

2005

The Wal-Mart Effect: The World Trade Organization and the Race to the Bottom

Ellen Israel Rosen

Follow this and additional works at: <http://digitalcommons.chapman.edu/chapman-law-review>

Recommended Citation

Ellen I. Rosen, *The Wal-Mart Effect: The World Trade Organization and the Race to the Bottom*, 8 CHAP. L. REV. 261 (2005).
Available at: <http://digitalcommons.chapman.edu/chapman-law-review/vol8/iss1/11>

This Article is brought to you for free and open access by the Fowler School of Law at Chapman University Digital Commons. It has been accepted for inclusion in Chapman Law Review by an authorized administrator of Chapman University Digital Commons. For more information, please contact laughtin@chapman.edu.

THE WAL-MART EFFECT: THE WORLD TRADE ORGANIZATION AND THE RACE TO THE BOTTOM

*Ellen Israel Rosen**

In the current global free-trade regime, there is no doubt that Wal-Mart Stores, Inc. is the most significant corporate player. As the world's largest retailer, Wal-Mart now sets the rules of competition as it vies with other multinational retail corporations over control of the world's consumer goods market.¹

However, bigger is not always better, and Wal-Mart's method of conducting business is not good for America, nor is it good for developing nations. Rather, it is likely that Wal-Mart's trade choices will actually lead to further extremes of wealth and poverty wherever the company does business. The winners will be Wal-Mart's executives and large shareholders, and its corporate competitors that are able to remain in business. The losers will be those individuals, mainly women, who are employed in export processing jobs, as well as hourly workers, such as salesclerks and cashiers, working in the U.S. retail industry.

Wal-Mart's much studied and hotly debated business model has been the foundation for a newly liberalized type of global free enterprise, e.g., "a template of 21st century capitalism."² In order to truly grasp Wal-Mart's effect on the world's economy, it is critical to explore the strategies the company has used to dominate the marketplace. In effect, the business tactics Wal-Mart has pioneered can be used as a prism: a lens through which one can view the reemergence of "a capitalism that increasingly resembles a capitalism of 100 years ago. . . . It combines the

* Professor Emeritus of Sociology, Nichols College. This article contains and expands views expressed in previous works by the author: ELLEN ISRAEL ROSEN, BITTER CHOICES : BLUE-COLLAR WOMEN IN AND OUT OF WORK (1990); ELLEN ISRAEL ROSEN, MAKING SWEATSHOPS: THE GLOBALIZATION OF THE U.S. APPAREL INDUSTRY (2002)..

¹ Andy Rowell, *Welcome to Wal-World Wal-Mart's Inexhaustible March to Conquer the Globe*, MULTINATIONAL MONITOR, Oct. 2003, at 13.

² Steven Greenhouse, *Wal-Mart, a Nation Unto Itself*, N.Y. TIMES, Apr. 17, 2004, at B7 (quoting Simon Head, author of "The New Ruthless Economy," on Wal-Mart's pay scale and labor practices).

extremely dynamic use of technology with a very authoritarian and ruthless managerial culture.”³ Wal-Mart’s sheer size ensures that it is a force to be reckoned with in global retailing,⁴ particularly as it continues to grow.⁵

However, Wal-Mart’s impact on the economy in general cannot be understated. When McKinsey Global Institute analyzed the increase in labor productivity in the late 1990s, it was surprised to learn that “the primary source of the productivity gains of 1995 to 1999 was . . . managerial and technological innovations in only six highly competitive industries” including retail trade.⁶ In fact, one study showed that in 2002, Wal-Mart saved its customers twenty billion dollars, although after factoring in the myriad of “price cuts other retailers must make to compete,” the total savings to consumers is actually closer to \$100 billion.⁷ It is “no wonder that economists refer to a broad ‘Wal-Mart effect’ that has suppressed inflation and rippled productivity gains through the economy year after year.”⁸

Business analysts explain Wal-Mart’s success as a function of four major factors: a big box format,⁹ every day low pricing, efficiency in logistics,¹⁰ and competitive intensity.¹¹ Business

³ *Id.*

⁴ Wal-Mart “is three times the size of the No. 2 retailer, France’s Carrefour. Every week, 138 million shoppers visit Wal-Mart’s 4,750 stores; last year, 82% of American households made at least one purchase at Wal-Mart.” Anthony Bianco & Wendy Zellner, *Is Wal-Mart Too Powerful?*, BUSINESSWEEK, Oct. 6, 2003, at 101, 102. Wal-Mart’s 2002 sales reached \$259 billion placing it at the top of the Fortune 500 list for the third straight year and surpassing well-known companies such as Exxon Mobil, General Motors, Ford and General Electric. *Wal-Mart Tops Fortune 500 List*, Mar. 21, 2004, available at <http://www.msnbc.msn.com/id/4573885/print/1/displaymode/1098>. In addition, Wal-Mart’s more than a quarter of a trillion dollars in sales were four times greater than Home Depot and five times more than Target, Wal-Mart’s closest competitors in discount retailing. See THE HOME DEPOT, INC., 2003 ANNUAL REPORT 1 (2004) (showing 2003 fiscal sales were \$64.8 billion); TARGET CORPORATION, 2003 ANNUAL REPORT i (2004) (showing total revenues for 2003 were \$48.163 billion).

⁵ Wal-Mart is the largest private employer in the United States. Bianco & Zellner, *supra* note 4, at 102. The retailer employs 1.4 million people, which makes it 56 times bigger than the average Fortune 500 company. David Olive, *Hitting The Wall*, THE TORONTO STAR, Aug. 29, 2004, at E01. As one researcher stated, “[t]here’s nothing like Wal-Mart . . . They are so much bigger than any retailer has ever been that it’s not possible to compare.” Bianco & Zellner, *supra* note 4, at 102 (quoting Ira Kalish, Global Director of Deloitte Research). Also, Wal-Mart plans to hire 800,000 additional workers by 2008. *Id.* at 106.

⁶ Virginia Postrel, *Lessons in Keeping Business Humming, Courtesy of Wal-Mart U.*, N.Y. TIMES, Feb. 28, 2002, at C2.

⁷ Bianco and Zellner, *supra* note 4.

⁸ *Id.* at 102.

⁹ The “big box format” is the principle of how “[l]arger stores increase sales per square foot by encouraging customers to buy additional goods, often on impulse. Big-box stores also let retailers spread fixed labor costs like store management and cleaning crews across more sales.” Postrel, *supra* note 6.

¹⁰ One of Wal-Mart’s greatest achievement is its use and development of IT

schools throughout the nation have begun using the Wal-Mart model as a real-world way to instruct students what – and what not – to do in terms of business “strategy, pricing, the behavior of competitors, the decision making of suppliers, cost structure and promotion.”¹² Even the prestigious Harvard Business School “sells Wal-Mart case studies to business schools around the world.”¹³ Wal-Mart creates the perfect paradigm through which students can learn about the costs and efficiencies of the new WTO-based economy.

