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**Labor Dimension of the
Japan - Philippine Economic Partnership Agreement
(JPEPA)**

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Visiting Research Fellow Monograph Series

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Summary

The labor dimensions of trade include, among others, the (1) movement of natural persons, (2) human resource development through training, and (3) decent work standards and compliance with labor laws.

With the collapse of the Doha round of the multilateral trade negotiations in the World Trade Organization (WTO) in Hong Kong in 2005, major trade players including Japan accelerated efforts to achieve “*udon soba*” (“mixed noodle bowl”), or “spider web” bilateral agreements with Singapore, Malaysia, Thailand, Indonesia and the Philippines, as insurance on the shaky illusion of a Japan - ASEAN Comprehensive Economic Partnership Agreement (CEPA).

Economic agreements in general have potential to stimulate the processes of equitable social development. The labor dimension in the JPEPA is noteworthy among EPAs between Japan and other countries, in the context of efforts to maximize economic and social benefits arising from trade and other economic relations. Except the loose and porous ASEAN Free Trade Agreement (AFTA), the Philippines has no other bilateral free trade agreement. Development of capacity and serious implementation of the labor dimension especially *Article 103* of the JPEPA on labor standards in investment & trade has potential to mitigate negative labor market effects arising from the exchange.

Numerous studies show a link between competitiveness and the quality of labor, through good employment, favourable working conditions and human resource development practices. In addition, the capacity of enterprises to comply with decent work is linked with the development of fundamental policies and institutions to provide for good practices in industrial relations including human resource development (HRD), effective human resource management (HRM) and balanced with the exercise of workers rights.

While the postwar trade balance was historically in favor of Japan, the Philippines benefited from Japanese human resource development (HRD) programs, through scholarships and training as part of official development assistance (ODA).

Outside the scope of the JPEPA, there are in fact ongoing advantages in the case of Philippine seafarers in Japan shipping; remittances increased seven times between 2006 and 2002. The positive experience in this particular sector highlights the potential benefits of the labor exchange, in the area of HRD. New opportunities from the JPEPA need to be developed in the health care, information technology (IT), professions and other areas, considering the idiosyncrasies of the labor market in both Japan and the Philippines, and the costs and benefits to identify winners and losers. Language, visa rules, and lack of information are some of the non tariff barriers which need to be addressed.

Case studies of Japanese investment in the Philippines show the need to raise awareness about the links between trade and labor compliance. There is a need to improve the capacity

of both trading partners to implement the labor dimension of the agreement. This has implications upon efforts at regional integration in East Asia, with greater demands from the public to ensure decent work and human resource development (HRD) in the movement of natural persons among the trading partners.

The case of the labor dimension in trade between Japan and the Philippines points to the need to develop capacity towards a regional framework to provide for decent work, respect for workers rights, good industrial relations; and maximize the social benefits arising from the movement of natural persons, and mitigate the negative impact.

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Dr. Maragtas S.V. Amante is a professor of industrial relations at the University of the Philippines in Diliman, Quezon City. He has more than 20 years experience in teaching, research and consultancy work in the areas of industrial relations, economics of human resources, and compensation.

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He was appointed Dean of the U.P. SOLAIR from 1998 to 2001. In 2002-03, he was a research fellow at the Seafarers' International Research Centre (SIRC) in Cardiff University, in Wales, UK. His research was about Philippine seafarers, in the context of the global maritime labor market.

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Some important publications

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1. Introduction and objectives

Mutual benefits in the exchange of products, capital and labor between nations are based on classical ideas and assumptions about comparative advantage. Economic relations between Japan and the Philippines provide a good case of the potentials as well as limits, the winners as well as losers in regional economic integration and globalization in East Asia.

National economies face constraints through domestic pressures as well from demands of the global economy, which determine capacity to promote economic growth & social development. There are significant similarities and contrasts between the economies of Japan and the Philippines, in terms of their history, background and structure. Better technology through communications and transport will enable more goods, capital, services and people move across national boundaries, at a greater intensity and with greater benefit for both sides. Movements of natural persons, goods and services across national boundaries are inevitable, but a functional economic partnership agreement will provide greater advantages between trading partners.

With the collapse of the Doha round of the multilateral trade negotiations in the World Trade Organization (WTO) in Hong Kong in 2005, *bilateral* and *regional* trade agreements gained greater importance. Major trade players including Japan actively embarked on a “*udon soba*” (“mixed noodle bowl”) and spiderweb strategy of multilateral free trade agreements. Economic partnership agreements (EPAs) became major foreign policy instruments of Japan, since 2002.¹ Japan concluded economic partnership agreements with Singapore in 2002 and Malaysia in 2005. An agreement was signed with Thailand in 2007. At the same time, Japan initiated a comprehensive economic partnership agreement with ASEAN, along side country to country negotiations with Vietnam, Brunei Darussalam, and Indonesia. In addition, Japan has concluded an EPA with Mexico in 2004, and Chile in principle in 2005. EPA negotiations with the Republic of Korea and Australia are also ongoing.²

The ‘labor dimension’ *is a composite framework of the primacy of the human element in economic transactions, including a commitment to promote decent work in trade.* In the production of goods and services for trade, workers are employed. As people move across national boundaries, they become foreign workers with human rights. The composite framework includes guarantees to freedom of association for unions and collective bargaining to improve work conditions, health & safety; and no discrimination in employment and pay.

In the development of classical economic ideas, ‘**labor**’ is factor of production and trade. Like any trade agreement, the JPEPA among others assume comparative advantages and

¹ The Japan Ministry of Foreign Affairs (MOFA) launched the FTA/EPA Headquarters and established the FTA/EPA Division in the Economic Affairs Bureau in 12 November 2002, “in order to strengthen its setup relating to free trade agreements and economic partnership agreements”. Source: Japan MOFA, <http://www.mofa.go.jp/policy/economy/fta/launch0211.html>.

² “Japan, Brunei swiftly agree to pursue Free Trade Agreement”, *The Japan Times*, 22 December 2006.

benefits in the international division of labor, and exchange of capital and resources between Japan and the Philippines. Both countries are signatory to various international conventions, which provide the basis for national laws and policies, including labor and social standards. International norms such as human rights include the freedom of association, workers rights to collective bargaining, health and safety, and decent working conditions. International agreements such as the UN Global Compact, the UN Declaration of Human Rights, and the ILO Declaration on Fundamental Principles and Rights at Work. These norms provide a standard of behavior or a code of conduct for trade partners, to regulate enterprises. Compliance with internationally recognized labor and social standards, laws and policies provide a playing field for global competition and free trade.

Prime Minister Junichiro Koizumi of Japan and President Gloria Macapagal Arroyo of the Philippines signed the JPEPA on 9 September 2006 during an Asia Europe summit in Helsinki, Finland.³ The main items in the discussions which led to the agreement are in the following areas:

- Lowering tariffs on agricultural trade.
- Liberalizing investment conditions in the Philippines for Japanese corporations
- Easing restrictions in Japan's labor market to accommodate more Filipino healthcare professionals.

The Japanese Diet ratified the JPEPA on 7 December 2006. The records show that Japan Diet members expressed concern about the effects of the JPEPA upon pineapple and sugar workers in Okinawa, and the negative effect of the entry of Filipino nurses and caregivers upon Japanese standards for working conditions and health care.⁴ Meanwhile, the Philippine Senate is expected to ratify the agreement after discussions start in August 2007, when congress opens.

The JPEPA is the only trade agreement that the Philippines have with other countries. The Philippine Senate Committee on Trade held public hearings, to solicit views from business and social sectors, after public protests by environmentalist groups and other non-government organizations (NGOs) on concerns about trade in toxic wastes.⁵ The concern in the Philippines over the issue of hazardous waste "is about to be dissolved by the exchanges of notes between the Foreign Ministers of Japan and the Philippines".⁶ The approval process should then go forward in the Senate of the Philippines. After ratification by the parliaments

³ President Gloria Macapagal Arroyo submitted the JPEPA to the Philippine Senate for ratification, as endorsed by the Department of Foreign Affairs. At least 2/3 vote is needed for ratification by the Senate, after public hearing and debate expected when Philippine Congress resumes after July 2007.

⁴ The records of discussions in the Japanese Diet ratification of JPEPA are available in Japanese: http://www.shugiin.go.jp/index.nsf/html/index_kaigiroku.htm.

⁵ The author attended the Philippine Senate hearing on 7 November 2007. Hearings were also held on 24 October 2007 and 27 November 2007.

⁶ Japan Ministry of Foreign Affairs Statement, "Meeting between Mr. Taro Aso, Minister for Foreign Affairs, and Mr. Alberto Romulo, Secretary of Foreign Affairs of the Philippines", 24 May 2007. http://www.mofa.go.jp/announce/announce/2007/5/1173562_826.html

of the two countries, the agreement will take effect.

For health care workers, Japan agreed to allow a limited number of nurses in the first year to stay beyond the current four-year time limit if they acquire a Japanese license. In the final agreement, the quota was raised to 1,000 health workers per year. In the negotiations, the Philippines proposed for a labor market demand-driven, not quota-driven approach in setting the number of health care workers who could enter Japan.

In agriculture, Japan agreed to lower tariffs on pineapples and bananas from the Philippines, while rice and sugar were left untouched. Regarding investment, concessions were sought on steel trade and on creating better conditions for Japanese direct investment in the automobile and electronics industries in the Philippines.

Objectives of the research

The research attempts to address some of the key issues on labor exchange between Japan and the Philippines. The specific objectives are:

- Identify the labor dimension of the trade agreement between Japan and the Philippines.
- Review existing ideas on the links between the labor dimension and trade, as provided in published papers and research reports.
- Examine the JPEPA in the wider context of regional economic integration, and implications to the labor dimension of the ASEAN – Japan Economic Partnership Agreement.
- Analyze the current movement of natural persons from the Philippines to Japan, with a focus on the possibilities for labor exchange in health services (nurses & caregivers), information and communication technology (*ICT*), and other sectors.
- Explore issues related to human resource development (HRD) and related policies of Japanese multinational corporations with Philippine subsidiaries, and Philippine seafarers employed in Japanese ships.
- Through case studies, evaluate the labor problems in the context of industrial relations of selected Japanese owned companies in the Philippines, on how to strengthen capacity to comply with labor laws and promote decent work.
- Provide recommendations on possible items for future negotiations, to strengthen the economic partnership between Japan and the Philippines, specifically on how to fill the gaps in existing deficits in trade and labor exchange, and strengthen capacity for competitive, mutually advantageous trade.

The labor dimension in the JPEPA

The labor dimension is a notable element in the Japan Philippine Economic Partnership Agreement (JPEPA), which is noteworthy, compared to Japan's EPA's with other ASEAN countries.⁷ The labor dimension is highlighted in the following provisions:

- **Movement of natural persons.** Professionals including lawyers and accountants will also be allowed to practice in Japan, provided they qualify. Japanese executives and managers of enterprises shall be exempted from the Alien Employment Permit. Recruitment of nurses and caregivers to Japan will commence only upon a final memorandum of understanding (MOU) between the Philippines and Japan.
- **Decent work in trade.** It is noteworthy that the JPEPA recognizes the need to promote decent work in trade, through labor law compliance. Article 103 of the JPEPA recognizes that "...it is inappropriate to encourage investment by weakening or reducing protection [of workers afforded by] domestic labor laws". The JPEPA cites the fundamental or core conventions of the ILO, to which both Japan and the Philippines are committed: "the right of association, right to organize and bargain collectively, prohibition on the use of any form of forced or compulsory labor; elimination of the worst forms of child labor, and labor protection to children and young people, including a minimum age for employment; and acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health."
- **Human Resource Development (HRD).** This refers to language training for OFWs to Japan; through scholarships and fellowships in advanced education and training, including further diffusion and improvement of quality of education; and capability enhancement for trainors and teachers;
- HRD in the fields of energy and environment management; and promotion of information exchange for investment opportunities; assistance for the capacity building necessary for road development, including highway planning; and so on, and so forth.
- **HRD for Information and Communications Technology (ICT),** including trainings for instructors of information processing and IT engineers; cooperation for the University of the Philippines IT Training Center; cooperation and sharing of know-how under the "Asia Broadband Program"; improvement of ICT skills and administrative skills in the Philippine government; and matching between the Philippine ICT industry and potential Japanese customers.

⁷ Mr. Reydeluz Conferido, Labor Attache of the Philippine Embassy in Tokyo, in an interview on 17 January 2007 revealed that the Philippine side proposed the inclusion of Article 103 on the labor dimension of trade and investment.

The “labor dimension” is a remarkable element in the JPEPA, which highlights the perceived labor surplus advantage of the Philippines compared to Japan. The immediate attention is upon the movement of natural persons, who are looking for employment either as blue or white collar workers, doing business, or training. The movement of natural persons draws attention upon how human rights will be observed and guaranteed, when a person moves from one state boundary to another. Countries have different capacity, institutions and procedures to guarantee human rights, including the right to join unions, negotiate and bargain for better working conditions. Human trafficking, abuse and exploitation of workers are the dark sides of societies with weak capacity to implement guarantees for human rights and social protection.

The Philippines expects that “..., under the new accord, ... highly skilled overseas Filipino workers (OFWs), including nurses and caregivers, shall be legally and formally accepted by Japan.”⁸

This is aside from the fact that Japan is already one of the top employers of overseas Filipino seafarers, and maintains a vibrant economic exchange and partnership with the Philippines. Nonetheless, the government noted that the JPEPA will not only enhance the bilateral trade relations between the two economies, but also create positive impact on human capital formation, and build on labor-related economic opportunities.

Among the provisions of the Agreement, the following were included:

- In the area of Human Resource Development (HRD), the JPEPA Joint Statement provides for “language training for OFWs to Japan; HRD in the field of education and training, including further diffusion and improvement of quality of education; and capability enhancement for trainors and teachers.”
- In Information and Communications Technology (ICT), the JPEPA Joint Statement provides for “... support to HRD, including trainings for instructors of information processing and IT engineers; **cooperation for the University of the Philippines IT Training Center**; cooperation and sharing of know-how under the "Asia Broadband Program"; improvement of ICT skills and administrative skills in the Philippine government; and matching between the Philippine ICT industry and potential Japanese customers.”

⁸ Statement by Secretary Arturo D Brion, Philippine Department of Labor and Employment (DOLE), “Brion notes OFW, labor-related aspects, of Arroyo-Koizumi accord”, September 16, 2006, DOLE Publication & Information Service.

2. Japan - Philippine economic relations: a background

Government leaders acknowledge that closer partnership between Japan and the Philippines contributes to economic development, promotion of well-being, and greater capacity to contribute to prosperity in Asia.⁹

The JPEPA is most meaningful given the wider context regional economic integration. An effort to achieve an ASEAN – Japan Comprehensive Economic Partnership manifests this accelerating trend. The ASEAN has a total population of about 526 million people -- the region's most important resource, as consumers and producers – thus a huge market potential. With Japan's population of 130 million, Japan & ASEAN's population is close to twice the 280 million population of the United States, and greater than the European Union's 370 million people.

Japan - Philippine relations are significant in policy dialogues in three areas: security affairs, maritime affairs and consular affairs. Mutual understanding through human exchanges and cultural activities has been boosted by the increase in the number of Filipino Japanese language teachers who can participate in the Training Program conducted in Japan. Japan and the Philippines also have very close collaboration in regional and global issues, such as counter-terrorism, the North Korean issue, and the reform of the United Nations reform, among others support for Japan's quest for a permanent membership in the Security Council.

The Japan-Philippines Economic Partnership Agreement (JPEPA) is a strategic development in 2006. Japan is also providing very significant assistance in the promotion of peace in Mindanao, with a major and unique diplomatic initiative in terms of the dispatch of a civilian development expert to the International Monitoring Team (IMT) in Mindanao.

In addition, Japan has committed "Human Security Grant Projects" at the grassroots level in conflict-affected areas in Mindanao for Fiscal Year 2006. Japan is also positively considering a new yen loan package to the Philippines, to support various priority areas of economic development. Japan has decided to extend financial support to the Philippines' "Power Sector Development Program" through co-financing by Japan Bank for International Cooperation (JBIC) and the Asian Development Bank (ADB). Assistance to disaster management cooperation by introducing simplified procedures was given prominence in the light of several typhoons and landslides in calamity areas in the Philippines.¹⁰

⁹ "Joint Statement on the Occasion of the Signing of the Agreement between Japan and the Republic of the Philippines for an Economic Partnership" by Prime Minister Junichiro Koizumi of Japan and President Gloria Macapagal Arroyo of the Philippines, Helsinki, Finland, September 9, 2006.

¹⁰ Speech of His Excellency Ryuichiro Yamazaki, Ambassador of Japan, 23 February 2007 on the opening of the Philippine Japan Friendship Celebration Awards Night, Intercontinental Hotel, Makati City.

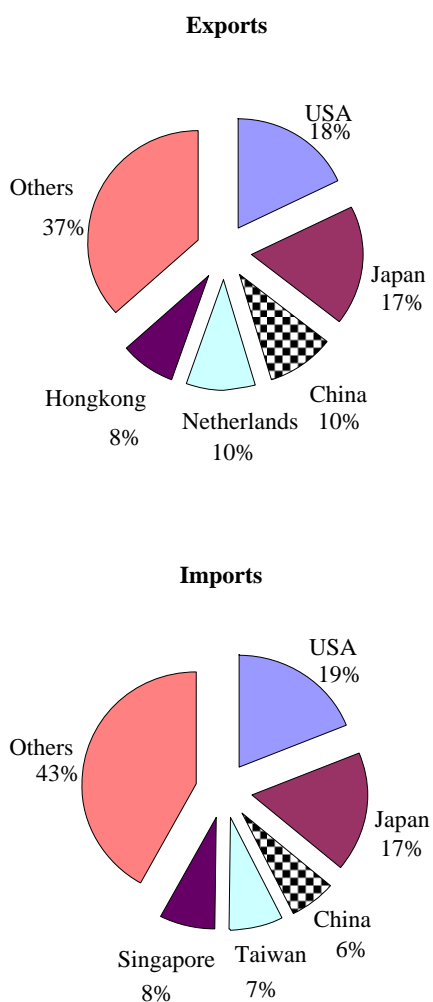
Philippine trade with Japan

Japan is the Philippines' second largest trading partner, next to the U.S., with total trade worth \$15.28 billion. In 2005, exports were valued at \$7.21 billion while payment for imports was valued at \$8.07 billion, or a \$865.01 million trade deficit.

The biggest receipt came from electronic products at \$4.846 billion or 67.2 percent of the country's exports to Japan. Ignition wiring sets in vehicles, aircrafts and ships are the second biggest group of exports to Japan, with \$283.98 million receipts (3.9 percent of total).

On the other hand, the Philippines' largest group of imports from Japan includes

Figure 1. Percent share of major Philippine trading partners, 2005



Source: National Statistics Office, *Special Release No. 227: Foreign Trade Statistics 2005*, 23 June 2006.

electronic products worth \$4.98 billion (61.7 percent), followed by industrial machinery and equipment worth \$676.36 million (8.4 percent).

Philippine trade with Japan is lower compared to Singapore, Malaysia, Indonesia and Thailand. Malaysia and Indonesia however have trade surpluses with Japan in 2006.

In 2006, Japan's trade with the Philippines is 1.4 percent of its total world trade. Japan,

Table 1. Japan's exports & imports by country, 2006

(US\$ thousands)

<i>Country/Area</i>	Year to Date			Share	
	<i>Exports</i>	<i>Imports</i>	<i>Balance</i>	<i>Exports</i>	<i>Imports</i>
Total	647,290,458	579,293,603	67,996,855	100	100
Asia	307,779,403	252,505,773	55,273,630	47.6	43.6
East Asia	295,692,523	239,707,701	55,984,822	45.7	41.4
ASEAN	76,349,365	79,989,666	-3,640,301	11.8	13.8
Asian NIEs	150,301,162	56,695,306	93,605,856	23.2	9.8
ASEAN4	52,539,672	64,496,063	-11,956,391	8.1	11.1
P.R. China	92,851,689	118,516,332	-25,664,643	14.3	20.5
Hong Kong	36,468,882	1,521,117	34,947,765	5.6	0.3
Taiwan	44,151,571	20,344,617	23,806,954	6.8	3.5
Republic of Korea	50,320,970	27,344,511	22,976,459	7.8	4.7
Singapore	19,359,739	7,485,061	11,874,678	3	1.3
Thailand	22,923,804	16,895,509	6,028,295	3.5	2.9
Malaysia	13,223,160	15,488,238	-2,265,078	2	2.7
Indonesia	7,378,034	24,149,175	-16,771,141	1.1	4.2
Philippines	9,014,674	7,963,140	1,051,533	1.4	1.4
Brunei	101,345	2,335,826	-2,234,481	0	0.4
Viet Nam	4,142,353	5,294,747	-1,152,394	0.6	0.9
Cambodia	81,910	120,088	-38179	0	0
India	4,456,653	4,057,600	399,054	0.7	0.7
Pakistan	1,760,278	208,052	1,552,226	0.3	0
Bangladesh	573,649	159,541	414,107	0.1	0

Source: Japan Ministry of Economy, Trade and Industry (METI).

Note: ASEAN-4: Thailand, Malaysia, Singapore & Philippines

as usual had a favorable \$ 1 billion trade balance with the Philippines. Japan however is in deficit with the rest of the ASEAN countries – who are benefiting through their favorable trade balances with Japan.

Japan bought \$ 7.9 billion of imports from the Philippines, and exported \$ 9 billion in 2006. The value of Japan - Philippines trade is 17.2 percent of total exports within ASEAN-4, and 12.3 percent of imports within the ASEAN 4 countries. The Philippines share of 1.4 percent trade with Japan is lower than Thailand (3.5 percent), Singapore (3 percent) and Malaysia (2 percent). It is a bit higher than the share of Indonesia (1.1 percent). Japan is pursuing trade talks with Vietnam, and Brunei.

