

MEASURES CONCERNING THE IMPORTATION AND SALE OF GARMENT PRODUCTS

(THE REPUBLIC OF AVEL *v.* THE KINGDOM OF RESSY)

1. The Republic of Avel ("Avel") is an island country situated within the subtropical zone with a population of approximately 150 million and it is a developing country with its GDP per capita stands at roughly USD 9,000 as of 2022. Historically, the majority of Avel's citizenry engaged in agricultural pursuits. However, the global surge in fast fashion around the year 2000 prompted a strategic shift. Avel embarked on a program of infrastructural development and enacted a series of business-conducive laws and regulations. These measures aimed to attract sewing factories from other countries, bolstering Avel's position within the global garment industry.
2. Beyond these governmental initiatives, Avel possesses unique cultural characteristics that further contributed to its success. The longstanding tradition of women acquiring embroidery skills from a young age fostered a workforce adept in intricate needlework. Additionally, Avel offered a readily available pool of labor distinguished by both affordability and competence. These factors collectively proved enticing to numerous foreign apparel companies, leading them to establish subcontracted sewing facilities within Avel's borders. As a direct consequence of these developments, Avel has witnessed remarkable economic progress. Since 2010, Avel has sustained an average annual growth rate exceeding 6%, solidifying its position as a key player in the international garment industry.
3. Despite the increased availability of stable employment opportunities within the burgeoning garment industry, a commensurate elevation in the overall societal status of Avelan women has not necessarily materialized. The custom of women preparing a substantial dowry for marriage, though outlawed in 1973, persists in some rural regions. Furthermore, the practice of children from impoverished families contributing to household finances through light labor remains prevalent. Statistics compiled by the International Labour Organization (ILO) in 2022 estimate that 3.5 million children are currently engaged in such activities.
4. The Kingdom of Ressay ("Ressay"), situated in the northern part of the continent of Emeria, boasts a population of approximately 100 million. Located across the western sea from Avel, Ressay's economic prowess is evident in its impressive GDP per capita of USD 80,000 as of 2022, solidifying its position as one of the world's leading industrialized nations. This economic strength stems from Ressay's competitive advantage across a diverse range of industries. From high-tech and space exploration to automotive manufacturing, financial services, and the service sector, Ressay consistently ranks among the global leaders.
5. The emergence of Southern Ressay as a major hub for large-scale cotton cultivation can be attributed to a confluence of favorable factors. The region enjoys a warm climate, offering ideal growing conditions. Additionally, extensive land availability facilitates large-scale cultivation practices. Furthermore, Ressay has implemented advanced mechanization within the agricultural sector, significantly increasing efficiency. The presence of a large migrant labor force further bolsters Ressay's cotton production capabilities. Finally, generous government subsidies provide crucial financial support to farmers, solidifying Ressay's position as a dominant force in the global cotton market.

6. In recent years, a heightened awareness of global environmental protection and human rights issues has permeated consumer consciousness within Ressay. This growing concern has been reflected in the actions of Ressay's leading multinational corporations. Notably, both NIKKUN and PUM, giants within the global marketplace, have opted to join the Better Cotton Initiative. This non-profit organization serves as a champion for sustainable cotton cultivation practices, aligning itself with the evolving preferences of Ressay's consumers.

7. However, it is crucial to acknowledge the presence of a significant economic disparity within Ressay. Since the global financial crisis, Ressay has grappled with a sustained economic decline. This reality is demonstrably reflected in Ressay's Gini coefficient, which stood at a concerning 0.38 in 2022. This figure represents the highest level of income inequality among developed countries.

8. A recent survey has shed light on the correlation between Ressayans' consumer income and environmental and human rights awareness. The study revealed a demonstrably stronger association between the concerns for protection of environment and human rights and consumers belonging to households with a higher annual income. Specifically, the survey indicated that approximately 30% of the population, those with annual household incomes exceeding USD 100,000, exhibited a heightened level of environmental and human rights consciousness.

