

Corporate Facilitated Trade Union Elections in Chinese Factories—An Evaluation

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**Paper presented at the conference on “Fair Trade, Corporate Accountability and
Beyond: Experiments in ‘Globalising Justice’”**

December 19-20, 2007 at the Law School, University of Melbourne

**Hosted by the Centre for Employment and Labour Relations Law, University of Melbourne,
with the support of the Fair Trade Association of Australia and New Zealand and the
Centre of Knowledge and Development at the Australian National University.**

Sponsored by Govnet and Centre for Applied Philosophy and Public Ethics

Just a few days ago, Chandran Nair wrote in the journal *Ethical Corporation* from a corporate insider's perspective, about the CSR "industry" that is generating an unending number of conferences that executives and staff of the big multinational corporations have been attending. Chandran Nair's view is stated unequivocally in the title, "Corporate Responsibility—An Industry that has Lost its Way". He goes on to strike at the core of the problem:¹

As another year draws to a close it is clear it has been one of countless corporate social responsibility conferences, forums and workshops. The phenomenon is characterised by ever bigger events, more pontification, few original thoughts, less informed debate, more participation by public relations professionals, great earnestness, few actions and an expanding list of "issues".

What does not seem to be happening is an honest assessment of what has been achieved and what impact the work of corporate responsibility teams is having on the ground.

The CSR industry has come to a point that the multinationals are stymied about what they are doing. The staff who have been assigned to their CSR offices are looking for alternative solutions. China inevitably looms large in the discussions.

How is the CSR industry being played out in China? In the past few months too something new seems to be stirring among individuals or organizations that have been

¹ See Ethical Corporation website, <http://www.ethicalcorp.com/content.asp?ContentID=5582> (December 14, 2007).

engaged in the CSR issue in China. For one, organizers of this conference several months ago asked me to present a paper on trade union elections at the workplace in China. In August an article, “Democratic Trade Union in a Reebok Factory: Five Year Update” by Peter Lee a researcher, appeared in an electronic website on Chinese labor describing the deteriorated work conditions in this now Adidas supplier factory call Shunda, a Taiwanese-owned Factory in Fujian. The report was critical that whereas five years ago Reebok facilitated a democratic election, Lee, based on his research was concerned that Adidas was not going to ensure a fair trade union re-election in October.² A debate over this report then ensued between Stephen Frost, editor of the influential CSR journal, *CSR Asia* and Jill Tucker, Reebok’s former Human Rights Director in Asia, as to whether Multinationals (MNCs) should be involved in supplier factory trade union elections in contractor factories.³ Last month Verite, an organization carries out a lot of social auditing around the world held a symposium in Shenzhen on “Worker Engagement and Social Responsibility in China: Ways Forward.”⁴

The point of contention is the trade union elections that Reebok facilitated. Six years ago Reebok took an innovative step and launched a pilot program of organizing trade union elections in a few of its supplier factories. The elections attracted international media attention and raised some interest in the anti-sweatshop movement. Reebok tried to interest other brand-name companies to take similar steps. But all took a

² Peter Lee, “Democratic trade union election at Shunda Factory: Five years on,” China Labor News Translations, <http://www.clntranslations.org/?q=Peter+Lee>.

³ Stephen Frost, “Trade Unions 101: MNCs and freedom of association in China,” *CSR Asian Weekly*, Vol.3 Week 38, 3007, p 3, <http://www.csr-asia.com/upload/csrasiaweeklyvol3week38.pdf>; Jill Tucker’s Letter to the Editor, *CSR Asia Weekly*, Vol.3 Week 40, 2007, p.3, <http://www.csr-asia.com/upload/csrasiaweeklyvol3week40.pdf>.

⁴ <http://verite.org/2007%20Verite%20China%20Symposium>.

wait-and-see attitude.⁵ For a number of reasons which will be described later, the experiment died a natural death. Why is there a renewed interest in trade union elections in supplier factories? As Nair points out so candidly, the corporate CSR initiative has reached a state of impasse. The money and energy that have gone into CSR programs, the proliferation of corporate codes of conduct and of reporting standards, the birth of a new CSR industry, the many many CSR conferences (not least, including this one), the heated debates over CSR that split the anti-sweatshop movement, all of these have borne too few fruits—Chinese workers’ conditions in the export sector have barely improved. The failure is now openly reported even in business magazines like *Business Week*, and is widely recognized by the corporations themselves. The CSR advocates who still want to see something positive coming out of this industry are exploring new avenues and wonder whether workers’ involvement and genuine representation at the workplace is a possible way out, as has been argued by the anti-sweatshop movement for many years.

