

KOR-US FTA and the Labor Regulations of Kaesong Industrial Complex*

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Abstract

The Kaesong Industrial Complex was a major issue in the recent KOR-US FTA negotiations, and strong criticism has been raised on the lack of human rights protection for North Korean workers in the Kaesong Industrial Complex. In this context, the following measures should be implemented in order for the Kaesong Industrial Complex to be recognized as an Outward Processing Zone(OPZ) and for it to be operated in a vital manner.

First, a transparent specialized employment agency should be established and operated as soon as possible. This agency could serve to heighten the sense of belonging to a South Korean organization on the part of North Korean workers, and also help private businesses to take the lead in personnel management issues. Second, a new 'mechanism' is needed to enhance labor productivity. This would be possible when North Korean workers actively volunteer to engage in a broader spectrum of management activities. Third, a system for direct wage payment must be put in place. If

this does not happen in the very near future, North Korean authorities will continue to be suspected of intercepting the workers' hard earned money. Fourth, efforts must be made to ensure that worker representatives operate in a democratic manner. The election process should be more autonomous and objective, so that worker representatives can take substantial actions to fully represent the North Korean workers and resolve labor disputes. Lastly, all such measures should be based on sincere consideration of the healthy lives of North Korean workers and the sound protection of labor-related human rights in areas such as industrial accidents, domiciles and issues on women, seniors and children.

Keywords: KOR-US FTA, Kaesong Industrial Complex (KIC), Kaesong Industrial Complex Labor Regulations, human rights of workers

I. The Issue

The October 9, 2006 a nuclear test by North Korea momentarily froze inter-Korean relations and most international relations surrounding the Korean Peninsula. People were apprehensive that the Mt. Geumgang tours and inter-Korean economic cooperation projects such as the Kaesong Industrial Complex¹ would come to a stop, but fortunately the situation did not deteriorate that far. The KIC project is the first large-scale joint investment venture pursued by the two Koreas, and has been regarded as the

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¹ The KIC started off as a pilot project that would satisfy the demand by SMEs for early entry into the complex while providing the opportunity to pre-examine the legal, institutional and investment environment that would be implemented in the actual main complex. The main complex has now been established and is in operation. Currently 15 companies operate within the pilot project area, and 17 companies have taken up residence as part of the 1st stage of the main complex establishment. Announcements have also been made to receive applicants for residency in the 2nd stage of the 1st phase.

cornerstone of private direct investment into North Korea. Economically, based on direct investments by Korean companies, this serves as an opportunity for South and North Korea to achieve mutual economic benefits. The project is also very significant from a national and cultural perspective, for this can be an opportunity for South and North to minimize the ill-effects of national division while rebuilding homogeneity of the two Koreas. The significance of KIC was once again emphasized with the passage (April 27, 2007) and promulgation (May 25, 2007) of the 'Act on Support for the Kaesong Industrial Complex' that aims to support the development and operation of the Complex and protect and support South Korean who invest, enter or stay within the Complex.

Unfortunately, however, there has been strong criticism² that the labor-related human rights of North Korean workers working in the Complex are not well-protected. This was a major issue during the negotiations for the KOR-US FTA that were concluded in early April 2007, and an international human rights organization that is also well-known in Korea wrote in its report that, "to protect the rights of North Korean workers in Kaesong Industrial Complex, labor laws that are currently being violated must be strictly enforced, and the labor laws should be amended as necessary"³. At this stage, if KIC is to be recognized as an Outward Processing Zone of the Korean Peninsula in the context of the KOR-US FTA, the North Korean authorities must, first, accept demands for complete denuclearization on the Korean Peninsula, second, the Complex must

² For instance, Jay Lefkowitz, Special Envoy for Human Rights in North Korea claimed that North Korean workers are paid "less than 2 dollars a day", while expressing strong concern for exploitation of the workers through low wages and the indirect wage payment system. (Jay Lefkowitz, "Freedom for All Koreans", *The Wall Street Journal*, April 28, 2006)

³ Human Rights Watch reported in its September 2006 *Human Rights Watch Briefing Paper - Worker Rights at Kaesong Industrial Complex in North Korea* that the major concerns were low wages, indirect payment, dismal working conditions, and violation of the rights on association and collective bargaining.

contribute to better inter-Korean ties and other projects for peace and cooperation, and third, the Complex should meet all international environmental, labor, operational and management standards – especially those set forth by the ILO, which include freedom of association, collective bargaining rights and the prohibition of child labor, forced labor and discrimination.⁴

It is therefore quite essential that we examine the actual application of and compliance to Labor Regulations within KIC, and explore appropriate measures through the analysis and assessment of the fundamentals in KIC. This paper provides an overview of how the ‘KIC Labor Regulations’ (hereinafter ‘Labor Regulations’) have been applied and enforced on South Korean companies operating in KIC and their North Korean workers. An analysis of the issues and their significance provides the basis for future responses to such issues.

This paper builds upon a 2005 study by researchers at the Korea Labor Institute who carried out interviews with and analytic research on personnel and labor managers of South Korean companies operating in KIC. The paper is also based on findings from visits to KIC made in May and November 2006, where the author sought out 9 companies⁵ operating in the pilot project area and met with the South Korean labor managers to learn about their concrete experiences on the implementation of labor-

⁴ Refer to p.26 of Seung-hwan Choi’s paper on “Competitiveness Enhancement Measures for the KOR-US FTA and the Kaesong Industrial Complex – Focusing on Issues in International Law” published in *Legal and Institutional Tasks to Support the Kaesong Industrial Complex*, the proceedings for the 2007 Spring Symposium on Legal Issues in Inter-Korean Economic Cooperation.

