

Is it Possible to Decouple Foreign Workers' Wages from the Minimum Wage in Taiwan?

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Abstract

The impact of minimum wage legislation has been widely discussed and is a major concern among labour economists. This article investigates, from economic, legal, international political, trade, and social perspectives, the possibility of decoupling foreign workers' wages from the minimum wage in Taiwan. The results show that foreign workers' wages cannot possibly be decoupled from the minimum wage, and foreign workers should not be treated as a separate group of workers in Taiwan's minimum wage policy.

JEL Codes: J38; J82; J88

Keywords

Foreign workers; labour costs; migrant workers; minimum wage; Taiwan.

1. Introduction

In response to the labour shortage brought about partly as a result of the 1980s economic boom, the Taiwanese government allowed hiring of foreign worker in 1989 but on a restricted basis, calling it 'moderated replenishment.' As international competition became more intense, the majority of Taiwanese corporations relocated their operations to China in order to reduce their operating costs and to take advantage of China's emerging market. The trend toward relocating operations off-shore has resulted in both severe unemployment and wages plunging so steeply that there has been negative growth in wage rates. Increase in the minimum wage has resulted in a declining gap between the minimum wage and the average wage declining in a number of regions in Taiwan, creating a situation where the starting wage for young workers is the same as the minimum wage.

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However, in contrast, increases in the minimum wage in 2007 and 2011 resulted in foreign workers receiving increased wages.

The practice of applying the minimum wage to foreign workers in Taiwan was not motivated only by the government's insistence on the principle of equality; the purpose is also to comply with conventions of the International Labour Organisation (ILO) and to present a favorable image to the world. However, there has never been any serious debate on the issue of decoupling foreign workers' wages from the minimum wage until now.

In the midst of growing unemployment and declining wages, the government's policy of moderated replenishment (allowing hiring of foreign workers to a limited extent) and minimum wages for all workers has been subject to a great deal of criticism. Opponents argue that the policies cause social unrest and the minimum wage should not be applied to foreign workers since that implies robbing domestic labourers of their employment opportunities, and aggravating the unemployment problem. Many business enterprises have requested that the government review policies pertaining to application of minimum wage to foreign workers. Given the growing opposition and discontent, the government has started paying attention to the issue. On issues of the minimum wage, the major political parties, the Kuomintang and the Democratic Progressive Party (KMT and DPP) share a consensus: both recognise that the minimum wage standard and its adjusting principles will be closely related to Taiwanese economic growth.

These debates raise two fundamental and contentious questions that require further examination: first, during periods of high unemployment, should foreign workers be hired; and second, should minimum wages apply to all foreign workers? This article will provide an in-depth discussion of the feasibility of decoupling foreign workers' wages from the minimum wage. The first section offers an overview of foreign worker policy and the minimum wage system in Taiwan, followed by a comparison with minimum wage systems adopted by other labour importing countries. Next, we examine the feasibility of excluding foreign workers from coverage of the minimum wage, followed by conclusions.

2. Taiwan's Foreign Worker Policy and Wage System

Until 1989, in Taiwan, importation of low-skilled workers was forbidden and importation of other types of foreign workers was strictly restricted. However, rapid changes in industry structure caused the demand for foreign workers to increase. When the government initiated work on 14 major infrastructure projects in 1984, the first batch of low-skilled workers from abroad was hired. This was treated as a special project to cover a labour shortage in Taiwan (Tseng 2004). In 1990, import of foreign workers was officially allowed. In 1990 the number of legal foreign workers working in Taiwan was approximately 2,999 but by 2000, the figure had soared dramatically to 326,515 (Council of Labor Affairs 2010a). When Taiwan joined the World Trade Organisation (WTO) in 2001, it became necessary to align the issue of import of foreign workers with the latest international conventions and regulations. It was imperative for the government to ensure fair treatment and basic rights such as equality for foreign workers in order to earn the respect of other members of the international society.

Table 1 provides a concise overview of the foreign worker market in Taiwan during the past few years. In 2008, the total number of foreign workers employed in Taiwan exceeded 360,000, with the majority working in manufacturing industries, followed by those working as caregivers.¹ Compared to 2007, the number of foreign workers has declined only in the construction industry; all other industries have hired more foreign workers. Most of Taiwan's foreign workers have come from Indonesia, Vietnam, the Philippines and Thailand. Although Taiwan permitted import of labourers from Mongolia in 2004, there were only 5 Mongolian labourers in Taiwan in 2008.

The Taiwan Council of Labor Affairs (CLA) allocates quotas for imports of foreign workers based on the percentage of foreign workers in each industry in Taiwan. Originally, the maximum percentage of foreign workers allowed was 15 per cent, 18 per cent and 20 per cent of the total numbers of employees, in different industry sectors. The restraints were restructured to five brackets of 10 per cent, 15 per cent, 20 per cent, 25 per cent and 35 per cent in 2011, implying foreign workers can account for as much as 35 per cent of the workforce in some qualified enterprises (Council of Labor Affairs 2010b).² The pressure for an increase the minimum wage has not come from foreign worker agencies. As of June 2010, the total number of foreign worker agencies in Taiwan, and the size of these agencies, were not large enough for them to have any significant influence on policies governing minimum wages. The major opposition to an increase in the minimum wage is from Taiwanese companies that hire foreign workers, the argument being that though the increase in percentage terms is small, the impact on companies that have higher percentages of foreign workers will be substantial.

**Table 1: Overview of foreign worker employment in Taiwan —
2004 to 2008 (Persons)**

	2004	2005	2006	2007	2008
Total	314,034	327,396	338,755	357,937	365,060
Industry					
Manufacturing	167,694	166,928	169,903	183,329	185,624
Construction	12,184	13,306	11,745	8,594	6,144
Crew members	3,089	3,147	3,322	3,786	4,865
Caregivers	128,223	141,752	151,391	159,702	165,898
Maids	2,844	2,263	2,394	2,526	2,529
Sources of labourers					
Indonesia	27,281	49,094	85,223	115,490	127,764
Malaysia	22	13	12	11	11
Philippines	91,150	95,703	90,054	86,423	80,636
Thailand	105,281	98,322	92,894	86,948	75,584
Vietnam	90,241	84,185	70,536	69,043	81,060
Mongolia	59	79	36	22	5

Source: Council of Labor Affairs (2008).

