

Policies on Admission Low-Skilled Workers in Korea, Japan and Taiwan (China): similarities and differences

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Unlike Taiwan (China) both Japan and Korea have long-standing policies which eschew the admission of low-skilled labour from abroad. What prompted them to abandon or make exceptions to the policy? Having opened their gates to low-skilled foreign workers, what policies and programmes did the three countries adopt to address concerns over the likelihood of permanent stay, problems with social integration and possible negative impact on wages of native workers? What role are these policies likely to play in the long-term future of the three East Asian countries given demographic trends and the social and economic changes that evolve in post-industrial societies?

Introduction

Official policies and programmes to open up markets to low-skilled workers from abroad are of rather recent vintage in the East Asian region. In the immediate post-war period the newly independent states in the region were pre-occupied with generating sufficient employment opportunities for their own nationals that little attention was paid to immigration except to allow foreign investors to be represented in the management of their local affiliates. Up until the early 1980s Korea was sending workers abroad largely as construction workers employed by Korean contractors. It has only been over the past two decades that pressures to open up labour markets brought about changes in policies on foreign workers. Rapid and sustained economic growth especially in Korea and Taiwan led to double-digit growth rates in wages, created enormous pressures on the labour market that could only be eased through the employment of foreign workers, in most cases in violation of existing laws and regulations.

Until 1990 the Immigration and Emigration Law did not allow foreign unskilled labour to enter Korea for employment purposes¹. Until today Japan still maintains formally a policy of not admitting low-skilled workers. The Immigration-Control and Refugee-Recognition Act (ICRRA) passed in 1951 did not include low-skilled among the various migration categories (or statuses) which could be admitted into the country. The Act has since then been amended several times but the ban on the admission of unskilled labour has been maintained.

In the case of Taiwan (China) foreign workers started to be admitted into the country only since 1989. It took a few more years before the legislature would enact the Employment Service Act of 1992 which established a regular guest worker programme. The Act mandated the Council of Labour Affairs to establish quotas and set the rules for the admission of low-skilled workers.

¹ See Chin Hee Han and Yong Seok Choi, 2006

Except for Taiwan (China) which started out as a country of immigration², both Korea and Japan still have small foreign populations. Authorities in Japan estimate a foreign population of 2 million (out of 128 million total population) while Korea has about 600,000 (out of 48 million). Foreign nationals in Japan and Korea have not exceeded 1.6 percent of their respective labour force, and in Taiwan (China) they account for no more than 2.4 percent. These are tiny compared with other advanced countries. Foreign nationals account for 9 percent of Germany's labour force, 5.4 percent of the UK's, 9.3 percent of Spain's, 8 percent of Belgium's, and 3.2 percent of Italy's. The foreign born represent 24.9 percent of Australia's, 17.8 percent of Canada's, and 15.1 percent of the US labour force.

East Asian countries as magnets for labour migration

The decade of the 1980s saw the three East Asian countries, together with Hong Kong and Singapore, emerge as new magnets for labour migration in the region. Many factors contributed to this development but it is clear that the widening of the income gap with other less developed countries of the region played a major role. From 1986 to 1992 the Korean GNP rose at the rate of 9.2 percent a year. The growth of fixed capital formation was an unprecedented high of 9.3 percent annually from 1970 to 2005. This enabled labour productivity to grow at 2.5 times that of Japan and US. The resulting widening of income gap with many nearby countries inevitably led to cross-border movements of labour. The numbers of undocumented foreign workers were estimated to have grown from only about 4,200 in 1987 to 65,000 five years later.

In the case of Japan, the 1985 Plaza Accord which caused the yen to rise 100 percent against the US dollar in one year was a signal event³. From that time on a marked rise in the number of foreign nationals reported as working without authorization began to be noted by the authorities. The number of foreign nationals apprehended by the authorities for immigration law violations including overstaying their visas or engaging in activities not permitted by their visa status rose dramatically from less than 7000 in 1984 to over 36,000 by 1990. These apprehensions of course only represented a small proportion of the actual numbers who were working without regular documents.

With the growing tide of illegal foreign workers in Japan ICRRA was amended in 1989 to provide for employers' sanctions and penalties for those who brokered the employment of illegal workers⁴. Despite the tough penalties, the number of illegal workers in Japan continued to rise yearly, from about 100,000 in mid-1990 to about 300,000 by the end of 1992 out of some 563,700 unskilled foreign workers in Japan as of 1992. The Immigration Bureau of the Ministry of Justice based these estimates on the number of foreigners who overstayed their visas and were presumed to be working in Japan illegally.

