

UNCHECKED

How Wal-Mart Uses Its Might to Block Port Security

A SPECIAL REPORT FROM THE AFL-CIO TO THE U.S. CONGRESS

ALMOST EVERY PRESS STORY written and news show aired since the Dubai Ports World battle began has trumpeted the gaping holes in our seaports' security systems. But few ask: *Why are U.S. ports so poorly protected nearly five years after the attacks of Sept. 11, 2001?* Why has the government spent just \$630 million—less than 4 percent of the \$18 billion-plus we have spent since 2001 on airport security—to make our ports safer?¹

The stock answer is that port security hasn't been a priority for Congress and the Bush administration because the United States hasn't suffered a catastrophic attack on one of our ports. But anger over the Bush administration's support for the Dubai Ports World deal prompted the chairman of the U.S. House Armed Services Committee, Rep. Duncan Hunter (R-Calif.), to reveal another significant reason:

[While we] talk about having strong homeland security, checking 100 percent of cargo containers... In the end, our commercial interests get ahead of us, and here we are, years after 9/11, still with a relatively small percentage [of cargo containers] being checked.²

The people who should pay for [better container security] are...the trading companies and the commercial companies that are moving the cargo containers into this country, and that means we're going to have to tax them or put a fee on them for inspection....It's part of a cost of doing business today when you're moving large cargo containers into the United States while we're pursuing this war against terror.³

The "commercial interests" are led by the world's largest retailer and America's biggest importer, Wal-Mart. *The Wall Street Journal*, in a "Washington Wire" blurb March 24, made it plain: "Wal-Mart resists efforts in Congress to dramatically tighten port security in wake of Dubai-ports furor. The company argues examining all containers, or even a fixed percentage of them, could impede shipping and boost costs."⁴

Rep. Hunter and the *Journal* let slip what is surely Wal-Mart's dirtiest secret: The company and its Washington, D.C., lobbyist, the Retail Industry Leaders Association (RILA), have systematically undermined our security by working to defeat and water down rules designed to make America's seaports and far-flung supply chains safe from terrorist attacks. And Wal-Mart and RILA have invested heavily in the members of Congress with the most sway over ports and supply-chain security issues, as well as the Bush administration and the Republican National Committee.⁵

The Washington successes of Wal-Mart and RILA (successor organization to the International Mass Retail Association, or IMRA) are made doubly

dangerous by the shift of manufacturing work from the United States to developing countries, China in particular. Twenty years ago, Wal-Mart bought only 6 percent of its merchandise overseas, but today “Wal-Mart and China are a joint venture, and both are determined to dominate the U.S. economy as much as they can in a wide range of industries,” Duke University professor Gary Geriffi told PBS’s “Frontline” in November 2004.⁶ Nearly two-thirds of all Wal-Mart products come from China, he said.⁷ Most of the rest comes from 70 other countries including Pakistan, the Philippines and Indonesia,⁸ where we find a dangerous cocktail of workers’ rights abuses and lax enforcement, official corruption and active terrorist organizations. A warning that “corruption is a pervasive problem within the ranks of border security organizations” tops a March 2006 Government Accountability Office (GAO) report on nuclear smuggling.⁹

In spite of the vulnerability of our ports and of supply networks around the world, Wal-Mart and RILA have—time and again since the attacks of Sept. 11, 2001—opposed new maritime and port security rules. Their mantra is: “Security requirements should not become a barrier to trade.”¹⁰

The AFL-CIO’s unions represent millions of port, transportation and emergency workers including first responders, whose lives are on the line in the event of a catastrophic attack on America’s ports. This report details the ways in which Wal-Mart’s lobbyists and allies have quietly and insistently made these workers and all Americans less safe.

Un-American, Undercover

Wal-Mart is not the only company undermining efforts to improve port and supply-chain security, but it’s far and away the biggest importer into the United States and America’s largest company as well.¹¹ When politicians in Washington get serious about making our ports and supply chains safer—as they have in the weeks since the Dubai Ports World deal was revealed—Wal-Mart’s got the most to lose.

Day-in, day-out and on issue after issue, Wal-Mart uses RILA as a front, working quietly against the things Americans care about most—the safety of our families and communities, affordable health care, fair wages and good jobs.

