

After the Smoke Clears

An Assessment of the Instruments Available to the Tobacco

Industry

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Abstract:

In the past forty years, the situation for smokers has totally changed. The lobby by Transnational Advocacy Networks (TAN) against the tobacco industry seems to be successful and much legislation against smoking in public has been implemented. The tobacco industry is however a mighty actor with access to large amounts of funding. It is unlikely that an actor of this calibre would sit by and do nothing while its core business is being threatened. This paper tries to assess how the situation regarding smoking has changed over the years and through the norm life cycle theory by Finnemore and Sikkink. This paper will then go further and tries to discover with each increase in regulation on tobacco, what counter move was launched by the tobacco industry.

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1.Intro

Smoking was an integral part of our lives twenty years ago. Smokers were facilitated no matter where they went. Smokers had their own section in restaurants, planes and other public transport. Smokers could easily smoke and participate in public life at the same time and there was no limitation of time when one could smoke. This has changed in the past twenty years. The norm went from facilitation to isolation. Nowadays if a smoker wants to take care of his nicotine needs, he is expected to cease whatever he was doing and then withdraw to a designated place before he could relieve his nicotine needs. The smoker cannot however withdraw at any desired moment; effectively forcing smokers to just smoke at appropriate timeslots. The situation on smoking seems to have changed with the implementation of a series of laws that banned smoking.

These laws however did not magically appear out of nowhere. A research on these organizations and their successes would then give us insight on how the situation on smoking has changed over the years.

For the past decades, there were organizations keen on banning smoking and actively lobbying. Much legislation against smoking has also been implemented over the years. What did these legislation entail and what were the tobacco industries doing all this time when this happened? It is hard to imagine that multinationals with multiple billions of dollars would sit quietly while there are organizations directly threatening their business.

This thesis tries to answer these two questions.

2. Research Questions, Methods and Objects

This thesis tries to answer a two-part question: what major breakthroughs against tobacco has been realized in the past 40 years and what did the tobacco industry do to stop or to counter these changes? In order to be able to answer these two questions in a scientific and scholarly fashion, we have reformulated the first questions as following:

1) What major regulations have been implemented against smoking since 1970?

When answering this question, this thesis hopes to provide more than a chronological summary. A theoretical framework of the norm lifecycle theory by Finnemore and Sikkink will be used. This theory describes how an NGO develops around a single issue, how these organizations persuade states into adopting legislation to promote their issue and how the public internalize these legislations into norms of their own. The obvious (sub) questions would then be, how do we define a norm and to what extent is this theory viable for the anti-tobacco lobby?

When we manage to put the increase of the anti-smoke into chart, we can then try to assess the response from the tobacco industry and their instruments. The second research question would then be:

2) What instruments does the tobacco industry have (on local and global level) to counter these regulations and legislation?

This is where the largest gap is in the existing theories. In most of the theories regarding Transnational Advocacy Networks, multinational corporations are not included even though their actions have a huge impact on the successes of TANs. Where the instruments of TAN in affecting policy are widely researched, the

instruments of large multinationals such as the tobacco industry remains relatively unknown.

After we have determined the research (sub) questions, it is important to decide on the scope of the research. The norm life cycle is normally a theory used to analyze International organizations. An international organization that is active against tobacco is the European Union (EU) and therefore a logical choice for this thesis. The theory however has no criteria regarding choice of the research object. There is also no objection to using the theory on national organizations. For the anti-tobacco on national level, we have decided to focus on the largest anti-tobacco organization in the Netherlands, the *Stivoro*. In order to match the sphere of influence of the tobacco industry (JTI, PMI and BAT are mostly active in the United States and Europe), this thesis will also focus on *Action on Smoking and Health* (ASH) in the United States. ASH is the largest anti-tobacco organization in the United States. The data will mostly come from literature research from publications, the websites of the organizations and some questions were asked directly to the organizations' representatives or PR department.

The response capacity by tobacco companies on the international level has mostly been researched through a study of literature. A large part of the found literature is also found on the websites of the companies. The tobacco industries are prohibited from advertising through both digital and printed media¹. Any publicity by tobacco companies, whether it is on their products or their policies, could be considered advertisement and therefore prohibited, although the websites of the

¹http://europa.eu/legislation_summaries/public_health/health_determinants_lifestyle/c11571_nl.htm
http://europa.eu/legislation_summaries/public_health/health_determinants_lifestyle/c11571_nl.htm

companies themselves seems to be exempted from this ban. Other data for actions by tobacco companies on international level comes from news articles. In this thesis we have chosen to focus on the three biggest tobacco companies in the world. Japanese Tobacco International (JTI), British American Tobacco (BAT) and Phillip Morris International (PMI). For data regarding instruments the tobacco industry has on local level, a series of interviews with ‘employees’ of these companies has been conducted at Schiphol Airport.

As part of the data, this thesis will use interviews with employees of tobacco companies. The instruments of tobacco industry on local level is very important in their arsenal of tools against the anti-tobacco lobby and the best source for finding out what these instruments entail, would be the employees who have to implement them directly. There are however a few problems. There is no literature available whatsoever on this subject and the tobacco companies do not make their actions on local level public. This source of information is as close as we can get, but there is no academic backing or any theoretic framework available to systematically study these interviews.

