

Tobacco and the Harms of Trade*

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I. INTRODUCTION

A key feature of the post-war order, it is often said, is the unprecedented pace, scale, and scope of global trade and investment. Few deny that the integration of the global economy has brought with it considerable benefits. Since Ricardo and Smith, economists have typically agreed that international trade is a catalyst for growth and prosperity. But trade may also involve harms and, much like the benefits of trade, these raise difficult questions regarding the justice of their distribution. In this article, I examine a particularly important, yet often neglected, form of harm: namely, the public health effects of trade and investment in tobacco.

In at least one important way, tobacco is a unique commodity: it is the only legal consumer product that kills up to half of its users.¹ With around 6 million deaths per year, tobacco-related diseases are the leading cause of premature mortality worldwide, claiming more lives than HIV/Aids, malaria, and tuberculosis combined.² And the death toll is only set to increase. If current trends persist, the 100 million tobacco-attributable deaths in the 20th century will rise to a billion in this century.³ Relatively few of these deaths will occur in high-income countries, where increased public health efforts have succeeded in driving smoking rates down. They will primarily occur in low- and middle-income countries. Throughout Africa, for example, the number of adult smokers is estimated to increase from 77 million in 2013 to 572 million in 2100.⁴

The steep rise in tobacco consumption in low- and middle-income countries is causally linked to the liberalization of international trade and foreign investment. In at least three different ways, our current global trade regime⁵ has allowed

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¹World Health Organization, *Tobacco Fact Sheet*, <https://www.wpro.who.int/mediacentre/factsheets/fs_201203_tobacco/en/>.

²World Health Organization, *WHO Report on the Global Tobacco Epidemic, 2015: Raising Taxes on Tobacco* (Geneva: WHO, 2015), at p. 20.

³Prabhat Jha and Richard Peto, 'Global effects of smoking, of quitting, and of taxing tobacco', *New England Journal of Medicine*, 370 (2014), 60–8, at p. 60.

⁴Evan Blecher and Hana Ross, 'Tobacco use in Africa: tobacco control through prevention', *American Cancer Society* (2013), <<https://www.cancer.org/acs/groups/content/@internationalaffairs/documents/document/acspc-041294.pdf>>.

⁵By 'global trade regime', I mean the multilateral trade system maintained by the World Trade Organization (WTO), as well as the regional and bilateral trade agreements negotiated in accordance with WTO law.

transnational tobacco companies to penetrate markets across the world. First, the reduction of trade barriers has led to greater market competition, thus decreasing prices and promoting tobacco use. Second, the liberalization of investment laws has led to the privatization of relatively inefficient domestic industries in developing countries, and acquisitions by (or mergers with) powerful and highly competent transnational tobacco companies. Third, the legal requirements imposed by free-trade agreements have often been thought to conflict with tobacco-control policies. In a recent case, for example, Philip Morris International filed a complaint against Uruguay for increasing the size of graphic health warnings on cigarette packs. Although Uruguay ultimately won the case, many observers fear that the mere risk of litigation may dissuade other countries from adopting similar policies.⁶

Does our global trade regime, by allowing and promoting the worldwide spread of tobacco, harm people in low- and middle-income countries? On the one hand, the growing popularity of tobacco may simply reflect the changing preferences of consumers across the world. Furthermore, as I noted at the outset, the liberalization of trade and investment as a whole has had overwhelmingly positive effects, which explains why countries have been keen to partake in it. On the other hand, it is hard to describe the economic and human costs of this liberalization as anything other than catastrophic in the case of tobacco. If these costs are deemed unjustifiable, then arguably the global trade regime ought to be reformed so that they can be averted. For a minimal condition for the fairness of any institutional arrangement or social practice is that it does not impose undue harms on its participants.

