Sustainable textile policy

The legal feasibility, implementability and expected effectiveness of three pricing measures

ABBEL

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1. Introduction, scope and approach

1.1 Introduction

The textile industry has a significant environmental impact. In Europe, textile consumption accounts for the largest climate impact after food consumption, housing and mobility. In terms of water and land use, textile consumption 'scores' third and in terms of material use and greenhouse gas emissions it 'scores' fifth.1 In the Netherlands, we buy an average of 50 items of clothing and 4-6 pairs of shoes per person per year. Every year, almost 1 billion garments and 70 million pairs of shoes enter the market in the Netherlands.2

To address this issue, the Dutch government has taken several measures and supported initiatives in recent years. One example is the Denim Deal 1.0, in which parties in the textile chain worked together to recycle discarded textiles into yarn for new denim garments. Since 1 July 2023, extended producer responsibility (EPR) for textiles has been introduced, aimed at promoting separate collection, reuse and recycling of textiles

At the European level, the European Commission has published a textile strategy and several legislative proposals, which incorporate many of the Dutch policy priorities. In addition, through behavioural campaigns, the government encourages consumers to be more conscious about clothing, for example by buying less or choosing second-hand items. The annual textile monitor shows some positive developments since 2018, such as an increase in the use of sustainable materials and recycled content in new products, and an increase in the separate collection of textiles. Despite this progress, many policy goals are behind schedule. For instance, the current use of recycled content and sustainable materials is not yet in line with set targets, and not enough textiles are recycled. Moreover, the amount of textiles placed on the market continues to rise, resulting in an increasing ecological footprint of the textile sector.3

To reduce the demand for non-sustainable textile products and increase the demand for sustainable textile products, policymakers are looking for measures that can be effective in this regard. The Policy Programme Circular Textiles 2025-20304 , published in December 2024, elaborates on this. The ambition is to make circular products more and more competitive with linear products. In the current situation, this is difficult partly because of the low prices of many new garments. Besides simply rejecting polluted clothing and extending the lifespan of clothing as much as possible through, for example repair and reuse of clothing, the competitive position of sustainable versus non-sustainable textiles can also be improved by pricing both variants differently.

This report describes the legal feasibility, implementability and expected effectiveness of such economic incentives within the Dutch and European context. By identifying the possibilities and limitations of three of these measures, this study aims to contribute to the further development of effective policies for a sustainable and circular textile chain in the Netherlands (also aimed at achieving CO_2 targets).

1 See European Environment Agency webpage Textiles (2024
2 See page 7 of the Circular Textiles Policy Programme 2025 - 2030 (2024)
3 See the Progress Report of the Circular Textiles Policy Programme (2024)
4 Policy programme circular textiles 2025 - 2030 (2024)

1.2 Policies that are part of this study

In this study, three policy measures are examined and assessed for their possibilities under (Dutch and European) laws and regulations, expected implementability and expected effectiveness. The selection of the three measures was made by the Ministry of Infrastructure and Water Management (I&W) after a preparation process involving discussions with (international) stakeholders and other departments. The following measures are part of this study:

1. Eco-modulation, or tariff differentiation under the EPR for textiles.
2. An import tariff on imported textiles.
3. A minimum price for textiles based on weight in kilograms

The above measures are examples of pricing measures. The National Circular Economy Programme (NPCE)[5] distinguishes between three types of measures:

- **Pricing measures** can charge any environmental damage directly to those causing it. This makes polluting activities more expensive and sustainable, circular alternatives more attractive. Pricing measures such as taxes and levies are aimed at discouraging undesirable behaviour and/or stimulating desirable behaviour through (direct) price incentives.
- **Standard- setting measures** can clarify, inhibit and/or prohibit activities with a negative societal impact. Examples include legal standards for steps in the product chain, such as circular design, new forms of ownership and product liability.
- **Stimulus measures** focus on encouraging chain parties to switch to a more sustainable and circular business model. Examples include subsidies, vouchers, or switching to circular procurement by government bodies and other buyers of circular products and services.

The NPCE indicates that intensified policies and more directive and coercive measures are needed to achieve the circular ambition. To this end, it calls for a mix of pricing, normative and incentive measures[6]. This study considers only the three named pricing measures.

1.3 Approach

This study was conducted from August to December 2024. The following steps were completed:

Step 1: Operationalisation measures

During a kick-off meeting with the client, the three measures were discussed and the details, steps already taken and possible alternatives were considered. Based on the discussion and desk research, the measures were further refined and described.

Step 2: Test for legal feasibility

The next step compromises a test whether the measures are possible based on Dutch (and European) legislation, providing insight into already existing examples and policy frameworks for each measure. Based on desk research, internal team analysis and a number of interviews, the legal feasibility analysis was further refined. As a result, the legal feasibility for each measure is provided via a traffic light system (green, orange or red).

Step 3: Implementability analysis

This step provides insight into the implementability of each measure. Based on desk research, interviews with experts and internal team analysis, insight into the implementation complexity of each measure was

5 See: National Circular Economy Programme 2023-2030, page 27
6 See the summary of the National Circular Economy Programme 2023-2030 (2023)

obtained. This includes consideration of administrative burdens, practicability (timeframe, complexity, consistency with existing processes) and the possibilities for enforcement.

Step 4: Analysis of effectiveness

In this step, an analysis of the expected effectiveness was made for each measure. Again based on desk research, internal team analysis and interviews with experts, insight was gained into causal relationships between measure and effect (via analysis of input-throughput-output and outcome). The analysis of expected effectiveness is thus mainly qualitative in nature. The analysis considered both an implementation of the measure that stimulates the sustainable alternative and an implementation that discourages the non-sustainable alternative. Both producer and consumer were considered.

Step 5: Review draft advice and draft final advice

After discussing the draft analysis with the client, it was more broadly reviewed, enriched and deepened in a session with policy officials, experts and stakeholders. Based on this, our final opinion was prepared. Besides our conclusions and recommendations for the three measures, this opinion contains a number of suggestions for pricing measures that can be further investigated for legal feasibility, implementability and effectiveness.

1.4 Definitions

The table below contains the key terms from the report.

Concept	Notes
Household textiles	Table linen, bed linen and household linen (such as hand and tea towels). Here we follow the definition from article 1 of Decree on Extended Producer Responsibility for textiles. 7
Clothing	Consumer clothing and industrial clothing, including safety clothing. Here we follow the definition from article 1 of Decree on Extended Producer Responsibility for Textiles.
Textiles	Household textiles and clothing. Here we follow the definition from article 1 of Decree on Extended Producer Responsibility for Textiles.
Put on market	Making a product available on the market for the first time in the Netherlands. Here we follow the definition from article 1 of Decree Extended Producer Responsibility Textiles for Placing on the Market.
Producer	The person who professionally, regardless of the sales technique used, puts substances, mixtures or products on the Dutch market. 8

7 Decree on extended producer responsibility. Article 1: definitions and scope. Available at this link

8 See Article 1 of Decision Scheme for Extended Producer Responsibility. Indicated in the explanatory memorandum as follows: The provisions in this decree concern the person who first places substances, mixtures or products on the market in the Netherlands. This may be a domestic producer. If products are produced outside the Netherlands, the provisions apply to the importer of the product, being the person who first places a product on the market in the Netherlands. For the sake of readability, we have chosen to refer to "the producer" in these explanatory notes, where "producer or importer" is meant.

Sustainable & non-sustainable textiles	In this study, we work on the assumption that it is possible to distinguish between sustainable and non-sustainable textiles (see also chapter 3). Given the objectives of this study and in the context of implementing the measures, being able to make this distinction is important. Because sustainability of textiles is influenced by several factors (e.g. expected lifespan, choice of material, production), making this distinction is not easy. It does not fit within the scope of this study to formulate a definition of sustainable or non-sustainable textiles. It is expected that sustainability of (textile) products can eventually be further defined using, among others, the Ecodesign for Sustainable Products Regulation (ESPR) . 9

1.5 Reading guide

This report provides insight into legal feasibility, implementability and expected effectiveness of three measures aimed at improving the position of sustainable versus non-sustainable (or linear) textiles. This chapter discusses the reason, the measures studied and the approach of the study. Chapter 2 presents the operationalisation we use to analyse these types of deterministic measures. Chapter 3 describes the complexity and dynamics of the textile chain and discusses some further assumptions used in assessing effectiveness. In sections 4 to 6, we explain for the three measures:

- What the measure means in general;
- How and whether the measure is already applied in other sectors;
- How the measure can be applied in the textile chain;
- What the legal feasibility of the measure is;
- What is the expected implementability and effectiveness of the measure, including unforeseen effects.

Chapter 7 summarises the findings from chapters 4 to 6 and provides insight into which (combination of) measure has the greatest chance of success. The chapter concludes with advice to the Ministry, including some suggestions for research into alternative pricing measures.

Depending on your knowledge and background on both the textile sector and pricing measures, readers may read through this report differently. For the broadly interested reader, the entire report is relevant. If you (e.g. as a policy maker) are mainly interested in the conclusions and recommendations, chapter 7 will suffice. For more insight into the comprehensive analysis of legal feasibility, (expected) effectiveness and implementability per measure, we recommend starting with chapters 4 to 6. For more information on assumptions and how this analysis was conducted, please refer to Chapters 2 and 3.

2. Operationalisation; legal feasibility, implementability and expected effectiveness

Before analysing legal feasibility, implementability and effectiveness of policy measures, we explain how we have operationalised these concepts within the framework of this study. Section 2.1 outlines legal developments in the field of sustainability. In sections 2.2, 2.3 and 2.4, we explain successively the operationalisation of legal feasibility, implementability and expected effectiveness.

9 See also the webpage explaining the European Commission's Ecodesign for Sustainable Production Regulation

2.1 Legal developments on sustainability

Developments regarding laws and regulations on sustainability are currently in full swing. It is important to take this into account when determining legal feasibility in this study. For this reason, we briefly describe some relevant developments.

In the Netherlands, the Climate Agreement and the Climate Act were implemented in 2019 to achieve the climate goals set out in the Paris Agreement. The Climate Act aims to reduce net greenhouse gas emissions in the Netherlands to zero by 2050 at the latest. While these agreements and laws provide important frameworks for long-term goals, in practice it proves difficult to outline concrete measures and timelines.

Influenced by the Green Deal and Fit-for-55 legislation, the European Commission has proposed a robust package of measures to achieve the transition to a sustainable (circular) economy. The importance of sustainability is central to all policy documents and legal texts. No longer is the overriding objective the single market and associated free-trade provisions; sustainability has come alongside this as an important pillar. Indeed, so-called 'green growth', according to the European Commission, ensures that Europe can maintain its position in the global market. The Green Deal affects at least 170 pieces of legislation, with both new legislation being introduced and various existing regulations being/have been revised. The legislative process surrounding the Green Deal is not yet fully completed; there are still pieces in procedure (negotiation) such as the revision of the Waste Framework Directive (hereafter **WFD**).

Production and consumption of specific product groups (such as textiles) have a high environmental impact. For this reason, in several pieces of legislation, the European Commission has proposed minimum obligations for polluting product chains. The textile product group in particular is specifically affected by legislation. On the one hand, we see this reflected in the Ecodesign Regulation when it comes to product-specific requirements, but also in the revision of the WFD, specific attention is paid to textiles.

Under the Green Deal, on the contrary, there is also room for member states to deploy their national laws in line with the policy choices made. This depends very much on the type of legislation that is central, and the space provided in that case. In many cases, a minimum standard is laid down in European legislation or delegated act of the European Commission, and member states can (within limits or not) set additional requirements or conditions.

In addition to agreements and legislative interventions from the Green Deal, climate justice is playing an increasing role in the legal approach to climate change. An important ruling in this regard is the KlimaSeniorinnen case[10] , in which the European Court of Human Rights ruled that Swiss climate policy was insufficient to prevent the consequences of climate change. The Court formulated an assessment framework that climate policies must meet as a minimum to prevent human rights violations. This framework includes setting timelines for carbon neutrality, setting interim targets, and consistently implementing relevant legislation and measures.

2.2 Legal feasibility of policy measures

Legal feasibility of measures depends on a number of circumstances:

- First of all, it is about getting a picture of the legislation that applies to a certain issue. This can be European legislation, but also Dutch legislation after implementation of a directive, for example. From this legislation comes a set of rules; the feasibility of measures is tested against these rules. Finally, a number of measures also take into account the perspective of international trade agreements.

10 ECLI:CE:ECHR:2024:0409JUD005360020 (Verein KlimaSeniorinnen Schweiz and others / Switzerland)

- The review may conclude that there is room to take a measure, and that it *does not* conflict with the legislative framework.
- It may also be that some degree of tension or conflict is detected.

This study assesses whether the measures are possible on the basis of Dutch (and European) legislation. For each measure, we outline the legal feasibility. To do so, we use a traffic light system of legal feasibility based on this analysis:

- **green** for those measures that are legally feasible;
- **orange** for measures that may be feasible depending on deeper research;
- **red** for measures that are (almost) not feasible.

Implementing measures will in many cases require legislative or regulatory changes, either at the European or national level. Whether such an amendment can actually be realised depends on various circumstances. An elaboration of this legal process is beyond the scope of this study.

2.3 Implementability of policies

Policies should be workable for everyone involved. This study provides an initial assessment of policy implementability and enforceability using the following questions: Is the measure implementable within a reasonable timeframe? Are the administrative burdens proportionate to the intended goal achieved by the measure? Is the measure consistent with other policy areas and existing processes? Is the implementation complex? In addition to the last question, we also look at enforcement. Is it possible to enforce the measure?

Also for implementability, this study uses a traffic light system:

- **green** for those measures that are feasible;
- **orange** for measures that are difficult to implement;
- **red** for measures that are almost impossible to implement.

