TOBACCO INDUSTRIAL POLICY AND TOBACCO CONTROL POLICY IN JAPAN*

Mark Levin†

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* Originally published in 2004, this chapter is republished with the permission of the author and the publishers of Tobacco Free * Japan. For further information, see Afterward on page 24. Much of the history set out here is drawn from Levin (1997), which is extensively footnoted with research references. For historical matters through 1996, citations are omitted and readers are invited to find further information in that article.

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I. SUMMARY

National tobacco policy in Japan runs along a strong line of legislatively established industrial policy promoted primarily through Japan’s Ministry of Finance and a weaker line of mostly administrative tobacco control policy promoted primarily by its Ministry of Health, Labour and Welfare (Ministry of Health). This chapter first looks at the two vectors in a historical overview of an unbalanced tug-of-war, and then considers the future of tobacco policy in Japan with reference to the Framework Convention on Tobacco Control (hereafter FCTC). In conclusion, the author hypothesizes that Japan’s domestic circumstances with regards to

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1 In 2001, the Japanese government carried out a massive reorganization of nearly all national government agencies. Nearly all existing agencies were reshaped, merged, divested, and renamed (in official English, Japanese, or both). For example, the former Ministry of Finance (Ōkurashō) became the Ministry of Finance (Zaimushō), with various functions divested to new agencies. The former Ministry of Health and Welfare (Kōseishō) merged with the former Ministry of Labor to become the Ministry of Health, Labor, and Welfare (Kōsei-Rōdōshō). Nevertheless, these agencies’ core functions were not significantly changed with regards to tobacco policy. Accordingly, for simplicity and clarity, this chapter uses the current names throughout, regardless of reference to current or prior entities.
tobacco control seem primed for significant improvement, but expresses concern that Japan will follow the United States in unkindly exporting the enormous public health burden of its tobacco industry to economically weaker and more vulnerable nations of the world.

II. TOBACCO INDUSTRIAL POLICY

Historically, industrial promotion has been the primary governmental force with regards to tobacco in Japan. The 1984 Tobacco Industry Law reflects this most clearly. It seeks for the nation “the sound development of the national economy and . . . stable fiscal revenues” by advancing “the sound development of national economy and . . . stable fiscal revenues” by advancing “the sound development of our nation’s tobacco industry.” Simply put, the Japanese Parliament (Diet) has formally recognized that tobacco is good business for the economy and good business for the government.

The Diet’s perspective on tobacco correlates to a nearly 100-year history of national government ownership of Japan’s tobacco business, first as a wholly owned monopoly enterprise, and more recently, from a majority ownership position in Japan Tobacco, Inc. (hereafter JT), a vast multi-national private corporation that retains a legal monopoly over tobacco manufacturing in Japan.

A. Monopoly Days: The Ministry of Finance’s Tobacco Business

Full government monopoly ownership of the tobacco industry in Japan dates to 1904. Ostensibly to preserve lucrative tax revenues in a wartime economy, but also to preclude further market entry by James Buchanan Duke’s powerful American Tobacco Company (Kluger 1996), the government transformed a lesser monopoly on leaf tobacco sales into a complete monopoly on both leaf sales and manufacturing owned and operated directly by the nation’s Ministry of Finance.

Japan’s tobacco industry grew strong under monopoly protection and government control. Following Allied Occupation guidance in 1949, the Ministry of Finance transferred its tobacco business from an internal division to a newly formed public corporation, the Japan Tobacco and Salt Public Corporation (JTSPC), an organizational appendage of the Ministry of Finance. This public corporation grew substantially as a business enterprise while remaining fully subordinate to Ministry of Finance control. Senior
Ministry of Finance officials routinely “descended from heaven” to cozy but dominant JTSPC executive positions, while mid-level Ministry of Finance officials supervised JTSPC operations under a close watch.

In the subsequent decades of Japan’s rapid economic expansion, JTSPC’s sales grew smoothly. As documented elsewhere in Tobacco Free * Japan, male smoking prevalence, already established at high levels during the wartime and post-war period, remained steady while per capita consumption rapidly increased (reflecting consumers’ improved spending power). In the meanwhile, the protected market environment supported peripheral economies, including a sizable tobacco leaf agricultural sector, an industry-held wholesale establishment, and a widely disbursed retail distribution network.

In the early 1980s, a variety of factors converged to push the Japanese government to again restructure its tobacco business. Foreign governments, particularly the U.S. Reagan administration on behalf of its tobacco giants Philip Morris and R.J. Reynolds Tobacco, put pressure on Japan in trade negotiations to end the monopoly protection regime (Kluger 1996; Sugarman 2001). Contemporaneous domestic pressures included broad-reaching efforts to accomplish national administrative reform and concerns over contentious labor/management relations in all three of Japan’s major public monopolies: telephone system, long-distance rail, and tobacco. A scheme for “privatization” of tobacco in Japan moved forward, reaching fruition in the 1985 Tobacco Industry Law described above. The privatized regime maintained an unmistakable tobacco industrial promotion posture. While legislative records makes clear that this was to appease an extremely powerful agricultural sector, industry documents dating back to the 1970s and 1980s also show an emerging awareness among tobacco industry players of market counter-pressures from consumers, activists, and other public officials about the health consequences of tobacco use (JTSPC 1979; Reynolds Tobacco 1979). This was presumably another likely factor towards establishing a protective oversight framework. Thus, even in the mid-1980’s, when governments of many economically developed nations were moving towards tobacco control efforts (Kagan and Vogel 1993), the newly established legislative scheme for tobacco business in Japan retained industry oversight in the hands of the business-friendly Ministry of Finance and an industry-dominated government advisory council.
B. Budget Rules: Tobacco Industrial Policy in the Post-Privatization Era (1985 to Present)

Tobacco industrial policy in the post-privatization era is accomplished directly, through Ministry of Finance guidance and support, and indirectly through the Ministry’s budgetary power.