I argue in this article that the liberalization of trade and investment in tobacco does indeed impose undue harms, and I sketch the kinds of institutional reforms that would be necessary to prevent them. The discussion is divided into two parts. In the first, I examine the meaning of harm, and show that both procedural as well as substantive concerns point to the harmfulness of trade in tobacco. The second part turns to the institutional implications. I defend the claim that tobacco ought to be exempted from free-trade agreements, but I also argue for further, positive measures to enable low- and middle-income countries to safeguard public health.

⁶For general evidence on the link between trade liberalization and tobacco consumption, see Allyn Taylor, Frank Chaloupka, Emmanuel Guindon, and Michaelyn Corbett, 'The impact of trade liberalisation on tobacco consumption', Prabhat Jha and Frank Chaloupka (eds), *Tobacco Control in Developing Countries* (Oxford: Oxford University Press, 2000), pp. 343–63; World Health Organization, *Confronting the Tobacco Epidemic in a New Era of Trade and Investment Liberalization* (Geneva: WHO, 2012). For the effects of liberalizing investment, see Anna Gilmore, Gary Fooks, and Martin McKee, 'A review of the impacts of tobacco industry privatisation: implications for policy', *Global Public Health*, 6 (2011), 621–42. For a discussion of the 'chilling effect' on tobacco-control policies, see Holly Jarman, *The Politics of Trade and Tobacco Control* (Basingstoke and New York: Palgrave, 2015), ch. 1.

II. IDENTIFYING UNDUE HARMS

A harm is something that is bad for an agent: a setback to his or her interests.⁷ This, to be sure, is a rough sketch of a definition, and there are complex metaphysical questions surrounding the nature of harm. But let us put these to one side, and adopt an intuitive understanding of what it means to set back somebody's interests. This leaves us with the normative question of what an *undue* harm is. When I hurt malicious aggressors in self-defence, I am setting back their interests. And yet we commonly think that self-defence is a paradigm case of justified harming, one that no sensible legal system would criminalize. Analogously, we should only worry about the harms of global trade in tobacco if these are not justified—that is, if a just global trade regime would rule them out.

Like any institutional arrangement or social practice, the global trade regime sets back some people's interests and advances the interests of others. A reduction in tariffs, for example, tends to promote the interests of importers of a given commodity and depress those of domestic manufacturers. But when is it the case that setting back someone's interests represents an undue harm? Broadly speaking, we can identify two types of criterion for the unjustifiability of a harm. The first concerns procedural problems in the way a setback comes about. For example, an institutional arrangement should not allow people's interests to be set back due to interactions that involve manipulation, coercion, or fraud. Here we insist that the interests of those who benefit from the interaction should not outweigh those of whom it disadvantages. The second type of criterion concerns substantive problems with the setback. For example, a procedurally fair interaction may lead to people falling below some minimally decent level of subsistence—an outcome that a just institutional arrangement should prevent or rectify. In what follows, I want to show that trade in tobacco raises both procedural and substantive concerns.

Let me begin with procedural concerns. Manipulation, coercion, and fraud are wrong because they involve, in different ways, a lack of voluntariness on the part of the harmed party. But in what sense is trade in tobacco non-voluntary? Modern economics assumes that people's preferences are revealed through their consumption habits: if people buy cigarettes, people want cigarettes. Though strictly speaking a descriptive and not a normative point, it is only a small step from here to the idea that we are responsible for our own preferences. Cigarettes may have become cheaper and more readily available in recent decades, but it is still up to each individual smoker to buy the next pack, and live (or die) by the consequences. The implication seems to be that there is no role for the state, or any other agent, to interfere with market transactions as a matter of justice. Markets do not impose undue harms; they merely reflect the preferences of consenting adults.

⁷See Joel Feinberg, *Harm to Others* (New York and Oxford: Oxford University Press, 1984).