² Only in the sense that a huge number descended on Taiwan from the mainland in 1949.

³ See Shimada p33-34

⁴ Penalty of 3 years imprisonment or 3 million yen fine for those who hire foreign workers illegally, under the 2004 Amendment to ICRRA. There was also a penalty for illegal workers--one year imprisonment or two million yen

The volume of inflows of foreign labour to Japan rose at an average of 7.7 percent a year over the period 1995 to 2004. In Korea the growth was almost 22 percent a year over the decade ending in 2002. Not only did the inflows grow but it was noticed that the stock of migrants did not go up and down with economic fluctuations. This led Tsuda and Cornelius to claim that in Japan there was merely an illusion of controlling immigration.⁵

In the case of Taiwan (China) foreign workers started entering the country in small numbers in the 1980s under the guise of tourism or for studying Chinese. Because of the ban on foreign labour admission in the face of growing shortages in the labour market the smuggling of foreign workers became a lucrative trade. By the early 1990s the estimates of foreign workers in an irregular situation were already in the order of 30,000. Legally sanctioned admission of foreign workers started in 1989. Between 1989 and 1990 some 44,000 foreign construction workers were admitted to work and the government gave permission for an additional 10,000 the year after. The number

	Korea	Japan	Taiwan(China)
Channels for admission			
Guest-worker system	EPS (from 2004)	None	From 1990
Training Programme	ITTP from 1991 ITS from 1993; ETS from 1997	TITP of 1993	
Special schemes		<i>Nikkeijin</i> from 1990 reform of Immigration Control and Refugee Recognition Act	

NOTES
 EPS – Employment Permit System enacted in July 2003, implemented starting from 2004.
 ITTP - Industrial & Technical Training Programme managed by Korea International Training Corporation (KITCO) which was set up by Korean Federation of Small Business
 ITS - Industrial Trainee System
 ETS - Employment cum Training System (*Yeonsu chueop jedo*)
 TITP – Technical Internship Training Programme (*Gaikokujingine jisshu seido*) managed by Japan International Training Cooperation Organization (JITCO)
Nikkeijin is used to refer to people of Japanese origin regardless of their citizenship. The immigration status given to *Nikkeijin* applies equally to first, second (*Nisseis*) or third generation Japanese.

of foreign workers and the industries in which they were allowed to work expanded steadily. From an estimated undocumented foreign workers population of almost 30,000 in the late 1980s the number of foreign workers shot up to 250,000 in 1995 and reached 323,000 at the end of 2005 (Lee,2006)⁶.

⁵ See Tsuda,T and W. Cornelius (2003) “Japan : The Illusion of Immigration Control” in **Controlling Immigration: A Global Perspective**

⁶ Joseph Lee “Brokerage Fees, Missing Workers and Nation-to –Nation Bilateral Recruitment Agreements: The Case of Taiwan

Approaches to Admission of Low-Skilled Foreign Workers

All the three countries eventually opened their previously shut doors to the entry of low-skilled foreign labour. Table 1 above compares the channels the three countries opened up for low-skilled foreign workers. Both Korea and Japan started with remarkably similar response – that of admitting low-skilled workers as trainees, while Taiwan (China) opted immediately for a guest worker scheme. Korea moved on to a regular guest worker programme replacing the trainee programme, while Japan continues to bar general admission of low skilled workers, except for foreign nationals who can claim Japanese ancestry (*Nikkeijin*). The evolution of their policies over time bore many similarities but also differed from each other in important ways. In the following we look more closely at interesting features of their approaches to dealing with labour shortage and compare the similarities and differences.

Taiwan's Guest Worker Programme

In the case of Taiwan (China) the decision to open legal avenues for the admission of low-skilled foreign workers was taken remarkably quickly. The long-standing ban on employment of foreign labour was first breached when the viability of high priority infrastructure projects was threatened by rapidly rising labour costs towards the end of the 1980s. In October 1989 the Government, yielding to pressures from contractors, permitted them to bring in foreign construction workers.⁷ Mounting labour shortages moved the Legislative Yuan to enact in 1990 the *Employment Service Act* which authorized the Interior Ministry to establish an immigration administration to handle entry, exit and immigration. The Council of Labour Affairs (CLA) was effectively put in charge of the country's labour immigration policy by arming it with the authority to decide on:

- scale of the alien workforce admissions,
- sector of their employment and
- length of their stay depending on the conditions of the economy.

It meant the adoption of a “guest worker” policy which at the beginning emphasized low-skilled labour and even restricted employers from hiring foreign managers and technicians on grounds that there were enough skilled people in the labour market.

