INTEREST GROUP INFLUENCE IN THE EUROPEAN COMMISSION
THE 2014 TOBACCO PRODUCTS DIRECTIVE

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ABSTRACT

Lucas William Wall: Interest Group Influence in the European Commission
Case Study: The 2014 Tobacco Products Directive
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Trying to understand interest groups and their influence in policy debates has been discussed for a long time discussion in political science. The majority of policy issues do not have high salience, and not many organizations are interested in what happens. However, when looking at issues that are controversial, such as tobacco control, then debates become salient and complex. Applying a single dimensional content analysis to a policy debate, such as the 2014 Tobacco Products Directive can generate more questions than answers. This paper critiques the analyses and findings by Costa et al. 2014 who suggest the tobacco industry's frames were successful in shifting the European Commission's policy position in their direction. However, I will argue that the evidence does not match this claim and that therefore a new line of inquiry is needed to reexamine influence within this policy debate: T-Lab software.

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INTRODUCTION

Lobbying and gaining influence in the European Union's policy process heavily relies on the ability to create a strategic frame for the issue at hand. How to accurately test the influence of these frames has been discussed critically in political science during recent decades (De Bruycker 2016b). Studies such as Bunea (2014), Boräng and Naurin (2015), Eising et al. (2015), Klüver (2009) have improved our understanding of interest groups' frames and their impact on pieces of legislation. Despite this advance in framing research there is still not a clear analytical tool that explains and enables us to investigate systematically how interest groups employ their strategies. Recently, a new software package applied to content analysis has opened up this new possibility. This paper will critique an existing EU case study and present an alternative methodology that can bring new insights into new policy issues. Before exploring this further, the EU's legislative process first needs to be defined.

The main actor in the legislative process is the European Commission, which has the sole right to initiate legislation. Before it proposes a piece of legislation, it has an open consultation with the relevant stakeholders involved. For these stakeholders, it is important to convey their desired changes to the proposed legislation in such a way that enables their preferences to be added or retracted from it. It is expected that these stakeholders try to garner influence on the Commission by strategically framing the proposed legislation in a way that favors

their interests. A frame is defined as an emphasis on a specific issue within the policy proposal. The policy proposal can have multiple issues within it. For instance, Klüver found 20 different issues within the proposal on CO_2 emissions (2009). Therefore, interest groups try to highlight one policy issue as their priority while at the same time disregarding others. A policy issue is only one part of the entire proposal. The policy debate then includes the process of adopting the proposal by considering EU institutions' and stakeholders' favored revisions. To understand why some proposals favor some stakeholders and not others, it is important to carefully research the frames put forward during the consultation period.

The study of strategic framing in the United States goes back to Riker (1986). One notable study, done by Baumgartner and Jones (1993, 2009), showed how positive and negative images could change the policy venues available and the mobilization among different interest groups in the US. Heike Klüver has been a leading scholar in unfolding the complexity of interest groups in the European Union (2009, 2011, 2012, 2013a, 2013b, 2015b, 2015c). One of her latest works with Christine Mahoney, *Measuring Interest Group Framing Strategies in Public Policy Debates,* provides important insights into the power of persuasion. Klüver and Mahoney use a method that has not been applied before to measuring interest group influence: T-Lab text analysis (2015a). This diverges from the traditional usage of WordScore for text analysis as WordScore faces a limitation, especially when examining the European Union policymaking process. Thomson has been able to show that policy debates in the EU are inherently multidimensional (2011). The problem with WordScore is that it only measures a single dimension within a policy

debate and can miss the involvement of a third party that might have the same or more influence than the original two sides (Börang et al. 2014). Instead of methodologically replicating previous studies using T-LAB, Klüver and Mahoney added a cluster and correspondence analysis to their approach, which will be elaborated on further in this paper (2015a).

The case study this paper will analyze is the 2014 EU Tobacco Products Directive (TPD). Previously, there has been a content analysis of TPD by Costa et al. (2014), using WordScore. My aim in this thesis is not to discredit the work of Costa et al. (2014) but rather to delve further into the question of the influence of the tobacco industry on the 2014 TPD. Costa et al. (2014) investigated whether there was a shift towards the industry position at all during the TPD 2014 consultation process and the final proposal approved by the Commission, Council and EP. However, their study did not focus on what types of interest groups were successful with their frames or how they were presented. Since the Framework Convention on Tobacco Control (FCTC) 5.3 Agreement, which states when discussing "public health policies with respect to the tobacco control, parties shall act to protect these policies from commercial and other vested interests of the tobacco industry" (World Health Organization 2009). Thus, it clearly states that tobacco industries should not have contact with decision-makers regarding policies on tobacco (Bertollini et al. 2016). However, it has been proven by (Smith et al. 2010) that the tobacco industry was able to utilize third parties as a part of its lobbying strategy. These third party organizations tried to distance themselves from any connection with tobacco industries and frame their arguments as if they were uncompromised by the

tobacco industry cause (Peeters et al. 2015). Following the logic of Thomson (2011) that policy debates in the EU are inherently multidimensional, it can be argued the third party organizations rather than the tobacco industry itself created a shift in the Commission's proposal.

This paper will address three questions: Does the analysis by Costa et al. (2014) capture the whole policy debate of the 2014 Tobacco Products Directive? What, if any, are the gaps missing in their analysis? Finally, is WordScore the most appropriate form of content analysis for examining the 2014 Tobacco Products Directive?

The structure of the paper will begin with a literature review of framing in interest group research and different methods used to measure its influence and success. The next section will be a detailed analysis of the strategies and influence the tobacco industry has had on EU legislation in the past decades including the 2014 TPD. Following that I will present be a critique of the findings from Costa et al. (2014). Finally I will draw out some conclusions about the implications of this case study and make a recommendation for a new line of inquiry into the 2014 TPD.

Literature Review

<u>What is Framing?</u>

Entman's definition of framing is widely accepted and will be used in this paper. Entman (1993) says that "to frame is to select some aspects of a perceived reality and make them more salient in a communicating text, in such a way as to promote a particular problem definition, causal interpretation, moral evaluation,

and/or treatment recommendation for the item described." This follows the idea that lobbying is a communication process, in which frames are chosen by interest groups strategically to promote their policy goals within debates (De Bruycker 2016a).