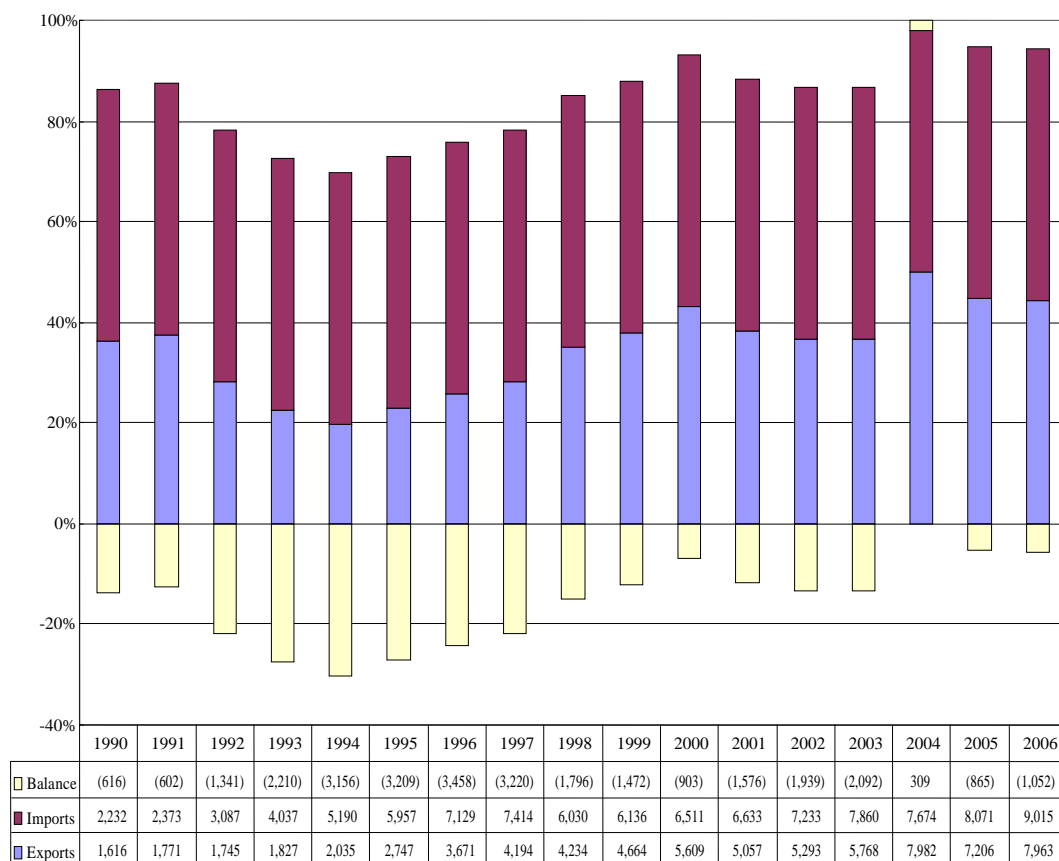
Philippine trade with Japan since the 1990s were always in deficit, due to the higher volume of imports compared to exports. The Philippines enjoyed a trade surplus with Japan only for one year, in 2004 when exports exceeded imports by \$ 309 million. In contrast, the historical pattern in Japan – Philippine trade balance was mixed between 1935 to 1985. The Philippines had a trade surplus in 1940, in 1950, & in 1960. Exports were about equal to imports only in 1980, and since then, the Philippines had a continuing trade deficit with Japan.

Figure 2. Philippine trade with Japan, 1935 to 1985



Source of raw data: Philippine Statistical Yearbook, 1980.

Figure 3. Philippine trade with Japan, 1990 to 2006



Source of raw data: Philippine Statistical Yearbook, 1980 to 2003. Japan Ministry of Economy, Trade and Industry (METI) data for 2006. (in million U.S. dollars)

Japan ODA and investment to the Philippines

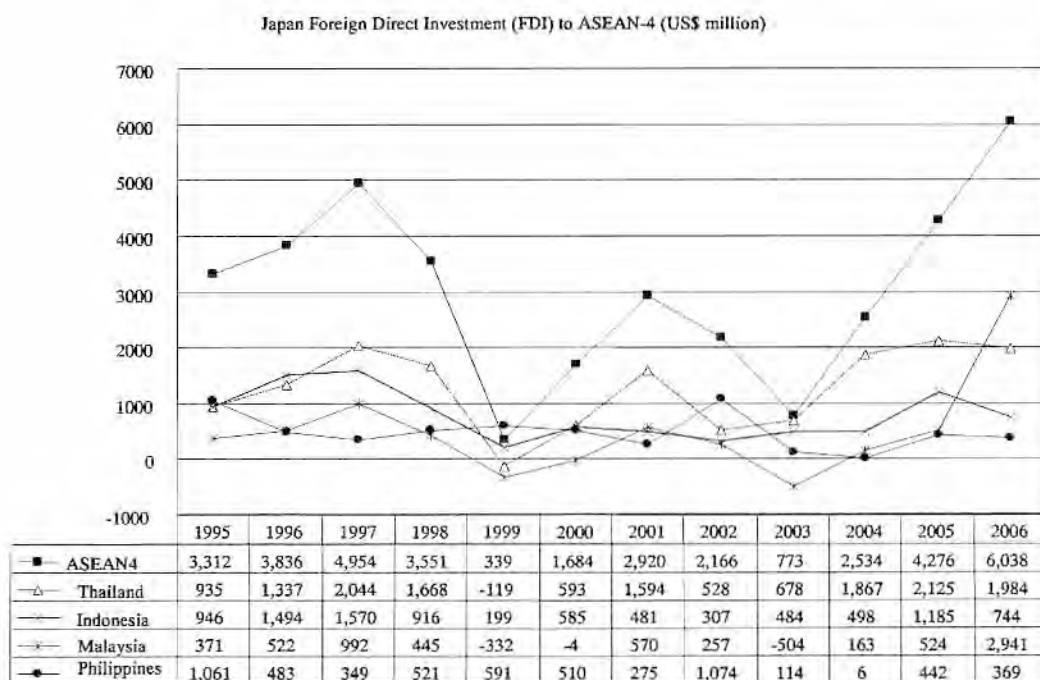
Japan remains the biggest donor of official development assistance (ODA) loans to the Philippines. The National Economic and Development Authority (NEDA) said that Japan's total commitment of US\$ 4.85 billion to the country accounts for about 58 percent of the ODA loans portfolio as of March 2006. ODA loans in the country amounted to US\$ 8.41 billion which include that from the Asian Development Bank (US\$ 1.15 billion, or 14 percent), World Bank (US\$ 1.12, or 13 percent) and other donors (US\$ 1.3 billion, or 13 percent). The infrastructure sector has the biggest share in the Japan portfolio amounting to US\$ 3.49 billion, followed by the agriculture, natural resources and agrarian reform sector

(US\$ 711 million). Assistance to industry, trade and tourism is about US\$ 468 million while US\$ 148 million is into social reform and community development projects.¹¹

Japan's ODA to the Philippines is also the largest in 2005. Among funding sources, the Government of Japan through the Japan Bank for International Cooperation (GOJ-JBIC) continued to be the largest source of ODA loans, accounting for 60 percent (or \$6.1 billion with 67 loans) of the total.¹²

Japan's Foreign Direct Investment (FDI) to the Philippines has been the lowest since 2003 among comparable ASEAN – 4 countries (Thailand, Indonesia & Malaysia). Japanese businessmen in the country had several outstanding issues with regard to doing business in the Philippines, including expensive and unreliable electricity, higher labor cost, among others.

Figure 4. Japan Foreign Direct Investment (FDI) to ASEAN 4 2006



Source of raw data: JETRO, "Trade and Investment Statistics", prepared from Ministry of Finance Balance of Payments Statistics and Bank of Japan foreign exchange rates. December 2006 data. <http://www.jetro.go.jp/en/stats/statistics/> accessed 12 March 2007.

¹¹ NEDA press release 4 August 2006. 14th Annual ODA Portfolio Review (2005). Reported in Manila Bulletin, 4 August 2006.

¹² Other sources of ODA are: Australia, Austria, Belgium, China, France, Germany, International Fund for Agricultural Development (IFAD), Korea, Kuwait, NDF, Netherlands, Organization of Petroleum Exporting Countries (OPEC), Saudi Arabia, Spain, and UK) with 16 percent (or \$1.6 billion with 43 loans). The Asian Development Bank (ADB) and World Bank (WB) are also significant sources of ODA with 12 percent or \$1.2 billion each (with 28 loans and 24 loans, respectively).

The Japanese, along with the Americans and Dutch, were the Philippines' top three sources of foreign direct investments, to build new or expand existing businesses and hire workers. The Japanese businessmen's bearish outlook was in contrast to the upbeat forecasts made by various investment banks on the Philippines, especially after the government reined in its budget deficit last year, and raised its economic growth outlook for this year. Overall current business sentiment for the five ASEAN countries (Thailand, Indonesia, Philippines, Malaysia and Singapore) showed little improvement. Among Japanese businessmen, the Philippines ranked highest in the ASEAN region on negative business sentiment on the strength of the local currency against the US dollar.¹³

¹³ Japan External Trade Organization (JETRO) press statement, "Japanese Business Sentiment in East Asia Continues Mixed in March", March 28, 2007.

3. Movement of natural persons and labor exchange between Japan and the Philippines

Decent work and the labor dimension could not be excluded from greater prominence in various bilateral and multilateral free trade negotiations, especially in the agreements regarding movement of natural persons among countries. The theory is that the “push” or demand factor for the movement of natural persons should fill in the labor shortage, contributing to higher productivity in the receiving country. Higher income through remittances to family and dependents, should contribute to better consumption and living standards of the country sending the person.

The “*movement of natural persons*” is a phenomenon of the global economy, and the Philippines is cited to have an advantage in terms of long term movements, through the Overseas Filipino Worker (OFW) phenomenon. On the other hand, countermeasures to mitigate the “brain drain” and shortage of critical skills for the country’s own needs could not be ignored.

The JPEPA provides for the movement of natural persons in *Chapter 9, Articles 108 to 116*. Commitments of both Japan and the Philippines are specified for the movement of the following natural persons:

- ✧ Short term business visitors; intra corporate transferees; investors.
- ✧ Persons engaged in professional services such as lawyers and accountants.
- ✧ Persons engaged in supplying services which require technology or knowledge at an advanced level which require specialized skills, pertaining to particular fields of industry, on the basis of a contract;
- ✧ Persons who supply services as nurses or certified care workers, on the basis of a contract, or admission to training facilities both public and private.

The agreement requires that the movement of natural persons comply with immigration laws and regulations applicable to entry and temporary stay. It is important to note that the agreement says “neither party shall impose or maintain any quantitative restriction on the number of natural persons to be granted entry and temporary stay.” (*Article 110 (3)*).

Annex 8 of the JPEPA provides details on the specific commitment on the movement of natural persons. Both Japan and the Philippines will “require a natural person of the Philippines seeking entry and temporary stay ... to obtain an appropriate visa ... prior to entry.”

In addition, the JPEPA provides for the entry and temporary stay of persons who “supply services which require technology or knowledge at an advanced level, or which require specialized skills”, such as physical science, engineering, jurisprudence, economics, business

management and accounting.¹⁴

This section reviews the data available so far with respect to the movement of people between Japan and the Philippines. The review includes a comparison of the labor market, employment and entry policies of both countries. The discussion concludes with observations on gaps as well as potentials in the labor exchange.

The Philippine labor market context

Basic facts about the Philippine labor force from 1990 to 2006 are shown in *Table 1*. Per capita Gross National Income (GNI) is estimated by the World Bank at US\$ 1,300, in 2005. While the Philippine population grows at an average annual rate of 2.0 percent, unemployment is at 10.9 percent, more apparent among women (10.3 percent to 11.7 percent) and the youth (19.7 percent to 21.7 percent). Youth accounted for almost half (49.7 percent) of the total unemployed. From 24.5 million workers in 1990, the labor force (total of employed and unemployed workers) is now estimated at 35.6 million. An additional 2.8 percent women and men joined the labor force in 1990; and 1.4 percent in 2006.

According to the October 2006 labor force survey by the National Statistics Office, there were 55.3 million Filipinos of working age. Of this number, 35.2 million were either employed or looking for jobs, among whom 2.8 million couldn't find any. The unemployment rate has steadily increased from 5.4 percent in 1975 to 11.30 percent (7.3 percent using ILO definition) in 2005. This number of unemployed would have swelled some more had not some 980,000 workers went abroad as Overseas Filipino Workers (OFWs) to work for foreign employers.

It is estimated that 7.8 million Filipinos are estimated to be permanent, temporary or undocumented migrants worldwide. These OFWs and migrants provided the Philippines a crucial lifeline in balancing the balance of payments deficit, with remittances amounting to US\$ 12.8 billion in 2006, an increase of 19.4 percent the previous year.¹⁵

Underemployment averaged 12.7% from 1975 to 1980. It ballooned to 20% in the next two decades, tapering to 22.7% in 2006. The underemployed are those who either wanted to work full-time, get second jobs or move to other jobs that would pay better. This means that as a result of jobless growth, the jobs generated in the past were short not only in quantity but also in quality. The labor supply of workers has been increasing faster than jobs are being created. While more than a million new workers joined the labor force last year, only 750,000 new jobs were created from January 2005 and January 2006.

¹⁴ Section 5, Annex 8 of the JPEPA on "Natural Persons of the Philippines who Engage in Supplying Services ...".

¹⁵ *Manila Bulletin*, "RP overseas remittances hit US\$ 12.8 billion", 15 February 2007.

Table 2. Basic facts about Philippine labor¹⁶

	1990	2000	2006
Population (millions)	61.0	76.3	88.7
Population growth rate (%)	2.3	2.1	2.0
Labor force (millions)	24.5	30.9	35.2
Annual change in labor force (%)	2.8	0.7	1.4
Labor force participation rate (LFPR) (%)	64.5	64.3	66.5
Male LFPR (%)	81.8	80.3	82.9
Female LFPR (%)	47.5	48.4	50.2
Employed persons (millions)	22.5	27.8	32.9
<i>Share of employed persons (%) in:</i>			
Agriculture, forestry, fishery	45.2	37.4	37.1
Industry (manufacturing, mining ...)	15.0	16.0	15.4
Services	39.8	46.6	47.5
Unemployment rate (%)	8.1	10.1	10.9
Underemployment rate (%)	20.5	22.3	22.7
Flow of Overseas Filipino Workers (OFWs) ¹⁷	446,095	841,628	980,000

Sources of statistics: Philippine Statistical Yearbook (1990, 2000); Bureau of Labor Statistics <www.bles.dole.gov.ph>, National Statistics Office <www.census.gov.ph>; Philippine Overseas Employment Administration <www.poea.gov.ph>

The dilemma of jobless growth underlines the impact of globalization in the Philippine labor market, alongside persistent underemployment, mismatch in skills and jobs demanded, growth in short term contractual employment, and expansion of the informal sector. From 1999 to 2003, employment in the formal sector dropped by 307,228 while employment in the informal sector expanded by nearly 2,000,000. The informal sector includes wage and salary workers in family-based or unregistered economic units, industrial home workers, the self-employed, and the unpaid family workers. As the pressure for global competition intensified, enterprises introduced changes in the organization, new work methods and technology, alongside productivity based employment conditions.

At the national level, reforms in Philippine labor market policy attempt to fill the gaps by providing among others public employment service centers, regulation of job contracting, a voluntary labor standards enforcement framework, and favorable rules to business process outsourcing (i.e. exemptions from prohibition to night work of women in business process

¹⁷ This figure represent the flow of OFWs as monitored by the Philippine Overseas Employment Administration. The stock of OFWS abroad however is estimated at more than 8 million.

outsourcing, such as call centers). Dependence on overseas employment of Filipino workers (OFWs) estimated at 1.3 million in 2005¹⁸, who bring in remittances of US\$ 12 billion every year, greater than the top industry export, remain to be a key feature of the Philippine labor market. In 2006, remittances from OFWs hit a record US\$ 12.8 billion, according to the Philippine Central Bank.¹⁹

Filipinos and workers in Japan

The Japan Immigration Bureau reports that in 2006, there were 195,113 Filipinos who entered Japan.²⁰ The number decreased by 12 percent, compared to 2005. The number also decreased by 6 percent between 2004 and 2005, no doubt the effect of Japan's strict implementation of the revised rules for entertainers' visa, to address human trafficking. Among those who entered Japan for the first time, there were 63,171 short stay visitors (32 percent) and 8,608 entertainers (4 percent) from the Philippines.

In addition, there were about 25,000 seafarers on short term contracts onboard Japanese owned ships in global seas. Most of the Filipinos have permanent visas (29.2 percent), family dependents of Japanese nationals (24.1 percent), and entertainers (13 percent) (*Figure*). Professionals however are only 1.5 percent, which include 1,179 engineers, 40 researchers, and 60 professors. There were 226 research students. It is interesting that a small number of 38 investors and managers are working in companies in Japan. In addition, there were 2,906 trainees. There is also a notable group of "special activity" visa holders, which number 5,361. These persons include cooks, sports instructors, pilots, and persons with special skills. The data mentions a category for "skilled labor", with 214 Filipinos. This detail says something more about the Japanese view of how knowledge, education, training and experience translate into "skills", and a visa.

The entertainers have been declining in number, from 44,784 in 2001 down to 23,643 in 2005. The Philippine Embassy estimates there could be between 40,000 to 45,000 entertainers suggesting a large number are undocumented, and vulnerable to human trafficking. The entertainers have been declining in number due to the strict implementation of Japan's immigration law, to respond to international criticisms on laxity in human trafficking.

In February 2005, the Japan's Ministry of Justice amended its landing permission requirement for entertainers, and no longer recognized the standards set by the foreign government which issued the entertainer certificate. In the case of the Philippines, entertainer skills certification were done by the Technical Education and Skills Development Authority

¹⁸ National Statistics Office, "2005 Survey of Overseas Filipinos" www.census.gov.ph [Accessed 30 November 2006].

¹⁹ Manila Bulletin, "RP overseas remittances hit record US\$ 12.8 billion. February 15, 2007.

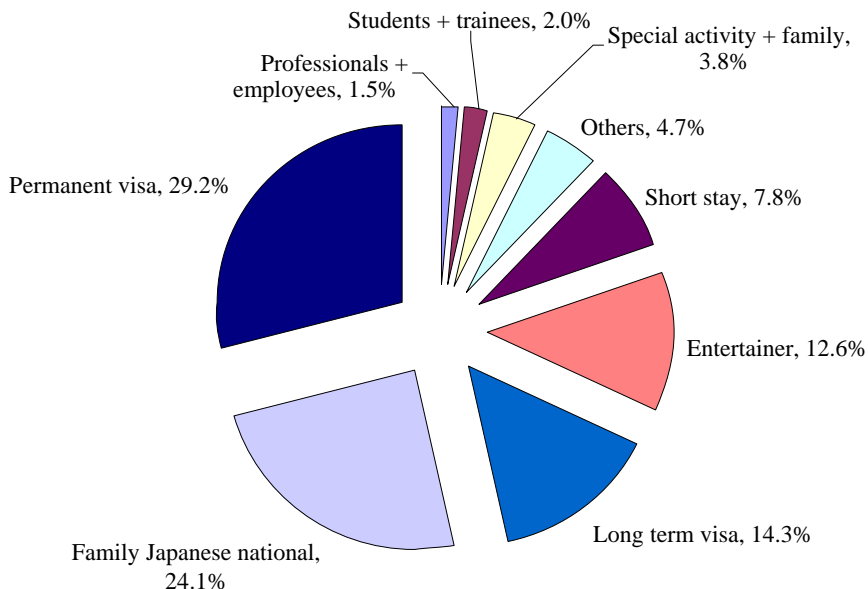
²⁰ Japan Immigration Bureau 2006 data report. Available for download at the Japanese Immigration website, <http://www.moj.go.jp/PRESS/070518-1.pdf> (May 2007 report). Statistics (in Japanese) are regularly updated, and could be downloaded.

(TESDA). Instead, Japan required that “entertainers” must have spent a minimum of two (2) years at a foreign education institution studying subject relevant to the type of entertainment performance.

Data from the Philippine Overseas Employment Administration (POEA) show that in 2005, Japan was the fourth among the top countries which received Overseas Filipino Workers (OFWs) processed through the government agency. There were 42,586 OFWs who went to Japan in 2005, compared to 74,480 in 2004. Most of them were entertainers, and the number drastically declined by 43 percent when Japan tightened its immigration procedures, particularly entertainer visas.

Seafarers’ remittances from Japan increased its share of total OFW earnings from Japan, from 5.2 percent in 2002 to 38 percent in 2006. Data on remittances monitored by the Central Bank of the Philippines show a decline of 25 percent between 2006 and 2002. The decline was mainly from the reduced number of entertainers, whose remittances were down by 40 percent compared to 2002. In contrast, remittances from seafarers deployed in Japanese ships increased by 585 percent, almost six times, during the same period. Remittances from Japan were \$ 453 million in 2006, which was one third (30 percent) of the total earned by OFWs in

Figure 5. Filipinos in Japan in 2005, by percent of category



Source of data: Japan Immigration Bureau (2006)

Table 3. Remittances from OFWs in Japan, 2002 to 2006 (US\$ 000)

	2002	2003	2004	2005	2006
Total from Asia	1,116,336	894,310	918,329	1,172,373	1,496,119
Total from Japan	490,435	346,057	308,128	356,659	453,398
<i>As percent from Asia</i>	<i>43.9%</i>	<i>38.7%</i>	<i>33.6%</i>	<i>30.4%</i>	<i>30.4%</i>
Seafarers	25,402	41,499	48,567	55,709	174,035
<i>Seafarers remittances as share of total from Japan</i>	<i>5.2%</i>	<i>12.0%</i>	<i>15.8%</i>	<i>15.6%</i>	<i>38.4%</i>
Entertainers & land based workers	465,033	304,558	259,561	300,950	279,363

Source: Central Bank of the Philippines, 2006.

Asia, compared to a high of 44 percent in 2002. (*Table 3*)

Statistics of the Japan Immigration Bureau also show that in 2005, Filipinos ranked number 7 among foreigners who entered Japan. There were 221,309 Filipinos who entered Japan, which is 3 percent of the total.²¹ Among new entrants, the Filipinos ranked number 9, with 132,745 new entrants. Foreigners who outranked the Filipinos were from Korea, 2 million (27 percent); Taiwan, 1.3 million (18 percent); United States, 853,845 (12 percent); China, 780,924 (10 percent), 250,366 Hong Kong (3.4 percent), and the UK 229,758 (3.1 percent). Filipinos outnumber those from Thailand, Malaysia, Indonesia and other Asian countries.

The number of Filipinos who entered Japan grew only by 5.3 percent from 2001 to 2006. This is a very small proportion compared to the tremendous increase of all Asians (77.7 percent), and all foreigners from all parts of the world in general (53.4 percent).

The POEA processes the employment of OFWs to Japan, including entertainers, seafarers and professionals. The number of processed workers which went through the POEA stood at only 42,586 in 2005. In contrast, the number of first entries, according to the records of the Japan Immigration Bureau stood at 132,745 persons in 2005. The number of Filipinos who registered for alien registration as a condition of staying in Japan stood at 187,261 in 2005, an increase of 29.3 percent between 2000 and 2005; and by 71.4 percent from 1996 to 2000.

