

Asongu, Simplicé; Uduji, Joseph I.; Okolo-Obasi, Elda N.

Working Paper

Transfer pricing and corporate social responsibility: Arguments, views and agenda

AGDI Working Paper, No. WP/19/029

Provided in Cooperation with:

African Governance and Development Institute (AGDI), Yaoundé, Cameroon

Suggested Citation: Asongu, Simplicé; Uduji, Joseph I.; Okolo-Obasi, Elda N. (2019) : Transfer pricing and corporate social responsibility: Arguments, views and agenda, AGDI Working Paper, No. WP/19/029, African Governance and Development Institute (AGDI), Yaoundé

This Version is available at:

<https://hdl.handle.net/10419/204996>

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A G D I Working Paper

WP/19/029

Transfer Pricing and Corporate Social Responsibility: Arguments, Views and Agenda

Forthcoming: Mineral Economics

Simplice A. Asongu

African Governance and Development Institute,
P.O. Box 8413 Yaoundé, Cameroon.

E-mails: asongusimplice@yahoo.com;
asongus@afridev.org

Joseph I. Uduji

Department of Marketing,
Faculty of Business Administration,
Enugu Campus, University of Nigeria, Nsukka, Nigeria
E-mails: joseph.uduji@unn.edu.ng; joseph.uduji@gmail.com;
joseph.uduji@yahoo.com

Elda N. Okolo-Obasi

Institute for Development Studies,
Enugu Campus, University of Nigeria, Nsukka, Nigeria
E-mails: eldanduka@yahoo.com; ndukaelda@yahoo.com

Research Department

Transfer Pricing and Corporate Social Responsibility: Arguments, Views and Agenda

Simplice A. Asongu, Joseph I. Uduji & Elda N. Okolo-Obasi

January 2019

Abstract

The central thesis of the paper is that Multinational Companies (MNC) should invest in the use of “soft” methods (socially responsible behavior) to mitigate costs in society accrued due to use of “hardcore” tax evasion tactics (Transfer mispricing) to maximize profits from operations in developing countries and/or countries with weak or inefficient tax laws and tax collection institutions. Therefore, we articulate the argument of Corporate Social Responsibility (CSR) as an indirect compensation for transfer mispricing. Our aim is not to present CSR as solution to transfer mispricing. An analytical approach is based on a content analysis of the existing literature with emphasis on a case study. We first discuss the dark side of transfer pricing (TP), next we present the link between TP and poverty and finally we advance arguments for CSR as a compensation for transfer mispricing. While acknowledging that TP is a legal accounting practice, we argue that in light of its poverty and underdevelopment externalities, the practice *per se* should be a strong defence for CSR because it is also associated with schemes that deprive developing countries of the capital essential for investment in health, education and development programmes.

JEL Classification: F20; H20; M14; O11

Keywords: Corporate Social Responsibility; Transfer pricing; Extreme poverty

1. Introduction

The central thesis of the paper is that Multinational Companies (MNC) should invest in the use of “soft” methods (socially responsible behavior) to mitigate costs in society accrued due to use of “hardcore” tax evasion tactics (Transfer mispricing) to maximize profits from operations in developing countries and/or countries with weak or inefficient tax laws and tax collection institutions. Hence, the central thesis has scholarly and policy relevance in at least three key aspects, notably: a development aspect; a tax enforcement aspect and a social responsibility aspect. The paper defines and explains the central concepts that are used, in the light of existing literature, namely: transfer pricing, transfer mispricing and Corporate Social Responsibility (CSR). The research explains that the evasion of taxes in poor jurisdictions could affect the ability of authorities in the corresponding jurisdictions to provide public commodities (e.g. basic services such as schooling, health care and social care) and hence, engaging in CSR by contributing toward providing the attendant public commodities can enhance the reputation of the MNC as well as make the prospective workforce more able.

Transfer pricing (TP) is a process by which commodities are traded between legal entities or subsidiaries within a corporation (Asongu, S. A., 2016). It consists of setting the price at which goods and services are sold by one subsidiary to another. For instance, if a subsidiary corporation sells commodities to another subsidiary, the cost of the commodities sold is transferred to the buying subsidiary through the transfer price. Some of these subsidiaries with legal entities that are within the control of a parent company include branches as well as corporations that are majority or wholly owned by the parent establishment. Within a broader framework of globalisation, TP can be employed as a method of allocating profits (or losses) before taxes to various nations where a multinational corporation does business. In a nutshell, TP is a process, relating to prices charged between affiliates within the same group of corporations (Asongu, S. A., 2016). While transfer pricing and transfer mispricing are used in this paper, in its ideal form transfer pricing involves companies 'correctly' pricing imports and exports between subsidiaries. Transfer mispricing is therefore the incorrect pricing of imports and exports between subsidiaries of the same company.

In order to avoid transfer mispricing, it is required that the transaction price between companies should be the same as a price in the open market. This is known as the ‘arm’s length principle’ of transfer pricing which states that the amount demanded for a commodity by one party must be supplied by the other party as though both parties were unrelated. While

such a principle is employed in the absence of good laws and legislation that prevent a nation from monitoring transfer mispricing, very rarely is there consensus as to the ‘correct’ arm's length principle (except perhaps for some commodities).

