Article

Job destruction in Newcastle: minimum wage-setting and low-wage employment in the South African clothing industry

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Abstract

From its establishment in 2002, the National Bargaining Council for the Clothing Manufacturing Industry (NBC) was used by the South African Clothing and Textile Workers Union (SACTWU) and mostly Cape Town-based employers to raise wages in lower-wage areas, including Newcastle. Rising minimum wages were agreed in the NBC, and then extended countrywide by the Minister of Labour. In Newcastle (and elsewhere), major firms shut down, whilst others failed to comply fully with the repeatedly raised minimum wages and levies imposed by the NBC. In 2010, the NBC launched a new ‘compliance drive’, using the labour courts to put pressure on, and close down, non-compliant firms, threatening at least 20,000 jobs. The NBC also agreed further wage increases, and presented these to the Minister of Labour for extension countrywide. Newcastle employers responded by taking legal action against the Minister of Labour and the NBC. The struggle over minimum wages in areas like Newcastle is of broader importance because the non-compliant firms comprised the labour-intensive rump of the last remaining labour-intensive manufacturing sector in South Africa. The Newcastle crisis reveals starkly the tensions between labour market policies and institutions and employment. The Newcastle case shows how, under the guise of promoting ‘decent work’ for workers and the supposed levelling of the playing field for producers, an unholy coalition of a trade union, some employers and the state initiated and drove a process of structural adjustment that undermined labour-intensive employment and exported South African jobs to lower-wage countries such as Lesotho and China.
Introduction

In 2010, the National Bargaining Council for the Clothing Manufacturing Industry (NBC) launched an aggressive ‘compliance drive’ against clothing producers who were not compliant with the minimum wages and levies set by the NBC and Minister of Labour. At the end of the year, the NBC and Minister of Labour agreed to further increases in the minimum wage. Non-compliant firms formed a new employers’ organisation, and five firms from Newcastle (in northern KwaZulu-Natal) together with the new organisation challenged the new minimum wages in court. At stake were somewhere between 20,000 and 28,000 jobs, most in non-metropolitan areas such as Newcastle where unemployment and poverty were pervasive. The issue generated considerable national and even international media attention. This paper examines the background and significance of this episode.

The threatened closure of clothing producers in Newcastle and elsewhere has serious implications for the prospects of labour-absorbing growth in South Africa as a whole. Successive government plans have emphasised the need for job creation in South Africa, without grasping the nettle of what is required for growth to absorb sufficient labour to reduce unemployment and poverty. The ‘New Growth Path’ (RSA 2010) emphasised ‘decent work’ (ie high-productivity, high-wage jobs). The ‘National Development Plan’ (RSA 2011) emphasised the imperative of labour-absorbing growth, and even suggested that expanding ‘access to employment on a mass scale’ would entail, in the short and perhaps medium-term, ‘a large proportion of working people’ receiving ‘low pay’ (RSA 2011: 114). But the Plan went on to suggest that South Africa’s manufacturing strength lay in capital-intensive industries. It noted forlornly that ‘in a context of high unemployment, growth would ideally be sourced through expanded contribution of labour’, but because South Africa had a ‘high cost structure’, its competitiveness in manufacturing would depend on ‘productivity, products and logistics’ (RSA 2011: 126). In this vision, less-skilled job creation would therefore have to be concentrated in the service sector. Neither document paid attention to the effects of wage-setting institutions on labour costs and hence rising capital intensity, the ‘high cost structure’ and the declining demand for less skilled employment, especially in tradable sectors. Nowhere is this more evident than in the clothing industry, where jobs in labour-intensive firms have actually been destroyed as a result of an institutionally-driven rising cost structure.

Clothing is South Africa’s last remaining labour-intensive industrial sector. According to the 2008 manufacturing survey, capital invested per job
was R10,000 in clothing, while the average for manufacturing as a whole was R150,000 (StatsSA 2010). Wages were accordingly lower, with average weekly wages (in 2008) of R696 in clothing compared to R918 in manufacturing generally. Wages were lowest in the most labour-intensive end of the sector.

South Africa’s clothing industry plunged into crisis in the early 2000s. Squeezed between rising wage costs and intense international competition, employment almost halved between 2002 and 2010 (Nattrass and Seekings 2012). Many firms shut down. Former clothing factories stand empty in some of the poorest parts of the country, as well as in Cape Town. Some labour-intensive firms relocated to Lesotho, where minimum wages were substantially lower. Some labour-intensive firms producing basic clothes for the mass market, in direct competition with imports from China and other low-wage countries, survived in lower-wage areas of South Africa – such as Newcastle in northern KwaZulu-Natal (KZN) – by paying wages that, whilst higher than in the past, were not compliant with the faster-rising legal minima. The existence of this rump of labour-intensive manufacturing in South Africa was threatened in 2010 by the NBC’s ‘compliance drive’. The NBC’s objective was to force all firms in the clothing industry to comply with the steadily rising minimum wages agreed to in the NBC by the participating employers’ associations and trade union (the South African Clothing and Textile Workers Union, SACTWU) and then ‘extended’ countrywide by the Minister of Labour. Firms that did not pay these minima (as well as wage-related benefits and additional NBC levies) were pursued through the courts. The NBC obtained, and sheriffs served, writs of execution against some non-compliant firms in order to shut them down.

