

asian multinationals in africa  
information and  
strategy guide



booklet one



a publication series  
for garment workers  
in africa

# About This Publication Series

This booklet series is part of the international workers' publication project, an initiative of IRENE, that includes workers' newsletters produced and distributed in Thailand and in Sri Lanka.

The booklet series was produced to share with trade unions, NGOs and workers in Africa the efforts of many organisations on improving working conditions in Multinational Companies. These efforts take many forms such as developing policies in tripartite structures, multistakeholder campaign initiatives, research, and worker education. It incorporates the work done in Africa on multinationals in the garment industry, spearheaded by the ITGLWF Africa office. Much of the research work in the sector has been conducted by SOMO in partnership with organisations based in Africa, in the past this was the Trade Union Research Project and more recently Civil Society Research and Support Collective. As the number of Multinationals that either produce or source in Africa continues to increase so do the challenges that are faced by workers and trade unions. Workers have risen to meet these challenges and it is in support of their struggle that these booklets have been produced.

The booklets have been designed as an educational tool to provide a wide range of information, from contextual issues of the garment sector in global trade to practical considerations for shop stewards. Whilst most of the material used in these booklets have been written by Civil Society Research and Support Collective, a fair amount borrows from other useful information or educational products, in particular those of ITGLWF, Clean Clothes Campaign, SOMO and ICFTU. Where possible these sources have been acknowledged. Please note that material taken from other sources have been used for fair use and the views and opinions in these booklets are not necessarily the same as those held by the funders of this project.

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## Booklet One

is a strategy guide designed to provide unions with information on Asian Multinationals in the global supply chain and is to be used in seeking ways combating the effects of global trade on African workers in the garment sector. It presents various tools and institutions for regulating the labour practices of these MNCs and presents some food for thought in an alternative development model for Africa's textile and garment industry.



## Message from Thabo Tshabalala

**Acting Regional Secretary of the International Textile Garment and Leather Workers Federation- Africa Region**

The struggle for workers rights is hundreds of years old and has never been easy despite civilization, democracy, and the development of technology which have solved some problems but created others in its place.

We hope the day shall dawn where through out the world workers rights like all human rights are respected. This booklet covers stories of workers from different countries and continents who all share the same experiences of exploitation and mistreatment. The stories teach a common lesson of organising unity amongst workers who can do nothing alone to change their fate but together have the power to create a different future. We call

for all workers in the textile, garment and leather industries to unite under the banner of ITGLWF.

We further call on all workers leaders to educate and teach their members not only through formal education but through vibrant debate and analysis in active union structures. A trade union lives in its member's hearts and minds, and it is through members that we can begin to action new solutions to new problems. Read, learn, share and, mobilize for the improvement of working conditions.

We thank all those international organizations who have expressed solidarity by making this series of publications possible - IRENE, CSRSC, SOMO, EED AND FNV

AMANDLA!!!!!!!!!! POWER TO THE WORKERS. UNITED WE BARGAIN, DIVIDED WE BEG.

**Thabo Tshabalala**

# Section One: Understanding The Garment Industry As Part Of The Global Economy

Globalisation is not new, its just speeding up and becoming more noticable. In any social system based on private property and competition there will be those who will by one or another means own more than others. How drastic this gap is depends really to what extent the system is regulated. We are currently witnessing the social impact of approximately 20 years of deregulation (liberalisation) of the global economy that started in response to the slow down in the speed with which large businesses were making money. This slow down started in the middle of the 70's. The funny thing about global deregulation is that it normally applies to the more marginalised of the global community. The very powerful countries normally preach liberalisation and practice protectionism largely I suppose because they can. The US president Ronald Reagan led the charge to liberalise global trade and economic policies in many less powerful nations and yet was president during one of the most protectionist periods in the history of the United States.

Trade in the global garment industry was dramatically changed by the introduction of the Multi Fibres Agreement in 1974. The purpose of this agreement was essentially to protect the domestic garment industries in The US and other wealthy countries in the North from products that were being produced far cheaper in the East. The idea was to create quotas to limit access. The problem with such a strategy is that it essentially underestimates the determination of Capital to seek out cheaper production methods regardless of international borders. In the same period we see the rise of the large multinational companies (MNCs) which incorporate global integration into their production strategies. Whilst MNC's are flexing their muscles institutions such as the World Bank and IMF were enforcing liberalised economic orthodoxy on more marginalised countries in the form of Structural Adjustment Programmes and multilateral trade agreements such as GATT.

Poor countries were to develop through producing goods for export (export led growth and Foreign Direct Investment). These two concepts become the mantra of development specialists and economists through the 80's and 90's. From the 70's garment production initially moved from industrialised nations to industrialising nations such as Mexico and Taiwan and other Asian economies. Later Asian companies built during this phase come to dominate various production facilities across the world, taking advantage of preferential access deals often enabled by pre-existing buying relationships effectively freezing out domestic production.

In the case of the garment industry these Asian MNCs became both the source of foreign direct investment and the beneficiaries of outward focus of export led growth. The countries themselves benefit little with lost revenues due to tax and other incentives that need to be offered to attract investors and slave wages that typify these forms of employment. Thus the Asian MNCs profits from incentives and lower production costs as well as preferential access to lucrative markets like the US under trade legislation called the African Growth and Opportunity Act (AGOA) which the MNC would not have in its home country.

Liberalised market access meant a flood of cheap imports and second hand clothes which in a relatively short space of time closed much of the domestically owned garment industry.

Various preferential market access agreements and legislation led to an increase in investment from the late 90's but this in many cases only serves to replace lost jobs often with worse working conditions, and does not really create new ones. Through all of this we see a deterioration in real wages and working conditions, a perspective not explained when US legislators report that AGOA created so many jobs in the previous year as evidence of the effectivity of the 'Trade not Aid' syndrome that has become the development slogan in recent years. The EU ACP Trade dispensation also has problems where it imposes quotas on market access which were not there before the Cotonou Agreement, limiting the amount that can be produced in poorer countries for export to the European market.

The net result of liberalised economic reforms for the garment sector in Africa has been to replace jobs with worse jobs and create complete dependancy of tens of thousands of people on the whims of highly mobile, mostly Asian owned Mulinational production companies and in the case of AGOA, a foreign legislature. When these MNC's leave there will be no industry. Yet national governments are so disempowered they dare not uphold their own labour legislation for fear of offending investors and often instead of encouraging domestic investment end up discriminating against it.

At the same time Asian investors are forced to exploit these conditions by the pressure exerted by large retailers and brand names. These retailers and brands place such large orders that they are able to dictate to producers the price, quality and delivery time of an order. A low price means low wages, short delivery time means excessive working hours and quality demands translate into workers being fined or dismissed for small errors.

This has made brand names and large retail stores such as Wal-Mart enormous amounts of money, made clothing slightly cheaper for people in richer countries and provided MNC producers with a pick of competing investment destinations and millions of desperately poor people to exploit. In other words the global supply chain transfers wealth upwards to the rich and is directly paid for by the poor.

# How The Garment Industry Works

A worker in the clothing industry anywhere in the world today is faced with decreasing real wages, deteriorating health, an increased risk of losing his/her job or being turned into a part time or casual labourer as governments compete for international investment by offering more vulnerable and lower paid work forces to these investors. Most clothes are produced far away from the place they are ultimately bought. Before a pair of trousers arrives in a shop, somewhere in the United States or in Europe, it has probably been in several factories and even in different countries and continents. The fabric is for example produced in India, the zipper in Swaziland, the buttons may come from South Africa and the trousers put together in a factory in Lesotho.

One retailer will buy clothing in many different countries. A specific sort of trousers in Lesotho for example, another sort in Swaziland, T-shirts in Madagascar and India, sweaters in Bangladesh and the United States.

## Factories

The factories where the clothing is made sometimes employ thousands of workers. Workers in these factories are involved in cutting, sewing, trimming, washing and packaging clothes.

Most clothing factories buy fabric from other factories and then cut the fabric into the shape of the clothes, make the clothes and trim off the excess. This is called a "cut-make-trim", or CMT, factory. There is little by way of value added processes in a CMT shop. The value added activities are generally reserved for more lucrative elements higher up the supply chain. Some factories make the fabric themselves in a textile mill. Textile mills are very expensive to set up and are expensive to operate and therefore more difficult to move. Textile mills tend to be resident in the home country of a multinational producer or more developed areas of the global economy. There are therefore fairly few textile factories in Africa meaning that most of the fabric used by CMT operations is imported and a very small portion of value created along the entire supply chain comes to reside in the poorest of African countries.



## Retailers

The clothes are sold to companies called "retailers" sometimes via a long chain of intermediaries and agents. This can make it quite difficult to trace where clothes actually come from. The retailers buy clothes from factories and sell them in shops to individual people and families. Most retailers are large companies with more than one shop to sell the clothes. Some are Multinational Corporations that, not only source clothes all over the world, but have sales outlets in many different countries. One such retailer that is the subject of a number of campaigns aimed at making the retailer take greater responsibility for what happens to people along their supply chain is Wal-Mart. Retailers sell these clothes at many times the price that it takes to source them as a result of which they make huge profits. The cheaper the clothes can be made the greater the profit they can make so they force producers to compete with one another to deliver cheaper better quality garments. Because large retailers place such big orders it is easy for them to dictate the prices they will pay for the items from the producers who quite often are multinational companies themselves. The producers (factories) determine where they will invest forcing different countries to compete for investment by providing incentives such as premises and tax breaks as well as a cheap and docile labour force. Once the multinationals invest in the country high unemployment rates force workers in that country to compete for jobs by accepting slave wages and poor labour conditions. In this way a worker in Africa working for a MNC along with other poor people in that country because of the expense to government, pay for the profits of the MNC and the super profits of retailers and brands. Wealth is distributed up the supply chain and suffering is distributed downwards.

Although the factories make the clothes, the retailers put their own name on the clothes. This is called a "label". For example, in Lesotho there is a factory called C&Y Garments. This factory sells clothes to several retailers, one of which is called The Gap. The clothes carry a label which reads "The Gap" or "Banana Republic" and not the name of the factory.

Because the clothes have the label of the retailer, they put a lot of pressure on the factories to make the clothes in the best possible way. If the clothing is of poor quality, the customers will blame the retailer and not the factory. The retailers will tell the factories how to make the clothes, where to make changes and what fabric to use to make the clothes. Many retailers and brands send their own employees to monitor the quality of the garments whilst they are being produced in the factory. As a result the MNC factories enforce quality standards ruthlessly. In many cases if a worker makes a mistake on a garment she can expect to pay a fine. If the worker makes too many mistakes she is dismissed. Again the worker pays for the profits of the rich.

If there are not enough orders in a TNC factory workers will normally be put on short time or layed off for a while during which time they receive no compensation. One of the reasons that companies are supposed to be entitled to their profits is that they take a risk. It seems though that they will pass as much risk onto workers as they possibly can.

## Brands

There are also large "brand" companies, who are only selling a brand name like Nike, Adidas or Levi's. Their clothing is made all over the world in factories similar to those that produce for retailers. The products are sold by retailers. The brand companies make a large profit on the clothing, not by making the clothing themselves nor by selling them, but only by giving the label (the name) and the logo to the clothing.

## Agents

Agents are companies that buy from factories for different retailers and brands. This allows the retailers and brands to be even more removed from the factories and conditions that the clothes they sell are produced in.

Different parts of the supply chain are represented in the table below

|                       |                                                                                                      |
|-----------------------|------------------------------------------------------------------------------------------------------|
| <b>Market End</b>     | Retailers (own label & other labels)                                                                 |
|                       | Producers, sometimes called Brands or Brand companies (own label and other labels)                   |
|                       | Importers, work for large and small retailers and producers (other labels)                           |
| <b>Trading End</b>    | Buying office (owned by a retailer or producer, but still can take orders from others)               |
|                       | Buying house (independent from retailer or producer, but with different clients, can be really huge) |
|                       | Agents (smaller then buying house, maybe 1 or 2 staff)                                               |
|                       | Direct buyers (fly in maybe 4 times a year)                                                          |
| <b>Production End</b> | Factory                                                                                              |
|                       | Small sweatshop                                                                                      |
|                       | Homeworker                                                                                           |

source : SOMO 2001

## How does the global garment supply chain work?

Here is a simplified version of how the chain works. A retailer / brand name, often the firm at the top of a particular supply chain, sends a sample garment to either an intermediary or a manufacturer. The manufacturer supplies a copy of the sample and a price quote. If the retailer / brand name's design and sourcing team approve - of the cost, time, quality, quantity and delivery - an order is placed.

Frequently, it is the manufacturer who sources the right material to make a good sample. The manufacturer may decide to finish all the work in the factory, or to subcontract parts of the order to smaller manufacturers further down the chain. These smaller manufacturers may also decide to subcontract part of the order to other manufacturers or homeworkers. The next process that links the different parts of the chain is Quality Control (QC).

The retailer / brand name wants to guarantee the quality level and checks this during the production process. This is because the retailer / brand name does not want to be stuck with bad merchandise, even if they have the right to send it back. There are many different ways in which QC can be done. It can be:

- outsourced to specialised companies -
- the retailer / brand name may employ QC staff to visit the factories three times per order

When the garments are finished, they are shipped to distribution centres - e.g. in the US and Europe - from where they are sent to individual shops.

## Some key players in the chain:

### Manufacturers

Manufacturers, sometimes called suppliers, are frequently responsible for buying raw materials, although sometimes this is done by the retailer or its intermediary. Large manufacturers are found at the top of the chain. Frequently, the largest manufacturers are part of multinationals that have textile production units and manufacturing units. Some even have their own freight and distribution subsidiaries. They are mostly backed by foreign direct investment. They produce large bulk orders for export for global brands. Their size gives them some power with the companies for whom they manufacture.

Medium manufacturers can also be very large, but they do not have the international scale of operations of large manufacturers. In some cases they are subsidiaries of large manufacturers. Medium manufacturers can vary quite widely in size: in China they can employ 400-1000 workers, while in Sri Lanka they may only employ 40-80 workers. They subcontract from the larger manufacturers and also receive orders directly from intermediaries. They often produce for the national market as well as for export. They have very little power in negotiations with large manufacturers above them in the supply chain. They have more power over manufacturers below them in the chain.

Small manufacturers is a category covering small factories, sweatshops and informal factories, as well as tiny units operating out of someone's house. Again, the size of these units varies depending on the location: in Sri Lanka they can have twenty employees, while in China the scale is much larger with several hundred workers in these small units.

Factories at this level tend to be funded by local capital. They generally do 'make and trim' work which is subcontracted in from bigger manufacturers. They also do CMT for domestic production. These units have no power as they are located close to the bottom of the chain.

### Intermediaries

Intermediaries are all the businesses that operate between the retailer/brand owner and the manufacturer. There may be one or several intermediaries. They are called buying offices, buying houses, importers, agents or traders. Based on research in Hong Kong (SOMO, 1997) the tasks of intermediaries usually are:

- communicating between the buyer and supplier, problem solving.
- sourcing: finding (new) manufacturers that can produce what the retailer wants.
- quality control: sampling, in-line inspection, final inspection (pre-shipment inspection).
- (sometimes) sourcing raw materials (often this is the task of the manufacturer). We can divide intermediaries into two groups: those that are owned or controlled by the retailer/brand owner and those that are independent of the retailer/brand owners. Intermediaries owned or controlled by retailer/brand owner If the intermediary is owned by the retailer/brand owner we call it a buying office. It often has the same name as the parent company. A buying office has only one client: its parent company.

Many of the largest retailers and brand names set up their own buying offices, which they control, as it is safer and cheaper than relying on an external company. However, after they have set up their buying offices, they may continue to use agents and traders. Sometimes the buying office gets the best orders and the riskier ones go to independent agents and traders. The buying office may also choose to subcontract to an independent agent or trader, for example to get rid of the responsibility for quality control, if they do not want to do this themselves. "Buying offices of the retailers themselves, are for the safe items, the ones they can always sell. The risky items are placed via others. They prefer to pay the percentage and have the agent, the trader or the importer take the risk" (SOMO, 1997:12-13).

### Independent intermediaries

If the intermediary is not owned by the retailer/producer we call it a buying house, buying agents, agents or traders. They have many clients. Confusingly, they can also be called manufacturers. This is because some of them were originally manufacturers, and some still have their manufacturing companies as well. They have expanded into the role of intermediary as this gives them greater control and profits.

Agents/traders can also take on the role of a supplier, taking care of all aspects of production, from the delivery of all raw materials to packaging, transport and distribution. Li & Fung Ltd, the largest trader in Hong Kong, received a big order for Limited Stores: 150,000 pants in one style, delivery time 30 days. So they placed the order at four or five factories to have it ready on time, but made sure they all used the same fabric, the same zippers etc. (SOMO 1997:14).

*Source: Source: Action Research on Garment Industry Supply Chains - Women Working World Wide*

# Asian MNCs In Global Supply Chains

## The Rise of Asian Production MNC's

Many North American and European garment and footwear MNCs have had operations in Asia for decades, with governments in the region often seeking to attract foreign companies and investors to their countries. Such MNCs paved the way for international economic restructuring around the world. More recently Asian MNCs are playing an important role in international supply chains in these industries, with Asian companies investing in production operations not only in the region but as far away as Africa and Central America. These Asian MNCs generally are focused on manufacturing, serving as subcontractors for brand-name garment and footwear MNCs. While they have lower global name recognition than their customers, for example Nike. Asian MNCs such as Tri-Star, Ramatex and Nien Hsing, with turnover of more than US \$1 billion, are crucial links in these supply chains. While Western MNCs draw their own huge profits from the development, marketing, and retail of items such as clothes and sports shoes, these Asian companies have shown that the lower-profile business of producing these goods can also be very profitable. These MNCs are often referred to as "**Production MNCs**".

## Incentives For Going Multinational

Asian MNCs ranging from small, medium, to large companies have been drawn to invest or set up operations in other countries for the same reasons that Western companies have: cost factors, the regulatory environment, possibilities for growth, and access to markets.

Incentive packages from host governments and **trade agreements** can help facilitate relocation to other countries. For example, the African Growth and Opportunity Act (**AGOA**), which went into effect in 2000, authorizes the duty and tariff-free export of garments from 36 sub-Saharan African countries to the United States. This preferential access to the U.S. market, as well as low labour costs, and access to European Union (EU) markets under the **Cotonou Agreement**, have been a powerful lure for investors, particularly from Asia. Researchers report that Southern Africa has drawn Asian investors mainly from Taiwan, Hong Kong, and Sri Lanka.

In Swaziland, for example, new investment in the garment and textile industries was once primarily South African, however now investment predominantly comes from Taiwan. Investors say that it is not only the AGOA provisions, but also tax incentives (such as five-year tax holidays) that bring them to Swaziland. Further south in Lesotho, there has also been a similar increase in Asian (mostly Taiwanese) investment in the garment industry during the 1990s.

When Taiwanese denim and jean giant Nien Hsing invested in Nicaragua in 1993, "the company received more than US \$370,000 in support from the Taiwanese government," reports Chen Yi Chi, editor of the Asia Pacific Labour Update. In addition to trade agreements that grant favourable market access, Chen explains that the political situation contributes to the Taiwanese government's willingness to support overseas investment. By subsidizing

overseas investment elsewhere, the government hopes to discourage an over dependence on investment in China, which they see as jeopardizing national security. He also reports that because Taiwan is politically marginalized due to its relationship to Mainland China, it uses Taiwanese investment as leverage to establish official diplomatic ties with other countries.

In some cases, Asian MNC home countries also give companies incentives to set up operations overseas. The Taiwanese government, for example, provides financial support and tax rebates to companies that invest in Central America and Africa. At a Swaziland factory producing jeans and other garments for U.S. brands such as Basic Edition and Bugle Boy, researchers were told that the Taiwanese parent company, which also had operations in Cambodia, received reimbursement from the Taiwanese government for up to 20% of wages.

## Sourcing Policies And Labour Practices Of Asian Production MNCs

Drawn by trade agreements and other incentive programs to countries desperate for foreign investment and jobs, investors, including Asian investors, have been able to circumvent local labour laws (for example, minimum wage and social security requirements) as well as the standards for good labour practices set out by the International Labour Organization (ILO). In Swaziland, for example, where violations documented at Asian-owned factories include forced overtime, verbal abuse, sexual intimidation, unhealthy and unsafe conditions (including locked doors), unreasonable production targets, and union repression, the department of labour admits that in an attempt to keep investors happy it does not pursue labour law violations to its fullest ability. They say they "can't push investors too hard," but instead are "very gentle and persuasive." While investors see profitable returns on their investments, critics wonder if workers and their communities really benefit when wages and conditions are substandard and tax abatements and subsidized infrastructure mean little money goes back into the community.

Asian investors in the garment and textile industries have proven to be as mobile as Western investors, "cutting and running" from one location to another as suits their interests. For example, Mauritius developed a significant clothing export industry directed to the EU, fuelled by investment from Hong Kong companies. Now that wages are lower and preferential trade incentives are better in nearby countries, this location is less attractive to investors.

When confronted with labour rights violations or with a workforce that increasingly demands the enforcement of labour rights, companies sometimes suspend or cut their orders to factories in the spotlight to distance themselves from such negative publicity. Companies that own factories embroiled in labour disputes sometimes close down their operations, either temporarily or permanently, to put an end to worker organizing efforts.

In El Salvador for example, when workers at the Taiwanese-owned Tainan factory organized a union, the company responded by suspending workers and diverting orders to other factories. The workers had faced forced overtime,

harassment, and low wages. When they sought a collective bargaining agreement in 2002, Tainan (which owned factories in China, Cambodia, and Indonesia) said they would have to close the factory due to a lack of orders. In Indonesia, increased worker organizing since independent unions became legal in 1998 is said to contribute to the exodus of investment out of the country in search of an environment where workers are less able to voice their demands, for example China and Vietnam. In 2002 eight garment factories (six owned by Korean investors, one Chinese, and another Japanese-Indonesian) shut down leaving thousands of workers jobless and without sufficient compensation.

