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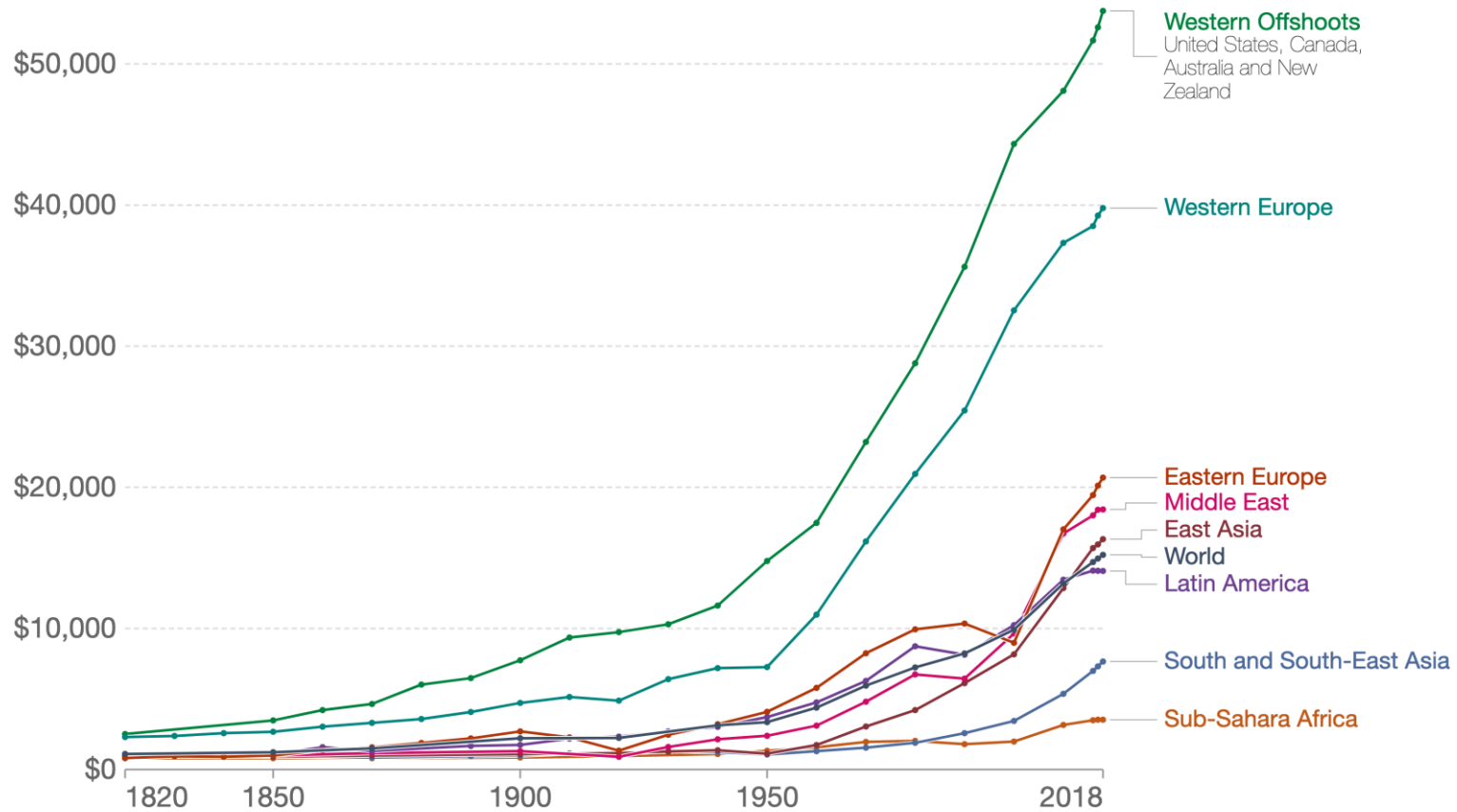
# Sustainability – Could Sales Law Play a Role?

