



Eidgenössische Technische Hochschule Zürich  
Swiss Federal Institute of Technology Zurich

## Curbing Illicit Financial Flows from Resource-rich Developing Countries: Improving Natural Resource Governance to Finance the SDGs

# Commodity Trade Mispricing: Mapping Regulatory Drivers, Enablers and Responses

January, 2019

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This project is funded through the Swiss Programme for Research on Global Issues for Development ([www.r4d.ch](http://www.r4d.ch)) by the Swiss Agency for Development and Cooperation (SDC) and the Swiss National Science Foundation (SNSF).



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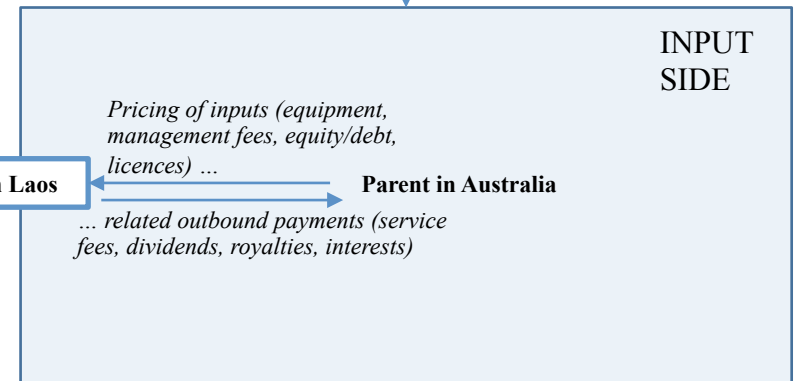
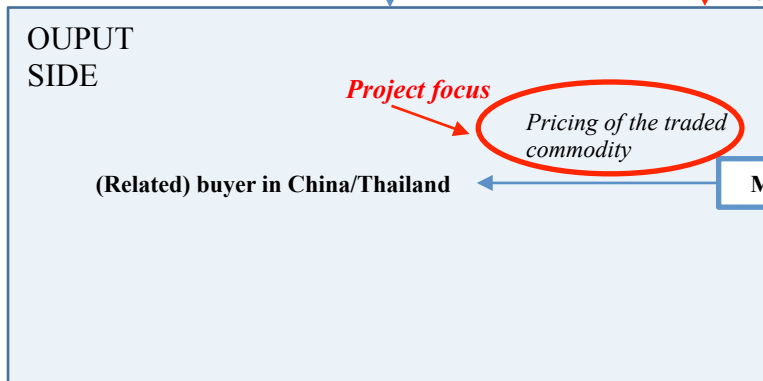
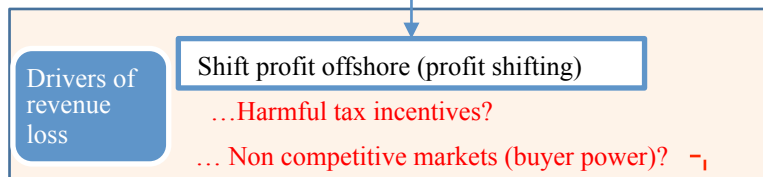
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# Commodity trade mispricing: Drivers and regulatory enablers/incentives



## Commodity trade mispricing: Regulatory enablers/incentives and regulatory responses

### TAX

- Tax rate differentials and preferential regimes / offshore tax structures ← Changes to the international tax architecture / alternative framework (minimum taxes, formula apportionment, etc.)
- International mismatches in entity and instrument characterisation & regulatory arbitrage ← Anti-hybrid rules
- Treaty ‘shopping’ and treaty abuse ← Limitation of benefits (LOB) rules and other anti-treaty abuse rules
- Secrecy, lack of transparency ← Exchange of information and cooperation in tax matters
- Transfer pricing rules ← Simplified TP mechanisms and alternative approaches (formulary apportionment, etc.)
- Tax treatment of related party debt-financing, captive insurance, etc. ← Restrictions on interest deductibility (thin capitalization and other rules)
- Issues of jurisdiction to tax (indirect transfer of interests, etc.) ← Strengthened source country taxing rights

### CUSTOMS

- Poor valuation and clearance procedures (valuation, traceability, data cross-matching) ← Reference databases, traceability systems and data cross-matching (rules and regulations)
- No internal cooperation (tax department, mines/line ministries) ← Internal administrative assistance (protocols and procedures)
- No external cooperation ← Customs cooperation agreements

### MINERAL VALUATION

- Poor mineral sampling and testing standards, and poor reporting requirements ← Strengthened mineral valuation frameworks and procedures

### COMMERCIAL / CORPORATE

- Issues of contract transparency and contract allocation procedures ← Contract registration, traceability systems, inter-locked paper trails / technologies (block chain?), auctions
- Insufficient due diligence and reporting by companies ← ‘Incentivize’ traders’ due diligence and reporting by leveraging trade facilitation, exchanges, finance/investors, etc.