## Labour Rights Campaigning In Relation To Asian Production MNCs

Pressuring Asian garment, textile, and footwear multinationals to take responsibility for their role in respecting workers rights can present special challenges. Because many of these companies are not "brand name" companies they are less visible. This means that labour rights advocates will get less leverage from the threat of tarnishing brand image, something which holds considerable value for brand name companies. One 2002 survey attributed 71% of a company's worth to "intangible assets" such as reputation. However, pressuring manufacturing multinationals via their relationship with the companies they produce for can yield results. Some Asian manufacturing MNCs however have a broad base of clients and therefore are less susceptible to pressure or threats of cancelled orders made by individual buyers.

Campaigns, as in the Nien Hsing case, that have utilised an approach that mobilises stakeholders at the various levels of the garment industry supply chain for example, where the clothes are produced, where the production multinational is based, and where the garments are sold have demonstrated a potential to open up space for workers to successfully voice their demands.

A challenge to workers' rights advocates will be to raise awareness of the role of these less-visible multi-national corporations and develop strategies for pushing them to take up their responsibilities for improving working conditions in the industry and respecting workers' rights.

Because these Asian production MNCs occupy a space in the production chain that is often closer to workers than the brand name companies they produce for, they have an important role to play in implementing workers rights. Attempts to seek better compliance with labour laws, international labour standards, and voluntary codes of conduct will need to consider the role these important actors play in shaping labour practices throughout global garment supply networks.

## Monitoring Asian MNCs

Increasingly, more research is being done to understand and assess the role of Asian MNCs in global supply chains and in the regions where they operate. The growing importance of manufacturing multinationals from such countries as Taiwan, South Korea, and Hong Kong, has led to a need for more information including tracing production chains. Also needed are campaigns on such manufacturing multinationals, based on links between regions.

Organisations such as ITGLWF and the CCC network are working towards addressing this need in their activities. Their initiatives focus attention on Asian companies in this sector and include investigations into Asian multi-national



## Asian Transnational Corporations Monitor

In 2001 Asia Monitor Research Centre (AMRC), a Hong-Kong based coalition advocating for workers' rights for more than 25 years, launched Asian Transnational Corporations Monitor (ATNC Monitor) to focus attention on such companies, both in the region and beyond. ATNC Monitor brings together organizations from Hong Kong, Japan, Korea, Taiwan, Thailand, the Philippines, Sri Lanka, and New Zealand that are examining the way Asian companies including garment and textile companies, operate overseas. The group notes that apart from a small number of well-known and powerful brand-name companies, such as Sony, Toyota, and Samsung there are many other Asian MNCs that are small and medium-sized firms that play a supplier or subcontractor role to North American or European companies. Their role in the supply chain often puts them in immediate contact with workers as their employers, therefore NGOs and trade unions should be monitoring their activities.

Through a program of research, education, training, exchange projects, and solidarity action ATNC Monitor hopes to build awareness of labour practices among these companies.

"Although TNCs from Japan, Korea, Taiwan and Hong Kong are violating labour rights and environmental law in the region, the public awareness of this in Asian countries is very low. Even workers and labour groups show almost no interest in domestic capital investment overseas...Home countries' protectionist stand has to be broadened to international solidarity," according to ATNC Monitor (2002).



# Case Study: Ramatex

The Namibian Government introduced the EPZ Act in 1995. The main aim of the EPZ policy was to encourage foreign investors to Namibia so that the country's manufacturing capacity could be boosted. To date, the most prominent foreign investment since independence is the Ramatex factory.

The Ministry of Trade and Industry of Namibia announced that it had snatched up a US\$100 million project ahead of South Africa and Madagascar which had also been considered as an investment location by the Malaysian textile company Ramatex. This was achieved by offering even greater concessions - above those granted to other EPZ companies. Drawing on the parastatals providing water and electricity (Namwater and Nampower) as well as the Windhoek municipality, the ministry put together an incentive package which included subsidized water and electricity, a 99 year tax exemption on land use as well as over US\$12 million to prepare the site including the setting up of infrastructure. This was justified on the grounds that the company would create between 3000 and 5000 jobs during the first two years and another 2000 jobs in the following two years. Ramatex's decision to locate to its operations in Southern Africa is largely motivated by the aim to benefit from the Africa Growth and Opportunity Act (AGOA) which allows for quota and duty free access to the USA. This is a classic example of SADC countries competing with each other for foreign investment.

Ramatex originated in Malaysia expanding from dyeing and knitting mills to garment production and yarn manufacture continuing its growth into finishing fabrics and printing. Out of this growth came Ramatex's subsidiary companies extending across borders into other countries namely China, Mauritius, Namibia, Brunei, Cambodia and South Africa, exporting to Europe, the USA, Canada and other countries to clients such as Wal Mart, Sears, Kmart, Target, Fruit of the Loom, May Department Stores, Puma, Otto Versand, Cherokee, New Edition, Falls Creek, Adidas, Christian Dior, Ralph Lauren, GAP, Hudsons Bay, Colby, Sharming and Halmode.

Ramatex represents a typical example of a multinational company spreading its operations globally in search of increased profits often taking the advantage of being able to bargain to gain increasing concessions from host countries. Ramatex's employment strategies seem to be in line with other MNC's who prefer 'young women workers as they are seen to be "docile with nimble fingers" and are less likely to join trade unions or resist company management.' The Ramatex operation in Namibia has been in the spotlight following many controversies that have remained unsolved as the root problem of exploiting the workers' rights seems to be unaddressed.

The majority of Ramatex workers indicated that they received training, either at the Windhoek Vocational Training Center or at the Ramatex factory. The training received varied as the workers who were trained at VTC were only trained for a maximum period of 3 months whereas the workers trained at the factory remained in training for a longer time, some up to 6 months and longer.

Ramatex workers earn very low wages. Workers who have completed training earn N\$3-00 per hour, for overtime they earn an extra N\$1.50. Trainees receive N\$ 1.50 per hour plus 75 cents for overtime. Even when workers work long hours of overtime, they only reach about US\$ 70.00 per month.

Workers indicated how difficult it is for them to make ends meet with their meager income and most workers still have to share their limited income with their extended families and children. Most Ramatex workers work extended hours at short notice, are not provided with safety gear and endure humiliating body searches. They are not given sick leave or compassionate leave and there is a lack of proper and fair disputes handling procedures that has led to escalating conflict especially between the Asian and the Namibian workers.

Currently Ramatex employs about 7500 workers with more than 2000 of these being ethnic Chinese and Filipinos workers who are often brought into other countries as they are more skilled or to be used as supervisors. Often MNCs do not bother to train local people as most of these companies see themselves as being there for a short time and wanting to extract as much as possible and therefore do not play any role in building the industry in that country but just extract from trade quotas and cheap labour. These migrant workers are a symptom of the exploitative mentality of foreign investors in the garment sector in Africa.

In 2004 there have been disputes with both ethnic Chinese and Filipino workers over the exploitative conditions and broken promises by management at the Ramatex factory in Namibia. There has also been disputes at Ramatex factories elsewhere. In Malaysia, 26 workers were dismissed and others suspended over attempts to secure union recognition at the factory. There has also been disputes in Tai Wah.

The experiences of workers in these countries with Ramatex to date point out the urgent need to ensure compliance by foreign investors with host countries laws, regulations, workers rights, environmental, health and safety standards as well as international codes of conducts. The host countries need to further implement these codes as non-negotiable so a baseline can be developed to prevent multinational companies from moving operations to a more exploitable host for the sake of profit but to the detriment of the workers and the environment.

*Case study compiled from the research report on Ramatex by LaRRI (2003) with additional information from ITGLWF.*

# Case Study: Tri-Star

Following the beating of a female employee, Molly Nanteza, at Apparel Tri-Star (Uganda) Ltd., workers downed tools in October 2003 beginning a strike in which they locked themselves into their dormitories for two days going without food, water or bathing. Many becoming sick, vomiting and fainting due to the lack of ventilation. Their extreme actions were motivated by a desperate need to put an end to their exploitation as workers in a multinational garment factory. Apparel Tri-Star (Uganda) Ltd. responded by calling in the police who broke down the door to the dormitory and handed over the workers to management with instructions to settle the matter peacefully. The management proceeded to terminate the services of all 293 workers ordering them off the premises immediately without their wages.

Apparel Tri-Star started out in Sri Lanka growing from a small company to a company that soon employed some 25,000 workers in 32 factories and started exporting to the USA, Canada, Hong Kong, South Africa, the UK and other European countries. Following the reduction in quota entitlements in 1995 and citing financial pressures, the company sold off eight of its factories in 2002. Tri-Star followed other Asian based companies and set up operations in third world developing countries where labour is cheap and the labour laws are less restrictive. These countries namely being Kenya, Botswana, and Uganda, employing 15,000 workers and producing 15 million pieces of garment. Tri-Star is known to have produced for such name brands as Ralph Lauren (2002 net revenue \$2.3 million), Gap (2002 net revenue \$7.0 million), Guess (2002 net revenue \$0.8 million), Victoria's Secret (2002 net revenue \$8.4 million), Wilson, Champion, Warner Bros. and Grasshopper Holder.

The Uganda operation is a 100,000 square foot factory boasting 500 new automated machines with a capacity of 10,000 to 15,000 pieces per day. "With an attractive package offered to workers with canteen and health facilities". This "skilled workforce works towards increasing productivity and quality through a welfare package and incentive based on production targets" (Managing Director Mr. Kananathan) However one can conclude from the following complaints of Apparel Tri-Star (Uganda) Ltd. employees that this is not the case. They state that their working conditions allow for restricted movement in the dormitories and workplace including the use of the bathroom facilities or toilets in which males and females are forced to use the same facilities. Meetings with visitors such as parents and children are restricted. Communication among workers is limited. Workers are subjected to beatings and sexual harassment from supervisors.

There is a lack of accommodation for sick workers who are forced to continue working receiving no time off. Pregnancy is a crime punishable by dismissal. There is a clear lack of respect for human rights including excessive working hours of more than 14 hours per day without overtime compensation. The workers have no job security; low wages; no compensation or negotiated terms and conditions of service; and management refuses to deal with the union.

Despite 1400 of the 1500 workers being signed up members of the Trade Union, the management of Tri-Star has delayed recognition of the union contrary to Uganda's Trade Union Act. To further compound this the lack of sufficient government labour regulations and resources contribute to the inability of workers to receive redress for their grievances. Whilst there is a Minimum Wage Commission Board, consisting of employers, workers, the government, and independent personalities that negotiates the minimum wage, this board has not met in five years and there is no minimum wage in Uganda. The Ministry of Labour is unresponsive to disputes from workers through their trade unions and is in fact disregarded by Tri Star management. In 2003, the Managing Director of Apparel Tri-Star (U) Ltd., Mr. Kananathan, did not allow the Labour Commissioner, Trade Union officials and Workers' M.Ps entry into the factory during a strike. He also refused a meeting with other ministry officials.

Despite intense international pressure to stop the exploitation of workers in Uganda by Apparel Tri-Star, in June 2004 the President of Zambia invited Tri-Star to set up a similar operation in Zambia. This is an example of how governments are willing to ignore the terrible labour practices of some investors and instead of protecting their workers from known exploiters; they keep their eye on the money, rolling out the red carpet so that these investors may spread their bad labour practices to another country singing the song of how these investments will bring jobs to the people.

## Uganda Textile, Garments, Leather and Allied Workers' Union Recommendations

1. The State should stop shielding the so called special investors against the union and workers in general in this country by allowing these special investors to physically, mentally and psychologically torture the workers of this country and at the end injure the economy of the country for their own selfish benefits.
2. The Government should without further delay make sure that, the functions of tripartite in running the affairs of the Country are adhered to including particularly, the Industrial Court, minimum wages and other related tripartite functions.
3. The present labour laws should be adhered to so that the question of recognition is not delayed and the Government should immediately embark on overhauling to improve on the present labour laws.

*Compiled from information from ITGLWF and UTGLAWU*

# Asian MNCs And Campaigns To Improve Working Conditions

## Case Study: Nien Hsing

The Taiwan-based Nien Hsing Textile Co. a denim and jeans manufacturing giant, year end profits are in excess of US \$50 million. Nien Hsing, which is reportedly the world's biggest jeans supplier, has just two small factories in Taiwan, employing approximately 700 people, however in factories in Central America and Southern Africa the company employs many thousands more. Nien Hsing has come into the spotlight in recent years due to high profile cases linking the company to serious labour rights violations. In both cases, organizing efforts at the factory level were coupled with sustained international pressure to successfully pressure Nien Hsing to make concessions to workers' demands.

First in 2000 management at Nien Hsing's Chentex factory, in the Las Mercedes Free Trade Zone in Nicaragua, was charged with union repression and illegal dismissal of union members. A year long campaign ensued to press for reinstatement of the fired unionists and an end to the company's anti-union stance. Activists throughout the United States, where the jeans produced at Chentex were sold, carried out more than 400 actions to protest conditions at the factory. In Taiwan a coalition of organizations came together to form "Taiwan Solidarity for Nicaragua Workers," to put pressure on Nien Hsing in their home country. The Taiwanese activists held rallies and spoke at Nien Hsing's shareholder's meeting, drawing media attention to the reality of working conditions at the Chentex factory, where mostly young single mothers were earning an average of 20 cents per pair of jeans that retailed for US \$30. Legal battles were launched in Nicaragua and lawsuits against Chentex and Nien Hsing were filed in the United States, while in Europe CCC activists and others also took up the case. A trade union leader from Lesotho, where Nien Hsing also has factories, came to Nicaragua to express solidarity with the Chentex workers. In 2001, the Chentex union signed an accord with management and the union leaders and workers were reinstated. This precedent-setting victory reportedly was instrumental in encouraging union organizing drives at other factories in the Las Mercedes zone.

In 1991 Nien Hsing had opened its first jeans factory (C&Y) in Lesotho. With the African Growth and Opportunity Act (AGOA) opening up more possibilities to access the U.S. market via Africa, a second factory was opened 10 years later right across the street. By 2002 Nien Hsing employed approximately 7,500 people at its Lesotho facilities that produced jeans for U.S. and Canadian clients, including Kmart, Sears, Gap, and Cherokee. A third facility, a textile mill, was under construction at a cost of US \$8.6 million. In September 2004, those seeking to take advantage of the provisions of AGOA requirements, fabric will have to be sourced from Africa; with this new mill supplying fabric to their factories Nien Hsing will be in compliance with the AGOA requirements.

A variety of problems were reported at the Nien Hsing facilities: taking advantage of Lesotho's high unemployment rate workers were employed on a "casual" basis, at a lower minimum wage. This is legal for casuals employed for less than six months, however at C&Y some workers had been employed as casuals for ten years. Workers also reported verbal harassment, physical abuse, unsafe conditions (including locked emergency exits) and non-payment of benefits. ITGLWF Africa and the Clean Clothes Campaign took up the case, as did unions and NGOs in the United States and Canada. In July 2002 the ITGLWF-Africa and the Lesotho Clothing and Allied Workers Union (LECAWU) started an organising campaign at the two Nien Hsing factories. With increasing pressure on all these fronts, LECAWU and Nien Hsing signed a memorandum of understanding committing the company to recognize the union and enter into collective bargaining negotiations once the union had recruited a majority of workers at each facility.

## Documenting Labour Violations

During the past decade, organizations such as SOMO and the Clean Clothes Campaign (CCC) have documented violations of labour rights at Asian-owned garment, textile, and sport shoe factories both in Asia and in other parts of the world. For example, in a study carried out by the Urban Community Mission (UCM) in Jakarta and published by the German Clean Clothes Campaign in 2000 documented ongoing labour rights violations at PT Tuntex, a Taiwanese-owned garment factory producing for Nike, Adidas, Gap, and others.

Researchers found forced overtime, wages below the legal minimum, long working hours that violated local law, physical and verbal insults. A UCM researcher testifying during a November 2000 European Parliamentary hearing on labour conditions spoke in detail about the serious rights violations at the Indonesian factory. Follow-up research

carried out in 2001 and 2002 showed that significant labour rights violations continued to occur at Tuntex.

Meanwhile, Tuntex Textile is one of the leading Taiwanese investors in Swaziland, having invested more than US\$10 million since it came to the country in 1998 and owning several factories employing several thousand workers. When researchers visited one Tuntex facility in Swaziland in 2002 interviews with workers revealed a variety of problems, including forced overtime, low wages, and unhealthy and unsafe conditions (including locked exits). Though management told researchers they had signed a collective bargaining agreement with the union, workers reported that management had in fact refused to recognize the union even though membership exceeded the 50% mark necessary for recognition in 1999. So for over five years, whilst Tuntex applies delaying tactics by keeping the dispute in court, thousands of workers go without representation.

# Case Study: Matsapha Knitwear

Matsapha is an industrial area in Swaziland that houses a number of Asian owned export focused garment and textile production facilities of Swaziland. Amongst these are the facilities belonging to the Tuntex group including Matsapha Knitwear. These factories have been set up to take advantage of preferential trade access under the Africa Growth and Opportunities Act and the Cotonou Agreement. The companies benefit substantially from support from their own government as well as a variety of investor incentives offered by the small African country. In exchange they have consistently victimised workers, violated Swaziland labour law and international labour conventions. Yet Matsapha Knitwear still claims to be part of the global production community reaping the rewards of preferential access to the US market under AGOA which is supposed to be premised on basic fair labour practice as detailed in clause 145 of the Act.

Matshapha Knitwear currently employs over 2000 workers and is known to produce for the American market, including brands such as Liz Clairborne, Target, Rivertown and Jones Apparel Group. The story of stubborn refusal to adhere to internationally accepted labour standards by the management of Matasapha Knitwear goes back a number of years. The Swaziland Manufacturing and Allied Workers Union (SMAWU), an affiliate of the International Textile Garment and Leather Workers Federation (ITGLWF) began organising in the plant in 1998. On January 13, 1999 after reaching and surpassing the 50% + 1% membership required by Swazi law SMAWU applied for recognition from Matsapha Knitwear. According to Swaziland's Industrial Relations Act, the employer has 30 days to respond, either by accepting the union or by approaching the courts and requesting a verification count. Matsapha Knitwear did nothing. The workers' next step was to approach the court and ask for SMAWU's recognition as their union. After conducting a count, the courts ruled in favour of the workers, union recognition was granted. Matsapha Knitwear then appealed the court's decision. To the employer's advantage the appellate court found that the procedures had not been conducted properly and dismissed the previous decision. This appeared to be a delaying tactic to allow time for management to weed out union activists amongst workers at the factory. This coupled with the reluctance of the Swaziland government ministries to adequately enforce domestic labour law for fear of alienating the investment community led to a gradual demoralisation of workers efforts to become organised and enforce their rights.

During the latter part of 2003 an initiative to establish a common bargaining forum between union and employers was facilitated by ITGLWF culminating in the signing of a procedural agreement between SMAWU, SPRAWU and the Swaziland Textile Exporters Association. Two meetings were held to get employers to recognize trade unions. Verification counts through arbitrators were conducted to verify the 50% +1 memberships.

Since the signing of the agreement some companies have recognised the union and made a positive move toward a better relationship. While Matsapha Knitwear is not the only company that has failed to recognise the union it has stubbornly refused to participate in broader discussions leading to changes in industrial relations in the sector and continued to flout the law in its abuse of workers rights. After repeated requests by the union to Matshapa Knitwear to adhere to internationally accepted labour practices and to join the movement towards engagement between labour and management no change or cooperation has been forthcoming. As a result of this intransigence this employer received specific attention during the joint tour of the US by the General Secretaries of SMAWU and ITGLWF Africa during which they detailed the practices of Swaziland employers and called on international assistance for the efforts to establish democratic industrial relations in the garment and textile sector and backing for SMAWU's efforts to deliver justice to workers in this country.

## Working Conditions At Matsapha Knitwear

Precious Khutanga, a single mother of four children has worked at Matsapha Knitwear for 5 years. Her children live in Mahlanya, a town 20km away, while she works 10 hour days, with no time to rest. She can only visit them monthly because the trip is costly and often she skips lunch just to save money to afford the transport cost. She is not alone, most workers employed in the factory are women and for many the long hours at work take them away from their families, many have to find caregivers for their children.

Shirena Nutombela works alongside 59 other machinists, all of them working hard to reach an unrealistic target. Celestina averages about 50 pieces per hour, which is not even half of the 130 piece per hour target set for her by management. Celestina tells how targets are kept at this unrealistic level even when she has to learn new designs, this means that she never earns a target bonus and she is continually threatened that she will lose her job if her performance does not improve. Workers are physically and verbally abused, especially on paydays when their line manager tells them they do not deserve to be paid and threatens to cut salaries.

Thobeka Khumalo is forced to work overtime, if she refuses then her work card will not be signed for that day's work. Every payday workers must wait in line for their pay check which management does not begin distributing until 5PM. By the time Nothemba receives her paycheck it is dark outside and very dangerous. When she got ill, the line manager refused to sign her sick sheet so she returned to work before she recovered because she cannot afford to not get paid and she feared that if she stayed home until she was better then she might lose her job. Workers have no job security, they are told all the time that they are easy to replace and live in constant fear that they may lose their job.

Source: SMAWU, ITGLWF Africa and the Solidarity Centre 2004

## Section Two: Global Trade and Multinational Producers

Neo-liberal based globalization has seen increasing movements towards liberalized multilateral and bilateral trade agreements that develops the basis for a global supply system. Many of the agreements as negotiated reflect the relative power imbalances between North and South serving to facilitate the use of low cost labour and materials by increasing the freedom of MNCs to rove the globe in search of points of production and consumption whilst at the same time limiting the ability of the less powerful nation states to moderate the social impacts of these trends simply because this as a process is not profitable business.

Supply side economic development that characterise the neo-liberal agenda of stimulating economic growth through cheapening inputs and therefore price is a principal assumption that lies behind most such trade agreements. This approach attempts to resolve the accumulation crisis that much of the global capitalist world found itself in after the 70's by decreasing the cost of inputs thereby increasing returns which, by virtue of proportionately smaller gains being passed onto the consumer, would also stimulate volumes of sale.

This is as opposed to Keynesian orthodoxy that characterised much development thinking until the 70's that suggests the need to stimulate demand by increasing the spending power of the citizenry, often through welfare systems. One of the notable impacts of supply side economic orthodoxy is that it has been spectacularly successful for an ever smaller percentage of the globes population whilst the increasing majority must literally pay for the decrease in input costs both in terms of their labour but also raw materials from the South now with even less of a social security net as governments are forced into cutting social spending and selling off public service delivery to increase potential areas of capital accumulation now on the basis of cost recovery once again forcing the poor to bail the rich out of their

most recent accumulation crisis.

