

# Market might in Factory Asia: The struggle to protect labour\*

Matthew Mullen\*\*

Purwo Santoso\*\*\*

Joash Tapiheru\*\*\*\*

Elisabeth Valiente-Riedl\*\*\*\*\*

**Abstract:** *'Factory Asia' pejoratively frames a situation of oversupply in low-skilled and underpaid wage labour, where people work in immiserating conditions, deprived of essential opportunities for political organising and the right to freedom of association. The context is such, in part, because the market enjoys considerable leverage and might over states and labour in the region. A range of factors, including capital mobility, the 1997 Asian financial crisis and global neo-liberal pressures, combine to dislocate the state from its role as protectorate and provider, and foreclose on conventional channels that offer protection for workers. This article frames and illustrates these dynamics, and argues that labour encounters a myriad of challenges, but also new opportunities for re-articulation, mobilisation and protection around labour rights. Two case studies, those of Indonesia and Thailand, provide empirical grounding for this thesis and convey both commonalities and contrasts in local labour struggles. In Indonesia, the increasing dislocation of the state needs to be understood in the context of the manifestation of a dual labour market. This has produced contrasting experiences of informal and formal workers. Accordingly, the resilience of traditional models of labour mobilisation (such as unions) diminishes compared to the growing relevance of informal and collective social protection systems. In Thailand, union advocates remain adamant about the need to realise international labour rights norms precisely because of deepening union restrictions and the state's reluctance to fulfil its duties. Meanwhile, other labour rights groups have sought space, protection and action from duty bearers through non-traditional methods. Relations between these networks can be tense, but they combine into a formidable, even if uncertain, force. In both case*

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\*\* BSc (Nebraska), PhD (Mahidol); Lecturer at the Institute of Human Rights and Peace Studies, Mahidol University, Thailand; authored the section on Thailand and co-designed the broader research project and conceptual framework.

\*\*\* BA (UGM), MA (St Mary), PhD (LSE); Professor of Political Science, University of Gadjah Mada, Indonesia; co-authored the section on Indonesia.

\*\*\*\* BA (UGM), MA (Sydney); Researcher with the University of Gadjah Mada, Indonesia; co-authored the section on Indonesia.

\*\*\*\*\* BEc Hons (Sydney), PhD (Sydney); Lecturer in Sociology and Social Policy, University of Sydney, Australia; authored the conceptual section and co-designed the broader research project and conceptual framework.

*studies, the dislocation of the state has led to new and thickening vulnerabilities for labour working in the shadow of the market, but also to unconventional opportunities for protection and mobility.*

**Key words:** *labour rights; labour mobilisation; Asia; Indonesia; Thailand*

## 1 Introduction

Asia has infamously gained status as the ‘World’s Factory’, characterised by an oversupply in low-skilled and underpaid wage labour, where people work in immiserating conditions, deprived of essential opportunities for political organising and the right to freedom of association. This has produced a veritable ‘crisis of labour’ within which traditional methods of advocacy and organising have been unreliable in raising the conditions on the factory floor. This is due in large part to the rising might of the market in Asia which, for better or for worse, sets clear challenges for labour rights advocacy. With the international human rights regimes relying on a ‘state champion’, and the market-based economic system increasingly bereft of meaningful state leverage, alternative approaches for protecting labour have become necessary. Those working to protect labour must invent innovative methods of prompting forces within and around the market to act as a protective force.

Using a desk-based analysis and several in-depth interviews with practitioners in the field,<sup>1</sup> this research led us to conclude that, while the market seems to rule the political economy in Asia, resulting in a myriad of challenges for labour protection, significant opportunities for re-articulating and mobilising protection have emerged. After a theoretical framing and regional snapshot, the article deconstructs this dynamic using the contrasting case studies of Indonesia and Thailand. Along the way, our analysis produces the following key observations, namely, that (i) the market increasingly dominates the political economy of Asia; (ii) this dislocation of power compromises formal state-based protection systems; (iii) the result is a labour protection crisis in Asia; and (iv) rights groups have turned to alternative approaches for protection, and see both challenges and opportunities.

## 2 The crisis of labour protection in Asia: Contesting actors and systems of protection

The experience of a deep and escalating labour rights crisis in Asia must be located in an increasingly global production system (‘the market’), characterised by the advent of mobile capital and the phenomenon of an increasingly surplus labour force. Within a marketised global economy, Asia’s labour force is increasingly understood to feed the factory floor of global production (commonly referred to as the ‘Factory Asia’ phenomenon). Here, ‘market-friendly’ conditions have spurred the relocation of a flood of low wage and ‘no-frills’ manufacturing jobs to the

1 As this juncture between market-based advocacy and traditional collective action offers an emerging advocacy dynamic in Thailand, interviews with practitioners engaged in the field provide grounded insights. A full list of practitioners interviewed can be found in Annex 3.

region, wherein states compete in a ‘race-to-the-bottom’ at labour’s expense to maintain their appeal to mobile capital in this sector. The analysis that follows explores the relative role of the state and market in development in this context, noting the increasing dislocation of the state and its capacity to buffer the negative impacts of the market in the region. The rise of ‘market-led’ development and the associated labour rights crisis in Asia then leads to a discussion of alternative systems of labour rights protection and advocacy.

## 2.1 Debating state versus market-led development in Factory Asia

The expansion of the capitalist system of ownership and production<sup>2</sup> sees economic activities evolve as regional and global enterprises where ‘mobile’ capital manifests a global division of labour. This veritable eradication of borders in an emerging ‘global economy’ does not assume the eradication of the state in economic management. Wolff (2010: 133) contends that capitalism oscillates between ‘two forms’: ‘private capitalism’, which is characterised by free market policies and minimal state intervention; and ‘state capitalism’, which is characterised by Keynesian economic policies, within which the state intervenes to buffer the impact of the market. This tension over the primacy of the state versus the market in capitalist systems of production is clearly manifest in debates over economic development.

