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**A study of changes and continuities in the organization and regulation of work  
with an empirical examination of the South African and Lesotho clothing/retail  
value chain**

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**Thesis presented for the Degree of Doctor of Philosophy  
in the Department of Sociology, Faculty of Humanities,  
University of Cape Town**

**February 2013**

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## **Dedication**

To my late parents, John and Eileen Godfrey.

## **Acknowledgements**

I have worked and interacted with many people over the years who have added to my experience as a researcher and influenced my thinking, all of which has indirectly benefitted this study. It would be impossible to list all of them but I would like to acknowledge in a general way their contribution to the on-going process that led to this thesis. Having said that, I would like to name for special thanks two people, without who this thesis would probably never have been written or would have been much the poorer. I owe a tremendous amount to my supervisor, Johann Maree, who has had a great influence on my academic development over the years and who was also instrumental in obtaining the funding for the scholarship that enabled me to complete the study. I also want to thank Jan Theron, my long-time colleague in the Labour and Enterprise Policy Research Group (LEP), who has had a profound intellectual influence on me and who gave me space within LEP to work on the thesis. Finally, I would like to thank the anonymous donor who provided the funding for the scholarship that allowed me to take off significant blocs of time to work on the thesis. His or her generosity was essential to me being able to finish the thesis.

I would also like to acknowledge the contributions of the many, many interviewees who participated in this study. All gave up valuable time in order to share their experience and insights. Without the information that they provided to me this dissertation would have been impossible to complete. I owe them my sincere appreciation.

Finally, I would like to thank my wife, Estelle, and my son, Lawrence, for their patience while I brooded about or worked on the thesis. The space and time they gave me was essential, as was the impetus they occasionally gave me when their frustrations boiled over. And, of course, there is also Twinkle, who constantly reminded me that it is the simple things in life that count.

## **Abstract**

The thesis uses world-systems analysis, together with the role of modern legal systems, to examine continuities between the early history of capitalism and aspects of contemporary capitalism. The focus of these continuities is the legal forms through which firms organise work and arrange employment, which relates to how labour is utilized and controlled. Once industrialization gathered momentum industrial capital asserted itself over commercial capital. The high point was the period of Fordism, which also saw the consolidation of the standard employment relationship and entrenchment of comprehensive labour regulation in developed countries. From about 1970 the Fordist model began to unravel, large corporations decentralized, production facilities were relocated, employment was externalized and casualized, labour regulation rolled back, and huge retailers emerged that play an increasingly important role as controllers of global, regional and local value chains. World-systems analysis allows one to situate Fordism and the more recent period of ‘flexibility’ in a long-term historical context, and within a wider geo-political and economic development context, in order to better understand how the legal forms of property and contract are able to accommodate but maintain control over different work and employment arrangements to the detriment of labor regulation. But firms take account of labour regulation when restructuring so it is an important influence on the way in which work and employment arrangements are organised.

The methodological approach was broadly deductive rather than inductive. Besides the historical and theoretical framework provided by world-systems analysis, together with the addition of a legal dimension, different sets of secondary literature were synthesized to examine developments with regard to the employment relationship, management control, the legal form of the firm, the changing organisation of work and employment, and global value chains and production networks. All of the above literature was used to develop a set of research questions and informed the empirical component of the research.

The empirical focus of the thesis is the clothing and retail segments of the local and regional value chains in parts of Southern African that comprise different geographical and regulatory zones. Secondary literature on the clothing and retail sectors was examined, but the main research method was interviews with senior managers of retailers, clothing manufacturers, design houses, cut, make and trim (CMT) operations, as well as key informants. The interviews focused on understanding the relationships that link different stages of clothing production with the retail sector. This research was largely exploratory and illustrative: it tracked differently structured value chains and sought in-depth 'factual' data on the relationships in the clothing/retail value chain, as they had previously been constituted as well as the ones that are forming and re-forming as the industry restructures.

There are significant continuities between earlier forms of contracting for work and contemporary trends such as externalization. These continuities derive from the flexibility of the underlying private law institutions of property and contract. The difference is that labour regulation is much more prevalent now than in the earlier period, even if it has weakened since the ending of Fordism. Labour regulation is therefore a key factor that shapes the architecture and geography of the regional and local clothing industry, providing a more complex series of core, semi-peripheral and peripheral zones. Another important factor is the power of the retail sector vis-à-vis clothing manufacturers. The process of segmenting the clothing production process and relocating its components has been facilitated by the embedding of management control in the structure of the production process through an advanced division of labour. Retailers and design houses can now transfer control down the value chain through a focus on quality and on-time delivery, leaving direct control of production workers to the owners of CMTs. The latter are also responsible for the labour regulatory obligations attached to the employment relationship. The flexibility that property and contract law allows to capital is being matched by flexibility in the arrangement of work. This poses a major challenge for labour regulation.

## **List of Acronyms**

ACP	African, Caribbean and Pacific (Group of States)
AGOA	African Growth and Opportunity Act
AMSA	Apparel Manufacturers of South Africa
ANC	African National Congress
ATC	Agreement on Textiles and Clothing
BLNS	Botswana, Lesotho, Namibia and Swaziland
BWL	Better Work Lesotho
CLOFED	Clothing Federation
CMT	Cut, Make and Trim
COMESA	Common Market for Eastern and Southern Africa
COSATU	Congress of South African Trade Unions
CSP	Customised Sector Programme
CSR	Corporate Social Responsibility
DCC	Duty Credit Certificate
DTI	Department of Trade and Industry
EAC	East African Community
EBA	Everything But Arms
EPC	Electronic Product Code
EU	European Union
FTA	Free Trade Agreement
GATT	General Agreement on Trade and Tariffs
GCC	Global Commodity Chain
GEAR	Growth, Employment and Redistribution
GEIS	General Export Incentive Scheme
GMROI	Gross Margin Return on Investment
GNP	Gross National Product
GPN	Global Production Network
GSP	Generalised System of Tariff Preferences
GVC	Global Value Chain
HR	Human Resources
ICT	Information and Communication Technology
IDC	Industrial Development Corporation
IDP	Industrial Development Plan
ILO	International Labour Organisation
IPAP	Industrial Policy Action Plan
ISI	Import Substituting Industrialisation
IT	Information Technology
KAP	Key Action Programme

KZN	KwaZulu-Natal
LDC	Less Developed Country
LEP	Labour and Enterprise Policy Research Group
LNDC	Lesotho National Development Corporation
MFA	Multi-Fibre Arrangement
MOLE	Ministry of Labour and Employment
M&T	Make and Trim
NCCC	Newcastle Chinese Chamber of Commerce
NEDLAC	National Economic Development and Labour Council
NGO	Non-Governmental Organisation
NIPF	National Industrial Policy Framework
QC	Quality Control
RFID	Radio Frequency Identification
RIDP	Regional Industrial Development Programme
SA	South Africa
SACTWU	Southern African Clothing and Textile Workers' Union
SACU	Southern African Customs Union
SADC	Southern African Development Community
TBVC	Transkei, Bophuthatswana, Venda and Ciskei
TDCA	Trade, Development and Cooperation Agreement
UCT	University of Cape Town
UK	United Kingdom
US	United States
WAB	Wages Advisory Board
WTO	World Trade Organisation

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# Chapter One

## Introduction

### 1.1 Introduction and central argument

A number of disciplines are currently focusing attention on changes in employment arrangements and the organisation of work. Industrial sociology is probably the most prominent of these disciplines, but labour law, economics and management studies are also examining this phenomenon through their differing disciplinary and methodological lenses. Most studies have a somewhat narrow focus in that they examine this issue over the last few decades in one or other of the advanced industrialised countries, often researching developments in only one sector. Comparative analysis, however, has provided a wider scope that spans countries and sectors, including case studies within developing countries, and has allowed for some generalisations to be distilled, but usually without being situated in a wider historical context.

The changes to work and employment are not a central focus of any of the disciplines mentioned above. Instead, these changes seem to constitute a topic located at the borders of these disciplines, connecting them, with some overlaps, but not integrating them. As a result the disciplines have tended to deal with or emphasise different aspects of these changes, leading to a plethora of concepts and a mass of fragmented evidence that lack a coherent explanatory theory. The context, however, is common cause. A new phase or era began with the tailing off of the post-war boom in the late 1960s and early 1970s; the oil shocks of 1973/4 being the decisive turning point. Initial attempts at conceptualising the disjuncture between the earlier and more recent period characterised it as a shift from Fordism to post-Fordism (or, in some cases, neo-Fordism), or as a 'second industrial divide' (Piore and Sable, 1984), or the emergence of an information or network society.(Castells, 2000) But these conceptualisations have more recently been subsumed to a large extent under the mantle of globalisation. As a result, the subsequent discourse on changes in employment and the organisation of work incorporated these disjunctive concepts as one part of this overarching process, either explicitly or implicitly. The concept of

globalisation therefore became a proxy for a theory explaining the changes taking place in employment arrangements and the organisation of work, in which a causal relationship is assumed: given the internationalisation of markets, in particular capital and product markets, the impact of new information and communication technologies (ICT), the dominance of finance capital and its mobility, the rise of shareholder-value activism, the growth of huge transnational corporations, the emergence of a new international division of labour, the spread of network forms of organisation, and a diminished role for the state; it is to be expected that there would be a demand for flexible workplaces and labour markets, and a rapid growth of non-standard forms of employment.

What this situation suggests is that there is a need to adopt a trans-disciplinary approach that has at its core a set of integrating concepts that reflect both change and continuity between the pre-globalisation period and the current era. Three integrating concepts are proposed: the employment relationship, management control and labour regulation. Each of these is embedded in a wider, more general concept, respectively the labour market, the hierarchy within the firm, and law. These wider concepts do not link in a one-to-one relationship with the abovementioned disciplines. In fact, the disciplines cut across all three, which attests to their value as integrating concepts. So, for example, law permeates the labour market through the employment contract, it provides the foundation for the firm and the exercise of authority within it, and it is the mechanism through which the state seeks to control or engineer the market. Similarly, the organisation of work and the relations in the hierarchical organisation are critical concerns of industrial sociology, as is the role of labour law in regulating those relations. Human resources and industrial relations are important functional areas of management that deal with employment, control over work and regulation. These are key components within management studies, while control is seen as a core principle of management more generally.<sup>1</sup>

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<sup>1</sup> It is interesting to note, given the argument made later in this thesis that most studies of the changing nature of employment and regulation at best go back to early in the 20<sup>th</sup> century or at worst are ahistorical, that labour law and management studies are disciplines that developed only in the last hundred years. Sociology and economics have a longer provenance, although their focus has been almost exclusively on the period of industrialization onwards.

Although the core integrating concepts link usefully to broader phenomena and optimise the overlaps between disciplines, it is their relationship with each other that is more important in constituting them as 'core' concepts. It is this relationship that defines the questions that this research seeks to answer. The relationship, set out in the form of an abstract argument, is as follows:

- industrialisation accelerated the concentration of workers in large workplaces and led to the need for a hierarchy of managers;
- managers needed to control how work was organised and how workers performed work in order to achieve productivity improvements;
- the employment relationship, combining cooperation and competing interests, increasingly became the institution through which management control could be best effected;
- the state was compelled to regulate the relationship between workers and managers in the workplace;
- most labour regulation rested on the existence of an employment relationship;
- management control became more and more constrained by labour regulation, threatening the ability of managers to achieve productivity improvements;
- the consequence is that employment is being avoided through externalisation,<sup>2</sup> but this potentially undermines the ability of management to control work;
- avoidance of labour regulation can be achieved by externalising certain functions locally or by externalising functions to suppliers located thousands of miles away;

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<sup>2</sup> Explain externalization takes place when employment is replaced by engaging workers through commercial contracts.

- managers make a trade-off between maintaining control and avoiding regulation, which leads to changes in the structure of firms, employment arrangements, and the organisation of work;
- alternatively, managers are able to control as effectively through institutions other than employment, so avoid regulation by utilising such institutions.

This argument raises a number of macro-theoretical questions:

- was the exercise of control through the employment relationship required only in certain historical circumstances, i.e. the Fordist era, and with changed circumstances employment is not necessary and easily jettisoned to avoid regulation;
- or was the earlier literature over-emphasising the drive by management for control of work through the employment relationship and ignoring the fact that alternatives always existed for management through which it could exercise adequate control;
- implicit in the above two questions is a more fundamental theoretical question, viz. is management making conscious, strategic decisions regarding the trade-off between control and employment or is this a structural process in which decisions are being determined largely by the environment within which managers are operating to the extent that they are almost unconscious choices or simply so obvious that one can hardly say that a choice exists or a decision has been made between two alternatives; and,
- finally, if we are entering a phase (or reverting to a phase) in which management control can be exercised in ways that do not require an employment relationship, how should labour regulation be designed so that it can continue to protect workers; what hook should labour regulation be hung on if not the employment relationship?

The above is the argument that is at the core of the thesis. The last two bullet points in the first part of the argument are the primary research questions, namely:

- Do managers make a trade-off between maintaining control through the employment relationship or avoiding regulation by externalisation, which leads to changes in the structure of firms, employment arrangements, and the organisation of work; or
- Are managers able to control as effectively through institutions other than employment, and therefore avoid regulation by utilising such institutions?

These questions relate to the theoretical questions raised in the last set of bullet points. Below I will concretise the last two questions further for the empirical research.

## **1.2 The theoretical and empirical scope and scale of the thesis**

Having decided the core concepts it remains to decide the scale and scope of the thesis. There are, of course, two aspects to this question, namely the theoretical and the empirical scales and scopes. I will deal with the theoretical aspect first. Above I made two criticisms of much of the existing literature on changing employment arrangements and work organisation. The first is that it has focused on a relatively short period from about 1970, and the second that research has tended to examine advanced industrialised countries, often in a quite isolated way. These criticisms point to questions of history and political geography; in other words, what geographical scale and what historical period should theory try to encapsulate and explain.

One point at which to begin would be the start of industrialisation. But such a periodisation tends to equate capitalism with industrialisation, and suggests that employment (or wage labour) is causally linked with both industrialisation and capitalism. Capitalism, according to Wallerstein and Braudel (and even Marx, although he later recanted), emerged much earlier in the 13<sup>th</sup> century (according to Braudel) or the 16<sup>th</sup> century (according to Wallerstein), and was not defined by employment (or wage labour). What defines capitalism is the continual drive to

accumulate capital in order to accumulate still more capital in a process that is endless.(Wallerstein, 2004: 24) This can be achieved without an employment relationship, although it should be noted that employment was quite widespread in this predominantly feudal period. But long-distance trade was capitalism's initial driving force and it was primarily through exchange of goods and services that surplus value was realised. Lumping employment with industrialisation and capitalism implicitly supports the notion that history comprises progressive stages that go from slavery, to serfdom, to free employment in the industrial/capitalist era. The many working arrangements that characterised the long transition from feudalism to capitalism, in particular the putting-out system and sub-contracting, are therefore seen as temporary aberrations that were consigned to history by the more and more efficient mechanism, the employment relationship. From the early 20<sup>th</sup> century the employment relationship became increasingly pervasive and secure in the advanced industrialised countries, and by the second half of the century what can be termed a 'standard employment relationship' was well entrenched.<sup>3</sup>

The standard employment relationship is the benchmark against which much of the current research on changing employment arrangements and work organisation is measured. Often implicit in such research is the sense that the emerging new non-standard employment arrangements represent a set-back for labour in the era of neo-liberalism and globalisation, but that soon the Polanyian double-movement will assert itself and we will once more be on track with a more secure (or progressive) form of employment, which will ultimately lead to an end to capitalism and freedom from wage-labour. The current phase in which the employment relationship is under threat, is therefore a temporary phenomenon that will be superseded in the inexorable course of human progress.

If, however, one takes a longer historical view an alternative and more open-ended scenario is suggested. This scenario proposes it is the standard employment relationship, and even employment in general, that is the temporary phenomenon associated with a particular phase of capitalism in certain regions. The emerging new employment arrangements then to some extent represent continuity with the sorts of

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<sup>3</sup> The standard employment relationship is where employment is indefinite and full-time, and the employee usually works in the workplace of the employer and is under his/her direct control.

arrangements that emerged in the long transition from feudalism to capitalism in Western Europe. The geographical limitation is important because standard employment in the developing world was never as widespread as it became in, first, Western Europe, and then in countries such as the United States, Canada and Japan. Subsistence agriculture, family work, self-employment and forms of coerced labour are still widespread in developing countries, which also have large informal economies in which extremely fluid working arrangements exist. Even if one were to classify such arrangements as employment, they have certainly never reached the status of standard employment arrangements. The latter is confined to a small proportion of the workforce, usually dominated by employment in the public sector and extractive industries. So, employment in advanced industrialised countries is increasingly being replaced by the contracting of work as a specific service or set of services, while in developing countries employment is limited to a fairly small proportion of the labour force under weaker regulatory conditions than prevail in advanced industrialised countries and the remainder of the workforce is in self-employment or in precarious informal working arrangements. Importantly, all the working arrangements in this scenario are part of the capitalist world system, so however one is contracted to perform work, surplus value will continue to be appropriated and the nature of society remains capitalist.

What the above suggests is the need for a longer historical scope and a wider geographical scale to the study of changes in employment and work organisation. The historical scope needs to go back to the emergence of capitalism and the scale needs to be the capitalist system in its entirety. World-systems analysis fits this requirement well. It is a socio-historical approach that takes a much longer temporal view, beginning in the 13<sup>th</sup> century (Braudel) or 16<sup>th</sup> century (Wallerstein), and starts with a larger, all-encompassing scale, the capitalist world-economy, which by the 19<sup>th</sup> century had become the capitalist world-system. The central concept of world-systems analysis is the axial division of labour. This is not the same as either the social division of labour (which describes the existence of different occupations) or the technical division of labour (associated with the breakdown of tasks within the workplace) of Marx and others, but the division of functions or tasks within the entire commodity chain. The geography of this division of labour, and the way in which surplus value flows along the commodity chain, leads to another key concept of

world-systems analysis, namely the categorisation of the world-system into core, semi-periphery and periphery. The three zones are co-dependent: wealth (or value) flows from the periphery to the core, with the semi-periphery gaining some wealth from the periphery but also contributing to the flow of wealth to the core. As one would expect, the level of development, as well as the nature of the labour relationship, regresses as one moves from core to periphery. To illustrate this Braudel traces a line across Western Europe that reveals wage-labour prevalent in England, a mix of wage-labour, artisan self-employment and old-style serfdom in the west of the continent, serfdom in Eastern Europe and the Turkish Balkans, and slave labour being rapidly exported to the New World.(Braudel, 1984: 62)

There are three additional benefits of using world-systems analysis. First, the scope of the theory lends itself to a trans-disciplinary approach because it encompasses history, sociology and international political economics. Second, it places the labour relationship at the centre of economic development. The way in which modern disciplines have developed has separated the labour relationship from the wider economy, splintering this critical nexus across economics, international political economy, sociology, management studies and labour law. It is even split within disciplines, as one sees with labour economics, industrial sociology and human resources management. In this thesis the concepts of employment, regulation and economic development are combined, as one would expect with the trans-disciplinary approach advocated by world-systems analysis. Third, the notion of core, semi-periphery and periphery is not limited to the world-system; it can be applied at regional and local levels. Of course, this produces a kaleidoscope when regional and local cores, semi-peripheries and peripheries intersect, but this simply reflects the complex reality at these levels.

World-systems analysis has two major weaknesses. First, although it does not ignore the state or the political sphere, it pays no attention to law or regulation, both of which are key aspects of this thesis. It is a serious omission if one is seeking to understand the emergence and consolidation of capitalism. It is surely not a coincidence that the period and region that is the primary focus for the development of world-systems analysis – the 13<sup>th</sup> to 18<sup>th</sup> centuries in the Mediterranean region and Western Europe – corresponds closely with the so-called ‘reception’ of Roman law into Western

European legal systems. The latter process introduced legal principles and institutions that were critical for the emergence and spread of capitalism, in particular the contract, including the contract of employment, and the *universitas*, which provides for collective ownership of property and laid the basis for the modern corporation.

The second weakness of world-systems analysis is that its long view of history and global scale makes it a somewhat unwieldy tool with which to study more recent developments at the local level. This is in part because the foundation for the theory was the 13<sup>th</sup> to 18<sup>th</sup> centuries, which was largely pre-industrial. Key features of the last two centuries of industrialisation that led to huge increases in productivity and rapid economic development in some regions have not been incorporated into and been given the detailed attention they deserve in world systems theory. This thesis highlights six of these features.

The first is the ‘freeing’ of workers from feudal obligations and their growing utilisation in production and other processes through the institution of the employment relationship. The legal basis for this relationship was the employment contract, but employment contracts are ‘incomplete’, entered at the beginning of the relationship but unable to entirely regulate the on-going, day-to-day performance and interaction that constitutes the relationship. The employment contract therefore dovetails with the emergence of management as a specific function, because at its core it provides for authority in the workplace, i.e. command over the worker with regard to the performance of work on an on-going basis (the so-called managerial prerogative). The contract therefore combines competition, cooperation and control: the competing interests of the parties to the contract who are seeking to maximise their benefit from it; the cooperation that is the basis for the contract and an essential part of work; and control, which derives from the ownership of property by one party and ensures that it can maximise its benefit from the contract over time. The contract is essentially a formality; it is the interaction of these processes that constitutes the employment relationship. Importantly, however, the same trinity of competition, cooperation and control are in a slightly altered form part of many commercial contracts, cloaked in the economic power of a larger unit of capital over a smaller unit.

Second, as markets grew there was a need for larger units of production capacity to meet demand. It was beyond the means of most individuals or partnerships to finance these entities. A vehicle was therefore required that could access much larger quantities of capital without the need for the investors to become directly involved in the management of the entity. The company or corporation was the vehicle, with its own legal personality and the added attraction that the liability of investors was limited to the amount of their investment. In most cases the growing corporations quickly became too large for one person or family to manage, so more and more managers were employed to run certain functions of the corporation. Such corporations have become huge and many now span the globe, wielding vast power through their size and decision-making about investment. But few have remained single units of capital. Company law has provided a great deal of flexibility in how corporations are structured, even providing for ostensibly independent legal entities to be created that are entirely controlled by another company through its shareholding. Many corporations now comprise holding companies (or virtual holding companies through interlocking directorships) and networks of subsidiaries.

Third, the modern state emerged. While more democratic and transparent than the absolute monarchies it replaced, its power is far greater and more pervasive. The relationship of the state with the economy has been one of the defining features of the industrial landscape, spanning the spectrum from neo-liberal capitalism, to social welfare capitalism, to state capitalism or 'actually existing socialism'. A key component of the state is the judiciary. It is independent but the state provides its infrastructure of courts, etc. and is the overall protector or guarantor of the integrity of the system of law. But aside from this function, the state intervenes much more directly in economy and society through regulation, in particular the regulation of markets and industries. Such regulation can take various forms, from protecting markets or seeking to improve the competitiveness of markets, to protecting society, in particular workers, from the worst effects of markets. (Polanyi, 1945) Such regulation has led to the growth of state bureaucracies and a large stratum of public sector managers.

Fourth, the emergence and growth of management has been indicated in each of the three points made above. First, the rationale for management is to respond to the

open-ended nature of the employment contract, thereby ensuring that the owners of property maximise their benefits from the contract. Second, the growth of management, the increasing specialisation of management functions and the quasi-professionalisation of management have all flowed from the growth of the large corporation. Third, the modern state has seen the emergence of a huge bureaucracy that comprises a large stratum of public sector managers. The growth of management led to a separation of control from ownership of the corporation that raised the possibility of a quite different form of capitalism. In fact, the developments mentioned above were so significant that in the middle of the 19<sup>th</sup> century Berle and Means (1932) referred to the emergence of 'managerial capitalism' and Burnham (1945) spoke of the 'managerial revolution'.

Fifth, the technical division of labour within the workplace became more and more refined, breaking down and deskilling the labour process, with control over work and knowledge being wrested from workers by managers. The result was that the division between management and worker increasingly came to represent a division between the mental and manual aspects of work. But this is not the only division of labour that is important. Wallerstein identifies what he calls the axial division of labour which divided the capitalist world system into core, semi-periphery and periphery (briefly outlined above). However, insufficient attention has been given to the relationship between these two types of the division of labour. In other words, the extent to which the location of large-scale production of certain commodities to developing countries has been premised on the de-skilling of production processes. It is an important question because it provides a basis for the incorporation of developing countries into the world system and also connects traditional concerns of industrial sociology with the focus of a more recent interest in development.

Sixth, science was utilised in the production of goods and services, with the result that technological advance became a major force in industrialisation.<sup>4</sup> This is not the central focus of this thesis but for many is probably the key factor that spurred

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<sup>4</sup> A seventh important process needs to be mentioned, namely the rise of trade unions, first in the form of craft unions and later as industrial unions. Trade unions, as well as worker resistance more broadly, have challenged managerial prerogative and re-shaped management's strategies. Given that industrial society has not polarized into two antagonistic classes, with the working class being led by revolutionary vanguard parties, trade unions have been the most visible representatives of working class interests in many countries.

industrialisation and continued to drive it. The advance in information and communication technologies in the second half of the 20<sup>th</sup> century is certainly a critical factor in what has come to be termed globalisation.

The emergence, or acceleration, of these and other processes from about the middle of the 18<sup>th</sup> century gave birth to sociology and the other social sciences, each of which present numerous theories that attempt to explain one or other aspect of the economy, polity and society. As noted above, the divisions between these disciplines sharpened and deepened over time, leaving some gaps as well as confusing overlaps. Even within disciplines there are curious lacunae; for example, industrial sociology is virtually silent as regards management, focusing much of its attention on the organisation of work, workers and workers' organisations. When management is studied it is as a practice rather than a group of people, and motives are read off from developments in the workplace rather than generated empirically. On the other hand, management studies deals squarely with management, but without the critical tradition of much sociology, so one is left with a discipline that is essentially descriptive and prescriptive. As argued above, this thesis seeks to place at its core a number of key integrating concepts that will seek to overcome these divisions, fill some of the gaps and clear up some confusion.

The trans-disciplinary approach adopted in this thesis lends itself to eclectic theory-making.<sup>5</sup> The thesis uses world-systems analysis as a framework, and utilises some of its key concepts, but it draws on other disciplines and theories in order to understand the relationship of management control and labour regulation. The literature review that follows therefore does not seek to examine trends in a particular set of literature, but rather draws together different sets of literature that can contribute to understanding the topic and provide a basis for theory development.

The methodological or empirical scope and scale of the thesis is much less ambitious than its theoretical scope and scale. To match empirical data to the theoretical scale and scope would be well beyond the ambit of the thesis. This creates a rather sharp asymmetry: the empirical scope is contemporary, although the background on the

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<sup>5</sup> The concept of eclectic theory-making is borrowed from JH Dunning; see discussion in Dicken, 2011: 116.

clothing industry and retail sector goes back to early in the last century, while the geographical scale is four areas in Southern Africa: the Cape Town area, the Durban area, the semi-rural interior of KwaZulu-Natal in South Africa, and Maputsoe in Lesotho. The economic scale is just one product, clothing. Two nodes of the clothing value chain will be examined, namely the clothing manufacturing sub-sector and the clothing retail sector. There is nothing one can do about the asymmetry between theory and empirical scope other than to moderate the claims that the empirical evidence can make with regard to proof of the central argument of the thesis. So, the empirical research is not designed to test an hypothesis or even answer a specific research question(s), but rather it is an illustrative case study to support a theoretical argument.

Above I set out the core argument of the thesis, highlighting the key research questions, namely:

- Do managers make a trade-off between maintaining control through the employment relationship or avoiding regulation by externalisation, which leads to changes in the structure of firms, employment arrangements, and the organisation of work; or
- Are managers able to control as effectively through institutions other than employment, and therefore avoid regulation by utilising such institutions?

For the purpose of the empirical research, i.e. the illustrative case study of the clothing manufacture and retail sectors, the above questions need to be broken down further and concretised:

- How is management control exercised in the manufacture of clothing? Is it an essential feature of the standard employment relationship in the clothing firm? Is control important for managers in order to achieve certain levels of performance? What impact has labour regulation had on management control?

- Do managers factor in control, and loss of control, when making decisions about decentralising production and externalising employment? In particular, are loss of control and the elimination of the costs and risks associated with labour regulation seen as key factors when making such decisions, to the extent that control and labour regulation are traded off against one another?
- What other factors do management take into account when making these decisions? In particular, what role does the power exerted by the retail corporation have in the decision?
- If production is decentralised and employment is externalised, how do managers at the client firm try to maintain a level of control over production through commercial contracts and extra-contractual mechanisms? Is the retail customer effectively controlling the way the good is produced and brought to the market? If so, how are retailer managers effecting control over the production process?

It is important to stress that the thesis will examine the clothing production process as well as the sales process, i.e. the clothing retail sector, as well as the connections between the two. One of the strengths of value chain analysis has been to bring the retail sector within the scope of research on production sectors. It is remarkable how poorly the retail sector has been researched. The claim that economists view the firm as a 'black box' is well known, but it seems that their view of the market is equally opaque and abstracted, denying the existence of the powerful organisations that have come to represent and shape the market. These organisations include not only the large retailers but also the intermediaries that function between manufacturers and retailers. When clothing was first produced commercially there was no distinction between manufacturer and retailer: the wife who made extra clothing in the home would also sell it in the marketplace, the bespoke tailor and dressmaker were both manufacturers and retailers. Similarly, the blacksmith making pins was both manufacturer and retailer, but Adam Smith famously focused only on the way in which the division of labour had broken down the pin-making production process. Others, notably Marx, continued with this focus, in the process overlooking the

division that happened in parallel with the fragmentation of production jobs and increase in output, namely the division between making and selling, often facilitated by intermediaries such as wholesalers that linked manufacturers and the retail shop.<sup>6</sup>

Wallerstein's concept of the axial division of labour implicitly acknowledges the division that took place between production and exchange, while Braudel provides historical detail on the emergence of markets, fairs, shops and trade alongside artisan workshops, the putting-out system and manufactories. But their research also highlights the fact that for the most part the separation of manufacture and sale was part of the structure of mercantile capitalism. Merchants, particularly long-distance merchants, did not want to get directly involved in production; their focus was on trading. So, their role was to become the conduit for getting manufactured goods to the market. This process gradually incorporated wholesaling and then some fixed retail operations. A far less significant part of the division between production and exchange saw artisans and other workers focus just on production while others set up shops.

With the expansion of production, first through the putting-out or domestic system, and then via the concentration of workers in factories, together with the growth of national markets, the functions of manufacturing and selling became increasingly specialised. In this process production rather than exchange became the dominant stage in the circuit of capital. Whereas commercial capital had driven capitalism from its earliest years, it was now industrial capital that was in the vanguard. This dominance was implicitly acknowledged in much social theory. Industrialisation was driven by manufacturing innovations and the economies of scale achieved by the organisation of work in large factories, rather than by exchange. Marx's outline of the circuit of capital implicitly recognised this dominance; although exchange was an important part of the circuit it was the production of commodities that was the starting point and the place where surplus value was realised. This is less and less the case today. For many commodities it is the huge retailers that coordinate and control

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<sup>6</sup> This division of labour is fundamental to the way in which the production and sale of goods and services has come to be structured but its history and the modalities of the split seem to have attracted little attention. The focus has instead been on the division of labour within manufacturing sectors, and to a lesser extent within commercial and retail sectors, rather than the split between the manufacturing and retail sectors and how it is managed.

production, and realise much of the value, even though they seldom own the production facilities. This development is brought out best in the value chain literature, which sees the various stages in a supply chain as having become integrated through the actions of 'lead' firms. In the case of buyer-led value chains the lead firms are generally the retailers or brand manufacturers in the developed economies.

This profound shift in power from commercial capital to industrial capital and back to commercial (or financial) capital has been largely ignored in industrial sociology literature. But the implications are far-reaching. First, the huge corporation is often not the producer but the retailer; production is increasingly fragmented into smaller units, often organised into tiers of contractors and smaller and smaller sub-contractors. Second, the divorce of control and ownership within the corporation does not signal a move to 'managerial capitalism'; the divorce now manifests as the dominance of management in huge retailers over much smaller suppliers that are often owner/managers. Third, retailers control production but without the need to employ workers in production facilities, thereby avoiding labour regulation. Furthermore, retail managers undermine regulation by constantly searching for production sites with lower labour costs (and less regulation). Fourth, ICT innovations have been utilised to further deskill and control workers within the production process, but it is the ability that these innovations have given to retailers to improve monitoring and control over suppliers that is even more important for the way in which production and distribution is organised.

It is these developments that suggest that something more profound is happening than a strategic trade-off between management control and regulation leading to externalisation of employment. What the above points to is a fundamental restructuring of the production and sale of goods and services because there are mechanisms through which control can be exerted other than management of employees. Control, it is proposed, can be exercised just as effectively through commercial contracts between independent entities as it is within an entity through employment contracts, without the disadvantage of labour regulation that the latter attracts. This means that the future is relatively open-ended. There are no limits to what economic power can achieve, together with the flexibility that contract and company law provide, especially when it is possible to exploit the inequalities

between developed and developing regions in the capitalist world-system. One can no longer rely on the certainties of the Polanyian 'double movement'. This oversimplification is undermined by the more complex dynamic that is created when one adds the power and malleability of property to the flexibility of contracts in the context of value chains that are dominated by retailers (what Gereffi calls 'buyer-driven'). As Hamilton and Petrovic argue, by the end of the 20<sup>th</sup> century, "large retailers had replaced large manufacturers as the key organizers of the world economy", and they will arguably determine the direction of the world-system in the next decades.(2011: 3)

### **1.3 Grounding the thesis empirically**

Contemporary developments in the six features of industrialisation mentioned above are all critical for understanding the changes taking place in the organisation of work and employment. First, the standard employment relationship is under threat, with contractual law undermining labour regulation and commercial contracting replacing employment as a way of engaging labour. Second, the hierarchy of the large corporation is being replaced by decentralised or network forms of organisation, although power has become ever more concentrated in the centre. Third, management has not led a 'revolution', as predicted by some writers, although it is arguable that their approach contributed to the gains made by labour in much of the 20<sup>th</sup> century. However, the financialisation of capitalism and shareholder-value movement has constrained managers, forcing them to restructure the corporation in order to drive down costs. This is evident, in particular, in value chains that are controlled by major retailers.

Fourth, the technical division of labour has undergone a change. Rather than the relentless deskilling of the labour process by management that was predicted by Marx and Braverman, the firm is often divided into a core, semi-peripheral and peripheral labour force (just as Wallerstein proposes that the world-system is divided). The core labour force continues to be engaged in standard employment, is skilled and has discretion in the performance of work. On the other hand, the semi-peripheral and peripheral labour forces are in less secure non-standard forms of employment, and perform the largely monotonous semi- and low-skilled work tasks. In many cases

these semi- and low-skilled tasks are in separate firms geographically distant from the core. As noted above, these developments fit easily into the axial division of labour proposed by Wallerstein.

Fifth, rapid advances in information and communication technology have facilitated and often driven the restructuring of firms and the transformation of the workplace. Sixth, the power of the state has diminished and regulation has shifted increasingly to promoting competition rather than protecting society, in particular workers. In the case of developing countries this has been forced on the state by the need to attract investment, increase competitiveness and exports, and create employment. The institutions for implementing the policy of the so-called Washington Consensus are usually the ones that have exerted the pressure on developing countries. The advanced industrialised countries, on the other hand, have been deeply influenced by the neo-liberal ideology that gave rise to the Washington Consensus. A smaller state with less involvement in the economy has been the central policy platform of political parties that espouse this ideology. As regulation is rolled back, or regulation is increasingly geared to liberalising markets rather than constraining them, the contractual regime has emerged more strongly to grease the wheels of the economy.

As argued above, these developments point to questions about the role of management control, the employment relationship and labour regulation in the way the modern world-economy is being structured. This has profound implications for the ability of labour and the state to protect the working population throughout the world.

#### **1.4 The structure of the thesis**

The background to the research topic and the research questions have been outlined in some detail above. It should therefore be evident that this is theoretical study with an illustrative empirical component. The latter aspect comprises four empirical studies of the exercise of management control across and within firms in the clothing and retail value chain. The findings of the empirical research are used to re-examine the argument that is developed in the first part of the dissertation in order to make refinements and draw conclusions.

The dissertation is structured conventionally. In chapter two the research methodology is explained, with a focus on the empirical design and method, although contextualised by historical and secondary research. Chapter three outlines the analytical framework, which highlights key concepts of world-systems analysis, with the addition of a legal dimension. In chapter four the focus is on industrialisation and five sets of literature that examine key institutions that emerged in this period. Chapter five is a bridging chapter that links the history discussed in chapter three with the focus on the clothing and retail value chain that follows in subsequent chapters. In chapter six the South African clothing industry is outlined, with some discussion also of the retail sector, and in chapter seven the findings of the empirical research are presented. In chapter eight the research findings are analysed in the light of concepts of world-systems analysis and the other relevant literatures. The dissertation is drawn to a conclusion in chapter nine.

University of Cape Town

## **Chapter Two**

### **Research methodology**

#### **2.1 Introduction**

This thesis was originally planned to focus on management and labour regulation. It was also intended to include far more empirical research than theoretical and secondary literature. The substantive focus shifted incrementally over time to examine how the flexibility of contracting and corporate form is able to re-shape the architecture and geography of manufacturing and retailing systems. It does this in a way that concentrates power with retailers and displaces responsibility for employment and regulatory compliance to manufacturers and their sub-contractors. What remained of the original conception was an interest in management control, in particular how economic power and commercial contracts could transfer management control across the legal and spatial gaps between firms. As the substantive focus of the thesis shifted, the empirical dimension narrowed from a number of sectors to one sector and the intention was for the empirical data to illustrate the processes underway in the clothing industry rather than to provide a basis for inductive theory-building.

The methodological approach therefore became broadly deductive rather than inductive, although it was not driven by a single theory or by the intention to test an hypothesis. Instead, world-systems analysis, a legal dimension, different sets of more contemporary literature on industrialisation, and empirical research were used to answer a set of research questions. The empirical research is qualitative and illustrative; it is focused on understanding the relationships that link different stages of production with the retail sector. This research was largely exploratory, which is why I cannot classify it as a case study or set of case studies. It tracked differently structured value chains and sought to understand the relationships that connected different firms in the chain. The interviews conducted for the thesis therefore sought in-depth 'factual' data on the relationships in the clothing/retail value chain as they had previously been constituted and the relationships that were forming and re-forming as the industry restructured.

With the narrowing focus of the empirical research, the secondary research took on much greater importance. The latter had three main parts. First, there is an historical and theoretical dimension, provided by the framework of world-systems analysis. Second, there is a more contemporary dimension that sought to synthesize different sets of literature that combine to contribute to the central argument of the thesis. In practice these different sets of literature deal with much the same issues but within their disciplinary boundaries, so an objective of the thesis was to get these sets of literature to interact and mesh with one another. Third, running through the above two approaches is a legal dimension, or more correctly a socio-legal dimension that also has an historical aspect. These different components, together with the empirical research, are brought together to answer questions that are situated at different levels of abstraction (see previous chapter).

In the sections that follow I will focus on the empirical component of the research.

## **2.2 Research design**

Value chain analysis has become popular in recent years. I did not attempt value chain analysis *per se* but rather borrowed from it to design my empirical research. In other words, value chain analysis informed the way I approached different stakeholders in the clothing and retail sectors. At the core of my inquiry was the intention of getting data that would allow me to compare the relationships formed through commercial contracting with the ‘traditional’ employment relationships that exist in hierarchically structured firms. I therefore needed to focus on different firms in the clothing/retail value chain as well as the management and employee relationship within the firms that actually manufacture the clothing. The first step was to roughly map a number of value chains and identify the different types of firms in the chains.

Hopkins and Wallerstein enjoin researchers that are seeking to study commodity or value chains to start with the end product, enquire first where it is being sold, and then work backwards along the different stages of production. My task to map the value chain appeared relatively simple since I focused on only two links in the chain. The point of sale of clothing was the major South African clothing retailers. But working backwards to understand the manufacture of clothing presented a more complex

picture. The clothing industry in South Africa has undergone significant restructuring in the last two decades, decentralising along a number of dimensions: legal, operational and geographical. Previous research and preliminary investigation for the thesis indicated that central to the restructuring was the emergence of design houses, i.e. firms that perform a specific set of functions in the clothing value chain that position them between retailers and small manufacturing firms. The latter are for the most part what are known as cut, make and trim (CMT) operations, although in some cases they do not have cutting facilities so are just M&T operations.

The design houses therefore appeared to be the lynch-pins in the restructured clothing value chain. But further investigation and parallel research projects revealed greater complexity in the restructuring in the industry. The design houses in Cape Town servicing the more fashion-oriented retailers appeared to operate differently to design houses in Durban that worked for discount retailers and used CMTs in the Non-Metro Area of KwaZulu-Natal (KZN). These differences were highlighted by the controversy that erupted when non-compliant CMTs in Newcastle resisted the clothing bargaining council's campaign to enforce compliance with its agreements. Furthermore, it became evident that design houses and CMTs were just one way in which clothing was being manufactured for the major South African retailers. Besides sourcing large proportions of clothing from China and other Asian countries, retailers were being supplied with clothing made in Lesotho and Swaziland by South African-owned factories. In many cases these factories were subsidiary operations of clothing manufacturers based in Cape Town and Durban that had supplied the retailers for many years.

Given this complexity it was difficult to develop a systematic approach. I therefore tended to take selected design houses as a starting point and then to conduct interviews with some of their CMTs and the retailer(s) they were supplying. It was not always a smooth process; one retailer refused to be interviewed and a number of CMTs refused to be interviewed. I therefore did not get as complete a picture of each value chain format as I would have liked, but in most cases I managed sufficient interviews to map the main features of the value chain format and understand the relationships between the different participants. I also conducted a number of interviews with key informants in the clothing and retail sectors. These were lengthy

interviews with people having extensive knowledge of the restructuring process in the clothing industry. They provided a great deal of important information that enabled me to contextualise the data I was receiving from interviewees in the value chains.

An important question that often comes up in value chain research is the unit of analysis. It is a difficult question to answer. The obvious answer is that the value chain is the unit of analysis, but the value chain does not exist as an entity; in reality it comprises connections between a number of firms. This suggests that individual firms should be the unit of analysis. Alternatively the sector should be the unit of analysis. But neither fit the bill. The firms add up to something less than the value chain and the sector is something much more than the value chain. In fact, they each constitute 'units of data collection' rather than units of analysis, but studying them is essential for understanding the value chain. Ultimately one is left with the value chain, or chains, as the unit of analysis, but made up of individual firms and embedded in the sector. This is a pragmatic solution that is not entirely without methodological tensions.

As noted above, the study borrowed from the conceptual and methodological framework of value chain analysis but its focus was on the relationships between firms. The specific question was how power and contract combined to reproduce the sort of control achieved in a hierarchical employment relationship. This focus was located in the clothing and retail sectors and used the concept of value chains to understand the architecture and geography of the various firms that constituted value chains. But it was the relationship between the links in the value chains that was the unit of analysis rather than the chain itself.

My research was assisted and informed by parallel projects that I conducted for the Labour and Enterprise Policy Research Group (LEP) at the University of Cape Town (UCT). The first project was part of an international research programme called Capturing the Gains, which was co-ordinated from the University of Manchester in the United Kingdom and Duke University in the United States. The objective of Capturing the Gains was to study economic and social upgrading and downgrading in global value chains (GVCs) in four sectors and across four regions of the world. The sectors were: agrifood (primary), clothing (low-tech manufacturing), mobile

telecommunications (hi-tech manufacturing), and tourism (services); and the regions comprised four core countries: Brazil, South Africa, India and China, plus a number of less developed neighbours. My own role in the programme was to conduct research as part of LEP on the clothing value chains in four sub-Saharan African countries: South Africa, Lesotho, Kenya and Mauritius. The research comprised collecting statistical information such as trade data and employment data, reviewing secondary literature, and conducting interviews with key stakeholders in the relevant countries as well as with senior management at a sample of clothing manufacturers. The interviews were detailed and were conducted face-to-face.

The Capturing the Gains research project was followed by research conducted for the International Labour Organisation's (ILO) Better Work Lesotho (BWL) programme. Better Work is a partnership between the ILO and the International Finance Corporation (a member of the World Bank) which aims at working with retailers, manufacturers and trade unions to monitor compliance with labour rights in clothing factories in developing countries. The Better Work programme has been rolled out in nine countries to date, including Lesotho. My brief was to interview the South African-owned clothing manufacturers in Maseru in Lesotho, and the major South African retailers sourcing from them, in order to establish why they were refusing to subscribe to BWL. Interviews were also conducted with officials of employers' associations, trade unions and government. Telephonic and face-to-face interviews were conducted.

A third project was conducted for LEP as part of an on-going research programme funded by FNV Mondiaal of the Netherlands. The project examined the challenge of achieving decent work in a number of sectors in South Africa. My component focused on the clothing industry in South Africa, in particular the issue of non-compliance in the Newcastle area of KZN and the emergence of worker co-operatives in and around Durban. Fieldwork was conducted in Durban, Ladismith and Newcastle in KZN and telephonic interviews were conducted with some design houses and retailers. Interviews were also conducted with employers' organisations, the trade union and a bargaining council official.

It is important to stress that there was not direct overlap between any of the above parallel research projects and this study. I used the opportunity of some fieldtrips for the above projects to also conduct separate fieldwork for my thesis. On a few occasions, however, I interviewed the same interviewee for both the parallel project and my own study, but only after making it clear where the one ended and the other began, and after explaining the ethical conditions in respect of the thesis research and getting the interviewees agreement (see information sheet in the appendix).

The parallel research projects did however significantly inform this study. It was impossible for them not to have had an indirect influence on the methodology and my understanding of the operational and geographical structure of the local and regional clothings/retail value chain as well as the dynamics within the chain. There was also considerable overlap in terms of secondary research conducted for the parallel projects and this study. But I did not draw directly on any interviews conducted for the parallel projects. At most I drew some quite general points about broad differences between different value chain formats and different regions.

### **2.3 Research methods**

The empirical component of the research was qualitative. The main research method for gathering empirical data was interviews, mostly face-to-face but a few telephonic, with clothing and retail sector key informants, senior managers at retailers and manufacturers, owners or senior managers at design houses, and owners of CMTs and M&Ts, including home-based M&Ts. The number of interviews in these various categories is as follows:

Clothing sector key informant interviews: 6

Retail sector key informant interviews: 1

Retailer interviews: 3

Clothing manufacturer interviews: 7

Design house interviews: 6

CMT interviews: 9

I have not included a number of interviews that did not provide any useful information. I have also not included a large number of interviews conducted at an earlier stage of my research when I was still investigating a number of sectors, e.g. metal engineering and fish processing, and had a focus on management.

It should be noted that when I started the interviews in the clothing sector I did not have a definite idea as to the number of value chain formats I would include or the number of interviews I would conduct. I ended by covering four value chain formats and conducting the number of interviews indicated above – I stopped interviewing when I assessed that I have more than enough empirical data for the purpose of the thesis. It should also be noted that I was not able to interview every firm in the different value chain formats. But for the four that I have included in this study I was able to conduct sufficient interviews to provide a sound basis for understanding them. Some value chain formats in which I was not able to conduct sufficient interviews, leaving a somewhat fragmented picture, have been excluded.

The interviews were generally at least an hour long, although in some cases they were shortened by the time constraints of the interviewee. In a few instances more than one interview was conducted with the same person. Almost all the interviews were digitally recorded although my practice was also to take notes during the interview. In one or two cases I relied only on note-taking. The interviews generally provided rich and detailed information.

I cannot reveal the names of interviewees or their firms or organisations – this is discussed in more detail below.

## **2.4 Analysis of data**

Almost all the interviews were transcribed in full by myself. The notes taken during three interviews were sufficiently detailed to make transcription redundant.

As noted above, the objective of the interviews was detailed ‘factual’ information rather than ‘attitudinal’ information. This explains why I did not use a ‘grounded theory’ approach to analysing the interview data or used associated computer software

such as Nvivo. Instead, I manually analysed the transcriptions and my interview notes. This involved reading through the transcripts repeatedly, identifying broad themes, more specific points, and quotes that reflected these themes and points. From studying the transcripts exhaustively in this way a framework emerged within which to reorganise and present the data.

The framework for presenting the data is evident in chapter 7 below. It should be noted that the framework is organised primarily by issue and theme rather than by value chain format, although some reference is made to specific value chain formats when presenting the data. The different value chain formats, however, are set out in some detail in chapter 7, together with a diagram that indicates their geographical and regulatory spread.

## **2.5 Research ethics**

There are two ethical considerations that need to be discussed. The first is the potential overlap between this study and parallel projects. This has been discussed above. As mentioned, there was significant indirect overlap but I sought to avoid any direct overlap and have not drawn directly on information given to me in the parallel projects for this study.

The second ethical consideration is with regard to the identity of the participants. In all cases, when explaining the research to potential interviewees, I indicated that I would not reveal their identities unless they explicitly stated otherwise. In some cases the interviewees made it clear that they were not concerned with anonymity. In the end I decided to adopt a consistent approach, i.e. I would maintain the anonymity of all the interviewees. My empirical focus was to gain information on how relationships are structured in value chains in order to support a more theoretical argument about management control through commercial contracting and the employment relationship. Given this objective there seemed little reason to reveal the identities of the participants in the research.

I have also suppressed the identities of firms and people mentioned in the interviews where these could reveal the identity of the interview or his/her firm. However, where

an interviewee made reference by name to other firms, usually to explain some point by way of a real example, I did not feel constrained to keep the latter anonymous.

## **Chapter Three**

### **Outline of an analytical framework**

#### **3.1 Introduction**

This chapter outlines world-systems analysis, which provides an analytical framework and historical foundation for much of what follows. World-systems analysis also contributes a number of important concepts for the thesis, in particular the notion of the axial division of labour and the concept of commodity chains. Although world-systems analysis deals with the global scale there is a suggestion that the latter concepts can be applied at the regional, national and local levels. There is certainly no intrinsic reason why they cannot be applied at these levels. Labour regulation, which world-systems analysis largely ignores, becomes critical to understanding the way in which production is being structured in value chains at the regional, national and local levels.

The history that is an essential part of world-systems analysis is important for two reasons. First, it provides some empirical evidence to flesh out the theoretical aspects of world-systems analysis and illustrates how the capitalist world-economy has been able to accommodate different forms of labour utilisation and control. This provides a foundation for the argument that there is significant continuity between the period often referred to as mercantile capitalism and contemporary capitalism, i.e. the period since about 1970. What this argument implies is that the period from about 1900 to 1970, which in advanced industrialised countries has been characterised as Fordism, constituted a 'break'.

Second, the history will introduce the role of law in the rise of the capitalist world-economy, thereby seeking to fill a gap in world-systems analysis. The integration of law into the concept of the emerging capitalist world-economy also supports the argument that the contractual freedom that developed in the period of mercantile capitalism has won through the restrictions it was subjected to under Fordism. It has emerged stronger than ever because at the global level it is being supported by the WTO's liberalised trade regime and by the way in which corporations are able to

structure themselves across different scales. The introduction of law into the history has a further important function: it provides a foundation for the discussion of regulation in the chapter that follows.

### **3.2 World-systems analysis**

There are four main reasons for using world-systems analysis and its concept of the capitalist world-economy as a theoretical framework for the thesis. First, its historical methodology is long-term and its scope is the entire world-economy. Second, it defines capitalism as a society dominated by endless accumulation of capital rather than rooted in ‘free’ wage labour (or what we would now call employment). Capitalism as a world-system can therefore work with different forms of labour utilisation and control, all of which can co-exist; an employment relationship through which surplus value can be appropriated is therefore not a necessary condition for capitalism. Third, world-systems analysis introduces the notion of the axial division of labour, i.e. a core zone at the centre of the world-economy surrounded by a semi-periphery that is itself surrounded by a periphery. Fourth, it also identifies commodity chains that are made up of a series of operations required to produce goods. These operations are often spread across the zones of the axial division of labour, connecting stages of production to final markets. A serious shortcoming of world-systems analysis is its failure to recognise the role of law, in particular the distinction between common or civil law and state regulation, in the emergence of the capitalist world economy. One of the objectives of this chapter is to correct this omission, in the process drawing a clear distinction between the common or civil law and legislation, which I will generally refer to as regulation.

The concepts of the world-economy and world-system were developed by Immanuel Wallerstein, a historical sociologist, but were influenced by the work of the Annales School of French historians, in particular Fernand Braudel. The methodology adopted and promoted by the school was to study history in the long-term (Braudel’s *la longue duree*) and on a wide geographical scale, which was an approach that complemented Wallerstein’s concept of the capitalist world-economy. World-systems analysis is also indebted to Latin American dependency theory espoused by Raul Prebisch, Andre Gunder Frank and Samir Amin, amongst others. They introduced the notions of

unequal exchange, the development of underdevelopment and the core-periphery model that critically informed the concept of the axial division of labour. There were even influences from Polanyi, who conceptualised three forms of economic organisation: reciprocal, redistributive, and market, which equate with Wallerstein's concepts of mini-systems, world-empires and world-economies.(Wallerstein, 2004: 11-17)

Braudel and Wallerstein differed on one or two issues, probably the most important being the main driving force for the emergence of the capitalist world-economy. This led to them disagreeing on the date of the emergence of the capitalist world-economy. For Braudel it was long-distance trade and the upper strata of the merchant class that were the vanguard for the capitalist world-economy, which led him to date its emergence in 13<sup>th</sup> century Italy.<sup>7</sup> Wallerstein acknowledges the key role of long-distance trade but emphasises that long-term trade in essentials was the defining feature of the emergent capitalist world-economy. This leads him to argue that it was agricultural capital, and small and large land-owning capitalists (yeoman farmers and the gentry), that were the catalyst for the establishment of the world-economy, which can be dated from the long 16<sup>th</sup> century (i.e. the period from 1450 to 1640) in North West Europe.<sup>8</sup>(Braudel, 1984: 57; Wallerstein, 2004: 23; Wallerstein, 37-47)

This difference is probably not as stark as it might at first seem. It appears more a question of degree that sees them opt for starting points three centuries apart. Wallerstein, for example, speaks of the economy of Northern Italy "prefiguring" the capitalist world-economy, without explaining what "prefiguring" means.<sup>9</sup> By the same token, Braudel acknowledges that "the new Europe" started in two regions more or less simultaneously, i.e. in the North Sea-Baltic region and the Mediterranean region. These two poles would pull the continent in two directions for several centuries. The Northern regional economy took off earlier and grew quite rapidly, but it was

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<sup>7</sup> Braudel asserts that at one point this was also the view of Marx but that he later recanted and dated the emergence of capitalism in the 16<sup>th</sup> century due to the presence of a "world-embracing commerce and a world-embracing market."(Braudel 1984: 57; Wallerstein, 1974: 77)

<sup>8</sup> There is, of course, much debate in the literature about when the transition from feudalism to capitalism took place, or when capitalism started (see Wallerstein, 1980: 3-7 for an overview).

<sup>9</sup> Wallerstein gives an indication of what he means elsewhere, when he states that in the period from 1150 to 1450 the potential of a world-economy arose but it failed to materialize because "the political coherence of the feudal economy had not yet fallen apart through its internal contradictions."(Wallerstein, 1980: 28)

outpaced by the Mediterranean economy, possibly because the latter built on a long history of contact with Islam and Byzantium as well as infrastructure built during the Roman Empire. The Mediterranean economy was driven above all by trade, whereas the Northern region was given impetus by agriculture and early industry. While starting off almost independent of one another, they soon complemented and rubbed against each other where they met on the overland trade routes that ran between the two regions.(Braudel, 1984: 97-98)

The contact between the zones gave energy to both but ultimately a centre had to emerge: the key cities had changed between the two regions over time, from Venice, to Antwerp, then to Genoa, and finally to Amsterdam. As this suggests, the centre of gravity was probably first in the south, but from about 1600 the balance shifted northwards. The rise of Amsterdam was a critical turning point; thereafter the capitalist world-economy would have only one centre of gravity, “and for centuries to come, right down to the present day, the patterns and circles of her profound imbalances would emanate from this pole.”(Braudel, 1984: 98)

Braudel and Wallerstein also have different conceptualizations of the structure of the emerging capitalist world-economy. Braudel, who highlighted long-distance trade as the catalyst, divides European society at that time into three levels: the base comprising ‘material life’, i.e. the largely self-sufficient, manual, and routine-bound life of the majority; at the next level there was ‘economic life’, i.e. the competitive relations that were starting to emerge with local and regional markets but still constrained by regularity and entrenched traditions (time-honoured social norms); and capitalism at the top level, i.e. the world of long-distance trade, risk, speculation, irregularity, and monopoly.(Braudel, 1982; 455-456). Capitalism therefore assumed a position at the top of the hierarchy and acted “*from above*” on “the great mass of elementary economic activities” that are “trapped, imprisoned, unable to move from the ground”.(Braudel, 1984: 44; emphasis in the original) It is this vantage point that capitalism acquires “a way in” or an “entry point”, or it makes a “foray or liaison”, through which “the connection is made, the current transmitted” to the other layers.(Ibid 65) Capitalism therefore “inserts itself into the chain leading from production to wholesale trade, not seeking to take over entire responsibility for them, but to occupy the strategic points controlling the key sectors of accumulation.”(Ibid)

For Wallerstein it was a bottom-up process, starting in the agricultural sector and connecting from there to international trade circuits. The beginning was the expansion of a geographical division of labour in the long 16<sup>th</sup> century in which basic goods began to be traded regularly across the northern and western parts of Europe, i.e. cereals, timber, wool, fur and wax flowed from the Baltic region to the west, while textiles, silk, salt and wine went the other way. This trade endured over time, thus entrenching a division of labour for the production of primary products that made the two areas interdependent.(Wallerstein, 1974: 96) Importantly, this emerging world-economy integrated different regional forms of labour control. The production of cereals in the east had seen a reversion to ‘coerced cash-crop labour’ in the agricultural sector (what Wallerstein refers to as the ‘second serfdom’). Much the same system of labour control was used in Hispanic America which had been newly incorporated as the periphery in the long 16<sup>th</sup> century, although slavery was also resorted to when necessary.

It was different in the core, where population density and a shortage of land motivated for more intensive farming methods and a shift from arable to pastoral land use. The copyhold system of land tenure in England, for example, enabled landlords to sell and rent out land, which paved the way for the yeoman farmer and a landed gentry<sup>10</sup> to emerge, who pioneered consolidation of land and new farming methods that increased agricultural productivity and capital accumulation. A less coercive organisation of work was required in this context, which led increasingly to wage labour and a more complex occupational hierarchy. In the semi-periphery, then comprising much of southern Europe, sharecropping and self-sufficiency were the prevalent forms of work organisation.(Ibid 25-26, 38, 69, 80-84, 111-116 and 128)

The above brief outline over-simplifies a complex story. The long 16<sup>th</sup> century saw population increase sharply in Europe and a rapid rise in prices (the ‘price revolution’), in parallel with a decrease in wages. The combination saw capital being accumulated that was used to stimulate other economic activities. Importantly, the

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<sup>10</sup> The gentry were relatively large *owners* of unentailed land who produced for the market. They often preserved social vestiges of an earlier time but their economic role was quite different to the seigneurial landholder. Yeoman farmers had smaller holdings and usually paid a money rent for them. They were two strata in a new capitalist agricultural class.(Wallerstein, 1974: 241, 256)

first modern states emerged in this period, and the Americas were discovered and incorporated into the periphery of the capitalist world-economy.(Ibid) These states came to form the core of the interstate system, which together with the capitalist world-economy constitute the modern world-system. By the 19<sup>th</sup> and 20<sup>th</sup> centuries there was “only one world-system in existence, the capitalist world-economy.”(Wallerstein, 1979: 5) The so-called empires, such as the French and British, which arose in the period from the 16<sup>th</sup> century, were “not world-empires at all, but nation-states with colonial appendages operating within the framework of a world-economy.”(Ibid.6) In other words, they were political and cultural systems incorporated into the single division of labour of the capitalist world-economy.

Braudel and Wallerstein, even though they differed, can be distinguished from many other social theorists and historians who generally date capitalism later, in many cases associating it with industrialisation from the middle of the 18<sup>th</sup> century, and who see wage-labour as the determining foundation of capitalism. Wallerstein and Braudel take a different tack, arguing that making a profit in the market is not a sufficient condition for capitalism and neither is wage-labour; both have existed for many centuries. Capitalism exists when there is a continuous and endless accumulation of capital. This is discussed in more detail below.(Wallerstein, 2004: 24)

### ***3.2.1 The capitalist world-economy***

The world-system and the world-economy often appear to be interchangeable terms. According to Wallerstein the world-system “is and has always been a *world-economy*” and it “is and has always been a *capitalist world-economy*”.(2004: 23; emphasis in the original) The world-economy is defined by Wallerstein as:

... a large geographic zone within which there is a division of labor and hence significant internal exchange of basic or essential goods as well as flows of capital and labor. A defining feature of a world-economy is that it is not bounded by a unitary political structure. Rather, there are many political units inside the world-economy, loosely tied together in our modern world-system in an interstate system. And a world-economy contains many cultures and groups... It does not mean that neither political nor cultural homogeneity is to be expected or found in a world-economy.

What unifies the structure most is the division of labor which is constituted within it.(Ibid)

The world-economy and the capitalist system “go together”, they are “obverse sides of the same coin” that are not causally linked but are the “same indivisible phenomenon.”(Ibid 24; Wallerstein, 1979: 6) The world-economy is held together by the axial division of labour, rather than a political structure or homogenous culture, and the efficacy of the division of labour “is a function of the constantly expanding wealth that a capitalist system provides”.<sup>11</sup> (Wallerstein, 2004: 24) On the other hand, capitalism needs the large market – in capital, labour and goods and services – that the world-economy provides. Furthermore, the capitalist system requires a particular kind of relationship between the economy and polity. If the latter is too strong then political interests will predominate over economic interests and a world-empire will emerge. Capitalism therefore needs a multiplicity of states that it can work with, trade-off against each other, or work around in the case of hostility. The world-economy has such a “a multiplicity of states within [an] overall division of labour.”(Ibid)

World-systems analysis defines capitalism as a social system that “gives priority to the *endless* accumulation of capital”, which means that “people and firms are accumulating capital in order to accumulate still more capital, a process that is continuous and endless.”(Ibid; emphasis in the original) Capitalism is therefore not defined by production for sale on a market to make a profit, nor is it the existence of a critical mass of wage-labour. Since wage-labour is not the defining feature of capitalism, it is not surprising that Wallerstein’s definition of surplus-value differs from that of Marx: it is “the amount of real profit obtained by a producer, which he may in fact lose” due to unequal exchange.(Ibid 97) Surplus-value is therefore appropriated from a wage-labourer as well as at the level of the world-economy, i.e. surplus-value is appropriated by core zones from the peripheral and semi-peripheral zones (see further below).

