Walmart's Global Track Record and the Implications for FDI in Multi-Brand Retail in India

UNI global union

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A report by UNI Global Union

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Introduction

This paper is submitted by UNI Global Union, a global union representing more than 20 million workers from over 900 trade unions in the services industries. UNI affiliates include unions which together represent millions of workers in the retail industry, many of which have relationships with the global retailers who now seek to enter India. The report is informed by the experiences of many of our affiliates with global retailers, but in particular the United Food and Commercial Workers International Union (UFCW), a union of 1.3 million members in North America. UNI has signed global agreements with over 40 multinational companies, which set forth parameters for fair treatment of their employees and their unions. In India, UNI affiliates include unions in the banking, telecommunications, postal, media, graphical, private security and retail industries.

Executive Summary

We believe that without adequate safeguards put in place, FDI in multi-brand retail will likely lead to widespread displacement and poor treatment of Indian workers in retail, logistics, agriculture and manufacturing. The report discusses the potential effects of globalised modern retail, on four groups of stakeholders: modern retail workers, small retailers (kiranas and hawkers), supply chain intermediaries (e.g. wholesalers), and producers. This report examines the track record of Walmart, the largest retailer in the world, with global revenue of $421 billion USD in 2010, 3.5 times the revenue of the next-largest competitor[1].

As set forth in more detail within the report, Walmart has a record of violating laws protecting workers' rights and aggressive anti-union conduct in the United States and elsewhere. For example, Human Rights Watch in a 2007 report noted that Walmart's "relentless anti-union drumbeat creates a climate of fear at its US stores." And as a result, "Many workers are convinced they will suffer dire consequences if they form a union."[2]

In the United States studies show that Walmart has a negative impact on both retail worker wages and total retail employment. University of California researchers found that "Walmart workers earn an estimated 12.4% less than retail workers as a whole."[3] And other researchers estimated that "Each Walmart worker takes the place of 1.4 retail workers."[4]

In a number of countries, the presence of a Walmart store has had a devastating impact on small businesses in the surrounding areas. Studies have also found that the expansion of hypermarkets like Walmart has led to the mass closure of small businesses in the United States and other countries. Researchers from the United States Census Bureau found that "the entry of and growth of [hypermarkets] has a substantial negative impact on employment growth and survival of single unit and smaller chain stores."[5]

Supply chain intermediaries, like wholesalers and other middlemen, are also negatively impacted by Walmart. The company's global reach allows it to source goods directly thereby circumvent existing wholesalers and distributors. During the recent Competition Tribunal hearings in South Africa regarding Walmart's acquisition of Massmart, the company cited its ability to "disintermediate" (e.g. eliminate middle men) as an important way to cut costs.[6]

Workers in the company's supply chain do not fare much better. In the long term, Walmart pushes prices paid to farmers and manufacturers *down* rather than raising them, and producers unable to accept such concessions simply go out of business. The company is so large that it has the power to dictate the terms of suppliers' contracts, including turnaround time, quality, quantity and price. In a review of Walmart's Mexican operations one clothing manufacturer noted that "Walmart has driven many suppliers out of business. Walmart maintains its profit margin… They never reduce their margin."[7] Therefore, as regards the supply of products for sale in the Walmart stores, the potential effects of FDI in retail include an increase in imports, price pressure on Indian producers, particularly SMEs, through giant retailer monopsonies, and the depression of pay and conditions for manufacturing workers and farmers.

UNI recognizes that the conditions and experiences in each country vary, and acknowledges that India needs to craft its own policies. Yet we believe that our experiences around the world should inform the formulation of those policies and would therefore suggest that India maintain its ban on FDI in multi-brand retail. However, in the likely event the government proceeds to allow FDI in multi-brand retail this paper offers a number of recommendations to mitigate its impacts. Among these, UNI asks that the government take steps to guarantee that retail workers will have an opportunity to be represented by a union and that a National Wage Board is established. We also urge that the government maintain and strengthen the current conditions under consideration, including the limitation on the pace and scale of the access to the Indian market, local sourcing and by the addition of an enforcement mechanism in place of self-monitoring.

A number of large global retailers are poised to invest in India if the barrier to FDI is removed. But FDI without strong conditions in place could lead to massive disruption of the Indian economy and society. In their quest to dominate retail markets and secure profits, big retailers like Walmart say they will eliminate unnecessary costs, but instead they transfer the burden of these costs onto supplier companies, manufacturers, retail workers, farmers, and society at large. We therefore advocate a rigorous regulatory framework that builds in legally enforceable protections to protect and assist those workers and other groups who stand to be harmed by the policy change.