Dissecting frames further shows there are two divisions. The first is issue versus generic frames. Issue-specific frames are connected to a certain aspect of a policy issue in question and the role of an interest group within that debate (De Bruycker 2016b). Studies that have focused on issue-specific framing are Kurzer and Cooper's (2013) study on food information labeling and Candel et al. (2014) on the Common Agriculture Policy (CAP). The advantage of these studies is the ability to illustrate how a single issue over time has changed. However, the disadvantage is the inability to study interest groups across different policy fields. Generic frames enable the study of interest groups in different policy areas.

In this same context, Klüver et al. (2015c) draw a distinction between economic and public frames. In the case of Klüver et al. (2015c) economic frames describe arguments that follow the logic of monetary gain or loss. Private interests and industries are more likely to put forth frames such as these. By contrast, public frames consist of arguments that are in favor of the "public goods" in society. The Smoke Free Partnership that stands for promoting public health and Friends of the Earth who advocate for the environment are stakeholders would fall into this category. Thus, generic frames do not delve in great detail into particular interest groups but rather allow the comparison of actors and their positions in large-n studies.

The second major division in framing studies is between equivalence and emphasis frames. Emphasis framing is highlighting a part of an issue while dismissing the others. A problem with this approach is the need to discern the exact frame considering all other factors involved. An example of emphasis framing is when the tobacco industry applied greater significance to the risk of illicit trade in cigarettes while down playing the health risk of smoking. Equivalence framing was coined in psychology research (De Bruycker 2016b). Interest groups who present equivalence frames are providing similar information in another way. Baumgartner was able to show that interest groups in the US normally argue issues as either a cost or benefit to society (2009). There are three different types of equivalence frames: opportunities versus risk, gains versus losses, and positive versus negative consequences (De Bruycker 2016b). An example would be if a welfare policy positively affects one-third of the population and negatively affects two-thirds. A proponent of this policy might create a frame that states the policy would allow one-third of the population to have an increase in their living standard, while if the policy is not adopted then no one in the population will see an increase in living standards. An actor that opposes the policy would state that if one-third sees an increase in their standard of living then two-thirds would not have an increase in theirs. Thus, the equivalence frames are presenting the same situation and results but implicitly favoring different policy decisions.

As Goffman (1986) has described it, frames are like "schemata of interpretation" that help promote some aspects of reality while downplaying others. Within the theory of framing, it is thought that each frame has multiple dimensions,

which are portrayed by different actors in the debate. It is these policy frames that establish what is at stake for the actors involved. Using Baumgartner and Mahoney's (2008) suggestion that there are 'two faces of framing', it is now known to successfully push a frame in a policy debate actors must do this on a general level to change the problem definition in their favor. The 'two faces of framing' corresponds to the individual and general level, where individual framing is more in line with the efforts by advocates communicating their position, while general framing encompasses the issue definition of the debate (Eising et al. 2015). An example is a policy for the disposal of coal waste, which would encompass an environmental issue, a transportation concern and one about competition. Since this issue is multidimensional, it is expected that individually actors will present arguments that vary on the spectrum. When studying the frames of actors on the micro-level then one will not be able to discern the collective issue definition. However, when examining the collective issue as a whole, we are more likely to over look individual frames and their effects on other actors involved.

The general framing of policy debates are still not properly understood. As De Bruycker (2016b:3) suggests from the work of Daviter (2011), Dudley and Richardson (1999), frames are "the building blocks that construct a policy debate, rather than an emphasis in communication as in Entman's definition". This line of reasoning follows studies that have looked at issue-specific frames by interest groups and tried to understand the collective issue definition. This can cause problems in research because one individual frame can be given too much significance over another.

The overall goal for framing research is to understand the link between interest groups and influence. Macro-level influence is the ability to change the collective issue definition. When researchers have looked at macro-level influence they have not produced fruitful results. However, Baumgartner et al.'s (2009) large-n study of US policy debates showed that the majority of the collective issue definitions in the debates studied remain quite stable. For the entire issue definition of a policy debate to change it requires more than one actor trying to change how the problem is perceived.

Hence, when looking at the interest group's level of influence, it can be discerned how it achieved its policy goals, but this does not mean it affects the entire policy debate. However, it is helpful to understand the collective issue definition and whether it has changed dramatically over time. Since most issues do not have a high salience for the public, many policy debates do not mobilize large actors - thus, interest groups' framing strategies are better understood as exogenous to influence (De Bruyker 2016b).

Interest Groups

There are multiple characteristics of interest groups and their behavior when it comes to lobbying the European Commission. The core principle of any interest group is survival (Lowery 2007). Thus, by following the logic of membership and the logic of influence, certain strategies and features of types of interest groups emerge (Klüver et al. 2015c). The logic of membership is the idea that interest groups behave in a manner consistent with the organizational structure so the flow of resources is maintained (Bunea 2014). The logic of influence requires that

interest groups frame their arguments, which generates the desirable outcome from the organization. Within the EU, it can be expected that interest groups will be balancing these two dilemmas while taking into account the institutional structure they are working within (Klüver et al. 2015c).

Factors of Framing

The institutional setting and policy debate are the important factors that can affect the frames actors put forth. Actors must recognize how each institution is receptive to arguments and evidence. For example, the Commission relies heavily on facts and is not impressed by highly political tactics. However, in the European Parliament, actors will find more sympathy for a politicized argument (Boräng and Naurin 2015).

The institutional factor on frames plays a critical role because the EU institutions are primarily set up to create and maintain the internal market. Thus, it is in the interest of stakeholders to present arguments supporting the internal market even if this isn't their true preference. There are two different types of institutional frames. A generic frame widely applies to the theme of the system and specific frames, which are more detailed, are usually based around regulatory tools (Eising et al. 2015). The generic frames are expected to be used at the Commission level and require policy entrepreneurs to play a vital role in creating cooperation (Klüver et al. 2015b). Hence, many Commission proposals are those that try to placate all stakeholders involved and reduce conflict.