In principle, TP should be consistent with either what the buyer would independently pay or what the seller would freely charge. Unfortunately, whereas unrealistic price transfers among subsidiaries does not affect the corporation or multinational in overall terms, TP becomes an issue for taxing authorities within a government when the accounting practice is used to (i) increase profits in countries with low tax jurisdictions (or low income taxes) and (ii) decrease profits in countries with high tax jurisdictions (or high income taxes). Given that tax havens are in the former category, TP is a principal mechanism for tax avoidance and the shifting of profits.

There is a consensus in the literature that corporations need to cater for some of the needs of communities in which they operate (Asongu, J.J; 2007). According to the narrative, the act by corporations of going beyond the delivery of commodities to tackling some of the core demands of society has been acknowledged as Corporate Social Responsibility (CSR). CSR within the context of this study refers to a company's initiative in examining and taking responsibility for its impacts on social and environmental wellbeing. According to Asongu, J.J¹, there are four main traditional arguments for CSR, namely, the: (i) brand image (or reputation), (ii) ethical (or moral), (iii) legal (or licence-to-operate) and (iv) sustainability arguments. The conceptions of CSR that fit the problem statement raised in the inquiry are the first-two. This is essentially because engaging in CSR increases the reputation of a MNC while at the same serving as an indirect compensation of transfer mispricing practices.

Over the past decades, the presence of Multinational Companies (MNCs) in developing countries has increased the debate as to what extent MNCs should invest in social amenities in the communities in which they operate (Sinder et al., 2003; Matten & Moon, 2004; Valentine & Fleischman, 2008; Uduji & Okolo-Obasi, 2019a, 2019b). This deliberation has been inflamed by evidence on the role of globalisation in developing economies and consequent implications for human development (Asongu, S.A; 2013a; Asongu, S.A, 2015; Stiglitz, 2007; Chang, 2008; Mshomba, 2011; Uduji et al., 2019a).

It is reasonable to infer that the arguments against globalisation are evolving partly because Multinational Companies (MNCs) are failing in their role as good corporate citizens.

¹ There are two authors with last names as Asongu used in this study, namely: Asongu, J.J and Asongu, S.A. Hence, the interested reader should not construe the recurrence of Asongu as citations for only one person.

This is essentially because, whereas the spirit of capitalism is motivating MNCs in their ever increasing quests to boost profits, civil societies of countries in which they operate are becoming less tolerant of MNCs that are failing to address their social responsibilities (Branco & Rodrigues, 2006; Osabuohien et al., 2013, 2014, 2015). One recurrent mechanism via which MNCs are evading their responsibilities towards countries in which they operate is tax evasion through transfer mispricing (Sikka, 2010; Hoi et al., 2013; Jenkins & Newell, 2013). While acknowledging that TP is a necessary and indispensable practice in the era of globalisation, this article argues that TP *per se* should also be a solid justification for more CSR because the practice by definition enables underlying MNCs to surreptitiously evade their tax obligations. Intuitively, transfer mispricing practices are concealed by MNCs within the framework of TP which is considered as legal. Therefore since MNCs would not admit to engaging in transfer mispricing, CSR can also be considered as some form of social justice.

Whereas, traditional advocates of CSR have employed concepts such as reputation, licence-to-operate, sustainability and moral obligation to make the case for CSR, recently there has been growing emphasis on other forms of arguments for CSR, *inter alia*: innovation (Asongu, J.J. 2007). The present inquiry extends this stream of literature by arguing that because TP is inherently connected with transfer mispricing, the practice of TP should naturally be a genuine justification for CSR. In this light, we take care in distinguishing this form of CSR from good works or charitable donations.

We devote space to clarifying transfer mispricing as an argument for CSR. Consistent with Vogel (2005), Fleming and Jones (2012) and Davis et al. (2016), arguments for CSR can be made on three broad grounds. They are: (i) CSR is beneficial to the corporation (e.g. in improving the corporation's finances and reputation), (ii) corporations have a moral obligation to operate in ways that are broadly beneficial to society, not simply to maximise returns for their stockholders and (iii) a combination of (i) and (ii). These grounds are broadly consistent with Maignan and Ralston (2002) and Neergaard and Pedersen (2003) on the influence of stakeholders to CSR as well as internal and external drivers of CSR.

Regardless of the grounds upon which the corporation stands, CSR as an argument for transfer mispricing is not aimed at eliminating transfer mispricing. On the contrary, this study is an argument that CSR should be an indirect compensation for the concealed practices of transfer mispricing. The perspective is most eloquently presented by Davis et al. (2016) who have argued that for many corporations, CSR plays the role of a substitute for paying tax. According to the argument, in the contemporary socio-political atmosphere, companies

strongly associated with CSR are simultaneously also characterised with paying low levels of tax. This perspective consolidates the intuition motivating this inquiry in that the separation between CSR and tax in many companies is deliberately done for political and strategic reasons. For instance, MNCs use CSR as some form of cosmetic window-dressing to compensate for the concern about their profits relative to tax paid. The perspective of Davis et al. (2016) is broadly consistent with the literature pertaining to the limits of CSR; notably: (i) contrary to developed countries where CSR has led to improved standards in labour, environmental practices and human rights, there is an apparent reduction of CSR in improving corporate conduct in developing countries in the absence of effective and extensive government regulation (Vogel, 2005); (ii) CSR is designed to conceal the insidious activities of corporations because it helps to deflect criticism of them by endowing such corporations with the rationale for pursuing activities for which shareholders' value is increased (Banerjee, 2009); (iii) CSR-related activities are a means of consolidating legitimacy from employees and consumers and, hence, boost the colonizing and exploitative agenda of most corporations (Fleming & Jones, 2012). It is important to note that the narrative of Davis et al. (2016), within the context of this study, is meant to articulate the argument of CSR as an indirect compensation for transfer mispricing.