In terms of illegal aliens in Japan, Filipinos ranked third in 2005, with 30,777 cases in 2005, which was 15.9 percent of the total. The Koreans and Chinese have the most number of

²¹ Statistical data from the website of the Japan Immigration Bureau (in Japanese), <http://www.moj.go.jp/PRESS/060406-1/060406-1.html> accessed 25 April 2007. Foreigners who outranked the Filipinos were nationalities from Korea (27%), Taiwan (18%), United States (12%), China (10%), Hong Kong (3.4%), and the UK (3.1%).

illegal aliens in Japan. Most of the reasons for the illegal cases are: staying beyond the short stay visa, 52 percent with 16,117 cases; and entertainers, 28.5 percent with 8,767 cases. There were 5,698 cases of Filipinos violating immigration law, which is 12.5 percent of the total. Most of the violations were female entertainers (66 percent).²²

Table 4. Movement of Filipinos to Japan, 2001 to 2006

	2001	2002	2003	2004	2005	2006
Total entry						
Philippines	185,262	197,136	209,525	236,291	221,309	195,109
Asia	3,280,514	3,674,574	3,793,793	4,607,027	5,134,673	5,830,902
World	5,286,310	5,771,975	5,727,240	6,756,830	7,450,103	8,107,684
First entry						
Philippines	115,318	120,812	131,834	147,817	132,745	91,469
Asia	2,501,705	2,831,868	2,975,448	3,656,533	4,144,223	4,768,553
World	4,229,257	4,646,240	4,633,892	5,508,926	6,120,709	6,733,560
	<i>Annual growth compared to previous year:</i>					
Total entry						
Philippines		6.4%	6.3%	12.8%	-6.3%	-11.8%
Asia		12.0%	3.2%	21.4%	11.5%	13.6%
World		9.2%	-0.8%	18.0%	10.3%	8.8%
First entry						
Philippines		4.8%	9.1%	12.1%	-10.2%	-31.1%
Asia		13.2%	5.1%	22.9%	13.3%	15.1%
World		9.9%	-0.3%	18.9%	11.1%	10.0%
	<i>Growth rate 2001 to 2006</i>		<i>Average growth 2001 & 2006</i>			
Total entry						
Philippines		5.3%			1.5%	
Asia		77.7%			12.3%	
World		53.4%			9.1%	
First entry						
Philippines		-20.7%			-3.1%	
Asia		90.6%			13.9%	
World		59.2%			9.9%	

Source: Computed by the author from statistics of the Japan Immigration Bureau (2006).

Gaikokujin Nyukansha Oyobi Nihonjin Shukkoku no Jokyu ni Tsuite. (Report on foreigners entering Japan and Japanese leaving for abroad) <http://www.moj.go.jp/TOUKEI/DB/index.html>

²² Japan Immigration Bureau (2006), *Honho ni okeru fuhozairyusha kazu ni tsuite* (Press release on illegal violations of immigration law).

Movement of Japanese nationals to the Philippines

Unlike the extensive set of updated statistics in Japan and posted in the Immigration Bureau website (in Japanese), there is no Philippine data on movement of natural persons from other countries, in terms of the various visa categories.

The Philippine Labor Code regulates the employment of foreign expatriate managers and non-resident aliens (*Article 40 to 42*). Any foreigner who wants to enter the Philippines to work needs an employment permit from the Department of Labor. The law requires that “the employment permit may be issued to a non-resident alien or to the applicant employer after a determination of the non-availability of a person in the Philippines who is competent, able and willing at the time of application to perform the services for which the alien is desired.” Most Japanese enterprises operate in special economic zones, and employment permits are issued by the government agency supervising the enterprises, which is the Philippine Economic Zone Authority. A media announcement is made by the Department of Labor announcing the employment of the foreign or expatriate manager.

In 2006, there were 764 expatriate Japanese managers in 675 enterprises in the country.²³ A fact sheet of the Japan Ministry of Foreign Affairs reports that there were 9,227 Japanese nationals residing in the Philippines.²⁴ Many of them are possible retirees. There are plush housing projects developed to cater to the Japanese retirees, such as the Tropical Paradise Village in Binictican, near the Subic Freeport Zone, which has also a training center for nurses and caregivers going to Japan.²⁵

A special investor’s visa is available for qualified business people. This visa requires a certification from an accredited bank that the investor has invested a certain amount of foreign exchange in the country. There is no data however on the number of Japanese expatriate managers who availed of the investor’s visa.

The government has set up the Philippine Retirement Authority to coordinate efforts to attract the well off retirees from foreign countries, including Japan, to settle in the Philippines. According to the Philippine Retirement Authority, the *Special Resident Retiree’s Visa (SRRVisa)* is a special non-immigrant resident visa that provides its holders with multiple-entry and indefinite stay status in the Philippines. This visa also grants Tax-Free incentives and privileges as well as value-added services and benefits that they can avail of from our partner establishments such as hotels, resorts, retirement facilities, and restaurants. The PRA describes the SSRVisa as a “lifestyle” visa for those who enjoy perks and privileges, a “hassle-free” visa for the frequent business traveler, and a “retirement visa” for the elderly who need special care for their special needs.”

²³ Toyo Keizai Shimposha (2006). *Kaigai Shinshutsu Kigyo Soran* (Directory of Overseas Enterprises).

²⁴ Japan Ministry of Foreign Affairs, *Fact Sheet on Japan Philippine Relations*, accessed 7 December 2006, <http://www.mofa.go.jp/region/asia-paci/philippine/index.html>

²⁵ See the website of Tropical Paradise Village (in Japanese): [www/t\[v-phil.com/kaisha.html](http://www/t[v-phil.com/kaisha.html)

Foreign retirees are required to make a US\$ 50,000 time deposit in a bank to apply for the scheme. Retirees below 50 years old need to have a \$ 75,000 time deposit in the bank. Medical tourism Japanese who wish to avail of quality health care was also mentioned as an important priority of the government.

Tourism is a significant component of the movement of natural persons, but this type of exchange is outside the scope of the JPEPA. Japanese short term tourist arrivals were 30 percent of the total 1.3 million tourists from East Asia. There was a 3 percent decline in tourists from Japan between 2006 and 2005.²⁶ In contrast, Koreans were 52 percent of tourist arrivals in 2006. The number of Korean and other East Asian tourists, particularly from China to the Philippines is increasing every year.

There are no available published statistics on the movement of natural persons from Japan or other countries, to the Philippines in terms of type of visa and other demographic characteristics.²⁷ The Philippine Bureau of Immigration needs to develop capacity to monitor the statistics associated with the movement of natural persons for various visa categories, and other demographic characteristics. There is a need to legislate and provide for the resources in terms of personnel and budget, for the inclusion of statistical monitoring of the movement of natural persons from other countries.

Japan is included in the list of 145 countries whose nationals could travel to the Philippines for business and tourism purposes and allowed to enter the Philippines without visas for a stay not exceeding twenty-one (21) days. Visas could be renewed for two months, but not to exceed one year. Those allowed to enter must hold valid tickets for their return journey to port of origin or next port of destination and their passports valid for a period of at least six (6) months beyond the contemplated period of stay. However, Immigration Officers at ports of entry may exercise their discretion to admit holders of passports valid for at least sixty (60) days beyond the intended period of stay.

Marriages between Japanese husbands and Filipina wives

There has been a significant increase in marriages between Japanese husband and foreign wife, with a growth of 25 percent between 1992 to 1999, and 16.9 percent from 2000 to 2005. Filipinos rank number three as foreign wives to Japanese husbands, next to Koreans and Chinese. In 1992, there were only 5,771 Filipino wives, and 7,519 wives in 2000. The increase was only 11 percent between 1992 and 1999.

²⁶ Data provided by the Philippine Department of Tourism from statistics available in 2006.

²⁷ The Japan Ministry of Foreign Affairs conducts the "Survey of the Number of Japanese Staying Outside Japan" to shed light on the population of Japanese nationals who resides outside the Japanese territories and excluded from the population census held every five years. The target of this survey includes people who possess Japanese nationality and who live or intend to live outside Japan for the period of three months or more around the date of the census. No statistics however are available from this survey.

Table 5. Trend in marriages, Japanese husband & foreign wife, 2005

	Total Japanese husband, foreign wife	Wife from			
		Korea	China	Philippines	Thailand
1992	19423	5537	4638	5771	1585
1993	20092	5068	4691	6394	1926
1994	19216	4851	4587	5999	1836
1995	20787	4521	5174	7188	1915
1996	21162	4461	6264	6645	1760
1997	20902	4504	6630	6035	1688
1998	22159	5143	7036	6111	1699
1999	24272	5798	7810	6414	2024
2000	28326	6214	9884	7519	2137
2001	31972	6188	13936	7160	1840
2002	27957	5353	10750	7630	1536
2003	27881	5318	10242	7794	1445
2004	30907	5730	11915	8397	1640
2005	33116	6066	11644	10242	1637
<i>Change from 1992 to 1999</i>	25.0%	4.7%	68.4%	11.1%	27.7%
<i>Change from 2000 to 2005</i>	16.9%	-2.4%	17.8%	36.2%	-23.4%

Source: Computations of the author from basic data (in Japanese), Japan MHLW Database. *Jinko Jittai Chosa*. http://www.dbtk.mhlw.go.jp/toukei/cgi/sse_kensaku

Japan – Philippine marriages increased tremendously to 36.2 percent, with 10,242 Filipino wives in 2005. In contrast, marriages between Philippine husbands and Japanese wives are very few, with only 187 cases in 2005; 109 cases in 2000; and 54 cases in 1992.

Gender implications are very significant, to explain why Japanese males marrying mostly other Asian females characterize international marriages. Foreign marriages and foreign workers in Japan are also be related to widening social differentials and segmentation in Japanese society as pointed out by Nagano (2007).²⁸ Japan’s nationality laws do not imply automatic citizenship, but only permanent residency once a foreigner is married to a Japanese.

The divorce rate between Japan and Filipino marriages is quite high, at 38.4 percent, compared to the divorce rate of 36.6 percent for Japanese spouses. The divorce rate among Japanese spouses, has increased, from 33 percent in 2000 to 36.7 percent in 2005. The share of Japan-Philippine divorces is 28 percent of total mixed marriages in Japan. (*Table 6*)

Why has there been a high increase in mixed marriages between Japanese husband and Filipino wives? The gender dimension could not be ignored, since it is mostly Japanese males

²⁸ Professor Yoshiko Nagano (2007) Kanagawa University, Yokohama, “Kakusa Shakai no Naka no Dekasegi to Kokusai Kekkon – Zainichi Firipin no Jirei” (Foreign Workers and International Marriages in the Context of Social Inequality: Case Study of Filipinos in Japan). Unpublished manuscript provided by Professor Nagano to the author.

Table 6. Divorce rates among Japanese & Philippine spouses, 2000 & 2005

	2005	Total	Japanese spouses	Foreign spouse	Philippine spouse
Divorces		261,917	246,228	15,689	3931
Marriages		714,265	672,784	33,116	10242
Divorce rate		36.7%	36.6%	47.4%	38.4%
	2000				
Divorces		264,246	251,879	12,367	2,882
Marriages		798,138	761,815	36,263	7,519
Divorce rate		33.1%	33.1%	34.1%	38.3%

Source: Computations from basic data, Japan Ministry of Health, Labor & Welfare, *Table 1G.9.18 Jinko Dotai Chosa*. http://www.dbtk.mhlw.go.jp/toukei/cgi/sse_kensaku

who marry Filipina females. There are social implications as well, on how the children of the mixed marriages are raised, and the welfare of the children of divorced parents. It would be interesting to examine the age profile, rural urban distribution of the spouses, and how the birth rate significantly different between international marriages compared to the marriages of the Japanese.

One explanation of the significant increase in marriages emerged in relation to the role of the underworld criminal activities. In April 2007, authorities arrested a pub operator who arranged fake marriages in the Philippines between Filipinas and homeless Japanese men so he could bring the women to Japan and employ them as hostesses. Fake marriages are often held in order to obtain unrestricted work permits for foreigners who are illegally working in Japan. It is uncommon for police to expose a fake marriage scam in which the bridegroom is sent overseas. The men who married the women were homeless people who had been living on the street in districts of Tokyo such as Shinjuku or Ikebukuro. According to the Japan Police, the pub operator paid them about 250,000 yen each and gave them sets of clothes so they could travel to the Philippines.²⁹

It is common for the "entertainer" work visa to allow entry for workers who are engaged in such activities as dancing or singing to be abused, and foreigners including Filipinos enter Japan and work as hostesses and commercial sex workers. In a bid to crack down on illegal work under this visa, immigration authorities introduced regulations banning people from obtaining entertainer visas if they intend to work at establishments that have been cited as engaged in illegal work any time over the past five years. From 2005 to 2006, the number of Filipinos who entered Japan for the first time on entertainment visas dropped from 47,765 people to 8,607 persons.

²⁹ "Pub operator arrested after sending homeless men to Philippines for marriage scams". *Mainichi Daily News* 10 April 2007

4. Possibilities for Philippine nurses and caregivers in Japan

A survey of the Japan Ministry of Health, Labor and Welfare (MHLW) predicted that the demand of nurses is expected to increase from 131.4 thousand in 2006 to 140.6 thousand in 2010, the supply projection of nurses is expected to increase from 127,200 thousand in 2006 to 139,100 in 2010 (*Table 7*).

The supply and demand projection of nurses is estimated by prefecture, from survey data supplied by medical institutions on their nurses, to improve their working conditions. Each prefecture validates the data, based on their policies. The projection or forecast is made based on the policies to promote the re-employment of people who do not work, but are qualified to be nurses (estimated at 550,000 persons). The policy is to promote their employment, by offering better working conditions. It is known that every year, about 4,500 among the new nurses in a batch of 50,000 give up being a nurse within the year that they are employed.

Table 7. Forecasts for labor supply & demand of nurses in Japan

	2006	2007	2008	2009	2010
Labor demand forecast	1,314,100	1,338,800	1,362,200	1,383,800	1,406,400
Hospitals	813,900	830,400	846,100	860,100	874,800
Clinics	246,200	247,900	249,600	251,300	253,100
Maternity wards	1,800	1,800	1,800	1,800	1,800
Care institutions	172,600	178,500	183,800	188,800	194,200
Welfare institutions	15,600	16,100	16,600	17,100	17,600
Community institutions	36,300	36,400	36,600	36,700	36,800
Education institutions	15,900	15,900	15,800	15,900	15,900
Offices, schools & others	11,700	11,800	12,000	12,100	12,200
Labor supply forecast	1,272,400	1,297,100	1,325,100	1,355,900	1,390,500
Annual stock of nurses	1,251,100	1,272,400	1,297,100	1,325,100	1,355,900
New graduates looking for work	51,400	51,100	51,500	51,600	52,500
Returning employees	85,000	88,200	91,200	94,600	98,400
Resigned employees	115,000	114,600	114,800	115,400	116,300
Difference between supply & demand (shortage forecast)	41,600	41,700	37,100	27,900	15,900
Percentage of supply meeting demand	96.80%	96.90%	97.30%	98.00%	98.90%

Source: Japan Ministry of Health, Labor & Welfare (2004). *Dai Rokkuji Kangofu Shokuin Kyoukyuu Mitoshi ni Kansuru Kentoukai Hokikusho* (No. 6 Report of the Study Group on the Labor Supply & Demand of Nurses)

Table 8. Trends and Forecast of Caregivers in Japan

	Caregivers	Elderly 75+ old	Elderly per caregiver
2000	543,800	9,012,000	17
2001	650,400	9,532,000	15
2002	734,200	10,043,000	14
2003	844,500	10,547,000	12
2004	917,900	11,070,000	12
2005	999,800	11,570,000	12
2010	1,215,200	13,792,487	11
2015	1,310,000	15,735,000	12

Source: Japan MHLW, Trends and Forecast of Caregivers

Notes: Actual numbers from 2000 to 2005, and forecast from 2005 to 2015.

Roughly 40 percent of Japanese nursing care license holders have turned down work in the industry because of low wages and poor working conditions, a survey conducted by the Health, Labor and Welfare Ministry has suggested.³⁰ Care workers earned an average of only 208,000 yen a month before tax, including allowances, even though their working hours are long,

The fees for care services are at almost the same level across the country, so fewer people in urban areas, where rent and consumer prices are higher, are willing to work in the industry. In their training, students are told that is very tough to work at special care homes for the aged. When working conditions for Japanese nurses and caregivers are improved, Japanese license holders may want to continue working in care service. Japan's MHLW survey shows that nearly 230,000 care workers are engaged in nursing care services.

The data is from information provided by various hospitals, clinics, maternity wards which employ midwives, social welfare and care services, nursing schools, public health centers, and other schools.³¹

In October 2004, 220,000 of the Japanese care workers were employed by the government's nursing care insurance program, according to the Japan MHLW. Roughly 9,000 others were engaged in providing care services for handicapped people and welfare services for children that are not covered by the nursing care insurance program, according to another survey. There were approximately 410,000 people who had care worker licenses as of the end of September 2004. Based on these figures, the Japan MHLW estimates that about 180,000, or some 40 percent of the license holders, have chosen not to continue doing nursing care work. Since the number of license holders had grown to 545,000 by May 2006, ministry officials said the number of those who have not taken on care jobs has further increased.³²

³⁰ *Mainichi Daily News*, "40 percent of nursing care license holders refuse work because of low pay" 21 May 2007.

³¹ The author is grateful to Mr Haruhiko Hori, and Mr K Akiyama, Researchers of the Japan Institute of Labor, Policy & Training in helping the author access the Japan MHLW data on nurses and caregivers, in various communications dated 2 February 2007 in Tokyo.

³² *Mainichi Daily News*, "40 percent of nursing care license holders refuse work because of low pay" 21 May 2007.

The JPEPA states that there will be no quantitative targets in the movement of natural persons between the two countries. The agreement provides that “neither party shall impose or maintain any quantitative restriction on the number of natural persons to be granted entry and temporary stay”.³³

The Japan Ministry of Health, Labor and Welfare however announced that “Japan will accept a maximum of 1,000 caregivers and nurses from the Philippines under the bilateral economic partnership agreement. The figure, which comprises 600 caregivers and 400 nurses, is for two years after the agreement takes effect.” The agreement was expected to go into force in 2007 after parliamentary approval. If the Philippine Senate ratifies the agreement in August 2007, Japan will likely begin accepting Filipino caregivers and nurses after that period. Plans to send Filipino nurses and caregivers for training in Japan are currently on hold, due to the delay in Philippine ratification.³⁴

The employment of Filipino nurses and caregivers in Japan was the main item requested by the Philippine side during the JPEPA negotiations. The Philippines is Asia's largest exporter of labor. More than 10,000 caregivers and about 160,000 nurses from the Philippines are working in about 50 countries. Despite high expectations from the Philippines, Filipino workers will face strict qualification requirements for working in Japan.

Caregivers must be graduates of a four-year university or a nursing college, who have had training in care services. Nurses must be graduates of a nursing college with a minimum of three years of work experience. In Japan, the workers will be required to go through a six-month orientation in Japanese language, laws and society. Caregivers will be allowed to work for four years, and nurses for three years on the basis of preliminary admission standards. If they pass government qualification examinations for their professions in Japanese, the workers can renew their resident permits indefinitely.

The recruitment and deployment of nurses and caregivers to Japan will be implemented by the Philippine Overseas Employment Administration (POEA), through its Government Placement Branch, based on a government-to-government hiring system. Candidates for the jobs in Japan will be selected by the Philippine government through POEA, and will be required to study the Japanese language for six months prior to the on-the-job training (OJT). Within three years of the OJT given to nurses, and four years for caregivers, they should have passed stringent Japan qualification or licensure examination in order for them to work in Japan for a longer period. Failure in the examinations means a return to the Philippines, since the training visas will expire.

Since the signing of the JPEPA was announced, there have been inquiries from interested Philippine caregivers and nurses. The Philippine Overseas Employment Administration (POEA) has to advise job applicants that “there is yet no recruitment for Japan nurses and

³³ Article 110, paragraph 3 of the JPEPA.

³⁴ Interviews with Mr Masahiro Hachiya, Executive Director of the International Care Aid Organization (ICAO), Tokyo, 14 April 2007; also interviews with Mr Randy Yu, ICAO Staff.

caregivers. Recruitment will begin upon agreement on a final memorandum of understanding between the Philippines and Japan that will define the process of selection and deployment of our workers, and the selection and qualification of Japanese employers.” There was a sudden interest among many young jobless Filipinos, but vulnerable as victims of illegal recruiters who take advantage of their ignorance of work conditions in Japan.

The Japan Ministry of Health, Labor and Welfare is introducing new legislation to ease license requirements for nursing-caregivers, as part of measures to facilitate Japan's acceptance of Filipino caregivers under the JPEPA. The ministry has included the measure in a related bill submitted to the current Diet session, with the aim of it taking effect in fiscal 2012. The plan is to certify those who have not passed a national exam as a *jun-fukushishi* the rough equivalent of which is “junior (*or assistant*) nursing caregiver” if they have completed related courses at colleges, universities or vocational schools. The ministry has found it necessary to set up the new license to pave the way for those who fail in the state exam to work at nursing-care facilities, to facilitate the acceptance of Filipino caretakers. The easier license is necessary because the bill toughens the requirements for certifying nursing-caregivers to those who pass the national exam, scrapping the currently allowed alternatives, such as licensing those who complete 1,650 hours of training courses at special vocational schools even if they do not take or pass the exam.³⁵

The *Japan Association of Certified Care Workers*, however, is against the abrupt easing of the license requirements. The association argued that less strict requirements “may lead to lowering the treatment of care workers in the future. The measure deviates from the ministry's original policy of integrating nursing-care services to a single system in which they are provided only by state-certified caregivers in order to secure qualified and specialized personnel to carry out the difficult and delicate jobs of caring for dementia patients and preventing abuses of the elderly.”³⁶

The most significant barrier in the movement of nurses and caregivers in the Japanese health and care industry is the need for Filipinos to acquire Japanese language skills. In order to pass *Level I* of the Japanese Language Proficiency Test (JLPT), about 1,000 hours are needed in Japanese language training. *Level I* Japanese language proficiency is also not enough to pass Japan's national board examination for professional caregivers.

In the hearing for the ratification of the JPEPA, Japan Diet members expressed important concerns on the effect of the entry of Filipinos into the quality of Japan's health care, and the effects on the labor market. The JPEPA stipulates that within two years, 400 nurses and 600 caregivers from the Philippines who qualify according to requirements will enter Japan. For six months they will study Japanese and undergo training. Philippine nurses finish their academic requirements and graduate after 4 years in their country. Then they will stay further

³⁵ Author's conversation with Mr Shinichi AKIYAMA, Director for Economic Partnership Agreement, Japan Ministry of Health, Labor and Welfare (MHLW) in Tokyo.

³⁶ *The Japan Times*, March 25, 2007, “Filipino nursing-caregivers to see eased licensing.”

to qualify for Japanese standard requirements for licensure, which require 3 years for nurses, and four years for caregivers. After they qualify and pass the licensure examinations, they could work as nurses and caregivers.³⁷

Japan Diet members expressed concern that the entry of Philippine nurses and caregivers “risk becoming the reasons for lowering down the standards for working conditions of Japanese nurses and caregivers”. One of the reasons why very few Japanese are attracted to work as nurses and caregivers are the bad working conditions. There are worries that the Filipino nurses and caregivers will be source of cheap labor at the bottom and therefore have an overall effect of pulling down working conditions in the Japanese labor market. For instance, while Filipino nurses and caregivers stay in Japan to learn Japanese and acquire work experience, they would not be entitled to health insurance.