An immediate complication with this view is that many consumers of tobacco are neither consenting nor adults. We commonly take consent to imply some degree of rationality, informed reasoning, and deliberation—attributes that are often lacking in the choice to consume tobacco. Many smokers pick up the habit as children or teenagers, and even adults are often poorly informed about its health risks. This is true in particular in low- and middle-income countries, where consumers have not been exposed to decades of public health warnings. It is also somewhat doubtful, to say the least, whether the preference to continue (rather than start) consuming a product known to be as addictive as cocaine or heroin should be regarded as fully autonomous. Finally, tobacco consumption has considerable effects beyond producers and consumers: second-hand smoking, for instance, inflicts harms on non-consenting third parties.⁸ In light of these issues, most people believe that just states must implement a set of tobacco-control policies—regulations of advertisement, restrictions of sales, public awareness campaigns, and so on—to minimize non-voluntary exposure to the risks of smoking.

Now, someone might concede this point, but question its relevance. Whether issues of voluntariness arise in the case of individual consumers is beside the point, the objection goes, because the fairness of the global trade regime turns exclusively on whether *states* agree to the liberalization of trade. Each sovereign state is responsible for its own tobacco-control policies: some states prioritize population health and aim to ensure that consumers make informed choices; others follow a more *laissez-faire* approach. Either way, by agreeing to participate in the global economy, states take responsibility for the ensuing public health effects. If I agree to participate in a bike race, and choose not to insure my bike, it is up to me—and not to the organizers of the race—to bear the costs if I crash. Similarly, the argument goes, sovereign states that consent to the liberalization of trade and investment in tobacco cannot complain about the ensuing adverse effects on their population's health.

There are two plausible replies to this objection. The first accepts the premise that states voluntarily agree to the liberalization of trade and investment in tobacco, but denies that they ought to be allowed to do so. While I may do as I please with my bike, I am typically not allowed to impose involuntary costs (including risks) on other people, even if I act legitimately on their behalf. Much as we do not think that parents ought to be allowed to make reckless choices that seriously endanger the well-being of their children, states should not be allowed to sign international agreements that undermine the human right to health of their citizens. The problem is compounded by the fact that many states are undemocratic, making it unclear whether they possess the legitimacy to act on behalf of their citizens in the first place. A global trade regime imposes undue

⁸For an excellent overview of these points, see Robert Goodin, 'The ethics of smoking', *Ethics*, 99 (1989), 574–624.

harms when it permits illegitimate or reckless states to submit their populations to serious, involuntary health risks.⁹

The second reply challenges the premise that the liberalization of trade in tobacco is fully voluntary. I may choose not to participate in a bike race. But few countries can afford not to participate in the global economy. This is true in particular for low- and middle-income countries. When resource exports are a primary source of revenue, it is costly not to agree to the liberalization of trade. When domestic capital is scarce, it is costly not to agree to the liberalization of investment. Quite generally, the voluntariness of a given choice is more likely to be compromised if the costs attached to all alternatives are intolerably high. And, as a matter of historical fact, low- and middle-income countries have often been denied the possibility of exempting their tobacco sectors from free-trade agreements. For example, through threats of retaliatory sanctions, the USA applied intense pressure on East Asian countries in the 1990s to liberalize their tobacco sectors, resulting in a marked increase in smoking rates.¹⁰ Given the oft-noted power asymmetries in negotiations concerning the rules of trade,¹¹ voluntariness is far from clear.

To be sure, not all arrangements that involve involuntariness are unjustified. For example, our cities expose us to some degree of environmental pollution that we have not explicitly consented to. But if these environmental costs are small, and in turn the benefits we derive from living in cities are large, we may think that we are not being *unduly* harmed. This is where the question of harm ceases to be a purely procedural matter. When we say that a social arrangement imposes undue harms, we often mean that it distributes costs and burdens in ways that cannot be justified to those who have to bear them. In order to determine whether this is the case, I want to suggest, we must compare the individual moral weight of the reasons that each affected party has for rejecting the arrangement in question.¹² In other words, we must proceed by weighing the relevant interests at stake to uncover substantive concerns with the liberalization of trade and investment in tobacco.