By requiring employers to pay considerably higher wages, the NBC not only made it harder (if not impossible) to create jobs for less skilled people in poorer parts of the country, but it actually destroyed existing jobs, directly contributing to worsened poverty and inequality. This paper locates the events of 2010-11 in the deepening crisis of the clothing industry since 2002, as South African producers faced intensified competition from imports (made possible by tariff reduction over the preceding decade). The powerful Cape Town-based union and employers allied to exert pressure on lower-wage employers in areas like Newcastle by imposing, with the assistance of the Minister of Labour, higher minimum wages across the whole country. Faced with the magnitude of the imminent job destruction, however, various state officials and even the trade union itself hesitated. The High Court later ruled that the Minister of Labour had erred in extending countrywide the
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NBC’s collective agreement at the end of 2010, but the underlying issues were not resolved: neither the courts nor the political process have shown clearly whether lower-wage production will continue to be tolerated in manufacturing in some parts of the country or a large proportion of the remaining formal jobs in the clothing sector will be destroyed.

The National Bargaining Council, the Minister of Labour and minimum wages in the clothing industry

The NBC, established in 2002, was never representative of the entire clothing industry. On the union side, SACTWU did organise a majority of workers in registered firms (although its membership was inflated by closed shop agreements, and the union remained dominated by its Cape Town-based officials and members), but the employers’ associations in the NBC never represented a majority of the industry. The larger, higher-wage firms in Cape Town dominated the NBC, whilst smaller, lower-wage firms in KZN and Free State were largely unrepresented. The NBC was established through the amalgamation of various regional bargaining councils, some of which were already in evident decline. In KZN, especially, many employers had already abandoned the existing, Durban-based regional bargaining council (Skinner and Valodia 2002). Several employer bodies, especially in KZN, resisted the establishment of the NBC (Anstey 2004). Almost half of the firms represented in the NBC, employing more than half of their total workforce, were represented through the Cape Clothing Association. After being steam-rolled by the Cape Clothing Association, employers’ organisations in most non-metro areas (including Newcastle) withdrew from the NBC in the mid-2000s. By 2010, only 10 per cent of registered KZN firms and 25 per cent of all registered firms countrywide were represented by the employers’ associations still in the NBC. These ‘party’ firms were, on average, almost three times larger than ‘non-party’ firms. Despite this, they employed only one-third of all workers in registered KZN firms and less than one half of all workers in registered firms across South Africa as a whole. Given the many firms that were not even registered with the NBC, these figures actually exaggerate the degree to which the NBC ‘represented’ the clothing industry.

Most employers outside of Cape Town adopted a strategy of circumventing, as far as possible, the NBC. Many shut down. In June 2011, five small clothing enterprises from Newcastle launched a judicial review application requesting that the decision taken by the Minister of Labour at the end of 2010 to extend NBC-agreed minimum wages to them be set aside.
In the alternative, they sought to have declared unconstitutional portions of the Labour Relations Act (section 32 (3)) which permit the Minister to extend collective agreements without acting reasonably and having regard to the consequences for unemployment (Chen 2011a). In 2013 the court ruled that the Minister of Labour had erred in accepting that the NBC was representative. The court found that the employers’ associations that were party to the NBC did not employ a majority of even the registered employees in the industry. The court therefore set aside the Minister of Labour’s extension of the collective agreement signed in the NBC.

The court judgement did nothing to resolve the underlying conflict. The Labour Relations Act gives the Minister of Labour the power, under a different section, to extend collective agreements even if the parties to a bargaining council are not representative (which she did indeed do subsequent to the court judgement). The court did not rule on the question of the reasonableness of such action. The Cape Town-based union and employers continue to push for raised wages in other parts of South Africa on the assumption that the Minister of Labour will extend these wages across the country even though only a small minority of firms employing a minority of clothing workers are represented in the NBC.

National bargaining councils were established to bring employers and workers to a national negotiating table. In practice, the NBC in the clothing industry provided an institutional mechanism through which some employers and the union could raise wages on other employers. Between 2003 and 2010, the NBC and Minister of Labour repeatedly raised the minimum wages in areas like Newcastle. Prior to the establishment of the NBC, minimum wages were either negotiated by employers and unions in mostly metro-based bargaining councils or were subject to minimum wages set by the more technocratic Wage Board and its successor, the Employment Conditions Commission (ECC). Both the Wage Board and the ECC were required to take into account the likely trade-off between wage and employment levels when setting minimum wages. The parties to the regional bargaining councils also, in practice, considered employment effects within their respective regions. Since 2003, however, minimum wage agreements in the NBC were routinely extended by the Minister of Labour to non-party firms, primarily in lower-wage, non-metro areas, without any apparent consideration of the ensuing job destruction.

In 2000, minimum wages in the clothing industry in Newcastle were half those in Cape Town. By 2011, after seven years of wage agreements in the
NBC, they were at two-thirds the Cape Town level (see Figure 1). This was achieved by the NBC pushing up non-metro wages at a much faster rate than wages in Cape Town. Indeed, real minimum wages in metro areas like Cape Town barely kept abreast of inflation. In dollar terms, however, wages rose from 2002/03 in all regions (see Figure 2), with adverse consequences for competitiveness across the industry. SACTWU wage negotiators were prepared to sacrifice real wage growth in an effort to save jobs in Cape Town – as they themselves recognised – whilst destroying jobs in non-metro areas such as Newcastle.