When Maryland required its largest employers to pay their fair share of health care costs in 2006,

Wal-Mart and RILA vs. America

Wal-Mart and RILA

The American People

Health Care

Sue state and local governments that have called on Wal-Mart to stop pushing its workers onto the state Medicaid rolls.¹²

“An overwhelming 83 percent of American voters support rules requiring big, profitable companies to provide health insurance for their workers or pay into a health care fund that will cover them, according to a November poll by Lake Research.”¹³

Minimum Wage

Keep America’s lowest-paid workers in poverty by fighting against any increase in the minimum wage.¹⁴

Eighty-three percent of voters favor federal legislation to raise the minimum wage.¹⁵

Unfair Trade

Lead the campaign in Washington, D.C., to protect the Chinese government’s unfair trade advantage and push anti-worker free-trade agreements such as the Central American Free Trade Agreement.¹⁶

“Sixty-nine percent of Americans say outsourcing hurts the economy by sending jobs and salaries overseas.”¹⁷ And 74 percent of voters said they would oppose the Central American Free Trade Agreement if it reduced consumer prices but caused job losses.¹⁸

Wal-Mart complained it was being singled out. RILA promptly hired Wal-Mart's go-to law firm, Gibson Dunn & Crutcher, to file suit against the state.¹⁹ Gibson Dunn lawyers and lobbyists do some of Wal-Mart's heaviest legal lifting.²⁰

When foreign governments insisted that Wal-Mart follow their zoning and investment laws, RILA went to the World Trade Organization to try to void their laws.²¹

Two Wal-Mart executives, including its vice-chairman, sit on RILA's board,²² twice the representation as any other RILA member company, and a former IMRA/RILA leader sits on Wal-Mart's board.²³

Here's the most telling measure of Wal-Mart's power in Washington and its dominance of RILA: Add together 10 giants of American retail, all RILA members (Best Buy, Dollar General, Gap, Lowe's, Nike, Office Depot, Home Depot, Sears/K-Mart, Target and Walgreens), and their annual revenues still don't top Wal-Mart's. Total 2005 revenue for these 10 was \$303 billion; Wal-Mart's 2005 revenue was \$312 billion.²⁴

'Port Security Still a House of Cards'

Long before the Dubai Ports World deal came to light, former U.S. Customs and Border Protection Commissioner Robert Bonner described the 11 million cargo containers passing through our now-global supply chains and U.S. seaports this year as the "Trojan horse of the 21st century."²⁵

In a trenchant analysis of our port security policies published in January 2006, Stephen Flynn, a retired Coast Guard commander at the Council on Foreign Relations, laid bare the vulnerability of these vast supply chains. His analysis, "Port Security Is Still a House of Cards," said:

[T]errorists will likely target a legitimate company with a well-known brand name precisely because they can count on these [cargo container] shipments entering the U.S. with negligible or no inspection.... All a terrorist organization needs to do is find a single weak link within a "trusted shipper's" complex supply chain, such as a poorly paid truck driver taking a container from a remote factory to a port.²⁶

A *Wall Street Journal* story written at the height of the Dubai Ports World debate rubbed away the patina of security at one of America's largest ports:

[The Baltimore] port's fiber-optic alarm system on the perimeter fence malfunctioned and was usually switched off, and...port police were so understaffed that their patrol boats often dry-docked because there was no one to operate them....[A Baltimore Sun investigation last year revealed] "video cameras" guarding the entrance to one important marine terminal [that] were actually blocks of wood on poles....gaps in perimeter fences, unattended gates, surveillances systems that didn't work and insufficient police patrols on land and sea.²⁷

On the first and second anniversaries of the Sept. 11 attacks, ABC News aired award-winning investigations that revealed glaring holes in U.S. port and supply-chain security.²⁸ A year after the inauguration of Customs' voluntary supply-chain security program, ABC News had shipped a 15-pound canister of depleted uranium from the Indonesian capital, Jakarta, through the port at Los Angeles. Former U.S. representative and then-Under Secretary for Border and Transportation Security Asa Hutchinson—a Bentonville, Ark., native and Wal-Mart favorite in Arkansas and Washington—dismissed the investigation as a "hoax on our inspectors."²⁹ The Department of Homeland Security insisted Customs would have been able to detect the makings of a dirty bomb and pushed for criminal prosecution of the reporters.³⁰ But one year later, the department's inspector general rejected that defense, writing that Customs' "protocols and procedures...were not adequate to detect the depleted uranium."³¹