Walmart is particularly relevant because compared to other large international retailers; it has the largest footprint in India and is therefore poised to expand rapidly once FDI restrictions are lifted. Walmart has already opened 14 wholesale stores in 4 states through its joint venture with Bharti Retail and the retailer also supplies back-end assistance to Bharti Retail's 150+ supermarkets and compact hypermarkets in 9 states.[8] Walmart executives emphasise the need to build scale in existing markets in order to achieve profitable returns;[9] as soon as the company enters a new market, rapid growth is a priority. There is speculation in the press that Walmart might gain a controlling stake in Bharti Retail's front-end operations, which would give it immediate access to an existing network of stores once FDI is permitted.[10] By comparison, Carrefour operates only two wholesale stores, in Delhi and Rajasthan, and Tesco does not operate any, though it works with Tata Group under a franchise agreement, providing back-end expertise for a mere 13 Star Bazaar hypermarkets.[11]

Walmart's behavior elsewhere can help us understand how the company will likely operate in India. Walmart refers to its cost-cutting model as "Every Day Low Costs" (ELDC), and the company has publicly stated that it is committed to its implementation in every market where it operates.[12] The company is an operational trend-setter – it was a pioneer in the globalised economy of the '80s and '90s, sourcing cheap and lower-quality goods from China while often paying the lowest possible wages to retail workers in the US. In an affidavit presented to the Competition Commission of South Africa regarding Walmart's entry into that country, Professor Nelson Lichtenstein of the University of California argues that "Walmart is a highly centralised company which keeps tight control of its foreign subsidiaries and transforms them, as far as possible, into clones of the US parent."[13] As Walmart has expanded it has brought its business model to other parts of the world, depressing labour standards in its stores, pushing SMEs and socially responsible employers out of business and creating a far-reaching global sourcing system that pits workers earning poverty wages in sourcing countries against each other.[14]

I. RETAIL WORKERS

Because of its large scale, Walmart has the power to exert intensive pressure on the labor market of retail workers. From UNI's experience working with retail worker unions in countries where Walmart operates, we believe that the company regularly demands significant increases in productivity from workers without commensurate increases in worker compensation.[15] The company is able to charge low prices in large part because it pays as little as possible – in some cases poverty wages – to its workers. In India, where modern retail work is still a relatively recent phenomenon, we believe that Walmart will attempt to set compensation and worker rights standards as low as possible to begin with. This type of low-quality job will not provide the foundation for a sector in which regular workers are able to thrive and benefit from India's rapid economic development.

Walmart pushes down pay for retail workers in the United States. When Walmart builds a new store there, the jobs that it displaces usually provided better pay, benefits and scheduling than Walmart does. According to Kenneth Jacobs of the University of California, Berkeley, "Walmart workers earn an estimated 12.4% less than retail workers as a whole, and 14.5% less than workers in large retail in general" in the United States. They are also less likely to have employer-sponsored health benefits. Because they earn so little, Walmart workers in the US are more likely to rely on publicly provided health and welfare programs compared to retail workers as a whole.[16] In 2007, Walmart was estimated to have lowered average retail wages by 10% – by displacing higher-paying jobs and by putting pressure on competitors to reduce wages – at an annual cost to US workers of $4.5 billion.[17]

Walmart's extremely low wages are not good for any American worker, but they especially hurt women, who are disproportionately represented in low-paying positions. In 2010, Walmart employed 798,881 women in non-supervisory positions,[18] who earned an average wage of just $8.81/hour.[19] In most parts of the United States, this is not a living wage for a single adult working full-time with a child.[20]

Walmart has a history of paying women less than men. In 2001, several women filed a lawsuit against the company alleging gender discrimination in pay and promotions. Under U.S. law, when a number of people have the same complaint, they are permitted to join together legally and file what is known as a class action. The lawsuit brought by Walmart employees, Dukes v. Walmart, became the largest class-action lawsuit in US history, with the plaintiffs representing roughly 1.5 million current and former female workers .[21]

As part of the proceedings, Walmart was compelled to disclose payroll and employment records. In his analysis of these records, economist Richard Drogin found that in 2001, female employees at Walmart at all levels earned less than their male counterparts. On average, women earned $5,200 less per year than men.

The Dukes case was dismissed by the US Supreme Court in June 2011. The justices did not rule on the merits of the case; instead, they essentially decided to disallow the lawsuit because the class was so large.

The plaintiffs continue to fight back and have now taken their cases to lower-level courts after breaking up the class into multiple smaller classes, including smaller class action suits filed in the states of California and Texas.[22] Through Jan. 27, 2012, more than 500 women who were part of the plaintiff class in the Dukes lawsuit had also lodged individual discrimination claims against Walmart, thousands more claims are expected from women in other states.[23]

In the United States, where minimum wage and other basic labour standards exist but lack strong enforcement, Walmart has broken the law multiple times in the past when it comes to minimum working conditions. The company has been repeatedly found guilty of forcing workers to work off-the-clock and denying workers paid breaks and overtime pay.[24] Walmart's past systemic denial of wages owed to hourly workers has been confirmed by former managers: Joyce Moody, a former manager in Alabama and Mississippi, told the New York Times in 2002 that Wal-Mart "threatened to write up managers if they didn't bring the payroll in low enough." Depositions in wage and hour lawsuits reveal that company headquarters leaned on management to keep their labour costs at 8 percent of sales or less, and managers in turn leaned on assistant managers to work their workers off-the-clock or simply delete time from employee time sheets.[25] In 2008 Walmart agreed to settle 63 pending wage lawsuits in 42 states. The settlements totaled $640 million dollars in legal fees and payments to former and current workers. [26]