9. GEE Inc. was incorporated in 2017 as an apparel fashion brand company with its principal place of business located in Juno, the capital city of Avel. The governing law applicable to the company's operations shall be the law of Avel. GEE achieves its "ultra-low price" by not having a physical store and doing everything from procurement of goods, wares, articles, or merchandise and product planning to manufacturing and sales domestically in Avel. As a clothing retailer, GEE has gained global popularity, particularly among teenagers and young adults in their twenties, by offering trend-relevant products at accessible price points. This success can be attributed, in part, to the influence of social media personalities. Reports indicated that GEE was projected to achieve sales of USD 35 billion in 2023, solidifying its position as a major player within the global fast-fashion market.

10. The workforce at GEE's sewing factories is approximately 90% female employees, with the majority falling within the mid-teenage to early twenties age range. Concerns have been raised regarding potential instances of underage labor within this demographic. Reported working hours at some of these factories suggest extended shifts exceeding standard working hours, with some reports indicating lengths of up to 15 hours per day, from 7:00 to 22:00, and the average monthly income of factory employees is 18 Rund (about USD 80). GEE's sewing factories adopt a work system similar to the system that is prevalent in other garment manufacturing facilities in Avel. The workforce at GEE exhibits a comparatively younger demographic, potentially leading to a marginally lower average monthly salary when compared to factories with older employee populations.

11. On 18 December 2020, a fire incident tragically occurred at a mixed-use building situated near Juno. The building housed several garment factories supplying fast fashion brands. The incident resulted in a significant loss of life, with over 500 fatalities reported. Additionally, more than 1,000 individuals sustained injuries. An investigation into the cause of the fire revealed structural deficiencies within the building. These deficiencies stemmed from repeated expansions and renovations undertaken to accommodate the burgeoning national sewing industry. Regrettably, these modifications failed to incorporate essential safety measures, including the installation of adequate fire suppression systems and the establishment of designated evacuation routes.

12. The incident garnered significant international attention due to the involvement of several foreign apparel companies, including NIKKUN and PUM, whose associated sewing factories sustained worker casualties. In the wake of the incident, widespread protests erupted throughout Avel, adopting the poignant slogan “I don't want to die for fashion”. This galvanized international attention, prompting the intervention of the International Labour Organization (ILO) and the Avel government. Through collaborative efforts, fashion brands with operations in Avel and labor unions reached a landmark agreement on 1 September 2021: the Accord on Fire and Building Safety in Avel. This agreement signifies a collective commitment to improving safety and working conditions within the Avel garment industry.

13. On 18 December 2021, one year after the fire incident, Ressay's public broadcasting channel NBM aired a documentary program titled “How a T-shirt is made”. The television program featured a 13-year-old boy residing near Juno. The boy reported commencing work in the cotton fields at the age of eight. He claimed prolonged exposure to field pesticides had resulted in his diagnosis of anemia. Additionally, he stated frequent absences from school due to illness, hindering his educational attendance. The program also featured a 14-year-old girl from Juno working in a sewing factory. She expressed a strong desire for higher education and a career as a teacher. However, her family's significant debt incurred from her sister's marriage forced her to prioritize earning required for her own wedding dowry through factory work. This course of action, while limiting her personal aspirations, was presented as the “safest option” within her circumstances. These stories drew the sympathy of many viewers.

14. After the documentary program was aired, Ressay's Parliamentary Association for Human Rights Diplomacy held an urgent press conference titled “Save the Children of Avel! Don't Ignore Modern-Day Slavery!”. The Association requested the Ressay government to take prompt action in stating as below:

Ressay, a leader in the global community, must address the disturbing reports of inhumane working conditions in Avel. Prolonged hours, unsafe workplaces, and even violence cannot be tolerated. We stand with the people of Avel and demand

15. In April 2022, presidential election was held in Ressay. Rebecca Prant, the leader of the National Republican Party (NRP), was elected as the 45th President of Ressay. President Prant, in her inaugural address, expressed concerns stating as follows:

My fellow Ressayans, the current multilateral free trade landscape weakens our nation. Unfair practices abroad threaten our jobs and prosperity. To combat unfair labor practices and safeguard Ressayan jobs, I propose imposing substantial tariffs – exceeding 50% – on garment imports originating from Avel where forced labor is suspected. This is not isolation, but a step towards a balanced and just trade system. Together, we will build a stronger Ressay.