Development economics only emerged as a branch of economics after World War II. However, a consideration of how economies prospered had been a key concern of the social sciences long before that (Szentos 2005: 146). A pioneer of this new branch of economics was Arthur Lewis, who in the 1950s argued that development as a concept was fundamentally tied to aspirations of ‘economic growth’, a clear departure from the emphasis on (re)distribution policies that were espoused in the welfare economics of the time (Esteva 1992: 12). Under a growth-oriented development paradigm, there were key implications for the perceived role of government (Frankovits 2002: 1). There was a clear shift in expectations where ‘[f]rom redistributors, governments are being transformed into regulators’ (Frankovits 2002: 1). This approach gained momentum and was rearticulated through the rising authority of neo-classical economics, which emphasised the free market as the key engine for development, espousing a minimal role for government. This absolute faith in the logic of the market and the importance of growth came to form the basis of a neo-liberal ideological platform, upon which the structure for a new global economy would be built.

Neo-liberalism gained a foothold as the global development orthodoxy in the 1980s, promoting the advantages of a private capitalist model for development. It advanced the importance of ‘market-led development’, typically on the basis of privatisation, deregulation and an ‘export-led growth’ model (penned the ‘Washington consensus’ (Williamson 1990)). It later evolved to concede a minimal role for the state to promote ‘good governance’, but only for creating market-enabling institutions (penned

2 Capitalism refers to ‘a system in which ownership or control of the means of production, including land, labour, and capital, by individuals and/or organisations is employed to create a profit, some of which is reinvested to increase profit-generating capital and accumulate further capital’ (Stubbs 1995: 787).

the ‘post-Washington consensus’ (Carroll & Jarvis 2014: 11)). This agenda was pushed heavily through the funding and conditionality of the World Bank and International Monetary Fund (IMF), and also via trade negotiations through the World Trade Organisation (WTO). However, it was also met with strong counter-narratives and strategies. For example, ‘dependency theorists’, pioneered by the work of Gunder Frank in the 1960s, argued that in a global economy, development in the ‘first world’ was actually causing ‘underdevelopment’ in the ‘third world’, with first world economies rising through the exploitation of so-called ‘developing’ countries (Gunder Frank 1966). It is perhaps not surprising that in Asia, states for some time retained an active role in the management of their integration into the global market.

Asia as a region boasts a unique political economy, featuring a variety of political systems and economic management models (Carroll & Jarvis 2014: 2-3). Importantly, the ‘developmental state’ has featured strongly in comparison to other regions (Stubbs 1995: 79).<sup>3</sup> The achievements and success of the Asian development state model are contested, particularly regarding any claims that these produced strong systems of rights protection. However, this phenomenon demonstrated the scope for a strong state mechanism to play a central role in emerging regional markets. Gray (2015: 102) defines the developmental state ‘as autonomous bureaucracies formulating industrial policies for the wider purpose of national development’. Yet, the experience of the developmental state phenomenon in Asia did not imply a rejection of integration into the global capitalist value chain, with the region consistently opening its markets over time. For example, strong developmental states actively pursued foreign direct investment (FDI) in their economies (Stubbs 1995: 790-91). Looking at the region as a whole, Annex 1 shows the phenomenal sustained growth of FDI inflow into Asia across three decades, which grew to 22.9 per cent in the year before the Asian financial crisis (AFC) hit, and achieved 30 per cent by 2013. Looking at the significance of trade in the region, between 1980 and 1996 trade in East Asian and Pacific countries rose from just over 30 per cent of gross domestic product (GDP) to nearly 90 per cent (ILO Global Wage Report 2008/9: 4). However, largely as a direct result of the AFC in 1997, the legitimacy and influence of the Asian development state would wane.

Quite apart from the dramatic human impact, financial crises strongly inform debates over economic management, leaving their impression on the prevailing economic orthodoxy and providing opportunities for new policies to be swept in with full force. The 1997 AFC has been described as ‘the first crisis of globalisation’ (Higgott 1998: 334 in Carroll & Jarvis 2014: 5). Carroll and Jarvis (2014: 12) explain that it brought with it renewed debate over Asia’s development and, more importantly, it allowed ‘re-entry and/or increased involvement of the World Bank and the International Monetary Fund (IMF) into the policy space of some of the region’s developmental superstars’. Effectively, it armed a strong defence of neo-liberal ideology, which would be pushed through in practice by the escalated involvement of the international financial institutions (IFIs) in

3 Notably, the performance of the regions rising developmental states (Japan, Hong Kong, the Republic of Korea, Singapore, Taiwan, Indonesia, Malaysia and Thailand) prompted the World Bank’s 1993 *East Asian Miracle* report and fuelled growing interest in an alternative state-led model for development (Carroll & Jarvis 2014: 6-9).

the region (Carroll & Jarvis 2014: 12; Gray 2015: 114). For example, the IMF immediately delivered austerity packages to Thailand, Indonesia and South Korea (Carroll & Jarvis 2014: 12), through which its influence in those states was increased. More broadly, sovereign debt grew exponentially, sealing the growing incapacity of the state (see Annex 2). Indeed, in Asia the AFC served as a 'game changer' for development policy in the region. Along with it, an onslaught of 'market-correcting' neo-liberal policies simultaneously strengthened an emerging free market in the region, while also rolling back the market-mediating capacity of the state.

## 2.2 A growing 'labour rights crisis' in Asia

Within a Marxist critique,<sup>4</sup> 'economic crises' are not merely temporal and situational phenomena, but structurally wedded to the (dis)function of the market itself and deeply connected to the tension between the forces (and interests) of labour and capital. Marxian critique famously provides a 'class' analysis, which observes that the capitalist system of production is based on the commodification of labour. Wolff (2010: 133) provides a very basic explanation of a key truism in economics, originally formulated in classical economics and firmly embraced by Marx: the 'labour theory of value':

A small group of people oversees the production and sale of commodities produced by a large group of hired labourers. That small group appropriates and distributes the surplus – the excess of the value added by workers over their wages – embodied in those commodities.

In the context of a globalising capitalist system, and particularly in conditions of private capital where the interests of labour and capital are not mediated by an interventionist state, the scope to maximise surplus value from labour is heightened.

For Marxists, the exploitation of labour is central to understanding recurrent crises. For example, assessing the recent financial crisis in the United States of America, Wolff (2010: 138) observed the increasing capacity for capital to stall wage rises in the US, through displacement of labour with technology, shifting production to source lower-wage labour, and also through the 'reserve army of labour' forming through the entry of women and migrants into the labour force. This led to the accrual of household debt as workers supplemented low wages with credit lines, and the realisation of super profits by capital, providing a money pot that fuelled 'poor investments and financial speculations' (Wolff 2010: 142). Explanations of financial crises vary;<sup>5</sup> however, the Marxian explanation points to the reality of a 'labour crisis' embedded in the very logic of the capitalist market economy. This 'economic' crisis of labour is crucial to understanding the condition of labour rights abuse in Asia and, connected to this, the challenges for labour rights advocacy.