Initially developing from the Breton Woods system came the General System of Trade and Tariffs, (GATT) which has later come to be replaced by the WTO. With this transition the Multi Fibres Agreement was remodelled into the Agreement on Textiles and Clothing in 1994. This agreement like agricultural provisions within trade dispensation have revealed the fundamental hypocrisy of the global elite pretending to participate in a free trade system which when stripped of its ideology reveals nothing more than one set of rules for the powerful and another for the marginalised, for example, agriculture can be subsidised in the North but may not be subsidised elsewhere. It is a small wonder that MNCs have done so well in a never seen before beneficial policy environment whilst the global masses stare mouths open, throats parched, waiting for the trickle to eventually come down.

Where opposition has finally begun to emerge to the excesses embodied in the multilateral system of the WTO powerful nations and the US in particular has been quick to move to establish a network of bilateral FTAs providing the same market access as before and retaining greater control both of negotiations as well as the practice of the agreement.

In this section we look at a series of contributions relating to trade both to provide a context to the global garment trade but also to analyse agreements and legislation for any useful aspects that may be used in struggles to improve working conditions for the globally marginalised working in the garment industry. More specifically we shall cover the WTO, AGOA, the EU-SACU Agreement, The EU-ACP Agreement and the US-SACU Free Trade Agreement which has yet to be concluded.



# Trade and Investment Agreements

## Liberalised Trade and the African Garment Industry

With liberalization and the policy prescriptions of the Breton-Woods institutions, developmental economic planning that had used strategies such as import substitution in order to develop a domestic industrial base in African countries came to an end. The opening of markets saw the arrival of huge quantities of goodwill used clothing and cheaper imports from the East flooded the African domestic garment market all but destroying domestic garment production capacity in most countries. At the same time initially bilateral investment deals between Taiwan and some African states saw the emergence of foreign owned domestic production which was in most cases for export. As preferential market access agreements such as the Cotonou Agreement and AGOA came into effect investment from the East intensified. In many African countries now the domestic market for garments is catered for by the trade in second hand clothing and industries, where they exist, are specifically to take advantage of a countries trading status. This is not even entirely a south-north flow. The case of Malawi illustrates this point where due to a bilateral trade agreement with South Africa, Asian owned factories were set up and where supplying South Africa until AGOA refocused the target market to the US. The future however is very uncertain. AGOA has recently been extended including the less developed countries (LDC) provision that allows for the use of textiles sourced outside of AGOA eligible countries and the US. This extension is potentially a stay of execution for thousands of jobs in those very LDC's (the poorest of countries) as Africa has limited quality textile production capacity and US textile are too expensive suggesting that when Asian producers in Africa can no longer get textiles from internal sources they will rapidly withdraw from a country rendering the devastation of the garment industry in that country complete. This section also covers issues relating to the end of the Multi Fibres Agreement now called the Agreement on Textiles and Clothing.

Trade agreements push us closer to liberalised market economies through requirements that the governments in those countries are implementing policies of deregulation, privatisation and liberalisation, and that they are decreasing social spending and putting an end to government subsidies. This we are told will lead to economic growth, there will be more jobs, our living standards will improve and poverty will gradually disappear. The reality is quite different as living standards in the Third World continue to drop. Through these trade agreements we are allowing our resources to be exploited, opening our markets to goods and services from the North and making our people more impoverished.

The major beneficiaries of these trade agreements are multinational companies that use these trade agreements as tools to drive their economic agenda, gain access to our markets and increasing the exposure of our workers to exploitation.

Some trade agreements deal with a small range of goods, others are more comprehensive and may deal with a large range of goods and include services and investments. Trade agreements are essentially negotiated agreements



on access to markets through the reduction or removal of tariff barriers and/or custom duties on goods. These tariff barriers are a form of protection for local industries and by removing these export goods can enter our markets more easily, forcing local industries to compete or close down.

Foreign investors attracted by these trade agreements with the North set up export orientated production making these economies more vulnerable to global market forces and workers are increasingly at the mercy of global capital interests seeking greater profits. Multinational companies use trade agreements to secure the interests of global capital by including provisions on the protection of investors' rights in these agreements.

The conditions for trade under these agreements often extend WTO agreements. Governments make greater commitment to trade and investment in bilateral and regional trade agreements than at the WTO. On the other hand, these trade agreements could potentially make better provisions for issues that have been more difficult to negotiate at the WTO, for instance labour rights and better environmental policies. In order for this to happen parties such as trade unions and environmentalist groups need to be present to ensure that the interests of workers and our environment are protected.

However, there are concerns that there are power imbalances between parties in negotiations and that the bargaining power lies with the stronger nation who are then able to coerce weaker nation into terms that do not best suit their needs. Also developing countries may not necessarily have skilled trade negotiators limiting their ability to participate in the negotiations on an equal footing. And as more and more international trade is done under trade agreements, developing countries are becoming increasingly pressured to enter into trade agreements with industrialised nations.

## Decoding Agreements

The texts of trade and investment agreements are written in legalistic language which is often difficult to understand. Most of these agreements contain common elements and provisions. It is helpful to have some understanding of what they mean in order to analyse them and strategise. By seeking the answers to the following series of questions, you will be able to understand an agreement. By analysing the agreement you will be able to predict its impact on labour and then be able to develop a position of a trade agreement as a union and strategise on possible ways to influence the outcome of trade negotiations or organise campaigns on existing trade agreements.

It is important that the union develops the capacity to assess trade agreements. This section can begin to develop those skills and can be used to look at the SACU-US FTA (Southern African Customs Union - United States Free Trade Agreement) currently being negotiated. It could also be applied to AGOA (African Growth and Opportunity Act) even though AGOA is not a legislative act of the US Trade Agreement.

It is suggested that you work as a group when trying to work through the following questions. You will probably need to divide the questions between yourselves and break up to investigate the answers. Once you have made progress on the answers, you can get together again to compile them and discuss the implications of the trade agreement on labour, especially in your sector. You can then present your assessment to the union to develop a position on the trade agreement and strategise on possible actions.

## Access to information

A major obstacle to mobilising around free trade and investment agreements is that they are negotiated in secret. This makes independent analysis of the text and its implications for workers very difficult. Usually governments only publicly release the text once the agreement has

already been concluded, if at all. Where "consultations" have taken place with unions, they have usually been selective, based on very limited information, and little more than a way of trying to defuse potential opposition.

It might be useful to find out who has been consulted about the agreement. Which businesses, selected union officials, government ministries or departments or opposition parties?

What is the political process for concluding or ratifying the agreement?

Will it go before parliament for debate before signing?

Is there scope for challenging the agreement and the process before it enters into effect?

When it is known that a government intends to enter a bilateral trade and/or investment agreement with another country, pressure needs to be put on governments to release the text for public scrutiny long before negotiations conclude.

It may also be useful to identify and seek information and solidarity from trade unions or social movements in the other country which is party to the agreement.

## What kind of agreement?

The "new age" trade agreements can cover a broad range of areas. Trade in goods, trade in services, investment, intellectual property, government procurement, and a range of regulations and standards which impact on trade. Free trade agreements can vary quite widely in their coverage of products. It is useful to know which sectors are covered, and which, if any, are explicitly excluded.

## A number of questions need to be asked:

What kind of agreement is this? What exactly does it cover?

How does the agreement define the specific concepts and terms used in the agreement?

Trade in goods (which ones?) Services (which ones?) Investment?

How are these and other terms defined in the agreement?

What is the duration of the agreement? What is the process



for terminating, revising or renewing it?

What commitments has the country made at the WTO, through other regional or bilateral agreements, or as a result of the dictates of structural adjustment programmes? How do these compare to the agreement in question? Does this agreement go further than existing commitments? In what way?

(If there is a preamble to the agreement, it is important to note that this has no legal effect. It is what is in the provisions of the actual text of the agreement which is enforceable.)

It's also important to consider the broader geopolitical context in which the agreement is being negotiated. For example, in the case of a bilateral investment agreement, it is useful to know what level and what kinds of investment already exist that are owned by investors from the other country with which the agreement is being negotiated. Is it possible to identify key companies or industrial sectors and their umbrella organisations which are promoting this agreement?

How does this particular bilateral agreement relate to other actual or proposed regional or international agreements or arrangements? For example, is it seen as a first step towards a new regional agreement? Does it set a precedent for future negotiations on similar agreements with other countries?

Even without access to the text itself, can we deduce from existing trade and investment agreements or from an understanding of the policy objectives of either of the governments involved what the new agreement will cover? What is the political context? For example, is it portrayed as a "reward" for political support for the "war on terror" or a sign of commitment for certain positions at the WTO or another international forum? How will it be used to lock in and further accelerate economic "reforms" implemented under IMF or the World Bank structural adjustment programmes? How does it relate to promises of future aid commitments?

Are there progressive domestic (national, state, provincial or municipal) policies or measures that will be undermined or overwritten by the provisions of the agreement?

What are they? Why are they important to workers and their communities?

## **I**dentifying the weaknesses and pressure points

Just as there are variations of the form, scope and coverage of bilateral agreements, formulating campaign strategy and building opposition to free trade and investment agreements may vary from country to country. But there are some key aspects and provisions of such agreements which may provide useful entry points for mobilising opposition.

### **1. National Treatment**

This is a core provision in free trade and investment agreements. In the trade context it requires foreign products to receive no less favourable (and possibly better) treatment than local products. In investment agreements it means that a foreign investor/investment must be treated on equal or better terms than a local investor/investment. Likewise in services agreements. Effectively this prevents governments from giving preference to local producers, service suppliers, or investors. It severely restricts their capacity to encourage local development and local employment. It gives overseas-based corporations an open door into the country and its market.

### **2. Performance Requirements**

Governments have often sought to regulate investment so that it meets social and/or environmental policy goals. But many bilateral agreements specify that no performance requirements shall be imposed. Traditionally, performance requirements have included measures aimed to achieve a particular level of local content, hire a certain proportion of local workers, to limit imports and sales, and to transfer technology. When these measures are prohibited in favour of multinational corporations, what benefit is there for workers and local communities?

### **3. Rules of Origin**

Under a free trade agreement import duties or tariffs are reduced or even removed on a range of goods. Governments in the North and South have often used tariffs to protect local industries and jobs and raising revenue. (With the removal of tariffs comes the likelihood of local producers, especially smaller ones, not being able to compete with cheaper imports and being forced to close down.) Because the preferential treatment provided for in a free trade agreement is usually granted only to products originating from members of that FTA, rules of origin are important. These are the criteria which determine the national origin of a product. The country of origin of a product is usually seen as the country where the last substantial transformation took place. Enforcing and defining rules of origin for goods or services poses major problems.

This issue has been very controversial in a number of agreements and unions and other critics have campaigned to highlight the ways in which rules of origin can be used and abused by governments and corporations alike. In particular there are concerns about the ease with which goods processed partly or fully in a third country can get duty-free access under a bilateral agreement by being re-exported with just enough processing to satisfy rules of origin requirements.

### **4. Disputes and Disputes Settlement**

Some of the most crucial parts of any bilateral trade/investment agreement are the provisions about disputes and the mechanisms for settling and resolving these disputes. The scope for enforceable action to be taken by a government or an investor against a government for a law, regulation or other measure or action has greatly expanded the power of corporate capital over governments. So if a clever corporate lawyer can argue, using a bilateral trade and/or investment agreement, that actual or planned progressive labour or social policy legislation, environmental regulations are a "barrier to free trade" or will reduce the profitability of an enterprise, they probably will. Such a dispute will be heard in secret and could result in large awards of compensation (from the public purse to the corporate pocket!) and the law or regulation being changed or reversed.

Arguably, once signed, the broad scope, definitions and applications of the terms in such agreements, and these enforceable and anti-democratic disputes procedures only make it a matter of time before they are used by an unhappy investor to undermine or block the rights of governments to set policies.

*Taken from Bombarded by Bilateral Trade and Investment Agreements written by Aziz Choudry for Transnationals Information Exchange – Asia, 2002.*



## The African Growth and Opportunity Act AGOA

AGOA is a trade act passed in the US in 2000. It offers preferential access for certain African exports to the US for a period of 8 years and is due to expire in September 2008. AGOA extends the General System of Preferences (GSP) that gives preferential access for 4650 product categories, by an additional 2 458 product categories. These additional product categories are 36 energy related products, 622 apparel related products and 1 800 non-energy, non-apparel products. The vast majority of AGOA related exports from Africa are in fact oil.

It is not a trade agreement, as it was not negotiated with the African countries that are referred to as 'beneficiaries'. Therefore, the conditions of becoming a 'beneficiary' country are imposed conditions of trade. At present 37 Sub Saharan African countries qualify to export to the US under AGOA. The conditions contain the normal structural adjustment fair with a requirement that the applicant country "establish or be making continual progress toward establishing "a market-based economy that protects private property rights, incorporates an open rules-based trading system, and minimizes government interference in the economy through measures such as price controls, subsidies, and government ownership of economic assets." In addition some specific clauses protect United States foreign policy interests for instance a requirement that a beneficiary country "does not engage in activities that undermine United States national security or foreign policy interests...or provide support for acts of international terrorism and cooperates in international efforts to eliminate human rights violations and terrorist activities."

In a some what contradictory nature section 104, that determines the eligibility criteria also calls for "economic policies to reduce poverty, increase the availability of health care and educational opportunities... and protection of internationally recognized worker rights, including the right of association, the right to organize and bargain collectively, a prohibition on the use of any form of forced or compulsory labour, a minimum age for the employment of children, and acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health." The application of Section 104 however is not a transparent process at all and therefore subject to arbitrary decree where worker rights for instance are consistently treated as paper obligations by both the eligibility conferee and conferrer. The use of the progressive clauses is difficult for section 104 tends to be a very blunt instrument. Campaigners may show gross labour rights abuses in the apparel sector normally by foreign owned companies set up to take advantage of access to the US market but are reluctant to call for the removal of eligibility as this would remove these companies completely and impact across multiple economic sectors. Similarly US decision makers will refer to this as a reason for not acting on information of continual labour rights abuses.

Reports on AGOA in the US proclaim it to be a success due to the increased volume of trade with Africa as well as the creation of jobs. The only sector that has created a significant number of jobs under AGOA has been the apparel sector due to the labour intensive nature of clothing factories. Of the US\$2.2 billion non-energy exports under AGOA in 2002, apparel accounted for 40%. A good portion of these jobs in the sector in fact pre-existed AGOA or were associated with trade with other countries. Malawi for example used to predominantly export to South Africa. Since AGOA producers in Malawi have shifted focus to the US market although employment has remained much the same if not decreased with the closure of David Whitehead, the only significant textile producer in the country. Jobs in these factories are now counted as AGOA related job creation.

Where the sector has expanded due to US trade it has not spread across sub Saharan Africa but tends to be associated with pockets of investment. The major exporters of apparel under AGOA are Lesotho, Kenya, Madagascar, Mauritius, South Africa and Swaziland. Lesotho is the top exporter of apparel under AGOA and these exports have grown from US\$111 million in 1999 to about US\$500 million in 2003.

Apparel products are subject to AGOA "Apparel Rules", under which only 19 of the 37 AGOA countries are eligible. Under these rules raw material used in the production of apparel for export under AGOA must come from local sources, other AGOA eligible producers or the US. There is a notable exception to this rule in that it is not applied to countries that are considered Lesser Developed Countries (LDCs) until October 2004 under a "Special Rule" also known as the third country fabric provision. It is the benefits of this rule that has attracted most of the investment in the sector as it means that producers located in LDCs are able to use fabric imported from Asia in the manufactured garments, fabric often sourced within multinational subsidiaries or through long standing supply relations.

Whilst this growth in export earnings sounds good on paper, in reality all the large-scale apparel producers in Lesotho, Kenya and Swaziland are foreign owned by predominantly Asian investors. These investors are offered very attractive incentives in Export Processing Zones (EPZ) and are allowed to repatriate all of their profits, leaving nothing but the wages that are paid to workers in the country and often acting to



drain state funds where serviced industrial sites are provided free or at a percentage of cost. Whilst jobs have been created under AGOA the quality of these jobs leaves much to be desired both in terms of the working conditions and wages associated with these jobs as well as their sustainability.

**AGOA SEC. 104. ELIGIBILITY REQUIREMENTS could be used to insist a country applies its laws and enforces ILO conventions**

(a) IN GENERAL.—The President is authorized to designate a sub-Saharan African country as an eligible sub-Saharan African country if the President determines that the country—

(1) has established, or is making continual progress toward establishing—

(A) a market-based economy that protects private property rights, incorporates an open rules-based trading system, and minimizes government interference in the economy through measures such as price controls, subsidies, and government ownership of economic assets;

(B) the rule of law, political pluralism, and the right to due process, a fair trial, and equal protection under the law;

(C) the elimination of barriers to United States trade and investment, including by—

(i) the provision of national treatment and measures to create an environment conducive to domestic and foreign investment;

(ii) the protection of intellectual property; and

(iii) the resolution of bilateral trade and investment disputes;

(D) economic policies to reduce poverty, increase the availability of health care and educational opportunities, expand physical infrastructure, promote the development of private enterprise, and encourage the formation of capital markets through micro-credit or other programs;

(E) a system to combat corruption and bribery, such as signing and implementing the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions; and

(F) protection of internationally recognized worker rights, including the right of association, the right to organize and bargain collectively, a prohibition on the use of any form of forced or compulsory labour, a minimum age for the employment of children, and acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health;

(2) does not engage in activities that undermine United States national security or foreign policy interests; and

(3) does not engage in gross violations of internationally recognized human rights or provide support for acts of international terrorism and cooperates in international efforts to eliminate human rights violations and terrorist activities.

(b) CONTINUING COMPLIANCE—If the President determines that an eligible sub-Saharan African country is not making continual progress in meeting the requirements described in subsection (a)(1), the President shall terminate the designation of the country made pursuant to subsection (a).

## Free Trade Amongst Southern and Eastern African Countries

### Common Market for Eastern and Southern Africa (COMESA)

The Preferential Trade Area (PTA) for Eastern and Southern African States became the Common Market for Eastern and Southern Africa (COMESA) in 1994. The current COMESA members are Angola, Burundi, Comoros, Democratic Republic of the Congo, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Madagascar, Malawi, Mauritius, Namibia, Rwanda, Seychelles, Sudan, Swaziland, Uganda, Zambia and Zimbabwe, representing a market of 350 million consumers. Tanzania withdrew from COMESA in 2001. Its free-trade area (FTA) was launched on October 31, 2000, but only nine members (Djibouti, Egypt, Kenya, Madagascar, Malawi, Mauritius, Sudan, Zambia and Zimbabwe) met this deadline. Its agenda is to deepen and broaden the integration process among members through the adoption of more comprehensive trade liberalization measures, such as the complete elimination of tariff and non-tariff barriers, and the adoption of a Common External Tariff (CET); the free movement of capital, labour, goods, and right of establishment within COMESA; the adoption of a common set of standards and technical regulations, quality control procedures, certification schemes and sanitary and phytosanitary regulations; the standardization of taxation rates (including value-added taxes and excise duties), and conditions regarding industrial cooperation, particularly on company laws, intellectual property rights and investment laws; and the establishment of a Monetary Union. The Common External Tariff is to be implemented by 2004; the rates will be from zero percent to five percent, fifteen percent, and thirty percent, on capital goods, raw materials, intermediate goods, and final goods, respectively.

### Southern African Development Community (SADC)

The current SADC member States are Angola, Botswana, Democratic Republic of the Congo, Lesotho, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe. SADC members have negotiated a Trade Protocol, which was signed in August 1996, and which became effective on September 1, 2000. The ultimate objective of the Trade Protocol is the establishment of a SADC Free Trade Area.

The members of SADC have signed a Free Trade Agreement (FTA). The FTA is asymmetrical in nature. SACU countries will reduce tariff barriers at a faster rate than other SADC states. SACU has a period of five years to reduce tariffs while the other member states have eight years. Essentially 85% of trade will be duty free by 2008, with total liberalisation in effect by 2012. Effective 1 August 2001, all SADC states excluding Seychelles, Angola and the DRC, have lodged their instruments of implementation. This means that trade between all SADC countries with the three exceptions, benefit from tariff reductions.

Under the SADC Commercial Protocol, trade should be liberalized between member states and the increase of commercial flow within the region. There is another agreement signed by some SADC members countries South Africa, Mozambique, Malawi, Zambia and Tanzania called RSA/MMTZ. Under this agreement, these countries can export garments to SACU market.

## The European Union (EU) - Africa Caribbean and Pacific (ACP) "Cotonou Agreement"

The EU-ACP Partnership Agreement, called the "Cotonou Agreement", is an aid and trade agreement concluded between 76 of the 78 ACP (African, Caribbean and Pacific) countries and the European Union (EU) in June 2000 in Cotonou, Benin. It builds on 25 years of ACP-EU cooperation under four successive Lome Conventions.

Cotonou is a non-reciprocal tariff preference agreement that offers tariff and quota-free entry to EU for ACP countries. The preferences will be maintained until December 31, 2007. From 2008 onwards, a set of reciprocal Economic Partnership Agreements (EPAs), or alternative trade arrangements, will replace them. Those sub-Saharan African countries not in a position to enter into EPAs could be transferred into the EU's GSP. The Cotonou Agreement covers 100 percent of industrial products and 80 percent of agricultural products. Manufactured and processed products are exempted from customs duties. On agricultural products, separate concessions exist for tropical products and for temperate products. The EU has also agreed to separate trading protocols on five products: sugar, beef and veal, bananas and rum. Under Protocol 1 of the Cotonou Agreement which underlines the rules of origin, imports of clothing from an eligible ACP country may enter the EU duty free provided that a double processing of the product has taken place in an ACP country. In the case of clothing, foreign yarn must be processed in that country (or any other ACP country) first into fabrics and then into garments.