Given the immense human toll of increased tobacco consumption, the interests in favour of trade in tobacco would need to be particularly important for it to be justified. The most obvious interests to consider are those of producers and merchants of tobacco products. Few would think that the profits of tobacco companies, which are among the most powerful corporations in the world, are

⁹See also James Christensen, *Trade Justice* (Oxford: Oxford University Press, 2017), for similar arguments applied to trade in weapons and hazardous waste.

¹⁰See e.g. Glenn Frankel, 'U.S. aided cigarette firms in conquests across Asia', *Washington Post*, 17 Nov. 1996, p. A01.

¹¹See e.g. Richard Miller, *Globalizing Justice* (Oxford: Oxford University Press, 2010), ch. 3.

¹²This approach is broadly contractualist in a Scanlonian sense, but I also think that an alternative utilitarian approach would reach similar conclusions in our particular case (since, as we will see, an interpersonal aggregation of the burdens of trade in tobacco clearly outweighs the associated benefits).

of greater moral importance than the health of millions of people worldwide. But a restriction of trade in tobacco may perhaps have grave economic consequences. Since the 1960s, the bulk of tobacco production has moved away from the USA to low- and middle-income countries. For example, China and India are now the first and third biggest producers of tobacco leaf worldwide. Would the restriction of trade in tobacco harm the economic prospects of these societies, and deprive poor tobacco farmers and workers of their means of subsistence?

Jobs in the tobacco industry are notoriously exploitative. Wages are so low that workers must often rely on their children's (unpaid) labour to make ends meet. Hours are long,¹³ and there are considerable health hazards.¹³ Despite these facts, it is sometimes said that exploitative jobs are better than no jobs, and that child and sweatshop labour is an important (and merely temporary) step on the path towards economic development.¹⁴ Whatever we make of these arguments in general, however, with regard to the tobacco industry they are not persuasive. Although the tobacco industry likes to emphasize its importance to local economies, of the 125 tobacco-exporting countries, only 17 derive more than 1 per cent of their total export earnings from tobacco. In fact, in only five countries does tobacco account for more than 5 per cent of export earnings, and even there the industry is but a small source of jobs.¹⁵ Tobacco production may also crowd out other forms of similarly labour-intensive agriculture. Finally, it is worth emphasizing that few of the profits of tobacco production stay in poor countries, since most of the production is owned by a handful of transnational companies based in rich countries.

It is still likely to be the case that some individual tobacco workers would be worse-off if trade in tobacco were restricted. But their interests must be weighed against those of others who suffer under the current trade regime. And, indeed, the economic effects on others are quite significant. An early study that weighed the economic benefits of tobacco against its costs estimated that every 1000 additional tonnes of tobacco traded in the global market led to a net loss of more than 27 million USD.¹⁶ These losses are not evenly distributed: in rich and in poor countries, smoking is associated with lower socioeconomic status. But, unlike in rich countries, where the costs of healthcare and lost productivity are, to some extent, spread across society as a whole, in poor countries they can be

¹³Campaign for Tobacco Free Kids, *Golden Leaf, Barren Harvest: The Costs of Tobacco Farming* (Washington, DC: Campaign for Tobacco Free Kids, 2001), at p. 20; World Health Organization, *Tobacco and Poverty: A Vicious Circle* (Geneva: WHO, 2004).

¹⁴E.g. Bas Van der Vossen and Jason Brennan, *In Defense of Openness: Why Global Freedom Is the Humane Solution to Global Poverty* (New York: Oxford University Press, 2018).

¹⁵World Health Organization, *Tobacco and Poverty*, p. 10.

