

Corporate Coalitions and Policy Making in the European Union: How and Why British American Tobacco Promoted “Better Regulation”

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Abstract Over the past fifteen years, an interconnected set of regulatory reforms, known as Better Regulation, has been adopted across Europe, marking a significant shift in the way that European Union (EU) policies are developed. There has been little exploration of the origins of these reforms, which include mandatory ex ante impact assessment. Drawing on documentary and interview data, this article discusses how and why large corporations, notably British American Tobacco (BAT), worked to influence and promote these reforms. Our analysis highlights (1) how policy entrepreneurs with sufficient resources (such as large corporations) can shape the membership and direction of advocacy coalitions; (2) the extent to which “think tanks” may be prepared to lobby on behalf of commercial clients; and (3) why regulated industries (including tobacco) may favor the use of “evidence-tools,” such as impact assessments, in policy making. We argue that a key aspect of BAT’s ability to shape regulatory reform involved the deliberate construction of a vaguely defined idea that could be strategically adapted to appeal to diverse constituencies. We discuss the theoretical implications of this finding for the Advocacy Coalition Framework, as well as the practical implications of the findings for efforts to promote transparency and public health in the EU.

Keywords public health policy, regulatory reform, European Union, ideational theory, think tanks

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Introduction

Since the early 1990s the concept of Better Regulation has been increasingly used to describe a rolling program of regulatory reform taking place at both European Union (EU) (Allio 2007; Commission of the European Communities 2009) and European member state level (Radaelli 2005; Radaelli and Meuwese 2010; Department for Business, Enterprise and Regulatory Reform 2007; Better Regulation Task Force 2005; Department of the Taoiseach 2004). Despite shifting interpretations of the term (Radaelli 2007a), it is possible to identify three core themes within Better Regulation discourses. First, the term is associated with an imperative to improve the quality of regulatory decision making, notably through the increased use of evidence (Department for Business, Enterprise and Regulatory Reform 2007; Department of the Taoiseach 2004). Second, there is often a particular focus on the impacts of regulation on business competitiveness (Commission of the European Communities 2005; Department of the Taoiseach 2004; EU Presidencies 2004). Regulatory impact assessment (a form of business impact assessment) is frequently advocated as a way to address these first two strands (Radaelli 2007b; Carroll 2010). Third, the principles of Better Regulation are often framed as a way to achieve a “simplified” regulatory environment (Department for Business, Enterprise and Regulatory Reform 2007; Commission of the European Communities 2002; Department of the Taoiseach 2004), in which “self-regulation” and “co-regulation” are promoted as alternatives to traditional legislation

(Commission of the European Communities 2002; Department of the Taoiseach 2004; EU Presidencies 2004). Finally, Better Regulation is associated with a commitment to transparency and dialogue (Better Regulation Task Force 2005; Commission of the European Communities 2002; Department of the Taoiseach 2004; EU Presidencies 2004).

The roots of Better Regulation in the EU date back to the 1980s, when European Community policy makers formally began to link a reduction of regulatory costs to business competitiveness and economic growth (see, e.g., Commission of the European Communities 1986a, 1986b). The UK was the first EU member state to formally adopt the term, using it widely in documents from 1997 onward (see, e.g., Department for Business, Enterprise and Regulatory Reform 2007). However, it was not until 2000 that a comprehensive and politically visible Better Regulation agenda was conceived at the EU level (Allio 2007). To date, there have been few empirical analyses of the origins of Better Regulation in the EU. Radaelli (2007b) claims it emerged from concerns among some member states (particularly the UK) about the quality and quantity of EU regulations, and constituted an attempt by these member states to control the European Commission; Renda (2006: 43) attributes its development to concerns about “regulatory creep” and “disappointing economic performance”; Allio (2007; see table 2) traces its origins to a growing concern among European policy makers that foreign direct investment might shift to jurisdictions with lower regulatory costs; and Löfstedt (2006) points to the influence of US political and economic institutions.

Of the various innovations to emerge from the Better Regulation agenda, the mandatory requirement for EU policy makers to undertake impact assessments (IAs) for virtually all policy decisions is perhaps the most significant and is widely interpreted as constituting an important shift in regulatory policy making (Allio 2007; Radaelli and Meuwese 2009, 2010). In general terms, IA is a way to assess the impacts of a potential (or existing) policy (Curtis 2008; Mindell et al. 2004; Radaelli 2008), but specific definitions vary (see, e.g., Löfstedt 2004; Parry and Kemm 2005; Radaelli 2005, 2007b), and IA tools differ across policy contexts (Radaelli 2005). A multitude of IA types now exist, including business IAs, health IAs, and environmental IAs. When applied to the regulation of substances that pose threats to human health and the environment, such as tobacco, alcohol, or toxic chemicals, IA provides a framework for making decisions about whether and how to limit the resulting health and/or environmental damage (Michaelson 1996). The first stage of IA usually involves some form of risk assessment on whether the risks posed by a particular hazard are great enough to warrant regulation (Curtis 2008; Kopp, Krupnick, and Toman 1997; Majone 2003). If policy intervention is deemed necessary, the likely impacts of each policy option may then be assessed in a process similar to cost-benefit analysis (CBA), which involves assessing policy options by quantifying the value of positive and negative impacts in quantitative (usually monetary) terms. The theory underlying CBA is that this process helps “effective social decision making through efficient allocation of society’s resources when markets fail” (Boardman et al. 2006: 23).

IA and CBA are widely regarded as useful decision-making aids, and their use within policy making is supported by business organizations (see, e.g., Business Europe, n.d.) and academics (see, e.g., Hahn and Litan 1997; Kopp, Krupnick, and Toman 1997; and Sunstein 2002). The use of particular forms of IA within policy making, notably health IAs and environmental IAs, has also been promoted by researchers and advocates concerned with public health and environmental debates (see, e.g., British Medical Association 1999; McCarthy et al. 2002; Mindell and Joffe 2003; and Wright et al. 2005). There are, however, a number of critiques of IA and CBA, some of which raise questions about their political neutrality (see, e.g., Chichilnisky 1997; Driesen 2006; Kelman 1981; Michaelson 1996; and Sen 2000). A key concern is the difficulty in accurately predicting *ex ante* impacts and the risk that IA may provide policy makers with a misleading sense of certainty about the consequences of particular decisions (see, e.g., Tennøy et al. 2006). These risks are perhaps greatest where IAs attempt to quantify relative costs and benefits in monetary terms and where nonmarket goods, such as health and environmental impacts, are involved (Michaelson 1996; Sen 2000). Quantification in these circumstances can obscure and oversimplify what are, in effect, highly complex and contested issues involving moral judgments and decisions about competing political priorities (Kelman 1981; O’Connell and Hurley 1997; Miller and Patassini 2005). Another concern that has been raised is that the time-

consuming nature of producing IAs can lead to significant legislative delays (Driesen 2006; Krieger et al. 2003). Finally, IAs can increase policy makers' informational dependency on resource-rich stakeholders with commercial interests in socially suboptimal policy outcomes (Smith et al. 2010). Given the opportunities that these complexities open up for different interests, it seems important to explore which actors worked to promote Better Regulation and the use of IA within the EU, how they tried to shape these agendas, and what they hoped to achieve as a result.

The following account begins with a brief explanation of the methods employed and the theoretical approach, before explaining the particular interest of British American Tobacco (BAT) in Better Regulation and IA within Europe. The article then presents a largely chronological account of the findings, explaining what kinds of policy change BAT managers hoped to achieve, why they believed these changes would benefit the company, and how they worked with others, notably, a Brussels-based think tank called the European Policy Centre (EPC; see table 1), to try to achieve these changes. Specifically, we explore whether the vaguely defined nature of Better Regulation reflects BAT's strategic approach to promoting regulatory reform in the EU. The concluding discussion considers the appropriateness of IA as a tool for practical decision making, the limits of current "transparency" initiatives in the EU, and the theoretical implications of our findings for Sabatier and Jenkins-Smith's (1999) widely employed Advocacy Coalition Framework.

Methods

This article uses tobacco industry documents released through litigation, other publicly available documents, and interviews with EU officials and lobbyists to explore why large corporations were interested in these reforms, to demonstrate how they attempted to shape the Better Regulation agenda, and, in particular, to embed CBA and risk assessment into the EU's approach to IA (i.e., what the chosen strategies and tactics involved). The tobacco industry documents are available following litigation in the United States, which required tobacco companies to make many of their internal documents public. There are currently over 80 million documents, and they can be searched using optical character recognition via the online Legacy library (www.legacy.library.ucsf.edu).

