

By Anita Chan

ORGANIZING WAL-MART IN CHINA

Two Steps Forward, One Step Back for China's Unions

Surprise, surprise, it is the All-China Federation of Trade Unions (ACFTU), the trade union notorious throughout the world for being “useless,” that has taken on Wal-Mart and succeeded in setting up workplace union branches. Within a period of four weeks, it set up branches at twenty-two Wal-Mart

supercenters. The Western mass media¹ and some of the Chinese media coverage² have been dismissive, on the presumption that the ACFTU does not really act like a trade union. Western reporters have indicated that Wal-Mart has finally found a union that it can live with. But has nothing positive emerged from the organizing of Wal-Mart's stores? Is the ACFTU a dinosaur that never changes? Or, could there be reformers from within the ACFTU pushing for change?

After analyzing eighty reports from Chinese newspapers and magazines, it became

obvious that in taking on Wal-Mart, the ACFTU attempted to do something it has not endeavored since the early 1950s—grassroots union organizing. How the first few union branches came to be formed within such a short period provides intriguing insights into this new phenomenon.

Before all else, it is necessary for us to understand that the Chinese press today is no longer totally under state control. On their own initiative, newspapers cover stories they consider newsworthy. For more than three years, the Chinese media has followed closely the jos-

ting between the ACFTU and Wal-Mart and has helped shape Chinese public opinion on the issue. At least some reporters have adopted the stance—why should we Chinese give in to this giant corporation, which comes to China, throws its weight around, and openly defies the law of the land.

SETTING UP UNIONS FROM THE TOP

WAL-MART MISCALCULATED IN THINKING IT could use the same antiunion tactics in China that it does around the world. If, like its main competitor in China, the giant European retailer Carrefour, Wal-Mart had welcomed the ACFTU to establish union branches in Wal-Mart superstores, those union branches would not have challenged management. The process would have been similar to so many other workplace union branches set up by the ACFTU in foreign-funded enterprises—from the top down. The district-level union would have sought management approval and cooperation to set up a union branch. Once an agreement was struck, management and the local union would have decided together on a mid-level Chinese manager to serve as the union chair, without a union election. After the fact, an announcement would have been made to the employees about the formation of a new union branch, or in some cases, no announcement would have been made at all. More often than not, such a “union branch” does not even perform the traditional welfare functions that it fulfills in state-owned enterprises, where it holds occasional entertainment events, distributes gifts to the entire workforce during major festivals, pays visits to the sick and injured, hands out welfare relief, etc. There is no collec-

tive bargaining or other actions that we associate with unions.³

Innocuous as these so-called union branches might be, many foreign investors still do not want them in their factories. One reason is that no matter how subservient a union branch might be, managers often prefer not to provide any potential platform through which workers could have representation. Another reason is that, by law, management has to give the union branch 2 percent of the total payroll to support union activities. Part of this sum goes to the upper levels of the union, and part is used to provide the above-mentioned welfare functions.

For more than ten years, despite yearly quotas set by the ACFTU's upper levels to set up union branches in foreign-owned enterprises, when enterprises refused to cooperate the local trade union normally did not insist. Under the influence of the local government, the local union often did not want to scare off foreign investment. But over the past decade, the ACFTU has been witnessing a decline in its national membership, as the numbers of state-owned enterprises dropped. In 1999, the ACFTU decided to offset this by expanding membership in the foreign-owned sector. Some reformist union leaders were disturbed by the international image that China, the world's factory, had become a gigantic sweatshop, and they particularly welcomed the new opportunity.

About six years ago, the Chinese union federation selected Wal-Mart as a special target.⁴ The ACFTU was taking a leaf out of the global anti-Nike and anti-Wal-Mart movements, targeting the most high-profile company: if Wal-Mart fell in line, other foreign companies in China that refuse to accept unions would have to follow suit.