⁵ A: a sewing company; B: a manufacturer of electric cable connectors; C: a timepiece manufacturer; D: a cosmetics case manufacturer; E: a shoe manufacturer; F: an automobile component manufacturer; G: an IT component manufacturer; H: an assembled metal goods manufacturer; and I: a sewn apparel manufacturer. Of the nine companies, G was in the technology and knowledge-based industry, and was thus the only non-labor-intensive company. As such, the characteristics of G tended to differ from the other 8 companies.

related legal and institutional frameworks in KIC.⁶

II. Recruitment and Dismissal of Employees

1. Recruitment and Labor Supply

Employees in KIC companies are recruited indirectly, as is the case with most foreign-invested companies, equity joint ventures and foreign companies in special economic zones that are operating in North Korea. The difference for KIC is that the Labor Regulations dictate that workers are to be provided through the ‘Labor Supply Agency’ instead of by North Korean authorities. Labor regulations do not, however, elaborate on the establishment and role of the ‘Labor Supply Agency’, and merely state, in Article 8, that this Agency engages in “operations to ensure labor supply for companies operating in the industrial district”. In sum, the ‘Labor Supply Agency’ is actually the only organization authorized to supply labor in KIC, but has yet to be established and operated. In its place, the Central Guidance Bureau for Developing Special Economic Zones (hereinafter ‘Guidance Bureau’)⁷ is currently performing labor supply activities.

⁶ The nine companies showed characteristics unique to their own industry area, but still abided by the same KIC laws. Also, because they utilized the same worker supply system, their labor management experiences and patterns were quite similar. This paper focuses particularly on the common characteristics found in the nine companies’ labor management, and attempts to generalize these findings, but at the same time, it is acknowledged that in-depth follow-up studies through individual participatory observation should be carried out on company G.

⁷ This organization is the equivalent of the South’s Management Committee. The KIC laws and regulations stipulate that the Guidance Bureau is responsible for the development of special economic zones in North Korea. But as North Korea has not established an organization to manage affairs related to KIC, this Guidance Bureau seems to be in charge of managing industrial districts while also playing the role of central guidance organization for industrial districts. The Guidance Bureau is essentially the North Korean authority in KIC, and ‘labor supply services’ are actually carried out

KIC Labor Regulations also set forth recruitment and employment procedures that require companies to file an application for labor supply with the ‘Labor Supply Agency’. The ‘Labor Supply Agency’ selects appropriate workers, and then signs a worker supply contract with the concerned company. Based on this contract, individual workers establish employment contracts with the companies.⁸

The Guidance Bureau is not, however, an organization that exclusively specializes in labor supply. Its many responsibilities include administration, resolution of grievances and worker supervision. The organization is thus already burdened with too many responsibilities. There is a lack of confidence as to the degree of expertise in terms of employment issues, and many people are dubious of the Bureau’s ability to fulfill its duties that are related to worker supply. South Korean companies and the Management Committee have therefore requested the North to establish a ‘Labor Supply Agency’ as per the Labor Regulations⁹, and while North Korean authorities have responded positively in verbal terms, there has not been any action so far.

by this Bureau. (Refer to p.8 of the 2006 KLI publication, *Workforce Management and Labor Laws in KIC* by Moo-gi Moon and Mun-hee Yoon)

⁸ Labor supply services have developed over the years, and there is a distinction between the early stages of KIC and the current phase 2. In the 1st phase, operations of the KIC were not yet fully organized, and individual companies did not have established relations with the North Korean authorities. Therefore, at the time, Hyundai Asan acted as a mediator for labor supply. This reflected the North’s desire to utilize Hyundai Asan as a facilitator for labor supply, instead of having to deal directly with relatively unknown entities. While this arrangement was helpful, in part, to South Korean companies that were not very familiar with situations in the North, there was also a lot of frustration as labor consumers were not able to meet with labor suppliers. These companies therefore requested direct contacts with the Labor Supply Agency, and Hyundai Asan was then excluded as a party to labor supply contracts. Currently, ‘labor supply contracts’ are signed directly between the Guidance Bureau and individual companies.

⁹ The South has continuously asked for the establishment of a separate ‘Labor Supply Agency’, a topic which has been set forth also at the Ministry of Finance and Economy’s ‘Inter-Korean Economic Cooperation Committee’ and is being discussed in the follow-up working-level committees.

The establishment of a 'Labor Supply Agency' will also be helpful in terms of enhancing transparency in labor supply. Companies need to be able to secure enough North Korean workers, and although this issue was not so prominent in the early stages of KIC development, it has started to emerge as an issue and will become more serious in the future. Companies are basically faced with the problem of being able to secure as many workers as they require. Some experts are worried that companies will be forced to engage in intense competition over workers, from as early on as the finishing stages of the 1st phase development (50,000 pyong) of the main complex.¹⁰ These concerns were also expressed by companies interviewed for this paper. Companies in the KIC pilot project area noted that securing enough workers was an issue in both quantitative and qualitative terms. Companies reported that the number of supplied workers was sometimes lower than their needs, and that age requirements were not met.¹¹ For those business areas (such as IT-related industries) in which the North Korean authorities were particularly interested, however, maximum efforts seem to have been made to meet the companies' requirements in supplying workers. The main complex is not in full-operation yet,¹² but a labor shortage could easily ensue when the main complex starts its operations on a full scale, causing a very serious problem. Therefore, an objective, specialized agency for labor supply must be established in order to prevent any friction surrounding the transparency of worker allocation.

¹⁰ Refer to pp. 18-19 of Mun-su Yang's paper on "Tasks for the Construction of KIC and Inter-Korean Economic Cooperation" presented in the *4th Symposium on Inter-Korean Logistics: Measures for the Vitalization of KIC and Inter-Korean Logistics in 2005*.

¹¹ This situation reflects a serious limitation of worker selection rights – even without taking into consideration the North's unique circumstances. With a limited and often short supply of workers, companies would find it very difficult to turn back supplied workers. Further elaborations on employment will be presented throughout the paper.

¹² All 15 companies in the pilot project area are currently in operation with North Korean workers (approximately 15,000 persons). Of the 24 main complex phase 1 companies, 7 are currently in operation, and 5 are currently building their facilities.

The third reason why a Labor Supply Agency is needed is that, under the existing system, companies do not have access to detailed individual information on the workers. Of course, this situation will not be fully rectified simply with the establishment of a Labor Supply Agency, as this is, in part, related to the specificities of the North Korean society. In principle, according to Article 9 of the KIC Labor Regulations, companies may request and receive from the ‘Labor Supply Agency’ an identification certificate with the worker’s basic personal information, a graduate certification issued from the worker’s highest institute of education, a proof of professional experience from previous employers, health reports from medical facilities etc. The problem is that, not only does the ‘Labor Supply Agency’ not even exist, the Guidance Bureau, which is supposed to be taking care of all responsibilities in lieu of the ‘Labor Supply Agency’, has not been providing this information to employers. At this point, it is just not possible to easily gain access to detailed information about North Korean KIC workers.¹³ Therefore, if a ‘Labor Supply Agency’ is established to exclusively manage and supply workers, labor supply could be carried out in a more systematic manner, and companies could more easily access information on potential workers. As for now, South Korean companies are forced to accept unilateral allocation of workers, but with the establishment of the ‘Labor Supply Agency’, companies could access worker information for those workers registered with the Agency, and employ workers more fitting to the companies’ respective needs.

