

Footloose Investors

Investing in the Garment Industry in Africa



Esther de Haan & Myriam Vander Stichele

August 2007

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Sub-Saharan Africa has recently received substantial foreign investment in the garment industry. Governments in the various countries have put a great deal of effort into attracting the garment industry, and have competed with their neighbouring countries in offering incentives for manufacturing companies to start production – and later on to continue production – in their countries.

Have these efforts been beneficial for the countries in question and who has really gained from these efforts? What have been the consequences of attracting what is known to be an unstable, footloose industry?

This report brings together various case studies and analyses, and looks at the consequences of this investment for those that it should ultimately benefit; the population and workers in the garment industry in the various countries in Africa.

This report focuses on Lesotho and Swaziland as two countries that received a share of the foreign investment and whose garment industries and exports have grown substantially. Attention is also given to several Asian production companies that have started production in Sub-Saharan Africa, benefiting from trade acts and incentives given.



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Colophon

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Published by:
SOMO – Centre for Research on Multinational
Corporations

Editor: Jim Turner
Cover Design: Annelies Vlasblom



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ISBN:
978-90-71284-17-5

Funding:
This report is made possible with funding from the
FNV, The Netherlands

Additional copies are available from:
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Contents

Contents	3
1. Footloose Investors	5
1.1 Introduction	5
1.2 Research process.....	5
1.3 Structure of the report.....	6
2. The international setting: the focus on investment and trade	7
2.1 Market dynamics	7
2.2 Imbalanced investment promotion.....	8
2.2.1 <i>Changes in investment policy orientation</i>	<i>8</i>
2.2.2 <i>Building investment promotion instruments.....</i>	<i>9</i>
2.2.3 <i>Investment promotion at the national level.....</i>	<i>10</i>
2.2.4 <i>Investment promotion instruments by the international community.....</i>	<i>11</i>
2.3 A window of opportunity	12
2.3.1 <i>MFA.....</i>	<i>13</i>
2.3.2 <i>AGOA</i>	<i>13</i>
2.3.3 <i>Effects of the AGOA on garment and textile export.....</i>	<i>15</i>
2.3.4 <i>Lobbying in the context of the AGOA</i>	<i>17</i>
2.4 Conclusion.....	17
3. Lesotho’s survival strategy	19
3.1 Introduction.....	19
3.2 Foreign investment	20
3.3 Trade	21
3.4 Government policies.....	22
3.4.1 <i>Lesotho National Development Corporation.....</i>	<i>22</i>
3.4.2 <i>Incentives</i>	<i>23</i>
3.5 Corporate strategies	24
3.5.1 <i>Company closures.....</i>	<i>24</i>
3.5.2 <i>Companies lobbying the government.....</i>	<i>25</i>
3.6 Working conditions in the garment industry in Lesotho	25
3.7 Conclusions on Lesotho	28
4. Swaziland’s stay of execution	30
4.1 Introduction.....	30
4.2 Foreign Investment.....	31
4.3 Trade	31
4.4 Government policies.....	32
4.4.1 <i>Incentives</i>	<i>32</i>
4.5 Corporate strategies	33
4.5.1 <i>Corporate investment.....</i>	<i>33</i>
4.5.2 <i>Lobbying of the companies.....</i>	<i>34</i>
4.5.3 <i>Company closures.....</i>	<i>35</i>

4.5.4	<i>Factory shells</i>	36
4.6	Working conditions in the garment industry in Swaziland	37
4.6.1	<i>Closure of companies</i>	37
4.7	Conclusions on Swaziland.....	38
5.	Asian Manufacturers	40
5.1	Introduction.....	40
5.2	Apparel Tri-Star	41
5.2.1	<i>Botswana</i>	41
5.2.2	<i>Kenya</i>	42
5.2.3	<i>Tanzania</i>	43
5.2.4	<i>Uganda</i>	44
5.3	Haps Investment.....	46
5.3.1	<i>Lesotho</i>	46
5.3.2	<i>Malawi</i>	47
5.4	Nien Hsing.....	47
5.4.1	<i>Workers win respect for their rights</i>	47
5.4.2	<i>Working conditions</i>	48
6.	Critical issues	49
6.1	What have the countries gained?	50
6.2	Factory closures	51
6.3	Costs	52
6.3.1	<i>Buyers</i>	52
6.3.2	<i>Pricing</i>	53
6.3.3	<i>The price of a garment</i>	53
6.3.4	<i>Costs benefits in Sub-Saharan Africa</i>	54
6.4	Employment in the garment industry	54
6.5	Perspectives and actions needed.....	55
6.5.1	<i>Governments</i>	55
6.5.2	<i>Investment and trade policies</i>	56
6.5.3	<i>Companies</i>	56
6.5.4	<i>International level</i>	57

1. Footloose Investors

1.1 Introduction

Sub-Saharan Africa has recently received substantial foreign investment in the garment industry, since the US drew up the Africa Growth and Opportunity Act (AGOA). This act is removing barriers to trade between the US and Africa, and has also facilitated the growth in trade in garments from Africa towards the US. Governments in the various countries have put a great deal of effort into attracting the garment industry, and have competed with their neighbouring countries in offering incentives for manufacturing companies to start production - and later on to continue production - in their countries.

Have these efforts been beneficial for the countries in question and who has really gained from these efforts? What have been the consequences of attracting what is known to be an unstable, footloose industry? This report brings together various case studies and analyses, and looks at the consequences of this investment for those that it should ultimately benefit; the population and workers in the garment industry in the various countries in Africa.

This report focuses on Lesotho and Swaziland as two countries that received a share of the foreign investment in the wake of the AGOA, and whose garment industries and exports have grown substantially. Attention is also given to several Asian production companies that have started production in Sub-Saharan Africa, benefiting from trade acts and incentives given.

1.2 Research process

This report is part of a larger research project looking at the consequences of foreign investment in the garment industry in Africa. Research was carried out in three countries, Swaziland, Lesotho and Kenya, by local organisations and a university to look at the impact and the benefits of this investment in the garment industry, at the stability of the investment and the consequences for the labour conditions and living conditions of workers. SOMO carried out additional research in Swaziland and Lesotho in 2006, and has worked with the University of Swaziland and with FIDA in Lesotho. These two studies look specifically at labour conditions and the impact of changes in trade and investment on workers in the garment industry, including after factories have closed down.

A third study, by the Kenya Human Rights Commission, was undertaken to look at the effects of “footloose and quota hopping” production companies, and focuses on one of the Asian production companies, Tri-Star, which has been roaming the African continent looking for low wages, loans and incentives and has consequently set up shop in 4 different countries in the last decade. According to Steve Ouma Akoth, “guaranteeing that the delicate balance between the rights and obligations of the host countries, investors

and the citizenry is maintained and monitored”¹ is important, in order to ensure that investment leads to improvements in a country.

By looking into the investment policies of these African countries, including the reality of the investment agreements and trade arrangements such as the AGOA, as well as the steps taken by the governments to attract investors - such as granting extreme incentives - will provide insights and tools for local trade unions and organizations, and enable their governments, donors and the international community to work with local organisations and trade unions on improving labour rights, including earning a decent wage.

This study draws heavily on research carried out during the past 6 years by SOMO on the garment industry in Southern Africa, which includes research in Swaziland, Lesotho, Kenya, Madagascar, Mauritius and Botswana as well as research on the Asian production companies which are investing in Sub-Saharan African countries. In the past 6 years, the research findings have been shared with the trade unions, local organisations and workers in Southern and Eastern Africa, and have been used in policy meetings, workshops and trainings.

1.3 Structure of the report

This report presents a broad scope, from macro economical regulation and market dynamics to micro economical consequences at the factory level.

- ❑ Chapter two: the international context of trade and investment regulation is described, as well as the market dynamics
- ❑ Chapters three and four: two case studies at the national level are used to illustrate the consequences of investment policies
- ❑ Chapter five: the strategies of Asian manufacturers are described, with the consequences for different countries
- ❑ Chapter six: looks at the critical issues within the garment industry in Sub-Saharan Africa

¹ Ouma Akoth, S. (2007), Foot Loose Investments: a case analysis of foreign direct investment in East Africa

2. The international setting: the focus on investment and trade

In order to be able to analyse and understand the impact of investments in the garment industry at the national level, it is important first to describe the international context of the garment industry both in terms of market dynamics, and the options for and regulations governing trade and investment. The global garment industry has often been described as a footloose industry, relocating relatively easily from country to country and even between continents. The movement of the industry around the world is shaped partly by trade stipulations and benefits, quotas and investment opportunities.

2.1 Market dynamics

In an increasingly easily integrated global economy, a garment today will have very likely been produced in different countries, perhaps in Asia, Latin America or Africa, or even on several continents and will be sold to consumers in Europe or the US. In this industry, which is largely driven by the brands and retailers, there are increasingly large contractors that deliver the finished goods, through their networks, to the specifications of the brands and retailers. Although the highest added value is perceived as being closer to the consumption stage than the production stage², several of these multinational operating contractors are known to have made the production stage into a profitable business.

In the choice as to where to locate a certain part of the production chain, the brand or contractor will be looking at various aspects, such as labour costs, proximity and lead times, trade possibilities and trade barriers, infrastructure, current safeguard measures (as have been taken against China), quotas up to 2004, and, increasingly, compliance on labour conditions.

In a global supply chain, the final retailers and brands are responsible for the design, the price, and the specifications. A proportion of the buyers will contact the manufacturers directly, while others will use US and/or Asian based agents. These then contact the manufacturing companies, which often include multinational operating contractors. The latter then decide where the various items will be produced, and often take care not only of the design, but also the fabrics to be used³.

The position of large contractors in the global supply chain is becoming more prominent. Asian Multinational Companies (MNCs) are playing a crucial role in the international

² Gereffi, G. & Memedovic, O. (2003) *The Global Apparel Value Chain: What Prospects for Upgrading by Developing Countries*. Vienna: United Nations Industrial Development Organization (sectoral studies series) (<http://www.unido.org/filestorage/download/?file%5fid=11900>)

³ Morris, M. & Kaplinsky, R. (2006a), *Dangling by a thread: how sharp are the Chinese scissors?*, Institute of Development Studies

supply chains, with Asian companies investing in production operations not only in the Asian region but also in countries in Africa and Central America. These Asian MNCs are generally focused on manufacturing, serving as subcontractors for brand-name garment and footwear MNCs.

On the retailing side, large retailers such as Wal-Mart are becoming increasingly important – taking over from specialised garment retailers – with large orders and downward pressure on prices. Within a garment industry much more tightly controlled by the large retailers and internationally operating contractors, it could be difficult for countries like Lesotho and Swaziland to develop their industry in such a way that more value will be added in their countries.

Developing countries have taken an increasing share of the international trade, with several countries being very dependent on the garment industry for their employment and for foreign-exchange earnings. This direction has been influenced by international institutions; investment policies were seen as a core feature of the type of industrialisation that has been happening in the sector, and as one of the bases for Asian investment in the African garment industry.

2.2 Imbalanced investment promotion

Without the current investment and trade policies and agreements, the textile and clothing industry would not have been able and/or would not have seen it as beneficial to locate production internationally at the most advantaged price and sell the products all over the world. These policies and agreements have contributed to many foreign investors, rather than national companies, being part of the global supply chain in this sector. In this section, we will be looking at how imbalanced investment promotion leads to imbalanced development.

2.2.1 *Changes in investment policy orientation*

In recent decades, the World Bank, the IMF, donors and various trade and investment agreements have totally reversed many investment policies which developing countries had been making use of in their drive to become economically independent. Newly independent developing countries had nationalised foreign investments or had introduced strict rules on foreign investments and entry of foreign goods. They tried to capture the economic benefits and spill-offs of foreign investment. Strategies to benefit from foreign investments included:

1. Requiring that foreign investors cannot own more than 49% of a domestic company or need to engage in joint ventures.
2. Making compulsory the use of domestic natural resources and national labour or management ('local content requirement');
3. Limiting the use of foreign exchange by foreign investors.
4. Imposing tariffs at the border - governments hoped that they would be able to build domestic industries and at the same time earn an income from any imported goods.

Such policies are now virtually impossible to enforce, due to various investment agreements which are explained below.

Following the high-profile failure of several policies of import substitution and foreign debt problems, the World Bank and IMF, followed by other donors and facilitated by the free trade rules of the GATT/WTO, pushed countries to open up their borders with the proclaimed aim of making developing countries more competitive. In addition, foreign investment was supposed to supplement the lack of domestic capital, donor aid, know-how and infrastructure. Liberalisation of foreign investment was considered to be the solution for the lack of diversification in many developing countries, to help them with export-oriented growth and repay their debts. Allowing foreign investors to use human, labour and natural resources of the host countries was seen as the way for them to integrate into the world economy and promote economic development.

This theory of trade and investment liberalisation was often part of the conditionalities imposed by the World Bank and IMF for their loans, and was translated in many developing countries into different instruments of foreign investment and membership of the World Trade Organisation (WTO) or its predecessor the General Agreement on Tariff and Trade (GATT). Developed countries have continuously been pushing for investment policies and agreements that only provide for the protection of the interests of foreign investors while limiting the measures that host governments can take, regardless of the behaviour and impact of the foreign investor. For instance, the WTO's Agreement on Trade Related Investment Measures (TRIMs) forbid governments to impose local content requirements.

As will be explained in this chapter, trade and investment liberalisation was one-sided and unbalanced, with developed countries often not liberalising the entry of products which were exported by developing countries. A typical example was the restrictions put on the entry of clothing and textiles through the Multi Fibre Arrangement (MFA)⁴ which imposed limitations on the quantity of these products that could be imported (quotas). The WTO accepted that this quota system would have to disappear only slowly by the end of 2004, while the tariffs could remain high. To redress this lack of opportunities to export, developed countries provided lower tariffs to some developing countries to enter their markets, such as through the African Growth and Opportunity Act (AGOA) and the Lomé and Cotonou agreements, but not without imposing conditions on the policies of the developing countries (in the AGOA for example) or on how much of the product was made in the country itself (rules of origin in Lomé and Cotonou agreements).

2.2.2 Building investment promotion instruments

Given the lack of Official Development Assistance (ODA), the perceived failings of ODA to stimulate growth, and the conditionalities attached to World Bank and IMF loans, many developing countries have focused on attracting foreign investment. They were supported in "improving the investment climate" by numerous donors. The donor countries grouped in the rich country club of the OECD spent 15% to 20% of their annual bilateral ODA

⁴ Ascoly, N., Dent, K. & de Haan, E. (2004), *Critical issues in the garment industry*, Amsterdam: SOMO

between 2001 and 2003 on instruments to attract investment, including by improving infrastructure (see box).

“A significant share of aid expenditures helps to promote investment”⁵

The 2005 World Development Report found that “assistance provided by major bilateral and multilateral development agencies for investment climate improvements averaged USD 21 billion per year between 1998 and 2002 — or about 26% of all development assistance. The bulk of that assistance went to infrastructure development.” The World Bank’s methodology can also be used to determine how much of the bilateral ODA provided by the 22 DAC member countries goes towards promoting investment in developing countries. DAC member countries spent between about USD 8 and USD 10 billion per year between 2001 and 2003, or 15% to 20% of their bilateral ODA. Infrastructure development was again the largest component.”