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<sup>11</sup> The area of the single division of labour is defined by the boundaries within which there is an exchange of essentials. Trade in luxuries or preciosities can take place between two world-systems, but once the exchange is in essentials there would be only one division of labour, and hence a single world-economy.(Wallerstein, 1979: 14)

The boundaries of a world-economy comprise lines or zones, often geographical barriers, that it “is only worth crossing, economically speaking, *in exceptional circumstances*” (emphasis in the original). These boundaries change only slowly and are seldom political or religious; in the Mediterranean region “(t)he economy, all-invading, mingling together currencies and commodities, tended to promote unity of a kind in a world where everything else seemed to be conspiring to create clearly-distinguished blocs”.(Ibid 22 and 26) There is always, according to Braudel, a ‘world-city’ and a hegemonic state at the centre of a world-economy. A hegemonic state is one that can produce products so efficiently that they are generally competitive in other core states. Hegemony is therefore primarily economic.(Wallerstein, 1980: 38) The United Provinces (later the Netherlands) was the capitalist world-economy’s first hegemonic state in the long 16<sup>th</sup> century. It was followed by Great Britain, which was in turn surpassed by the United States. Because Braudel dates the capitalist world-economy much earlier; he starts with the city-states of Venice and Genoa, before hegemony shifted to the United Provinces. Braudel also argues that at the centre of the hegemonic state there is always a dominant ‘world-city’. Venice was the first ‘world-city’, followed by Antwerp (reflecting the tension between the poles of northern and southern Europe), then Genoa (returning to the south), followed by Amsterdam, London, and more recently, New York.(Ibid 27, 51)

Economic and social differentiation existed within the world-city as well as between it and the surrounding towns and zones. All had a proletariat, a bourgeoisie and a patriciate; the latter initially controlled power and wealth, but successful merchants came to dominate economic activity in the cities. This differentiation, Braudel argues, tended to deepen over time, i.e. the rich became richer and the proletariat became poorer, mainly because the economic activities within the world-city drove up prices, thereby attracting the produce of the region to its market. The same dynamic is critical for the operation of a world-economy.(Ibid 31)

The capitalist world-economy goes through cycles of expansion and contraction, or the A-phases (growth) and B-phases (recession) of what are termed Kondratieff cycles. These cycles have until now been about fifty to sixty years in length. There are also more fundamental and longer-term secular trends. Braudel calculates that since the emergence of the capitalist world-economy there have been four secular cycles in

Europe, with the last starting its upward movement from the depression that reached its nadir in 1896 and then probably peaking in 1973-4, before starting a decline. Occasionally the two cycles overlap and reinforce one another, e.g. the peaks in 1817 and again about 1973-4. The latter date therefore signals the turning point of Kondratieff cycle that had begun in 1945, which has coincided with the reversal of a secular trend. The world-economy therefore entered a long recession in about 1973-4 marked by production slowing down and unemployment and prices rising.(Wallerstein, 2004: 30-31; Braudel, 1984: 80-81)

One of the capitalist's responses to rising wages is to move operations to areas in which labour costs are much lower. Even the threat of moving can benefit the capitalist in that workers might accept lower wages to retain jobs or states might make special concessions to the firm. The problem with moving, however, is that it involves transaction costs: the operation usually ends up further from customers, the lower wage zone often has inferior infrastructure, and there is the cost of 'corruption'. The trade-off between labour costs and transaction costs shifts according to the cycle of the world-economy. Wallerstein argues that in Kondratieff A-phases transaction costs become more important, i.e. the capitalist will remain in the core zones, and in B-phases labour costs are the primary consideration, i.e. the capitalist will move to the semi-periphery or periphery. In the latter regions a large proportion of the population is outside the wage-economy, which means that a wage-earning job will mean a significant increase in the income of their household, even if the rate of pay for the job is well below that in the core zone.(Wallerstein, 2004: 80)

The argument in this thesis that the period from about 1900 to 1970 constitutes a 'break' between features of an earlier period that have re-emerged in the contemporary period, therefore corresponds with much of an overlapping secular and Kondratieff upward movement that reached its peak in about 1970. The subsequent period again sees the secular trend and a Kondratieff phase overlapping, but this time in a downward movement. The latter period therefore sees, according to Wallerstein the relocation of production to the semi-periphery and periphery to access lower labour costs.

### 3.2.2 *The axial division of labour*

The organising principle of the capitalist world-economy is the axial division of labour. This is not the same as the technical division of labour within a workplace or the social division of labour in the labour market, but rather a division of labour defined by differing levels of profitability of production and by unequal exchange:

The axial division of labour of a capitalist world-economy divides production into core-like products and peripheral products. Core-periphery is a relational concept. What we mean by core-periphery is the degree of profitability of the production processes. Since profitability is directly related to the degree of monopolization, what we essentially mean by core-like production processes is those that are controlled by quasi-monopolies. Peripheral processes are then those that are truly competitive. When exchange occurs, competitive products are in a weak position and quasi-monopolized products are in a strong position. As a result, there is a constant flow of surplus-value from the producers of peripheral products to the producers of core-like products. This has been called unequal exchange. (Wallerstein, 2004: 28)

Core-like production processes tend to concentrate in strong states that are able to protect quasi-monopolies (or oligopolies). Peripheral production processes, on the other hand, are spread across a large number of states. The production processes are not exclusive to one or other type of state, but there are few peripheral processes in core states and few core-like processes in peripheral states. Some states, the so-called semi-peripheral states, have a more or less equal combination of core-like and peripheral production processes. (Wallerstein, 2004: 28) The semi-periphery acts as a buffer between the core and periphery, preventing the world-economy dividing into two poles, developed and undeveloped. Whereas Wallerstein refers to states in making these distinctions, Braudel refers to zones, but in both cases they are actually talking about relations between production processes that have different levels of profitability. This hierarchy of core, semi-periphery and periphery always exists in a world-economy. (Braudel, 1984: 39) The core is well-developed but relatively small, the semi-periphery is larger but less developed, and the periphery is huge and marginalised. The zones are bound together by a myriad of unequal economic relationships. (Ibid 48)

While the structure of the zones does not change, production processes can move from the core zone to the semi-periphery and then the periphery. This is an on-going process as quasi-monopolies (or oligopolies) expire and products lose the level of profitability that was the rationale for their location in the core zone. In the semi-periphery and periphery the production of these products becomes progressively more competitive, while new core-like processes are always emerging to take up the space left in the core zone.(Wallerstein, 2004: 29)

States can also move from one zone to another; in fact, state policy is shaped by its location in a particular type of zone. Strong states will seek to protect the quasi-monopolies of the core-like production processes, whereas the weak states of the periphery have very little power to change anything. One of the few policy avenues that individual states in the semi-periphery have open to themselves is to attract the relocation of what were core-like processes or products to their country, rather than to their many competitor countries. The states in the semi-periphery are in the most difficult situation and face complicated policy choices. Their aim is to avoid slipping into the periphery and preferably to shift toward the core.

### ***3.2.3 The co-existence of different forms of labour control***

The core, semi-periphery and periphery model, and concepts such as the development of underdevelopment, mark a sharp break with teleological theories that see development as a series of consecutive stages, whether from the perspective of a mainstream economist such as Rostow or Marxism's notion of 'modes of production'. World-systems analysis argues that rather than following one another, 'modes of production' can exist side-by-side in the capitalist world-economy. There is in effect an "historical regression" from one zone to another that allows slavery, serfdom and wage-labour to co-exist. Indeed, Braudel goes further to argue that capitalism depends on the presence of the other modes; in other words, the modes are complementary and capitalism benefits from the co-existence.(1984: 64-65) Wallerstein argues that this co-existence does not suggest a progression over time from one to another; there can just as well be regression, as with the so-called 'second serfdom' in Eastern Europe.(1980: 93)

The capitalist world-economy can therefore accommodate different forms of labour control or modes of exploitation. These alternative forms of labour control are important aspects of the differentiation between zones:

So moving from one zone of the world economy to another meant for several centuries passing synchronically from wage labour to serfdom and slavery. The social order steadily and monotonously reproduced itself, in accordance with basic economic necessities. Every task, once allocated in the international division of labour, created its own form of control and that control articulated and governed the form taken by society. England at the core of the world-economy at the end of the eighteenth century, was the country where wage labour was penetrating both the countryside and urban activity; soon it would have spread to every area of British life. On the continent, wage labour and the degree to which it was prevalent, was a measure of the advance of modernity, but there were still many independent artisans; sharecropping – a sort of compromise between old-style serfdom and tenant-farming – was still widespread; and there were innumerable peasant smallholders in revolutionary France. Meanwhile serfdom was alive and well and spreading through the refeudalized countryside of eastern Europe and in the Turkish Balkans, while slavery had by the sixteenth century been dramatically revived for export to the New World... So if society took a different form here or there, it was because it represent *a* solution or perhaps *the* solution, ‘which was best suited (other things being equal) to the particular types of production with which it was confronted’.(Braudel, 1984: 62; emphasis in the original)<sup>12</sup>

The axial division of labour therefore assigned roles to regions for the production of goods, which would determine an appropriate form of labour control. A social order emerged on this foundation, conditioned by its relation with other zones in the world-economy. Wallerstein explains it as follows:

Why different modes of organizing labor – slavery, “feudalism”, wage labor, self-employment – at the same point in time within the world-economy? Because each

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<sup>12</sup> The quote at the end of this quote is from I Wallerstein, *The Modern World System*, part II, read in typescript.

mode of labor control is best suited for particular types of production. And why were these modes concentrated in different zones of the world-economy – slavery and “feudalism” in the periphery, wage labor and self-employment in the core, and as we shall see share-cropping in the semiperiphery? Because the modes of labor control greatly affected the political system (in particular the strength of the state apparatus) and the possibilities for an indigenous bourgeoisie to thrive. The world-economy was based precisely on the assumption that there were in fact three zones and that they did in fact have different modes of labor control. Were this not so, it would not have been possible to assure the kind of flow of the surplus which enabled the capitalist system to come into existence.(1974: 87)

Importantly, Braudel also finds “pockets of backwardness” in the core or middle zones, economic “black holes” that have been completely by-passed by the trading economy.(Ibid. 42) These ‘undeveloped’ areas existed in England on the brink of the industrial revolution and can be found in the US today. What this suggests is that the concept of core, semi-periphery and periphery can be applied at different scales, from the global to the regional, national and even the local. This is confirmed by Braudel’s comment that the “centre of a world-economy was itself divided and subject to hierarchy – as indeed were the peripheries.”(Ibid 45, 70) The commercial centre of a city or large town can therefore constitute a core of sorts, with the surrounding peri-urban industrial area the semi-periphery, and the rural region around it making up the periphery. A network of longstanding relations of unequal exchange entrench the zones at the local level just as they do at the global level.

One can extrapolate that different forms of labour control could exist in these different zones at the national or local levels, but in the modern state it would arguably be a case of different forms of labour regulation, or different levels of labour regulation, including enforcement of and compliance with labour regulation.

### ***3.2.4 Commodity chains***

Commodity chains are a key component of the concept of capitalist world-economy. The axial division of labour creates three inter-dependent zones across which value flows from the periphery to the core. The commodity chain, which Hopkins and Wallerstein define as “a network of labour and production processes whose end result is a finished commodity”, were conceived as the mechanisms through which both integration of production processes and the flow of value was achieved. (Hopkins and Wallerstein, 1986: 159) This approach marked a sharp departure from the dominant theories of modernity and industrialization the centered on the nation state as the unit of analysis. In terms of these theories, industrialisation would follow a similar path in all countries and reach a similar end-point; the unevenness in industrial development between countries was simply down to different starting points and factor endowments. But the theory of the capitalist world-economy proposed a division of labour in production processes that crossed territorial borders and entrenched enduring differences in levels of development. These production processes were structured in commodity chains that facilitated the flow of value from the periphery to the core.

The process of mapping a commodity chain describes its structure well. The first step one takes is forward from the completed product to the point of sale and consumption. Thereafter one works backwards to identify “the loci of the sources of value in [the] finished product.” (Ibid: 160) The operations at these loci were termed the ‘nodes’ or ‘boxes’ of the commodity chain. Sub-chains could branch off from the boxes and two or more different chains could intersect in the boxes, each of which could be traced back to different raw materials or intermediary goods. Hopkins and Wallerstein recognized that the result was something that looked much more like a network than a chain, and they tended to use the terms ‘chain’ and ‘network’ interchangeably. (Ibid: 162)

The nodes or boxes comprise a specific production process. The characteristics of these processes are determined by technology and social organization. There is dynamism in the commodity chain because a high rate of profit will attract more firms to the box, despite any barriers to entry that might exist, which will reduce the rate of profit. This might result in core capital shifting investment to other boxes in the chain, or there might be reorganization within the box or a change in its size. Hopkins and

Wallerstein argued that boxes in the core will tend to span a small number of countries, whereas peripheral boxes will comprise many production units spread across a large number of countries. If core-like processes move over time to the periphery it will mean greater competition within the box and a steep increase in the number of production units and the geographical spread of units.(Hopkins and Wallerstein, 1994: 18)

Hopkins and Wallerstein argue that two questions must be asked with regard to each box in a commodity chain. First, what is the nature of the property or ownership arrangements of the production units? These, they suggest, can range from dominance by “petty owners”, to large private or parastatal firms, to non-owning managers that administer the process and enjoy the profits but pay certain fees in money or produce. There is no reason why a box should comprise only one ownership type. Second, what is the form of labour control in the production units? Forms of labour control, or social modes of exploitation, can range from different forms of wage labour, to various types of labour tenancy, to diverse types of coerced (non-wage) labour. Different types of labour control can co-exist in a box but one type will usually predominate and characterized the particular box. More coercive forms of labour control will, according to Hopkins and Wallerstein, be most often located in the periphery.(Ibid 19)

The remaining feature of commodity chains is the linkages between boxes. The analysis of these linkages by Hopkins and Wallerstein was somewhat crude. They identified just two types of linkages: vertical integration and market-like transactions. Vertical integration (or hierarchy) sees the linkage that takes place between two or more boxes incorporated into the same firm. They do not spell out the nature of the ‘market-like transactions’, but the suggestion is that these would be arms-length contracts. The influence of transaction cost economics is evident: administrative decision-making versus private ordering via contract.

### **3.3 The world-economy, the nation state and the legal order**

The long 16<sup>th</sup> century saw the emergence of the modern sovereign state and the development of the interstate system, which is a key part of the world-system. The relationship of the world-economy to the state is a complex one which will vary in its details from state to state. World-systems analysis deals with this detail in its historical research but abstracts from that to make quite crude generalisations about the relationship:

Power was shared between the two. Without ever being swallowed up, the state was thus drawn into the intrinsic movement of the world-economy. By serving others and serving money, it was serving its own ends as well. (Braudel, 1982: 51)

The state was therefore in a symbiotic relationship with the emerging capitalist world-economy, which relationship could vary. At times the interests of state and capital corresponded closely, in which case the state actively encouraged capitalism, but capital could also harm the interests of the state, and vice versa, in which case the two locked horns. At other times the two operate almost in parallel, neither aiding nor hindering one another. The key difference between the two, however, was that commercial capital, in particular, was borderless, whereas the state was concerned primarily with the “ordinary market economy” that operated within its borders.

At a more concrete level, Wallerstein argues that the sovereign state exerts authority in at least seven areas in relation to capital. States:

1. set the rules whether and under what conditions commodities, capital and labour may cross their borders;
2. create the rules regarding property rights within their borders;
3. set the rules concerning employment and the compensation of employees;
4. decide which costs firms must internalise;
5. decide what kinds of economic processes may be monopolised and to what degree;
6. levy taxes; and,
7. use their power externally to influence the decisions of other states if firms based in their boundaries would be affected. (Wallerstein, 2004: 46)

Furthermore, the stronger the state the larger its bureaucratic machinery and therefore the greater its ability to enforce decisions.(Ibid) In other words, strong states, which would generally be in the core, are effective regulatory states whereas weaker states in the semi-periphery and periphery struggle to regulate.

The above list points to a problematic conception of law. In very broad terms law comprises the common law or civil law, both of which have roots of varying strength in Roman law. The initial development of common law or civil law legal systems preceded the emergence of modern states. The other main branch of law is state-made law. The main element of state-made law is legislation, but one can include policy as well as the departments and agencies that implement policy and programmes, or enforce legislation, into the category of state-made law. State-made law is therefore what is generally referred to as regulation (although the concept of regulation goes slightly wider to include some forms of self-regulation or joint-regulation, e.g. legally-binding collective agreements).

The modern state to a large extent adopted or endorsed existing common law or civil law systems. It gave added authority and legitimacy to these systems, and provided the necessary infrastructure of courts through which these systems resolve disputes and develop their jurisprudence, but the state did not create them. The state, however, did and still increasingly does create most regulation. Wallerstein ignores this distinction. In fact, he does not even make a distinction between the state and law, simply assuming law to be incorporated within the notion of the state. This obscures a complex relationship between regulation and the common law or civil law. Much of state regulation is concerned with, on the one hand, protecting and facilitating the exercise of property rights and contracts, and on the other hand, constraining or modifying the exercise of property rights and contracts. For example, labour regulation is primarily directed at supplementing the inadequacies of the employment contract, i.e. the common law or civil law contract of employment. Similarly, joint-regulation in the form of collective bargaining developed to supplement the inadequacies of the employment contract. Economists characterise this as regulation that intervenes in the market, but it is more specifically an intervention in the law of contract.

The argument made above can be extended to the list of the seven areas of authority of the modern state in relation to capital. All are correctly identified as forms of state regulation except the second one, viz. that states create the rules regarding property rights. States play a critical part in protecting these rights but did not create them. Wallerstein expands on this point but only partly resolves his confusion:

Property rights are of course the centrepiece of the capitalist system. There is no way to accumulate capital endlessly unless one can hold on to the capital that one has accumulated. Property rights are all those laws which limit the ways in which the state can confiscate the money, extended kin can lay claim to a share of the money, and others can steal the money... This is all so obvious that it seems scarcely worth saying. But of course the key actor in this protection of property rights is the state, which alone has the legitimate right to set the rules. Obviously, none of these rights is without some limits. And of course there are many actions whose description as protected property rights is a matter of debate. Differences lead to conflicts which must be adjudicated – by the courts of the states. But without some state-guaranteed protections, the capitalist system cannot function at all. (Ibid 47)

The quote correctly identifies the main function of the state to protect property rights and provide courts for the adjudication of disputes about such rights, but fails to recognise that the state did not create these rights. The comment that it “is all so obvious that it seems scarcely worth saying” seems precisely the point at which Wallerstein misses the fact that the reason that it is so obvious is that these rights were there before states emerged that endorsed them.

There are four points that need to be emphasised regarding the relationship between the legal order (i.e. the common or civil legal system and regulation) and the capitalist world-economy. First, there is a close correspondence between the history and geography of the emergence of the capitalist world-economy and the revival of legal systems in Europe under the influence of Roman law, termed the ‘reception’ by legal historians. One of the great legacies of the Roman Empire was its legal system. For about five hundred years after the fall of the Roman Empire there were only fragmented systems of rudimentary customary law. From the 10<sup>th</sup> and 11<sup>th</sup> centuries, however, these systems of customary law developed into modern legal systems under

the strong influence of the study and practice of Roman law. And, at the core of this revived and 'received' Roman law was the law of property and contract law. The interaction between the reception of Roman law and emergence of legal systems closely paralleled the spread of the capitalist world-economy from northern Italy up to North West Europe over the period from about the 11<sup>th</sup> century through to the 18<sup>th</sup> century. The revival of Roman law was however slow and its intensity varied from one region to another. One could therefore make a convincing argument in favour of Wallerstein's dating of the emergence of the capitalist world-economy in the long 16<sup>th</sup> century in North West Europe, in particular the United Provinces, which is when Roman law was received as a complete system by Germany and the United Provinces.

This correspondence seems to point strongly (although it is clearly not sufficient proof) that the emerging legal systems, under the influence of the Roman law reception, were critical for the development of the capitalist world-economy and preceded the establishment of modern states. The making of modern legal systems in Europe was a slow tortuous process and their interaction with the economy was complex. In order to provide further support for the above argument the section below will spell out the 'reception' of Roman law and emergence of modern common and civil law systems in a bit more detail.

The second point about the relationship between the legal order, the state and the emerging capitalist world-economy is that Roman law and the world-economy were borderless. Wallerstein makes the point that a key feature of the capitalist world-economy is that it was "not bounded by a unitary political structure" and that it instead comprised "many political units" within it.(2004: 23) The reception of Roman law was also for centuries a virtually borderless process, spreading a common legal base, with some variations, across the whole of Western Europe. This was the reason long-distance trade could flourish and, for example, bills of exchange were understood and accepted throughout Western Europe. The emerging world-economy and the developing legal systems, under the influence of the Roman law of property and contract, went together. This was not because the Roman law of property and contract represented the most rational way of doing business but because it was promoted by the rising merchant class and its allies. In fact, it was the alliances between this class and the sovereign (or king) that were critical for the emergence of

sovereign states out of the seigneurial system. The reception of Roman law was therefore a political process as much as it was a legal or economic process.

Once the modern state emerged one of its most important tasks was to consolidate and elaborate its legal system. National legal systems therefore developed, each beginning to vary more and more over time, particularly with the increasing resort to state-made law in the last two centuries. The capacity of states to enforce law also differs, as has been noted above. This is a key differentiator between states in the core and the periphery. But the commonality between modern legal systems at the most basic level is remarkable, so while technical details might differ from country to country there is a common legal language that facilitates international transacting because it spans different regions throughout the world-economy.

Third, a critical development in the law of contract was the notion of equality between the parties to the contract. This is, of course, a legal fiction. It is most explicitly recognised as a fiction in labour law, where much regulation is justified on the basis that the employee is not the equal of the employer when contracting and therefore employee's side of the contract needs the backing of the state and trade unions. Importantly, however, this inequality can be as stark in commercial contracts. An obvious example would be a small firm with many competitors supplying a huge corporation in an oligopoly or monopoly situation. The axial division of labour rests on precisely this point, viz, unequal exchange between capitalists in different competitive situations that as a result have very different bargaining power when they contract with one another. The result is the general flow of value from the periphery to the core. The fact that the law of contract has continued with very little change in its core principles means that the legal fiction of equality has endured, which means that the real inequality between the contracting parties is entrenched. This is one reason why the core, semi-peripheral and peripheral zones always exist, although production processes and states might over time shift from one to the other.

The fourth point was elaborated by the Marxist legal theorist Renner. He argued that legal institutions remain the same over time but their functions change. Pre-capitalist and early capitalist legal conceptions and norms can therefore be functionally adapted to the needs of much later stages of capitalism without changing the content of the

norm. Renner's focus was on private law: property, contracts of various kinds, mortgage and lease, marriage and succession. But he paid particular attention to property and contract. Property and contract, he argued, were being put to new uses and had different functions although without the legal institutions of property and contract changing. It is an argument that supports an approach that sees the ability of capital to shape property law and the law of contract to its requirements, whether this is the huge unitary corporation of the Fordist period or the decentralised production network of the post-Fordist period.(Renner, 1949)

### ***3.3.1 The reception of Roman law***

It is unfortunate that Braudel and Wallerstein barely mention the role of law in their accounts of the emergence of the capitalist world-economy. They both make brief mentions of contracts, bills of exchange, and credit but do not explore the way in which these legal instruments tied developing legal systems and the emerging capitalist world-economy together. In particular, they do not recognize the role of Roman law in the development of legal systems and how closely its growing influence corresponded with the expansion of the world-economy. The Roman law reception was "an event of the first importance"; Ihering wrote that Rome conquered the world three times: "by her arms, by her church and by her law"; and Maitland went as far as to equate the importance of the reception with the Renaissance and the Reformation.(Hahlo and Kahn, 1968: 484 and 517)

The story of the 'reception' of Roman law, according to legal scholars, was one in which scattered, fragmented versions of customary law were all that remained following the fall of the Western Roman Empire in AD 476. The 'reception' saw the rediscovery and study of Roman law by legal scholars, which fed into a process that can be dated from about the 12<sup>th</sup> century that saw Roman law influence the developing legal systems in Western Europe. There were four overlapping phases to the 'reception'. The first phase saw Roman law influence conquered territories during the existence of the Roman Empire. Although the Roman custom was to not force its law and institutions on new subjects, it was inevitable that the Roman administration and business firms would over the centuries leave their mark. The influence of Roman

law can also be seen after the fall of the Roman Empire in the various *leges barbarorum* drawn up by the Germanic tribes.(Hahlo and Kahn, 1968: 485-489)

The second phase was essentially one of scholarship and continued into the 17<sup>th</sup> century. It began when Roman law started being studied during the 12<sup>th</sup> century at the law school of Bologna and spread to other European universities. The law school completed an on-going shift in legal scholarship from the study of the *Codex Theodosianus* and the *Breviarium* to a focus on Justinian's *Corpus Juris Civilis*.<sup>13</sup> Although these scholars, termed glossators because of the methodology they used, have been criticized for their single-minded focus on the *Corpus Juris Civilis* to the exclusion of the law of their time, it was their efforts that brought a purified Roman law to the world. The scientific study of law in general, and Roman law in particular, spread from Bologna to schools of law that were established throughout Europe over the next few centuries. It was Roman law, as glossed by the glossators, that was studied at these schools and ultimately 'received'.(Ibid 489-492)

The glossators were followed in the 13<sup>th</sup> century by the post-glossators or commentators, who sought to remedy one of the shortcomings of the glossators by integrating Roman law with the law of their own times, in the process attempting to build a coherent system of law that was grounded in reason. The result was the transformation of Roman law into medieval Italian law that was in a form conducive to 'reception' throughout Europe. The post-glossators were followed by the humanists, which saw the centre of study of Roman law shift from Italy to France. The humanists reverted from the glosses and commentaries to the original text of the *Corpus Juris Civilis*, but unlike the glossators did not study it as timeless authority, instead placing it in historical context. Their approach significantly advanced the scientific study of law, including having a major influence on the 'antiquarian' school of the Netherlands, which in the 17<sup>th</sup> century became the leading country for the study

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<sup>13</sup> From about 150 A.D. there was a surge in Roman legal writing, much of which became the basis for medieval knowledge of Roman law. The most complete and influential example was the *Corpus Juris Civilis*, which comprised three parts: a collection of imperial edicts that constitutes the Code; the Digest, which is made up of the opinions of leading Roman jurors and legal thinkers; and a summary of the Code and Digest for students that was called the Institutes. The *Corpus Juris Civilis* was compiled on the instructions of Justinian, the Eastern Roman Emperor in the 6<sup>th</sup> century A.D. There was nothing new in the *Corpus Juris Civilis*: it was a work that collected and systematically organized a vast number of edicts and legal treatises into areas of law, such as contract, property, family law, and so on. Few of the sources on which it drew have survived.(Tigar and Levy, 1977: 21)

of Roman law and law in general. The great Dutch jurists sought to correct the limited practical impact of the humanists' scholarship by focusing on Roman law as the law of their own time.(Ibid 493-498)

The third phase (the 'early reception') saw the influence of Roman law on legal theory and practice growing during the 13<sup>th</sup> and 14<sup>th</sup> centuries. This was essentially the Roman law as rediscovered and glossed by the glossators. References to Roman law become more frequent during this period in both academic debate and legal argument, and its influence on the *stadrechten* became more pronounced over time.(Ibid 499)

The fourth phase took place during the 15<sup>th</sup> and 16<sup>th</sup> centuries, when Roman law was received as a complete system (*in complex*) into the practice of the courts in Germany (including Holland and the other Dutch provinces, which were feudal dependencies of Germany). Hahlo and Kahn speculate that the reason why there was a complete reception in Germany was that there had been no pre-reception, which had left the legal system "somewhat crude and primitive" and therefore ripe for replacement by a system that was "logically consistent, fair and equitable, and sophisticated."(Ibid 501) But they also state that the reason Roman law was adopted was "simply because it was believed to be valid law."(Ibid) This is clearly too simplistic an explanation, and although they later note that the reception was pushed by "the Establishment", their discussion of the politics of the process is remarkably bland. The 'establishment', according to Hahlo and Kahn, comprised princes and prelates, merchants and lawyers. They each had different reasons for favouring Roman law: princes saw in Roman law the promise of legal uniformity as well as a vehicle for overcoming certain ancient privileges and liberties; the Church had long kept Roman law alive through canon law and generally supported its spread; university-educated lawyers, who were entering senior positions in the legal hierarchy in increasing numbers, were proponents of Roman law because it had been a central part of their training; and merchants, who had been hampered by the patchwork system of local laws and customs in Europe, also wanted the greater uniformity and rationalization that Roman law would bring.(Ibid 500-501)

Because the United Provinces of the Netherlands were feudal dependencies of the German Empire, a reception of Roman law also took place there, but it was not on the scale of Germany. There had been an early reception of Roman law in the Netherlands and a much more extensive reception in the 16<sup>th</sup> century. The latter process was not uniform across the provinces, with Friesland experiencing a complete reception by the end of the 15<sup>th</sup> century and other provinces being much less influenced by Roman law. Holland did not experience a complete reception but the influence of Roman law was very extensive. In the 14<sup>th</sup> century Dutch judges had begun referring to Roman law where customary law and local law did not provide rules, and by the first half of the 15<sup>th</sup> century they started reconstructing customary law in the light of legal texts that had drawn deeply on Roman law.

It is evident that the four phases of reception of Roman law identified by Hahlo and Kahn did not follow a strict chronological sequence or have a uniform impact across the countries of Western Europe. It also had a much wider impact on another level; besides its individual rules, Roman law had a huge influence on legal thinking as a 'scientific system', i.e. "doctrines, concepts, principles, and methods."(Ibid 517)

The spread of Roman law and the development of 'modern' legal systems therefore corresponded closely with the emerging capitalist world-economy, which progressed from Italy, with its world-cities of Venice and Genoa, through France to the world-cities of Antwerp and Amsterdam in the Netherlands. Furthermore, although Roman law was received unevenly, it had the greatest influence where Germanic law had lagged, namely "contract and quasi-contract, delict, property, and testamentary succession."(Ibid) These areas were critical for the emerging capitalist economic relations. Three are of particular concern to this thesis: contract in general, the employment contract as a special type of contract, and the corporation as a form of property.

Roman law had less of an impact on England, the next centre of the world-economy, but it did have a strong influence. England was in any case a country that established a uniform common law much earlier than many other European countries. The foundations of England's common law were laid in the 12<sup>th</sup> and 13<sup>th</sup> centuries. During this period Roman law, as elaborated by the glossators, had a major influence. There

was exchange of legal scholars and students between Italian universities, including Bologna, and English universities, and the influence of the *Corpus Juris* is evident in some key English legal texts of that time. Roman law also played an influential role in the English courts in that period, with judges often quoting lengthy passages from sections of the *Corpus Juris*. There were, however, a number of reasons why this early influence did not later translate into full reception. One of the most important reasons was that England achieved political unification at a relatively early stage, which laid the basis for the establishment of an indigenous common law. This law was being studied and taught by a legal profession that was already well organized in the 13<sup>th</sup> century: the inns of court, which was effectively a guild of barristers that issued the license to practice law, used and promoted the common law.<sup>14</sup>(Ibid 506)

Importantly, from the 12<sup>th</sup> century onwards “the development of the English *lex mercatoria* was strongly influenced by Continental and, more especially, Italian mercantile law, so much so that Plucknett speaks of a ‘reception’ of Italian mercantile law in England during the fifteenth and sixteenth centuries.”(Ibid 507) The late mercantile and early industrialization periods in England therefore corresponded with the development of the modern English law merchant on Roman law foundations.(Ibid)

Modern legal systems are usually classified into civil law systems and common law systems. The main distinction between the two is the extent to which they have been influenced by Roman law. Civil law systems are squarely based upon and structured by Roman law, whereas common law systems are rooted in the English common law. The latter, as noted above, was influenced by Roman law but in a relatively limited manner. There are other differences: most civil law systems are codified whereas common law systems are not; civil law is based on a set of “logically inter-connected principles which the courts apply by a process of deductive reasoning” in the cases before them, without a system of precedent, whereas common law is casuistic, developing inductively by judgements in cases, which decisions are followed through a system of precedent (*stare decisis*). But the differences can easily be exaggerated

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<sup>14</sup> It should be noted that for many centuries Oxford and Cambridge taught Roman law and canon law only. But this gave students a degree in law and not a license to practice. In order to acquire the latter they needed to immerse themselves in the English common law.(Ibid 506)

and the two systems are arguably becoming more alike. The civil law, for example is increasingly expanding on the basis of “a veritable jungle of case-law” that accretes to each of its principles, and a tacit system of precedent is practiced.(Ibid 521-522) On the other hand, the modern regulatory state is characterised by its propensity to legislate in many areas of economic and social life, effectively codifying the common law.

### ***3.3.2 The political economy of emerging legal systems***

While legal scholars view the reception of Roman law in a quite technical way, Tigar and Levy study the historical relationship between developing legal systems and capitalism more broadly. They also situate law in a political and economic context. The reception of Roman law overlapped with and influenced a number of other types of law: feudal or seigneurial law, canon law, royal law, and the law merchant.<sup>15</sup>(Tigar and Levy, 1977: 8-9) Each of these different types of law was rooted in a power structure; respectively the feudal system or seigneurial hierarchy, the church, the crown, and the rising class of the bourgeoisie. Roman law spread not only because it attracted the attention of legal scholars but because it served certain interests within these power structures. The strength of Roman law was that it had been formed in the world of commerce and could therefore be applied in the expanding capitalist world-economy. Its commercial core made it particularly influential with regard to canon law, royal law and the law merchant. The Roman law of contract and property were especially useful in the expanding networks of trade, and the law merchant therefore became the main proponent of Roman law. Importantly, Tigar and Levy argue that “by 1600 the main principles of bourgeois private law, that law regarding interpersonal dealings in contract, property, and so on, had in theory though not everywhere in practice replaced personal feudal relationships.”(Tigar and Levy, 1977: 183) In other words, the law of property and

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<sup>15</sup> The law merchant was law that merchants had adopted and promoted from the revival of trade following the ending of the Crusades. The fundamental elements of the law were “the ease with which it permitted binding contracts, its stress on security of contracts, and the variety of devices it contained for establishing, transmitting, and receiving credit.” Merchants also had their own tribunals to adjudicate disputes that were created by treaty, by royal charter, or by virtue of municipal privileges.(Tigar and Levy, 1977: 49)

contract was well established in Western Europe by the time that modern states began to emerge.

Tigar and Levy do not draw an explicit distinction between regulation and the common law or Roman law, but their discussion reveals the different inroads that they made on seigneurial law. The emergence or re-emergence of towns was one example of very early regulation. Towns were legal creations as much as they were political and social phenomena. Most were established by charters that recorded a seigneurial lord's recognition of the town as a unit, and accorded the inhabitants freedom from serfdom and the right to govern themselves. Later charters granted additional rights to the town, such as the freedom to hold a fair or market. The charter implicitly conceded that the class of burgesses or bourgeoisie (i.e. the townfolk) had a law proper to it. Relations within the town were governed by oaths, called the 'communal', entered into by all the inhabitants that acknowledged their unity and equality. These oaths seemed to shade into the oaths taken by the members of different trades when they established or joined guilds. Guilds were in fact a form of early self-regulation. (Tigar and Levy, 1977: 80-88)

The freedom of the town from the seigneur's control was as much about the freedom of the market from any interference on his part, other than perhaps a tax levied and collected by the town, i.e. the municipality (a collective concept derived from Roman law). The market was however not 'free', or self-regulating in Polanyian terms. Municipal statutes generally regulated the market in great detail, "regulating the price of goods, restricting advertising or hawking of ware, providing for protection of merchants on their way to market, and in general seeking to harness the forces of commodity sale and exchange to the needs of the community." (Ibid 94) The labour market was also regulated by municipal laws that overrode guild charters. For example, if a master had two journeymen but another had none, then the first had to allow his fellow to hire one of the workers. These regulations regarding markets and work persisted for centuries, principally in the occupations limited to local commerce – bakers, butchers, i.e. food perishables – where protection of a local and relatively stable clientele remained important. These municipal laws were therefore another form of early regulation.

In the course of time control over the land on which towns stood shifted from seignorial lords to the Crown, i.e. the state. It was the basis for an important alliance between kings and the rising bourgeoisie that resonated with other common interests such as the king's aspirations for territorial control and the needs of merchants for a unified trading area with a uniform legal system. The first modern state, and the first explicitly regulatory state, emerged in Tudor England. Here one saw the new commodity relations that had formed on the basis of contract correspond with the public law of Henry VIII, whose "mechanism for change was the statute."(Ibid 208) It marked the transition that Maine famously captured in his statement that the history of human progress was measured by the journey from status to contract. Landed property would no longer mediate legal relations between people. Instead, "[p]roperty became the relationship of *persona* and *res*. The contract – to work, to sell, even to live in marriage – took pride of place."(Ibid 211-212)

Merchant law had mounted an assault from another angle on feudal institutions. Tigar and Levy spell this out in a paragraph that could well have been written by Braudel:

Long-distance trade, in its turn, both directed and helped to form consciously national or quasi-national legal and political institutions which provided a framework within which it could operate and profited from its success. From the universities, from the newly powerful national monarchies (in England and France), from the Italian cities (Venice and Genoa) and from the Hanseatic League of German cities came a legal literature outlining and commenting upon commonly accepted mercantile and seafaring law. The civil authorities... established courts to apply this law as the merchants wanted it applied. By establishing these courts and making them competent in certain types of cases, and by channelling appeals to royal, ducal, or municipal courts of last resort, the temporal powers sliced through feudal jurisdiction in order to protect trade.(Ibid 118)

The law of contract also undermined feudal institutions at the local level. A contract was private law, the private ordering of economic and social relations. Its rationale was that private individuals could create their own legal relations that were outside the sphere of the state or similar legal order. Development of the law of contract, particularly under the influence of Roman law, took place to facilitate long distance

trade but led to its non-recognition of unequal bargaining power. Until about 1100 possession marked a person's legal relationship with property, whether moveable or immovable. Possession therefore constituted one's rights in a 'thing'. The physical transfer of possession of property was the foundation element of contracts of sale. Written contracts therefore amounted to little more than receipts given by seller to buyer acknowledging payment of the price of the thing. However, at this point the Roman law concept of sale began to emerge in commercial contracts. From then on contracts of sale became "important as a source of rights rather than a mere adjunct to possession."(Ibid 66) This approach to contracts re-emerged in North West Italy and spread along the trade routes that led north and west into Europe. The importance of this development is spelled out by Tigar and Levy:

The single most important legal idea to come out of this period is that of the contract as a uniting of wills, reflecting promises of one, two or more people, which, *because of a legal system which exists to enforce them*, are binding without any other formality. Specifically, the newer contracts do not require *tradition* – the handing over – of the object sold or of some ritual portion of it to validate a sale. A contract of sale is entered into and reflected in a writing. This contract obliges the seller to deliver the item contracted for, and the buyer to deliver the price. That is the essence of the Roman-law contract of sale, which was bilateral and rested on good faith, and sharply separated this contract from the delivery of the item sold and the payment of the price – the agreement to do these things was its essence.(Ibid 66-67; emphasis in the original)

The commercial contract therefore became increasingly objectified. At the heart of the contract is the promise, reflecting the wills of the parties. But the expression of their wills is represented in the written document. This had huge importance for commerce because it enabled transactions to be entered into without the parties ever needing to meet, i.e. they could transact even if separated by thousands of miles. This marks a sharp break with the sort of relationships that characterise the feudal system, which tend to be on-going, marked by personal proximity, and had a strong protective element. Long-distance trade, however, needed an instrument that could travel and did not rely on immediate physical conclusion. The written contract was the basis for evaluating the contract whether this was at a different place and a future time; the

document was evidence that there was a contract and it was evidence of the parties' intentions, rather than the context in which it was entered into and the real power of the parties to the transaction. It was therefore irrelevant that the weak were entering into contracts with the strong, and the lawyers were working for the latter. Even when lawyers acknowledged the provisions in Roman law that could protect the rights of weaker parties, they are more often than not a prelude in contracts to a term renouncing or waiving those rights. The principle of free will entitled the weak to bargain those rights away. (Ibid 68-69, 108, 152)

Up until the 17<sup>th</sup> century the practice of contracting had a real impact on economic and social relations. The commodity relations that spread through the capitalist world-economy were at the same time contractual relations. From the 17<sup>th</sup> century, however, the law of property and contract law were overlaid with natural law theories that saw the emergence of a legal ideology. Against the backdrop of feudal obligations was posed the notion of freedom of contract and of property. Rather than closely circumscribing the operation of the market, as was the case in the early towns and cities, legislation was increasingly introduced to ensure that markets, including the labour market, could operate freely. In terms of this ideology good governance came to be associated with minimal state intervention in the economy. (Ibid 154) The balance between regulation and contract, between state and market, continues to be contested to the present.

### **3.4 Conclusion**

There are four analytical concepts developed by world-systems analysis that are critical for this thesis: first, the concept of the world-economy; second, the axial division of labour with its core, semi-peripheral and peripheral zones – and the notion that the division of labour can be translated to the regional, national and local levels; third, that different regimes of labour control can exist side by side and that wage-labour does not equate with capitalism; and four, commodity chains.

World-systems analysis has focused much of its attention on two periods: the 15<sup>th</sup> to the 18<sup>th</sup> centuries (although for Braudel the starting point is the 13<sup>th</sup> century) and the period from about 1970 through to the present. It therefore tends to overlook the

period from 1800 to 1970, i.e. much of the period of rapid industrialization that culminated in Fordism in the 20th century. This oversight leaves some serious gaps, including the rise of management, the emergence of the employment relationship, the growth of huge corporations, the rise and rise of the retail sector and the regulatory state. These are dealt with in the next chapter and the relevance of the axial division of labour, different forms of labour control, and commodity chains will become further apparent in the empirical study of the Southern African clothing industry.

While world-systems analysis foregrounds the historical and geographical dimensions of the capitalist system, the above chapter has added the legal dimension, in particular the reception of Roman law into Western Europe, and argues that the reception corresponded closely with and facilitated the emergence of the capitalist world-economy. Central to the emerging legal systems was the Roman law of property and contract. These principles enabled the accumulation of capital and the spread and intensification of transacting, while obscuring the inequality that often accompanied transactions.

## **Chapter Four**

### **A review of selected sets of literature**

#### **4.1 Introduction**

In the prior chapter it was argued that world-systems analysis tends to overlook the 'industrial revolution', in particular the Fordist period. A number of institutions entrenched themselves in this period. First, the hierarchical firm was given an enabling legal foundation. These firms spread rapidly, became huge, and play a fundamentally important role in the capitalist world-economy; they now span borders and some would argue that they have become trans-national. Initially these firms were concentrated in industry and transport but they now operate in almost all sectors of the economy. Management and the employment relationship is an essential feature of such firms and gave rise to the rationale for management control, especially in the manufacturing sector where large numbers of production workers were concentrated in complex labour processes. The hierarchical employment contract facilitated the relation of domination and subordination between managers and workers in the capitalist firm.

Along with the emergence of the capitalist world-economy one saw the rise of the modern state. These states to a large extent endorsed or adopted common or civil law systems that were already in existence and functioning across their economies. But the modern state also created law and did so to a greater and greater degree. Such law – regulation - focused on the economy and the market. The objectives of regulation are not simply to advance the short-term interests of capital. The state has relative autonomy, which enables it to act in ways that might appear to constrain capital, or at least constrain short-term interests in favour of securing conditions for long-term accumulation. The state also responds to other interests. Labour regulation sees the state responding to the interests of workers as well as to the long-term interests of capital by stabilising labour relations and securing a supply of labour for the future. Importantly, labour regulation generally hinges on the presence of an employment relationship; it does not apply to so-called independent contractors or firms that might be seen as subordinate to another firm.

One therefore sees in the above paragraphs the central integrating concepts in the thesis that were mentioned in the introductory chapter: the employment relationship, management control, and labour regulation, which link to the broader concepts of the labour market, the hierarchical firm and the legal order.

In the period since about 1970 the capitalist world-economy went into an overlapping secular trend and Kondratieff contraction phase, and the above institutions have been subject to significant pressure. Although the hierarchical firm has become even more powerful it has also decentralised many of its operations, hiving off some into subsidiaries, outsourcing others to sub-contractors, and relocating others to lower wage areas. While this deconstruction takes place, power has tended to become even more concentrated in the center, i.e. in the core zone. At the same time employment arrangements have become far more flexible. The standard employment relationship of Fordism is breaking down into a variety of non-standard forms, which can be categorised as either casualisation or externalisation. These non-standard forms of employment, in particular externalisation, pose serious challenges to the ability of labour regulation to protect and advance workers' interests. These developments also pose questions about management control. One question is central to this thesis: is it possible to exercise as much management control across firms through commercial contracts as can be exercised within the hierarchical firm over employees that are its own?

In effect what one is seeing is commodity chains becoming the pervasive arrangements through which goods and services are produced. These chains span the globe, regions and the local level within countries. They distribute value towards to centre and away from the periphery because higher value functions are generally concentrated in the centre close to markets and lower value functions are in the semi-periphery or periphery. The legal instruments that link firms in the chains are commercial contracts, but these are overlaid with the immense economic power of 'lead' firms. Importantly, labour regulation is often a key factor in how the chain or network is structured, because it will seek to avoid or evade labour regulation where possible. So labour regulation both shapes these chains and is undermined by them.

This chapter will seek to address the gap in world-systems analysis by examining the above aspects of industrial capitalism. However, while addressing this gap the aim of the chapter is to emphasise continuities between the pre-industrial period of the capitalist world-economy and the current phase. In many respects there is nothing new about what is happening in contemporary capitalism. Hopkins and Wallerstein's

concept of commodity chains is one example of continuity between the early history of the capitalist world-economy and contemporary capitalism. What this thesis argues is that the foundation for such continuities is the law of property and contract, including aspects of the employment contract, which provide capital with immense flexibility in how it structures itself and arranges for work to be done. The question as to what happens to management control in some of these arrangements will be addressed in the empirical chapter below, which focuses on the Southern African clothing/retail value chain.

## 4.2 The hierarchical firm

Property took on a new role with the emergence of the capitalist world-economy. It became the means through which there could be a ‘continuous and endless accumulation of capital’. Initially, the unit of property to pursue such accumulation was small, usually the resources at the disposal of an individual, plus what he could borrow. Individuals could combine their resources through contracts to form partnerships, but that still limited the quantity of capital that could be pooled and there was a risk of losing one’s property. Roman law provided a solution to these problems. It had developed the concept of a *universitas*, which was considered to be an entity through which property was collectively owned “entirely apart from its individual members”.<sup>16</sup>(Kempin and Wiesen, 1983: 2) The legal entity created would “be regarded as having a personality... like unto a person”, giving the *universitas* the legal capacity to acquire and possess property, sue and be sued, and exercise legal privileges in other ways, i.e. it became a juristic person. Individual members would, furthermore, not be liable for the debts of the corporation.(Ibid, 2, 5) The modern corporation retains these legal characteristics: it exists as a legal entity independent of its members; the ‘owners’ of the corporation have shares in it but are limited in their liability to the extent of their investment; and the shares that ‘owners’ have in the corporation do not constitute rights of ownership. The collective entity, i.e. the corporation, owns itself, with its management given fiduciary powers to manage

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<sup>16</sup> In the time of the Roman Empire the *universitas* or corporation was generally a public body. The main purpose of a corporation was enable the ownership of property by cities or states in their municipal or governmental capacities. There were however a few ‘private’ corporations, the most important of which were collectives of tax collectors (farmers of public revenues), shipbuilders, and gold, silver and salt miners. There were also merchant companies formed for the purpose long-distance trade.(Kempin and Wiesen, 1983: 3, 5)

it.(Ibid 1, 3) However, the legal basis is no longer the Roman law notion of *universitas*, or the English common law or civil law systems that drew on the Roman law principles for their early corporations. In the 19<sup>th</sup> century the modern state, responding to the needs of capitalist industrialisation, gave an entirely new life to the corporate form through general enabling legislation. It was in this guise that the corporation made possible much “of the industrial and commercial development of the nineteenth and twentieth centuries”.(Cox and Hazen, 2003: 2)

The corporation is therefore the ideal vehicle for the ‘continuous and endless accumulation of capital’. It has limited liability and can therefore attract large quantities of capital by offering shares, which is essential to its ability to constantly expand in size, and it also has a legal form that provides perpetual and virtually seamless succession. Its legal structure, furthermore, creates ‘owners’ (i.e. shareholders) who can change constantly but are always seeking to maximise profits, thereby placing relentless pressure on the professional managers that actually run the firm. The latter have a significant stake in the performance of the firm because it gives them status and high earnings (and they might also be shareholders).

The modern corporation took a long time to develop and had many predecessors. What the history of the corporation emphasises is that trade was the primary motivation for early firms and that the legal forms taken by corporations always displayed great flexibility. The roots of the modern corporation in Roman law are confirmed by Braudel, who states that “commercial lawyers in the eighteenth century resorted to the precedents, vocabulary and sometimes even the spirit of Roman law” when constituting partnerships and firms.(Braudel, 1982: 434) But firms had an earlier provenance than the 18<sup>th</sup> century. They were first established in the 10<sup>th</sup> and 11<sup>th</sup> centuries in towns on the Mediterranean that were renewing trade links with Byzantium and the cities of Islam, as well as in the Hanseatic seaports. Long distance sea-borne trade needed substantial finance so one of the first types of firm was the *societas maris* or maritime firm, also known as *collegantia* or *commenda*. It was generally a two-person partnership between an investor and the working partner who travelled with the cargo aboard a ship. The partnership was usually entered for one voyage at a time.(Ibid)

The maritime firm was followed by the *compagnia* (later to become known as ‘free’ firms or ‘joint liability’ firms), which were family firms that brought together larger concentrations of capital and were constituted for the long-term. The issue of succession was resolved practically by simply reconvening the firm on the death of the head of the firm and carrying on much as before. In these firms capital and labour as well as risk and profit was shared. Although they started out as family firms, the *compagnia* were soon admitting foreign partners and accepting deposits from investors; but they were able to retain a close family-like association amongst the members. Both the *societas maris* and the *compagnia* survived as business forms for a long time, but ultimately the *compagnia* became far more important.(Ibid 436-438)

The issue of liability was still a problem facing many firms. The first evidence of a solution was found in a 1532 contract that created a *commandite* or limited partnership agreement. The contract separated the liability of the firm’s directors from investors, whose liability was limited to the amount of their investment. The limited partnership spread slowly through Europe, replacing many family firms, and was particularly useful for establishing long-distance partnerships (but hiding the identity of partners who wanted to remain anonymous for one or other reason).(Ibid 438)

The *commandite* still combined people and capital. The next step in the evolution of the corporation was the joint stock company. There are many early examples of joint stock companies: in the 13<sup>th</sup> century one could buy shares in silver or salt mines, and in Toulouse mills were divided into shares, while in the same period many ships in the Mediterranean were divided into shares. The shares in these joint-stock companies could be bought or sold, but what distinguished the modern version of the joint-stock company was that its shares could be bought and sold on the open market. The capital invested by shareholders therefore became a single mass that vested in the firm itself. So, while earlier versions of the company had combined people and capital, the new version combined only capital.(Ibid 438-440)

The joint stock company was slow to take until the state intervened and one saw the emergence of the great merchant companies created to exploit trade monopolies. There had been earlier examples of state assistance for trading companies: in Venice the state launched the *galere da mercato* system, which saw it building and fitting

large trading ships and then hiring them out to merchants. But merchant companies came of age with the establishment of the Dutch East India Company in the United Provinces and the Merchants of the Staple, the Merchant Adventurers, the Muscovy Company, the Levant Company, the English East India Company and the Africa Company in England.(Ibid 444-450)

The rationale for the Dutch and English merchant companies was a trading monopoly. For this they needed a supportive state that would grant privileges in the national market and a monopoly of trade in the distant zone to be exploited. They were also charged with enforcing order in the latter zone, if necessary by military means, i.e. they effectively had government powers. Some even had the right to establish their own courts and impose sanctions on competitors in the regions assigned to them. The benefit for the companies was generally huge profits while the state gained from taxes. It was in this context, in particular the huge investments needed to pursue this trading strategy, that the idea of the joint stock company took off. Like the *societas maris* of the Mediterranean port cities, the English merchant companies initially offered joint stock for each voyage separately, but this was later extended and eventually the joint stock was made permanent. Alongside the joint-stock companies was another type of corporation, the regulated company. Regulated companies were essentially umbrella entities beneath which its members traded for their own account. Guilds were structured in a way very similar to regulated companies and in fact some guilds eventually transformed into regulated companies while others chose the joint-stock option. There were also instances of switching by companies between the two legal forms.(Ibid 444-446, 449; Kempin and Wiesen, 1983: 9-12) Regulated companies and joint stock companies were formed by individual charters from the state (i.e. the sovereign). A third type of company, the unchartered joint stock company, arose early in the 17<sup>th</sup> century. The reason a charter was not sought was probably the expense of obtaining one or because the promoters of the company anticipated difficulty in convincing the sovereign that the company would be beneficial for the public. These companies were formed under deeds of settlement and some even obtained certain privileges bestowed by letters of patent or grants, but they did not have the monopoly privileges of the charter companies.(Ibid 12-13; Tigar and Levy, 1977: 223)

The bursting of the South Sea ‘bubble’ in 1720 led to the passing of the Bubble Act which prohibited companies from acting like chartered joint stock companies if they did not have a charter. The Act also sought to regulate companies that exceeded the terms of their charters. The statute set back the law of corporation in England for over a hundred years (it was repealed in 1825) and challenged lawyers to create entities that could mimic chartered companies without actually having obtained a charter. One way was to create a trust into which investors could pay money for the operation of a business or businesses. The investment constituted shares in the business and could also be transferred if the trust agreement permitted it. The trust could hold property, it could sue or be sued separately from the investors, and the trustees could perpetuate themselves. So, the business trust, an entity very similar to a company, came into existence.(Kempin and Wiesen, 1983: 13)

The reaction to the South Sea ‘bubble’ saw the United States take the lead in developing corporate law, including the development of the modern concept of limited liability. Although limited liability made sense to many interests – it was critical for raising capital and it was the corollary of the company having legal personality – it was extremely controversial and faced strong resistance. The result was about fifty years of conflict that played itself out in state legislatures and courts. Limited liability survived but not without certain conditions. Furthermore, by this time the weight of public opinion had swung firmly against the granting of monopoly privileges to companies. In England the monopolies of the Russian and Levant companies were abolished and in France the Indies trade was opened to all. The era of free trade had arrived.(Braudel, 1982: 452-454; Kempin and Wiesen, 1983: 14-15)

By 1800 about 250 corporate charters had been granted in the US, all with the benefit of limited liability, whether explicit or implicit. The corporate charter was arrived at by way of negotiation between the state, the combined associates, and the groups of associates acting for themselves. The result was a set of contracts between these parties and the corporation. The corporate charters were then usually transformed into separate statutes, which allowed for oversight on the part of the legislature.<sup>17</sup> The outcome was a new corporation with legal personality and independence from its

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<sup>17</sup> The legislatures often used this ability to severely regulate the transactions.(Berle and Means, 1967: 122)

associates. But the legislatures at that time were keenly aware of the potential for abuse of power and introduced a number of statutory protections for shareholders to supplement the common law.(Berle and Means, 1967: 120-122) As in Europe, the motivation for granting a charter to a business was that its operations would benefit the public. The US was industrializing and there was a strong desire to develop a manufacturing base that would free it from reliance on European, and particularly English, products. But there was an opposing view that sought to uphold the interests of creditors against iniquities that could flow from limited liability.(Kempin and Wiesen, 1983: 17-18)

In the second half of the 19<sup>th</sup> century a turning point for the corporate form was reached: general legislation for corporations to be established and acquire the benefits of legal personality, limited liability, and perpetual succession (i.e. for the corporation) was introduced in Germany, England, France and the US. Thereafter the state no longer had direct involvement in the negotiation of the corporate charter and the legislature's oversight role was curtailed. The transformation of the charter into the 'certificate of incorporation' or 'articles of association' gives the promoters of a corporation flexibility to determine the scope of business of the corporation, its capital structure, and the conditions of its establishment and operation. The subsequent history of company law was to narrow and restrict the protections of shareholders, and thereby their ability to maintain control over the corporation, with the corollary that the position of management was strengthened. The result was been huge growth in corporations and what Berle and Means describe as the divorce of ownership and control in the large corporation.(1967: 122-140)

#### ***4.2.1 The separation of ownership and control***

The flexible nature of the modern corporation is underscored by its disjointed structure: shareholders (without ownership rights), independent board, and employed management. This structure gave rise to the debate about the separation of ownership and control. The issue has significant implications for the nature of the capitalist system, but also because it provides one example of the way in which control can be separated from ownership, i.e. it can be transferred.

The debate was sparked by the 1932 publication of *The Modern Corporation and Private Property*. The book attracted criticism because of the empirical method and criteria used by Berle and Means, but it had a major impact because of the implications of their thesis for the nature of capitalism.<sup>18</sup> The thesis was that the unity of ownership and possession that characterised the traditional view of property no longer existed in the case of many corporations. (Berle and Means, 1967: viii) This process had “changed the nature of the profit-seeking enterprise” and was of such fundamental importance that it amounted to a “revolution”. (Ibid. 7) This raised important questions about the nature of property and the logic of productive property, viz. to secure a profit for the benefit of the owner(s). Berle and Means describe the process as follows:

The corporation becomes the legal “owner” of the capital thus collected and has complete decision-making power over it; the corporation runs on its own economic steam. On the other hand, its stockholders, by now grandsons or great-grandsons (sic) of the original “investors” or (far more often) transferees of their transferees at thousands of removes, have and expect to have through their stock the “beneficial ownership” of the assets and profits thus accumulated and realised, after taxes, by the corporate enterprise. Management thus becomes, in an odd sort of way, the uncontrolled administrator of a kind of trust having the privilege of perpetual accumulation. The stockholder is the passive beneficiary... (Berle and Means, 1967: xv)

But what does the divorce of ownership and control mean in practice? Berle and Means argued that legally the board of directors have the authority to direct the affairs of the corporation, which means that the “individual or group who have the actual power to select the board of directors (or its majority)” are “the control”. (Berle and Means, 1967: 66)

Such management control would generally arise where shareholding is so widely dispersed that no individual or small grouping of shareholders has an interest large enough to give it the power to select the board of directors or significantly influence

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<sup>18</sup> Much of the comment on Berle and Means’ method has been critical: see Zeitlin (1974) for an excellent review of the literature.

its selection. In such a situation a shareholder has three options with regard to the election of the board of directors.<sup>19</sup> She can withhold her vote, which achieves nothing, or she can attend the annual general meeting and vote, but with a tiny proportion of the total shareholding this vote will have little effect. Third, she can sign a proxy transferring her voting power to the proxy committee, which is appointed by management. This effectively gives management the right to appoint the board of directors, i.e. management has control of the corporation even though it might own few shares in it.(Berle and Means, 1967: 78-82; Gordon, 1945: 109, 121)

The divorce of ownership and control negates the “the traditional logic of profits”, viz. the owner bears the risk of his endeavour but earns all the profits so will manage effectively. Ultimately his self-interest will benefit the community.(Berle and Means, 1967: 297-300) This raises the question as to what motivates managers in the modern corporation to exercise their skills to ensure that the corporation operates as efficiently and profitably as possible? Why would managers put in effort beyond that needed to obtain a ‘satisfactory’ level of profit, i.e. a level that will satisfy shareholders and potential investors? If managers do not get an adequate share of the profit then its motivating force is undermined and the “logic of profits” unravels to the detriment of society.(Berle and Means, 1967: 300-302)

It is a question that Berle and Means are unable to satisfactorily answer. One proposal they make is that the motivation could be “*personal profits*”, i.e. profits that the controlling management group can earn at the expense of the corporation (emphasis in the original).(Ibid.) But if this is the case, the interests of managers are directly opposed to those of ownership.<sup>20</sup>(Ibid 114) Management, however, could be pursuing goals other than personal profits, such as “prestige, power, or the gratification of professional zeal”.(Ibid) Such goals do not necessarily correspond with the interests of the owners, but they do not necessarily contradict the latter’s interests. In fact, any conflict between the interests of owners and managers is related mainly to sacrificing

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<sup>19</sup> In addition, a shareholder could try to gather together other shareholders to form a voting bloc that would allow it to challenge management’s control. In practice, however, this is extremely rare.(Berle and Means, 1967: 82-83)

<sup>20</sup> A simple example would be where management buys a property in its own right and then sells it to the corporation at a large profit, but there are many other less obvious ways in which the management group can pursue personal profits that are contrary to the interests of the owners.(Berle and Means, 1967: 114-115)

short-term gains for longer-term profitability, rather than reducing profits per se. Furthermore, Berle and Means suggest that there are instances where the interests of management and shareholders might correspond, e.g. where “the control” seeks the prestige of success, and profits constitute the main measure of success.(Ibid. 116)

Berle and Means explore the role of stakeholders with other interests. If managers do not have a necessary interest in profit maximisation, then it puts “the community in a position to demand that the modern corporation serve not alone the owners or the control but all society”.(Berle and Means, 1967: 312) The obvious questions this statement raises are how does the community establish what its interests are and how does it enforce these interests as against the corporation? Berle and Means’ solution was again legal: in order for the community to pursue its interests “a generally accepted” and “convincing system of community obligations” needs to be formulated.(Ibid.) In this way, management control would “develop into a purely neutral technocracy, balancing a variety of claims by various groups in the community and assigning to each a portion of the income stream on the basis of public policy rather than private cupidity”.(Ibid. 312-313) It is arguable that government regulation often seeks to do something along these lines, although in a more limited way. One also sees evidence of alternative mechanisms to enforce the community’s interests against corporations in consumer campaigns and the corporate social responsiveness efforts developed by corporations as a response.

As noted above, Berle and Means’ study sparked a vigorous debate about the splitting of ownership and control as well as the implications for the economy and wider society. Their statement that the corporation was playing a vital role in the “twentieth-century American economic revolution” proposed that capitalism had entered a new phase, what some termed ‘managerial capitalism’. The debate generated two strands of literature. One strand can be termed the ‘managerialist’ literature and the other the Marxist literature.

The first major contribution to the ‘managerialist’ literature was from RA Gordon.<sup>21</sup> His roots in Berle and Means’ work are evident<sup>22</sup> but he tried to delve more deeply

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<sup>21</sup> *Business Leadership in the Large Corporation.*

into certain issues, particularly with regard to what motivates management in the modern corporation. He, however, also offers little in the way of a theory as to what the impact will be of the 'corporate revolution' on society. The latter issue that was to be the focus of subsequent writers, particularly Burnham, Crosland, Galbraith, Kaysen, Mills and Clarke Kerr *et al.*

Marxists were concerned with the debate about the separation of ownership and control because it proposed that an alternative, more socially-responsive form of capitalism was emerging that would not be driven by profit maximisation. Marx had been aware that such a separation was starting to take place as industrialisation progressed. He identified the "(t)ransformation of the actually functioning capitalist into a mere manager, administrator of other people's capital, and of the owner of capital into a mere owner, a mere money capitalist". Unfortunately, Marx did not explore the ramifications of this incipient separation for the class structure of society, although his writings on the joint-stock company are suggestive of where he believed managers would be located.(Marx, 1974: 436) He argued that such companies led to "private production without the control of private property" and "the abolition of capital as private property within the framework of capitalist production itself."(Marx, 1974: 436, 438) The joint-stock company therefore signals "a necessary transitional phase towards the reconversion of capital into the property of the producers", thus making it "the property of associated producers, as outright social property."(Marx, 1974: 437)

Marxists have tended to reject or ignore these passages. Zeitlin, for example, dismisses them out of hand as "rather confusing Hegelian comments".<sup>23</sup>(1974: 1080). But Dahrendorf, while acknowledging that Marx's comments were "strange", takes Marx at his word.(Dahrendorf, 1959: 22) He argues that the implication of Marx's comments is as follows:

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<sup>22</sup> Gordon's book is based on a large-scale empirical study conducted in the United States that covers similar ground to Berle and Means' study and uses much the same methodology.

<sup>23</sup> The 'revisionist' Social Democratic theoreticians Bernstein and Schmidt followed this approach. They argued at the turn of the 19<sup>th</sup> century that the corporation was changing the fundamental nature of capitalism. Mass shareholding would progressively transfer control over property to society as a whole, thereby expropriating the capitalist class and replacing the captains of industry in the social scale.(Zeitlin, 1974: 1080)

If, therefore, the functions of the “director” and the “mere owner,” the manager and the stockholder, are separated, this means a first step on the way to the complete abolition not only of effective private property itself, but also of the authority relations dependent on it, and thus a step on the way to the communist society.(Dahrendorf, 1959: 22-23)

This means that a “new group of managers who are utterly different from their capitalist predecessors” will emerge.(1959: 42) Such managers cannot be part of the capitalist class. In fact, managers are arguably in the vanguard of the working class and will lead the way, with the large corporation as the vehicle, to a classless society.

Not surprisingly, most Marxists rejected Dahrendorf’s interpretation. Instead, they sought to develop an approach which they argue is more consistent with the rest of Marx’s work. The key for Marxists was to establish the class position of management. This quest generated a considerable literature that produced a variety of conclusions. Managers were seen as being in the capitalist class, in a contradictory class location, in a middle stratum, in a new class, and as part of a service class.(Poulantzas, 1975; Wright, 1979, 1985, 1997; De Vroey, 1980; Carchedi, 1980; Goldthorpe, 1982; Gouldner, 1979) Although there was no consensus on the issue of the class location of managers, the main thrust of the Marxist literature was that managers were either part of the capitalist class or were co-opted in one or other way to serve the interests of the capitalist class. Unlike the ‘managerialist’ literature, the Marxists engaged in little or no empirical research, preferring to remain at the level of abstract concepts and social structure than delve into the corporations themselves. As a result, Goldthorpe argues, whatever is decided with regard to the class location of managers, it tells one very little about the political role of management. Their class interests remain contingent, conditioned by particular social and ideological circumstances.(Goldthorpe, 1982: 164)

A number of criticisms can be made of the ‘managerialist’ and the Marxist approaches. For example, the Marxists assume a single, uniform capitalist mode of production across the world, with no recognition that there might be differences according to levels of industrial development. But the most important criticism from the perspective of this thesis is that the literature focuses only on the large firm sector

where there are hierarchies of 'professional' managers. It therefore completely ignored the fact that a key aspect of the separation ownership and control was between managers in large corporations and owner/managers of small firms. Or, to use the terminology of value chains, between managers in 'lead' firms and owner/managers in smaller subordinate firms lower down the chain.

