

Labor Standards and Labor Market Flexibility in East Asia

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Abstract Since the 1980s, de jure labor standards have improved in Northeast and Southeast Asia and de jure labor market flexibility has decreased. For most countries in the region, however, de facto labor standards are much worse than de jure standards, and de facto flexibility is much higher than de jure flexibility. International pressure has rarely produced meaningful change in either labor standards or labor market flexibility. Authoritarian regimes have proven the most immune to international pressures to improve labor standards and to increase labor market flexibility. The most significant improvements to labor standards usually follow democratization, with international influences working in tandem with domestic pressures. International actors have had little effect on improving labor standards in semi-democracies, with the exception of Cambodia, but progress there depended on a carrot, not a stick. Demands by the international financial institutions to increase labor market flexibility have been minimal, with the notable exception of South Korea. Both democracies and authoritarian regimes have adopted laws that reduce labor market flexibility, and domestic political concerns rather than international influences were the primary driving force.

Keywords Labor standards · Flexibility · Labor reform · East Asia

Introduction

The repression of labor has been a defining feature of political economies in Northeast and Southeast Asia (Deyo 1987, 1989, 1997; Hadiz 1997; Rasiah and von Hofmann 1998; Caraway 2006a). Beneath the miracle of rapid economic growth in the region was a demobilized and politically excluded working class. Today, although there are still authoritarian and semi-authoritarian regimes that severely limit freedom of

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association, a democratizing subset of countries has opened political space for unions and enacted new labor laws that have provided stronger guarantees for the collective rights of workers. Consequently, labor standards are stronger in the region today than they were 20 years ago. While the repression of labor is a well-known feature of these political economies, the relatively inflexible labor laws are a better-kept secret. Some of the fastest growing economies combined the repression of unions with highly protective laws regulating individual labor contracts. Even more surprising, few countries have flexibilized their labor regulations, and in recent years, the most notable trend is labor reforms that reduce labor market flexibility. Countries in the region have achieved high rates of growth in spite of having labor regulations that are not significantly more flexible than the rest of the world.

Labor standards in the region, however, still fall short in many ways. Most East and Southeast Asian countries, including some democracies, have failed to ratify all of the ILO's core conventions, signaling a reluctance to give these standards even a patina of legitimacy. Further, weak enforcement of existing labor laws exerts downward pressure on labor standards and increases the actual level of labor market flexibility. For most countries in the region, *de facto* labor standards are much worse than *de jure* standards, and *de facto* flexibility is much higher than *de jure* flexibility. Weak enforcement of the law raises *de jure* flexibility dramatically in about half of the countries in the region.

This paper will explore the various international influences on labor standards and labor market flexibility in East Asia. International influences, of course, are mediated by domestic politics; the focus here is on assessing whether a plausible case can be made that international pressures contributed to significant changes in labor standards and labor market flexibility. Since some governments respond to international prodding by adopting measures that minimally affect *de jure* and *de facto* standards, I also evaluate how meaningful these changes were.

Many countries have taken action to improve labor standards that is at least in part a product of international pressure, but such action has seldom resulted in more than minor improvements in collective labor rights. Most notably, authoritarian regimes have proven relatively immune to international pressures to improve labor standards. The most significant improvements to labor standards usually came after democratization. In these cases, international influences worked in tandem with domestic pressures to produce improved labor standards. International actors have had little effect on improving labor standards in semi-democracies, with the exception of Cambodia, but progress there depended on a carrot, not a stick.

Demands by the international financial institutions to increase labor market flexibility have been minimal in East Asia—with the notable exception of South Korea. This fact is surprising given that labor laws in the region are quite protective of individual labor contracts. Both democracies and authoritarian regimes have adopted laws that reduce labor market flexibility. Labor law reforms that have an impact on flexibility are driven more by domestic political concerns than by international influences. In addition, since democracies have the most inflexible labor laws in the region, attempts to pass labor law reforms that increase labor market flexibility inevitably provoke a strong response from organized labor, which raises the political cost of reform. Non-enforcement of labor regulations is usually an easier path to follow in these countries.

This article will first present background information about the countries in the region and then provide an assessment of de jure and de facto labor standards and labor market flexibility. The rest of the article will assess the impact of international influences on labor standards and labor market flexibility. The actors and mechanisms that will be examined directly are the international financial institutions and the Organization for Economic Cooperation and Development (OECD), trade legislation and trade agreements, and codes of conduct from multinational corporations.

Background

Countries in Northeast and Southeast Asia range widely in terms of income category, population, and regime type (see Table 1). The majority of countries in the region are in the lower middle income and low income categories (nine countries), with just one, Malaysia, in the upper middle category, and three—Singapore, South Korea, and Taiwan—in the high income category. Economically, most of the countries in the region are relatively open to international trade and investment, but Burma, Laos, and North Korea are less integrated into the global political economy than the rest of the region. Politically, the region is divided equally between authoritarian regimes (Burma, China, Laos, North Korea, and Vietnam) and procedural democracies (Indonesia, the Philippines, South Korea, Taiwan, and Thailand¹); communist parties rule in most of the authoritarian regimes. Three countries—Cambodia, Malaysia, and Singapore—are “semi-democracies” that hold regular competitive elections in which the dominant party uses electoral rules, restrictions on civil liberties, and political intimidation to constrain the ability of opposition parties to effectively challenge it (Case 1996; McCargo 2005). The democracies in the region are relatively young, with the exception of the Philippines, which has experienced more years of democratic governance than any other country in the region. Wealth and democracy are correlated in the region, with most of the poor countries being authoritarian and the richer countries being democratic or semi-democratic.

Most East Asian governments have not embraced trade unions. In contrast to Latin America where populist governments in some countries embraced unions in inclusionary corporatist arrangements, most in East Asia sought to demobilize workers (Deyo 1989, 2006; Koo 2001). In the authoritarian countries ruled by communist parties, all unions are required to affiliate to the official union that is subordinate to the party (Gallagher 2005; Clarke et al. 2007; Taylor and Li 2007). Whereas unionization rates in the former Soviet Union and Eastern Europe under communist rule approached 100%, unionization rates in East and Southeast Asia's communist countries are much lower. These low unionization rates are indicative not only of the large role of agriculture in their economies but also of the communist party's wariness of union organizing in the private sector and fear that such organizing might deter foreign investment. In non-communist countries, semi-democratic and authoritarian states banned unions (Thailand 1957–1972, Burma),

¹ In September 2006, a military coup took place in Thailand. The analysis in this chapter only goes through 2006, so Thailand will be treated as a democracy.