The result has been that opening up to foreign investment and promotion of foreign investment has been translated into national policies and bilateral, regional or international agreements that protect investors against national regulation that is considered harmful for foreign investors’ interests, and by providing a wide range of incentives. At the same time, countries were not given much leeway to distinguish between the kind of investment they wanted to attract or the country from where the investment originated (most-favoured nation (MFN) clause). Also, no specific instruments were set up to assess the impact of foreign investors on the economy, the workers, communities and the environment and to protect their interests.

2.2.3 Investment promotion at the national level

This section will be focusing on investment promotion at the national level and the incentives and financial benefits for foreign investors.

In order to attract foreign investors, for example in the garment industry, developing countries have implemented policy measures and rules that make it profitable for foreign investors, even though some of the circumstances and political instability do make it risky, or not very profitable to invest. These incentives include:

- ❑ tax exemptions or tax reductions for foreign investment on the profits made, often for a period of 5 to 10 years,
- ❑ tariff exemptions on imports, e.g. of machinery or cloth
- ❑ zero rate or reduced export tariffs
- ❑ no restrictions on the use of foreign exchange
- ❑ a wide range of rules that guarantee investors that they can move their money, profits and indeed their whole investment in and out of the country, without obligations to reinvest the profits made in the country

⁵ Source: OECD (2006), *Promoting Private Investment for Development - the role of ODA, DAC Guidelines and Reference Series*, using sources from the World Bank (2004) and OECD

- ❑ building infrastructure only for the smoother operation of the investors
- ❑ establishment of export processing zones (EPZs) in which investors receive even more benefits, such as removal of import restrictions, and often formal or informal exemptions from the application of labour and environmental laws.

Many of the foreign investors in the exporting garments and textiles industry operating in Africa benefit from these incentives. The tax exemptions and tariff payment reductions lead to losses of income to the host country. However, few or no impact assessments are being carried out in Africa as to whether these losses of income through the incentives are being compensated by other incomes coming from these investments, such as taxation of workers' incomes etc⁶. Even the impact on economic growth and long term job creation are not clear. For instance, the OECD admits that "Donors are supporting a vast range of activities that affect investment, both domestic and foreign. They spend around 20% of their aid on these. But little evaluative material is available on the impact of these interventions on investment and employment in developing countries"⁷. Most of all, the impact on workers, communities and the environment is hardly taken into account, because attracting foreign investment as such is seen as the overriding objective. The investment promotion mechanisms do not include protection mechanisms for workers in the event that foreign investors misbehave and national governments do not sufficiently regulate or enforce labour laws. Moreover, foreign investors are given better advantages than local companies.

In order to guarantee that investor protection measures will not be changed, different countries have signed "bilateral investment agreements" (BITs) that prohibit nationalisation of foreign investment without compensation, limits on capital or money transfer, unfair treatment and discrimination at the disadvantage of foreign investors. BITs do not include instruments for the protection of labour conditions. Interestingly, the research for this report found that the countries below hardly use these BITs for investment promotion purposes, and had hardly any BITs with the host countries of the garment investors.

2.2.4 Investment promotion instruments by the international community

The international financial institutions and donors have implemented many instruments to promote foreign investment in particular, such as:

- ❑ Protection of foreign investors against financial losses (e.g. credit guarantees); examples of such mechanisms are the World Bank's risk mitigating instruments: the Multilateral Investment Guarantee Agency (MIGA) which insures investors against political or non-commercial risks such as war or civil disturbance⁸. The

⁶ Interview with COMESA

⁷ http://www.oecd.org/document/41/0,3343,en_2649_34621_36566761_1_1_1_1,00.html, accessed at 18 July 2007

⁸ Research based on MIGA's own information, <http://www.miga.org/>

International Finance Corporation (IFC)⁹ that mobilizes capital in the international financial markets and provides technical assistance and advice to governments and businesses. Based on the Cotonou agreement, the EU gives financial incentives to foreign investors in the form of loans and guarantees by the European Investment Bank (EIB).

- There are different donor instruments through which advice is given to countries as to how to implement investment promotion activities and how to design laws and regulations that are friendly towards investors, in the hope that this might attract investment. Examples are the OECD “Policy Framework on Investment” (started in 2006) and the NEPAD – OECD Africa investment initiative. Companies give advice to governments about their investment promotion policies through the Investment Climate Facility¹⁰ for Africa, which is among others supported by the Dutch government, the EU and Dutch companies.
- Some investment promotion instruments paid for by donors are targeted directly at the (potential) investors and include business to business meetings or capacity building of organisations that do so. Examples are the EU- SADC Investment Promotion Programme (ESIPP), ProInvest (an EU-ACP investment promotion programme¹¹) .

All these instruments, which are supported through billions of dollars in donor aid, have no instruments to assess the benefits of the promoted investment on workers, to protect workers and communities when they are harmed by foreign investment, or at least to give workers and communities a voice in the decisions taken by the above mentioned bodies.

Overall, the investment promotion mechanisms are highly imbalanced in favour of foreign investors, with little or no guarantee that they promote the interests and benefits of workers, communities and citizens in the host countries. The focus on foreign investment as one of the most important ways to develop, has overlooked many aspects of what the reality of foreign investment means and what the cost of investment promotion is. For instance, more and more donors are indicating that providing tax holidays to foreign investors is detrimental to the benefits of the host country.

2.3 A window of opportunity

When the AGOA was implemented in 2000, it became clear that the first 4 years, in particular, would be the most important, and the years that would give the most opportunities for setting up a garment industry in Sub-Saharan Africa. As is described below, the quota imposed on such garment exporting giants as China and India, and the possibility of duty-free entry of garments into the United States – even made with imported Asian fabrics – created a window of opportunity that would close down at the end of 2004. The forecasts on the possibilities for Sub-Saharan Africa to be able to sustain this industry

⁹ For more information see: <<http://www.ifc.org/about>>

¹⁰ Except otherwise stated, all the information about the ICF comes from its website: <http://www.investmentclimatefacility.org>, accessed at 22 April 2007

¹¹ < <http://www.proinvest-eu.org/page.asp?id=378>>

once quotas were lifted were negative. These predictions have not been totally sustained, as will become clear when talking about the sector in several African countries and their value of garment export in the years immediately after the MFA phase-out.

2.3.1 MFA

The MFA was created in 1974 under the General Agreement on Tariffs and Trade (GATT) and remained in effect until it was replaced by the Agreement on Textile and Clothing (ATC) under the WTO in 1995. The developed countries tried to protect their own industries by creating quotas limiting the export from developing countries. Quotas have particularly constrained imports from Asian countries, including from China, to the EU and US. The system was heavily criticised, especially by developed countries, but was extended several times. Several developing countries have developed their garment industry because of quotas imposed on most of the larger economies, for example China, India and Taiwan. The issue of the looming phase-out of the MFA was publicly ignored by policymakers from both the United States and Africa when the AGOA came into effect in 2000, and even in 2005 when the consequences of the phase-out became clear.

The ATC phased out the quotas, with the real impact coming in the last tranche, at the end of 2004. After the phasing out of the quotas, other “regulation mechanisms” have become more important, such as trade agreements with tariff and import duties, and non-tariff measures including rules of origin.

Before the phase-out of the MFA, many scenarios were written on the effect of the phase-out. Who would be the losers, and who the winners? In all predictions Sub-Saharan countries were part of those that would lose at the end of 2004. Although there has certainly been a decline in exports of garments from most African countries, the changes have not been as devastating as initially predicted, as will become clear in the chapters on Lesotho and Swaziland.

2.3.2 AGOA

The African Growth and Opportunity Act (AGOA), which came into effect in 2000, is an expansion of the US General System of Preferences and authorises the duty-free and tariff-free export of more than 6400 products, including garments, currently (July 2007) from 39 sub-Saharan African countries to the United States. The AGOA puts a cap on the export of garments and grants least developed countries (LDCs) with a per capita income below US\$ 1500 duty-free access for garments that are made from fabric sourced anywhere in the world (i.e. there is no requirement for the material to be of US or African origin) for those countries. In July 2007, this “special rule” was granted to 24 countries. The special rule, also known as the “third-country fabric provision”, was meant to expire first in September 2004, then after severe lobbying in September 2007, and has recently been extended to 2012 (in AGOA IV)¹².

¹² For more information www.agoa.gov

The AGOA was initially only meant to remain in effect for a period of 8 years, with a window of only 4 years of possibilities for using third-country fabrics¹³. Most countries in Africa have hardly any facilities for the production of fabrics, so the possibility of using fabrics from Asia has been facilitating investment in most of the new factories during this four-year period. The end of this window of opportunity almost coincided with the end of the MFA, therefore creating a situation whereby the countries would lose their main advantages in this sector at the same time. This situation led to quite a substantial amount of factories leaving African countries, some already after 1 or 2 years of starting production – as described in the following chapters - although after heavy lobbying, the third-country fabric provision was extended by 3 more years, even before September 2004.

Tapping into the benefits of the AGOA means that countries benefiting from the Act will have to enact far-reaching changes: “The President may designate Sub-Saharan African countries as eligible to receive the benefits of the Act if they are making progress in such areas as: establishment of market-based economies; development of political pluralism and the rule of law; elimination of barriers to U.S. trade and investment; protection of intellectual property; efforts to combat corruption; policies to reduce poverty, increase availability of health care and educational opportunities; protection of human rights and worker rights, and elimination of certain practices of child labour. Progress in each area is not a requirement for the AGOA eligibility”¹⁴.

Section 104 of the AGOA demands that African countries eliminate barriers to all US trade and investment in Africa, including that US firms be given equal treatment to African firms, and demands further privatisation, the liberalisation of service sectors, the removal of government subsidies and price controls. It also links the AGOA to participating countries' guaranteeing international labour standards, and demands that African countries not engage in any act that undermines US national security and foreign policy interests.

Labour rights provision is increasingly being included as part of bilateral and multilateral trade agreements – although in practice such labour rights provision are not often enforced. Section 104 - F of the AGOA also states that countries should have established, or should make progress to establish “Protection of internationally recognized worker rights, including the right of association, the right to organize and bargain collectively, a prohibition on the use of any form of forced or compulsory labour, a minimum age for the employment of children, and acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health”¹⁵.

Section 104 has been used at least twice in Sub-Saharan Africa. The first is the case of Swaziland, where the US pressured the government into changing its labour legislation or face the withdrawal of trade privileges¹⁶. The second is the case of Uganda, where the

¹³ This period is under AGOA III extended to 2015

¹⁴ <http://www.agoa.gov/faq/faq.html#q1>, accessed at 10 July 2007

¹⁵ http://www.agoa.gov/agoa_legislation/agoatext.pdf, accessed at 15 July 2007

¹⁶ For more details see de Haan, E. & Philips, G. (2002), *Made in Southern Africa*, Amsterdam: Clean Clothes Campaign

trade union asked for the AGOA preferences to be reversed because of labour issues in one of the factories producing garments for the US market. See chapter 5 for more information.

2.3.3 Effects of the AGOA on garment and textile export

Much is being made of the AGOA pushing Africa into the new reality of trade and investment, and the proclaimed boom in garments production was much cheered in the early years of the AGOA. When taking a closer look at the benefits of the AGOA, in terms of trade, the situation seems less optimistic than US communication on the AGOA has implied. Through the years, the United States has expressed a great deal of optimism that the implementation of the AGOA will not only result in economic reform, but will also lead to economic growth and development in Sub-Saharan Africa. The AGOA is mentioned by the US Government as a factor “expected to help countries diversify their exports and to assist them in building a manufacturing base to support long-term economic growth”¹⁷. The 2001 AGOA report to the US Congress claims that after only one year of implementation, the AGOA “generated a strong trade and investment response”¹⁸.

The countries fuelling the growth in trade are limited in number, as is the number of sectors involved. All in all, although US imports from Africa increased as a whole in 2005 and 2006, this was mainly due to oil imports (in 2006 petroleum products accounted for 93% of the AGOA imports). Most of the FDI coming into the African continent goes to a few countries, and mainly in the petroleum sector, with the exception of South Africa where a large investment in the financial sector took place after Barclays took over ABSA for US\$ 5 billion. Sub-Saharan Africa only received one percent of the US merchandise exports and only delivered slightly more than 3% of US imports in 2005, 80% of this being oil¹⁹.

Although it is only a small percentage of the final trade under the AGOA, garments remain an important export product for Sub-Saharan Africa, and several countries have become more or less dependent on this sector.

But the share of garments in the total export under the AGOA is decreasing, as is the total value. According to Morris & Kaplinsky²⁰, garments formed 4.1% of total exports in 2004, and 16.4% of merchandise exports. As expected after the MFA phase-out, garment and textile exports from Sub-Saharan Africa decreased, by 12% in 2005 and 11% in 2006. And while garments still accounted for 5.9% of Sub-Saharan exports in 2004 under the

¹⁷ Office of the United States Trade Representative (2001), *Comprehensive Report on U.S. Trade and Investment Policy Toward Sub-Saharan Africa and Implementation of the African Growth and Opportunity Act*, first of eight annual reports, http://www.agoa.gov/resources/annual_1.pdf

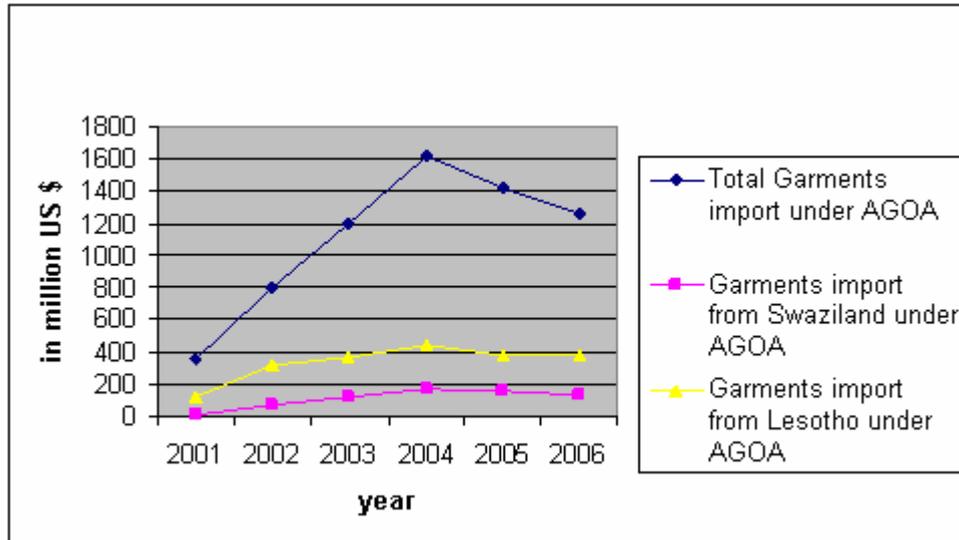
¹⁸ Office of the United States Trade Representative (2002), *Comprehensive Report on U.S. Trade and Investment Policy Toward Sub-Saharan Africa and Implementation of the African Growth and Opportunity Act*, second of eight annual reports, www.agoa.gov/resources/annual_2.pdf

¹⁹ Diemond, J. (2007), *U.S. – African Trade Profile*, Market Access & Compliance / Office of Africa

²⁰ Morris, M. & Kaplinsky, R. (2006a)

AGOA²¹, in 2006 garments made up only US\$ 1,291 million of the total of US\$ 59,175 million exported to the US under the AGOA (2.2%) .²²

Figure 1: AGOA imports of garment in the US



While the sector has expanded due to trade with the US, it has not spread across sub-Saharan Africa but tends to be associated with pockets of investment. The major exporters of apparel under the AGOA are Lesotho, Kenya, Madagascar, Mauritius, South Africa and Swaziland. Lesotho is the top exporter, with exports having grown from US\$111 million in 1999 to around US\$454 million in 2004²³.