With regard to cumulation with South Africa, the relevant provisions are in article 6 paragraphs 5 and 9 of Protocol 1 of the Cotonou Agreement. The principle of paragraph 5 is that cumulation between South Africa and an ACP country is only possible when the products in question are granted the same tariff treatment by the EU. Since, according to the EU-South Africa bilateral trade agreement, South African clothing will only enter the EU duty free three years or six years (depending on the product) after the provisional entry into force of the agreement, i.e. 1 January 2000, cumulation between South Africa and an ACP country will only be possible starting January 2003 or January 2006 depending on the product. Annex XI and Annex XII to protocol 1 contains the list of products for which cumulation with South Africa can take place in three and six years respectively. When this cumulation becomes possible, it will fall under the provisions of paragraph 9, which grants full cumulation between members of the Southern African Customs Union (SACU). The full text of the agreement can be found at:  
<http://www.acpsec.org/gb/cotonou/accord1htm>.

## Everything But Arms(EBA)

On February 26, 2001, the EU General Affairs Council adopted the Everything But Arms (EBA) amendment to the European Union's Generalized System of Preferences (GSP), which came into effect on March 5, 2001. The EBA gives duty and quota free access to all of the products originating in the Least Developed Countries (LDCs), except arms and ammunitions. Only the three most sensitive products, bananas, rice and sugar, were not immediately liberalized. Full liberalization for these products will be phased-in by August 2009. One feature of the EBA is that LDCs can import agricultural products from third countries for their domestic consumption in order to export their own domestic production (i.e. - import/export swaps, or "triangular trade"). In addition, LDCs can, under certain conditions, cumulate "regionally" or "bilaterally".





## **A**GOA/EU-ACP: Potential For Use To Improve Working Conditions

The EU-ACP agreement is different to AGOA in that it is a negotiated trade instrument and not a unilaterally imposed piece of legislation. Because it is an agreement theoretically it should be able to be used in far more robust fashion as it is not simply up to the President of the United States to be able to withdraw eligibility. AGOA is far more easily used as an instrument of American foreign policy. When you examine the export figures from Africa under AGOA you will see that some 80% are oil related which provides a clearer picture as to what the foreign policy imperatives may be. Having said that though in terms of market access far more export of clothing and textiles are happening under the auspices of AGOA as opposed to the EU ACP Agreement. The EU Agreement also has certain problems in that it does quite clearly advance a free trade agenda and although some of the policy intentions around the trade dispensation may be developmental the actual negotiations were still dominated by the power of the EU market and much of the agricultural protectionism of the past is still in place along with certain narrow sectional interests of business lobbies.

Both dispensations do however make reference to basic labour standards around freedom of association and collective bargaining. AGOA at section 104 and article 50 of the EU-ACP agreement. Both instances therefore do have potential for activists to mobilise and bring pressure to bear on Asian MNC's that violate these rights through international pressure on domestic governments. These are however very blunt instruments of persuasion, as there is a fear of losing trading status. Therefore other enforcement measures must be proposed that will result in better working conditions and not in the loss of jobs.

## **S**outhern African Customs Union (SACU)

The Southern African Customs Union (SACU), in place since 1910, is the oldest customs union in the world. The re-negotiation of its 1969 Agreement, that replaced the 1910 Customs Union Arrangement, was concluded in 2002. However, the 1969 SACU Agreement is still in place, the 2002 Agreement having yet to be ratified by all parties.

The United States and the five member countries of the Southern African Customs Union (SACU)- Botswana, Lesotho, Namibia, South Africa and Swaziland- launched negotiations toward a free trade agreement (FTA) in Pretoria, South Africa on June 2, 2003. It will be the first U.S. FTA in sub-Saharan Africa and the first time the SACU nations have jointly negotiated such an agreement.

Through an FTA, the United States would gain guaranteed preferential access to its largest export market in sub-Saharan Africa – worth more than \$2.5 billion in 2002, indicating that the US has much to gain through this agreement with the SACU countries. The FTA is also about gaining access to an export market in competition to the European Union that has had the advantage of a free trade agreement with South Africa. Whilst the US pushes its economic agenda, it also has a political agenda; by creating greater economic dependence on the US in Southern Africa, the US is able to influence political decisions and garner support for US initiatives from one of the most stable regions in Africa.

There are also concerns that the FTA due to completed by mid 2005, will undermine trade from other African countries with the US under AGOA.



# The Expiration of the Multi Fibres Arrangement and AGOA 3

The Multi Fibres Arrangement is old, coming into force as far back as 1974. Since then it has been extended on several occasions, in 1977, 1981, 1986 and 1994.

The agreement was originally introduced by wealthy/industrialized countries that feared the loss of many jobs in their countries as a result of open competition on the world market with less developed countries generally characterised by low paid and easily exploited labour forces. In the South we have watched developed countries praise the virtue of the free market whilst themselves practicing protectionism. The same is apparent in the agricultural subsidies by Northern countries to their farmers, keeping this sector artificially competitive on a world market. Africa has never enjoyed the likes of 30 years of protectionism, rather rapid change and liberalization were forced on many countries as a result of World Bank and IMF orthodoxy linked to export led growth in many instances replacing the import substitutions policy that had created the industry in these countries in the first place. The result has been disastrous in most incidents achieving only the replacement of a fairly stable local production and consumption market with the volatility of global trade and large companies roving the globe in search of profits and vulnerable workers. African countries certainly did not enjoy ten year phase out periods to protectionist agreement. Perhaps one of the biggest achievements of the MFA is the stunning hypocrisy of developed countries that it has come to embody as well as to serve as yet another example of the bankruptcy of free market ideologies that are used to hide the real power interests being exercised in the global economy.

On 1 January 1995 the WTO Agreement on Textiles and Clothing (ATC) was entered into by WTO member countries which was essentially an agreement that would phase out the quotas of the MFA over ten years, ending on the 1st January 2005.

The MFA did not stop the closing of factories in the North it only slowed it down as the intensity of trade and the downward pressure in price have meant all but the most desperate of workers have been evicted or left this industry. In the United States the production of clothing is seen as a sunset industry and traditional employment in the sector has dropped dramatically over the last decades. Europe has in a more mixed manner witnessed this overall trend as well. Indeed time does give an opportunity to cushion the blow of shifting global trade for voters in the North a luxury that will not be extended to workers in the South as the ending of the agreement results in market corrections that could in many cases be quite devastating. According to most studies done on the topic the largest beneficiary is likely to be China which has had restricted access to the US market for many years. Studies suggest that in the absence Asian companies looking for cheap production and e of quotas US retailers are likely to begin to source increasing amounts of product from the China known for competitive price, price quality and reliable delivery. As China takes a greater market share other countries currently supplying the US will lose out on market share and workers will be laid off in these countries. The MFA has also had a marked affect on the distribution of the industries between different developing countries. Quotas have been negotiated on a country by country basis and have been established at different levels. As such the abolition of quotas will benefit some developing

countries while others will be very negatively affected

"One of the realities we must face is that the MFA's existence did encourage the entrance of several countries into the export of textiles and clothing that otherwise would not have been involved; I can mention both within and without the ranks of the MFA members, Sri Lanka, Indonesia, Mauritius, Maldives, Panama and Nepal among others." (World Bank Publication 1990)

What the World Bank does not make explicit is what is to become of the workers in these industries that face potential collapse with the removal of their quotas. Behind all the figures and neo liberal ideology lies a more insidious feature of our global trading system and that is that it values life differently. This is brought even more sharply into focus when considering that the end of the MFA is not just about the garment industry. Many developing countries were coerced/conned into signing WTO agreements such as TRIPS, TRIMS in return for the removal of quotas. Similarly these multilateral agreements were pressured through the use of other preferential trading access to markets such as AGOA and the COTTONOU agreement. Whatever small benefit derived from these systems by the creation of some garment jobs amongst those nations which will benefit needs to be weighed against the impact of such agreements on the poor that sees job losses in the public sector, the enshrinement of concepts such as cost recovery and the consequent increasing price and hence inaccessibility of basic services for the poor.

More specifically, what is the impact of the end of the MFA for African countries? It is difficult to estimate the impact on the garment sector in Africa largely because the sector is so small where Africa supplies only 1% of the US retail market. However using the above logic it is likely that it will have some negative effect.

Besides the inevitable long term consequence of the MFA's removal, Africa enjoys the advantage of having so little that it does not have that much to lose. A bleak way of looking at it but nevertheless lets consider the argument. Many least developed countries (LDC) already have duty free and in some instances quota free access to major Western markets largely because there is insufficient infrastructure to seriously take advantage of this. Secondly free trade, structural adjustment and second hand clothing trade have all but removed most countries domestically owned garment capacity in any event, so Eastern Imports may stunt the growth of a domestic sector but it will not cause significant job losses. Thirdly many countries are AGOA eligible and have duty free quota based access to the US market until 2015. In fact the removal of the LDC clause allowing LDC nations to use cloth imported from anywhere in the manufacture of garments, at the end of 2007, poses a much bigger threat to jobs in those African countries without textile capacity than does the ending of the MFA. Wages in African countries are in a number of instances similar to those paid in China if not lower. Africa is thus quite capable of competing but it does mean the race to the bottom has been accelerated by the existence of greater competition. The end of the third country fabric provision poses a real threat to the jobs that do exist in the sector and action needs to be taken to lessen African dependency on the United States and rebuilding a viable

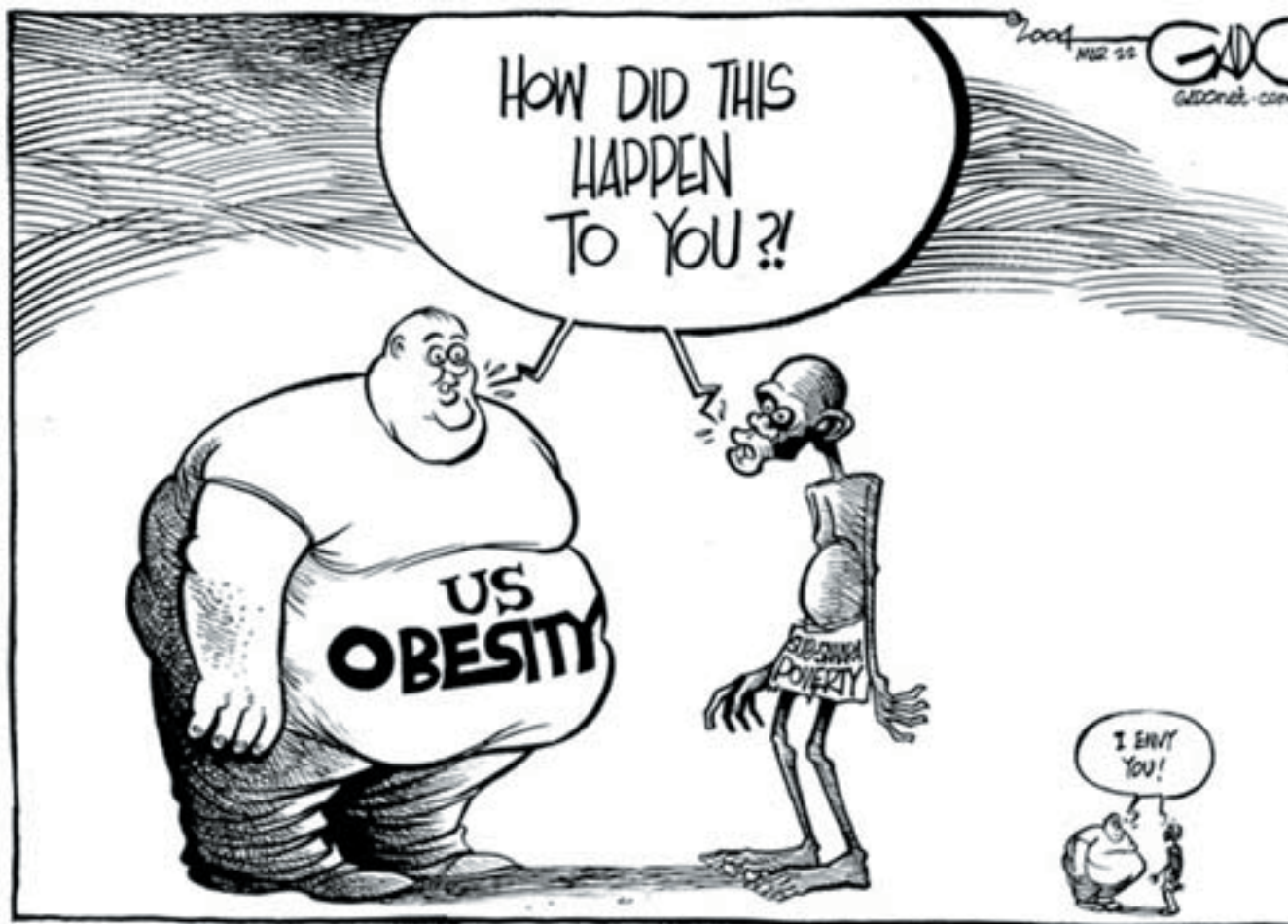
domestic production capacity that is aimed at the African market. Section 4 of this book deals with these issues in greater detail.

## Section Conclusions

Trade and trade regulations play a central role in determining the nature of the industry and employment in it. Whilst there are clauses in trade regulation that may be of use in fighting for better working conditions such as clause 104 in the AGOA, these are blunt instruments though and need closer examination if they are to be of use controlling employer actions that contravene law and international standards. ITGLWF at the 2003 strategic forum developed a position that calls for more active and effective monitoring of labour conditions associated with enabling trade legislation. The same forum also argued that employers should be regulated through a mechanism of preventing them exporting under enabling legislation where continued abuses are present. This may for instance refusal to recognise a union where the national labour law allows for this as this is contrary to AGOA which calls for the adherence to national labour laws.

The ending of the MFA and the AGOA third country fabric provisions threatens much of the employment that has been created in the last years under these trade dispensations. The absence of a domestically owned production sector threatens to leave people worse off than before the so called enabling trade dispensation. Engagement around trade issues is therefore important for unions at both a political and practical reasons.

The nature of the trade framework has attracted particular forms of investment and employment. The framework has certain strategic aspects that may be used by unions in fighting for improvements in working conditions. International labour standards, Retailer and multistakeholder codes of conduct, regional labour standards and eligibility clauses in trade dispensations all create the opportunity for unions to tap into global networks to bring attention to abuses. The next section deals more specifically with such actions.



# Section Three: Tools And Institutions For Regulating Asian MNC labour Practices

In this section we examine different methods of attempting to regulate the employment malpractices of Asian MNCs. This can be done directly and/or through applying pressure to retailers and brand names that these MNCs supply to ensure that labour rights are upheld along the supply chain. This book does not deal with issues around organizing and negotiations at a shop floor or industry level. These are the subject matter for the second and third booklets in the series. It is however important to note that without some form of shop floor organisation amongst workers most of these tools that will be discussed are near to useless as instruments of change.

As the nature of the garment industry and global economic policies have shifted unions and groupings in civil society have had to come up with new ways to fight employers for better standards. What this form of globalisation has meant is that big companies have been able to free themselves of employing many people and the responsibility that goes along with this by outsourcing and subcontracting to smaller companies. Thus the brands and retailers for a long time just denied that the workers belonged to them and therefore argued that they were not their problem. Ongoing campaigning in some of the wealthy countries has to some extent led to a change where groups like the CCC networks have informed the buying public in these rich countries of the kinds of places that their clothes are made. This was a long fight but companies have begun to acknowledge that they have responsibility to these workers even if not 'directly' employed by them. This has been seen in the rise of corporate codes of conduct, multi stakeholder initiatives and clauses that regulate or at least mention labour rights and conditions in some trade dispensations.

## Support From ITGLWF For Organising In Multinationals

Contributed by Doug Miller Multinationals Project Coordinator  
ITGLWF Head Office

### Thinking Globally Acting Locally

National unions within SADC are realising how crucial it is to take an internationalist perspective in their approach to organising. Meeting local opposition from factory owners in EPZs in such countries as Mauritius or Lesotho has forced trade unions to take the struggle to the headquarters of the suppliers in Asia as well as the headquarters of the merchandisers in the USA.

Such an approach requires considerable international co-ordination. This is where the ITGLWF at both regional and headquarters level has a particular role to play. Firstly, we can put the factory into a global context by assisting with research on the company in question. In the case of Ramatex in Namibia we discovered that the Malaysian



multinational had garment factories in South Africa, which were organised. By putting the union organisers in Namibia in touch with SACTWU they are now armed with vital bargaining information when dealing with the company and representing their new members.

Because some of the US prime contractors have track records of being socially irresponsible multinationals in their choice of suppliers, they have attracted widespread global criticism for operating supply chains, which continue to drive wages and conditions to the bottom.

In an effort to deal with this criticism, these multinationals have sought to publish what are known as codes of conduct. These are statements of what the multinational merchandiser or retailer expects from its suppliers in terms of its treatment of workers. Although such codes have not been negotiated and are deficient in some cases in their exclusion of key employment standards e.g. on freedom of association and the right of trade unions to collectively bargain on behalf of their workers, they can nevertheless be used as norms in negotiations with the supplier companies.

For example, Novel Denim, a Chinese owned multinational which has factories in Mauritius and South Africa, supplies, amongst others, the US multinational merchandiser/retailer the GAP. The GAP has a code of conduct, which makes explicit reference to the principle of freedom of association. In discussions with the GAP compliance officer for South Africa, ITGLWF Africa region warned the company that it would have to ensure its suppliers complied with the terms of the company code of conduct or face an international campaign which would hurt the company's image, its brand and ultimately its sales and profits. These campaigns require considerable coordination but the ITGLWF is equipped to mobilise such action, which is swiftly picked

up by the NGOs and appears on websites throughout the world.

Knowing whom you are producing for is thus a crucial piece of information in a union organising drive. The ITGLWF can assist affiliates in undertaking the necessary research. Links to workers in the same company located elsewhere in the world can be created. LECAWU found it necessary to forge links with workers at Chentex in Nicaragua and Nien Hsing in Mexico to negotiate a recognition agreement with Nien Hsing and CY Garments in Lesotho. Their success in achieving an agreement with a notoriously difficult Taiwanese employer was in no small measure due to the international pressure which these links had mobilised. The ITGLWF can establish and maintain such international coordinating structures.

- So if you are planning an organising drive in the export sector make sure you have done some homework on the company before you start.  
The ITGLWF both internationally and regionally can help you here both in building an overview of the company's operations but also in establishing who the major multinational clients are.
- Once your recognition campaign starts it is likely that at some point your trade union's rights will be violated in some way.  
Such violations constitute infringements of globally recognised trade union rights and therefore require a global response – again contact the ITGLWF regional/head office.
- Finally to be effective you need to consider yourself as part of a Global Union Federation – the ITGLWF can put you in touch with your counterparts where they exist in other parts of the same company's global operations.

## ITGLWF Resolution on MNCs

Multinational companies are becoming stronger than nation states. Generally, these international corporations are immune from the democratic controls which often limit the actions of national governments. The UN has noted that more than half of world trade is produced by multinational companies and more than one third of world trade is composed of goods transfers within different branches of the same multinational corporations. Two thirds of all international transactions in goods and services combined are dependent on multinational company operations. The increasingly free movement of capital allows corporations to transfer production without regard to national boundaries to wherever costs are low. Often production is outsourced or subcontracted to ever smaller units of production. Some of the largest and most powerful corporations have very few direct employees but they are able to maintain the required quantity and quality of production by franchise or subcontract arrangements around the world. It is at this level that the worst employment practices are found.

The ITGLWF will:

- \* promote cooperation between affiliates dealing with the same multinational enterprises;
- \* in conjunction with its regional organisations, develop a dialogue with multinational enterprises with a view to concluding international framework agreements relating to trade union organisation and collective bargaining as well as to information and consultation rights;
- \* promote the creation of world-wide company councils within individual multinational corporations;
- \* actively participate in the debate on the social responsibility of business;
- \* seek to be represented where standards of implementation, monitoring and verification of codes of conduct covering labour practices are set;
- \* exert pressure on multinational manufacturers, merchandisers and retailers to set down guidelines on workers' rights for their own operations and for those of their suppliers, contractors and sub-contractors, such guidelines to reflect all of the fundamental principles of the ILO, including the right to form trade unions and to bargain collectively and preferably be in the form of a framework agreement negotiated through the trade union movement, or, where this cannot be achieved, in the form of a multi-party sponsored corporate code of conduct reflecting all of the fundamental principles of the ILO;
- \* encourage affiliates to make use of such framework agreements and codes of conduct as a tool for organising workers and improving working conditions;
- \* campaign to ensure that a uniform approach is adopted to the content of codes of content, and that companies adopting such codes put in place a system of implementation, internal monitoring and viable independent verification, with regular impact assessments;
- \* campaign to ensure that codes of conduct are not used as a substitute for effective labour legislation, nor as an alternative to union organisation;
- \* demand that companies externally sourcing their production provide full disclosure of their suppliers worldwide.



# International Solidarity

International solidarity works, particularly if it accompanies and supports effective national action. In some countries, the mere threat of action by international trade union organisations and NGOs has been sufficient to achieve settlements, secure the reinstatement of sacked union leaders or end legal attacks on unions.

## The Range Of International Solidarity

Perhaps the best known part of international solidarity is the co-ordination of protest or solidarity messages, but it is much more than that. It involves other activities, including participating in international campaigns, establishing contacts or organising meetings between those trade unions which represent the workers employed in the countries where a multinational company operates. It may also mean co-ordinating publicity, exchanging experiences, intervening with inter-governmental and other organisations, or participating in world or regional company councils and other formal and informal networks of trade unions organised around specific multinational companies. There are several international NGOs that assist unions in solidarity actions such as the Clean Clothes Campaign through the urgent appeals system, this is discussed in detail in booklet 2.

Solidarity can also be financial, although means may be limited. Trade unions may face massive costs because of attacks by employers or governments, fines or other legal actions which threaten their ability to defend their members' interests. In recent years, there has been a significant tightening in legal restrictions on union rights to take industrial action around the world. Secondary boycott action and other forms of solidarity have been amongst the principal targets for anti-union legislation. Employers have also become much more aggressive in using the law. Sanctions that can be used against trade unions for even minor breaches of the law are often out of all proportion to the seriousness of the action, including huge fines for damages, seizure of assets or even imprisonment of officials.

It is clear that trade unions must work vigorously to amend and repeal these anti-union laws and to secure the right to undertake solidarity action both nationally and internationally. Globalisation should not combine increased freedom of action for companies across boundaries while restricting the rights of workers to act globally. Experience shows that the law can also be an excuse as well as a genuine reason for not taking action. It is much easier to simply say "the law prevents us from doing anything", rather than "we can do the following". As some doors close, others may open.