What the literature highlights, however, is that control can be transferred. This transfer is never complete: the transferor always retains some control, although this will vary from case to case. However, management control has another important aspect, namely the control managers exercise over subordinates within the firm. Importantly, this form of control is relatively new, only beginning to appear when large corporations emerged in the manufacturing sector, concentrating significant numbers of production workers together. Earlier production systems, such as the putting-out system, were marked by the absence of direct management control. Before examining management control in more detail, the thesis will briefly outline the putting-out system and sub-contracting system.

### **4.3 Earlier alternatives to management control in the hierarchical firm**

#### **4.3.1 *The putting-out system***

The guild system and artisan workshops were enmeshed to a greater or lesser extent with the putting-out or domestic system (known in Germany as the *Verlagssystem* and in France as *le travail a domicile* or *a facon*). The putting-out system was controlled by the merchant, who provided artisans with the necessary raw materials and an up-front part-payment to manufacture certain goods. The balance of the payment would be paid on collection or delivery of the finished product. According to Braudel the system appeared much earlier than is generally recognized, and was definitely in operation at the time of the 13<sup>th</sup> century economic boom: in 1275 the Provost of merchants in Paris issued a decree prohibiting the spinsters of silk to pawn or sell or exchange the silk given to them to work by a merchant. (1982: 316-317) It was also far more widespread than many recognize: Braudel talks of 60 000 people being involved in this system in about 1350 in and around Florence. All were connected by the merchant entrepreneur, who gave out the raw material, saw that the goods went from

one operation to another: “from spinner to weaver, to fuller, to dyer, to shearer, who took care of the finishing process and payment of wages, and at the end of the day, pocketed the profits from sales at home or abroad”.(Ibid 300) Wallerstein agrees that the system started very early but argues that it became much more widespread only in the 16<sup>th</sup> century, before expanding even further in the recessionary 17<sup>th</sup> century.(1980: 194)

Braudel sums up the essential features of the putting-out system as follows:

The most frequent form taken by industry in town and country was the putting-out system, a pattern of working which had become general throughout Europe and had enabled mercantile capitalism from a quite early stage to take advantage of the surplus of cheap labour in the countryside. The rural artisan worked at home, helped by his family, while still keeping a field and a few animals. Raw materials – wool, flax, cotton – were provided by the merchant in town who ran the operation, received the finished or semi-finished product and paid the bill. The putting-out system thus combined town and country, craft and farming, industrial and family labour, and at the top, mercantile and industrial capitalism. To the artisan, it meant a life that was balanced if not exactly peaceful; to the entrepreneur, it meant the possibility of keeping fixed capital costs down and more particularly of coping with the only too frequent gaps in demand; when sales fell off, he simply reduced his orders and employed fewer people – perhaps suspending operations entirely.(Braudel, 1984: 593)

As will be seen in subsequent chapters, the system survives in the modern clothing industry.

The putting-out system started in urban areas, sometimes with the co-operation of the guilds. There are even examples of merchants contracting with an entire guild.(Braudel, 1982: 318) However, the power that merchant-entrepreneurs wielded over artisans in the system, who were employers in their own right, was perceived by the guilds to be a threat to their independence:

In the putting-out system, the master of a guild was often himself a wage-earner too. He was dependent on the merchant who provided raw materials, often imported from

abroad, and who would afterwards handle the sale and export of the cloth, fustians, or silks he had woven. In this way, all the sectors of craft life were touched, and the guild system was gradually being destroyed, although outward appearances were maintained. By obliging craftsmen to accept his services, the merchant was imposing his choice of activity, whether in iron-work, textiles or ship building.(Ibid 317)

The guilds sought to exert some control over the system by regulating the contracts entered into by the merchant and the artisans. But the guilds did not have power to regulate the countryside, so the putting-out system increasingly shifted from the towns to country. There merchants were generally able to find families of workers that would do the work for lower pay. The expansion of the putting-out system in the recession of the 17<sup>th</sup> century was primarily due to its spread to rural areas. (Braudel, 1982: 318; Wallerstein, 1980: 194) It was an early example of the division of labour spanning the urban and rural labour markets:

He was not only the middleman between the producer of raw materials and the artisan, between the artisan and the purchaser of the finished product, and between the local town and foreign markets, but also had one foot in the town and the other in the country.(Braudel, 1982: 318)

The putting-out system therefore linked town and country, local production systems to foreign markets, and core to semi-periphery and periphery.(1980: 195-196) Although the merchants dominated the artisans and workers in the putting-out system, their intention was never to transform craft production. The merchant's main interest was marketing; payment by the piece was their proxy for direct management of production. The resistance from the guilds to the system was therefore not because it controlled the internal organization of production, but because the merchant-entrepreneur controlled the inputs and the outputs, and to a large extent the income, of the artisan.(Wallerstein, 1980: 195; Braudel, 1982: 318) In fact, the artisan workshop was locked into a system in which the only thing it controlled was the production process:

Under putting-out, the direct producer formally owned the means of production but de facto became an employee of the merchant-entrepreneur, who controlled the

producer's real income and appropriated his surplus-value without being yet in a position to ensure his maximal efficiency by direct supervision at the workplace.(Wallerstein, 1980: 195)

Braudel records the presence of the putting-out system in a wide range of sectors, but it was particularly prevalent in the textile sector.(Braudel, 1982: Ibid 321) However, it reached the clothing industry late. Marshall mentions that it was only well into the 19<sup>th</sup> century that clothing manufacture in England was drawn into the putting-out system. There it followed the same pattern as most other sectors: a merchant or intermediary would give the work out to women that worked alone at home or with the assistance of family members. However, it could be operated in towns and cities because it seems that guilds did not wield much power in the clothing industry; there were 200 000 clothing outworkers in London alone. There were also many outworkers spread across the rural areas of England.(Marshall, 1961: 295)

Pollard's research, focusing on England, also indicates an early start for the putting-out system in that country, where it became as widespread as the system on the Continent. The "plan of giving out material and paying wages" was prevalent in the woollen industry and "was characteristic of every other important industry in the eighteenth century".<sup>24</sup> It was found in the clothing and textile industries, metal goods manufacture such as nails and cutlery, as well as in the making of watches, straw hats, articles of wood and leather "and many others". Pollard gives a detailed account of the numbers of workers in various parts of England and different sectors that were engaged in the putting-out system. (Pollard, 1965: 31-32)

There were different models for structuring the administration and staffing of the system. Some merchants used middlemen who bore most of the risk and possibly advanced their own capital.<sup>25</sup> Another model was to employ agents on a commission

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<sup>24</sup> Ashley Economic Organisation of England at 145; quoted in Pollard, 1965: 31.

<sup>25</sup> The amounts of capital employed in the system were considerable: many West Country clothiers had at their disposal £40 000 to £50 000, while some individuals or partnerships had as much as £100 000 to £200 000. Despite these resources, it appears that these merchants would often require intermediaries to also contribute capital (or share risk) in the business, probably because of the problem of embezzlement.(Pollard, 1965: 31-33)

basis who often also bore some of the risk of the business; they were referred to variously as ‘undertakers’, ‘bagmen’ or ‘putters-out’. There were, however, also firms that directly employed managers and agents to coordinate the distribution of material and recovery of completed goods. All the models battled with the problem of how to exercise closer supervision over workers, in the main to guard against embezzlement of materials, but also to try speed up production.(Ibid 32) The system also resulted in “a vast complex network of indebtedness”, and Wallerstein notes that the granting of credit led to indebtedness on the part of artisan and family workshops that resembled forms of debt-bondage associated with the agricultural sector.(Ibid; 1980: 194)

To some extent the putting-out system created pressure for the centralisation of production. However, it was not a transition phase to full-fledged industrial organisation. Putting-out survived alongside factory production and for a long time merchants operated putting-out systems and manufactories in tandem. In some regards, however, putting-out assisted in the transition from the artisan workshop to the factory system. For example, it enabled the development of certain skills and management capabilities critical for factory production, and it also led to the accumulation of sufficient capital to finance the setting up of factories. A further factor was that the inherent limitations of the system became a motivation for going beyond it. Merchants, who risked considerable amounts of money, wanted better control over production than could be obtained in the myriad “unsupervised and unsupervisable” workshops of the putting-out system. (Pollard, 1965: 31) Many factory-owners, especially in the textile sector, began as putting-out merchants. If they did not have sufficient expertise with regard to the manufacturing process, to match their knowledge of the market, they simply hired it or took on partners.(Ibid 30-31)

Factory organisation began to be considered the better option, although initially this was “without the incentive of superior technique” and faced opposition from workers who resisted the discipline imposed in the factory.(Ibid 33, 162) The putting-out system had taken the division of labour of the artisan workshop a few steps forward, but the nature of the system created a barrier to further advances. This barrier was another motivation for centralising production, which pulled firms “into the kind of progress which led, sometimes dramatically and sometimes imperceptibly, into the

factory system.”(Ibid 37) And, as soon workers were concentrated in factories the way was opened for rapid refinement in the division of labour.

As noted above, for a time the putting-out system and factories were run in tandem as part of a single operation. There was “a central mill or workshop for some processes, with a penumbra of semi-independent outworkers for others.”(Ibid 34) New technology was one of the main determinants of the new form of ‘organisation’. In the cotton textile industry, for example, major inventions in spinning, carding and related processes saw them being brought within the central manufactory, which then supplied outwork to handloom weavers. This innovation actually increased the number of handloom weavers (all outworkers) from 108 000 in 1788 to 240 000 in 1820, and large spinning factories were surrounded by significant numbers of outworkers well into the 19<sup>th</sup> century. There are numerous examples of the putting-out system combined with one or more spinning and finishing factories in the textile sector, and the mix of systems was not unknown in other sectors.(Ibid 35-37)

Similar combinations were also prevalent on the Continent. The manufactories of the pre-industrial era, sometimes referred to as “concentrated manufacture” or “privileged manufacture”,<sup>26</sup> were often motivated by access to a single power supply (e.g. water-operated forges) and aimed at achieving economies of scale.(Braudel, 1984: 593) Although these manufactories allowed for a greater division of labour and direct supervision of work,<sup>27</sup> there were very few that were not also centres of a putting-out system. There is one remarkable example of a woollen manufactory in Linz that in 1775 employed a total of 26 000 workers, about two-thirds of which were spinners and weavers working at home.(Braudel, 1982: 300, 330; Pollard, 1965: 48-50)

Importantly, from the point of view of this thesis, the putting out system survived manufactories and continued well into the era of factory production. It was therefore

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<sup>26</sup> These manufactories were often established by the state or were sustained by special privileges granted by the state. (Braudel, 1982: 332-333; Pollard, 1965: 48-49)

<sup>27</sup> The manufactories never constituted a significant part of the economy of that time but they were important because they enabled technical advances, including the development of techniques for “supervision, discipline and respect of the rules”.(Braudel, 1982: 335) Wallerstein states that workers in manufactories “were virtually imprisoned in their work places”, probably because at that time workers were so reluctant to be subject factory discipline.(Wallerstein, 1980: 93)

not a transition stage that would inevitably be replaced by factory production. As Braudel argues, there was “no logical and natural succession” from the one to the other.(1982: 373) Hobsbawm broadly agrees: he argues that the emergence of factories in the early industrial period in England did not see the displacement of outworkers by factory workers (except in a very few trades), but rather the opposite; the factory system actually multiplied the number of outworkers. Domestic handloom weavers were therefore not an anachronistic remnant of the Middle Ages but were “largely created *as part of capitalist industrialisation in its early phases* just as the factory workers were”.(Hobsbawm, 1968: 116; italics in the original)

However, the combination of the two systems worked to the detriment of workers. As the factory system expanded in the course of industrialisation, conditions in the domestic system were undermined. This perversely extended the life of the putting-out system: the spread of factories put downward pressure on the ‘wages’ of outworkers, which meant they remained an attractive option for production. There was, therefore, nothing inevitable about the factory system winning out over the putting-out system.(Hobsbawm, 1968: 116)

#### **4.3.2 The sub-contracting system**

Pollard notes that some see sub-contracting as a further ‘stage’, but he points out that the arrangement was not new; it had been used in an earlier time when production was still predominantly small-scale. Sub-contracting, furthermore, survived well into the “factory age”:

Subcontract as such, however, does not itself form a ‘stage’, but may be compatible with different stages of development of industrial capitalism, according to technical and commercial needs and managerial competence. It survives, in many forms, into the factory age; in some industries it survives until today, and is not necessarily inefficient or anachronistic. It is, in fact, only the dogmatism of classical political economy as developed in the nineteenth century, which looked upon the capitalist-owner-entrepreneur, facing an individual, propertyless worker, as the ‘normal’, highest, finite form of organisation, which has led us to ignore or minimise the

importance of surviving systems of subcontract, group-contract or co-operation.(Pollard, 1965: 38-39)

So, 'stage' is a relative term that suggests that in a certain period sub-contracting expanded significantly before it shrunk in the face of the hierarchical, managed firm. In this period, sub-contracting seems to have been driven mainly by the inability of management to keep up with the growth of firms. Sub-contracting was a response; it became, "if not a method of management, at least a method of evading management."(Ibid 38) The primary advantage therefore was to reduce the span of management and range of supervisory duties, it "dispensed with the necessity of incessant supervision of the managing-foreman by the employer";<sup>28</sup> but it also allowed the employer to share his risk and capital, and draw on the technical knowledge of the sub-contractor, and it simplified and stabilised the cost structure of the employer.(Ibid 38)

At this time there were many firms that "showed an untidy mixture of ownership, management, subcontract and co-operation."(Ibid 40) Pollard cites the example of the charcoal iron industry, in which groups of interlocking partnerships existed, with one partner acting as manager for each unit, to ensure adequate supply to the market despite fluctuations in output from individual furnaces or forges. It was a complex system of co-operation and delegation that worked, whereas an integrated and centralised management of the scattered units would have been impossible. Similar patterns of delegation and sub-contracting could be seen in other industries of the time. One of the oldest systems had developed in the mining districts of Cornwall and Derbyshire, in which owners spread their risk by taking a limited number of shares in many mines and delegated the management to engineers and others with expertise. Besides spreading risk, the interlocking ownership fostered co-operation between neighboring mines. It was only with the Joint-Stock Companies Act of 1856, which clarified and tightened the distinction between owners and managers, that such arrangements began to be phased out.(Ibid 40-41)

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<sup>28</sup> AJ Taylor, 'The Sub-Contract System in the British Coal Industry' in LS Pressnell (Ed.) Studies in the Industrial Revolution. Essays presented to T.S. Ashton, 1960; quoted in Pollard, 1965: 38.

The above hybrid forms of ownership and management were however not as widespread as the practice of sub-contracting. Sub-contracting was particularly prevalent in the mining sector. Initially the sub-contracts were with groups of miners in which there was no hierarchy, but by later in the 18<sup>th</sup> century the ‘butty’ had become the employer, making his profit from the gap between the payment for the piece of work and the wages he paid to the rest of the group. In the North Wales coalfield the charter masters would not only pay wages to the miners but also provide the equipment and materials, all of which came out of the ‘wage’ he was paid by the ‘employer’. As pits became deeper and more expensive capital equipment was required, there was a tendency for the pit owner to take direct control of all operations, thereby ending sub-contracting. But there were instances in which the opposite trend was observed: sub-contractors grew in size and took over whole mines or clusters of pits, in the process becoming quite large firms in their own right. On the other hand, sub-contracts in the Cornish tin and copper mines were auctioned to groups of miners. There were two types of sub-contractor. In one case, the ‘tributers’ who won the auction for a certain pit or ‘pitch’ would pay the ‘adventurers’ a percentage of the ore sales; this was mainly for mining operations. In the other case, ‘tut-workers’ did what was termed dead-work, e.g. sinking shafts, and were paid a specified amount of money per job. The groups of miners or ‘tut-workers’ would employ their own assistants. Similar systems could be found in other mining districts, including in Scotland and Ireland.(Ibid 42)

Sub-contracting was also prevalent in manufacturing, particularly the cotton textile sector. In this case skilled workers would be employed by the firm but would in turn employ their own assistants. In many cases the assistants were children, often their own, who were employed as ‘scavengers’ and ‘piecers’. Here one sees continuity from the domestic system into the factory system, with families often being employed as units. In fact, cotton masters for many years paid out wages on a family basis, even where the family members were spread across different departments. Returns to the Factory Commission of 1833-4 reveal that in the spinning mills there were 8 136 child workers employed by other operatives and only 1 043 direct employees.(Ibid 43)

A different sub-contracting system operated in the woolen mill of Benjamin Gott, then the largest mechanised woolen mill in existence. As late as 1815 most of the weaving,

including that done on the premises, was done by independent contractors who made cloth to the order of the firm, paid the firm a commission for the use of the factory and its equipment, and sold the completed cloth to the firm.(Ibid) An arrangement that was almost as complex could be found in the Heathcote lace mills. The firm employed foremen to supervise direct employees at the mill, but the foremen could in addition hire two or three machines on their own account as sub-contractors and employ their own labour to work on them.(Ibid 44) Pollard cites many other examples: the iron industry, the building industry, the printing industry in Soho; in the potteries, including the Wedgwood plant; in collieries; in the assembly industries such as piano and coach manufacturer; and in cutlery making and framework knitting. Sub-contracting was the method par excellence in the building industry, then still small-scale, and the civil engineering industry, which was in the process of becoming large-scale: the construction of canals, railways and laying gas mains was all done largely through sub-contracting arrangements.(Ibid 44-45) Hobsbawm also cites many examples in the iron and steel industry, shipbuilding, part of coal mining, all small-scale workshop or sweated trades, many transport trades, in public works, and in railway and mine construction.(1968: 299-300)

It should be emphasised that the above examples all concern core operations. Pollard notes that the ancillary operations were “even more easily subcontracted.” Transport was an operation usually contracted out. The carters of coal, often local farmers, were sub-contractors, and there were usually many more of them than those directly employed at the furnace. The Gregory lead mine had four ‘companies’ of miners as well as coopers, builders, carpenters, blacksmiths and ten carters among its sub-contractors.(Ibid 46-47)

Sub-contracting provided flexibility, so there were always areas in which it would be favoured for one or other reason:

While one form of subcontract declined with mechanisation, others sprang up, and while some forms were conservative and inhibiting progress, others were centres of innovation. Subcontract was thus not a ‘stage’ of industrial development to be superseded in due course by a unitary factory-type organisation, though in this period

its general tendency was to allow entrepreneurs to escape the most urgent immediate problems of large-scale management.(Ibid 47)

Unlike Pollard, Hobsbawm argues that the system of sub-contracting that existed in the early part of the industrialism could be regarded “as a transitional stage in the development of capitalist management”, and he termed this phase “co-exploitation”, in that it turned many skilled workers and foremen into co-employers of their fellow workers. He states further that:

Capitalism in its early stages expands, and to some extent operates, not so much by directly subordinating large bodies of workers to employers, but by subcontracting exploitation and management.(Hobsbawm, 1968: 297)

The system could be structured to ensure the maximum pressure on workers. Hobsbawm refers to the early sub-contractors in factories as a form of entrepreneur. They were usually paid on the basis of results but would pay the people under them by time rates. This created an incentive for the sub-contractor to drive his employees hard by direct supervision in order to maximise his own income. There were, furthermore, layers to the system. An engineering employer would sub-contract a major job of work to a ‘piece-master’, who would employ and pay his own craftsmen, who in turn would employ and pay their own labourers. The employer would also hire and pay foremen, who in turn would hire, and have a financial interest in paying the labour that did not work on sub-contract.(Ibid 298)

Sub-contracting, however, began declining in industrialising countries from the 1870s and not much survived the First World War. Increasingly production began to be performed in hierarchically organised firms that directly employed all its workers. Most workers came to be paid by time rates but payment by piece-rate and payment by results systems were always an option that management explored.(Ibid 299-300)

#### **4.4 Management control in the hierarchical firm**

Forms of management go back to the earliest times but it was only with accelerated industrialisation from the mid-18<sup>th</sup> century that management became a major force

and key stratum in society. However, management made an inauspicious start. Pollard found that “examples of dishonest, absconding or alcoholic managers who did much damage to their firms abound in this period”.(1965: 21) Adam Smith provided an even more telling indictment: he argued that managers in joint-stock companies would lead to inefficiency because they cannot be expected to watch over “other people’s money... with the same anxious vigilance with which the partners in a private [company] frequently watch over their own”; the result would be “(n)egligence and profusion in the management of the affairs of such a company.”<sup>29</sup> Much has changed since then, although there are still many questions that can be raised about the capabilities and interests of managers. But the general view in the literature is that industrialisation has led to the emergence of professional managers that have played a critical role in economic development.

Given the importance of managers, there is surprisingly little known about them and what they actually do. Rather than studying who managers are and how they manage in practice, management science has “tended to take the role and social position of management as given, and concentrated on investigating how management objectives can be better fulfilled”.(Eldridge, Cressey and MacInnes, 1991: 51) Management science is therefore descriptive and prescriptive, rather than critical and empirical. Other disciplines do not fare any better. Economics almost entirely ignores managers; the firm is a ‘black box’ within which managers are assumed to be functioning optimally. Marxists are not much better, treating managers as “‘agents’ of capital: mere ciphers who must follow the dictates of market forces”.(Ibid 44) Similarly, in the work of Weber managers are nothing more than the rules of their office in the bureaucratic hierarchy.(Ibid) Even Braverman, who’s main focus was managers, substituted Taylor’s theory of management for an empirical examination of the actual practice of management.

One of the reasons for our ignorance about management is that it is so difficult to establish who they are. For example, Kerr *et al* state that:

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<sup>29</sup> Adam Smith 1904 Wealth of Nations Cannan vol.2 233, 246 and 248; quoted in Pollard, 1965: 12-13.

Many of the managers are in turn managed from above, and many of the managed, in turn manage someone below. Few are those who only manage and many are those who are only managed; but there is a hierarchy of managerial relations far too complex to compress into simple class relations. Instead a society develops of the semi-managers and semi-managed.(Kerr *et al*, 1973: 259)

The solution for some has been to avoid the issue by defining management as a process or function or practice, rather than a group of people.(see Grint, 1995: 46) Eldridge *et al*, for example, define management as “the process of directing an organisation, in return for a salary, on behalf of those who nominally have the right to control it, using various forms of technical and organisational expertise”.(1991: 49-50) This, of course, begs the question: what is the nature of management’s control and what technical and organisational expertise do they require to manage, never mind the initial question of who are these people that manage? Eldridge *et al* even acknowledge that neither technical and organisational expertise, nor authority, are exclusive to management. Determining who a manager is therefore becomes an empirical enquiry: at what level in the hierarchy is the person and how much managerial activity is involved in the operation.(Eldridge *et al*, 1991: 50) But this does not take us very far in understanding management. We are therefore left a remarkable paucity of information about management.(Eldridge *et al*, 1991: 44; Nichols, 1980: 211; Pollard, 1965: 1-2; Grint, 1995: 1-3)

Even if one were to provisionally accept Eldridge *et al*’s definition of management as a process or social relation, there is still the question of what is it that managers actually do? Early management theorists answered this question by specifying key principles or functions of management. Fayol, the founding father of management studies, listed five functions: planning (defining what must be accomplished), organising (establishing lines of authority for transmitting orders in respect of the work), coordinating (arranging the sequence of the work), commanding (issuing the instructions to set the organisation in motion), and controlling (continuously monitoring and correcting the work once it has begun).(1984: 1, 5 and 57) Gulick and Urwick, also important early management theorists, came up with seven management functions, sometimes referred to by the acronym POSDCORB:

Planning – working out in broad outline the things that need to be done and the methods for doing them to accomplish the purpose set for the enterprise;

Organising – establishing a formal structure of authority through which work subdivisions are arranged, defined and coordinated in order to meet the defined objective(s);

Staffing – the personnel function that involves recruiting and training staff as well as establishing conditions of employment;

Directing – the continuous task of making decisions and embodying them in general and specific instructions, and serving as the leader of their enterprise;

Co-ordinating – the important task of integrating the various functions and subdivisions of work in the organisation;

Reporting – keeping the board, the executive as well as his subordinates informed through records, research and inspection; and,

Budgeting – fiscal planning, accounting and control.

The problem is that the few in-depth empirical studies that have been done of management find that the actual activities of managers bear little resemblance to the above core functions prescribed for management.(see Mintzberg, 1980)

Control is therefore recognised as a core function of management. But what does the concept of control mean in practice? Neither Fayol, nor Gulick and Urwick, examined the concept of control closely. In other words, they did not address the question of exactly what managers did to ensure ‘control’ over an organisation. Taylor, on the other hand, prioritised control above all other management functions. It was, according to Taylor, the central task of management, and he spelled out exactly what managers needed to do to be in control: they needed to wrest all aspects of control over work and the labour process from workers and make it their exclusive preserve. Standard operating procedures, instructions by managers and monitoring by supervisors, employment conditions and disciplinary codes were therefore merely “ordinary management”. At most they achieved only formal control of labour by management. This was not real control because workers retained control of the actual process of work. This allowed workers to “thwart efforts to realise the full potential in their labour power”. Taylor sought to take control to a new level by putting every

aspect of the labour process under the sway of management. This was done by dictating to each worker the precise manner in which work was to be performed at every step of the process. Management would thereby control each and every decision made by a worker in the course of work.(Braverman, 1974: 90, 100-1, and 107))

There are two main strands in sociology's response to Taylorism (or Scientific Management). One was the human relations school pioneered by the work of Elton Mayo. The second came later in the critique of Braverman, which extended Marx's analysis of the capitalist labour process in *Capital*.. Given that Braverman equated management practice with Taylorism, it is not surprising that his main focus is control. Control is, according to Braverman, the "central concept of all management systems" and "has been the essential feature of management throughout its history", a fact that "has been recognised implicitly or explicitly by all theoreticians of management".(1974: 58, 68 & 90)

Braverman's main thesis was that managers had in the course of capitalist industrialisation appropriated the knowledge of workers, particularly skilled craftsmen, in order to exercise control over the labour process. The need to appropriate knowledge from workers presents itself to the capitalist "as the problem of *management*" (emphasis in the original). It is achieved by the progressive separation of the planning from the execution of work (i.e. to a great extent the separation of mental from manual labour) that enabled managers to relentlessly fragment work and deskill jobs, thereby lowering labour costs.

The thesis was largely theoretical and provoked a voluminous critical literature and many empirical studies, all of which came to be referred to as the 'labour process debate'. Much of the literature acknowledged the importance of Braverman's work but argued that in practice management strategies were not as uniform, coherent and dominant as he claimed. The 'labour process debate' therefore contributed to a much better understanding of the organisation of work in the capitalist labour process, underpinned by a large body of empirical research.

As noted above, Braverman's reliance on the theory of scientific management (or Taylorism) instead of examining how it was actually implemented by managers,

attracted a lot of the subsequent criticism. Empirical research showed that scientific management was less pervasive than Braverman contended, and even when it was implemented it was usually in a piecemeal and selective way.<sup>30</sup> A second criticism that can be made of Braverman's thesis is that it completely ignores labour regulation. He does not refer to labour laws or collective agreements as having a role in influencing the decisions and actions of managers.<sup>31</sup> He therefore overlooks Marx's passionate and detailed account of the struggle for regulation of the working day and working conditions in factories. (See Marx, 1976: 389-416 and 610-635) He also fails to recognise that it was the constraints introduced by such regulations that played an important role in pushing management to intensify its control over work in order to maintain output; that is, in the terminology of Marxism, to appropriate relative surplus value rather than absolute surplus value. Surprisingly, the critical literature that developed in response to Braverman's book also ignored labour regulation, instead focusing a lot of attention on Braverman's failure to deal with workers' resistance, especially resistance through trade unions, and how such resistance shaped the development of the capitalist labour process.

The third, and most important criticism for the purpose of this thesis, is that Braverman is silent on the nature of the employment relationship. So, there is an implicit assumption that management's quest for control of the labour process occurred in the context of the standard employment relationship. In other words, work was being fragmented and deskilled, but it was governed by an employment contract, was conducted at the workplace of the employer, was full-time, and was for an indefinite duration.<sup>32</sup> For Braverman this is not an historical coincidence: the standard employment relationship was critical for the further development of the division of labour and facilitated management's control over work in order to increase productivity. The implication is that management control of the type that Taylor advocated could only be achieved where there was a direct employment relationship, and therefore the sorts of productivity improvements and profits that were made in the

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<sup>30</sup> But see Clawson for a defence of Braverman on this point. (1980: 32-33)

<sup>31</sup> In fact, the few passing references to law and rules are concerned with the removal of the legal restraints of the feudal system and guilds in order to provide for 'free' contracting between employer and employee. The legal protections introduced in the course of industrialization to protect these employees are ignored.

<sup>32</sup> It is only in the chapter on productive and unproductive labour that Braverman briefly touches on the issue of work being performed other than through an employment relationship.

period of monopoly capitalism (or what others would call Fordism) could only be achieved through management control over employees in the hierarchical firm.(1974: 63-64)

Research by Stone on the US steel industry (also the locus of Taylor's work), dealing mainly with the period from 1890 to 1910, tends to debunk the above notion. It strongly suggests that Taylor was more concerned with how managers could wrest control from sub-contractors than from the firm's own employees. Late in the 19<sup>th</sup> century the organisation of work within US steel factories was quite different to the modern steel plant. There were just two types of workers: skilled and unskilled. The skilled workers were an elite that had considerable status in the workplace and the community. They did work that "required training, experience, dexterity, and judgement", whereas unskilled workers did "heavy manual labour – lifting, pushing, carrying, hoisting, and wheeling raw materials from one operation to another".(Stone, 1974: 62-63) Employment of unskilled workers was in part through the 'contract system'; this system saw skilled workers directly hire and pay the unskilled helpers that they needed to perform the heavy parts of the work. In some cases, however, the companies directly employed and paid the unskilled workers, or paid a certain proportion of the wage of unskilled workers.

Skilled workers considered themselves independent contractors; they were partners of the steel companies rather than employees. They were paid according to the amount of steel they produced, at a rate (referred to as 'the tonnage rate') that was determined by the market price of iron and steel (although there was a minimum rate below which the tonnage rate could not fall). The company therefore had no discretion in the amount that skilled workers were paid, while workers shared in both the risks and profits of the company through the so-called 'sliding scale'.<sup>33</sup> It was, according to Carnegie, the "solution of the capital and labour problem" because it made the skilled workers "partners – alike in prosperity and adversity". In fact, the question of division of earnings was only relevant within the teams formed by the skilled workers, i.e. how would they split the amount earned per ton produced.(Ibid)

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<sup>33</sup> The system was introduced for the first time in 1865 in a Pittsburgh iron works and spread throughout the iron and steel industry over the next 25 years.(Stone, 1974: 63)

Importantly, skilled workers – together with their union - had almost complete control over the production process. A Carnegie Corporation historian gives a detailed account of the extent of such control:

Every department and sub-department had its workmen's "committee," with a "chairman" and full corps of officers... hardly a day passed that a "committee" did not come forward with some demand or grievance. If a man with a desirable job died or left the works, his position could not be filled without the consent and approval of an Amalgamated [the union] committee... The method of apportioning the work, of regulating the turns, of altering the machinery, in short, every detail of working the great plant was subject to the interference of some busybody representing the Amalgamated Association. Some of this meddling was specified under the agreement that had been signed by the Carnegies, but much of it was not; it was only in line with the general policy of the union... The heats of a turn were designated, as were the weights of the various charges constituting a heat. The product per worker was limited; the proportion of scrap that might be used in running a furnace was fixed; the quality of pig-iron was stated; the puddlers' use of brick and fire clay was forbidden, with exceptions: the labor of assistants was defined; the teaching of other workmen was prohibited, nor might one man lend his tools to another except as provided for.<sup>34</sup>

This control prevented US steel firms from mechanising or reorganising to speed up operations in an increasingly competitive steel market. The only solution for employers was to "control production, unilaterally. The social relations of cooperation and partnership had to go if capitalist steel production was to progress."<sup>35</sup>(Ibid 66)

Stone's research strongly suggests that at the time Taylor was developing and promoting his management system the 'problem of management control' was mainly related to the control skilled sub-contractors retained over the production process. It is an important point. The trinity of hierarchical firm, management control and direct employment suggested by Braverman is not necessarily the driving force of the

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<sup>34</sup> JH Bridge History of Carnegie Steel Corporation, 201-202; quoted in Stone, 1974: 64.

<sup>35</sup> In 1892 the Carnegie Corporation carefully planned for a violent showdown at its Homestead mill. It sparked the confrontation by locking out the entire workforce and announcing that henceforth it would be non-union. The resulting strike was eventually defeated and spelled the beginning of the end of the Amalgamated Association throughout the country.

capitalist labour process and a higher stage of capitalism. This explains why in the current phase of capitalism managers are, in the context of increased competition, not necessarily seeking an intensification of control within the standard employment relationship, as one would expect from Braverman's thesis. Instead, they are restructuring employment arrangements in a variety of ways, some of which reconstitute employees as independent contractors or service providers, thereby apparently reducing or removing management control over a part of the labour process. Of course, employees of outsourced operations or sub-contracted firms are still subject to the direct control of the owner or manager of that entity, and this control can be highly Taylorist. But the manager at the contracting firm also appears able to exert control, to transfer control even if one step removed, by economic power and the contract with the subordinate firm.

Braverman is not the only sociologist to oversimplify and obscure a complex situation rather than explain it. Friedman provides very limited elaboration on Braverman by proposing two forms of management control, viz. 'direct control', which is much the same as Braverman's process of deskilling, and 'responsible autonomy', which seeks to get workers to collaborate with capital's interests by allowing them some job control and a limited involvement in conception (rather than just execution).(1977) Edwards takes a slightly different tack by periodising industrial capitalism into three stages of control: simple, technical, and bureaucratic.(1979) Simple control is found in the early period of industrialisation when firms were mostly small and managers exercised arbitrary, paternalistic domination over workers. Once control began to be incorporated into technology (e.g. the assembly line) one has technical control. Bureaucratic control is the final stage when rules are used to define and evaluate work tasks and to govern the application of sanctions. This periodisation ignores the fact that one still finds many small firms in which simple control is exercised, so these forms co-exist rather than follow one another. But what the periodisation makes more explicit is an underlying teleology that sees some sort of progression of stages. This is less explicit in Braverman's account but arguably informs his conceptualisation of management control and the capitalist labour process.

Atkinson's concept of 'the flexible firm' provides a potential bridge between the labour process literature and the more recent literature on flexible forms of

employment, but one needs to do a lot of work to make the connection. Atkinson proposes the three separate workforces are emerging in firms: the core, peripheral and external workforces. The core workforce is employed by the firm on a full-time and indefinite basis, it is relatively well-paid, well-trained, is protected by labour standards, and is usually organised. In other words, these workers are in a standard employment relationship. The core workforce is often given greater discretion regarding the performance of work and an expanded role in decision-making through worker participation schemes. The peripheral workforce comprises semi-skilled workers, including workers on part-time or on fixed-term contracts (or both), that are relatively easy to replace and therefore have limited job security. They will be covered by labour regulation but might not be able to access certain benefits such as pension/provident and medical schemes, and will probably not be unionised. They might also struggle to enforce their rights. The external workforce is not employed directly by the firm but through contracts with temporary employment services or small sub-contractors. They will be low paid, less skilled and will have very little job security. They will also have little or no protection from labour regulation, either because they are not classified as employees or because they are unable to exercise their rights. (Atkinson, 1985: 27-28; Atkinson, 1987: 93-94; Standing, 1999)

One can make an argument that the peripheral workforce is a further step in the process theorised by Marx and Braverman, one in which job fragmentation and deskilling occurs in occupations filled by this workforce. This might be true to some extent but it leaves the core and external workforces unaccounted for; certainly the characteristics and persistence of the core workforce directly contradicts Braverman's thesis.

There is an interesting potential link between the core, peripheral and external workforces of Atkinson's 'flexible firm' and the three zones of the capitalist world-economy, viz. core, semi-periphery and periphery. Such a link obviously introduces much greater complexity into the axial division of labour, but it does at least recognise how different forms of employment, which might attract different levels of labour regulation, can introduce sharp distinctions between workers within the core, within the semi-periphery, and so on.

#### 4.5 The employment relationship and management control

Forms of subordinate labour have been around since virtually the beginning of humankind. The most extreme form of labour subordination was slavery, or forced employment, in which the worker was property; in legal terms a 'thing'. Slavery was widespread for centuries and continues to exist today, but is marginal compared to other working arrangements. In the feudal period serfdom was the predominant form of labour. The basis for serfdom was an act of homage or fealty by a vassal with respect to his lord to create a personal relationship of domination and subordination between them. The act of homage saw the vassal kneel before the lord and place his hands within the clasp of the latter's hands, make a short declaration, after which the two would kiss to seal the agreement. On the face of it, the act of homage symbolised accord and friendship (i.e. cooperation), but it immediately gave rise to a set of obligations (which were later passed on to the vassal's heirs in the male line) that did not derive from the agreement but were imposed by a framework of seigneurial authority, and later by royal law. The feudal relationship was therefore personal, based on an agreement that had elements of co-operation and control, but the position of the serf was a status rather than a contractual relationship. It was therefore a labour relationship that can be seen as governed by public law, with strong elements of property law. (Tigar and Levy, 1977: 24)

The lord's power over the vassal was fundamental and comprehensive. The vassal possessed (or had tenure over) the land he worked and almost all his movable possessions 'of' the lord and his life was regulated by his feudal obligations:

The family worked on the lord's domain, tilled its own plot, obtained its necessities from the manor, and had the right to use common and waste land... The family was obliged to provide troops or provisions for the lord's armed retinue. It was bound to the land and could not sell either the land or most movable goods, or transmit them to a future generation, or marry, or trade, without the consent of the lord and perhaps the payment of a tax. (Ibid 28)

In addition to military and labour services, the lord was entitled to a portion of the harvest, a payment when an heir assumed tenure, and wardship of a minor heir. (Ibid

196) But the relationship also created obligations for the lord. He protected his vassals and in years when the harvest was poor he would open his storehouses to ensure that they did not go hungry.(Ibid 28)

A different set of working relationships were carved out of the feudal system from the 10<sup>th</sup> and 11<sup>th</sup> centuries when towns began to emerge (or re-emerge). Small markets arose in the towns and as trade routes connected with the towns these markets became bigger and in some cases were transformed into fairs. So, money began to enter the feudal economy.(Ibid 80-81) Artisans, traders and others, many of them former serfs, settled in the towns. Artisans and merchants were the most important groups. Artisans generally had workshops that comprised themselves (i.e. the master craftsman), two or three journeymen who were paid a wage, and a few apprentices. They were small, “countless in number”, and the organisation of work was “undifferentiated and continuous”, i.e. a division of labour barely existed.(Braudel, 1982: 299) Over time artisans organised themselves into guilds (as did merchants), with the objective of regulating their trades. Guilds had ‘statutes’: sets of rules that governed the relations between ‘employers’ and workers in the artisan workshops, prescribed “strict control over the numbers in the trade or profession, including rules governing entry”, and also sought to maintain “a close check on the skill and capability of each newcomer, prescribing the tools and methods of work, requiring a lengthy period of training and the passing of an examination or the production of a ‘masterpiece’.”(Veneziani, 1986: 37-38) As noted elsewhere, these statutes were an early form of self-regulation that often shaded into public regulation in the form of municipal laws.

The relationship differed between master and journeyman, and master and apprentice. The relationship between master and journeyman was contractual, but the contracts were overlaid by the rules of the guilds and the municipal authorities. Penal sanctions could be enforced against a journeyman who breached the contract, while maximum wages (and sometimes minimum wages) were set by police order.(Ibid 38) While the relationship between master and apprentice was also contractual, there was even tighter regulation of such contracts by the guild. The contract was entered into in writing and had to be deposited in the guild archives. The master’s obligations included giving professional training as well as protection, which included board and lodging in the masters household. The apprentice had to pay his master a fee (and

received no remuneration while serving the apprenticeship) as well as swear obedience and allegiance to him. Veneziani argues that such contracts:

... cannot be classified as a hiring of services, and even less as a form of subordinate employment. It was closer to the relationship of family subordination based on statute found in the predominantly feudal type of cottage industries, with a low level of investment.(Ibid)

In other words, journeymen and apprentices were more a legal status (like a serf) than a contractual category.

#### ***4.5.1 The emergence of the hierarchical employment contract***

Many accounts of industrialisation suggest an almost immediate and unproblematic transition from ‘unfree’ serfdom to workers that are ‘free’ to enter employment contracts of the kind we know today. It was, in fact, a much slower process. This is probably the reason why Marx, Wallerstein and many others use the rather clumsy term ‘wage-labour’ to describe workers in this period rather than the ‘employment relationship’. As noted above, criminal law was a part of the employment relationship, generally through Master and Servant laws that were heavily biased against workers and carried penal sanctions for breaches of contract. These laws also entrenched categories of workers of different status. The long transition period was therefore characterised by what has been termed the ‘service model’, before it evolved into what can be seen as a ‘contractual model’ of employment. It was only the latter development, which according to Deakin changed in England only in the 1940s,<sup>36</sup> that saw the contract falling into line with many other types of contract that had at their core the notions of the free will and equality of the parties. In South Africa it was not the workers status but rather his or her race that saw them constrained within a service model in some respects and excluded from the benefits of labour regulation in other respects.(Le Roux, 2010: 139-143; Deakin, 2005)

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<sup>36</sup> Compare with Polanyi below who dates the emergence of a ‘free’ labour market in England from 1834 when the Poor Law Reform Act was introduced.

At the same time, however, a new dichotomy was introduced into the notion of employment, viz. the ‘binary divide’ between an employee and an independent contractor. The latter relationship can take many forms – an individual worker, a large sub-contractor, a group of workers previously part of the employer but now an outsourced entity - but in all cases they do not place any labour regulatory obligations on the contracting firm, i.e. the workers do not fit the definition of employees of the contracting firm. In law they provide a defined service to the firm rather than their services as in an employment relationship, even if the defined service is a purely labour service.

In employment law the common law and civil law systems followed somewhat different routes but ended at much the same binary divide between employment and the contract for work as a service. In the English common law an initial divide was built into the Master and Servants laws and early social welfare legislation but was later eliminated and replaced by a divide between employment and independent contracting. The employment contract in civil law systems draws on the Roman law concept of lease. Roman law saw work as a form of letting and hiring, either of general service (*locatio conductio operarum*) or a specified service (*locatio conductio operis*). The object of the letting and hiring was therefore either the power to work (i.e. to enter service) or the production of a piece of work or performance of a specific service (i.e. to provide services).<sup>37</sup> These Roman law concepts were the basis for the later distinction between employment and independent contracting in civil law systems in Europe and arguably had some influence on common law systems.<sup>38</sup>(Ibid)

At the core of this distinction is the power of the employer to direct the work of the employee, i.e. to have control over the labour power of the employee while he or she is in service. This became the rationale for the development of managers as a set of strata in the hierarchical firm. The contract of employment is therefore at its core a hierarchical contract, incorporating the element of domination and subordination that one sees running from the feudal relationship through the masters and servants laws to

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<sup>37</sup> Veneziani, however, argues that this distinction was not known in Roman times; *locatio conductio* was a unitary concept that defined an economic transaction in which a thing was temporarily assigned to another in return for a payment of money.(1986: 32)

<sup>38</sup> The concepts certainly had an influence on the South African common law, i.e. Roman-Dutch law, given the history of European settlement in the country.

the present. A person who contracts for a certain piece of work or a specified service does not in theory have the some power of command. They are, in theory, limited to providing specifications but do not control how the work is performed and often do not have a say over exactly who does the work and when it is performed. In most other respects the essentials of the two types of contract are the same.(Deakin, 2005)

However, the employment contract is different from most contracts of sale in that it does not entail a once-off transaction that terminates when completed. The employment contract is incomplete and continues indefinitely, unless it has a fixed term. The contract therefore provides only the legal foundation,<sup>39</sup> with a lot more added to it through the on-going interaction between the employer and employee, particularly with respect to the performance of the employee. The contract is therefore the basis for an employment relationship.

In advanced industrialised countries the employment relationship was consolidated in the 20th century. This process saw the emergence of what is termed the standard employment relationship. The standard employment relationship is characterised by full-time, indefinite employment (sometimes referred to as permanent), generally at the workplace of the employer and under his/her control. The foundation of the standard employment relationship is an employment contract that is considerably bolstered by labour legislation and possibly a collective agreement. This sought to constrain the power of management that was at the core of the hierarchical employment contract. What is not constrained is the power of management to change the boundaries of the employment relationship or to contract for work in a different way. Hence, there is a category of non-standard employment, which includes all employment that does not meet the abovementioned conditions.

Faced with intensified competition and increased uncertainty management had to look for improvements in efficiency beyond its existing focus on achieving this within the standard employment relationship. The way in which labour regulations had come to be designed provided an avenue for management to explore. The regulatory

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<sup>39</sup> An employment contract can exist by operation of the law even though the parties have not explicitly agreed to terms. The law of contract will provide certain essential provisions to regulate the employment relationship.

framework generally did not restrict management's prerogative to organise work or how managers structured contracts. While managers had to comply with a range of standards regarding conditions of employment and termination of employment, they were free to engage workers on a part-time basis or on fixed-term contracts. They could also avoid the employment relationship through sub-contracting arrangements or by utilising temporary employment services, which replaced the employment contract with a commercial contract. By making such changes managers could gear their personnel requirements to exactly the quantity needed by the firm at any point in time. This would increase productivity and had the added benefit of reducing the risk of the costs, or the actual costs, associated with having to comply with the rights and procedures protecting employees in terms of the various instruments of labour regulation. But employers and managers went further. They now argued that labour regulation was the main obstacle standing in the way of their achieving greater competitiveness. Existing legislative frameworks, the argument went, were too rigid for the more uncertain environment in which managers were operating; they wanted more flexibility to respond quickly to changes in the market.

By the 1990s the demand for labour market flexibility had become the mantra of management. The Fordist labour market stood out because it did not provide the flexibility that capital could find in the corporate form of property or in relations established through commercial contracts. The result was pressure on well-established regulatory frameworks and the standard employment relationship. This pressure has seen rights of employees rolled back and labour standards lowered. Managers have, furthermore, exploited loopholes, particularly with respect to structuring the employment arrangements, to avoid labour regulation (using the category of 'independent contractor' that is generally excluded from protection). Entrepreneurs and managers have also evaded labour regulations, refusing to register or comply with various statutory obligations, which has fuelled a growing informal economy.<sup>40</sup>

The above developments have seen the emergence of many types of non-standard employment. Some see these arrangements as 'new', but this is incorrect. They are continuities with earlier working arrangements that have re-emerged in slightly

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<sup>40</sup> This option carries a certain amount of risk, depending on levels of union organisation and the enforcement capacity of the state.

different forms, mainly as ways of avoiding standard employment. Two main processes see standard employment changing into non-standard employment: 'casualisation' and 'externalisation'. Casualisation sees an employment relationship continue between the employer and employee but it is either no longer full-time or it is not indefinite, or both. Casualisation therefore takes the form of part-time work and fixed-term contracts. Externalisation sees the employment relationship replaced by a commercial contract. Work is now performed as a service through intermediaries or sub-contractors (in the case of externalisation). A third process can be added: informalisation. Informalisation is where employment or work is shifted from a regulated to an unregulated environment. There is overlap between all three categories or processes. For example, externalisation of workers to a temporary employment service or a small sub-contractor will often see them become casual or informal, or both. A deeply segmented labour market has therefore developed that has profound implications for many workers in that the standard of living of non-standard employees, contracted labour and unregulated workers, both in terms of material and psychological well-being, is significantly lower than that of standard employees in the formal economy.

The existence of an employment relationship is critical for whether labour regulation attaches to the relationship or not. Establishing whether a worker is an 'employee' is therefore of fundamental importance. But the courts have found this to be extremely difficult in the face of a proliferation of flexible working arrangements. In many countries courts have resorted to three main 'tests' to assist in making the distinction. The first was the so-called 'control' test, which was "premised on the subordination of the employee to the employer in terms of the common law contract." (Du Toit et al, 2003: 69) In other words, it focused on the right of an employer to prescribe to an employee what work is to be done and how it is to be done as the essential requirement of an employment relationship. The test, however, was found to be increasingly inappropriate because of the many highly skilled employees that were not subject to this sort of control. Employers, lacking the specialised knowledge of such employees, exert only the most formal type of control over such employees. This in part explains the evolution of the 'organisation' or 'integration' test. Rather than focus on the actual exercise of control in the relationship of authority and subordination that characterizes employment, the 'organisation' test sought to establish whether the

person could be seen as “part and parcel of the organisation” or whether the work, “although done for the business, is not integrated into it but is only accessory to it.”(Du Toit et al, 2003: 69<sup>41</sup>) In a sense the boundaries of the firm now became the test to establish whether a person was an employee or not. One is shifting from control within the employment relationship to general subordination within the hierarchy of the firm.

The ‘organisation’ or ‘integration’ test was superseded by the ‘dominant impression’ test, which continues to be used by courts. It involves a comprehensive examination of the nature of the alleged employment relationship in order to arrive at a determination. In other words, no particular factor is decisive for distinguishing between an employee and an independent contract.<sup>42</sup> Here one arguably sees the courts acknowledge that working arrangements have become so complex that they cannot be untangled for determining whether employment is involved by a single test. The court must therefore be left with an open-ended discretion to make its determination.

What the above developments suggest is that the predilection of managers for flexible forms of work, in particular externalisation, means that managers are able to exercise sufficient control through commercial contracts and therefore do not need to employ workers to exercise the level of control needed to secure optimal performance from workers. Or, at the very least, the benefits of evading labour regulation through externalisation, outweigh the ‘costs’ of lower levels of control.

#### **4.6 Employment and labour regulation**

One of the main types of regulation, i.e. state-made law, has been labour relations and labour market regulation. Modern labour regulation to a large extent hinges on the existence of an employment relationship. Any work arrangement that does not constitute an employment relationship does not attract the rights and obligations of

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<sup>41</sup> Quoting *Bank voor Handel en Scheepvaart NV v Slatford* [1953] 1QB 248 (CA) at 295, and *Stevenson Jordan & Harrison Ltd v Macdonald and Evans* [1952] 1 TLR 101 (CA) at 111.

<sup>42</sup> The test has been the subject of a lot of criticism. The criticisms focus on the absence of a theory or definition of employment on which to base the test. So, one cannot gain an ‘impression’, let alone a ‘dominant impression’, unless one has an *a priori* concept of the employment relationship against which one can test it.(Du Toit et al, 2003: 69)

labour regulation. Labour regulation developed over a long period, reached its peak in the Fordist, post-war boom and since about 1970 has been under increased pressure. That pressure has seen employers rearranging work to avoid employing workers. The sections below will discuss three main stages in the history of labour regulation: Polanyi's account of the introduction of labour market regulation in England, Kahn-Freund's seminal work on labour regulation in its hey-day, and a recent application of transaction cost economics to labour regulation.

#### ***4.6.1 Regulation and society***

In *The Great Transformation* Polanyi traces the emergence of what he terms the self-regulating market. Markets did not emerge spontaneously. The early markets in towns were tightly regulated by municipal laws in order to protect consumers and restrict monopolies. With the emergence of national markets the need for regulation did not disappear; the state continued to regulate markets in order to control competition. What is distinctive for Polanyi about this early period is that society controlled the market, that is regulation prevailed over competition. (Polanyi, 1945: 62-73)

The 19<sup>th</sup> century saw an intensification of the struggle between social relations and economic relations. 'Fictive commodities', i.e. labour, land and money, remained tightly regulated by a "network of measures and policies [that] was integrated into powerful institutions designed to check the action of the market relative to" these commodities. (Ibid: 82) On the other hand, there was a huge increase in production and trade of 'genuine commodities', i.e. goods and services, and markets expanded across the globe. The continued regulation of labour, land and money markets constituted what Polanyi famously described as the 'double movement': at the same time that markets expanded "a deep-seated movement sprang into being to resist the pernicious effects of a market-controlled economy." (Ibid.) Resistance to the commodification of labour and land was particularly strong, because the application of the market mechanism to labour and land would "subordinate the substance of society itself to the laws of the market." (Ibid: 77) Once this took place a critical turning point would be reached that would see the creation of a market economy and therefore a market society:

...the control of the economic system by the market is of overwhelming consequence to the whole organisation of society: it means no less than the running of society as an adjunct to the market... This is the meaning of the familiar assertion that a market economy can function only in a market society.(Polanyi, 1945: 63-64)

The rapid mechanisation of production and the rise of the factory system were the catalyst for the creation of a market society. These developments led to the commodification of all the “elements of industry”, i.e. labour, land and money, because the factory system required a ready supply of all three, so it required them to be capable of purchase and sale.(Ibid 80) It was, however, a long time before the market achieved this goal. In England the Statute of Artificers of 1563, the Act of Settlement and Removal of 1662, and the Speenhamland Law of 1795, organised the labour market “on the principles of regulation and paternalism”, and provided a sequence of barriers to the emergence of a competitive labour market.(Ibid: 91) It was only with the Poor Law Reform Act of 1834, which effectively repealed the Speenhamland Law, that the obstacles to a competitive labour market were removed.(Ibid: 88-92) Hence, Polanyi argues, “industrial capitalism as a social system cannot be said to have existed before that date”.(Ibid: 88)

The so-called double movement asserted itself almost immediately. The emergence of a competitive labour market saw society respond by seeking to protect itself: factory laws and social legislation were passed to regulate the labour market and the working class organised itself in various ways, both politically and economically.(Ibid: 88) Polanyi described this process as:

...the action of two organising principles in society, each of them setting itself specific institutional aims, having the support of definite social forces and using its own distinctive methods. The one was the principle of economic liberalism, aiming at the establishment of a self-regulating market, relying on the support of the trading classes, and using largely *laissez-faire* and free trade as its methods; the other was the principle of social protection aiming at the conservation of man and nature as well as productive organisation, relying on the varying support of those most immediately affected by the deleterious action of the market – primarily, but not exclusively, the

working and landed classes – and using protective legislation, restrictive associations, and other instruments of intervention as its methods.(Ibid: 135)

The contradictory nature of these developments needs to be emphasised. Economic liberalism did not advocate simple deregulation of markets. Markets had required the active intervention of the state to allow them to expand to the extent that they became self-regulating. The state therefore needed to have an active role in the economy to facilitate the operation of markets. The 1830s and 1840s (in England) therefore “saw not only an outburst of legislation repealing restrictive regulations, but also an enormous increase in the administrative functions of the State, which was now being endowed with a central bureaucracy able to fulfil the tasks set by the adherents of liberalism.”(Ibid: 141) On the face of it, this development contradicted what economic liberalism stood for:

...the introduction of free markets, far from doing away with the need for control, regulation, and intervention, enormously increased their range. Administrators had to be constantly on the watch to ensure the free working of the system. Thus even those who wished most ardently to free the state from all unnecessary duties, and whose whole philosophy demanded the restriction of State activities, could not but entrust the self-same State with the new powers, organs, and instruments required for the establishment of *laissez-faire*.(Ibid: 142-143)

The counter-movement which arose after 1860 in response to the liberalisation of markets by the state was “spontaneous, undirected by opinion, and actuated by a purely pragmatic spirit.”(Ibid: 143) Polanyi is here making an important argument about the relationship of regulation to specific interests. The disorganised and diverse resistance to freer markets was not driven by a political programme; one cannot therefore simply read narrow class interests into this counter-movement:

The anti-liberal conspiracy is a pure invention. The great variety of forms in which the “collectivist” counter-movement appeared was not due to any preference for socialism or nationalism on the part of concerted interests, but exclusively to the broad range of the vital social interests affected by the expanding market mechanism. This accounts for the all but universal reaction of predominantly practical character called forth by

the expansion of that mechanism. Intellectual fashion played no role whatever in this process...(Ibid: 147)

In most cases the groups that promoted the 'interventions' (mainly pieces of legislation) were "convinced supporters of *laissez-faire*" and "uncompromising opponents of socialism, or any other form of collectivism."(Ibid 148) For example, the Ten Hours Bill, which Marx hailed as the first victory of socialism, is characterised by Polanyi as "the work of enlightened reactionaries".(Ibid 168) In the case of the right of workers to combine and anti-trust regulations, Polanyi argues:

If the needs of a self-regulating market proved incompatible with the demands of *laissez-faire*, the economic liberal turned against *laissez faire* and preferred – as any anti-liberal would have done – the so-called collectivist methods of regulation and restriction.(Ibid 150)

Rather than being projections of narrow class or other interests, the vast majority of the interventions were motivated by pragmatic considerations and sought to address a particular problem threatening the community.(Ibid 148) Polanyi concludes that regulatory solutions in this period:

switched over from individualistic to "collectivistic", from liberal to anti-liberal, from '*laissez-faire*' to interventionist forms without any change in the economic interest, the ideological influences or political forces in play, merely as a result of the increasing realisation of the nature of the problem in question.(Ibid 151)

So, for Polanyi, regulation, which he did not clearly define, was primarily a response to the market, particularly the market for fictive commodities, and was a response by 'society' through the legislature (rather than the state), i.e. a diverse range of interests and groupings motivated by pragmatic concerns oriented to solving specific problems rather than by ideology.

Polanyi's analysis resonates in certain ways with world-systems analysis, although Braudel criticises Polanyi on a number of scores, in particular the latter's separation

of the economic and the social.<sup>43</sup> Despite these criticisms, Polanyi is a social historian that provides a useful antidote to Braudel and Wallerstein's omission regarding regulation. While Polanyi might have exaggerated the autonomy of the market (i.e. the self-regulating market), he was correct to identify a new historical phase in which regulation of the market and industry mediated between society and the economy:

Regulation and markets, in effect, grew up together... The road to the free market was opened and kept open by an enormous increase in continuous, centrally organized and controlled interventionism... [while] (s)ociety protected itself against the perils inherent in a self-regulating market system... [which meant that] social protection was the accompaniment of a supposedly self-regulating market.(Polanyi, 1945: 74, 82, 142, 201)

Capitalist industrialisation and regulation therefore go together.

The regulation approach or regulation school can be seen to build on Polanyi's work, although the approach has its roots in heterodox economics that sought to foreground the role of institutions in shaping the growth paths of countries (the exponents of the regulation approach have backgrounds in Marxism, Althusserian structuralism, Gramsci, the Marxist state and capital debate, and the capital logic theory of the state). The term 'regulation' in the approach, furthermore, refers to a much wider conceptualisation of regulation than when it is used in relation to labour regulation.<sup>44</sup> In the regulation approach the concept of regulation constitutes both a 'mode of regulation', which comprises a range of legal mechanisms and non-economic institutions that condition and accommodate, or regularise, the 'regime of accumulation, i.e. operation of the economy. Mode of regulation and regime of accumulation correspond with one another for indeterminate periods, which end when the economy goes into crisis and the mode of regulation and regime of accumulation are no longer compatible. The crisis is resolved through the emergence of a new mode of regulation that corresponds with an appropriate regime of accumulation.(Jessop and Sum, 2006: 1-18)

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<sup>43</sup> See Braudel, 1982: 225-228.

<sup>44</sup> The French term *reglementation* corresponds better with the narrower use of the concept.(Jessop and Sum, 2006: 15)

The regulation approach is based on the study of Fordism and its ending in about 1970, or rather its transition to a new accommodation of mode of regulation and regime of accumulation, the features of which are not yet entirely clear. The focus on Fordism is important for this thesis because it constitutes something of an institutional exception that interposed between the continuities of the earlier period of capitalism and institutions of the contemporary phase. However, the exclusive focus on Fordism is one of the limitations of the regulation approach, because no attempt has been made to use its concepts of mode of regulation and regime of accumulation to define periods prior to Fordism. Furthermore, the regulation approach acknowledges that it emerged from the *ex post facto* study of Fordism, which suggests that much of the current research on the specificities of the contemporary phase is arguably premature. There is no question that this research is interesting and creative, but it seems somewhat speculative that the reference point for its projections is only one short period of industrial capitalism. Having said that, the regulation approach is relatively modest in its claims of generality, and does not put itself forward as a coherent theory.(Ibid)

Exponents of the regulation approach are aware of its limitations but are attracted by its potential. This is probably why it does not claim to be a general theory but rather a body of research loosely cloaked in the form of an 'approach'. Beyond a few core concepts the approach is undogmatic and its research agenda is open-ended. It is therefore not surprising that the regulation approach has expanded and branched out rapidly: Jessop and Sum identify seven different schools within the approach and already speak of a second, third and fourth generation of research.(Ibid 18-30) One of the reasons for the rate at which new schools have been generated is that the regulation approach is being applied to the study of the unique forms that the accommodation of mode of regulation and regime of accumulation takes within countries. Intensive studies of countries using its core concepts, e.g. the US, France, Germany, and the Nordic countries have tended to throw up new concepts that constitute the starting point for a different branch of study within the broad approach. The regulation approach is therefore consistent with the recent interest in 'varieties of capitalism' and with the institutional basis for the path-dependent growth trajectories of nations, all within the overarching framework of the capitalist mode of production.

#### ***4.6.2 A focus on labour regulation***

The foundation of the employment relationship is the contract of employment. The contract of employment is a private law instrument that complies with the general formalities and principles of contract but is sufficiently unique to be categorised as a special type of contract. Labour regulation is generally seen as a response by the state to the inability of contract law to adequately regulate the individual employment relationship or the collective relationship. While this might explain the motivation for labour regulation in a legal sense, the reality is that the employment relationship was from its earliest days highly politicised and prone to conflict. The need to balance the unequal power of the parties to the contract, and to institutionally contain and channel conflict generated by the relationship, was as much a reason for the state to step in as was the technical inadequacy of the contract of employment. Labour regulation has therefore been a very special type of mediator of power in the economy.

One can probably periodise two approaches to labour regulation. The first prioritises the inadequacy of the contract of employment to regulate the collective labour relationship, and also emphasise the political role of labour regulation in balancing power. The second, more recent approach, has been more concerned with understanding the relationship of regulation with issues of efficiency through the medium of transaction cost economics. Both approaches have focused on labour regulation in advanced industrialised countries.

Kahn-Freund's seminal work, *Labour and the Law*, epitomises the first approach to examining labour regulation.<sup>45</sup> While he famously describes law as "a technique for the regulation of social power", he is also at pains to stress the limitations of law. (Davies and Freedland, 1983: 14) These limitations manifest most obviously in the common law, hence the need for labour regulation, but law is also subordinate to technology, economic forces and collective action in promoting welfare. Law, both

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<sup>45</sup> It is clear that when Kahn-Freund uses the term 'labour law' he means labour regulation. If he refers to the common law or the contract of employment he does so specifically to distinguish it from labour law, i.e. labour regulation.

the common law and regulation, is accordingly only “a secondary force in human affairs, and especially in labour relations”.(Ibid)

Kahn-Freund argues that all societies are characterised by the unequal distribution of social power and are stratified into rule makers and subordinates, into command and obedience. Social power, and its imbalance, give labour law its principal purpose: “to regulate, to support and to restrain the power of management and the power of organised labour”.(Ibid 15) The use of the term “organised labour” for the employee side of the relationship is important, because the power of workers is realised only through collective power. In Kahn-Freund’s view the individual employee has little or no power, either when he/she meets the employer in the market place to negotiate the contract of employment, or in the course of the employment relationship. So, “the relation between an employer and an isolated employee or worker is typically a relation between a bearer of power and one who is not a bearer of power”.(Ibid 18) At its most fundamental level, therefore, the aim of labour law is “to be a countervailing force to counteract the inequality of bargaining power which is inherent and must be inherent in the employment relationship.”(Ibid) This imbalance is the rationale for most protective labour legislation, which constitutes an attempt to “infuse law into a relation of command and subordination”.(Ibid)

Importantly, Kahn-Freund goes further to argue that this inequality of power is not only the reason for labour regulation but it also defines the fundamental relationship on which labour law rests: the employment relationship: “There can be no employment relationship without the power to command and a duty to obey, that is without this element of subordination in which lawyers rightly see the hallmark of the ‘contract of employment’”.(Ibid 18) Labour law characterises this power as the right of management to control the worker in the employment relationship, and it is this prerogative of management that is at the core of the employment contract. Control by management over employees therefore defines the relationship as one of employment. Such control derives from property rights and is exercised by the capitalist or is delegated to managers to exercise.