**Figure 1:** Nominal value of minimum wages for qualified machinists in Newcastle and Cape Town, 2000-2012
Most of the employers represented in the NBC went along with the reduction of inter-regional differentials as this was 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 were party to the NBC negotiations tended to produce for relatively protected niche markets (eg bespoke orders, promotional products, government contracts, and fast fashion) where margins were generally higher and where longer-term relations could be forged with retailers. This reduced direct competition from lower-wage non-metro firms which tended to produce clothes for different markets, notably the relatively simple skirts, shirts and pyjamas aimed at middle- and low-income consumers where branding is less important. Whilst it is difficult to be precise about the economic differences between firms, it is widely accepted that the regional dispersion of South Africa’s clothing industry mirrors the spatial profile of global value-chains in which lower-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). The combination of higher productivity and niche markets meant that higher-wage firms (including producers in Cape Town and compliant firms in places like Newcastle) succeeded in coexisting with lower-wage producers such as the non-compliant firms in places like Newcastle. This is why the presence of low-wage firms did not inevitably result in a ‘race to the bottom’ for the South African clothing sector as a whole. If it had, all clothing production would have relocated to the lowest-wage areas and no firms and jobs would remain in higher-wage areas such as Cape Town (Nattrass and Seekings 2012).

This does not mean that Cape Town’s firms were secure. Employment in Cape Town did fall. The iconic former Rex Trueform factory was converted into offices. Some of this decline was due to the loss of export markets, some to import penetration. Some Cape Town firms relocated production – but not to Newcastle or other lower-wage areas inside South Africa. When Cape Town firms did relocate, they did so to Lesotho, where wages were even lower than in South Africa’s non-metro areas. Even Seardel – part-owned by SACTWU – had a factory in Lesotho. There were instances where non-compliant firms in places like Newcastle won contracts that might otherwise have gone to compliant firms in Cape Town, but these seem to have been the exceptions rather than the rule. Firms in Newcastle were competing primarily with firms in Lesotho or China, not Cape Town. Insofar as there was any ‘race to the bottom’, the ‘bottom’ was mass production in Lesotho or China (or Bangladesh or Vietnam), not in Newcastle (or other non-metro areas within South Africa).

The NBC and the umbrella employers association – the Apparel Manufacturers of South Africa (AMSA) – defended the compliance drive as a struggle for survival by compliant firms. According to the then NBC compliance manager, non-compliant firms were ‘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, 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-compliant employers can remain employed in oppressive circumstances’ (2011). Baard here was echoing the views of some of AMSA’s member-firms. There is little evidence to support this argument,
however. In one prominent case where a Cape Town-based firm lost a prospective contract to a Newcastle-based firm, the latter turned out to be compliant with the NBC’s minima. In another case, a Cape Town employer complained about ‘unfair’ lower-wage competition from Newcastle firms, but then admitted that his main competitor was in fact, in Lesotho. In this case, the Cape Town and Lesotho firms were both supplying a South African sporting apparel retailer. The Lesotho firm had a clear advantage in producing most of the cheaper, mass-produced lines, whilst the Cape Town firm retained the advantage in producing the more complex lines and short runs needed at short notice. The two firms competed fiercely, however, over contracts to produce lines in the middle of this spectrum. As this case shows, higher-wage and lower-wage firms in different areas sometimes do compete directly, using different technologies to produce similar products. But even in these instances, Cape Town firms’ higher-productivity has allowed many of them to remain competitive. If this was not the case then AMSA members would not have been able to co-exist hitherto with lower-wage firms elsewhere in South Africa. Cape Town firms that have been unable to raise their productivity or to secure a niche market have faced intense pressure from competitors, but mostly from competitors in Lesotho or China and only occasionally in Newcastle. Destroying the lower-wage, labour-intensive section of South Africa’s clothing industry in order to protect a small minority of higher paying metro firms who may have, on occasion, found themselves in competition with lower-wage producers, was (and is) a very high price to pay in terms of net job destruction.

Labour-intensive producers are particularly sensitive to wage increases. According to the 2008 manufacturing survey, wage costs in the clothing industry comprise 19 per cent of total expenditure, almost double that for manufacturing as a whole (StatsSA 2010). But in lower-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 consumed by wages ranged between 35 per cent (a knitwear jersey producer) and 61 per cent (a cut-make-and-trim or ‘CMT’ enterprise). Raising minimum wages had a huge impact on such firms’ profit margins, which were already tight in a clothing industry that is one of the most competitive in the world.

International competition was 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 100 per cent in 1994 to 60 per
cent in 2000 and 40 per cent in 2003 (Skinner and Valodia 2002: 59). This tariff reduction did not lead to immediate employment losses, however. Employment only fell from 2003. This was in part because of international restrictions on Chinese clothing exports. Imports of clothing into South Africa rose slowly in 2002 and 2003, before accelerating in 2004. Crucially, South African producers remained competitive into 2002 because of the rapid depreciation of the Rand. Despite rising real wages in rand terms, wages fell by about one-quarter in dollar terms from 2000 to 2002 (see Figure 2). The real effective exchange rate, that takes into account the value to consumers of imported goods (including textiles) as well as the dollar cost of wages, fell sharply in 2001 and 2002, to the benefit of South African producers.\(^{16}\)

In response to their improved competitiveness on international markets in 2001-02, 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, whose export production grew rapidly after China joined the World Trade Organisation in 2001 and the Multi-Fibre Arrangement expired 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 a small increase in the tariff on imported clothing as well as 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). Trade liberalisation did not precipitate the crisis in South Africa’s clothing industry, but it did make the crisis possible. Power shifted from producers to retailers. Once tariffs had been lowered, it took the combination of the expansion of Chinese production and the stronger Rand to ratchet up the pressure on South African producers.