On the world market, the influence of Sub-Saharan Africa is not particularly large, with 2.6% of the global textile trade and 3.7% for clothing in 2004.²⁴ The majority of the garment industry's export through the AGOA from Southern and Eastern Africa is directed towards the US. A small but increasing percentage is being sold regionally, and only a few countries are also exporting to Europe (mainly Mauritius and Madagascar). In 2006, South African companies started producing increasingly in Lesotho and Swaziland, drawn, according to the Lesotho National Development Corporation, by lower wages and weaker unions²⁵. Retailers in South Africa have been looking for production facilities outside of South Africa. A large proportion of their products are currently imported from China. However, a recent and much anticipated voluntary agreement between China and South Africa has led to temporary quotas on garment imports from China. Another consequence of the measure, being negotiated by South Africa to protect the national industry, is that

²¹ Robinson-Morgan, A. (2004), *US-African trade profile*, United States Department of Commerce, April, http://www.satradehub.org/CXA_html/docs/reports/US-African%20Trade%20Profile%202004.pdf, accessed 10 December 2006

²² Office of the United States Trade Representatives (2006), *Trade Facts. U.S. – Africa Trade* and Diamond, J. (2007)

²³ United States International Trade Commission, 2002 and 2005

²⁴ Morris, M. & Kaplinsky, R. (2006a)

²⁵ Interview with LNDC in July 2006

South African retailers are looking for suppliers in Lesotho and Swaziland, balancing transport costs and prices against productivity and labour costs.

2.3.4 Lobbying in the context of the AGOA

There has been a fervent lobby working to retain the AGOA benefits for a longer period. Governments of countries such as Lesotho and Swaziland, that have invested a great deal to attract the industry to their countries, were very aware of the effect on their industry once they would no longer be able to use imported material. The producing companies have also been lobbying the US for extensions, especially of the third-country fabric provision.

In anticipation of the end of this special rule, however, some companies have set up a textile mill (Nien Hsing in Lesotho) or bought a textile mill (CGM in Lesotho bought a textile mill in South Africa). There has therefore also been a lobby from that side to make it worth their while. There is a provision in the extension of the special rule to 2012, called the abundant supply provision, which provides the option to declare a certain type of fabric in abundant supply for all of the AGOA-eligible countries, following which the garment producers in the AGOA eligible countries must use the regionally-available quantity in the production of garments under the AGOA. The provision also stipulated that denim fabric is considered to be available in commercial quantities up to a volume of 30 million square meters for the period beginning October 2006²⁶. There have been concerns that this stipulation might backfire, as any attempt to curtail garment manufacturers' free choice of fabrics could influence the garment manufacturers' choice to stay, especially seeing that decisions for fabrics and production specifics are being decided at the top of the supply chain, not in the countries of production.

2.4 Conclusion

It is evident that the garment industry in several countries in Sub-Saharan Africa has grown as a consequence of trade arrangements and quota restrictions, which has drawn foreign investment into "new" countries or has led to a substantial growth of the sector in other countries. The AGOA has been the trigger for several countries to work on attracting foreign investors into the garment industry, specifically through the special rule on using third-country fabrics, while in most instances investments in other industries have not been pursued. Most of the trade goes to the US. The EU has a strict rule of origin policy, and there has therefore not been an increase in garment trade to the EU in recent years, and exports from countries such as Mauritius and Madagascar, the two Sub-Saharan countries with a history of exporting to the EU, has actually dropped.

Both government officials and factory managers interviewed in research projects mentioned the MFA quotas as one of the main reasons that Sub-Saharan Africa became attractive to the garment industry, and the lifting of the quotas therefore as a major

²⁶ AGOA news (2007), *AGOA Forum 2007: Where to for textiles?*, <http://www.agoa.info/?view=&story=news&subtext=827>, accessed 27 July 2007

influencing factor. The prolongation of the AGOA is definitely seen as a positive force to keep – at least – part of the companies in Sub-Saharan Africa. Although a substantial number of companies closed in the year following the MFA phase-out, the scale of the exodus was not as large as initially expected. Duty-free and quota-free access to the American market as a result of the AGOA did help to enhance the countries' competitiveness.

But not only has the trade in garments from Sub-Saharan Africa been facilitated by the MFA and the AGOA and safeguard measures. As the United States International Trade Commission wrote: "To a lesser extent, exports [in the period between 2001 through 2005] increased because of regional economic integration in Southern Africa; individual country programs and state-sponsored policies, such as the creation of export processing zones (EPZs); infrastructure development projects; and, especially in Kenya, Lesotho, Madagascar, and Swaziland, other government investment and incentives that served to attract domestic and foreign direct investment (FDI), notably of Asian origin"²⁷. The next chapters, on Lesotho and Swaziland, will be looking at these governments' efforts in this regard, as well as the impact on the workers and population in these countries.

²⁷ US International Trade Commission (2007), *Sub-Sahara Africa: Factors Affecting Trade Patters of Selected Industries. First Annual Report*, Washington DC: USITC, Publication 3914, April

3. Lesotho's survival strategy



3.1 Introduction²⁸

Lesotho is a small country that is entirely surrounded by South Africa, with a population of just under 2 million mostly engaged in subsistence agriculture. The unemployment rate is estimated at about half the working population.

Lesotho is ranked 149th out of 177 countries on the Human Development Index (HDI)²⁹. The life expectancy at birth is 39.97 years (in 2007) with a population growth of 0.14%. This is partly a consequence of a high percentage of its population being infected with HIV/AIDS. There is an extreme inequality in the distribution of income with almost half of its population under the poverty line. The economy is still primarily based on subsistence agriculture, although there has been a major decrease due to drought. For many years, the country has relied on money sent home by relatives working in the South African

²⁸ From: de Haan, E. & Philips, G. (2002)

²⁹ The HDI provides a composite measure of three dimensions of human development: living a long and healthy life (measured by life expectancy), being educated (measured by adult literacy and enrolment at the primary, secondary and tertiary level) and having a decent standard of living (measured by purchasing power parity, PPP, income), http://hdr.undp.org/hdr2006/statistics/countries/country_fact_sheets/cty_fs_LSO.html, accessed at 10 July 2007

mines. This has recently decreased, coinciding with the growth of the garment industry³⁰. The country currently relies heavily on exports of garments to the US. The Lesotho economy is linked to South Africa, with the Lesotho Loti equal to the South African Rand.

3.2 Foreign investment

The first FDI in the garment industry came from Taiwanese companies that relocated from South Africa, following economic sanctions against the apartheid regime. The main attractions at that time were the Lomé conventions and Lesotho's relations with Taiwan. This changed when Lesotho became eligible for the AGOA in 2000, and the Taiwanese investment that had been in Lesotho for about 10 years helped to attract more investment³¹.

Between 1973 and 1999, the Lesotho National Development Corporation (LNDC) worked with 40 companies that invested in Lesotho. In the 1970s and 1980s, the LNDC facilitated investments by 18 companies, which produced a wide range of products, including umbrellas, bricks, automotive components, pharmaceuticals, and garments. Most companies came from South Africa, in order to circumvent the economic sanctions that existed during the apartheid years. In the 1990s, investment in Lesotho shifted towards garments: 15 of the 22 companies investing during this time invested in the garment industry. In addition, during this period (and also in later years) there was an increase in the number of Asian investments – 11 of the 22 companies were Taiwanese owned. Several of these expanded their operations up to 2004, with an estimated 50 factories halfway through 2004, employing about 55,000 workers. In the run-up to the MFA phase-out, several already closed down at the end of 2004, and a few more at the beginning of 2005. The most recent list from the LNDC from July 2005 gives 39 garment producing companies of which 32 are Taiwanese owned, and several others have as their home country China, Singapore and South Africa.

Lesotho has been called the denim hub of Africa, as it is a major producer of jeans and denim. According to Conmark³², in 2006 there were an estimated 42 companies producing about 26 million pairs of jeans and 80 million knitted garments per year. One major facility that warrants special attention is the vertically integrated denim mill that was built by Nien Hsing in Lesotho, in anticipation of the end of the AGOA third-country fabric provision, for an amount of 100 - 120 million US dollars.

³⁰ CIA, the World Factbook, <https://www.cia.gov/library/publications/the-world-factbook/geos/lt.html>, accessed at 24 of July 2007

³¹ UNCTAD (2006), World Investment Report 2006. FDI from Developing and Transition Economies: Implications for Development, New York and Geneva: United Nations

³² Conmark (2006), Briefing memo: the current state of Lesotho's Textiles & Apparel Industry, May

3.3 Trade

Since the AGOA, Lesotho has expanded its trade with the US at a very fast pace – especially through garments. The percentage of garments and textiles for export is very high; in 2006 garments and textiles were responsible for almost 70% of exports³³ and AGOA-eligible garments made up almost 100% of this³⁴.

In 2001, Lesotho exported garments up to a value of about US\$ 129 million to the US, which had increased to US\$ 445 million by 2004. Since the phase-out of the MFA, Lesotho, like the other countries in the region, has been facing up to the inevitable: a loss of orders and jobs. As one of the countries that used the period that the MFA had not yet been phased out and the AGOA was in place, to quickly build its garment industry, Lesotho was also one of the countries that had most to lose.

The end of the MFA had an immediate effect on Lesotho, in that several factories closed and a number of the factories retrenched a large part of the workforce. According to the LNDC and the employers' association, the appreciation of the Rand against the dollar added to the effect as export became relatively more expensive. As the factories stayed in operation, they were able to increase their labour force reasonably quickly again when new orders came in, in 2006. Almost 7,000 jobs were lost in the first months of 2005, and in July 2006, the employers' association said that a total of 15,000 jobs were lost in the first year after the MFA phase-out. A percentage of the jobs were regained from early 2006 on. In July 2007, the Lesotho Clothing and Allied Workers Union (LECAWU) estimated 44,000 workers were employed in the garment industry compared to the 55,000 in 2004. Other sources confirm that the changes have not been as dramatic as expected.³⁵

There are several reasons given as to why the industry in Lesotho survived the temporary crisis. The employers' association mentions the safeguard measures taken by the US and Europe against China and the large number of orders that have been relocated to China which causes buyers to look for a more diversified suppliers base, as well as the buyers that feel a "social responsibility to help Africa"³⁶ referring with this to the MFA Forum dealings in Lesotho (see box for more information). Also, the extension of the third-country fabric rule has had its influence, and recently, the depreciation of the Rand against the US dollar helped. In addition to this, the South Africa - China agreement that put quotas on Chinese garments import had a positive effect on countries such Lesotho and Swaziland, with orders from South African retailers on the increase.

The MFA Forum has generally been welcomed by most of the parties involved as giving opportunities to Lesotho. Jennifer Chan of the Employers' association feels that Lesotho should market itself more as an ethical production country³⁷ and make use of comparative

³³ FIAS (2007), *Sector Study of the effective tax burden. Lesotho*

³⁴ http://agoa.info/index.php?view=country_info&country=ls#

³⁵ Interview with LECAWU (24 July 2007), information from Conmark and MFA Forum

³⁶ Interview with Jennifer Chan of the employers' association in Lesotho in July 2006

³⁷ Idem

advantages and the benefits provided through the MFA Forum. The LNDC feels that the MFA Forum has been drawing more attention towards Lesotho, which should be used to market the country. The MFA Forum has been criticised for not paying enough attention towards the labour conditions in Lesotho. It has been focussing on keeping orders in Lesotho, which is benefiting the Asian investors, and getting new buyers – which would certainly benefit the employment strategy of the country – but without yet having a strategy for improving these jobs, especially in view of the wages being paid. The MFA Forum is currently looking at programmes to address this, such as setting up training courses and implementing programmes to improve labour conditions.

Several initiatives have been targeted at the garment sector in Lesotho

MFA FORUM

The MFA Forum's aim is to "promote social responsibility and competitiveness in national garment industries that are vulnerable in the new post-MFA trading environment". One of the countries that the Forum has been focussing on is Lesotho.³⁸ There have been several meetings in Lesotho, and initiatives have been introduced whereby buyers, government and unions work towards a programme that is geared towards enhancing Lesotho's competitiveness within the garment sector, which includes improvements to labour rights.

ALAFA

The Apparel Lesotho Alliance to Fight HIV/AIDS (ALAFA) has been developed by ComMark, and is a programme to provide care, treatment and education on HIV/AIDS for garment workers in Lesotho. ALAFA reported in July 2007 that the programme had been implemented in 8 factories, reaching 11,000 workers. It will also be implemented in the other factories. A study carried out in 8 factories in Lesotho found that 43% of the garment workers are infected with HIV/AIDS. The programme is funded by DFID, brands, retailers and other funds³⁹.

3.4 Government policies

3.4.1 Lesotho National Development Corporation

In 1967, directly after gaining independence from the United Kingdom, the government established the Lesotho National Development Corporation (LNDC) to promote industrial investment, with the ultimate aim of raising the level of employment⁴⁰.

³⁸ <http://www.mfa-forum.net/>

³⁹ ALAFA (2007) Issue 3, July and DFID, *Helping Lesotho's factory workers to stitch up HIV and AIDS*, <http://www.dfid.gov.uk/casestudies/files/africa/lesotho-factory.asp>, accessed 21 July 2007

⁴⁰ The LNDC is the government's main parastatal agency for implementing the country's industrial policy. Among others, the LNDC provides factory buildings that are rented out to investors, the LNDC provides infrastructure, services (for example serviced industrial lands for rent, so companies can build their own factories), and an incentive package for investors.

The LNDC provided and paid for the factory shells that are put in place for the investors. The LNDC acquires the land - foreigners cannot buy land - and puts up the buildings. They make modifications to the factory shells for the investors and also provide basic infrastructure. Recently, South African companies have also started getting interested in the region, and the LNDC is therefore now putting up new factory shells for those investors.

As the garment industry is the main industry in Lesotho, there is a strong political will to keep it there; in order to help realise this, the government has set up an inter-ministerial task force which facilitates easy access to governmental officials, close working relations with the labour movement and the possibility of a quick response when needed, according to the LNDC⁴¹.

3.4.2 Incentives

When the first companies closed down, the Lesotho government came into action and amended some of the incentives given, reducing corporate taxes from 15% to 10%, and to 0% for exporters outside SACU. Lesotho also started the Duty Credit Certificate Scheme (DCCS), which gives exporters opportunities (through tradable instruments) to reclaim duty paid on raw materials.