In the light of the above, the argument in this study neither builds on the eradicating of TP nor on the eliminating of transfer mispricing. The former cannot be abolished because it is a legal accounting practice and the latter cannot be eliminated because poor countries do not have proper legislation and laws in place for the purpose. The indirect connection between transfer mispricing and CSR is that most poor countries lack proper legislation and laws to monitor and sanction transfer mispricing. Hence, in the absence of effective laws and legislation that oversee TP practices by MNCs, it is very likely that MNCs will not consider transfer mispricing as illegal because the laws in place are not effective at identifying it.

Moreover, the absence of proper legislation and laws may prevent the country from monitoring the arm's length principle of transfer pricing which states that the amount demanded for a commodity by one party must be supplied by the other party as though both parties were unrelated. In other words, the transaction price should be the same as a price in the open market. Whereas implementing this principle may sound easy from the perspective of comparing prices from transactions that are not related, the evaluation becomes more complicated when it concerns intangibles or propriety commodities. Hence, in the light of issues associated with the arm's length principle, better regulation is needed because CSR

cannot serve as a substitute for transfer mispricing, *inter alia* (i) a unitary taxation for transnational corporations (Picciotto, 2012) and (ii) under specific scenarios, within the economic sphere, price planning by private corporations should be examined as a component of political rule because even with the arm's length principle, a substantial amount of trade at the international level cannot be assessed by genuine transactions in the market (Ylönen & Teivainen, 2015). Furthermore as a means to improving regulation, MNCs may be required to voluntarily adopt the Fair Tax Mark initiative which is a mark that companies achieve if they adopt nondiscriminatory and transparent tax practices.

This Fair Tax Mark is an initiative which advocates that when taxes are paid honestly, they help fund essential public commodities. Fair payment according to the initiative also ensures a level playing field for businesses of all size. Companies are therefore encouraged to report their tax practices transparently for their contributions to society to be established. Therefore, the Fair Tax Mark celebrates companies that are transparent in the tax practices by granting them some just recognition. Within the framework of this study, MNCs that are recognised and listed with Fair Tax Mark may use such ratings to justify their lower engagement in CSR².

In the light of the above, in an increasing globalised world, developing nations are growingly opening-up their borders to investments and trade, which exposes them to issues pertaining to tax base erosion and profit shifting (BEPS). Given the growing requirement in developing countries that fully effective TP regimes should be put in place in order to address the risks associated with BEPS (which reduces the much needed tax income for economic development, in 2011), the Organisation for Economic Cooperation and Development (OECD) Task Force on Tax and Development started a programme designed to provide support to developing countries which are seeking to strengthen and/or implement rules of TP (Abbas & Alexander, 2013; OECD, 2017). The impact of the programme is increasingly significant in all countries where the TP rules are being implemented in alignment with international standards. According to the narrative, the programme has had a significant effect in all countries of operation embodying: (i) the introduction of rules of transfer pricing that are aligned with international standards; (ii) setting-up of units of specialization to perform works related to transfer pricing and (iii) enhanced revenues from audits pertaining to transfer pricing. Meanwhile in order for the developing countries to fully benefit from the programme,

² More information on the Fair Tax Mark can be found on the following link: <https://fairtaxmark.net/who-we-are/>

there is need to further scale-up the OECD's new Inclusive Framework in the coming years (Crivelli et al., 2016; OECD, 2017). Such scaling-up entails training, guidance and the development of tools relevant in assisting countries in the pragmatic application of adopted rules governing transfer pricing.

The rest of the study is structured as follows. Section 2 discusses linkages between transfer mispricing, extreme poverty and CSR. Here, we first discuss transfer mispricing as the dark side of TP, then argue about the linkages between TP and poverty before finally presenting the case for CSR in transfer mispricing. Section 3 presents practical insights with a case study of the Democratic Republic of Congo's mining industry and Glencore Plc. We conclude with Section 4.

2. Transfer Mispricing, Extreme Poverty and Corporate Social Responsibility (CSR)

2.1 The negative side of transfer pricing (TP)

The negative side of TP is obviously 'transfer mispricing' which has been documented to be linked to tax avoidance and retention of wealth (Sikka & Willmott, 2010; Asongu, S.A, 2016). According to this stream in the literature, TP is a legitimate accounting practice which has gained more prominence with the advent of globalisation because the operations of corporations extend beyond national borders with different taxation regimes and regulations. In essence, the ever growing quest to increase company cash flows, profits and goals of marketing, among others, have also prompted underlying companies with a multinational position to adopt measures of cost performance and accounting for taxable profits that are of questionable business ethics, even by conservative standards. Within this framework, MNCs tailor cost- and overhead-allocation schemes that enable them to transfer commodities to various subsidiaries/branches. It is important to note that some discretion is enjoyed by companies which engage in TP owing to the subjective features in mechanisms of cost and overhead allocation. Hence, companies can assign commodities to specific geographic regions so as to increase profits and keep their taxes low. The basic idea in the TP strategy consists of allocating higher profits to low-tax jurisdictions and higher costs to high-tax jurisdictions.