When Wal-Mart refused to let the ACFTU into its stores, as is the practice of Wal-Mart worldwide, the ACFTU made a series of unprecedented moves. For the first time it openly threatened to take a foreign company to court for violating China's trade union law by barring the union. Wal-Mart retorted that the law says joining a trade union is voluntary and that it was up to the employees to apply to set up a union. Since none had, Wal-Mart was not violating any law.⁵

The ACFTU had never engaged in grassroots organizing. Motivating workers to agitate to form a union instead of asking management for permission was alien to ACFTU union officials, and the ACFTU was at a loss as to how to go about it. For a long period it persisted in seeking management's cooperation so that a union branch could be introduced in a top-down fashion. For instance, local union officials in Nanjing contacted a Wal-Mart superstore twenty-six times in two years but were not even granted a meeting with the store manager. This humiliating experience was repeated many times over at Wal-Mart stores in other cities.⁶

UNIONIZING WAL-MART FROM THE BOTTOM UP

IN THE END, THE ACFTU REALIZED THAT WAL-Mart employees would need to come forward to apply to set up a workplace union, and that to accomplish this the ACFTU would have to resort to grassroots organizing. This would have to be kept secret from Wal-Mart's management, just as unions elsewhere often operate in the face of hostile management. According to Chinese newspaper reports, in the spring of 2006 local union officials in several cities

began approaching employees after hours, away from Wal-Mart's premises, handing out literature to convince them of the benefits of a trade union branch. In early July, the union federation called a national meeting in Quanzhou City, Fujian Province, in order to coordinate the efforts.⁷ Quanzhou had been selected to spearhead the drive, as the city had achieved a 90 percent rate of unionization.

Several Chinese newspapers have reported in some detail how the first Wal-Mart branch was established at the Jinjiang Wal-Mart store in Quanzhou at the end of July.⁸ Ke Yunlong, a twenty-nine-year-old employee in the meat packing department, together with two colleagues, had become enthusiastic about securing a trade union branch at their Wal-Mart store. Secret communications ensued between Ke and a special task force set up by the local union. To support Ke's efforts to convince his workmates, a union official rented and moved into a room near the store so that he could more easily meet at night with interested Wal-Mart employees.⁹

According to China's trade union law, a minimum of twenty-five signatures is needed to establish a branch. Having secured the requisite number, the city union sprang a surprise on Wal-Mart. A union committee was formed on July 28 at a meeting held from 11 p.m. in the evening to 3 a.m. the following morning—the only time employees from both night and day shifts could assemble. This unusual time and the secretive nature of the founding ceremony were firsts for the ACFTU.

At the meeting, seven executive committee members were elected, with Ke as the union chair. To underscore their determination and the solemnity of their commitment, the thirty members affixed their fingerprints to the ap-

plication form, rather like the swearing-in ceremony of traditional Chinese secret societies. At 6.30 a.m. they declared the union branch formed, and sang the Internationale beneath a banner that read, "Determined to take the road

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to develop trade unionism with Chinese characteristics!"¹⁰ The ACFTU later declared the ceremony a "historic breakthrough" in China's labor movement history, and there was a scramble across China to announce further union branches in rapid succession. The first several branches that were established within days after Jinjiang similarly resorted to secret founding ceremonies that took place after midnight, and the proclamations of their formation were sprung on Wal-Mart the following day.

The moment Wal-Mart was informed of the new trade union branches in its stores, anti-union activities went into high gear. Big meetings were called at which, according to Chinese newspaper reporters, warnings were duly announced that those who join the union would not have their contracts renewed. Wal-Mart also announced that it would not pay the union

the 2 percent payroll union fees. It tried to discredit the ACFTU by accusing it of bribing employees to join the union, and charged that the workers had not joined voluntarily, in violation of the Chinese trade union law.¹¹

But within a week, it offered an olive branch in a 180 degree turnaround. It tried to co-opt the ACFTU to work together to achieve "harmony." Top Wal-Mart regional executives invited themselves to the local Quanzhou trade union office, where they met with the Quanzhou General Trade Union deputy chairman, Fu Furong, the official who had been overseeing the program of unionizing the Jinjiang union branch. Fu reported to the press that the meeting was cordial but there were still disagreements. He admitted many people were skeptical that the new trade union branches would accomplish anything, and said that the most urgent task now was to "nourish and protect" the new unions.¹²

He had good reason to express concern about the vulnerability of the new branches. Chinese newspaper reports had not mentioned any ACFTU or local union officials making any reference to collective bargaining or any other means of improving Wal-Mart employees' conditions or salaries. Instead, the officials were quoted using phrases such as "cooperation," "working with management," "no confrontation," "common purpose," "harmony," and "win-win situation."