In this new environment, South African producers were weakened also by domestic wage pressures. Chinese labour costs per unit of output were half that in South Africa (Morris and Barnes 2009). Unsurprisingly, many South African firms tried to survive through failing to comply with the rising minimum wages agreed in the new NBC and extended by the Minister of Labour. 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). As the NBC continued to raise minimum wages in lower-wage areas, so it had to embark on repeated campaigns against non-compliant firms, closing non-compliant factories and destroying jobs (LEP 2010: 162).
From 2007 to 2008 the Rand weakened, temporarily taking the pressure off South African clothing manufacturers. From 2008, however, the Rand began to strengthen again (see Figure 2). The dollar value of the minimum wage in Cape Town rose by more than one-quarter over two years, weakening their international competitiveness. This was the immediate context in which desperate Cape Town employers turned their attention to the supposed ‘competition’ from non-compliant firms in Newcastle, even though the latter were also being squeezed by the exchange rate.

Non-compliant ‘Chinese’ firms in Newcastle

Non-compliant firms were concentrated overwhelmingly in KwaZulu-Natal and the Free State throughout the 2000s. They were especially visible in Newcastle where they were located in two easily accessible industrial areas. The fact that many of the non-compliant firms in Newcastle were owned by people of Chinese origin – i.e. who had come from Taiwan, Hong Kong or China – may have made them more likely targets for both SACTWU’s attention and the NBC’s compliance drives. The 2011 court case against the Minister of Labour and NBC was brought by five ‘Chinese’-owned firms (together with the association newly formed by non-compliant firms in KZN).

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, Todes and Velia 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 Newcastle municipality turned to East Asia for investors to fill the gap left by ISCOR. Municipal officials were sent to Taiwan, Hong Kong and China. The key official learned basic Mandarin. His business card is still (as of 2012) 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 1982 Regional Industrial Development Program (RIDP), an apartheid-era industrial decentralisation program. Other inducements included cheap high-quality real estate and large supplies of lower-wage labour in the
adjoining townships (created in large part through forced removals off farms in the 1960s and 1970s). Chinese producers brought with them the skills and networks needed to operate at the very labour-intensive end of the clothing industry (Todes 1998). As a result of these efforts, by 1996 clothing and knitwear had become the mainstay of manufacturing in Newcastle, 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 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. By 2010, Newcastle had 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. These East Asian immigrants retained strong links with their countries of origin, but many came to see Newcastle as their home in a very real sense. They owned houses and factories. They participated in local politics, with at least two having been elected as town councillors. Many became South African citizens and their children were born and schooled in South Africa.

But their journey 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 the Wage Board’s Wage Determination 471, setting national minimum wages in clothing on a regionally differentiated basis, came into effect. Many ignored the wage determination. By 1995 SACTWU had over 30 labour disputes with firms in Newcastle, and its then General Secretary, Ebrahim Patel, proclaimed that he would ‘eat these fly-by-nights for breakfast’ (quoted in Hart 2002: 166). Through the 1990s Patel championed a combination of industrial and labour market policy that sought to eliminate lower-wage producers such as the Newcastle employers. In his view, the state should provide financial incentives for technological upgrading conditional on compliance with legislated minimum wages. Firms should
increase their productivity enabling them to pay higher wages. There was simply no place in this approach for lower-wage, labour-intensive production. Patel’s influence extended far beyond SACTWU, into COSATU and government.

The second major shock was wage setting through the NBC and the appreciation of the Rand from 2002. 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. 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: 22-23). Other large employers that closed during this period included Welcome Textiles and Nantex, which respectively put 450 and 2,000 people out of work.

This signalled the effective death of Newcastle’s clothing export industry. From 2003, almost all of the remaining producers concentrated on the lower- and middle-income domestic market, competing directly with imports from countries like Lesotho and China. Some registered with the NBC, whilst others tried to avoid the NBC altogether. Most raised their wages somewhat. Very few complied with all of the requirements of the NBC’s collective agreements, as extended by the Minister of Labour. Many failed to pay all of their dues (including the ‘agency fee’ to SACTWU, introduced in 2006, which raised wage costs by 10 per cent), most failed to pay the steadily rising minimum wages.

The Newcastle Chinese were not (and are not) saints. As SACTWU has repeatedly emphasised, in some firms working conditions were not compliant with the Basic Conditions of Employment Act (Gina 2011, Kriel 2012). In one particularly infamous case from 2001, a worker on a night shift gave birth prematurely to twins, both of whom died when no one could access the locked factory and the owner could not be reached. This incident prompted the Department of Labour to inspect Newcastle clothing factories, finding
other instances of abuse (Newman 2005). SACTWU launched an ‘Operation Clean-up’ to end ‘sweatshop conditions’ in the area.

The Newcastle ‘Chinese’ employers felt betrayed by the transformed policy environment and offended by what they perceived to be racist slurs (for example, being called ‘fly-by-nights’ when they regarded Newcastle as their home). They also felt that there was a failure to understand how difficult it was to compete at the bottom of the clothing market. In this highly competitive environment, missed deadlines could turn a small profit into a major loss as fines were imposed by large customers and orders cancelled. Some owners lived – and died – on their factory premises. Family labour worked long hours whenever deadlines loomed. Such pressures contributed to abusive labour practices, such as locking workers into factories, and to strong resistance to raising wages.

