

To Norges Bank

May 8, 2019

**Recommendation to revoke the exclusion of Walmart Inc and
Wal-Mart de Mexico S.A.B. de C.V from investment by the Government
Pension Fund Global (GPF)**

1 Introduction

In 2006, Wal-Mart Stores Inc. and Wal-Mart de Mexico S.A. were excluded from investment by the Government Pension Fund Global (GPF) at the recommendation of the Council on Ethics. The companies have subsequently changed their names to, respectively, Walmart Inc. and Wal-Mart de Mexico S.A.B. de C.V. In the following they are collectively referred to as “Walmart”.

The Council on Ethics has reviewed the GPF’s exclusion of Walmart and concluded that the grounds therefor no longer exist. The Council therefore recommends that Walmart’s exclusion be revoked.

1.1 Matters considered by the Council

According to section 5(5) of the Guidelines for the Observation and Exclusion of Companies from the Government Pension Fund Global, the Council on Ethics must periodically review whether the grounds for a company’s exclusion continue to exist. On the basis of new information received, the Council may recommend to Norges Bank that exclusion be revoked.¹

2 Background

In November 2005, the Council on Ethics recommended that Walmart be excluded from the GPF on the grounds that the company contributed to human rights violations in its own operations and in its supply chain.² The Council has assessed whether the violations underpinning its recommendation to exclude still take place or whether the company has implemented changes that mean the grounds for exclusion no longer exist. In connection with its assessment, the Council has held several meetings with the company. In addition, the Council has based its assessment on information from several sources, as referred to in the footnotes.

The Council on Ethics’ recommendation from 2005

In its recommendation to exclude the company, the Council on Ethics attached importance partly to unacceptable working conditions at some of Walmart’s suppliers and partly to conditions within the company’s own operations.

With respect to unacceptable conditions in the supply chain, the Council took as its starting point information linking Walmart to a number of incidents at suppliers in several countries, where it was reported that employees had been abused, that basic fire safety precautions were lacking, that employees were prevented from complaining about poor working conditions by fear of losing their employment, and that employees were forced to work overtime without compensation. Among other things, the Council pointed out that Walmart’s procedures for

¹ Guidelines for Observation and Exclusion from the Government Pension Fund Global (GPF): http://etikkradet.no/files/2017/04/Etikkradet_Guidelines-eng_2017_web.pdf

² The Council on Ethics’ recommendation to exclude Walmart, 15 November 2005: <https://etikkradet.no/wal-mart-stores-inc/>.

monitoring and uncovering unacceptable working conditions in its supply chain seemed inadequate in size and scope and little suited to uncovering serious issues. Furthermore, the Council pointed to a lack of third-party verification in connection with supplier inspections, since 85 per cent of the checks were carried out by Walmart's own staff. The Council considered that Walmart, due to its size in the market, had a major influence over the supply industry and therefore the working conditions prevailing therein. The Council also took the view that some of the conditions reported in the supply chain constituted serious norm violations, and that the company's failure to seek to prevent such violations at its suppliers constituted an established pattern of behaviour.

With respect to conditions within its own operations, the Council on Ethics referred to several lawsuits which were at that time ongoing, including a class action suit in which Walmart was accused of practising gender discrimination and forcing employees to work overtime without compensation. Furthermore, the Council referred to cases from 2000 and 2004, in which the company was accused of unlawful use of underage labour. The Council also referred to the company's active efforts to prevent its employees in the USA from forming or joining a trade union. The Council concluded that the company's widespread and systematic measures to prevent unionisation were the reason why none of the company's employees in the USA were members of a trade union.

