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## GLOBAL DIMENSIONS IN MAPPING THE FOREIGN LABOR POLICIES OF KOREA: A COMPARATIVE AND FUNCTIONAL ANALYSIS\*

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*This paper focuses on global dimensions in mapping the foreign labor policies of Korea. First, I categorize the foreign labor policies in the world into five types in terms of the integration methods of foreigners and the standard for naturalization. Second, I analyze the system and the operation of foreign labor policies in Germany, Singapore, Malaysia, Thailand, Hong Kong, Taiwan, Japan and Korea. The eight countries have substantial similarities, with minor differences in foreign labor policies: “temporary migrant workers program for manual workers.” In this study, I identify the migrant recruiting scheme, including legislatures, the responsible government bodies or public organizations, major economic sectors engaged, and major nationals recruited in each country, and compare international labor migration management programs among them. Finally, I discuss the current issues of the foreign labor policy in Korea.*

**Key Words:** *foreign labor policy, international labor migration, intergration, naturalization, work permit, Korea*

### INTRODUCTION

According to the United Nations Population Division, the number of people who work or live in other countries reaches 175 million that correspond

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to 3 Percent of the world's population (United Nations Population division 2003; IOM 2003: 304).<sup>1</sup> 86.3 million of those are migrant workers (ILO, 2004: 7). It is noteworthy that even though the number of migrant workers is a small portion of the 3 billion of the world labor force, the overall scale is tremendous. Nowadays migrant workers are everywhere; not only in the industrially developed countries, such as the USA, Japan, Germany, and France, but also in the newly industrialized countries, such as Singapore, Malaysia, the Hong Kong Special Administrative Region, the People's Republic of China (hereafter, Hong Kong), Taiwan, and Republic of Korea (hereafter, Korea), and even in the developing countries, such as Thailand and Pakistan. Hence, people in every nation-state have to live along side with foreign migrant workers, no longer just living with their own people.

Migration in particular presents a challenge, in the sense that the (unauthorized) movement of individuals across national boundaries can violate the principle of sovereignty, which requires a degree of immigration control (Sassen, 1996; Hollifield, 2002). The freedom to move and live and the right to work is one of the basic human rights. However, the right of residence is limited to the freedom to move and live within the borders of each state. Every nation-state regulates the entry and exit of foreigners through procedures such as visas, work permits or resident permits in order to protect the job securities of its own people, which is regarded as part of its sovereignty.

The prohibition of discrimination based on nationality is legalized by national laws by most of the nation-states and enforced by international laws (see Piper, 2004; Cholewinski, 1999; Goldberg, Mourinho and Kulke, 1996; Otting, 1993).<sup>2</sup>

While most nation-states accept "wanted" foreign labor, they control the border to prevent "unwanted" influxes of foreigners from poor countries (Martin, 2003; Martin and Miller, 2000a, 2000b). Huge amounts of people from developing countries desire to work in developed countries and try to work even in the case when legal employment is not allowed. Accordingly,

<sup>1</sup> Of these, about 158 million were deemed international migrants; Approximately 16 million were recognized as refugees and 900,000 were asylum-seekers.

<sup>2</sup> The United Nations' conventions such as the *International Convention on the Elimination of All Forms of Racial Discrimination* (1966) and the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* (1990), or the International Labour Organization's conventions such as the *Convention Concerning Discrimination in Respect of Employment and Occupation* (1958, No. 111), the *Convention Concerning Equality of Treatment for National and Foreign Workers as Regards Workmen's Compensation for Accidents* (1925, No. 19), the *Convention Concerning Migration for Employment* (1949, No. 97), and the *Convention Concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers* (1975, No. 143).

immigration control by developed countries is strict (see Cornelius, Tsuda, Martin and Hollifield, 2004). In August 2003, Korea had a reform process of immigration control. The government launched a new program for foreign workers, and pushed for a strict crack-down policy for foreign undocumented workers.

This paper aims to show where the foreign labor policy of Korea is located in a global dimension. The research was carried out in four stages. The first consisted of identifying significant similarities among a number of countries, enabling them to be identified as the United States model, the Swedish model, the French model, the German model and the Asian model. I categorize the foreign labor policies of the world into four types in terms of the integration methods of foreigners and the standard for naturalization. Once the typology was formulated, the second stage was to analyze the system and the operation of foreign labor policies of selected countries in the same category with Korea — Germany, Singapore, Malaysia, Thailand, Hong Kong, Taiwan and Japan. The eight countries have similar foreign labor policies with minor differences: *less-skilled temporary migrant workers programs*. The third stage was to identify the uniqueness of the Korean case by comparing the key variables of the migrant recruiting scheme and the foreign labor management system in the eight countries. On controlling the socio-historical context and institutional conditions, it is possible to compare the eight countries' policies. Finally, the last stage was to determine problems with Korea's foreign labor policy, and its improvement plan.

## TYPES OF FOREIGN LABOR POLICIES

A nation-state ensures its internal order by monopolizing political power. All governments control their border by regulating the cross-border movements of people and commodity. The methods and levels of immigration control vary. Nation-states have constructed a system of migration control through registration, censuses, passports, identity cards, and so forth (Torpey, 2000; Torpey and Caplan, 2001).

Most nation-states, including the US, Canada, Japan and Korea, admit foreign workers by issuing visas. Through the visa system, they limit the move of foreign workers and their rights of collective bargaining, and justify their differential treatment between nationals and foreigners. On the other hand, countries such as France and Germany that cannot easily control the entry of foreign workers with the visa system, differentiate rights to work from rights to live. Foreigners can enter these countries but must get permission from the government to reside or work for long periods of time. Since for-

eigners cannot be employed without the work permit, they are different from nationals.

Countries of immigration, such as the United States, Canada and Australia, as well as the countries which reluctantly receive immigrants, such as France, Germany, the Netherlands, and the United Kingdom, distinguish immigrants from temporary migrant workers. These countries treat immigrants who are admitted as permanent residents with almost the same rights as citizens. However, they discriminate against temporary migrant workers through legal devices, such as immigration law, work permit programs, etc (Corrigan, 1977; Cohen, 1987; Miles, 1987). The so-called “non-immigrant countries,” such as Germany, Japan and Korea, do not want to accept immigrants but accept “guest workers” who leave after a certain period of working without permanent settlement (Weiner, 1998; Joppke, 1999; Hollifield, 2002).

The policies for international labor migration management are represented in immigration laws, nationality laws or citizenship laws. The institutional control for foreigners’ entry and exit is valuable for determining the quantity and quality of international labor migration. Castles and Miller (2003: 249-252) categorized the acceptance of foreign migrant workers by the different nations as the following three categories: the differential exclusionary model (hereafter “exclusionary model”), the assimilationist model, and the multicultural model.

The exclusionary model admits foreign workers or immigrants only in limited economic sectors, such as the difficult, dirty, and dangerous (so called “3-D”) labor markets, and never accept them in civic and political sectors such as citizenship and voting rights. The assimilationist model sets it as ideal that foreign workers or immigrants totally give up linguistic, cultural, and social features of their origin and do not show any difference from the mainstream society. The multicultural model admits and supports the culture of immigrants and sets the goal of policy as coexistence rather than minorities’ assimilation to the mainstream society.<sup>3</sup> Among the three models, the countries with the exclusionary model — Germany, Belgium, Austria, Switzerland, Singapore, Malaysia, Thailand, Hong Kong, Taiwan, Japan and Korea - have the most exclusive attitudes toward immigrants; those with the multicultural model — the United States, Canada, Australia, New Zealand and Sweden — are most friendly toward immigrants, and

<sup>3</sup> No country falls *completely* into one, or another, of these categories. For example, France (assimilationist model) has made efforts to adapt French culture to new immigrant groups, while Sweden (multicultural model) still has many policies that work to encourage assimilation.

those with the assimilationist model — the United Kingdom, Ireland, France, Holland, and Italy - are in the middle. Furthermore, the multicultural model is divided into two categories — the first for the case of the United States, and the second for the cases of Canada, Australia, New Zealand and Sweden.

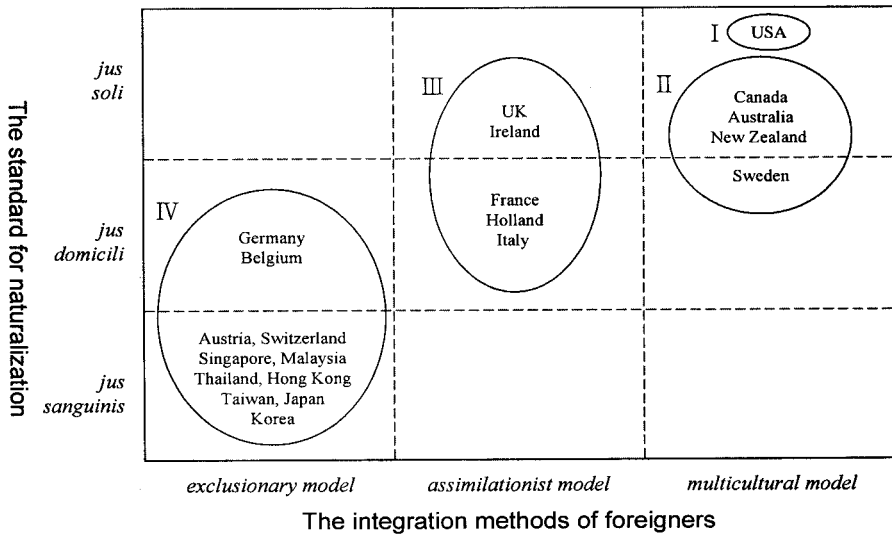
The integration of foreigners is closely related to the acquisition of citizenship (Castles and Miller, 2003: 211-214, 247-248). The exclusionary model and *jus sanguinis* (by blood, or right of the blood), the assimilationist model and *jus domicili* (by residence in the territory), and the multicultural model and *jus soli* (by birth in the territory, or right of the soil) are strongly, though not exactly, related.

*Jus sanguinis* allows citizenship to a person whose parents are the citizens of the country. The principle of territory is divided into nationality attribution based on birth in the territory (*jus soli*) and residence in the territory (*jus domicili*). *Jus soli* regards the birthplace as a standard for citizenship. *Jus domicili* specifies the conditions that newcomers have to fulfill when applying for citizenship, after having lived for periods of mostly two to eight years in the country of residence.

*Jus sanguinis* prevails in countries such as Austria, Switzerland, Norway, Italy, Israel, Singapore, Malaysia, Thailand, Hong Kong, Taiwan, Japan and Korea, whereas *jus soli* applies in the New World including the United States, Canada, Australia, and New Zealand, as well as some immigrant countries such as the United Kingdom and Ireland. The United Kingdom applies *jus soli* as the primary mode of conferring citizenship at birth, but unlike the New World which applies it predominantly, also combines elements of *jus sanguinis*.<sup>4</sup> *Jus domicili* allows denizens to finally acquire full citizenship in countries such as Sweden, France, Holland, Italy, Belgium and Germany. Germany altered the citizenship principle from *jus sanguinis* to *jus domicili* recently. In 1993, Germany opened up the possibility of awarding German citizenship to Turkish immigrants who have lived in Germany for over 3 generations, and the German citizenship reform of 1999 established a minimum residency requirement of eight years without any age restriction as a legal claim to naturalization (Anil, 2004: 9).<sup>5</sup>

<sup>4</sup> The United Kingdom has long allowed nationality to be acquired by patriality — inherited from the father. The British *Nationality Act* of 1981 further permitted British citizenship to be inherited automatically at birth from either parent anywhere in the world. The act also restricted unconditional *jus soli* by preventing newborns in the UK from acquiring British citizenship if either parent was illegally resident in the country at the time of birth (see Faist 1999: 20).