We undertook iterative searches of these documents between mid-April and September 2008. In total, approximately 6,800 documents were reviewed. Of these, 714 were identified as relevant to the story of Better Regulation in Europe because they included references to European regulation processes, BAT's specific regulatory objectives (e.g., IA, CBA, and risk assessment), or key organizations or individuals. The remaining 6,086 documents either appeared to have no relevance to BR, IA, and risk assessment, or they were duplicates of documents that we did include. The 714 relevant documents were imported to an EndNote library, from where they were reread (in chronological order), interpreted, and thematically coded by an experienced, qualitative researcher. The coding process involved highlighting specific components of BAT's interest in EU regulatory reform (i.e., what BAT hoped to achieve with regard to IA, CBA, risk assessment, stakeholder consultation, transparency); key individuals and organizations that were involved in the process; mechanisms and strategies employed to shape the agenda; and indicators and assessments of progress. Documents were also coded in terms of document type (e.g., whether the document was a letter, an e-mail, or an internal report) and authorship (where this was discernible). This article draws on a section of these documents to present the key findings from this research. The interpretation of all documents was checked by at least one other researcher.

Although the tobacco industry documents provide valuable insights into the internal strategies of some of the world's largest tobacco companies, it is important to recognize that this resource does not represent the entire backlog of internal company documents (MacKenzie, Collin, and Lee 2003). Rather, the documents were released as a result of a process of discovery during litigation. Consequently, these documents are often fragmentary and provide only a partial picture of an organization's activities (ibid.). In addition, far fewer documents are available from 2000 onward, which limits the relevance of the documents for understanding more recent developments. For all these reasons, we contextualized our analysis of the internal tobacco company documents using other

sources, including interviews with relevant individuals and electronic searches of other databases and online sources (e.g., of the organizations mentioned in the internal tobacco documents and interviews).

We approached sixteen individuals for interviews because they had been involved in policy decisions and debates relating to BR and IA in the EU since 1997 or were specifically mentioned in BAT's documents relating to BR (see table 2). We were unable to approach one key individual mentioned in the tobacco industry documents, Bruce Ballantine (table 2), because he passed away before we commenced this research. We also chose not to approach individuals who still worked for BAT for the reasons outlined below. All but three of the individuals we approached agreed to be interviewed. Of these thirteen, the following three interviewees agreed to be named: Charles Miller (who led the Fair Regulation Campaign), Stanley Crossick (who cofounded the EPC and worked directly with BAT on the Better Regulation agenda), and David Byrne (commissioner for health and consumer protection, 1999–2004). The other ten interviewees included three members of European Commission staff who were involved in developing and implementing Better Regulation and/or IA, one member of European Commission staff based in DG SANCO (the directorate general responsible for health and consumer protection), three heads of voluntary organizations working to promote public health and environmental issues in the EU, one head of an EU-based think tank (other than EPC), one senior member of a major Brussels-based consultancy firm, and one UK civil servant who held responsibility for Better Regulation/IA issues in the UK government. Tables 1 and 2 provide an overview of the key individuals and organizations mentioned in this article.

The interviews were transcribed and analyzed alongside the documentary data, and although, between them, the interviewees held contrasting views about BR, IA, and the tobacco industry, the information that interviewees provided was largely consistent with the information garnered through our analysis of the internal tobacco documents, supporting our interpretation. Several of our interviewees were surprised to learn that BAT had been involved in efforts to promote and shape Better Regulation, and two (policy-based) interviewees said that they believed BAT had not been involved, but they provided no evidence to substantiate this belief or to counter the findings presented here. This article draws on a selection of our various data sources to present the key findings; the lead author (Katherine Smith) led the analysis, but the interpretation of all sources employed in this article was checked by at least one other author. Minor revisions to the wording of some sections were made as a result.

Our analysis is undertaken from a public health perspective, and it should be acknowledged that, because internal tobacco industry documents are one of our main sources, our findings inevitably say more about British American Tobacco's interests in regulatory reform than they do about the interests of other organizations (e.g., the other companies involved). In addition, while our selection of interviewees was based on a thorough documentary analysis, the sample might have excluded some important informants who were not identified in the documents that we identified. Finally, although we interviewed individuals who had undertaken work on behalf of BAT, we chose not to approach current BAT employees for an interview because we considered the internal documents likely to provide a more accurate representation of BAT thinking at the time of the reforms and not subject to social desirability or recall bias (as contemporaneous interviews with BAT staff may have been).

Table 1 Key Organizations Involved in the Construction and Promotion of “Better Regulation”

<i>Name of organisation</i>	<i>Type of organisation</i>	<i>Role / description</i>
Charles Barker	Consultancy	A UK based firm that provided an early analysis for BAT of how the company might pursue a requirement for Risk Assessment guidelines (MacKenzie-Reid, 1995).
Covington & Burling	Legal	An international legal firm regularly used by large tobacco companies (Ong & Glantz, 2001), which had been involved in Philip Morris’ campaign to promote risk assessment in the US (Hirschhorn & Bialous, 2001; Ong & Glantz, 2001).
European Policy Centre	Think tank	A large Brussels-based think tank, which was established by Stanley Crossick and others in the early 1990s (Sherrington, 2000). Originally known as Belmont European Policy Centre (Crossick, Undated), it was re-branded ‘European Policy Centre’ in 1997-8 (Crossick, Undated; Sherrington, 2000). Describes itself as ‘ <i>progressing a range of business friendly policies</i> ’ (Watson, 1998); described by the Corporate Europe Observatory (1998) as ‘ <i>nothing more than [a] corporate front group</i> ’.
Fair Regulation Campaign	Consultancy-led campaign	A campaign group promoting Business IA (effectively a coalition of companies, including BAT – see Figure 1) formed in 1999 and led by the CBI, Institute of Directors and Federation of Small Business, for which Charles Miller, of the Public Policy Unit (see below) was Secretary/Director. The Fair Regulation Campaign was subsequently merged into the European Policy Forum, where this work continued as part of a Better Government Initiative (since moved to the Regulatory Policy Institute in Oxford according to Charles Miller in our interview with him on 27 th August 2008).
IMPACT	Consultancy	An arm of the Public Policy Unit (see below), IMPACT specifically promoted Business IA as a means by which businesses could influence and challenge legislation, offering to undertake and advise companies accordingly (IMPACT, 1995).
Public Policy Unit	Consultancy	A UK based consulting firm that BAT employed the services of in its attempts to influence Business IA and risk assessment in the UK (Binning, 1996c; Miller, 1995).
Risk Forum	Think tank	An invitation only group that BAT and Stanley Crossick (see above) established within EPC. While a number of NGOs were members of the EPC, they were specifically excluded from this Forum (personal communication with Hans Martens, Chief Executive of the EPC from 2002 until present), resulting in the Forum being asked to leave the EPC in 2007. It subsequently established itself as an independent think tank, known as the European Risk Forum (European Risk Forum, 2009). Dirk Hudig (see below) is its current Chairman and Lorenzo Allio (see below) works as a ‘Senior Policy Analyst’ (European Risk Forum, 2012).
Weinberg Group	Consultancy	A multinational ‘scientific and regulatory consulting firm’ which helps ‘companies resolve complex issues surrounding science, management, law and regulation’, the Weinberg Group has an office in Brussels (as well as in the US and UK) (Weinberg Group, 2009).

Sources: Binning 1996c; Corporate Europe Observatory 2001; Crossick, n.d.; European Risk Forum 2009, 2012; Hirschhorn and Bialous 2001; IMPACT 1995; MacKenzie-Reid 1995; Miller 1995; Ong and Glantz 2001; Sherrington 2000; Watson 1998; Weinberg Group 2009

Table 2: Key Individuals involved in the construction and promotion of ‘Better Regulation’