Apart from violations of wage and hour laws, Walmart also has a poor track record when it comes to workplace safety and child labour laws in the United States. An internal company audit of 128 stores in the U.S. found that in one week in July 2000 there were 1,371 instances of minors working too late, during school hours, or for too many hours in a day. Wal-Mart paid $135,540 to settle a case with the U.S. Department of Labour alleging that the company violated child labour laws in the states of Arkansas, Connecticut and New Hampshire between 1998 and 2002 by requiring teenage employees to use hazardous equipment such as chain saws, paper balers and forklifts.[27]

In 2000, Washington State's Department of Labour and Industries threatened to take over the management of Wal-Mart's workers' compensation claims. The Department found that Wal-Mart repeatedly did not allow employees to file accident reports or workers' compensation claims, failed to respond to claims, made unreasonable delays in payments, prematurely terminated and miscalculated compensation, had consistently poor record-keeping, and failed to recognise injured workers' rights to lost-time compensation.[28]

The problem of extremely low pay at Walmart is not restricted to the United States. Professor Anita Chan of the Australian National University, a Walmart scholar who recently published a book about Walmart's practices in China, argues that "the overwhelming problem facing Wal-Mart employees [is] the low salaries even by [China's] low standard. In fact, the take-home pay is lower than most of the exploited factory production-line workers receive.[29] Chan has also found that between 2006 and 2008, Walmart systematically circumvented Chinese minimum wage laws at multiple Walmart stores by paying a base wage that is lower than the legal minimum, then supplementing the base wage with a bonus and housing subsidy. Although the total payout to the workers was equal or greater to the legal minimum wage, this manipulation of pay packages afforded Walmart numerous benefits, according to Chan:

> First, since the subsidy is a fringe benefit, there is no obligation to in-

> crease it each year to catch up with inflation. Wal-Mart does not violate the labour law in not adjusting its housing subsidy and bonus. Thus when the official minimum wage goes up every year Wal-Mart only adjusts the basic wage. This also helps Wal-Mart to avoid paying in full an employer's contribution to its employees' social security premium, which is calculated as a percentage of the worker's wage. That means Wal-Mart gets away with only paying about half the social security premium.[30]

Chan also notes that a large percentage of the work force at Walmart in China is composed of casuals or part-timers who receive even lower pay and no subsidies.[31]

When Walmart workers take collective action to address unfair treatment, the company uses anti-worker and sometimes illegal tactics to evade responsibility and suppress workers' freedom of speech. In the US and Canada, Walmart is a virulently anti-union company. In more than one instance, after North American Walmart workers have elected to form a union, the company has simply closed those workers' department or store – at the meat department in a Texas Walmart in 2000, and at a supercenter in Quebec in 2005.[32] Not a single store in the United States has been unionised. In the United States between 1995 and 2005, the National Labour Relations Board issued 60 complaints against Wal-Mart in the U.S. These complaints cited the company for illegally retaliating against employees who attempted to organise, through illegal firings, unlawful surveillance, threats and intimidation.[33] Human Rights Watch documented Walmart's denial of its workers' basic rights in a 2007 report:

> The retail giant stands out for the sheer magnitude and aggressiveness of its anti-union apparatus. Many of its anti-union tactics are lawful in the United States, though they combine to undermine workers' rights… Human Rights Watch's investigation revealed that, in most cases, Wal-Mart begins to indoctrinate workers and managers to oppose unions from the moment they are hired. Managers receive explicit instructions on keeping out unions, many of which are found in the company's "Manager's Toolbox," a self-described guide to managers on "how to remain union free in the event union organisers choose your facility as their next target." … Wal-Mart's relentless anti-union drumbeat creates a climate of fear at its US stores. Many workers are convinced that they will suffer dire consequences if they form a union, in part because they do not hear pro-union views. Many are also afraid that if they defy their powerful employer by organizing, they could face retaliation, even firing.[34]

According to the report, the company even went so far as to distribute an internal document – "A Manager's Toolbox to Remaining Union Free" – that detailed its strategies and tactics around preventing workers from organising.

Outside of North America, Walmart has reluctantly allowed unions in some of its stores, though these are generally located in countries with robust and institutionalised retail unions, and in some cases, union representation and collective bargaining are legally mandated. However, working conditions at Walmart in these countries are often still poor. UNI has received reports from its partner unions in Latin America that Walmart workers face a myriad of struggles at work, including wage and hour violations, excessive working hours, anti-union intimidation tactics, and health and safety violations.[35]

It is important to note that these criticisms of Walmart do not apply to all of the foreign retailers who propose to enter the Indian market. Carrefour has had an agreement with UNI since 2000 through which it commits to respect worker rights and the right to collective bargaining wherever it operates. Metro also has an explicit Code through which it commits to remain neutral towards unions and has been in the process of implementing that code with a UNI affiliated union in India.

