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JOB DESTRUCTION IN THE SOUTH AFRICAN CLOTHING INDUSTRY

How an alliance of organised labour, the state and some firms is undermining labour-intensive growth

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JOB DESTRUCTION IN THE SOUTH AFRICAN CLOTHING INDUSTRY

How an alliance of organised labour, the state and some firms is undermining labour-intensive growth

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"The Minister's successive extension of collective agreements, the National Bargaining Council's compliance drive, and the resulting job losses puts paid to the argument that South Africa's bargaining councils do not affect employment."

EXECUTIVE SUMMARY

*For ten years, the National Bargaining Council for the Clothing Manufacturing Industry (NBC) has been used by the South African Clothing and Textile Workers Union (Sactwu) and largely Cape Town-based employers in an effort to impose higher labour costs on 'Chinese' employers in Newcastle, in northern KwaZulu-Natal. Many of the Newcastle employers have failed to comply with the rising minimum wages and levies imposed by the Council. The struggle intensified in 2010/11 when the NBC used the labour courts to put pressure on, and close down, targeted non-compliant firms, in response to which some employers initiated legal action against the Minister of Labour and the NBC. In the latest **CDE Focus**, Professors **Nicoli Nattrass** and **Jeremy Seekings** of the University of Cape Town assess the implications of these developments.*

The struggle between the NBC and non-compliant firms is of broader importance because the non-compliant firms comprise the labour-intensive rump of the last remaining labour-intensive manufacturing sector in South Africa. Their fate draws our attention to the role of labour market policies and institutions (especially the process of minimum wage-setting through bargaining councils), trade liberalisation and industrial policy in determining the viability of labour-intensive manufacturing.

The Newcastle case shows how, under the guise of promoting 'decent work' and the supposed levelling of the playing field for producers, an unholy coalition of a trade union, some employers and the state can initiate and drive a process of structural adjustment that undermines labour-intensive employment and exports South African jobs to lower-wage countries such as Lesotho and China.

Introduction

Successive government plans emphasise the need for job creation in South Africa, yet industrial and labour market policies are biased against labour-intensive growth. Nowhere is this more evident than in the clothing industry, where employment has collapsed in the face of rising wage costs and intensifying international competition. South Africa's most labour-intensive firms, which produce basic clothes for the mass market in direct competition with China and other low-wage countries, have survived by relocating to lower-wage regions and/or paying below the legal minimum wage. Some firms have relocated production to Lesotho, where minimum wages are substantially lower.

The existence of the rump of labour-intensive manufacturing in South Africa is now threatened by a 'compliance drive' launched by the National Bargaining Council for the Clothing Manufacturing Industry (NBC) in 2010. Firms that do not pay the minimum wage are pursued through the courts and eventually forced out of business. We estimate that about 16 700 jobs are directly under threat, with further job losses possible in other firms in the areas concerned. This has serious implications for labour-intensive growth as clothing is South Africa's most labour-intensive industrial sector, and the low-wage firms targeted by the NBC are its most labour-intensive.

The NBC was created in 2002. Resisted from the outset by several employer bodies, especially in KwaZulu-Natal (KZN), the NBC has never been representative of firms in KZN or in the country as a whole. Only about one quarter of the firms that are registered with the NBC (collectively employing less than half the workforce) are represented by employer associations and hence are 'party' to agreements concluded with the South African Clothing and Textile Workers Union (Sactwu). Nevertheless, successive Ministers of Labour have used the Labour Relations Act to extend wage agreements to all clothing firms in South Africa, whether party to the NBC agreement or not.

In June 2011, five small clothing enterprises from Newcastle, a low-wage region in KZN, initiated legal proceedings against the NBC and the Minister of Labour over the extension of minimum wages to them. The case was scheduled to be heard in January 2013. At stake is the survival of 450 firms employing around 16 700 workers being targeted by the NBC in its compliance drive. This paper locates the Newcastle story within the broader context of South Africa's clothing industry and related industrial policy.

Minimum wages in South Africa's clothing industry

Since the first national minimum wage agreement in 2003, nominal and real minimum wages have risen significantly in the lowest-wage, non-metro areas of South Africa, including Newcastle. In 2000, when minimum wages were still set through the Employment Conditions Commission, minimum wages in Newcastle were half those in Cape Town. By 2011, after nine years of wage agreements in the NBC, they had reached two-thirds of the Cape Town level.

Employers represented in the NBC, who are largely located in metro areas, have gone along with the reduction of inter-regional differentials as this is of little consequence to them.

Although some of the firms that are party to the NBC agreements claim that they face competition from lower-wage producers, in fact they tend to produce for relatively protected niche markets (e.g. bespoke orders, promotional goods) or the 'fast fashion' end of the industry, where margins are higher and where longer-term relations can be forged with retailers. These firms are not threatened by competition from low-wage, non-metro firms which produce different products for different markets, notably simple skirts, shirts and pyjamas aimed at middle- and low-income consumers for whom branding is less important.

The claim by the NBC and the umbrella employers association, the Apparel Manufacturers of South Africa (AMSA), that the compliance drive is necessary to protect themselves against unfair competition is implausible. AMSA members have long co-existed in the presence of low-wage firms in South Africa, the destruction of which will benefit firms in China and Lesotho, not AMSA members. AMSA's support for the compliance drive should be seen rather as a means of putting pressure on government and Sactwu (because of the likely job losses involved) to agree to a new 'wage model' for the industry with more room for productivity-linked pay.

Increased international competition, especially from China, caused in part by the appreciation of the Rand between 2003 and 2011, has been the major factor behind the collapse of employment in South Africa's clothing industry. But this collapse would have been even worse if many of the low-wage producers in places like Newcastle had shut down due to an inability to comply with the minimum wages imposed by the Minister of Labour. Non-compliance, however, has resulted in chronic conflict with the NBC.

Chinese firms in Newcastle

The five applicants in the court case are so-called 'Chinese' producers in that they originate from Taiwan, Hong Kong or China. Originally recruited by the municipality in the 1980s and 1990s to create jobs, Chinese producers brought with them the skills and networks needed to operate at the most labour-intensive end of the clothing industry. By the 2010s they had come to form a settled 'Chinese' community.

It is a community that has had to weather a number of shocks, the first of which was in 1991 when decentralisation incentives (including wage subsidies) came to an end, and minimum wages were set by the Wage Board. Many ignored the wage determination and, by 1995, Sactwu had over 30 labour disputes with firms in Newcastle. Ebrahim Patel, then General Secretary of Sactwu, was unsympathetic, saying that he would 'eat these fly-by-nights for breakfast'. Later, as Minister of Economic Development (from 2009), he supported an approach to industrial policy which provides incentives for industrial upgrading conditional on compliance with legislated minimum wages. This, along with other aspects of industrial policy, has been intended to move the clothing industry towards the more capital-intensive, sophisticated end of the market. There is simply no place in this approach for lower-wage, more labour-intensive production.

The second major shock came when wage-setting through the NBC began. This coincided with the appreciation of the Rand from 2003, which wiped out the large export producers. The remaining producers now concentrate on the low- and middle-income domestic market, competing directly with imports from lower-wage countries like Lesotho and China. Their relationship with the NBC has been fraught: many registered with it, but did not comply with the minimum wage agreement (although some raised wages in an effort to get closer to the legal minimum); others attempted to avoid the NBC altogether — an increasingly untenable strategy given the compliance drive.

The Newcastle Chinese feel betrayed by the transformed policy environment and by what they perceive to be racist slurs, such as calling them 'fly-by-nights' when they regard Newcastle as their home. They also feel that there was a failure to understand how difficult it is to compete at the bottom of the clothing market. Profit margins are very low, and tight deadlines are stressful for owners and workers. In this highly competitive environment, missed deadlines can turn a small profit into a major loss as penalties are imposed and orders cancelled. Some owners live on their factory premises, mobilising their family to work long hours in the factory if a deadline is in danger of being missed (Mr Cheng, the owner of Lucky Industry, died of a heart attack late one night in 2011 as he worked five knitting machines while trying to complete an order). It is these pressures that have also sometimes resulted in labour practices that are clearly abusive, such as locking workers into the factory. In one infamous case, a worker gave birth to twins during a night shift, both of whom died because the owner could not be reached and relatives could not access the locked factory. This prompted the Department of Labour to inspect Newcastle clothing factories, finding other instances of abuse. It also prompted Sactwu to launch its 'operation clean-up' to end 'sweatshop conditions' in the area.