Whereas TP can enable corporations to limit the downsides of double taxation, abuse of the practice is increasing and it is being employed by virtually all MNCs to shift profits (Baker, 2005). The above TP practices obviously have negative externalities on tax incomes, public service delivery and living standards in countries with relatively higher rates of corporate taxation, especially low income economies.

According to Asongu, S.A (2016), the strength of MNCs is being increasingly solidified with the spirit of capitalism such that microstates are increasingly taking precedence over nation states which are competing for investment needed for employment and taxable income. The outcome of the unfortunate scenario is that investments are delivered to nation states while subsequent profits are channelled to micro states. Consistent with the narrative, transfer mispricing schemes are also providing an enabling environment for the proliferation of microstates which are commonly known as offshore financial centres or 'tax havens'.

In light of the above, low-end taxation or microstates have been growing substantially (Sikka, 2010). Microstates have very small populations and hence less public expenditure is needed for public commodities and services. Some microstates are even tax-free and therefore do not have much regard for mispriced profits that are declared within their jurisdictions. It is important to put this point into perspective by articulating the growing depth of activities by MNCs in microstates. *First*, according to Sikka and Willmott (2010), microstates are witnessing the birth of over 200,000 new enterprises on a yearly basis. Baker (2005) claims that there were approximately 3,000,000 corporations registered in microstates by the year 2000. Notable examples include: (i) the Cayman and British Virgin Islands accounting for respectively 3,389 and 182 companies for every 100 inhabitants, (ii) a single building in the Cayman Island accounting for approximately 19,000 companies and (iii) about 15,000 corporations registered in Sark Island that is host to only 574 residents (UK Home Office, 1998). It is important to note that in the narrative, microstates are tax havens. This should not be misconstrued as an assimilation of all microstates to tax havens.

It is important to note that the above microstates are also associated with developed countries. These more advanced nations have the legislative authority to provide a business environment that is favourable to MNCs, which are in constant search of obscure administrative structures: imposition of low/no taxes, preservation of secrecy and less stringent regulations. The above conditions are conducive to global tax avoidance schemes and transfer mispricing mechanisms. It is therefore unsurprising that whereas only about 50 percent of transactions from global trade are traceable to offshore financial centers, these underlying tax havens constitute only about 3 percent of global GDP. Moreover, according Sikka and Willmott (2010), whereas microstates make-up only about 1.2 percent of the world's population, they represents about 26 percent of assets and 31 percent of net profits of the United States MNCs.

Given the above stylized facts, it is apparent that globalization is engendering novel trends in international taxation by MNCs (Asongu, S.A. 2016). According to Sikka and Willmott (2010), under the pressure of territorial juridical constraints, MNCs have been engineering mechanisms of tax avoidance by means of special purpose entities (SPEs), negotiating trust and joint ventures and establishing subsidiaries as well as affiliates that enable them to manipulate asymmetries in taxation systems around the world. It follows that worldwide production is increasingly creating innovative and entrenched networks of TP mechanisms which are being masterfully developed by MNCs to shift taxes to microstates, and so avoid them in countries where their mainstream operations are conducted. What is also striking is that the inherent complexity, scale and strength of globalization is facilitating both the good and bad sides of TP. Accordingly, production and distribution networks are progressively complex, notably (i) national companies are in a permanent quest for transnational and multinational profiles and (ii) foreign companies are at liberty to either jointly work with local corporations or establish new companies under different jurisdictions.

The above scenarios illustrate the case of global trade that has increased international corporate legitimacy and by so doing has enhanced the ability of MNCs to introduce 'tax avoidance' TP schemes. There is a wealth of literature with evidence of MNCs manipulating international taxation privileges. Tanzi (2000) documented how tax administrators were deeply engaged in transfer mispricing. According to Sikka and Willmott (2010) and Asongu, S.A (2016), multilateral institutions like the World Bank, the International Monetary Fund (IMF) and the African Development Bank (AfDB) are increasingly concerned with the plethora of issues in national taxation that have emerged in relation to transfer mispricing by MNCs, namely issues surrounding fixed costs, trademark valuations, loans and patents.

Whereas the poverty externalities of such schemes may not be so apparent in developed nations, poor countries (especially resource-rich nations) are more likely to suffer, given that public goods and services are still substantially absent (Borkowski, 1997). Furthermore, developing countries are more vulnerable than their developed counterparts to some TP practices like illicit capital flight (Asongu, S.A. 2016).

2.2 Linking transfer pricing (TP) to underdevelopment

We have already emphasised that while TP is a legitimate accounting practice because it is needed to distribute profits to various jurisdictions, transfer mispricing which is also a commonly associated practice leads to underdevelopment in countries with high corporate tax

jurisdictions, essentially because of shortage of taxable income that is needed for the delivery of public goods and services (Asongu, S.A., 2015, 2016).

The unfortunate link between transfer mispricing, losses in tax revenues and underdevelopment in high-tax nations has consistently been deplored by renowned policy makers and economists who have reached a consensus in acknowledging that, in its current form, the international taxation system is inequitable and socially damaging (see Walsh, 2015). For example Nobel Laureate Joseph Stiglitz has qualified as ‘unfair, inequitable and inefficient’ the manner in which MNCs operate nationally when their capital is global. Hence, according to him, these MNCs have “*free rein to move their money around to the low-cost (tax) jurisdictions*” (Walsh, 2015). Stiglitz further posits that this scenario has substantially deprived developing countries of capital essential for investments in health, education and development programmes. He further claims that “*it undermines the social and economic fibre of a country*”.

