

Trajectory of Competition Policy in a Coordinated Market Economy¹

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Abstract

Over the previous two decades, an increasing volume of literature focusing on policy feedback has developed the historical and temporal understanding of public policy. However, although policy feedback theory underscores policy continuity, several recent analyses have found that path-dependence based on self-reinforcing mechanisms are not always found to be effective. Competition policy in Japan marks a typical case. Although this policy has gradually strengthened as economic institutions have changed from a Coordinated Market Economy to a Liberal Market Economy beginning in the 1990s, this is not a simply linear and self-reinforcing path. A pendulum motion appears between periods of tighter regulations due to legal reforms and subsequent stagnation in enforcement of the law. This paper analyzes this non-linear sequence of policy development. In particular, it highlights the mechanisms that limit positive feedback effects following policy reforms.

Keywords: Competition Policy, Historical Institutionalism, Policy Feedback, Varieties of Capitalism, Japan

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1. Introduction

Beginning at the turn of the century, scholars in policy studies have increasingly focused their research agendas on what happened before or after a given policy choice rather than on the policy-making process itself (Pierson 2005). In particular, they have sought to explain why and how a policy can maintain policy feedback theory following historical institutionalism (for reviews, see Béland 2010; Béland and Schlager 2019; Mettler and SoRelle 2018). Much work in this area seeks to account for the linear trajectory of policy development. However, not all sequences of events are linear. Many policy developments show reactive sequences and cyclical patterns (Mahoney 2000; Bennett and Elman 2006; Page 2006). Policy studies have not focused its attention on non-linear sequences or their mechanisms. This paper analyzes cyclical patterns of policy development over long periods, tracing the trajectory of competition policy in Japan. It delineates the limits of positive feedback following policy reforms.

Competition policy has a long history in Japan, going back more than 70 years. In 1947, the Japanese government introduced its competition law³, informally referred to as the Anti-Monopoly Act (AMA) (formally titled the Act Concerning the Prohibition of Private Monopolies and the Assurance of Fair Trade [*Shiteki dokusen no kinshi oyobi kōsei torihiki no kakuho ni kansuru hōritsu*]). After the enactment of the AMA, the government established the Japan Fair Trade Commission (JFTC), an independent regulatory agency, to create and implement competition policy. Currently, 130 countries have competition laws in place, but in the immediate aftermath of World War II, apart from Japan, only the US and Canada did. In 1957, West Germany passed its own competition law (*Gesetz gegen Wettbewerbsbeschränkungen*), not far behind Japan.

³ Competition laws are, in a broad sense, defined as ‘general laws whose primary objective is to combat restraints on the competitive decisions of enterprises’ (Gerber 2019: 1170). This type of law might also be known as antitrust law, especially in the US. Scholars and practitioners tend to use the terms competition law and competition policy at present. This paper follows current common usage and does not refer to them as antitrust laws, by and large.

Japan's competition policy was developed at an exceedingly early stage relative to those of other countries. Nevertheless, the Japanese competition policy in general and JFTC in particular are not considered to be at the forefront of their field in the international community of competition law. The reason for this is that the JFTC has poor performance in enforcement relative to the US and the EU (Kurita 2004).

It is generally understood that economic structures affect the development of competition policy. Scholars of comparative political economy have classified Japanese economy as a Coordinated market economy (CME) (Hall and Soskice 2001) or a Developmental State (DS) (Johnson 1982). Liberal Market Economies (LMEs) feature competitive market mechanisms, but the CMEs incorporate both coordinative and non-market institutions. In a DS, the government actively intervenes into the market and guides domestic industries to promote economic growth. The US, which is termed an LME, has underscored the need for competition policy to foster accelerated the production of consumer welfare by fostering competition between firms. By contrast, in CMEs and DSs, competition policy is not crucial. The reason for this is that coordinative market features are predisposed to tolerate cartels and mergers, which will be strictly regulated by competition law.

Beginning in the 1990s, the Japanese government strengthened the competition policy together with the institutional reforms to liberalize the economic system. However, the formal enforcement of the JFTC tends to be slow, although this has not been universally true, even though the AMA was revised to tighten legal sanctions. Over the history of competition policy in Japan, the pendulum has alternated between periods of tighter regulations due to legal reforms and subsequent stagnation in enforcement (Hirabayashi 2016: v). This paper analyzes this non-linear sequence of policy development. It focuses in particular on the mechanisms that limit positive feedback effects following policy reforms.

This paper is organized as follows. First, it considers the analytical framework, adopting a historical institutionalist approach, especially with regard to policy feedback theory. Second, it examines the long history of competition policy in Japan, from the introduction of the AMA in 1947 to the present day, focusing on legal reforms and the enforcement of the JFTC. This case study elucidates the mechanisms of the limits of positive feedback. Finally, it draws conclusions and presents the implications of its findings for current debate on positive feedback.

2. Mechanisms of Policy Development

The emergence and spread of historical institutionalism in the field of comparative politics and the American Political Development since the 1990s have brought about a so-called ‘historical turn’ in policy studies (Howlett and Rayner 2006). Today, many policy scientists who follow historical institutionalism examine policy processes by contextualizing them in their historical and temporal contexts. These studies share a ‘policy development’ perspective and hence shed light on how processes develop over time and what happens ‘before’ and ‘after’ the policy choice rather than with respect to a moment (Pierson 2005). In the recent literature that follows this line, policy feedback theory has contributed to flourishing in our understanding of public policies. This theory elucidates ‘[the] impact of previously enacted policies on future political behavior and policy choices’ (Béland 2010: 570). The main objective is to elucidate the long-term political effects of policies after they have been put into place. That is, policy feedback theory considers policy as an independent variable of politics, whereas previous policy studies took it to be a dependent variable of the political process.