Guided by the principle that foreign workers will be only be admitted if they complement, rather than substitute for national workers, the CLA established quotas for the country as a whole and for industries and job categories. In establishing quotas it distinguished between traditional and non-traditional industries, services and health care, and major investment projects. Overall, foreign workers should not account for more than 30 percent of workforce of major investment projects, for 20 percent of the workforce of traditional industries, and for no more than 15 percent of the workforce of non-traditional industries. High wage and more technical jobs were supposed to be reserved for national workers. In 1991 the CLA opened to foreign workers 15 job categories within 6 manufacturing industries. Later foreign workers were allowed in 68 manufacturing industries, domestic service, healthcare, and deep sea fishing. The list was again expanded to 73 manufacturing industries, and 6 ceramics were added.

⁷ (http://www.migrationint.com.au/news/canary_islands/dec_1995-18mn.asp)

Before being allowed to import foreign labour they were required to submit plans for upgrading their production and automation of facilities. However, the requirement was eventually abandoned, according to Lee (2007), because CLA did not have the staff competent to assess the merits of the plans for upgrading production technologies.

In the case of Korea and Japan the accommodation of low-skilled foreign workers in immigration policy took place in stages over a longer period of time, reflecting the complexity of political processes needed to generate acceptance of liberalizing entry as well as the conditions in the labour market. At the beginning both countries had closed doors to foreign unskilled workers, a policy often attributed to the ethnic homogeneity of both societies and the popular sentiment to maintain it that way. But more important was the fact that conditions in the supply of labour helped the policy's sustainability. In both countries the reservoir of labour in agriculture was still large in the 1960s and 1970s, giving the labour market sufficient flexibility to respond to the demands of industry for more workers. There was also in both countries a baby-boom in the 1950s which brought more workers into the labour market during the 1970s and 1980s. In Japan according to Mori the participation of newly-graduated students of second generation baby boomers reached its peak in 1991.⁸

There was also for most of that period a rising rate of labour force participation of women. The labour force participation of women in Japan grew by 4 percent during the 1970s and by 3.2 percent during the 1980s.⁹

The Side Door to Immigration : The foreign worker trainee systems of Korea and Japan

In both Korea and Japan the first opening to low-skilled workers was through the "side door", that is, by being admitted as "trainees". The Immigration and Emigration Law of Korea did not allow foreign unskilled workers to enter but the country's rapid and sustained economic growth of the 1980s led to escalating wages which brought strong pressures for easing up on the restrictions. Conditions in the labour market had become very tight by the late 1980s as the entry of the baby-boomers of the 1950s' and early 1970s was already ending by the late 1980s.¹⁰ With mounting pressures from Korean business, despite opposition from the trade unions, the Government introduced the *Industrial and Technical Training Program* in November 1991.

The *ITTP* enabled *de facto* employment of foreign unskilled workers for the first time in Korea according to Yoo and Lee (2002). Although originally intended for training foreign workers employed in overseas Korean companies the programme became the avenue for small Korean businesses to import foreign labour. The Korean Federation of Small Business brought strong pressure on the Government to allow its members to bring in unskilled labour (Dong Hoon Seol and Skrentny, 2003). The programme was expanded two years later as the *Industrial Trainee System* which explicitly

⁸ See Hiromi Mori, **Immigration Policy and Foreign Workers in Japan**, MacMillan Press, London, 1997 for a comprehensive study of Japan's experience with temporary labour migration.

⁹ See Mori, p.40

¹⁰ See Chin Hee Hahn and Yong Seok Choi, "The effects of Temporary Foreign Worker Program in Korea: Overview and Empirical Assessment" July 2006

addressed the labour shortage being experienced by small business enterprises. Migrant workers in Korea numbered some 82,000 at end of 1994 and about 333,000 towards end of 2005. Of these only 167,000 were legally employed.

Korea's policies on admission of foreign labour and the setting of quotas are decided on by the Committee for Foreign Workers' Policy which is chaired by the Prime Minister and composed of related ministries. The Office for Small Business was tasked with the supervision of the training system and the authority to decide on countries of origin and quotas to be allocated to each country, but it was the Federation of Small Business, a private sector association, that effectively administered the programme. The Federation negotiated agreements with supplying country governments, organized the recruitment of the workers, and allocated the trainees to firms. The programme has been widely criticized as not really serving to provide training but only as a means to provide small business with cheap foreign workers who are not entitled to the same rights as Koreans. These shortcomings motivated foreign trainees to sooner or later leave the programme and work illegally as ordinary workers in other firms.