The representativeness of the case of Schiphol was a point that could prove to be a problem; this was however solved with the encounter of a manager of JTI, who is responsible for the uniformity of all the airports in Europe. He and a group of other managers from the other two tobacco companies have been travelling throughout Europe and visiting different airports to ensure that everything is done according to their model. All information on the respondents has been saved. If any future researchers wish to come into contact with these respondents, they can request their cooperation through me. Contact information will be provided at the end of this thesis. Despite the efforts we are well aware of the small amount of respondents and

the lack of a methodologically sound interview structure. Considering these factors, it would be scientifically irresponsible to treat the interviews more than a few illustrative examples. Nonetheless, it is very interesting to see how international legislation gets bypassed with very simple local strategies.

The interviews aside, this thesis is also aware that Schiphol is not an obvious choice for research and it requires some explanation. For most locations that sell tobacco, the tobacco companies would deliver their cigarettes to stores through large distributors. The tobacco companies do not (directly or indirectly) have staff in those stores that interact with the customer, nor do they meddle in how these stores run their operations. At the airport, it is a different situation, the tobacco company have a direct say (all to a certain extent of course) in how the cigarettes are displayed and they have staff in the stores that interact with the customer. This is the same for all the major airports throughout Europe.

Actually the whole idea of selling tobacco at the airport is a circumvention of policy regarding tobacco, as airports are one of the few places where the public can purchase tobacco tax-free.

3.Theoretic Framework: The Norm Life Cycle

The definition of a norm that fits the general consensus, defines it as a standard of appropriate behaviour for actors with a given identity (Finnemore & Sikkink: 1998, p. 891). In International Politics this is mostly concern states or non-governmental actors. This issue of smoking has been the *raison d'être* of mobilization for various Anti-tobacco NGOs. These NGOs carry the norm of smoking being something bad and inappropriate and therefore it has to be stopped. In order to do so, these NGOs try to persuade states in adopting legislation that promotes the same notion as held by these NGOs.

The Norm Life Cycle (NLC) by Finnemore and Sikkink is a theory that studies this phenomenon of how NGOs emerge on certain issues and how they persuade states and affect policy in order to promote and protect the norm that they hold dear. This model is widely used and it seems appropriate for studying the tobacco lobby. Even though it is called a cycle by Finnemore and Sikkink, the NLC is a three-stage process as shown in figure 1.

Figure 1. Norm Life Cycle (Based on Finnemore & Sikkink: 1998, p.896)

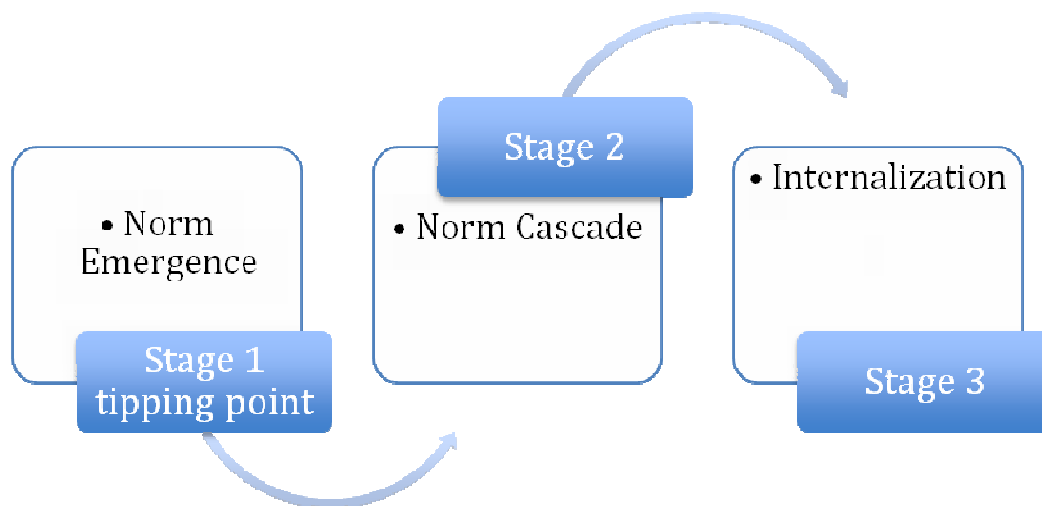


Figure 1. Norm Life Cycle (based on Finnemore & Sikkink: 1998, p.896)

Stage 1: Norm emergence.

Contrary to the title of the stage, a norm does not simply emerge and if a norm does emerge, then there are two important key factors to the creation of a norm; those are *norm entrepreneurs* and *organizational platforms* (Finnemore & Sikkink: 1998, p.896-897).

Norms are formed through agents who have strong feelings about appropriate or desirable behaviour in our community actively promotes them. These agents are what Finnemore and Sikkink calls *Norm Entrepreneurs*. A norm entrepreneur can be a person, a group of people, an organization or a state that attempts to convince a critical mass of states to adopt new norms (Finnemore Sikkink: 1998, p.895-899). By using discourse that names, interprets and dramatizes the issue at hand, the norm entrepreneur creates a certain 'frame' that calls attention to that same issue. This new frame resonates with the public and affects how people perceive and discuss the issue. With this new frame the entrepreneur strongly embeds alternative norms and creates new perspectives on both appropriateness as well as interest (Finnemore Sikkink: 1998, p.895-899). This is harder than it sounds, as the newly endorsed norm does not enter a vacuum. It has to compete with the already existing norm or even multiple norms that are dominant in the normative space. Let us use women suffrage as a clarifying example. In contemporary times, it is perceived to be normal for women to have the same rights as men, whether it is politically, economically or legally. Before this was the norm, people thought it was inappropriate for women to have careers or right to vote. Women were considered emotional beings incapable of reason or logic and therefore unfit for functions in public life. When the norm of universal women suffrage entered the normative space, it had to compete with this women unfriendly norm. Followers of old norms have to be persuaded of the new competing norms.