UNI is concerned that in the case of the proposed FDI policy changes, retail workers in India's modern retail sector will be as vulnerable to the whims of this irresponsible company as workers in other countries are. Strong and enforceable legal requirements for decent pay and working conditions are absolutely vital for the long-term preservation of modern retail workers' dignity, freedom, and economic survival. In addition, in order to raise standards for retail workers across the sector and secure fair wages and conditions, UNI recommends that the government take steps to establish a National Wage Board for the industry. This recommendation is discussed more fully below.

II. LOCAL SHOPKEEPERS AND RETAILERS

Allowing FDI in multi-brand retail will lead to the growth in number and sales for India's modern retail outlets and these stores will compete both with formal domestic retailers and with the informal sector, including kiranas and hawkers. Retail giants' entry into the Indian retail market is likely to put many of those involved in the informal retail sector out of business and likely lead to increased market consolidation in the formal sector. As small, less capitalized retailers are less able to absorb losses in the face of unsustainably low prices charged by big competitors, these small business will be forced to close their doors.

Those in favor of opening India to retail FDI argue that new modern retail outlets will not displace those who work in the informal sector. They argue that the overall market is growing so rapidly as incomes for many Indians rise there is enough space for both to succeed. However, retail experts offer a conflicting story – in the retail world, countries with large informal markets like India are seen as favorable investments for new market entrants *because* of the informal market's dominance. These markets offer an opportunity to gain market share vis-à-vis informal retailers. In India, where 99% of grocery sales occur in the informal sector, any growth in grocery market share faster than market growth that is experienced by formal retailers will amount to losses in the informal sector. In the case of Walmart, executives are proud of the company's ability to grow faster than the market in most countries, which indicates that the company is capturing sales from competitors.[36]

Some argue that kiranas will remain competitive because they currently suit local customer needs, but this will likely change with the influx of modern retailers' cheap goods. The "Walmart effect," as defined by US investigative reporter Charles Fishman, occurs when "Wal-Mart, or any big-box retailer, comes into town, reshapes shopping habits, and drains the viability of traditional local shopping areas or mom-and-pop shops."[37] Walmart and its peers redefine the markets that they enter, changing consumption habits over time, and this factor combined with the company's ability to underbid other retailers, means inevitable economic displacement for those involved in the existing system.

Recent history proves that when large international retailers enter, informal and small-scale businesses are forced to shut their doors. A United States Census Bureau study of the US retail sector between 1976 and 2005, found that "the entry and growth of Big-Box stores (hypermarkets) has a substantial negative impact on employment growth and survival of single unit and smaller chain stores that operate in the same detailed industry as the Big-Box… the impact is largest if the single unit or smaller chain store is within 1 mile or 1 to 5 miles of the Big-Box store relative to being 5 to 10 miles from the Big-Box."[38] In a similar study of Walmart's effects on jobs in 1,749 counties in the US between 1977 and 1999, Emek Basker of the University of Missouri found that Walmart's entry into a new county led to a reduction in the number of small retail establishments in that county.[39]

Not only are small retailers put out of business when large retailers like Walmart enter; in some instances modern retail may also create fewer jobs than it destroys. In a national study of Walmart in the US between 1977 and 1995, David Neumark of the University of California, along with researchers from Clark University and Cornell University, found:

> "Each Wal-Mart worker takes the place of 1.4 retail workers. On a county basis, this estimate implies a 2.7 percent reduction in retail employment attributable to a Wal-Mart store opening. Of course this need not all come about via Wal-Mart workers literally displacing other workers. Wal-Mart's entry into a market may also induce other retailers to try to cut costs by shedding workers. And we reiterate that these estimates do not imply absolute declines in retail employment, but instead that retail employment was lower than it would have been had Wal-Mart stores not opened."[40]

In rural areas of the US, Walmart's effects on the retail sector are similar. Kenneth Stone of Iowa State University, in a study of Walmart's effects on Mississippi's retail sector between 1990 and 2001, argues that "Although it cannot be proven conclusively, there is a strong sense that the zero-sum-game theory applies in the case of supercenters in Mississippi. For every gain in sales by supercenter-related goods, there were corresponding losses in sales for businesses of these types in the host counties and, in some cases from non-host counties."[41]

In the US, Walmart has expanded in an already modern and relatively efficient retail environment, where the possible gains in efficiency, devastating to employment already, have been much smaller than they will be in a retail market like India's, where traditional, small-scale retailers still dominate.

