

# *Japan* Labor Review

Volume 7, Number 3, Summer 2010

## Special Edition

## Current Situation of Japan's Foreign Labor Policy

### Articles

The Current Issues on Foreign Workers in Japan

*Masahiko Yamada*

Labor Law and Policy Issues Relating to Foreign Workers in Japan

*Chizuko Hayakawa*

Concerning Revisions in the Foreign Trainee and Technical Intern System

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10% of Companies Recruited Foreign Students in the Past Three Years:  
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The Economic Crisis and Foreign Workers in Japan:  
Why Does Japan Treat Migrant Workers as Second Class Citizens?

*Kiyoto Tanno*

### Article Based on Research Report

School-to-Work Transition and Employment of Youth in Non-Metropolitan Areas

*Yukie Hori*

### JILPT Research Activities



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NEXT ISSUE (Autumn 2010)

The Autumn 2010 issue of the Review will be a special edition devoted to ***Kanrishoku (Managerial Positions) in Japan.***

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## Introduction

### Current Situation of Japan's Foreign Labor Policy

According to the 2005 Population Census, 1,555,505 foreigners were living in Japan, which comprises 1.2% of the total population. Within this 1.5 million, almost 0.8 million replied that they were actually working, and which also constitutes 1.3% of the entire working population. Nevertheless, the annual average number of those unemployed was just under 3 million in the same year (Labor Force Survey), almost double the number of immigrants. Over 2.5 million students were learning in undergraduate courses at universities (Basic Survey on Education). Compared with the number of the unemployed or students, foreign residence numbers in Japan were, in effect, too small.

We can also confirm the particular situation in Japan from an international comparison. The next table uses OECD Statistics for numbers on foreign residence and unemployment.

Besides Japan, countries with lower numbers for foreign residence compared to those unemployed include the Czech Republic, Finland, Hungary, Italy, Poland,

Country	Foreign Residence (ten thousand)	Average Unemployed (ten thousand)	Ratio
Australia	118.8	65.3	1.82
Austria	56.8	15.0	3.78
Belgium	73.8	36.2	2.04
Canada	135.9	119.3	1.14
Czech Republic	11.0	40.8	0.27
Denmark	20.8	14.3	1.46
Finland	7.3	25.5	0.29
France	281.5	237.7	1.18
Greece	63.5	49.8	1.27
Hungary	8.2	26.7	0.31
Ireland	19.3	8.8	2.19
Italy	108.7	246.8	0.44
Japan	114.2	323.0	0.35
Luxembourg	12.8	0.5	24.23
Netherlands	52.7	24.5	2.16
Norway	16.9	8.1	2.08
Poland	3.4	271.7	0.01
Portugal	19.9	23.5	0.85
Slovak Republic	7.7	44.3	0.17
Spain	133.7	248.9	0.54
Sweden	38.3	28.0	1.37
Switzerland	119.9	12.2	9.84
Turkey	15.5	187.3	0.08
United States	1642.4	659.2	2.49

Source: OECD Statistics. Average unemployed is the average of annual unemployed between 1998 and 2002.

Portugal, the Slovak Republic, Spain and Turkey. Most of these countries are recognized rather as sending countries not as receiving countries. The particularity of Japan in terms of immigration is, thus, in the low number of foreign residents even though Japanese economy is enough developed to receive migration. More detailed report on the situation of foreign workers in Japan will be overviewed in *The Current of Issues on Foreign Workers in Japan* by Masahiko Yamada.

This particularity is formalized in the legal regulation of immigration which is shown in the *Labor Law and Policy Issues Relating to Foreign Workers in Japan* by Chizuko Hayakawa. The Japanese policy of foreign labor is solely based on the status of residence system which originally gives a status to foreigners in Japan such as "spouse of Japanese." As the status of foreigners is not logically related with their labor market activity, the institution lacks a rational control over the labor supply of foreigners. In reality, the government interprets the status and controls the low-skilled migration through modifications of interpretation. The famous example is for Japanese-Brazilian. In 1990 the government changed the interpretation of status of "long-term resident" more broadly to include blood relatives of former emigrants from Japan. Since then foreigners who prove their Japanese blood can, to some extent, receive the status of "long-term resident." By using the changed interpretation many Japanese-Brazilians have begun to immigrate to Japan and now they constitute almost 13% of foreign residents.

The second measure of government is to create a status which closely corresponds to a specific occupation such as an actress, engineer and so on. However, because the Japanese labor markets have not prepared for the formal qualification of occupations, there is only an ambiguous evaluation as to who belongs to a certain occupation, and the government has been said to interpret the occupation very conservatively.

The remaining room for control lies only in student status. In 1993, the government created the "Technical Intern Program," adding it to the "Foreign Training Program" which is originally equivalent to the student visa. In other words, it is for private companies to receive foreign workers who are supposed to transfer technological knowledge abroad. For example, when one company opened a branch abroad in which they needed the know-how of the original company, the original Japanese company could accept the worker of overseas branch in Japan to train through the "Foreign Training Program." The amendment in 1993 extended the training process into on-the-job training for one (later, two) years, but these kinds of institutions easily turned to the supply of cheap labor. Details of the institution are shown in the article of the *Concerning Revisions in the Foreign Trainee and Technical Intern System* by Hiroaki Watanabe.

Foreign residence in Japan has gradually spread through the above exceptions of the status of residence system. Thus, foreign workers have been at most excep-

tional in both terms of legal status and quantity in the Japanese society. This is one of the reasons why Japanese research has not shed light on foreign workers for a long time. *Impacts of International Migration on the Labor Market in Japan* by Jiro Nakamura is, however, a valuable piece of economic research to evaluate the impact of foreign workers. He used many microdata from governmental statistics and showed that the increase of foreign workers did not always have a negative effect on the incumbent wage. In addition, he points out the usage of foreign workers may have caused the exodus of Japanese workers from the same area and as a result it may have been merely a temporal stimulus to maintain a low productivity sector.

Behind the economic results of foreign workers, there may be a serious informational asymmetry on foreign workers. *10% of Companies Recruited Foreign Students in the Past Three Years: JILPT Survey on Recruiting of Foreign Students* by Masato Gunji is a summary of surveys on employers and foreign employees. The most interesting results is that there is a large cognitive gap about the advantages of foreign workers between employers who actually hired foreign workers and those who did not. The nonexperienced employers tend to overestimate the disadvantage of foreign workers especially in terms of their ability, obedience and language skills. As above, the proportion of foreign residents is not so large. In addition, because foreign workers are likely to congregate in certain geographical locations, there is an even lower possibility for the average Japanese to deal with them in business situations. It may thus be quite natural that the nonexperienced employers keep their own prejudice.

*The Economic Crisis and Foreign Workers in Japan: Why Dose Japan Treat Migrant Workers as Second Class Citizens?* by Kiyoto Tanno has a different argument on the low numbers of foreign workers in Japan. His discussion starts from his own case studies to introduce the role of foreign workers in the production system. It is, according to him, a typical buffer not only from the view of quantity adjustments but also from the view of price adjustment. The more important point is, he continues, that the employers explicitly recognize that the foreign workers are useful because employers do not have the burden of providing social insurance to them.

These defects surrounding foreign residents are now explicitly recognized, especially after we experienced the job crisis of 2009. As in the articles of Yamada and Watanabe, details of institutions are now modified to stabilize the situation of foreign workers. However, as pointed out by Hayakawa's article, the status of residence system substantially lacks logic in regards to the labor market and it should be possible to introduce a kind of "Labor Certification Program" as in the U.S.A.

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# The Current Issues on Foreign Workers in Japan

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In the context of globalization, there has been an emphasis on obtaining highly-qualified foreign human resources in order to strengthen Japan's international competitiveness. At the same time, strings of dismissals, un-renewed contracts, and other issues impacting foreign workers, such as South Americans of Japanese descent who are increasingly settling in Japan have begun to draw public concerns on issues related to foreign workers in Japan. This paper gives a general overview of such themes as the employment situation of foreign workers in Japan, opinions of interest groups, public opinion, and government policy.

## I. Current Conditions of Labor Market in Japan

### 1. Japan's Demographic Composition: A Declining Birthrate and an Aging Population

The decline of the birthrate in Japan is rapidly leading to fewer children and an aging populace, and in 2005, the country entered into a phase in which the population was falling. According to *Population Projections for Japan*, a projection released in December 2006 by the National Institute of Population and Social Security Research, the decline of the birthrate and ageing of the population are expected to advance even further from this point, and are likely to progress into a full-fledged depopulating of society. Projections by the Japan Institute for Labour Policy and Training give the prediction that, if the worker participation ratio were to proceed at the same level as 2006, the 66.57 million people who were in the labor force at that time would dwindle to 55.84 million by the year 2030, an estimated decrease of 10.7 million people. It projected, however, that if the implementation of a variety of policy measures were to lead to groups such as young people, women, and the elderly participating in the labor market, the 2030 labor force would be an estimated 61.8 million people—or a decrease of 4.8 million compared to the year 2006—and the magnitude of the decline would be kept in check.

None of these projections changes the fact that the future will see a decline in the labor force population, and it is against such a backdrop that the pros and cons of accepting foreign workers into the labor market have become a major issue, one that is currently under debate in various sectors.

### 2. The Current Employment Situation

Owing to the influence of the Lehman crisis, the employment situation in Japan remains severe, with an overall unemployment rate of 4.9% in the first month of 2010. The number of unemployed workers in that month was at 3.23 million, and although employment levels have been maintained through the application of Japan's employment adjustment subsidy, as many as

1.73 million people are among the “hidden” unemployed.<sup>1</sup>

Although Japan’s recent employment situation has seen a slight pick-up after its worst period in July 2009 when the unemployment rate reached 5.6%, what can be said is that, judging from the conditions described above, the situation remains severe.

## **II. Basic Policy on Accepting Foreign Workers into the Labor Market**

Decisions on the extent to which Japan will accept foreign workers are made under the Immigration Control and Refugee Recognition Act, based on an integrated consideration of its “effects on Japanese industry and public welfare.”

The Employment Measures Act takes as its basic policy to “actively promote employing foreign nationals who are in specialized or technical fields in Japan.” The policy on accepting unskilled laborers is that, “since, in addition to the concern that it would create a dual structure in the labor market, there is a need to improve conditions of employment, etc., and thereby to promote matching and the securement of human resources, rather than only widening the scope of acceptance for foreign workers and responding accordingly without careful consideration, it is essential to first achieve participation in the labor force by Japanese young people, women, the elderly, and the disabled.” Further, as regards the future, the policy is that “in light of Europe’s history of acceptance [of foreign workers] and in particular how immigration problems have developed in accordance with [their] settlement, rather than debating this issue from the economic perspective alone as a simple issue of industry labor needs, we must continuously examine this issue comprehensively and from a broad perspective, while reaching a public consensus on the influence that this would have not only on the labor market but on health care, social security, education, and the community, as well as the social order, as a wide-ranging issue that affects all aspects of the lives of the people.”

## **III. The Current Status of Foreign Workers in Japan**

### **1. General Overview**

As of 2009, 100,309 foreign nationals were residing in Japan for the purpose of working in a specialized or technical field. Other foreign nationals residing in Japan included 253,361 people of Japanese descent, 96,897 part-time workers (with permission for activities outside the status of residence ), 112,251 people engaged in technical internship and other activities<sup>2</sup> and

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<sup>1</sup> From *About Employment Adjustment Subsidies, etc.: Decisions on Payments and the Acceptance Status of Notices to Implement Suspended Operations, etc.* (Published March 2, 2010, by the Ministry of Health, Labour and Welfare).

<sup>2</sup> *Notification of the Status of Employment of Foreign Workers*, the Ministry of Health, Labour and Welfare (at the end of October, 2009).



113,072 who were in the country illegally.<sup>3</sup>

## 2. Workers in Specialized or Technical Fields

Looking at a breakdown of workers in specialized or technical fields, 38,555 people hold a Specialist in Humanities/International Services visa, and 17,633 hold an Engineer visa.<sup>4</sup>

## 3. Foreign Nationals of Japanese Descent

The residence status of “Long-Term Resident” was newly established through a revision to the Immigration Act in 1989. Because these long-term residents are descendents of Japanese nationals, few limits are placed on their activities in Japan. Accordingly, after this status was created, many people came to Japan with the aim of working in the country’s manufacturing industry, where, at that time, understaffing was a substantial problem. The number of foreign nationals of Japanese descent residing in the country increased, and although in 1991 the foreign residents with a residence status of long-term resident numbered 54,359 people, by 2006, 268,836 people were residing in Japan as long-term residents. In 2007 and 2008, their numbers decreased (to 258,498 people in 2008), though this is thought to be as a result of the rather poor economic conditions in Japan during that period. In 1998, there were 5,853 Brazilian and Peruvian permanent residents, and 140,243 in 2008, with the number of permanent residents increasing by approximately 130,000 people during this ten-year period. While at first, Latin Americans of Japanese descent came to Japan with the purpose of working outside their homelands on a temporary basis, now they are residing in the country for longer periods of time.<sup>5</sup>

Looking at employment by industry, foreign nationals who are living in Japan with a residence status that is based in their standing as a person of Japanese descent are mainly employed by business enterprises that drive the manufacturing industry, with 109,371 foreign nationals of Japanese descent among their ranks.<sup>6</sup>

## 4. Technical Interns

The Technical Internship Program was established in April of 1993 as a new mechanism with the goal of transferring technology to developing countries. This is a program in which foreign-born trainees, who enter the country under the residence status of “Trainee,” receive training for a set period of time (usually 9-12 months), after which they are evaluated on the results of their training and other factors, and if they have progressed to a certain level and fulfilled other requirements, they continue to increase their skills and their technical proficiency, mainly

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<sup>3</sup> *Statistics on Foreign Residents*, Ministry of Justice (Published in 2009).

<sup>4</sup> *Notification of the Status of Employment of Foreign Workers*, the Ministry of Health, Labour and Welfare (at the end of October, 2009).

<sup>5</sup> *Statistics on Foreign Residents*, Ministry of Justice (Published in 2009).

<sup>6</sup> *Notification of the Status of Employment of Foreign Workers*, the Ministry of Health, Labour and Welfare (at the end of October, 2009).

through on-the-job training within a working relationship. The total duration of stay for trainees and technical interns is three years or less. From the program's establishment until the end of 2008, the number of people who moved on from industrial training to the technical internship totaled over 250,000. This number is increasing every year, and in 2008, the 8,521 of trainees who progressed amounted to a 15.8% increase over the previous year. By nationality, Chinese, Vietnamese, and Indonesian trainees made up a large number of those who went on to a technical internship. By type of work, many transferees worked in women's and children's clothing manufacturing, welding, and plastic molding.

The Immigration Control and Refugee Recognition Act was revised in July of 2009 in light of the Industrial Training and Technical Internship Programs, and the new residence status of "Technical Intern" was created. This revised Act is to come into force on July 1, 2010.

## 5. College and Pre-College Students

The number of foreign nationals who are college students<sup>7</sup> or pre-college students<sup>8</sup> staying in Japan is increasing every year. At the end of 1999, there were 64,646 college students, but at the end of 2008, they numbered 138,514. The number of pre-college students rose from 34,541 people at the end of 1999 to 41,313 by the end of 2008.<sup>9</sup>

As for these college and pre-college students' homelands, other Asian countries—particularly China, South Korea, and North Korea—account for the majority (Table 1).

By getting permission for activities outside of their status of residence, college and pre-college students, can work: up to 28 hours a week for college students, up to four hours a day for pre-college students, and up to 8 hours a day during long vacations such as summer break for both, although it is prohibited for either to work at establishments such as "host clubs" or "hostess clubs."

The number of college students and pre-college students who obtained permission for activities outside their status of residence in 2008 was 133,513, a 12.1% increase from the previous year.

According to *Notifications of the Status of Employment of Foreign Workers*, among foreign nationals with the residence status of college student and pre-college student who work with permission for activities outside their status of residence, 48.6% were working in the hotel or food service industries, 22.5% were working in retail or wholesale, and 5.1% were working in manufacturing.

A survey by the Ministry of Justice's Immigration Bureau reveals that in 2008, 11,040 foreign college and pre-college students received permission to change their status of residence for

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<sup>7</sup> "College Student" is the residence status for foreign nationals who study at Japanese universities, junior colleges, graduate schools, and in specialized courses of study at advanced vocational schools.

<sup>8</sup> "Pre-college Student" is the residence status for foreign nationals who study at Japanese high schools and in general or advanced courses of study at advanced vocational schools.

<sup>9</sup> *Statistics on Registered Foreign Nationals*, Immigration Bureau of Japan, Ministry of Justice.

Table 1. Changes in Foreign College Students and Pre-College Students' Countries of Origin

Residence status	2004	2005	2006	2007	2008	Distribution rate (%)	Increase over the previous year (%)
<b>College Students</b>	129,873	129,568	131,789	132,460	138,514	100.0	4.6
China	90,746	89,374	88,074	85,905	88,812	64.1	3.4
South, and North Korea	16,444	16,309	17,097	17,902	19,441	14.0	8.6
Vietnam	1,761	2,165	2,472	2,930	3,202	2.3	9.3
Thailand	1,950	1,902	2,203	2,361	2,502	1.8	6.0
Malaysia	2,092	2,031	2,211	2,234	2,377	1.7	6.4
Other	16,880	17,787	19,732	21,128	22,180	16.0	5.0
<b>Pre-College Students</b>	43,208	28,147	36,721	38,130	41,313	100.0	8.3
China	29,430	15,915	21,681	22,094	25,043	60.6	13.3
South, and North Korea	7,286	6,397	8,254	9,742	10,286	24.9	5.6
Thailand	597	451	612	687	769	1.9	11.9
Vietnam	802	924	1,005	803	701	1.7	-12.7
Nepal	572	580	642	575	643	1.6	11.8
Other	4,521	3,880	4,527	4,229	3,871	9.4	-8.5

Source: Ministry of Justice, *Statistics on Foreign Residents 2009*.

the purpose of employment, and of these, Chinese (69.3%) and South Korean (12.3%) nationals accounted for almost 80% of the total changes. By status of residence, the greatest number of people received permission to change their status to Specialist in Humanities/International Services at 7,863 people (71.2%), showing an increase of 559 people (7.7%) from 2007 and an increase of 4,446 people (130.1%) from 2004. An increase has thus been observed in the number of foreign college and pre-college students who are utilizing specialized knowledge in the humanities or sensibilities particular to foreign nationals in their job duties. Additionally, 2,414 foreign students (21.9%) received permission to change their status of residence to Engineer in 2008, and together with Specialist in Humanities/International Services, these two statuses of residence account for 93.1% of the total changes from the status of College Student and Pre-college Student.

## 6. Industries with Foreign Workers

From October of 2007, the Ministry of Health, Labour and Welfare, based on the Employment Countermeasures Act, made it obligatory for all employers to notify a public employment security office when a foreign worker (excluding Special Permanent Residents and persons with the status of Diplomat or Official) became employed with them or left his/her position.

As of the last day of October 2009, a total of 562,818 foreign workers were working in 95,294 places of employment (Table 2). By nationality, Chinese nationals (including people from

Table 2. The Number of Foreign Workers by Nationality and by Industry

As of the end of October, 2009		Unit: Number of people (Distribution rate %)						
	All industries	Manufacturing	Information/ Communications	Retail/ Wholesale	Hotel/ Food Service	Education/ Tutoring	Service industry (not otherwise classified)	
Total	562,818	218,900 (38.9)	22,077 (3.9)	54,923 (9.8)	63,755 (11.3)	42,001 (7.5)	74,080 (13.2)	
China (including Hong Kong, etc.)	249,325	95,604 (38.3)	12,253 (4.9)	34,766 (13.9)	45,474 (18.2)	9,837 (3.9)	16,730 (6.7)	
South Korea	25,468	2,244 (8.8)	3,952 (15.5)	4,205 (16.5)	5,062 (19.9)	3,254 (12.8)	2,332 (9.2)	
The Philippines	48,859	23,183 (47.4)	505 (1.0)	4,229 (8.7)	1,943 (4.0)	646 (1.3)	9,026 (18.5)	
Brazil	104,323	56,450 (54.1)	580 (0.6)	2,538 (2.4)	733 (0.7)	573 (0.5)	31,496 (30.2)	
Peru	18,548	9,731 (52.5)	180 (1.0)	641 (3.5)	323 (1.7)	112 (0.6)	5,225 (28.2)	
G-8 countries, Australia, and New Zealand	43,714	2,004 (4.6)	1,783 (4.1)	2,296 (5.3)	801 (1.8)	21,600 (49.4)	2,743 (6.3)	
US	18,477	667 (3.6)	750 (4.1)	588 (3.2)	162 (0.9)	9,693 (52.5)	1,133 (6.1)	
UK	7,307	242 (3.3)	242 (3.3)	298 (4.1)	98 (1.3)	3,831 (52.4)	375 (5.1)	
Other	72,581	29,684 (40.9)	2,824 (3.9)	6,248 (8.6)	9,419 (13.0)	5,979 (8.2)	6,528 (9.0)	

Notes: 1. Industry classifications reflect the November, 2007 revision to the Japan Standard Industrial Classification.

2. The distribution rate is the percentage of foreign laborers in the relevant industry compared to the total number of foreign laborers of the same nationality (in all industries).

Hong Kong, etc.) were the most numerous at 249,325 people, making up 44.3% of the total number of foreign workers. They were followed by nationals of Brazil at 104,323 people (18.5%), and the Philippines, at 48,859 people (8.7%).

Among these establishments, 16,300 or 17.1% employed foreign workers on a temporary or contract basis, and the 162,525 foreign nationals working for them accounted for 28.9% of all foreign workers.

By industry (Figure 1), manufacturing had the highest number of both foreign workers and businesses employing foreign workers, accounting for 218,900 people (38.9%) and 31,466 establishments (33.0%). Next was the service industry (not otherwise classified) at 13.2%, the hotel and food service industries (11.3%), retail and wholesale (9.8%), and education and tutoring (7.5%). Additionally, among employers in the manufacturing industry, 5,270 establishments (16.7%) were employing 58,621 foreign workers (26.8%) on a temporary or contract basis.

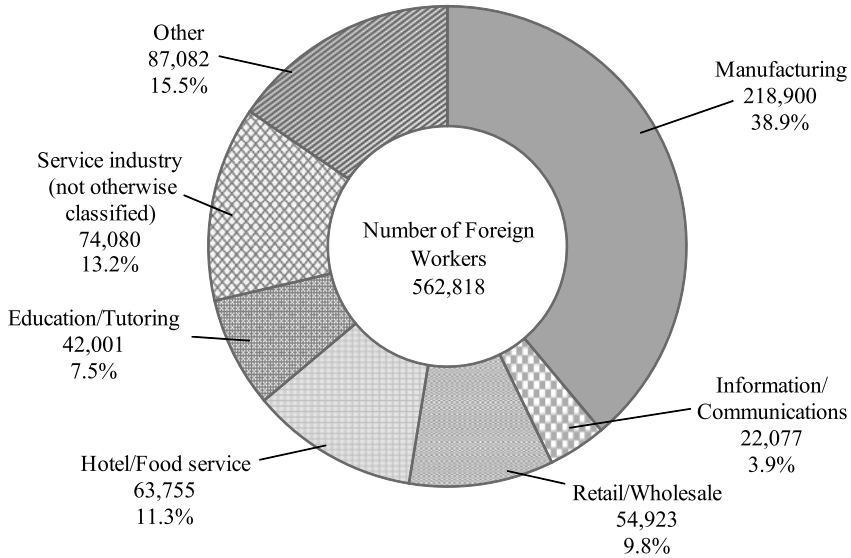


Figure 1. The Number of Foreign Workers by Industry

## 7. Illegal Overstayers

As of January, 2010, 91,778 people were illegally overstaying their visas (Ministry of Justice estimate), and many of them are thought to be working illegally (Figure 2). Compared to May 1, 1993, when the number was at its highest ever with 298,646 people, this figure represents a decrease of 206,868 people (69.3%), and the number of overstayers continues to decrease every year.

By gender, at 46,324 men (50.5% distribution rate), and 45,454 women (49.5% distribution rate), 870 more men than women had overstayed their visas. Compared with the most recent investigation, these numbers represent a 12,087-person decrease for men (20.7%), and an 9,207-person decrease for women (16.8%).

By nationality or country of origin, South Korea had the most overstayers with 21,660 people, making up 23.6% of the total. Following South Korea were China, the Philippines, Taiwan and Thailand, although compared to January 1, 1993, the numbers of overstayers from all countries had decreased.

Additionally, in 2008, judging from the breakdown of deportation procedures that were put in motion for approximately 32,000 illegal workers, there were many immigrants from other Asian countries such as China, South Korea, and the Philippines; many of the men had been working as construction workers and builders, and many of the women had been working as “hostesses” in “hostess clubs.”

As a measure to counter recently growing security concerns, the *Action Plan for the Realization of a Society Resistant to Crime* (December, 2003) set the goal of halving the number of illegal residents in the country within the next five years. This continued into the final year of the

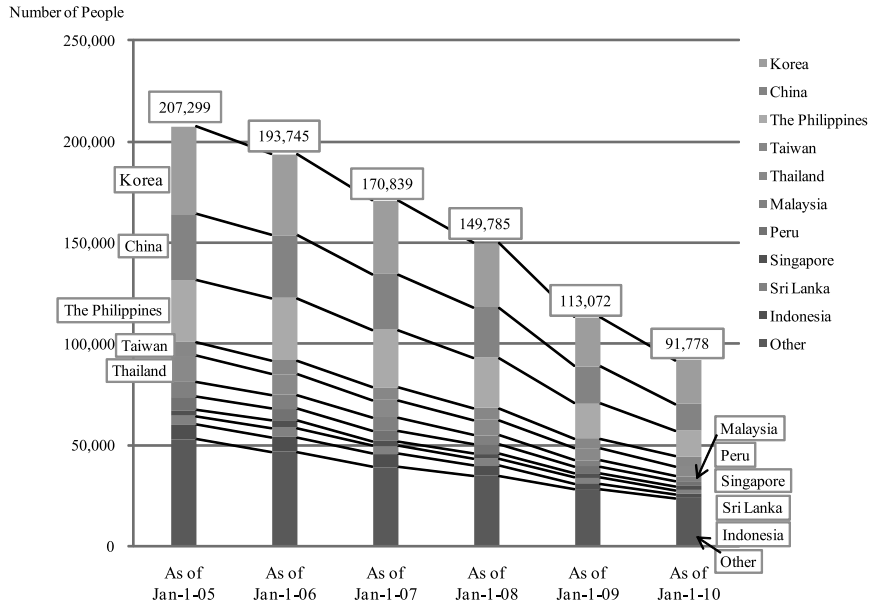


Figure 2. Changes in the Number of Illegal Overstayers

government target in 2008, and as a result of the comprehensive measures on illegal residents that had been developed toward this goal, their numbers were reduced by 106,346 people in five years, representing a 48.5% reduction from the January 1, 2004 level.

#### IV. Policies on Foreign Workers

##### 1. Employment Policy

The current employment policy on foreign workers being carried out by the Ministry of Health, Labour and Welfare can be divided into four general parts, namely: (i) assessment of the employment situation of foreign workers, (ii) appropriate response to foreign job applicants, (iii) raising awareness on and provision of employment management assistance, etc. for employers, and (iv) promotion of appropriate employment.

Assessment of the employment situation of foreign workers is being carried out through the previously mentioned *Notification of the Status of Employment of Foreign Workers*. Appropriate response to foreign job applicants is being achieved by putting in place service corners for foreign nationals in 126 public employment security offices in regions with many foreign nationals and enhancing the service provided to foreign job applicants by making interpreters available. Particularly, foreign nationals of Japanese descent working at temporary and contract jobs with unstable employment faced unemployment in high numbers around the time of the Leman crisis. These foreign job seekers faced difficulty to find work again because they have not yet mastered the language, not used to employment practices in Japan and with insufficient job

experience, and because of this, a variety of new measures are being taken by the Ministry of Health, Labour and Welfare to support them.<sup>10</sup>

Raising awareness on and provision of employment management assistance for employers is being carried out through the *Guidelines to Assist Employers with Appropriate Handling Related to Improvements in Employment Management of Foreign Workers*, formulated based on Article 9 of the Employment Countermeasures Act, and the guidance is provided to each industry through lectures held in June during “Month for Issues on employment of foreign workers” and through advisors on employment of foreign workers. Promotion of appropriate employment is being addressed through meetings by the Liaison Councils of the relevant Ministries and Agencies.

## 2. Social Security Policy

There is an international demand for equal application of social security for people of all nationalities. Accordingly, even if a person is a foreign worker in Japan, in principle, all employees are to enroll in health insurance and employee pension plans, and entrepreneurs are to enroll in National Health Insurance and the National Pension Plan. Those who fulfill certain qualifications can receive pension benefits even after returning to their countries.

Disability and survivors’ benefits must be paid under the pension system, and it is not appropriate to exclude from this those foreign nationals whose period of residence in Japan is a short one. Additionally, when foreign nationals who were insured for a half of a year or more return to their countries, they are provided with a lump-sum payment when withdrawing from the pension plan. This withdrawal payment is in the amount of one half of the insurance payments made in, but in this exceptional system, three years’ worth of payments has been established as the upper limit. Further, to prevent redundancy in the pension systems of different countries, Japan has concluded social security agreements which involve co-ordination of pension rights and under which the period of enrollment in the pension plan of a country counterparty to the agreement qualifies as participation in the pension plan of one’s own country during the same period. Such agreements have been concluded with Germany, the United Kingdom, the United States, South Korea, France, Belgium, Canada, Australia, Netherlands, and the Czech Republic.

It is not thought to be necessary for foreign nationals to be subject to the new and independent medical insurance system, and efforts are being made to familiarize them with the current system.

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<sup>10</sup> (i) Detailed advice and support in the native languages of foreign nationals of Japanese descent, by increasing the number of translators and advisors who are available at “Hello Work,” national employment security offices in areas where many of them live, (ii) Establishment of preparation courses for those who wish to find new jobs in Japan which include improving their Japanese communication skills (attended by approximately 6,300 people in fiscal year 2009), (iii) Implementation of repatriation-cost support for those who wish to return to their countries of origin (accepted by approximately 22,000 people in fiscal year 2009).

### 3. Education Policy

Although it is not mandatory for foreign nationals to attend school under Japan's system of compulsory education, children whose parents wish them to receive a formal education in the country are accommodated within the country's public schools for compulsory education. In this, so that non-Japanese children whose parents wish them to attend such schools do not miss out on this opportunity, local boards of education provide the guardians of school-aged children with information on school attendance, and after their children have begun to attend public elementary schools or junior high schools, such matters as free attendance and free textbooks are handled the same for their children as they are for Japanese children.

## V. Domestic Debate on the Foreign Labor Issue

In recent years, the issue of foreign workers has been a topic of debate in many of the country's forums and organizations. Here we will introduce the major points of the ongoing dialogue.

### 1. The Council of Cities with High Concentrations of Foreign Residents

The influx of foreign nationals of Japanese descent into the country has been increasing since 1990, and although the numbers of those with permanent residence have dramatically increased in recent years, at the same time, various issues in areas such as education have arisen in the cities where many of them are living.

In response, 13 cities in which many foreign nationals of Japanese descent are living have established The Council of Cities with High Concentrations of Foreign Residents, which compile proposals on dealing with these issues. In 2001 the proposal-cum-declaration (the *Hamamatsu Sengen*) was issued by the Council, with proposals in several arenas. In education, the proposal called for enrichment of the leadership, in Japanese language and other areas, that was in place in public elementary and junior high schools, and of support systems for school attendance. In relation to Social Security, the call was for a review of the medical insurance system (through the conclusion of agreements on aggregating pensions and the establishment of a medical insurance system geared to foreign nationals), improvement in working conditions for foreign nationals (by promoting employers enrollment of their foreign employees in social insurance, by clarifying corporate liabilities, and, as a future theme, by introducing a licensing system for independent contractors), and others (such as improvements in the medical translations and information on treatments and medications being provided). The declaration further made other proposals in the area of procedures related to alien registration, the call for a review of the registration system among them.

Following Hamamatsu's declaration, almost every year sees new proposals, and recently in 2009, urgent proposals that integrated such issues as the creation of an Agency for Non-Japanese Residents, improvements in Japanese language education, and making school attendance mandatory for children, were adopted, and proposals were submitted to the govern-



ment's majority coalition.

## 2. Nippon Keidanren's *Recommendations on Accepting Foreigners* (April, 2004)

Nippon Keidanren (the Japan Business Federation), a representative group of Japan's employers, proposes "policies that, rather than continuing to accept foreign nationals in order to 'compensate' for the overall decline in the population, accept them with a view toward increasing the 'value-added creative strength' of each citizen, as comprehensive policies on acceptance of foreign nationals for the purpose of applying their strengths to that process." The recommendations touch on specific areas such as "facilitating acceptance in specialized and technical fields," "promoting improvement in the quality of international students and the job search within Japan," and "acceptance into fields in which there is expected to be a future labor shortage."

Additionally, to implement coherent policies that are integrated among national and local public entities, Nippon Keidanren has proposed the appointment of a Minister of State for Special Missions, a Basic Act on the Acceptance of Foreign Workers, an Agency for Foreign Residents, and a Foreign Workers Employment Act.

In the *Toward Fostering and Ensuring Human Resources with Competitive Strength*, published April 14, 2009, to the above-mentioned proposal were added proposals for "the creation of an appealing country in which foreign nationals will want to settle," "maintenance of a stance on acceptance that actually makes it possible for foreign nationals to settle in Japan," and the establishment of "clarified requirements for settling in the country and the stable functioning thereof."

## 3. *JTUC-RENGO's View on the Issue of Foreign Workers* (September, 2004)

The Japanese Trade Union Confederation (JTUC-RENGO), a representative group of Japan's trade unions, published *JTUC-RENGO's View on the Issue of Foreign Workers* in September of 2004. In this, JTUC-RENGO put forth the following basic views, in a proposal on points such as the immigration system, on-the-job training programs, and reining in illegal employment. "In order to promote lawful employment, in addition to actively accepting foreign workers who possess specialized knowledge or skills, the establishment of a new status of residence should come with the precondition of establishing an environment for domestic workers' employment in which people can work regardless of their age or gender." "In the case that foreign nationals are employed as workers, the 'same work, same pay' principle under which at least the same amount of compensation is paid as that which a Japanese national would receive for being engaged in the same work should apply regardless of nationality or job qualifications, and from the standpoint of a human rights issue, there cannot be any discrimination in this." "From the standpoint of the negative influence that accepting unskilled labor causes on the domestic employment situation and working conditions, this acceptance should not be carried out arbitrarily, but rather within the possible scope and without loosening the statuses of residence under the present immigration system."

In *JTUC-RENGO's Priority Policies for FY2011* (draft), released March 4, 2010, regarding the acceptance of foreign nationals based on economic partnership agreements between two

countries, JTUC-RENGO indicated that “[Japan should be careful that] these partnerships do not lead to overly easy acceptance of foreign workers. At the same time, in addition to aiming for the substantial application of employment laws to foreign workers, [the country should] intensify its exposure of the middlemen and employers who are in breach of the law.”

#### 4. *The Basic Plan for Immigration Control (Fourth Edition)*, March 2010

The Minister of Justice prescribes a policy on immigration control once every five years, and in the newest plan that was formulated in March of 2010, stated that in the midst of the approaching era of full-scale depopulation, with a view to Japanese society maintaining its vitality, from the standpoint of sustained progress, and also in terms of drawing on Asia’s vitality, what is being called for is a more active expansion of the acceptance of those foreign nationals that Japanese society requires. Additionally, the plan suggests that efforts should be made to strongly attract foreign nationals in the form of high-level human resources, international students, and others to vitalize Japan widely from overseas including other Asian countries, keeping firmly in mind the influence that accepting them has on Japan’s industry, the lives of its people, and the public order.

Concretely the plan gives mention to consideration of the following topics: (i) introduction of a point-based priority system for high-level human resources, (ii) promotion for accepting foreign nationals in specialized and technical fields according to economic and social changes, (iii) review of entry permission related to the limitations on the standard number of working years for people who hold nationally-recognized professional qualifications in Japan such as dentists and nurses. In the caretaker field, the plan pushes for a study into the pros and cons of accepting foreign nationals who have graduated from Japanese universities and obtained set nationally-recognized professional qualifications such as that of certified care worker, in light of the fact that this is a field where the government aims at creating jobs intensively for domestic human resources.

Currently, regarding foreign nationals of Japanese descent, different cultural backgrounds, customs, and values, and lack of Japanese language skills have produced friction and discord within local communities, and since the latter half of 2008 in particular, against the backdrop of a rapidly worsening economic climate, many problems—such as employment, housing, childhood education—have become more urgent, and it has been decided that starting from now consideration should be given to a review of immigration and residence requirements.

#### 5. *The New Growth Strategy(Basic Policies)*, (December 30, 2009 Cabinet Decision)

In *The New Growth Strategy (Basic Policies)* compiled by the new administration, “(6) Employment/Human Resources Strategy” addresses the issue Japan is facing as, “there is a concern that the decline in the population of the labor force due to the low birthrate and an aging population will weaken the potential output of Japan’s growth engine. In this, progress of the *Countermeasures for the Falling Birthrate*, which aims for a birthrate recovery, is indispensable; however, it will take at least 20 years for these measures to lead to an increase in the labor force’s

population. Accordingly, what Japan must focus on right now is encouraging participation in the labor market by people who possess the latent ability, such as youths, women, and the elderly, and promoting an employment/human resources strategy under which human resources are fostered, through occupational skills development by society as a whole and through other means.”

In “(3) Asian Economic Strategy,” “expansion of acceptance of international students and upgrading of domestic systems under which researchers and other human resources from overseas can work comfortably in occupational categories that necessitate specialization” is mentioned. The active support for international students and for work in specialized fields done by high-level human resources from abroad that is already in place will continue to be actively promoted following the same pattern.

## **VI. Economic Partnership Agreements**

With the objective of strengthening Japan’s partnerships in economic activities and based on its economic partnership agreements with the Philippines and Indonesia, Japan has been accepting foreign nationals from these countries as candidates to become nurses and care workers. This acceptance is not in response to a deficiency in the labor force in the nursing and health care field, but instead is based on the agreement Japan has with each of these two countries, and is being carried out as an exception within the official framework. In order to prevent any negative influence on the labor market, quotas have been established for the maximum number of people to be accepted, as have requirements such as equal compensation.

## **VII. The Vision for the Future**

Japan has entered into a phase of population decline, and there is a fear that the labor force population will decline from this point.

According to the 2006 long-range population projections, Japan’s population is expected to decrease from now on, and the country is projected to have a population of 95.15 million people in 2050.<sup>11</sup> Accordingly, under this decrease in the population, the question will become the way in which Japan should view the issues related to foreign workers in the medium to long term.

If the population decline is to be covered solely through acceptance of foreign nationals, it will be necessary to take in one million individuals annually, which would have a major influence on the very essence of the country. Accordingly, although a consensus will need to be reached with the people in regard to this issue, as a general feeling, there is a fair amount of negativity in the people’s perspective on the acceptance of foreign workers. If policy efforts are

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<sup>11</sup> From projections on average mortality in *Population Projections for Japan* (December 2006 projection), by National Institute of Population and Social Security Research.

neglected from the start, the domestic labor force population can be expected to decline. However, if it becomes easier for those such as young people, the elderly, and women to participate more in the labor market, there will not be any drastic declines for as long as the next ten years. Other propositions are employment support for foreign nationals who are currently residing in the country legally, such as foreign nationals of Japanese descent and other permanent residents, and encouraging international students, who are the seeds of high-level foreign human resources, to find employment domestically. If the government fails even in these measures, the acceptance of a substantial number of unskilled laborers is no alternative.

The current economic crisis has had a greater influence on foreign nationals employed in Japan than it has on Japanese people, but on the other hand, it has had the result of causing the country reach a deep realization of the social and economic costs that come with accepting foreign workers, and the necessity of the roles that the country's administration (central and local governments), its industry, and its people must fulfill. The issue of accepting foreign workers is an essential theme of the body politic, and one that must be debated and considered comprehensively and prudently, not only from the standpoint of labor policy, but also from perspectives such as social security, education, the social order, industrial competitiveness, and regional measures. With issues that require a popular consensus such as these, we should not draw any rushed conclusions. From this point what will be necessary is to give these issues our thorough consideration.

# Labor Law and Policy Issues Relating to Foreign Workers in Japan\*

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This article analyzes law and policy relating to foreign workers in Japan. Immigration has been widely debated in Japan against a background of falling birthrates and an aging society, as well as globalization, while the issue of unemployment—including the unemployment of foreign workers—has become more pressing. This article attempts to interpret these policy issues, initially outlining the perspectives from which labor law and policy issues relating to foreign workers are examined (the two principles of selection and integration), and then considers legal issues relating to immigration law and labor and employment law, in the light of pointers provided by U.S. law. In regard to immigration law, which is the means of implementing the principle of selection, the article proposes that a Japanese version of the labor certification program, with full consideration given to the labor market, should be introduced. Furthermore, in regard to labor and employment law, which is the means of implementing the principle of integration, the article proposes clarification of the analysis framework of regulations prohibiting discrimination on grounds of nationality contained in Article 3 of the Labor Standards Act, and their application to employment discrimination, and the specific coordination of both principles in regard to the legal treatment of undocumented workers.