Historical institutionalists emphasize the path-dependence of existing public policy. They observe mechanisms related to positive and self-reinforcing feedback. How are positive feedback mechanisms activated in this context? In his pioneering review article,

Pierson identified resource and interpretation effects of policy feedback (Pierson 1993). In the resource effects, the recipients of public policy who are provided material resources such as subsidies and services invoke their veto power over retrenchment and reform to protect their vested interests. The interpretive effects increase policy sustainability through the establishment of ideas and norms that legitimize and support it (Pierson 1993; for recent reviews, see Béland 2010; Béland and Schlager 2019; Mettler and SoRelle 2018).

A growing literature on policy feedback has developed our understanding of policy development by unpacking the processes that take place before and after the policy choice. However, there are some limitations here. For example, pioneering analyses in early historical institutionalism largely focused on distribution and redistribution policies, such as those of social welfare, health care, and public pensions, such that government agencies can provide constituencies with material resources, including cash benefits and social services (eg., Pierson 1994, 2001; Skocpol 1992). Here, analysts tend to find evidence of positive feedback effect. By contrast, we know little about feedback mechanisms in regulatory policies, such as competition policy, which is less likely to have positive feedback because few specific acquire clear benefits (cf. Wilson 2000: 78-79).

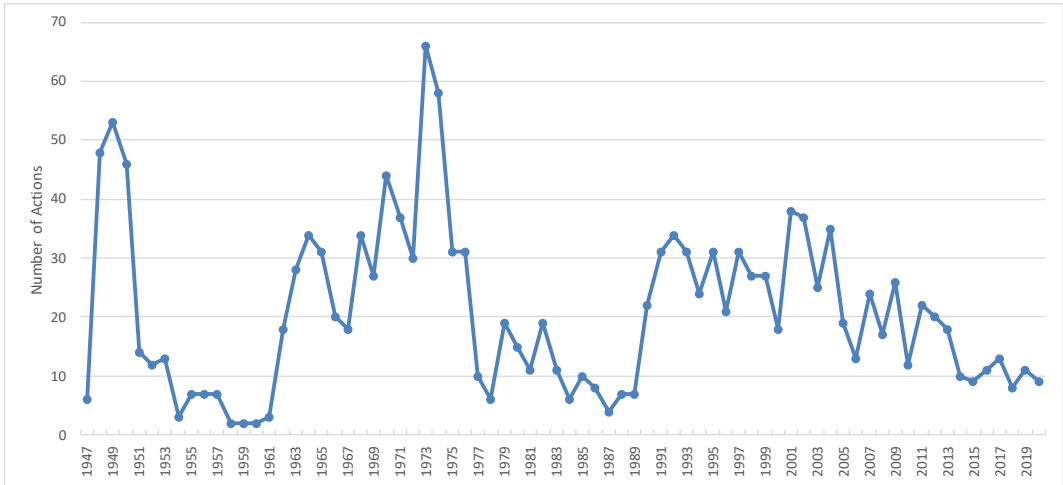
Thus, competition policy is a curious case. The core objective of such a policy is to promote competition in a market economy and increase consumer welfare (Gerber 2020). In Japan's competition policy, the competition authority does not have the policy instruments to provide companies with incentives but has only the power of regulations and sanctions to prevent competition-restricting behavior. It is difficult to obtain a positive feedback effect here because few directly acquire material benefits from the government's actions. Therefore, in policy fields, such as in competition policy, where resource effects likely do not operate, interpretive effects can play a more decisive role

in sustaining and enhancing policy. It is anticipated that the competition authority will steadily enforce the antitrust law and demonstrate the effectiveness of competition policy by that means. In this way, the agency can acquire legitimacy for its enforcement of the policy to demonstrate its *raison d'être* to the public and companies.

However, history shows the paradoxical pattern that enforcement by the JFTC, which is responsible for competition policy, becomes less active rather than more so after the legal reform implemented to strengthen the regulations and sanctions against violations of the law. In analyses of the regulatory policy process, it is essential to examine not only inputs (the design of the policy) but also outputs (implementing it) (cf. Guidi, Guardiancich, and Levi-Faur 2020). The regulatory capacity of the JFTC can be estimated by observing the number of legal actions as the output, particularly cease and desist orders. The JFTC has the authority to impose cease and desist orders on companies that have violated the AMA. This order is a formal administrative action that legally orders the abandonment of acts that are deemed to restrict or inhibit competition in violation of the AMA. Although the activities of the JFTC are not limited to cease-and-desist orders, this measure has been positioned as its core policy instrument (Fujita 2002: 93). Therefore, by examining the number of cease-and-desist orders, we can capture the approximate trend of enforcement by the JFTC.

Curiously, although this was not uniform, the number of cease and desist orders issued had been on a slight downward trend rather than growing after the development of legal regulations and sanctions. The amendments of AMA aimed at tightening legal penalties have been made several times since 1977, and among them, the legal reforms in 1977 and 2005 are particularly important. However, comparing the ten years before and after the revision of the law, in both cases, the number of formal JFTC enforcement actions tended to decrease after the amendments (Figure 1). Why does formal enforcement tend to stagnate after policy reforms intended to enhance the activity of the JFTC? Did the stricter rules and sanctions effectively prevent violations of the AMA and reduce the number of cases? This last hypothesis seems unlikely, as the law had been revised many times to tighten sanctions. This paper unpacks the processes and mechanisms regarding how and why the enforcement of the JFTC slows after

Figure 1. Formal JFTC Enforcement Actions



Source: Kōsei torihiki iinkai Jimusōkyoku 1997b: 252–253, Kōsei Torihiki Iinkai each year, and Kōsei Torihiki Iinkai 2021: 3.

institutional reforms, taking a historical institutionalist approach.

