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Breaking the Impasse

Promoting Worker Involvement in the Collective
Bargaining and Contracts Process

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Introduction

Collective contracts, directly negotiated between representatives of labour and management, via a process of collective bargaining, are a well-established and globally recognized means of addressing workers' demands and ensuring healthy labour relations. The collective contract system is a cooperative and consensual mechanism that can help improve working conditions, as well as communication and understanding between labour and management.

Such a system is urgently needed in China today. Violations of workers' rights are widespread and increasingly commonplace, and over the last decade there has been a commensurate rise in the number of workers' protests, to the extent that labour disputes are now the single most significant cause of social unrest in the country. China Labour Bulletin believes the collective contract system, if implemented correctly with genuine workers' representation, can act as a powerful tool to improve workers' lives and reduce the evident tensions between labour and management in China today. Indeed, the new *Labour Contract Law*, which comes into effect on 1 January, although limited in scope, should provide a favourable environment and stimulus to the future development of collective contracts.

Collective contracts were used in the early days of the People's Republic of China (PRC), but they gradually disappeared with the establishment of state-owned enterprises (SOEs) in the late 1950s. Collective contracts were deemed unnecessary in SOEs because the Communist Party controlled All-China Federation of Trade Unions (ACFTU) acted as a "bridge" between workers and management that could in theory mediate any disputes. In reality, the ACFTU simply relayed management dictates to the workers.

With the introduction of economic reforms in the 1980s, and the growth of the private sector, the ACFTU's previously solid enterprise-level powerbase began to erode. By the early 1990s, the ACFTU was a shadow of its former self, and its leaders sought to use the collective contract provisions in the PRC's *Trade Union Law* (1992) and *Labour Law* (1994) as a means of regaining some of the prestige and influence the union had lost. Both laws gave trade unions the right to engage in collective consultations with management, and in the mid-1990s the government, in conjunction with the ACFTU, launched a major drive to implement collective contracts in the SOE sector. At the turn of the century, this drive was extended to the rapidly growing private sector as well. The collective contract system has been in place for over a decade now, but, because of the continued lack of genuine collective bargaining, collective contracts have so far failed to make a significant impact on labour-management relations in China.

China's collective contract system is more formally known as the "equal

consultation and collective contract system.” However, the term “equal consultation” should not be confused with “collective bargaining” as it is internationally understood. Because of the lack of elected workers’ representatives and the equivocal nature of the ACFTU as both an agency of government and the designated representative of labour, “equal consultation” does not emphasize a bargaining process in which labour and management are able to confront each other as formal equals. Rather it is a process designed, in the parlance of the current government, to create “harmony” in the workplace, and in a wider sense ensure “stability” in society as a whole. In recent decades, the latter term in particular has often been a by-word for repression rather than dialogue.

However, China’s existing legislation does at least provide a legal foundation for genuine collective bargaining, and this report will examine that legal framework, the extent to which collective contracts have been implemented thus far, the protection they provide for workers’ rights and the prospects for future development, especially in the context of the corporate social responsibility (CSR) movement that has gained considerable momentum among global companies doing business in China over the last decade.

I. Laws and policies on the “equal consultation and collective contracts” system

Collective contracts became a real possibility in the PRC again with the passage of the *Labour Law* in July 1994. The law allowed for workers at a particular enterprise to sign a collective contract or agreement regarding wages, work hours, workplace safety, benefits, and other issues. And in December that year, the Ministry of Labour (now the Ministry of Labour and Social Security) issued its *Regulations on Collective Contracts* giving clear guidelines for the implementation of a collective contract system. The regulations provided a comprehensive and concrete set of rules governing the collective contract system, consisting of 41 provisions on the signing and review of collective contracts and dispute handling. Some nine years later, in January 2004, the Ministry of Labour and Social Security issued updated *Regulations on Collective Contracts* which included detailed rules on the consultation process and the selection, responsibilities and rights of workers’ “consultation representatives.” The new regulations required that both labour and management add specific provisions on the protection and training of female and juvenile workers to the scope of collective contracts. Moreover, the new regulations firmly established the concept of a “Specific Collective Contract,” defined as a specific written agreement between labour and management covering, for example, wages, the rights of female employees or health

and safety issues. (For more information on specific collective contracts, see Section III. The collective consultation process and the various types of collective contracts).

It is important to note here that under Chinese law, the trade union does not necessarily have to act as the workers' representative in the negotiation and signing of an enterprise-level collective contract. The *Labour Law* states:

Collective contracts shall be signed by the trade union representative and the enterprise; when there is no trade union established for an enterprise, collective contracts shall be signed by a representative selected by employees and by the enterprise (Article 33).

And the *Regulations on Collective Contracts* issued by the Ministry of Labour and Social Security stipulates that workers can elect their own representatives:

The collective consultation representative for employees shall be selected by the union for the work unit. If there is no union, [the representative] shall be nominated by the workers in the work unit and approved by a majority of the workers in that work unit" (Article 20).

However the new *Labour Contract Law*, which will go into effect on 1 January 2008 significantly restricts workers' ability to directly negotiate a collective contract without union supervision. It states:

Collective contracts shall be signed by the trade union representing the workers and the enterprise; if there is no union at an employing work unit, a representative selected by the workers *under the guidance of the next-higher level union* shall sign along with the employing work unit" (Article 51). (Emphasis added).

Once a collective contract is signed, according to the *Regulations on Collective Contracts* it becomes a written document with the force of law. In November 2000, the Ministry of Labour and Social Security issued the *Interim Measures on Collective Wage Consultations*, which maintain that wage negotiations between labour and management represent a "bilateral specific collective contract." If labour and management have already signed a collective contract, then the wage agreement shall act as an addendum to the collective contract, and shall enjoy equal force under law (Article 3). These measures further stipulate that wage consultations shall not be limited to basic wages but shall also cover the wage allocation system, average salary levels based on seniority, incentives, bonuses, allowances and subsidies, and the means by which wages will be paid.