The government therefore provides;

- ❑ Tax-related incentives
- ❑ Good infrastructure
- ❑ Utilities
- ❑ One-stop shop; to facilitate easier investment and trading

Tax-related incentives⁴²;

- ❑ Preferential Corporate Income Tax rate of 0% for exporters outside SACU; 10% for other manufacturing firms
- ❑ 5% depreciation allowance for industrial buildings.
- ❑ 125% training expense deduction.
- ❑ No withholding tax on dividends distributed by manufacturing firms to local or foreign shareholders.
- ❑ Free repatriation of profits derived from manufacturing firms.
- ❑ VAT deferment facility for imports for manufacturing exporters.
- ❑ Upfront VAT refund scheme for local purchases by textile and garment exporters.
- ❑ Duty free imports of raw materials and capital goods for manufacturing exporters.

According to FIAS⁴³, although almost half of the population of Lesotho in formal employment is employed in the garment and textile industry and more than 70% of its manufacturing exports are generated by this sector, almost 86% of corporate revenue is

⁴¹ Interview with the LNDC in July 2006

⁴² FIAS (2007)

⁴³ Idem

nevertheless generated through the non-manufacturing sector. As is described below, the average wage in Lesotho in the garment industry is not much higher than the minimum wage, and therefore below the threshold for which tax has to be paid on income. The income tax paid in this sector is therefore minimal. In addition, all VAT paid on raw materials is refundable.

3.5 Corporate strategies

3.5.1 Company closures

Company closures

Example 1:

Baneng factory⁴⁴

The factory started operating in Lesotho in 2003, and closed down in December 2005, leaving 730 workers without employment. The workers came back from the Christmas break and found the building abandoned, while the security guard told them that the factory had closed. The workers did not receive any terminal benefits.

Example 2:

Hong Kong International Knitters⁴⁵

The factory started operating in Lesotho in 2000 and closed down in March 2004, leaving 1049 workers unemployed. They applied for voluntary liquidation and paid their bills, including the employees' terminal benefits.

Example 3:

TW Garments started operating in 2002 and closed its factory in December 2004, leaving 1600 workers without a job. The company was liquidated and paid its bills but not the terminal benefits of the workers. The LNDC tried to locate the management in an attempt to get these benefits for the workers, but in vain.

As has been stated before, several companies closed after the MFA phase-out, six large factories closed immediately at the end of 2004 and in the first months of 2005. Of the companies that closed after the MFA phase-out, several left without paying any terminal benefits to the workers, some even left without paying the salaries due. The box below contains several examples of companies which closed down in 2004 and 2005. It is interesting to see that two of these had only been producing in Lesotho for 2 years before they suddenly fled the country.

The workers that were interviewed in 2006 by the Federation of Women Lawyers (FIDA) during research conducted for SOMO told the researchers that they were angry about

⁴⁴ FIDA (2006), *Factory closure in Lesotho after the MFA phase-out*, unpublished

⁴⁵ Idem

losing their jobs and finding out that the company had fled the country, and they were very critical of many aspects, including the working conditions of long hours without adequate rest periods, no protective equipment and being insulted by management.

One of the workers who lost her job told the researchers of FIDA⁴⁶ that she could no longer pay the rent after the company fled Lesotho. “I remember that the night I was chased out of the flat I had rented, I had to collect plastic to build a shelter where I kept my belongings. I could also not move away from that plastic because I feared that once I go elsewhere leaving them there, thieves would come and steal them”.

3.5.2 Companies lobbying the government

“Our costs are going up, our prices are going down” says Jennifer Chen, of the Employers' association⁴⁷. Production companies are turning towards the government for help. They expect tax incentives, stable utility supply, more textile mills and labour law reforms. Regarding the labour law reforms, Jennifer Chan adds that “the labour law is stricter than the ILO, for example on the hours of work”. This has an influence on the productivity, and therefore the companies are lobbying the government for extensions of the normal hours of work. Also, several of the companies in Lesotho are lobbying for a piece-rate system. Companies are further expecting the government to provide better infrastructure, including better access to water.

3.6 Working conditions in the garment industry in Lesotho⁴⁸

In 2001, SOMO interviewed workers in the garment industry in Lesotho, and this was followed up by interviews by the Trade Union Research project (TURP) and the trade union, LECAWU. The initial findings were confirmed by a study carried out by the Department of Labour in Lesotho⁴⁹. The studies found that working conditions in the factories involved long working weeks of often seven days per week, forced and often unpaid overtime, repression of trade union rights, violations of health and safety standards, illegal dismissals, job insecurity with some factories employing casual workers for years, and beatings and verbal abuse by managers.

⁴⁶ FIDA (2006)

⁴⁷ Interview with Jennifer Chan of the employers' association in Lesotho in July 2006

⁴⁸ Based on de Haan, E. & Philips, G. (2002), FIDA (2005), *Report on “as you sew” project*, unpublished and interviews with workers from 12 factories in July 2006

⁴⁹ Department of Labour (Lesotho) (2001), *Report of Inspection in the Clothing, Textile, and Leather Industries carried out by officials of the Labour Department, LNDC and LECAWU delegated by the Labour Commissioner during the period 19th March – 20th April 2001*, report to the labour Commissioner

RED

The RED T-shirts, promoted by U2's glamorous frontman Bono, have proved to be quite a successful method of raising money for the Global Fund to fight AIDS, TB and Malaria.

A proportion of these T-shirts are produced in Lesotho. There have been quite a few improvements to labour conditions in this company in the past few years, but there are still some concerns regarding health and safety, work pressure and wages.

One of the main problems in Lesotho's garment industry is the low wages, and the factory that produces RED is no exception in this. The wages that are paid are the minimum or just above the minimum. The workers say that there is no way they can live on these wages, and they are constantly trying to make ends meet. Those interviewed relate that workers will borrow money against their severance payment, which is the pension they receive when they leave the factory (2 weeks pay for every year worked). They can basically take out a few years, which is then deducted, both in years (seniority) and in money. One worker says: "I had to pay my kid's school, I had to borrow the money. Our salaries are so low, we can't solve our problems".⁵⁰

Since the initial interviews carried out in 2001 by SOMO, several campaigns were initiated by Lesotho Clothing and Allied Workers Union, with the Clean Clothes Campaign, the African office of the International Textile Garment Leather Workers Federation (ITGLWF) together with international organisations, directed at the main brand companies that buy garments made in Lesotho. The situation in the factories seems to have improved in 2006 on several issues⁵¹. The atmosphere in the factories has improved, and work has been done on improving management attitude; less harassment was reported. The access for unions to the factories has improved in several factories, although the organised labour percentage is still relatively low and access is not provided in all factories. There are also other outstanding problems including compulsory overtime and non-payment of overtime, misuse of warnings and unfair terminations, temporary lay-offs, health and safety problems, high targets and the payment of very low wages which keeps workers in a poverty trap.

As became clear from the research, the salaries are too low to live on, and far below a wage that would cover basic needs. A study carried out in 2005 by FIDA looked at the living conditions of the children of 30 garment factory workers, and interviewed children where they were living - the majority with their grandparents⁵².

⁵⁰ Interviews with workers in July 2006

⁵¹ Interviews in July 2006 with workers from 12 factories in Lesotho, with the two trade unions that are active in the garment sector, LECAWU and FAWU and with several NGOs and government departments

⁵² FIDA (2005)

Research by SOMO in 2006 found the following labour issues:

Warnings are used in many factories, and in many instances are misused to force workers to work harder. Workers are being given warnings for refusing to work overtime, for not making their targets, which is forcing them to work through their lunch break and forgo toilet visits, etc. The workers are given a disciplinary hearing with management after three warnings, and may be subsequently dismissed.

When orders are low, the workers are temporarily laid off by the factory. Companies use this method to make up for bad planning, while workers are not paid for the time they are laid off.

Wages in this industry are very low. Most of the factories pay the minimum wage or only slightly above it. Workers are not able to take care of their families, not even with both parents working. The workers go to loan sharks to borrow money, but have to pay off these debts at a very high rate of interest, and therefore very easily fall into a debt trap in which debts accumulate very quickly, and most of the salaries are used to pay of the debts.

The garment industry is concentrated at Maseru and Maputsoe, in the industrial parks, and most women come from more distant parts of the country to work here. Most leave their children at home, some in very distant locations, and are not often able to pay for transport to see their family, nor able to send enough money home to make sure that they are well taken care of. When looking for work, the women will queue outside the factories waiting for a job, surviving on casual jobs.

Most workers therefore live in urban settlements, where they do not have access to decent housing, clean water, medical facilities, etc. The jobs they have in the garment industry do not provide them with the means to move on.

The majority of the children said that they did not get adequate food, and often the only food they get is mealie-pap (staple food) without any vegetables, fish or meat. The money sent home by the mothers is not enough. The children who are staying with grandparents have adequate shelter, but those who live with their mothers often do not; their mothers live in one small rented room with their children⁵³. The children were wearing old and torn clothes and did not have any shoes on their feet. Although there is free public education, most of the children nevertheless either do not receive any education, or only a few years. Most of the women interviewed in the study mentioned a lack of suitable clothing and no money for transport to school as the main reasons for their children not receiving sufficient primary education. Most women cannot afford to pay for higher education. Most children are not able to access healthcare.

⁵³ Idem

Mamofolo

Mamofolo had been working for more than 8 years in the factories. She relates the following: “One night in 2001 this hut I was staying in fell onto me and my children, and one child died in the incident. I struggled again to find other accommodation, but it was not easy. I decided to find a site, which I did, and was able to build this shack (mokhuku) that I am staying in with my children. Ever since they joined me, that is in 1998, I have never gone home because I cannot afford money for transport. Another reason for me not to go home is that no one will look after my children and my belongings while I am away. I have also not been able to send any money home. Up to 2001, when free education was introduced, my children did not attend school”⁵⁴.

3.7 Conclusions on Lesotho

The garment industry is very important for Lesotho and is currently the largest employer in the country. Most investments in Lesotho have come from Taiwanese companies, with a few investors from other Asian countries and several from South Africa. Incentives, such as reducing corporate tax to 0% and refunding duty paid on imports of material and capital, mean that the government does not get much out of the industry, other than employment. Although there have been some improvements, workers are still facing hardships in their employment, including compulsory overtime and low wages, and the government is still protecting the investors so they will not be scared away.

The government not only turns a blind eye to labour conditions, but also to the impact of the industry on the environment. Some companies have water filters to treat the waste water, which contains chemicals such as those used to bleach denim. These systems have been ineffective in some cases, and several factories have nothing in place. Over the course of the past years, little has been done to address the many complaints from communities around the industrial areas about the waste water.

The government is clearly putting most of its hope in the garment industry. The country is determined to keep the industry, having set up an inter-ministerial working group to be able to deal with all challenges, and following the phase-out of the MFA, Lesotho has even made the incentives more lucrative for the manufacturers. Investment has been made in fabrics, through Nien Hsing, which offers opportunities for the garment industry to stay in Lesotho and neighbouring countries, especially once the special rule in the AGOA is removed, and until then through the abundant supply provision.

In recent years, Lesotho has become the centre of attention of different initiatives, which has put Lesotho’s garment industry clearly on the international agenda. The government and union in Lesotho feel that the MFA Forum will give Lesotho a comparative advantage in keeping the industry. The union has expressed its hope that the MFA Forum will bring

⁵⁴ Idem

about further improvement of labour conditions, and progress will be made on raising the wages in this industry.

As a result of the additional period to benefit from the AGOA and several other additional “benefits”, such as the safeguard measures against China, the effect of the MFA phase-out has not been as devastating as had been projected. The question remains as to what will happen when some of these influences have disappeared. Lesotho has not paid much attention to other sectors yet, and is highly dependent on the garment industry for employment and economic development.

As the government has frequently stated, the industry is important for employment in Lesotho. Apart from Nien Hsing’s denim mill (which is also foreign owned) the garment industry has not lead to much new investment, and there is very little connection with the local economy other than through transport and the informal economy of food traders, for example. Thanks to the investment it has made in the factory shells, the specific infrastructure and tax-related incentives, the government is unlikely to earn a great deal from this industry. The various initiatives in the country provide hope that, working together, brands, retailers, government, industry and trade unions and NGOs can improve labour conditions. It is also hoped that, by focussing on several issues, including training, wages and HIV/AIDS, the sector will be able to go beyond adding to the profits of retailers, brands and multinational production companies, and can make sure that some of the profits will return to the pockets of the workers and to improving their labour situation.

4. Swaziland's stay of execution



4.1 Introduction⁵⁵

Swaziland is a small country, wedged between the east of South Africa and the South of Mozambique. Swaziland has a small, open economy which is marked by a large agricultural base and has low capacity in the manufacturing sectors. Swaziland's average economic growth declined from 3.7% during 1995-1999 to 2.3% in 2000-2004, with a GDP growth rate declining from 2.1% in 2004 to 1% in 2006. With a estimated population growth rate of 2.9% it is clear that the standard of living is decreasing. There is weaker performance of the manufacturing sector and low agricultural productivity. The increasing population is putting pressure on available resources, and about two-thirds of the population falls below the poverty line. Swaziland has the highest rate of HIV/AIDS in the world, with over a third of its population infected. Swaziland is experiencing slow progress; according to the Human Development report, it has fallen from 112th place (out of 175 countries) to the 133rd in HDI ranking.

As is the case with Lesotho, the Swazi economy is also linked to South Africa, with the Swazi Emalengeni equal to the South African Rand.

⁵⁵ Based on a study done for the project on investments in the African garment industry; Madonsela, Winnie S. (2007), *The State of the Garment and Textile Industry in Swaziland*, SOMO and on Madonsela, W. (2006), *The textile and Clothing Industry of Swaziland*, in: Jauch, H. & Traub-Merz, R., *The Future of Textile and Clothing Industry in Sub-Saharan Africa*, Bonn: Friedrich Ebert Stiftung

4.2 Foreign Investment

The government of Swaziland has placed private sector investment at the centre of its efforts to spur economic growth, reduce poverty and improve the standards of living. The strategy for social and economic development is to a large extent based on attracting foreign direct investments and focusing on labour-intensive, export-oriented industries.

In 1998, the Swaziland Investment Promotion Agency (SIPA) was formed with a mandate to attract, encourage, facilitate and promote local and foreign investment in Swaziland, to initiate, coordinate and facilitate the implementation of government policies and strategies on investment, to provide a one-stop information and support facility for local and foreign investors, and to advise the Minister on investment policies, strategies, proposals and suitable incentives for investors⁵⁶

In July 2007, there were around 17 or 18 garment companies in Swaziland (down from more than 30), all foreign-owned companies; about 11 are Taiwanese owned, with other investors coming from countries such as Singapore and South Africa. Reports from 2006 and 2007 mention that employment levels are currently relatively stable; two new factories have recently been opened in the country, which again is Taiwanese investment.

There has been a very low transfer of skills, in view of the fact that most managerial and supervisory positions are held by expatriates, who have been recruited specifically in their home countries. Very little training is being given to the workers and there is little room for advancement to a better position. There is very little connection with the local economy in Swaziland - most of the fabrics are imported from Asia - other than employment being created through transport and a boost to the informal economy through food vendors that sell meals at the factories for example.

