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REPORT FROM THE COMMISSION TO THE COUNCIL

**concerning the 'dock dues' tax arrangements applied in the French outermost regions
(presented by the Commission under Article 3 of Council Decision 940/2014/EU of 17
December 2014)**

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regions

1. BACKGROUND

The provisions of the Treaty on the Functioning of the European Union (TFEU) that apply to the outermost regions of the EU, including Réunion and Guadeloupe (each of which is a French region and *département*), the two territorial collectivities of Martinique and French Guiana, and the *département* of Mayotte (French outermost regions) do not, in principle, authorise any difference in taxation in the outermost regions between local products and those from metropolitan France or the other Member States. However, Article 349 TFEU envisages the possibility of introducing specific measures for the outermost regions because of the existence of permanent handicaps affecting their economic and social situation.

Dock dues (*‘octroi de mer’*) are one of the oldest forms of French taxation, and the very oldest in the French outermost regions. In force in these regions only, they are applicable to imported goods of whatever origin and to goods delivered for consideration by persons engaged in production activities¹.

Dock dues consist of two separate taxes: dock dues *per se* and regional dock dues².

The rates of dock dues are established by the regional councils (in Guadeloupe and Réunion), the single territorial collectivities (in French Guiana and Martinique) and the Departmental Council (in Mayotte). They are established independently for each French outermost region.

Revenue from dock dues is allocated, on the one hand, to the budgets of the territorial collectivities (*communes*, *département*, region) and, on the other (and under certain conditions), to a regional fund for development and employment.

Council Decision No 940/2014/EU of 17 December 2014 authorises France, until 31 December 2020, to apply exemptions or reductions to dock dues for a number of locally manufactured products. The Annex to the Decision contains the list of products to which the tax exemptions or reductions may be applied. Depending on the product, the difference between the taxation of products manufactured locally and that of other products may not exceed 10, 20 or 30 percentage points.

The Council Decision of 17 December 2014 sets out the reasons for adopting the specific measures: remoteness, raw-material and energy dependence, the obligation to build up larger stocks, the small size of the local market combined with a low level of export activity, etc. The combination of these handicaps increases production costs and, therefore, the cost price of goods produced locally, so that without specific measures they would be less competitive than those produced elsewhere, even taking into account the cost of transporting such goods to the French outermost regions. That would make it harder to maintain local production. The specific measures contained in the Council Decision of 17 December 2014 have therefore been designed for the purpose of strengthening local industry.

¹ By ‘production activities’ is meant the manufacture, alteration or renovation of movable tangible property. Services, therefore, are outside the scope of this tax.

² Tax additional to dock dues and whose rate cannot at present be higher than 5 %.

Article 3 of the Council Decision of 17 December 2014 provides that the French authorities must submit to the Commission, by 31 December 2017, a report on the application of the tax arrangements referred to in the Decision in order to assess the impact of the measures taken and their contribution to the maintenance and promotion of local economic activities, in the light of the handicaps affecting the outermost regions. On the basis of that report, the Commission must submit a report to the Council, giving a full economic and social analysis and, if necessary, a proposal for adapting the provisions of the Decision of 17 December 2014.

On 12 February 2018 the French authorities accordingly submitted their report to the Commission. Specific evaluation reports for each of the French outermost regions, accompanied by requests to adapt the list of products to which differentiated taxation may apply, were sent on 15 March 2018 for French Guiana, Martinique and Guadeloupe, on 4 June 2018 for Réunion and, without requesting an update of the list, on 28 August 2018 for Mayotte. The requests for list updates relate to almost 90 products. These requests are aimed mainly at including new products on the lists and at reclassifying existing products on a list, allowing for a greater tax differential.

2. THE MAIN FEATURES OF THE REPORTS FROM THE FRENCH AUTHORITIES

2.1. The report of 12 February 2018

Based on data aggregated on a sector-by-sector basis, the report of 12 February 2018 is an overall macro-economic statistical analysis for the French outermost regions as a whole. It contains no information on product categories benefiting from a tax differential.

The report describes the dock dues arrangements, examines a number of features of the macro-economic framework of the French outermost regions and maps the beneficiaries of the dock dues differentials. It states, in particular, that the goods produced by the 665 businesses subject to dock dues are worth EUR 5.6 billion.

The report also analyses the effects of lowering the dock dues threshold for local businesses. This was reduced from EUR 550 000 to EUR 300 000 in 2014. According to the report, this measure has mainly harmful consequences, given the administrative charges to which it gives rise, the very small increase in tax receipts and its counterproductive effect.