4 Note that Marxist literature is not homogenous with Marxian ideas highly contested and prone to multiple interpretations (Wolff 2010: 130). This article refers to foundational concepts that underpin Marxian economic analyses.

5 For example, Keynesian and neo-classical economists remain in a permanent 'tug-of-war', the former claiming the need for state intervention to discipline private capitalism and avoid/manage crises while the latter blame state interventions for creating market distortions (Wolff 2010: 134).

In the context of a globalising capitalist system, the increasing mobility of capital has been associated with the phenomenon of the 'global factory' (De Angelis 2000 in Chang 2009: 162). This, in turn, is characterised by the rising informalisation of labour (Chang 2009: 165). Here it is important to differentiate between the traditional concepts of the 'informal sector' (referring to the 'self-employed' undertaking work outsourced from the formal sector (Chang 2009: 172-174)) to that of the 'informal economy'. The latter spans the informal sector but also the increasing 'informality' of the formal sector, within which flexibilisation and outsourcing of work encroach on the provision of formal protections (Chang 2009: 170). Certainly, the global factory phenomenon has manifested the rise of 'informality' in Asia. In 2002, the ILO estimated that the informal sector accounted for 41 per cent of GDP in Asia and also for 65 per cent of its work force (ILO 2002: 19 & 24). Specifically in India, Indonesia and the Philippines, the proportion of informal non-agricultural employment was 83, 78 and 72 per cent respectively (ILO 2002 in AMRC 2014: 89). In Indonesia and Korea, the rates of informality grew after the AFC (Chang 2009: 171-2). The changing condition of labour in a 'global factory', within which capital commands super profits and surplus labour searches for space, sets important challenges for the advocacy of labour rights, particularly given the diminishing legitimacy and capacity of a 'state champion' to address the rising precariousness of labour.

### 2.3 Opportunities and challenges for labour rights advocacy in the region

Sen defines development as 'the expansion of the 'capabilities' of people to lead the kind of lives they value – and have reason to value' (Sen 1998: 18), whereby the market serves as only one of many mechanisms that may advance the freedoms of individuals (eg Sen 1999: 3). In the context of mobile capital in the 'global factory' and its implications for 'Factory Asia',<sup>6</sup> the means of expanding the capabilities of the labour force continue to be debated. The traditional 'champions' of workers' rights (either states, once legitimately working as 'welfare states', or unions, which have their origins advocating in the context of domestic supply chains) lack leverage in the context of a global capitalist economy, where mobile capital increasingly dictates the conditions of labour. There is clearly a need to (re)articulate actors and mechanisms to 'champion' the advancement of labour rights in the region. Sen's work points to 'a need to develop and support a plurality of institutions' (Sen 1999: 53). However, with an emphasis on individual freedoms and agency, Sen's discussion on enabling institutions is thin. For example, Evans (2002) points to the neglect of the role of collective agency.

A pragmatic approach to the realities of a global economy suggests the need to turn to market actors and market mechanisms, fuelling the popularity of 'market-based advocacy'. If the crisis of labour is due to exploitation by private capital, then, surely, the answer to advancing labour rights is to appeal to private capital to raise its standards. Moreover,

6 Asia Development Bank (2013: iv) describes it as follows: 'Factory Asia' – these two simple words help define Asia's phenomenal economic growth over the past two decades. A growing population eager to earn more provided relatively cheap and abundant labor in the last decade of the 20th century and the early part of the current century, producing many of the manufactured consumer goods the world needed.'

while ‘mobile capital’ undermines leverage of the state or labour, through its ability to threaten to move production and associated jobs away, again, surely the answer to advancing labour rights is to appeal to private capital as a means of raising standards without chasing business away. Arguably, business has revised its ‘bottom line’. Elkington (1999) contends that the need for ‘sustainable capitalism’ has re-defined business’s ‘bottom line’, inserting environmental and social justice concerns among traditional economic imperatives. The demands are not just posturing, according to Elkington (1999: 2), but rather

[t]o refuse the challenge implied by the triple bottom line is to risk extinction ... These challenges flow from a profound reshaping of society’s expectations and, as a result, of the local and global markets business serves.

However, this ‘revision’ of business’s bottom line relies very much on assumptions about business’s changing ‘self-interest’, whereby concerns about sustainability (for instance environmental) but also consumer preferences<sup>7</sup> compel a changing business agenda, and raise questions regarding a new corporate ethic.

Corporate social responsibility (CSR) serves as a flagship for market-based rights protection, instituting the redefinition of business’s bottom line. It may be defined as ‘a company’s responsibility beyond return to shareholders to include an acknowledgment of its responsibilities to a broad range of stakeholders throughout society including employees, customers, business partners, communities and the environment’ (Business for Social Responsibility 1 in Baughn, Bodie & McIntosh 2007: 191). It is supported globally by a range of initiatives, including the United Nations (UN)’s Global Compact, which was established at the turn of the century. However, it has evolved as a typically voluntary mechanism through which businesses commit to raising standards within their supply chains.<sup>8</sup> The lack of enforceability points to the continuing tensions in how a business defines its bottom line and its relative commitment to human rights. Chan (2010), in a qualitative study of workers’ representation in corporate China, found a clear disconnect between the underlying imperative toward profit maximisation and the new-age concerns with human rights. In a case study of Reebok, the researcher observed that ‘Reebok’s production department does not know, and does not much care, what its human rights department is doing’ (Chan 2010: 216). For example, efforts made by the disconnected human rights department to spur workers’ representation were seen as ‘top-down’, leading to a recommendation by the author that the CSR model would benefit from engagement with national and international trade unions. However, unionisation also faces important challenges before it can serve as a conduit between workers and corporations.

According to Wong and Chang (2005: 128), ‘capital mobility’ serves as the central threat to the labour movement, both serving as the ‘greatest fear for worker organisations’ and as ‘a good excuse for governments to introduce anti-labour policies in many countries’. However, the labour

7 See Harrison, Newholm & Shaw (2005) for a comprehensive discussion of the phenomenon of ‘ethical consumption’ and how it is re-shaping business imperatives.

