



Published in final edited form as:

Tob Control. 2014 January ; 23(1): . doi:10.1136/tobaccocontrol-2012-050788.

Illicit Trade, Tobacco Industry Funded Studies and Policy Influence in the EU and UK

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Keywords

illicit trade in tobacco products; corporate political activity; smuggling, tobacco industry

Over the last decade, the tobacco industry has attempted to increase the political salience of the illicit trade in tobacco products (illicit trade) (Box 1).^{1, 2} Tobacco companies have claimed that sharp rises in tobacco taxation and innovative regulation, such as standardised packaging and product display bans, are drivers of the illicit trade and have advocated programmes of engagement with policymakers and other social actors in an effort to ensure that the issue is given greater consideration in health policymaking.²⁻⁵

As part of this strategy, Philip Morris International (PMI) has funded a series of reports by academics at the Università Cattolica del Sacro Cuore in Milan (hereafter Transcrime) which explore the potential impact of proposed regulation on the illicit trade.⁶⁻⁸ We briefly examine two of these reports which explore the crime risks inherent in the proposed revision to the European Union Tobacco Product Directive 2001/37/EC⁸⁻¹⁰ (hereafter described as the EU report) and the proposal to introduce plain packaging in the UK (hereafter described as the standardised packaging report).⁸ Although Transcrime claims to have retained full control over the research, the reports closely reflect PMI's appraisal of the potential impact of regulation on the illicit trade.^{7, 11-14}

PMI's success in bringing an academic body with a solid track record of criminological research into the debate on the illicit trade represents a new development which lends academic capital to the industry's efforts to represent regulation as the main driver of illicit tobacco. Tobacco companies optimise this effect by failing to mention PMI's funding when using Transcrime's work in policy debates, creating the impression of a broad independent constituency in favour of the industry's arguments against plain packaging.^{13, 15, 16} The inclusion of a specific question concerning the impact of standardised packaging on the supply and demand of illicit tobacco in a recent consultation document circulated by the British Government arguably exemplifies the increasing salience of the issue¹⁷ as does news that Transcrime was invited to present its standardised packaging report to the British House of Commons in June of this year.¹⁸ However, a close examination of Transcrime's work – which builds its argument through assertion, theoretically led judgements about the relative strengths of different types of evidence and questionable summaries of trend data -

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Conflicts of interest:

The authors have no conflicts of interest.

Contributorship Statement

Gary Fooks conceived the idea for the research, undertook most of the analysis, and was the lead author of this article. Silvy Peeters and Karen Evans contributed to the analysis and writing of the article.

underlines the need for policymakers to continue approaching critically the industry's analysis of the trade in illicit products.

A good illustration of Transcrime's use of assertion concerns the contention that standardised packs are likely to make it more difficult for consumers to distinguish between legitimate and counterfeit products. This point is key to Transcrime's argument that standardised packaging is likely to boost the demand for counterfeit products, thereby increasing counterfeiting irrespective of the use of formal crime prevention methods, such as high quality tracking and tracing systems and conventional forms of enforcement.^{5, 8} In order to gauge the presence of this phenomenon and its impact on the illicit trade it is necessary to know the relative differences in quality between counterfeited and non-counterfeited branded packs and standardised packs, whether any differences in relative quality that might exist can be perceived by consumers, and how consumers are likely to respond to this effect. Notwithstanding a dearth of data on these issues, Transcrime concludes that standardised packaging is "likely to impact on consumers' capacity to distinguish legitimate products from counterfeit ones".⁸

Transcrime's analysis of Moodie, Hastings and Joossens' 2012 study of young adult smokers' perceptions of illicit tobacco provides an instructive example of Transcrime's rejection of conventional hierarchies of evidence.¹⁹ Moodie, *et al*'s findings, based on a series of focus groups (n=8, participants=54), suggest that smokers are able to easily identify counterfeited branded packs (because of colour variations with genuine packs, poorer quality printing, cheaper cardboard and inferior cellophane, which frequently sticks to packs) and that they are primarily motivated by price and availability, rather than pack design in their purchasing decisions. This undermines Transcrime's theory that standardised packaging is likely to increase the difficulties consumers experience in distinguishing between legitimate and counterfeit products.¹⁹ Transcrime dismisses the study, partly on the basis that "the methodology was not specifically designed to test smokers' ability to spot illicit products" and partly on the basis of "evidence from other studies, suggesting that counterfeits are frequently of excellent quality."⁷ However, this other "evidence" comprises statements in a report by Her Majesty's Revenue and Customs which are not backed up with reference to empirical data and a 2006 study by the German criminologist, Klaus von Lampe, which relies on an opaque summary of a public survey of smokers.²⁰⁻²² Transcrime does not explain the basis of its decision to reject inconclusive, but moderately persuasive evidence, in favour of what are effectively inadequately supported assertions.