<i>Name of individual</i>	<i>In tobacco industry documents?</i>	<i>Interviewed?</i>	<i>Role / description</i>
Lorenzo Allio	CHECK	No – declined request.	In charge of the Better Regulation programme at the EPC (see Table 1) between 2002 and 2006 (Kirkpatrick & Parker, 2007), Allio began working for the European Risk Forum (2012) when it left the EPC to establish itself as an independent think tank.
Bruce Ballantine	Yes.	No - deceased.	Worked as an advisor to the EPC from the mid-1990s (Crossick, 1997a) until his death in 2005 (EPC Risk Forum, 2005).
Stuart Chalfen	Yes.	No – unable to identify contact details.	Joined BAT as a solicitor in 1988 (British Institute of International and Comparative Law, Undated); remained there until his retirement in 2000 (BIICL, undated). According to Crossick, he and Chalfen had been friends since Chalfen ‘ <i>was a teenager</i> ’ and had previously worked together, which is one reason Chalfen approached Crossick to discuss regulatory reform (interview with Stanley Crossick, September 18 th 2008).
David Clark MP	Yes.	No - did not respond to request.	Appointed as a ‘Political Advisor’ to BAT Chairman's Policy Committee in 1992 (BAT, 1992b). By the time Labour won the 1997 General Election, Clark was not only aware of BAT’s interest in Business IA but supportive of the company and, in 1995, reportedly offered to lobby MPs on BAT’s behalf (Opukah, 1995). Between 3 rd May 1997 and 27 th July 1998, Clark was responsible for regulatory reform in the UK. Clark supported BAT and the EPC’s proposal that the UK Presidency of the EU should sanction a conference on risk and regulation in April 1998 ([BAT], 1997a; Anonymous, 1998a; Clark, 1997). In addition, Clark apparently invited Bruce Ballantine (of EPC) onto key groups advising on regulatory reforms, including a Task Force on ‘Open Government’ (Anonymous, 1997).
Stanley Crossick	Yes.	Yes.	A corporate lawyer from the UK who set up his own law firm in Brussels in 1977 and later went on to found the think tank, EPC (see Table 1) (Anonymous, 1998b; Crossick, Undated). Crossick (who died in 2010) was described in the <i>Economist</i> as the ‘grandfather’ of lobbying in Brussels (Anonymous, 1998b).
Dirk Hudig	Yes.	No but did engage in email exchange.	Joined Imperial Chemicals Industries in 1970, becoming Group Manager of EU Government Relations from 1987-1998. Left to become Secretary General of the Union of Industrial & Employers' Confederations of Europe (now BusinessEurope) until 2001. Joined one of ‘Europe’s leading communications consultancy specializing in advice on political and regulatory issues’ (FIPRA, 2005b). Involved in BAT’s Better Regulation campaign from 1997 onwards (Anonymous, 1997a, [BAT], 1997b; Chalfen, 1997) and is currently Chair of the European Risk Forum Table 1).
Charles Miller	Yes.	Yes.	A UK based lobbyist who worked for the Public Policy Unit from 1985 onwards and was involved in IMPACT. Coordinated the Fair Regulation Campaign (Miller, 1999; see Table 1).
Christopher Proctor	Yes.	Not approached.	A senior research scientist at BAT during the 1980s (Boyse & Proctor, 1990), Proctor worked for Covington & Burling 1991-1994 (Thornton, 1990), before returning to BAT (Proctor, 1994). Asked by a colleague, Chalfen (see above), to produce an overview of Philip Morris’ approach to regulatory issues (Chalfen, 1995; Proctor, 1995).

Sources: Anonymous 1997a, 1998a; BAT 1992; [BAT] 1997a, 1997b; BIICL, n.d.; Boyse and Proctor 1990; Chalfen 1995, 1997; Crossick 1997; EPC Risk Forum 2005; European Risk Forum 2012; FIPRA 2005; Kirkpatrick and Parker 2007; Miller 1999; Opukah 1995; Proctor 1994, 1995; Thornton 1990

Theoretical Approach: Employing the “Advocacy Coalition Framework”

The case study builds on a wealth of existing research on corporate lobbying and policy influence in the EU (see, e.g., Bouwen 2002; Coen and Richardson 2009; and Woll 2007), which charts the “growing political sophistication of public and private interests in a complex multi-level venue policy environment” (Coen 2007a: 333). It provides a way to assess the utility of one of the most popular theories of policy change, Sabatier and Jenkins-Smith’s (1999) Advocacy Coalition Framework. The ACF suggests that diverse groups of actors form relatively stable coalitions around core ideas (relating to values and beliefs about causation) within particular “policy subsystems.” The ACF posits that once a particular coalition comes to dominate a policy subsystem, policy change is likely to be limited, but that significant policy change can occur when a particular coalition’s ideas are perceived to be so successful that some actors switch between competing coalitions, shifting the balance of power in relation to the “core ideas” driving policy.

The policy subsystem with which this article is concerned is the regulation of business interests to protect social (particularly health) or environmental interests, a subsystem in which two distinct coalitions were identifiable in the 1980s and early 1990s (Farquharson 2003; Smith 2013b). One consisted of actors concerned with the health and environmental harms caused by economic activity (largely made up of civil society and nongovernmental organizations, academics, politicians, and professional medical groups). To use the terminology of the ACF, a policy core belief held by this group was that regulatory intervention provides a crucial way to prevent harms to the environment and public health. The second, competing coalition consisted of actors concerned with the ability of businesses to operate freely and competitively (this group largely consisted of businesses, business organizations, and think tanks, as well as some academics and politicians). A policy core belief held by this group was that businesses should be able to operate as freely as possible in the EU (which was conceived of as a largely economic project) and that EU regulations should be implemented only to address market failures (and only where regulations at the member state level were demonstrably insufficient). It seems likely that policy makers, both at the EU and at the member state level, were (and remain) split between these two coalitions, with many viewing themselves as arbitrators between the two (this was indeed the way that many of our interviewees characterized the situation). Our data indicate that, by the mid-1990s, BAT managers became increasingly concerned that policy makers in the EU were becoming sympathetic to the first group’s views. Regulatory reform appears to have been conceived of by BAT managers as a way to shift the balance of power back in favor of business and economic priorities. Combined with the wide range of actors involved and the time period of more than a decade, all this suggests that the ACF may offer a valuable hermeneutic device for making sense of recent regulatory change in the EU. However, as the concluding section outlines, our findings also challenge the ACF by drawing attention to the importance of studying the characteristics of the particular ideas developed and promoted by coalition actors, alongside the networks of actors involved.

The particular focus of this article on the tobacco industry and its involvement in regulatory change is important in light of the fact tobacco remains the leading cause of avoidable premature mortality in Europe (Mackenbach et al. 2013). It is estimated, based on Eurostat data, that in 2009 about 9.9 million years of life were lost because of smoking attributable premature mortality and that the total cost to the twenty-seven EU member states was about €544 billion (Jarvis 2012). The tobacco industry has been framed as a “vector” of this epidemic of tobacco-related morbidity and mortality (LeGresley 1999) and has, largely as a consequence of this, become increasingly excluded from formal health policy discussions (WHO 2003). Despite this, tobacco-related policy developments in the EU remain highly controversial and deeply politicized, as the recent resignation of EU Health Commissioner John Dalli, in the context of claims that he knew of efforts to bribe a tobacco company, illustrates (Watson 2012).¹ The findings of this article, which demonstrate the

¹ EU health commissioner, John Dalli, resigned in October 2012, after pressure from commission president Jose’ Manuel Barosso, which related to accusations that Dalli had been aware that a Maltese businessman with whom he was acquainted had tried to bribe the tobacco company Swedish Match (which manufactures an oral tobacco known as “snus”) for e60 million to secure a removal of the European ban on snus (see Watson 2012). Within thirty-six hours of Dalli’s resignation, the offices of the three main antismoking NGOs based in Brussels

sophisticated and complex nature of tobacco industry efforts to influence policy, are therefore also of interest from a public health perspective.

We note, at the outset, that the tobacco industry documents drawn on often use the terms IA and CBA interchangeably, reflecting the fact that the version of IA being promoted by tobacco interests involved an economic framework resembling CBA. For the most part, this article focuses on IA. However, the term CBA is employed where appropriate when we quote directly from tobacco industry documents. By outlining what corporations involved in regulatory reform hoped to achieve, the article provides an important addition to recent accounts of the European emergence of Better Regulation and IA, which focus on the role of the commission and particular member states (see e.g., Radaelli and Meuwese 2010; Radaelli 2007b; and Allio 2007).

British American Tobacco (BAT) and Better Regulation

Contextualizing BAT's interest in Better Regulation and IA

The emergence of neoliberalism as a governing political philosophy in many EU member states in the 1980s and 1990s (Apeldoorn 2003) coincided with a renewed emphasis on deregulation as a way to improve business competitiveness and market efficiency (Department of Trade and Industry 1985, 1988; Commission of the European Communities 1993). However, in contrast with other industries, which are typically thought to have enjoyed a renaissance in their policy influence during this period (Farnsworth 2004; Farnsworth and Holden 2006), the tobacco industry had begun to experience a significant decline in its credibility and political authority (Sanders 1997), with many of its traditional techniques of policy influence coming under increasing scrutiny from both public health advocates and public officials (Fooks et al. 2013).

At the same time, the tobacco industry was increasingly concerned about the extent of tobacco control legislation emanating from the EU (Gilmore and McKee 2004), and broader corporate concern was growing around the use (and potential use) of the “Precautionary Principle” in the EU (BAT 2000; EPC 1998b). This principle applies to circumstances in which there are reasonable grounds to believe that a given hazard would, if it occurred, result in severe or irreversible damage to public health or the environment, and it calls on policy makers to intervene to prevent such hazards, even when there is no clear scientific consensus about the likelihood of the hazard occurring (Commission of the European Communities 2000). Some commentators argue that the Precautionary Principle is inconsistent with scientific approaches to policy making and does not sufficiently take account of economic efficiency (Allio, Ballantine, and Meads 2005; EPC Risk Forum 2005). Indeed, as Löfstedt (2002) notes, many business interests came to perceive the Precautionary Principle “as a tool for the more radical environment and health advocates.”

