INTERNATIONAL MIGRATION PAPERS

Training abroad: German and Japanese schemes for workers from transition economies or developing countries

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Foreword

The two studies that follow have been elaborated under the auspices of the Migration for Employment Programme of the ILO. They deal with a very specific type of international migration, migration for training, that has recently gained prominence as a government-supported scheme in western Europe and Pacific Rim countries, notably Germany and Japan. Both authors were asked to set out the German and Japanese schemes with a view to highlighting, not so much the alleged abusive elements on which some anecdotal but little systematic evidence exists, but their principles and procedures so as to see how or to what extent training was imparted to foreigners, as well as to provide a descriptive analysis that other countries could consider drawing upon if they were interested in establishing similar schemes.

Much migration, in today's circumstances, has the effect of increasing the person's experience, occupational skills or knowledge. What makes migration for training different from other kinds of international labour migration? Migration for training is different because the acquisition of additional experience, skills or knowledge is the very purpose - the primary and perhaps even the exclusive purpose - of the move. Furthermore, it is return orientated: the person, the firm(s) or the government(s) involved envisage use of the training after the migrant has gone back to his or her country of origin.

Individuals can undertake migration for training under their own steam, just as many students go abroad for educational purposes and with their own means. Individuals who consider moving abroad to acquire training will usually possess some basic training or skills, i.e. they will be skilled or highly skilled rather than unskilled labourers.

Enterprises may find it interesting to sponsor trainees. Enterprises in the migrant's country of origin may look to having nationals become familiar with foreign methods of work organization, production, technology, etc., and to that end seek to place them in appropriate public or private firms abroad. In the case of firms, this will normally be possible only if at least a rudimentary commercial link already exists between the two countries' firms, otherwise there would be no incentive for the migrant-receiving country's firms to admit foreign trainees.

Enterprises in the country of training may be interested in foreigners familiarizing themselves with methods of work organization, production, technology, etc., with a view to having these foreigners diffuse their new knowledge upon return and thereby create demand for the goods or services provided by the training country's enterprises, or perhaps even with a view to having these foreigners form a nucleus in the country of origin around which future local production or distribution can be envisaged. Management would usually opt for a more direct strategy if the transfer of production or services were contemplated; but the training of foreigners represents a supplementary option and a relatively low-cost strategy.

As migration for training can be anticipated to involve rather smaller numbers than straightforward migration for employment, governments of trainee-sending countries will rarely be interested in it on grounds of unemployment relief or the receipt of remittances. They will want to foster the

1 For a brief summary of contemporary types of migration, see ILO, IOM and UNHCR:

acquisition of experience, skills and knowledge that are scarce on their territories. Like enterprises, they may consider putting up funds to those ends.

Governments of trainee-receiving countries have in theory no reason to support foreign trainees financially or to make it easy for them procedurally to enter their territories and firms - except for the same reasons that these firms have, i.e. to diffuse familiarity with organizational methods, production techniques, technology, etc., or in the hope that the foreign trainees can aid their firms in production or distribution abroad. If those were the reasons or the hope, the procedures can be tailored to achieve these objectives.

What happens in practice? A great deal of migration for training occurs daily but without it becoming public knowledge, most notably in the form of movements within transnational enterprises. For them it is commonplace and, presumably, highly profitable. Large enterprises that do not have production or trading links with certain countries may still occasionally want to accept their citizens as trainees. C. Kuptsch in her study on Germany refers to the example of enterprises cooperating with the Carl Duisberg Society.

However, Germany's migration for training scheme and even more so the agreements on project-tied migration with central and eastern European countries are inspired by foreign policy considerations rather than enterprise-based economic criteria. The German Government activated them in order to help those countries' transition towards the market economy rather than because German firms were clamouring for central and eastern European trainees or project-tied migrants. The tribulations arising therefrom are instructively laid out in C. Kuptsch's contribution. As so often in the field of migration, a procedurally tightly circumscribed form of migration has taken on a life of its own, in this case project-tied migration. It is appreciated by German employers who have easy access to the Czech, Polish, etc., contractors or subcontractors who bring along the migrant workers.

In Japan's case, the government had to reconcile several interests that were not always pulling it in the same direction. To simplify the complex system explained by N. Oishi in some detail, there were a fair number of large Japanese firms that felt foreign trainees would not only somehow transfer Japanese management and production methods or technology but who could be used in their subsidiaries in the trainees' home countries. The government saw itself as an actor to foster Japanese modes of perception, organization, etc. Additionally, however, small-scale enterprises asked to be given access to foreign trainees. Unsurprisingly, their key motives did not relate so much to the spread of knowledge of technology but rather more to the filling of vacant jobs, which small-scale firms had a harder time filling than big enterprises, especially the so-called 3-K jobs (Kitanai, Kiken, Kitsui), i.e. dirty, dangerous or demanding jobs. The complications that have arisen therefrom - for both the Japanese Government and the foreign trainees - are explored at some length in N. Oishi's contribution on Japan.
Migration for training, then, is one of the forms of contemporary migration. While it is unlikely to assume major proportions, it is an inherently beneficial form for all actors who may be involved - migrants, enterprises and governments. What does pose problems is the possible intrusion of elements that are far removed from the training aspect. But one can guard against such intrusion by appropriate policy decisions. These matters are considered in the two country case studies hereunder.

Geneva, Switzerland

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A. SHORT-TERM MIGRATION AS A MEANS OF TRAINING - SCHEMES PROVIDING FOR TEMPORARY EMPLOYMENT AND TRAINING OF CENTRAL AND EASTERN EUROPEAN WORKERS IN THE FEDERAL REPUBLIC OF GERMANY

by

Christiane Kuptsch
1. Introduction

Short-term labour migration for the purpose of acquiring additional knowledge and training in a foreign country is considered attractive by many. For the migrants themselves, temporary employment for training can represent an important stepping stone in a career and may be the only way of participating in foreign labour markets. The governments of their home countries see potential development effects in the utilization of training acquired abroad. Governments of receiving countries perceive the temporary nature of the employment contract as a way of minimizing permanent immigration.

This paper examines how the temporary employment and training of central and eastern European workers is organized in Germany. It begins by outlining the political context and legal framework which render possible this employment and training. Chapters 3 and 4 focus on agreements which have been concluded between the government of the Federal Republic of Germany and a number of central and eastern European states pertaining to guest-employees and project-tied migration. The legal basis, objectives, size and execution of both programmes, the guest-employees scheme and the project-tied scheme, are described and analysed. Problems which have arisen in relation to the programmes and suggestions to solve them are also presented. The programmes' training components are appraised and the schemes' utility as a model for other countries is assessed. Chapter 5 provides information on training and temporary employment not covered by governmental agreements. Chapter 6 addresses the question of whether it would be possible to enlarge existing training programmes or create new ones.  

1 Many of the points made in this paper are based on information gathered during a mission the author undertook to Germany in late November - early December 1993. I am most grateful to representatives of the following organizations who extended their help to me by taking the time for comprehensive interviews: Bundesanstalt für Arbeit (Federal Labour Office), Nuremberg; Landesarbeitsamt Nordrhein-Westfalen (Regional Placement Office North Rhine-Westphalia), Düsseldorf; Landesarbeitsamt Hessen (Regional Placement Office Hesse), Frankfurt; Zentralstelle für Arbeitsvermittlung ZAV (Central Placement Office), Frankfurt; Bundesvereinigung der Deutschen Arbeitgeberverbände (Federal Association of German Employers), Cologne; Hauptverband der Deutschen Bauindustrie (Main Association of the German Construction Industries), Wiesbaden; Zentralverband des Deutschen Baugewerbes (Central Association of the German Construction Industry), Bonn; Bundesvereinigung der
2. Political context and legal framework
governing temporary employment and training
of foreigners in the Federal Republic of Germany

2.1. Political context of the employment of foreigners in the 1990s

In November 1973, the Federal Republic of Germany halted the recruitment of foreign labour by administrative decision. Since then practically only family members of foreign workers already residing in Germany and persons admitted to the country for humanitarian reasons have been given access to the German labour market.

This policy of restricting labour immigration was revised at the beginning of the 1990s. Although the new Law on Foreigners, in force since 1 January 1991, gave legislative expression to the recruitment stop, in fact the German labour market has been opened to foreigners to a certain extent, in particular to workers from central and eastern European states (called hereafter CEE states).

The reasons for this new policy are as follows:

Fachverbände des Deutschen Handwerks (Federal Association of German Crafts), Bonn;

Industriegewerkschaft Bau-Steine-Erden (Industrial Trade Union "Construction-Stones-Soil"), Frankfurt; Verband der Polnischen Dienstleistungsunternehmen in der Bundesrepublik Deutschland (Association of Polish Service Enterprises in the Federal Republic of Germany), Cologne; Carl Duisberg Gesellschaft (Carl Duisberg Society), Cologne.

A copy of this paper in German, giving additional details on legal and procedural aspects, can be obtained from the author: Christiane Kuptsch, Graduate Institute of International Studies (IUHEI), 132, rue de Lausanne, 1211 Genève 21.
With the opening of the borders between East and West the government of the Federal Republic had to deal with a changed environment. Visas were no longer required; citizens of CEE states had the possibility of coming to Germany as tourists. Given the difficult economic conditions in the CEE states, characterized by high unemployment, decreasing real wages, bottlenecks in supplies and a new consumption attitude of their citizens, and given the enormous gap in standards of living and income between East and West, it was feared that the Federal Republic would be exposed to substantial migration pressures. Illegal immigration had to be prevented. The view prevailed that one way of doing this would be to provide legal employment opportunities to CEE citizens.

It was considered an "obligation of the West to support the process of reform in eastern Europe with the means of the social market economy" (Heyden, 1991, p.6). Financial support could not be granted to the extent necessary, given that the German unification entailed heavy costs. That is why the countries in transition were offered employment possibilities in Germany along with assistance in building or reforming their systems of social security and introducing active labour market policies. Overall, these measures were intended to give the people in the CEE states hope for an improved standard of living and to encourage them to help in rebuilding their respective countries (Heyden, 1991, p. 6).

The Federal government also believed that it had obligations to states whose citizens previously had found work in the former GDR. Poland, for example, made continued employment of a certain number of its workers a topic of discussion during negotiations concerning the recognition of the German-Polish border.

Overall, one may conclude that the recent willingness to admit foreign workers to the Federal Republic of Germany is based on political motives. Unlike during the 1950s and 1960s, it is more difficult to explain this willingness on economic grounds, even if there is excess demand for labour in certain geographic regions and sectors of the economy.

The readiness to open the German labour market to foreign workers is limited to temporary employment and training. Temporary employment satisfies the needs of those branches of the German economy which suffer from labour shortages, such as the hotel and catering sector and the construction industries. From the point of view of the government, a permanent stay of foreigners in Germany should be prevented in order not to pass the limits of Germany’s "capacity of absorption" which is considered a "relevant socio-political issue" (Heyden, 1991, p.6). It is also argued that CEE countries cannot possibly desire large outflows of skilled and unskilled workers to the Federal Republic as these people are needed for the purpose of developing their home countries.

The limited opening of the labour market has been achieved partly by revising legislation concerning seasonal work and frontier commuting, but mainly by concluding bilateral agreements with CEE governments that provide for employment and training of a fixed number of persons per year.

### 2.2. Legal framework

Legally, the opening of the German labour market is chiefly reflected in a decree called for short Decree on Exceptions to the Recruitment Stop (Anwerbestoppausnahme-Verordnung - ASAV).

Only seasonal employment is not regulated in this decree. It is covered by the Decree on Work Permits for Non-German Workers (Arbeitserlaubnisverordnung - AEVO). § 1 (3) AEVO lays down that for short-term employment a work permit can be granted up to three months in a year if the placement has been arranged based on an agreement between the Federal Labour Office (Bundesanstalt für Arbeit) and the labour administration of the migrant’s country of origin. As from 1 September 1993, however, with the tenth decree to revise the AEVO, placement has been restricted to employment in agriculture, agricultural production, saw-mills, show-business and the hotel and catering sector. The construction industries were deliberately excluded so as to take
account of the interests of nationals unemployed in this branch, given a worsening labour market situation. ¹

The Decree on Exceptions to the Recruitment Stop is dated 21 December 1990 and has been revised for the first time in September 1993. Exceptions to the recruitment stop are essentially made in four areas: skilled workers (§§ 4 and 5 ASAV), frontier commuting (§ 6 ASAV), training (§ 2 ASAV) and governmental agreements in force. The following chapters will deal with the ways the latter two exceptions are organized.

3. Agreements on guest-employees ("Gastarbeitnehmerabkommen")

3.1. Legal basis for, modalities and objectives of employing foreign trainees²

Bilateral agreements on guest-employees regulate the employment, in the partner state, of a limited number of persons for the purpose of on-the-job-training. The employment of guest-employees thus falls under two criteria of exceptions of the Federal Republic's recruitment stop: such employment is governed by bilateral agreements and it serves training purposes.

¹ Bundesanstalt für Arbeit, Anwendung der Arbeitserlaubnisverordnung (AEVO) und der Anwerbe-


² The words "trainee" and "guest-employee" will be used interchangeably throughout this work. The word "trainee" is not employed in the sense of "apprentice" but closer to the notion of "stagiaire". The expression "guest-employee" should not be confounded with the popular term "guest-worker", which really means migrant worker or foreign worker.
The agreements stipulate mutuality, but in practice guest-employees from CEE states come to Germany and rarely vice versa.¹

The wording of the agreements concluded between the Federal Republic and individual CEE states is almost the same. They mainly differ by the number of guest-employees admitted annually and by different restrictions on the participants' age.

3.1.1. Content of the agreements on guest-employees
The agreements lay down that the work permit is granted without regard to the situation and evolution of the receiving country's labour market. For the Federal Republic this means that a vacancy test does not take place. A work permit can be granted to the guest-employee even if normal job seekers would qualify for a given position.

Employment as a guest-employee normally has a duration of one year. It can be extended to 18 months.

Salaries, conditions of work, social benefits, etc., have to conform to collective agreements or legislation in force in the host country. Hence, a CEE guest-employee in the Federal Republic has a right to the same wages and working conditions as a German worker.

A maximum annual number of guest-employees is negotiated between the two governments. The agreements stipulate that number. It can be altered by an exchange of notes.

Basic knowledge in the respective profession is a condition for participation in the guest-employee scheme. It is interesting to note that the agreement between the Federal Republic and the Czech and Slovak Federal Republic of April 1991 calls for a completed occupational training whereas the German-Russian agreement of 1993 states that, in the absence of a training certificate, it suffices for the trainee to prove comparable professional abilities. In practice, a minimum of three years of professional experience is desired.² It seems that over the years one wanted to enlarge the circle of possible participants: either to give more young persons a chance or because it was realized that the requirements for obtaining a training certificate differ greatly from country to country and, therefore, decisions based on formal criteria may not be appropriate.

Participation in the guest-employee scheme is reserved to trainees of a certain age. According to most of the agreements, guest-employees must be between 18 and 40 years old; the agreements with Bulgaria, Poland and Romania fix the upper limit at 35.

3.1.2. Objectives
As announced in the agreements' titles, the main objective of the guest-employee scheme is to improve the occupational and language skills of the participants. This postulate is confirmed in the individual agreements where the guest-employee is defined as a worker who is temporarily employed for the purpose of ameliorating his/her professional and linguistic knowledge.

¹ Agreements that Germany has concluded with Austria, Finland, Sweden and Switzerland are used by both sides.

² INFORMATION herausgegeben von der Zentralen und Internationalen Management- und Fachvermittlung für das Hotel- und Gaststättengewerbe (ZIHOGA) (INFORMATION edited by the Central and International Placement Office for Management and Skilled Workers in the Hotel and Catering Sector (ZIHOGA)), August 1993.
Occupational training is offered because one hopes to promote the trainees' personal initiative, in particular with a view to establishing small and medium-size enterprises. Language skills are of enormous importance in the service sector: they are, for example, of use in developing the tourism industry. From the point of view of the German government, a full exhaustion of the guest-employee quotas is desirable as one assumes that the agreements contribute to speeding up the process of economic transition in the CEE states.

Another objective of the guest-employee scheme is to establish contacts and/or prepare the ground for future economic cooperation. For joint ventures one needs well-trained partners; from this point of view not only the CEE states benefit from the training of their workers in Germany but also German enterprises.

It can be assumed that individuals from CEE states and certain interest groups in Germany pursue aims other than improvement of knowledge and establishment of contacts. For individual guest-employees the training aspect of the programme may be relatively unimportant in comparison with increased earnings or the mere fact of having employment. For employers in the Federal Republic from economic branches which suffer from acute labour-shortages the main objective may be to fill vacant jobs; training may only be viewed as a bothersome obligation.

3.2. Size of the programme

Bilateral agreements on temporary migration for the purpose of training are nothing new. In fact, agreements between European states but also with overseas partners have been in force for decades: an agreement between Belgium and Switzerland exists since 1935, one between the Netherlands and Norway since 1951 and one between France and Canada since 1956. However, in the past the number of participants in guest-employee schemes was very small. No more than 1,500 guest-employees annually used to work and work to this date in Switzerland, a country having agreements with 21 states (OECD, 1994, p. 10).

The agreements concluded since 1989 between the Federal Republic of Germany and CEE states are a novelty to the extent that they differ from previous schemes in size. Table 1 presents information on quotas fixed and their use in 1993.

<table>
<thead>
<tr>
<th>CEE state</th>
<th>Agreed quota</th>
<th>Placements</th>
<th>Exhaustion</th>
</tr>
</thead>
<tbody>
<tr>
<td>Albania</td>
<td>500</td>
<td>247</td>
<td>49 %</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>500</td>
<td>176</td>
<td>35 %</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>1400</td>
<td>1577</td>
<td>113 %</td>
</tr>
<tr>
<td>Hungary</td>
<td>2000</td>
<td>1370</td>
<td>69 %</td>
</tr>
<tr>
<td>Latvia</td>
<td>100</td>
<td>57</td>
<td>57 %</td>
</tr>
<tr>
<td>Poland</td>
<td>1000</td>
<td>943</td>
<td>94 %</td>
</tr>
<tr>
<td>Romania</td>
<td>500</td>
<td>562</td>
<td>112 %</td>
</tr>
<tr>
<td>Slovak Republic</td>
<td>710</td>
<td>837</td>
<td>118 %</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>6710</strong></td>
<td><strong>5769</strong></td>
<td><strong>86 %</strong></td>
</tr>
</tbody>
</table>

Source: Auslandsbrief der ZAV, Mitteilungen aus der internationalen Arbeitsvermittlung, no. 5, May 1994.