2. Payment of Labor Supply Service Fees

¹³ While this was a common issue in all interviewed companies, company G, due to the specific nature of its operations, reported being able to request only those workers with education equal to or higher than a certain level.

Companies operating in KIC pay a ‘Labor Supply Service Fee’ to the ‘Labor Supply Agency’. This fee is determined through consultations with the KIC Management Committee (according to Article 11 of the KIC Labor Regulations).¹⁴ Currently, this service fee is a one-time fee of 17 dollars per hired person to be paid when the ‘labor supply contract’ is signed. The fee covers the total period of employment for the concerned worker, so companies do not need to pay the fee again to renew contracts of existing workers. There are no regulations that govern the increase or decrease of this fee, but it is expected that there will be a need for the establishment of procedures on consultations and agreements on fee increase methods and increase amounts.

Because the Labor Supply Agency does not yet exist, labor supply service fees are currently being paid to the Guidance Bureau. Payments are being made after employment contracts are signed with North Korean workers. In other words, this payment is being made *post facto* – after the employment contract is concluded. There is no set mechanism for determining the fee amount, and the only requirement here is that fees should be decided through consultations between the Labor Supply Agency and the KIC management organization (which is the Kaesong Industrial District Management Committee¹⁵ – hereinafter, ‘Management Committee’). Companies, therefore, have no means to provide input into the fee determination process. Fee increases and decreases are not governed by any particular regulation, and therefore it is difficult to anticipate changes to the fee structure. With continuous development in

¹⁴ Article 11 of the KIC labor regulations stipulates only that “a labor supply service fee may be charged”. All details relating to the fee amount, increases and decreases are to be “determined through consultations” between the Labor Supply Agency and individual companies.

¹⁵ Article 24 of the KIC Act establishes the Management Committee as a North Korean legal entity. This Management Committee, in essence, is a private organization that manages and operates KIC through consultations with its North Korean counterpart, the Guidance Bureau.

inter-Korean relations and close contact at the level of the Inter-Korean Economic Cooperation Committee, it is not expected that North Korea will suddenly demand any unreasonable fee increases. Still, we need to remember the lessons of KEDO, where although principles for wage increase rates were agreed upon¹⁶, North Korea chose to ignore the principles and tried to push through its demands. Considering this, there is still a slight possibility that things might be the same for KIC.

3. Employment

The KIC Labor Regulations recognize the right of companies to select their own employees (Article 10). According to the regulations, companies may administer technical skill tests and face-to-face interviews on workers sent by the Agency. On paper, therefore, companies do have the right to choose their own employees. Companies may select their workers, and then set forth details¹⁷ on monthly wages, employment period, working hours etc. in a ‘Worker Employment Contract’ signed by both parties.

But because of the previously mentioned insufficient labor supply, and the regional limitations and political realities of North Korea, companies are not actually able to take

¹⁶ The General Principles Guidelines on the wage structure for KEDO included an agreed stipulation that wages could be adjusted every 12 months and that the increase rate could not exceed 2.5%. In spite of this provision, North Korea demanded that wages be increased from 110 dollars to 600 dollars. Many complex factors (including the North Korean nuclear issue) caused the demise of KEDO, and this wage increase demand was one of those factors.

¹⁷ Details in the contract could include: 1. work start and end times, break times, holidays, leaves shifts; 2. determination, calculation, payment method, payment timeframe of wages; 3. issues related to termination of employment; 4. retirement allowances and minimum wages; 5. employee training facilities; 6. health and safety issues; 7. awards and disciplinary measures; and 8. other issues applying to all employees in the business or workplace.

the lead in the employment process, and are forced to simply “accept” whomever is sent to them. In other words, it is currently impossible for companies to autonomously select their employees. There simply isn’t enough supply for companies to be able to pick and choose, and there isn’t really much room for companies to carry out substantial selection procedures. So starting from the very early employee recruitment processes, South Korean companies have had very restricted rights. Our companies have very consistently demanded, therefore, for stronger control rights over their North Korean employees.¹⁸

4. Termination of Employment Relations

Employment relations in KIC may be terminated in the four following cases: when a ‘Worker Employment Contract’ is rejected and either the worker or the company refuses employment; when an employed worker is dismissed; when a contract expires; and when a worker resigns or retires. There was one case which created quite a furor in KIC that involved ‘worker replacement’, but this case provided quite a lot of insight into what issues would be raised in KIC should a worker actually be dismissed.

Can a company request a worker to be replaced if the level of labor the worker provides does not meet the expectations of the company? This question related directly to the issues of whether companies can reject employment relations, and is of substantial importance to labor management in KIC companies. The current KIC Labor Regulations do not include any provisions on worker replacement requests. Meanwhile, the Labor Regulations do include provisions on dismissals. This gives rise to a situation where people might try to interpret replacement requests as ‘dismissals’. Therefore, it

¹⁸ Refer to the article in the November 2, 2005 edition of the Chosun Daily Newspaper.

would be necessary to explicitly elaborate upon conditions for worker replacement requests in KIC regulations. It would be wise to include information on conditions, timeframes and methods for making the request as well as provisions for how long it should take to replace a worker after a request has been made, for measures applied to replaced workers¹⁹ and for issues surrounding compensation for both concerned parties. Unlike dismissal, ‘replacement of workers’ happens before the employment contract is signed²⁰, and refers to requests made by companies to the Labor Supply Agency for the replacement of allocated workers. In July 2005, there was an actual case where a replacement request was made in KIC.²¹ Some South Korean media referred to this as a ‘mass dismissal’, but this was not the case. Far from being an act of terminating employment relations through dismissals, this was simply a case where a request was made to the Labor Supply Agency for worker replacement.²² So far, there have not been any cases of collective ‘labor supply’ rejection. But companies, according to their own circumstances, may have made one or two individual replacement requests for their respective companies. Sometimes these requests were filed during the trial period before formal employment, and in special cases, requests have been filed after the formal employment contract went into effect.