<sup>5</sup> The German *Nationality Act* (*Staatsangehörigkeitsgesetz*, StAG) 1999 has some factors *jus soli*:



Source: Adapted by Castle and Miller (2003).

FIGURE 1. THE INTEGRATION TYPE OF IMMIGRANTS/MIGRANT WORKERS IN SELECTED HOST COUNTRIES

Figure 1 shows the integration type of foreign workers in receiving countries with two axes: one with integration methods and the other with standards for naturalization. I label each of them as the United States model, the Swedish model, the French model, and the German and Asian model.

**The United States model:** Multiculturalism or pluralism implicates giving equal rights to immigrants and immigrant workers in every sphere of a society. Though immigrants are demanded to follow the core values of the main society, they are not forced to give up their own culture. In the countries of immigration, multiculturalism is the best policy in which immigrants with various cultural backgrounds can be incorporated into the receiving society rapidly. The necessity of changing an immigrant to a citizen reinforced the multicultural policy. If an immigrant becomes a voter, ethnic groups can acquire political influence. The United States model of multiculturalism can be characterized as the principle of *laissez-faire*, admitting cultural differences and ethnic communities. The government in the United States model

a person born in Germany to a foreign parent, who has resided in Germany lawfully for eight years and has held unlimited residency permit for at least three years, would automatically be granted German citizenship (see Hollifield 2002: 2).

does not play any role in supporting immigrants to maintain their cultures.

**The Swedish model:** Canada, Australia, and Sweden adopt multiculturalism as a governmental policy. In these countries, the mainstream society is willing to accept the cultural autonomy of immigrants, and the government actively supports the integration of immigrants and their equal rights. This model focuses on the state's intervention, which is different from the United States model.

**The French model:** The assimilationist model permits foreigners to become citizens under the condition that they are culturally assimilated.<sup>6</sup> Among the countries with high rates of immigration, France is closest to the assimilationist model. France emphasizes the fact that it is a temporarily multicultural society, but should not be forever multicultural. This French assimilationist model is different from the German model in the sense that the latter is based on blood. Also, it is different from the United States model and the Swedish model that composed their citizens by immigration.

**The German and Asian model:** Countries that define a nation as a blood community mostly adopt the exclusionary model. Those countries have an ideology of a nation based on blood community rather than a nation of immigration. In other words, countries with *jus sanguinis* as the naturalization standard dislike permanent settlement of foreigners. Germany and Austria in the 1950s and 1960s blocked the possibility of accepting foreign workers as "permanent immigrants" during times of labor recruitment. In Germany, which sticks to the exclusionary model, foreign workers are strangers or "guests" forever. Singapore, Malaysia, Thailand, Hong Kong, Taiwan and post-2004 Korea also have similar guest worker programs.<sup>7</sup> These countries opened their labor market, and recruited foreign workers as "temporary migrant workers." Japan and pre-2004 Korea have not formally imported foreign "workers." The governments announced that they are not countries of immigration. These two countries have accepted foreign labor as trainees, visitors to their homelands, part-timers, or undocumented workers. Despite the governments' denial of labor importing, there are thousands of "actual" foreign migrant workers in each country.

<sup>6</sup> Most countries constructed by immigration once took the assimilationist model. The United States, Canada, Australia, and New Zealand moved from the exclusionary model to the assimilationist one, gradual assimilation, and finally adopted the multicultural model.

<sup>7</sup> Singapore, Malaysia and Hong Kong have a willingness to accept highly skilled workers' permanent immigration. However, most immigrants in the countries are temporary migrant workers.

## THE RECEIVING POLICIES OF MIGRANT WORKERS IN EACH COUNTRY

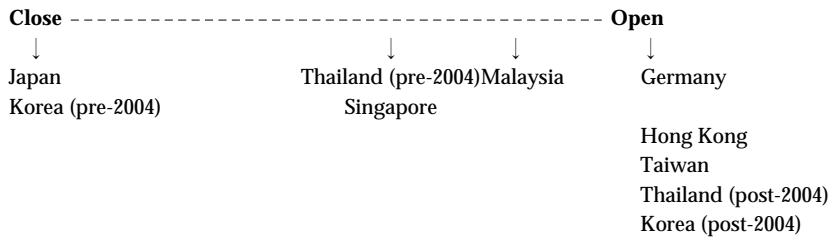
To find out the uniqueness of the foreign labor policy of Korea, it is more important to compare countries in one model, rather than to compare the five models. Many comparative analyses of the models have been made (see Cornelius, Tsuda, Martin and Hollifield, 2004; Castle and Miller, 2003), so it is likely to make self-evident conclusions. However, the comparative analysis of intra-model countries has the advantage in improving the “comparability” of the cases by controlling variables (see Lijphart, 1971, 1975; Ragin, 1994). In other words, ruling out the countries of the assimilationist and multicultural models, comparative analysis of the selected countries of the exclusionary model will draw the similarities and differences among the countries. By making such an analysis, the uniqueness of the Korean case will be revealed.

The receiving system of temporary migrant workers is a realistic representation of the exclusionary model. It is created to supply the cheapest and non-unionizing workforce for capitalists. Furthermore, Sharma (1997a, 1997b) strongly insisted that the free wage labor, which defines capitalism, is limited to only citizens. As a consequence, the unfree wage labor — that was predicted to disappear by the advent of capitalist society — is still at the core of the reproduction of capitalism.

The existence of unfree wage labor, however, does not mean that most states do not offer a legal status of “worker” to foreign workers. Most countries provide legal status to workers, but partly limit the freedom to choose occupations, and set limitations to the three basic rights granted to indigenous workers: the right to join unions, the right to collective bargaining, and the right to strike. However, Japan and pre-2004 Korea hesitated to offer even the legal status of “worker” to foreign less-skilled workers. Not giving the legal status of “workers” to foreigners who provide labor in the host society is rare.

Figure 2 locates the receiving countries in terms of having an official policy acknowledging the need of less-skilled migrant workers (Asis, 2003: 4-5). At one end is Japan, which has maintained a policy of not admitting less-skilled migrant workers. It has responded to the shortage of less-skilled workers by admitting *Nikkeijin* (descendants of Japanese migrants in South America) and by introducing the trainee program (see Tsuda, 2003; Skrentny, Chan, Fox and Kim, 2004). Unauthorized migrant workers make up the rest of the shortfall. At the “open” end are countries that have codified their systems of admitting migrants and regulating their stay. Germany and Singapore recognized their need for migrant workers in the 1950s and





Source: Adapted by Asis (2003: 19).

**FIGURE 2.** SPECTRUM OF GERMAN AND ASIAN MODEL ON ADMITTING LESS-SKILLED MIGRANT WORKERS

the late 1960s. Hong Kong and Taiwan also had similar systems of migrant workers in the mid-1970s and early 1990s. They had the advantage of putting in place migration policies before the arrival of migrants. Malaysia, Thailand and Korea found themselves having to deal with a large number of migrants in the midst of drafting policies. The fact that they have formal systems of importing migrant workers does not imply an open and welcoming reception of migrants.

In general, the policies of the German and Asian model countries are intended to control and regulate migrants through limited work contracts. The actual situation is totally different. Against the odds of a highly regulated and restrictive regime, labor migration has evolved into a massive and relatively permanent phenomenon. In the next section, I will show the receiving policies of migrant workers in Germany, Singapore, Malaysia, Thailand, Hong Kong, Taiwan, Japan and Korea in their social and historical contexts.

### *The work permit program in Germany*

Germany has the largest economy and has become the major destination for immigrants and migrant workers in Europe. The contemporary immigration pattern in Germany stems largely from the longstanding guest worker (*Gastarbeiter*) program, which began in 1955 during the height of the postwar rebuilding phase when tremendous shortages of manual labor occurred. However, the world oil crisis in 1973 immediately resulted in banned new recruitment of non-European workers (Hönekopp, 1997b; Joppke, 1999). German employers recruited “guest workers” under the terms of bilateral labor agreements signed with Italy, Spain, Greece, Turkey, Portugal, Tunisia, Yugoslavia, and Korea in the 1950-1960s (Martin and Miller, 2000a: 19; Seol, 2000a: 121). Most guest workers were farmers

between the ages of 18 and 35, although a significant number of semi-skilled construction workers, miners, and even schoolteachers migrated to Germany to work on assembly lines (Martin and Miller, 2000a). Unlike the 1960s' guest worker programs, the new foreign worker programs in the 1990s have a different purpose — to make inevitable migration legal and to cope with micro labor shortages in agriculture, hotels, and construction, and not with macro or economy-wide labor shortages. These programs included a variety of rules and incentives that encourage foreign workers to return to their countries of origin. Most were employed less than a full year, so the foreign worker programs since the 1990s added the equivalent of about 150,000 full-time equivalent workers to the German workforce in 1993-94, before being reduced by administrative measures aimed at halting abuses (see Honekopp, 1997a).

The German policy for recruitment and management of foreign workers has four characteristics (Werner, 1996). First, the contract is concluded by the bilateral agreement between the sending and receiving countries. Second, the government monopolizes the recruitment of foreign workers and their guidance to occupations for the benefit of German citizens. Third, it limits areas and occupations that foreign workers can be employed in, based on "German citizens or European Union members' citizens priority principle." Fourth, they issue valid work permits for one year and control the staying period. Germany adopts a "rotation policy" of sending back foreign workers who stay for a certain period.

The German government regulates non-EU alien employment with the permit to stay (*Aufenthaltsgenehmigung*) and the permit to work (*Arbeiterlaubnis*). In Germany, foreigners can obtain the work permit after they obtain the permit to stay. If someone is employed without the work permit, he/she is considered as an undocumented foreign worker. The permit to stay is enforced by the *Alien Act (Ausländergesetz)* of 1965, and the enforcement ordinance of the permit to stay for employment purpose and the work permit is regulated by the *Employment Promotion Act (Arbeitsförderungsgesetz)* of 1969 (see Kuptsch and Oishi, 1995).

The work permit is issued to foreign workers who want short-term employment. A work permit may be issued with or without restriction to a specific form of work in a specific establishment. It can be divided into the general and the special work permit.<sup>8</sup> The general work permit or

<sup>8</sup> The general and the special work permit were replaced by *Arbeitgenehmigung* (work permit) and the *Arbeitsberechtigung* (right of employment) respectively by the amendment to the *Employment Promotion act* in 1997.

*Arbeitsgenehmigung* (work permit) cannot be obtained for taking up employment in the context of the hiring-out of labor. Permits are issued at the limited discretion of the Federal Employment Service, through the appropriate local Employment Office. It is valid during the employment period and sometimes it is limited to a maximum of 3 years. However, certain individuals are able to obtain a special work permit or *Arbeitsberechtigung* (right of employment) irrespective of the above conditions. They can be employed freely, independent of the labor market situation, without a time limit and without regional or professional restrictions. They include people who for the five years immediately preceding the period of validity of the work permit have been lawfully engaged in continuous employment in Germany, and aliens married to German citizens whose habitual place of residence is in Germany.

On 1 January 2005, after several years of discussion at the parliament, the new *Immigration Act* (*Zuwanderungsgesetz*), which was promulgated on 5 August 2004, entered into force. It constitutes the first comprehensive reform of the existing *Alien Act* into the *Immigration Act*. For the first time in the history of Germany, immigration is to be regulated by law — for Germany is a *de facto* immigration country, even though politicians closed their eyes to this fact for many years.

*Zuwanderungsgesetz*, which replaces the previous *Ausländergesetz*, regulates the entry of foreigners, their residence, the termination of residence and asylum procedures. Under the previous system, residence and work permits were separated. However, under the new law, the residence permit also grants access to the labor market. Foreigners will therefore only have to deal with one authority. The labor administration is involved via an internal employment approval procedure where this is required.

