

Chapter 3

MOVEMENT OF NATURAL PERSONS

Overview of the Rules

1. *Background to the Rules (See Part II, Chapter 12 “Trade in Services” for Mode Four movement of natural persons under GATS)*

Chapters on the “movement of natural persons” in EPAs/FTAs address the issue of how, within the scope of trade in services, a contracting party country can satisfy the demands of another contracting party with respect to GATS (as well as other items). A chapter in the EU-Swiss FTA addresses another issue -- immigration policy outside the scope of trade in services.

Mode Four of GATS covers a wide range of persons, from high-level engineers to unskilled workers, in its commitment to liberalization. However, many Member countries, including Japan, have only made “horizontal commitments” to date, and their Schedules of Commitments generally indicate, with regard to market access regarding specific service sectors, “unbound except for measures concerning the categories of natural persons referred to in the market access column.” In other words, such commitments made by Members under GATS are generally extremely restricted in nature. This is also the case with Japan, which has made horizontal commitments only in three areas: intra-corporate transferees, professional services and temporary stays (see Chapter 2).

The extent to which liberalization of trade in services provided for in an EPA/FTA will go beyond the market access commitments made on the movement of natural persons under GATS will generally become a point of negotiation. Each EPA/FTA can provide for a different level of commitment depending on the relationships of the contracting parties. For example, an EPA/FTA may go beyond the liberalization of GATS by including a broader range of professional services or lowering the required expertise level of covered workers. Reflecting the progress of the request-offer process in the Doha Round service negotiations, in some of the EPAs entered into by Japan, Japan made commitments in five areas (the three areas mentioned above plus contractual service suppliers and investors). Japan liberalized these areas as required by commitments made under the EPAs, but on an MFN basis rather than only in relation to the relevant EPA partners.

The immigration control system of Japan is operated according to the government policy of proactively accepting professionals and engineers, and accordingly, is vested with

the discretion to allow non-Japan nationals to enter and stay in excess of its liberalization commitment under GATS. Therefore, if Japan extends preferential treatment, including at the practice level, to certain countries on a bilateral basis, the issue at negotiation would be setting the scope and conditions for entry of acceptable professionals within the extent of the aforesaid discretion (e.g., nurses and care workers), in order to improve the level of commitment and/or to work out more favorable conditions for permitted entry and stay only with certain countries. On the other hand, it is important to set flexible conditions so as to establish long-term win-win relationships between Japan and counterpart countries, while taking into consideration the future impact of the continuous proactive acceptance of professionals (e.g., degradation of services due to decrease in the number of nurses).

The commitment made on the above-mentioned movement of natural persons is restricted to such persons as intra-corporate transferees and professional engineers. Unskilled workers are not covered by commitments due to labor market concerns of every country including Japan. It is extremely unlikely that an EPA/FTA would include a provision that would lead to a large number of unskilled workers coming into the country.

Figure III-3-1 Main types of horizontal commitment of GATS
(Excerpt from Part II, Chapter 12 “Trade in Services”)

Main Types of Horizontal Commitments	Consumer Country	Source Country	Examples
Intra-Corporate Transferees: ICT			CEO, Manager, Professional Engineer
Business Visitors: BV			Business negotiations (no activity receiving compensation at that time)
Independent Professionals: IP			Independent lawyer who enters foreign country through contract with foreign consumer
Contractual Service Suppliers			Computer engineer employed by corporation dispatched to Japan via contract between corporations
			Independent computer engineer who enters Japan via contract between corporation and individual

2. Overview of Legal Disciplines

The provisions of EPAs/FTAs concerning the movement of natural persons can be put into two categories. The first is a labor market integration model, like the EU, which

authorizes or expressly pursues intra-regional labor movement, independent of service trade liberalization rules. The second category, as represented by the Japan-Singapore EPA and the Japan-Philippines EPA, pursues deregulation of the movement of natural persons to the extent necessary for the liberalization of services (or liberalization of trade in goods or investment) provided for as a part of a particular liberalization clause. In general, the EPAs consist of the common provisions horizontally applicable to all sectors and individual commitments made for or by the counterparty country, specifically applied to certain sectors.

This section gives a summary of the provisions concerning the movement of natural persons included in the EPAs/FTAs entered into by Japan, and an overview of the level and scope of the commitments made by Japan under the EPAs/FTAs. The following section will review examples of FTA provisions of other countries, primarily those of developed countries. It will go on to explain the simplification of passport control, which is provided for in some EPAs/FTAs. This section will also discuss “mutual recognition of qualifications,” an issue which is closely related to the movement of natural persons. The arrangements on a bilateral basis were notified to the WTO as required pursuant to Article VII of GATS, and such arrangements are also included in multilateral and regional frameworks.

Figure III-3-2 Overview of the commitments made by Japan under the EPAs/FTAs and GATS with respect to the movement of natural persons

	Short-term Business Visitors	Intra-corporate Transferees	Investors	Natural Persons Who Engage in Professional Services	Natural Persons Who Engage in Business Activities on the Basis of a Personal Contract with Public or Private Organizations	Others
GATS (UR)	○	○	-	○ Lawyer, registered foreign lawyer, chartered patent attorney, maritime procedure commission agent, certified public accountant and certified public accountant	-	-
Singapore	○	○	○	○ Lawyer, registered foreign lawyer, chartered patent attorney, maritime procedure commission agent, certified public accountant and certified public accountant	○ “Engineer”	-
Mexico	○	○	○	-	○ “Engineer,” “Specialist in Humanities / International Services”	-
Malaysia	○	○	○	○ Lawyer, registered foreign lawyer, chartered patent attorney, maritime procedure commission agent, certified public accountant and certified public accountant	○ “Engineer,” “Specialist in Humanities / International Services”	-