Company A requested worker replacement during the trial period after making various

¹⁹ For instance, measures could be taken to ensure that a worker who refuses employment with a specific company is not reassigned to that same company in the future etc.

²⁰ Generally, this would be about when the 3-month trial period comes to an end.

²¹ Refer to the article in the July 20, 2005 edition of Kookmin Ilbo.

²² According to the July 21, 2005 State Affairs Briefing prepared by the Ministry of Unification Support Team, as more companies move into full-scale operations in KIC, companies may find throughout training that some North Korean workers are not suited for the company in terms of both skills and aptitude, and have sometimes asked for other workers to replace these unsuited workers. There were also cases where North Korean workers resigned voluntarily for reasons of personal health or continued education. Both cases were in no way ‘mass dismissals’.

efforts to help a worker settle in at the company. Company A tried to match the concerned worker with various jobs during the three-month period, but was unsuccessful, and asked for the worker to be replaced. The Guidance Bureau is said to have replaced the worker with a different person. But after this incident, company A and all other interviewed companies reported refraining from making such requests, since even the worker who was replaced because of his/her personal capabilities needs to work somewhere within KIC, or ends up without a job at all. Thus, the burden of worker replacement requests rests, essentially, on the companies themselves.²³

There was also a case where a replacement request was lodged in order to replace the chief worker. This case was a bit different from other cases that involved ordinary workers, as the reasons for replacement were not related to work skills, but rather to management activities. As is discussed later on, worker management in KIC companies is not carried out directly by the companies, but by the chief worker or team leaders. Therefore these chief workers and team leaders have extensive influence over ordinary workers, and thus the relationship between the company and these influential workers is also quite important. Company I made a request to replace its chief worker, because the worker had been stopping workers from reporting to work and arbitrarily delivering his own agenda. Companies report that it is more difficult to replace a chief worker, as they are more like managers than workers, and also because of their status as worker representative. It therefore seems highly possible that further conflicts will arise over the role of chief workers.

²³ In the second round of interviews, companies reported that as KIC workers needed to remain in KIC companies, replacement requests would influence not only the worker at question but also other companies in KIC. Past requests significantly burdened the companies, and thus they reported that such requests are no longer being made (Companies A and I).

III. Wage Level, Payment Method and Labor Productivity

1. The Concept and Nature of Wages

The KIC Labor Regulations use ‘labor compensation’, ‘monthly labor wage’ and ‘labor wage’ to refer to wage. The issue here would be to decide what concept would be utilized as the basis for calculating minimum wage and retirement allowances. Article 24 of the Labor Regulations is titled ‘labor compensation’, and stipulates that ‘labor wage, bonuses, allowances and incentives’ should be paid to workers. Article 26 then stipulates that “the monthly wage of an employee may not be lower than the monthly minimum wage”, but it is not clear whether this monthly wage is equivalent to the sum of all amounts listed under ‘labor compensation’, or if it refers to a ‘labor wage’ that is similar to a base salary. Meanwhile, Article 19 talks about retirement allowances, and that they should be equivalent to the 3-month ‘average monthly wage’, but here as well the regulations are not clear as to what amount should be used to calculate this average. So far, working conditions have remained the same for almost all workers, so there have not been any conflicts surrounding wage. Retirement allowances have also not been required to be paid to anyone so far. But with long-term operations in KIC, problems could easily arise. Therefore, we should clarify the concepts of terminology such as ‘labor compensation, monthly labor wage and labor wage’ in the Labor Regulations, and decide upon a clear criteria for the calculation of each wage type (such as minimum wage).

One reason for this obscurity in wage concepts is that the concept of ‘wage paid as compensation for work’ does not exist in North Korea. The labor laws of North Korea provide for the principle of distribution by the National Economic Planning Board, and

is based on the socialist principle of distributing 'living stipends for the worker and his/her family in return for work', only on the basis of labor quantity and quality.²⁴ Therefore, in a socialist State where people live on money provided by the State, wage as compensation for work and the wage systems under capitalist labor law that put a price on labor and turn labor into a special product would be interpreted more in the context exploitation of workers by capital,²⁵ and simply are not concepts that people in North Korea are used to.

2. Wage Levels and Wage Increase

As previously discussed, the KIC Labor Regulations include wage (labor wage), allowances and incentives in the scope of labor compensation. The labor compensation paid out in KIC so far would all fall under the category of 'labor wages', as no separate allowances or incentives have yet been paid out. Labor wage is what we in South Korea usually refer to when we talk about wage, and incentives are regulated in Article 31 of the Labor Regulations. As to the wage level, Article 25 of the Labor Regulations stipulate that the minimum wage shall be 50 dollars, and also limits the minimum wage increase rate to 5%. Wage increases ('increases to the minimum wage') are to be agreed upon by the Management Committee and the Guidance Bureau.

The actual wage in KIC is 50 dollars, the minimum wage. Interviewees, however, understood this minimum wage as a base salary. Thus, in principle, all workers receive

²⁴ Refer to p583 of *North Korean Legislation and Its Characteristics*, edited and published by the Sejong Research Institute in 1994, pp89-97 and pp117-125 of *North Korean Labor Legislation* published by the Korea Employers' Federation in 2000, and pp25-27 and pp35-36 of *Study on North Korean Labor Laws*, Eun-jung Park's 1998 Master's Degree Thesis from Ewha Womans University College of Law.

²⁵ Refer to p26 of the aforementioned Master's Thesis by Eun-jung Park.

50 dollars regardless of their skills, jobs or ranks, and no other allowances are paid to the workers. The North Korean authorities have complained about this situation, and have demanded that different amounts be paid to different workers. All interviewed companies, meanwhile, claimed that chief workers and team leaders were paid 25 dollars more than ordinary workers. This extra pay would constitute a separate job wage. Additionally, this request by North Korean authorities may signify that overtime payment and incentives (bonuses) actually exist in North Korea,²⁶ and that there are demands for different wages for different jobs or job functions. North Koreans may interpret different wages not as capitalist ‘incentives’, but as wages determined by talent, function and skills. Meanwhile, the labor regulation integrates the concept of overtime pay by requiring a 50% additional payment for extended and nighttime work (Article 30). South Korean companies in KIC are thus paying a separate amount for overtime pay. According to the interviewed companies, the actual average monthly salary for North Korean workers in KIC is about 60-70 dollars, and reaches up to 100 dollars for lead workers (such as the chief worker and team leaders).

