

## Transcript – Deadly Industry: Challenging Big Tobacco – Ep. 5, S.1

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**Louis**

Welcome to Deadly Industry: Challenging Big Tobacco, a weekly podcast from the Tobacco Control Research Group at the University of Bath. We are an international and award-winning group that investigates the tactics used by Big Tobacco to maximise its profits at the expense of public health. The evidence we produce helps society to hold this deadly industry to account.

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**Multiple speakers**

The health issues are massive. Globally, each year, tobacco kills 9 million people. That's the equivalent of wiping out the population of London each year. Corporations are out for profit. Anything that is going to harm those profits is going to be unpalatable to them. This is a massive issue globally because if you look at global deaths just four corporate products, cause between a third and two thirds of all global deaths.

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**Louis**

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In this episode, we're exposing the murky world of illicit tobacco products. We're going to look at everything from counterfeit cigarettes to how the industry may benefit from smuggling, what the industry says about illicit tobacco, and what actions can be taken to challenge this illicit trade. I'm joined today by Dr. Allen Gallagher, a research fellow at the University of Bath working within the Tobacco Control Research Group.

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He is an expert on the illicit tobacco trade. Welcome, Allen. So, Allen, maybe let's start at the basics. So tell me what does the term illicit trade actually mean?

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**Allen**

So when we talk about illicit trade or illicit tobacco trade, we're talking about any illegal act relating to tobacco products essentially. So that can range from illegal production, shipment, distribution, sale or purchase of tobacco products. But most commonly, when people think of illicit tobacco trade, what kind of pops into the mind is large scale tobacco smuggling. So this is the practice of products being illegally diverted from one country to another.

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A good example of this actually would be from a news report from a few years ago, where at the port of Hull in the UK, we actually found the largest ever smuggled shipment that we've seen. So eight shipping containers that were supposed to contain logs actually contained almost 100 million cigarettes that had been smuggled from the United Arab Emirates.

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**Louis**

So who's benefiting

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**Louis**

from this kind of smuggling to the UK, for example?

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**Allen**

So it's a range of factors. So it depends really on the nature of the smuggling. So in terms of large-scale smuggling, you're often looking at organised crime syndicates. But also, as I expect we'll come on to, historically we're also looking actually at transnational tobacco companies facilitating the smuggling of their own product as well. But different types of smuggling,

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so another type of smuggling is small scale smuggling this is also what we think of as bootlegging. Bootlegging comes from an old term from when alcohol smugglers used to hide bottles of alcohol in their boots

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and so this is when you take small amounts and take them from one

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jurisdiction to another and often then sell them off.

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So an example there would be a US state where

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tobacco is cheaper in one state than another. You then buy it from one state and then, you know, drive across the border smuggle it into another state and sell it there for profit. So that would be small scale smuggling. And in that case that's then more the consumer who's responsible for it.

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So sorry a long answer there, but in short it really depends on the type of smuggling as to who's responsible for it.

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**Louis**

So maybe let's row back a bit. So what are the different kinds of products that we see smuggled?

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**Allen**

Yeah. So firstly there are counterfeits. So these are products that use a trademark without owning the rights to that trademark. So you can think of these, I suppose, as fake cigarettes. I don't use that terminology because they're still cigarettes, they're still harmful like any other cigarettes. But in terms of using the brand, we would say that that's fake.

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**Louis**

So if I went to, you know, to my local pub and bought a dodgy packet of tobacco, would that fall within the counterfeits?

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**Allen**

So it could do, it would depend. So it can be dodgy in different ways so it could be dodgy because it says Marlboro but it's not actually made by PMI, or it can be dodgy in that it doesn't have a brand name on it at all, which may mean that it was illegally manufactured. It could be dodgy in that it's something we call illicit whites.

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So these are cigarettes made legally in one country but are then made with the purpose of being smuggled and sold in another market illegally. And they often have their own distinct brand names. And then what you also might have is your dodgy cigarettes, which is actually quite common, may actually be genuine branded cigarettes that have again ended up in the country illegally

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So they start off in the legal supply chain, but end up at some point being diverted and sold in a different country.

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**Louis**

That's interesting. You mentioned the supply chain there. I wonder if we could go back and think about so where are these factories producing the cigarettes and where is most of their distribution happening? Which countries end up most affected?