Labour regulation generally creates rights, standards and enabling provisions. Most will have some sort of civil sanction for their enforcement, but in particular instances

there might be criminal sanctions (e.g. child labour and forced labour). Each has different enforcement modalities. Rights are usually enforced by the individual employee through a dedicated tribunal or court. Standards are usually enforced by government or a state agency, e.g. a labour inspectorate. This enforcement route might intersect at some point with the dedicated tribunal or court, e.g. to hear an appeal or to review an administrative decision. Enabling rights can be enforced by approaching the dedicated tribunal or court, but the nature of these rights also means that disputes over their utilisation can be resolved by the exercise of power (within certain constraints), i.e. to industrial action.

There are two ways of looking at the rights and standards created by labour regulation. On the one hand, they are protections that workers can enforce if breached by management. On the other hand, they are constraints on unilateral decision-making by management. They therefore set limits to managerial behaviour and narrow the menu of options open to management in its pursuit of efficiency. Given that regulation is a generally not adequate to balance power in the employment relationship, it is evident that enforcement is a critical component of rights and standards. Ineffective enforcement means that rights and standards exist on paper only. Furthermore, poor enforcement will lead to managers being emboldened to ignore the regulatory constraints that have been imposed on them. Managers might even ignore effective enforcement if the likely cost of the sanction is outweighed by the potential benefit of non-compliance.

During the height of Fordism in advanced industrialised countries the latter problems do not seem to have been of great import. This was when Kahn-Freund wrote; the main pillars of labour regulation were trade unions and collective bargaining, which were supplemented by general legislation setting basic conditions and protecting workers' health and safety. A lot has changed since then. Trade union membership and collective bargaining coverage have declined steeply in many industrialised countries. The decline has not been off-set by increases of trade union membership and effective collective bargaining in many developing countries. In the light of this very different context some writers have begun to draw on regulation theory to ask different questions to those asked by Kahn-Freund. Regulation theory has disciplinary roots in economics and seeks to understand why some regulation is ineffective and

how regulation can be designed so as to intervene more effectively in markets. Until now it has been applied to a range of different markets and has not gained much traction in literature on protective labour market regulation. When it has been applied to the labour market it has usually been to make an argument for deregulation, influenced by notions of freedom to contract. Collins seeks to remedy this situation, arguing that one can find a number of justifications for interventions in the labour market using the concepts of regulation theory. What differs is the design of such regulatory interventions.(Collins, 2000: 3-6)

The argument for regulation of markets is rooted in the problem of market failure and concern regarding distribution. Collins argues that market failure in respect of the labour market is caused by information asymmetry, transaction costs, and monopoly power. A case can be made for market failure due to information asymmetry because an employment contract is entered into at the start of a “complex and indeterminate contractual relation.” Neither party has a adequate information at the time of concluding the contract. Furthermore, obtaining additional information is expensive. The parties to the contract acquire that information through their experience over a few months, but by then it can be expensive for either party to extricate themselves from the contract.(Ibid 7-9)

The standard argument with regard to transaction costs is that labour regulation increases such costs for various reasons. But, a counter-argument is that minimum standards legislation or collective agreements can reduce transactions costs by providing a standard set of terms. The negotiations on entering the contract are simplified and shortened, and renegotiation of terms is done collectively if there is a representative trade union. Similarly, dedicated dispute resolution mechanisms established by agreement or statute can resolve disputes expeditiously that might otherwise have festered and led to costly litigation.

The issue of monopoly power does not refer to the power employers have vis-à-vis workers in the employment relationship but rather to the cartel-like power of trade unions. However, Collins argues that the market failure represented by the labour market cartel does not necessarily justify special regulation. Cartels might be weak

and might not even increase total labour costs if workforce reductions are factored in. Furthermore, cartels can be justified on distributive grounds.(Ibid 9-11)

Collins goes through a similar process with regard to distributive justifications, evaluating regulatory (and economic) concepts such as allocative efficiency, back-firing, the market for regulation, and externalities. The market for regulation is of interest because it reflects the ability of capital to relocate to countries with weak regulation. Collins concludes that there is little that can be done at the global level to counter 'regime shopping', but developing countries should be aware of the social costs that might off-set the benefits of creating low-wage employment.(Ibid 11-16)

It is not necessary to go into the details of each justification. In any event, while regulation theory throws up interesting new perspectives on the costs and benefits of regulation it does not provide any empirical evidence to definitively decide one way or the other. All it provides is a set of theoretical arguments. It is much the same when regulation theory moves on to its next question, once it has identified a justification for regulation, viz. how does one achieve the objective of the regulation. This involves questions of efficacy and the comparative costs of alternative regulatory designs or techniques. The two main alternatives that Collins considers in respect of the labour market are the private law model (i.e. the employment contract) and state-made regulation. Much of the discussion focuses on the respective costs of enforcement and who bears those costs. The private law model of individual rights, some of which are introduced by legislation, backed up by liability rules, is relatively weak when compared to innovative reflexive regulatory techniques that encourage self-regulation and self-monitoring of compliance.(Ibid 17-27)

#### **4.7 Management control across firms in value chains and production networks**

Global value chains and global production networks (GPNs) (hereafter, for convenience, GVCs or value chains) are examined in this thesis, first, because the concepts evolved from the notion of commodity chains sketched out by Hopkins and Wallerstein. Gereffi and others developed and refined the original concept into the global commodity chain (GCC) and later the global value chain (GVC), and applied these to study contemporary capitalist development. Economic geographers

elaborated on these concepts, mainly by embedding them in an environment with external 'governance' mechanisms. The result was the global production network. The concepts therefore link with the framework of world systems theory and its central notion of the axial division of labour but have a new research agenda.

An additional attraction of value chain analysis is that it surmounts sectors when studying the organization of production. It follows the production of goods across sectors through to the ultimate seller and even on to the consumer. One is therefore able to examine the relations of power between different parts of the chain as well as the distribution of value in the cycle from conception of a product or service to consumption. The role of power and authority in the chain is expressed in the concept of governance. However, both the GCC and GVC concepts confined the term 'governance' to relations between firms within the chain. With the GPN concept, however, regulation external to the chain is explicitly brought into the analysis, although still using the term governance (rather than regulation). Put simply, the nodes in GPNs 'touch-down' at various points, and when they do they are surrounded by social and regulatory forces that affect operations in the node as well as the functioning of the production network as a whole. Regulation will either constrain or facilitate production in the node in various ways.

A further attraction of value chain analysis is that it directly examines the way in which the hierarchical firm is restructuring into a series of operations linked by contractual relationships governed by private ordering and power. Importantly, this reveals that decentralization of production and employment to the semi-periphery and periphery is generally matched by the concentration of higher value activities and power in the core.

#### ***4.7.1 Global commodity chains and global value chains***

Gereffi described a commodity chain as comprising "sets of interorganisational networks" that are "situationally specific, socially constructed, and locally integrated, underscoring the social embeddedness of economic organization." He goes on to state that analysis of a commodity chain shows "how production, distribution, and consumption are shaped by the social relations (including organizations) that

characterize the sequential stages of input acquisition, manufacturing, distribution, marketing and consumption.”(Gereffi, Korzeniewicz and Korzeniewicz, 1994: 2)

The main advance that Gereffi made on the commodity chain concept was to conceive of GCCs as having three dimensions: (1) an input-output structure, i.e. a linked “sequence of value-adding economic activities”; (2) a geographic spread which might be more or less dispersed; and (3) a governance structure.<sup>46</sup> The latter dimension, as noted above, incorporated power into the commodity chain and attracted much subsequent attention. The focus on governance led Gereffi to identify two types of global commodity chain characterized by different roles of so-called lead firms. The two types were producer-driven chains and buyer-driven chains. Producer-driven chains are characteristic of capital and technology intensive production processes in which very large firms play a key role in co-ordinating the backward and forward linkages of production networks (e.g. automobile manufacture). Buyer-driven chains are typical of labour-intensive consumer goods industries and are controlled by large retailers, brand marketers and trading firms. These lead firms tend to retain the high value activities such as design and marketing, while co-ordinating independent firms that do the production, many of which are located in the periphery.(Gereffi et al, 1994: 2-7)

While the GCC concept sought to improve on the earlier commodity chain formulation, it allowed labour control to slip into the background and also took little account of the regulation of trade. It is only in the later GVC literature, particular research on the apparel value chain, that the role of the General Agreement on Trade and Tariffs (GATT), the Generalised System of Preferences (GSP), the Multi-Fibre Arrangement (MFA), the WTO, and bilateral trade agreements began to be studied.

The GVC concept succeeded that of the global commodity chain. It did so by building on and adding to the earlier concept rather abandoning it. The GVC therefore continues to be concerned with the expansion and geographical fragmentation of production processes but it gives greater prominence to issues of organization and

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<sup>46</sup> It is unclear as to the source for the concept of governance but it is probable that the literature on economic governance and institutional economics, particularly transaction cost economics, was one influence. This link is made more explicit in research on global value chains.

coordination, i.e. to governance. Another important addition to the concept is the notion of ‘upgrading’. This focused greater attention on value creation and value capture across value chains and how firms could improve their position in the system of distribution of value along the chain.<sup>47</sup> It, furthermore, led to the development by Gereffi and others of five categories of governance within value chains: market, modular, relational, captive and hierarchical. Three variables are used to distinguish the different types of governance:

- the complexity of information required for the production of the good;
- the ability to codify or systematize the transfer of knowledge; and
- the capabilities of suppliers.(Gereffi, Humphrey and Sturgeon, 2005: 83; Gereffi, 2011: 41)

Market governance is characterized by relatively simple transactions, product specifications that are easily transmitted, low costs of switching suppliers so the relationship is usually short-term, and the key factor in securing the transaction is price. The relationship is therefore arms-length. At the other end of the spectrum is hierarchical governance, which is nothing more than the vertically integrated firm in which administrative decision-making replaces transactions. Hierarchical governance will usually occur where products are complex, information cannot be codified and competent suppliers cannot be found.(Gereffi et al, 2005: 83-84; Gereffi, 2011: 42)

The three governance categories in the middle are more innovative. Modular governance is similar in certain respects to market governance but the flow of information between the firms is considerable and the transaction is complex, although specifications are still relatively easily codified. However, the supplying firm purchases the materials and components, and must also have competence with respect to process technology. The relationship is therefore more substantial than a simple market transaction.(Gereffi et al, 2005: 83; Gereffi, 2011: 41)

In the case of relational governance information regarding the product is complex and difficult to transmit, so there is greater dependence between the firms and asset

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<sup>47</sup> Another reason for changing the name was that the term ‘commodity’ tends to be associated with low-cost undifferentiated goods.

specificity in relation to the transaction. Power is more balanced and trust between the parties plays a major role in the relationship; the latter can arise from proximity, family and ethnic ties, as well as reputation. Quality, product characteristics and speed become increasingly important along with price.(Gereffi et al, 2005: 84; Gereffi, 2011: 41-42)

With captive governance power assumes greater importance, with lead firms approaching the levels of monitoring and control over the supplier that one would find exerted within a firm. However, in this case the switching cost for both firms is high. The lead firms in these relationships do not have production competence so will often assist suppliers to improve efficiency and quality.(Gereffi et al, 2005: 84; Gereffi, 2011: 42)

Although it is not mentioned as one of the three variables, power is also a critical factor in classifying these governance types, but can be off-set by trust, which will balance the elements of control and co-ordination. Governance, however, remains an intra-chain concept: it is therefore conceived of narrowly and is endogenous to the value chain. Gone are the references one found in the GCC concept to the social embeddedness of chains. It is a shift in emphasis that is probably explained by the influence of the work of Coase and Williamson as well as Granovetter.(Bair, 2008; Sturgeon, 2008)

#### ***4.7.2 The global production networks and an expanded notion of governance***

The GCC and GVC concepts had attracted the attention of economic geographers and their constructive critique saw the development of the GPN concept. While the geographers brought something new to the concept they also resurrected certain aspects of commodity chains that had dropped out of the picture. Importantly, the concern with the regulatory context within which value chains or production networks operate brings labour control into the frame once again, both in terms of the organization of work within the factory and also, albeit somewhat recast, as workers rights.(Coe, Dicken and Hess, 2008)

The GPN concept considerably expands the notion of governance to laws, agreements and customs external to the chain but which impact on the working of the chain, either within one of the nodes or in the relationship between nodes. In this case governance clearly overlaps with the notion of regulation, which has traditionally been used to describe the complex of laws and institutions that regulate the labour relationship within firms and the labour market. Exponents of GPN analysis have responded to the potential confusion this causes by splitting governance into two categories, namely private governance and public governance. Private governance comprises the original value chain concept of governance, namely the legal and extra-legal private ordering of relations between firms within the chain. International framework agreements and local collective agreements as well as the actions of NGOs or even campaigns by consumers or communities are also located in the private governance category. The latter could arguably be included in a separate category, perhaps social governance. Public governance generally includes international and national instruments, such as trade agreements and national legislation, usually emanating from the state or states. (Meyer and Pickles, 2010)

But despite these refinements governance remains a somewhat vague term in the GVC and GPN literature. The question of why private governance is used as opposed to control, a concept that has healthy roots in management theory, employment law, and in the labour process literature, is not addressed. Neither is the question of the usefulness of the public governance category when there is a tried-and-tested term such as regulation. Perhaps more reflection on the theoretical roots of the concept would be a way of avoiding overlap and getting greater clarity.

## **Chapter Five**

### **A brief history of the textile, clothing and retail sectors**

#### **5.1 Introduction**

The analytical framework for this thesis has a strong historical element. This chapter provides a bridge between the earlier chapter dealing with the emergence of the capitalist world-economy in Europe and the contemporary focus on developments in the Southern African clothing and retail value chain. The chapter therefore provides a brief history of the clothing industry and also examines the much earlier beginnings of the retail sector. The clothing industry emerged in the 19th century and therefore displays many of the features highlighted in the previous chapter on industrialisation. The retail sector, on the other hand, grew significantly over a number of centuries but without changing very much. In the latter half of the 20<sup>th</sup> century, however, it underwent massive restructuring and concentration.

## 5.2 An historical overview of the clothing industry

Whereas the textile sector played a leading role in the rise the world-economy and the rapid industrialisation of Western Europe from the 18<sup>th</sup> century, the clothing industry had a much less significant role. Clothing was made for thousands of years by women within the household for the use of the family, and by craftsmen and women individually or in small workshops for a wealthy clientele. Until late in the 18<sup>th</sup> century, all clothing was hand-stitched, an item at a time. The first sewing machine was invented only in 1790 in England, but it was not until well into the 19<sup>th</sup> century that the improvements made by Izaak Singer produced a machine that was suitable for factory production. However, the putting-out system was widespread, especially in outlying areas, while in the cities garments were usually made up in small bespoke tailoring workshops, often involving wives and children in production. Factory production was therefore slow to gain momentum, lagging well behind the textile sector.(Barker, 1962: 1-2)

This mix of production formats survived for a long time. Late in the 19<sup>th</sup> century clothes were made in three ways in England: the cheapest clothing was made by unskilled women in their homes; bespoke tailors and skilled dressmakers made expensive, customised clothing; and moderately priced, ready-made clothing was manufactured in small factories. The division of labour in the first type of manufacture was limited: merchants co-ordinated the cutting of fabric in central workshops and put out the assembly of garments to large numbers of homeworkers. There was virtually no division of labour in the second type of manufacture, other than some basic separation of tasks within the tailoring or dressmaking workshop. The division of labour was however more developed in the small factories, although it was limited by the number of workers employed. The factory system began to spread from that point on but concentration of production in the industry still lagged many other sectors.(Marshall, 1961: 253, fn 1; Barker, 1962: 2)

Sweating was a feature of the clothing industry from the outset, both in the putting-out system and within the factory. Regulation followed the expansion of the industry more slowly. In Britain it was only in 1909 that, following a public outcry over sweating, the first Trade Board Act was passed. This resulted in Boards being

established for 'readymade tailoring' and 'machine-made lace finishing', amongst other trades. Besides increasing wages somewhat, the Board's orders, according to Tawney, pushed manufactures to "closer supervision of earnings and of work, more careful attention to the training of workers, better division and grouping of processes and stimulation of the introduction of new kinds of power and of better machinery."<sup>48</sup>(Barker, 1962: 6-7)

Sweatshops (and child labour) were also prevalent in the US, surviving well into the latter half of the 19<sup>th</sup> century before being suppressed by militant trade union action, only to emerge again in the depression of the 1930s. As was the case with weaving in the putting-out system, homeworking and factory production of clothing competed with one another, which put downward pressure on wages:

Sweating appears to have been mainly associated with the system of contracting in the American clothing industry, which system had much in common with the operations of middlemen in England. Manufacturers of garments from expensive materials usually found it best to operate what was termed an 'inside' shop, in which everything was done on the premises and the business was run on ordinary factory lines. But where the chief consideration was cheapness rather than high quality, the manufacturing work was given out to the lowest bidder among numbers of contractors, who in turn would pass on the making-up to competing workers, frequently operating in their own lodgings or in squalid tenements where the contractor also lived. In some cases the first link in the production chain was not himself a manufacturer at all in the true sense. His establishment was known as an 'outside' shop and in the women's garment industry he himself was called a 'jobber'. He was enabled to concentrate on the buying of materials and the selling of finished garments, with no participation in production worries, small overhead expenses and the freedom to play off one contractor against another.

For production of the cheapest – as distinct from merely cheap – garments the contracting system was not greatly used, because the mass-production techniques of inside shops could be better adapted to the manufacturing of the lowest grade clothing. A further reason may have been that the profit margin in the case of the very

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<sup>48</sup> RH Tawney. 1914. 'Minimum rates in the Tailoring Industry. G Bell & Sons: London, at 135-138; quoted in Barker, 1962: 5).

low-grade articles was too small to permit of the squeezing of contractors by jobbers and, in addition, of workers by contractors.(Barker, 1962: 6-7)

Attempts were made to regulate working conditions in the US clothing industry. The National Industrial Recovery Act of 1933 led to wages improving, while outwork was almost eradicated and unionization increased. But the Act survived for only two years before being declared unconstitutional. It was followed by the Fair Labor Standards Act of 1938, which laid down minimum rates of pay. Enforcement was a problem, however; in 1939 eleven of the largest clothing factories in the industry were found to be paying well below in the minimum wage rate.(Ibid)

The pattern of sweating and contracting persists to the present, as does the difficulty of regulating working conditions. It seems that the need for 'flexibility' in the organization of production is deeply ingrained in the industry, usually to the detriment of workers.

As operations were slowly concentrated within factories, the search for increased productivity began. The result was a series of technological and organizational innovations. The treadle was replaced by line shafting within the factory, initially driven by steam or gas engines, and later by an electric motor. Individually powered machines soon followed, which allowed much more flexibility in the organization of production, both within and outside the factory. The increasing productivity of sewing machines put pressure on the cutting process, which led to technological improvements in cloth-cutting tools and the automation of other operations. Running parallel to these developments were innovations to the standard sewing machine as well as the design of specialist machines for certain operations. Automatic fabric-laying or spreading machines were developed, as were steam or hydro-air pressing machines. The sewing machine became much faster,<sup>49</sup> the quality of stitching improved, and a growing variety of garments could be mass-manufactured. But technology has not been able to automate clothing assembly; the limp nature of fabric means that manual manipulation continued to be essential. The machinist, in most cases a woman, therefore remains at the centre of the production process. Even

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<sup>49</sup> Singer's early sewing machine made about six stitches a minute whereas modern machines make more than 5 000 stitches a minute.(Barker, 1962: 2)

relatively simple and repetitive operations, usually the type most susceptible to automation, need a person to position the fabric and work the machines.(Ibid 255; Barker, 1962: 2)

Larger concentrations of workers meant that the technical division of labour could be further developed. Whereas the dressmaker or bespoke tailor would cut and sew an entire garment according to a customer's measurements and requirements, the mass manufacture of garments saw the labour process broken down into a number of relatively simple operations. For a time an intermediate system of production arose for making men's suits, i.e. wholesale or factory bespoke manufacture.<sup>50</sup> Rather than taking individual measurements and instructions regarding fabric and style to make up a suit for a specific customer, wholesale bespoke manufacture offered a customer a limited range of fabrics and styles, and a set price, but the suit would be made by a small factory according to the customer's measurements. Orders would therefore be sent from the men's outfitters to the factory, together with the measurements, where they would be collated as far as possible for cutting the fabric. Thereafter the suits were made up according to the measurements in a factory organized in the same way as a ready-made clothing manufacturer.(Barker, 1962: 26)

Bespoke tailoring, wholesale bespoke manufacture and skilled dressmaking were doomed once the quality of factory production improved, clothing became cheaper, and fashion shifted to more informal ready-made clothing. At the same time, the fragmentation and deskilling of clothing production was taken to its extreme, resulting in a remarkably uniform production format.<sup>51</sup> The clothing factory has changed little over the last few decades and looks much the same whether one is producing men's suits or women's dresses, and whether the factory is in South Africa, Mauritius or China. A number of production lines constitute the core of the process, bracketed by

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<sup>50</sup> It should be noted that at the time the production of men's suits constituted the largest proportion of all manufactured clothing.

<sup>51</sup> I cannot find any record of struggle between managers and clothing workers over the deskilling and fragmentation of jobs through a more refined division of labour. However, there were earlier production methods, such as the 'making through' and the 'divisional' systems, which accorded a more central role to skilled workers. However, once the conveyor belt system was introduced and then the 'synchro-flow' system, the scene was set for almost all operations to be classified as semi-skilled. Thereafter a skilled worker in the clothing industry is generally one that is multi-skilled, i.e. can do a number of semi-skilled operations.(Barker, 1962: 252)

pre-production and post-production stages. The three stages are described in more detail below.

The production lines are laid out according to the styles being assembled and the number and type of machining operations required for each style. So, all the operations will be identified for a certain style and one or more lines will be set up comprising the necessary machines to perform the operations (including any specialist machines). The machines will be arranged in the sequence in which the operations will be performed to assemble the garment. Each of the machinists on the line therefore performs at least one of the operations needed to assemble the garment, and the length of the line is determined by the number and complexity of the operations that need to be performed. The length of the line might be shortened if one has skilled machinists that can perform more than one operation, and it might be lengthened if there are complex operations that might create a bottle-neck, in which case more than one machinist will be assigned to those operations to optimize the flow of work (this is termed balancing the line). The pieces of fabric (cutting is done in pre-production) are tied together in separate bundles that will move down the line, with each machinist doing her assigned operation(s) by removing the relevant pieces from the bundle for machining. By the time the bundle reaches the end of the line it will have been transformed into completed garments.<sup>52</sup> The size of the bundle of pieces determines the number of completed garments that will be assembled, i.e. if the bundle has the necessary pieces to make 30 garments then that is the number of completed garments there will be at the end of the line.

Supervision and work study are key parts of the production process. Supervisors set up and balance lines with the assistance of the work study officers, who will have timed each of the operations required to make up the garment. Once the garment is in

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<sup>52</sup> Early production systems are discussed briefly in footnote 51 above. In modern clothing factories one of three production methods is generally used, all of which are variations on each other. The methods are the bundle system, the progressive bundle system and the line method. (Barker, 1962: 253-254) An alternative method is the use of overhead conveyor systems that aim to eliminate the manual transportation of the cut pieces and reduce handling. More advanced factories use modular manufacturing systems, which break up the traditional production line into small groups of workers who usually sit in a group or circle. The workers will perform two or three tasks, will rotate tasks when necessary, and will balance the flow of work themselves. Modular manufacturing systems are suited to producing small batches, quick change-overs and low levels of work in progress. Modules will be incorporated into a world class manufacturing production system, together with visual measurements and the kanban system.

the lines supervisors directly monitor and measure the performance of the line and individual workers. The timing done by the work study officer enables them to calculate the 'minute-rate' for the garment, i.e. the number of minutes and seconds required to complete a garment. The calculation provides the basis for determining 'efficiency' standards and production targets, i.e. how many garments the line should produce every 15 minutes or every hour or in a day. Alternatively, it can be used to establish a piece rate. The calculation of the minute-rate is also used by the manufacturer to cost the making of the garment.

Quality control usually takes place before the cut pieces enter the production lines and at the end of the production line, and again in the post-production stage before the dispatch of the garment. Some factories will also have roving quality controllers that do checks during the assembly process, although supervisors will also often pick up quality problems in the lines. Quality control is a key area of interface with the retailer. Retailers hold immense power in the clothing value chain: they determine the styles and designs, often stipulate the exact specifications of the garments, and also to a large extent dictate the price. Having set these parameters, their main concern is that the garments comply with their technical and quality specifications and that the order is completed on time. The benchmark for checking quality is the sample garment and the set of specifications agreed to by the retailer and manufacturer. The manufacturer will usually examine the first few garments off the production line against the sample garment and the specifications, and might even send these garments to the customer for checking if there are any areas of doubt. The same standard is used in the final inspection before the dispatch of the order to the customer. The retailer will do its own quality check on receipt of the garments.

Besides the quality inspection, the post-production process requires relatively low skilled workers, but even here tasks have been broken down as far as possible: cleaning, washing, pressing, finishing and packing. Thereafter the clothes are dispatched immediately or stored for dispatch later.

The pre-production process is more complex and skill-intensive. It is also the critical interface between manufacturer and retailer, one that to a large extent determines who holds the power in the value chain. The main stages in the pre-production phase are

design and marketing, pattern-making and grading, and cutting and marking. In the early years of the mass production of clothing the manufacturer held the power in the value chain: it conducted marketing exercises, decided on designs, constructed clothing ranges, and quoted a price. In some cases, using the device of resale price maintenance, manufacturers would even stipulate the price at which garments would be sold. The manufacturers also generally developed brands and advertised those brands. Most retailers were small, having only one or two outlets, and even department stores were tiny by today's standards. There was generally little they could do but accept the terms dictated by manufacturers.

It is evident from the above that the clothing production process is Taylorist writ large. In fact, there cannot be many other industries in which the production process is still so firmly Taylorist. There are probably two reasons why this is the case. First, mass clothing production within a factory required mainly semi-skilled workers. The workers that were recruited did not come from a craft background, so there was never a contest with highly skilled workers over the deskilling and fragmentation of garment making. In fact, workers often needed to receive training to work in a clothing factory rather than being deskilled. Second, the Taylorist production model was easily relocated to low-wage, low-skill areas with abundant female labour (who are associated with clothing production because of their gendered role in the household rather than because they possess sewing skills). Competition has been primarily driven by lowering labour costs through productivity improvements within the Taylorist production model and by relocation to low-wage areas; this competitive dynamic has not been conducive to searching for innovations in the production process.

The search for low-wage areas in which to locate factories started in developed countries, but soon factories were relocated in less developed neighbouring countries, and from the middle of the 20<sup>th</sup> century a bigger global shift took place that saw clothing manufacture move from the United States (US) and Western Europe to, first, Japan, and then, Hong Kong, Taiwan and Singapore. The dispersal of production was facilitated by the fact that clothing can be transported quite cheaply, which was important because most of the clothing that began to be produced in South-East Asia

was exported back to the huge markets in the US and Europe. Garments therefore became one of the most traded items in the world.

Not surprisingly, trade regulation has played a key role in this geography of the clothing industry. As production shifted to developing countries, the advanced industrialised countries sought to protect their textile and clothing sectors, which were still significant employers. They did so by controlling access to their markets. Following the establishment of global trade regime in the form of the General Agreement on Tariffs and Trade (GATT) in 1947, a special dispensation was introduced in 1961 for trade in cotton textile products called the Short-term Arrangement. This dispensation, which was an exception to the rules of GATT, was extended the next year by the so-called Long-term Arrangement, which lasted until 1974. The Long-term Arrangement was replaced by the Multi-Fibre Arrangement (MFA), which expanded the scope of the special dispensation to all textile products. These special arrangements provided a mechanism whereby developed countries could limit the quantity of clothing imported from developing countries so that they (i.e. developed countries) would have time to restructure their textile and clothing industries. The restrictions took the form of quotas that were imposed on developing countries.

The quotas had an unexpected developmental impact. Developing countries with established clothing sectors, such as Japan, Taiwan, Hong Kong and Singapore, soon reached their quota ceilings. When they did they began to look at other developing countries that had little or no clothing manufacturing, and therefore had potentially unused quotas. They located factories in these countries to take advantage of these excess quotas, a practice that became known as quota-hopping. So the imposition of quotas through the MFA saw a further phase of relocation take place, initially to countries in South East Asia, but then to Central America and sub-Saharan Africa. The restrictive trade regime therefore had an unintended consequence: foreign direct investment to set up clothing factories to access unused quotas was often the start of a manufacturing sector in many undeveloped countries. The clothing industry was now seen to have an explicit developmental role, offering large-scale employment to low-skilled women that did not require huge investments in capital and technology.

The (unintended) development role of the MFA was put under the spotlight when the ending of the quotas loomed. The intention had always been that the MFA would be a temporary measure, but it was extended a number of times before a decision was taken during the Uruguay Round of GATT in 1994 to phase it out over a ten year period ending on 1 January 2005 (at the same time it was re-named the Agreement on Textiles and Clothing). Major developing country producers of clothing such as China and India were in the main the 'winners' of the ending of the ATC because their access to the huge United States and the European Union markets was no longer restricted by quotas. But many of the countries that had gained access to these markets because of the limits that quotas placed on their larger competitors, were the 'losers'. They saw their market shares shrink. Tariffs remain in place in most countries, although these are generally quite low, so the latter countries have had to rely on bilateral trade agreements or unilateral trade preferences in order to remain competitive in the major clothing markets.

There has been one further development that needs mention. Competition in the clothing industry has always been largely based on price, which for many manufacturers has meant squeezing labour costs. This is part and parcel of the Taylorist organisation of work and the continual dispersal of the industry to lower wage areas. But the spreading of production and the attempt by huge retailers to respond ever more quickly to changes in the market (termed 'fast fashion'), have led an alternative route to competitiveness, namely speed to market (or quick-response). In this case proximity is important, as is quality and flexibility, while price is somewhat less important. Clothing industries have therefore survived in developed countries such as the US and Europe, which indicates that there is a 'high road' for the sector alongside the 'low road' of price and labour cost competition.

The above developments are set at different scales. Management control takes place in the workplace (the enterprise-level), but production mobility sees factories spreading within and beyond the borders of countries (the national-level crossing into the regional and international scales). The result is bi- and multi-lateral trade regulation (explicit recognition of the regional and global scales), with clothing manufacture being used as a catalyst for development (the global level crossing into the national). The functional integration of dispersed production operations by huge retailers (the

buyer-led global commodity chain) connects the enterprise and the global levels, in a sense going below and above the national scale, which makes it especially difficult to regulate. There is probably no other industry in which these different scales are so closely connected or in which the relationship between trade and labour standards is so immediate.(Clarke and Godfrey, 2011: 77)

### **5.3 The rise and rise of the retail sector**

Braudel and Wallerstein identify trade as the initial driving force for the emergence of capitalism. The early catalyst was long-distance trade, described by Braudel as “the genesis” and “backbone” of merchant capitalism.(1982: 403) Trade fed into the early markets and the larger but less frequent fairs that began to take place in the 11<sup>th</sup> and 12<sup>th</sup> centuries, as towns emerged or re-emerged in Western Europe. Soon small shops began to be established in parallel with the markets. With these developments one saw a division of labour becoming established between manufacturing and selling, and between town and countryside.

Different types of traders tended to focus on supplying one of the three main outlets, viz. markets, fairs and shops. At the top of the hierarchy of traders were the long-distance merchants, who often took great risks but also realised huge profits. Their initial target was the great fairs that were held periodically in Western Europe, but over time they began to supply the town markets and the growing number of shops. They were complemented by pedlars, who survived by supplying small quantities of basic goods to poorly-served regions, usually selling directly to consumers. Although there was a hierarchy of traders and markets they did not replace one another; the different types of traders and markets survived in parallel with one another for centuries. In fact, it was probably only in the period between 1918 and 1939 that shops became the dominant outlets for exchanging goods with consumers in Western Europe.

Markets were initially the most pervasive site for the exchange of goods. They are ancient institutions: Braudel speculates that they could have been invented by the Phoenicians and argues that the Greek city-states must have had significant markets. The key aspect of their re-emergence in Western Europe in the 11<sup>th</sup> and 12<sup>th</sup>

centuries was their appropriation and control by the town, along with the expansion of the catchment area that supplied the market and which it served.(Ibid 228) Markets generally preceded the establishment of shops, but in some places markets and shops were almost indistinguishable: clusters of small shops, sometimes only temporary structures, took the form of markets, or what Braudel describes as “specialised markets of a kind”.(1982: 61)

According to Braudel, the first shops “were really the workshops of bakers, butchers, shoemakers, cobblers, blacksmiths, tailors and other artisans who sold their products.”(Ibid 62) If a market took place in a town on certain days these artisans would leave their shops to sell their products at the market, as well as advertise their trade: artisans such as blacksmiths, carpenters and locksmiths would be hired at the market to do jobs, which also created a form of labour market.(Ibid 117) Initially, artisans were compelled to sell their goods at the market by the town authorities, who could more easily regulate markets and protect customers at a centralised venue than in the scattered shops. But over time artisans increasingly sold products from their workshops in the intervals between market days, so that their business became a mix of workshop, market, and shop.(Ibid 62)

The artisan shops were followed by what Braudel calls the ‘real’ shopkeepers, who over an extended period from the 13<sup>th</sup> century transitioned from being merchants, either long-distance traders or pedlars, to putting down roots in one or other town and opening a shop:

... they were the middlemen of exchange, inserting themselves between producer and consumer, and confining their activities to buying and selling; the goods they sold were not (or not entirely at any rate) the work of their own hands.(Braudel, 1982: 62)

The origin of these middlemen is obscure. Braudel surmises that it was probably simply a case that “the travelling merchants, who had survived the decline of the Roman Empire, were surprised in the eleventh century and no doubt earlier too, by the rise of the towns: some settled down and joined urban guilds.”(Ibid 64) However, the division of labour between manufacturing and retailing, i.e. between the small emerging shops and the artisan workshops, was slowly established “between the

fifteenth and eighteenth century”, during which time “retail shops and retailing methods were visibly transformed”.(Ibid) The transformation seems to have mainly comprised a massive expansion in the number of shops and also much greater retail specialisation. Distinctions were made between shops that sold by weight (e.g. grocers), those that sold by measure (e.g. drapers and tailors), those that sold objects (e.g. ironmongers), and those that sold used utensils, clothes or furniture. There was also the spread of shops that traded in ‘services’: the apothecary, the pawnbroker, the money-changer, the innkeeper, the tavern-keepers or wine merchants, and even the brothels.(Ibid 64-68)

Another distinction that slowly emerged was that between wholesalers and retail shops. Wholesaling grew out of and began to replace the fairs that were held periodically in towns and cities. The need of long-distance merchants to be able to stockpile the quantities of goods they transported to towns prior to the fairs, led to a form of warehousing. The growth of towns, and with it a rising and more constant demand, saw warehouses transform into a wholesale trade that was independent of the periodic fairs. These developments took place throughout Europe from as early as the 15<sup>th</sup> century. By the 18<sup>th</sup> century the process was well advanced in North West Europe: Amsterdam and London, in particular, saw wholesalers dominating every sector of trade. Wholesalers mitigated the effects of irregular production, poor communication and the lengthy transportation times, all of which added to the risks of long-distance trade. The wholesaler therefore performed a key intermediary function between producers, traders of goods in bulk, and many smaller retailers. Once these abovementioned shortcomings were overcome in the 19<sup>th</sup> century, wholesaling declined in importance compared to the retail sector.(Ibid 94-97)

Retail shops had become so pervasive by the 18<sup>th</sup> century that Braudel speaks of them having come “to conquer and devour the towns”, and of a “takeover by the shops”.<sup>53</sup>(Ibid 68) The growing population and expanding economies were factors explaining why shops spread so rapidly, as was the spreading distribution network,

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<sup>53</sup> While Braudel’s main focus is the emerging world-economy in Western Europe, he notes that rise of shops was a world-wide phenomenon: shops were spread across Brazil and other South American countries, the Islamic countries of the Middle East, and in India and China.(1982: 114-120)

but the most important reason for the explosion in retailing was credit. The wholesaler granted credit to the retailer, which the retailer would have to pay back in instalments, and the retailer granted credit to his or her customers. Although credit stimulated trade and increased the number of transactions, it also created a precarious situation for many retailers. A default by one big customer or impatience on the part of a supplier could spell ruin to the shopkeeper. Bankruptcies were frequent and there would be a knock-on effect through the chain of credit in which the shopkeeper had been enmeshed.(Ibid 75) Retailers were therefore at the bottom of a hierarchy, and were capitalists only “in a very small way”, surviving between those they owed money to and those – generally of much higher social status – who owed them money.(Ibid 73)

The trading system, of which shops were a growing part, was still dominated by the long-distance merchant, who was essentially a middleman. While shops interposed themselves between producer and consumer, the long-distance traders inserted themselves between the artisan and his (often distant) raw materials (e.g. wool, silk and cotton), and then again between the finished products and the markets (often far away). The long-distance merchants were pioneers in a number of respects: their need for capital saw the emergence of companies in which shares could be held, their long-distance activities gave rise to channels through which debt and credit could be transacted, and they earned huge profits that were frequently the catalyst for other economic activities, including early manufacturing.

Pedlars were at the bottom of the trading hierarchy. They generally had hardly any capital and a limited range because they carried their goods on their backs. Taken together, however, they amounted to a considerable factor in trade, extending to towns and villages in areas outside of the regular channels of distribution. They were, in fact, critical in the distribution of many key items, such as horseshoes, nails, locks, pins and even almanacs and religious books, to sparsely populated areas. They also served a useful purpose for shopkeepers, who were able to off-load unsold stock from their shops to these itinerant salesmen. At other times, when their numbers increased and they invaded the towns and cities, they were seen as a threat to the fixed shops.(Ibid 75-79)

Other than continued growth and further specialisation, there appears to have been little change to retailing between the 18<sup>th</sup> century and the middle of the 19<sup>th</sup> century. However, even in the most industrially advanced country in the world, England, there were at the latter date more people still employed in agriculture than in any other sector, handicraft methods and outworking were still prevalent in many industries alongside factory production, and the national market had not yet been fully opened up by the railways.(Jefferys, 1954: 1)

There were in England at that point four types of retail shop. First, there were fixed retail shops such as general dealers as well as specialised shops such as grocers, hosiers, drapers, haberdashers and chandlers. These shops bought their goods from manufacturers, wholesalers and other intermediaries for sale to consumers. Often some processing of products was still required, e.g. besides weighing and packing goods a grocer would blend tea, roast and grind coffee, cut and mill sugar, mix herbs and spices, and cut and cure bacon. Such a retailer was a highly skilled job: success depended on his expertise in selecting, valuing and processing goods. He relied almost entirely on his reputation to attract custom; there was no retail advertising at the time and even the display of goods to attract attention was rudimentary. Second, there were the skilled craftsmen who grew or manufactured their goods as well as selling them, e.g. boot and shoe makers, tailors, blacksmiths, cabinet makers, butchers and dairy farmers. The two types of retailer generally owned and worked in only one shop. The practice of son succeeding father in the business was common, as was the employment of young apprentices to learn the trade; they were often relatives and lived with the family of the retailer. Their market was primarily the well-to-do classes in towns.(Jefferys, 1954: 1-4)

The third form of retail was the markets and fairs. The former were held one or more times a week, while the latter took place less frequently but attracted a much wider range of goods from manufacturers, wholesalers and importers for sale to consumers. Fourth, there were the itinerant tradesmen and pedlars that distributed goods throughout the year over a wide area. Retailers in the markets and fairs, as well as pedlars, also depended on their skills in selecting and pricing goods, but their target market was the rural and urban working classes. The standard of living of these classes was still so low that demand was limited.(Ibid)

There were usually no intermediaries involved in the supply of the goods produced by craftsmen-retailers or the growers that sold their produce at markets, although both were often at the end of chains of suppliers of raw materials and semi-finished products. In the case of the other retailers there were often a number of intermediaries between producer and retailer:

In the case of finished consumer goods in the textile, grocery and coal trades, to take three examples, the chain from the producer at home or overseas to the consumer was a long one. The goods tended to move forward slowly in a series of short stages, changing hands at each stage. In the larger towns, and in London in particular, very few manufactured or imported goods reached the consumer without passing through the hands of at least two intermediaries. Many different types of intermediaries – agents, jobbers, factors, wholesalers, dead meat salesmen, bummarees in the fish markets, cheesemongers, butter factors and so on – played a part, and a profitable part, inside and outside the central wholesale markets in equating supply and demand.(Jefferys, 1954: 3)

A final important feature of the retail sector at this time was that goods were very seldom marked with a price and few retailers expected customers to accept the initial price at which goods were offered. The final selling price was therefore only reached after “higgling, haggling or chaffering”.(Ibid 5)

Industrialisation had from the outset exerted pressure on the organisation and techniques of the wholesale and retail sectors outlined above, but it was only in the second half of the 19<sup>th</sup> century, in particular the period from 1875 to 1914, that major innovations were introduced. These innovations were in some cases forced on retailers by producers or were responses to rapid changes taking place amongst consumers. In both cases the innovations reflected the ending of the era of handicraft manufacture and the emergence of a society increasingly dominated by the manufacturing sector and characterised by large corporations.(Jefferys, 1954: 1-2, 6).

The innovations in retailing impacted in a number of areas. One area was the inside of the shop, where retailing followed the same fragmentation and deskilling of

operations as the manufacturing sector. Fixed shops were small and comprised a counter, manned by one or more shop clerks, which separated the goods from the customer. The shop clerk had important skills; they dealt directly with the customers, bringing them the goods they requested, but also needed to be able to advise customers about the qualities of various goods. The transaction would be completed when the goods were rung up at the till and exchanged across the counter for the money.

It seems that the main innovations with regard to the internal arrangement of shops happened in the US. The first was the development of the self-service concept, which was pioneered by two brothers. They opened a chain of Alpha Beta grocery stores in 1914 in California that allowed customers to select the goods themselves. In order to make it easy for the customer the goods were stocked on shelves in alphabetical order, hence the name of the chain. This development was taken forward by Clarence Saunders in 1916, when he opened the first King Piggly Wiggly in Memphis. In this shop customers would follow a set route up and down rows of shelves on which were displayed all the goods in the store. The customer would select what he or she wanted and would pay for the goods at a “checking and paying station at which the goods selected may be billed, packed and settled for.”<sup>54</sup> The idea, which Saunders patented in 1917, revolutionised retail. Labour costs were cut significantly and the customers were compelled to survey the entire stock of the store but could do so in their own time, which had the effect of increasing sales and revenue. According to Patel, the architecture of the store made it “the first consumption factory” in which shoppers “resembled nothing so much as rats in a maze.”(Patel, 2007: 220)

There is no evidence that these innovations were linked to the concept of manufacturing assembly line or to scientific management, but it would not be surprising if there had been some influence. The innovations ran more or less parallel with Ford’s organisation of automobile manufacture into a continuous running line and with the promotion by Taylor of his ideas in the metal engineering sector.<sup>55</sup> Although the workplace environments were entirely different, the principles are

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<sup>54</sup> Saunders, C. 1917. Self Serving Store, Patent number 1,242,872, dated 9 October. Arlington, VA: United States Patent Office: quoted in Patel, 2007: 219.

<sup>55</sup> Patel states that managers in the early supermarkets tried out time and motion studies on workers in order to get them to increase their speed doing narrowly-defined jobs.(2007: 231)

similar and the objectives were much the same, viz. reduce labour costs, increase output or sales per worker, and increase the throughput of products. Certainly, the role of shop clerks was deskilled; they could be replaced by fewer and lower paid workers that were little more than shelf packers:

Their [the shop clerks'] job description was downgraded from the almost artisanal knowledge of customers, of providers of consumer credit and of conduits of information, to a job that primarily involved stacking shelves and pointing consumers through a maze. Under the reign of supermarket logistics, every other function that the shopworkers performed prior to the invention of the self-service store has been dismantled and redistributed.(Patel, 2007: 230)

In fact, although these workers could direct shoppers to goods when asked, they were under strict instructions not to assist customers in choosing which goods to purchase; customers were now 'free' to do this themselves. This meant that any link between the producer, the store and the customer was broken. In the new self-service retail store the only communication about the origin and nature of the goods it stocked was on the label of the individual product. Even if the 'clerks' knew something about the product they were prohibited from disclosing it to the customer. The carefully planned layout of the store would 'train' customers as to where to find products. It was a design "that would inaugurate the sciences of impulse and pester purchasing and provide active schooling in the ways of 'consumtionism'."(Patel, 2007: 222)

The concept took off quickly. Within eight years there were 1 200 Piggly Wiggly stores operating across the US. Because some of the cost savings realised from the new type of store could be passed on to consumers in the form of lower prices, there was strong pressure on other retailers to follow suite. Within a few years the branded supermarket pioneered by Saunders was to become the standard retail format.<sup>56</sup> (Patel, 2007: 222-223)

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<sup>56</sup> Saunders did very well but went out of business in 1924 after borrowing heavily to fend off a number of corporate take-over attempts by Wall Street financial interests. Much later in life he experimented with innovations such as the Keedoozle (an entirely mechanized store) and the Foodelectric (still incomplete at the time of his death in 1953). One can see the influence of that these ideas had on the fast food and on-line shopping concepts.(Patel, 2007: 222-3)

Other innovations focused on the customer. Initially every effort was made to get customers to internalise the self-service concept, but an enormous amount of thought also went into ‘improving’ the self-service format. So, we are no longer compelled to follow a set route in a supermarket, although studies show that most shoppers follow a very similar path. There are also always one or two shop assistants on duty that can direct you to products, although we would never think to ask them to recommend a particular product (and they would probably refuse to do so). (Patel, 2007: 224) While this process of ‘training’ customers has carried on, the science of store layout has become ever more sophisticated in order to induce customers to stock their trolleys or baskets with more and more goods, often purchased on an impulse (e.g. at the check-out point).<sup>57</sup> So, when we go into a supermarket to buy milk, which is always positioned at the very back of the store so that we see as many products as possible while getting it, we are entering an environment that is “obsessively monitored and reconfigured” to achieve maximum sales. (Ibid)

Technology primarily introduced to improve the logistics operation revealed the benefit of better knowledge of customers. The barcode was first conceived as part of a vision of supermarkets as being entirely automated, i.e. shoppers would select punch-card representations of the products they wanted, which would be gathered by giant mechanical arms and delivered to the checkout point. The cost of this system proved prohibitive but the idea of a barcode survived. In 1974 the first products began to be scanned and by the end of the 1970s the barcode was standard in supermarkets. It saved time (and labour costs) at the checkout, but the main benefit was real-time inventory control that could be linked to order of new stock. A by-product, however, was that retailers were getting data on what each customer in the store was purchasing. This has been taken a step further by radio frequency identification (RFID), which sees an electronic product code (EPC) being placed on every product. The EPC will tell the retailer at the click of a mouse where a particular product was manufactured, how it was shipped, when it will expire, how many of them are in a

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<sup>57</sup> The science is referred to as ‘atmospherics’ by the academics involved in it. It covers issues such as the influence of the type of music (or muzak) on the shopper (there is no doubt that muzak has an influence but the question is what kind of music has the biggest impact); the colour scheme in the store (this has been found to stimulate “purchases, purchasing rates, time spent in the store, pleasant feelings, arousal, store and merchandise image, and the ability to attract a consumer toward a retail display”); the smell in the store; its lighting; and the positioning of wall coverings (amongst other things). (Patel, 2007: 224)

shopping trolley (which could indicate they are being stolen), and what route the customer takes in the store. So, the EPC will tell the retailer exactly what individual customers are buying (as well as what goods they put in their trolley's and then returned to the shelf).(Patel, 2007: 227-228)

But probably the most important area of innovations has been on the 'behind the scenes' logistics operations that bring goods to the store. Technology has played a major role. Stocking the shelves of the supermarket is controlled by computer, "which commands battalions of truckers, armadas of ships and squadrons of aircraft to keep the supplies coming."(Patel, 2007: 230) Wal-Mart, currently the biggest retailer in the world,<sup>58</sup> owes its success to a "logistical empire" it has created and to massive investment in information technology (IT): it is the owner of the second most powerful computer in the world after the Pentagon. Its computer system is so central to its operations that, according to Patel, in the information technology world Wal-Mart is known as an IT firm that also does retail, rather than as a retailer.(Patel, 2007: 230-232)

The retailer's own brand is symbolic of the power it now exerts over the value chain. In many industries, including the clothing industry, brands were originally the preserve of the manufacturer. Increasingly, however, goods are sold under the retailer's brand or brands. In supermarkets goods with the retailer's brand are packed alongside similar branded products but usually sell at a lower price. The trade-off to manufacturers is a guaranteed weekly or monthly order of their products (which are then branded by the supermarket), and elimination of the risk of unsold goods being discounted or returned. This is much the same in the case of clothing retail. Retailer branding also has the consequence of making the actual manufacturer and its geographical location invisible (and increasingly irrelevant) to the customer. What is important for the customer is the retailer; it has become the brand or the label that counts when he or she goes shopping.(Patel, 2007: 247)<sup>59</sup>

In the last thirty to forty years retailers have become huge, with hundreds and even thousands of branches, often spread across a number of countries. The share of the

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<sup>58</sup> It employs 1.6 million people across the globe.(Patel, 2007: 234)

<sup>59</sup> As Patel notes, "when you shop in a supermarket, you're already inside the label."(2007: 247)

market the big retailers hold gives them immense power vis-à-vis the many, many clothing manufacturers that supply them. The retailer now controls and co-ordinates the value chain, and the marketing and design functions as well as technical capacity are critical for that control. Advances in information technology, particularly applied to the pre-production stage, have facilitated the shift in power. In fact, manufactures have become little more than expanded cut, make and trim (CMT) operations, simply making up the garments to exact specifications. An important consequence of this shift is that the retailer dictates the price to the manufacturer; there is seldom any room for negotiation. The manufacturers has therefore lost the costing function to the retailer; the main purpose of determining the minute rate of the garment is not for the manufacturer to construct a quote but simply to see whether it is financially viable to accept the order or not. A second critical consequence is that although the retailer controls the value chain and dictates the price, which will largely determine the wages and working conditions in the production operations in the chain, it does not employ any production workers and bears none of the risk in relation to labour regulation.

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## **Chapter Six**

### **Overview of the local and regional clothing/retail value chain**

#### **6.1 A short overview of the development of the South African clothing industry and retail sector**

The South African clothing industry started early compared with the many developing countries. It was, furthermore, not a labour intensive catalyst for development as it has been in other countries. The extraction of mineral resources drove industrialisation in South Africa, which in turn fostered the development of capital-intensive supporting industries. The concentration of workers in the major industrialising nodes, i.e. the Johannesburg and Pretoria area, Cape Town, Durban, and to a lesser extent Port Elizabeth, created markets that stimulated the development of labour-intensive sectors that manufactured consumer goods.

Five points need to be noted about the history of the industry. First, from the outset the industry battled against imports. These imports took two forms. There were the 'fashionable' imports from the UK and the US. Coats, men's suits and ladies costumes were imported from the UK, while so-called 'close-out' dresses were imported from the US at the end of their seasons. Price was a consideration but it was

probably second to fashion. These imports engendered a demand from early on for quality and diversity, to which the local industry was compelled to respond. The second category of imports comprised cheap clothing from the Far East. The latter imports led to demands from local manufacturers for protection.(Barker, 1962: 11-12)

Second, the industry developed within the context of an import substitution industrialisation strategy and focused almost all its attention on the domestic market. The domestic orientation was strengthened by economic sanctions against the country in the 1980s. By the early 1990s it sourced the majority of its fabric from local textile mills and supplied 93% of local clothing demand; it exported only a small proportion of total output. The failure of the industry to develop export markets entrenched its dependence on the local retail sector, with which the clothing industry was closely integrated. The industry produced an extremely diverse range of clothing.(October, 1996: 6)

Third, the industry developed along sharp regional lines, i.e. in and around Johannesburg-Pretoria, Cape Town, Durban, and Port Elizabeth. There was, in addition, a tendency for manufacturers in each region to specialise in the production of certain products. However, some geographical dispersion took place in order to avoid industrial council regulation: in the period from 1947 to 1954 at least 15 factories were located or relocated in rural towns outside the councils' jurisdiction.(Ibid 101, 105-106 (Table XII), 109) This dispersion increased from the 1960s due to government programmes that sought to encourage manufacturers to locate operations in so-called 'decentralised areas'.

Fourth, the regional and racial demographics of the country influenced the composition of the labour force. White workers initially dominated the industry but increasingly moved into better paying jobs and were replaced by Coloured workers in Cape Town and Indian workers in Durban, with African workers becoming a majority in the Johannesburg and Pretoria area. These differences motivated for labour organisation and regulation to avoid low-wage competition between the regions.

Fifth, regulation of working conditions in the industry began early, as did trade union organisation and collective bargaining. An industrial council was established in 1925

for the Johannesburg-Pretoria region and was followed by councils in Cape Town and Durban 1936, and a council in Port Elizabeth in 1938. The agreements of the industrial councils were generally extended to all employers and employees falling within their jurisdictions, but usually with some differentiation of wage rates for peri-urban areas and rural towns.<sup>60</sup> The employers' organisations and trade unions that participated on the industrial councils were for the most part organised along regional lines. This entrenched the regional character of the industry and also saw wages and working conditions differing between the regions.(Ibid 99) Most rural areas outside the jurisdiction of the industrial councils were from 1942 and 1944 covered by wage determinations that set lower wages rates and inferior conditions to those in the industrial council agreements. After a period of trade union militancy in the 1930s and 1940s labour relations became dominated by relatively large and well-organised, but very moderate, unions. Collective bargaining in the regional industrial councils became little more than a formality, a ritual entered into once a year that left wage levels lagging well behind the rest of the manufacturing sector.(Ibid 99, 371-374)

The retail sector in South Africa followed a very similar pattern to the sectors in Britain and the US. Until the latter half of the 20<sup>th</sup> century the sector was dominated by many, relatively small independent firms. Department stores represented an innovation that saw the size of retail units increase considerably and they were followed by chain stores and supermarkets. Up until this time there were a number of very large clothing manufacturers in the country and they tended to wield considerable power vis-à-vis the local retailers, particularly the manufacturers that produced branded lines of clothing and were exporting garments. The mechanism of resale price maintenance was an example of this power, although the diversity of clothing produced by the local industry tended make it redundant for most lines of clothing.(Ibid 478-481) The trend in the second half of the 20<sup>th</sup> century, however, was one of increasing concentration in the retail sector, which indicated a shift in power between manufacturers and retailers.

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<sup>60</sup> Agreements could be extended by the Minister of Labour to cover all employers and employees within the jurisdiction of a bargaining council if the employers' organisations and trade unions that were parties to the agreements were held to be 'sufficiently representative' and the Minister deemed it expedient to extend the agreement.

From the early 1990s the clothing industry went into an on-going crisis. There were a number of reasons. First, there was an increase in the imports of cheap clothing from the beginning of the decade, including second-hand clothing. The trend accelerated with the lowering of tariffs following the conclusion of the Uruguay Round of the General Agreement on Trade and Tariffs (GATT) in 1994. Since then local production has declined while imports and sales of clothing have increased. Second, government interventions to assist the industry to restructure have been slow and ineffective. Third, worker organisation underwent a sea-change with the emergence of the South African Clothing and Textile Workers' Union (SACTWU), a national union that is well organised across the industry.<sup>61</sup> Its aggressive style pushed up wage levels and to a large extent closed off the option of a low-wage competitive strategy for the industry. Fourth, clothing manufacturers were slow to gear themselves up to face the new competitive environment they found themselves in. The years of protection had left the industry with outdated technology, low skill levels, poor management systems, inefficient production processes, an absence of innovation, inadequate marketing capability and limited specialisation. (Swart Commission: 1994: i) Furthermore, many manufacturers did not seem to know where to start to make up the lost ground.

Adding to the problems facing the industry was its dependence on the local textile sector. Like the clothing industry, the textile sector had been the beneficiary of tariff protection for many years and it displayed similar inefficiencies to the clothing industry. It was notorious for long lead times, low quality levels and a poor delivery record, did not produce sufficient fabric, and also produced a limited range of fabrics. (Barnes, 2005: 5; Staritz, 2010: 90)

Another key factor impacting on the clothing sector is the country's powerful retail sector. The income inequality that characterised apartheid ensured that there was a domestic market for high-quality, relatively expensive clothing as well as cheaper clothing. The retail sector that emerged to cater to this diverse market is amongst the most concentrated in the world, with five retailers accounting for over 70% of formal clothing sales in the country. (Vlok, 2006: 228; Morris and Reed, 2008: 10) These

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<sup>61</sup> It organises workers in the clothing, textile, footwear and leather sectors.

retailers exercise immense power in the domestic market, especially since local manufacturers have had very little success in exporting to markets outside the country. Retailers were therefore able to exert strong downward pressure on clothing manufacturers' prices, but some also developed close relationships with large manufacturers. The latter retailers set high quality standards for their suppliers to meet but at the same time benefitted them with large, relatively stable orders. The power of the retail sector, especially the five major firms, meant that its sourcing decisions would largely determine whether the local clothing industry survived, and if so, in what shape and form.

The sections that follow elaborate on and provide data on the trends briefly sketched out above, but includes the industry in Lesotho that developed from the early 1990s.

## **6.2 Trade and industrial policy vis-à-vis the clothing industry**

Many of the developments in the global clothing industry over the last four to five decades were driven by the special dispensation carved out in the multi-lateral trade regime, in particular the MFA and the Agreement on Textiles and Clothing. South Africa was however never a signatory of the MFA. The decision not to participate probably had something to do with the country's anomalous decision to join GATT in 1948 as a 'developed country'. This means that the local clothing industry was never subject to quotas in terms of the MFA or the ATC phase-out, but neither did it receive the benefits of market access provided by the MFA quotas. Given that resource-based industrialisation had created a fairly large national market, the main effect of the trade regime was to strengthen the domestic orientation in the industry. The industry therefore expanded as the local market grew and few clothing manufacturers were persuaded there was any need to export. High levels of import protection and economic sanctions against the country in the last decade or so of apartheid were further reasons to focus on the domestic market.<sup>62</sup>

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<sup>62</sup> Trade and investment sanctions were introduced first by Sweden in 1979, followed in 1985-6 by the remaining Nordic countries, six members of the Commonwealth, the members of the European Community and the USA. (Edwards *et al*, 2009: 155)

South Africa had started an import substitution industrialisation (ISI) strategy in the 1920s. For many years protection of local industry was primarily through quantitative restrictions, i.e. import quotas. It was only in the early 1970s, with the appointment of the Reynders Commission of Inquiry, that this strategy began to be re-evaluated. The perception was that the ISI strategy was no longer contributing sufficiently to economic growth and the country needed to diversify its exports away from its dependence on gold for foreign exchange. The Commission did not go as far as to advocate an export-oriented industrialisation strategy but there was a change in the nature of protection over the next few years: quantitative restrictions were reduced and there was a shift to tariff protections.(Edwards, Cassim and Van Seventer, 2009: 153)

Over the next decade quantitative restrictions continued to be replaced by tariffs, with the balance of payments crises during this period also leading to the introduction of intermittent import surcharges.<sup>63</sup> The recession of the early 1970s saw increasing numbers of applications from firms for *ad valorem* and formula duties to replace the quantitative restrictions that were being removed. The result was an increasingly complex tariff structure and a rising overall rate of protection. By the end of the 1980s, however, the promotion of exports gathered momentum. Structural adjustments programmes were introduced for the automobile sector and the textile and clothing sectors; these programmes enabled exporters to import raw material and intermediary goods duty-free. The sectoral programmes were followed in 1990 by the General Export Incentive Scheme (GEIS), which introduced a system of direct subsidies that applied to the export of all manufactured goods. Quantitative restrictions continued to be removed and import surcharges were lowered in 1991-2 and 1994, before being abolished in 1995. Although nominal tariff protection was lowered somewhat, the changes did little to reduce the complexity of the system or have much impact on the anti-export bias.(Ibid 154-156)

A watershed was reached in 1994. The apartheid government made a number of far-reaching commitments as part of the Uruguay Round of GATT, including that it

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<sup>63</sup> Import surcharges were first introduced in 1977 to 1979 (following the 1976 Soweto uprising), then in 1983, again in 1985 (following PW Botha's Rubicon speech), and in 1988.(Edwards *et al*, 2009: 153-155)

would rationalise the more than 12 000 tariff lines, reduce the number of tariff categories to six at rates ranging from 0% to 30%, and bind 98% of all tariff lines. The commitment signalled a change from the combination of import controls and export promotion, to tariff liberalisation and an export-oriented growth path. At the same time a decision was taken to phase out GEIS, which was in contravention of WTO rules.<sup>64</sup>(Ibid)

The commitments South Africa made to GATT in 1994 were part of a major change in South Africa that impacted on industrial policy. The first democratic elections in the country's history saw a new government installed, led by the African National Congress. The country engaged with the liberalising global trade regime at the same time and also saw its economy open up further when sanctions were removed. A huge challenge faced the new government in terms of promoting economic growth while also redistributing wealth. To a large extent its hands were tied with regard to trade policy, so new industrial policy was urgently needed to facilitate the proposed export-oriented growth path. Furthermore, industrial policy would need to break with the orientation of the past, which focused on the promotion of large-scale, capital-intensive industries, including many strategic industries. Industry, especially labour-intensive manufacturing industry, needed assistance to become internationally competitive if it was to grow.

In the years leading up to the first democratic elections, the policy arena had opened up significantly as the weakened apartheid state accommodated other stakeholders. The progressive trade unions, in particular, forced their way into policy formulation processes by getting on to a number of national forums, e.g. the National Manpower Commission and the National Economic Forum. Individual unions also made inroads into policy formulation at the industry level. One of these was SACTWU. The result of SACTWU's efforts was the establishment of the Swart Commission in 1992.<sup>65</sup> The Commission was a multi-partite body that had a brief to plan a way forward for the clothing and textile industries. It was one example of a number of meso-corporatist arrangements that emerged in this period.

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<sup>64</sup> GEIS ended in 1997.

<sup>65</sup> The Commission was also known as the Panel and the Task Group.