2.4 Expected effectiveness of policy measures

In a nutshell, policy is effective if the pre-set goal is achieved. That goal is usually an impact goal. In this study, for example, it is about fewer unsustainable textiles and more sustainable textiles on the market.[11] When talking about effective policies, reference is usually made to the positive or desired effects that policies can have. We know that policies also bring unwanted effects . The occurrence of undesirable effects negatively affects the effectiveness of policies. Besides desired and undesired effects, a distinction can be made between foreseen and unforeseen effects. Unforeseen effects are a nice by-product if they contribute to the previously set goal (and are therefore desirable). Unforeseen effects that are undesirable require flexibility and resilience in minimising the negative effects. Unwanted effects that are to be expected can be anticipated in advance by taking appropriate mitigation measures. All combinations of these types of effects can be summarised in the matrix below:

Effects	**Desired**	**Unwanted**
Foreseen		
Unforeseen		

11 As explained in Chapter 1, this study does not provide a definition for sustainable or non-sustainable textiles, but we make the assumption that it is possible to distinguish (over time) between sustainable and non-sustainable textiles.

In an ideal situation, effectiveness is measured with a test group and a control group, adjusting for as many factors as possible so that only the effect of the measures on your target variable can be analysed. Identifying these effects is difficult in itself, given the complexity of analysis with control groups. This is all the more true when policy measures have not yet been introduced and/or have hardly been tested in practice (and it is therefore difficult to make a comparison with control groups and possibly other countries). We therefore talk about expected effectiveness. For measures that have not yet been implemented, mapping unwanted and unforeseen effects (bottom right of the matrix) is not possible. After all, if it is possible, the effects are foreseen. That category of effects can only be determined after implementation. An example of an unwanted effect (foreseen or unforeseen) is pulling open dustbins as a result of the introduction of the deposit on cans. This effect is expected to disappear in the longer term, once the behavioural change is realised and no (or few) cans end up in residual waste.

Another aspect that is important in determining effectiveness is whether the measure has a direct relationship with the target to be achieved or, on the contrary, an indirect one. Example: encouraging the use of recycled content can be done indirectly via a recycling target (this at least increases the supply of recycled content) or more directly via a target requiring the use of recycled content (this is expected to increase demand for recycled content). Of the three measures in this study, a minimum price has a more direct relationship with the consumer (the consumer pays this minimum price), while an import tax affects the consumer indirectly and the importer directly.

For the measures studied, there is currently little quantitative information available. For ecomodulation, for example, the level of the EPR tariff (both standard and differentiated) is not yet clear. To be able to say something about the expected effectiveness of the measures, in this study we draw up a causality diagram for each measure, based on which we qualitatively describe the expected effectiveness. A quantitative analysis can possibly be carried out in a follow-up study

For expected effectiveness, this study uses a traffic light system:

- **green** for those measures expected to be highly effective;
- **orange** for those measures expected to be effective;
- **red** for those measures expected to be little or ineffective.

3. Starting points for analysis in our study

This chapter provides a brief description of the textile chain (3.1), illustrates the price difference between more sustainable and less sustainable textiles (3.2) and describes four assumptions used in scoring the expected effectiveness of measures (3.3).

3.1 The international (and opaque) textile chain

The figure below shows (part of) the textile chain: from raw material to consumption. 95% of the textiles we use in the Netherlands are not produced in the Netherlands. The five largest textile-producing countries are China, Bangladesh, Vietnam, India and Turkey.12 The production and supply chain is complex; there are many different steps and parties between the raw material and the sold product. This long and also opaque chain complicates making effective (national) interventions. In discussion with experts on the measures, it is repeatedly stressed that parties in such a context can evade laws and regulations.

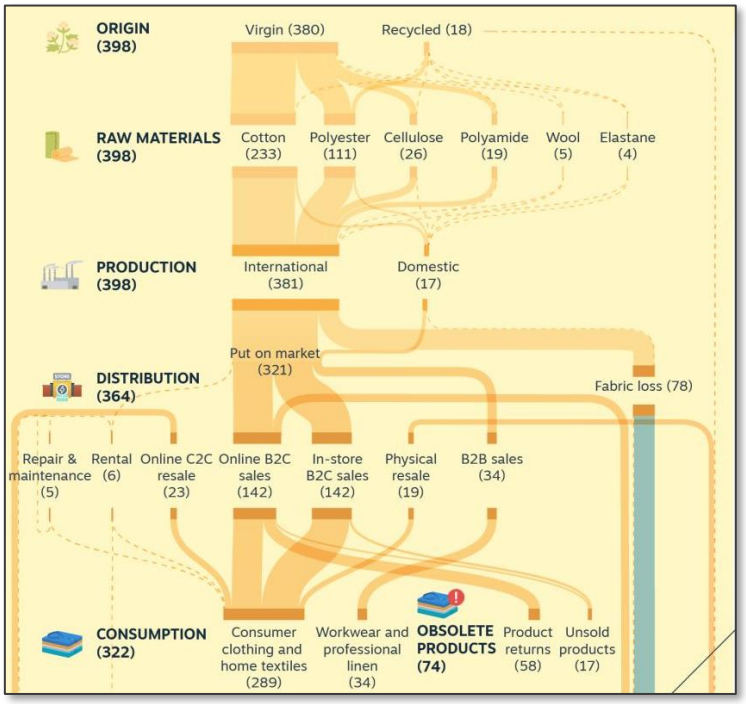


Figure1 - Part of Invest NL and Metabolic's Material Flow Analysis 13

3.2 Illustration of price difference between sustainable and less sustainable items

The pricing measures analysed in this study aim to encourage 'sustainable textiles' and/or discourage 'non-sustainable textiles'. While it is difficult to make a hard distinction between sustainable and non-sustainable textiles, it is possible to score brands against each other. Organisations such as Good on You and Impactful Ninja release annual rankings scoring brands on sustainability.14 To give insight into the price difference between sustainable textiles (read: more sustainable brands) and non-sustainable

12 The garment industry: problems and solutions, Clean Clothes Campaign, (2021)
13 See the report Towards a Dutch Circular Textile Industry, Invest NL (2024)
14 See, for example, the ranking of 'tops' from Good on You and Apparel ranking from Impactful Ninja

textiles (read: less sustainable brands) to be bridged by the pricing measures, we conducted a digital sample. We chose two textile products for this purpose: a white longsleeve and mommy jeans. This sample is not representative, but indicative and illustrates the order of magnitude of the price difference between more sustainable and less sustainable garments. The illustrations below show per garment the average price of the garment from a sustainable or circular brand in Europe (such as, for example, Mud Jeans, Nudies, New Optimist and Armed Angels) compared to the average price of a similar garment from a fast fashion brand (such as H&M, Mango and Zara) and an ultra-fast fashion brand (such as brands offered through platforms like Shein). As shown in the illustration below, the price differences between them for both garments are significant (a factor of 2 or higher).

Figure 2- Price difference in sample by 'women's white longsleeve'. Based on Rebel analysis

Figure 3- Price difference in sample by 'women's mommy jeans'. Based on Rebel analysis

3.3 Starting points for analysis of effectiveness

To score the expected effectiveness of the three measures, this study uses four assumptions:

1. The expected effectiveness of a measure is assessed using an input-throughput-outcome diagram;
2. A distinction can be made between sustainable and non-sustainable textiles;
3. Producers and importers pass on an increase in cost to consumers faster than a decrease;
4. Textiles are price elastic: an increase in price leads to the same (or stronger) decrease in demand.

These assumptions are at the same time a simplification of reality. Practice is often more nuanced. We explain this nuance and the justification for each measure in the following chapters (4 to 6).

1. The expected effectiveness of a measure is assessed qualitatively using an input-throughput-outcome diagram

For each measure, we draw up a causality diagram. This diagram provides insight into which intermediate steps and effects a measure can ultimately achieve (or, conversely, fail to achieve) its intended goal. For reporting purposes, we have simplified this diagram to an input-throughput-outcome diagram, as shown below. An input has one or more consequences, which in turn leads to certain outcomes. The measure is the input (dark blue), the intermediate steps we call 'throughput' (light blue) and the result is the outcome (green). Using numbered arrows, we explain the extent to which effects can be achieved.

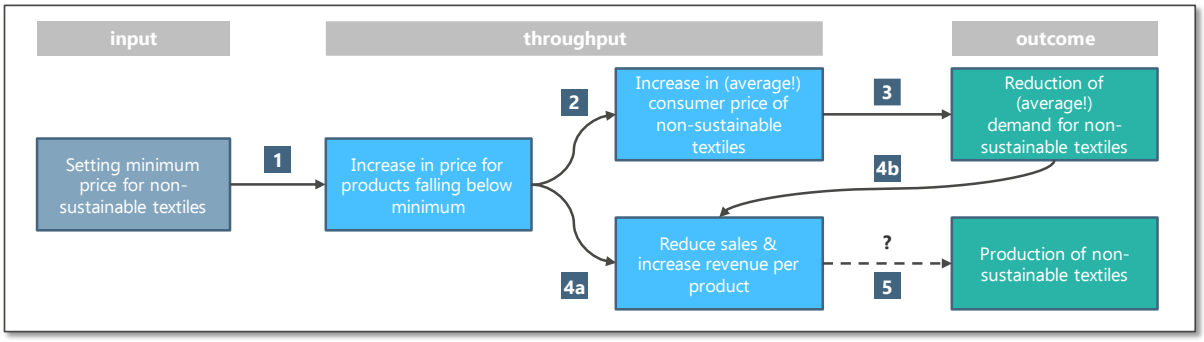


Figure 4- Example of input-throughput-outcome diagram for the measure 'setting minimum price for non-sustainable textiles'

2. A distinction can be made between sustainable and non-sustainable textiles

As explained in Chapter 1, it is not within the scope of this study to formulate a definition of sustainable or unsustainable textiles. It is expected that product sustainability can eventually be defined using the Ecodesign for Sustainable Products Regulation (ESPR) and the Product Environmental Footprint (PEF).[15] In addition, the recently developed tool 'Exploration of sustainability policies for the textile chain' provides insight into the level of sustainability in the textile sector. [16]

We would like to add that, in practice, there are several ways and bases to distinguish between sustainable and non-sustainable textiles, for instance the environmental impact (of the production or perhaps the whole life cycle of a product), the use of sustainable materials (after having determined what these are), not using certain non-sustainable materials and the lifespan of a product.

In this study, we assume that, based on the aforementioned methods and tools, on the basis of the ESPR, PEF and the developed tool for policy makers, it will be possible in time to define sustainable textiles. This is an important prerequisite for the effectiveness and feasibility of all measures.

3. Producers and importers pass on an increase in cost to consumers faster than a decrease

Certain pricing measures will cause a cost increase for chain parties (e.g. a higher import tariff for non-sustainable textiles), others lead to a possible decrease in cost price (such as ecomodulation, if a company meets the conditions for a lower tariff). Previous studies on pricing measures show that parties

15 The PEF (Product Environmental Footprint) method is a standardised approach developed by the European Commission to measure and communicate the environmental impact of products throughout their life cycle.
16 See also the guide to the tool in the annex to the Parliament letter accompanying the Circular Textiles Policy Programme 2025-2030

tend to pass on an increase in costs one-to-one to the party in the next chain link (and ultimately the consumer), while a decrease in costs is only partially passed on. A good example is the increased prices due to the energy crisis (as a result of the Ukraine war): when energy prices have fallen sharply again, prices for products have not (or have fallen less).[17] A previous study on the effectiveness and efficiency of reducing the VAT rate cited four studies that show that a VAT reduction is only partially passed on in the price.[18] These are summarised in the table below.

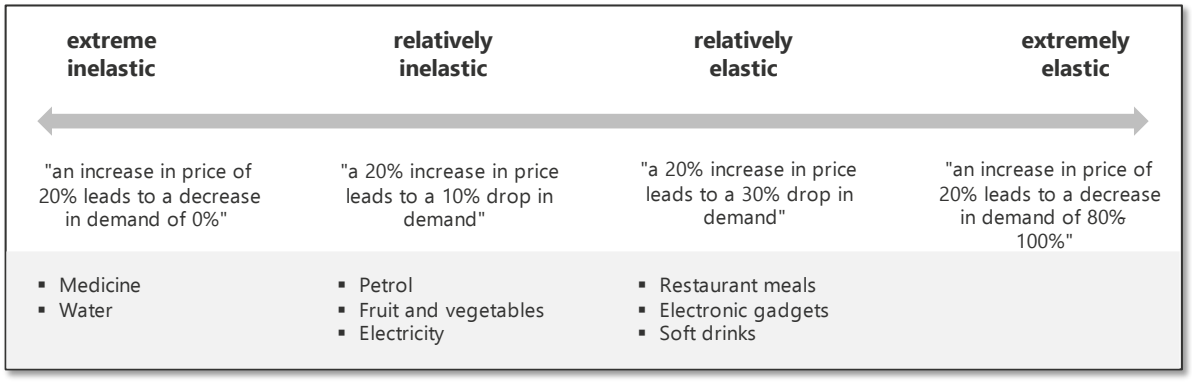
Product	Passing on VAT reduction in price	Source
Labour-intensive services	70-80%	CPB (2003)
Hairdressing services Netherlands	80%	CPB (2017)
Hairdressing services Finland	50%	Kosonen (2015)
Restaurant meals Finland	25% (but in-elastic price)	Haju & Kosonen (2014)

In addition to passing on the price increase to consumers, it emerged in the interviews Rebel conducted for this research that when prices rise (in response to a levy), producers and retailers may put pressure on their suppliers to lower prices (to compensate for the levy). This effect occurs especially if there is an insufficient level playing field and the cost-increasing measure (such as the import tariff) does not apply to all non-sustainable textiles from all countries

The assumption we make in this study is that a producer price increase usually leads to a consumer price increase (the extent to which depends on bargaining power in the chain) and a producer price decrease leads to a partial consumer price decrease

4. Textiles are price elastic: an increase in price leads to the same (or stronger) decrease in demand

The relationship between a change in price and the change in demand depends on the elasticity of a product. For products with high price elasticity, an increase in price leads to the same (or greater) decrease in demand. For products with a low elasticity (also called in- elastic), an increase in price leads only to a limited (or no) decrease in demand. See the figure below with examples that illustrate this.