Norms that fail to persuade the public or norm leaders, also fail in finishing the norm cycle.

The second essential element is the *Organizational Platform*. All norm entrepreneurs at the International level need some kind of organizational platform through which they can promote their ideas (Finnemore & Sikkink: 1998, p. 899). Sometimes such platforms already exist and are specifically constructed for the purpose of promoting norms anyway. Examples of these platforms could be Amnesty International or Greenpeace along with the corresponding advocacy networks that they are part of. More often an entrepreneur could make use of a platform that has purposes and agenda's, which transcends a single issue (Finnemore & Sikkink: 1998, p. 899). The United Nations, European Union or the World Bank are good examples of such platforms.

Whatever platform the entrepreneur chooses, the support of states is pivotal for the success of the entrepreneur. The organizational platform helps the entrepreneur to persuade states in terms of leverage. With their resources they have leverage over weak developing states. Such states are forced to adopt new norms in order to have access to resources or ascension to membership of the organization (Finnemore & Sikkink: 1998, p. 899). Platforms are especially handy when dealing with weaker states, stronger states are however more resilient to such pressure and harder to persuade. The United States in the case of acknowledging the Kyoto Protocol is a good example of a stronger state not giving in to pressure from other states. For a norm to reach a tipping point and enter stage 2, it must become institutionalized in certain sets of international rules and organizations (Finnemore & Sikkink: 1998, Katzenstein: 1996, Goldstein & Keohane 1993). These

institutionalized sets of international rules are the successes of the Anti-tobacco lobby, which the tobacco industry has to react to.

The theory of Finnemore and Sikkink is unable to explain the reason, timing or location the tipping point is reached, but they do offer two tentative hypotheses of what constitutes a 'critical mass' and when and where to expect the norm tipping (Finnemore & Sikkink: 1998, p.901).

According to empirical studies, the tipping point of a norm often happens after one-third of the total states adopt the norm (ibid). So that is the first moment. Another point is that it matters which states adopt the norm. Some states are more important because they have a certain moral stature, while other states are deemed more important because of the issue and their involvement. Finnemore & Sikkink use the example of the ban on mines in wartime. It is logical to think that the impact of the state varies on this issue depending if it is a mine producing state or not.

Stage 2: Norm Cascade

So far, in order to get up to the tipping point, major domestic movements by norm entrepreneurs through organizational platforms are needed to support the change. After the tipping point, a different dynamic will take place. Through a 'contagion' effect, other states will start to follow and adopt the new norm. A process of international socialization is the primary mechanism behind the norm cascade (Finnemore & Sikkink: 1998, p. 902). This 'contagion' effect is similar to peer pressure and states are pressured by organizations and other states to adhere to the new norm. There are according to Finnemore and Sikkink three different motivations for states to adhere to this peer pressure: legitimating, conformity and esteem. This thesis however will not go deeper into the motivations a state could have for adhering

to pressure or implementing policies. For the moment it is important to keep in mind that the organizations need to convince the state government of the just of their cause and when the state is persuaded a contagion effect driven by the desire for legitimacy, conformity and self-esteem help spread the norm to other states.

There are however a few problems with this point. First, states are unlikely admit that they are submitting to pressure by organizations or other states. Second, it is therefore hard to determine the role of NGOs in the adoption of legislation. For example, The Dutch government implements a set of regulations regarding smoking they could say it is for the benefit of its citizens and it will remain unclear what the role was of the NGOs against tobacco or whether other states had exercised any pressure on the Netherlands in adopting the norm. We can only assume the NGOs had played a part in the adoption of the legislation.

Stage 3: Internalization

At the end of the cascade a norm is widely implemented and adopted to a degree that actors internalize them. They achieve a “taken-for-granted” status and actors adhere to the norm almost automatically (Finnemore & Sikkink: 1998, p. 902). It is in this theory however unclear how we measure this status or how to confirm the achievement of this status. By the time this status has reached, the debate will then be over and the tobacco industry will be too late to do anything about it anymore.

With the Norm Life Cycle explained the next chapter analyses the anti-smoke lobby in the Netherlands, the United States and the European Union through this cycle. The development of the anti-tobacco lobby in these three cases will be reviewed on the following points.

Stage 1:

- Who or what was the norm entrepreneur?
- What norm do they claim to champion?
- What was the organizational platform that they used?

Stage 2:

- The norm that the entrepreneurs promoted, which have been institutionalized in legislation or regulations?
- Has there been a 'contagion' effect?

Stage 3:

- Has the norm been internalized and achieved a 'taken-for-granted' status?

4.The Anti-Smoke Lobby through the Norm Life Cycle

The Dutch Case

In the Netherlands, the most prominent NGO against smoking is Stivoro. According to their site, the organization was founded 1974 in The Hague by the initiative of three other organizations²: the Astma fonds (Asthma fund), Nederlandse Hartstichting (Dutch Heart Foundation) and KWF Kankerbestrijding (The Dutch Cancer Society). Their initial mission is to raise awareness on the dangers of smoking, provide information, aiding people who want to quit smoking and to work together with foreign partner organizations³. In the past thirty years, they have actively pursued their goals, had campaigns to discourage the public from smoking and it has

² http://www.stivoro.nl/Over_STIVORO/De_organisatie/index.aspx

³ http://www.stivoro.nl/Over_STIVORO/De_organisatie/Missie___doelstellingen/Index.aspx

developed into the centre of expertise on tobacco prevention in the Netherlands. Stivoro however has mostly been a national initiative. Their site only mentions partners that also operates on national level and after an inquiry by phone, a spokeswoman of the secretariat of Stivoro has stated:

[...]“We (the Stivoro) do not have any official affiliations with any foreign anti-tobacco organizations, we do however lobby at European level by ourselves and frequently attend anti-tobacco congresses.” [...]