The aim of SACTWU in pushing for the Commission was to develop an industrial policy that would promote the growth of both the textile and clothing sectors; it had a large number of members in both sectors. For years what amounted to industrial policy in the textile and clothing sectors had boiled down to tit-for-tat lobbying for tariff protection. The union wanted to break the culture of lobbying within the value chain and broker an agreement between itself, the textile and clothing manufacturers, and the retailers, that would provide a way forward. It goes without saying that the policy that was formulated had to go beyond tariffs to deal with investment, technology, productivity, employment and labour relations.(Hirschsohn et al, 2000: 117-118)

There was a great deal of urgency at the time. The textile and clothing sectors were entering into the crisis and faced huge challenges if they were to survive. In the clothing sector there was, according to the Swart Commission, a need for “(t)echnology upgrading, skills development, improved process management systems, international specialization and dynamic marketing efforts” (1994: i). The years of protection meant that “(c)ompetition was restricted and levels of efficiency were almost certainly low by international standards”, while “aggregate levels of specialisation within the sector was extremely low.”(Gibbon, 2002: 15). The industry, furthermore, lacked “capital, technology and innovation”, had “high labour and management costs in relation to output”, and its domestic-market focus meant it “was never able to achieve economies of scale”.(Barnes, 2005: 7)

Faced with this catalogue of problems, the Swart Commission identified two main objectives for the industry: (1) to become internationally competitive and export oriented; and (2) to achieve labour-absorbing growth. The clothing sector would play the major role in creating jobs, which it would do by focusing on exports to high-priced market segments and niches. Allied to this would be the development of small clothing firms and support for “cottage industries within the informal sector” with a view to progressively integrating them into the formal sector.(Swart Commission, 1994: iii, 7, 9)

The Commission’s recommendations to achieve its objectives included two scales for tariff reductions (discussed below) as well as the introduction of supply-side measures

and subsidies to assist the textile and clothing sectors to become internationally competitive. In fact, the tariff reduction proposed by SACTWU and the clothing and textile sectors was conditional on the introduction of the supply-side measures.(Hirschsohn et al, 2000: 118-119) The supply-side measures the Commission recommended were a mixture of concrete programmes and rather vague declarations of intent. For example, there were statements to the effect that input costs in terms of cotton, wool, and synthetic and man-made fibres should be scaled down to the level of world prices, that a technology upgrading programme was “absolutely necessary”, and that participative management should become the norm in the clothing and textile industries because it had been critical to “worldwide productivity improvement”. It was also proposed that the “manufacturing/retail productivity interface” be improved, which apparently meant that there should be better coordination and efficiency within the links in the value chain. On the other hand, the training and skills development needs were spelled out in more detail, with the proposal that by 1995 two per cent of payroll should be spent on training, rising to 4% in 1997.(Swart Commission, 1994: v-vii) There were also demand-side measures that would have resource and/or cost implications, such as proposals regarding the upgrading of customs control, the implementation of anti-dumping and countervailing measures, and the introduction of export incentives and programmes.(Ibid)

The new ANC government, however, rejected almost all the aspects of the plan proposed by the Swart Commission, including the above supply-side measures, which were rejected as too expensive. Instead, the government focused almost entirely on tariff reduction, which was exactly what the Swart Commission had aimed to avoid. As noted above, the apartheid government had made a set of commitments to the Uruguay Round of GATT. These included the following phase-down schedule for clothing (HS 61 and 62):<sup>66</sup>

**Table 6.1**

Year	1	2	3	4	5	6	7	8	9	10	11	12	
Tariff rate (%)	100	100	100	100	100	94	87	80	73	66	59	52	45

<sup>66</sup> HS 61 comprises knitted clothing and HS 62 woven clothing.

The Swart Commission had also dealt with the issue of tariffs, but it had been unable to reach consensus on a phase-down schedule, so produced two proposals.<sup>67</sup> The Textile Federation, the National Clothing Federation and SACTWU, which made up the majority of the Commission, proposed a faster but more even phase-down, and a lower end-rate, than agreed to by the government: over 11 years in steps of 5% each year with an end-rate of 40% in 2005. But the retail sector and the small business group wanted an even faster phase-down and lower end-rate: over eight years, starting with 5% steps but increasing to 10%, to reach an end-rate of 30%. The newly-elected ANC government, however, opted for a phase-down somewhere between the two proposals: it committed the industry to a reduction of tariffs for clothing over eight years with an end-rate of 40% in 2002 (with specific tariffs being eliminated completely over the period). The only major concession to the sector was to the introduction of the Duty Credit Certificate (DCC) scheme.<sup>68</sup> The union vigorously disputed government's affordability but it had no effect. This temporarily ended multipartite policy formulation in the industry as firms and the union focused their attention on addressing the challenges posed by the new trade regime. (Hirschsohn et al, 2000: 118-120; Gibbon, 2002: 16)

The government's rejection of most of the Swart Commission's recommendations effectively ended the meso-corporatist initiative in the clothing and textile sectors. The industry would have to rely thereafter on state-formulated policies. The most important of the new policies that were produced was the Growth, Employment and Redistribution (GEAR) strategy. The latter was essentially a self-imposed, neo-liberal structural adjustment programme that was in accord with the commitments that the government had made to reduce tariffs and liberalise trade. The industrial policy that

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<sup>67</sup> It was the only issue on which consensus could not be reached by the Commission.

<sup>68</sup> The DCC scheme sought to encourage exports by allowing firms to claim a rebate on duty on imports in proportion to the amount exported. The scheme initially backfired on the industry because it allowed clothing manufacturers to sell any rebates they earned, without restricting to whom the rebates could be sold. Retailers bought rebates at a discounted rate and used them to import garments, thereby reducing demand for locally-produced clothing. The DCC scheme was replaced in 2005 by the Interim Development Programme (IDP), which lasted until early 2007. It was identical to the DCC scheme except that in the second year of its operation rebates could be sold only to other manufacturers. (Barnes, 2005: 9-10)

followed was strongly influenced by GEAR, with its objective of “employment creating international competitiveness”.(Black and Roberts, 2009: 211-212)

However, in the first decade after 1994 the various industrial policies and measures to improve competitiveness and export performance had little to offer the clothing industry (or any other labour-intensive sector). Instead, the focus was on knowledge-intensive activities, advanced technology, and infrastructure, and the policies had general application rather than being sector-specific. The policies did not exclude the clothing industry but neither were any aimed at the industry. Only one policy priority, small business promotion, resonated with the clothing industry, given the large number of small firms it had, but unfortunately the implementation of these particular policies and programmes was fraught with problems and inefficiency. Very few small clothing firms appear to have benefitted.(Ibid 214-215)

In the absence of suitable industrial policy, the phase-down of tariffs drove restructuring in the clothing sector. The most visible impact of the new tariff regime was a rapid increase in clothing imports, especially imports from China. Clothing imports from all countries grew steadily from 1995 and then accelerated sharply in 2003, while China increased exports of clothing to South Africa from \$95.4 million in 2000 to \$797.6 million in 2006 (in the process moving from 49.6% in value of all clothing imports to 78.5%).(Morris and Reed, 2008: 12-13, 16-17; Vlok, 2006: 231; Staritz, 2010: 11) Exports by local manufacturers did not off-set the share of the domestic market that they had lost to imports: after a brief upsurge in the early 2000s when the value of the Rand dropped steeply, the quantity and value of exports has declined and is now almost negligible.

Unfortunately, the decline in the value of the Rand brought out the worst in short-term opportunism on the part of local manufacturers. When the exchange rate significantly cheapened exports in 2000, many clothing manufacturers rushed to sell their garments in foreign markets, in the process reneging on orders placed by local retailers. The retailers were forced to look elsewhere for product at about the same time that tariffs had reached their end-rate. The obvious place for retailers to look was Asia, in particular China, where retailers found much cheaper clothing, more variety, and often better quality. When the Rand strengthened in 2003, the local manufacturers did

an about-turn, dropping export orders and returning to the domestic market. But they found that retailers were now importing large quantities of clothing, which the stronger currency made even cheaper. (Morris and Reed, 2008: 18)

Faced with the *fait accompli* of a liberalised trade regime, an unsympathetic retail sector, and a rapidly declining share of the domestic market, the clothing industry has two alternatives for survival. The first is to get favourable terms for the industry in trade agreements or in unilateral preference arrangements such as the US's African Growth and Opportunity Act (AGOA). The second measure is to get temporary respite from imports by applying for WTO-approved temporary safeguard measures.

The first of the above measures has been actively pursued by the government, but the clothing industry has secured little benefit. The country is a member of the South African Customs Union (SACU), together with Botswana, Lesotho, Namibia and Swaziland (BLNS). There are no tariffs for intra-SACU trade, but the markets in the BLNS countries are also insignificant compared to the South African market. Furthermore, labour costs in the BLNS countries are significantly lower than in the South African clothing industry. This has encouraged local manufacturers to relocate some or all their operations to SACU member countries, in particular Lesotho and Swaziland, and 'export' their products back to South Africa. (Ibid 157-158) The Southern African Development Community (SADC) Free Trade Protocol, which South Africa signed in 1996, has had similar negative consequences for the local clothing industry.<sup>69</sup> The Free Trade Protocol introduced an asymmetrical phase-down of tariffs that is biased against the SACU countries, including South Africa. This has restricted South Africa's access to other SACU countries' markets while opening up its own much more quickly.<sup>70</sup> Mauritius, which has a fully-integrated yarn, textile and clothing industry and is only six days by sea from the port of Durban, has used the Free Trade Protocol to rapidly increase clothing exports to South Africa. Much of this

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<sup>69</sup> South Africa signed the SADC Free Trade Protocol in 1996 but it was implemented only in 2000. It provides the legal basis and institutions for the creation of a SADC Free Trade Area (FTA), which followed the initial phase-down of tariffs in terms of the Protocol in 2008.

<sup>70</sup> By 2006 SACU had phased out almost all tariffs on imports from other SADC countries, while the latter started phasing down tariffs only in 2007.

clothing is targeting higher segments of the market to those in which Chinese imports have had such an impact.<sup>71</sup> (Edwards *et al*, 2009: 155-158)

As regards trade with the rest of the world, South Africa ratified a Trade, Development and Cooperation Agreement (TDCA) with the European Union in 1999.<sup>72</sup> Certain aspects of the TDCA were implemented from the EU's side in 2000, but the Agreement came fully into effect only in May 2004. The agreement sees a bias in favour of South Africa, which bears out the DTI's claim that the main objective of its strategy to sign bilateral agreements is "to achieve substantial market access for manufactured and agricultural goods and leverage export-oriented investment."<sup>73</sup> The TDCA was followed in December 2004 by a Preferential Trade Agreement between SACU and MERCOSUR (formed by Argentina, Brazil, Uruguay and Paraguay), and in 2006 a Preferential Trade Agreement was signed by SACU and the European Free Trade Association states.<sup>74</sup> There was also the prospect of a free trade agreement between SACU and the US, but the negotiations, which began in 2003, collapsed in 2006 due to differences over the inclusion of provisions regarding services, intellectual property, procurement and investment. The South African government subsequently turned its attention to developing trade agreements with China and India. Importantly, however, none of these agreements have led the local clothing industry to significantly increasing exports. (Ibid 155-159; Naumann, 2002: 27-28)

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<sup>71</sup> The intention was that the SADC Free Trade Area would become a customs union by 2010, then a common market in 2015, and finally a monetary union in 2016. The first of these milestones has not been met but negotiations are continuing, as are discussions in respect of a far more ambitious plan to merge COMESA, the EAC and SADC into a giant free trade area that would comprise much of sub-Saharan Africa.

<sup>72</sup> South Africa is also a member of the African, Caribbean and Pacific (ACP) Group of States which is party to the Cotonou Agreement (the successor to the Lome Conventions), although South Africa has qualified membership of the Cotonou Agreement. However, the TDCA between SA and the EU provides the substance of the trade relationship with the EU, effectively making the general trade principles espoused in the Cotonou Agreement irrelevant for South Africa. The latest revision of the Cotonou Agreement in 2010 committed all the parties to signing new Economic Partnership Agreements (EPAs). This will probably see the different trading blocs in sub-Saharan Africa, including SADC, signing separate EPAs with the EU.

<sup>73</sup> Quoted from a 1997 DTI document in Edwards *et al*, 2011: 159. In terms of the TDCA the EU reduced tariffs with respect to 95% of all imports over three years, compared to a 12-year period for South Africa in respect of only 86% of exports. Furthermore, the EU will reduce tariffs to zero while South African tariffs will end at an average of 4.9%, with higher levels allowed for sensitive sectors such as automobiles, clothing, footwear and processed food.

<sup>74</sup> Switzerland, Norway, Iceland and Lichtenstein.

Besides the negotiated bilateral and multi-lateral agreements, South Africa and Lesotho qualify for the benefits of AGOA, which customises the Generalised Scheme of Tariff Preferences (GSP) for trade from sub-Saharan Africa to the US.<sup>75</sup> AGOA was introduced by the US in 2000 to “authorise a new trade and investment policy for sub-Saharan Africa, expand trade benefits to the countries in the Caribbean Basin, renew the generalised system of preferences, and re-authorise the trade adjustment assistance programmes”.(Naumann, 2002: 23) It expanded the GSP programme to 1 800 additional product lines and provides duty-free access to the US market for 41 Sub-Saharan countries, including South Africa.<sup>76</sup> Lesotho also qualifies for the EU’s Everything But Arms (EBA) tariff preference scheme. It was introduced in 2001 and gives duty-free and quota-free access to the EU market for 48 ‘least developed countries’ for all products (except armaments).<sup>77</sup> Lesotho is the only SACU country that is part of EBA, but its clothing industry does not appear taking advantage of the benefits it offers.

As mentioned above, the South African clothing industry has gained very little from the various agreements. One of the main reasons is adverse rule of origin in the light of the virtual collapse of the local textile industry. The SADC Free Trade Protocol effectively requires double transformation for exports between the SADC member states.<sup>78</sup> The absence of a substantial local textile industry has undermined South African clothing manufacturers’ ability to export into the SADC region. At the same time, it has benefitted Mauritius, which has a fully integrated spinning, fabric and garment industry. It was mentioned above that clothing imports from Mauritius are increasing rapidly. The TDCA also requires double transformation, so despite the fact that Europe was traditionally the main export market for South African clothing and the TDCA is biased in favour of South Africa, local manufacturers have gained very

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<sup>75</sup> The Generalised System of Tariff Preferences (usually referred to by the acronym ‘GSP’) was adopted by GATT in 1971 in the form of a waiver to the anti-discrimination provision in Article 1. It entitles developed countries to establish individualized Generalised Schemes of Tariff Preferences to unilaterally benefit ‘least developed countries’.

<sup>76</sup> AGOA was initially to be effective for the period October 2000 to September 2008, but in 2004 the AGOA Acceleration Act (termed AGOA III) extended the benefits to 2015. In 2006 the Africa Investment Incentive Act (AGOA IV) amended the textile and clothing sections of AGOA.(Morris and Barnes, 2008: 37)

<sup>77</sup> Special rules applied to bananas, sugar and rice for a limited period.

<sup>78</sup> There is a special dispensation giving Malawi, Mozambique, Tanzania and Zambia easier access to the SACU countries for exports of textiles and clothing.

little benefit from the agreement (and it increasingly exposes the local market to competition).

AGOA's rules of origin have been even more restrictive with regard to South African clothing exports. These rules require triple transformation for clothing to qualify for duty-free export to the US, i.e. the clothing must be made from yarn and fabric made in the US or in another AGOA beneficiary country.<sup>79</sup> There is, however, a special rule that applies to less developed countries (LDCs).<sup>80</sup> Until September 2015 these countries have duty-free access for exports of clothing to the US with no restriction on where the yarn and fabric is sourced. South Africa does not qualify as a LDC and is therefore subject to the triple transformation restriction. This has removed much of the potential benefit of AGOA for local clothing manufacturers. (Barnes, 2005: 9; Morris and Barnes, 2008: 37) It was only when the Rand devalued precipitously in 2001 that clothing exports made some headway in the US market. Lesotho, on the other hand, is classified as a LDC, which has meant that the mostly Taiwanese clothing manufacturers that originally located to the country to access its MFA quota, have stayed on to reap the benefits of AGOA.

The second trade measure that can help the local clothing industry is to apply for WTO-approved temporary safeguard measures. SACTWU triggered this process in 2006, which resulted in South Africa implementing quotas on imports of 31 textile and clothing lines from China from the beginning of 2007. The 31 lines accounted for about 70% (in value terms) of clothing and textile imports from China. The implementation of the quotas followed negotiations with China and was for a period of two years, with the possibility of an extension subject to further negotiations. The application by SACTWU was badly timed. It effectively sank the Customised Sector Programme, a 'rescue plan' that the government had been brokering, and further damaged the relationship between the major retailers and the clothing industry (see discussion below).

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<sup>79</sup> The dispensation for LDCs applied until September 2007, but was first extended to 2012, and then again to 2015.

<sup>80</sup> Defined originally as countries with a GNP per capita of less than \$1 500 in 1998. There are 19 LDCs. (Barnes, 2005: 9)

There were other negative consequences. First, the quotas stimulated a spike in orders from China shortly before they were implemented (i.e. in the fourth quarter of 2006). Second, it appears that the quotas were not very effective because Chinese manufacturers were able to channel exports to South Africa through other countries.<sup>81</sup> Third, the quotas forced South African retailers to explore a wider range of countries from which to source, increasing the importation of clothing from Vietnam, Bangladesh, Malaysia and the like. When the quotas ended most retailers had a more diverse portfolio of suppliers from which to import. Fourth, the quotas provided a temporary respite only; when the South African government approached China for an extension of the quotas their request was refused. Thereafter imports from China rose rapidly and were soon approaching their pre-quota levels, with imports dipping only slightly from other Asian countries.<sup>82</sup> Fifth, the quotas appear to have been of limited assistance to local manufacturers. In 2007 the domestic output of clothing increased by 2.68% but in 2008 decreased by 1.47% (in real terms), and exports of the 31 items covered by the quotas declined between 2007 and 2008. Most importantly, the quotas seemed to do little to slow the haemorrhaging of jobs from the local industry.(Van Eeden, 2009: 1-4)

While the clothing industry was in steep decline, industrial policy very slowly began to direct attention at it. In 2004 the Department of Trade and Industry (DTI) launched a process to craft a Customised Sector Programme (CSP). It was a rescue plan rather than an industrial policy, in which 26 key action programmes (KAPs) were identified that needed to be implemented to stabilise the sector in the short-term. In brief, the CSP sought to recapture the domestic market (mainly by cracking down on illegal imports and under-invoicing as well as improving the monitoring of the DCC scheme); promote exports (by replacing the DCC scheme); and stimulate investment and capital upgrading (by, for example, preferential lending rates). Firm-level competitiveness would be enhanced by giving support to regional cluster initiatives as well as benchmarking exercises that would assist local manufacturers to reach global

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<sup>81</sup> During the period in which the quotas were in place imports from Malaysia rose dramatically and prices dropped sharply, but when the quotas ended imports from Malaysia fell to 'normal' levels. The implication is that Malaysia was being used as a conduit for Chinese clothing to evade the quotas.(Information supplied by AMSA)

<sup>82</sup> Imports of clothing from China rose to R3.2 billion in value in the first half of 2010, i.e. just after the ending of the quotas, which constituted 75.4% of all imports by value in the period.(Information supplied by AMSA)

standards. The CSP also proposed that more support should be given to training institutions and that more use should be made of tertiary education institutions.<sup>83</sup> More effort would also be put into better coordination of domestic value chains by setting up a Textile and Clothing Development Council and forming value chain working groups that would target niche markets. Finally, there was a hint in the CSP of a push for increased labour market flexibility, but it did not spell out what this might entail.<sup>84</sup> (Barnes, 2005: 13-14)

The CSP was negotiated in a tortuous process over two years by government (DTI), SACTWU and the Business Alliance (which comprised textile and clothing manufacturers as well as retailers).<sup>85</sup> But, shortly before the CSP was about to be signed in 2006, SACTWU made an application to the DTI for the imposition of quotas on Chinese clothing imports. The quota issue sharply divided business from the DTI and SACTWU, and seriously damaged the DTI's credibility with business, the perception being that the DTI had been 'captured' by SACTWU. As a result, most retailers pulled out of the Business Alliance, which side-lined the CSP. (Financial Mail, 2009: 33-35)

However, the shelving of the CSP was followed quickly by the announcement of the National Industrial Policy Framework (NIPF) and the Industrial Policy Action Plan (IPAP 1). The latter was followed in 2010 by the so-called IPAP 2. The NIPF was the latest stage of an evolving industrial policy that saw an increasing focus on specific sectors. IPAP1 identified the clothing sector, together with textiles, footwear and leather, as priority sectors that "cannot be left to wither away", and it took up (in broad terms) many of the measures proposed in the CSP. This concern translated into special support in order to "preserve capabilities and retain employment." IPAP1 distinguished its proposals from other government efforts that were aimed at "arresting its decline", because its objective was to turn the industry around in the

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<sup>83</sup> In particular, the Clothing, Textile, Footwear and Leather Sector Education and Training Authority and Centres of Excellence.

<sup>84</sup> One of the KAP's refers to the need to increase "the flexibility of the SA labour market so as to shorten amortisation periods". (Barnes, 2005: 13) It is probable that this refers to the introduction of shift work, which SACTWU had opposed for a number of years.

<sup>85</sup> The Business Alliance, which brought the retail sector together with the textile and clothing sectors, was an important achievement of the CSP process. Their common ground was a shared commitment to becoming competitive through value chain alignment. (Financial Mail, 2009: 33-35)

medium- to long-term. This, it states, requires the industry to move up the value chain. IPAP1 identified the adaptation of the existing support measures for special attention, particularly the DCC scheme, which it proposed to redesign to assist manufacturers to recapture domestic market share. It also recommended a review of input costs into the sector that would entail an investigation of the downward adjustment of import duties on selected textiles and fibre, full implementation of country of origin labelling regulations, and support for productivity upgrading and skills development.(DTI, 2007: 22-23)

The extension (or second phase) of this policy in IPAP2 sees the scaling up and broadening of support for the clothing industry.(DTI, 2010: 35) The following programmes of IPAP 2 are especially important:

- A clothing and textiles production incentive and competitiveness programme will be implemented by the Industrial Development Corporation (IDC) with the support of the DTI. Their objective is to “enable the sector to compete sustainably and effectively against international competitors in both the domestic and the export markets.”
- An illegal import programme will clamp down on garments brought into the country under the wrong tariff or using documents that under-invoice the consignment, and will improve the policing of country of origin labelling. It will be implemented by a number of government agencies acting in partnership and aims to eliminate illegal imports over three years.
- A programme that will seek to address the poor supply of graduates to the sector, especially technicians, technologists, engineers, managers and scientists. The programme will receive funding from National Skills Fund and will be implemented by the Textiles and Clothing Centre of Excellence in Port Elizabeth.
- An innovation and technology programme will see the establishment of a South African garment-sizing database utilising three-dimensional body scanning technology and computer-aided design technology. Design technologies appropriate for the fashion industry will also be implemented.

- The broad-based black economic empowerment obligations of the retail sector will be leveraged in order to “promote domestic manufacturing and sustainable black ownership”. Succession plans that favour the promotion of black management will also be encouraged.(DTI, 2010: 65-68)

In addition, some of the programmes directed primarily at the textile sector will have a positive impact on the clothing sector. For example, it is proposed to do an audit of the textile industry’s capabilities with a view to encouraging firms to specialise in certain products, especially fabrics that the clothing and retail sectors are in need of and are currently importing. The innovation and technology programme mentioned above will include research on the processing of new natural fibres such as flax, wild silk and cashmere, which could assist clothing firms to develop niche markets for garments made of such fabrics.(DTI, 2010: 66-67) It is significant that the various assistance measures will be available only to firms that are in compliance with the bargaining council agreements, other labour legislation and tax laws.(Financial Mail, 2009: 33)

An additional aspect of the attention given to the clothing sector was the raising of the clothing tariff rate from 40% to the bound of 45%.<sup>86</sup>

The various trade and industrial policies and programmes appear to have slowed but not stopped the decline of the clothing industry. What is left is undergoing major restructuring, both in terms of its geography and the architecture of the value chain, mainly under the pressure exerted by the major South African retailers. The implications for employment and labour regulation are significant.

#### **6.4 The changing geography of the regional clothing industry**

It was noted above that the South African clothing industry had developed in and around the major industrial centres. The most concerted attempt to restructure the industry geographically was made by the apartheid government from the 1960s.

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<sup>86</sup> The bound rate is the maximum tariff rate for South Africa in terms of WTO rules. The 45% rate applies to 30 categories of clothing.

While not much remains of the so-called ‘border industries’, the scheme left a legacy that has been reconstructed in recent years.

The ‘border industries’ scheme started in the 1960s with the aim to stem the flow of African workers to metropolitan areas by getting firms to re-locate or set up new operations along the boundaries of the ‘homelands’. African workers would therefore continue to reside in the ‘homelands’ because they could commute on a daily basis to their workplaces in South Africa. The scheme had little success at first, but in the late 1960s the incentives for relocation were improved and disincentives were introduced for firms in the metropolitan areas. The latter sought to increase the price of industrial land, limit the construction of new factories, and restrict the employment of African workers. While there were perverse consequences – manufacturers in metropolitan areas simply shelved expansion plans and substituted capital for labour – some firms in labour intensive, low-cost sectors, including textiles and clothing, did take the bait.(Pickles and Woods, 1989: 516)

In 1982, due to the continuing impoverishment of the ‘homelands’ and rising unemployment, a significantly revamped decentralisation programme was introduced. While the basic format and aims remained much the same as the earlier scheme, the need to create jobs in or close to the ‘homelands’ had become much more urgent. The new programme saw an improved package of incentives<sup>87</sup> and a more systematic mapping of the sites for investment/relocation. Two types of site were identified: ‘deconcentration points’ were situated relatively close to metropolitan areas and ‘industrial development points’ were in more remote areas in and around the ‘homelands’. Incentives varied by region, but were highest in industrial development points within the ‘homelands’ and lowest in the deconcentration points.(Pickles and Woods, 1989: 517)

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<sup>87</sup> The decentralization incentives included a tax-free subsidy of up to 95% of the total wage bill but limited to the amount of up to R110 per worker per month for a period of seven years, subsidies of up to 70% of the interest on the cost of land and buildings, plant and equipment, and other assets for a period of 10 years, a relocation allowance of up to R500 000, a rebate of up to 60% on the transport costs of finished goods, a price preference of up to 10% on government tenders, and an allowance for training workers. The incentives were, according to one Taiwanese investor, ‘the best incentives in the world’.(Pickles and Woods, 1989: 517)

The new decentralisation programme was relatively successful in attracting investment, particularly from Taiwanese-owned firms.<sup>88</sup> The number of Taiwanese-owned firms located in the 'homelands' rose from 35 in late 1985, of which 23 were in the textiles, clothing and footwear sector, to 120 by March 1988. The incentives were the major attraction, but the 'homelands' had other more dubious benefits for manufacturers. 'Homeland' governments were opposed to trade unions and labour protection was weak, while wages ranged from a third to a half of the wages in metropolitan areas in South Africa; for example, unskilled wages for men averaged R107 per month in the 'homelands' compared to R285 in metropolitan areas, while the difference for unskilled female workers was R94 as against R279 per month. When the wage subsidy was included labour costs fell to insignificant levels.(Pickles and Woods: 1989: 518-519) Another attraction was that South Africa, including the 'homelands', was not part of the MFA and exports to the US were therefore not constrained by quotas. By mid-1986 as much as 85% of textile exports from South Africa were coming from Taiwanese firms.<sup>89</sup>(Pickles and Woods, 1988: 52-53) The rapid rise in exports led the US to restrict the annual increase to 4% (exports had risen by about 30% in 1985). By the end of 1986 exports to the US by Taiwanese-owned clothing firms located in the TBVC states had been reduced to a trickle.(Pickles and Woods, 1989: 522)

The Taiwanese-owned firms continued to export to the European Community and also began to supply the Canadian market, but some turned to the South African domestic market. The latter trend put downward pressure on prices and impacted on clothing manufacturers in the metropolitan areas, who did not have access to the decentralisation incentives.<sup>90</sup> This was, according to established manufacturers in South Africa, "unfair competition". The fact that these competitors were being subsidised by the South African taxpayer added insult to the injury of job loss; a total

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<sup>88</sup> Pickles and Woods (1989: 509-514) track the wooing of Asian investment by the South African government in the 1980s, and highlight the fact that almost all such investment was in the 'homelands', especially the so-called independent 'homelands' of Transkei, Bophuthatswana, Venda and Ciskei (TBVC). Investment by Taiwanese firms predominated, partly because the incentives offered by the South African government were mirrored by tax rebates that the Taiwanese government gave for "the export of manufacturing facilities and semi-finished products by 'economically inefficient' companies that move to 'less-developed countries'."(Pickles and Woods, 1989: 514-515)

<sup>89</sup> Pickles and Woods refer to 'textiles' but were probably using this term to refer to fabric and clothing; it is almost certain that exports of clothing predominated.

<sup>90</sup> Clothing manufacturers in the Ciskei had the added benefit of being able to import fabric duty-free.(Pickles and Wood, 1989: 523)

of 4 000 jobs were estimated to have been lost in the Western Cape alone.<sup>91</sup> This placed the government in a dilemma: removing or reducing the incentives would lessen the burden on revenue and placate established South African manufacturers, but would probably chase away foreign investors and cause a huge loss of jobs in rural areas with already high levels of unemployment. The alternative was for South African manufactures to improve their efficiency or relocate to deconcentration points or industrial decentralisation points.(Pickles and Woods, 1989: 523)

In the end the decision about the incentive scheme, which had become the Regional Industrial Development Programme (RIDP) in 1991, was overtaken by political events. The democratic elections in 1994 saw the ending of the 'grand apartheid' vision of 'homelands' and 'independent states', while the RIDP was cancelled in 1996.(Black and Roberts,2009: 215)

The industry remains concentrated mainly in four areas, of which the Western Cape and KwaZulu-Natal are the biggest, with a smaller grouping of manufacturers in Gauteng and a handful of firms in the Eastern Cape. The firms in the Western Cape are concentrated in and around Cape Town. There had been only one deconcentration point in the Western Cape, i.e. Atlantis, about 50 kilometres outside Cape Town, which attracted a number of textile and clothing firms in the 1980s.<sup>92</sup> Very few of these remained after the ending of the RIDP. Firms in KZN are much more spread out. There had been a number of industrial development points and deconcentration points in the province, which had seen both locally-owned manufacturers locating operations to rural towns as well as a number of Taiwanese manufacturers. Newcastle, a research site for this thesis, proved a popular destination for Taiwanese manufacturers, mainly because of the efforts of the town municipality. As noted above, these firms initially produced for export to the US, but most now supply the lower end of the domestic market.<sup>93</sup>

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<sup>91</sup> The recession being experienced at the time was a contributing factor.(Pickles and Wood, 1989: 523)

<sup>92</sup> In 1988 there were 25 clothing factories in Atlantis employing about 4 000 workers, but by the mid-1990s many had closed down or been re-absorbed into their parent companies in Cape Town. Atlantis was apparently not seen as particularly attractive in spite of the incentives, because it was within the jurisdiction of the industrial council in the region.(October, 1996: 20)

<sup>93</sup> By 2005 there were about 21 500 workers employed at the firms in the Non-metropolitan Areas of KZN.(Vlok, 2006: 230)

As indicated in the introductory section above, the major cities in the above areas (i.e. Cape Town, Durban, Johannesburg and Port Elizabeth), form part of what the bargaining council categorises as ‘Metropolitan Areas’ (or Metro Areas). These were areas historically covered by the regional industrial councils, and differences remain between them in terms of wage rates and some other conditions of employment. The areas outside the Metro Areas are classified as either ‘country areas’ (in the Western Cape) or ‘Non-metro Areas’ (further divided into two categories). These were areas that for the most part were historically covered by the wage determination and include what were the TBVC states and ‘homelands’. Wage rates are significantly lower than in the Metro Areas (see further discussion below).

### ***6.3.1 The regionalisation of the clothing industry: Lesotho***

A relatively recent development has been the emergence of a clothing industry in Lesotho. It started in the early 1990s as a result of the MFA; quota-hopping Taiwanese investors located factories in Maseru in order to evade the restrictions of quotas in their home countries and access the US market. Most factories are large but are CMT operations only, getting work from their head offices in Taiwan, which contract with US buyers (or their agents). The head office sends the design to the Lesotho factory and arranges the delivery of the fabric, thereby creating what are known as triangular manufacturing networks. (Staritz, 2010: 77) The introduction of AGOA in 2000 boosted the growth of the industry; Lesotho is classified as a ‘less developed country’ and can therefore source yarn and fabric produced anywhere in the world. AGOA provided an incentive for investors to remain in Lesotho in the face of the phase-out of the MFA/ATC. The DCC scheme (it was a SACU-wide scheme) also assisted exporters. A final factor that benefitted the industry was the precipitous decline in value of the local currency against the US dollar in the 2001 to 2002 period.<sup>94</sup> By 2004 the industry comprised about 45 factories and employed about 53 000 workers.<sup>95</sup>

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<sup>94</sup> The Lesotho currency, the Maloti, is pegged to the South African Rand.

<sup>95</sup> Employment rose from just under 10 000 in 1999 to over 53 000 just prior to end of MFA, but then dropped to about 40 000 in 2005. By 2009, following the ending of the DCC scheme, the number fell further to 38 000.

The industry then hit some snags. The local currency strengthened quite rapidly against the US dollar in 2003 and remained relatively strong, and the MFA/ATC ended in 2004, causing the industry to contract significantly. It had begun to stabilise when the DCC scheme ended in 2007. However, the impact of these blows was mitigated by the increasing number of South African-owned apparel firms that started locating to Lesotho from about 2005. Most of these factories are also part of triangular manufacturing networks in that the head offices and some manufacturing operations remain in South Africa, with the Lesotho factories operating as CMTs or M&Ts. The difference, however, is that the South African-owned firms export back into South Africa (which is duty-free because both countries are members of SACU). These firms are therefore not dependent at all on AGOA. The main attraction of Lesotho for these firms is the much lower labour cost than those just across the border in South Africa.<sup>96</sup>

All the major South African retailers are sourcing from Lesotho but in differing quantities. Some, like Foschini and Truworths, which are fashion-oriented, source very small quantities from Lesotho (and usually in small batches). Woolworths is probably sourcing the most of the local retailers from Lesotho, while PEP, Mr Price, Edcon and Pick n Pay also source from Lesotho, but generally through intermediaries (or what they term 'suppliers'), so it is difficult to know how much of their clothing is coming from Lesotho, i.e. it can fluctuate a lot according to where the suppliers place the orders.

The influx of South African investors saw the industry begin to slowly grow again. There are currently just over 35 clothing firms in Lesotho employing about 35 000 workers. The Taiwanese-owned firms are in a slight majority but employ considerably more workers because they tend to be much larger than the South African-owned firms. However, this is likely to change as more and more South African investors move into the country – at present there is a long waiting list of firms that are being held up by the fact that the Lesotho National Development Corporation (LNDC)

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<sup>96</sup> Many of these firms initially moved operations to the low-wage Non-metropolitan Areas in South Africa and later moved to Lesotho (or Swaziland). Once in Lesotho there is a tendency for these operations to expand and the South African-based factories to decline in size.

cannot put up factory ‘shells’ fast enough. The shifting of operations from SA to Lesotho means that the industry is sustainable beyond AGOA (which is due to end in September 2015). Taiwanese managers were quite frank during interviews about the implications of AGOA ending: they would immediately close down their Lesotho operations. Although many of these factories are huge, employing 2 000 to 3 000 workers, they are what Gibbon refers to as ‘caravans’, so they can be packed up and moved elsewhere relatively easily.

The clothing industry in Lesotho therefore comprises two quite distinct parts: the Taiwanese-owned factories, generally part of multi-national companies, that are all located in Maseru and export to major retailers in the US; and the South African-owned factories that are all based in Maputsoe (immediately across the border from Ficksburg in South Africa), and export to South Africa. All fabric (except some denim) is imported (mainly from China) and very few backward and forward linkages have developed with other firms in Lesotho. Furthermore, middle and senior managers are either Taiwanese, Chinese or South African, but all live in South Africa and commute to Maseru or Maputsoe each day. HR managers tend to be Lesotho citizens. Many supervisors are also foreign, although there are also quite a few Basotho supervisors. (Morris, Staritz and Barnes, 2011: 8-16; Pike and Godfrey, 2011)

Investment policy, rather than trade and industrial policy, is crucial to the growth of the industry. Lesotho is desperate to attract investment that will create jobs and its government has therefore introduced a range of incentives for foreign-owned manufacturers. The incentives are administered by the LNDC, which also assists new firms with registering as a company in the country, registering for tax, and in respect of compliance with labour standards.

#### **6.4 The changing structure of the local clothing industry**

South African-owned clothing firms can be divided into what are termed full-line factories and CMT operations. Sub-contracting to CMTs has been a feature of the clothing industry for many years. CMTs started emerging in the 1960s and were initially seen as a threat by the established manufacturers, who feared that retailers were promoting them and would source directly from them. There was also a racial

dimension because the full-line factories were White-owned and many of the emerging CMTs were owned by Indians (in Durban) or Coloureds (in Cape Town). Manufacturers opposed the CMTs by various means but then saw that the threat was more apparent than real. Furthermore, manufacturers came to realise that CMTs provided a useful service by allowing them to supplement their production capacity in peak seasons. Orders therefore flowed from retailers to manufacturers and garments went the other way, or orders flowed from retailer to manufacturer and then a part or all of the order went on to one or more CMTs, with garments going back to the manufacturer and then on to the retailer.

As noted in the introductory section, the South African retail sector has played a critical role in the restructuring of the clothing industry. The retail sector is immensely concentrated but this level of concentration is a relatively new phenomenon. In the 1960s and 1970s the retail sector was dominated by numerous independent stores. Interviews conducted by October report of manufacturers that supplied between 200 and 500 independent stores, with one large manufacturer having moved from supplying 23 stores to 440 stores in the early 1970s. But this began to change and by the mid-1990s the latter firm supplied only two major retailers. All the other large manufacturers interviewed by October had followed a similar trend, and interviews conducted for this thesis with manufacturers that had been in the industry for years confirmed the decimation of small retailers and the growing concentration in the sector. (October, 1996: 9, 17-18) The concentration has increased over time. Whereas in the mid-1990s the five biggest retailers sold 55% of the clothes in the country this had risen to more than 70% of formal clothing sales by 2005. (Vlok, 2006: 228; Morris and Reed, 2008: 10)

When the retail sector was fragmented the design function was almost exclusively the preserve of manufacturers, sample rooms were large, and batch sizes were small (as low as 400 units). But increasing concentration in the retail sector corresponded with the design function shifting from clothing manufacturers to the retailers or being shared between the two. The power of the retail sector manifested by some retailers acquiring their own production facilities: Pepkor and Bonwit were established by retailers. In other cases, a very close relationship developed between retailers and manufacturers such that there was no need for the retailer to own the factories.

Woolworths is the prime example; it was supplied by the group of manufacturers that produced exclusively for it, the so-called '100 per centers'. Such was the level of integration that October quotes one manufacturer as saying: "Woolworths owned factories without ever paying for them".(October, 1996: 10)

As manufacturers got locked into exclusive relationships with a single retailer the length of production runs increased and the size of factories grew. Although from one point of view these relationships turned these manufacturers into little more than "glorified sub-contractors", they benefited from the greater certainty regarding orders. This was particularly the case when there was an 'understanding' between the retailer and the manufacturer that the retailer would not broaden its supplier base.(October, 1996: 18)

In a subsequent phase the high cost of design and the design capabilities of manufacturers led to a partial transfer of the design function back to manufacturers. From this point the design function was seen as 'jointly owned'. Running through the shifting location of design was the emergence of design houses. It seems that design houses were established when CMTs first emerged but spread very slowly. In 1984 there were four registered design houses in the Western Cape and 52 CMTs, compared with eight registered design houses and 103 CMTs in 1994. However, it is likely that there were more design houses and many more CMTs operating at the time that had not registered with the industrial council. The design houses act as intermediaries between retailers and CMTs, thereby cutting out full-line manufacturers. Alongside this development was the emergence of a number of specialist cutting services. An alternative value chain was therefore developing that allowed retailers to give orders to a design house that in turn parcelled out the orders to a network of CMTs, in some cases using specialist cutting services to do the cutting.(October, 1996: 12-13)

The above changes are reflected in trends regarding the average size of firms. In the Western Cape average firm-size grew steadily to 160 employees in 1980, before declining sharply to 125 employees in 1990 and 87 employees in 1994. Average firm sizes in other regions were lower but followed much the same pattern. The reduction in size reflects an increase in the number of small firms, in particular CMTs, as well

as downsizing by many larger firms. Notwithstanding this decline there were still 20 firms with over 500 employees, four of which had more than 1 000 employees. These firms accounted for 37% of employment in the Western Cape region. At the other end of the spectrum, there were 146 firms in the Western Cape with less than five employees and 284 firms with less than 100 employees, which together made up 53% of firms in the region.(October, 1996: 8-10) This decline in the size of firms has continued. By 2007 the average firm size in the industry nationally had dropped to 72 employees.

It is important to note that the above data reflects the declining size of formal firms, i.e. firms registered with the bargaining council. If one were to include the burgeoning informal clothing sector the decline in firm-size would be sharper and the average size would be much lower.

Retailers have been the main drivers of the restructuring and have benefitted most from it. Increased imports have put downward pressure on clothing prices, which has in turn led to the expansion of the clothing market. Retailers now have many more sourcing options. On the one hand, there are thousands of suppliers to choose from in Asia and the Far East to provide large orders of relatively standard goods. On the other hand, there are supply chains developing that tap into manufacturing in neighbouring states such as Lesotho and Swaziland that can provide smaller orders of standard goods more quickly. There are also a number of options for retailers within the borders of the country. First, there are the manufacturers in the Metropolitan Areas that have improved their efficiency and can provide smaller orders on a quick-response basis. In many cases retailers have close relationships with these manufacturers, but an alternative route is to work through design houses that have close relationships with a network of CMTs. The latter is suited to greater diversity of styles and smaller orders, because they can be parcelled out to many CMTs. Another advantage is that the retailer is 'screened' by the design house from CMTs that might be unregistered or non-compliant. Second, there are the manufacturers located in rural towns in South Africa, that are required to pay a much lower wage rate than manufacturers in the main urban areas. In recent years many of these firms have become openly non-compliant with the bargaining council wage rates.

Not much is known about the unregistered (informal) part of the clothing industry. The question that arises is whether these firms are part of an entirely informal value chain, i.e. they supply to informal retailers (e.g. flea markets and the like), or whether they are linked in to the formal retail sector via intermediaries such as design houses. Research conducted in 2005 on homeworking operations in the clothing industry found that the vast bulk of clothing being produced by homeworking operations was destined for the formal retail sector. Design houses had become the crucial link between the two, providing a conduit through which retailers could source from networks of small unregistered firms. The homeworking operations would supply flea markets only in exceptional circumstances, such as the cancellation of an order by a design house. (Godfrey, Clarke, Theron and Greenburg: 2005)

Four options therefore exist for South African manufacturers. First, they can stay in the Metropolitan Areas, pay much higher wages, and compete with imports on the basis of efficiency and closeness to their customers. Second, they stay in the Metropolitan Areas but divest themselves of their manufacturing operations and become a design house, thereafter sub-contracting work out to CMTs and homeworking operations, which gives them flexibility in terms of order sizes and also a low wage option if the CMTs or homeworking operations are non-compliant with the bargaining council wage rates. Third, they relocate to the Non-metropolitan Areas to take advantage of lower wage rates, with the option of trying to operate 'under the radar' of the bargaining council, in which case they can unilaterally set wages and other conditions. Fourth, they relocate some or all of their operations to neighbouring countries such as Lesotho and Swaziland. Large firms appear to be pursuing either the first, second or fourth options, or some combination of these options, while the retail sector is increasingly sourcing garments from the informal component of the clothing sector via design houses.

## **6.5 Labour regulation in the clothing industry**

Prior to the 1990s collective bargaining in the clothing industry took place for years in regional industrial councils between regional employers' organisations and well-established regional trade unions that represented mainly Coloured and Indian workers. The unions were moderate and had little contact with their members on the

shopfloor. Collective bargaining was conducted in a congenial atmosphere, with the result that wage levels lagged well behind the rest of the manufacturing sector. The collective bargaining arrangements and style of engagement remained largely unaffected by the upsurge in unionisation of African workers after 1973,<sup>97</sup> which started in the textile industry but was slow to arrive at the clothing sector. By the late 1980s, however, the emergent union movement began making inroads into the clothing sector through a series of mergers that resulted in the establishment of SACTWU in 1989. The mergers led to SACTWU becoming the only union in the sector.<sup>98</sup> (Maree and Godfrey, 1995: 131-132) The new union immediately set about addressing the historically low wages in the sector and also demanded the formation of a national industrial council, in part to deal with regional wage differentials and differences in working conditions.

The demand for a national council was not unique to the clothing sector. Following its formation in 1985, COSATU had made a demand for the establishment of centralised bargaining structures in every industry. In the clothing sector there were already a number of industrial councils, but they were separated along regional lines (there were five regional clothing industrial councils)<sup>99</sup> and sub-sectoral lines (the clothing councils, a regional knitting council and two small millinery councils). The aim of the union was to amalgamate all the councils into a single national bargaining structure for the industry. However, a merger would still leave many firms that were regulated by a sectoral determination (previously a wage determination) outside the jurisdiction of the council. A key aim of SACTWU was therefore to get the national council's agreements extended to cover all clothing manufacturers in the country. This would be critical to its effort to reduce the wage differentials in the industry.

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<sup>97</sup> Huge spontaneous strikes erupted in and around Durban in 1973 and thereafter spread across the country. Following these strikes new unions sprang up and began to rapidly organise mainly unskilled African workers. In 1985 many of these unions came together to form the Congress of South African Trade Unions (COSATU), which is currently the main union federation in the country. SACTWU is affiliated to COSATU.

<sup>98</sup> The starting point was the establishment of the National Union of Textile Workers after the 1973 strikes. It grew rapidly despite state repression and employer opposition, and then embarked on a series of mergers that were more like take-overs. The first merger was in 1987 with the established Textile Workers Industrial Union and the National Union of Garment Workers (SA). The process was completed through a merger with the Garment and Allied Workers Union to form SACTWU.

<sup>99</sup> These industrial councils covered much of the industry in the Western Cape, KwaZulu-Natal, Gauteng, the Eastern Cape, and the Free State/Northern Cape.

Clothing manufacturers were strongly resistant to the establishment of a national bargaining structure so it was only after a protracted struggle that agreement on the national council was reached. The council was registered in 2002 and a set of collective agreements now covers the clothing sector nationally: one set of agreements covers specified Metropolitan Areas (this set of agreements mostly cover the areas that had fallen within the old regional councils); one agreement covers Non-metropolitan Areas, but with wage differentiation for two sets of non-metropolitan areas (this agreement replaced the sectoral determination for the clothing industry);<sup>100</sup> and one agreement covers certain 'country' areas in the Western Cape. The agreements set minimum wage levels, maximum hours of work, an overtime rate and limit, annual leave, sick leave, and provide for a sick benefit fund and a provident fund, although regional differences remain in respect of many of these aspects. The agreements are extended to non-parties, which means that every clothing industry employer and employee in the country is covered by one or other agreement.<sup>101</sup> Whether every clothing employer complies with the agreements is another matter.

The establishment of the national bargaining council has led to a narrowing of regional wage differentials and other conditions, but less than might have been expected. The process of getting harmonization between regional agreements covering conditions of employment as well as social benefit schemes has proved to be difficult. This led to the union and employers agreeing to negotiate a total labour cost increase each year, with the regions then deciding how to divide the increase between wages, conditions of employment with direct cost implications, and social benefits. Regional interests have therefore continued to assert themselves to some extent.<sup>102</sup>

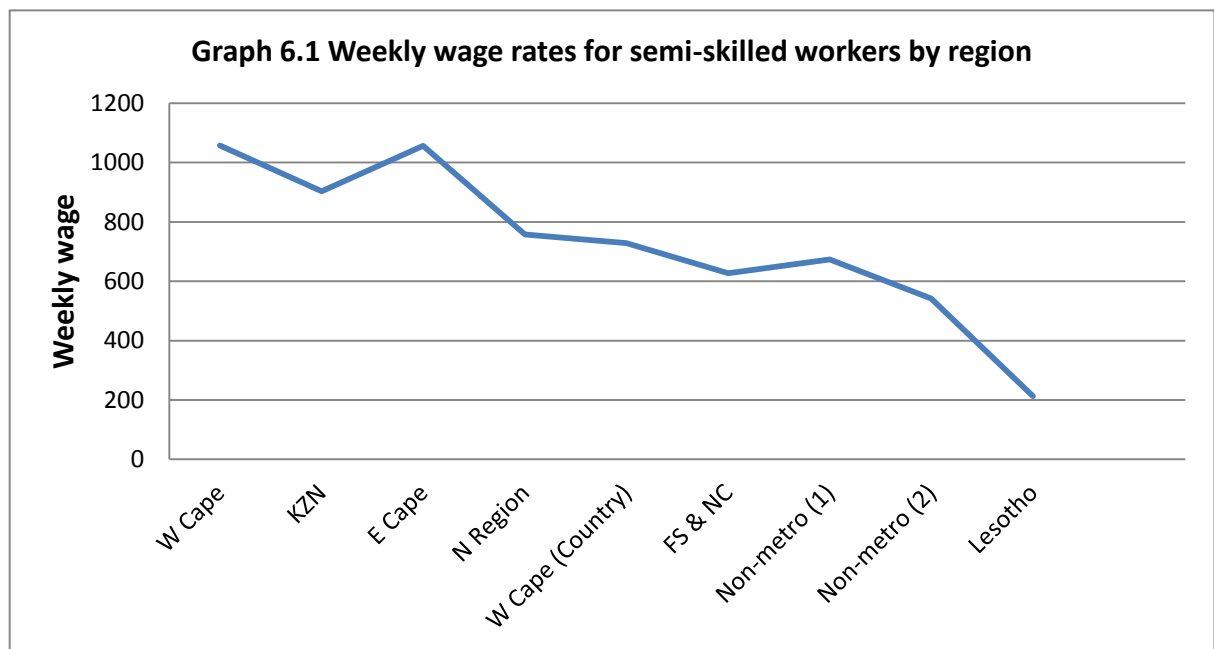
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<sup>100</sup> The sectoral determination had replaced the prior wage determination. It was issued in terms of the new Basic Conditions of Employment Act, 75 of 1997.

<sup>101</sup> Agreements can be extended by the Minister of Labour to cover all employers and employees within the jurisdiction of a bargaining council, i.e. the agreements do not cover only the members of the employers' organisations and trade unions that are party to the agreements.

<sup>102</sup> Historically employers in the clothing industry associated through regional employers' organisations for the purpose of collective bargaining and through a national association for matters such as trade and industrial policy (the National Clothing Federation). With the establishment of the national bargaining council employers formed the National Employer Caucus to represent the regional organisations at the council. At the same time the South African Clothing Employers Federation was formed to represent clothing manufacturers on labour market policy issues at the National Economic Development and Labour Council (NEDLAC) vis-à-vis organised labour and government. Changes also occurred in how the clothing industry organised in respect of trade and industrial policy matters. The National Clothing Federation was replaced by the Clothing Federation (CLOFED), also a federation of

Furthermore, lower productivity in non-metropolitan areas has resisted the narrowing of the wage differential between urban and rural areas. The graph below shows the regional differences in wage rates as well as the wage rate in Lesotho; note that the wage rates are for semi-skilled workers, which category covers most sewing machinists.



To provide some context for the above wage rates one can compare clothing sector wages with those in the manufacturing sector as a whole. In the 11 years between 1996 and 2006 the average wage for elementary occupations (i.e. least skilled and lowest paid occupations) in the manufacturing sector rose from R410.85 to R628.27, a nominal increase of R217.42 (or 52.9% over the period) and a real increase of only 6.54%. However, between 1997 and 2006 (there is no data for 1996) the average wage for elementary occupations in the clothing sector rose from R256.51 to R307.75, a nominal increase of R51.24 (or 19.9% over the period) and a real decline 26.4%.<sup>103</sup>

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regional associations, which was in turn replaced by Clotrade, which had direct membership by clothing manufacturers. Then, in the course of 2009, all the above strands were brought together with the establishment of the Apparel Manufacturers of South Africa (AMSA). It is a federation that represents employers in the clothing industry at a national level on trade and industrial policy issues, labour market issues and collective bargaining, replacing all previous bodies.

<sup>103</sup> The data on wages rates in this section is calculated from the AWARD Wage Database compiled by the Labour Research Service in Cape Town.

So, while the real value of wages for elementary occupations in the manufacturing sector as a whole rose marginally between 1996 and 2006, there was a big decline in the real value of wages in the clothing sector.

Increasingly, however, the minimum wage rates set in the bargaining council's agreements do not reflect actual wage rates. The past few years have seen clothing manufacturers splitting into three regulatory categories: a shrinking number that are registered with the national bargaining council and comply with its agreements; a large number of registered firms that are not complying with all or some provisions of the bargaining council's agreements; and, an unknown (but probably very large) number of unregistered firms (that we assume are non-compliant).<sup>104</sup> The data in respect of these categories is set out in the table below, which shows the registration and compliance status of employers in the clothing industry as at August 2009, with comparator aggregate figures for September 2004.<sup>105</sup>

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<sup>104</sup> There is a fourth category of firms classified as 'known unregistered employers', i.e. unregistered firms that have been 'found' by council agents and against which the council is in the process of enforcing registration and compliance. The numbers are not significant at this point in time.

<sup>105</sup> The data is taken from documentation for the Seventh Annual General Meeting of the National Bargaining Council for the Clothing Industry (15 October 2009).

**Table 6.1 National Clothing Industry Bargaining Council: Registration and non-compliance (August 2009)**

<b>Registered employers</b>	<b>Known unregistered employers</b>	<b>Total employers</b>	<b>Non-compliant employers</b>	<b>% non-compliant employers</b>		
<b>Western Cape:</b>	Metro	269	22	291	150	51.55
	Non-Metro	14	1	15	5	33.33
	Sub-total	283	23	306	155	50.65
<b>Northern Areas:</b>	Metro	229	15	244	47	19.26
	Non-Metro	118	21	139	68	48.92
	Sub-total	347	36	383	115	30.03
<b>KZN:</b>	Metro	201	163	364	287	78.85
	Non-Metro	156	30	186	99	53.23
	Sub-total	357	193	550	386	70.18
<b>Eastern Cape:</b>	Metro	12	12	24	12	50.00
	Non-Metro	1	3	4	3	75.00
	Sub-total	13	15	28	15	53.57
<b>TOTAL EMPLOYERS</b>		<b>1 000</b>	<b>267</b>	<b>1 267</b>	<b>671</b>	<b>52.96</b>
<b>TOTAL EMPLOYEES</b>		<b>59 609</b>	<b>9 654</b>	<b>69 263</b>	<b>18 248</b>	<b>26.35</b>
<b>September 2004</b>						
Total employers		1 092	321	1 413	1 010	71.48
Total employees		99 373	30 549	129 922	67 110	51.65

(Source: Documentation from the 7th Annual General Meeting of the National Bargaining Council for the Clothing Industry, 15 October 2009)

The data shows that just more than half of all known employers in the industry are non-compliant (including known unregistered firms at which the council is trying to enforce compliance). The non-compliant firms employ just over a quarter of all known workers in the industry, which indicates that the non-compliant firms are predominantly small. Remarkably, the comparison with figures for September 2004 shows that compliance has actually improved over the last five years, with non-compliant employers dropping from 71% of total employers to 53%, with an even larger decline for workers employed at non-compliant firms.

The improvement in compliance, however, still leaves the industry with a very high proportion of non-compliant firms. The improvement also has to be assessed against a massive shrinking of the industry: the number of known firms dropped by 146 (10.3%) and all known employment dropped by 60 686 (46.7%) between 2004 and 2009. Importantly, the drop in employer and employee numbers was predominantly at the non-compliant firms: 329 non-compliant firms (32.5%) employing a total of 48 862 workers (72.8%) disappeared over the same period. This decline does not appear to be because the non-compliant employers became compliant in the period, but rather because they went out of business, or have closed down and re-opened but without registering with the bargaining council. So the improvement in compliance is largely because the industry has shrunk and in the process has shed mostly non-compliant employers and their employees.<sup>106</sup>

In recent years the issue of what to do about the large number of non-compliant firms has become an extremely contentious one. The catalyst was an enforcement campaign launched by the bargaining council to clamp down on the non-compliant firms. This involved taking the final steps in legal action that would lead to the closure of a reported 385 non-compliant firms around the country, with the bulk in the interior of KZN. The reason the threat of closure was so controversial was the potential loss of between 20 000 to 25 000 jobs (reports varied).

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<sup>106</sup> The fact that a much higher proportion of workers lose their jobs than firms close down also indicates that some of the job loss is due to downsizing by firms as well as closure of firms.

The action began in August 2010 when the bargaining council shut down 30 non-compliant firms in KZN and 14 in Botshabelo that resulted in the loss of 3 700 jobs. When the bargaining council tried to close a further two firms in the Newcastle area of KZN, over 100 firms (many of which already had writs issued against them) shut their doors in protest, in the process temporarily laying off a further 7 500 workers. The protest action was co-ordinated by the Newcastle Chinese Chamber of Commerce (NCCC), and most of the firms that participated in the protest were CMTs owned by Taiwanese and Chinese immigrants. National and provincial government intervened and discussions took place over a number of months, during which there was a series of moratoriums with regard to the bargaining council's campaign. SACTWU remained adamant that working conditions would not be compromised, whereas employers were speaking of a 'new wage model' for the industry, which it seems meant the introduction of a piece-work payment system. The result of the negotiations was an agreement to phase in compliance, with the relevant firms being expected to pay 70% of the minimum wage rate by 31 March 2011, 90% by 1 January 2012, and 100% from 30 April 2012. However, once the enforcement exercise began again it was found that many firms were not meeting the thresholds.<sup>107</sup>

The employers on the bargaining council subsequently pushed for the outstanding writs to be executed against the defaulting firms, but SACTWU blocked this step, arguing it would cost too many jobs (many of which are held by members). This standoff came to a head at about the time that the annual wage negotiations were to begin. When the union demanded a 13% wage increase, the employers responded by demanding that SACTWU discuss its 'new wage model'. The union refused and the employers walked out of the negotiations and applied to the Labour Court to compel the bargaining council to go ahead with serving the writs on non-compliant employers. The union filed papers to oppose this step, but withdrew them and their opposition a few days later.

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<sup>107</sup> 'A big day for wages in the clothing industry' *Business Day* 30 September 2010; 'Minister faces court action of clothing wages' *Business Report* 17 June 2011; 'High wages unravel Newcastle's industry' *Mail & Guardian* July 22 to 28 2011.

A second court action relating to this issue was begun about a year before. In this action a newly-formed employers' organisation and a number of small firms that had been threatened with closure challenged the extension of the national clothing bargaining council agreement to non-parties. The action is being opposed by the Minister of Labour, the Bargaining Council and SACTWU. It is a case that has serious implications for the bargaining council and the clothing industry, not to mention the impact it will have on the entire centralised bargaining system. The case has been heard but judgement has been reserved.

Two important points emerge from the above saga. First, the controversy highlighted the widespread, open non-compliance by firms in the industry. Allegations were made that CMTs in Newcastle were paying machinists wages as low as R90 per week. Interviewees for this study have mentioned amounts of R150 to R200 per week. The Newcastle Chinese Chamber of Commerce has hotly denied that any of its members are paying wages of R90 per week. Its spokesperson stated in the media that most of its members pay machinists R250 to R550 per week. Given that at the time the minimum wage for a machinist was R479.10 per week, the statement was an acknowledgement that at least some of its members were paying well below the minimum rate. The second point of interest is that in all the media coverage the role of 'suppliers' and retailers is entirely absent. This is despite the fact that the non-compliant CMTs maintain that the main reason that they are non-compliant is because the 'suppliers' that source from them give them such low prices. Furthermore, behind these 'suppliers' are two of the major retailers in the country, Edcon and Mr Price.

In the absence of recognition of the role of the suppliers and retailers in the problem of non-compliant clothing firms, finding a solution to the problem is extremely difficult. The bargaining council, AMSA and, to a lesser extent, SACTWU appear to be set on following due process, even if it means closing down hundreds of firms. There is nothing untoward in their approach; the centralised bargaining system must eradicate non-compliance or else it will reach a level that will ultimately undermine the system.

Besides the direct challenge to the legitimacy of the national bargaining council posed by the non-compliant firms, the level of non-compliance threatens the viability of the council. Non-compliant firms are almost by definition not members of the employers' organizations that are parties to the council.<sup>108</sup> The growth in non-compliance therefore means that the regional employers' organizations have lost members, which has in turn meant a worsening of their representivity in the industry. The latter is critical for the council's ability to have its collective agreements extended by the Minister of Labour. The last agreement was extended by the Minister, but it must have been a very close call.<sup>109</sup> If the parties to the bargaining council cannot in future years convince the Minister to extend their agreement it would threaten the existence of the council. Few employers would have any reason to continue complying with the council's agreements if competitors did not need to comply with the agreement simply by not being a member of one of the party employers' organisations.

It should be stressed that the above table does not reflect figures for unknown, unregistered firms and their employees. These firms are operating illegally and nobody knows how many of them there are or how many workers they employ in total. If these figures were known and were included in the table, they would likely significantly increase the level of non-compliance, if one goes on the estimates of key informants in the industry (e.g. the Executive Director of AMSA estimates that unregistered firms are probably producing about 20% to 25% of all clothing made in South Africa, and employ about the same proportion of all workers in the clothing sector nationally).

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<sup>108</sup> In KZN the constitution of the employers' organisation requires member firms to be compliant with the bargaining council agreement. A firm that becomes non-compliant automatically ceases to be a member of the employers' organisation and at the same time becomes a non-party. This is not the case in all the regions but in practice it is unlikely that non-compliant firms will be or remain a member of a party employers' organisation.

<sup>109</sup> In 2008 the members of the regional employers' organisations employed 47.4% of all workers in the industry employed at registered clothing firms. This disqualifies the agreement from automatic extension and leaves the decision about extending the agreement to the discretion of the Minister. (Information supplied by the Department of Labour)

The unregistered firms are generally small and many are located in homes. Research by Godfrey, Clarke, Theron with Greenburg on homeworking in the clothing industry, found that it is prevalent in the sector in Cape Town and Durban and is increasing.<sup>110</sup> The increase appeared to be driven by workers losing their jobs in the shrinking, registered (formal) part of the industry and taking up employment in small homeworking operations near where they lived, i.e. through a process of informalisation. Almost all the interviews conducted for the research were with homeworkers that had previously been employed in the formal clothing sector and had moved to homeworking after being retrenched in the period from 1997 to 2000.( Godfrey, Clarke and Theron, with Greenburg, 2005: 3 and 22)

The wages paid in these operations are generally below the bargaining council minimum rates, but are often not much below the cash wage of employees in registered firms (i.e. once tax, benefit fund contributions and the like have been deducted). However, workers in home-based operations seldom get paid overtime, sick pay or holiday pay, as required by the bargaining council agreement and the Basic Conditions of Employment Act. They also do not contribute to or have the benefit of any social benefit schemes, as would be the case if the employer was registered with the bargaining council, nor do they contribute to the Unemployment Insurance Fund or pay tax.(Ibid 19-20)

There are some indications that homeworkers like the less autocratic work environment and clearly see the proximity to their workplace as a major benefit. However, these advantages are off-set by very long working hours on occasion and no work (and payment) at other times. In other words, when there was work they worked, if necessary into the night or over weekends, but if there was no work they were told to stay at home and were not paid. Workers express high levels of anxiety about the duration of the contracts, both in terms of the pressure to meet the suppliers' deadlines and the fact that once deadlines were met there was no guarantee of further work (and income).(Ibid 21-22)

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<sup>110</sup> The research involved interviews with 38 homeworkers in 19 homeworking operations in Cape Town and Durban (the main clothing centres). Interviews were also conducted with the owners of six homeworking operations and at design houses and retailers.

### ***6.5.1 Labour regulation in Lesotho***

Labour standards are generally far less onerous in Lesotho than in South Africa and prescribed wage rates are much lower. The Lesotho Labour Code is the sole statute regulating the labour market. It provides for freedom of association and collective bargaining as well as prescribing key minimum standards. In theory collective bargaining can improve upon standards set in the Labour Code, but collective bargaining at enterprise level is not widespread or particularly effective, in part because of splits in unions and rivalry between them. Where negotiations do take place at enterprise level they tend to be over working conditions other than wages.

The Labour Code makes provision for the establishment of the Wages Advisory Board (WAB). Initially the WAB prescribed a minimum wage for certain categories of work across the economy, but from 1996 there were specific wage rates for the trainee machinist (0-6 months) and qualified machinist categories in the clothing industry. A few years later a separate schedule for the clothing sector was issued. Over this time the WAB seems to have evolved into a quasi bargaining forum for the clothing industry, at which government, employers' organisations and trade unions 'negotiate' wage increases for the sector. Nominal wage rates have increased each year from 2005 to 2010, but have probably lagged inflation slightly in most years. Importantly, wage increases have trended below the increases in the South African bargaining council wage increase over this period. The graph above compares minimum prescribed wages rates between bargaining council regions and Lesotho, and the table below compares wage rates and other conditions of employment.