There is currently very limited empirical research on the price elasticity of textiles. A 2001 study on the textile and clothing industry in Europe states that textile products are price elastic, with household

17 Benzarti, Y., Carloni, D., Harju, J., & Kosonen, T. (2020). What Goes Up May Not Come Down: Asymmetric Incidence of Value-Added Taxes (link).

18 See Evaluation of reduced VAT rate by Dialogic & Significant Ape, commissioned by the Ministry of Finance (2023)

textiles generally being less elastic than clothing.[19] Based on economic research, the factors that (mainly) influence price elasticity are known.[20] Using these factors, we reconstruct the price elasticity of textiles (see table).

Factor	Notes	Application on textiles
Necessity	Products that have a higher need are generally less elastic. To illustrate: If you own a car, you need to fill it up regularly. A price increase on fuel therefore has only a limited effect on demand. Restaurant meals, on the other hand, are much less necessary and have higher demand elasticity.	The necessity of textile purchases varies from person to person. We buy clothes several times a year, but generally do not depend on them for our daily activities. Exceptions might be household textiles such as dishcloths, tea towels and bed linen. Of these, the need is higher.
Substitute goods	If there are one (or more) substitute good(s) for a given product, there is more elasticity. To illustrate, if soft drinks become more expensive, it is relatively easy to switch to fruit drinks or lemonade. When restaurants become more expensive, people eat at home more often. On the other hand, fruit and vegetables are a lot harder to replace.	The presence of substitute goods for textiles depends on the delineation. Within textiles, there are many substitution goods. Think of a cardigan instead of a jacket or a jumper, or jeans instead of a dress. For clothing as a whole, second-hand clothing or 'wearing old clothes longer' can be considered substitution.
Market saturation	When the market is saturated and there are many different providers of products, it is easier for consumers to switch. This leads to higher elasticity. To illustrate, if Renault increases the price of cars, people may switch to Peugeot or Opel. While a price increase of specific drugs does not lead to a switch.	The market for textiles and clothing is quite saturated. There are many different suppliers. In addition, with the rise of e-commerce, it is easy for consumers to switch. This is especially true for the low and middle segments. For luxury brands (such as Gucci), a price increase is less likely to lead to a switch.

Based on the factors and available research, we conclude that the price of textiles will be elastic rather than in-elastic in nature. In other words, a price increase (or decrease) will lead to the same or greater decrease (or increase) in demand. Experts and stakeholders say they recognise the analysis, with the following comments:

- **Price segment**; the lower price segment is generally more price elastic than the higher price segment. The very rapid rise of ultra fast-fashion through platforms like Shein and Temu shows that the lower price segment is very sensitive to price drops (or increases). [21] A drop in price of a few euros in this segment immediately triggers a large market response. For products within the higher price segment, this effect is less.
- **Product group;** basic goods (such as tea towels and cotton T-shirts) are generally less price elastic than luxury goods. This touches on necessity as explained in the table above
- **Zeitgeist;** the way consumers view textiles is changing. In general, textiles have become more elastic over the years. Textiles used to be a basic need, so necessity was high and price increases had a

19 European Union (2001). The textile and clothing industry in the EU (link)
20 Investopedia (2023). Types of consumer goods that show the price elasticity of demand (link)
21 De Volkskrant (2024). Chinese clothing giant Shein doubles profits with very cheap fast fashion (link)

more limited effect. With the rise of (ultra-) fast fashion, this has changed, textiles are cheaper and more symbolic of expressing your identity. This also increases price elasticity.

Although price elasticity may vary by price segment, product group and zeitgeist, our starting point remains: across all product groups and price segments and in contemporary times, textiles are elastic rather than in-elastic in nature.

4. Measure 1: Eco-modulation under the EPR for textiles

4.1 General description

On 1 July 2023, the EPR for textiles came into force.[22] This makes producers who are the first to market textile products in the Netherlands - such as clothing (both consumer and workwear), household textiles and, in the future, shoes - financially responsible for the waste phase of their products. The regulation contains a number of coherent objectives with regard to recycling and reuse (see, for example, Articles 3, 4 and 5 of the Textile EPR Decree).

The entry into force of the Decree makes each producer *individually* responsible for the waste management phase of the products that the producer puts on the Dutch market every year. It is common practice that the extended producer responsibility obligations are implemented and fulfilled collectively by a producer organisation (PRO). In practice, we see that this is usually one organisation that all producers have to join (in which case the waste management agreement has been declared generally binding (AVV[23]) by the government).[24] This is for example the case around electronics (OPEN Foundation) and packaging (Verpact). Several PROs can also co-exist. In that case, the producer has the choice of which organisation to join. In the Dutch EPR for textiles, three collective organisations are currently active.

When obligations are implemented collectively, participating producers pay a waste management fee to the PRO. This is often a fee per type of product or per unit weight of products. In this way, the costs associated with waste management can be passed on to the producers responsible for the waste.

The amount of the financial contribution paid by the producer to the PRO is subject to rules.[25] In any case, this contribution covers the costs necessary to implement the obligations arising from the extended producer responsibility. In addition, the following applies: '*The costs passed on to the producer shall not exceed what is necessary to ensure proper and cost-effective implementation*[26] *of these obligations, taking into account the revenues from the reuse, sale of secondary raw materials of their products .....'.*

In addition, the explanatory notes to the 'Decree regulating extended producer responsibility' state that the producer organisation should, if possible, charge different tariffs for individual (or groups of similar) products placed on the Dutch market. In particular, in charging different tariffs, *'the entire life cycle of products and the durability, reparability, reusability, recyclability and the presence of hazardous substances* should be taken into account'.

Ecomodulation (tariff differentiation with sustainability of different products or product groups as the basic principle) thus goes a step further than the aforementioned differentiation per (for example) type of product or weight unit. NB. If there is no PRO, tariff differentiation is not mandatory and has no added

22 Decision on extended producer responsibility for textiles, at: link
23 In Dutch: Algemeen Verbindend Verklaring (AVV)
24 Where there is one PRO that does not apply for AVV, producers have the choice of joining this PRO or fulfilling the obligations individually.
25 See Article 6 of the Extended Producer Responsibility Decree. Via: pdf (overheid.nl). This regulation elaborates the European rules laid down in the Waste Framework Directive (WFD) for the Dutch situation.
26 Good and cost-efficient implementation means, among other things, professionally setting up, maintaining, operating, continuing and also innovating the financial and organisational resources needed to meet the set obligations, also in the future. This may include, for example, setting up a knowledge institute or innovation fund.

value in practice, because each producer is then individually responsible for the obligations. There is then always only one individual payer.

The overall aim of ecomodulation under an EPR is to incentivise producers to make the design of products entering the market more sustainable, thereby increasing the share of sustainable products on the market. Incentives are based on a financial incentive: a producer pays a lower waste management fee (a lower tariff) to the PRO when the product is more sustainable. Detailed questions relating to this measure, which we discuss below include: (1) what bases for differentiating tariffs are legally and practically possible, (2) what is the expected implementability and effectiveness, (3) how will the system be designed (only a discount for the sustainable alternative, only an increase for the non-sustainable alternative) or both, and (4) how big should the differences be to have an impact. We also address the question of what possibilities exist to include the costs associated with higher R-strategies (preparation for reuse, continued use, repair, refurbishment, maintenance, lifetime extension, etc.).

4.2 Legal framework and legal feasibility

Ecomodulation has its origins in European regulations (Waste Framework Directive ("WFD")) that have been elaborated in National regulations (e.g. Decree on Extended Producer Responsibility). The WFD is currently under review. We learned from interviews that a larger revision of the WFD was initially foreseen, but that the overall level of ambition has since been toned down.

Additional rules are envisaged for specific product groups. The latest proposal for the revision of the WFD dated 17 June 2024[27] focuses on two product groups with a high environmental impact, clothing (fast fashion) and food. The regulations assume harmonisation between member states and propose a mandatory EPR where textile producers are required to contribute financially to the collection and processing of used textiles. Price incentives are an important part of the revision. It involves both the application of ecomodulation based on the degree of circularity and environmental impact of specific textile products in the calculation of the contribution to the fund, and the leeway given to member states to charge commercial second-hand sellers a lower contribution. [28]

The proposal sees ecomodulation as an effective driver for circularity:
"At the same time, modulation of extented producer responsibility fees is an effective economic instrument to incentivise more sustainable textile design leading to improved circular design. In order to provide a strong incentive for ecodesign while taking into account the objectives of the internal market and the composition of the textiles sector which is primarily composed of SMEs, it is necessary to harmonise criteria for the modulation of extended producer responsibility fees based on the most relevant ecodesign parameters to enable the treatment of textiles in line with the waste hierarchy."

It further aligns with the system set out in the Ecodesign Regulation (ESPR), which sets binding requirements for eco-design (see box below).

Explanatory note - sustainable design under the Ecodesign Regulation (ESPR)

The ESPR is legislation aimed at sustainable production of (consumer) goods and has a broad scope. It follows from Article 5 of the ESPR that the European commission can control product aspects based on established product parameters. Product aspects include the terms sustainability and reusability. Annex 1 of the ESPR has a comprehensive set of product parameters with unambiguous definitions. These

27 Proposal for a Directive of the European Parliament and of the Council amending Directive 2008/98/EC on waste dated June 17, 2024 via: pdf (europa.eu)

28 Source: Proposal for a Directive of the European Parliament and of the Council amending Directive 2008/98/EC on waste - General approach, 11300/24, dated 17 June 2024 (pdf).

parameters can be used individually or in combination as a starting point for improving parts of a product. Some of these are relevant to this study, for example the following components:

"(a) durability and reliability of the product or its components, as expressed in: the guaranteed lifetime, technical lifetime and average failure-free interval of the product, indication of information on actual use on the product, load resistance or ageing mechanisms of the product.

(h) use of or content of recycled materials and recovery of materials, including critical raw materials;

(i) use of or content of sustainable renewable materials."

It is also clear that biobased products are not distinguished from other products under the scope of the ESPR. They are assessed in the same way as other products looking at all aspects of a product as defined in Article 5 ESPR.[29] The Commission's first work package under the ESPR also includes the subject of textiles, and more specifically clothing and footwear. The other products filling in the textile product category will be elaborated later. The work package has not yet been published, and thus it is also impossible to say how the commission will manage textiles.

Where the current WFD leaves a lot of room for individual member states to make choices in an EPR and associated differentiation of rates, the room in the new proposal is more framed:

i. Member states should ensure that differentiation is applied based on criteria established under the ESPR.

ii. Member States may apply rate differentiation to counteract overproduction of textile waste. This is in line with the polluter pays principle (see recital 27 in the preamble to the proposal). Rate differentiation is elaborated as follows:

   a. Article 22 of the proposal includes frameworks for the EPR for textiles. This article (22c) currently also includes a passage that allows member states to impose more far-reaching requirements for tariff differentiation. This is the following passage, of which it is not yet definitively clear whether it will remain as such:

      "In addition to the eco-design requirements established in accordance with [the Ecodesign Regulation], Member States may require producer responsibility organisations to differentiate the financial contribution based on criteria that take into account the practices of producers that lead to overproduction and overconsumption of textiles, textile-related products and footwear, resulting in over-generation of related waste, including the number of textile reference numbers made available on the market for the first time per producer and per unit of time or the frequency with which textile collections are renewed, linked to the number of items per collection."

      It is noted that this section is still under discussion. It is not an established policy and it is unclear whether this section will remain in place when the review is adopted

   b. Article 22c(3) sets out the framework on the basis of which member states organise financial contributions for producer organisations. For example, that contributions are based on the weight and quantity of the products concerned. More specifically, it states that the financial contribution is modulated based on the criteria that 'take into account the practices of producers leading to overproduction and overconsumption'.

iii. Member States are given the option of establishing a state-run EPR organisation: 'state-run producer responsibility organisations' (recital 29)

29 FAQ to ESPR dated 25 September 2024; question 77: How are biobased products affected by the ESPR? Circabc.

iv. The European Commission - as with various revisions to legislation under the Green Deal - is given the ability to intervene in tariff setting when the internal market requires it (Art 22c(4)). The Commission is given the possibility to adopt harmonised rules for ecomodulation to ensure that ecomodulation tariffs are in line with ESPR product requirements (Recital 27). It should be noted that the implementing act does not address the exact determination of the level of contribution.

The review of the WFD is currently ongoing. The text dated 17 June 2024 provides the best available information and has been used as the basis for the analysis in this research report. It is important to closely monitor the revision of the WFD and the setting of criteria under the ESPR to avoid any discrepancies in measures and systematics as much as possible.

4.2.1 Conclusion legal feasibility

Currently, ecomodulation is already used in several EPRs (such as textiles in France). Under the revision of the WFD, ecomodulation will have a greater role. For this reason, the conclusion is that this measure is legally feasible (**green)**. In time, harmonisation between member states of ecomodulation criteria for textile products will be pursued.

	Legal implementability	
1. Eco-modulation under the EPR for textiles	●	The measure is already being implemented. Under the WFD revision, ecomodulation will have a greater role. Ecomodulation should take place on the basis of the ESPR criteria. In addition, it has been included that member states can require that tariff differentiation focuses on countering overproduction, overconsumption and overgeneration of waste. It is not yet clear whether this passage will be retained in the final revised WFD

4.3 Implementability

4.3.1 Further implementation of measure ecomodulation; practical examples Verpact and ReFashion

Ecomodulation, according to the WFD, can be based on different bases, such as use of recycled content in the product, reparability, longevity, reusability, recyclability and the presence of hazardous substances. In this section, we discuss two practical examples of how ecomodulation has been implemented: within the Dutch EPR for Packaging and within the EPR for Textiles in France.