Japanese language communication skills would also be a problem. It is doubtful that after about 6 months of Japanese language training, the Filipino nurses and caregivers would be able to adequately understand instructions for medical prescription for instance, answer emergency calls in the telephone, or respond correctly to sudden changes in the health conditions of patients. The quality of health care will suffer due to language communication problems.

The Philippine Overseas Employment Administration (POEA) is currently negotiating with Japanese authorities to firm up the mechanism for hiring Filipino nurses and caregivers in Japan. In Japan, the designated institution for hiring foreign nurses and caregivers is the *Japan International Corporation of Welfare Services (JICWELS)*.³⁸ The purpose of this administrative agency is to develop “international technical cooperation programmes ... for the promotion of health and social welfare activities in the friendly nations.”³⁹ Once the JPEPA is ratified by the Philippines, JICWELS will identify and accredit medical institutions and care giving homes qualified to receive Filipino medical caregivers. The medical institutions will be evaluated based on the adequacy of their facilities and capacity to provide training for Filipino medical caregivers.⁴⁰

Japan’s policy and views on foreign workers

From 1641 to 1853, due to external threats, the Tokugawa shogunate of Japan enforced an isolation policy called “*sakoku*”. The policy prohibited foreign contact except with China,

³⁷ Views expressed by Diet members during the committee hearing on November 10, 2006 (No. 6 meeting) http://www.shugiin.go.jp/index.nsf/html/index_kaigiroku.htm.

³⁸ Interviews with Mr Shinjiro Nozaki and Mr Keichi Inagaki, officials of the Japan International Corporation for Welfare Services (JICWELS), Tokyo, Japan.

³⁹ JICWELS was established under the auspices of the Minister for Health and Welfare as a semi-governmental organization in July 1983. Webpage: <http://www.jicwels.or.jp/>

⁴⁰ Author’s interview with Mr Reydeluz Conferido, Labor Attache, Philippine Embassy, 17 January 2007, in Tokyo.

Korea, Taiwan, and the Dutch. In this context, it is easy to understand why the subject of “foreign workers” is sensitive to many Japanese people when it came up in the 1980s. But from being a sensitive subject, Japan has extensively discussed the acceptance of “foreign guest workers”. There were many research articles and books published on the subject. Interest on foreign workers in Japan then declined.

Japan’s policy meanwhile, has shifted from a “guest worker” perspective to acknowledgement that “the use of foreigners as human resources will become an important issue, in addition to the development of Japan human resources, including women and elderly”.⁴¹ The 2006 white paper of the Japan Ministry of Economy, Trade and Industry outlines Japanese strategy in the emerging global economy. It has a section on “training and utilization of human capital”. The white paper of the Japan METI recognized that “international competition for competent human resources has intensified, and training of human resources in Japan is needed...” Among other strategies, Japan is establishing the “Asia Human Resource Fund” to support talented human resources in Asia by inviting them to be educated and trained in Japan and helping them find jobs with Japanese companies.⁴²

In Japan, the debate about foreign workers has shifted to the framework of “the movement of persons across national borders”. First, the public is concerned over the issue of how the nation will manage the anticipated future decline of the Japanese workforce, given the dwindling birthrate and fast ageing of the population. The mass media has focused on the debate over whether or not the anticipated shortage of domestic labor should be replenished using foreign workers. Nippon Keidanren (Japan Business Federation) and the Japan Chamber of Commerce and Industry, in anticipation of a shortage of labor that doesn’t require expertise, skills or experience (referred to as “unskilled labor”), argue for the acceptance of foreigners as unskilled labor.

The Japan Business Federation (*Nippon Keidanren*) has proposed that skilled foreign workers be allowed to get temporary full-time working positions at Japanese companies in areas where Japanese workers are scarce. The proposal calls to expand the area of skills that qualify for working status so an increasing number of foreign workers will be able to work at Japanese firms to fill in labor shortages in those areas. Currently, foreign workers with specialized skills such as sheet metal processing, welding and shipbuilding are unable to get working visas in Japan. The Nippon Keidanren argued that “foreign workers should be accepted from countries that have signed economic partnership agreements with Japan and should be limited to those with skills in areas where Japanese workers are scarce.” Foreign workers should also be required to have Japanese language ability and specialty skills, and their period of stay should be limited to one year or to three years.⁴³

⁴¹ Japan Ministry of Economy, Trade & Industry. 2006. Training and Utilization of Human Capital. *White Paper on International Economy and Trade 2006*. <http://www.meti.go.jp/english/report/index.html> [Accessed 21 March 2007]

⁴² New Year Greetings of Mr Akira Amari, Japan Minister for Trade, Economy and Industry, January 1, 2007. <http://www.meti.go.jp/english/speeches/index.html>

⁴³ *The Japan Times*, March 21, 2007 “Up job chances for skilled foreigners: Keidanren”.

In contrast, the Japan Trade Union Confederation (RENGO) reconfirmed its view that “foreign workers should only be accepted into job types that require expertise, technology, or skills, and in principle their acceptance should be in balance with the employment of domestic workers and based on a national consensus.”⁴⁴ RenGo however recognized that the movement of persons both internationally and in Japan has drastically changed since 1988, and debates over foreign workers have entered a new phase. RENGO recognized that with “globalization,” not only the “movement of goods” such as commodities and capital across national borders, but also the “movement of persons” has been increasing dramatically. These movements will gain momentum in the future, and Japan will also be affected by them. However, the “movement of persons” differs in character from that of goods. This is because the movement of persons entails diverse and broad problems, ranging from frictions emerging in everyday life due to encounters of people from different cultures, to ideological controversies over what a nation should be in terms of ethnicity.”⁴⁵

The Japan External Trade Organization (JETRO), a think tank of the Japan METI issued its recommendations on the movement of the international movement of people to Japan.⁴⁶ The report observed that Japan is “very strict about issuing short-term visas to foreigners visiting Japan, which slows down business transactions. The report suggested that Japan should do away with the letter of guarantee requirement, increase the number of countries exempt from visa requirements (while taking measures against illegal entry that may relate to criminal activity), give expedited visa service to foreigners attending trade fairs and exhibitions in Japan, among others.

JETRO’s report recognized the need to increase the number of skilled foreign workers in Japan. While competition for highly skilled workers, regardless of nationality, heats up outside of Japan, the number of such workers coming to Japan remains relatively modest. Japan’s strict immigration policy may be one cause for this”. Compared to other countries, Japan allows relatively short maximum periods of stay for foreign workers (the current maximum is three years). Also, foreign students studying in Japan are allowed to remain in the country for only 180 days after graduation, which does not provide adequate time for these students to pursue employment options in Japan, where there is a scarcity of skilled foreign workers in certain fields.

JETRO recommended that Japan extend the period of stay for foreign workers, in particular investors, business owners and senior executives. One positive step in 2005 was the

⁴⁴ In 1988, RENGO, which was then the private sector trade union confederation, published “RENGO’s View on Conditions and Criteria for Accepting Foreign Workers”. This statement was reconfirmed in 1989, when the present JTUC-RENGO was formed.

⁴⁵ These views are posted in the English version of the JTUC (Rengo) website. Please see “RENGO’s View on the Issue of Foreign Workers”, <http://www.jtuc-rengo.org/specialtopics/foreignworkers01.html>. I thank Mr Toshiyuki Wakatsuki, International Affairs Section of the RENGO for explaining to the author the meaning of the RENGO position on foreign workers.

⁴⁶ Japan External Trade Organization (JETRO) (2005). “Facilitating the Movement of People Across National Borders. Revitalizing International Business Exchange.”

extension to a 5 year maximum period of stay for IT-related experts and researchers. The report also suggested extension of the period of stay for recent foreign graduates of Japanese universities to one year, increase the number of countries with which Japan has social security agreements (to decrease welfare costs for foreign workers and their employers in Japan), and for Japan to establish a unified system to track foreign workers in Japan.

The demand for highly skilled foreign workers in many Japanese industries continues to grow. Yet, under present government regulations, companies in certain business categories are not allowed to accept foreign workers. Another concern is Japan's diminishing labor pool, which is shrinking as the country heads toward an aged society and the birth rate continues to decline. The report suggested that Japan conclude more agreements to increase the number of foreign workers in certain business categories. Such steps would also help decrease the number of foreigners staying in Japan illegally.

Finally, the JETRO report recommended that Japan introduce a clear system for evaluating the skills of prospective foreign workers. Some countries employ a "point system" that gives a numerical value to person's skills and qualifications.

5. Cooperation in HRD: Philippine seafarers in Japanese shipping and case studies

Japan and the Philippines have different practices and policies on skills training, qualification and licensures. The JPEPA states that “a party may recognize the education or experience obtained, requirements met, or licenses or certifications granted in the other party ... [to fulfill] ... the standards or criteria for the authorization, licensing or certification of natural persons of the other party. Recognition maybe accorded unilaterally.”⁴⁷

Human resource development (HRD) is mentioned as an item, with no details in *Article 144(a)* of the JPEPA, among other principles, to “... promote cooperation to facilitate and liberalize trade and investment, to promote wellbeing.” The joint statement on the occasion of the signing of the agreement in Helsinki in 2006 however lists programs and projects under a “*Japan Philippines Common Strategies for Action*”:

- ✧ Japanese language training and other cooperation on the movement of natural persons (nurses/caregivers);
- ✧ HRD in education and training, including diffusion and improvement of the quality of elementary and secondary education;
- ✧ Cooperation for scholarships in higher educational institutions;
- ✧ Cooperation for competency upgrading and entrepreneurship including assistance for social and economic empowerment of women;
- ✧ Capability enhancement for trainers and teachers;
- ✧ Promotion of training and exchange program for government officials;
- ✧ Capacity building to strengthen the administration and management of the education sector.

HRD training and scholarships of Filipinos in Japan

More than 2,500 Filipinos have studied in Japan since a scholarship program for foreign students started 50 years ago, according to the Japan Information and Cultural Center in Manila, which administers all state-funded scholarship applications. Statistics from the Japanese Embassy in Manila show that there were 99 and 94 Filipino scholars supported by Japan in 2005 and 2004, respectively. On average, about 700-800 Filipino citizens apply for educational grants in Japan each year, indicating an average acceptance rate of only 12-14 percent.⁴⁸

⁴⁷ Article 112 (1 to 3) of the JPEPA on “Mutual Recognition”.

⁴⁸ Doris Dumlao, “Filipino scholars in Japan reverse brain drain”, *Philippine Daily Inquirer*, 6 June 2006.

There are also many exchanges of students, visiting professors, researcher and artists from the Philippines going to Japan. The exchange is based on an agreement between higher education institutions and scientific research institutions in the two countries. There have been many beneficiaries from scholarships and fellowships under the following agencies and institutions:

- Japan Ministry of Science, Education and Technology (MEXT, Mombukagakusho)
- Japan Society for the Promotion of Science (JSPS)
- Association of Overseas Training (AOTS) for technical training
- Japan International Training Corporation (JITCO)
- Japan International Cooperation Center (JICE).

The government of the Philippines is implementing the Japanese Grant in Aid for Human Resource Development Scholarship (JDS), since 2002. According to the JDS program, the main target groups are “young people in public sector who are expected to play leadership roles in the Philippines and people in private sector who are expected to contribute to the development of the Philippine market economy.”⁴⁹ There are now 25 scholarship slots for various fields in the graduate program, including public administration, economics, and business management. Almost all the Japanese ministries have institutions which provide exchange and training for foreign counterparts, including the Philippines.

The state-funded scholarship system for foreign students covers seven programs provided for: Research students, trainee teachers, scholarship students of the Young Leader's Program, undergraduates, Japanese studies/culture studies students, College of Technology students, and *Senshu-gakko* (special training college) students. A report from Japan's Ministry of Foreign Affairs circulated during the ABCDE conference estimated that of the total 117,302 foreign students in 2004, 315 were Filipinos. The report indicated that the Filipino student community in Japan was the sixth biggest. China had the biggest number (1,810) of citizens studying in Japan, followed by Thailand (622), Indonesia (600), Vietnam (530) and Bangladesh (440).

The objective of most of the scholarships, fellowships and exchange programs between Japanese institutions and Philippine nationals is to provide “opportunities for obtaining master’s degree at Japanese universities in order to support human resource development policy of the Government of the Philippines, and eventually to extend and strengthen the bilateral relationship between the Philippines and Japan.”

It is recognized that human interactions between Japan and the Philippines would require better communication and language skills, especially at the grass-roots level. In December 2006, during Prime Minister Abe’s visit to the Philippines, it was announced that Japan will

⁴⁹ Japan International Cooperation Center (JICE) website, accessed 12 March 2007.
http://sv2.jice.org/jds/jds/philippines/philippines_org.html

consider to expand the number of Filipino teachers of the Japanese language to be accepted to "the Training Program for Teachers of the Japanese Language" in Japan, taking into account the needs in the Philippines, and will start a training program for Filipino teachers of the Japanese language in the Japan Foundation. Japan is prepared to intensely provide teaching materials of the Japanese language to educational and other relevant institutions which serve as bases in the local areas. Japan is also to inviting education officials to assist in formulating a mid- and long-term plan to foster Japanese language teachers in the Philippines.⁵⁰

There is however no government agency in the Philippines which monitors the policies, benefits and costs as well as the progress of scientific and academic exchanges with foreign institutions, including those with Japan.

Another important institution in the field of training of foreign workers is the *Japan International Training Cooperation Organization (JITCO)*, a semiofficial organization established in September 1991, with the aim of assisting the "human development" in private sectors of developing countries, with emphasis on supporting the transfer of Japanese technique and skills through the ITP (Industrial Training Program) and TIP (Technical Internship Program). JITCO has framework agreements with governments (ministries or governmental agencies) of 14 partner counties, out of which 13 are Asian countries, including the Philippines.⁵¹

Foreigners applying for internships in the government-supported Industrial Training Program and Technical Internship Program are dispatched by JITCO to cooperatives and host companies. The Japan Ministry of Health, Labor and Welfare supervises the programs at individual firms.

In 2005, 83,000 foreigners entered Japan under the Industrial Training Program, which provides basic skills for the trainees. That year, 32,394 interns changed their status to the Technical Internship Program, which enables them to stay in Japan for up to seven years to obtain higher job skills. Host firms have often been found to exploit interns and trainees, using them as cheap labor instead of offering proper training, and JITCO has been criticized for failing to properly supervise the programs by the companies.⁵² The Nippon Keidanren said that the state-sponsored industrial training and internship program should be maintained for the time being. Punishment for companies who fail to pay minimum wages or overtime allowances for foreign workers, or abuse the interns in other ways should be reinforced.⁵³

The JITCO program was launched in 1991 to help foreign workers acquire skills in Japan that could be used in their home countries. A program participant is allowed to work as a technical intern for two years after undergoing a one-year training course. But the program

⁵⁰ Japan-Philippine Joint Statement "Partnership between Close Neighbors for Comprehensive Cooperation" December 9, 2006 <http://www.mofa.go.jp/region/asia-paci/philippine/joint0612.html>.

⁵¹ "Introducing JITCO", Japan International Training Cooperation Organization (JITCO), accessed 27 March 2007, http://www.jitco.or.jp/eng/contents/01_01.htm

⁵² *The Japan Times*, Tuesday, Feb. 20, 2007 "Sexually abused JITCO intern wins settlement".

⁵³ *The Japan Times*, March 21, 2007 "Up job chances for skilled foreigners: Keidanren".

Table 9. Philippine trainees in JITCO, 2001 to 2005

	2001-2005	1992-2005
Total JITCO supported trainees	228,666	416,009
Philippine trainees	11,098	25,168
<i>Percent from Philippines</i>	4.9%	6.0%
Other trainees handled by JITCO	341,093	748,679
Philippine trainees	18,554	51,414
<i>Percent from Philippines</i>	5.4%	6.9%

Source: Raw data from the JITCO.

has come under fire for helping Japanese employers to hire foreign workers as cheap manual labor.

Cooperation through HRD in information technology: UP ITTC

Japan is currently providing assistance to a key HRD project in information technology training, through the Japan International Cooperation Agency (JICA). The project is based in the College of Engineering, University of the Philippines, in Diliman, Quezon City, through the U.P. Information Technology and Training Center (U.P. ITTC). The project supports the implementation of a plan for a national IT strategy by building and establishing an IT training center in the University's science and technology park.⁵⁴ The joint statement by Japan Prime Minister Junichiro Koizumi and Philippine President Gloria Macapagal Arroyo on the signing of the JPEPA in Helsinki on September 9, 2006 prominently mentions this ongoing project as part of the implementation of the common strategies for action.

This project aims to provide university and college graduates and IT engineers with the appropriate IT training courses to enhance their skills and knowledge to meet the needs of industry. To achieve this aim, technical transfers relevant to supplying highly educated technicians to the local IT industries are being held through practical IT training courses. The four-year project began in July 2004 and will continue through July 2008.

According to the U.P. ITTC, only 2 percent Filipino IT graduates are employed yearly after graduation due to inadequate practical training and industry experience. Among those hired by companies, a significant percentage still undergo additional training for several months to address this lack in skills required by the industry. To fill the IT industry gap in the

⁵⁴ The information in this section was provided by Dr Jaime Caro, Director of the University of the Philippines Information Technology and Training Center (U.P. ITTC). Their website could be accessed at <http://ittc.up.edu.ph/about.html> [accessed 5 March 2007].

Philippines, the Philippine and Japanese Governments through the University of the Philippines (UP) and the Japan International Cooperation Agency (JICA) established the *UP Information Technology Training Center (UP ITTC)*.

The UP ITTC implements the technical cooperation between the University of the Philippines and the Japan International Cooperation Agency (JICA) for the Philippine Information Technology Human Resource Development Project. The UP ITTC administers the one-year Certificate in Information Technology training program. The full-time course is open to four-year degree holders. UP ITTC industry partners offer full scholarships, internships, and employment opportunities after completion of the training program.

The UP ITTC administers the one-year Certificate in Information Technology training program with emphasis on the following specializations: Applications Development, Network Systems, and Mobile Computing and Embedded Systems. Students gain a solid IT background complemented by effective business and communication skills. Half the curriculum is devoted to laboratory and workshop sessions, giving students ample hands-on experience. The UP ITTC operates four computer laboratories: Applications Development Lab 1 and 2, Network Systems Lab, and Embedded Systems Lab. The curriculum was developed by a working group with members from the academe and ITTC industry partners. The industry partners offer full scholarships, internships, and employment opportunities after completion of the training program. Lecturers come from the different UP units and departments, other universities, and IT companies. There are seminars and short courses on current computer technologies.

In the evaluation of this program, it is recommended that a “tracer study” be undertaken. The study should trace what happened to a sample of graduates who finished the courses, their current employment status, jobs, and career progression after they were employed by industry.

Best practice HRD case study: Philippine seafarers in Japanese ships⁵⁵

Labor exchange and HRD through Filipino seafarers in Japanese shipping are not included in the scope of the JPEPA. Yet, human resource development (HRD) through training and education for Philippine seafarers on board Japanese ships provide an excellent example of how the labor dimension could actually work for the mutual benefit of both Japan and the Philippines. About 72 percent of the seafarers on board Japanese ships are Filipinos. In 2006, there were 24,727 Filipino seafarers in Japanese ships – the rest are from India,

⁵⁵ This section benefits from the author’s discussions with Captain Osamu HANDA, Managing Director; Mr Shunsuke YAMAWAKI, Deputy General Manager; and Mr Takashi MATSUMOTO, officials of the Japan Shipping Association; and Mr Yasuhisa TSUJIMOTO, Director General of the International Maritime Manning Association of Japan (IMMAJ), 17 May 2007 in Tokyo.

China, Indonesia and other nationalities. The Japanese ship-owners expect a shortage of seafarer officers, and 8,000 new Filipinos are needed.⁵⁶ There are rich issues for fruitful negotiations, on how the Philippines could meet Japan's demand for seafarers. Quality training must be strictly enforced to match global standards, given that most Philippine maritime education and training institutions need to improve learning equipment and curriculum.

Japan's merchant shipping fleet consists of about 2,000 ships, and the number did not change in the past decade. However, the number of Japan-flag vessels is decreasing, and has gone down to 95 vessels in 2005. The number of Japanese seafarers also declined rapidly, from 30,000 in the 1985 to only 1,648 in 2005.⁵⁷

It is well known in global shipping that ship-owners use "flags of convenience (FoCs)" with less costly tax regimes and regulations in countries such as Panama, Bahamas, Liberia and others to register their ships. The International Mariners' Management Association of Japan (IMMAJ) reported that there are about 2,000 ships in the Japan merchant fleet. There are only 98 vessels which fly the Japanese flag, and about 1,300 ships fly flags of convenience (FoCs), mostly Panama (80 percent). Philippine seafarers are 72 percent of the total 34,268 crew in 1,659 vessels under the scope of the IMMAJ. Due to positive trends in global trade,

Table 10. Seafarers in the Japanese merchant fleet, 2004 & 2005

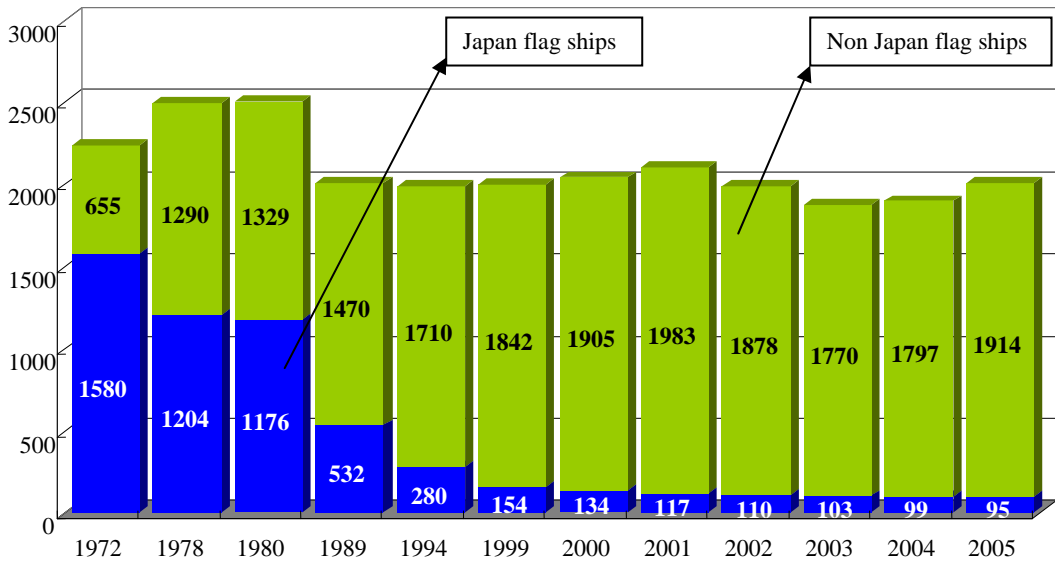
	2004		2005	
	<i>Number</i>	<i>Percent</i>	<i>Number</i>	<i>Percent</i>
Japanese	1,903	5.5%	1,648	4.4%
Non-Japanese	32,709	94.5%	35,387	95.6%
Philippines	25,031	72.3%	26,546	71.7%
China	1,915	5.5%	2,260	6.1%
India	1,584	4.6%	1,768	4.8%
Korea	1,196	3.5%	1,174	3.2%
Myanmar	992	2.9%	1,255	3.4%
Vietnam	578	1.7%	711	1.9%
Indonesia	471	1.4%	531	1.4%
Others	942	2.7%	1,142	3.1%
TOTAL	34,612	100.0%	37,035	100.0%

Source: Keynote address by Mr Koichi Fujiwara, Director General of the Japan Maritime Bureau, 26 October 2006 Japan Philippines Manning Conference

⁵⁶ Statement of Mr Nobuo Kayahara, Chairman of the International Mariners Management Association of Japan, October 26 & 27, 2006 Conference on "Working Together to Meet the Challenge for a Stable Supply of Seafarers", Philippine Japan Consultative Manning Council, Tokyo.