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**Allen**

Lots of things to answer in one question there. I think so if we just start with, kind of where in the supply chain, if you will, again, it will depend on like the type of products, so often products on the illicit market actually are manufactured legally. So there will be, you know, tobacco comes into, a company, comes into a factory legally from the farmers, they then manufacture that into tobacco, they then will transport that to a distributor or importer.

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And it's actually at that point that the product ends up often being smuggled and so ends up being sold illegally. So for instance, a product supposed to end up in the UK but ends up, say in France instead. Just as an example.

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**Louis**

So who is actually harmed by this trade? I mean, obviously we know it's illegal, it's breaking the law, there may be tobacco companies involved, but why is this seen as such a problem?

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**Allen**

So there are quite substantial health harms. So

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by having illicit tobacco trade, you essentially have more tobacco available. And as we know, tobacco is a deadly product. It's been estimated that the illegal cigarette market reduces average cigarette prices by about 4%. So that makes for more appealing to price sensitive smokers, particularly those on lower incomes and younger people.

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And it's also responsible for about 2% higher cigarette consumption per year. Previous estimates have said that's around 164,000 additional tobacco related deaths per year, opposed to if there was no illicit market.

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**Louis**

So what you're saying is that more people are smoking when they're illicit cigarettes. Is that because it's essentially cheaper?

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**Allen**

Well, so price is one factor. But also again, there's just more product in the first place. Right? So it's just the additional tobacco availability means more chances of more people smoking. But yes, certainly, it can disproportionately affect those on lower incomes because of price differences.

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**Louis**

How does that play into obviously the tax argument? Tobacco is a product which is highly taxed. Presumably this is one way of also avoiding that tax?

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**Allen**

So price is really only one factor in terms of determinants of illicit trade. And the industry certainly likes to argue that, say tobacco taxation and increasing prices, is a key contributor. But actually research indicates that it's only one factor of many. And that actually levels of enforcement, levels of government corruption, geography in terms of where are your neighbouring countries and what's their level of enforcement, what kind of customs protections, those factors over actually all far more substantial in terms of the levels of illicit trade in the country.

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And the evidence backs that up in terms of countries with higher levels of tobacco taxation actually then tend to have better levels of tax enforcement, which actually means their levels of illicit trade are lower than countries with lower legal tobacco prices.

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**Louis**

Right. And it's interesting. And just as a note to listeners, if people are interested more in this tax discussion, in our previous episode, we covered all things tobacco taxation, so make sure you go back and have a listen to that if you haven't already. This might be a good time to bring in the industry. As you've mentioned, the tobacco industry, that's the focus of this podcast.

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So where do they stand on the illicit trade? Are they benefiting from it, are they against it?

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**Allen**

So they claim to be against it and that makes sense in the context of, as I say, often organised crime syndicates, we're often looking at product from illegitimate supply chains being diverted. And so there

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in principal we are looking at potential losses for the industry. However, the reality of the situation is far more complex and there are actually a range of incentives for tobacco companies to facilitate the smuggling of their own products.

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Now, generally, when I talk about, as people say, it starts to certain kind of conspiratorial, but actually we have a lot of evidence to back this up, due to leaked industry documents released in the 1990s, we can see that transnational tobacco companies were actively facilitating the smuggling of their own products on global scales dating back to the 1960s.

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**Louis**

That's sort of astounding. So we actually have documents that show that they are involved in the smuggling that they also stand against.

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**Allen**

Yeah, exactly. And,

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they use different euphemisms, often they refer to it as general trade. And again, when providing definitions of general trade essentially means trade that's not happening legally. They would often use this, just as an example, as a market entry strategy. So following the fall of the former Soviet Union there were then many new markets their that tobacco companies hadn't yet penetrated.

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So they actually then, you can see from their own documents, started to smuggle products into those countries, creating demand for those products. And then, you know, years later, we now see that all those products have a legal presence. Because of that, those initial smuggling routes.

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**Louis**

So these documents, surely these are highly secretive. How have we been able to access these?