Labor Conditions have Barely Improved

We need to look at what impact CSR has made on the ground. The region in China that has been most socially audited is the Pearl River Delta in Guangdong province. This area has one of the largest concentrations of export factories (mostly Taiwanese, Hong Kong, Korean and domestic Chinese) that supply the world’s brand-name corporations. The province exports some US\$ 300 billion of manufactured products,

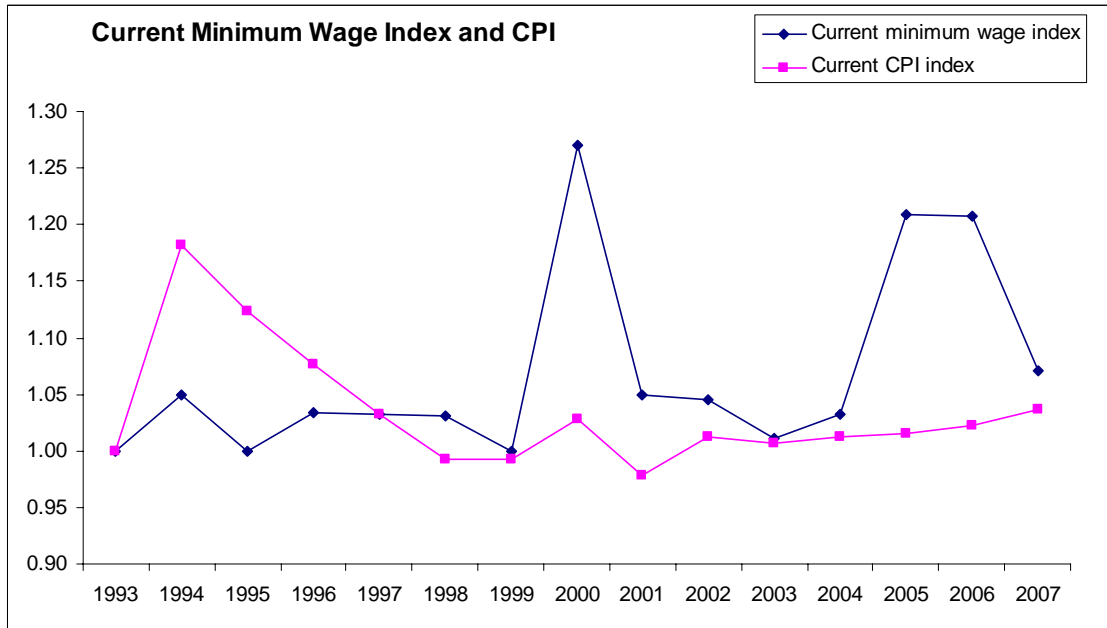
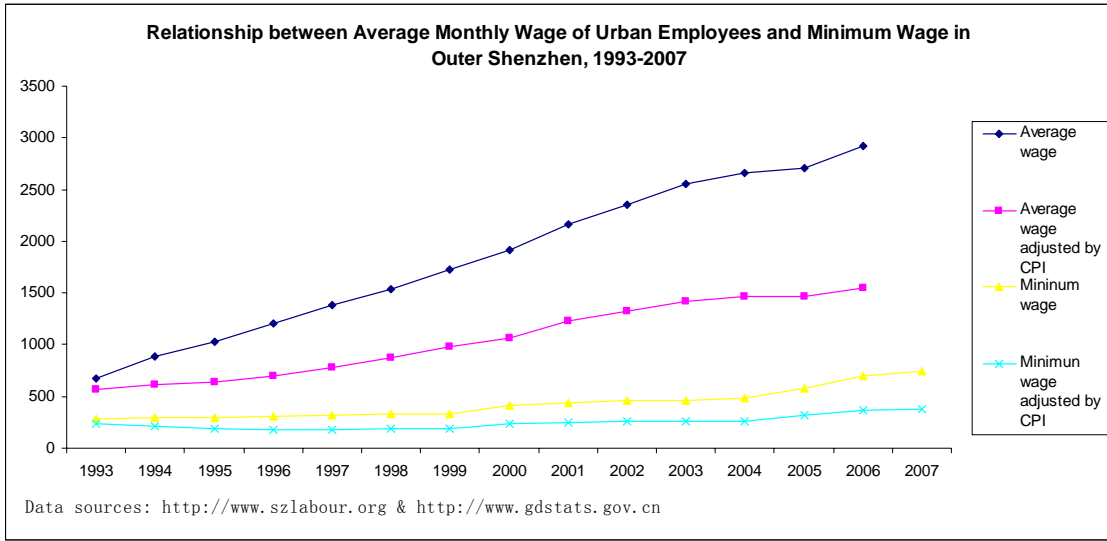
⁵ After the elections, International Labor Rights Fund and Amnesty International USA organized what was called the China Working Group that had a few big brands as members. Several international phone conferences were held in which Reebok tried to interest the others to facilitate similar elections. Information based on several personal participation in these phone conferences in 2002 and 2003.