Delivering effective international solidarity action should mean concentrating on what can, rather than on what cannot, be done. Solidarity does not necessarily have to be prompted by a dispute. There is also the work of anticipating and preventing disputes through, for example, established relations with a company which may include a global agreement. Solidarity is a way of thinking which is best expressed through democratic organisation and participation.

## Requesting And Showing International Solidarity

The essence of solidarity is requesting and providing assistance. These acts are rarely as simple as they sound. The amount and quality of help offered is influenced by how it was requested. For trade unions, requesting and showing international solidarity involves many of the same principles that apply nationally, but there are also some important differences. Both in requesting and showing solidarity, it is important to keep the fabric of affiliations and counterparts in mind. The ICFTU and ITS have identified the following situations where informing and consulting other trade union organisations is especially important for successful international trade union co-operation:

1. Trade union counterparts should be informed and consulted when contacting non-trade union organisations or trade union organisations in other countries that do not share a common international affiliation;
2. National trade unions should involve their national centre when contacting national centres in other countries;
3. ITS affiliates should inform the ITS of bilateral requests for assistance;
4. National centres should inform the ICFTU and its regional organisations of requests for assistance made by organisations from other countries; and
5. When solidarity actions or campaigns involve at least one national centre or the ICFTU, national centres in other countries where assistance is sought should be informed or included in the campaign.

National trade unions have several routes to request and show solidarity - through the national centre, directly with foreign counterparts and through their ITS. As already stated, in cases involving particular companies, the most efficient means of securing international co-operation is nearly always to begin to build support through the ITS. They can also work together with their ITS with NGOs like the Clean Clothes Campaign. Although in some cases it is possible that the ITS and others may not be able to help, one should not assume that this is the case. In addition, if a trade union discovers that the international relationships of an employer are outside of its industry and beyond the jurisdiction of its ITS, the union should go ahead and contact the ITS anyway. ITS have relationships with one another and work together in many such situations. The ITS also co-operate with the ICFTU, the TUAC and others. In many circumstances, national centres can, and do, contribute to international solidarity on specific disputes with companies. In very serious cases, it may be useful if a representative of another trade union, which has a collective bargaining agreement with the parent company, and/or an ITS representative visits the union and personally learns, on the spot, about the dispute or problem. This may also considerably strengthen the commitment to and effectiveness of international solidarity action. Another way is for workers or officials from the union in dispute to visit, with ITS backing, other countries to generate solidarity. A few general principles for contacting the ITS, which make international solidarity work easier, are mentioned in the checklists on requesting and showing solidarity.

Taken from the A Trade Union Guide to Globalisation  
ICFTU Dec 2001

# International Campaigning

## What Actions Can Be Done And How To Mobilise International Support For Campaigning?

Different types of campaigning methods can be used to influence different actors and participants in the supply chain. This is important to understand so that local organising by trade unions and workers can be linked into global campaigning to support these local efforts.

**Suppliers:** Local and international demonstrations and actions, refusals to offload, lobbying government, solidarity actions with foreign suppliers, efforts to stop supplies from getting through.

**Garment producing factories:** industrial action (strikes, sit in, pickets, marches, demonstrations), direct action, consumer actions, sabotage, use local networks, occupation of buildings, community mobilisation.

**Subcontractors:** awareness creating meetings, media, big marches, pressure from supplying factories, organise workers in subcontracted factory.

**Informal labour:** raise legal issues (e.g. child labour), pamphlets, enforce ILO convention on home workers, connect them to the supply chain, lobby activities and the media.

**Transport companies:** solidarity action, work with transport unions.

**Agents:** transparency campaigns, codes of conduct (ethical standards), internet/email petitions.

**Retailers:** actions and demonstrations in shops, picketing shops, shop lifting, post cards, protest letter campaigns, codes of conduct, media, disruptions, solidarity action from retail unions.

**Customers:** awareness campaigns, influence behaviour, write posters to give information on working conditions, trade unions / media, using famous people, presenting them with substitutes / alternatives.

## International Campaigning

An example of an international campaigning organisations is the Clean Clothes Campaign, a large network of consumer-, research-, women organisations, solidarity groups and (international) trade unions. The Clean Clothes Campaign campaigns for improving labour conditions in the garment industry, in the whole chain of production. They do this by mobilising citizen power; citizens demand for changes in the labour conditions in the clothing they are buying. The main demand of the Clean Clothes Campaign is that retailers live up to their responsibility of ensuring that clothing is produced in decent conditions. It is of course important to be clear about how good working conditions are defined. This cannot simply be left up to the retailers as their single goal is profit and they will define good working conditions in such a way that best allows them to make the most profit. Therefore the Clean Clothes Campaign drafted a Code of Conduct, together with the international trade unions, based on International Labour Organisations (ILO) conventions. The (ILO) is an organization where trade unions, governments and companies from around the world come together to set the minimum labour standards.

**These principles are:**

1. freedom of association,
2. the right to collective bargaining,
3. no discrimination of any kind,
4. no forced or slave labour,
5. a minimum employment age of 15,
6. safety and health measures,
7. a working week of 48 hours maximum and voluntary overtime of 12 hours maximum,
8. a right to a living wage,
9. establishment of the employment relationship (a contract).



# The Clean Clothes Campaign (CCC)

## *Campaigning for better working conditions in the global garment industry*

### **What is the Clean Clothes Campaign?**

A 1989 demonstration in front of a Dutch clothing store, protesting bad working conditions in the Philippines where the clothes were actually produced, grew into an ongoing campaign in the Netherlands, called the Clean Clothes Campaign (CCC). The campaign, focused on improving working conditions in the global garment and sportswear industries, is now active in 11 other European countries.

Each of the European CCCs is a coalition of NGOs and trade unions. They work autonomously at the national level, and come together to work jointly at the European level. This European campaign network is backed up by a broader, international network that includes trade unions, NGOs, and individuals in countries where garments are produced. This means Asia, Africa, Eastern Europe, and Central America. The CCC also cooperates with similar campaigns in the United States, Canada, and Australia.

Outside of Europe the CCC operates more as an informal network -- organizations or individuals do not become official members or pay dues -- but all those involved in the CCC network are committed to actively working in cooperation with other coalition members to improve conditions in the garment and sportswear industries. This means seeking to bring conditions up to the labour standards of the International Labour Organization (ILO), and to also lessen the environmental impact of garment production. Because a high percentage of workers in the garment industry are women, the CCC strives to incorporate a gender analysis into its strategizing and approach to campaigning. The CCC also recognizes that the current structure of the international garment industry is largely carried out in the informal sector and that significant use is made of migrant labour. These factors bring special challenges that the CCC seeks to address.

### **What does the CCC do?**

The CCC has four broad categories of activity that ultimately aim to move us closer to our main goals -- improving working conditions in the industry and empowering workers.

#### *These areas of activity are:*

#### **Raising awareness & mobilizing consumers**

Multinational corporations (MNCs) spend millions of dollars each year on advertising and marketing campaigns to get consumers to buy the products they are selling. For them getting the attention of consumers is worth this huge amount of money. Brand name companies compete intensely for consumer loyalty, and therefore consumers can influence how these companies operate. The CCC is a consumer campaign, and harnesses the power of consumers to push for positive social change. We gather information and present it to consumers in a variety of ways (educational programs, demonstrations, ads, debates, books, rallies, internet) so that they know the truth about how clothes are produced (low wages, long hours, repression of trade union rights, sexual discrimination, etc.). Armed with this information we encourage consumers to pursue a variety of ways to take action to improve conditions. Generally, the CCCs in each European country will inform consumers about the practices of the specific brands that dominate the market in their country.

#### **Pressuring companies to take responsibility**

The campaign puts pressure on companies to take responsibility to ensure that their products are made in decent working conditions. We also pressure them to adopt ethical buying practices -- for example in relation to pricing and scheduling -- otherwise their suppliers will not be able to enforce requests to improve work place conditions. The CCC believes that companies at the top of the garment industry supply chain have to act upon this responsibility at all levels of their supply chains. Such supply chains, i.e. all workers involved in producing clothes for the international market, can span the globe and include workers wherever they are based -- from homeworkers, to those informally employed, and those working in factories. The CCC makes demands for structural improvements and also pressures companies to take action on individual instances of labour rights violations. This is through our urgent appeals system. With this system we receive, verify, disseminate, and follow up on specific requests for assistance in cases of labour rights violations. The demands that we publicise and pursue are those made by the workers themselves -- they take the risks (in terms of safety and loss of jobs) therefore the CCC believes that they should set the strategy and make the decisions about if and how their case is presented to the brand name companies involved, the public, and the media.

#### **Solidarity actions**

The urgent appeals system is also an example of the solidarity work that the CCC does to support workers, trade unions, and NGOs. We also organize research and exchange programs and international seminars that help create spaces where international strategies to improve working conditions can be debated and developed. Both the solidarity work and the CCC's work with consumers are supported by our function as a clearinghouse for relevant information.

#### **Lobbying and legal action**

Most recently the campaign is exploring legal possibilities for improving working conditions (that includes for example investigating the possibilities for lawsuits against companies in their home countries for violations of labour rights in other countries) and lobbying for legislation that would promote good working conditions. The CCC believes that government has an important role in ensuring that good labour standards are enforced (in many countries where garments are produced there is good legislation, but enforcement is lax). The CCC does not promote a link between trade

agreements and labour standards (ex. inclusion of social clauses in such agreements). The campaign is actively lobbying for laws that would compel governments to become ethical consumers. Governments -- at the local and national levels -- spend millions on uniforms, for example, and the CCC believes that these should all be produced in workplaces that respect workers rights. The CCC recognizes that states are under pressure (for example from the World Bank and IMF) to create an atmosphere (tax breaks, repression of union rights, low wages) that is attractive to foreign investors, but that does not mean they should ignore their responsibilities to their people.

### **The CCC and Codes of Conduct**

Codes of conduct are lists of labour standards. Today, many companies have written up their own codes and they claim that these standards are enforced in the workplaces where their garments are made. This is generally not true. Nevertheless, the CCC uses these "company codes" to try to pressure companies to improve conditions for their workers. We believe that if companies are breaking their own rules and the workers want to make an issue of it, then attention should be drawn to this. In this way, the CCC has used codes of conduct as a campaigning tool, both in relation to specific cases of rights violations and in our general awareness-raising efforts. For example, we inform consumers what a big brand name company says in their code (minimum wages, safe workplace) and then what the reality is (wages below minimum, locked fire exits). We also inform workers who are trying to organize in their factories what the promises are that the brand name companies are actually making to the public in countries where the clothes are sold. But a code can easily be just a piece of paper that makes companies look good -- lots of beautiful promises -- unless workers know about them and they are actually enforced. The best codes are good labour laws that are enforced, but given the lack of political will in most garment producing countries, other tools have to be pursued in the meantime, to create a space to allow for worker organising.

The CCC pushes companies to have codes that are made up of ILO standards. In this way, the promises made are not vague, but are written out in clear language that has been discussed internationally. The CCC also pressures companies to have a code that requires full implementation of the standards listed, and requirements for regularly monitoring code compliance. The CCC also believe that claims about code compliance must be independently verified. The CCC has developed a model code as a guideline and is currently involved in several projects to get a better understanding of what would actually constitute a good monitoring and verification system. More information on these initiatives and what has been learned so far is available via the Internet at <[www.somo.nl/monitoring](http://www.somo.nl/monitoring)> or from the CCC International Secretariat. A CCC priority is to push for worker involvement in code development and systems for code compliance. Though codes are voluntary initiatives, if they call for the implementation of good standards and create inclusive methods to allow for worker empowerment (ex. systems for workers to file complaints or get training) then we think this tool should be used.

### **CCC Resources Available to the Public**

The CCC produces and/or distributes a wide variety of materials in a variety of languages. These resources have different goals -- for example some are geared specifically toward raising awareness among children, sports fans, or workers. CCC materials include:

- research reports on working conditions
- profiles of "brand name" companies (including information on their codes of conduct)
- campaigning materials (leaflets and posters), including materials to use in lobbying government (also at the local level) to adopt policies that support the enforcement of labour standards and ethical purchasing
- video documentaries about working conditions and campaigns
- information on codes of conduct and monitoring and verification processes
- educational materials for classroom use
- an e-mail news list available via subscription for regular updates on campaigns and other developments
- a semi-annual newsletter, in English, available free via subscription

The CCC International Secretariat maintains a website (in English) where many of these materials are posted. We encourage those who are interested in learning more about the CCC or working conditions in the garment industry to take a look at our website <[www.cleanclothes.org](http://www.cleanclothes.org)>. Contact the secretariat (e-mail: [info@cleanclothes.org](mailto:info@cleanclothes.org)) to order any materials.

### **How to become involved in the CCC network**

Participants in the CCC network include trade unions, human rights organizations, consumer organizations, researchers, academics, solidarity organizations, youth groups, women's organizations, homeworkers' organizations, migrant worker organizations and many others. Interested individuals or organizations are encouraged to become involved in the CCC. There are a variety of possibilities.

Contact the CCC to:

- share information you have about working conditions in the garment industry
- get more information about a company
- request assistance in a campaign to draw attention to rights violations
- volunteer to give workshops on these issues or organize campaigns in your community
- become a protest letter writer and support workers in their struggle to have their rights respected
- make a one-time donation or become a supporting member of the campaign
- ask any questions you might have about the CCC

Please contact the CCC International Secretariat to discuss where you or your organization might fit in. (taken from the CCC website)

# Codes Of Conduct

Codes of conduct have been formulated primarily to ensure that companies respect fundamental worker rights. Mostly, they aim at improving working conditions around the world. However, in order to achieve this objective, all parties involved, i.e. consumers, NGOs, trade unions, workers, companies, social accountability auditors, governments etc., must effectively play their respective roles.

Codes of conduct, however good, are no substitute for fair national labour legislation, enacted and effectively implemented by government, or for international labour standards enforced around the world. Neither can they be a substitute for the right of workers to organize and to bargain collectively with their employers; nor are they shortcuts to more equitable wages and better working conditions. At best, codes of conduct are a handle that workers and their representatives can use to help enforce their rights, as part of the mechanisms of normal industrial relations.

## Key Elements of a Credible Code

Experts on codes of conduct say that a credible code has a few key elements. They are as follows:

### 1 . Content

A credible code shall:

- be based on the core conventions of the ILO;
- provide for freedom of association and the right to organize and free collective bargaining;
- prohibit child labour, forced labour and discrimination;
- provide for the payment of a living wage;
- set limitations on the normal hours of work and overtime hours;
- ensure adequate health and safety measures;
- ensure equal pay and benefits for men and women for work of equal value;
- prohibit discrimination in any form;
- promote equality of opportunity and treatment;
- prohibit corporal punishment, mental or physical coercion or verbal abuse;
- prohibit sexually coercive, abusive or exploitative behavior; and

- provide job security.

### 2 . Implementation

- Top management shall define the company's policy for social accountability and labour conditions and ensure that it is understood by everyone involved, and implemented throughout the chain of production, including suppliers and sub contractors.
- A top management representative shall be appointed to ensure that the requirements of the standard are met.
- Non-management personnel shall choose a representative, from their ranks, to facilitate communication with senior management on matters related to the standard.
- The company shall ensure that all its employees, from top to bottom, are given adequate training to ensure the successful implementation of the standard.
- Top management shall periodically review the company's policy and management systems and effect amendments where appropriate, with a commitment to continual improvement.

### 3 . Monitoring

- A system of formal internal monitoring, with regular examination of the application of the code, carried out by staff trained and designated for that purpose, shall be put in place.
- All personnel shall undergo training to understand the code and its implication, to ensure its effective application and monitoring.
- The internal monitoring system should cover all products manufactured, supplied or distributed by the company concerned.
- Monitoring methods should be transparent, documented and effectively communicated to management, workforce and stakeholders.
- The monitoring system should provide feedback into management decisions to ensure a process of continuous improvement.
- Once the system is in place, results should be disclosed to key stakeholders in a way that allows performance to be measured.



## 4. Independent Verification

- Self-assessment, no matter how well applied, will not deliver full credibility.
- Only independent verification will confer legitimacy and credibility.
- In reality, no company can police and judge itself, when it itself is the potential offender.
- The verification system would cover all operations of the company concerned, its contractors and sub-contractors and including home workers.
- Those carrying out the verification would have access to all parts of the production chain and to all company records.
- The verification process would include discussion with management, trade unions and workforce, examination of company data and observation of the plant.
- The verification exercise would involve discussion of local issues with trade unions, NGOs, community groups, etc.
- That discussion would be renewed at the conclusion of the verification exercise.
- The verification process should be transparent, documented and effectively communicated.
- Verification methods including spot-checks, interview and sampling technique and progress reports should be made public, without breaching commercial confidentiality.
- Any certificate granted would be for a limited period and subject to withdrawal for breaches of the code.
- The verification process must incorporate an appeals and complaints procedure, having local access and providing a confidential means for workers, their unions and other interested parties to oppose certification or to lodge complaints against the company concerned.
- As the whole purpose of codes of conduct is to improve performance, a systematic approach to righting faults needs to be part of the verification process.
- Verification should be carried out by professionals working to clearly defined independent verification standards and trained in skills incorporating factory inspection, accountancy, health and safety, as well as detection.
- Practitioners would cease to be recognized if their work was inadequate or if they were corrupted.
- Probably the best way of promoting effective independent verification is to create a certification agency or foundation with the active participation of business, labour and human rights' groups which would establish independent monitoring standards and accredit suitably qualified certification firms or units.
- The agency, besides coordinating the appeals and com-

plaints procedure, would oversee the performance and review the activities of such firms or agents on a regular basis.

- Trade unions should not be involved in monitoring, unless the code is the subject of a collective agreement, or they have established specialist units for the purpose.

- Neither should NGOs be involved, unless they too have established specialist units for the purpose.

- Both trade unions and NGOs should be actively involved in briefing the verifiers, in monitoring their work and in raising complaints through normal industrial relations practice.

## 5 . Impact Analysis

- A credible code of conduct will make provisions for periodic impact analysis.

- Such impact analysis will reveal the code's weaknesses and strengths, and pave the way for further improvements in effectiveness.

## How to Use Codes to Help Secure Workers' Fundamental Rights

Keeping in mind that workers' demands and grievances are best taken up by well-organized and strong trade unions, workers and their representatives can use codes as a handle to help secure their rights. Here are some recommendations:

- Find out whether your company subscribes to a code of conduct.

- If so, get hold of a copy of the code and examine it to see whether it is a credible one. (Remember the key elements of a credible code?)

- Determine whether the code would ensure workers their fundamental rights and improve their working conditions, if properly implemented. Unless the code is credible and offers workers benefits, similar to or better than those provided for in the national labour legislation and international standards, it is not worthwhile fighting for its implementation.

- Look out for any breach of the code, on the part of management.

Codes are discussed in more detail and with examples in booklet 2.



# Targeting a global retailer

Part of the problem in dealing with MNC producers is not simply that they are so mobile but that they depend on retail buyers who are a lot more mobile and have information networks that constantly seek out production of the best quality for the lowest price with dependable delivery time frames. It is very quick and easy to shift a production order any where in the world and thus it was realised that simply targeting producers as needing to be socially responsible and retailers not to buy from socially irresponsible producers more recent thinking has had held that the "investment" or buying decisions need to be responsibly used as tools to build the industry in the poorest countries. Part of this shift is linked to the threat of a lot of buying orders moving to China at the end of the MFA. Consequently work is under

way that will target large retailers at a global level with the demand that their buying decisions are stabilised in particular regions in order to give these industries development space and that such continued investment should be with socially responsible producers.

The largest retailer in the world currently is Wal-Mart and as such this retailer is to be subjected to the demand for long term socially responsible buying practices. Research is currently under way to establish all the production sites that sell to Wal-Mart in Africa and other marginalised regions of the world. This will lead to a campaign to pressure for the stabilisation of buying patterns and global production for this retail giant.

## Public Enemy No. 1 Wal-Mart: when consumers save, workers pay the price

"Always low prices" promises the world's biggest retailer. With 1,300 stores across 10 countries, and sales of \$245 billion in 2002, Wal-Mart is number one in the US, Canada and Mexico, now making in roads into China, Brazil and South Korea. Investors like the company: share prices have quadrupled since 1994. Consumers like it too: four out of five US households shopped there in 2002 and the retailer dropped its prices for US customers by \$20 billion. "The mindset around here is, we're agents for our customers" said the Senior Vice-President for global procurement.<sup>2</sup> But producers worldwide – totaling 65,000 suppliers – bear the burden of those price cuts and pass it on to their employees.

One American-owned garment factory making jeans for Wal-Mart in Kenya knows the pressure. To push down prices, Wal-Mart by-passes mid-chain suppliers and buys direct from factories. But first it gets price quotations from several global sourcing agents and then challenges the factory to match the lowest one. In addition, the retailer demands open book costing of every component and step involved in each garment's production, eliminating any margins the factory can make in sourcing inputs, so raising the pressure to profit through production.

Workers bear the burden of this squeeze. Excessively high hourly production targets are almost impossible to reach. But few dare complain out loud, fearing the sack if they complain. Wal-Mart's own code of conduct makes no mention of trade union rights. But this factory has its own code and under Rule Number Four, "Every employee is entitled to freedom of association. You are free to join a trade union if you wish." It begs the question of what workers would wish upon themselves. In April 2003, when they went on strike to demand decent pay, most union members were sacked. Julia, a clerical worker, got rehired. "Me, they gave me my job back. I was very lucky," she said, "When I got there the management told me 'Next time, Julia, don't do that again. You did bad to join a union'...Everybody wants the trade union, but they can't say it. If someone talks about the union, he will be sacked...So we just keep quiet."

Low profits and strict shipping deadlines drive the factory's management to sub-contract orders out to a second factory forty minutes by truck across Nairobi. It pays the sub-contractor an even lower price. No wonder that workers there face even worse conditions. "If a shipment is very near, like now," said 33 year old Miriam working in that factory, "there are people working day, night, day, night without sleeping because they are told 'You are not meeting the target, and the shipment is very near. And if the ship goes, we will transport these garments by air and it is very costly.'" Overtime is long and unpaid, sexual harassment is rife and fear of being sacked stifles complaint.