8 There are important regional differences here, with the advent of regulatory measures in and across countries in Europe strengthening the CSR model in this region (Baughn, Bodie & McIntosh 2007: 191).

movement faces challenges from within as well, with the increasing 'informality' of labour proving divisive. This is due to a range of factors, including the lack of protection afforded informal workers (Chang 2009: 176) and the tensions between formal and informal workers, with formal workers traditionally organising to protect jobs in a domestic context, not identifying shared interests with the informal workforce (Chang 2009: 168). The tensions in the labour movement itself, as well as its lack of leverage in the face of capital mobility, suggest the need for the labour movement to (re)articulate itself in and across borders in 'solidarity' with other interest groups (Wong & Chang 2005; Chang 2009). Indeed, in the same way that CSR may benefit from engagement with labour rights movements, the latter may benefit through more co-ordinated engagement with both business and consumer interest groups. To move this discussion from the abstract, the following case analyses will begin to map some of the constraints and opportunities for institutionalising labour's capabilities through contrasting discussions of collective action-based (Indonesia) and market-based (Thailand) strategies.

### 3 State dependency and its alternatives in Indonesia

#### 3.1 Context

When the Asian financial crisis (AFC) hit Indonesia in the late 1990s, Indonesia was under Suharto's authoritarian 'New Order' regime. The regime promoted technocratically-formulated industrialisation policies within a developmental state structure, a structure which would immediately collapse under the weight of the AFC. Not only did the crisis force Suharto to end his more than three-decade reign, but the political and economic landscapes in Indonesia would also dramatically transform. Severe crises justified the drive toward a more liberal political orientation, but, along with this, intense political control by the state was no longer acceptable. Indonesia in the post-Suharto era is arguably best understood as market-driven. Indeed, with the exception of the years of severe financial crisis, the business community regularly exerts political control. Facing the reality of an increasingly dislocated and non-provisioning state as well as the rising might of the market, traditional and grassroots communal systems of public governance have re-emerged as communities vie to find solutions for their own problems.

In this context, the responsibility for labour rights in Indonesian society is heavily contested. Competing discourses formulate varying responsibilities for the state, market and society itself (Santoso et al 2014; Aspinall & Sukmajati 2014). On the one hand, there is the traditional view that positions the state as the central institution in dealing with public matters. However, the emergence of neo-liberalism as a global hegemonic discourse pushes the state to play a rather peripheral role and to relegate many public matters to market mechanisms. The result in Indonesia has been a situation where some labour groups continue to turn to the state to safeguard their well-being, and others put their welfare in the hands of informal communal social structures. These debates are best examined through a closer look at the evolving role of the state in relation to the market, as well as the emerging structure, precariousness and commensurate creativity of Indonesia's growing informal labour force.

### 3.2 Re-articulation of the state, market and labour

The post-AFC 1997 economic recovery serves as a vehicle for deepening market liberalisation in Indonesia. As such, it also produced a swift re-articulation of the position and role of the state. Effectively, the AFC delivered a resolute commitment to Indonesia's limited initiation of market-enabling policies in 1988.<sup>9</sup> This comes through the IMF's intervention, which was symbolised with the signing of the Memorandum of Economic and Financial Policies on 15 January 1998, followed by the issuing of a letter of intent. One important point in this letter of intent is the government's commitment to further minimise obstructions toward foreign investment in Indonesia, which resulted in the enactment of Law 25/2007 on investment (Aswicahyono, Hill & Narjoko 2010: 1087; Daeng 2014). However, the breadth of economic reform is also seen to impact the post-crisis social reform agenda, within which a commitment to market-enabling policies was also evident. Under Habibie's short-lived administration, Indonesia ratified ILO Convention 87 on Freedom of Association and Protection of the Right to Organise (Hadiz 2003: 109). While it provides broader scope for advocates to insert labour rights issues into the policy process, the conventions still hold relatively little weight in government policies regulating industrial relations. Generating economic development through creating a favourable environment for market actors remains the nodal point. Yet, arguably, the relative position of labour *vis-à-vis* business has always been weak.

Under both regimes, the state has favoured business in their relations with labour. This has important implications for the evolution of welfare provisioning. Workers and their interests are determined by overarching economic development policies, in which business entities have more to say and stronger bargaining power to influence government policies, which in turn are in dire need of investment. This process has been taking place since the eradication of socialism and communism in 1965, and has deepened along with, first, state-led economic development during the New Order and, subsequently, market-led economic development post-1998 (Hadiz 2003: 100-101). This was accompanied by a hand-over of issues of labour rights and welfare in general, from the state to the market mechanism (Hadiz 2003). Thus, one's welfare is determined singularly by the capacity to compete in the labour market. Since the labour-political movement was incorporated under the state during the New Order era, there is little formal recourse for labour to lobby the state. It is in this context of both crisis and aggressive marketisation that dual socio-economic structures have thrived in Indonesia – both in terms of employment and provisioning.

An immediate impact of the AFC in 1997 was the dismissal of many labourers in urban economic centres. These labourers turned to informal economic activities in their rural native homeland, which in turn led to the growing importance of informal systems of provisioning. The Power, Welfare and Democracy Baseline Survey in 2013 provides a picture of how expectations for an active and welfare-provisioning state have diminished in the post-1998 democratic regime, which partly explains the tendency of

9 From 1988, under the New Order regime, Indonesia started to ease regulation, which had limited investment in Indonesia. The regime, however, did this with much reluctance and chose to work with the liberalisation project rather gradually.

the Indonesian public to resort to available informal structures and institutions (Santoso et al 2014). This includes the revival of many customary or traditional institutions through which some members of the Indonesian public, including labourers, articulate their demands both toward the state and business entities. Manning (2000) provides an analysis of the way in which these informal socio-economic structures worked to empower workers who had lost their employment during the AFC in 1997. When displaced from the formal economic sector, workers resorted to the informal sector, which in many ways were closely linked to informal social structures (Manning 2000). These informal socio-economic structures persisted despite the New Order's determination to fully consolidate various non-state entities of Indonesian society under the state's control, including labour unions (Hadiz 2004: 213). They also grew during the transition to a market-led economic development framework, with key implications for welfare and labour rights advocacy.