16. On 29 August 2022, the NPR introduced the “Apparel Industry Forced Labor Eradication Bill” in the House of Representatives. The bill subsequently secured passage in the House and was enacted by the Senate on 2 November 2022. On 1 January 2023, the “Apparel Industry Forced Labor Eradication Act”, hereinafter referred to as the “Red Tag Act”, entered into force (*see Annex I*).

17. The Red Tag Act envisioned a red tag design that, while abstract in nature, evoked a figurative representation of a young female figure clad in traditional Avel attire, seemingly in a state of tearful distress. In the wake of the enactment of the Red Tag Act, the Avel Ministry of Foreign Affairs has immediately transmitted a *note verbale* to its Ressay counterpart. The *note* expressed profound disappointment and firm opposition to the legislation, highlighting its blatant disregard for the fundamental principle of national sovereignty, and demanded immediate repeal of the Act:

Developing countries possess the inherent right to establish their own labor regulations, taking into account their unique socio-economic realities. Any attempt to impose external standards undermines this right and represents an unacceptable intrusion into domestic affairs. Avel vehemently rejects the notion that developing countries are obligated to improve the labor standards of developed countries, irrespective of their vastly different circumstances. Such demands are not only irrational but also a violation of international law.

Developed countries must prioritize providing meaningful financial assistance and capacity-building programs to empower developing countries to progressively enhance their labor standards. We call upon the international community to uphold the principles of non-intervention and respect for national sovereignty. Sustainable progress in labor rights can only be achieved through constructive dialogue, mutual understanding, and targeted development cooperation.

18. In December 2022, Ressay and its neighboring country the United Melunian States (“Meluna”) concluded a “Agreement for Bilateral Cooperation on Improving the Working Environment.” This agreement signifies a commitment to addressing key labor issues, including: (1) combating violence against workers, (2) eliminating gender-based discrimination in workplaces, (3) upholding workers' right to organize, and (4) establishing an early response mechanism for labor disputes. The agreement further emphasizes ongoing consultations to strengthen cooperation in the future. Notably, Meluna received a temporary exemption from the application of the Red Tag Act during this consultative period.

19. In response to the Red Tag Act, NIKKUN and PUM have issued statements including the following points on their respective websites:

- **Sustainable Sourcing:** Both companies emphasize their commitment to sourcing sustainable cotton from Ressay.
- **Mechanized Production:** Both companies highlight the extensive use of automation throughout their production processes, except for sewing.
- **Skilled Workforce in Avel:** While acknowledging some sewing operations occur in Avel, both companies maintain that wages for these workers significantly exceed the local average. This reflects the need for highly skilled labor to ensure product quality aligns with their brand image.
- **Compliance with Regulations:** Both companies confirm that their distributors have submitted the necessary certifications to the Ministry of Commerce, as mandated by the Red Tag Act.

20. Economic journals published in Ressay have raised ethical concerns regarding GEE’s supply chain practices. These reports allege that GEE may be sourcing cotton from Avel, a country where instances of child labor have been documented in the agricultural production of cotton. Additionally, the reports

suggest that GEE employs a less-skilled workforce in its sewing factories, potentially enabling them to offer lower wages compared to competitors. To date, GEE has not taken any official position on these reports and the Red Tag Act.

21. Although GEE mainly sells its products via internet mail order, GEE has entered into direct contracts with major local general merchandising supermarkets and outsources its sales to them, in some developed countries with particularly large markets, including Ressay. One-PM, the largest general supermarket in Ressay, failed to present the Ministry of Commerce with the certificate required by the Red Tag Act for some foreign-made garment products, including GEE, by the date the Red Tag Act became operational.

22. After the implementation of the Red Tag Act, all GEE products would have red tags attached in Ressay. One-PM has reportedly asked GEE to bear the cost of the tags, as the purchase of the tags and the cost of labor together would have resulted in a huge cost burden. On the other hand, since the Act does not apply to individual consumers importing GEE products, there is a growing trend, especially among young people, to buy GEE products directly from the company. Despite the enactment of the Act, data suggests a continuous increase in the number of fashion-related posts associated with the hashtag #GEE on various social media platforms. This seemingly indicates that the legislation may not have had the intended impact on consumer behavior.