So the tobacco issue in the Netherlands became an issue when three existing advocacy networks with overlapping interest cooperated and their cooperation later became institutionalized in Stivoro. Scholars such as Carpenter, argue that because of competition by existing organizations or the lack of coordination between organizations with overlapping interests, some issues do not get adopted and nothing gets done (Carpenter: 2007, p.115-116). It is interesting to see how the Dutch case bypassed this pitfall. The three advocacy networks could also act as an organizational platform for Stivoro. Created from coordination between three major existing organizations and their advocacy networks and immediately having access to their expertise and resources, there were few obstacles for the first success of this new organization.

The first success of the anti-smoke lobby in the Netherlands would be the implementation of the tobacco law⁴. This law was developed in the 80's but was later on implemented in the 1990. The purpose of the law is to protect the well being of non-smokers and to actively limit the usage of tobacco among smokers. The law was later on expanded with the ban on advertisement and sponsorship in 2002, a ban on advertisement in papers and magazine in 2003, a ban on sales to minors and the ban

⁴ http://wetten.overheid.nl/BWBR0004302/geldigheidsdatum_12-05-2012

on smoking in public area (such as government buildings and private owned cafes) and public transportation⁵. With the implementation of a lot of drastic regulation and legislation, it is safe to assume that the tipping point has been reached for the Netherlands. The norm however is still up for debate and stage three is still far away. In 2011 a small group of small café owners have successfully overturned the general ban in cafes and small cafes are since 6th July 2011 exempted.⁶

In sum, the norm entrepreneurs in the Dutch case were initially the three organizations. Their shared notion against smoking was later on unified in Stivoro and Stivoro took over as the norm entrepreneur on smoking, using the founding organizations as organizational platform, Stivoro had successfully persuaded the Dutch government to take up their norm and issue regulations and legislation against smoking. Or at least the Stivor gives us the impression they had a part in it, by listing the implementation of the regulation on their site. The contagion effect seems to be minimal, as Stivoro is primarily a national initiative and has no official foreign connection nor do they have any international goals. They do however lobby on their own initiative in the European Union, but only to achieve goals on national level. Their EU lobby will be further discussed in the EU case later on. Even though the cycle in the Netherlands has reached stage two, it is certain that the norm has yet to reach a 'taken-for-granted' status and so the norm cycle is not finished yet.

The American Case

As for the United States, the two most important organizations against tobacco are the U.S. Food and Drug Administration (FDA), which is a governmental

⁵http://www.stivoro.nl/Voor_volwassenen/Rookbeleid___Tabakswet/Wetgeving/Tabakswet/Geschiedenis_van_de_Tabakswet/Default.aspx

⁶http://www.stivoro.nl/Voor_volwassenen/Rookbeleid___Tabakswet/Wetgeving/Tabakswet/Geschiedenis_van_de_Tabakswet/Default.aspx
& <http://www.rijksoverheid.nl/onderwerpen/roken>

organization and Action on Smoking and Health (ASH), which is a NGO. The FDA is a federal governmental organization responsible for various issues regarding public health and safety and only became relevant quite recently. In 1995 they tried to exert control over the Tobacco industry, by declaring that nicotine was a drug. The Clinton administration approved of this proposal, de facto giving the agency power to regulate cigarettes as cigarettes are now considered a 'drug delivery device'.⁷ This was however overruled in 2000 when the US Supreme court ruled that the FDA could only exert power over tobacco products when the congress grants them the power to do so⁸. The FDA only came into play in the Arena of tobacco in 2009 with the signing of the *Family Smoking Prevention and Tobacco Control Act* by Obama in 2009⁹.

ASH on the other hand has been involved with the anti-tobacco lobby since 1964. The norm they are set out to champion is clear and simple, their vision: "To end the worldwide disease, damage and deaths caused by tobacco." Their mission: "to be a prime mover in domestic and global tobacco control through advocacy, communication, the force of law and our essential partnership with the Framework Convention Alliance for Tobacco Control."¹⁰ Just like Stivoro, ASH is primarily active on national level. Their national focus is confirmed on their site. There is also another anti-tobacco organization called ASH in the UK, one might expect that they are affiliated, but the UK organization was founded by another party and is only active in the United Kingdom¹¹. On their site there is not even a link or a mention of a possible partnership with their American namesake. From this we could conclude that the anti-tobacco organizations in the Netherlands and United States are organizations