The European Commission has the sole right to initiate legislation, and when it does this mobilizes the stakeholders who will be affected. The Commission

welcomes this because lobbying in the EU is a two way street in the sense that EU

institutions seek expertise and support from these interest groups. However, one

issue is the lack of understanding about the way interest groups interact with EU

institutions and whether there are biases for or against some organizations (Klüver

et al. 2015b). Due to the multilevel complexity of the EU and its varying policy

issues, it is difficult to generalize about how legislation is composed across policy

fields. For example, if some organizations feel their voice is not heard at the

Commission level, they may turn to a stronger campaign in the Council or European

Parliament. Therefore, the EU allows for multiple access points for interest groups

to contribute to the policy process (Richardson 2000). Furthermore, if interest

groups find their message is not received well at the national level, they are able to

mobilize at the supranational level and vice versa. However, it should be noted that

not all interest groups have the capacity to "venue shop" at the EU level. Some

interest groups typically lobby in the EP, while economic interest groups find

themselves dealing with the Council and Commission more (Dür and Mateo 2012;

Dür and Matteo 2013; Eising 2007; Beyers and Kerremans 2012). An example is

how the tobacco industry during the 2014 TPD consultation was able to speak with

the Commission, every member state, and over one-third of the European

Parliament before the end of the initial consultation (Bertollini et al. 2016). By

contrast, the public health side of the argument, the Smoke Free Partnership (SFP),

could only employ five full time employees compared to the 160 of Philip Morris

International (Peeters et al. 2015). This limited the SFP to taking things one-step at

a time. Hence, during the Commission's consultation period their efforts were

focused there, and when it moved to the European Parliament they had to refocus their campaign.

The contextual factors that might influence the strategies and behavior of interest groups are the complexity, policy type, the status quo, salience, degree of conflict and lobbying coalitions.

Complexity is due to the 'degree to which a given policy problem is difficult to analyze, understand or solve' (Klüver 2011). It is expected that the policy type, as Lowi (1964) has described, will affect the strategies by interest groups. An example of this is emission trading in the United States. It is a highly complex policy issue that deals with environment, government regulation and market competition. Therefore, interest groups trying to protect the environment will have to consider arguments put forward by free enterprise and government organizations.

The *status quo* deals with the Baumgartner et al. (2009) illustration that shows typically there are two sides to a policy debate, one protecting the status quo and one that wants to change it. An issue that embodies this is the Common Agricultural Program (CAP) in the EU, where farmers and their associations will fight any negative changes that might be proposed against the existing policy. The factor of *salience* is normally actor-centered, but it is important to combine this with the public attention on an issue (Klüver and Mahoney 2015a). The more that individual lobbyists are involved and that attention is given by the media to a policy, the harder it often is to discern an interest group's preferences. A recent example is the Trans-Atlantic Trade and Investment Partnership (TTIP), which has become a

highly politicized issue within the media and has mobilized protest on both sides of the Atlantic.

The next factor is the *degree of conflict* in a policy debate, which can be multi-faceted. The policy issue can be highly conflictual on both sides and the issue can cause differences within lobbying coalitions. The regulation of the shared economy that governments are now tackling has caused lobbyists to disagree with one another. A particular case is Uber, which has almost become a monopoly and has divided other car sharing services against one another. This does not even include the backlash from taxi companies, which has impeded Uber from setting up in some European cities.

The final factor is the *lobbying coalitions* and the cohesiveness among members (Eising et al. 2015). An example that will be elaborated on in this paper is the health coalition that has been established in an ad hoc manner throughout the past decade. Due to the large resources of the tobacco industry, health NGOs are forced to combine resources and present a unified message to have any success in policy debates.

Since this study is focused on the Commission's consultation process, a closer look at the factors within the institution that can affect stakeholders is needed. First, the College of Commissioners has traditionally held close ties to their own member states (Boräng and Naurin 2015). This relationship that Commissioners have with their home countries can cause conflicts with their duty to serve and promote the EU. Moreover, the selection of Commissioners has become politicized in party politics, which can affect how they are lobbied and the frames they are more likely

to accept (Börang and Naurin 2015). Commissioners also show their policy views during the drafting process, and it has been determined that the primary Directorate General (DG) carries the most weight in the context of the proposal (Klüver et al. 2015b). Therefore, stakeholders can consult other DGs to sway the leading DG but need to realize that the argumentation they have given to the primary department responsible will have the most effect. This was an important factor in the TPD because the DG for Health and Food Safety (DG-SANCO) was responsible for the proposal, which customarily favors NGOs over industry (Bertollini et al. 2016). Below is the case study of the 2014 TPD and the tobacco industry's influence on the EU in the past decades.

Case Study: Tobacco Products Directive (TPD)

This case study will not solely present the 2014 TPD but rather examine the long relationship between the EU and the tobacco industry. First the original 2001 TPD and the strategy of the tobacco industry will be analyzed. By understanding the frames and arguments made by stakeholders in the original TPD my analysis will clarify actions taken in the future especially by the tobacco industry. Next this section will look at the influence the tobacco industry has had on the use of Impact Assessments (IA) when proposing legislation. This section will be able to illustrate the strategic forward thinking of the tobacco industry and how they are preparing themselves to fight future regulation. A quick discussion of Phillip Morris International's (PMI) significance will follow. Due to release of PMI documents, the power of its ability to garner influence during the 2001 TPD can be ascertained. This

leads into the analysis of the recent 2014 TPD and the controversies that were

involved in the process. In addition to a recounting of events, my critique of the

recent content analysis by Costa et al. (2014) will be presented. Given the lack of

evidence that tobacco industry frames caused a shift in the Commission's proposal, I

will argue that the emergence of a new methodology allows for a new line of inquiry

into this case.

2001 Tobacco Products Directive

The original proposal from the European Commission was in 1989, which

acted to restrict advertising (Boessen and Maarse 2008). The European Against

Cancer (EAC) program pushed this proposal. The argument by the Commission was

to allow for free trade and all national regulations to be harmonized. Under the

cooperation procedure, the Committee on Environment, Public Health and

Consumer Protection (ENVI) in the European Parliament called for a total ban. In

1991 the Commission accepted the EP's amendment and the proposal now called for

a total ban (Boessen and Maarse 2008). The legal basis was built on article 100a at

the time (Neuman et al. 2002). Article 100a stipulated that health should be

considered when making policies but did not state that protection of health should

be the primary objective. However, it was known that the Commission's reasoning

behind the proposal focused on health reasons. Also, when the total ban was

accepted, the main purpose of the proposal went from market harmonization to

fighting smoking. Other options the Commission could have taken were articles 129

of the TEU (now article 152) or article 235 (now article 308) (Boessen and Maarse

2008). However, both of these involved political obstacles to overcome that were

greater then using article 100a. Even though article 100a was their best option, it still was not a perfect fit. The Commission now had to argue it was a market-making intervention. Indeed, it was a market-correcting policy, which, one could argue, over- stepped the Commission's competency.