¹⁶See Howard Barnum, 'The economic burden of the global trade in tobacco', *Tobacco Control*, 3 (1994), 358–61, at p. 359. A more recent systematic review of the economic evidence confirms that the direct costs and externalities of tobacco far outweigh its benefits; Victor Ekpu and Abraham Brown, 'The economic impact of smoking and of reducing smoking prevalence: review of evidence', *Tobacco Use Insights*, 8 (2015), 1–35.

catastrophic for individuals and families, as livelihoods are destroyed by incapacitating illness and lost earnings.¹⁷ Moreover, while these losses are substantial, the benefits are transferable: if tobacco consumption were eliminated, an influential World Bank study found, ‘money spent on tobacco would be spent on other goods and services, thereby generating more jobs’.¹⁸

In short, aside from the profits that multinational corporations make, trade in tobacco produces little economic benefit. Though some tobacco workers may become worse off—at least in the short term—if trade in tobacco were restricted, their interests must be weighed against the interests in life and health of many others who are equally badly off. These considerations, together with the worries about voluntariness I raised above, point to the conclusion that our current regime of unrestricted trade in tobacco imposes undue harms.

III. REFORMING THE GLOBAL TRADE REGIME

If trade in tobacco is unduly harmful, what should be done? The most radical position is abolitionist. A 1984 editorial in the *Lancet*, Britain’s leading medical journal, opined: ‘Wilberforce succeeded after 40 years. We shall have to take much stronger action if, with regard to smoking, we are to emulate his achievement’.¹⁹ The analogy may strike some as distasteful, but many public health experts and ethicists agree that the tremendous harms of tobacco outweigh the loss of liberty that a total ban would represent.²⁰ Indeed, from the point of view of public health, the case for banning tobacco seems a lot stronger than the case for banning other drugs such as cannabis, LSD, or ecstasy. So does a just global trade regime rule out any trade in tobacco?

A global ban might be justified if buying and selling tobacco were *always* wrong, even within domestic markets. But there are several good arguments against this position. Apart from well-known anti-paternalistic worries about such a ban, there are pragmatic considerations regarding transition costs and the emergence of black markets, as well as concerns about the suffering it could inflict on addicted smokers. The more general point, though, is this: arguably, it is possible to impose tough public health measures (taxes, labelling requirements, advertising prohibitions, and so on) that limit tobacco consumption to those who truly consent to the risks. If two countries with such tough measures in place were then to engage in trade in tobacco, they would not be imposing involuntary, unjustifiable risks on their citizens. In other words, a trade regime that allowed these transactions would not raise the procedural and substantive worries that we discussed.

¹⁷World Health Organization, *Tobacco and Poverty*.

¹⁸Prabhat Jha and Frank Chaloupka, *Curbing the Epidemic: Governments and the Economics of Tobacco Control* (Washington, DC: World Bank, 1999), at p. 68.

¹⁹‘Editorial: third world smoking—the new slave trade’, *The Lancet*, 323 (1984), 23–4.

²⁰Kalle Grill and Kristin Voigt, ‘The case for banning cigarettes’, *Journal of Medical Ethics*, 42 (2016), 293–301; Robert Proctor, *Golden Holocaust: Origins of the Cigarette Catastrophe and the Case for Abolition* (Berkeley and Los Angeles: University of California Press, 2011).

Hence a more promising approach, I believe, consists not in banning, but in *exempting* tobacco from trade liberalization—a goal that the international tobacco-control community has pursued since the early 2000s.²¹ In practice, this would mean that countries should not have to subject their tobacco-control regulations to rules established through WTO or other trade agreements. Although there are provisions under WTO law that allow countries to prioritize public health over trade liberalization, these place the burden of proof on countries to show that their proposed policies are necessary, appropriate, and consistent with other trade obligations.²² A true tobacco exemption, in contrast, would not require meeting this burden of proof. Having to show, for instance, that a tariff on imported cigarettes complies with WTO rules is an unjustified cost on the country adopting the measure, *even if* it is later ruled that it does comply.

Now, someone might agree that there is a need to restrict the harms of trade in tobacco, and yet take issue with the policy of exemption. It has been argued, for example, that exempting tobacco would allow countries to block the importation of tobacco merely for protectionist reasons—that is, without any public health rationale. North America and Europe could impose trade barriers on imported tobacco goods while continuing to subsidize their own tobacco industries.²³ Thus, the strategy of exemption might ultimately lead to greater harm to low- and middle-income countries, without really reducing the consumption of tobacco. Furthermore, a critic might add, the exemption strategy needlessly violates the widely accepted norm of non-discrimination. Instead of undermining the exports of foreign businesses, any country could simply adopt tough public health measures that impose restrictions on domestic and foreign tobacco companies in equal measure.