Table 1 Economic and political summary data for East Asia

Country	GNI per capita (US dollars)	Population (in millions)	Regime type	Year of transition	Unionization rate (%)
Burma	NA	51	Authoritarian		0.0
Cambodia	380	14	Semi-democratic		1.0
China	1,740	1,305	Authoritarian		54.7
Indonesia	1,280	221	Democratic	1998	2.6
Laos	440	6	Authoritarian		3.0
Malaysia	4,960	25	Semi-democratic		8.3
North Korea	NA	23	Authoritarian		NA
Philippines	1,300	83	Democratic	1986	12.3
Singapore	27,490	4	Semi-democratic		15.7
South Korea	15,830	48	Democratic	1987	11.8
Taiwan	16,170	23	Democratic	1988	27.9
Thailand	2,750	64	Democratic	1992/2007	3.1
Vietnam	620	83	Authoritarian		10.0

Sources: Doing Business 2007, except for unionization rate. Unionization rates are from ILO (1997) for Cambodia, Malaysia, Philippines, Singapore, South Korea, and Vietnam (unionization rate measured as percentage of non-agricultural workforce); US Department of Labor, *Foreign Labor Trends* reports (2000) for China, Indonesia, Taiwan, and Thailand; for Laos, the US State Department's Country Report on Human Rights Practices reports union membership of about 77,000 workers. The World Bank reports a labor force of about 2.5 million in 2000 (World Development Indicators)

controlled unions through exclusionary corporatist institutions in which state-backed unions enjoyed monopoly or near-monopoly status (the Philippines, Taiwan, Indonesia, South Korea, Singapore), or constrained unions through restrictive labor legislation (Malaysia, Thailand since the 1970s) (Deyo 1981; Choi 1989; Kleingartner and Peng 1991; Arudsothy and Littler 1993; Jomo and Todd 1994; Hadiz 1997; West 1997; Brown 2003). The domestication of unions in the region often required a heavy hand from the state, since many countries had small but vocal labor movements in the early years of independence, and even after many years of repression, workers from time to time took enormous risks and mounted protests to demand better wages and working conditions (Norlund et al. 1984; Deyo 1989, 1997).

The history of labor exclusion is reflected in the low levels of unionization in the region today. With the exception of Taiwan, unionization rates are less than 20% in the non-communist countries. The relatively high union density in Taiwan is largely a product of increases in membership in occupational unions, composed of self-employed workers who join in order to receive health insurance (Chu 1996).² Another legacy of labor exclusion in Northeast and Southeast Asia is the weak link between political parties and unions in most of the non-communist countries. The exceptions are Singapore and Taiwan. In Singapore, the National Trade Union Council (NTUC) and the People's Action Party (PAP) have an intimate relationship in which the NTUC has been co-opted by the PAP. The traditional political party in

² Lee (2006) reports unionization rate of 10.5% in the industrial sector in 2002.

Taiwan (the KMT) also has a close relationship with the former state-backed union, the China Federation of Labor (CFL). Since the transition to democracy in Taiwan, the KMT has lost its dominant status, and the main rival to the CFL, the Taiwan Confederation of Trade Unions, has established links with the Democratic Progressive Party (Lee 2006). Taiwan is the only country in the region where more than one union organizes a large share of unionized workers and has robust ties to an influential political party. China has the highest level of unionization in the region, which is mostly a consequence of compulsory membership for state employees (Taylor and Li 2007). The comparatively low rates of unionization in Vietnam and Laos are in part a function of the agricultural basis of their economies. Most union members work in the public sector, although Vietnam has recently begun to push for expanded unionization in the private sector, largely in response to repeated wildcat strikes in export factories (Taylor and Li 2007).

Cambodia is a special case due to its tumultuous history. The reign of the Khmer Rouge (1975–1979) and the subsequent civil war and Vietnamese occupation in the 1980s devastated the country. Foreign investors began to invest heavily in the garment industry in the mid 1990s; protests over wages and working conditions soon followed. Leaders from the opposition Sam Rainsy Party seized the opportunity to organize disgruntled garment workers into a national organization (Hughes 2007). Only after the opposition established a trade union in the garment sector did the ruling Cambodia People's Party (CPP) make an effort to channel workers in the private sector into unions that it controlled. In Cambodia, many unions thus have close relationships with either the CPP or opposition parties, but given the semi-democratic nature of politics there, opposition parties face enormous obstacles in influencing political outcomes that affect labor. The overwhelming importance of garment exports to the Cambodian economy, however, has made international influences on labor rights especially strong there.

Measuring Labor Standards and Flexibility

This section will assess labor standards—specifically collective labor rights pertaining to freedom of association, collective bargaining, and the right to strike—and labor market flexibility, with indices that measure both their *de jure* and *de facto* status. According to these measures, neither *de jure* nor *de facto* labor standards are strong in Northeast and Southeast Asia. *De jure* labor market flexibility is surprisingly low considering the region's reputation for flexible labor markets. Due to weak enforcement, however, *de facto* labor market flexibility is notably higher than *de jure* flexibility.

Labor Standards

Respect for labor standards varies dramatically among countries in the region. Not a single country has labor laws that are in full compliance with ILO Conventions No. 87 and 98, and the average score in the region for *de jure* labor standards (DJLS) is 69 (out of 100) (see Table 2).³ Although democracies have the highest average DJLS

³ North Korea is omitted from the analysis because there are insufficient data available to assess labor rights there.

Table 2 De jure and de facto labor standards and flexibility scores in East Asia

Country	De jure labor standards	De facto labor standards	De jure flexibility	De facto flexibility
Authoritarian	45.0	32.7	50.9	60.8
Burma	0.0	0.0	n/a	n/a
China	50.0	35.2	50.9	60.3
Laos	52.9	44.0	56.8	65.4
Vietnam	77.1	51.6	44.8	56.8
Semi-democratic	71.7	53.8	63.4	69.8
Cambodia	90.0	59.8	45.3	59.8
Malaysia	55.0	42.9	58.2	62.7
Singapore	70.0	58.8	86.8	87.0
Democratic	73.0	58.1	44.4	54.7
Indonesia	88.6	66.6	39.5	55.8
Philippines	74.3	52.0	43.4	56.2
South Korea	70.7	60.2	45.9	52.9
Taiwan	68.6	62.2	34.9	44.7
Thailand	62.9	49.4	58.1	63.9
Regional average	69.1	53.0	51.3	60.5
World average	72.5	55.2	51.7	60.6

Calculated according to methods described in text and appendix in Stallings (this volume); world average is the average on the four regions analyzed in this project

scores, they barely inch by the semi-democracies; scores within regime-type categories also vary considerably. The relatively high scores in democracies are a consequence of the significant reforms to labor legislation that occurred after transitions to democracy, but even so, the labor laws in most democracies retain many provisions that violate international labor standards. Although the three countries with the lowest scores are authoritarian, Vietnam has the third highest score in the region. One semi-democracy—Cambodia—has strong labor laws, but the laws in the two other semi-democracies—Singapore and Malaysia—are at or below the regional average. Cambodia invited the ILO to assist it with rewriting its labor legislation in 1994 (Bronstein 2004–05), which explains why it has the highest DJLS score in the region in spite of being a semi-democracy.⁴

Labor law, however, only tells part of the story of labor standards in the region. Labor standards are also affected by whether the laws are enforced and by the political climate in the country. To assess the effects of enforcement and political climate on labor standards, another measure, de facto labor standards (DFLS), will be used. As can be seen in Fig. 1, DFLS scores are much lower than the DJLS scores for almost every country, indicating that labor standards protected by law are in practice frequently violated. Democracies still have the highest scores and

⁴ Consultations with the ILO began in 1994; the legislature approved the new Labor Code in 1997 (Bronstein 2004–2005).