However, although Wal-Mart topped the Fortune 500 List of Most Admired Companies in 2003 and 2004,¹⁴ its “seemingly simple and virtuous business model is fraught with complications and perverse consequences.”¹⁵ In America, low wages, anti-union tendencies and lawsuits for unpaid overtime and sex-discrimination are just some of the issues haunting this corporate giant. In addition, Wal-Mart’s use of factories abroad has raised serious concerns about low-wage employees in poverty-stricken countries working in sweatshop conditions with no feasible alternatives. In effect, Wal-Mart’s unrelenting push to succeed and unreasonable demands on its suppliers have

applications:

It is widely regarded as the leader in the use of IT in retail and pioneered a number of IT applications [including], for example:

Early adoption of computers to track inventory in distribution centers (1969)

Use of computer terminals in stores to facilitate communication (1977)

Scanning using UPC codes (1980)

Groundbreaking use of electronic data interchange (EDI) (1985)

Satellite communications network (1987)

Use of radio frequency (RF) guns (late 1980s)

Expansion of the EDI system to include an extranet, which became an early form of eSCM (beginning in 1991)

Development of ‘Retail Link,’ a micro-merchandising and supply chain management tool (beginning in 1991)

As with its managerial innovations, these innovative uses of IT improved Wal-Mart’s productivity (both capital and labor) and cost position. They also resulted in continued market share gain due to their contribution to lower prices, lower out of stocks, and more effective merchandising.

MCKINSEY & CO., U.S. PRODUCTIVITY GROWTH, 1995-2000 1, 10 (Oct. 2001), *available at* <http://www.mckinsey.com/mgi/reports/pdfs/productivity/Retail.pdf>.

¹¹ *Id.* at 11.

¹² Constance L. Hays, *The Wal-Mart Way Becomes Topic A in Business Schools*, N.Y. TIMES, Jul. 27, 2003, § 3 (Money and Business), at 10.

¹³ *Id.*

¹⁴ “Dell Inc. was No. 1 on *Fortune* magazine’s annual list of the nation’s most admired companies, displacing Wal-Mart, which has held the top spot for the past two years and fell to No. 4.” *Dell Beats Wal-Mart as “Most Admired,”* CNN Money, Feb. 22, 2005, *at* http://money.cnn.com/2005/02/21/news/fortune500/most_admired/.

¹⁵ Bianco and Zellner, *supra* note 4, at 102.

created a “race to the bottom,” where the lowest production price wins, regardless of the human cost.

This article seeks to examine the impact of Wal-Mart on the global retailing industry. Part I will study the winners and losers in the new global economy resulting from the WTO’s quota elimination. Part II will discuss Wal-Mart’s expansion into the international market, and, in particular, into China. Part III will look at the negative aspects of Wal-Mart’s business strategy, which is leading to harsher social and economic stratification, particularly in poor countries. Part IV takes a closer look at the effect Wal-Mart is having on its female workers in China and America. Finally, Part V will conclude with a short summary and opinion on where Wal-Mart is headed.

I. THE WORLD TRADE ORGANIZATION’S QUOTA ELIMINATION: THE WINNERS AND THE LOSERS

There is no question that the global production of garments and textiles is big business. Currently, there are approximately 40 million people around the world who are working in the garment and textile industries, which accounts for 14 percent of global employment.¹⁶ The majority of “garment workers supplying the U.S. market – upwards of 80 percent – are young women in the developing world, 16 to 25 years old, who are already forced to work long hours for below-subsistence wages under conditions which violate internationally recognized human and worker rights standards.”¹⁷ Unbelievably, due to a change in export policies, the lives of these women have changed dramatically for the worse.

Since the 1970s, “all textile and apparel trade worldwide has been governed by a system of quotas which were reached through bi-lateral negotiations under what was known as the multi-fiber agreement, or MFA.”¹⁸ The underlying goal of these quotas was to guarantee “developing countries access to the major U.S. and European markets. For example, in 2003 Bangladesh knew it had enough quota to export approximately 900 million garments to the U.S., in effect guaranteeing many of the country’s 1.8 million apparel jobs.”¹⁹ However, the World Trade Organization (WTO) chose to eliminate all textile and apparel quotas as of

¹⁶ NATIONAL LABOR COMMITTEE, ELIMINATION OF TEXTILE AND APPAREL QUOTAS IN 2005 WILL SHOCK THE DEVELOPING WORLD 1 (Sept. 2004), available at http://www.nlcnet.org/news/publicfiles/upload.quotas2005_en.pdf.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

January 1, 2005.²⁰

It is likely that the inevitable efforts by retailers, including Wal-Mart, to take advantage of the new no-quota rule means that clothing production will move to countries that can produce the largest volume of apparel for the lowest cost.²¹ The U.S. Association of Importers of Textile and Apparel anticipates that its members, some of the largest retailers in the world, will “react to the WTO’s lifting of quotas . . . by slashing the number of countries they source production in from 50 today to just five or six countries by 2007.”²² This will ensure that retailers like Wal-Mart can purchase their desired goods for the lowest production price without regard for the standards under which it was produced. As a result, countries such as Costa Rica, Haiti, Jamaica, South Africa, Mauritius, Malaysia, Indonesia, Philippines, Kenya, Lesotho, Madagascar, Bangladesh, Cambodia, and, arguably, Mexico, are likely to be huge losers in this race to the bottom.²³

For example, Bangladesh’s “economy has improved significantly during the last decade, driven primarily by the garment sector, which brought in US\$6 billion in export earnings in 2001-2002.”²⁴ The country’s garment production industry currently employs nearly two million people, eighty percent of whom are women, “and generates almost \$2 billion worth of economic activity in areas such as banking, transport, insurance, packaging, real estate, utility services, and consumer goods.”²⁵ However, the United Nations estimates that upward of one million garment workers in Bangladesh will lose their jobs as a direct result of the WTO’s quota elimination.²⁶ Simply put, like many other poor countries, Bangladesh cannot compete with the state-of-the-art logistics of quota-elimination beneficiary China:

²⁰ *Id.*

²¹ See Jenny Strasburg, *American Shoppers Could Find Wider Selections; Flood of China-made Garments Means Job Losses for Millions in Other Countries*, S.F. CHRON., Jan. 18, 2005, at A7 (explaining that the end of a WTO quota system will cause a shift in production to China, a country known for producing low-cost goods).

²² NATIONAL LABOR COMMITTEE, *supra* note 16, at 2. “Gary Ross, Vice President of Worldwide Operations for Liz Claiborne asked, rhetorically: ‘Would we be in 35 countries if quotas didn’t exist?’ Answering his own question, he said, ‘We’d probably be in as few as ten or fifteen countries.’” *Id.*

²³ See *id.* at 6; UNITED NATIONS DEVELOPMENT PROGRAMME, LOOMING TRADE CURBS PUT BANGLADESH JOBS AT RISK (Jun. 18, 2003) [hereinafter *UNDP*], available at <http://www.undp.org/dpa/frontpagearchive/2003/june/18june03/>; Peter S. Goodman, *Pinning Hope on Fair Labor Standards*, WASH. POST, Nov. 17, 2004, at A19.

²⁴ *UNDP*, *supra* note 23, at 1.

²⁵ *Id.*

²⁶ *Id.* But see Keith Bradsher, *Bangladesh Survives to Export Again*, N.Y. TIMES, Dec. 14, 2004, at C1. (quoting Wal-Mart’s vice president for global purchasing who stated, “Bangladesh is very competitive because the labor cost in Bangladesh is only half of what China is, and maybe less than that”).

“[L]abor for a shirt made in Bangladesh runs just \$1.52, compared with \$2.28 in China, but after factoring in materials and transportation, the total cost of the Chinese shirt is \$11.15 – almost a dollar cheaper [than can be produced in Bangladesh].”²⁷

However, Bangladesh is not alone. Cambodia is also prone to significant post-quota job loss. Five years ago, the country signed a trade deal with the United States where Cambodia’s “[f]actories . . . gained duty-free access to the U.S. market in exchange for submitting to inspections from the International Labour Organization, a watchdog group. The volume of clothing Cambodia could ship was pegged directly to improvements in labor conditions.”²⁸ As a result, Cambodia’s garment industry truly blossomed and its workers saw positive changes in the way they were treated.