⁵⁷ Keynote address by Mr Koichi Fujiwara, Director General of the Japan Maritime Bureau, Ministry of Land, Infrastructure and Transportation, 26 October 2006 Conference.

Figure 6. Japan’s merchant shipping fleet, 1972 to 2005



Source: Keynote address by Mr Koichi Fujiwara, Director General of the Japan Maritime Bureau, 26 October 2006 Japan Philippines Manning Conference

the Japan Ship owners Association expects an increase in 1,000 vessels in the next ten years, each of which requires an average of 25 crew. Japanese shipping would therefore require 25,000 additional crew members. They expect the Philippines to supply about 80 percent of this crew requirement.⁵⁸

Seafarers’ remittances from Japan increased in its share of the total OFW earnings from Japan, from 5.2 percent in 2002 to 38 percent in 2006. In contrast, remittances from seafarers deployed in Japanese ships increased by 585 percent (almost six times), during the same period.

Japanese ship-owners respect the right of Filipino seafarers to freedom of association and collective bargaining, and exert efforts to ensure their health and safety on board. Most Filipino seafarers are members of the *All Japan Seamen’s Union (JSU)*, affiliated with the *International Transport Workers Federation (ITF)*. The JSU has negotiated increases in wages for seafarers, and improvements in training. Work contracts are consistent with ITF standards.

The work contract of seafarers says that “\$15 dollars are collected from each seafarer to complement the employer’s contributions to the “Training Levy”, which is \$ 18 for each

⁵⁸ Author’s interview with Mr Yasuhisa Tsujimoto, IMMAJ and Mr Shunsuke Yamawaki, Japan Shipowners Association on 17 May 2007 in Tokyo.

seafarer.⁵⁹

Japan's shipping managers acknowledge that the demand for skilled deck officers and engineers continue to rise, but crew size is lesser, with far less demand for ratings due to "smarter" ships with the latest technology. The Philippine Overseas Employment Administration (POEA) reports that global deployment of Filipino seafarers increased by some 8.18 percent or almost 18,749, from 229,002 in 2004 to 247,751 in 2005. The trend continues due to the growth in global shipping, and preference for skilled Filipino seafarers. Philippine Labor and Employment Secretary Arturo D. Brion cites for instance growing demand from Japan's shipping industry, who need to employ 8,000 Filipino officers and seafarers as crew for the 600 new ships to be built until the year 2010. The government acknowledges that Japanese shipping companies are investing heavily in the training of Filipino seafarers, to streamline and build up their skills, through training center facilities.

In contrast, there has been a decline in the supply of Japanese seafarers, particularly for officers. The Japan Shipping Association (JSA) reports that in 2002, there were only 3,770 Japanese seafarers.⁶⁰ Most are officers (73 percent), and 67 percent are over 40 years old. In addition to their operational duty, Japanese seafarers are required to train and supervise foreign seafarers, most of whom are Filipinos.

Japan's shipping industry provides enormous assistance in the area of seafarer training. In addition, the Japan International Cooperation Agency (JICA) gave technical and financial assistance to upgrade Philippine maritime education and training institutions. The Philippine Department of Labor and Employment (DOLE) sees a bright and bullish demand for Filipino seafarers in Japan due to the new ships to expand its shipping capacities until 2010.⁶¹ Philippine Labor and Employment Secretary Arturo D. Brion said that major players in the shipping industry of Japan want to draw 8,000 Filipino officers and seafarers as crew for the 600 new ships to be built until the year 2010. The government acknowledged that Japanese shipping companies are investing heavily in the training of Filipino seafarers, to streamline and build up their skills, through training center facilities.

An example of the best practice in HRD training for Philippine seafarers for employment in Japanese ships is given by Mitsui OSK Lines (MOL).⁶² The Philippine government recognized the company's efforts with a Presidential Award as an "International Maritime Employer" in 2002 & 2005. The award honors MOL's long contributions to the Philippine economy, employing thousands of seafarers aboard its worldwide fleet.

The Magsaysay Institute of Shipping (MIS) is the first seafarer training institute founded by a Japanese shipping company in the Philippines This institute recruits candidates selected

⁵⁹ Statements by the *All Japan Seamen's Union*, Tokyo, 15 April 2007. The JSU also maintains an office in Manila to help Philippine seafarers and their families.

⁶⁰ The Japanese Ship-owners Association, *The Current State of Japanese Shipping* (2004).

⁶¹ Information Service of the Philippine Department of Labor & Employment, Press Release dated November 4, 2006.

⁶² Information in this section was generously provided by officials of the Seafarer's Group, Marine Management Division, Mitsui OSK Lines, Ltd., in Tokyo as requested by the author, through correspondence on 25 April 2007.

from maritime academies in the Philippines and offers a three-month training course before assignment to a vessel. Graduates serve as cadets on ships operated by MOL and its partners. After a one-year on-board cadetship, they are entitled to take examination for certificate of competency. Those who pass the examinations are qualified as deck officers or engineer officers to serve onboard vessels of MOL and its partners.

MOL founded the Magsaysay Institute of Shipping (MIS) in 1993, through a joint venture with two partners - Magsaysay Maritime Corp and Fairmont Shipping Ltd. As a boarding school for recruits to mariner, MIS has sent out top-quality, highly skilled seafarers since its foundation. The institute has supplied nearly 2,000 graduates to MOL and its partners. Currently, about 950 MIS graduates are on board MOL-operated vessels

According to company officials, MOL's HRD project aims to train more Filipino seafarers to expand its fleet in line with the company's mid-term management plan (called the 'MOL STEP'). The redevelopment budget for HRD is about 100 million pesos (approx. 200 million yen). An extensive renovation project is ongoing at the Magsaysay Institute of Shipping (MIS), and the MOL Training Center in Dasmariñas, Cavite, a suburb in the south of Manila.

According to the company's press release, the construction is to be completed in 2008, with the following major elements:

- The training site area is increased from 28,000m² to 31,400m², and another building will be added, bringing the total to seven, and increasing the floor space from about 5,700m² to about 8,900m².
- The number of classrooms will be increased from 14 to 22.
- Six additional instructors who have on-board practical experiences will join the faculty, which currently numbers 15.
- A new dormitory (3,250m²) with accommodations for 350 people will be constructed.
- The number of training kitchens will be increased from two to four for instruction in on-board cooking.
- The authorized number of cadets will be increased from current 240 per year to 440.

The development of HRD facilities will enhance the competencies of the trainees, instead of focusing only on maritime technical skills. In particular, trainees who graduate from MIS are expected to advance to captains, chief engineers, or shore side marine superintendents, so they will need additional training in leadership, analysis, judgment, and communication skills. The program will include role-playing exercises and case studies in lectures and practical training. Each trainee is assigned a thesis that must be completed before graduation. The center is also hiring deans with extensive experience in education and psychology, and assigning them to help counsel trainees after school. In addition, trainees will have more opportunities for recreation, sports, lectures, and entertainment.

Shipping and crewing companies through the International Maritime Employers Committee (IMEC) has urged maritime education and training institutions to upgrade the training of Filipino seafarers, particularly in mathematics, the sciences and communication skills, including English. IMEC is an organization of about 100 ship-owners who operate 5,870 ships registered in over 40 countries, and is the largest group of employers of Filipino seafarers. The IMEC has proposed a more stringent college entrance examination for students who aspire to be seafarers. The IMEC employers anticipate that a considerable number of ships and containers are being built in the next five years, along with demand for more qualified officers.

Filipino seafarers are mostly from the poor maritime areas in the Visayas and Mindanao. They came from large families, and their parents were either fishermen, farmers, or self-employed workers. The choice of a seafaring career was a way out of poverty, with the added attraction of “earning dollars and seeing the world for free”, proclaimed by gleeful maritime school brochures. Parents sacrificed their incomes to pay the \$5,000 tuition and other schooling costs needed for a 4-year program, and even brothers, sisters and other relatives were enlisted financially for help. The cost to complete an officer-level maritime course is about 5 times the average per capita income in the Philippines.

Seafarers however complain about expensive, time-consuming, overlapping procedures, as well as red tape in the processing of papers, certificates and documents. They are made to go back and forth in different agencies for their papers. Overlapping function breed fraudulent certification, corrupt fixers or go betweens, extortion and inconsistencies in policy implementation.

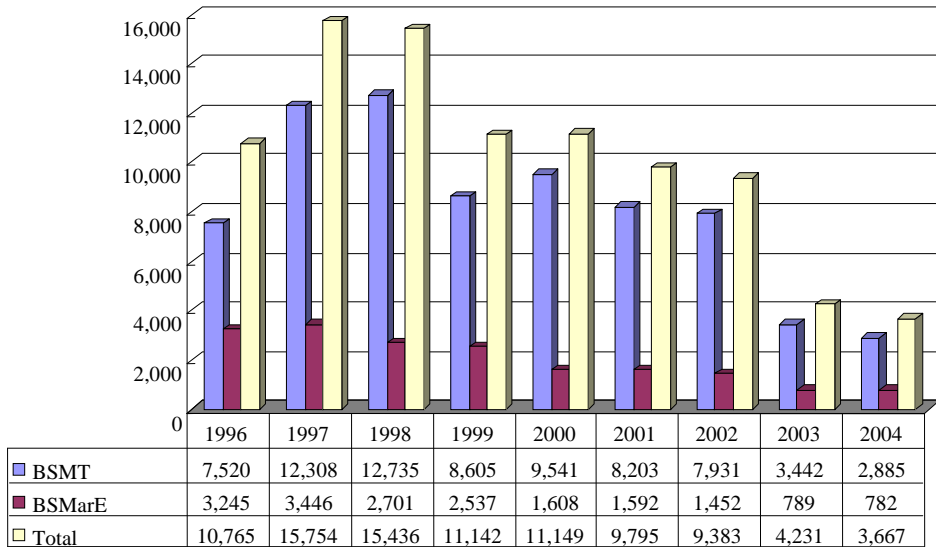
The Philippine Commission on Higher Education (CHED) reports a decreasing trend in the graduates of officer level courses. In 1997, there were 15,754 graduates, which decreased to 11,149 by 2000; there were only 3,667 graduates in 2004. Since 2000, there has been an average yearly decline of 16.5 percent in Philippine maritime graduates. The decline is more severe with respect to the supply of marine engineers (19 percent) (*Figure 7*).

After college studies and an apprenticeship onboard, maritime graduates need to pass a proficiency examination to obtain licenses as officers. Since 1991, pass rates were more severe, much less than the 50 percent average for all professions. Only 47.2 percent of the examinees pass as marine engineers, and 40.5 percent as deck officers. In other words, the actual supply of officers who qualify in licensure examinations is less than half of the graduates (*Figure 2*). More than half who don't qualify compete with others as ratings, and the numbers accumulate every year.

There is a significant gap between the number of new students enrolled for MET studies and the number of graduates from these institutions, suggesting a large drop out or wastage rate. Many students find they are unable to afford the costs of MET courses, and are forced to drop out. Others are unable to obtain placements for cadetships or shipboard training.

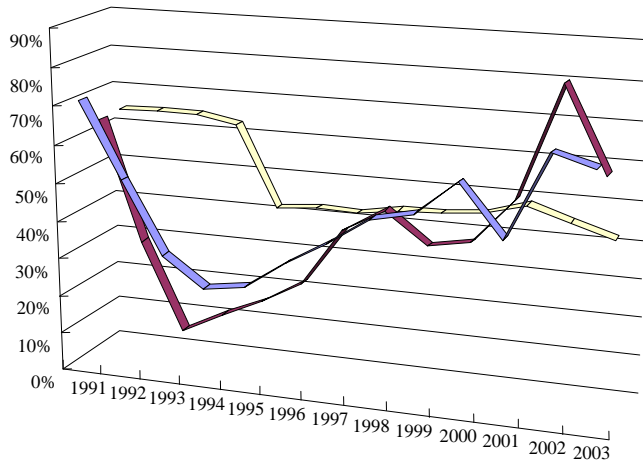
The Philippine Commission on Higher Education (CHED) is the government agency

Figure 7. Decrease in Filipino maritime graduates, 1996 to 2004



Source of basic data: Philippine Commission on Higher Education (CHED)
 BSMT: Bachelor of Science in Marine Transport
 BSMarE: Bachelor of Science in Marine Engineering

Figure 8. Less than half of graduates pass licensure tests, 1991 to 2003



	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
Marine Engineering	71%	51%	32%	25%	27%	34%	40%	47%	50%	59%	46%	68%	65%
Marine Transportation	64%	32%	9%	15%	19%	26%	41%	47%	39%	41%	52%	82%	60%
Pass rates, all professions	65%	65%	65%	63%	42%	42%	42%	44%	44%	45%	48%	45%	42%

Source of basic data: Philippine Commission on Higher Education (CHED)

which regulates higher education, including the maritime sector. In 1985, there were 47 maritime schools (8 government – owned, and 39 private – owned) but by 2000 there were 121 maritime schools in the official list. Demands for the application of IMO education standards to comply with STCW95 put pressure upon the CHED to trim the list to 53 schools with accredited maritime programs in 2001. Thus, the number of graduates went down to 9,795 in year 2001, compared with a peak of 15,754 *in 1997. Many schools subsequently claimed compliance with the standards on facilities and teaching staff under STCW95, and were put back on the list of accredited institutions. The International Maritime Organisation (IMO) website's 'Compendium of Maritime Training Institutions' shows that the Philippines has the world's largest number (n=98) of MET institutions, or 20.3 percent of the global total.

Aside from the shipping employers and crewing agencies, stakeholders in the Philippine seafaring industry include seafarer unions and organizations. While government policy, expressed in various laws, aims "to ensure qualified, competent and globally competitive Philippine seafarers", labor market regulation remains decentralized in a plethora of state institutions with their own specialization's, histories, mandates and constituencies. At the same time, Philippine labor laws reflect the tensions faced by the State in exploiting the global demand for Filipino labor, and the need to protect workers from abuse and exploitation. The quality of maritime education and training directly affects the seafarers' competencies and skills, which in turn reflects on the performance of their job assignments, pay and working conditions in the global labor market.

Philippine industry leaders and officials express hope that the country maintain its top position, or even further enlarge its share of the global labor market. There is however a need to pursue more vigorous and sustained policy reforms to strengthen maritime education and training, with benchmarks as well as standards consistent with best practices in leading countries. At the same time, the protection and welfare of seafarers through labor market regulation requires more resources to be allocated to the institutions and agencies which deal with the creation of valuable human capital for the maritime industry -- the seafarers.

6. Compliance with labor standards in investment and trade: regional context of ASEAN and East Asia

Article 103 in the JPEPA concerns respect for workers rights and promotion of decent work, and compliance with labor standards in investment and trade. This article embodies the eight (8) core ILO Conventions considered as fundamental to the rights of human beings at work. These rights are a precondition for all the others in that they provide for the necessary means to strive freely for the improvement of individual and collective conditions of work. The ILO argues that "... a failure to respect labour standards carries specific and measurable costs to national economies, harms economic development, and violates the rights of working people throughout the region."

In addition, both Japan and the Philippines are signatories to the UN Declaration of Human Rights of 1948, which provides for workers rights as a core component of human rights (Article 23 in particular).

Many ASEAN + 3 countries have ratified some, but not all of the core ILO conventions. Efforts to develop capacity need to continue, even for countries which have already ratified these core conventions. Capacity building is important, to fill the gaps, harmonize and improve national policies and laws on the fundamental framework of industrial relations.

Brunei Darussalam became the 180th Member State of the International Labour Organization (ILO) following receipt in Geneva of a letter from Mr. Pehin Dato Adanan Yusof, Minister of Home Affairs, stating on behalf of the Government that Brunei formally accepts the obligations of the ILO Constitution. Brunei Darussalam's membership became effective on 17 January 2007. The country has been a member of the United Nations since 21 September 1984.

Timor Leste (former East Timor) has applied for membership in ASEAN, and on several occasions has been invited as an observer in the meetings.

All ASEAN + 3 countries subscribe to the following principles in the preamble of the ILO Constitution:

"... universal and lasting peace can be established only if it is based upon social justice; ... conditions of labour exist involving such injustice hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperiled; and an improvement of those conditions is urgently required; as, for example, by the regulation of the hours of work including the establishment of a maximum working day and week, the regulation of the labour supply, the prevention of unemployment, the provision of an adequate living wage, the protection of the worker against sickness, disease and injury arising out of his employment the protection of children, young persons and women, provision for old age and injury, protection of the

interests of workers when employed in countries other than their own, recognition of the principle of equal remuneration for work of equal value, recognition of the principle of freedom of association, the organization of vocational and technical education and other measures;

... the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries.”

All member countries also subscribe to the fundamental principles of the ILO, which include the principle that “freedom of expression and of association are essential to sustained progress”. Furthermore, all member countries agree that “representatives of workers and employers, enjoying equal status with those of governments, join with them in free discussion and democratic decision with a view to the promotion of the common welfare.”⁶³

The core standards which constitute the key elements of the labor dimension are the following:

Freedom of association

1. Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87)
2. Right to Organize and Collective Bargaining Convention, 1949 (No. 98)

Abolition of forced labor

3. Forced Labor Convention, 1930 (No. 29)
4. Abolition of Forced Labor Convention, 1957 (No. 105)

Equality

5. Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
6. Equal Remuneration Convention, 1951 (No. 100)

Elimination of child labor

7. Minimum Age Convention, 1973 (No. 138)
8. Worst Forms of Child Labor Convention, 1999 (No. 182)

Most ASEAN countries have ratified the core conventions of the ILO on labor standards which implies that fundamental legislation and implementing mechanisms have been enacted. Effective ratification however depends upon the capacity to devote resources to implement the observance of core labor standards. Ratification also depends upon the circumstances of the relevant government instrumentality mandated to ratify international commitments.

⁶³ Section I (b) & (d), *Declaration concerning the aims and purposes of the International Labour Organization* (1944). <http://www.ilo.org/public/english/about/iloconst.htm#annex>

Among the ASEAN countries, Indonesia, Philippines and Cambodia had ratified all 8 of the core ILO conventions, together with other 85 states, which have done so. These countries face a huge challenge on how to develop capacity to implement the conventions, with the appropriate resources for employers, workers, government and other social sectors to comply with the requirements of the conventions, and to sanction the violators.

Malaysia has ratified 5 core conventions, but denounced or withdraw from Convention 105 on forced labor. Vietnam ratified 4 core conventions on child labor and equality in pay and employment, but not the core conventions on forced labor, freedom of association and collective bargaining. Myanmar has ratified 2 conventions on forced labor and freedom of association, and compliance has been the subject of annual reports in the ILO conference. The Lao PDR ratified only 1 out of 8 core conventions, on forced labor. Brunei Darussalam has not yet ratified any core convention. By way of comparison, Japan ratified core conventions; the Republic of Korea, 4 conventions; China, 3 conventions; and the USA, 2 core conventions out of 8.

The right to “freedom of association” has been defined by the ILO to include the right of workers and employers to establish and join organizations of their own choosing without previous authorization; to draw up their own constitutions and rules, elect their representatives, and formulate their programs; to join in confederations and affiliate with international organizations; and to be protected against dissolution or suspension by administrative authority.

The “right of association” includes the right of workers to strike. While it is generally accepted for strikes to be restricted in essential services, the interruption of which would endanger the life, personal safety, or health of a significant portion of the population, and in the public sector, these restrictions must be offset by adequate safeguards for the interests of the workers concerned (for example, mechanisms for mediation and arbitration, due process, and the right to judicial review of legal actions). Reporting on restrictions on the ability of workers to strike generally includes information on any procedures that may exist for safeguarding workers' interests.

“The right to organize and bargain collectively” includes the right of workers to be represented in negotiating the prevention and settlement of disputes with employers, the right to protection against interference, and the right to protection against acts of antiunion discrimination. Governments should promote mechanisms for voluntary negotiations between employers and workers and their organizations. Coverage of the right to organize and bargain collectively includes a review of the extent to which collective bargaining takes place and the extent to which workers, both in law and practice, are protected against anti union discrimination.

Table 11. Core ILO standards ratified by ASEAN + 3 countries

	1. Abolition of Forced Labor		2. Freedom of Association	
	Con. 29	Con. 105	Con. 87	Con. 98
Brunei Darussalam				
Cambodia	24/02/1969	23/08/1999	23/08/1999	23/08/1999
Indonesia	12/06/1950	07/06/1999	09/06/1998	15/07/1957
Lao PDR	23/01/1964			
Malaysia	11/11/1957	Denounced		05/06/1961
Myanmar	04/03/1955		04/03/1955	
Philippines	05/05/2005	17/11/1960	29/12/1953	29/12/1953
Thailand	26/02/1969	02/12/1969		
Singapore	25/10/1965	Denounced		25/10/1965
Vietnam				
<i>Compare with:</i>				
Japan	21/11/1932		14/06/1965	20/10/1953
Korea				
China				
	3. Prohibition of discrimination in employment		4. Effective elimination of child labor	
	Con. 100	Con. 111	Con. 138	Con. 182
Brunei Darussalam				
Cambodia	23/08/1999	23/08/1999	23/08/1999	14/03/2006
Indonesia	11/08/1958	07/06/1999	07/06/1999	23/03/2000
Lao PDR				
Malaysia	09/09/1997		09/09/1997	10/11/2000
Myanmar				
Philippines	29/12/1953	17/11/1960	04/06/1998	28/11/2000
Thailand	08/02/1999			16/02/2001
Singapore	30/05/2002			14/06/2001
Vietnam	07/10/1997	07/10/1997	24/06/2003	19/12/2000
<i>Compare with:</i>				
Japan	24/08/1967		05/06/2000	18/06/2001
Korea	08/12/1997	04/12/1998	28/01/1999	29/03/2001
China	02/11/1990		28/04/1999	08/08/2002

Source: <http://webfusion.ilo.org/public/db/standards/normes/appl/index.cfm?lang=EN> 12 Dec 2006

7. The labor dimension and industrial relations in Japanese owned enterprises in the Philippines: case studies

A key element in the Japan Philippine Economic Partnership Agreement (JPEPA) is *Article 103*, which require both countries to comply with key labor laws in doing investments.. It is important to examine the experience, and the capacity of investors and institutions to implement the core conventions of decent work in practice. It is also important to identify the gaps, and the means to strengthen the link between investment and labor compliance. The case studies of Toyota Motor Philippines Corporation (Toyota Philippines) and Nissan Motors Philippines illustrate the need to be aware of the links between trade, investment and compliance with labor laws.