An Associated Press report on a recently leaked study from the Department of Homeland Security found that "risks from smuggled weapons are especially worrisome because U.S. authorities largely decide which cargo containers to inspect based on shipping records of what is thought to be inside."³²

Finally, Sen. Robert Menendez (D) of New Jersey, home to one of America's busiest ports, said in March our container inspection system is "riddled with flaws" and that *U.S. officials inspect only 5 percent of containers coming into the United States*. The other 95 percent get a "cursory review of a cargo manifest."³³

‘Security Requirements Should Not Become a Barrier to Trade’

As ordinary Americans reeled from the effects of the 2001 attacks and struggled to fathom our new-found vulnerabilities, Wal-Mart’s lobbyists were on Capitol Hill urging that container and supply-chain security be left to the retailers. In 2002 testimony before the House Committee on Transportation and Infrastructure, IMRA (RILA) and the West Coast Waterfront Coalition advised:

*We believe that adherence to voluntary industry standards and internal security plans will be the single most important step that American industry can take in improving the security of supply chains, and the containers that move along those chains.*³⁴

RILA warned Congress in 2004 that x-rays of shipping containers at U.S. ports would “cause major delays” for their goods,³⁵ although a 100-percent container x-ray system in Hong Kong’s busy port won praise from security experts.³⁶

RILA boasted in its 2005 lobbying report to Wal-Mart and other members about its “continued industry leadership in opposition to ill-advised and onerous port security measures (i.e., cargo fees, increased physical inspections).” In fact, beating back meaningful port security measures topped RILA’s agenda.³⁷

RILA is a founder of the Waterfront Coalition,³⁸ another retail industry lobby group dedicated to improving “the productivity, efficiency and through-put” of U.S. ports.³⁹ RILA and the Waterfront Coalition collaborated in 2005 on a container transportation policy paper that runs to nearly 50 pages but says nothing—not one word—about supply-chain security.⁴⁰

And here is RILA’s public warning to Congress from March 2006 that it should not put protection of our ports ahead of profits:

*[M]ove cautiously and with careful deliberation before considering any new legislation related to the security of our nation’s seaports or commercial cargo....Congress should be careful to avoid measures that would harm global supply chain efficiency or unnecessarily delay the movement of food and cargo.*⁴¹

Wal-Mart’s Need for Speed

Wal-Mart and its Washington lobbyists are defying these fundamental security measures because Wal-Mart’s record profits and its dominance in the retail industry are built on its fast-moving supply chain.⁴² In Wal-Mart’s high-velocity system, a delay of a few hours or days can cut into the company’s profits. One logistics expert likened it to a heart attack.⁴³

Wal-Mart uses its buying power to squeeze out extra profits all along its global supply chain—from factory workers, manufacturers, trucking companies and shippers.⁴⁴ Wal-Mart’s supply-chain operation is widely regarded as the most efficient on earth. One global supply-chain expert likened it to a bus with no brakes.⁴⁵

But the need to protect America from terrorist attacks is the brake Wal-Mart fears.

As the Hong Kong port security regime has shown, proper investments make speed and visibility compatible. National security expert P.J. Crowley argues that a company as innovative as Wal-Mart should not insist that America choose between speed and security.⁴⁶ But Wal-Mart and RILA have fought against these innovations and invested instead in lobbyists.⁴⁷

‘Taking Their Sweet Time’

One of the top U.S. port security experts puts the cost of helping protect America from a catastrophic terrorist attack at one of our ports at 0.2 percent of the value of cargo in the containers:

*The total cost of third-party compliance inspections, deploying “smart” containers, and operating a cargo scanning system such as the one being piloted in Hong Kong likely reach \$50 to \$100 per container, depending on the number of containers an importer has and the complexity of its supply chain. Such an investment would allow container security to quickly move from the current “trust, but don’t verify” system to a “trust but verify” one. Can industry afford the cost of this regime? Even if the final price tag came in at \$100 additional cost per container, it would raise the average price of cargo moved by Wal-Mart or Target by only 0.2 percent.*⁴⁸

But RILA lobbyists have blitzed Capitol Hill since the September 2001 attacks to kill off or water

down fundamental security measures that might cut into Wal-Mart's record profits—more than \$11.2 billion last year. In these efforts, Wal-Mart's lobbyist RILA has:

- **Opposed the introduction of anti-terrorist “smart containers” and electronic seals for cargo containers coming into U.S. ports.** RILA called them “feel-good [security] measures”:

The government should not rush to require the use of “smart containers” or “electronic seals”....These technologies are still extremely expensive and are not yet 100 percent accurate....[I]f you could design a foolproof container door intrusion device, all the terrorist would have to do is cut a hole in the side of the container for purposes of placing a bomb inside. An operation such as this might only take 20 minutes or less, depending on the expertise of the bad guy. We need to ensure that the money we spend provides more than simply “feel-good” measures.⁴⁹

Long before RILA described electronic container seals as expensive “feel-good measures,” they were available for as little as \$5 apiece. But unless security demands override commercial interests, security experts know retailers and their lobbyists, as one research consultant put it, will keep “taking their sweet time.”⁵⁰

One of America's top supply-chain security experts warned in 2006 that, when it comes to making containers safer, the Department of Homeland Security should not “be inordinately influenced by powerful industry groups such as the Retail Industry Leaders Association (RILA), which has been criticized for putting security second to... the retailers' bottom line....None of the [key] attributes of the smart container...is somehow left for future development. Products are available today.”⁵¹

- **Opposed independent and regular inspections of supply-chain security practices around the world.**

RILA bragged in a 2005 lobby report to its members that it forced House Homeland Security and Ways and Means committee members to strip “problematic ‘third party validator’ language” that would improve U.S. officials' ability to check out supply-

chain security claims made by companies such as Wal-Mart.⁵²

Wal-Mart rejects outside scrutiny of its supply-chain practices and is notorious for its secretive factory monitoring system. “Wal-Mart says it inspects thousands of supplier factories each year in dozens of countries. But since no [independent] outside body...is involved and Wal-Mart won't release its audits or even its factories' names, the public is left to the company's word for it.”⁵³

- **Opposed new container-handling fees to pay for improved port security.**

In April 2004, RILA took credit for spearheading Senate defeat of a maritime security user fee, reporting:

RILA scored a major victory this week, defeating a Senate proposal to impose two new user fees on retailers and others shippers to fund additional maritime security programs....RILA's Government Relations Team immediately launched a Capitol Hill blitz, working with Sen. Trent Lott (R-Miss.) on an amendment to eliminate the bill's user fees.⁵⁴

The Coast Guard has identified \$7.3 billion worth of improvements needed to make our ports safer.⁵⁵ The president of the American Association of Port Authorities estimates federal money for port security improvements is only one-fifth of the amount needed.⁵⁶

Although RILA and Wal-Mart remain categorically “opposed to any new port-container fees or taxes that would increase the cost of doing business,” Wal-Mart imposes an implicit tax on all Americans, wringing more than \$4.3 billion each year from federal, state and local governments to provide income and health care subsidies to its low-wage workers.⁵⁷ In the past 20 years, Wal-Mart has taken more than \$1 billion from state and local governments for the construction of its stores and distribution centers.⁵⁸

- **Opposed tougher rules requiring Wal-Mart to let Customs know what is being shipped in and where it comes from.**

Lobbyists for retailers and manufacturers are balking at a requirement that their ocean carriers

*give 24-hour notice before loading products bound for U.S. ports. Customs officials want more time to check whether terrorists have stashed explosives in big cargo containers, but the companies view it as an unnecessary obstacle that will slow business and increase costs.*⁵⁹

The U.S. Customs commissioner said in December 2002 that “knowing the contents of a container before it is loaded onto a ship bound for the U.S. is a critical part of our efforts to guard against the terrorist threat.”⁶⁰ RILA had called the idea of sharing information with Customs “extremely premature,” and Wal-Mart worried about delays for suspicious containers and asked about “the consequences for failing to file [shipping documents] on time.”⁶¹

Wal-Mart and its Washington allies repeatedly put their profits ahead of America’s security. Listen to RILA’s top trade lobbyist sniff about post-Sept. 11 safeguards in a 2002 *Washington Post* story: “We are the industry driving the U.S. economy.... Any increased delays or costs would really impact” retailers such as Wal-Mart.⁶²