### *The work permit program in Singapore*

The German work permit system has been a model for the foreign labor policies of Asian countries, such as Singapore, Taiwan, and Korea. These countries have noticed the breakdown of the “rotation principle” and the emergence of the permanent settlement of foreign workers by endowing “special work permits” and allowing family reunion. In order to prevent foreign workers from staying permanently, these governments devised the “employment permit program” to restrict foreign workers’ freedom to transfer workplaces and ban their family accompaniment.

Singapore is a newly urbanized state, constructed by immigrants, and still accepts immigration. A restrictive immigration policy has been enforced

since their independence in 1965. Singapore distinguishes between the highly skilled and the less skilled. The regulation of the latter rests mainly on two policies: first, a system of dependency ceiling or dependency ratio since 1988 in order to ensure that local workers are not replaced by cheaper migrant workers; second, the imposition of higher "levies" since 1987 in order to discourage employers from over-reliance on cheap, less-skilled foreign labor, and to make efforts for technological innovations (see Yeh, 1995; Chiew, 1995; Hui, 1998).

The *Immigration Act* in Singapore addresses skilled professional foreigners. They have the "employment pass," which means that they have a college education and are paid more than 2,000 Singapore dollars. In contrast, the *Employment of Foreign Workers Act* deals strictly with less-skilled foreign workers who are imported with a short-term visit pass and are paid less than 2,000 Singapore dollars.

Until the 1990s, the *Employment Act* in Singapore regulated the import and employment of less-skilled foreign workers. It dealt with Singapore workers as well as foreign workers, similar to the German *Employment Promotion Act*. The Singapore government established and enforced the *Employment of Foreign Workers Act* just for the control of less-skilled foreign workers in 1991 (see Ruppert, 1999; Yap, 2004).

Singapore's foreign labor management relies on immigration regulations in the forms of work permits. There are four different types of permits that control both the quantity and quality of labor entering Singapore. They are differentiated by the level of skill, sending country, permit duration, and the sector of work. According to this classification, a variable levy is charged. The permit application must specify the prospective employee, his/her country of origin,<sup>9</sup> the job to be performed and the duration of the job.

The work permit system applies to less-skilled foreign workers being paid under 2,000 Singapore dollars, with the exception of Malaysians. The employers who want to hire foreign workers have to apply for the work permit of foreign workers at the Work Permit Department of the Ministry of Manpower. There is no regulation that an employer should get governmental permission as in Taiwan, but the work permit of foreign workers contains a name of employer (or company), address, and occupation.

Foreign workers without the work permit are regarded as undocumented workers and are supposed to be punished, together with their employers. The change of workplaces is not allowed, except in exceptional cases. In

<sup>9</sup> To maintain the ethnic balance, the government grants nationality to foreigners with Malaysian and Chinese backgrounds generously.

Germany, the Employment Promotion Law allows foreign workers with work permits to change their workplace in principle, while in Singapore, they can change their workplace with the consent of the employer, although this is rare (see Seol, Lee, Yim, Kim and Seo, 2004).

The number of permits granted to employers is subject to the dependency ceiling, or the dependency ratio, which is defined as the maximum share of foreign workers in a firm's total employment. Dependency ceilings are set for each sector and are uniform across firms. Although this restriction is unduly rigid, since it imposes a single limit that is unlikely to be optimal for all firms within a sector, the Singapore authorities apparently have the capacity to monitor and enforce it. The government controls labor demands with flexibility by setting the dependency ratio. The government limits industries and occupations that the alien workforce can get involved in. Foreigners can be employed in construction, manufacturing, shipbuilding, hotel, and domestic services. After March of 1990, the government abolished the limitation of industries and occupations for the Malaysians. People from other countries are regulated by these discriminating policies, based on the country of origin.

The problem of undocumented workers is not severe in Singapore, due to the government's strong crackdown on illegal employment. The Singapore government has enforced the punishment for illegal stay since 1989, and for illegal working since 1995. It has applied the law strictly to foreign workers as well as to their citizens.

#### *The work permit program in Malaysia*

Malaysia has a mixture of regular and irregular migrants both in the peninsula, as well as in Sabah. It has a tendency to rethink its migration policies, according to economic trends. The earliest immigrants from India and China entered the agricultural and construction sectors in the 1970s. However, as manufacturing employment expanded in the 1980s, the gap between real wages in agriculture and manufacturing widened from one to two in 1967, and from one to three in 1981. The presence of foreign workers in manufacturing became discernible in the early 1990s. Approaching the mid-1990s, as the labor market further tightened, large firms requested the government to use foreign labor, and acquired approvals on a case-by-case basis. In August 1995, however, the government announced that the recruitment of foreign workers for plantation, construction and manufacturing would be made on a government to government basis, through one accredited supplier in each country (Pillai and Yusof, 1998; Ruppert, 1999; Kassim,

1999; Kanapathy, 2001). A recent memorandum of understanding will resume the admission of workers from Bangladesh, while one with Pakistan foresees the admission of up to 100,000 Pakistanis (Battistella, 2005: 8).

The *Employment Restrictions Act* of 1968 required Malaysian employers to get work permits for non-citizen workers. The entry and stay of migrants are governed by the *Immigration Act* of 1959/63 (Amendment, 2002). The welfare and rights of foreign workers were secured through the *Employment Act* of 1955, the *Industrial Relations Act* of 1967, the *Trade Union Act* of 1959 and the *Workmen's Compensation Act* of 1952.

The eligible source countries are Indonesia, Bangladesh, Thailand, the Philippines, and Pakistan. The government set the limit of employment sectors according to the country of origin: (1) migrant workers from Indonesia, Thailand, Cambodia, Nepal, Myanmar, Laos, Vietnam, and the Philippines are allowed to work in the manufacturing, service, plantation and construction sectors only, (2) those from Turkmenistan, Uzbekistan, and Kazakhstan are allowed to work in the manufacturing, service and construction sectors only, and (3) those from India are allowed to work in the service (restaurant cooks), construction (high-voltage cable workers) and plantation sectors.

The largest number of migrants work in agriculture and construction, followed by services and manufacturing (see Karim, Zehadul, Abdullah and Bakar, 1999; Ramachandran, 1994; Rudnick, 1996). Relatively small numbers of migrants are occupied in the manufacturing sector. This can be explained by two factors: the relatively better wage and working conditions which attract Malaysians into this sector; and the past government policy which induced foreign workers into agriculture and construction but limited their flow into manufacturing.

Immigration policy in Malaysia consists of a system similar to that found in Singapore, namely a series of three permit types: (1) a visit pass for temporary employment of foreign unskilled/semi-skilled workers, (2) a visit pass for professional employment of foreign skilled workers, and (3) an employment pass for expatriate personnel. In applying for a permit, employers identify the prospective employee and specify the job to be performed and its duration. As such, permits are firm- and job-specific, and are non-transferable. Furthermore, foreign workers are subject to age and nationality restrictions (Ruppert, 1999: 8-9).

In order to stem the influx of foreign labor and encourage the employment of nationals, the system of variable permits and fees effectively raises the cost of foreign labor, and enables the targeting of workers to fill the skill gaps that emerge in the context of sustained growth. However, raising labor costs negatively affects output, thereby impeding the over-arching objective

of economic growth. There may be additional objectives with respect to foreign population size and labor force composition as well. These conflicting objectives highlight the tremendous challenges in designing effective policies to achieve various results. Moreover, policy objectives evolve over time.

Immigration policy in Malaysia seeks to control foreign labor flows and at the same time to facilitate growth by inviting foreign skilled-workers or professionals. It accomplishes these goals by directly affecting both the demand and supply of foreign labor. Malaysia's immigration policy is characterized by skills targeting, which distinguishes it from the Singaporean model. Whereas immigration policies in both countries set the target of less-skilled foreign workers for temporary contracts, skilled workers can remain on long-term contracts, albeit subject to higher permit fees relative to less-skilled workers in the case of Malaysia.

Unskilled and semi-skilled workers are eligible for visit passes for temporary employment, up to one year. Skilled workers are also eligible if they fall below the salary cap of RM 1,200 per month (equivalent to US\$ 302). Workers must be between the ages of 18 and 45, and no resettlement of dependents is allowed. A security deposit is required to cover the cost of repatriation following permit expiry, and levies are imposed at differential levels, depending on skill. Visit pass levies range from RM 840 per year for less-skilled manufacturing jobs, to RM 1,200 per year for semi-skilled jobs, to RM 1,800 for skilled workers in manufacturing. Viewed as a payroll tax, the permit fee for skilled workers is equivalent to at least 12.5 percent of the wage. Only citizens of the Philippines, Indonesia and Thailand are issued passes for domestic/household employment; for the manufacturing, construction, plantation and service sectors, the list of eligible nationalities is extended to include Bangladeshis and Pakistanis. There are minimum income requirements for households to employ domestic workers, in order to minimize fraud, and visit pass fees for domestic workers are tax deductible for employers. In October 1995, a set of guidelines on foreign workers employment was announced. These included the compulsory employee payment of security bonds and return flights, the advance payments of levies and permits and the disallowance of salary deductions by employers.

The current challenge faced by the Malaysian government deals with the "ghost population" of illegal immigrant workers. Retaliation by these communities of workers is real and the process of detention and repatriation is going to be a major exercise for the security forces. The Malaysian Immigration Act was amended in 2002 to provide mandatory jail sentence of up to five years' imprisonment and up to six strokes of the cane for unau-

thorized foreigners. Malaysia removed 300,000 unauthorized foreigners in 2002, but many returned from Indonesia and the Philippines, especially in eastern Sabah state, prompting another round of enforcement activities (see Kanapathy, 2004).

### *The work permit program in Thailand*

Although Thailand was regarded as a labor-sending country, an influx of legal and undocumented workers from neighboring countries occurred in the 1990s when a nationwide labor shortage occurred. By the mid-1990s, Thailand became a net labor-receiving country, and the number of foreign workers exceeds 0.5 million. It might be said that the Thai economy is at a "turning point in international labor migration," at which the country is transforming from a labor-sending to a labor-receiving country (see Chalamwong, 1998).

The *Investment Promotion Act* of 1977, the *Alien Employment Act* of 1978 and the *Immigration Act* of 1978 made provision for temporary work permits to be accorded, subject to certain conditions, to selected groups of foreigners. Furthermore, the Board of Investment (BOI) approved foreign firms wishing to bring in foreign skilled labor, technicians and their family members for a fixed period of time. The occupations for which foreign workers are eligible are generally restricted to those of high skills and specialization. These include expertise in the areas of production control, engineering, high-level, administration, etc. Firms which use foreign labor are supposed to recruit Thai workers for training, so that they can replace those foreign workers in the long run. Reflecting the list of countries that have continually ranked among the leading investors, Japanese, Taiwanese, Hong Kongers, Koreans, and American nationals predominate among foreign workers. They possess medium to high skills and work as administrators, managers, engineers, and experts in specific areas.

There are also many undocumented foreign workers. In Northern ASEAN or mainland Southeast Asia, Thailand is the hub of migrants from Myanmar, Cambodia and Laos. A notable feature of migration into Thailand is the preponderance of unauthorized migration, largely from Myanmar, and from Cambodia. The migrants also arrived in Thailand spontaneously to look for jobs when the Thai economy was booming. In the case of Myanmarian migrants, political reasons were also a push factor in migrating to Thailand. Since the migrants are already in the country, Thailand attempts to bring the situation under control through registration programs. Those who register, however, are only part of a larger population



of unauthorized migrant workers. Moreover, migrant workers have brought or have been joined by their families in Thailand. The long border, shared by Thailand and Myanmar, greatly facilitates the movement of people.