Taking advantage of the protective legislative regime, the Ministry of Finance, the industry-dominated government advisory council, and Ministry of Finance agents inside JT have already reshaped the formerly flaccid domestic government enterprise to a vast global multi-national corporation now standing at number three on the world stage of international tobacco companies (Japan Tobacco, Inc. 2003). These same players have worked to preserve the industry’s position through business-favorable domestic tax and cigarette pricing determinations (Jha 1999; Chaloupka 2001; Watanabe 2003).

The Ministry of Finance’s successful deployment of institutional dominance through its control over the annual fiscal budget process seems even more important. When the budgetary axe swings over lesser agency heads, all players understand the dangers of seeking funding for measures likely to be unpopular with Ministry of Finance budget directors. This enables a wordless annihilation of much meaningful tobacco control program development at the national governmental level, reflected in miniscule tobacco control budgets for decades. Although the reality is admittedly more complicated than presented here (particularly with regards to role of intervening legislators (McCubbins and Noble 1995)), overall, Ministry of Finance ownership of tobacco in Japan subtly achieves tobacco industrial promotion by precluding funding for governmental tobacco control initiatives that would otherwise impair the industry’s advantages.

C. Who Owns Japan Tobacco? The Debate over Further Privatization

Both Japan Tobacco Inc. (JT) and the Ministry of Finance have long wished to accomplish the business of privatization, unfinished because of agricultural interest groups’ self-protection in the early 1980s. The Japan Tobacco Incorporation Law requires the Minister of Finance to retain at least two-thirds of JT’s stock “for the time being” and at least one-half of JT’s stock “in perpetuity”. Accordingly, the Minister of Finance’s holdings are precisely 64.5% of JT’s publicly traded stock (Table 1). [Note: 50% as of April 2004.]
### TABLE 1: PRIVATIZATION OF JAPAN’S TOBACCO MONOPOLY, 1985 TO PRESENT

<table>
<thead>
<tr>
<th>Date</th>
<th>Event Description</th>
<th>Govt. Ownership</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>April, 1985</td>
<td>JT established</td>
<td>100%</td>
<td>Japan Tobacco &amp; Salt Public Corporation abolished</td>
</tr>
<tr>
<td>October, 1994</td>
<td>First public stock offering</td>
<td>81.9%</td>
<td>Poor market interest resulted in less than full subscription for offering</td>
</tr>
<tr>
<td>June, 1996</td>
<td>Second public stock offering</td>
<td>66.7%</td>
<td>Sale intended for October 1994 completed</td>
</tr>
<tr>
<td>April, 2000</td>
<td>Presidency of Katsuhiko Honda announced</td>
<td>0% (proposed)</td>
<td>Honda indicates wish for privatization</td>
</tr>
<tr>
<td>December, 2000</td>
<td>JT seeks privatization</td>
<td>0% (proposed)</td>
<td>Company task force announced</td>
</tr>
<tr>
<td>January, 2001</td>
<td>MOF Minister Miyazawa asks for</td>
<td>50% (proposed)</td>
<td>Sale expected in 2002</td>
</tr>
<tr>
<td>December, 2001</td>
<td>MOF panel report recommends sale to</td>
<td>50% (authorized)</td>
<td>Sale expected in 2002</td>
</tr>
<tr>
<td>July, Dec, 2002</td>
<td>Sale to 50% postponed twice</td>
<td>66.7%</td>
<td>Owing to market conditions</td>
</tr>
<tr>
<td>2003</td>
<td>2.2% sold</td>
<td>64.5%</td>
<td></td>
</tr>
<tr>
<td>April, 2004</td>
<td>Sale to 50% announced</td>
<td>50%</td>
<td>Sale accomplished</td>
</tr>
</tbody>
</table>

JT officials seek full privatization with no retained government share. While this aspiration coincides generally with the government’s announced plans to reduce its share in the other two former state monopolies, NTT and Japan Railway, government plans remain focused on an intermediate divestment of JT stock down to a 50% share. In December 2002, the Ministry of Finance’s Policy Review Commission approved divestment to the 50% level (Fiscal System Council 2002a). Two successively scheduled sales were
cancelled owing to financial market circumstances and the sale is presently on indefinite hold with a target for early 2004 (Nikkei Weekly 2003).

The foremost political interests at stake in the debate are unrelated to tobacco control. These reflect a persistent and significant divide among pro-tobacco interest groups, most notably between JT (and its Ministry of Finance friends) and tobacco agriculture (and its Ministry of Agriculture friends) in a relatively even balance of powers (Fiscal System Council 2002a).

Many tobacco control activists in Japan view the government’s ownership of JT as an affront to the moral dignity of the nation and actively seek a complete separation of powers between the industry and the government. These proponents generally regard divestment as a necessary step for meaningful tobacco control to succeed in Japan (Hanai 2003). On the other hand, at least one observer has suggested that pragmatically, privatization of JT to date has worked against the interests of tobacco control in Japan (Sato 2000). Others have waged a similar debate with regards to privatization of government monopolies elsewhere (11th World Conference on Tobacco or Health 2000).