which constitutes one third of China's total exports.⁶ The Pearl River Delta is both important for the wealthy countries and for China. After one and half decades of increasingly intensive CSR social monitoring in this region, with some factories being "monitored" regularly by social auditors sent by several different corporate clients, one would have thought that labor conditions would have gotten better by leaps and bounds. Except for perhaps a few big factories, the overall picture is unimpressive. Let us only examine the issue of wages. The hourly wages of workers at most factories are still below the level of the minimum legal wage in China—which means it violates the corporate codes of conduct—and overtime pay in these factories is considerably below what is legal.

In 2004 China's Ministry of Labor and Social Security announced that "studies show the [monthly] salary of a migrant worker in the Pearl River Delta area has grown by a mere 68 yuan (US\$8.20) over the last 12 years".⁷ The increase was so little that it was cancelled out by inflation, as shown in Figure 1 and 2:

⁶ Xu Linqing, "chukou tui shui zhengce tiaozheng tui Guangdong chukou jiyue de yingxiang fenxi," (An analysis of the impact of adjustment of tax rebate to Guangdong's export enterprises), *Zhujiang Jingji* (South China Review), No. 193, September 2007, pp. 32-37.

⁷ Ministry of Labor and Social Security Report, <http://www.molss.gov.cn/new/2004/0908a.htm>.



Note the bottom line in Fig. 1, which traces the real legal minimum monthly wage for a 40-hour week for the Outer Shenzhen region. Such minimum wage levels in China are set annually by city-level governments, supposedly in accordance to the prevailing wage and the cost of living in the city. The nominal minimum wage seems to have increased somewhat after 2004, but once adjusted by CPI the increase is actually very marginal. Fig.2 shows the relationship between minimum wage and CPI. The big increase in minimum wage in 2005 due to labor shortage, but with double digit inflation this year, the spike is being cancelled out.

Since there is no reliable data collected for migrant workers' real wage, we can only use the official minimum wage to gauge how much workers are making. Based on a lot of grassroots research the conclusion is that workers are made to work so much overtime that their hourly wage is less than the minimum wage. My research collaborators and I in China have been to many dozens of factories in this region during the past two decades, and the monthly wage that the migrant workers have received for a 40-hour week is invariably the same as the legal minimum wage. Most of these workers labor far longer than 40 hours a week, and by law, they are required to be paid a higher wage per hour for all overtime and weekend work. But in reality, most of them are paid at the same rate or just a bit more, and a lot of the workers make *less* per hour of overtime work than they are for their first 40 work hours. Because they are not paid enough for their overtime labor, the overall pay of most of the migrant workers is far less than what is stipulated by law. Yet the CSR auditors either did not look or allowed themselves to be fooled by supplier factory managers.

The legal maximum number of overtime hours per month in China is 36 hours, that is, some 9 hours of overtime work per week. Most corporate codes of conduct allow far more than that, allowing a 60 hour week. But in truth, few factories in the Pearl River Delta provide a work week with as few as 60 hours. Most workers in the export industries there are required to work 10 to 11 hour days, some 6 or 7 days a week. During a factory's peak production season, the hours may extend up to 17 or 18 hours a day. At almost all the factories, despite rises in the minimum wage in recent years, the hourly wage there is still today lower than the legal minimum hourly wage and the amount of overtime hours is at least 30 percent more than the legal maximum, and often far in excess of that. Yet even though this over-work is totally in violation of both the law and CSR codes, again the auditors look the other way.