In order to ensure that labourers earn enough to cover their basic living expenses, the government promulgated the Temporary Minimum Wage Procedure in 1968 and set the domestic minimum wage at NT\$600 per month. In the period from 1965 to 1974, Taiwan experienced a golden era of economic boom, witnessing an average annual economic growth of over 10 per cent. Consequently, the minimum wage was also adjusted upwards. On 29 April 1980, the minimum wage in Taiwan was increased to NT\$3,300 per month. Since then the domestic minimum wage has been upwardly adjusted on an annual or biannual basis to keep up with the rapid growth in the economy. By 1997, minimum wage in Taiwan had reached NT\$15,840 per month and it stayed at that figure in the following decade, i.e. until 2007, when the government increased the minimum wage to NT\$17,280 per month (with effect from 1 July 2007). The hike translated into an increase of NT\$1,440 (roughly equivalent to 9 per cent). A further adjustment, announced on 29 September 2010 (effective from 1 January 2011), raised the minimum wage to NT\$17,880 per month or NT\$98 per hour, an increase of 3.5 per cent (Council of Labor Affairs 2010a, 2010b; Ministry of Economic Affairs 2011).

When deciding the minimum wage, the Executive Yuan, the CLA and the Minimum Wage Fixing Commission (MWFC) take into account: (i) the latest economic situation; (ii) the consumer price index; (iii) the wholesale price index; (iv) labour productivity and employment situation; (v) both national and average per capita income; (vi) wages of industrial workers; and (vii) household income and expenditures. In particular, the consumer price index and labour productivity are given greatest weight. As a result, when amending the standard of the minimum wage (as nominal wages), inflation is the major criterion.

Existing regulations in Taiwan prescribe that the minimum wage shall apply to both local and foreign workers. According to enterprises that employ relatively more foreign workers, even a marginal hike in minimum wage constitutes a substantial financial burden on them. The sudden surge in wage costs means a significant pressure on the profitability of employers.

Since 1980, as Taiwan's economic growth has accelerated, many traditional industries have had problems in finding labourers, prompting the government to allow the importation of foreign workers, although adhering to 'supplement principles' to avoid any adverse effects on local labour markets and employment.³ Although not fully supported by official minimum wage rates, the views of the enterprises that employ foreign workers and of commercial unions are that foreign workers in Taiwan earn wages higher than in competing countries such as Hong Kong and Singapore, and any increase in the minimum wage will benefit only foreign workers and increase labour costs to employers, resulting in lower investment.⁴ Therefore, they want foreign workers to be excluded from the minimum wage, decoupling foreign worker costs from the minimum wage, in order to help decrease operating costs and enhance competitiveness.⁵ They argue that the higher cost of foreign workers in Taiwan may cause enterprises to move to other countries (like China) where labour costs are lower. Alternatively, the competitiveness of Taiwanese manufacturers will drop, adversely affecting investment and generation of new employment opportunities.

With the exception of Singapore, all major labour importing nations around the world have established systems and regulations governing minimum wages in order to regulate, protect and manage labourers' wages. A national minimum wage system was first introduced in New Zealand in 1894, followed a few years later by Australia then the UK and from 1938 the United States, France, Taiwan, Japan, Holland, Korea and Hong Kong.⁶ Among the nations that have adopted minimum wage systems, the UK, France, Holland, Korea and Taiwan have minimum wage levels that are uniformly applicable nationwide. In contrast, Japan has established a national legal framework to regulate the minimum wage and yet has permitted each prefecture to set the minimum wage in accordance with the structure of its local industries and the characteristics of local labour markets (Wu and Wong 2008).

Table 2 shows that among the nations that have adopted minimum wage systems, France, Japan, the UK and Korea adjust their minimum wage levels annually, based on factors such as the rate of inflation, overall national economic performance, operational costs, employment rate and so forth, in order to accommodate the demands of workers, employers and the overall economic situation. On the other hand, Taiwan and the U.S. adjust their minimum wage levels irregularly, based primarily on factors such as the nation's current economic status, employment trend in the labour market, average wage in different industries, labour productivity, and employers' capacity to pay.

It is evident that nations adopting minimum wage systems have promulgated comprehensive laws and rules and regulations to ensure that low-wage labourers are able to sustain lifestyles meeting certain specific standards. In terms of minimum wage levels, it is apparent that Germany's minimum wage is significantly higher relative other nations, followed by France, the UK, Japan, Korea and Taiwan. However, given the discrepancies in living conditions and cost of living in different countries, minimum wages as a percentage of average wages in manufacturing industries perhaps provide a more realistic picture. In 2007, this percentage in Taiwan was 40.3 per cent and though the figure is higher than in Japan and Korea (28 per cent and 25.7 per cent respectively), it is still lower than the UK (41.8 per cent) and Germany (between 64 and 90 per cent) (Legislative Council Secretariat of Hong Kong 2008). As a result, Taiwanese industry is not likely to be affected too much by an increase in the minimum wage.