23. Retailers of GEE products, including One-PM, have been forced to restructure their GEE product outlets and switch to other companies' products, affecting their supply chains. The implementation of the Red Tag Act in January 2023 coincided with significant fluctuations in the net profits of several garment manufacturers in Ressay during the first half of 2023. While a direct causal relationship between the Act and these financial variations cannot be definitively established at this time, it is noteworthy that NIKKUN and PUM experienced a substantial increase in net profits exceeding 150% compared to the second half of 2022. Conversely, GEE's net profit in Ressay during the first half of 2023 declined to a mere 20% of the level observed in the preceding six-month period. Estimates suggest that the closure of 56 sewing factories, encompassing both large and small facilities, in Avel has resulted in job losses for approximately 95,000 employees.

24. In January 2023, the NBM conducted a public opinion poll on the Red Tag Act within Ressay. The result revealed generational discrepancies in awareness of forced labor. Respondents in their 40s and 50s exhibited the highest concern, with over 70% expressing worry. Conversely, amongst teenagers and individuals in their 20s, nearly half reported a lack of awareness regarding child and forced labor in Avel. Furthermore, 30% of all respondents, predominantly from lower-income demographics, indicated that forced labor concerns in other countries were overshadowed by their own economic challenges. The provided quotes highlight the divergent perspectives surrounding the ethical implications of fast fashion, specifically referencing the red-tag system and brands like GEE.

"The red-tag system throws Avel in your face, and frankly, it's gut-wrenching. My daughter's just turned 15, and the thought of her peers in Avel churning out clothes under who-knows-what conditions – it makes me sick. Seeing those clothes just feels wrong, and I wouldn't want my kids anywhere near a system that might be exploiting kids like them."
(50s engineer)

“GEE? Like, duh, obsessed! They’re so slay, you know? Like, the prices are bomb and the styles are always on point. Literally all my besties are rocking GEE right now, so it’s like, a total vibe check. Plus, all this drama about forced labor sounds kinda sus, tbh. I’m just tryna look cute and stay on trend, not solve world hunger, you feel me?” (Teenage student)

“Sustainable cotton? What’s that even? I got too much on my plate already to be thinkin’ ‘bout where all these clothes come from and all that. I just gotta work my shift, pay the bills, and make ends meet, ya know?” (40s transport worker)

“Forced labor is messed up, man. We all know it happens, especially in developing countries. But is boycotting one brand, like GEE, really gonna change the whole system? Seems kinda narrow-minded, you know? And honestly, if their economy tanks because of it, won’t that just make things worse for the people there, especially the kids? Maybe we need a bigger solution, not just individual brands on the chopping block.” (30s musician)

25. A recent report published by the Global Labour Rights, a non-governmental organization, sheds light on working condition rankings across several countries. The report, titled “Working Environment Indicators (2022)” and released in February 2023, surveyed 165 countries. Among the countries included, Avel ranked 115th, Ressay ranked 85th, and Meluna ranked 122nd. These rankings suggest that Avel may have less favorable working conditions compared to Ressay, while Meluna appears to have the least favorable conditions among the three countries mentioned.

26. Following the results of the public opinion poll and the “Working Environment Indicators (2022)”, President Prant unveiled a new policy initiative titled “Fair Trade Ressay”. This program offers domestic Ressay companies a reduction in corporate taxes in exchange for adherence to specific labor standards. These standards include the payment of fair wages to employees and the implementation of improvements to the overall working environment. The policy made Ressay brands such as NIKKUN and PUM eligible for tax breaks, while companies doing business with GEE were identified as not meeting the conditions.

27. The Ministry of Foreign Affairs of Avel subsequently made the following statement:

Ressay’s measures are disguised protectionism under the cover of human rights protection and are not consistent with the ‘General Agreement on Tariffs and Trade 1994 (GATT)’. Avel has attempted to negotiate with Ressay through various channels to resolve this issue, but no positive response has been received from the Ressay side.