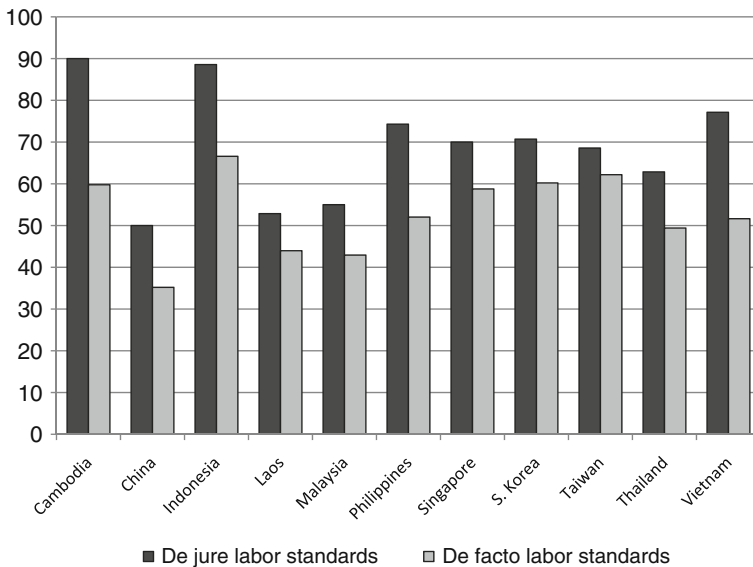


Fig. 1 De jure and de facto labor standards in East Asia (based on Table 2)

authoritarian countries the lowest; scores fall most sharply for semi-democracies. Indonesia has the strongest DFLS, and after Burma, China has the lowest DFLS score.

Most striking are the plummeting scores of the four countries with the strongest DJLS—Cambodia, Indonesia, Vietnam, and the Philippines. The falling scores on DFLS are in part a function of their high DJLS scores.⁵ None effectively enforce their labor laws, and the consequences of poor enforcement are most severe in countries that have relatively protective laws. Most alarming, in both Cambodia and the Philippines, multiple trade unionists have been murdered. In one horrific case in the Philippines, the police and the army forcibly put down a strike at Hacienda Luisita sugar mill and plantation in November 2004, killing seven protestors (ICFTU 2006c); in 2005 at least eight trade unionists were murdered or disappeared (ICFTU 2005). In Vietnam, the violence is not as severe, but labor activists are harassed, civil liberties frequently violated, and independent trade unions are prohibited. China's score, already low, fell dramatically as well as a consequence of the weakness of associational rights and rule of law, unfair labor practices, and the harassment and imprisonment of labor activists (ICFTU 2006a). The ILO's Committee on Freedom of Association (CFA) has raised particularly grave concerns about the continued use of arrests, detention, and violence to suppress labor rights there (CFA Case 2031 and 2189). Brutal crackdowns on strikes and mass arrests of trade unionists mar Korea's labor rights record as well. The ICFTU estimates that over 1,000 unionists were arrested between 1999 and 2005, most on charges of “obstruction of business” and for organizing unions in the public sector (ICFTU 2006b).⁶

⁵ Since countries with strong laws and weak enforcement are penalized more than countries with weak laws and weak enforcement, countries with strong laws are more likely to experience a large decrease in their scores than those with weak laws.

⁶ Under Section 314 of Korea's Criminal Code, workers participating in strikes can be arrested and prosecuted on charges of “obstruction of business.”

Labor Market Flexibility

Renowned for its booming economies, it is perhaps unsurprising that the World Bank's data on labor market flexibility show that East Asia has comparatively flexible labor markets. The World Bank's assessment, however, hinges crucially on the inclusion of many small Pacific island nations with extremely flexible labor laws, as well as the exclusion of firing costs in its rigidity of employment index. Firing costs in Northeast and Southeast Asia are relatively high; incorporating them into a measure of flexibility significantly alters the picture. The average DJF in the region is 51, with semi-democracies having the most flexible laws and democracies the most protective laws (see Table 2). Taiwan has the most protective laws, Singapore the most flexible. The relatively low scores for authoritarian countries are striking and indicate that the communist parties that rule them have opted to cushion the effects of market reforms on workers with fairly protective individual labor laws. Among democracies, Thailand stands out as having by far the most flexible labor laws. It differs from the other democracies in that Indonesia, the Philippines, South Korea, and Taiwan all had relatively protective individual labor laws under authoritarian regimes. Subsequent democratic governments have rarely undone these protections.⁷ Even South Korea, the only democracy that has enacted reforms flexibilizing its individual labor laws, still has relatively protective laws.

An index based purely on legislation, however, underestimates the actual level of labor market flexibility in the region, since labor laws are only as strong as their enforcement. The *de facto* flexibility index (DFF) takes into account both legislation (the DJF) and law enforcement to estimate the actual level of labor market flexibility in the economy. As Fig. 2 shows, taking enforcement into account increases labor market flexibility in the region. Incorporating enforcement had particularly strong effects on labor market flexibility in Cambodia and Indonesia because both had relatively high DJF scores but extremely poor enforcement. The scores for China, Laos, the Philippines, and Vietnam also increase notably. Still, the effect of regime type remains—labor markets in democracies are less flexible than those in other regime types, and semi-democracies have the most flexible labor markets in the region.

Core Labor Standards

In comparison to other regions, countries in both Northeast and Southeast Asia have embraced core labor standards reluctantly. They have ratified fewer ILO core conventions and frequently violate those that they have ratified. Two countries, North Korea and Taiwan, are not members of the ILO.⁸ Only three countries (Cambodia, Indonesia, and the Philippines) have ratified all eight conventions. For ILO members in the region, the average number of conventions ratified is 5.1, and the total ratification rate for the region is 65%, which is significantly lower than the worldwide ratification rate (see Table 3). The most widely ratified standards are those for

⁷ Caraway (2004, 2009) has coined the term “protective repression” to describe labor rights regimes in authoritarian countries that repress collective labor rights but protect individual labor rights.

⁸ Taiwan is ineligible to join since it is not a member of the United Nations.

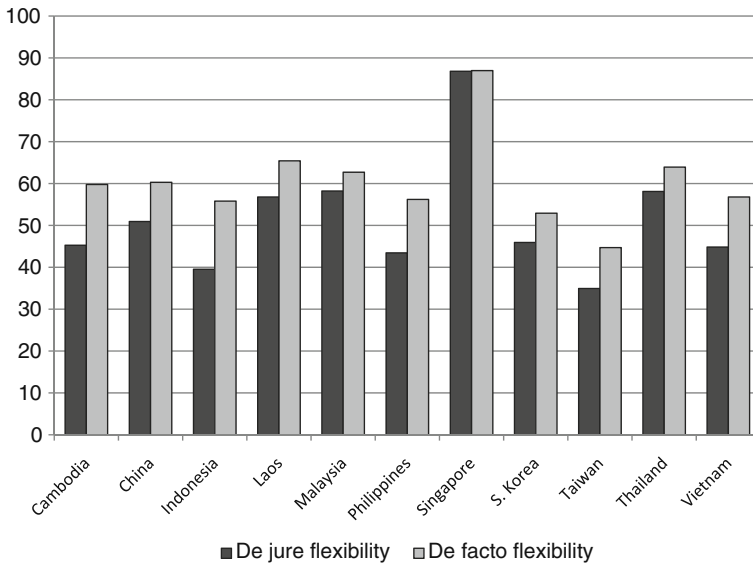


Fig. 2 De jure and de facto labor flexibility in East Asia (based on Table 2)

discrimination and child labor; resistance is fiercest to Conventions No. 87, No. 98, and No. 105, on freedom of association/collective bargaining and forced labor, which fewer than half of the countries have ratified. The ILO's efforts to encourage the ratification of the eight conventions have had a notable impact on five conventions—No. 87, No. 105, No. 111, No. 138—at least 50% of the ratifications for these conventions took place in 1998 or later.⁹ Democracies have ratified more conventions (6.25) than countries with other forms of government. Semi-democracies have ratified an average of 6.0 core conventions, authoritarian countries just 3.5. Wide variation exists within the democratic and semi-democratic cases, however, ranging from four to eight conventions ratified in the democracies and five to eight for the semi-democracies.