Pushed by the trade union, the NBC chose to use minimum wages as the mechanism to shut down these lower-wage firms rather than using the procedures provided for under the Basic Conditions of Employment Act and related legislation to combat sweatshop working conditions. For SACTWU, wages much lower than NBC minima were ‘simply irreconcilable with the work environment contemplated by our labour legislation and our Constitution’ (Gina 2011: para 10-11). The union was also strongly opposed to the practice of some of Newcastle’s ‘Chinese’ employers of linking pay to productivity. One model entailed paying bonuses for production over and above a basic quota. Another was to offer low basic weekly wages but to supplement them with piece-work payments. These practices could 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 2011 court case (a CMT firm) ranged from 15 per cent below the NBC minimum wage to almost double the minimum. The union accepted that there would be job losses when non-compliant firms were closed, but this was justified in terms of ensuring that the industry only provided ‘decent work’ (Payne 2011).

**The 2010 compliance drive and further wage increases**

By the end of 2009, the NBC was ready to take action against over 400 non-compliant clothing factories, mostly in lower-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 the local sheriff). Many writs were obtained, but not fully executed as NBC
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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. 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 cooperatives.

For example, Alex Liu, the chairman of the Newcastle Chinese Chamber of Commerce and Industry (henceforth ‘the Chinese Chamber’), 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 plus productivity-linked pay, which pushed earnings for some as high as R630 a week (well over the then NBC minimum wage of R489). The NBC, however, took a dim view of both the wages paid and the WinCool/Simunye structure, and took Liu to court several times (unsuccessfully).

At the end of 2009 the NBC decided to launch a ‘compliance drive’ against those non-compliant firms against which it had obtained court orders. In early 2010 the NBC compliance manager drew up a list of 65 priority ‘offenders’ and acted decisively against them by instructing local sheriffs to implement court orders. 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. 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).

The crisis in Newcastle and elsewhere also prompted a series of national 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 2011a: par 54). Many of the non-party firms, mostly in KZN, organised themselves into a new association, the United Clothing and Textile Association (UCTA). All parties to these meetings committed themselves to finding a solution that was acceptable to everyone. But they failed to find any such solution. The UCTA proposed a new wage model for the entire industry. This would allow for lower minimum wages supplemented by piece-work or productivity-linked pay. AMSA, who had been party to the compliance drive in the first place, concurred with the ‘need for a new minimum wage dispensation in the industry because of the job losses and closures’ and the imperative of reforming labour legislation. This was rejected by SACTWU. Later that month, SACTWU 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. SACTWU also decided to celebrate a ‘reduction in job losses’ in October, on the grounds that the 30,000 jobs lost between 2007 and 2010 were fewer than in the preceding three years!

By November 2010, 26 factories in Newcastle had been closed down (Chen 2011a: par 52). The NBC proceeded to agree a new round of wage increases, and submitted the collective agreement to the Minister of Labour so that she could extend the agreement to non-party employers countrywide. It is difficult to reconstruct precisely who knew what, and when, during the final weeks of 2010, but it seems that the combination of factory closures under the existing compliance drive and the prospective new round of wage increases focused attention again on the prospect of massive job destruction. In December 2010, following substantial adverse publicity about job losses, Ebrahim Patel – by now the Minister of Economic Development – announced that the NBC and non-parties had accepted a proposal (the so-called ‘22 December resolution’) for a phased period of compliance and a ‘moratorium’ on proceeding with writs of execution against non-compliant companies. Non-compliant firms would have to become 70 per cent compliant by March 31, 2011, 90 per cent compliant by January 1, 2012 and 100 per cent compliant
by April 30, 2012 (Chen 2011a: par 58). All arrears (in back-pay, NBC levies, and so on) owed by non-compliant firms were suspended and deemed payable only if the firm broke the phase-in agreement (or became non-compliant after April 30, 2012). Just two days later, however, the Minister of Labour gazetted the extension of the collective agreement, without any reference to phased transitions from non-compliance to compliance. Confusion reigned over the following months, as no one fully understood the minimum wage dispensation or whether the phasing-in agreement applied to the old or the new minimum wage levels.

Patel’s prominence, relative to the Minister of Labour, reflected the additional resources he was able to mobilise through his co-ordinating role as Minister of Economic Development. In practice, he wielded considerable authority over DTI programmes aimed at improving productivity. The Clothing and Textile Competitiveness Improvement Programme (CTCIP), for example, assisted the large clothing producers to upgrade skills and production capacity and to develop stronger and more co-operative links with suppliers in the CMT sector.26 A key requirement of the programme was that all parties complied with NBC agreements. The DTI also offered production incentives (then worth 10 per cent of value-added, later reduced to 7.5 per cent) to help fund capital-investment. These, too, were available only to compliant producers.27 By increasing their capital-intensity and enforcing higher wage costs, assisted firms were reoriented towards the higher-income consumer market. As the DTI put it, the CTCIP and related incentives were ‘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 subsidization in other developing countries’ (2010). Over the following three years, the DTI made 175 awards, totalling R470 million, to compliant clothing producers.28 Given employment in compliant firms, and the fact that most but not all compliant companies received awards, this amounted to approximately R20,000 per worker, ie double the 2008 estimate of the investment costs associated with each job in the industry. Seardel – part-owned by SACTWU – received at least R67 million for its apparel division (Seardel 2012).

Unsurprisingly, given Patel’s erstwhile leadership of SACTWU, this was in line with SACTWU’s understanding of ‘decent work’ as comprising only those jobs at the top end of the clothing industry. In his defence of the NBC, Andre Kriel, Patel’s successor as General Secretary of SACTWU, quoted 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 was no place in the Patel/SACTWU vision for the labour-intensive production of basic goods for lower-income consumers or the mass market. Compliance might be achieved in phases, but the objective of the Patel/DTI/SACTWU structural adjustment programme for the industry was the destruction of lower-wage jobs.