In order to substantiate the above narratives, we present some statistics and stylized facts in the paragraphs that follow. Given that capital flight is one of the main consequences of TP (Donnelly, 2015), recent estimates show that the stock of capital in some poor regions (e.g. Africa) would have been 60 percent higher had TP and illicit funds been kept on the continent. Moreover, the corresponding Gross Domestic Product (GDP) increase would have been some 15 percent higher had illicit capital flight been mitigated. On the basis that absolute pro-poor³ growth is a consequence of GDP growth, the connection between TP and poverty becomes apparent. According to Donnelly (2015), commercial corporations contribute to about 65 percent of illicit capital flows. Furthermore, it was suggested that deliberate over- and under-invoicing of trade activities represented approximately 67.4 percent of illegal capital outflows between 2003 and 2012. Donnelly goes on to emphasize that about 60 billion USD are lost annually to TP-related activities like illicit capital flight.

According to the Donnelly, illicit capital flows from Africa represent about 4 percent of GDP; substantially outpacing official development assistance (ODA) and foreign direct investment (FDI). It is important to note that this illegal flow of money is the product of tax evasion made possible by mechanisms for, among others: bribery, trade misinvoicing, money laundering and transfer mispricing by MNCs. The report by Donnelly (2015) documented that in 2012 the stock of illicit capital flows from sub-Saharan Africa (SSA) stood in the

³ Whereas ‘relative pro-poor growth’ is growth that reduces inequality, ‘absolute pro-poor growth’ is one that reduces poverty. The former engenders sub-optimal externalities for both rich and poor households (see, Asongu & Kodila-Tedika, 2015).

neighbourhood of 68.6 billion USD, compared to ODA and FDI that were respectively 41.1 billion and 35.4 billion USD during the same interval. Asongu, S.A (2016) suggested that these estimates may be way lower because the real scale of illicit flows by their very nature is often under-reported.

It is estimated by Fofack and Ndikumana (2010) that over the past decade, there was about 25 percent of capital flight loss due to TP-related activities. Had this dishonest capital flow being reinvested in Africa, GDP would otherwise have increased by between 19 percent and 35 percent. Diak (2014) argued that if tax income lost to transfer mispricing had been spent on health care, many children could have been saved every year. Mechanisms through which illicit capital flight and transfer mispricing contribute to underdevelopment have been substantially documented. Boyce and Ndikumana (2012a, 2012b) provided country-specific consequences of transfer mispricing whereas Nkurunziza (2012) empirically investigated relationships between illicit capital flows, transfer mispricing and poverty⁴.

It is important to balance the above with the intuition that MNC directors are very likely to use every tax avoidance opportunity to argue that by decreasing tax on capital, they are working in the interest of shareholders. However, shareholders are likely to have heterogeneous interests with some valuing the social responsibility of MNCs as much as their share holdings.

2.3 Arguments for CSR as a compensation for transfer mispricing

There has always been an intense debate about CSR. More specifically, while some scholars argue that the concept is not relevant to business, others view it as of strategic importance, passing through and some protagonists who admit its relevance but still stress that it is not good for business (Asongu, J.J. 2007). In light of the above, the relevance of CSR to business remains an open debate. According to Asongu, J.J, CSR embodies the notion that organisations have an obligation to acknowledge and take into account the interest of employees, customers, communities, the environment as well as shareholders in their operations. Moreover, the notion of CSR is tied to sustainable development which requires corporations to go beyond the ‘making of profit and payment of dividends’ so as to consider

⁴ The interested reader can find more evidence of the linkages in a substantial bulk of the literature devoted to the relationships (Boyce & Ndikumana, 1998, 2001, 2003, 2011, 2012ab; Weeks, 2012, 2015; Asongu, S.A., 2013b, 2014; Efobi & Asongu, 2016; Asongu & Nwachukwu, 2017).

the long-run environmental and social consequences of their operations. Hence, such may be viewed as the continuous commitment to business ethics in order to contribute to socio-economic development through improvements in the quality of life for the local community and society as a whole.

In the paragraphs that follow, we attempt to demonstrate that TP and CSR are not mutually exclusive. In fact their complementarity could *inter alia*: (i) consolidate shareholders' trust, (ii) improve benefits by company employees, (iii) enhance company reputations, (iv) compensate for losses in investment as well as the absence of legislation in developing countries against transfer mispricing and (v) improve tax compliance by domestic companies. We discuss the above points chronologically in five main strands. The first-three components are broadly consistent with Groen (2014).

First, CSR from MNCs is very likely to increase shareholders' trust. Accordingly, it is beneficial for shareholders if MNCs have a responsible CSR strategy. Another dimension from which CSR may be viewed is to conceive of it as being in the same category as dividends to shareholders in MNCs. In essence, the maximisation of shareholder value and CSR are not a contradiction because if MNCs do not engage in CSR, shareholders may be doubtful of the dividends apportioned them. Moreover, in the transition from Millennium Development Goals (MDGs) to Sustainable Development Goals (SDGs), MNCs with a substantial degree of CSR are more likely to be positively viewed by many shareholders, civil society and multilateral development agencies (Uduji et al., 2019b, 2019c).