Article 25-2 of the Labor Regulations states that “the monthly minimum wage cannot be increased more than 5% of the previous year’s monthly minimum wage”. By placing a ceiling on the minimum wage increase rate, this regulation seeks to block arbitrary wage increase measures by the North Korean authorities, while preventing conflicts

²⁶ ‘Bonuses’ are additional living stipends that should not reflect the quality of labor. In other words, these bonuses are paid in consideration only of work years, working conditions, technical qualifications etc. Meanwhile, ‘incentives’ are paid to model groups or individual workers who have exceeded the work requirements set forth in national plans. (Refer to pp35-36 and pp38-48 of Bo-gun Kim’s Korea University Department of Economics Master’s Thesis, *Critical Overview of North Korea’s Labor Compensation System – From the Perspective of Equality and Efficiency*; pp142-156 of Ki-sup Lee’s *Legislation of the Democratic People’s Republic of Korea: Labor Legislation*, published in 1994 by Sa-hwe-gwa-hak; and pp34-35 of Chul-soo Lee’s *North Korean Labor Laws*, an KLI internal report from 1994.

surrounding wage increase. This stipulation most likely reflects the lessons learned in the KEDO experience where North Korea pursued a unilateral wage increase. Since the establishment of KIC, no wage increases have occurred. This may be because the North understands the importance of fully establishing the pilot project area, and is therefore refraining from such unreasonable wage increase demands like those they pushed for in KEDO. But many KIC companies believe that discussions on wage increase will start in 2007.²⁷ The most pressing collective issue would be the increase of the minimum wage. There are currently no discussions within KIC focusing on the minimum wage. But most companies noted that, while in 2006 discussions on the topic were not pursued because the complex was not soundly established, in 2007, discussions of some kind are to be expected.²⁸

3. Wage Payment and Labor Productivity

One way to enhance labor productivity would be to directly pay wages to the workers. On this point, Article 32 of the Labor Regulations state that “companies must directly pay labor compensation to the workers in money”, and it was expected that this would contribute greatly to labor productivity, but in KIC this principle of direct pay is still not being implemented. The Management Committee and the South Korean authorities say that they have strongly requested at numerous times for the Guidance Bureau and other North Korean authorities to quickly enforce this regulation. North Korea has given its

²⁷ Because companies entered the pilot project area at different times, attitudes toward wage increase were varied. Companies who entered KIC at the early stages and who were now quite stable tended to be more flexible, while those who entered KIC later tended to be more negative on wage increases.

²⁸ Company B, however, responded that the complex was still not soundly established and therefore they were not thinking of any wage increase discussions in 2007.

word, but no tangible results have been achieved.

North Korea has always given its citizens 'living stipends to ensure livelihoods', rather than pay wages as compensation for work. The basis for the livelihoods of North Koreans is the rations that are distributed by the State. In this situation, if someone starts receiving direct wages, just because he/she works in a Special Economic Zone such as KIC, this could weaken the very roots of the North Korean economy. Even if North Korean workers were paid directly in US dollars, they would not be able to officially use dollars for living expenses,²⁹ and there would be issues related to exchange rates,³⁰ so analysts note that this measure would not be welcomed that much.³¹ Due to these various issues, despite the regulation, the Guidance Bureau seems to be rather cold to the implementation of direct pay.

As was the case with monetary incentives, companies differed in their opinions of whether direct pay would help boost productivity. Some noted that the socialist cultural

²⁹ Officially in North Korea, US dollars cannot be used in the open market, and most commodities are traded with 'ration tickets' distributed by the North Korean authorities. US dollars could be used in the black market, but in areas nearby KIC, both luxury goods and commodities are quite rare, so it would be quite difficult to use US dollars to cover living expenses.

³⁰ There are no official currency markets in North Korea where North Koreans can change US dollars for North Korean currency. Also, the official exchange rate is 1\$=150won, but this rises to 1\$=3,000won in the black market, an amount twenty times higher than in the official market.

³¹ According to current analyses, black markets are quite active in Pyongyang and the metropolitan area, while they are almost non-existent in areas nearby KIC. North Korean KIC workers could receive 42 dollars (70% of the monthly average pay of 70 dollars) in direct pay, after a 30% social-cultural deduction by the North Korean authorities to cover housing, medical and education costs, all of which are being provided free of charge to workers by North Korean authorities. Realistically, this amount would be worth 6,300won to the North Korean workers. In this situation, North Korean workers may be making a wise choice in not claiming their rights to direct pay, but instead 'entrusting' this pay to the North Korean authorities, and then receiving 6,000won and a substantial amount in ration tickets. Ration tickets are basically used like cash.

foundation would inhibit any productivity growth,³² while companies E and D were extremely hopeful about productivity growth from direct pay. A notable difference was found in company G, which engages in IT component manufacturing and R&D for skill-building. Here, North Korean workers lead R&D activities and set their own goals for productivity growth, which are followed and analyzed in order to establish the next goal. The workers in company G tended to be considerably autonomous and proactive.³³ It is probably too early to say that these effects are the result of the unique labor management style of company G and not the result of industry characteristics. But it is clear that when North Korean workers more proactively participate in autonomous and creative work, positive effects can be achieved. The most notable difference between company G and the other KIC companies was that the others had core R&D operations in the South or in other countries, and had only moved the manufacturing operations into Kaesong.

Most companies were of the opinion that neither direct pay nor incentives would help increase productivity. Due to the structural issues of the North Korean economy, incentives have somewhat been blocked, as North Korean authorities fear that monetary compensation will lead to the spread of capitalism. There is also the issue of North Korean workers not being very familiar with the concept of compensation according to productivity levels.³⁴ According to companies B and C³⁵ who reported that they had

³² Companies A and B stated that they did not expect productivity growth because current labor practices were almost ingrained on the workers, and it would be very difficult to change things.