The Ministry then requested consultations under Article 4 et seq. of the “Understanding on Rules and Procedures for the Settlement of Disputes” (DSU). Following the unsuccessful conclusion of consultations within the prescribed 60-day timeframe, the Government of Avel formally submitted a request to the Dispute Settlement Body (DSB) of the World Trade Organization (WTO) to establish a panel. The DSB subsequently established the panel on 25 May 2023.

28. On 22 March 2024, the Panel Report, *Ressay – Measures Concerning the Importation and Sale of Garment Products* (see **Annex II**) was issued and circulated to all WTO members.

29. Avel, complaining that the Panel had erred in finding, appealed certain issues of law and legal interpretation developed in the Panel Report. At the same time, Avel's Ministry of Foreign Affairs made the remarks that "the Appellate Body is currently dysfunctional and there is no indication of when it will resume its functions. Therefore, our country must seek other means to restore our rights and compensate for our economic losses", and announced that it was preparing to bring the case to the International Court of Justice.

30. On 1 April 2024, Avel filed in the Registry of the Court an Application instituting proceedings against Ressay. The Application states that the dispute it brought to the Court "concerns the implementation by Ressay of its Apparel Industry Forced Labor Eradication Act obligating the distributors of apparel products to purchase specific red tags and attach them to products that are not in conformity with the requirements as specified in the Act".

31. In response, the Department of Trade Policy of Ressay published the following statement on its website:

The Panel Report, *Ressay – Measures Concerning the Importation and Sale of Garment Products*, upheld the WTO-consistency of the measures taken under the Red Tag Act. In light of the present circumstances of the WTO dispute settlement mechanism, however, Avel deliberately proceeded to 'appeals into the void' to block the adoption by the Dispute Settlement Body of the Panel Report.

Unlike Ressay, Avel has not participated in the Multi-Party Interim Appeal Arbitration Arrangement. Instead, Avel purports to bring the very same dispute that had already been decided by the Panel to the International Court of Justice to obtain a second chance. Such behavior is not warranted in light of the law and jurisprudence of both the WTO and the ICJ.

32. On 14 February 1985, Avel made the following declaration under Article 36, paragraph 2, of the Statute of the Court:

The Republic of Avel hereby declares that it recognizes as compulsory *ipso facto* and without special agreement, in relation to any other State which accepts or has accepted the same obligation, the jurisdiction of the International Court of Justice in all legal disputes referred to in paragraph 2 of Article 36 of the Statute of the International Court of Justice.

33. On 7 May 2001, Ressay made a declaration under Article 36, paragraph 2, of the Statute of the Court, which states, in its relevant part:

The Kingdom of Ressay declares that it accepts as compulsory *ipso facto* and without special agreement, in relation to any other State accepting the same obligation, the jurisdiction of the International Court of Justice [...] over all disputes arising after the present Declaration, with regard to situations or facts subsequent to the same date, other than:

(i) any dispute in respect of which the Parties thereto have agreed to have recourse exclusively to some other method of peaceful settlement;
[...]

34. Ressay is an original Member of the United Nations. Avel was admitted to the United Nations in 1972. Avel has been a Member State of the ILO since 1972. Ressay has been a Member State of the ILO since 1934. Both Avel and Ressay are among the original Members of the WTO. For other international treaties, *see Annex III*.

35. The Republic of Avel respectfully requests the Court to adjudge and declare that:

- (a). The Court has jurisdiction to entertain the Republic of Avel's submission (b) below, and the Republic of Avel's Application is admissible;
- (b). The measures taken to implement the Apparel Industry Forced Labor Eradication Act are inconsistent with the obligations of the Kingdom of Ressay under Article III(4) of the General Agreement on Tariffs and Trade and are not justified under Article XX(a).

36. The Kingdom of Ressay respectfully requests the Court to adjudge and declare that:

- (a). The Court lacks jurisdiction to entertain the Republic of Avel's submission (b), or, even if the Court has jurisdiction, the Republic of Avel's Application is inadmissible;
- (b). The measures taken to implement the Apparel Industry Forced Labor Eradication Act are either consistent with the obligations of the Kingdom of Ressay under Article III(4) of the General Agreement on Tariffs and Trade or justified under Article XX(a).