## I. Introduction

This article considers labor law and policy issues relating to foreign workers in Japan. The number of foreign nationals living in Japan was 2.22 million at the end of 2008, the highest it has been throughout history.<sup>1</sup> In addition, there are approximately 110,000 foreign nationals currently living in Japan in contravention of the Immigration Control and Refugee Recognition Act (hereinafter referred to as the Immigration Control Act),<sup>2</sup> the majority of who are thought to be working illegally.<sup>3</sup> Given these facts, it is estimated that

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<sup>1</sup> There were 2,217,426 foreign nationals registered in Japan at the end of 2008, equivalent to 1.74% of the total population (Japan Immigration Association 2009, 3).

<sup>2</sup> 91,778 foreigners who have remained illegally in the country as of January 1, 2010, added to the estimated number of illegal entrants, gives an estimated figure of between 104,000 and 113,000 people (not including foreigners engaging in activities outside the scope permitted by their status of residence). (Immigration Bureau, Ministry of Justice, <http://www.moj.go.jp/PRESS/100309-3.html> (accessed March 9, 2010)).

<sup>3</sup> Of the 32,661 people subject to forced deportation during 2009, 26,545 or 81.3% of the total were undocumented workers. Ministry of Justice Immigration Bureau, <http://www.moj.go.jp/PRESS/100309-1.html> (accessed March 9, 2010).

approximately 900,000 foreign nationals are now working in Japan.<sup>4</sup>

The challenge of ensuring a labor force sufficient to meet Japan's nursing and welfare needs, as the country experiences a declining birthrate and aging society, as well as maintain the productivity of its manufacturing output despite a declining population, is a contemporary policy issue. While on some levels the utilization of young people, women and the elderly in Japan, who have conventionally not been able to access sufficient employment opportunities, is being proposed as a solution to this problem, the idea of allowing foreign workers to immigrate to work in areas hitherto closed to them is also being considered.<sup>5</sup> Furthermore, given the developments in globalization within both economy and society, there is a current policy issue regarding not only the training of Japanese human resources but also the proactive immigration of a diverse range of highly qualified foreign nationals in order to maintain and strengthen Japan's international competitiveness.

From a medium to long-term perspective, while the creation of policy that ensures Japan will be properly resourced, both by Japanese and foreign nationals, is an increasingly important issue, there is also an urgent need to consider how to rein in the increase in unemployment of both Japanese and foreign laborers, which has resulted from the worsening employment situation caused by the economic downturn following the global recession.

This article attempts to interpret these policy issues, initially outlining the perspectives from which labor law and policy issues relating to foreign workers are examined, and then considers legal issues relating to the Immigration Control Act and labor and employment law, in the light of pointers provided by U.S. law, before giving forecasts in relation to each of these issues.

## **II. The Perspectives from Which Labor Law and Policy Issues Relating to Foreign Workers Are Examined**

Before entering into the main considerations of the article, I wish to clarify the perspectives from which labor law and policy issues relating to foreign workers are examined (see Figure 1).<sup>6</sup>

### **1. Selection and Integration**

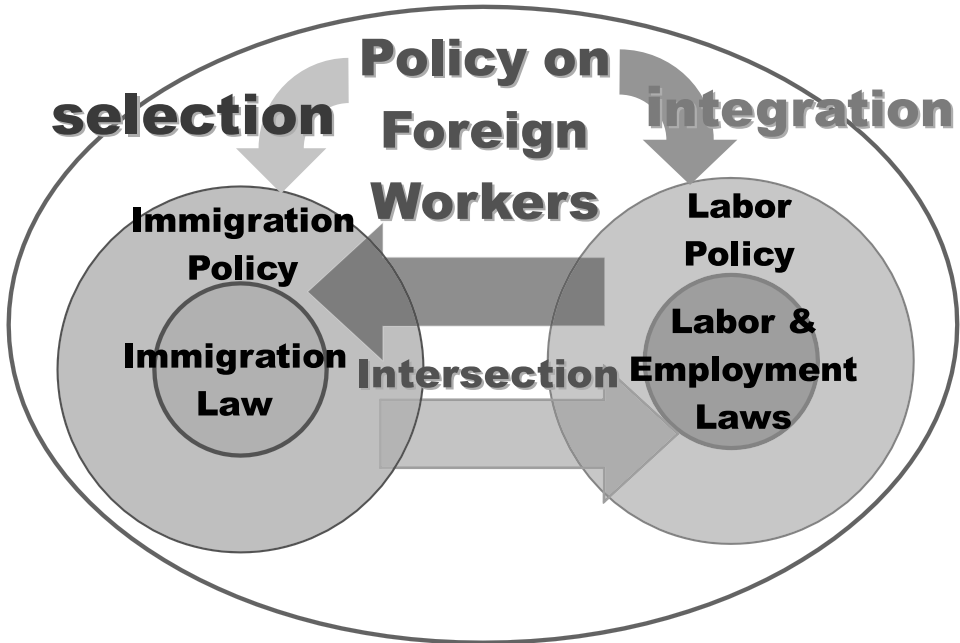
The first perspective is that of the principles of selection and integration, considered to be the basic principles of policy regarding foreign nationals. International legal convention

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<sup>4</sup> The number of documented workers was estimated at around 755,000 in 2006 (Ministry of Health, Labour and Welfare [2008, 34, 284]).

<sup>5</sup> As part of the recent debate on the issue of immigration, Nippon Keidanren suggests in its paper "An Economy and Society That Responds to the Challenges of a Declining Population" (October 14, 2008), available at <http://www.keidanren.or.jp/english/policy/2008/073.html> (accessed May 12, 2010), that highly qualified human resources should be allowed to immigrate within certain parameters.

<sup>6</sup> The following basic perspectives are according to Hayakawa (2008b).



Source: Created by the author.

Figure 1. Perspectives from Which to Consider Legal Policy Relating to Foreign Workers

dictates that immigration to a country is not free for non-nationals, but rather that a country has the right to exercise its own discretion over whether or not to allow each foreign national to enter.<sup>7</sup> This is the principle of selection, and the criteria for selection are defined by each country in their immigration laws (in Japan’s case, the Immigration Control Act).

At the same time, policy regarding foreign nationals adopts, concurrent to the principle of selection, the principle of integration for foreign nationals who are admitted to a country according to the applicable laws. Integration in relation to foreign nationals who have entered and are residing in a country according to applicable laws means attributing to them the same basic status as nationals of the country in question, and not engaging in inappropriate discrimination towards them. This principle of integration is often reflected in international conventions in relation to national treatment,<sup>8</sup> etc., and is significant in establishing the rights of foreign nationals. Constitutions and laws in different countries have sought to regulate this in practical ways, and labor and employment laws are the means by

<sup>7</sup> Ashibe (2007, 92-93). Common lore and judicial precedent regarding the residence of foreign nationals also provide that the right to remain in a country is not constitutionally protected (McLean case, Supreme Court judgment, Oct. 4, 1978, *Minshu* 32-7-1223).

<sup>8</sup> The Universal Declaration of Human Rights (1948), the International Covenant on Economic, Social and Cultural Rights (1966), etc.

which integration is functionally realized in the aspects of labor dealt with in this article.

## 2. The Combination of Immigration Policy and Labor Policy

As stated above, in terms of the aspects of policy relating to foreign nationals and labor (foreign labor policy), immigration law is the means of realizing the principle of selection, while labor and employment law is the means of realizing the principle of integration. The second perspective, then, is that immigration policy and labor policy based on these laws mingle with each other in realizing these principles. We can consider this through the approach to the Immigration Control Act from a labor policy standpoint, and also through the approach to labor and employment law from an immigration policy standpoint.

## 3. Balance and Coordination between Selection and Integration

The third perspective is that of achieving a balance and harmonization between the two principles at the point at which immigration policy and labor policy, which realize both selection and integration, collide.

Based on such perspective above, I will examine the state of Japanese law, with regard to immigration law and labor and employment law, and provide suggestions from U.S. law.

# **III. Foreign Workers and the Immigration Control Act—Realizing the Principle of Selection**

## 1. The State of Japanese Law

### (1) The Status of Residence System

Let us take a brief look at the way Japan's Immigration Control Act treats foreign workers.

According to the Immigration Control Act, the basic concept relating to the immigration and residence of a foreign national is the "Status of Residence" (see Table 1). As defined by the Immigration Control Act, foreign nationals are, in principle, permitted to enter and remain in Japan only if permitted to do so by their status of residence (Article 2-2), and unless they are given permission to renew it (Article 21), they may not remain in Japan longer than the period of their permission to stay. In addition, foreign nationals may not engage in any activity resulting in income or payment, other than those permitted according to the terms of their status of residence (Article 19).

Categories of status of residence that allow employment include "Permanent Resident," "Spouse or Child of Japanese National," "Spouse or Child of Permanent Resident" and "Long-Term Resident." These statuses are awarded based on the identity or position of the applicant, and persons holding these statuses are able to work in any kind of employment. Workers of Japanese descent are treated differently to other foreign nationals in that they have no restrictions placed on the type of work they can do, and they are able to work



Table 1. Statuses of Residence in Relation to Permission to Work, after Revisions to the Immigration Control Act

Status of residence defined by activity*			Status of residence defined by identity or position
Eligible for employment within scope of status of residence	Ineligible for employment	Dependent on designation by Minister of Justice	No employment restrictions
Diplomat	Investor/ Business Manager	Cultural Activities	Permanent Resident  Spouse or Child of Japanese National  Spouse or Child of Permanent Resident  Long-Term Resident
Official	Legal/ Accounting Services	Temporary Visitor	
Professor	Medical Services	Student	
Artist	Researcher	Trainee	
Religious Activities	Instructor	Dependent	
Journalist	Engineer		
	Specialist in Humanities/ International Services		
	Intra-company Transferee		
	Entertainer		
	Skilled Labor		
	Technical Intern Training (i)(a), (i)(b) (ii)(a), (ii)(b)		

\* Permission can be granted for employment outside the scope of status of residence by the Minister of Justice.

on the shop floor in manufacturing and other industries because they have been awarded the same status of residence as “Spouse or Child of Japanese National,” or “Long-Term Resident.”

Foreign nationals other than those mentioned above are permitted to immigrate if they have specialist technical skills, but immigration policy dictates that unskilled laborers are

not permitted to immigrate<sup>9</sup>, and so the scope of activities in which such foreign nationals can engage is defined by their status of residence. Categories of status of residence that permit working are restricted to highly specialist skills such as “Engineer,” “Specialist in Humanities/International Services,” etc., as well as “Diplomat,” “Professor” and other categories that indicate a commitment to public life. In addition to this, it is also possible to be awarded the status category of “Designated Activities,” where the scope of activity is defined by the Minister of Justice. Other categories of status of residence such as “Student” only permit working within the scope permitted as activities other than those permitted under the status of residence. In this way, the Immigration Control Act uses the status of residence system to restrict working by foreign nationals.<sup>10</sup>

Some of these statuses of residence have been acknowledged to require adjustments in the scope of immigration they allow, in consideration of the impact they have on Japanese industry and the lives of Japanese nationals from the perspective of immigration policy. For these categories, the criteria for being given permission to enter Japan are defined in the “Ordinance of the Ministry to Provide for Criteria Pursuant to Article 7, Paragraph (1), Item (ii) of the Immigration Control and Refugee Recognition Act” (hereinafter referred to as the Criteria Ordinance). Among those statuses of residence to which the Criteria Ordinance is applicable, those categories defined according to types of work activities are almost all covered by income criteria, in the form of legislation that foreign workers must “receive an equivalent or higher salary to any Japanese national doing the same work.” It is clear from this that the legislation seeks to minimize the impact of the criteria on the labor market, but within the Criteria Ordinance, there is no particular indication of how it should be judged whether a foreign worker is being paid an equivalent or higher salary to a Japanese one.

## (2) Prohibition of Illegal Work

Foreign nationals working without a status of residence that allows work under the Immigration Control Act (a work permit) are known as undocumented workers. Persons hiring undocumented workers, placing them under their control or sending them to work for others on a regular basis are liable to be prosecuted for facilitation of illegal work (Article 73-2, Paragraph [1]).

Undocumented workers themselves are liable to punishment (Article 70) and forced deportation (Article 24), but the Minister of Justice is able to offer consideration of cir-

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<sup>9</sup> The Basic Plan for Immigration Control (1st Edition, 1992) sets out this policy, which is maintained strongly in the 2nd and 3rd Editions (2000 and 2005). The 4th Edition is released in March 2010, the policy is also basically maintained.

<sup>10</sup> In addition to these, “Special Act on the Immigration Control of, Inter Alia, Those Who Have Lost Japanese Nationality Pursuant to the Treaty of Peace with Japan” (hereinafter referred to as the Special Act) also defines a status of residence known as “Special Permanent Resident” to which no labor restrictions apply.

cumstances during the process of deportation, and if special permission for residence<sup>11</sup> is granted, the person in question may remain in Japan under the terms of the status of residence they were awarded (Article 50).

### (3) Recent Trends—Revisions to the Immigration Control Act

The revisions implemented to the Immigration Control Act and other related laws were passed by the 171st Ordinary Session of the Diet and was promulgated on July 15, 2009.<sup>12</sup> The “amended Act,” as it is hereinafter referred to, is outlined below.<sup>13</sup>

#### i. A New System of Residence Management

Many foreign workers of Japanese descent are engaged in shop-floor work in the manufacturing industries. They are working via employment agencies or contractors (some of which are illegal), and because of the unstable nature of the way they work, they often move frequently and are constantly changing jobs. Before the amended Act, there were often problems caused by the fact that the main residence of workers of Japanese descent and their families, registered under the terms of the alien registration system, which is based on the Alien Registration Act, did not accurately reflect the living status of these families. Because of this, the Alien Registration Act is abolished, and a new system of residence management, which integrates immigration control and residence management under the Immigration Control Act, is introduced in regard to medium to long-term resident foreign nationals.<sup>14</sup> The implementation of the new system is scheduled within three years of its promulgation (Supplementary provisions to the amended Act, Article 1).

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<sup>11</sup> Immigration Bureau, Ministry of Justice, “Guidelines relating to Special Permission for Residence” (revised July 2009). See <http://www.moj.go.jp/NYUKAN/nyukan85-1.pdf> (accessed March 9, 2010).

<sup>12</sup> “The law for partial amendment to the Immigration Control and Refugee Recognition Act and the Special Act on the Immigration Control of, Inter Alia, Those who have Lost Japanese Nationality Pursuant to the Treaty of Peace with Japan” (July 15, 2009, Act No. 79).

<sup>13</sup> Additionally, not only were the categories of status of residence “College Student” and “Pre-College Student” integrated as “Student,” but negligent employment of undocumented workers became the basis of employer sanctions (Article 73-2, Paragraph [2]). See Hayakawa (2009) for outline of amendments.

<sup>14</sup> Foreign Nationals residing legally for a medium to long term with a status of residence under the amended Act, excluding the persons described below, shall be subject to the new system of residence management: (1) Persons granted permission to stay for not more than 3 months, (2) Persons granted the status of residence of “Temporary Visitor,” (3) Persons granted the status of residence of “Diplomat” or “Official,” (4) Persons whom a Ministry of Justice ordinance recognizes as equivalent to the aforementioned foreign nationals, (5) “Special permanent residents” under the Special Act, (6) Persons with no status of residence.

ii. New Technical Internship Program

In addition, the Trainees and Technical Interns had been subject to increasing misuse, and the Foreign Training Program and the Technical Internship Program were revised<sup>15</sup> under the amended Act with the aim of dealing with the issue of how to protect existing trainees engaged in on-the-job trainings (OJT). As a result, any training including OJT is now basically considered to constitute a technical internship, and labor and employment laws apply, with the exception of orientation taking place immediately after arrival in Japan. In addition to this, the categories of status of residence relating to training (“Trainee”) and technical internship (as one of the categories of “Designated Activities”) were integrated into a newly created status of residence known as “Technical Intern Training.” The new system is to be implemented from July 1, 2010.

(4) Issues

As seen above, the Immigration Control Act uses the status of residence system not only to define the scope of immigration by foreign nationals, but also to restrict work done by foreign nationals while resident in Japan. The system allows the immigration of workers in specialist technical fields while denying access to unskilled laborers, thereby realizing the principle of selection defined in immigration policy. When considered from the perspective of the combination with labor policy, however, although the current legislation could be said to be giving consideration to the impact of foreign workers on the labor market due to the Criteria Ordinance, under the control of the Ministry of Justice’s Immigration Bureau, there is no system in place to assess the impact of individual foreign workers on the labor market.

2. Suggestions from U.S. Law

(1) Immigration Law and the Agencies Responsible for Its Implementation

Immigration law in the United States of America is based on the Immigration and Nationality Act of 1952 (INA), along with its subsequent revisions, the most important of which is the Immigration Reform and Control Act of 1986 (IRCA), which prohibits the knowing employment of undocumented aliens and introduces a system of employer sanctions (see 8 U.S.C.S. §1324a). The administration and operation of the INA are done by the U.S. Citizenship and Immigration Services (USCIS), which also has discretionary powers regarding eligibility for visas and changing to legal permanent residence status, etc., of the Department of Homeland Security, the Department of State (which issues visas to overseas

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<sup>15</sup> Conventionally, trainees engaged in trainings with the aim of gaining technical abilities were not subject to labor and employment laws, but under the amended Act, trainees engaged in programs including OJT other than those implemented by the government or agencies such as JICA were categorized as technical interns and were subject to labor and employment laws. See Hayakawa (2008c) regarding the debate relating to revision of the programs. See Hayakawa (2010b) regarding the interpretation of labor contracts for technical interns under the new system.

embassies) and the Department of Labor (which implements the Labor Certification Program), etc.

## (2) The Visa System

Visas, according to U.S. immigration law, are divided into immigrant visas and non-immigrant visas. “Immigrants” are generally defined as persons who move from one country to another with the objective of residing there permanently, but the INA assumes that any applicant not demonstrating their applicability for non-immigrant status to be an immigrant. Some types of immigrant visas, such as visas issued to immediate relatives of U.S. citizens, are not restricted in terms of the number issued each year, but some types, including (i) family-sponsored visas, (ii) employment-based visas, and (iii) diversity visas, which are restricted for foreign nationals visiting from countries with low visa allocations, and allocated by lottery, are capped in terms of number. For (i) and (ii) above, visa allocation is done by a process of priorities. Additionally, non-immigrant visas, which are for short-term stays, are broken down into complex categories.

## (3) The Labor Certification Program

### i. Outline

In the United States, the INA requires that certain employment-based immigrant visas be subject to the labor certification procedures.

The purpose of the Labor Certification Program is to avoid negative impacts on the domestic labor market through (i) denying U.S. workers the opportunity of employment and (ii) creating downward pressure on labor conditions such as wages. PERM regulations, which are discussed below, require, in regard to (i) above, the recruiting of U.S. workers; and in regard to (ii) above, the offering U.S. workers to pay at least the prevailing wage<sup>16</sup> (and the payment of at least the prevailing wage to foreign workers, if they are in fact hired). The Labor Certification Program is considered to be one of the labor market tests that ensure appropriate adjustments to supply within the labor market upon allowing foreign nationals to immigrate.

The scope of the Labor Certification Program covers the second and third priority categories of employment-based immigrant visas, which are categorized into five priorities. The second of these covers members of professions with (i) advanced degrees or their equivalent or (ii) exceptional abilities in the sciences, arts or business (those who are considered to further the national interests in the opinion of the Secretary of Homeland Security are exempted from labor certification procedures). The third of these covers (i) skilled workers with sufficient experience, (ii) professionals who hold bachelor’s degrees, and (iii)

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<sup>16</sup> PERM regulations state that the wage rate set forth in a collective bargaining agreement is considered to be the prevailing wage (20 C.F.R. §656.40 (b) (1)).

other workers in areas lacking labor force. Foreign nationals to whom this applies are required to obtain a labor certification before applying for a visa. The employer implements the procedures on behalf of the foreign national in question. Furthermore, labor certification is required not only for persons entering the United States for the first time, but also in order to change the status of persons already residing in the United States under non-immigrant status, etc., into legal permanent residents.

In comparison to this, priority workers, who are covered by the 1st priority, persons engaged in certain special categories, such as religious activities, etc., who are covered by the 4th priority, and investors, who are covered by the 5th priority, are not required to obtain labor certification (see 8 U.S.C.S. §1153).

## ii. Conditions of the Labor Certification Program

Labor certification is the process by which the Secretary of Labor issues proof to the Secretary of Homeland Security and the Secretary of State that the immigration of the foreign national in question meets the following conditions set by the INA (see 8 U.S.C.S. §1182[a][5][A][i]). Since there is a cap on the number of visas that can be issued, however, labor certification itself does not necessarily mean permission to the foreign national in question to undertake work.

- (i) There are not sufficient workers who are able, willing, qualified ... and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and
- (ii) the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.

The criteria set by the INA to determine whether a foreign national meets the conditions above and the procedures of labor certification are specified by regulations issued by the Department of Labor. The Department of Labor regulations were revised in 2004, and Program Electronic Review Management or PERM was begun in 2005 (see 20 C.F.R. part 656). The original procedures were complex and took a significant amount of time to process (see Benson [2002]), but it is said that, in comparison, PERM regulations have streamlined the procedures, and the introduction of electronic applications has shortened the time required for processing.

## iii. The Labor Certification Program Procedures

Labor certification is processed in the following way.

Firstly, if a foreign national is appropriately qualified in a profession listed as experiencing a chronic shortage of human resources in Schedule A, they are automatically considered to be certified, and are not required to undergo the labor certification process.

If the foreign national is not eligible under Schedule A, they are required to undergo

the basic labor certification process. In this case, the employer wishing to hire the foreign national must first complete the pre-application procedure (which is discussed below), and the application is submitted electronically once they have attested to the requirements in the registration procedure. Next, the Department of Labor's Certifying Officer makes a determination as to whether the above conditions have been met, and decides whether to grant or deny the labor certification.

Under the terms of PERM regulations, the employer must complete the following steps before the application mentioned above can take place.<sup>17</sup>

Firstly, the employer is required to fulfill obligations regarding the recruiting of U.S. workers. Specifically, the employer must place recruitment advertisements twice in Sunday papers generally read in the region where employment is to take place. Furthermore, the employer must place a job order with a state workforce agency for 30 days. When recruiting, employers are not permitted to offer jobs at less than the prevailing wage, and they are not permitted to place requirements that surpass the commonly required level for the job in question, unless the job requirements can be shown to be arising from business necessity.<sup>18</sup> The steps must be conducted at least 30 days, but no more than 180 days, before the filing of the application. In addition, employers are also required to notify bargaining representatives, and if they have laid off employees in the same occupation within six months of the application, they are required to notify these employees of the recruitment, among other conditions. If a U.S. worker who meets the minimum requirements applies for the job, in principle, labor certification will not be granted.

#### (4) Temporary Labor Certification Program

##### i. Outline

The information above concerns labor certification required for certain types of employment-based immigrant visas, but there are also temporary labor certification programs, which are applied to certain types of non-immigrant visas, such as H-2A, H-2B, etc. The most common form of non-immigrant visas to which these programs are applied is the H-1B visa (issued to persons working in specialty occupations such as IT engineers).

##### ii. The Labor Condition Application Program (LCA)

Before applying for an H-1B visa, the employer must first file an electronic application to the Department of Labor, along with the following attestations. The attestations are

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<sup>17</sup> If labor certification is refused, a complaint may be lodged with BALCA (the Board of Alien Labor Certification Appeals). If the applicant has a complaint regarding BALCA's decision, it may be taken to judicial review at the federal court.

<sup>18</sup> See Marion Graham, No.88-INA-102, 1990 BALCA LEXIS 72 (BALCA, Feb. 2, 1990). If the application is for a professional occupation, employers must select three among ten additional recruitment steps of the PERM regulations.

(i) that the foreign national in question will be paid a minimum of the actual wage applicable to the job in question once employed, or alternatively will be paid the prevailing wage, whichever is the greater, (ii) that the working conditions will not adversely affect workers similarly employed, (iii) there are no strikes or lockouts within the scope of the occupational classification at the place of employment, and (iv) that notification of recruitment has been given to the bargaining representative (if any) or in the area around the place of employment at the time of the application being made.

Applications that meet the conditions stated above will be approved. The employer must then attach the LCA document to the application for an H-1B visa. The employer must also give a copy of the LCA document just after hiring to each foreign worker on behalf of whom they are applying for an H-1B visa. The employer is responsible for ensuring the realization of the attested conditions in regard to any foreign national given permission to immigrate.<sup>19</sup>

In this way, the LCA used for the non-immigrant visa H-1B consists only of a certain number of attestations, and the procedure is relatively simple. H-1B dependent employers,<sup>20</sup> however, who hire more than a certain proportion of H-1B visa foreign workers, can be subjected to additional conditions relating the recruitment of U.S. workers and other requirements. Criteria for determining the existence or otherwise of a negative impact by foreign workers on the domestic labor market differ depending on the visa type.

### 3. Forecasting Developments in Japanese Law—A Japanese-Version Labor Certification Program

Japan and the United States share an intention to protect their domestic labor markets from the negative impact of the immigration of foreign workers, which can result in worsening labor conditions such as the unemployment of national workers and reduced rates of pay. The Immigration Control Act, however, does not contain any aspect of coordination with the labor market when determining the right of individual foreign workers to immigrate. I propose that consideration should be given to the introduction of a labor certification program in Japan, albeit with consideration given to the differences between the U.S. and Japanese labor markets. In particular, a Japanese-version labor certification program should be considered in line with the creation of new categories of status of residence, including “Intermediate skills” (see Iguchi [2001, 190, 197]) and the broadening in scope of foreign workers immigrating under existing categories of status of residence, in the case of

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<sup>19</sup> LCA is a system based on the INA designed to ensure that the employment of foreign nationals on H-1B visas does not have a negative effect on the labor market, such as that of lowering wages or labor conditions for U.S. workers. It also has the effect of protecting the interests of foreign workers through enabling the Department of Labor to prosecute employers who contravene their attestations (see Hayakawa 2010a).

<sup>20</sup> The same applies to employers who have deliberately contravened or given fraudulent submission to LCA within the past five years.



accepting foreign workers where competition is created with domestic workers. Highly trained human resources, for whom immigration should be further promoted, on the other hand, should be exempted from the scope of this program.

The introduction of a system requiring attestation to labor conditions, such as that which the LCA used in the United States for the issuance of H-1B visas, should also be considered<sup>21</sup> when thinking about accepting foreign workers with limitation on their periods of residence, even if more detailed regulations than those used in the United States need to be implemented in regard to labor conditions. In such cases, employers who are thought to be in danger of misusing the system, through, for example, dependence on a relatively high proportion of foreign workers, could be subjected to additional requirements.

#### **IV. Foreign Workers and Labor and Employment Law—Realizing the Principle of Integration**

##### **1. The State of Japanese Law**

###### **(1) The Application of Labor and Employment Laws**

As has already been discussed, the principle of integration is realized basically through the requirement to treat Japanese and foreign nationals equally. At the same time, the impact of the status of residence system enshrined in the Immigration Control Act must be considered, even for legal workers in Japan. Labor and employment laws are applicable,<sup>22</sup> in principle, to foreign workers as well as Japanese, and providing it is implemented within the framework of the status of residence defined by the Immigration Control Act, labor and employment laws contain no restriction in regard to the employment of foreign workers. Rather, it is anticipated that foreign workers will be entitled to equality with Japanese workers, with Article 3 of the Labor Standards Act<sup>23</sup> prohibiting discrimination based on nationality, among other measures. In addition to this, the application of Japanese labor and employment laws do not, in principle, allow for any difference based on nationality.

Firstly, the protection of workers based on labor and employment laws are basically extended to foreign workers in Japan. If, for example, employment is being terminated, Article 3 of the Labor Standards Act prohibits the termination of employment based on the

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<sup>21</sup> According to the Tokyo District Court judgment dated July 7, 1992 in the *Yamaguchi Seito* case (*Hanrei Times* 804-137), the court decided not to recognize a document containing labor conditions submitted as part of an immigration application as a labor contract. The labor conditions attestation proposed here, however, would require this document to be submitted by the employer to the worker, which would avoid a similar problem.

<sup>22</sup> This debate assumes that, with regard to the application of laws to labor contracts with foreign workers, Japanese laws are applicable as mandatory provisions. See Yamakawa (1999, 23-25), Hayakawa (2008a).

<sup>23</sup> Article 3 of the Labor Standards Act: “An employer shall not engage in discriminatory treatment with respect to wages, working hours or other working conditions by reason of the nationality, creed or social status of any worker.”

reason that an employee is a foreign national. The Labor Contract Act prevents the misuse of an employer's right to terminate for both Japanese and foreign workers (Article 16 of the Labor Contract Act), and restricts the termination of employment during the period of a valid contract (Article 17, Paragraph [1] of the said Act). Furthermore, Article 3 of the Employment Security Act legislates the principle of equal treatment regardless of nationality in employment referral and vocational guidance.

## (2) Regulation of the Labor Market

### i. Employment Countermeasures Act

The Employment Countermeasures Act promotes the employment of foreign nationals in specialist and technical fields, as well as defining measures to promote improvements in the appropriate management of employment of foreign workers, the re-employment of workers who leave their jobs (Article 4, Paragraph [1], Item [x]) and measures to prevent illegal working by foreign nationals (Article 4, Paragraph [3]). At the same time, the Act also defines the responsibilities of employers, in terms of improvements to employment management in regard to foreign nationals, and the responsibility to support foreign nationals who have their employment terminated in finding another job (Article 8). Furthermore, when hiring or terminating foreign nationals, the Act also stipulates that employers must not only check their status of residence and period of residence, but also submit a report regarding the foreign national's employment with the Minister of Health, Labour and Welfare (the "System for Provide Notification of the Status of Foreign Workers") (Article 28, Ordinance for Enforcement Articles 10-12). In addition to this, Public Notice of the Ministry of Health, Labour and Welfare No. 276, issued August 3, 2007, defines "Guideline concerning Appropriate Approaches to Improving Management of Foreign Workers for Employers" (hereinafter referred to as "Guidelines on Foreign Workers") based on Article 9 of the Employment Countermeasures Act.

### ii. Safety Nets for Unemployment

Following the global economic crisis, the employment situation in Japan has worsened. This is a problem for foreign workers, too, and particularly for workers of Japanese descent, many of whom have lost their jobs. This section seeks to consider the safety nets available for foreign workers who have become unemployed.

Firstly, employers who terminate the employment of foreign nationals for reasons other than the employee's fault are required to offer re-employment support to any ex-employees who request it in the form of development of employment opportunities or other activities (Article 8 of the Employment Countermeasures Act. According to Article 1-2 Paragraph [2] of the Ordinance for Enforcement, this also includes cases where employees leave for reasons relating to the employer). This Article only obliges the employer to make efforts in this direction, but since there is a requirement to act in an equitable manner, when implementing re-employment support for foreign workers, employers are re-

quired to also offer the same measures to Japanese workers (where large numbers of employees are terminated, Article 24 of the Employment Countermeasures Act requires the employers to make a plan for re-employment support.)

Furthermore, if a foreign worker becomes unemployed, there is a serious problem surrounding the issue of whether they are eligible for payment of unemployment benefits from the employment insurance. Workers hired under the terms of the Employment Insurance Act are eligible for benefits regardless of nationality (Article 4, Paragraph [1]), indicating that other than cases where the worker is being covered under an unemployment insurance system in their own country, the Employment Insurance Act is also applied to foreign workers.

In addition to this, Japan has a system of welfare benefits paid in regard to persons in need, where unemployment has become a more serious problem as re-employment is considered difficult, but the Public Assistance Act contains an Article dealing with nationality (Article 2) that limits welfare benefits to those holding the status of residence of “Long Term Resident,” etc., by applying the provisions *mutatis mutandis*.<sup>24</sup> As a result, it is extremely important that foreign workers do not fall into poverty due to the difficulty of re-employment, and proactive public administration support for re-employment is required. Labor administration has implemented the following measures in response to the recent economic crisis.

Firstly, the Cabinet Office established the “Council for the Promotion of Measures for Foreign Residents,” which compiled the “Promotion of Support Measures for Foreign Residents in Japan” (January 30, 2009, revised April 16, 2009) under the guidance of a partnership made up of related government departments and agencies.

As part of this, employment countermeasures, which are the responsibility of the Ministry of Health, Labour and Welfare, define support for re-employment particularly in areas where there is a high residential concentration of workers of Japanese descent, the “Emergency Employment Creation Projects” that take into consideration the needs of workers of Japanese descent and other long-term foreign residents, and “Employment Preparation Training for Foreign Residents,” which will allow foreign residents to brush up their skills<sup>25</sup>, including their abilities in Japanese language. Additionally, financial support has been made available for emergency responses implemented by local governments. In addition to the support measures outlined above, from April 2009 onwards, unemployed workers of Japanese descent who meet certain conditions and their family were given financial sup-

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<sup>24</sup> Persons holding a status of residence that indicates long-term domicile (“Permanent Resident,” etc.) are covered by the Public Assistance Act and may be awarded welfare benefits by applying the provisions *mutatis mutandis* (*Shahatsu* No. 382, May 8, 1954 [revised on January 4, 1982, *Shaho* No. 1 and *Shaenhohatsu* Nos. 50 and no. 51, October 15, 2001).

<sup>25</sup> Ministry of Health, Labour and Welfare, <http://www.mhlw.go.jp/houdou/2009/03/h0331-9.html> (accessed March 31, 2009).

port to return their home countries under the “Repatriation Support Project for Job-displaced People of Japanese Descent” (during fiscal 2009 only).<sup>26</sup>

### (3) Protection of Labor Conditions

#### i. Prohibition of Discrimination Based on Nationality According to Article 3 of the Labor Standards Act

As mentioned above, Article 3 of the Labor Standards Act prohibits discrimination on the grounds of nationality. If, for example, an employer who is restructuring their business uses the fact that a worker is a “foreign national” as grounds for terminating their employment, this is considered discrimination based on nationality and is prohibited by the above-mentioned Article. Since some forms of employment are appropriated only for foreign workers, however, in the case that these employees are terminated, it is difficult to say whether the termination has occurred because they are “foreigners” or because of the form of employment they were engaged in, and there is a need to establish and judge the intent to discriminate. The same Article, however, may be thought not to apply to hiring in general (Supreme Court judgment in the *Mitsubishi Jushi* case).<sup>27</sup> The progress made in regulation relating to prohibition in recruiting and hiring discrimination in Article 5 of the “Act on Securing, etc. of Equal Opportunity and Treatment between Men and Women in Employment” indicates a need for consideration of its applicability to hiring, including a debate on the legislative process.

#### ii. Court Judgments in Which Discrimination Was an Issue

An example of a court judgment in which discrimination against foreigners was an issue is the judgment given in the *Tokyo Kokusai Gakuen* case (Tokyo District Court judgment, March 15, 2001, *Rohan* 818-55), where the fixed-term employment period of foreign nationals became an issue. The court’s judgment was that since foreign teachers of the language school were on a different pay scale to their Japanese teachers, and being paid higher rates, it could not be argued that there was any clear demonstration of nationality-based discrimination.<sup>28</sup> In these court precedents, there has been a tendency not to determine the sort of discrimination prohibited in Article 3 of the Labor Standards Act, even where foreigners have been treated differently to typical Japanese staff, since their form of employment was also different.

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<sup>26</sup> Ministry of Health, Labour and Welfare, <http://www.mhlw.go.jp/stf/houdou/2r98520000003rnz.html> (accessed June 8, 2010). There had been 22,403 applications.

<sup>27</sup> Supreme Court judgment, Dec. 12, 1973, *Minshu* 27-11-1536.

<sup>28</sup> See also the Japan Times case, Tokyo District Court judgment, March. 29, 2005, *Rohan* 897-81.

#### (4) Application to Undocumented Workers

##### i. Outline

Undocumented workers are subject to deportation based on the Immigration Control Act. Since, however, they are also subject to protection in their current position under labor and employment law, there is a conflict in the policies of the two laws when it comes to the legal status of undocumented workers.

The application of labor and employment law to undocumented workers can be interpreted to indicate that the Labor Standards Act, Minimum Wages Act, “Industrial Safety and Health Act” and “Workers’ Accident Compensation Insurance Act,” among other labor protection acts, are also in principle applicable to undocumented workers. The Labor Union Act is also thought to apply in the same way (see Sugeno, Anzai, Nogawa [2006, 342]). The Employment Security Act is also thought to be applicable,<sup>29</sup> although Public Employment Security Offices do not provide any work placements that would result in illegal work. The Employment Insurance Act has no clear statement regarding the exemption of undocumented workers, but since they cannot be considered to be appropriately qualified for work (Article 4, Paragraph [3]), they cannot be defined as unemployed, and therefore in principle are thought to be ineligible for unemployment benefits.

Next, let us look at an example from the Supreme Court relating to damage liability in the case of a work-related incident.

##### ii. Supreme Court Judgment Relating to the *Kaishinsha* Case<sup>30</sup>

This case involved an undocumented worker from Pakistan, who claimed damages from his former employer based on violations of their responsibility to ensure safety, where the calculation of loss of earnings became an issue.

The Supreme Court determined that it was rational to calculate loss of earnings based on income generated in Japan during the time the plaintiff was able to work, or eligible for residence in Japan, and subsequently based on income in the assumed destination country (in most cases this would be the home country). In the case of persons remaining illegally in Japan without leave, since they are subject to compulsory deportation under the Immigration Control Act, and even taking into account the fact that some foreigners continue to reside in Japan illegally for a certain period of time, the Court’s judgment was that the period of time for which they could have worked in Japan could not be extended into the long term unless their residence and permission to work were legally compliant, through being awarded special permission for residence or other similar measures. In this case, therefore, loss of earnings were estimated based on what the worker had earned in Japan for a period of three years following the day he left the company where he was working before his acci-

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<sup>29</sup> See *Kihatsu* No. 50, January 26, 1988, etc.

<sup>30</sup> Judgment of the Third Petty Bench of the Supreme Court, Jan. 28, 1997, *Minshu* 51-1-78.

dent, and based on what he had earned in Pakistan before coming to Japan for subsequent years. This judgment is considered to demonstrate a ruling of the payment of damages to undocumented workers, while giving consideration to the position of the Immigration Control Act.

### iii. Recent Court Judgments

Examples of recent court judgments include Nagoya District Court's judgment dated August 24, 2005, *Komin* 38-4-1130. Here, the Court ruled it appropriate that the loss of earnings awarded after the death of a Filipino woman in a common-law marriage with a Japanese man, who was the mother of a child (the child has yet to acquire Japanese citizenship even though he was affiliated by the father after birth), should be calculated based on the average earnings in Japan of the woman at the time of her death, since the woman in question had stated her intention to remain in Japan in order to raise her child, and there was a significant possibility that this would take place. This judgment was apparently based on the precedent of the aforementioned *Kaishinsha* case, and was significant because it upheld the possibility of permanent residence in Japan.

Such judgments, which take into account the Immigration Control Act, are so far restricted to damage liability cases, and it is thought that insufficient consideration has so far been given to the application of labor and employment laws in the assistance of undocumented workers in cases where their employment has been terminated, etc.

## (5) Issues

From the perspective of the basic considerations above, it appears that labor and employment laws are in principle applied to foreign nationals, but the impact of the status of residence system under the Immigration Control Act needs to be considered in regard to the legal status of foreign workers. In addition to this, issues outstanding in Japanese labor laws include the following: (i) in cases where the discrimination based on nationality (Article 3 of the Labor Standards Act) is challenged, the court has a tendency not to find discrimination if the form of employment is different to that for Japanese workers. (ii) Furthermore, the same Article can be interpreted as not prohibiting discrimination in hiring. Additionally, (iii) labor and employment laws are in principle applicable to undocumented workers, but consideration is given to the legal status of the worker under the terms of the Immigration Control Act. Insufficient consideration is given to how assistance might be given to undocumented workers, or how to judge their eligibility for work.

## 2. Suggestions from U.S. Law

### (1) Application of Labor and Employment Laws

In principle, U.S. labor and employment laws are also applicable to foreign workers. There are no problems relating to persons working legally, and employment discrimination laws are extremely effective at ensuring the realization of integration.

## (2) Regulation of the Labor Market

U.S. labor market policy has been included in immigration law, as described above. The U.S. labor market law allows for the same regulation in regard to legal foreign workers as for U.S. citizens. For example, while unemployment insurance is not consistent nationwide, as it is provided by individual states, it is paid to foreign workers providing they meet the conditions of receiving the benefit. Since, however, undocumented workers are not considered to be able to and available for work, they are considered ineligible to receive these benefits.

## (3) Protection of Labor Conditions

### i. Employment Discrimination Laws

Title VII of the Civil Rights Act of 1964 prohibits discrimination on the grounds of race, color, religion, sex, and is the most important law preventing discrimination in employment. It also prohibits discrimination based on national origin.<sup>31</sup> Title VII, however, does not prohibit discrimination based on the fact that someone is a “foreign national,” in other words based on nationality. Providing they meet certain conditions, however, the U.S. Supreme Court has judged that discrimination against foreign workers equates to discrimination on the grounds of national origin as prohibited by Title VII (*Espinoza v. Farah Manufacturing Co.*)<sup>32</sup> On the other hand, IRCA prohibits discrimination on the grounds of nationality in hiring, recruitment, referral for a fee, or discharging from employment, although only for U.S. citizens and some legal permanent residents (see 8 U.S.C.S. §1346 [a]).