It is in this context that BAT began to consider ways to increase its influence over EU policy by promoting the need for a form of structured risk assessment to be embedded within the European legislative process (BAT 1995; Chalfen 1996a, 1996b, 1996c). It might appear paradoxical that risk assessment could be promoted by a company whose products were well known to pose serious risks to human health (Royal College of Physicians 1962; National Cancer Institute 1993). Indeed, BAT was warned by one of its political consultants, Charles Barker (see table 1), that such an approach might work against the company's interests (MacKenzie-Reid 1995). However, having closely monitored Philip Morris's use of risk assessment to undermine proposed restrictions on environmental tobacco smoke in the United States (Hirschhorn and Bialous 2001; Ong and Glantz 2001; Muggli et al. 2004), senior BAT managers took the view that a policy requirement for a particular form of risk assessment could help the company defeat efforts to introduce policies restricting smoking (BAT 1995, n.d.a). This would be achieved through promoting a set of rules for assessing epidemiological data, within risk assessment, that would place the bar for what constitutes “unacceptable risk” above that posed by environmental tobacco smoke (see Bero 2012).

Building a Coalition of Support around a Malleable Concept

had been burgled (Watson 2012). One consequence of all this was to delay the passage of a controversial EU tobacco policy, the revised Tobacco Products Directive (Watson 2012).

BAT was aware that a proposal for risk assessment guidelines promoted solely by a large tobacco company was unlikely to be received favourably (Mackenzie-Reid 1995). Consequently, the strategies that BAT employed to promote this issue were collaborative and indirect, obscuring specific, tobacco-related objectives. Hence, BAT was advised by the consultancy company Charles Barker to construct a supportive coalition of interests, initially focusing on recruiting other businesses with potentially overlapping interests in risk assessment:

As a first step, BATCo should seek to identify industries that would benefit from risk assessment guidelines. . . . The pharmaceutical industry would be a clear contender since research on the veracity of drugs prior to medicinal approval may well be linked to assessments which overstate the degree of danger. Similar considerations apply to the oil and chemical industries, especially in relation to the assessment of environmental dangers. All industry would however benefit from clearer assessment guidelines if that resulted in a reduction in compliance costs associated with health & safety legislation. There would be clear benefits in persuading the CBI [Confederation of British Industry] to launch an initiative on risk assessment, especially since they have two appointees on the Health & Safety Commission. (MacKenzie-Reid 1995)

Reflecting this advice, Stuart Chalfen (1996b, 1996d, 1996c, 1997), BAT solicitor, subsequently wrote to other companies involved in manufacturing and marketing regulated products, although not (as far as it is possible to tell) to other tobacco companies. A meeting involving BAT staff and representatives from some of the companies that Chalfen approached (including Elf Aquitaine, Imperial Chemical Industries [ICI], and Zeneca) was subsequently held in Brussels in January 1997. The minutes of this meeting note that a key part of the proposed strategy for achieving regulatory reform would involve generating “a large reservoir of informed and favourable opinion towards the project across the EU which [could] be activated at short notice at the appropriate time” (Anonymous 1997a). In other words, the aim was to create the sense among policy makers that there was a widely held consensus in support of these regulatory reforms within the business community. As we describe below, the business interests involved were subsequently expanded, including via a separate, UK-based group known as the Fair Regulation Campaign (see fig. 1, table 1, and below).

Charles Barker also advised BAT to use a “front group” to expedite the campaign to promote regulatory reform (MacKenzie-Reid 1995), noting that public knowledge of tobacco industry involvement could seriously undermine the campaign’s credibility (Honour 1996). After briefly considering the idea of conscripting a center-left institute or think tank to “confound the critics” (Fitzsimons 1995), BAT managers turned to the EPC, a leading Brussels-based think tank (Sherrington 2000; table 1) with “a broad political profile across a number of issue domains” (Coen 1998: 78). The EPC (2009) received funding from the European Commission, which bestowed it with something of an “insider” status (Broscheid and Coen 2003). These features made the EPC an excellent platform from which to present the regulatory reforms as credible and nonpartisan to policy makers and journalists.

BAT was initially advised by both the UK-based consultancy firm the Public Policy Unit (table 1) and the Brussels-based lobbyist Stanley Crossick (table 2) that the European Commission was not interested in developing risk assessment in the way that BAT envisioned (Gretton 1996c; Crossick 1996b).² In February 1996 the legal firm Covington and Burling (1996) (see table 1) suggested that an alternative way forward might be to situate any discussion of risk assessment within the context of the European Commission’s existing commitment to undertaking business IAs. Known as *fiches d’impact*, these basic business IAs had been mandated in the EU since 1986 (Commission of the European Communities 1986a) and focused on assessing the potential impacts of EU legislative proposals on small and medium-size enterprises (SMEs) (Commission of the European Communities 1986b). In practice, their use was erratic and, when conducted, seemed to involve only limited

² As described elsewhere (Bero 2012) the commission had actually already begun employing risk assessments in some policy sectors, and, on that basis, we presume that the advice BAT received which suggested that the commission was not interested in risk assessment meant that the commission was not interested in the kind of mandatory (cross-sectoral) form of risk assessment that BAT was interested in.

information (Froud et al. 1998). However, Covington and Burling advised BAT that the commission's priorities for 1996 included implementing revised guidelines for *fiches d'impact* and suggested that an opportunity therefore existed to press for "more detailed guidance on the preparation of business impact assessments, perhaps including elements of structured risk assessment" (Covington and Burling 1996). Covington and Burling identified the UK government (which had already gone some way toward incorporating risk assessment and business IA into public policy making) and the German government (which was perceived to be committed to reducing business related regulations) as obvious policy allies in such a campaign. They also suggested that Nordic member states and "some non-business interest groups" might be persuaded to support the proposals if they believed that the proposals would help achieve more transparent policy making, while commission support could be optimized by linking the measure to the growth of SMEs (Covington and Burling 1996).

The documents suggest BAT managers were persuaded by the idea of using IA as a way to promote risk assessment (see, e.g., Anonymous 1997a; and Gretton 1998), a decision that appears to have marked the start of a broader strategy to deliberately construct a vaguely defined idea that could be strategically adapted to appeal to diverse constituencies. Yet, rather than try to embed risk assessment within *fiches d'impact*, as Covington and Burling had suggested, BAT committed itself to the more ambitious aim of using the commission's interest in revising its *fiches d'impact* guidelines as a foothold for a campaign that was intended to achieve nothing less than a paradigm shift in the way that European regulation functioned (Chalfen 1996d). BAT's strategy hinged on replacing *fiches d'impact* with a far more thorough and economically oriented form of business IA, based on CBA, while working to promote the notion that risk assessment was a necessary part of this approach (see, e.g., Anonymous 1997a; and Chalfen 1996d). This was in no way an obvious strategy; not only were *fiches d'impact* silent on the issues of assessing risk and risk management (Commission of the European Communities 1986b), but the process itself was relatively marginal to European policy making (Froud et al. 1998).

Focusing on IA offered several benefits to the company. By making economic assessments central to risk-benefit calculations (Bero 2012), it was hoped that it might counter what BAT and its allies perceived to be an increasing use of the Precautionary Principle in EU policy making (BAT 2000; EPC 1998b; see "Contextualizing BAT's Interest in Better Regulation," above). By enabling public officials to regulate in the absence of a clear scientific consensus over the risks of economic activity to public health and the environment (Martuzzi and Bertollini 2005; Commission of the European Communities 2000), the Precautionary Principle was widely regarded by EU businesses as subordinating economic growth and competitiveness to harm prevention (BAT 2000; EPC 1998b; Löfstedt 2002). BAT managers conceived that incorporating risk assessment into CBA would provide a way to achieve precisely the opposite (Bero 2012). As one BAT document explains, the strategy aimed to ensure "that new measures are not adopted unless they will achieve significant risk assessment" (BAT 1996). The immediate commercial aim of the approach was to prevent the introduction of tobacco control measures, such as restrictions on tobacco advertising and legislation designed to limit second-hand smoke exposure, by creating minimum requirements for risks to health linked to the economic impact of proposed regulation (BAT, n.d.b). In addition, the accountancy firm Ernst and Young advised BAT that the requirement for quantitative data in CBA might conceivably help establish a more resource-dependent relationship between BAT and EU officials:

The lack of official statistics will mean that greater attention and credibility will be [given] to the industry developed statistical series. This can be used to advantage in discussions and negotiations with government agencies as it means that the industry has access to information (potentially including economic assessment studies) that are unavailable to government officials. Officials will often be more willing to talk to industry in these circumstances. (Ernst and Young 1997)