Over the past decade, policy studies have focused on negative and self-undermining feedback, which erodes the stability of the policy and triggers future policy reform. The path-dependent mechanism of positive feedback does not operate

continuously. Policy feedback includes not only positive and self-reinforcing effects but negative and self-undermining ones as well (Jacobs and Weaver 2015; Oberlander and Weaver 2015; Weaver 2010). Although existing policy feedback theory can help account for the sustainability of policy, negative and self-undermining feedback frameworks shed light on policy changes. A main feature of this framework is that it highlights the endogenous forces that can result in policy change, as distinct from punctuated equilibrium theory (Baumgartner and Jones 2009), arguing that exogenous shocks can trigger drastic policy reforms. According to this framework, the existing policy itself may gradually cause erosion and change (Jacobs and Weaver 2015; Oberlander and Weaver 2015; Weaver 2010). More recently, scholars of policy studies have elucidated nuanced and complex stories of policy development, including both self-reinforcing and self-undermining processes within the same policy field (Béland, Rocco, and Waddan 2019; Daugbjerg and Kay 2020; Moore and Joardan 2020; Skogstad 2017, 2020).

The self-undermining framework explores the long endogenous development of policy change; in other words, it highlights on what comes before the policy choice. Patashnik and his colleagues, meanwhile, highlight what the political process is that comes after the policy change. They discuss the limits of policy feedback effects in particular. According to their works, positive feedback effects may not function clearly when the benefits are not distributed, the reform idea is not shared, or there is insufficient administrative capacity (Patashnik 2003, 2008; Patashnik and Zelizer 2013). Analyses along this line have demonstrated how political pressure and the countermobilization of losers and business power following the enhancement of competitive policy could impede the sustainability of such a policy, mainly focusing on cases in the US (Patashnik 2019; Patashnik and Oberlander 2018; Patashnik and Weaver 2020).

These analyses enable the development of policy feedback theory by highlighting

other mechanisms that differ from positive feedback, as previously underlined by historical institutionalists. However, we know little of the detailed processes and conditions through which policy of this type is undermined and reoriented. This paper investigates these questions that have not been adequately addressed in previous work. First, it explores the nuanced factors that limit positive feedback. The recent literature focuses primarily on exogenous causes and examines intentional political mobilization to repeal and reorient policy (Patashnik 2019; Patashnik and Weaver 2020). This analysis sheds light not only on exogenous but also on endogenous causes that can lead to a slowdown of enforcement by a regulatory agency. Among the exogenous factors are the erosion of policy efficacy due to pressure from outside the government, whereas endogenous elements refer to the fact that policies and administrative agencies are themselves factors in undermining the policy. The most typical exogenous factor here is direct attack on the policy by opponents and losers. Organized interests and business that oppose regulatory policy lobby against it during policy-making. This has immediate and long-term effects as well, which would prevent further policy reform to tighten the regulations because policy-makers must acknowledge the high political cost of the decision-making. The losers often lobby politicians to revise unfavorable policies after they are enacted.

This paper also highlights the endogenous factors that undermine the policy. This shows that a shortage of administrative and policy capacity is a representative endogenous factor. Scholars of public administration and public policy have recently argued that public administration capacity, at the level of the individual and of the organization, can significantly affect policy outputs and outcomes (Lodge and Wegrich 2014; Painter and Pierre 2005; Wegrich 2021; Wu, Howlett, and Ramesh 2018). This analysis mainly pays attention to the overloading of the bureaucracy due to the accumulation of policy. It is thought that the introduction of a new and complex policy

without careful consideration of how resources for implementation will be secured would be an excessive burden on the bureaucracy and result in erosion of the policy (Adam et al. 2019; Dasguta and Kapur 2020; Wegrich 2021: 16–17).

Second, this paper contextualizes countermobilization strategies according to their temporal factors. In their article, Patashnik and Weaver list the varieties of strategy. Enacted policies can be undermined in six ways, namely, repeal, modification, undeveloped implementation, under-resourcing, devolving responsibility, and layering (Patashnik and Weaver 2020: 6–7). However, countermobilization and policy backlash do not always follow policy implementation. Although reversing or reorienting policy can have a significant impact on it, doing so can be costly after the policy is enacted. Opponents and losers who mobilize against a policy and succeed in changing or overturning it require timing such that the window of political opportunity is open when the political cost is low and it remains comparatively easy to create political coalitions to accomplish policy rearrangement (Jacobs and Weaver 2015; Kingdon 2011; Patashnik and Weaver 2020). In other words, the countermobilization changes according to the temporal context, namely, the stage of policy development. For example, it is relatively easy to overturn the law in the early period after its enactment. However, once the law has been in force for a long time, it will be more challenging to fundamentally reverse policy. In the latter case, opponents will attempt to attack the policy in other ways.

Finally, this paper presents a more structural context, such as the economic system that will affect policy-making. Scholars of comparative political economy have identified models of capitalism and specific economic institutions in different countries and regimes. Most typically, Varieties of Capitalism theory classify market economies into two models: LMEs and CMEs (Hall and Soskice 2001). LMEs feature competitive and market mechanisms, whereas the CMEs consist of coordinative and non-market institutions. The Japanese economic system is classified into a CME. Other scholars

have indicated that Japanese capitalism shows non-liberal features, resembling those of Germany (Yamamura Streeck and Yamamura 2001; Yamamura and Streeck 2003). Johnson understands Japan as a typical case of the DS, intervening in the market to promote economic growth and protect specific domestic industries (Johnson 1982; see also Clift 2021: 163–166). How do economic structures affect competition policy? Although previous studies have investigated the relationship between the economy and policy, they have not fully explored how the structures and institutions of market economies impact policy development over the long run. This paper bridges the gap between policy studies and comparative political economy to fill the gap.