Some Newcastle firms still do not fully comply with the Basic Conditions of Employment Act or pay NBC-agreed minimum wages, but the situation defies simple characterisation. Some firms provide small payments to their workers during the off-season (a practice they might have to stop if they paid higher minimum wages). Others have experimented with worker co-operatives and various forms of productivity-linked pay. One model is to pay bonuses for production over and above a basic quota. Another is to offer low minimum wages plus piece-work payments. These practices can result in significant variation in earnings. According to wage records for 2011, take-home pay for workers employed by one of the applicants in the case ranged from 15 per cent below the NBC minimum wage to almost double it.

There is therefore no simple correlation between minimum weekly wages and total earnings, and not all workers would necessarily benefit if minimum wages rose to the prescribed level at the cost of reduced productivity-linked pay. Indeed, when one of the applicants in the court case attempted to increase his minimum wages to 70 per cent of the legal minimum, he could do so only by reducing his piece-work bonuses. His most productive (and best paid) workers resigned in protest at their reduced total earnings.

The compliance drive, industrial policy and the destruction of jobs

By the end of 2009, the NBC was in the process of taking action against over 400 clothing factories, mostly in low-wage areas of KZN (especially Newcastle), Botshabelo and QwaQwa. Some owners engaged in elaborate cat-and-mouse games with the NBC as they begged for time to implement the minimum wage whilst completing their existing orders and simultaneously making plans to shut down their companies. Some opened new factories with machinery leased from elsewhere (to avoid having these assets attached), often in different locations, forcing the NBC to begin the process anew. Others downsized to micro-enterprises in order to obtain an automatic exemption from the minimum wage, or re-organised along co-operative lines.

In 2010, the NBC compliance manager drew up a list of 65 priority 'offenders', escalating their action against them. Employers and workers protested the precipitous job destruction, various meetings were held, and, in December, a 'moratorium' on proceeding with writs of execution against non-compliant companies was imposed. Minister of Economic Development, Ebrahim Patel, announced that non-compliant firms had 15 months to become compliant on a phased basis. He also encouraged firms to make use of the government's productivity incentives. These, however, were conditional on compliance with minimum wages and, historically, DTI support for the clothing industry has been aimed at large companies like Seardel (part owned, ironically, by Sactwu). Such support has not prevented further retrenchments in the industry.

It is difficult to estimate precisely how many jobs might be lost if factories are forced to comply with the minimum wages agreed by the NBC and extended to non-parties. It appears that there are 16 700 workers nationwide employed at factories which pay at least some workers' wages that are below the existing minimum. While it is not possible to say how many workers' wages would have to be raised or by how much, many of these factories operate on razor-thin margins, and any pressure on costs might result in closure. If the cost of compliance includes both raising minimum wages and paying unpaid levies to the NBC, outstanding pension contributions, etc., the likelihood is that many factories will be unable to absorb the costs and will close.

The closure of the highly labour-intensive firms in Newcastle and elsewhere will have other consequences. The loss of clothing jobs in Newcastle, for example, would undoubtedly affect the viability of other businesses in that community. In addition, some of the compliant factories in Newcastle draw staff from non-compliant firms who act, in effect, as training institutions. If these factories are closed, training costs in compliant firms might rise, affecting their margins and viability, too.

There appears to be no grounds for optimism that the DTI/Sactwu vision of a high-wage, high-fashion, top-quality, 'decent work' strategy will create an employment growth engine anything like the low-wage, labour-intensive model currently under threat in Newcastle. Indeed, it implies that, if the industry is to exist at all, firms must compete only in the 'high fashion', technical/quality end of the business. The destruction of low-wage labour-intensive firms is thus explicitly part of the DTI and Sactwu's structural adjustment programme for the industry.

Concluding remarks

The struggle of the Newcastle clothing producers to remain in business is symptomatic of the difficulties involved in promoting labour-intensive growth in South Africa. The firms have to contend with minimum wages set in bargaining councils dominated by unionised businesses in metropolitan areas, producing for the higher value-added top-end of the industry, often with substantial support from government's industrial policies.

The Sactwu/DTI vision is that only 'decent' jobs should exist in South Africa, and that labour-market and industrial policies should actively prevent any low-wage, low-productivity production as this is supposedly a 'low-road' to growth. But the hoped for 'high-road' of substantial job creation through skill- and capital-intensive growth has yet to materialise, and the costs have been borne by workers in labour-intensive industry and the unemployed.

South Africa needs a more differentiated approach to wage-setting that enforces basic standards of employment but tolerates low-wage employment. Allowing low-wage producers in places like

Newcastle to continue to exist will not harm jobs in the upper-end of the industry. Instead, it will accommodate the needs of low-skilled workers, the unemployed and poorer consumers who purchase basic clothing rather than the pricier, branded, fast fashion products.

The extension of agreements, the NBC's compliance drive, and resulting job losses puts paid to the argument that South Africa's bargaining councils do not affect employment. Indeed, the story illustrates how, under the hypocritical guise of promoting 'decent work', labour-market institutions and industrial policies can create an unholy coalition of the state, a trade union, and metro-based, relatively capital-intensive employers whose actions can inflict massive job-destroying structural adjustment on a labour-intensive industry.

Introduction

Successive government plans emphasise the need for job creation in South Africa, yet neither the 'New Growth Path' (RSA, 2010) nor the 'National Development Plan' (RSA, 2011) has grasped the nettle of what it takes to allow labour-intensive growth. The former emphasises 'decent work' (i.e. high-productivity, high-wage jobs) whilst the latter claims that South Africa's manufacturing strength lies in capital-intensive industries, noting forlornly that 'in a context of high unemployment, growth would ideally be sourced through expanded contribution of labour' but that 'to compete, the country's cost structure requires an emphasis on productivity, products and logistics' (2011: 126). No attention is given to how South Africa's wage-setting institutions themselves drive up labour-costs, promoting capital-intensity and undermining the prospects for labour-intensive growth. Nowhere is this more evident than in the clothing industry.

South Africa's clothing industry is in crisis. Squeezed between rising wage costs and intensifying international competition, employment has almost halved since 2003 (Nattrass and Seekings, 2012a). The most labour-intensive firms producing basic clothes for the mass market, and in direct competition with China and other low-wage countries, have survived in South Africa by relocating to lower-wage regions and/or paying below the legal minimum wage. Some firms have relocated production to Lesotho, where minimum wages are substantially lower.

South Africa's wage-setting institutions drive up labour-costs, promote capital-intensity and undermine the prospects for labour-intensive growth

The very existence of the rump of labour-intensive manufacturing in South Africa is now threatened by a 'compliance drive' launched in 2010 by the National Bargaining Council for the Clothing Manufacturing Industry (NBC). The NBC's objective is to force all firms in the clothing industry to comply with the minimum wages agreed to in the Council by member employer associations and the South African Clothing and Textile Workers Union (Sactwu). Firms that do not pay these minima — as well as various levies to the NBC — are pursued through the courts; served with compliance orders, demands for levies owed to the NBC and back-pay owed to workers; and eventually shut down by writs of execution served by the local sheriff.

This has serious implications for the prospects of labour-intensive growth in the industry and the country.

Clothing is South Africa's most labour-intensive industrial sector. According to the 2008 manufacturing survey, capital invested per job created was R10 000 in clothing, while the average for manufacturing as a whole was R150 000 per job (StatsSA, 2010). Wages are accordingly lower, with average weekly wages (in 2008) of R696 in clothing compared to R918 in manufacturing generally. This is particularly true of wages in the most labour-intensive end of the sector, which are generally lower than those paid by more capital-intensive firms. The NBC's compliance drive is making it harder (if not impossible) to create jobs for relatively unskilled people in poorer regions — with adverse consequences for poverty and inequality.

The NBC was created in 2002 through the amalgamation of various regional bargaining councils, some of which were in a state of decline — especially in KwaZulu-Natal (KZN) where employers were abandoning the existing, Durban-based regional bargaining council in droves (Skinner and Valodia, 2002). Resisted from the outset by several employer bodies, especially in KZN (Anstey, 2004), the NBC has never been representative of firms. Only 10 per cent of KZN firms and only 24 per cent of all firms registered with the NBC are represented by employers' associations in the NBC and are therefore formally party to its agreements. 'Party' firms tend to be larger than 'non-party' firms (employing 114 workers on average in 2011 as opposed to 42) but still employ less than half (47 per cent) of all workers in firms registered with the NBC (see Table 1).

Table 1: Employment Strength of the NBC as of 28/2/11

	Registered with the NBC		KZN inclusive of known but unregistered firms*
	Total South Africa	**KZN**	
Employers party to the collective agreement	232 (24.5%)	33 (9.8%)	33 (7.8%)
Employers not party to the collective agreement	716 (75.5%)	303 (90.2%)	303+89 = 395 (92.2%)
Total employers	948 (100%)	336 (100%)	336+89 = 425 (100%)
Workers in firms party to the collective agreement	26 645 (47.1%)	6 741 (31.7%)	6 741 (26.0%)
Workers in firms not party to the agreement	29 894 (52.9%)	14 521 (68.3%)	14 521+4 680=19 201 (74%)
Total workers	56 539 (100%)	21 262 (100%)	25 942 (100%)

Source: Data obtained from the NBC office in Cape Town: 'Employment strength as at 28th February 2011 and from the NBC-KZN. *According to the list of non-compliant firms (no date, but it appears to be from mid- to late 2010) there are 89 known but unregistered firms in KZN employing 4 680 workers. If we take these into account, these estimates for representivity for KZN in early 2011 can be derived.