Table 3 provides a comparison of labour costs (as disclosed by the government in Taiwan) in Taiwan, Hong Kong, Singapore and Korea (the Four Asian Tigers) in 2008. Obviously, in the manufacturing industry, the average wages received by workers in Taiwan are higher only than those in Singapore. However, if the employment stability fee (or labour tax), discussed below, is taken into consideration, the fact that Singapore has the highest employment stability fee becomes apparent. In contrast, Hong Kong has temporarily suspended the fee while Korea does not levy this fee. Thus, among the four Asian Tigers, Korea ranks number one in terms of monthly wages paid to foreign workers (approximately NT\$25,646), whereas the figure for Taiwan is NT\$19,280–19,680. Wages of foreign worker hired as domestic help are NT\$15,840, and with the employment stability fee of NT\$2,000, it comes to a total of NT\$17,840. This is

Table 2: Comparison of minimum wage levels in nations with minimum wage systems — 2007

	UK	France	Taiwan	Japan	Germany	Korea
Year in which the minimum wage system was established	1891. The law was abolished in 1993 and later re-introduced in 1999.	1950	1956	1959	1916	Established in 1986, officially promulgated in 1988
Existing regulation that governs minimum wage	National Minimum Wage Act	Salaire minimum interprofessionnel de croissiance	Labor Standards Act	Minimum Wage Law	German Posted Workers' Act	Minimum Wage Law
Minimum wage (per hour)	£5.52 (US\$11.04)	€8.44 (US\$11.55)	NT\$95 (US\$2.89)	687 Yen (US\$5.83)	East Germany: €8.9–9 (US\$12.18–12.32) West Germany: €10.3–12.4 (US\$14.10–16.97)	KRW 3480 (US\$3.74)
Minimum wage as percent of average wages in the manufacturing industry	41.8%		40.3%	28%	East Germany: 75%–90% West Germany: 64%–65%	25.7%
Frequency of minimum wage adjustment	Adjusted annually	Adjusted annually	Adjusted irregularly	Adjusted annually	Adjusted irregularly	Adjusted annually
Model of minimum wage implementation	National	National	National	Regional and occupational. Different minimum wage levels apply in different regions and for different occupations.	Occupational. The minimum wage is only applicable to the six occupations prescribed by the German Posted Workers' Act.	National
Is the minimum wage system applicable to foreign workers?	Yes	Yes	Yes	Yes	Yes	Yes

Note 1: With the exception of Germany (data is for 2006), data from other nations was collected in 2007.

Note 2: The model of minimum wage implementation in Germany is occupational. The minimum wage level for Germany shown in the table is based on average salary for construction workers.

Note 3: For calculation of minimum wage as percentage of average wage in Germany, average wage of workers in the construction industry was used. For other nations, average wage of workers in the manufacturing industries was used instead.

Source: Legislative Council Secretariat of Hong Kong (2008).

Table 3: Comparison of foreign worker costs in Taiwan, Hong Kong, Singapore and Korea — 2008

Type of foreign worker	Manufacturing industries			Maids		
	Monthly wage converted to NT\$ (local currency) (Note 1)	Employment stability fee (or labour tax)	Subtotal in NT\$ (local currency)	Monthly wage converted to NT\$ (local currency)	Employment stability fee (or labour tax)	Subtotal (in NT\$)
Taiwan	NT\$17,280	Traditional industries NT\$2,000 Non-traditional industries NT\$2,400	NT\$19,280 NT\$19,680	NT\$15,840	NT\$2,000	NT\$17,840
Hong Kong	NT\$22,667 (HK\$5,660) (Note 2)	Domestic helper levy temporarily suspended for 2 years	NT\$22,667 (HK\$5,660)	NT\$14,337 (HK\$3,580)	Domestic helper levy temporarily suspended for 2 years	NT\$14,337 (HK\$3,580)
Singapore	NT\$13,307–15,525 (SGD\$600–700) (Note 3)	NT\$3,327–9,980 (SGD\$150–450)	NT\$16,634–25,505 (SGD\$750–1,150)	NT\$6,653 (SGD\$300)	NT\$3,770 or 5,877 (SGD\$170 or 265) (Note 4)	NT\$10,423 or 12,530 (SGD\$470 or 565)
Korea	NT\$25,646 (KRW 852,020) (Note 5)	N/A	NT\$25,646 (KRW 852,020)	-	-	-

Note 1: Conversions based on exchange rates as on August 14, 2008: NT\$ / HK\$ = 4.0048; NT\$ / SGD\$ = 22.178; NT\$ / KRW = 0.0301.

Note 2: Based on the non-skilled worker earning the lowest wages in the manufacturing industry from the Supplementary Labour Scheme as amended by Labour Department, Government of Hong Kong, March 31, 2008 – stitcher/mender in textile industry with monthly wage of HK\$ 5,600. From August 1, 2008, the domestic helper levy (cf. the Taiwan employment stability fee) for all foreign workers (including maids) was suspended for 2 years.

Note 3: Singapore does not have a minimum wage system. Based on standard market rates, average manufacturing industry wage in Singapore was SGD\$600–700. Based on foreign workers as % of total labour force, the labour tax is estimated at SGD\$ 150–450.

Note 4: Wage for domestic labourers in Singapore came to approx. SGD\$ 300. Employers hiring domestic labourers pay a labour tax, set at SGD\$ 170 per month for employers with children aged below 12 years; seniors aged over 65 years /member with mental/physical disability requiring full time care. For other employers, the labour tax works out at SGD\$ 265 per domestic labourer hired per month.

Source: Council of Labor Affairs (2010b).

still higher than Hong Kong (NT\$14,337) and Singapore (NT\$12,530) (Legislative Council Secretariat of Hong Kong 2008). Figures from Table 3 suggest that while wages of foreign workers in Taiwan's manufacturing industries are not too high, foreign workers employed as domestic help receive much higher wages compared to their counterparts in Hong Kong and Singapore.

3. Discussion: Feasibility of Excluding Foreign Workers from the Minimum Wage System

In recent years, owing to factors such as sluggishness in the Taiwanese economy and extremely competitive international markets and the hike in the minimum wage in Taiwan, some business enterprises and scholars have advocated decoupling of foreign workers' wages from the minimum wage. They argue that it would lower labour costs and encourage companies that have relocated their units elsewhere to return to Taiwan. This section provides different analyses of the feasibility of excluding foreign workers from coverage of the minimum wage from economic, legal, international politics, trade and commerce and social perspectives.