Part III EPA/FTA and IIA

	Short-term Business Visitors	Intra-corporate Transferees	Investors	Natural Persons Who Engage in Professional Services	Natural Persons Who Engage in Business Activities on the Basis of a Personal Contract with Public or Private Organizations	Others
Philippines	○	○	○	○ Lawyer, registered foreign lawyer, chartered patent attorney, maritime procedure commission agent, certified public accountant and certified public accountant	○ “Engineer,” “Specialist in Humanities / International Services”	Nurses, care workers
Chile	○	○	○	-	○ “Engineer,” “Specialist in Humanities / International Services”	-
Thailand	○	○	○	○ Lawyer, registered foreign lawyer, chartered patent attorney, maritime procedure commission agent, certified public accountant and certified public accountant	○ “Engineer,” “Specialist in Humanities / International Services,” “Skilled Labor (Thai cook)”	Instructors
Brunei	○	○	-	○ Lawyer, registered foreign lawyer, chartered patent attorney, maritime procedure commission agent, certified public accountant and certified public accountant	○ “Engineer,” “Specialist in Humanities / International Services”	-
Indonesia	○	○	○	○(※2) Lawyer, registered foreign lawyer, chartered patent attorney, maritime procedure commission agent, certified public accountant, judicial scrivener, administrative scrivener, certified social insurance and labor consultant, certified tax accountant, land and house investigator	○ “Engineer,” “Specialist in Humanities / International Services”	Nurses, care workers
Viet Nam	○	○	-	○(※1) Lawyer, registered foreign lawyer, chartered patent attorney, maritime procedure commission agent, certified public accountant and certified public accountant	○ “Engineer,” “Specialist in Humanities / International Services”	Nurses, care workers (※3)
Switzerland	○	○	○	○(※1) Lawyer, registered foreign lawyer, chartered patent	○ “Engineer,” “Specialist in Humanities / International Services”	-

	Short-term Business Visitors	Intra-corporate Transferees	Investors	Natural Persons Who Engage in Professional Services	Natural Persons Who Engage in Business Activities on the Basis of a Personal Contract with Public or Private Organizations	Others
				attorney, maritime procedure commission agent, certified public accountant and certified public accountant		
India	○	○	○	○ Lawyer, registered foreign lawyer, judicial scrivener, administrative scrivener, certified social insurance and labor consultant, chartered patent attorney, maritime procedure commission agent, certified public accountant, certified tax accountant, land and house investigator	○ “Engineer,” “Specialist in Humanities / International Services,” “Skilled Labor (Indian cook)”	Instructors
Peru	○	○	○	Lawyer, registered foreign lawyer, chartered patent attorney, maritime procedure commission agent, certified public accountant and certified public accountant	○ “Engineer,” “Specialist in Humanities/ International Services,” “Skilled Labor (only Peruvian cook)”	-

* EPA/FTA has not yet been signed with Peru (as of February 2011), and hence it is not written in this list.

1. Japan-Singapore Economic Partnership Agreement

This EPA, which became effective in November 2002, was the first entered into by Japan that included a chapter on the “movement of natural persons”. As indicated in Figure III-3-3, in addition to “short-term business visitors” and “intra-corporate transferees,” the EPA provides GATS-plus commitments regarding “investors” (it is unbound under GATS) and “natural persons engaging in work on the basis of personal contract with public or private organization in territory of their home country”; under GATS Japan grants a stay up to only 1 to 3 years

Figure III-3-3 Commitments on movement of natural persons in Japan-Singapore EPA

Specific commitments of Japan	Specific commitments of Singapore
○ “Short-term business visitors” will be granted entry and stay of up to 90 days.	○ “Short-term business visitors” will be granted an initial stay of up to one month upon arrival. The stay may be extended up to a maximum of three months upon application.
○ “Intra-corporate transferees” will be granted entry and stay with no express limit	

Specific commitments of Japan	Specific commitments of Singapore
<p>of duration.</p> <p>○“Investors” and “natural persons engaging in work on basis of personal contract with public or private organization in territory of Japan” will be granted, pursuant to Japanese laws, entry and temporary stay with no express limitation of duration, as long as such persons continue to meet the criteria and conditions stipulated at time of entry.</p>	<p>○ “Intra-corporate transferees” will be granted entry with a limit of up to two years, which may be extended for periods of up to three additional years upon each renewal, for a total term not exceeding eight years. Further extensions may be possible with the decision of the Singapore government.</p> <p>○“Investors” and “natural persons engaging in work on basis of personal contract with public or private organization in territory of Singapore” will be granted entry and stay of up to two years pursuant to Singapore laws, which may be extended for periods of up to three additional years upon each renewal, for a total term not exceeding eight years. Further extensions may be possible with the decision of the Singapore government.</p>

In addition, in notes verbale, Japan made a commitment to accept doctors and dentists (maximum of seven doctors and two dentists) on the condition that they (i) take and pass Japanese national examinations for medical practitioners using the English language, and (ii) treat non-Japanese nationals only. Singapore also made a commitment to accept doctors and dentists (maximum of 15 doctors and 5 dentists initially, increased to 30 and 15, respectively, in 2005) on the condition that they treat Japanese patients only.

2. Japan-Mexico Economic Partnership Agreement

The Japan-Mexico EPA, which became effective in April 2005, includes a chapter on “Entry and Temporary Stay of Nationals for Business Purposes” (Chapter 10). This EPA grants entry and temporary stay to short-term business visitors, intra-corporate transferees, investors, and natural persons who engage in work on basis of a personal contract with a public or private organization, and provides for simplified requirements for documentation at entry, duration of stay in contracting party country, and maximum number of extensions.

3. Japan-Malaysia Economic Partnership Agreement

The Japan-Malaysia EPA, which became effective in July 2006, does not include a chapter on the movement of natural persons, but does include commitments related to entry and temporary stays by short-term business visitors, intra-corporate transferees, natural persons engaged in professional services; and natural persons engaged in work based on personal contracts with public or private organizations. This can be found in annex 6 to the chapter on Service Trade (Chapter 8). Also, Malaysia has committed to measures on entry and temporary stays for short-term business visitors, intra-corporate transferees, and professionals. It also includes a provision for facilitation of movement of investors (Article 86 in Chapter 7 concerning Investment). It provides that: i) subject to immigration laws and regulations relating to entry, stay and authorization to work, each country shall grant entry, temporary stay and authorization to work to investors and executives, managers and members

of the board of directors of an enterprise of the other country; ii) each country shall, to the extent possible, make publicly available the requirements and procedures for application for renewal of the period of temporary stay, change of status of temporary stay and issuance of a work permit to a natural person of the other country who has been granted entry and temporary stay with respect to an investment; and iii) each country shall endeavor to facilitate the procedures for issuance of temporary stay or work permits, to the extent possible, in accordance with its laws and regulations. Immigration laws and regulations are exempted from Chapter 7 concerning investment (Article 73).