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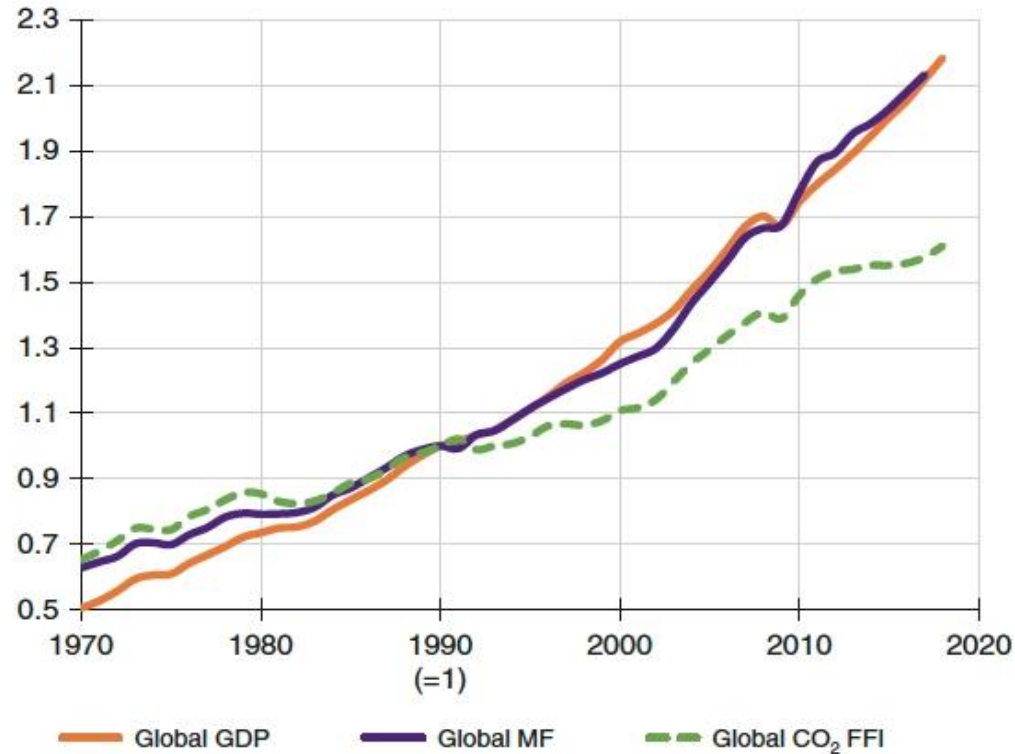
## GDP per capita, 1820 to 2018

GDP per capita adjusted for price changes over time (inflation) and price differences between countries – it is measured in international-\$ in 2011 prices.



Source: Maddison Project Database 2020 (Bolt and van Zanden, 2020)

OurWorldInData.org/economic-growth • CC BY



**Fig. 1 Relative change in main global economic and environmental indicators from 1970 to 2017.** Shown is how the global material footprint (MF, equal to global raw material extraction) and global CO<sub>2</sub> emissions from fossil-fuel combustion and industrial processes (CO<sub>2</sub> FFI) changed compared with global GDP (constant 2010 USD). Indexed to 1 in 1990. Data sources: <https://www.resourcepanel.org/global-material-flows-database>, <http://www.globalcarbonatlas.org> and <https://data.worldbank.org>.

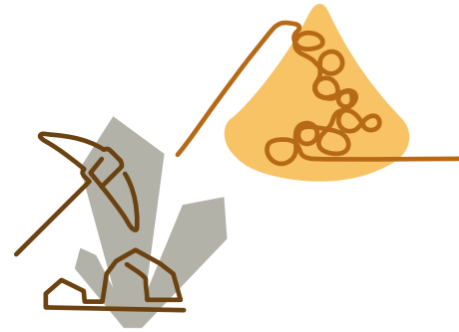
**WIEDMANN ET AL.,  
SCIENTISTS'  
WARNING ON  
AFFLUENCE**

**NATURE  
COMMUNICATIONS 2020**



# GLOBAL RESOURCES OUTLOOK 2019

NATURAL RESOURCES FOR THE FUTURE WE WANT



## Foreword

Global gross domestic product has doubled since 1970, enabling immense progress, and lifting of billions of people out of poverty. At the same time, this economic growth has been fueled by a relentless demand for natural resources. At no point in time nor at any level of income, has our demand for natural resources wavered.

Our consume and throwaway models of consumption have had devastating impacts on our planet. This report finds that 90 per cent of biodiversity loss and water stress are caused by resource extraction and processing. These same activities contribute to about half of global greenhouse gas emissions.