# Cooperation frameworks

# Levers, international

- Trade intelligence and transparency
- Internal administrative assistance (bank supervisors, AML units, tax authorities, law enforcement)
- Customs valuation

- Trade provisions, including trade facilitation (Authorized Economic Operator status etc.)
- Investment treaties/contracts (Denial-of-benefits clauses, etc.)
- Business and Human Rights (and environment)

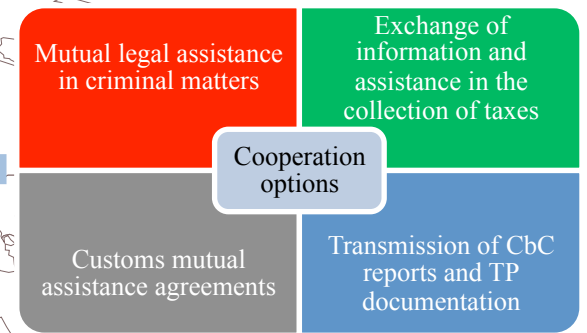
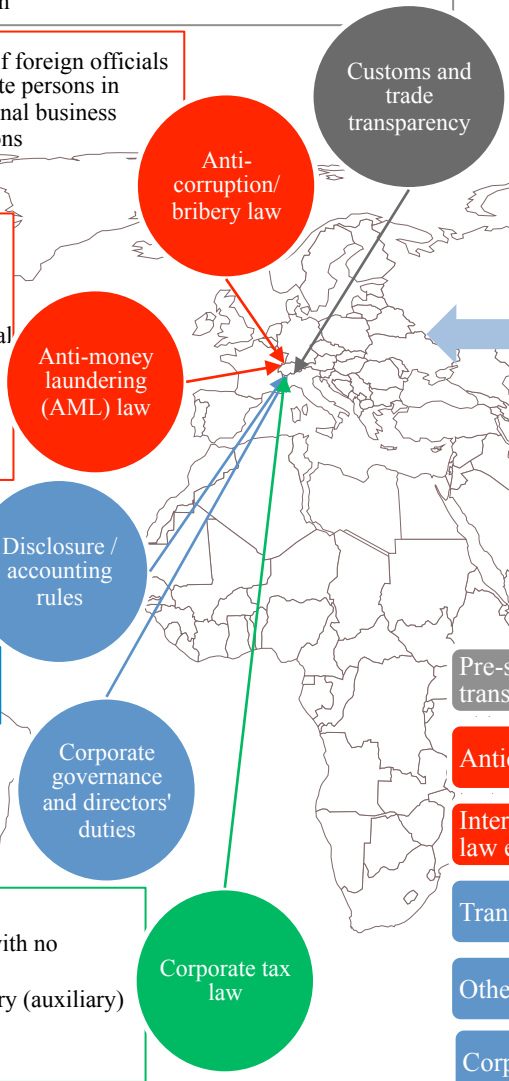
## Switzerland

- Bribery of foreign officials and private persons in international business transactions

- Tax crime as a predicate offense of AML
- Financial intermediaries due diligence and disclosure requirements
- Extension of AMN regulations to designated non-financial businesses and professions, including traders
- Suspicious activity reporting system, internal administrative assistance (customs, tax authorities, banking supervisors)

- Country-by-country (CbC) reporting & transfer pricing (TP) documentation
- Obligation to disclose payments to governments
- Identification of the beneficial owners of legal entities
- Transparency regarding legal entities, including companies with bearer shares

- Elimination of potentially harmful tax practices:
  - Preferential tax incentives for license income with no substantial activity
  - Preferential tax treatment of holding, domiciliary (auxiliary) and mixed companies at cantonal level
  - “Commissionaire” ruling regime



## Ghana and Laos

Pre-shipment inspection and valuation; customs enforcement and trade transparency

Anticorruption laws & AML legislation

Internal administrative assistance (tax authorities, customs agencies, law enforcement, banking supervisors/FIUs, etc.)

Transfer pricing rules, procedures and documentation

Other anti-abuse rules

Corporate disclosure requirements and transparency

Tax provisions (general tax law, mining law, mining contracts)

Investment regulation (institutional set up, concessions/licences, operations)

- Criminal law issues (Switzerland: SCC, AMLA & Ordinances, ACLA)
- Company law issues (Switzerland: CC, CO, CISA, FAIS)
- Tax law issues
- Customs laws, regulations and procedures