The Kenya Human Rights Commission, together with trade unions and other NGOs, is campaigning for workers in factories like these ones to get paid maternity leave, a living wage and freedom to join trade unions. Campaigning against local companies alone cannot solve the problem. "I hear that civil society considers the sourcing companies like K-Mart and Wal-Mart to be allies," said the Director of a leading EPZ factory, "You think that they can put pressure on us to improve the working conditions here. We should be putting pressure on them – for all they care, they want the products on time and at the correct price."

*Source: Kenyan Human Rights Commission*

### (Endnotes)

<sup>1</sup> www.walmart.com Investor information. 10 November 2003

<sup>2</sup> Business Week 6 October 2003. Is Wal-Mart too powerful? Anthony Bianco and Wendy Zellner

<sup>3</sup> Oxfam interview 22 October 2003

# International Initiatives on Multinationals

## The ICFTU/ITS Basic Code Of Labour Practice

The 111th meeting of the ICFTU Executive Board (Brussels, December 1997) adopted a text for a "Basic Code of Conduct covering Labour Practices". The text of this code was developed by the ICFTU/ITS Working Party on Multinational Companies in a process that involved extensive consultations with various trade union organisations and other interested individuals and organisations. It aims to establish a minimum list of standards that ought to be included in all codes of conduct covering labour practices. It is not meant, and should not be interpreted to mean, that codes of conduct that are the result of a collective bargained agreement with an appropriate trade union organisation should be limited to the provisions of this code.

Company codes of labour practice can be one trade union response to some of the challenges presented by globalisation. These codes, which are meant to apply to the international operations of a multinational company, are aimed at limiting the worst forms of abuse and exploitation caused by the international competition to attract investment. Governments increasingly are failing to observe either in law or practice basic internationally-recognised standards with respect to working conditions and the rights of workers. Codes are also meant to address the responsibility of a company for the labour practices of its contractors, sub-contractors and principal suppliers.

The purpose of this basic code is to promote the primacy of international labour standards and the inclusion of trade union rights in codes of conduct covering labour practices. A central idea of this code is that labour exploitation and abuse cannot be separated from the repression of workers and that therefore codes of conduct must incorporate freedom of association and the right to collective bargaining. The ICFTU/ITS Basic Code is also meant to encourage the use of consistent language in codes of conduct as part of a strategy to promote an international framework for workers' rights. This basic code is meant to assist any trade union organisation in negotiations with companies and in working with NGO's in campaigns involving codes of conduct. It can also be used as a benchmark for evaluating any unilaterally-adopted codes of labour practice.

The provisions of this code can be adopted by any company doing business internationally. The code is not only for companies marketing manufactured products but also for companies marketing services. The scope of application of any code, that is the extent to which the code will apply to the labour practices of a company's contractors, subcontractors and principal suppliers, will have to be determined in each case. This could affect the definitions provided in this text. The scope of application is meant to be as wide as both practical and reasonable.

**The following provisions are covered by the code:**

### **E**mployment is freely chosen

There shall be no use of forced, including bonded or involuntary prison, labour (ILO Conventions 29 and 105). Nor shall workers be required to lodge "deposits" or their identity papers with their employer.

### **T**here is no discrimination in employment

Equality of opportunity and treatment regardless of race,

colour, sex, religion, political opinion, nationality, social origin or other distinguishing characteristics shall be provided (ILO Conventions 100 and 111).

### **C**hild labour is not used

There shall be no use of child labour. Only workers above the age of 15 years or above the compulsory school-leaving age, whichever is higher, shall be engaged (ILO Convention 138). Adequate transitional economic assistance and appropriate educational opportunities shall be provided to any replaced child workers.

### **F**reedom of association and the right to collective bargaining are respected

The right of all workers to form and join trade unions and to bargain collectively shall be recognised (ILO Conventions 87 and 98). Workers representatives shall not be the subject of discrimination and shall have access to all workplaces necessary to enable them to carry out their representation functions. (ILO Convention 135 and Recommendation 143) Employers shall adopt a positive approach towards the activities of trade unions and an open attitude towards their organisational activities.

### **L**iving wages are paid

Wages and benefits paid for a standard working week shall meet at least legal or industry minimum standards and always be sufficient to meet basic needs of workers and their families and to provide some discretionary income. Deductions from wages for disciplinary measures shall not be permitted nor shall any deductions from wages not provided for by national law be permitted without the expressed permission of the worker concerned. All workers shall be provided written and understandable information about the conditions in respect of wages before they enter employment and of the particulars of their wages for the pay period concerned each time that they are paid.

### **H**ours of work are not excessive

Hours of work shall comply with applicable laws and industry standards. In any event, workers shall not on a regular basis be required to work in excess of 48 hours per week and shall be provided with at least one day off for every 7 day period. Overtime shall be voluntary, shall not exceed 12 hours per week, shall not be demanded on a regular basis and shall always be compensated at a premium rate.

### **W**orking conditions are decent

A safe and hygienic working environment shall be provided, and best occupational health and safety practice shall be promoted, bearing in mind the prevailing knowledge of the industry and of any specific hazards. Physical abuse, threats of physical abuse, unusual punishments or discipline, sexual and other harassment, and intimidation by the employer is strictly prohibited.

### **T**he employment relationship is established

Obligations to employees under labour or social security laws and regulations arising from the regular employment relationship shall not be avoided through the use of labour-only contracting arrangements, or through apprenticeship schemes where there is no real intent to impart skills or provide regular employment. Younger workers shall be provided the opportunity to participate in education and training programmes.

Taken from the A Trade Union Guide to Globalisation  
ICFTU Dec 2001



## The OECD Declaration On International Investment And Multinational Enterprises

The OECD Declaration on International Investment and Multinational Enterprises was created in 1976, a year before the ILO Declaration. It is in fact a recommendation from the OECD Governments to multinational enterprises to abide by the Guidelines for Multinational Enterprises (the OECD Guidelines) which are included as an annex to the Declaration. They seek to “encourage the positive contributions which multinational enterprises can make to economic and social progress by helping to ensure that their operations are in harmony with the policies of the countries in which they operate”.

The OECD Guidelines includes the “national treatment principle”, i.e. to treat MNE’s “no less favourable than that accorded in like situations to domestic enterprises”. The OECD Guidelines themselves are said to be “good practice for all” and are, like the ILO Declaration, not legally enforceable. They are government recommendations covering MNE activities with chapters on general policies, disclosure of information, employment and industrial relations, environmental protection, combating bribery, consumer interests, science and technology, competition and taxation.

The Declaration applies to all governments of the OECD countries, together with Argentina, Brazil and Chile, and all multinational enterprises which are operating within these boundaries or are headquartered in any of these countries. The impact of the OECD guidelines is comparable to the impact of the ILO Declaration: it is a set of positive guidelines creating an international framework to regulate MNE’s and their social behaviour.

The follow-up procedure consists of a regular overview of the guidelines and a system of National Contact Points (NCP’s). Every country adhering to the Guidelines is obliged to set up a NCP. They are responsible for promoting and implementing the Guidelines. They are also responsible for dealing with cases, raised by a trade union or another concerned party, regarding breaches of the Guidelines. In addition, TUAC (the Trade Union Advisory Committee to the OECD) or BIAC (the Business and Industry Advisory Committee to the OECD) can raise issues directly with the OECD Committee for International Investment and Multinational Enterprises (CIME), which is responsible for the Guidelines. This can be the case, for example, if it is believed that a NCP has

not fulfilled its responsibilities or if it has misinterpreted the Guidelines. CIME can then issue a clarification, but it will not name companies since it does not reach conclusions on the conduct of individual enterprises.

It is hoped that the OECD guidelines will gain in importance as a result of their revision in 2000. The revised Guidelines include the full list of workers’ rights as enumerated in the ILO Declaration of Principles on Fundamental Rights at Work. Other changes in the text include a reference to MNE responsibilities related to sub-contractors and suppliers, and respecting human rights in general. Of particular importance was the decision to formally extend the coverage of the Guidelines to include the world-wide operations of multinationals based in countries adhering to the instrument (30 OECD Members, plus Argentina, Brazil, Chile).

The major weakness, however, of the Guidelines in the past had not been the text, but the implementation by Governments. Although the Guidelines represent the expectations of governments from countries that headquarter the largest MNE’s in the world, measures have been weak to promote and encourage respect for the Guidelines. The revision has, among other things, resulted in a special Procedural Guidance to improve the performance of National Contact Points (NCP). They are designed to promote and increase the effectiveness of the Guidelines and to contribute to the resolution of issues involving breaches of the Guidelines. This can include making recommendations to multinationals on how to implement the Guidelines. It also ensures greater review by the OECD on the functioning of NCP’s, including through reporting and annual meetings.

The global reach of the Guidelines should open up possibilities for improving the behaviour of global corporations beyond the OECD area. The overall feeling is that, despite the problems encountered in practical dealings with the Guidelines, they remain, together with the ILO Declaration, the two most important sets of internationally recognised standards to date and they are, two decades after adoption, still very relevant and necessary for people dealing with multinational enterprises and their social policies.

**Taken from the A Trade Union Guide to Globalisation, ICFTU Dec 2001**



# The OECD Guidelines

The Guidelines are supported by the 30 OECD participating countries and eight non-Member countries. Originally, the Guidelines only applied to companies operating within the OECD countries. However, the latest review of the Guidelines, conducted in 2000, widened their scope to include companies operating in or from OECD member states. The applicability of the Guidelines is thus not limited to OECD countries or countries adhering to the Guidelines. For Example, a number of complaints were raised about MNE behavior in Burma (Myanmar). Even though Burma is not an OECD member or adhering country, these cases, mostly dealing with forced labour, were valid for complaints, because the companies involved also had branches in OECD countries.

The latest review of the Guidelines also included supply chain responsibility which means that companies should encourage business partners, including sub-contractors, to do business in a manner compatible with the Guidelines. The most significant implication of this for the textile and garment sector is that factories located any where in the world that supply multinational retailers located in OECD countries are required to comply with the standards of the Guidelines.

The only formal obligation that the Guidelines put on countries is to set up National Contact Points, NCPs, whose primary responsibility it is to ensure the follow-up of the Guidelines. The NCPs gather information on experiences with the Guidelines, promote them, deal with enquiries, discuss matters related to the Guidelines and assist in solving problems that arises in matters covered by the Guidelines. When a party raises a case, the NCP is required to make an initial assessment of whether the issue raised merits further examination and respond to the party. After completion of the initial assessment, the focus is on problem solving with help from experts, stakeholders, other NCPs and CIME and through mediation with the parties involved. If the parties involved do not reach an agreement with regard to the specific instance, the NCP is required to issue a statement.

NCPs are supposed to operate according to the four core criteria of visibility, accessibility, transparency and accountability. This implies that they should be open to enquiries and complaints, also when they originate from NGOs or the public. Governments are free to set up their NCP as long as they adhere to these four criteria. The NCP can be a government official, a government office, a government body including representatives of several government agencies and even a tripartite body, including representatives of government, employers, workers and sometimes even civil society. NCPs have been tasked with promoting the Guidelines in their countries. Some NCPs are more active than others, for example they may organize regular consultations with stakeholders.

Several NCP have also developed their own procedure to handle complaints. Some NCPs have already dealt with some complaints, mostly filed by trade unions or NGOs such as Oxfam, the Clean Clothes Campaign and Greenpeace. Some of these complaint procedures have already come to a conclusion. The Czech NCP handled a case about threats to fire people when a trade union was formed. The case was consequently settled when the companies agreed to negotiate and take part in dialogue. Accord-

ing to the Czech trade union confederation, it was possible to resolve the problems because they were raised at the NCP. In another case, the French NCP concluded that Marks & Spenser had not consulted its employees properly on the closure of Marks & Spenser stores and French trade unions were content with this outcome. The Belgian NCP however, which was dealing with the same case filed by a Belgian trade union, concluded that the enterprise had not breached the guidelines.

## Advantages of the Guidelines

- The Guidelines and the possibility to file a complaint with the NCP can serve as a means to get companies to discuss their conduct instead of turning a deaf ear to allegations of misconduct.
- The Guidelines can be an important pressure tool for corporate responsibility by helping to put pressure on companies that are not acting in a socially and environmentally responsible manner by subjecting the company to adverse publicity.
- Government involvement in ensuring corporate responsibility is increased as these guidelines are recommendations made by OECD governments to their enterprises. These governments then have a role to play in resolving complaints which is not the case with private codes of conduct set up by enterprises or bilateral communications between a company and those attacking social or environmental record of the company.
- The Guidelines are also applicable outside the OECD countries, and multinational enterprises operating in these countries are still expected to comply with the OECD Guidelines and can be held accountable. Thus the Guidelines can be an option for countries where the legal framework is not functioning smoothly, or where NGOs or trade unions do not have easy access to the legal system, as was the case in Burma as discussed above.
- the Guidelines includes supply chain responsibility which means that companies should encourage business partners, including sub-contractors, to do business in a manner compatible with the Guidelines. The most significant implication of this for the textile and garment sector is that factories located any where in the world that supply multinational retailers located in OECD countries are required to comply with the standards of the Guidelines.
- The consultative and problem solving nature of the complaint procedure means that the burden of proof is not as judicially heavy as is the case when you take a company to court.

## Disadvantages of the Guidelines

- The current procedures of the Guidelines only provide minimum sanction through the risk to a company's reputation that the decision of the NCP might cause.
- The OECD does not ensure independent verification of whether companies follow the Guidelines.
- Some NGOs report that despite their best efforts to engage their NCPs they have not been able to make much progress. This is true of the USA, where the NCP has done little more than acknowledge letters but has not invited NGOs for consultations on the problems raised.
- Weak wording such as "where practicable" or "when ap-

appropriate" water down the meaning of many paragraphs. For example, the paragraph on supply chain responsibility says that enterprises should "where practicable" encourage their subcontractors to respect the Guidelines.

■ The Procedural Guidance says that while procedures about a certain case are underway, a confidentiality rule is applied: "information and views provided during the proceedings by another party involved will remain confidential unless that other party agrees to their disclosure". There is insufficient practical experience on the effect of the confidentiality provisions to draw any conclusions. Whilst a case can be made for confidentiality so as to not undermine the opportunity to find meaningful solution using the OECD Guidelines, specific cases of corporate misconduct are often discussed outside of the NCP procedure; this information should not suddenly become confidential once a NCP procedure is started, while new information from parties about the issue should also be brought into the public domain. The confidentiality provisions also potentially stand in the way of mandate processes of organisations that are representative in nature, such as trade unions and civil society organisations that have a responsibility to have their actions directed by their constituents.

■ The renewed implementation procedure still relies largely on the will of governments, through their NCPs, to deal openly and effectively with the specific instances. Too much discretion is left to the individual NCP in the handling of specific instances and NGOs and other interested parties still have no mechanism of appeal.

■ The fact that the Guidelines do not refer to specific paragraphs of other international instruments like ILO and environmental instruments diminishes their value. Whilst Chapter IV of the Guidelines on employment and industrial relations is fairly detailed and includes paragraphs on freedom of association, collective bargaining and non-discrimination policies, there are no references to other internationally accepted standards such as the ILO Conventions. Instead the Guidelines are formulated in their own vaguer terms. Furthermore, some elements that are accepted as standard in other codes are lacking in the Guidelines such as hours of work and living wages.

## Cases Brought To NCPs

OECD Watch reports 11 complaints filed with NCPs since June 2001; of these only three have been resolved, with 8 still pending.

### Some examples of cases:

#### **India Committee of the Netherlands (ICN) vs. Adidas Netherlands & Kubbinga importer**

June 2001 - December 2002

Filed with the Netherlands NCP

Issue: Labour issues in football supply chain in India

Actions: NCP arranged meetings between parties, joint statement between ICN & Adidas.

Status: Finalised, some agreement on need for monitoring of codes of conduct.

#### **Germanwatch, FIAN vs. Continental AG (Germany) & Euzkadi (Mexico)**

May 2002- pending

Filed in Germany transferred to Mexico

Issue: Closure of factory without proper prior notice to employees and trade unions

Actions: Case transferred to Mexican NCP in June 2002, in January 2003 NCP asked MNE for written statement, meeting held with Mex. TU, Mex. Embassy, company and NGOs.

Status: Mexican trade union and FIAN started a lawsuit before a court in Mexico. After case was raised in Germany Euzkadi agreed for the first time to talk to the trade unions.

#### **Clean Clothes Campaign (CCC) Austria, CCC Germany & Global Exchange (US) vs.**

##### **Adidas & Nike**

September 2002 - pending

Filed in Austria, transferred to Germany & US

Issue: Labour conditions in supply chain in Indonesia

Actions: Austrian NCP transferred case. No action in US yet, in Germany NCP asked companies for statement, discussion in Working Group, meeting with NCP, company and NGOs on 26-05-03

Status: Adidas responded to German NCP stating they took corrective action measures. CCC still upholds case. NCP is requesting more information from Adidas

#### **CCC Austria in support of a coalition of trade unions vs. Brylane inc, subsidiary of Pinault-Printemps-Redoute (PPR)**

October 2002- January 2003

Filed in Austria, US, France, Netherlands

Issue: Right to organise and harassment

Actions: Austrian NCP said the case was not admissible in Austria

Status: UNITE withdrew the case after it had reached an agreement with Brylane

## Using the OECD Guidelines

*Information used in this section has been taken from Using the OECD Guidelines For Multinational Enterprises: A critical starter kit for NGOs, Friends of the Earth Netherlands, August 2002, [www.foenl.org](http://www.foenl.org).*

*Other sources include the OECD Watch. Review of National Contact Points June 2002 - June 2003*

For more information on the practical use of the OECD guidelines please refer to booklet 2 in this series.



# The SADC Social Charter of Fundamental Rights

Another tool which will become increasingly useful to trade unions within SADC is the recently adopted Social Charter. The SADC Social Charter of Fundamental Rights is an expression of the labour movement's desire to establish common minimum labour standards in the region. The SADC Social Charter embodies workers aspirations in Southern Africa. It is a reflection of Southern Africa's labour movements common social, economic and cultural identity. The social charter outlines the social and labour standards that the different SADC countries have committed to establishing in their country. Many of the labour clauses are progressive and should be fought for. In 2003 SATUCC and various global union federations launched a campaign for the adoption of the SADC social Charter realising its potential to improve labour standards in the sub region.

At the Summit Meeting of the SADC, Heads of State or Governments in August 2003, all but four countries of SADC signed the SADC Charter on Fundamental Social Rights. Whilst the summit noted that Angola, Botswana, the Democratic Republic of Congo and Zambia needed more time to carefully study the financial implications that the Charter places on their governments, it was agreed that those Member States that were ready to sign the Social Charter would do so. The Summit also noted that the Social Partners, being Governments, Employer Associations and Trade Unions, in the region had concluded the necessary consultations on the matter.

The Summit outlined the objectives of the Charter as: To ensure the retention of the tripartite structure of the three social partners. Promote harmonisation of legal, economic and social policies and programmes and regional cooperation on labour market information to contribute in employment opportunities. Promote labour policies and practices that facilitate labour mobility and remove labour distortions. Promote the establishment of social security schemes, development of institutional capacities and vocational and technical skills and harmonise regulations on health and safety standards in the region.

## Preamble

WE, the Heads of State or Government of:  
The Kingdom of Lesotho  
The Republic of Malawi  
The Republic of Mauritius  
The Republic of Mozambique  
The Republic of Namibia  
The Republic of Seychelles  
The Republic of South Africa  
The Kingdom of Swaziland  
The United Republic of Tanzania  
The Republic of Zimbabwe

RECALLING the objectives of SADC as spelt out in Article 5 of the Treaty;  
FURTHER RECALLING that the SADC Council of Ministers approved the main objectives of the SADC Employment and Labour Sector;  
NOW THEREFORE, SADC hereby adopts the following Charter:

## Article 1: Definitions

1. In this Charter, terms and expressions defined in Article 1 of the Treaty establishing SADC shall bear the same meaning unless the context otherwise requires.
2. In this Charter, unless the context otherwise requires:  
"Charter" means this Charter of Fundamental Social Rights in SADC;  
"consultation" means a process of discussion which involves information sharing, and the making of representations on relevant issues with a view to achieving consensus;  
"essential services" has the meaning assigned to it under national legislation and consistent with international labour standards;  
"international instrument" means any international treaty, declaration, recommendation, or relevant international agreement in the social, human rights and labour fields subscribed to by Member States;  
"ILO" means the International Labour Organisation; and  
"social partners" means Governments, representative organisations of workers and representative organisations of employers in respective Member States.

## Article 2: Objectives Of The Charter

1. The objective of this Charter shall be to facilitate, through close and active consultations among social partners and in a spirit conducive to harmonious labour relations, the accomplishment of the following objectives:
  - a. ensure the retention of the tripartite structure of the three social partners, namely: governments, organisations of employers and organisations of workers;
  - b. promote the formulation and harmonisation of legal, economic and social policies and programmes, which contribute to the creation of productive employment opportunities and generation of incomes, in Member States;
  - c. promote labour policies, practices and measures, which facilitate labour mobility, remove distortions in labour markets and enhance industrial harmony and increase productivity, in Member States;
  - d. provide a framework for regional co-operation in the collection and dissemination of labour market information;
  - e. promote the establishment and harmonisation of social security schemes;
  - f. harmonise regulations relating to health and safety standards at work places across the Region; and
  - g. promote the development of institutional capacities as well as vocational and technical skills in the Region.
2. It shall be the responsibility of Governments to create an enabling environment in order that objectives referred to in paragraph 1 of this Article are realised.

## Article 3: Basic Human Rights And Organisational Rights

1. This Charter embodies the recognition by governments, employers and workers in the Region of the universality and indivisibility of basic human rights proclaimed in instruments such as the United Nations Universal Declaration of Human Rights, the African Charter on Human and Peoples' Rights, the Constitution of the ILO, the Philadelphia Declaration and other relevant international instruments.