**Table 6.2 Lesotho/South Africa comparison of wages and minimum labour standards for apparel sector in 2011**

	<b>SA Metro (KZN)</b>	<b>SA Non-Metro</b>	<b>Lesotho</b>
Minimum weekly wage	R739.90	R489.00	M229.00
Ordinary maximum weekly hours	42.5	45	45
Overtime rate	x1.5	x1.5	x1.25
Overtime limit per week	10 hours	10 hours	11 hours
Annual leave days	15 days	15 days	12 days
Annual bonus	3.47% x actual annual wage	1% x standard annual wage	-
Sick leave and 24 days at 50%	40 days p.a. at 50% of wage	30 days paid in full	12 days paid in full
Maternity leave	Max. 6 months/3,25 weeks paid	Min. 4 months/UIF benefit	12 weeks/2 weeks paid plus UIF benefit
Paternity leave	3 days unpaid p.a.	3 days paid p.a. (via family responsibility leave)	-
Notice periods	Weekly paid = 1 week	0-6 mths service = 1 wk 7-12 mths service = 2 wks >12 mths service = 1 mth	2 weeks after 1 month's service
Severance pay	1 week per year service	1 week per year service	2 weeks per year service

<b>SA Metro (KZN)</b>	<b>SA Non-Metro</b>	<b>Lesotho</b>		
Sick benefit fund (medical aid) and e/ee 1.5% of wage	Yes – e/er contributes 1.75% of wage		-	-
Provident fund and e/ee 6.5% of wage	Yes – e/er contributes 7% of wage of wage and e/ee 6.5%	Yes – e/er contributes 7%		-
Workmen’s compensation (i.e. occupational injuries and diseases)	National scheme	National scheme		National scheme
Unemployment insurance	Yes – national scheme, includes payment for maternity leave	Yes – national scheme, includes payment for maternity leave		-

(Source: The table was compiled using data from bargaining council agreements, the Lesotho Labour Code, and Wages Advisory Board schedules.)

Enforcement of compliance is ostensibly through the Labour Inspectorate of the Ministry of Labour and Employment (MOLE), but this body is generally seen as ineffective. For the Taiwanese-owned factories, this enforcement is superseded by the codes of conduct of the major US retailers with which they agree to abide. Compliance with the Labour Code and with the retailers' codes of conduct (which usually stipulate compliance with national labour legislation) is monitored and enforced through corporate social responsibility (CSR) audits conducted by the US retailers or third party auditors. The South African-owned manufacturers do not face similar prescriptions from the South African retailers, because the latter have no consumer pressure on them regarding compliance with labour standards. CSR is only at an embryonic stage in South African firms. However, Woolworths, which is sourcing a lot of clothing from Lesotho, does have a CSR system that is on a par with the US retailers. Some of the other South African retailers are engaging in a more limited CSR process, while some are doing nothing. However, this does not appear to be a major problem. Compliance with wage rates and other key conditions of employment is not a serious challenge for the South African manufacturers, mainly because labour costs are so much lower than those they face in South Africa. (Pike and Godfrey, 2012)

Finally, it is important to note that there has been no fragmentation of production in Lesotho into smaller unit or relocation to outlying areas. There is also little non-standard employment. Most manufacturers employ production workers indefinitely (although some initially employ for a four or six-month probation period); the only other non-standard workers are those on short-term contracts concentrated in the packing area, which make up a small proportion of the total workforce. The industry therefore fits the formal, Fordist 'type' of production organisation.

## **6.6 Employment trends in the clothing industry**

Employment trends in the clothing sector have been left until last because the trends have been driven by tariff liberalisation and increasing labour costs in South Africa. The above sections therefore provide a necessary background to understanding the employment data. It is not easy to calculate clothing employment in South Africa. On the one hand, household surveys produce estimates of all employment, including what is termed informal employment. On the other hand, there is data on the number of workers employed at firms registered with the national bargaining council. The latter includes only those employees that

firms disclose to the bargaining council.<sup>111</sup> Subtracting the one figure from the other therefore gives one an indication of the number of informal employees.

The table below provides a comparison of bargaining council employment data and household survey data of all employment. It shows that employment at registered firms has declined steeply over the last decade, while the drop in total employment has been much less. This indicates that a process of informalisation has been underway, that has seen jobs shift from registered (formal) firms to unregistered (informal) firms.<sup>112</sup>

**Table 6.3 Registered employment and total employment**

Year	Number of employees at registered firms	Registered firms	Total employment
1998	80 635	834	116 740
1999	78 711	784	123 902
2000	69 954	702	121 615
2001	62 712	651	117 281
2002	65 585	672	117 417
2003	95 187	1 090	114 932
2004	97 958	1 169	113 922
2005	83 081	1 138	n/a
2006	74 456	1 048	n/a
2007	72 796	1 008	n/a

(Source: Morris and Reed, 2008: 23; Van der Westhuizen, undated: 8)

The table shows a steep decline ‘registered’ employment through to 2001, when the currency devalued and capacity utilisation and exports increased. The jump in employment from 2002 to 2003 was however artificial in that it mainly reflects the formation of the national bargaining council and the inclusion in its figures of employees that previously fell under the sectoral determination (and were outside the jurisdiction of the regional councils). However, employment thereafter drops sharply through to 2007 (a loss of 25 162 employees). The number of firms follows a similar trend, although less steep. The fourth column shows employment figures generated by household surveys. The difference between these figures

<sup>111</sup> Registered firms provide the bargaining council with data on employment but some do not record ‘casual’ employees, which means that the council data undercounts employment at registered firms.

<sup>112</sup> Prior to the establishment of a national bargaining council in 2002, the difference between the two estimates of employment comprised employees at firms outside the jurisdiction of the five regional councils (i.e. covered by the sectoral determination) as well as employees at unregistered firms within the jurisdiction of the councils. After 2002 the difference in employment estimates comprises only employees at unregistered firms.

and those in column 2 give on a rough indication of the number of employees at unregistered firms (taking account of the proviso regarding the data mentioned above).

This data in the above table underlines the fact that employment at firms registered with the bargaining council is a subset of all employment in the clothing industry, and that much of the employment loss has been in registered firms. Research done by Godfrey, Maree and Theron confirms this point. They compared total employment in 2004 in occupational categories 4 to 9 at registered firms with employment in the same categories for the clothing industry as per the Labour Force Survey (September 2004). Occupational categories 4 to 9 are those covered by the bargaining council. Employment at registered firms in the relevant occupation categories amounted to 97 958 employees as opposed to the household survey's estimate of 129 417 employees (much higher than the figure for 2004 in the above table). The difference in the employment totals (31 459) can be accounted for only by employment at unregistered firms. (Godfrey, Maree and Theron, 2006: 46)

Calculations done by Barnes support the above point, but he argues that informal employment is also probably starting to decline, i.e. rather than informalisation taking place there is an absolute decline in clothing employment. He found that formal employment in the clothing sector declined from 125 181 employees in 1994 to 110 739 in mid-2004 (a loss of 14 442 jobs), but that in 2004 total employment in the sector was 158 879 (i.e. there were just over 48 000 workers in informal employment). Barnes argues that there is a limit to the capacity of the informal clothing sector to absorb employment and he projects that the textile and clothing sectors will together lose a total of 50 000 to 75 000 formal and informal jobs by 2014. (Barnes, 2005: 4-6) This argument tends to be supported by some interviewees (see chapter below) who indicate that it is becoming increasingly hard to find reliable CMTs from which to source clothing.

## **Chapter Seven**

### **Illustrative empirical studies of different local and regional clothing/retail value chain formats**

#### **7.1 Introduction**

Most of the literature on value chains and production networks has dealt with them at the global scale. The empirical studies in this thesis focus on domestic and regional value chains, although it should be noted that about half the clothing manufacturers in Lesotho export to US retailers and therefore participate in the global clothing value chain. The latter, however, are not included in this research. The studies below aspire to be case studies but it was not always possible to do all the interviews that would have been necessary to give the quantity and quality of information needed to qualify as a case study. Hence I will classify the studies under the generic term ‘empirical studies’.

In the previous chapter I outlined the geographical spread of the clothing industry in South Africa and neighbouring countries, in particular Lesotho. I also indicated the way in which traditional forms of sub-contracting had changed with the emergence of design houses, and how the power had shifted from manufacturers to retailers, which has led to restructuring of the clothing value chain. These processes have been facilitated by the economic power of the retailers, the malleability of commercial contracting, and the legal flexibility that firms have in how they structure themselves. In this chapter I will examine examples of this restructuring and decentralisation in more detail, adding empirical flesh to the bones of the argument made above, mainly through in-depth interviews with participants in the South African and Lesotho clothing sectors and the South African retail sector.

The empirical studies examine different value chain formats, i.e. different ways in which production is connected by contracts to intermediaries and retailers, as well as the different ways in which intermediaries and retailers are legally structured. The focus of the empirical studies is manufacturers located in four areas in the region but all supplying major South African retailers. The primary areas are Cape Town in South Africa and Maputsoe in Lesotho (which is directly across the border from Ficksburg in South Africa), and the secondary areas

are Durban and the region around Newcastle and Ladysmith in northern KwaZulu-Natal (KZN). There are different labour regulatory regimes applying in each of these areas, a situation made more complex by varying levels of compliance with the different regimes. I will briefly outline the labour market zones in which the above areas are located.

The first zone – one can call it the core – comprises the urban areas of Cape Town and Durban which are covered by the Metro Areas section of the bargaining council agreement. However, if one factors in registration with the bargaining council, which can be used as a proxy for compliance, the core can be sub-divided into:

- a compliant core, i.e. clothing manufacturers that are registered with the bargaining council and complying with its agreement;
- a non-compliant semi-periphery, i.e. manufacturers that are registered with the bargaining council but are not complying with its agreement - in many cases this means the firm is paying 80-90% of the prescribed minimum wage and/or is not making contributions to one or other of the social benefit funds administered by the bargaining council; and
- the non-compliant periphery, i.e. the manufacturers that are not registered with the bargaining council and are not complying with its agreement - these firms are almost certainly not paying the minimum wage, are not making contributions to any social benefit or social protection fund, and are usually employing workers on a flexible basis and working flexible hours.

Technically all the above firms are core firms because they fall within the jurisdiction of the bargaining council, and should therefore be registered with the bargaining council and should be complying with the conditions prescribed in the Metro Areas agreements. Different levels of non-compliance therefore create semi-peripheral and peripheral zones within the core.

However, if we ignore the issue of compliance and treat the Metro Areas such as Cape Town and Durban as an undifferentiated core zone, then surrounding this core is a regional semi-periphery and periphery:

- the semi-periphery comprises rural towns such as Newcastle and Ladysmith in northern KZN that fall within the jurisdiction of the bargaining council's agreement for Non-Metro Areas, which sets wages substantially lower than in Metro Areas such as Cape Town and Durban, and does not make provision for a sick benefit (medical aid) fund to which clothing employers must contribute; and
- the periphery is constituted by South African firms that have relocated to Lesotho or relocated some manufacturing operations to Lesotho, where wage levels for clothing workers are significantly lower than the Non-Metro Area wage levels in South Africa, and there are no social benefit funds or skills development fund or unemployment insurance fund to which employers must contribute.

The question of compliance does not arise to any great extent in Lesotho. My research found that labour costs were so low compared to South African wages that the South African manufacturers generally complied. Of course, there are instances of corners being cut by manufacturers, but most South African manufactures comply with the minimum wages set by the Lesotho Wages Advisory Board for the clothing sector and comply with most provisions of the Lesotho Labour Code.<sup>113</sup>

The regional semi-periphery, however, presents the same complication as the core, i.e. there are varying levels of non-compliance that create a further set of zones:

- a compliant core zone (within the semi-periphery), i.e. clothing manufacturers in the Non-Metro Areas that are registered with the bargaining council and complying with its Non-Metro Areas agreement;
- a non-compliant semi-peripheral zone (within the semi-periphery), i.e. manufacturers that are registered with the bargaining council but are not complying with its Non-Metro Areas agreement, in the main the wage rates; and

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<sup>113</sup> Order no. 24 of 1992.

- a non-compliant peripheral zone (within the semi-periphery), i.e. manufacturers that fall within the Non-Metro Area of the bargaining council but are not registered with the bargaining council and are not complying with its agreement.

One therefore has a series of labour market zones determined by different regulatory regimes, and compliance or non-compliance with those regimes. A complicated pattern is suggested: firms in the core that are not complying with the Metro Areas agreement are incurring higher labour costs than compliant firms in the regional semi-periphery and in the periphery (i.e. Lesotho). Furthermore, registered, non-compliant firms in Non-Metro Areas as well as unregistered, non-compliant firms in these areas, are probably also paying higher wages than compliant firms in Lesotho.

The above categories set out the geographical and regulatory dimensions of the current structure of the clothing industry. However, an overlapping contractual and corporate restructuring has also taken place. This has seen the traditional full-line or full-package clothing manufacturer becoming marginalised. The full-package manufacturer designed the clothing, bought all the fabric and trims, cut the fabric, assembled the garment, checked the quality, packaged the garment and sold it to a retailer (or possibly a wholesaler, especially in earlier years). Such a manufacturer was supplemented by a relatively small cut, make and trim (CMT) sector, to which excess orders were sub-contacted in the annual production peak period. The CMT would be given the pattern (the design for the garment marked-up and graded) and the fabric by the manufacturer, and would cut, assemble and finish the garment for delivery back to the manufacturer. This format, the standard model of production organisation until about thirty years ago, has been largely replaced by a variety of arrangements:

- the full-package manufacturer that is also an importer and distributor of clothing; the latter usually entails quality checking the imported garments, doing any necessary repairs and finishing, and repackaging the garments for delivery to the retailer;
- the so-called design house that takes orders from a retailer and has them made up by a network of CMT operations that it is legally independent from but with which it has a close association;

- the retailer with its own design capacity, i.e. an in-house design centre, that deals directly with a network of independent CMTs to get garments assembled;
- a very large CMT sector that spans sophisticated, formal operations through to survivalist, home-based operations, and includes alternative forms of organisation such as ‘co-operatives’, most of which have been set up to circumvent labour regulation;
- the dedicated importer/wholesaler that distributes to many smaller retailers; and,
- complex combinations of the above arrangements.

These different organisational architectures cut across and intersect with the geographical and labour regulatory zones outlined above to create a complex mix of value chain formats. In this thesis I focused on the following value chain formats – note that this scheme does not comprehensively describe the structure of these chains but examines the main features of the different structures. In reality the value chain formats are probably far more complex and wide-ranging. There are also other value chain formats that were not directly studied.

#### Format A

Retailer A

Design house A

Network of CMTs and M&Ts in Cape Town Metro Area

#### Format B

Retailer B

In-house production (it recently took over a high performance manufacturing operatoin)

In-house design centre

External design house B with own CMTs

Network of independent CMTs in Cape Town

### Format C

Retailer C

Manufacturer C1 – Cape Town Metro Area and Lesotho CMT factories

Manufacturer C2 – Cape Town Metro Area, Durban Metro Area, Non-Metro Area, and Lesotho CMT factory

Manufacturer C3 – Cape Town Metro Area and Lesotho CMT factory

### Format D

Retailer D

Design house D and Lesotho CMT factory

Network of CMTs in Durban Metro Area and Non-Metro Area

### Format E

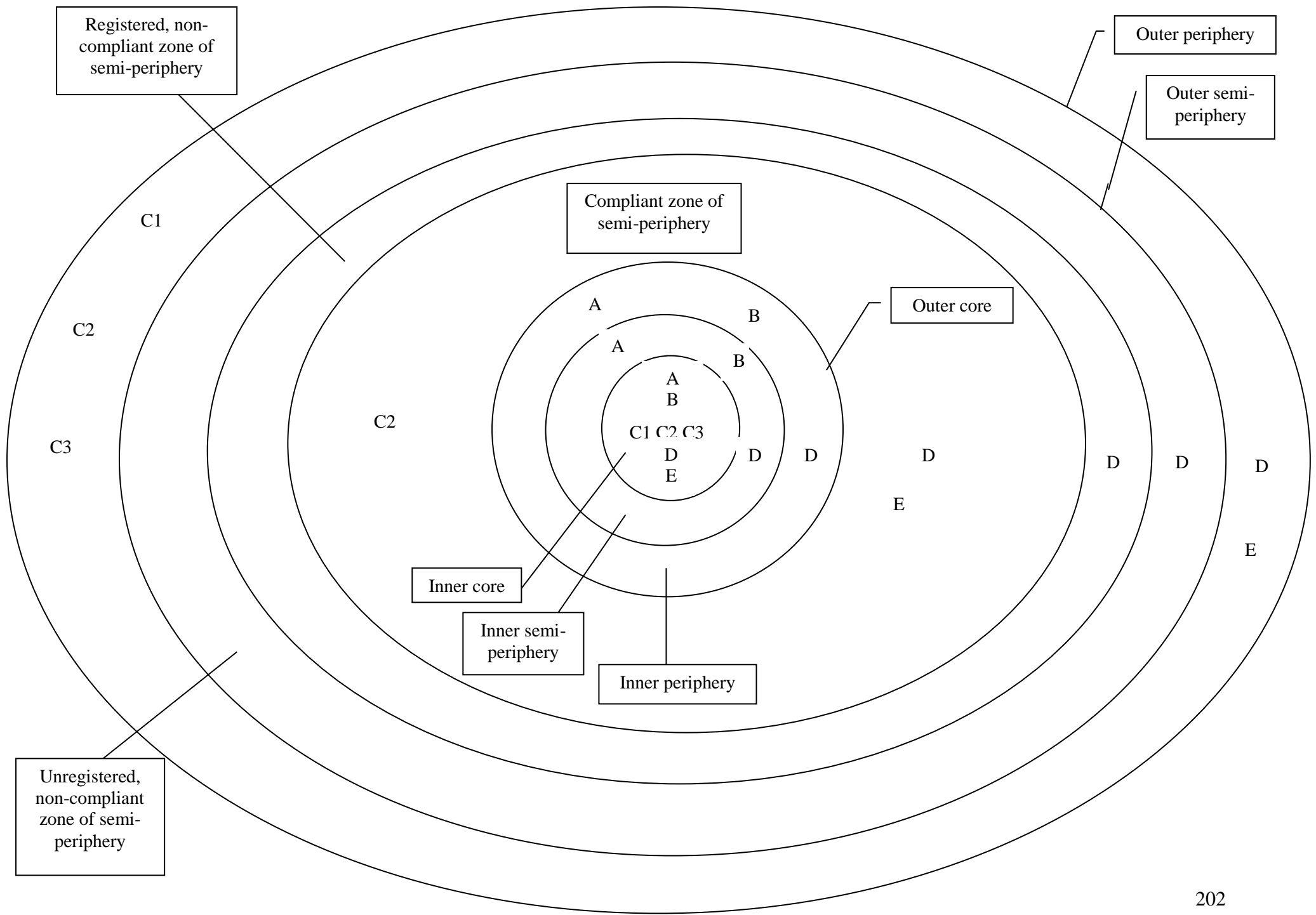
Brand manufacturer E

Non-Metro Area factory

Lesotho factories

Two points should be noted about the above. First, all the retailers are South African-owned except one that was bought by a US private equity company a few years ago. Second, all the retailers are sourcing from Lesotho and many are sourcing from other countries in the region, in particular Swaziland, Mauritius and Madagascar. Furthermore, all are sourcing from China and other countries in Asia. However, they differ in how much they are sourcing from outside South Africa. Retailers A and B are probably exceptional in stating their intention to source less than 50% of their clothing from outside South Africa.

The diagram below provides an illustration of the value chain formats superimposed onto the geographical and regulatory system.



In the centre of the diagram are three circles that constitute the Metro Area core, semi-periphery and periphery. This is where the head offices of the retailers are based as well as the head offices (including design and marketing functions as well as some production facilities) of most manufacturers. Also included in the Metro Area core are the design houses, with their network of CMTs spread across the core, semi-periphery and the periphery. However, these three zones can be seen as a single Metro Area core, in which case it is surrounded by the regional semi-periphery and periphery; their boundaries are the two outermost circles. As noted above, the regional semi-periphery can be broken down into a registered and compliant core zone, a registered but non-compliant semi-peripheral zone, and an unregistered and non-compliant peripheral zone – these are labelled on the diagram.

Wage differences represent the most prominent aspect of the different sets of working conditions in each of the labour regulatory regimes. The prescribed minimum wage rates illustrated in Graph 6.1 in the prior chapter illustrate the steep differences in the minimum wage levels between the Metro Areas (the various provinces), the Non-Metro Areas, and Lesotho. It should be emphasised however that these are the prescribed minimum wage rates rather than the actual wage rates. We have very limited (mostly anecdotal) evidence regarding the actual wages being paid by registered, non-compliant firms and by unregistered, non-compliant firms. For example, the owners of some CMTs interviewed in this study alleged that registered, non-compliant factories in the Newcastle area were paying machinists between R150 and R200 per week, which is significantly lower than the Non-Metro Areas minimum wage rate. The union indicated that these non-compliant firms were paying between 50% to 60% of the minimum wage. Another CMT in Durban stated that a firm just along the road was paying machinists R350 per week (this factory was within walking distance of the regional offices of the bargaining council and SACTWU). Even less is known about other employment conditions such as hours of work, overtime pay, and leave.

Interviews conducted in related research projects (as yet unpublished) indicate further complexity. In many cases, however, the lynch-pin in the restructuring is the design house. Retailers generally describe them as ‘suppliers’, which obscures the fact that these firms are often design houses with no manufacturing capacity whatsoever. In some cases the design house might have one or more factories, but is taking on orders that significantly exceed the capacity of those factories. Retailers are therefore well aware that their ‘supplier’ is not the firm that is actually manufacturing their clothing. In fact, the manufacturer comprises a

network of CMTs co-ordinated by the design house, that might or might not be complying with the bargaining council agreement. The networks of CMTs working for the Cape Town design houses in this study were all be in the Cape Town Metro Area, but design houses (or ‘suppliers’) in Durban have networks that stretch into the Non-Metro Area, in particular the largely non-compliant CMTs in the Newcastle region in northern KZN. They will also contract with the South African-owned operations in Lesotho and Swaziland.

A recent related research project reveals a variation on these strategies. Clothing firms in Durban are transforming themselves into ‘co-operatives’, or splitting into two separate legal entities, a private company or close corporation and a ‘co-operative’. The main benefit of becoming a co-operative is that they are exempt from labour legislation and from the bargaining council agreement.<sup>114</sup> So the so-called co-operatives are very seldom genuine co-operatives. The firms that change into co-operatives change very little other than to come up with a new name, de-register from the bargaining council, and significantly reduce workers’ wages and/or working conditions and/or social benefits. The erstwhile owner continues to run the firm in the same way he/she did in the past, and most workers are unaware that they are supposedly now members of a cooperative with a say in its management.

In the case where the firm splits into two entities, one of which is a co-operative, there is also very little that changes. They remain at the same premises, with the office of the erstwhile owner becoming the private company or close corporation, while the rest of the factory becomes the ‘co-operative’. Nothing changes in the way the firm actually functions; it would be exaggerating to say they are two separate operations that are fully-integrated with one another, because they are in fact still one operation (but legally two separate entities). The private company or close corporation focuses on the marketing and distribution, while the ‘co-operative’ does the manufacturing, but the division of functions is seamless.<sup>115</sup> This practice is prevalent in KZN with the aim of evading labour legislation and the bargaining council’s agreements. The bargaining council is trying to challenge their legitimacy, i.e. by

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<sup>114</sup> Co-operatives are explicitly excluded from labour legislation in respect of their members but the bargaining council argues that they are not excluded from the jurisdiction of the bargaining council. However, the main thrust of the efforts of the bargaining council to apply its agreements to co-operatives has been to show that they are not genuine co-operatives.

<sup>115</sup> Workers in eight clothing co-operatives in Durban and Newcastle were interviewed. This is clearly not a representative sample but the fact that none of the eight cooperatives were genuine worker co-operatives strongly suggests that most clothing co-operatives have probably been set up with the sole purpose of evading labour legislation and the bargaining council. Furthermore, the legal officer at the Durban branch of the bargaining council provided me with a list of over 100 co-operatives in the Durban area, all of which he believed were not genuine co-operatives.

showing they are not actually co-operatives, but it is a slow process. Unfortunately, the Department of Trade and Industry (DTI), under which the promotion and regulation of co-operatives falls, must take a lot of the blame for this situation because it has made the registration of co-operatives very easy but does not have the capacity to monitor and enforce the relevant regulations in respect of co-operatives.

As noted above, most retailers keep their options open as to where they source from, and manufacturers have followed their lead by structuring themselves in such a way that they can pursue a combination of production strategies, with or without the knowledge of retailers. Furthermore, these strategies and structures are changing all the time. In the sections that follow the relationships within the different value chain formats will be examined in more detail.

## **7.2 Understanding the links in the restructured clothing/retail value chain**

The main economic explanation for the restructuring that the clothing industry has undergone is the pressure of low-price competition from imports, mainly from China but increasingly from Vietnam, Cambodia, India and Bangladesh. This low-price competition has been exacerbated by illegal imports. Allied to this are the steadily rising labour costs within South Africa because of the strong trade union and centralised collective bargaining structure. But these pressures translate into decisions taken by managers in clothing and retail firms as to how to respond, which brings power, management practices and trust relationships into play in the way they structure themselves and the value chain for clothing.

In this section I will present the research findings primarily by theme, but will link particular points or quotes to the above structural outline where this is relevant. The key themes are: the shift of power from manufacturing to retail with a focus on the role of design; the 'high road' and the 'low road' competitive strategies; legal structure, contracting, management control and the relationships between retailers, design houses and CMTs; restructuring to avoid labour regulation and the informalisation of employment; and the option of sourcing from Lesotho and further afield. There is overlap between these themes but it is hoped that any such overlap will strengthen the argument rather than merely duplicate it.

### ***7.2.1 The shift of power from manufacturing to retail, the role of the design function in this shift, and the impact on costing***

There is no doubt that retailers hold the power in the local and regional clothing value chain. A key informant stated:

The other thing is the tremendous strength that the retailers hold in the value chain, so while import competition has assisted it all, the retailers are just able to squeeze manufacturers to the n'th degree. And the manufacturers aren't really in a position to say: OK, I will just start exporting or focus on the export market. (Clothing sector key informant, 3)

Retailers are comfortable with the fact that they now hold power and are prepared to be quite ruthless:

The power in the value chain when the manufacturer was protected was all in manufacturing, and they managed that power to the significant detriment of the other players in the value chain. I'm not asking you to feel sorry for us [i.e. retailers]. I'm simply stating the facts. Payback's a bitch. (Retail sector key informant, 1)

The above interviewee and a number of others made frequent references to 'the Zara model', i.e. the power Zara exerts to control and co-ordinate its value chain. One could "see similar trends within South African retailing – there is participation by retailers, either influentially or directly, right through the value chain, and that includes the design house phenomenon." (Retail sector key informant, 1)

As discussed above, the power the retailers exert, given their ability to source low-priced garments from outside the region, has led to fundamental restructuring of the local industry. Established manufacturers are desperate for some commitment and direction from retailers:

It is that kind of impasse that we are sitting with at the moment in the industry; is to invest, is to upgrade, is to re-invent, but against what. Nobody is asking for guarantees. What we are asking [retailers] for is... tell us over the next six months I want you to be there, after a year I want you to be there, after 18 months I want you to be there – on flexibility, quality, reliability, speed and price. You can then sit down as a manufacturer and say: What do I need

to do to get there? And then you take a view on it; yes there is an element of risk but it is all hands on deck and you will make it happen more often than not. But you can't in the absence of the retailer making... an obligational relationship commitment to you. Then the guys will say: Well we will run our plants down and become suppliers of garments and not manufacturers, we will import the stuff.(Clothing sector key informant, 2)

The quote indicates some of the options while retailers maintain an arms-length relationship with them: to close down or to become 'suppliers', i.e. a design house, or to become importers and distributors. Another key informant confirms the design house option:

We have had a lot of companies that retrenched their entire workforce and became design houses. They then do the designing and get the order from the retailers, procure the fabric, and then give out the orders to CMTs.(Clothing sector key informant, 3)

Working through a design house gives a retailer a great deal of flexibility. They can give out small orders for a great variety of garments, which the design house contracts out to a network of small CMTs. The different types of garments can be sent to CMTs that specialise in one or the other. Furthermore, the size of the orders generally suits the capacity of the CMTs (but would be much too small for most medium-sized, full-line manufacturer). And the retailer always has the alternative of sourcing the garments from firms in the Non-Metro Areas, or from Lesotho, or from outside the region, e.g. China. In fact, the retailer can source from China through a manufacturer, thereby shifting risk of the transaction to the manufacturer:

Many manufacturers also import. So a retailer will come along and say: I want this T-shirt for R25; and the manufacturer says I can import it for R20 and not make it... The retailers know it and don't mind it. The retailers are very happy to source imported goods from local suppliers because you have got recourse if something goes wrong. If you import something from China you have almost no recourse. If you get something from a local guy and there is something wrong, well you just send it back to him.(Retail interviewee , 1)

Besides reducing its risk, the retailer gets the manufacturer to take responsibility for quality control. So the manufacturer will unpack the imported garments, check them, fix any problems, clean, iron and repack them, before delivering them to the retailer.

What the above quote also indicates is the extent to which the 'China price' is a constant reference point in the local industry. Local manufacturers are therefore confronted with the price at which the garments can be imported when transacting with retailers, which tends to make the price quoted by the retailer non-negotiable.

The role of design is a key part of the shift in power from manufacturer to retailer:

In those days there were factories that did designs, and they would show the designs, and you went and sat there and you would pick this one and that one. It was a whole thing, and... there was a pecking order [depending on who the retailer was]. So...we only got to see the stuff as number five, and Edgars got to see it first because they were the biggest. But [the manufacturers] just couldn't handle it any more. These days the entire industry is really a design house, because retailers, to differentiate themselves from one another, want to do their own designs. Foschini doesn't ever want to have the same garments as Truworths, and Truworths doesn't want to have the same garments as Foschini. So by its very nature that thing fell apart. There was a time when the manufacturers had design capacity and had quite a lot of financial clout behind them – that has all gone. (Retail interviewee, 1)

These days, according to interviews with retailers, the pecking order has been reversed: the retailers rank suppliers into A, B, C and D categories according to their capabilities and reliability.

Another clothing manufacturer echoed the above quote:

Manufacturing had the control. Now the ball-game is completely different. When I started in this industry 25 years ago... we used to all design our own stuff, have our own fits, our own sizes, present it to the chain store. They would either buy or not buy. They would give you an idea, obviously based on last year sales. So that communication was there the whole time. Over time the chain stores started taking that power away from the manufacturers, whereby they buyers started dictating, they started... going overseas, started looking at their own ranges, so they started dictating to us what they needed. Then the whole technology side came into the picture. They got their own technologists, people doing their own measurements; they wanted their own specific fits. So then their own handwriting from a

Woolworths to a Truworths all became quite distinctive – that was what they stood for. They had more control over their product in the sense of design input. The technical side of that still sat with the manufacturers – I would think over the last 10 years even the technical side went over to the retailers... so now they will specify exactly what they want. And as soon as that happened then they started specifying price... With that the manufacturing side got all the pressure put on it, at the end of the day you are basically forced to supply or otherwise close down.(Clothing manufacturer interviewee, 2)

Part of the relocation of design away from manufacturers has been the emergence of dedicated design houses that work closely with retailers, often exclusively for a particular retailer:

What the design house does is – they need a lot less capital to start up – so they start off and they get two or three ladies with a very keen eye, and they will go to London, Barcelona and Paris as well as a couple of other trendy places. And they literally just buy the really desirable stuff that is selling well in the season ahead. And then they come back and show that merchandise – not just piecemeal – they put it together into these stories. So they say something is going to trend big and they put a whole mix of casuals and semi-casuals, etc. And then they show that to the retailer and the retailer gets all excited and says that is wonderful, they love they have interpreted the trend and then the design house gets a big order.(Clothing sector key informant, 1)

By having a relationship with a design house the retailer eliminates most of its design overheads but gets the benefit of a specialist organization that it to a large extent controls. At the same time, the design house is a ‘barrier’ between the retailer and the networks of CMTs, some of which are informal, that the design houses co-ordinate.

The power in the value chain impacts on the pricing and costing of garments in two ways. First, there is the benefit of contracting someone else to deliver a specified service, which turns a variable cost into a fixed cost. One therefore no longer bears the risk of taking longer to manufacture the garments than was originally estimated and costed. Second, power in the value chain has implications for who sets the price for the manufacture of a garment and what room there is for costing the garment and negotiating a price. With respect to the first of these

issues, a design house indicated that turning the manufacture of garments into a contracted service at a fixed cost is critical for its success:

Why we decided to do that is to cut down on the immediate cost of labour; you don't have the responsibility of having all this labour to control. CMTs have been around for years. The advantage of this is that as a design house you can go out and get a fixed cost for your product. So if you are manufacturing a blouse you go to a CMT operation and get a fixed cost to manufacture that blouse, let us say R20. Whereas if you manufacture it yourself it is a variable cost, because if it takes longer to make it is going to cost you more money. And obviously if you do it quicker you will make more money... Whereas now it is fixed – that is the beauty of it – so if there is any problem with the garment, or he's got a problem with labour – if he has costed that garment with twenty people coming in and working on it, but only ten people pitch up on Monday because of absenteeism, now that blouse is going to take him longer to manufacture. And you haven't got the problem of worrying about where the staff is... (Design house interviewee, 1)

Traditionally manufacturer's calculated a minute rate for a garment and would use that to establish the cost of manufacture, to which amount it would add its margin. It would quote the total to the wholesaler or retailer. This is no longer the case. The owner of a CMT that had worked exclusively for a design house for many years stated:

The industry has changed. Those days of taking a garment, doing an analysis, breaking it down into how many minutes each operation is, and then working out a minute rate and multiplying the minute rate by the number of minutes – that is history, it doesn't work... [The design house] knows the product that they are making, they know who they are selling it to, they know what the retail price is, and they know what the mark-up is. So the retail price is R500, the mark-up is 300%, therefore they can sell it to them for R180, for arguments sake. They then work backwards: the fabric, the cost of the trims, and the other stuff, then their margin, and then whatever is left over is paid out to the CMT. And the rule of thumb is that it is approximately 10% of what it sells for in [the retailer]. And that is basically it. That is the only way – there is no costing – so you can either accept it or reject it.(CMT interviewee, 1)

Besides showing how the costing of garments has changed, the quote also indicates how the distribution of power in the clothing/retail value chain closely corresponds with the huge

inequality in the apportionment of value in the chain, i.e. the CMT would get about R50 for making a garment that retails for R500. Information supplied via personal communication from a key informant in the clothing sector provided a more moderate assessment of the distribution of value. The informant stated that clothing retailers have a rule of thumb for costing and pricing garments: they multiply the price they give to a manufacturer by 2.2 in order to arrive at the selling price. So, a garment for which the manufacturer gets R100 will be sold for R220 (a margin of 54.5%). Of course, if the manufacturer is actually a design house that pays for the fabric and trims, and adds its margin, then the CMT that makes the garment would be looking at a lot less than R50 for each one. From the CMT perspective these margins are mostly estimates: they are not told the price for which the retailer will sell the garment and they are not told the price the design house is being given or what the latter's margin is.

Retailers, on the other hand, have developed immense expertise with regard to costing. This is well illustrated in one retailer's explanation of an innovative new approach to costing, the open costing model, which also reveals the extent to which retailers now control costing:

The supplier would come in here and say here is your jacket for you and you can sell it at R299; they had worked out the cost price and done it all for us. So we said hang on a second, that is not how we are going to do things. And effectively what the open costing model does is work its way right back through to understand the price of every component of the garment. So what is the fabric price, what is the rating of the fabric, what is the total fabric cost, how many standard minutes in the garment, where is it made, and what is the cost of the standard minute of production in China or Bangladesh. So what we have developed is a model whereby we can take a supplier's costing and we can break that down, and also understand whether they are making what we feel is a reasonable level of profit – we want people to make a profit because they have got to reinvest in their business. But it's a model that we have developed which has also contributed to us unlocking additional margin, because previously there was much too much fat sitting in different elements of the costing, and we've got a much better understanding of how the open costing works... But we would not need to sit down and do that with every single costing because we have built a lot of the history now around the costing... whether it is understanding the true cost of sourcing from China or Bangladesh or understanding a local costing, we've got a very good understanding of that. And it can work both ways – it is not meant to be just a tool for bashing a supplier

over the head, it can also be a tool sometimes to inform our buyers, who might be trying to develop product at a completely unreasonable level of costing... They might be asking a supplier to develop a product... but there is no way they are going to get that level of styling and that level of fabrication at that price. So it has actually proved to work both ways because there are times when by trying to force a supplier to do that they are going to end up cutting corners...

The bottom-line, however, is that manufacturers, whether large factories in Bangladesh or small CMTs in Cape Town, bear all the risk of producing the garments, while retailers and design houses can contract for a specified service at a fixed price and have the power to build substantial margins into the selling price. This generally means that the CMTs are confronted with a price that is usually non-negotiable, although this varies according to the type of product being made. Design houses in Cape town that are supplying high-quality, fashion-oriented garments occasionally allow for some negotiation with CMTs, although the margin involved is usually very small. CMTs in the Newcastle area indicate that they face enormous downward pressure from 'suppliers' on prices; they are usually quoted a price with the rider that they can "take it or leave it". The latter are evidently competing more directly with the manufacturers in China and Bangladesh.

### ***7.2.2 Two competitive strategies: the 'high road' and the 'low road'***

Confronted by the new liberalised environment and the power this gives retailers, clothing manufacturers are said to be following one of two strategies. The decision regarding these strategies is not the manufacturers alone; the competitive strategies and sourcing practices of retailers are deeply implicated in the choices being made by manufacturers. The first strategy, which a key informant estimated 80% of manufacturers have adopted, is to try to compete on price with the cheap imports, which means drastically cutting costs. This starts a race to the bottom that will lead to the closure of these manufacturers in the not too distant future. The second strategy is to compete on the basis of versatility, speed and quality; the so-called quick-response model. The latter strategy requires a close relationship between manufacturer and retailer, and depends on both making significant changes to the way they operate.

It must be emphasised that the way the industry is restructuring accommodates both the above strategies. The design house phenomenon, for example, can be seen as part of the

quick-response strategy: the Cape Town design houses that participated in this study would fall into this category. On the other hand, design houses or 'suppliers' are also a critical part of the low-cost competitive strategy, because they are the intermediaries used by retailers to source garments from unregistered homeworking operations on the outskirts of Cape Town and Durban, from non-compliant CMTs in Newcastle, and from firms in Lesotho. Most commentators on the industry would still argue that the latter strategy is doomed to fail; at best its life might be extended a few years by working through 'suppliers' and exploiting informal firms. The two strategies, furthermore, are not mutually exclusive; in practice there is overlap between the two, with the fashion-oriented retailers and design houses sourcing certain types of garments from non-compliant or unregistered firms in South Africa, or sourcing from Lesotho. It should also be stressed that the restructuring in the industry is very dynamic and that value chain formats are being continually reconstituted.

In the section that follows, I have tended to focus on the more fashion-oriented part of the local and regional value chain for two reasons. First, it comprises the firms that are likely to survive in the medium to long-term. Second, it provides a good example of the level of integration that is possible between legally independent firms, i.e. retailers, design houses and manufacturers/CMTs.

As noted above, the strategies are being determined by the sourcing decisions made by retailers. The quick-response strategy favours local manufacturers because of their proximity to the retailers and the ability this gives them to achieve better speed to market:

The 'standard offering' is a retailer that decides what they are going to put into the marketplace nine to ten months before the season starts, versus those retailers that have developed the capability to go from design concept into store in the space of weeks, literally in two to three weeks. Now to do the latter you cannot source from the East. As a matter of fact, they must have complete anti-Asian sourcing models; they must source from wherever they are selling in order to get these very short cycle times. (Clothing sector key informant, 1)

The attraction of the latter strategy is that it allows for much higher wages without the firm becoming uncompetitive, but the firm must make big changes. For example, in Turkey:

The workers earn much higher wages – comparable to our higher wages in our metro areas and much higher than the wages in our non-metro areas. Yet they have grown their clothing output very substantially over the last few years, based on the speed and flexibility model. The problem is that organizationally our firms have got to look very, very different. They have got to professionalize, they must not focus on reducing overhead costs in the same way; they must reduce waste, eliminate it out of the production process. But most importantly they must show the retailers that there is major commercial benefit in being able to sell into seasons what the consumer is actually buying, rather than hoping to sell what you think the consumer wants to buy... they [the overseas firms] are very, very different. How the firms get organized - completely different; how the firms look inside - completely different; how management is structured - completely different; how people are trained - completely different; everything about them is completely different. (Clothing sector key informant, 1)

Two key informants estimated that about 20% of South African firms are attempting to implement the quick-response strategy, although they are at different stages of the journey. Many of these firms are participating in the Cape Clothing and Textile Cluster or the KwaZulu-Natal Clothing and Textile Cluster, which started in respectively 2005 and 2006 with funding from provincial and local government. The clusters comprise CMTs, textile and clothing manufacturers, and some retailers, including a number of participants in this study.<sup>116</sup>

The major South African retailers are generally seen to be very well-run operations but they “are not particularly sophisticated in terms of how they buy”, which is an obstacle to implementing the quick-response strategy. Most still measure profitability on the basis of the input margin:

The problem with the retail model in South Africa is that it is an incredibly crude model. What they basically do is try to maximize their input margin when they buy a garment, knowing full-well that they are going to cock everything else up in their own business, because they don't know what the customer is actually going to consume. And therefore what they do is guess miles out, literally five to six months out. The retailers are... already

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<sup>116</sup> These firms are working through three programmes: a Value Chain Alignment Programme (the main target is to get retailer buy-in), a World Class Manufacturing Programme (the aim is to get manufacturers ready for a quick-response relationship with retailers), and a Human Resource Development Programme (which has the objective of transforming the ‘traditional’ supervisor into a team leader).

guessing what people are going to start buying next winter. So what invariably happens is that they buy a lot of the wrong stuff, which is fine because they paid very low prices for the stuff. But what they then have to do is mark down massively in their stores and then they have to spend a huge amount of money on promotions and advertising, trying to get feet through their floor-space. (Clothing sector key informant, 1)

As the quote indicates, retailers are also locked into a lead time of about 150-160 days, i.e. the period from approving the design concept to placing the garments in their stores. This period remains the same whether they are buying the garments in South Africa, Lesotho or China. Sticking to this ‘standard offering’ model means that there is no reason why a South African retailer will necessarily buy from a local manufacturer. Retailers have only two criteria: first, the completed garments must look like and be the same quality as the original design and sample, and second, the garment is manufactured to the agreed price point. And the retailers’ price points are aimed at maximising their input margin. Only one retailer, Truworths, has started to experiment with adopting the ‘gross margin return on investment’ (GMROI) measure, which measures performance on the input margin as well as on the number of times you can turn over this margin. Retailers can therefore accept smaller margins because they can increase revenues by turning their stock over more often.<sup>117</sup>

If retailers focus only on the input margin they will just “screw [their] suppliers the whole time because you have to squeeze them for price.” A retailer:

... in a buyer-driven value chain [is] not interested in manufacturing. All you want is the cheapest possible price. And that forces the manufacturers to de-professionalize, to try to take labour costs out, to move from Cape Town to a non-metro area, and from a non-metro area to Lesotho, and eventually to closure. (Clothing sector key informant, 1)

So, retailers are forcing many clothing manufactures down the ‘low road’ strategy. This undermines labour regulation in the sector and will ultimately lead to a large part of the local industry closing down. A key informant confirmed this view:

... a strategy in a large part of the industry... is not a very sustainable strategy... What they are trying to do is manufacture cheap tops, T-shirts or jerseys – those kind of products – at a

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<sup>117</sup> Truworths were reported to be turning their stock over 6.6 or 6.7 times a year compared to an average of 3 or 3.1 times for the other retailers.

very low price, and try to compete in those kind of products. And in those products it is really just about price and you will never be able to compete the Asian countries on those things. And because of that strategy they have to be able to pay as little as possible, be non-compliant – not just with labour legislation but all kinds of other things like tax... (Clothing sector key informant, 3)

The alternative is for manufacturers to offer to produce runs of 500 units in a two-week cycle, and to undertake to re-stock retailers' stores every fortnight via analysis of point-of-sales data for the first week of each cycle. The manufacturer will therefore re-stock stores with "exactly what has sold by colour, by size mix, by styling detail... exactly in line with what has been consumed." The rider is that to do this the manufacturer must demand a premium of 35% for the garment:

Now the retailer obviously looks at this and goes: You're mad! There is no way I am paying 1% more for a garment. And yet we know from studying the Zara's and H & M's of the world, who operate these quick-response models and pay 35% more for the garments, that they can make a ton load more money as a result, because they don't have to discount their merchandise and they don't need to advertise. And, most important, they are never left with residual stock... They are always [adjusting] supply in line with the demand curve. (Clothing sector key informant, 1)

But embarking on a quick-response strategy requires a big step up for local manufacturers:

If you want to adopt the quick response model you have got to be able to make garments right the first time, you can't have large amounts of quality reviewing at the end of the production line, you've got to change how your production is organised, you've got to have really slick supply chain capabilities, you've got to be really well organised with good IT systems, you've got to have good HR systems, you've got to motivate and organise your workers well, and you've got to have good management. It goes back to putting in lean production systems if you want to be based in a metropolitan area with the quickest, most flexible, most well trained workers... (Clothing sector key informant, 1)

The problem is that most manufacturers "are just so weak operationally. Many tests and pilot programmes have been done by participants in the Cape Clothing and Textile Cluster and the

KwaZulu-Natal Clothing and Textile Cluster but “the manufacturers generally can’t deliver on anything anymore, they are incredibly weak.” All the shortcomings identified by the Swart Commission twenty years ago are still prevalent in the industry: little or no training, old equipment, limited product development, and a focus on standard products. A key informant noted that “the list goes on and on and on – and it is all part of that downgrading approach.” Clothing firms have therefore faced the crisis by sticking with what they know rather than innovating or taking a leap into the unknown. So, inevitably they “end up in a couple of really undifferentiated segments that you can compete in for a short period of time before you die – and that is where many of the firms are.(Clothing sector key informant, 1)

As noted above, the quick-response route is often combined in the same firm with low-cost options. Clothing manufacturers are therefore “increasingly not becoming manufacturers of garments but suppliers of garments – and there is a very big difference.” Many firms are structuring themselves so that they have:

... a manufacturing arm and a sourcing arm, and how you manufacture is increasingly being diversified in terms of some of it is in-house, some of it is sub-contracted, some of it is CMT’ed, some of it is from offshore. So the business compared to where it was five to ten years ago; a single-purpose business is now becoming a multi-purpose business, where the business is no longer to manufacture garments but to supply garments.(Clothing sector key informant, 2)

Even the CMT sector, traditionally there to supply excess capacity at a low cost during the peak season, is also bifurcating:

CMT’ing doesn’t mean downgrading. There is a view that all CMTs are highly exploitative sweatshops. Unfortunately that is probably true more often than not, but top-end design houses that are doing highly fashionable designs, the CMTs that supply them often have much better manufacturing plants than the full, vertical clothing manufacturers. If you had to ask me who the two or three best clothing manufacturers are that I know, they are not manufacturers but are rather CMT operations. But they are supplying into Truworths and into Foschini, and are supplying top-end design... That is why there is often an argument that they are the future, and I think that there is a level of truth to that. I think those are the firms that are likely to be the most resilient... going forward.(Clothing sector key informant, 1)

The 'high-road' strategy is therefore not restricted to traditional full-line manufacturers in close relationships with retailers. The model of design houses linked with "top-end" CMTs can work just as well, if not better. This part of the industry will survive because it is needed by retailers who want to source fashion-oriented garments quickly. In fact, it might even grow:

As retail, of course we'll support a manufacturing sector that operates efficiently and effectively. It doesn't have to have Chinese price points, it really doesn't. We have enough of a fast-fashion opportunity here, and we can grow those entities to be exporters of goods. (Retail sector key informant, 1)

And a key informant in the clothing sector stated:

When we went to the retailers two to three years ago, they said... if you can give us the following four things: quality, speed, flexibility, and reliability; if you can give us service standards in those four areas that match international best practice, then that fifth element called 'price' we actually can start talking about it. (Clothing sector key informant, 2)

So there is a future for the industry, or at least a small part of the industry, that will get margins from retailers that allow manufacturers to comply with the bargaining council agreement and probably pay relatively high wages. But this industry of the future will employ far fewer workers than are employed today, not taking into account the huge decrease in employment that has occurred over the last decade. Running alongside this industry is the model of design houses and CMTs that fits into the 'low-road' strategy, with design houses driving down prices to levels at which they know the manufacturers cannot remain viable unless they do not comply with bargaining council wages and conditions of employment. Even with the much lower labour costs due to non-compliance it is likely that this part of the industry will disappear in ten years.

A strong commitment is expressed by retailers to adopt the quick-response model. There is nothing surprising about this commitment. Retailers cannot rely on China for all their garments despite the low price; the lead time from placing an order to getting the clothing into their stores is too long. Even the lead times from Lesotho and Swaziland are too long,

and there are limitations on the quality and type of clothing that can be produced in the latter countries. So, the clothing industry in South Africa will survive “because the likes of Truworths and Foschini, and Woolworths to a less extent, and probably Edgars to a lesser extent, need to have local manufacturing because of the speed and flexibility.”(Retail interviewee, 1) The problem is that the retailers have not all taken the necessary steps to change the way they operate and it is debatable whether the manufacturing base will survive the restructuring the industry is going through. The quotes above often indicate pessimism as to whether established manufacturers can transform sufficiently to supply retailers on a quick-response basis. An alternative to sourcing from full-line manufacturers is to work through design houses that contract to CMTs which specialize in different products. This model is well suited to small orders, quick turnaround time, and product variety.

There is, however, a question-mark as to whether such design houses and CMTs are going to survive. A number of interviewees indicated that the pool of reliable CMTs is shrinking. As one interviewee noted: “There are very few CMTs out there of a reasonable quality to place an order. It’s been lost. From what people are saying is that they can’t afford to stay open anymore.” The same interviewee commented further:

We’re going down [i.e. CMTs]... The workforce is not trained, they are taken off the street, they don’t understand what they have got to do. The bosses don’t really have time. They have got deadlines, very short deadlines to get the merchandise out. So there is no training given. It’s difficult out there at the moment – and there are not too many CMTs left to place orders with, they are closing down.(Design house interviewee, 4)

One of the consequences of the weakness of the CMT sector is that design houses have taken over one or other CMT to ensure they survive and can continue manufacturing for the design house. This is generally against the first principles of a design house, which is to avoid employing production workers:

One other thing – in the last year a couple of our factories got into financial problems and I had to take them over. One was quite a big one – 200 workers – which I took over. I didn’t want him to close down because I needed the production capacity, so we took him over. It is in a separate corporation but it belongs to us. It is one of the things that I didn’t want to do – I

don't want to own factories; I don't want to own... more people. People are the biggest problem – people and red tape.[Design house interviewee, 1]

The above design house was not the only one that had very reluctantly taken over CMTs. Short of taking over a CMT, design houses will sometimes give it financial support to tide it over in difficult times or will pay a penalty for late delivery to a retailer even if the fault lies with a CMT. It is a curious reversal of the restructuring process that is being done out of desperation. Design houses are dependent on certain CMTs with expertise and find it difficult to easily replace them, so they are forced to expand into owning production facilities. At the same time, it is a consequence of the nature of the relationship that is established when production is split from retail and design, with the latter largely driven by price competition and having little or no investment in the sustainability of production operations.

### ***7.2.3 Legal structure, contracting and management control: the relationships between retailer and design house, the design house and CMTs, and CMT owners and their employees***

A key theme in this thesis is the role of contracting to create bridges between legally independent organisations across which management control travels. In the clothing industry contracts, whether verbal or in writing, appear to be only a very limited foundation for such a bridge, with power and trust providing much of the substance.

#### ***7.2.3.1 The relationship between retailer and design house***

It is surprising that even very large corporations such as the major South African retailers, with specialist sourcing divisions, do not have a more formal approach to their relationship with suppliers. It is perhaps a reflection of the vast power disparity, i.e. they do not see the need for formality when their suppliers are so dependent on them. In this scenario it is unlikely that they would have to ever rely on the contract when it comes to enforcing the terms of the order they gave to a supplier. A key informant provided more insight on this issue and indicated what the implications are for the local clothing industry:

South Africa retailers don't like service level agreements. When a South African retailer buys, its order is the contract. When Zara buys, its order is its order and there is a separate supply chain contract... [Similarly] in the auto industry... you have an order and then you have a service level agreement, and they are two completely different things. You are governed by your service level agreement, and your order must always conform to your service level agreement, but your service level agreement is your guarantee of long-term business. And because you know you have a long-term contract with your customer you are encouraged to invest behind your business. Whereas the clothing manufacturer – I know I have said that they perform poorly and their management is weak, but I can understand why – they literally run businesses that turn over R150 million a year with no idea what their order book is going to be like next month or the month after that. They probably are planning with a two month window of certainty. And that is a recipe for cash extraction from a business, it is not a recipe for building it... In clothing the guys are told that you need to invest more in your people and they go: Well what if I haven't got business in two months time, why would I want to spend any money training anybody – I would rather extract the cash from my business. Which is wrong but it is understandable on the basis of the nature of the contracts that exist. (Clothing sector key informant, 1)

A number of the interviewees confirmed that the 'contract' between retailers and design houses or manufacturers was nothing more than the order itself. There appears to be little risk to either party due to this informality; what ties the two together is an enduring relationship and a high degree of trust. Of course, there is variation in the approaches adopted by retailers. Truworths, for example, was identified as having a more "transactional" relationship with suppliers, whereas another retailer emphasises a close, enduring relationship with suppliers that effectively amounts to a "partnership". The latter retailer explained some aspects of this "partnership":

I wouldn't say it was a service level agreement because... retail is very dynamic and there are things that can change, and one has got to be very careful in this industry that we are not giving a supplier almost a binding contract that says your business will grow from R100 million to R120 million, for example. However, what we do have is documented intent, and followed up with seasonal purchase orders, and what we have just developed is effectively a capacity planning document that... is giving a clear intent... almost a high, middle and low

ambition for that supplier. So, if the middle is the most likely scenario that would translate into a million units across the following programmes, with a potential upside and a potential downside.(Retail interviewee, 2)

Given the power of the retailers in the value chain, the objective of the different arrangements is to maximise the benefits to the retailers and spread the risks to manufacturers. The retailer sets the conditions of the relationship: “The fact that the supplier is a partner is no guarantee that the partnership will remain if that supplier is not delivering regularly to a very tough and robust number of key performance indicators that we regularly assess.”(Retail interviewee, 2) From the perspective of a supplier the retailers can appear quite fickle: “Even if you have a partnership the retailer is going where it can get the best price, [so] the price seems to be more important than the partnership.”(Clothing manufacturer interviewee, 3)

But building a close relationship, whether it is a “partnership” or is more “transactional”, means give and take on both sides, which does not always mean that the retailer offloads all the risk on its suppliers. It is investing a lot of management time and energy in building up the sort of supply base it wants, so the retailer will try to keep it intact. Retailers do not easily drop suppliers with which they have developed a relationship. This give and take points to a level of integration in the operations of retailers and manufacturers or design houses that goes well beyond a contractual relationship. Much of this has to do with which party buys the fabric upfront and which party bears the ultimate risk of purchasing the fabric. This risk has heightened with the near collapse of the South African textile industry and the need to import most fabrics, in particular from China. Previously manufacturers could usually negotiate payment terms with local textile firms, but the Chinese fabric suppliers require payment when the order is placed and the lead time is long.

At least two major retailers indicated that in certain circumstances they have purchased fabric and supplied it to manufacturers. Retailers also talk of holding greige stock that can be quickly dyed and finished for supply to manufacturers. Managing this risk is a critical part of fashion retail:

If you run a fashion business, the trick... is the ability to manage the risk of fashion. That is what makes Truworths different. So they are fashion risk managers. And I think that puts them at the top of the pile in the retail sector. Fashion risk sounds easy... but actually

managing fashion is tricky, and to do it consistently is what Truworths is good at and they have got a very good track record. What that means is that you have got to have very good forecasting. Someone has got to be telling you where fashion is going with colour and all those sorts of things. And then you've got to put your head down and buy the fabric. Buying the fabric is one risk, converting it into clothes is another risk. And it is the management of these processes that Truworths is particularly good at. (Retail interviewee, 2)

The interviewee carried on to emphasise the point:

Truworths business model is one of being very sure of predicting fashion in advance... and then communicating that to manufacturers early. And then taking a lot of the risk on fabric. So Truworths, although they don't own the manufacturing, they will tell the manufacturer to buy this print and if the print doesn't sell they will then take the liability for that. (Retail interviewee, 2)

But retailers do not always buy the fabric up front. The advent of design houses has allowed them to shift the initial financial burden of buying and holding the fabric to design houses, even though they might eventually pick up the tab for unused fabric. As one design house interviewee noted:

Except that we're buying the fabric, for both of them [the two retailers it supplies], without an actual order. We're buying it on their commitment that we must buy the fabric. It has never happened that they've not taken it up, they never renege on the fabric. But they might say we don't want it, we'll buy it, and that's a problem because they don't always want to buy it. We occasionally fight with them for six to eight months to buy the fabric. (Design house interviewee, 2)

Eventually, however, the retailers will buy the fabric and sell it to "some jobber" for a huge discount. The risk that the retailer ultimately bears for the cost of the fabric partly accounts for their huge mark-ups on the price of garments. Similarly, if the retailer ends up discounting a garment at the end of the season, it is a financial burden that it alone bears. This is the downside of being the one that develops the brands and determines the price at which garments are sold. As one design house interviewee stated:

Not our problem, they've made that decision. They're selling their labels. If we had our label... they'll say you stand the risk with your label, if it's not sold in six weeks we'll return it. On your label you can maybe make a rand or two more, where you can't with them, they know the prices – that's the price, it's R300, that's what you've [the retailer] got to sell it for.(Design house interviewee, 2)

Another key aspect of risk is customer credit. How retailers deal with credit is what sets apart the upmarket retailers from the discount retailers:

They have huge mark-ups; their risk is so great – they sell on credit, and they give six months to a year [to pay], so they factor that into their cost price. If you go to Mr Price you might buy the same thing for much less. They sell it on cash.(Design house interviewee, 2)

The retailers therefore often bear the ultimate risk of purchasing the fabric, and might even hold a reserve of greige fabric, but can shift the financial burden of purchasing and holding the fabric until the design is finalised on to a design house. As we have seen above, the other major risk in the process, which an interviewee above identified as “converting [the fabric] into clothes”, can be transferred by contracting with CMTs to do the manufacture at a specific price. This makes manufacture a fixed cost for the design house and a variable cost for the CMT.

The distribution of risk in the relationship between retailer and manufacturer or design house indicated a high degree of integration between ostensibly legally independent entities. This integration can be divided into two stages: design and production. Design houses have specialised in a function previously carried out by a full-line manufacturer, but they perform this function in close collaboration with the retailer. The quotes below indicates just how integrated the collaboration is:

So [the head designer] goes overseas, looks around, gets ideas, buys samples, takes magazines, and reads annual manuals; we have all kinds of subscriptions from overseas showing fashion trends, all kinds of fashion trends. So she'll come and tell them [the retailers, mainly their buyers, but often directors will attend], displays the garments, and shows the trends, and says this is a 'sailor' trend for summer, for January, February, or it's gone 'western'... They look at the range, they um and ah, they love it and they want to take back

garments... Each of the buyers will want the garments, which they'll take with them, this one wants 10 or 15, so they might take back 50 or 60 garments to the retailer.

As soon as the retailers make this initial selection of the styles they like, the design house orders the relevant fabrics, although they are not entirely sure at that point how much fabric they will need or what the final design will look like:

We don't know what they're going to buy, whether a long dress, a short dress, a three-quarter dress, or not a dress at all; it might change into a blouse. So we take the risk, we buy 2 000 metres for that style, although we may only need 1 700, so we might get stuck... So we buy at a price and give them [the retailer] an approximate idea of what it will cost them. When the fabric is ordered, we get a sample in early [about 10 metres of the fabric], it gets shipped in by air, and we'll make up the samples. Based on their variation [the changes the retailer wants] of what they've seen inside here - because every buyer is a designer, so they'll style it up, and they'll take the six garments that they wanted, and they'll show the range and somebody above them doesn't like it, or they like four out of the six, and two come back - we change it. Or it goes for review amongst the managers, and the managers don't like all six at all so we have to do it again. And the expertise we have is to re-do the samples within 24 hours most of the time... [So] it will become a skirt or a dress or a different format, and we will have to re-cost it. The pattern has to be re-made, the garment re-made, and we have to cost it, with whatever components have to be added [also] costed, and sent back, with the [revised] cost of making the garment. We stop at a certain level - we have done this year up to seven different styles to make one garment, so it's a lot of work, a lot of expertise running into each garment. Then [some weeks later] the fabric arrives, and suddenly they don't like red, red's not selling... they say hold the red, so we have to change... We carry the cost of the fabric and the cost of the components that come with it... sometimes it's a fancy component... it might come from Durban, sometimes from China.(Design house interviewee, 2)

The level of integration in the design stage is matched in the production stage. The lengthy quote below focuses on the latter stage of the relationship. At this point the fabric has arrived and all the decisions have been made about the designs. Subject to possible last-minute changes based on sales data, the design house has six weeks to make the order:

When we make the sample, the quality controller at [the retailer] will look at each garment, measure it, try it on, send it back with comments. If the comments aren't right, we may have to make it over again – just the quality control [aspect], not the styling. Once we've got the order and the quality control has been passed, our production department will put it out to work – we'll have a cut-sheet, with all the details of where to put what, and the style itself, with the seal, to show the factory – one of the 15 or 16 factories – exactly how to make it. We'll make a pre-production sample, so we'll make a sample beforehand, it goes to our quality controller, they're happy with it, it goes out to work... [So] it has a sample, with a description, and the quality control [document] from [the retailer] will be on it, with whatever changes they might want... on there. So a cut-sheet is made out with all the details, how much fabric to use, how much lining, what components, and most of the time it goes out with all the components [plus] a list that will tell them what components are missing...

It goes to the factory and we have two quality controllers on the road checking each factory every day, or every second day if it's a small factory, and once she's passed it, it's delivered back to us. [Retailer X's] come on hangers... I have a whole system downstairs, it was adapted for hangers, it's a shunting system like trains, that go from rail to rail, [but Retailer Y] wants it in boxes. Unfortunately you can hide a lot of things in boxes that you can't hide on a hanger, where you can see each garment. So we have to inspect each garment in the boxes...

But before we can send out to [the retailer], they send a QC person to us in our warehouse. They'll check at random ten or twenty garments out of any box they choose, give it a pass, and only then can we book a delivery... Now they're talking about shortening the [production] period from six weeks to five weeks, which means I've got four weeks to produce it... Four weeks is tough, but they want to get it quicker into the store; which is great in theory, and they could get it quicker in store, if we get a quicker decision up front. If they could decide up front what they wanted and not change their minds five or six times, then it will get to the stores much quicker, so the delay is on their side...

So the garment goes in and we can pick up sales in the stores daily, we have access to their sales on the computer, so we can track a style over the first couple of weeks. We are also monitored – they keep a monitoring system, all these chain stores - if you're delivering in full

and on time, there's a schedule. They're starting to fine us if you don't deliver in full and on time.(Design house interviewee, 2)

The quote indicates a virtually seamless operation spread across two legally independent organisations. It is, furthermore, in constant motion: "There should be a style in work, a style in the shelves, and two styles in cutting at all times, so it's like a conveyor belt system." As with the relationship more generally however, it is the retailer that is clearly setting the terms with regard to design, production time and quality, even to the extent of requiring different packing arrangements.

### 7.2.3.2 *The relationship between the design house and CMTs*

#### (a) The contractual relationship

Just as retailers appear to be reluctant to enter into service level agreements with suppliers, design houses also do not see the need to formalise their relationship with CMTs through service level agreements, despite the fact their relationships are generally long-term and are imbued with a high degree of trust:

There is no service level agreement with suppliers. It is basically done on trust and on time. A lot of them have been with me for years and years. New ones come on board and they fall off or they stay on board. There is an unwritten working relationship between these plants and us.(Design house interviewee, 1)

A CMT that supplies the above design house confirmed the arrangement: "It is a 100% trust relationship, purely on a trust basis."(CMT interviewee, 1) Another CMT in the same network stated: "There has never been a contract with [the design house]". She went on to explain that it is a long, well-established relationship that is based on trust.(CMT interviewee, 4)

This informality has certain benefits for the CMT:

It's all by mutual understanding, nothing in writing. We try every now and again to formulate something formal and legal, but it doesn't quite work, so we just keep it informal. We've got

complete control – if the guy doesn't deliver on time, *we* might get fined. For a day, they could cancel an order, or half the order, or they could ask for a discount of 2½%. I very seldom pass that on to the manufacturer – we carry that extra cost. (Design house interviewee, 2)

In many cases these enduring relationships convey a sense of security; they expect the relationship to continue. In response to a prompt that the design house could cut off its orders without any warning, a CMT owner who had worked for it for almost fifteen years stated that:

They could do that, they could. But I far prefer the way we are operating. I am still very much from the old school... and there is trust, there is trust. I can't see – it could happen – but I can't see [the design house] turning around tomorrow and saying: ... we are not supplying you with work anymore. And in exactly the same way I will not turn around to [the design house] and say: ... I am not manufacturing for you anymore because [another retailer] have offered me a better deal. I would never do that. I have been with [the design house] for 15 years, or whatever it is, I am not going to do that. And I don't believe he would do it either.