4. Japan-Philippines Economic Partnership Agreement

The Japan-Philippines EPA, which became effective in December 2008, includes a chapter on “Movement of Natural Persons,” which grants temporary entry and stays to short-term business visitors, intra-corporate transferees, investors, natural persons engaged in professional services, and natural persons engaged in rendering services based on personal contracts with public or private organizations. In addition to this, it also approves the acceptance of nurse and care worker candidates. This EPA includes provisions to grant entry into Japan to nurses and care workers. (Similarly, it also includes provisions to grant entry to Japanese nurses and care workers in Philippines.) It is the first EPA entered into by Japan that allows foreign workers in new occupations to qualify for resident status. The grant of entry to nurses and care workers is not implemented by lowering entry permission standards, but rather by including nurses and care workers in the category of professionals and engineers eligible for entry. Thus, this does not represent any policy change of the Japanese government concerning foreign workers’ entry, nor does the EPA extend mutual recognition in order to enable foreign workers to obtain qualifications required under Japanese law.

The details of the framework for entry are shown in Figure III-3-4 below. Entry is permitted for Philippines nurse and care worker candidates who fulfill certain criteria and conditions (such as completion of Japanese language training). Permission to work will be granted as a part of preparation to obtain qualifications required under Japanese law (maximum length of stay is three years for nurses and four years for care workers). Those who pass the Japanese national exams will be permitted to continue working as nurses and care workers. After Japanese language training, they have an option to enroll in Japanese care facilities nationwide (facility training course for care workers). Graduates from such facilities will be granted qualifications as care workers. Those with a certain level of Japanese language skills will be exempted from the training.

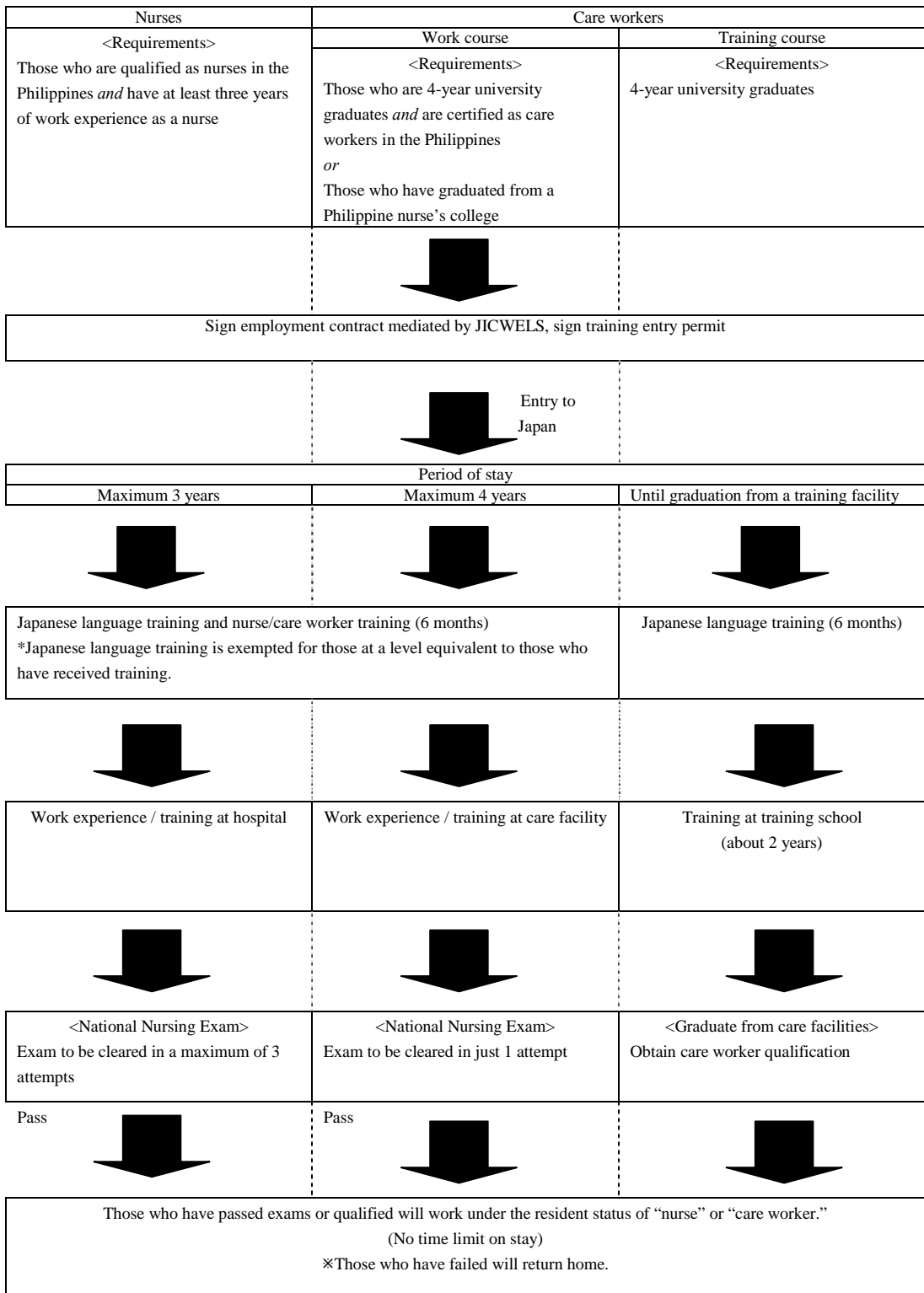
Japan notified the Philippines that the number of persons to be granted entry was 1000 (400 nurses and 600 care workers) for the first two years, and the Philippines gave its consent. This EPA goes beyond what is permitted by the Japanese immigration control system by: (i) permitting nurses and care workers to work as such (only those who acquire Japanese qualifications); and (ii) permitting such candidates to work in their field for a limited time as a preparation period for acquiring Japanese qualifications. It should be noted that foreign nurses who acquired Japanese qualifications were permitted a maximum seven-year stay as a training period before this EPA, but were not officially permitted to work. In November 2010, the 7-year limitation on the period of stay was lifted after partial revision of “Ministerial Ordinance to Provide for Criteria Pursuant to Article 7, paragraph (i), item (ii) of the Immigration Control and Refugee Recognition Act” (Criteria Ministerial Ordinance). Under this EPA, a total of 310 nurse and care worker candidates entered into Japan in the fiscal year of 2009, and a total of 128 in FY 2010, 131 in FY 2011, 101 in FY 2012, and 150

in FY 2013. They are taking training courses on the Japanese language, nursing, and care working.