Moreover, the benefits of this type of resource use remain



## Challenges in the 21<sup>st</sup> Century

### Longer durability and usage of goods

- Problem: short lifespan of goods / continuous need for updates in case of digital goods / irreparability by design / planned obsolescence

### Observance of sustainable production processes

- Problem: unsustainable use of resources / environmental pollution / human rights violations / poor working conditions / inappropriate animal husbandry.



## Regulatory Options

### Longer Durability and Usage of Goods

- Production phase: 'Ecodesign' requirements for more durable goods.
- Marketing phase: Correct information on durability/reparability/sustainability
- Contract phase: Remedies?

### Observance of sustainable production processes

- Production phase mostly in 3<sup>rd</sup> country:
  - Reporting requirements for companies concerning their business conduct in 3<sup>rd</sup> country
  - Tort based liability of companies for their business conduct abroad.
  - Administrative fines / corporate criminal law
- Contract phase: Remedies?



# **Durability and Product Use**



# Durability of goods

- Durability of goods is a quality requirement in sales contracts:
  - ✓ Either it is part of the express provisions of the contract (subjective requirements)
  - ✓ Or part of implied terms (objective requirements)
- However, any warranty claim is subject to a time period which is for example in the EU 2 years from the moment of delivery (Art. 10 SGD).
- Can this be circumvented for durable goods?





# Durability of goods

- Pre-contractual statement: “*this refrigerator can be used for at least 5 years*”
  - ✓ 2019 EU Sale of Goods Directive says in Recital 32: ‘insofar as **specific durability information** is indicated in any pre-contractual statement which forms part of the sales contract, the consumer should be able to rely on them as a part of the **subjective requirements for conformity**.’
  - ✓ Interpretation: extended warranty for at least 5 years → Remedies for 5 years
- No explicit provision in the contract (**Objective requirements**):
  - ✓ 2019 EU SGD Art. 7(1)(d): “be of the [...] **durability**, [...] normal for goods of the same type and which the consumer may reasonably expect [...].”
  - ✓ Consumer expectations on the market: 5 years durability for refrigerators
  - ✓ Contractual Remedy: ???



# Repairability of Goods as a Durability Feature

- 'Right to repair' within the warranty period
  - ✓ E.g. Proposal for a Directive on common rules promoting the repair of goods, COM(2023) 155 final, 22.3.2023
  - ✓ Repair is suggested as the **primary remedy** as long as the costs of replacement are not higher
- 'Right to repair' beyond the warranty period
  - ✓ EU Proposal: obligation of producers of durable goods to provide repair.
- New perception: If not repairable, goods are not conforming with durability expectations.
  - ✓ E.g. France: Since 2021 repairability index for smartphones, laptops, washing machines, TVs and lawn mowers to inform consumers
  - ✓ Proposal for a Directive as Regards Empowering Consumers for the Green Transition, COM(2022) 143 Final
  - ✓ Contractual remedy: ???



# Durability of Goods with Digital Elements

## ➤ Update obligation?

- ✓ One of the major challenges to current sales law is posed by goods with digital elements;
- ✓ Even **after passing of risk** they need updates to keep functioning;
- ✓ Some legal systems, like the EU, ask the seller to provide updates for a period of time the **consumer may reasonably expect given the type and purpose of the goods and the digital elements, and taking into account the circumstances and nature of the contract**, (Sale of Goods Directive, Art. 7 III a)
- ✓ For how long would the consumer have a contractual remedy: ???