COMING TO AN AGREEMENT

ON AUGUST 16, ACFTU OFFICIALS FROM Beijing met with Wal-Mart's top executives in China at Wal-Mart's headquarters in

Shenzhen and signed a five-point memorandum. My reading of the document is that, overall, the ACFTU is the winner, but Wal-Mart may potentially gain some ground through the composition of the preparatory committees set up to form new trade union branches at its superstores. In an interview with a business magazine, the top ACFTU official in the "grassroots construction department," Guo Yincai, who was the brains behind the campaign, recalled the negotiations that day as tough. Wal-Mart had wanted to control the union branches by inserting top management personnel into the preparatory committees, and argued that management staff should be eligible to run for the union executive committee and for the trade union chair. Guo held his line but had to give in on one point: the preparatory committee is to be composed of management, district union officials, and employees, although management representatives are to be capped at middle-management level and at 20 percent of the committee members.¹³ Significantly, there will be a multicandidate election for the union committee, the union chair, and deputy chair, and the election is to be organized by an official sent from the district union, not by management. Higher level management personnel and their relatives are barred from becoming union members. Upper-level union personnel will be allowed to conduct in-house training of employees about China's labor laws and employees' labor rights, and to recruit new members. But the memorandum's final point seems ambiguous: Wal-Mart union branches will support management in exercising its management rights *in compliance with the law*, mobilize and organize the employees to fulfill their responsibilities, and cooperate on an *equal basis* with management in order to allow the

enterprise to develop harmoniously.¹⁴ The statement can be read as a concession by the ACFTU, but the emphasis on compliance with the law in management practices and sharing equal responsibilities and rights between the management and union counterbalances the rhetoric about management rights and harmony.

The five-point memorandum was seen at the time as the ACFTU's template for setting up trade union branches in all foreign-funded enterprises. Grounds for some optimism lay in an editorial, "How Wal-Mart Came to Change its Attitude," that appeared on the ACFTU website on August 16, the day the memorandum with Wal-Mart was signed. The grassroots organizing experience had not been lost on some of the union leaders. The editorial is filled with self-confidence: the Chinese union has "cracked the world's toughest problem." In seeing this as a "world problem," the editorial was contextualizing the ACFTU as part of an international anti-Wal-Mart movement. Let me quote from it at length to capture its tone:¹⁵

Setting up these unions encountered many ups and downs. It did not come about easily. ... It is a major breakthrough in creating something new that will definitely open up a new stage! The positive determining factors in the births of these Wal-Mart union branches were the employees' aspirations, plus legal compliance. The guidance and assistance provided by the upper level unions fostered positive outcomes. It is a big departure from our previous method of setting up union branches by relying on persuading management to give support. Now instead we turn to propagating, inspiring, cultivating and reinforcing

ing employees' trade union consciousness, instigating and mobilizing their aspirations to join the union. Even in circumstances where employers are uncooperative and unsupportive, we still will set up our unions. In reality, in the past few years, in our work to establish trade union branches, particularly in foreign-funded and private enterprises, we encountered much passive resistance from employers. It was enormously difficult. This successful experience in setting up Wal-Mart unions is groundbreaking in that we have discovered a new line of thinking. It not only will influence other foreign and private investors to quickly abide by the law to allow unions to be established, it also brings to trade unionists a new mission. Following the new logic in setting up unions, new adjustments in union work will be needed, be it in methods, in organizational structure, ways of identifying backbone activists, down to how to use union funds...

It is obvious the ACFTU is not the monolithic structure it is often portrayed to be. There are union officials and local unions who understand the principles of grassroots organizing and are willing to push the limits. But they are constrained by pro-capital forces within the Communist Party, the government, and the ACFTU on the one hand, and domestic and international antiunion forces on the other. The ACFTU's confrontation with Wal-Mart has opened up a means for reformers to operate in future, and has set a legal precedent for Chinese workers to take on their employers and to demand union branches.

In past years, many workers in foreign-funded and private firms have lacked support from the union federation. Sometimes they

have engaged in wildcat strikes or taken to the streets to demand their rights. Very seldom has it been envisioned that they could use legally sanctioned means to set up their own union branches, or that they might be given an opportunity to work within the space provided

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by the ACFTU structure. But such efforts have begun from below. One highly publicized case involved demonstrations and strikes two years ago at Uniden, an enormous Japanese factory in Shenzhen, over worker demands that included the establishment of an official trade union branch.¹⁶ The struggle went on for several months and ended with an election of a trade union committee.