Governmental agreements have also been concluded with the Russian Federation and with Lithuania, involving annual quotas of respectively 2,000 and 200 possible placements. Thanks to administrative arrangements made at the end of 1993, these two agreements are operational since January 1994. Hence, the total quota has meanwhile increased to 8,910.
In the beginning, the quotas were not used fully, probably because of lack of information. It seems that employers were initially not aware of the possibility of hiring guest-employees. Given a quota of 7,000 in 1991, only 2,250 guest-employees were placed in German enterprises. In 1992, 5,057 placements were made against a quota of 8,500. As shown in table 1, in 1993 quotas for certain countries were surpassed, whereas for others they were not exhausted. The Central Placement Office (Zentralstelle für Arbeitsvermittlung, ZAV) believes that, on the one hand, German enterprises prefer to hire guest-employees from countries which they have had positive experiences in previous years. On the other hand, an increasing number of potential guest-employees has to be accommodated in a tightening labour market. In other words, not enough enterprises can be found, willing to take on foreign trainees.

3.3. Execution of the programme

3.3.1. Institutions involved
Both in the CEE states and in Germany the guest-employee programme is administered by central offices of the labour administration and by local labour exchanges responsible to those central offices. In Germany, the Central Placement Office (ZAV), as part of the Federal Labour Office, supervises the execution of the guest-employee programme. In the CEE states, central offices within the labour administration or coordinating bureaus at ministerial level have been made responsible for administering the programme or have even been created for that purpose.

The CEE central offices are chiefly in charge of examining and forwarding requests for training places to the ZAV. Individual labour exchanges in the CEE states receive applications of potential guest-employees and pass them on to their respective central offices.

The ZAV has placement and, accordingly, selection functions: it receives both the CEE workers' applications and the job offers from German enterprises. It is also responsible for granting the work permit in the form of a decision on admission. It examines whether the conditions for granting the work permit are fulfilled in the individual case, not only as far as the guest-employee is concerned but also with respect to the employer. German labour exchanges, as much as their CEE counterparts, are in charge of forwarding applications. German employers can submit their job offers to them, should they prefer not to turn to the ZAV directly. The German labour exchanges, moreover, have a role in determining whether the German employer is apt to hire guest-employees, in particular whether (s)he guarantees training of the workers.\(^1\)

3.3.2. Recruitment process
Enterprises can call for foreign trainees in an *anonymous* way if they do not have contact with a candidate or in a *nominal* way if they know the person they would like to hire. Frequently, candidates are known to firms because of their previous employment as a seasonal worker, contract worker or apprentice.\(^2\)

The CEE states' central placement offices or coordinating bureaus ensure that the media of their countries report on the guest-employee scheme and on training opportunities abroad. The public is informed that candidates should apply at their local placement offices.

Once or twice a year, collaborators of the ZAV travel to different CEE countries for recruitment interviews during which the qualification of the candidates is to be established. The potential guest-employees' knowledge in their occupational field is tested. So are their language skills


\(^2\) It is currently queried in Germany whether or not employment in the Federal Republic prior to the work as a guest-employee runs counter the agreements' objectives.
because it is assumed that for on-the-job-training a minimum vocabulary is necessary. Language skills are particularly indispensable in the service sector. The tests are not always very demanding so that candidates from particular countries are not disadvantaged. Albanians, for example, usually speak very little German in the beginning; they may be employed as unskilled workers during their first six months in Germany.

Other candidates may be so highly qualified that they can hardly find posts corresponding to the education they have received in their respective home countries. Nevertheless, they are not excluded from the programme.

3.3.3. Monitoring
The ZAV monitors the proper execution of the programme in Germany. The main task is to ensure that the guest-employees are truly given an opportunity to learn. There are no controls in enterprises - the labour administration lacks resources for such controls. Instead, it is attempted to reach the agreements' objectives by spreading information and by controlling the quality of the participating firms.

The ZAV's work in this field begins with informing future guest-employees about their rights and obligations in Germany. For this purpose, educational seminars are held in the partner countries. During the seminars it is, inter alia, explained to the candidates that their wages will correspond to the ones fixed in German collective agreements, that German laws and regulations apply to them, for instance with regard to hours of work and taxes. They are warned that, should they lose their job through their own fault (e.g. consumption of alcohol during working hours), they will have to leave the country. They are told that no re-placement is done, other than in the case of the employer's culpable behaviour (e.g. refusal to grant all rights due to the guest-employee by contract or law).

The ZAV is keen on placing guest-employees only in enterprises which are in a position to train. Local placement offices assist the ZAV in checking on training capacities. Amusement bars are not considered. Employers who have performed incorrectly in the past, who have paid less than standard wages for example, are put on a black list: guest-employees are no longer placed in their enterprises. Returning or returned guest-employees give feedback on the programme to the ZAV. Preference is given to employers who have repeatedly been referred to as good trainers.

Since July 1993 it is also part of the requirements for hiring guest-employees that the interested enterprise possess a certain number of regular staff: a proportion of four German-speaking regular staff to one guest-employee should be the rule of thumb. In this way contact with German-speaking colleagues is guaranteed to the guest-employees, a fact helping them to improve their German.

3.4. Appraisal of the programme's training component
Despite some cases of abuse ¹, the agreements on guest-employees are, on the whole, a success, in particular because it seems that the training objective is achieved. ²

¹ The main form of abuse is that the employer circumvents the "four regular staff : one guest-employee" rule.
² The following appraisal is based on statements made by ZAV staff who often receive feedback from guest-employees. The picture drawn may be biased to the extent that only a certain group of guest-employees desires to provide feedback. For reasons of data protection it
In general, the participants' feedback is positive. In discussions with ZAV staff they report being satisfied with their stay in Germany and having learned something. Not only would they take hard currency back home but also additional knowledge.

Both money and knowledge are important for those who are desirous of launching their own business upon return. For many, participation in the programme is a *conditio sine qua non* for self-employment. According to ZAV collaborators, guest-employees who used to work in small and medium-sized enterprises in Germany wish to create their own businesses. Frequently, such new enterprises become business partners of German firms which shift part of their production to the respective CEE states.

A number of guest-employees are trained to manage or work in restaurant-, food- or other chains. Thanks to the knowledge acquired as a guest-employee they are better equipped to perform their new tasks.

It is understood that not everybody receives genuine training. The German labour administration assumes that a guest-employee can learn from the mere fact of forming part of a German enterprise. For this reason the enforcement of the "four regular staff : one guest-employee" rule is insisted upon. However, if the guest-employee works at an assembly line or as an unskilled worker, the training effect will be minor, no matter how many German-speaking regular staff the enterprise employs. Yet, even such tasks are accepted under the guest-employee scheme with a view to not entirely excluding people with little education and language skills.

The participants' satisfaction with the programme is presumably not only related to the training imparted but also to income received. In any case, the guest-employees are satisfied and so are their employers: 90 per cent of the trainees ask for and are granted a prolongation of their employment for six months. They make fully use of the programme's maximum duration.

With respect to the scheme's training component, reference should be made to an additional programme. The Coordinating Bureau for the Promotion of Reintegration by Means of Qualification and Business Creation (KFR), an establishment of the Ministry of Labour and Social Affairs and German business circles, has the task of complementing the guest-employee scheme. The Bureau is in charge of selecting able and interested guest-employees who appear suitable for business creation, additional professional qualification and training as a trainer. The candidates are given special courses, in addition to their work as a guest-employee. This special training has a duration of up to three months. In general, it takes place in the trainee's home country at the end of the guest-employee programme. It is organized by the Coordinating Bureau and financed by the Ministry of Labour and Social Affairs. To date, courses are only offered in Hungary and Poland. It is planned to introduce special training programmes in the Czech Republic and the Slovak Republic as well.

4. Agreements on project-tied migration ("Werkvertragsabkommen")

4.1. Legal basis

was unfortunately impossible to launch a representative survey among guest-employees in Germany.

1 KFR Information leaflet entitled "Gestalten Sie ihre Zukunft in Ungarn" ("Shape your future in Hungary"), dated August 1993.
The German word "Werkvertrag" is sometimes translated with "contract for services" which is misleading. A "Dienstvertrag" (Dienst = service) should be called "contract for services". "Werkvertrag" is translated with "contract on outputs" throughout this paper. This translation reflects the fact that results, outputs, and not service delivery, are the essence of this particular concept in German civil law.

In international parlance, the move of workers based on contracts on outputs tends to be referred to as project-tied migration.
The Government of the Federal Republic of Germany has concluded agreements with a number of CEE states pertaining to employment in Germany of staff of enterprises based in CEE states, employment to fulfil contracts on outputs.¹ Contrary to the agreements on guest-employees, the agreements on contracts on outputs (= agreements on project-tied migration) do not stipulate mutuality: they do not refer to the sending of German workers to CEE states.

The agreements lay down the annual average number of contract workers² who have permission to stay in the Federal Republic. Some agreements not only fix a numerical limit but allow for supplementary quotas. The latter can be temporary; they can also be aimed at certain occupations or medium-sized enterprises. Some agreements contain sub-quotas, fixing a maximum number of contract workers allowed to work in a specified branch of the economy, namely the construction industries. Table 2 shows the size but also the nature of the quotas negotiated with the CEE countries.

### Table 2. Agreements on project-tied migration: quotas in November 1993

<table>
<thead>
<tr>
<th>Country</th>
<th>Basic quota</th>
<th>Quota reserved to German medium-sized enterprises</th>
<th>Quota reserved to foreign medium-sized enterprises</th>
<th>Additional quota for Romanian workers of German origin</th>
<th>Temporar y quota</th>
<th>Quota reserved to restorers</th>
<th>TOTAL</th>
<th>Sub-quota construction</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bulgaria</td>
<td>1740</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>2000 until 05/94</td>
<td>-</td>
<td>3740</td>
<td>-</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>2270</td>
<td>580</td>
<td>-</td>
<td>-</td>
<td>1950 until 12/93</td>
<td>170</td>
<td>4970</td>
<td>1430</td>
</tr>
<tr>
<td>Slovak Republic</td>
<td>1550</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>1050 until 12/93</td>
<td>90</td>
<td>2690</td>
<td>1100</td>
</tr>
<tr>
<td>Hungary</td>
<td>5460</td>
<td>880</td>
<td>880</td>
<td>-</td>
<td>6000 until 12/93</td>
<td>-</td>
<td>13220</td>
<td>960</td>
</tr>
<tr>
<td>Latvia</td>
<td>380</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>380</td>
<td>-</td>
</tr>
<tr>
<td>Poland</td>
<td>18850</td>
<td>4360</td>
<td>-</td>
<td>-</td>
<td>8000 until 12/93</td>
<td>500</td>
<td>31710</td>
<td>9640</td>
</tr>
<tr>
<td>Romania</td>
<td>3480</td>
<td>-</td>
<td>-</td>
<td>880</td>
<td>2000 until 12/93</td>
<td>-</td>
<td>6360</td>
<td>-</td>
</tr>
<tr>
<td>Turkey</td>
<td>6100</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>6100</td>
<td>-</td>
</tr>
<tr>
<td>Yugoslavia</td>
<td>1730</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>1730</td>
<td>740</td>
</tr>
<tr>
<td>Bosnia-Herzegovina</td>
<td>1030</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>1030</td>
<td>300</td>
</tr>
</tbody>
</table>

¹ An agreement has also been concluded with Turkey.
² Throughout this paper the term "contract worker" will stand for the worker who is employed abroad, based on a contract on outputs which his employer has concluded with a foreign firm (here a German firm).
The quotas can vary over time as a result of an adaptation clause contained in all of the agreements. The quotas shrink by five percent for each percent rise in unemployment in Germany. An improvement on the German labour market has the reverse effect on the quotas.

The quotas cannot only be reduced on account of developments in the labour market but also as a sanction, namely if unlawful subcontracting of workers has taken place, if quotas were surpassed or if workers were found to be without a work permit.

For contract workers (as much as for guest-employees) the usual labour market test is not required. Nevertheless, the work permit is only granted if the wage promised to the contract worker corresponds to the wage German collective agreements fix for a comparable activity.

Moreover, the agreements lay down that work permits are only to be granted in relation to contracts on outputs whose fulfilment requires a majority of skilled workers.

Exceptional cases left aside, the work permit is limited to a specified activity for the purpose of fulfilling a particular contract on outputs. The work permit is given for the foreseen duration of works, generally not exceeding two years. Exceptions are made for senior staff. Repeated employment as a contract worker is also regulated in the agreements.

4.2. Objectives of the programme

Judging by the titles and preambles of the agreements, the main objectives are (a) to create employment opportunities for workers from CEE states in Germany and (b) to foster the economic, industrial and technological cooperation between the Federal Republic and the respective partner countries.

For CEE enterprises, contracts on outputs are supposed to be vehicles of making profits, necessary for investments which, in turn, are needed for job creation.

Both from the German and the CEE perspectives, contracts on outputs, concluded thanks to existing governmental agreements, are to be a source of earning hard currencies for the CEE states.

The German side does not exclusively aim at assisting the CEE states, though. Agreements on contracts on outputs are clearly seen as a means of reducing immigration pressures and as a way of preventing illegal immigration (Heyden, 1993, p. 1).

According to representatives of the Federal Labour Office, the agreements are also to compensate for a lack of skilled workers in Germany.

Access to new markets and advantages over other countries that do not cooperate as much as Germany does with CEE states, apparently played a role in elaborating the agreements and are on the minds of German entrepreneurs when concluding contracts on outputs. German enterprises which engage in contracts on outputs in any case aim at reducing costs.

Occupational training of individual workers is not in the centre of this type of agreements. Agreements on project-tied migration focus on cooperation between enterprises. Training for

<table>
<thead>
<tr>
<th>Country</th>
<th>Quota</th>
<th>Quota</th>
<th>Quota</th>
<th>Quota</th>
<th>Quota</th>
<th>Quota</th>
<th>Quota</th>
<th>Quota</th>
<th>Quota</th>
<th>Quota</th>
<th>Quota</th>
<th>Quota</th>
<th>Quota</th>
<th>Quota</th>
<th>Quota</th>
<th>Quota</th>
</tr>
</thead>
<tbody>
<tr>
<td>Croatia*</td>
<td>5260</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>5260</td>
<td>1510</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Macedonia*</td>
<td>490</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>490</td>
<td>140</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Slovenia*</td>
<td>2010</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>2010</td>
<td>490</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>TOTAL</td>
<td>50350</td>
<td>5820</td>
<td>880</td>
<td>880</td>
<td>21000</td>
<td>760</td>
<td>79690</td>
<td>16310</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* = agreement in preparation; - = no special quota

Source: Bundesanstalt für Arbeit (Federal Labour Office)
employers, not for workers, is sought. It is hoped that CEE entrepreneurs will learn to think in terms of a market economy and will become acquainted with organizational and technical procedures during their activities in Germany.

4.3. Size of the programme

In Germany, the employment of foreign workers in fulfilment of contracts on outputs has rapidly developed following the conclusion of agreements with CEE states to this effect. German business circles have quickly taken the opportunity of relying on contract workers, so that the quotas were soon used up. In 1988, a first agreement was concluded with the former Yugoslavia. Most of the other governmental agreements followed during the early 1990s. Until that time, no more than 15,000 foreign contract workers had resided in Germany annually. This number leapt almost ten times. Figure 1 illustrates the evolution since the 1980s.

Maximum numbers were registered in 1992. Following the conclusion of agreements with seven CEE states and Turkey, the agreed quotas added up to almost 90,000. This number was reduced to 78,000 as of 1 October 1992, pleading the adaptation clause in the agreements, i.e. a worsening of the labour market situation. Poland, the former Czechoslovakia and Romania surpassed their quotas, with the result that in October 1992, 116,000 instead of 78,000 contract workers were registered in Germany (Heyden, 1993, p. 26).

Figure 1 demonstrates that contract workers are mainly employed in the construction industries. (See table 3 for a presentation of contract workers according to branches of the economy.) The rapid evolution and the concentration in the construction industries led to problems which will be detailed in another chapter. Suffice it to say here that the programme on contracts on outputs has caused an enormous controversy in Germany, that no further agreements are being considered and that the intentions are to reduce the quotas.

In December 1993, three temporary quotas, adding up to 11,000, came to an end. Three more, totalling 10,000, will have shared that fate by late 1994, as indicated in table 2. Because of this and because of an expected further reduction on the grounds of adaptation to the labour market, the Federal Labour Office assumes that the total quota should not exceed 55,000 at the end of 1994.

Table 3. Contract workers according to economic sector in October 1993

<table>
<thead>
<tr>
<th>Economic sector</th>
<th>Number of contract workers employed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Construction industries</td>
<td>44488</td>
</tr>
<tr>
<td>Branches related to the construction industries</td>
<td>6955</td>
</tr>
<tr>
<td>Insulation</td>
<td>1146</td>
</tr>
<tr>
<td>Iron and steel production</td>
<td>5307</td>
</tr>
<tr>
<td>Agriculture, energy, mining, chemical industries</td>
<td>1394</td>
</tr>
<tr>
<td>Processing, assembling</td>
<td>2419</td>
</tr>
<tr>
<td>Restoration</td>
<td>288</td>
</tr>
<tr>
<td>TOTAL</td>
<td>61997</td>
</tr>
</tbody>
</table>


1 In this calculation the former Yugoslavia and the former Czech and Slovak Federation states are each counted as one state. Germany has now negotiated agreements with their successor states.
4.4. Execution of the programme

4.4.1. Institutions involved
The basis for the employment of contract workers from CEE states is the contract on outputs. The German and the CEE entrepreneurs are responsible for concluding this contract of private law. The search for a partner enterprise is left to private initiative. Employers’ organizations can help. The administrations refrain from making arrangements, notwithstanding the fact that lists of enterprises based in foreign countries can be consulted in Germany’s regional placement offices. In the CEE states, the media report on the possibility of concluding contracts on outputs with German firms.
Figure. Number of contract workers employed in Germany: evolution since 1980

Source: Bundesanstalt für Arbeit (Federal Labour Office)
There is, of course, no selection procedure comparable to the one in the guest-employee scheme. Contract workers do not change their employer when going to Germany; they remain staff members of their CEE enterprise. But who "selects" the enterprises entitled to participate in the programme.