However, along with textile quotas, Cambodia’s arrangement with the United States ended in January. Thus, a country whose garment production comprises 98 percent of its total exports, and which ships two-thirds of those garments to the United States, will now be forced to pay customs duties, which could have a devastating effect on its economy.²⁹ Currently, approximately 230,000 of Cambodia’s thirteen million people work in the garment industry, and many of them may find their jobs eliminated in the post-quota environment.³⁰ Women, who comprise the majority of factory workers, have an even greater concern when faced with the possibility of job loss: “If the garment factories [are forced to fire workers,] . . . women from rural districts can fall back on field work. But for urban women, the only employment alternative may be as a bar hostess or prostitute.”³¹

Some argue, though, that the biggest loser could be Mexico. In 1965, the Mexican government created the maquiladora program,³² which boasts a low cost and trainable labor force, close proximity to the U.S., and a “[p]redominately nonunion work force.”³³ After the implementation of the North American

²⁷ George Wehrfritz & Alexandra A. Seno, *Succeeding at Sewing*, NEWSWEEK, Jan. 10, 2005, at 38.

²⁸ Goodman, *supra* note 23.

²⁹ *Id.*

³⁰ *Id.*

³¹ James Brooke, *A Year of Worry for Cambodia’s Garment Makers*, N.Y. TIMES, Jan. 24, 2004, at C1.

³² A maquiladora “[a]llows a foreign (non-Mexican) individual or firm to establish wholly-owned operations in Mexico for the purpose of manufacturing products for exportation.” CITY OF EL PASO, ECONOMIC OVERVIEW- EL PASO/CD. JUAREZ BORDER REGION – MAQUILADORA PROGRAM 1, at <http://www.elpasotexas.gov/econdev/maquiladora.asp> (last visited Mar. 1, 2005).

³³ *Id.*

Free Trade Agreement (NAFTA) in 1994, “few anticipated the massive rush to the region that followed the December, 1994, peso crash, when Mexican wages plunged 40% in dollar terms.”³⁴ As a result, in 2001, the maquiladora “industry sold \$77 billion of goods abroad . . . almost half Mexico’s total exports.”³⁵

Retailers were among those who originally found the low “wage, rent, and electricity costs” extremely attractive, as they amounted to only one-fourth of that charged in the United States.³⁶ Recently, however, many factories have begun to leave Mexico, many of them heading for China.³⁷ There are two major reasons for this phenomenon. First, Mexican maquiladora wages are between \$2 and \$2.50 per hour, which is a rate much higher than in some other countries, including China.³⁸ Second, “[f]or years, a cheap peso had masked inefficiencies in Mexican manufacturing, including high employee turnover and unwieldy logistics. But since the currency began appreciating in 1999, costs have risen some 30 percent.”³⁹ As a result, the maquiladora industry lost 287,000 jobs – a twenty-one percent drop – between October 2000 and March 2002.⁴⁰

Thus, the quota elimination has some analysts wondering whether Mexico will be able to compete in the new global economy. One recent study opines that, in spite of its higher wages, Mexico has a distinct advantage over other countries in its proximity to the United States,⁴¹ because “Wal-Mart Stores Inc. and other U.S. chains prefer North and Central American and Caribbean suppliers who are closer to home for products like jeans and T-shirts that must be quickly replaced on store shelves as stocks run out.”⁴² However, even such optimists point out that in order “[t]o stay competitive [in the new economic environment], Mexico will need to develop its strengths.”⁴³

Despite the grim outlook for many of the world’s poorest countries, other nations – like China and India – are expected to

³⁴ Geri Smith & Elisabeth Malkin, *The Border*, BUSINESSWEEK, May 12, 1997, at 64, 65.

³⁵ Elisabeth Malkin, *Manufacturing Jobs Are Exiting Mexico*, N.Y. TIMES, Nov. 5, 2002, at W1.

³⁶ Smith & Malkin, *supra* note 34, at 65.

³⁷ Malkin, *supra* note 35.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Andy Mukherjee, *Wal-Mart and Distance Can Save U.S. Textiles*, Dec. 21, 2004, available at http://www.tradealert.us/news_item.asp?NID=1344203 (citing a study by the Harvard Center for Textile and Apparel Research).

⁴² *Id.*

⁴³ Malkin, *supra* note 35.

benefit greatly from the WTO's quota elimination.⁴⁴ "Within their vast borders, the two countries – the most populous in the world – can offer the low wages of poor nations along with the efficiencies of modern economies."⁴⁵ As one writer points out, "[t]he advantages are perhaps most evident in the textile and apparel industry, which requires large pools of unskilled laborers but also depends on fast delivery and the ability to change production specs on a dime."⁴⁶ In particular, China is seen as the biggest threat to the well being of poorer countries in the textile and apparel industry because it "sets the standard for efficient, low-cost production."⁴⁷ Whereas the pre-2005 quota restrictions "protected millions of jobs in countries that lacked China's huge low-cost workforce, manufacturing know-how, willing investors and efficiencies of scale[.]"⁴⁸ now that big retailers, such as Wal-Mart, "aren't bound by import quotas, it's far easier to funnel orders to the factories that produce the most, the fastest and the cheapest."⁴⁹

Currently, the WTO estimates that "China produces about 17 percent of all apparel and textiles [worldwide]. . . . Within three years, the country is expected to own 50 percent of the \$400-billion-a-year market."⁵⁰ Wal-Mart has played a significant role in China's hold on the industry. In fact, in pre-quota 2003, Wal-Mart alone was responsible for nearly 10 percent of China's total exports to the United States.⁵¹ However, one of the major concerns surrounding the WTO's quota elimination is that "huge multinationals such as Wal-Mart . . . can make or break entire economies with their orders."⁵² For example, whereas Wal-Mart currently "buys as much as one-third of the clothes made in Bangladesh," the corporation's predictable attempt to capitalize on China's low production costs will result in job loss or, at a minimum, a further lessening of factory labor conditions.⁵³

⁴⁴ Tyler Marshall et al., *A World Unravels: Clothes Will Cost Less, but Some Nations Pay*, L.A. TIMES, Jan. 16, 2005, at A1.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Strasburg, *supra* note 21.

⁴⁸ *Id.*

⁴⁹ Marshall, *supra* note 44.

⁵⁰ Strasburg, *supra* note 21.

⁵¹ *Id.* In 2003, Wal-Mart exported \$15 billion from China. *Id.*

⁵² Marshall, *supra* note 44.

⁵³ *Id.*

Already, gains in wage levels and working conditions are starting to unravel. In Lesotho, the government has agreed to give apparel and textile factory owners an exemption from paying a mandatory cost-of-living increase. Salvadoran business leaders want to reduce the nation's \$5.04-a-day maquiladora minimum wage in rural areas to stay competitive with China and its lower-cost neighbors in Central America.