2. Member States undertake to observe the basic rights referred to in this charter.

## **Article 4: Freedom Of Association And Collective Bargaining**

Member States shall create an enabling environment consistent with ILO Conventions on freedom of association, the right to organise and collective bargaining so that: employers and workers of the Region shall have the right to form employers associations or trade unions of their choice for the promotion and defence of their economic and social interests;

- a. every employer and every worker shall have the freedom to join or not to join such employers associations or trade unions without any personal or occupational damage being thereby suffered by him or her;
- b. employers associations and trade unions shall have the right to negotiate and conclude collective agreements under the conditions laid down by national legislation and practice;
- c. the industrial disputes settlement machinery and method of operation shall be autonomous, accessible, efficient and subject to tripartite consultation and in agreement with guaranteed right of recourse to established appeals or review procedures;
- d. the right to resort to collective action in the event of a dispute remaining unresolved shall:
  - i. for workers, include the right to strike and to traditional collective bargaining;
  - ii. for employers, include traditional collective bargaining and remedies consistent with ILO instruments and other international laws;
- e. organisational rights for representative unions shall include:
  - i. the right of access to employer premises for union purposes subject to agreed procedures;
  - ii. the right to deduct trade union dues from members' wages;
  - iii. the right to elect trade union representatives;
  - iv. the right to choose and appoint full time trade union officials;
  - v. the right of trade union representatives to education and training leave; and
  - vi. the right of the trade unions to disclosure of information;
- f. essential services and their parameters shall mutually be defined and agreed upon by governments, employers associations and trade unions;
- g. due to the unique nature of essential services, appropriate and easily accessible machinery for quick resolution of disputes shall be put in place by governments, employers and trade unions;
- h. freedom of association and collective bargaining rights shall apply to all areas including export processing zones.

## **Article 5: Conventions Of The International Labour Organisation**

For the purposes of attaining the objectives of this Charter:

- a. Member States shall establish a priority list of ILO Conventions which shall include Conventions on abolition of forced labour (Nos. 29 and 105), freedom of association and collective bargaining (Nos. 87 and 98), elimination of discrimination in employment (Nos. 100 and 111), and the minimum age of entry into employment (No. 138) and other relevant instruments;
- b. Member States shall take appropriate action to ratify and implement relevant ILO instruments and as a priority the core ILO Conventions; and
- c. Member States shall establish regional mechanisms to

assist Member States in complying with the ILO reporting system.

## **Article 6: Equal Treatment For Men And Women**

Member States shall create an enabling environment consistent with ILO Conventions on discrimination and equality and other relevant instruments so that:

- a. gender equity, equal treatment and opportunities for men and women are ensured;
- b. equal opportunities for both men and women shall apply, in particular, to access to employment, remuneration, working conditions, social protection, education, vocational training and career development; and
- c. reasonable measures are developed to enable men and women to reconcile their occupational and family obligations

## **Article 7: Protection Of Children And Young People**

Member States shall create an enabling environment consistent with the ILO Convention on the minimum age of entry into employment (No 138) or any other relevant international instrument so that:

- a. without prejudice to such rules as may be more favourable to young people in particular those ensuring their preparation for work through vocational training, and subject to derogation limited to certain light work, the minimum employment age must not be lower than the minimum school leaving age and in any case, not lower than that set out in the ILO Convention No.138;
- b. employers shall be liable for employment practices of adult employees that lead to the indirect employment of children;
- c. young people who are in gainful employment shall receive an equitable remuneration in accordance with national law and practice;
- d. appropriate measures shall be taken to adjust labour regulations applicable to young workers so that their specific development and vocational training and access to employment needs are met;
- e. the duration of work for young people shall be limited, and shall not be resorted to, save in the case of certain jobs laid down in national laws or regulations; and
- f. young people shall be entitled to receive initial vocational training of a sufficient duration to enable them to adapt to the requirement of their future working life and for young workers, the training shall take place during normal working hours.

## **Article 8: Elderly Persons**

Member States shall endeavour to create an enabling environment in accordance with arrangements applying to each Member State so that:

- a. every worker in the Region shall at the time of retirement enjoy resources affording him or her a decent standard of living, including equity in post employment security schemes;
- b. every worker who has reached retirement age but who is not entitled to a pension or who does not have other means of subsistence shall be entitled to adequate social assistance to cater specifically for basic needs including medical care; and
- c. employment after the normal retirement period shall be under the same labour standards and rates of remuneration that apply to all workers.

## **A**rticle 9: Persons With Disabilities

1. Member States shall create an enabling environment such that all persons with disabilities, whatever the origin and nature of their disability, shall be entitled to additional concrete measures aimed at improving their social and professional integration.

2. The measures shall relate to, in particular, according to the capacities of beneficiaries, vocational training, accessibility and mobility, means of transport and housing and appropriate organisation of work and workplaces to take into account their needs.

## **A**rticle 10: Social Protection

1. Member States shall create an enabling environment so that every worker in the Region shall have a right to adequate social protection and shall, regardless of status and the type of employment, enjoy adequate social security benefits.

2. Persons who have been unable to either enter or re-enter the labour market and have no means of subsistence shall be entitled to receive sufficient resources and social assistance.

## **A**rticle 11: Improvement Of Working And Living Conditions

Member States shall create an enabling environment so that:

a. harmonisation of minimum requirements laid down in labour legislation and in particular the introduction of equitable basic working and living conditions, the specifications of minimum rest periods, annual paid leave, compassionate leave, paid maternity leave, occupational health and safety protection, and stipulation of acceptable rules and compensation for overtime and shift work, are achieved;

b. every worker in the Region shall have a right to a weekly rest period and annual paid leave, the duration of which must be progressively harmonised in accordance with the national practice; and

c. the conditions of employment for every worker in the Region shall be stipulated in national law, a collective agreement or a contract of employment.

## **A**rticle 12: Protection Of Health, Safety And Environment

Member States shall endeavour to create an enabling environment so that:

a. subject to paragraphs b) to g), every worker in the Region has the right to health and safety at work and to a healthy and safe environment that sustains human development, access to adequate shelter;

b. employers shall provide safe workplaces that do not pose a risk to the health of employers or any other person exposed;

c. basic work environment and occupational health and safety standards as set out in ILO Convention No. 155 are provided;

d. engineering is prioritised to control risk from hazards at source;

e. the organisation of occupational health and safety shall be on the basis of bipartite and tripartite co-operation and the full participation of all parties;

f. workers have a right to information on workplace hazards and the procedures being taken to address them, and to appropriate health and safety training in paid working time;

g. workers have the right to stop work that they reasonably



believe poses an immediate and serious risk to their health, safety or physical well being according to ILO Convention No. 155;

h. workers have the right to services, that provide for the prevention, recognition, detection and compensation of work related illness or injury, including emergency care, with rehabilitation and reasonable job security after injury and adequate inflation adjusted compensation;

i. employers control and are liable for work related environmental risks according to the 'polluter pays' principle;

j. workplace based health service for workers is accessible, affordable and equitable, and is provided on a professional ethical basis; and

k. economic and investment measures take into consideration health, safety and environmental standards.

## **A**rticle 13: Information, Consultation And Participation Of Workers

Member States shall create an enabling environment so that:

a. industrial and workplace democracy is promoted;

b. workers shall have the right to information, consult and participate particularly in the following cases:

i. when technological changes which, from the point of view of working conditions, have major implications for the work force are introduced into undertakings;

ii. in connection with the restructuring operations in the undertakings having an impact on the employment of workers;

iii. in connection with social responsibility or other outreach programmes carried out by the community;

c. information, consultation and participation of workers is developed along appropriate lines and similar practices are encouraged in all Member States;

d. information, consultation and participation applies especially in companies or groups of companies having establishments or companies in two or more Member States in the Region.

## **A**rticle 14: Employment And Remuneration

Member States shall create an enabling environment so that:

a. every individual shall be free to choose and engage in an occupation or that person's choice;

b. workers are provided with fair opportunities to receive wages which provide for a decent standard of living;

c. remuneration systems in the Member States encourage the progressive establishment of equitable wage rates across the Region in accordance with arrangements applying in each Member State; and  
d. workers, subject to terms of employment other than full-time contracts, shall benefit from an equitable current rate.

## Article 15: Education And Training

Member states shall create an enabling environment consistent with ILO Convention on paid education and training (No 140) so that:

- a. government, employers and trade unions contribute towards workers education, training and skills development; and
- b. all workers have the right to paid study leave subject to the provisions of the ILO Convention and to a collective agreement.

## Article 16: Implementation Of The Charter

1. The responsibility for the implementation of this Charter lies with the national tripartite institutions and regional structures.
2. The institutions and structures referred to in paragraph 1 shall promote social legislation and equitable growth within the Region and prevent non implementation of this Charter.
3. All Member States shall submit regular progress reports to the Secretariat.
4. The most representative organisation of employers and workers shall be consulted in the preparation of the reports referred to in paragraph 3.

## Article 17: Entry Into Force

This Charter shall enter into force upon signature by the Member States.

## Article 18: Amendments Of The Charter

1. An amendment to this Charter shall be adopted by a decision of three-quarters of the Member States.
2. A proposal for the amendment to this Charter may be made to the Secretariat by any Member State for preliminary consideration by the social partners provided that the proposed amendment shall not be submitted for preliminary consideration until all Member States have been duly notified of it and a period of three months has elapsed after such notification.

## Using the SADC Social Charter

With the ratification of the SADC Social Charter, unions have a new tool to demand the respect of workers rights. In order to use the tool, unions must popularise the charter with workers and employers including MNCs of the rights entitled to workers in the region in terms of the Charter. Unions should also advocate and lobby for the implementation and enforcement of rights enshrined in the Social Charter. Unions should also report violations of the Social Charter to the SATUCC Secretariat with a request for support to actions that the union wishes to take. By exposing cases of Social Charter violations, the Charter should develop to be used for bringing pressure on governments to enforce workers rights.

## Southern African Trade Union Coordinating Council

SATUCC is an umbrella organisation under which 13 national trade union centres from 11 SADC countries are affiliated. The trade union centres together command a total of 5.5 million organised workers. Established in 1983 with the aim of co-ordinating trade union activities of the sub-region, SATUCC has its policies based on a broad range of objectives outlined in its Constitution.

SATUCC plays a central political role in representing labour in matters that affect the region. SATUCC can play a key role in beginning to enforce basic labour standards as part of the SADC FTA. Good progress has been made in getting the SADC social charter adopted by ministers. It is just pending the heads of state ratification. There are very progressive elements in the social charter that is featured a little later in the booklet. SATUCC has been engaged by the global Union Federations like ITGLWF and joint projects have been initiated. The GUF forum and SATUCC campaigned together around the adoption of the SADC Social Charter. Extracts from a recent SATUCC congress report reflect an interesting direction in engaging around trade negotiations and developing labour input in accepting investors into the country. Some other interesting developments are reported along with these below,

### The following recommendations were adopted:

Unions should have access to trade related information, offer alternative input in trade negotiations. They should be consulted before govt allow new investors in a country. This will help in identifying genuine investors and the barring of bad investors. SATUCC should consider coming up with a regional investment code for investors and have it ratified by SADC. Unions should also highlight good examples of corporate behaviour. Labour laws should be strengthened to protect workers. There is need to create a database at national and SATUCC level that would strengthen research capacity among unions. This would foster the sharing of information among unions, GUFs, research institutions and CSOs.



# The International Labour Organisation ILO

The International Labour Organisation (ILO) emerged in 1919 after a devastating war when it was given a special responsibility to contribute to world peace. Its constitution begins with the statement that "universal and lasting peace can be established only if it is based upon social justice." Inherent in the establishment of the ILO was the recognition that freedom of association contributes to democracy and stability inside and among nations. The development of a system of international labour standards was seen as helping to reduce international tensions which contribute to economic rivalry, social tensions, and war. Interdependence was already clearly recognised at the time as shown by the following passage from the constitution: "The failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries."

Although the link between the rights and conditions of workers in different countries and the economy has always existed, a formal recognition of this came only in 1944 with the ILO's Declaration of Philadelphia, which states the aims and purposes of the International Labour Organisation and the principles which should inspire the policy of its Members. The main principles of the declaration are:

1. Labour is not a commodity.
2. Freedom of expression and association are essential to sustained progress.
3. Poverty anywhere constitutes a danger to prosperity everywhere.
4. The war against want requires to be carried on with relentless vigour within each nation, and by continuous and concerted international effort in which the representatives of workers and employers, enjoying equal status with those of governments, join with them in free discussion and democratic decision with a view to the promotion of the common welfare.

A few years later, in 1946, the ILO became the first specialised agency associated with the United Nations.

## International labour standards and the ILO

The International Labour Organisation (ILO) is based in Geneva and is the major international body dealing with labour and labour related issues. It is also the only body in the UN system which is tripartite, with representation of workers, employers and governments. The ILO currently has over 170 member countries.

Globalisation, without mechanisms to support fundamental workers' rights, can put workers back into competition and lead to a race to the bottom, as countries reduce wages, taxes, welfare benefits and other social or environmental protections to make themselves more competitive.

This is why one of the most important functions of the ILO is the development of international labour standards. These are Conventions and Recommendations, adopted by the tripartite International Labour Conference. Through ratification by the member States, Conventions are intended to create binding obligations to put their provisions into effect. Recommendations provide guidance on policy, legislation and practice. These standards cover a wide

range of issues in the world of work, including freedom of association, the right to organise and bargain collectively, forced labour, child labour, equality, labour administration, industrial relations, employment policy, working conditions, social security, occupational safety and health. So far, more than 180 conventions and even more recommendations have been adopted.

The ILO is not only charged with developing international conventions and recommendations, it also has a system of supervision which monitors efforts by member governments to ratify conventions. The ILO also examines laws and practices in terms of their conformity to ILO standards. That system includes a Committee of Experts which examines compliance with a list of conventions each year and a committee at the annual International Labour Conference which discusses the report of the Experts and, in turn, reports to the full conference.

In addition, the ILO Governing Body, which guides the work of the ILO along with the annual International Labour Conferences, has a Committee on Freedom of Association which analyses complaints from trade union and employers' organisations concerning violations of the right to organise. It is this committee, in cooperation with the committee of Experts which has defined the jurisprudence of Conventions 87 and 98 to include the right to strike. The ILO also holds sectoral meetings, bringing together people from workers' and employers' organisations, as well as from governments' representatives, doing work in a specific sector.

Other main functions of the ILO include formulating international policies and programmes to promote basic human rights, improve working and living conditions and enhance employment opportunities. It has an extensive programme of international technical co-operation formulated and implemented in an active partnership with constituents to help countries in making these policies effective in practice. These efforts involve training, education, research and publishing.

Taken from the A Trade Union Guide to Globalisation  
ICFTU Dec 2001





## The ILO Tripartite Declaration Of Principles Concerning Multinational Enterprises & Social Policy

The Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (hereafter: the ILO Declaration) is a 58 clause statement adopted in November 1977 by the governing Body of the International Labour Organisation. It is a set of recommendations concerning basic labour practices, based on ILO principles, covering social issues which include employment, training, conditions of work and life and industrial relations.

As a tripartite instrument (agreed upon by governments, employers' and workers' groups) for guidance on the "social aspects of the activities of multinational enterprises, including employment creation in developing countries", State Members of the ILO, employers' and workers' organisations concerned and the multinational enterprises are expected to adhere to its provisions.

The Declaration is universally applicable and comprehensive. However, the Declaration is not legally binding which means that its application can not be enforced. In the almost complete absence of international legally binding rules, the ILO Declaration is (together with the OECD Guidelines) one of the very few international instruments for trade unions to help create an environment in which unions can freely perform their functions. It is a way to encourage companies to take up their responsibilities and is of great value to put pressure on MNE's so as not to abuse their growing power and ability to shift capital across national boundaries to undermine the public interest, government policies and workers' rights.

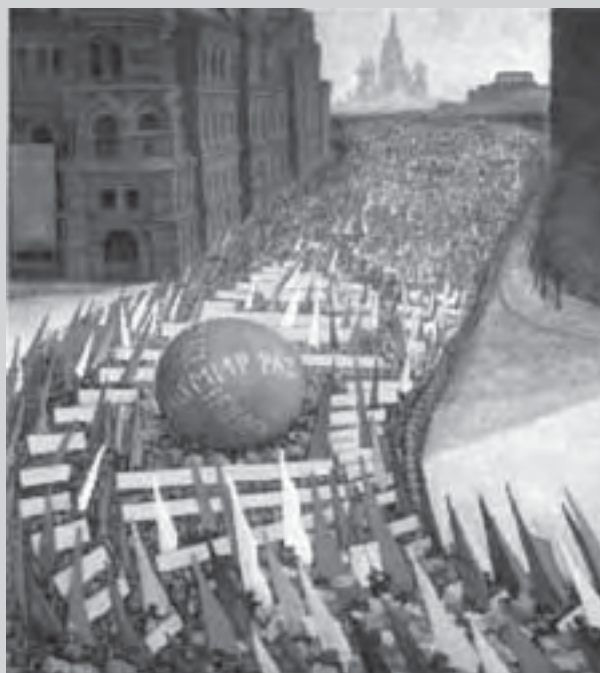
The follow-up procedure consists of a periodic survey on the effect given to the Tripartite declaration and a procedure for interpretation for its meaning in specific situations, overseen by the Sub-committee on Multinational Enterprises of the Employment Committee of the ILO Governing Body. This Committee receives reports from Member Countries on the application of the Declaration, which come in the form of requests for interpretation. If necessary, the interpretation can be done by the Governing Body of the ILO itself.

Trade unions had hoped that this would in effect create an international complaint procedure against specific companies but, in fact, specific companies are not mentioned. Moreover, it has been very difficult for requests for interpretation to be considered. Part of this is due to the fact that issues concerning freedom of association and collective bargaining are referred to the Committee on Freedom of Association. The other part is due to the resistance of the employers' organisations to consider any questions involving the behaviour of specific companies.

In spite of the facts that the follow-up procedures could be improved and that the Declaration is a voluntary code, the instrument still remains a very important tool and an excellent reference for trade unionists in dealing with multinational enterprises.

The Declaration is now, nearly 25 years after it was first adopted, probably more relevant and needed than ever. In a world of changing values, increasing foreign direct investment and growing public awareness of corporate behaviour, an internationally accepted standard such as this has become indispensable in the struggle for higher standards of corporate behaviour and sound industrial relations.

Taken from the A Trade Union Guide to Globalisation ICFTU Dec 2001



# Section Four: Alternatives to Asian MNC based development In the African Garment Industry

Most of what has been discussed so far in this booklet has been aimed at combating the effects of a particular economic framework that accepts foreign investment for production for the global market as the only way to develop the garment sector in poor countries. This framework as explained in section one is linked to structural adjustment programmes that emphasise liberalizing and opening economies for competition on the global market. Growth should come from foreign direct investment and competing globally through exports.

Liberalisation also saw the decline of the domestic garment sector in most African countries. As part of this trend we noted the rise of 'lean retailing' where the most money is made not in making the clothes but in selling them. This has meant that big retailers like Wal-Mart have come to dominate the clothing industry and demand standards and levels of production which have come to negatively impact on the lives of workers in the factories that produce for these large retailers as the factories attempt to remain competitive and still make their profit in the face of increasing demands by these retailers.

This is quite different to a decade ago when clothes were made in African countries for their own consumption. Today the shops in Africa that supply the small rich elite are supplied from other poor countries but the majority of people either by very cheap imported clothes from the east or more likely buy used clothes that rich countries export

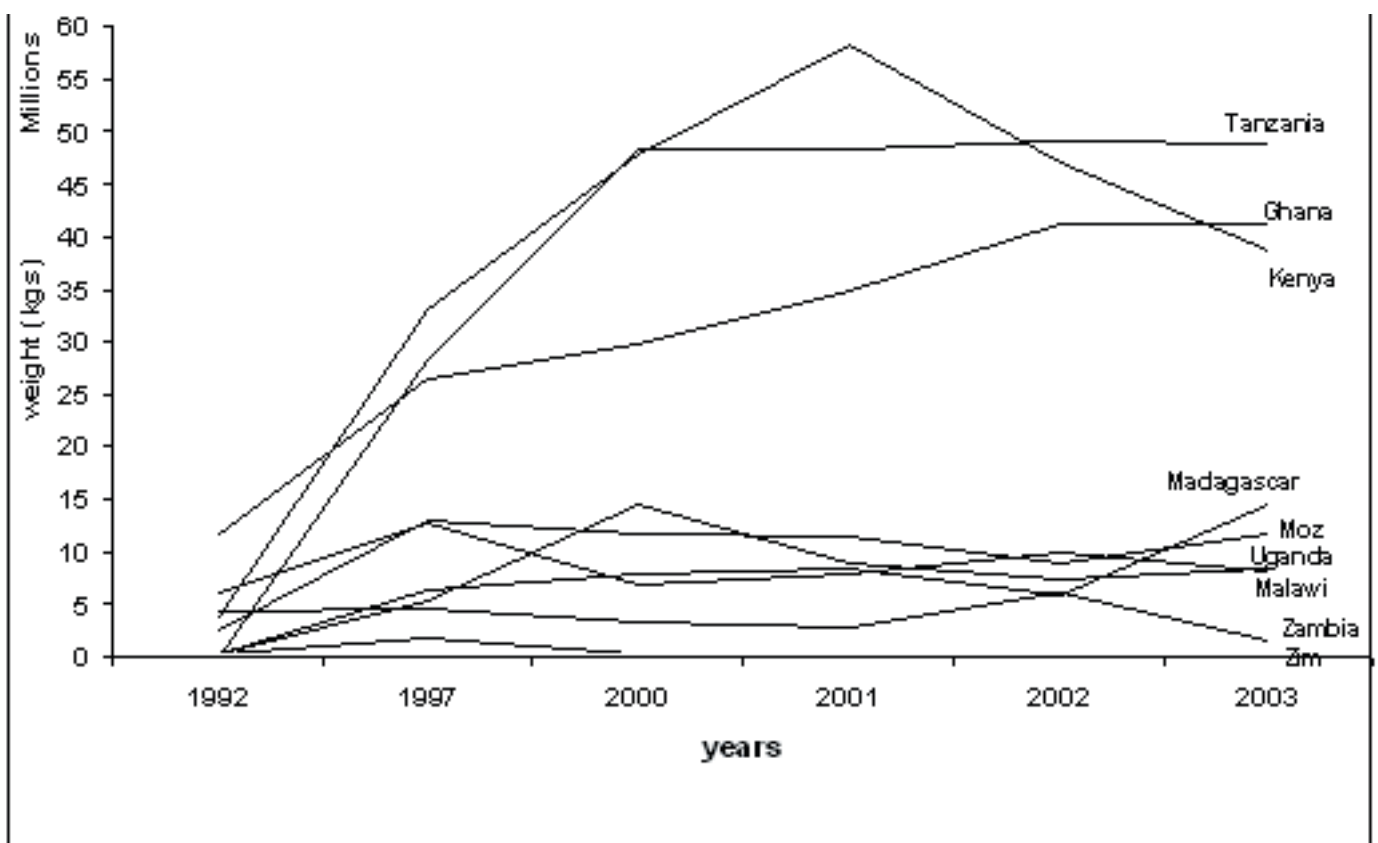
to Africa. It was a combination of these imports and more importantly the used clothing that flooded the market after development approaches insisted that African countries liberalise and open their economies to the rest of the world market that saw many factories that produced for the local market close down. Thousands of jobs were lost in this process as producers could not compete with used clothing.