The distribution of the quota is the responsibility of the institution named in the respective agreement. In Hungary it is the Ministry of Economics, in Poland the Ministry of Economic Cooperation and in Romania the Ministry of Labour, to cite but a few examples.

Among the criteria for allotting shares of the quota are the enterprises’ organizational structure and administrative requirements, such as, for example, registration in a particular trade register. There are indications that the "examination" of the enterprises was initially not taken very seriously in some CEE countries. In Poland, for example, 1,502 firms participated in the programme in the beginning; only 200 are admitted today. Anecdotes report that some "enterprises" were set up for the sole purpose of sending contract workers to Germany.

As soon as the decision on the distribution of the quota is taken, the institution responsible for allotting the quota notifies the enterprises of the number of workers they can take to Germany and for how long.

The CEE entrepreneur approaches the relevant German labour exchange with this notification and presents, in addition to the contract on outputs, a detailed list stating the works to be carried out in fulfilment of the contract and a "declaration" on conditions of work and payments.

The responsible labour exchange grants the work permit if two conditions are fulfilled. First, the contract workers expected to carry out the project must have demanded a visa prior to immigration. Second, the regional placement office to which the labour exchange reports must have approved the contract on outputs: the decision whether or not the contract is in compliance with the respective governmental agreement lies with that office.

The regional placement office informs the CEE entrepreneur and the institution responsible for the distribution of the quota that it has authorized the contract (see also box below).

Since March 1993, based on a directive of the Governing Body of the Federal Labour Office, CEE entrepreneurs must pay a fee for the granting of work permits to their employees. The fee, collected by local labour exchanges, varies according to the expected duration of work, the number of contract workers and their individual period of employment in Germany. It amounts to DM 2,000 per worker for an anticipated period of works of over nine months, to DM 1,600 for up to nine months and to DM 1,200 for up to six months.  

1 Anordnung des Verwaltungsrates der Bundesanstalt für Arbeit über die Entrichtung von Gebühren durch Arbeitgeber für die Erteilung einer Erlaubnis nach § 19 Abs. 1 Satz 1 des Arbeitsförderungsgesetzes auf Grund zwischenstaatlicher Vereinbarungen (Directive of the Governing Body of the Federal Labour Office on fees to be paid by employers for the granting of a permit according to § 19 (1,1) Employment Promotion Act, based on bilateral agreements), dated 24.3.1993.
After a contract on outputs has been authorized and the respective work permits have been granted, the CEE entrepreneur has the obligation to notify the community where he is to carry out the project, of his activities. Craft establishments need special registration.
Box. Agreements on project-tied migration: regional responsibilities

<table>
<thead>
<tr>
<th>CEE state</th>
<th>Responsible regional placement office</th>
</tr>
</thead>
<tbody>
<tr>
<td>Poland</td>
<td>North Rhine-Westphalia</td>
</tr>
<tr>
<td>Hungary</td>
<td>Hesse</td>
</tr>
<tr>
<td>Romania</td>
<td></td>
</tr>
<tr>
<td>Bulgaria</td>
<td>Baden-Württemberg</td>
</tr>
<tr>
<td>Yugoslavia</td>
<td></td>
</tr>
<tr>
<td>Bosnia-Herzegovina</td>
<td></td>
</tr>
<tr>
<td>Croatia</td>
<td></td>
</tr>
<tr>
<td>Macedonia</td>
<td></td>
</tr>
<tr>
<td>Slovenia</td>
<td></td>
</tr>
<tr>
<td>Czech Republic</td>
<td>Southern Bavaria</td>
</tr>
<tr>
<td>Slovak Republic</td>
<td></td>
</tr>
<tr>
<td>Turkey</td>
<td></td>
</tr>
<tr>
<td>Latvia</td>
<td>Berlin-Brandenburg</td>
</tr>
<tr>
<td>Lithuania</td>
<td></td>
</tr>
<tr>
<td>Russian Federation</td>
<td></td>
</tr>
</tbody>
</table>

Source: Bundesanstalt für Arbeit (Federal Labour Office)

In a leaflet elaborated by the Federal Labour Office which is available in various CEE languages, CEE entrepreneurs receive information on further obligations, for example taxes, and on sanctions in case of violations of German laws.

4.4.2. Monitoring

Before the work in fulfilment of a particular contract starts, a certain control takes place in the form of an examination of the contract on outputs. The responsible regional placement office checks whether there are any indications which would suggest that the contract is not a contract on outputs. The CEE enterprise must be in a position to plan, organize and execute the project independently in terms of its equipment and staff (capital, machines, vehicles, tools, office organization, qualifications).¹

The regional placement office also examines whether the promised wage is comparable to German wages, as required in the governmental agreements.

In addition, the regional placement offices have the task of exploring whether or not the German partner enterprises fulfil all necessary conditions. For example, with respect to construction projects, only firms registered as enterprises of the construction industries are admitted as an orderer. Since October 1993 the granting of work permits in the construction industries has been restricted in relation to the number of staff employed by the German partner. If the German enterprise employs up to 30 workers, at most six contract workers can be given work permits.

However, their number must not exceed the number of regular staff. A maximum of 30 contract workers, respectively a number representing not more than 20 percent of the German enterprise's staff, can be admitted in cases where the German partner employs up to 200 persons. The maximum numbers for enterprises with a regular staff exceeding 200, are 200 or 15 per cent. (As will be explained later, these quotas were intended to lessen problems of unfair competition in the construction industries.)

Since the introduction of a so-called "labour market protection clause" in January 1993, the regional placement offices are also to make sure that no new work permits are granted to contract workers in regions with unemployment above average. Above average unemployment is defined as at least 30 percent more than the federal average during the last six months. The regional placement office is also to refuse work permits if the German partner enterprise is working short-time.

Besides the above preliminary examinations, a number of legal and administrative instruments have been introduced with a view to ensuring that the agreements on contracts on outputs are properly executed in Germany. The aim is to eliminate illegal practices such as wage dumping, employment without work permit and illegal supply of temporary workers (unlawful subcontracting of workers).

The Employment Promotion Act and the Temporary Employment Businesses Act lay down a series of sanctions for illegal practices, from a revocation of work permits and fines to prison sentences.

The labour administration has the right to proceed to controls in enterprises where foreigners work. Working conditions are examined and work permits controlled. Both the CEE and the German entrepreneur are obliged to take part in the procedure. So do the workers: they must carry their work permit. Refusal to participate can be fined. Fines can amount to DM 1,000 for workers and up to DM 50,000 for employers (Heyden, 1993, p. 29).

Controls at workplaces are among the daily activities of the German labour administration. However, the resources are lacking to cover the entire country. Therefore, samples are taken. Public construction projects are preferred targets for control. Work permits and wages are checked, rarely the accommodation of the contract workers. The labour administration does not possess sufficient personnel. Theoretically, other institutions such as health care centres and supervisory bodies of the trades should also proceed to controls (occupational health, respect of working hours). In reality, they renounce on controls, because the monitoring of local firms takes up all their time.

4.5. Problems and their solutions

4.5.1. Criticisms by workers' and employers' organizations

Increased controls since January 1993 as well as the introduction of legal sanctions can be explained by the fact that Germany's public opinion has heavily criticized the agreements on project-tied migration.

For details please refer, in particular, to §§ 227 and 229 AFG (Arbeitsförderungsgesetz = Employment Promotion Act) and to Article 1, §§ 15, 15a AÜG (Arbeitnehmerüberlassungsgesetz = Temporary Employment Businesses Act).
Such a substantial number of contracts on outputs with CEE firms were concluded - especially during 1992 - that illegal practices in relation to the employment of contract workers could not be prevented.\footnote{It is not necessary here to describe the different illegal practices or individual cases of abuse. Their existence is not contested in Germany. For illustration's sake, suffice it to say that CEE entrepreneurs often do not pay more than DM 5-6 per hour while the workers should receive DM 25-30.} Most abuses appear to occur in the construction industries. Despite clauses in the agreements that a concentration of contract workers in particular industries or regions should be avoided, the construction sector was most pre-eminent in concluding contracts with CEE firms, presumably because construction is a non-tradable good. While other branches can move (part of) their production to low wage countries, the construction industries can only reduce costs by concluding contracts on outputs.

The concentration in the construction industries mobilized the social partners of this branch. Trade unionists and employers began to criticize the government's programme on contracts on outputs, not only because of the apparent abuses.

Unionists fear that in the long run contracts with CEE firms will result in the displacement of German workers. They point to increasing rates of unemployment and short-time working.\footnote{A study of the "Institut der deutschen Wirtschaft" contests that there are displacement effects to date. The study argues that the growth in unemployment and short-time working is to be explained by increased immigration. See Institut der deutschen Wirtschaft, 1993, p. 18-21.} One also assumes that the employment of CEE contract workers in sub-standard conditions creates such a bad image of the construction industries that it will become difficult to attract German manpower to work in this branch. The trade union "Bau-Steine-Erden" complains of the creation of an "extra-territorial labour market" because trade unions cannot influence the working conditions of contract workers (for which the CEE entrepreneur and not the German partner is responsible). Contract workers do not enjoy the right of association in Germany. They do not even have the right to sue their employer in a German court.

Employers deplore problems of unfair competition because equal access to the quotas cannot be guaranteed. The quotas undercut the free market. An employer who does not receive a share of the quota is disadvantaged as (s)he cannot reduce costs. CEE entrepreneurs can offer better prices, even if they pay German wages, because they do not pay as much in social benefits as their German counterparts. According to representatives of German employers' organizations, it is therefore
almost impossible for a German firm to win a tender without counting on finding a CEE sub-contractor. For large enterprises it is relatively easy to keep their regular staff limited and have minor projects carried out by CEE firms. Small enterprises might actually refrain from concluding contracts on outputs because this could damage their image in the local community: "That firm only gives work to foreigners". Especially small enterprises therefore feel pressures of competition.

Actual illegal practices, as well as concerns about unfair competition and displacement effects led the German employers' and workers' organizations of the construction industries to meet in March 1993 and to request the government to abolish the schemes on contracts on outputs entirely. 

4.5.2. Revision of the programme
The Federal Government keeps to the existing agreements. Concessions to the social partners in the construction industries are (a) that no further agreements will be signed and (b) that temporary quotas are not extended.

Many of the regulations and procedures in place to date, pertaining to contracts on outputs, have to be seen in the light of and as a reaction to the social partners' criticisms. They are not regulations made to serve the agreements. They are to eliminate distortions and to satisfy the social partners.

Clearly, the introduction of quotas with respect to contracts on outputs in the construction industries is a reaction to the criticism of unfair competition. By rendering the number of work permits granted dependent on the size of the German partner enterprise and by making the quotas decrease with the size of the enterprise, one seeks to guarantee access by small enterprises to the contingents. It is still too early to assess whether quotas are the appropriate means of reaching this aim. First indications point to the contrary. The quota refers to enterprises and not to companies: companies' subsidiaries are regarded as enterprises.

The "labour market protection clause" constitutes a reaction to the criticism that contracts on outputs have displacement effects on the German labour market. One may doubt whether the clause is a useful instrument to respond to concerns about the displacement of German workers. To illustrate this point, in eastern Germany there is lack of skilled workers in the construction industries. Contract workers can, however, not receive work permits in many districts there because the general unemployment exceeds the Federal average. They are not granted work permits even if unemployment mainly hits women who would not work in the construction industries anyway, i.e. even if they would not displace anyone.

The introduction of a fee for granting the work permit was probably also designed to satisfy the social partners. Fees were considered a way of deterring CEE entrepreneurs, a means of "rendering more expensive contract activities to foreign firms" (Heyden, 1993, p. 29). On the one hand, the fees do not represent a major cost disadvantage, DM 2.30 at the maximum per hour and worker, according to calculations of the Central Association of the German Construction Branch. On the other hand, one wonders whether CEE entrepreneurs will be inclined to shift the costs to their workers. Do the fees stimulate abuse in form of sub-standard wages ?

In any case, the enforcement of the new regulations represents much work for the labour administration. In particular, additional staff would be needed to cope with controls in enterprises. In this context, it is necessary to stress that combating abuse in relation to contract work is extremely difficult. In general, contract workers earn more in Germany than at home, even if they

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1 See the so-called Declaration of Frankfurt (Frankfurter Erklärung) of Industriegewerkschaft Bau-Steine-Erden, Zentralverband des Deutschen Baugewerbes and Hauptverband der Deutschen Bauindustrie of 30 March 1993.

2 For example, an agreement which had been negotiated with the Russian Federation.
are paid sub-standard wages. At least part of the wage is paid in hard currencies. Often, contract workers refrain from claiming their rights for fear of being sent home. Collusion is evident.

The above demonstrates that the execution of the scheme on contracts on outputs incurs difficulties for the Federal Government. It seems that no effective solutions have been found for existing problems. Due to illegal practices, workers from CEE countries keep being exposed to substandard working conditions. Even after revision of the programme, workers' and employers' organizations would still like to see the scheme abolished.

4.6. Appraisal of the programme's training component

Despite strong criticisms in Germany, project-tied migration could be extremely useful for CEE countries if it was true that the contract on outputs scheme provided training to CEE entrepreneurs and/or workers.

The legal conception of the contract on outputs points to the contrary. Outputs are stipulated which can normally be delivered only if the entrepreneur and his workers are qualified, not if they are trainees. German legal precedent confirms this in demanding of the contractor that he masters his craft or, if necessary, continues his training, informing himself about new technical developments in his field. ¹ Qualification is already presupposed in the agreements. How could the aim of compensating for a lack of skilled workers in Germany be reached without qualified CEE workers?

However, it is possible to argue that entrepreneur and workers obviously have to present particular qualifications in relation to the project they carry out, but that there can still be scope for training. One can even postulate that a know-how-transfer is only possible if basic qualifications exist.

The delimitation of a contract on outputs from the subcontracting of workers reveals that a contract on outputs is hardly apt to serve training purposes. The definition of the contract on outputs implies that there will be little contact between the German enterprise and the CEE firm. The CEE (sub-)contractor must be free to dispose, i.e. take own decisions, and his workers must be able to act independently in the German partner company. Considering that in connection with the agreements on guest-employees it was argued that CEE workers learn by becoming part of the German enterprise, contracts on outputs cannot be expected to have training effects. In fact, if German staff gave instructions to CEE workers, which could have training aspects, the contract on outputs would convert into unlawful subcontracting of workers that is subject to sanctions.

Work with new substances and equipment could have training implications. Indeed, the CEE contractor is provided with working materials and tools. The German labour administration, workers' and employers' organizations share the opinion that learning-by-doing is the main form of training of CEE workers. In addition, it is considered possible that working while respecting German quality requirements could have training effects.

Given that the training of workers does not figure among the declared objectives of the agreements on project-tied migration, it is not surprising that contract workers do not necessarily benefit from their activities in terms of training.

That should be different for CEE entrepreneurs. The agreements aim at teaching them management and thinking in terms of a market economy. Representatives of workers and employers and collaborators of the German labour administration consider that the agreements do not have much success in this respect. Many activities which could provide an insight in the functioning of a

¹ Decision of the Federal Court on Civil Affairs (Bundesgerichtshof) of 1978, BGH

WPM 78, p. 1411.
market economy are undertaken by the German orderer of the project. To cite but two examples: the CEE entrepreneur does not directly participate in tenders; he has no contact with supervising authorities (e.g. supervisory bodies of the construction industries). The diffusion of know-how seems to be a coincidence. As is the case for their workers, the CEE entrepreneurs mainly learn by being in a different environment; by negotiating with their German partners and, to a certain extent, by "imitating" the latter. This point is confirmed by CEE entrepreneurs. Training effects are mainly observed in the case of CEE firms operating in Germany repeatedly.

It is plausible that both CEE workers and employers "learn" through contracts on outputs if one admits that the economic branches they work in are not as developed in their country as in Germany. However, Germans familiar with the scheme on contracts on outputs state that they cannot verify that CEE enterprises actually apply knowledge acquired in the Federal Republic.

4.7. Modification of agreements on project-tied migration?

The execution of the scheme presents difficulties, the agreements are heavily criticized, the transfer of know-how through contracts on outputs proves to be a coincidence. Should the agreements be modified?

Abolition is not possible for political reasons. In international meetings, the Federal Government has repeatedly emphasized that the agreements are intended as assistance to the CEE states, a support in the form of employment and income opportunities. It has suggested that other countries should conclude similar agreements. To dissociate itself from this stance would render the Federal Government untrustworthy. One also fears that relations with the CEE states would suffer, which could have undesirable economic consequences. Considerations of international law also oppose a complete abolition of the agreements: commitments are taken that people in CEE states depend on.

In what respect should the agreements be changed? Three possibilities are discussed in Germany: conversion to regular employment covered by social security, to seasonal employment or to agreements on guest-employees.

All three would mean direct employment with a German employer; hence, employment governed by German laws and collective agreements. Many of the illegal practices the agreements on project-tied migration are blamed for could be prevented in a situation of direct employment.

Direct employment would imply more training for the individual worker as (s)he would form part of the German enterprise. A direct transfer of know-how could take place. This is the unanimous opinion of workers' and employers' organizations and of the labour administration in Germany. There would be no training of the entrepreneurs and senior staff, it is true. Junior experts, too, would lose opportunities. To date it has not been examined which form of employment would most benefit the CEE economies as a whole in terms of training.

A conversion of the agreements to regular employment covered by social security would represent a dismantling of the recruitment stop and result in the establishment of a new guest-worker programme comparable to the 1960s and 1970s. Such a programme is not desired politically, neither from the perspective of economic policy nor from the point of view of social policy (see chapter 2 above). Seasonal work is seen in a similar light. In 1991, the seasonal employment of CEE workers was facilitated but in 1993 the construction industries were excluded from the regulations by reference to unemployment among nationals in this branch.

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1 For details on these issues, see Heyden, 1993, p. 27.
2 The arguments of the Federal Government are detailed in Heyden, 1993, p. 27, 28.
Is a conversion to agreements on guest-employees practicable? As demonstrated, the latter are rated positively in Germany. For the individual CEE worker they represent a source of income but also a true training opportunity. Moreover, they do not run counter to the recruitment stop.