Only 8 per cent of firms in KZN were party to the 2011 NBC agreement

Given the many firms that have not registered with the NBC, these figures actually exaggerate the degree to which the NBC represents the industry. According to the March 2011 Labour Force Survey conducted by Statistics South Africa, estimated total wage employment in the clothing industry was about 60 per cent higher than that recorded by the NBC, suggesting that there are large numbers of workers in unregistered firms. If one includes these firms in the calculation of representivity, then only 8 per cent of firms in KZN, collectively employing only 26 per cent of workers, were party to the 2011 NBC agreement. Despite this, successive Ministers of Labour have extended wage agreements to all clothing firms throughout South Africa, whether party to the agreement or not (LEP, 2010: 158).[1]

The employers in the NBC are dominated by the Cape Clothing Association which accounts for 39 per cent of firms that are party to the NBC agreement. The Cape Clothing Association's members also account for 55 per cent of the workers employed by all the firms that are party to the NBC's agreements. Almost all the other firms party to the agreement are based in the metros. The only significant exception is the Coastal Clothing Manufacturers Association whose members operate in KZN, but which represents a mere 7 per cent of party firms and which has limited influence in the NBC. Sactwu, which was

1 Note that when the NBC's certificate of representivity expired in May 2012, the Minister of Labour did not renew it (Steyn, 2012) – so we may be witnessing a change in approach in this regard.

created in 1989 out of a series of mergers with regional unions, also has a strong Western Cape presence, though this has declined in recent years as a consequence of major retrenchments in the Western Cape, offset by a small increase in membership in KZN.[2]

In June 2011, five small clothing enterprises from Newcastle, a low-wage region in KZN, together with the United Clothing and Textile Association launched a judicial review requesting that the decision taken by the Minister of Labour to extend the 2011 NBC minimum wages to them be set aside.[3] In the alternative, they sought to have declared unconstitutional some sections of the Labour Relations Act that govern the extension of bargaining council agreements to non-parties (Chen, 2011a). The case was scheduled to be heard in January 2013. At stake is the survival of the 450 firms employing around 16 700 workers being targeted by the NBC in its compliance drive. This paper locates the Newcastle story within the broader context of South Africa's clothing industry and related industrial policy.

Minimum wages in South Africa's clothing industry

Since the first national minimum wage agreement in 2003, nominal and real minimum wages have risen significantly in low-wage, non-metro areas such as Newcastle (Figures 1 and 2). Prior to 2002/03, minimum wages in most parts of the country were negotiated by employers and unions in regional bargaining councils. Areas like Newcastle that were not covered by the regional bargaining councils were subject to minimum wages set by the Wage Board and subsequently by the Employment Conditions Commission (ECC).[4] Both the Wage Board and the ECC took account of the likely trade-off between wage and employment levels when setting minimum wages. Since 2003, minimum wage agreements in the NBC have been routinely extended to all employers by the Minister of Labour without further consideration of the impact on employment.

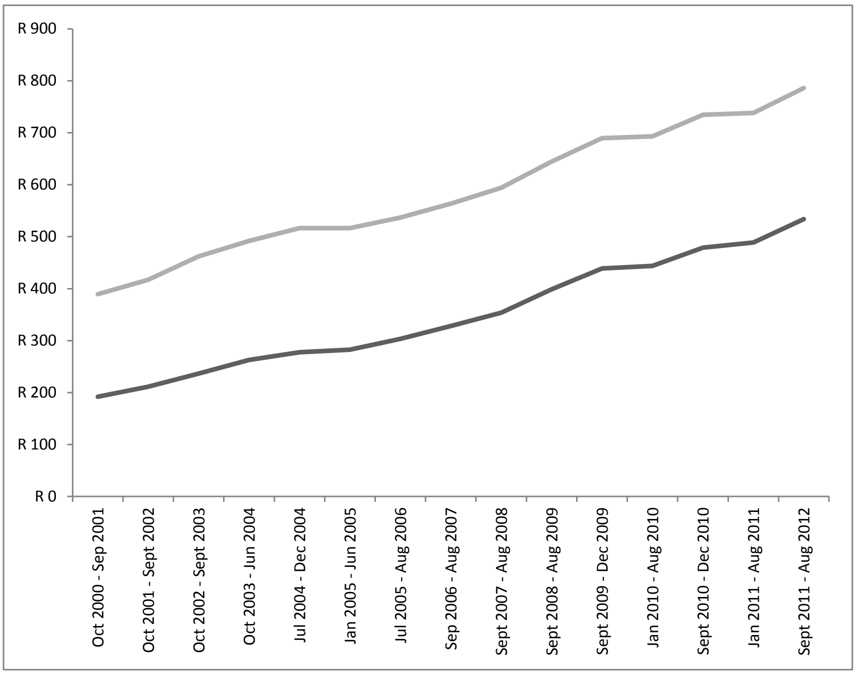
At stake is the survival of the 450 firms employing around 16 700 workers being targeted by the NBC in its compliance drive

2 In 2003 Sactwu had 59 574 members of which 53 per cent were in the Western Cape. By January 2011, membership had dropped to 47 815 (of which 32 per cent were in the Western Cape). Sactwu's membership in KZN rose from 25 per cent to 42 per cent over the same period--in part because the compliance drive increased registration of firms and as Sactwu mobilised workers on the issue

3 Case number 5642/2011 in the KwaZulu-Natal High Court.

4 In 1991, the Wage Board set minimum wages for clothing firms in South Africa (Wage Determination 471). The so-called independent bantustans were exempt until 1997 when the minimum wage was extended across South Africa. The Wage Board was replaced by the ECC, which regulated minimum wages in clothing between 2000 and 2003 (sectoral determination 4).

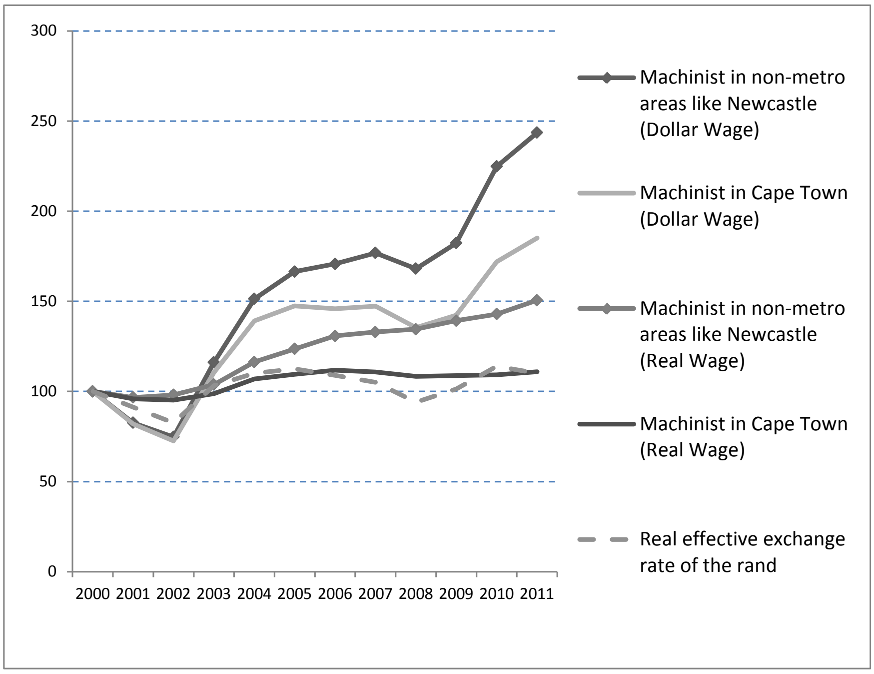
Figure 1: Minimum wages in Cape Town and Newcastle



Source: Minimum wages set by the ECC or by extension of NBC agreements as gazetted in various issues of the Government Gazette 2000-2011

Since 2003, minimum wage agreements in the NBC have been routinely extended to all employers by the Minister of Labour without consideration of the impact on employment

Figure 2: Real effective exchange rate and wage trends in Cape Town and Newcastle



Source: Various issues of the Government Gazette 2000-2011, South African Reserve Bank (http://www.resbank.co.za/Research/Statistics/Pages/OnlineDownloadFacility.aspx)

Figure 1 shows that in 2000, minimum wages in the clothing industry in Newcastle were half those in Cape Town. By 2011, after nine years of wage agreements in the NBC, they were at two-thirds the Cape Town level. This was achieved by pushing up non-metro minimum wages at a much faster rate than minimum wages in the metro areas. Indeed, as shown in Figure 2, real minimum wages in metro areas like Cape Town have barely kept up with inflation. The strength of the Rand since 2002/03, however, has meant that wages in all areas, when expressed in dollar terms, have risen significantly, with adverse consequences for competitiveness across the industry. One way to interpret these data is that Sactwu wage negotiators have recognised that, in light of the strong Rand, too rapid a rise in wages in Cape Town would threaten jobs there. Indeed, they have explicitly recognised this.[5] A different approach has been applied to Newcastle and other non-metro areas, however, which has seen much more rapid real growth in minimum wages outside of Cape Town.