This author views further divestment as distinctly counter-productive to tobacco control interests. Rather, tobacco industry ownership should be transferred to the Ministry of Health under a Tobacco Products Control Law for Japan. Health could then develop a meaningful, compassionate, and comprehensive tobacco control regime, while restraining though direct ownership controls the nation’s principal tobacco enterprise. Moreover, the precautionary principle should apply here; the government stake is like a railroad right-of-way that, once abandoned, will be nearly impossible to restore.

III. TOBACCO CONTROL POLICY

In contrast to industrial promotion policy, tobacco control policy has a shorter and shallower history. Meaningful tobacco control policy was virtually nonexistent before and after the swift demise of an initial effort taken by Japan’s Ministry of Health in 1964. This void can be attributed to explicit Ministry of Finance intervention in 1964 and a subsequent chilling effect that continued successfully for nearly thirty years. During that time, the Ministry of Finance put forward minimal steps in response to external pressures, but little more action was evident.
More recently, the tides have changed somewhat. After the Ministry of Health began to take a weak hold on tobacco control in 1987, its initiative grew incrementally (measured relative to pre-1987 circumstances) through the 1990s. However, aggressive Ministry of Health action was quashed in the spring of 2000 when the tobacco industry and the Ministry of Finance won a major policy battle in a drawn-out public confrontation over the future of tobacco control in Japan. As of this writing, the Ministry of Health seems to be trying again, now supported by the first national legislation addressing tobacco control, the Health Promotion Law of 2003, and with the potential of further backing if Japan ratifies and abides by the global FCTC.

As documented elsewhere in this volume, national tobacco control measures in Japan remain extremely weak when viewed in an international comparative context. Local measures have been more diverse and, at times, have shown greater success. Space does not permit a complete elaboration of local initiatives in Japan, but it is important to recognize the many positive developments occurring, including some modest tobacco control information campaigns, enforced restrictions on tobacco smoking in public places (including crowded outdoor areas in some major urban centers in Tokyo and elsewhere), and one ground-breaking rural locale that has banned outdoor cigarette vending machines (Levin 2001). Many recent local efforts are the fruits of the Healthy Japan 21 initiative, (described in more detail below), carrying the weight for a barred nationwide program. While disparate local measures seem unlikely to effectively reduce the public health consequences of tobacco use in Japan on their own, they serve an important role in framing public discussions and consciousness and paving the way towards more comprehensive national reforms.

Finally, it should be briefly noted that non-binding tobacco industry “self-regulation” has been a historically significant source of informal tobacco control policy for Japan. This remains true. Again, space does not permit a complete discussion of this complicated issue, whereby modest and meagerly steps often serve as the only game in town, forestalling more aggressive and effective governmental action (Jacobson and Zapawa 2001). Most of Japan’s few limitations on tobacco product advertising, including TV and radio broadcast restrictions, and most recently, restrictions on large-format urban billboards, have come out of the “self-regulation” regime (Table 2).
### Table 2: Voluntary Advertising Restraints As Claimed by the Tobacco Industry, 1985 – 2003

<table>
<thead>
<tr>
<th>Date</th>
<th>Industry self-imposed restriction</th>
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</table>
| April 1985    | Television commercials between 6 p.m. and 9 p.m.  
Advertisements in women’s magazines and magazines with 50% of readers underage  
Advertisements using celebrities and models popular with minors  
(Note: only pertained to broadcast advertising; this kind of advertising persists in print media and billboards) |
| August 1987   | Advertisements using images of smoking women                                                                                                                                 |
| January 1989  | Television commercials from 5 a.m. to 8 p.m.                                                                                                                                 |
| October 1995  | Radio commercials on weekends  
Outdoor billboards within 100 meters from the front entrance of elementary, junior and senior high schools |
| April 1998    | All television and radio cigarette product commercials  
(Note: does not include “manner campaigns” and corporate image promotions which are still broadcast regularly on Japanese television) |
| June 2002     | Advertising in magazines with more than 25% of readers underage  
Outdoor billboards larger than 35 square meters                                                                                                                                 |

A. **Finance Runs the Show: Tobacco Control Policy Through 1987**

1. **Complete Ministry of Finance control through 1964**

   Until 1964, the Ministry of Finance was the only player in tobacco control in Japan. At least two changes seem to have been carried out through behind-the-scenes informal administrative guidance from the Ministry to JTSPC in the late 1950s. The most significant turn was JTSPC’s development and promotion of filter cigarettes. Filter cigarettes, which were virtually unavailable in Japan in 1960, rose to capture over 90 percent of the market by 1970 and 98

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2 Source: Asahi Shimbun, July 9, 2003; notes by Levin, July 2003.
percent of the market by 1980. In 1957, JTSPC also commenced internal research into the effects of tobacco upon health, though unlike U.S. counterparts’ research, the unpublished results of this research remain out of the public’s purview.

In fairness, Japan’s circumstances at this time were not dramatically different from tobacco control policy elsewhere around the world. Moreover, it should be noted that Ministry of Finance involvement in these initiatives is only presumed from knowledge of how Japanese government agencies operated at the time (e.g. Johnson 1982; Young 1984), and has not been confirmed via publicly available documents.

