

From the "Controlled-Use" of Asbestos to the Ban on Main Asbestos Products – The Process in Japan: June 2002 to October 2004

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Abstract

During the past decades, Japan has been a leading consumer of asbestos, but very few people were aware of this fact. This misconception planted in society has concealed the magnitude of this issue, while numerous hidden victims have been produced. An examination of the steps leading to the current asbestos ban in Japan is needed under these circumstances.

On 28 June 2002, the Minister of Health, Labor and Welfare, Dr. Chikara Sakaguchi, declared the new policy that all asbestos-containing products should be prohibited except products considered to be essential for industrial and public safety.

In December 2002, the government formed "the Technical Committee on Substitution for Asbestos", a closed committee, to review the possibility of asbestos-containing product replacement at the category level. The report of the committee released in April 2003 indicated preference for a partial ban instead of total ban.

Notification of the ban was sent to the WTO in May 2003, but no official comments from other member countries of the WTO were submitted.

Just before this procedure, the committee had heard submissions from Canada and other interested parties behind closed doors. Public comments were invited, but the consultation document provided for this purpose was only a few lines of outline.

On 16 Oct. 2003, the Enforcement Order of the Industrial Safety and Health Law was amended. Manufacture, import, use and transfer of ten kinds of products, including tiles and friction materials, containing more than 1% asbestos by weight were prohibited.

Although the amended Order was enforced on 1 Oct. 2004, import or export of chrysotile fiber is legal after this date. Any asbestos-containing products except for those in the ten prohibited categories, as well as products in those categories containing 1% or less asbestos, can be produced or used in Japan. Besides, all asbestos-containing products which were produced or imported before 1 Oct. 2004 were not to be subject to the amended Order, so they could be sold legally after the enforcement date.

Introduction

In the mid 1990s, Japan imported approximately 200,000 tons of asbestos per year, but most people were unaware of this fact. This misconception planted in society has concealed the

magnitude of this issue, while numerous hidden victims have been produced. I was interested in why such a misconception was embedded in society. I established the internet website “Let’s Think about ASBESTOS” in 1997¹. Since then, I’ve been circulating information regarding asbestos issues in Japan.

In June 2002, the Japanese government decided to change its policy and head for a ban on asbestos. The new policy was put into practice on 1st Oct. 2004, but, actually, was limited to only ten kinds of asbestos products.

Some other countries such as those in the EU had already taken the firm step of imposing a total ban. It is said that there were some 3,000 kinds of asbestos-containing products in the golden era of asbestos; it is not clear why Japan has adopted a partial ban policy and why just these ten categories of products were targeted for prohibition.

Recently, not only the Government but also the mass media have referred to this ban as if it were a total or fundamental ban on asbestos. Under these circumstances, as there is concern that another misconception might be produced, it is necessary to be sure of what was banned and what was not banned and to clarify the processes involved in securing the ban on asbestos in Japan.

The ten kinds of prohibited products

In Oct. 2003, the Enforcement Order of the Industrial Safety and Health Law (ISHL) was amended. The amended Order prohibited manufacture, import, use and transfer of the following ten kinds of products containing more than 1% asbestos by weight².

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| (1) Asbestos cement pipes | (6) Clutch facings |
| (2) Extruded cement panels | (7) Clutch linings |
| (3) Decorated cement shingles for dwelling roofs | (8) Brake pads |
| (4) Fiber reinforced cement boards | (9) Brake linings |
| (5) Fiber reinforced cement sidings | (10) Adhesives |

The kinds of products which were not prohibited

The amended Enforcement Order of the ISHL rules has the following consequences regarding acceptance of asbestos-containing products:

- (1) Asbestos fiber is not targeted on the amended Order. (To import chrysotile fiber is completely legal.)
- (2) To import or produce any asbestos-containing products not in the ten specifically prohibited categories is completely legal.
- (3) To import or produce products in the ten prohibited categories containing asbestos at or below 1% by weight is not prohibited.
- (4) The amended Order ruled that products in the ten prohibited categories produced or imported before 1st Oct. 2004 were not subject to the Order. This means even products in the ten prohibited categories, if they were produced or imported within one year after the amendment can be legally sold from now on³.

How were these ten kinds of prohibited products chosen?

The following table explains the report of “the Technical Committee on Substitution for Asbestos”. Officially, the committee decided on the prohibited products.