Moreover, the majority of provinces have now drafted and promulgated local laws and regulations providing for the implementation of a collective contract system

in their jurisdictions, including 14 provincial laws and regulations that provide for regional and industry-specific collective contracts.¹

II. Promoting the collective contracts system

In his work report to the ACFTU's National Congress in October 1993, the union's then vice-chairman Zhang Dinghua said: "We must vigorously promote a collective contract system in which the union represents labour during consultations with enterprise management on issues related to workers' interests."²

The promulgation of the *Labour Law* in the following year was seen by the ACFTU as an ideal opportunity to use collective contracts as a means of rebuilding its image and re-establishing its powerbase in enterprises across China. And at its national committee meeting in December 1994, the promotion of the collective contract system was for the first time made a major focus of the union's work. The meeting stressed: "Thorough implementation of the Labour Law is an opportunity and an opening that will help drive various union projects, promote reform and construction."³

Following this meeting, the promotion of the collective contract system remained high on the ACFTU's agenda for the next three years. The union leadership repeatedly emphasized that the signing of collective contracts was "a right given to unions by law," and that "union organizations at all levels must fully exercise this right."⁴ On 17 August 1995, the ACFTU announced its *Test Guidelines for Union Participation in Equal Consultation and Signing of Collective Contracts*. In this document, the ACFTU set out regulations governing the content of collective consultations and collective contracts, procedures for signing collective contracts, modification, elimination and termination of collective contracts, and the responsibilities of the upper levels of the unions. Only two of the 42 articles in the document referred to the role of government agencies in resolving conflicts arising out of collective contracts and the approval of such contracts, indicating that the ACFTU was at that time confident of its own ability to independently promote a collective contract system

¹ Li Wei: *Can Collective Contracts Become a New Weapon to Protect Worker Rights?* The Observer Daily (online edition), <<http://www.jcrb.com/n1/jcrb819/ca375478.htm>> May 23, 2006.

² Zhang Dinghua: *Report before the 12th National People's Congress*, *People's Daily*, 1 November 1993, section 1.

³ From the ACFTU: *Decision on the Thorough Implementation of the Labour Law*, excerpted from the People's Republic of China Federation of Unions' *China Union Almanac 1995*, China People's Publishing House, 1995, pp. 351-357.

⁴ Wei Jianxing: *Remarks at the 70th Anniversary of the Founding of the Chongqing Chinese National Federation of Unions*, excerpted from the *China Union Almanac, 1995*, China People's Publishing House, 1995, pp. 511-514. Wei Jianxing: *Remarks at the Opening Ceremony of the 12th National Federation of Unions*, excerpted from the *China Union Almanac, 1996*, China People's Publishing House, 1996, pp. 514-522. Zhang Dinghua: *Working Report at the 3rd session of the 12th National Federation of Unions*, excerpted from the *China Union Almanac, 1996*, China People's Publishing House, 1996, pp. 531-538.

without input from government labour agencies.

Immediately after the promulgation of the *Labour Law*, the ACFTU and the Ministry of Labour had different priorities. The main focus of the Ministry of Labour was to promote individual labour contracts within enterprises,⁵ whereas the ACFTU concentrated on collective contracts, specifically collective contracts in SOEs. However, because the ACFTU had always been closely bound up with the Communist Party, union leaders at all levels had to seek permission from their party counterpart before undertaking their collective contract work. If such permission or support was not forthcoming, the ACFTU's progress in independently promoting the collective contract system could be severely compromised. By the end of 1995, out of the 2.6 million enterprises in China, only 48,431 had signed collective contracts, a coverage rate of just 1.8 percent.⁶ Moreover, many local unions felt that the promotion of the collective consultation system "was not something that can be done simply because the union desires it; it requires the close cooperation of management at enterprises, the recognition of government agencies, a high level of support from the departments undertaking systemic reform, and the support and understanding of the public."⁷ In some places, local unions set up working groups led by Party officials and composed of workers and officials to promote the collective contract system in enterprises. In these working groups, model collective contracts were drafted, and policies were established to promote the collective consultation process in the local area.⁸ At no point was the concept of genuine collective bargaining introduced, and the whole process remained a "top-down" system whereby collective contracts were essentially imposed on individual enterprises. And this would eventually become the framework used by the ACFTU as a whole in its large-scale promotion of the collective contract system after 1996.

From 1996 onwards, collective contracts were jointly promoted by the ACFTU, the Ministry of Labour and the National Enterprise Association. Although this grouping appears on the surface to represent a tripartite mechanism, in reality the ACFTU is too closely linked to both government and management to be considered a separate, independent entity. The key point to emphasize here is that from 1996 the

⁵ According to Deputy Minister of Labour Zhu Jiaping, "Individual labour contracts are fundamental in establishing a legal basis for labour relations. Collective contracts are based on individual labour contracts and secondary to them." See Zhu Jiaping: *Speech at Symposium on Adjustment of Labour Relations*. Excerpted from Wang Jianxin (ed.), *China Labour Almanac (1995-1996)*, Beijing: China Labor Publishing House, 1996, p. 99.

⁶ Xiao Zhenbang: *Summary of Union Work, 1995*, excerpted from the *China Union Almanac, 1996*, China People's Publishing House, 1996, pp. 19-22. Based on *First Survey of Basic Units* data, there were 2,628,125 legal entities registered in China. See State Bureau of Statistics web site

<http://www.stats.gov.cn/was40/gjtj_detail.jsp?channelid=15069&record=1>.