In the Dutch EPR for Packaging, ecomodulation is applied for plastic packaging. Verpact has opted for a *discount* on the regular rate if the packaging meets a number of characteristics: colour (transparent/white/natural), composition (mono-material), labels (size and material), use of post-consumer recycled content and recyclability.[30] In 2024, the system has been updated and the procedure for proving that a producer markets packaging eligible for discount has been simplified. Each characteristic provides a discount of 10 cents per kilogram. In 2025, the discount on use of recycled content will be increased from 10 to 20 cents per kilogram. If all characteristics are met, this means a maximum discount of 60 cents per kilogram apply. The maximum discount is equivalent to slightly less

30 Rate differentiation Plastic 2.0 | Verpact.

than half the basic rate. In order to still be able to pay for the costs of the waste management structure (which the obligations arising from an EPR oversee) including the discount, the base rate has been increased. The effects of these changes on the characteristics of packaging in the market are not yet clear. Only when the 2024 reporting is final (after the first quarter of 2025) more can be said about this.

In the French EPR for textiles, ecomodulation has long been applied. ReFashion uses three possible options to get a discount on the regular rate:

1. if products are designed for a longer life (durability) and products can, for example, be easily repaired or reused.
2. if certain (sustainability) certificates have been acquired for the products.
3. if recycled content is used in the products. Recycled content from production (loss) and recycled content from unsold stock *are not eligible* for ecomodulation

The system allows discounts to be added together, when a garment meets several criteria and the corresponding supporting documentation can be provided. In 2019, only 2% of producers in France used one of these options. In 2023, 3.25 billion textile items were offered on the French market. Of these, 52 million were eligible for ecomodulation, or 1.6%.[31] The lifetime discount option is the most used (practically all applications), application of recycled content is the least used. In recent years, ReFashion has made the system more accessible and user-friendly in a number of areas. This with the aim that more producers will start using the system. Discount options remain the same, but rates and reporting have been tightened up.[32] For instance, the discounts and product categories to which that discount applies within the durability option have been revised. There are now 10 product categories with a discount amount (i.a.€ 0.70 per item <100,000 items and €0.07 per item >100,000 items). For the discount on application of recycled content, the requirements have been extended and a maximum distance for the origin of recycled fibre of 1,500 km applies. Submission of the various supporting documents to prove entitlement to the discount options is now possible via an online platform. The aim is to ease the administrative burden.

In France, an additional measure proposed in 2024 is a tax on garments with a high environmental impact (such as fast fashion[33]). The proposals set the level at €5 rising to a maximum of €10 per item in 2030. The tax should not exceed 50% of the selling price excluding tax.[34] We understand that the idea is to implement this measure as a form of tariff differentiation under the EPR. What exactly this measure will look like is not yet known. It will be relevant to monitor developments.

4.3.2 Lessons viability

A number of lessons can be drawn from the above examples for design and implementation of an ecomodulation system within the EPR for textiles:

- Design the simplest possible tariff structure system with a limited number of clearly distinguished and unambiguous groups (i.e. not a complicated system with different tariffs for a multitude of

31 see https://rapport-activite-2023.refashion.fr/static/eng-kpi-s-ra23-vdef.pdf

32 For more information, see Refashion's 2024 guide to ecomodulation (link)

33 Waste Framework Directive amendment proposal dated 5 July 2023, page 1 description issues related to textile waste and an attempt to define fast fashion: "However, the situation is exacerbated by 'fast fashion', which is characterised by the more frequent launch of fashion collections, with cheap products that do not internalise environmental externalities, encourage impulse purchases and motivate consumers to buy more clothes."

34 See also the article Fast fashion: France wants to link environmental levy to clothing label. The tax will not only target fast fashion, but will be linked to a sustainability label (to be developed).

different products and materials). At ReFashion, for example, the product categories have been simplified. In addition, discounts are the same for many product categories.

In our earlier advice on setting up a EPR for Textiles[35] , several bases were examined and weighed up: use of mono-materials, use of more sustainable materials, sustainable production (to be demonstrated via e.g. labels), lifespan, recyclability and deployment of (post-consumer) recycled content. Several of these can be used in parallel. Both ReFashion and Verpact use several principles that can be added together. In our study, we came to a first preference for the use of (post-consumer) recycled content, because in our view this basis can provide the greatest incentive to start the process towards more circularity in the textile chain. When producers/importers have a financial incentive to use recycled fibres in new textile products (in the form of a lower tariff), there will be more demand for recycled fibres. To meet the demand, the market will ensure that there is more recycling capacity. It will also be able to spur the development of innovative new recycling technologies that can scale up industrially in the future.

- Build in a clear incentive via tariff discount to steer the textile chain towards more circularity. Again, a simple system (and not a complicated system to set the discount with many requirements and different discount rates): you either get the discount or you do not. Moreover, the discount is significant. By comparison, in Verpact's Tariff Differentiation 2.0, the discount for plastic packaging is just under half the waste management fee. And in the French EPR for textiles, higher or lower percentages may apply depending on the addition of rebate options and the number of items a producer puts on the market each year.
- Reduce the administrative burden of the ecomodulation system. Both for producers to demonstrate that a textile product meets the set specifications for a tariff group and for the producer organisation to establish that the products do indeed fall into the tariff group. The experiences with both Verpact and ReFashion have led to a simplification of the system aimed partly at increasing the accessibility and user-friendliness of the system.

In addition, it is important for the implementability of ecomodulation to ensure that the many parcels coming across the border from outside Europe via e-commerce platforms on a daily basis are also included in the EPR (and thus make a remittance to the producer organisation). The regulations ensure that each producer appoints a representative in the relevant member state if that producer markets textile manufacturers in the member state (of the EU) and is based outside the member state.[36] This also applies to online platforms, but can be complex in enforcement. In France, Shein has joined ReFashion. We understand that platforms like Shein and Temu have not yet joined a PRO in the Netherlands.

4.3.3 Conclusion implementability

The measure ecomodulation is expected to be feasible **(green)**. However, there are implementation concerns, as highlighted in the Verpact and Refashion experiences mentioned above. If the burden of proof for producers to qualify for the discount is too high, this will negatively affect implementability.

The regulatory framework is expected to provide sufficient starting points for enforcement. There is a requirement in the current regulatory framework to have a system of ecomodulation in case of collective implementation of an EPR. And the proposal for adaptation of the WFD proposes for textile collective implementation of the EPR with a system of ecomodulation according to ESPR possibly supplemented

35 For more information, see pdf starting on page 41.

36 See Articles 3(4b)(d) and 22 of Proposal for a Directive of the European Parliament and of the Council amending Directive 2008/98/EC on waste dated June17, 2024 via: pdf (europa.eu)

by further options regarding overproduction and overconsumption. A specific focus on enforcement concerns getting and keeping online platforms from outside the EU connected. The above points of attention for the design and implementation of a system of tariff differentiation can be included in the further elaboration of ecomodulation in the Netherlands. It is not within the scope of this study to develop a proposal for this.

	Expected implementability	
1. Ecomodulation	●	Ecomodulation is included in the current regulation. The draft proposal for adaptation of the WFD assumes further harmonisation of systems between member states based on the ESPR regulation. There are also expected to be sufficient starting points for enforcement. The exact interpretation and determination of tariffs themselves - also according to the latest texts of the WFD - is expected to remain with the PROs and is not the competence of the (Dutch or European) government

4.4 Expected effectiveness

To say something about the expected effectiveness of the measure ecomodulation within the EPR Textiles, two alternative interpretations of this measure are analysed:

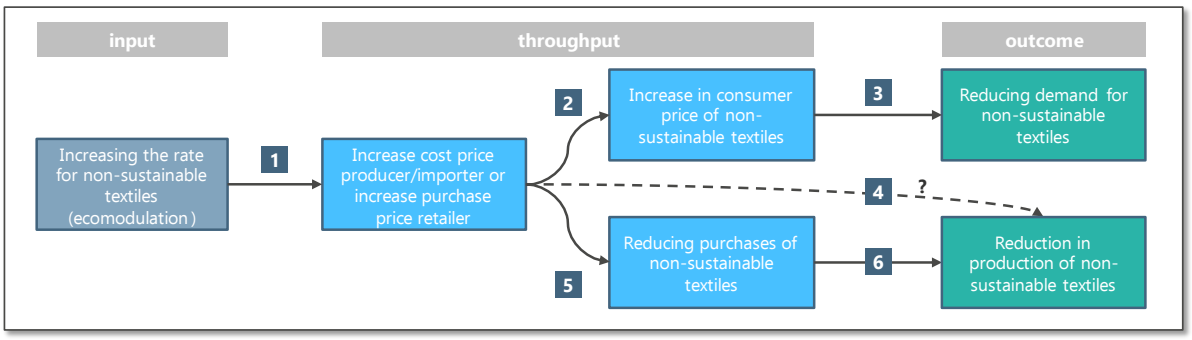
1. Higher tariff for non-sustainable textiles
2. A lower tariff for sustainable textiles

We describe these separately from each other. At the same time, we realise that both interpretations are related given the obligation that a collective EPR is responsible for the total costs of the waste management structure. No additional costs may be charged to producers (with the exception of a reserve for, for instance, an innovation fund and future waste treatment). A reduction in the tariff for sustainable textile products within a collective implementation of the EPR will thus naturally also lead to an increase in the tariff for non-sustainable textile products in order to continue bearing the total cost of the waste management structure and vice versa.

4.4.1 Analysis higher tariff on non-sustainable textiles

The way ecomodulation is usually designed (see also the examples of Verpact and Refashion) is that producers pay a lower tariff to the PRO if a product meets certain sustainability criteria. Imposing a higher tariff on unsustainable textile products could take the form of a fast fashion tax as proposed in France (see 4.3).

Increasing the tariff on non-sustainable textiles within the EPR will (if there is a sufficient degree of increase that includes a substantial part of the consumer price) be able to lead to a reduction in demand for non-sustainable textiles. In addition, it may also lead to a reduction in production of non-sustainable textiles. The sum to be paid to PRO per producer is quite high. This makes this an important incentive for producers to move more towards circular products. We explain this below using the input-throughput-outcome diagram.



Explanation of diagram by arrow:

1. An increase in the tariff on non-sustainable textiles leads to an increase in the cost price for the producer who introduces textile products into the Dutch market. The same applies to the importer who first introduces textile products to the Dutch market. For retailers, a tariff increase will lead to an increase in their purchase price.
2. Under the assumption that cost increases are often passed on to consumers one-to-one, the consumer price of non-sustainable textiles rises.
3. A price increase can lead to a reduction in consumer demand for non-sustainable textiles (because price elasticity) if the price increase is sufficiently substantial and not 'just' a limited increase in the consumer price.
4. Increasing the cost price of producers MIGHT reduce output. This is linked to producer bargaining power in the supply chain.
5. Increase in purchase price from importers and retailers decreases purchases of non-sustainable textiles
6. ....this may eventually lead to a reduction in production among producers.

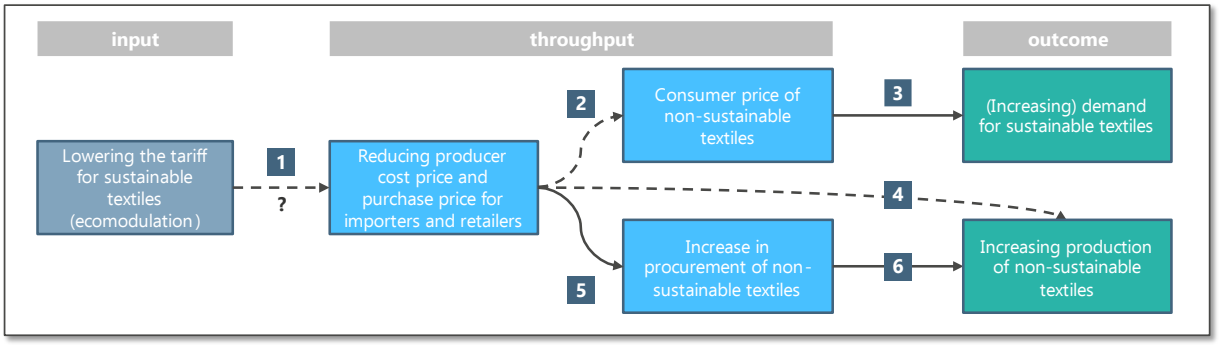
In the above analysis, we talk (at point 3) about the *possibility* that the demand for non-sustainable textiles will decrease. This is linked to the price increase of non-sustainable textiles (absolute and relative to sustainable textiles). Given the current rates charged in France (generally lower than and at most around 1 euro per product)37 , the expected price increase will be a small part of the selling price of a textile product. Our previous study on the EPR for Textiles - where we calculated a possible EPR Tariff based on a general chain model - arrived at a similarly small share of the tariff. In addition, the price differential with sustainable textiles (which get a discount and thus pay a lower tariff) will not get much smaller. There is a possible effect that could become larger if a charge as proposed in France is actually implemented.

In addition, we talk (at point 4) about the *possibility* of a decrease in the production of non-sustainable textiles. On the one hand, this is related to the share of the EPR tariff in the total cost of the textile product the party puts on the market and the total amount producers pay to the PRO in waste management fees. On the other hand, the effect partly depends on the bargaining power of the chain party to perhaps absorb the cost increase by negotiating or enforcing price reductions in the supply chain. In our view, this would be an undesirable effect of the increase. In a general sense, we expect a greater impact when this measure is introduced in more (all) European countries, as included in the WFD amendment proposal, than when it applies only in the Netherlands.

