
Concerning Revisions in the Foreign Trainee and Technical Intern System*

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

I. Introduction

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

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

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

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

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

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

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

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

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

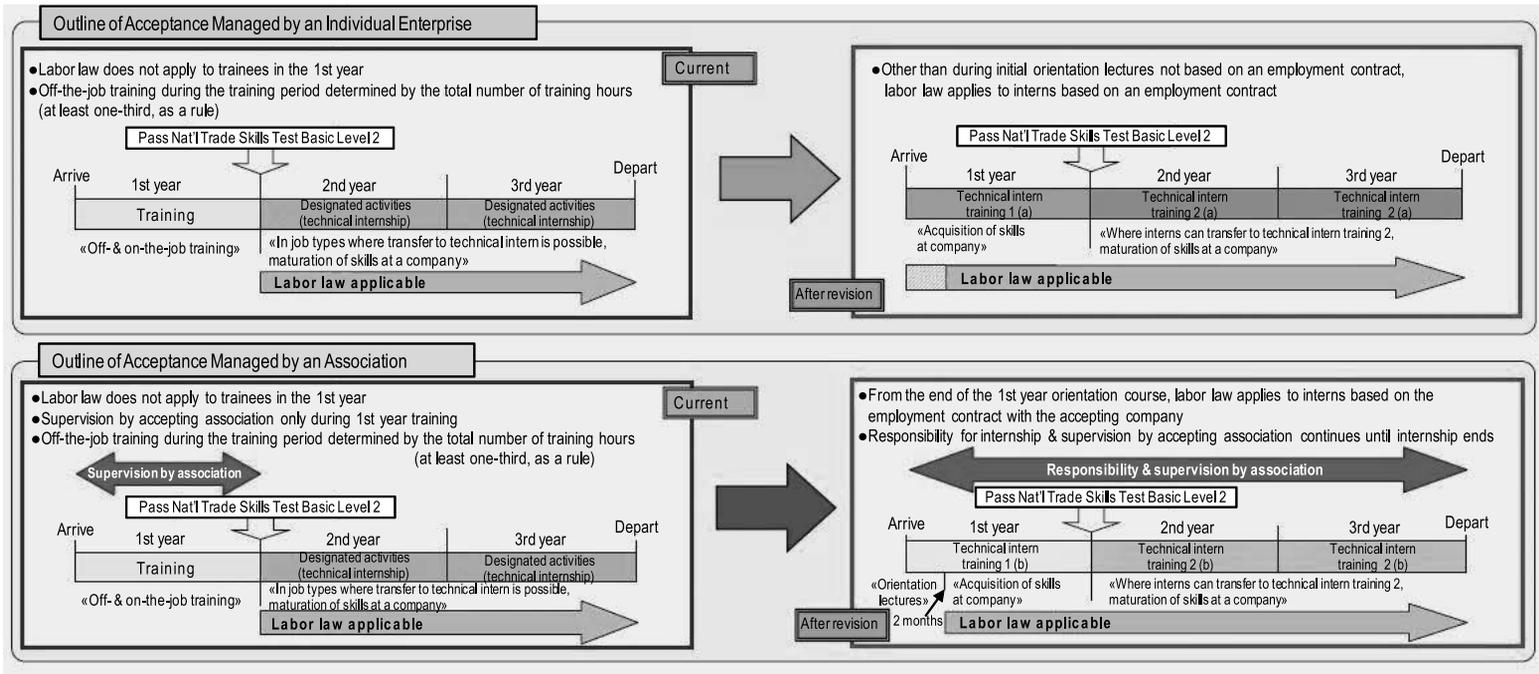
1. Outline of the Foreign Trainee and Technical Intern System

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

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

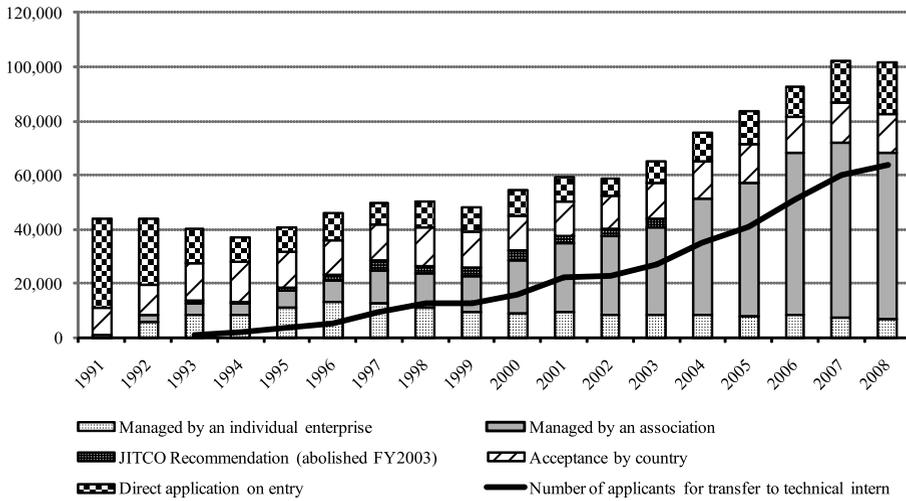
Figure 2 shows changes in the number of foreign trainees entering the country by acceptance route and changes in the number of those requesting transfer to technical intern status. From this diagram, we can see that the number of foreign trainees and technical interns is on the increase. As of 2008,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

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



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

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



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

Note: The JITCO Recommendation System was abolished in FY2003.

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

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

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

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

2. Problems Concerning the Foreign Trainee and Technical Intern System

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ciation, in order to weed out rogue accepting associations.

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

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

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

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

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

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

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

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

2. Evaluation of Various Reports

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

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

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

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

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

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

Table 2.(Continued)

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

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

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

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

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

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

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

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

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

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

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

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

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

3. Training Course Duration

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

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

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

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

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

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

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

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

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

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

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

6. Other

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

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

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

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

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

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

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

VI. Conclusion

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

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

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

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

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

Table 3. (Continued)

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

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

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