The negative effects of large retailers on small retailers are not restricted to the United States. A 2010 paper authored by Thabelo Rabhugoni and Mfundo Ngobese of the Competition Commission of South Africa suggests that "larger discounts negotiated by larger buyers have a consequence for discounts negotiated by smaller buyers." According to the analysis, South Africa's retail sector has become more formalised and concentrated as a result small retailers have exited the market.[42] Before the Competition Tribunal of South Africa in 2011, Etienne Vlok, Director of the South Africa Labour Research Institute, also argued that if Walmart entered the South African market, there would probably be "increased levels of concentration in South Africa over the long-term" and that the merger was "likely to lessen or prevent competition within the retail sector."[43]

In urban Chile, when modern retail arrived in the early 1990s, a large number of small shops went out of business in the span of just a few years. As reported in ICRIER's May 2008 report, between 1991 and 1995, "15,777 small shops went out of business, mainly in Santiago, a city of 4 million, "representing 21-22% of small general food, meat and fish shops, 25% of deli/meat shops and dairy shops, and 17% in produce shops.[44] Chile's food retail sector has continued the process of consolidation to the point of negatively impacting free competition. In December 2011, government competition authorities announced an investigation of Chile's highly concentrated grocery sector, where Walmart is the largest player with 33.4% market share,[45] for possible price collusion of basic products including meats and detergents.[46]

Similar to Chile's early experiences with modern retail, "in urban Argentina from 1984 to 1993, during the most intense period of take-off of supermarkets, the number of small food shops declined from 209,000 to 145,000;" in other words, over 1/3 of small food retailers closed as large formal retailers entered the market.[47]

III. SUPPLY CHAIN INTERMEDIARIES

Supply chain intermediaries, like wholesalers, supplier companies and other middlemen, will feel immediate effects of the entry of multinational retailers. While this may lower the cost of goods in the short term, it will lead to rapid mass dislocation of workers involved in the supply chain. The Indian government must be prepared to address the coming unemployment of these workers if FDI restrictions are relaxed.

Multinational retailers do not hide the fact that they plan to cut out the middle men and overhaul existing supply chains. Even the government and some farmers have argued that FDI in retail will remove middlemen, according to multiple reports in the press.[48] Global retailers in recent years have increased the percentage of goods sourced directly, rather than through suppliers or wholesalers. This process is often referred to as "disintermediation." In Competition Tribunal hearings in South Africa regarding Walmart's acquisition of the South African retailer Massmart in 2011, Walmart executives argued that disintermediation is one important way that it will cut costs in South Africa.[49] The company has also practiced disintermediation in the past. In 2008, Walmart executives in Japan announced that in order to accelerate cost-cutting the company planned to start directly importing private-label goods also sold in Walmart US. The company stopped using some wholesalers and imported items to Japan from Southeast Asia.[50] In October, 2011, Walmart International President Doug McMillon stated that direct sourcing of food, apparel, and general merchandise has the potential to reduce costs for the company by 5-15%.[51]

Mexico offers one example of the effects of global retailers on existing agricultural wholesalers. In a study conducted by James Biles of Indiana University about the globalisation of food retail in Mexico between Walmart's entry and 2005, It was found that the role of regional wholesale markets had diminished significantly due to "the increasing reliance on direct procurement and distribution centers" as well as "the emergence of large, powerful intermediaries closely linked with state government and export markets." Most notably, "this sharp decline in sales coincides with the increasing market share of Wal-Mart and national food retailers."[52]

While we agree with the government that predatory procurement practices on the part of middlemen are not good for producers or consumers, large retailers are not a solution to this problem. As discussed in further detail below, multinational retailers have massive bargaining power relative to suppliers and are equally able to grant disadvantageous prices to farmers and manufacturers. Furthermore, while the profits gained during this process are currently recycled back into India's economy by Indian middlemen and wholesalers, who live and work in India, the profits extracted by Walmart and its peers will flow back to company headquarters and shareholders in Europe and the United States. That said, if FDI in retail is permitted, at the very least, the dislocation of supply chain workers, including wholesalers and middlemen, is of great concern.

IV. PRODUCERS

There are both short-term and long-term effects on producers that we believe are relevant to a discussion of India's FDI policy options. Here we will discuss three potential effects of FDI in retail: an increase in imports, price pressure on Indian producers, particularly SMEs, through giant retailer monopsonies, and the depression of pay and conditions for manufacturing workers and farmers.

Global retailers have global supply chains. Allowing FDI in multi-brand retail opens up the Indian retail market to foreign goods, particularly manufactured goods. As international retailers enter the market, they will tap into their existing global supply chains.[53] Unless there are detailed, effective and strictly enforced local sourcing requirements for international retailers, we have every reason to believe that these retailers will drastically increase the volume of imported products sold to Indian consumers.

Professor Lichtenstein describes Walmart's global sourcing practices in detail in his affidavit to South African competition authorities. According to Lichtenstein, when it became apparent in the 1990s that Walmart's overseas sourcing practices were putting US manufacturers out of business, the company

> ...inaugurated a 'Buy American' purchasing campaign, which it today replicates in virtually every country in which Walmart buys or builds its discount stores. Of course they are now labeled 'Buy Mexico' or 'Buy Local'… in the United States, as in other nations, the buy local campaign was inevitably linked to an increasing reliance on both East Asian imports and debased labour at home. Walmart would increase domestic purchasing, but the company used the prospect of such procurement as a hammer to drive down supplier costs, including wages and profits, and transform these vendors into Bentonville pawns.