⁷ <http://www.stateoftobaccocontrol.org/our-fight/tobacco-timeline.html>

⁸ <http://www.tobacco.org/Documents/000320whiteleyjuryform.html>

⁹ <http://www.stateoftobaccocontrol.org/our-fight/tobacco-timeline.html>

¹⁰ <http://ash.org/mission.html>

¹¹ <http://www.ash.org.uk/current-policy-issues>

bound by territory. After the founding in 1964, ASH has successfully persuaded the government to ban tobacco advertisement on television and radio in 1969.¹² The ban on advertisement was necessary because it glorified smoking and influenced the attitude of non-smoking adolescents, making them more likely to try smoking (Lovato, 2003). The ban on sales to minor was a logical next step in order to stop smoking from 'spreading'. After the ban on advertisement on television and radio, a long time has passed before the ban on advertisement in magazine and newspaper.¹³ Despite the loss of the FDA as partner, ASH did succeed in convincing the American government in passing more legislation and regulations regarding tobacco. With the institutionalization of major bans, such as the ban on smoking on public transport, work place and other public places, the American case has been working its way up to a tipping point¹⁴. In 2009, with the signing by Obama, the tipping point has seemingly been reached. There are also already signs visible of a contagion effect. In 2004, the US signed the Framework Convention on Tobacco Control Treaty (FCTCT), which is the world's first tobacco control treaty, but this treaty still has to be ratified by the US Senate. Just like the Dutch case, the US is well into stage two of the norm cycle, but stage three is still be far off. The just mentioned successes and institutionalized successes are all very recent. The FCTCT still has to be ratified and the act just signed by Obama could still be overruled if he losses the re-election or it could be contested again legally like in 2000. Even if such practical obstacles were absent, it is unlikely for the adopted norm to reach a 'taken-for-granted' status in such a short time.

¹²http://www.cdc.gov/tobacco/data_statistics/by_topic/policy/legislation/index.htm

¹³ http://www.cdc.gov/tobacco/data_statistics/by_topic/policy/legislation/index.htm

¹⁴ http://www.cdc.gov/tobacco/data_statistics/by_topic/policy/legislation/index.htm

The European Case

When we review the anti-tobacco lobby on European level, it is noticeable that even though a lot of the member states have already adopted legislation and regulation on tobacco. It is also remarkable that the European Union itself is an active organization lobbying against the tobacco industry. For example the European Commission itself purposed a ban on sponsorship and advertisement by tobacco companies in the 90's (Bitton 2002: 20-24). In an ideal situation (at least for the theory of Finnemore and Sikkink in this thesis), Netherlands and other European states would have adopted the norm against tobacco sponsorship and advertisement themselves due to domestic forces. In their turn they would become norm entrepreneurs themselves and through the EU as an organizational platform they would have encouraged other states to adopt the same norms. These states would then become norm followers for the sake of legitimacy, conformity and esteem or more practical reasons as ascension to the EU. If the norm becomes internalized, then the cycle would end and that would be a perfect application of the norm life cycle.

In reality, the situation did not develop as smoothly as the anti-tobacco lobby hoped. The Netherlands, even though they have domestically adopted the norm on smoking and along with it a lot of legislation, has yet to become a norm entrepreneur. During the proposal of the European Commission to ban tobacco advertisement and sponsorship, it was still legal for tobacco companies to sponsor and advertise in the Netherlands. In order for that proposal to pass a majority of votes was needed in the European Parliament. The tobacco companies pressured some member states, threatening that such a ban would result in unemployment and loss of income¹⁵. The Netherlands, Germany and the United Kingdom buckled under the threat and

¹⁵ <http://legacy.library.ucsf.edu/tid/wgd55c00>

withdrew their support for this ban on advertisement in the 90's¹⁶. The ban eventually got implemented in the Netherlands in 2002 and the EU followed in 2003¹⁷. Even though there are guide lines and agreements on tobacco control¹⁸, the regulation and the legislation on tobacco is however not part of the *Acquis Communautaire* and enforcement and implementation of tobacco control was left to the responsibility of the member states (Bitton 2002: 20-24). So it seems that the tipping point has been reached and stage two has been reached, there is however a lack of 'peer pressure' to put the cascade effect in practice. Despite the realization of common EU regulation, it is hard to claim that the Netherlands has taken the role of norm entrepreneur as the Netherlands have been even nominated for the 'Marlboro Man Award' of 2012¹⁹. The Dutch government had stopped subsidizing initiatives to help people stop smoking. This award was presented by the NATT (Network for Accountability of Tobacco Transnationals, which is an organization consisting of over 100 organizations in 50 different countries). With this award the NATT tries to appeal to the Dutch governments, hoping they would take their duty to protect its citizens' health against the tobacco companies more seriously and continue their support to anti-tobacco initiatives.

In short, so far the major anti-tobacco organizations in the Netherlands and United States primarily operate on national level and they have no official affiliations with organizations abroad. There are still conventions or congresses on this issue that they attend, but there is a lack of official international coordination. The only sign of

¹⁶ <http://legacy.library.ucsf.edu/tid/wgd55c00>

¹⁷ http://europa.eu/legislation_summaries/public_health/health_determinants_lifestyle/c11571_nl.htm

¹⁸ http://ec.europa.eu/health/archive/ph_determinants/life_style/tobacco/documents/com_20080520_en.pdf

¹⁹ http://www.hartstichting.nl/actueel/nieuwsoverzicht/nederland_genomineerd_voor_marlboro_man_award/

international cooperation against tobacco is in the European Union. Member states that have already taken on the norm are expected to in turn be norm entrepreneurs, using the EU as leverage to persuade other countries to also take on the norm. The Netherlands is one of those persuaded states, but it does not mean it automatically becomes a norm entrepreneur. Even though international legislation was created, the EU in enforcing this norm adopts a very lenient and soft attitude. With the lack of a peer pressure and socialization mechanism, the cascade effect of the norm cycle will be absent, de facto stopping the norm life cycle.