Give Us the Green Light

In 2002, RILA helped engineer a voluntary U.S. Customs container and supply-chain security program called the Customs-Trade Partnership Against Terrorism (C-TPAT).⁶³ Former Coast Guard Commander Stephen Flynn charged in March 2006 that the “standards are so nominal” that supply chain security operates “on an honor system.”⁶⁴ Congressional investigators have assailed the arrangement because it has no minimum standards, no serious monitoring or enforcement provisions and might actually make it easier for terrorists to smuggle weapons of mass destruction into the United States.⁶⁵ In a May 2005 report, the GAO said:

*The [C-TPAT] validation process is not rigorous enough to ensure that the security procedures outlined in members’ security profiles are reliable, accurate and effective. For example, CBP officials told us that validations are not considered independent audits, and the objectives, scope and methodology of validations are jointly agreed upon with the member company....In addition, [Customs] has indicated that it does not intend for the validation process to be an exhaustive review of every security measure at each originating location.*⁶⁶

By April 2005, Customs had accepted about 4,800 C-TPAT applications, but only 550 of those companies—about 11 percent—had been checked out and found to be doing what the program requires.⁶⁷ The remaining companies were “granted the preferred status after little more than a review of their paperwork.”⁶⁸

The GAO report said C-TPAT members such as Wal-Mart get a green light at U.S. ports if they simply “conduct self-assessments of their security profiles each year...and jointly determine [with Customs] which elements of the members’ supply chain measures will be validated, as well as which locations will be visited.”⁶⁹

Customs went so far as to promise C-TPAT shippers there would be no surprise inspections of their supply-chain security operations. This promise is reminiscent of the gift the Department of Labor gave Wal-Mart in 2005, promising 15 days’ notice before government inspectors could come looking for wage, working hours or child labor law violations.⁷⁰

The Customs and Border Patrol’s official description of the program sounds like a plea:

*[Customs] is asking businesses to ensure the integrity of their security practices and communicate and verify the security guidelines of their business partners within the supply chain....C-TPAT is also not intended to create any new “liabilities” for companies....These actions include self-assessing security systems, submitting security questionnaires, developing security enhancement plans and communicating C-TPAT guidelines to companies in the supply chain.*⁷¹

C-TPAT certification opens the gate to Customs’ Free and Secure Trade (FAST) program, which speeds truck containers from “trusted” shippers such as Wal-Mart through our borders with Mexico and Canada.⁷² A March 2006 GAO investigation smuggled enough radioactive material across our borders with Mexico and Canada to make two dirty bombs, prompting Sen. Norm Coleman (R-Minn.) to say, “We suffer from a massive blind spot in our cargo security measures.”⁷³

The Bush administration released its 2007 homeland security budget proposal at the height of the

Dubai Ports World debate, eliminating grants to improve port security⁷⁴ and increasing the C-TPAT budget by a mere 1.3 percent—a cut in real terms from the program’s 2006 budget request.⁷⁵

The essence of this policy is, “Trust, but don’t verify.”⁷⁶ That’s just the way Wal-Mart and RILA want to keep it.

On Nov. 15, 2005, two U.S. senators—one Republican, one Democrat—introduced a port and supply-chain security bill that threatens to stiffen spines at the Department of Homeland Security and harden supply-chain security rules at Customs. Within hours, RILA launched a campaign heaping praise on the voluntary C-TPAT program, sending a letter to Homeland Security chief Michael Chertoff, advising him to stick with C-TPAT.⁷⁷

The same RILA letter suggests Chertoff pick a business-friendly Customs commissioner to replace then-outgoing Robert Bonner, a partner and lobbyist at one of Wal-Mart’s favorite law firms, Gibson Dunn & Crutcher, where Bonner is advising clients “on the intersection of homeland security, international trade and customs issues.” Along with RILA, U.S. Customs is also a client of Gibson Dunn.⁷⁸

The Bush administration since has tapped current Secret Service Director Ralph Basham to run Customs, and the prospect of a security expert running the U.S. Customs and Border Patrol agency has RILA worried: “The hope is that we will be able to continue to work with Customs [under Basham] as we did with Bonner in a true spirit of partnership between the public and private sectors.”⁷⁹

RILA’s friends at the National Customs Brokers and Freight Forwarders Association put it more bluntly:

[T]he private sector needs to continue to get emerging government figures to swear on a stack of Bibles that commercial operations are an important responsibility that cannot be subordinated wholly to security interests.⁸⁰