⁷ Henan Province Federation of Unions Department of Social Guarantees: *An Exploration of Establishing Collective Consultation and Collective Bargaining Systems for Wages and Other Issues at Enterprises*, 1994, unpublished.

⁸ Henan Province Federation of Unions Department of Social Guarantees: *An Exploration of Establishing Collective Consultation and Collective Bargaining Systems for Wages and Other Issues at Enterprises*, 1994, unpublished.

ACFTU considered the promotion of collective contracts to be a joint effort and not something it could accomplish itself.⁹

The initial focus of the collective contract drive in the mid-90s was to establish comprehensive collective contracts in SOEs. However the initiative coincided with the government's massive SOE privatisation programme in which hundreds of thousands of SOEs were either closed, merged or bought-out, leading to millions of workers across China being made redundant. Nonetheless, by the end of 1997, collective contracts had been concluded in 236,000 enterprises, 75 percent of which were state-owned. At the turn of the century the focus of the programme switched to the private sector, and in particular the use of specific wage contracts as well as regional and industry specific contracts. For example, in 2006, the ACFTU, the Ministry of Labour and the National Enterprise Association issued the *Opinions Regarding the Work of Developing Regional and Industry-specific Collective Consultations*, which stated that labour agencies at all levels of government, union organizations and enterprise federations and associations should, "under the leadership of the local Party committee and government," re-double their efforts to establish regional and industry-specific collective consultations. By September 2005, a total of 754,000 collective contracts had been signed covering 1.378 million enterprises, and 103.84 million workers, or 58 percent of all enterprise workers in China. Moreover, according to the ACFTU's *2005 Blue Paper on the Protection of Workers' Legal Rights in China*, 84,000 regional collective contracts had been signed, as well as 29,000 industry-specific collective contracts.

III. The collective consultation process and the various types of collective contracts

The *Labour Law* stipulates that individual enterprises should be the main focus of the collective consultation process. This highly decentralized approach was devised to some extent out of political considerations, in that it was hoped a decentralized system would help prevent labour disputes from spreading over a large area or across a specific industry. However it soon became apparent to the ACFTU that it would be difficult to unionize hundreds of thousands of small-scale private enterprises spread over a wide area, each with no union base, a small workforce and high rate of employee turnover. As a result, the ACFTU, in addition to unionizing individual enterprises, sought to establish industry-specific or regional union associations in

⁹ Including *On Gradual Implementation of Collective Consultation and the Collective Contract System* (promulgated May 17, 1996); *On Further Promotion of Equal Consultation and the Collective Contract System* (November 14, 2001); *On Thorough Implementation of 'Regulations on Collective Contracts'* (May 14, 2004); *On Further Promotion of Collective Consultation between Labour and Management* (February 22, 2005) and *Opinions on Developing Collective Consultation in Regional Industry*, (August 17, 2006).

areas with high concentrations of small- and medium-sized private enterprises, and to promote industry-wide and regional collective contracts. In the 1996 *Background On the Gradual Implementation of Collective Consultation and the Collective Contract System* the ACFTU suggested that “in areas where there are concentrations of foreign-invested small businesses and private enterprises, industry-specific or regional union associations can be established to represent the workers in collective consultation and in signing collective contracts with the enterprises.”

1. The collective consultation process

The *Regulations on Collective Contracts* contain a chapter devoted to the process of collective consultation, including procedures for requesting a meeting, pre-consultation preparation, convening a consultation meeting, and signing a collective contract. The regulations stipulate that either labour or management may give a written request for a collective consultation to the other side in writing, and the other side must respond in writing within 20 days of the receipt of such request. The representatives of both parties must be aware of and understand the nature of the meeting prior to the consultation, and employee representatives must canvas the opinions and suggestions of employees. Both parties are responsible for drafting an agenda, setting the date, time and location of the meeting.

Collective consultation meetings should be chaired in rotation by the chief representative of each side, and both parties should seek to reach a consensus through a process of discussion and consultation. If the representatives of both sides do not reach a consensus during the meeting, or if some unforeseen problem occurs, after mutual discussion the consultation may be halted. The time, location and agenda for the next session will be decided by both parties.

Although there are clear guidelines to the collective consultation process, in practice consultations have been hampered by local union officials' lack of experience and expertise in contract negotiation. Most union representatives have not been selected by the workers but rather appointed by management. As such they dared not face-off with management or vigorously defend the rights and interests of the workers. All too often the collective consultation process involved merely the copying and signing of sample contracts provided by the local union. With the introduction of specific wage consultations in 2000, the ineffectiveness of the union representatives became even more apparent. An obvious solution to this problem would be to have a genuinely representative and democratically elected union negotiator participate in the consultation process; however the ACFTU attempted a technical fix by hiring a new breed of “collective consultation consultants.” These consultants were government labour officials, union officials and managers who had undergone training in consultation techniques and had a basic understanding of the legal foundation of the

collective contract process. Once their training was complete, they were presented with an official certificate jointly issued by the local government labour agency and the union. Their primary responsibility was to act as a facilitator bringing both labour and management together, train both sides in appropriate consultation techniques, assist enterprises in drafting collective contracts, and seek to alleviate tensions and problems that emerged in the course of the collective consultation process. These consultants have only become commonly used in the last two years and it remains to be seen if they will have any lasting or beneficial impact on the consultation process.