37 See the document The Eco Fee, 2024 Declaration. Via this link

4.4.2 Analysis lower tariff for sustainable textiles

Introducing ecomodulation in the EPR for textiles with a lower tariff for sustainable textiles could (if sufficiently reduced) lead to an increase in demand for sustainable textiles. Possibly, this measure could also lead to an increase in the production of sustainable textiles. We explain this below using the input-throughput-outcome diagram.



Explanation of diagram by arrow:

1. A reduction in the tariff for sustainable textiles within the EPR leads to a reduction in the cost price for producers who market their own textiles and for importers who are the first to market textile products in the Netherlands. A lower tariff for sustainable textiles MAY lead to a reduction for the purchase price for retailers, depending on the extent to which this benefit is passed on to the retailer.
2. MAYBE this will lead to a reduction in the consumer price of sustainable textiles. As explained, cost reductions are often only partially passed on to consumers.
3. Next, the possible consumer price reduction leads an increase in consumer demand for sustainable textiles (given the assumed price elasticity). This effect is enhanced when the price reduction is sufficiently substantial and not 'just' a limited decrease in the consumer price.
4. Reducing the cost price of producers and importers and/or the total amount paid by producers/importers to the PRO MAY increase the production of sustainable textiles (relative to non-sustainable textiles).
5. The possible decrease in the cost price of producers and importers and the purchase price of retailers increases the procurement of sustainable textiles
6. ....this eventually leads to an increase in the output of producers of sustainable textiles (at least compared to non-sustainable textiles).

In the above analysis, we talk (at point 3) about the *possibility of* increasing consumer demand for sustainable textiles. Given the range of tariffs in relation to selling price (see also 4.4.1.), we come to a similar conclusion. There may be a (limited) effect, which becomes larger if a tax as proposed in France is actually implemented.

We also talk (at point 4) about the *possibility* of increasing the production of sustainable textiles. Again, because of the share of the EPR tariff in the total cost of the textile product the party brings to market and the total amount producers pay to PRO in waste management fees. In addition, the (relatively limited) influence of the Netherlands alone also plays a role here. We expect a larger impact if the measure is introduced in more (all) European countries, as included in the WFD amendment proposal.

4.4.3 Conclusion expected effectiveness

The current WFD and its proposed amendment take ecomodulation as a starting point and establish it as an effective tool to promote circular textile design. In doing so, the proposal for amendment pushes for a further harmonised system of tariff differentiation.

If we maximise the opportunities offered by tariff differentiation in the Netherlands, we expect a limited effect on the circular design and marketing of sustainable textile products by producers. The size of this effect depends on the degree of increase or decrease in the total sum to be paid to PRO per producer. The greater the relative advantage or disadvantage, the greater the effect.

In addition, we expect a limited impact in terms of magnitude on consumer sales of sustainable textiles. As explained in the previous sections, the tariff difference is a small part of the price consumers pay for a textile product. If this part becomes larger, the effect could also be larger. However, a discount in the tariff for sustainable textiles will also directly entail an increase in the EPR tariff for non-sustainable textiles with which the difference could become relatively larger.

We expect that the impact of tariff differentiation may increase if (1) EPRs are introduced in more European countries and as much as possible a harmonised tariff system is effective, and (2) the WFD retains the possibility in the final revised version to impose hefty tariffs to reduce overproduction and consumption, which could further reduce the price differential between sustainable and non-sustainable textiles and increase the demand of sustainable textiles also given the assumed price elasticity of demand (relative and absolute).

In the context of assessing effectiveness from the perspective of the government, it is relevant to re-emphasise that developments regarding European regulation are increasingly moving towards more far-reaching harmonisation between Member States in areas such as design requirements (under the ESPR) and in ecomodulation. The Commission is also given the power in tariff setting frameworks if the internal market requires it (see also section 4.2). Although the WFD review is not yet final, we expect that the (European and national) authorities will focus mainly on harmonisation of the tariff system and not on the level of tariffs themselves. Setting up ecomodulation is the responsibility of the PROs, whereby the (revenues through the) tariffs should be in line with the costs of the waste management structure. The cost of the waste management structure will vary between member states. Where a member state chooses to establish a PRO led by the government (see also section 4.2), there is a more direct influence on the level of tariffs.

	Expected effectiveness		Notes / comments
1. Eco-modulation (higher rate for non-sustainable and lower rate for sustainable textiles)		Has an (expected limited) impact on demand and supply of sustainable textile products and circular design. The (European and Dutch) government influences the tariff system. Setting up and regulating is up to the PROs	Effective producer behaviour change (decrease in non-sustainable textiles in the market) is related to the share of the tariff differential in the cost price and the disadvantage/benefit in the total amount that producers remit to the PROs. Effective consumer behaviour change (buying sustainable textiles instead of non-sustainable ones) partly depends on the extent to which the tariff difference is passed on in the consumer price.

5. Measure 2: textile import tariff

5.1 General description

Import tariffs are taxes levied on imported goods from outside the European Union. Levies are primarily intended as an additional cost barrier to regulate the import of (cheaper) foreign products. In addition, they are a source of revenue. The European Union determines the level of import tariffs. The tariffs are fixed per country and product category and all EU member states are obliged to apply the same import tariff.[38] The import tariff is based on the HS code (customs code) of the product and is charged on the customs value. This is the purchase price (paid by the importing party) including transport and insurance costs. Shipments with a value of up to EUR 150 are not subject to import duties.

Explanatory note European agreements

Within the frameworks of the European Union, there is an internal market, so a single trade policy applies. Part of this trade policy are trade agreements with one country outside of the European Union or combination of countries outside of the European Union. Preferential (import) tariffs can be agreed in a trade agreement. So too for textiles. A trade agreement is valid indefinitely and they are reviewed every few years. During such a review, parties may decide to renegotiate part of the agreement. From the interviews conducted as part of this study, we understand that it is not common for a trade agreement to completely change or lapse. Also, negotiations for trade agreements often take a long time. For example, negotiations between the European Union and Indonesia have been ongoing since 2016 and have not yet been concluded.

When there is a trade agreement with a country, the import tariff on textiles contained in that agreement applies. This can result in import tariffs being zero per cent. For example, this is currently the case for goods imported to the European Union from Vietnam, Tunisia and Morocco.[39] If there is no trade agreement then maximum tariffs apply. These tariffs are drawn up within the World Trade Organisation (WTO) and are called Most Favoured Nation (MFN) tariffs. MFN tariffs are determined by HS code. HS codes are specified, among other things, by the degree of processing of the product. For example, a maximum charge of 8% applies to cloth and 12% to a full textile product. All tariffs per country and product group can be found on the European Union's Access2Market website.[40] For China and the United States, for example, the MFN tariff applies, making the import tariff for clothing and textiles 12%.

In general, textiles and clothing have relatively high MFN tariffs. Of all the products most commonly bought (such as electronics, cars and jewellery), only shoes have higher import tariffs, of up to 17%.[41] The other import tariffs of these product groups range between 4.5% and 9.7%. MFN tariffs are mostly the result of lengthy negotiations within the WTO. The level of tariffs is partly determined by the sensitivity of the products in question. This sensitivity is in turn related to the extent to which the imports compete with production taking place in the European Union itself.

Not only in the European Union are duties imposed to protect their own markets. Other countries and regions also have import duties on clothing and textiles, with the aim of protecting local products from

38 Chamber of Commerce. Paying import duties and other taxes on imports (link)
39 Based on the Access2Market website, see this link. This also emerged during the interviews
40 For the Access2Market website, see this link.
41 Ministry of Finance. Allow for extra customs charges if you order online outside the EU (link)

unfair competition. In South Africa, for example, textile import duties range from 10-45% depending on the type of product and country of origin.[42]

The main purpose of a higher import tariff on non-sustainable textiles is to discourage these products and thus reduce greenhouse gas emissions and environmental impact. In addition, a lower import tariff on sustainable textiles may actually encourage these products. In the following sections, we discuss the legal feasibility, implementability and effectiveness of both variants.

5.2 Legal framework and legal feasibility

The aim of this measure is to adjust import tariffs at European Union level, such that higher import tariffs can be levied on non-sustainable textiles or lower import tariffs on sustainable textiles. The idea is that these measures will apply to the entire European Union, eliminating the risk of any infringement of trade between EU member states. Moreover, the subject of import levies falls under the exclusive competence of the European Union.

The system of international trade and duties at European Union level, in addition to the WTO framework, is shaped by EU trade policy. This includes various trade agreements between the European Union and third countries in which import duties are laid down. Import duties are levied on specific categories of goods, and based on the country of origin.

For agreements on import tariffs (within or outside trade agreements), it is important that the agreements are in line with World Trade Organisation (WTO) rules; there is then WTO conformity. These rules are, for example, 'you may not treat country A more favourably, than country B'. But also, 'trade without discrimination, or in other words, equal products should be treated equally in equal cases'. A distinction between sustainable and unsustainable touches on this last point. The rules were agreed in a multilateral context[43] and therefore also apply to the European Union. As it is not desirable to deviate from these rules, as this would violate WTO law, it is important that the distinction between sustainable and non-sustainable is recognised in the WTO context.

In this regard, players in the (global) textile market are quite active in bringing proceedings before the WTO. Over the past 20 years, a remarkable number of dispute settlement procedures have been brought before the WTO in the field of textiles.[44]

To distinguish between sustainable and non-sustainable products within and outside trade agreements, it is essential that this distinction is made in the HS codes. For this, the codes need to be changed. The revision of these codes will take place in 2027. It is advisable to include distinction between non-sustainable and sustainable textiles in the negotiations on the HS codes. Interviews revealed that negotiations are time-consuming and complex. For instance, a process to green HS codes has been ongoing for several years but so far this has not led to concrete adjustments. [45]

In the past, attempts were made to differentiate within a product group without changing HS codes. This distinction ultimately did not hold up in the WTO dispute settlement procedures. The dolphin-tuna

42 NCPC. South Africa textile and clothing sector guideline development (link)

43 Multilateral indicates multi-faceted cooperation in which agreements are reached with three or more countries.

44 A list of 26 dispute settlement procedures have been registered on the WTO website in the field of textiles. Considering the number of dispute settlement procedures for other product groups, this can be called a lot. The highest recorded number of procedures is in the field of steel (33). The most recent consultation took place in 2003 by Egypt (WTO | Dispute settlement - Index of disputes issues).

45 For more information, see the World Customs Organisation website (link)

case underlines the complexity of the distinction between sustainable and non-sustainable textiles in international trade (see text box below). 46

Example - trade without discrimination

The "Tuna-dolphin case" previously attempted to differentiate by mode of production within one product group. In 1990, the US announced a ban on tuna from countries that did not have a conservation programme to protect dolphins during the tuna fishery. This meant that US imports of tuna from countries including Mexico and Venezuela were no longer allowed. The two countries subsequently initiated a dispute settlement procedures, alleging that the US' action violated the principles of the General Agreement on Tariffs and Trade (GATT, predecessor to the WTO).

The arbitrators followed Mexico and Venezuela in their arguments. This was partly because the US had failed to prove that the tuna ban was "necessary", or that it was the least trade restrictive way to protect dolphins. But also because the exceptions under the agreement should be interpreted very narrowly, so that a country cannot undermine multilateral trade agreements.

Some other WTO dispute settlement procedures are currently ongoing in which the EU is accused of pushing its sustainability policy agenda in violation of the trade agreement.47 There does not seem to be broad support for the sustainability and circularity distinction. The EU is increasingly under fire for accusations of 'green protectionism'. 48Because the emphasis on sustainability can have adverse effects on third countries, it can lead to a disruption in the relationship of trading partners. Here, it does not help if a measure only applies to products that are imported (as in the case of this measure) and not to the internal market. Policymakers should take this into account in the design of any trade policy measures.

5.2.1 Conclusion legal feasibility

There are legal barriers to adjusting trade treaties with countries of origin or differentiating import duties for goods. The question of making these measures successful depends largely on the position of the Netherlands within Europe, and of Europe in relation to the countries of origin. The conclusion regarding legal feasibility of this measure is therefore **red**.

	Legal feasibility	
2. Import tariff	●	There are legal barriers to adjusting trade agreements with countries or differentiating the import tariff on goods. We also see areas of concern for implementing sustainability measures in foreign trade relations. Consensus of participants is needed for adaptation of the WTO agreement and the percentages in trade agreements.

5.3 Implementability

As explained in the previous section, there are legal barriers to implement a higher import tariff for non-sustainable and lower import tariffs for sustainable textiles. If it succeeds in breaking through the legal barriers, the measure is almost impossible to implement. The trade agreements the European Union has

46 World Trade Organization. Mexico etc vs US: 'tuna-dolphin' (link)

47 Prof Freya Baetens, Oxford University and Leiden University, Free trade agreements factsheet, February 22, 2022:

48 Green protectionism is favouring domestic products or discriminating against countries under the guise of green growth and sustainability policies.

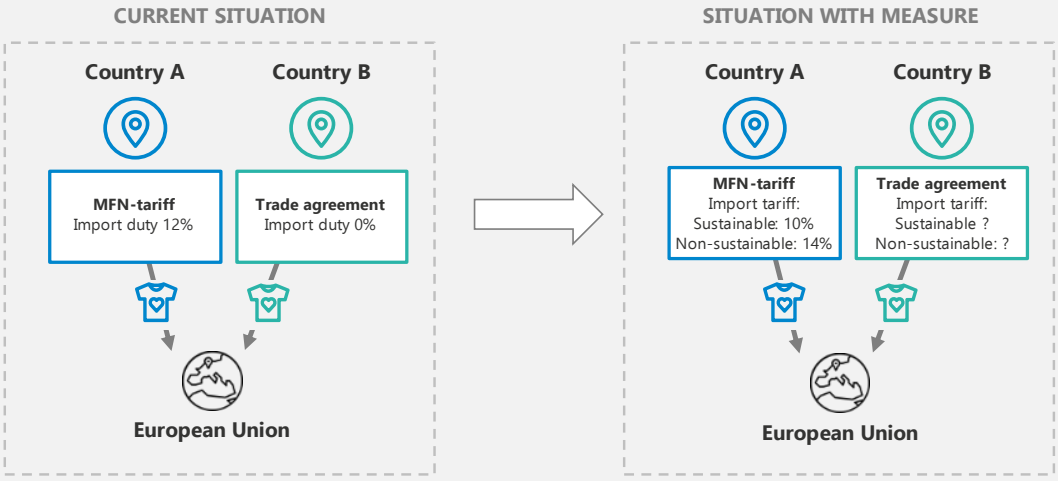
with individual countries are difficult to adjust. We explain this in more detail below. We also discuss the enforcement of the distinction between sustainable and non-sustainable textiles at the border.