2. Lost turning point: the quashed 1964 public health engagement

U.S. Surgeon General Luther Terry’s 1964 report on Smoking and Health was a clarion call to action for senior public health officials in Japan. Just two weeks after the report’s release, the Ministry of Health’s Pediatrics Section Chief issued a directive to all prefectural governors and to mayors of major cities urging stronger efforts for the prevention of underage smoking to promote pediatric health. Two days later, the Ministry’s Public Health Section Chief assembled a committee of nine medical specialists to evaluate the U.S. report. This committee reported back within only a week, and while hedging somewhat their observations about local circumstances in Japan, the specialists’ conclusions were nonetheless grave: “[I]t can be inferred from the instant report that in the long term, juvenile commencement of smoking and heavy smoking consumption will become major causes of lung cancer mortality [in Japan] above present levels.”

Based upon the latter report, the same Public Health Section Chief, on February 6, 1964, issued MOH’s second directive on smoking and health to all prefectural governors and to mayors of major cities declaring it to be “clear that long-term and heavy tobacco consumption by adults detrimentally affect health” and stating a desire that measures be taken to widely disseminate information and guidance to the public concerning the health harms caused by smoking.

In what must be the greatest lost opportunity ever for public health in Japan, these Ministry of Health officials and their peers instantaneously shifted from urgent action to perfect silence and the Ministry took no further official public action on smoking and health
for 24 years. Hearsay reports allege (and reasonable logic accepts) that this was due to immediate and intense Ministry of Finance pressure at the highest levels. Other governmental and political interests may have been involved as well, including the agricultural and trade ministries and their public constituencies.

Certainly, the “what-if” game brings sad epidemiological results to consider where tobacco related mortality would be today in Japan if the Ministry of Health had been able to continue vigorously pursuing tobacco control policies from 1964.

3. 1964 – 1987: Finance’s unrivaled dominance and minimal regulation

Japanese ministries are ordinarily known for claiming extraordinarily broad-reaching jurisdictional reach in comparison with their U.S. counterparts (Johnson 1982; cf. Haley 1989), the Ministry of Health’s null stake in tobacco control was confirmed publicly in 1971 when the Minister of Health testified in the Diet that tobacco was beyond his ministry’s jurisdiction. In fact, even the World Health Organization’s 1970 important recommendation on tobacco or health, officially delivered to the Minister of Health, was merely forwarded to the Minister of Finance with no other public action.

In subsequent years, the Ministry of Health issued only three notices of rather limited scope. A 1978 notice directed administrators of national hospitals and clinics (only a very few of Japan’s many hospitals) to restrict smoking in those facilities to designated smoking areas. A 1980 request asked prefectural governors, mayors of major cities, and Tokyo ward chiefs, to strengthen their efforts to provide public education about the health effects of tobacco smoking. And a 1984 request asked prefectural governors to ask public medical service providers under the governors’ jurisdiction to consider smoking restrictions or improved ventilation in hospital and clinic waiting areas, particularly in facilities where patients with respiratory ailments or and infants might be gathered.

Meanwhile, in the late 1960s, JTSPC took two small steps that may also be presumed to have come from Ministry of Finance policy guidance. From April 1967, JTSPC made public tar and nicotine levels of its cigarette brands and initiated its first “self-regulation” program concerning tobacco advertising and promotion in November 1969.

Ultimately the Ministry of Finance was somewhat active in only one instance in this time period. Two weeks after officially
receiving the 1970 WHO recommendation from the Minister of Health, the Ministry of Finance submitted an inquiry to the Monopoly Industries Government Advisory Council asking for advice on appropriate measures concerning smoking and health. The Advisory Council’s report came back with predictably tame recommendations, particularly finding that a health warning on tobacco packages was not advisable. However, outside pressure from opposition members of the Diet and newspaper editorial pages pushed the Ministry of Finance to take slightly more aggressive measures. On April 20, 1972, the Ministry of Finance issued formal instructions to JTSPC to follow the report’s recommendations regarding tar and nicotine disclosure and, going further, to place a modest warning on cigarette packaging: “For health reasons, let’s be careful not to smoke too much”.

Apart from this, the Ministry of Finance’s construction of a post-1964 tobacco control policy vacuum through 1987 was nearly perfect. Throughout this time, Finance took the minimum measures sufficient to prove that some action was taken while fundamentally preserving its primary interest of promoting the tobacco industry. Tobacco control initiatives by other government agencies were essentially nil.


1. Health’s first steps get some results

Japan’s Ministry of Health returned to public engagement in tobacco control in conjunction with the Sixth World Conference on Smoking and Health in Tokyo in 1987. Since Japan would be on the world’s stage with little to show in terms of governmental tobacco control efforts, Ministry of Health officials hastily prepared a white paper on smoking and health that was released just one month ahead of the conference. This was the first government document in Japan to unambiguously recognize links between tobacco and various health harms. The report extensively documented adverse public health effects concerning tobacco use, but concrete suggestions for tobacco policy reform were allegedly removed prior to publication.

The 1987 White Paper spurred reform by the Ministry of Finance, unquestionably modest (or perhaps, minimalist) in scope, but nonetheless the highest level of tobacco control seen in Japan to date. In 1988, Finance’s Tobacco Industry Government Advisory Council set up a sub-committee to consider tobacco and health issues. This Council’s May 1989 report proposed strengthened warnings and tar and nicotine levels on tobacco packages and invited industry
'self-regulation' concerning tobacco television advertising and outdoor tobacco vending machines’ late night operations. Proposed changes arrived gradually over the next seven years. Tobacco package warnings were revised to the warning presently in use (‘As smoking might injure your health, let’s be careful not to smoke too much’) almost two years later. Television advertising for cigarettes moved back from an 8:54 p.m. starting time to 9:54 in August 1990, and to 10:54 p.m. in April 1991 (keeping the important late night news closing slot until April 1998). Finally, in 1996, Japan’s tobacco vendors’ industry association agreed to turn off outdoor vending machines from 11 pm to 5 am after April 1996 in a measure ostensibly to prevent youth access to tobacco purchases. (Levin 2000).