Due to the lack of coordination between the lobbies, a huge gap in time is present between the successes of the Both ASH, Stivoro and the EU. To continue on the example of advertisement, the ban on television and radio was already issued in 1971, but the ban in magazines and newspapers had to wait over thirty years and was issued in 2003. The Netherlands followed suit in the same year, but the ban for EU level was purposed in the 90's but only realized a decade later. This diffuse character frustrates the use of the norm cycle as a theory for analysis. In stage one in the norm emergence the theory still applies, but after that the emergence the national initiatives just went their own way. Convinced states are expected to become norm entrepreneurs themselves and try to persuade other states to follow suit, using the EU as leverage. There is however no mechanism to guarantee that the convinced state will in turn become a norm entrepreneur. Even if a state does become an entrepreneur and promotes the norm in the EU, the states are still responsible for their own implementation. It is not a given that a cascade effect will automatically kick in, propelling the cycle into stage three. So far, the bad fit of the NLC on the tobacco case could be due to flaws in the theory, or it could be caused by an unfortunate

selection of the cases or both. Either way, this leaves us enough ground to cover in future research.

Despite the diffuse case, the lobby has produced impressive results and similar legislation has been issued in the Dutch, EU and American case. We could summarize the successes in the following list:

1. Banning on advertisement
2. Ban on sales to minors
3. Banning on the use of terms as 'light', 'mild' and 'low tar' to make cigarettes sound less harmful
4. The mandatory health warnings on packages
5. Ban on smoking on the work place
6. Ban on smoking in public transport and public places

All three cases have institutionalized six points in legislation and regulations.

5. Instruments of Tobacco Industry

In the previous chapter we have reviewed the increase legislation debit to the anti-tobacco lobby in general and it has resulted in an impressive list. The tobacco industry reacted to some of these legislation and some were either ignored by the tobacco industry or they reacted without anybody knowing. The ban on public transport and public places and the ban on smoking at work are such examples, we do not know how or if tobacco industry reacted. This could be a point for further research. The remaining successes of the anti-tobacco lobby did force the tobacco industries to utilize some instruments as counter measure. Measures could be either on

international level or on local level and in some cases the tobacco company would take action on both levels.

First, the banning on advertisement, before the ban on advertisement, the tobacco industry had extensive campaigns to promote their brands, ranging from television adverts to large outdoor posters. The tobacco industry also sponsored major events worldwide.

Before the banning on advertisement and sponsoring in 2002, the budget of the tobacco industry for advertisement was massive. As an indication, the entire tobacco industry had a combined promotional budget of \$3.91 billion US dollars in 2000²⁰.

Even though advertisement is now banned, the budgets should still exist and one would assume the companies would find a way to bypass this ban on advertisement.

The counter measure that the tobacco company utilized was *Brand Stretching*, Brand stretching is expending your brand through other products. Clothing is a clear example used by the tobacco companies. Every major flagship brand of the tobacco company has a clothing line carrying the same name, Camel Active²¹, Marlboro Classic²² and Pall Mall Jeans²³. This is actually a normal business strategy to diversify business and to spread out risk. Through advertisement that are not cigarette related, but nonetheless carry the same name, they hope to bypass the ban on tobacco advertisement. This strategy, although costly at first, proved to be rather successful.

Marlboro classic is the second-largest mail order brand in the USA with over thousands of stores throughout Europe and Asia²⁴. Marlboro Classic has turned into an advertisement campaign for the cigarettes that earns them money on itself. In a

²⁰ <http://no-smoking.org/may02/05-29-02-1.html>

²¹ <http://www.camelactive.de/>

²² <http://www.marlboroclassics.be/>

²³ <http://www.pme-legend.com/>

²⁴ http://www.ash.org.uk/files/documents/ASH_176.pdf

study in Norway, where cinemagoers were presented a screening of an ad for Marlboro Clothing before the movie and 50% of the visitors thought they had seen a commercial on cigarettes²⁵. This is clearly a demonstration of an effective counter measure instrument by the tobacco company.

In the ban on advertisement, there is one major exception. The brands are allowed to advertise on places where the sale is also allowed²⁶. For example, if a store is authorized to sell cigarettes, Marlboro is allowed to put a display in that shop with their cigarettes and hang a big poster of Marlboro above it. This exception allowed the companies to intensify their in-store advertisement strategies and even place staff inside the stores. As mentioned earlier, the Airport is one of the few places that have (direct or indirect) employees of the tobacco companies. Direct employees are often supervisors or management level and indirect employees are the category advisors in the shops. Due to the law on tobacco advertisement, they have to be careful with promoting particular brand of cigarette. The visiting customer often has a brand that he smokes regularly. The category advisor will offer help even if it is on a brand from the competition. If the brand he usually smokes is out of stock or not available, then the customer will be advised what other brands of cigarettes have roughly the same taste and quality. Of course, if the advisor works for JTI, then he will try to promote Camel or Sobranie. Phillip Morris will push a customer towards Marlboro and so on.

The in-store competition with other brands continues at Schiphol with the displays and the airport earns a lot of money from it. At the Airport the tobacco company pay for the displays, the more they pay the larger the display they are allowed to put up. The larger the display, the more attention they will draw. The same

²⁵ http://www.ash.org.uk/files/documents/ASH_176.pdf

²⁶ http://europa.eu/legislation_summaries/public_health/health_determinants_lifestyle/c11571_nl.htm

applies for the location of the displays. Eyesight level and amount of people passing are two other factors that can drive up the price that the companies have to pay for their display. Low places and less crowded areas are of course cheaper. So with the ban on advertisement on television, radio, newspaper and magazines, the competition between the tobacco companies responded by moving the competition into to the stores. This change did not go un-noticed by the anti-tobacco organizations²⁷.