According to employers’ representatives, quite a few German enterprises would be willing to bear additional costs for training, in particular in branches where skilled labour is lacking. Nonetheless, one must doubt that the construction industries could provide the training capacities necessary for a conversion of the contract on outputs scheme to a guest-employee programme. A glance at the programmes’ sizes suffices to raise these doubts. At present the German labour administration searches on-the-job-training possibilities for close to 9,000 CEE guest-employees; and not everybody can be satisfied. Guest-employees are spread more evenly than contract workers across sectors of the economy, although one quarter is employed in the hotel and catering branch. It appears unimaginable that 50,000 or so CEE citizens could be accommodated as trainees in the construction industries.

A conversion of the contract on outputs scheme to a guest-employee programme seems difficult for yet another reason. One cannot assume that the participants of the project-tied scheme possess the language skills needed for participation in the guest-employee programme. Could enough participants be found for a guest-employee programme involving more than 60,000 trainees?¹

There would be a danger that the guest-employee scheme would be transformed into a guestworker scheme, filling gaps in the German labour market but reducing the utility of the scheme for CEE states. The guest-employee programme should not be deprived of its training aspect. But the larger the scheme, the more difficult it is to ensure that training is actually imparted to the participants.

The CEE states are not likely to accept a modification of the agreements on contracts on outputs in any of the proposed forms. The CEE governments clearly appreciate project-tied migration. The CEE state as such benefits most from this kind of employment of its citizens in Germany. Guest-employees have to pay taxes in Germany while entrepreneurs fulfilling contracts on outputs are taxed in their home country. The state also forces them to convert part of their hard currency earnings (Institut der deutschen Wirtschaft, 1993, p.26); hence, contract activities provide banks with hard currencies. What is more, some of the enterprises participating in the scheme are state-owned. The state would be the loser if one were to convert the agreements on project-tied migration into some form of direct employment with a German employer. In many CEE states, enterprises - whether state-owned or private and newly created - have a better lobby than workers planning to go to Germany. A conversion of the agreements on project-tied migration at the expense of the enterprises involved seems hardly acceptable to them.

Since neither the government of the Federal Republic nor CEE governments seem supportive of the idea of converting the agreements, project-tied migration in the present form is likely to stay.

4.8. Utility of the scheme as a model for other countries

Should other countries be interested in establishing similar schemes, as suggested by the Federal Government, collaborators of the German labour administration, dealing with the programme on a daily basis, give the following advice:

¹ For example, the Migration Service of the Russian Federation reports great difficulties in finding appropriate candidates for the guest-employee scheme. By the end of August 1994, they had not even found 100 candidates to fill the annual quota of 2000.
- The execution of the programme should be monitored by one single institution. It should not be divided between local labour exchanges and regional placement offices, for example. Issues of residence permit and work permit should be dealt with at the same time. Otherwise, important information could be lost; control of the programme is the more difficult the more organizations are involved.

- The supervisory body must have sufficient staff and be equipped with a well-functioning data-processing system.

- Good contact with the partner administration is of prime importance to exchange information but also to monitor the proper execution of the programme in a combined effort.

- Both labour administrations involved must possess sufficient advisory capacity, if only for the purpose of informing participating enterprises and workers about the implications of a contract on outputs.

- The programme should not be burdened by detailed regulations.

- The size of the programme warrants careful planning. A scheme comprising a large number of participants is difficult to handle, as is demonstrated by illegal practices in Germany.

### 5. Training and temporary employment not covered by governmental agreements

#### 5.1. Overview

In Germany, the training and temporary employment of foreigners who normally reside outside of the Federal Republic, are not exclusively governed by bilateral agreements. The Decree on Exceptions to the Recruitment Stop (ASAV) provides criteria for examining whether a work permit can be granted. The decision lies with the local labour exchanges of those regions where the training or temporary employment is to take place. It is not the task of central organizations (ZAV or regional placement offices) to examine individual applications submitted without reference to governmental agreements.

For lack of a central data base, it is not known how many foreigners per year receive a work permit for what purpose, i.e. for what form of training or employment.

In the Decree on Exceptions to the Recruitment Stop, training plays the most important role. Not only scientific activities and foreign students’ education in Germany are promoted but professional and occupational training are also rendered possible.

A work permit up to one year can be granted to the following persons:

1. foreigners who work abroad for an enterprise with headquarters in Germany and who are to be familiarized with the enterprise’s practices;
2. skilled workers who are employed by a German-foreign joint venture, for the purpose of on-the-job-training;
3. foreigners who are employed in fulfilment of export delivery and licence contracts or who are to be trained within the scope of such contacts.²

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¹ See in particular § 2 (1), § 4 (2),(3) and § 5 ASAV.
² See § 2 (2) ASAV.
A work permit valid up to 18 months can be given to foreigners who are employed by a German business partner for the purpose of being initiated to the partner's work style and trade practices. According to staff of the German labour administration, German enterprises often take advantage of this regulation in respect of CEE partners.

A work permit of a duration up to two years can be granted to skilled workers and senior staff for on-the-job-training in enterprises or associations.

It depends on the individual case how much training these various forms of employment actually represent. Often it will be in the interest of the German entrepreneur to provide a maximum of training to foreign partners or employees. In some cases it may be that the above possibilities to attract foreign labour to Germany do not serve training purposes, as they should. Training may only be a pretext for filling in gaps in the German labour market.

5.2. An example: the programme for eastern Europe of the Carl Duisberg Society

To illustrate how private initiative in Germany provides real training opportunities to foreigners, a few activities of the Carl Duisberg Society will be briefly mentioned.

The Carl Duisberg Society is a non-profit association for international training and human resource development. Besides programmes of cooperation with developing countries and western industrialized states, the Carl Duisberg Society organizes training and know-how-transfer for senior and junior professionals from central, eastern and southern Europe, from the Baltic states and the CIS. The Carl Duisberg Society focuses on management, marketing, controlling, industrial protection of the environment, conversion of enterprises in the armament sector, conversion of state enterprises and occupational training. The training is chiefly undertaken in form of seminars and train-the-trainers-programmes which take place in the countries concerned. Nonetheless, trainee programmes in German enterprises, of a duration of several months, are also offered.

The Carl Duisberg Society puts much effort into finding trainee places for citizens of these target countries in German enterprises. It can rely on long-standing links with German industry and business circles. Nevertheless, it has become increasingly difficult for the Carl Duisberg Society to satisfy the demand for on-the-job-training, in particular because this demand has rapidly escalated. Large enterprises are most willing to train foreigners. They have sufficient personnel to take care of the interns. But, more than others, they are also export-orientated and therefore of the opinion that it could be beneficial for them to accommodate foreign trainees.

A particular challenge for the Carl Duisberg Society in respect of the trainee programme is to find housing for the trainees for the duration of the training. In all of the large German cities with a high concentration of industries there are acute housing problems.

6. Possibilities of extending training programmes?

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1 The Carl Duisberg Society was founded based on an initiative by German industry. By and large, its executive board consists of representatives of the industries. Regional industries are represented in the Carl Duisberg Society's working parties in the federal states (Bundesländer).
6.1. Germany

As demonstrated in the above chapters, the Federal Republic strives to provide training opportunities for a maximum number of citizens from countries in transition. German employers make use of the possibilities offered by the Decree on Exceptions to the Recruitment Stop. But the creation of additional opportunities seems out of the question. Even now the placement of guest-employees proves to be difficult: existing quotas are not exhausted (see chapter 3).

A rising number of participants in training schemes carries the danger that the training aspect of temporary employment in Germany is increasingly eroded. For example, the Federal Labour Office seems to be in the process of reinterpreting the agreements on guest-employees. The following facts point to this process. In a newsletter of May 1994 the ZAV had written that, in view of a tightening labour market in 1993, it had been necessary to stiffen the training requirements of the guest-employee scheme.¹ The Federal Labour Office was of the opinion that the agreements on guest-employees and their respective directives on execution did not expressively demand training; the training component was "only desirable". The Federal Labour Office described the work of guest-employees as a form of regular employment for which skilled workers were paid according to collective agreements.²

Reinterpreting the agreements on guest-employees is presumably inspired by their growing numbers. Because it seems hardly possible to carry out the programme with its hitherto existing objectives, one appears to de-emphasize the scheme's training aspects.

The question of whether to open up on-the-job-training programmes to more participants thus involves a weighing of quantity and quality. Quality is to be preferred. If one extended programmes while eroding their training aspects, one would soon face the dilemma of a huge gap between the declared aims and reality of the programmes. Training would be offered but mere employment provided. The texts of the agreements should then be altered. But is such a situation to be desired? It seems more valuable to offer real training for a limited number of persons. According to the conception of the agreements on guest-employees, training imparted to a given number of people should anyway not only serve them: training should have multiplier effects in the home country.

6.2. Other western European countries

Should other European countries step in? For sure, some of the European labour markets present capacities to employ a number of CEE workers, larger than in the past, and to offer true on-the-job-training. Agreements on guest-employees already in force among European countries could give guidance; so could the experiences made in Germany.³

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¹ Auslandsbrief der ZAV, Mitteilungen aus der internationalen Arbeitsvermittlung (ZAV newsletter for abroad, news from international placement), no. 5, May 1994, p. 2.
² Auslandsbrief der ZAV, Mitteilungen aus der internationalen Arbeitsvermittlung (ZAV newsletter for abroad, news from international placement), no. 6, June 1994, p. 2.
³ Currently, only Belgium, Finland, France, Sweden and Switzerland have agreements with Poland, Russia and the Baltic states, involving the following quotas: Belgium - Poland (200), France - Poland (1,000), Switzerland - Poland (150), Finland - Russia (500),
However, as in the Federal Republic, unemployment prevails and often at higher rates than in Germany. How could the conclusion of governmental agreements or an enlargement of quotas be justified to unemployed citizens? Given its geographical location, the Federal Republic perceives itself exposed to migration pressures, more than its neighbours do. Germany feels that it has certain obligations to some of the eastern European countries in the context of its reunification. For other western European countries such reasons for a limited opening of their labour markets do not exist. There is not much political pressure for extra training opportunities for CEE workers in western Europe.

But there could be moral pressures. Since the guest-employee scheme proves to work well in Germany, since it leads to improved occupational and language skills, other countries could be interested in offering opportunities to workers from the "disadvantaged" part of Europe, as they used to call it. Moral pressures exist even more so because it would be easier for CEE labour administrations to find appropriate candidates for the guest-employee scheme if one of the basic requirements for participation would not be knowledge of the German language.

The issue of language also points to another set of incentives for western European countries to open their labour markets: economic incentives. It is in their interest, as much as in Germany's, to foster cooperation with CEE states. As Germany's case demonstrates, to offer on-the-job-training is a convenient way to do so: numerous joint ventures and business cooperations have resulted from contacts established during training periods in Germany.

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B. INTERNATIONAL MIGRATION FOR TRAINING: 
THE JAPANESE EXPERIENCE

by

Nana Oishi
1. Introduction

This paper is largely based on the information gathered and interviews conducted during the ILO mission to Japan undertaken by the author in January 1994. The author would like to express her sincere gratitude to the officials of all the organizations she visited for their assistance. Special thanks are due to Mr. Y. Katsura of the Association for Overseas Technical Scholarship, Mr. K. Sasaki of the Ministry of Labour, Mr. S. Maruyama of the Ministry of Justice, Prof. H. Komai of Tsukuba University for providing data and information, and Mrs. K. Fujii and the staff of the ILO Tokyo Branch Office for their full logistic support. The author is also most grateful to Mr. C. Fry and Mr. J. Windell of the ILO and Mr. R. Ho for editorial help, and my colleagues in the Migration for Employment Branch, Mr. M. Abella, Ms. C. Kuptsch, Prof. H. Mori and Mr. R. Zegers de Bejil for their valuable comments on the draft. Finally, a special debt of gratitude is due to Mr. W. R. Böhning, Chief of Migration for
The objective of this paper is to examine the various training schemes in Japan which provide trainees from developing countries with an opportunity to acquire knowledge and skills within Japanese companies. The transfer of technology and assistance for human resources development in developing countries has been given a high priority in the framework of Japan's Official Development Assistance. The acceptance of foreign trainees, in this regard, forms an essential element of Japan's economic and technical cooperation programme. The number of foreign trainees reached the level of 44,000 in 1992, and the government envisages accepting 100,000 trainees by the end of the century through conventional training scheme and the newly established Technical Intern Training Programme (TITP).

While training is an effective method to transfer knowledge and technology as well as to contribute to human resources development, it leaves open the possibility for abuse by the companies. Some companies receive foreign trainees to cope with their own internal labour shortages. In other words, the training system can also serve as an adjustment function in the labour market. With the inclusion of the employment component, the TITP can be regarded as Japan's first attempt to legalize the intake of unskilled foreign labour by linking the needs of training with the demand for labour. A similar attempt has been observed in the Republic of Korea, with other countries also showing interests in this type of training. While the TITP might be a promising scheme for the future in some respects, it has inherent limitations which have not been fully examined yet. This paper aims to bridge this knowledge gap.

The paper consists of four parts. The first part will provide an overview of the training system as legally established. The second part will then examine the Technical Intern Training Programme and the role of its core implementation body, the Japan International Training Cooperation Organization (JITCO), explaining the socio-economic factors which gave rise to this programme. The third part will provide an overall assessment of the training system and address some unresolved issues. Conclusions and possible suggestions for future policy consideration on training and immigration will be presented in the last part.

2. Overview: general characteristics of the training system in Japan

Employment Branch, for his support and guidance throughout this project, including revisions to the final manuscript.

1 Not all the receiving organizations are private corporations, e.g. they include agricultural farms and various service agencies. However, given the largest proportion of private corporations in the total number of receiving organizations, the term "receiving companies" or "receiving corporations" will mostly be used in the subsequent chapters to indicate receiving organizations of all kinds.
2.1. Background

The acceptance of foreign trainees started in both governmental and private channels. The governmental channel was established in 1954 when Japan joined the Colombo Plan,¹ with a view to promoting social and economic development in Asia. As will be discussed later, this official channel, which has undergone modification and diversification over the years, now consists of several types with a number of accepting and/or implementing agencies. The largest implementation body is the Japan International Cooperation Agency (JICA), which accommodated about 7,500 trainees in 1992. Approximately one quarter of foreign trainees in Japan enter through this official channel. In addition, municipal governments also receive trainees through their own channels, mainly from their "sister cities" in China.

The private channel was developed by large corporations following the internationalization of the Japanese economy. Foreign direct investment in Asian countries by Japanese corporations started in the mid-1950s after the Korean War. As the number of joint venture businesses and overseas subsidiaries increased, the importance of active transfer of technology and knowledge on an international scale became prominent. The training of their staff in joint venture corporations or subsidiaries was thus regarded as part of their business strategy to increase productivity and enhance competitiveness within a whole corporate group. This trend was reinforced in particular after 1985, when the rising appreciation of the yen compelled many companies to relocate their manufacturing bases overseas.

Apart from this private channel, small- and medium-sized enterprises also accepted foreign trainees in the mid-1960s. This was primarily due to the acute labour shortage caused by a rapid acceleration in economic expansion during this period. The labour shortage reached its peak in 1970, when job vacancies exceeded job seekers by 87 per cent (OECD, 1975, p.16). In addition, after diplomatic relations between Japan and the Republic of Korea was restored by the ratification of the Japan-Republic of Korea Basic Relations Treaty in 1965, trainees from that country became more easily accessible to Japanese enterprises. Since a distinct residential status for trainees did not come into being until 1981 ², the precise number of trainees for this period is not available. However, Ochiai estimates that thousands of trainees from the Republic of Korea alone entered Japan between 1965 and 1968 (Ochiai, 1975, p.37). Taiwan (China), Indonesia, Thailand, and Malaysia were also listed as major sending countries of trainees. Most of the trainees were unskilled and semi-skilled workers received by enterprises in manufacturing industry, but the notable characteristic was that among them were also quite a few nurses and assistant nurses, reflecting labour shortages in Japanese hospitals.

Severe labour shortages during this period triggered the first heated debate among business leaders, politicians, and journalists over whether Japan should import foreign labour to cope with the predicament (Nihon Keizai Shimbun, 12 January 1970; Nikkei Business, April 1970; Ekonomisuto, December, 1970; cited in Ochiai, 1975, p.37). In 1967 when facilities for the Japan World Exposition were to be constructed, it was planned to import 30,000 workers from the Republic of Korea, though this never materialized (Ochiai, op.cit., p.233). Around this time, many reports were submitted from business organizations to the government, emphasizing the necessity of opening up the labour market to foreign workers as well as of expanding the training system.

¹ An international organization for cooperation with the objective of promoting economic and social development in the countries of the Pacific and Asia.

² The residential status of "special activities" covered a whole range of foreigners who resided in Japan under exceptional conditions, including trainees. The independent category of "trainee" was created in 1981.
These efforts, however, faded eventually once the Japanese economy began spiralling downward after the 1973 oil crisis which generated excessive labour supply.\(^1\) Correspondingly, the acceptance of trainees by small- and medium-sized companies also ceased after this year.

It did not take long, however, before companies resumed accepting trainees. As the Japanese economy recovered and showed notable growth again in the late 1980s, the demand for labour also increased. Many foreign workers moved into Japan legally and illegally during this period. The number of trainees also rose dramatically after 1985. Especially after the revision of Immigration Control Act in 1989\(^2\) which imposed a tighter control over illegal foreign workers, many employers regarded accepting trainees as a safer way of obtaining foreign labour.

### 2.2. General characteristics and trends

The current training system in Japan consists of two schemes: (1) the conventional training scheme, and (2) the Technical Intern Training Programme (TITP). The conventional training scheme normally comprises On-the-Job Training (OJT) and Off-the-Job Training (Off-JT). The OJT refers to the type of training in which one acquires skills in the production or sale of goods, or by providing labour in exchange for its counter-value,\(^3\) whereas the Off-JT does not involve production of goods but mainly takes the forms of language courses, lectures and seminars in the classroom. Even when one receives training at the workplace, it is still considered Off-JT whenever the person does not make marketable products. The training can be offered in the form of Off-JT alone if OJT is not necessary. However, the reverse case is strictly prohibited: the training containing OJT is required to include Off-JT.

The second scheme, TITP, is an internship under a formal employment contract for up to one year. To qualify as an intern, one must complete the conventional training over a period of at least nine months and successfully pass the evaluation exam before proceeding to the TITP. During this internship, an intern is officially given a worker's status comparable to Japanese workers, including wages and other working conditions. The detailed explanations on these two schemes will be presented in the following chapters.