Furthermore, due to the low national exam pass rates of Filipino nurse candidates for various reasons such as lack of Japanese linguistic ability, the Japanese government officially commenced from fiscal year 2010 additional study assistance for nurse and care worker candidates. It is administered by the receiving facilities after the candidates commence their employment. This surpasses the obligations stipulated in the Japan-Philippines EPA (six months of training including Japanese language training). Moreover, based on the Economic Partnership Agreement (EPA), the Cabinet approved in March 2011 extending the length of stay for Indonesian and Filipino nurse and care worker candidates. The Cabinet decided to allow Filipino nurse and care worker candidates who entered Japan during fiscal year 2011, prior to the commencement of this official assistance and failed their national exam during their stay, an additional one-year extension to their stay, provided that they fulfill certain conditions. In June 2011, the Group for Movement of Natural Persons (set up under the Minister of National Policy) put together the Basic Guidelines for Accepting Nurse and Care Worker Candidates Based on the Economic Partnership Agreement (EPA), and decided upon policies such as acceleration of initiatives for the improvement of Japanese linguistic abilities and implementation of the re-challenge support program in order to improve the framework for the acceptance of nurse and care worker candidates under the EPA.

As part of the program, the National Ministry of Health, Labor and Welfare issued “the report on the national examination considering the candidate of the care workers under the Economic Partnership Agreement (EPA)” in June 2012. The report included recommendations such as improving the examination with less difficult Japanese, attaching Japanese kana (phonetic symbols), alongside the Chinese characters and extending the time for the examination. In August 2012, as a special measure for the candidates to be foreign nurses, they decided to attach Japanese kana to all the Chinese characters and to extend the time for the examination to 1.3 times longer than the Japanese national license examination scheduled in fiscal 2013; they informed the appropriate authorities of these changes.

Figure III-3-4 Framework for acceptance of nurses and care workers in the Japan-Philippines EPA



5. Japan-Chile Economic Partnership Agreement

The Japan-Chile EPA, which became effective in September 2007, includes a chapter on entry and temporary stays for commercial purposes (Chapter 10). This EPA grants entry and temporary stays to short-term business visitors, intra-corporate transferees, investors, and natural persons engaged in work based on personal contracts with public or private organizations, and provides for simplified documentation requirements for entry and for the duration of one's stay in the countries of the contracting parties.

6. Japan-Thailand Economic Partnership Agreement

The Japan-Thailand EPA became effective in November 2007 and includes a chapter on the movement of natural persons and the granting of entry and temporary stays to instructors as well as to short-term business visitors, intra-corporate transferees, investors, natural persons engaged in professional services, and natural persons engaged in work based on personal contracts with public or private organizations.

Instructors of “classical and traditional Thai dance,” “Thai music,” “Thai-style boxing,” “Thai language” and “Thai spa services” are granted entry and temporary stays under the “instructor” status of residence. However, these are included in the conventional qualification of residence, so they do not mean further liberalization. However, “Thai cooks” are granted entry and temporary stay in Japan as natural persons engaged in work on the basis of personal contracts with public or private organizations, by fulfilling certain requirements, including experience of more than five years in an actual business setting, under the “skilled labor” status of residence as “Thai cook.” The requirement of “work experience for at least five years” is lenient in comparison with the requirements for other general-purpose cooks, who are required to obtain the “skilled labor” status of residence, which necessitates experience of more than ten years in actual business settings. Moreover, Thailand committed to granting entry and temporary stay in Thailand to short-term business visitors, intra-corporate transferees, investors, and natural persons engaged in professional services, as well as to instructors and persons engaged in professional business activities on the basis of personal contracts with public or private organizations.

7. Japan-Brunei Economic Partnership Agreement

In a manner similar to the Japan-Malaysia EPA, which became effective in July 2008, the Japan-Brunei EPA includes commitments to measures related to entry and temporary stays by short-term business visitors, intra-corporate transferees, natural persons engaged in professional services, and natural persons engaged in work based on personal contracts with public or private organizations, in the annex to the chapter on Service Trade (Chapter 6). Whereas, Brunei has committed to granting entry and temporary stays in Brunei to intra-corporate transferees.

8. Japan-Indonesia Economic Partnership Agreement

The Japan-Indonesia EPA, which became effective in July 2008, includes a chapter on the movement of natural persons, granting entry and temporary stays to instructors, in addition to short-term business visitors, intra-corporate transferees, investors, natural persons

engaged in professional services, and natural persons engaged in work based on personal contracts with public or private organizations. “Judicial scriveners,” “administrative scriveners,” “certified social insurance and labor consultants” and “land and house surveyor” are included among natural persons engaged in professional services, in addition to activities committed under GATS. The EPA also approves the acceptance of nurses and care workers, with a content and acceptance framework nearly identical to the commitment under the Japan-Philippines EPA, with the exception that it does not include a facility training course for care workers. Under the EPA, a total of 1048 Indonesian nurse and care worker candidates have entered Japan (208 candidates in fiscal year 2008, 362 in 2009, 116 in 2010, 105 in 2011, 101 in 2012, and 156 in 2013), and are currently taking training courses on the Japanese language, nursing, and care working. Furthermore, due to the low national exam pass rates of Indonesian nurse candidates for various reasons such as a lack of Japanese linguistic ability, the Japanese government officially commenced from fiscal year 2010 additional study assistance for nurse and care worker candidates. It is administered by the receiving facilities after the candidates commence their employment. This surpasses the obligations stipulated in the Japan-Indonesia EPA (six months of training including Japanese language training). Moreover, based on the Economic Partnership Agreement (EPA), the Cabinet approved in March 2011 extending the length of stay for Indonesian and Filipino nurse and care worker candidates. The Cabinet decided to allow Indonesian nurse and care worker candidates who entered Japan during fiscal years 2008 and 2009 prior to the commencement of this official assistance and failed their national exam during their stay, an additional one-year extension to their stay, provided that the candidates have an employment contract with a receiving organization during the additional length of stay and that their national exam’s score is above a certain level. In June 2011, the Group for Movement of Natural Persons (set up under the Minister of National Policy) put together the Basic Guidelines for Accepting Nurse and Care Worker Candidates Based on the Economic Partnership Agreement (EPA), and decided upon policies such as acceleration of initiatives for the improvement of Japanese linguistic abilities and implementation of the re-challenge support program in order to improve the framework for the acceptance of nurse and care worker candidates under the EPA.