In the European Council, the legal service created an opportunity for member states that opposed the ban for economic reasons to have a smoke screen so that they could not be portrayed as favoring the tobacco industry. Since the proposal was now a total ban, the legal service saw it as a domestic issue since it was designed to protect public health (Boessen and Maarse 2008). However, it was the changing of the government position by the Netherlands that led the passage of the proposal out of the Council. In late 1997 the Dutch government decided to vote in favor of the ban stating that the legal basis was for the European Court of Justice to handle (Neuman et al. 2002). This line of reasoning opened the door for the tobacco industry to create a generic institutional frame that focused on the issue of the EU's competency in this area, rather than the components of the TPD itself.

In the EP there were two attempts to amend the legal basis of the proposal, which would have blocked the legislation completely. The European People's Party (EPP) and Economic and Monetary and Industrial Policy Committee tabled an amendment to change the legal basis to article 235 (Boessen and Maarse 2008). This called for a unanimous vote in the European Council that would not have been feasible to achieve. After the European Council internally agreed in 1997, lobbyists from the tobacco industry and health NGOs battled hard to make their cases heard. It was the legal service in the EP that proved instrumental in keeping article 100a

the basis of the competency for the EU to act (Boessen and Maarse 2008).

Eventually this worked, as the EP voted in favor of the proposal in May of 1998,

which was adopted in July 1998 (Neuman et al. 2002).

<u>British American Tobacco's Utilization of IA</u>

The 1997 Treaty of Amsterdam provided a legal basis for a new policy

instrument in the EU, impact assessments (IA). IA's are a form a risk assessment

(RA), which measures the potential hazards of a policy area and if it requires

regulation. This process is mirrored by cost-benefit analysis (CBA) that weighs the

economic and social benefits (Smith et al. 2010). Previous work has shown how IA

and CBA actually prioritize economic interests over others (Michaelson 1996). In an

assessment of IA's these claims have been refuted, and it has been proven that the

economic pillar receives more favor than does the social pillar, which healthcare

falls under (Franz 2007).

The British American Tobacco Company (BAT) and Philip Morris

International (PMI) were two tobacco companies that utilized the use of IA/RA.

Through BAT's documents, (Smith et al. 2010) it was seen that BAT had hired a

consultancy group to find a way to take advantage of RAs in the European

policymaking process. The consultancy group offered a solution by lobbying

through a front organization and other large corporations (Hiilamo and Glantz

2015). Their goal was to see that when health RAs were assessed, they would be

looked at according to their economic efficiency. Smith et al. (2010) found that

BAT's aim was to embed RA/CBA into European law by amending the EU Treaty.

BAT used the advice they were given and created the Risk Assessment Forum, which

included names such as Coca Cola, HSBC, and Bayer. The Forum wanted to see the reduction of the use of the precautionary principle used in EU policymaking. To make changes to the EU Treaty, the Forum needed to gain influence on the 1996-1997 Intergovernmental Conference (IGC) (Smith et al. 2010). The Forum, which resembles a policy network, used their venues and third party organizations to submit to the IGC (Baumgartner 2007). In addition, they lobbied member states that were receptive to their message such as, the United Kingdom, Ireland, the Netherlands and Germany. The UK was the leading member state because they added to the Treaty of Amsterdam a proposal that called on the European Commission to "consult widely" and reduce the difficulty of policy changes on "economic operators" (Smith et al. 2010). This was considered a win for BAT and quickly proved helpful during their challenge to the IA of the 1998 TPD where they were able to overestimate the cost and lost of labor (Neuman et al. 2002).

Philip Morris International's TPD Strategy

Using internal documents released by Philip Morris International, Neuman et al. (2002) were able to illustrate PMI's strategy in the run up to the 1998 TPD. Germany proved to be the most reliable member state that opposed the ban. PMI documents showed the influence of Chancellor Kohl and that he was on board with their plan to place the TPD on the subsidiarity ban list due to member state sovereignty infringement (Neuman et al. 2002). A clear example of Germany's opposition to the proposed harmonization initiative was their submission of a weaker piece of legislation to the European Commission, which was drawn up by the European Community Cigarette Manufactures (CECCM) (Hiilamo and Glantz

2015). Again when the Commission formerly proposed the TPD, Germany

submitted a document to the Council of Health Ministers that was originally

submitted by the Verband der Cigarettenindustrie (VdC) to the Germany Health

Ministry (Neuman et al. 2002). This document tried to dilute the advertising ban as

well. As far back as 1992 the CECCM was preparing the case for Germany to appeal

the TPD to the European Court of Justice on the basis of insufficient evidence for the

EU's competency. The significant preparations that the tobacco industry put

together ultimately led to the successful case that was brought by Germany to

overturn the ruling of the TPD.

In the United Kingdom, PMI had close ties to officials. For example, when

Margret Thatcher left office she was hired by Philip Morris International for a fee of

US$250,000 and an annual donation of US$250,000 to the Margret Thatcher

Foundation for her lobbying services in the House of Commons (Neuman et al.

2002). In addition, Kenneth Clarke the former Secretary of Health was seen as a key

ally. From 1998 he received 100,000 pounds from BAT to serve as deputy chairman

while also holding his seat in the House of Commons (Smith et al. 2010). PMI and

BAT's plan was to use the subsidiarity ban argument that the UK strongly favored

(Boessen and Maarse 2008).

In the Netherlands PMI used their relationship with the Dutch Economics

Ministry and launched a lobbying campaign against the TPD for the media industry.

While the Danish were strongly against the idea of a total ban when the TPD was

proposed, PMI helped foster this idea by creating a third party organization, the

Committee for Freedom of Commercial Expression. This committee was directed "at

arm's length" by PMI and included influential Danes such as a Constitutional lawyer and the President of a major brewery (Neuman et al. 2002). This helped sustain Danish opposition to the ban during the 1990s.