### 3.3 Traditions of collective advocacy: Labour unions and their informal counterparts

The roots of Indonesia's labour movement may be traced back to the colonial period and the establishment of the politically-active Train and Tram Labour Union or *Vereniging van Spoor en Tramwegpersoneel* (VSTP) in 1908. This deep tradition of collective advocacy continues today, but its evolution has been anything but linear. Hadiz (2002) argues that, despite the apparent resurgence of the labour movement in post-1998 Indonesia, it has been unable to significantly influence national policies or facilitate other substantive shifts. Hadiz offers a few explanations for this. First, massive unemployment due to the 1997 crisis greatly changed the political economy. In times of crisis, as shown in 1997, both state and business entities failed to ensure the welfare of Indonesian workers and the broader public (Wanandi 2002; Robertson-Snape 1999). Unemployment increased and there was a shift in the concentration of the labour force from the formal to the informal sector (Manning 2000). Indeed, today the informal sector is reported to account for over 70 per cent of Indonesia's work force (Sedane Labour Information Centre 2004 in Chang 2009: 171). Second, the institutionalised movements have been fragmented. Co-operation between various unions and other labour rights groups does exist, but lacks clear structure. Initially, this fragmentation was strategic, allowing these groups to 'avoid the full brunt of state repression during much of the New Order' (Hadiz 2002: 130). Yet, Indonesia's increasingly informal economy demands a plurality of actors and institutions to champion labour rights in the country.

The recognition of dual structures in Indonesia is hardly novel. During the first half of the twentieth century, the works of Furnivall (1939) and Boeke (1953) explain relations between the formal state system and informal social systems. More recently, Aspinall and Van Klinken (2011) have illustrated how the persistence of the seemingly loose yet influential informal societal structures reproduce in almost every aspect of social, economic and political life in Indonesia. At some point, the informal societal structures enable the formal structures to function. Indeed, this co-existence of multiple structures was recognised by Suharto's New Order regime. In order to manage this co-existence and produce political stability, the regime adopted a state-corporatism political strategy. This strategy did not necessarily eliminate these informal social structures, but

rather re-configured them under the regime's control and turned them into dependents of the regime. In turn, the regime granted them a relative degree of power, as part of the regime, for their obedience. By doing so, the regime tried to control a diverse Indonesian society by re-structuring particular social formations, and ensuring their dependency (MacIntyre 1994; Hadiz 2004).

The labour unions in Indonesia also underwent the same process of state-corporatism. After the demise of the Communist Party in 1965-66, the ideological struggle over the discourse of labour and its supposed role was won by the ideology of *Karyawan*, endorsed by the *Sekretariat Bersama Golongan Karya* (SEKBERGOLKAR) (Joint Secretariat), which later evolved into the main political machinery of Suharto's regime (Reeve 2013). This ideology of *Karyawan* denounces the Marxist notion of class struggle and the role of labour therein, and redefines labour as one of many other elements that should work and contribute positively to national development and prosperity. Instead of a class struggle, the ideology of *Karyawan* projects a social reality in which labour and other elements contribute to construct harmoniously and collaboratively under the state's leadership. However, these efforts fell short of eliminating or effectively penetrating the informal society-based structures that many labourers in Indonesia continue to turn to for their welfare and as a framework for collective advocacy (Reeve 1985). This underscores the declining relevance of formal advocacy structures in the Indonesian context, and the growing importance of informal collective strategies.

### 3.4 Power of informal forces in relation to state and market

The state and market, in formal character, have never been able to fully structure the social reality in Indonesia. For those union groups that see the state as the guarantor of well-being, this is an unfortunate dynamic. However, for those in Indonesia who have little hope of or interest in a guardian state and limited identification with or recourse to formal union advocacy, the might of informal forces hold significant appeal. The ability of informal forces to penetrate the state apparatus and to exert leverage over market actors is well documented in Indonesia. A powerful example is the community organisation model known as *Organisasi Kemasyarakatan* or Ormas (Hadiz 2003: 108).<sup>10</sup> Primarily, Ormas aim to effect solutions at the community level and, as such, labour rights become subsumed in a broader community advocacy strategy within this model. Ormas run a significant portion of education (from the elementary to the university stage) and health services (from small clinics to large hospitals). Irrespective of state capacity, they work to maintain strategic control over public affairs. However, they have also gained considerable leverage in relation to both state and market actors, through which they strengthen their position to advocate labour rights.

Indonesia's state structure is porous and capitalism itself is not impenetrable. There are various cases that show how informal social structures have been able to penetrate the state and wield influence over

10 Hadiz uses the term NGO to refer to the Ormas model. For some of the more conventional labour unions' activists the existence of these NGOs and their engagement in labour issues has disuniting effects among workers. Though their engagement might be prompted by sincere motives of solidarity. (Hadiz 2003: 108).

market actors to mobilise resources to further the interests of labour. The issues are broader than those articulated in traditional labour politics, with Ormases regularly advocating matters such as land tenure, access to business, revenue sharing and the recognition of particular identities. Across these issues, they often draw on political and commercial networks. For example, there are two large Islam-based Ormases, namely, *Nahdlatul Ulama* and *Muhammadiyah*. Judging from their networks, the former has links with the Nation Awakening Party (*Partai Kebangkitan Bangsa*) (PKB), and the latter has links with the National Mandate Party (*Partai Amanat Nasional*) (PAN), though neither declare that they are the political wing of these Ormases. Ormases sometimes stage their 'struggle' to gain access to welfare sources, employment opportunities, revenue shares, and even political positions. It is evident how they orchestrate popular protests, mobilise their networks and, sometimes, resort to intimidation and racketeering activities to safeguard their interests. While these actions do not receive praise on the international stage and also among labour union circles (Hadiz 2004: 218), the reality is that these informal structures are institutions capable of protecting the well-being of workers in Indonesia in contrast to traditional champions such as states and unions.

A recent study on citizenship in resource-rich regions found that in two regions with established and institutionalised extractive industry activities, the district of Bojonegoro in East Java Province and the district of Kutai Kertanegara in East Kalimantan, issues of labour rights emerge with strength outside the conventional language of labour rights politics (Tapiheru et al 2015). Here, the discourse of indigenous rights becomes divisive in platforming the plight of informal workers. Instead of organising themselves into labour unions, communities in these two regions have formed Ormases based on indigenous identity. Indeed, the impotence of formal unions is well recognised by industry informants. It is through such Ormases that local communities have strengthened their position in the labour market for this sector, either directly advocating for workers in the mines or representing informal workers seeking access to employment in the industry.<sup>11</sup> This is largely possible because in post-1998 Indonesia, democratisation and decentralisation policies have worked to strengthen the position of local and indigenous communities. This is evident in the willingness of local communities to put forward their own interpretation of the Indonesian Constitution and challenge the state apparatus. In a recent land dispute between a member of an indigenous group and a corporation in the extractive industry sector, a community leader explained the community's position in a legal case against a corporation as follows:<sup>12</sup>

It is their [the community's] rights to maintain their customs. It is a customary right. If you, the prosecutor and the police say that you act on the behalf of the state so you are wrong. The state recognises it [customary rights and laws], so why don't you recognise it? You insist to criminalise people. So if this [case] is on the behalf of the corporation, in what right does the corporation make use of you as state apparatus?