After several failed attempts, the Thai government had hoped that the work permit system of 2004 would solve the problem of unauthorized migration (see Chalamwong, 2004; Chantawanich, 2004). In preparation for the implementation of the new policy, Thailand has started a series of repatriation drives. The Thai government had introduced a nationwide registration program for unauthorized foreign workers during the month of July 2004. After registration, foreign workers must pass a physical exam, and then can obtain work permits valid for two years. In July 2004, all employers in all provinces were required to register the migrants they employ. And for the first time, jobless migrants could register themselves and stay in Thailand for 12 months while seeking jobs, a provision that reportedly encouraged smugglers and traffickers to send migrants to Thailand for registration (*Migration News* 2004). Migrants will be able to change Thai employers and will be encouraged to open bank accounts.

Numbering 1,269,074, foreign migrants from all over the region registered with the government (see Chalamwong, 2004). They included 906,000 Myanmaris, 182,000 Laotians, and 182,000 Cambodians — 702,000 were male and 567,000 female. The total number includes the family members of migrants who are, according to some officials, to be sent home while the employed migrants remain in Thailand. In terms of occupation, 337,000 migrants were registered by agricultural employers, 206,000 by construction employers, 154,000 by private households for domestic helpers, and 115,000 by fisheries employers.

All registered illegal migrants are likely to be sorted out between those who are able to identify their nationality, and those who are not able to do so. The first group can be easily converted to legal immigrant workers under the new rules and treated under the existing bilateral Memorandum of Understandings (MOU) which the government has already signed with Myanmar, Laos, and Cambodia.<sup>10</sup> It would take more time to implement the

<sup>10</sup> (1) Memorandum of Understanding between the Government of the Kingdom of Thailand and the Government of the Kingdom of Cambodia on Cooperation in the Employment of Workers, (2) Memorandum of Understanding between the Government of the Kingdom of Thailand and the Government of the Kingdom of Cambodia on Bilateral Cooperation for Eliminating Trafficking in Children and Women and Assisting Victims of Trafficking; (3) Memorandum of Understanding between the Royal Thai Government and The Government of Lao People's Democratic Republic on Employment Cooperation; (4) Memorandum of Understanding between the Government of the Kingdom of Thailand and

new rules for the second prospect group whose majority is the minority along the Myanmar-Thailand border, due mainly to its vulnerable status. This group is likely to be granted temporary work permits for humanitarian purposes.

Registered migrants are entitled to the Thai labor law protection, and a new form is being prepared on which migrants can file complaints of labor law violations. To encourage their return, employers are to deduct 15 percent of migrant earnings and contribute it to a repatriation fund; migrants are to receive refunds of these withheld earnings with interest in their countries of origin if they apply within three months. Registered migrants without passports and identity documents from their country of origin are to be issued documents by their countries' consular officers in Thailand. Many migrants commute daily, for example, over the Myanmar-Thailand border, and the Thai government is planning to provide them with three-month passes, an increase from the current three days, to enter Thailand and work.

The Thai government has strongly committed to convert the illegal status of the immigrants to a manageable legal status. The Thai government, under the "Bugum Declaration," will assist the three neighboring countries, Myanmar, Laos, and Cambodia, to develop their physical and other infrastructures, based on the interest of the members on an equal basis (see Martin, 2004).<sup>11</sup> The Declaration hopes that the gap of socio-economic disparities with these neighboring countries would be reduced, so that the pressure on the influx of migrant workers would be reduced as well.

### *The work permit program in Hong Kong*

Hong Kong is constructed by immigrants, similar to Singapore. It has always welcomed the immigration of highly skilled and professional personnel from abroad in order to satisfy the almost insatiable demand for high-level employees under high economic growth. The importation of foreign domestic helpers (FDHs) is also not controversial, as Hong Kong already experienced difficulty in hiring local domestic helpers in the 1970s and 1980s due to the tight labor market and the manifested reluctance of locals to enter this occupation (Constable, 1997). Hong Kong is the destination of mostly domestic workers (over 250,000), with three quarters of them coming from the Philippines.

the Government of the Union of Myanmar on Cooperation in the Employment of Workers (see Morris, 2004: 106-132).

<sup>11</sup> The Economic Cooperation Strategy (ECS) has been successfully declared in the "Bugum Declaration," after the meeting among the four countries on 12 November 2003.

Nevertheless, the importation of non-professional workers at the craftsmen, operatives and technician levels has stirred a highly divisive political debate between labor and capital, with the government stuck in the middle trying to balance conflicting demands. In the end, a limited number of “imported” workers have been inducted under the various schemes of labor importation since the 1980s. The government basically prohibits extension and renewal of the work permit for foreign less-skilled workers, in order to prevent permanent immigration.

In 1995, the economic downturn and the increase of unemployment fueled public resentment over the presence of legal and illegal imported workers. Legislators, trade unionists in particular, moved to curb the importation of foreign workers with a threat that they might introduce a new policy. After a revision of the *General Labor Scheme* (GLS) in 1995, it was decided that the scheme should end and be allowed to decline naturally, with regard to the labor market situation. Instead, a *Supplementary Labor Scheme* (SLS) was established in 1996 to allow the entry of imported workers to take up jobs which the local workers cannot fill (Chiu, 2004a, 2004b).

Allocation of the import quotas is based on the vacancy rate and the unemployment rate reported in the industry. In principle, applications are approved only when employers can satisfactorily demonstrate that local workers cannot fill vacancies. To minimize the impact on the local wage level and to protect imported workers, the government stipulates that these guest workers should not be paid less than the market wages of local workers in comparable jobs in the sector. The government has imposed “levies” on the employers since 2003, to discourage employers’ over reliance on cheap, less-skilled foreign labor.

Hong Kong is different from Germany, Singapore, Taiwan and Korea in the sense that it does not have special laws on foreign labor management. Since there are no laws through legislations and administrative order, whether or not to import an alien workforce is decided by special measures of government or everyday administrative enforcement. When needed, a domestic employer requests permission to import foreign labor. Then, the government examines the case; when the case is positive, the government issues the employment permit for employers and the work visa for foreign workers.

Foreign, less-skilled workers in Hong Kong are treated equally as the native workers, except for the following three regulations (see Seol, Lee, Yim, Kim and Seo, 2004). First, they can stay only for a short time. As their stay depends on their work, they cannot stay forever in Hong Kong. Second, they cannot freely choose their occupations. Since they can work for

a certain person or company, they cannot find other jobs or change workplace. Third, they cannot request permanent residency in Hong Kong and invite and live with their family.

Foreign workers cannot be employed in different industries, change workplaces, and be employed as part-time workers. If these rules are violated, the worker's work permit is cancelled, and he/she is deported right away. Moreover, he/she will be forever prohibited from working in Hong Kong in the same program. Similar to other countries, both undocumented foreign workers and their employers are supposed to be punished.

The "undocumented workers" refer to those who come to Hong Kong and work with the two-way exit permit (from mainland China) or visit visa, and thus they violate the condition of stay under Section 41 of the *Immigration Ordinance*. Visitors include those who enter with visit visas or visa-free, but does not include imported workers and foreign domestic helpers. The number of undocumented workers from outside (the Mainland and elsewhere) is unknown. Most illegal immigrants work illegally in construction sites, factories, restaurants or other places of work while some come to meet their families and relatives. This suggests that the number of people illegally staying and working is substantial. The police have routinely arrested undocumented workers hired as operatives in factories and for odd jobs in restaurants or construction sites, especially those in the New Territories. The Immigration Department's Immigration Task Force has carried out special operations at construction sites, factories, restaurants, commercial offices and residential premises to combat illegal employment and overstayers (Economic and Employment Council of Hong Kong, 2004).

The problem of illegal employment has also arisen in connection with foreign domestic helpers. Some employers have illegally deployed their foreign domestic helpers to take up non-domestic duties, which presumably take away the work opportunities that might otherwise be available to the locals. In other cases, foreign domestic helpers illegally occupy additional employment.

#### *The employment permit program in Taiwan*

In 1990, Taiwan liberalized its foreign labor policy in order to deal with labor shortage. The national Legislative Yuan of Taiwan enacted the *Employment Service Act (Jiuye fuwufa)*, and the Council of Labor Affairs did the enforcement rules which include the *Measures for Employment Permission and Supervision of Foreign Persons (Waiguoren pingu xuke ji guanli banfa)*, and the *Measures for the Regulation of Income and Expenditure, and Investment and*

*Management of the Employment Security Fund (Jiuye anding jijin shouzhi baoguan ji yunyong banfa)* in 1992. Foreign labor was illegal until 1992, when the government formulated its first policy which permitted the importation of foreign labor in response to the pressures of industries for cheap labor. The model of *Employment Service Act* of Taiwan is similar to the Singaporean *Employment Act*. The Taiwanese government issues the employment permit for employers and the work permit for foreign workers, which aim at easy control of the scale and occupations of alien labor. The presence of foreign labor has resulted from the state-led capitalist development of Taiwan for the two previous decades (Cheng, 2001; Lee, 2004; Weng, Tseng, Lee and Juan, 2004).

Employers who want to hire foreign workers apply for work permits at the Council of Labor Affairs and get an employment permit, followed by examination and payment of a deposit and security money for employment (Seol, Lee, Yim, Kim and Seo, 2004: 112-119). Employers are supposed to seek native workers by public announcement before they apply for an employment permit. The government can limit the permit when it is possible to recruit among native workers. Foreigners who want to work in Taiwan should acquire work permits, issued by the governmental institution, after passing the physical examination. The work permit system in Taiwan is different from that of Germany in the sense that it limits the freedom of choosing an occupation (change of workplace). After an employer obtains an employment permit from the government, a foreign worker can get the work permit under the condition of being employed in that company.

Employers of all industries are not allowed to get employment permits and have to go through an examination process with certain qualifications. The Council of Labor Affairs decides the policies of the alien workforce, including the number of people and industries, and the committee consists of representatives of workers and managers, public service workers, and the representatives from the governmental institutions. The Council of Labor Affairs plays a key role in the importation of foreign workers. Its purpose is both to control the import scale of the alien workforce while considering the supply-demand of the domestic labor market, and to regulate the employers of foreign workers.

The Council of Labor Affairs announced in August 1994 that it would thaw the recruitment freeze, imposed in April 1994. However, it also announced that in order to reduce their reliance on foreign workers, it would increase the "employment stabilization fee" (levy), charged to employers who would import foreign workers.

The *Employment Services Act* covers the employment of foreign workers in Taiwan. Foreign workers can stay in Taiwan for a maximum period of two years. Employers may apply for a two-year extension of the work permit only once. Almost all enterprises provide programs and services for foreign employees, such as insurance coverage under the government's labor insurance program and through private group insurance. Other programs and forms of assistance include recreational activities on weekends, cultural and recreation centers, counseling sessions, weekend religious activities, and Chinese language training.

With the slowdown in economic growth, the Council of Labor Affairs allows foreign workers to apply for a change of employer in the event that a company shuts down, suspends production, lays off employees, or automates production. Foreign employees may also be transferred to other businesses or factories owned by the same employer or may work for the new owners of a business in the event of a takeover.

About 279,789 foreign workers were employed in April 2004. As of April 30, 2004, 57 percent of these workers were employed in the manufacturing industry, 38 percent as care-givers, 3 percent in construction, 1 percent in domestic help, and 1 percent in other sectors. In terms of their origin, approximately, 98,241 were from Thailand, 80,017 from the Philippines, 60,103 from Vietnam, 41,393 from Indonesia, and 30 from Malaysia (Seol, Lee, Yim, Kim and Seo, 2004: 110-111). Most workers from Thailand and the Philippines work in the manufacturing industry, whereas those from Vietnam and Indonesia were employed as domestic helpers for dependents under six or over 75 years of age.