### ii. Prohibited Discrimination

The abovementioned Title VII prohibits discrimination based on national origin in employment, termination of employment or labor conditions, etc. (see 42 U.S.C.S. §2000e-2 [a]), including discrimination in hiring. It also states that defining criteria for English spoken with a foreign accent or physical traits can in some cases be judged as discrimination based on national origin, based on disparate impact doctrine. In contrast to this, the courts have been divided in different cases over whether or not “English-only” rules, which prohibit languages other than English from being spoken in the workplace, equate to discrimination based on national origin. Subsequent cases seem to veer towards such rules being illegal providing certain other conditions are met.<sup>33</sup>

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<sup>31</sup> Small businesses are exempt from the provisions of Title VII, but are prohibited from discrimination based on national origin by IRCA.

<sup>32</sup> 414 U.S. 86 (1973).

<sup>33</sup> See *Garcia v. Spun Steak Co.*, 998 F.2d 1480 (9th Cir. 1993), *reh'g denied*, 13 F.3d 296 (9th Cir. 1993), *cert. denied*, 512 U.S. 1228 (1994).

iii. The Burden of Proof

In general discrimination cases in the United States, there has been a clear definition of the allocation of burden of proof among the parties. The U.S. Supreme Court, in the intentional discrimination case *McDonnell Douglas Corp. v. Green*,<sup>34</sup> which was tried as racial discrimination under Title VII, demonstrated an analysis framework where initially, the plaintiff presented prima facie evidence, to which the defendant responded with reasons why this did not constitute discrimination, and the plaintiff responded by proving that these reasons were no more than pretexts. Furthermore, in *Klimas v. Department of the Treasury*,<sup>35</sup> which challenged employment discrimination on grounds of nationality as prohibited in IRCA, the 9th Circuit Court of Appeals used the analysis framework of the *McDonnell Douglas* case under Title VII focusing on national origin.<sup>36</sup>

(4) Application to Undocumented Workers

i. *Hoffman Plastic Compounds, Inc. v. NLRB*<sup>37</sup>

This case involved an order of the National Labor Relations Board (NLRB) in a dispute between a company and four of its union-supporting members who were laid off. The NLRB claimed that the employer violated the National Labor Relations Act (NLRA), and the employer was subjected to an order to cease and desist from future violations and a post-notice order and was additionally ordered to provide backpay and reinstatement to the employees. During the process of completing procedures to ensure legal compliance, it became clear that one of the plaintiffs was an undocumented worker. The NLRB recognized that there was no proof that the employer had employed the person in question while knowing of his undocumented status, and did not allow reinstatement of employment, but did order the employer to pay backpay up until the date when the employer found out that the plaintiff was undocumented. The appellate court supported this order, and so the employer took it to the Supreme Court, resulting in this case. The Court judged that in the case of a conflict between the NLRA and immigration policy, the NLRB order must be set aside, stating that granting the backpay that could not be earned lawfully was inconsistent with IRCA policy, in regard to which the NLRB had no authority. The Court judged that the NLRB had exceeded its discretion of remedies, and that the payment could not be upheld.

This judgment (hereinafter referred to as the Hoffman Judgment) was notable in that it rejected a remedy of backpay to an undocumented worker, who was employed illegally, on the basis of immigration policy. It could be said to have protected undocumented workers from the point of view of NLRA, while giving consideration to immigration policy

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<sup>34</sup> 411 U.S. 792 (1973).

<sup>35</sup> 1994 U.S. App. LEXIS 3064 (9th Cir. 1994), *cert. denied*, 511 U.S. 1147 (1994).

<sup>36</sup> See *Jiminez v. Mary Washington College*, 57 F.3d 369 (4th Cir. 1995), *cert. denied*, 516 U.S. 944 (1995).

<sup>37</sup> 535 U.S. 137 (2002).



when deciding on remedies.

ii. Trends in Court Cases since the Hoffman Judgment

Since the Hoffman Judgment described above, the range of scope of similar cases has been called into question. In such cases, as with the Hoffman Judgment, labor law has in principle been applied to undocumented workers, while judgments relating to remedies have been made in such a way as not to give approval to illegal work. Depending on the details of the remedies, however, some judgments have been made differently, with lower courts increasingly recommending the retrospective payment of unpaid wages for work made under the terms of the Fair Labor Standards Act (FLSA)<sup>38</sup> and damages awarded under the terms of Title VII and other laws preventing employment discrimination.<sup>39</sup> Laws relating to workers' compensations are mainly the jurisdiction of individual states, and various court judgments have been divided. A relatively high number of judgments, however, have been in favor of payment of lost wages to undocumented workers within certain parameters.

3. Forecasting Developments in Japanese Law

(1) Application of Labor and Employment Laws, and Regulation of the Labor Market

As seen in the examples above, there is a large degree of similarity between the United States and Japan in the way in which labor law plays the role of realizing the principle of integration in regard to foreign workers. In the United States, however, it is largely laws prohibiting employment discrimination that act to integrate foreign workers. Japan, in contrast, as described below, does not have such strong anti-discrimination laws as the United States, and should consider increasing its administrative support for the effective integration of foreign workers. This is already being done in some places, through support for re-employment, support for learning Japanese, etc.

(2) Protection of Labor Conditions

i. Article 3 of the Labor Standards Act

Article 3 of the Labor Standards Act prohibits discrimination based on nationality. The scope of this regulation is broader than Title VII prohibiting discrimination only on grounds of national origin. Little consideration has been given, however, to the definition of discrimination based on nationality. For example, the court in the aforementioned *Tokyo Kokusai Gakuen* case considered that, since the employer was paying foreign workers at a higher rate than its Japanese ones, disadvantageous terms relating to period of employment

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<sup>38</sup> See *Zavala v. Wal-Mart Stores, Inc.*, 393 F.Supp.2d 295 (D.N.J. 2005), *later proceeding at* 2008 U.S. Dist.LEXIS 74960 (D.N.J.), *recons. denied*, 2009 U.S. Dist. LEXIS 48353 (D.N.J. 2009).

<sup>39</sup> See *Rivera v. NIBCO, Inc.*, 364 F.3d 1057 (9th Cir. 2004), *reh'g denied*, 384 F.3d 822 (9th Cir. 2004), *cert. denied*, 544 U.S. 905 (2005), *motion granted*, 2006 U.S. Dist. LEXIS 16967 (E.D. Cal. Mar. 31, 2006), *rev'd*, 2010 U.S. App. LEXIS 6460 (9th Cir. 2010).

could not be construed as discrimination. Questions must remain, however, regarding whether or not the fact that one aspect of employment was advantageous discounts the possibility of intentional discrimination in other areas. The definition of discrimination has not been sufficiently considered in such cases, and here the U.S. example of distribution of burden of proof could be a source of reference.

ii. Prohibition of Employment Discrimination

As has already been discussed, it is considered that Article 3 of the Labor Standards Act does not prohibit discrimination in hiring, but in the future, perhaps consideration should be given to the possibility of applying this Article to discrimination in hiring, including the cases of Japanese workers. In that case, foreign nationals are subject to the employment restrictions placed upon them by their status of residence under the Immigration Control Act, and the introduction of a Japanese-version labor certification program would mean that an appropriate level of prioritization of domestic workers could be achieved within the scope of applicable foreign workers, for the sake of protecting the domestic labor market, which would not be subject to the prohibition of discrimination in hiring.<sup>40</sup>

iii. Administrative Support

From the perspective of the strength of legal regulations, however, it appears that Japanese law is weaker than U.S. law in the area of employment discrimination (The United States, for example, has a system of punitive damages). Even if foreign workers are subject to the application of laws relating to equality and regulations preventing discrimination, they are in a particularly weak position when their rights are infringed, and there is a need for public administration to provide integration support strategies. Specifically, the Guidelines on Foreign Workers should be strengthened, to make more practical measures possible by public administrators.

(3) Application to Undocumented Workers

In terms of the legal status of undocumented workers, Japan should learn from the U.S. law discussed above, and in principle, I propose that (i) labor and employment laws are applied, but (ii) in terms of remedies, the demands of immigration law are taken into consideration in order to ensure that decisions will not produce similar outcomes for undocumented workers as for those with permission to work. Under Japanese law, retrospective work (remedies for unpaid wages, etc.) should be granted, since it does not have any bearing on promoting illegal work in the future, but at the same time, remedies in regard to future work (reinstatement, etc.) must be judged so as not to indicate approval of illegal work,

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<sup>40</sup> Labor Certification Program in the United States includes legal permanent residents in the scope of its protected U.S. workers. A Japanese-version labor certification program should also include special permanent residents and permanent residents in the same category as domestic workers.

and remedies should only be offered if the worker can suitably prove a strong eligibility to be allowed to work legally. Furthermore, based on similar concepts to the framework demonstrated in the Supreme Court judgment in the *Kaishinsha* case noted above, in cases where an undocumented worker may have been able to work in fact for a certain period of time, it is recommended that a certain level of financial remedies be offered in regard to that period of time.

## V. Conclusion

In the current worsening employment climate, it is anticipated that new debates regarding the immigration of foreign workers will remain low priority for the foreseeable future. Over the long term, however, the issue will remain important, as Japan tries to work out how to manage its declining population in the future. Regardless of economic fluctuations, the issue needs to be considered in a long-term, not a temporary perspective. The recommendations in this article will be able to provide assistance in designing future policies on foreign workers.

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## Concerning Revisions in the Foreign Trainee and Technical Intern System\*

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The objective of the foreign trainee and technical intern system is to cultivate personnel who will come from their native countries to Japan in order to learn about Japanese technology and acquire skills and knowledge, and then contribute to their country's economic development after returning home, by utilizing what they have learned. Under this system, such personnel were permitted to remain in Japan for a maximum of three years; labor legislation was not applied to the trainees, but was enforced in relation to technical interns from their second year onwards. However, various problems have been pointed out in regard to this system. The changes instituted as a result of the 2009 amendment of the Immigration Control and Refugee Recognition Act were (i) the creation of a "technical intern training" residence status and the application of labor legislation to trainees; (ii) the prohibition of the unreasonable levying of money or goods through security deposits or penalties; (iii) provisions regarding the duration of training courses; (iv) the strengthening of the system of guidance, supervision and support by supervisory bodies, and increased transparency in its operation; and (v) the extension of the acceptance suspension period in the event of any misconduct, and the establishment of new disqualification requirements. In the future, it will be necessary to examine the effects of these revisions in the foreign trainee and technical intern system.

### I. Introduction

In recent years, we have begun to see a lot of information about the foreign trainee and technical intern system (*Gaikokujin Kenshu Gino Jisshu Seido*), and it has become common knowledge that a number of fields would not be able to keep going without the use of foreign trainees and technical interns. For example, lettuces and Chinese cabbage are produced in the Nagano Prefecture village of Kawakami-mura, which has a population of 4,800 people; in order to deal with the lack of manpower, 200 farming households have established a cooperative and have taken in a total of 615 agricultural trainees (*Asahi Shimbun*, April 20, 2008). In Ibaraki Prefecture, foreign trainees and technical interns are also being brought into the field of agriculture. However, most of the information relating to this system, which is usually obtained through the mass media, tends to be rather negative. Examples involving malpractice are conspicuous among the news reported in the papers and on the television,<sup>1</sup> for instance, the case of technical interns taken in by a strawberry farm,

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\* The responsibility for any errors contained in this article lies solely with the author.

<sup>1</sup> Furthermore, it is noted that the image of the foreign trainee and technical intern system is being tarnished by the fact that the relationship between Japan's foreign trainee and technical intern system and forced labor is pointed out in the U.S. Department of State's Diplomacy in Action.

who were dismissed on the grounds that “the crop failed so your jobs have disappeared,” and who were in danger of being forcibly repatriated (in addition, the interns had not been paid; *Mainichi Shimbun*, January 29, 2008); the case of trainees who were meant to be receiving training in the field of women’s and children’s clothing manufacturing but who were forced to carry out low-paid labor for long hours at a dry cleaning company, and who were in danger of being forcibly repatriated when the problem came to a head (*Tokyo Shimbun*, September 4, 2008); and the cases of numerous Chinese women who were working as foreign trainees and technical interns, who were made to engage in illegally low-paid labor by a clothing factory making clothes for popular boutiques (*Mainichi Shimbun*, January 26, 2009).

Examples of such problems with the foreign trainee and technical intern system have been pointed out on countless previous occasions, and it has come to be recognized as a social problem. In response to this, a number of proposals for revisions of the system have been presented by relevant government agencies. Naturally, companies accepting foreign trainees and technical interns, and groups involved with their acceptance have been focusing their attention on how this system will be revised.

A number of proposals for revisions of the foreign trainee and technical intern system have been published, including a personal proposal. In particular, the Ministry of Health, Labour and Welfare (MHLW) and the Ministry of Economy, Trade and Industry (METI) have each been considering future approaches to the system, and have compiled reports. In July 2009, the “Act on Amendments to the Immigration Control and Refugee Recognition Act and the Special Act on the Immigration Control of, Inter Alia, Those Who Have Lost Japanese Nationality Pursuant to the Treaty of Peace with Japan” was issued, entering into force on July 1, 2010. As a result of this, some changes have been made to the foreign trainee and technical intern system.

This paper summarizes what kind of problems existed in this system before the revisions, how the draft revisions that were proposed by the various parties dealt with these problems, and how the system has changed as a result of the amendment of the Immigration Control and Refugee Recognition Act.

With regard to the composition of this paper, Section II provides an outline of the foreign trainee and technical intern system and a simple summary of the problems with it. Section III provides an overview of the proposals made by the MHLW and the METI for revisions to the system and points of contention in relation to these, as well as evaluating the draft revisions. Section IV provides an introduction to the ways in which the foreign trainee and technical intern system changed as a result of the 2009 Amendment to the Immigration Control and Refugee Recognition Act, while Section V looks at the approach to the technical intern system adopted in the Basic Plan for Immigration Control (Fourth Edition). Finally, future issues are discussed.

## **II. Outline of the Foreign Trainee and Technical Intern System before the Revisions and Problems with That System**

### **1. Outline of the Foreign Trainee and Technical Intern System**

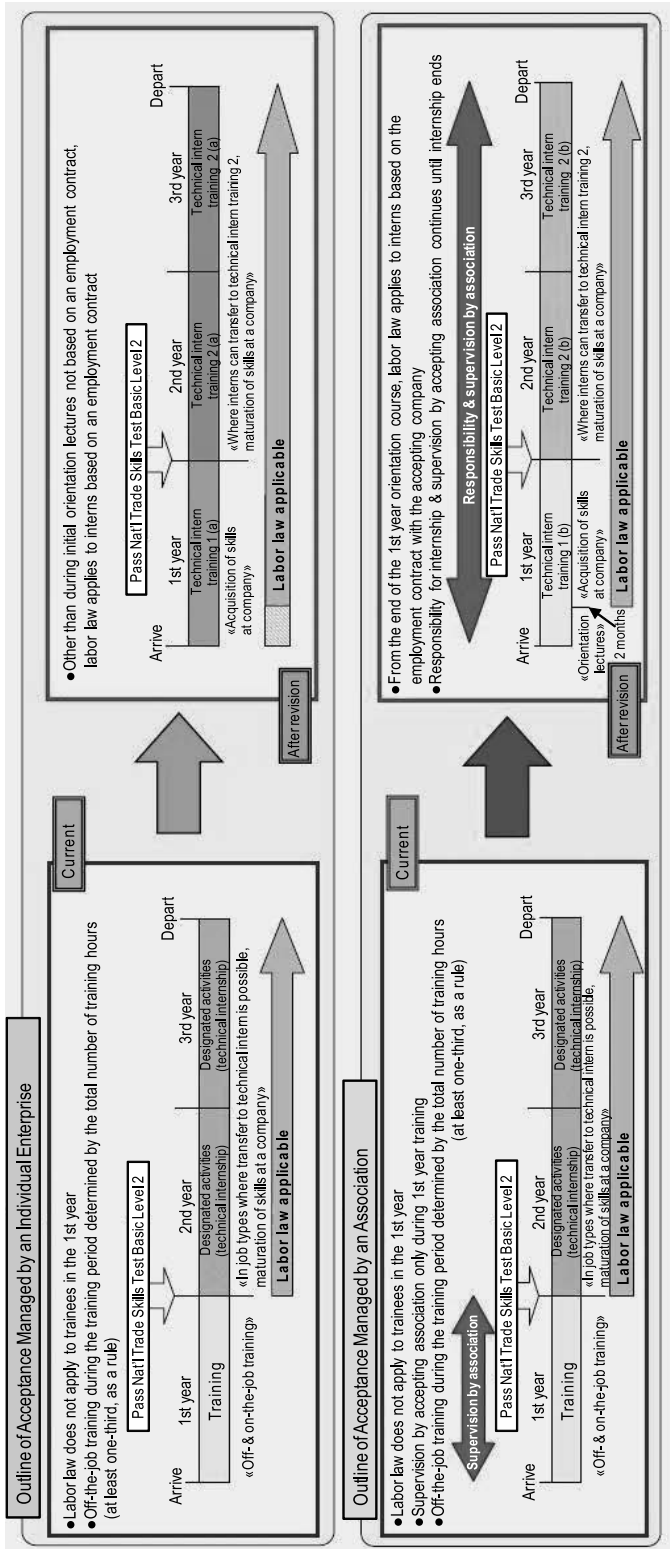
The objective of the foreign trainee and technical intern system is to cultivate personnel who will come from their native countries to Japan in order to learn about Japanese technology and acquire skills and knowledge, and then contribute to their country's economic development after returning home, by utilizing what they have learned. The foreign trainee system was put in place through the 1990 amendment to the Immigration Control and Refugee Recognition Act, and the technical intern system was subsequently created in 1993.

This system differs slightly depending on the job type, but the basic mechanism is that if the trainee passes the prescribed skills assessment test (National Trade Skills Test Basic Level Two) after a year of training (consisting of classroom lectures and on-the-job training), their residence status will be changed from "trainee" to "designated activities," and then they will acquire skills as a technical intern under an employment relationship. As shown in the left-hand panel of Figure 1, under this system, the trainees are permitted to stay for a maximum of three years, including the one year of training. In this system, the trainees are not classed as workers, so labor legislation does not apply to them, but it does apply from the second year onwards, once they become technical interns.<sup>2</sup>

Figure 2 shows changes in the number of foreign trainees entering the country by acceptance route and changes in the number of those requesting transfer to technical intern status. From this diagram, we can see that the number of foreign trainees and technical interns is on the increase. As of 2008, the number of those entering the country with the "trainee" residence status was 101,879 (a decline of 139 people compared with 2007), while the number of applicants for transfer to technical intern status was 63,747 (an increase of 3,570 people compared with 2007). The main governmental accepting organizations are the Japan International Cooperation Agency (JICA), the Association for Overseas Technical Scholarship (AOTS) and the ILO Association of Japan, Inc., which account for 14.2% of the total. At the same time, the acceptance of trainees by private sector organizations supported by the Japan International Training Cooperation Organization (JITCO) consists of "acceptance managed by an individual enterprise," where an employee of an overseas subsidiary is accepted, and "acceptance managed by an association," where a business cooperative, chamber of commerce and industry, or chamber of commerce is the primary accepting organization, and a member company accepts the trainee or technical intern, and this accounts for 85.8% of the total. Of the trainees supported by JITCO, 9.6% are accounted for by "acceptance managed by an individual enterprise," while 90.4% are accounted for by "acceptance managed by an association."

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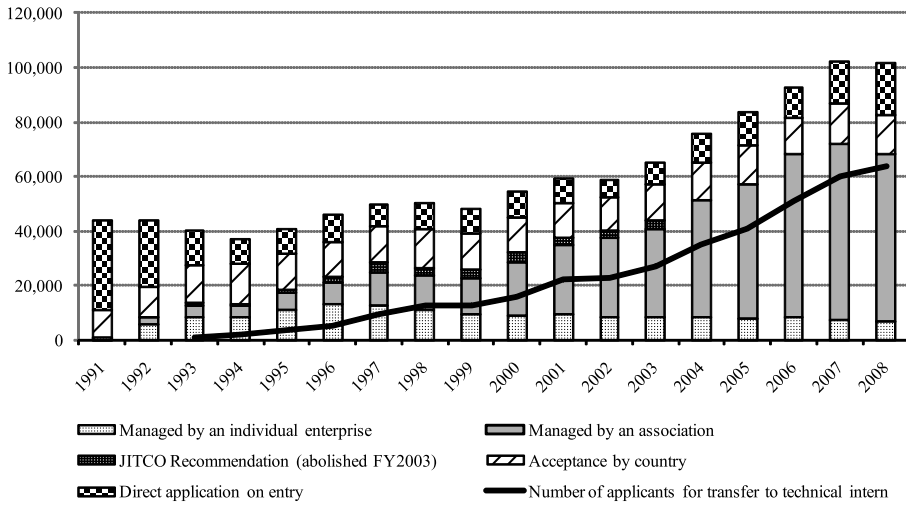
<sup>2</sup> With regard to this point, see Hayakawa (2008c, 74-76).



Source: Ministry of Justice Immigration Bureau homepage. <http://www.moj.go.jp/content/000023240.pdf>.

Figure 1. Outline of the Foreign Trainee and Technical Intern System (Acceptance Managed by an Individual Enterprise/Acceptance Managed by an Association) before the Amendment of the Immigration Control and Refugee Recognition Act and of the System after the Amendment





Source: Compiled from data in the 2009 edition of the JITCO White Paper.

Note: The JITCO Recommendation System was abolished in FY2003.

Figure 2. Changes in the Number of Foreign Trainees Entering the Country by Acceptance Route and Changes in the Number of Those Requesting Transfer to Technical Intern Status

It is not shown here due to the constraints of space, but if we look at the breakdown by country of applicants for transfer to technical intern after completing their training in FY2008, based on Japan International Training Cooperation Organization (2009), we can see that China accounts for 78.4%. Moreover, with regard to the characteristics of the job types for which technical interns are accepted, the largest shares are accounted for by the machinery and metals sector (26.2%), the clothing and textiles sector (22.7%) and the food manufacturing sector (11.4%). Compared with the situation in FY2007, there has been a significant increase in the figures for the agriculture sector (up 23.1% on the previous fiscal year) and the construction sector (up 12.2%). Furthermore, 58.6% of accepting companies are small and micro-sized companies, with 19 or fewer employees.

Incidentally, the “training allowance” paid to trainees is defined as “actual costs recognized as necessary for daily life” (Ministry of Justice guidelines), and the average monthly amount is ¥65,871 (2008). However, there is a disparity according to acceptance type: while it is ¥64,208 in the case of “acceptance managed by an association,” it is ¥81,617 in the case of “acceptance managed by an individual enterprise.” Moreover, the average wage (base salary) planned to be paid to technical interns is ¥122,000, while the actual average wage for interns (base salary plus various allowances) is ¥140,000. The starting salary for Japanese high school graduates in 2008 was ¥157,700 (according to the Ministry of Health, Labour and Welfare 2008 Basic Survey on Wage Structure), but the

question of whether the wages of technical interns is high or low in comparison with the wages of Japanese workers cannot be evaluated correctly unless various conditions are controlled, so caution is required. There are those who point out that trainees and technical interns need to be provided with guidance during their training and internship, and accommodation has to be secured for them, so if these matters are taken into consideration, the cost does not differ greatly from that of employing a part-timer or casual employee.

## 2. Problems Concerning the Foreign Trainee and Technical Intern System

More than 15 years have passed since the foreign trainee and technical intern system developed into its current form. The things that the trainees and interns learn in Japan include not only manufacturing technology, but also quality control and production management, and they are achieving results to some extent. As a consequence, in some cases, after the trainees and technical interns return to their home countries, they flourish in the sending organization or a local subsidiary of a Japanese company, or even establish their own company.

However, the following problems have been pointed out with regard to this system.

- (i) There is a discrepancy between the original intent of the system, which was to achieve skills transfer overseas, and its actual situation. The original aim of the foreign trainee and technical intern system is to transfer technology overseas. However, with regard to the actual situation, there is a possibility that it has become a system by means of which small, medium and micro-sized companies can secure manpower that they would not otherwise be able to obtain. The companies accepting trainees and technical interns are often in fields that Japanese workers do not wish to enter, because productivity is low and so there is little ability to pay good wages (Kamibayashi 2002). Moreover, through the foreign trainee and technical intern system, companies are able to secure a “calculable workforce” that will be firmly established for a total of three years (Sun 2003). Consequently, it is said that among the accepting companies are companies that accept trainees and technical interns without employing any Japanese workers.
- (ii) There are cases where the training or technical internship is not carried out according to plan, trainees are required to work overtime, which is basically not permitted, or are not paid, or have their human rights infringed. If the training or technical internship is not carried out according to the plan, it is clearly an infringement of the original intent of this system. Moreover, there have been reported to be cases where administration costs have been illegally deducted from the training allowance, and cases where the equal pay requirement has not been satisfied in relation to the wages paid to interns. Furthermore, human rights infringements are occurring, such as violence, sexual harassment and power harassment. There are cases in which this takes place in order to cover up misconduct.
- (iii) There are cases in which the number of staff accepted is boosted by counting tech-

nical interns as permanent staff. The number of new trainees accepted is restricted to a maximum of 5% of the number of permanent staff in the accepting company, in view of the fact that practical instruction is to be given. Moreover, in the case of companies where acceptance is managed by an association and the company has between three and 50 employees, the company is permitted to accept up to three new trainees. Based on this provision, for example, in a company where there are three Japanese employees, if the company accepts three new trainees in the first year, and in the second year those trainees are transferred to technical interns, then by counting them as permanent staff, three new trainees can be accepted, making a total of six; then, in the third year, if those six technical interns are counted as permanent staff, it becomes possible to have a total of nine trainees and interns, including the three new trainees. Under this kind of acceptance system, it is difficult to carry out training and technical internships, which is clearly an infringement of the intent of this system.

- (iv) Intervention by brokers and running-away by trainees and interns are emerging as problems. One could cite the existence of third parties other than accepting and sending organizations: so-called brokers. Moreover, apart from brokers, as a result of the intervention of sending organizations, situations can arise where the original intent of the system is infringed, or trainees or interns are forced into binding labor, or the burden on the accepting company increases.
- (v) There are some trainees and technical interns who intentionally come to Japan with the aim of “working” in Japan.

According to the Ministry of Justice, the number of organizations acknowledged in 2009 to have engaged in “misconduct” was 360, which was a decline of about 20% compared with the all-time high of 452 organizations that was recorded in 2008 (Table 1). If we look at the situation by form of acceptance, we can see that in the case of acceptance managed by an individual enterprise, two accepting organizations (0.5%) were acknowledged to have engaged in “misconduct,” while in the case of acceptance managed by an association, the figure was 358 (99.5%). With regard to the breakdown of accepting organizations in the case of acceptance managed by an association who were acknowledged to have engaged in “misconduct” (358 organizations), 34 were primary accepting organizations, while 324 were secondary accepting organizations. The number of incidents of “misconduct” classified by type was 444, with the largest number consisting of “infringements of labor-related legislation,” at 123 incidents, followed by “work by trainees outside the prescribed working hours,” at 121 incidents, and “name lending,” at 96 incidents; these three types of misconduct accounted for 76.6% of the total.

In response to the occurrence of such examples of misconduct, the Ministry of Justice Immigration Bureau has revised the *Guidelines Concerning Entry and Residence Management of Trainees and Technical Interns* (December 2007), and is adopting a response of publicizing misconduct.

As well as cases of misconduct, the economic slowdown that followed the “Lehman

Table 1. Changes in the Number of Organizations Accepting Foreign Trainees and Technical Interns Acknowledged to Have Engaged in “Misconduct”

	2007 Total	2008 Total	2009 (Number of organizations)			
			Total (360)	Acceptance Managed by Individual Enterprise (2)	Acceptance Managed by Association	
					Primary (34)	Secondary (324)
<b>Type 1</b>						
(i) Double contract	8	0	0	0	0	0
(ii) Discrepancy with the training and internship plan	36	48	28	0	14	14
(iii) Name lending	115	96	96	0	9	87
(iv) Other formulation/ use of false documentation	22	28	21	0	19	2
<b>Type 2</b>						
Work by trainees outside the prescribed working hours	98	169	121	1	9	111
<b>Type 3</b>						
Aggravated infringements of human rights, etc.	70	36	31	0	3	28
<b>Type 4</b>						
Failure to report problems	1	1	4	0	3	1
<b>Type 5</b>						
Employment of illegal workers	31	15	20	0	0	20
Infringement of labor-related legislation	178	115	123	1	2	120
<b>Type 6</b>						
Recurrence of equivalent acts	3	1	0	0	0	0
<b>Total</b>	<b>562</b>	<b>549</b>	<b>444</b>	<b>2</b>	<b>59</b>	<b>383</b>

Source: Compiled from data published by the Ministry of Justice Immigration Bureau.

Note: There are cases where a single organization is acknowledged to have engaged in a number of types of “misconduct,” so the number of organizations acknowledged to have engaged in “misconduct” and the number of incidents acknowledged by type do not correspond.

shock” has had a significant impact on trainees and technical interns as well. According to the Ministry of Justice Immigration Bureau, the number of foreigners who have had to leave the country part of the way through their training or internship due to the insolvency or downsizing of the accepting company reached 1,007 people in the period October 2008 to January 2009 (222 trainees and 785 technical interns). If we look at the reasons for returning home part of the way through the training or internship period, corporate downsizing or the worsening business conditions of the company was cited by 921 people, while the insolvency of the company was cited by 86 people. The layoff of temporary workers and permanent workers is a topic for discussion, but foreign workers, trainees and technical interns are also being exposed to the effects of the economic slowdown.

In cases where the acceptance of trainees and technical interns is managed by an association, in the event that it is difficult to continue the training or internship due to the in-

solvency of the accepting company or acknowledged misconduct on the part of the accepting organization, and the trainee or technical intern him- or herself is free of responsibility; if he or she requests to continue with the training or internship, JITCO provides information that will enable the trainee or intern to transfer to another company in the same field of business, under the guidance of the Regional Immigration Bureau with jurisdiction over that particular area.

Moreover, measures are being taken to assist trainees and technical interns affected by the insolvency of their accepting company, such as providing introductions to or placement with other accepting organizations (basically, placement with another accepting company under the auspices of the same accepting association; the figure for FY2008 was 124 trainees/interns placed in this way) and to deal with unpaid training allowances and secure wages.<sup>3</sup>

### **III. Proposals for Revisions of the Foreign Trainee and Technical Intern System**

#### **1. Overview of Major Proposals for Revisions of the Foreign Trainee and Technical Intern System**

Amidst this situation, various opinions concerning and proposals for revisions of the foreign trainee and technical intern system have been published from various quarters. It is a little arbitrary, but this section focuses on providing an overview of the Ministry of Health, Labour and Welfare reports, as well as the Ministry of Economy, Trade and Industry summary (Table 2), which relate to the discussion later in this paper.<sup>4</sup> The various items listed down the side of the table are the points at issue in relation to the revision of the system; the following conclusions can be drawn from this table.

Firstly, both of the reports share the approach of revising the system in such a way as to improve work and internship environments that lead to misconduct and increase the effectiveness of skills transfer, while maintaining the objective of international cooperation through skills transfer, taking into consideration the merits of the foreign trainee and technical intern system.

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<sup>3</sup> Among the cases of misconduct, there are said to have been cases of trainees and technical interns giving up in frustration, but recently, there have also been cases of trainees and technical interns consulting such bodies as support groups, the Labor Standards Inspection Office, and the police.

<sup>4</sup> In addition, there are proposals such as the Personal Plan of the Minister for Justice (May 2007), the proposals of the Japan Federation of Economic Organizations (September 2007) and the Additional Personal Plan of the Japanese Trade Union Confederation (March 2007). Furthermore, with regard to the overall system for accepting foreigners, without being confined to the foreign trainee and technical intern system, the Ministry of Justice's *Proposals Concerning a New Residence Status System* (March 2008) presents a proposal for the abolition of the alien registration system, with the Ministry of Justice Immigration Bureau issuing "residence cards" and with the maximum period of stay for a single visa being extended from three to five years as a general rule.

Secondly, there has been misconduct in the form of trainees being compelled to work overtime; with regard to the question of how to protect trainees, the MHLW report proposes revising the system in such a way as to integrate training (one year) and technical internship (two years), to create a system where there is an internship of up to a maximum of three years, with labor-related legislation being applied from the moment the trainees/interns enter the country. It is the same in the Second Report of the Expert Panel on Labor Market Reforms of the Council on Economic and Fiscal Policy. On the other hand, the METI summary proposes maintaining the existing one-year period of training and making accepting organizations legally obliged to provide systematic skills education, Japanese language education and support for daily life, with penalties for failure to abide by these obligations being strengthened, as well as seeking the development and protection of a mechanism whereby foreign trainees and technical interns can report and seek advice concerning infringements. In addition, the MHLW report proposes setting guidelines to ensure the effectiveness of the requirement for equal remuneration for technical interns, and creating a mechanism for implementing the necessary measures.

Thirdly, in order to ensure the effectiveness of skills transfer, which is the original objective of the system, the MHLW interim report proposes the formulation and implementation of a technical internship plan during the internship, the deployment of training instructors, the maintenance of the system whereby interns take the National Trade Skills Test Basic Level Two, and introducing an obligation to evaluate the interns at the end of the technical internship; furthermore, the report proposes the provision of instruction by the accepting organization to enable the intern to acquire the requisite skills for the National Trade Skills Test Level Three or above and obliging the intern to take this test, and introducing a system of preferential measures for companies that excel. In the METI summary, there are also proposals to introduce an obligatory evaluation of the skills acquired at the end of the internship, such as by having the intern take the National Trade Skills Test Level Three, and to introduce the obligation to provide Japanese language education and safety training by positioning these aspects in the basic ordinance, etc.

With regard to the framework concerning the number of people accepted, the MHLW report states that it is necessary to consider the number of people accepted, such as the proportion of Japanese employees and technical interns, and proposes the establishment of restrictions on the stock side for individual accepting enterprises. In relation to this, the METI proposal states that although there are requests for an expansion in the number of people accepted, this is an issue that will require continuing consideration, from the perspective of the scope of personnel that enables training and technical internships to be carried out effectively, and the rationalization of its operation. Moreover, with regard to the roles and responsibilities of accepting associations, both proposals refer to the duty of supervision not only during the training period, but also during the technical internship. The Ministry of Health, Labour and Welfare proposal suggests creating a requirement that the accepting association should have a certain record of achievement in its primary activities as an asso-

ciation, in order to weed out rogue accepting associations.

Fourthly, there are those requesting the establishment of a system of follow-up internships, for providing more advanced skills training; under the MHLW proposal, only interns who had been accepted by individual enterprises would be permitted to undergo a follow-up internship lasting two years. On the other hand, under the METI proposal, permission would be granted only to accepting companies that were deemed to be excellent and to be carrying out effective technical internships, irrespective of whether they were small, medium or large companies; in order to do this, it proposes incorporating a mechanism for screening and evaluation to be carried out by external assessing organizations.

Fifthly, with regard to approaches to accepting organizations and sending organizations, in order to bring accepting organizations and sending organizations into line, the MHLW proposal suggests making regulations on companies and associations that have engaged in misconduct stronger and stricter, and requesting that the governments of sending countries take steps to deal with sending organizations that demand unreasonably high security deposits or penalties. The METI proposal also states that steps need to be taken to bring accepting organizations and sending organizations into line, and that a more stringent response is required in order to do this, such as imposing harsher penalties. Moreover, in order to bring the sending organizations into line, it proposes requesting improvements at the government level, and working with JITCO, organizations in counterpart countries, primary accepting organizations and sending organizations in counterpart countries to decide upon restrictions on the levy of unreasonable security deposits, etc.

Sixthly, both the MHLW report and the METI summary propose strengthening the guidance provided by JITCO as a check function, as well as strengthening initiatives aimed at protecting foreign trainees and technical interns.

In addition, it is not summarized in Table 1, but after the METI working group summary and the MHLW report, the *Three-year Plan for Promoting Regulatory Reform* (June 2007) was published; this three-year plan stated that (i) in order to ensure that trainees are not engaged in labor, such as being treated as low-paid workers during their on-the-job training, the requisite measures should be taken to ensure that the skills transfer that is the original objective of the system is being carried out properly and to implement the legal protection necessary in order to ensure that training allowances are paid appropriately; (ii) a residence status relating to technical internships should be put in place swiftly; and (iii) measures should be taken to upgrade regulations such as bulletins relating to the foreign trainee and technical intern system to the status of cabinet and ministerial ordinances relating to the Immigration Control and Refugee Recognition Act, clarify the criteria for recognizing misconduct on the part of accepting organizations and improve the effectiveness of regulations.

Furthermore, the *Three-year Plan for Promoting Regulatory Reform* (March 2008) stated that in order to ensure that the originally intended transfer of skills takes place without any unfair treatment of foreign trainees and technical interns, rather than waiting for the

requisite legislative amendments to be implemented, the following measures should be implemented as a matter of urgency in relation to such matters as the protection of foreign trainees and technical interns, the rationalization of accepting organizations and requesting the rationalization of sending organizations.

- (i) Measures that should be taken urgently in order to protect foreign trainees and technical interns: (a) The establishment of a “foreign trainee and technical intern hotline (provisional name),” the development and publicizing of the consultation system, the relaying of information gained through consultations to relevant organizations, the identification of misconduct on the part of accepting organizations, and increasing the effectiveness of protection for foreign trainees and technical interns. (b) The provision of explanations concerning the system and labor-related legislation to trainees who are to newly come to Japan, the promotion of understanding concerning the information required in order to provide legal protection to trainees, such as methods of dealing with misconduct on the part of accepting organizations, and giving consideration to the development of a system for providing orientation courses when the trainees first arrive. Moreover, trainees and technical interns who have already entered the country should be informed of ways to deal with misconduct on the part of accepting organizations. (c) A mechanism should be constructed for exploring new accepting organizations, in the event that a trainee or technical intern is unable to continue at their current accepting organization, as a result of such issues as the accepting organization having been recognized as having engaged in misconduct or the insolvency of the training organization, but there is no reason attributable to the trainee or intern him- or herself; this mechanism would then, as a general rule, enable the trainee or intern to continue their training or technical internship at another accepting organization.
- (ii) Measures aimed at rationalizing accepting organizations: (a) The clarification of the scope of “misconduct,” carrying out investigations or on-the-spot inspections and supervision of accepting organizations in response to allegations of impropriety, and implementing stronger crackdowns, while strengthening the visiting guidance functions of JITCO. (b) Extending the period for which the organization is suspended from accepting new applications in the event that misconduct is acknowledged to have been committed, and taking preventative measures based on the strict application of regulations, even in the event that the accepting organization has been reorganized. (c) Carrying out surveys of the effectiveness of the aforementioned measures and considering the necessity of measures to improve the effectiveness of measures to prevent misconduct. (d) Enhancing the courses provided by JITCO for those in charge of implementing training and technical internships.
- (iii) In the event of failure to attend courses, measures should be taken to suspend acceptance of trainees and technical interns by that accepting organization (full details omitted).



- (iv) Requesting that the governments of sending countries take steps to rectify the system (full details omitted).
- (v) Labor-related legislation such as the Labor Standards Act and the Minimum Wages Act should, as a general rule, be applied to trainees during their on-the-job training, with the requisite measures being taken to sort out the way in which the residence status of “trainee” is handled and positioned under the Immigration Control and Refugee Recognition Act.
- (vi) Consideration should be given to the introduction of a system of follow-up internships (for providing more advanced skills training), lasting two years (full details omitted).

## 2. Evaluation of Various Reports

In relation to the revision proposals outlined above, Nogawa (2007) notes that both the MHLW report and the METI summary have in common the fact that they are focused on the protection of foreign trainees and technical interns, and are seeking rigorous measures to deal with accepting organizations; he focuses on the fact that the MHLW report revises the system to create a three-year technical internship to accept participants as “workers,” while the METI summary proposes expanding the types of job where technical interns can be accepted and instituting checks and controls of accepting associations by means of external assessment, while noting the possibility of granting “work” visas to interns who excel after they complete their internships. Nogawa deems this to be “an approach that moves the foreign trainee and technical intern system that has prevailed hitherto a step forward towards becoming a method of accepting foreign workers” and states that it would be appropriate for the trainee system to be based upon a proposal for its integration with the technical intern system.

Hayakawa (2008c) ventures into the discussion regarding the application of labor law in order to protect trainees, stating that while the METI summary has the advantage that it will oblige accepting companies to carry out Japanese language education, etc., there is no option but to rely on voluntary compliance with the law on the part of accepting organizations and there is no conclusive proof that this will be sufficiently effective in protecting trainees. Moreover, she points out that while the MHLW proposal has the merits that governmental bodies involved in labor administration can contribute through the application of labor laws, and trainees/interns can be enrolled in worker's accident insurance, there is a certain ambiguity with regard to the handling of off-the-job training, such as Japanese language education, and the payment of training allowances and wages, and there are concerns that it will lead to a decline in moral standards among accepting companies. In addition, she states that it is necessary systematically to ensure that the original intent of the system, i.e. skills transfer, is carried out, separately from the application of labor laws.

The foregoing provides an overview of some of the discussions in the legal arena, but discussions in other fields have not yet matured.