In what is known as the "Wal-Mart effect", Western corporations have been forced into competitive price wars to provide products at lower cost to consumers, and they have done so by squeezing their suppliers in Asia, relentlessly insisting on depressing the buying price year by year. While willing to spend money on CSR programs they are not willing to help suppliers shoulder the costs to raise wages and improve conditions. To counteract this, supplier factory managements have resorted to squeezing their workers. They have done so by speeding up the pace of production, by increasing the amount of (under-paid) overtime work, and also, to counteract the very recent rises in the minimum wage, by greatly increasing the deductions they take from workers for food and dormitory fees. There are a hundred and one ways factories try to cheat the workers and, in turn, the social auditors -- and there are numerous reasons why the latter turn a blind eye to the transgressions. These are discussed by other paper

presenters and need not be repeated here. What can be concluded is that the workers are being exploited, and that social auditing is not working in this part of China.

Reebok's attempted solution—genuine workers' representation

Six years ago Reebok's human rights compliance department, in particular Jill Tucker, the former Director of Reebok's Human Rights office in Asia, had the foresight that, since outside auditing was not working, a better way forward might be to help workers hold democratic trade union elections in supplier factories, so that the workers' own elected representatives could help to ensure that the minimum standards were met. Insisting on workers' empowerment in this way has been the position of many labor NGOs and trade unions. They argue that empowering workers is the only way to improve labor conditions, not CSR drummed up by corporations. The Reebok program was an initiative to put into practice the principle of freedom of association. This is enshrined in almost all corporations' codes of conducts, though no one takes it seriously. Although the Reebok was the one initiating and facilitating the election, the elected trade union committee would still be a workplace trade union branch of China's only trade union, the All China Federation of Trade Unions (ACFTU). In their original form these were not yellow unions. Reebok's plan was to bring in experienced outside labor NGOs after the elections to help the newly elected employee committees to get organized to handle trade union affairs and perhaps even to engage in collective bargaining over work conditions.

I had the opportunity in 2001 and 2002 to study and observe two such elections, in KTS in Guangdong and Shunda⁸ in Fujian province. In both cases, the official district-level trade unions agreed to the elections and agreed that the new bodies would be

⁸ Five years ago this factory was also known as Fulu.

recognized as union branches. I witnessed workers' enthusiasm during the election process. After the elections, workers held high hopes that *their* own elected union branches would help them. So any argument against a multinational corporation's involvement in trade union elections because they were not initiated by workers is to ignore workers' feelings about these elections.

Failed Experiments

Unfortunately, the pilot program at KTS and Shunda ultimately failed. Several years later, neither of the two trade unions in KTS and Shunda is functioning properly. Today they are under absolute management control, undoubtedly sanctioned by their respective local trade unions, which in turn are under the control of their local governments whose paramount interest is attract foreign investment. Three problems at that time stood out that would doom the project to failure:

One was that despite all the declarations about social accountability, in practice a western corporation's human rights department usually tends not to be an important one within the corporation. Staff of various departments carries on their daily work without much interaction with other departments. Thus the production department, for instance, has its own priorities and does not know, and does not much care, what the human rights department is doing. For example, at the time of the trade union election at Shunda factory, which was causing quite a stir among workers and the Taiwanese managers, I was surprised to find that a Reebok American staff member from Reebok's production department, who worked on site, had no idea that an election was going on. One of the main reasons why suppliers are able to persist in violating their clients' corporate codes is

because their clients' sourcing practices work against their own codes of conduct. While sourcing departments want to squeeze as much out of the suppliers by paying as little as possible for the products and by imposing as short a delivery time as is humanly feasible, the human rights department is separately supposed to ensure there is no excessive overtime. It is the production department and sourcing department that are important, since they deal with getting a quality, low-cost product delivered to Western consumers. Not co-ordinating the functions of the CSR department with the other departments in order to make CSR effective is not a simple oversight. Rather, the ultimate goal of corporate policy is to render the CSR program ineffective.

