EU Environmental Border Tax Adjustments (BTA’s):
Typology and Legal Context

CONTEXT
For more than 20 years, States have been looking for a global solution to climate change. Although progress has been made, current agreements remain insufficient to effectively tackle climate change (World Bank Report, "Turn Down the Heat", 2012). In addition to international climate action (i.e. the ‘first-best option’), some countries and regional groups have implemented internal climate measures. However, national and regional action is limited by two main risks: (1) a risk of loss of competitiveness and (2) a risk of carbon leakage.

In the light of these risks, a second-best choice in mitigating climate change could be unilateral action, complemented with border tax measures.

RESEARCH QUESTION
« To what extent could border tax adjustments be used in order to complement current and future internal climate policies? »
- Interdisciplinary topic but emphasis on legal aspects ⊃ Typology and legal context
- The main objective is to study the legal conditions of the establishment of environmental tax adjustments at the European borders

HYPOTHESES
BTA’s « in se »: New EU Harmonised Tax
This hypothesis has already been widely developed by scholars, mostly economists [e.g. Majocchi & Missaglia, 2002; Burniaux, Chateau, Duval, 2010]
- Sometimes referred to as "environmental custom duties", "green tariffs", "carbon tax adjustments".
- Generally defined as "any fiscal measures which put into effect, in whole or in part, the destination principle (i.e. which enable exported products to be relieved of some or all of the tax charged in the exporting country in respect of similar domestic products sold to consumers on the home market and which enable imported products sold to consumers to be charged with some or all of the tax charged in the importing country in respect of similar domestic products" [OECD; WTO, Report of the WP on 2 December 1979 (KL/344d), BID 185/9]

Question:
- Are BTA’s similar to existing taxes (custom duties, VAT, excise duties) or sui generis?
  ➢ "Carbon-Motivated BTA's: Old Wine in Green Bottles" [Lockwood & Whalley, World Economy, 2010]

« BTA’s » through Transfer Pricing & Corporate Taxation
This hypothesis aims at including an environmental factor in transfer pricing rules. More specifically, the objective is to determine to what extent environmental criteria could be taken into account in the allocation of profits between associated enterprises.

Question:
- How can environmental factors best be taken into account in the allocation of profits between associated enterprises?

ANALYTICAL PERSPECTIVES:
The research will focus on three fundamental questions: the legality, the coherence and the impact of each hypothesis.

Legality
What are the legal limits to the establishment of BTA’s?
- National level: general tax principles
- European level: TFEU (e.g. art. 107-115; 192; 194) and TEU (e.g. art. 20)
- International level: WTO (e.g. art. II, III, XX GATT); UNFCCC (e.g. principle of common but differentiated responsibility)
  ➢ Most research projects only focus on the compatibility of BTA’s with the WTO legal framework [e.g. Hense & Mavromatis (2013); Low, Marceau & Rain (2011); Ekhardt & Schmeichel (2009)]

Coherence
To what extent can the establishment of BTA’s be supportive of current EU policies?
- EU internal policies (e.g. environmental policies)
- EU external policies (e.g. development/cooperation policies)

Impact
What could be the impact of the establishment of BTA’s on economic actors? How to deal with it?
- Avoidance behaviour (tax fraud/evasion/avoidance)
  □ Corporate Social Responsibility
  □ Principles of good governance (e.g. information exchange)
  ➢ How to ensure the effectiveness of BTA’s?