Most of the employers represented in the NBC have gone along with the reduction of inter-regional differentials as this is of little consequence to them, at best protecting them from future marginal inroads into their markets. Indeed, for metro-based employers, the NBC may well have helped constrain wage growth as Sactwu traded flat real wage growth in metro areas for higher minimum wage growth in non-metro areas.

Firms that are party to the NBC negotiations tend to produce for relatively protected niche markets (e.g. bespoke orders, promotional products) or the ‘fast fashion’ end of the industry, where margins are higher and where longer-term relations can be forged with retailers. For this reason, they are not threatened by competition from low-wage non-metro firms which produce clothes for different markets, notably the relatively simple skirts, shirts and pyjamas that are aimed at middle- and low-income consumers for whom branding is less important. Indeed, the regional dispersion of South Africa’s clothing industry mirrors the spatial profile of global value-chains in which low-wage areas produce items for the mass market, and higher-wage firms in metro areas produce higher value-added items for better off consumers (Gibbon, 2004; Gibbon and Ponte, 2005; Rogerson, 2004; Skinner and Valodia, 2002; Nattrass and Seekings, 2012a, 2012b). This is why the presence of low-wage firms does not inevitably result in a ‘race to the bottom’ for the South African clothing sector as a whole. If it did, there would only be clothing factories in low-wage areas, and no jobs at all in Cape Town.

The presence of low-wage firms does not inevitably result in a ‘race to the bottom’

Yet the NBC and the umbrella employers association — the Apparel Manufacturers of South Africa (AMSA) — defend the compliance drive as a struggle for survival. According to the NBC compliance manager, non-compliant firms are ‘taking business away from compliant firms whose existence is being threatened, so we cannot allow the situation to continue’ (quoted in Bisseker, 2010). Johann Baard, the head of AMSA, also portrayed the situation as a zero-sum game, claiming it was ‘unconscionable’ to ‘sacrifice a complying industry employing tens of thousands of workers under conditions of “decent work” so that employees of non-complaint employers can remain employed in oppressive circumstances’ (ibid). Such claims are blatantly implausible. AMSA members have long co-existed in the presence of low-wage firms in South Africa. Destroying the low-wage firms in South Africa will benefit firms in countries like China and Lesotho, not AMSA members. AMSA’s support for the compliance drive should be interpreted as a means of putting pressure on government and Sactwu (via the associated job losses and resultant

5 SACTWU Press Release, “SACTWU and NCMA sew together wage agreement”. 9th June 2005; http://www.sactwu.org.za/pr-and-news/archived-2005/71-sactwu-and-ncma-sew-together-wage-agreement.

public outcry) to agree to a new 'wage model' with more room for productivity-linked pay (discussed further below).

Labour-intensive producers are particularly sensitive to wage increases. According to the 2008 manufacturing survey, wage costs in the clothing industry comprise 19,2 per cent of total expenditure, almost double that for manufacturing as a whole (StatsSA, 2010). But in low-wage areas like Newcastle, this figure is substantially higher: for the four Newcastle-based applicants in the High Court case who were in business in 2008, the proportion of total costs accounted for by wages ranged between 35 per cent (a knitwear jersey producer) and 61 per cent (a cut-make-and-trim (CMT) enterprise).[6] Raising minimum wages, especially in the presence of intensifying international competition, has a huge impact on profit margins, which are already tight in a clothing industry that is one of the most competitive in the world.[7]

International competition has been a key factor driving structural change in the clothing industry across Africa (Brooks and Simon, 2012). Tariff protection on imported South African clothing fell from 84 per cent in 1995 to 40 per cent in 2002 (Skinner and Valodia, 2002: 59). Initially, the rapid depreciation of the Rand between 2000 and 2002 helped to sustain competitiveness as tariffs fell. Figure 2 shows that both the real effective exchange rate (the value to consumers of imported goods) and the dollar cost of wages fell sharply in 2001 and 2002 to the benefit of South African producers.

By 2010, three-quarters of South Africa's clothing imports were from China where labour costs per unit of output are half that in South Africa

In response to their improved competitiveness on international markets, many clothing manufacturers reneged on their orders from domestic retailers, opting instead for lucrative export contracts. South Africa's retailers scrambled for alternatives, and 'discovered' China — the most important low-wage clothing producer which has dominated the international clothing trade since joining the World Trade Organisation in 2001, and the expiration of the Multi-Fibre Arrangement in 2005 (Morris and Einhorn, 2008). When the Rand strengthened again from 2003, South Africa's clothing exports collapsed. Imports of clothing rose sharply, especially from China, despite an increased tariff on imported clothing and temporary restrictions on Chinese imports in 2007 and 2008. By 2010, three-quarters of South Africa's clothing imports were from China (AMSA, 2011: 1) where labour costs per unit of output are half that in South Africa (Morris and Barnes, 2009).

The collapse in clothing employment would have been much worse if many of the low-wage producers had shut down due to an inability to comply with the NBC minimum wage. But their non-compliance with minimum wages came at the cost of chronic conflict with the NBC.

All firms in the clothing industry are legally obliged to register with the NBC and to comply with any collective agreement extended by the Minister of Labour to non-parties. In the first 18 months of its existence, the NBC's compliance officer investigated almost 1 400 firms and issued non-compliance notices against almost 1 000 of them (Anstey, 2004: 1859). Its campaign against non-compliant firms continued intermittently, resulting in factory closures and job losses (LEP, 2010: 162). The 2010/11 compliance drive is the latest chapter

6 Information obtained from firm-level annual financial reports.
7 According to the 2008 manufacturing census, profit margins are 0.5% in clothing as opposed to 8% in manufacturing as a whole (StatsSA, 2010).

in this saga — although the stakes have risen considerably, and the very constitutionality of some aspects of South Africa's wage setting machinery is now being reviewed in court.

'Chinese' firms in Newcastle

The five applicants in this court case are so-called 'Chinese' producers in that they originate from Taiwan, Hong Kong or China. Originally recruited by the municipality in the 1980s and 1990s to create jobs, Chinese producers brought with them the skills and networks needed to operate at the very labour-intensive end of the clothing industry (Todes, 1998). By the 2010s they had come to form a settled 'Chinese' community.[8]

During the 1970s, Newcastle underwent a rapid process of industrialisation. Manufacturing jobs expanded from 5 023 in 1970 to 19 514 in 1982, accounting for 49 per cent of the Gross Geographic Product (Robbins et al., 2004: 13). Over half of these jobs were provided by the steel giant, ISCOR. In response to ISCOR's plans for further expansion of the steelworks, the Newcastle town council invested heavily in roads, housing and related infrastructure. When ISCOR cancelled its plans, Newcastle was left with over 600 vacant houses, 2 000 serviced plots, and a shrinking industrial base (Hart, 2002: 146). The town council responded by developing a strategy to lure East Asian (initially Taiwanese) clothing firms to the area (Todes, 1998).

The municipal officials responsible for economic development visited Taiwan, Hong Kong and China many times, meeting with prospective investors and visiting factories. The key official learned basic Mandarin. His business card is still printed in English on one side and in Mandarin on the other. The strategy worked in part because of the generous subsidies on offer through the Regional Industrial Development Program (RIDP), an apartheid-era industrial decentralisation programme. Other inducements included cheap high-quality real estate and large supplies of low-wage labour in the adjoining townships (created in large part through forced removals off farms in the 1960s and 1970s). As a result of these efforts, clothing and knitwear had become the mainstay of manufacturing in Newcastle by 1996, accounting for 11 295 jobs (Robbins et al., 2004: 15). The core of large Taiwanese firms soon attracted other, often smaller, family-linked firms to Newcastle, and a highly networked form of production soon developed. Knitting, assembly and embroidery were often done in different firms, replicating the kinds of familial management systems and networks found in Taiwan (Hart, 2002: 183-4). CMT operations also sprang up, producing basic items such as sleepwear, uniforms, jeans, skirts and basic shirts, with factories often sharing orders, and outsourcing particular tasks.