**Job destruction stalled**

The December 2010 ‘agreement’ to phase in wage increases in non-compliant firms required that firms paid 70 per cent of the minimum wage by the end of March 2011. In mid-March, 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 took the opportunity to push again for a new wage model. Johann Baard told the reporter that this failure to achieve the target was to be expected because ‘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, had helped drive up labour costs in non-metro areas and for employers who are not represented at the NBC. 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 [ANC head office] had the will. We need to re-invent the wage dispensation in the country’ (quoted in Planting 2011).

Some non-compliant producers in the UCTA applied to the NBC for exemptions from the minimum wage on grounds of financial hardship. The Labour Relations Act allows producers to apply for exemptions from sections of NBC agreements. The applications were turned down (Enslin-Payne 2011). South Africa’s bargaining councils rarely grant exemptions from the
minimum wage, and the NBC seemed especially reluctant to do so. It even stopped hearing any exemption applications during part of 2010.

Relations between the NBC and Newcastle firms worsened in March 2011 when, on the day that Newcastle employer and UCTA deputy-chair Alex Liu was attending a meeting with the NBC, sheriffs attached assets at his and 11 other Newcastle factories, for their failure to register with the NBC and pay over back-pay and outstanding NBC levies. 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 (Enslin-Payne 2011).

In June 2011, following the issue of further compliance orders, five Newcastle firms and the UCTA launched their legal action against the Minister of Labour and the NBC. 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).

It is difficult to be precise about the total number of workers being paid less than the legal minima. The 2010 compliance drive entailed executing writs against firms employing more than 19,000 workers with respect to minimum wage violations, and firms employing another 2,000 workers with respect to non-compliance with benefits (especially pension fund contributions) or NBC levies. Almost 13,000 of these workers were in KZN, and another 5,500 in the Free State. 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 NBC were also paying below the official minimum wage – and jobs in these firms too would come under threat if or when they were identified by NBC officials or Department of Labour inspectors.

These figures include all workers in the known non-compliant firms. Some of these workers might have been paid wages at or above the legal minimum. Even if only a minority of employees are paid less than the minimum, raising them would impact on profit margins and throw the viability of the business into question. It is impossible to determine the precise number of jobs which would be lost if the minimum wage was enforced as some producers might have been able to improve efficiency (for example, by shedding unskilled workers and becoming more capital-intensive) and stay in business (although with a smaller workforce, and probably producing different products). Given
existing low-profit margins, skills shortages and strong competition from countries like China, however, it is probable that most labour-intensive producers of basic clothing items would simply cease production if they were compelled to pay the full minimum. These estimates ignore another source of possible further job losses: the enforcement of minimum wages on non-compliant firms has indirect, negative effects on compliant firms. A handful of large compliant employers in the Newcastle area, for example, paid the gazetted minimum wage, producing for niche markets, using capital-intensive processes and were not threatened by the lower-wage ‘Chinese’ firms near-by. They did, however, draw many of their employees from the non-compliant firms which acted, in effect, as outsourced training institutions (see Nattrass and Seekings 2012). If the non-compliant businesses in Newcastle closed their doors, the remaining compliant firms would have found themselves having to provide more basic training, thereby raising their production costs in the longer term. Shutting down the lower-wage labour-intensive firms would also reduce employment and incomes in the area, thereby lowering demand and threatening jobs in others sectors too. A report for the KZN Provincial Treasury found that full compliance with the nationally-imposed minimum wages would lead to the destruction of as many as 25,000 jobs (Coetzee 2011), and the press reported the figure of 28,000 in early 2011 (Bisseker 2011).

The scale of likely job losses in 2010-11 if the new minimum wages were enforced explains both the producers’ responses – forming a new association and taking the Minister of Labour and NBC to court – as well as the hesitation on the part of the state and even the union with respect to enforcing compliance. As we have seen, Patel participated in the informal agreement at the end of 2010 to tolerate temporary non-compliance through a gradual phasing in of the new minima (although this was not acknowledged in the Minister of Labour’s extension of the NBC’s 2010 collective agreement). In August 2011, the crisis in the clothing industry was the subject of a cabinet briefing, where the Minister of Finance (Pravin Gordhan) suggested that changes to labour policies might be necessary to prevent further job losses. His comments were subsequently endorsed by Trevor Manuel, a previous Minister of Finance and head of South Africa’s National Planning Commission. The NBC’s compliance manager resigned, began to help establish cooperatives in the Free State and then KZN, and denounced the NBC model as ‘out-dated and counter-productive’ (Payne in Mail&Guardian 2013). A report for the KZN Provincial Treasury warned of massive job losses.
Minimum wage-setting and low-wage employment in the South African clothing industry (Coetzee 2011). The general-secretaries of the ANC and COSATU clashed over the acceptability of lower-wage job creation, with the ANC arguing that the immediate priority was to create any jobs, whilst COSATU said that only high-wage, ‘decent’ work was acceptable. In practice, however, even SACTWU was hesitant to insist on large-scale destruction of jobs in non-compliant firms. In late 2011 and into 2012, the union restrained the NBC from further action against non-compliant firms. When, in July 2012, AMSA sought a court order to compel the NBC to act on the 450 writs of execution that it has accumulated but not served on non-compliant firms, SACTWU initially opposed the application, explaining that it favoured living wages but not factory closures. A few days later the union reversed its position, explaining that it did not want to give the impression that it condoned non-compliance (Planting 2012). The union agreed to a new NBC collective agreement (for 2012-13) that, for the first time, included a plan for phased-in wage increases by non-compliant firms.