When policy makers in America look at how many jobs the AGOA has created they do not subtract the number of jobs that were lost in the transition to the liberalised economic framework that AGOA insists be in a country before that country is eligible for AGOA. Meanwhile the United States is the largest exporter of used clothes globally.

The continued importation of used clothes effectively prevents the development of African production for African consumption which would have the effect of creating more formal sector jobs.

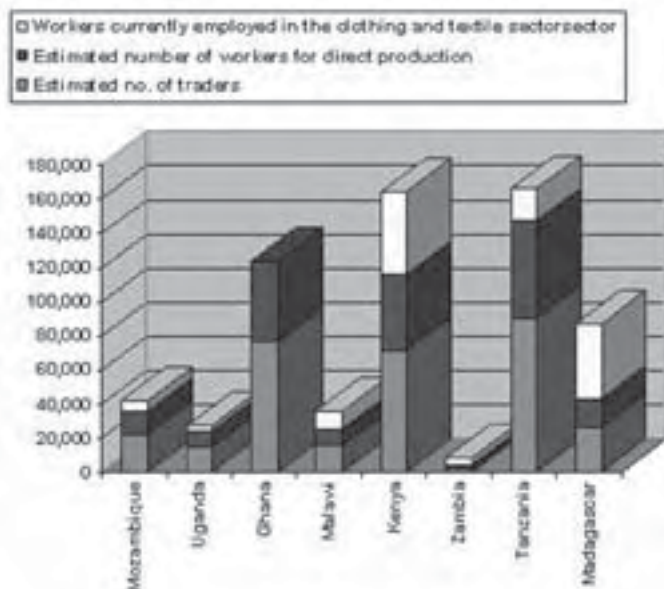
Many worker leaders have for a long time argued that there needs to be a control on these imports and that a local industry must be redeveloped in African countries. However up to now most efforts have been focused around fighting multinationals and other companies along the supply chain as this is where the majority of union members are now to be found.

*Comparison of Total Imports of Second Hand Clothing (kgs) for Nine African Countries and Change in Consumption from 1992 to 2003*

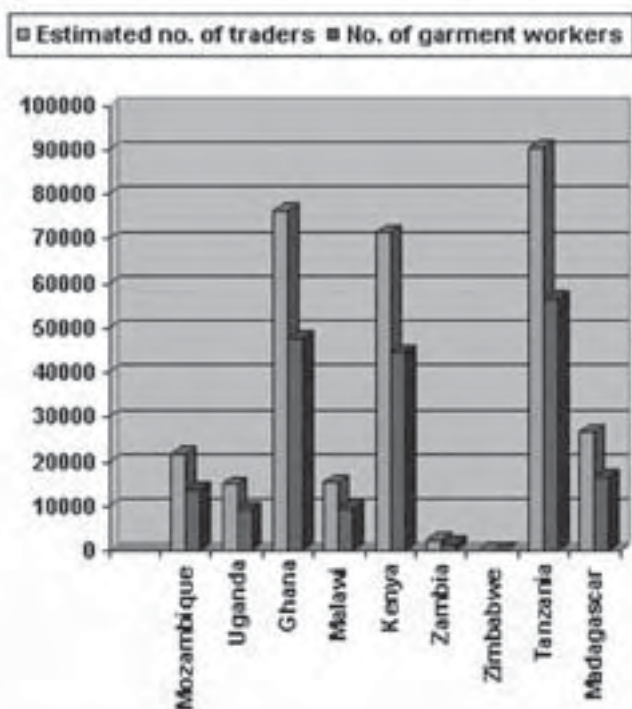


The argument developed through recent research is that local production of new clothing could compete with used clothes prices if certain strategic steps are taken, for example if distribution did not rely on formalised retail outlets and the various price inflating factors that are associated with this. The idea is to use pre-existing networks of distribution which will also prevent the large scale social impact of removing the trade in used clothing. The graph makes the impact fairly clear where people involved in distribution normally outnumber those involved in direct production of the same number of items. This of course does not include workers involved in upstream and downstream activities such as cotton growing, yarn spinning and textile weaving. This would raise the estimated number of formal workers substantially.

Graph: Estimates of total possible employment levels



Graph: The graph represents the estimated number of traders supported by the trade and the number of workers who could be employed manufacturing these volumes



When these numbers are added together it is shown that a substantial number of workers can be supported in an integrated production and distribution chain as demonstrated in the graphic below. If this and textile production is included the potential of the sector to create jobs and income for the poor becomes both large and hence worthy of concerted effort by government to support initiatives to support the sector. In the future could we see domestic production zones alongside export processing zones.

In December 2004 ITGLWF Affiliates met to discuss a strategic response to the potential crises facing the garment and textile sector in Africa. A multi pronged approach emerged from this process which argues for a campaign to stabilise buying relationships with African suppliers that is also focused around buyers acting responsibly to the issues of workers rights. At the same time the necessity to control the import of used clothing and the development of the entire value chain development from cotton through spinning weaving, design and manufacturing to consumption. Full value chain development would also develop the export potential of the sector and greater cotton and textile capacity will address the potential problems of the ending of the AGOA 3rd country provision. This approach which includes calling a industry summit initially in South East Africa is outlined in the Ethekewinini Action Declaration emerging from this forum. This is an important development providing all national unions with a strategic approach to the industry that extends across borders.



## Ethekwini Action Declaration

We, worker representatives from Zambia, Kenya, Uganda, South Africa, Swaziland, Lesotho, Mauritius, Namibia, Malawi, Tanzania, Zimbabwe, Botswana and Mozambique having met on the 30th August - 4th September 2004

### *Noting:*

The introduction of liberalized trade policy and consequent liberalization of the African economies and tariff lines along with structural adjustment policies have created economic sectors based on export based growth and dependent on foreign direct investment.

The decimation of domestic capital in the industry and the eradication of the domestic consumer market as the result of liberalization and the consequent impact of second hand clothing, cheap and illegal imports and the policy shift towards export led growth.

That the trade liberalization and the Africa Growth and Opportunity Act has created a complete dependence of African workers and the communities they support on the United States market and legislature as well as flight risk foreign producers resulting in highly vulnerable employment.

The contents and principals of the Istanbul declaration and despite the efforts of Mauritius, Bangladesh and others who supported a call for a review of the decision to end the Multifibre Arrangement (MFA) the phase out of the quotas will destabilise established production relations and employment across the globe.

That the AGOA was tabled as enabling legislation for socio-economic development of Africa which purpose stands in stark contrast to the potential devastation faced by millions of people in the region as a consequence of the looming crisis in the garment and textile industries in Africa as a combined effect of the ending of the MFA and the phasing out of the 3rd country provision for fabrics in the Africa Growth and Opportunity Act in September 2007.

The MFA phase out also threatens the continued existence of producers supplying the European market ostensibly under the auspices of EU-ACP enabling trade agreement.

The dependence of the African sector on European and US markets, the US legislature and mobile foreign capital and the potential for social and economic deprivation as a result of the withdrawal of the investment and the lack of a domestic base to absorb the impact.

The development of the industry under current trade dispensations has failed to significantly develop full value chain production in Africa from the use of cotton, wool and other raw material production through spinning, weaving, knitting, design and finished goods production processes.

There exists a moral obligation amongst US and EU buyers and often Asian producers who have extracted significant short term benefits from preferential access legislation ostensibly for the purposes of African development, to continue to support the regional industry and take part in a broader benefaction process focused on developing integrated value chain production in the region.

The huge volumes of used clothing being dumped on Africa by the United States, Canada and Europe.

That Africa has become a dumping ground for the used clothes from the West where it often costs more to dispose of clothing than to export it. This has had a negative impact on the economy and dignity of Africa.

The evidence of continued colonial domination in the very style of clothes that many African people currently wear and the need to restore dignity and pride in what is African.

The enormous power exercised by US and EU retail buyers, and the potential for this power to be used responsibly at insignificant cost to stabilize investment and employment patterns in the region.

The frequent occurrence of labour and human rights abuses in foreign companies set up in Africa to take advantage of the AGOA and the potential and responsibility of US and EU retail buyers to impact positively on these abuses.

Considerable support and pledges of assistance from the US and European Civil society formations and labour movements to mobilize members and consumers in support of the principals and actions proposed in this declaration.

### *Resolve:*

To call on EU and US retail buyers to source from countries that respect human and labour rights and to take responsibility by proactively working with trade unions and producers where they currently source to adhere to and implement respect for these rights through the use of corrective measures as opposed to irresponsible actions such as unilateral withdrawal of sourcing agreements.

Having noted the principles indicated by some buyers to avoid sourcing from countries who do not comply with human rights and labour rights therefore call upon all buyers to apply such an approach consistently regardless of size or influence of countries including China in the post MFA period.

To actively campaign for US and EU retail buyer commitment to the process of stabilizing employment and protecting labour rights in the region and to hold retail buyers and producers accountable for job losses and other social consequences of decisions to shift production.

That SATUCC and ITGLWF Africa are to articulate and implement an African approach for the best utilisation of African resources within the region, with a greater focus on domestic consumption and value chain benefaction.

To call upon the Southern African Development Community (SADC) and the East African Community (EAC) to convene and fund an urgent summit in response to the impact of the ending of the MFA and the phasing out of the AGOA 3rd country fabric provision in the region to bring a strategic approach to the sector and to stabilize employment and investment practices in light of these changes.

That this summit bring Southern and East African stakeholders (business and labour and relevant SADC and EAC departments) in the sector together in a crisis summit to develop commitment towards a common action plan aimed at developing full intra-regional benefaction in the industry in response to the potential impact of the MFA phase out and AGOA 3rd country fabric provision phase out.

To engage all Africa ITGLWF Affiliates with the Support of ITGLWF Africa and partners in order to drive similar processes across the continent to extend intra-regional trade to stabilise employment and to effect producer and buyer responsibility.

We call for a urgent support for the development of local capital and consumption markets with a parallel process for the eradication of used clothing in the region and a shift in local consumer preferences in apparel and skills development practices in order to reduce foreign market and producer dependency, stimulate economic activity and result in reduction of poverty and improved social well being and dignity of African communities.

To call upon significant business interests across the value chain from cotton to finished goods to actively participate in this process.

To specifically appeal to domestic and regional capital in the sector to assist in driving this process

To call upon national governments and regional formations to treat these issues as being of an emergency nature and react accordingly including where need is identified to invest capital to stimulate the benefaction process.

ITGLWF Affiliates in the region commit to actively support and participate in summit and campaigning processes calling upon the ninth congress of the ITGLWF and the International labour movement to commit to actively support these principals and actions as a matter of priority.

## Value Chain Development for Local Consumption

One of the recommendations that emerges from the analysis is the critical need to develop alternate forms of production and consumption within African markets. This is to reduce the vulnerability on external retailers and producers that threaten to withdraw both supply and demand at the drop of a hat. This clearly requires two elements to be in place in order to facilitate this alternative and that is local supply and local demand.

## Domestic Supply

With the exception of South Africa where used clothing is a restricted good, most countries have very little active production capacity for the local market that is still operational. Whilst there are a number of moth balled facilities the task in developing this capacity again really means kick starting the industry from scratch. This will not simply happen as a result of the market and therefore will require state intervention.

Such an intervention would need to be along the entire length of the value chain. This means a total intervention aimed at; cotton, spinning, weaving, manufacture and distribution. Possible intervention methods could include;

## State-Private Partnerships

Tariff regulation alone is unlikely to stimulate sufficient impetus for rapid development of domestic production and consumption. As an initial stimulus direct state action may well be necessary. Given the neo liberal framework in which global capitalism operates the most palatable form of such intervention would probably be in the form of Public Private partnerships. This would require investment in both human and other forms of Capital. The Zambian Government recently entered a partnership with the Chinese forming a new ginnery in Chiapata in an attempt to again develop cotton supply. Such investments need to be duplicated along the value chain. There is the potential for securing relatively modern capital equipment for lower costs as global production realigns post MFA. Whilst such enterprises may involve themselves in export production the intention should be to supply local and regional markets. It is unrealistic to assume that small countries with small domestic markets will be able to rapidly develop full value chain activities thus the focus needs to be around developing regionally based supply and demand relationships within an enabling environment. As such intra-regional quotas and tariffs need to be assessed to develop regional integration on the supply side.

## Producer cooperatives

There is a long tradition of tailoring in many African countries particularly in the East. Such tailors whilst traditionally earning a living through the informal sector have to have suffered at the importation of second hand clothing as many people these days engage themselves in repairing seconds rather than producing original garments. Within this grouping lies a natural reservoir of skills that need simply to be organised to better economies of scale. A natural organisational form in this case would be to develop producer cooperatives. Again the state can play an active and enabling role here through the provision of support institutions seed capital and the sourcing of equipment. Domestic trade unions could also use this as an effective organising strategy whereby very direct interventions and support can draw displaced workers into such activities. This can also result in significant skills transfer between workers.

## State Subsidies

State subsidies for production (Domestic Production Zones) Currently the state provides all manner of support to enable foreign capital to invest produce and export. Benefits vary but most countries under analysis offer tax holidays cheaper water and electricity and access to land and buildings. Domestic business however does not enjoy the same benefits however. In Interviews with labour departments in a number of countries that were visited there was a sense of having to protect the investor to the point of even adopting a soft approach to the enforcement of workers rights in foreign owned concerns. Unions too report perhaps more vociferously that foreign companies are treated quite differently to domestic firms and it is hard to organise in these plants precisely because workers rights are not protected adequately by the state. In addition Some countries most notably Tanzania and Kenya have EPZ acts which allow a percentage of production to be sold domestically. This has obvious implications for competition between foreign and domestic capital within the domestic market. There are of course potential benefits from such an arrangement not least of which would be an upward pressure on efficiencies but more importantly it begs the question that if we have export processing zones why do we not have domestic production zones. These areas would be supported by the state in the same way that export businesses are supported and perhaps even beyond this in the form of wage subsidy or production subsidy policies. This is not a unique approach the writer recalls an interview with a company in Swaziland some two years ago where it was revealed that the company received a subsidy from the Taiwanese government towards a portion of workers wages. Such subsidy has good potential for welfare benefaction within the economy.

Also, although controversial, government subsidies for cotton growers must also be considered as it will be essential to regenerating the cotton industry from cotton growing to fabric production. This will also assist in lowering the cost of domestically produced fabric to local manufacturers, as these will have to compete with very low priced fabrics from Asia.

## Domestic demand and achieving transition

One of the obvious problems confronting any attempt to develop a domestic textile and garment industry that is not dependent on export markets governed by foreign legislation is price based competition in the domestic market with second hand clothing. It is apparent from much analysis that the largest impact on price in the value chain lies at the retail as opposed to the production end. The normal approach to the issue of competition with used clothing through the use of import tariffs does not deal with the issue of distribution. On the other hand it is at the point of distribution that the used clothing trade accumulates the greatest welfare benefits accrue. To retain these welfare benefits that have built up through the trade in used clothing and to reduce the cost of new clothing at the point of sale by avoiding the problems associated with the formal sector retail trade the possibility exists to regulate distribution through the pre-existing distribution networks whilst simultaneously influencing the supply side through twin mechanisms of phased in tariff increases reducing the import of used clothing and state subsidies and partnerships to rapidly develop a supply chain to the domestic market.

With the use of consumer based cooperatives the same approach as goods being bought by wholesalers who in turn supply bulk to traders could be used quite efficiently. The clothing could be bought up by consumer coopera-

tives playing the role of wholesalers who then supply their members. Clothing could be sold on the same basis as the bale system of mixed bales or bales of different lines at least with the guarantee that there will not be soiled or damaged items.

## Consumer cooperatives and distribution networks

Currently used clothing is distributed via well established networks between commercial importers, wholesalers and then traders who by varying amounts dependent on the size of the trade that they do. Linked to the notion of developing domestic/regional full value production is the question of how the product is to be distributed. Given the extent of retail trade in used clothing and the number of people that subsist off the trade it seems logical to rather utilise these networks as a basis for distribution of new domestically produced clothing that preferably begins to reflect a more African design. To improve coordination and economies of scale traders could be organised into consumer cooperatives that buy direct from factories and distribute in this way. Wholesalers may wish to continue to trade and shift their focus the new clothes market as they become available. As the trade develops it may well give rise to more formal retail trade in clothing but the main distribution system needs to remain in the informal networks. The major cost associated with lies at the retail end of the value chain and reflects advertising infrastructure and branding costs more than anything else. You don't see adverts for used clothing on television in Africa because if you did the clothes would immediately get more expensive. Consumer cooperatives also serve to increase consumer buying power that can act as a handbrake on price escalation once used clothing competition has been phased out of the market. Again government should support the formation of these consumer cooperatives through institutional support, information, seed capital and cooperative advice centres that could service and advise both producer and consumer cooperatives as well as acting as a link between these two formations by way of facilitating more efficient trade. Where more than one country adopts such an approach these centres should be linked in a network to assist with developing intra-regional trading networks.



## Conclusion

When it comes to developing the garment and textile sector in Africa the policy options open to governments under the current economic framework are quite limited. It is a fact that tens of thousands of workers are employed in export orientated factories and as such the debate is no longer whether we should have this type of employment but how to regulate and improve the conditions of this employment. To this effect the first booklet in the series has focused on the origins of this type of employment and the Asian production multinationals that dominate the sector as well as different methods to regulate employment conditions. Research has also made it quite clear that these mechanisms are ineffectual in the absence of trade union organisation at a shop floor level. As such the focus of booklet 2 shifts to practical considerations around trade union organising and the practical use of regulation mechanisms such as codes, monitoring, international labour standards etc. by unions in the struggle to improve wages and conditions which are in many instances inhumanely exploitative.

At the same time it is also clear that export orientated employment in Asian production multinationals is very vulnerable employment. This vulnerability is aggravated by structural changes to trade relations in the sector through the end of the MFA and the phase out of the 3rd country fabric provisions in the AGOA. As such unions have argued that there is a need to redevelop domestic production and consumption industry that was more or less destroyed in most African countries after liberalisation policies were forced on these countries by institutions such as the World Bank and IMF.

To redevelop integrated full value chain production on a regional basis will require a concrete industrial development policy and institutions at a regional basis. To begin this process ITGLWF and its affiliates are working towards an industry summit initially in SE Africa bringing SADC and East African Community countries government, business and unions together to discuss the potential crisis in the export based sector and conditions in these factories as well as an approach to developing domestic production along the value chain. This will be critical in developing export quality textiles in response to the phase out of the allowance for the import of fabric from Asia where the AGOA eligible country is considered a lesser developed country. Labour needs to drive this process as a matter of urgency to attempt to secure jobs as well as create new formal sector jobs. In the absence of stabilised employment improving labour conditions will continue to be very difficult as the insecurity created by such the current system undermines the ability of parties to plan as well as undermining worker power and the ability of unions to engage with employers.

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Developed from a need to begin to collect and centralise information about the garment industry in South and East Africa. A number of different organisations have through the African office of the International Garment and Leather Workers Federation contributed towards research, education and activism in support of garment workers in the region. The website developed from a process of systematically databasing information on the sector. This was primarily for the purposes of having ready and sharable information on hand to support campaign activities as these become part of project focussed work or in support of particular worker grievances. Whilst the website and database system were initially developed to provide this function and specifically to promote a joint Solidarity Centre/ International Textile Garment and Leather Workers Federation anti sweatshops campaign the intention was to make this space more widely available providing information regarding other sectors and Global Union Federations in the GUF's Forum.

*"The struggle for improved working conditions and the end of human bondage is one that takes place on many different fronts. In all of the time I have been involved in the labour movement the one thing I know for sure is that there is no substitute for solid organizing on the factory floor. All of our activities in the ITGLWF Africa have attempted to develop this capacity whether it be by building skills or supporting action the starting point must be with people trying to improve their circumstances by acting collectively. The Network represents a number of different areas that ITGLWF Africa has been involved in over the past four years but that extend beyond just the garment sector as it was soon apparent that employers needed to be tackled at a sectoral national, regional and global level. The ALN website has three principal areas of focus being the Anti Sweatshops campaign being launched by ITGLWF and Solidarity Centre, general information on ITGLWF and its activities in the region for use by partner organizations and affiliates as well as developing an arena for the efforts of the Global Union Federation Forum.*

*For this reason we wish to use the resource created by the website and the information clearing house that lies behind the website to develop areas of collective effort in the Global Union Federation Forum and deal more broadly with regional initiatives through the forums support of SATUCC initiatives such as the SADC social Charter Campaign. It is my hope that this site proves useful to all those who visit who involved in the work of making this world a more human friendly place".*

Jabu Ngcobo Former Regional Secretary for ITGLWF Africa

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## IRENE

This booklet has been produced as part of the international workers newsletter project, an initiative of IRENE. IRENE has been stimulating and facilitating the exchange of information on labour issues since 1981 and has contacts, resources and a European programme of work which covers current international labour issues.

IRENE is an international network on development education. IRENEs aim is to stimulate that international labour issues are taken up by NGOs and trade unions in their mainstream education and campaign programmes. IRENE is set up to strengthen international workers solidarity. By organising international seminars and workshops it gives attention to new areas of work and provides new inputs in existing work. IRENEs activities stimulate the exchange between organisations in the South and the North and within Europe (also Eastern Europe).

The core question of IRENEs work is: How are workers in different regions in the world, affected by international restructuring in the industrial and services sector. The outcome of IRENEs work is published in the bulletin "NEWS from IRENE".

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