Preferential Trade Programs and Free Trade Agreements

A number of pieces of trade legislation in both the USA and Europe have social clauses pertaining to labor rights. Some of these are unilateral instruments—the Generalized System of Preferences in both the USA and the European Union, and the US Trade Act—while others are bilateral. The regional trade agreement, the ASEAN Free Trade Area, does not contain provisions that permit countries to call into question respect for labor rights in other signatories.

The best-known trade instrument for promoting stronger labor rights worldwide is the US Generalized System of Preferences (GSP).¹⁰ The GSP provides preferential access to US markets for a wide variety of products from developing countries. Countries receiving privileges under the GSP are required to respect internationally

⁹ Since Convention No. 182 on the Worst Forms of Child Labor was promulgated in 1999, all ratifications have taken place recently.

¹⁰ See Compa and Vogt (2005) for a useful overview of GSP.

Table 3 ILO Core Standards: ratifications by country and regime type in East Asia

Country	Freedom of Association/ Collective Bargaining		Forced Labor		Discrimination		Child Labor		Total
	#87	#98	#29	#105	#100	#111	#138	#182	
Authoritarian countries									
Average ratifications: 3.5									
Burma	1955		1955						2
China					1990	2006	1999	2002	4
Laos			1964			2008	2005	2005	4
Vietnam					1997	1997	2003	2000	4
Semi-democracies									
Average ratifications: 6.0									
Cambodia	1999	1999	1969	1999	1999	1999	1999	2006	8
Malaysia		1961	1957		1997		1997	2000	5
Singapore		1965	1965		2002		2005	2001	5
Democracies									
Average ratifications: 6.2									
Indonesia	1998	1957	1950	1999	1958	1999	1998	2000	8
Philippines	1953	1953	2005	1960	1953	1960	1998	2000	8
South Korea					1997	1998	1999	2001	4
Thailand			1969	1969	1999		2004	2001	5
Total/Average	4	5	7	4	9	7	9	9	5.2
Rate of ratification (%)	36	45	64	36	82	64	82	82	65
Since 1998 (%)	50	20	14	50	33	83	100	100	

Sources: www.ilo.org/ilolex/cgi-lex; Malaysia ratified #105 in 1958, but renounced it in 1990; Singapore ratified the same convention in 1965 but renounced it in 1979

recognized worker rights, and interested parties who believe that a country is violating these rights may petition the USTR to request a review of the country's GSP status. Currently, only four countries in this study participate in the GSP program—Cambodia, Indonesia, the Philippines, and Thailand. In the past, Malaysia, Singapore, and South Korea have also participated in the GSP program.¹¹ American activists and unions have filed multiple petitions with the USTR but results have been mixed. In the Philippines and Malaysia, the petitions had little effect on labor rights, while in Indonesia, South Korea, and Thailand evidence is mixed. In Cambodia, a GSP petition opened the door to a establishing a unique monitoring program designed to strengthen labor standards. This change, however, depended crucially on Cambodia's dependence on textile exports and incentives, rather than punishment, for taking steps to improve labor standards.

GSP petitions have had the weakest effects in Malaysia and the Philippines. Malaysia underwent multiple reviews—but no continuing reviews—and took absolutely no steps to improve labor rights. The USA lacked the will to push

¹¹ Singapore and South Korea graduated in 1989, Malaysia in 1997 (Elliot and Freeman 2003: 152).

Malaysia, an important ally and investment location for US electronics manufacturers (Compa and Vogt 2005). The Philippines was under review in 1988 and 1989, and both petitions were accepted by the USTR. The Philippines had already amended its labor code soon after Cory Aquino took office and had already removed many of the repressive Marcos era amendments to the labor code. Although the ILO still found many shortcomings in the labor code, the USA was a stalwart supporter of the Aquino administration, and neither petition was extended. The International Labor Rights Fund (ILRF) filed a petition against the Philippines in 2007, demanding that the Philippines rectify its abysmal record of violence against trade unionists. In 2008, the ILRF attempted a creative new product-based strategy in response to Dole's request to include unsweetened pineapple juice on the list of products eligible for the GSP program. Dole's main pineapple facility is in the Philippines, and the ILRF presented evidence that both Dole and state security forces have committed egregious labor rights violations on Dole's pineapple plantations. The ILRF believes that GSP privileges should not be extended to this new product until labor rights violations in its production cease. Both of these cases are still pending.¹²

In Indonesia, South Korea, and Thailand, evidence is mixed about the effects of the GSP petitions on labor rights. Indonesia was the target of multiple GSP petitions in the late 1980s and early 1990s. All of the petitions were accepted for review, and two underwent continuing reviews. Glasius (1999) documents a number of steps taken by the government, but none ultimately had much effect on collective labor rights, *de jure* or *de facto*. For example, although a strike ban in vital industries from the 1960s was revoked, the Suharto regime had long relied on other regulations to suppress strikes. A new ministerial regulation that permitted independent unions to form at the plant level also required them to later affiliate with the state-backed union. The increase of the minimum wage and stronger enforcement of this higher wage was a significant achievement, but gains in wages should not be confused with meaningful improvements in collective labor rights, on which the regime gave little ground. In addition, a massive wave of wildcat strikes swept through Indonesia during this period, and most of these strikes focused on minimum wages, so the interactive effect of international and domestic pressure is evident. Glasius is probably correct that part of the explanation for the limited effect of the GSP petition is that the USA was half-hearted in using its influence to pressure an important ally and trading partner. The memory of the unpleasant glare of the international spotlight during the GSP review, however, played a role in making labor reforms a high priority for the Habibie administration, which was eager to establish its democratic credentials after the fall of Suharto (Caraway 2004).

South Korea came under review in 1987, in the midst of a democratic transition that was accompanied by massive worker protests (Koo 2001). The legislature made some minor revisions to Korean labor laws that ended some restrictions on strikes and on bargaining above the enterprise level, and the USTR found it to be taking steps to improve labor rights and suspended the review. Although a step forward, the

¹² Information about the status of these cases can be found at www.laborrights.org/creating-a-sweatfree-world/changing-global-trade-rules/gsp (accessed on 18 October 2009).

revisions to the laws did not address the most serious violations of ILO standards and produced minimal improvements in collective labor rights.

In Thailand, evidence for the effect of GSP is also mixed, in part due to the timing of changes to the law and in part because the Thai government crafted changes to its labor laws in an extremely clever way that allowed it to achieve much of what it had hoped by violating international labor standards in the first place. American activists and unions filed a number of petitions against Thailand in the late 1980s and the early 1990s. All but one were accepted, and Thailand was under continuing review from 1992 to 2000. The main bone of contention was the right of state enterprise employees to organize. During the brief period of military rule in 1991–1992, the junta removed state enterprise employees, who had the strongest unions in Thailand, from the scope of the Labor Relations Act; consequently, workers in state enterprises could no longer unionize. In 1993, the USTR decided to continue its review of Thailand's GSP status (Compa and Vogt 2005). Although Thailand was one of the top beneficiaries of the program, it did not change its laws until seven years later, when Supachai Panitchpakdi of Thailand became a top candidate to head the World Trade Organization. American unions exerted pressure on the Clinton administration to oppose Supachai's candidacy. Bending to pressure, Thailand finally enacted the State Enterprise Labor Relations Act (SELRA) of 2000. SELRA reinstated the right of state enterprise workers to unionize, but the law limited the scope of collective bargaining, forbade strikes, and prohibited state enterprise unions from forming federations with unions in other sectors of the economy.¹³ Moreover, when state enterprises are privatized, unions formed under SELRA are dissolved. The law weakened state enterprise unions by gutting their right to bargain and strike and by limiting their ability to unite with other workers. SELRA became law in May 2000; the USA suspended its GSP review and Supachai was selected to be WTO Director-General in July.