³³ This was confirmed directly by the author through visits to the plant facilities and observation of operations briefings.

³⁴ Company interviews revealed that North Korean authorities preferred praise and other non-material compensation to monetary compensation, and North Korean officials sometimes requested that compensation be given in non-material forms.

³⁵ B and C reported providing collective compensation for production lines that exceeded production goals.

given out incentives in the past, initially, the incentives seem to be effective, but they were soon regarded not as awards for achievements but as everyday payouts. Company A did not have any experience with incentives, but expected that productivity would not be boosted much unless individually differentiated incentives were given to the workers. Article 24-2 of the Labor Regulations does stipulate that “companies shall accurately calculate labor compensation for workers according to their achievements”. This provision could be the basis, therefore, for a differentiated individual wage. In this context, we should also note Article 31, which states that “companies may accumulate a part of their profit into an incentives fund to finance incentives or awards to be given to high achievers”. The North Korean authorities, however, frown upon monetary incentives for individual workers. This is, in essence, a political issue, for while North Korea is very proactive when it comes to KIC operations, it absolutely does not want any fundamental weakening of its regime, and therefore does not want the implementation of a capitalist incentive system.³⁶

These conditions, combined with other factors, have caused the international community to hold negative views related to KIC. Some are concerned that human rights are being sacrificed to obtain cheap labor, while others worry about the foreign currency that is falling into the hands of the North Korean regime, and how that money will be used.³⁷ These concerns arose as the North Korean nuclear issue emerged in the midst of extreme economic difficulties where the rations system was not operating well.

³⁶ For this reason, company A focused more on building welfare facilities for workers than on providing monetary incentives. For instance, it expanded shower facilities for workers and provided better meals and snacks. Initially, such efforts seemed to generate better feelings for the company and increase productivity, but as such welfare facilities became the norm in KID, productivity was no longer affected.

³⁷ It is expected that direct wage payment will somewhat dilute US concerns that North Korea is appropriating KIC worker wages for the development of nuclear and other weapons. (Refer to the February 4, 2007 article in Korea Economic Daily)

But as one daily newspaper³⁸ has noted, according to trading company representative who formerly lived in North Korea,³⁹ the North Korean authorities are putting up to 70-86% of the workers' net pay into an equity joint venture operated by overseas North Koreans and the city of Kaesong, and has been buying commodities in overseas markets through this equity joint venture on behalf of the workers. This equity joint venture is said to be distributing the purchased commodities to the workers according to their individual account amounts through 10 rations stations in Kaesong, including the Kaesong Department Store. This article was successful in somewhat dispelling concerns that most worker wages were channeled to the North's highest officials and the North Korea Workers' Party.

IV. Working Hours and Welfare

The official working hours for North Korean workers are 8 hours per day and 48 hours per week, as applied also in KIC. This is compliant with North Korean labor laws that stipulate that workers should work 8 hours, rest 8 hours and study 8 hours (Socialist Labor Act Article 33). The KIC Labor Regulations that govern statutory working hours in KIC only provide that the work week should be 48 hours. Companies can only request workers to engage in overtime work if they obtain the agreement of worker representatives or workers beforehand, and workers may reject such requests (Articles 20 and 12 of the Labor Regulations). The Labor Regulations do not, however, limit the

³⁸ Refer to the November 7, 2006 article in Hankyore Daily.

³⁹ Yong-dung Song, who operates the Lobana Trading Company in Australia, revealed that, following a proposal from North Korea in mid 2004, in January 2005 he participated in the establishment of the "Koryo Commercial Equity Joint Venture" together with the City of Kaesong's Mt. Songak Trading Company, with an investment ratio of 59:41.

number of overtime hours. North Korean KIC workers are guaranteed rest days for national and public holidays, along with 14 days of paid leave (Article 22 and 23 of the Labor Regulations). On average, KIC workers perform about 6-7 hours of overtime work per week, and an overtime allowance (additional 50% payment) is paid to the workers. It is notable that North Korean workers generally accept the overtime work requests set forth by KIC companies. People say that this has been possible because companies provide sincere explanations to North Korean worker representatives on the need for overtime work, and the workers understand this need. But we shall later note that, on one occasion, North Korean workers collectively refused to engage in regular overtime work.

Among the interviewed companies, in those where daily work started relatively early in the morning⁴⁰, many workers dozed in the mornings, leading to reduced productivity. Although some might point to health issues and low physical fitness levels, there is also the matter of the North Korean authorities demanding workers to participate in evening political meetings and education sessions.

Companies offer various welfare services to North Korean workers. Instead of providing workers with monetary incentives, KIC companies may focus more on providing work clothes and snacks. Lunch is usually served in the form of a simple soup, unlike in the South. As previously mentioned, because North Korean authorities frown upon individual monetary incentives, there is a need to provide better treatment and welfare benefits to workers as a form of indirect compensation in lieu of higher direct monetary compensations. In providing these benefits as a means of indirect compensation, it is necessary, however, to recognize the special circumstances of the

⁴⁰ Limitations in transportation options (the jointly-operated commuter shuttle) have caused companies to start work at different times. Most workers arrive at work between 7 to 9 in the morning.

North Korean society, and to also consider equality issues among the different companies.⁴¹

Welfare benefits for workers such as sports and recreational facilities, expansion of shower facilities and provision of snacks do build a stronger sense of belonging and loyalty, and to emphasize equal treatment with South Korean colleagues, both North and South Korean workers receive the same work clothes. But some have started to become skeptical about the effectiveness of such welfare benefits. For, as welfare benefits become similar across the board, they are no longer special, and there is a limit to the productivity boosting effects such benefits may have.

V. Employment Rules, Worker Representatives and Collective Labor-Management Relations

1. Employment Rules

Article 13 of the KIC Labor Regulations stipulate that ‘labor rules’ can be established through consultations with worker representatives.⁴² These labor rules are basically the equivalent of employment rules in Korea’s Labor Standards Act, and set forth working hours, break hours, labor protection standards, measures for maintaining order in

⁴¹ A recent media report carried the headline, “Why do we only get bean paste soup when the guys next door get meat soup?” illuminating the concept of equality that North Korean workers have. (Refer to the July 15, 2005 article in Donga Daily). Companies in KIC comment that “even if we want to give them the best of everything, we also need to consider the situation of companies that aren’t doing so well.”