Table 2. Comparison of the Ministry of Health, Labour and Welfare Proposal and the Ministry of Economy, Trade and Industry Proposal Regarding the Revision of the Foreign Trainee and Technical Intern System

	System Before Revisions	MHLW Interim Report of the Working Group on the Foreign trainee and technical intern system and Report of the Working Group on the Foreign trainee and technical intern system	METI Summary of the Working Group on the Foreign trainee and technical intern system	(Reference) Proposal of the Expert Panel on Labor Market Reforms
Objective	International cooperation through skills transfer	International cooperation through skills transfer	International cooperation through skills transfer	International cooperation through skills transfer, creating a more advanced industrial structure and responding to a manpower mismatch
System Framework	1 year of training + 2 years of technical internship (employment relationship)	3 years of technical internship (employment relationship)  A certain level of Japanese language ability will be a requirement for entry into the country, and there will be an obligation for accepting organizations to provide training in daily life and customs and health and safety after the interns enter the country	1 year of training + 2 years of technical internship (employment relationship)	3 years of technical internship (employment relationship)  However, the "classroom lectures" will not be treated as working hours.
Protection of Trainees	There are cases where they are practically treated as low-paid workers and made to do overtime	Application of labor-related legislation (setting guidelines concerning the requirement for equal pay)	Clarification of criteria for judging "training" and "work"  Thorough publicizing of the intent of the system, provision of initial guidance to trainees, issue of trainee cards and development of an infringement consultation and report service	Application of labor-related legislation to the on-the-job training section  In the event that "trainees" only return home within the first year, labor-related legislation will be applied to their on-the-job training
Follow-up Internship	—	Limited to acceptance managed by individual enterprises only (two years)	Excellent accepting organizations (2 years), work visas for technical interns who excel	For the time being, acceptance managed by individual enterprises will be the main form eligible; where acceptance has been through an association, companies that excel will be eligible on an individual basis (2 years)

Concerning Revisions in the Foreign Trainee and Technical Intern System

Revision of Job Types Targeted	114 jobs in 62 types of area	Revision to permit internships in multiple related job types	Consideration of the approach to setting the job types, as well as consideration of additions and revisions	Flexible revision of the setting of job types and the scope of job types  Ongoing addition and revision to be carried out based on an adequate understanding of training needs in the sending countries
Numbers Accepted	Accepted trainees/interns should be 5% of all employees  In the case of business cooperatives, where there are 10 employees or fewer, the number should be expanded to 3 people	Consideration of the number accepted  Setting the number of new trainees accepted (flow) and the proportion of interns to Japanese staff (stock)	Consideration given to expanding the number of trainees/interns accepted by excellent accepting organizations	—
Accepting Associations	Obligatory management of secondary accepting organizations during the training period (there is none during the technical internship period)	Introduction of management responsibilities, such as supervision during the on-the-job training period  Record of achievement as a business cooperative	Introduction of an obligation to provide supervision and support with regard to accepting companies during the technical internship period	—
Effectiveness of Skills Training	From the technical internship period, by means of passing the National Trade Skills Test Basic Level Two  Accepting organizations are obliged to formulate and implement a training plan and technical internship plan	Accepting organizations are obliged to formulate and implement a technical internship plan, deploy technical instructors, have the interns take the National Trade Skills Test Level Two, and have the interns take at least Level Three by the time they complete their technical internship, with companies with a good pass rate receiving preferential treatment  Regular visits from the accepting association, checks and advice concerning the technical level of the interns	Evaluation at the end of the technical internship period, obligation to carry out health and safety education	—

Table 2.(Continued)

	System Before Revisions	MHLW Interim Report of the Working Group on the Foreign trainee and technical intern system and Report of the Working Group on the Foreign trainee and technical intern system	METI Summary of the Working Group on the Foreign trainee and technical intern system	(Reference) Proposal of the Expert Panel on Labor Market Reforms
Strengthening of Check Functions	<p>Visiting guidance by JITCO, investigations by the regional immigration bureau, supervisory guidance by the Labor Standards Inspection Office</p>	<p>Strengthening of visiting guidance by JITCO, concentration on management and instruction duties, protection of interns when misconduct is acknowledged to have occurred</p> <p>On-site inspections of companies by public institutions, along with advice, guidance and recommendations</p> <p>Penalties in the form of suspension of acceptance in the event of legal infringements, etc.</p>	<p>Strengthening of guidance by JITCO (separation into service division and guidance division)</p> <p>Protection of trainees and technical interns when misconduct is acknowledged to have occurred</p>	<p>Thorough implementation of JITCO's support functions</p> <p>Establishment of a hotline for trainees</p> <p>Establishment of a reserve fund to prevent non-payment of training allowances and wages</p>
Broker-related Measures	<p>Training placement for the purpose of profit is not permitted</p>	<p>Establishment of a system of permits for employment agencies, clarification of fees through notifications, requests to governments of sending countries for action to be taken against problem sending organizations, tougher penalties for infringements of regulations concerning misconduct</p> <p>Control by accepting organizations, rationalization through collaboration with the governments of sending countries (System of permits for accepting associations, system of notifications for placement organizations within Japan and overseas)</p>	<p>Accreditation of excellent associations by external assessing organizations, rationalization of accepting associations</p> <p>Requests at the government level, regulations by JITCO, etc. concerning security deposits, more stringent regulation of misconduct</p>	<p>Stricter penalties (extending the acceptance suspension period in the event that misconduct is acknowledged to have occurred from three to five years)</p>

Source: Compiled from data published by the Ministry of Health, Labour and Welfare Working Group.

#### **IV. The 2009 Amendment to the Immigration Control and Refugee Recognition Act and the Foreign Trainee and Technical Intern System**

In 2009, the Act on Amendments to the Immigration Control and Refugee Recognition Act and the Special Act on the Immigration Control of, Inter Alia, Those Who Have Lost Japanese Nationality Pursuant to the Treaty of Peace with Japan was issued, entering into force on July 1, 2010. The right-hand section of Figure 1 (p.46) provides an overview of the revised foreign trainee and technical intern system after the amendment of the Immigration Control and Refugee Recognition Act. By comparing the right- and left-hand sides of this diagram, we can see the changes in the foreign trainee and technical intern system that have resulted. The main changes are as follows.<sup>5</sup>

##### **1. Establishment of the “Technical Intern Training” Residence Status**

Under this law, a new residence status of “technical intern training” has been established. Of these, “technical intern training 1” is for “activities focused on the acquisition of knowledge through classes” and “activities focused on the acquisition of skills, etc. based on an employment contract.” “Technical intern training 2” is for activities where a party who has acquired skills, etc. through “technical intern training 1” will be engaged in duties requiring the skills, etc. acquired based on an employment contract, in order to master the skills in question. Furthermore, the acceptance formats for both types of “technical intern training” visa are classified as follows.

- (a) Activities conducted in relation to accepting an employee of a company with a business relationship to the accepting company, such as an overseas joint venture (acceptance managed by an individual enterprise).
- (b) Activities conducted under the responsibility and supervision of an association that is not profit-oriented, such as a chamber of commerce (acceptance managed by an association).

The technical internship period is a maximum of three years, combining the visa periods for “technical intern training 1” and “technical intern training 2.”

When switching from “technical intern training 1” to “technical intern training 2,” it is necessary to have passed a proficiency examination, such as the National Trade Skills Test Basic Level Two. As of January 2010, 65 job types are eligible for the switch to “technical intern training 2.”

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<sup>5</sup> The following description is based on the aforementioned pamphlet published on the Ministry of Justice Immigration Bureau website ([http://www.moj.go.jp/ONLINE/IMMIGRATION/ZAIRYU\\_NINTEI/zairyu\\_nintei10\\_0\\_01.pdf](http://www.moj.go.jp/ONLINE/IMMIGRATION/ZAIRYU_NINTEI/zairyu_nintei10_0_01.pdf)) and the Ministry of Justice Immigration Bureau, *Guidelines Concerning Entry and Residence Management of Trainees and Technical Interns*. In addition, ahead of the entry into force of the new foreign trainee and technical intern system, the Ministry of Justice Immigration Bureau has compiled the *Guidelines Concerning Entry and Residence Management of Trainees and Technical Interns*.

In addition, under the new system, those participating only in off-the-job training that does not involve any on-the-job training or public training courses that are conducted by bodies such as national organizations or JICA, enter the country and stay here with the residence status of “trainee,” as has been the case hitherto.

## 2. Prohibition of the Unreasonable Levying of Money or Goods through Security Deposits or Penalties

Under the new system, the unreasonable levying, etc. of money or goods is prohibited. This is a response to cases in which sending organizations have levied a security deposit on the trainees themselves to prevent their running away, as this has imposed an economic burden on trainees and led to illegal labor and labor outside of the trainees’ actual working hours.

## 3. Training Course Duration

At least one-sixth of the total period for activities under “technical intern training 1” is earmarked for the training course period, but in the event that the intern has undergone training courses overseas lasting a total of at least 160 hours over the course of a month, then the period is reduced to at least one-twelfth of the total period for activities under “technical intern training 1.”

The content of the training course should focus on such aspects as the Japanese language, daily life in Japan in general, information required for the legal protection of technical interns and knowledge that will contribute to the smooth acquisition of skills, etc.

Moreover, the training course must be implemented by means of classroom lectures (including visits to places of interest), and it is not possible to include machinery operation education or health and safety education carried out at facilities for producing goods, such as the production line of plants belonging to the organization implementing the technical internship.

After completing the requisite number of course hours specified in “technical intern training 1b,” an employment relationship is formed between the technical intern and the organization implementing the internship.

## 4. Strengthening the System of Guidance, Supervision and Support by Supervisory Bodies, and Increased Transparency in its Operation

Under the new system, supervisory bodies are to provide guidance, supervision and support concerning the technical internship, until the technical intern completes their activities relating to the acquisition of skills, etc. The main requirements are as follows.

- (i) Formulating technical internship plans: A technical internship plan should be formulated by an employee or officer of the supervisory body with a certain level of skill, experience and knowledge.
- (ii) Regular visiting guidance for organizations implementing technical internships: An

employee or officer of the supervisory body should visit the organizations implementing technical internships at least once a month in order to provide guidance.

- (iii) Implementation of auditing and reports to the regional immigration bureau: At least once every three months, an officer of the supervisory body should carry out an audit and provide a report to the regional immigration bureau.
- (iv) The construction of a consultation system for technical interns: Consultants should be deployed and a system constructed to deal with enquiries and requests for consultations from technical interns.
- (v) Measures to ensure that interns return home: Measures should be taken by the supervisory body to ensure that technical interns return home, such as ensuring that they have money to cover the cost of their return travel.
- (vi) Efforts to transfer interns to other internship organizations if it is difficult for the interns to continue the internship: In the event that it is difficult for the interns to continue the internship at the current organization implementing the internship, efforts should be made to transfer them to a new organization that can continue the internship.
- (vii) Clearly specifying the amount of money being levied to cover costs and the purpose of levying it: If money is being levied for administrative and supervision purposes, the amount being levied and the purpose of the levy should be clearly specified to the organization paying those costs.
- (viii) Prohibiting the imposition of a financial burden on technical interns in relation to management costs: It is prohibited to make technical interns bear the burden of costs required for administration and supervision, either directly or indirectly.

## 5. Extension of the Acceptance Suspension Period in the Event of any Misconduct, and the Establishment of New Disqualification Requirements

In the event of misconduct on the part of the supervisory body, etc., that body will be suspended from accepting trainees and interns for a period of one, three or five years, depending on the nature of the misconduct. Moreover, in the event of serious misconduct, such as (i) violence, threatening behavior or confinement; (ii) confiscation of a passport or alien registration card; (iii) failure to pay wages, etc.; (iv) acts that constitute a serious infringement of human rights; or (v) the use or provision of forged documentation, the foreign trainee and technical intern acceptance suspension period will be extended to five years.

## 6. Other

In addition to the items listed in 1-5 above, the other new requirements are: (i) the formulation by the organization implementing the internship of documents relating to the implementation status of the technical internship and the preservation of these documents for a year after the completion of the internship; (ii) the formulation by the supervisory body of documents relating to the implementation status of the training course and reports

concerning the visiting guidance, and the preservation of these documents for a year after the completion of the internship; (iii) the formulation of measures such as the submission of notification before the technical intern commences skill acquisition activities, to the effect that the organization implementing the internship has concluded all matters relating to insurance, such as workers' accident compensation insurance; (iv) in the case of acceptance managed by an individual enterprise, in the event that it is not possible to continue the technical internship at the organization implementing the internship, the organization implementing the internship is required to report this fact and the measures taken to deal with it to the regional immigration bureau; and (v) in the case of acceptance managed by an association, in the event that the technical intern returns home after the technical internship or it becomes impossible for the intern to continue with the technical internship, the supervisory body is required to report this fact and the measures taken to deal with it to the regional immigration bureau.

## **V. The Future of the Foreign Trainee and Technical Intern System**

The Ministry of Justice published the fourth edition of its Basic Plan for Immigration Control on March 30, 2010. In the Basic Plan for Immigration Control, "The Minister for Justice clarifies the status of foreigners entering and residing in Japan and stipulates the requisite matters relating to matters that should act as guidelines for managing the entry and residence of foreigners and other related measures, in order to implement the smooth, appropriate administration of immigration controls."<sup>6</sup>

Table 3 summarizes and compares the differences between the third and fourth editions of the basic plan, focusing solely on foreign trainees and technical interns. If we look at the fourth edition, we can see how it responds to the latest amendment to the Immigration Control and Refugee Recognition Act, with regard to the various problems that had arisen with the foreign trainee and technical intern system. There are three main points summarized in this table. It overlaps with what has already been stated above, so we will touch upon it only briefly, but firstly, there is the application of labor legislation by treating on-the-job trainees as workers; secondly, there is the strengthening of regulations concerning the responsibilities that should be fulfilled by accepting organizations and the penalties to be imposed for failure to fulfill those responsibilities; and thirdly, there is the fact that initiatives are required both on the part of Japan and the sending countries, in order to ensure the appropriate operation of this system. With regard to the fundamental revision of the foreign trainee and technical intern system, it presents an approach of considering the matter in conjunction with responses to the issue of the acceptance of foreigners not assigned to specialist or technical fields, based on examples from other countries and a consensus

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<sup>6</sup> Ministry of Justice, *Basic Plan for Immigration Control*, 4th ed. (2010), 1. The first edition of the *Basic Plan for Immigration Control* was formulated in 1992, the second edition in 2000 and the third edition in 2005.



among the populace, because it relates to the “acceptance of foreigners not assigned to specialist or technical fields,” i.e. foreigners other than those which Japan is actively accepting.

## **VI. Conclusion**

In place of a conclusion, the author wishes to point out two things. The first relates to a more fundamental problem relating to the economy and society of Japan, which forms the background to the foreign trainee and technical intern system; this is something to which the Ministry of Health, Labour and Welfare report also refers. That report points out that there are companies and placement organizations that abuse trainees and technical interns, treating them as low-paid labor to replace Japanese employees, due to problems with the industrial structure and labor conditions and environment; in addition, it notes that there are quite a few cases where trainees and technical interns are utilized as labor because no efforts are being (or can be) made to make the company’s business more advanced or ameliorate the work environment, so there is no management base that will enable appropriate wage levels to be met. Furthermore, it refers to the necessity of tackling head-on approaches to this economic position and industrial structure of Japan, promoting the reinforcement of the labor management system, the improvement of the work environment and the upgrading of business endeavors, and discussing such matters as industrial and economic policy and education policy in the medium- to long-term from a comprehensive perspective. Rather than simply stopping at revisions of the foreign trainee and technical intern system, it is probably necessary to go back to basics and discuss the fundamentals.

With regard to the second matter, it is necessary to evaluate the effects, focusing on the degree to which cases of malpractice and other problems that had occurred and had been pointed out before the system was revised will be remedied by these revisions of the foreign trainee and technical intern system, which focus primarily on the application of labor-related legislation to trainees. As raised in the previous section, the *Basic Plan for Immigration Control (Fourth Edition)* seeks to consider further fundamental revisions of the system, but ongoing evaluation of the policy effects will be required for these as well.

Thus, it is thought likely that revisions of the foreign trainee and technical intern system will continue in the future as well, and this author would like to continue to observe the direction that these revisions will take, to see who will actually benefit from the revisions of the system.

Table 3. Comparison of the Third and Fourth Editions of the Basic Plan for Immigration Control

	3rd Edition of the Basic Plan for Immigration Control (2005)	4th Edition of the Basic Plan for Immigration Control (2010)
<i>Approach to Revisions</i>	<ul style="list-style-type: none"> <li>■ Seeks to rectify operations in line with the intent of the system, in order to achieve the original objective, which was for trainees and technical interns to reliably master technologies, etc. in Japan, and to make use of these in their home country.</li> <li>■ Revisions of the system itself are to take place at the same time.</li> <li>■ Collaboration with related organizations is to be sought with regard to the initiatives required in order to ensure that the foreigners who have completed their period as a trainee or technical intern and returned home are adequately able to exercise the abilities they acquired in Japan.</li> <li>■ With regard to the job types targeted for technical internships, wide-ranging revisions are to take place, from the perspective of making a contribution to the international community.</li> <li>■ In collaboration with related ministries and agencies, ongoing consideration is to take place with regard to methods of facilitating a smooth, swift response to requests. When engaging in these deliberations, the perspectives that should be included are the establishment of a transparent, appropriate system that is desirable for the trainees/technical interns themselves, for the country sending the trainees, etc. and for Japan as the accepting country, as well as promoting technology and skills transfer.</li> </ul>	<ul style="list-style-type: none"> <li>■ Closely related to the problem of the acceptance of foreigners not assigned to specialist or technical fields. Based on examples from other countries and a consensus among the populace, deliberations will be undertaken in combination with a response to the problem of the acceptance of foreigners not assigned to specialist or technical fields.</li> </ul>
<i>Protecting Technical Interns</i>	<ul style="list-style-type: none"> <li>■ As well as creating a residence status relating to technical internships, consideration will be given to revisions of the system, such as approaches to legal protection during on-the-job training, while giving adequate consideration to the perspective of promoting the smooth, appropriate transfer of technology.</li> </ul>	<ul style="list-style-type: none"> <li>■ Trainees engaged in on-the-job training, who were hitherto not classed as workers, will become the focus of the application of the Labor Standards Act, the Minimum Wages Act and other labor-related legislation, as “workers.” Efforts will be made to ensure closer collaboration with bodies such as the Labor Standards Inspection Office, and to protect technical interns.</li> </ul>

Table 3. (Continued)

<p><i>Responses to Accepting Organizations</i></p>	<ul style="list-style-type: none"> <li>■ Seeks to rectify operations in line with the intent of the system.</li> <li>■ Seeks the implementation of proactive guidance for those engaging in supervision, and the publicizing and thorough implementation of the original intent of the system, as well as promoting collaboration with governmental organizations involved in the administration of labor-related matters, while conducting strict inspections, such as strengthening investigations of the actual situation. Furthermore, seeks to rectify operations in line with the intent of the system, by such means as suspending acceptance by organizations that have engaged in malpractice for three years, while giving consideration to the protection of trainees and technical interns.</li> <li>■ With regard to cases where acceptance is managed by individual enterprises, which tend to generate few problems, the relaxation of the criteria according to changes in the company's activities will be considered. With regard to cases where acceptance is managed by an association, which is where the majority of problems arise, consideration will be given to making the criteria more stringent, such as strengthening the supervisory responsibilities of accepting associations, in order to rectify matters depending on the situation.</li> <li>■ Presenting approaches by means of which accepting organizations are tackling improvements, by such means as analyzing and introducing examples where a successful contribution has been made to the international community under the existing system, as a result of technology transfer to developing countries, etc.</li> </ul>	<ul style="list-style-type: none"> <li>■ Seeks the reinforcement of supervision by associations and a more stringent response to organizations engaging in malpractice.</li> <li>■ In the case of the acceptance of technical interns through associations such as business cooperatives, seeks the strengthening of supervision of associations, by such means as ensuring that the association in question supervises the implementation of the internship from when the interns arrives in the country until they leave.</li> <li>■ Seeks the strengthening of measures in relation to malpractice, such as the extension of the acceptance suspension period for supervisory bodies and technical internship implementing organizations that have engaged in malpractice that is clearly defined in legislation as malpractice with regard to improper acceptance. Efforts shall be made to notify the relevant parties of these measures and to carry out proactive investigations of the actual situation, in order to bring supervisory bodies and organizations implementing technical internships into line by gaining a reliable understanding of and dealing with associations that have neglected their management obligations and organizations that have engaged in malpractice.</li> </ul>
<p><i>Responses to Sending Countries</i></p>	<ul style="list-style-type: none"> <li>■ Seeks to bring sending organizations into line and lobby the sending countries.</li> <li>■ As well as implementing reliable checks at the immigration screening stage, in order to check that the sending organization is not engaging in the unreasonable levy of money, ongoing strong requests shall be made to the governments of sending countries through diplomatic channels, etc., with regard to bringing sending organizations into line and taking measures to deal with brokers.</li> </ul>	

*Note:* The articles in the third and fourth editions do not correspond strictly to each other.

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# Impacts of International Migration on the Labor Market in Japan

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This paper introduces an empirical analysis on three key points: (i) whether the introduction of foreign workers into the labor market will serve to lower wages for Japanese workers, (ii) whether the introduction of foreign workers will affect the supply behavior of Japanese workers in a region, and (iii) whether the introduction of foreign workers will affect companies' technology choices. Since statistical data about foreign workers are limited in Japan, it is difficult to make a strict analysis on the relationship between Japanese and foreign workers. This paper analyzes this relationship, focusing on the above three key points and matching individual data by using existing statistical data including the Population Census, the Establishment and Enterprise Census, the Basic Survey on Wage Structure, and the Employment Status Survey. Analytical findings indicate that the introduction of foreign workers has positive effects on wages for domestic workers in Japan—as seen in other countries that accept foreign workers—and that the inflow of foreign workers into a region could cause an outflow of Japanese workers from that region through its effect on the labor supply behavior of Japanese workers.

## I. Introduction

In discussions on whether Japan should accept the full-fledged introduction of foreign workers, the importance of empirical analysis on how this would affect the Japanese labor market is hardly worth stating. Since Japan has never experienced a full-scale introduction of foreign workers, however, it is extremely difficult to strictly assess the effects of this level of participation by foreign workers in the Japanese labor market.<sup>1</sup>

In fact, relevant empirical analyses are extremely limited in Japan. Be this as it may, Japan is not the only country where data on foreign workers are limited, and other countries with limited data have devised various efforts to produce empirical analyses. As labor market data are abundant in Japan, it is not impossible to combine relevant databases to empirically assess the effects of the introduction of foreign workers. One reason why empirical analyses using existing data have been limited in Japan is that procedures for using existing individual data have been very complicated. A greater reason may be that the limited range of data on foreign workers has made it difficult to directly assess their substitution for or complementary relationship with domestic workers—the most basic factor for considering the effects of foreign workers on the labor market.

Nakamura et al. (2009) attempted to consistently assess the impact of introducing

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<sup>1</sup> No accurate number of foreign workers in Japan has been published. The Ministry of Health, Labour and Welfare has estimated the number at around 800,000 (as of 2003) including illegal workers. See Ogawa (2004) for details.

foreign workers into the labor market by combining micro data from existing statistics to analyze its effects from various viewpoints, though not directly. As indicated in the next section, Japan has yet to utilize foreign workers on a full-scale basis, and the number of foreign workers in Japan is extremely limited. Although this makes it difficult to empirically assess the effects of introducing foreign workers into the labor market, the analysis achieved by Nakamura et al. (2009) was designed to do so as consistently as possible within the limited framework.

Hypotheses taken up for examination in the paper were roughly integrated into the following three issues:

- (i) Whether the introduction of foreign workers into the labor market would serve to lower wages for Japanese workers
- (ii) Whether the introduction of foreign workers would affect Japanese workers' entry into and exit from the labor market
- (iii) Whether the introduction of foreign workers would serve to delay upgrades to the industrial structure

These issues, as noted by even the Ministry of Health, Labour and Welfare (2002), represent major reasons for Japan to refrain from accepting unskilled foreign workers. This paper uses the Nakamura et al. (2009) analysis on these three points to outline the present influence of foreign workers. Due to physical restraints on this paper, details of the analysis cannot be introduced. The analysis is thus outlined below. See Nakamura et al. (2009) for details.<sup>2</sup>

## II. Hypotheses and Data

As shown by Figure 1 (A), a simple framework of the effects of introducing foreign workers into the labor market indicates that wages, including those for domestic workers, may decline on a rightward shift of the supply curve. However, empirical analyses from Western countries as seen in such papers as Bauer and Zimmermann (1999) and Borjas (1994) has indicated that the introduction of foreign workers does not necessarily lead to wage drops for domestic workers. In this regard, such papers as Card and DiNardo (2000) have noted that the supply curve would shift leftward as indicated by Figure 1 (B), and would have no effect on wages for domestic workers as the introduction of foreign workers in one region would prompt domestic workers to move from the region. When considering the influence of foreign workers on wages for domestic workers, therefore, we must give consideration not only to direct influence but also to the labor supply behavior of domestic workers.

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<sup>2</sup> The paper represents a joint study that was conducted by Nakamura, Naito, Kambayashi, Kawaguchi, and Machikita and compiled by Nakamura. See Nakamura et al. (2009) for details including the theoretical framework and data used for the study.

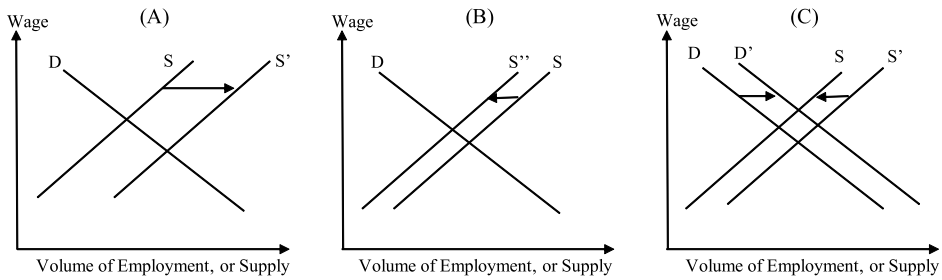


Figure 1. Introduction of Foreign Workers and Wages for Domestic Workers in Japan

In order to understand foreign workers as a heterogeneous group and assess the effects of a change in the number of workers in the group, it is best to assess the substitution and complementary relationship between distinct heterogeneous groups. However, data restraints have worked to limit past empirical analyses as to which groups of workers would be affected by the inflow of foreign workers in terms of wages or labor transfer, as indicated above. If positive effects on wages for domestic workers are detected, therefore, we may have to consider various potential factors including the transfer of domestic workers.

Few analyses have directly examined the argument that the inflow of unskilled foreign workers would serve to preserve less-productive enterprises or industries with technologies that complement these workers. Lewis (2004) and some others have indicated that the inflow of unskilled foreign workers is linked to equipment with relatively lower technological levels. Detailed information on technologies used by businesses is required for these analyses, and great problems exist in regard to the availability of data.

If the introduction of foreign workers serves to preserve enterprises or industries where relatively less-productive technologies are linked to unskilled foreign workers, or if enterprises move to a region in search of relatively cheaper, less-skilled foreign workers, demand for less-skilled workers may increase to boost the wages for these workers, including domestic ones, as shown in Figure 1 (C).

Past studies have noted that the introduction of foreign workers can affect wages for a group of relatively less-skilled workers. As a matter of fact, this influence depends on whether or not the foreign workers are skilled. The acceptance of relatively-rare, skilled foreign workers may little affect unskilled workers; however, the acceptance of unskilled foreign workers can be expected to greatly affect domestic workers who could be replaced by such foreign workers. Many foreign nationals reportedly work as unskilled workers in Japan, which is contrary to the government's principle of not accepting unskilled foreign workers, but it is difficult to get relevant detailed data.<sup>3</sup>

<sup>3</sup> Such data as the Population Census include educational levels of foreign workers as well. Nakamura et al. (2009) tested an analysis that gave consideration to educational level of foreign workers.



This paper examines the effects of Japan's introduction of foreign workers in relation to hypotheses on the three issues from various viewpoints, including a perspective similar to Borjas (1994). The following introduces the analytical findings of Nakamura et al. (2009) focusing on these three issues. Nakamura et al. (2009) empirically examined and assessed the effects of the introduction of foreign workers from various viewpoints by combining individual data from such statistics as the Population Census, the Establishment and Enterprise Census, the Basic Survey on Wage Structure, the Employment Status Survey and the Report of Employment Conditions of Foreign Workers.

### 1. Effects on Wages

First, we will take a look at the effects on wages. Here, we consider the effects on two categories of wages. The first is average regional wage by educational level and gender. The second is the wage at individual business establishments, with new university graduates' starting salaries by educational level and gender as the dependant variable. Effects on the former category of wage indicate how the inflow of foreign workers into a region's labor market would affect regional wages. Effects on the latter are somewhat different, indicating the relationship between starting salaries and the employment of foreign workers at individual business establishments. Usually, it would seem natural to assess how market wages are affected by the introduction of foreign workers. However, when the effects of the introduction of foreign workers are to be considered in a country that features such a strong internal labor market as Japan, it is important to consider wages encountered in the external labor market as much as possible.

For both categories of wages, different values are used for variables indicating the degree of introduction of foreign workers. As for the former category, foreign nationals' share of the population in each region is computed based on the Population Census to indicate the degree of the introduction of foreign workers. As for the latter category, the Basic Survey on Wage Structure and the Report of Employment Conditions of Foreign Workers are matched through the Establishment and Enterprise Census to create a variable of 1 for establishments employing foreign workers and a variable of 0 for those employing no foreign workers, indicating the degree of introduction of foreign workers. The former category is used to examine whether wages in a local labor market are affected by the degree to which foreign workers have been introduced. The latter is designed to detect any starting-salary gap between business establishments employing foreign workers and those employing no such workers.

The following equation has been assumed for the former category:

$$\begin{aligned} \text{Log}(W_{c,t}) = & \beta_0 + \beta_1 D1996 + \beta_2 D2001 + \text{INDI}_{c,t} \cdot \gamma_1 + \text{FIRM}_{c,t} \cdot \gamma_2 \\ & + \beta_3 \text{UUEMPLOYMENT}_{c,t} + \beta_4 \text{FOREIGN}_{c,t} \\ & + \beta_5 D1996 \cdot \text{FOREIGN}_{c,t} + \beta_6 D2001 \cdot \text{FOREIGN}_{c,t} + u \end{aligned} \quad (2-1)$$

Table 1. Estimation Results

	High school graduates					
	(1) Male			(2) Female		
	Coef.	Std.Err	p-value	Coef.	Std.Err	p-value
FOREIGN	0.844	0.265	0.00	-0.147	0.411	0.72
D1996•FOREIGN	0.023	0.149	0.87	-0.284	0.229	0.21
D2001•FOREIGN	-0.377	0.152	0.01	0.087	0.236	0.71
Observations	8,750			8,561		

	University graduates					
	(3) Male			(4) Female		
	Coef.	Std.Err	p-value	Coef.	Std.Err	p-value
FOREIGN	-0.357	0.375	0.34	-0.927	0.558	0.09
D1996•FOREIGN	0.285	0.190	0.13	-0.561	0.275	0.04
D2001•FOREIGN	0.453	0.191	0.01	-0.720	0.279	0.01
Observations	7,847			6,765		

In the equation,  $W_{c,t}$  indicates the local average wage rate in Region  $c$  in Year  $t$ .  $FOREIGN_{c,t}$  represents the ratio of foreign workers to Japanese in the region. D1996 and D2001 are year dummies for 1996 and 2001. INDI shows the attributes of employees in the region (including the average age and education level of workers employed by enterprises in the region). FIRM indicates the attributes of enterprises located in the region (including the enterprise size and the gender ratio of employees).

The ratios of foreign workers to Japanese for three years (1990, 1995, and 2000) in each local community in the Popular Census are used. Other variables are based on data from the Basic Surveys on Wage Structure in 1991, 1996, and 2001. These data are used to regress each region's average wage by educational level and gender with the age, length of service, business establishment size, gender ratio at each business establishment, manufacturers' share of enterprises, the unemployment rate, the year dummy (for 1995 and 2001), and the ratio of foreign workers to Japanese (cross terms for year dummies are added to variables for some estimations). A regional dummy is also used for each local community to exclude any fixed effect. Since sample sizes for some 3,000 local communities are substantially different, the number of samples in each community is used as a weight with consideration given to heteroscedasticity upon estimation.

Estimation results are given in Table 1. Here, coefficient values other than the ratio of foreign workers to Japanese workers are omitted. The coefficient of the ratio of foreign workers to Japanese workers is significant and positive for male high school graduates, partially positive and significant for male university graduates, negative and significant for

female university graduates, and insignificant for female high school graduates. The effects of the ratio of foreign workers to Japanese workers differ from time to time for male high school and university graduates. For male high school graduates, the coefficient of the ratio of foreign workers to Japanese workers is positive with the cross term for the 2001 year dummy being negative, indicating that the effects of the introduction of foreign workers on wages have declined recently. For male university graduates, meanwhile, the cross term for the 2001 year dummy alone is estimated as positive and significant.

The above results indicate that the introduction of foreign workers can serve to boost wages for males more or less and to lower wages or have no effect for females.

How does the employment of foreign workers affect wages on a business establishment basis? The framework for estimation follows: first, starting salaries by educational level, job category, and gender ( $W_{ijt}$ ) upon recruitment in April of Year  $t$  at Business Establishment  $i$  located in Prefecture  $j$  in Year  $t$  are computed as a dependent variable. Adopted as demand factors ( $X_{ijt}$ ) for determining starting salaries were the number of regular employees, the overtime ratio (the ratio of the establishment's total overtime work hours to official working hours), the average age of employees, the ratio of regular employees, and the ratio of fulltime employees in the previous period. The prefecture-by-prefecture number of new university graduates is adopted as a labor market supply factor ( $Y_{jt}$ ) facing the business establishment. In addition, a dummy ( $D_{ijt}$ ) that stands at 1 for employment of foreigners in Year  $t$  is introduced to check the effects of foreigners' employment on starting salaries. The least square with 0 for the absence of new graduates is adopted as the estimation method. The estimated equation is as follows (2-2). The analysis focuses on the significance and positive or negative sign for  $\beta$ . Samples for the analysis are limited to establishments with 50 or more employees where accurate data are collected. Introduced as other control variables are prefecture, industry category, and year dummies considering differences in the labor market. Estimations have been made separately for high school graduates, junior college/vocational school graduates, and university graduates, production and nonproduction employees, and males and females.<sup>4</sup>

$$W_{ijt} = D_{ijt}\beta + X_{ijt}\gamma_1 + Y_{jt}\gamma_2 + Controls + \alpha \cdots \cdots (2-2)$$

As indicated by Figure 1, on the premise of the simplest competitive equilibrium, wage levels are determined in a competitive market and cannot be expected to depend on the attributes of business establishments that employ the relevant workers. Then, Equation (2-2) has no rationale. Only a few earlier studies have used this kind of data. Here, business establishments are assumed to exercise a monopolistic power in recruiting new graduates

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<sup>4</sup> Data used here (for the period between 1993 and 2003) are data from the Basic Survey on Wage Structure and the Survey on Employment Conditions of Foreign Workers that were matched for each business establishment through the Establishment and Enterprise Census. See Nakamura et al. (2009) for details of the matching method.

and determine starting salaries and their respective numbers of workers for recruitment. A decision on whether to employ foreign workers may have some correlation with labor demand emerging at each business establishment, which analysts cannot perceive. This may cause some positive bias, though not so large, in the coefficient of the dummy for the employment of foreign workers. Therefore, three estimations were conducted to check the robustness of this estimation. They are the OLS (ordinary least squares) estimation, the random effect model estimation taking advantage of the data characterized as panel data by business establishments, and the Tobit model estimation taking into account the left-censored starting salary as a dependent variable. As a result, the coefficient values for the dummy for the employment of foreign workers were all significant and positive for male high school graduates in production jobs—67.23 in the OLS estimation, 61.597 in the random effect model estimation, and 240.79 in the Tobit model estimation. The coefficient value for the Tobit model estimation, though, being larger than those for other estimations, did not affect an overall conclusion. Therefore, only OLS estimation results are introduced below.

Table 2 shows the effects of the employment of foreign workers on starting salaries by educational level and gender. Estimated coefficients are positive and significant, indicating starting salaries for high school graduates are higher for business establishments that employ foreign workers. The estimation based on regions in Table 1 confirmed the tendency that the employment of foreign workers may exert a negative effect on wages for female university graduates. In this regard, Table 1 and 2 estimations are different. For all other wages, however, both estimations indicated that the employment of foreign workers would roughly exert positive effects on wages.

Tables 1 and 2 suggest that the employment of foreign workers has a positive relation to wages for not all but some employees. This tendency is remarkable particularly for male high school graduates. Why are such positive effects generated? Borjas and some others explain that this is mainly because the supply curve shifts leftward as indicated by Figure 1 (B) since the introduction of foreign workers in one region prompts domestic workers to move to other regions. Have such effects emerged in Japan as well? The following checks how the inflow of foreign workers may affect Japanese workers' entry into and exit from the labor market.

## 2. Effects on Domestic Workers' Entry into and Exit from the Labor Market

Foreign workers' inflow into a region is thought of as generating three effects: (a) domestic workers' moves to other regions, (b) domestic workers' exit from the labor market, and (c) an effect on career paths including higher education. The first effect may emerge mainly in relation to male workers, the second on married females, and the third on young people. The three effects of foreign workers' inflow into one region are outlined below.

The Population Census includes residence data from five years earlier. Such data are used for checking whether domestic workers moved from regions with more foreign workers

Table 2. Effects on Starting Salaries by Educational Level/Gender (At business establishments with 50 or more employees)

Dependent variable	Starting salaries for high school graduates (in hundreds of yen)											
	Production job			Nonproduction job								
	Male	Female		Male	Female							
	Coef.	Std.Err	p-value	Coef.	Std.Err	p-value						
Dummy for employment of foreign workers	63.230	8.003	0.00	60.676	5.724	0.00	39.128	7.929	0.00	41.242	8.101	0.00
Observations	116,789			116,789			116,789			116,789		

Dependent variable	Starting salaries for junior college graduates (in hundreds of yen)											
	Production job			Nonproduction job								
	Male	Female		Male	Female							
	Coef.	Std.Err	p-value	Coef.	Std.Err	p-value						
Dummy for employment of foreign workers	52.097	4.404	0.00	15.315	2.343	0.00	49.464	8.200	0.00	76.762	9.663	0.00
Observations	116,789			116,789			116,789			116,789		

Dependent variable	Starting salaries for university graduates (in hundreds of yen)											
	Production job			Nonproduction job								
	Male	Female		Male	Female							
	Coef.	Std.Err	p-value	Coef.	Std.Err	p-value						
Dummy for employment of foreign workers	122.860	12.060	0.00	40.763	7.852	0.00	55.022	12.533	0.00	92.147	10.430	0.00
Observations	116,789			116,789			116,789			116,789		

to other regions with fewer foreign workers in those five years. The estimation is based on the following equation:

$$y_{ijt} = \alpha + \beta_1 x1_{jt} + \beta_2 x2_{ijt} + \beta_3 c_j + \beta_4 D_t + \varepsilon_{ijt}$$

The dependent variable is a dummy variable for moving that stands at 1 for domestic workers who within those five years had moved to regions where foreign residents' shares were slipping below prefectural averages and at 0 for others. Index  $i$  stands for the individual,  $j$  for the region, and  $t$  for the time (1990 or 2000). Here,  $x1_{jt}$  is an independent variable of interest, representing Foreigner Share 1 from five years earlier (in the town of residence from five years earlier), Foreigner Share 2 from five years earlier (in the town of residence from five years earlier), present Foreigner Share 1 (in the town of residence from five years earlier) and present Foreigner Share 2 (in the town of residence from five years earlier). Foreigner Share 1 includes *Zainichi* Koreans (North and South Korean residents in Japan) and Foreigner Share 2 encompasses only non-*Zainichi* Korean foreign nationals.  $x2_{it}$  is a variable indicating the attributes of individuals or households.  $c_j$  is a dummy variable to control the regional characteristics.  $D_t$  is a dummy variable that stands at 1 if  $t$  is 2000.

The estimation model using foreigner shares from five years earlier indicates that past foreigner shares would cause a crowding out. The model, which uses the foreigner share that a domestic worker would face if he/she were to remain in his/her town of residence from five years earlier, takes into account a reasonable prediction that an expected foreigner share would affect human behavior.

Moves between regions must be prudently considered with aspects such as the effects of regional characteristics taken into account. Table 3 indicates panel estimation results. These results confirm that male workers who are high school graduates moved from regions with higher foreigner shares to those with lower foreigner shares. This means that the inflow of foreign workers to Japan has caused moves of domestic workers who are likely to be replaced with foreign nationals, as indicated by Figure 1 (B). Indications are that such effect is stronger on junior high or high school graduates than on university graduates.