#### *The training program and the technical internship training program in Japan*

Japan continues to resist the "formal" reception of immigration and has turned to several alternative methods to defer a decision in favor of open immigration or the integration of the current immigrants. Without changing its policy, Japan responded to the clamor of less-skilled workers by allowing the admission of *Nikkeijin* (the "front-door"), introducing the trainee program (the "side-door"), or allowing some unauthorized migration (the "back-door") (see Komai, 1995; Mori, 1997; Kajita, 2001; Kondo, 2001; Weiner, 1998).<sup>12</sup>

<sup>12</sup> According to Kondo (2001: 8), the Japanese way of dealing with foreign workers is the "back-door" policy. On the surface, the Japanese government refuses entry to foreign workers; in fact, foreign workers are imported by an ambiguous status within the "international students", "current students", "graduate students", or "refugees" categories.

Although Japan faces a great need for workers, it places a premium on ethnic and cultural homogeneity, and thus has little constraints against discrimination. Moreover, it is highly conscious of its already high population density. Japan revised the *Immigration Control and Refugee Recognition Act* in 1989, and continued to focus on *de facto* immigration policies, to avoid an open debate on the question of whether Japan should remain bound to the principle of Japanese ethnicity.

The Trainee Program as a “side-door” policy is, in a sense, a product of compromise which more or less satisfied the interests of different parties concerned: the Japanese government that does not want to accept less-skilled foreign labor, Japanese companies in need of less-skilled workers, as well as a foothold for their future business abroad, sending countries interested in developing their own human resources as well as acquiring foreign currencies, and trainees themselves enthusiastic in learning, earning money and developing their skills. It is this intricate ad hoc policy that renders some trainees as inexpensive disguised labor (Kuptsch and Oishi, 1995; Weng, Tseng, Lee and Juan, 2004). A number of small- and medium-sized companies take advantage of the system, since it is the only loophole for them to obtain less-skilled labor under the current legal framework.

The current training system consists of two programs (Iguchi, 2004; JITCO, 2003): (1) the conventional training program, and (2) the technical internship training program. The conventional training program normally comprises of on-the-job training (OJT) and off-the-job training (Off-JT).<sup>13</sup> The OJT refers to the type of training in which one acquires skills in the production or sale of goods, or by providing labor in exchange for its counter-value, whereas the Off-JT does not involve production of goods but mainly takes the form of language courses, lectures and seminars in the classroom. Even when one receives training at the workplace, it is still considered as Off-JT whenever the person does not make marketable products. The training can be offered in the form of Off-JT alone if OJT is not necessary. However, the reverse case is strictly prohibited: training which contains OJT is required to include Off-JT. These types of trainees are those who are transferred from the company in foreign countries (i.e., Japanese affiliated companies) to the company in Japan (i.e., a Japanese parent company or head-quarter of Japanese multinationals) to learn technology and skills and then return to the affiliated company in their home country. The maximum num-

<sup>13</sup> The Ministry of Justice defines off-the-job training as “an activity acquiring ability, skill and knowledge through engaging in service that produces or sells goods, or in service that supplies labor.”

ber of trainees is equivalent to 5 percent of the total number of regular employees in the establishment which accepts trainees.

The second type of trainees are those who are sent from a company in a foreign country to an organization of small and medium sized companies which has OJT. The regulations on the second type were relaxed in August 1990, and the acceptance of trainees through this type was facilitated in 1993, when the Technical Internship Training Program (TITP; *Gaikokujin gino*

**TABLE 1.** COMPARISON OF TRAINING AND TECHNICAL INTERNSHIP TRAINING PROGRAMS

	Training	Technical Internship Training
Eligible duties and occupations	In keeping with applicable immigration control laws and regulations, must not be purely repetitive tasks.	62 occupations and 112 work tasks allowed for proficiency measurement.
Target skill levels	Basic Grade 2.	Basic Grade 1 (by the end of 1 <sup>st</sup> year of internship); Grade 3 (by the end of 2 <sup>nd</sup> year of internship)
Measures of assuring skill acquisition	Formation of and adherence to training plans.	Formulation of and adherence to technical internship plans.
Required residence status	"Trainee"	"Designated Activities"
Worker status	Trainees have no worker status; not permitted to work.	Interns are treated as workers.
Overtime or holiday duty	Not allowed.	Allowed.
Protective measures for foreigners	Protections offered under immigration control laws and regulations.	Protections offered under labor laws and regulations.
Transparency of terms and conditions	Trainees are sent notifications stipulating training hours, allowances, and other terms and conditions.	Interns are provided employment contracts or notifications stipulating work terms and conditions
Welfare guarantees provided by accepting organizations	Trainees are paid training allowances to cover their living expenses.	Interns are rewarded with wages for their labor performed as internships.
Insurance against accidents and illness	Private insurance coverages are obligatorily arranged by accepting organizations as per the immigration control laws.	National social and worker insurance programs are obligatorily applicable.

Source: JITCO (2003: 57).



*jisshu seido*) was established (see Table 1).<sup>14</sup> The Japan International Training Cooperation Organization (JITCO, *Kokusai kenshu kyoryoku kiko*) played a core role in the implementation of TITP. TITP is an internship under a formal employment contract for up to one year. To qualify as an intern, one must complete the conventional training over a period of at least nine months and successfully pass the evaluation exam before proceeding to the TITP. During this internship, an intern is officially given a worker's status comparable to Japanese workers, including wages and other working conditions. They are able to stay in principle for two years and in some occupations for three years.

It is worthwhile to note that the foreign trainees and technical interns are just a small portion of the alien workforce in Japan. In 2002, the number of technical interns was 46,445. Technical interns are just 6.0 percent of all the foreign workers in Japan. This means that the TITP is an official system for alien workforce import, but it does not function well. In reality, the Japanese way to recruit alien workforce is *Nikkeijin* (233,897), allowing foreign students a part-time work status (83,340), and ignoring employment of undocumented workers (220,572). As a result of this expedient policy, Japan's undocumented workers reach 28.9 percent of the total foreign workers (Seol, Lee, Yim, Kim and Seo, 2004: 171).

#### *The employment permit program and the training program in Korea*

Korea has been a sending country for a long time, but has recently begun to receive migrants from other countries. Korea accepts migrant workers through the visa system, which prevents them from changing their workplace and from permanently settling. Korea's immigration policy has been based on the principle that only contracted migrant workers should be accepted, while immigrants should not. Labor policy has focused on complementing the Korean economy through foreign labor. However, it gives priority to professionals and skilled workers, even encouraging their naturalization, while strictly controlling the inflow of less-skilled workers. A rotation policy has been adopted to prevent migrants from settling in Korea, which means that migrant workers who have stayed for a certain period are forced to leave the country, to be replaced by new workers (Seol and Skrentny, 2004).

<sup>14</sup> The Training Program was introduced for the short period of 1986-1993 in Japan. The misuse of the Training Program has been reported through media domestically and internationally. In fact, some of the sending countries already raise this issue and criticize the way in which the Japanese government has handled the problem.

In 1991, the Korean government *launched the Industrial Technical Training Program* (ITTP; *Saneop gisul yeonsu jedo*), supposedly for foreigners to learn skills both in the classroom and workplace, and to transfer technology to less developed countries (see Seol, 1999). In 1992, the Korean government offered amnesty to undocumented foreign workers. At that time, 61,126 foreign workers out of approximately 68,000 were officially registered and allowed to stay in Korea until the end of 1992. In September 1993, there was a shortage of 120,220 workers in the manufacturing sector. For the country's entire economy, a 4 percent shortage of production workers amounted to about 250,000 workers. As a result, in November 1993, the government introduced another industrial training program, which allowed 20,000 foreign trainees into Korea that year. These foreign trainees have been managed by the Korea International Training Cooperation Corps (KITCO), which was established in 1994 under the Korea Federation of Small Businesses (KFSB).

Korea's ITTP is a photocopy of the Japanese Training Program, and not the TITP. Although Japan abandoned the Training Program and introduced the TITP in April 1993, Korea copied the old-fashioned model instead of the brand-new model. The Ministry of Trade, Industry and Energy of Korea claimed that the ITTP should be maintained in order to prevent the cost increases of authorized foreign labor resulting from the proposed work permit program.

The ITTP produced severe social problems. However, hardly anyone has actually been trained in Korea; trainees have instead been put to work despite not being recognized as workers under existing labor laws. The original purpose of the system — to offer industrial training — has not been actualized, leaving it as a discriminatory policy. Some employers take advantage of the migrants' unprotected legal status to avoid paying wages or to beat or insult them. Abusive behavior has been widespread and has attracted criticism from NGOs as a violation of human rights; some, including the Joint Committee for Migrant Workers in Korea (JCMK), have even called the ITTP a "contemporary form of slavery" (see Seol, 2005).

So, the Korean government adopted a version of the Japanese TITP just "outward appearance" in 1998. The *Work After Training Program* (WATP; *Yeonsu chuieop jedo*) for foreigners is a system to permit changing their status to stay. A training company recommends trainees who entered after the 1<sup>st</sup> of April in 1998 and were trained in a company for more than one and a half years. The chair of the KFSB gave a status to apply for the foreign trainee qualifying test. A person who passed the exam could work for one more year after his two-year training period with the changed visa status from D-

3 (for training) to E-8 (post-training employment). Foreign training employees who pass the exam and acquire the status are not labeled as “workers” for one year, but in fact they are treated as workers regulated by labor-related and socially related laws in employment relations. This can be epoch-making because the government broke the close-system of less-skilled foreign labor, keeping “trainees” rather than “workers.” It still has many problems of the ITTP for foreigners in 1991-2000 (Seol, 2000b; Yoo, Lee and Lee, 2004).

The WATP does not classify “industrial and technical training” and “expedient labor.” There is no report from companies or public institutions about training of industrial and technical trainees, which illustrates that WATP is just an extension of the ITTP. What WATP proposes is different from what it has done. Even though there are regulations for foreign industrial trainees by the *Departures and Arrivals Control Act*, it is not for employers to make trainees “work” rather than “train,” but for real industrial training.

The Korean government failed in the control of the growing number of undocumented workers. In August 2003, there were 400,000 foreign workers in Korea and 80 percent of them were illegal. The portion of undocu-

TABLE 2. COMPARISON BETWEEN THE WATP AND THE EPP

	Work After Training Program	Employment Permit Program
Responsible government body or public organization	Korea Federation of Small and Medium Businesses (KFSB); Construction Association of Korea (CAK); National Federation of Fisheries Cooperatives (NFFC); National Agricultural Cooperative Federation (NACF)	Ministry of Labor
Legislation	No separate legislation (but relying on the existing Departures and Arrivals Control Act)	Act on Foreign Workers' Employment Etc.
Legal status of foreigners	Trainee for the first year and worker for the next two years	Worker for three years
Labor allocation system	Neither employers nor workers have the opportunity to choose their workers or jobs	Employers have the opportunity to choose their workers
Protecting employment opportunities for native workers	Industrial policy-related considerations are given priority without regard to the labor shortage	Employers should attempt to find native workers for a certain period

mented workers among the total foreign workers in Korea is highest in the world. This phenomenon continued from the late 1980s, when Korea started to import a less-skilled alien workforce. The high rate of undocumented workers reflects a failure of the ITTP and the WATP.

As problems escalated, the Korean government tried to find another solution. On August 16, 2003, the *Act on Foreign Workers' Employment, Etc.* (hereafter, *Foreign Workers Act*) was legislated, which stipulated the introduction of the *Employment Permit Program* (EPP, *Goyong heoga jedo*) for foreigners. The main aim of EPP was not only to eradicate human rights violations, but also to substitute legal foreign workers for undocumented workers. The EPP allows businesses that have failed to recruit Korean manpower to legally hire migrant workers. Whereas the ITTP and WATP are notorious as systems for exploiting migrant workers without providing proper status under labor laws, EPP provides equal treatment to workers regardless of their nationality (see Table 2).