The NBC’s retreat in 2011-12 from its aggressive compliance drives of 2009-10 meant that job destruction was, for a while, slowed. The state and union attributed this not so much to de facto tolerance of non-compliance as to the government’s industrial policy. The DTI and union claimed that the DTI’s industrial policies had ‘effectively stabilised a deeply vulnerable sector’ (DTI 2012: 2) and achieved a ‘significant slowdown in retrenchments in the industry’33 (see also Vlok 2011, Steyn 2012). This optimism proved to be premature. Between 2010 and 2012, Seardel retrenched almost half of its 9,000 clothing workers (Seardel 2012: 15) despite receiving generous production incentives from the DTI. Eight hundred jobs were lost when it closed Intimate Apparel in Cape Town. Intimate Apparel had been supplying the upmarket chain Woolworths, and was not facing competition from Newcastle producers.34 In January 2013, the NBC resumed its compliance drive, targeting 300 firms in KZN. Within one month it had issued 50 writs of execution, shutting 15 factories (Payne 2013).

Conclusion
After seven years of retrenchments in the clothing industry, the NBC and Minister of Labour sought in 2010-11 to raise and enforce increases in the minimum wage that threatened another 20-28,000 jobs. The issue pitted mostly compliant Cape Town-based employers, the union and the Minister of Labour against non-compliant employers in Newcastle, other parts of KZN, and the Free State, with various government and ANC officials urging caution on the NBC and Minister of Labour. The issue exposed the logic
inherent in South Africa’s institutions for minimum wage setting. The parties to the NBC could use the mechanisms of collective agreements and (with the backing of the Minister of Labour) extensions to raise the minimum wages that non-party firms were obliged to pay, and could then use the courts to enforce compliance. If non-compliant firms were unable to pay these raised wages, given strong international competition, the outcome was inevitably large-scale job destruction.

The struggle over non-compliant clothing producers in Newcastle and elsewhere in 2010-11 was symptomatic of the difficulties involved in promoting labour-intensive growth in South Africa. These producers have to contend with minimum wages set in bargaining councils dominated by unionised firms in metro areas, who produce primarily for the middle- and higher-income end of the clothing market where there is more room to pay higher wages. The lower-wage producers are unable to benefit from the DTI’s support programmes which 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 lower-wage, low-productivity forms of employment necessary to absorb unskilled unemployed South Africans.

The SACTWU/DTI vision is that only ‘decent’ (ie higher-wage, higher-productivity) jobs should exist in South Africa, and that labour-market and industrial policies should prevent any lower-wage, lower-productivity production as this is supposedly a ‘low-road’ to growth. This assumption has underpinned the post-apartheid government’s growth strategy (Nattrass 2001, 2011). But the hoped for ‘high-road’ of substantial job creation through skill- and capital-intensive growth has yet to materialise. The costs of this union-backed structural adjustment strategy have been borne by workers in labour-intensive industry.

The case of the clothing industry suggests that South Africa needs a more differentiated approach to wage setting that enforces basic standards of employment but tolerates lower-wage employment in specific areas, especially if low basic wages can be supplemented with productivity-linked pay. ‘Sweatshops’ and illegal working conditions should not be tolerated, but minimum wage-setting is the wrong mechanism for ensuring that delinquent employers comply with legislation on working conditions. Lower-wage, lower-productivity employment should not be destroyed on the mere assumption that it might protect higher-wage, higher-productivity production.
Job destruction should require evidence. Our research suggests that job destruction in areas like Newcastle does not benefit sufficiently compliant firms in Cape Town: non-compliant firms compete mostly with producers in Lesotho and China; insofar as there is some competition between compliant and non-compliant South African firms, the scale of job destruction in non-compliant firms required to preserve jobs in compliant firms is simply indefensible. Allowing low-wage producers to continue to operate in places like Newcastle provides employment for less skilled workers, in especially impoverished areas, and helps poorer consumers who purchase basic clothing goods rather than pricier, branded, and more fashionable products.

This analysis does not imply that there should be any general deregulation of the labour market, or that there should be no minimum wage setting, or that minimum wages should be lowered in all sectors, or even that minimum wages in the clothing sector should be abolished. It certainly does not imply that unemployment in SA is primarily or even largely the consequence of labour market regulation, or that reforms to the current system of minimum wage setting through national bargaining councils and extensions would solve South Africa’s unemployment problem. What the analysis does suggest is that the level at which minimum wages are set has large effects on employment in specific circumstances, notably in labour-intensive, tradable sectors. The Minister of Labour should therefore not impose higher minimum wages through the extension mechanism without taking into account possible employment effects – especially when the higher minima were proposed by a bargaining council that was not representative of the firms (and workers) most affected. If or when higher minima will result in factories closing and/or jobs being destroyed, then minimum wage-setting should certainly take into account the preferences of the workers most affected.