The number of trainees accepted through both private and public channels has increased threefold since 1985 in accordance with increasing foreign direct investment and ODA. According to the immigration statistics of the Ministry of Justice, the number of those who entered the country under the category of "trainee" amounted to 39,795 in 1993 (see Graph 1a). About 90 per cent come from Asia: by far the largest population comes from China.

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\(^1\) According to official estimates, 1.4 million persons withdrew from the labour force by the fourth quarter of 1974. See Organization for Economic Co-operation and Development, ibid.

\(^2\) The Immigration Control Act was revised in 1989 and enforced in 1990. In the subsequent chapters, it will be referred to as "the Immigration Control Act of 1990."

\(^3\) The Ministry of Justice designation No.141 in the Official Gazette of 5 April 1993.
which comprises about 40 per cent of total number of trainees, followed by Thailand, Indonesia, and the Republic of Korea (see Graph 1b). The slight decrease from 1991 (43,649) must be accounted for by the economic recession.  

Trainees are heavily concentrated in the manufacturing industry. According to Komai’s survey, 83.3 per cent of trainees were in the manufacturing industry and 10.1 per cent of them were in the construction industry (Komai, 1992, p.6. See Graph 2). They are mostly received by small- or medium-sized enterprises. About 50 per cent of receiving companies were “small companies” (100 employees or less) and 24 per cent were “medium-sized companies” (300 employees or less). With regard to the duration of training, one-year was the prevalent period (35.5 per cent), followed by six months (23.8 per cent) and three months (16.0 per cent) (Ministry of Labour, 1994, p.17).

As regards the profile, a typical trainee is a young educated male. Although the level of education varies, most of them have at least a high school diploma. Komai’s data showed that 44.3 per cent of trainees held a university degree or above, 21.6 per cent held a technical school degree, 28.0 per cent held a high school diploma, and 5.9 per cent held a junior high school diploma (Komai, op.cit., p.16).

The educational level differs depending upon the channel through which they came. Each intermediary organization stipulates different levels of education to qualify as trainees. For example, the Association for Overseas Technical Scholarship (AOTS) requires either a university (or equivalent) degree, or equivalent work experience. The Japan Vocational Ability Development Association (JAVADA) and the Chambers of Commerce and Industry require a high school diploma and some work experience. For the ILO Association, junior high school diploma is necessary, but there is no particular educational requirement for the Japan International Training Cooperation Organization (JITCO). For the Japan International Cooperation Agency (JICA), there is no specific requisite for educational level either. However, most of their trainees have a university degree since they were competitively selected among government officials, leading scientists and scholars in their home country. As regards age, it is stipulated by ministerial ordinance that trainees must be over 18 years old. Many intermediary institutions can accept trainees in the age range of 18 to 40; however, most of the trainees fall under the category of 20s or early 30s. According to the ILO Association’s survey of 1,500 returned trainees, the mean age was 27 years (Heiwa keizai Keikaku Kaigi, 1989).

1. It should be noted that these figures do not necessarily represent the precise number of trainees in Japan. Those who receive training for less than three months can enter the country under the status of either "short term resident" or "tourist" to avoid lengthy and intricate immigration procedures. As a result, the total number of trainees will be much higher than the above official figure.

Since training is not regarded as employment, trainees receive not a "salary" but a "training allowance". There is no officially set minimum standard for the allowance. The allowance varies between 30,000 yen (US$300) and 300,000 yen (US$3,000) or more per month (Komai, op.cit., p.17). This wide range mainly derives from the difference of other costs that are included. Some companies provide meals at their own cafeteria free of charge, others include this cost in the allowance. Most companies provide lodging, but those which do not have their own dormitories or apartments compensate the cost by increasing the allowance. Under the new regulation, it is mandatory for corporations to secure lodging although it does not necessarily mean that accommodation is free. According to Komai's data, the most typical range of training allowance was between 60,000 and 80,000 yen (US$600 - $800). In any case, the Ministry of Justice reiterates that the allowance is not remuneration for labour, and that "the amount of the allowance should not be beyond the level of common sense" (Ministry of Justice, 1991, pp.2-15).

2.3. Legal framework for the conventional training system

2.3.1. Basic framework

Under the Immigration Control Act, foreigners who wish to reside in Japan must obtain an appropriate residential status. This also applies to those who intend to receive training. The category of "trainee" as a residential status was created in 1981. The Immigration Control Act defines a trainee as a person who engages in "activities to learn and acquire technology, skills or knowledge at public or private organizations in Japan."  

In order to secure the status of a "trainee," an applicant must fulfil various requirements stipulated by the ministerial ordinance of 1990. The requirements can be summarized in three points. Firstly, an applicant must be at least 18 years old and is expected to engage in a job requiring the skill and knowledge obtained in Japan after returning to his/her country. Secondly, the skills and/or knowledge to be obtained in Japan must not be of the kind which can be acquired through the repetition of simple work. Thirdly, the skills and knowledge must be of the kind which are impossible for trainees to acquire in his/her country of origin.

The ministerial ordinance of 1990 imposes less requirements on those who receive trainees through national/local government or certain designated intermediary organizations than those who do so through others. The stiffer requirements on the latter are intended to protect trainees from abuses. The ordinance, in principle, attempts to ensure that receiving organizations provide decent living and training conditions. The requirements include securing accommodation, training facility, and the safety and sanitation at the training site. The organizations must also provide private insurance or other means to cope with death, accident or sickness of trainees during the training period. With regard to the implementation of training, the ordinance requires the organizations to provide a trainer who is a full-time employee with more than five years of work experience, to ensure the quality of the training. A "life advisor" must be also provided to help trainees with their smooth adaptation to a new environment as well as to ease cultural and psychological problems.

There are certain restrictions concerning the source of trainees. In cases where OJT is included in the training, receiving organizations can only engage a trainee who is a full-time employee of one of the following organizations and is seconded by it: (a) the national government, a local government or a public corporation; (b) joint ventures or affiliated companies of the accepting organization; (c) organizations which have had business transactions with the accepting organization for at least one year or for at least one billion yen during the past year. These

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1 Immigration Control Act, Annexed Table I (Reference in Articles 2-2 and 19), 1993.
2 Ministerial Ordinance to Provide for Criteria pursuant to Article 7, Paragraph 1 (2) of the Immigration Control and Refugee Recognition Act (Ministry of Justice Ordinance No.16 of May 24, 1990. Latest Amendment: Ministerial Ordinance).
restrictions are not applied to cases where the applicant is accepted to receive the training for new local staff of the foreign joint venture or subsidiary which the receiving company is planning to establish. This exemption is subject to the condition that the establishment of a joint venture or subsidiary has been recognized by the competent authorities, or in cases where the applicant is invited by the national government or a local government, or in cases where the applicant falls under the cases designated by the Minister of Justice in the Official Gazette.

Lastly, there are conditions to satisfy to qualify as a receiving company or an intermediary organization. Firstly, the manager of the receiving company and those in charge of training “must not have committed misconduct in the training of foreign nationals in the past three years.” The same condition is also required for an intermediary organization and its employees. Secondly, in cases where an intermediary organization is not the Japanese government or a local government, the organization concerned must not be a profit-making organization.

2.3.2 Subsequent reforms: the expansion of the training system

The notifications No.246 and No.247 of the Ministry of Justice in 1990, subsequent to the Immigration Control Act of 1990, made significant changes in the training system. The most important change was that the acceptance of trainees, which used to be restricted only to official agencies and multinational corporations, became possible for small- and medium-scale enterprises. The notifications enabled these enterprises to receive trainees as long as the acceptance was organized by designated intermediary organizations and the programme was operated under the guidance of national or municipal governments. The designated intermediary organizations were defined as the Chamber of Commerce and Industry, Chamber of Commerce, Business Cooperatives and public corporations. Furthermore, revised ordinances (No.567, 568, and 569) added corporate vocational training foundations, agricultural cooperatives and JITCO to the list of intermediary organizations. In other words, these regulations intended to stop the uncontrolled flow of trainees as potential disguised workers, and placed responsibilities upon recognized organizations to oversee the implementation of training at private corporations.

The notifications also alleviated the restriction on the ratio of trainees to full-time employees. Small companies with less than 20 employees could not receive trainees due to the former regulation stipulating that there should be "1 trainee to 20 full-time employees." However, after the revised notifications were enforced, the companies with less than 50 employees were allowed to accept up to three trainees. For other organizations, in principle, the ratio of trainees to full-time employees should be less than five per cent. However, there are exceptional cases such as acceptance through the Chambers of Commerce, Chambers of Commerce and Industry, Business Cooperatives and JITCO which are allotted higher ratios depending on the size of the enterprise (see Table). Agricultural cooperatives are allowed to accept only two trainees per farm regardless of their size.

With regard to the duration of conventional training, the total period to be spent in Japan cannot exceed one year. The proportion of On-the-Job Training to Off-the-Job Training is regulated according to the total length of residence in Japan. The notification of the Ministry of Justice No.569 in 1992 prolonged the proportion of OJT. When OJT is undertaken for less than four months, at least one-third of total duration of the training should be allocated to Off-JT. The amount of Off-JT can be decreased even further to one-fourth when preliminary training was provided prior to their entry to Japan. In that case, the training has to be provided for at least 160 hours over a period of one month or more at a foreign public organization, a joint venture or subsidiary of the Japanese accepting company at any time during the past six months. The same ratio applies to the cases where the programme contains more than four months of OJT. The amount of Off-JT decreases even further to one-fifth of the total duration if both conditions of preliminary training and the length of OJT are met.

### Table. Acceptable number of trainees according to the size of organizations

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<th>Size of Receiving Organizations (the number of full-time employees)</th>
<th>Acceptable number of trainees</th>
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According to the Notification No. 247, the non-profit organizations which have conducted training for those with legitimate residential status between June 1, 1989 and May 31, 1990, are allowed to continue their training. In this case, receiving companies or organizations have to fulfill the requirements stipulated in the ministerial ordinance No.16 Section 5 (except for 5-b).

These programmes do not include the technical internship introduced by TITP.

3. Channels through which foreign trainees are received

There are four distinct ways of receiving trainees: (1) through governmental agencies and international organization, (2) directly through private corporations, (3) through intermediary organizations and (4) through the Japan International Training Cooperation Organization (JITCO). Chart 1 gives a comprehensive summary of these channels.

3.1. Through governmental agencies and international organizations

The governmental and international receiving channels are characterized by the least number of legal restrictions. There are no conditions imposed upon trainees and no restrictions on the receiving organizations in terms of the ratio of trainees to full-time employees. The receiving organizations are, however, limited to: (a) the national or local government agencies, (b) the Japan National Tourist Organization, (c) the Japan International Cooperation Agency (JICA), (d) the Technology Research Centre of the Japan Petroleum Development Corporation, (e) the Japan Vocational Ability Development Association (JAVADA), (f) the Association for Overseas Technical Scholarship (AOTS), (g) international organizations (e.g. ILO, UNIDO, UNESCO, FAO), and (h) organizations with a history of accepting trainees as defined in Item 10 of the Notification.

The governmental channel is further classified into two groups: (i) acceptance by governmental agencies in response to the requests from foreign governments or international organizations; (ii) acceptance by private enterprises with financial assistance of the Japanese government as well as technical support of governmental agencies; (iii) acceptance by municipal governments. Box below summarizes main governmental organizations and their programmes with the financial assistance of the government.

**Box. Major training programmes sponsored by governmental organizations**

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1. According to the Notification No. 247, the non-profit organizations which have conducted training for those with legitimate residential status between June 1, 1989 and May 31, 1990, are allowed to continue their training. In this case, receiving companies or organizations have to fulfill the requirements stipulated in the ministerial ordinance No.16 Section 5 (except for 5-b).

2. **These programmes do not include the technical internship introduced by TITP.**
3.2. Through private corporations

A growing number of private corporations receive trainees from their overseas subsidiaries or joint venture companies. Trainees they could receive have to satisfy one of the following conditions: being (a) full-time employees of a Japanese subsidiary or joint venture company, (b) persons to be employed by a soon-to-be-established Japanese subsidiary or joint venture company, (c) full-time employees of a "business partner", or (d) employees of government, central bank, or international organizations. To be qualified as an employee of a subsidiary or joint venture company, more than 20 per cent of the company's capital subscription has to be held by receiving companies in Japan. In the case of (c), in order to receive trainees from a "business partner," a receiving company has to have had business transactions over one billion yen with the sending company over the past year. With regard to the number of trainees under this corporate channel, companies cannot receive more than one trainee for every 20 full-time employees, regardless of the type of sending companies.

**Chart 1. Receiving channels of foreign trainees in Japan**
3.3. Through intermediary organizations

Whereas the direct channel is utilized mainly by larger companies, the intermediary channel is made use of generally by small- and medium-sized companies as well as agricultural farms. This channel assists these companies and farmers, which do not have the capacity to delocalize their business overseas and yet suffer from labour shortage, in receiving trainees.

There are a number of organizations which engage in intermediary activities (see Chart 1). Possible choices are: (a) the Chamber of Commerce and Industry, (b) the Society of Commerce and Industry, (c) small enterprises' associations as defined by the relevant legislation, (d) non-profit organizations as defined by Article 36 of the Civil Law, (e) corporate vocational training organization (Shadan) and (f) corporate vocational training foundation (Zaidan). These organizations are required to receive financial and/or other kind of assistance from either national or municipal government, and are subject to their guidance and regulations. Different requirements and conditions must be fulfilled for using each intermediary organization.

For example, a company has to be a member of the organization concerned to be eligible for channels (a), (b), and (e). Also for these channels, the permissible ratio of trainees to full-timers differs depending on whether or not a company is defined as a small company within the terms of the Small Business Basic Act. To put it simply, small companies can accept larger percentage of trainees per full-timers than others (see Table 1). The ratio varies according to their total number of full-time employees. Those which are not defined as small companies are allowed to take no more than one trainee for every 20 full-time employees.

Labour shortages, largely due to urbanization and depopulation of farming areas as well as the ageing of the labour force in the agricultural sector, have also induced many farmers to accept trainees. For farmers, two channels are available to receive trainees: (i) non-profit organizations for agricultural cooperation as defined in Article 34 of the Civil Law and (ii) agricultural cooperatives. A body implementing On-the-Job Training must be an agricultural institution for channel (i) or a member of an agricultural cooperative for the channel (ii). In both channels, only two trainees can be accepted per farm or agricultural institution.
3.4. Through Japan International Training Cooperation Organization (JITCO)

Companies can also receive trainees if they are able to obtain an appropriate recommendation from JITCO and recognition from the Minister of Justice. To be recommended by JITCO, a company still has to meet several criteria. First, when a company intends to receive trainees on its own, it must either hold a "business partnership" or "technological cooperation agreement" with a sending company; or be a supporting member of JITCO and be prepared to receive its guidance and assistance. Secondly, in receiving through an intermediary organization, the training must be of the nature of intended public utility; or the training must be implemented in response to the request from or in agreement with foreign governments.

4. Further elaboration of the training system

4.1. Need for developing the new training system

A large number of trainees started flowing into Japan again since the late 1980s. This was partially due to the internationalization of Japanese enterprises which gave rise to the needs of training their overseas staff. As previously mentioned, with the soaring value of the yen and the rise of domestic wage levels, an increasing number of Japanese corporations adopted a policy of relocating their manufacturing plants overseas, especially in Southeast Asia, in the latter half of 1980s. These companies brought their overseas staff to Japan to provide the necessary training. However, the labour shortage was also an important reason for the increase of trainees. The Japanese economy underwent accelerated growth often referred to as the "bubble economy" from the late 1980s to the beginning of the 1990s. The resulting labour shortages were particularly acute in construction, manufacturing and service industries where the work environment was unattractive to young Japanese workers. The demand for marginal labour such as women, older and foreign workers thus increased. The de facto number of foreign workers exceeded 500,000 including more than 280,000 clandestine workers, which comprised more than one per cent of total labour force in 1990. The profile of these foreign workers including descendants of Japanese emigrants to Latin America, foreign students illegally working part-time and clandestine workers is described as young, single or, if married, alone in Japan, and employed in 3D (dirty, demanding, and dangerous) jobs in construction, manufacturing and service sectors.

In addition, the demographic shift also played a significant role. The fertility rate had declined to below replacement level, 1.50 in 1990. The combination of an ageing population and a slowly growing labour force exacerbated the labour shortage. The ILO estimated that job vacancies exceeded job seekers by 46 per cent (ILO, 1992, p.49). According to the projection of the government in 1991, it was estimated that there would be 2.7 million more jobs than workers by the turn of the century (Appleyard and Stahl, 1993, p.213). The projection by the Federation of Economic Organizations suggests a labour shortage of five million persons. Effective measures were necessary to fill these gaps in order to sustain the economic growth.

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1 The term was originally "3K" in Japanese which stands for Kitanai (dirty), Kitsui (demanding/difficult), and Kiken (dangerous).
While the Japanese government has firmly refused to allow unskilled foreign labour into the country's labour market, it has taken several measures to cope with the labour shortage. The first measure was the revision of the Immigration Control Act in 1989, followed by the establishment of JITCO in 1991 as the second attempt, and thirdly, introduction of the Technical Intern Training Programme in 1992.

Amending the Immigration Control Act in December 1989 (in force since June 1990) represented the first significant change in this Japanese immigration control system since 1951. The revised Act has three notable aspects. Firstly, in order to facilitate the entrance of skilled foreigners, the Act clarified and expanded the classifications of qualifications that are necessary to obtain residential status. Secondly, it reconfirmed the prohibition of entrance of foreigners without appropriate residential status. New penal regulations were added to the Act. Thirdly, it defined the criteria of immigration inspection more clearly, while it simplified and speeded up its procedures. One of the major changes was to provide Latin Americans of Japanese origin (Nikkei) with a "resident" visa which enabled them to stay and work in Japan for up to three years. Consequently, the size of the Nikkei population rose from 8,000 in 1988 to approximately 180,000 by the end of 1992. Nevertheless, this immigration reform alone did not solve the fundamental problem of labour shortages because of the limited number of Nikkeis in Latin America and North America. The pressures from small and medium-sized enterprises on the government thus remained in favour of a fundamental solution, that is, legalizing the entry of unskilled foreign labour.