The trainee system in Japan also got into similar difficulties as in Korea but certain funding features and timely corrective action and reforms over the years prevented it from becoming a major channel for bringing in unskilled foreign workers. The programmes comprising of "off-the-job" and "on-the-job training" were closely supervised and lasted only for at most one year. Unlike in Korea where the training was left in the hands of the Federation of Small Business, in Japan training was largely overseen by the Government. Training fell under two major groups – Government –based programmes and private-based ones. The former are totally funded by the government budget through the ODA and included programmes for foreign government officials. Private –based training programmes comprise two sub-groups- one partly funded by official budget and the other without any support. The number of trainees rose from 17000 in 1987 to almost 40,000 in 1993. According to Iguchi (2007) foreign trainees and technical interns numbered some 160,000 in 2005.

Japan's "first best" solution to meet shortage of low-skilled workers – Nikkei programme

In Japan the more significant step to open a gate for low-skilled workers was the programme to bring back the descendants of Japanese who emigrated to Brazil, Peru, Chile and other countries in the early part of the 20th century. Before 1990 those who can prove Japanese ancestry were entitled to admission under a special status of residence and reside for up to 3 years. But the requirements for documentation were so extensive that few actually came in. From the second half of the 1980s however some Japanese brokers began organizing and recruiting in Brazil. The 1990 reform of the Immigration Control Act, according to Mori, brought about a drastic change with the establishment of long-term resident status for Japanese (*Nikkei*) living abroad up to third generation. Even non-Japanese married to second-generation Japanese were included.¹¹

¹¹ Korea is implementing in 2007 a "guest-worker" programme designed for ethnic Koreans who are citizens of China or one of the former Soviet Union states. The programme allows these ethnic Koreans to stay and find jobs in Korea. Those who have entered Korea under H-2 visas no longer need to obtain permits to change their status in order to take on a job. See Lee Tae Hee, "Foreign Workforce Policy

The opening of the door to Japanese descendants who have foreign nationalities was earlier viewed by many as a “first best” solution to Japan’s dilemma on how to meet the need for low-skilled workers without risking problems with integrating foreign workers into Japan’s very homogeneous society. It was expected that the descendants of Japanese migrants would easily pick up the language, conform to social norms of the host society, and would not face discrimination as other minority groups have experienced. With the special status of residence given to them the descendants were allowed full mobility in the labour market, to bring their families and have their children educated in Japanese schools.

Offered the status of "long-term resident" which permitted them to live and work in Japan for up to three years (renewable), Japanese emigrants and their descendants from Brazil, Peru and other Latin American countries came to Japan in large numbers. From a mere 3500 in 1988 the number of *Nikkei* from South America who took advantage of the offer rose to 153,000 in 1991, 312,000 in 2000 and 358,000 in 2004 (Immigration Control 2005, p. 29). Of the admissions in 2004 some 240,000 were unskilled according to Iguchi (2007).

Reforming Korea’s admissions policy for low-skilled

The enactment in July 2003 of a law providing for an employment permit system (in other words a “guest worker” programme) was the culmination of efforts to reform a system that the authorities have long recognized as having major weaknesses.¹² Under its industrial training programme the foreign trainees were to return to their home countries after one year. The continued expansion in the number of trainees and the growth in the number of “missing” trainees betrayed the fact that the ITTP, and its subsequent modifications, was not working. According to Young-bum Park the reason for increasing numbers of trainees was the change in policy to extend training from one to two years and the inclusion of other economic sectors (eg. fishery, construction) where trainees may be accepted. The reason for the missing trainees was because they were motivated to leave their companies before the completion of their programmes in order to work longer to recoup the large fees many had to pay to agents who recruited them. Moreover, they earned higher wages as irregular workers than as trainees.

The key features of the employment permit system (EPS) are:

Changes and Plans for 2007” **Korea Labor Review**, March April 2007, Korea International Labour Foundation.1

¹² The Ministry of Labor and some NGOs tried initiating a guest-worker programme since 1995, but only succeeded in 2003. The Korean trade unions and the Labor Human Rights Center (LHRC) played major roles. The LHRC first began its work with foreign migrant workers in 1992 and was the first organization to suggest the need for a new law. It pressed for the following provisions: (1) abolition of the trainee system, which unjustly and disingenuously classifies full-fledged workers as “trainees”; (2) implementation of a work permit system, which would also extend domestic labor rights to all foreign migrant workers; (3) provision of social welfare benefits to foreign workers; and (4) a grant of full amnesty to all foreign migrants currently in Korea “illegally.”