For this reason, “[m]any trade specialists see the post-quota era as every bit as potentially destructive as the unrestrained capitalism of the late 19th and early 20th centuries that spawned sweatshop conditions and price-fixing monopolies.”⁵⁴ Like China, India is also expected to be successful in this new trade regime, and will likely become the second biggest winner, increasing “its share of the global textile business from 3% to 15% by 2010.”⁵⁵ Currently, the country’s garment manufacturers already export to large U.S. retailers, such as Wal-Mart, Gap and Target, who collectively import approximately \$1.3 billion in textiles per year from India.⁵⁶ Although China has approximately five times the volume of textile exports as India,⁵⁷ the latter is already benefiting from the quota elimination. In January 2005, “India’s overall exports were 33 per cent up on the previous January, driven mostly by Indian garment makers making the most of the abolition of quota ceilings.”⁵⁸

Nevertheless, Indian manufacturers are concerned about their competitive position vis-à-vis China, whose labor productivity in textiles and apparel leads the industry; for example, to produce the same cotton shirt, it takes 22.2 minutes in India and only 12.5 minutes in China.⁵⁹ In addition, India has a “rusting infrastructure” in comparison to China, which has “impressively modern ports, highways and power supply.”⁶⁰ However, as one of India’s largest clothing exporters states: “[India has] skills where the Chinese are weak: high quality design and software, the ability to interact with western customers in English and a managerial talent pool which has a very flexible and cosmopolitan mindset.”⁶¹

One thing is certain – in the post-quota environment, low wages will continue to be a necessary condition for success in exporting textiles and apparel to the U.S. However, high

Halfway around the world in the Philippines, a panel of business and government officials has proposed exempting garment makers from paying the minimum daily wage, which ranges from about \$3.75 to \$5.

Id.

⁵⁴ *Id.*

⁵⁵ Geeta Pandey, *India Awaits Textiles Boom*, Dec. 22, 2004, available at http://news.bbc.co.uk/1/hi/world/south_asia/4105973.stm.

⁵⁶ Khozem Merchant, *India Looks to Make a Stitch in Time*, FIN. TIMES, Jan. 6, 2005, at 20.

⁵⁷ Edward Luce & Richard McGregor, *India’s Prowess in Services and China’s Manufacturing Strength Are Complementary but Both Countries Can Also Grow in Sectors Where They Compete Directly*, FIN. TIMES, Feb. 24, 2005, at 17.

⁵⁸ *Id.*

⁵⁹ David J. Lynch, *As Quotas End, China Stands Ready to be Clothing Giant*, USA TODAY, Dec. 22, 2004, at 1B.

⁶⁰ Luce & McGregor, *supra* note 57.

⁶¹ *Id.* (quoting Dinesh Hinduja, chief executive of Gokal Das Exports).

productivity and low-cost merchandise will increasingly depend on logistics and technology, which is extremely disadvantageous for the world's poorest countries.

II. WAL-MART AND CHINA

In 1991, after two decades of dramatic growth in the U.S., Wal-Mart executives began to look toward the future, recognizing that international sales would someday be needed to sustain the company when domestic profits slow down.⁶² As one Wal-Mart executive noted: “[t]he United States is 37 percent of the world’s economy, which leaves 63 percent for international. If we do our job, international operations should someday be twice as large as the United States.”⁶³ With that goal in mind, Wal-Mart began its foray into the international market. Between 1991 and 1995, the company opened its first non-U.S. stores in “strategic countries in the Americas,” including Mexico, Puerto Rico, Canada, Argentina and Brazil.⁶⁴ The company’s success in those countries encouraged further global growth, and as of January 2005, Wal-Mart owned 1,355 discount stores, Supercenters, Sam’s Clubs, and neighborhood markets abroad.⁶⁵

Then, in 1996, Wal-Mart opened its first Chinese store outlet in Shenzhen.⁶⁶ However, Wal-Mart’s plan was about more than just *selling* goods to China – it had already begun to buy from them, too. In the 1980s, as China began to focus more on capitalistic ideals, it already had the benefit of more than 30 years of industrial development. Thus, though the country still had a collectivist state-run economy, it was in a position to compete with the West and learn the principles of capitalist growth. In addition, unlike poorer countries, which were encumbered with structural adjustment programs, China adopted export processing, in part, as a way to develop its free market economy. Accordingly, by the 1990s, the Chinese government was strongly encouraging foreign investment, which, by 2003, totaled approximately \$52 billion.⁶⁷

Over the past decade, the symbiotic relationship between Wal-Mart and China has become one of the most significant in the retail industry, and certainly the best example of Wal-Mart’s foreign business dealings. Despite its famous, “Buy American,”

⁶² Rowell, *supra* note 1, at 13.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ WAL-MART STORES, INC., 2004 ANNUAL REPORT 55 (2005).

⁶⁶ Rowell, *supra* note 1.

⁶⁷ Marshall, *supra* note 44.

slogan,⁶⁸ Wal-Mart is “the single largest buyer of Chinese products (if Wal-Mart were a nation, it would be China’s eighth-largest export destination).”⁶⁹ In addition, China plays a critical role in Wal-Mart’s operations – the country currently produces more than 70 percent of merchandise sold in Wal-Mart’s stores.⁷⁰ Wal-Mart’s preference for China stems from the country’s rare combination of production factors, e.g. low wage labor and increasingly advanced technology, which enable its manufacturers to make quality goods at an extremely low cost – something few other countries, including the United States, can claim.

Wal-Mart has ambitious plans for a long-range course of development in China. Most recently the company, along with Singapore’s CapitaLand, invested \$120 million for the purchase of six new shopping malls where Wal-Mart will be the largest tenant.⁷¹ In addition, CapitaLand also has an option to acquire 14 more malls with Wal-Mart outlets, and Wal-Mart plans to open between 20 and 30 new Supercenters in the next four years.⁷² Wal-Mart has also joined with the Chinese-owned CITIC Pacific and is expected to open hundreds of stores in China over the next five years.⁷³ Significantly, Wal-Mart’s venture into China will likely be hastened by a recent change in China’s foreign retail investment policy. As of December 11, 2004, foreign firms will be able to invest without forming joint ventures with Chinese partners.⁷⁴ Thus, companies like Wal-Mart will no longer be limited by location – they will be able to build production facilities anywhere in the country.

Wal-Mart is certainly not alone in its enthusiasm for China. In fact, in the past ten years, many of the world’s retailers have

⁶⁸ Interview with Jon Lehman, former Wal-Mart manager (June 4, 2004 and Oct. 7, 2004), available at <http://www.pbs.org/wgbh/pages/frontline/shows/walmart/interviews/lehman.html>.

⁶⁹ Rowell, *supra* note 1.

⁷⁰ Jiang Jingjing, *Wal-Mart’s China Inventory to Hit US \$18b This Year*, CHINA DAILY, Nov. 29, 2004, at http://www.chinadaily.com.cn/english/doc/2004-11/29/content_395728.htm.

⁷¹ Dai Yan, *CapitaLand Cashes in on Retail Property Sector*, CHINA INVEST, Dec. 24, 2004, at <http://www.chinainvest.com.cn/E/invest/spotlight/S20041224-03.html>; Chan Sue Ling & Linus Chua, *CapitaLand to Invest in Chinese Malls*, INT’L. HERALD TRIB., Dec. 24, 2004, available at <http://www.iht.com/articles/2004/12/23/bloomberg/sxsmall.html>.

⁷² Yan, *supra* note 71.

⁷³ *Wal-Mart, CITIC Pacific Plan Expansion*, CHINA DAILY, Jan. 20, 2005, at http://www.chinadaily.com.cn/english/doc/2005-01/20/content_410802.htm; *Wal-Mart, CITIC Pacific Plan Big on Mainland Shops*, WORLD BUSINESS NEWSWIRE, Jan. 20, 2005, at <http://en.icxo.com/htmlnews/2005/01/20/7741.htm>.