Normally, though, Chinese labor laws are the fulcrum around which the discourse on industrial relations is anchored. The laws are the tools used by all sides to argue their positions. Wal-Mart used the Chinese trade union law to refuse to let the ACFTU set up unions; and the ACFTU in turn used the procedures stated in the law to set up union branches. In recent years, workers too have become accustomed to use the law to fight for rights and demand justice and compensation, as seen in a rapidly mounting number of court cases.¹⁷

According to clauses of the Chinese labor

law, setting up a trade union branch and getting recognition for it is, legally speaking, as easy as ABC (in stark comparison to, say, the procedures set down in U.S. laws).¹⁸ A recent example relates to Foxconn, a gigantic Taiwanese-owned electronics company that supplies Apple, Dell, Nokia and many other brands from its factories in China. After *The Mirror* in the United Kingdom in mid-2006 exposed Foxconn's management practices at a vast factory in Shenzhen that produces the world's iPods, with twelve-hour work shifts in which employees are forced to stand the whole time, the news media in China picked up the story,¹⁹ and Foxconn employees began blogging to vent their anger. The Shenzhen city trade union responded by announcing that Foxconn, which employs more than two hundred thousand workers in the city, would be obliged to have union branches by year's end. Jumping the gun by one day, union organizers set up a table outside the largest plant on December 31, signed up 118 employees as union members, and handed them union cards on the spot.²⁰ According to *Shanghai Daily*, "A spokesman for Foxconn said the company had planned to set up its own trade union in January. ... But the local was set up unilaterally by the general trade union of Shenzhen and not through cooperation with the company. 'This is an innovative move,' said the union official who represents the new local at Foxconn. 'It'll help promote the protection of workers' rights in other foreign-funded and private businesses.'"²¹

If groups of Chinese workers in coming years use this method to set up trade union branches and affiliate them to the ACFTU, it might well provide the workforce with a voice. Under China's labor law and the present political situation, they may find this politically fea-

sible and more productive than fighting to set up autonomous trade unions.

But the ACFTU has little experience of grassroots initiative, and many union officials are nervous about activities that are not top-down and initiated and controlled by themselves. Nor are they accustomed to, or comfortable with, organizing workers themselves, whatever the precedent set by the recent experience with Wal-Mart. Reformers within the ACFTU want to push in that direction, as the editorial makes clear, but they are themselves untrained and on unsure ground. Trade unions in our own countries have accumulated a wealth of experience in union organizing that they can help transfer to the Chinese union reformers—if our unions become willing to reach out.

TWO STEPS FORWARD, ONE STEP BACK

THE AGREEMENT THAT WAL-MART SIGNED LAST August will work to the benefit of workers only if the local unions are serious and strong enough to confront Wal-Mart. If past practice can serve as any guide, many district unions will be constrained by local governments and Party committees to remain passive, and the Wal-Mart union branches may not have the strength to face up to Wal-Mart's antiunion policy.

It soon became apparent that the editorial's hopes were not being fulfilled. Once the memorandum was signed, the union branches that quickly sprang up at all of the remaining Wal-Mart stores across the country were founded in a very different manner from the earlier ones. No longer did a union need to reach out to employees in confidence and persuade them to sign up. The founding ceremonies were now held inside the store rather than at the local

trade union office; and during work hours instead of after midnight. According to Chinese media reports, the new union branches all held democratic elections, but notably, there have been no further details on the election process, and so it is not possible to know how candidates emerged, whether they were handpicked by the ACFTU, and if so, based on what criteria, or whether Wal-Mart manipulated the selections from behind the scenes.²² Much will have depended on the district union's and the local government's position on the issue.