The introduction of the measure changes the import tariffs for textiles. As explained in section 5.1, the import tariff can vary from country to country. If there is a trade agreement, the tariff contained therein will apply. If there is no trade agreement, the MFN tariff applies. A higher import tariff for non-sustainable and a lower import tariff for sustainable textiles requires an adjustment of schedules under the WTO, an adjustment of the individual trade agreements Europe has with third countries or trading blocs and a change in HS codes. The modification of HS codes requires the ability to prove that sustainable and non-sustainable textiles are two different types of products. The previous section explained that the distinction between sustainable and non-sustainable textiles is very difficult to achieve legally in the WTO context. Based on interviews conducted as part of this study (including with the Ministry of Foreign Affairs), we know that adjusting trade agreements is generally an extensive and lengthy process. Not adapting all trade agreements and making the difference between sustainable and unsustainable only in the MFN tariff makes the feasibility somewhat less complex (see box below).

Explanatory note - trade agreements and MFN tariff changes

When an increase in the import tariff on non-sustainable textiles is fitted into the MFN tariff and does not apply to all third countries, there is a chance that importers will choose to go elsewhere. This is plausible for those countries where the import tariff is lower (than the established import tariff on non-sustainable textiles) and even more so if it is zero per cent.

A fictitious example. Country A has the MFN tariff of 12 per cent and with country B there is a trade agreement. If the MFN tariff differentiates the import tariff (and the measure is in place), in country A, for example, a MFN tariff of 8% for sustainable textiles and 16% for non-sustainable textiles would apply (figures are fictitious). If country B (with which there is a trade agreement) does not differentiate the import tariffs or if a different level for the import tariff between sustainable and non-sustainable is agreed, it may still be possible to import non-sustainable textiles from country B for a lower tariff than in country A. This affects the effectiveness of the measure (see also section 5.4).



Enforcement is also important for the implementability of the measure. Based on discussions (with customs, among others), enforcement is expected to be extra challenging with this measure. The supervisor checks parcels at the border. This involves (randomly) checking for proper payment of duties.

Distinguishing import tariffs between sustainable and non-sustainable makes this check more complex. The enforcement burden has already increased in recent years due to the sharp rise in the number of individual parcels from China, for example. Not all packages can be checked and some of the packages entering the Netherlands (and thus Europe) do not comply with European laws and regulations.[49] The extra control burden for the regulator on the distinction between sustainable and non-sustainable textiles makes the implementability of the measure difficult.

5.3.1 Conclusion implementability

The textile import tariff measure is almost impossible to implement. Adaptation of the trade agreements, where the distinction between non-sustainable and sustainable textiles can be made, is expected to be very difficult. The measure also creates challenges in terms of enforcement. The conclusion regarding the implementability of this measure is therefore **red**.

	Implementability	
2. Import tariff	●	Adjusting trade agreements is an extensive and lengthy process, but necessary to make a change in the import tariff between sustainable and non-sustainable. The measure is also difficult to enforce.

5.4 Expected effectiveness

To say something about the expected effectiveness of the import tariff measure, we look at two alternative interpretations of this measure:

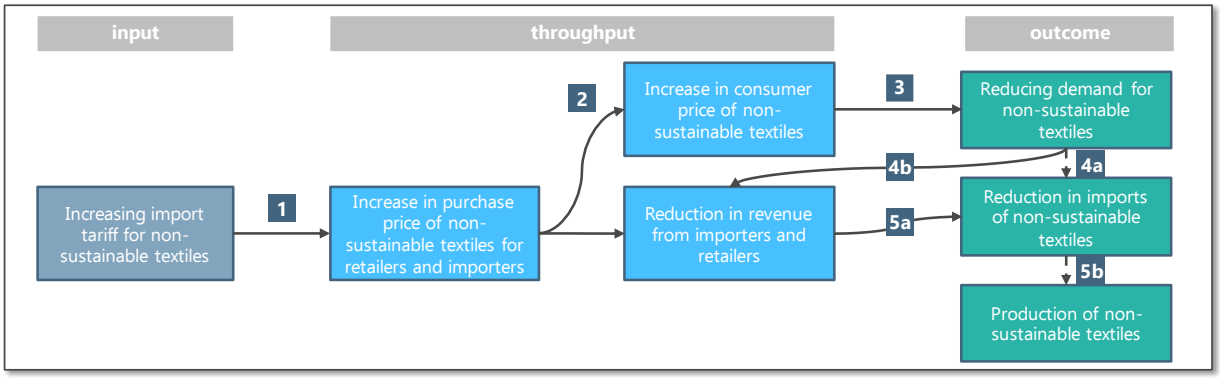
1. Higher import tariff for non-sustainable textiles
2. Lower import tariff for sustainable textiles

In principle, both infills can be introduced and take place simultaneously. Because they can both produce different effects, we first work them out separately here. In determining the expected effectiveness, we assume that the measure is legally feasible and practicable. It was explained in the previous sections that we have low expectations for this. We therefore assume that the MFN tariff and individual trade agreements are adjusted. Meaning that there is a distinction between sustainable and non-sustainable in the import tariff for the European Union's trading partners. We also assume that measure is enforceable.

5.4.1 Analysis higher import tariff for non-sustainable textiles

Increasing the import tariff on non-sustainable textiles will lead to a reduction in demand for non-sustainable textiles. This may eventually lead to a reduction in production of non-sustainable textiles. We explain the effect of a higher import tariff on demand and production of non-sustainable textiles below using the input-throughput-outcome diagram.

49 A recent study by Toy Industries of Europe (2024) into the extent to which the major Chinese platform Temu complies with European laws and regulations shows that none of the products examined comply with EU legislation and that 95% of the items pose a real safety risk to children (link). This example illustrates that succeeding in implementing legislation does not guarantee that no more non-compliant products will reach the market.



1. An increase in the import tariff on non-sustainable textiles leads to an increase in the purchase price of non-sustainable textiles for importers and retailers.
2. Which leads to an increase in the consumer price for non-sustainable textiles. Cost increases are often passed on to consumers one-to-one.
3. A price increase can lead to a reduction in consumer demand for non-sustainable textiles (given the price elasticity) if the price increase is sufficiently substantial and not 'just' a limited increase in the consumer price (see below).
4. When the price change is implemented, importers and retailers margins are the same but demand has decreased (4a). Therefore, the total revenue of importers and retailers is also expected to decrease (4b).
5. A reduction in the yield of importers (and retailers) is expected to reduce imports of non-sustainable textiles (5a). Over time, this could POSSIBLY lead to a reduction in producer output (5b).

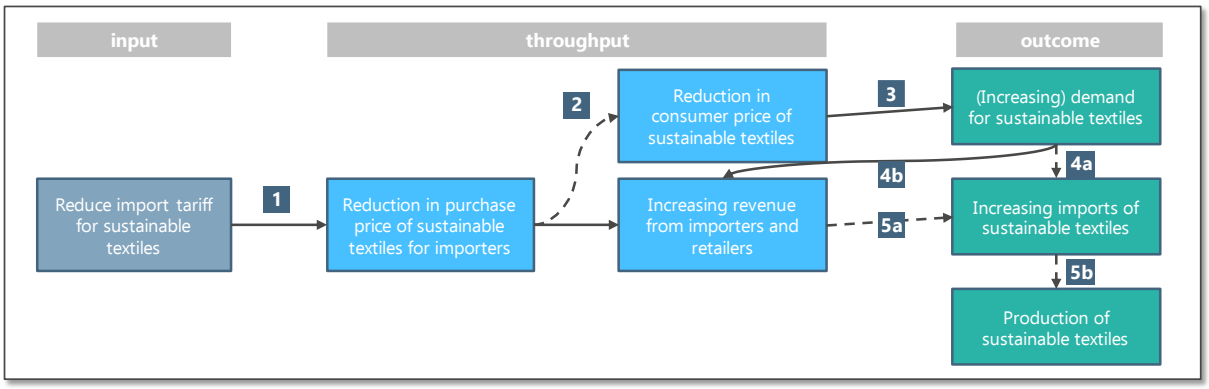
Under the assumption that the import tariff for all trading partners of the European Union includes an increase in the tariff on non-sustainable textiles, raising the purchase and sale price, it is plausible that increasing the import tariff on non-sustainable textiles will lead to a reduction in demand for non-sustainable textiles. The final effect will be related to the level of the import tariff. A notional increase in the import tariff for non-sustainable textiles from 12% to 16% will lead at most to a 4% increase in the purchase price. A shirt that used to cost 10 euros will then become up to 40 cents more expensive. To actually reduce demand, it is important that consumers switch to sustainable textiles. This is the case if sustainable textiles are not or to a limited extent more expensive than non-sustainable textiles. Also, people may decide to consume less because of the price increase.

For effectiveness, the level of the MFN tariff compared to the import tariffs from trade agreements also plays a role. If the MFN tariff for sustainable textiles is higher than the import tariff for non-sustainable textiles in accordance with a trade agreement, this has consequences for effectiveness. Non-sustainable textiles can then still be imported from those countries for a lower import tariff.

Besides the effect on the demand for and production of non-sustainable textiles, there may also be other effects. For countries where the import tariff under the trade agreement is currently zero for textiles, an increase in the import tariff on non-sustainable textiles may have adverse (economic) consequences. The extent of this will depend on the level of the import tariff on non-sustainable textiles included in the trade agreement (and its level relative to the MFN tariff). The measure could also lead to (part of) the production of non-sustainable textiles being relocated within the European Union to circumvent the rules around the import tariff. This is obviously also linked to differences in production costs between third countries and the European Union.

5.4.2 Analysis lower import tariff for sustainable textiles

Reducing the import tariff on sustainable textiles will lead to an increase in demand for non-sustainable textiles (under the assumption that the consumer price goes down and the producer does not keep all the extra margin himself). This could eventually lead to an increase in the production of sustainable textiles. We explain the effect of a lower import tariff on demand and production of sustainable textiles below using the input-throughput-outcome diagram.



Explanation of diagram by arrow:

1. A reduction in the import tariff reduces the purchase price of sustainable textiles for importers and retailers
2. … which MAY lead to a reduction in the consumer price of sustainable textiles. As explained, cost reductions are often only partially passed on to consumers.
3. A price reduction leads to an increase in demand for sustainable textiles (given price elasticity)
4. If the fall in cost price does not lead to a lower consumer price, the revenue of importers and retailers will increase (due to a higher margin per garment sold). If the lower price is fully or partially passed on to consumers, the margin remains the same but demand increases (4a). Then, too, the revenue of importers and retailers may increase (4b).
5. The increased yield from importers and retailers is expected to lead to an increase in imports of sustainable textiles (5a), and thus MAY lead to an increase in production (5b).

Under the assumption that a cost reduction is partly passed on to the consumer (and the producer does not keep all the extra margin himself), it is plausible that a reduction in the import tariff for sustainable textiles will lead to an increase in the production of sustainable textiles. The final effect will depend on the extent of the import tariff reduction. A notional reduction of the import tariff for sustainable textiles from 12% to 8% will lead at most to a 4% reduction on the purchase price. A shirt that used to cost 10 euros will then become 40 cents cheaper at most. For an actual increase in demand, it is important that consumers who previously consumed non-sustainable textiles decide to switch to sustainable textiles. This is the case if sustainable textiles are not or to a limited extent more expensive than non-sustainable textiles.

Besides the effect on the demand for and production of sustainable textiles, there may also be other effects. For countries currently subject to the MFN tariff, a reduction in the import tariff on sustainable textiles could have positive (economic) effects. For countries with a trade agreement, this is different and initially there seem to be positive (economic) effects only if the current import tariff can be lowered and are thus not (already) zero.

5.4.3 Conclusion expected effectiveness

Under the assumption that it is possible to differentiate between sustainable and non-sustainable in the import tariff for all trading partners of the European Union, it is expected that this measure can be effective in reducing demand for non-sustainable textiles and increasing demand for sustainable textiles. The level of the tariff for sustainable and non-sustainable and the difference in the MFN tariff and import tariffs from the trade agreements are partly determinants of effectiveness. A limited increase or decrease will also have a limited effect on the demand for respectively, non-sustainable and sustainable textiles. In addition, the tariff only applies to imported products (and not to production within the European Union) and is primarily designed to protect its own market. In summary, the conclusion regarding the effectiveness of this measure is **orange.**

	Expected	
2. Import tariff	●	The measure is expected to reduce the demand and production of non-sustainable textiles and increase the demand and production of sustainable textiles. **Note:** we assume for effectiveness purposes that the measure is legally feasible and enforceable. We assume (among other things) that it is possible to make the distinction between sustainable and non-sustainable textiles in the import tariff for all exporting countries outside the European Union. The effect is related to the difference in the tariff between sustainable and non-sustainable. Differences between MFN tariffs and agreements in individual trade questions also play a role here

6. Measure 3: a minimum price for textiles

6.1 General description

In the European Union, Article 34 of the Treaty on the Functioning of the European Union (TFEU) is in force. This article concerns the free movement of goods and guarantees a level playing field between member states.[50] Producers are free to set a selling price depending on their cost price. This agreement is one of the main foundations for the EU. Nevertheless, there may be a reason to intervene on these selling prices, for instance through a minimum price. Based on classical economic theory, this may be because of two reasons

- To protect producer income;
- To protect against underpricing

Minimum prices to protect producer income

In the past, minimum prices were used as part of European agricultural policy. The main purpose of minimum prices was to guarantee farmers a stable income. For certain agricultural products, the EU set a minimum price higher than the market equilibrium price. If the market price fell below this minimum price, the European Union bought up the surplus at the guaranteed minimum price. For farmers, this provided security as they were guaranteed a minimum yield per product.[51] This Common Agricultural Policy (CAP), dating back to 1957, is controversial.[52] Farmers were encouraged to produce more than the market demanded, leading to large surpluses. The European Union bought up the surplus produce, which in turn led to significant costs. It is estimated that half of the total EU budget went into this.[53] The old system of minimum prices played a crucial role in the development of European agriculture, but proved unsustainable in the long run and was therefore largely replaced by other forms of agricultural support. Today, the emphasis is therefore more on direct income support per hectare and promoting sustainability measures.