⁷⁴ Julie Walton, *At Your Service: Foreign Service Providers are Starting to Make Inroads in the China Market – With Some Exceptions*, CHINA BUS. REV., at <http://www.chinabusinessreview.com/public/0409/walton.html> (last visited on March 1, 2005).

chosen to put down stakes. The country's market for foreign retail giants is so promising that some analysts believe China's foreign companies will actually outperform the country's domestic businesses.⁷⁵ Thus, it is not surprising that Wal-Mart's international business interests have pushed the company to engage in lobbying activities for the first time in its forty-plus years. In late 1999, just three years after Wal-Mart opened its first store in China, former U.S. Senate Majority Leader Trent Lott traveled to Wal-Mart headquarters where he met with company executives and suggested that Wal-Mart increase its political profile.⁷⁶ As a result, shortly thereafter, the company opened an office in Washington, D.C., where it currently employs five fulltime lobbyists.⁷⁷

Currently, Wal-Mart is among the top twenty political action committee (PAC) contributors to federal candidates,⁷⁸ and was the second largest overall donor in the 2004 election.⁷⁹ Wal-Mart's legislative interests include consumer protection, ergonomics, port security and prescription drug reform.⁸⁰ Representatives of the company have also been known to testify in front of Congress as proponents for beneficial trade laws.⁸¹

Because China is so important to its overall success strategy, Wal-Mart has also begun to instruct the Chinese on the most effective ways of doing business. On November 2, 2004, Wal-Mart's CEO visited Beijing to announce his company's gift of \$1 million to establish the "China Retail Research Center," at Tsinghua University.⁸² This center will "focus on China-oriented retail theory and retail policy and will provide consulting services to domestic retailers."⁸³ However, some argue that letting Wal-Mart into China is a "bold and risky move even for Beijing," because it is "reshaping the global economy, [and] restraining wage and price levels on both sides of the Pacific."⁸⁴ Regardless,

⁷⁵ Don Lee, *China Draws in Foreign Retailers*, L.A. TIMES, Jan. 1, 2005, at C2.

⁷⁶ Edward Alden & Neil Buckley, *Wal-Mart Finds it Pays to Have a Say in Washington*, FIN. TIMES, Feb. 25, 2004, at 8.

⁷⁷ *Id.*

⁷⁸ Alison Vekshin, *Wal-Mart Beefs up Federal Presence*, ARK. NEWS BUREAU, Jan. 18, 2004, at <http://www.arkansasnews.com/archive/2004/01/18/WashingtonDCBureau/107230.html>. "Of the 435 members of Congress, 191 received PAC contributions from Wal-Mart in 2003." *Id.*

⁷⁹ Jim Hopkins, *Wal-Mart Widens Political Reach, Giving Primarily to GOP*, USA TODAY, Feb. 3, 2004, at B1.

⁸⁰ Vekshin, *supra* note 78.

⁸¹ *Id.*

⁸² *Wal-Mart Donating US \$1 Million to Establish Tsinghua University China Retail Research Center*, WAL-MART NEWS, Nov. 2, 2004, at <http://www.wal-martchina.com/english/news/20041102.htm>.

⁸³ *Id.*

⁸⁴ Sarah Schafer, *A Welcome to Wal-Mart*, NEWSWEEK, Dec. 20, 2004, at 30.

the government seems to “welcome[] the disruptive impact of Wal-Mart’s business model,” which is “already having a transformative effect on everything from supply chains, to distribution networks, to customer service.”⁸⁵

This “transformative effect” results from the fact that Wal-Mart’s growth plans are complementary to China’s industrial needs. For example, Wal-Mart’s way of doing business changes the way that its suppliers produce, which, in turn, raises productivity and accelerates China’s transition from a state-planned economy to a free market system.⁸⁶ In addition, many of Wal-Mart’s Chinese suppliers like this new system because they find it superior to the Chinese way of doing business, which consisted mainly of personal relationships and bribes.⁸⁷ The Chinese are also eager to expand the number of production jobs that multinationals like Wal-Mart can provide, particularly as China’s increasing number of impoverished migrant workers, most of them women, continue to emigrate from the Chinese countryside to its industrial zones in search of work.⁸⁸

III. WAL-MART AND THE HUMAN COST OF LOW-PRICE CONSUMER GOODS

There is a serious downside, though, to Wal-Mart’s relationship with China. The company uses its power to drive down prices among American suppliers, which are often encouraged to relocate to China as a method of reducing wages and pricing.⁸⁹ As a result, thousands of U.S. workers lose their jobs.⁹⁰ Even America’s largest producers, Procter and Gamble, and Gillette, have been unable to avoid Wal-Mart’s demands. In fact, they have recently merged in an effort “to take back some pricing power from Wal-Mart and other retailers, who have increased their leverage by consolidating, and eliminating rivals.”⁹¹

China also feels pressure from Wal-Mart to cut prices and has responded by forcing employees to work longer hours –

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *China Offers More Jobs to Migrant Workers*, XINHUA NEWS AGENCY, Mar. 3, 2005, at <http://www.china.org.cn/english/government/121631.htm>.

⁸⁹ Pete Engardio & Dexter Roberts, *The China Price*, BUSINESSWEEK, Dec. 6, 2004, at 102; George Stalk & Rob Lachenauer, *Playing Hardball with Wal-Mart*, FORBES GLOBAL, Oct. 18, 2004, at 18; Charles Fishman, *The Wal-Mart You Don’t Know*, FAST COMPANY, Dec. 2003, at 68; Frontline, *Is Wal-Mart Good for America?*, PBS Documentary, at <http://www.pbs.org/wgbh/pages/frontline/shows/walmart/> (posted Nov. 16, 2004).

⁹⁰ Fishman, *supra* note 89.

⁹¹ Constance L. Hays, *What’s Behind the Proctor Deal?*, N.Y. TIMES, Jan. 20, 2005, at C1.

usually for less pay.⁹² Further, Wal-Mart's procurement centers in Shanghai and Shenzhen, which are in close proximity to China's factories, give it up-to-the-minute information on prices.⁹³ Thus, Wal-Mart can leverage its enormous merchandising power to squeeze concessions from suppliers. These firms are asked to cut their production costs deeper and deeper, and, in some cases, even open their books, so Wal-Mart executives can find "unnecessary costs."⁹⁴ However, Wal-Mart's employees, whether in retail stores in the U.S., or supplier factories in China, are most negatively impacted by Wal-Mart's actions.

In China, Wal-Mart's business methods have made a dire economic situation even worse. Already, the company's migrant workers in the Guangdong Province, a primary area of development encompassing the industrial areas of Guangdong near the Southeast of China, are paid wages that remain far below that needed for subsistence.⁹⁵ Thus, Wal-Mart's ability to wring out lower costs is not merely due to newfound efficiencies in its supply chains – the reduced prices come primarily from the sweated labor that Chinese manufacturers impose on their workers. Unfortunately, the Chinese government, which is too concerned with needed jobs and revenues from exports, often does not enforce, or is unable to enforce, the country's current employee protection laws.⁹⁶

For example, the legal workday in China is eight hours a day, and the required minimum wage is thirty-one cents per hour.⁹⁷ However, many of the employees receive only half of the minimum wage and work twice the legal number of hours – up to sixteen hours per day – without overtime pay, and sometimes without any pay at all.⁹⁸ In fact, according to the All China Federation of Trade Unions (ACFTU), China now has an estimated ninety-four million migrant workers who are owed over 100 billion yuan in back wages.⁹⁹ Moreover, Chinese factory

⁹² Jim Jubak, *Jubak's Journal: 3 Big Threats to China's Economic Miracle*, May 7, 2004, at <http://moneycentral.msn.com/content/P82353.asp>.

⁹³ *Id.*

⁹⁴ Fishman, *supra* note 89.