4.3 Trade

The garment industry in Swaziland really took off when Swaziland became eligible for t AGOA on July 26, 2001. From 2001 on, the garment and textile industry expanded rapidly, characterised by large-scale investments, with more than 30 garment factories investing between 2001 and mid-2004 (including manufacturers of zippers and yarns), and at its peak, the sector employed around 30,000 workers. Most of the companies are based in Matsapha, the main industrial centre in Swaziland and only a few in rural areas. Although the government has been trying to develop the rural areas, a lack of developed infrastructure, high transportation costs and other operating costs has led to most of the companies that settled in rural areas discontinuing their operations.

⁵⁶ <http://www.sipa.org.sz/about.php>, accessed at 26 July 2007

The garment producing industry in Swaziland employs between 15,000 and 16,000 workers in 2007, which is down 50% from 2004⁵⁷. As was predicted for most Sub-Saharan countries with a garment industry, Swaziland lost a relatively large proportion of its employment at the end of 2004 and the beginning of 2005. Since then, employment figures in the industry have been fairly stable. As described under the chapter of Lesotho, Swaziland has also benefited from the safeguard measures towards China, the extension of the third-country fabric rule in the AGOA, relocation from South African retailers and the recent depreciation of the Rand against the US dollar.

In 2001, Swaziland's garment exports to the US under the AGOA amounted to US\$ 8.2 million. This increased exponentially to US\$ 176 million in 2004, after which exports declined in 2005 and 2006, to US\$ 134 million .

4.4 Government policies

In an interview with Pumelela Dlamini of the Ministry of Enterprise and Employment, she stated that the period up to the end of the MFA had been too short to really be beneficial to the country. The government did not have sufficient capacity to make an informed decision when Swaziland became eligible for the AGOA⁵⁸. "The costs of attracting the garment companies may have been too high," she said. The period was too short for a transfer of skills; Swaziland would have needed about 10-20 years. She mentions that following on from this, the government is reviewing the programmes and will make sure that in future, when the Swaziland Investment and Promotion Agency (SIPA) attracts investment, the industry becomes more sustainable⁵⁹.

In an interview with a delegate of the European Commission to Swaziland in January 2006, Mr. Matsebula mentioned that the factory shells were risky investments on the part of the government. Swaziland is so desperate for investment, he said, that "the government went a bit overboard, building the structures, giving long grace periods" for tax exemptions. The EU has not directly supported the Swazi government in building the shells, but the EU has supported the Swaziland Investment and Promotion Agency (SIPA) through its private support programme⁶⁰.

4.4.1 Incentives

The government in Swaziland was very committed to developing an attractive environment for investors, through trade agreements and economic blocs, as well as by promoting and renewing incentives for investors;

⁵⁷ Interview with SMAWU in July 2007 and US International Trade Commission (2007), *Sub-Sahara Africa: Factors Affecting Trade Patterns of Selected Industries. First Annual Report*, Washington DC: USITC, Publication 3914, April

⁵⁸ Interview with Pumelela Dlamini of the Ministry of enterprise and employment, in January 2006

⁵⁹ Idem

⁶⁰ Interview in January 2006 with Walter Matsebula of the European Commission in Swaziland

- ❑ Signatory to several economic and trade agreements, giving exports from Swaziland preferential access to overseas markets.
- ❑ Providing and constantly reviewing incentives for investors.
- ❑ A review of general business regulations that create bureaucratic obstacles to investment, in order to remove controls on trade.
- ❑ The development of infrastructure, including road and rail links.
- ❑ The supply of readily available commodities, support services and professionals (including attorneys, accountants, engineers, and architects).⁶¹

With all countries competing against each other to attract the industry, Swaziland also felt it had to make an extra effort to attract the industry; as they do not have a comparative advantage over other countries on wages, for example, Swaziland offers other incentives, such as the factory shells and paying for the infrastructure costs of foreign investors.

Financial incentives offered include⁶²:

- ❑ 10% corporate tax rate and exemption from withholding tax on dividends for ten years for qualifying investments in the manufacturing, tourism, mining and international services sectors;
- ❑ Duty-free importation of capital goods, new machinery and equipment for use in manufacturing enterprises;
- ❑ Duty-free importation of raw materials for exports outside the Southern Africa Customs Union;
- ❑ Depreciation allowances for capital goods and buildings;
- ❑ An Export Credit Guarantee Scheme granted through Commercial Banks and supported by the Central Bank of Swaziland for export-orientated enterprises;
- ❑ Double taxation agreements with the Republic of South Africa, Mauritius, the United Kingdom, and China (Taiwan);
- ❑ A Human Resources training rebate of 150% of cost written against tax;
- ❑ Repatriation of profits and dividends in full. Repatriation is also allowed for salaries of expatriate employees and for capital repayments.

4.5 Corporate strategies

4.5.1 Corporate investment

As with most of the other countries that started producing garments under the AGOA, Swaziland did not start up its own factories, but attracted foreign investors to start up businesses in Swaziland.

Swaziland has seen a surge since the beginning of this century in the number of Asian investors, particularly Taiwanese, choosing Swaziland as a manufacturing location. In 2004 there were twenty Taiwanese Investors in Swaziland. The AGOA has been a very

⁶¹ Madonsela, Winnie S. (2007)

⁶² SIPA, at <http://www.sipa.org.sz/incentives.html>, accessed at 26 July 2007

important driving force in attracting investments, connected to incentives. Another positive aspect for the Taiwanese investors was the diplomatic ties between Swaziland and Taiwan, with Swaziland being one of countries that recognize Taiwan. Taiwan and Swaziland have had a strong political relationship based on Taiwan's crucial need for diplomatic support and Swaziland's economic and humanitarian needs. Overall, Taiwanese companies have seen Swaziland as a stable investment environment, in spite of the controversial Monarchy, which has influenced the influx of foreign manufacturing investment. Swaziland had focused its efforts on Taiwan; SIPA stated that they lobbied hard in Taiwan, including making trips to Taiwan and holding a meeting with the captains of industry in Swaziland⁶³.

The commercial attaché of the Taiwanese embassy in Swaziland states that Taiwan is supporting the Taiwanese investors with financial support for wages, equipment and other costs, up to a certain amount⁶⁴. At a Swaziland factory, SOMO researchers were told in 2001 that the Taiwanese parent company, which also had operations in Cambodia, received reimbursement from the Taiwanese government of 15 – 20% of wages. One company, FTM Garments, mentioned as a reason for their original investment that the Taiwanese government had given them a subsidy of 50 million Rand.⁶⁵

4.5.2 Lobbying of the companies

After the MFA phase-out, lobbying of the government by the companies has intensified; the factory managers regard the labour regulations as too strict and find that the market conditions require that labour regulations be loosened⁶⁶. According to SIPA⁶⁷, these producers are being pressured by buyers such as Wal-Mart to lower their prices. "There is no way that we can make the garments for the price that Wal-Mart wants to pay". The companies have been lobbying to decrease the minimum wage⁶⁸ and to be able to pay the workers a piece rate.

The buyers from the garment industry in Swaziland used the phase-out of the MFA as an extra pressure on the companies to give better prices, and to realise more beneficial government policies. Companies have been asking for certain "incentives" in exchange for their continued production in the country, implying that the country owes them something for their presence. One of the companies in Swaziland, for example, Tex Ray, announced its willingness to set up a textile mill but asked in return for less stringent labour laws and laws on the environment, and for the prices of electricity and water to be halved. They also felt that the government should subsidise the wages⁶⁹.

⁶³ Interview in January 2006 with Zizwe P. Vilane of SIPA in Swaziland

⁶⁴ Interview in January 2006 with Mr. Hsueh-San Leu, the commercial attaché of the Taiwanese embassy in Swaziland

⁶⁵ Madonsela, Winnie S. (2007)

⁶⁶ Interview in January 2006 with Walter Matsebula of the European Commission in Swaziland

⁶⁷ Interview in January 2006 with Zizwe P. Vilane of SIPA in Swaziland

⁶⁸ Interview with Pumelela Dlamini of the Ministry of enterprise and employment, in January 2006

⁶⁹ Interview with Jennifer Neves of the International Trade Department of the Ministry of Foreign Affairs and Trade in January 2006

The Taiwanese embassy says that some of the companies have been lobbying the government ferociously for extra incentives, such as implementation of the DCCS, which gives exporters opportunities (through tradable instruments) to get the duty paid on raw materials refunded, for example. According to the embassy, the companies will make their own choice on the basis of what the government grants them. The companies are arguing that the labour costs are higher than in many other countries, and that the factory shells are only rent free for a certain period of time, which they feel should be longer⁷⁰.

4.5.3 Company closures

*"Companies employ 2000 workers, and a few months later it seems it never happened."*⁷¹

Some examples of company closures⁷²:

Sheung Lee was a company that suddenly closed down from one day to the next, and the 400 workers employed there were not paid their terminal benefits. The owner fled the country and, according to the Taiwanese embassy, has disappeared without a trace.

Workers at Suntay Lon were not paid for a fortnight, and were told to come back another day to get their payment. They were never paid and the management left, stripping the factory and leaving the supervisors from China behind, without money or plane tickets. The Taiwanese embassy arranged for their employment agency to get them tickets, and gave them money for food.

Brand Knitting employing 800 workers, Diamond textile employing 300, Day light employing 120 workers, Kasimi employing 600, A&L Garments employing 800, First Garments employing 800, Nantex employing 650 workers, New Biella employing 150, Welcome employing 1200. All closed down after 2004 with a few reopening after a certain period of time. Most remained closed.

Companies have been closing down in Swaziland since the MFA was phased out. But the end of the MFA is not the only reason cited for the sector losing jobs. Other reasons mentioned have been the appreciation of the Rand against the US dollar – to which the Swazi currency was pegged - and, according to the companies, the higher labour costs and utility costs (compared to other countries). The Trade Promotion Officer of the International Trade Department mentioned, for example, that companies are complaining about the high labour costs, that the workers do not work hard enough and absenteeism is

⁷⁰ Interview in January 2006 with Mr. Hsueh-San Leu, the commercial attaché of the Taiwanese embassy in Swaziland

⁷¹ Interview in January 2006 with Mr. Sandile A. Pato, director of the International Trade Department of the Ministry of Foreign Affairs and Trade.

⁷² Information from Siphon Mamba from SMAWU (Swaziland Manufacturing and Allied Workers Union) in January 2006 and Trina Tocco from the ILRF, who interviewed SMAWU and visited several factories in July 2006 and information from the Taiwanese embassy in Swaziland in January 2006.

high. She said “the cost of electricity and water is criminal here!”, 1,000 litres of water costs 9,000 Rand, for example, while it is only 6,000 in Lesotho⁷³.

When companies closed, they often left suddenly, leaving behind debts, and without paying the workers their terminal benefits. Although there are possibilities within the law to do so, the government has not set up a fund for investors to deposit money into, which can be refunded upon departure⁷⁴.

4.5.4 Factory shells

The costs for building the factory shells for the garment factories have been too high, according to the Ministry of Enterprise and Employment, and this had a severe influence on the government's cashflow. The grace period for tax holidays for foreign investors could be up to 5-7 years, without the government receiving any income. The reason for the government offering the factory shells “has to do with desperation, looking for jobs”⁷⁵.

The shells were not well managed⁷⁶ according to the representative from the European Commission in Swaziland. The Ministry of Enterprise and Employment called it a “severe influence on the government's cashflow”. In 2003, they were put under control of SIPA, in order for SIPA to better negotiate with the investors: “We needed the control”.⁷⁷ The factory shells should eventually be paid off by the investors according to SIPA – they should pay about 200,000-250,000 Rand per month for a reasonable sized factory which costs 25 million Rand to build. The investors should have to pay for at least 10 years for a customised factory, even if they leave earlier. In reality “they are running away” and some are not paying anything but the rent they pay in advance, which is 2 months.

The companies that are departing from Swaziland are not leaving anything behind. Most of the companies can leave without the government being able to take any action. They take everything with them on departure; they do not pay the workers, they take everything that has been built into the factory, they even take the keys, so that SIPA has to break into the factory when the investor has left.

It is a challenge to retain the industry. The whole investment programme has been a short-term solution for a long-term problem, according to SIPA. “We have nothing to offer in garments, the AGOA is doing nothing for us, not with China”. Every country is competing against each other, “we will try to keep the industry but will not sell our souls to do so”⁷⁸.

It seems that the public spending on building the shells and infrastructure aimed at attracting foreign investment in the garment industry has not brought much economic

⁷³ Interview with Jennifer Neves of the International Trade Department of the Ministry of Foreign Affairs and Trade in January 2006

⁷⁴ Interview in January 2006 with Zizwe P. Vilane of SIPA in Swaziland

⁷⁵ Interview with Pumelela Dlamini of the Ministry of enterprise and employment, in January 2006

⁷⁶ Interview in January 2006 with Walter Matsebula of the European Commission in Swaziland

⁷⁷ Interview in January 2006 with Zizwe P. Vilane of SIPA in Swaziland

⁷⁸ Idem

benefit so far. “We have spent billions, but it has not cost the US government anything, nor the companies that are buying here, all have only profited. It has cost us and they have profited”, said Mr. Vilane of SIPA in an interview with SOMO⁷⁹.

4.6 Working conditions in the garment industry in Swaziland⁸⁰

The Swaziland Manufacturing and Allied Workers Union (SMAWU) mentioned in July 2007 that the main issues regarding workers labour conditions are health and safety issues, companies that were not recognizing trade unions, casual employment and contract work and the high level of HIV/AIDS⁸¹.

Wages are still very low in this industry. The minimum wage is about 200 Rand per week, with an average income of between 800-1000 Rand per month in 2006. The wages vary according to tasks and seniority, and most of the companies work with performance-based systems which give bonuses and wage increases on the basis of productivity. Overtime is compulsory when the orders are high. Most workers work the overtime as they desperately need the income. Trade unions have researched the income needed for a family, concluding that 2000 Rand per month is an absolute minimum. Workers interviewed in 2006 said that they would need about 3000 Rand to support an adequate standard of living. On average, a garment worker supports a family of five to ten people.

Workers report that companies often do not pay the legally mandated sick leave and maternity leave, and workers generally report that they are not confident that their employers will pay their pensions and provident funds. Workers are often employed on a casual contract basis, which does not provide job security or a sustainable income.

The unions are cautious not to put too much pressure on the companies, as they are worried that this will result in a decrease in their bargaining power. SMAWU stated in July 2006 that workers are more afraid now, they are scared of losing their jobs, and are unwilling to organise as they fear that every factory that organises will close. Indeed, some of the factories that were on the verge of a recognition agreement with the trade union, closed down in 2005 and 2006.

4.6.1 Closure of companies

When companies closed at the end of 2004 and the beginning of 2005 the workers who were made redundant often found themselves in very difficult situations. They were forced out of their homes, and often had to work in the informal economy, with very little income.

⁷⁹ Interview in January 2006 with Zizwe P. Vilane of SIPA in Swaziland

⁸⁰ Based on Madonsela, Winnie S. (2007)

⁸¹ In a telephone interview with the Swaziland Manufacturing and Allied Workers Union (SMAWU) in July 2007

Life after the factory closes: an interview with an ex-worker

I had worked for the company for three years and had been hired on a permanent basis. I was based in the Packing Department and was earning 375 Rand per fortnight. I used to start work at 7:00 a.m. and stop at 5:00 p.m. We were given a thirty minute break at 12:30.