In its recommendation, the Council also made it clear that it was the sum total of the norm violations that formed the basis for exclusion: *“Concerning violations of working environment standards, prohibition against unionisation and gender-based discrimination, these too will probably not be sufficient in themselves to recommend exclusion, even in cases where they must be regarded as systematic. In the view of the Council, what makes this case special is the total sum of violations of standards, both in the company's own business operations and in the supply chain.”*

Conditions at the company today

Today, Walmart is the world's largest private sector employer, with 2.2 million employees, of whom 1.5 million are employed in the USA. The company operates retail chains comprising more than 11,700 businesses in 28 countries.³

According to Walmart, the company had in 2018 over 25,000 production facilities that it considers 'active' producers, in other words, places which engage in ongoing production for the company. In addition, there is a large number of suppliers and production sites making items for other companies/brands that Walmart sells. The company has explained that it requires all suppliers to operate their businesses in accordance with *Walmart Standards for Suppliers*, which state that companies must, at the very least, comply with local laws and regulations, refrain from using child labour, provide safe working conditions, etc.⁴ Walmart further discloses that it has now concentrated its monitoring activities on active producers, such that suppliers in vulnerable sectors in vulnerable countries are especially prioritised. The company reports that in 2018 it reviewed 13,000 audit reports, whose results it ranked in order of seriousness. Where serious non-conformances were found, the matter was raised with the supplier. Walmart further discloses that it, in some grave cases, terminated its agreement with the supplier concerned. In addition, Walmart reports that in 2018 it carried out some 500

³ Walmart - Company Facts: <https://corporate.walmart.com/newsroom/company-facts>.

⁴ Walmart Standards for Suppliers: <https://cdn.corporate.walmart.com/bc/8c/97ac8c9b43229f17480057fd684e/standards-for-suppliers-english-updated-6-30.pdf>.

separate investigations into individual issues that had either been reported in to the company or that the company had otherwise become aware of.⁵

Since 2009, the company has used third-party audits of working conditions, which are measured against recognised standards for different sectors. To help increase the level of competence and esteem of those carrying out the audits, Walmart has, moreover, become engaged at board level in the Association of Professional Social Compliance Auditors (APSCA),⁶ whose membership currently comprises 3,200 registered auditors.⁷

The company has also explained that since 2016, it has taken its own initiatives to improve general working conditions in particularly vulnerable sectors, such as the fishing industry in Thailand, agricultural production in Mexico, the electronic industry in China and Malaysia, and the textiles industry in Bangladesh. This work is under development, and will be expanded to encompass additional problematic sectors. The initiatives include contact with the authorities to step up enforcement of existing regulations, training employees in their rights, collaboration with other parties on the establishment of shared standards and data collection.⁸

The Council on Ethics employs a news monitoring system (RepRisk) to link companies to incidents that could constitute human rights violations, etc. For large companies with many suppliers, numerous such incidents, with varying degrees of seriousness and ties to the company, may be picked up by the monitoring system at any given time. A review of the reported issues relating to the company over the past three years shows that Walmart is no worse in this respect than other large companies.

The Council's recommendation to exclude referred to a number of ongoing lawsuits that former employees had filed against Walmart, alleging that the company forced employees to work overtime without compensation. In 2008, Walmart settled 63 such lawsuits and paid USD 350–640 million in compensation to former employees.⁹ As far as the Council is aware, no further lawsuits have been filed against the company for grievances of precisely this type. However, it has been reported that other class action suits have been brought against the company. These relate partly to matters that occurred several years ago, but one lawsuit relates to more recent discrimination of pregnant employees. According to the company, women made up 43 per cent of Walmart's middle managers in 2018, which it claims is the same level as in the rest of the industry. The company discloses that 30 per cent of more senior management positions are held by women, which also matches the rest of the industry. With regard to management positions being held by members of minorities, Walmart's figures are on a par with or higher than the rest of the industry.¹⁰ The company has clear guidelines against various forms of discrimination.¹¹ Furthermore, the company has pointed to various initiatives and programmes to include minorities and other groups that may otherwise be

⁵ Walmart Inc. 2018 Global Responsibility Report, pp. 109–112.

⁶ Association of Professional Social Compliance Auditors: <https://www.theapsca.org/>.

⁷ Walmart's presentation to the Council on Ethics, 27 March 2019.