In Cambodia, activists filed a GSP petition with the USTR in 1998, just as Cambodia began to enter negotiations with the USA about its textile quota. The coincidence in the timing of the petition and the trade negotiations, in combination with the dependence of Cambodia on textile exports, opened the door for notable progress on labor standards. In response to the petition, Cambodia finally permitted the main independent federation in the garment sector to register (Abrami 2003). But perhaps the most notable change came from the USA offering a big carrot—it agreed to raise Cambodia's quota if apparel production could be shown to be in substantial compliance with national labor law and international labor standards (Abrami 2003; Polaski 2006). Realizing that the Cambodian government lacked the capacity to effectively enforce its laws, which were already the strongest in the region, and that respect for labor rights would need to be verified by a credible source, Cambodia and the USA called on the ILO to monitor labor standards in Cambodia's garment industry. Although the ILO does not have the authority to enforce laws, most factories made some improvements in working conditions (Elliot and Freeman 2003: 118). (This project is now known as Better Factories Cambodia.) The program is

¹³ In 2001 the restrictions on forming federations with unions in the private sector were amended. Federations of state enterprise unions were allowed to affiliate with federations of private sector unions; individual state enterprise unions, however, were still not allowed to affiliate directly to federations of unions in the private sector.

widely regarded as a resounding success, and efforts are being made to set up similar programs in other countries.

A ringing endorsement of this program, however, is perhaps premature. Hughes (2007) argues that the program undercut the dynamic labor movement that emerged in the late 1990s. Further, in spite of the success of the project in addressing wages and working conditions, few garment factories have collective bargaining agreements, and labor activists are still subjected to extreme intimidation and violence.¹⁴ Hughes echoes the point made so well by Compa (2001) about unions and monitors being “wary allies.” Monitoring programs run by international groups or by NGOs essentially accept the government's abdication of enforcement and potentially undermine unions by allowing workers to turn to monitors rather than worker-controlled organizations to address their grievances.

In addition to the US GSP program, Section 301 of the US Trade Act of 1974, as amended in 1988, allows the government to tie trade and labor standards. The law states that persistent violations of internationally recognized workers' rights constitute an “unreasonable” trade practice. The USTR can suspend benefits or impose sanctions in order to encourage a country to cease its unfair trade practices. The AFL-CIO filed petitions in 2004 and 2006 against China.¹⁵ The Bush administration declined both petitions, so the petitions did not ultimately pose much of a threat to China's trading privileges with the USA.

The European Union also has a GSP program with two mechanisms for improving labor rights. The first provides civil society actors with the opportunity to request that GSP benefits be withdrawn from countries that violate the ILO's core conventions. The second is essentially a labor rights incentive provision referred to as GSP Plus. Countries that respect the “substance” of the ILO's core labor standards may apply for additional tariff preferences (Greven 2005). Burma lost its GSP privileges in 1997 as a result of severe violations of the forced labor conventions, but has not subsequently taken steps to improve labor standards. No country in East Asia has applied for tariff preferences under the GSP Plus program.

Thus far only one bilateral trade agreement with labor provisions is in effect, the US–Singapore Free Trade Agreement (USSFTA).¹⁶ Both countries committed to enforce their domestic labor laws, and the penalty for non-compliance is a fine (maximum \$15 million); if a country refuses to pay a fine, trade sanctions may be imposed provided that trade is affected by the violation (Greven 2005; Polaski 2003). Unlike violations of the commercial aspects of the treaty, parties to the agreement may not submit labor rights issues to a formal dispute resolution process. Perhaps the most controversial aspect of the agreement is the “Integrated Sourcing Initiative” that allows some goods from Bintan and Batam islands in Indonesia to fall under the scope of the US-Singapore FTA. The labor chapter of the USSFTA does not, however, extend to Bintan and Batam. In addition, the pledge to merely enforce existing law means that neither country is obligated to improve its laws so

¹⁴ In 2004, two leaders of the FTUWKC were assassinated in broad daylight in Phnom Penh, yet the ILO's Garment Sector Monitoring Project failed to mention this in their report (Hughes 2007).

¹⁵ The 2004 petition was the first time that a petition was filed under Section 301 on worker rights grounds.

¹⁶ The USA signed an FTA with South Korea in 2007 that contains labor provisions as well, but it has yet to be ratified by Congress.

that they comply fully with ILO conventions. Singapore amended the Industrial Relations Act in 2004, the year after the signing of the FTA, eliminating the restrictions on collective bargaining that had been imposed on “pioneer industries.” The FTA may have influenced this outcome, although it should be noted that the USA had not invoked the labor rights provisions of the agreement and that other aspects of Singaporean law that violate international labor standards remain. Moreover, Singapore may have decided to undo this provision because the restrictions on pioneer industries were anachronistic, given the country's level of industrial development, and because the state still retained the right to strike provisions of collective agreements deemed not to be in the “public interest.”

Multinational Codes of Conduct

Since the 1990s, many corporations have adopted or signed onto codes of conduct that obligate them and their supplier factories to respect labor rights. Although the codes vary in terms of the obligations imposed and the methods of monitoring compliance, most at a minimum prohibit child and forced labor and require compliance with local labor laws. The thorniest issue that has emerged is that some countries—China and Vietnam, for example—prohibit freedom of association by requiring all unions to be affiliated to the state-backed union. Requiring full respect for freedom of association would essentially mean that corporations and their suppliers could not produce in these countries. Most corporations are unwilling to boycott China and Vietnam as production sites, so the focus of monitoring has usually been on hours, wages, and health and safety issues.

Assessing the effects of codes of conduct on labor rights and working conditions is extremely difficult. Leaving aside the important issue of the quality of monitoring,¹⁷ the effects of monitoring have been most noticeable in the areas of child labor, forced labor, and health and safety, while progress on hours, wages, and freedom of association have been minimal (Vogel 2006; Locke et al. 2009). One study of Nike's internal monitoring system showed that years of monitoring had failed to improve working conditions in its supplier factories (Locke et al. 2007). Wal-Mart, which is one of the top export markets for Chinese goods, also reports that the vast majority of its suppliers worldwide fail to comply with its standards for suppliers (Wal-Mart 2009).¹⁸ Although some case studies find that suppliers for corporations with codes of conduct have better working conditions than those that do not, even these suppliers violate local laws pertaining to hours and wages (Ngai 2005). Enforcing codes of conduct by severing relationships with repeat violators would require multinationals to fire most of their suppliers. Multinationals will not take such action, and activists are reluctant to demand the suspension of contracts since it results in layoffs of innocent workers. Part of the challenge in using codes of conduct to improve labor rights is that the very nature of the relationship between brands or retailers and their suppliers discourages long-term commitments to

¹⁷ For excellent discussions see O'Rourke (1997) and Wells (2007).