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**Allen**

They've stemmed from a major lawsuit in the 1990s where the tobacco companies were taken to court, and that actually related to addictive properties of nicotine and tobacco companies not

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disclosing that. But there have also been some lawsuits related specifically to tobacco company involvement in illicit trade. Just one example that actually led to some guilty pleas, is in Canada

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**Allen**

where in the early 1990s, Canada doubled its tobacco tax in response to that, multiple tobacco companies then worked to facilitate the smuggling of US cigarettes into Canada, they did this via First Nation reserves, so they have tax exempt status, less than a year following this, tobacco tax in Canada ended up actually being reduced to levels lower than before the increase and stayed that way for several decades, that was due to the government feeling that their policy had led to an increase in illicit trade.

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We later saw again from these documents that it wasn't because of its physical tax increase, it was because of the behaviour of the tobacco companies. And again that led to some guilty pleas and substantial fines from the companies involved.

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**Louis**

So is this still ongoing then, this kind of behaviour?

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**Allen**

So to the point of the documents, we don't have access to decades of documents where they're being relatively blatant about their business practices in the way that we used to. So in that sense, we don't have as much concrete evidence of contemporary tobacco industry involvement from documents.

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We see numerous reports every year, largely from different investigative journalistic organisations indicating evidence that major transnational continue to be involved in the facilitating of their own products.



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**Louis**

So if this is happening, if they're smuggling their own products, essentially, how is this allowed to go on, how is this not been put a stop to by authorities?

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**Allen**

So firstly, it is very difficult to navigate. And I think if we start to come on later to solutions to address these problems, the reality is we're looking at massive, you know, global spread supply chains, large powerful companies, but actually not a lot of regulation in place to monitor those supply chains. So just to give a quick example, one of the main policy measures we're now seeing countries implement is called tracking and tracing.

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So this is where you have some secure markings on a tobacco product that basically say this was made in this factory and is intended for sale in this country. Authorities can scan that and if that product is found to be in a country it shouldn't be in you can trace it back and you can hold the people responsible. But that's a very new concept,

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that's not actually something until in the past few years, actually, that we've had on tobacco products. And so what that means is before then, there's not as many clear ways to actually identify if a products was smuggled and where it came from and actually then to hold the people responsible to account. So the short answer is essentially we just haven't had the tools and mechanisms in place to stop this type of behaviour.

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And I think that's led to it being very low-risk, high-reward.

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**Louis**

So maybe let's clarify what are some of the rewards for the industry? I mean, obviously there's the fact that there are sales in smuggling, but you say it's low-risk. Surely, you know, if they're caught smuggling their own products, that's a pretty high-risk. There must be some other benefits to these companies?

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**Allen**

Right now the, controlling the entire supply chain is really difficult. And right now we have tobacco companies being part of that response. So essentially it's actually very difficult for authorities to hold companies to account if they are engaging in such behaviour.

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to shut down other threats such as tobacco tax increases.

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Many of the, I mentioned the journalistic investigations. If you look at countries in various kind of states of war, or where government structures are not fully in place,

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there's evidence that that's when products are largely being shipped through to reach other countries, basically taking advantage of that political instability for financial gain. As I say though it's complicated in that we see that happening, different factors are at play so organised crime is still very much involved, terrorist organisations involved. So the extent to which we can attribute all of that to transnational tobacco companies is

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far more complicated than that.

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But as I say we do see evidence still of continued involvement.

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**Louis**

Some of these things you mentioned, scary stuff, organised crime, smuggling. Is this ever a risk to you as researchers?

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**Allen**

I think the risk, certainly from my personal experience as a researcher in this field, has been largely legal. So even, just in the context of this discussion, of ensuring that what I'm saying, there's no evidence to support it because these are large claims to make, they are claims that don't present the industry in a favourable light,

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and so that can lead to, you know, potential legal risk there. So we focus largely on the role of transnational tobacco companies in this practice. That's where my concern lies more as opposed to, say, organised crime where, for the most part, my research is not exploring or digging deep into those organisation specifically.

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**Louis**

You've hinted at this already, perhaps, but what is it that the industry is saying about, about the illicit trade because it feels like they're kind of working both sides of the scale here.

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**Allen**

Yeah, so in short tobacco companies have largely managed to shift the illicit tobacco issue from a public relations disaster. So again, they were identified previously from these documents as a key driver of the problem, that led to multiple lawsuits and agreements with different countries, but now they are actually increasingly perceived as the victim of and more worryingly, even, a solution to the problem, and this ultimately gives them a seat at the policymaking table and enables them to work to undermine effective supply chain control measures.