Predictably, suppliers felt the brunt of the costs. A spokesman for the National Knitwear and Sportswear Association argued in a 1992 interview that Walmart used the Buy American campaign "as a negotiating club that forces domestic manufactures to compete, often unrealistically, with foreign suppliers who pay their help pennies an hour. As a result, vendors see their gross sales skyrocket and their net profits plunge." Furthermore, one vendor stated that Walmart's approach was making American business *less* competitive by setting the parameters of product development.[54]

US factories that ended up supplying for Walmart into the 1990s generally paid low wages, did not offer health insurance, and did not offer stable schedules. They fought unionisation out of fear that Walmart wouldn't buy union goods, though eventually most of them went bankrupt anyway, and the buildings now sit abandoned in small towns across the country.[55] In order to avoid bankruptcy, large suppliers of brand name goods like Rubbermaid, Huffy and Mr. Coffee relocated their production facilities to China after becoming Walmart suppliers.[56]

There is ample evidence that Walmart transfers a large portion of its costs onto the suppliers and producers that it does work with. The company is so large that it has the power to dictate the terms of contract, including turnaround time, quality, quantity and price.[57] Potential suppliers have very little ability to negotiate over these conditions, which often include increasing quality standards in shorter time for lower pay.[58] In their 2006 essay about Walmart's global logistics empire, Edna Bonacich and Jake B. Wilson of the University of California put it best: "A key aspect of Walmart's relationships with its suppliers (and service providers) concerns its demand that suppliers keep cutting their costs. Some of this cost cutting has led to more efficient operations and the cutting out of unnecessary middlemen. However, at some point all the excess fluff has been cut out of a business and you start reaching the bone."[59] Walmart refers to this phenomenon, in a positive light, as "leveraging of global scale" in order to renegotiate supplier contracts.[60] In more developed economies like the United States, this leveraging of global scale has led to contract terms that push local producers out of business.

In less developed countries, where labour is already relatively cheaper, such purchasing practices drastically reduce producers' profits, threaten their livelihoods, and compel them to lower wages and working standards for employees. The effects are particularly acute for SME producers, which are less able to absorb the losses imposed when Walmart demands a lower price for goods. In sum, in the long term, Walmart and its peers push prices paid to farmers and manufacturers *down* rather than raising them, and producers unable to accept such concessions simply go out of business.[61]

Walmart Mexico ("Walmex") has had a devastating impact on Mexican manufacturing since its arrival in 1991, when it bought a controlling stake in CIFRA, Mexico's largest retailer. According to one Mexican clothing manufacturer, "Walmart has driven many suppliers out of business. Wal-Mart maintains its profit margin… They never reduce *their* margin. They *do* pass on savings in price, but at the expense of the manufacturer."[62] After forcing these local suppliers to reduce costs, Walmex, following the example set by its US counterpart, still decided to buy fewer goods locally. After a decade in Mexico, in 2002-2003, Walmex imported over half of its merchandise from manufacturers in low-wage countries outside of Mexico, especially China.

In Mexico and Central America, recent studies indicate that Walmart has pushed down the prices paid to farmers as well. In a study of the Nicaraguan retail sector conducted between 2007 and 2008, researchers from Michigan State University argue that although Walmart (the dominant food retailer in Central America) is able to reduce the volatility of prices paid to farmers in Nicaragua, the prices paid by Walmart are "significantly lower" than those paid by the traditional market. However, the study also found that domestic modern retailers paid approximately the same prices to farmers that traditional retailers did. Overall, the study found some evidence that "farmers may be paying too much" for the reductions in price volatility associated with Walmart contracts.[63]

In a discussion of the effects of food retail globalisation in southern Mexico, Biles et al argue: "in theory, the globalisation of food retailing provides small-scale agricultural producers in developing countries with an unprecedented opportunity to reach new markets and penetrate supply networks directly…. In the case of Yucatán, however, small-scale producers generally have not benefited from the reconfiguration of food retailing supply networks." Biles attributes the exclusion of small-scale producers in the Yucatán from the supply chain to these producers' lack of "infrastructure, technology, financing and institutional support needed to comply with the increasingly stringent quality-control and certification standards imposed by intermediaries and food retailers. As a consequence, only the largest, most well-financed producers are able to reap the benefits of the globalisation of food retailing by gaining direct access to retail supply networks and export markets."[64]