Chinese producers brought with them the skills and networks needed to operate at the labour-intensive end of the clothing industry

Chinese immigration (initially from Taiwan and Hong Kong, but from 1998 also from mainland China and Singapore) continued long after the RIDP incentives were phased out in the early 1990s. A vibrant community developed: Newcastle has several Chinese restaurants, a Buddhist temple, a Chinese night school, two Chinese chambers of business (one politically pro-Taiwan, the other with members from China, Taiwan and Hong Kong), and a 'Welcome to Newcastle' obelisk at the city limits in Mandarin and English. Strong links remain with their countries of origin, but for many of those in the clothing sector, Newcastle is their home in a very real sense. They own houses, factories and participate

8 This section draws on secondary literature and on interviews with local government officials, factory owners and some of their workers.

in local politics (including at least two who have been elected town councillors). Many have become South African citizens and have children born and schooled in South Africa.

But their journey has had many twists and turns. The first economic shock was in 1991 when the RIDP (which had provided significant wage subsidies) came to an end and Wage Determination 471, setting national minimum wages in clothing on a regionally differentiated basis, came into effect. Many ignored the wage determination, however: by 1995 Sactwu had over 30 labour disputes with firms in Newcastle, and its then General Secretary, Ebrahim Patel, said he would 'eat these fly-by-nights for breakfast' (in Hart, 2002: 166). Later, as Minister of Economic Development (from 2009), Patel supported South Africa's industrial policy which provides incentives for industrial upgrading conditional on compliance with legislated minimum wages (see, for example, DTI, 2011). The clear thrust of post-apartheid industrial policy for the clothing industry has been to shift it towards the more capital-intensive, sophisticated end of the clothing market (discussed more below). There is simply no place in this approach for low-wage, labour-intensive production.

The second major shock was wage setting through the NBC and the appreciation of the Rand from 2003. This had serious implications for the large Taiwanese producers, many of which produced for the export market. Richfin, a large Taiwanese-owned knitwear producer, applied to the Industrial Development Corporation (IDC) to reschedule a loan, and, when this was refused, closed its doors, putting 1 660 people out of work. Nova Clothing, the first firm to relocate to Newcastle from Hong Kong, was issued with a compliance order to pay legislated minimum wages and subsequently closed its doors, putting a further 1 600 people out of work. The owner had apparently instigated legal proceedings against the government over the creation of the NBC, but withdrew the action under pressure from Sactwu (including protest marches), and left South Africa.[9] He, like many other Chinese producers, was concerned about the power of the NBC to seize property and assets of firms that were not paying the prescribed minimum wage (Robbins et al, 2004: 22-3). Other large employers that closed during this period included Welcome Textiles and Nantex, which respectively put 450 and 2 000 people out of work.

The Newcastle Chinese feel betrayed by the transformed policy environment

This signalled the effective death of Newcastle's clothing export industry. From 2003, almost all of the remaining producers concentrated on the low- and middle-income domestic market, competing directly with imports from countries like Lesotho and China. Some registered with the NBC and paid various dues — including an 'agency fee' from 2006 which raised wage costs by 10 per cent — but did not comply with the minimum wage agreement, although some raised their minimum wages in an effort to get closer to the legal minimum. Others attempted to avoid the NBC altogether — an increasingly untenable strategy given the compliance drive.

The Newcastle Chinese feel betrayed by the transformed policy environment and by what they perceive to be racist slurs (for example, calling them 'fly-by-nights' when they regard Newcastle as their home).

They also felt that there was a failure to understand how difficult it is to compete at the bottom of the clothing market. In this highly competitive environment, missed deadlines

9 Information supplied by Ferdie Alberts, interviewed 14 June 2011.

can turn a small profit into a major loss as penalties are imposed and orders cancelled. Some owners live on their factory premises, mobilising their family to work long hours in the factory if a deadline is in danger of being missed. (Mr Cheng, the owner of Lucky Industry, died of a heart attack late one night in 2011 as he worked at five knitting machines trying to complete an order). These pressures have also sometimes resulted in labour practices that are clearly abusive, such as locking workers into the factory. In one particularly infamous case from 2001, a worker on a night shift gave birth prematurely to twins — both of whom died because the owner could not be reached and relatives could not access the locked factory (Newman, 2005). It was an incident that prompted the Department of Labour to inspect Newcastle clothing factories, finding other instances of abuse (ibid). It also prompted Sactwu to launch its 'operation clean-up' to end 'sweatshop conditions' in the area.[10]

Ten years on, some Newcastle firms still do not fully comply with the Basic Conditions of Employment Act (Kriel, 2012; Gina, 2012) and, according to the NBC's list of 'known non-compliant' firms, some were paying less than half the NBC minimum wage in 2010. For Sactwu, this is 'simply irreconcilable with the work environment contemplated by our labour legislation and our Constitution' (Gina, 2011: par 10-11).

It is important, however, to recognise some complexity in the patterns of conditions of service which is not fully captured by asking only if firms pay the minimum wage: some firms provide small payments to their workers during the off-season (a practice they would likely stop if they paid higher wages); others have experimented with worker co-operatives and various forms of productivity-linked pay. One model is to pay bonuses for production over and above a basic quota. Another is to offer low basic weekly wages but to supplement them with piece-work payments. These practices can result in significant variation in earnings. According to wage records for 2011, take-home pay for workers employed by one of the applicants in the case (a CMT firm) ranged from 15 per cent below the NBC minimum wage to almost double it.

Take-home pay for workers employed by one of the applicants ranged from 15 per cent below the NBC minimum wage to almost double it

There is, therefore, no simple correlation between minimum weekly wages and total earnings, and not all workers would necessarily benefit if wages rose to the prescribed minimum if that came at the cost of much reduced productivity-linked pay. Indeed, when one of the applicants in the court case (the jersey producer) attempted to increase his minimum wages to 70 per cent of the legal minimum, he could only do so by reducing his piece-work bonuses. His most productive (and best paid) workers resigned in protest at their reduced total earnings.

The compliance drive, industrial policy and the destruction of jobs

By the end of 2009, the NBC was taking action against over 400 clothing factories, mostly in low-wage areas of KZN (especially Newcastle), Botshabelo and QwaQwa. This involved obtaining arbitration awards (made orders of the Labour Court in terms of section 143 of the Labour Relations Act), followed by writs of execution (implemented on instruction by

10 Operation Clean-up is regarded as a key date by Sactwu: http://www.sactwu.org.za/union-history/important-dates?start=2

the local sheriff). Many writs were obtained, but not fully executed as NBC officials sought agreements with firms over payments of dues and pension fund contributions owed to the NBC, as well as wages owed to workers. For firms that had been non-compliant for many years, the amounts owing in terms of back-pay and NBC contributions were substantial and self-evidently impossible to honour fully.[11] There was, therefore, some room for negotiation, although the high current cost of compliance remained the major sticking point.

Some owners engaged in elaborate cat-and-mouse games with the NBC as they begged for time to implement the minimum wage while completing their existing orders and simultaneously making plans to shut down their companies. Some opened new businesses, sometimes in different locations, forcing the NBC to begin the process anew. They also leased machinery from other factories to avoid having these assets attached. Others downsized to micro-enterprises (employing five or fewer workers) in order to obtain an automatic exemption from the minimum wage, or re-organised themselves as co-operatives.

For example, Alex Liu, the chairman of the Newcastle Chinese Chamber of Commerce and Industry (henceforth 'the Chinese Chamber') and key spokesman for the Chinese clothing firms, shut down his clothing firm (Win-Cool) in 2008 but was prompted by his parents and ex-workers to start up again. He decided the only way this could be done was to set up a co-operative (Simunye) which would fall under the Co-operatives Act rather than the NBC to supply orders sourced through Win-Cool (Payne, 2011). In 2011, workers in the co-operative earned a basic wage of R250 but this was supplemented with productivity-linked pay, which pushed earnings for some as high as R630 a week (well above the R489 NBC minimum wage). The NBC, however, takes a dim view of both the wages paid and the Win-Cool/Simunye structure, and has taken Liu to court several times. As of 2013, however, Win-Cool/Simunye remains in operation.