Economic Analysis

When examining the economic effects of the minimum wage through empirical studies, most economists choose to focus mainly on the impact of the minimum wage on employment. Most time series studies relating to the economic effects of the minimum wage have been conducted in the U.S. The majority of empirical results lead to the conclusion that an increase in the minimum wage has a negative impact on employment, i.e. it raises unemployment rate.⁷ Neumark and Wascher (2008) in a meta-analysis of such studies argued that a large majority indicate negative effects of the minimum wage; those showing positive effects are few, questionable, and disproportionately discussed. However, some research works have suggested that higher minimum wages are not necessarily associated with lower employment, though they do boost average hourly earnings of workers (Card 1992a, 1992b; Card, Katz and Krueger 1994; Card and Krueger 1994; Katz and Krueger 1992). In addition, Orrenius (2008) examined (by an empirical study) how minimum wage laws affect employment and earnings of low-skilled immigrants and natives in the U.S., and found that minimum wages did not have adverse employment effects on adult immigrants or natives who did not complete high school. Potential explanations for these results include imperfectly competitive labour markets, decrease in hours worked per worker, instead of in the number of workers, and improvements in the quality and productivity of workers that offset the effects of higher wage mandates.

As of June 2008, foreign workers in Taiwan's manufacturing and construction industry were receiving monthly wages of NT\$17,575 and 17,948, respectively. Both figures are close to the legally stipulated minimum wage of NT\$17,880 (Council of Labor Affairs 2008). West and Mckee (1980) maintain that preventing exploitation of labourers and protecting disadvantaged workers were the fundamental grounds and objectives for minimum wage legislation.

According to Taiwanese law, business organisations hiring foreign workers must pay relevant fees (the employment stability fee) as prescribed in the *Employment Service Act*, the *Management and Approval Regulation for the Employment of Foreign Nationals* and the *Employment Stability Fee Payment Procedure* (Council of Labor Affairs 2010c). Fees are related to the current minimum wage level. In addition, foreign workers employed in sectors where the minimum wage system applies receive the minimum wage as stipulated by law. *Per se*, minimum wage and employment stability fees for foreign workers are directly related. As the minimum wage increases, the operational costs of sectors hiring foreign workers increase. If foreign workers in Taiwan receive higher wages compared to those in other Southeast Asian nations, this will hurt Taiwanese industries' competitiveness, in the short term. However, in the long run, the applicability of minimum wage to foreign workers may cause domestic corporations to cut down on employment of foreign workers due to the increase in minimum wage. Also, domestic companies are likely to opt for more capital or technology intensive production processes, thereby facilitating industry's technological upgradation. This will in turn boost the competitiveness of Taiwan's economy.

Allowing foreign workers in Taiwan not only decreases employment opportunities for domestic unskilled labourers but also stimulates demand for complementarily skilled workers. Increased gap between wages of skilled and unskilled workers can improve the contribution of human resources to overall value addition and facilitate accumulation of domestic human resource capital. On the other hand, the introduction of foreign workers was primarily driven by shortage of domestic labour and the wish of employers to protect their own interests. Decoupling foreign workers' wages from the minimum wage may lead to wage discrimination and employers may find it more difficult to hire quality foreign worker to replenish their human resources. Not only that, the odds of labourers skipping work or labour disputes erupting would probably be higher, thus resulting in a negative impact on the morale of foreign workers.⁸

Low wages for foreign workers can lead to an artificial demand for labour that may mislead one into thinking that Taiwan is always short of labour. This may slow down the process of industrial upgrading; decoupling foreign workers' wages from the minimum wage can only further aggravate the so-called labour shortage problem in Taiwan.

On a related note, a labour market with imperfect competition (or where the employers have significantly more leverage) is more susceptible to problems of worker exploitation by employers. A minimum wage system actually facilitates employment and efficiency. According to the efficiency wage theory (Shapiro and Stiglitz 1984), the wage level is closely correlated to the level of workers' productivity. Higher wage levels lower the likelihood of workers shirking responsibilities as they motivate workers to put in their best efforts. This in turn boosts productivity and causes labour costs to fall instead of increasing. From the perspective of hiring foreign workers, application of Taiwan's existing minimum wage to foreign workers would attract more quality foreign workers to be a part of the domestic labour market. Not only that, it would also help enhance foreign workers' efficiency, thereby lowering the costs of hiring foreign workers. On the

other hand, if foreign workers are excluded from the protection of the minimum wage system, it would lower foreign workers' efficiency at work or lower the quality of foreign workers available in the labour market. Consequently, it will drive up the costs of foreign workers employment, rather than lowering it.

Furthermore, decoupling foreign workers' wages from minimum wage might also lead to negative impact on local workers in Taiwan because foreign workers would become cheap replacements for local workers, encouraging employers to exploit their workers even more; this would suppress the wage level for domestic unskilled workers.

However, there are scholars who hold opposing viewpoints on this issue. Using human capital theory and dual-labour market theory in fundamental economic theory, they have argued that the market for foreign workers is in fact separated from the domestic labour market. For example, Becker (1960) proposed that the level of labourers' education can be used as a criterion to differentiate workers' wages, whereas Spence (1973) maintained that qualifications and academic degrees serve as an important signal and criterion that employers can use in their search for ideal workers. In other words, these scholars suggest that as long as the level of education of domestic workers is higher than that of foreign workers, their wage levels and employment opportunities are unlikely to be affected by the presence of foreign workers and as such, foreign workers and domestic labourers are naturally categorised by their level of education.