My observation at the time was that the expatriate Reebok human-rights staff and some of its local Chinese staff were serious about helping workers to secure genuine representation. But they were inexperienced and made some mistakes in running this pilot program. One mistake was in not soliciting the involvement of the top levels of the national union federation. It was a time when the foreign community generally held a very dismissive attitude towards the national union. The union leadership in Beijing knew about these elections but did not intervene for about two years, which also gave the impression that it silently approved of the program. But it was never brought into the process. In contrast, the district trade union was forced to become involved by Reebok. The district union largely was an arm of the district government. It therefore was on the side of the foreign investors, since the local government's revenues depended on the foreign factories. When Reebok demanded an election and pressured the supplier company to agree, the district union fell into line. It sat in on all the pre-election meetings, but passively chose to behave like an observer.

After the elections, for half a year management and the newly elected union committees met regularly, and in the case of KTS in Guangdong, the union committee under the guidance of Hong Kong NGO staff negotiated with management over a variety of issues, not dissimilar to collective bargaining. But in both the Fujian factory and the Guangdong factory the district union gradually began to exert its influence to bring the enterprise unions into line, partly through cooptation of their union chairs and committee members. Though it was Reebok which had initiated and facilitated the elections, the district unions claimed the elections as though these were their own doing, and they moved to bring the elected representatives into their own fold. The newly elected union committees were lauded as models by their respective district unions, and in the Fujian factory the new union chair has been showered with various national and provincial awards.⁹ Under the tutelage of the Fujian district union, the union chair and deputy chair gradually allowed themselves to become effectively allies of management. They receive a full-time office middle management staff salary. The enterprise union ultimately did very little to improve workers' conditions,¹⁰ and especially so after Reebok was bought by Adidas and Reebok's human rights office was disbanded.

Nonetheless, the initial experience of the first year had been successful, as had the election procedures that involved a self-nomination process, the candidates delivering public speeches, public forums in which workers openly had asked management questions, voting booths, etc. Today, several researchers in the national union federation continue to talk about these elections in a positive way as worthy of emulation, and one

⁹ Information based on a brief report (October 18, 2007) circulated by the local development zone trade union in Fuzhou.

¹⁰ See Peter Lee, *op. cit.* My own current contact with some workers inside the factory also informs me that the trade union has done nothing that can be said to be helpful to workers.

of them is even writing a book about the Shunda experience, hoping to document and pass on the experience within the Chinese trade union circle.

But some of the ACFTU leaders were unhappy from the start with this foreign intrusion, and in 2003 one of the vice-presidents of the national union federation criticized foreigners for intervening in Chinese trade union affairs.¹¹ Had Reebok sought cooperation from the ACFTU from the very beginning, the fate of the enterprise unions might be different. The elected trade union committee members who initially were serious about their responsibilities might have stood up against management's resistance and the district union's blandishments and intervention. The post-election training of new committee members by Hong Kong labor NGOs, which was cut short as soon as Reebok pulled away in its attention, might have continued. The local unions would not have suppressed union activists.

A third problem was the program's failure to insist on trade union financial independence and a right to collective bargaining with factory management as stipulated by law. Without a guarantee of these two trade union rights, very quickly the union committees' ability to function independently from management was curtailed, and it became reliant on management. As noted, at KTS in Guangdong, the newly elected union committee was able to achieve some gains not dissimilar to collective bargaining gains. When the union published its first magazine issue, it read like a workers' magazine. In Shunda in Fujian, the lack of financial independence was felt almost from the start. When the new union committee published its first magazine issue it had to go to management

¹¹ Wang Jiaoping, "Zhixuan, zai gueifanzhong pingwen tuijin—quanzong fuzhuxi Suliqing jiu jizeng gonghuizhuxi zhixuan da jizhe wen" (Direct elections: pushing ahead steadily within a framework—ACFTU Vice President Su Liqing's responses to reporters' questions on basic-level trade union chair direct elections), *Workers' Daily*, July 25, 2003.

for funds and that entailed very serious compromises.¹² The magazine was indistinguishable from a factory PR magazine.