When the sheriffs shut down Wintong Manufacturing in Newcastle, factory workers protested vociferously

In 2010, the NBC compliance manager drew up a list of 65 priority 'offenders' and acted decisively against them. By the end of July, the sheriffs had executed 13 writs in metro areas and 12 in non-metro areas, nine of which were in Newcastle.[12] In August, the NBC ramped up the process, shutting down a further 14 firms in Newcastle and QwaQwa (Khanyile, 2011). Employers and workers alike were alarmed by the precipitous job destruction. When the sheriffs shut down Wintong Manufacturing in Newcastle, factory workers protested vociferously (Dugger, 2010). The Chinese Chamber added its voice to the protest and 85 clothing firms closed in solidarity. Sactwu asked the courts to intervene, arguing that this amounted to an illegal lockout. Negotiations led to the re-opening of the factories (including Wintong) and a series of meetings between the Department of Labour, the Department of Trade and Industry (DTI), the NBC, AMSA and various ad hoc representatives of firms that were not party to NBC agreements and were also not compliant with their terms (Chen, 2011: par 54).

Although the parties to these meetings committed themselves to finding a solution that was acceptable to everyone, they failed to do so. Many of the non-party firms, mostly in

11 According to an audit done in September 2009, R40 million was owed in arrear payments to workers in non-compliant firms (Enslin-Payne, 2011a).
12 NBC progress report on the to 65 prioritised list (reported on in HC5 of the court papers).

KZN, organised themselves into a new association — the United Clothing and Textile Association (UCTA), chaired by Ahmed Paruk and Alex Liu (deputy) — which proposed a new wage model for the entire industry. This would allow for lower minimum wages supplemented by piece-work or productivity-linked pay. At this meeting, AMSA, the Cape-based employers association that had helped launch the compliance drive in the first place, announced an 'alliance' with the Chinese Chamber, saying that there was a 'need for a new minimum wage dispensation in the industry because of the job losses and closures' and to 'change the current law'.[13] This was rejected by Sactwu, however, and, later that month, it presented its 'Worst Employer Award' to the Chinese Chamber in the form of a broken brick, symbolising employers who break, rather than build, decent work in the clothing industry.[14]

By November 2010, 26 factories in Newcastle had been closed down (Chen, 2011: par 52). In December, following substantial adverse publicity about job losses, the NBC accepted a proposal from the Coastal Clothing Manufacturers Association (the so-called '22 December resolution') to allow the non-compliant firms to become compliant in phases. A 'moratorium' on proceeding with writs of execution against non-compliant companies was implemented, and Ebrahim Patel announced that non-compliant firms would not have to comply immediately with the minimum wage. Instead, they had to become 70 per cent compliant by 31 March 2011, 90 per cent compliant by 1 January 2012 and 100 per cent compliant by 30 April 2012 (Chen, 2011: par 58). All arrears (back-pay, NBC levies, etc.) owed by firms were suspended and deemed payable only if the firm broke the phase-in agreement, or became non-compliant after 30 April 2012.

By November 2010, some 26 factories in Newcastle had been closed down

That Patel was in charge of this process rather than the Minister of Labour, under whose remit this process more naturally falls, reflects the additional resources he was able to mobilise through his co-ordinating role as Minister of Economic Development — especially various DTI support programmes and production incentives. The DTI also encouraged clothing firms to make use of industrial policy programmes to upgrade production processes. The Clothing and Textile Competitiveness Improvement Programme (CTCIP), for example, assists large clothing producers to upgrade skills and production capacity and to develop stronger and more co-operative links with suppliers in the CMT sector.[15] A key requirement of the programme is that all parties comply with of the NBC agreement. The DTI also offers production incentives (worth 10 per cent of value-added) to help fund capital-investment. These, too, are only available to those who comply with the requirements of the NBC.[16]

It is important to recognise that making themselves eligible for these programmes and making use of them would tend to increase the capital-intensity of the firms and, because of their higher wage costs, shift them towards the higher-income consumer market. Or, as the DTI (2010: 6) puts it, the CTCIP is 'aimed at helping the industry upgrade its processes, products and people. This is expected to move the industry up the value chain to activities that are far more sustainable than competing against "sweatshop" labour practices and pervasive government subsidisation in other developing countries.'

13 Minutes of the meeting chaired by Les Ketledas of the Department of Labour, 20 September 2010.
14 http://www.sactwu.org.za/pr-and-news/archived-2010/161-worst-employer-award.
15 http://www.thedti.gov.za/financial_assistance/financial_incentive.jsp?id=35&subthemeid=25
16 http://www.thedti.gov.za/financial_assistance/financial_incentive.jsp?id=36&subthemeid=25

Unsurprisingly, given Patel's erstwhile leadership of Sactwu, this is in line with Sactwu's understanding of 'decent work' as being only those jobs in the top-end of the clothing industry. In his defence of the NBC, Andre Kriel, the current General Secretary of Sactwu, quotes approvingly from a DTI document which argued that: 'a policy that seeks to base competitiveness on low wages would not be consistent with South Africa's human rights culture. On the contrary, sustainable human resources policies will allow the industry to compete in the market for high fashion and technical garments and textiles and to deliver innovative, quality products that require well trained and productive workers' (Kriel, 2012: par 57).

There is no place in this vision for the labour-intensive production of basic goods for lower-income consumers or the mass market. It implies that if the industry is to exist at all, firms must compete only in the 'high fashion', technical/quality end of the industry. The destruction of low-wage labour-intensive firms is thus explicitly part of the DTI/Sactwu structural adjustment programme for the industry.

The destruction of low-wage labour-intensive firms is explicitly part of the DTI/Sactwu structural adjustment programme for the industry

Patel reported in February 2012 that 100 South African clothing firms were benefitting from the DTI's incentive programmes, to the tune of R1 billion (Crotty, 2012). These are sizable incentives averaging R10 million a firm, and equivalent to R18 000 per worker in firms registered with the NBC. They are, in other words, nearly double the 2008 estimate of the investment costs associated with each job in the industry. Moreover, some firms received more than R10 million from the DTI: in the three years before March 2012, Seardel, which is part-owned by Sactwu,[17] received R98,6 million in production incentives, almost all related to its apparel.[18] Ironically, Seardel has a manufacturing plant in Lesotho, which means that Sactwu benefits indirectly, via its shareholdings, from low-wage production there. Sactwu has publicly defended its indirect shareholding in a low-wage producer in Lesotho, in part, on the basis that it is compliant with Lesotho's minimum wage legislation. This is despite the fact that minimum wages in Lesotho are significantly lower than the wages paid in the non-compliant firms in Newcastle that Sactwu and the NBC are trying to shut down![19]

The DTI, in its most recent Industrial Policy Action Plan (IPAP), claims that its various support programmes have 'effectively stabilised a deeply vulnerable sector' (DTI, 2011: 17), which would be a very poor achievement for a government supposedly committed to rapidly increasing the number of people in employment. By the same token, in late 2010, Sactwu celebrated a 'reduction in job losses', because the 30 000 jobs lost between 2007 and 2010 were fewer than had been lost in the preceding three years.[20] One year later, in late 2011, Sactwu celebrated a further 'significant slowdown in retrenchments in the industry',[21] which the union attributed primarily to the DTI's support. Indeed,

17 Sactwu owns 38% of Hoskins Consolidated Investments (HCI) which owns Seardel. Sactwu also has a small holding of Seardel shares on its own account. Together, Sactwu's stake in Seardel is 30% of all shares (calculated from the 2012 Seardel annual report).

18 Clothing Industry sheds jobs, 17 February, 2012: http://www.hci.co.za/clothing-textile/clothing-industry-sheds-jobs/. According to Seardel's 2012 annual report, the apparel section got R66,7 million from the DTI's customised sector program for the clothing industry in the 'period under review', presumably meaning 2011-12.

19 'Union owns stake in sweatshop', by Anna-Marie Lombard, City Press, 20th September 2010.

20 Sactwu press release, 'Clothing and textile industry job losses slow down', 4th October 2010; http://www.sactwu.org.za/press-releases/clothing-and-textile-industry-job-losses-slow-down.

21 SACTWU press release, 'Significant slowdown in clothing, textile and footwear job losses', 14th November 2011; http://www.sactwu.org.za/pr-and-news/archived-2011/210-significant-slowdown-in-clothing-textile-and-footwear-job-losses.

Sactwu's research director, Etienne Vlok, echoed the DTI, suggesting that the industry had 'stabilised' due to the government's productivity-oriented industrial policies (Vlok, 2012). As late as July 2012, the DTI was claiming that upgrading and compliance with minimum wages was a 'win-win' strategy that 'supports a race to the top that is based on product, process and people upgrading', and that productivity had grown as a consequence and employment had stabilised (Steyn, 2012).

It turned out, however, that the DTI and Sactwu's confidence was premature. Between 2010 and 2012, Seardel retrenched 40 per cent of the workforce in its apparel and household textile operations. Seardel's total employment in its clothing division dropped from almost 9 000 in 2010 to just over 5 000 in 2012 (Seardel, 2012: 15). Seardel closed down Intimate Apparel in Cape Town, with 800 job losses. Intimate Apparel had been supplying the upmarket chain Woolworths, and was not facing competition from Newcastle producers.[22] It also shut down its men's suit unit in Durban. In 2012, it announced a further 1 500 retrenchments in Cape Town — which the company called a 'high-wage metro area' — and Ladysmith in KZN.[23] Trubok likewise announced it would be retrenching 400 workers (Steyn, 2012).