- The employment of foreign workers is covered by government-to-government agreements. Korea has already signed Memorandum of Understanding (MOUs) with 10 countries and negotiating with another 5.
- EPS is managed by public authorities but employers choose their workers.
- Permit to work is for 3 years (renewable for another 3 years) but worker must stay out for 1 year in-between. This condition was later reduced to 1 month provided the worker is explicitly requested for by the employer.
- Family members are not allowed to join the workers
- Except for restriction on changing employers, foreign workers are protected under the Labour Standard Act equally as native workers. They have right to a guaranteed minimum wage, to form and join the trade union, to collective bargaining as well as collective action.
- Foreign workers are entitled to the same benefits including industrial accident compensation insurance, employment insurance and national health insurance and the national pension based on reciprocity between the parties of the MOU.

Comparative approaches to managing foreign worker programmes

In Table 2 we lay out what appear to be the common objectives behind the admission of low-skilled workers, the programmes adopted for admitting them, and the policy tools and instruments used by the governments of the three countries to achieve them. The objectives have largely remained the same but programmes and the policy tools used were bound to change with experience over more than two decades. Table 2 does not include the trainee programmes which are considered as “side door” approaches to bringing in foreign labour. Instead it focuses on the EPS system in Korea which will eventually fully replace the trainee system, the guest worker programme of Taiwan(China), and the admission of *Nikkeijin* in Japan which we treat in this paper as a special programme covering both skilled and low-skilled foreign labour even if nowhere in Japanese immigration law is it treated as such. In some ways it is not comparable to the other two since qualification is based on Japanese “ethnicity”, but we include it here because it meets in a large way Japan’s requirement for low-skilled foreign labour.

As earlier explained both Korea and Japan groped for a way to meet shortages for such workers under existing laws. Given the political resistance to changing the long-standing policy not to admit low-skilled workers, the pressures could only be eased through the back and side doors to immigration. It did not take much time for the population of undocumented foreign workers to build up in both countries – curiously monitored through a close accounting of the number of foreigners who overstayed

Table 2 Comparison of policy tools for front-door admission of low-skilled foreign workers			
	Korea	Japan	Taiwan (China)
Admission programme	Guest worker (EPS)	Special scheme only for <i>Nikkeijins</i>	Guest -worker
Policy objective			
Determine needs/control admissions	Committee for Foreign Workers sets quotas; HRD Korea pre-departure training; Selection by origin country public agency Border controls	No quotas; Offers long-term residence status Action Plan against Human Trafficking Dec 2004 Border controls	CLA assesses labour market and set quotas; Border controls
Avoid creating disincentives to technology upgrading in industry	Maximum ratio foreign to local workers	No limits set	Maximum limit of 15 to 30% of enterprise workforce.* Require upgrade, automation **
Support SMEs, priority projects, provide for home/health care workers,	Give priority for employing foreign labour	Implicit in policy	Give priority for employing foreign labour
Avoid displacement of native workers	Equal treatment; employers required to advertise jobs; limit sectors; restrict changing employers	Insure equal treatment in wages/working conditions/benefits	Equal treatment; employers required to advertise jobs; limit sectors; restrict changing employers;
Select sources	Bilateral agreements	Diaspora communities abroad	Bilateral agreements
Avoid/prevent abuses in recruitment	Only public agency may recruit	Public employment services No private recruitment agencies	Agreements with some governments for direct hiring by employers; Set limit to brokerage fee (= 1 month wage); Stop hiring if violations
Allocate workers in domestic economy	Selected sectors especially SMEs/ occupations	No restriction	Only in selected sectors/occupations; restriction on changing employers
Protect the migrant workers	Cover under all labour –related laws; right to organize; access to services, complaints mechanisms; pre-	Ensure same rights/benefits as national workers	Cover under Labour Standards Law; prohibit salary deductions; allow direct hiring; adopt model employment

	departure training; inform about rights upon arrival, labour inspection		contract; require salary slips; multi- language educational kit
Ensure temporariness of stay	Maximum duration of stay - 3 yrs (renewable); may be re-employed 1 month after returning home Family not allowed to join	Given long-term residence status	Maximum duration of stay - 3 yrs (renewable); Family not allowed to join; Pregnancy tests***
Discourage illegal employment of unauthorized foreign workers	Employer sanctions (W10 M) Worker sanction of W 100,000	Employer sanctions (3 yrs imprisonment of Y 2 million). Worker can face 1 yr imprisonment	Employer sanctions monetary fine and jail term; Reward offered for information leading to capture of illegal foreign workers.
<p>* The limit of 15% on non-traditional industries, 20% on traditional industries, and 30% on high priority infrastructure projects. **Applicants for permit to employ foreign workers were earlier required to submit plans for upgrading production facilities and automation. This requirement was later dropped for CLA's lack of technical capacity to assess worthiness of plans submitted. *** Requirement of pregnancy test in medical examination later removed.</p>			

their visas since clandestine entry to the two countries has always been difficult. And, as earlier described, others found their way in through the side doors as “trainees”.