⁹⁵ Jon E. Dougherty, *Free Trade v. Slave Trade*, May, 24, 2000, at http://www.worldnetdaily.com/news/article.asp?ARTICLE_ID=15367.

⁹⁶ CONGRESSIONAL EXECUTIVE COMMISSION. ON CHINA, 108TH CONG., ANNUAL REPORT 2003 1 (Comm'n. Print 2003).

⁹⁷ National Labor Committee & China Labor Watch, *Toys of Misery* 2004, Feb. 2004, available at <http://www.nlcnet.org/campaigns/he-yi/he-yi.shtml> [hereinafter *Toys of Misery* 2004].

⁹⁸ *Id.*

⁹⁹ *Trade Unions Help Workers to Recover Unpaid Wages*, PEOPLE'S DAILY, Dec. 30, 2003, available at http://english.people.com.cn/200312/30/eng20031230_131489.shtml.

employees get no social security or health insurance of any kind.¹⁰⁰

In addition, the working conditions in many of China's factories are sub-standard. In 2002, the National Labor Committee (NLC) released a report detailing the conditions in a typical Chinese toy factory staffed mainly with "young women between the ages of 18 and 30, migrants from rural areas who live and work with restricted rights."¹⁰¹ During the peak season, which lasts approximately six months, "[a] typical work day . . . begins at 8:00 a.m. and often goes past midnight."¹⁰² In addition, the women work seven days per week for \$0.12 to \$0.14 cents per hour in 104-degree factory temperature; are fired if sick; share one small dorm room with fifteen other women; and are constantly "dizzy, nauseous, and on the verge of throwing up from the strong chemical paint odor . . . in the factory air."¹⁰³ As the report notes, these factories exist because seventy-one percent of U.S. toys are imported from China.¹⁰⁴ In fact, Wal-Mart alone accounts for one out of every five toys sold in the United States.¹⁰⁵

Wal-Mart is not the only multinational corporation responsible for sweated labor in China's economic zones, or in the export processing zones of other developing countries. Nevertheless, like other major retailers, it is unquestionably accountable for conditions in its own factories. Accordingly, Wal-Mart enacted a "Code of Conduct" addressing workers' rights provisions, which it now claims are in place in all its contracting firms.¹⁰⁶ Further, it employs PricewaterhouseCoopers (PwC) and other large accounting firms as auditors, which Wal-Mart says are responsible for inspecting all its suppliers in China, e.g. making sure that each is in compliance with labor and safety laws.¹⁰⁷ In 2003, as a direct result of Wal-Mart's actions, seventy-two factories were permanently blacklisted from doing business with the company for violating child labor laws, and

¹⁰⁰ *Toys of Misery* 2004, *supra* note 97.

¹⁰¹ See National Labor Committee & China Labor Watch, *Toys of Misery* 2001 6, Dec. 2001, available at <http://www.nlcnet.org/campaigns/china/chinatoys01.pdf> [hereinafter *Toys of Misery* 2001].

¹⁰² *Id.* at 6.

¹⁰³ *Id.* at 5.

¹⁰⁴ *Id.* at 4.

¹⁰⁵ *Toys of Misery* 2001, *supra* note 101, at 4.

¹⁰⁶ See JEAN-PAUL SAJHAU, BUSINESS ETHICS IN THE TEXTILE, CLOTHING AND FOOTWEAR (TCF) INDUSTRIES, (International Labour Organization, Working Paper No. 110, 2000), available at <http://www.ilo.org/public/english/dialogue/sector/papers/bzethics/bzethics8.htm>.

¹⁰⁷ Peter S. Goodman & Philip P. Pan, *Chinese Workers Pay for Wal-Mart's Low Prices*, WASH. POST, Feb. 8, 2004, at A1.

another four hundred suppliers had their contracts suspended for overtime violations.¹⁰⁸

Thus, Wal-Mart clearly has all the institutional components to effectively do these inspections. It even has “labor supervision departments” in Shenzhen, Dongguan, Putian City, Guangdong, and the Fujian Province.¹⁰⁹ However, a major study of Wal-Mart’s monitoring operations showed that PwC missed significant labor problems in the company’s contracting firms, such as hazardous chemical use and other safety hazards, barriers to freedom and collective bargaining, and violations of wage and overtime laws.¹¹⁰ In addition, there were instances of employers falsifying time cards in order to simulate compliance with labor regulations.¹¹¹

Although Wal-Mart has claimed that it does its audits unannounced, evidence from its factory inspections showed that the monitors’ visits were revealed well beforehand, which gave the factory owners time to “fix” any abuses prior to any visit.¹¹² Thus, employers were able “prepare” for these audits by cleaning up, creating fake time sheets, and briefing workers on what to say if they were questioned.¹¹³ For example, in a memo entitled “Instructions on Inspections from Wal-Mart,” workers at one factory were told to wear their uniforms and work “carefully,” “keep clean” and ensure that they “hav[e] [their] Health Certificate and Training Certificate on them,” and wear their gauze masks and earplugs.¹¹⁴ The memo also directed that the kitchen dormitories and public space should be cleaned and food cooked “strictly according to the requirements.”¹¹⁵ In addition, factory personnel were told to unlock the fire exits (presumably closed before the inspection), and unlock the first aid or medical boxes (presumably locked prior to the audit).¹¹⁶ Workers told those conducting the study that they were paid substantially better than usual for cooperating with the ruse.¹¹⁷

In order to remedy this situation, the auditors must conduct

¹⁰⁸ *Id.*

¹⁰⁹ *Condemnation of Wal-Mart Sparks Labor Rights*, CHINA LABOR WATCH, available at http://www.chinalaborwatch.org/en/web/article.php?article_id=50045 (last visited Mar. 1, 2005).

¹¹⁰ DARA O’ROURKE, MONITORING THE MONITORS: A CRITIQUE OF PRICEWATERHOUSECOOPERS (PWC) LABOR MONITORING 1 (Mass. Inst. of Tech., 2000), available at <http://web.mit.edu/dorourke/www/PDF/pwc.pdf>.

¹¹¹ *Id.*

¹¹² *Id.* at 3.

¹¹³ *Id.* at 6.

¹¹⁴ *Toys of Misery* 2004, *supra* note 97, at 3.

¹¹⁵ *Id.*

¹¹⁶ *Id.* at 1.

¹¹⁷ *Id.* at 2.

surprise visits and longer inspections. Additionally, independent auditors might be more effective in reporting the true conditions of these workplaces.¹¹⁸ Charles Kernaghan of the NLC commented:

It is impossible that Wal-Mart is still so totally ignorant of the common practice in China for factories to keep two sets of time cards and payroll sheets, and to clean the factory, unlock emergency exits, provide safety gear and take whatever other steps are necessary in preparation for Wal-Mart's announced visit. No company could be that shallow and gullible – unless of course it were consciously acting out a role with the full intent of achieving the desired result – a whitewash.¹¹⁹

Robert J. Rosoff, a writer for *The China Business Review*, the official magazine of the U.S.- China Business Council, similarly noted:

In practice, however, the rights of Chinese workers are routinely violated. Workers are often required to work far more than 40 hours a week, have few days off, are paid below the minimum wage, and are not paid required overtime. Improper deductions from wages are common. Some Chinese workers must pay a large sum of money as a “deposit” to their employer, and they may have to pay a “recruitment fee” in order to be hired. These payments can prevent workers from leaving jobs where their rights are violated. Physical abuse of workers, and dangerous working conditions, are also common.¹²⁰

The tragedy is that these labor violations are inevitably repeated because no one takes responsibility by punishing those who break the law.¹²¹ Even other multinationals, such as Hasbro and Mattel, which have made much broader commitments than Wal-Mart to the remediation of working conditions in China, agree that there is a long way to go to make things right.¹²²

Chinese workers are not alone, though, in suffering labor violations at the hands of Wal-Mart. On the contrary, if the company saves costs by contracting with sweatshops in China, it also saves money by developing policies and practices that make employees in its U.S. retail stores work under sweatshop-like conditions.¹²³ Although Wal-Mart may not be the only store to

¹¹⁸ Steven Frost, *China: Chinese Workers Pay for Wal-Mart's Low Prices*, ASIAN LABOUR NEWS, Feb. 8, 2004, at <http://www.asianlabour.org/archives/000795.php>.