Overall, the signs are not good. In the nationwide drive to expand union membership in the foreign-funded factories, the district unions have come under pressure during the past year and a half to fulfill quotas set by the national union leadership, and they are falling back on the top-down method in establishing union branches. For instance, Shanghai union density was targeted to reach 60 percent by the end of 2006, and 80 percent by the end of this year. A year ago Zhejiang Province claimed 70 percent union membership among the employed workforce, and it was scheduled to reach 80 percent by the end of 2006. How could that possibly be achieved? Zhejiang contains three thousand Taiwanese-funded factories, and as of a year ago two-thirds of these still had no unions.²³ Even the top-down unionizing method takes time, especially now that elections are supposed to be held. The quotas become impossible targets if a grassroots organizing method is used.

Chasing after bureaucratically set targets has been a problem under the Chinese Communist Party for more than five decades. When confronted with resistance by foreign-funded

enterprises, will local unions resort to the secretive grassroots organizing method used in Quanzhou? It is quite likely that most of the workplace unions that are so quickly being established in China's foreign-funded sector are,

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by local mutual agreement, management-dominated unions. In short, they are probably not much different from those that existed before the Wal-Mart incident.

A second piece of bad news is that the Party and government appear to have taken a step to nip in the bud the potential for the new union branches at Wal-Mart to act independently. They are installing a workplace Party committee above the union branch in each superstore. The first two of these Party committees were established simultaneously with the new union branches at stores in Shenyang in northwest China as early as August 2006, followed soon by two stores in Shenzhen in the south. The media reports on their establishment do not bode well for the ACFTU's efforts at Wal-Mart.²⁴ They stress a win-win situation with Wal-Mart, with an emphasis on stability and company development, on "reinforcing communication and mediation with the company and winning top management's understanding

and support." Not a word is mentioned about protecting the rights of Wal-Mart employees. An ordinary Party member of a Shenyang Wal-Mart store was quoted as saying, "The Party branch secretary told me that the criterion for assessing Party members' progressiveness is success in attaining better sales."²⁵ A new slogan for the Wal-Mart Party branches is telling—"construction of the Party to facilitate union construction; construction of the union to facilitate Party construction."²⁶ The slogan's implicit message is that the Party now plays the leadership role, not the union.

On December 15, five months after the ACFTU's euphoria about the sudden emergence of grassroots Wal-Mart trade union branches, a Party branch committee was set up at Wal-Mart's Chinese headquarters in Shenzhen. The founding ceremony was attended by top local Party officials, with fanfare and media publicity and with the full knowledge of Wal-Mart.²⁷ Tellingly, a search of the ACFTU-affiliated newspaper *Workers' Daily* and of ACFTU websites reveals that these did not carry a single report about the new development. The union federation does not appear to be enthusiastic about the Party's intrusion.

LESSONS FROM THE WAL-MART VICTORY

THE FORMATION OF TRADE UNION BRANCHES INSIDE China's Wal-Mart stores has created an international precedent. The fact that Wal-Mart conceded to unionization could provide Wal-Mart workers and trade unions in other parts of the world with a leg up in their own efforts to organize Wal-Mart. In this sense, there is already an implicit common front in the union-

ization of Wal-Mart. For Western unionists to continue to dismiss the ACFTU's efforts is not the wisest tactic.

The ultimate shape of the union branches in Chinese superstores is as yet unknown. It remains unclear whether union reformers who want grassroots organizing and elected representation can overcome the lethargy and resistance of more traditional Chinese union officials who desire compliant union branches that do not trouble either themselves or Wal-Mart. But the ACFTU as a whole does not seem to favor the Party's intrusion to establish control over the branches. At the time of writing, it appears that this is a step backwards, but the ultimate outcome has not yet been determined.

A final word on what specifically obliged Wal-Mart in China to concede to unionization last August. It was not the independent power of China's trade union organizing efforts. Before China opened its doors to private business and foreign capital in the 1980s and 1990s, the ACFTU did not have to face the onslaught of capital, and there was no need to engage in grassroots organizing. Trade union branches automatically existed in state and collective enterprises. The enterprises provided workers with an iron rice bowl that included lifetime employment and welfare benefits that union employees helped management to disburse. There was no necessity or room for the union to learn to organize or confront management. Thus, the ACFTU today has no ideological underpinnings nor any independent capacity or tools to counter capital. Its victory over Wal-Mart depended upon clauses in Chinese labor law and the power of the Chinese state to enforce them.

In some ways, this is in line with the situation in the United States vis-à-vis Wal-Mart.

