

Laws Regulating Tobacco Products in Japan

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Finding

No law or regulation exists in Japan focusing its attention on the content of tobacco products from the viewpoint of protecting public health.

The only law regulating tobacco products is **the “Tobacco Business Law”**.

“Tobacco Business Law”

(enacted in 1984)

Article 1 states:

“promoting the sound development of the Japanese tobacco industry, thereby securing national revenues”.

Article 39:provides regulation regarding the warning label

Article 40:provides regulation regarding the advertising

But---

This is the worst obstacle to the implementation of anti-smoke measures

Laws and regulations in need of examination

Pharmaceutical Affairs Law

Article 2, clause 1 (3) of the law defines pharmaceuticals as

“the substances(except for ‘quasi-drugs (Iyakubugaihin) and cosmetics) that are aimed at affecting the structure or function of the body of a person or an animal, and which is not a piece of machinery nor a device of some sort”.

The notice from the Director of the Pharmaceutical Affairs Bureau of the Ministry of Health and Welfare

June 1, Showa 46 (1971)

“How to understand the list of ingredient essence (raw material) chiefly used as pharmaceuticals”,

“pharmaceuticals” =

- **“a strong toxic alkaloid”**

- **“ a substance containing specified ingredients equivalent to a poison or powerful drug”**

The Poisonous and Deleterious Substances Control Act

Specifies nicotine as : a toxic substance.

Therefore, it is clear that nicotine, as a pharmaceutical, is subject to control under the Pharmaceutical Affairs Law.

It is also clear that:

Other products containing nicotine should be subject to control under the Pharmaceutical Affairs Law.

For example: nicotine patches
nicotine gum
electronic tobacco

“YOKOHAMA Tobacco Disease Lawsuit”

(A tobacco products liability litigation)

- The national government has asserted that:

tobacco is “a socially accepted **item of personal preference**” and its use is a matter of choice based upon the judgement of the user.

Under this assumption, the state insisted that tobacco is not a pharmaceutical as specified in Article 2 clause 1 (3) of the Pharmaceutical Affairs Law.

- The courts have also determined, "As for psychoactivity:

it is within the limits permitted for **items of personal preference**, so it is understood as not corresponding to the influence of the function of a person, as defined by Article 2 clause 1 (3) of the Pharmaceutical Affairs Law.”

“Items of personal preference”

(in japanese “shikohin”)

Major examples of “items of personal preference”

The jurisdiction control of these items are the same **except for tobacco**

- Tea
- Coffee → Food Sanitation Law
- Alcohol
- Tobacco → Tobacco Business Law

Other laws and regulations with potential to regulate tobacco

1 The Food Sanitation Law

The Japanese government asserted that tobacco is not “food” as defined by the Food Sanitation Law.

2 The Act on Control of Household Products Containing Harmful Substances

The Japanese government asserted that tobacco is not a “Household Product”.

Because “Household Product” mainly signifies items which general consumers use to assist their daily life activities in a variety of ways. However, tobacco is consumed and made available to meet personal preferences. Therefore, tobacco can not be classified as a “Household Product”.

In effect---

Tobacco is only to be regulated by the Tobacco Business Law.

Press release (5th of Sept, 2011)

- Minister of Health, Labor and Welfare Yoko Komiyama said:
“The tax hike I'm proposing is not for the purpose of increasing revenues, but to protect people's health. I think it is wrong that the Finance Ministry controls the tax revenues under the Tobacco Business Law. I think the Ministry of Health, Labor and Welfare should have control over such health issues” .
“ The manifest of the ruling Democratic Party of Japan calls for abolishing the Tobacco Business Law” .
- However, Finance minister Jun Azumi said that he believes it was only her **“personal opinion,”** and showed his disapproval. (7th of Sept, 2011)
- Komiyama then toned down her comments, saying the issue was up to the Finance Ministry, (which is in charge of the tobacco administration,) and the government's tax commission to decide.

The Stance of the Japanese Government

In Japan, the Tobacco Business Law, which the Ministry of Finance exercises regulatory authority over, for the purpose of maintaining stable tax revenue, is currently the only law that directly regulates tobacco products.

According to this law, the Japanese government takes the stance that tax revenues in excess of 2 trillion yen per year take precedence over public health.

The Japan Tobacco Inc. Law

Article 2, clause 1 requires the Minister of Finance to retain government ownership of one third of the shares of JT.

Under the status quo that is limited to regulations from a Finance Ministry intent on encouraging the production and sale of tobacco and the maintenance of stable tax revenue,

there is little possibility for effective tobacco regulation.

In Summary

We need to change our law.

The jurisdiction for tobacco products should be regulated by the Ministry of Health, Labor and Welfare as soon as possible.

- Regulations on tobacco products should be enacted with the purpose of protecting public health and should be under the authority of the Minister of Health, Labor and Welfare.
- Since Japan has ratified the Framework Convention on Tobacco Control, this broken state of affairs needs to be resolved as quickly as possible, not only to protect public health, but in accordance with Japan's national obligations as a party to the Framework Convention on Tobacco Control.