The quality, volume and delivery requirements demanded by modern retailers can be difficult for farmers to meet; without investment from either supermarkets themselves or other groups, many farmers have no capital to put into improving quality, safety, and delivery standards. In many Asian countries, the number of produce suppliers involved in modern retail supply chains has rapidly declined as modern food retail has grown, since retailers often "delist" suppliers that cannot meet supermarket standards, according to Andrew W. Shepherd in a paper presented to the UN Food and Agriculture Organisation in 2005. For example, in Malaysia, the supermarket chain Giant's vegetable suppliers dropped from 200 in 2001 down to 30 in 2003, and Shepherd observes a similar phenomenon in Thailand.[65]

Interviews of Walmart suppliers in Chile conducted in 2011 by Carolina Bank Muñoz, an Associate Professor at the City University of New York, Brooklyn College, indicate that suppliers for the company are generally dissatisfied with basic aspects of Walmart's procurement model. Although sales for these suppliers have gone up as volumes have risen since Walmart entered Chile through acquisition in 2009, all suppliers interviewed stated that they felt increased price pressure from Walmart. The company has pushed suppliers to either lower the prices of goods sold or put those products on sale, with the suppliers absorbing a considerable portion of the resultant losses. One small supplier stated that he operates on volume of sales (at low prices) rather than sustainable profit margins in his dealings with Walmart, and that this is only possible for him because he has other buyers who pay more than Walmart will for his goods. However, in an attempt to compete with Walmart, other Chilean retailers have begun to emulate the company, and are now starting to demand similar concessions from suppliers, putting their future survival into question.[66]

The examples of Mexico, Chile, and Southeast Asia lead us to believe that small-scale producers, most notably farmers, will need direct assistance in order to stay afloat once multinational retailers enter India.

When Walmart acquired Massmart in South Africa, the government and South African community groups worried that Walmart's entry would "negatively affect the stability of a number of industries within the South African manufacturing sector," leading to "significant deindustrialisation of these sectors."[67] Etienne Vlok of the South Africa Labour Research Institute warned that Walmart's entry would "result in decreased demand within the retail sector for locally-produced products and increase demand for import products" leading to “significant foreclosure (on an industry-wide basis) of domestic manufacturers and suppliers within the industries which supply the retail sector,” including textiles, leather, footwear, furniture, plastics and white goods. In turn, he argued that these closures would lead to “significant job losses” for South Africans. Vlok also argued that Walmart’s entry into South Africa would lead to “increased pressure on suppliers to reduce prices and accept more onerous supply terms… [negatively affecting] the ability of smaller retail firms to compete given their already existing disadvantage in terms of relative bargaining power, resources, and ability to negotiate favorable import contracts.”[68]

The true victims of Walmart’s cut-throat procurement practices are farmers and factory workers. Kenneth Jacobs of the University of California at Berkeley argues that “there is a well-documented history of violations of labour and employment laws by Walmart suppliers in China and elsewhere.”[69] In a similar vein, Scott Nova, of the Worker Rights Consortium, a US-based factory-monitoring NGO argues that “Walmart is – through both its purchasing practices and its failure to effectively remedy rights violations in its overseas operations – the leading corporate contributor to the persistence and pervasiveness of abusive and exploitative labour conditions in global export manufacturing and the greatest corporate beneficiary of the cost savings derived there from.”[70] Nova also posits that “Walmart has repeatedly demonstrated that it is unwilling to hold its suppliers accountable for violations of applicable labour law, thus leaving suppliers who follow the law at a disadvantage.”[71]

As Walmart and its peers already source some products from India, including garments, the effects of the company’s destructive and unjust purchasing practices are already being felt by some of India’s poorest workers.[72] A 2009 report by the Clean Clothes Campaign documenting extensive interviews with factory workers and producers for retail giants in India, Sri Lanka, Thailand and Bangladesh, found that Walmart’s purchasing practices subjected factory workers to excessive working hours for poverty wages, suppression of their right to demand improvements in their treatment at work, and a lack of job security.[73]

If multinational retailers enter India, they should be encouraged to increase the volume of goods sourced in India, but at the same time, safeguards must be put in place to protect producers, especially small and medium producers, from monopsonistic purchasing practices that these companies employ.

V. SOUTH AFRICA

Walmart’s 2011 merger with the large South African retailer, Massmart, faced resistance from many stakeholders within South Africa on grounds similar to those presented in India. While there were no traditional competition issues at stake, the South African competition legal regime provided an opportunity for unions and several government ministries to challenge the merger on the grounds that it did not advance the public’s interest. In applying the public interest concern, the competition Commission and Tribunal considered the effect the merger would have on employment, a particular industrial sector or industry, the ability of small businesses or firms to be competitive, and the ability of national industries to compete in international markets.

The trade unions, led by SACCAWU, an affiliate of UNI Global Union, argued that Walmart’s record, including its animus toward trade unions, negative impacts upon labour conditions for retail and supply chain workers, and its potential negative impact upon domestic industries, warranted a rejection of the merger application. The case is considered to be a landmark decision for South Africa’s competition scheme, as well as significant as regards the development of an industrial policy in South Africa.