My employer used to withdraw money from my account as my contribution to the pension scheme, but when the company closed and I went to enquire about my pension, it transpired that my employer had not been remitting money into the pension scheme. My employer could not be found to clarify the position regarding my pension.

While working at San Tay Lon, the treatment we received as workers was not good; the supervisors would shout at us, telling us to speed up our work. I recall a case in which a Chinese supervisor beat up an employee for being too slow, and the employee decided to fight back. The employee was fired for having assaulted the supervisor, but some of us were happy that she fought back, because from then on the supervisor stopped assaulting staff members.

When the company closed, my employer disappeared without paying me the benefits due to me for the years I had worked at the company. They also left without paying the expatriate labour they had hired. I have been waiting eagerly for the Government to do something about our situation, I even began to regain hope when former employees of Welcome, another firm that had closed, were called over the radio to go and receive their terminal benefits not so long ago."

Since the San Tay Lon factory closed the interviewee has been working as a domestic servant for a couple employed in the formal sector. She is paid 400 Rand less than what she had earned in the garment and textile industry. Her income supports three children, one of school going age. She has been forced to give up the room she once occupied and now lives with her parents.

4.7 Conclusions on Swaziland

When interviewed in 2001, the trade unions were wondering if the focus on investment in the garment industry would ultimately be beneficial. "The main thing that is offered is employment," one union official said, "and no money comes into the country except the wages that are paid"⁸². Some of the companies interviewed in 2001 complained about the labour costs, and some already announced that they would be leaving after the MFA phase-out (still under the impression at the time that the third-country fabric rule would expire in September 2004). The prolongation of the AGOA was seen as important.

In 2001, SIPA still believed that the industry would develop through backward integration, and that this would result in development of the cotton and fabric industry. With the

⁸² Interview with SMAWU in 2001

advantage of hindsight, SIPA told SOMO in 2006 that “Garments can’t work here”, as the raw materials still have to be imported from Asia, which is almost doubling the lead time. “Can we survive? I don’t think so.”⁸³. There is a clear dissatisfaction with the return on all the investments. It has cost Swaziland a great deal of money and effort to attract the industry to Swaziland, and it will cost the country even more to retain it.

Swaziland has lost about half of its employment in the garment industry, but employment levels in 2006 were relatively stable compared to 2005. This has provided – maybe only temporary – relief to the workers in this industry and to the government. The question will be how future developments will influence this industry, without additional initiatives as is taking place in Lesotho.

As noted by Morris & Kaplinsky⁸⁴, employment levels in Swaziland have dropped fairly significantly, and the 10% fall in exports in 2005 is therefore offset by a 56% fall in employment, and a drop in the number of companies producing garments. According to Morris & Kaplinsky it is possible that illegal shipping from China is taking place, either re-shipped through Swaziland or with papers that suggest that the garments come from Swaziland. This situation is unclear, and illustrates the problems involved in making realistic assessments of the data on trade, costs and consequences.

The situation is complicated for the unions and workers. They are wedged between bad labour conditions and companies that are lobbying the government for better incentives and changes to the labour regulation. This makes it difficult for unions and workers to improve their labour situation. The workers that were dismissed in the year following the MFA phase-out were mostly not informed in advance and were not compensated.

The government has spent a great deal of money attracting the industry, and although there is definitely frustration with the returns on the investment, there is a strong will to keep the industry. This makes the government vulnerable to pressure from buyers and manufacturers wanting even better deals.

⁸³ Interview in January 2006 with Walter Matsebula of the European Commission in Swaziland

⁸⁴ Kaplinsky, R. & Morris, M. (2006b), *The Asian Drivers and SSA: MFA quota removal and the portents for African Industrialisation?*

5. Asian Manufacturers

5.1 Introduction

The chapters on Lesotho and Swaziland described the consequences of foreign investment policies and government actions. The information given explores the effects on economic development, government policies, corporate strategies, employment and labour conditions. In this chapter, the focus will be shifted to the role of Asian manufactures and the consequences of their strategies for different countries.

As has been shown, most of the investment in Lesotho and Swaziland came from Taiwan, with some investment from other Asian countries and from South Africa and Mauritius. This chapter looks at several examples of Asian manufacturing companies that are or have been producing in one or more African countries. Tri-Star is one example of a company which has used every legal and illegal means to get as much as possible out of the African continent. In various instances, the company has used the desperate search of African countries for investment to gain as much as it possibly can from a short presence in a country. Accepting loans that were never paid back, exploitation of workers, non-payment of terminal benefits, having countries invest a great deal of money in setting up specific infrastructure for their factories but not staying long enough to make it worth their while. Haps Investment from Taiwan set up shop in two countries in Africa; Malawi and Lesotho. They closed their factories in early 2005, just after the phase-out of the MFA.

Several other companies that have invested in African countries in recent years have opted, for now, to stay. In interviews held with producers in Kenya, South Africa, Lesotho and Swaziland, they expressed pessimism about the future and thought it unlikely that US buyers would sustain their orders in the coming years. Interestingly enough, in the same study, the US buyers were far more optimistic⁸⁵ about the near future⁸⁶.

A proportion of the Asian production companies have functioned at a slightly different level, in that they have invested in the countries where they set up their factories and some have used own resources, rather than getting the governments to provide all the premises and infrastructure. These companies are still producing at the time of writing, in July 2007, in the African countries where they made their investments. They have been acting less unscrupulously than companies such as Tri-Star, but have invested in order to gain, and are therefore using their power – for example the power to leave – to put extra pressure on governments for extra incentives or to gain extra access to export to the US, for example by having their denim fall under the “abundant supply” provision in the AGOA.

⁸⁵ Although about half of the interviewed mentioned in the summer of 2005 that sourcing would decrease within 3-5 years

⁸⁶ Morris, M. & Kaplinsky, R. (2006a)

All the companies described here have a history of labour abuses in the countries where they produce. Companies such as Tri-Star have not been swayed by local or international campaigns to take more responsibility. Others, such as Nien Hsing, have taken some actions to improve the conditions in their factories.

5.2 Apparel Tri-Star⁸⁷

Apparel Tri-Star has been roaming Africa, closing down in one country without paying the benefits or wages, and setting up shop in other countries for just a few years, after which they leave behind the same situation.

Apparel Tri-Star was established in Sri Lanka in 1979 and according to its website currently has 26 factories, employing 25,000 employees⁸⁸, which makes it one of Sri Lanka's largest garment manufacturers and exporters⁸⁹. Tri-Star produces a variety of garments, including Men's and Women's shirts, blouses, trousers and dresses for export to retail buyers across North America, Europe, Asia, the Middle East, South Africa and Australia. Sri Lanka based Tri-Star has expanded production into Africa, specifically Uganda, Kenya, Tanzania and Botswana, delivering goods to companies such as JC Penny, Childrens place, Wal-Mart, Target, Family Dollar, Mervyns, Dress Barn, Haggar, and Sears.

5.2.1 Botswana

Star Apparel set up shop in Botswana in 2001. Minister Tebelelo Seretse welcomed the investor; "We welcome bona fide investors from any capital exporting country," she said, and stated that Botswana would create an investor-friendly environment. She encouraged the 500 workers that were going to be employed to work hard⁹⁰. In the middle of 2003, the factory shut down, leaving its then 611 employees in the lurch⁹¹. The employees have not been paid, despite an Industrial court order against Star Apparel Botswana to pay their wages.

⁸⁷ Information on Kenya, Uganda, Botswana and Tanzania is based on Ouma Akoth, S. (2007), Foot Loose Investments: a case analysis of foreign direct investment in East Africa and on information provided by shop stewards during a workshop in Swaziland in May 2005 and on specific company profiles that appeared in *Building International Solidarity: African Asian Networking. Report on the Solidarity Workshop for African Garment Workers held in Swaziland May 2005*, <http://www.cleanclothes.org/ftp/05-Swaziland-report.pdf>

⁸⁸ www.tristar.com, accessed at 20 May 2007

⁸⁹ Jozef De Coster, "Africa Attracts Asian Investors," *Textile Asia*, September 2002, p. 9.

⁹⁰ New Garment co. opens,

<http://textile.texworld.com/informationcenter/News/2001/May/nw2001may30014.html>, accessed at 17 July 2007

⁹¹ Midweek Sun, 28 May 2003

5.2.2 Kenya

In Kenya, the EPZ offers investors a variety of advantages including fiscal incentives, administrative speed and simplicity. The tax benefits include 10 years' tax holiday, 100% investment deduction, VAT exemption on inputs, etc. Tri-Star apparel started operating in the country in 1994, as a joint venture with the locally owned Concraft. Two other factories in Kenya were under the same partnership, namely Rayshian (operating outside the EPZ) and Kenya Textile Mills (KTM).

Working conditions in Tri-Star Kenya

Working conditions in Tri-Star EPZ were difficult. The workers tried organising from 1995 on, and the union even gained a majority within the factory, but the factory has been stalling recognition. Workers were dismissed when they were suspected to be organising. In 2000, the courts finally ordered the factory to allow the union.

One of the workers working in the factory between 1998 and 2000 told researchers that she got pregnant and would not be paid her wages if she went for antenatal care. She was granted unpaid maternity leave and when she reported back after her leave was only given her job back as a new employee, losing all her gratuity. Women are sexually harassed at work and when returning home late at night.

Forty percent of the workers were employed as casual staff. When there was a power cut, the workers had to make up that time, unpaid. Overtime was always announced at the last moment and was compulsory. Workers would have to meet their targets, which were set high, and were not paid for the extra hours worked. The company even asked the ministry to allow this.

According to a letter written by the company, "due to the high level of unemployment in the country, both the management and the Union did recognize the need to give [...] Slow workers a chance to complete their daily target at their own time [...]. Even though this mutual agreement costs the company an extra expense as such slow workers still have to be supervised while they remain behind, the cost of the supervisors is acceptable to the company in the spirit of helping such workers, who normally improve in the subsequent days". It is unclear what has been the response of the Ministry to this letter.

The factory closed in 2004, after 10 years, which coincidentally is the same period that companies enjoy a tax holiday. The company announced in early 2004 that it was operating at a loss and lacked orders. The company gave one month's notice to the workers before closing down. During that period, workers were harassed with extreme targets, unpaid overtime, non-granting of annual leave, and many workers were dismissed so that the company did not have to pay their terminal benefits. After the closure, workers were not paid their full benefits and were told they would get the difference after the machines had been sold. These machines were exported and sold abroad, however, despite the fact that the workers were granted a court injunction to prevent this happening.

The company also did not settle its accounts for electricity, water, and for the supply of materials, etc., delivered by other companies.

I joined Tri-Star in 1999, initially as a casual worker but later on I was engaged in the sewing department as a permanent employee. Despite being on a meagre wage, I was able to organize myself and meet all my bills. I did lose my husband in between, as he could not stand my working schedule, so I opted to bring up our daughter as a single mother. This was not easy as the meagre pay declined more and more in terms of what I could afford. Nevertheless, I carried on; the benefit was that I could do as much overtime as was available.

In 2002, I was retrenched from the company; the explanation given by the company then was that their market was not doing well and they therefore needed to reduce their work force. I was therefore left to fend for myself by doing small-scale part-time trading. Initially I traded in onions and tomatoes, and then I went on to cabbages and kales. But these could not provide a decent income either.

In 2003, I received a call from my former supervisor. She informed me that Tri-Star had opened another company in Uganda. Some of the former employees like myself were being invited to go to Uganda to train the new employees there on how best to work in the various departments of the company. I therefore took up this offer. Initially we were informed that we would be paid at double the rate of what we were being paid when we were employees at Tri-Star Kenya. But when we went to Uganda in 2003, things were different. The company insisted that they would pay us at the same rate that we were being paid as employees of Tri-Star Kenya. This was extortion but that was it; we were poor, jobless and were only going to teach our Ugandan 'colleagues' how to carry out routine work. I worked in Uganda for six months and then came back to Kenya. Since then I have been involved in a small business, where I earn USD 2 per day.

In the meantime the company already started operating in Uganda and Tanzania, and also spent a few years in Botswana in the interim.

5.2.3 Tanzania⁹²

The company was established in Tanzania in 2003, started recruiting in August 2003 and initially employed 650 workers, growing to about 1000 workers by the end of 2004. The factory was located in an EPZ in Dar Es Salaam and was opened amidst much fanfare, which was attended by the US Ambassador to Tanzania and US Senator McDermott, chief advocate of the AGOA. While on the surface, Tri-Star appeared to be a model investor in Tanzania, when it came to labour conditions they left a lot to be desired. Concerning labour relations, the executive director openly stated that the company was anti-union and would attempt to keep the union out.

⁹² Based on *Building International Solidarity: African Asian Networking. Report on the Solidarity Workshop for African Garment Workers held in Swaziland May 2005*, <http://www.cleanclothes.org/ftp/05-Swaziland-report.pdf> and UTGLAW (2004), *Uganda Apparel Tri-Star Report*, 20 April

... life in the factory was tough. [...] all pregnant women were ordered to write a resignation letter so the factory could avoid having to meet the legal requirements of maternity leave; working hours were increased by 1 ½ hours to a total of 9 ½ hours per day; overtime was compulsory, forcing workers to work from Monday through to Sunday, without rest days. When workers had to work overnight as overtime after a full days work, the hours were 6pm to 6am and workers had to report back to work the day after, having had only 3 hours of rest. Workers were not entitled to any leave, if there was a funeral of a close relative, only a day's leave was given without pay; Indian and Sri Lankan expatriate staff verbally and sexually abused young women workers ; trade unions were not allowed at all. Anyone discovered having contacts with a trade union representative was immediately dismissed without payment.

In April 2005, Star Apparels was placed under receivership after failing to service the company's loan, and in May 2005, it closed down in Tanzania without giving any notice to the workers and without paying them benefits.

A former worker of Star Apparels recalls what happened after the closure: "Life has been hard for all the workers who lost their jobs after the closure. We met at the time of the closure and everyone was concerned about how they were going to survive, none of us had savings as we did not really earn very well in our jobs. The workers who were the sole providers for their families were the most distressed. "It was terrible: our dreams of a better future had been destroyed, we had been fooled by Star Apparels and many of us felt worse off than before we started working at the factory".

5.2.4 Uganda

The factory in Uganda opened in January 2003, with 1200 workers, and started producing for retailers in the United States. President Museveni saw Tri-Star as offering thousands of jobs to people who had never dreamed of having a regular income. While Ugandan President Yoweri Museveni often cites the success of the AGOA and Apparel Tri-Star and its importance, especially in creating jobs, Apparel Tri-Star soon found itself in deep water, with many accusations of poor working conditions and policies that violated not only Ugandan labour laws, but also international labour standards. The complaints concerning working conditions extend across the spectrum, including low wages and long hours without overtime pay, limitations on movement within the factory and dormitories, communication among workers, verbal, physical and sexual abuse, unfair job termination, and lack of recognition of workers' unions⁹³.