¹¹⁹ *Toys of Misery* 2004, *supra* note 97, at 1.

¹²⁰ Robert J. Rosoff, *Beyond Codes of Conduct: Addressing Labor Rights Problems in China*, CHINA BUS. REV., Mar. - Apr. 2004, at 44.

¹²¹ Bama Athreya, *China's Changing Labor Relations*, CHINA BUS. REV., Jan. - Feb. 2004, at 20, 21.

¹²² See generally Abigail Goldman, *Mattel Struggles to Balance Profit with Morality*, SEATTLE TIMES, Nov. 28, 2004, at A1; Toh Han Shih, *Time for Toy Industry Rogues to Sweat*, SOUTH CHINA MORNING POST, Jan. 31, 2005, at 4.

¹²³ *Audit Details Violations at Wal-Mart*, L.A. TIMES, Jan. 14, 2004, at C3. The

impose these conditions on its workers, it has acquired – perhaps more than any other retailer – a reputation for paying its workers poorly and treating them badly.¹²⁴

Wal-Mart is alleged to have one of the most poorly paid work forces in the U.S. economy, and offers low-quality health benefits, which many employees cannot afford.¹²⁵ As a result, employees are forced to turn to the public sector for a variety of subsidies, including health care, at great cost to American taxpayers.¹²⁶ Wal-Mart's policies also have far-reaching effects on other industries. In fact, some argue that without Wal-Mart's low wages and poor health insurance, its grocery store competitors, e.g. Vons, Albertson's and Safeway, might have been willing to bear the higher wages and health care benefits requested by their unionized workers, thus avoiding California's 2003 grocery strike.¹²⁷

In addition, some of Wal-Mart's policies have come under legal fire. The company recently agreed to pay \$11 million to settle claims stemming from the federal investigation of illegal workers hired by Wal-Mart's cleaning contractors, who forced approximately 345 illegal immigrants to "work[] seven days or nights a week without overtime pay or injury compensation."¹²⁸ In addition, "[t]hose who worked nights were often locked in the store until the morning."¹²⁹ Wal-Mart is also the target of the largest sex discrimination class action lawsuit in history, which currently includes 1.6 million workers.¹³⁰ The plaintiffs allege that (1) regardless of rank or seniority, women employed at Wal-Mart are paid less than men in the same jobs; and (2) Wal-Mart has purposely discriminated against women when it comes to job promotion.¹³¹

definition of a sweatshop is a workplace where labor laws, and/or health and safety regulations that are already on the books, are routinely violated. See ELLEN I. ROSEN, MAKING SWEATSHOPS: THE GLOBALIZATION OF THE U.S. APPAREL INDUSTRY 2 (2002).

¹²⁴ *Wal-Mart's Child Labor Deal Draws Fire, Allows Notification Before Future Probes*, BELLEVILLE NEWS DEMOCRAT, Feb. 19, 2005, at A7.

¹²⁵ DEMOCRATIC STAFF OF THE COMMISSION ON EDUCATION AND THE WORKFORCE, 108TH CONG., EVERYDAY LOW WAGES: THE HIDDEN PRICE 4, 5 (Comm. Print 2004), available at http://www.walmartclass.com/walmartclass94.pl?wsi=0&websys_screen=all_reports_view&websys_id=18 [hereinafter EVERYDAY LOW WAGES]; Abigail Goldman & Nancy Cleeland, *The Wal-Mart Effect: An Empire Built on Bargains Remakes the Working World*, L.A. TIMES, Nov. 23, 2003, at A1.

¹²⁶ Goldman & Cleeland, *supra* note 125.

¹²⁷ *Id.*

¹²⁸ Associated Press, *Wal-Mart Pays \$11M to Settle Illegal Immigrant Janitors Case*, USA TODAY, Mar. 18, 2005, available at http://yahoo.usatoday.com/money/industries/retail/2005-03-18-wal-mart-immigrants_x.htm?esp=1.

¹²⁹ *Id.*

¹³⁰ James Doran, *These Men Stripped Me of My Dignity*, TIMES, Aug. 19, 2004, at 6.

¹³¹ Richard Drogin, *Statistical Analysis of Gender Patterns in Wal-Mart Workforce*, February 2003, at http://www.walmartclass.com/walmartclass94.pl?wsi=0&websys_screen

Wal-Mart is also accused of multiple violations of the National Labor Relations Act, which gives employees the right to organize.¹³² The company shows all new employees a video describing its anti-union position, and a handbook which instructs management how to fend off efforts by employees who even discuss forming a union.¹³³ A telephone number is given to all store managers to alert company executives about such behavior, and a team from national headquarters is then sent to the store to discourage union activity.¹³⁴ The company has been brought up on a number of charges by the National Labor Relations Board and has been fined multiple times for violating workers' right to organize.¹³⁵

In addition, Wal-Mart's systematic practice of understaffing stores, e.g. to keep costs low, is extremely problematic because employees, and even management, have to do more work than is possible during the hours of their officially paid employment.¹³⁶ Thus, they face a Hobson's choice – either work off the clock or face losing their jobs. This type of behavior is permitted because Wal-Mart's unique culture is designed to legitimize its authority by routinely disciplining its employees using shame and intimidation.¹³⁷ Unfortunately, because women are sixty-five percent of Wal-Mart's hourly workforce, they are the worst victims of these abuses.¹³⁸

IV. CHINESE AND AMERICAN WOMEN: THE REAL LOSERS

There is no doubt that female workers in developing countries will suffer most from the changes wrought by the WTO's quota elimination. Nevertheless, it is critical to focus on the convergence that is occurring between women who produce for export, e.g. for Wal-Mart and other multinationals, and Wal-Mart's female retail workers in the U.S. There are signs that conditions in China may actually improve, whereas, in the U.S., all signs point to a worsening situation. Under President George W. Bush's administration, there is currently no active movement to improve or enforce existing wage and hour or labor laws for

=all_reports_view&websys_id=18; EVERYDAY LOW WAGES, *supra* note 125, at 3.

¹³² EVERYDAY LOW WAGES, *supra* note 125, at 3.

¹³³ *Id.* at 4.

¹³⁴ *Id.*

¹³⁵ Elizabeth DiNovella, *The True Costs of Low Prices: Selling Women Short: The Landmark Battle for Workers' Rights at Wal-Mart*, THE PROGRESSIVE, Jan. 1, 2005, at 44.

¹³⁶ Seth Slabaugh, *'Off-the-Clock' Work Allegations Bring the Heat on Giant Retailer*, THE STAR PRESS, Oct. 17, 2004, at 5A.

¹³⁷ Ellen Rosen, *Untitled*, in WAL-MART: TEMPLATE FOR 21ST CENTURY CAPITALISM (Nathan Lichtenstein ed., forthcoming 2005) (on file with author); Ellen Rosen, *Wal-Mart: The New Retail Colossus and Women Workers*, 6 GEO. J. GENDER & L. (forthcoming 2005).