2. The various types of collective contracts

Comprehensive collective contracts covering a wide range of work-related issues such as wages, hours, health and safety, medical insurance and job security, were the main type of collective contract in the mid-1990s. However, at the turn of the century the focus switched to specific collective contracts, primarily wage contracts, as well as regional and industry specific contracts. This change of emphasis suited both labour and management because they allowed both sides to reach an agreement on one particular issue and obviated the need for wide-ranging collective contracts which both labour and management often found too difficult or complex to negotiate properly.¹⁰

Specific collective wage contracts

In its 1997 *Opinions on Collective Wage Consultation for Foreign-Invested Enterprises*, the Ministry of Labour urged unions or workers' representatives at foreign-invested enterprises and representatives of the enterprise to follow national guidelines on the negotiation and implementation of specific wage contracts. This was followed up by the ACFTU in April the following year in its *Guiding Opinions on Union Participation in Collective Wage Consultations*, and again in 2000 by the Ministry of Labour and Social Security, which issued the *Interim Measures on Collective Wage Consultations*, a set of administrative regulations that formally established the idea that collective wage consultations were applicable to all enterprises.

According to the ACFTU's 2005 *Blue Paper on the Protection of Workers' Legal Rights in China*, a total of 252,000 specific collective wage contracts covering some 414,000 enterprises and 35.312 million workers had been signed by the end of September 2005. By the end of 2006, more than 300,000 specific wage contracts had been signed, covering some 526,000 enterprises (126,000 more than the ACFTU's

¹⁰ Wang Xiangqian: *New Developments in China's Collective Contracts System -- An Assessment and Analysis of the 'Guidelines for Collective Consultation on Wages' China Labour Net* <<http://www.labournet.com.cn>>.

target) and 37.2 million workers (about 7.8 million fewer than targeted).¹¹ There were in addition 19,000 regional wage contracts (see below for details) covering 235,000 enterprises and 8.2 million workers signed by the end of 2006. By the end of 2008, the ACFTU hopes to have increased wage contract coverage to 60 percent of all workers in China, with more than 50 percent coverage in non-state-owned enterprises; and to establish a collective wage consultation system in the majority of enterprises that have a comprehensive collective contract system.¹²

Specific collective contracts on the rights of female workers

Specific collective contracts on the protection of the rights of female workers are primarily used in service enterprises, where there is a high concentration of female workers. These collective contracts are based on the provisions of the *Labour Law* on the safety and health and special interests of female workers, as well as the specific circumstances of the enterprise in question. Contracts generally cover issues such as maternity leave, gynaecological examinations, and the provision of feminine hygiene products, but may also include provisions safeguarding women from harassment and exploitation. By the end of 2006, 119,000 specific contracts including these issues had been signed, covering 10.5 million mostly female workers at 238,000 enterprises.¹³

Specific collective contracts on safety

High-risk industries such as metallurgy, mining and construction have, over the last few years, promoted specific collective contracts on health and safety. For example, the union at the Chongqing Coal Group's Nantong Mining Co signed a collective contract with management which stipulated management must comprehensively canvass and take into account the opinions of union and worker representatives when considering any issues related to worker health and safety. In addition management should support financially any union-led initiatives on the health and safety of workers.¹⁴ By the end of 2006, 55,000 specific safety contracts had been signed across China, covering 117,000 enterprises and nearly six million workers.¹⁵

Specific collective contracts on job training

On 8 August 2002, the union at the Changzhou Gongjiao Group in Jiangsu signed a specific collective contract with management on employee training. The

¹¹ All-China Federation of Trade Unions 2006 *Statistical Report on Trade Union Organizing and development*. ACFTU website <<http://www.acftu.org/template/10004/file.jsp?cid=201&aid=59168>>. These are the ACFTU's own statistics and cannot be independently verified.

¹² *All-China Federation of Trade Unions Press Conference No. 1, 2006*, ACFTU web site <<http://news.acftu.org/template/10001/file.jsp?cid=161&aid=5867>>, January 10, 2006>

¹³ All-China Federation of Trade Unions 2006 *Statistical Report on Trade Union Organizing and development*. ACFTU website <<http://www.acftu.org/template/10004/file.jsp?cid=201&aid=59168>>.

¹⁴ Li Guo, Wen Liangbing: *Chongqing: First specific collective contract on safety signed by labour and management*. Workers' Daily: reprinted from Xinhuanet <http://news.xinhuanet.com/politics/2006-03/17/content_4310350.htm>, March 17, 2006.

¹⁵ All-China Federation of Trade Unions 2006 *Statistical Report on Trade Union Organizing and development*. ACFTU website <<http://www.acftu.org/template/10004/file.jsp?cid=201&aid=59168>>.

contract stipulated that management has to provide training for workers doing technical jobs so that they meet national qualification standards before starting work. During the term of the contract, the company should train a certain number of workers to specific skill-levels, provide funds for vocational education and reward employees who obtain college or technical diplomas of their own volition.¹⁶

Since this contract was initiated, several other similar types of contracts have been signed, including ones on social insurance and work hours. These specific contracts are generally initiated by local unions, and primarily apply to private enterprises with very specific work environments and conditions of employment.¹⁷

Regional and industry-specific collective contracts

Since 2000, the government and the ACFTU have jointly promoted regional and industry-specific collective contracts in areas with a high concentration of small private enterprises such as industrial parks, small towns and villages. These regional or industry-specific collective contracts are usually signed by the local or industry union association and the employing company or the employers' association. This form of contract has helped break down the original decentralized structure of the collective contract system in which the enterprise was the centre of the process. However, the effectiveness of these new collective contracts has been limited by the difficulty of taking into account the specific conditions within each enterprise, and even greater difficulty in satisfying the wide-ranging demands of the workers concerned. Thus far, the provisions in these contracts have tended to merely copy provisions in existing labour law, or add some explanatory notes to them, and in practice they are no more effective in preventing abuses of labour rights by employers than the law itself.