Article 103 of the JPEPA states that investors should comply with labor laws and regulations consistent with internationally recognized rights, such as the right of association, and the right to organize unions and bargain collectively.

The case studies on the labor disputes experienced by Japanese enterprises in the Philippines show the gaps that need to be filled to implement *Article 103 of the JPEPA*, as an instrument to ensure decent work in trade and investment.

Economic agreements in general have potential to stimulate the processes of equitable social development. The labor dimension in the JPEPA is noteworthy among EPAs between Japan and other countries, in the context of efforts to maximize economic and social benefits arising from trade and other economic relations. Except the loose and porous ASEAN Free Trade Agreement (AFTA), the Philippines has no other bilateral free trade agreement. Development of capacity and serious implementation of the labor dimension especially *Article 103* of the JPEPA on labor standards in investment & trade has potential to mitigate these effects.

Numerous studies show a link between competitiveness and the quality of labor, through good employment, favourable working conditions and human resource development practices. In addition, the capacity of enterprises to comply with decent work is linked with the development of fundamental policies and institutions to provide for good practices in industrial relations including human resource development (HRD), human resource management (HRM) and the exercise of workers rights.

Policies and practices of multinational enterprises or corporations (MNEs or MNCs) may determine the HRD and HRM practices of their affiliates and subsidiaries. In turn, the local suppliers of these subsidiaries and affiliates, including their service and product contractors most of whom are small and medium enterprises (SMEs) adopt and adjust practices on employment, HRD and HRM according to the demands and specifications of their MNE partners.

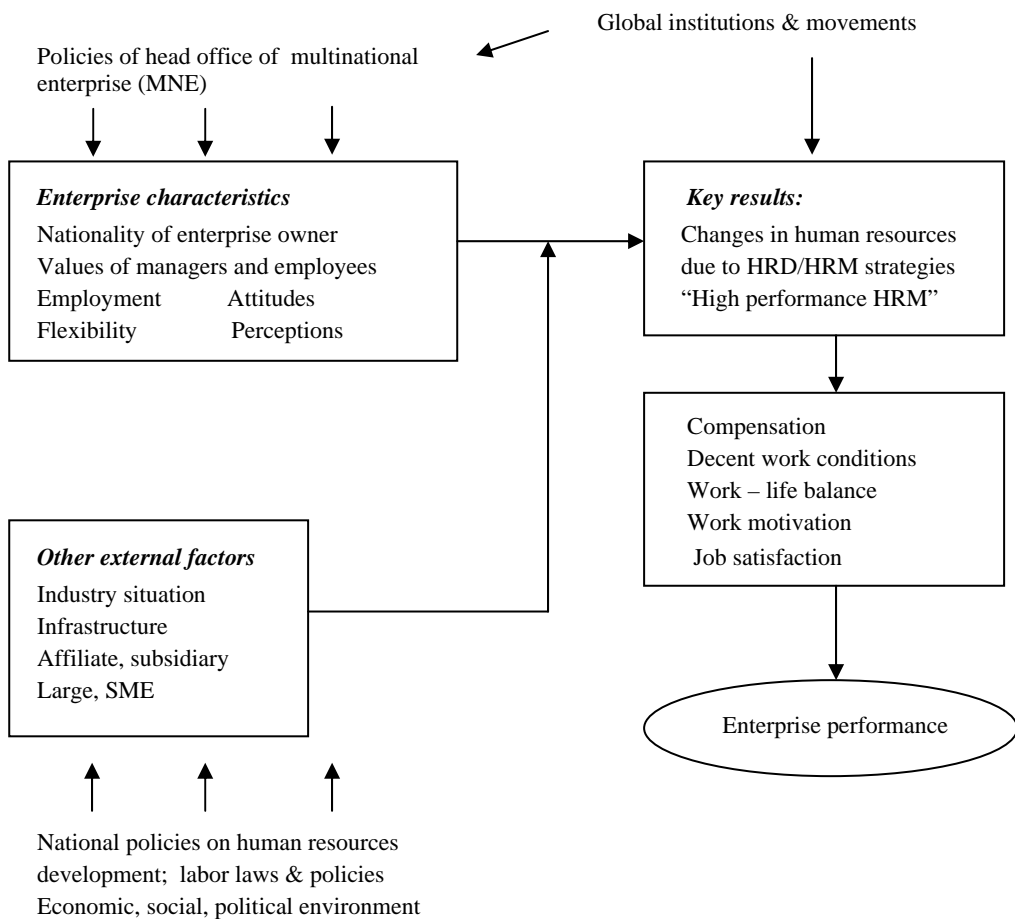
International norms and conventions on corporate social responsibility in the specific

areas of HRD and HRM, including labor standards have a significant impact upon MNC strategies and policies in employment. These global conventions include the UN Global Compact, the decent work framework of the International Labor Organisation (ILO), and Social Accountability (SA8000) on corporate social responsibility.

The cultural values of the controlling owners of large multinational enterprises (MNEs) may determine their policies on HRD and HRM, and influence their choice of responses and adjustments concerning workplace practices, to promote competitive employment. The values of the owners may influence the behaviour and attitudes of the expatriate managers, who must implement the policies and practices of their head offices.

This case study focuses on the labor dimension in the auto and vehicle parts industry in the Philippines, with focus on Toyota Motor Philippines Corporation (TMPC). A conceptual guide to the discussion is provided in *Figure 1*.

Figure 9. Guide to the analysis of interaction between industrial relations, HRD & HRM



National laws, rules and regulations on employment, HRD and HRM may constrain these ethnocentric practices, but market conditions in the industry (labor market, product and capital markets) may influence the actual shape of working conditions in the enterprise. Disputes with respect to working conditions are a result of resource and market constraints, more than conflict due to culture. Problems between expatriate managers and the local workforce which arise from different values between the workers and the owners of the enterprise are related to these resource and market constraints.

Court and other published records of the labor dispute in TMPC are publicly available, through various Supreme Court decisions as well as a separate report of the ILO *Committee on Freedom of Association* on the case.⁶⁴

Industrial relations (IR) concern the processes and results of the employment relationship at the level of the workplace, the industry and society as a whole (Dunlop 1958). It is important to consider the context of the work rules and processes, which comprise the core of the employment relationship. The employment relationship between employer and employees depend on prevailing market conditions, which influence managerial decisions on the work rules, which is the key concern of industrial relations.

The Philippine auto and vehicle parts industry

The Philippine automotive and vehicle parts supply industry consists of 14 passenger car assembly companies, 20 passenger vehicle assembly companies, 7 motorcycle assemblers and a conservative estimate of 256 auto parts suppliers. There are about 240 dealer outlets. Investment consists of Pesos 40 billion (US\$ 800 million) from car companies, and P 28 billion (\$ 560 million) from auto parts suppliers. The industry employs about 74,700 workers. There are 15,000 workers in the car assemblers and distributors, 44,000 in the auto parts suppliers, and 15,700 in the dealers.

The industry exported US\$ 1.95 billion worth of vehicles in 2005. There were \$ 150 million in vehicle exports, and \$ 1.8 billion in auto parts and components. The government earned Philippine Pesos 11.5 billion (\$230 million) in taxes and duties from the industry in 2003. Employees also contribute to the government through their income taxes. Retrenchment of employees means lesser government taxes from this sector. In 1997-99 due to the Asian financial crisis, there were 6,914 retrenched employees from the industry. There were 1,248 retrenched employees from Mitsubishi Philippines, 500 from Toyota, 292 from Nissan, 380 from Isuzu Philippines, 494 from Honda Cars, and 4,000 estimated from various car parts suppliers.

⁶⁴ The documents could be downloaded from the Philippine Supreme Court website, www.supremecourt.gov.ph. Full text of the ILO Committee on Freedom of Association report on the Toyota Motor Philippine case (No. 2252) <<http://www.ilo.org/ilolex/english/casframeE.htm>>.

Industrial relations in the Toyota Motors Philippines Corporation

The Toyota Motors Philippines Corporation (TMPC) started operations in 1988. There were 1,242 employees in 2005. Toyota Japan owns 34 percent of the company, and 30 percent is owned by the Metrobank Group of George Ty, a Filipino Chinese taipan. Another local investor group, Titan Resources Corporation owns 21 percent. The rest of the shares are owned by other minority local investors. While the management of human resources and labor management relations are entrusted to local managers, key decisions are approved by a top management team, including the expatriate Japanese managers.

Court and other records show the various possibilities of confrontational and legal strategies used by workers and unions to exercise their rights to organize and engage in collective bargaining. On the other hand, it is not uncommon to find employers exerting substantial efforts to fight and frustrate the union in every step of the way, often through legal means. In some cases, the Supreme Court has decided in favour of the union. However, the cases had undergone a long, expensive and frustrating legal process, some of which are still ongoing. The case of the TMPC is a good example of the limits of using legal strategies in achieving desired outcomes in industrial relations processes.⁶⁵

On 26 November 1992, the Toyota Motor Philippines Corporation Labour Union (TMPCLU) filed a petition to the DOLE for a certification election. The TMPCLU's petition was dismissed on the ground that the labour organization's membership was composed of both supervisory and rank-and-file employees in violation of Art. 245 of the Labor Code, which require separate unions for these two different types of employees. When the petition was filed, TMCPLU was not yet registered, as required by law. Therefore the union has no legal personality. The TMPCLU appealed, and the Secretary of Labour ordered elections among the regular rank-and-file employees. The company however blocked this election, through a petition with the Supreme Court. On February 19, 1997 the court decided that since TMPCLU includes at least twenty-seven supervisory employees, the union could not be considered as a legitimate labor organization which could file for a certification election.

On April 24, 1997, the Toyota Motors Philippines Corporation Employees and Workers Union (TMPCEWU) filed a *Petition for Certification Election* before the Department of Labor and Employment, for the union to represent the rank-and-file employees of the manufacturing division from Levels 1 to 4 of Toyota Motor Philippines Corp. (TMPC).

On May 13, 1997, while the case was pending, the Toyota Motors Philippines Corporation Labor Union (TMPCLU) claimed to be the legitimate labor organization, filed a *Motion to Intervene with Opposition to the Certification Election*. It claimed that the

⁶⁵ This section is based on Philippine Supreme Court and ILO records; and interviews with industry leaders undertaken by the author.

**Box. Toyota Japan policy on relations with employees:
to what extent does it influence Toyota Philippines?**

“Foster a corporate culture that enhances individual creativity and teamwork value, while honoring mutual trust and respect between labor and management.”

Toyota has adopted the Basic Principles of Human Resources Management:

1. Creating a workplace environment where employees can work with their trust in the company.
 - Stable employment where lay offs and dismissals are not readily made
 - Steadily maintain and improve working conditions from a medium to long term perspective
 - Ensure fairness and consistency
 - Ensure high employee morale.
2. Creating a mechanism for promoting constant and voluntary initiatives in continuous improvements
 - Share management mindset and sense of critical urgency through communication.
 - Promote employee participation in corporate activities.
 - Reflect business results in working conditions.
3. Fully committed and thorough human resources development.
4. Promoting teamwork aimed at pursuit of individual roles and optimization of the entire team.
 - Through consensus building and achievement in single thrust
 - Team results and creating a sense of unity.

Source: Toyota website. Responsibility. Relations with employees.

<http://www.toyota.co.jp/en/relationship/index.html> [Accessed 5 January 2007]

TMPCEWU petition was premature due to an earlier resolution by the Secretary of Labor ordering the conduct of a certification election among the rank-and-file employees of TMPC. This petition was the subject of proceedings before the Supreme Court and still awaiting final resolution. The TMPCLU argued that the collective bargaining unit which TMPCEWU sought to represent violated the "single or employer" unit policy since it excluded the rank-and-file employees in the other divisions and departments.

On February 4, 1999, Toyota Motors Philippines Corporation Workers' Association (TMPCWA) filed a petition for certification election seeking to be recognized as the sole and exclusive bargaining agent of all rank-and-file employees at Bicutan and Sta. Rosa plants of

the Toyota Motors Philippines Corporation (TMPC). This move was vigorously opposed by the Toyota Motors management on the ground that a case was pending before the Supreme Court between it and another union, the Toyota Motor Philippines Corporation Labor Union (TMPCLU) whose registration certificate has been cancelled. The company argued that the TMPCWA membership is the same as that of the TMPCLU, which sought to represent the same bargaining unit. The company further asserted that the petition repeats a previous petition dismissed on June 18, 1998. On March 29, 1999, the regional office of the DOLE dismissed the union's petition. The union appealed, and a higher official, Undersecretary Rosalinda Dimapilis-Baldoz of the DOLE reversed the decision on June 25, 1999, and ordered the conduct of a certification election.

The TMPC filed a petition with the Court of Appeals, alleging grave abuse of discretion on the part of the Secretary of Labor and Employment (SOLE), which was denied. The certification election was set on March 8, 2000.

During the inclusion and exclusion proceedings on whom among the employees has the right to vote, the company submitted a list of 1,110 employees at its Bicutan and Sta. Rosa Plants in the payroll list. The TMPCWA however, questioned the eligibility of the 120 employees in the list, contending that they were not rank-and-file employees but supervisory employees of the respondent, on the basis of a previous Supreme Court decision.

The company asserted that the establishment of its Three-Function Salary Structure had already superseded the Supreme Court decision (*Box*). The real supervisors or managers are distinguished from the rank-and-file employees in terms of the duties & functions of the employees. Nonetheless, the certification election proceeded as scheduled. During the certification election, 105 out of the 120 employees whose eligibilities had been questioned by the petitioner were able to cast their votes, but these votes were not opened and considered. With 503 affirmative votes and the exclusion of the 105 challenged votes, the TMPCWA asserted that it garnered the majority votes of the 943 votes cast (less the challenged votes); hence, it sought to be declared as the certified bargaining agent of the respondent at its Sta. Rosa and Bicutan Plants.

On May 4, 1999, the arbiter at the Department of Labor and Employment-National Capital Region (DOLE-NCR) conditionally dismissed the petition. TMPCWA immediately filed an appeal before the Secretary of the Department of Labor and Employment.

Implementing the June 25, 1999 decision which granted the appeal, the Department of Labor and Employment, through Undersecretary Rosalinda D. Baldoz ordered the conduct of a certification election. The results of the election held on March 8, 2000 turned out in favor of TMPCWA. Out of the one thousand one hundred ten (1,110) employees, one thousand sixty three (1,063) cast their votes, with one hundred (105) votes being challenged for allegedly being cast by supervisory employees.

Five hundred three (503) votes were in favor of the worker's union while 440 votes were against it. The union then filed a motion to be certified as the sole and exclusive bargaining

Box. Japanese style HRM and IR: Toyota Philippine's 3 function salary level with blurred distinctions between supervisors and rank and file

SUPERVISORY employees are those who belong to:

The General Staff

Salary Levels 9-10 (Supervisors)

Salary Levels 7-8 (Group Heads, if they function as such, i.e., they are staff with subordinates for whom they are responsible in terms of daily work supervision)

Line Employees – refers to factory workers assigned at the manufacturing plants.

Salary Levels 9-10 (Foremen)

Salary Levels 7-8 (Senior Group Chiefs)

Salary Levels 5-6 (Junior Group Chiefs: Group Leaders & Team Leaders)

Note: Levels 5-10 are considered supervisors only when their actual functions dictate such categorization.

RANK-AND-FILE employees are not included in the managerial or supervisory classes:

The General Staff

Salary Levels 8 and below – function as ordinary staff; no subordinates.

Line Employees – refers to the factory workers, those who are assigned at the manufacturing plants: Salary Levels 1-4.

Office Staff: Salary Levels 1-6.

Source: Toyota Motors Phils. Corporation Worker's Association (TMPCWA) v. Court of Appeals, GR 148924, Supreme Court of the Philippines, 24 September 2003

agent of all the rank-and-file employees of Toyota Motor Philippines Corporation. Again, Toyota Motor Philippines Corporation management did not accept the results of the election and insisted that the 105 questioned votes be opened for purposes of determining the majority of the valid votes cast. This was notwithstanding the fact that these 105 challenged and segregated ballots were cast by employees occupying position levels 5 and upwards and considered as supervisory employees in accordance to a previous Supreme Court ruling. Management insisted that a new three-function salary scheme had superseded the previous ruling. Nonetheless, on May 12, 2000, the Med-Arbiter declared the challenged votes as ineligible and subsequently TMPCWA was certified as the bargaining agent of the rank and file employees of the company. The TMPC appealed the decision but the Secretary of Labor denied the appeal. But when TMPCWA submitted its CBA, the TMPC management refused to negotiate.

TMPC filed a Motion for Reconsideration of the DOLE secretary's decision and to the union's surprise an order requiring both parties to a hearing was issued. Obviously alarmed,

the union decided to hold an assembly after the scheduled hearing to express their dismay on the decision. The TMPCWA filed a formal request to the Toyota management in behalf of the workers to join the assembly while expressing willingness to work without overtime pay on rest days to make up for lost time.

On March 16, 2001, the 227 union officers and members were shocked to receive a decision from Toyota Corporation terminating 227 union officers and members and suspending 64 union members for 30 days for participating in the assembly from 21 to 23 February 2001. The union filed a notice of strike. While the union was preparing for a strike vote, protest actions were organized in front of Toyota's two plants to persuade management to retract its decision. A full-blown strike subsequently took place when management paid no attention to the protests.

On April 4, 2001, the National Labor Relations Commission issued a Temporary Restraining Order which practically allowed management to disperse the striking members. On April 9, 2001, while most of the striking union members went home to visit their families, around 100 policemen and security guards dispersed the picket line and forcibly took all the strike paraphernalia. At the same time, busloads of scabs and managerial employees were escorted inside the plants.

A day after the violent dispersal of the striking union members, the Secretary of Labor assumed jurisdiction over the labor dispute and ordered the strikers to return to work. Though unconvinced with the decision of the Secretary of Labor, the union members complied with the return to work order. The union then questioned the assumption of jurisdiction by the Secretary of Labor before the Supreme Court but the high court sustained the DOLE Secretary's decision.

After the Secretary of Labor certified the labor dispute to the National Labor Relations Commission, the union requested to defer hearing on the certified cases. The National Labor Relations Commission declared the protest rallies illegal and decided that the termination of 227 members who participated in those assemblies was justified. It also declared that the Union Officers and Directors have forfeited their employment status for having led the protest assemblies.

Toyota management implemented the NLRC decision, and more than half of the membership of the union was dismissed, including the entire union leadership. Toyota also filed criminal complaints against several union members and officers for grave coercion.

Meanwhile, on March 19, 2001, the union proposed to the company that a conference be held between them on March 21, 2002 to settle all issues amicably including their current labor dispute and CBA regulations. On March 21, 2001, the company filed a petition before the Court of Appeals to nullify the decision of the Secretary of Labor to recognize the TMPCWA as exclusive bargaining agent for the rank and file employees. The company argued that the union failed to obtain a majority vote of the workers. The company opposed the TMPCWA in representing the workers in collective bargaining, and argued that:

- The TMPCWA was coercing and urging its members to force the company to start negotiations for collective bargaining, despite the serious question on the status of the union as the exclusive bargaining agent of the rank-and-file employees;
- 300 employees refused to render overtime service on February 21, 2001 and deliberately did not report for work from February 22-23, 2001;
- Operations in the production plant was paralyzed and lost potential sales in the amount of P40,000,000;
- The government will suffer considerable losses in taxes from lost potential sales;
- If the challenged voters are not finally resolved, it will result in their mass promotion not on the basis of their work performance but simply on the opinion of the Secretary of Labor;
- If operations of the company are paralyzed due to the dispute on the status of the challenged voters, its 1,600 employees will be adversely affected, and the company will resort to cost-reduction or even the closure of its business, thus contributing to the already worsening unemployment condition of the country.

The Secretary of Labor and Employment however assumed jurisdiction over the Toyota labor dispute, and ordered all union members and officers who staged the strike to return to work. The DOLE Secretary determined that the auto industry is indispensable to the national interest. The union gave assurances that its members and officers would no longer stage a strike because of the certification election.

On 24 September 2003, the Supreme Court issued a decision favorable to the TMPCWA, and denied the injunction requested by the company, to prevent the union from representing Toyota workers in collective bargaining.

Before the Supreme Court issued its favorable decision, on February 2003 the TMPCWA filed its complaint to the ILO *Committee on Freedom of Association* (ILO CFA) against the government of the Philippines and the Toyota Motor Philippines Corporation for infringement of ILO conventions 87 and 98 on freedom of association. In November 2003, the ILO/CFA recognized the complaint and ruled that the Philippine government did infringe on these ILO conventions (Freedom of Association and Protection of the Right to Organize Convention, and Right to Organize And Collective Bargaining Convention). The ILO CFA recommended the following: 1) the reinstatement of all the 233 dismissed union members 2) the immediate resumption of CBA in order to establish healthy labor relations 3) the withdrawal of criminal charges against union members 4) acceptance of ILO delegation, and 5) the amendment of relevant legislative provisions in the country's Labor Code.

In its 2003 report, the ILO *Committee on Freedom of Association* urged the Philippine government not only to review its labor legislations but to introduce fair, independent and speedy procedures in the certification process, to recognize a union to represent workers in collective bargaining negotiations. Likewise the ILO Committee requested the government to

amend the Labor Code as it has allowed the Secretary of Labor and Employment to submit the Toyota dispute (and any dispute likely to cause a strike) to compulsory arbitration with the argument that the Toyota Motor Company represents "an industry indispensable to the national interest" -- which totally contradicts the provisions of C. 87 and 98 ratified by the Philippines. In addition, it observed that the administrative labor court decisions in the Toyota case contained disproportionate sanctions for participating in an illegal strike. It urged the government to facilitate the reinstatement of the 227 dismissed workers and 15 trade union officers who lost their employment status, and to provide for their compensation if reinstatement is not possible."