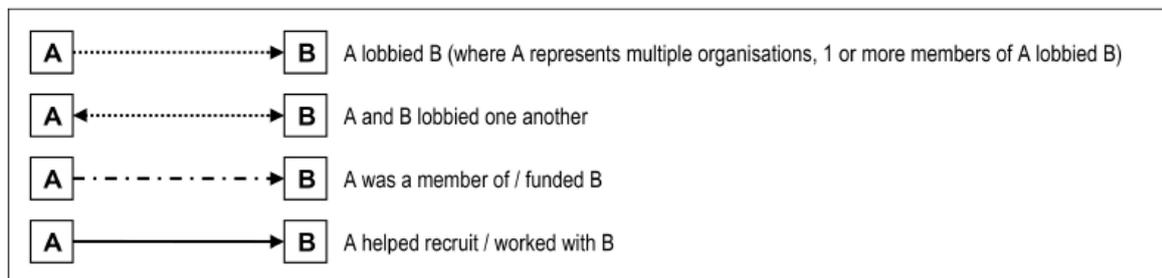
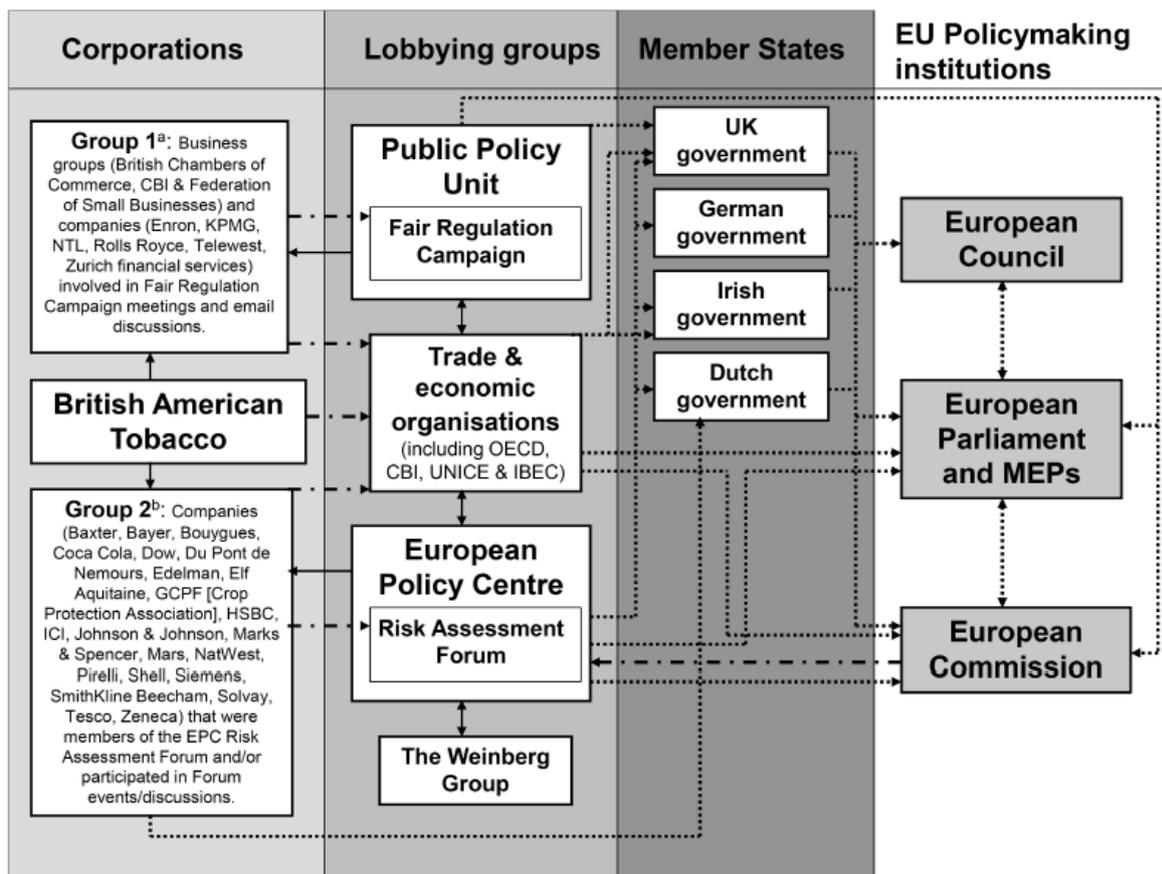


Figure 1 The Multifaceted Approach Lobbying Effort to Shape and Promote Better Regulation

^aSources: Fair Regulation Initiative 1999; Summers 2000a

^bSources: [BAT] 1997a; Ballantine 1997; Chalfen 1996c, 1996d; Crossick 1997b; EPC 1998a, 1998b

This is likely to have been particularly attractive to BAT in the context of the declining political authority and public credibility of tobacco industry interests (Fooks et al. 2013), as it seemed to allow the company to re-establish itself as a legitimate stakeholder in policy debates. Similarly, the calls for greater “transparency” and “consultation” within policy making, associated with Better Regulation, were likely to have been helpful to BAT in securing its inclusion in policy-making discussions ([BAT] 1997a; Anonymous 1997a; Gretton 1996c).³ Hence an emphasis on consultation and transparency served the dual purpose of attracting policy actors committed to transparency, such as the Nordic member states (see above, this section), and providing a rationale for challenging tobacco industry exclusion from EU policy-making discussions.

Although these various ideas (risk assessment, a form of IA modeled on CBA, and commitments to transparency and consultation) were not immediately labeled “Better Regulation” by BAT or the

³ Here and throughout this article, when a tobacco document source is set off in square brackets, the given authorship is probable, but it is not explicitly stated in the document.

EPC, the documents indicate that, from the start, they were considered part of the same project and were presented as mutually reinforcing ([BAT] 1997a; Ballantine and Crossick 1996; Gretton 1996c). Promotional material therefore focused on collectively promoting risk assessment and CBA (as a form of business IA), transparency, and stakeholder consultation (Ballantine and Crossick 1996). The “chameleonic” qualities (Smith 2013a) of the overall concept, originally mooted as “better legislation,”⁴ allowed the reforms to be packaged differently according to the audience being targeted.

First, concepts such as risk assessment and business IA were simultaneously marketed as advantageous to the narrow interests of regulated industries and as a valuable component of socially efficient policy making. Thus, in letters to large corporations in other regulated sectors, Chalfen (1996b; see table 2) described the campaign as “a unique opportunity” to “protect in a fundamental manner the interests of European industry vis-a-vis the European regulators.” Chalfen’s (1996b) letter concluded that the proposed reforms represented “a remarkable step forward” for regulated companies in the EU. In contrast, an EPC occasional paper making the case for regulatory reform to a broader policy audience, produced in response to a suggestion that such a paper could serve as a campaign “hook/crib sheet” (Gretton 1996a), focused explicitly on CBA and only briefly mentioned risk. The key point here is that, in marked contrast to Chalfen’s promise to other large corporations of fundamental regulatory reform, the EPC occasional paper simply presented CBA as a technical “management tool” that could be used to improve transparency, accountability, and “the quality of legislative and regulatory decision-making” (Ballantine and Crossick 1996). The suggestion here was that such a tool would merely help policy makers to better understand “the full costs and benefits of government actions” (Ballantine and Crossick 1996), rather than significantly change the relationship between industry and regulators or shape officials’ approach to assessing and managing risk. In other words, the way in which the regulatory reforms were pitched to policy audiences was markedly different from how Chalfen framed the reforms in correspondence with other regulated industries.

Second, in line with Covington and Burling’s advice, the reforms were initially pitched by the EPC as primarily benefiting SMEs, which fit with the commission’s aim of enhancing the competitiveness of smaller enterprises in the EU (Ballantine 2001, EPC 2004). This was despite the fact that the campaign was primarily orchestrated by, and designed to promote the interests of, large corporations in regulated sectors (see fig. 1), such as BAT.⁵ At a later stage, Charles Miller (of the Fair Regulation Campaign) then emphasized the need for the officials implementing Better Regulation reforms to focus on the needs of big business (quoted in Gribben 2000).⁶

Third, the reforms were presented in subtly different ways to appeal to different political audiences. In 1996, for example, faxed documents from Covington and Burling suggest that, in the run-up to the UK’s 1997 general election, the coalition adapted the way in which the concepts were described to appeal to the perceived preferences of the two main, opposing parties, Labour and the Conservatives ([Covington and Burling] 1996a, 1996b).