Minimum prices to protect against excessively low selling prices

A minimum price on textiles will be instituted for a different reason than the former minimum prices in agricultural policy. A minimum price on textiles has precisely the intended effect of discouraging textiles. There have been several attempts to introduce minimum prices on products in the EU with the aim of inhibiting consumption. In 2010, France, Austria and Ireland tried to introduce minimum prices on cigarettes for public health reasons. The legislation was found to be contrary to European law because it undermines the freedom of manufacturers and importers to set prices. The court rejected arguments about health protection, stating that health promotion already took place through taxes. Because of the health risk reduction argument, a minimum price for e-cigarettes is also currently being debated in the Netherlands.

As on a minimum price for textiles, consideration is being given to discouraging short-haul flights. France calls for a European minimum price on low-cost flights. [54]

When a minimum price is set, the aim is to inhibit consumption of cheap, unsustainable textiles, thereby reducing the impact of the textile sector. Due to the diversity of the textile sector, a minimum price can

50 Government.co.uk (2024). Agreement on European Union (link)
51 The Correspondent (2024). If the EU can do anything, it is reform agriculture (link)
52 Rural network. European agricultural policy (CAP) (link)
53 Royal Society of Biology. Common Agriculture Policy (link)
54 Forbes (2023). The end of cheap Europe flights? France proposes EU-wide minimum price (link)

be set in different ways. After all, textiles are an umbrella term for different product groups: from socks to jumpers to bath towels. In addition, textile products are made of many different materials that vary in how sustainable they are. A minimum price can therefore vary from a fixed price per product group ('each t-shirt costs a minimum of 10 euros'), a minimum price per material ('textiles made of polyester cost a minimum of 10 euros'), a price based on both weight and material ('textiles made of cotton cost a minimum of 30 euros per kg') or only on weight ('textiles of 1 kg cost a minimum of 10 euros'). In practice, a minimum price results in a producer being obliged to increase the price of a product if he initially wanted to market it at a lower price. The rationale is then that this reduces demand for the product in question. For the textile products that the producer does still sell, he then receives a higher price.

6.2 Legal framework and legal feasibility

Setting minimum prices is one of the most far-reaching measures that can be used by a government to intervene in a market. In practice, we see these measures in sectors that are intensively regulated, for example in healthcare whose justification for this measure is protection of public health or as support to the agricultural sector - to protect the European agricultural market. As yet, we do not see these measures in the consumer goods market.

To date, government involvement in the textile market has been limited. Traditionally, it has mainly been about product safety working with minimum requirements that we see reflected under CE marking. Under the European Green Deal, we see this changing. There is more and compelling control of the textile market by the European legislator. Through the ESPR, additional sustainability requirements are imposed on products, and the extended producer responsibility makes producers responsible for their waste. In addition, large companies face a reporting requirement in which their own environmental impact must be reported transparently (Corporate Sustainability Directive, CSRD).

First, the question can be asked whether there is a need for the (national) government to intervene in the textile market with its legislative instruments. In general, there is only room for such intervention at the moment of market failure, namely the (in)ability of market participants to solve the central challenge independently. These trade-offs are addressed by the Policy Compass.[55] The Policy Compass is the central working method for making policy and legislation from central government and provides a roadmap for implementing legislation. Many of the test points that need answering from the European law framework should also be answered in the Policy Compass

In addition, the possible measures of intervention should be reviewed. The principles of proportionality of the measure, efficiency of the measure and subsidiarity (can the effect be achieved with a less far-reaching measure) should be addressed.

In the context of this subsidiarity, a total ban or the imposition of a minimum/maximum price is a far-reaching and drastic instrument. If the Dutch legislator decides to introduce a measure imposing a minimum price for textiles, the measure must pass the test of Articles 34 and 36 of the Treaty on the Functioning of the European Union (TFEU).

Speaking of infringement?

First, it must be established whether there is a violation of a free movement provision. Article 34 of the TFEU states that quantitative restrictions on imports and measures having equivalent effect between

55 Policy Compass | Knowledge centre for policy and regulation

member states are prohibited. These are all national measures that may directly or indirectly, actually or potentially, hinder or restrict trade between member states.[56]

In addition, the European Commission has produced guidelines that provide a general guide to the application of free movement of goods provisions.[57] These guidelines are an interpretation of case law on Articles 34-36 of the TFEU. The guidelines discuss that Member States can adopt price measures, which may violate the free movement of goods. Minimum or maximum prices also fall under this category.

When minimum prices are regulated at the European Union level, an alleged infringement of the free movement of goods is less likely to come into play, as case law on minimum prices on tobacco products shows.[58]

Justification for the infringement?

Under Article 36 of the TFEU, an infringement of Article 34 of the TFEU may be justified on grounds of protection of, amongst others, public policy, public security, health and life of humans, animals and plants or industrial property. The obstacle may be justified on grounds of public interest or overriding requirements.[59] The prohibitions or restrictions must not result in disguised discrimination or constitute a restriction on trade between Member States.[60] The measure must also be suitable for achieving the objective pursued, and must not go beyond what is necessary to achieve it.[61]

At the time of writing, we are not yet aware of any case law in which the threat of climate change has been adopted by the European Court of Justice as a justification under Article 36 of the TFEU. However, given the dominant development of climate jurisprudence - for example, under the influence of the European Court of Human Rights - a cogent argument in that context is certainly predictable. In *KlimaSeniorinnen*, the Court held that Article 8 ECHR (right to family life) encompasses the right for individuals to effective protection by state action against the serious adverse effects of climate change on their lives, health, well-being and quality of life. Similar reasoning seems to fit well with Article 36 of the TFEU's justification of the health and life of persons, animals and plants as an overriding reason of general interest.

As for the other criteria, further substantiation is needed to establish that setting minimum prices is justified, appropriate and does not go beyond what is necessary to achieve the objective. Based on the information available while preparing and writing this report, the minimum price does not appear to meet this test at this time.

In a recent study conducted by the country's lawyer on minimum prices, some reluctance can be observed. The conclusion of the study on minimum prices on e-cigarettes is that introducing a minimum retail price for e-cigarettes is a restriction of trade, which can be justified on the grounds of a public

56 European Court of Justice dated July 11, 1974, (*Dassonville*), C-8/74, EU:C:1974:82, para 5.
57 Communication from the Commission - Guidance on the application of Articles 34-36 of the Treaty on the Functioning of the European Union (TFEU) on the free movement of goods, C(2021) 1457 final, 5.3.2021 - Guide on Articles 34-36 of the Treaty on the Functioning of the European Union (TFEU) https://ec.europa.eu/docsroom/documents/44906.
58 Communication from the Commission - Guidance on the application of Articles 34-36 of the Treaty on the Functioning of the European Union (TFEU) on the free movement of goods, C(2021) 1457 final, 5.3.2021 - Guide on Articles 34-36 of the Agreement on the Functioning of the European Union (TFEU) https://ec.europa.eu/docsroom/documents/44906, pp. 22-23.
59 Most recently, the District Court of The Hague ruled on the national ban on flavoured vapes. That ban was upheld by the Court (ECLI:NL:RBDHA:2024:17892, Rechtbank Den Haag, C/09/646505 / HA ZA 23-367). The ruling was that there was an infringement of freedom of movement, but that this infringement could be justified on the grounds of harmful effects.
60 CJEU October 29, 2017, C-65/16 *(Istanbul Lojistik Ltd),* para 109.
61 CJEU December 2, 2010 (Ker-Optika), C-108/09, EU:C:2010:725, para 57 and case law.

interest (in the interest of protecting public health).62 However, the country's lawyer is reluctant to assess the appropriateness of the measure, mainly because of the lack of its justification. In addition, the proportionality of the minimum price is a concern, especially when choosing a minimum price instead of a national consumption tax. Finally, it is noted that a further national proportionality test may be in order.

6.2.1 Conclusion legal feasibility

In view of the above, the conclusion on this measure is as follows:

- Overall, the introduction of this measure is a very tough one;
- New legislation is needed to include the measure for a minimum price for textiles;
- The sustainability study requires a concrete measure:
    - Description of the measure, duration, target group, and need to adjust the price level upwards;
    - An examination of whether such a measure is effective and appropriate, and whether the effect cannot be achieved with less far-reaching measures;
    - This includes an examination of the impact on trade within member states. That examination will determine whether the measure is sustainable.
- In addition to introduction of the measure, it is conceivable that various players in the market could initiate legal proceedings to legally test the measure's tenability.
- Based on the current status of case law on free movement provisions, the protection of the internal market takes precedence over other interests. Based on the case law surrounding Article 36 of the TFEU, the court could argue that no justification can be found in the climate change and environmental impact argument for the minimum price. While it is conceivable that the introduction of a minimum price could possibly be justified because of the serious impacts of climate change, this would require a firm judgement from a court that dares to act legally. That situation leads to uncertainty about the legal security of the measure, which may materialise well after its introduction.

At the time of drafting this report, the measure is not concretised and the underlying file is therefore not sufficiently in order. This applies on the one hand to the question of the feasibility of including the measure in legislation, but even more so to the question of the legal tenability in proceedings once the legislation is introduced. Of course, the soundness of the file can be worked on in the coming period. That would rather warrant an orange colour. However, given the circumstance that in addition to new legislation, new fundamental jurisprudence must also be formed to legally secure the tenability of the minimum price, the measure currently colours **red**

	Legal feasibility	
3. Minimum price	●	Implementing such a measure restricts trade between member states. Further research is needed into the concretisation of the measure, as well as a solid dossier structure. Implementation of the measure and legal safeguards require both better dossier building and awaiting a legal opinion.

62 Pels Rijcken (2024). Possibilities of introducing a minimum retail price for e-cigarettes in the light of Union law (link)

6.3 Implementability

The practical implementability of this measure is low, which is also expected to make it difficult to enforce. As explained in paragraph 6.1 , a minimum price can be set differently: by product group, by material, material and weight or weight only. In all cases, enforceability is complicated. Below, we explain practical implementability and enforcement for each form of minimum price.

Minimum price per product group

There are lots of different types of textiles: from underwear to bed linen to t-shirts. A minimum price per product group is complicated because the demarcation of textile products is not so obvious. For example, does a thick long-sleeve fall under t-shirts or jumpers? In France, Refashion uses such a system for the EPR, this system could serve as a (first) basis for a possible minimum price per product group.[63] A disadvantage of this form, however, is that the measure only affects the low-price products, which means that only the - based on price - bottom of the product group is affected. If the product group is still very broad, this could mean that certain sub-product groups fall outside the minimum price. For example, if there is a product group that includes dresses, jumpsuits and suits then it is expected that all suits will fall outside the minimum price. This is because suits are generally more expensive than dresses and jumpsuits, so this subcategory is never subject to the minimum price. But at the same time, the narrower the product groups (or in other words: the less covered), the more different product groups there will be, which makes the measure more difficult to implement.

Minimum price per material (and weight)

The implementability of a minimum price per material or per material and weight is also complicated. A system needs to be set up that knows the material composition of all textile products (including weight) on the market and determines the minimum price on this basis. This system should be simple and very clear to enforce the measure as well.

Minimum price per total weight

The form in which the minimum price is determined solely on the basis of weight is relatively somewhat simpler, as only the weight of all textile products is then needed. However, this form has the major disadvantage that you create an (unwanted) incentive to switch to materials that are lighter. This is because you only look at the total weight and do not include the individual weights of the materials. From an environmental point of view, this is undesirable for materials that are light but not sustainable. This is the case, for example, for polyester, which is lighter than many of its alternatives, but whose raw material is fossil and therefore not (always) desirable from a sustainability point of view.

6.3.1 Conclusion implementability

The implementability of the minimum price seems difficult but not unfeasible. The methodology and data could fit with the yet-to-be-developed system of the Dutch PRO. For these reasons, the implementability of this measure colours **orange**.

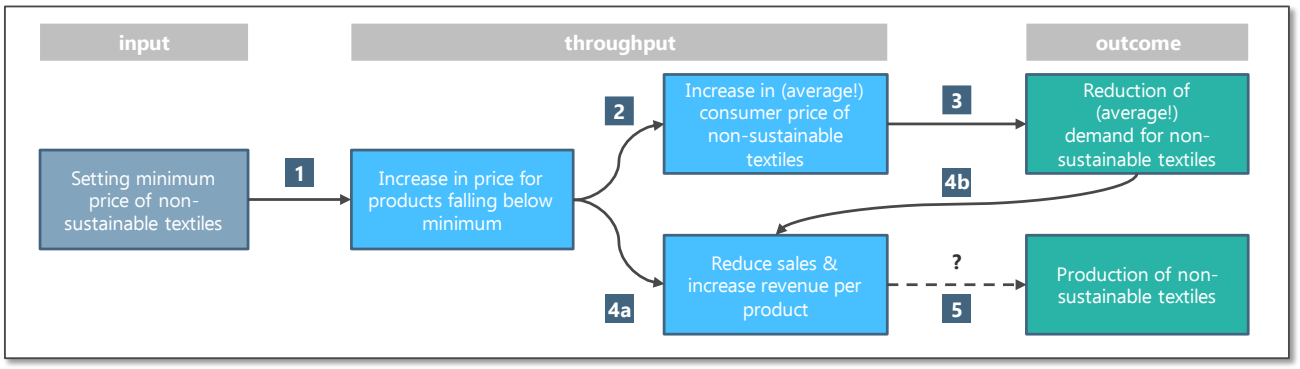
	Implementability	
3. Minimum price	🟡	Because there are multiple minimum prices in each form, implementability is difficult. At the same time, implementability is not unfeasible. The methodology and data could align with the yet-to-be-developed system of the Dutch PRO.