There appears, therefore, to be no grounds for optimism that the DTI/Sactwu vision of a high-wage, high-productivity, high-fashion, top-quality, 'decent work' strategy will create anything like the number of jobs that are possible with the low-wage, labour-intensive model currently under threat in Newcastle. Indeed, Sactwu's stance amounts to a celebration of job-destroying structural adjustment away from low-wage, labour-intensive production.

There appears to be no grounds for optimism that the DTI/Sactwu strategy will create anything like the number of jobs that are possible with the low-wage, labour-intensive model

In March 2011, the *Financial Mail* reported that at least 250 clothing firms in Durban, Newcastle, QwaQwa and Botshabelo would not be able to meet the 70 per cent target and 28 000 jobs were under threat (Bisseker, 2011). AMSA's Johann Baard told the reporter that this was to be expected 'because we know what it costs to run a factory and the industry's cost structure does not match the prices the retailers want', adding that 'with almost half the industry non-compliant, it is clear that as an industry we have priced ourselves out of the market....Non-compliance reflects that the industry wage model has been overtaken by competitive global market realities' (quoted in Bisseker, 2011). There is a certain irony here, given that AMSA and the NBC, which had managed to restrain real minimum wage growth in metro areas since 2000, have helped drive up labour costs in non-metro areas and for employers who are not represented at the NBC. AMSA, however, is happy to use the loss of jobs in Newcastle to help justify a recalibration of the industry's wage model. Thus, in a later interview, Baard observed that AMSA's support for the compliance drive was born out of frustration: 'It is not that we are uncaring, we are left with no alternative. It would be different if the unions, Cosatu, the politicians and Luthuli House had the will. We need to re-invent the wage dispensation in the country' (quoted in Planting, 2011).

AMSA's call for a new wage dispensation, whatever its merits, did not affect the requirement that non-compliant firms become compliant. However, some members of

22 "South Africa: 'Retailers to Blame' for Closing of Seardel Unit", by Bekezela Phakathi, Business Report, 28 July 2010; http://allafrica.com/stories/201007280126.html.
23 'Seardel to cut up to 1,500 jobs', by Leonie Barrie, 7th February 2012, http://www.just-style.com/news/seardel-to-cut-up-to-1500-jobs_id113412.aspx.

UCTA — the KZN-based employers association — applied to the NBC for exemptions from the minimum wage on grounds of financial hardship, but were turned down (Enslin-Payne, 2011a). This is typical of South Africa's bargaining councils which rarely grant exemptions from the minimum wage, and which contribute to undermining labour-intensive growth elsewhere in the economy (Nattrass and Seekings, 2012b). The NBC in the clothing industry does not grant any exemptions from minimum wages, according to the most recent report available (which is for 2008),[24] and it stopped hearing exemption applications in 2010.

Relations between the NBC and Newcastle firms worsened in March 2011 when, on the day that Alex Liu was attending a meeting with the NBC, assets of his and eleven other Newcastle factories were attached for their failure to register with the NBC and pay over back-pay and outstanding NBC levies (Enslin-Payne, 2011a). The NBC compliance manager denied that the timing had been deliberate, saying that 'Alex has been giving us the run-around' and that it had taken the NBC two weeks to find his new premises (ibid). Later that year, the sheriff attached machinery and removed it from the premises of a firm belonging to the head of the Newcastle Clothing and Textile Association. Employers threatened to lock out workers in protest, but did not do so because the legal requirements for a lock-out had not been met (Chen, 2011b: par 73).

South Africa's bargaining councils rarely grant exemptions from the minimum wage

In June 2011, following the issue of further compliance orders, five Newcastle firms and the UCTA launched their legal action against the NBC and the Minister of Labour. The firms were subject to on-going harassment and intimidation, including threats from the sheriff to remove assets and close them down (Chen, 2011b). By mid-July, writs had been issued to 109 companies across South Africa, affecting 6 400 employees (Planting, 2011). The following month, Sactwu held a protest march in Newcastle, calling on the NBC to enforce the collective agreement on non-compliant firms, and for the application to the High Court to be withdrawn. Several factories, including one of the applicants in the court case, were inspected (or raided) by a joint team from the Department of Labour, the Department of Home Affairs and Sactwu. Sactwu released a press statement entitled 'Human and labour rights violations exposed', complaining mainly about the toilet facilities in factories, the employment of undocumented workers, and irregularities with regard to unemployment insurance payments.[25] These findings were disputed by the Newcastle employers involved as applicants in the court case, who described them as selective, unfair and 'designed to cast the applicants in a negative light' (Chen, 2011b: par 72).

In November 2011, the five Newcastle firms launched an urgent application to prevent the NBC from holding them to the collective agreement until such time as their court case was heard. Although this was unsuccessful, the sheriffs took no further action against the firms in 2012. The reasons for this are unclear, but it is likely that the adverse publicity generated

24 Data from 2008 for applications to the NBC for exemptions by small and medium enterprises to do with the wage indicate that of the 29 applications, 12 were granted, 3 were refused and 4 were under consideration at the time of writing. The NBC reports that the basis on which the applicants requested exemption included: 'no previous experience, demotion as a result of disciplinary enquiry, false statement at the time of engagement, companies unable to afford the prescribed wage and levies'. When reporting the NBC's stated rationalisation for granting exemptions, the NBC lists: 'no previous experience in current position, medical reasons and demotion due to disciplinary enquiry'. Note that affordability was a stated motivation for requests for exemption, but not included in the list of reasons why exemptions were granted. It thus seems that for that period no exemptions were granted for reasons of affordability, despite exemptions being requested on this basis.

25 http://www.cosatu.org.za/show.php?ID=5518.

over the Newcastle clothing employment crisis was important here. Events were covered in all the major South African papers and on television, with a story appearing even in the *New York Times*. In August 2011, they were also the subject of a cabinet briefing where the Minister of Finance, Pravin Gordhan, suggested that changes to South Africa's labour dispensation may be necessary to prevent further job losses in the clothing sector. His comments were subsequently endorsed by Trevor Manuel, a previous Minister of Finance and current head of South Africa's National Planning Commission.[26]

In an attempt to force the issue, AMSA approached the Labour Court in July 2012, seeking an order to compel the NBC to act on the 450 writs of execution which had been issued but not served. In a bizarre twist, Sactwu initially opposed the application, even filing papers arguing that the union was in favour of living wages but not the closure of factories. A few days later the union had had a rethink and abandoned the case. Sactwu General Secretary Andre Kriel told journalists: 'If we oppose AMSA's court application it creates the perception that the union condones non-compliance. We do not' (quoted in Planting, 2012). But Sactwu was clearly uncomfortable about being associated with an action that could be linked directly to the loss of thousands of jobs.

Figures 3 and 4 indicate the number of jobs threatened by the NBC compliance drive in non-metro KZN, Free State and Northern region, and in metro KZN.[27] They show the cumulative number of recorded jobs in the listed, non-compliant firms according to the lowest wages paid in each firm, first for non-metro areas in KZN, the Free State and Northern areas (Figure 3), and second for metro KZN (Figure 4). In other areas, very few firms with very few employees were listed as non-compliant in terms of paying minimum wages.[28]

In 2011, the Minister of Finance suggested that changes to South Africa's labour dispensation may be necessary to prevent further job losses in the clothing sector

Figure 3 shows, for example, that there were 1 250 workers in factories where the lowest wage in practice was R200 a week or less in non-metro Free State, in 2010/11. There were also about 1 400 workers in the same position in non-metro KZN. About 4 000 workers were employed in factories where the lowest wage was R300 or less in the non-metro Free State, more than 3 200 in non-metro KZN, and about 800 in non-metro Northern region. In total, about 5 100 workers were employed in KZN factories where the lowest wage was less than the official minimum wage for non-metro areas (i.e. R412,50), as extended by the Minister of Labour with effect from 1 January 2011, about 5 400 in factories in the Free State, and about 1 050 in factories in the Northern region, giving a total of about 11 600 workers. Most of these jobs would be under threat if the minimum wage was enforced because the low profit margins in the sector left firms with little room for manoeuver. If a minimum wage of 90 per cent of the current prescribed minimum were enforced, then about 10 200 of these jobs would still be under threat. If a minimum wage of R300 per week was enforced, then about 8 000 workers would be under threat.