Finally, the chameleonic quality of the reforms enabled the campaign to respond to changing political circumstances. In 1999 the European Commission was rocked by a scandal over nepotism and cronyism, and twenty commissioners were forced to resign (CNN 1999). The EPC subsequently focused on emphasizing the aspects of the proposed reforms relating to “transparency” and “accountability,” presenting regulatory IA (a form of business IA) as a way to address the perceived “democratic deficit” in Europe (Ballantine 2001).

In focusing on the promotion of such a multifaceted and malleable concept (which became known as Better Regulation), as opposed to the very narrow, specific form of risk assessment that BAT managers eventually hoped to achieve, it was possible for the campaign to be adapted to appeal to

⁴ In 1997, some years before the concept of Better Regulation had become a familiar term in the EU, a consultant at the Weinberg Group (see table 1), suggested to BAT that “better legislation” might be a useful title for a conference promoting the regulatory reforms the company was hoping to achieve and stressed that “the title, if we get it right, is the fundamental objective” (Huggard 1997).

⁵ In reality, SMEs are far less likely than large corporations to have sufficient resources to be able to benefit from the resource-dependent relationship that CBA helps create between policy makers and business.

⁶ In practice, Better Regulation seems to have done little to have reduced the costs of regulation to SMEs (Baldwin 2004).

different audiences. The strategies of developing a malleable concept and building a large coalition of support were therefore closely intertwined, with the chameleon-like qualities of Better Regulation helping attract the diverse constituencies required for success, and the divergent support further contributing to the concept's varying interpretations. The EPC helped both to establish the broad-based corporate constituency in favor of the regulatory reforms and, over time, to attract policy officials and politicians to the coalition, facilitating the political traction of the coalition's proposals.

The major disadvantage of "chameleonic ideas" is that their flexibility raises the risk that key sponsors may lose control of the agenda. BAT had, from the start, been warned that risk assessment guidelines "might be hijacked by other lobbies," such as "the environmental lobby [which] might insist that sustainable development issues comprise one of the criteria in the assessment guidelines" (MacKenzie-Reid 1995). This concern was not unwarranted. In 1997, for example, Crossick reported that the EU directorate general responsible for health policy was establishing a separate risk assessment unit, reporting directly to the director-general, which had plans to develop approaches to risk assessment that Crossick (1997a) considered "political" and "dangerous."

With a view to maintaining control over the campaign, BAT and the EPC worked to construct a closed group within the EPC, helping ensure that expansion of the coalition did not necessarily dilute their ability to manage the campaign's direction. In 1996 the EPC created the Risk Forum (EPC Risk Forum 2006), whose membership was dominated by BAT and the other large companies that had agreed to support the campaign. Significantly, according to our interview data, even though a number of nongovernmental and civil society organizations were members of the EPC at this time, they were specifically excluded from the Risk Forum throughout its existence within the EPC (indeed, two interviewees involved in the campaign reported that it was as a result of pressure to allow other members of the EPC to join the Risk Forum that the forum left the EPC in 2007 and established itself as the independent European Risk Forum—see table 1). This suggests that a "closed" (invitation only) inner group was established within the broader coalition and that this approach was deemed crucial, probably because it allowed BAT and other major corporations to maintain some control over the campaign's direction, even as support for Better Regulation was evolving into a more institutionalized "advocacy coalition," involving politicians and officials at EU and member state level. The potential for the campaign's ideas to be interpreted in multiple ways also explains why BAT took a closely managed approach to mobilizing a coalition for regulatory reform, as outlined below.

Working to Achieve Policy Change

The process of embedding the forum's broad interests into European policy making was undertaken in stages and initially focused on inserting a protocol into the Treaty of Amsterdam (a revision to the Treaty on European Union), which would make CBA a mandatory component of EU policy making (BAT, n.d.a; Crossick 1996b; Crossick, interview by Katherine Smith, Brussels, September 18, 2008). To achieve this, the forum's members were encouraged to focus on mobilizing support from public and elected officials in strategically important member states in advance of the intergovernmental conference that culminated in the Treaty of Amsterdam ([BAT], n.d.; [Risk Forum], n.d.; Anonymous 1997b; Chalfen 1996d; Veljanovski 1996; Crossick interview). In practice, the strategy relied heavily on the EPC and supportive business organizations, notably UNICE (the Union of Industrial and Employers' Confederations of Europe, subsequently renamed BusinessEurope—see table 1), the CBI (Chalfen 1998a, 1998b, 2000; Etherington 1994), the Bundesverband der Deutschen Industrie (the German employers' federation), and the Irish Business and Employers Confederation (Agar 1997; Crossick 1996a, 1996b, 1996c; Geoghegan 1997; Kretschmer 1996; UNICE 1996b; Woods 1995).

Lobbying efforts focused particularly on member states where the ruling political parties were already predisposed to business IA or CBA, such as the UK and Germany, although some other member states were also targeted, notably the Irish and Dutch governments, which consecutively held the EU presidency during the Inter-Governmental Conference (Anonymous 1997a, 1997b; BAT, n.d.a, n.d.b; Covington and Burling 1996; Gretton 1997). In Ireland, the UK, and Germany, supportive trade associations appealed directly to government ministers (Geoghegan 1997; Crossick 1998b; Turner 1998; Chalfen 1996a; Kretschmer 1996; Marcq 1996; UNICE 1996a). In Germany and the Netherlands, lobbying was directed via key industrialists with close personal links to senior policymakers (Anonymous 1997a; Chalfen 1997; Curtis 1997; Hudig 1997). Both the EPC (EPC Risk

Forum 2006) and UNICE (1996b) made direct submissions to the Inter-Governmental Conference, calling for CBA to be made legally binding.

Persuading the UK government to act as an advocate on behalf of the forum was considered particularly important. BAT managers and the EPC considered the UK to be farther along than other member states in embedding business IA into policy making (Covington and Burling 1996; BAT 1995). Documentary evidence (Gretton 1996b, 1996c; Binning 1996a, 1996b, 1996c) and existing literature (Farnsworth 2004; Farnsworth and Holden 2006) suggest that this is likely partly due to the influence that businesses, like BAT, had already exercised over regulatory policy in the UK. The focus on the UK and other member states deemed likely to be supportive allowed the campaign to make use of the EU's decentralized policy system, with its multiple points of influence (Coen 2007). This included enabling the coalition to target the Council of Ministers and thus representatives of EU member states (see fig. 1).

This first stage of the strategy, securing a change in the wording of the official Treaty on European Union, was successful (BAT, n.d.b; EPC1997). The documents do not make clear the extent to which BAT/EPC was formally involved in drafting the protocol (which was tabled by the UK delegation), but BAT has several versions of the protocol in its files (Anonymous 1996a, 1996b, 1996c, 1996d, n.d.). The eventual wording of the treaty sections that BAT managers focused on was as follows:

Without prejudice to its right of initiative, the Commission should:

- Except in cases of particular urgency or confidentiality, consult widely before proposing legislation and wherever appropriate, publish consultation documents;
- justify the relevance of its proposals with regard to the principle of subsidiarity; whenever necessary, the explanatory memorandum accompanying a proposal will give details in this respect. The financing of Community action in the whole or in part from the Community budget shall require an explanation;
- take duly into account the need for any burden, whether financial or administrative, falling upon the Community, national governments, local authorities, economic operators and citizens, to be minimised and proportionate to the objective to be achieved. (BAT, n.d.b)

Although it did not refer specifically to a requirement for CBA or IA, this section of text was interpreted by BAT to mean “the Commission must now take into account the financial and administrative burden (cost), which has to be minimised and proportionate to the objective (benefit)” (BAT, n.d.b). It is impossible to know whether the UK government already intended to include wording to the above effect in its submission; when interviewed, Crossick said that the EPC had suggested the inclusion of a requirement for CBA to various member state representatives and that this suggestion was generally welcomed. Whatever their level of involvement in the specific treaty change, BAT managers considered it a major coup (BAT, n.d.b). However, the chameleonic nature of the ideas used in the campaign, and the relatively imprecise wording of the protocol, inevitably widened the range of ways in which regulatory reform might subsequently evolve. This necessitated sustained political activity aimed at narrowing the received meaning and legal interpretation of the treaty change ([BAT] 1997b; [EPC] 1998; EPC 1997; Crossick interview).