But both objections are misguided. Take first the claim that the exemption strategy might ultimately harm low- and middle-income countries. To make sense of this claim, we would need to weigh the disadvantages of not being able to export to high-income countries against the health- and non-health-related advantages of being able to restrict imports. For a vast majority of people in low- and middle-income countries, the benefits of restricted trade in tobacco are substantial. And while a few tobacco-exporting countries may benefit from liberalization, the gains are typically modest, as we saw before. Hence the exemption strategy is unlikely to harm these countries. It is true, of course, that any country could continue to subsidize their own tobacco sector, and fail to implement tougher tobacco-control policies on a domestic level. Yet this would be no fault of the global trade regime.

²¹Cynthia Callard, Hatai Chitanondh, and Robert Weissman, 'Why trade and investment liberalisation may threaten effective tobacco control efforts', *Tobacco Control*, 10 (2001), 68–70.

²²Taylor et al., 'The impact of trade liberalisation', p. 348.

²³Benn McGrady, 'Trade liberalisation and tobacco control: moving from a policy of exclusion towards a more comprehensive policy', *Tobacco Control*, 16 (2007), 280–3.

Consider now the claim that there are non-discriminatory alternatives to the policy of exemption. This clearly presupposes that any tobacco-control measure that a country might want to adopt is compatible with the terms of existing trade agreements. Even if we grant this controversial premise, however, it does not follow that these alternative policies are in fact realistic and feasible. Take the case of Thailand, whose government attempted to ban foreign cigarettes in the 1990s. A GATT panel ruled against this ban, to which Thailand appealed by arguing that foreign cigarettes were more addictive, and that advertisement by transnational tobacco companies was much more effective in promoting tobacco consumption. The GATT panel was unpersuaded. It argued that Thailand could have adopted alternative, non-discriminatory public health measures, such as general advertising and labelling restrictions. What the panel didn't consider, however, were the potential administrative and compliance costs of these alternative measures, and the difficulties of effectively implementing them in a developing-country setting.²⁴ For a country like Thailand, maintaining the highly inefficient state-run tobacco monopolies was bound to keep smoking rates lower than opening the internal market up to multinational companies, while simultaneously attempting to implement complex tobacco-control regulation. As a commentator put it at the time, a ban on foreign cigarettes was 'exactly what a doctor might have ordered'.²⁵

Let me finally turn to a more practical objection to the exemption strategy. Even if tobacco were exempted from all future trade agreements, there is a vast and complex body of law established by already existing trade and investment agreements. Transnational tobacco companies can make use of these older agreements to press claims against governments that enact tobacco-control legislation. Consider once again Philip Morris International's lawsuit against Uruguay. One particularity of the case was that PMI used the investor-state dispute-settlement mechanism of a bilateral trade agreement between Uruguay and Switzerland, where some of its holding companies are located. This exemplifies the ability of transnational companies to 'forum-shop': that is, to find trade agreements signed by countries in which they have commercial interests, and launch disputes through these agreements. The strategy is highly effective, as there are now thousands of bilateral and regional trade agreements to choose from.²⁶

Another notable feature of the Uruguay case is the power asymmetry between tobacco companies and many developing countries. In 2002, the three largest tobacco companies—British American Tobacco, Philip Morris, and Japan Tobacco—had combined revenues of more than 121 billion USD. This was, at the

²⁴Dani Rodrik, *The Globalization Paradox: Why Global Markets, States and Democracy Can't Coexist* (Oxford: Oxford University Press, 2011), at p. 195. It's not surprising that the panel did not consider this: arbitration panels are composed of international trade lawyers, not public health experts.

