



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

**Irene Musselli**

Centre for Development and Environment (CDE) University of Bern

**Elisabeth Bürgi Bonanomi**

Centre for Development and Environment (CDE) University of Bern

© The Authors. All rights reserved. For more details, visit the project website: <https://curbing-iffs.org/>

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).



Swiss Programme for Research  
on Global Issues for Development



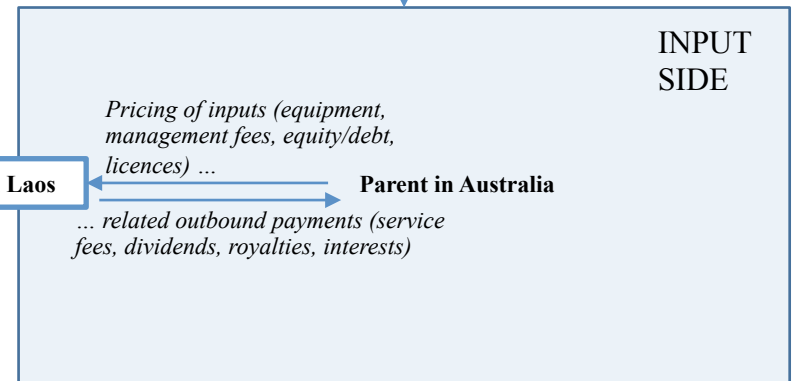
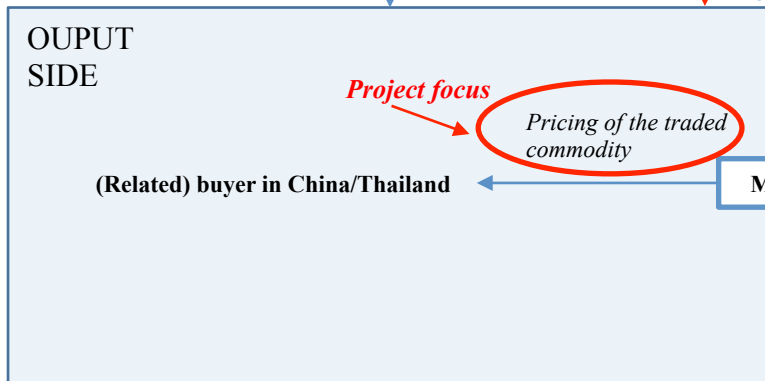
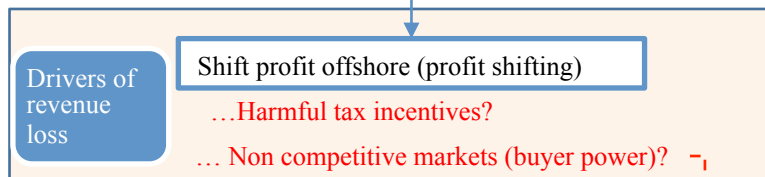
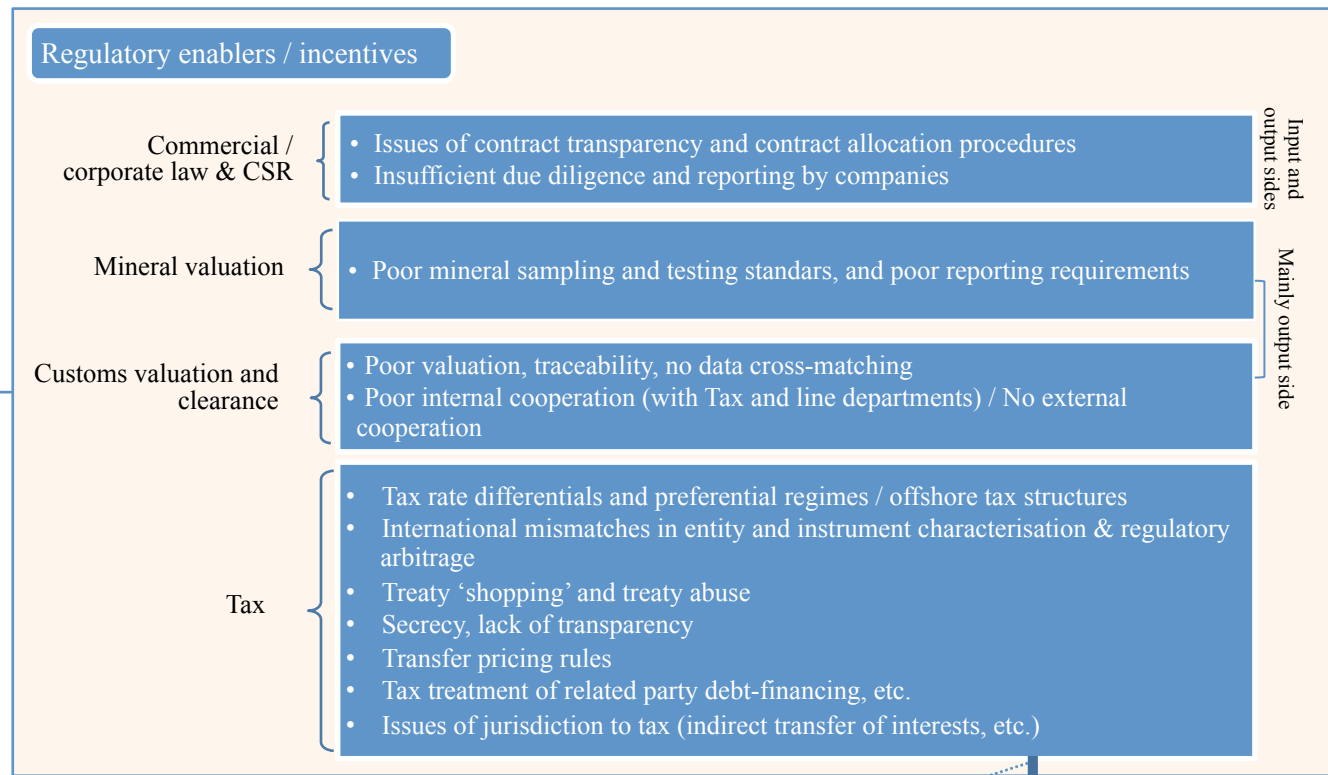
Schweizerische Eidgenossenschaft  
Confédération suisse  
Confederazione Svizzera  
Confederaziun svizra