Regardless of its modest success with the 1987 White Paper, the Ministry of Health once again opted for a quiet role after 1987, coordinating annual pronouncements with WHO’s World No-Smoking Day and little more. Tobacco was erased from the draft text of a 1989 report on national health promotion and the 1993 revised edition of the White Paper on Smoking and Health followed the first edition’s model by omitting any policy recommendations.


Things started to change from October 1994 in conjunction with the temporary absence from power of the Liberal Democratic Party, which had been the ruling political party since 1955. Not surprisingly, this was a time for making changes in countless areas of public policy. The Ministry of Health’s move came when the Director General of the Health Service Bureau established a Tobacco Action Plan Working Group to consider national policy direction regarding tobacco and health. In contrast to Finance’s Tobacco Industry Government Advisory Council, Health’s Working Group members were balanced to include cancer specialists and representatives from consumer and anti-smoking groups as well as tobacco industry representatives and their allies.

After several highly contentious meetings, the Working Group’s March 1995 report was major news. The report urged action in three broad areas: (1) comprehensive prevention of underage smoking, (2) creation for non-smokers of an environment supporting the removal or reduction of passive smoke exposure, and (3) providing support for current smokers who desire to quit or cut back consumption. (The report’s conclusions also included an
acknowledgment of the beneficial attributes of smoking.) The report proposed approximately twenty specific policy initiatives aimed towards fostering the three goals identified above.

Hindsight in 2003 reveals limited accomplishment of the optimistic goals articulated in the 1995 Working Group Report, although positive momentum has been constant with regards to environmental tobacco smoke exposure in public places. But the symbolic value of the 1995 Working Group’s action should not be overlooked. The Ministry of Health’s interest and achievement in tobacco control has ebbed and flowed since, but the basic jurisdictional fact that Japan’s Ministry of Health will be engaged in tobacco control policy no longer seems in doubt (cf. Kessler 2001).

3. The battle over Healthy Japan 21

In November 1996, despite the fact that the Liberal Democratic Party had returned to power, tobacco control remained on the Ministry of Health’s agenda owing to then Prime Minister Ryutaro Hashimoto’s appointment of Jun’ichiro Koizumi to the Health portfolio.

Koizumi strongly supported and encouraged tobacco control efforts at the Ministry. Most notably, Koizumi intervened in favor of tobacco control in the preparation of an important official White Paper on Health published in 1997 that unequivocally indicated tobacco as an addictive product that is harmful to the user and harmful to others. This powerful language, anathema to the Ministry of Finance’s outlook, arguably represented Health’s first direct challenge to Finance’s hegemony on tobacco policy.

The next round was a setback for tobacco control. In February 1998, Koizumi established the Ministry’s 21st Century Tobacco Policy Deliberation Committee with a balance of Health- and Finance-approved supporters similar to the makeup of the 1995 Working Group. Tobacco industry supporters successfully maneuvered this Committee to wind down its activities in August 1998 with an inconclusive report presenting conflicting views for future tobacco policy. Although little forward motion was achieved, a key lesson appears to have been learned here. Subsequent Ministry of Health committees have not since provided courtesy seating to tobacco industry supporters likely to disrupt or derail tobacco control initiatives.

Koizumi lost his position as Minister of Health in July 1998, but his replacement, Sohei Miyashita was also a strong supporter of
tobacco control. Under Miyashita’s lead, the Ministry of Health supported three major tobacco control initiatives: sending a tobacco control expert to the October 1999 FCTC Working Group meeting in Geneva, supporting a November 1999 WHO International Conference on Women and Children’s Tobacco Use in Kobe (Samet and Yoon 2001), and including tobacco control as a part of ‘Healthy Japan 21’ (hereafter HJ21), the Ministry’s newest overall public health initiative.

HJ21 was a major health promotion initiative under the aegis of the Ministry’s Council on Public Health, one of Health’s foremost advisory bodies. The HJ21 Working Group’s tobacco sub-group was the first panel established under Ministry of Health authority to operate without including at least a minority of Finance’s delegates. In August 1999, the tobacco sub-group, working free of Finance’s influence, announced draft plans to halve the percentage of Japanese who smoke and the total number of cigarettes consumed annually in the country by the year 2010. These hard-hitting numerical-based targets immediately became the focal point for an all-out political battle waged by all interests connected with the tobacco industry in Japan.

First, a new Director-General of the Ministry’s Health Services bureau in September 1999 was appointed. Miyashita’s replacement as the Minister of Health followed shortly thereafter. The new Minister, Yuya Niwa, would not defend the draft as the new Health Services administrator took it apart. In November 1999, just after with the WHO conference in Kobe (the timing here is unlikely to have been a coincidence), the Liberal Democratic Party’s crucially influential Policy Research Council sent a resolution to the Ministry of Health opposing numerical targets in the Healthy Japan 21 program with regards to tobacco.