While Korea’s EPS and Taiwan’s guest worker programme are similar in that they are both based on the principle of short-term stay of foreign contract workers and possible re-admission after spending a certain period of return to their countries (“rotation”), the *Nikkei-jin* in Japan are, in contrast, given long-term resident status and have the possibility not only of becoming permanent immigrants but also of acquiring Japanese nationality.¹³ They are also entitled to bring their families with them and are not restricted in the sector or occupation of employment. Indeed for the Japanese public this is not seen as a foreign worker programme even if the effect on the labour market is not any different.

Avoiding negative consequences on native workers and labour market

The policy objectives behind the programmes are many and sometimes conflicting. A key objective is to avoid creating disincentives to upgrading production technologies in industry by increasing the supply of cheap labour. Investing in automation is expensive and risky and small enterprises are particularly adverse to make such investments in an unpredictable market. They would much prefer to have continued access to low wage workers. For this reason governments are under pressure to support small and medium scale enterprises whose viability is typically threatened by

¹³ Japan and Korea both follow the “*jus sanguinis*’ principle in granting naturalization.

difficulties in attracting native workers, even in a situation of high unemployment. Taiwan's economy, in particular, is built on the strength of its small-scale enterprises and in Korea the large companies still heavily depend on smaller companies for certain operations.¹⁴ Small enterprises are beset with high labour turnover because they offer limited career prospects, lower salaries, and typically small firms are more vulnerable than the large ones to downturns in the economy.

A large panoply of measures and controls characterize the guest worker programmes of Korea and Taiwan (China) and they bear strong similarities with each other. To start with, the governments decide on whether a shortage of low-skilled labour exists and whether or not to bring in foreign workers to meet it. According to Lee (2007) the establishment of immigration quotas in Taiwan (China) is done by Council of Labour Affairs. It was supposed to be undertaken through social dialogue with tripartite partners but up to this day the CLA has not seen it fit to share their power to decide on the matter with others. In Korea, the Committee for Foreign Worker Policy, which is chaired by the Prime Minister, decides on the quotas and priority sectors.

The decisions to allow foreign labour in certain sectors are complemented by other measures designed to correct for the potential negative consequences of labour immigration. In the three countries employers are required to pay the foreign workers with wages and salaries no lower than those paid to native workers. It is very difficult to impose this standard since many transactions between foreign workers and their employers escape the attention of public authorities, especially where the workers are not organized. This is the reason for micro-policies that have been pursued in some countries such as not allowing for salary deductions. In Taiwan (China) the Council on Labor Affairs used to require employers applying for visas to bring in foreign workers to first submit a plan for upgrading production technologies and for automation of processes. The CLA soon realized that it had no technical capability to enforce such requirement and later dropped the requirement (Lee 2007).

Once the large parameters have been decided on by the governments (how many to admit, for which sectors/occupations, for how long) employers are the ones who activate the process. All foreign workers are admitted on the strength of requests by employers, not simply on the basis of their individual qualifications. The EPS however has the added feature that the Korean Government subsidizes some of the programmes for equipping aspiring migrants with Korean language and upgrading their skills prior to departure from their home countries.

The concern that foreign workers do not displace native workers is met by measures typically attached to guest worker programmes. These include requirements that employers first look for suitable candidates in the domestic labour market before obtaining authorization to import foreign workers, that they offer at least the same wages to foreign workers as they give to national workers, and that foreign workers are restricted from changing employers or pursuing another occupation from the one he or she was admitted under. Again, the *Nikkei-jin* are more privileged than their counterpart guest workers in the other countries since they are treated just like national workers. They can be fully mobile in the labour market, changing jobs at

¹⁴ See Abella, M., Y.B. Park (1993) "Labor shortages and foreign workers in small firms of the Republic of Korea" in *Adjustments to Labor Shortages and Foreign Workers in the Republic of Korea*, International Migration Papers, ILO Geneva.

their option, and take up higher skilled jobs than the ones they took when they entered Japan.