3. Competition Policy in Era of the Developmental State

3.1 Initiation of the Competition Policy in Japan

The history of the competition policy in Japan began with enactment of the AMA in 1947, shortly after World War II. Before this, there was no competition law in Japan intended to promote market competition. The industrial policies of the Japanese government tended to restrict rather than support competition. The economic structures and institutions in Japan before World War II were oriented into conglomerates, called *zaibatsu* in Japanese, and into cartels established between firms and through trade associations. The term *zaibatsu* describes a Japanese conglomerate with a close relationship between a holding company as the core organization of the group and related industrial companies through cross-shareholding, interlocking officers, business connections, and so on. The *zaibatsu* held a dominant economic position in Japan's market in the pre-World War II era (Kōsei Torihiki Iinkai Jimusōkyoku 1997a: 2–3). The government accelerated corporate mergers and promoted cartels. This limited rather than facilitating market competition. Competition policy seems to have been quite alien

to the Japanese government during the pre-World War II period (Freyer 2006: 160).

The introduction of the competition policy in Japan was triggered by the Allied Occupation after the end of World War II. Japan's AMA was drafted and enacted under the substantial influence of the Occupation, particularly under that of the US government. The Supreme Commander of the Allied Powers (SCAP), the entity in charge of occupation policy, directed the dissolution of the *zaibatsu* and then made the Japanese government abolish acts and measures put in place to prevent market competition and to dismiss industrial associations that were established during wartime to demilitarize and democratize the Japanese economic regime (Negishi and Funada 2015: 5–7; Kōsei Torihiki Iinkai Jimusōkyoku 1997a: 13–24; Kisugi 1990: 23–24; Schaede 2000: 73).

SCAP further proceeded to work on enacting the anti-monopoly law to establish and sustain a fair and competitive market economy after the end of the Occupation. In November 1945, SCAP promulgated a directive to the Japanese Imperial government to immediately enact a law prohibiting private monopolies and trade restrictions, among other stipulations (Kōsei Torihiki Iinkai Jimusōkyoku 1997a: 4, 25). Although the Japanese government issued a bill in response to the directive, SCAP did not approve it because it could not play the role of an antitrust law (Hirabayashi 2012: 101–102; Kōsei Torihiki Iinkai Jimusōkyoku 1997a: 25; Freyer 2006: 167). Following this, SCAP led the lawmaking process, originally creating and proposing a draft that referenced the antitrust law of the US and prescribed stricter regulations: prohibition of monopolization and unreasonable restraint of trade, the establishment of a special court and a commission as enforcement authorities, treble-damage suits, and so on (Haley 2001: 30–33; Hirabayashi 2012: 106).

Although some bureaucrats within the ministries, particularly the Ministry of Commerce and Industry, opposed this policy initiative, the Japanese government

eventually formulated a bill to reflect these ideas. After discussion within the government and negotiation with SCAP, the cabinet approved the bill on March 18, 1947. The bill of the AMA was submitted to the Imperial Assembly on March 22. Although opposition from some political leaders nearly scuttled the bill, the Japanese government and SCAP's Government Section succeeded in stifling the resistance. As a result, the bill unanimously passed the final session of the Imperial Assembly under the Meiji Constitution on March 31 (Freyer 2006: 179; Hirabayashi 2012: 116–117; Kōsei Torihiki Iinkai Jimusōkyoku 1997a: 25–26). Thus, following this legislation, the JFTC, the only authority being responsible for competition law, was established in 1947. The JFTC, which was modeled on the US Federal Trade Commission, is an independent regulatory agency. Although the JFTC is an organization that falls under the prime minister's jurisdiction, its commissioners and officials execute their authorities independently of the prime minister and other ministers.

3.2 Reorientation and Layering of the AMA

Immediately after the enactment of the law, competition policy faced a significant challenge. In the 1950s, the Ministry of International Trade and Industry (MITI) implemented a policy of Recommended Reduction of Production (*kankoku sōtan*) to curtail operations in overproducing industrial sectors. The main objective was to protect domestic industries facing economic depression after the Korean War. This scheme performed essentially the same functions as a cartel. Although the JFTC suggested that the MITI reconsider its plan, it was eventually unable to overturn the policy due to the limitations of the AMA. Additionally, the MITI drafted bills to exempt a specific kind of cartels from violations of the AMA, and these bills passed the Diet in 1952 (Uchida 1996: 40–45; Kisugi 1999: 28–29). Thus, this was policy change as 'layering' (Hacker 2005; Mahoney and Thelen 2010). By introducing new measures, including the

recommended reduction scheme and exemption laws that were layered onto the AMA, the competition policy was effectively reformed without formal revision of the AMA.

The economic community, called *zaikai* in Japanese, consisting of the heads of larger companies, criticized the AMA. The *Keidanren* (*Keizai Dantai Rengōkai*, or Japan Business Federation), which was set up in August 1946, objected to the competition policy on the grounds that the regulations were too strict and that the AMA would disturb the economic activities of private companies (Uchida 1996: 40–45). The end of the Occupation in September 1952 substantially accelerated the counteractions to the AMA led by business leader. Three months afterward, *Keidanren* put forward a document calling for the reform of the AMA and requesting that the government and political parties radically ease the regulations of the act (Uchida 1996: 47–49). The JFTC, realizing that reform for the AMA was inevitable, began to draft a revision. After negotiations between the JFTC and other ministries, the bill was submitted to the Diet and was enacted in August 1953. The revised act was intended to relax restrictions on business action, reflecting the voices of business communities. The following critical revisions were included: (1) deletion of the provision prohibiting any collusive activity, (2) exemption of cartels in cases of recession or rationalization from being found in violation of the act, (3) exemption of resale price maintenance agreements from the application of the act, and (4) a significant relaxation of regulations on economic concentration and business mergers. This 1953 revision of the AMA is a reorientation of the policy, in that it radically transformed the initial aim of democratizing the Japanese economic system (Negishi and Funada 2015: 10–11; Sugahisa 2020: 398–399; Kōsei Torihiki Iinkai Jimusōkyoku 1997a: 71–74).