Spencer further stressed that the labour market can in fact be separated into a 'primary market' and a 'secondary market'. Characteristics that define the primary market include stable jobs, high wages, ideal working environments, multiple channels for promotion and sound organisational structures. In contrast, secondary market is usually characterised by high turnover rates, lower wages, little or no opportunities for promotion and relatively worse working environment. Berger and Piore (1980) conceived dual labour markets as result of firms and employees dealing with economic flux and uncertainty. Employers are expected to make more use of secondary labour in peak periods and reduce it when markets are slack. Piore (1986) believed such differentiation suited foreign workers well since most foreign workers come from developing nations and they are mostly employed in the secondary market where local workers are less willing to work. Induction of foreign workers in the secondary market accommodates the nation's economic needs.⁹

Given the principles of limited supplementation by foreign workers, with restrictions on their duration of stay, we can deduce that the government wishes to minimise the impact on local labourers' rights and benefits. In other words, the foreign worker policy adopted by the government is inclined more towards the 'segmentation hypothesis' rather than the 'replacement hypothesis' (Briggs 1975). If the segmentation hypothesis is indeed true, decoupling foreign workers' wages from the minimum wage should not affect domestic workers' wage levels.

The impact of foreign workers on employment prospects for local workers in Taiwan depends on the nature of the relationship between foreign workers and domestic workers, i.e. whether they supplement or replace each other; if the relationship is supplementary, introduction of foreign workers would in fact

facilitate employment for domestic workers. Hsu et al. (1997) proposed that with the exception of livelihood industries, where replacement of local workers (by foreign workers) is insignificant, the role of foreign workers in metallurgy, machinery and electronic industries is generally supplemental. Hwang and Chiang (1998) found no replacement phenomena between foreign workers and teenage employment. On the other hand, San (1996) pointed out that a fairly stable replacement relationship existed between foreign workers and local workers.

Though some researchers believe that with proper regulation of imports of foreign workers, decoupling of foreign workers' wages from the minimum wage should not drive unemployment up in Taiwan. The problem is whether the government would be able to cope with the pressure from business enterprises to import more foreign workers, once foreign workers' wages have been decoupled from Taiwan's minimum wage, since the move would certainly enlarge the gap between costs of hiring foreign and local workers. Furthermore, had the notion of decoupling been irrational and unfeasible from the start, the discussion of hypothetical questions such as how decoupling the two could help businesses lower labour costs and how it would entice businesses that have relocated elsewhere to return would be meaningless.¹⁰

Legal Analysis

The principle of equal opportunity plays an important role in international politics; sovereignty over territory does not hold because basic human rights are involved. From an ethical perspective, everyone in this world is created equal and it naturally follows that everyone deserves equal treatment. Protection of foreign workers' rights used to be viewed as the responsibility of their respective countries but things have changed.

The International Labour Organisation (ILO) now works actively to safeguard the basic rights of foreign workers around the world, and points out contributions of foreign workers to economies of nations suffering labour shortage when insisting upon protection of their fundamental human rights. Numerous international conventions and proposals stipulate comprehensive protection for foreign workers.¹¹ Pursuant to ILO Conventions 97, 111, 143, 157, 167, 168 and 169 (ILO 2006a–g) and WTO regulations stipulating specific obligations on its members (WTO 2011), no discrimination of any form (including wage discrimination) against foreign workers is permitted.

The principle of reciprocity was the primary and accepted norm before World-War II. Under the principle of reciprocity, before granting any privileges to foreign workers, the host nation makes sure that local labourers are entitled to equivalent rights when working abroad. However, the global view has now veered toward the national treatment principle. The scope of national treatment has gradually expanded to include application of social security systems that protect local workers to foreign workers also. ILO Convention No. 111 on the elimination of discrimination and proposals on supplementary regulations that forbid discrimination against foreign workers further demonstrate the ongoing efforts around the world to safeguard the rights of foreign workers. Apart from entitling foreign workers to national treatment, the ILO has also been passively

forbidding nations from engaging in any discriminatory acts against foreign workers.

In 1990, the General Assembly of the United Nations adopted the International Convention on the Protection of the Rights of All Migrant Workers and Their Families, which regulates the definition of foreign workers, restrictions on their entry into and departure from other countries and the rights they are entitled to (Office of UNCHR 1994). Definitions of working conditions for foreign workers, their wages, working hours, occupational safety and health benefits are covered by Article 25 and Article 43 (12) (b) and (c) and Article 45 (1) (b) of the convention, which clearly state that migrant workers shall enjoy treatment and wages not less favorable than what applies to nationals of the host country. In addition, migrant workers and their families shall enjoy access to vocational guidance, placement services, vocational training and retraining. Nafziger and Bartel (1991) argued that adoption of the convention by the United Nations will serve four objectives: 1) establishing a collection of universal regulations that apply to all foreign workers; 2) making up for inadequacies of existing regulations; 3) improving upon the situation of separation between foreign workers and their families; and 4) reducing the number of illegal migrant workers.

In Taiwan, the Executive Yuan, the executive branch of the Government, is the authority for fixing the minimum wage. The Council of Labor Affairs (CLA) is a cabinet-level unit under the Executive Yuan. The Minimum Wage Fixing Commission (MWFC) is an advisory body established within the CLA for deliberations on minimum wage and other related matters. The MWFC has a chair who is a director from the CLA. The number of members can vary from 17 to 23 persons. The members are from the government, employers associations and labour unions.¹²

Although Taiwan is not a member of the ILO, the government can not risk damaging Taiwan's international image. Besides, any violation of international covenants can also draw the attention of international human rights organisations. Not only that, Article 21 of the *Labor Standards Act* in Taiwan also states that 'A worker shall be paid such wages as determined through negotiations with the employer, provided, however, that such wages shall not fall below the minimum wage.' This means that all workers to whom the *Labor Standards Act* is applicable must not be paid wages lower than the minimum wage, regardless of nationality. It has also been established that contents of Article 21 of the *Labor Standards Act* may not be superseded or rendered inapplicable by other regulations.¹³

From the perspective of 'international regulation,' the government needs to follow the international trend of safeguarding foreign workers' rights. While foreign workers in Taiwan should be subject to Taiwanese laws and regulations, it is obvious that they should also be protected by the *Labor Standards Act 1984* (2009 modified). This Act has already established that labour contracts between foreign workers and employers should not be less favorable than the lowest standards defined by the *Labor Standards Act*. This means foreign workers should not receive wages lower than the legally required minimum wages. If the government truly wants to decouple foreign workers' wages from the minimum wage, the

only way to do it with sufficient legal ground is to abolish the *Labor Standards Act* altogether, which certainly seems impractical and unfeasible.