In the table, construction materials were classified into five categories (asbestos cement pipes, extruded cement panels, decorated cement shingles for dwelling roofs, fiber reinforced cement boards and fiber reinforced cement sidings), which it was concluded could be replaced so should be banned.

Other materials except these construction materials were classified into six categories, such as friction materials for clutch and brake, adhesives for insulators, sealing materials, jointing sheets, thermal/electrical insulating sheets, and asbestos cloth and thread etc. Two of these six categories, friction materials for clutch and brake and adhesives for insulators, were judged to be replaceable, while the others were judged to be difficult to be replaced and should be used under conditions of ‘controlled-use’, subject to certain existing regulations.

As a result, seven kinds of asbestos products (as friction materials were subdivided into four kinds, clutch facings, clutch linings, brake pads and brake linings, later, ten kinds of products) were targeted for prohibition.

Categories of Asbestos Products and the Possibilities of Replacement

Product Categories		Substitution	Result
Construction materials	Asbestos cement pipes	able to be replaced	prohibit
	Extruded cement panels		
	Decorated cement shingles for dwelling roofs		
	Fiber reinforced cement boards		
	Fiber reinforced cement sidings		
The others	Friction materials for brake and clutch	difficult to be replaced	controlled use
	Adhesives for insulator		
	Sealing Materials		
	Jointing sheets		
	Thermal/electrical insulating sheets		
	Asbestos cloth and asbestos thread etc.		

(Quoted from the web site of MHLW and translated into English⁴)

The steps toward prohibition

The sequence of events leading to prohibition are detailed below:

On 28 June 2002, the Minister of Health, Labor and Welfare, Dr. Chikara Sakaguchi, declared the new policy that all asbestos-containing products should be prohibited except products considered to be essential for industrial and public safety. This was at a press conference⁵ to explain the Governmental Answer⁶ to a Written Question put by Diet member,

Mr. Atsuo Nakamura, under the Diet Law⁷.

The Ministry set about researching asbestos-containing products in line with this Governmental Answer and formed "the Technical Committee on Substitution for Asbestos" consisting of eight technical experts, in Dec.2002. (There is no description of the Substitution Committee in the contractual documents, but there is evidence of another committee in the background with other members including people from asbestos-related industries.)

The Substitution Committee decided on the basic framework of the ban, that is, that the possibilities of replacement should be decided at the category level and in cases where alternatives didn't exist or were considerably inferior in quality and might cause socially unacceptable problems, the products should be designated as "difficult to be replaced". The Report of this Committee was released in Apr. 2003⁸.

The Committee decided that seven categories of products out of eleven should be banned. As friction material was re-defined into four kinds, such as brake and clutch, later, the total number of prohibited categories rose to ten.

Based on the report of this committee, notification was sent to the World Trade Organization (WTO) in May 2003⁹. At the same time, national comments were invited, but only a few lines of overview were released for the nation to ponder¹⁰.

On the other hand, prior to the WTO notification, "Hearings from Foreign Parties" took place in Tokyo, in Apr. 2003. The Asbestos Institute and the Canadian government demonstrated their usual stances¹¹.

After the final decision had been made by the Labor Policy Council, in Sep. 2003¹², the Enforcement Order of the ISHL was amended in Oct. 2003. The amended Order was enforced in Oct. 2004. As the amended Order had a stipulation that products imported or produced before Oct. 2004 would not be subject to its rules, it was liable to promote production or import before the deadline.

- Events leading up to the ban on ten kinds of asbestos products -

10/Apr/2002

A study predicting the future mortality for male pleural malignant mesothelioma in Japan (by Dr. Murayama et al.) was reported¹³.

17/May/2002

The Diet member, Mr. Atsuo Nakamura, submitted the Written Question: "Regarding measures on the prohibition of asbestos", under the Diet Law.

28/June/2002

The Governmental Answer to the Written Question was released. At the press conference to explain the Answer, the minister of MHLW, Dr. Chikara Sakaguchi addressed Japan's new policy on asbestos and the prospect that chrysotile would be added to the prohibited asbestos.

-/Aug/2002

The MHLW set about researching asbestos-containing products in line with the Governmental Answer.

07/Oct/2002

The first judgment on an asbestos pneumoconiosis case, workers at the Yokosuka U.S. Army base, was given. The court approved the victims' claim almost perfectly.

29/Oct/2002

“The Standards Committee for Authorized Occupational Diseases caused by Asbestos Exposure” was established.