The estimation results for the second and third effects are outlined below. As for the effect of foreign workers on domestic females' entry into and exit from the labor market, female junior high or high school graduates who are relatively expected to take unskilled jobs are likelier to exit from the labor market in regions into which more foreign workers have flowed. In this case even without moves to other regions, as is the case with males, the labor supply curve in relevant regions shifts leftward. As for the effect on young people's career paths, the presence of many foreign workers in a region may be expected to affect high school students' decisions on whether to continue on to higher education. The presence of many foreign workers who are relatively expected to take up unskilled jobs can serve to reduce the relative scarcity of workers who are high school graduates. In fact, the coefficient value of the foreigner share affecting high school graduates' probability of taking jobs

Table 3. Males' Moves to Regions with Lower Foreigner Shares: Fixed Effect on a Municipality-by-Municipality Basis

Dependent variable = a dummy for moves to regions with lower foreigner shares								
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Foreigner Share 1 from five years earlier (in the town of residence from five years earlier)	-1.043 (1.61)				-0.622 (2.34)*			
Foreigner Share 2 from five years earlier (in the town of residence from five years earlier)		-2.501 (3.34)**				-0.774 (3.31)**		
Present Foreigner Share 1 (in the town of residence from five years earlier)			0.325 (0.97)				-0.136 (1.24)	
Present Foreigner Share 2 (in the town of residence from five years earlier)				-0.481 (1.73)				-0.267 (3.52)**
Educational level of samples	University and junior college graduates				Junior high and high school graduates			
Number of observations	1,351,762 for each category				2,958,538 for each category			
R-squared	0.05	0.05	0.05	0.05	0.04	0.04	0.04	0.04

Note: Clustering robust t statistics in parentheses. \* significant at 5%; \*\* significant at 1%. In addition to the above independent variables, each regression equation includes the age, the square of the age, the number of household members, the year dummy, the constant, and the fixed effect.

after graduation is positive and significant. In regions where there are more foreign workers, high school graduates' probability of taking jobs right out of high school is lower and the percentage for those going to high education is higher.

The estimation results for the three cases above indicate that the inflow of foreign workers to a region leads to a decline in labor supply of domestic workers to the labor market in the region. This means that the effect on their labor supply behavior could have prompted the labor supply curve to shift leftward, as indicated by Figure 1 (B).

Are there any effects other than the labor supply curve's leftward shift? The following considers the effects on the reorganization of enterprises.

### 3. Reorganization of Enterprises

Employing foreign workers is reportedly expected to serve to preserve enterprises that are relatively less productive. In fact, Lewis (2004) confirmed that U.S. enterprises that employed foreign workers had adopted technologies for which relatively higher skills were not required. Enterprises' adoption of less productive technologies is expected to lower their survival probability, but could this also be the case in Japan? It is difficult to find data that directly indicate the relationship between the employment of foreign workers and the levels

of adopted technologies. Here, let us look at the relationship between foreign workers and the development of the industrial structure from two viewpoints. One viewpoint is to look at this as a short-term issue of whether enterprises employing foreign workers have adopted technologies for relatively less skilled workers. Specifically, we will estimate a wage function to examine a hypothesis that if enterprises have equipment that can be operated by workers of relatively lower quality, demand for higher-quality workers may decline to reduce wage disparities based on worker quality gaps.

Another viewpoint represents a more direct problem—whether such enterprises have a higher probability of going bankrupt or going out of business in the medium to long term. Specifically, the following hypotheses are examined:

- (i) Reduced scarcity of labor and improvement of returns on capital through the introduction of foreign workers to a region increases the survival probability of enterprises located in the region.
- (ii) The introduction of foreign workers in one region encourages more enterprises to expand into the region.

On the first hypothesis, the effect of the unskilled/skilled and the labor/capital ratios at relevant business establishments is also considered.

First, we will look at estimation results on the wage function. Here, the cross term for the number of years of education and the foreign worker share are added as independent variables in the Mincer wage function, similar to Equation (2-1), to examine the hypothesis. If the cross term coefficient is negative, it will indicate that wage disparities among workers with different education levels are narrower with the introduction of more foreign workers. This means wages for relatively less skilled workers are higher. It is assumed that under the technology structure in which demand is relatively higher for less skilled workers, demand for relatively less skilled workers may increase to relatively boost their wages.

Basic estimation results are compiled in Table 4.<sup>5</sup> The coefficients for variables other than the cross term for the number of years of education and the foreign worker share are very significant, meeting the sign conditions almost completely. All estimates of the cross term for the number of years of education and the foreign worker share in 2000 are significant and negative. This indicates that the number of years of education has less effect on wages in regions with more foreign workers than in those with fewer foreign workers. If observable variables are used to identify estimated samples, estimation results, though with estimated coefficients becoming smaller, strongly indicate a relationship in which the number

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<sup>5</sup> Since the foreign worker share is a municipality-based variable that fails to indicate differences between individuals, estimates' standard deviations must be adjusted in the estimation to get a consistent estimator that explains the differences among municipality-based foreign worker shares in relation to those among individual wages. Here, the clustering-robust regression is used for adjusting the standard deviation. Data used here include the foreign worker share, the region-by-region unemployment rate and the population size from the 2000 Population Census, and some data from the 2002 Basic Survey on Wage Structure. As for wages, a median level is used for each category.



Table 4. Basic Estimation Results (Foreign Labor Share Computed for Each Municipality)

	[1]	[2]	[3]	[4]	[5]	[6]	[7]	[8]
Foreign worker share in 2000	8.039 (1.493)***	9.12 (1.589)***	6.355 (1.416)***	2.255 (0.891)**	1.995 (0.934)**	2.535 (0.794)***	2.444 (0.807)***	2.352 (0.809)***
Years of education*Foreign worker share in 2000	-0.451 (0.088)***	-0.536 (0.094)***	-0.535 (0.103)***	-0.193 (0.061)***	-0.175 (0.064)***	-0.198 (0.058)***	-0.19 (0.058)***	-0.183 (0.058)***
Unemployment rate, population size, years of education	yes	yes	yes	yes	yes	yes	yes	yes
Females, years of working, square of years of working		yes	yes	yes	yes	yes	yes	yes
Independent variable: University graduates' share of employment in 2002							yes	yes
Years of residence								yes
Prefecture			yes	yes	yes	yes	yes	yes
Industry				yes	yes	yes	yes	yes
Occupation					yes	yes	yes	yes
Enterprise size						yes	yes	yes
Observations	431,746	431,746	431,746	428,789	428,693	427,147	427,147	425,721

Note: Standard errors in parentheses. \* significant at 10%; \*\* significant at 5%; \*\*\* significant at 1%.

of years of education has less effect on the wage rate for (individuals located in) municipalities with more foreign workers.

Various other estimations were conducted in addition to those indicated here. In every estimation, the estimated cross term for the number of years of education and the foreign worker share was negative and significant, suggesting that wage disparities among workers of different educational levels are narrower for regions with higher foreign worker shares. Therefore, indications are that the introduction of foreign workers can serve to preserve older technologies over the short term.

How about the medium to long-term effects on the consolidation of business establishments? The following equation is estimated to examine Hypothesis (1).

$$y_{ic} = \alpha_0 + \alpha_1 g_c + \alpha_2 [x_{1i} - x_1] + \beta_1 g_c \times [x_{1i} - x_1] + \beta_2 x_{2i} + \beta_3 x_{3c} + \varepsilon_{ic}$$

In the equation,  $y_{ic}$  is a dummy variable indicating whether Enterprise  $i$  existed in Region  $c$  in both 1991 and 2001. The variable is 0 for the case in which the enterprise exited from the region during the 10 years and 1 for the case in which it remained there for the 10 years.  $g_c$  is an index indicating the regional foreign worker share.  $x_{1i}$  represents variables indicating characteristics of Enterprise  $i$ . These are the variables we are interested in (the labor-capital ratio and the unskilled- skilled ratio).  $x_{2i}$  represents variables indicating other characteristics of enterprises that are expected to have effects on their exits (including the enterprise size and the founding year).  $x_{3c}$  is a variable indicating municipalities' characteristics other than the foreigner share.  $\alpha_1$  is a coefficient indicating the survival probability of Enterprise  $i$  with Characteristics  $x_{1i}$  at  $x_1$  if foreign workers increase in a municipality where the enterprise is located.  $\alpha_2$  is the survival probability of enterprises in a municipality with a foreigner ratio of 0 if Enterprise Characteristics  $x_{1i}$  (enterprise age, enterprise size, etc.) increase by one unit.  $\beta_1$  is a coefficient indicating how much longer an enterprise that has one unit more of beneficial characteristics (the unskilled-skilled ratio and the labor-capital ratio) can survive than an enterprise that has one unit less of such characteristics in a region when the regional foreigner share increases by one unit.<sup>6</sup>

The coefficients for Foreigner Shares 1 and 2 in 2000 are of our primary interest. They are the foreigner shares in municipalities where enterprises were located in 2000. The coefficients indicate how the survival probability for enterprises would change with the labor-capital and unskilled- skilled ratios controlled if the foreigner share rises by one unit.

The following variable was created to examine the effect of the unskilled-skilled and labor-capital ratios. The "dev\_unskill\_skill\_ratio" is a deviation of an enterprise's unskilled-skilled ratio from an average unskilled-skilled ratio of all enterprises. When the

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<sup>6</sup> The average, the median, and 90% of  $x_{1i}$  are used for  $x_1$  here. In the equation,  $x_1$  is changed to indicate how the effect of the foreigner share would change on the survival of enterprises with different characteristics.

“unskill\_skill\_ratio” stands for the ratio for an enterprise and the “average (unskill\_skill\_ratio)” for an average of all enterprises, the deviation (dev\_unskill\_skill\_ratio) is defined as “dev\_unskill\_skill\_ratio=unskill\_skill\_ratio-average (unskill\_skill\_ratio).” The unskilled-skilled ratio for each enterprise was computed by obtaining the ratio of newly recruited junior high and high school graduate workers to junior college and university graduate workers, and the average ratio of all enterprises, based on the 1991 Basic Survey on Wage Structure. How would an increase in the foreigner share affect unskilled-labor-intensive enterprises compared with other enterprises? Analyzing the question is the following cross term for the foreigner share and the unskilled-skilled ratio’s deviation from the average:

Foreigner Share 1 in 2000  $\times$  dev\_unskill\_skill\_ratio

or

Foreigner Share 2 in 2000  $\times$  dev\_unskill\_skill\_ratio

The cross term indicates how the marginal foreigner share effect would change when the unskilled-skilled ratio rises by one unit.

Meanwhile, the labor-capital ratio was computed as the ratio of the total number of employees to the capital size for each enterprise in 1991. As was the case with the unskilled-skilled ratio, the “dev\_labor\_capital\_ratio” was computed in the following way:

dev\_labor\_capital\_ratio = labor\_capital\_ratio – average (labor\_capital\_ratio)

Data used here are from the 2000 Population Census, the 1991 and 2001 Establishment and Enterprise Censuses, and the 1991 Basic Survey on Wage Structure.

Estimation results are put in order in Table 5. The results, though including a small number of significant coefficients, indicate a certain amount of tendency. The coefficient of Foreigner Share 2 in 2000 is positive and significant. This indicates that an increase in the foreigner share that includes *Zainichi* Koreans does not lead to a rise in the survival probability of enterprises, while an increase in the share that excludes *Zainichi* Koreans brings about such a rise in the relevant region.

What about the effects of the unskilled-skilled and labor-capital ratios? Column (3) indicates that when Foreigner Share 1 rises by 1 percentage point in a municipality, the survival probability may increase by 0.025 percentage point for an enterprise with an unskilled-skilled ratio that is one unit higher in the municipality, compared with an enterprise with a ratio that is one unit lower. Similarly, this indicates that when the foreigner share rises by 1 percentage point in a municipality, the survival probability may increase by 0.31 percentage point for an enterprise with a labor-capital ratio that is one unit higher in the municipality, compared with an enterprise with a ratio that is one unit lower. These effects cannot be observed when Foreigner Share 2 is used (Column [4]). The results in Table 5, though failing to produce any strict conclusion, indicate that the introduction of foreign workers tends to increase the survival probability of enterprises. Particularly, such tendency is more remarkable for enterprises with higher unskilled-skilled and labor-capital ratios.

Lastly, let us consider capital flow to regions with more foreign workers (Hypothesis

Table 5. Foreigner Share's Effects on Survival of Enterprises: Assessment Based on Average Unskilled-Skilled and Labor-Capital Ratios

Dependent variable = a 2001 survival dummy				
	(1)	(2)	(3)	(4)
Foreign share 1 in 2000	0.027 (1.39)		0.028 (1.43)	
Foreign share 2 in 2000		0.047 (2.98) **		0.047 (2.94) **
Foreign share 1 in 2000 × dev_unskill_skill_ratio			0.025 (2.09) *	
Foreign share 2 in 2000 × dev_unskill_skill_ratio				0.024 (1.33)
Foreign share 1 in 2000 × dev_labor_capital_ratio			0.312 (3.09) **	
Foreign share 2 in 2000 × dev_labor_capital_ratio				0.130 (0.75)
Observations	1,208,368	1,208,368	1,208,368	1,208,368

Note: Clustering robust t statistics in parentheses. \* significant at 5%; \*\* significant at 1%. In addition to the above independent variables, the regression equation includes the enterprise age, the square of the enterprise age, the number of employees, the square of the number of employees, Japanese population in the relevant municipality in 1990, the square of the 1990 Japanese population, the share for employees in each industry on a workplace basis in the relevant municipality in 1990, the share for university and junior college graduates on a workplace basis in the relevant municipality in 1990, the share for junior high and high school graduates, the unemployment rate on a residence location basis, and the elderly share.

[2]). If an increase in the number of foreign workers engaged in unskilled jobs leads to a rise in the supply of unskilled workers in a region, complementary capital for such workers may flow into the region.

The following model is considered for examining the above hypothesis:

$$y_c = \beta_1 x_{1c} + \gamma_1 x_{2c} + \varepsilon_c$$

Index c indicates a municipality.  $y_c$  represents the number or the total capital of new enterprises founded in each municipality in seven years to 2001.  $x_{1c}$  is the foreigner share.  $x_{2c}$  represents the other variables (regional industrial structure) that affect the number or the total capital of new enterprises. A problem with the OLS (ordinary least squares) estimation using this equation is the possible correlation between  $x_{1c}$  and  $\varepsilon_c$ . Instrumental variables are used for the estimation to resolve the endogeneity problem.

The estimation results are put in order in Table 6. Dependent variables are the number

Table 6. Foreigner Share's Effects on the Number and Total Capital of New Enterprises in Each Municipality

Dependent variable	(1) ln (number of new enterprises)	(2) ln (number of new enterprises)	(3) ln (total capital of new enterprises)	(4) ln (total capital of new enterprises)
Foreign share 1 in 2000	0.908 (3.36) **		0.876 (2.05) *	
Foreign share 2 in 2000		0.908 (3.40) **		0.880 (2.08) *
Observations	3,226	3,226	3,226	3,226

*Note:* Clustering robust t statistics in parentheses. \* significant at 5%; \*\* significant at 1%. In addition to the above independent variables, Japanese population in the relevant municipality in 1990, the square of the population, the share for employees in each industry on a workplace basis in the relevant municipality in 1990, the share for university and junior college graduates on a workplace basis in the relevant municipality in 1990, the share for junior high and high school graduates, the unemployment rate on a residence location basis, the elderly share and the total number of enterprises in the relevant municipality in 1990 are included as independent variables.

of new enterprises logged by Columns (1) and (2), and the total capital of new enterprises logged by Columns (3) and (4). Used as instrumental variables here are the Chinese share, the foreigner share excluding North Americans, Asians, and Europeans, and the foreigner share excluding *Zainichi* Koreans in 1990.<sup>7</sup>

First, let us look at the estimation results for the number of new enterprises. Coefficients of Foreigner Shares 1 and 2 are positive and significant, indicating that a rise of 1 percentage point in the foreigner share may lead to an increase of about 0.9% in the number of new enterprises.

Next, let us look at the relationship between a rise in the foreigner share and capital brought about by new enterprises in the same region. In order to control differences in new capital amounts among large and small cities, total capital amounts and numbers of enterprises in the same cities in 1991 are added to control variables. The same instrumental variables as used for the number of new enterprises were adopted here. As a result, as seen in Columns (1) and (2), coefficients of Foreigner Shares 1 and 2 were positive and significant. Coefficient values are almost the same. The results in Table 6 confirm that both the number and the total capital of new enterprises indicate that more new enterprises have been founded in regions with more foreign workers, as suggested by Figure 1(c).

<sup>7</sup> Phase-1 F values of the instrumental variables were very high. Correlations between instrumental and endogenous variables were also very high. The Hansen J statistics were very low when the instrumental variables were used for the estimation. As a result, the P value indicating the absence of correlations between error terms and endogenous variables was sufficiently high. This indicates that the instrumental variable estimation was successful.

The above results indicate a significant relationship between enterprises' entry into and exit from a region, and the introduction of foreign workers to the region, endorsing a general fear that the introduction of foreign workers could serve to impede the development of the industrial structure. However, foreign workers might be functioning as a lubricant to facilitate adjustments in the industrial structure as Japanese workers shift to more productive enterprises or industries in the development process of the industrial structure. This point must be subjected to more detailed consideration.

### **III. Conclusion**

The number of foreign workers in Japan is extremely small as the nation has yet to introduce such workers on a full-fledged basis. As young workers decline in Japan over the long term, however, pressures are expected to grow on Japan to accept more foreign workers. So far, various arguments have been made about accepting foreign workers into the labor force, but none of these has been based on any empirical analysis.

Under the physical restraints of this paper, the findings introduced here are limited to a part of the findings of Nakamura et al. (2009). They do, however, give some answers to past arguments. They deny the past argument that "the acceptance of foreign workers, particularly unskilled workers, would serve to lower wages for Japanese workers." As seen in other industrial countries, however, the findings also indicate that accepting foreign workers into a region's labor force may prompt Japanese workers to move away from that region, and that it may serve to preserve less productive sectors.

As a matter of course, it is necessary to retain some reservations about these findings. If foreign workers serve to prevent less productive sectors from declining rapidly amid Japanese workers' shift from less productive sectors to more productive ones, foreign workers can be seen to function as a cushion in the course of the development of Japan's industrial structure. Less productive sectors might increase their survival probability by taking advantage of an efficient combination of foreign and Japanese workers, rather than cheap foreign labor, to make production operations more efficient. There are many problems left to be solved, and these findings must be subjected to a more detailed analysis.

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## 10% of Companies Recruited Foreign Students in the Past Three Years: JILPT Survey on Recruiting of Foreign Students

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Only about 10% of companies in Japan actually recruited foreign students over the past three years. But most of the companies which did recruit foreign students are actively evaluating these recruits, and about 80% of these want to continue recruiting them. On the other hand, companies which did not recruit them have a relatively negative image of foreign students, and nearly 80% of such companies replied “I don’t think so” regarding future recruiting of foreign students. Companies which actually recruited and understand the actual situation of foreign students want to continue actively recruiting them. This seems important evidence for promoting the recruiting of foreign students. It seems there is a very high hurdle to taking the first step with no precedent. Also, few companies which recruited foreign students implement career management or labor management optimized for them, so foreign students are not fully utilized. Detailed care is essential in order to strategically utilize foreign students who have a variety of attitudes and backgrounds.

### **I. Introduction**

Amidst the increasing global competition in recent years, the Japanese government and companies have viewed foreign students as excellent human resources with specialized knowledge and skills. They have begun to look at these students as human resources which they must recruit in order to survive. Foreign students studying in Japan’s universities and graduate schools are increasing each year, with 132,720 foreign students in 2009, double the 55,755 students 10 years before (1999) (according to the Japan Student Services Organization). The previous Liberal Democratic Party-New Komeito administration announced “achieving 300,000 foreign students in the year 2020” in its “Economic Growth Strategy.” This is a policy for actively incorporating foreign human resources with advanced technology and skills. The Democratic Party of Japan took power last summer, and also actively set out to accept foreign students in its “New Economic Growth Strategy” put together at the end of last year. But there is actually less progress than hoped for regarding domestic employment of foreign students.

In order to search for the reasons behind the lack of progress in employment and the reality of domestic employment of foreign students from the perspective of companies and model employment management, The Japan Institute for Labour Policy and Training (JILPT) has performed a questionnaire survey on 15,000 private sector companies with 30 or more employees—Survey on Recruiting Foreign Students (hereafter Company Survey), and has compiled the replies obtained from 3,244 companies (Effective response rate 21.6%, Survey period January 5-23, 2007). Also, as a counterpart to the Company Survey, the



Questionnaire Survey on Foreign Graduates Working in Japanese Companies (hereafter Foreign Students Survey) for former foreign students working in Japanese businesses regarding their experiences in Japanese businesses, in what sense they are working etc. was conducted, and the responses of 902 former foreign students were compiled (the questionnaire was distributed to former foreign students enrolled in 10,349 private sector companies with 300 or more employees). This paper introduces these two findings, and discusses the current state of lack of smooth progress in the employment of foreign students.

First, let us sort out the state of foreign students in Japan and compare it with foreign countries. According to UNESCO's Global Educational Digest 2009, the United States has the most foreign students, at approximately 600,000 (3.4% of all students in the country). Next are the UK at approx. 350,000 (14.9%), France approx. 250,000 (11.3%), Australia approx. 210,000 (19.5%), Germany approx. 210,000 (% data not available), and then Japan with approx. 130,000 (3.1%). Japan has more foreign students than Canada (approx. 70,000, % data not available), Russia (approx. 60,000, 0.6%), and Italy (approx. 60,000, 2.8%), but we can see that Japan's figures are not particularly high. Among these precious foreign students studying in Japan, how many remain and continue to work in Japan? Looking at the number of change permits from student visas to work visas (Number of visa change permit cases of Legal Affairs Bureau), these first exceeded 10,000 when they reached 10,262 in 2007, rising to 11,040 in 2008. The number almost doubled from 2004 (5,264) and 2005 (5,878), indicating a steady increase. However, considering that about 30,000 foreign students graduate from schools every year, only about 30% of foreign students obtain employment and work in Japan. The remaining 70% return to their home country or move to other country to work.

## **II. Company Survey (Survey on Recruiting Foreign Students)**

### **1. Experience of Recruiting Foreign Students**

Let us examine the findings of the Company Survey to specifically find out how many companies recruit foreign students. On enquiring whether foreign students were recruited as regular or contracted employees in the past three years, 9.6% i.e. almost 10% of the companies "Recruited," while almost 89.5% "Did not recruit" (hereafter, for recruiting, the period is for the past three years).

Looking at the "Recruited" percentage by industry, the "Recruited" percentage exceeded 20% for the information/communications industry and general machinery manufacturing industry (information/communications industry = 26.5%, general machinery = 22.5%). The "Recruited" percentage also exceeds 10% in other manufacturing industries: food processing (10.6%), iron and steel, non-ferrous and metal (10.3%), electrical machinery (12.2%), transportation equipment (15.9%), precision machinery (14.9%).

Looking at their numbers of regular employees, 5.8% of companies with 30-49 employees, 9.1% of companies with 50-99 employees, and 10.3% of companies with 100-299

employees “Recruited” foreign students. Thus we see the “Recruited” percentage rises in larger companies, and 36.3% of companies with 300 or more employees, i.e. 1 in 3 larger companies employed foreign students (Figure 1).

## 2. Perception of Foreign Students

Each company was asked about its perception regarding attributes of foreign students and their employment. Specific perceptions were posed, and replies were received in the three stages of “Agree,” “Neither agree nor disagree” and “Disagree.”

According to that, the perception with the highest percentage of “Agree” was “Strongly self assertive” (42.6%), followed by “Lack Japanese language ability” (38.4%), “Low retention rate” (34.4%), and “Broad international perspective” (30.8%). On the other hand the perception with the highest percentage of “Disagree” was “They are loyal” (29.4%), followed by “They are cooperative” (19.8%), and “Lack Japanese language ability” (12.3%).

For these results, let us compare the companies which “Recruited” and “Did not recruit.” Figure 2 shows the “Agree” response rate for each perception, for companies which “Recruited” and “Did not recruit” foreign graduates. Looking at this, for the positive perceptions, as a general trend it can be understood that the proportion of “Agree” is higher for companies which “Recruited” rather than companies which “Did not recruit” (Right half of Figure 2). On the other hand, for negative perceptions, the proportion of “Agree” is generally higher in companies which “Did not recruit” rather than companies which “Recruited” (Left half of Figure 2).

Looking at each perception, companies which “Recruited” had relatively high ratios which “Agree” with “Strong motivation for work,” “Strong abilities” and “They are cooperative,” and a large gap existed in comparing with companies which “Did not recruit.” Specifically, for “Strong motivation for work,” the difference between “Recruited” companies and “Did not recruit” companies was 27.1 points (54.2% “Recruited” – 27.1% “Did not recruit”), for “Strong abilities” it was 25.9 points (36.5% “Recruited” – 10.6% “Did not recruit”), for “They are cooperative” the difference was 20.8 points (26.0% “Recruited” – 5.2% “Did not recruit”). These were especially large differences.

Also, the perceptions which had a high proportion of “Agree” in companies which “Do not recruit” were “Lack Japanese language ability,” “Low retention rate,” “Do not fit in with Japan’s employment practices,” “Strong demands regarding labor conditions,” etc. Especially, for “Do not fit in with Japan’s employment practices,” the percentage gap between “Did not recruit” companies and “Recruited” companies was a large 17.0 points.

On considering that the replies of “Recruited” companies are based on their experience in contrast to the replies of “Did not recruit” companies, which are closer to their imagined perceptions, it can be said that the perceptions of companies which had recruited is closer to the real truth regarding foreign graduates. As the companies which “Did not

10% of Companies Recruited Foreign Students in the Past Three Years

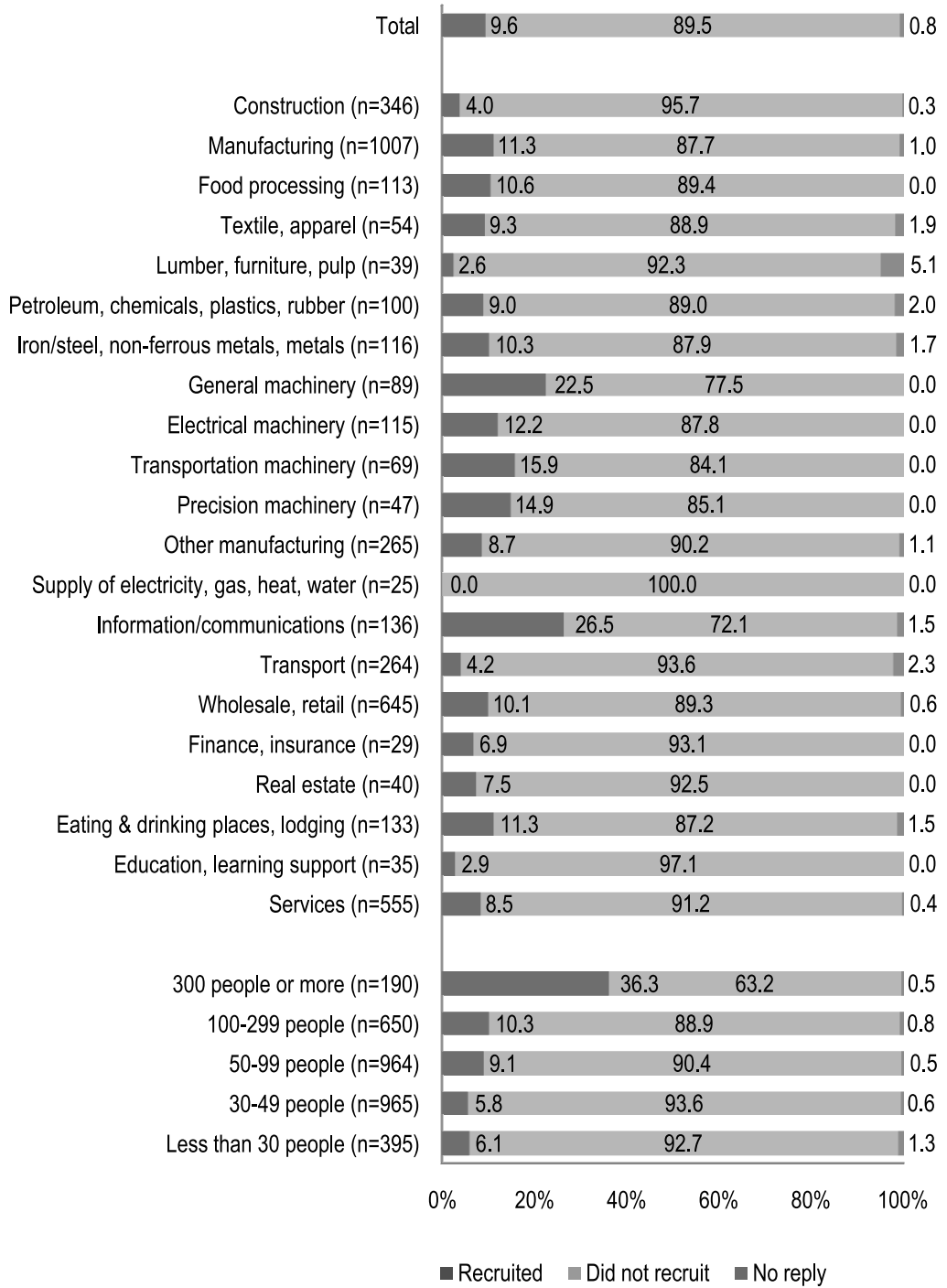


Figure 1. Recruited Foreign Students in the Past Three Years (n=3,244)

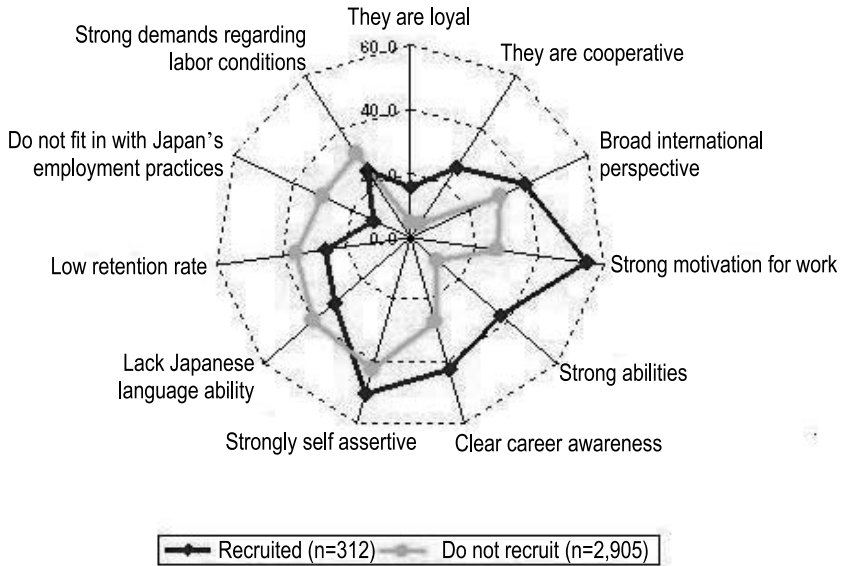


Figure 2. Perception of Foreign Students by Whether Recruited in Past (%，“Agree”)

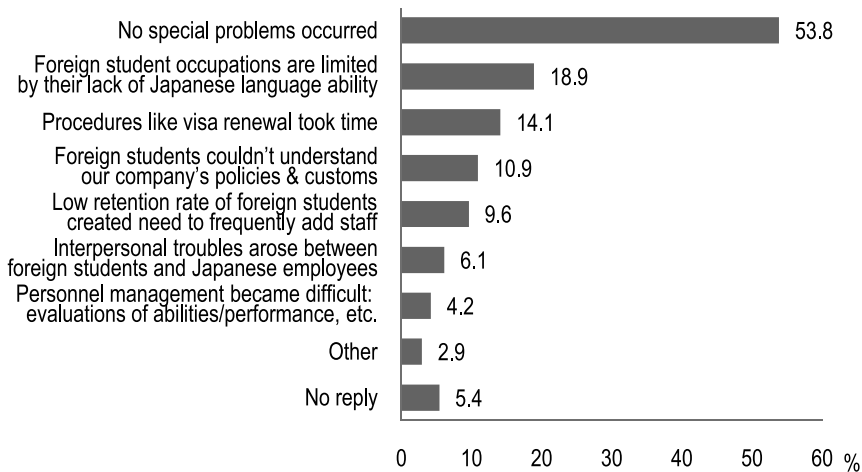


Figure 3. Things that Occurred in the Workplace Due to Recruiting Foreign Students (multiple replies, n=312)

recruit” have such a negative perception, they feel uneasy regarding recruiting foreign students, but when companies which had recruited were asked (multiple replies) whether problems occurred in the workplace, 53.8% i.e. more than half replied “No special problems occurred” (Figure 3).

10% of Companies Recruited Foreign Students in the Past Three Years

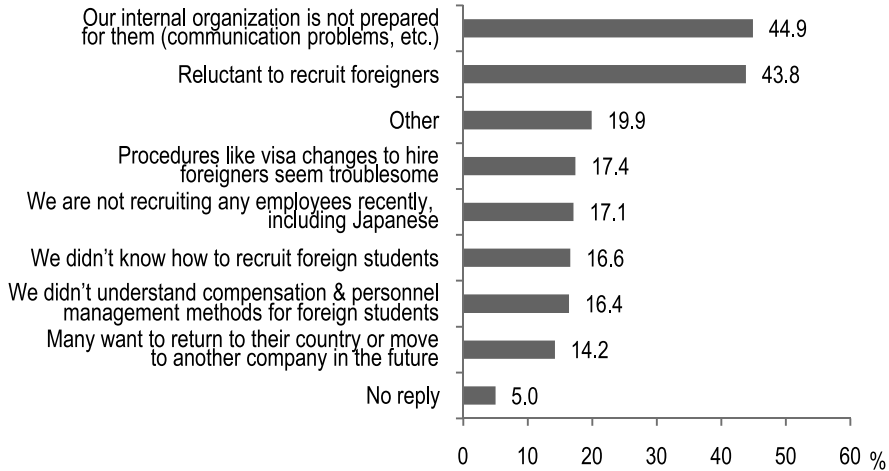


Figure 4. Reasons for Not Recruiting Foreign Students (multiple replies, n=2,905)

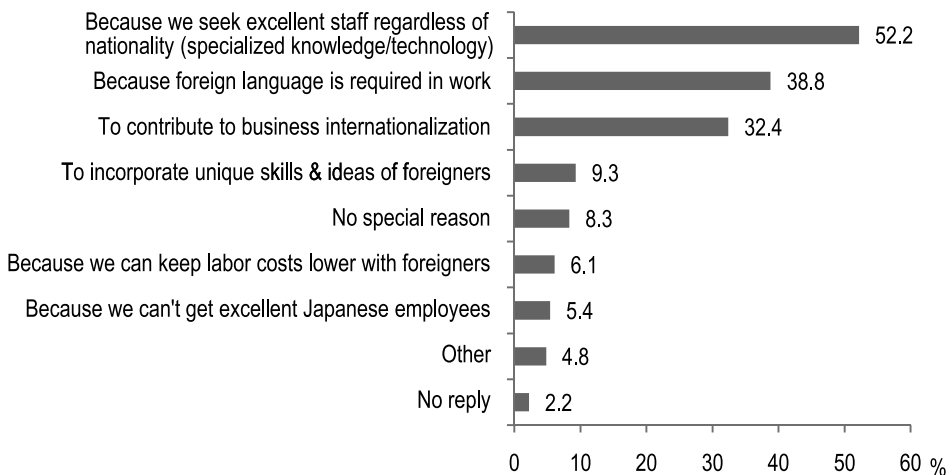


Figure 5. Reasons for Having Recruited Foreign Students (multiple replies, n=312)

### 3. Reasons for Recruiting or Not Recruiting Foreign Students

Due to which specific reasons did the “Did not recruit” companies not recruit international students? On asking the reasons from the companies which replied that they had not recruited (multiple replies), the most common reply (44.9%) was “Our internal organization is not prepared for them (communication problems, etc.),” closely followed by “Reluctant to recruit foreigners” with 43.8% (Figure 4).

Looking at the reasons (multiple replies) of the companies which had recruited foreign students, the most common was “Because we seek excellent staff regardless of nationality (specialized knowledge/technology including academic background and public qualifications)” (52.2%), followed by “Because foreign language is required in work” (38.8%),

“To contribute to business internationalization” (32.4%), and “To incorporate unique skills and ideas of foreigners” (9.3%), (Figure 5).

When asked what effects (multiple replies) recruiting foreign students had on Japanese employees and the organization, the most common reply was “No particular change” (45.8%), followed by “Workplace was energized” (26.0%), “Employees came to have an international perspective” (24.7%), “Employees are studying the foreign student’s native language” (10.9%), etc.

#### 4. Recruiting Methods and Labor Management of Foreign Students

Regarding the recruiting routes for foreign students (multiple replies), the most common reply was “Recruited via newspapers, job search information sites, job search magazines, company’s website, etc.” (36.2%), followed by “Introduction by the university or guidance professor” (27.9%), “Introduction by the employees, parent company, clients” (27.6%), “Used Hello Work (Public Employment Security Office) or Employment Service Center for Foreigners” (18.6%), etc.

Regarding recruiting slots during recruiting, when asked whether separate employment openings were established for Japanese employees and foreign students, 77.6% replied “Recruited without distinguishing from Japanese employees,” 17.3% “Recruited for openings separate from Japanese employees,” and 1.0% replied “Other.” Little difference in results were seen due to numbers of regular employees in the company.

Regarding personnel and labor management, when asked about the six categories of (i) Assignment and job rotation, (ii) Advancement and promotion, (iii) Rating system, (iv) Wage and bonus system, (v) Retirement benefit system, (vi) Providing education and training, in all six categories, “Same handling as Japanese employees” accounted for more than half of the replies.

When asked about the current highest position of recruited foreign students, the most common reply was “General staff class” (48.7%), followed by “Section chief class” (9.6%), “Senior staff class” (9.0%), etc. Viewed by the company’s number of regular employees, 21.7% of companies with 300 or more employees replied “Section chief class.”

#### 5. Future Recruiting of Foreign Students

Regarding whether the company considers recruiting foreign students in the future, for companies which had “Recruited,” 79.5% replied “I think so,” and 15.7% “I don’t think so.” On the other hand, for companies which “Did not recruit,” 19.7% replied “I think so,” and 77.7% “I don’t think so” (Figure 6). It can be understood that “Recruited” companies have positively evaluated foreign students, and are showing a positive attitude towards future recruiting.

Looking at the forecasts of future recruiting of foreign students according to the number of regular employees, the percentage of companies which replied “I think so” about future recruiting was 73.2% for those with 30-49 regular employees, 81.8% for 50-99 employees,

10% of Companies Recruited Foreign Students in the Past Three Years

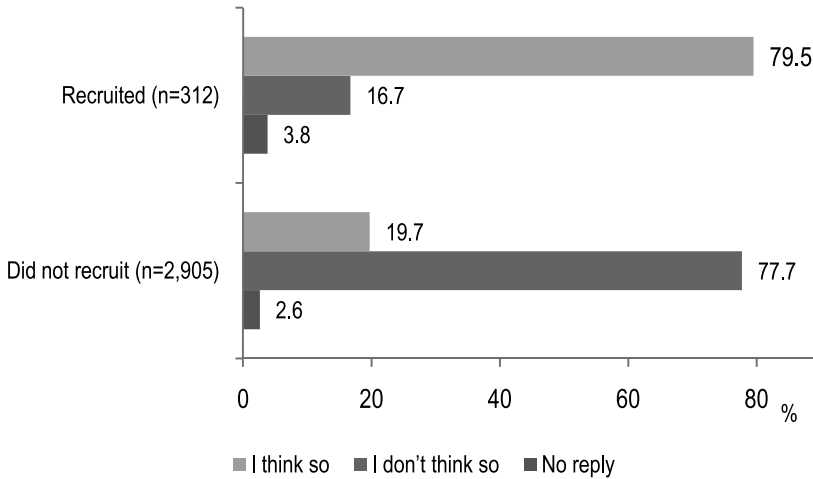


Figure 6. Forecast of Future Recruiting of Foreign Students (By Past Recruitment of Foreign Students)

79.1% for 100-299 employees, and 84.1% for more than 300 employees. Thus there was little difference in terms of size. In the actual recruitment in the past three years, only 5%-10% of small and medium companies (less than 300 employees) had “Recruited.” But regardless of size, for future recruitment forecasts, 70-80% of small and medium sized companies replied “I think so.” We see that many small and medium sized companies have not actually recruited, but they have a strong interest in recruiting foreign students.

Looking at the forecasts of future recruiting of foreign students according to workplace troubles which occurred in companies which recruited foreign employees, more than half (52.6%) of the companies replying “Interpersonal troubles arose between foreign students and Japanese employees” have replied “I think so” for future recruiting. In companies replying “Procedures like visa renewal took time,” “Low retention rate of foreign students created need to frequently add staff,” or “Foreign student occupations are limited by their lack of Japanese language ability,” regarding future recruitment prospects, more than 70% (88.6%, 80.0%, 71.2%, respectively) replied “I think so” (Figure 7) .

Also, looking at future recruitment forecasts according to the reasons that companies did not recruit, in companies giving the reason “We didn’t know how to recruit foreign students,” (38.2%) replied “I think so” regarding future recruiting. Considering this from another viewpoint, if recruitment methods are known, then there is a possibility that an increasing number of companies will start recruiting foreign students in the future. In companies giving the reason “Reluctant to recruit foreigners,” the percentage of “I think so” is a mere 11.2%, showing a reluctant attitude also towards future recruiting (Figure 8).