The case of the clothing industry demonstrates how South Africa’s bargaining councils affect employment, destroying jobs and inhibiting new job creation. In a tradable, relatively labour-intensive and lower-wage sector such as clothing, imposing higher minimum wages through the extension of collective agreements results inevitably in either massive non-compliance or massive job destruction. South Africa’s labour-market institutions and industrial policies can be used by an unholy coalition of a trade union, metro-based and more capital-intensive firms and parts of the state to inflict job-destroying structural adjustment on the industry under the guise of promoting ‘decent work’ and a level playing field for producers, even as clothing jobs are simply being exported to low-wage countries such as Lesotho and China.
Acknowledgement

The financial assistance of the Research Project on Employment, Income Distribution and Inclusive Growth is acknowledged. Findings, opinions and conclusions are those of the author and are not to be attributed to said Research Project, its affiliated institutions or its sponsors. This paper was originally written to provide the background to the legal case as it reached court in early 2013. An earlier version was published as a Working Paper by the Centre for Social Science Research at the University of Cape Town (Nattrass and Seekings 2013) and the Centre for Development and Enterprise. Press reports prompted a barrage of media criticism from Sactwu. Sactwu’s criticisms, and our responses, are available online on http://www.cssr.uct.ac.za/2013/03/controversy-over-clothing-industry. This paper benefited from comments made when we presented earlier versions at seminars at the University of Cape Town and Harvard, as well as from our to-and-fro exchanges with Sactwu. Sactwu declined our requests for interviews. We are grateful also to state officials, employers and workers who agreed to be interviewed.

Notes

1. In 2003, 53% of Sactwu’s 59,574 members 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.

2. Party firms employed on average 114 workers, whilst non-party firms employed only 41, in 2011 (NBC, ‘Employment strengths as of 28th February 2011’, data provided by the NBC).

3. Ibid.

4. According to the March 2011 Labour Force Survey, 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. A 2011 list of non-compliant firms from the NBC’s Durban office recorded 89 known but unregistered firms in KZN, employing a total of 4,680 workers. If one includes these ‘known and unregistered’ firms in the calculation of representivity, then only 8 per cent of firms in KZN, collectively employing only one quarter of the province’s clothing workers, were party to the NBC. Whilst we do not have comparable information for other provinces, it is clear that, by late 2010, substantially less than one of half of clothing workers countrywide were employed in firms that were represented in the NBC.

5. And the United Clothing and Textile Association, whose head office is in Durban.

7. In 1991, the Wage Board set minimum wages for clothing firms in South Africa (Wage Determination 471). The 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).

8. These figures are for the minimum wage for an experienced machinist. The minimum wages payable to trainee machinists were lower, but rose faster, as the NBC narrowed the gap between trainee and experienced machinists as well as the gap between lower-wage areas such as Newcastle and Cape Town.


10. Firms are reluctant to provide precise data. Our discussions with producers in Cape Town, Newcastle and elsewhere, and with buyers for major retailers in Cape Town, all confirm these basic economic differences between firms in different areas. In the extensive debate over the clothing industry, none of our critics seem to have contested this point. Indeed, Sactwu uses this point in its argument that these low-productivity, low-wage firms should either shift to higher-productivity, higher-wage production or shut down.

11. An alternative interpretation of AMSA’s support for the compliance drive was that it was a useful mechanism for increasing pressure on government and Sactwu (via the associated job losses and resultant public outcry) to agree to a new ‘wage model’ that allowed for more productivity-linked pay across South Africa (discussed further below).

12. Neither producers nor buyers are willing to divulge publicly details of producers’ competitiveness. Our discussions with producers and buyers suggest that competition between compliant and non-compliant firms is limited. It is possible that talking to different producers or buyers would yield contrasting evidence. We are not aware, however, of any contrary evidence produced by any of our critics.

13. We think that it is plausible that one in five workers in non-compliant firms in places like Newcastle is competing directly with a worker in a compliant firm in Cape Town or elsewhere. If all non-compliant firms had to be shut down to eliminate the minority that really are competing with compliant firms, and given the relative labour-intensities, then the implication is that approximately eight to ten jobs in non-compliant firms would need to be destroyed to preserve a single job in a compliant Cape Town firm.

14. Information obtained from firm-level annual financial reports.

15. According to the 2008 manufacturing census, profit margins are 0.5 per cent in clothing as opposed to 8 per cent in manufacturing as a whole (StatsSA 2010).
16. The depreciation of the rand increased the cost of imported textiles. Tariff reduction on textiles over the preceding years had, however, decreased clothing producers’ costs, partly offsetting any effects of tariff reduction on clothing itself.

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


19. There was, 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 this meant the erosion of 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.

20. According to an audit done in September 2009, R40 million was owed in arrear payments to workers in non-compliant firms (Enslin-Payne 2011).

21. In 2012-13, the trade unions pushed hard for abolishing the exemption of cooperatives from the Labour Relations Act.

22. NBC, list of firms for priority writs of execution, undated, included as Annexure HC5 of Chen (2011a).

23. Minutes of the meeting chaired by Les Kettledas of the Department of Labour, 20 September 2010.


27. Ibid.

28. Minister of Trade and Industry, written reply (April 2013) to written question 610 tabled in the National Assembly by Mr G. Hill-Lewis (DA).

29. The most recent data on applications to the NBC for exemptions by small and medium enterprises are for 2008. The NBC reported that exemptions were requested on the basis of ‘no previous experience, demotion as a result of disciplinary enquiry, false statement at the time of engagement’ and ‘companies unable to afford the prescribed wage and levies’. When reporting the NBC’s stated rationalisation for granting exemptions, however, the NBC lists: ‘no previous experience in current position, medical reasons and demotion due to...’
disciplinary enquiry’. Affordability was a stated motivation for requests for exemption, but not included in the list of reasons why exemptions were granted.

30. NBC, ‘Prioritised compliance action list’ (excel spreadsheet, undated).

31. Some firms switch from production to importing. In Newcastle, for example, several factory shops already stock more items imported from China than are produced on the premises.


References


Gina, Sipho Christopher (2011) ‘Affidavit (8 December)’, Case number 11023, High Court of South Africa, Pietermaritzburg.


industry’, *Competition and Change* 12(4).