16/Dec/2002

“The Technical Committee on Substitution for Asbestos” was formed. The committee convened seven times to hear evidence from asbestos-related companies¹⁴.

06/Jun/2003

The children and their guardians of Sasigaya nursery school run by Bunkyo ward filed a suit in the court.

24/Mar/2003

A Written Question was submitted by the Diet member, Ms. Miyo Inoue¹⁵.

04/Apr/2003

The Report of “the Technical Committee on Substitution for Asbestos” was released.

08/Apr/2003, 11/Apr/2003

The procedure of the hearing from foreign countries was held in Tokyo. The Canadian Government and the Asbestos Institute adopted their usual stances.

23/May/2003

The governmental Answer to the Written Question by Diet member, Ms. Inoue, was released¹⁶.

02/May/2003

National public comments were invited, but the Government provided only a few lines of overview about the amendment, explaining the decision by the Substitutes Committee.

12/May/2003

The notification regarding the amendment of the Order was sent to the WTO, explaining the contents of the report of the Substitute Committee. (The deadline was 29 July 2003.)

26/Aug/2003

The report of the Standards Committee for Authorized Occupational Diseases caused by Asbestos Exposure was released. (The scope of the authorized occupational diseases was expanded¹⁷.)

19/Sep/2003

The Labor Policy Council admitted the overview of the amendment of the Order.

16/Oct/2003

The Enforcement Order of the ISHL was amended. (The ban on ten kinds of asbestos products was decided.)

01/Oct/2004

The Enforcement Order of the ISHL was enforced. (The ban on ten kinds of asbestos products was enforced.)

The Role played by “The Technical Committee on Substitution for Asbestos”

At the time of the WTO notification, in May 2003, the report of “The Technical Committee on Substitution for Asbestos” was used to explain the decision to prohibit only ten kinds of asbestos products in Japan. Also, when the Government invited national public comment, in May 2003, the findings of this committee were used to explain the decision of the MHLW.

To examine the reasons why these ten kinds of products were targeted for prohibition, the role played by the above committee was very important, but there are many ambiguous factors regarding this committee. For example, the MHLW entrusted the management of the committee to the Japan Industrial Safety and Health Association (JISHA), but an officer of the MHLW says he can't find any description of the committee in the contractual documents.

It means the MHLW can't account for how the Substitution Committee was established and managed, or, how much money was spent for the management of the committee.

However, the contractual documents indicate there was another committee consisting of other members including members from asbestos-related industry¹⁸.

Although the Substitution Committee actually existed and decided on the prohibited products, it might have played the role of a dummy committee. If this is true, another problem, what was the real Substitution Committee?

The MHLW should account for the entire procedure, including how it usually contracts with JISHA, to the nation.

Discussion

The ban on asbestos in Japan can be characterized as follows:

- (1) The prohibition on asbestos was a Government led fade-out rather than a ban. It also continued a trend of asbestos content reduction. The Government promotes replacement and reduction of asbestos content below 1% by traditional methods, such as governmental notifications or administrative suggestions, waiting for leading companies to complete replacement strategies. Industries not ready for such changes were not targeted by the ban.
- (2) Economic viewpoints were emphasized rather than hygiene. The Substitution Committee provided a forum for asbestos industry views to be heard. The ban was not decided on the point of what damage asbestos use would inflict on the nation, but on what influence a ban would have on the asbestos industry.
- (3) All asbestos-containing products except products in the prescribed ten categories were judged to be irreplaceable and should be used under "controlled-use" conditions, according to certain existing regulations. A new version of controlled-use was adopted. Now, a new rule to prevent asbestos exposure is being drafted.
- (4) Behind this situation, there is a lack of public participation. Only a few lines of overview were provided for the public to comment on, in Apr. 2003. The report of the Substitution Committee was attached as a reference, but this was a completely closed committee and records of the committee had not even been made public until they were forced into the open under the freedom of information Law.
- (5) There was a lack of objectivity. The Secretary of the Substitution Committee was also the Chairman of the Labor Policy Council. This meant that a person who had taken part in proposing the measures was also deciding whether they should be accepted. Lack of participation by third parties served to promote the strength of the connection between the government and the asbestos industry.

Last remarks

Although the asbestos issue concerns the whole nation, the decisions on the asbestos ban were taken in a small and closed world along with only perfunctory democratic procedures. It is necessary for us to demand an opening of this closed society and adjust the lack of transparency during such procedures. This will be important in realizing a total ban on asbestos in Japan.

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