With the 1953 revision of the Act, the JFTC was forced to downsize, and its workforce was reduced from 305 to 241 (NHK shuzai-han 1990: 195–196). This reduction of the organizational capacity of JFTC caused stagnation activities. The

number of cease and desist put out against violations of the AMA declined beginning in the mid-1950s, and then it dropped to only a few cases per year around 1960. The role of the AMA during the period of rapid economic growth was generally neglected, and the autonomy and capacity of the JFTC were severely constrained. The merger of Fuji and Yawata Steel to form Nippon Steel Corporation in 1970 symbolized this reduced role of the JFTC. Although the JFTC initially expressed its firm opposition to the large-scale merger of the two steel companies, it was ultimately unable to stop it, which was settled by the consent decision under conditions (Kisugi 1999: 39).

However, the even after the 1953 reforms, the regulations had not been slackened to the degree desired by the business community. In 1958, a bill to revise the AMA initiated by the MITI, that intended to provide further allowances for cartels in specific cases and loosen regulations for firm mergers, was submitted to the Diet. It did not pass the Diet due to opposition from agricultural cooperatives, small and medium-sized companies, and consumer associations that expressed concern about the dominance of the market by big companies and rising prices due to cartels (Miyajima 1989: 348–431; Kōsei Torihiki Iinkai Jimusōkyoku 1997a: 90–94). This showed that the political cost of reversing the goal of the competition law was expensive. After this, few political opportunities have arisen to amend the law for the purposes of deregulation.

4. Policy Reforms and Reactive Undermining Feedback After the Oil Crisis

4.1 The Oil Crisis and Competition Policy

The JFTC had gradually emerged from a period of stagnation in its activities in the 1960s, when the rise in consumer prices due to rapid economic growth had become a major social issue. The government acted to ameliorate the situation by proactively implementing the AMA due to the perception that cartels caused increased prices. This

changing environments around competition policy resulted in further expansion of legal action by the JFTC (Kōsei Torihiki Iinkai Jimusōkyoku 1997a: 129; Hirabayashi 2012: 336–337, 341–342). However, it was after the 1970s that significant changes appeared in the competition policy.

The policy change was triggered by the exogenous event of the Oil Crisis in 1973. The JFTC investigated company and business association that seized the opportunity of Oil Crisis to conclude cartels and referred them for prosecution to the Public Prosecutor's Office. The widespread cartelization of petroleum companies sparked public outrage. The mass public and the Diet members repeatedly called for tougher measures, saying that the present regulations were insufficient effect of reducing the violation of the AMA, and thus the JFTC should bring criminal prosecutions against cartels (Uchiyama 1998: 177; Hirabayashi 2012: 468–469). With the support of public opinion, the JFTC began to investigate cartel cases against twelve petroleum companies and the Petroleum Association of Japan (*Sekiyu Renmei*), which had worked to cooperatively control production and opportunistically raise prices in the Oil Crisis. In 1974, the JFTC formally recommended that the cartel be broken, citing violations of the AMA. It further referred the prosecution of the corporations, the association, and the executives to the Public Prosecutor's Office (Uchiyama 1998: 177–178). The Prosecutor's Office investigated and indicted in Tokyo High Court. Although the AMA has provisions for criminal prosecution, just as US antitrust law does, they had rarely been invoked, entirely unlike the experience in the US. Until that point, only four criminal prosecution cases had been filed since the enactment of the AMA in 1947, and three of them had been during the Occupation. JFTC's unprecedentedly hardline stance on the petroleum cartel cases shocked the business community at first. However, the cartels had been established following the administrative guidance of the MITI (Kōsei Torihiki Iinkai Jimusōkyoku 1997a: 250; Tansō 2002: 14; Uchida 1996: 145–151). This

case indicated that the DS system, in which the government intervened in the market to protect and promote specific domestic industries, was out of date.

Another noteworthy change in competition policy was the legal reform that took place in 1977. Although the past amendments of the AMA were intended to loosen cartel regulations, the purpose of the revision was to strengthen the legal rules for the first in the history of Japan's competition policy. However, Keidanren, the MITI, and some politicians affiliated with the LDP took a firm opposite side against the legal reform intended to improve legal measures (Hirabayashi 2016: 522–533). Although their opposition delayed the decision process, it was unable to deter the legislation itself in the face of public pressure to revise the act, and the bill was finally passed in May 1977. The core contents of the amendment included the introduction of a surcharge for violations of price cartels, division of companies with a market share above a certain level, and a system for reporting the reasons for synchronized price increases in oligopolistic industries (Kojō 1999: 47–48; Negishi and Funada 2015: 14–15; Uchiyama 1998: 189–219; Hirabayashi 2012: 504–509).