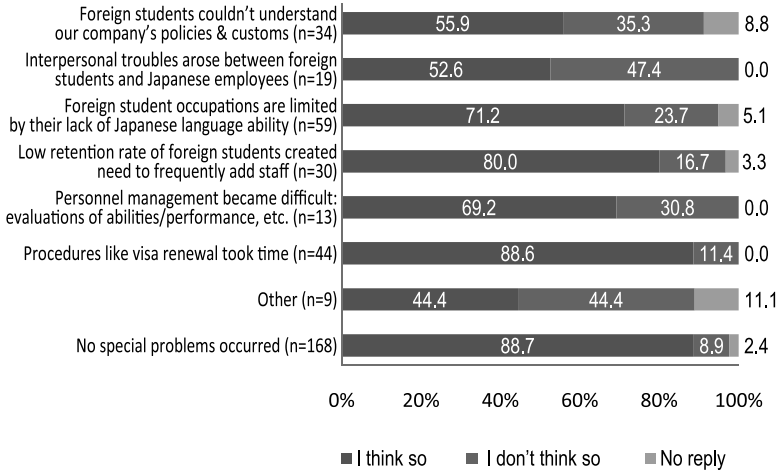


Figure 7. Forecast of Future Recruiting of Foreign Students, by Thing That Occurred in the Workplace Due to Recruiting Foreign

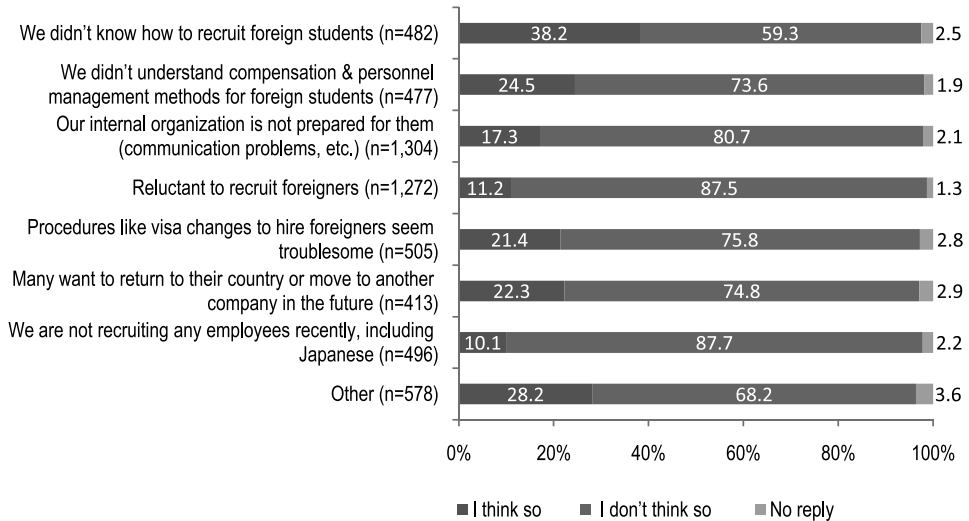


Figure 8. Forecast of Future Recruiting of Foreign Students, by Reason for Not Recruiting

### III. Foreign Students Survey (Survey on Foreign Student Graduates Working in Japanese Companies)

#### 1. Reasons that Foreign Students Joined Japanese Companies, and Reasons that Companies Recruit Foreign Students

According to the Company Survey, the government has made accepting foreign stu-



dents a national strategy, and has set out to utilize them as excellent human resources. But only a small minority of companies are actually recruiting foreign students. Few companies which recruited them consciously worked to recruit foreign students. Almost all of the companies treat them totally the same as Japanese employees in employment management. Thus one cannot say they are actively utilizing the special qualities of foreign students. In this situation, let's look at the Foreign Students Survey from the aspects of how former foreign students working in Japan today feel about Japanese companies, what their attitudes are towards working there, and company attitudes and policies.

Survey responses were received from 902 foreign students and 3,018 companies (this survey targeted 10,349 private companies with 300 or more employees). Of the former foreign students working in 703 companies (23.3% of total) which had experience recruiting foreign students, 77.4% of them came from China. 89.8% of them are under age 40, 57.3% are men, and 42.6% women. 53.9% are graduate school graduates, and 40.8% university graduates. 55.7% were humanities students, and 39.3% science or engineering. 60% of them had worked in Japan less than three years.

It is said that about 80% of foreign students studying in Japan want to work in a Japanese company. But why did the foreign students think to seek work in their current company? According to the survey results, the most common reply was "Because I was interested in the content of the work" (66.0%), followed by 48.9% who replied "Because I want to use my abilities in my native language, Japanese language, etc." (35.5%) replied "Because I felt attracted by the advanced technical abilities of Japanese companies," and 35.3% replied "Because I can utilize the expertise I learned in school in Japan" (Figure 9).

Looking at this by majors in their last studies, the most common response for both "science/engineering" and "humanities" was "Because I was interested in the content of the work" ("science/engineering" 68.6%, "humanities" 64.7%). For "science/engineering," this was followed by 49.1% of replying "Because I can utilize the expertise I learned in school in Japan," and 45.1% saying "Because I felt attracted by the advanced technical abilities of Japanese companies." For "humanities," 59.5% replied "Because I want to use my abilities in my native language, Japanese language, etc." and 29.5% "Because I felt attracted by the advanced technical abilities of Japanese companies." Science and engineering graduates seem to have a strong desire to utilize the advanced skills they learned in Japanese university.

In the Foreign Students Survey, a survey was done on companies at the same time (hereafter Foreign Students Survey [Company Questionnaire]). When "Companies which recruited foreign students" were asked why they recruited foreign students, the most common reply was "Because we seek excellent staff regardless of nationality" (65.3%). This was followed by "To contribute to business internationalization" (37.1%), "Because foreign language is required in work" (36.4%), etc. This matches the needs of foreign students in the sense of utilizing language, but for actively utilizing the characteristics of foreign students, only 9.4% replied "To incorporate unique skills and ideas of foreigners" (Figure 10).

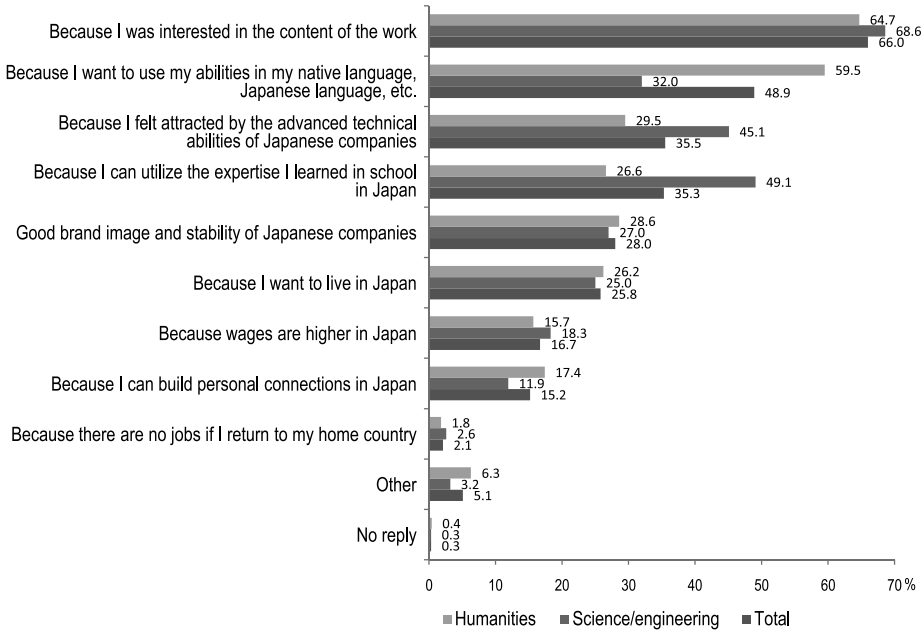
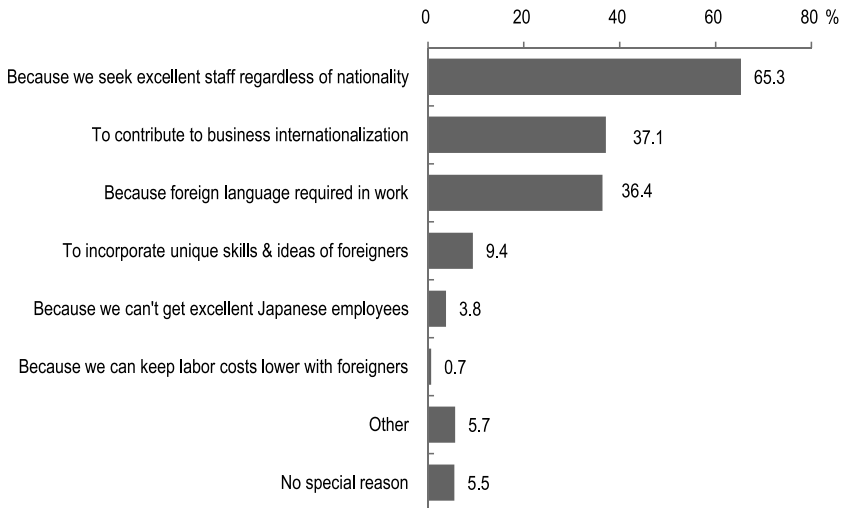


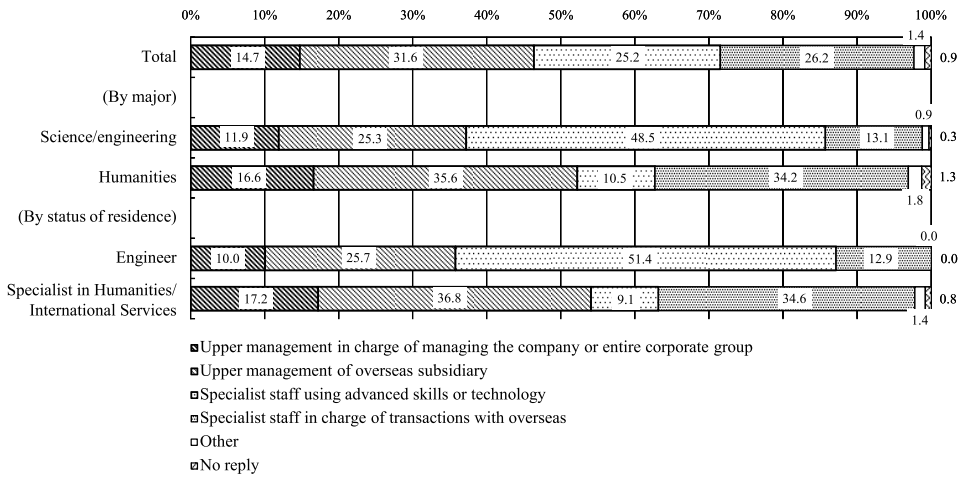
Figure 9. Reasons for Seeking Work in the Current Company (n=902, multiple replies, unit=%, by major) (Foreign Students Survey)



Note: Compiled for companies which recruited foreign students (“Recruited in the past three years” + “Did not recruit in the past three years, but recruited before then”).

Figure 10. Reasons for Having Recruited Foreign Students (n=703, multiple replies, unit = %), (Company Survey)

10% of Companies Recruited Foreign Students in the Past Three Years



Note: Omits residency visa qualifications other than “Engineer” or “Specialist in Humanities/International Services.”

Figure 11. Future Career in Japanese Company (n=902), (Foreign Students Survey)

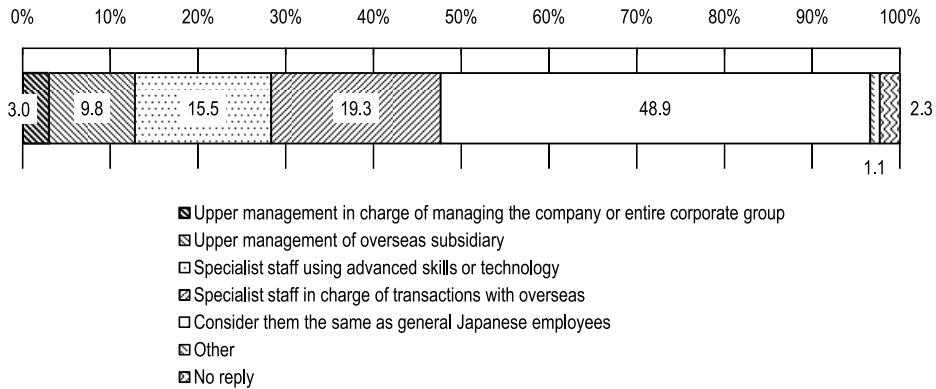
2. Future Careers Desired by Foreign Students, and Future Roles Companies Expect from Foreign Students

What kinds of future careers do foreign students imagine? The most common future career foreign students desire is “Upper management of overseas subsidiary” (31.6%). This is followed by “Specialist staff in charge of transactions with overseas” (26.2%), “Specialist staff using advanced skills or technology” (25.2%), and “Upper management in charge of managing the company or entire corporate group” (14.7%), (Figure 11).

Looking at this by majors in their last studies, the most common reply for “science/engineering” was “Specialist staff using advanced skills or technology” (48.5%). On the other hand, the “humanities” replied “Upper management of overseas subsidiary” (35.6%), and “Specialist staff in charge of transactions with overseas” (34.2%), for a total of almost 70%.

Viewed by status of residence, many science/engineering majors are on “engineer” visas, whose most common reply was “Specialist staff using advanced skills or technology” (51.4%). On the other hand, many humanities majors are on “Specialist in Humanities/International Services” visas, who replied “Upper management of overseas subsidiary” (36.8%), and “Specialist staff in charge of transactions with overseas” (34.6%), for a total of about 70%.

On the other side, what roles do companies which have recruited foreign students want them to fulfill in the future (Foreign Students Survey [Company Questionnaire])? The



Note: Compiled for companies which recruited foreign students (“Recruited in the past three years” + “Did not recruit in the past three years, but recruited before then”).

Figure 12. Future Role Expected of Foreign Students (n=703)  
(Company Survey)

most common reply in the survey results was “Consider them the same as general Japanese employees” (48.9%). We see that about half of companies do not have a clear image for future roles expected of foreign students.

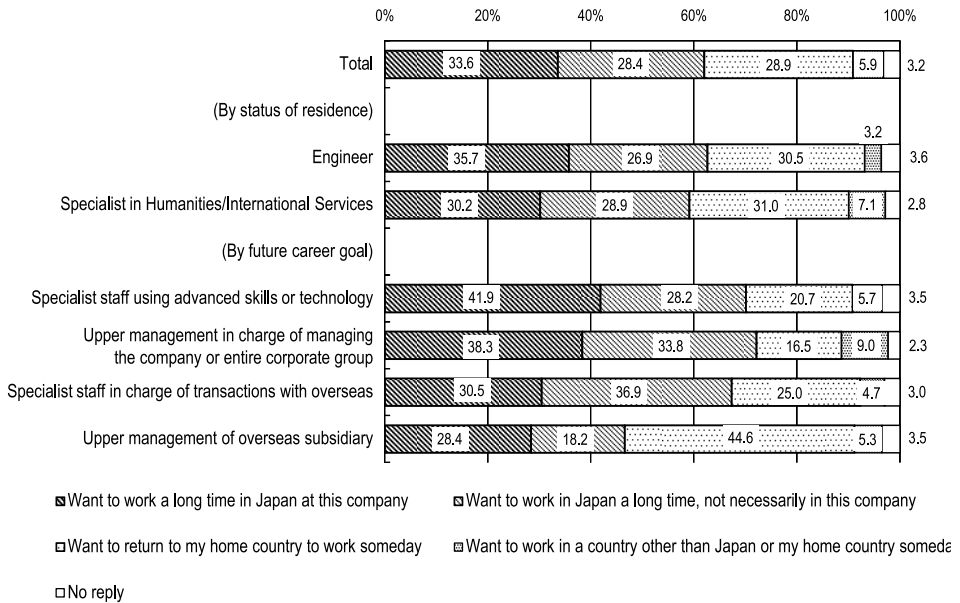
Not many companies replied “Upper management of overseas subsidiary” (9.8%), “Specialist staff in charge of transactions with overseas” (19.3%), or “Specialist staff using advanced skills or technology” (15.5%), which were common roles imagined by foreign students. Thus there seems to be a gap between their views. Only 3.0% of companies replied “Upper management in charge of managing the company or entire corporate group” which would be top management of headquarters (Figure 12).

### 3. Foreign Students’ Expectations of Future Work in Japan

The Foreign Students Survey also asked about future work expectations: keep working in Japan, leave Japan to work in their home country, etc. According to this, one third (33.6%) replied they want to work at their current company: “Want to work a long time in Japan at this company” (hereafter shortened to “Want to stick to the current company”). The next most common reply (28.4%) was “Want to work in Japan a long time, not necessarily in this company” (hereafter shortened to “Want to work in a Japanese company”), showing that a total 62.0% want to remain in Japan. In contrast, combining “Want to return to my home country to work someday” (28.9%), and “Want to work in a country other than Japan or my home country someday” (5.9%), we see that one third (34.8%) want to work outside of Japan in their home country or a third country (hereafter shortened to “Want to work in my home country or a third country”), (Figure 13).

Looking at this by status of residence, 62.6% of “Engineers” “Want to work in a

10% of Companies Recruited Foreign Students in the Past Three Years



Note: Omits residency visa qualifications other than “Engineer” or “Specialist in Humanities/International Services.”

Figure 13. Expectation of Future Work in Japan (n=902), (Foreign Students Survey)

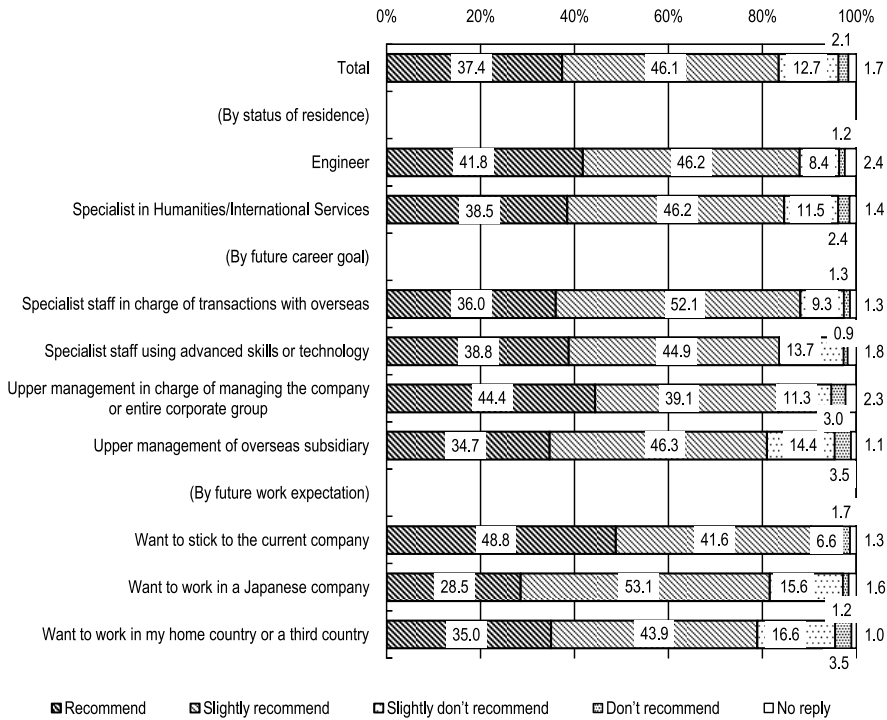
Japanese company,” showing slightly more Engineers want to stick to Japan than the 59.1% of “Specialists in Humanities/International Services.” In contrast, slightly more “Specialists in Humanities/International Services” “Want to work in my home country or a third country.”

Looking by future career desire, of the people who desire “Upper management of overseas subsidiary” as a future career, 44.6% replied “Want to return to my home country to work someday,” and 5.3% “Want to work in a country other than Japan or my home country someday.” Together, half (49.9%) want to leave Japan.

4. Do You Recommend that Foreign Students from Your Country Work in Japanese Companies?

When asked whether they recommend Japanese companies for foreign students from their home country, a large majority (83.5%) replied “Recommend” (“Recommend” + “Slightly recommend”). 14.8% replied “Don’t recommend” (“Don’t recommend” + “Slightly don’t recommend”), (Figure 14).

Looking by status of residence slightly more “Specialists in Humanities/International Services” don’t recommend, compared to “Engineers.” Looking by future career, 17.9% of those who desire “Upper management of overseas subsidiary” are in the “Don’t recom-



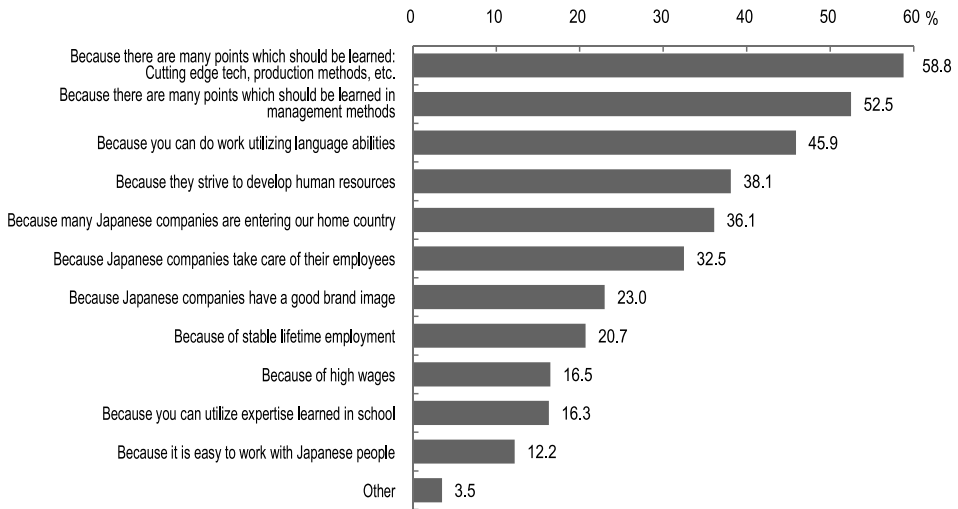
Note: Omits residency visa qualifications other than “Engineer” or “Specialist in Humanities/International Services.”

Figure 14. Do You Recommend that Foreign Students from Your Country Work in Japanese Companies? (n=902) (Foreign Students Survey)

ment” group, which is the highest percentage. Looking by future work expectations, 20.1% of those who “Want to work in my home country or a third country” don’t recommend, which is the highest percentage. Among people who want to become upper management of an overseas subsidiary and those who want to leave Japan someday, it seems a somewhat high percentage do not recommend Japanese companies.

When people who replied they would recommend Japanese companies to foreign students from their home country were asked why they would recommend, 58.8% said “Because there are many points which should be learned: Cutting edge technology, production methods, etc.,” which was the most common reply. This was followed by “Because there are many points which should be learned in management methods” (52.5%), and “Because you can do work utilizing language abilities” (45.9%). The lowest percentage of all replies were “Because of high wages” (16.5%), and “Because you can utilize expertise learned in school” (16.3%). “Because you can utilize expertise learned in school” is a common reason to seek work in a Japanese company, but an uncommon reason to recommend, indicating a gap between thinking and reality, (Figure 15).

10% of Companies Recruited Foreign Students in the Past Three Years



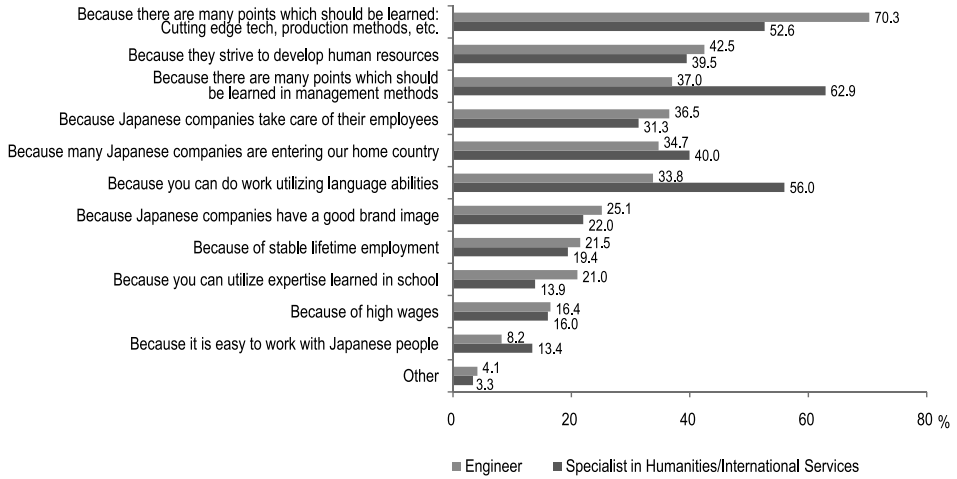
Note: Compiled from foreign students who replied they recommend seeking work in a Japanese company (“Recommend” + “Slightly recommend”).

Figure 15. Reasons to Recommend Seeking Work in a Japanese Company (n=753, multiple replies, unit=%), (Foreign Students Survey)

Looking by status of residence, compared to “Specialists in Humanities/International Services,” the percentage of “Engineers” who replied “Because there are many points which should be learned: Cutting edge technology, production methods, etc.” is 17.7 points higher, and the percentage of those who replied “Because you can utilize expertise learned in school” is 7.1 points higher. In contrast, compared to “Engineers,” the percentage of “Specialists in Humanities/International Services” who replied “Because there are many points which should be learned in management methods” is 25.9 points higher, and the percentage of those who replied “Because you can do work utilizing language abilities” is 22.2 points higher, (Figure 16).

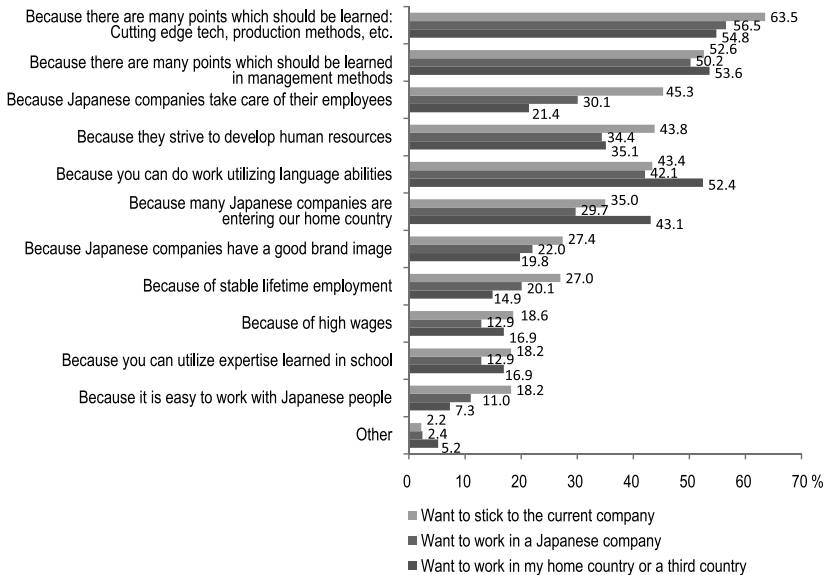
Looking by future work expectations, compared to other types, those who “Want to stick to the current company” were more likely to reply “Because Japanese companies take care of their employees,” “Because there are many points which should be learned: Cutting edge technology, production methods, etc.,” “Because they strive to develop human resources,” etc. Compared to other types, those who “Want to work in my home country or a third country” were more likely to reply “Because you can do work utilizing language abilities,” “Because many Japanese companies are entering our home country,” etc., (Figure 17).

When people who replied they would not recommend Japanese companies to foreign students from their home country were asked why, the most common reply (73.1%) was “Because there seems to be a ceiling to advancement for foreigners,” followed by “Many Japanese companies cannot accept different cultures of foreigners” (61.9%). Other common



Notes: 1. Compiled from foreign students who replied they recommend seeking work in a Japanese company (“Recommend” + “Slightly recommend”).  
 2. Omits residency visa qualifications other than “Engineer” or “Specialist in Humanities/International Services.”

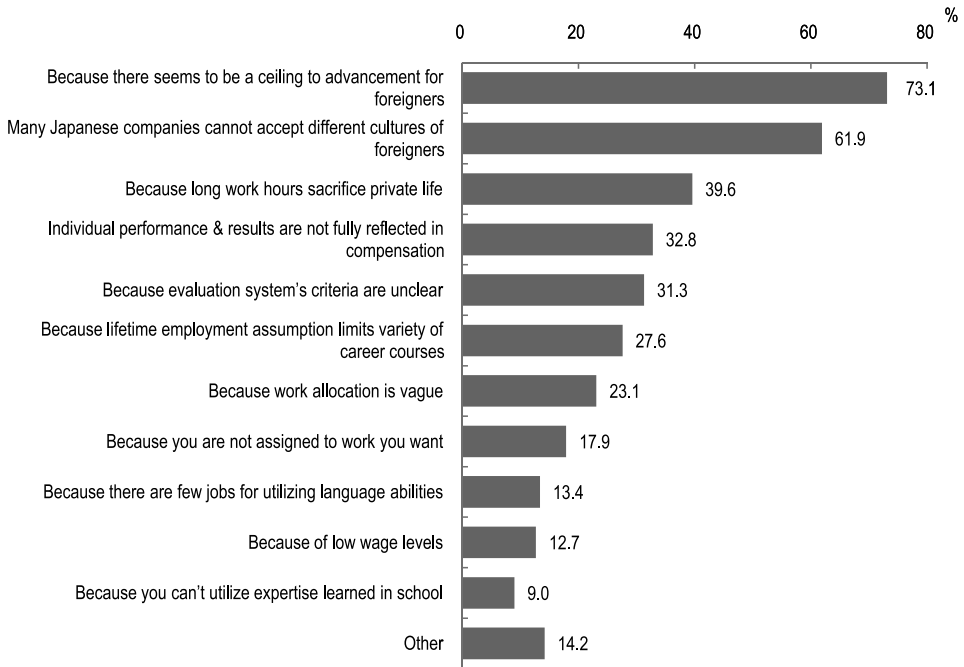
Figure 16. Reasons for Recommending Seeking Work in a Japanese Company (by status of residence), (n=753, multiple replies, unit=%), (Foreign Students Survey)



Note: Compiled from foreign students who replied they recommend seeking work in a Japanese company (“Recommend” + “Slightly recommend”).

Figure 17. Reasons for Recommending Seeking Work in a Japanese Company (by future work expectation), (n=753, multiple replies, unit=%), (Foreign Students Survey)





*Note:* Compiled from foreign students who replied they don't recommend seeking work in a Japanese company ("Don't recommend" + "Slightly don't recommend").

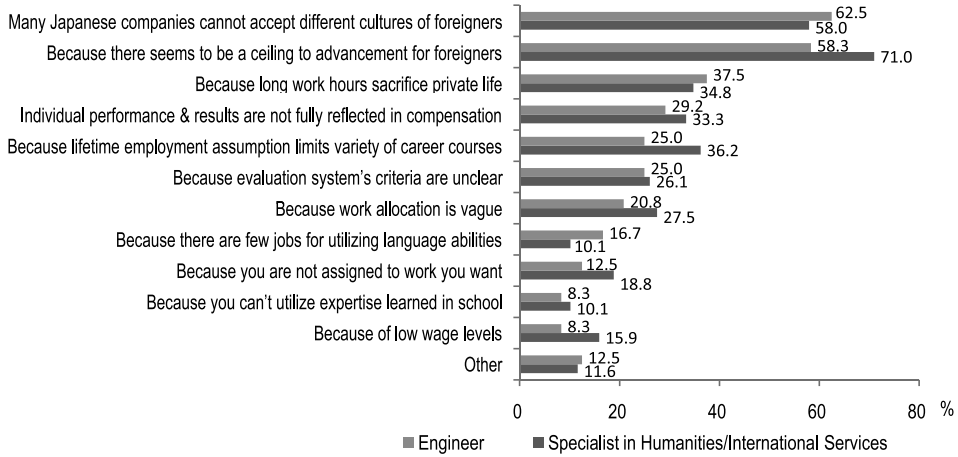
Figure 18. Reasons for Not Recommending Seeking Work in a Japanese Company (n=134, multiple replies, unit=%), (Foreign Students Survey)

replies raised employment management aspects: "Because long work hours sacrifice private life" (39.6%), "Individual performance and results are not fully reflected in compensation" (32.8%), etc., (Figure 18).

Looking by status of residence, compared to "Engineers," the percentage of "Specialists in Humanities/International Services" who replied "Because there seems to be a ceiling to advancement for foreigners" is 12.7 points higher. "Specialists in Humanities/International Services" are also more likely to reply "Because lifetime employment assumption limits the variety of career courses," "Because of low wage levels," "Because work allocation is vague," "Because you are not assigned to work you want," etc., (Figure 19).

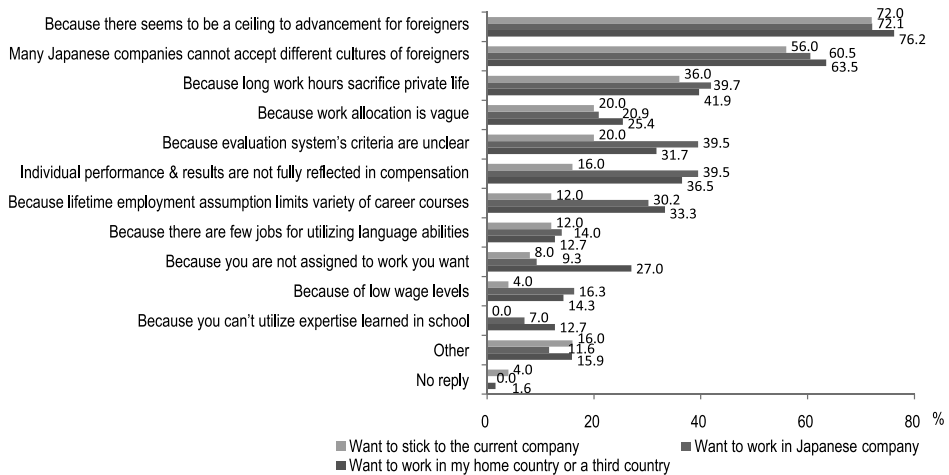
Looking by future work expectations, people who want to leave Japan someday also most often replied "Because there seems to be a ceiling to advancement for foreigners," followed by "Many Japanese companies cannot accept different cultures of foreigners."

For those who replied regarding the employment aspects of "Because evaluation system's criteria are unclear," "Because of low wage levels," and "Because lifetime employment assumption limits the variety of career courses," percentages were much higher for those who "Want to work in a Japanese company" or "Want to work in my home country or



Notes: 1. Compiled from foreign students who replied they don't recommend seeking work in a Japanese company ("Don't recommend" + "Slightly don't recommend").  
 2. Omits residency visa qualifications other than "Engineer" or "Specialist in Humanities/International Services."

Figure 19. Reasons for Not Recommending Seeking Work in a Japanese Company (by status of residence), (n=134, multiple replies, unit=%), (Foreign Students Survey)



Note: Compiled from foreign students who replied they don't recommend seeking work in a Japanese company ("Don't recommend" + "Slightly don't recommend").

Figure 20. Reasons for Not Recommending Seeking Work in a Japanese Company (by future work expectation), (n=134, multiple replies, unit=%), (Foreign Students Survey)

### 10% of Companies Recruited Foreign Students in the Past Three Years

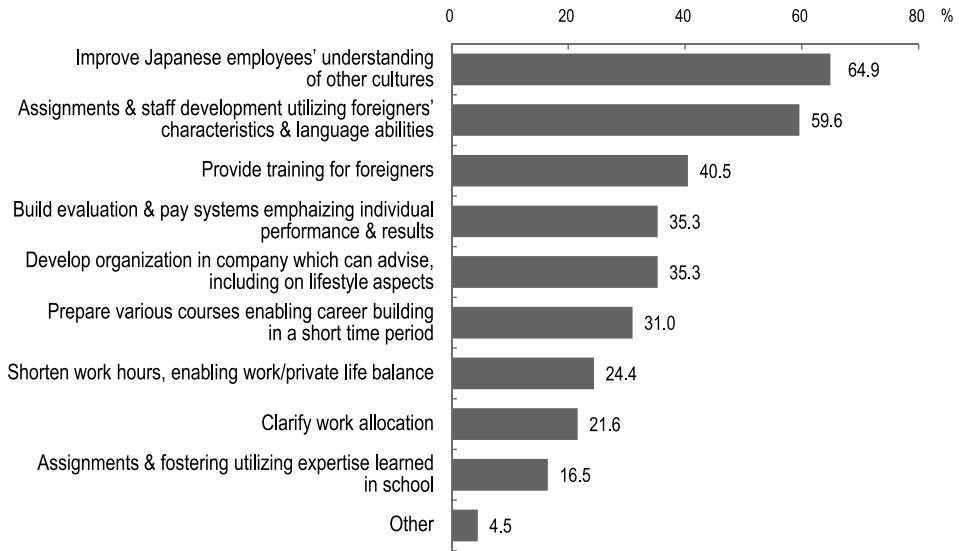


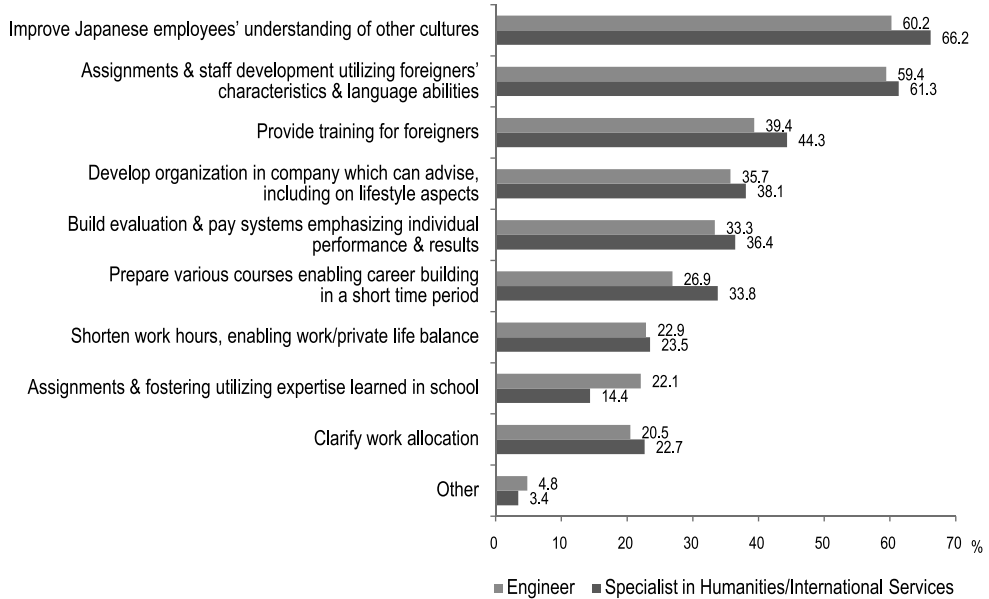
Figure 21. Policies Which Should Be Taken for Foreign Students to Stay and Perform in Japanese Companies (n=902, multiple replies, unit=%), (Foreign Students Survey)

a third country,” compared to those who “Want to stick to the current company.” This indicates dissatisfaction with the Japanese companies where they are now working. And compared to other types, those who “Want to work in my home country or a third country” more often reply “Because you are not assigned to work you want” (Figure 20).

### 5. Policies Foreign Students Want in Order to Stay and Perform in Japanese Companies

What can be done to encourage foreign students to stay and perform in Japanese companies? The survey asked “What efforts should be made by Japanese companies to encourage foreign students to stay and perform in Japanese companies?” The most common reply (64.9%) was “Improve Japanese employees’ understanding of other cultures.” This was followed by “Assignments and staff development utilizing foreigners’ characteristics and language abilities” (59.6%), and “Provide training for foreigners” (40.5%), (Figure 21).

The most common replies were the same for all statuses of residence: “Improve Japanese employees’ understanding of other cultures,” “Assignments and staff development utilizing foreigners’ characteristics and language abilities,” and “Provide training for foreigners.” But compared to “Engineers,” “Specialists in Humanities/International Services” were more likely to reply “Prepare various courses enabling career building in a short time period,” “Improve Japanese employees’ understanding of other cultures,” and “Provide training for foreigners.” On the other hand, compared to “Specialists in Humani-



Note: Omits residency visa qualifications other than “Engineer” or “Specialist in Humanities/International Services.”

Figure 22. Policies Which Should Be Taken for Foreign Students to Stay and Perform in Japanese Companies (by status of residence), (n=902, multiple replies, unit=%), (Foreign Students Survey)

ties/International Services,” “Engineers” were more likely to reply “Assignments and fostering utilizing expertise learned in school” (Figure 22).

Looking by future work expectations, the most common reply was “Improve Japanese employees’ understanding of other cultures” for all three types, followed by “Assignments and staff development utilizing foreigners’ characteristics and language abilities.” But the percentage of people replying “Prepare various courses enabling career building in a short time period” increased in the following order from lowest to highest percent: “Want to stick to the current company,” “Want to work in a Japanese company,” and “Want to work in my home country or a third country.” This indicates that especially people who are thinking they want to leave Japan have great needs for various career courses enabling early career formation. Also, those who “Want to work in my home country or a third country” were more likely than others to reply “Shorten work hours, enabling work/private life balance” (Figure 23).