Fourth was the absence of an independent trade union culture among Chinese workers. This takes decades to develop and often emerges out of labor struggles. The workers in these two factories were endowed with a golden opportunity to have their own representatives, but the workers did not have much understanding of trade unionism. Workers' consciousness needs time and nurturance to develop and grow. Andrew Walder's book about the authoritarian culture of dependency of Chinese state enterprise workers in the Maoist period¹³ shows up today among Chinese migrant workers. After the elections, workers' spirits were elated by the experience. The workers and the elected trade union committee members were grateful to Reebok and relied on Reebok to continue to help them against management suppression. But Reebok itself was caught in a difficult position. Jill Tucker understood it was not the job of a department of a multinational corporation to run a trade union at the factory of another company in China, and when the national union federation expressed its disapproval, Reebok retreated. Certainly, it was an odd situation from the beginning. A multinational company surely is not the institution one would expect to assume the task of educating workers in how to organize a functioning trade union. This is normally the job of higher-level trade unions. But short of this, are we to stop pushing the agenda of genuine workers' representation? My argument is that we should still try to overcome the dilemma posed here by looking into other solutions.

¹² One newly elected union committee member told me his article was rejected.

¹³ Andrew Walder, *Communist Neo-Traditionalism: Work and Authority in Chinese Industry*, Berkeley, University of California Press, 1986.

The Necessity for Trade Union Involvement

One common feature that runs through these two pilot election programs was an absence of trade union involvement in training and supporting the workers before and after the elections. Even in societies that have well-established trade unions and trade union cultures, much time and efforts are needed to set up workplace trade unions and after that to ensure they have the competency to bargain with management. Moral and practical support and prolonged training by higher-level trade union organs are normally needed. Needless to say, in China this is essential. Reebok initially provided this as best it could, through “human rights” training to the workers, and brought in NGOs to help, but these cannot take the place of trade unions. The “human rights” training fortunately was not totally lost on the workers. In KTS, where this pre-election training lasted for almost a year, workers were better prepared for the election and the post-election period than in Shunda in Fujian. But even this was not sustainable once Reebok left the union to survive on its own.

Chinese workers need trade unions to help raise their awareness and set up genuine workers’ represented unions. Though collective bargaining is legal and there are some union officials in Beijing who view it as important, it is not a concept widely disseminated at the grassroots. There are some small local labor NGOs that operate in China, but their focus is on helping workers to seek remedies through the courts when their individual legal rights are violated. Collective bargaining is legally solely the prerogative of the official trade unions

Let me put this put this into a broader perspective. We have seen that these elections need the support of the trade union federation, and by support I do not mean the

kind of “support” that the local unions have been providing to the two union branches instructing them to submit to management, couched in terms of “win-win” arguments. I mean real support that can help workers function independent of management. We know, and even the ACFTU is fully aware, that it has little experience trying to work in an environment of hostile management, which is the predominant factory management culture in the export industrial sector, particularly in Guangdong. Under such circumstances, the involvement of foreign trade unions with their wealth of historical experience is much needed. If this experience can be “technically transferred” to the Chinese trade unions it will quicken the process by which China can develop a mature industrial relations system.

I am sure many of you in the audience by now think that I am talking nonsense. That it is all wishful thinking. You mean multinational corporations should work with the ACFTU? That the ACFTU will cooperate with the multinationals in this? That the ACFTU will work with foreign trade unions? Or that foreign trade unions will work with the ACFTU when the ITUC, the International Trade Union Congress, still refuses to recognize the ACFTU? Or even that the ACFTU is at all serious about helping workers? Yes, I agree with you. In fact, that is how I often feel, that the situation is near hopeless. But fortunately, there are many signs indicating that things have changed since KTS in Guangdong had its first trade union election.

Here are some, but not all, of the changes:

- 1) The ACFTU is changing, though perhaps not that much in Guangdong province.