As part of the program, the National Ministry of Health, Labor and Welfare issued “the report on the national examination considering the candidate of the care workers under the Economic Partnership Agreement (EPA)” in June 2012. The report included recommendations such as improving the examination with less difficult Japanese, attaching Japanese kana (phonetic symbols), alongside the Chinese characters and extending the time for the examination. In August 2012, as a special measure for the candidates to be a foreign nurse, they decided to attach Japanese kana to all the Chinese characters and to extend the time for the examination to 1.3 times longer than the Japanese national license examination scheduled in fiscal 2013; they informed the appropriate authorities of these changes.

Indonesia committed to granting entry and temporary stays in Indonesia to short-term business visitors, intra-corporate transferees, investors, as well as natural persons engaged in professional services based on personal contracts with public or private organizations, in addition to nurses and care workers from Japan.

9. Japan-Viet Nam Economic Partnership Agreement

The Japan-Viet Nam EPA, which became effective in October 2009, also includes a chapter on “Movement of Natural Persons” (Chapter 8) as well as Annex 7, which is related to the chapter. The Japan-Viet Nam EPA grants entry and a temporary stay to short-term business visitors, intra-corporate transferees, natural persons who engage in professional

services and natural persons who engage in work on the basis of a personal contract with public or private organizations. Vietnamese who have been qualified as nurses under the laws and regulations of Japan are granted entry and a temporary stay under the resident status of “nurse” for practicing purposes, and such a temporary stay may be extended up to seven years from the date of obtaining a Japanese license. A natural person who has passed the national examination on information processing technology of Viet Nam is granted entry and a temporary stay under the status of residence of “Engineer,” but it is not necessary to complete college education or equivalent higher education. These commitments are made in accordance with the existing practices of the immigration control system of Japan, and do not amend the application of the relevant Japanese laws and regulations. As mentioned above, the limitation on the period of stay has been abolished as a result of partial revision of the Standard Ministerial Ordinance (see 4. Japan-Philippines Economic Partnership Agreement). Also, Viet Nam has committed to granting entry and temporary stay in Viet Nam to short-term business visitors, intra-corporate transferees, natural persons who engage in work on the basis of a personal contract with public or private organizations, persons responsible for setting up business locations, and nurses.

In addition, on October 31, 2011, during the Japan-Viet Nam summit, Prime Minister Noda and Prime Minister Dung signed a memorandum related to the entry of Vietnamese nurse and care worker candidates into Japan (it entered into force in June 17, 2012). Unlike the prior cases of the acceptance from Indonesia and the Philippines, level N3 of the Japanese Language Aptitude Test (the ability to understand Japanese used in everyday situations to a certain degree) is required to be a candidate. In November 2012, for the Vietnamese nurse and care worker candidates accepted by Japan under the EPA, Pre-arrival Japanese-language training (twelve months) has started in Viet Nam.

10. Japan-Switzerland Economic Partnership Agreement

In the Japan-Switzerland EPA, which became effective in September 2009, as well, there is the chapter on “Movement of Natural Persons” (Chapter 7) and the related Annex 8, under which entry and a temporary stay are granted to short-term business visitors, intra-corporate transferees, investors, natural persons who engage in professional services, and natural persons who engage in supply of services on the basis of a personal contract with public or private organizations. A commitment was made by Switzerland, upon the request of Japan, that the numerical ceiling of issued resident permits will not be applicable to the entry or temporary stay of natural persons of Japan who engage in businesses specified in the EPA. Japan also requested the abolition of the nationality requirements on directors of Japanese subsidiaries in Switzerland. As this request was virtually fulfilled by the amendment of relevant Swiss laws and regulations, specific commitments concerning this issue are not provided in the chapter on “Movement of Natural Persons” of the EPA.

11. Japan-India Economic Partnership Agreement

The Japan-India EPA, which became effective in August 2011, also includes a chapter on “Movement of Natural Persons” (Chapter 7) and the related Annex 7, under which Japan grants entry and temporary stay to Indian cooks and instructors, in addition to short-term business visitors, intra-corporate transferees, investors, qualification holding natural persons engaged in independent professional services, and natural persons who engage in supply of services on the basis of a personal contract with public or private organizations. “Indian cooks” are granted entry and temporary stay in Japan as natural persons engaged in

independent professional services under the “skilled labor” status of residence. In response to a request from India, this was the first time that Japan committed to granting entry and temporary stay to “persons engaged in supply of services under a contract”. Until now, in the EPAs signed by Japan, individual contracts had to be formed between a public or private organization in Japan and a natural person. In contrast to this, there was a new commitment under which even if a contract is formed between public or private organizations of Japan and India, if in that contract it is recognized that a labor contract has been formed between the public or private organization in Japan and the natural person from India, then entry and temporary stay is granted. Entry and temporary stay are also granted under contracts between enterprises based on the Immigration Control and Refugee Recognition Act; its application is unchanged. Entry and temporary stay are also granted to instructors of “yoga,” “Indian cooking,” “Classical and traditional Indian dance” and “English,” under the “Education” status of residence. Moreover, India has committed to granting entry and temporary stay in India to business visitors (including investors), intra-company transferees, persons engaged in supply of services under a contract, and persons engaged in independent professional services.

12. Japan-Peru Economic Partnership Agreement

The Japan-Peru EPA, which became effective in March 2012, also includes a chapter on the “Entry and Temporary Stay of Nationals for Business Purposes” (Chapter 9), as well as annex 8 committing to measures on entry and temporary stay of short-term business visitors, intra-corporate transferees, and professionals. Peru promptly agreed on visa issuance, which was an issue of concern for Japanese companies. It was the first time that Peru committed to make a decision within twenty working days (it had committed to do so within 45 days in EPAs with other countries). Japan, on the other hand, committed to relaxing entry conditions for Peruvian cooks (reducing the minimum of ten years in an actual business setting to five years), provided that Peru establishes a national sanctioned exam on Peruvian cooking.