Given this predicament, the training system gradually caught the attention of private corporations and the government. The Immigration Control Act of 1990 allowed small- and medium-scale enterprises to receive a larger number of trainees. As a result, the total number of trainees increased from 29,000 in 1989 to 38,000 in 1990. However, the problems related to training concomitantly increased as well. The implementation itself was entirely at the discretion of receiving corporations many of which did not possess sufficient experience or know-how in training foreigners. This caused various problems including abuse of trainees. Furthermore, there was also a concern in the government that the relatively weak control over trainees might create a potential pool of illegal workers. Consequently, it became necessary to create an institution which could suitably assist corporations in receiving trainees, provide necessary information and advice, and take charge of the whole training system.

4.2. Establishment of JITCO

These growing needs led to the establishment of the Japan International Training Cooperation Organization (JITCO) in 1991. Led by Mr. A. Morita (former chairman of SONY), JITCO was established as a judicial foundation in September 1991 with the assistance of various economic organizations such as the Federation of Economic Organizations (Keidanren), the Japan Chamber of Commerce and Industry, the Japan Federation of Employers' Associations and the Japan Association of Corporate Executives. The primary purpose of JITCO is to assist in the acceptance of foreign trainees in order to contribute to the development of human resources in developing countries. Under the joint auspices of the ministries of Labour, Justice, Foreign Affairs, International Trade and Industry and Construction as well as with financial support from private industries, JITCO has provided extensive advisory and technical services. Above all, as far as the newly established Technical Intern Training Programme is concerned, JITCO has been playing a central role in its implementation.

JITCO's major functions include consultation with the interns' home countries, supply of information and other mediatory roles, evaluation of training results, research relating to the implementation of training programmes, and guidance and assistance for receiving companies and organizations.

Based in Tokyo, JITCO currently has twelve regional offices in Japan which survey progress and provide companies with on-the-spot guidance. They also assist the headquarters office in the promotion of projects relating to technical internships.

4.3. Establishment of Technical Intern Training Programme (TITP)

4.3.1. Background

Together with the revision of the Immigration Control Act and the establishment of JITCO, the Technical Intern Training Programme (TITP) can be considered a significant change made by the
government within the framework of their immigration policy. The TITP, launched in April 1993, represents a notable step forward in terms of officially providing trainees with employment opportunities. The planning of this programme was originally initiated by private industries. In March 1989, the Organization for Economic Development (Keizai Doyukai), one of the leading organizations of large corporations, suggested the adoption of an "Apprentice Programme System" for foreign workers and the Tokyo Chamber of Commerce, for its part, presented the "Skilled Foreign Workers System" in December 1989. Both plans were aimed at utilizing some form of training to get foreign labour into Japan. The Ministry of Labour elaborated these frameworks in the form of the "Technical Training Project for Foreign Youths" in February 1990. This proposal was further deliberated upon among political parties and ministries as seen in, for example, the third report by the Council on Administrative Reform (12 December 1991) and the Liberal Democratic Party policy proposal (3 July 1992). Eventually, the concerned ministries came to a consensus on the draft written by the Ministry of Labour, "the Framework of Technical Intern Training Programme," in December 1993.

4.3.2. Objective
The official aim of the government regarding the purpose of the Technical Intern Training Programme is the following:

Its purpose is to promote the transfer of technologies, technical skills, and know-how of the Japanese industries to developing countries in a more practical manner and to contribute to the development of human resources in those countries. It is to be stressed, however, that the purpose of the Technical Intern Training Program is in no way to accept foreign workers into Japan (Ministry of Labour, 1993. Italics added by the author).

In contrast to the stated objective, it is widely perceived that there was a mutual agreement between the government and prominent business sectors to use this "trainee" system as a loophole to accept foreign labourers into Japan. Given the acute labour shortage at the time of introducing this programme, this view seems to have some credibility and in fact is widely shared in the media as well as in academia.

The actual purpose of the programme is not solely to take advantage of cheap labour. By giving JITCO authority to oversee technical interns, the government intended to reduce the number of illegal trainees who could be another potential source of illegal workers in the future. In addition, one of the more positive aspects of the programme is that, by defining the internship as "employment," it provided the interns with legal protection. Interns are entitled to the same conditions as Japanese workers in terms of salary, working hours and other employment conditions.

4.3.3. Framework
The TITP is an elaborated form of the existing training system where foreign trainees receive training at companies and other private institutions. One of the significant aspects of this scheme is that trainees, after nine months of training, can proceed to take up employment with the same receiving companies as a "technical intern" for up to one year and three months. This transition is possible only if they successfully completed both their off-the-job and On-the-Job Training and pass the skill evaluation during the training period, to be carried out by JITCO.

After nine months of training, trainees have to apply for change of their residential status from "training" to "designated activities" for the internship period (see Chart 2). The Minister of Justice determines whether or not to grant the request, based on the examination and other evaluation indicated above. Once this change of status has been approved, "trainees" become "interns" and are able to enter into an officially recognized employment contract with their receiving companies. At this stage, all labour-related laws are applicable to the interns under this programme.

The total length of residence for training and the TITP combined should be a maximum of two years. The internship period should be approximately one and a half times the training
period. For instance, one can receive a maximum of one year and three months of internship after completing nine months of training. Trainees cannot be accepted for technical internships if the preceding training period is too short. Extension of the internship or change of the residential status cannot be approved under any circumstances. Interns are permitted to return temporarily to their home country at their own expense during the internship period, provided they obtain a re-entry permit prior to leaving Japan. Since family reunification is forbidden under this programme, family members of interns are not permitted to enter or stay in Japan if the purpose of this visit is to reside with interns during the internship period.

In order to ensure the return of technical interns to their home countries, the Japanese government placed heavy responsibilities upon employers to control their interns. These include assigning a life advisor, providing accommodation, and ensuring financial wherewithal for return travel, submitting a report of trainees' return to the appropriate intermediary organization, and so on. The companies or institutions which violate the rules and regulations concerning the programme will not be permitted to accept trainees and technical interns for a certain period of time.

4.3.4. Current stage of implementation
Since the programme was launched in April 1993, as of 31 March 1994, there were 1,166 trainees who submitted a request to proceed to the technical internship. Among them, 730 trainees passed the examination, 372 were expecting to take one, and 47 had withdrawn their request (Ministry of Labour, 1994). Currently, 728 trainees were actually engaged in the technical internship.

This relatively low figure can be attributed to several factors. The most significant factor is that the range of skills which are covered by the assessment examinations is quite limited, as will be discussed in the subsequent chapter. Another element is the economic recession. The unemployment rate reached a record high, 2.8 per cent in 1994. As the demand for labour decreased, the demand for trainees has also decreased since the actual role of trainees was in part to serve as a labour adjustment tool. It is estimated, however, that the figure will rise once the Japanese economy recovers. Additionally, the lack of information and preparation also accounts for the small number of interns. Those who were eligible for this programme in 1993 or 1994 are the trainees who had already completed their first year of training at Japanese companies. Many of them originally intended to stay in Japan for a year since they were not informed of this new programme prior to their arrival. Due to family reasons or contract formalities they had with the receiving companies, not many of them were prepared to take the opportunity.

4.4. The Technical Intern Training Programme and the role of JITCO
As was previously mentioned, JITCO was designated as the only core body in the implementation of the TITP. It is actively engaged in administrative supervision of the programme. Its major functions include the following.

4.4.1. Primary functions of JITCO
JITCO sends its representatives to the country concerned to exchange views and general information as well as to ascertain the situation and requirements of the country concerned. After obtaining a proper understanding of the system from governments of sending countries, the agreements in the form of "Record of Discussions" are exchanged with sending organizations. These procedures have been completed with the People's Republic of China, the Republic of Indonesia, the Socialist Republic of Viet Nam, and the Republic of the Philippines. Once JITCO receives applications from these countries' designated organizations, they consult with overseas sending organizations on trainees who are planning to enter a technical internship. This consultation is conducted through related bodies such as the Ministry of Foreign Affairs, the Ministry of Justice, the Ministry of International Trade and Industry, or the Ministry of Labour.

4.4.2. Introduction of trainees
JITCO also performs a role as a non-profit employment broker, operating with the permission of the competent authorities in accordance with the Employment Security Act. It introduces trainees to corporations which wish to take them in, in concert with overseas sending organizations and accepting bodies in Japan. In cases where on-the-job training is not provided, accepting corporations may recruit trainees directly from abroad, although they are still obliged to report the specifics of such recruitment to the Public Employment Agency upon entry of the persons in Japan.
However, as far as the TITP is concerned, JITCO is the sole employment broker. Individual recruitment of trainees by corporations is strictly prohibited by law.

After introducing trainees and mediating the internship, JITCO signs an agreement with receiving organizations stipulating, for instance, that the internship will be implemented in the proper manner. JITCO also gives guidance and advice regarding planning of traineeships and internships, and contracts for interns engaging them in receiving companies or organizations.

4.4.3. Assessment of training
JITCO performs an assessment of the results of training focusing on the skills acquired during the period of conventional training. This assessment is based on an "objective and fair evaluation" through the method used by public organizations that operate similar assessment and qualification examinations. The assessment systems used by public organizations consist of two types. One is a technical assessment based on the Occupational Skills Development Promotion Act, and the other is one of which the content is approved and publicized by JITCO.

The evaluation system is based on a simple method which takes into account the language ability of overseas trainees. In addition to the skill acquired, JITCO also evaluates a trainee's degree of commitment to the programme, behaviour and conduct during the programme, and other factors including opinions of the organizations implementing the training programme, reports from personnel in charge of training and the extra-curricular information from a manager or a life advisor. To ensure the suitability and uniformity of the evaluation criteria, JITCO will, if necessary, set up a coordination committee, composed of academics and persons with practical experience in the field concerned, to examine the assessment system.

4.4.4. Technical advisory services and consultations
JITCO provides technical advice and assistance in various areas. This covers the whole process of receiving trainees from their entry to return. At the stage of entry, JITCO assists in the negotiation with the sending organization and the preparation of legal documents for trainees' entry and residence in Japan. Once a training programme is launched, JITCO helps in the implementation of the programme. It provides appropriate advice, training manuals, guidelines and textbooks for trainees. It also facilitates the utilization of public vocational training facilities for companies. In addition, JITCO covers the trainees' safety and health requirements by making an arrangement for private accident and health insurance programme. When the programme is terminated, JITCO conducts an assessment of each trainee's development of skills and knowledge. In cases where trainees intend to proceed to the TITP, JITCO offers appropriate advice and assistance regarding the necessary transitional procedures.

JITCO conducts research and development related to training programmes as well as the TITP to ensure its effective implementation, and utilizes the data to improve the quality of training. It also publishes a number of educational materials and manuals for training programmes for foreign nationals and their instructors. To promote public awareness of the training programme, JITCO issues promotional materials and holds lectures and seminars to publicize the purpose, framework and details of the general training programme or the TITP. Such promotional work puts emphasis on the Labour Standards Law, the Minimum Wage Law and other employment related laws that are to be applied to the interns under the TITP. It also emphasizes that various measures under the Immigration Act will be applied to ensure that interns return to their home countries.

5. Assessment of the Japanese training system

This section attempts to make a general assessment of the Japanese training system, and also points out some remaining problems inherent in it. Since a comprehensive survey on foreign trainees has not been conducted yet after TITP was introduced, the assessment will be based upon existing data from recent research literature as well as the interview data obtained during the author's mission to Tokyo in January 1994.

5.1. Overall assessment

While the Japanese training system is complex in nature, it seems reasonable to classify it into two types according to its characteristics. The first type of training is designed for highly-educated or skilled individuals from developing countries, e.g. government officials (JICA) or engineers
(AOTS and ILO Association), with a view to transferring knowledge, technology and management skills to their home countries. The duration of training varies but is relatively short, ranging between a few weeks and several months. The second type is designed for less-skilled or less-educated persons. This type of training officially has the same purpose as the first kind, which is to contribute to human resources development in developing countries. It is mainly assisted by various intermediary organizations, whether public or private, and conducted by small- and medium-sized enterprises. The duration of this type is longer than that of the first one, due to the large component of on-the-job training. Trainees and receiving companies can choose to have either the conventional training only (one-year training with 1/3 off-JT and 2/3 OJT) or the TITP (one-year conventional training plus one-year employment).

In general, the first type of training is fairly effective. As examined in the previous chapter, the institutions closely linked with the national government, such as JICA, AOTS and ILO Association, provide substantial training together with suitable accommodation and follow-up services. These programmes were generously subsidized by the national government, and they do not contain an employment component such as TITP. The overall quality of the training seems satisfactory for trainees, and their living environment is also well taken care of. According to the ILO Association's survey, 84 per cent of their former trainees answered that the training was useful for their current job, and 97 per cent of them would like to come back and get further training in Japan (Heiwa keizai keikaku kaigi, 1990). Apparently, there exists a strong demand for this type of training. Thus the number of participants for these programmes warrants being increased to a much larger scale.

The second type of training programme is rather problematic. Even though it may be effective in some cases, it is widely perceived to have an aspect of coping with labour shortages in 3D jobs in manufacturing, service and construction industries which are unable to attract Japanese workers. The TITP was officially launched as the first type, but is considered to fall under this second type in reality. At the moment, no survey data on technical interns is available to assess the effectiveness of the TITP. However, several surveys offer some hints to evaluate the training system in general.

Most of the survey results uphold the general perceptions of training system being abused by receiving companies. According to Komai's survey, 56.3 per cent of companies answered that their intention of receiving trainees was to satisfy labour shortages (Komai, 1990). The companies which conducted "overtime training," which is actually unlawful, comprised 45.6 per cent of his sample. Komai concluded that 72 per cent of the companies examined were suspected of disguised employment. The survey conducted by a Chinese trade union in Shanghai also upheld Komai's survey (NHK News, 28 November 1993). According to this survey on Chinese trainees residing in Japan, more than half of the respondents stated that they were used as menial labour without receiving training. Furthermore, the Japan Institute of Labour's survey on municipal governments also showed that the programmes conducted by municipal governments and local business associations are rather targeted towards unskilled or semi-skilled workers to fill labour shortages (Japan Institute of Labour, 1994). According to their survey, about 80 per cent of the business associations chose labour shortages as one of the reasons for receiving trainees. Also 77 per cent of them answered that they intended to use this system as a foothold of their business expansion overseas (mainly in China) in the future.

Thus it seems clear that economic incentives and needs often surpass the aspect of international cooperation in this type of training. This tendency was accelerated even further by the Immigration Control Act of 1990 and subsequent ministerial ordinances which made trainees more easily accessible to these small- and medium-sized enterprises. For further assessment, it would be necessary to conduct extensive survey research on a national scale regarding trainees in a conventional training scheme, returnees, and especially technical interns in the TITP.

5.2. Unresolved issues

Even though there have been changes and improvements in the training system, there are still fundamental issues to be addressed. Some of the examples are to be discussed in this section.

5.2.1. Training vs. employment

Although the "internship" is officially recognized as employment, this is not the case for "training". In other words, a person who is on the TITP can be protected by labour-related laws during the period as an intern, but not during the first nine months as a trainee. There is no legal protection for trainees who are in the conventional training programme for one year or less. Since training
is not considered "employment," trainees are not allowed to receive remuneration. Instead, they receive a "training allowance" which is to cover the basic costs necessary for their stay in Japan during the training period (Ministry of Justice, 1991, pp. 2-15). Even though the accommodation is usually offered for free, the average amount of training allowance is still low. However, it is often pointed out that the second type of training, especially OJT, could involve some profit-making activities, and that many trainees are used as supplementary labour. These de facto workers remain deprived of workers' rights simply because of their "trainee" status.

5.2.2. Problems in skill assessment
As previously pointed out, the skill assessment, which is necessary for trainees to proceed to the Technical Intern Training Programme, is conducted only for a limited number of skill types. This greatly hinders the increase in the numbers of interns. For example, prior to December 1993, there were only 19 skill types which were recognized for examinations, such as ladies' and children's dress making, plumbing, scaffolding, metal press, casting, forging, etc. Although the number has increased to 44 since then, it is still fractional compared with 133 types of skill examinations for Japanese in the vocational examination system. Nevertheless, it is apparently not so easy to increase this number because it would increase the number of technical interns who are officially recognized as "workers". Trade unions, for example, are concerned that the increase of technical interns could threaten the employment opportunities of Japanese workers. They insist that examinations should be only available in those skill types where Japanese workers are scarce but which are in excess demand in the labour market. This explains why the variety of examinations has not yet reached the level to meet the demand of trainees.

However, there has also been a constant pressure from private industries on the government to increase the number of skill types, since they needed as many workers as possible at the time. In response to this demand, JITCO established a special committee, consisting of members from employers' organizations and labour unions, which takes the responsibility of authorizing skill types for examination. Subsequently, two additional skill types (operating construction machines and welding) were recognized by the JITCO committee and became available to trainees for skill examination.

Another problem with the skill assessment is the rigidity of the examination system. Some officials of intermediary organizations mentioned that the examination takes little account of variations and uses only limited types of machines or methods to test skills, even though machines and methods used for the training differ from one company to another. This makes it difficult for trainees to pass the skill examination since they are accustomed to a particular type of machine at their workplace. In many cases, trainees must take special training at a company or spend extra time studying to prepare for this particular examination. This incurs additional efforts and costs on both parties, trainees and companies.

5.2.3. Length of training
The current training scheme allows trainees to stay for the maximum of two years. However, there is an argument among receiving companies that two years is not sufficient enough to transfer technology to trainees. Some maintain that it would take at least six years to train a capable technician (Asahi Shimbun, 23 August 1989). The necessary period of training might differ depending on the types of skills. However, the current scheme does not allow any flexibility. In addition, once they return to their home countries, trainees are normally prohibited re-entry to Japan as a trainee. Yet many of them wish to come back to Japan for further training. In fact, the ILO Association's survey indicated that 97 per cent of their former trainees showed their interest in returning to Japan for further training (Heiwa Keizai Keikaku Kaigi, op. cit., p.59).

The extension of the training period is a problematic issue since it involves the question of family reunification and possibly settlement. Nevertheless, from the long-term perspective of human resources development, offering another chance of training to former trainees will have positive

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1 There are some but very limited exceptions in the governmentally-supported training.

The typical example is the JICA's follow-up programme which offers another training opportunity to those who previously received training in Japan.
effects on both individuals and their countries. In cases where a total training period is short or the proportion of OJT is small, the re-entry for further training might be considered.