In February 2000, the HJ21 Working Group, under pressure to preserve the HJ21 overall program threatened by pro-tobacco interests, eliminated the numerical targets pertaining to tobacco. The HJ21 Program was inaugurated with only weak hortative aspirations including “dissemination of knowledge,” “making a thorough distinction between where people can and cannot smoke,” and “promoting programs to help people stop smoking to the point where they can receive assistance anywhere.”

In July 2000, Prime Minister Mori appointed a top leader of tobacco industry supporters in the LDP, Yuji Tsushima, as the Minister of Health, to annihilate any lingering tobacco control
sentiments within the Ministry’s ranks. By August 2000, the Ministry’s Office of Smoking and Health had no staff and tobacco control was a part-time job for two low-level non-professional staffers in the Ministry’s Public Health section.

Although the next section suggests that things may at last be changing, HJ21 represented another major lost opportunity in Japan. Moreover, the loss reveals the entrenched and powerful status of the tobacco industry’s voice in public policy at least as recently as 2000. This is not surprising. The Liberal Democrats are famed for their strong ties to agricultural interests and have a long history of protectionism in favor of those interests. Moreover, a number of other powerful interests seem inclined to push the Liberal Democratic Party towards a pro-tobacco industry perspective. The party has long-standing and close ties in the central Tokyo area with the Ministry of Finance bureaucracy, with powerful pan-industry business organizations such as the Keidanren that include JT among their members, and presumably with the senior executives of JT itself. Second, the party is responsive to media and advertising industry interests, most notably Japan’s big five major media companies and with the world’s largest advertising combine. Given the enormous sums spent by the tobacco industry on advertising and promotion in Japan, the media and advertising world shares a pro-tobacco perspective that is certain to be reflected in its political “wish lists”. Finally, the greatest political interest favoring the tobacco industry likely comes from the collective voices of over 300,000 tobacco retailers. Tobacco retail includes both major business players (e.g. the convenience store chains) and a multitude of ‘mom-and-pop’ tobacconists present in every electoral district. Not only elected officials from tobacco growing regions or party leaders with elite ties to the Tokyo business community, but rather virtually every LDP parliamentarian has reason to acquiesce to pro-tobacco interests.

C. Has The Tide Turned? Tobacco Control Policy In Japan Today

Since the summer of 2001, there has been an unprecedented (for Japan) series of major tobacco control policy-related events in Japan. To this observer, it seems that meaningful policy initiatives are accomplishing real changes in the tobacco environment in Japan. At least within the domestic arena and without regarding JT’s multinational growth outside Japan, the tide may have turned (Table 3).
Table 3: Major Tobacco Policy Events, 2001 – 2003

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
<th>Comments</th>
</tr>
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<tbody>
<tr>
<td>Summer 2001</td>
<td>Minors Smoking Prohibition Law revision</td>
<td>Penalties strengthened; substantial media attention</td>
</tr>
<tr>
<td>March 2002</td>
<td>Parliamentarian’s Tobacco Control League established</td>
<td>Announced on March 7, 2002 with 64 members; by December 2002, over 90 parliamentarians had signed on</td>
</tr>
<tr>
<td>Summer 2002</td>
<td>Health Promotion Law of 2002</td>
<td>Art. 25 provides for nationwide protection from tobacco smoke pollution</td>
</tr>
<tr>
<td>October 2002</td>
<td>Fiscal System Council Interim Report on Smoking And Health</td>
<td>Generally industry defensive but recommends baseline tobacco control policies including revision of package and advertising warnings;</td>
</tr>
<tr>
<td>December 2002</td>
<td>Health Sciences Council Report on Future Measures for Smoking</td>
<td>Recommends substantial tobacco control policy changes for Japan</td>
</tr>
<tr>
<td>March 2003</td>
<td>Tax increase approved</td>
<td>¥20 per pack, effective July 1, 2003</td>
</tr>
<tr>
<td>May 1, 2003</td>
<td>Health Promotion Law takes effect</td>
<td>Substantial nationwide media attention; countless large and small positive changes towards clean indoor air</td>
</tr>
<tr>
<td>May 21, 2003</td>
<td>FCTC unanimously approved in Geneva</td>
<td>Government of Japan agrees in early May to vote to approve treaty (though no commitment to join as signer); substantial nationwide media attention</td>
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<tr>
<td>July 1, 2003</td>
<td>Tax increase takes effect</td>
<td>Roughly 8% price increase on cigarettes nationwide</td>
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1. Acts of parliament: the revised Minors’ Smoking Prohibition Law and the Health Promotion Law

In September 2001, the Japanese Diet revised Japan’s 100-year old Minors’ Smoking Prohibition Law to strengthen the penalties imposed on merchants who sell to minors where the retailers know the buyers to be purchasing for their own use. It is easy to
imagine that practical result of the “knowing” clause makes the law text profoundly self-limiting, but further limitations curtail Japan’s youth-oriented tobacco control regime as well. The law has no official compliance assessment or enforcement system and the ubiquity of free-standing tobacco vending machines throughout Japan allows youth free access to tobacco without having to face a merchant. Nevertheless, at a minimum, the legislative revision brought the issue of youth smoking into the public arena and arguably confirmed a degree of public support for policies to reduce youth smoking rates (cf. Rigotti 2001). It was a small first step heralding further reforms to come.