Second, the ban on the term 'light' has forced companies to rethink their tactics. In the past the companies tried to promote the idea of a healthier cigarette by using terms like 'light' or 'mild'. According to Respondent XS at Schiphol Airport, the tobacco companies have taken many measures in their stores and their selection to affect the public influence. Camel has an *Essentials* series that promotes the image of being an additive free natural product, thus healthier. Another strategy to promote a more 'healthy' cigarette was adopted by Kent, with the creation of a new and better filter. The filter with new nanotechnology would supposedly filter out more of the harmful substances, producing a cleaner smoke with the same enjoyment. The final strategy of promoting a healthier cigarette shared by Ladiesman 69 is the *Super light cigarettes*. These cigarettes, as shown in picture 1 contains but a fraction of the tar and harmful substances. So instead of using the term 'light' or 'mild' they just use the mandatory health warning to promote a healthier cigarette.

²⁷ <http://no-smoking.org/may02/05-29-02-3.html>

Picture 1. Super lights



Another way to improve its image is by promoting the image of a socially responsible cigarette. For example, the tobacco that BAT uses is mostly from environmentally friendly farms run on renewable energy. All to make sure that the production of the tobacco does not hurt the environment. Besides sustainability, a lot of attention is given to human rights. Farmers are getting better prices for their crops,

no child labour is used during the production of the cigarettes and BAT makes sure their suppliers of tobacco also treats their workers well²⁸.

The third legislation was the ban on sales and advertisement of cigarettes targeted on minors. To limit the effect of this ban and to also improve the image of the tobacco industry, the tobacco companies got involved in youth related projects or started giving out scholarships. For example BAT has given scholarships at the University of Nottingham and funded the programme there on corporate responsibility (Smith: 2001). This strategy has two functions, first is to improve the image of a social responsible company, and second is to promote the image of a company that is concerned with the youth. If giving out scholarships is too passive, then the company could try to directly influence the school curriculum like PMI. In the United States, Phillip Morris has been promoting *Life Skills Training* courses at high schools, in order to prevent youth from smoking. Mandel et al have studied these efforts by Phillip Morris. Their conclusion was that Phillip Morris was trying to shift the existing paradigm. In the existing paradigm the problem of youth smoking would eventually lead to a demonizing and blaming of the tobacco industry. By helping and promoting the programme, the tobacco industry would shift the attention from their role as a cause of the problem to a possible partner that can help deal with the problem (Mandel,2006, p.869). With the same train of thought, the companies also offer help people to stop smoking on their sites²⁹ and even help support the organizations that are considered part of the anti-tobacco lobby like the FDA

²⁸http://www.bat.com/group/sites/uk_3mnfen.nsf/vwPagesWebLive/DO52AD7G?opendocument&SKN=1

²⁹http://www.bat.com/group/sites/uk_3mnfen.nsf/vwPagesWebLive/DO52AMFD?opendocument&SKN=1 (BAT)
http://www.pmi.com/eng/tobacco_regulation/regulating_tobacco/pages/harm_reduction.aspx (PMI)

(McDaniel & Malone: 2005. In the end, the idea behind these actions, a better image of the tobacco companies would create less resistance to smoking.

Not all reactions by the tobacco companies are elaborate, original or as ingenious we have seen so far. For example, the cigarettes all must bear a health warning and information on the harmful substances in the cigarettes. The strategy for countering the health warnings happens on two levels. On International level, the tobacco company has started a lawsuit against the bigger health warnings that takes over half of the facing of a pack of cigarettes. Litigation and legal action are classical instruments that the tobacco industry has. The tobacco industries have a lot of experience in the courts. BAT alone by the end of 2001 has faced 4419 lawsuits in the United States alone³⁰. The overruling of the FDA in 2000 mentioned earlier in this thesis is also a success due to litigation of the tobacco industries.

On local level the tobacco industry uses a simple strategy to counter the health warnings. At the airport, staff members have a very strict rules on 'mirroring' (lining the products up to the front of the shelves, in order to make the shelves look neatly and fully stacked) . The side with the smallest health warning should face the customer. The tobacco companies prints the health warnings on the packages, so it is easy to have all the small health warnings on the pretty side of the package. This is a perfect example of how an international regulation such as the health warnings on the package is countered on local level.

The information on the packages of the harmful substances in tobacco is also explained differently in the stores. The information is set out to warn the public on the harmful substance, but employees like respondent C uses it as an indicator for taste.

³⁰<http://whqlibdoc.who.int/publications/2002/9241562099.pdf>

Often customers walk into the store with a pack of obscure cigarettes, asking the category advisors if they sell the same kind of cigarettes. If the store does not carry the same brand of cigarette, the customer then often would ask for advice for replacement that is similar. Respondent C would then use the substance information to help the customer. On the package is written how much mg tar the cigarette would contain and the category advisor would then find a cigarette with the same amount of harmful substances, arguing that it should taste just as heavy. So another tactic that can be used is misdirection or re-interpretation of health warnings by staff members.

The provided examples have shown a wide variety of instruments that the tobacco industry has, some are very distinct and not available to traditional NGOs and lobbies. Brand Stretching is a very costly strategy that is very acceptable for multinationals to adopt.