3. *Examples of measures taken on movement of natural persons in other FTAs*

1. U.S.-Singapore Free Trade Agreement

The U.S.-Singapore FTA was signed in May 2003 and became effective in January of the following year. It consists of 21 chapters, including “Chapter 8: Cross-border trade in services,” “Chapter 11: Temporary entry of business persons” and “Chapter 17: Labor,” all of which provide for “movement of natural persons.”

The commitments made by the U.S. in this FTA do not significantly differ from commitments of the U.S. under GATS with respect to movement of natural persons. Movement of natural persons who are seeking jobs in contracting party countries is not liberalized. The FTA states that: (i) each party shall grant entry for up to 90 days to a business person seeking to engage in a business activity, without requiring that person to obtain an employment authorization, but in order to ensure that such entry is not entry into the labor market of the recipient party, the business person is required to present documentation demonstrating that the primary source of remuneration for the proposed business activity is outside the territory of the party granting temporary entry (Annex 11A); and (ii) the U.S. shall

permit up to 5,400 applications annually for Singapore business persons to provide professional services (Annex 11A.3).

The FTA also provides that: (i) the parties shall examine whether to develop mutually acceptable standards and criteria for licensing and certification for professional service providers and to provide recommendations on mutual recognition (Annex 8C); (ii) each party shall strive to ensure that its laws provide for labor standards consistent with internationally recognized labor rights; and (iii) each party shall exercise its discretion when executing labor laws (Chapter 17).

2. EU-Algeria Free Trade Agreement

In June 1996, the EU and Algeria began negotiation of the “Euro-Mediterranean Association Agreement between the European Community and its Member States, of the one part, and the People's Democratic Republic of Algeria, of the other part”. They concluded the agreement in April 2002. The association agreement broadly covers not only the areas of an ordinary trade agreement but also such broad areas as politics, national security dialogues, economic cooperation, social and cultural cooperation, and legal cooperation. The provisions concerning movement of natural persons are included in Chapters 33, 83 and 84.

The EU gave permission for entry of intra-corporate transferees under GATS. It is limited to the scope of the related GATS commitment. The EPA goes beyond the commitments under GATS in regard to cooperation in preventing and controlling illegal immigration and re-admission (Article 84), which represents the EU's view that prevention of illegal entry from non-EU areas, resulting in an illegal stay, is an important issue.

EU-Algeria cooperation in prevention and control of illegal immigration (excerpt)

Article 84 Prevention and control of illegal immigration; re-admission

The Parties reaffirm the importance which they attach to the development of mutually beneficial cooperation in relation to the exchange of information on illegal immigration flows and agree to cooperate in order to prevent and control illegal immigration. To this end:

— Algeria, on the one hand, and each Member State of the Community, on the other hand agree to readmit any of their nationals illegally present on the territory of the other Party after the necessary identification formalities have been completed;

— Algeria and the Member States of the Community shall provide their nationals with the appropriate identity documents for this purpose.

(Paragraph 1)

Desirous of facilitating the movement and residence of their nationals whose status is regular, the Parties agree to negotiate, at the request of either Party, the conclusion of agreements on combating illegal immigration and on readmission. If either Party considers it necessary, such agreements shall cover the readmission of nationals of other countries arriving in their territory direct from the territory of the other. The practical arrangements for the implementation of the above mentioned agreements shall be laid down, where appropriate, by the Parties in the agreements themselves or in their implementing protocols. (Paragraph 2)

The Association Council shall examine the possibility of other forms of joint action for the prevention and control of illegal immigration, including ways of detecting forged documents. (Paragraph 3)

3. EU-Switzerland Free Trade Agreement

Switzerland concluded a free trade agreement with the EU (at that time, the “EC”) in December 1972. In order to limit the disadvantages of being a non-member of the EU or the EEA (European Economic Area), Switzerland concluded bilateral agreements with the EU on the movement of natural persons, air transportation, land transportation, agriculture goods, government procurement, science and technology cooperation and mutual recognition. (These bilateral agreements were signed in June 1999 and entered into force on June 1, 2002).

The Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the Free Movement of Persons is a voluminous agreement consisting of 25 articles, “Annex 1: Free Movement of Persons,” “Annex II: Co-ordination of Social Security Schemes” and the “Protocol” thereto, and “Annex III: Mutual Recognition of Professional Qualifications.”

The agreement provides that: i) nationals of a contracting party shall have the right to visit another contracting party and to reside there for a reasonable amount of time in order to seek employment in the territory of the other contracting party (Paragraphs 1 and 2 of Article 2 of Annex I); ii) an employed person and self-employed person who is a national of a contracting party shall receive a residence permit in the counterparty country, and no residence permit will be required for short-term employed persons and self-employed frontier workers (Articles 6, 12 and 13 of Annex I); and iii) contracting parties shall adopt measures necessary for the mutual recognition of diplomas, certificates and other qualifications in order to make it easier for nationals of contracting parties to gain access to and pursue activities as employed and self-employed persons and to provide services (Article 9).

Switzerland, however, imposed a quota for a period of five years from entry into force of the agreement on the number of persons whose stays as residents are for a period of four months to less than one year, and those whose stays are more than one year. The quota was lifted in the sixth year (Paragraph 3 of Article 10). The number of permissions to be granted was 115,500 for persons staying for a period of four months to less than one year and 15,000 for persons staying for more than one year. (They could be increased slightly depending on circumstances).

Switzerland uses the following two categories in fulfilling its commitments under GATS. The first category of “important persons who enter Switzerland with a specific office or company (intra-corporate transferees)” will be granted a three-year stay (extension possible for a maximum of four years). The second category of “other important persons who enter Switzerland (service suppliers and persons in charge of commercial center establishment)” will be granted one three-month stay per year. In addition, it is specifically provided that these two categories of persons shall be guaranteed national treatment except in certain cases.

The substance of the agreement goes far beyond the commitment made under GATS and embarks on the liberalization of “movement of natural persons” to the maximum extent possible with the EU. However, Article 10 can be viewed as trying to avoid social and

economic disruption caused by rapid liberalization of movement of natural persons, as it granted Switzerland the right to impose quotas during the transition period after entry into force of the agreement.

Provisions of the EU-Switzerland FTA whose scope exceeds the commitments made under GATS (excerpt)

Article 6 Right of residence for persons not pursuing an economic activity

The right of residence in the territory of a Contracting Party shall be guaranteed to persons not pursuing an economic activity in accordance with the provisions of Annex I relating to non-active people.