²⁵Frankel, 'U.S. aided cigarette firms', p. A01.

²⁶Jarman, *The Politics of Trade and Tobacco Control*, p. 72.

time, more than the total combined GDP of Albania, Bahrain, Belize, Bolivia, Botswana, Cambodia, Cameroon, Estonia, Georgia, Ghana, Honduras, Jamaica, Jordan, Macedonia, Malawi, Malta, Moldova, Mongolia, Namibia, Nepal, Paraguay, Senegal, Tajikistan, Togo, Uganda, Zambia, and Zimbabwe.²⁷ In PMI's challenge against Uruguay, for example, the high legal costs of the proceedings meant that Uruguay may have had to abandon the case, had it not been for US billionaire Michael Bloomberg's decision to financially support its defence.²⁸ Far from showing that the current system works, the case of Uruguay is best seen as exceptional.

To be sure, this does not show that the exemption strategy is misguided. It does show, however, that it would need to be complemented with positive steps to help countries avoid the harms of trade. In this context, the Framework Convention on Tobacco Control (FCTC) deserves attention. The FCTC is a global public health treaty that entered into force in 2005, and has been ratified by 180 countries. It places binding obligations on states to enact a minimum set of proven tobacco-control measures, such as rules concerning taxation, product-content regulation, packaging, labelling, and advertisement. Although the final text of the FCTC does not explicitly mention trade, the rationale for its adoption was to establish universal standards to counteract the global spread of tobacco. As one observer put it, 'the FCTC is an attempt to develop a form of health governance capable of effectively regulating transnational corporations'.²⁹

It is perhaps too early to pass judgement on the success of the FCTC. Although implementation has been slow and partial, the binding nature of the FCTC has certainly supported public health authorities in enacting tobacco-control measures.³⁰ However, one clear limitation of the FCTC is its domestic focus: it does not contain obligations that states have towards each other, since these were opposed by high-income countries. But given the asymmetries in power, resources, and expertise between poor and rich countries, ensuring that all countries can avoid the harms of trade would require certain redistributive policies. We could envisage, for instance, some form of assistance pool to provide economic and legal assistance to low- and middle-income countries whose tobacco-control policies are challenged by transnational tobacco companies under free-trade agreements.³¹ In short, exempting tobacco from trade and investment agreements is a plausible policy to restrict the harms of trade, but in practice it would need to be complemented by positive steps.

²⁷World Health Organization, *Tobacco and Poverty*, p. 9.

²⁸Heather Wipfli, *The Global War on Tobacco: Mapping the World's First Public Health Treaty* (Baltimore: Johns Hopkins University Press, 2015), at p. 132.

²⁹Jeff Collin, 'Tobacco politics', *Development*, 47 (2004), 91–6, at p. 91.

³⁰Thomas Bollyky, 'Has a global tobacco treaty made a difference?', *The Atlantic*, 28 Feb. 2015, <<https://www.theatlantic.com/health/archive/2015/02/has-a-global-tobacco-treaty-made-a-difference/386399/>>.

³¹E.g. Eric Gottwald, 'Leveling the playing field: is it time for a legal assistance center for developing nations in investment treaty arbitration?', *American University International Law Review*, 22 (2006), 237–75.

IV. CONCLUSION

Traditionally, much of our thinking about global trade has been dominated by the way it shapes the wealth of nations. Its effects on population health, in contrast, have received far less attention. As the single most preventable cause of death in the world today, tobacco deserves special scrutiny. Each year, 6 trillion cigarettes are smoked; ‘enough to make a continuous chain from the earth to the sun and back, with enough left over for a couple of round trips to Mars’.³² This staggering scale of tobacco consumption is linked to the liberalization of international trade and investment, which is neither natural nor unavoidable, but driven by socially alterable institutions and practices. It’s a matter of social choice what kind of global trade regime we design and collectively impose on one another. But in any case, this imposition must be justified, and a first step towards this goal is to desist from harm.

³²Proctor, *Golden Holocaust*, p. 3.