10% of Companies Recruited Foreign Students in the Past Three Years

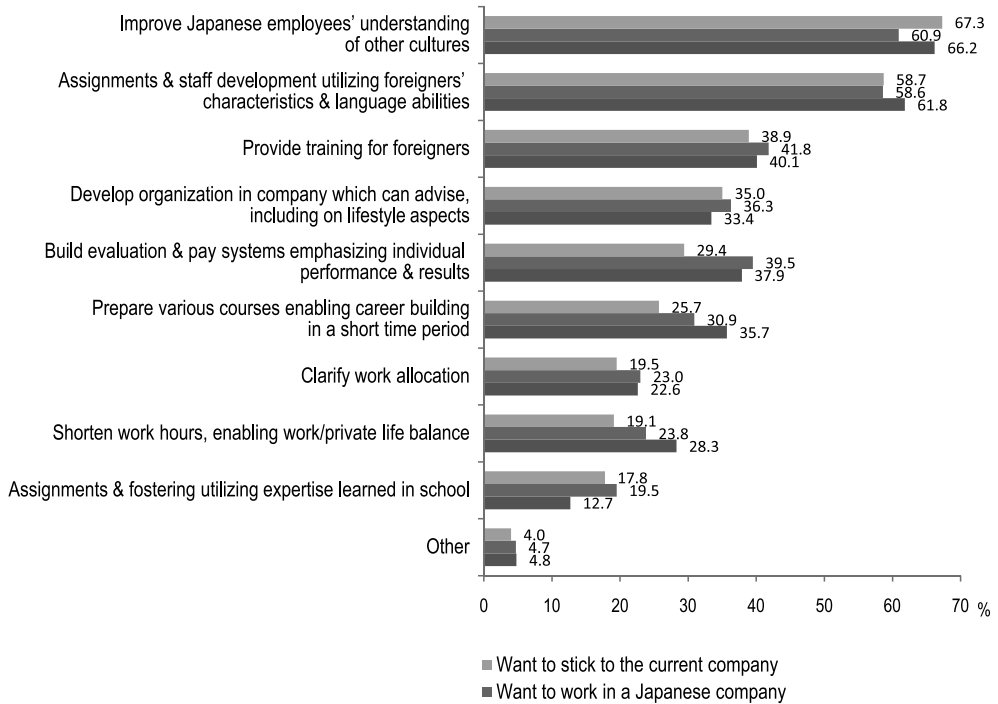
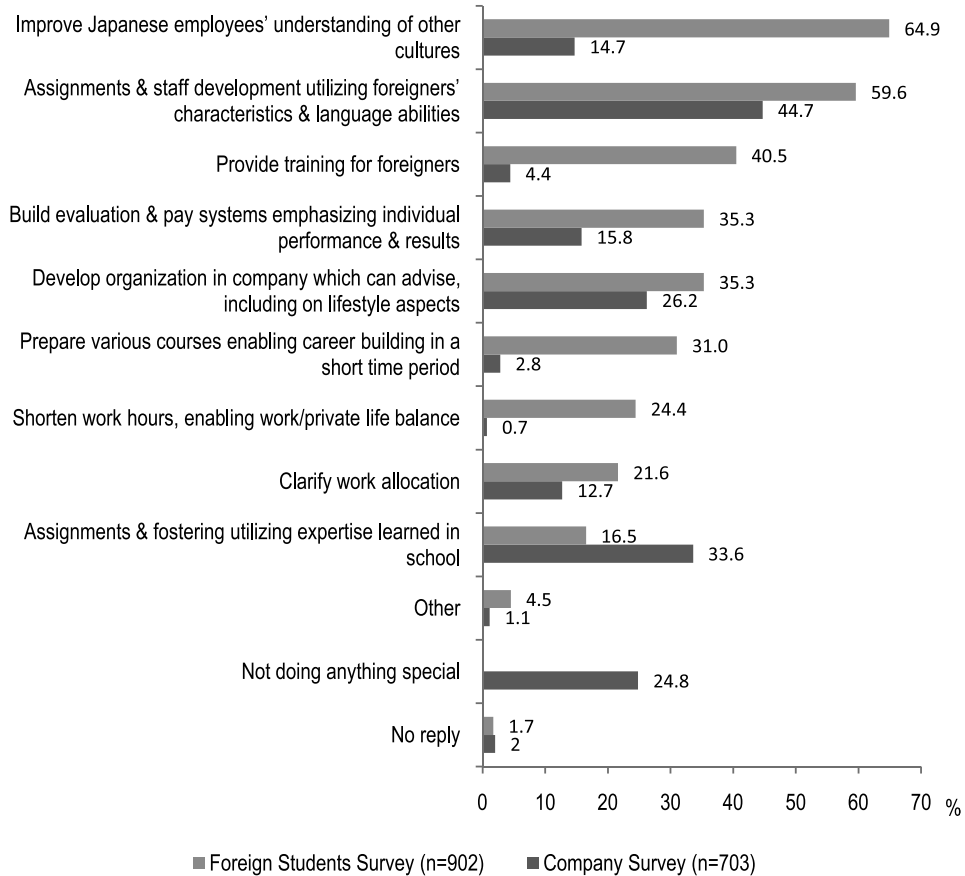


Figure 23. Policies Which Should Be Taken for Foreign Students to Stay and Perform in Japanese Companies (by future work expectation), (n=902, multiple replies, unit=%), (Foreign Students Survey)

6. Gaps between Foreign Students and Companies Regarding Policies to Keep Foreign Students

For foreign students who are thinking this way, what kinds of policies are companies taking (Foreign Students Survey [Company Questionnaire])? Regarding policies for foreign students to stay and perform, the Company Survey and Foreign Students Survey asked almost the same questions. In the Foreign Students Survey, the most commonly desired policies were “Improve Japanese employees’ understanding of other cultures” (64.9%), “Assignments and staff development utilizing foreigners’ characteristics and language abilities” (59.6%), and “Provide training for foreigners” (40.5%). On the other hand, the most common policy implemented by companies is “Assignments and staff development utilizing foreigners’ characteristics and language abilities” (44.7%), followed by “Assignments and fostering utilizing expertise learned in school” (33.6%), and “Develop organization in company which can advise, including on lifestyle aspects” (26.2%). 24.8% replied “Not doing anything special,” showing that one fourth of companies are not implementing any special policies for foreigners to stay and perform.



Note: Compiled for companies which recruited foreign students (“Recruited in the past three years” + “Did not recruit in the past three years, but recruited before then”). “Not doing anything special” option is only in the company survey.

Figure 24. Policies Which Should Be Taken for Foreign Students to Stay and Perform in Japanese Companies (multiple replies, unit=%), (Foreign Students Survey and Company Survey)

Comparing these results, there is a match between companies and foreign students regarding “Assignments and staff development utilizing foreigners’ characteristics and language abilities.” But in the employment management aspects of “Improve Japanese employees’ understanding of other cultures,” “Provide training for foreigners,” “Prepare various courses enabling career building in a short time period,” and “Shorten work hours, enabling work/private life balance,” foreign students have many desires compared to the ratios of company initiatives. These results show a large gap between foreign student desires and policies implemented by companies (Figure 24).

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# The Economic Crisis and Foreign Workers in Japan: Why Does Japan Treat Migrant Workers as Second Class Citizens?\*

*Kiyoto Tanno*

*Tokyo Metropolitan University*

The global recession has been affecting the Japanese economy since the fall of 2008. When the problem of “*haken-giri*” (the layoffs at temporary staffing agencies) made headlines in Japan, the issue of unemployment among foreign workers of Japanese ancestry also began to attract attention. Although unemployment among irregular workers has been put under the microscope, recruiting activities for jobs in Japan continue in Brazil. In this paper, the author first presents, how Japanese factories use foreign workers as a convenient work force, and then presents the quality of life of foreign workers. The purpose of this paper is to reveal the realities of foreign workers’ lives in Japan. Focusing on the position of foreign workers continue as irregular workers and have unstable status in Japan, the author discusses why it is not possible for Japanese society to accept foreign workers, even though they provide indispensable manpower.

## I. Introduction

Japanese society entered 2009 with a harsh employment environment. Even Japan, which had until this time felt the financial instability originating in the USA to be someone else’s problem, was unable to escape the fallout of the crisis. In October and November 2008, layoffs of employees dispatched to major manufacturing companies by temporary staffing agencies drew attention, and the issue of *haken-giri* and measures to deal with it began to be debated seriously in the Diet. Naturally, issues related to foreign workers made up large part of debate. Foreign workers of Japanese ancestry are the only foreign workers who can legally be employed in Japan as unskilled labor. They are dispatched to factories by service contractors (including temporary staffing agencies specializing in the manufacturing sector). These foreign workers work and live in an unstable labor environment, and will continue to do so until the distant future.

In this unstable labor environment, major differences between foreign workers and Japanese nationals in irregular employment have become apparent. This is because those with rights (Japanese nationals) are in a very different position from those without rights (foreigners), even if they are in the same form of irregular employment. The author believes the cause of this inconsistency to be the fact that the Japanese socio-legal system does not accommodate foreign workers in the law. Accordingly, in this paper, the author would like to consider what kind of transformation is required if Japan hopes to be able to depend on

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\* This paper is the outcome of research founded by Grant-in-Aid for Scientific Research (KAKENHI) (B).

foreign workers as a part of its manpower.

## **II. Labor Demand for Foreign Workers in the Context of the Global Recession**

Between September 2008 and February 2009, the author conducted surveys through interviews with the management executives of 32 offices in which foreigners were working, as well as those in charge of labor management at those offices. During this time, the global recession was deepening by the day; therefore one cannot simply compare the responses received from offices where interviews were conducted in September 2008, with those received in December 2008 or February 2009.<sup>1</sup> However, there are a few conclusions that can be reached. This paper will begin by considering the changes in the status of foreign workers in the context of this global recession.

First, when Japanese and foreign nationals in irregular employment were employed in the same workplace and it became necessary to lay someone off, there was little sign of foreign workers being chosen intentionally. Rather, it appeared that it the Japanese workers were more likely to be dismissed. This is likely because when it is necessary to assign an order of precedence for laying off workers from the same place, the simple economic principles of productivity and cost are implemented thoroughly. More Japanese workers are let go because their hourly wage is higher, but their productivity is not correspondingly higher.

Secondly, the just in time production methods that have been developed, primarily in the automotive industry, have reduced the need of for permanent staff. Just in time synchronizes production activities by gaining an accurate understanding of the quantity of orders and sharing information about orders from the parent company through to the subcontractor at the very end of the chain. Using this method, it is possible to operate the production system without delays, while keeping redundancy to the absolute minimum. As a result, since production activities increase or decrease according to demand, manpower needs vary significantly. If only permanent employees undertake all production activities, it becomes necessary to employ staff on the basis of benchmark of the busy period, but if the company were to do this, it would be saddled with workers who were not working during the slack period. In contrast, if the company employed staff on the basis of benchmark of the slack period, it would be unable to meet demand during the busy period and would lose business opportunities. Thus, if the company employs permanent employees on the basis of benchmark of the slack period and uses irregular employee to make up the difference during the busy period, it can reduce redundancy as production activities are synchronized with demand.

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<sup>1</sup> The time period differs slightly, but Tanno (2009b) considers the problem of irregular employment from a different perspective that of foreign workers on the basis of responses from 29 offices from September 2008 to December-end 2008.



Just in time production activities are said to involve subcontractor companies that produce only the required quantity of their product as indicated by the *kanban* (cards or signboards used to signal the need for an item) from the parent company. However, this is the principle; in fact, subcontractor companies actually hold three to four days' worth of components in stock, in anticipation of orders from the parent company. As a result of the rapid expansion in the scale of automotive companies from 2002 onwards, immense component stocks were built up among the subcontractors. As the number of cars produced by the parent company increases, the quantity of stock required to cover three or four days also has to rise. It was at a point when stocks had become quite large that the decrease in production began suddenly. The decline in the operation rate of parent companies' production lines may only have been a decrease of around 5% initially, but this grew each month, and as of the end of February 2009, the capacity utilization rate of automotive manufacturing factories such as Toyota, Honda, Nissan of had fallen to a level 70% lower than the average. With this operation rate, the three to four days' worth of stock with which the subcontractors were saddled became two to three weeks' worth of stock, depending on the type of car being produced, and they were forced to halt the production lines. The foreign workers from temporary staffing agencies focused on the manufacturing sector or service contractors who were working in those sectors lost their jobs, and their departure from the labor market continues. This departure will likely continue until the workforce reaches the level required by the smaller scale of production.

Third, despite this new reality, demand for foreign workers of Japanese ancestry is not declining. This is because demand for cheap labor that can be laid off easily is stronger than ever. With a sudden expansion in the scale of production in the automotive and electronics sectors, parent companies actively undertook the updating not only of their own plants, but also of the plants and production facilities of subcontractor companies, providing financial support for the upgrades. The subcontractor companies also responded actively to requests from their business partners. As a result, the break-even point for Toyota vehicles, for example, has been set on the basis of premise of nine million Toyota vehicles being produced worldwide. This means that if worldwide production drops to seven million, the capital investment in the expansion of plants will not be recouped. If the scale of production shrinks while there is excess production capacity at plants that does not correspond to the scale of production, the break-even point inevitably shifts.

Due to the aforementioned three factors, demand for cheap, convenient manpower is becoming stronger than ever. While the number of positions advertised in the *International Press*, a Portuguese-language newspaper published in Japan, is decreasing, it shows clearly that job advertisements are not disappearing completely, and as of March 2009, travel agencies focused on migrant workers were still handing out leaflets in Liberdade Square in Sao Paulo, aiming to recruit workers to come to Japan. According to a consular official in charge of issuing visas, "Until August 2008, I was issuing 100 long-term residence visas every day. From the fall, this began to decline gradually, but until November, I was still issuing around

90 visas a day. There has been no big decrease. In December, the number fell by about 50% compared with the previous month and I was issuing around 45 visas each day, but this is in line with typical years.”<sup>2</sup> The influx of migrant workers to Japan continued even during the period when the layoff of employees dispatched to companies by temporary staffing agencies due to the global recession continued to make headlines on television and in newspapers and weekly magazines. On the other hand, most of the prefectural and municipal government employees interviewed by the author responded that, “hardly any foreign residents of Japanese ancestry have returned home.” Just as water always comes out of a tap when you turn it on, demand is brisk for foreign workers of Japanese ancestry who can conveniently be scooped out of the pool of labor, and we now have an environment in which workers can be scooped out of the pool of domestic and foreign labor even more flexibly than before.

### **III. The Reality of the Lives of Foreign Workers**

This section examines how the foreign workers employed in Japan are actually working. Beginning in December 2005, the author conducted interviews with a worker from Bolivia, concerning his employment situation since he came to Japan with his wife and began work. At these interviews, the worker showed the author his monthly payslips. Table 1 is his payslip for February 2006. This payslip contains various hidden meanings.

This worker said that he “was employed on an hourly rate of ¥1,200.” There is no doubt that his payments are calculated on the basis of an hourly rate of ¥1,200. However, his hourly rate of ¥1,200 consists of base pay of ¥900, to which a good attendance bonus of ¥300 is added if he works all of the working days stipulated by the employer. The reason for this wage structure is that if the worker is absent from work without leave or refuses a request from the employer to work on the worker’s day off, that worker’s pay can be reduced to ¥900 as a punitive measure. The ¥1,200 is not an amount determined as a commitment between the employer and the worker, but an amount that can be received *ex post facto*, if the worker works as instructed by the employer.

Looking at Table 1, one might think that if this worker receives a considerable amount of money. The ¥375,180 received by this individual is higher than the average Japanese factory worker receives. However, although employment insurance, which is the equivalent of unemployment insurance, is deducted from his pay, there are no items corresponding to health insurance or pension. This means that he is left with risks if he becomes ill or when he becomes older. Moreover, he is single-handedly taking on the risks relating to

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<sup>2</sup> Interview conducted on March 11, 2009, at the Sao Paolo Consulate. The number of days on which the consulate is open varies slightly according to Brazilian and Japanese national holidays, but it is around 20 days each month. If there were 100 visas each day, that would mean that around 2,000 long-term residence visas were being issued each month.

Table 1. Payslip

year/month: February 2006			
Name: S. K.			
Base pay			¥900
Good attendance bonus			¥300
<b>Total</b>			<b>¥1,200</b>
	Hourly rate (¥)	Hours	Subtotal (¥)
Full-time (daytime)	1,200	88	105,600
Overtime	1,500	28	42,000
Late-night shift	1,200	28	33,600
Overtime on late-night shift	1,500	124	186,000
Work on days off (daytime)	1,500	8	12,000
Work on days off (nighttime)	1,500	9	13,500
Special allowance	30	285	8,550
<b>Total</b>			<b>401,250</b>
Employment insurance			¥3,210
Income tax			¥21,860
Advance			¥1,000
<b>Income after deductions</b>			<b>¥375,180</b>

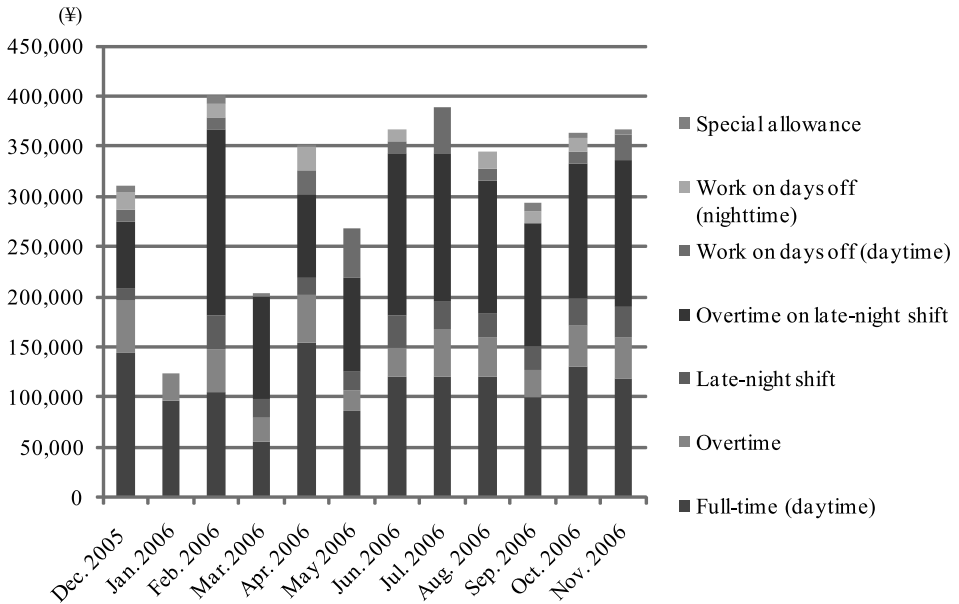


Figure 1. Breakdown of Changes in the Pay Received by One Foreign Worker of Japanese Ancestry

changes in the factory where he works. This is shown in Figure 1.

During the period indicated in Figure 1, one service contractor to a company manufacturing automotive components dispatched this worker.<sup>3</sup> In January 2006, the month before he received ¥375,180, he was paid no more than ¥117,750. His pay was not reduced because he missed work without permission or because he refused his employer's request to work on a holiday. It was simply because the operation rate of the automotive component plant was low and there was no late-night overtime work.

The fact that this worker's income conditions depend on the operation status of the plant can easily be seen from the changes in the proportion of his income accounted for by the full-time portion paid as wages for work carried out between 09:00 and 17:00. The only month in which the pay that this worker, who has a wife and two children, received for work during ordinary full-time hours exceeded 50% of his monthly income was January 2006, which was the month when his pay was lowest. His lifestyle is such that during the months when he had time to spend with his family, he was only barely able to meet his living costs, while during the months when his pay was in excess of ¥300,000, he was working night and day and did not have time to see his children. In January 2007, he took paid leave to attend a class observation day at his children's school. As a result, his hourly rate was ¥900 for the entire month. When he complained about this, he was sent to a different factory. Then, in March 2007, his employment was terminated.

The moment that he exercised his right to paid leave, his wages were cut. Then, because he complained about this, he lost his place of employment and ultimately faced unemployment. If a worker asserts his or her rights or complains, that worker cannot continue working. Why has this kind of situation arisen?

#### **IV. Foreign Workers as a Redundancy Problem**

Unlike a socialist society, which uses a planned economy, in a capitalist society, the state does not control demand and supply. While there is unemployment, there is no forced labor. In addition, it is not possible to avoid economic fluctuations. However, the state may implement systematic techniques are implemented aimed at linking demand and supply in a harmonized fashion, which mitigate these economic fluctuations. The development of this kind of social system has shaped the system called the welfare state.

While the management side was securing a rise in productivity and the labor side was securing an increase in wages concomitant with the increase in productivity, these were carried out through labor negotiations that had become systematized within a country, the wel-

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<sup>3</sup> In January 2007, there was a change in the factory to which he was assigned, while in April 2007, the worker went to work for a different service contractor dispatching company. Consequently, the focus of the comparison here is limited to the period when he was dispatched to the same workplace by the same dispatching agency.

fare state system functioned well, thereby resulting in an expansion in production capacity and an increase in the standard of living. However, when rises in productivity began to peak, this suddenly resulted in a conflict. In order to restore productivity, the management side, which disliked rigid labor-management relations, began to transplant factories overseas and promote the introduction of foreign labor (Sassen-Koob 1983; Sassen 1988). Globalization became the focus of attention perhaps because through its implementation, the motivation to accumulate capital, which is a foundation of the capitalist system came to be in direct opposition to the guarantee of a certain standard of living for the populace, which is another foundation of capitalist state's existence (In the sense that the welfare state has to secure tax revenue as long as it depend on such revenue, the motivation to collect capital is also a foundation of the existence of welfare state; as long as welfare state is democratic, if capital is accumulated but welfare disparities increase, political regime change could take place democratically.) (Offe 1985). Above all, the problem of foreign workers has been recognized as one that concretely indicates that the welfare state is collapsing from within. If one thinks about this, one can see that the problem of foreign workers (= the issue of immigration) is one that has existed from the outset, as a problem of redundancy in the socio-economic system.

Incidentally, the problem of redundancy in the labor market is dealt with better in countries that have constructed a new mechanism, on the basis of the welfare state's social system. This is the case in the Netherlands, which has developed a system that has been taken up in Japan as the Netherlands model; Denmark, which has a system that has been taken up in recent years as a flexicurity model, probably falls into this category as well. In both the Netherlands and Denmark models, companies are made to bear the burden of social security costs in the form of part-time permanent employees, and the state or society takes on the task of assisting the unemployed discharged from those companies in acquiring the skills that they need to be reemployed, this leads on the one hand to flexibility and on the other hand to stabilization in periods of unemployment and the development of workers' skills during these periods (Madsen 2002). Furthermore, since these models guarantee the flexibility of employment, mechanisms for a society in which those discharged from the labor market do not become immobilized at the bottom develop, creating security for workers (Madsen 2003).

In the case of Japan, the burden of the employment flexibility required by companies was borne by the external labor market. This trend became particularly pronounced after the collapse of the bubble economy. The social convention of equal pay for equal work, as seen in Europe, did not become established, in Japanese corporate society. Since manufacturing in Japan takes place on the premise of a wage disparity within the subcontracting system, which could be called a dual structure, if one seeks employment flexibility, the whole production system, has to exhibit flexibility. In addition, one cannot avoid the necessity of some kind of mechanism to bring about employment flexibility that can be utilized throughout the subcontracting system. In Japan, this function was specifically fulfilled by

the expansion of service contractors (= in-house contractors).

However, from the outset, there was no thought put into developing the skills of workers employed in this sector. Consequently, within the companies, no skills development took place (either within the service contractor organizations or within the companies to which such workers were dispatched). Moreover, since workers were made redundant, the national and social systematization of skills development did not spread across Japan. As a result, employment in this sector became unable to escape the tendency to lead to immobilization at the bottom of the labor market. The problem was localized as long as economic activities were vigorous. Foreign workers fulfill temporary employment, according to the subcontracting structure of Japanese corporate society.

## **V. Why Are Foreigners Still Workers without Rights?**

Japan still adheres to a stance of not permitting the acceptance of unskilled foreign labor. However, anyone can see that trainees, those enrolled in on-the-job training programs, and the foreigners of Japanese ancestry who come mainly from Latin America are engaged in unskilled labor. Nevertheless, under the Immigration Control and Refugee Recognition Act, trainees are not defined as workers, because they are at the stage before they become workers. A foreigners of Japanese ancestry has, the visa status of “long-term resident,” this means that he/she is designated as person who lives in Japan rather than as a person who works in Japan. In a Diet debate on the 1990 revision to the Immigration Control and Refugee Recognition Act, the discussion clearly demonstrated that foreigners of Japanese ancestry were expected to join the workforce. Nevertheless, foreigners of Japanese ancestry from countries such as Brazil and Peru were accepted as long-term residents.

It is often said that foreigners of Japanese ancestry were permitted to work as a result of the 1990 revision to the Immigration Control and Refugee Recognition Act, however strictly speaking, this is not correct. The Matter to Provide for Status Described in the Right-hand Column under “Long-term Residents” of Appended Table II of the Immigration Control and Refugee Recognition Act Pursuant to the Provisions of Article 7, Paragraph 1, Item (ii) of the Said Act (Public Notice of the Ministry of Justice No. 132 of 24 May 1990) (hereinafter referred to as the “Public Notice on Long-term Residents”), which was published about six months after the revision to the Immigration Control and Refugee Recognition Act, only announces that (i) spouses of second-generation Japanese (Public Notice on Long-term Residents, item [iii]); (ii) third-generation Japanese (biological child of a biological child) (Public Notice on Long-term Residents, item [iv]) ; (iii) spouses of third-generation Japanese (Public Notice on Long-term Residents, item [v]; and [iv]) fourth-generation Japanese who are minor, unmarried, and are dependent on their parents (Public Notice on Long-term Residents, item [vi]) can receive the “long-term resident” residence status.

The public notice was no more than a document publishing an interpretation of the operation of the law by government ministries and agencies, and the instructions for admin-

istrative handling based on this interpretation, it certainly is not the law. There are similar documents called circular notices. The difference is that, while circular notices can only be checked by those within government ministries and agencies, public notices are widely published. However, populace is not constrained by public notices; their effect is limited to those within governmental organizations.<sup>4</sup> Given this fact, it is certainly not correct to say that foreign workers of Japanese ancestry have been permitted to work since 1990, under the Revised Immigration Control and Refugee Recognition Act; it might be correct to say that, in the operation of the Revised Immigration Control and Refugee Recognition Act, no restrictions were placed on labor by foreigners of Japanese ancestry. This makes it possible for Japan to hold a national policy of not accepting unskilled labor without any contradiction, enabling Japan to maintain the interpretation that it has accepted not workers but residents with no labor restrictions. However, has Japan left foreigners who have come to Japan for the purpose of living here, without a place within the socio-legal system of Japan?

Toshio Hironaka's *Outline of Civil Code* (2006) has many suggestions at this point from the Hegelian point of view. First, let us look simply at the essence of Hironaka's theory. He perceives civil society from the perspective of three orders. The first order is "the order of goods." Civil society is supported by "the social process whereby the exchange of goods supports the existence of the whole of society," and "a social awareness that perceives as legitimate a mechanism whereby various kinds of goods are assigned to various individuals and can be transferred to another person according to the wishes of the party holding ownership of those goods arises among the component members of that society (Hironaka 2006, 3)." "A mechanism for assigning the ownership of goods to individuals and the transfer of goods based on the wishes of the owning party" is required in order to establish this kind of awareness. The former is "the order of goods ownership," while the latter is "the order of transfer of goods," and together they comprise "the order of goods."<sup>5</sup> This order of goods is also "a process for the exchange of goods that is based on an awareness by others that the agent of private ownership is the agent of private ownership and the agent of intent, and the relationship between these." It is precisely the substantive interpersonal and social relation-

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<sup>4</sup> In this sense, substituting the term "public notice" for the term "circular notice" in the quotation from Hiroshi Shiono used below makes no difference whatsoever to the meaning. "As interpretative criteria, circular notices constrain lower-level governmental institutions. However, the effect of circular notices is restricted to this, and they are not used as criteria in court in relation to the populace. In this sense, they do not have any external effect (Shiono 2005, 94)."

<sup>5</sup> The order of goods ownership forms the origin of private ownership, while the order of transfer of goods prescribes the process for the exchange of goods. However, in prescribing the process for the exchange of goods, it is not sufficient only to ensure the intention relating to the transfer of goods; "order of competition" is also required, for the parties exchanging goods to exchange them as equals. In addition, this "order of competition" requires mechanisms to avoid competitive situations or the concentration of unlimited goods that are contrary to securing "competition." Hironaka calls this "the outer order encapsulating the order of goods." More specifically, the elimination of monopolies and the right of workers to organize is equivalent to this. (Hironaka 2006, chap. 1, subsec. 2)

ships in the process for exchanging goods that should be called “civil society,” and the concept of citizens as the owners of goods is now also expanded to citizens as the owners of the good known as labor (= wage labor).<sup>6</sup> The second type of order emerges here. This is because the realization of the order of goods necessitates the formation of an “order of individuality” in which citizens respect each other’s individuality. According to Hironaka, the right to daylight and the problem of pollution came to be recognized as social problems because they were perceived to infringe on the order of individuality.

However, the order of goods that forms a process for the exchange of goods, and the order of individuality that forms interpersonal social relationships for the order of goods are not things that naturally develop and can be maintained simply as a result of the existence of citizens. It is precisely because the interests of citizens collide that state power always emerges in the form of joint management to which all citizens can consent, and that a third order that stipulates the relationship between citizens and the state has to be formed: the “order of power.”

By looking again at civil society from the perspective of social order, through positioning people as living beings in the arrangement of links between the aforementioned three orders, Hironaka tries to identify mechanisms for securing the dignity of the individual, while conflicts arise among individuals and between individuals and the state. This author would like to think about how foreign workers are positioned in Hironaka’s theory and what is lacking in relation to the welcoming of foreign workers to Japan.

## **VI. Foreign Workers: Between the Economy and the Law**

Hironaka’s relationship between civil society and the law as set forth above has not been discussed as a concept. He clearly takes Japan since the 1960s as the period that can be perceived through his own schema. This is because the “dignity of the individual,” which is the most important tenet of the post-war constitution, is alive and well in Japanese society, and the modern society has been formed on the basis of this concept. Since he reconsidered the Japanese socio-legal system from the viewpoint of the actual situation of Japanese society, he rejected the distinction between public law and private law, as well as rejecting the classification of civil law (a form of private law), from the perspective of “property law and family law.” He classifies the relationship between orders as part of the whole wherein the

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<sup>6</sup> “In a social infrastructure wherein people sell the goods they own and become the agents of intent that purchase as consumers various materials required for their lives, all people will come to be perceived as personalities.... [section omitted] Individual people will be viewed as agents of ownership of the moral rights that are conditions for the survival and individuality of each person, such as life, physicality, freedom, honor, etc. [section omitted] A social awareness will become established among the component members of society whereby all individual humans will be recognized as the agents of ownership of moral rights, which should be protected from infringements of the ownership of those moral rights [emphasis is author’s own]” (Hironaka 2006, 12).



order of law is achieved because he believes that positioning individuals in the arrangement of links among the order of law is important to the achievement of value in the constitution, in the form of the “dignity of the individual.”

Can the 1990 revision to the Immigration Control and Refugee Recognition Act be evaluated from this perspective? If the law sought to eliminate the inconsistencies in the actual situation, then even if it had abolished restrictions on working through the operation of the law, the Revised Immigration Control and Refugee Recognition Act would have been designed to ensure the acceptance without inconsistency of migrant worker families who were already living here. However, this gap between the law and reality was perceived solely as a problem of the Immigration Control and Refugee Recognition Act. The question of how foreign migrant workers and their families were positioned in the order of the overall socio-legal system of Japan, transcending the Revised Immigration Control and Refugee Recognition Act, remained vague. If people live as families, then issues inevitably arise, relating to their children’s education, healthcare for the family, and housing, and as their stay becomes long-term and the migrant workers begin to grow older, the questions of pensions and nursing care for the elderly begin to emerge. There is also the problem of unemployment insurance if they lose their jobs, and if the unemployed person has a family, whether they qualify for public welfare benefits. It was only natural that if foreign workers stayed long-term, needs would arise for them as citizens, but the question of to what extent they can demand their rights in relation to those needs remains exceedingly ambiguous.

Since these needs were not being supplied by the public sector, the private sector, in connection with the labor market, came to play an important part in supplying the social services required by foreigners of Japanese ancestry. More specifically, service subcontractors and ethnic businesses fulfilled this role. Housing and health insurance (overseas travel accident insurance was common) was prepared by the service subcontractors, while ethnic businesses supplied educational opportunities, pension services, international telephone services, and community media in the form of newspapers and radio, all in the native tongue.<sup>7</sup> Such ethnic businesses also gave rise to services that would have been unthinkable if the labor market consisted solely of Japanese workers. A typical example is health insurance for families left behind in Latin America.<sup>8</sup> This is because cross-border families are created when migrant workers come to Japan, and therefore, health insurance is also required for the family left behind in Latin America. Brazilian and Peruvian schools accredited by the

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<sup>7</sup> The fact that foreign workers of Japanese ancestry did not know much about the insurance system in Japan is strongly related to this, and when I initially conducted a survey in Hamamatsu, it was clear foreign workers misunderstood their insurance type. Many were enrolled in overseas travel accident insurance, but misunderstood it as being social insurance, because they had enrolled in it through their workplace.

<sup>8</sup> It is possible, of course, to enroll in such insurance services in Brazil as well. The largest player in such services is NIPOMED. A first-generation Japanese from Okinawa, who emigrated after the World War II, founded this company.

Table 2. Comparison of Japanese Workers and Foreign Workers of Japanese Ancestry as Shown in a Pamphlet Produced by Service Subcontractors

		Full Employee Costs	Outsourced Employee Costs
Wages	(100)	¥299,500	¥300,000
Bonus	(33.3)	99,833	0
Legal Welfare Expenses	(15.2)	45,524	0
Discretionary Welfare Expenses	(5.2)	15,574	0
Labor Management Costs	(2.0)	5,990	0
Retirement Benefits, etc.	(7.2)	21,564	0
Total	(163.0)	¥487,985	¥300,000

Source: Hayashi (1995).

governments of those countries are also included in the niche businesses aimed at foreign households. It is not commonly known, but the increase in Brazilian and Peruvian schools in Japan is closely related to the travel agencies for foreigners of Japanese origin and migrant workers, which gather workers for Japan in Latin America.<sup>9</sup> In any case, it is a fact that the public goods of health insurance, pensions, and schools are being swallowed up by the logic of the labor market.

The employment of foreigners of Japanese ancestry found meaning in the fact that it enabled companies to escape from social insurance and pensions, the burden of which they would have had to bear had they hired direct employees (Table 2 is used by a certain service subcontractor in its sales activities, but it clearly shows the object of this comparison). A contradiction inevitably arises from the demand for the burden of insurance and pensions in the employment that develops in order to evade legally prescribed welfare expenses. Moreover, while the failure of foreign children to attend school is deemed to be a problem, one of the biggest factors in the failure of the national and local governments to take action is the attitude towards the compulsory education of foreign children that, “it is not a problem for local authorities to accept those who have asserted their right to receive education” when it comes to foreign residents. Despite the fact that they plan to live in Japan for a long period (or despite the fact that they could live here for a long period), the criteria on which the rights of these children are based are different from those on which the rights of Japanese citizens are based.

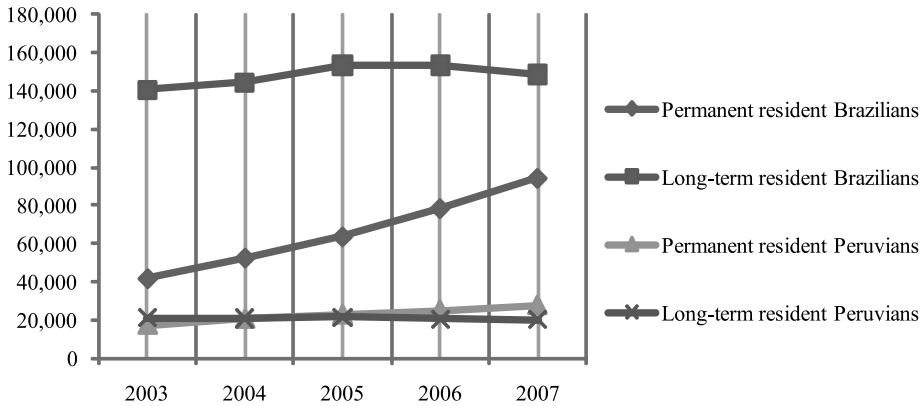
Hironaka brings up the order of individuality as an issue because of his stance that, “What is sufficient as the agent of rights is, in the first place, people (humans).... [section omitted] All people, from the moment they are born, actually begin to possess the rights that

<sup>9</sup> A detailed explanation of this point can be found in Tanno (2009a).

contain the enjoyment of life and physicality (= health) (the rights that form the core of personal rights), under the Interpretation Guidelines for Article 2 of the Civil Code (guidelines that should be interpreted as aiming for the “dignity of the individual”); in addition, they acquire the qualifications for enjoying various rights (the ability to have rights). Furthermore, ‘unless otherwise provided by applicable laws, regulations or treaties, foreign nationals shall enjoy private rights apart from in cases where it is prohibited under the prescriptions of laws or treaties, (Article 3, Paragraph 2).’ (Hironaka 2006, 98). Seigo Hirowatari actively praises this way of understanding of the order of individuality in Hironaka’s work, saying, “This means that humans not only have freedom and rights as ‘agents of the exchange of goods,’ but also, transcending this, can be perceived as more comprehensive, integrated entities, as ‘entities whose dignity should be guaranteed.’” (Hirowatari 2008, 67).

The Hironaka’s work set forth the social order that would inevitably emerge when people lived in the same society long-term and when the foundations for civil society to exist or civil society itself have become established. As shown in the previous quotation, Hironaka’s arguments that, “apart from in cases where it is prohibited under the prescriptions of laws or treaties, foreigners enjoy private rights (Article 3, Paragraph 2)” certainly does not mean that foreign citizens are excluded from Japanese civil society. What should be important is that foreigners also “enjoy private rights.” If this is the case, the “dignity of the individual” must be recognized as a matter of course in relation to those living in Japanese society in the long term, and even if they cannot be treated in exactly the same way as Japanese nationals, they must be positioned within the order of individuality. If this is not the case, then it creates amongst the people living in the same society “first-class citizens (Japanese nationals)” and “second-class citizens (foreigners living in Japan long-term).”

However, if one looks at foreigners of Japanese ancestry, although they are residing in Japan in the long term under the status of “long-term resident” or “permanent resident,” their enjoyment of life and health as the source of the order of individuality has not been considered. Apart from the problem of education, nothing has been done about the fact that, by being in this employment system that evades insurance and pensions, these people are falling through the gaps of the insurance and pension system. Even among the local authorities that comprise the Council for Cities of Non-Japanese Residents (*Gaikokujin Shuju Toshi Kaigi* in Japanese) which lobbies the government on issues relating to foreigners, there are those who reject outright applications for public welfare benefits from foreigners of Japanese ancestry. Whereas there were 316,967 Brazilian residents in Japan at the end of 2007, only 94,358 had permanent residence (Of the others, 67,472 held the status “spouse, etc. of Japanese national,” while 148,528 held the status “long-term resident”). At the same time, whereas there were 59,696 Peruvians resident in Japan, only 27,570 had permanent residence (Of the others, 5,928 held the status “spouse, etc. of Japanese national,” while 20,255 held the status “long-term resident”). Thus, quite a large number of foreigners of Japanese ancestry have permanent resident status, and, as shown in Figure 2, there has been a rapid increase in the number of such people becoming permanent residents. The fact that even the



Note: Figure 2 was compiled from each year's editions of *Statistics Concerning Resident Foreigners*, published by the Japan Immigration Association.

Figure 2. Trends among Foreigners of Japanese Ancestry in Recent Years, as Seen from Status of Residence

applications for public welfare benefits of these people are rejected is proof that, despite the fact that they are accepted without restrictions relating to work or the residence of their families, foreign workers are not positioned within the legal order in Japan.

## VII. Conclusion

The author's point in this paper is that, in the legal order in Japan, even if a foreign worker and his or her family reside in Japan for the long term, that worker can barely secure the income from work that is a necessary order of goods for that individual to live in society, and nobody has ensured education for them, as a means of forming personality in the order of individuality. Thus, they are placed in a situation where their freedom is greatly limited. With regard to this viewpoint, Takashi Miyajima has pointed out that, "Today, one of the major points of contention in considering the direction of foreign workers of Japanese ancestry is... [section omitted] what possibility there is for them to live in Japan in the long term. With regard to the question of whether this problem can be resolved by approaches concerning the labor market or the employment system, I will not say that there are no doubts.... [section omitted] However, it is not easy to say whether or not someone is a long-term resident, without seeing their lifestyle and activities outside of the workplace. One such element is their behavior in relation to their family, particularly their children. Today, the proportion of the Brazilian population in Japan aged under 15 has reached 16%, many of them have become Japanized, they attend Japanese schools and are losing the ability to speak their native language. Many parents are uncertain whether they can return home

and readapt.... [section omitted] One has to estimate the possibility of long-term residence in terms of this aspect.” (Miyajima 2009, 55). I completely agree with Miyajima with regard to his awareness of the facts. However, whether long-term residence is recognized, if it is, then, whether it is being maintained, depends greatly on whether long-term residence is accepted and whether residents are positioned in society as residents. For example, with regard to the current problem whereby many Brazilian and Peruvian schools are going bankrupt because of the growing number of students who are unable to pay the fees even those students who pay their fees are being deprived of educational opportunities, one cannot understand why this is happening it, given that, long-term residence is actually increasing. The author’s position is that the setting of social conditions that establish facts should be scrutinized, rather than the problems relating to the fact.