4.2 Reaction Against Reform

Even though Japan's competition policy was improved in the 1970s, the JFTC's enforcement activities once again slowed. It acquired the powerful weapon of surcharge from the legal reform that the public favored. However, the agency was unable to use it sufficiently well. The average number per year of legal actions taken by the JFTC against companies violating the AMA decreased from 37.6 from 1967 to 1976 to 11.5 in the decade after 1977, when the act was revised. Although the surcharge system was established, there were few cases where the JFTC actually caught companies in violation of the AMA and imposed hefty surcharges. Although the oil cartel cases raised public expectations of criminal penalties for cartels, the JFTC also did not utilize the most

efficacious legal weapon for almost two decades afterward. The Public Prosecutor's Office, which has the authority to prosecute after a referral, was reluctant to do so because of the difficulty in proving violations of the AMA⁴. The JFTC primarily engaged in preventing companies from violating the AMA rather than strictly dealing with breaches by means of the legal scheme. The preventive approaches included the formulation and announcement of guidelines by the JFTC in which it indicated in detail when a violation of the AMA would occur (Kōsei Torihiki Iinkai Jimusōkyoku 1997a: 328).

Why did the JFCT's enforcement slow after the legal reform? Both exogenous and endogenous causes are essential here. Political conflict and pressure on the JFTC in lawmaking process were critical for creating the trajectory of the competition policy following this by significantly influencing its implementation. The JFTC's Chairman Toshihide Takahashi, who was active in uncovering cartels and who led the reform of the AMA, resigned in 1976, midway through his term, ostensibly due to an illness. However, this was not the only reason for his resignation. His hardline stance had made him an enemy of other commissioners of the JFTC and of LDP politicians. Thus, calls grew for a more coordinative than antagonistic relationship between the JFTC and business (Okawa 1985: 421–422). Although Takahashi had strengthened competition policy even in opposition with business communities and politicians, his successors adopted a policy of harmonization to deflect from the political assault on the JFTC. They believed that the JFTC should not be hostile to business leaders, but should be on their side, in order to establish competition policy in Japan's economic society.

Additionally, in 1983, *Keidanren* lobbied LDP, intending to amend the AMA again. It demanded to restore the legal provisions before 1977. Though this goal was not

⁴ The fact that the defendants were acquitted in the oil cartel case also led the Public Prosecutor's Office to be reluctant to receive referrals from the JFTC. This agency tends to prosecute only those cases that are almost certain to result in conviction (Hirabayashi 2016: 278).

achieved, it did constrain the JFTC's activities. The MITI created acts to allow cartels to protect specific industries under economic recession after the Oil Crisis. This law was layered on the AMA (Hirabayashi 2016: ch. 1, 110–111).

Endogenous factors also constrain the positive feedback effects. Policy reform itself led to stagnating enforcement because of under-resourced organizational capacity. Although the JFTC had powerful authority to file criminal charges against antitrust violators through the Prosecutor's Office, it rarely used it. Thus, violators of the AMA were not fined due to criminal penalties. As a result, the AMA had little ability to deter cartels. The surcharge system was newly added to the existing legal frameworks to effectively enforce the AMA. However, the addition of a new policy instrument placed a heavy burden on the JFTC's organization. However, the legal reform intended to strengthen the regulations and enforcement, the personnel and budget of the JFTC did not increase sufficiently to implement the reformed policy (Kisugi 1999: 52, 55).

5. Policy Reforms in Liberalization Era

5.1 Structural Impediments Initiative and Competition Policy

The role played by the government in promoting domestic industry has gradually weakened as the economy developed after the 1970s. The Japanese market economy, which featured, in particular, stable networks of business relationships, the *keiretsu*, was formulated and matured during the age of high economic growth. Therefore, it is necessary to understand Japanese capitalism as a CME rather than a DS (Vogel 2006, 2018). In the late 1970s, Japan's economy recovered from the recession of the oil crises. This showed the effectiveness of the Japanese CME. However, Japan's trade surplus, which resulted from the expansion of its exports, triggered political and economic conflict between the US and Japan during the 1980s. The US government initially

demanded that the Japanese government open its closed market to foreign companies and imports, and then US-Japan trade negotiations were held in separate areas. The US side, not satisfied with the results of the talks, demanded governmental action on the structural problems that were causing the trade imbalance. Resulting from this, the Structural Impediments Initiative (SII) was launched in 1989. The US called on Japan to remove the structural barriers to its market. The intensification of the competition policy and the enforcement of the JFTC was the most critical issue in the SII. The US government believed that the closed features of the Japanese market were caused by the anti-competitive behavior of Japanese companies and other economic institutions, such as *keiretsu* and cross-shareholdings. Therefore, it was necessary to strengthen regulations and sanctions relating to it to reform these behaviors and institutions (Matsushita 1992: 11).

Pressure from the US, the so-called *gaiatsu* (foreign pressure), presented the opportunity for the competitive policy to be strengthened for the first time since the 1970s (Beeman 2002: ch. 8). After negotiations between the US and Japanese governments, a final report was announced in June 1990. The report clearly stated that the Japanese government would intensify its competition policy and the regulatory capacity of the JFTC, including expanding the investigations of the JFTC and the amendment of the AMA to strengthen regulations and others (Nichibē Kōzōmondai Kenkyūkai 1990: 32–35). After the issuance of the final report of the SII, the Japanese government quickly began to discuss revising the AMA. As a result, of this, the government decided to revise the AMA to raise the calculation rate of the surcharge to 6% of the sales operating rate in principle. The bill smoothly passed the Diet in April 1991 without significant opposition from the LDP because it was simply following the government's lead after the conclusion of the SII (Hirabayashi 2016: 313–314; Negishi and Funada, 2015: 15). Moreover, the JFTC revised the AMA the following year in an

update that included an increase in the maximum fine for corporate entities for the unfair restraint of trade from 5 million to 100 million yen. Although some LDP politicians who reflected voices from business communities opposed the legislation, the bill passed the Diet nevertheless (Hirabayashi 2016: 280–282, 316–317).