Swiss Agency for Development  
and Cooperation SDC



SWISS NATIONAL SCIENCE FOUNDATION

# 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)

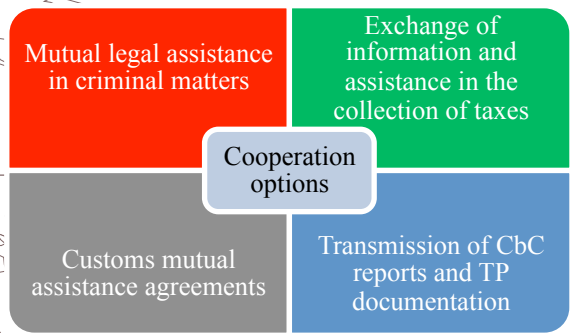
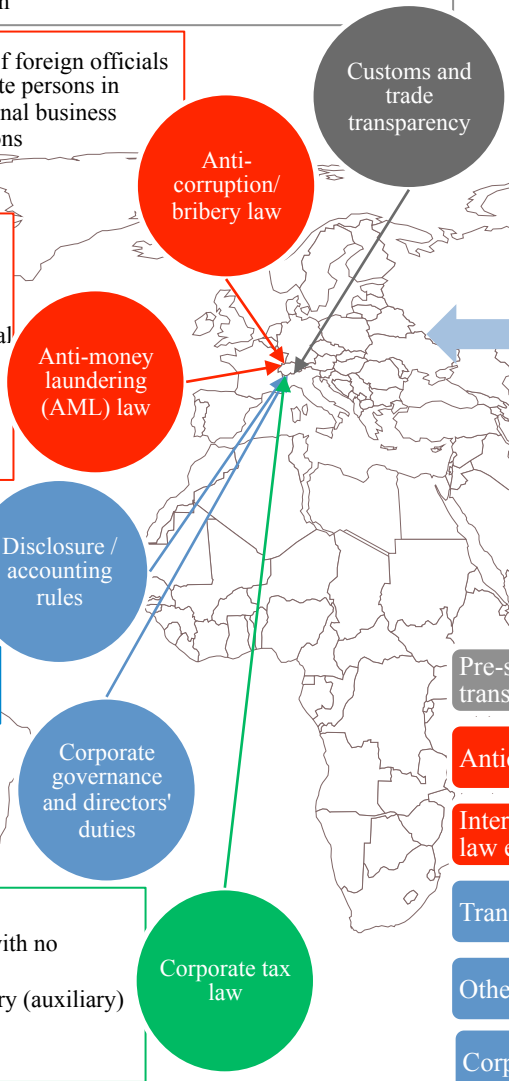
## Switzerland

- 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