



Graduated sovereignty and global governance gaps: Special economic zones and the illicit trade in tobacco products



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ABSTRACT

Illicit trade in tobacco products has been a significant problem globally for many years. It allows cigarettes to be sold far below their legal price and thus contributes to higher consumption, morbidity and mortality, and deprives state treasuries of a substantial amount of revenue. This article identifies special economic zones (SEZs), particularly free trade zones, as a key conduit for this illicit trade. The development of SEZs as weak points in the global governance architecture is explained with reference to the concept of 'graduated sovereignty', whereby the uniform management of territory by modern states has given way to a more spatially selective form of territorial governance, in which some slices of territory are more fully integrated into the world economy than others via various forms of differential regulation. Attempts to comprehensively (re)regulate SEZs, in the face of growing evidence of the dysfunctions that they can engender, have so far been unsuccessful. It is concluded that the neo-liberal global economy has facilitated a regulatory 'race to the bottom', a problem that can only ultimately be overcome by international negotiation and agreement.

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Introduction

Illicit trade in tobacco products, usually cigarettes, has been a significant problem globally for many years, both in terms of its impacts on public health and state revenues. One of the most effective means of reducing tobacco consumption, and therefore the disease burden caused by it, is by raising the sale price through taxation (Chaloupka, Hu, Warner, Jacobs, & Yurekli, 2000). Nearly all countries impose excise tax and sales or value added tax (VAT) on tobacco products and many apply high import tariffs, so the difference between the tax free price and the tax inclusive price can be substantial (Yurekli & Sayginsoy, 2010, pp. 549). Smuggling allows cigarettes to be sold far below their legal price and thus contributes to higher consumption, morbidity and mortality (Chaloupka et al., 2000). It also deprives state treasuries of a substantial amount of revenue.

The extent of cigarette smuggling is difficult to calculate because smuggling routes are extremely complex and data is limited (Yurekli & Sayginsoy, 2010, pp. 546), yet all estimates agree that it is a sizeable problem. The best and most recent estimate puts the extent of the illicit trade globally at 11.6% of total consumption,

although this can vary between countries from just 1% at its lowest to 40–50% at its highest (Joossens, Merriman, Ross, & Raw, 2010, pp. 1645–1646). This equates to a total revenue loss globally of about \$40.5 billion a year (Joossens et al., 2010, pp. 1645). If this illicit trade were eliminated, because average prices would rise as a result and consumption would therefore decline, governments would gain at least \$31.3 billion a year and 164,000 premature deaths a year would be avoided (Joossens et al., 2010, pp. 1645). So serious is the problem of cigarette smuggling that in 2012 the States Parties to the World Health Organisation's (WHO) Framework Convention on Tobacco Control (FCTC) adopted a Protocol to Eliminate Illicit Trade in Tobacco Products (hereafter 'the WHO Protocol') (WHO, 2013).

Smuggling usually involves hub or transit locations where huge volumes of cigarettes are imported solely to be re-exported (Joossens & Raw, 1998; Yurekli & Sayginsoy, 2010). While economic theory suggests that smuggling and other forms of illicit trade result from price (and therefore tax) differentials between different jurisdictions, empirical studies demonstrate the importance of governance arrangements. For example, higher levels of corruption are associated with weaker law enforcement and higher smuggling (Yurekli & Sayginsoy, 2010, pp. 553). Merriman, Yurekli, and Chaloupka (2000) find that the perceived level of corruption in a country statistically explains more of the variance in estimates of

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cigarette smuggling than do price differentials. In fact, research shows that it is not usually cheap cigarettes that are smuggled into high price markets, but the opposite, with opportunities to evade duties the explanatory factor (Joossens & Raw, 1998, pp. 67–8; Joossens et al., 2010, pp. 1646). In addition to the differences between duty free and duty paid prices, therefore, the magnitude of the illicit trade in tobacco products can be explained by factors relating to the governance arrangements within and at the borders of jurisdictions and the legal regime that governs how products are traded between those jurisdictions.

The legal regime governing trade between jurisdictions has been exploited by the use of complex smuggling routes designed to confuse authorities and hide the true destination of the product. Products destined for export from one jurisdiction to another are exempt from taxes, including customs duties, excise tax and VAT, while they are in 'transit'. Tax is only required to be paid within the jurisdiction where final sale is intended to occur, so products passing through a third jurisdiction remain legally untaxed. Cigarettes are thus sold by manufacturers to suppliers and then shipped from one destination to another, often changing hands on many occasions (Joossens, Chaloupka, Merriman, & Yurekli, 2000). Smuggling takes place when all or a portion of the product is diverted into the illegal market and sold without taxes having been paid. The final locus of the illicit sale can be anywhere in the world, including within the country of origin.

Illicit trade thus takes place where there are 'weak points' in local, national or global structures of governance, particularly where borders are compromised for one reason or another. Once large scale illicit trade takes hold, the potential profits associated with it provide incentives for organised crime networks to develop, and can lead to increases in corruption and higher-risk criminal activity supported by these profits (Joossens et al., 2000). Weak governance may exist as a result of state failures and lack of capacity, but may also arise where governments have chosen to govern parts of their territory in a differentiated or graduated manner, as in the case of special economic zones (SEZs), potentially resulting in the (de jure or de facto) loosening of border controls or other regulations.