⁸ Ibid pp. 117–125.

⁹ Walmart and Plaintiffs' Counsel Announce Settlement of Most Wage and Hour Class Action Lawsuits Against the Company: https://corporate.walmart.com/_news_/news-archive/2008/12/23/walmart-plaintiffs-counsel-announce-settlement-of-most-wage-hour-class-action-lawsuits-against-the-company.

¹⁰ Walmart's presentation to the Council on Ethics, 26 February 2019.

¹¹ Walmart Global Statement on Ethics: <https://www.walmartethics.com/uploadedFiles/Content/U.S.%20-%20English.pdf>.

excluded from the workforce.¹² As far as the Council is aware, no instances of underage labour being used in the company's own operations have been reported since the recommendation to exclude was issued.

That Walmart continues to thwart its employees' attempts to form trade unions in the USA can be taken as read. None of the company's employees in the USA is a trade union member. At a meeting with the Council on Ethics, the company explained that it respects its employees' *right* to unionise, but that it considers trade unions to be unnecessary in the USA, and informs workers of its views on this matter. The company also points out that there are union members among its employees outside of the USA, and that the company requires its suppliers to accept their employees' right to unionise.

3 The Council's assessment

With respect to Walmart's contribution to human rights violations in its supply chain, positive developments have occurred in the areas to which the Council attached importance in its recommendation to exclude. The extent of the company's monitoring of its suppliers has increased and the system seems better able to uncover serious non-conformances. The control system is now based on recognised industry standards and third-party verification. Furthermore, the company engages actively in selected, high-risk areas in order to help bring about improvements in working conditions. There seem to be fewer reports of poor working conditions in Walmart's supply chain now than there were before. All in all, the scope of these improvements is such that the Council no longer considers there to be an unacceptable risk that the company is contributing to human rights violations in its supply chain in such a way as to constitute grounds for exclusion from the GPFPG.

With respect to conditions at the company's own operations, positive developments also seem to have occurred in several areas to which the Council attached importance in connection with Walmart's exclusion. The Council is aware that the company has been and continues to be the subject of class action suits relating in part of employees' working conditions. However, there no longer seem to be grounds to claim that the company systematically discriminates against groups of employees, that underage people are unlawfully employed by the company or that employees are systematically forced to work without pay.

Of the grounds for Walmart's exclusion, what primarily remains is the company's active opposition to employees' efforts to form or join trade unions. Here no trace of positive change can be detected. Even though Walmart has proclaimed to the Council that it respects all employees' right to unionise, it is clear that the company actively and by a variety of means impedes the unionisation of its employees. In reality, this must be deemed a violation of employees' right to form a trade union without undue pressure or influence. The Council still finds Walmart's practice in this area to be censurable.

In its recommendation to exclude Walmart, the Council on Ethics underlined the fact that its decision was based on the sum total of numerous factors that, each individually, would not reach the threshold for exclusion. The Council considers that Walmart's thwarting of its employees' attempts to unionise is not by itself sufficient to maintain the company's exclusion. Since there is no longer an unacceptable risk that Walmart contributes to human

¹² Walmart: Culture, Diversity & Inclusion Report 2018: https://corporate.walmart.com/media-library/document/2018-culture-diversity-inclusion-report/_proxyDocument?id=00000168-4df5-d71b-ad6b-4ffdbfa90001.

rights violations in its own operations in a way that constitutes grounds for exclusion from the GPFG, the Council on Ethics recommends that Walmart's exclusion of be revoked.

4 Recommendation

The Council on Ethics recommends that the exclusion of Walmart Inc. and Wal-Mart de Mexico S.A.B. de C.V from investment by the Government Pension Fund Global be revoked.

Johan H. Andresen Hans Chr. Bugge
Chair

(Sign.)

Cecilie Hellestveit

(Sign.)

Trude Myklebust

(Sign.)

Brit K. S. Rugland

(Sign.)

(Sign.)