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So essentially, tobacco companies argue "this is a problem for us. We can help you fix that, work with us and we'll fix it". And then in doing so, they actually undermine the strategies that would effectively fix it.

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**Louis**

Are there some examples of that, of how companies are presenting themselves as part of the solution?

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**Allen**

We actually do have some more recent industry documents, so early 2000s British American Tobacco documents where they became aware there was likely to be more policy related to illicit tobacco trade specifically and so they produced a document basically identifying how they wanted to be seen as part of the solution rather than part of the problem.

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And that how they would do that was trying to work with customs authorities and trying to work to produce kind of research to be seen as part of the solution to the problem.

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**Louis**

This must be quite a challenge for some countries if they're already struggling with a thriving black market in tobacco and a multi-billion dollar company comes and says, we're going to help you out, surely that that must be a hard offer to turn down sometimes.

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**Allen**

Exactly. And this is one of the challenges we face. We face this even, as I mentioned, that track and trace policy, for instance, we face that there because the transnational tobacco companies developed their own system, which they essentially have control over. As a result of that, that system can't be considered compliant with international regulations, but despite that, they used front groups to market that product to countries who again are often kind of resource deprived and they essentially come along

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and say "here we have this really cheap system ready to go and you can use it". And the countries aren't even aware that it's linked to the industry, so that's been that's been a real issue.

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**Louis**

Could you go into a bit more detail about what this system is that the industry has developed?

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**Allen**

So it was initially called Codentify. And this was patented by Philip Morris in the early 2000s, they then actually licensed it for free to all of the major transnational tobacco companies. So this is a really good example of all these usually competitive companies actually

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working together for a shared goal, they then created a front group it called the Digital Coding and Tracking Associate, which then again submitted and presented to various government

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authorities across the world, arguing this Codentify system as kind of a solution in a way, for addressing illicit tobacco trade, often without disclosing that actually, this company is made up of the major transnational

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tobacco manufacturers, then in say 2015/2016 it was kind of revealed that that was a front group, so they then actually sold that technology to a company that they claimed was independent. Both Phillip Morris and the company itself claims to be independent, however the CEO of that company was formerly at Phillip Morris and is actually named on the patent for the original technology.

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**Louis**

And so, again, to come back to this point, if you're a country struggling to deal with this problem and you have this technology being offered to you, whether or not you know that it's

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controlled by tobacco companies, what would you recommend to people in that position, like, how can you both tackle illicit trade whilst also keeping transnational tobacco companies out of the equation?

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**Allen**

So there are measures. And so we have the Protocol to Eliminate Illicit Trade in Tobacco Products. This is the first treaty to stem from the FCTC,

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so that's the Framework Convention on Tobacco Control, which is the first international treaty looking to address the harms of tobacco products and has over 180 signatories from countries across the world.

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And this takes Article 15 of the FCTC, which is focussed specifically on illicit trade, and essentially makes a whole new range of potential policies that countries can adopt from that.

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And that includes independent implementation of tobacco tracking and tracing, and has some language in there about how the tobacco industry should only be involved to the extent strictly necessary for the maintenance of those systems so there are measures kind of on paper. But again, that doesn't mean in practice that we don't still see industry trying to interfere at country level.

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**Louis**

In an ideal world,

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how would

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illicit trade protocols be implemented in a way that keeps the industry out?

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**Allen**

So I think that's really the point there, it's about keeping the industry out. And so it's really about adherence to article 5.3 of the FCTC, which recognises the

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differences between tobacco industry interests and public health interests. That's kind of well understood in the context of lots of different tobacco control policy. But I think in the context of illicit

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trade, specifically, because of those industry arguments and narratives about being part of a solution, we often see close collaboration between say customs authorities and tobacco companies.

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So illicit trade is one of those areas where actually, the industry are very much still involved. And so in an ideal world, to answer your question, they wouldn't be so involved.

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**Louis**

So you've got this international treaty, the Framework Convention on Tobacco Control, that has some measures addressing illicit trade. What does this look like on a national level? Is there a country you can think of who's doing a really good job of dealing with illicit trade?