Article 7 Other rights

The Contracting Party shall make provision, in accordance with Annex I, for the following rights in relation to the free movement of persons:

- (a) the right to equal treatment with nationals in respect of access to, and the pursuit of, an economic activity, and living, employment and working conditions;
- (b) the right to occupational and geographical mobility which enables nationals of the Contracting Parties to move freely within the territory of the host state and to pursue the occupation of their choice;
- (c) the right to stay in the territory of a Contracting Party after the end of an economic activity;
- (d) the right of residence for members of the family, irrespective of their nationality;
- (e) the right of family members to pursue an economic activity, irrespective of their nationality;
- (f) the right to acquire immovable property in so far as this is linked to the exercise of rights conferred by this Agreement;
- (g) during the transitional period, the right, after the end of an economic activity or period of residence in the territory of a Contracting Party, to return there for the purpose of pursuing an economic activity and the right to have temporary residence permit converted into a permanent one.

Article 8 Coordination of social security systems

The Contracting Parties shall make provision, in accordance with Annex II, for the coordination of social security systems with the aim in particular of:

- (a) securing equality of treatment;
- (b) determining the legislation applicable;
- (c) aggregation, for the purpose of acquiring and retaining the right to benefits, and of calculating such benefits, all periods taken into consideration by the national legislation of the countries concerned;
- (d) paying benefits to persons residing in the territory of the Contracting Party;
- (e) fostering mutual administrative assistance and cooperation between authorities and institutions.

4. Thailand-Australia Free Trade Agreement

The Thailand-Australia Free Trade Agreement was signed in July 2004 and entered into force in January of the following year. It provides general rules on the movement of natural persons in “Chapter 8: Trade in Services” and gives details in “Chapter 10: Movement of Natural Persons.”

Australia’s GATS commitment for the “movement of natural persons” sets out four categories of entry and temporary stay: (a) intra-corporate transfer of executives and senior managers (initial stay of four years); (b) independent business persons (initial stay of two years); (c) business visits of service suppliers (initial stay of six months, which can be extended to a maximum of 12 months); and (d) professionals (initial stay of two years which can be expanded to a maximum of four years upon passing labor market tests; an exemption from market testing is possible under certain conditions).

Australia made additional commitments in the agreement by granting temporary entry to Thai professional chefs and agreeing to hold consultations on acceptance of qualified Thai massage therapists.

Thailand-Australia Free trade Agreement: Annex 8 “Schedule of Commitments, Australia” (excerpt)

I. Horizontal Commitments

Sector	Limitations (market access and national treatment)
All Thai Nationals	<p data-bbox="281 994 487 1023">Temporary entry</p> <p data-bbox="281 1052 1275 1120">The nationals will be permitted to enter Australia and work without labor market testing under the following conditions:</p> <ul data-bbox="281 1130 1275 1400" style="list-style-type: none"> - business visitors will be permitted to enter and stay for up to three months; - service sellers will be permitted to enter and to stay initially for six months, with a maximum stay of 12 months; - intra-corporate transferees will be permitted to enter and stay initially for up to four years with a total period of up to 10 years; - contractual service suppliers will be permitted to enter and stay for up to three years. Specialist Thai chefs* entering as contractual service suppliers will be permitted to enter and stay for up to four years; <p data-bbox="281 1400 1275 1468">(*A specialist Thai chef means a person who gains National Technical Standard qualification for [omitted])</p> <ul data-bbox="281 1468 1275 1642" style="list-style-type: none"> - executives and managers of a business with its head of operations in Thailand seeking to establish a subsidiary in Australia will be permitted to enter and stay initially for up to four years; - spouses and dependents of intra-corporate transferees will be permitted to enter, stay and work for the period of the intra-corporate transferee’s visa. <p data-bbox="281 1671 1275 1777">To obtain entry into Australia under any of these categories, Thai nationals will have to fulfill the documentary and other requirements as notified by the Parties from time to time.</p> <p data-bbox="363 1806 1262 1835">Temporary entry of Thai nationals into Australia is otherwise unrestricted.</p>

Sector	Limitations (market access and national treatment)
	Australia will support discussions between Thai professions and relevant Australian professional bodies with a view to establishing a standard for recognition of Thai qualifications for traditional Thai massage therapists. The results of these discussions could be incorporated in the next round of negotiations on services and investment, scheduled to take place within three years after entry into force of the Agreement.

5. India-Singapore Free Trade Agreement

The Comprehensive Economic Cooperation Agreement (CECA) between India and Singapore was signed on June 29, 2005. It includes Chapter 9 on the “movement of natural persons.”

The CECA has provisions on temporary short-term entry of business visitors and short-term service suppliers (Article 9.4) and on long-term temporary stay of intra-corporate transferees and professionals (Article 9.5). Such provisions do not greatly exceed the commitments made by India under GATS, but do provide more favorable conditions concerning employment of spouses and dependents for the period of stay of intra-corporate transferees than the five-year maximum under GATS.

Furthermore, the agreement includes a commitment to issue residence permits to 127 occupations, including system engineers, electricians, auto mechanics, scientists, doctors and accountants. As these occupations require an advanced educational background (more than college degrees) the agreement can be viewed as aiming to promote the movement of highly skilled professionals. Specifically, the agreement provides that the parties shall ensure that mutual recognition is granted in the service sectors subject to the licensing requirements of accounting and auditing, architecture, medicine, dentistry and nursing within 12 months from the date of entry into force of the agreement, thus affecting immigration control policies.

4. *Other examples of facilitation of immigration control systems (APEC)*

APEC Business Travel Card

At the APEC summit held in Manila in November 1996, agreement was reached between the President of the Philippines, the President of Korea and the Prime Minister of Australia on the experimental introduction of the APEC Business Travel Card (ABTC) proposed by the APEC Business Advisory Committee (ABAC) in order to promote and facilitate the intra-regional movement of business persons.

ABTC was put into experimental use in May 1997 in the Philippines, Korea and Australia. The number of Member countries and regions adopting the use of ABTC has grown to 19. They are Australia, Brunei, Chile, China, Hong Kong, Indonesia, Japan, Korea, Malaysia, Mexico, New Zealand, Papua New Guinea, Peru, Philippines, Singapore, Chinese Taipei, Thailand, Viet Nam, and Russia. In addition, Canada and the United States are provisionally participating (preparing for official participation). Japan initiated the use of ABTC's on April 1, 2003, reflecting strong demand from the Japanese business sector; Japan

announced its participation at the APEC summit held in Mexico in October 2002. The number of ABTCs issued is increasing every year: 752 in 2009, 1,140 in 2010, 2,138 in 2011, and 2,195 in 2012 (years are fiscal years)..