11 Interview with Rifqi, Yamto and Novel, CSR officers of PT Adimitra Baratama Nusantara-ABN, Sanga-sanga, 7 April 2015.

12 Interview with Elisasson, Great Tribal Chief of Dayak in East Kalimantan Province, 7 April 2015 (Tapiheru, Lestariningsih, Capriati & Nudia 2015).

The growing and prominent discourse on indigenous rights also becomes the repertoire of these groups, to enhance their bargaining position before the state and corporations.

While the phenomenon of the Ormas enables labour to gain political leverage, it is a double-edged sword and significant challenges are foreseen. Recourse to the indigenous identity discourse has also manifested in workers pitted against fellow workers who come from other regions (Tapiheru et al 2015). The overall process of solidarity mobilisation has further been a breeding ground for local elites, which are shaped and maintained through clientelistic structures (Cribb 2009: 14-15). While currently there is a level of tolerance of Ormas by state and market actors, it is not clear whether this will endure in the changing regional landscape. Presently, Indonesian politicians need Ormas for political mobilisation in exchange for favourable policies related to access to welfare. Corporations accept Ormas as the best possible option among less favourable alternatives as long as their business operations continue. However, soon all these arrangements may have to be adjusted, since Indonesia has become part of the ASEAN Economic Community (AEC). The current administration has started a campaign to rectify perceived issues of informal socio-economic practices by evaluating existing regulations, including local regulations, in an effort to eradicate those considered to be not business-friendly. The main motive, however, is rather to further facilitate business investment. The President claims that the local regulations that will be annulled are those that

[f]irst, obstruct local economic development; second, lengthening the bureaucratic procedures; third, local regulations that obstruct investment licensing and facilitation of business operation, and those that contradict the [national] law (Alvin 2016).

Thus, the tensions between the state, the market and labour persist in Indonesia with ongoing implications for labour rights struggles; struggles which also in a contrasting way manifest in Thailand.

## 4 Striving for control in Thailand

### 4.1 Context

In Thailand's business-friendly political economy, there is constantly uncertainty as to who is in control. From one perspective, it seems as though the market has to answer to the state. From another perspective, the state shows a propensity to cater to the whims of the market. Yet another interpretation could be that both the state and market depend on a work force that has the collective might to tear down the machine demanding high outputs for low wages. The landscape could be interpreted in any number of ways. Nevertheless, predatory practices remain prevalent in Thailand's political economy, and human rights groups believe that the situation has worsened during more than a year of military rule (HRW 2015). What is not clear in Thailand is whether the predations of the market are due to a lack of capacity or will. Thailand, being one of the founding members of the International Labour Organisation (ILO), is yet to ratify two core ILO conventions providing for freedom of association and collective bargaining, C87, and the right to organise and to collective bargaining, C98. Recently, speaking about an

influx of reports on human trafficking in Thailand's seafood industry, Thailand's military leader 'warned that if any news reports cause Thailand's seafood industry to lose customers, the people who published the news will have to be held responsible' (Khaosad 2015). As in large parts of South-East Asia and elsewhere, many of the political elites in Thailand are economic elites. Put another way, those governing have incentives to ensure that Thailand remains business-friendly (World Bank Group 2014).<sup>13</sup> During in-depth interviews with labour practitioners, one person spoke of the tripartite situation in Thailand being false: 'The ILO tripartite in Thailand, in particular, is not a tripartite at all. It is the state, business, and worker representatives who are selected by the state and business all on one side.'<sup>14</sup>

In this vein, a business solutions consultancy, Bangkok Base (2015) advertises the attractive nature of Thailand's market, explaining that 'Thai labour laws provide for considerable freedom in managing labour, and unions are not very effective'. Concomitantly, numerous practitioners referred to situations where Thai courts and authorities issued rulings and directives that were simply ignored by businesses. The lack of enforcement in such cases suggests that capacity is also an issue. It may be a lack of will or capacity or, probably, a combination of both. Nevertheless, the outcome is the same: Business has significant leverage. Assessing the relationship between politics and economic growth in Thailand from 1976 to 2010, Kijkul (2013: 1) locates trade as the main driver of the Thai economy, with political instability perceived as being inconsequential provided it 'does not disrupt the flow of exports', which would impede economic growth. Of particular interest is the way in which labour advocacy strategists navigate this landscape. More specifically, against this backdrop, what challenges and opportunities are perceived by those working towards ensuring protection?

What follows is an attempt to show the real-time implications of having no clear protection champion from above, particularly for those in the front lines of business and human rights in the world's factory. Indeed, one of the first themes coming into focus during in-depth interviews with labour practitioners was the might of the market.

#### 4.2 Business in the driver's seat

There is a perpetual line of workers outside factory doors in Thailand waiting for low-wage vacancies. Thailand remains the second-biggest economy in the region. Three of Thailand's four neighbours – Laos, Myanmar and Cambodia – are least-developed countries. The flow of migrants in search of employment, therefore, is massive – estimates vary from two to four million – and constant. Combined with the high numbers of indebted young Thais, Thailand becomes a portrayal of Kaur's utilisation of the Lewis model to explain the growth of low-wage labour in South-East Asia. Kaur (2004: 10-11) points to three 'crucial points' from

13 The World Bank raised Thailand from the 28th to 26th most business-friendly environment in the world: The report finds that Thailand ranks among the top 30 economies in the world in five areas: dealing with construction permits (at 6th in the global ranking); getting electricity (12th); protecting minority investors (25th); enforcing contracts (25th); and registering property (28th).