Bonner was not the only top Homeland Security official to go to work for one of Wal-Mart’s Washington lobbyists in 2005. Asa Hutchinson left his job as under secretary of the Department of Homeland Security to lobby for companies on

security issues at Venable, one of Washington’s oldest lobbying law firms and another of Wal-Mart’s Washington partners.⁸¹ But Hutchinson was connected to Wal-Mart long before he took the nation’s No. 2 security post. In his brief stint as congressman from Arkansas’ Third Congressional District—home to Bentonville and Wal-Mart’s global headquarters—Hutchinson had taken more than \$12,500 from Wal-Mart’s Political Action Committee, and at least \$7,000 more from top Wal-Mart executives and Walton family heirs.⁸² Wal-Mart’s previous CEO, David Glass, has been a long-time patron to Hutchinson.⁸³

Hutchinson’s brief tenure at the Department of Homeland Security saw the creation of Customs’ voluntary supply-chain security program and a controversial decision not to bring criminal charges against Wal-Mart for its abuse of illegal immigrants hired to clean its stores. The workers’ lawyer said, “They generally worked seven nights a week, 364 days a year, and they were often locked in the stores.” Wal-Mart instead was fined \$11 million. Wal-Mart even denied being fined, calling the payment “voluntary.”⁸⁴

Finally, Wal-Mart, RILA and two Wal-Mart-connected law firms—Sandler Travis and Strasburger & Price—hold seats on Customs’ Commercial Operations Advisory Committee (COAC), a group of retailers, shippers and lobbyists who ensure that national security demands do not obscure the need for efficiency in the supply chain. RILA’s and Wal-Mart’s seats on the committee and subcommittees give them a chance to weaken supply chain security measures such as the Maritime Transportation Security Act, which they were unable to defeat in Congress.⁸⁵

Security for Sale

Wal-Mart’s and RILA’s recent investments in members of Congress with power over port and supply-chain security issues are massive and tilt heavily to the Republican side. Wal-Mart’s recent investments in the Bush administration and the Republican National Committee are the stuff of legend in Washington.⁸⁶

Wal-Mart has given \$191,500 to current House Homeland Security Committee members since 2000—all but \$9,500 of that since the September

2001 attacks. Eighteen of the committee's 19 Republican members took in \$173,000—90 percent of the total—and four of the committee's 14 Democrats collected \$18,500.⁸⁷

In the past eight years, Wal-Mart's Washington Political Action Committee put more than \$360,000 into current members of the powerful House Ways and Means Committee. Twenty-three of the committee's 24 Republicans took Wal-Mart's money—82 percent of the total—as did eight of the committee's 17 Democrats.⁸⁸

Wal-Mart also has spent \$63,000 on current members of the Senate Committee on Homeland Security and Governmental Affairs in the past eight years—more than two-thirds of that since September 2001. Ninety-six percent of Wal-Mart's spending went to the committee's Republican members.⁸⁹

Trust Us, We're Wal-Mart

RILA and Wal-Mart insist that making cargo containers and supply-chains secure against terrorist attacks be *voluntary*. Wal-Mart's voluntary monitoring and enforcement of its own supply-chain "code of conduct" has been exposed dozens of times in the past 15 years as a sham.⁹⁰

In Wal-Mart's secretive monitoring arrangement, workers in some factories are given cheat sheets by management telling them how to answer questions from the Wal-Mart monitors about factory working conditions.⁹¹ In an echo of RILA's battle to keep Customs in the dark about container shipments, Wal-Mart keeps its monitoring reports on sweatshop abuses secret and—unlike Nike, Reebok and Levi's—refuses to disclose the names and locations of the factories it uses.⁹²

Wal-Mart's two long-time monitoring contractors, Intertek and Global Social Compliance, are known for their light touch and lack of independence.⁹³ Intertek says, "Our business philosophy is simple: We go where our clients require us to go and... ensure that their needs are fulfilled."⁹⁴

Intertek and Global Social Compliance also are used by Worldwide Responsible Apparel Production (WRAP), a front group thrown together by the

apparel industry to squelch the demand that retailers such as Wal-Mart follow *mandatory* rules designed to stop sweatshop abuses.⁹⁵

Intertek and Global Social Compliance's mercenary approach to monitoring caused one of the largest global monitoring organizations, which uses third parties to monitor factory working conditions for apparel companies, to drop both firms from its list of accredited monitors in 2002.⁹⁶