5.2.4. Ensuring the return of trainees/technical interns
The official gazette stipulates that receiving companies should ensure the return of trainees/interns to their home countries. The regulations in the ministerial ordinance (No.16 of 1990) such as securing the accommodation for trainees/interns and assigning a "life advisor" partially aim to prevent them from dropping out from training or technical internship and to ensure the return of trainees/interns. By accommodating trainees/interns in the dormitories, companies can have considerable control over them. The life advisor also oversees the behaviour of trainees/interns, while playing the role of counsellor as well. Nevertheless, despite this strict environment, there are still some cases where trainees disappear before completing the training period. It is suspected that some trainees run away and remain staying as illegal workers. Trainees may find it tempting to work illegally since it is financially more rewarding. This is not the case for technical interns who receive equal salary to Japanese workers' during their internship. Nevertheless, since the TITP scheme prohibits their re-entry to Japan after completing the programme, it still looks attractive for them to stay in Japan illegally for several years to save more money.

5.2.5. Mismatch of needs and expectations
Many officials in intermediary organizations and companies acknowledge the potential mismatch of needs between trainees and receiving companies. It seems that there are three types of mismatches: the qualifications of trainees do not match the skill training offered by receiving companies, or the skills which trainees anticipated to learn cannot be offered by the companies, or both.

These problems may be, firstly, due to the miscommunication between a sending organization in the trainee's home country and a receiving company in Japan. Many receiving companies in Japan entrust sending organizations with the selection of qualified trainees, instead of meeting the candidates and selecting appropriate persons by themselves. For sending organizations, it is difficult to select trainees whose qualifications match exactly the needs of the Japanese company due to the differences in educational background, technology or type of work between Japan and their home country.

Secondly, there is a strong pressure in developing countries to send as many trainees as possible to Japan. As a consequence, sending organizations designate trainees even if their qualifications do not match the companies' needs. The financial incentive for the sending organization, represented by a commission fee for their matching services, actually reinforces this tendency. Furthermore, the foreign currency earned by trainees in the form of savings or remittances also benefits the economy of the sending country. Thus sending a large number of trainees always has positive impacts on sending countries. The Chinese government, for example, made an unofficial request to the Japanese government to accept over one million trainees from China.

The third reason is a wide gap in technology between Japan and sending countries. Sometimes it is impossible for companies to find trainees with the relevant background simply because certain technologies do not exist in the sending countries. On the other hand, even when trainees possess the relevant background, some of them find it difficult to acquire the skill which they seek. This type of cases happen when receiving companies intend to use trainees to fill labour shortages in 3D jobs.

A typical example was observed in one of the companies which the author visited in suburban Tokyo. The company is of medium size with about 400 employees and produces air-conditioning ducts. It accepts six or seven trainees from mainland China every year. Directors of the company admitted the difficulty of finding trainees with the relevant work experience, since air-conditioning systems are as yet rarely found in China. They are aware that the skill which trainees would acquire eventually could not be utilized after return. The managers, however, insisted that the training would be useful for trainees in terms of having an opportunity to acquaint themselves with the Japanese work ethic, management style and teamwork spirit which would be, they argued, even more important in the long run. On the other hand, the trainees complained that they were not learning the advanced skills that they expected, but were engaged in repetitive work. This is a clear case of the mismatch between trainees and receiving companies.

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1 Hereafter the term "interns" will refer to "technical interns."
5.2.6. Costs and benefits on the part of receiving companies

As a rule, provision of training incurs high costs to receiving companies. The costs do not only refer to the cost of travel, board and lodging, training and outfitting allowance. There is an opportunity cost for trainers. When they assign one of the employees as a trainer, which is now legally required, that person cannot engage in work while teaching and training. Moreover, with regard to Off-JT, companies without know-how or experience of teaching the language or cultural courses, tend to rely on private language schools that are considerably expensive.

In addition, the company cannot enjoy the return of their human capital investment from trainees as they normally do in the case of their own employees. In fact, in the pure sense of international cooperation for development which the Japanese training system is claimed to be, training is not an "investment" but in fact an "aid" for human resources development in developing countries from which one should not expect any kind of returns. However, for companies, the cost is rather high to motivate them to accept trainees. Therefore, the government has to subsidize many receiving companies to implement training programmes. Nevertheless, the acceptance of trainees is not entirely profitless. Trainees can serve as supplementary labour force for small companies in manufacturing industry or small agricultural farms which involve 3D jobs. During the Heisei economic boom from the late 1980s to the beginning of 1990s when many companies went bankrupt because of the severe labour shortage, trainees meant "saviours" to owners of small- and medium-scale enterprises. One official in an economic organization reflected the situation by stating, "At that time, every single company needed more workers. Honestly speaking, a worker could have been virtually anybody as long as he or she had two arms and two legs."

Trainees can also become an inexpensive labour once they have mastered the necessary skill and are taken on to produce goods, which is actually often the case. If trainees are used as workers, it is profitable for receiving companies since the total cost of accepting trainees is not as high as hiring Japanese workers. Although the cost varies depending upon each case and region due to differences in the cost of living, the standard cost of accepting one trainee calculated by the Japan Chamber of Commerce and Industry is 1,728,180 yen ($17,000) per year including the airfare and other miscellaneous costs (Japan Chamber of Commerce, 1991). This is approximately two thirds of the annual salary of a freshman worker with a high school degree. Comparing the training allowance alone (excluding accommodation), it is nearly 55 per cent of a high school graduate's monthly salary and 40 per cent of a university graduate's.

There are many other benefits that receiving companies can enjoy. Firstly, many employers mention the "internationalization" of their employees and improvement of the company's outside image. Secondly, the existence of trainees stimulates and motivates other Japanese employees, which often leads to increases in productivity. Ageing is another serious problem in small- and medium-sized enterprises, since they are unable to attract lively young workers. One official at the Japan Chamber of Commerce and Industry said:

Many senior workers are influenced by trainees. Trainees are young, enthusiastic, and eager to learn. They also work very hard. Many company owners told me that the atmosphere of their factories had significantly improved since trainees came, especially in those companies which were suffering from an ageing labour force. Many senior workers enjoy teaching skills to trainees, since they had not an opportunity to do that for such a long time. Also there was time when trainees studied Quality Control system, they did a better job than some of their Japanese colleagues. This stimulated other Japanese workers, and productivity went up.

In fact, the ministries are willing to support receiving companies. The subsidies derive from the ODA budget of each ministry which now comprises a major portion of their ministry budget especially after the cutbacks of the defence budget after the end of the Cold War. It is one of the strategies of each ministry to use ODA to expand their ministerial budget. Under the name of "international cooperation," the ODA budget has been increasing.
In fact, this aspect is just as equally important as coping with the labour shortage - motivating Japanese workers.

However, in the companies which accommodate both regular foreign workers and trainees, conflicts tend to arise due to the difference in payment. Whereas foreign workers are, as long as they are legally present, guaranteed their workers' rights and on the same footing as Japanese workers in terms of salary, trainees are not. The allowance which trainees receive is much lower than the salary of regular foreign workers. Therefore, when regular workers and trainees are to perform the same job, trainees may see it as unfair treatment. This is especially pronounced for Chinese trainees who are used to a workplace where everyone receives an equal amount of remuneration for an equal amount of work.

5.2.7. Implementation problems
The revision of the ministerial ordinance (No. 16 of 1990) has made notable improvements in terms of implementation of training programmes by setting requirements such as securing accommodation, facilities, an experienced instructor, etc. Although these requirements are necessary to ensure the quality of the training, they often create hesitation among many companies, especially small-scale ones, to accept trainees. Small companies normally find it difficult to fulfil all the requirements due to cost problems or capacity questions. For instance, one survey showed that about 70 per cent of companies in Yokohama hesitate to accept trainees due to the lack of accommodation and/or training facilities (Mainichi Shimbun, 15 July, 1991). In some cases, small enterprise associations jointly construct a training centre with accommodation facilities (Nihon Keizai Shimbun, 9 June, 1993). To alleviate these problems, JITCO tries to facilitate the access of companies to local public vocational training centres during the Off-JT period.

The implementation of training is another problem. The first and most serious problem is the lack of a structured programme for training. Many companies are still at the stage of struggling with formulating and implementing their training programme. Although JITCO provides know-how and a model guideline for training programmes, many companies still seem confused due to their very limited exposure to foreigners in the past and lack of experience in training foreigners.

The second implementation problem concerns the instructors. Most instructors are not formally trained as instructors. They have no license or certificate in teaching or training and are not used to communicating with foreigners. The communication gap which originates from the language difference is often pointed out in many surveys. The ILO Association's survey highlighted the need to ensure language training (in English) on the part of instructors (Heiwa Keizai Keikaku Kaigi, op.cit., p.9). Although the quality of instructors is one of the decisive factors for the success of training, it has not been given much attention. To a limited extent, AOTS and JITCO conduct training in language, education and occupational safety for Japanese instructors. However, it will be necessary for the government to take some measures to guarantee the quality level of trainers including language skills. Ideally, all the instructors or trainers should obtain a certificate to prove their capability of training, as is the case in Germany.

Assigning an experienced instructor for training is most difficult for companies whose number of workers is small. Although the ministerial ordinance No. 16 of 1990 stipulates that the instructor must possess at least five years of work experience at a company, if the experienced worker devotes all his/her time to training instead of working, this incurs a notable cost for a small company.

Training also invariably incurs cultural problems, to which most companies are not accustomed. Many companies prefer to accept Chinese trainees to avoid cultural conflicts. They expect Chinese people would be similar to Japanese in terms of culture and language. Nevertheless, a manager of a company admitted;

We accepted Chinese trainees partly because there was no need to hire a costly English translator. We can communicate in writing. We have a common culture such as eating rice, using chopsticks, etc. But after a while, we realized that there was an immense cultural difference between us in terms of the way of thinking and behaviour. Our assumption was wrong.

The companies accepting Indonesians and Malays also most often face difficulty in dealing with religious differences.

5.2.8. Obstacles to the smooth transfer of technology
There are several obstacles to the smooth technology transfer to developing countries that is a central aim of training programmes. The first obstacle is a wide technology gap. As discussed
earlier, this causes a mismatch of trainees and receiving companies. In the worst case, training can be virtually useless. For example, the Overseas Youth Skill Training Programme supported by the Ministry of Labour in fact had to abstain from accepting trainees from Pakistan, Bangladesh and India since there was no workplace where trainees could utilize the skill that they would acquire in Japan (Tezuka, 1991, p.222).

The second factor is the risk of technology leaks. This is one of the reasons besides the cost reason why many companies hesitate to receive trainees. Teaching skills and technology always involves some risks on the part of receiving companies. Trainees could utilize the skills and knowledge in current or future competitors of receiving companies. Even in cases where trainees are not engaged in learning highly advanced technology that might jeopardize the business of receiving companies, there are always chances of leaking certain management strategies and know-how which might benefit rivals. At present, it is virtually impossible for trainees to change a training site or employer within Japan, given the strict regulation to confine them to an initial receiving company. However, when they return to their home country, they often move from their former workplace to another. For example, in Singapore where job-hopping is quite common, it is often the case that former employees of Japanese subsidiary companies, who return from training in their headquarters office in Japan, move to their competitors for a higher salary. According to the ILO Association's survey, 38 per cent of the trainees changed their job upon return (Heiwa Keizai Keikaku Kaigi, op.cit., p.79).

Another problem is related to its practical effect on human resources development. Providing skills, knowledge, and technologies does not necessarily imply that these will be shared and utilized among other workers at the trainees' former workplace. An official of one intermediary organization mentioned that some of those who return to their former workplace often hesitate to share what they have learned and use it solely for their own promotion or job-hopping. This seems to apply especially in the case of trainees in Singapore and Thailand.

5.2.9. Preferential acceptance of trainees
The Japanese training system tends to assist Japanese enterprises to train their own employees of overseas subsidiaries and/or joint venture companies, except in the cases such as JICA and the ILO Association. This is largely due to the difficulty in finding receiving companies which would provide training. Given that the training cost for one person is between US$15,000 and US$20,000 per year, it seems highly unlikely that private enterprises would be willing to receive trainees every year without expecting any economic returns. In part, for that reason, the government introduced the new Technical Intern Training Programme to offset the costs by enabling the companies to employ trainees as "interns" after the initial nine months of training. The government also has subsidized training programmes from its ODA budget through many intermediary organizations to alleviate the financial burden of the companies. In other words, ODA is used partially to serve the interests of these companies. Although training local staffs of Japanese overseas subsidiaries still contributes to the human resources development of that country in a broad sense, training opportunities should not be preferentially provided to those affiliated with Japanese corporations, since the training programme is officially open to the general population in developing countries. Moreover, it would be more effective to train those who could utilize the acquired knowledge and skills in the indigenous enterprises, considering its direct impact on the economic development in the sending countries.

6. Conclusion: Towards a more open policy for foreign labour

6.1. Summary
As seen above, the Japanese training system is quite complicated in terms of its diverse receiving channels as well as its detailed regulations. Its nature is also complex. In some cases useful and effective training is provided, but in other cases training is simply a means to satisfy labour shortages.

The newly established Technical Intern Training Programme is perceived as the first official attempt to legalize the entry of unskilled and semi-skilled workers into the Japanese labour market. It officially added an employment contract under the name of "technical internship" following a conventional training. This represents a significant change in the Japanese immigration policy, not
to mention the training system *per se*. At the same time, the TITP certainly made some improvements in the previous training system such as guaranteeing technical interns legal protection, the status equal to that of Japanese workers, and also a certain level of quality of the training. Nevertheless, there still remain quite a few problems associated with it as well as with a conventional training scheme.

These problems derive largely from the ambiguous nature of the current immigration policy. While firmly refusing to take in unskilled foreign labour, the government also yielded to strong pressures from private industries clamouring for foreign labour, albeit in the form of trainees. The recent amendments of ministerial ordinances and the new Technical Intern Training Programme represent this dual nature: while maintaining its ostensible principles, they implicitly allow the intake of unskilled foreign labour. This clearly indicates that the TITP is, in a sense, a product of compromise which more or less satisfied the interests of different parties concerned: *the Japanese government* not wanting to accept unskilled foreign labour, *Japanese companies* in need of unskilled workers as well as a foothold for their future business abroad, *sending countries* interested in developing their own human resources as well as acquiring foreign currencies, and *trainees* themselves enthusiastic in learning, earning money and developing their skills. It is this intricacy and resulting ad hoc policy that make for a complex situation where some trainees are used as inexpensive disguised labour. A number of small- and medium-sized companies are taking advantage of the system since it is the only loophole for them to obtain unskilled labour under the current legal framework. The misuse of training system has been reported through media domestically and internationally. In fact, some of the sending countries are already disturbed by this aspect and criticize the way the Japanese government has handled the problem. Unless appropriate measures are taken, the Japanese training system may be the target of severe criticism and harm the reputation even of the real training programmes which have worked effectively.

6.2. Suggestions for improvements: Short-term measures

Revisions of policy could have both short-term and long-term components. For the short-term measures to improve the existing training system, I would offer the following suggestions.

6.2.1. Status of trainees

Firstly, the government should recognize the employment nature in the training and treat trainees as workers at least after they complete their Off-JT. While “interns” are officially recognized as "workers" and are entitled to all the workers' rights, this is not the case for trainees. If trainees cannot be regarded as workers, the minimum standard for the "training allowance" should be clearly set. At present, the average training allowance they receive is far below the minimum wage standard in Japan. It has been explained that it would be difficult to set a standard due to the diversity in living costs in different regions. If so, at least official regional standard should be established.

It is certainly difficult to draw a clear line between OJT and regular employment activities. Obviously, at the beginning of OJT, the productivity of trainees will generally be low and their products might be defective. However, when they reach the same skill level as other workers, the OJT turns into an economic activity which should be remunerated. Therefore, the regulations should be modified at least to enable trainees to take a skill assessment at any stage of the training period. This would allow them to proceed to normal employment as soon as they have mastered the designated skill. In this way, trainees could receive proper remuneration for their work when they are capable of producing goods or providing services.

6.2.2. Mismatch problems

The mismatch of trainees and receiving companies benefits neither side. Since miscommunication and/or misunderstanding is often the cause of the problem, the exchange of detailed information on both sides would be helpful. Receiving companies should be encouraged to pay a visit to the country where they intend to recruit trainees and conduct interviews with candidates in person. They should also provide trainees with a written description of the training programme. The description should contain detailed explanations of the curriculum in a flow chart including, for

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example, hours to be spent at each skill level so that trainees would be able to visualize their skill development prior to their departure from their home country.

The written description would also help in avoiding misunderstandings between trainees and companies. Even if skills are matched, many trainees might complain that the amount of OJT is too much, or that they cannot acquire the skill they expected to learn. They come to Japan expecting to receive training rather than to work. Trainees are, as a rule, competitively selected among a large pool of applicants in their home country. It is, therefore, often humiliating for these qualified persons to be utilized as labour in a 3D job. The misunderstanding is common for Chinese trainees, since the word "trainee" has a rather scholastic connotation in their language.

The mismatch caused by the technology gap is another problem that ought to be tackled. Ideally, trainees should receive training in the country whose technological level is best suited, even if that were not Japan. Allocating trainees to different countries could be an alternative. The level of technology used should be closer to that being adopted in their own country. For example, it may be more useful for trainees from China to go to Thailand rather than Japan or for Thai trainees to go to Korea. Although it might be unrealistic at present, it would be ideal to establish an information network among the governments or private industries which matches the data of the types of training available and the needs and qualifications of trainees. Even without such a network, Japan should take an initiative to promote the exchange of human resources in the region. The era in which only Japan can contribute to the human resources of other Asian countries has passed. A coordination mechanism on a multilateral basis could contribute to the effective use of human resources as well as the smooth transfer of technology which would promote socio-economic development in sending countries in the long run.

6.2.3. Completion of training and return of trainees
Up to the present, no effective measures have been taken to administer the completion of training and return of trainees. The responsibility is placed upon receiving companies alone. Nevertheless it is sometimes difficult for the companies to guarantee the trainees' completion of training, much less their return. In reality, some dropout and runaway cases are reported ([Nihon Keizai Shimbun], 9 December 1991). To reduce these cases, the most effective measure would be that the receiving companies provide trainees with appropriate remuneration as well as training which they would perceive too rewarding and valuable to become illegal workers.