¹⁸ Most of Wal-Mart's stores in China are unionized, whereas none of its US stores have unions. After the ACFTU waged a grass roots campaign to establish unions in several stores, Wal-Mart agreed to top-down unionization for the rest. Most of the union committees are dominated by management (Blecher 2008).

particular factories. Demands by multinationals to improve labor practices on the one hand, and to lower production costs and tighten production schedules on the other, send mixed messages to supplier factories. Unless multinationals are willing to pay for higher labor standards, allow for longer production schedules, and enter into long-term relationships that reward suppliers that are willing to absorb the extra cost of compliance, suppliers will invest their resources in duping monitors, doing just enough to avoid the cancellation of their contracts.

The weaknesses of the code of conduct model are evident in both Northeast and Southeast Asia. The following examples are well-known cases in which the code of conduct model has been put to a public test. Since most corporations do not release complete data of their monitoring and remediation efforts, these public cases are one of the only means of gaining insight into the effects of codes of conduct on labor rights. Some of these problems stem from the footloose nature of production, while others arise from a weak commitment by multinationals to making compliance a decisive factor in their sourcing decisions.

At PT Mulia Knitting in Indonesia, for example, investigators from the Worker Rights Consortium (WRC) uncovered evidence that management had busted a union by firing its leaders.¹⁹ When the WRC asked the university licensee to exert pressure on the company, the licensee was in no position to do so because it no longer had any orders with PT Mulia. In another case in Indonesia, the PT Dae Joo Leports factory worked with the WRC to make significant improvements to address numerous violations uncovered by the WRC investigation team, but PT Dae Joo Leports later closed its factory, relocating to China, in part because of the increased costs imposed by complying with the WRC's recommendations. Similarly, in the famous case of the Gina factory in Thailand, activists forced the employer to recognize a union through mobilizing a dynamic transnational campaign targeting the international brands that had contracts with Gina (Robertson and Plaiyoo Wong 2004). The union successfully negotiated wage increases and better benefits, but several years later the factory closed and relocated to China.

In a recent case in the Philippines, the WRC tried to persuade Wal-Mart and university licensees to exert pressure on a supplier factory, Chong Won. In 2006, the WRC investigation team not only found minimum wage violations, forced overtime, and abuses of freedom of association and collective bargaining, but also uncovered evidence that factory management had collaborated with state security agents to use violence against labor activists and lawfully striking workers. Chong Won responded by closing the factory in 2007 and to date neither Wal-Mart nor other multinationals have taken visible steps to remediate these labor rights violations. When the international spotlight shines too brightly, it is often easier to cut and run than to invest in improving labor standards.

¹⁹ The WRC is an NGO that carries out investigations of reported violations of its code of conduct by supplier factories that produce university licensed products. It is the only monitoring organization free of corporate influence and is widely recognized as conducting the most thorough investigations of factory conditions, in particular with regard to violations of freedom of association (Esbenshade 2004; Wells 2007). The WRC's factory investigations are available at: www.workersrights.org/Reports/index.asp#reports (accessed on 18 October 2009).

IFIs and the OECD

The international financial institutions active in the region—the International Monetary Fund, the World Bank, and the Asian Development Bank—have paid some attention to core labor standards, but their activities have thus far not positively affected labor standards. Only the OECD has taken action that has produced improvements in labor rights.

The IMF was the first of the international financial institutions to recognize CLS (Hagen 2003; Caraway 2006b). In the last decade, Cambodia, Indonesia, Laos, the Philippines, South Korea, Thailand, and Vietnam have been under IMF programs. Although the IMF has raised labor rights issues behind the scenes in at least one case in the wake of the Asian financial crisis, Indonesia (Caraway 2004), and has mentioned efforts to abide by ILO labor standards in the context of its analysis of garment exports in Cambodia, it has never imposed conditionality in the form of benchmarks or performance criteria, or demanded progress on labor standards as prior actions—measures that must be taken before a loan is granted.²⁰

As for the World Bank, it has pledged to integrate CLS into its Country Assistance Strategies (CAS), now called Country Partnership Strategies. Only Cambodia, Indonesia, Laos, the Philippines, Thailand, and Vietnam have concluded CAS in recent years. The CAS do not contain a section that addresses CLS. The most frequently raised issue is gender discrimination, although interestingly CLS are rarely mentioned explicitly, which suggests that its inclusion is a product of gender mainstreaming efforts in place at the Bank for many years. Of the eight recent CAS reviewed, six of them address discrimination against women, although often in an oblique way that voiced concern for gender inequality in general rather than discrimination against women in the workplace in particular. Four of the CAS had a more robust discussion of labor standards—Cambodia, Laos, Thailand, and Vietnam (2003–2006 CAS only). The Bank recognized the importance of CLS in maintaining Cambodia's competitive advantage in the garment sector and committed to funding a labor code compliance study; it also noted the problems with compliance with CLS and enforcement of the labor code in Laos. In Thailand, in response to demands by civil society groups to address labor issues and worker rights in its programs, the Bank noted its commitment to working with the Thai government to improve occupational health and safety and to reduce child labor. In Vietnam, the 2003–2006 strategy included a corporate social responsibility project designed to assist and highlight companies that respect Vietnam's labor code and CLS. The project supports the goal of strengthening the capacity of unions to protect worker rights and working conditions. The Better Work program, established jointly by the IFC and the ILO to help enterprises to comply with national labor law and CLS, is carrying out this project in Vietnam.

Trade unions have welcomed these steps by the World Bank but remain skeptical about implementation, in part because it is unclear how the Bank will verify that CLS are being respected but also because some Bank staff seem insufficiently committed to the goal. In a World Bank report submitted to China in November

²⁰ This assessment is based on a reading of publicly available letters of intent and IMF staff reports from 1980–2006.

2006, it advised the Chinese government that it could brush off the question of “so-called labor standards” (ITUC Online 2006). Although the World Bank has taken some steps to address CLS, thus far concrete improvements in labor standards as a consequence of these actions have yet to be demonstrated.

The ADB has also made an effort to engage the ILO with regard to labor standards. Since the ADB adopted its Social Protection Strategy in 2001, it has pledged to comply with CLS and to use them to guide its operations. In line with this objective, the ADB recently published a handbook on CLS that offers ideas for integrating them into ADB operations (ADB 2006). The ADB is careful to note that the recommendations “are not an expansion of any policy, and the user should note the distinction between good practice suggestions, i.e., the examples in this Handbook, and the policy requirements presented in ADB's Operations Manual” (ADB 2006: 4). The ADB's equivalent of the CAS is the Country Strategy (CS), and in recent years the Bank has issued these reports for seven countries in the region—Cambodia, China, Indonesia, Laos, the Philippines, Thailand, and Vietnam. None provide an assessment of CLS and how to integrate them into their projects in each country; none even mention labor standards as such. Three discuss the need to deal with gender inequalities in labor markets, but in the context of gender assessments of country programs rather than in a discussion of labor standards.

The OECD, in contrast to the international financial institutions, positively influenced labor rights in South Korea. After South Korea joined the ILO in 1991, Korean and international unions began to file complaints with the ILO's Committee on Freedom of Association, which found violations of numerous principles of freedom of association (Park and Park 2000). Korean governments ignored ILO recommendations for many years and made only modest changes to labor laws in response to demands by Korean unions (Koo 2000). When Korea became a member of the OECD in 1996, however, the price of admittance was a commitment to bring its labor laws into compliance with international labor standards as interpreted by the ILO (Gills and Gills 2000; Park and Park 2000; Kim and Kim 2003). The OECD instructed its Employment, Labor and Social Affairs Committee to monitor progress on labor law reform. Korea responded to this pressure by passing the Trade Union Labor Relations Adjustment Act in 1997, which addressed many but by no means all of the shortcomings in Korea's legislation. As with Cambodia, the government responded more favorably when international actors could withhold something that the government desperately wanted.