In addition to member states, the tobacco industry cultivated third party relationships to build a coalition. Their allies included the International Chamber of Commerce (ICC), Industrial and Employers' Confederations of Europe, the European Association of Advertising Agencies, the International Advertising Association, the European Advertising Tripartite and the European Group of Television Advertising (Neuman et al. 2002). PMI saw the advertising industry as an important actor in opposing the advertising ban. Overall, PMI was able to successfully mobilize opposition to the 2001 TPD and expected nothing less when the directive was being revised in 2014.

Revised 2014 Tobacco Products Directive

Before delving into the 2014 TPD, I will discuss the article by Costa et al. (2014), which used content analysis to evaluate the influence the tobacco industry had on the 2014 TPD. The content analysis was carried out by taking 18 stakeholder position papers and using WordScore to create a picture of the entire policy debate throughout time. By using word frequencies, WordScore was able to create a scale of 0-tobacco industry to 1-public health and place actors involved in the debate within this spectrum. This allows for snapshots of interest group positions compared to the Commission's own position in a certain period of time. However, it does not account for the influence or factors that contribute to a move on the spectrum by an actor.

The authors found that third parties held closer positions to the tobacco industry than did public health NGOs. For example, retailers were at 0.35 and trade unions were at 0.34 on the scale. Throughout the Commission's consultation process, they also found a shift by the Commission from 0.52 to 0.40 (Costa et al. 2014). This shift meant the final proposal given by the Commission included an increase of words pertaining to the economic interest at hand and a decrease of words relating to public health. However, this paper will contend that their WordScore analysis does not capture the whole policy debate and misses critical factors involved. Despite the shift by the Commission towards the tobacco industry, WordScore was not and is not able to show what frames or actors caused the change. It has previously been shown that the Commission usually tilts towards economic interests in its proposals (Boräng and Naurin 2015). Thus, a small shift towards the economic interest in this case does not justify the conclusion that the tobacco industry had significant influence during the consultation. Other economic actors were also involved, such as the advertising agencies, that might have had preferences that aligned with the tobacco industry notwithstanding that priority number one would be their own self-interest. To further elaborate on this point, I will now suggest an alternative analysis and solution of the 2014 TPD.

The revision of the 2001 TPD was the most lobbied legislation in the history of the EU (Hiilamo and Glantz 2014). While the final draft included an increase in graphic health warnings, a ban on characterizing flavors, restrictions on the size and shape of cigarette packs, and the regulations of the Electronic Nicotine Delivery Systems (ENDS), the initial proposal was much stronger (Peeters et al. 2015). The

revision was not considered smooth by any stretch of the imagination, with claims

of tobacco industry sabotage and the resignation of Health Commissioner John Dalli

(Bertollini et al. 2016). Also, the revision process had a conflicted foundation. On

one hand the FCTC Article 5.3 entails that in the setting and implementing of health

policies the parties involved should be protected by the tobacco industry (World

Health Organization 2009). On the other hand, the Smart Regulation implemented in

the mid-2000s was built on the use of IA's during the consultations, which has been

shown to favor economic interests (Smith et al. 2010).

PMI's overall strategy was to amend, delay or block any proposals that it

deemed a threat, including standardized packaging, a point of sales display band and

an ingredients ban (Costa et al. 2014). PMI was closely involved with the TPD

throughout the process by hiring 160 lobbyists and spending 1.25 million euros on

lobbying. By contrast, the health NGOs only had five employees in equivalent

positions working on TPD (Bertollini et al. 2016).

PMI's 'key to success' was the use of third party actors and being engaged

indirectly. PMI tried to reframe the TPD in four ways to different Commissioners to

gain political support. These frames were intellectual property, ingredients, retailers

and smokeless tobacco. Creating a sense of support was not a difficult task for PMI

because, as Peeters et al. (2015) found, 126 associations and 33 non-TTC companies

opposed the TPD during stakeholder meetings with the Commission. Many of these

associations had financial links to the tobacco industry but tried to give the

perception that they were autonomous by not attending any meetings dealing the

tobacco industry.

PMI was able to delay the TPD in two important ways. The first was the IA stage, which was delayed for two years. There was strong opposition to the original RAND IA, thus, DG-SANCO commissioned two further studies (Costa et al. 2014). Also, during the public consultation, DG-SANCO received over 85,000 submissions, the most in EU history. The Commission found that 57% of these were duplicates due to the campaigns by the tobacco industry in Italy and Poland (Peeters et al. 2015).

During the Inter-Service Consultation (ISC) there were three delays to the process. First, the Secretary-General Catherine Day and Legal Service Director-General Luis Romero Requena called for the DG-SANCO to delay the launch of the ISC because many issues were not addressed (Peeters et al. 2015). They claimed the original IA did not sufficiently look at all the concerns of the TPD. Through a Freedom of Information request, it was found that emails between Day and DG-SANCO resulted in the removal of the plain packaging and point of sale display ban from the proposal (Peeters et al. 2015). The next reason for the delay of the proposal was Day's and Chief of Barroso's Cabinet, Johannes Laitenberger's, request to have the ISC after the October European Council meeting because, if leaked, it could cause problems (Costa et al. 2014). The last and unexpected reason was the forced resignation of Commissioner John Dalli in a cash-for-access scandal with Barroso requesting the ISC not be launched until the new Health Commissioner was selected (Bertollini et al. 2016). This controversy was especially serious because of the timing. Michel Petite, the former Director-General of the Commission's Legal Service who had turned PMI consultant, approached Day with the claim that Dalli's

business associate, Silvio Zammit tried to solicit 60 million euros from Swedish Match in return for lifting of ban on snus sales (Costa et al. 2014). After an investigation by the EU Anti-Fraud Office (OLAF), Commissioner Dalli was forced to resign although OLAF did not find direct evidence of Dalli's involvement. When leaked OLAF documents were found, it showed the real reason Dalli resigned was due to his two meetings with Swedish Match and the European Smokeless Tobacco Council (ESTOC) in Malta that were not publicly disclosed (Peeters et al. 2015). This was in breach of the Commissioner's Code of Conduct and the FCTC's Article 5.3. However, it is also important to note that senior staff in the Commission had 12 meetings with the tobacco industry that were not publicly disclosed and were not sanctioned (Costa et al. 2014).