Sourcing foreign workers

For the *Nikkei* Japan did not have to enter into agreements with any country since the target groups are clearly defined by ethnicity and not nationality. However, the sourcing of foreign labour migration is an important policy decision and plays an important role in political and economic relations with other states. An important concern is how foreign workers would adapt to the host society and vice versa. Those with close cultural affinity are more welcome than others, i.e. Chinese or Korean ancestry. However, the demand for certain specific skills may in some instances be the determining factor. This has clearly featured in the negotiation for economic partnership agreement with the Philippines which is widely seen as a source of qualified medical nurses and care givers.¹⁵ Strategic economic interests are always taken into account. Korea, for example, has been opening up more markets for Korean cars and other products and services in countries of the former Soviet Union. This may explain why it is in the process of negotiating labour agreements with Uzbekistan and others in Central Asia.

Addressing abusive practices in recruitment

Another major area of concern that has called for specific measures is the profit-taking by job brokers in the recruitment and placement of foreign workers. Many of the problems associated with the growth of undocumented foreign worker populations can be traced to the very high fees that these intermediaries charge for finding jobs. To counter the practice various measures have been taken either to exclude private recruiters altogether from organizing migration (as Korea has done) or for imposing restrictions on the practices of private recruiters. The problem went reportedly out of hand in Taiwan (China) where Taiwanese recruiters found a lucrative business in “getting kickbacks” for jobs they are able to offer to recruiters in origin countries.¹⁶ Some of the kickbacks were the equivalent of 9 months wages of the migrant workers. Under pressure from some origin governments Taiwan negotiated bilateral recruitment agreements with a number of countries which provided for origin government supervision of recruitment (in the case of Vietnam and Thailand) and for “direct hiring” by Taiwanese employers (the Philippines). Apparently these measures have yet to yield benefits in terms of reducing the cost of recruitment to the workers. In Japan it is reported that many *Nikkei* are actually recruited by brokers (often the *yakuza*), who then demand a percentage of their pay.¹⁷

At the end of 2001 the CLA in Taiwan issued new rules against illegal deductions or withholding from salaries. Limits were placed on how much employers may deduct

¹⁵ Japan and the Philippines have signed an economic partnership agreement which also provides for the admission of Filipino nurses and care givers in Japan.

¹⁶ For a detailed analysis of these practices see Joseph Lee (2006) “Brokerage Fees, Missing Workers and the Nation to Nation Bilateral Recruitment Agreements: The Case of Taiwan” Japan Institute of Labor

¹⁷ Bailey, B. “Japanese Laws and Policies Concerning Immigration” <http://home.att.net/~steve.bailey2/japanimmigwordpad.html> quoting an article by Jones, Clayton in Christian Science Monitor 27 Feb 1992 entitled “Latin Japanese Workers Feel Cool Welcome”.

from salaries for water, electricity, meals and housing. The amended Employment Service Act in January 2002 empowered the CLA to impose limit on brokerage fees (one month basic wage of NT 15,840). If rules are violated the Government would disapprove applications or revoke permits already granted. In Nov 2002 the CLA amended regulations to forbid deductions of brokerage and other fees from workers' salary. Deductions are prohibited even when there is consent of the worker.

Protecting migrant workers

How are migrant workers protected under the admission policies of the three countries? From information supplied by Japan and Korea in an ILO Survey of Migration in 2003 we have constructed Table 3 below. Unfortunately our information, drawn from available studies in English, is incomplete for Taiwan (China). In the three countries low-skilled workers, like other temporary migrant workers, appear to be entitled to the same protection as national workers in respect of their basic labour rights, coverage by minimum wage laws and under health insurance. The significant exclusions are workers performing domestic services and care givers.

Whether or not the migrant workers are actually able to exercise these rights is not easy to determine. A number of studies, for example, show that foreign workers especially trainees receive lower wages than native workers doing the same work, although some suggest that some of the difference can be explained by productivity differences. What may be more significant to note is how the governments, trade unions and civil society groups are taking measures to insure that their rights are protected. In Korea the well-known weaknesses of the trainee system compelled the government to introduce administrative measures to improve migrants' access to remedies in case their rights are violated. Equally important are the activities of trade unions and civil society groups which have campaigned for getting rid of the trainee system and replacing it with a regular guest worker scheme, and are on the forefront of organizing the foreign workers including the undocumented.