⁴² Article 13 (Establishment and enforcement of labor rules) of the labor regulations state that “Companies may establish and enforce labor rules that apply to all workers through consultations with worker representatives. Labor rules should clearly set forth working hours, break hours, labor protection standards, measures for maintaining order in everyday labor, criteria for awards and disciplinary measures etc.”

everyday labor and criteria for awards and disciplinary measures.⁴³ Despite this regulation, most companies have not drawn up labor rules. As Article 13 is not a normative regulation, there won't be any immediate serious legal issues arising from the lack of such rules, but still, in terms of rationally and efficiently implementing personnel management for North Korean workers, these labor rules should be worked on quickly.

Of the nine interviewed companies, only A and E had established labor rules. Most of the companies stated that, "because companies do not directly manage their North Korean workers, labor rules are not being applied at all." To elaborate, for essential activities essential to initial production, such as technical training, South Korean management teams directly manage North Korean workers or at least have contact with them, but all general personnel management activities such as rule making, disciplinary measures and awards are carried out by chief workers or team leaders who are the worker representatives. Companies can only indirectly enforce rules through these chief workers and team leaders, and there is just no room for the management to directly intervene in the management of labor. Some Korean companies therefore complain that they are facing difficulties in delivering orders and managing personnel because they cannot gain full control over the management of their workers. This indirect communication with workers also obstructs the timely and accurate delivery of the management's messages to the workers.

2. Worker Representatives

⁴³ Compared with general foreign-invested companies in North Korea, KIC companies enjoy a unique situation where labor-management relations can be formed together with 'worker representatives' through a kind of labor council, while blocking intervention by the North Korean occupational unions.

A notable aspect of worker representatives is that they are actually designated as such when they are sent to the KIC companies. In some companies, these people will reveal that they are the worker representative from the very beginning, and in others, there are often perceptible signs that a certain person is the worker representative.

Many terms such as 'chief worker, team leader, group leader, manager, deputy manager' are used to refer to worker representatives, and some companies choose to replace these North Korean terms with workplace specific terms such as 'plant head' or 'secretary'. The titles may differ, but worker representatives are alike in that they are not elected from the worker organization, and they are definitely not elected through democratic elections among the workers. Even before these people are employed by KIC companies, from the labor supply stage, these persons are given worker representative status by the North Korean authorities. One company may have just one worker representative (the chief worker or the team leader), or they may have an organized system where executive-type workers (team leaders and group leaders) manage smaller groups of workers.

These people represent North Korean workers by speaking out for them and conveying collective demands, but they also play the part of a labor manager, in the place of South Korean managers. Worker representatives are labor managers in the sense that most communication ranging from work-related coordination to things that have nothing to do with work go through these worker representatives to the ordinary workers. So from the very beginning, a worker representative designated by the North Korean authorities performs comprehensive labor management.

Worker representatives, no matter what they are called, are responsible for the following: first, they consult with the management on behalf of the workers on issues

such as overtime work and working conditions; second, they play the role of labor manager for North Korean employees; and third, policy-wise, they speak on behalf of the North Korean authorities, and they also convey individual grievances or collective demands. It is expected that even if worker organizations such as labor unions or labor councils are at some time recognized in KIC, the chief worker will continue to play the role of worker representative.

Some worker representatives are essentially ‘full-time worker representatives’ as they do not participate at all in production activities and perform only their duties as worker representatives. Other worker representatives do work in the workplace while also managing and supervising the overall situation. One point to remember is that even though some worker representatives may seem to have the status of a full-time official, they are, by nature, closer to personnel and labor managers who perform part of the company’s personnel management duties or to socialist union officials, as opposed to ‘full-time union officials’ in the South Korean context.

3. Structure and Operation of Worker Organization

The KIC Labor Regulations do not include any provisions on the structure and operation of worker organizations. Neither does there exist any official North Korean ‘occupational union’-like labor unions. North Korean workers do, however, gather for a short reflection session at the end of the day. These activities are not organized or collective, and usually consist of assessments and comments for one another. Workplace-wide meetings are not frequently held. Daily reflection sessions are usually led by chief workers and team·group leaders.

The absence of an official workers’ organization leads to questions as to whether the

worker representative fully represents the interests of the workers. Chief workers and team-group leaders do speak on behalf of workers, but are very different from the labor union leaders found in capitalist societies. Should conflicts arise in a company, these worker representatives listen first to the Guidance Bureau rather than listen to the workers or the company. Despite the fact that there is no specific collective body, at times, such as the incident when North Korean workers collectively refused overtime work,⁴⁴ North Korean workers bind into a single worker organization.

KIC companies tend to have negative reactions to the idea of unions. Although they are open to the establishment and operation of a labor council-like dialogue channel or a consultative body, KIC companies seem wary of a workers' organization of the union-type that could instigate collective action against the company.⁴⁵ Special caution is warranted when discussing this subject, in light of the North Korean situation where the regime is holding tight to the ideologies and systems of the socialist State. Undue stimulation could escalate discussions on this labor-management issue into the realm of ideology, which could prove fatal to the KIC project in which we have put so much effort into establishing thus far.

But as has been previously mentioned, real organizational entities are in action, and it may be beneficial to companies to turn these unofficial worker organizations into visible official organizations. If not a labor union, a labor council could be formed to engage regularly in dialogue with workers. By making labor-management cooperation more transparent in this manner, KIC will be able to somewhat avoid criticism from the international community that the freedom of association is not guaranteed in KIC, while

⁴⁴ In practical terms, as it is impossible to request individual workers to engage in overtime work, this incident took the form of the chief worker refusing overtime work during consultations with the company.

⁴⁵ Refer to p54 of the 2006 KLI publication, *Workforce Management and Labor Laws in KIC* by Moo-gi Moon and Mun-hee Yoon

also preventing and minimizing any unexpected collective or individual actions on the part of workers.