The Commission investigated and recommended approval of the transaction without conditions with the assumption that a parallel dialogue taking place between the merging parties, the trade unions, small business and government would lead to an outcome which would assuage the concerns raised by the interveners. However, that dialogue failed to reach an agreement. Persuaded that the merger warranted significant scrutiny and should not be allowed on the basis of unsupported representations about South Africa’s public interest, three departments of the South African government, Department of Economic Development (EDD), Department of Trade and Industry (DTI), and the Department of Agriculture, Forestry and Fisheries (DAF) then intervened and participated in the Competition Tribunal process.

The Tribunal held five and a half days of hearings during which the merging parties, the trade unions and the government departments presented evidence. After a review of the evidence, the Tribunal decided that the merger could go forward with conditions. These included continued recognition of the trade union at Massmart, no retrenchments, rehiring rights for a group of retrenched workers and the creation of a $15 million fund to aid in the development of suppliers. The government departments and SACCAWU appealed the decision to the Competition Appeal Court. Its decision is still pending.

VI. UNI RECOMMENDATIONS

Based upon our experience in other countries, UNI has some reflections on the conditions already proposed by the government. We would also suggest some additional means, through which the government could manage the process, guarantee fair treatment of workers and protect its communities from disruption.

Government proposals

The Indian government has proposed that multi-brand FDI in India be limited in several respects.
UNI would argue that in every case the limitation is justified and could be strengthened. For example, the back-end infrastructure requirement should be more carefully defined and maintained or increased. The number of cities in which the investment will be allowed should be reduced, not increased, and stores should be located away from inner cities in order to reduce the impact on small retailers. The process should move forward with care and due concern for the various stakeholders, in a carefully phased manner.

Local sourcing requirements should be maintained or increased. Detailed local sourcing requirements, the percentage of which should be determined by the government, should stipulate production in India, rather than simply sourcing from an Indian supplier who has imported the product. The percentage of locally sourced goods could increase over time, allowing recent entrants a grace period to adjust their supply chains, while ensuring eventual stability for local producers. In order to facilitate this process, foreign investors should contribute significant money to a government controlled fund to assist domestic suppliers. How these monies are disbursed should be guided by the industrial policy of India, not solely the needs of the multinational retailer.

Finally, and most important, UNI would argue that self-monitoring by the retailer undermines the integrity and legitimacy of the regulations. We would support the creation of a centralized or state run agency to monitor the application of established conditions. Clear consequences – substantive enough to act as a deterrent against undesirable behavior - must be put in place for violations of any conditions.

New conditions

These retail giants should be required to recognise unions and bargain collectively. We propose a national tri-partite Wage Board to negotiate national minimum conditions in the industry. The agreements would be subject to the conciliation and adjudication machinery under the Industrial Disputes Act. In order to facilitate this process, the retailer should be required to meet with the relevant union(s) ahead of any permission to build a store and negotiate a process through which the relevant union can achieve recognised status.

The areas of licensing, urban planning, competition, procurement, local control and respect for the environment are all critical concerns and should not be overlooked. These will guarantee the protection of the Indian economy and the broader communities. The question of integrity in the supply chain is crucial, as well as respect and remedial support for all of those whose livelihood will be affected by the entry of these mega retailers into the market. For small retailers who still will not be able to compete with the large modern retailers, some other options must be made available for them to make a living, given the large number of shopkeepers who stand to go out of business. Retailers could be required to contribute to a fund in order to financially support this assistance.

If FDI is to be permitted in multi-brand retail, we believe that government bodies should maintain the authority to make adjustments to the policy after an agreed-upon period of time. In UNI's experience, the far-reaching structural changes that global retailers induce may occur relatively rapidly, given these retailers' access to large amounts of foreign capital. There may be unexpected consequences of the change, both negative and positive, that will deserve careful consideration in the coming years, and the economic dislocation resulting from the entry of global retail may be ameliorated if their entry is slowed, giving local businesses time to adjust.

Finally, similar to regulations in France and Germany, foreign retailers should be required to set prices of goods paid to suppliers at or above cost so as to preclude monopsonistic purchasing practices on the part of big retailers. This will ensure fair prices for farmers and manufacturers and will prevent future pressures on the government to supplement farmers' incomes.[74]

CONCLUSION

Throughout the Competition Tribunal process in South Africa, company executives emphasised repeatedly that the Walmart regularly adapts its business to comply with local laws and regulations.[75] In effect, we have Walmart's word that legal requirements can force the company to improve its behavior. The Indian government is now presented with the valuable opportunity to create conditions that will mitigate the dislocating effects of retail liberalization for India's most vulnerable populations. This consultation process is an opportunity to take stock of the multitude of opinions on the subject and craft an effective, pertinent policy. UNI and our affiliates welcome the opportunity to engage in this consultation process as we recognise the importance of the issue. The stakes are high – while the possibility of deregulating FDI in India right may be enticing to some, what should be clear to all is that the costs of getting this process wrong is something that the Indian people cannot afford.

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