The JFTC was reformed to improve the regulatory capacities, unlike when the AMA was amended in 1977. It augmented the personnel, and its total staff was increased from 445 in 1989 to 534 in 1996; the investigation staff in particular nearly doubled (Kōsei Torihiki Iinkai Jimusōkyoku 1997a: 493–494). The JFTC further renewed the organizational arrangement from the secretariat (*Jimukyoku-sei*) to the general secretariat system (*Jimusōkyoku-sei*) (Kōsei Torihiki Iinkai Jimusōkyoku 1997a: 494–495)⁵. This illustrated that the JFTC achieved its long-held goal of expanding its organizational capacity. Reflecting these institutional changes, the JFTC actively executed legal actions in the 1990s. The average number of cease and desist orders in the 1980s had fallen to 9.8 per year, but it drastically rose to 27.9 cases in the 1990s.

5.2 Competition Policy Reforms in the Koizumi Era

In addition to the consensus of SII, the collapse of the ‘bubble economy’ in the early 1990s and the subsequent economic downturn further promoted the liberalization of the Japanese market economy, based on the architecture and idea of the DS and the CME. Because policy-makers and business leaders passionately believed that to rebuild the economy, it was necessary to radically reform the institutions that had been at the core features of the Japanese model, such as the primary bank system, lifetime employment, closed business groups (*keiretsu*), and the corporative state-industry relationship. They proposed introducing US-style institutions as a prescription for a fundamental solution

⁵ In exchange for the expansion, the JFTC amended the AMA to allow the establishment of pure holding companies, which the *Keidanren* and MITI had strongly advocated.

to economic problems (Vogel 2006: 1–3).

The liberalization of institutions caused a positive feedback effect in competition policy. The government wholly reconsidered exemption from the application of the AMA. Further, it abolished certain legal schemes, such as the exemption act and the provisions regarding the exemption of cartels in cases of recession or rationalization. The exemption scheme was institutionalized in 30 laws, of which the total number of formal measures reached 89 in 1996, a number that was reduced to 21 measures in 10 laws 10 years later (Kōsei Torihiki Iinkai 2007: 13–14). As illustrated in section three, many exemption schemes were introduced in the late 1940s and the 1950s to restore post-war Japan's economy and protect domestic companies and industries. The institutional reforms symbolized the transformation of the Japanese DS and the CME.

The appointment of Junichiro Koizumi as the new prime minister and the leader of the LDP in April 2001 further promoted the liberalization of the Japanese market economy and its reliance on neoliberalism. The Koizumi cabinet intervened in the market economy in the way in which it reinforced the competition policy to accelerate the greater competition and innovation. The government actively revised the AMA to restrict regulations and sanctions and improved the regulatory capacity of the JFTC. The amendment of the AMA in 2005 was one of the most critical legal reforms in the 2000s. Although business associations such as *Keidanren* adamantly opposed tightening the AMA regulations, the bill finally passed the Diet in April 2005. The JFTC accepted *Keidanren's* request for a concession, withdrawing its initial proposal to double the surcharge and proposing a revised draft. The amended AMA that was eventually passed included the following provisions: (1) increase in the surcharge calculation rate from 6% to 10% in principle, (2) expansion of the coverage of surcharge, (3) introduction of

a leniency scheme⁶, (4) empowerment of the JFTC for compulsory investigation of criminal cases, and (5) reform of the complaint scheme from the ex-ante to the ex-post appeal type⁷ (Sugahisa 2020: 402). The introduction of the leniency scheme implied that the JFTC acquired a powerful means to uncover cartels, just as competition authorities could do in other countries. The purpose of the reform of the complaint scheme was that the JFTC could, by this means, efficiently take legal actions against violators of the AMA, preparing by means of increasing cases (Andō 2013: 112).

In addition, the organizational capacity of JFTC was dramatically extended in the Koizumi cabinet. The number of staff had been significantly expanded from 571 to 737 during the term of the Koizumi administration (from 2001 to 2006). The budget also was considerably raised for the same period. Their measures were intended to improve the enforcement capabilities of the JFTC (Uesugi 2007: 242–243).

5.3 Reactive Sequence and Negative Feedback After the Policy Reforms

Paradoxically, the legal reform of 2005 opened a political opportunity that losers such as *Keidanren* would increase the probability that they could fulfill their demands. The amendment of the AMA in 2013, which *Keidanren* was able to use to abolish the scheme of complaint procedure (*shinpan seido*) with its long-standing requirements, was triggered by the reform in 2005. The system allowed the JFTC to judge the

⁶ The measure provides exemption or reduction of surcharges for companies that voluntarily declare to the JFTC for violations of the AMA.

⁷ Prior to the amendment of the act, violations of the AMA were handled by a distinct procedure called the complaint system, which was different from the ordinary judicial procedure. This is to judge the adequacy of administrative acts by the complaint procedure carried out by the JFTC itself, not by the court. The AMA adopted a preliminary review system in which the JFTC conducted the complaint procedure before taking an administrative action. When the JFTC made a recommendation (cease and desist) to the company committing the violation, and if it refuses to accept the recommendation, the complaint procedure is initiated. The complaint procedure is institutionalized in the same way as a court trial, but the hearing officer who makes the decision is officials of the JFTC. In the new scheme, the JFTC issued a cease and desist order to violator of the AMA after procedures such as filing an opinion, and if the violator is dissatisfied with the order, complaint proceedings will be initiated (Ando 2013: 110–113).

administrative actions it has taken, meaning that there would be little chance for an action to be overturned. Business communities recognized that the complaint system was disadvantageous to them and thus have long advocated for its abolition.