Annex I: Excerpts of the Apparel Industry Forced Labor Eradication Act (entered into force 1 January 2023)

Article 1 (purpose)

The purposes of this Act are

- (1) to end forced labor practices wherever such practices occur through all means available to the Kingdom of Ressay;
- (2) to regard the prevention of atrocities as in its national interest, including efforts to prevent torture, enforced disappearances, and widespread and systematic use of forced labor; and
- (3) to lead the international community in protecting humankind from all forms of violence and exploitation, promoting respect for their inherent dignity.

Article 2 (definitions)

[...]

(c) “Forced labor” shall include any work or service which is exacted from any person under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily. For the purpose of this article, “forced labor or/and indentured labor” includes forced or indentured child labor.

[...]

Article 6 (certification)

For all garment products to be sold in the Kingdom of Ressay, distributors must provide clear and convincing evidence demonstrating that it does not use goods, wares, articles, or merchandise produced wholly or in part by forced labor at any stage of the supply chain, by submitting documents such as third-party audit reports, materials illustrating the supply chain and photographs showing the living and working conditions of its employees, to the Ministry of Commerce.

Article 7 (enforcement)

Distributors who fail to produce the evidence provided in the previous article must purchase the specified red tags and attach them to their garment products when distributing and selling them in the territory of the Kingdom of Ressay.

[...]

Article 9 (penalties)

Distributors who contravene the provisions of this Act shall have their products seized and be fined up to EST 100,000¹.

¹ 1 EST = 1.3 USD.

Annex II: Excerpts of the Panel Report, Ressa – Measures Concerning the Importation and Sale of Garment Products

II. The Measures at issue

2.1 Avel's challenge concerns the implementation by Ressa of its Apparel Industry Forced Labor Eradication Act obligating the distributors of garment products to purchase specific red tags and attach them to products that are not in conformity with the requirements as specified in the Act.

[...]

III. Parties' request for findings and recommendations

3.1 Avel requests that the Panel finds that [...] the measures at issue are inconsistent with the obligations of Ressa under Article III:4 of the GATT 1994.

[...]

IX. Conclusions and recommendations

9.7 [...] On the basis of these above, the Panel finds that the measures taken to implement the Apparel Industry Forced Labor Eradication Act are *prima facie* inconsistent with the obligations of the Kingdom of Ressa under Article III:4 of the GATT 1994.

9.8 [...] In analyzing relevant precedents with respect to the definition of "public morals", the purposes and necessity of the measures, and the *chapeau* of Article XX of the GATT 1994, the Panel concludes that the measures taken to implement the Apparel Industry Forced Labor Eradication Act are justified under Article XX(a) of the GATT 1994.

Annex III: Ratification Status by Treaty

- Vienna Convention on the Law of Treaties of 1969:
Avel ratified in 1972; Ressayre ratified in 1970
- International Covenant on Economic, Social and Cultural Rights of 1966:
Avel ratified in 1998; Ressayre signed in 1977 and not yet ratified
- International Covenant on Civil and Political Rights of 1966:
Avel ratified in 2000; Ressayre ratified in 1992
- Convention on the Elimination of All Forms of Discrimination against Women of 1979:
Avel ratified in 1984; Ressayre signed in 1980 and not yet ratified
- Convention on the Rights of the Child of 1989:
Avel ratified in 1990; Ressayre signed in 1995 and not yet ratified
- ILO Convention No. 29 on Forced Labour of 1930:
Avel ratified in 1972
- ILO Convention No. 105 on the Abolition of Forced Labour of 1957:
Avel ratified in 1972; Ressayre ratified in 1991
- ILO Convention No. 138 on Minimum Age for Employment of 1973:
Avel ratified in 2022 (minimum age: 14 years²)
- Protocol of 2014 to the Forced Labour Convention of 1930:
Avel ratified in 2022

² Upon the ratification of the Minimum Age Convention, 1973 (No. 138), Avel declared that a minimum age for admission to employment or work within its territory and on means of transport registered in its territory is 14 year-old.”