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**Allen**

So not to be, I guess, too biased, but I actually think that the UK is a relatively good example, partly because one of the challenges, you were asking earlier how do we stop this, surely to some degree it would be easy to stop? Well, it's not even easy to measure is the reality, most countries don't even produce estimates of the illicit trade that's occurring in the country,

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for many regions of the world, the only estimates we have actually come from tobacco industry funding reports. And there is a clear incentive there for tobacco companies, firstly, to exaggerate the scale of the problem, because then they can again say there's a bigger problem for us to try and solve. But I think more nuanced, they also then will try and present a skewed picture of the nature of the problem.

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So again, if the majority of a country's illicit trade is actually products that have been diverted from a legitimate tobacco company supply chain, there's a fair argument there that that tobacco companies is somewhat responsible for that illicit trade. But their reports don't focus on that, their reports focus instead on, say, counterfeits or other products they're not essentially responsible for. And so that's kind of a wider context there. In countries like the UK, I think are doing a good job because they actually produce annual estimates of illicit trade in the country.

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So Her Majesty's Customs and Revenue conduct a tax gap analysis every year which gives a sense of the level of illicit trade in the country, which is very useful for getting a sense then of if industries claiming this policy is going to lead to an increase, we actually have evidence to counter those claims.

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**Louis**

So the industry presumably is also interested in influencing these policies in countries like the UK or around the world that address illicit trade?

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**Allen**

Yes. And again, the key focus there has been to present themselves as part of the solution. They've done that in a number of different ways. So again, creating funding initiatives to pay for research that presents industry favourable narratives, but also to pay for things such as, I think some examples would be, boats for Greek coastguards and to provide training to different authorities across the world in relation to illicit trade.

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those would be some, some key examples of

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industry efforts

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there to again get a seat at the policy making table specifically around illicit trade.

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**Louis**

So is one of these industry arguments, and maybe this is playing devil's advocate slightly, or it may be what some listeners are thinking. Like you have this illicit trade in tobacco, and one of the obvious comparisons that comes to mind is other illicit trades, illicit trades in drugs, cocaine, heroin, you know, whatever, run by organised crime, globally traded, presumably the industry says if you get rid of us, that's what you going to end up with, is just yet another illegal drug trade.



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To what extent do you think is that a fair argument? How would you, how would you counter that point?

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**Allen**

I mean, it's impossible to say that if a product exists in the world, that, you know, if it's something you can grow, people can continue to grow it to some degree. But I don't think it's a very strong argument in the context of what we've already seen in terms of increasing the price of tobacco leads to less consumption and save more lives, continue

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to taking measures like that, reducing the access to tobacco will again, ultimately, save lives because it will reduce consumption, but doesn't mean that it will not be possible for some people to obtain that products illegally, as we see. But I think to flip the argument around, I guess the argument would be if right now we decided to legalise heroin, I expect we would probably see an uptake of people using heroin rather than a decrease or remaining stagnant.

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**Louis**

That's interesting.

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I think maybe let's bring it back to the core of this again, the trade in tobacco. So in your view, the things you haven't mentioned already, what are some of the other strategic steps or actions that we could be taking to reduce the illicit trade.

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**Allen**

So perhaps I'll just talk a little bit more about some of the measures in the protocol, because I've only so far touched on one of them. So I mean, firstly, currently we have almost seven parties, 70 sorry parties across the world, who are signed up to the protocol. As I said,

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one of the key measures there is establishing effective track and trace systems.

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Another is actually to license the entire tobacco supply chain. So, for instance, you would need a license for tobacco manufacturing equipment, through to a license to actually sell tobacco. Many countries don't have this in place. Just to give an example, people might be surprised to learn, actually, that currently in the UK, as a retailer, you don't need a license to sell tobacco.

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Of course, if you're found to be doing something illegally, then you could lose your premises licence, but you actually technically can sell tobacco without a license in the UK right now. So, gaps like that are also kind of measures that we can address to strengthen

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supply chain.

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There's also regulating or banning trade in free trade zones or special economic zones. So these are areas that government create as kind of incentives for more business. And so there's lower, if any, kind of tax rates there and we have seen examples of more illicit production happening and so on.

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**Louis**

So

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what are some maybe bold kind of new policy ideas that you'd like to see put in place to address the illicit trade?