These conditions, and the 'disciplinary' beating of a female worker, led workers - which the press and the public were now calling "the AGOA girls" - to strike at the Ugandan factory on 21 October 2003. The workers locked themselves in their dormitories for two days without food, water, or bathing. After hearing that Tri-Star planned to terminate the workers' contracts for their actions, a court injunction was sought in order to stop them

⁹³ Badru D. Mulumba, "A Glimpse inside Apparels Tri-Star," 30 October 2003, <<http://www.monitor.co.ug/archives/2003main/nov/business/1102/busweek2.php>

doing so, or at least making sure that workers would be paid everything owed to them. On October 23rd, the police arrived to break up the strike. The police ensured the workers that they would be safe, but then proceeded to hand them over to Apparel Tri-Star, which subsequently dismissed 293 workers without paying them their wages⁹⁴.

The incident has drawn a lot of attention, also because the president himself mentioned to the press that he had sacked the AGOA girls: "I sacked those girls because of indiscipline, as their action would have scared off investors who had plans to set up business here. They would have thought that the labour force in Uganda is undisciplined"⁹⁵.

Uganda has been offering incentives to Tri-Star, including a low company tax rate and deduction of initial allowances, such as on plant and machinery. But in addition the president, who was very enthusiastic about the project, welcomed Tri-Star by guaranteeing a loan of US\$ 5 million from the Uganda Development Bank; offering free premises and a subsidy towards training the workers. The government converted a warehouse into a garment factory and dormitories. The government also provided power lines, three standby generators and the recruitment of 2000 employees. It was estimated that getting the company operational cost the government 7.57 billion Ugandan Shillings (US\$ 3.8 million)⁹⁶ (6.1 billion Ugandan Shillings were provided by the government, and the rest by Uganda Property Holdings). Tri-Star was also given an advance on the promised loan of just over US\$ 3 million (which has never been repaid). The government also provided a cash collateral through the Bank of Uganda of US\$ 2.1 million, which was later increased on the instructions of the president to almost US\$ 2.7 million.

The trade union has been very active with respect to the company, and has even filed a complaint under the AGOA to have the trade preference withdrawn after the company failed to improve labour conditions. The company kept dismissing workers, not paying workers their full salaries, and workers were increasingly laid off temporarily for periods without receiving any payment whatsoever. The company finally laid off most of the workers in October 2006 without paying them their due salaries or benefits. These workers were recruited throughout the country with promises of high salaries. A part of the workers stayed on the premises as they did not have the money to get back to their villages. The workers were still producing products in the factory, but they hardly received any pay. In November 2006, there were still about 300 workers living in the dormitories, with hardly any food. In August 2007, the trade union mentioned that the company would possibly be taken over by a Libyan investor, with the government holding a third of the shares⁹⁷.

⁹⁴ Uganda Apparel Tri-Star Report, Interviews with General Secretary of Ugandan Textile Workers' Union, the Registrar of Labour, and 9 workers from Tri-Star in Kampala and "General Industrial Relations in Textile Garments & Leather Industries, In Particular Apparel Tri-Star (U) LTD, (Known as the AGOA)," from the Uganda Textiles, Garments, Leather and Allied Workers' Union, 20 April 2004.

⁹⁵ Daily Monitor February 2006

⁹⁶ Exchange rate of January 2003

⁹⁷ Catherine Aneno of the Uganda Textile, Garment, Leather and Allied Worker's union in an email to the author, 9 August 2007, on file

5.3 Haps Investment⁹⁸

Lesotho Haps Development Company was established in Lesotho in 1986, by a Taiwanese company. The factory is located at Maputsoe and produces t-shirts, tracksuits, dresses, tights, jackets, and women's two piece suits for labels including No Clothing, Method Charge, Chinois, Kebo Girks, Kebo Kids, River Trader, Christal Kobe, Current, RT, Dress Barn, Gnarly, Cherokee, Jet, and Foshini. Lesotho Haps also produces for retailers such as Kmart, Wal-Mart, Woolworths, Mr. Price, Edgars, and Truworths. Around 1200 workers are employed at the factory. Haps investment also has operations in Malawi. With a workforce of 2500, this factory produces mainly t-shirts and jeans for labels such as Dress Barn and retailers including Wal-Mart, Target, TSI, Haggar, JC Penney, and Sears.

5.3.1 Lesotho

Reports and investigations concerning Lesotho Haps have revealed that over several years of the factory's operation, employees endured poor working conditions. Workers are given unfavourable terms of employment from the start, earning about US\$ 100 per month and receiving insufficient compensation for overtime. If targets are not met, workers are required to put in overtime without pay. Overtime pay for weekend work is also not paid at double the wage as claimed by the manager, but workers are actually receiving much less. There are also reports that many workers are employed as informal or casual labourers. Workers have respiratory problems, have no face masks and are not provided with other protective clothing, such as gloves for the cutters. Extreme heat has also caused workers to faint, and faulty electrical wires have led to shocks. The factory does not provide medical services, and workers have even been denied first aid for cuts. Pregnant women are not accommodated and must remain standing while working or remain working in extreme heat or cold, despite their condition. Toilet facilities are also insufficient. There are only 20 toilets for 1200 workers, usually without toilet paper.

On top of these physical hardships, workers at Lesotho Haps are subjected to verbal and emotional abuse; supervisors are known to scream at workers, using profane language and foreign languages. At the end of the day, workers must also endure invasive searches to make sure that they are not stealing anything. Female workers complain that they must take off all of their clothes, and sometimes they are touched, frisked or patted down within view of male workers and supervisors.

The company and the union have signed a recognition agreement. This has not been an indication, however, of the company's willingness to cooperate with the union. Workers report that managers are hostile to the union and that they interfere with the work of the shop stewards. They also do not allow the union to hold meetings on factory premises.

⁹⁸ Based on *Building International Solidarity: African Asian Networking. Report on the Solidarity Workshop for African Garment Workers held in Swaziland May 2005*, <http://www.cleanclothes.org/ftp/05-Swaziland-report.pdf>

In January 2005, workers at Lesotho Haps could not return to work after the Christmas holidays. Seemingly without warning, the factory did not re-open. The LNDC has said that it did not expect Lesotho Haps to leave suddenly, considering that does not have any debts and its credit is sound.

5.3.2 Malawi

Unsurprisingly, conditions at Haps Investment in Malawi are not much different. Workers have reported that wages are low, sufficient protective clothing is denied, employment opportunities are unequal and that workers are often subjected to harassment and sometimes, physical abuse. Field research has revealed that employees must also work very long days and weeks. Work can last from 7am to 7pm at night, and there are also shifts of at least 8 hours on both Saturday and Sunday. Sickness and injuries are not dealt with appropriately, the factory has no medical facilities, does not compensate for injuries and requires workers to bring a report from a doctor in order to receive paid sick leave that is only given for two days maximum.

Haps Investment in Malawi also closed down in February 2005, leaving more than 2,000 workers jobless.

5.4 Nien Hsing

Nien Hsing was founded in 1986 in Taiwan, and according to its website has a global production of 50 million pairs of jeans and an annual production volume of denim of 74 million yards. They get orders from Calvin Klein, DKNY, Tommy Hilfiger, Nautica, Mudd Jeans, GAP, Levis Japan and JC Penney, Wal-Mart, Target, VF Jeanswear (Lee, Wrangler), Sears, No Excuses. To “cope with increasing demand” from these buyers, Nien Hsing established manufacturing sites around the world to demonstrate their “quick response” ability. They have facilities in Taiwan, Mexico, Nicaragua and Lesotho⁹⁹.

Nien Hsing was established in January of 2001 in Thetsane Industrial Area, and has now three factories and a denim spinning mill. Nien Hsing started building a denim mill in 2002 which, according to Conmark, can make about 6,300 tons of denim per year and 10,800 tons of cotton and cotton-blend yarns, which can be used for knitted garments.

5.4.1 Workers win respect for their rights

In 2001 and 2002, Nien Hsing was investigated by SOMO and the Trade Union Research Project (TURP), which brought to light serious labour rights infringements in their factories. The trade union in Lesotho for the garment industry, LECAWU, worked with different parties, including the Clean Clothes Campaign, Maquila Solidarity Network and the African office of the ITGLWF, to campaign on improving the conditions and getting the union recognised. The Ethical Trading Action Group (ETAG) in Canada pressured the Hudson’s Bay Company, a known buyer of Nien Hsing garments, to take steps. Campaigning efforts

⁹⁹ <http://www.nht.com.tw/en/nh.php>, accessed at 26 July 2007

were also targeted at the Gap, which was urged to pressure Nien Hsing to improve working conditions. The result of these actions was that Hudson's Bay Company stopped sourcing from the factories in question, rather than using their influence to improve the conditions. The Gap, on the other hand, started to work with its supplier, and kept the campaigning coalition updated on the progress.

In March of 2002, workers at one of the Nien Hsing factories held a strike to protest the management's refusal to improve on many of the workers' complaints. During the strike, one of the workers was stabbed by a manager with scissors, escalating the strike to desperate and dangerous levels. The strike eventually yielded positive results, however. As a result of both local and international pressure, and following talks between the trade union LECAWU, the international ITGLWF and Nien Hsing, the company signed a Memorandum of Understanding, and eventually the union was recognized at both of the Nien Hsing factories¹⁰⁰ in December 2002.

5.4.2 Working conditions

The buyers in Lesotho are GAP, CHP, Levis and Wal-Mart. When interviewed by SOMO in 2006, the workers complained about the targets which are set too high; sometimes the workers have to work through their lunch hour to finish the target. If you don't make your target, you are given a verbal warning. The second time, a second verbal warning. The third time you are required to attend a disciplinary hearing, which could end in dismissal. Each warning remains in effect for six months.

The workers all complain about the wages. June, who works for Nien Hsing, says that it is hard to make ends meet on the wages she earns, 686 rand per month. She spends all her money on her room, transport, food and on sending some money home. Although she has no children herself, she has to take care of her sister's children's school fees.

Workers are worried about the health and safety situation in the factory. The dust masks are made of the material they use for making the garments, so not particularly effective. If you ask for permission to visit the doctor, this is sometimes refused. There is no heating in the factory and there is only one working ventilator, which is not enough. Workers don't trust the chemicals that are used in the washing room. Toilet use is restricted. The company does nothing about medical help, even if you get injured on the job. If workers are sick a lot, the management asks them to resign.

With regard to safety, there are concerns about the number of doors in some parts of the factories. The workers feel that the situation is unsafe, are worried about possible fires and think there should at least be fire drills.

¹⁰⁰ "How Lesotho garment workers won respect for their rights," March 2003, http://www.maquilasolidarity.org/comapaigns/hbc/update_mar2003.htm (5 August 2004).

6. Critical issues

As is clear from the information given in the country profiles of Lesotho and Swaziland, the value of garment exports to the US has dropped, but not as much as was expected before the phase-out of the MFA. The reasons for this include the safeguard measures towards China, the extension of the special rule on the third-country provision, the recent depreciation of the Rand against the US dollar, private initiatives, as well as extending the incentives and benefits provided by the governments to foreign investors.

The situation has had a greater impact on Swaziland than on Lesotho, as employment levels have dropped quite significantly in Swaziland after the MFA phase out. This could be partly explained by the attention the MFA Forum has been paying to Lesotho, which has kept a number of the buyers focussed on sourcing from Lesotho and some efforts like investments by Nien Hsing in the denim mill, which is supported by the abundant supply rule in the latest AGOA update.

So far the AGOA has predominantly benefited the foreign investors that came to Sub-Saharan Africa to profit from the tariff benefits under the trade arrangements, and from the incentives provided by the various governments. In the race to attract this investment, African governments have provided substantial incentives to the industry, ranging from 0% taxes to full rebates on imports to providing factory shells and infrastructure. When they arrived in these countries, the investors identified the AGOA as the main attraction, and the incentives were more the icing on the cake. Nevertheless, for the countries in question these incentives could mean the difference between benefiting from the investments in the garment industry or totally losing out. The current situation, in which the benefits for the investors are much more evident, lacks appropriate conditions for countries to gain in the long term or for workers to benefit from improved labour conditions. Corporate strategies that are exploiting the opportunities offered by trade and investment acts and policies can therefore lead to unstable situations, especially in a footloose industry such as the garment industry.

What becomes clear is that, following the MFA phase-out, a substantial number of companies closed down, most without paying benefits to their workers, some leaving large debts unpaid. Nevertheless, a considerable number of companies decided to continue producing, while still trying to squeeze out a bit more from the governments in their host countries. There are several interesting initiatives, notably in Lesotho, that could (potentially) improve the lives and working conditions of the workers in these industries, but a thorough study is needed to make sure that they are not, once again, geared towards benefiting the companies.

The future of the industry is all but sure. Part of the reason why the industry is still present in Sub-Saharan Africa are temporary measures such as the safeguard measures towards China and the extension of the special rule on the third-country provision. This makes for

a very insecure situation, both for the workers in this industry and the countries concerned.

6.1 What have the countries gained?

The question is whether the AGOA has benefited the economies and the workers, specifically when looking at the benefits of the garment industry. According to the World Investment Report of 2006¹⁰¹ there are, in addition to the benefits of employment, costs related to “insufficient local participation at higher levels, inadequate training and productivity improvement and poor integration with the local population – all of which signify that the investments have not taken root and will vanish in the long term”. Governments, with the support of donors, have put a great deal of effort into attracting investment, foregoing taxes, investing money in factory shells and in highly specific infrastructure, while turning a blind eye to labour abuses.

Too little is done at the national and international level to look at what the real benefits have been and how to ensure that the investment ultimately benefits the country and, in particular, the workers in this industry. Countries should be wary of selling out their workers to this industry, but instead should create an infrastructure for growth and good labour conditions. As FIDA concluded in its research looking at Lesotho, the investment policy of the government must be clear and easy to implement, without compromising the rights of the people.

Neither downward pressure on labour rights nor government incentives have prevented companies from leaving the African countries where they temporarily had a presence. This creates ever more desperate attempts by countries to keep the investors, in an industry that has already cost countries too much, by offering better incentives. For instance, a company like Tri-Star was able to use the desperation of a country like Uganda for foreign investment to get the government to provide and invest in buildings and infrastructure, secure loans and credit facilities. The company left the country without repaying any of its debts, leaving behind a destitute workforce that did not even have enough money left to pay the bus fare home. And this happened after the company had already abandoned factories in Tanzania and Kenya, without repaying its debts or paying off its workers.

As is clear from the reports on the different countries, by focussing on the garment industry, countries have not accelerated industrial development in a way that enabled the countries to create new production systems or develop the innovative capacity to input into new or existing industries.

The mostly Asian companies that have invested in the industry in Swaziland and Lesotho, for example, have invested very little in the local economies or in their own companies. Most of the companies were given factory shells, rebates, tax-free import of machinery, tax holidays, etc., without contributing much themselves. This has made it much easier for

¹⁰¹ UNCTAD (2006), World Investment Report 2006. FDI from Developing and Transition Economies: Implications for Development, New York and Geneva: United Nations

companies to start production in a country, sometimes even for a very short time period, and to leave without looking back.