The status of residence “based on position or identity” of foreigners of Japanese ancestry ensures freedom in selecting employment, in this sense, the point of departure for the order of goods has certainly been assured, but in reality, most foreigners of Japanese ancestry only have a fixed-term contract of employment, irrespective of whether they have been employed via intermediate employment through service subcontractors, or they are directly employed. Now, more than ever, it is clear that the employment and social environments are not those in which the “dignity of the individual” through which the legal order functions, is must be guaranteed. The fact that only the Immigration Control and Refugee Recognition Act, which is a special law, forms the legal order is a problem. Looking at it from this perspective, although it seems that a revision to the Immigration Control and Refugee Recognition Act will soon be enacted, aiming to unify the management of the status of residence of foreigners, this revision is unlikely to make it possible to normalize the problem of foreign workers.

As observed in the first chapter, production activities are contracting as a result of the global recession, and the surplus workforce is being discharged as unemployed workers. Nevertheless, new immigrants continue to arrive because foreigners of Japanese ancestry are replacing other foreigners of Japanese ancestry. Most of the job advertisements appearing in Brazil in March 2009 were for work in boxed lunch factories, delicatessen factories producing ready-prepared side dishes, and workplaces with low wages.<sup>10</sup> Such low-wage workplaces often recruit workers overseas rather than within Japan. There are costs involved in recruiting workers from overseas, but those costs fall upon the workers as debts because the companies are able to impose constraints on workers.<sup>11</sup>

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<sup>10</sup> Wages at boxed lunch factories and delicatessen factories producing ready-prepared side dishes are below ¥900 an hour, this is the same, for low-wage workplaces for foreigners of Japanese ancestry.

<sup>11</sup> Under the travel system called “*finanziamento*,” there is no need for the migrant worker to bear any costs at all when they travel to Japan. The cost of their plane ticket and employment placement fee (as of March 2009, this was between about \$3,300 and \$3,500 in total) is paid through automatic deduction from the worker’s pay, over the course of around five months in the case of a male worker and about six months in the case of a female worker. For further details of the actual situation with

Despite the fact that those who have become unemployed as a result of the recession are remaining in Japan, companies are not recruiting from the Japanese domestic labor market, but rather seeking cheap labor from overseas. As a result, the replacement of labor among foreign workers of Japanese ancestry gives rise to an endless influx of workers from overseas. In addition, precisely because everyone from parent companies to subcontractors is suffering from excess capital investment as a result of the expansion in the scale of production, a more flexible workforce is required and only once such a workforce exists will it be possible to adjust inventory in the extremely short term. With regard to this point, no matter the degree to which “*haken-giri*” has become a problem, it is unlikely that demand for workers in irregular employment, in the form of workers dispatched to major manufacturing companies by temporary staffing agencies and contract-based workers, will weaken. If we are facing globalized corporate activities, the flexibility that irregular employment brings about cannot be completely ignored.

However, when foreign workers are sought in order to bear the burden of this employment flexibility, this is another matter. As shown by the Netherlands and Denmark models, if a good social mechanism is created, it might be possible to identify a means through which the problems of employment flexibility and security could be resolved simultaneously. Even in Japan, a similar system could be considered, and it is precisely because of this that work sharing is now becoming an issue. Giving workers complete freedom to choose employment and giving them rights as citizens, such as the right to receive education, will facilitate a path on which, even if a worker temporarily falls to the bottom of society, he/she will not become stuck there. Moreover, because it is possible for most developed Western countries to recognize citizens’ rights as being separate from nationality, it is possible to incorporate foreign residents in social policy and to do something for them. To put it in the terms of the Hironaka’s work, this is a mechanism by which the order of goods, the order of individuality, and the order of power function well and the people living within those orders exist as citizens.

Unfortunately, with regard to this point, the socio-legal system in Japanese civil society cannot incorporate foreigners into the logic of civil society, to the extent that Western countries do. In light of the fact that one has to think about foreign workers within the framework of this kind of socio-legal system, the situation in which foreign workers had no choice but to work in a sector where regulations were relaxed should have been avoided. This is because it was inevitable that the protection of workers would become extremely difficult. The current situation is that foreign workers have congregated in precisely this sector. One cannot turn back the clock. Precisely because of this, in the future, foreign workers must be positioned in the order of individuality, around the core of the “dignity of the individual.” Above all, these foreigners with the “long-term resident” and “permanent

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regard to this *finanziamento* system, please see Tanno (2007, chap. 10).

resident” visa statuses, who are planning to remain in Japan for the long term, must not become entrenched as second-class citizens just because they are foreign.

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# School-to-Work Transition and Employment of Youth in Non-Metropolitan Areas

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In this research paper, we discuss the notable features of the patterns of School-to-Work Transition and Employment of Youth in non-metropolitan areas that are revealed by comparing the trends for senior high-school graduates in two non-metropolitan areas, Nagano and Hokkaido Prefectures, and the trends for their counterparts in Tokyo. Each of the three regions represents one of the three types of labor markets that we classified for the purpose of this research. From our research, we found that the Type 2 market, represented by Nagano, offers the prospect of the most steady career among the three due to the relative abundance of job offers from manufacturers, followed by Type 1 (Tokyo) and Type 3 (Hokkaido) in that order. We also found that the link between educational attainment and career prospects is weaker in Hokkaido and Nagano than in Tokyo. In Hokkaido, higher education does not promise a job amid a chronic shortage of job offers, while senior high-school graduates have a good chance of joining the ranks of regular employees in Nagano, where most employers are manufacturers (with demand for workers equipped with skills typically available from high-school graduates). In the meantime, senior high-school graduates find it difficult to obtain a steady job in Tokyo, where the university enrollment rate is particularly high and the services industry commands a dominant presence in the labor market. As such region-specific factors have significant implications for the school-to-work transition process, it is important to review the traditional research approach of narrowing the focus on metropolitan-area youth.

## I. Perspective on Issues and Problems and Key Points of the Survey

### 1. Perspective on Issues and Problems

This research paper seeks to identify and explain the patterns of School-to-Work Transition and Employment of Youth in non-metropolitan areas through comparison with the trends in metropolitan areas.

The 2008 edition of the OECD Employment Outlook, while noting an improvement in the overall employment condition for youth in OECD countries, concluded that disparities remained in employment prospects and the quality of job opportunities according to educational attainment, initial job experience and local labor market condition. This conclusion is in line with the results of a study conducted by the Japan Institute for Labour Policy and Training (JILPT), which indicated that the level of educational attainment, the first job and the condition of the local labor market are the critical factors as to whether a smooth school-to-work transition is assured (a JILPT study conducted in 2005). From the results of previous studies, we may assume that specific groups of young people, rather than all youth, face an uphill struggle in getting on and climbing the career ladder. Consequently, when

conducting research on career formation for youth, we must delve into the potentially constraining social trends and factors.

A number of studies have already examined the patterns of youth employments and the school-to-work transition process. However, most of them focused on educational attainment and gender as critical factors for career formation for youth. Among the few studies that gave consideration to region-specific factors are those that examined the regional gap in the university enrollment rate (Sasaki 2006) or in the non-employed rate (which represents the rate of people who neither become employed nor advance to higher education after leaving school) among senior high-school graduates (Mimizuka 2000). These studies invariably indicated that the situation differs significantly from region to region.

The findings of these studies show the employment trend for new entrants into the labor market. As for the employment trend for people with several years of practical job experience, the JILPT's research in 2005 looked at it from the viewpoint of the *freeter* rate (*freeter* refers to a new type of non-regular worker; a more detailed definition to be provided later) and the NEET (not in employment, education or training) rate on a prefecture-by-prefecture basis.

However, most of the past studies have neglected the task of shedding light on the whole transition process including the experience of non-regular employment, as opposed to focusing on entry or some other fixed points of the process. The analysis by Genda (2008) of the government's Employment Status Survey (2002), which is among the few studies that examined the whole process, showed that it is easier for non-regular workers to shift to regular employment in the Hokuriku/Tokai and Chugoku/Shikoku regions than in the Kanto region, while in the Kinki region, more regular workers shift to the non-regular status than vice versa. Genda's analysis also found that in the whole of Japan, as much as 17.0% of non-regular workers in their 20s switched to a regular job. However, this research is based on too broad a regional division to enable an adequate analysis of local trends. According to a survey conducted in 2007 by the Osaka City's Citizens' Affairs Bureau, 11.7% of youth in Osaka shifted from non-regular to regular employment. Although this survey research provides valuable insight, it was exclusively metropolitan in scope as it focused on Osaka youth. For its part, JILPT has studied trends for Tokyo youth in its Survey on Working Style of Young People. Also, in a study in 2003, JILPT conducted case studies of the transition process for non-metropolitan-area youth. However, these studies are not sufficient to provide the full picture of the school-to-work transition process.

As indicated above, most of the past studies focused either on the trends for Japanese society as a whole or on the situation in metropolitan areas such as Tokyo and Osaka, or were case studies insufficient to illuminate the full picture of the process. Therefore, the disparity between regions in the pattern of employment and the transition process has remained an unexplored field of research, with particular neglect shown for trends in non-metropolitan areas. While the narrowed focus on metropolitan areas may have helped to give clear-cut findings, the research results may have provided a distorted picture of the

transition process based on factors specific to such areas. Whereas young people in metropolitan areas have access not only to a relative abundance of job offers from companies but also to various other career opportunities, only a limited range of job offers and opportunities are available for their counterparts in non-metropolitan areas. In short, the lack of studies on employment trends for non-metropolitan-area youth is clearly a great problem.

## 2. Key Points of the Survey

To fill the research void created by the exclusive focus on metropolitan areas, we use the Working Style of Young People in Non-Metropolitan Areas, conducted by the JILPT in February and March 2008, as the basis of our analysis. The regions covered by our research are Hokkaido (Sapporo and Kushiro) and Nagano (Nagano, Chino and Okaya). We compare the trends in these regions with the situation in Tokyo as evaluated on the basis of our past studies.

We selected these regions for the following reasons.

The past two rounds of the Survey on Youth Working Style showed that there was a gap in employment opportunity between senior high-school graduates and higher-education graduates at the beginning of the working career and that this gap tended to persist throughout the career. From the survey results, it is obvious that in Tokyo, senior high-school graduates face a disadvantage in career formation. However, the non-employed rate among senior high-school graduates is not necessarily high in all regions, as shown by the research on this subject that we referred to earlier. In some regions, people with senior high-school or lower levels of education have a chance to get off to a steady start in a career, while the situation is more challenging in other regions. In light of this, if we are to gain useful insight into the patterns of employment by youth and the transition process, we should turn our attention to the school to work transition process for senior high-school graduates.

Therefore, we give consideration to social trends that could affect the transition for senior high-school graduates. Critical factors for the transition for senior high-school graduates include (i) the condition of the local labor market, (ii) the framework for career guidance provided by senior high schools (the size of a cohort of senior high-school graduates seeking employment in a region is particularly important) and (iii) the size of employer companies (JILPT research in 2008). While these factors are interconnected, the condition of the local labor market is a particularly significant influencing factor. As it is impossible to study the transition process in all regions, we classified regions into three types according to the features of the local labor market for senior high school students and looked at each type.

The following are the three types of labor markets as classified according to the supply-demand balance, the specifics of jobs offered and the level of labor mobility, based on a survey and analysis conducted in 2009 on the employment trend for senior high-school

Table 1. Classification of Labor Market for Senior High-School Graduates

	Labor mobility	Supply-demand balance	Specifics of jobs offered	FY2007 survey area
Type 1	Net inflow	Favorable/neutral	Services, sales	Tokyo, Saitama, Osaka
Type 2	Balanced	Favorable/neutral	Manufacturing	Nagano, Niigata
Type 3-(1)	Balanced	Unfavorable	Services, sales	Aomori, Kochi, Hokkaido
Type 3-(2)	Net outflow	Neutral/unfavorable	Manufacturing	Shimane, Oita, Akita

*Source:* The Japan Institute for Labour Policy and Training (2008).

graduates (see Table 1).

The Type 1 market, which is typically a metropolitan area, provides a relative abundance of job offers, attracting an inflow of job seekers from other regions. Jobs offered in the Type 1 market are mostly related to services and sales.

The Type 2 market is characterized by balanced supply and demand, with the demand for labor satisfied by local supply. Another notable feature of Type 2 is the dominant presence of manufacturers as employers.

The Type 3 market is challenging for job seekers because of the paucity of local employers. Except for Hokkaido, the regions that fit this category are suffering from an exodus of job seekers to other regions. The Type 3 market is sub-divided into Type 3-(1), in which jobs offered are mainly related to services and sales, and Type 3-(2), in which job offers come primarily from manufacturers.

There is a strong correlation between the labor market types as classified above and the non-employed rate (which represents the rate of senior high-school graduates who neither become employed nor advance to higher education). We see several notable trends in the career paths for people who graduated from senior high school in March 2007 as shown in Table 2. First, the non-employed rate is higher in the Type 1 market than in Type 2, despite a relatively good supply-demand condition in the former. While this may reflect an attitude to employment that is specific to metropolitan-area youth, we cannot also ignore a structural factor—the concentration of labor demand in services- and sales-related jobs. Moreover, among the regions belonging to Type 3, there is a disparity in the non-employment rate: in Shimane, Oita and Akita Prefectures, where job offers come primarily from manufacturers, the non-employment rate is lower than in Aomori, Kochi and Hokkaido, where jobs offered are related mainly to services and sales.

In other words, the non-employment rate tends to be low in regions where job offers come primarily from manufacturers requiring skilled worker (Type 2 and Type 3-[2]), which

Table 2. Career Paths for March 2007 Graduates  
(from local senior high-schools)

		Employed ratio	Non-employment rate*
Type 1	Tokyo	8.8	9.5
	Saitama	15.2	5.8
	Osaka	14.4	7.0
Type 2	Nagano	18.1	3.8
	Niigata	21.8	3.6
Type 3-(1)	Aomori	37.1	4.8
	Kochi	25.1	5.4
	Hokkaido	22.3	7.8
Type 3-(2)	Shimane	29.4	4.2
	Oita	33.6	2.3
	Akita	35.6	4.4

*Source:* Partial excerpt from JILPT survey in 2008.

\* The rate of senior high-school graduates who neither become employed nor advance to higher education.

are provided mainly by senior high-school graduates. The abundance or dearth of job offers from manufacturers is a critical factor for the school-to-work transition process for senior high-school graduates, as such offers facilitate the process.

The role of the Public Employment Service varies among the three types of labor market (JILPT research in 2008), although we do not discuss this matter in detail in this paper.

For our analysis of these three types of labor markets, we looked at Tokyo as an example of Type 1. Type 2 is represented by Nagano Prefecture (Nagano City and the Suwa region, where manufacturers are heavily concentrated) and Type 3 by Hokkaido (Sapporo and Kushiro). We selected those regions because, as a result of the past studies, there is already some analysis data accumulated concerning trends and factors specific to them, which is useful for our research. In addition, we conducted a new round of the Survey on Youth Working Style that covered those regions.

### 3. Methodology of the Survey on Working Style of Young People

We designed the survey sheet so as to enable consistent analysis between the past two rounds of the Survey on Youth Working Style, conducted by the JILPT on Tokyo youth in 2001 and 2006, and the new survey.

As we already mentioned, the new survey covered Hokkaido (Sapporo and Kushiro), Nagano (Nagano City and the Suwa region) and the whole of Tokyo. Except for the case of Kushiro, for which random sampling of subjects from the register of voters was possible,

Table 3. Key Points of the Survey

Date	Area	Age group	Sampling method	Sample size
Feb.-Mar. 2006	Tokyo	18-29	Area sampling	2,000
Feb.-Mar. 2008	Hokkaido			
	Sapporo	20-34	Area sampling	600
	Kushiro	20-34	Random sampling	Valid response gained from 113 of 240 selected subjects (response rate: 47.1%)
Feb.-Mar. 2008	Nagano			
	Nagano	20-34	Area sampling	500
	Suwa	20-34	Area sampling	500
	Chino			
Okaya				

we adopted area sampling, a method which has recently grown popular because of the declining availability of registers of voters for public inspection (see Table 3).

In area sampling, sample subjects (who are asked to cooperate with the survey by the visiting survey team) are selected from among residents in the survey areas determined on the basis of the Population Census or other relevant data so as to ensure that the sample composition matches the composition of the entire population of concern. Specifically, our survey teams visited every third house in the survey areas, which were located at equal intervals in terms of population density, as they moved in a counterclockwise direction, until they secured a sufficient sample group of willing subjects (one subject at each house) with a gender and age group mix (early 20s group, late 20s group and early 30s group) that matched that of the entire population of concern. The response rate was not calculated.

Area sampling was also used in the second round of the Survey on Youth Working Style, which was conducted on 2,000 people aged 18 to 29 (excluding students enrolled in regular university courses and full-time housewives) in Tokyo (excluding the island areas) in February and March 2006.

Area sampling was partially adopted in the surveys conducted in Hokkaido and Nagano in February 2008. As for the survey in Hokkaido, we found 600 subjects willing to cooperate through area sampling in Sapporo, while in Kushiro, the questionnaire was sent to 240 people selected from the register of voters, of which 113 agreed to cooperate (which translates into a response rate of 47.1%). In Nagano Prefecture, we found 500 subjects willing to cooperate in each of Nagano City and the Suwa region. Although there was an interval of two years between the Hokkaido and Nagano surveys, the employment condition remained little affected by cyclical fluctuations of the economy and continued to be favorable during the two-year period, a fact which presumably validates an inter-regional comparison based on the two surveys.

As for the sampling accuracy, we may presume that the results of the Nagano and Hokkaido surveys properly reflect the trends for the entire population of concern given that the distribution of educational attainment of their subjects mostly corresponds to that of the subjects of the nationwide Employment Status Survey, which was conducted in October 2007. However, it should be noted that in the Tokyo survey, people with senior high-school or lower education may have been somewhat over-represented because students enrolled in regular university courses were excluded from the sample.

This research paper is organized as follows.

In Section II, we classify career paths into several categories and provide an inter-regional comparison. In Section III, we provide an analysis of the path to and exit from the *freeter* status. In Section IV, we sum up our findings and point out their implications.

## II. Career Paths for Non-Metropolitan Area Youth

In this section, we classify career paths for youth and discuss regional disparities.

### 1. Classification of Career Paths for Youth

Table 4 shows the categories of career path as classified from three viewpoints: current employment status, employment status immediately after graduation or dropout and the transition after the first job.

People working as a regular employee are represented by the categories “staying in a regular job” (people who have retained the status of regular employee at a single company since leaving school), “regular job→regular job” (people who have switched employers but have retained the status of regular employee), “regular job→non-regular job→regular job” (people who entered the labor market as a regular employee and who, after working temporarily as a non-regular employee or as a self-employed person, have returned to regular employment) and “other status→regular job (people who obtained a non-regular job, became a self-employed person or remained non-employed immediately after graduation but who now work as a regular employee). People working as a non-regular employee are represented by the categories “continuing in non-regular jobs” (people who obtained a non-regular job or remained unemployed immediately after graduation and who now work as a non-regular worker) and “regular job→non-regular job” (people who obtained a regular job immediately after graduation but who are now employed as a non-regular worker. We also adopted two other categories, “self-employed/family work” and “non-employed.”

Let us begin by looking at the situation in Hokkaido (see Table 4). Among men, “staying in a regular job” is the most common career path, followed by “continuing in non-regular jobs,” “other status→regular job” and “regular job→regular job” in that order. Among women, “continuing in non-regular jobs” is most common, followed by “staying in a regular job” and “regular job→non-regular job” in that order. Compared with the results of the Tokyo survey, the ratio for “continuing in non-regular jobs” is 9 percentage points

Table 4. Classification of Career Paths

	Hokkaido			Nagano			Tokyo		
	Men	Women	Total	Men	Women	Total	Men	Women	Total
Total (N)	216	208	424	305	286	591	923	851	1,774
(%)	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Staying in a regular job	25.5	22.1	23.8	46.2	39.2	42.8	32.6	30.9	31.8
Regular job→regular job	9.3	5.3	7.3	9.8	6.6	8.3	7.5	6.1	6.8
Regular job→non-regular job→regular job	5.1	1.4	3.3	6.2	2.4	4.4	4.7	3.8	4.2
Other status→regular job	13.9	12.5	13.2	13.1	11.2	12.2	14.7	9.4	12.2
Continuing in non-regular jobs	33.3	39.9	36.6	14.1	19.2	16.6	23.6	32.1	27.7
Regular job→non-regular job	4.6	13.5	9.0	4.3	16.1	10.0	6.3	11.5	8.8
Self-employed/family work	4.2	1.9	3.1	3.0	2.8	2.9	7.2	2.1	4.7
Non-employed	3.7	2.9	3.3	3.3	2.4	2.9	3.4	3.9	3.6
Others	0.5	0.5	0.5	0.0	0.0	0.0	0.1	0.2	0.2



higher and the ratio for “staying in a regular job” is 8 percentage points lower in Hokkaido. The disparities reflect the relatively dim career prospect for youth in Hokkaido as exemplified by the low ratios of people who obtained a regular job immediately after graduation and people who are now working as a regular employee.

As for the situation in Nagano Prefecture, “staying in a regular job” is the most common career path among men, trailed in order by “other status→regular job” and “regular job→regular job.” Among women, “staying in a regular job” is most prevalent, followed by “regular job→non-regular job” and “continuing in non-regular jobs.” Among both men and women and in both Nagano City and the Suwa region, the three most common career paths accounted for more than 70% of the total. Men tend to switch from a non-regular job to a regular job, while women are liable to shift to a non-regular job. Comparison with the results of the Tokyo survey shows that the ratio for “staying in a regular job” is approximately 10 percentage points higher and the ratio for “continuing in non-regular jobs” is around 10% lower in Nagano Prefecture.

The difference in the career path trend between the two regions reflects the difference in the trend at each stage of the career path, from the status in the period immediately after leaving school to the current job.

## 2. Correlation between Academic Attainment and Post-Graduation Career

Next, we provide an analysis of the correlation between academic attainment and the career path.

### (1) Hokkaido

“Staying in a regular job” (see Table 5) is the most common career path among male university and junior college graduates and female university graduates. This path is least common among school dropouts, both male and female. On the other hand, “continuing in non-regular jobs” is particularly prevalent among school dropouts, with more than half of female dropouts and around 40% of male dropouts on this path. This finding underscores the disadvantage that dropouts have in career opportunity, over the long term, compared with graduates.

In the case of men, although there is not a significant disparity between different types of higher education in the ratio of people “staying in a regular job,” the ratio is somewhat lower for graduates of specialized training colleges and other non-university institutions. As for women, some distinct trends are observed regarding university graduates. For one thing, the ratio for “staying in a regular job” is significantly higher for female university graduates than for graduates of other higher-education institutions. Moreover, compared with graduates of other higher-education institutions, few female university graduates who were initially employed as a regular worker have shifted to a non-regular job and those who were initially employed as a non-regular worker switched to a regular job in many cases. The finding suggests female university graduates’ strong preference for regular employment.

Table 5. Career Path Categories by Academic Attainment (Hokkaido)

	Hokkaido				
	Senior high grads	Non-univ. higher education (incl. vocational school) grads	Univ./graduate school grads	Dropouts	Total
Men total (N)	<b>86</b>	<b>45</b>	<b>57</b>	<b>27</b>	<b>216</b>
(%)	100.0	100.0	100.0	100.0	100.0
Staying in a regular job	23.3	31.1	36.8	0.0	25.5
Regular job→regular job	12.8	6.7	10.5	0.0	9.3
Other status→regular job	16.3	8.9	10.5	22.2	13.9
Continuing in non-regular jobs	34.9	24.4	29.8	48.1	33.3
Regular job→non-regular job	3.5	11.1	0.0	7.4	4.6
Others	9.3	17.8	12.3	22.2	13.4
Women total (N)	<b>72</b>	<b>97</b>	<b>28</b>	<b>11</b>	<b>208</b>
(%)	100.0	100.0	100.0	100.0	100.0
Staying in a regular job	13.9	23.7	42.9	9.1	22.1
Regular job→regular job	4.2	7.2	3.6	0.0	5.3
Other status→regular job	13.9	7.2	21.4	27.3	12.5
Continuing in non-regular jobs	47.2	37.1	25.0	54.5	39.9
Regular job→non-regular job	18.1	13.4	7.1	0.0	13.5
Others	2.8	11.3	0.0	9.1	6.7

Compared with the results of the Tokyo survey (see Table 7), the ratio for “continuing in non-regular jobs” is high and that for “staying in a regular job” is low in Hokkaido. The regional disparity in these ratios is particularly large regarding male university graduates: the ratio for “continuing in non-regular jobs” among male university graduates in Hokkaido is 16 percentage points higher than the ratio among their counterparts in Tokyo and the ratio for “staying in a regular job” is 16 percentage points lower. From this, we may say that in Hokkaido, the advantage that male university graduates have over male graduates of other higher-education institutions is relatively small in terms of the chance of obtaining the status of regular employee. In both Hokkaido and Tokyo, the ratio for “continuing in non-regular jobs” and that for “other status→regular job” were relatively high among people who dropped out of school, suggesting that the record of dropout has a considerable lasting impact on the career prospect of youth, either in metropolitan areas or in non-metropolitan areas.

## (2) Nagano

As for the category of “staying in a regular job” (see Table 6), the higher the level of educational attainment is, the higher the ratio of people fitting this category. Among school dropouts, the ratio of people who get on this path is zero or negligible. “Other status→regular job” and “continuing in non-regular jobs” are the most common paths among dropouts. (The ratio for “other status→regular job” is relatively high among people who dropped out from higher education institutions, while “continuing in non-regular jobs” is common among dropouts from secondary education schools.) Among women, the lower the level of educational attainment is, the higher the ratio for “regular job→non-regular job” is.

Compared with the situation in Tokyo (Table 7), “staying in a regular job” is a more common path for school leavers (as opposed to school dropouts) in Nagano, at any level of educational attainment. In Tokyo, the ratio for “continuing in non-regular jobs” is high among women with lower educational attainment, whereas the Nagano survey shows an insignificant disparity between different levels of educational attainment, with the ratio for that category low across the board, although the ratio is relatively high among female senior high-school graduates. For school dropouts, “continuing in non-regular jobs” and “other status→regular job” are the two most common paths in both Tokyo and Hokkaido, indicating a considerable lasting impact of the record of dropout on the career prospect of youth, in metropolitan areas and non-metropolitan areas alike.

### III. Path to and Exit from the *Freeter* Status

In this section, we discuss the path to and exit from the *freeter* status.

The word *freeter* came into use in the latter half of the 1980s to refer to young people who depend on odd jobs to scrape a living as a freelance worker of sorts. In good economic times, the *freeter* style of working became popular, particularly in urban areas, because of its freedom from the straitjacket of permanent affiliation with the employer. However, as the economy has remained in a prolonged slump since the latter half of the 1990s, the public perception of *freeter* has changed from something associated with “freedom” to a symbol of “insecurity.”

The *freeter*, as generally defined, refers to a part-time/odd-job worker aged between 15 and 34 who is not enrolled in school (being single is also a criterion in the case of women). In our research, we treated people who declared to be a *freeter* as such (our survey asked the sample subjects about their experience of working as a “*freeter*”). Little difference was observed between the perception of the *freeter* by self-declared *freeters* and the generally accepted definition of the word.

The Tokyo survey in 2006 found that the experience of working as a *freeter* was fairly widespread. According to our new Hokkaido survey, 43.9% of men in their early 20s and 46.4% of women in the same age group replied that they had the experience of working as a

Table 6. Career Path Categories by Academic Attainment (Nagano Prefecture)

		Nagano Prefecture							
		Senior high grads	Vocational school grads	Non-univ. higher education grads	Univ./ graduate school grads	Secondary education dropout	Higher education dropout	Total	
<b>Men total (N)</b>		<b>109</b>	<b>74</b>	<b>14</b>	<b>72</b>	<b>23</b>	<b>11</b>	<b>305</b>	
<b>(%)</b>		<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	
Staying in a regular job		45.9	47.3	57.1	63.9	8.7	0.0	46.2	
Regular job→regular job		10.1	14.9	14.3	6.9	4.3	0.0	9.8	
Other status→regular job		11.0	12.2	7.1	9.7	21.7	45.5	13.1	
Continuing in non-regular jobs		13.8	10.8	0.0	8.3	39.1	36.4	14.1	
Regular job→non-regular job		3.7	4.1	7.1	5.6	4.3	0.0	4.3	
Others		15.6	10.8	14.3	5.6	21.7	18.2	12.5	
<b>Women total (N)</b>		<b>92</b>	<b>56</b>	<b>72</b>	<b>45</b>	<b>9</b>	<b>12</b>	<b>286</b>	
<b>(%)</b>		<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	
Staying in a regular job		34.8	42.9	44.4	53.3	0.0	0.0	39.2	
Regular job→regular job		8.7	12.5	4.2	2.2	0.0	0.0	6.6	
Other status→regular job		4.3	12.5	8.3	20.0	11.1	41.7	11.2	
Continuing in non-regular jobs		22.8	8.9	16.7	8.9	77.8	50.0	19.2	
Regular job→non-regular job		22.8	14.3	16.7	11.1	0.0	0.0	16.1	
Others		6.5	8.9	9.7	4.4	11.1	8.3	7.7	

Table 7. Career Path Categories by Academic Attainment (Tokyo)

	Tokyo						Total
	Senior high grads	Vocational school grads	Non-univ. higher education grads	Univ./ graduate school grads	Secondary education dropout	Higher education dropout	
<b>Men total (N)</b>	<b>302</b>	<b>191</b>	<b>22</b>	<b>283</b>	<b>66</b>	<b>57</b>	<b>923</b>
(%)	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Staying in a regular job	22.5	33.0	40.9	53.0	6.1	10.5	32.6
Regular job→regular job	7.3	11.0	4.5	7.8	3.0	1.8	7.5
Other status→regular job	15.2	11.0	18.2	10.2	30.3	28.1	14.7
Continuing in non-regular jobs	28.1	22.0	27.3	14.1	28.8	45.6	23.6
Regular job→non-regular job	9.6	5.8	4.5	4.2	7.6	0.0	6.3
Others	17.2	17.3	4.5	10.6	24.2	14.0	15.3
<b>Women total (N)</b>	<b>207</b>	<b>194</b>	<b>160</b>	<b>208</b>	<b>44</b>	<b>37</b>	<b>851</b>
(%)	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Staying in a regular job	17.9	29.4	40.0	49.5	0.0	5.4	30.9
Regular job→regular job	3.4	8.2	8.1	7.7	0.0	0.0	6.1
Other status→regular job	4.8	9.3	10.0	9.1	18.2	24.3	9.4
Continuing in non-regular jobs	46.4	25.3	19.4	22.1	68.2	54.1	32.1
Regular job→non-regular job	15.0	15.5	13.1	5.3	4.5	8.1	11.5
Others	12.6	12.4	9.4	6.3	9.1	8.1	10.0

*freeter*. Overall, more than a third had experienced being a *freeter*.<sup>1</sup>

However, the *freeter* style of working is less common in Nagano Prefecture, with only 33.6% of men in their early 20s and 37.8% of their female counterparts having the experience of working as a *freeter*.

We classified *freeters* into three types: the “dreamer” (who takes advantage of the *freeter* status to achieve ultimate success), the “moratorium type” (who seeks a time-out from the rigor of a more disciplined working environment) and the “those in *freeter* type work because of external circumstances” (who works as a *freeter* because there are no other options available) (we omit detailed analysis regarding this classification in this research paper). The “reality dodger” was the most prevalent type in Tokyo, whereas in Hokkaido and Nagano, the bite-the-bullet type was most common. This divergence presumably reflects a difference in the degree of tolerance of the *freeter* status. While it is difficult to obtain a regular job in Hokkaido, the economic environment there is too exacting to tolerate the idea of working as a *freeter*. Meanwhile, *freeters* in Nagano may feel alienated, as workplaces there are dominated by regular employees.

To what extent do people wishing to escape the *freeter* status have a chance to succeed in doing so? (see Figure 1)

In Hokkaido, approximately 60% of men in their early 20s attempted to escape by obtaining a regular job, as did 86.5% of men in their late 20s. As for women, the attempt rate stood at about 50% for those in their early 20s and at 68.6% for those in their late 20s. Of the would-be escapees in their early 20s, about a third succeeded in getting a regular job, among both men and women. Among the would-be escapees in their late 20s, the success rate exceeded 60%.

In Nagano Prefecture, 67.4% of men in their early 20s attempted to switch to a regular job, while more than 80% of men in their late 20s also tried to. Among women, approximately 40% of those in their early 20s made the attempt, as did 66.7% of those in their late 20s. The success rate reached about 50% for people in their early 20s, among both men and women. For people in their late 20s, the success rate was higher, at some 70% among men and at approximately 60% among women.

We may say that compared with their counterparts in Tokyo, *freeters* in non-metropolitan areas tend to attempt to switch to regular employment at a younger age. As for the rate of successful attempts, there is little inter-regional disparity.

We also found that the Hello Work employment support centers played a larger role in transition from the *freeter* status to regular employment in non-metropolitan areas than in Tokyo (detailed analysis shall be omitted here). This underscores the importance of the role of the public sector in non-metropolitan areas in particular.

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<sup>1</sup> Although the *freeter* experience rate is lower than in Tokyo, the ratio of people engaging in a non-regular job is higher.

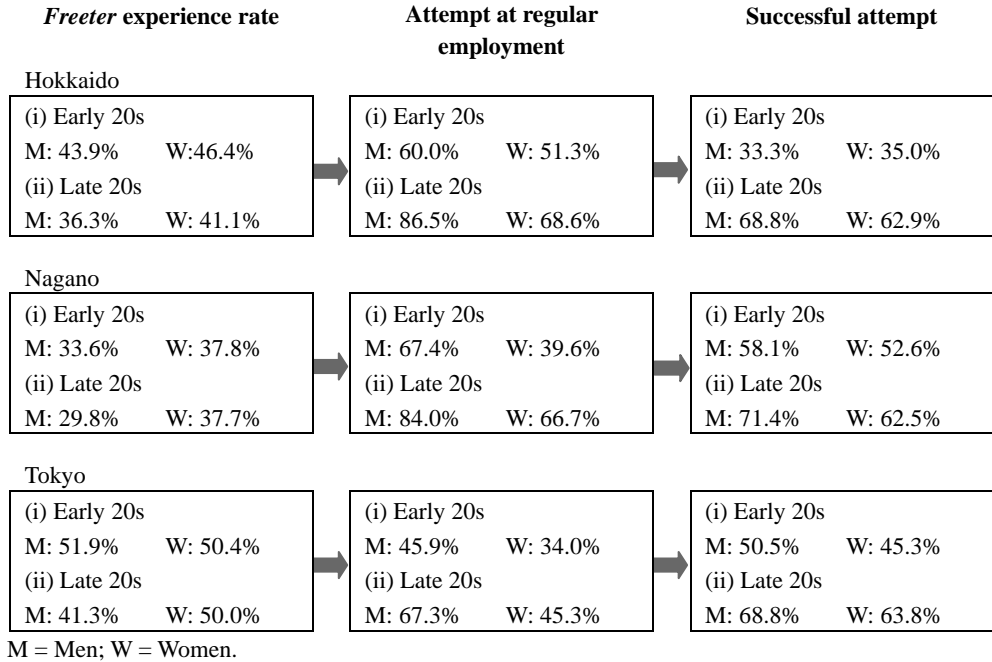


Figure 1. Path to and Exit from *Freeter* Status

#### IV. Conclusion

Our findings can be summed up as follows.

As for the security of the working career, the Type 2 market (Nagano Prefecture), where job offers come primarily from manufacturers, provides the prospect of the most steady career, followed by Type 1 (Tokyo) and Type 3 (Hokkaido) in that order. Let us take the career path for men in their 20s, for example. In Nagano Prefecture, 46.2% fit the “staying in a regular job” category compared with 32.6% in Tokyo and 25.5% in Hokkaido. As for the “continuing in non-regular jobs,” 33.3% were on this career path in Hokkaido, compared with 23.6% in Tokyo and 14.1% in Nagano Prefecture. Presumably, these figures reflect a chronic shortage of job offers in the labor market of Hokkaido and strong demand for labor in Nagano, particularly in the manufacturing sector. However, even in a Type 2 market area like Nagano, the situation is likely to be challenging when the manufacturing sector is struggling as it is now.

We also found that the strength of the link between educational attainment and the career path varied from region to region, depending on the condition of the local labor market.

Although the Tokyo survey indicated a strong link between educational attainment and the career path, we observed only a weak link in Hokkaido and Nagano. For example, let us look at the ratio of people “staying in a regular job” by educational attainment. In

Tokyo, only 22.5% of senior high-school graduates fit this category, compared with 63.9% for university and graduate school graduates. The disparity between different levels of educational attainment was less conspicuous in Hokkaido and Nagano: 36.8% of university and graduate school graduates versus 23.3% of senior high-school graduates in Hokkaido and 63.9% of university and graduate school graduates versus 45.9% of senior high-school graduates in Nagano.

However, the disparity was small in these two regions for different reasons. In the case of Hokkaido, the reason was the fact that higher education does not necessarily promise a better job prospect there. As for Nagano, the reason was a relatively high chance for senior high-school graduates to obtain a regular job. Meanwhile, as the higher education enrollment rate is especially high in Tokyo, people with lower educational attainment are likely to be put at a particular disadvantage in terms of career opportunity.

In our research, we endeavored to extend the coverage of the analysis of the patterns of employment by youth and the school-work transition process, which has traditionally focused mostly on the situation in metropolitan areas. We believe that this research has reminded readers of the importance of broadening the research focus so as to examine the trends for youth across Japan, both in metropolitan and non-metropolitan areas. By shedding light on the situation in non-metropolitan areas, we have also clarified the constraints imposed by social trends and factors on the school-to-work transition and the career.

The findings based on the surveys on employment trends for non-metropolitan youth underscore the need to reconsider the traditional approach of focusing on metropolitan areas. In the future, it will be essential for us to give consideration to region-specific factors when we study the patterns of youth employment and the school-to-work transition.

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## JILPT Research Activities

### *International Workshop*

On March 8 and 9, 2010, JILPT hosted “The 10th JILPT Comparative Labor Law Seminar” in Tokyo, an event used to address the theme of “Labor Policy on Fixed-Term Employment Contracts.” In order to have cross-national discussion and comparative analyses on the above theme, we invited researchers from nine countries: Australia, China, France, Germany, Korea, Sweden, Taiwan, the U.K., and Japan. We discussed the issue of fixed-term employment contracts, focusing on the balance between social protection for workers and flexibility in the labor market, and the recent developments in regulations on fixed-term contracts. The submitted papers will be published and are scheduled to be posted on the JILPT website (<http://www.jil.go.jp/english/index.html>).

The list of Speakers and submitted papers is as follows:

- Hisashi Takeuchi-Okuno (Japan), *The Regulation of Fixed-Term Employment in Japan*  
John Lee (Korea), *A Study on the Prohibition of Discriminatory Treatment of the Temporary Employee: Focusing on the Fixed-Term Worker*  
Chih-Poung Liou (Taiwan), *Laws and Practice of Fixed Term Labour Contracts in Taiwan*  
Aristea Koukiadaki (U.K.), *The Regulation of Fixed-Term Work Contracts in Britain*  
Mia Rönnmar (Sweden), *Labour Policy on Fixed-Term Employment Contracts*  
Bernd Waas (Germany), *Labour Policy and Fixed-Term Employment Contracts in Germany*  
Pascal Lokiec (France), *Fixed-Term Contracts in France*  
Anthony O’Donnell (Australia), *Fixed-Term Work in Australia*  
Kungang Li (China), *Practice and Problems: the Fixed-Term Employment Contract in China*

### *Research Reports*

The findings of research activities undertaken by JILPT are compiled into Research Reports (in Japanese). Below is a list of the reports published from June to August 2009. The complete Japanese text of these reports can be accessed from the JILPT website (<http://www.jil.go.jp/institute/seika.html>). We are currently working on uploading abstracts of reports in English onto the JILPT website as well.

#### Research Reports

- No. 119 *Regional Employment Strategies and Job Creation Efforts in Municipalities* (April 2010)  
No. 118 *Human Resources Development and Capacity Building in Small and Medium-Sized Service Firms* (March 2010)  
No. 117 *Career Development by Non-Regular Employees: Realities of Capacity Building and Conversion of Employment Contracts to Become Regular Employees* (March 2010)  
No. 116 *Comparative Law Study on Work-Life Balance [Interim Report]* (March 2010)

- No. 115 *Transition of Diversification of Employment between 2003 and 2007: Based on Special Analysis of Comprehensive Field Survey on Diversification of Employment Status, Conducted by the Ministry of Health, Labour and Welfare* (March 2010)
- No. 114 *Research Study on Adult Career Development: Experiences of Career Development by Workers in Their 50s* (March 2010)

#### Labor Policy Reports

- No. 7 *Safety Net for the Labor Market* (March 2010), Keiichiro Hamaguchi

#### Discussion Papers

- DPS-10-03 *Realities of Occupational Fields of Contract Workers and Conversion of Their Employment Contracts to Become Regular Employees* (April 2010), Koji Takahashi
- DPS-10-02 *Working Hours of White Collar Workers, Viewed from the Aspects of Their Occupational Characteristics and Personal Characteristics* (April 2010), Kazuya Ogura

#### Research Series

- No. 69 *Research Study on SMEs' Employment Management and Support Programs for Career and Child Raising (2)* (March 2010)
- No. 66 *Retired Workers' Choice of Working Styles After Retirement: Bargaining on Changes in Employment Terms* (March 2010)
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- No. 64 *Human Resources Development and Capacity Building by Employers Associations: Efforts of Employers Associations in the Service Industry* (March 2010)

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- No. 70 *Research on Unemployment Assistance Systems in Germany, France, and United Kingdom* (May 2010)
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