Labor Market Flexibility

In this section of the paper, I will evaluate the influence of the international financial institutions on labor market flexibility and analyze the most notable labor law reforms that have affected individual labor laws in the region during the last decade. With the exception of South Korea, IFI pressure on countries in the region to flexibilize their labor laws has been minimal. Most notable is that aside from South Korea, significant episodes of labor law reforms in East and Southeast Asia have produced less, not more, flexible labor laws.

IFI Pressures

The international financial institutions are well known for their advocacy of labor market flexibility, so it is surprising that they have not aggressively pursued it in East Asia. One reason is that only seven countries in the region have accepted loans from the IMF since 1997—Cambodia, Indonesia, Laos, the Philippines, South Korea, Thailand, and Vietnam. The other is that many of the labor regulations in the region were already relatively flexible. The IMF has not pushed for greater labor market flexibility in East and Southeast Asia until very recently, and in all but South Korea, it has not been a top issue for reform. The IMF has not mentioned labor market flexibility in its Article IV consultations with Laos, Thailand, and Vietnam, and these countries have not committed to making labor law reforms in their letters of intent. Thailand's labor market is already quite flexible, so the lack of pressure there is unsurprising, but *de jure* flexibility scores in Laos and Vietnam exceed the world average, which makes the IMF silence puzzling.

In the remaining four countries—South Korea, Indonesia, the Philippines, and Cambodia—the IMF's strong preference for greater labor market flexibility has been evident, although in all but South Korea, this is a recent development. The IMF targeted South Korea earliest, since it saw liberalizing layoffs as necessary for restructuring the *chaebol* in the wake of the Asian financial crisis (Kim and Moon 2000; Koo 2000). Even here, “hard” conditionality—benchmarks and performance criteria—were not used as sticks to compel Korea to make its labor laws more flexible. With the support of employers, the Korean government instituted reforms in two areas, liberalizing layoffs and outsourcing.²¹ Korea did not go as far as the international financial institutions wanted, however, and the IMF continues to push South Korea to further flexibilize its labor markets. Nonetheless, subsequent changes to Korea's laws have, on balance, lessened labor market flexibility by reducing the number of hours in the standard working week and introducing more conditions on the use of fixed-term and part-time workers.

Labor market flexibility escaped the IMF's notice in Cambodia, Indonesia, and the Philippines in the immediate aftermath of the Asian financial crisis, even though all had relatively inflexible labor regulations. Since 2004, however, the IMF has recently begun to highlight issues of labor market flexibility in its Article IV consultations with Cambodia, Indonesia, and the Philippines. In Indonesia, the new attention is the result of the passage of the Manpower Act of 2003, which reduced labor market flexibility. In response to both IMF and business pressure, the Indonesian government attempted to push through a reform of the Manpower Act, but labor unions mounted massive protests and thwarted this effort. The Filipino

²¹ On labor market flexibility, the IMF and the OECD were singing the same tune (OECD 2000). Previously, employers could only dismiss workers for “justifiable” reasons, and the Korean courts interpreted “justifiable” narrowly. In practice, it was difficult to fire workers on personal, behavioral, or economic grounds (Lee 2002). The reforms allowed employers to dismiss workers for “managerial reasons,” which included retrenchments, mergers, and acquisitions. Regarding outsourced labor, until 1998 the Minister of Labor tightly limited the use of labor supply services to security, janitorial and engineering work, unless the union agreed to permit the outsourcing of additional job categories (Lee 2002). The Dispatched Workers Act of 1998 removed labor suppliers from the scope of the Employment Security Act and permitted outsourcing in 26 job categories.

government has also committed to revise its labor code in the direction of greater flexibility but has yet to do so.

The main tool that the World Bank has used to promote labor market flexibility in Northeast and Southeast Asia has been the annual *Doing Business* report. Through the Employing Workers component of the study, the World Bank highlights which countries it considers to have inflexible labor regulations. Some CAS made explicit reference to the Employing Workers rating, but most do not. Of the eight CAS evaluated, only two refer outright to labor regulations as hurting the country's business climate (Indonesia 2009-12, and the Philippines 2005-08). Similarly, the ADB only mentions inflexible labor markets as an issue in one out of eight CS (Indonesia 2006-09).

In sum, international financial institutions have had a minimal effect on labor regulations in East Asia. The most convincing case of international influence is South Korea, where significant flexibilizing reforms coincided with IMF and OECD pressure. Since both employers and the IFIs were pushing for more flexible labor markets, however, the outcome is overdetermined, and disentangling the effect of each set of actors is difficult. Of course, labor unions vehemently objected to these reforms. Most likely, the Korean government used the IMF as political cover to enact controversial reforms (Vreeland 2003).

Labor Market Reform

In the last decade, several important reforms affecting labor market flexibility have taken place in the region, but most reforms have produced less flexible labor laws. The case of flexibilizing reforms in Korea has been discussed in some depth already, so the focus in this section will be on the major labor law reforms in Thailand, Indonesia, and China, that reduced labor market flexibility. In addition, recent changes in Korea, while not undoing previous reforms, have made labor laws less flexible. Before analyzing these major reforms, it should first be noted that a number of countries have made minor changes to their labor laws that have increased flexibility modestly. Malaysia, Singapore, Taiwan, and Vietnam have all expanded the range of flexible working hour options available to employers; Vietnam has also raised the upper limit on yearly overtime.

The first episode of labor reform to be discussed, Thailand, took place soon after the Asian financial crisis hit. Drafted prior to the Asian financial crisis, the amendment to the Labor Protection Act was pushed through in spite of the increased costs it placed on companies that sought to downsize their workforce (Bangkok Post, 31 May 1998). The amended law provided for higher severance pay and limited fixed-term contracts to jobs of a temporary or seasonal nature. Lawmakers in Thailand had room to maneuver since the IMF had not imposed labor conditions in its rescue plan. Increasing severance pay and providing for greater employment security was a populist policy that politicians probably hoped would show their sympathy for the workers bearing the brunt of economic adjustment; mounting activism by Thai labor organizations in the mid and late 1990s probably also played a role (Brown 2003).

Indonesia is the second country that revised its laws in the direction of less flexibility. In 2000 the pro-labor Minister of Manpower issued a decree that

dramatically increased severance pay. Unions were ecstatic and fought successfully to prevent the revocation of this decree. The Manpower Act of 2003 further increased protection by limiting outsourcing to “non-core” work and raising severance pay for most dismissals. Since 2003, the IMF has voiced its concern about Indonesia’s inflexible labor markets, but government efforts to carry out flexibilizing reforms were greeted with massive protests by unions. In spite of the wish of employers to revisit labor reform, thus far the government has proven reluctant to try again.

China has also recently enacted a new law on labor contracts, which went into effect in 2008. The law places limits on the duration of fixed-term contracts (through regulating the total length of time and the number of renewals), outsourcing (by setting a minimum contract period of two years), and overtime (Wang et al. 2009). The new contract law represents an effort by the Chinese government to defuse social conflict in the export sector and to encourage investment in higher value-added industries. The Chinese pushed ahead with the new contract law in spite of vocal protests by the Shanghai-based American Chamber of Commerce (Wang et al. 2009).