Because the countries have put so much of their resources into attracting this industry, they have become very dependent on keeping the benefits. The threat of removal of the AGOA benefits puts political pressure on the receiving countries, for instance in international trade negotiations. At the WTO Ministerial Conference in Hong Kong (December 2005), Kenyan MPs reported that their trade minister was pressured by the US, which threatened removal of AGOA benefits in order to make Kenya give in during the WTO negotiations.

6.2 Factory closures

As is clear from the chapters on Lesotho and Swaziland, there are no safety nets to assist workers if their factories close down or they are dismissed. Even if they are given terminal benefits, the amounts are so low that they have spent the payment within a few weeks. Companies are not informing the government nor the workers when they plan to leave the country, nor are there mechanisms in place that could stop companies from leaving. There is not enough effort being made to prevent companies fleeing the country. If they leave, there are no mechanisms in place to make sure that they pay their debts to the workers, to their suppliers, to the national banks, etc.. Governments do not set up funds for companies in which they can put deposits in case they declare bankruptcy or suddenly leave the country. Workers are often left in the cold, without their terminal benefits, sometimes without their wages for the last months and without a social plan to mitigate some of the adverse effects of the sudden unemployment.

The factories use their position to bargain for better investment conditions. For countries desperate for foreign investment and employment, this does not seem like such a bad deal. The costs incurred when companies close are high, however, both economically and socially. If the companies flee the country, they leave behind a shell and infrastructure that was constructed specifically for their needs, and for which the country has incurred high costs.

With factories closing or threatening to close, the workers are put in a complicated position. You have no real bargaining power if you expect your factory to pack up and leave at any time, and the threat of closure can always be used by the management, whether implied or real. In this situation, it is unlikely that workers will negotiate for better wages and improvement of labour conditions. As more and more factories are closing down, the possibility of finding employment elsewhere is also decreasing.

The ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy says on security of employment:

Governments should carefully study the impact of multinational enterprises on employment in different industrial sectors. Governments, as well as multinational enterprises themselves, in all countries should take suitable measures to deal with the employment and labour market impacts of the operations of multinational enterprises.

Multinational enterprises equally with national enterprises, through active manpower planning, should endeavour to provide stable employment for their employees and should observe freely negotiated obligations concerning employment stability and social security. In view of the flexibility which multinational enterprises may have, they should strive to assume a leading role in promoting security of employment, particularly in countries where the discontinuation of operations is likely to accentuate long-term unemployment.

In considering changes in operations (including those resulting from mergers, take-overs or transfers of production) which would have major employment effects, multinational enterprises should provide reasonable notice of such changes to the appropriate government authorities and representatives of the workers in their employment and their organizations so that the implications may be examined jointly in order to mitigate adverse effects to the greatest possible extent. This is particularly important in the case of the closure of an entity involving collective lay-offs or dismissals.

Arbitrary dismissal procedures should be avoided.

Governments, in cooperation with multinational as well as national enterprises, should provide some form of income protection for workers whose employment has been terminated.

6.3 Costs

6.3.1 Buyers

Giant retailers, such as Wal-Mart and Sears, are becoming increasingly important in the global garments market. Having a large consumer market with a more complex global chain of production, these companies require large volumes, and exert downward pressure on the prices being paid for the garments. These prices are passed along the chain of production, and cause manufacturers, usually subcontractors along the supply

chain, to look for ways to cut costs. This then translates into lower wages, more insecure, and unsafe and informal employment for workers with few other viable alternatives. There is also more pressure on governments to further deregulate workers' wages and conditions.

6.3.2 Pricing

Downward pressure on pricing by the buyers, connected to lobbying efforts from the production companies towards the government to grant more freedom in determining the wages, have the option of paying a piece rate, etc., would certainly have an adverse influence on the workers in this industry.

According to Morris & Kaplinsky¹⁰², costs are king in this industry; cost pressure and competition has companies roaming the world making calculations on transports costs, efficiency, etc., and looking for protective regimes which will benefit the industry. Since the MFA phase-out, there has been a fall in the unit prices of the garments. Morris & Kaplinsky state that the value of clothing exports from Sub-Saharan African countries to the US dropped by 17% in 2005, while volume increased slightly. The reason for this is that the unit prices fell by more than 10% overall.¹⁰³ Compared with China, this decline was shallow, seeing that unit prices in China were almost halved for similar garments. This then triggers even greater pressure on the prices of garments being produced in Sub-Saharan Africa.

6.3.3 The price of a garment

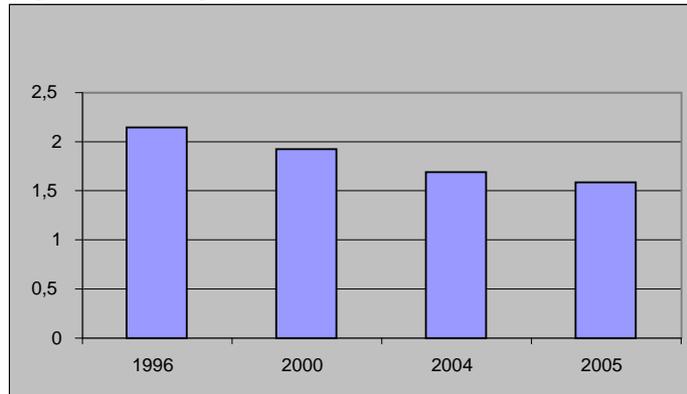
It is common knowledge that the price of garments has decreased in the last 10 years. One example is the price paid for a T-shirt, as shown in the figure below¹⁰⁴.

In the time that the MFA put quotas on exports, this system has added a cost to the price of garments that were being exported from countries which were capped by the quotas, and it encouraged Asian production companies in recent years to start looking for other countries to include in their chain of production. Since the MFA phase-out, the price paid for garments has dropped even more than in the last 10 years.

¹⁰² Morris, M. & Kaplinsky, R. (2006a)

¹⁰³ Idem

¹⁰⁴ Adapted from: Progressive Policy Institute (2006), Trade Fact of the Week: T-shirt Prices Are Falling, 15 February, http://www.ppionline.org/ppi_ci.cfm?contentid=253748&knlgAreaID=108&subsecid=900003, accessed at 15 July 2007

Figure 2: Average price of a T-shirt in US \$

6.3.4 Costs benefits in Sub-Saharan Africa

Most of the production in Sub-Saharan Africa is geared towards export to the US, largely due to the AGOA. The buyers are driven to search for increasingly low costs and the producers are looking for cheaper production locations. The AGOA not only offers quota-free exports to the US at a time when exports to many other countries have been curtailed, it also offers benefits through duty preferences. Morris and Kaplinsky argue that these tariff reductions in fact are a form of high subsidy for the product being exported, as the tariff reduction not only takes into account the added value to the product in Africa (mostly labour) but also the value of the imported material (for which the duty is rebated), resulting in a substantial extra price incentive.¹⁰⁵ In other words, AGOA also helps exports of fabrics from Asia.

The emphasis of donors on helping countries attract foreign direct investment (22 major donors spent US\$ 8 and US\$ 10 billion per year between 2001 and 2003, or 15% to 20% of their bilateral ODA) means that scarce donor aid is given to instruments, advice, infrastructure and policies whose benefits for workers and long-term economic, social and environmental sustainability is not guaranteed or even not properly assessed. One example is the building of the factory shells in Swaziland: the Swaziland Industrial Development Company (SIDC), which was initially responsible for building and leasing the factory shells to investors, was not only owned by the Swazi government (34.9% of the shares) but also by the German Investment and Development Company (DEG) and the Netherlands Development Finance Company (FMO), among others.

6.4 Employment in the garment industry

It is unquestionably the case that the most important sector in terms of employment under the AGOA has been the garment producing sector, due to the labour-intensive nature of garment producing factories and the surge in the industry. A proportion of these jobs in the sector in fact existed before the creation of the AGOA, or were associated with trade with

¹⁰⁵ Morris, M. & Kaplinsky, R. (2006a)

other countries. Malawi, for example, used to export predominantly to South Africa. Since the AGOA came into existence, producers in Malawi have shifted their focus to the United States market, although employment in the sector has remained much the same.

Most of the jobs in this industry are low skilled, with very few people advancing or being trained on the job. Most of the foreign-owned companies fly in their own management, and other top and middle management are recruited in China and India, for example .

Drawn by trade agreements and other incentive programmes to countries desperate for foreign investment and jobs, investors, including Asian investors, have been able to circumvent local labour laws, as well as internationally agreed labour standards laid down in ILO conventions. In Swaziland, for example, violations documented at Asian-owned factories in the last 6 years include forced overtime, verbal abuse, sexual intimidation, unhealthy and unsafe conditions, unreasonable production targets, and anti-union repression. In 2001, when asked about their influence, the Department of Labour in Swaziland admitted that in an attempt to keep investors happy it did not pursue labour law violations to its fullest ability. They say they “can’t push investors too hard,” but instead are “very gentle and persuasive”¹⁰⁶. Another example is the sacking of the ‘AGOA girls’ by the President of Uganda because the workers were “not disciplined” when they protested against bad labour conditions. While investors can see profitable returns on their investments, one wonders if workers and their communities really benefit when wages and conditions are substandard and tax abatements and subsidized infrastructure mean that little money goes back into the community. The argument that workers would otherwise have no jobs or no income should not be an argument to sustain exploitation that has consequences for generations because workers cannot even send their children to school.

6.5 Perspectives and actions needed

There is concern about the present situation, with the potentially transitory character of the garment industry, based on investment by Asian companies that are linked into global supply chains, but without adding substantial income for the country or for the workers, and without creating and integrating local African companies.

6.5.1 Governments

Governments should avoid situations in which foreign investors take advantage of the trade and investment regulations and incentives of a country, without having a positive effect on the economy and social conditions. Attracting investment should not undermine the setting up and implementation of effective regulation on labour conditions and having safeguards in place in case companies suddenly close down. Governments should look for long term commitments and be selective in providing incentives so that returns can be secured. Governments should make sure that the industry becomes more integrated, and pursue avenues to create, integrate and upgrade local companies.

¹⁰⁶ De Haan and Phillips (2002)

Countries receiving the investment could share information with other governments about the records of companies investing in their countries to avoid companies exploiting the workers and situations with companies like Tri-Star, which relocated several times within a few years without paying its debts or compensating its workers.

6.5.2 Investment and trade policies

There should be serious concerns about international trade acts and the facilitation of investment policies that, instead of benefiting developing countries and their populations, put those countries in an uncertain position and extreme competitive pressures, in which they have to invest in expensive infrastructure, lower their taxes and have their workers exploited by foreign investors.

Human rights and social and environmental provisions could be included in investment agreements in order to ensure that developing country governments retain a right to regulate investments that do not contribute to the wider goal of sustainable development and do not respect fundamental rights. This would include binding articles on compliance with internationally agreed social and environmental standards and principles, such as the OECD Guidelines, ILO Tripartite Declaration and Rio Principle, and a reservation of regulatory powers on issues of social and environmental responsibility. The agreements should also provide support for implementing these articles.

Regional investment treaties are one level in which human rights, social and environmental provisions could be included. This could include stopping the downward spiral of competing incentives, including tax holidays. For instance, the SADC Finance and Investment Protocol (signed in 2006) includes a provision that the SADC member states “recognise” that relaxing health, safety or environmental measures in order to attract or maintain investment is not appropriate, and “agree” not to waive international treaties they have signed to that extent (Annex 1, Art. 13). The African Peer Review Mechanism, which includes exercises to assess a country’s investment environment, could also include assessing the benefits of (foreign) investments for workers, their families, communities and social development.

6.5.3 Companies

Within the garment industry, retailers and brands have been under pressure to accept responsibility for the labour conditions in their supply chain. Buyers such as Wal-Mart, Sears, JC Penney, GAP and Jones, that source from countries like Lesotho and Swaziland, should make sure that the products they purchase are being made under internationally accepted labour conditions as laid down in ILO conventions, and that the workers making the products are earning a wage they can live on, without the necessity of putting themselves in debt in order to be able to send their children to school. More and more companies are adopting Codes of Conduct, and are monitoring the conditions in the factories that produce their garments. Some companies are working together within Multi-Stakeholder initiatives, in which retailers and brands work with trade unions and other

workers' rights organisations to improve conditions.¹⁰⁷ Still, as the information on Swaziland and Lesotho shows, the efforts so far have not been enough, and more companies need to take responsibility for their supply chain, making sure that their products are being produced under good labour and environmental conditions and ensuring that their purchasing practices allow for good conditions.

The increased pressure on prices, delivery times and on flexible production possibilities is being passed on by companies to the workers making their products. The buyers at the top of the chain should ensure that their purchasing practices do not have an adverse influence on the labour conditions of the workers.

There are no clear instruments to regulate the responsibilities of internationally operating companies concerning labour conditions, environmental issues and human rights, or with regard to responsibility for the economic consequences of their investments. Multinational companies have a great many rights to invest and trade, but there are virtually no instruments that governments in developing countries can use to ensure that companies investing in their countries do so responsibly.

Multinational production companies, such as Tri-Star, are almost invisible in the supply chain, as they mostly produce for other companies and have no recognisable own label. Due to their position in the chain of production, these companies are not easy to convince to take up responsibility- they are almost never approached by consumers, for example. There is no incentive – such as the risk of reputation damage - for them to take responsibility, other than being pushed by their buyers.

These companies have to comply with the national law in the countries where they produce. They should be prevented from taking structural advantage of the eagerness for investment that some developing countries display, to the detriment of workers' rights. As becomes clear from this report, they have a clear obligation to comply with internationally agreed labour rights, as well as to make sure that their investments are providing economic and social benefits to the populations in the countries where they produce. Companies that move in for a very short period of time, demanding that governments invest large amounts of money to provide shells and infrastructure, are acting irresponsibly. Companies which do not uphold contracts with the national governments and leave the country without paying their workers and debts are clearly breaking the law.

6.5.4 International level

A level playing field should be created at the international level to avoid a race to the bottom where companies move from one country to another where labour costs and implementation of labour laws are lower. There should be extra-territorial application of core labour standards and fundamental human and environmental rights.

¹⁰⁷ For example, in the Netherlands the Fair Wear Foundation (<http://en.fairwear.nl/>) and in the UK the Ethical Trading Initiative (www.ethicaltrade.org/). In addition to monitoring and verification of compliance with good labour standards, members of these initiatives also engage in research and training activities that support better conditions throughout supply chains.

Multinational companies should be legally bound to respect and comply with basic internationally-agreed standards and principles as laid down in the ILO conventions and the Universal Declaration on Human Rights. These rules should apply to the worldwide operations of multinational companies.

Donor agencies at the national and international level, including the World Bank's Foreign Investment Policy Advisory Service and the OECD Policy Framework on Investment, should start discussing and acting on the serious concerns about international trade acts and the facilitation of investment policies that, instead of benefiting developing countries and their populations, place those countries under extreme competitive pressures and put them in an uncertain position in which they have to invest in expensive infrastructure, lower their taxes and have their workers exploited by foreign investors.

Donor aid given to instruments to attract investment needs to have guarantees for benefits to workers, redress for abuses and a voice for labour in advisory channels. Specific assessments need to re-tailor and re-balance existing instruments and investment promotion agencies.