Once the training is completed, securing a job opportunity will be also effective to ensure trainees' return. The authorities should offer trainees some attractive incentives, such as securing a job opportunity in their home countries, reimbursing their pension contribution\(^1\), and so on. The survey of the Ministry of Labour, in fact, indicated that only 40 per cent of trainees already had a job waiting for them in their home countries (Tezuka, op.cit., p.226). An opportunity to utilize acquired skills and knowledge will surely encourage trainees to return to their home countries. The government or JITCO should coordinate with the government of trainee-sending countries to secure a job for trainees upon their return. For instance, the JITCO could establish the employment information network in cooperation with business organizations of sending countries and help trainees find an employment opportunity in advance of their return. If these services cannot be provided, the government could add another requirement such as "holding a job upon return" to qualify trainees.

6.2.4. Ombudsman system
Currently there is no public body that deals with trainees' problems or complaints regarding training conditions or trainees adjustment to the workplace. Most of the problems are either handled by trainees themselves, their colleagues or officials of each intermediary institution. As

\(^1\) In the case of TITP, the pension contribution is automatically deducted from technical interns' monthly salary. Since the interns will never become pension beneficiaries in Japan, it would be only fair for the government to reimburse their contribution upon return.
the number of trainees grows, related problems are also expected to be on the increase. There are in fact some problems which individuals or companies cannot cope with by themselves. In this respect, an ombudsman function should be established to deal with these training-related problems comprehensively. This task could be entrusted to JITCO or other government-based organization. The task should also include counselling services (e.g. setting phone lines to answer general questions of trainees), legal aid, intervention (e.g. sending staff to the training site when the involvement of the third party is necessary) and so on. An ombudsman function that would pay attention to the opinions of trainees would, in the long run, serve to improve the current training system even further.

6.3. Towards an open policy for unskilled foreign labour: Long-term measures

According to projections of the Ministry of Labour, the economically active population will decline by 10 per cent, i.e. 9.1 million, by the year of 2010, if the labour participation rates prevailing in 1990 remain the same (Shimada, 1993, p.223). This figure does not directly lead to labour shortages since other factors play a role in the labour market. The demand for labour, for example, is largely affected by the rate of economic growth and supply changes depending upon the rate of labour force participation. Some experts argue that labour shortages will be alleviated due to the recession. Others argue that the gap can be filled by increasing the number of working women and aged workers (Goto, 1993, pp.158-174). However, even during the current economic recession, labour shortages still exist in 3D jobs, although their number has slightly declined. The owners of small and medium-sized enterprises are still asking for trainees since they cannot attract Japanese workers. Furthermore, the Ministry of Labour predicts a labour shortage of 1.8 million persons by 2010 even under the assumption that the labour participation rate of women will increase drastically (Shimada, op.cit.).

Labour shortages in Japan are not a transient but a structural problem. Economic fluctuations affect but do not eliminate shortages even during the recessions. However, the training system should not be used as the strategy to solve it. The system itself should be maintained to achieve its avowed aim, as is the case for the programmes of JICA, AOTS and the ILO Association. The Technical Intern Training Programme and other conventional training programmes could be clearly oriented to cope with labour shortages, and transform themselves into a new scheme for unskilled and semi-skilled workers. The framework for this new scheme could be similar to a "rotating labour system," while maintaining the framework of the existing system. The difference from the current system would be that those who engage in unskilled or semi-skilled work are regarded as

1 *Hokkaido Shimbun* (31 January, 1991) reported the case in which a Chinese trainee killed his boss and his wife due to his adaptation problems and conflicts at work place. It also pointed out that every year there were some trainees who face serious psychological problems and return home before completing the training.

2 Böhning's insightful analysis on the labour market in the Republic of Korea is also applicable to the case of Japan (Böhning, 1994). See also Mori's article in *Journal of International Economic Studies* (forthcoming).
"workers" from the beginning and protected by labour-related laws. Accordingly, trainees should be guaranteed at least the minimum wage.

The new scheme should allow them to stay and work in Japan for a certain period of time, for example, two to three years and should foresee return to their home country. To enhance the effectiveness of this scheme, it is strongly recommended that training centres be established in sending countries which could provide basic courses on the Japanese language and culture. In other words, Off-JT, presently required to be implemented by receiving companies for one-third of the total training period, can be undertaken by the government. The cost can be much lower compared with courses implemented in Japan, easing the financial burden of receiving companies. However, the centres must ensure, by requiring an examination, that trainees have mastered a basic knowledge of Japanese and be given instructions on safety measures.

The ad hoc and ambiguous nature of the training system is attributed to the difficulties which the Japanese government faces in setting a long-term immigration policy. It is indispensable to establish a clear national consensus which determines unequivocally whether unskilled or semi-skilled labour should be accepted. The immigration policy should be implemented accordingly, instead of repeatedly revising the system on a provisional basis and overlooking the de facto employment of trainees. The current training system requires some revision. Since training is conducted under the framework of international cooperation, it should fulfil its functions properly and not put into question the mutual trust between Japan and recipient countries.

ANNEX

Major training programmes

The following three organizations conduct fairly effective training programmes with the assistance of Official Development Assistance. This section will summarize the content of their programmes and delineate how they are implemented.

1. Japan International Cooperation Agency (JICA)

1.1. Overview
JICA, a semi-governmental organization, is one of the main organizations implementing Japan's Official Development Assistance. It was originally founded at the time of Japan's participation in the Colombo Plan in 1954, and eventually established in its present form in 1974. Since then, JICA has undertaken programmes such as technical cooperation, acceptance of trainees and dispatch of experts to developing countries. The total scale of the budget is 15.3 billion yen (US$153 million) in 1992.

Training programmes comprise a major portion of JICA's activities. JICA is currently accepting 7,500 "participants" (a JICA term for "trainees") from over 150 countries and areas under various training programmes. The training courses are normally undertaken at JICA's International Training Centres throughout Japan, government agencies, local government facilities, private training facilities, universities and other organizations. The duration of the courses varies between two weeks and one year, depending upon the field of training. The average cost of the training for one person is approximately one million yen (US$10,000) per month.

1.2. Technical Training Programmes
The Technical Training Programmes (TTPs), inter alia, accommodate more than 6,000 participants per annum. The participants are mainly government officials, leading scholars or so called "key persons" for the development of their own countries. Through TTPs, they are to acquire knowledge and technology in a wide range of fields through various methods such as lecture, discussion and problem-solving techniques and strategies, rather than specific knowledge of certain technical fields.

The TTPs are carried out in accordance with a bilateral agreement between the Japanese government and the recipient government or a multilateral agreement between JICA and international organizations. While a large number of the programmes are undertaken at JICA's training centres and various institutions in Japan, a growing number of programmes are also implemented overseas. These so called 'Third-country Training Programmes' are funded and operated by JICA, but undertaken in a developing country chosen as a host country. Participants are brought in from this host country as well as its neighbouring countries that have a common natural, social and cultural background. This type of training is quite useful since participant countries are at a similar development stage and share common needs. It is also effective in that the content of training can be more region-specific such as in tropical forestry, which is difficult to implement in Japan. Furthermore, this type of training can accommodate a larger number of participants from many countries due to the lower costs compared with programmes in Japan. The programmes can thus promote not only technology transfer from Japan to developing countries but also encourage technical cooperation among developing countries in the same region.

1.3. Group training vs. individual training
The TTPs take the form of either (a) group training or (b) individual training. For the former, JICA offers the curriculum of group training courses according to the common needs of developing countries. Each country is allowed to send only one participant
Currently one half of the Technical Training Programmes are implemented in this form, and its share is increasing. About 1,500 JICA conducts more than 300 of these group training courses every year. The problem of this form is the diversifying needs for per course. A course consists of about 10 participants who share the common needs for particular knowledge and technology. JICA conducts more than 300 of these group training courses every year. The problem of this form is the diversifying needs for training among participants. A widening gap in technology between Asia and Africa also makes the implementation of coherent programmes even more difficult. Consequently, JICA also conducts Country-focused Training Programmes that offer training suitable for a particular development plan of a country.

The individual training programmes are undertaken upon request of foreign governments. JICA formulates a curriculum responding to the specific needs of the requesting country. A course is organized with ten of its nationals, focusing upon a certain theme. Currently one half of the Technical Training Programmes are implemented in this form, and its share is increasing. About 1,500 people participated in these programmes last year.

1.4. Non-governmental programmes
In addition to the government-based training programmes, JICA collaborates with private industry in the Development Cooperation Programme (DCP) and Training Programme of Emigration Services (TPE). The DCP supports Japanese private enterprises which are engaged in development projects and/or technical cooperation in developing countries. JICA finances these enterprises to implement projects and assists them to receive people from developing countries for the purpose of training. Participants are sent by JICA to the enterprises which submitted requests. As a rule, enterprises pay one-half of international round trip expenses, while the rest of the costs (allowance, training and medical costs) are borne by JICA.

The Training Programme of Emigration Services targets Japanese emigrants and their descendants in Central and South America. It provides them with knowledge and technology necessary for development of the countries in which they reside. The programmes include projects which invite researchers and scholars of Japanese origin to Japanese universities or research institutes. For this programme, applicants send requests directly to JICA together with a recommendation from the organization to which they belong. Costs such as air fare, accommodation, training and allowance are borne by JICA.

When the training is completed, participants and Japanese experts hold a final evaluation meeting where they discuss the results of the training and examine the content of the programmes. The opinions presented at this meeting will be reflected in the planning of subsequent training courses.

1.5. Procedures of training programmes
Participants are selected and recommended by the government of their country before they are accepted by JICA. Upon arrival, participants receive a briefing on their allowances and accommodations before the training courses start. They must take a general orientation about the culture, society and economy of Japan before proceeding to the training courses which are normally conducted in English. For those who use the Japanese language in their training, JICA offers intensive Japanese courses.

1.6. Living conditions of participants
In principle, all the participants are to stay at one of the JICA’s International Training Centres during the training course. JICA owns ten centres at present, each of which is furnished with bedrooms, dining facilities, library, clinic, typing room, lounge, and so on. The meals are prepared in consideration of the customs of participants' home countries. The centres also hold various kinds of recreation activities such as parties, sports, and sightseeing tours. In addition, participants receive a chance to visit Japanese families and schools to get acquainted with Japanese culture and people through activities.

Participants are provided with allowances by JICA, including round trip air fare, preparation allowance, book allowance, material mailing allowance, study trip allowance, commuting allowance (for regular expenses between lodging and training facility). The medical expense incurred will also be borne by JICA.

1.7. Follow-up services
JICA provides various follow-up services after trainees return to their home countries. Firstly, it dispatches follow-up teams to visit former participants and their workplace. The team conducts surveys to assess the effectiveness of the training and tries to grasp future needs of developing countries. The team also provides former participants and members of other related organizations with the latest technical information through seminars. Secondly, JICA assists former participants in better utilizing the skills and knowledge that they acquired in Japan. For example, JICA supplies them with equipments relevant to the training course and publications such as technical papers to keep up with the latest technology. Thirdly, JICA actively promotes alumni activities through its alumni associations. The associations, presently existing in about 60 countries, not only function as the focal points of communication among former participants, but also conduct technical seminars to disseminate information on the technology and knowledge that former participants acquired in Japan. Lastly, JICA is establishing an international personnel network. With the help of the alumni associations, JICA constantly updates its list of former participants and assesses their needs in order to provide them with effective follow-up services. This network comprises former participants, JICA experts and Japan Overseas Cooperation Volunteers dispatched to the countries involved.

2. Association for Overseas Technical Scholarship (AOTS)

2.1. Overview
The Association for Overseas Technical Scholarship, established in 1959, was the first non-profit, non-governmental organization which received trainees from overseas. Its main purpose is to promote technical cooperation for the industrialization and development of developing countries and enhance mutual understanding and friendly relationships between these countries and Japan. Under the auspices of the Ministry of International Trade and Industry, AOTS invites approximately 4,000 trainees to Japan and provides training to another 2,700 trainees overseas every year. They are predominantly engineers but there are also people in managerial positions. Many of these trainees are from joint venture companies of Japanese corporations. They must be between 20 and 50 years old, hold a university degree or equivalent professional experience in managerial and/or supervisory posts, and are expected to take leading positions at their work place upon return. The activities of AOTS are financed by Japanese government subsidies, company contributions and other sources.

2.2. Education and training
Currently AOTS operates three types of training programmes: (a) the AOTS regular training programme, (b) a collaborative training programme and (c) other training programmes. The duration of programmes varies between one week to two years, depending upon the nature of each programme.
In the regular training programme, trainees can either take a general orientation course at the AOTS training centres - for instance, Japanese language, industry, technology, culture and society - and proceed to "specialized technical training" in Japanese host companies, or take a management training course at the AOTS training centres. The specialized technical training is organized by the host company individually and training is given at either the host company or its affiliated firms. However, AOTS oversees the programme by occasional observation visits and gives advice where necessary for improvements in training. Those who take management courses can also proceed to the technical training at Japanese companies, though it is not required. The management training focuses on modern theory and practice of business management, production management, quality control, etc.

Collaborative training programmes are implemented on behalf of the Japanese government and/or international organizations. There are established programmes such as the "UNIDO in-plant group training programme" on production management in manufacturing industry and quality improvement of industrial products, the "APOCH training programme" on effective problem solving, production management information system, and the "JIF-sponsored training programme" which is similar to the regular programme supported by AOTS. AOTS in collaboration with the Japan Machinery Federation. AOTS also offers various other programmes such as the "overseas correspondence programme," "overseas training programme," and "trainers' training programme." In addition, the "eastern Europe supporting programme" has recently been established to assist eastern European countries' transitions to the market economy.

Furthermore, AOTS accepts trainees who have no affiliations with Japanese companies under four programmes. One is the acceptance through AOTS alumni societies in developing countries. Engineers and managers who want to develop their capabilities but have little means of contact with Japanese companies can be accepted through a recommendation from an alumni society in each country. This programme provides about 800 trainees with regular and managerial training every year. Another programme is targeted to the foreign students who have completed their study in Japan. It offers them an opportunity to practice their knowledge and skills in Japanese companies as well as to learn new skills and the Japanese style of management. Thirdly, AOTS accepts Malaysian trainees under their government's "Look East" policy which aims at acquiring Japanese work ethics as well as production techniques. Since its start in 1982, over 1,100 trainees have been accepted. Lastly, trainees sent by the government of the Republic of Korea are accepted under the programme which aims at the modernization and technological improvements of small and medium-sized enterprises of the country through human resource development.

2.3. Living conditions of participants
AOTS has four training centres in Tokyo, Yokohama, Nagoya and Osaka. The centres are well furnished with accommodation facilities (a room with a private bathroom for each trainee), dining, training and recreation. Most of the important signs and notices in the building are written in eight different languages. The meals are prepared taking account of cultural and religious customs of the trainees. The trainees are supplied with miscellaneous allowances including air fare, stipend, settlement allowance, book allowance and shipping allowance. They are also entitled to free medical treatment during the period of their training.

2.4. Follow-up services
AOTS maintains a network of its former trainees in various ways. It keeps them informed of current AOTS activities through its quarterly magazine "KENSHU" which functions as information exchange media among former trainees and AOTS. It also offers services such as sending upon request technical publications and the latest information on Japanese industries and technology to the former trainees. Furthermore, several groups of AOTS officials visit the returnees every year and conduct surveys to assess the effectiveness of their training programmes as well as to grasp the needs of their country. AOTS encourages its former trainees to organize an alumni society in each country to develop mutual cooperation among members and maintain friendship between them and AOTS. AOTS including its overseas offices supports the alumni activities such as providing technical seminars for local people.

3. The ILO Association of Japan, Inc.
3.1. Overview
The ILO Association of Japan was established in 1949 with the objective to cooperate with the International Labour Organization in various activities as well as to disseminate and enhance the ILO spirit in the country. The organization, in order to expand its services, obtained a juridical personality in 1970 and restarted as the ILO Association of Japan, Incorporated. The Association receives a relatively small number of trainees, mainly from developing countries. In the fiscal year 1993, it accepted 206 trainees, of whom 168 were from Asia. The largest number came from Thailand (45), followed by China (35), the Philippines (32) and Indonesia (15). The programme is kept small partially due to the limitation of capacity but also in order to maintain its quality. Since 1972, the Association has accommodated over 3,000 trainees in total. The Association aims to train workers of foreman level in developing countries.

3.2. International Skill Development Training Scheme
The International Skill Development Training Scheme started in 1972 as a project of the Ministry of Labour. The Scheme aims to contribute to human resources development in developing countries through technical cooperation, and to promote friendly relationships between these countries and Japan. The ILO Association, entrusted with the implementation role of this scheme, has executed training programmes with the assistance of the Employment Promotion Corporation. Since 1987, the Scheme has expanded its role to accommodate trainees from developed countries for the better understanding of Japanese society and its unique employment practices. However, the number is smaller than those from developing countries.

Trainees are mainly selected from workers in developing countries corresponding to the following criteria: (a) recognized as suitable for receiving training under this Scheme by the local cooperating organizations in the countries concerned (i.e. overseas vocational training centres, international technical cooperation agencies, etc.); (b) the employees of the local industries and who are recognized as suitable for receiving training under this Scheme by the cooperating agencies concerned. Trainees also have to fulfill qualifications such as being 18 and 35 years old, holding at least a junior high school degree, being expected to be a leading technician at the workshop level upon return, understanding simple Japanese or English and being in good health.

As a rule, the term of training is nine months, including a three-month orientation course. However, it may be shortened or lengthened in due consideration of the individual trainee's educational background and vocational experiences. The training consists of (i) the orientation course involving Japanese language course, the introduction to Japan and certain basic theoretical subjects, and (ii) In-plant Training which gives OJT to the trainees. The orientation course is undertaken by Employment Promotion Corporation at the training centre with accommodation facility. During this orientation course, life advisors from the Association also stay at the training centre to take care of trainees for 24 hours a day. The in-plant training is normally
implemented at the cooperating enterprises of the Association. Most of them are large-scale enterprises in the manufacturing sector such as electronics and automobile industries. The In-plant Training undertaken at their facilities places emphasis upon learning the production control technology and quality control system, rather than the operation at the actual production line.

3.3. Living conditions of participants
The board and lodging are provided by the Association during the orientation course and by the cooperating enterprises during the In-plant Training. The basic expenses such as travel expenses, outfit allowance, monthly allowance, training expense, and medical insurance are borne by the ILO Association. The total monthly allowance per person is 240,230 yen (US$2,400), out of which 63,000 (US$630) is paid in cash to trainees and the remaining amount is accounted for by accommodation and board of the trainees payable in kind.
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