Recent reforms in Korea have traded increased flexibility in working hours for reductions in the standard work week, which declined from 44 to 40 hours. The Fixed-Term and Part-Time Worker Protection Act, which went into effect in 2007, required employers to convert fixed-term contracts to indefinite term contracts after two years and prohibited discriminatory treatment of contract and part-time workers who perform the same or similar duties as permanent workers. The effects of this law, if enforced, could be significant, since the main motivation for using contingent workers is their lower pay and benefits.²² Korean unions were divided about the Act. The Korean Confederation of Trade Unions feared that loopholes and poor implementation would not stem the increase in contingent labor, and argued that unless the rights of contingent workers to organize, bargain collectively, and strike were guaranteed, no meaningful improvements would occur. The more conservative Federation of Korean Trade Unions initially opposed the bill but in the end supported it (Doucette 2005, 2007).

Labor reforms to reduce labor market flexibility are perhaps a signal of a Polyani-esque double-movement. Even though labor laws have been comparatively protective in the region, employers routinely violate them. Workers therefore experience increased precariousness, which leads to protest and discontent among working people. Since the Asian financial crisis, South Korea has experienced a dramatic increase in contingent labor (Yun 2009; Kim and Park 2006). In Indonesia, employers have responded to stronger protections for both labor standards and individual labor contracts by flexibilizing their labor force in flagrant violation of the law (Aliansi Serikat Buruh and Forum Pendamping Buruh Nasional 2004; Forum Pendamping Buruh Nasional 2004). Although

²² The Seoul Administrative Court recently ruled that “non-payment of performance-based bonuses to fixed-term workers was illegal if there was no fundamental difference between the work performed by the regular workers and the fixed-term workers” (Shin&Kim 2009).

Indonesian law has actually increased protections for individual labor contracts, more workers in manufacturing are on short-term contracts than in the past. One response by governments to the increased vulnerability of workers was to improve legal protections, but these steps have had little effect, as new laws do not deal with the underlying problem of weak enforcement.

Conclusion

While labor standards in East and Southeast Asia have improved in the last 20 years, labor laws in the region have become less flexible. Figure 3 reveals the negative association between de jure labor standards and labor market flexibility. With the exception of Singapore, which is an outlier, countries with stronger labor standards also have less flexible labor regulations, while those with lower labor standards also have more flexible labor laws. All countries are in the upper two quadrants of the chart, and differences in de jure labor standards are larger than differences in de jure flexibility. With the exception of Thailand, democracies cluster in the top left quadrant.

Figure 4 presents the data for de facto labor standards and flexibility. Once again, Singapore is an outlier. The most notable difference with respect to Fig. 3 is that labor standards fall and flexibility rises. All countries except Taiwan are in the upper right or bottom right quadrants of the chart. Differences in labor standards remain large among countries, but differences in flexibility have narrowed. Nevertheless, countries with higher DFLS still have lower DFF, and only one democracy, Thailand, is in the lower right quadrant of the chart. In de facto terms, labor standards are extremely poor and flexibility is quite high in East Asia.

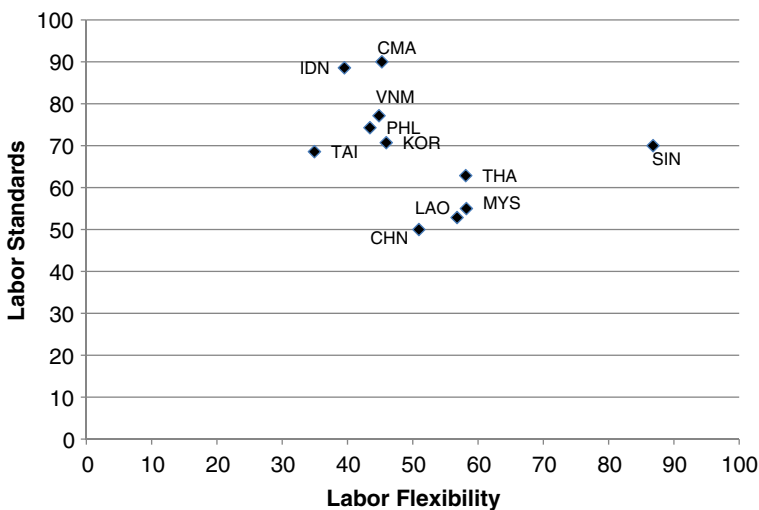


Fig. 3 De jure labor standards and flexibility in East Asia (based on Table 2)

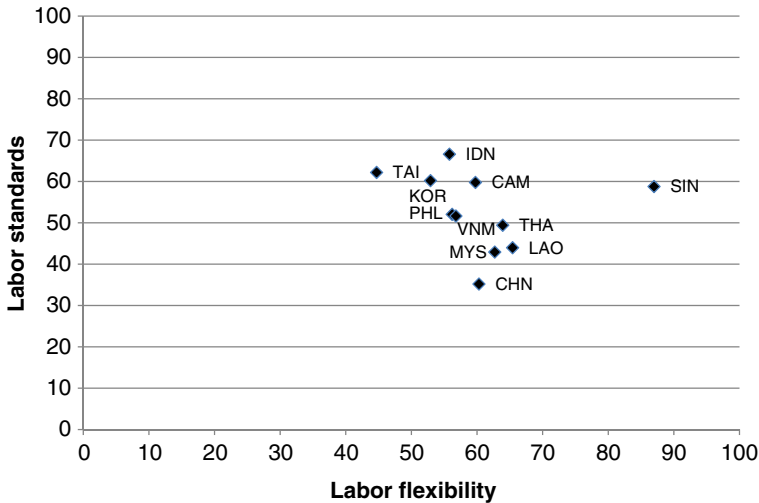


Fig. 4 De facto labor standards and flexibility in East Asia (based on Table 2)

The distance between law and practice is wide in most countries in the region. Scores drop less for democracies than non-democracies, but the gap between de jure and de facto labor standards and flexibility remains wide. Yet the experience of countries in the region does not support contentions that the price of improved labor standards is an increase in labor market flexibility. Collective labor rights have improved in the region, while labor law reforms have rarely promoted greater labor market flexibility. Weak enforcement, however, has a more toxic effect on labor rights now than in the past. Under authoritarian rule, labor laws provided far fewer protections for collective labor rights; weakly enforcing them did not lower labor standards. (If independent unions are illegal, then weakly enforcing that part of the law hardly damages labor rights!) When labor laws provide for better protection of labor rights, however, non-enforcement of the law has much more serious consequences for labor rights. For example, if the law provides guarantees for workers to form unions, but the state does not punish employers who violate workers' right to freedom of association or actively colludes with employers to prevent unionization, non-enforcement of the law has potentially dramatic effects on the capacity of workers to form unions.

While laws in the region have provided stronger protections for individual labor contracts, enforcement is weak; employers have therefore flexibilized a large proportion of the workforce in violation of the law. As Anner (2008) has argued, flexibility enters through the back door of ineffective labor law enforcement, which in turn has affected the organizing efforts of unions. Not only do unions face greater obstacles in persuading workers to join unions—employers simply refuse to renew the contracts of union members—ineffective enforcement also virtually assures that if workers dare to exercise their rights, they will be fired. As countries enact labor laws that provide better guarantees of labor standards and stronger protections for individual labor contracts, the struggle for effective enforcement becomes paramount.

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