On the other side of the aisle was the tobacco control community who viewed their achievement in the 2014 TPD revision as a success (Bertollini et al. 2016). The campaign was led by the Smoke Free Partnership, which includes Action on Smoking and Health (ASH), Cancer Research UK and the European Heart Network (EHN). The SFP also had a headquarters in Brussels, which (Bunea 2014) found had significance in gaining influence with the Commission. This was not their first time acting as a coalition because these partners had previously engaged in EU directives on tax and smoke-free policies (Weishaar et al. 2016). But due to their lack of resources, it was critical for the SFP to have a set of shared priorities and to build the coalition through workshops, briefings and national meetings (Bertollini et al. 2016). The SFP knew the giant they were facing when it came to the tobacco industry; thus, it needed to utilize its knowledge of the policy process to influence

the right people at the right time. Hence, the coalition focused its efforts on the ENVI committee because it was more likely to be receptive to their message.

One of their more prominent successes was ensuring that the 2014 TPD revision was not derailed after the resignation of John Dalli. The SFP was able to lobby the EP using the FCTC Article 5.3 calling on the accountability of the Commission to appointment a new Health Commissioner immediately (Peeters et al. 2015). The SFP efforts paid off because the 2014 TPD proposal was released ahead of schedule on December 19, 2012 (Berteletti et al. 2016). As Weishaar and her associates (2016) explained, a health coalition without a unified structure and objective was doomed to fail. This is why it was vital for the SFP to maintain its strategy as being the leader of the health side of the policy debate.

<u>Gaps in Research</u>

Although Costa et al. (2014) were able to provide insights into the 2014 TPD, in this section I will raise serious concerns about their research. The first concern is the number of texts that were analyzed - 18 documents. The authors noted that they selected the stakeholders from previous research on the TPD and through Google search (Costa et al. 2014). However, other studies have found the number of relevant industry texts to be 300 and that did not begin to include the NGOs texts (Hiilamo and Glantz 2014). Another point is the inference that the tobacco industry was able to cause the removal of the plain packaging section in the TPD. Other evidence suggests that Catherine Day, head of the Legal Service, recommended the EU's competency did not cover this issue and problems could arise if a stakeholder brought a case to the ECJ against the Commission (Peeters et al. 2015). So the plain

packaging portion was removed from the text. Without clear evidence of the tobacco industry contacting Catherine Day about this issue, it can be inferred she was simply fulfilling her job in protecting the integrity of EU law, especially given that after the first try at passing the original TPD failed when Germany filed a case with the ECJ against the Commission. This case succeeded and subsequently forced the Commission to start over with a new proposal.

The final issue deals with the methodology that the authors used. WordScore is a valuable content analysis tool but its limitations are a cause for concern with regard to some policy debates.   For example, Baumgartner and Jones have determined that majority of issues in the United States have a low level of salience and are single dimensional debates (2009). This means that, in most policy debates, WordScore would be the appropriate tool for a content analysis. But, when it comes to a controversial issue such as tobacco, then policy debates can become more convoluted and WordScore becomes much less effective.   It is also important to remember Article 5.3, which prohibits tobacco companies from being consulted during the drafting of legislation that pertains to tobacco. Tobacco companies have been able to circumvent this Article by using lobbying firms and third parties. These third parties try to avoid any connection with the tobacco industry, creating frames and arguments that are viewed as sincere concerns for their own distinct interests. The Costa et al (2014) analysis of the shift in the proposal cannot convincingly claim that this was due to the tobacco industry's influence or these third party actors arguing in their self-interest. The third parties add another dimension to the policy debate so that it no longer has only one dimension. Unfortunately, WordScore can

only account for binary policy debates, which is the major limitation on its utility. There is, however, a new methodology that can analyze such multidimensional debate and, in this case, offer new insights to the shift of the Commission's proposal.

A New Analytical Tool

T-Lab software relies on co-occurrence analysis; that is, the statistical analysis of words that appear together in designated spans of a text corpus (Klüver and Mahoney 2015a). The fundamental assumption of the analysis is that words that co-occur "in similar context have similar meaning" and "documents that contain similar word patterns tend to have similar topics" (Lancia 2007:25). A term document matrix is created to base the classification process on, which uses the existence of a word in a document. The rows of the matrix are documents and columns indicate the occurrence of the words in each text. T-Lab then utilizes an unsupervised bisecting K-means algorithm to identify clusters of documents in a bottom up process (Klüver and Mahoney 2015a). The clusters are understood as frames by actors in a policy debate (Börang et al. 2014).

The second use of T-Lab is to analyze the dimensionality of the frames by the correspondence analysis. This analysis "allows for spatial representation of the relationship between the clusters as distances in dimensions" (Klüver and Mahoney 2015a:228). Creating a second matrix, T-LAB cross tabulates document clusters and words that are used for factor correspondence analysis (Börang et al. 2014). The analysis produces a measure that indicates the amount of variance explained by the dimensions. It aims to account for a maximum amount of variance along the first

dimension. The second dimension then seeks to account for a maximum amount of remaining variance and so on. The correspondence analysis provides coordinates for individual interest groups, the frames and decision-makers in the multidimensional policy space (Klüver and Mahoney 2015a).

T-Lab is not a new analytical tool. It has been used in studies of political debates and speeches. Schonhardt-Bailey has used T-Lab text analysis to study framing in debates, presidential speeches and transcripts of the Federal Reserve OMC (Klüver and Mahoney 2015a). Also, Weale has used T-Lab as well to analyze debates on abortion in the House of Commons (Börang et al. 2014).

Klüver and Mahoney (2015a) were the first to utilize T-Lab in the area of framing research; they examined the Commission proposals in environment and transport policies. This new approach allowed them to take a close look at policy debates. For example, in the CO2 proposal, environmentalist versus the auto industry made up the variance in the debate of 52%, while 48% of the variance was due to the advertising industry and their concerns of regulation of ads (2015a). Klüver (2009) had previously run a content analysis of the CO2 emissions proposal using hand coding, WordScore and Wordfish. Since these methods are only single dimensional and T-Lab is multidimensional, cross validation can only be done by the correspondence analysis. This is a key difference between methods of content analysis because WordScore is only testing for policy positions, whereas T-Lab, through its cluster analysis, will test for framing strategies, as well. Also, the results of the validity tests Klüver and Mahoney completed were significant and every

method strongly supported the argument that pro-anti-environmental regulations were the dominating frames.