Table 3 Rights and entitlements of Temporary Migrant Workers Guaranteed Under National Laws			
	Rep Korea	Japan	Taiwan
Equality in respect of wages		Y	Y
Equality in respect of national minimum wages	Y	Y	Y
Entitlement to join a social protection scheme	Y	Y	Y ³
Protection against forced labour	Y	Y	Y
Form or join workers' organization	Y	Y	Y
Bargain collectively	Y	Y	
Protection against discrimination at work	Y	Y	
Protection against sexual harassment	Y	Y	
Protection against ethnic and racial harassment	Y	Y	
Access to free public medical/health services	N	Y	
Accompanied by family members	N	Y	N
Public schooling for children		Y	
Right to change employers	Y ¹	Y ²	Y ¹

¹ Only after prior approval from competent authority and if in the same branch of economic activity or industry

² Prior authorization and as long as residency permit has not expired.

³ Domestic helpers and caretakers not protected by state operated Labour Insurance Programme

Protection starts with well informed workers. In Korea foreign workers are made to undergo a two-day briefing shortly upon arrival to acquaint them with, among others, their rights under Korean labour laws and how to access remedies in case of violations. Currently being designed by HRDKorea are pre-departure training programmes to be given in origin countries which would also cover their rights and obligations under Korean law. Information brochures explaining these rights and obligations in the languages of the countries of origin are now available.

Laws protecting workers against discrimination and harassment apply to all workers in Japan and Korea including the low-skilled. These are particularly important because language and communication difficulties have been known to cause much friction between workers and their supervisors and fellow-workers. For this reason the Korean government is requiring foreign workers to pass a Korean language test before being considered for employment.

Ensuring temporariness of stay

Korea and Taiwan's guest worker programmes are both premised on the idea that low-skilled foreign workers will only stay temporarily in the country. Both the migrant workers and their employers, however, gain from prolonging their relationship hence governments of receiving countries have had to develop measures to ensure temporariness. Low-skilled foreign workers are granted 3 year work visas and must return home upon completion of their contracts. However their visas may be renewed at the option of the employers. They are not permitted to be mobile in the labour market and most important of all, their families are not allowed to join them. In Japan the *Nikkeijin* are however more privileged since they are given long-term residence and hence qualify to be accompanied by their families. In Taiwan an earlier policy of requiring female migrant workers to undergo pregnancy test was meant to prevent their permanent settlement. It was later removed.

Discouraging illegal employment of unauthorized foreign workers

This has proven to be one of the most problematic issues in the management of labour migration in all the three countries. Korea imposes a hefty penalty of 10 million wons on employers found guilty of employing undocumented foreign workers and a fine of 100,000 won imposed on foreign workers illegally working in the country. However the number of undocumented foreign workers kept on rising over the years. At the end of 2001 they were estimated to number some 255,000. In Japan the penalties include up to 3 years imprisonment and 2 million yen fine. Both employers and the migrant workers are liable to be penalized. The number of "overstaying" foreign residents reached a peak of 299,000 in May 1993 but has since declined. In Taiwan in April 2006 about 7 percent of 330,000 foreign workers are missing or regarded as

illegal. Foreign workers staying illegally for over 6 months face a maximum fine of NT 150,000 while their employers may be fined from NT 150,000 to NT\$750,000 depending on the decision of the local government. The fine may reach NT\$ 1.2 million depending on the number of offences. In May 2006 the CLA was reported to have increased the reward for information leading to capture of illegal foreign worker from NT\$2000 to NT\$5000.

Conclusions

The three subject East Asian countries have gone very far in reducing their demand for labour by promoting technological upgrading of their industries, off-shoring labour-intensive production, and liberalizing trade. On the supply side they have promoted greater participation of women in the formal workforce and raising retirement ages. Nevertheless, changes in social values brought about by increasing prosperity and career aspirations of more and more educated workforce have left large gaps in the labour market, especially for low skilled workers in manufacturing and services, which are being filled by migrants. The importance of small enterprises in their economies is another major factor constraining their policy options.

The three countries have responded to the pressures to liberalize entry of workers in a very similar fashion – by admitting low skilled workers temporarily, employing trainees in regular work, and allowing students to work. They have sought to make temporary policies effective through similar measures including limitations on mobility in the labour market, employers' sanctions, workers' sanctions, not allowing family reunification, and so on. They have also realized that increasing the cost of labour migration for the workers creates powerful incentives to “overstay” permits to stay and have all sought alternatives to commercialization of recruitment.

The countries nevertheless were careful to include low-skilled foreign workers within the purview of their labour protection laws. They also adjusted policies or reformed them when earlier strategies proved unworkable. Korea's adoption of the EPS system, together with accompanying programmes now underway to make it work better for the employers and their foreign workers, is a good example of how difficult it is to reform policies after economic interests are built around the maintenance of existing ones. Nevertheless the improvements did finally come and the programme now in place promises to offer models for others to follow or at least learn from.

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