Not long after the Reebok elections the ACFTU announced that it had begun

- workplace-level direct trade union elections in an effort to show support for trade union democracy.¹⁴ The timing of that announcement often makes me wonder whether it was not a reaction instigated by the Reebok elections. The direct election program has been going on for several years. Whether the process is democratic or not remains to be studied. In any case the ACFTU now formally recognizes the need for a show of trade union democracy.
- 2) The ACFTU's first ever grassroots trade union organizing efforts took place at a Wal-Mart store in Fuzhou City in Fujian last year, followed by similar efforts at a number of other Wal-Mart stores. The union federation and Wal-Mart subsequently signed a five-point memorandum that, if ever utilized, opens up avenues for the emergence of functioning workplace unions.¹⁵ The Wal-Mart case also set a precedent of the union federation negotiating with a major foreign company. Wal-Mart is a direct employer in China, whereas other multinationals such as Reebok are not. But there is no reason why such a multinational cannot approach the union federation to work out a formula to help workers set up genuine representative bodies inside contractor factories. The union federation might even welcome this since it has difficulty setting up effective union branches in such factories on its own.
 - 3) On the other hand, we are also aware that many local trade unions are more pro-management than pro-worker and suppress workers' initiatives. To alleviate this

¹⁴ Wang Jiaoping, *op cit*. According to this report, direct workplace level trade union elections had been tried out for some time at various places. To me this was the first time that Wang announced made it widely known. Also see Jude Howell, "New Democratic Trends in China? Reforming the All-China Federation of Trade Unions," *Institute of Development Studies*, Working Paper 263, March 2006.

¹⁵ ACFTU website, August 16, 2006 <http://www.acftu.org/template/10004/file.jsp?cid=222&aid=41801>. (An English translation is available at Chinese Labor News Translations <http://www.clntranslations.org/article/4/wal-mart>).

problem the involvement of foreign trade unions would be helpful. Compared to six years ago, the ACFTU is now much more willing to reach out to foreign trade unions. In the past few years, it has had some contacts with foreign trade unions at different levels that are more than formal hand-shaking. Trade unions of various European countries have been increasingly active in China. This includes the factories of suppliers of multinationals from their home countries, with the cooperation of those multinationals. In addition, the Beijing General Trade Union has gone to Canada and has received training sessions on how to collectively bargain.¹⁶ Even the American trade unions, as exemplified by the Change To Win union federation, are beginning to have direct contacts with the Chinese federation. These international contacts in time will have some impact on the Chinese federation's conception of what trade union entails.

- 4) Chinese workers too have changed. They are much more aware of their labor rights and legal rights today than before, especially in Guangdong province. The current labor market conditions, with labor shortages at some factories, are advantageous to them to become more assertive. Their horizons have been expanded by the ease of communication through mobile phones and the internet compared to half a dozen years ago. Moreover, the Chinese press today generally is supportive of labor. The impact has been cumulative. For instance, recently I met an ordinary worker in Outer Shenzhen who said he was very interested in finding out more about how the first Wal-Mart store union had been set up in

¹⁶ Information from Cathy Walker, formerly of the Canadian Auto Workers. She has facilitated a number of exchanges with the ACFTU and its lower level unions and various Canadian trade unions.

Fuzhou, which he had read about avidly in the Chinese press, because he too wanted to give it a try.

Those who are still skeptical that it is possible to cement productive relations between the Chinese and foreign trade unions ought to look towards Vietnam, a country that has a political and economic system quite similar to China. There, with the permission of the Vietnamese Communist Party and government, the Vietnamese union federation has been actively engaging with foreign trade unions for almost two decades. Local and foreign labor NGOs can function quite openly. The top and middle levels of the Vietnamese union federation are quite pro-labor and so are the official trade union newspapers that report on strikes, which are even illustrated with photographs of strikers' demonstrations. The Vietnamese union federation is also willing to participate in CSR programs. Presently one ILO CSR program, "Improving Industrial Relations at Enterprises in Vietnam", involves the union federation.¹⁷ After a 2006 strike wave in Asian-funded enterprises in southern Vietnam the Vietnamese government worked closely with the ILO office to revise the law on strikes. Another effort, which is more interesting, is a pilot program to improve work conditions in about two dozen factories, funded by the government of Finland, the Finnish employers' associations and the Finnish trade union federation. On the ground in Vietnam, the program has involved the Vietnamese union federation and is coordinated by APHEDA, the foreign aid organization of the Australian trade union federation, the ACTU. That is, this CSR

¹⁷ This program is funded by the U.S. Department of Labor, the VGCL, the Vietnam Chamber of Commerce and Industry, and the Vietnam Cooperative Alliance.

program involves both the local union federation and foreign unions. It will be interesting to see whether the program is successful.