IV. The pressing need for collective contracts as a means of reducing tensions between labour and management

The development of China's collective contract system is clearly distinct from that in western industrialized nations. It has been a top-down process led by the government, which not only drafted and implemented legislation and regulations but established the administrative framework whereby the process could be carried out. The ACFTU also adopted a top-down model for implementation, issuing documents, and setting targets for the number of contracts to be signed within a certain period of time. And throughout this period, there was no mechanism for genuine collective bargaining, and the opinions, demands and needs of the workers themselves were

¹⁶ Fan Xiaoping: *Jiangsu Has Specific Collective Contracts on Job Training*, Workers' Daily, August 14, 2002.

¹⁷ Wang Wei, Zhang Zi, Fan Xiaoping: *Changzhou Promotes Survey and Consideration of Specific Special Collective Contracts*, Workers' Daily, November 21, 2002, Sect. 5.

generally ignored. As a result, the process of collective contract implementation has met with numerous obstacles and difficulties on the ground.

The reform and privatization of state-owned enterprises in the 1990s led to the gradual erosion of the ACFTU's previously solid enterprise-level powerbase. And the private enterprises that steadily increased in number during this same period for the most part did not have union organizations. The union organizations that were set up by the ACFTU were largely controlled by management. And the collective contracts that were signed mostly consisted of provisions copied from articles of labour legislation and regulations; as such they generally did not reflect the needs and interests of workers in terms of wages and working conditions at individual factories.

Despite the fact that the development of the Chinese collective contract system occurred in a very particular political and economic environment, and regardless of the fact that there are still flaws in the collective consultation process and in the provisions of collective contracts, the process can still be seen as a potentially useful means of reducing tensions between labour and management. The current state of labour-management relations in China is roughly analogous to that which existed during the early phases of the Industrial Revolution in Western nations. As the pace of economic growth increases, the systematic and widespread exploitation of the workforce increases too. Factory owners are extending working hours, keeping wages low, docking salaries and using short-term contracts and outsourcing to reduce labour costs. This has had a hugely negative impact on the rights and interests of Chinese workers, and relations between labour and management have steadily deteriorated as a result.

Official statistics show that from 1994 to 2004, the number of collective labour dispute cases handled by labour dispute arbitration committees (LDACs), as well as the number of workers involved in such cases, tended to increase substantially year by year (see Table 1).¹⁸

Table 1 Number of collective labour disputes in China and employees involved

| Year | Collective labour disputes (cases) | Workers involved | Total workers with labour disputes | Workers involved in collective disputes as percentage of all workers with disputes |
|------|------------------------------------|------------------|------------------------------------|--|
| 1994 | 1, 482 | 52, 637 | 77, 794 | 67.7 |
| 1995 | 2, 588 | 77, 340 | 122, 512 | 63.1 |
| 1996 | 3, 150 | 92, 203 | 189, 120 | 48.7 |
| 1997 | 4, 109 | 132, 647 | 221, 115 | 60.0 |
| 1998 | 6, 767 | 251, 268 | 358, 531 | 70.1 |
| 1999 | 9, 043 | 319, 241 | 473, 957 | 67.4 |

¹⁸Data for 1995 - 2004 are from the *China Labour Statistics Almanac* for that year, compiled by the National Bureau of Statistics Office of Census and Social and Employment Statistics, Ministry of Labour and Social Security Office of Planning and Finance, published by the China Statistical Publishing House.

Data for 2005-2006 is from the *Ministry of Labour and Social Security Web Site – Statistical Reports* <http://www.molss.gov.cn/gb/zwxn/node_5436.htm>.

The methods used to compile these statistics were revised in 2005, and this partially explains the significant drop in the numbers of disputes in 2006.

| | | | | |
|------|---------|----------|----------|------|
| 2000 | 8, 247 | 259, 445 | 422, 617 | 61.4 |
| 2001 | 9, 847 | 287, 000 | 467, 000 | 61.5 |
| 2002 | 11, 024 | 374, 956 | 608, 396 | 61.6 |
| 2003 | 10, 823 | 514, 573 | 801, 042 | 61.6 |
| 2004 | 19, 241 | 477, 992 | 764, 981 | 62.5 |
| 2005 | 19, 000 | 410, 000 | 740, 000 | 55.4 |
| 2006 | 14, 000 | 350, 000 | 680, 000 | 51.5 |

Moreover, mass protests by workers, such as demonstrations, sit-ins, strikes and so forth also increased greatly during the same period of time. The 2005 *Blue Paper* asserts that that between 1993 and 2003, the number of mass protests in China each year grew from 10,000 to 60,000, with a corresponding increase in the number of participants each year from 730,000 to 3.07 million. Protests have continued to swell since then, and Ministry of Public Security statistics from 2004 show that the major causes of these protests were primarily labour-management disputes, followed by land disputes, forced evictions and the low level of compensation provided, as well as issues specifically arising from the privatization of SOEs.¹⁹

Labour disputes and protests have not just been confined to domestic enterprises. Tensions between labour and management are just as prevalent in companies with overseas investment, notably those from Taiwan and Hong Kong concentrated in coastal areas of south-eastern China. The vast majority of workers in these companies are migrants from the poorer, less developed rural areas of China. And in recent years, these migrant workers have become increasingly determined to stand up for their rights and no longer accept substandard working conditions, long hours and low wages. For example, in February 2005 several thousand employees at Jingyi Industrial Co Ltd. (a Taiwanese joint-venture company) in Shenzhen took to the streets to demonstrate against the docking of wages. And in November 2005 more than 3,000 workers at Del Coro Co Ltd. (a wholly-owned Italian company) in Shenzhen went on strike in protest at the beating of several workers' representatives who had asked for an audit of wages by the Italian manager.