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**Allen**

So I think one of the key things, as mentioned in the UK earlier, actually producing its own independent estimates of illicit trade. I think if other countries want to do the same, that would already make a substantial difference, because then it would be a clear counterpoint to the industry's arguments that, you know, illicit trade is booming in this country and is booming in that country.

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And also in order for a country to effectively address the problem, I think they have to understand the extent of that problem first. And that sounds very basic, but I actually think in terms of addressing illicit tobacco trade, we are at that very early stage. So the protocol is very young, in comparison to the FCTC, we've got a lot of tobacco control legislation and taxes across the world, but we haven't made a lot of progress

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yet in terms of securing the supply chain and reducing the illicit trade. So I think that's where the focus needs to lie.

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**Louis**

It sounds like one of the biggest problems to that progress is the industry itself. In your view, maybe this is a bit of a crystal ball question, but were you to bring in some of this increased regulation, how do you think the industry would respond to that?

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**Allen**

So again it is hard, they have different responses to different types of regulation, right. So again they argued to be in support of tracking and tracing systems but then were actively working to undermine independent systems and promote their own and so you can question really the incentives there. I think what we've seen a lot and why it's complicated to answer that question,

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what we've seen a lot with illicit trade so far is that they're really focussed on policy capture, so as opposed to simply arguing that a policy won't work in the context of illicit trade, they actually would rather have control over the solution to that. And again, I think that narrative has been so successful right now that essentially we're looking at probably the last area in tobacco control broadly where the industry are seen generally, including by, you know, authorities they are seen as a credible solution, whereas

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I think most authorities probably wouldn't look at the industry as a credible voice in terms of discussions around tobacco tax generally, but in the context of illicit trade, we don't see, you know, authorities, I think there's over 100 memorandums of understanding between countries across the world and different tobacco companies related specifically to illicit trade. They're not legally binding or enforceable at all

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and there's no evidence that any of these agreements have actually led to a reduction in illicit trade in any of those countries but every one of those agreements is an opportunity for tobacco companies to present themselves as part of the solution. And also, unfortunately for governments to in their view, be seen as working towards a solution because they say "hey we're working directly with the companies who are also victims".

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**Louis**

So that so it sounds like what you're saying from your research is that any new regulation that tries to address this illegal trade in tobacco also at the same time has to address the tobacco industry itself and the ways that it interferes?

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**Allen**

Yeah. And I again, I think that, the crucial,

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to repeat myself too much, but again, the crucial point there then is actually ensuring that the policy process happens independently from the industry despite the industries claim that it's part of the solution, however just to add some nuance there one of the other complexities in this field,

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is that , again, if we're looking at securing the supply chain of tobacco companies, there has to be some level of tobacco company involvement in how that process happens. And I think we're still at the stages of figuring out how can we do that in a way that ensures full independence in the processes, and so the protocol starts to outline different measures of that.

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But I think there will still be continued discussion in terms of what does it really mean, how do you ensure that a supply chain is secure without allowing the companies involved in that supply chain to have some say in how that process happens, so some complicated issues still to solve.

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**Louis**

So just to summarise here, if there's one thing that you'd want people to take away from this discussion about illicit trade, what would that be?

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**Allen**

That when you come across an advert or you hear anything related to, you know, illicit trade,

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as a problem that really makes the industry suffer, I would say, actually look at the evidence there historically that it's been a problem that they've driven, it's a problem that they benefit from in terms of using it to oppose tobacco control policy across the board, and also to try and gain stranglehold over

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illicit trade policy globally.

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**Louis**

Dr. Allen Gallagher, thank you very much.

00:32:12:16 - 00:32:13:19

**Allen**

Thanks, Louis.

00:32:13:19 - 00:32:20:05

**Louis**

Thank you to Allen for joining us. And the sources for today's discussion can all be found in the episode show notes.

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We'll be back next week, where we'll be joined by Jorge Alday, Director of the STOP project, to talk about the tobacco industry's marketing tactics and strategies.

00:32:28:11 - 00:32:29:09

See you next time.

00:32:29:09 - 00:32:35:09

From the Tobacco Control Research Group, you've been listening to Deadly Industry:

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Challenging Big Tobacco,

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