This article analyses the role of SEZs in the illicit tobacco trade and theorises it with reference to literature concerning the growing political and spatial complexity of governance arrangements under contemporary forms of globalisation. It draws particularly on Ong's concept of 'graduated sovereignty' (Ong, 2000; 2006) and Agnew's (2009) development of Mann's (1984) concept of 'infrastructural power'. It is argued that spatially selective forms of territorial governance such as SEZs can create 'gaps' in governance that facilitate illicit trade. The next section presents an extended discussion of these concepts. Subsequently, I discuss examples of how various SEZs have facilitated the illicit trade in tobacco products. Finally, I analyse the difficulties of effective regulation, or re-regulation, of SEZs, and the trade-offs that governments face when balancing effective regulation with the economic imperative of increasing competitiveness within a globalised world market.

Graduated sovereignty and global governance gaps

As Walker (1998, pp. 356) observes, the concept of sovereignty 'was introduced into legal and political thought as a way of comprehending a one-dimensional pattern of state-centred authority', or as Hirst and Thompson (1999, pp. 256) put it, "'sovereignty" in its modern form is a highly distinctive political claim – to exclusive control of a definite territory.' Sovereignty implies control over both specific areas of territory and particular functions and so 'tends to be restricted by boundaries of space and subject matter' (Walker, 1998, pp. 356). This identification of sovereignty with control of a

specific territory implies that sovereignty has been exercised 'uniformly within a given territory' (Pauly & Grande, 2005, pp. 8).

Yet, as Pauly and Grande note (2005, pp. 8), empirical investigation indicates that the 'practices, expression, and even theoretical conceptualisation' of sovereignty have been subject to change historically. Indeed, they argue that 'the idea that sovereignty can be divided and reconfigured is ... one of the most important innovations in modern political philosophy' (Pauly & Grande, 2005, pp. 11). While issues concerning the locus of sovereignty have always been inherent in federal polities, the distribution of powers between levels of government is usually specified by a constitution and related to particular territorial states (Watts, 1998). Contemporary discussions of the divisibility of sovereignty go beyond this, noting, as Ruggie (1993) does, that state territory can be 'unbundled'. Agnew (1994; 2009), for example, has been one of the foremost critics of 'sovereignty myths', particularly the assumptions that state sovereignty is congruent with both a specific 'nation' and with a defined territory. Drawing on the work of Michael Mann (1984), Agnew (2009, pp. 117) highlights the distinction between what Mann calls 'despotic' and 'infrastructural' power, linked respectively to 'the two different functions that states perform ...: (1) the struggle for power among elites and interest groups in one state and between those and elites and interest groups in other states and (2) the provision of public goods that are usually provided publicly (by states).' Until recently, argues Agnew (2009, pp. 118), the provision of infrastructural goods had a largely territorial basis, since the populations benefiting from them were concentrated territorially and the technologies for providing them 'had a built-in territorial bias, not least relating to the capture of positive externalities.' However, it is increasingly the case that 'Infrastructural power can be deployed across networks that, though located in discrete places, are not necessarily territorial in the externality fields that they produce ... New deployments of infrastructural power both de-territorialise existing states and re-territorialise membership around cities and hinterlands, regions, and continental-level political entities such as the European Union' (Agnew, 2009, pp. 118).

Pauly and Grande (2005, pp. 15) argue that as a result of such processes sovereignty arrangements have become increasingly complex, leading to 'multiple and overlapping hierarchies' in a system of 'complex sovereignty'. In this new situation, 'territoriality still matters', but political authority has been reconfigured across various functional dimensions and spatial scales (Pauly & Grande, 2005, pp. 15). These developments have been associated particularly with processes of globalisation. Cerny (1998, pp. 36), for example, argues that globalisation is 'leading to an unbundling of basic state functions and the growth of uneven, cross-cutting and overlapping levels of governance and quasi-governance, the fragmentation of cultural identities and the reconfiguration of social, economic and political spaces' (see also Cerny, 2010a). According to Grande and Pauly (2005, pp. 286), we are beginning to see a transcendence of 'the traditional separations of domestic and international politics, inside-outside and public-private'.

Hirst and Thompson (1999, pp. 268–269) too note that 'Politics is becoming more polycentric, with states as merely one level in a complex system of overlapping and often competing agencies of governance'. In many cases, power has been ceded 'upwards' to supranational organisations or 'downwards' to sub-national units (Hirst & Thompson, 1999, pp. 270). In relation to the latter, Keating (2001, pp. 53) observes how various strategies for 'territorial management', used by states in the past to integrate disparate groups and ensure the integrity of their territories, 'have been undermined by the decreased capacity of national states to deliver the goods.' In a globalised economy, states find it difficult to manage the various interests within their borders to the same

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