Some instruments are costly, but one needs not to worry about the tobacco industries wallet. The income of the tobacco industry in 2009 was (\$17.157.014.000 after taxes.³¹ If we look at their annual reports of 2011, all three companies are still making billions of profit.³²

Besides the special instruments shown, the tobacco industry still has the more conventional instruments of lobby. The signs of lobby in the European and Dutch case became apparent in the withdrawal of the Dutch support of European legislation on sponsorship and advertisement in the 90's. There is also a very strong tobacco lobby present in the United States. Research by Goldstein & Bearman, has shown that there are at least 300.000 lobbyists active for the tobacco industry in the United States

³¹ <http://www.taxpolicycenter.org/taxfacts/displayafact.cfm?Docid=403>

³² http://media.corporate-ir.net/media_files/irol/14/146476/ar2011/2011-highlights.html (PMI) <http://www.jti.com/media/investor-information/> (JTI) <http://www.bat.com/ar/2010/directors-report/business-review/financial-review.html> (BAT)

during the 90's (Goldman & Bearman: 1996). The data could use an update, but one would expect that with the increasing number of legislation and regulations, the number of lobbyists would also have increased.

6. Conclusion

If we would review what progress there has been booked against smoking in our cases with the analysis of Norm Cycle, we would have to conclude it was diffuse process.

The anti-tobacco lobby itself has been really diffused, consisting of individual organizations that primarily focused on their own territory. In the Dutch case, Stivoro emerged as a norm entrepreneur and through an organizational platform it had successfully persuaded the Dutch state to implement legislation and regulation regarding smoking. The contamination effect was however minimal as Stivoro operated primarily on national level and acted on its own accord on EU level without any official affiliation with foreign organizations. The Netherlands did not become a norm entrepreneur in its turn. The Netherlands even buckled under the pressure of the tobacco industry and withdrew their support for EU legislation on tobacco in the late 90's, de facto blocking EU legislation on tobacco. The situation did however improve, as more legislation regarding tobacco got implemented in the Netherlands after 2000. In 2003 EU legislations on tobacco was realized, but the EU let the member states free in the regulation and legislation and pointed on the states own responsibility, seriously weakening the socialization mechanic that should otherwise push the norm past stage two in the norm cycle. The role of the Netherlands regarding tobacco did not improve and it even earned them the Marlboro man award in 2012 as one of the most tobacco industry serving states. So even if the state is persuaded, there is no guarantee it will in turn act as a norm entrepreneur and the socialization mechanic in

stage two do not occur automatically, although Finnemore and Sikkink does give us that impression.

In the American case, the cycle is also just viable to a certain degree. ASH has emerged as a norm entrepreneur and progress was made in the battle against tobacco. Considering the many regulations, legislations on tobacco control and the newly gained competence of the FDA, it is safe to assume that the tipping point has been reached for the American case. The contamination effect is very minimal, as ASH is also mostly national orientated. During the analysis of these cases, a few aspects appeared where the theory and the case of tobacco did not fit. The problems mostly appeared in stage two. First, even when the state is persuaded, there is no guarantee that the state will in turn become a norm leader/entrepreneur. Secondly, it is not a given that the socialization effect will take place. In the EU case, a lack of peer pressure should seriously delay the progress of the cycle. Despite the diffuse movement there have been major successes of similar character.

With these successes, the tobacco industries were forced to undertake action on various levels. For the ban on sales to minors, the tobacco industry welcomed this ban and even promotes it themselves on their sites. For the ban on advertisement the tobacco industry used the tactic of brand stretching and more intensive instore promotion. In response to the ban on terms as 'light' etc. the tobacco industries used new technology or organic tobacco to give of the impression of a healthier cigarette. Through different social responsible initiatives they tried to improve the image of the product even more. The mandatory health warnings are fought on two different fronts. First was in the international courts through litigations and second front was at local level simply by letting the smallest warning face the buying public. The use of legal

force intensified as the litigations against the tobacco industry became more coordinated. The tobacco companies have been fairly successful in their legal fights, with the overruling of the FDA in 2000 as their biggest success. Besides all the just reviewed strategies and instruments, the tobacco industry has their own lobbies in both the United States as well as the European Union. Through threats as the loss of income or employment for states, the industry puts pressure on the states. Sometimes, like in the case of the European legislation on advertising, the tobacco industry can really delay or annul the efforts made by the anti-tobacco lobby.

So far, this thesis has proven that tobacco companies are not docile actors and have an array of instruments at their disposal to counter attacks from the anti-tobacco lobby. It is interesting to see how the large amount of money that the tobacco industry has was put in to use through instruments like brand stretching. For your convenience the successes and counter measures are summarized below in table 3.

Table 3. Successes and counter measures

Successes of the Anti-Tobacco Lobby	Counter instruments by the Tobacco Industry
Banning on advertisement	Brand stretching, In store promotion
Banning on the use of terms as 'light', 'mild' and 'low tar' to make cigarettes sound less harmful	Social responsibility in production, sustainability in production, new technology with filters, organic cigarettes.
The mandatory health warnings on packages	Mirroring-directives, use as taste guide and litigation

Ban on sales to minors	Scholarships, curriculum
Ban on smoking on the work place	?
Ban on smoking in public transport and public places	?
	Other instruments: Lobby

An interesting finding was that the tobacco industry had a large impact on the progress of the anti-tobacco lobby. For instance, a successful lawsuit against the FDA threw the movement back five years. Finnemore and Sikkink, or a lot of other authors for that matter, have no attention at all in their theory for large multinational companies. Surely, the tobacco lobby is not the only scenario where a TAN has to deal with a giant multinational company. Oil companies like Shell versus Green Peace, Food companies like Unilever versus Fair Trade, Apple or Nike versus third world labour rights movements, just to name a few examples. Hopefully this thesis will inspire others to do more research regarding multinational companies and established scholars like Finnemore and Sikkink would now consider adding multinational companies as actors to their theories.

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