# Durability and Planned Obsolescence

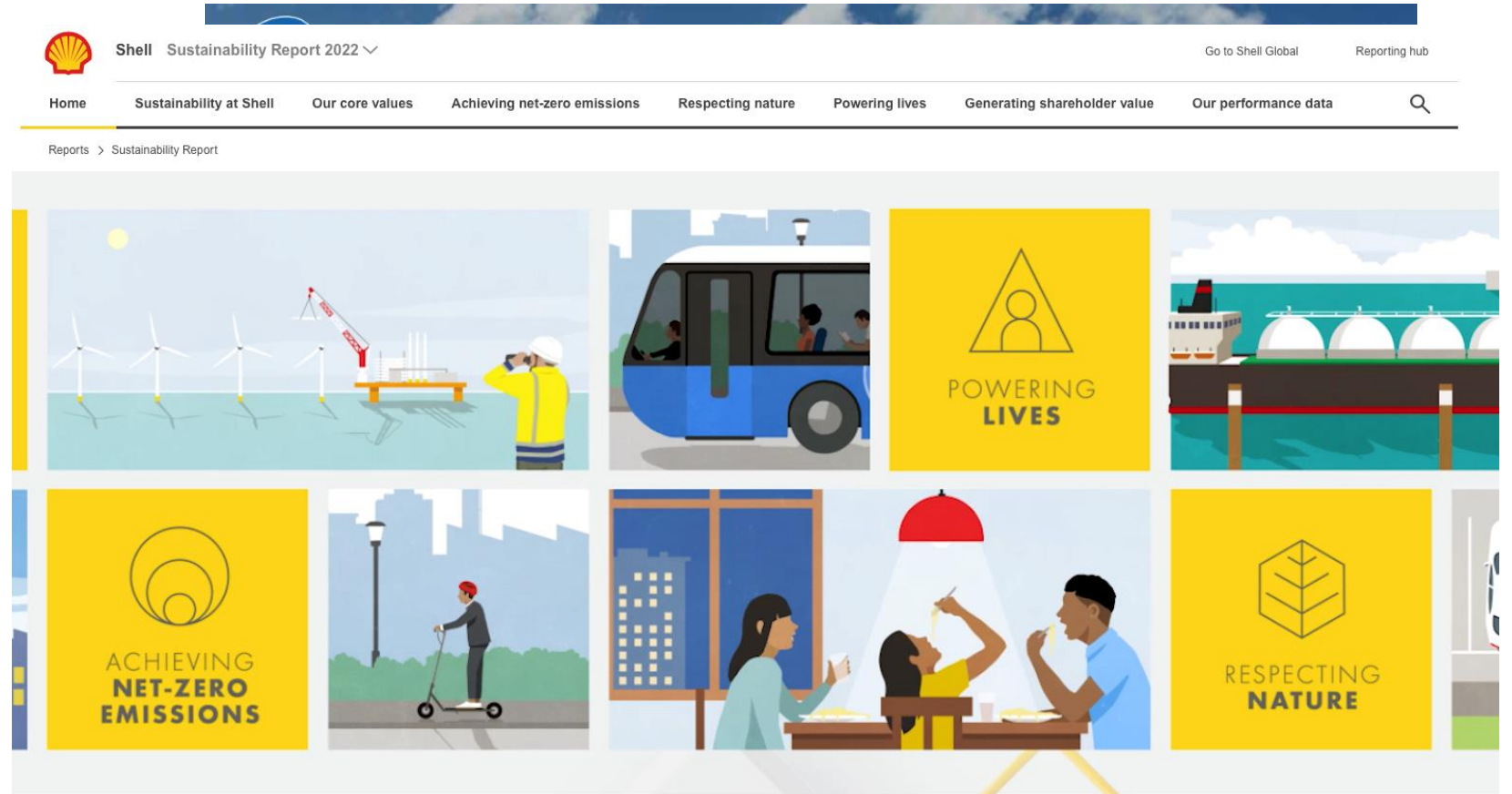
- **Planned Obsolescence**, is the practice of deliberate (fraudulent)
  - ✓ installation of weak points in products,
  - ✓ or their subsequent manipulation through software changes
    - so that the goods are no longer functional after a certain period.
    - E.g. Apple and Samsung phones / heavy fines by the Italian and French competition authorities.
- Contractual remedy: ???



# **Sustainable Production Processes**



# Sustainable Production Processes as Quality Requirements?



Sustainability Report 2022



## Sustainable Production Processes as Quality Requirements?

- Art. 7 (1) (d) Sale of Goods Directive – EU:
  - ✓ [...] be of the quantity and possess the qualities and **other features**, [...] taking into account any public statement made by or on behalf of the seller, or other persons in previous links of the chain of transactions, including the producer, particularly in advertising or on labelling.
  
- Remedies?
  - ✓ Price reduction
  - ✓ Termination
  - ✓ Damages



**Revision of sales law?**





## Possible regulatory options

- Warranty periods
  - ✓ Longer periods for durable goods
  - ✓ New warranty period after repair
  - ✓ Special regulations for planned obsolescence cases / direct claim against the producer
- Acceptance of durability, repairability as well as sustainable production methods as quality requirements
- Update obligations for longer periods for durable goods
- Repair and price reduction as major remedies
- Collective redress mechanisms for effective enforcement of claims



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**Thank you for your attention**  
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