The I states that the EPP and ITTP work in tandem. The Korean government could not abolish the ITTP because it was difficult to introduce the EPP unless interests of employers — such as the Korea Federation of Small and Medium Businesses (KFSB; *Junggihyeop*), the Construction Association of Korea (CAK; *Geonseolhyeop*), the National Federation of Fisheries Cooperatives (NFFC; *Suhyeop*), and the National Agricultural Cooperative Federation (NACF; *Nonghyup*) — were protected (see Seol, 2005). The Ministry of Labor and some NGOs had tried to initiate the EPP since 1995, but were unable to bring it into effect until 2003.

The EPP also grants amnesty to undocumented workers who have resided in Korea for less than 4 years previous to March 31, 2003. While it was more desirable for the new program to repatriate current undocumented workers and bring in legal workers, it was considered impossible to change the labor force in small and medium enterprises in a short time. However, there is little logical basis for limiting the maximum stay to four years. The Korean government provided two options to undocumented workers residing in Korea for more than the designated four years: voluntary departure or forced deportation. Very few have voluntarily departed, and a number have gone into hiding.

After one year of preparation, the *Foreign Workers Act* came into force on August 17, 2004. The preparation included bilateral agreement on the memorandum of understanding with sending countries, amnesty for some undocumented workers, inducement for others to return to their home countries, and the arrest and deportation of those who refuse voluntary return. The Korean government has also signed bilateral agreements with

the governments of labor-sending countries to establish the EPP. Under the EPP, workers are granted non-renewable, fixed-term contracts for a duration ranging from three months to one year. Some of these schemes include professional and language training.

Currently, the EPP has two urgent issues for its better functioning: the presence of undocumented workers and the difficulty of legal migrant workers transferring workplaces. First, the government has attempted to induce the voluntary repatriation of undocumented workers by dangling “carrots,” such as an exemption of overstay penalty, abolishing disadvantages on re-entry, or re-employment when they return from the listed sending countries. Aggressive efforts to deport them were promised if the undocumented workers would not leave voluntarily. However, there has not been a significant decrease in the number of undocumented workers. Regulation of undocumented workers itself is not a violation of human rights, given that each nation-state controls its border and ultimately restricts the “freedom of residence” for foreigners. Therefore, immigration control and the deportation of foreigners who breach laws is a prerogative of a sovereign nation-state. However, undocumented workers’ dignity as human beings should be respected. In the age of globalization, it might be difficult to block the entry of migrant workers with travel visas. Consequently, focusing administrative capability on strictly controlling employers is a better solution than concentrating on pursuing overstaying undocumented workers. There may be no other options except the prevention of hiring undocumented workers by rigorous scrutiny of employers.

Second, the abuse of migrant workers’ rights is likely to continue to exist, since migrant workers are not supposed to be entitled to change employers or workplaces with whom they first sign. There are unavoidable circumstances which make it impossible to continue the work contract, such as a withdrawal from the contract by an employer, close-down, suspension of business, beatings, unpaid wages, and so on. Transferring workplaces is restricted to three instances (in addition, one more change is allowed for circumstances beyond the worker’s control). To change workplaces, migrant workers must visit the Employment Security Center and submit a form requesting the change in person. The request should be made within one month of the contract termination and should be approved within 2 months of the date the request was made. Otherwise, the worker is forced to depart Korea or become an undocumented worker. Furthermore, if they get a job by themselves, through a friend, colleague or private agency, they will be categorized as undocumented workers and cannot get the approval for the change. Changing the workplace has also not been managed properly, due

to the inexperience of civil servants in the Employment Security Centers under the Labor Ministry, and the absence of translation services. Also, since there is no strict application of labor inspections for migrant workers, it is difficult to detect unlawful situations. Consequently, the process of workplace change should be improved, together with the proper labor inspection for migrant workers.

Recently, the Korean government has begun to promote the return of ethnic Koreans from abroad to strengthen the domestic economic foundation. Ethnic Korean migration to South Korea, from China and North Korea, is also raising a number of international questions. The *Act on Departures, Arrivals and Legal Status of Overseas Ethnic Koreans* in January 2000 allows ethnic Koreans permission to stay in Korea for two years with the possibility of extending their visas, and integrating into South Korean society. Nevertheless, ethnic Koreans in either China or Japan whose ancestors left Korea before and during the Japanese occupation (1910-1945) may find it almost impossible to guarantee their Korean ethnicity.

## COMPARATIVE ANALYSIS

Being influenced by each other, each country's foreign labor policy has a tendency to eventually come together, in several types. This is because the basic principles and methods in accepting foreign workers reflect each country's socio-economic context. Therefore, to grasp the constellation of each country's foreign labor policy, it is necessary to analyze the eight aspects of international labor migration management. The key variables for the comparative analysis are as follows: (1) the principle of indigenous worker priority in employment, (2) laws which control international labor migration management, (3) the division of labor among the government ministries/departments, (4) channels through which foreign workers are received, (5) foreign workers' vocational training, (6) obligations of foreign workers and their employers, (7) social welfare, and (8) transferring employers/workplaces and the renewal of work-visas (see Table 3).

### *Principle of indigenous worker priority in employment*

The "principle of supplementing the domestic labor market" means that foreign labor is imported only when vacancies in the domestic labor market cannot be filled by native workers. This can also be called the "principle of indigenous worker priority in employment," as it prefers native workers. The supplementary foreign labor policy for less-skilled workers is found in

TABLE 3. COMPARISON OF CHARACTERISTICS OF FOREIGN LABOR POLICIES IN SELECTED EIGHT COUNTRIES

	Germany	Singapore	Malaysia	Thailand	Hong Kong	Taiwan	Japan	Korea
Principle of indigenous worker priority in employment	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Laws which control international labor migration management	Employment Promotion Act	Employment of Foreign Workers Act	Employment Restrictions Act	Alien Employment Act	No separate legislation	Employment Service Act	No separate legislation	Act on Foreign Workers' Employment, Etc
Responsible government body for foreign labor	Federal Ministry of Economics and Labor; Federal Employment Agency	Ministry of Manpower	Department of Labor and Employment	Ministry of Labor	Department of Labor	Council of Labor Affairs	Ministry of Health, Labor and Welfare	Ministry of Labor
Responsible government body for undocumented foreigners	Federal Office for Migration and Refugees; German Customs Administration	Immigration and Checkpoints Authority under the Ministry of Home Affairs	Immigration Department under the Ministry of Home Affairs	Immigration Bureau of the Royal Thai Police Department under the Ministry of Interior	Immigration Department under the Security Bureau	Foreign Affairs Police of the National Police Agency under the Ministry of Interior	Immigration Bureau under the Ministry of Justice	Immigration Bureau under the Ministry of Justice
Channels through which foreign workers are received	Government (bilateral agreement contract)	Private labor recruiting agencies	Private labor recruiting agencies	Private labor recruiting agencies	Private labor recruiting agencies	Private labor recruiting agencies	JITCO / intermediary organizations, private corporations, and government	Government and public agencies (EPP)/Employers' association (WATP/ITTP)
Foreign workers' vocational training	Yes (Country of origin and host society)	No (Recruiting agencies' self-imposed control)	No (Recruiting agencies' self-imposed control)	No (Recruiting agencies' self-imposed control)	No (Recruiting agencies' self-imposed control)	No (Recruiting agencies' self-imposed control)	Yes (Host society)	Yes (Country of origin)

TABLE 3. (CONTINUED)

	Germany	Singapore	Malaysia	Thailand	Hong Kong	Taiwan	Japan	Korea
Obligations of foreign workers and their employers	Migrant workers' work permit from the government	Migrant workers' work permit from the government	Employers also get an employment permit from the government	Employers also get an employment permit from the government	Employers also get an employment permit from the government	Employers also get an employment permit from the government	Employers also get an employment permit from the government	Employers also get an employment permit from the government
Levy as one of obligations of the employers	No	Yes	Yes	Yes	Yes	Yes	Yes	No
Social welfare	Similar to native workers in terms of social insurances	Similar to native workers in terms of social insurances	Similar to native workers in terms of social insurances	Similar to native workers in terms of social insurances	Similar to native workers in terms of social insurances	Similar to native workers in terms of social insurances	Similar to native workers in terms of social insurances	Similar to native workers in terms of social insurances
Transferring employers/workplaces	After receiving the government's permission (general work permit holders) / Freedom of choice of jobs (special work permit holders)	After receiving the government's permission	After receiving the government's permission	After receiving the government's permission	After receiving the government's permission	After receiving the government's permission	After receiving the government's permission (TTP)/ Freedom of choice of jobs (Nikkeijin)	After receiving the government's permission
Maximum basic employment period and the renewal of work-visa	Two years and renewable once, maximum of 4 years	Two years and renewable once, maximum of 4 years	Three years only and may, upon application by the employer, be extended from year to year, maximum of 5 years	Two years and renewable once, maximum of 4 years, after which there should be three-year mandatory stay in the country of origin before being hired again.	According to employment contract, and renewable once without limit if the employment contract is made	Two years and renewable once. If leaving Taiwan for more than a day and reentering after 4-year-employment, can be renewed once again, maximum of 6 years.	Three years and not renewable	One year and can be renewed twice, once for a maximum of 3 years, after which there should be a 1 month (or 6 months) mandatory stay out of Korea before being hired again.



Korea and the other seven countries. The governments allow only a limited number of industries to recruit foreign labor, and vacancies have to be advertised in local newspapers before employers petition to import workers from abroad (see Chan and Abdullah, 1999).

The principle is typically found in societies which receive foreign labor as migrant workers, but not as immigrants. Recently, each government tends to open the door positively to acquire foreign professionals or skilled workers. As for less-skilled foreign workers, based on the rotation principle, they are accepted on the assumption that they must return to their native country. Eight countries, Korea included, have in common that although they receive less-skilled foreign workers, they seal the possibility to acquire their denizenship or citizenship in the first place. They have no linkage to immigration policy for the less-skilled foreign workers.

As the years went by, the list expanded, and the wage disparities between domestic and foreign labor became a serious issue. It was not the sheer shortage of local people willing to do certain kinds of work, but employers' preference to hire foreign workers due to their cheaper wages and more flexibility. Foreign labor was no longer supplementary, but alternative.

#### *Laws controlling international labor migration management*

In some receiving countries, there are foreign labor laws on their entry, employment, stay and exit. Also, nationality laws, citizenship laws and the laws related to naturalization are in close relationship with the foreign workers' appearances. There are immigration laws — the *Immigration Act*, the *Immigration Control and Refugee Recognition Act*, and the *Departures and Arrivals Control Act* — to control foreigners' entry, stay and exit in the eight countries. However, countries can be divided into two groups: whether they have laws which control the importation of foreign labor or not. In the case of the former, there is a need to distinguish whether the law is only subject to foreign workers or to both native and foreign workers.

In the cases of Germany and Taiwan, each establishes the *Employment Promotion Act* (*Arbeitsförderungsgesetz*) in the 3<sup>rd</sup> part of the Social Code and the *Employment Service Act* (*Jiuye fuwufa*) as the foundation law of foreign labor, and these laws control natives and foreigners at the same time.

In Singapore and post-2004 Korea, each has the *Employment of Foreign Workers Act* and the *Act on Foreign Workers' Employment, Etc.*, which strongly regulate foreign workers. However, these laws are only subject to less-skilled foreign workers. As both countries aim to attract professionals even by providing privileges, these laws are not applied to foreign professionals

or skilled workers.

The *Employment Restrictions Act* of Malaysia requires the employers to get work permits for foreign workers. The *Alien Employment Act* of Thailand is made for skilled foreign workers. Also, these two countries have no laws on importing less-skilled foreign workers.

Meanwhile, Hong Kong and Japan have no laws for importing less-skilled foreign workers. Though Hong Kong is managing the Importation of Foreign Domestic Helpers and the Supplementary Labor Scheme as the foreign labor program, it is not based on law but only a product of policy decision. In Japan, though TITP is actually in operation as a foreign labor program, in public it is regarded as a system for skill transfer and cooperation of undeveloped countries, and is only regulated by the *Immigration Control and Refugee Recognition Act*.