If the government adopts lower wage standards for foreign workers, labour exporting nations such as the Philippines and Thailand are quite likely to protest. The situation may escalate into an international controversy which may undermine Taiwan's efforts to further strengthen its ties with the international society. In a worst case scenario, any discrimination against foreign workers may lead to a situation where some countries may boycott or impose sanctions against exports from Taiwan. Such a situation would greatly damage Taiwan's economy and image in international circles. On the other hand, if the government collects special taxes (such as work privilege bidding tax) from foreign workers or launches an employment stability fund (directly deducted from wages) to lower the costs of hiring foreign workers for the society as a whole, the government would no doubt be criticised for imposing an alternative form of discrimination.¹⁴ Not only that, the fairness of such tax/fund collection and the government's utilisation of the revenue would be subject to much scrutiny, not to mention that businesses hiring foreign workers could exploit the situation by under-declaring relevant taxes to cut labour costs. These examples illustrate the fact that while these measures could potentially cut down the costs of foreign worker employment for the nation as a whole, they would not effectively lower the costs for hiring foreign workers for individual corporations, thus making these measures commercially and financially unfeasible.

In light of the fact that Taiwan is actively seeking to join relevant international organisations, any attempt by the government to adopt lower standards of protection for foreign workers would definitely draw criticism from the international society, given the gradual increase in attention being paid to improvement of working conditions of workers around the world. Not only that, the government would also face accusations of not doing enough to safeguard foreign workers' human rights. Without a precedent (i.e. an example of decoupling foreign workers' wages from the minimum wage in nations with minimum wage regulations) to follow, Taiwan might not be able to withstand international criticism for decoupling foreign workers' wage from the minimum wage.

International Political Analysis

Besides economic considerations, the Taiwanese government has used the importation of foreign workers as a diplomatic measure also. Importation of foreign workers from specific countries yields benefits in terms of enhanced economic collaboration with the labour-exporting nations. Workers from certain countries earning higher wages compared with what they are able to earn in their home states helps enhance the image of Taiwan and its products in labour-exporting nations and helps boost Taiwan's economic and political influence. In turn, labour exports help the exporting states boosting their foreign reserves and economic development. Foreign worker importation has become a part of Taiwan's foreign policy as the government hopes to consolidate Taiwan's status in international politics by this means.¹⁵

The General Assembly of the United Nations declared December 18 as International Migrants Day in 2000. This reflects the growing awareness and concern for foreign workers' rights around the world. During the very first celebration of the International Migrant Day, the General Assembly pointed out that although the trend of globalisation has accelerated the flow of workers migration around the world, it has also led to a number of social problems, such as criminal offenses committed by foreign workers, discrimination, and the spread of xenophobia and so forth. However, considering the contribution of foreign workers to the economies where they are employed, governments around the world should still offer appropriate protective measures for foreign workers (United Nations 2010).

Taiwan has been a member of APEC (Asia-Pacific Economic Cooperation) since 1991. The Credibility of the APEC project does not rely solely on economic success. The farther the negotiations go, the greater will be the need to include certain general standards and workers' rights. APEC members need to establish some basic rules to be followed by all members, including adoption of policies in line with guidelines issued by the International Labour Organisation (ILO). Policies such as Conventions 97 and 143, that provide for equal treatment of foreign workers *vis-à-vis* national workers, and ILO's emerging policies and strategies on foreign workers make it necessary for Taiwan to apply the minimum wage to foreign workers as well.

Generally speaking, labour importing nations have specific advantages over labour exporting nations and this leverage is another chip on the table for Taiwan in the arena of international politics. Taiwan has always restricted the number of foreign workers coming into the country and labour exporting nations do allow Taiwan more leeway in political and diplomatic issues in exchange for a higher quota for labour exports.¹⁶ However, this also means that the handling of foreign workers related issues has direct implications for Taiwan's diplomatic interests. This is something the government must consider before decoupling foreign workers' wages from the minimum wage.

Taiwan's compliance with ILO regulations is another matter that the government has to deliberate on, for the sake of international politics. According to the existing practice of foreign worker imports, all existing labour exporting nations have clearly defined standard contracts in order to safeguard the rights of their workers. Taiwanese businesses are required to enter into agreements with foreign workers based on the aforementioned contracts before the government approves applications for labour exports. In other words, once the wages of foreign workers are decoupled from the minimum wage, it is possible that labour exporting nations would be unwilling to revise the contents of the contracts and end up refusing to export labour to Taiwan or taking the matter to pertinent international bodies and the international society. Such consequences will only undermine Taiwan's diplomatic standing.

Trade and Commercial Analysis

From the perspective of international trade, since Taiwan is a member of the World Trade Organisation (WTO), all trade and commerce (including the labour market) regulations have to be compliant with requirements for the national treatment for foreign workers.¹⁷ In terms of working conditions, there should not be any discriminatory treatment for foreign workers. Decoupling of foreign workers' wages from the minimum wage would not only reflect the government's lack of regard for basic human rights but also a lack of respect for the spirit of national treatment. It is entirely possible that the decision would cause labour exporting nations and relevant members of international trade organisations to protest or impose trade boycott or sanctions.

Given the fact that none of the other nations (Japan, US, Canada, the UK, France and Korea and so forth) that have adopted minimum wage systems has set lower wage standards for foreign workers, if the government decouples foreign workers' wages from the minimum wage, it would be violating workers' human rights and, in turn, damage Taiwan's international image. Should other nations decide to impose trade sanctions or undertake retaliatory measures, it may lead to severe impacts on Taiwan's international trade. It should be apparent that the argument for decoupling foreign workers' wages from the minimum wage to cut labour costs and boost our products' competitiveness in the world would only backfire.