These two examples are just the tip of the iceberg.²⁰ Tensions between labour and management, in both foreign and domestic firms, are flaring up on a daily basis and worsening each year. Indeed workers' protests are no longer simply confined to individual factories but have become increasingly well organised and spread out to affect neighbouring and same-sector companies. For example, on 27 July 2005 over 500 employees at Dongzhi Dalian Ltd. went on strike to protest at arbitrary increases in the speed of the production line and low wages. This action prompted strikes by workers at other Japanese-invested firms in the Dalian Enterprise Zone such as Mitsubishi, Toshiba, NEC Electronics, Nissin and Asahi. In total, more than 30,000

¹⁹ Chen Lihua: *Group Actions Test China*. The Globe, (*Huanqiu*) 2005, No. 8.

²⁰ For a detailed discussion of the scale and nature of these protests, see CLB's research report on the Workers' Movement 2005-06.

workers at a dozen companies went out on strike. And on 4 April 2006 several thousand workers at Ruifeng Timber Co Ltd. in Shenzhen attempted to present a petition at the Qilin Mountain Villa where Chinese leaders were staying, protesting at the company's compulsory overtime system. Faced with more and more workers' protests, local governments and unions have begun to reassess their policies and strategies. Although the government still uses pressure to break up workers' protests, it is also now actively considering ways to improve workers' conditions of employment in an effort to maintain social stability. And in this regard, CLB believes genuine collective bargaining and the implementation of properly negotiated collective contracts could be the most effective means of reducing tensions between labour and management. This should be the common goal of management, government, unions and workers alike.

V. Corporate social responsibility and collective contracts

Since the mid-1990s, corporate social responsibility (CSR) has played an increasingly prominent and influential role in the Chinese workplace, especially in foreign-invested companies and those enterprises supplying major multinationals and internationally recognized brands. From 1995 to 2006, at least 8,000 factories in the coastal regions of China agreed to corporate responsibility audits by multinational companies; those that scored good marks often obtained bigger orders, while some of those that did not demonstrate sufficient goodwill had their contracts terminated.²¹ However the growth of CSR in China has yet to significantly improve working conditions or relations between labour and management as a whole.

The reasons for the ineffectiveness of CSR thus far stem from the fact that it is seen in China as a "virtuous act" on the part of management, designed to eliminate sweatshops, promote economic and social justice, democracy and equality, but not as a genuine move to empower workers. CSR can exert significant pressure on a handful of companies in China, spurring suppliers to improve working conditions, but it cannot systemically affect labour-management relations across the whole country.

CSR codes of conduct are usually based on international human rights and labour rights standards, and as such provide an invaluable benchmark for acceptable standards in enterprises across China. However, just as in the government and ACFTU's collective contract system, it is still essentially a "top-down" approach that does not necessarily take into account the individual needs and demands of the workers at the enterprise it is imposed upon. Moreover, corporate codes of conduct

²¹ Wang Yijie, Liu Peng, Sun Yuping, Wang Yang: *Analysis of the Impact of Social Responsibility and Recognition of SR Standards on the Chinese Government and Responses to SR*, China Enterprise Confederation, Global Compact Promotion Office <http://gcp.cec-ceda.org.cn/files/info_166.html>.

are not legally enforceable, and the buyer company has to rely on moral authority or the threat of withdrawing its business in order to enforce its own regulations. The withdrawal of business or cancelling of an order not only leads to an economic loss for both parties, it also may lead to the supplier's employees losing their jobs.

The intention of CSR may be to protect worker interests but only rarely are workers genuinely involved in the CSR process. Workers at supplier companies typically know little or nothing of the standards imposed on that company, and even if the code of conduct stipulates a right to supervision by workers, the workers mostly have no way of acting to enforce that stipulation. Even if the workers are aware of the code of conduct, without an effective system of collective worker supervision, any complaints from individual workers tend to disappear like a stone into the ocean.

International brands that use inspections as a core mechanism to enforce their codes of conduct put a lot of pressure on their suppliers. Purchasers typically implement two to three audits of suppliers annually. If one supplier has several purchasers, it could easily undergo a dozen or more inspections each year.²² Some suppliers agree to these audits in order to maintain and win contracts, but simply go through the motions, providing false information about wage levels and doctored records of work hours to inspectors, and "guiding" and threatening workers to answer questions based on the company line. In many cases, factory inspections have become a game of mutual deception between suppliers and purchasers. Suppliers may make superficial improvements to working conditions in order to pass these audits, but there is rarely any substantive or long-term benefit accrued by the workers.

Despite the limitations of CSR, in the same way that China's current labour laws and the ACFTU's collective contract system provide a potential basis for genuine collective bargaining, so CSR could in theory help the development of genuine workers' rights in China. The right of workers to organize unions or undertake collective bargaining is an important part of many codes of conduct, and the promotion of a more ambitious and forward-looking variant of CSR in the coastal region of China could potentially provide a significant spur to the development of union organizing and collective bargaining across the country.

Even the most ardent proponents of CSR would acknowledge that it is impossible to inspect every factory in the global production system. However if workers are given the genuine right to supervise management, codes of conduct could be far more rigorously and effectively enforced. And the best way to ensure effective supervision is through the negotiation of collective contracts, followed by regular reviews by the union or workers' representatives.

Crucially, collective contracts – unlike codes of conduct - are legally binding,

²² Ma Zhijuan: *Fed-up with Inspections by Purchasers and Trade Barriers*, China Economy Weekly, reprinted from Xinlangnet <<http://finance.sina.com.cn/leadership/jygl/20051024/09412058126.shtml>>, 24 October 2005.

and they are meant to be promoted and enforced by government labour agencies. The government can impose sanctions on suppliers that violate the law, and international brands will have greater confidence that their codes of conduct will actually be adhered to. Moreover, the workers' representatives, as the direct signatory of the collective contract, ultimately can exercise the right to sue the company in the event of persistent violations of that contract.

In the final analysis, CSR codes of conduct are simply an agreement between two business partners. The collective contract system, by contrast, puts the workers in the driver's seat, and above all refocuses initiatives to advance labour rights in China to the critical locus: the legal labour relationship, i.e. that between employers and workers.