The next stage of the campaign had at least three overlapping strands. The UK's leadership of the six-monthly rotating EU presidency was seen as an important “window of opportunity” (BAT, n.d.a). Hence, at EPC's suggestion, one strand involved UNICE and the CBI directly lobbying the UK prime minister, Tony Blair, over the implementation of the protocol ([EPC] 1998; Crossick 1997a, 1998b, 1998c), and according to a note from Crossick (1998b), these efforts were received favorably. The second strand centered on the organization of a conference to promote the forum's favored interpretation of the protocol, which was that CBA was now a legal requirement in the EU and that “CBA must include risk assessment” (Gretton 1998). The EPC and the Weinberg Group (an international consultancy firm that had been involved in a tobacco industry campaign to reform risk assessment in the United States; see Ong and Glantz 2001) approached David Clark MP (see table 2) with a proposal for the UK to sponsor a conference on risk while it held the EU presidency ([BAT] 1997a, 1997b; Huggard 1997). Clark, who was the minister responsible for regulatory reform in the UK at that time, and who had previously served as a political adviser to BAT (1992), agreed to

support the initiative.⁷ The conference, titled “Managing Risk: A Balancing Act,” went ahead and was paid for by BAT, which also played a key role in selecting speakers and delegates and organizing the associated promotional material ([BAT] 1997b; Curtis 1998a, 1998b, 1998c; Crossick 1998a). Yet it was officially sanctioned by the UK presidency of the EU, and formal materials made little, if any, mention of BAT (Anonymous 1998a; [BAT] 1997a, 1997b). A third strand involved the CBI and BAT working with other business interests to establish a second corporate group in January 1999, called the Fair Regulation Campaign (see table 1). This campaign specifically aimed to influence UK and European officials’ interpretations of the new Treaty Protocol (Miller 1999; Anonymous 1999). Coordinated by Charles Miller of the Public Policy Unit (tables 1 and 2), the Fair Regulation Campaign quickly won the support of several European commissioners, including Erkki Liikanen, then commissioner for enterprise and information (Summers 2000a, 2000b; Fair Regulation Campaign 2000; Business-Europe 2000; Charles Miller, telephone interview by Katherine Smith, August 27, 2008).

With the increasing support and involvement of officials and politicians, BAT’s original group of corporations steadily broadened into a rather more classic advocacy coalition, involving key politicians and policy makers as well as the large businesses, think tank, and consultancy organizations initially involved. This allowed the coalition to exert influence across the European Commission, the European Parliament, and the Council of the EU (see fig. 1). Although the range of actors involved reflected the considerable breadth of support for regulatory reform, support for the core ideas of Better Regulation was more sectoral than it might have appeared.

In other words, the diversity of entities now working to move the issue forward is likely to have created a misleading impression among EU officials and other member states about the depth of consensus in favor of the Better Regulation agenda (an interpretation supported by our interview data). Obscuring the specific interests of the companies involved is likely to have helped attract policy makers and others (such as SMEs and civil society organizations), ensuring that they were unaware of the extent to which a small group of large corporations were aiming to shape Better Regulation’s core concepts in their favor. This is not to say, however, that those who supported the campaign did not agree with the need for regulatory reform or the potential benefits of IA, including that it might delay and prevent some EU legislation (see Radaelli and Meuwese 2010).

Commissioner Liikanen’s support proved crucial to formalizing the EPC Risk Forum’s preferred interpretation of the protocol into EU decision making as Liikanen oversaw a pilot study of business IA in the commission (Enterprise Directorate-General 2002), which reportedly involved the provision of a Fair Regulation Campaign checklist to all directorates general (Corporate Europe Observatory 2001). Additionally, the EPC Risk Forum (which was at that time chaired by the BAT scientist Christopher Proctor) was commissioned to produce an occasional paper titled Regulatory Impact Analysis: Improving the Quality of EU Regulatory Activity (Ballantine 2001), which also contributed to the official pilot study. Tracking how the campaign progressed from 2001 onward is complicated by the availability of substantially fewer internal tobacco company documents. Alternative sources of data, including interviews with EU policy makers and lobbyists, suggest that many of the key elements of the campaign continued,⁸ although in line with BAT’s original ambitions, there appears to have been more of a shift in emphasis toward trying to shape policy assessments of, and responses to, risks.⁹ Also, as described above, the Risk Forum now exists as an independent think tank (EPC 2006; European Risk Forum 2009), which is made up almost solely of tobacco and chemical industry interests.¹⁰

⁷ It is unclear to what extent Clark knew of BAT’s involvement in the conference.

⁸ In April 2004, for example, the Irish Business and Employers Confederation organized a conference on Better Regulation in Ireland attended by Bertie Ahern, then prime minister (Ahern2004). Ahern actively encouraged the Irish Business and Employers Confederation’s participation in the push for Better Regulation, accepting their offer to “oversee implementation” of Better Regulation in Ireland. This suggests that the coalition BAT helped create may be consolidating its “insider” status within some member states.

⁹ For example, in 2006, the EPC Risk Forum responded to a European Commission Green Paper on the Transparency Initiative by arguing that the Minimum Standards for Consultation should be extended to enable stakeholders to inform proposed guidelines on risk assessment and the Precautionary Principle (EPC 2006).

¹⁰ Information about the membership of the European Risk Forum is not provided on the forum’s website (although this information is now available for the EPC on its website). However, according to Dirk Hudig,

An assessment of the current situation suggests that the Better Regulation agenda has been successfully adopted at the EU level. For example, units and directorates of the commission have been renamed to include Better Regulation (see Radaelli and Meuwese 2010), the European Commission created an official website dedicated to Better Regulation (recently renamed Smart Regulation; ec.europa.eu/smart-regulation/index_en.htm), and, as Radaelli and Meuwese (2010) note, Better Regulation became a priority for the Lisbon agenda. IA has been formally adopted (albeit it on a “soft law” basis; see Alemanno 2009), with commission guidelines now requiring integrated IAs, which incorporate assessments (preferably quantitative) of key business, environmental, and social impacts, to be produced for virtually all proposals (European Commission 2002, 2005, 2009).¹¹ There is also a consensus that Better Regulation in the EU represents a qualitatively different approach to governance and that IAs are taken seriously, often more seriously than is the case in member states (again, see Radaelli and Meuwese 2010). However, it is too early to assess whether the large, European-based corporations involved in the coalition described in this article have been able to benefit from the regulatory reforms as they hoped.

Concluding Discussion

This article addresses an important gap in the current academic literature on the origins and evolution of Better Regulation in the EU by providing an account of business efforts to shape and promote these regulatory reforms. Although the article focuses on tobacco interests in particular, the similarities between the tobacco industry and other regulated sectors (Freudenberg and Galea 2008; Brownell and Warner 2009), including those industries working to limit regulation relating to climate change (see Oreskes and Conway 2012), mean that many of the article’s policy implications stretch well beyond tobacco.

From a policy perspective, our findings point to how policy entrepreneurs can amplify their influence over regulatory policy by skilfully exploiting multiple access points at a distance, obscuring the interests involved in promoting particular policy ideas. The ease with which the EPC Forum and the Fair Regulation Campaign both appear to have been able to involve political elites in corporate-led campaigns is consistent with the argument, made elsewhere, that commercial consultancy organizations have become increasingly institutionalized within the EU policy-making system (Lahusen 2002). Our findings therefore reinforce calls for the commission to maintain a mandatory register of interests (ALTER-EU, n.d.) and confirm the importance of ensuring that mechanisms aimed at making EU lobbying more transparent are coordinated across its institutions (Coen 2007) and extended to think tanks.

Of course, the promotion of an idea by a particular company and industry does not make it a “bad idea” per se. Nor is it necessarily the case that the apparent success of BAT’s campaign “is an indication of ‘power,’ in the sense of victory in a business-government conflict” (Woll 2007: 58): it may simply represent the “convergence of business and government objectives” (59) that Woll identifies as common to many European policy debates. Indeed, the economic orientation of the EU’s Lisbon agenda may eventually have led to an economically dominated form of IA being developed and incorporated into the EU policy-making process, even without the involvement of BAT and its allies. Despite this, two interviewees who worked at the commission (interviewed in 2008) attributed the origins of Better Regulation, and the commission’s policy interest in IA, directly to the EPC; Crossick (table 2) stated that the EPC’s interest in Better Regulation and IA had, in turn, originated from Chalfen of BAT (Crossick interview). While policy decisions rarely originate from one clear source, these interviews support our broader data in suggesting that BAT was highly influential in promoting this agenda in the EU. This does not lead us to conclude that Better Regulation is necessarily a negative development from a public health perspective, but rather that policy makers and those interested in promoting and protecting public health (which the EU has a legal requirement to

chairman of the European Risk Forum, BAT remains a member and has been joined by two other tobacco companies, Philip Morris and Swedish Match (Dirk Hudig, email to author, February 17, 2010). The other members of the European Risk Forum are all companies based in, or with strong links to, the chemical industry or are consultancy firms, such as the Weinberg Group.

¹¹ The European Parliament and the Council of the EU are also supposed to produce their own IAs for significant policy developments, although implementation has been far more problematic in these contexts.

do; see Hervey, McKee, and Gilmore 2010) should at least be aware of why BAT has been working to influence Better Regulation and what its managers hoped to achieve. When considering the policy interests and ambitions of a major tobacco corporation, it is important to stress (as outlined earlier) the considerable extent to which premature morbidity and mortality are caused by tobacco products in Europe (WHO 2012). This means that efforts by a tobacco company to avoid legislation likely to reduce tobacco consumption must necessarily be understood as efforts that, if successful, are likely to result in higher than necessary levels of morbidity and mortality (Mackenbach et al. 2013).