Social Analysis

From a social standpoint, the introduction of foreign workers has made labour relationships in Taiwan more sophisticated. What started out as a relatively simple employment relationship between employers and local workers has evolved into a complex, triangular relationship among employers, local workers and foreign workers. For example, employers might attempt to take away local workers' bargaining chips on the table by leveraging foreign workers' cheaper costs and higher degrees of cooperation. This could easily lead to friction and hostility between foreign workers and local workers as the latter would blame the former as the root cause of deteriorating working conditions and fewer employment opportunities.

Toh and Quinlan (2009) indicate that occupational health and safety are major concerns of immigrant and foreign born workers. They have identified a number of risk factors, including language/communication problems and inadequate training.¹⁸ Nonetheless, a number of recent studies have recognised that foreign born workers are concentrated in vulnerable or precarious jobs in hazardous industries (like construction, agriculture and manufacturing) with limited collective representation and inferior labour standards.¹⁹ Premji et al. (2010) have also found that immigrants and linguistic and visible minorities are over-represented in job categories with the greatest injury risks.

Foreign workers in Taiwan are mostly hired in low-paying jobs with long working hours and physically demanding specifications, besides unsafe and often unsanitary environments. Owing to the apparent discrepancies in lifestyles of foreign workers and the native population in Taiwan, foreign workers are often subject to maladjustments in terms of livelihood, entertainment, language, transportation, religion and so forth. In addition, the belief that hiring of foreign workers leads to fewer employment opportunities for local workers, increases the tendency for local workers to commit acts that violate the law or disrupt public order.

Many nations have often restricted foreign workers basic rights in the hope of achieving effective management. However, attempts to impose more restrictions often backfire with negative results. For example, when a country restricts the duration of the working period for foreign workers, it results in more foreign workers returning to their home countries; but limitations of foreign workers' cultural rights usually end up creating further social and public order issues. By the same logic, decoupling of foreign workers' wages from the minimum wage will lead to discrimination and unequal treatment (i.e. different wages for the same job) and it will further escalate friction between foreign workers, local workers and employers, even leading to class conflicts. This would not only defeat the very purpose of lowering labour costs but also impair overall foreign worker management.

From the perspective of equal and non-discriminatory treatment, elimination of discrepancies between basic rights of foreign workers and local workers should help reduce a number of social problems relating to foreign workers, thereby lowering the costs of managing the importation of foreign workers.²⁰ For these reasons, too, decoupling of foreign workers' wages from the minimum wage would be an inappropriate decision.

Decoupling of foreign workers' wages from the minimum wage would also lead to bias in the government's handling of foreign workers' problems and result in discrimination against foreign workers, thereby violating their basic human rights and resulting in negative impact on the society. In Taiwan, the greatest problem with foreign workers' basic rights is not the lack of legal protection but issues that go beyond legal protection, such as employer management, information acquisition and expression of opinion. Decoupling foreign workers' wages from the minimum wage would allow employers to further exploit foreign workers and violate their rights under the guise of cost considerations, resulting in greater damages to foreign workers' rights.

4. Conclusion

In response to the labour shortage brought about partly as a result of the 1980s economic boom, the Taiwanese government allowed hiring of foreign worker in 1989. Subsequently Taiwan's economic growth slowed down, and this was accompanied by an increase in the unemployment rate. The enterprises that employ foreign workers and commercial unions want foreign workers to be excluded from minimum wage in order to help decrease operating cost and increase investment.

Proponents of the decoupling of foreign workers' wages from the minimum wage argue that the move would lower labour costs and attract Taiwanese businesses that have relocated elsewhere to return to Taiwan. However, the argument we have proposed in this paper, which we have drawn from economic, legal, international political commercial and social perspectives, indicates that decoupling of foreign workers' wages from the minimum wage is not a wise course of action for Taiwan. None of the nations who have adopted minimum wage systems has excluded foreign workers from minimum wage protection. Analyses from different perspectives presented in this article also reveal that disadvantages of decoupling foreign workers' wages from the minimum wage far outweigh the advantages.

Despite the fact that Singapore has not implemented a nationwide minimum wage system, comparison of the Asian Four Tigers shows that foreign workers in Taiwan's manufacturing industries are receiving the lowest wages compared to the other three nations. It is important to remember that the government's original purpose of importing foreign workers was to address the shortage of labour in specific industries, rather than helping businesses lower labour costs. Given these considerations, we believe that policies that decouple foreign workers' wages from the minimum wage would not be suitable for Taiwan.

In addition, the current ratio of foreign workers to local workforce is still relatively low as the labour market is primarily based on local workers. Import of foreign workers is merely to make up for labour shortages in some industries, rather than to cut down labour costs. Actual statistical data reveal that the adjustment of the minimum wage has had insignificant impact in terms of the number of foreign workers hired, their productivity, labour costs and labour/health insurance fees. The hiring of foreign workers should not be a major factor of consideration when determining minimum wage increases in Taiwan.