In countries enforcing work permits or employment permit programs, foreign workers are protected by labor laws and social security systems as natives. However under the TITP in Japan, the status of the foreign worker is the first year "trainee." He/she is not treated as a "worker" legally.

In regards to how the number of imported foreign labor is decided, there are cases where the government decides the quota or where it is left to the market. Germany, Malaysia, Thailand and Korea are representative cases in which the government decides the quota of the foreign labor force.<sup>15</sup> The countries introduce the quota system. The number is determined based upon the calculation considering the domestic labor market situations annually. In contrast, Singapore introduces foreign labor according to the labor market situation automatically. The government only establishes a "dependency ratio" to prevent foreign labor centering at particular companies. Taiwan utilizes the quota system and the dependency ratio system in parallel. After examining the requirement of foreign labor in enterprises, the Council of Labor Affairs decides the quota by considering the total amount needed. Hong Kong and Japan have no quantitative control, despite visa control. Basically they admit anyone who meets the qualifications (see Miyoshi, 2002: 3).

<sup>15</sup> From the 1950s to early 1970s in West Germany, the government decided the scale through bilateral agreements with the governments of labor sending countries. Recently, as free labor mobility has become available by the unification of EU, the German government cannot limit the quality and the scale of foreign labor. One can see that such changes are reflected in the recent reform of the German Immigration Act.

*The division of labor among the government ministries/departments*

Government bodies which manage international labor migration are ministries or departments in charge of labor and human resources, such as the Federal Ministry of Economics and Labor (*Bundesministerium für Wirtschaft und Arbeit*) and the Federal Employment Agency (*Bundesanstalt für Arbeit*) in Germany, the Ministry of Manpower in Singapore, the Department of Labor and Employment in Malaysia, the Ministry of Labor in Thailand, the Department of Labor in Hong Kong, the Council of Labor Affairs in Taiwan, the Ministry of Health, Labor and Welfare in Japan, and the Ministry of Labor in Korea. While the Federal Ministry of Economics and Labor only performs policy planning functions and the Federal Employment Agency enforces these functions in Germany, policy and enforcement functions are unified in other countries.

The issuing of visas for foreign workers and modification of visiting status affairs are authorized by each country's immigration office. The names of this office vary: the Federal Office for Migration and Refugees (*Bundesamt für Migration und Flüchtlinge*) in Germany, the Immigration and Checkpoints Authority under the Ministry of Home Affairs in Singapore,<sup>16</sup> the Immigration Department under the Ministry of Home Affairs in Malaysia, the Immigration Bureau of the Royal Thai Police Department under the Ministry of Interior in Thailand, the Immigration Department under the Security Bureau in Hong Kong, the Immigration Office of the National Police Agency under the Ministry of Interior in Taiwan, and the Immigration Bureau under the Ministry of Justice in Japan and Korea. The role of these offices is common, that of a "gatekeeper."

However, the government bodies in charge of deterring illegal entry and employment vary. Though the police have the authority to control undocumented foreigners in every country, it does not have the full responsibility. The government body which is also in charge of undocumented foreigners plays an important role. In Singapore, Malaysia, Thailand, Hong Kong, Japan and Korea, the Immigration Office is responsible for controlling undocumented foreigners; in Germany, the role is given not only to the Federal Office for Migration and Refugees but also to the German Customs Administration; and the responsibility is endowed on the foreign affairs police in Taiwan. The Immigration Office in Taiwan does not control undocumented foreigners; it is the responsibility of the foreign affairs police — the

<sup>16</sup> The Immigration and Checkpoints Authority (ICA) was formed on 1 April 2003, with the merger of Singapore Immigration and Registration (SIR) and Customs and Excise Department (CED).

Foreign Affairs Division and the Foreign Affairs Police Brigade of the National Police Agency under the Ministry of Interior.

In controlling undocumented foreigners, it is important whether cooperation is substantially established or not within the government bodies involved with international labor migration. Although every country emphasizes the cooperative system among government bodies, Germany and Taiwan are the ones which do well in this regard. In the case of Germany, cooperation between immigration controlling agencies (the German Customs Administration and the Federal Office for Migration and Refugees) and the Federal Employment Agency is well operated. In Taiwan, there is a definite division of labor in the Council of Labor Affairs and the Foreign Affairs Police. In Taiwan, the rewarding of 2,000 Taiwan dollars, per each undocumented foreigner, for arresting stands out. In Korea, the public officer's responsibility to report is defined in the *Departures and Arrivals Control Act*. When the Labor Inspectors of the Labor Ministry acknowledge undocumented foreigners, he/she should report to the Immigration Bureau of the Justice Ministry, but it is rarely carried out in reality. Also, in Singapore, organic cooperation between the Employment Inspectors of the Ministry of Manpower and officials in the Immigration and Checkpoints Authority is nominal. The situations in Malaysia, Thailand and Hong Kong are similar to that of Singapore.

Unauthorized migration is prevailing in Asia. Except in Singapore and Taiwan — at least a third of labor migration in Asia is unauthorized. In some countries — Malaysia, Thailand and pre-2004 Korea — the proportion of unauthorized migrants is larger than authorized migrants (Battistella and Asis, 2003).

The best way of preventing the entry and employment of undocumented workers is through employer sanction (Martin and Miller, 2000a). Asian countries, including Malaysia, Thailand, Hong Kong, Japan and Korea, already have employer sanctions laws, but the enforcement authorities admit that the goal is to punish foreign undocumented workers, and not native employers.

#### *Channels through which foreign workers are received*

How to recruit foreign workers can be divided into three categories: (1) to go in person to choose foreign workers, (2) to use private migrants recruiting agencies, and (3) to recruit foreign workers through government or public agencies.

The West German model in the 1950s – 1970s, characterized by the con-

tract with the government of the labor-sending country, can be evaluated as the “government or public agency importing model.” Accepting foreign labor through bilateral agreement contracts, of course, occurs nowadays, but its number has dramatically decreased. In addition, the increased mobility of citizens in the EU has obviously changed the quality of the situation.

In Singapore, Malaysia, Thailand, Hong Kong and Taiwan, the recruiting pattern has been fixed; that is, through private labor recruiting agencies. When recruitment procedures are dealt with in private agencies, the employers gain profits from the lowest recruitment fee of foreign manpower. However, it results in the phenomenon that foreign workers have to pay an expensive fee in order to enter the host society. This is a result of the “employer-driven labor market.” In these five countries, the costs of foreign labor recruitment are definitely a major financial burden for the migrant workers.

There are four distinct ways of receiving trainees in Japan: (1) through governmental agencies and international organizations, (2) directly through private corporations, (3) through intermediary organizations, and (4) through the JITCO.

The Employment Permit Program in Korea follows Germany’s bilateral governmental agreement model. It is a form which entrusts both domestic foreign labor recruiting and overseas exporting groups to national or public agencies. The “public agency model” is evaluated as a system that can prevent illegal stay and the exploitation of the labor force through limiting the exporting fee of foreign workers to the lowest level.

The Work After Training Program in Korea follows Japan’s JITCO model. KFSB, CAK, NFFC, and NACF in Korea and JITCO in Japan are mainly responsible for managing “training” and “post-training employment.” The characteristics of the agencies are totally different: JITCO in Japan is the “3rd sector” — a mixed body of the government, employers and workers — representing public interests; while KFSB, CAK, NFFC, and NACF in Korea are associations of employers in different industries, representing private interests.

### *Foreign workers’ vocational training*

Vocational training for foreign workers is mainly done before being exported. In order to reduce problems of adaptation in host societies, it is best to achieve sufficient education/training in language, culture and employment in one’s native country before being exported. As education/training before departure is a full responsibility of the labor-

sending agencies, it is necessary to control beforehand the agency and its education/training programs.

In the host societies, such as Singapore, Malaysia, Thailand, Hong Kong, and Taiwan, which rely on private labor recruiting agencies, the education/training is self-imposed control. When a foreign worker is recruited by a private agency, vocational training rarely happens before and after his/her arrival. In other words, the employment of well-trained workers is the model for Singapore, Malaysia, Thailand, Hong Kong and Taiwan.

The German model contrasts with the above. According to the bilateral governmental agreement, not only do the foreign workers receive education before departures, they also have language and vocational training for a certain period (at least for several months) after arriving in Germany.

Though the Korean Employment Permit Program emphasizes migrant workers' education before departures, there is no vocational training for foreign workers in service. Although there is education, it is a basic education/training that lasts for only a few days.

The Japanese model focuses on training. Foreign trainees who enter Japan through the skill training system must have "off-the-job training" for at least one third of their first year as trainees. Off-the-job training means being educated not in workshops but in classrooms. Considering the facts, the Japanese government does not include the "trainees" with the category of foreign "workers." Also, the technical intern workers are receiving on-the-job training from their places of labor.

The situation of WATP in Korea is similar to that of TITP in Japan, but there is a clear difference between the two programs. Trainees in Korea do not get any off-the-job training.

### *Obligations of foreign workers and their employers*

Governments adopting the "guest worker system" require employers or the foreign workers to obtain a work/employment permit. First of all, there is a system focusing on foreign workers' work permits in Germany and Singapore. In Germany, foreign workers have to receive work permits and residence permits, and in Singapore less-skilled foreign workers have to get work permits (R-pass). While the employer in Germany has no particular responsibility, the employer in Singapore has to pay the "foreign worker levy" and purchase an employment stability bond.

In Malaysia, Thailand, Hong Kong, Taiwan, Japan and Korea, the employer needs permission from the government in order to employ foreign workers or trainees. Foreign workers are allowed to come and live after entering

with employment (or training) visas after contracting with the employer. Japan's TITP is identical to the employment permit program except that the off-the-job period, the on-the-job training period, and the technical internship training period are separate. Employers in Malaysia, Thailand, Hong Kong and Taiwan are responsible for paying the "foreign worker levy" or "employment stabilization fee."

If a foreign worker deserts his/her assigned company or engages in fields other than the one defined by the work permit, he/she will lose the legal visa status. Also, work permits can be cancelled for those who have failed the medical examination for contagious diseases. In Singapore, pregnancy is also considered as a reason for canceling the work permit.

If an employer cannot follow the contract, such as payment of wages or fringe benefits, or cannot fulfill the responsibilities, such as foreign worker levy or employment stabilization fee, he/she would receive fines or other legal restraints. Every government operates labor inspectors to control the employers if they delay the payment or treat their foreign workers differently from the employment contract.

### *Social welfare*

Each country has government officials who are in charge of labor inspection. They check whether the laws protecting foreign workers' working conditions are obeyed or not. Each government also has the authority to inspect the actual condition of employment. The Ministry of Labor sends labor inspectors who can visit the foreign worker's lodging and working scene. The inspector also examines whether basic labor rights are allowed, the employment contract is followed, or undocumented foreigners are employed, etc.

There are systems which help foreign workers settle their difficulties, for instance, the employment stability center used in common by native and foreign workers, the predicament settlement center, call hotline, and so on. Such systems are commonly established in each country. It is also usual to have a translator per language at the employment stabilization center.

With respect to the inspection of the employment of undocumented workers, it is well carried out in Germany and Taiwan and is comparatively well performed in Singapore and Hong Kong. However, in the cases of Malaysia, Thailand, Korea and Japan, though it nominally exists, the inspection system does not actually function.

Concerning equal treatment, as a rule, foreign workers with proper visas are supposed to enjoy equal treatment with natives. However several

restrictions are applied, and each country shows small differences. In Germany, foreign workers have equal rights with native workers in the aspects of social insurances, medical insurance and workers' three basic rights.