Far more significant legislative action came one year later with the enactment of the Health Promotion Law of 2003. This law, the outcome of the Healthy Japan 21 project, enacted a wide-ranging list of health promotion measures primarily addressing lifestyle-related health promotion initiatives. Buried inside the law, Article 25 established Japan’s first nationwide statutory provision addressing protection from tobacco smoke pollution:

Prevention from Passive Smoking Exposure: Persons who manage schools, gymnasiums, hospitals, theatres, public assembly halls, gallery spaces, department stores, offices, government buildings, restaurants and bars, and other facilities used by numerous people should try to take whatever steps are necessary to prevent passive smoking exposure (i.e. being forced to breath other persons’ tobacco smoke in indoor or functionally equivalent spaces) for the users of such facilities.

A new force on the tobacco policy political scene, the Japan Parliamentarians’ Tobacco Control League, facilitated this remarkable enactment, emerging from the ashes of the Healthy Japan 21 numerical quota defeat. The non-partisan League, established on March 7, 2002, gathered 64 Diet members from all of the major political parties. Its opening meeting achieved substantial media coverage (Watanabe 2002). Moreover a host of additional Diet members continued to sign on later, significantly exceeding its founders’ expectations. By December 2002, over 90 parliamentarians, or roughly 12% of the total membership, had gone on the record endorsing the idea of a tobacco control legislative agenda for Japan (Watanabe 2003).

The merely hortative language of Health Promotion Law Article 25 may appear inadequate, but this kind of phrasing is relatively common in Japanese legislative texts aiming towards
achieving difficult and controversial social changes (Levin 1997). Contemporaneous guidelines on tobacco smoke pollution issued by the Ministry of Health took a more aggressive stance, indicating, for example, disfavor of open air separation of smokers from non-smokers and/or air cleaning devices as ineffective. Moreover, as noted below, even within weeks after the law took formal effect, its accomplishments have been substantial.

2. **Dueling councils: Finance and Health face off**

Following the enactment of the Health Promotion Law, and with work on the FCTC moving forward in Geneva, the spotlight shifted from the legislative to the administrative arena. Throughout 2002, two separate government advisory councils of experts were at work in competing efforts to design tobacco policy for Japan under a future global FCTC regime.

Finance’s team, under the auspices of the powerful Fiscal System Council, took the front position publishing its interim findings in October 2002. The report’s findings and recommendations were primarily industry-defensive. The report’s overall posture was that non-youth related tobacco control policy should only be aimed towards informed consent (and accordingly, smoking then becomes the individual consumer’s responsibility), that reducing tobacco consumption or prohibition are inappropriate policy goals, and that notwithstanding global movement towards the FCTC, policies should be independently developed by nations in accordance with their own values and political systems. Nevertheless, the report gave in to external pressures in at least two key areas – acknowledging that smoking has been epidemiologically proven as a disease risk factor, and agreeing to revise (details to be worked out later - and the devil in the details) Japan’s tobacco package and advertising warnings to stricter requirements in compliance with the anticipated FCTC. On the other hand, the report was replete with defensive positions, including that tobacco is an “item of preference” for consumers, refusing significant restrictions on marketing practices such as with regards to “light” and “mild” tobacco products, and essentially keeping vending machines on the landscape in Japan, albeit with some restrictions on location of machines and an expectation that age-verification technology will eliminate youth access problems by 2008.

It is fair to describe the Health Science Council’s Report on Future Measures for Smoking in Japan, issued December 25, 2002, as
the polar opposite of the Fiscal System Council’s report. This report proffered ample evidence-based findings on tobacco health harms to smokers and non-smokers, and addressed addictiveness. The report included what was perhaps the broadest-to-date economic assessment on the costs of tobacco use for Japan, including for example recognition of implications for labor productivity associated with increased mortality. The Health Science Council proposed a broad set of counter-measures for Japan’s future, consonant with the FCTC and the best interests of public health. Most dramatic was a call to reduce youth smoking to zero and promotion of smoking cessation programs nationwide.

Obviously, the two dueling reports were speaking to their respective constituencies. However, the ramifications are more significant than a staged shouting match. First, both reports explicitly targeted policymakers in the Japanese Government involved with the FCTC intergovernmental negotiations. (Arguably, both were influential. The Japanese Government assiduously worked on behalf of JT to weaken the FCTC text during intergovernmental negotiations. On the other hand and contrary to many expectations, the Government voted with the unanimous body of the World Health Assembly to approve the final text of the FCTC in May 2003). Second, because Finance’s limited concessions are certain to be achieved, this will at least revise Japan’s modest package warning in place since 1991: “As smoking might injure your health, let’s be careful not to smoke too much.” Finally, it is clear that independent tobacco control initiatives are now permanently established as part of the policy framework for Japan. In light of the history reported in this chapter, this represents a true sea change.

3. From a snowball to an avalanche: tobacco control policy in 2003

In 2003, the pace of tobacco control activity continued to grow, with the majority of events reflecting forward progress.

In January, the Japanese parliament followed a ruling party proposal for a modest tax increase on cigarettes, the first tax increase explicitly justified in the name of reducing tobacco consumption. While the roughly ¥20 per package increase was less than had been initially hoped for by public health advocates, a massive public relations campaign launched by tobacco industry forces in late 2002 to avoid any increase was also unsuccessful. This was a tobacco control victory. Given the substantial body of evidence showing the
value of tax hikes towards accomplishing reductions in tobacco consumption, one hopes for further increases to come (Chaloupka et al. 2001).

Tobacco control drew substantial media attention, including favorable editorial writing, in 2003 associated with the tax increase decision, the March FCTC intergovernmental negotiations, the May FCTC enactment, the May 1 implementation of the Health Promotion Law Article 25, and the implementation of the ¥20 per package tax increase on July 1. Among these events, Article 25 has had the most significant short-term impact on the environment in Japan and the Act’s potential as a positive force for long-term change in Japan cannot be underestimated.