63 Refashion (2024). The eco fee declaration (link)

6.4 Expected effectiveness

6.4.1 Analysis for setting minimum price for non-sustainable textiles

A (relatively high) minimum price of non-sustainable textiles reduces the average demand for non-sustainable textiles. As the increase targets a part of the textile market, the effect on the total is limited. Possibly, this measure also indirectly leads to a decrease in production of non-sustainable textiles. We explain this below using the input-throughput-outcome diagram.



Explanation of diagram by arrow:

1. An increase in the minimum price leads to an increase in the price of products that currently fall below the minimum
2. ..which automatically leads to an increase in the average consumer price of non-sustainable textiles
3. ..which in turn leads to a decrease in average demand for non-sustainable textiles (because price elasticity)
4. In the short run, increasing the price of products below the minimum leads to an increase in retailers' average revenue (because the margin per product increases) (4a). In the long run, however, a reduction in demand leads to a decrease in total revenue (4b). Which effect will be stronger is difficult to determine
5. How this affects the production of non-sustainable textiles is unknown and depends on the level of the minimum price

6.4.2 Conclusion expected effectiveness

A minimum price for textiles has (limited) effectiveness in reducing demand for non-sustainable textiles. Since the increase affects only a part of the textile market, the effect on the total is limited. For the part of textiles that would normally have been below the minimum price, the measure is effective. The increase has to be passed on to consumers, which does not allow for cost reduction through the supply chain. This reduces the demand for textiles below the minimum price (price elasticity). It is unknown what the measure does for the production of non-sustainable textiles. For producers (of products normally below the minimum price), the margin increases. At the same time, there is also a decrease in demand, reducing overall yield. How this affects production is unknown and largely depends on the level of the minimum price.

	Expected effectiveness	
3. Minimum price	●	The measure only oversees part of the market, so the impact is limited. For the part of the market covered by the measure, the measure is effective.

7. Conclusion and recommendations

In this chapter, we summarise the legal feasibility, implementability and expected effectiveness for each measure (7.1) and compile the insights into an opinion (7.2). Finally, we make some suggestions for pricing measures that we think would be useful to investigate further in the context of the goal of encouraging sustainable textiles and discouraging non-sustainable textiles (7.3).

7.1 Summary by measure

The table below shows a summary of the legal feasibility, implementability and expected effectiveness of the three measures studied. In addition, a final assessment has been added. We explain this further in 7.2.

	Legal feasibility	Imple-mentability	Expected effectiveness	Explanation
1. Ecomodulation	🟢	🟢	🟡	The measure is legally feasible and practicable because it is already applied and included in current regulations. The measure is reasonably effective. The measure affects supply and demand of sustainable textile products and circular design to a limited extent. However, the government cannot design the tariff system itself. That is up to the PRO. **Final verdict: apply**
2. Import tariff	🔴	🔴	🟡	There are legal barriers to adjusting import tariffs and trade agreements. For instance, the distinction between sustainable and non-sustainable textiles does not fit within the current frameworks of international global trade. The measure is primarily designed to protect its own internal market. We also see areas of concern for implementing sustainability in foreign trade relations. Adjusting trade agreements is a complex and politically sensitive process and usually has a long lead time. In addition, the measure is difficult to enforce. Under the assumption that the measure is legally feasible and enforceable, the measure can be effective. It is plausible that the measure will lead to a reduction in the demand for and production of non-sustainable textiles and an increase in the demand for and production of sustainable textiles. **Final verdict: do not apply**
3. Minimum price	🔴	🟡	🟡	Implementing such a measure restricts trade between member states and is therefore very difficult to legally secure. The implementation of the measure and legal assurance would require better file keeping and awaiting a judgement of law. Setting a minimum price could be done by product group, material or weight. Weight and/or material compositions should be monitored and minimum prices could be set accordingly. Implementability is difficult, but could tie in with the yet-to-be-developed EPR system. A (relatively high) minimum price of non-sustainable textiles leads to a reduction in the average demand for non-sustainable textiles. However, as the increase applies to part of the textile market, the effect on the total is limited. **Final verdict: do not apply**

7.2 Recommendations

In this study, we investigated three pricing measures that could potentially increase the demand and supply of sustainable (circular) textiles and potentially reduce that of non-sustainable (linear) textiles. For these three measures, we examined the legal feasibility, implementability and expected effectiveness.

Based on the performed analysis, two of the three measures are not feasible and/or implementable. We recommend to **apply** ecomodulation under the EPR for textiles and **not apply** a textile import tariff and minimum price.

The measure ecomodulation is legally feasible and implementable (taking into account a number of concerns). In addition, we have the impression that the measure can contribute to the objective that is central to this study; relatively fewer non-sustainable and more sustainable textiles. However, the Dutch government is not in a position to fully determine and set up the tariff system. While European regulations do become more guiding in the systematics (ESPR criteria and partly depending on the final review starting points to counter overproduction and consumption), implementing the systematics and (within it) determining the different heights of the tariffs is up to the different PROs. If a member state were to opt for a government-led PRO, there are obviously more opportunities to determine the design of ecomodulation. For the EPR for textiles, the government has not opted for this and three private initiatives have been established.

A higher import tariff for non-sustainable textiles and/or a lower import tariff for sustainable textiles are, based on insights from our research, difficult to implement. The distinction between sustainable and non-sustainable textiles does not fit within the current frameworks of international global trade. Import tariffs are partly set in individual trade agreements with countries, which are difficult to break open or modify. In addition, the measure is difficult to enforce. This makes us question whether you want to use such a measure (should the legal barriers and obstacles in terms of enforceability be removed) for this purpose. The tariff is primarily intended to protect its own market, and applies to imported products (and not to production within the European Union). However, we recommend exploring within the current system whether its operation could be widened so that an import tariff is also paid on parcels below EUR 150. The prices of parcels from the large Chinese platforms (such as Shein and Temu) tend to fall under this, making them exempt from the tariff. This works to distort competition against other companies that import goods in large quantities to sell on the European market. Under the assumption that textiles from the large Chinese platforms are often not sustainable, it is advisable to further investigate the possibility of lowering or dropping this limit.

For a minimum price for textile products, we also see limited opportunities for implementation. The measure is not legally feasible, as it restricts trade between member states and therefore violates trade agreements. Besides legal feasibility, we also question the implementability and expected effectiveness. Textiles have many different categories of products and are not uniform, which complicates implementability. Because the measure applies to a part of the textile market (only the products initially covered by the minimum price), the expected impact is limited.

As mentioned earlier in this report (e.g. in section 3.3), a - for both consumers and implementers of possible measures - recognisable and clear distinction between sustainable and non-sustainable textiles is an important condition for the effectiveness and feasibility of (pricing) measures for sustainable and non-sustainable textiles. It was also indicated that it is not within the scope of this study to come up with a definition on this. It is therefore important to establish a workable definition of non-sustainable and sustainable textiles in the coming period. We expect that based on the ESPR, PEF and the developed tool for policymakers, among others, this will be possible.

7.3 Alternative pricing measures for further investigation

Besides the three measures examined, we see some other pricing policies that could potentially contribute to the objective (encouraging sustainable textiles over non-sustainable textiles)

In this last section, we will successively briefly discuss four measures that, in our view, deserve further investigation: a circular contribution on every (non-sustainable) textile product purchased, deposits, fiscal measures to stimulate the sale and/or repair of second-hand textiles and an environmental tax on textiles with a high(er) environmental impact. These measures are also regularly mentioned by textile chain stakeholders with the expectation that they can be effective. To assess whether these measures deserve implementation, additional research on legal feasibility, implementability and expected effectiveness is required.

Circular contribution. This measure involves setting up a fund for textiles, as is just worked out in previous research for linear Electronic and Electrical Appliances and Furniture[64], fed by a circular contribution when a non-sustainable textile product is produced or purchased. The resources from the fund can be used to make second-hand textiles or repairs cheaper and thus encourage sustainable textiles over non-sustainable ones. One of the research questions is whether this fund should then be additional to the existing EPR or becomes part of it (via the option of an innovation fund in case of collective implementation).

Deposits. Deposits have been introduced on several products to encourage return flows[65]. As many used textiles still end up in residual waste, encouraging return flows through deposits could be effective. This could be implemented by paying a "return premium" when textiles are handed in at collection points. The amount of the "return premium" can vary, for instance according to the purchase value of the product or the condition in which it is returned (e.g. can it be used again as a textile product possibly after a small repair or not). Clothing brand and producer New Optimist has introduced its own deposit system on the clothes they market in 2023. In our view, it would be interesting to investigate whether and what effects are already visible. In addition, the following could be part of the research: will deposits also be reclaimed on sustainable textiles (because of the expected longer lifespan) and not only on non-sustainable textiles (given the expected shorter lifespan of many products)? Which R-strategy is particularly affected by this measure; mainly recycling or also (one) other? And, what level of deposit stimulates the desired behaviour?

Fiscal measures. A VAT reduction on second-hand textile sales is often put forward as a potentially effective measure to promote sustainability and influence consumer behaviour through a lower purchase price. This would involve second-hand textiles sold through (commercial) suppliers. After all, no VAT is charged for the sale of second-hand textiles between consumers. Currently, a generic reduction of VAT on textiles is not possible.

- In the European VAT Directive (and also in the Turnover Tax Act), there is no VAT reduction exception for sales of second-hand goods by businesses, nor a specific exception for the sale of second-hand textile products. However, the margin scheme can be applied to used goods in specific cases. [66]
- During negotiations on the directive, the Netherlands argued for a reduced rate for recycling shops (as social/societal institutions). That proposal did not make it.[67]

64 Pricing measures scaling up circular business models, Sufficiency, Jan 2024 commissioned by Ministry of I&W
65 The explanatory note to the extended producer responsibility decree allows producers to introduce deposits.
66 As long as the other conditions, which apply to this, are met.
67 In response to the Grinwis motion: Parliamentary Papers II, 2020/21, 32 852, no 147. See also Annex 5 (Policy space VAT rates directive) to Parliamentary Papers II 2021/22, 32 140, no 119.

- Repair of textiles is currently already covered by the low (9%) VAT rate.

Any further reduction to 0% is not possible at the moment for the same reasons. Renegotiation of the directive and related elaboration is needed, to make that happen. Despite the fact that (further) lowering of VAT is currently not legally possible, we recommend investigating these measures further for effectiveness, with stimulating sustainability/reducing environmental impact via a lower price for consumers as an objective. In an evaluation, conducted in 2023 by Dialogic & Significant Public, the researchers conclude that the reduced VAT rate is partly effective, but is generally not an efficient instrument to achieve its intended goals.[68] An important note here, as explained in the cabinet's response to the study, is that "goals attributed to reduced VAT rates after their introduction, such as sustainability, have not been examined".[69]

We note in advance that it is not certain that the cost benefit that could arise from this would benefit consumers on a one-to-one basis (see also section 3.3 in this report). The outcomes of this further effectiveness study including a description of why this is not legally possible now could, in our view, answer the many questions stakeholders from the textile chain have about these measures. The outcomes could also be used to feed into a future revision of the European VAT Directive as an exception requires unanimity.[70]

An environmental tax on textiles with high(er) environmental impact. The market share of low-cost textile products that do not internalise environmental externalities in the price could potentially be reduced by introducing a tax on these products related to environmental impact. The latest proposal for the WFD review dated 17 June 2024 provides an opening for such a measure. Member states can require that criteria that take into account overproduction and overconsumption can be included in ecomodulation. France is currently working on a proposal to integrate an eco-tax into the EPR system (see also chapter 4). We recommend following the developments in France around elaboration and (possible) implementation of this measure, as these may provide useful insights for possible introduction in the Netherlands (e.g. definitions that France will use and ways of implementing the measure). In addition, other possibilities for shaping such a tax could be identified. One suggestion is to further investigate whether it is possible and desirable to add textiles to the Carbon Border Adjustment Mechanism (CBAM). The CBAM is an EU legislation that requires importers to pay for the CO2 emissions of goods produced outside the EU, complementing the existing Emissions Trading Scheme (ETS) for domestic production. Although textile sustainability depends on more than CO2 emissions alone, pricing textiles in this way could be a way to potentially reduce the share of unsustainable textiles. Questions to consider with regard to a tax are: should the measure be regulated at European or at national level, where in the chain should the tax be placed (producer, retailer or consumer) and do you organise this as part of the EPR or separately?

Making the textile chain more sustainable and/or more circular requires more than pricing measures. It requires - as the National Circular Economy Programme (NCPE) also mentions - a mix of policy measures; normative, pricing and incentive policies. We are aware of this. Given the focus of this study on three specific pricing measures, we have not discussed normative and incentive measures further in this report.

68 See study "Evaluation of the reduced VAT rate" conducted by Dialogic and Significant Public dated April 2023
69 See parliamentary letter; the respons of the cabinet regarding the review of the reduced VAT rate September 2023
70 The VAT Directive was adopted relatively recently (2022). Renegotiation is not expected in the foreseeable future.

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