These relationships clearly go well beyond arms-length contracting. The trust between the Cape Town design houses and their CMTS are evidence of the existence of what one interviewee called “relational obligations”.

It is useful to note four points at this juncture. First, the relationships function in a way that mimics working arrangements in an integrated, hierarchical organisation. Second, these relationships bear a remarkable similarity with the standard employment relationship: a basic contract, trust that the relationship will continue indefinitely, integration into an organisation of work (albeit in separate workplaces), and close monitoring by a stronger party of the work arrangements and performance of the weaker party; these are all features of the standard employment relationship. Third, the CMT alone bears the risk of employing production workers and the regulatory obligations that go with such employment. Fourth, it is important to note that the above section has used the example of design houses in Cape Town that are producing fashion-oriented garments. It is apparent that design houses that are sourcing much more basic types of garments from areas such as Newcastle, where many CMTs are non-compliant, have more of an arms-length relationship with their suppliers. Because these firms

are competing primarily on low prices, the relationship is much less accommodating of any flexibility on price.

In the sub-section below I will examine another aspect of the relationship between design houses and CMTs.

(b) Management control from design house to CMT

The following quote is lengthy but is reproduced in full because it illustrates so well the contradictory relationship between firms in the value chain: legally independent, temporarily linked by very basic contracts, and deeply integrated in how work is arranged and performed:

*How does your firm exercise control over the workers at the CMTs?*

No – we don't. It is independent, they are absolutely independent companies. They have got nothing to do with us... we give them a product to make and the quicker they manufacture it the more money they are going to make, if it is good quality and acceptable. They are selling us time, basically they are selling us time. So we have got no control over their labour. Sometimes we get involved in their disputes where the workers are disgruntled and they haven't got money, but it's very rare.

*So you have your quality control people and the CMT can come in here if they have technical problems?*

But they are totally independent companies run by independent people... There are no formal contracts with them. Our control, in as much as there is control, is that we control the amount of product that goes into them – so if a thousand meters goes in to them we should get a thousand garments back. It's all in the numbers.

*You give them the fabric, the design...*

We give them everything: the design, the trims, the plastic bags. All they have got to do is make it. They are just doing the labour.

*Do you give them a deadline?*

Oh yes, everything is on a deadline, everything has a delivery period.

*How do you maintain the quality standard?*

We give them the quality standard, we give them all the specifications they have to meet. The quality level is per the sample – they get a sample that has to be followed. And that is the bible of that particular style. And that is why our QCs are there to see that they adhere to the particular standard. It's got points to check, it's got measurements – you've got to measure, a bust measurement, or a length measurement for a sleeve. (Design house interviewee, 1)

The extent of the management control is made evident in the following section of an interview with one of the quality control (QC) staff of the above design house. As will be explained in more detail in the section on quality below, this design house has six roving QCs that each spend their time visiting daily between seven to ten CMTs that are doing its work. The QC's job is to monitor the production of an order "from the minute it hits the line at the CMT to the minute it comes off the line" and is dispatched back to the design house. At the design house is it again checked for quality by another quality controller and is then checked by the retailer's QC person before it is dispatched to the latter's warehouse:

I don't have anybody under me, except the CMTs assigned to me. You start off in the mornings. You will go the CMT that possibly has the most problems, according to your delivery date. You go onto the lines, go to the actual machinists, look at what they are doing. You will carry your sample with you, your approved sample from [the retailer], to say this is what we require... We take that with us on the line – it is at the CMT already – they have cut the style. We go onto the line with that sample, read our notes, all the information that is supplied to us. Take it onto the line and ensure that what is there [i.e. what is being produced] is what has been requested. Every single day you will cover all of your CMTs allocated to you, day after day, every single one. So if it is a big order you might be checking that same style at the CMT for five days, or six days, or seven days – it depends on how large the order is.

*If you find problems, what do you do?*

Well, you have got to find the solution to the problem yourself, if you can. If you need some assistance, and you are not capable of solving it yourself, you bring it in to [the design house] and there is a team of people who will attend to it internally.

*Will the CMT person come in for that process?*

No, most of the time we come in with the problem and then we go back out there and advise them. We need them to stay with their work.

*Is there resistance from the owner of the CMT to your involvement?*

No, they won't do that.

*But strictly speaking they could?*

They could, they could, but it's not to their advantage to do it because we are there to help.

*But how interventionist are you in solving the problem? Do you work through the owner of the CMT to relay instructions to machinists, for example?*

We will work with everybody we have to work with – with an owner, with a supervisor, with a machinist, if necessary. It's everybody.

*So, once you walk into the CMT you could to all intents and purposes be the CMT's QC person, it's all hands-on?*

Correct, correct, every aspect of it.

*We have been focusing on quality – what about the deadline for an order?*

This is something we must watch. We monitor it on a daily basis to see that our deliveries are going to be met. If they are not going to be met then we must advise, we must ring the alarm bells, so the we can put a plan into place to rectify it.

*Describe the relationship with the owners of CMTs.*

Oh no, never any form of power struggle. We work together. It is in the best interests of everybody to work together. [There is} never any resistance from them – not at all, not at all, no. It is to everybody's advantage to work together – and we do it in a polite, civil manner... [Design house interviewee, 4]

The role of the design house's roving QCs is therefore much the same as a hands-on production manager in a unitary firm. She has the authority in the relationship but seeks to work co-operatively as far as possible.

Another design house gave a different perspective on the power in the relationship with CMTs: "We control the cash – 90% of the factories are working 100% for us – so we control the flow of work, we control the work going in, and we control the payments as well." He went on to emphasise, however, that he could not use payment as a stick to beat the CMTs with – they needed the payments to survive and continue working for the design house: "I must see that they can exist the next week and the week afterwards... I must pay them to see that they can continue to work for us; there's no way any factory can survive for more than a week without payment, because 80% of the cost is wages. (Design house interviewee, 2)

Just as in an employment relationship, management control needs to be complemented by co-operation and support. This is evident in the above quotes. But support goes beyond just working co-operatively with the CMTs; there is an element of dependence on both sides:

And then they have problems because they run late because of absenteeism, because the staff are not what they thought, or they have financial problems. And then we assist them. We are the mothership and they nurse off us. If they need milk they come to us.(Design house interviewee, 1)

This dependence is especially the case for the design houses that are producing more fashion-oriented garments because the pool of CMTs that have the expertise to manufacture these types of garments is shrinking. The CMTs therefore need to be nurtured, which gives them a certain amount of bargaining power, although they are generally not aware of it:

So in a sense they have a certain amount of power as well, if we're looking at it purely in terms of power in a relationship and negotiation, because you can't just find ten other CMTs easily out there that you can work with. They're not quite aware of that. They think we've got the capabilities to find other people, and we can, but we can't find people who can work to the workmanship... that we need. It takes a long time to get that running. So I couldn't just now suddenly go and find factory number 16 or 17, and hope they will suddenly produce for us.[Design house interviewee, 2]

Part of the problem is that design houses usually require CMTs to work exclusively for them, which tends to put them out of bounds for other design houses.

#### (c) Production scheduling

A high level of integration between the retailer, the design house and the CMTs is evident in the planning that goes into making sure that garments are manufactured and delivered to the retailer at the right time. The relationship between the retailer and design house was dealt with above at some length. At the next level, the delivery deadlines for an entire range of styles for a certain period given by the retailer to the design house, are translated by the latter into separate schedules that it distributes to its network of CMTs. These schedules will list the styles, the quantities of each, the specifications, and delivery dates that the design house is proposing to each CMT. Each CMT will select what they can manufacture, both in terms of having the necessary expertise and equipment, and having the capacity to meet the delivery deadline. Each CMT will therefore 'book' orders for its factory going forward a number of months. As one CMT stated:

It is planned. There is the production plan that goes up to the 24<sup>th</sup> of January next year.

*So he has you booked up to 24 January? And he [the design house] has the same thing with [the retailer] and has the same thing with all his CMTs? So he has a plan for the next six months?*

Yes, yes. At least I am sure he has a production plan going even further forward, I am just booked up till the 24<sup>th</sup> January.... And I will go through this and say: I don't want this, I don't want that, I don't want that so move that somewhere else. I can do that, I can't do that... And this is orders just for September [showing the list of potential orders]. There is a special machine needed for that so I can't do it.

*So he has given this schedule to you?*

Yes, and he says go through it and tell me what you can't do. Or tell me if you need more anywhere.

*And the price – is that part of it?*

Not at this stage, this is just scheduling. Price we only get a week or two before we start manufacture. That is when we negotiate; but there is very little space for negotiation, it might be a Rand here or there. Ja, and this gives me security.(CMT interviewee, 2)

Another CMT revealed much the same arrangement:

They know more or less what my capacities are... They give me a loading, which they do as the orders come through they just allocate styles to me. I then get their loadings, I go through the loadings that they have proposed that I should make, sometimes it is a few thousand more than I can, but I go through it and just say right I can make that, that, that and that, and the rest they will have to outsource to somebody else. So I would work my schedule from that: what and when. I don't have any say in the quantity of individual styles but I have a say in the total quantity according to my capacity. I can make 12 000 units for you and these are the styles... I have got such a good relationship with them that they give me sketches of what is on the schedule, so I can go through the sketches and say: Yes, yes I will make that one, but that one I won't make. So it allows me to select the product that I want to make. I will obviously make complicated styles but even with 45 machinists there are not enough

machinists to make some of them, they have got to go to the bigger factories.(CMT interviewee, 1)

What the quotes show is that the distribution of the schedule of orders from the retailer is not just about production planning. It also means that a very wide range of styles can be broken up and assigned to the CMTs that specialise in particular garments and therefore have the requisite expertise to make those garments efficiently and to a high quality standard. It is a key aspect of the retailer – design house – CMT network model, namely the centralised co-ordination of differently specialised operations that facilitates a level of versatility that could never be achieved by a large full-line manufacturer.

The attitude of ‘suppliers’ that work with CMTs in the Newcastle area appears to be much less co-operative. A retail interviewee spoke of such ‘suppliers’ “just ramming work into the pipeline” and playing off CMTs against each other to get lower prices. The lack of co-operation was an obstacle to attempts to put a quick-response model in place. CMTs in the area are strongly opposed to the quick-response model because the number of units they will be given to produce is too low. This is largely a misunderstanding because ‘suppliers’ do not share their full production schedule with the CMTs. So, the latter think they will be getting only 10 000 units for a whole season because that is the amount revealed by the ‘supplier’. In fact they would get a lot more, probably the 50 000 units they need to keep them busy for the full season, but the suppliers are only telling them about the first set of orders, i.e. 10 000 units. It is another example of the much more arms-length approach adopted by design houses working at the low-price end of the industry.

#### (d) Quality control

Some of the quotes above indicate a high degree of integration between a design house and its CMTs in order to ensure that delivery dates are met. There is similar integration between retailer and design house regarding quality control. The following quote explains in more detail how this system works:

We have six QCs on the road that are interacting constantly with the CMTs. [The retailer] has their QC come here to check the goods... [she] quality controls a certain amount of styles before they are allowed to be dispatched to their warehouse. It is a certain quality level that

they have to be at. So our function is to make sure that we are at that quality level and they just come here and check it. They do find things wrong and then we have to fix it and get them up to their standard. She is here every day, she is here right now, she spends a couple of hours here... And then they [the retailer] quality control the stuff when it gets to their warehouse... Our QC people at the CMTs are doing exactly the same thing – they nurse the style through from beginning to end. They try to pick up problems as and when they happen, not just at the end. And if the factories are having problems then they come here... we have technical people here so they come here and we sort it out... So what they will do is they will bring the samples and the pattern, and they will come here and sit with our technical staff and they will say they had difficulty attaching the sleeve or a pocket, and we try to sort it out for them here.(Design house interviewee, 1)

The level of integration with respect to quality assurance is clear from the above quote. The integration is emphasized when one gets the perspective on the system from a CMT:

Our supervisors are our quality controllers. But we also have a QC from [the design house] coming to us every day. She checks the garments we are putting in dispatch, does all the measurements, checks to see that everything is up to spec, and at the end of the style if she is happy with what we have produced she signs it off. She is obviously here while the style is going through so she is monitoring as well. We have examiners at the end of the line that are examining the garments as they come off, so if there are any repairs, threads lying around, panels not fitting properly, whatever it is, it goes straight back onto the line for repairs. And then it goes for ironing after that, and then it gets a final inspection where we see the presentation of the garment... If [the design house QC] is not happy we have to fix the mistakes or do the repairs. She could spend up to two hours a day here. And what we do is the first five garments produced of a style I will take myself to their QC there, they then check to see that everything is according to what they want, they make notes, and the garments then come back with me with the notes, which are the things to watch out for...I make a point of making sure that the first five garments go to [the design house] because if this is 2 500 units I don't want the QC to come in when I've made 600 garments and tell me there is something wrong.(CMT interviewee, 1)

This monitoring of quality is not confined to the borders to South Africa. Quality controllers from the South African retailers visit factories in Lesotho and Swaziland to do inspections.

Furthermore, at least three major retailers have opened their own quality assurance offices in China to conduct inspections at their supplier factories and to check the quality of garments before they are dispatched to South Africa.

(e) Pricing and costing

The issue of pricing and costing was touched on above in the section on the shift of power from manufacturers to retailers. This sub-section will add more detail. As noted above, the issue has two dimensions: first, there is the conversion of variable production costs to a fixed cost for the performance of a specific service, and second, is the way in which a garment is costed and what room this leaves for negotiation. In the following quote both aspects are dealt with:

We are surviving successfully because we have this huge advantage of the fixed cost. Now on the other end of the spectrum our CMT factories are not surviving successfully. They are bearing the brunt, they are the bottom of the totem pole unfortunately. So what happens is the chains fix the price of the garment, and then you take off your fabric price, you take off your trims price, and then we take off what profit we feel we should make, and then you say to the factory: Look, we can only afford to pay you X amount for the garment. Do you want to take it or don't you want to take it. And unfortunately they are not sophisticated enough – a lot of them – to understand the costing aspect of it. They only find out that they are losing money once the garment is on line. They find that they have produced a 1 000 but they have only an income of R20 000 from the 1 000 and their expenses are R24 000. And they haven't anticipated that. (Design house interviewee, 1)

But even if the CMT has costing expertise, they have lost control over their ability to quote a price to a customer based on its costing. The CMT now works backwards from the price given by the design house to arrive at a result which tells it whether it will make a profit or loss from doing the order at that price. A CMT owner in Lesotho working for design houses based in South Africa stated that he will be told a price by them with the rider that if he cannot meet that price they will get it made in China; it is a case of "this is the price, so take it or leave it". (CMT interviewee, 5) He then described how he costs the order. Rather than working out the minute rate of a garment and using that to calculate a quotation price, the CMT owner has established exactly what it costs to run his factory at full employment for a

day, including wages and overheads. So, he will calculate the number of days it will take him to complete the order and multiply that figure by his daily cost. The result will tell him whether he will make a profit on the order, break even or make a loss. Even if he will make a loss, he might still take the order so that he can keep his factory running. Other CMTs had resorted to very similar systems, either establishing a daily breakeven amount or a weekly amount.

Most CMTs in this study indicated that there was little opportunity to negotiate prices with design houses, but the design houses working with CMTs in Metro Areas appeared to be prepared to accommodate some negotiation of prices in certain circumstances. Their flexibility on this point reflects the fact that the type of garment the design house is getting manufactured is relatively complex. The design house is therefore dependent to an extent on what it perceives to be a limited number of CMTs that can make such garments. This gives the latter some bargaining power.

It is clearly not the same for a CMT in Newcastle or Lesotho that is making standard garments. In Newcastle, for example, there are a large number of CMTs concentrated in the industrial area, many of which are owned by Taiwanese and Chinese immigrants. The CMTs manufacture garments mainly for Edcon and Mr Price, although they deal with design houses or suppliers rather than directly with the retailers. A number of interviewees, including a retailer, recounted how these suppliers start at one end of the road through the industrial area with their orders and slowly drive down the prices as they move from CMT to CMT and play them off against each other. A supplier would, for example, end up getting a garment made for R13.50 for which started out getting quotes of R20. The only negotiation that is taking place in Newcastle is therefore to push the price ever lower. Another CMT interviewee in Newcastle recounted how the downward pressure on prices is so intense that that from one year to the next prices can go down. He cited the example of making corduroy pants for R4.50 a pair one year, including supplying the elastic and paying for the transport, and the next year being told that the price was now R3.75, and that he could “take it or leave it”.(CMT interviewee, 6)

### *7.2.3.3 The relationship between CMT owners and their employees*

What does the decentralised production format mean for the workers that actually make the clothes? How do the retailer and design house ensure that the workers perform as required? In fact, the extent to which clothing production has been broken down into a sequence of relatively simple operations has made the task of control a relatively routine one. And, importantly, breaking production up across a large number of small or medium-sized CMTs means that control can be exercised directly by the owner of the CMT through close monitoring and supervision. In brief, there are four dimensions to control at the CMT: control built into the production line; direct supervision; performance measurement; and, the threat of disciplinary action, possibly dismissal. These are discussed further below, with perspectives from interviewees via quotes.

The first dimension of control over production workers is the extent to which the manufacture of clothing has been fragmented into relatively simple tasks. Each worker therefore has a quite specific role in the production line and knows what is expected of them. Furthermore, they are getting work from the machinist behind and passing on work to the machinist ahead of them in the line, so their pace of work is to a large extent determined by the line. All the CMT interviewees indicated that there was no need for detailed job descriptions or elaborate occupational categories. The production line to a large extent sets the parameters for each person's task, which they understand. When asked whether there were detailed rules regarding the performance of work, a CMT owner pointed to the quality dimension of the production set-up:

Everybody knows that they don't work on things that are not up to standard. So if a garment comes to you and you see there is something wrong with it, then you don't work on it. You just leave it. You call the supervisor and say to her: The lady before me messed this up and I can't carry on with the garment. OK. They know there has got to be checking of their fabric all the time. Working with a stretch fabric, if the machine is not set properly the thread will crack and make a hole in the garment. So they have got to know about that.(CMT interviewee, 2)

Second, there is direct and close supervision of workers while they are performing their tasks. This supervision is done by supervisors as well as by the factory manager or owner. The role of the latter was seen as critical and is a function of the relatively small size of most CMTs, i.e. the factory manager or owner would spend considerable periods of time on the factory

floor monitoring and supervising. When asked about his managerial philosophy, one CMT owner left no doubt as to his approach: “It is discipline, close control.” In response to my query as to whether his style was participative and sought to encourage initiative, he stated: “No, tight discipline.”(CMT interviewee, 3)

This direct supervision overlaps a lot with measurement, as a CMT owner indicated when asked about close supervision and monitoring:

Yes, definitely. I can take you around the factory and show you where everybody’s production is being counted all the time. So I know how much you gave me in an hour, and how much you gave me. It is being checked constantly.(CMT interviewee, 2)

But when the owner gets directly involved in the production lines there is no need for measurement:

But take today for example, when I am out there on the floor, we are not counting, because I am just picking up stuff here, and picking it up there, and taking from there. And that is why we are getting the figures we are getting today. But if I am not here then everything gets counted so I can see for myself and look in straight away and see what has happened here. So that is our control. And a lot of it is bullshit baffles brains. For example I say to the one finishing lady that her work is not up to standard, you are not giving me what you should be giving me. And I haven’t counted anything. But her work will then improve.(CMT interviewee, 2)

Direct control is critical for ensuring that workers are performing at the appropriate level. When asked whether this was the case, a CMT owner said: “Yes, definitely, that is exactly why I spend as much time as I do on the floor.”(CMT interviewee, 1)

Third, performance is constantly measured and monitored. This is vitally necessary because the CMTs work with such small margins that there is very little room for error. The measurement systems are quite straightforward but are effective. Any decline in output is detected quickly, the problem is identified and remedial action is taken. The action usually involves the supervisors or the owner directly addressing the problem with the production line as a whole or an individual worker. One CMT owner explained his system as follows:

There is a production board up there [points to board in factory]. You can see we are struggling a bit at the moment. I put the target in there – I need to produce R3 500 per hour – I put the target in there to produce R3 500 per hour. And as I say it is pretty much a thumb suck but it is there or thereabouts, and I can sit anywhere in the factory and I can see at any stage where I am. Look, I would gladly take more [i.e. make more than R3 500 per hour] but that is the bottom line that I have to get to. That it is a live scoreboard. That records every garment as it is produced. They push the button. So that is live. As soon as one garment is finished they hit a button and it goes onto the board. This is my only measure, basically a financial one, I don't record productivity to analyse at the end of the month. What I have spent and what has come in. I do monitor production... because I am on the factory floor a lot of the time, so I am at people all the time, but I don't keep a record of it. I do take a half-hourly score from each individual person but I take the live overall score from the board. So I do monitor production but I don't do any real analysis, well I do if I am not hitting production on the board there then I go back to find the source of why production is not coming through, but that is basically it; very, very simple.(CMT interviewee, 1)

Another CMT owner stated that measurement was a key form of control and emphasized his own role in the process of ensuring that measurement translated into reaching the right performance level:

By being out there and counting. We are counting already what is going into the factory and we are counting what is coming off the line. So I can tell you at the moment there are 60-70 garments... yesterday I got it up to 150 garments an hour. It went right down this morning to... the first hour was 48 yesterday. So I called the supervisors and said that this is not acceptable. And [the supervisor] says: Well I am trying to get it higher; and [the other supervisor] is saying they can't do much more than that. So I said, well fine, then they have got to tolerate me because I am going to be out there. I am going to show you how we can do this. And we got it right up to... I think it was 158 an hour. [Fetches work sheet.] Very, very simple. This was Friday: 53, 67, 32, 59, 54, 28 [lunchtime], 56, 33. Now there is no ways I can run like that. That was Monday – first hour 48, second hour 122, third hour 110, then 154. Now that is from me running around inside there saying I want this and I want that. And they said we can't, but I said it can be done - watch. Now [the one supervisor] is all motivated, she gets very excited when she sees this, whereas [the other supervisor]... is not at

work today. It was too stressful for her yesterday. And then you can see: 45 – that is lunchtime, 99, 90, 85... Now straight away I picked it up there [refers to worksheet]. What is happening? We ran out of lace. Now it will start picking up again because we are on a different size and we have got lace for those sizes. This here [the worksheet], this is my bible. And it is a simple little form that tells me... [*Did you draw this up?*] Yes, yes, nothing fantastic, but it tells me, it works for me. It is a 15-minute breakdown. In fact it is not even 15 minutes, it is actually every couple of minutes. It is the old story, if they see work lying here it looks like they have been busy, but if there is no work lying next to them, Jeez, now they have got to work to get more work in here. So, yes, there are controls all the time. Now [the supervisors] have sheets like this at the machines. So she is counting the machinists, what each machinist is doing. So this machine is doing 10, that one is doing 10, that one is doing 10, and this one is doing 2, so something is wrong with you. Now either you can't do the operation or you are just sitting here talking or what is your problem? Now we need to get that up. So it is not a case of waiting to the end of the day or waiting to the end of the hour, you can see it every 15 minutes.(CMT interviewee, 2)

Even small homeworking operations measure production performance. The owner of a tiny CMT based in an enclosed patio on the side of her house stated:

I take production every hour to see how they are doing. Then I can see who is playing and not working properly; they mess around. So I am counting every hour how each one is doing, that is the only way you are going to get your work out. And for the rest of the time I will be on the shopfloor checking on what they are doing.(CMT interviewee, 4)

Most of the CMTs also indicated that it was not just the machinists that were measured. The performance of workers in the pre-production and the post-production areas is also measured. In fact, “everybody, everybody” is measured, according to one CMT owner.(CMT interviewee, 2)

Fourth, the threat of disciplinary action, even dismissal, for poor performance is a very real one. Some of the more established CMTs employ labour consultants to ensure that there are no mistakes with the disciplinary procedure:

*Is there a background threat of disciplinary action for poor performance?*

Yes, definitely, and not just the threat but to issue a warning, yes.

*Do supervisors have power to dismiss and use this as a threat?*

They can't, unfortunately, no. They definitely have the power to give warnings, but not to dismiss. I don't even dismiss. That will go straight to [labour consultant].

*But supervisors will come to you and say I am having a problem with so and so.*

Yes, yes.(CMT interviewee, 2)

The threat of dismissal is ever present and applies to everyone. A CMT owner recounted that the next person he would be dismissing was the shop steward: "There was a big joke running around the factory in January when she became shop steward to the effect that she became shop steward so that she can't be fired. I said anybody can get fired. She can't be covered up by the trade union."(CMT interviewee, 2)

Another CMT owner tended to rely more on his supervisors and factory manager. The latter "is actually quite a strict disciplinarian. She is not friendly with the girls. She is not a shouter and screamer, but she is a disciplinarian, she does not take any nonsense." If supervisors could not deal with a disciplinary problem it would go to the factory manager and then come to him. He also had a labour consultant on a retainer to handle to actual hearings and ensure that dismissals were carried out by the book. But the bottom-line was that workers were very aware that poor performance would result in disciplinary action.(CMT interviewee, 1)

Even a tiny home-based CMT owner emphasized a strict employer-employee relationship and would brook no ill-discipline: "I don't have friends with them, because once you make friends with them it is over, they take advantage... If they have a problem they know they can come to me and we sort it out – but not friends, it doesn't work like that." If a worker is not performing she will talk to her but then "they must step up and if they don't then tonight I give them their pay and they must go." The quotes emphasize one of the distinguishing features of informal firms, viz. a lack of concern with the disciplinary procedures required by

labour legislation. In this case no disciplinary hearing is held and no notice pay is given; the worker is just paid the wages due to her and told not to return.

#### ***7.2.4 Restructuring to avoid labour regulation and the informalisation of employment***

It is important to note the way in which labour market flexibility is being achieved in the clothing industry. The vast majority of employees in the industry, in the Metro Areas and the Non-Metro Areas of South Africa, in firms in Lesotho, and in registered, non-compliant firms, are in standard employment relationships, i.e. they are indefinitely employed, they work full-time, and they are employed in the workplace of the employer and are under his or her direct control. A small proportion of workers in the South African clothing industry are on short-term contracts, although these types of contract appear to be on the increase. One manufacturer stated that about 20% of his employees were on one-year contracts “so that we can flex”, meaning the firm had some flexibility to respond to production booms and slumps. Similarly, manufacturers that are also importing and distributing clothing will employ workers on short-term contracts to assist when containers arrive. In Lesotho the practice at a number of South African-owned firms is to initially employ workers on a four or six month contract, which effectively amounts to a probation period. Most are taken on ‘permanently’ once this period is completed, but if they have not performed well their contracts will not be extended. Workers in the packing and distribution end of their operations are also often employed on short-term contracts, according to the flow of work.

Flexibility in the clothing industry is therefore being achieved mainly by the restructuring of firms and effectively externalising employment rather than by casualising employment. Such restructuring, as noted above, has legal, geographical and operational dimensions. It is also motivated by a desire to avoid or evade the constraints of labour regulation. Avoiding labour regulation sees firms shifting to zones within South Africa with lower wages and less onerous conditions of employment or relocating to Lesotho, or shifting some of their operations to such zones or to Lesotho. This leads to loss of employment in certain zones and the creation of jobs in other zones with lower labour costs. Evading labour regulation involves either not registering with the bargaining council or registering with the council but not complying with its agreements. The result of evasion is the informalisation of employment, whereby more and more workers are being shifted from employment in firms that are registered and compliant with the bargaining council agreements to firms that are either unregistered or non-

compliant or both. Registration and compliance therefore suggest two levels of informality. This might appear a somewhat technical distinction but it generally points to a real difference in the employment conditions of workers. Registered firms are on the bargaining council's radar, and any non-compliance is measured and firms will probably be held accountable. This probably acts as a constraint on how low firms will go in terms of underpayment of wages and whether they contribute to the bargaining council benefit funds. Unregistered clothing firms are not constrained as to what wages they will pay and do not contribute to the council benefit funds, and also will not register in terms of the Compensation for Occupational Injuries and Diseases Act or to the Unemployment Insurance Act.<sup>118</sup>

In this sub-section I will discuss restructuring to avoid labour regulation, i.e. relocation of some or all operations to areas with lower labour costs, as well as the two levels of informal employment that result from the evasion of labour regulation.

#### *7.2.4.1 Restructuring to avoid labour regulation*

The emphasis in the above sections has been on the way in which the restructuring of design and production functions into separate firms is managed so that the quality and variety of garments is optimised along with production efficiency. A further important motivation for the way in which design and production is being restructured is to avoid accountability for compliance with labour regulation. In other words, it is a route to lowering labour costs.

Such restructuring is evident from the diagram above that shows the spread of operations across various core, semi-peripheral and peripheral zones. Most full-line manufacturers have chosen the option of locating factories in Non-Metro Areas and Lesotho in order to give themselves low-cost competitive options. Manufacturer C2, for example, has retained its design and marketing functions together with some factories in one Metro Area and cutting and warehouse facilities in another Metro Area. It also has factories in the Non-Metro Area and in Lesotho. Orders can therefore be assigned to a Metro Area factory or the Non-Metro Area factory or the Lesotho factory, depending on the type of garment and the price point. If the order is sent to the Non-Metro Area factory or the Lesotho factory the fabric will be cut at its cutting facility in the Metro-Area and the completed garments will be returned to the warehouse in the Metro Area for distribution. It is a model that is replicated with some

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<sup>118</sup> Respectively Act 130 of 1993 and Act 63 of 2001.

variations by manufacturers C2 and C3. In some cases one finds that the location of factories to the Non-Metro Areas and Lesotho is done more or less at the same time as part of a strategy. In other cases the firm moves operations in sequence and is driven more by a sense of desperation. Manufacturer C3, for example, first moved its factory to a Non-Metro Area on the understanding he would get a special dispensation from the bargaining council. When this did not materialize he was forced to move to Lesotho.

Restructuring along the lines sketched out above seems to be achieving its purpose because once they embark on it most firms tend to expand the size of their operations in the Non-Metro Areas or in Lesotho. This expansion usually takes place in parallel with some scaling down of production facilities in the Metro Areas (or there is no further expansion of such facilities in the Metro Areas). Brand manufacturer E, for example, has rapidly scaled up its production operation in Lesotho from a factory employing just over a hundred workers to five factories employing about 2 000 workers. It still retains all the key design, marketing and warehousing functions in a Metro Area in South Africa. Other manufacturers start out locating some production operations to Lesotho, then scale down their Metro Area operations and expand their Lesotho factory, and then move their entire firm to Lesotho, with just an office for marketing left in a Metro Area in South Africa.

There are further variations on the above. Another firm has its head office and a production facility in a Non-Metro Area and a factory in Lesotho. It can therefore assign orders to either its Non-Metro factory or its Lesotho factory. However, it has a third option that is proving the most successful: it will import clothing to meet local orders, and quality check, repackage and distribute these at its Non-Metro operation. This latter option is leading to pressure to scale down its Lesotho factory because even though it has low labour costs it is far less profitable than the importing operation. Still another firm has its head office in a Metro Area, next to the head office of a major retailer, it has a factory in Lesotho, and it contracts with a CMT in another Metro Area. Longer runs of more simple products are sent to the Lesotho factory and short runs of more complex products are sent to the CMT operation. Although the latter CMT is independent, the firm has a quality control person permanently located at the CMT and plans the production schedule for it.

While full-line manufacturers tend to avoid labour regulation by relocating operations within the region, design houses give the option of avoiding labour regulation within the Metro Area

core. The first step is obviously the restructuring of full-line operations into a design house and independent CMTs. In some cases this is done intentionally, i.e. a manufacturer will retrench all its production workers except the most skilled who become sample machinists. It becomes a design house and contracts with a network of CMTs, some of which will have been started up by its previous employees. In other cases, a design house is set up by someone in the industry who sees it as a viable option but does not want to employ production workers. Workers are difficult to manage and attract labour regulation. This factor was critical for one design house interviewee:

That was the exact reason – the labour requirements, the labour laws,... That was the reason I stayed away [from the industry] for twenty or thirty years. I see the problems that factories have, I see the problems with unions... Labour was really instrumental in us not having our own factory.(Design house interviewee, 2)

The advantage for the retailer is that the design house effectively becomes a screen between it and the manufacture of its garments so it cannot be held accountable for breaches of labour regulation by CMTs:

[Retailer X] do it [i.e. source through design houses] to escape any potential ‘nasties’ that may emerge in terms of every being caught in relation to using non-compliant factories, so they have created this barrier between them and the CMTs by using an intermediary. But effectively they manage that intermediary and work with that intermediary in exactly the same way that [Retailer Y] works with their in-house designer.[Clothing sector key informant, 1]

At the same time, retailers argue that monitoring compliance is not their job, and would be virtually impossible for them to do:

Some retailers have tended to say that compliance is really something that should be managed by the government rather than the retailer, because they can be compliant today and non-compliant tomorrow. So it is not our job to do that role. The unions would like us to get an undertaking from them that they are compliant but you just can’t, you can’t manage that process.(Retail interviewee, 1)

On the face of it this explanation has validity but it is also somewhat disingenuous given that retailers are working through design houses knowing full well that they are contracting with a range of CMTs, many of which are probably non-compliant given the prices at which the clothing is being produced. This is the case with design houses using CMTs in the Metro Areas but is even more difficult to ignore where design houses are sourcing from Non-Metro Areas, where non-compliance is even more prevalent.

Non-compliance in Metro Areas tends to be concentrated amongst the micro-enterprises. A design house owner indicated that “most of those little guys are not compliant; they’ve got ‘outstandings’ with SARS, maybe with the bargaining council, maybe with the unions.” But the CMTs in the Non-Metro Areas are bigger and usually located in factory premises rather than in homes.

The feigned ignorance of the retailers is even more disingenuous when one considers that they have quality controllers visiting their suppliers all the time. The quality controllers can quite easily pick up instances of non-compliance and report these back to the retailer. It is the same with the design house quality controllers. However, although they are the people best placed to do some monitoring of compliance, this is not part of the design house quality controller’s job:

No, that is not part of my job description. I go in for the quality, monitor my delivery dates, monitor my work on a daily basis – I don’t get involved with that [i.e. whether the CMT is compliant]. I think that is something that [the design house owner] handles, but I could be wrong. (Design house interviewee, 4)

Design house D in the diagram above goes significantly further than providing an option to avoid labour regulation in the Metro Area core. It works with operations across all the zones, including in Lesotho. Many of the CMTs it contracts with are in the interior of KZN, where non-compliance is particularly high.

#### *7.2.4.2 Informalisation of employment due to non-compliance with bargaining council agreements*

The prior chapter highlighted that the number of registered, non-compliant firms is very high in both Metro Areas and Non-Metro Areas (the category does not occur in Lesotho). These firms are usually in factory premises and are small to medium-sized, so are less able to operate entirely under the radar of the bargaining council. They therefore register with the council but at one or other point become non-compliant. The issue has become extremely contentious in recent years, with the Newcastle area in KZN the flashpoint. The saga that unfolded there from late 2010 is dealt with in chapter six above. However, the interviews revealed another side to the issue. Owners of compliant firms expressed growing frustration that their competitors – people that they bump into when they visit the same design houses – are non-compliant and seem to be getting away with it:

I am 100% compliant, I comply with everything. But I have to say it is a disadvantage because there are so many people out there that are not compliant and they are getting an unfair advantage... I mean there is something like R180 million in levies outstanding. The people are paying the correct wages but they are not paying the levy over. There was an agreement that the bargaining council would go after the non-compliant factories but now SACTWU has said: No, we can't do that because there are going to be too many people that will lose their jobs.(CMT interviewee, 1)

Compliant CMTs in Non-Metro Areas are even more frustrated. So, compliant CMTs in one part of the Non-Metro Area will argue that they are working for the same retailers, getting the same prices, and have the same efficiencies as the CMTs in Newcastle, but the latter claim they cannot pay the prescribed wage despite the fact they have lower rental. Given the many of the CMTs in Newcastle are owned by Chinese and Taiwanese immigrants, there were interviewees that took a somewhat xenophobic line in giving reasons why the latter were non-compliant. Some CMTs took a more sympathetic line, stating that they think the Newcastle CMTs are working in a lower market segment for discount retailers and do not have the systems in place to operate efficiently.

It is impossible to verify all the claims and counter-claims. The problem is that the cost of following through with the enforcement campaign in terms of jobs is prohibitive, especially in the country with a remarkably high unemployment rate, and the firms that dictate the prices are not being seen as part of the solution. A CMT owner in Newcastle has apparently calculated that if retailers sourcing from the area raised their prices by two price points all the

CMTs would be able to become compliant. A ‘supplier’ argues along the same lines that retailers do not care about manufacturers and their buyers are entirely profit-driven; the solution to the problem would therefore be to arrest the chief executive officers of the five major retailers!

Moving into the notional registered non-compliant zone of the semi-periphery, the first level of informalisation referred to above, has therefore become a hugely contentious issue in the clothing industry. But by having design houses that can contract with CMTs in this zone, retailers can tap into low-cost production with impunity. The implication is an increasing number of jobs located in this zone, which raises the threat of job loss whenever an effort is made to enforce labour regulation in the zone.

#### *7.2.4.3 Informalisation of employment due to not registering with the bargaining council*

The restructuring in the clothing industry has led to a second level of informalisation, i.e. manufacturing operations that do not register with the bargaining council and almost certainly do not comply with most provisions of its agreements. These firms are for the most part very small and are often located in homes in residential areas. Design houses have been key to linking these firms to the major retailers. The result has been a huge decline in the number of full-line manufacturers and an increase in the number of design houses and the size of the CMT sector. CMTs are now a key part of the clothing production system whereas they were previously an appendage to the formal, full-line manufacturing sector. The reason for this huge shift in the industry is that design houses can ‘delegate’ responsibility for employing production workers to CMTs and the latter can far more easily operate under the radar of the bargaining council:

In my experience 75% of CMT’ing is through the design houses. It is not through clothing manufacturers using CMTs. But some clothing manufacturers have become design houses over time because they don’t want to deal with the hassles of the labour market and the trade union and all the other things that they have to deal with.(Clothing sector key informant, 1)

The question is why this phenomenon has attracted far less attention than the non-compliance in the Non-Metro Areas, especially since most unregistered CMTs are located in the Metro Areas. The answer is that it is far less visible and nobody knows how many such firms there

are or what their total employment is. However, according to estimates by key informants in the industry the unregistered CMT sector, much of it home-based, is significant. One estimate is that these operations probably produce about 20% to 25% of all clothing going to the formal retail sector and employ about the same proportion of the clothing labour force. A CMT owner, referring to the Cape Town area, stated that there were probably “500 Mrs Salies” in Cape Town, using the somewhat derogatory term ‘Mrs Salie’ to refer to a typical local woman running a home-based operation. Such operations are:

... probably making at least 50% of daily production. And they do make good garments. They don’t make rubbish just because it is ‘Mrs Salie’. She used to be a supervisor in the Bonwit factory and took ten of the Bonwit girls with her when Bonwit closed down. So they make a good garment; the only thing is that they can’t compete with me and this type of product because of the units and timeframe. Mrs Salie would take three weeks to make it whereas I have four days to make it... So that is where they have a disadvantage.(CMT interviewee, 1)

But they would have a significant cost advantage over the above CMT owner.

There are two reasons why the key informant referred to above believes there are so many unregistered firms and employees. First, although the formal industry has shrunk significantly over the last decade and thousands of workers have been retrenched, clothing manufactures struggle to recruit machinists when they have vacancies:

The single biggest challenge to our members as we speak is the shortage of machinists. Now the question is where are all these people? I suggest that a significant number of them are in the informal sector or in kind of homework/cottage industry sort of operations.(Clothing sector key informant, 2)

The second reason that points to there being many unregistered firms is that there are not many second-hand machines in evidence. Despite the many factory closures in recent years, the interviewee has established that second-hand machines have not been exported in any numbers in the last decade, nor are there empty factories with thousands of machines lying around. His view is that they have been taken up by small homeworking operations.

As noted above, design houses play an important role facilitating the incorporation of small, unregistered firms into the local clothing value chain. They acknowledge that they deal with such firms but claim that it is very difficult to keep track of whether these firms are registered or not:

Our CMTs are not all registered. It is an on-going process, it never stops, because you can get them registered in one year and then they don't pay for a few months and the next year they are not registered. So it is an on-going process. So never at any one time are all of them registered with the bargaining council, but we try and keep all of them registered. (Design house interviewee, 1)

The unregistered firms generally pay a cash wage only. In the main Metro Areas the cash wage is often not much lower than the take-home pay of a formally-employed worker once all the required contributions have been deducted. But this depends on whether the firm is well-established and in a long-term relationship with a design house or not. Survivalist homeworking operations will pay a much lower wage. The homeworking employer also has flexibility with regard to what wages to pay to different workers:

If I see you are a good machinist... I pay up to R650; for an experienced all-round machinist... In the big factories everybody gets the same wage but in a small business I will say it's unfair on the next person, so I pay them according to what I think they are worth. I will go down to a minimum of R500, which would be for a basic machinist. (CMT interviewee, 4)

This flexibility is something formal clothing manufacturers have battled the trade union over for a number of years. They finally made some headway in the 2012 bargaining council negotiations, when agreement was reached to have a lower wage for entry-level machinists and also to have a bigger proportion of the wage in the form of a productivity incentive. Manufacturers have welcomed these innovations but many believe it is a case of 'too little, too late.'

But the industry has been able to tap into this flexibility in the way it has restructured itself. These homeworking operations – the lowest level of informality - are producing clothes that end up on the shelves of the major retailers. They are not in a separate chain that is leading to

informal markets and the like. A key informant that has been in the industry for many years stated:

There are numerous reports, going back ten years plus, from the bargaining council inspectors, in which they say they see delivery vehicles with a Foschini on it, or an Edgars on it, or a Mr Price on it, or a PEP on it, going to Mitchells Plain residential areas. And the one or two or three instances where they manage to follow them it reverses into a garage and the doors open, and cut panels get dropped, and the doors close, and then the guy goes and drops another load. So, in Mitchells Plain you can have twenty operations with ten machinists each and you have a nice little business, and you are getting a nice price point. And it is not stuff that is going into flea markets - a lot of it is going to formal, retail high-street chains.

*Are retailers doing this directly, are manufacturers doing it, or is it going via design houses?*

All of the above.(Clothing sector key informant, 2)

So a very large section of the industry that is 'peripheral' in many respects is in the core Metro Areas and on the doorsteps of the major retailers. And it is the price offered by the retailers, via design houses or 'suppliers', that to a very large extent determines the employment conditions and wages of these 'peripheral' firms.

#### ***7.2.5 The Lesotho option and sourcing from even further afield***

The retailers, of course, have the additional flexibility of being able to source from formal firms in Lesotho that have much lower labour costs than the firms in South Africa. The factories in Lesotho are managed (and sometimes owned) by people the retailers have been dealing with for years; all that has changed is that they have moved across the border into Lesotho. The factories are generally quite large, employing between 500 to 1 000 workers, but they are CMTs, either getting designs and fabric from the head office in South Africa, or getting orders and fabric via South African design houses. In fact, two of larger South African-owned factories in Lesotho do not do their own cutting. The fabric is cut in South Africa and the cut panels are transported to Lesotho for assembly. There is even final quality checking back in South Africa before delivery to the retailer. However, while labour costs are low there are certain disadvantages to sourcing from Lesotho: lower efficiencies, lower skills,

longer lead times, limited range of products, higher management costs, and additional transport costs. Some of these shortcomings are slowly being overcome.

The above disadvantages are however outweighed by the much lower labour costs in Lesotho. There are, according to one South African manufacturer, no benefits in being located in Lesotho other than low labour costs, but the latter are sufficiently attractive to keep them in Lesotho. Minimum wage rates, as noted in the previous chapter, are set by the Wages Advisory Board in terms of the Lesotho Labour Code. Enforcement of payment of these minima is by the labour inspectorate of the Ministry of Labour and Employment. South African manufacturers in Lesotho report that inspections are sporadic and perfunctory, i.e. they are generally perceived to be not very effective. Compliance audits done by some South African retailers are probably far more effective. Those retailers that do not do compliance audits still have some insight into conditions in their supplier factories from their quality control staff that visit them regularly.<sup>119</sup> Either way, however, non-compliance does not appear to be an issue given that wage levels are so much lower than in South Africa. This creates an anomalous situation in which compliant firms face much lower labour costs and less onerous regulatory conditions than their non-compliant or unregistered competitors just across the border in South Africa.

Lesotho is a better option for some full-line manufacturers because they retain control over production, which they believe they lose if they sub-contract production:

We looked at the whole design house, sub-contracting thing but what we decided was that we could not lose control over our production. With a niche-type product quality is everything; that is a differentiator that will keep us in business. Not everyone can get into tailoring... We wanted to maintain control of the production processes, at the same time realising there are other models. Sub-contracting defines the price... in sub-contracting the problem is the sub-contractors, whereas with this it is ours. (Clothing manufacturer interviewee, 1)

But that control comes at a cost. The lower skills levels in Lesotho require more machinists on the production line because operations need to be more narrowly defined:

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<sup>119</sup> Despite some retailers claiming to have a concern about their suppliers complying with labour legislation and prescribed wage rates in Lesotho, and to be doing compliance audits, they have refused to participate in the International Labour Organisation's Better Work programme in Lesotho and have failed to put any pressure on their suppliers to subscribe to the programme.

The garment is broken down quite extensively. Whereas in Cape Town... I would have 35, or maybe 40 people, here I will go from 45 up to 50 people. So where in Cape Town people are more multi-skilled, they can multi-task, here they can't multi-task, they can really do only the one little operation.(Clothing manufacturer, 2)

The clothing production line is however particularly adept at accommodating less skilled workers, which is precisely why clothing factories can be located to places like Lesotho. But production is generally limited to large volumes of relatively simple garments; this allows workers to have the time to become accustomed to one style and up their efficiency levels. Furthermore, supervisors have to be much more hands-on in Lesotho than in Cape Town, and there is a need for more layers of line and middle management in production in Lesotho. It is not a place that is ready for modular manufacturing, fashion-oriented garments or a quick response strategy.

Direct management control is therefore just as necessary in Lesotho as it is in CMTs working for design houses in Cape Town:

I am extremely hands-on in what I do. I spend half my days on the line – I am not an executive who sits in my office the whole day – I can dirty my hands. Obviously I am not going to go sit in on a machine; but I run the business, I keep an extremely tight hand on it. I go on the floor, I pick up quality issues and I know how to fix them.(Clothing manufacturer, 2)

South African retailers therefore have a number of options, but have to work within a number of constraints if they want to be competitive. One retailer outlined the situation as follows:

What has happened generally in the industry, because there are so many price pressures, and there are so many labour differences: Cape Town is very different to Durban, is very different to Lesotho and Swaziland, in terms of what they charge for a CMT garment. So Cape Town is very reliable, very good, and all the other places require a little bit more work in volume but the prices are unbelievable. You know minute rates in Cape Town are... we have been up to R1.90, which is ridiculous, and you can go to Swaziland and you are going to get 80 cents a minute. So you can understand the disparity. In Durban it can be from R1 to R1.20, when I

say Durban I mean the surrounding areas there. So one has to really think how far you are going to push this thing and [if you do not] you are not going to be competitive and you lose out. So we have had to really sit down and look at how we do business. (Retail interviewee, 3)

The retailers are of course able to source clothing from further afield in the Southern Africa region as well as from outside the region, mainly from China. The latter is seen as setting up the low-price competition that has been the main driver of the restructuring that has taken place in the industry over the last two decades. Within the region retailers have some attractive options: Lesotho and Swaziland offer a low-cost option to source standard products, and Mauritius and (to some extent) Madagascar provide high-quality, fashion-oriented garments that can compete at the higher end of the South African clothing market. Both the latter two countries have lower wage rates than South Africa, especially Madagascar, which is in much the same wage bracket as Lesotho and Swaziland.

The retailers sourcing strategies are not all the same. They will work with different value chains that span a variety of zones and countries. Furthermore, they have different approaches to sourcing that reflect different business models as well as levels of risk aversion:

If I look at Truworhts, the locally-based importers they are working with also provide them with design and market intelligence and product development, working very closely with their design team. So it is a model that is appropriate for their business. For our business... we saw the opportunity to go more direct from an import perspective and to really try to derive the full benefit of going more direct. What can often happen is if you are working with a locally-based agent they... will be taking their margin, often they will be working with a trading house in the Far East, and the trading house will have the relationship with the ultimate factory. I... did not see that as an optimal way of working... [so] we have built our own sourcing capability. What we have done is that we have improved our intake margin by working more direct, so effectively we may still work with a trading house who are then working with a factory, or we might work with a smaller service provider who works with three or four factories, but effectively that is significantly more direct than we were... Obviously when one takes the decision to go direct one is taking on all of the issues around the importation of product, in terms of understanding where we source it, how we source it, as opposed to those goods being imported on your behalf and being held in someone else's

supply chain. There is a significant investment in terms of bringing those goods into one's own supply chain, but we feel that is appropriate for our business model. Whereas a number of retailers in South Africa prefer to work the indirect way because they also then have, in essence, no responsibility for how, why and where those goods are imported from. (Retail interviewee, 2)

It is therefore not surprising that very little is known about where South African retailers are sourcing from and whether those firms are compliant with the relevant national labour legislation, whether Mauritian, Madagascan or Chinese. Some retailers claim to be doing compliance audits and to work only with compliant firms, while others are silent on the issue. South African retailers are however relatively new at corporate social responsibility (CSR), so even if they do audits these tend to be somewhat limited.<sup>120</sup> In fact, the retailers have much more stringent requirements regarding the technological, efficiency, quality and reliability capabilities of their suppliers than they do in their compliance with legislated labour standards. In the absence of audits one can rely only on the effectiveness of the respective governments to enforce their labour regulation.

Retailers are however well aware of the prices they can get in different parts of the world. So, for example, the prices they get in China are in a direct relationship with the prices they are getting from small homeworking operations in Cape Town or Durban, from medium-sized, non-compliant firms in Newcastle, and from large, formal CMTs in Lesotho. This means that the labour costs in these different locations are also in a direct relationship. The evidence is in the way the industry has restructured itself to take advantage of different options as well as in how it is operating: CMTs claim the 'China price' is frequently quoted to them when they are offered an order. In this situation it is inevitable that the once well-regulated clothing industry in South Africa is going to haemorrhage into different levels of informality.

### **7.3 Conclusion**

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<sup>120</sup> Retailers that do compliance audits also generally favour a 'remedial approach' when they pick up non-compliance by a supplier. They will therefore work with the manufacturer over a period of time to get them up to full compliance rather than immediately drop them (and putting a lot of workers out of a job). The approach is probably justifiable but it means that at any one time a retailer will be getting supplied by manufacturers that it knows to be non-compliant. There is also an element of self-interest; retailers find it much easier to work with a known supplier and bring them up to speed than it is to work with an entirely new supplier.

This chapter has provided detailed qualitative data on relationships within the various local and regional value chain formats, with a particular focus on, first, the way in which control is effected across legally independent firms from retailer, via intermediaries, to manufacturers, and second, what the implications of the various structures are for employment conditions in the local and regional value chains. The motive force for much of the restructuring was the ability of South African retailers to source relatively cheap clothing from China and its neighbours in Asia. The fact that the local industry has never developed a significant export orientation has meant it lost power in the local value chain to the retailers. The subsequent restructuring has to a large extent been driven, directly or indirectly, by the power the retailers hold. The result has been the development of a series of geographical and regulatory zones, across which the clothing industry has structured itself, linked by commercial contracts that are heavily supplemented by relationships of implicit power and trust. Importantly, through these relationships decentralised structures made up of legally independent firms are able to mimic the sort of control that is usually achieved in a formal, hierarchical firm. But the fact that the links in these structures are commercial contracts and the firms are all legally independent means that only the CMTs at the end of the value chain are accountable for the employment conditions of production workers.

In the next chapter I will analyse the above findings in the light of the concepts discussed in the earlier chapters that deal with world-systems analysis and the more contemporary literature on employment, management control and regulation.

## **Chapter Eight**

### **Analysis and theory-building: contract, control, employment, regulation**

#### **8.1 Introduction**

This thesis asks a number of questions that are loosely structured in the form of an argument. Some of these questions are of a higher order than others, requiring an historical and legal dimension, while others are more focused and can be answered – to the extent that any sociological questions can be answered – by empirical research. World-systems analysis has been used to provide a framework that has appropriate historical and geographical scale, as well as providing some concepts that are important for the central argument of the thesis and for describing the structure through which work is organized in the Southern African clothing industry. A number of sets of literature focus on different aspects of the more contemporary industrialization period leading through to the present. The aim was to use integrating concepts to link these sets of literature, exploiting overlaps and filling gaps, in support of the central argument. The integrating concepts are the employment relationship, management control and labour regulation, each of which is associated with a more general concept, respectively the labour market, the hierarchical firm and law. An empirical study of the clothing and retail value chain at different scales within Southern Africa aimed to illustrate, rather than prove, certain aspects of the argument. The empirical study was heavily contextualized through secondary literature and data on mainly the clothing sector in Southern Africa. Its findings are specific to the clothing sector in Southern Africa; any generalizations must therefore be made cautiously and modestly. The objective of the approach adopted in the thesis was eclectic theory-making that would explain certain developments by bringing different disciplinary perspectives to bear.

The combination of concepts from world-systems analysis, secondary literature and empirical research on the regional and local clothing value chains supports a number of findings. First, the reception of Roman law was a critical part of the emergence of the capitalist world-

economy, in particular the Roman law of property and contract. The development of the legal principle that the contract represented the respective wills of the parties, i.e. both understood and agreed to the terms, obscured in law any inequality there might be between them. Commercial contracting has therefore from a very early time been able to cross political borders and also accommodate an implicit hierarchy between the contracting parties, which might or might not be exploited by the stronger party. In the putting-out system, for example, merchants used their power to control and coordinate the value chain but stopped short of exerting control over production. Roman law also had a strong influence on the employment contract, but it took much longer for the hierarchical employment contract to emerge in its modern form, and it almost immediately attracted an extensive framework of regulation to protect workers from the stronger party in the contract, i.e. employers. However, this regulation is a feature of a recent period, roughly corresponding with the period of Fordism. With the ending of secular and cyclical upward trends in about 1970, the inflexibility of the labour market and the employment relationship did not match the sorts of flexibility that could be achieved by the way firms structured themselves and contracted with one another to get work done. One therefore saw continuities begin to emerge that had their roots in an earlier era of capitalism, in particular versions of sub-contracting and outworking that displaced the regulatory risk attached to employment down the value chain to those entities holding less economic power. Commercial contracting for work has therefore reasserted alongside the hierarchical employment contract, but without the power imbalance being susceptible to regulation because it is rooted in common law principle of freedom of contract. Hierarchical employment has therefore become just one option for how work is organized.

Although labour regulation can be circumvented by commercial contracting, i.e. externalization, it is an important influence on the way the core, semi-periphery and periphery are shaped at the regional, national and local levels. It also an important factor in the way in which firms are structured and restructured, with legal ownership and control seemingly relatively easily separated. And it is an influence at the firm-level, where one also finds a core, peripheral and externalised workforce. This produces a more complex kaleidoscope of zones than the axial division of labour proposed by Wallerstein, which explains the range of different structures taken by value chains that develop across this more complex array of zones. Value chains are therefore shaped by considerations identified by Gereffi, e.g. complexity of product and transfer of information and specifications, as well as by the regulatory risk and cost attached to the employment of workers. Furthermore, one

finds a variation on the types of labour control that Wallerstein had identified, viz. slavery, serfdom, wage-labour. The new categories are defined to a large extent by their relationship to regulation, viz. workers in standard employment, externalized workers, workers at non-compliant firms, and so on. Importantly, these different forms can co-exist just as the earlier forms of labour control could co-exist. However, regulation at the national, local or enterprise level places few constraints on the flow of value across zones, both the zones within the firm, i.e. the zones of standard, semi-peripheral and peripheral workers, and the zones surrounding the firm at local, national and regional scales. A very large proportion of the surplus value extracted within the sphere of production, ostensibly through the mechanism of the hierarchical contract, travels along the value chain to where power resides through the mechanism of commercial contracts.

These changes have seen a fundamental re-ordering of the structure of the global economy. Commercial capital has become increasingly powerful and in certain sectors dominates producers. In the global clothing value chain the power of retailers compared to manufacturers is immense, just as it is in the regional and local value chains in Southern Africa. The key event in the shifting of so much power to retailers in South Africa was the steep lowering of tariff barriers and the failure of clothing manufacturers to develop alternative export markets. The concomitant delay of over a decade by the state to introduce industrial policy measures to assist them was also important. In this context the local clothing industry is virtually held captive by a highly concentrated retail sector. This power imbalance is the main reason for the significant restructuring the local clothing industry has undergone over the last two decades, spreading production facilities of various sizes across the region and enhancing the role of intermediaries.

The empirical research shows convincingly that management control can be transferred across legally independent firms, even if separated by hundreds of miles. There are two reasons why this can be achieved relatively easily in the clothing industry. First, a very high degree of management control over the clothing production process was achieved during the 20<sup>th</sup> century. The production process is classical Taylorism. Conceptualisation and design is detached from production, and the production process has been simplified to the extent that it can be relatively easily scaled up or down as necessary, or relocated to the outskirts of the city or a neighbouring country where labour is still unskilled but unregulated and/of cheap. In this instance one sees the technical and axial divisions of labour overlapping:

conceptualisation and design are wrested from producers by management but are then the functions retained in the core when production was relocated to the periphery.

Second, given that key aspects of management control have become embedded in the Taylorist organization of the clothing production process, overall management control can be relatively easily transferred across legally independent firms by monitoring two factors: quality and delivery date. There is no great mystery to how these are monitored: there is extensive practical integration of functions between legally independent firms. The quality control function of the hierarchical firm is therefore split across a number of firms and is staffed by employees of different firms, but it is in fact a single integrated process. It is similar with the monitoring of producing to a deadline, although in this case it is economic power that exerts much of the control on subordinate firms. But the ultimate control of the production process is left to the proprietor or manager of the manufacturing firm or CMT, together with the responsibilities in respect of labour regulation.

Taylorist management control was therefore a critical 'step' or 'stage' for the ability of control to be transferred along value chains. One should, however, not see this process as a sequence, because Taylorist control of semi-skilled and low-skilled employees in production is still a key feature of the contemporary clothing value chain. It co-exists with dispersed supply chain management that exercises control indirectly through measures such as quality and delivery times that are embedded in contracts, or much more comprehensive systems of indirect control over sub-contractors that are exercised via service level agreements. But just as Taylorist management control ran alongside the trust and cooperation that was engendered by the job security provided through standard employment, so too is power in value chains running alongside the trust and cooperation that emerge in long-term commercial contractual relationships (or 'relational contracting').

There is one more important aspect to the transfer of control across firms; it has recast the divorce of ownership and control. Whereas Berle and Means had examined this split in the context of the hierarchical corporation, locating it as a split between shareholders (i.e. owners) and managers, the value chain in the local industry sees the split taking place between managers at retailers with immense economic power and owners of design houses and CMTs who are effectively subordinates. Immediate control over production is usually now in the hands of owners of CMTs, who exercise a very direct form of control, although

this is a function of the pressure being exerted on them by retailers and/or design houses. At the same time, the shareholder value movement has acted to stitch together the split that had occurred between shareholders and managers, in the process shifting significant power back to shareholders. They will in general exert much greater pressure on managers for short-term profitability, which in turn is transferred down the value chain as increased pressure on the owners of production facilities for better quality and shorter delivery times.

Firms in the local clothing and retail value chain are linked by commercial contracts. These contracts are however extremely rudimentary. Economic power is the main cement to the relationship between firms, together with high levels of trust that has often built up over long periods. It is therefore a relationship that is 'beyond contract' to use Fox's term. Importantly, however, it is a commercial *relationship* in the same sense that an employment contract is often the rudimentary legal basis for an employment *relationship*. Effectively one is seeing commercial relationships develop between dominant and subordinate firms that correspond very closely with the hierarchical employment relationship. Macneil's concept of relational contracting provides a way of integrating the two types of contractual relationship at a theoretical level.(Cohen, 2012) But Macneil did not explore the similarity between these two types of relationship and therefore his theory of relational contracting misses the key point that they share almost identical features – both involve the elements of competition between contracting parties, on-going cooperation, and the exercise of control by the strong party - although they are part of completely different regulatory regimes. The commercial contract can therefore mimic the employment contract but without attracting the risks and costs associated with labour regulation.

It is extremely difficult to empirically research the decision-making processes of owners and managers. Decisions are often taken implicitly and incrementally; even if an owner or manager was entirely open about their decision-making processes most would probably struggle to identify exactly how and when a particular decision was made. Or they are part of collective processes that evolve over time. This is the case with regard to the decision regarding the trade-off between exercising direct management control over employees but with the risk and costs of labour regulation, or exercising control only indirectly but without the risk and costs of labour regulation. No owners or managers were able to point to a systematic process of evaluating the benefits and costs of these different options. Even where they express strong opinions about opening a design house rather than a clothing factory

because they wanted to avoid employing workers, this is seldom a clear-cut decision. And they will take over production operations and their workers where this is necessary to maintain supply, even if they do so reluctantly.

Retailers definitely come closest to a systematic decision-making process in the way that they are now developing quite sophisticated tools to evaluate suppliers on a number of criteria. In some cases this does not take account of the risk of labour regulation, because this risk has been removed by the legal independence of the supplier or the 'screen' interposed by the design house between retailer and manufacturer. But in other cases, retailers have developed CSR processes and measuring tools that will include various questions regarding compliance with labour regulation. In all cases, however, the costs of labour regulation in the form of wage levels and associated costs are a key part of the sourcing decision. But these decision-making processes are not without flaws. Retail buyers are at the forefront of a retailer's engagement with suppliers and they are often incentivized on the basis of the input margin, i.e. for them it is price that is paramount. Other considerations, including CSR criteria, tend to lag behind and can be side-lined in the politics of the hierarchical retail corporation.

Larger manufacturers that have decentralized and spread their operations within the region have clearly also done a reasonably systematic calculation of the costs and benefits of different options, one part of which would be regulatory risks and labour costs. In fact, in a labour intensive sector such as clothing manufacture these costs loom large and the architecture and geography of the regulatory framework present a very explicit set of options to manufacturers. One can see the results of the calculation in the diagram in the previous chapter. At the level of the design house a much cruder calculation seems to have been done. It boiled down to a gut-level reaction to the bargaining council and the trade union that was expressed as a desire to avoid the 'hassle' of employing people. But, as noted above, they cannot always stick to this position, sometimes taking on production operations. The decisions create a similar series of zones at the local level, with retailers benefitting from the 'screen' that design houses provide between themselves and labour regulation.

Transaction cost economics does not help much in understanding this decision-making process. It contributes an interesting angle on the issue of how this decision is made but it remains a somewhat abstract theoretical explanation. The theory of transaction costs is also undermined by the fact that firms in the clothing industry are able to get such remarkable

levels of control of other legally independent firms that they approach the administrative coordination of the hierarchical firm. If one can effectively be a hierarchical firm that makes administrative decisions rather than market transactions, but in fact are transacting through contracts in the market, then the theory breaks down.

What is clear about the decision is that it is deeply influenced in an implicit way by macro-level processes over which managers and owners have no control, namely trade liberalization, industrial policy failure, intensified foreign competition, and retailer dominance in global, regional and local value chains. Clothing employers can through collective bargaining have an influence on the rate at which labour costs rise, but the power of individual manufacturers or CMTs is very limited in this regard. These macro-level factors present themselves to individual managers and owners in the changing structural form of the sector; a structure that appears to them as omnipotent and immutable, and significantly constrains the range of choices they have. Few managers and owners have the strategic capacity and information through which to anticipate changes and develop proactive policies. Most react to structural imperatives. In the local clothing and retail value chain there are only a handful of textile mills, clothing manufacturers, CMTs and retailers that are developing a proactive strategy – the quick-response model – in order to become more competitive. And, in this instance, it has taken an intervention in the form of the clustering initiatives in Cape Town and KZN to persuade these firms to go this route.