Second, investments in CSR are also very likely to be profitable for MNCs⁵. This is essentially because MNCs also use benefits from the social opportunities offered by the CSR schemes through, *among others*, improvements in human resources and efficiency in operations (Asongu, J.J. 2007). Other mutually beneficial social amenities include healthcare, infrastructural and educational development (Groen, 2014).

Third, with CSR the reputation of MNCs can also be substantially improved. In this light, CSR is also a kind of public relations appeal because the general public (including suppliers and customers) tend to view the involving MNC in a positive light. With the proliferation of information and communication technologies (ICTs), the concern with local

⁵ It is important to note that this statement also highlights a problem in the perspective that tax issues and CSR are often held as distinct by companies in their existing practices and organizational arrangements. Moreover, because stopping tax avoidance would affect the economic bottom line of companies, for many corporations, CSR plays the role of a substitute for paying tax (see Davis et al., 2016).

and international corporate reputational damage is very important and hence a good track-record in CSR may be a valuable asset in times of tax avoidance accusations and transfer mispricing. The position is even more relevant in societies where some MNCs' stakeholders work and live in high-end tax countries. It is also relevant to clarify from this attendant paragraph that: (i) spending in CSR should not be construed as implying that engaging in CSR is more effective than paying taxes and (ii) the perception of company reputation is broad and hence, no distinction is made between local and international perceptions.

Fourth, we have already substantially discussed the need for MNCs to engage in CSR as a form of compensation for losses in tax income by nation states from which they operate. Our position on this line of inquiry is also substantiated by the fact that MNCs profit from the social opportunities offered by nation states which use taxed income from MNCs to provide public goods and services. Accordingly, in the absence of tax income, welfare may plunge with obvious negative externalities for underlying MNCs, notably: mediocre education, poor health services and low public infrastructural quality owing to less maintenance. Hence, it is reasonable to argue that MNCs that are conscious of inherent transfer mispricing schemes should engage in more CSR as means of compensating for lost capital by nation states. Furthermore, there is an absence of, or lack of proper legislation against transfer mispricing in many developing countries. The documented challenges to formulating and implementing policies against the abuse of TP include: (i) lack of resources and knowledge, (ii) lack of comparable standards, (iii) income skewed by the Intellectual property (IP) regimes or the intangible economy to the benefit of advanced nations, (iv) lack of comprehensive tax treaties and (v) issues with location of savings (Asongu, S.A., 2016).

Fifth, we further argue that CSR by multinational corporations could incite domestic companies to comply more willingly with their tax obligations and/or engage in similar activities. This position is consistent with Stiglitz who has postulated that endowing MNCs with breaks in taxes and implicitly giving them the leeway to indulge in transfer misprice, makes domestic corporations less willing to meet with their tax obligations: *"If multinational companies are escaping taxation, domestic firms are put in an unfair competitive position and it distorts the economy"* (Walsh, 2015).

The foregoing arguments for CSR in respect of TP are also justified by two main complementary tendencies. They are (i) the growing strength of MNCs and (ii) increasing poverty levels in many developing countries in which underlying MNCs operate. This is because:

First, by the beginning of the 21st century, 51 of the top 100 largest economies were MNCs, not nation states (Anderson et al., 2005). We support the argument with five points. (1) According to Anderson et al., intellectual property rights (IPRs) have been monopolised to the height of 97 percent by the OECD countries and 90 percent of the underlying proportion is retained by powerful MNCs. (2) Developing nations which are overly reliant on agriculture have been left to the mercy of MNCs because: (i) twenty of them control trade in coffee; (ii) six influence about 70 percent of wheat trade; (iii) two companies control approximately 80 percent of the global grain market which is also distributed by two MNCs and (iv) one MNC has control over 98 percent of the production of packed tea. (3) Two hundred corporations constitute approximately 28 percent of the global economy. (4) The top five hundred MNCs controlled 80 percent of FDI, 70 percent of global trade in commodities, about 33.3 percent of manufactured exports, 30 percent of global GDP and roughly 80 percent of trade in management and technical services. (5) The one-hundred largest corporations account for approximately \$3400 billion worth of assets, of which 60 percent are located in foreign economies; that is developing countries many of which currently experiencing increasing levels of poverty.

Second, the highlighted growing poverty in some developing countries has been recently confirmed by a World Bank report in April 2015 (Caulderwood, 2015; World Bank, 2015). According to the report on Millennium Development Goals (MDGs), poverty has been decreasing in all regions of the world with the exception of SSA, where about 45 percent of countries are still substantially off-track from achieving the MDG extreme poverty target (Asongu, S.A & Kodila-Tedika, 2017; Asongu & le Roux, 2017, 2019; Tchamyou, 2019a, 2019b). This unfortunate trend substantially contrasts with the two decades of growth resurgence in the mid-1990s (see Alan & Carlyn, 2015; Fosu, 2015; Tchamyou et al., 2019).

3. The Case of Glencore and the Mining Industry in the Democratic Republic of Congo

Glencore Plc is an Anglo-Swiss MNC headquartered in Baar-Switzerland that specializes in commodity trading and mining (Why Poverty, 2013; Asongu, S.A 2016). According to the authors, by 2013 it was ranked among the top 10 Fortune Global 500 of the World's largest companies. It is also the third largest family business in the world. Conversely, whereas the Democratic Republic of Congo (DRC) has been abundantly blessed with natural resources, it remains one of the poorest countries in the world (Daniele, 2011). The DRC is a nation state that is poor and at the same time rich.