Governments have become the only actors powerful enough to confront and dictate terms to the biggest corporate entity in the world. Thus far, despite the great efforts by American trade unions to organize Wal-Mart employees, not even one union branch has been set up. On the other hand, several state and city governments in the United States, employing legisla-

tive and administrative power, have been acting to rein in the giant and to make it pay a higher minimum wage and contribute to medical care and pension funds. Perhaps, in this one respect, the ACFTU has a point in reiterating its "trade unionism with Chinese characteristics." ■

Notes

1. E.g., *Bloomberg*, August 10, 2006; *New York Times*, August 10, 2006; *McClatchy Newspapers*, August 15, 2006.
2. E.g., *Finance* (Chinese), August 15, 2006.
3. Anita Chan, "Labor Relations in Foreign-funded Ventures", in Greg O'Leary, ed., *Adjusting to Capitalism: Chinese Workers and the State* (Armonk, N.Y.: M.E. Sharpe, 1998), pp. 122-49.
4. New China News Agency (Chinese), November 24, 2004.
5. *Beijing Chinese News* (Chinese), November 24, 2004; *New York Times*, November 25, 2004.
6. *Number One Financial Daily* (Chinese), August 6, 2006.
7. ACFTU website, August 17, 2006.
8. It was broadcast on Chinese television on July 31, 2006; *Chinese Economic Management News* (Chinese), August 6, 2006.
9. *Business Affairs Weekly* (Chinese), September 5, 2006.
10. *Number One Financial Daily* (Chinese), August 3, 2006.
11. *Chinese Economic Management News* (Chinese), August 7 and 8, 2006.
12. *Number One Financial Daily* (Chinese), August 11, 2006; ACFTU website, August 11, 2006, <http://www.acftu.org/template/10004/file.jsp?cid=181&aid=41372>.
13. *Business Affairs Weekly* (Chinese), September 5, 2006.
14. *Workers' Daily* (Chinese), August 19 and 21, 2006.
15. ACFTU website, August 16, 2006, <http://www.acftu.org/template/10004/file.jsp?cid=222&aid=41801>.
16. *South China Morning Post*, April 21, 2005; *Washington Post Foreign Service*, April 26, 2005. What is interesting about this case is that the struggle was protracted and there was a large amount of blogging by workers over those months. The organizers were using the internet effectively to marshal the employees to put forth their demands and to go on strike. [Unfortunately, these websites no longer exist today.]
17. Mary E. Gallagher, "Use the Law as Your Weapon: The Rule of Law and Labor Conflict in the PRC," in *Law and Social Change in China*, ed. Neil Diamant, Stanley Lubman and Kevin O'Brien. Stanford: Stanford University Press, 2004; Virginia Harper Ho, *Labor Dispute Resolution in China: Implications for Labor Rights and Legal Reform*, Berkeley: Institute of East Asian Studies, University of California, 2003.
18. Mark Dudzic, Larry Cohen, and Joshua B. Freeman, "Debate: The Crisis of Workers' Rights," *New Labor Forum* 14 no. 1, pp. 59-78.
19. An investigative report by two journalists from *China Business News* (Chinese) (June 15, 2006) confirmed the story and added details about workers blacking out from fatigue. In early July, Foxconn filed a lawsuit against the two journalists, demanding 30 million yuan (\$3.75 million). The company slashed its defamation claim to just one yuan (12 cents) in August and dropped the lawsuit in September.
20. www.sina.com.cn, January 1, 2007; *South China Metropolitan News* (Chinese), January 1, 2007.
21. *Shanghai Daily* (Chinese), January 3, 2007.
22. *Workers' Daily* (Chinese), August 17, 23, 26 and 29, 2006.
23. *Guangzhou Daily* (Chinese), August 8, 2006; *Beijing Commercial News* (Chinese), August 22, 2006.
24. In December 2006, searching the web I found ten Chinese reports on the establishment of these Party branches.
25. *New China Web*, August 25, 2006.
26. This slogan appeared in a report on the setting up of the Party branch in Shenyang in September. *Workers' Daily* (Chinese), August 22, 2006.
27. Joe McDonald, "New at Wal-Mart's in China: A Communist Party Branch," *International Herald Tribune*, December 18, 2006; *Shenzhen Special Economic Zone News* (Chinese), December 16, 2006; *People's Daily Online*, December 16, 2006.