ABTC's will be issued to applicants upon the permission of respective governmental or local bodies (in Japan, the Ministry of Foreign Affairs) after preliminary review and approval of such applicants by the other Member country or region adopting ABTC. The basic requirements to be fulfilled are as follows:

- (a) The record must indicate that applicant has not committed any crime.
- (b) Applicant must have a valid passport.
- (c) Applicant is a genuine business person with a need to make frequent short-term visits for commercial purposes within the region of APEC.

Utmost efforts are to be made to complete the preliminary review within two weeks from submission of the request of applicants. However, as it may take several months to put together all responses from participating Member economies and regions, there is a website to check the status of such preliminary review.

When an ABTC holder enters or stays in an ABTC participating Member country listed on the back of the card for short-term commercial purposes, he/she is only required to submit a passport and the ABTC (*i.e.*, no visa is required) at passport control. Once his/her entry is permitted, a stay of approximately two to three months will be granted in accordance with the laws and regulations of respective participating Member countries. An ABTC will be valid for three years after issuance (if a passport is valid for less than three years, the validity period of the passport will prevail). An ABTC holder is eligible for the lanes for ABTC holders only (in Japan, found in Narita International Airport, Kansai International Airport, and Chubu International Airport) and for expedited check at passport control.

5 Other examples of mutual recognition of qualifications

(i) The Washington Accord

The Washington Accord between Australia, Canada, Ireland, New Zealand, England and the United States was concluded in November 1989. It provides for the mutual recognition that bodies responsible for registering or licensing professional engineers in the Member countries are equivalent in substance in respect of their qualification standards and examination procedures. Since then, the following countries have joined the Accord: Hong Kong (1995), South Africa (1999), Japan (2005), Singapore (2006), Korea (2007), Chinese Taipei (2007) and Malaysia (2009). As of January 2010, Germany, India, Russia, Sri Lanka and some other countries are preparing to join the Accord. This Accord has been notified to the WTO under GATS.

The Washington Accord is an international agreement concerning the substantial equivalence of qualifications, which is the precondition for one country granting the same licenses or registration benefits to persons who completed the engineering education programs in another country. This represents an attempt to secure the equivalence of qualifications and admissions, and thus does not automatically lead to the grant of a residence permit.

(ii) APEC Engineer

This method of mutual recognition of engineer qualifications was created in response to the resolution made in the APEC Summit held in Osaka in November 1995, to the effect that “in order to promote regional development in APEC, technology transfer is necessary, and to such end cross border movement of engineers is indispensable.” On November 1, 2000, the requirements for APEC Engineers were established. As of January 2010, there are 13 official Member economies: Japan, Australia, Canada, Chinese Taipei, Hong Kong, Indonesia, Korea, Malaysia, New Zealand, Philippines, Singapore, Thailand and the United States.

Once registered as an APEC engineer, a person will be granted the status equivalent to that in his/her home economy as an engineer in 16 designated fields in the other participating economies. The designated fields include mechanics, electrical engineering, electronics, information and communications technology, and construction. An APEC Engineer, similar to the Washington Accord, secures equivalence of qualifications and admissions only, and thus is not automatically granted a residence permit.

(iii) Mutual Recognition in Intra-ASEAN Trade in Services

ASEAN member states agreed in the seventh ASEAN Summit held in 2001 to speed up negotiations on the liberalization of intra-ASEAN trade in services and to start negotiations on mutual recognition arrangements for professional services. In the ASEAN Economic Community Blueprint, issued by the ASEAN Secretariat in 2007, it is declared that Mutual Recognition Arrangement (“MRA”) should be completed in seven fields: engineering services, architectural services, nursing services, surveying qualifications, accounting services, medical services, and dental services. By 2009, the MRAs for these seven fields of service, in which principles and procedures for recognition of qualifications are provided, were signed. Member states have agreed to identify and develop MRAs for other professional services by 2012, and to complete the recognition scheme within the ASEAN for such additional services by 2015.

(iii) Mutual Recognition of Information Technology Engineer Examinations

Although outside the EPA framework, Information Technology Engineer Examinations are an example of mutual recognition of qualifications between Japan and other countries. Information Technology Engineer Examinations are national exams in which, based on the Act on Facilitation of Information Processing, the Ministry of Economy, Trade and Industry (METI) certifies that the knowledge and skills of an information technology engineer are above a certain level. The exam administration body is Information-technology Promotion Agency (IPA).

During the ASEAN + China-Japan-Korea Economic and Trade Ministers’ Meeting held in October 2000, the Asia IT Skills Standardization Initiative proposed by Japan was adopted. The aim of this mutual recognition initiative is the improvement and effective utilization of mobility of IT human resources. It does so by establishing examination systems targeting IT engineers in Asian regions who can establish that they have abilities equivalent to the level and scope demonstrated by those who pass Japan’s national examination. It utilizes the experience and know-how of over thirty years with the Information Technology Engineer Examination in Japan and supports the fostering of IT human resources in Asian countries.

Following this policy, the IPA has established a mutual recognition program and has exchanged memoranda with India, Singapore, Korea, China, the Philippines, Thailand, Viet Nam, Myanmar, Taiwan, Malaysia and Mongolia. Those who pass the exam will have eased conditions for acquiring a working visa, which becomes necessary upon entering Japan. At present, this applies to India, Singapore, Korea, China, the Philippines, Viet Nam, Myanmar, Taiwan and Malaysia).

6 *Economic aspects and significance*

Today, the biggest issue concerning the liberalization of movement of natural persons is the opening up of labor markets of developed countries to developing countries. Opening up labor markets (including unskilled workers markets) often receives criticism in developed countries while it is often supported by developing countries. In particular, developed countries, which are likely to be the accepting countries of workers as a result of opening up of labor market, will have both advantages such as labor shortage eliminating, etc. and disadvantages such as lowered wage levels and increased social costs, etc., and thus are taking cautious positions.

In contrast, developing countries can gain substantial income through from money transfers from workers working in developed countries, and thus take supportive positions.