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
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Commodity trade mispricing: Drivers and regulatory enablers/incentives

- Commercial/Corporate law & CSR
  - Issues of contract transparency and contract allocation procedures
  - Insufficient due diligence and reporting by companies

- Mineral valuation
  - Poor mineral sampling and testing standards, and poor reporting requirements

- Customs valuation and clearance
  - Poor valuation, traceability, no data cross-matching
  - Poor internal cooperation (with Tax and line departments) / No external cooperation

- Tax
  - Tax rate differentials and preferential regimes / offshore tax structures
  - International mismatches in entity and instrument characterisation & regulatory arbitrage
  - Treaty ‘shopping’ and treaty abuse
  - Secrecy, lack of transparency
  - Transfer pricing rules
  - Tax treatment of related party debt-financing, etc.
  - Issues of jurisdiction to tax (indirect transfer of interests, etc.)

Drivers of revenue loss
- Shift profit offshore (profit shifting)
  - ... Harmful tax incentives?
  - ... Non competitive markets (buyer power)?

Project focus: Pricing of the traded commodity

(Related) buyer in China/Thailand

Mining company in Laos

Parent in Australia

Pricing of inputs (equipment, management fees, equity/debt, licences) ...

... related outbound payments (service fees, dividends, royalties, interests)
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 trials / 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.
• Trade intelligence and transparency
• Internal administrative assistance (bank supervisors, AML units, tax authorities, law enforcement)
• Customs valuation

• 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

Cooperation frameworks

Switzerland

• Anti-corruption law
• AML law
• Disclosure/accounting rules
• Corporate governance and directors’ duties

Levers, international

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

• Mutual legal assistance in criminal matters
• Exchange of information and assistance in the collection of taxes
• Customs mutual assistance agreements
• Transmission of CbC reports and TP documentation

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)