We do not wish to deeply engage in the debate on transfer mispricing by Glencore in the DRC for the simple reason that it is difficult to establish such evidence. This is essentially because TP regimes in Africa present a very mixed picture. According to Curtis and Todorova (2011), some countries have: (i) well established TP regimes (South Africa and Kenya); (ii) recently passed TP legislation (Uganda); (iii) tax code provisions that only mention TP (Algeria and Mozambique); (iv) expectations of enacting TP legislation (Zimbabwe and Nigeria) and (v) no TP legislation/regulation (Sudan and Libya). This apparent heterogeneity among nations constitutes a substantial challenge to TP policy harmonization across Africa. Moreover, as far as we have reviewed, TP legislation is currently non-existent in the DRC. This implies that Glencore can misprice without oversight and sanctions from national authorities. This inference is also coupled with the fact that the secrecy surrounding Glencore's deals with the DRC has been estimated to tarnish the long term reputation of the company, essentially because shareholders might have been involved in corrupt practices (Global Witness, 2012).

We discuss Glencore's CSR in three strands, namely: a highlight on the exercise of TP; Glencore's CSR and caveats to her CSR. Narratives of underlying elements are drawn from an independent assessment of Glencore's CSR activities in the DRC by three notable organizations: (i) Rights and Accountability in Development (RAID); (ii) BREAD for All (a development foundation of the Swiss Protestant Churches) and (iii) Fastenopfer (the Catholic Lenten Fund is the Swiss Catholic relief agency) (Peyer et al., 2014).

The *first* aspect which highlights evidence of TP is dealt with by Glencore's taxation strategy. According to Peyer et al. (2014), there has been no substantial progress in the domain of taxation in the DRC. Thus, Glencore's investment in community infrastructure and development projects should not conceal the fact this MNC is involved in optimising its tax liability through the transfer of profits to microstates or tax havens. For instance, taking exclusively the case of Kamoto Copper Company (KCC) which is Glencore's DRC unit, TP practice costs the DRC some millions in USD between 2009 and 2014 (Peyer et al., 2014). This is very surprising given that the government of the DRC which is an indirect shareholder should not tolerate such transfer mispricing. Perhaps such inertia on the part of the DRC authorities may be traceable to the lack of legislation on transfer mispricing for the country's mining industry and/or general corruption.

In the *second* strand, consistent with Peyer et al. (2014), since the year 2012, and more precisely since Glencore merged with Xstrata, the MNC has improved its CSR policies,

notably by: (i) a more detailed sustainability report; (ii) a human rights policy which has been adopted; (iii) an application which has been made for admission into the ‘Voluntary Principles on Security and Human Rights’ and (iv) it has integrated with the ‘International Council on Mining and Metals’ (ICMM). The following improvements are also noteworthy.

First, on the ‘pollution of the Luilu River’, there has been some investment by the KCC in pipes and acid neutralisation systems in order to canalise ‘*some of its effluent to an old quarry (Mupine)*’ (p.115). However, contrary to the information provided by Glencore to the media and to its investors, the issue of pollution in the Luilu River remains to be resolved. This is despite the fact that the hydro-metallurgical plant is still discharging effluent (that is substantially contaminated with cobalt and copper) into the Luilu River.

Second, in the ‘Basse-Kando Game Reserve’, Glencore has eventually acknowledged that installations at MUMI are located within the ‘Basse-Kando Game Reserve’. However, the MNC is still failing to engage in transparent and open negotiations with the relevant stakeholders, including the Ministry of Environment and the Congolese Institute for Nature Conservation (ICCN).

Third, with regard to ‘security and human rights’, Peyer et al. (2014) remarked that Glencore is continuously relying on police officers who often have recourse to excessive force and use of live ammunition to protect mines from thieves and clandestine miners. The report reveals that most of the human casualties suffered near KCC concessions have neither been adequately investigated nor have victims (or families of victims) received compensation. The MNC seems to have adopted a military approach in the protection of its assets. This represents opportunities for the violation of human rights, especially, when Glencore’s security forces are also entitled to execute judicial police functions at MUMI and KCC.

Fourth, concerning communities, whereas Glencore and its DRC subsidiaries have employed new staff to help enhance the company’s relations with local communities, the measures put in place are still not enough. Moreover, the approach which had not been previously sanctioned by human rights has not changed substantially. According to Peyer et al. (2014), Glencore still lacks accountability and transparency and genuine community participation is not promoted. According to the authors, Glencore is not taking the necessary measures to reduce the negative effects of its activities on local communities, *inter alia*: (i) the resettlement of residents in Musonoi who have been most adversely affected by blasting and dust from the KCC open cast mine; (ii) enabling access to existing roads that are used by MUMI villagers and (iii) provision of drinkable water to Musonoi and Luilu.

Fifth, the fact that Glencore has permitted RAID, Fastenopfer and ‘Bread for All’ to visit its installations and sites in the DRC is an eloquent testimony that there is some dialogue with non-governmental organisations (NGOs). To this end, Peyer et al. (2014) have been able to engage in extensive discussions and interviews with MUMI and KCC management as well as the representatives of Glencore in Switzerland. However, it is important to note that Glencore has also been threatening and exerting pressure on these NGOs. Such threats of legal action are viewed by Peyer et al. (2014) as manoeuvres to deflect criticism which is inconsistent with constructive engagement of dialogue with NGOs.