Main findings of the report:

a. With regard to the economic impact of the dock dues arrangements on the economic development of the French outermost regions, the report considers that the arrangements have more of an impact on maintaining employment rather than creating it, and on developing local production pathways and making them sustainable.

The report emphasises that the tax advantages granted under the dock dues arrangements are a substantial contribution to the French outermost regions' GDP. According to estimates, dock dues account in total for 3.3 % of the GDP of the five French outermost regions combined. At this aggregate level, the differences between the territories are not significant enough to enable conclusions to be drawn concerning real geographical disparities.

b. With regard to the handicaps of the French outermost regions that are the cause of the additional costs borne by businesses established in the French outermost regions, the report points out that these additional costs stem as much from the natural characteristics of these regions – their size, relative inaccessibility and weather conditions – as from their low level of integration into their regional environment. The ratio of staff costs to

turnover, and purchases of raw materials and other purchases and external costs, are identified in the report as the two main sources of the additional costs affecting local businesses.

The additional costs borne in the French outermost regions have been estimated, on the basis of financial charges as these relate to operating revenue, at 1.8 million additional euros of financial charges per business, i.e. a total of EUR 1.2 billion. This is a low estimate, as it takes no account of the fact that local businesses are in no position to make economies of scale.

c. With regard, finally, to the impact of dock dues on local businesses, the report regrets that there is no data available on the dock dues differential over a period of several years, making it impossible to analyse the way in which businesses have performed over time. Only an analysis of the impact on businesses' performance in 2015 has been carried out. According to this analysis, there is no significant difference in turnover or profitability between local businesses benefiting from dock dues differentials and those not benefiting from them. It follows that dock dues fulfil their objectives by enabling local businesses in the targeted sectors to achieve a performance similar to that of businesses not benefiting from the arrangements, despite ostensibly higher exposure to the additional costs caused by remoteness. The fact that businesses benefiting from the arrangements do not perform any better also indicates that there is no over-compensation.

2.2. Specific reports for the French outermost regions

Given the limitations of the report of 12 February, this has been supplemented by **specific reports** for each French outermost region. In these reports, the territorial collectivities of Martinique, Guadeloupe, French Guiana, Réunion and Mayotte each carry out an assessment of the dock dues arrangements. These supplementary reports provide an overview of socio-economic developments in these regions over the period 2014-2016, denoting large disparities between the French outermost regions. Réunion is the collectivity with the most successful economy – one that has been recovering steadily (at a rate of more than 3 % per year) since 2014, with unemployment in sharp decline and prices rising only slowly. In contrast, the economies of Guadeloupe and French Guiana remain stagnant, with consistently high, or indeed increasing, rates of unemployment. In Martinique, the trend is positive overall, with, in particular, an improvement in the labour market. In Mayotte, the economy has entered a period of wait and see, marked by a level of unemployment that has risen to 27.1 %. This is due, in particular, to the institutional changes that have taken place in Mayotte (which has acquired the status of an outermost region after having being made into a *département*).

The overview indicates a similar situation with regard to foreign trade and price trends. Although prices rose little in the French outermost regions over the period 2014-2016, they are markedly higher (by between 7 % and 12 %, according to the Fisher index³) than those in metropolitan France. In each of the French outermost regions, this gap is, however, narrower (by between 12 % and 14 %) than it was in 2010.

Where foreign trade is concerned, the reports show that the French outermost regions are still very dependent on imports, which represent more than 30 % of their GDP and are responsible for their large trade deficit. Imports (other than of petroleum products) rose slightly over the period 2014-2016 throughout the French outermost regions.

³ The Fisher index corresponds here to the geometric mean of A (discrepancies between French outermost-region prices and prices in metropolitan France) and the inverse of B (metropolitan France/French outermost-region discrepancies), i.e. the square root of the A/B ratio.

Analysis of trends in the local manufacture of the products on the list for the period 2014-2016 reveals a mixed picture because, although local production increased overall in the French outermost regions (except in the case of Guadeloupe, which recorded a decrease of 6.9 %), its share of the market in relation to overall consumption in the French outermost regions fell (except in the case of Martinique, which recorded an increase of 9.8 %).

These reports also provide sector-by-sector analyses of rates and differentials. The analyses show, in particular, that the weighted average differential applied varies between 14 % (Réunion) and 18 % (Martinique and Guadeloupe), depending on which French outermost region one is discussing.

These reports go on to supply a sector-by-sector analysis of economic trends in the French outermost regions in the light of the differential policies conducted and, in the cases of the territorial collectivities of Guadeloupe and Martinique, an up-to-date breakdown of the additional costs sustained by local businesses.

Finally, the reports on the territorial collectivities of Martinique, Guadeloupe, French Guiana and Réunion contain justifications of the requests to adapt the list of products to which differentiated taxation may be applied.