The *Keidanren* succeeded in getting the government to add supplementary provisions to the AMA when it was revised in 2005. According to the additional requirement for further consideration of the AMA, the government set up a review meeting to discuss the next legal reform in July 2005. A most critical element in this process was the issue relating to the complaint scheme. The conference recommended maintaining the ex-post type complaint system for the time being and then reverting to the ex-ante type system that had previously been in place.

The *Keidanren* actively lobbied politicians to alter the process. The JFTC finally decided to abolish the complaint system, in exchange of tightening regulations, under increasing political pressure (Hirabayashi 2016: 390–392). The legal reform was put into place to improve the surcharge and enhance the leniency system in 2009; conversely, the complaint scheme was abandoned in 2013. Thus, the *Keidanren* achieved its long-cherished desire.

Besides exogenous countermobilization to the policy reforms, endogenous factors caused a slowdown of the enforcement. In spite of the improvement of the formal institution, the number of cease and desist orders has been on a slight downward trend rather than increasing after the legal reform in 2005. The average number of formal enforcements per year by the JFTC from 1995 to 2004 was 29.0, but it dropped to 18.1 in the following decade from 2005 to 2014. The JFTC recently has been increasingly enforcing the AMA through informal measures such as the caution (*Kōsei Torihiki Inukai* each year; Kurita 2019).

The policy reforms, including improvement of the competition policy and the enhancement of the organization of the JFTC, produced an unanticipated effect on the

enforcement of the AMA and caused a significant negative reaction in business circles. Contrary to what is usually thought, tightening regulations could lead to a more reluctant attitude of the JFTC. A crucial reason for this is the cost of law enforcement, such as in investigating whether something violates the AMA, and determining on administrative penalties (Kurita 2019). The higher the penalty and the more severe the punishment, the more cautious the JFTC will be in its investigations and in decisions of administrative orders. As the amount of its surcharges increases, it is expected that companies that are ordered to pay the surcharges will be more likely to file a lawsuit against the JFTC. Indeed, the number of cases in which the companies that were taken formal administrative actions by the JFTC file a complaint with the court has increased rapidly since around 2005 (Kōsei Torihiki linkai each year), coupled with the effects of the change in the complaint system.

Additionally, more careful investigation and decision-making is required to reduce the possibility that a judgment will overturn JFTC's orders in court. This demonstrates that strengthening the legal regulations and sanctions can overload of the JFTC. In this situation, the JFTC will prefer a low-cost approach of enforcement, including informal administrative guidance. As a result, it is unlikely that the investigated company will file a lawsuit, and it can be processed quickly because it does not require meticulous fact-finding (Kurita 2019).

6. Conclusion

The competition policy in Japan has an exceptionally long history, stretching back over 70 years. However, the road to the present has not been smooth. The path has not been linear and does not show positive feedback effects such as those expected by historical institutionalist approaches. This paper explores the mechanisms in a non-linear type of policy development.

The introduction of competition policy and the many legal changes presented to strengthen regulations and legal sanctions were also triggered by exogenous factors such as the Allied Occupation, pressure from the US government, and the Oil Crisis. We do not find much effort by the Japanese government or the JFTC to reform the law to independently strengthen competition policy. Notably, when a DS and a CME characterized Japan's economic system, there was an emphasis on cooperation among firms rather than promoting competition. Moreover, the government encouraged the formation of cartels. As a result, competition policy was generally disregarded.

To be sure, the Japanese government underscored the competition policy since the 1990s, when it began to reform the CME. In accordance with the liberalization of the market institutions, the government revised the AMA to strengthen regulations and penalties. However, the formal enforcement of the JFTC tended to slow after the legal revisions. In other words, positive feedback effects did not function smoothly after the policy reforms. This paper mainly focuses on the factors, processes, and mechanisms that prevented policy sustainability.

The results of the analysis indicate three essential findings. First, not only exogenous but also endogenous factors limit positive feedback effects. Political pressure from opponents, including politicians and prominent business associations, constrain formal JFTC enforcement after legal reforms. In addition to these exogenous factors, endogenous factors of policies and administrative organizations themselves are also crucial. This paper largely elucidated the mechanisms that entail that tightening legal penalties overloads the staff of the JFTC. New or renewed regulations and tightened penalties increase enforcement costs, in particular, falling short on administrative capacity constrains enforcement. The enhancement of penalties and rules, paradoxically, brings about the anticipated opposite effect, a stagnation of enforcement. This finding is consistent with existing literature claiming that policy accumulation caused

stagnation of implementation (Adam et al. 2019; Dasguta and Kapur 2020; Wegrich 2021: 16–17).

Second, this study finds that the strategies implemented by opponents and losers changes with the development stage of the policy and the given economic structure. They can replace and reorient a policy if they do not do so long after its introduction. However, once a certain amount of time has passed, it becomes difficult to reverse a policy as the cost of change increases. As a result, the loser's proposal to overturn the policy is less likely to be accepted. Instead, they are more likely to pursue a layering strategy, where the political costs are relatively low (Hacker 2005; Mahoney and Thelen 2010). As it becomes difficult to relax the substance of the regulation itself, they may instead seek to effectively loosen the policy by having procedural provisions revised. Their strategies are also constrained to some extent by economic structures. In the era of the DS and the CME, competition policy is neglected, and opponents can easily modify it. By contrast, from the 1990s onward, as the institutions became more liberalized and competition policy was strengthened, the strategies of opponents also changed. These findings contribute to not only further developing the study on policy sustainability but also bridging the gap between policy studies and comparative political economy.

Finally, this paper shows that legal reforms to tighten the penalties, on the contrary, could provide political opportunities for opponents and losers to mobilize. The chances for losers to reverse policies diminish over time. Efforts to tighten regulations, paradoxically, provide opportunities for losers. In sum, policy reforms may activate mechanisms to undermine the policy.

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