Transcrime's questionable use of trend data illustrates the way in which its general presentation of material underpins PMI's broader narrative on the illicit trade. Tobacco companies' efforts to move the illicit trade higher up the health policy agenda are helped by exaggerated estimates of the scale of the trade and conservative estimates of the impact of conventional forms of crime prevention. In practice, the considerable methodological difficulties involved in estimating illicit trade and the fact that existing estimates are based on different methods make accurate estimates, for the present at least, unattainable.^{5, 10, 23-27} Despite this, Transcrime's European report asserts that the magnitude of the illicit trade is increasing.⁸ Similarly, the executive summary of its standardised packaging report describes a significant investment in enforcement relating to the illicit trade as "quite successful", when Government figures indicate a significant decline in the UK illicit cigarette market from 21 *per cent* (as a percentage of the total market) in 2000/2001 (when the investment first began to take effect) to 10 *per cent* in 2009/2010 (the last year for which figures are available).

In summary, the illicit trade in tobacco products is a significant social problem that can weaken the impact of public health reform.²⁷ However, Transcrime's work does not add

anything substantive to the existing evidence on the impact of regulation on the trade and, on the basis of the available data, arguably overstates the risks of regulation and taxation in shifting consumption from legitimate to illegitimate markets. PMI's financial support to Transcrime is part of a wider strategy aimed at generating research and data on the illicit trade which underpins arguments that potentially overstate the criminogenic effects of tobacco control in countries with effective tobacco regulation and relatively low (Norway and Australia) or declining (UK and Canada) levels of illicit trade.^{26, 28-30} In 2011, the Alliance of Australian Retailers ran advertisements in several Australian newspapers warning that 15.9 *per cent* of tobacco products used in Australia were illicit.³³ The estimates were based on a small survey by Deloitte funded by BAT Australia, Philip Morris and Imperial Tobacco Australia. According to Quit Victoria, Deloitte had arrived at the estimate by looking at the amount purchased by those who exclusively smoked illicit tobacco (25 illicit cigarettes daily) and applying this figure to all respondents to the survey who had admitted to smoking illicit tobacco in the previous year.^{31, 33} This contradicted a far larger government survey which had found that only a small proportion (1.5 *per cent*) of current smokers were regular users of illicit tobacco (using it half the time or more).^{32, 33} Quit Victoria estimated that even if illicit users smoked more than average, this put illicit tobacco at about 2 to 3 *per cent* of the total market.³³

The industry's increasing emphasis on illicit trade requires a robust evidence based response that builds on existing research in this area.³⁴⁻³⁷ In particular, there is a need for further high quality, independent research aimed at: providing more accurate estimates of the illicit trade;^{29, 37, 38} evaluating the methodologies used in industry estimates; and assessing the impacts of different types of regulation on the trade. There is also a need to ensure that policy is informed by the best available, peer reviewed research. To this effect, a credible international agency, such as the World Health Organisation, could be given responsibility for collating and summarising existing academic research so that policymakers have ready access to a reliable body of knowledge on the illicit trade and the nature of its relationship with contemporary tobacco control measures.

Acknowledgments

Funding source:

Gary Fooks and Silvy Peeters have financial support from the National Cancer Institute at the US National Institutes of Health (Grant Number RO1CA160695). Karen Evans has financial support from Cancer Research UK (Grant Number C27260/A12294) The funders had no influence on the research design, data collection, data interpretation or the writing of this article.

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Box 1**Major Activities Comprising the Illicit Trade in Tobacco Products^{8, 29, 39}**

Transcrime adopts the definition of illicit trade outlined in the World Health Organization, Framework Convention of Tobacco Control, namely, “any practice or conduct prohibited by law and which relates to production, shipment, receipt, possession, distribution, sale or purchase including any practice or conduct intended to facilitate such activity”.^{8, 40} This covers:

Smuggling

The unlawful movement or transportation of tobacco products (including counterfeit products) from one tax jurisdiction to another without the payment of taxes or in breach of laws prohibiting their import or export.³⁹

Counterfeiting

Cigarettes manufactured and packaged to imitate an established brand without the owner’s consent.

Cheap or illicit whites

Cigarettes produced legally in one country but intended for smuggling into countries where there is no prior legal market for them. Taxes in the country of production are typically paid, but avoided in destination countries.

Unbranded Tobacco

Manufactured, semi-manufactured and loose leaves of tobacco carrying neither labelling nor health warnings.

Bootlegging

Tobacco legally bought in a low-tax country by individuals or small groups and then smuggled into a country with higher tax rates and illegally resold.

Illegal Manufacturing

Cigarettes manufactured for consumption which are not declared to the tax authorities. These cigarettes are sold without tax and may be manufactured in approved factories or illegal covert operations.