The ILO observed that Philippine labor laws which provided for the penalty of dismissal from employment are disproportionate to the act of participation in a peaceful strike. A "back to work order" in strikes which do not threaten the life, health, and safety of the population is also not in conformity with ILO Conventions 87 & 98 on freedom of association. The ILO recommended that the government amend its labor laws to be in conformity with these conventions. The ILO noted that it took more than one year to organize a certification election to recognize the union, and another year to have the union confirmed as the exclusive bargaining agent with the Toyota Motor Corporation. The ILO Committee noted that these delays resulted from the various petitions, appeals and motions filed by the Toyota Motor Corporation with the labor authorities, particularly with the Secretary of the Department of Labor and Employment.⁶⁶

On July 11, 2005, the Department of Labor and Employment (DOLE) granted the petition for certification election filed by another union, the Toyota Motor Philippines Corporation Labor Organization (TMPCLO). The TMPCWA opposed this action, and argued that there is already a certified bargaining agent, and accused the latter as a yellow union supported by the company.

The Philippine DOLE went ahead and approved the rules and the official list of voters for a Certification Election which was held on February 16, 2006. The TMPCWA organized a picket protest to what they referred to as unjust rules by the labor department, but the union also took part in the election. The TMPCWA lost (237 votes) against TMPCLO (424 votes), out of a total of 894 employees who voted. Under the law, there is failure of election if the winner does not get a majority vote (at least one half plus one of the total votes). There were 121 challenged voters, with votes from an additional 89 dismissed workers. The TMPCWA argued to consider the challenged votes in the result, and filed a protest to question the results, citing alleged violations and harassments. It is expected that whatever is the outcome of the case at the lower level, appeals would be filed by either party up to the Supreme Court. As in previous cases in Toyota, this dispute may take many years to resolve.

⁶⁶ The full text of the ILO Committee on Freedom of Association report on the Toyota Motor Philippine case (No. 2252) could be downloaded: < <http://www.ilo.org/ilolex/english/casframeE.htm>>

Meanwhile, on June 6, 2006 the International Metalworkers Federation (IMF), which includes auto industry workers unions all over the world, launched a global campaign to urge the reinstatement of the TMCP dismissed workers, and to encourage the Toyota Motor Philippines Corporations to bargain in good faith with the TMPCWA.⁶⁷

Legal maneuvers and lack of good faith poisoned labor and management relations in Nissan Motor Philippines⁶⁸

Nissan Motors Philippines was incorporated in April 1982 and started its operations in the country in 1983 after acquiring the former Volkswagen assembly facility. Initially, the vehicle company started as a joint venture between the First Manila Management Corporation, Nicherman (a local trading firm) and Nissan Motors Japan. The company is assembles passenger cars and other types of transport vehicles, such as trucks and buses. In 1997, the Japanese sold three-quarters of their shareholdings to their Taiwanese partner, Yulon Motor Co. which is the leading car maker in Taiwan. The company president was connected with the sales and marketing division of Yulon-Nissan Motor Co., Ltd., a consolidated company of Nissan Motor Co. Ltd. in Japan.⁶⁹ It has 310 workers in 2005.

The labor problem in Nissan Motor Philippines could be traced to the Asian financial crisis of 1997 – 1998.

A collective bargaining deadlock between Nissan Motor and the Union resulted in a series of four (4) notices of strike. The first notice was filed on December 4, 2000. The union complained against the company's unfair labor practice, in the suspension of about 140 company employees, after the November 15, 2000 disruptive protest action arising from the employees' demand for payment of the 2nd half of their 13th month pay. The union filed a second strike notice of strike on July 24, 2001, due to deadlock in collective bargaining.

On August 21, 2001, the union filed a 3rd notice of strike, against the company's alleged illegal lockout, illegal suspension, and union busting.

On August 22, 2001, the Department of Labor and Employment (DOLE), upon the company's petition, issued an order assuming jurisdiction over the labor dispute. In The DOLE Secretary prohibited any strike or lockout and directed the parties to cease and desist from committing any act that might exacerbate the situation. The Union was ordered to refrain from any slowdown and similar activities that may disrupt company operations or decrease production.

⁶⁷ The IMF global campaign webpage could be accessed at www.imfmetal.org/toyotaphilippines [Accessed 15 January 2007].

⁶⁸ Information in this section is from the Philippine Supreme Court Decision on *Nissan Motor Philippines versus Secretary of Labor and Employment and the Bagong Nagkakaisang Lakas sa Nissan Motor Philippines Inc. (BANAL-NMPI-OLALIA-KMU)*, issued on June 21, 2006.

⁶⁹ Manila Bulletin, "Nissan Motors Philippines has a new president", 21 May 2007.

On 12 September 2001, the DOLE issued an order directing that the 3rd Notice of Strike be consolidated with the first two notices ...; reiterating the injunction against strike or lockout, and directing the parties to cease and desist from committing acts which may aggravate the situation and to refrain from any slowdown.”

On 18 September 2001, the union filed an urgent petition to suspend the effects of termination of union officers and members, which increased to 43 workers.

On 18 September 2001, the Union filed a 4th notice of strike against alleged illegal dismissal of eighteen (18) union officials, illegal lockout due to the forced leave, coercion & intimidation, union busting and non-payment of salaries for August 15-30, 2001.

On 28 September 2001, Acting [DOLE] Secretary Arturo D. Brion issued an Order consolidating the 4th notice of strike with the first three (3) notices and repeated the injunction in the assumption of jurisdiction order of 22 August 2001 and another order on 12 September 2001.

On 05 October 2001, the company filed a motion to deputize the Philippine National Police (PNP) “... to secure, maintain and preserve free ingress (*entry*) and egress (*exit*) in the company.” The company said that despite the injunctions against any slowdown and strike, the union went on strike on 01 October 2001, picketed and blocked the company offices, plant premises; unlawfully blocked and obstructed all entrances and exits points.

On 08 October 2001, the union filed a motion against the company’s motion to deputize the police. On 13 October 2001, the Secretary of Labor however issued an order to grant the company’s motion to deputize the police to maintain order in the company premises.

On 22 October 2001, the union filed a reply alleging that the bargaining unit at NMPI ... is composed of 360 highly skilled employees; that the workers are always on forced leave; and work is only for 4 or 5 days. The union stated that the company had Pesos 3.2 Billion in gross sales in year 2000. The union alleged that 140 union officers and members were placed under suspension from 3-6 days without observing procedural due process. The union said that the Company abused its prerogative in imposing discipline.

The union accused the company of violating the DOLE’s assumption of jurisdiction order by falsely accusing the Union of committing slowdown and placing them on forced leave. While all these were taking place and up until 23 July, the union claims, the auto parts have not arrived, thus lowering production.

The union claims that after the filing of the 2nd notice of strike, the company charged the union with engaging in work slowdown. Despite explanation that the low production was due to many reasons none of which is attributable to a slowdown. The union requested for a grievance meeting but the company ignored this request.

On 26 October 2001, the Company replied to the union’s charges. The company argued that the first notice of strike is without merit as the union’s charge of unfair labor practices is not supported by the events. The charge of *illegal suspension of more or less 140 union members ranging from 3 to 6 days* is without merit as the action was in the exercise of

management's prerogative to instill discipline among its employees. The Company asserted that the suspension was a sanction for the employees' misconduct committed on 15 November 2000, when they refused to go back to their workstations, and instead demanded payment of the 2nd half of their 13th month pay. The suspension from work was imposed as a disciplinary measure under company rules, and after due process, the Company argued. The Company noted that the employees failed to submit satisfactory explanations within the 48-hour period granted to them.

On the 2nd Notice of Strike, the company stated that it is incapable of meeting the economic demands of the union. The company continued to suffer losses over the last four (4) years of operations, with a total about Pesos 1.490 billion. Despite the reduction of the union's total requested package, the total cost will still be Pesos 212 million or a 309.5 percent increase over the previous CBA. The company had offered a wage increase package of P35.4 million, which is a 52.5 percent increase in the previous CBA.

The company insisted that it suffered Pesos 1.5 billion net losses from 1997 to 2000 due to the 1997 Asian economic crisis, and a small share in the motor vehicle market. Market share in 2000 was also lower than the previous year, among the lowest in the industry. A drastic increase in economic benefits would adversely affect the Company's survival.

The company argued also that the slowdown carried out by the union after the filing of the 2nd strike notice, was in violation of the cooling off period required by law, and is therefore illegal.

On the dismissal of 19 Union officers and 25 members ... after the issuance of the DOLE's Assumption of Jurisdiction Order ..., the Company asserted that employees defied the order by continuing the slowdown. The union refused to formally acknowledge the DOLE's assumption order.

The company said that the union's computation of the incremental direct cost over the three (3) year period is totally incorrect and misleading as annual increases are cumulative. Moreover, there is not basis for comparing total labor cost against total sales revenues. While labor cost may be just a small percentage of total sales revenue, NMPI is incurring tremendous losses because of big overhead cost.

The company confirmed that it unofficially offered a gratuity bonus of Pesos 3,000 per employee, but there is no longer any basis since the parties did not reach any agreement on the CBA. The principle of the signing bonus is premised as an incentive to goodwill on both parties to achieve agreement.

On December 5, 2001, DOLE Secretary Patricia A. Sto. Tomas issued a decision based on her power to assume jurisdiction over the labor dispute, granted by law. The Secretary affirmed the suspension of the 140 employees which was the subject of the first notice of strike. The dismissal of the union officers was also sustained. However, the dismissals of the union members were recalled. They were reinstated to their former positions without back wages, but imposed a suspension of one month which is deemed already served. In effect, the

DOLE Secretary imposed on the erring union members a one (1) month suspension to replace the penalty of loss of employment decided by the Company.

The Secretary also ordered the union (Bagong Nagkaka isang Lakas saNissan Motor Philippines, Inc. (BANAL-NMPI-OLALIA-KMU) and the company, Nissan Motor Philippines, Inc. to conclude a Collective Bargaining Agreement to include the dispositions made above and all other agreements which were reached by the parties during negotiation and conciliation. Such agreement shall have prospective effect.

In due time, the company and the union each sought partial reconsideration of the DOLE Secretary's order. The DOLE Secretary however modified her resolution on January 22, 2002. The modified order deleted from the list of dismissed union officers the names of three (3) employees previously identified as officers but are not listed as such in the official records of the DOLE's Bureau of Labor Relations.

The Philippine Supreme Court ruled that "while the employer is authorized to declare a union officer who participated in an illegal strike as having lost his employment, the option is not as wide with respect to union members or workers. The law itself draws a line and makes a distinction between union officers and members or ordinary workers. A worker who is a union member cannot, as a rule, be terminated for mere participation in an illegal strike. There must be proof that the worker committed illegal acts during the strike. The law also grants power to the Secretary of Labor and Employment to calibrate punishment as a consequence to defiance of the assumption order."

Previous Supreme Court decisions upheld that any worker who participates in a strike or otherwise engages in any prohibited act in defiance of the assumption order may be given the penalty of loss of employment status. The law itself authorizes the graduation of penalties, considering the distinction between union officers and their members, or any other workers. Ordinary workers and members do not necessarily lose their job by mere participation in an illegal strike, if there is no proof that they committed illegal acts.

The Supreme Court did not support the Union's contention that the company Nissan Motors Philippines imposed disciplinary sanctions against its officers and members without due process of law. The records show that the company first asked the erring union officers, members and other workers to explain their defiant attitude and duly warned them of their imminent fate as a consequence of their intransigence, before declaring their dismissal.

The court also supported the power of the Secretary of the DOLE to decide on the economic aspects of the CBA, such as transportation allowance, 14th month pay, seniority pay, separation pay and date of affectivity of the new CBA. The court however noted evidence that shows the company's precarious financial position. The Court reduced the salary increase and deleted the gratuity bonus.

Interface of IR, HRD & HRM in the Philippine auto industry

Diverse interests motivate the actions and strategies of stakeholders in human resources & industrial relations (HR & IR) in the Philippine auto and vehicle supply parts industry. These interests involve the top Japanese auto companies and their local partners, worker unions, and government agencies with a mandate to promote decent work, create jobs, and labor justice. Global players include the International Metalworkers Federation (IMF), and the multinational auto companies in the Philippines: Toyota, Mitsubishi, Nissan, Isuzu, and Honda. Each local stakeholder compete to expand influence and achieve their distinct goals in the sphere of political action, union organizing, and solidarity in the case of the workers organization, and increase in market share and stability in labor management relations in the case of the employers. Government’s goal is to achieve industrial peace, settlement of disputes, and the balance of the protection of interests of both workers and employers (*Box*).

Industrial relations is given more prominence due to increased union organizing among workers in the industry, with some support from the International Metalworkers Federation (IMF), and legal and non-legal conflict among the rival militant unions. Philippine workers organizations however emphasize independence or autonomy from the IMF. The Philippine Metalworkers Alliance (PMA) suspended its relations with the IMF, due to rivalry with the militant Kilusang Mayo Uno (May First Movement) affiliate in Toyota Motors. The KMU affiliate successfully filed a case of violation of freedom of association in Toyota Motors Philippines Corporation with the International Labor Organization (ILO). Government

Box. Extent of influence of Toyota Japan HRM policies in Toyota Motor Philippines Corp: relations with employees

Toyota Japan	Toyota Motor Philippines
“Foster a corporate culture that enhances individual creativity and teamwork value”	5 – S: “seiri, seiso, seiketsu, seiton, shitsuke” Gemba shugi. “Muda, mura, muri,
“Honoring mutual trust and respect between labor and management.”	Industrial relations is subject to Supreme Court rulings and ILO opinion asking the company to reinstate dismissed workers. TMPC actively opposed union formation.
“Stable employment where lay offs and dismissals not readily made.”	Dismissal of workers who formed a union and organized protests against company not recognizing the union.
“Mechanism for voluntary initiatives in continuous improvements.”	Kaizen activities. Suggestion schemes.
“Committed and thorough HRD”	Toyota Philippines has an active HR group, and a skills training center.

Note: Toyota Japan owns 34 percent of Toyota Motor Philippines. The majority ownership is by the local Filipino Chinese taipan, Metrobank Group of George Ty.

intervention in labor disputes is possible through conciliation, mediation, voluntary and compulsory arbitration through the courts. Policy changes through new rules and laws in labor relations are not expected to change significantly in the Philippines.

Auto and vehicle employers need to understand and realize the importance of respecting freedom of association, and being neutral in intra-union rivalry and conflicts caused by ideological differences among the union leaders. The goal must be to provide an environment of freedom to facilitate collective bargaining negotiations, and the use of labor-management committees (LMCs), grievance committees, and other bilateral mechanisms to reach agreement with the unions. It is urgent that both employers and the workers be provided with the necessary skills and competencies for negotiations, bargaining, and voluntary modes of disputes settlement. Top management and industry leaders need to appreciate that in the absence of competencies and skills in industrial relations, risk of jeopardizing costly investments will be greater.

It is expected that Philippine industrial relations in the auto and vehicle supply parts industry will increase in significance, as the stakes are high for all parties involved. It is important to strengthen mechanisms that will promote respect of the competing and overlapping interests of both employers and workers, and find venues and opportunities for negotiations and dialogue towards a win-win achievement of mutual goals (*Box*).

The employers, whose views and opinions were diligently sought for this study, agree that customers or buyers of auto vehicle products are not much concerned about union activity. The industry has not experienced organized customer boycotts which succeeded in the past. But it may be deduced that with industry unions on the rise through the Philippine Metalworkers Alliance – AIWA, the standardization and narrowing of differentials of wage rates and other economic allowances or incentives may become a possibility.

The AIWA has 15 union affiliates from the following Japanese auto companies: Mitsubishi, Toyota, Nissan, Isuzu and Honda. There are also affiliate unions from among auto parts makers and car dealerships. There are at least 20,000 workers who are members of 15 union affiliates of the AIWA. This makes up about 27 percent of the total estimated workforce of the 75,000 workers in the auto industry. The PMA has a total worker base of 40,000 from 27 union affiliates.

Box. Summary of goals and strategies for stakeholders of industrial relations in the Philippine auto & vehicle parts supply industry

Stakeholders	Goals	Strategy
<i>Worker organization:</i>		
Philippine Metalworkers Alliance + Alliance of Progressive Labor (AIWA - APL)	Promote industry wide bargaining through responsible unionism.	Union organizing, petition for certification elections. Court cases. Picket, strikes.
Rival unions: Kilusang Mayo Uno (KMU) vs. Bukluran ng Manggagawang Pilipino (BMP), versus APL.	Expand membership. Solicit support from ILO, IMF and the public.	
<i>Employers:</i>		
Subsidiaries of car companies: Toyota, Mitsubishi, Honda, Isuzu, Nissan	Expand, increase or stabilize market share. Minimize disruption in production.	Increase negotiations skills, pro active competencies in IR & HR.
<i>Government: Dept of Labor & Employment (DOLE):</i>		
DOLE in relation to employers	Compliance with labor standards & policies, create jobs, stabilize employment and promote foreign investment.	Conciliation, mediation, voluntary and compulsory arbitration through labor court. Information sharing. Monitoring.
DOLE in relation to unions	Protection of workers rights.	
DOLE in relation to IMF	Respect for freedom of association.	
Arbiters, National Labor Relations Commission, Court of Appeals, Supreme Court	Settlement of labor disputes through compulsory arbitration, based on Philippine labor laws.	Temporary restraining orders, injunctions, execution of decisions.
<i>International Metalworkers Federation (IMF)</i>	Achieve international worker solidarity, industry bargaining & coordination. International framework agreements.	Solidarity, support with PWA, KMU, IMF Philippine Council. Pressure multinational auto employers.
<i>International Labor Organization (ILO)</i>	Promote decent work, monitor compliance with international labor standards	Investigation, pressure to DOLE & government

Box. Case study: cultural sensitivity and employment relations

A case between a Japanese employer and his Filipino workers in the Philippines became a classic study on the importance of cultural sensitivity and employment relations. The case was published and studied by students of labor law.

In 1990, three Filipino workers were undergoing training on Japanese customs, traditions, discipline as well as hotel and resort customer services of a new Japanese owned resort in Cebu. In the course of the training, the Japanese employer of the resort, Mr Tsuyoshi Sasaki, got angry with the 3 Filipino workers. He hurled brooms, floor mops, iron trays, fire hoses and other items at them. In protest, the workers staged a walk out and gathered in front of the resort. The Japanese employer shouted at the workers “*to go home and never to report back*”. The workers filed a complaint of illegal dismissal, and filed claims against the employer. Question: could the workers be charged for abandonment, and failure to qualify for their jobs?

This situation is a case of a “constructive dismissal” from employment, when the Japanese employer shouted at them to go home and not to go back. The employer later asked the workers to explain why they should not be charged for abandonment of work. But the workers were already effectively dismissed, and rendered any due process useless after the fact. Even as probationary employees, the workers are protected from dismissal within the period of their probation. They cannot be unjustly terminated during the probationary period. The workers did not abandon their work: they were fired by the employer, without just cause, and with no due process. The immediate filing of a complaint before the labor arbiter for illegal dismissal, pleading reinstatement is proof that they have not abandoned their jobs. As to the argument that the workers failed to qualify for their jobs, it must be stressed that they were hired for a trial, probationary period. They were not able to complete their probation due to their premature dismissal. The workers were awarded separation pay equivalent to or proportional to at least one month pay for every year of service, in addition to full back wages, allowances and other benefits from dismissal in 1990 until the order of reinstatement by the labor arbiter in 1993.

Source: Philippine Supreme Court, *Cebu Marine Beach Resort versus National Labor Relations Commission*, GR No. 143252, October 23, 2003.

Prospects for good industrial relations

The well known cases of Toyota Motor Philippines Corporation, and Nissan Motor Philippines Corporation illustrate the need for investors to raise their awareness of strategies for good industrial relations through labor compliance. Both employers and workers relied on incompetent external advice, poisoned each other with too many legalistic strategies instead of positive approaches which emphasize settlement of labor disputes at the workplace through dialogue, and invited government intervention at great cost and suffering.

While union militancy may affect employee motivation and productivity, there are various means which could be harnessed to channel the impact of militancy into positive results, particularly through venues such as labor-management meetings, informal dialogues, and in the mobilization of employee welfare programs to send a strong message that the “company cares” for each member of the production team from the rank and file up to the top tiers of the organization.

Employers acknowledge that adherence to humane labor practices and standards empower people and increase employee motivation, which in turn, leads to better performance and productivity. The need to comply with laws and regulations which are often quite strict, even in developing countries, indeed, is a major consideration. But pressure from customers and civil society also add as a factor in some sectors, especially where assets such as corporate brand and reputation are important and need to be protected. For in the end, employers have realized, good sales go hand in hand with a positive business image. This case study shows that a neglect of decent work and sound industrial relations would eventually undermine HRD and HRM strategies, and setback productivity.

The increasing globalization of work affect national labor markets, with inevitable impact upon employment, education and training, industrial relations, compensation and the work rules. It is important to ensure that industrial relations reinforce HRD & HRM strategies, and vice versa, to achieve fair globalization and decent work. It is important for both employers, leaders of workers organizations, and officials of relevant government agencies to acquire the competencies and skills needed to translate broad macro economic objectives, into relevant micro level practices and link industrial relations with supportive HRD/HRM practices at the enterprise or workplace to achieve successful results, as well as to continuously struggle and survive in a difficult competitive environment.

8. Conclusions and recommendations

The first historical record of Japan Philippine relations concerns the movement of the samurai Takayama Ukon Shigetomo who led a group of 300 Japanese Christians in his daimyo to go on exile to the Philippines. The Tokugawa Bakufu prohibited Christianity in 1614 and ordered the expulsion of all missionaries and samurai who refused to recant their faith.⁷⁰ The Philippine national hero Jose Rizal who wrote against Spanish colonialism went to Japan in 1888, and no doubt must have been impressed by the changes and intellectual ferment in Japan's Meiji era.⁷¹ At about this time, many Japanese migrated to the Philippines to start the Davao plantations.

Japan and the Philippines signed a treaty of friendship in 1956. Since the postwar period, both countries developed mutually advantageous relations which contributed to stability, security and prosperity in East Asia. After 50 years of stable and friendly relations, Japan Philippine relations face a new stage of challenges and opportunities.

While economic relations are important, there are many other areas of exchange with advantageous benefits and enormous positive experience for both Japanese and Filipinos. These include cultural exchange, people to people exchange, academic and professional exchange, local government exchange, as well as non government initiatives and assistance through NGOs.

With or without the JPEPA people and commodities move due to demand (*pull*) and supply (*push*) factors in both Japan and the Philippines. This movement and exchange of both people and commodities have experienced ups and downs.