Notes

1. Most foreign workers are limited to the '3K' industries, which stands for kitsui (demanding), kitanai (dirty), and kiken (dangerous).
2. Due to the demanding, dirty and dangerous working environment, 3K industries suffer from a labour power shortage, and employers must rely on hiring foreign workers to accommodate their needs. In July 2011, the Taiwan Council of Labor Affairs will promote its 'Manpower Shortage Employment Rewarded Project', which aims to encourage unemployed workers to work in 3K industries by giving them extra salary sponsored by the government. This project will release 5,000 vacancies, with each labourer able to earn NT\$56,000 salary per month the highest, in the duration of 1 year.
3. As a result of the 'supplement principle', foreign workers in Taiwan remain in secondary labour markets and cannot integrate into primary labour markets.
4. See for example *Economic Daily News* (2011), 'The commercial unions oppose to hike the minimum wage' January, available: http://pro.udnjob.com/mag2/pro/storypage.jsp?f_ART_ID=61907 [accessed 12 July 2011]. On the other hand, in May 2011, when an official minimal wage was introduced in Hong

- Kong, the comparative rates were Hong Kong USD \$3.60 per hour, Korea USD \$3.95 per hour and Taiwan USD \$3.40 (Pacific Bridge, Inc. 2011).
5. If employers follow the minimum wage standard, then foreign workers wages' decoupling from the minimum wage will have significant effect on labour cost. Chang (2009) compares and contrasts guest worker programs in Taiwan and the United States and analyses the positive aspects of each society's guest worker program that the other society can adopt. Chang pointed out that feminists, human rights activists, and church-based nongovernmental organisations (NGOs) in Taiwan have suggested revision of immigration policies to protect foreign workers' rights. The majority of Taiwanese employers follow the minimum wage policy for the following reasons: the number of labour unions in Taiwan, the high education level of labourers, the prevalence of active human rights organisations, fast dissemination of information by the media and the supervisory power of the public. According to 2009 Annual Reports of Labor Inspection, Council of Labor Affairs and Executive Yuan Taiwan, there were only 203 cases of minimum wage policy violation by Taiwanese employers; the violation rate is around 6.07 per cent. Available: <http://statdb.cla.gov.tw/html/trend/98/pdf/cla.pdf> [accessed 12 July 2011].
 6. The United States established a minimum wage system in 1938, France, Taiwan, Japan, Holland, Korea and Hong Kong followed suit in 1950, 1956, 1959, 1968, 1986 and 2010, respectively (Eurofound 2009; Wu and Wong 2008).
 7. Neumark and Wascher (2006) found that of the 86 international studies surveyed, the vast majority indicated that minimum wage increases had a negative effect on employment. Neumark and Wascher (2007) compiled results from a substantial number of empirical studies conducted in the 1990s, and these data also support the notion that upward adjustment of the minimum wage lowers the employment rate.
 8. Becker (1971) pointed out that discrimination against labourers by employers results in ineffective workforce utilisation; García-Mínguez and Sánchez-Losada (2003) demonstrated in their analysis that it is possible to boost economic growth by offsetting wage discrimination with transfer policy. Baldwin and Johnson (1992) showed that wage discrimination leads to lower employment.
 9. Piore (1979) gives three possible explanations for the demand for foreign workers in modern industrial societies: general labour shortages, the need to fill the bottom positions in the job hierarchy, and labour shortages in the secondary segment of a dual labour market.
 10. In truth, the argument for decoupling of foreign workers' wages from the minimum wage based on the assumption that it would lower labour costs is in fact inappropriate because the government's original intention of introducing foreign workers was driven by the need to resolve the issue of domestic labour shortage rather than lowering labour costs (in reality, no government would import foreign worker as a means to cut labour costs).
 11. In an ILO publication, Böhning (1996) offers an overview of ILO regulations pertaining to issues related to foreign workers and their rights.

12. MWFC includes the Export Processing Zone Administration, the All-Taiwan Federation of Trade Unions, the Taiwan Federation of Industry; and the Taiwan Chamber of Commerce. See :<http://www.legco.gov.hk/yr07-08/chinese/sec/library/0708rp04-c.pdf> [accessed 19 July 2011].
13. The Taiwan Legislative Yuan passed the preliminary review of a draft amendment on 21 April 2011 that stipulates higher penalties for violating the *Labor Standards Act*. Stiffer penalties are to be imposed on employers violating the minimal wage standard, principles of wage payment, overtime working hours and wage, working hours, paid vacation, days off and compensation for occupational accidents. The fine is proposed to be raised from NT\$6,000–NT\$60,000 to NT\$20,000–NT\$300,000. According to the draft amendment, names of companies and employers who violate the country's labour laws will be disclosed to the public (The China Post 2011).
14. Chen (2009) has pointed out that when the government collects an employment stability fee from imported foreign workers, irrespective of whether the externality exists, employers will pay more employment stability fees in the short term. However, in long term, labourers will pay more.
15. In 2004, the Taiwanese government opened the doors to the importation of workers from Outer Mongolia. Additionally, the government has attempted to introduce workers from Eastern Europe. It is important to realise that both decisions were made out of political and diplomatic considerations, rather than just economic considerations, or to resolve the issue of labour shortage (Kung 2009; Schucher 2008)
16. For example, in February, 2011, in protest against the Philippines government's deportation of 14 Taiwanese fraud suspects to China, the Taiwanese government decided to impose sanction against the Philippines, including strictly checking Philippine labour entry visas to Taiwan, and raising the screening period from the original 7 days to a maximum of four months. If there is still no positive feedback from the Philippines government, the Taiwanese government is threatening to freeze the hiring of Philippine workers. Foreign workers have once again become the victims of foreign affairs issues (RFI 2011).
17. According to GATT 1994 Article III on national treatment, the products of other countries must be treated the same way as products manufactured in the importing country. The principle of national treatment shall be applicable to products, services, trade and intellectual property (WTO 2011).
18. Dong and Platner (2004) reported that Hispanic construction workers — over 70 per cent of whom are foreign-born — have higher fatality rates than non-Hispanics in several specific occupations. Premji et al. (2008) found that language barriers prevented new immigrants from understanding important health and safety information and voicing work-related concerns.
19. Loh and Richardson (2004) similarly commented that poor proficiency in English language and low education levels may limit many immigrants' employment options.
20. The incident relating to foreign workers in Kaohsiung, exposed on 21 August 2005, is the perfect example of unfair and unequal treatment to foreign work-

ers and it has resulted in significant social costs and has damaged Taiwan's international image (Ching-Jen Labor Health and Safety Service Centre 2005; Migrant News Monitor 2004).

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