4. Labor Disputes and Systems for Resolution

No major labor disputes have been reported in KIC, aside from the February 2006 incident when workers refused overtime work. This incident occurred because work days – used as the basis for calculating allowances – were counted differently.⁴⁶ Other minor disputes did arise, but no collective action was taken, and companies noted that they responded to such disputes through the chief workers.⁴⁷

For the KEDO project, North Korean workers did not have their own labor organization, but still acted collectively as an expression of resistance (such as refusing to engage in overtime work at the construction site). The labor organization that appeared in that instance was not a collective body that represented specific organized workers, but a resistant force that encompassed all North Korean workers.

⁴⁶ Whereas South Korea recognizes paid leave, the North does not, and this difference led to a different result when counting the number of actual days worked. This, in turn, led to calculations of daily pay and hourly pay. It has been surmised that the North Korean authorities took this as an opportunity to demand an increase in the minimum wage level or additional payment of job wage.

⁴⁷ Labor disputes are said to mostly be resolved through chief workers. Disputes not resolved at this level are resolved directly by an advisor from the Guidance Bureau or the Labor Administration. At the early stages of the pilot project, the Management Committee attempted to resolve disputes, but this proved to be quite difficult and resulted in a major collapse of Management Committee authority. Therefore, the Management Committee has not been able to play a pivotal role in dispute resolution. In this situation, individual companies have been resolving disputes through direct meetings with North Korean authorities. Companies expressed the wish to maintain this situation, as they seemed to be extremely wary of information on individual companies' circumstances leaking out to the public. But the companies realize that once KIC is fully-operational, a dispute-resolution body would be needed. Companies expressed their hopes that, in this case, a body with authority equal to that of the Guidance Bureau would be established.

The KIC Labor Regulations stipulate that the concerned parties should engage in consultations to resolve any conflicts in opinion over labor issues or in any other cases of labor disputes, and further elaborates that the next step should be to resolve the dispute through ‘labor arbitration procedures’ (Article 48). Also, the Labor Regulations state that violations of the Labor Regulations may be reported to the KIC management bodies, or may be brought before the Central Industrial District’s guidance body (Article 49). However, the ‘labor arbitration procedures’ in Article 48 have yet to be established. And while it is stipulated that individual disputes (surrounding individual working conditions and violation of regulations on dismissals etc.) are to be resolved through an arbitration process should consultations fail (Article 49), detailed procedures have yet to be determined. A detailed dispute resolution mechanism should definitely be established in the future.

VI. Assessment and Policy Responses

The KOR-FTA and the KIC project are similar in that both strive to maximize social and economic benefits for the concerned parties through improved trade and economic cooperative relations. As inter-Korean relations are always affected by US-North Korean ties and the influence of the international community, for the KIC project to successfully reach its goals, we need to ensure that the KIC project fulfills all legal and institutional requirements expected of members of the international community. In other words, we need to make sure that, above all, the human rights of workers are protected, and relevant international standards are met. On the basis of this first step, the following measures can be taken to explore avenues for having KIC recognized as an OPZ in the context of the KOR-US FTA, and for vitalizing the operations of KIC.

First, a fully-functional and able ‘Labor Supply Agency’ should be quickly established. With a specialized agency that can transparently carry out labor supply services, high quality North Korean labor can be efficiently secured. In addition, employment contracts with North Korean workers could be signed directly with the workers, building a sense of belonging on the part of the workers. At the same time, Korean companies could take the lead in all labor management activities ranging from recruitment, selection and employment to job allocation and dismissal. The current stop-gap system of labor supply lacks transparency, and will not be able to keep up with a fully-operational KIC in the near and long-term future. The Government and KIC companies must work together for this endeavor. North Korea will not cooperate if companies just seem to be using KIC for cheap labor and considerable profits. The proactive interest North Korea has shown in cutting-edge technologies should be well-noted in this context.

Second, new mechanisms for productivity growth must be identified. These mechanisms must not look threatening in the eyes of the North Korean regime, and must stand on the basis of the North Korean socialist system, while serving to increase competitiveness. In this context, we could consider expanding the scope of proactive and voluntary participation in management activities by North Korean workers, through a ‘KIC-style business operation method’, which would encourage participation in capitalist management activities. As shown previously, some companies widened the scope of engagement for high-level North Korean workers by bringing in core technology R&D activities along with production activities to KIC. This showed that monetary incentives were not always necessary to enhance productivity. Of course, it is to be admitted that North Korean workers were particularly interested in the IT industry and that the North Korean authorities were more understanding and considerate of the

needs of this industry. But still, the company's confidence in North Korean workers led to active investment and training, which in turn brought about trust and support from the North.

Third, institutional adjustments such as direct pay need to be implemented. Opinions do diverge when it comes to the pros and cons of direct pay. But we must remember that, together with individual employment contracts, direct pay was a component through which we envisioned that we would transform the existing wage payment concepts in North Korea's labor laws and foreign-invested companies' laws into capitalist concepts. We particularly hoped that this would facilitate personnel management and enhance labor productivity. Direct pay is also important in that the international community is keen on making sure that wages go into the hands of North Korean workers, not the North Korean regime. If this continues to be a problem and the human rights of workers are not fully protected, the legitimacy of the KIC project itself would be in jeopardy.

Fourth, authority on personnel management issues such as recruitment, dismissal and work orders should be restored to KIC companies, and we need to make efforts to secure the 'democracy of worker representatives'. Restoring personnel management authority doesn't simply refer to strengthening the power of dismissal, but signifies the reinstatement of corporate autonomy. KIC companies are currently not able to directly control their workers, and workers tend to listen more to pre-designated worker representatives. We must work to ensure that the worker representative selection process is more independent and objective, so that worker representatives can truly represent North Korean workers, instead of just acting as supervisors. This would enable labor and management to engage in meaningful dialogue, and should also lead to the development of dispute resolution procedures, all of which are measures that could allay the concerns of the international community.

Finally, basic human rights and consideration for the healthy lives of workers must form the foundation for our activities in KIC. This Complex is highly regarded as a strategic production base with high-quality low-cost labor. In dealing with legislation and revisions of laws and institutions, we must remember that North Korean workers are not just means of production, but are human beings who should be treated with respect. For instance, detailed measures are needed for the protection of workers who have been hurt in industrial accidents, and also for efficiently securing housing for workers who have moved to the KIC area to work in the complex. Measures to rectify sexual harassment and unfair discrimination against women workers are also needed, as are those to appropriately remedy the unfair treatment of seniors and minors.

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