¹³⁸ Drogin, *supra* note 131, at 11.

workers in American companies, e.g. Wal-Mart.¹³⁹ In addition, there has yet to be any action by the U.S. Equal Employment Opportunity Commission to try and reduce the degree of sex discrimination in American workplaces.¹⁴⁰ Further, President Bush has urged Congress to pass tort reform legislation that will “do away with . . . frivolous and costly lawsuits,” a proposal that his critics say is “meant to protect big companies [like Wal-Mart] and their insurers.”¹⁴¹

In contrast, in China, awareness of labor abuses is growing. While the country does not publish an official number of factory protests, one Hong Kong labor rights group suggests that the number has grown dramatically, reaching 300,000 in 2003.¹⁴² Many stories about these protests are now published by the Western press and Chinese newspapers. Since the latter are censored, some believe that the coverage reflects the Chinese government’s desire to see these problems aired and resolved.¹⁴³ Because protests are illegal, protesters continue to be arrested and beaten.¹⁴⁴ However, China may nevertheless be offering signs that it is ready to engage in reform, lest the legitimacy of the Party’s authority be questioned.¹⁴⁵

In addition, salaries for Chinese workers, which have risen sharply in recent years, are fast approaching ninety cents an hour on average, which is thirty percent higher than Bangladesh, and more than double the wages paid in Indonesia.¹⁴⁶ Recently, the government of the Guangdong Province has increased wages and incorporated a medical and social security program.¹⁴⁷ It remains to be seen how well this new plan will be implemented.

There is also the possibility of worker representation in China. The ACFTU has traditionally been allied with the

¹³⁹ David Moberg, *Under the Microscope: An Aggressive Audit of Labor Unions is Only One Front in Republicans’ Multi-Pronged Attack*, IN THESE TIMES, Mar. 28, 2005, at 22; *Obstacles Grow for Workers Facing Discrimination*, LRA ONLINE, at <http://www.laborresearch.org/story2.php/378> (last visited May 1, 2005).

¹⁴⁰ Ellen Chesler, *A Progressive Agenda for Women’s Rights*, 2 NEW DEMOCRACY PROJECT NEWSLETTER 8, Oct. 1, 2004, available at http://www.newdemocracyproject.org/newsletter.cfm?nl_id=88&nla_id=213.

¹⁴¹ Stephen Labaton, *Bush’s Calls for Tort Overhaul Face Action in Congress*, N.Y. TIMES, Feb. 3, 2005, at A16.

¹⁴² Dexter Roberts, *China: A Workers State Helping the Workers?*, BUSINESSWEEK, Dec. 13, 2004, at 61.

¹⁴³ Robert Marquand, *In China, Stresses Spill Over Into Riots*, CHRISTIAN SCI. MONITOR, Nov. 22, 2004, at 1.

¹⁴⁴ Kathy Chen, *Chinese Protests Grow More Frequent, Violent*, CHINA LABOR WATCH, May 11, 2004, available at http://www.chinalaborwatch.org/en/web/article.php?article_id=50225.

¹⁴⁵ *Id.*

¹⁴⁶ Wehrfritz & Seno, *supra* note 27.

¹⁴⁷ *Guangdong Raises Minimum Wage Level*, CHINA LABOR WATCH, Dec. 4, 2004, available at http://www.chinalaborwatch.org/en/web/article.php?article_id=50226.

Chinese Communist Party and was extensively involved in China's state-run enterprises. Thus, it has always been a so-called company union, rather than a free trade union, and has been challenged by international labor movement leaders, including the AFL-CIO, for its alliance with the government.¹⁴⁸ For a variety of reasons, however, the ACFTU is now trying to encourage membership among multinationals and other privately-owned firms, particularly those in the export processing sector.

In large part, the Party sees it as a way to improve conditions in the factories that form the foundation of China's participation in the new global economy.¹⁴⁹ As one ACFTU official noted: "Unions work as a bridge to communicate between employees and company owners to deal with conflicts, and therefore protect workers' rights."¹⁵⁰ However, some companies, including Eastman Kodak, Dell, McDonald's, KFC, the Japanese Samsung Group, and Wal-Mart, have strenuously fought against joining the ACFTU.¹⁵¹ Regardless, according to Chinese trade union law, the ACFTU does not need the companies' approval - ACFTU is authorized to send its representatives to organize unions without any interference from the individual enterprise.¹⁵²

In October of 2004, after a considerable struggle with Wal-Mart, which refused to follow Chinese law and allow the formation of a union, the ACFTU threatened to blacklist companies that did not comply.¹⁵³ Shortly thereafter, Wal-Mart accepted the ultimatum, despite its continued opposition to unions in the U.S., Canada, and Germany.¹⁵⁴ However, some believe that Wal-Mart is simply stalling. Company executives have said that they will accept a union, in accordance with the law, but only if workers request it.¹⁵⁵ Chinese workers, though, are fearful of getting fired, and, unsurprisingly, Wal-Mart has yet to receive any requests for union organization.¹⁵⁶

¹⁴⁸ See Adam Daifallah, *Labor Unions in a Rift Over Communist China*, N.Y. SUN, Oct. 21, 2002, at 1.

¹⁴⁹ Roberts, *supra* note 142.

¹⁵⁰ Jiang Jingjing, *Trade Unions Need Update*, CHINA BUS. WEEKLY, Nov. 16, 2004, at para. 4, available at http://www.chinadaily.com.cn/english/doc/2004-11/16/content_392529.htm (internal quotation marks omitted).

¹⁵¹ Roberts, *supra* note 142.

¹⁵² See generally Lan Xinzhen, *Coming to Terms With Unions*, BEIJING REVIEW, Dec. 9, 2004, at 32, available at <http://www.bjreview.com.cn/ml-zhong/ml-200449-z.htm>.

¹⁵³ Jingjing, *supra* note 150.

¹⁵⁴ *Id.*

¹⁵⁵ Xinzhen, *supra* note 152.

¹⁵⁶ *Id.*

V. CONCLUSION

Multinationals have entered into a new kind of competitive regime whose principles have become increasingly dominated by the Wal-Mart model, e.g. squeezing suppliers to drive down prices without regard for the human cost involved in the process. Accordingly, Wal-Mart's competitors, as well as garment industry employees throughout the world, are suffering from an increasingly competitive "race to the bottom." Now that the quotas for textiles and apparel have been eliminated, new manufacturing for these products will likely go to China, which will only serve to further stress the poverty-stricken countries that can least afford to lose business. As it stands, Wal-Mart is expected to reduce its apparel production to six out of the sixty or so countries that currently supply it.¹⁵⁷

It is not clear how large corporations will be able to compete in this new business context without using sweated labor, both at home and abroad. In spite of its bad reputation, Wal-Mart is defending its business tactics by attempting to "educate" the public – the company took out advertisements in 100 major U.S. newspapers to answer its critics.¹⁵⁸ However, the reality is that regardless of Wal-Mart's words, its actions, or lack thereof, speak volumes – even now, Wal-Mart continues to refuse to make meaningful changes to its policies or practices, which means that suppliers and workers all over the world will still ensure hardship courtesy of Wal-Mart.

¹⁵⁷ *Global Unions and Wal-Mart*, ASIAN LABOUR NEWS, available at <http://www.asianlabour.org/archives/003304.php>.

¹⁵⁸ *Wal-Mart is Working for Everyone* (Nationwide Advertisement), Jan. 13, 2005, available at <http://dodo.netcomsus.com/walmart/8p75x11p25-en.pdf>.