In Singapore, less-skilled workers receive social insurances and health insurance benefit and are protected by the labor laws, but they are not subject to minimum wages. In addition, housemaids cannot join trade unions. In Malaysia, foreign workers have social and health insurances and the workers' three basic rights, but foreign domestic workers have no protection under the Malaysian labor law. Also, Malaysia has no national minimum wage, as the government prefers letting market forces determine wage rates. However, the *Wage Councils Act* provides for a minimum wage in those sectors or regions of the country where market-determined wages are insufficient. In Thailand, foreign workers can be entitled to social and health insurances, minimum wages, health care and education for children, as well as workers' three basic rights.

In Hong Kong, foreign workers have social and health insurances and workers' three basic rights, and they are subject to minimum living wages. They also have freedom of the unlimited trade union activities, in sharp contrast with the cases of Singapore, Taiwan, Malaysia, Thailand, Korea and Japan, while construction workers are not subject to minimum wages. In Taiwan, foreign workers have social and health insurances and workers' three basic rights, and they are subject to minimum living wages. Though the activity of foreign worker's trade union is allowed, it is rare to take action through actual participation.

In Japan, the post-training workers have workers' basic rights and social insurances — health insurance, welfare pension insurance, employment insurance, and workers' accidents compensation insurance — and are subject to minimum wages, but the trainee is not recognized as a "worker." All employees employed at "covered offices" are qualified as "insured persons" under the scheme and must register with their respective offices as well. This regulation covers foreign nationals regardless of their nationality, visa status, or length of stay in Japan.

Finally, under the EPP in Korea, foreign workers are subject to minimum wages, and receive benefits of social insurances, health insurance, and three basic labor rights, same as natives. Trainees in WATP are not "workers," so they do not have three basic labor rights, but they are subject to minimum wages and are entitled to receive benefits of social insurances and health insurance.



*Transferring employers/workplaces and the renewal of work-visas*

Foreign workers are fundamentally prohibited from changing jobs. This is in common in the countries which adopt the “principle of native priority in employment.” Though foreign workers with the “special work permit” in Germany and *Nikkeijin* of Japan are exceptional, in both cases, it is more appropriate to consider them as permanent immigrants than temporary migrant workers. In other words, to protect the native worker’s employment opportunity, each government is strictly restricting the foreign worker from changing employers. Of course, it is not impossible for foreign workers to change their companies. One can change the company according to the provided procedures after receiving the government’s permission. In Germany, foreign workers with general work permits can exceptionally change the companies when the case is approved after a certain period of employment. In Singapore, construction workers and housemaids from “Non-traditional Sources” (including India, Sri Lanka, Thailand, Bangladesh, Myanmar, Philippines, Pakistan, and Indonesia) and China can change their employers when it is approved that the case is not self-responsible. While countries such as Taiwan, Malaysia, Thailand, Japan and Korea afford a strict process of changing one’s employers, the Hong Kong government takes into deliberation and decision case by case, without a defined process clearly in the regulations.

The employing period of foreign workers differs according to each country and foreign worker’s visa status. The one common fact is that most of the countries actually permit extending employment period of foreign professionals without limit.

For guest workers with “general work permits” in Germany, the maximum basic employment period is two years and can be renewed once, allowing one to work up to 4 years. Less-skilled foreign workers in Singapore receive work permits of 2 years and can be renewed once, allowing them to stay for 4 years. Foreign unskilled/semi-skilled workers in Malaysia are initially allowed to work for three years only and may, upon application by the employer, be extended from year to year, maximum of five years. For an extension after the fifth year, the employer must obtain certification from the National Vocational Training Council (MLVK), the Ministry of Human Resources or the Construction Industries Development Board, Malaysia (CIDB), demonstrating that the particular worker is a skilled worker. Foreign unskilled/semi-skilled workers in Thailand, after 2004 registration, must pass a physical exam, and then can obtain a work permit which is valid for two years. Migrant workers cannot be accompa-

nied by family members; they usually have a two-year contract, renewable once, after which there should be a three-year mandatory stay in the country of origin before being hired again.

In Hong Kong, foreign workers receive work permits according to the employment contract, and the staying period can be extended without limit as long as the employment contract is renewed. In Taiwan, a foreign worker's work permit allows a maximum of 2 years and can be extended once. Moreover, those who renew their work permit one time can be employed again by leaving the country for more than a day and reentering it. That is, foreign workers in Taiwan can be employed as long as 6 years.

The technical internship training workers in Japan can stay as long as 3 years, a year for "training" and two years for "technical internship." It is impossible for the foreign workers having training or technical internship visas to extend their stay in Japan over 3 years.

Foreign workers under the EPP of Korea can be employed up to 3 years and can be reemployed after leaving for at least six months.<sup>17</sup> Their mandatory stay out of Korea, however, can be shortened just one month when the employer asks their reemployment before they leave Korea. When the employment contract is made in this form, it can be renewed without limit. Foreign migrants in WATP in Korea can stay as long as 3 years, a year as "trainees" and two years for "post-training workers." The less-skilled foreign workers cannot change jobs freely. However, it is possible to change jobs with the guidance of the Labor Ministry for EPP or KFSB, CAK, NFFC and NACF for WATP.

## CONCLUSION

Underlying international labor migration is a search for a better life. International labor migration can help to achieve this by associating people more closely with available foreign employment and services. The monies sent back by migrants contribute more to national and local economies than trade in several parts of the developing world. It is certainly substantially greater than flows of development assistance in many countries. Yet it is equally clear that exploitation of migrant workers exists and one of the key challenges is to prevent such practices (Skeldon, 2003).

This paper synthesizes and analyzes the results of eight country studies of labor immigration representing the exclusionary model: Germany,

<sup>17</sup> The act on Foreign workers' Employment, Etc was amended to afford convenience to the employers in May 31, 2005. Before the amendment, there should be a 1 year mandatory stay out of Korea before being hired again.

Singapore, Malaysia, Thailand, Hong Kong, Taiwan, Japan and Korea. A discussion on open borders may not be promising in Asia at this time. The Westphalian principles of nation-state formation — border control, freedom from external intervention, and delegitimizing sub-national identities and loyalties — must be maintained in the post-colonial period in which various countries in Asia still are in, while they are challenged by migratory flows. As has been discussed, in the eight countries, migration is strongly organized as temporary contract labor, with minimal entitlements. Germany and Japan represent the extreme cases. Whereas Japan continues to justify erroneous immigration and integration policies under the “myth of homogeneous society,” Germany eventually recognized the limitations of withholding basic civil and political rights of foreign workers. The foreign labor policies of intermediate cases — Singapore, Malaysia, and post-2004 Thailand, Hong Kong and Taiwan — are mostly similar to that of Germany (Asis, 2004). However, the foreign labor policy of Korea in 2005 is in the midst of reforming. Although launching the EPP in 2004, the WATP/ITTP did not disappear. The Korean model of foreign labor policy in 2005 is a grotesque mixture of the German and Japanese model, implying that the reform is not complete. The result of the comparative analysis shows that the direction of the foreign labor policy reform of Korea is right, but that the reform is left unfinished. So, the eight countries can best be summarized by grouping migration flows into four migration subsystems: (1) Germany, (2) Singapore, Malaysia and Thailand, (3) Hong Kong and Taiwan, and (4) Korea and Japan.

There are two remaining issues which await urgent response in the foreign labor policy of Korea. Among them, the core issues are: (1) the abolishment of the ITTP expediently operated for the settlement/success of EPP, and (2) the clearing-up of the problems of existing unregistered workers.

First, it has been criticized that enforcing the employment permit program in parallel with the ITTP is a practice to discriminate against foreign less-skilled workers. Even among the foreign workers from the same country, treatment can differ according to their visa status. Whereas those who enter through the EPP are regarded as “workers” by the *Labor Standards Act*, those who enter through ITTP are considered as “industrial trainees” by the Departures and Arrivals Control Act, which regulates foreign industrial trainees “with no intention of employment” to train at domestic companies with training conditions laid down by the Minister of Justice. The objective of entry by industrial trainees is regulated as “industrial training” (D-3) by this law. However, as they only complete “after entry education” that lasts for 3 days and get employed at once, it should be viewed as actual “work-

ing without training.” Such expediently operated ITTP is an evident violation of the law and must be abolished at once.

Criminal collegial sector 1 of Daegu District Court on July 7, 2004, came to a decision that if a foreign industrial technical trainee has actually worked in Korea, he/she is subject to the *Labor Standards Act*. It means that though the industrial technical trainee has signed a training contract, if the training did not cease and resulted in supplying actual labor to the relevant company, he/she should be regarded as a worker who is subject to the *Labor Standard Act*. Reflected by this judicial precedent that states that the *Labor Standards Act* and the *Minimum Wages Act* should be applied if the industrial technical trainee, regardless of the title, provides actual labor, it is evident that there is no authority to operate WATP/ITTP expediently.

In a similar purport, the National Human Rights Commission of Korea, in February, 2003, recommended abolishing the ITTP and WATP. Legal circles and academia also conclude that WATP/ITTP operated expediently is unconstitutional, contrary to the rule by law.

Even after enforcing the EPP, based on the *Act on Foreign Workers' Employment, Etc.*, the operation of the WATP/ITTP in parallel is a very grave problem. The WATP/ITTP go against the first principal in foreign labor policy, the “principle of native workers priority in employment.” Employers prefer the ITTP and WATP, in which they have no responsibility of making the effort to hire domestic workers prior to foreign ones. Such a system, going against the principle, should be abolished immediately to take care of the domestic labor market.

Also, it is necessary to bear in mind the fact that runaways from the assigned companies are still endlessly occurring even by the newly entered 2004-2005 industrial technical trainees. Still expediently operating the WATP/ITTP, as such, and preserving the interests of the employers associations is very dangerous. It can cause the EPP's failure. The WATP/ITTP should be abolished as soon as possible.

Second, in order to reduce the human rights violation against foreign workers and to successfully settle the EPP, the government has to enforce the policy: inducing the existing undocumented workers to repatriate voluntarily and deporting non-repatriating undocumented workers by force. The government has attempted to induce voluntary repatriation of undocumented workers by dangling “carrots,” such as the exemption of the overstay penalty, the elimination of disadvantages on re-entry, or re-employment when they return if they are from the listed sending countries. The government promised aggressive efforts to deport them if the undocumented workers would not leave voluntarily. However, the number of undocu-

mented workers has not decreased.

Regulation of undocumented workers itself is not a violation of human rights since each nation-state controls its border and ultimately restricts the “freedom of residence” for foreigners. Therefore, immigration control and the deportation of foreigners who breach immigration laws is a prerogative of a sovereign nation-state. However, undocumented workers’ dignity as human beings should be respected. In the age of globalization, it might be difficult to block the entry of migrant workers who enter with travel visas. Consequently, strengthening the administrative capability of strict control of employers would be a better solution than pursuing the overstaying undocumented workers. There may be no other options except to prevent hiring of undocumented workers by rigorous scrutiny of employers.

Harmonious cooperation systems should be built among government ministries who are in charge of regulating undocumented foreigners (the Justice Ministry) and of controlling and employing foreign labor (the Labor Ministry). In addition, it is necessary to positively examine how to train public officials who control foreigners’ illegal stay. One example is the Taiwan model: the Immigration Office is only in charge of controlling foreign worker’s arrivals, departures, and stay; and the Foreign Affairs Police is in charge of checking undocumented foreigners. The other is the German model: though the German Customs Administration and the Federal Office for Migration and Refugees are in charge of controlling undocumented foreigners, the German Customs Administration is formed as customs being in charge of the field where severe resistance is expected. A distinctive feature of the two countries is that they operate a specialized organization. It is understood that the case of system operation in Germany and Taiwan has a lot of scope to be examined in relation with restructuring the Immigration Bureau under the Ministry of Justice in Korea.

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