Conclusion

This paper has provided an overview of framing and added to the research on the 2014 TPD by calling into question the assumptions and results of a binary content analysis carried out on this policy debate. Through a discussion of framing research, we have found key factors that point to a different conclusion than that of Costa et al. (2014). As framing research has shown, the degree of conflict, salience and lobbying coalitions can have an impact on the policy debate. The revision of the TPD was filled with conflict. The battle between Article 5.3 and the "Better Regulation" were at odds with each other from the beginning. It placed the Commission into a difficult position seeking to uphold each policy without causing stakeholders to call bias on the consultation process. Also, tobacco policy is a high salience issue, which gives rise to the expectation that there will be an increase in the number of stakeholders pushing their positions thereby making it hard for one interest group to establish its preferences within the proposal. The lobbying coalitions within the policy debate remained strong between the tobacco industry and public health sector. However, it is the third parties that give a new dimension that needs to be analyzed.

Since there is now a legal basis for the EU's competency in issues that deal with health, this excludes the expectation that the tobacco industry would present a generic institutional argument based upon the question of legality. In addition, the

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FCTC Article 5.3 blocks any direct engagement from tobacco companies discussing policies with governments during a consultation period. Therefore, the economic frames presented in the policy debate are made by third parties. Since the third parties want to maintain their credibility and expertise with the Commission, they do not want to openly be associated with tobacco companies during this process. This will lead to their framing strategy to oppose the ban on grounds that are not related to the preferences of the tobacco industry. Hence, a new dimension of the policy debate emerges having importance and possibly more variance than the traditional public health issues versus the tobacco industry. The WordScore analysis that was given by Costa et al. (2014) only offers the positions of stakeholders involved without accounting for the strategies used by various actors.

In conclusion, the analysis performed by Costa et al. (2014) contains a deficiency that is vital to understanding the frames put forth by the tobacco industry and investigating whether they were in fact the cause of the shift by the Commission. Therefore, I would strongly recommend a T-Lab analysis be completed. An analysis using T-Lab should be run using the exact same data that Costa et al. (2014) used to cross-validate the results. The T-Lab test will reveal what is the variance that the tobacco industry versus public health debate has and if there is another dimension present. The evidence given in this paper would lead us to expect to find an additional dimension within the TPD policy debate that has significant impact on the outcome of the proposal.

BIBLIOGRAPHY

Aydin, Umut. 2014. "Issue framing in the European Commission: State Aid Policy and the Single Market." *Comparative European Politics,* 12 (January): 141-159.

Bache, Ian. 2013. "Measuring Quality of Life for Public Policy: An Idea Whose Time Has Come? Agenda-Setting Dynamics in the European Union." *Journal of European Public Policy,* 20 (July): 21-38.

Baumgartner, Frank, and Bryan Jones. 1993. *Agendas and Instability in American Politics.* Chicago: University of Chicago Press.

Baumgartner, Frank. 2007. "EU Lobbying: A View From the US." *European Public Policy,* 14 (October): 482-488.

Baumgartner, Frank, and Christine Mahoney. 2008. "Forum section: The two faces of framing Individual-Level Framing and Collective Issue Definition in the European Union." *European Union Politics,* 9 (September): 435-449.

Baumgartner, Frank, and Bryan Jones. 2009. *Agendas and Instability in American Politics*. 2nd ed. Chicago: University of Chicago Press.

Baumgartner, Frank, Jeffrey Berry, Marie Hojnacki, Beth Leech, and David Kimball. 2009. *Lobbying and Policy Change: Who Wins, Who Loses, and Why*. Chicago: University of Chicago Press.

Bertollini, Roberto, and Sofia Ribeiro, Kristina Mauer-Stender, and Gauden Galea. 2016. "Tobacco control in Europe: A Policy Review." *European Respiratory Review,* 25 (June): 151-157.

Beyers, Jan, and Bart Kerremans. 2012. "Domestic Embeddedness and the Dynamics of Multilevel Venue Shopping in Four EU Member States." *Governance,* 25 (September): 262-290.

Binderkrantz, Anne, and Anne Rasmussen. 2015. "Comparing the Domestic and the EU Lobbying Context: Perceived Agenda Setting Influence in the Multilevel System of the European Union." *Journal of European Public Policy,* 22 (March): 552-569.

Boessen, Sandra, and Hans Maarse. 2008. "The Impact of the Treaty Basis on Health Policy Legislation in the European Union: A Case Study on the Tobacco Advertising Directive." *BMC Health Services Research,* 8 (April): 77.

Boräng, Frida, and Daniel Naurin. 2015. "'Try to see it my way!' Frame Congruence Between Lobbyists and European Commission Officials." *Journal of European Public Policy,* 22 (February): 499-515.

Bozzini, Emanuela, and Stijn Smismans. 2016. "More Inclusive European Governance Through Impact Assessments?" *Comparative European Politics,* 14 (January): 89-106.

Brickenstein, Christine. 2015. "Social Protection of Foreign Seasonal Workers: From State to Best Practice." *Comparative Migration Studies,* 3 (May): 1.

Bunea, Andrea. 2014. "Explaining Interest Groups' Articulation of Policy Preferences in the European Commission's Open Consultations: An Analysis of the Environmental Policy Area." *Journal of Common Market Studies,* 52 (November): 1224-1241.

Candel, Jeroen, Gerard Breeman, Sabina Stiller, and Catrien Termeer. 2014. "Disentangling the Consensus Frame of Food Security: The Case of the EU Common Agriculture Policy Reform Debate." *Food Policy,* 44 (February): 47-58.

Chalmers, Adam. 2011. "Interests, Influence and Information: Comparing the Influence of Interest Groups in the European Union." *European Integration,* 33(August): 471-486.

Costa, Hélia, Anna Gilmore, Silvy Peeters, Martin McKee, and David Stuckler. 2014. "Quantifying the Influence of the Tobacco Industry on EU Governance: Automated Content Analysis of the EU Tobacco Products Directive." *Tob Control,* 23 (August): 473-478.

Daviter, Falk. 2007. "Policy Framing in the European Union." *Journal of European Public Policy,* 14 (May): 654-666.

Daviter, Falk. 2011. *Policy Framing in the European Union*. Basingstoke, Hampshire: Palgrave Macmillan.