14 As part of this research, in-depth interviews with labour practitioners were conducted. These sources wish to remain anonymous.

the model: (i) 'a pool of 'surplus' labour with low marginal productivity'; (ii) 'low wages in the modern sector, ensured by the continued flow of labour from rural areas (or from immigration)'; and (iii) 'the significance of capital investment in raising productivity and job opportunities in the capitalist sector.'

Collective action by workers inside the factories is exceptional. Ussarin Kaewpradap of the State Enterprises Workers' Relations Confederation (SERC) described any space for organising and collective assertions as 'heavily controlled'. Kaewpradap explained that even legal Thai unions often have to organise underground, and cited a significant reduction in union membership and the demise of more than 1 000 unions. ITUC (2009) describes dismissals and retaliation against workers who organise activities. One of the reasons for the decrease in union membership is a change in the nature of contracts. Businesses in Thailand opt for short-term contracts, an impermanence that threatens unionisation or informal organisation.

Restrictions on unions, the perpetuation of low wages and lenient labour laws are some of the measures taken by the Thai state to accommodate business and to retain a competitive edge with its neighbours, who are also striving to maximise foreign direct investment. If business in Thailand becomes too costly or arduous, owners always have the option of shifting their operations across the border, or to Vietnam. The rise of the minimum wage to 300 baht (about \$10) per day on 1 January 2013 was a victory for labour, but resulted in the exit of some businesses abroad, 'leading to thousands of lost jobs and revenue, and wrecking the local economies built around factories', Kaewpradap explained.<sup>15</sup> This is but one example of a situation where the state and the masses suffer as a result of their dependence on transnational business.

### 4.3 Business leverage as a challenge

Labour rights in Thailand are heavily reliant on the whims of business as a result of the markets' leverage in the political economy. Business leverage forces both the state, workers and advocates into a delicate balance. A human trafficking researcher explained that 'being too confrontational or too public may push businesses into hiding'. The interviewees were clear that the popular portrayal of their efforts was part of the problem: Their goal is to prompt change, not to punish business and certainly not to shut business down. Labour rights groups have to tread carefully to resist exploitation without legitimating accusations of being anti-business. Accordingly, labourers and those advocating on their behalf must be strategic in selecting issues on which to focus.

Practitioners from formal and informal unions were predictably critical of giving businesses a discretion with regard to collective action. Aung Kyaw explained that some owners in the fish factories of Samut Sakhorn allowed migrant and Thai workers to organise and collectively bargain. However, he noted that only the big companies who are subject to much

15 Kaewpradap proposed that the flows of dependency in the Thai political economy, even as undercurrents, have 'serious consequences'. The workers depend on their jobs. Their families depend on the money coming from that job. The state depends on the investment and revenue. In the end, the worker cannot turn to the state to break its dependency; Kaewpradap noted.

public scrutiny have been open to such measures, and spoke of the struggle to make factories beyond Samut Sakhorn act without directives from the state. When businesses do not allow workers to organise and take collective action, labour is robbed of its best means of illustrating 'the state's and business's dependence on workers', as noted by Kaewpradap.

Beyond the propensity of business to limit collective organisation and action without state directives, practitioners in Thailand mentioned other inherent limitations to market-based advocacy. Businesses in Thailand regularly use corporate social responsibility as a marketing scheme, selling philanthropic efforts while not addressing the real issue. Asuncion noted that CSR was useful to the extent that it focused on accountability and how corporations make their money:

CSR used to be about what corporations do with their profit. Now we are shifting the focus to how corporations made their money in the first place. Outdated notions of CSR are hanging around, and the challenge is exposing them.

The task of market-based advocacy is to compel action, and some businesses may not be compelled. Compelling action is particularly challenging in a context where an entire industry has a low standard. The business that takes the first step towards change runs the risk of not benefiting from adding costs or making itself vulnerable, or being sidelined within its own industry. As one informant put it, 'businesses want to be clean, but not alienated'. Additionally, there is the lack of sustainability in voluntary action. If models or commitments are not mandatory and regulated by law, they can be broken at any time. One informant described this as follows: 'All it takes is one group of investors who do not see the adding burdens and costs of getting clean as a smart business move, even when it is sold in terms of sustainability.' As Kaewpradap noted, market-based advocacy 'works within that arrangement of dependency that it is crucial to part with'. For this reason, labour groups reiterate that ratifying ILO conventions C87 and C98 is key to any sustainable shift in labour rights in Thailand. In addition to being unsustainable, market-based advocacy has a limited reach. While some organisations see in this an opportunity to change one factory at a time, others see the limits of this. Market-based advocacy struggles to reach those businesses that do not stand to profit from change. Aung Kyaw observed the contrasting imperatives of bigger and smaller factories in Thailand, the former being subjected to pressure from 'foreign governments, workers, consumers, and the Thai government', while the latter 'don't have the huge profit margins and thus lack either incentives or deterrents worth changing over'.

#### 4.4 Seeing opportunities and promising drifts

Practitioners simultaneously spoke of breaking the state and public's dependence on business and the possibilities that come with a business that wants to change. Asuncion positioned business as a more expeditious catalyst of change:

If you can effectively make the business case, business will make the change in their business processes and behaviour. When business starts to change, the state is more likely to pay attention because it responds more quickly to business imperatives.

For businesses, reputation is everything. Even in a context such as Thailand where surplus labour causes businesses to be less dependent on each individual worker, businesses are still dependent on profit. Profit is the central vein of business, and it can be tapped. Aung Kyaw declared:

Owners have asked for direct engagement. They want to handle things in-house to avoid public fallout. We have found that they are willing to move quickly and strongly towards change to avoid what could be a lasting blow to their public profile.

Aung Kyaw and others spoke of the different ways in which businesses with ties to international export are now facing new pressures.

Three pressures, in particular, came into focus. First, the feeling was that foreign governments were increasing their pressure on Thai exporters. Foreign governments can be powerful allies in a number of ways, namely, by pressure and preference. Aung Kyaw addressed the power of foreign pressure on business and the Thai state, and the utility of having allies in foreign governments:

Businesses will do whatever they can to avoid sanctions or lawsuits. They are terrified of being blacklisted by the EU, US, or other government. When we can combine this with ILO, Thai and Myanmar governmental support and co-operation between MWRN and other labour unions and groups throughout the world, MWRN becomes a serious force.

Kaewpradap echoed this notion and also pointed out the potential for preferential treatment, such as a generalised system of preference, as having the power to influence business and governmental behaviour.