Conclusion

Since the 1990s, China has acquired a basic legal, regulatory and administrative framework for promoting the collective labour contract system. The implementation of the new *Labour Contract Law* from January 2008 onwards will further strengthen the legal framework and create a generally beneficial policy environment for undertaking both individual and collective contract negotiations. The challenge now for China's labour movement is to give real substance to this process by gradually introducing collective bargaining into the process.

With the overall level of labour unrest rising steadily around the country nowadays, there is clearly an urgent need for direct channels of dialogue and dispute resolution to be opened up between workers and employers. Although the Chinese government and the official trade union are united in supporting the collective contracts project, thus far implementation has been of the top-downwards variety, with such contracts being imposed on the state-owned, private and foreign invested sectors in a largely pro forma manner. The very limited success and effectiveness of this project in reducing the number and seriousness of labour disputes in the country has been a direct result of the lack of any meaningful worker involvement in the process.

If democratically elected workers' representatives can be brought into the collective bargaining process as equal negotiating partners with management, the resultant labour contracts will more accurately reflect the wishes of both sides, understanding between workers and management will be enhanced, and the prospects for normal and healthy industrial relations at the enterprise will rise. In this process, from being mere bystanders to negotiations between employers and buyers, the workers would instead be given a direct voice as co-negotiator of the collective contract, a legally binding document.

Of equal importance, this would refocus efforts to protect labour rights on to the legal labour relationship between employer and worker – the only place where they can be truly effective. An agreement between employer and buyer, such as a corporate code of conduct, can exert only a moral force at best; it has no direct bearing or impact on the legal labour relationship itself, and neither can it be invoked in court. While such initiatives can certainly play a useful secondary role, in this core sense they are peripheral to the main task and problem of advancing labour rights in China. The central vehicle for the realization of the country's labour law standards must, by definition, be the labour contract – and above all its collective variant.

China Labour Bulletin believes the best way forward now, if the authorities wish to address the problem of growing industrial unrest and neglect of labour rights at the fundamental level, is for them to permit and encourage a genuine level of worker involvement in the collective-contract negotiation process. China is currently at the very beginning stage of this initiative, and much work needs to be done in terms of education, training and advocacy on the subject of collective bargaining.

However if the opportunity can be seized by all sides – government, labour and management – the collective contract system could serve as a much-needed catalyst to improve the lives and working conditions of ordinary workers across China. If the opportunity is missed, the likelihood is that workers will increasingly take matters into their own hands, and the wave of strikes and protests seen in recent years will continue to worsen.

If government and management in China can, if not embrace, then at least learn to live with genuine worker participation in the collective “consultation” or bargaining process, the example of other countries suggests that labour disputes would gradually decline in scale and intensity and overall relations between labour and management would steadily improve. Moreover, an equitable and productive tripartite system of labour relations would have been created that could continue to benefit China's workers and employers for decades to come.

And finally, it is arguable that – across the much broader range of social injustice issues that the country is presently grappling with as it strives to maintain breakneck economic growth – the single most conspicuously absent factor today is the spirit of peaceful and constructive social dialogue. What better place to start fostering this urgently needed spirit than in factories and workplaces around the country?

Appendix. The development of the collective contracts (CC) system in China

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| 1992/4/3 | <p>Trade Union Law.</p> <ul style="list-style-type: none"> • Unions may represent workers in signing collective contracts with enterprises. <p><i>Remarks:</i> The first time CCs are mentioned in labour legislation.</p> |
| 1994/7/5 | <p>Labour Law.</p> <ul style="list-style-type: none"> • Defines the scope of CC negotiations to include five subjects: pay, working hours, rest & vacation, health and safety, insurance and welfare). • Establishes the legal status of CCs. <p><i>Remarks:</i> Lacks clear instructions on how CCs should be concluded.</p> |
| 1994/12/5 | <p>Ministry of Labour: Regulations on Collective Contracts.</p> <ul style="list-style-type: none"> • Defines CC and equal consultation • Broadens and elaborates on the scope of CC negotiations. • Sets the number, role and rights of workers' representatives. • Establishes the length of contracts, and the procedures for the conclusion, revision and termination of CCs. <p><i>Remarks:</i> Provides more concrete procedures and rules leading to the conclusion of CCs but lacks details about equal consultation, such as how worker representatives are to be selected</p> |
| 1994/12 | <p>ACFTU outlines a three-year plan to promote CCs. The first time CCs become a key area of focus for the ACFTU.</p> |
| 1995/8/17 | <p>ACFTU: Trial measures for Union Participation in Equal Consultation and Signing of Collective Contracts.</p> <ul style="list-style-type: none"> • Defines the role of trade unions in the conclusion, revision and termination of CCs. • Gives a more detailed description of the scope of negotiations to include ten subcategories based on and additional to the original five. |
| 1995 | <p>At the end of 1995, only 48,431 (1.8 percent) of all, enterprises had signed CCs</p> |
| 1996 | <p>ACFTU promotes CCs based on the model of working groups led by local party officials.</p> <p><i>Remarks:</i> A top-down approach without genuine collective bargaining, and lacking real substance.</p> |
| 1996/5/17 | <p>ACFTU, the Ministry of Labour, the State Economic and Trade Commission and the China Enterprise Management Association jointly promulgate the Circular on Gradual Implementation of Collective Negotiation and Collective Contracts.</p> <ul style="list-style-type: none"> • Stresses the cooperation of the above four departments in promoting collective contracts. • Focuses on the promotion of CCs in foreign-invested enterprises and private enterprises. |
| 1997/2/14 | <p>Ministry of Labour: Several Opinions on Collective Wage Consultation in Foreign-Invested Enterprises.</p> <ul style="list-style-type: none"> • Focuses on the promotion of wage consultations in foreign-invested enterprises |
| 1998/4/1 | <p>ACFTU: Guidelines for the Participation of Trade Unions in Wage Consultations</p> <ul style="list-style-type: none"> • Focuses on the promotion of wage consultation in all enterprises |
| 2000/11/8 | <p>Ministry of Labour and Social Security (MLSS): Interim Measures on Collective Wage Consultations</p> <ul style="list-style-type: none"> • Further elaborates on the coverage of wage consultations and the criteria used to determine wages and subsidies, such as worker productivity and regional and industry-average wages. <p><i>Remarks:</i> Uses wage consultations as means to promote CCs, and establishes the concept of specific CCs.</p> |
| 2001/11 | <p>ACFTU establishes the Wage Consultation Branch in its Collective Contract Bureau.</p> |
| 2004/1/20 | <p>MLSS: Regulations on Collective Contracts</p> <p>Elaborates further the rules and procedures of the consultation process, and the selection, responsibilities and the rights of consultation representatives.</p> <ul style="list-style-type: none"> • Expands the scope of negotiations to include 15 broad categories and a number of subcategories • Confirms the role of the consultation conference • Expands the idea of “specific collective contracts” on wages, rights of female employees, |