Indeed, four aspects of the way that IA has been implemented in the EU suggest that it may be offering at least some of the benefits to large companies that BAT hoped. First, Löfstedt (2004) claims that the “regulatory pendulum” swung away from the Precautionary Principle when integrated IA guidelines were officially introduced in the EU, shifting the burden of proof onto policy makers (i.e., policy makers were required to use IA to demonstrate that a regulated product causes enough harm to warrant intervention, as opposed to the onus being on business interests to prove their safety). Second, the way in which IA is functioning in the EU is inevitably shaped by the context in which it is being implemented; currently, that context is the Lisbon agenda, which is clearly economic in orientation, with a particular focus on business competitiveness (see Radaelli and Meuwese 2010). Third, the commission’s internal control body for IAs, the Impact Assessment Board, does not include any representative from the directorate general responsible for health. This is notable, given that Radaelli and Meuwese (2010) claim that the board was chosen to reflect the main categories of impacts perceived to be important by the commission. Finally, independent reviews of IAs produced by the commission have consistently found that economic impacts have received the most attention (Franz and Kirkpatrick 2007; Wilkinson et al. 2004), with environmental and social (particularly health) impacts receiving far less consideration (Franz and Kirkpatrick 2007; Salay and Lincoln 2008; Ståhl 2010). Elsewhere, we explain how tobacco and chemical companies have tried to use IA specifically, and Better Regulation generally, to prevent or weaken policy proposals affecting their respective interests (Smith et al. 2010).

From a theoretical perspective, the story presented in this article can be understood in terms of a struggle between competing civil society and corporate-led coalitions. The former believed in the need for greater EU regulations to guard against social and environmental harms (including to health), while the latter believed that regulation of economic operators at EU level should be as limited as possible to promote competitiveness and free market ideals. BAT’s concern with a perceived increase in EU regulatory activity, linked to the Precautionary Principle, seems to have been interpreted as an indication that the competing coalition was becoming powerful enough to threaten the commercial interests of regulated industries operating in the EU. This is not to say that the health-environmental coalition was necessarily achieving a level of policy influence significant enough to threaten the business-oriented coalition’s interests, for, as Sabatier and Jenkins-Smith (1999) point out, coalition actors tend to view their opponents as more threatening and powerful than they often are. Whatever the reality, BAT managers worked to build a political constituency around regulatory reform that they hoped would shift the balance of power back toward business and economic interests. These regulatory reforms included mandatory requirements for EU policy makers to undertake ex ante IA and risk assessment and to consult with stakeholders at an early stage, all of which appear to have been perceived as ways to ensure that the production of EU regulation would be slowed and that the business-oriented coalition would have greater opportunities to influence policy proposals likely to affect their interests. The requirement to “consult widely” also appears to have been a way to enhance the “significant resource dependency” between officials and commercial interests that Coen (2007: 334) has identified as common within EU lobbying but which has been increasingly limited in tobacco-related contexts (WHO 2003).

The findings reflect several of the ACF’s core features, including the staged approach taken to achieving policy change, the long period over which ideas about Better Regulation developed, the involvement of actors from a variety of institutions (including policy bodies) in coalitions, and the efforts to influence policy via multiple venues at multiple levels. However, the ACF says little about the role of individual corporate actors, third-party consultants, or resources in the management and mobilization of coalitions, all three of which appear to have played an important role in the case study presented in this article and all of which have previously been highlighted as important to EU-focused lobbying (see, e.g., Bouwen 2002; Coen 2007; Woll 2007).

In addition, like Compston and Madsen (2001) and Ku'bler (1998), our findings emphasize the importance of studying the characteristics of the ideas employed by advocacy coalitions to achieve policy change. The ACF is certainly useful in understanding the coalition-forming approach that BAT took to promoting regulatory reform, but it does little to illuminate BAT's decision to incorporate structured risk assessment (the company's main aim) within a package of broader regulatory reforms, which were then marketed in contrasting ways to different audiences. We therefore propose that the ACF might usefully be supplemented by ideational approaches to analyzing policy change (see Béland 2005; and Kisby, 2007). More specifically, our findings indicate that "chameleonic" ideas (Smith 2013a) can play a crucial role in long-term efforts to effect policy change. The malleability of chameleonic ideas can be used to attract actors with quite divergent interests to support what, by virtue of a shared terminology, appears to be the same idea, even though the various supportive actors may have rather different interpretations of what the idea entails. This is not merely because the ideas in question are an amalgamation of different interests but because they are deliberately imbued with mercurial qualities that allow different actors to interpret an idea according to their own interests and context. Better Regulation, as Radaelli (2007a: 8–9) puts it, "is a convenient language in which very different reform priorities can all sit together," allowing "programmes that increase the political power of the business community and initiatives that reduce the power of special interest groups" all to be interpreted as Better Regulation. This is revealing itself via the way in which policy commitments to improving regulation in the late 1990s have steadily given way to a renewed focus on deregulation and economic competitiveness (Radaelli 2007b; Baldwin 2006) and to a new tolerance of risk among policy makers (Dodds 2006). Effectively, this approach appears to have allowed the business coalition (led by BAT) to promote its preferred regulatory reforms without experiencing any significant opposition from the health-environmental coalition (the individuals we interviewed with public health and environmental interests reported being unaware of the Better Regulation agenda until it had been officially adopted in the EU). The flip side of this approach, from BAT's viewpoint, is the ongoing possibility that the meaning of Better Regulation will evolve in directions other than those envisaged by company managers.

The concept of chameleonic ideas (Smith 2013a) raises some difficult questions for the ACF, as one of the framework's foundations is a clear distinction between three different levels of belief (deep core, policy core, and secondary). Our analysis suggests that this rigid distinction overlooks the potential for policy ideas flexible enough to bridge different levels of belief. In the case of Better Regulation, while promotional material targeted at policy makers presented the reforms as technical and bureaucratic (i.e., relating to secondary-level beliefs), letters from BAT to other large corporations in regulated sectors sketched out a promise of far more fundamental reforms that would help determine the relative priority given to business interests vis-à-vis public health and environment interests within EU policy (i.e. policy core beliefs).

It could be argued that aspects of our findings relate to the fact that the advocacy coalition we describe was in what Sabatier and Jenkins-Smith (1999) call a "nascent" (formative) stage, when "almost everyone" supports a new concept because it sounds innately appealing but remains poorly defined. However, our data suggest that while Better Regulation was a new concept, the regulatory reforms that it encompassed were intended to shift the balance of power in relation to an existing policy subsystem (in which two identifiable coalitions already existed). Furthermore, Better Regulation appears to have been vaguely defined not by circumstance but for very deliberate and strategic reasons. Nevertheless, as Better Regulation in the EU becomes more clearly defined and understood, and as information emerges about the associated costs and benefits of its implementation for different groups, we would expect actors to coalesce into more numerous and distinct coalitions, as Sabatier and Jenkins-Smith (1999) describe, consequently clarifying some of the underlying conflicts involved and creating (or re-creating) the kind of mature policy subsystem that ACF theorists usually focus on. Indeed, more recent events and reports sponsored by public health civil society groups suggest this maturation is presently occurring for Better Regulation and IA in the EU (see, e.g., Smokefree Partnership 2010a, 2010b; and ASH 2010). We therefore believe that the concept of chameleonic ideas represents an important explanatory device that complements the account of policy change developed in the ACF.

While further research is required to explore the origins, evolution, and consequences of Better Regulation in the EU, the findings presented in this article confirm Coen and Richardson's (2009)

observation that European pressure politics are often obscured. The corporate interests involved in the campaign described in this article were rarely perceived by interviewees to have been involved in shaping or promoting Better Regulation, and although the EPC was positioned as a driving force behind this agenda by many of our interviewees (including an ex-health commissioner), almost no one reported observing any links between the EPC and tobacco interests. This suggests that, for the EU's Transparency Register to be effective in helping address the EU's "democratic deficit," it needs to be both mandatory and more closely monitored than is currently the case (Greenwood and Dreger 2013), particularly with regard to organizations such as "consultants" and "think tanks," which may be acting on behalf of other interests. In addition, the fact that BAT managers believed a form of IA modeled on CBA would work to slow down public health legislation in the EU and its member states suggests far more attention needs to be given to exploring how tools such as this, which are ostensibly about increasing the use of evidence within decision making, operate in practice. At the very least, from a public health perspective, it seems crucial to ensure that health policy interests are better represented on the Impact Assessment Board, the official forum for monitoring the European IA process.

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