Despite the fact that the quick response and cluster strategies offer a lifeline to clothing manufacturers, there is little likelihood of these options being rolled out to the industry as a whole. These initiatives demand considerable expertise on the part of managers as well as appropriate technology and systems. They also require that owners are prepared to invest in their factories. Furthermore, there needs to be a close working relationship between the participating manufacturers and retailers as well as reasonably close proximity between them (hence the location of the two cluster initiatives in the major clothing producing centres). Most manufacturers and CMTs fall short on a number of these scores; two key informants indicated that only 20% of manufacturers would be able to successfully pursue these strategies. The other option, i.e. the raft of measures introduced by the DTI as part of the rescue plan for the clothing industry, will also have limited impact because firms can access these programmes and funding only if they have a bargaining council compliance certificate.

This means that a large proportion of all clothing firms are excluded (arguably those most in need of assistance).

What is the future of labour regulation in this situation? Indeed, does it have a future? Will the Polanyian 'double movement' be able to assert itself in a world where the employment relationship is no longer the basis for organizing work? Certainly, much has changed since the time Kahn-Freund wrote his seminal book. Much as one might like to argue that worker organization and collective bargaining will ultimately turn the corner and begin to grow and strengthen until they are once again able to act as a countervailing social power to owners and managers, this seems to be unlikely. It also appears that one cannot place too much hope on the state filling that gap left by trade unions and collective bargaining, as Kahn-Freund's thesis might suggest. The state in advanced industrialized countries has weakened, or perhaps can be best described as having been 'captured' by advocates of deregulation and limited involvement in the market. In developing countries the state is almost by definition weak and is forced to make compromises around workers' rights in order to attract investment. Private governance, in the form of CSR and similar initiatives, held out some promise for labour in developing countries, but the record of these initiatives does not inspire confidence. Many CSR systems are subordinate to the impetus of buyers to find lower prices as well as having many other flaws.

Collins would seem to suggest that the reduction of social power on the part of workers and a more limited state, a scientific approach to regulation that draws on transaction cost economics might provide some protection. Clearly, more work needs to be done on developing this option. At present it seems to be a largely academic endeavour that has had no impact on policy-making. Transaction cost economics also does not lend itself to empirical measurement so one cannot support the sorts of arguments put forward by Collins by evidence that will convince policy-makers to make changes to regulatory frameworks. One therefore hesitates to set too much store by this approach in the short-term.

In the light of the above, I would argue that labour regulation does not have a future in its current form. A radical redesign needs to take place that situates the obligations in respect of workers' rights with those who have economic power in value chains rather than with those who have least economic power. In other words, those who set the terms in value chains must be responsible for working conditions rather than those who accept the terms as given. It is

beyond the scope of this thesis to say what the nature of such redesign would be other than to state that the focus should be the value chain rather than the sector. There are two possible routes one could take to shift the focus to the value chain, i.e. by a new regulatory framework or by amending common or civil law legal principles, although the two options are not mutually exclusive. Arguably, a new regulatory framework will encounter much the same problems as the existing framework. Flexibility in property forms, in contracting and in employment are going to be extremely difficult to constrain by regulation in the current global economic and political climate, the repercussions of the economic crisis notwithstanding. It is likely that capital will, by restructuring property and innovative contracting, find new ways to circumvent regulation. In any case, although the modern state is much stronger than the feudal state was when merchant capitalism was dominant, its strength is limited vis-à-vis capital. What is the chance it will introduce a new regulatory framework that targets value chains if this is contrary to the wishes of financial and commercial capital? And, even if the state was to adopt a new approach, how would regulation be designed and enforced that would restrict the use of value chains by the economically powerful to avoid labour regulation? This is especially the case where value chains cross national borders. And, as noted above, alternatives such as CSR have proved inadequate to this task. Furthermore, global programmes such as the ILO's decent work initiative are unlikely to achieve much; their translation to the national level via country programmes seems to have ignored the role of value chains or the regional interaction of labour markets.

The second option is to reconsider the core principles of contract law. The principle of equality between the parties is a fiction both at the level of the employment contract and for many commercial contracts. The distinguishing feature of the employment contract, viz. the right of the employer to direct how and what work is done, is becoming increasingly irrelevant. This right derives from the ownership of property, i.e. the means of production, by the employer, and is turned into managerial authority or control through the employment contract within the hierarchy of the firm. Labour regulation has hinged on this distinguishing feature to govern the relationship between employer and employee. But control can be delegated and transferred along value chains that span zones defined by different levels of industrial development and different levels of regulation. Workers in developing countries are effectively being subjected to formal and real subordination simultaneously, with only limited protection from rather weak systems of labour regulation. They are therefore unable to make

the sort of trade-off supposedly agreed by labour and business in advance industrialised countries in the Fordist period, i.e. to stop challenging management over control of the production process in return for collective bargaining rights and job security. This is not an option when power no longer resides in the production process but in the retail sector. The solution therefore lies at the heart of the law of contract, namely the principle that contracts represent that wills of the parties, with its accompanying assumption that the parties are equal.

There needs to be greater recognition within the law of contract of possible inequality of economic power between the parties, with a remedy that would allow courts or state tribunals to intervene in contracts on the basis of equity rather than legal principle. A concept that is currently being explored is good faith contracting, which is a corrective to the notion that the contract is a meeting of the wills even if the consequences are grossly unfair. Such a concept opens a way for a court or tribunal to engage with the substance of the contract to produce an outcome that is fair. There is a long way to go in order to win the acceptance of this principle in common and civil law systems but it promises a more fundamental solution than labour regulation. Until then value will continue to be distributed unequally along value chains.

## **Chapter Nine**

### **Conclusion**

This thesis did not work within a particular set of literature and focus on a single question that was strongly supported by a tightly designed empirical study. Instead, a trans-disciplinary approach was adopted in the thesis. It drew primarily on sociology, law and history, but there are also elements of economics, management studies, and organisation theory. It also tied together different sets of literature that spanned the above disciplines, i.e. literature on management control, the hierarchical firm, the employment relationship, labour regulation, and value chains. The aim was to link these different approaches and literatures through some core concepts, rather than to explore any one literature in great detail. It was a somewhat ambitious attempt at eclectic theory-making. The thesis clearly only begins to scratch the surface of what is a very large research project, but hopefully it opens the way for further exploration that will consolidate the links and give more substance to the integrating concepts.

I believe that the policy implications of such a research project are profound. A great deal of policy, in South Africa and globally, is dominated by an economics discourse that is generally pitched at the macro-level and is supported by quantitative data that tells one part of a story but leaves much untold. A more integrated approach is required for policy-making. This approach needs to start at the bottom, putting employment at its core, but defined more widely to include all contracted work (see below). It needs to understand how industry is restructuring and what this means for employment arrangements. Given the complexity of different employment and contracting regimes this is an issue that cannot be addressed by quantitative studies that are generally still limited to counting how many people are in employment or are unemployed. Policy also needs to address the retail sector and the power it now wields in national economies and the global economy. Despite its power, the retail sector seems to exist in a policy gap in most countries, only acknowledged indirectly by trade policy.

Management is another category that needs much more critical research and also needs to be given a prominent role when policy is considered. Economic and industrial policy does not distinguish between employers and managers, and is not based on evidence as to what such people want and how they will respond to different incentives or constraints. These policies are formulated on the basis of assumptions, often influenced by lobbying from sectional interests. Importantly, such policies assume a level of capability and capacity that does not exist, ensuring that policies will not be optimally effective. Both academic researchers and policy makers need to focus more attention on the role of managers in developing countries. Their capabilities are probably the most important contributor to development and compliance with labour regulation but are often overlooked.

The biggest policy challenge, however, is to design labour regulation that will offer suitable protection to workers in the developed and developing world. Arguably a new 'hook' needs to be found on which to hang labour regulation; the existence of an employment relationship is no longer suitable. The flexibility of contract law means that too many workers in the modern labour market are not 'employees' as defined, and are therefore not protected by labour regulation. They form part of the burgeoning informal economy in increasing numbers, both in developed and developing countries. There is no easy solution to this problem. However, a starting point will be for labour regulation to take account of fundamental continuities and changes. In particular, labour regulation needs to reorient itself away from 'employment' and address all contractual working arrangements. It also needs to follow value chains to where the power to determine wages and conditions of employment resides. Those centres of power need to be addressed by regulation. Until then labour regulation will be fighting an on-going defensive battle that will be characterised by a series of retreats.

An alternative route, touched on in the previous chapter, is to address key principles of the law of contract. It is only at this level that the fundamental continuities in the way in which work is organised, which Fordism only briefly interrupted, will be addressed. Good faith contracting is one route that can be explored, but this will require an entirely new approach from courts and will be fiercely resisted at the political level. It does, however, hold out the promise of a longer lasting solution for labour.

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## **APPENDIX 1.**

### **Information sheet with respect to interviews to be conducted for PhD research**

I am a senior researcher in the Labour and Enterprise Policy Research Group at the University of Cape Town and am also currently registered for a PhD degree at the Faculty of Humanities at UCT. It is in respect of the latter that I am approaching you.

The title of my dissertation is:

Management and Labour Regulation: The implications for economic development of the management of the employment relationship within the context of the existing framework of labour regulations in South Africa

The core research question that I will be seeking to investigate and answer is how management make decisions with respect to the restrictions that labour regulations place on their ability to control labour in the production process, in particular where responses (such as outsourcing) might limit the impact of labour regulations but at the same time reduce management's capacity to control labour through the employment relationship. A related question is the impact that such decisions have on economic development.

The methodology I will be using comprises case studies of two firms in each of the following sectors: metal and engineering; food manufacturing; clothing manufacture; and, finance and business services. Prior to conducting the case studies I will do interviews with key stakeholders in the relevant sectors.

However, the first step in my empirical research is to conduct interviews with key informants regarding 'the state of management in South Africa'. I understand that this is a very broad topic, but it is necessary that I cover this ground because there is very limited secondary material on management in this country within which to contextualise my research focus. For example, a standard approach has been to describe South African management as having gone from unitarist, to pluralist, and in some cases to co-determinist, since about 1960. This is clearly inadequate; it does not address possible differences between functional areas of management, differing levels of management, and management approaches at different types and sizes of firms. It also obscures the complexity of management decision-making in the face of uncertainty.

In the case studies I plan to conduct I will be exploring the above issues in some depth. But before embarking on the case studies I would like to get some general perspectives from key people on management in South Africa, which will provide me with a more nuanced, albeit broad, sense of where management is at and where it is going. I do not intend that these perspectives are confined to the management of 'labour'; the broad overview should cover the strengths and weaknesses of management, the major challenges facing management, the dominant management philosophy, etc. My interview schedule will highlight these and other key issues that I would like to discuss, but it is a starting point only; the interview will be open-ended and the direction it takes will be determined to a large extent by the concerns and perspectives of the interviewees. Given your position in business in South Africa your agreement to participate would be greatly appreciated and will add much to my research.

The data obtained from the interviews will be confidential and your anonymity will be guaranteed, unless you explicitly indicate otherwise. Any further concerns you have in this regard can be addressed prior to the interview.

Shane Godfrey

12 June 2008

## **Information sheet with respect to interviews to be conducted for PhD research**

I am a senior researcher in the Labour and Enterprise Policy Research Group at the University of Cape Town and am also currently registered for a PhD degree at the Faculty of Humanities at UCT. It is in respect of the latter that I am approaching you.

The title of my dissertation is:

**Management and Labour Regulation: The implications for economic development of the management of the employment relationship within the context of the existing framework of labour regulations in South Africa**

The core research question that I will be seeking to investigate and answer is how management make decisions with respect to the restrictions that labour regulations place on their ability to control labour in the production process, in particular where responses (such as outsourcing) might limit the impact of labour regulations but at the same time reduce management's capacity to control labour through the employment relationship. A related question is the impact that such decisions have on economic development.

The main research method I will be using comprises case studies of two firms in each of the following sectors: metal and engineering; food manufacturing; clothing manufacture; and, finance and business services (specifically call centres). However, the first step in my empirical research is to conduct interviews with key informants regarding the very broad topic of 'the state of management in South Africa'. The next step is to interview key informants in the above sectors to get their perspectives on the nature of the sectors, developments within the sector, and management within the sector. I am therefore hoping to use these interviews to explore some of the more general points made by key informants about management in South Africa in more detail within the context of specific sectors. At the same time, the interviews will provide information on the sector for the purposes of contextualising the case studies.

I do not intend that the focus of the interviews is confined to the management of 'labour'; the sectoral overview should cover the major challenges facing the sector, the strengths and weaknesses of management in the sector, the dominant management culture, etc. My interview schedule will highlight these and other key issues that I would like to discuss; but it is a starting point only, the interview will be driven to a large extent by the concerns and perspectives of the interviewees. Given your position in the sector your agreement to participate would be greatly appreciated and will add much to my research.

The data obtained from the interviews will be confidential and your anonymity will be guaranteed, unless you explicitly indicate otherwise. Any further concerns you have in this regard can be addressed prior to the interview.

Shane Godfrey

25 August 2010

## **Information sheet with respect to interviews to be conducted for PhD research**

I am a senior researcher in the Labour and Enterprise Policy Research Group at the University of Cape Town and am also currently registered for a PhD degree at the Faculty of Humanities at UCT. It is in respect of the latter that I am approaching you.

The title of my dissertation is:

Management Control and Labour Regulation: The management of the employment relationship within the context of South Africa's labour regulation framework and the implications thereof for economic development and social justice

The core research question that I will be seeking to investigate and answer is how management make decisions with respect to employment arrangements and work organisation if their control over the work process will be affected, in particular where responses (such as outsourcing) might reduce management's capacity to control labour through the employment relationship but at the same time limit the impact of labour regulations. A related question is the impact that such decisions have on economic development.

The starting point for my empirical research was interviews with key informants regarding the very broad topic of 'the state of management in South Africa'. The next step was interviews with key informants in selected sectors to get their perspectives on the nature of the sectors, developments within the sector, and management within the sector. The next step, and my major research method, is case studies of firms. I intend to do case studies of two firms in each of the following sectors: metal and engineering; food processing (i.e. fishing); and clothing manufacture. The firms need to be large and have a substantial management infrastructure. They also must have engaged in some re-organisation of work and employment in recent years.

The case studies will entail a number of interviews with selected managers at various levels of the firm. It will also involve the perusal of documentation on the firm's policies. It might also require an interview with shop stewards, if the firm is unionised. However, the starting point will be an initial interview with the CEO or MD of the firm to discuss the case study, get an understanding of the structure and recent history of the firm, and to agree to a procedure for the research at the firm. On the basis of this interview the research design and interview schedules will be customised for the firm. The interview schedules will give a clearer indication of the main issues that I will be seeking to cover in the research.

It is with regard to the above case studies that I am approaching your firm. My preliminary research on the sector indicates that your firm fits the basic profile for my case studies. I am therefore seeking your agreement to participate in the research.

It should be emphasised that if you agree to participate in the research individual managers will not be obliged to be interviewed, can withdraw from an interview at any point, and can decline to answer particular questions. Furthermore, neither the firm nor individual managers will be identified in any way, unless you explicitly indicate otherwise, and all the data obtained from the interviews will be confidential. Any further concerns you have in this regard can be addressed in the preliminary interview with the CEO or MD prior to the commencement of the case study.



## **Information sheet with respect to interviews to be conducted for PhD research**

I am a senior researcher in the Labour and Enterprise Policy Research Group at the University of Cape Town and am also currently registered for a PhD degree at the Faculty of Humanities at UCT. It is in respect of the latter that I am approaching you.

The title of my dissertation is: Management Control and Labour Regulation: Management decision-making about employment arrangements and control over work in the context of South Africa's labour regulation framework, and the implications thereof for economic development and social justice

The core research question that I will be seeking to investigate and answer is the way in which management make decisions about subcontracting or outsourcing production rather than employing workers to produce goods, with a particular focus on the issue of the benefit of exerting direct control over employees as opposed to the costs of employment in the context of labour regulation. A second (related) question is the impact that such decisions have on economic development and social justice.

The starting point for my empirical research was interviews with key informants regarding the very broad topic of 'the state of management in South Africa'. The next step was interviews with key informants in selected sectors to get their perspectives on the nature of the sectors, developments within the sector, and management within the sector. The next step, and my major research method, is case studies of firms or chains of firms in the following sectors: clothing manufacture, metal engineering; and food processing. In the clothing sector I would like to conduct research at two groupings of firms, i.e. retailer, manufacturer and CMT or retailer, design house and CMT. In each case my aim is to try to unpack how managers arrived at the decision to subcontract or outsource production, what factors they took into account in making this decision, and how they have sought to ensure that they get the requisite level of performance from the firms to which they have subcontracted or outsourced production.

On the basis of one or two preliminary interviews at the firms I will customise my research design and interview schedules for each firm and will agree on the procedure for conducting the research with senior management. The interview schedules will give a more detailed picture of the main issues that I will be seeking to cover in the research.

It is with regard to the case studies in the clothing sector that I am approaching Woolworths. Although your firm is a retail company and as such has not outsourced production, it has close links with clothing manufacturers. It is the decision-making in respect of these links that I am interested to understand. I am therefore seeking your agreement to participate in the research and would like to arrange to meet so that I can discuss the research further and plan the interviews.

It should be emphasised that if you agree to participate in the research individual managers will not be obliged to be interviewed, can withdraw from an interview at any point, and can decline to answer particular questions. Furthermore, neither the firm nor individual managers will be identified in any way, unless you explicitly indicate otherwise, and all the data obtained from the interviews will be confidential. Any further concerns you have in this regard can be addressed in the preliminary interview prior to the commencement of the case study.



## **Information sheet with respect to interviews to be conducted for PhD research**

I am a senior researcher in the Labour and Enterprise Policy Research Group at the University of Cape Town and am also currently registered for a PhD degree at the Faculty of Humanities at UCT. It is in respect of the latter that I am approaching you.

The title of my dissertation is:

*Management Control and Labour Regulation: An examination of the impact on management control of different organisational and employment arrangements within the context of the current labour regulation framework*

The core research question that I will be seeking to investigate and answer is how management make decisions with respect to employment arrangements and work organisation if their control over the work process will be affected, in particular where responses (such as outsourcing) might reduce management's capacity to control labour through the employment relationship but at the same time limit the impact of labour regulations.

The starting point for my empirical research was interviews with key informants regarding the very broad topic of 'the state of management in South Africa'. The next step was interviews with key informants in the clothing industry to get their perspectives on the nature of the sector, developments within the sector, and management within the sector. The next step, and my major research method, is case studies of firms. The firms need to be large and have a substantial management infrastructure. They also must have engaged in some re-organisation of work and employment in recent years.

The case studies will entail a number of interviews with selected managers at various levels of the firm, including an interview with the CEO or MD of the firm to get an understanding of the structure and recent history of the firm. It is with regard to the above case studies that I am approaching your firm. My preliminary research on the sector indicates that your firm fits the basic profile for my case studies. I am therefore seeking your agreement to participate in the research.

It should be emphasised that if you agree to participate in the research individual managers will not be obliged to be interviewed, can withdraw from an interview at any point, and can decline to answer particular questions. Furthermore, neither the firm nor individual managers will be identified in any way, unless you explicitly indicate otherwise, and all the data obtained from the interviews will be confidential. Any further concerns you have in this regard can be addressed in the interview with the CEO or MD prior to the commencement of the case study.

Shane Godfrey

6 December 2011

## **APPENDIX 2.**

### **Interview Schedule for Key Informants for an Overview of Management**

For an explanation of the research and the purpose of this interview see the attached information sheet, which serves as an introduction to the interview.

#### **A. Organisation and role of the key informant**

1. What does your organisation do, i.e. what are its objectives and functions?
2. What does it do specifically with regard to management?
3. In what ways do you experience management outside your organisation?

#### **B. The state of management in South Africa**

4. How would you describe and evaluate South African management?
  - (a) What are its main strengths?
  - (b) What are its main weaknesses?
  - (c) What are the main challenges it faces?
5. Does South African management have a distinctive culture? Or are there a number of cultures?
6. Does South African management have a particular philosophy? Or are there a number of philosophies?
7. Are there differences within South African management according to functional areas of specialisation, sector, region, race, and gender?
8. Why is management, as management rather than as employers, so poorly organised and represented?

9. Who is primarily responsible for training and developing managers: the individual, FET colleges and universities, SETAs, companies?
10. Is there sufficient concern about the state of management? Explain.

11. What is South African management going to look like in 10 years?

### **C. Influences and constraints on management**

12. To what extent are South African managers influenced by international management thinking and practices?

(a) If so, what have some of the key influences been?

13. Are managers influenced by political developments outside the firm in the decisions they make within the firm and how they approach management more broadly? Explain.

14. Do managers think about broader economic development issues when making decisions at the level of the firm? Explain.

15. Is management over-regulated? Explain.

(a) If so, is this real or ideological? If the latter, whose interests are being served?

16. A lot of the sociological literature on management deals with a contest between managers and owners for control of large corporations. Has such a contest also taken place in South Africa?

(a) If so, what has been the outcome – do owners still control managers or do managers control corporations?

(b) If the latter, do they still pursue the interests of shareholders or do they pursue their own interests?

17. Where is a decision to outsource or use temporary employment services made – at the board level or operational level?

### **D. General**

18. Is management a profession?

19. Currently much of the popular management literature is on the concept of leadership. Is leadership the same as management? If so, why the different term? If not, what is the difference between leadership and management?

20. Given the sorts of questions I have asked in the interview, who else would you recommend that I speak to for such an overview of South African management?

University of Cape Town

**Interview Schedule for Sector Key Informants**

For an explanation of the research and the purpose of this interview see the attached information sheet, which serves as an introduction to the interview.

Sector: \_\_\_\_\_

Name of interviewee: \_\_\_\_\_

Organisation & position: \_\_\_\_\_

Date and place of interview: \_\_\_\_\_

### **A. Organisation and role of the sector key informant**

1. What does your organisation do, i.e. what are its objectives and functions?
2. Does it have any objectives or functions specifically with regard to management?
3. What is your role within the organisation?
4. How long have you been involved in this sector?
5. In what ways are you able to gain a perspective on management outside your organisation?

### **B. Basic information on the sector/sub-sector**

6. Since 2002 how has the sector/sub-sector performed (get detailed information or reliable estimates for 2002 and for 2007 (or the latest available figures)):

- (i) Has there been an increase or decrease in output or turnover between 2002 and 2007?
- (ii) Has there been an increase or decrease in labour productivity, and in multi-factor productivity, between 2002 and 2007?
- (iii) Did the trade balance for the sector/sub-sector improve or decline between 2002 and 2007 (if relevant for the sector)?
- (iv) Has there been an increase or decrease in the number of firms in the sector between 2002 and 2007?
- (v) What is your estimate (or the best estimate) of the total number of people employed in the sector (including informal employment) in

2002 and 2007?

- (vi) Leaving aside the overall employment performance of the sector, are there sub-sectors in which employment has increased significantly?
  - (vii) Has there been an increase or decrease in the number of people working in the sector (this includes those who work in the sector or are dependent on the sector other than through an employment relationship)?
7. Can you name four firms in the sector/sub-sector that have increased turnover but decreased direct employment? Are you aware if any of these firms have also 'externalised' employment?

**C. Changes in the structure of the sector (i.e. externalisation)**

8. Has the structure of the sector/sub-sector changed since 2002 in any of the ways listed below:

- (i) Has there been a significant shift in the proportions of firms in the following size categories (if there has, try to get an estimate of the changes that have taken place):

Large and very large (500+ employees):

Medium (100-499 employees):

Small (10-99 employees):

Micro (10 < employees):

- (ii) Has there been a transfer of assets or of enterprises to employees or former employees in the sector/sub-sector, whereby the employees or former employees own or manage such enterprise themselves. If so, indicate what such transfers have entailed or give examples of the more significant transfers:

- (iii) Have services or operations formerly conducted by enterprises in the sector/sub-sector been outsourced:

- (a) If so, which part(s) of their operations or which services have been outsourced?

- (b) Have operations been outsourced to existing enterprises, or have new enterprises been established to provide the services in question:

- (iv) Has there been an increase in sub-contracting (sub-contracting means the supply of goods and/or services to a contractor in terms of an agreement - this may or may not be pursuant to outsourcing):

- (c) If so, what services or goods are sub-contractors providing?

- (v) Has there been an increase in the number of home-based enterprises (i.e. homework) in the sector/sub-sector:
- (a) If so, what services or goods are home-based enterprises providing?

- (vi) Has there been an increase in the use of temporary employment services (i.e. labour brokers):
- (a) If yes, what proportion of employees in the sector/sub-sector (at any one time) are currently supplied by labour brokers?
- (b) Do temporary employment services mainly provide skilled, semi-skilled or unskilled workers?

9. In respect of any of the above questions where increases in 'externalisation' were identified, what are the reasons for the changes (answer as fully as possible and indicate if there are regional or sub-sectoral differences)?

10. Has the externalisation been driven by or facilitated by particular provisions in the labour statutes?

- (i) If so, can you specify the provisions?

#### **D. Information on employees in the sector (i.e. casualisation)**

11. What proportion of employees in the sector/sub-sector are permanent, and what proportion are temporary (i.e. on fixed-term contracts, temporary workers supplied by temporary employment services, seasonal workers, casual workers employed on daily contracts)?

12. Has the ratio of temporary employees to permanent employees in the sector/sub-sector increased or decreased since 2002:

13. What proportion of employees in the sector/sub-sector today is full-time and what proportion is part-time or casual:

14. Has the ratio of part-time employees to full-time employees in the sector/sub-sector increased or decreased since 2002:

15. In respect of any of the above questions where increases in 'casualisation' were identified, what are the reasons for the changes (answer as fully as possible and indicate if there are regional or sub-sectoral differences)?

16. Has the 'casualisation' been driven by or facilitated by particular provisions in the labour statutes:

- (i) If so, can you specify the provisions?

**E. Changes in regulatory compliance in the sector** (i.e. informalisation)

17. Has there been an increase in the proportion of informal enterprises in the sector? (A rough definition of an informal enterprise is one that is not registered with any relevant authority, does not comply with labour legislation, and/or does not pay tax.)

(i) If yes, what has been the extent of the increase and what goods and services are informal enterprises providing:

18. Has there been an increase in the number of employees employed informally? (N.B. Informal employment would be where the employee is *de facto* not protected by labour legislation/regulations.)

(ii) If yes, what has been the extent of the increase? And have the increases been concentrated in particular regions or sub-sectors?

19. What are the factors causing the process of informalisation? To what extent has it been in response to particular provisions in the labour statutes?

(i) If the latter, can you specify the provisions?

**F. Consequences of the changes for regulation**

20. Does the bargaining council agreement or sectoral determination (if applicable) recognise non-standard categories of employees? If so, how are these defined:

(i) Are there special provisions that apply to these employees in terms of the relevant regulations? If so, give details.

(ii) Are there special provisions relating to sub-contracting and/or outsourcing, or labour broking, or homeworking? If so, what are they?

21. Is enforcement in respect of the agreements or determinations (or the BCEA) effective? Give reasons:

**G. The state of management in the sector**

22. How would you describe and evaluate management in this sector?

(i) What are its main strengths?

(ii) What are its main weaknesses?

(iii) What are the main challenges it faces?

23. Does management in this sector have a distinctive culture? Or are there a number of cultures?

24. Do managers in the sector have a particular management philosophy? Or are there a number of management philosophies?

25. Are there differences within management in the sector according to functional areas of specialisation, or sub-sector, or region, or race, or gender, or size of firm?
26. In what way is management in the sector organised and represented? If it is not organised and represented, why is this the case?
27. Who is primarily responsible for training and developing managers in the sector: the individual manager himself/herself, the employing firms, FET colleges and universities, the SETA?
28. Is there sufficient concern about the state of management in the sector? Explain.
29. What is management in the sector going to look like in 10 years?

## **H. Influences and constraints on management**

30. To what extent are managers in the sector influenced by international management thinking and practices?
- (a) If so, what have some of the key influences been?
31. Are managers in the sector influenced by political developments outside the firm in the decisions they make within the firm and how they approach management more broadly? Explain.
32. Do managers in the sector think about wider sectoral development issues when making decisions at the level of the firm? Explain.
33. Do managers in the sector think about broader national economic development issues when making decisions at the level of the firm? Explain.
34. Is management in the sector over-regulated? Explain.
- (b) If so, is this real or ideological? If the latter, whose interests are being served?
35. A lot of the sociological literature on management deals with a contest between managers and owners for control of large corporations. Has such a contest also taken place in this sector?
- (a) If so, what has been the outcome – do owners still control managers or do managers control corporations?
- (b) If the latter, do they still pursue the interests of shareholders or do they pursue their own interests?
36. If a decision is made by a firm in the sector to outsource or use temporary employment services, would this generally be a board-level or operational-level decision?

## **I. General**

37. Is management in the sector viewed as a profession?

38. Given the sorts of questions I have asked in the interview, who else would you recommend that I speak to in the sector for their views of the sector and management in the sector?

39. Are there any firms in the sector that you would suggest that I approach for the purpose of more in-depth research on the above questions (your suggestion can be kept anonymous)?

### **Interview schedule for Senior Management at Case Study firms**

For an explanation of the research and the purpose of this interview see the attached information sheet, which also serves as an introduction to the interview.

**1. The firm – ownership, size and turnover, management structure, decision-making process, competitive environment, technology, business strategy, management style and culture, and performance measurement**

#### ***1.1 Ownership structure***

Is the firm a public company?

Is it listed on the JSE? (Check website for data prior to interview)

Who is on the board of directors and what is the status of each (i.e. executive or non-executive)?

Who are the major shareholders and what is their shareholding (as a percentage)?

Is there a BBBEE component in the ownership structure? If so, briefly explain.

### ***1.2 Size of firm: employment and turnover***

How big is the firm in terms of number of employees?

How many employees are categorised as managers, how many are administrative employees (monthly-paid and white collar?), and how many are workers (weekly-paid and blue collar)?

How many of all the employees are: (Note that these are also performance measures)  
Full-time, permanent employees?

Part-time, permanent employees?

Full-time, temporary (seasonal) employees?

Full-time, temporary (one-off) employees?

Part-time temporary (one-off) employees?

Day labour (i.e. casuals)?

Other (explain):

How many people work at the firm but are not employees?

How many of these workers are:

Employees of high-skilled service providers (e.g. supplying IT or HR services)?

Employees of low-skilled service providers (e.g. supplying cleaning or security services)?

Employed by a temporary employment service (TES) but supervised by employees of the firm?

Employed by a TES and supervised by the TES?

Other (explain):

How many people work in a dependent role for the firm, i.e. sub-contractors or outworkers or homeworkers that are involved in production tasks? Explain.

What was the annual turnover of the firm in 2009? (Note this is also a performance measure)

### ***1.3 Organisation and management structure***

Can you provide an organogram for the firm, or a diagram of the management structure at the firm?

What is the composition of the senior management team that makes major decisions together with the managing director or chief executive officer? Which of these managers is on the board of directors?

Explain the division of responsibility between the board of directors and the senior management team, i.e. the 'in principle' division or by using examples of which body would make which decisions.

Which of the senior managers are responsible for managing the production (labour) process and what is the hierarchy of managers beneath them?

How is production management held accountable to senior management for operational performance?

How is production management held accountable to senior management for the performance of externalised workers?

### ***1.4 Decision-making at the firm***

Explain, with reference to the organogram, how decisions are made by management at the firm?

Which group of managers would make major strategic decisions? Who is in this group?

For major strategic decisions would there be a process of consultation amongst a wider range of managers before a decision is made?

Which group would make decisions regarding new technology that could have implications for labour? Who is in this group?

Which group would make operational decisions with respect to the firm's day-to-day functioning? Who is in this group?

Which group would make decisions about recruitment, selection and appointment? Who is in this group?

Which group would make decisions regarding employment (including the restructuring of employment) and employment/labour relations issues at the firm? Who is in this group?

In what way would the board of directors be involved in decision making?

What sort of decisions would be referred to the board?

Does the CEO have a certain amount of discretion with regard to what is referred to the board?

Does the board set broad guidelines with respect to the implementation of a decision or give very specific directions?

What sort of decisions involving employment restructuring and employment or labour relations would be referred to the board?

Does the top management team involve subordinate managers and supervisors in decision-making?

If so, explain how they are involved and what sort of decisions they would be involved in?

If not, how does the top management team relay its decisions to subordinate managers and supervisors?

### ***1.5 The firm's competitive environment***

Describe the firm's competitive environment.

What product markets is the firm located in – domestic, international? Explain.

Are these product markets simple and stable, or complex and turbulent? Explain.

What changes are occurring in these markets? Explain.

What supplier markets is the firm dependent on – domestic, international? Explain.

Are these supplier markets simple and stable, or complex and turbulent? Explain.

What changes are occurring in these markets? Explain.

What is the nature of the labour markets (including the labour relations environment) the firm operates in (e.g. is labour scarce or abundant across the major skills levels)? Explain.

Are these markets simple and stable, or complex and turbulent? Explain.

What changes are occurring in these markets? Explain.

What is the nature of the technological environment that the firm operates in?

Is this environment simple and stable, or complex and turbulent? Explain.

What changes are occurring in this environment? Explain.

Are there other aspects of the firm's environment that are impacting on its competitiveness? Explain.

Is it evident that there are interconnections between various elements of the firm's environment?

What is the chance of some development transforming the whole environment, i.e. some development that will create a new opportunity or challenge the viability of existing operations?

### ***1.6 Technology***

Is the production process at the firm capital or labour intensive? Explain.

Is the firm's production process standardised and routinised?

Would you describe the predominant technology used by the firm as being at the high end or low end of the technology spectrum?

Does the predominant technology used by the firm create jobs with high or low scope for responsibility and autonomy?

Does the technology rigidify operations, or is it flexible and open-ended?

What technological choices face the firm? Can it replace rigid systems with more flexible forms?

### ***1.7 Business strategy***

Is the firm systematically analysing the environment to identify new threats and opportunities?

Does the firm have a formulated strategy or is it simply reacting to whatever change comes along?

Is the firm adopting an innovative, proactive stance, constantly searching for new opportunities and evaluating existing activities?

Is the firm attempting to defend a particular niche that it has created in the environment?

Is the stance of the firm towards the environment competitive or collaborative?

Does the firm have a dedicated strategy with regard to the management of labour and labour relations?

To what extent is the management of the labour force a part of the firm's strategy?

### ***1.8 Management ideology and style, and firm culture***

Is the dominant managerial philosophy within the firm one that stresses discipline, with accountability and close control being emphasised, or more participative, encouraging initiative and enterprise throughout the organisation?

How would you characterise the style of management of the core production process?

Does the philosophy of the firm stress safe but sure approaches, or is it innovative and risk-taking?

What orientations do managers bring to their work? Is it a narrow, bureaucratic mindset that demands compliance with rules, it is a self-interested “I’m here for the money” approach, or are managers searching for challenges and involvement? Or are managers just interested in doing their jobs in a satisfactory manner?

What orientations do workers bring to their work? Do they come to work reluctantly (i.e. because they have to), are they driven only by money, or are they interested in their work and want to do it well and see the firm as a whole perform well?

Is this different for externalised workers? Explain.

What are the core values and beliefs shaping patterns of corporate culture and sub-culture?

### ***1.9 Operational and economic performance*** (See performance measures)

How does the firm measure operational performance, i.e. what measures does it use?

How did the firm perform in respect of each of these measures for each year since ??

What are the reasons for the upward/downward trend in operational performance (measure by measure)?

What role did the way in which work is organised and the control system used to improve the performance of workers have in the upward/downward trend in operational performance (if possible, measure by measure)?

How does the firm measure economic performance, i.e. what measures does it use?

How did the firm perform in respect of each of these measures for each year since ??

What are the reasons for the upward/downward trend in economic performance (measure by measure)?

What are the links between operational and economic performance – spell these out in detail?

## **2. Labour regulation and the firm**

Briefly describe the labour relations system in place at the firm:

Union(s) organising at the firm:

Union(s) recognised at the firm:

Nature of union rights in the recognition agreement:

Disciplinary code and procedure, and grievance procedure:

Collective bargaining – with which union(s), in which structure or at what level,  
and what agenda:

Consultative forum(s):

Other:

How would you describe the state of labour relations at the firm – excellent; mature; stable;  
adversarial; turbulent?

What changes did management make to accommodate or comply with the:

Labour Relations Act (as well as bargaining council agreement)

Basic Conditions of Employment Act (as well as sector determination)

Employment Equity Act

Skills Development Act

Broad-based Black Economic Empowerment Act

What does management see as the main benefits of the above statutes (and bargaining council agreement or sectoral determination – if relevant)?

What does management see as the main constraints and costs imposed by the above statutes (and bargaining council agreement or sectoral determination – if relevant)?

Does the firm comply with all aspects of the labour statutes (and bargaining council agreement or sectoral determination – if relevant)? If not, what aspects are not complied with and why? Is one reason that the relevant provisions impose unacceptable restrictions on the control management must exercise over workers.

Besides the direct adjustments to ensure compliance with the above statutes (and bargaining council agreement or sectoral determination – if relevant), what other changes has the firm made to improve its functioning in the light of the constraints imposed on it by the statutes (and bargaining council agreement or sectoral determination – if relevant)?

Has the firm retrenched employees subsequent to the introduction of the new labour statutes (or decided against recruiting more employees despite increased orders)? Explain. What were the reasons? In particular, what role did the constraints imposed by labour regulation (and bargaining council agreement or sectoral determination – if relevant) play in this decision?

Has the firm increased capital relative to labour (or vice versa) subsequent to the introduction of the new labour statutes? Explain. What were the reasons? In particular, what role did the constraints imposed by labour regulation (and bargaining council agreement or sectoral determination – if relevant) play in this decision?

Has the firm de-recognised a trade union or refused to recognise a trade union, or sought to avoid bargaining with a trade union, or decentralised collective bargaining, or resigned from an employers' organisation that negotiates with a trade union(s), subsequent to the introduction of the new labour statutes? Explain. What were the reasons? In particular, what role did the constraints imposed by labour regulation (and bargaining council agreement or sectoral determination – if relevant) play in this decision?

Has the firm externalised labour subsequent to the introduction of the new labour statutes? Explain. What were the reasons? In particular, what role did the constraints imposed by labour regulation (and bargaining council agreement or sectoral determination – if relevant) play in this decision?

Has the firm sub-contracted production tasks or work subsequent to the introduction of the new labour statutes (or used outworkers or homeworkers)? Explain. What were the reasons? In particular, what role did the constraints imposed by labour regulation (and bargaining council agreement or sectoral determination – if relevant) play in this decision?

How have the above changes (direct and indirect) brought about by the new labour legislation impacted on:

- the production process and the day-to-day management of workers in the production process?
- the operational performance of the firm?
- the economic (or financial) performance of the firm?

### **3. Getting control over and/or cooperation from labour in production**

How does management exercise control over labour in production:

- Very close supervision and monitoring of work?
- Real-time measurement of performance?
- Supervisors have power to dismiss and use this as a threat?
- The background threat of disciplinary action for poor performance?
- Detailed job descriptions
- Training?
- Technology that 'controls' how workers perform?
  - Detailed rules as to how work is to be performed?
  - Electronic surveillance of workers?
  - Other?

How does management exercise control over labour not employed directly in the production process?

How does management control externalised workers in the performance of their work?

Does the contract with the provider of externalised workers assist managers with regard to control of these workers?

Does management have any control over the employees of sub-contractors (or outworkers or homeworkers)? Explain how control is exerted or what alternative is used to ensure adequate performance.

If this differs from the way that standard employees are managed, why does it differ and what are the implications for the level of control that managers can exert over such workers.

How has the new labour legislation (i.e. the LRA, BCEA, EEA and SDA) affected the way in which management control labour in and around the production process?

Does the level of control that management exerts over workers link directly to operational performance? Do you have measures that show this link?

How would management seek to improve operational performance given the existing system of control? Would it change this system to improve performance? Explain.

How does management obtain or enhance the cooperation of labour in production:

By creating a pleasant working environment?  
Having an open and friendly personal relationship with workers?  
Paying wages above the minimum rates or higher than the norm?  
Productivity incentive schemes or payment by results?  
Through training and skills upgrading?  
By career development and career pathing?  
By giving workers greater discretion in how they do their jobs?  
Working in teams that control the performance of their own work?  
By allowing worker representatives to participate in decision-making regarding the business?  
Through progressive industrial relations systems and practices?  
Other?

How does management get or enhance the cooperation of labour not employed directly in the production process?

How does management obtain or enhance the cooperation of externalised workers to optimise their performance?

Does the contract with the provider of externalised workers assist managers with regard to getting or enhancing cooperation from these workers?

How does management get or enhance cooperation from the employees of sub-contractors (or outworkers or homeworkers)? If this is impossible, how does management ensure adequate performance by these workers?

If these methods of gaining cooperation differ from the way that standard employees are managed, why does it differ and what are the implications for the level of cooperation that managers obtain from such workers?

How has the new labour legislation (i.e. the LRA, BCEA, EEA and SDA) affected the way in which management get or enhance cooperation from labour in and around the production process?

Does the level of cooperation that management obtains from workers link directly to operational performance? Do you have measures that show this link?

How would management seek to improve operational performance given the existing methods of gaining cooperation? Would it change these methods to improve performance? Explain.

Which do you see as more important for improving the performance of work – control or cooperation? Explain.

#### **4. Changes to work organisation and employment arrangements**

What changes have taken place in the firm's core production process in the last decade?

What has been the impetus for these changes? Explain.

Competitive pressures in the product market?

The threat from cheap imports?

New technology to replace outdated technology?

Changes upstream with regard to raw materials or intermediate goods?

New ownership or management at the firm that has introduced a new business strategy?

The constraints or costs imposed by labour legislation?

Consultants?

New international techniques (indicate how you became aware of the techniques)?

Your parent or holding company or head office?

Other?

What changes have taken place in the firm's arrangement of employment in the last decade, i.e. reduction or increase in standard employment, reduction or increase in non-standard employment, or externalisation of employment, or sub-contracting of production work or tasks (or use of outworkers or homeworkers)?

What was the reason for these changes? Explain.

Competitive pressures in the product market?

The threat from cheap imports?

New technology to replace outdated technology?

Changes upstream with regard to raw materials or intermediate goods?

New ownership or management at the firm that has introduced a new business strategy?

To avoid the constraints and costs of labour regulations?

Other?

Could you explain in detail the decision-making process through which the decisions were made?

What management group made the decisions to effect the changes to employment arrangements?

Were there differences between managers with respect to the decision? If so, explain what the different positions were.

In the latter case, explain how the differences were resolved to produce the final decision?

Did the changes lead to a change in the way the production process is managed or the style of management?

What has the impact of these changes been on operational performance at the firm?

How was this impact measured? Has management continued to monitor this measure?

Has management ever thoroughly reviewed these decisions in the light of the effect they have had on performance? Is it satisfied that the current arrangement is better for operational or economic performance than another arrangement? Can it show this in hard measures?

## **5. The firm's performance, economic development and social justice**

What contributes most to the firm's performance, i.e. strategic decisions, top management, technology, the skills of certain employees, the way work is organised and control maintained over production?

Two of the main purposes of the LRA and the BCEA are to advance economic development and social justice. How do you understand these terms?

How do the firm's employment and labour relations practices as well as its performance contribute to economic development and social justice?

When the board or top management make major strategic decisions do they consider the implications for economic development and social justice? Or is it simply about the shareholders interests? Or do management make such decisions in their own interests? Or is there another rationale for major strategic decisions?

Do managers have a role in economic development and social justice or is their duty restricted to acting in the interests of the firm? Explain.

Do you think that the new labour statutes (i.e. the LRA, BCEA, EEA and the SDA) contribute to economic development and social justice? Explain.

Do you think that the new employment arrangements (see above) contribute positively or negatively to economic development and social justice? Explain.

Were the implications for economic development and social justice a consideration when the decision was taken regarding the change work organisation and/or employment arrangements?

What do you think the impact has been on the conditions of work (including job security) and standard of living of workers that were externalised? Has this impacted positively or negatively on economic development and social justice?

**Interview schedule for Senior Managers at Case Study firms**

## **1. Demographics of managers**

Gender:

Race:

Age:

Current position at the firm (i.e. job title):

Length of employment at the firm:

Education (highest school qualification and all post-school (tertiary) qualifications):

## **2. Career, status and financial rewards**

Outline your employment career from when you started work, i.e. the career steps that led you to your current position (positions and firms and periods), specialised management training courses you have been on, and length of time in current position?

Is your current position in the area of management for which you have been trained?

What are your future career plans?

Is the status of a higher position in the firm important for you? Does this drive you to work harder?

Are the rewards attached to a higher position in the firm important for you? Does this drive you to work harder?

Are you subject to performance evaluation, either linked to a performance bonus or not? If so, explain how the system works and what influence it has on you to work harder?

Is the fact that you are highly skilled and do your job very well important for you? Is this more important than status and rewards?

Are you driven to make the firm more profitable or is the way the firm is run and how it treats people, especially employees, more important?

If the latter, does this cause tensions between you and other (senior) managers? If so, how do you manage this tension (eg do you invariably have to give in to the other (senior) managers?)

How would considerations about your own career, your status and your desire for financial rewards influence a decision you had to take or contribute to about whether to outsource work or not?

## **3. Social factors that influence managers in how they approach their work**

Do you have a philosophy of management?

If yes, briefly describe this philosophy and explain how you came to develop it, i.e. what were the major influences on your management philosophy?

If no, what informs the way that you manage?

Did experiences within your family, your community and at school influence your management philosophy? Explain.

Does your race influence your management philosophy? Can you see this clearly when you compare your philosophy to that of managers of other races? Explain.

Does your gender influence your management philosophy? Can you see this clearly when you compare your philosophy to that of managers of the opposite gender? Explain.

Does the fact that you are younger/older than most managers influence your management philosophy? Explain.

Has your post-school education and training influenced your management philosophy? Explain.

Does the fact that you have been at this firm less time/longer than most other managers explain why you approach management differently? Explain.

Has your experience at another firm(s) influenced your management philosophy? Explain.

Does the fact that your own performance is evaluated and good performance rewarded (if relevant) influence your management philosophy?

How does your management philosophy translate into your practice of managing your subordinates? Explain.

How do you ensure that your subordinates do exactly as you instruct them? How much do you rely on the control you exert over them and how much on methods you use to get them to cooperate with you?

How would your social background and managerial philosophy influence a decision you had to take or contribute to about whether to outsource work or not?

Would the fact that you would have less control over externalised workers influence your decision?

**Interview schedule for Service Providers at Case Study firms  
or Sub-contractors to Case Study firms**

For an explanation of the research and the purpose of this interview see the attached information sheet, which also serves as an introduction to the interview.

**1. Size of firm, employment, assets and turnover**

Is the firm a public company, private company, close corporation, partnership or sole proprietorship?

If a public or private company, who are the major shareholders and what is their shareholding (as a percentage)?

Is there a BBBEE component in the ownership structure? If so, briefly explain.

What services does the firm provide or what work does the firm do?

How many firms do you provide services to or work for?

What was the annual turnover of the firm in 2009?

How many people does the firm employ? (Check how many staff and how many placed employees, if relevant.)

Can you provide an organogram for the firm, or a diagram of the management structure at the firm?

How many employees are categorised as managers, how many are administrative employees (monthly-paid and white collar?), and how many are workers (weekly-paid and blue collar)?

How many of all the employees are: (Note that these are also performance measures)

Full-time, permanent employees?

Part-time, permanent employees?

Full-time, temporary (seasonal) employees?

Full-time, temporary (one-off) employees?

Part-time temporary (one-off) employees?

Day labour (i.e. casuals)?

Other (explain):

How many of your employees work at ????? firm and in which of the above categories do they fall?

What services are they providing at ????? firm, i.e. providing high-skilled services (e.g. IT or HR services), low-skilled services (e.g. cleaning or security services)?

Do you supervise your employees at firm ???? or are they supervised by firm ?????

If you supervise your employees at firm ???? which aspects of the work do you supervise and which aspects fall under firm ???? How is this relationship structured and managed – who is

accountable to who for operational performance, how do your managers fit into the decision-making structure of firm ????

## **2. The firm's market environment and managerial philosophy**

Describe the firm's competitive environment. Is this environment simple and stable, or complex and turbulent? Explain.

Is the dominant managerial philosophy within the firm one that stresses discipline, with accountability and close control being emphasised, or more participative, encouraging initiative and enterprise throughout the organisation?

How would you characterise the style of management of the core production process? Is it coercive, or does it incentivise, or is it motivational?

What orientations do managers bring to their work? Is it a narrow, bureaucratic mindset that demands compliance with rules, it is a self-interested "I'm here for the money" approach, or are managers searching for challenges and involvement? Or are managers just interested in doing their jobs in a satisfactory manner?

What orientations do workers bring to their work? Do they come to work reluctantly (i.e. because they have to), are they driven only by money, or are they interested in their work and want to do it well?

What are the core values and beliefs shaping patterns of corporate culture and sub-culture?

## **3. Labour regulation and the firm**

Briefly describe the labour relations system in place at your firm:

Union(s) organising at the firm:

Union(s) recognised at the firm:

Nature of union rights in the recognition agreement:

Disciplinary code and procedure, and grievance procedure:

Collective bargaining – with which union(s), in which structure or at what level, and what agenda:

Consultative forum(s):

Other:

How would you describe the state of labour relations at the firm – excellent; mature; stable; adversarial; turbulent?

What changes did management make to accommodate or comply with the:

Labour Relations Act (as well as bargaining council agreement)  
Basic Conditions of Employment Act (as well as sectoral determination)  
Employment Equity Act  
Skills Development Act  
Broad-Based Black Economic Empowerment Act

What does management see as the main benefits of the above statutes (and bargaining council agreement or sectoral determination, if relevant)?

What does management see as the main constraints and costs imposed by the above statutes (and bargaining council agreement or sectoral determination, if relevant)?

Does the firm comply with all aspects of the labour statutes (and bargaining council agreement or sectoral determination, if relevant)? If not, what aspects are not complied with and why? Is one reason that the relevant provisions impose unacceptable restrictions on the control management must exercise over workers?

Besides the direct adjustments to ensure compliance with the above statutes (and bargaining council agreement or sectoral determination, if relevant), what other changes has the firm make to improve its functioning in the light of the constraints imposed on it by the statutes (and bargaining council agreement or sectoral determination, if relevant)?

Have these adjustments impacted positively on the performance of the following aspects at client firms, in particular firm ?????:

- the production process and the day-to-day management of workers in the production process?
- the operational performance of the firm?
- the financial performance of the firm?

Do you have measures of any of the above aspects as evidence of the impact?

#### **4. Getting control over and/or cooperation from labour in production**

How does your firm exercise control over your workers at firm ?????:

Very close supervision and monitoring of work?  
Real-time measurement of performance?  
Supervisors have power to dismiss and use this as a threat?  
The background threat of disciplinary action for poor performance?  
Detailed job descriptions?  
Training?  
Technology that 'controls' how workers perform?  
Detailed rules as to how work is to be performed?  
Electronic surveillance of workers?  
Other?

How does your firm exercise control over your workers not employed directly in the production process?

Does the contract with the client assist your firm with regard to control of your workers at firm?

Does the way you exercise control over your workers at firm ??? differ from the way that the employees of firm ??? are managed? If so, why does it differ and what are the implications for the level of control that managers can exert over such workers.

How has the new labour legislation (i.e. the LRA, BCEA, EEA and SDA) affected the way in which you control your workers at firm ???, either by limiting your control over them or modifying the way in which it is exercised?

Does the level of control that your management exerts over your workers link directly to operational performance? Do you have measures that show this link?

How would your management seek to improve operational performance given the existing system of control? Would it change this system to improve performance? Explain.

What role does cooperation by workers play in them complying with management's directives about the performance of work without overt methods of control needing to be used? Explain.

How does your firm obtain or enhance the cooperation of your workers at firm????:

- By creating a pleasant working environment?
- Having an open and friendly personal relationship with workers?
- Paying wages above the minimum rates or higher than the norm?
- Productivity incentive schemes or payment by results?
- Through training and skills upgrading?
- By career development and career pathing?
- By giving workers greater discretion in how they do their jobs?
- Working in teams that control the performance of their own work?
- By allowing worker representatives to participate in decision-making regarding the business?
- Through progressive industrial relations systems and practices?
- Other?

How does your firm get or enhance the cooperation of your workers at firm ??? who are not employed directly in the production process?

Does the way you get or enhance the cooperation of your workers at firm ??? differ from the way that the employees of firm ??? are managed? If so, why does it differ and what are the implications for the level of cooperation that managers obtain from such workers?

How has the new labour legislation (i.e. the LRA, BCEA, EEA and SDA) affected the way in which management get or enhance cooperation from your workers at firm ????

Does the level of cooperation that management obtains from workers link directly to operational performance? Do you have measures that show this link?

How would management seek to improve operational performance given the existing methods of gaining cooperation? Would it change these methods to improve performance? Explain.

Which do you see as more important for improving the performance of work – control or cooperation? Explain.

## **5. The firm's performance, economic development and social justice**

What contributes most to the firm's performance, i.e. strategic decisions, top management, technology, the skills of certain employees, the way work is organised and control maintained over production?

Two of the main purposes of the LRA and the BCEA are to advance economic development and social justice. How do you understand these terms?

How do the firm's employment and labour relations practices as well as its performance contribute to economic development and social justice?

When the board or top management make major strategic decisions do they consider the implications for economic development and social justice? Or is it simply about the shareholders interests? Or do management make such decisions in their own interests? Or is there another rationale for major strategic decisions?

Do managers have a role in economic development and social justice or is their duty restricted to acting in the interests of the firm? Explain.

Do you think that the new labour statutes (i.e. the LRA, BCEA, EEA and the SDA) contribute to economic development and social justice? Explain.

Do you think that the provision of services to firms, which means that firms no longer employ people directly to do these functions, contributes positively or negatively to economic development and social justice? Explain.

What is the impact on the job security, conditions of work and standard of living of workers by your firm providing the services rather than the firm itself employing people to do these functions? Has this impacted positively or negatively on economic development and social justice?

**Interview schedule for Managers at Service Providers at Case Study firms**

**1. Demographics of managers**

Gender:

Race:

Age:

Current position at the firm (i.e. job title):

Length of employment at the firm:

Education (highest school qualification and all post-school (tertiary) qualifications):

**2. Career, status and financial rewards**

Outline your employment career from when you started work, i.e. the career steps that led you to your current position (positions and firms and periods), specialised management training courses you have been on, and length of time in current position?

Is your current position in the area of management for which you have been trained?

What are your future career plans?

Is the status of a higher position in the firm important for you? Does this drive you to work harder?

Are the rewards attached to a higher position in the firm important for you? Does this drive you to work harder?

Are you subject to performance evaluation, either linked to a performance bonus or not? If so, explain how the system works and what influence it has on you to work harder?

Is the fact that you are highly skilled and do your job very well important for you? Is this more important than status and rewards?

Are you driven to make the firm more profitable or is the way the firm is run and how it treats people, especially employees, more important?

If the latter, does this cause tensions between you and other (senior) managers? If so, how do you manage this tension (eg do you invariably have to give in to the other (senior) managers)?

How would considerations about your own career, your status and your desire for financial rewards influence a decision you had to take or contribute to about whether to outsource work or not?

### **3. Social factors that influence managers in how they approach their work**

Do you have a philosophy of management?

If yes, briefly describe this philosophy and explain how you came to develop it, i.e. what were the major influences on your management philosophy:

If no, what informs the way that you manage:

Did experiences within your family, your community and at school influence your management philosophy? Explain.

Does your race influence your management philosophy? Can you see this clearly when you compare your philosophy to that of managers of other races? Explain.

Does your gender influence your management philosophy? Can you see this clearly when you compare your philosophy to that of managers of the opposite gender? Explain.

Does the fact that you are younger/older than most managers influence your management philosophy?

Has your post-school education and training influenced your management philosophy? Explain.

Has your experience at another firm(s) influenced your management philosophy? Explain.

Does the fact that your own performance is evaluated and good performance rewarded (if relevant) influence your management philosophy?

Does the fact that you have been at this firm less time/longer than most other managers explain why you approach management differently?

How does your management philosophy translate into your practice of managing your subordinates? Explain.

How do you ensure that your subordinates do exactly as you instruct them? How much do you rely on the control you exert over them and how much on methods you use to get them to cooperate with you?

How would your social background and managerial philosophy influence a decision you had to take or contribute to about whether to outsource work or not?

Would the fact that you would have less control over externalised workers influence your decision?

### **South African firms in the Apparel Sector in Lesotho**

#### **Interview schedule for Management**

##### **1. Background information on the interviewee**

What is your job title?

Please describe your area of responsibility (including for other factories, etc.)?

For how long have you worked at this establishment?

##### **2. Key information on the enterprise and its environment**

In which country is your firm's head office or headquarters located?

How many factories does your firm own and operate? Where are these located?

When was this factory established in Lesotho?

Why was it decided to set up a factory in Lesotho?

What were the main entry barriers to setting up your factory in Lesotho or problems you have encountered in running the factory successfully:

What was the number of employees at this factory in 2000, 2007 and 2010. If you cannot give the actual numbers can you indicate the trend over this period: employment numbers have increased, decreased, or stayed the same? Can you break down the data by gender?

What are the main types of products that this factory produces? What main types of products do the other factories owned by your firm produce?

What is the main market that this factory serves? (US, SA, EU?)

Approximately what percentage of exports go to the US/SA/EU and what percentage of production stays in Lesotho?

### **3. Relationships with suppliers, intermediaries and customers**

Where do most of your raw materials come from in terms of country of origin? Who orders and arranges delivery of the raw materials: your factory, your head office, the customer?

Does the factory give work out to sub-contractors? If so, what proportion of its work is given out to sub-contractors? What type of work is given to sub-contractors? How many sub-contractors does the factory use? Where are these sub-contractors located (on-site or off-site).

Do you have production linkages with other factories in Lesotho?

What is the main reason(s) for giving out work to sub-contractors? Who made this decision: management at head office or at the factory?

How many companies does this factory supply to? Name your main customers?

Do you usually interface with a sourcing agent or directly with the company? How do you receive your orders (telephone, online request, etc)? When orders have been placed, have you ever been asked about labour standards at your establishment (and/or anything to do with codes of conduct).

How long have you been a supplier to each brand? If the relationship is long-term, what does the brand say about the work your factory produces?

If you are not producing for brands, what is the duration of your supply relationship(s) with your (main) client firm(s)?

What proportion of your total output is supplied to your (main) client firm(s)?

### **4. Production process and control**

How would you describe your management approach? Is there a particular management philosophy or system that informs the management approach at the firm?

Has the factory introduced new equipment, production processes or new work practices or procedures since 2007? If so, give details and explain the motivations and impact of these changes.

What is the approximate average age of your current equipment? Are you planning to invest in new equipment?

Which of the following best describes the organization of your production process:

- Progressive bundle system (bundles of garments move sequentially from operation to operation)
- Hanging rail or unit production system (line layout moves garments from work station to work station for assembly)
- Work group or modular production system (explain)
- Other (specify): \_\_\_\_\_

Has this changed in any way since 2000 or 2007?

Do you have production targets for workers? If so, are these set for individuals, production lines or the entire factory? Who sets the production targets? Have the production targets changed since 2007? If so, explain how and why they changed. Explain the nature of the 'reward' for reaching the target. How is this distributed?

What other methods do you use to ensure good production performance:

Close and continuous supervision?

Threat of discipline?

On-going training and re-training?

Management of work flow and quality?

Other: \_\_\_\_\_

Do you think that this factory can be more productive? If so, what changes would you like to make?

How do you ensure the quality of the garments you produce? Explain how and at what stages of the production process quality is checked.

## 5. Employment

Of your total workforce, what percentage is:

	Male	Female	Lesotho citizen	Non-Lesotho citizen
Managers/professionals				
Supervisors				
Technical/technical support				
Office/clerical/sales/customer service				
Production workers				

Specify the levels that exist in your factory between a production worker and the top manager in your establishment (or, if it is easier, describe the organizational structure of the factory starting at the shop floor)?

How many production workers were in standard employment, i.e. they are employed full-time and on indefinite contracts, in 2000, 2007 and 2010?

What proportions of production workers that were in non-standard employment in 2000, 2007 and 2010 were in the following categories:\*\*\*

Part-time

Temporary or fixed-term contract workers

Supplied by labour contractor

Casual/informal (explain how this differs from other categories)

Other (e.g. homeworkers or outworkers or other self-employed):

How many people are working at the factory who are not employees (e.g. supplied by labour contractor, or homeworkers and outworkers)?

Why have you adopted the above arrangements?

Does your factory comply with all relevant provisions of the Labour Code as well as any other instrument applicable to it? Explain.

How are labour standards enforced, e.g. by shop stewards, through a grievance procedure, government inspectors, buyer audits, NGO or third party audits, other?

In particular, how often do government labour inspectors inspect the factory? What is the focus of their inspections and what issues arise?\*\*\*\*

What are the average wages for production workers in the following skill categories?

Skilled/Artisan  
operators

Semi-skilled/Machine

Low skilled/Labourer

Are wage levels the same for non-standard workers in the above main categories or for workers employed by labour contractor or for homeworkers? If not, what are the wage rates for these workers?

Are your employees covered by any of the following:

Pension/Provident fund (describe)

Worker compensation for work-related injuries or illnesses

Sick benefit fund/Medical aid

Are non-standard workers or workers employed by labour contractor or homeworkers also covered by the above? If not, what social benefits do these workers receive?

How many workers are employed by the sub-contractors your factory gives out work to (estimate)? Do the sub-contractors employ with minimum labour standards? Do you monitor compliance?

Do you have one or more codes of conduct that you need to abide by? Which codes of conduct are these? Do these codes of conduct apply to your supplier factories and sub-contractors?

How often does the factory have audits by buyers or independent third parties? Which buyers or third party(ies) do audits? Are your suppliers and sub-contractors also audited?

## **6. Labour relations**

How many trade unions are organizing at your factory?

How many trade unions are recognized by management at your factory for the purpose of organizing and representing workers?

How many workers in the factory are members of unions (what proportion)?

How many shop stewards are there in this factory? How were they elected?

Is collective bargaining taking place with any union(s)? If so, how frequently does bargaining take place, what is the duration of collective agreements, and what issues are covered by collective agreements? (Can we get a copy of the agreement(s)?)

What percentage of your employees is covered by a collective agreement(s)?

Are there worker councils (or similar structures or forums) at this establishment? If yes, can you describe what they are like and how they work? What are the issues discussed most frequently at meetings of the worker council?

Have unions or workers taken industrial action since 2007? What are the disputes about? Where there was industrial action how many working days were lost on each occasion to the action?

Is there a written disciplinary procedure in place (explain)?

How many disciplinary actions were there per year since 2007? What proportion resulted in dismissal?

Is there a written grievance procedure in place (explain)? If not written, what usually happens when someone has an issue?

How many formal grievances were lodged by workers per year since 2007?

Since 2007, how many grievances have there been per year, what is the average number of inspections per year, and how many of audits are conducted per year on average?

What is the absenteeism rate (per year or per representative week or month per year)?

## 7. Training

Since 2007 have the skills required to perform production or support jobs at an acceptable level increased or decreased or remained the same in your establishment?

What types of structured training<sup>121</sup> does your establishment pay for or provide (indicate the type of training, when such training began and whether the establishment plans to increase, decrease or maintain this training in the next two years)?

On average how many days/hours of structured training has each production worker received per year since 2007?

If your establishment increased the amount of structured training since 2007, what was the reason(s):

In addition to your structured training program, does your establishment provide informal (on-the-job) instruction by supervisors or co-workers?

What types of training are provided through informal instruction?

How many days/hours of informal training on average would a newly-hired production worker employed in your establishment's core production process receive before becoming fully proficient in a job?

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<sup>121</sup> Structured training includes all types of training activities that have a pre-defined objective. Examples of structured or formal training include seminars, lectures, workshops, apprenticeships. This training may be offered at your establishment or at another location and may occur during working hours or at other times.