Summary of Japan Philippine economic relations

- In 2006, Japan exports to Philippines were valued at US\$ 9.01 billion, while Japan imports from Philippines was valued at \$ 7.96 billion, or a trade deficit of the Philippines valued at \$ 1.05 billion.
- The Philippines enjoyed a trade surplus with Japan only for one year, in 2004 when exports exceeded imports by \$ 309 million.
- Trade from 1990 to 2006 has been mostly in favor of Japan. Philippine trade with Japan since the 1990s was always in deficit: imports were always greater compared to exports.
- In contrast, Japan – Philippine trade balance was mixed, from 1935 to 1985. The

⁷⁰ F. W. Seal, "Takayama Ukon, 1552 – 1615", *Samurai Archives History Page* <http://www.samurai-archives.com/ukon.html> Accessed 30 April 2007.

⁷¹ Bernard Karganilla, 'Rizal's Japanese Adventure', <http://www.jose-rizal.eu/reisenjapane.html> [Accessed 21 May 2007].

Philippines had a trade surplus in 1940, in 1950, & in 1960. Exports were about equal to imports only in 1980. Since then, the Philippines had a continuing trade deficit with Japan.

- For many years, the Philippines is recipient of ODA from Japan, the United States, World Bank, and many other countries. Japan remains the biggest donor of official development assistance (ODA) to the Philippines. The National Economic and Development Authority (NEDA) said that Japan's total commitment of US\$ 4.85 billion to the country accounts for about 58 percent of the ODA loans portfolio as of March 2006.
- Japanese investments in the Philippines include 449 companies wholly owned or joint ventures, with an employment of 169,469 Filipinos in 2006. There are 1,047 Japanese expatriate managers in the Philippines.
- The Philippines has benefited from the movement of its people to Japan, especially through remittances from Overseas Filipino Workers (OFWs). Filipinos from Japan contributed US\$ 453 million in remittances in 2006, with seafarers contributing 30 percent and entertainers and other land based workers, 38 percent. The social costs of remittances are high, but difficult to measure.
- Japan – Philippine marriages increased tremendously to 36.2 percent, with 10,242 Filipino wives in 2005. The divorce rate between Japan and Filipino marriages is quite high, at 38.4 percent, compared to the divorce rate of 36.6 percent for Japanese spouses.
- In 2006, 195,109 Filipinos, including temporary visitors entered Japan. The number decreased by 12 percent, compared to 2005. The number also decreased by 6 percent between 2004 and 2005, no doubt the effect of Japan's strict implementation of the revised rules for entertainers' visa, to address human trafficking.
- There were 158,506 Japanese tourists to the Philippines in 2006, which is 30 percent of the total tourists from East Asia. Japanese tourists however are second only to Koreans.
- The movement of natural persons draws attention upon how human rights will be observed and guaranteed, when a person moves from one state boundary to another. Countries have different capacity, institutions and procedures to guarantee human rights, including the right to join unions, negotiate and bargain for better working conditions. Human trafficking, abuse and exploitation of workers are the dark sides of societies with weak capacity to implement guarantees for human rights and social protection.
- The labor dimension of Japan Philippine economic relations is an emerging area of development, highlighted by the movement of persons, human resource development and compliance with global labor and social standards.

- Compliance with global labor standards to respect workers rights are highlighted in the well known cases of Toyota Motor Philippines Corporation, and Nissan Motor Philippines Corporation. These cases illustrate the need for investors to raise their awareness of strategies for good industrial relations through labor compliance.

The Philippines had expressed appreciation for the prompt response of Japan in giving urgent assistance during natural disasters, such as the one million US dollars (111 million yen) in food aid to the Philippines during massive mudslides and floods disaster caused by a large typhoon hitting the southern Luzon Island from November 30 to December 1. Many disaster victims of the mudslides and floods disaster have lost their jobs and homes and have been compelled to an uncomfortable life as evacuees with uncertain future. Under such circumstances, based on the request of the Philippines, Japan provided assistance for the Food-for-Work Program, providing foods to the victims.

The Philippines is supporting Japan's bid as a permanent member of the UN Security Council, in view of Japan's enormous contributions to the United Nations and the international community.

What is the best explanation for Japan Philippine trade?

What could we learn about Japan Philippine trade? It is dynamic, and the benefits for people in both countries are apparent. The exchange of goods, services and the movement of people raise aggregate economic welfare. While there are "winners", trade theory however shows clearly that some people will suffer losses in both sides of the exchange. A country like the Philippines may benefit from free trade even if it is less efficient than all other countries in every industry. Trade theory also says that a domestic firm may lose out in international competition even if it is the lowest-cost producer in the world. Non tariff barriers provide protection which may be beneficial for some sectors of the economy. Although protection can be beneficial, the case for trade remains strong.

The facts about Japan Philippine trade relations require an explanation, to predict possible trends in the future, and whether or not recommendations will actually work. It is beyond the scope of this paper to go deeper, compare how each theoretical perspective tally with the facts, and declare the best explanation. The explanations include competing ideas on economic development, and the most prominent ones are presented in this section. The best explanation should tally with the facts about Japan Philippine trade, taking into account the labor dimension.

Needless to say, the best explanation is subject to the position in the power structure, and resources available to the advocates. Testing the ideas and hypotheses of these theories on trade should be part of an institutional research agenda.

Theory of absolute and comparative advantage

The division of labor according to specialization through comparative advantage is traced to the ideas of Adam Smith in his *Wealth of Nations* (1776): “If a foreign country can supply us with a commodity cheaper than we ourselves can make it, better buy it of them with some part of the produce of our own industry, employed in a way in which we have some advantage.”⁷² If a country can produce some set of goods at lower cost than a foreign country, and if the foreign country can produce some other set of goods at a lower cost, then it would be best for both to trade and benefit from relatively cheaper goods. In this way both countries may gain from trade. It is easy to confuse the theory of absolute advantage with the theory of comparative advantages. Many arguments and statements by trade negotiators and business people are mixed up due to misunderstanding of absolute and comparative advantage.

The concept of a “global international division of labor” is based on the theory of comparative advantage. There are many simplistic arguments about “labor surplus countries having advantages in exporting manpower, and advanced market economies having comparative advantage in capital”. These are wrong arguments, since the production process involves optimal combinations of inputs including labor, capital, raw materials, and others. There are also many statements and arguments about “country competitiveness” especially from multinational businessmen. These are simply wrong ideas, since enterprises and businesses are the ones who compete in the market. States provide the laws & rules for the competition, and do not compete.

International trade has undergone enormous change in 200 years since the time of the classical economics thinkers Adam Smith and David Ricardo. The nature of goods entering international trade has changed, along with increases in the volume of trade. Advantages based on natural resources still exist, but more dominant today are advantages that can be acquired. Over time, industries in specific countries gain specialized knowledge and economies of scale. There is also the possibility, in industries where knowledge is easily transferred, and where economies of scale are not significant, of dispersing production around the world to use cheap labor or other special advantages. Through cyber trade, firms could exploit lower costs of modern wideband communication to deliver goods or services to global markets at greater speed than their competitors.

Theory of factor price equalization and classical theory of trade

As countries trade, there is a tendency for the costs of inputs to be equal in the long term.

⁷² Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*. London: Methuen and Co., Ltd., ed. Edwin Cannan, 1904. Fifth edition.

These arguments are made more elaborate in various international trade theories such as the Heckscher-Ohlin model, the Stolper – Samuelson – Rybczynski model, and so on. The basic idea is that when the prices of the output goods are equalized between countries as they move to free trade, then the prices of the factors (capital and labor) will also be equalized between countries.

This implies that free trade will equalize the wages of workers and the rents earned on capital throughout the world. These ideas assume that the two countries share the same production technology and that markets are perfectly competitive.

Textbooks say that in a perfectly competitive market, the return to a factor of production depends upon the value of its marginal productivity. The marginal productivity of a factor, like labor, in turn depends upon the amount of labor being used as well as the amount of capital. As the amount of labor rises in an industry, labor's marginal productivity falls. As the amount of capital rises, labor's marginal productivity rises. Finally the value of productivity depends upon the output price commanded by the good in the market.

With no trade (autarky), the two countries face different prices for the output goods. The difference in prices alone is sufficient to cause a deviation in wages and rents between countries, because it affects the marginal productivity. Once free trade is allowed in outputs, output prices will become equal in the two countries. Since the two countries share the same marginal productivity relationships it follows that only one set of wage and rental rates can satisfy these relationships for a given set of output prices. In theory, free trade will equalize wage and rental rates (“price of factors”).

Since the two countries face the same wage and rental rates they will also produce each good using the same capital-labor ratio. However, because the countries continue to have different quantities of factor endowments, they will produce different quantities of the two goods.

Theory of dependency

Economic growth in the advanced industrialized countries did not necessarily lead to growth in the poorer countries. Studies suggested that economic activity in the richer countries often led to serious economic problems in the poorer countries. Such a possibility was not predicted by neoclassical theory, which had assumed that economic growth was beneficial to all (Pareto optimal) even if the benefits were not always equally shared.⁷³

The explanation was straightforward: poor countries exported primary commodities to the rich countries that then manufactured products out of those commodities and sold them back to the poorer countries. The "value added" by manufacturing a usable product always

⁷³ Dependency theory developed in the late 1950s under the guidance of the Director of the United Nations Economic Commission for Latin America, Raul Prebisch. Prebisch.

cost more than the primary products used to create those products. Therefore, poorer countries would never be earning enough from their export earnings to pay for their imports.⁷⁴

The solution however is too simplistic: poorer countries should embark on programs of import substitution so that they need not purchase the manufactured products from the richer countries. The poorer countries would still sell their primary products on the world market, but their foreign exchange reserves would not be used to purchase their manufactures from abroad.

Three issues made this policy difficult to follow. The first is that the internal markets of the poorer countries were not large enough to support the economies of scale used by the richer countries to keep their prices low. The second issue concerned the political will of the poorer countries as to whether a transformation from being primary products producers was possible or desirable. The final issue revolved around the extent to which the poorer countries actually had control of their primary products, particularly in the area of selling those products abroad. These obstacles to the import substitution policy led others to think a little more creatively and historically at the relationship between rich and poor countries.

Theory of unequal exchange and imperialism

The theory of imperialism explains the domination of underdeveloped areas by industrialized countries as the consequence of different economic and technological levels and unequal power potential resulting from a different economic growth. The consequence of the development of industrial capitalistic societies is a pressure for expansion which may lead to military or political acquisition (colonies) or to maintain economic dependence (developing countries). Different theories have their own explanation of the reason for the pressure for expansion but it is always seen as the result of the inability to cope internally with the consequences of permanent technological innovation and their effects on the society.

The theory of unequal exchange is related to the theory of dependency, where concerns include transfer pricing and monopoly by multinational corporations, and center-periphery trade. If unequal exchange occurs in trading, the effect is, that producers, investors and consumers incur either higher costs or lower incomes (or both) in the buying and selling of commodities than they would have, if the commodities had traded at their "real" or "true" value. In that case, they are disadvantaged in trading, and their market position is worsened, rather than strengthened. On the other side, the beneficiaries of the trade obtain a super profit. This term implies that the beneficiaries of unequal exchange are capitalists or entrepreneurs. The transfer of values due to is due to super profits, not to the terms of trade, due to pricing

⁷⁴ Raúl Prebisch (1963). *The economic development of Latin America and its principal problems*. New York, United Nations Economic Commission for Latin America and the Caribbean (ECLAC).

strategies adopted by multinational corporations (called "monopolies").⁷⁵

There are however many vague points in the concept of unequal exchange. It is impossible to specify objectively what a fair or equal exchange would be, given that any such judgment is regarded as either subjective, or biased in favor of some group or other. Any economic exchange will be "unequal" from some point of view. "Unequal" does not necessarily imply "unfair", since a decision to buy or sell a product above or below its true value is a free choice. Even if there is unequal exchange, it is preferable to no trade at all. If there is trade, everyone's welfare improve, even if it means some gain more than others. If that is accepted by all parties to the trade, it cannot be morally wrong. It may be that a good purchased in one country fetches a much higher price in another, but in good part that higher price is due to the costs involved in the trading process. Traders aim to sell goods as competitively as they can, and if the final price is comparatively high, there is not much they can do about that. If unequal exchange exists, that is only because some groups or countries took the initiative to trade and generate wealth.

Recommendations

It is impossible to proceed with viable recommendations without a statement on the best explanation behind Japan Philippine trade. The dominant explanations on why JPEPA is necessary favors comparative advantage, given the absence of research to provide evidence on the various theorems to prove benefits from factor price equalization. The dominant explanation may not always be correct.

There is however not much freedom in the market of ideas competing to explain the facts on Japan Philippine trade, since much depends on the motivations, intellectual honesty, coherence & capacity, including ethics on who funds the research, conflicts of interest, and the relative position in the power structure of the advocates.

The recommendations offered here maybe academic and tentative, but nevertheless assumes mutual benefits among business, workers; producers and sellers in Japan and the Philippines.

(1) Raising awareness on the labor dimension of trade

There is a need to improve the capacity of both trading partners to implement the labor dimension of the agreement. This effort has implications upon efforts at regional integration in East Asia, with greater demands from the public to ensure decent work and human resource

⁷⁵ Geoffrey Pilling, "Imperialism, Trade and 'Unequal Exchange': The work of Aghiri Emmanuel", *Economy and Society*, Vol. 2, 1973.

development (HRD) in the movement of natural persons among the trading partners.

A higher level of awareness among investors about social and labor compliance should prevent a race to the bottom, to provide the rules for competition, and a “level playing field” for competing businesses.

Good industrial relations practices could be realized when business people, investors and employers respect workers’ rights, with collective bargaining to improve working conditions, prevention of labor disputes through non legal modes such as conciliation and arbitration, and complemented by efforts to motivate performance and raise productivity through technical innovation and human resource development.

To develop capacity to maximize the benefits from labor dimension of trade, the following measures are recommended:

- ✧ Provide briefing papers, brochures and pamphlets regarding compliance with *Article 103* of the JPEPA on the requirements of labor laws and promotion of decent work, best practices in disputes settlement, respect for workers rights, and good industrial relations to be circulated to business people, managers, associations, government officials, workers organizations, non government organizations, business schools, and the public.
- ✧ Learning sessions, seminars and dissemination of information on labor and social compliance for prospective investors and expatriate managers.
- ✧ Improving capacity for exchange of timely and appropriate trade information, data and statistics.
- ✧ Continuous improvement in the quality of the data and information collected, and having a common, jointly managed website for regular posting of updated information, trade statistics, and statistics on the movement of natural persons and HRD, for timely access of all stakeholders, including business people, investors, government officials and researchers.
- ✧ Research on the effects of the movement of natural persons in the labor markets of Japan and the Philippines, to examine possible labor market segmentation, income effects, job creation and unemployment, health insurance and social security, education, social costs on the family and community, and human capital costs.

(2) Review of JPEPA: inclusion of labor compliance, HRD and employment in trade and investment

The JPEPA also calls for a review of the agreement after five years. Preparations for such a review should begin immediately after the agreement takes effect, by providing adequate legal framework, resources, expertise and budget to design the objectives, instruments and methods of the review, gathering the relevant information and statistics,

analysis of the data, and verifying the results and conclusions with the stakeholders, as well as the public.

The review must include the extent that trade and investment between Japan and the Philippines complied with *Article 103* of the JPEPA, which requires compliance with labor laws and promotion of decent work in investment. The review must examine the experience, identify gaps, and identify measures to fill the gaps in compliance with labor standards to promote decent work, human resource development, sustainable employment and safety nets for the displaced workers arising from trade in both Japan and the Philippines.

(3) Recommendations to JICWELS & POEA

After the Philippines ratifies the JPEPA, the Japan International Corporation for Welfare Services (JICWELS) and the Philippine Overseas Employment Administration (POEA) are designated to design and implement the policies and rules for the movement of nurses and caregivers to Japan.

The JPEPA has raised lots of false expectations about jobs in Japan, a situation where illegal recruiters thrive to victimize gullible young jobseekers.

It is important that the implementing policies and rules reflect the intention of Article 103 of the JPEPA for compliance with decent work standards. In the spirit of transparency, to avoid misunderstanding and false expectations, rules and procedures need to include clear standards and action plans such as:

- ✧ Dissemination of information to the general public through website print and other media.
- ✧ Preventive measures against illegal recruiters who victimize vulnerable job applicants.
- ✧ Basic orientation and requirements for applicants on life & work in Japan.
- ✧ Recruitment and processing of applicants based on merit and qualifications, to avoid favoritism and under the table deals.
- ✧ Action plan against fraudulent certificates and documents.
- ✧ Japanese language training curriculum and requirement for instructors
- ✧ Compensation, allowances and health insurance.
- ✧ Accreditation of training centers and health institutions for caregivers: criteria, rules & policies, with clear sanctions on violations.
- ✧ Standards for on the job training (OJT) and supervised practice for nurses and caregivers; criteria for supervisors.
- ✧ Standard employment contract consistent with Article 103 of JPEPA.
- ✧ Counseling and guidance, and criteria for counselors.
- ✧ Evaluation instruments for accredited training centers and health care institutions.
- ✧ Measures to prevent verbal, mental or physical harassment (*ijime*) at the workplace.

- ✧ Disputes settlement mechanisms and collective bargaining.
- ✧ Support measures for returning nurses and caregivers, and their families or dependents.

(4) Human resource development (HRD), unemployment and trade

Textbooks of economics include a lesson on the links between unemployment and trade, but human resource development (HRD) and good industrial relations through labor compliance are not prominent. It is important to examine the evidence of the links between HRD, investment and job creation through businesses which practice labor and social compliance.

In a small perfectly competitive economy, there are market imperfections such as lack of market information, and relatively immobile factors of production across industries. The labor force develops sector specific skills as the time of employment in an industry increases. Over time, the productivity of a worker in a car industry will rise relative to non-car workers who might begin employment in the car industry. Similarly other workers become more productive in their own industries relative to car workers who might begin employment in other non car industries.

These assumptions imply that although workers might be free to move across sectors of the economy they might not be easily transferred without cost. Workers in one industry, accustomed to being paid a wage proportional to their productivity, might be unwilling to accept a lower wage in another industry even though the lower wage would reflect their productivity in that industry. Worker reluctance to transfer could lead to long search times between jobs as workers continue to look for an acceptable job at an acceptable wage. This explains structural unemployment arising from trade.

There are pains accompanying the search for a new job. A variety of adjustment costs would be incurred by the unemployed worker, his family, community and by government.

Social costs arise from dislocation in employment arising from trade. Workers and their families suffer anxiety in looking for another job. His or her family would have to adjust to a reduced income, and previous savings accounts would be depleted. Household assets may have to be sold to survive. In advanced economies, the government compensates loss or reduced income by providing unemployment compensation, not available in almost all ASEAN countries. “Safety nets” need to be designed and funded from tax revenues, and are costs to others in the economy.

Human resource development costs could be incurred by the individual, and by society. In some instances the productivity of transferred workers could be raised by incurring training costs. These costs might be borne by the individual worker, as when the individual enrolls in a vocational training school. The costs might also be borne by an employer who hires initially low productivity workers but trains them to raise their skills and productivity in the new

industry. Industries may pool their resources. The governments may also provide free or subsidized training through state vocational and technical institutions. The experience of Japan is important in this regard, in ensuring that HRD mitigates the effects of unemployment arising from trade.

(5) Labor research agenda for ERIA

During the ASEAN + 3 summit in Cebu, Japan proposed a think tank for regional issues in East Asia. The Economic Research Institute for ASEAN and East Asia, known as ERIA, was formally established in 2007, with the Japan External Trade Organisation (JETRO) acting as coordinator and manager for the new institution. The institute is designed to conduct research and studies on regional economic integration and to offer intellectual input on regional issues.

It is recommended that the research agenda of ERIA include analysis of the labor dimension of trade and regional integration, including industrial relations and employment.

Many labor disputes arise from the lack of worker motivation, and denial or failure of workers to share in productivity. Labor disputes contribute to social instability, and threaten the viability of trade and economic relations in the region.

There is a need for sustained thinking on how labor, employment & IR issues are dealt with in trade and business. In particular, there is a need for solid, quality research with theory and evidence to guide the design, monitoring and implementation of effective policies on labor, employment decent work and labor productivity.

It is strongly recommended therefore that ERIA include a research agenda, allocate resources, identify research expertise and organize a specific research project or section on the possible theme “*Labor Economics and Industrial Relations in East Asia (LEIREA)*”. The objective is to ensure effective and coherent business, labor market and social policies, to promote decent work and improvement in living standards in East Asia. This objective could be achieved by providing timely information and analysis on the changes in the labor market, employment creation, human resource development, wages and income, productivity, labor disputes settlement policies and mechanisms, and sound industrial relations.

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Appendix 1.
Japan – Philippine relations: key facts

Important facts about Japan – Philippine relations

Number of Residents:

Number of Japanese Nationals residing in the Philippines: 9,227 (Oct. 2000)

Number of Philippine Nationals residing in Japan: 187,261 (2005)

Trade with Japan (2006):

Exports: \$ 9 billion (electronic machinery)

Imports: \$ 8 billion (communication machinery)

Direct Investment from Japan:

(1) 27.5 billion pesos (approved by Bureau of Investment) (2005)

Japan's Economic Cooperation:

Loans: \$ 57.5 billion (cumulative total -1999)

Grants: \$ 17.9 billion (cumulative total -1999)

Technical Cooperation: \$ 12.9 billion (cumulative total -1999)

Source: Japan Ministry of Foreign Affairs website [12 December 2006]

<http://www.mofa.go.jp/region/asia-paci/philippine/index.html>

Appendix 2.
Some comparative statistics: Japan & Philippines

	Japan	Philippines	Differential
GDP & GNI (US \$) *			
GDP per capita, PPP	\$ 29,251	\$ 4,614	6.3
GNI per capita, PPP	29,814	1,170	25.5
GDP growth (annual, %)	2.7%	6.1%	0.4
Trade statistics			
Trade balance \$ billion	\$ 80.6	\$ - 3.9	-20.7
Current account \$ billion	\$ 165.8	\$ 2.9	57.2
Foreign reserves \$ billion	---	\$ 18.2	
	Japan	Philippines	Differential
Population & age profile			
Population (millions, 2000)	129.87	78.4	1.7
0 – 14 years old (%)	10.0%	37.5%	0.3
15 – 64 years old (%)	77.0%	56.9%	1.4
65 + years old (%)	13.0%	5.5%	2.4
	Japan	Philippines	Differential
Labor force & employment (2004)			
Population 15 to 64 yrs old (millions)	85	49	1.7
Labor force, total (million)	67	36	1.9
Labor force, female (million)	41	39	1.1
Unemployment %	4.7%	9.8	0.0
Male workers, agriculture %	4.5%	45.4%	0.1
Female workers, agriculture %	4.9%	24.9%	0.2

Notes: * Year of comparison: 2004.

GDP: Gross Domestic Product

GNI: Gross National Income

Sources: World Bank country profiles, www.worldbank.org

[Date accessed 15 August 2006]

Trade statistics from The Economist, 29 July 2006

Differential: [Japan / Philippines]

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