It is important to note that these figures include only workers employed in firms known to the NBC. It is likely that most of the (predominantly informal) firms not known to the

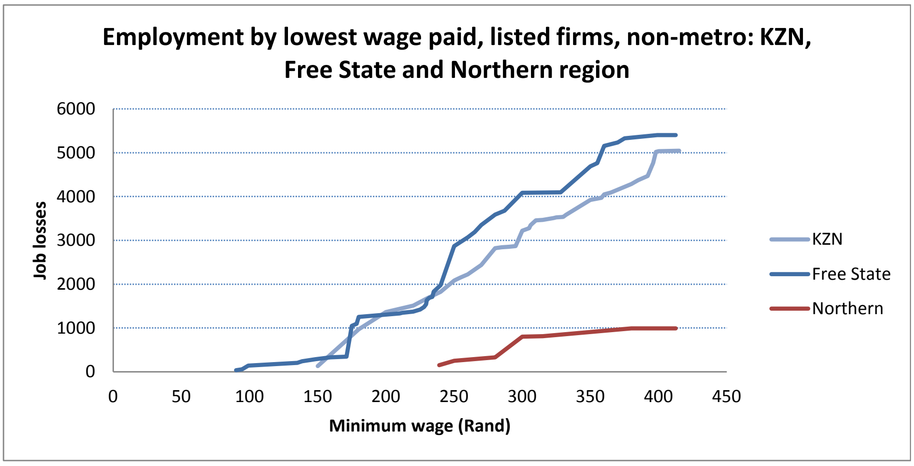
26 http://mg.co.za/article/2011-08-25-cabinet-no-pravin-we-wont-relax-sas-labour-laws

27 There are a further 600 workers employed by listed firms paying below the relevant minima in metro Free State and metro Northern region not included in the figures.

28 The handful of non-compliant firms in Camperdown and Umzinto, where minimum wages are set at an intermediate level between the general non-metro and the metro levels, are included in the non-metro data.

NBC were also paying below the official minimum wage — and jobs in these firms would also come under threat if or when they were identified by NBC officials or Department of Labour inspectors.

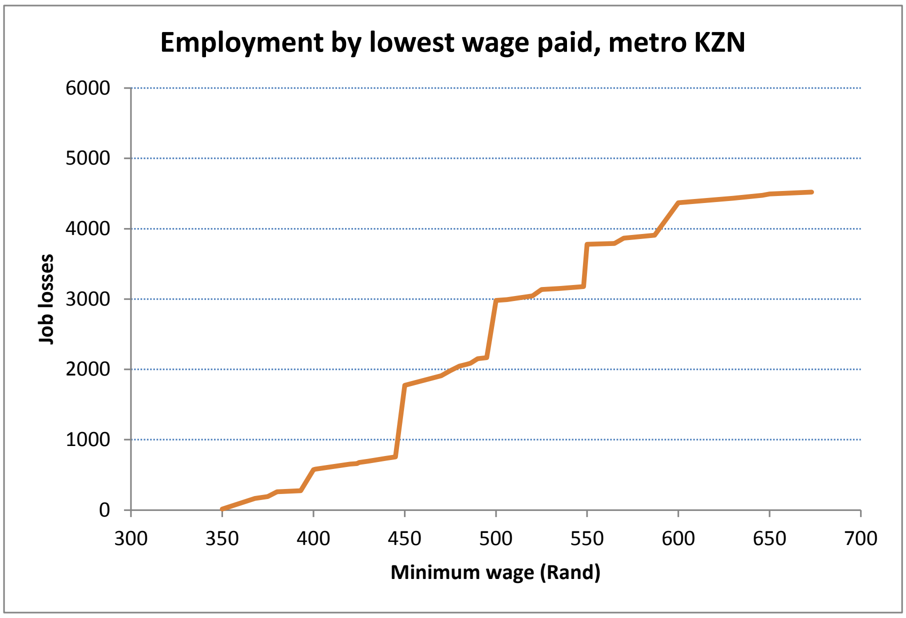
Figure 3: Employment by lowest wage paid, listed firms, non-metro: KZN, Free State and Northern region



Source: Authors' calculations based on the NBC's 'Prioritised Compliance Action List', undated.

Sactwu was clearly uncomfortable about being associated with an action that could be linked directly to the loss of thousands of jobs

Figure 4: Employment by lowest wage paid, listed firms, metro KZN



Source: Authors' calculations based on the NBC's 'Prioritised Compliance Action List', undated.

Figure 4 shows that, in metro KZN, listed non-compliant firms paying wages below R684,25 (i.e. the minimum scheduled with effect from 22 March 2010) employed a total of about 4 500 workers. Most of these jobs would also be under threat if the minimum wage was applied. Taken together, Figures 3 and 4 (plus the approximately 600 workers in metro Free State and Northern regions, not shown) suggest that the compliance drive threatened at least 16 700 jobs in listed firms in non-metro and metro areas.

It is also important to note that these figures reflect all the workers in the non-compliant firms, though it is not clear if all of them receive wages below the legal minimum. Even if only a minority of employees are paid less than the minimum, raising wages would impact on margins, throwing the viability of some businesses into question. It is, however, impossible to determine the precise number of jobs which would be lost if the minimum wage was enforced as some producers may be able to improve efficiency (which is typically done by shedding unskilled workers and becoming more capital-intensive) and stay in business with a smaller workforce producing different products. However, given existing low profit margins, skills shortages and strong competition from countries like China, it is probable that most labour-intensive producers of basic clothing items will simply cease production. Some may even become importers: several factory shops in Newcastle already stock more items imported from China than are produced on the premises.

In addition, the estimate of almost 10 000 potential job losses in listed firms in KZN (and 16 700 jobs nationally) ignores another source of possible job losses in that the enforcement of minimum wages on non-compliant firms might have indirect effects on compliant firms. A handful of large compliant employers in the Newcastle area, for example, currently pay the gazetted minimum wage, producing for niche markets, using capital-intensive processes and are not threatened by the low-wage Chinese firms near-by. They do, however, draw many of their employees from the non-compliant firms which act, in effect, as outsourced training institutions (see Nattrass and Seekings 2012a). If the non-compliant businesses in Newcastle close their doors, the remaining firms would ultimately find themselves having to provide more basic training, thereby raising their production costs in the longer term. Shutting down the low-wage labour-intensive firms will also reduce employment and incomes in the area, thereby lowering demand and threatening jobs in others sectors too.

The Minister's successive extension of collective agreements, the NBC's compliance drive, and resulting job losses puts paid to the argument that South Africa's bargaining councils do not affect employment

Concluding remarks

The struggle of the Newcastle clothing producers to remain in business is symptomatic of the difficulties involved in promoting labour-intensive growth in South Africa. They have to contend with minimum wages set in bargaining councils dominated by unionised firms in metro areas, who produce for the more expensive, higher-quality, fast-fashion end of the clothing market (and hence have more room to pay higher wages). They are also unable to benefit from the DTI's support programmes, as these require firms to be compliant with the minimum wages at the outset. Furthermore, by assisting firms to improve their competitiveness by upgrading machinery and retraining workers, such programmes raise the firms' capital-intensity and shift producers out of the kind of low-wage, low-productivity forms of employment necessary to absorb unskilled unemployed South Africans.

The Sactwu/DTI vision is that only 'decent' (i.e. relatively high-wage, high-productivity) jobs should exist in South Africa, and that labour-market and industrial policies should prevent any low-wage, low-productivity production as this is supposedly a 'low-road' to growth. This assumption has underpinned the post-apartheid government's growth strategy (Nattrass, 2001; Nattrass, 2011). But the hoped for 'high-road' of substantial job creation through skill- and capital-intensive growth has yet to materialise — and the costs have been born by workers in labour-intensive industry.

South Africa needs a more differentiated approach to wage-setting that enforces basic standards of employment but tolerates low-wage employment, particularly if low basic wages can be supplemented with productivity-linked pay. Policies that assume, incorrectly, that we need to drive out low-wage, low-productivity employment in order to support higher-wage, higher-productivity forms of production, fail to appreciate that there are different product-markets in clothing. Allowing low-wage producers in places like Newcastle to continue to exist will not harm jobs in the upper-end of the industry. Instead, it will accommodate the needs of lower-skilled workers, the unemployed and poorer consumers who purchase basic clothing goods rather than the pricier, branded, fast fashion products.

The Minister's successive extension of collective agreements, the NBC's compliance drive, and resulting job losses puts paid to the argument that South Africa's bargaining councils do not affect employment. Indeed, the story illustrates how South Africa's labour-market institutions and industrial policies can be used by an unholy alliance of a trade union, metro-based and more capital-intensive firms, and the state to inflict job-destroying structural adjustment on a labour-intensive industry. This is being done under the guise of promoting 'decent work' and a level playing field for producers, and even as clothing jobs are simply being exported to low-wage countries such as Lesotho and China.

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