The list of smoking restrictions and other tobacco control items reported in the media in connection with Article 25 is too long to particularize and, in fact, inadequate since the media has likely only revealed the tip of the iceberg. Major reports focused on the eight private railways in the Tokyo area removing their vestigial designated smoking areas, a number of local and prefectural governmental buildings banning all indoor smoking, schools and universities completely removing smoking from their campuses, and even a new line on Japan’s famed “Bullet Train” that will have no designated smoking cars from its inception. Moreover, countless other changes are observable though not reported in the media. All across Japan in public and privately-owned facilities, non-smoking areas have been set up where none existed before, and formerly designated smoking areas have been reduced or eliminated creating wholly smoke-free spaces. Unblocking a dam of pent-up hopes and expectations, Article 25 has served as an energized catalyst giving legitimacy and authority to clean air advocates in Japan.

IV. CONCLUSION – JAPAN’S FUTURE WITH THE FCTC

Understanding of Japan’s past governmental practices in the international arena takes on greater importance with the development of the FCTC. Evidence shows Japan’s treaty negotiations have been “largely defensive in nature” when faced with developing international law obligations that run counter to domestic practices and interests (Iwasawa 1998). This phrasing captures Japan’s methodology in the FCTC intergovernmental negotiations (see e.g. Yomiuri Shimbun 2003) where Japan took the bottom prize among all national and international participants in the FCTC negotiations as most frequent recipient of the Framework Convention Alliance’s
reproachful Dirty Ashtray Award (Framework Convention Alliance 2003).

Iwasawa’s study of Japan’s follow-up on Convention for the Elimination of Discrimination Against Women (CEDAW) is revealing. To avoid embarrassment, Japan voted for the CEDAW Convention in the UN General Assembly and was one of the few nations in the world to ratify the Convention with no reservations (Iwasawa 1998). In subsequent practice however, Japan has been willing to buck international pressure in the implementation of its obligations under CEDAW. After making superficial amendments to its domestic laws to apparently put the nation in compliance with international obligations, many observers argue that meaningful gender policy change in Japan has not been forthcoming (e.g. Knapp 1999; Yamakawa 1999).

Given this data, it is at least a fair conjecture that questions of Japan’s ratification of the treaty and its future implementation of the FCTC will follow similar paths, i.e. Japan will ratify the FCTC, but its realization of the FCTC’s goals and obligations will proceed slowly.

On the other hand, domestic trends over the past two years have shown an unmistakable trend towards more significant tobacco control policies. It seems highly possible that within Japan, effective tobacco control policies will continue to be developed and implemented, and positive results will follow. This author observed in the past that “a conscientious effort to reduce Japan’s high tobacco consumption would have high prospects for success” (Levin 1997). This remains true. With the growing strength of the Parliamentarians’ League for Tobacco Control and apparent popular satisfaction with changes coming through under the Health Promotion Law, there may at last be room for optimism that Japan will soon turn the corner on the inequitable and tragic burden of tobacco-related disease at home.

Concern lingers with Japan’s involvement in the global tobacco epidemic through its multinational business proxy JT. This behavior may leave Japan in an unfortunate rogue status (together with the United States and Great Britain) as responsible for countless deaths of non-Japanese people around the world. Yet, for example, none of the three significant advisory reports sponsored by the government in recent years addressed international issues relating to Japan’s global tobacco industry (Fiscal System Council 2002a, Fiscal System Council 2002b; Health Sciences Council 2002). Accordingly, policy makers in Japan may wish to consider further the international
implications of their tobacco control policies together with their domestic policy advances.

AFTERWARD

This article was written in the summer and fall of 2003 as a part of a much larger project titled “Tobacco Free * Japan: Recommendations for Tobacco Control Policy.” The Tobacco Free * Japan project was multi-national and multi-disciplined, assembling together many of Japan’s leading researchers on tobacco and health, researchers from the Johns Hopkins University Bloomberg School of Public Health Institute for Global Tobacco Control, and myself, the only legal specialist amidst a team of eighteen public health specialists. All of us were guided by a remarkable advisory board of nine of Japan’s foremost health researchers and policy specialists.

During 2003, in addition to contributing my chapter, I was able to participate in three intensive planning and development meetings in Tokyo with my fellow authors and the advisory board. It was an honor and pleasure to be able to meet my colleagues personally and learn from them so much about public health research methodologies, medical science relating to tobacco’s human toll, and the history of tobacco control policy in Japan.

The final report, which runs approximately 400 pages in either the English and Japanese versions (plus data appendices) was released in the summer of 2004, and presented to several hundred influential policy makers in Japan, including all of the nations elected parliamentarians, senior government officials, and key business leaders. An executive summary is available online at www.tobaccofree.jp where orders for CD-ROM versions of the complete report may also be submitted.

Work on this project was among to most exciting cross-cultural professional opportunities I have experienced in my career. I am deeply grateful to the project’s editors, Dr. Yumiko Mochizuki, of Japan’s National Institute of Public Health, Dr. Naohito Yamaguchi, of the Tokyo Women’s Medical University, and Dr. Jonathan Samet, the director of the Institute for Global Tobacco Control at Johns Hopkins University, for giving me such a rich chance to participate in the project. I share their hope that this project will mark a positive turning point for tobacco control in Japan, and look forward to being able to say that I played a small part in that event.
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