This is perhaps occurring as a result of demands by their constituents: the international consumers. Thai and international consumers were seen as the second evolving pressure. Those interviewed saw the limits to consumer activism, as a large part of the world is not in a situation to vote with their wallets. However, they also saw much potential in the ability of local and global consumers to drive a change in attitudes and standards. Looking at the first and second pressures, it is evident that the easing of global communication has been a game changer. Kaewpradap explained how the ability to reach abroad is a boon for unions in Thailand:

Now unions in Thailand are working very closely with buyers and unions together with NGOs elsewhere. Unions around the world combine into a massive customer community. We can go to our brothers and sisters and tell them about how different companies behave. This extends beyond unions to other workers and human rights organisations.

Perhaps related to the evolving pressure from foreign governments and consumers is the third evolving source of pressure – the reform-seeking forces within the Thai state. While the Thai state may be dependent on business, this does not mean that the state simply kowtows to business. Practitioners saw signs of the Thai state becoming more assertive in its role as regulator. One informant pointed out the downgrading of Thailand to Tier 3 in respect of human trafficking, and the subsequent urgency with which the Thai government responded as a sign that, as in the case of business, the Thai state holds tightly onto its reputation. A boycott of Thai products would prove devastating for the Thai economy, and the state is well aware of the severity of the situation.

It is in the best interests of business to get ahead of sea-changes. As Asuncion explained:

Businesses are not NGOs. We shouldn't expect them to act like NGOs. They exist to provide services, make products, and turn profits. They don't want to be held back by social, political, and legal pressure. Businesses are constantly expressing a sentiment to states and NGOs following a line of 'just tell us what to do, be clear, and we'll do it'. They can't afford to guess and be wrong. This desire to get over the guessing games and get back to business is something NGOs and states can use.

Asuncion also noted the opportunities associated with business efficiency. Business wants to move fast; to stay ahead. In this sense, states may be more resistant to change than business. The evolution of ethical consumption manifests a new source of 'leverage' over private capital. Asuncion concluded that

[b]usinesses are norm setters, and they are often progressive ones, because it is basically a creation of businesses' competitive advantage over other players in the market. But it works to meet societal demands for corporate responsibility to some extent.

Indeed, there is no one way of seeing the political economy and no one path to transforming governance. There was also unanimous agreement that neither states, nor workers, nor consumers need simply be obligated to the structuring of the market that may underlie many of the challenges relative to labour and human rights protection.

## 5 Conclusion

State subjugation to the market has obvious consequences for human rights. There are countless examples in Asia and throughout the world of states sacrificing the interests of citizens to satisfy the whims of the market. Yet, power is constantly shifting, and this is manifested in many ways. There is hope for accomplishing labour protection in ways never before possible. Informal approaches to protection may no longer be an option of last resort. There is also the prospect of reinvigorating formal, procedural protection in the region. Market shifts, such as the 2015 ASEAN Economic Community and the unfolding Trans-Pacific Partnership, will certainly lead to a relocation of states in the region, whether that be towards a more assertive or peripheral role. Practitioners addressed a combination of possibilities for expanding and embedding formal and informal protection. Informal approaches could leverage the market and use business to reinvigorate the state. In other words, businesses exhausted by the burdens of self-regulation, auditing and uncertainty may pressure states to govern. Asuncion offers some concluding reasons for optimism:

We can see success stories throughout the region. Certainly, many challenges remain, but attitudes are changing rapidly. Advocacy strategies are strengthening. Sensitisation is underway. Communication and information is now readily available. The timing works. Far more change has been made in the last ten years than from 1970-2000. Even in the last six years you could argue that exponential change is underway. Businesses are trying to predict what kind of future consumers, like the millennials or the Z generation, will be, and anticipate their expectations. Changing business may not directly

change the market, per se. But consumer demands and responsive states can change the market itself.

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## Annex 1: FDI Inflow: Asia 1981-2013 (Selected years)

Year(s)	Billions (USD)	% of total global FDI inflow
1981-1985	-	8.5 (average)
1986-1990	-	8.7 (average)
1992	21	-
1993	-	23.3
1994	59	26.2
1995	65	20.7
1996	81	22.9
1997*	87	20.6
1998	85	13.2
1999	106	-
2000	134	10
2001	102	14
2002	95	-
2003	107	-
2004	148	22.7
2005	165	18
2006	200	-
2007*	249	-
2008	300	-
2009	233	-
2011	-	22
2013	-	30
*1997 and 2007 mark the commencement of the Asian Financial Crisis and the World Economic Crisis respectively.		

## Annex 2: External debt/debt servicing in Asia: 1995-2000 (Selected sub-regions/countries)

External Debt (US\$ millions)						
Regions/ Selected countries	1995	1996	1997	1998	1999	2000
*East Asia	260596	310737	358563	649541	599139	524330
China	118000	129000	147000	144000	152000	146000
Korea	85810	115803	136984	139097	130316	134417
**S-East Asia	342134	371471	389992	652231	606418	568228
Thailand	100000	113000	110000	105000	96770	79710
Indonesia	124398	128937	136273	151347	151332	144159
Total Debt Service Paid (US\$ millions)						
	1995	1996	1997	1998	1999	2000
*East Asia	58842	70351	75692	378843	347184	258608
China	15066	15756	18445	18435	26862	27092
Korea	11870	13562	13865	20624	43020	23217
**S-East Asia	38387	47753	46274	44461	46687	45587
Thailand	8586	9524	11810	12752	16230	13991
Indonesia	16416	21543	19737	18310	17665	16622
<p>*East Asian countries not displayed: Hong Kong (China), Mongolia, Taipei (China) (NB: Japan not included as it is not a Developing Member Country)</p> <p>**South-East Asian countries not displayed: Brunei Darussalam, Cambodia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore and Vietnam</p> <p>Source: Asian Development Bank 2007, <i>Key Indicators 2007</i>, vol 38 151</p>						

## Annex 3: Practitioner interviews

Practitioner	Organisation	Interview Date
Aung Kyaw	Migrant Worker Right Network (MWRN)	29 March 2015
Ussarin Kaewpradap	State Enterprises Workers' Relations Confederation (SERC)	18 March 2015
Melizel Asuncion	Verité Southeast	30 March 2015
Anonymous	Human Trafficking Researcher	24 March 2015

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# Market might in Factory Asia: The struggle to protect labour

Mullen, Matthew

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