De Bruycker, Iskander. 2016a. "Pressure and Expertise: Explaining the Information Supply of Interest Groups in EU Legislative Lobbying." *Journal of Common Market Studies,* 54 (May): 599-616.

De Bruycker, Iskander. 2016b. "Framing and Advocacy: A Research Agenda for Interest Group Studies." *Journal of European Public Policy,* 20(April): 1-13.

Dudley, Geoffrey, and Jeremy Richardson. 1999. "Competing Advocacy Coalitions and the Process of "Frame Reflection": A Longitudinal Analysis of EU Steel Policy." *Journal of European Public Policy,* 9 (February): 225-248.

Dür, Andreas, and Gemma Mateo. 2012. "Who Lobbies the European Union? National Interest Groups in a Multilevel Polity." *Journal of European Public Policy,* 19 (April): 969-986.

Dür, Andreas, and Gemma Mateo. 2013. "Gaining Access or Going Public? Interest Group Strategies in Five European Countries." *European Journal of Political Research,* 52(February): 660-686.

Eising, Rainer, Daniel Rasch, and Patrycja Rozbicka. 2015. "Institutions, Policies, and Arguments: Context and Strategy in EU Policy Framing." *Journal of European Public Policy,* 22 (February): 516-533.

Eising, Rainer. 2007. "Institutional Context, Organizational Resources and Strategic Choices: Explaining Interest Group Access in the European Union." *European Union Politics,* 8 (September): 329-362.

Entman, Robert. 1993. "Framing: Toward Clarification of a Fractured Paradigm." *Journal of Communication,* 43 (December): 51-58.

Franz, Kirkpatrick. 2007. "Integrating Sustainable Development into European Policymaking: The Role of Impact Assessments." *Journal of Environmental Assessment Policy and Management,* 9 (June): 141-160.

Goffman, Erving. 1986. *Frame Analysis: An Essay on the Organization of Experience.* Northeastern: Northeastern University Press.

Hiilamo, Heikki, and Stanton Glantz. 2015. "Old Wine in New Bottles: Tobacco Industry's Submission to European Commission Tobacco Product Directive Public Consultation." *Health Policy,* 119 (January): 57-65.

Klüver, Heike. 2009. "Measuring Interest Group Influence Using Quantitative Text Analysis." *European Union Politics,* 10 (December): 535-549.

Klüver, Heike. 2011. "The Contextual Nature of Lobbying: Explaining Lobbying Success in the European Union." *European Union Politics,* 12 (December): 483-506.

Klüver, Heike. 2012. "Biasing Politics? Interest Group Participation in European Policy-Making." *West European Politics,* 35 (August): 1114-1133.

Klüver, Heike. 2013a. "Lobbying as a Collective Enterprise: Winners and Losers of Policy Formulation in the European Union." *Journal of European Public Policy,* 20 (July): 59-76.

Klüver, Heike. 2013b. *Lobbying in the European Union: Interest Groups, Lobbying Coalitions and Policy Change.* Oxford: Oxford University Press.

Klüver, Heike, and Christine Mahoney. 2015a. "Measuring Interest Group Framing Strategies in Public Policy Debates." *Journal of Public Policy,* 35 (August): 223-244.

Klüver, Heike, Caelesta Braun, and Jan Beyers. 2015b. "Legislative Lobbying in Context: Towards a Conceptual Framework of Interest Group Lobbying in European Union." *Journal of European Public Policy,* 22 (February): 447-461.

Klüver, Heike, Christine Mahoney, and Marc Opper. 2015c. "Framing in Context: How Interest Groups Employ Framing to Lobby the European Commission." *Journal of European Public Policy,* 22 (February): 481-498.

Kurzer, Paulette, and Alice Cooper. 2013. "Biased or Not? Organized Interests and the Case of EU Food Information Labeling." *Journal of European Public Policy,* 20 (December): 722-740.

Lancia, Franco. 2007. "Word Co-Occurrence and Similarity in Meaning." November. http://www.mytlab.com/wcsmeaning.pdf.

Lowi, Theodore. 1964. "American Business, Public Policy, Case Studies and Political Theory." *World Politics,* 16 (July): 667-715.

Michaelson, Jay. 1996. "Rethinking Regulatory Reform: Toxics, Politics and Ethics." *Yale Law Journal,* 105 (May): 1891-1925.

Panke, Diana. 2012. "Lobbying Institutional Key Players: How States Seek to Influence the European Commission, the Council Presidency and the European Parliament." *Journal of Common Market Studies,* 50(October): 129-150.

Peeters, Silvy, Hélia Costa, David Stuckler, Martin McKee, and Anna Gilmore. 2015. "The Revision of the 2014 European Tobacco Products Directive: An Analysis of the Tobacco Industry' s Attempts to 'Break the Health Silo'." *Tob Control,* 26 (February): 108-117.

Princen, Sebastiaan. 2011. Agenda-Setting Strategies in EU Policy Processes." *Journal of European Public Policy,* 18 (August): 927-943.

Richardson, Jeremy. 2000. "Government, Interest Groups and Policy Change." *Political Studies,* 48 (December): 1006-1025.

Riker, William. 1986. *The Art of Political Manipulation*. New Haven: Yale University Press.

Roos, Christof. 2013. "How to Overcome Deadlock in EU Immigration Politics." *International Immigration,* 51 (July): 67-79.

Schonhardt-Bailey, C. (2005). Measuring Ideas More Effectively: An Analysis of Bush and Kerry's National Security Speeches. *PS: Political Science & Politics, 38*(4), 701-711.

Smith, Katherine, Gary Fooks, Jeff Collin, Heide Weishaar, Sema Mandal, and Anna Gilmore. 2010. ""Working the System"- British American Tobacco's Influence on the European Union Treaty and Its Implications for Policy: An Analysis of Internal Tobacco Industry Documents." *PloS Medicine,* 7 (January): 1-17.

Thomson, Robert. 2011. *Resolving Controversy in the European Union: Legislative Decision-Making Before and After Enlargement.* Cambridge: Cambridge University Press.

Weishaar, Heide, Jeff Collin, and Amanda Amos. 2016. "Tobacco Control and Health Advocacy in the European Union: Understanding Effective Coalition-Building." *Nicotine and Tobacco Research,* 18 (January): 122-129.

World Health Organization. 2009. Article 5.3 The Framework Convention on Tobacco Control. *World Health Organization Treaties.*