In the *third* stand in the literature, Peyer et al. (2014) concluded from their research that in spite of efforts devoted by Glencore towards improving its CSR in the DRC, not much has changed on the ground in the country. The authors noted that the company’s human rights, social and environmental performance is lacking in the international standards the MNC supposedly subscribes to. Half-measures and non-transparent tactics are still being employed by Glencore. In summary, it is apparent from RAID, Fastenopfer and ‘Bread for All’ that the MNC has failed to make issues relating to the environment and human rights its top priority. It follows that CSR remains of marginal importance compared to Glencore’s continuing interest in minimising tax payments and maximising shareholder profits.

4. Concluding Implications and Future Research Agenda

This article has presented a case for transfer pricing as an argument for Corporate Social Responsibility (CSR). The argument is that CSR and transfer pricing have been treated as separate by companies. But business ethics and CSR need rethinking in terms of tax because it is unethical and unjust for companies to “artificially” misprice their imports and exports between subsidiaries. The debate has built on the position that Multinational Companies should be more socially responsible when they are operating in countries where the legislation and laws in place are not effective in identifying and sanctioning transfer mispricing. While acknowledging that transfer pricing (TP) is a legal accounting practice, we have argued that in view of its poverty and underdevelopment externalities, the practice *per se* should be of a strong justification for CSR. This is because TP is also connected with schemes that deprive developing countries from capital essential for investments in health, education and development programmes. Intuitively, transfer mispricing practices are concealed by MNCs within the framework of TP which is considered as legal. Therefore since MNCs would not admit to engaging in transfer mispricing, CSR can also be considered as some form of social

justice. We have further argued that CSR by multinational corporations could incite domestic companies to comply more willingly with their tax obligations and/or engage in similar activities. Whereas, traditional advocates of CSR have employed concepts such as reputation, licence-to-operate, sustainability, moral obligation and innovation to make the case for CSR, the present inquiry has extended this rationale by arguing that TP and its externalities are genuine reasons for CSR.

The analytical argument has consisted of the following steps. We first described the connections between transfer mispricing, extreme poverty and CSR by: (i) discussing transfer mispricing as the dark side of TP, (ii) explaining the link between TP and poverty and (iii) presenting arguments for CSR as a compensation for transfer mispricing. Second, we consolidated our arguments with a case study of Glencore and the mining industry in the Democratic Republic of Congo (DRC). To this end, we have built on an independent assessment of Glencore's CSR by NGOs in the DRC to confirm three main theses surrounding our arguments. They are: (i) the MNC's top priority is minimising taxes paid to the DRC government and maximising profits transferred to subsidiaries in tax havens, (ii) the absence of a TP legislation that oversees mispricing by MNCs operating in the DRC and (iii) striking disparities between findings on the ground and Glencore's efforts towards CSR which imply that the company still has much to invest in the DRC to compensate for lost income from transfer mispricing.

CSR within the context of this study refers to a company's initiative to examine and take responsibility for its impact on social and environmental wellbeing. The investigation which we have carried out clearly has implications for CSR debates and for company practice. While the study is grounded on the need to consider CSR simultaneously with tax, the separation between CSR and tax in many companies is deliberately done for political and strategic motives. On the one hand, tax issues and CSR are often held as distinct by companies in their existing practices and organizational arrangements. On the other hand, CSR plays the role of a substitute for paying tax because stopping tax avoidance would affect the economic bottom line of companies.

Given the limited resources of tax administration in poor countries, especially in terms of respecting the arm's length principle, it will require stronger international regulation to help curb transfer mispricing. For instances, a unitary taxation for international corporations and/or requiring MNCs to adopt the Fair Tax Mark Initiative. The Initiative is an accolade which companies achieve if they adopt nondiscriminatory and transparent tax practices. If it is

required, it would entail a major change of international law, and the creation of an international body to really assess how MNCs comply with the criteria.

As a caveat, transfer mispricing is a systemic problem and company's voluntary CSR commitments are not meant to address it. The argument in the paper is not a suggestion that a different kind of CSR could deal with the difficulty of transfer mispricing. The debate is that when legislation and laws of countries in which MNCs operate are not effective at identifying and abolishing transfer mispricing, MNCs should be more socially responsible. This recommendation is essentially because by virtue of rationality, they are very likely to engage in transfer mispricing in order to evade taxes and protect their economic bottom lines.

Future research agenda can focus on assessing how the Fair Tax Mark Initiative has improved CSR on the one hand and decreased transfer mispricing on the other. Since, the barriers that have stopped CSR from moving to social justice have not been discussed in this study, future inquiries may improve the extant literature by providing answers to the following questions. How can companies be made to address 'social justice' as part of their CSR agendas? And what reforms are needed? It would also be worthwhile for future studies to consider the problem statement in the light of assessing if taxing profits is the appropriate avenue of taxation for natural-resource wealthy developing countries. In this light, the Norwegian style resource rent tax may be more adequate and could go far in making transfer pricing a less relevant topic.

5. Declaration

Availability of supporting data: This is not an empirical paper, hence not data were used.

Funding: this is an unfunded paper.

6. Compliance with Ethical Standards

The authors are self-funded and have received no external funding for this manuscript. The authors also have no conflict of interest.

This article does not contain any studies with human participants or animals performed by the authors.

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