

To The Ministry of Finance

Recommendation of 15 November 2005

(Unofficial English translation)

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1 Introduction

The Council on Ethics for the Norwegian Government Petroleum Fund decided at a meeting 27 June 2005 to consider whether the business of Wal-Mart Stores Inc. (Wal-Mart) might entail complicity by the Fund in serious or systematic violations of human rights under Point 4.4 of the Ethical Guidelines.

As of 31 December 2004, the market value of the Government Petroleum Fund's shareholding in Wal-Mart was NOK 1,656 billion and in Wal-Mart de Mexico S.A. NOK 72.9 million. The market value of the Fund's bond holding in Wal-Mart was NOK 668.6 million.

Wal-Mart is alleged to run its business operations in a manner that contradicts internationally recognised human rights and labour rights standards, both through its suppliers in a number of countries in Asia, Africa and Latin America, and in its own operations. There are numerous reports alleging that Wal-Mart consistently and systematically employs minors in contravention of international rules, that working conditions at many of its suppliers are dangerous or health-hazardous, that workers are pressured into working overtime without compensation, that the company systematically discriminates against women with regard to pay, that all attempts by the company's employees to unionise are stopped, that employees are in some cases unreasonably punished and locked up, along with a number of other allegations which will be subject to further discussion below under section 4.

The Council has, in accordance with Point 4.5 of the Ethical Guidelines, (through Norges Bank in a letter dated 14 September 2005), asked Wal-Mart and Wal-Mart de Mexico S.A., to comment on the above allegations and the background for them. These enquiries were not answered.

In order to ascertain any risk of complicity in serious or systematic human rights violations there must, according to the Council's understanding of the Ethical Guidelines, exist a direct link between the company's operations and the relevant violations. A further criterion is that the violations have been committed to serve the interests of the company and that the company has been aware of the violations, but has omitted to take steps to prevent them. There must be an unacceptable risk either that the violations are presently taking place or will take place in the future. The Council considers that all these conditions are met in the case at hand.

The Council's conclusion is that the Ethical Guidelines, Point 4.4., first alternative, provide a basis for recommending exclusion of Wal-Mart because of the risk of complicity in serious or systematic violations of human rights.

2 Background

Wal-Mart is the world's largest retailer with a turnover in 2005 in excess of 285 billion USD. In Mexico, the company operates through its subsidiary Wal-Mart de Mexico S.A. Wal-Mart's stake in Wal-Mart de Mexico S.A. is about 62%.¹

Wal-Mart runs stores and shopping centres under the names *Wal-Mart Stores*, *Supercenters*, *Neighborhood Markets* and *Sam's Club*. The company sells, *inter alia*, garments, footwear, foodstuffs, household appliances and electronic goods. Wal-Mart also profiles itself through low price sales and has sales outlets in the USA, Canada, Argentina, Brazil, Germany, Mexico, Korea, the United Kingdom and Puerto Rico.² The company also runs sales operations in China through joint venture agreements. Wal-Mart imports products from 70 countries around the world.³ The Council has been apprised of a large number of allegations that parts of Wal-Mart's business operations are run in an ethically unacceptable manner. These refer in part to working conditions of employees at the company itself and in part to unacceptable working conditions at the company's suppliers.

The Council's secretariat has been investigating these conditions since medio 2005. In order to distinguish between unacceptable conditions connected with the company's own operations and conditions linked to the supplier chain, the two are considered separately in the following:

- Conditions in the company's global supplier network. Examples are given in section 4.1.
- Conditions referring to the company's own operations, mostly in North America. Examples are given in section 4.2.

A large amount of information on various allegations regarding Wal-Mart's operations are available. The present recommendation presents a selection of examples. The selection has been made to show the breadth of cases, both in terms of conditions within the company and its supplier chain, and in terms of the large geographical spread and the large volume of cases related to Wal-Mart.

Publicly available sources such as newspapers and magazines have been relied upon, as well as information emerging in connection with a number of lawsuits against Wal-Mart concerning conditions in the supply chain in poor countries as well as conditions in the company's own business operations in North America. On commission from the Council, information has also been obtained from lawyers, various organisations and individuals. Certain parts of this source base will, at the request of the sources involved, not be made public.

The Council's task is to establish whether there exists an unacceptable *risk* of complicity in violations of international standards. In other words, the Council does not consider it necessary to find proof of the veracity of each individual claim emerging from the material available to the Council.

¹ http://www.hoovers.com/wal-mart-de-m%C3%A9xico/--ID_42411--/free-co-factsheet.xhtml

² Wal-Mart Stores SEC Filing, <http://investor.walmartstores.com/>

³ Wal-Mart Stores Inc., "Factory Certification Report: March 2003 – February 2004," page 23. Entire report: www.walmartfacts.com/docs/131_NewsDeskFactShtSourcingarticle_1161280340.pdf.

3 The Council's considerations

The Council has to consider whether the Government Petroleum Fund can be said to contribute to unethical acts or omissions through its ownership in Wal-Mart. Point 4.4., second paragraph, first bullet point of the Ethical Guidelines states:

“The Council shall issue recommendations on the exclusion of one or more companies from the investment universe because of acts or omissions that constitute an unacceptable risk of the Fund contributing to: Serious or systematic human rights violations, such as murder, torture, deprivation of liberty, forced labour, the worst forms of child labour and other forms of child exploitation.”

The Council will consider the question of excluding Wal-Mart under this provision. The other alternatives in Point 4.4., regarding violations of individuals' rights in war or conflict, severe environmental damage, gross corruption or violation of other ethical norms, are considered less relevant to the case at hand.

3.1 Point 4.4., second paragraph, first bullet point

Point 4.4., second paragraph, first bullet point contains a general reference to human rights. NOU (Norwegian Official Report) 2003: 22, which is the basis on which the Ethical Guidelines were drafted, states: *“Companies' contributions to serious or systematic violation of human rights and labour rights should, in the Committee's opinion be encompassed by the proposed exclusion mechanism.”*⁴ Where the scope of the terms *human rights* and *complicity* are concerned, the Council stated the following in its recommendation regarding Total S.A., issued on 15 November 2005:⁵

“The Council takes as its point of departure that the reference to human rights pertains to internationally recognised human rights and labour rights. It is clear from the wording of this provision that the specific human rights violations listed are examples of such violations and not an exhaustive list.

*Not all human rights violations or breaches of international labour rights standards fall within the scope of the provision. Point 4.4. states that human rights violations must be “serious or systematic”. The Graver Committee recommends “fairly restrictive criteria for deciding which companies should be subject to possible exclusion ...”.*⁶ *The Council assumes that a determination of whether human rights violations qualify as serious or systematic needs to be related to the specific case at hand. However, it seems clear that a limited number of violations could suffice if they are very serious, while the character of a violation need not be equally serious if it is perpetrated in a systematic manner.*

Only states can violate human rights directly. Companies can, as indicated in Point 4.4., contribute to human rights violations committed by states. The Fund may in its turn contribute to companies' complicity through its ownership. It is such complicity in a state's human rights violations which is to be assessed under this provision.

⁴ NOU 2003: 22, page 166.

⁵ The recommendation concerning Total S.A can be found in full at www.etikkradet.no.

⁶ NOU 2003: 22, page 34.