A suit filed last year in California state court on behalf of workers in Wal-Mart's global supply chain sums up Wal-Mart's approach to supply-chain scrutiny:

In essence, based on its policy created by central management, Wal-Mart's code enforcement is a closed loop: Wal-Mart adopts the code, monitors the code and reports on whether code compliance has been achieved—in the absence of meaningful transparency and in the absence of any independent, external mechanisms for enforcing the code.... [A former regional inspector for Wal-Mart] exposed that Wal-Mart inspectors were pressured to produce positive reports for factories not in compliance with the Code of Conduct to avoid any disruption in the Wal-Mart production process.⁹⁷

It was an extension of this monitoring system, built in bad faith and propped up with cynicism, that RILA offered as "the single most important step" that members such as Wal-Mart could take to keep terrorists away from their supply-chains:

Since Sept. 11, American business interests have begun the process of assessing risks along the supply chain. These activities are, in most cases, an expansion of already-existing supplier and/or factory certification programs. Most well-known American retailers and their consumer product suppliers already have programs in place to make sure their factories meet certain specifications.... American companies have a long list of criteria upon which they evaluate their suppliers. The factors include reliability and quality, as well as compliance with wage, hour and other labor practices. In the wake of Sept. 11, companies are now adding loading dock security aspects to their vendor and factory compliance programs.⁹⁸

A former Wal-Mart global procurement officer who led monitoring teams in Wal-Mart supplier factories overseas says security issues were not part of their inspections before or even in the months after the 2001 attacks.⁹⁹

Wal-Mart is a ruthlessly efficient company that has the power to fix the problems it takes seriously. To help keep its shelves stocked, Wal-Mart ordered its top suppliers in 2004 to outfit their shipments with a new radio tracking technology. As the industry trade magazine *Mobile Tech Today* declared, when it comes to supply-chain efficiency, compliance with Wal-Mart's demand "is a non-negotiable issue."¹⁰⁰

Conclusion

Wal-Mart, America's largest importer, is using its clout to block new port security measures. Together with its Washington lobbyists and allies, it has pitted its bottom line against port and supply-chain security. But as high as the stakes are for Wal-Mart, the stakes are infinitely higher for Americans. A shipping container can be what Stephen Flynn calls a "poor-man's missile," killing thousands of Americans and cutting the blood flow to the American economy.

Congress and the administration need to put the experts back in charge of port and supply-chain security. The lives of port and transportation workers, first responders and working families living near our seaports depend on it. Congress must:

- **Mandate the use of "smart containers."** Electronic seals on all containers are essential parts of port and supply chain security.

- **Increase physical container inspections.**

All "empty" containers entering the ports, whether by ship, truck or rail, should be inspected to confirm they are truly empty.¹⁰¹

Rep. Jane Harman (D-Calif.), who has called poor port and supply chain security "America's Achilles' heel," noted in 2005 that it was the "good eyes of ILWU [International Longshore and Warehouse Union] crane operators that we have twice caught human cargo coming out of shipping containers....Next time, it might not be people coming here for a better life....it could be terrorists."¹⁰²

- **Invest in 100-percent screening using improved technology, and invest in port worker training.**

- **Fund independent investigations of supply-chain security.**

- **Require publicly traded companies such as Wal-Mart to lay out in their annual reports to the government and share holders what steps they are taking in response to the threat of terrorism.**

Finally, Congress should require CEOs—and especially Wal-Mart CEO Lee Scott—to pay as much attention to the safety of their supply chains as they do their bottom line. That means requiring CEOs to certify, on pain of criminal prosecution along the lines of the Sarbanes-Oxley Act, that their supply chains are secure. Just as Wal-Mart lays down and ruthlessly enforces its rules for its suppliers, Congress must ensure that the safety of the American people is a nonnegotiable issue.

By Jason Judd, AFL-CIO Wal-Mart campaign

ENDNOTES

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⁹⁶Interview with U.S.-based global monitoring nonprofit organization, March 22, 2006.

⁹⁷*Jane Doe I et al on behalf of Wal-Mart workers in Shenzhen, China... v. Wal-Mart Stores*, filed Sept. 13, 2005 in California Superior Court in Los Angeles, <http://www.laborrights.org/projects/corporate/walmart/WalMartComplaint091305.pdf>

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