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| | <p>and health and safety issues etc.</p> <ul style="list-style-type: none"> ● Confirms the rights of workers' representatives to supervise and monitor CC compliance. |
| 2005/10/27 | <p>Company Law</p> <ul style="list-style-type: none"> ● Emphasizes the duties of management in concluding CCs |
| 2005 | <p>At the end of September 2005: a total of 754,000 collective contracts had been signed, covering 1.378 million enterprises, 103.84 million workers, or 58 percent of enterprise workers in China</p> |
| 2007/6/29 | <p>Labour Contract Law</p> <ul style="list-style-type: none"> ● Confirms that the trade union should establish a CC mechanism ● Selection of worker representatives should be under the guidance of the next-higher level union ● The union should guide workers in the negotiation and implementation of CCs <p><i>Remarks:</i> Tightens the ACFTU's control over the CC process, but provides a generally beneficial policy environment for promoting the use of CCs.</p> |

China Labour Bulletin's research reports

China Labour Bulletin is committed to promoting workers' rights, as well as raising international awareness and understanding of labour issues in China. To this end we have produced a series of Chinese language and English language reports that provide an in-depth analysis and overview of some of the most important aspects of labour rights in China today. The reports will be of particular use to scholars and researchers but will also provide the general reader with a valuable introduction to specific issues such as the workers' movement, child labour, migrant workers, healthy and safety, the coal mining industry and the legal framework of labour rights in China.

English Language Reports

1. Deadly Dust: The Silicosis Epidemic among Guangdong Jewellery Workers

The main focus of this report is on the labour rights litigation work undertaken by China Labour Bulletin during 2004-05 to assist jewellery workers who had contracted chronic silicosis to win fair and appropriate compensation from their employers. The report highlights the severe health cost to Chinese workers of the country's current model of economic development and reveals the daunting procedural obstacles that occupational illness victims must surmount in order to secure compensation.

Published December 2005

2. Falling Through the Floor: Migrant Women Workers' Quest for Decent Work in Dongguan, China

Migrant women workers in Dongguan and other key cities of the Pearl River Delta have consistently been denied their fair share of the rewards of China's rapid economic growth over the past decade and more – indeed, they are increasingly falling below the ILO-defined minimum standard for socially acceptable work. In this survey report, Chinese women workers tell us in their own words about their arduous experiences of trying to earn a decent living in the boomtowns of the Chinese economic miracle today.

Published September 2006

3. Small Hands: A Survey Report on Child Labour in China

Child labour is a widespread, systemic and increasingly serious problem in China, and this report provides a timely, detailed and insightful analysis of the problem. Based on research carried out on the ground in 2005, the report explores both the demand for child labour in China and the supply of child labour stemming from serious failings in the rural school system. Our researchers talked to government labour officials, school teachers and administrators, factory owners, child workers and their parents to build up a picture of the living and working conditions of child labourers and explore the reasons why these children drop out of school early and go into work.

Published September 2007

Short English Reports

Public Interest Litigation in China: A New Force for Social Justice

One of the first English language overviews of the newly emerging field of public

interest litigation (PIL) in China. The study examines the social, economic and legal background to PIL's development, shows its relevance to labour rights in China, introduces a range of illustrative cases, and discusses the current obstacles to PIL and its prospects for the future.

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Conflicts of Interest and the Ineffectiveness of China's Labour Laws
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Occupational Health and Safety in China – Labour Rights Lose Out to Government and Business
3. 挣扎在去留之间：中国广东省东莞女工状况的调查笔录整理报告（2005年6月）
Falling Through the Floor: Migrant Women Workers' Quest for Decent Work in Dongguan, China
4. 中国工人运动观察报告(2000-2004)（2005年9月）
Standing Up: The Workers Movement in China, 2000-2004
5. 致命的粉尘：中国广东地区珠宝加工业矽肺病个案分析报告（2005年12月）
Deadly Dust: The Silicosis Epidemic in the Guangdong Jewellery Processing Industry
6. 有效的工人组织：保障矿工生命的必由之路——中国煤矿安全治理研究报告（2006年3月）
Bloody Coal: An Appraisal of China's Coalmine Safety Management System
7. 关于中国童工现象的实地考察报告（2006年5月）
Small Hands: Survey Report on Child Labour in China
8. “以人为本”？：煤矿矿难遗属谈话的启示（2006年11月）
Putting People First: A Critique of China's Compensation System for Bereaved Coalminers' Families
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Speaking Out: The Workers Movement in China, 2005-2006
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