Moreover, the French outermost regions are unhappy about the ever more finely graduated nomenclature for the products on the list (moving on to level NC8 or even NC10), making it more difficult for businesses to identify correctly what it is they are producing. They are also unhappy about the reduction in the tax threshold to EUR 300 000 which, for the collectivities, has not been reflected in a substantial increase in revenue. These two measures have led to a heavier administrative burden for businesses. The French outermost regions would like to see a mechanism set up for regularly updating the tax differentials, in that way meeting investors' need for clarity and enabling adjustments to be made in response to developments in the market and in the economic fabric of the locality concerned. These requests should be analysed when the request for renewal of the arrangements is examined.

With a view to assessing the actual effects of the tax differentials on the economic activity of the French outermost regions, several requests for documents in proof and for additional explanations were forwarded by e-mail to the French authorities on 27 March, 14 April, 16 May and 4 July 2018. The French authorities were also asked to supply – for each French outermost region and for each category of product subject to a dock dues tax differential in that region – an assessment of the extent to which the dock dues arrangements had helped maintain or promote local business activities and trading conditions.

The French authorities have provided the Commission with a breakdown of imports and local production for each product benefiting from a tax differential, as well as with various clarifications.

3. COMMISSION ANALYSIS OF THE DOCK DUES ARRANGEMENTS

In view of the date of presentation of the report by the French authorities (February to March 2018), it is difficult to examine, over a long period, the impact of the differentiated taxation applied in accordance with the Council Decision of 17 December 2014, especially since the new arrangements did not enter into force until July 2015.

Moreover, where Mayotte is concerned, the fact that the arrangements came into effect only recently, combined with the island's belligerent climate, has meant that the French authorities have not had data that is stable and reliable enough for carrying out the same work as elsewhere.

In so far as the Commission is broadly dependent on information supplied by France and does not have any other means of collecting further information, the Commission's analysis is based on the information received from the French authorities. The following conclusions may be drawn from the information provided.

3.1. The handicaps of the French outermost regions remain.

In their initial report, the French authorities underline once again the handicap-related causes of the additional costs borne by businesses established in the French outermost regions. Indeed, these territories have to cope with major handicaps inherent in their small size, relative inaccessibility and prevailing weather conditions. These handicaps, which are structural in nature, fall into two categories:

- Exogenous handicaps such as remoteness, small surface area, complex topography, difficult climate, high levels of risk related to the natural environment, and isolation from the outside world and, in some cases, also from activities and services located in the main islands of an archipelago;
- Endogenous handicaps: limited production facilities, limited human capital development, economic dependence on a small number of activities, restricted internal markets, lack of integration into the regional environment, and barriers to market entry.

Thus, local production is faced with large additional costs, which have been identified and measured at the macro-economic level. These include additional costs relating to pay gaps, supplies, logistics, over-sizing of equipment, the use and maintenance of such equipment, and local markets not large enough to permit economies of scale. These additional costs also relate to product marketing and distribution, agricultural land and construction and financing.

They are reflected in the large trade deficit common to all the French outermost regions.

Therefore, the handicaps that justified maintaining the dock dues arrangements in 2014 are still a factor, with all the consequences they have in terms of possible additional costs for local production.

3.2. The consequences of applying differentiated dock dues taxation

3.2.1. The impact of dock dues on the prices of products benefiting from a tax differential

The information provided does not enable a judgment to be made on the impact of dock dues on the general level of prices of the products that are the subject of differentiated taxation.

It nonetheless shows the general impact of dock dues on the level of prices, as those French outermost regions that apply the lowest rates (Réunion) and where the number of products targeted is lowest (Mayotte) have prices that differ least from those of metropolitan France.

With regard to the adjustments brought about through the Council Decision of 17 December 2014, the macro-economic analysis of prices, based as it is on the consumer price index, shows that prices increased very little between 2014 and 2016 in the French outermost regions. The analysis even shows that the gap between prices in metropolitan France and those in each of the French outermost regions was narrower than in 2010. This development is testimony to the concern of the local authorities to use tax differentials in a way that is proportionate so as not to affect the purchasing power of the local populations.

These factors show, therefore, that the recent adaptations to the list of products benefiting from a tax differential have had a negligible impact on prices in the French outermost regions.

3.2.2. The impact of dock dues on economic development in the French outermost regions

It has been possible to obtain only fragmentary information about the impact of differentiated taxation on growth and employment in each sector considered and during the period concerned (2014-2017). In many cases, such information is not yet available.

It is difficult to compare the data on growth, employment and businesses with that for products benefiting from a tax differential, as most businesses in the sectors concerned sell both products that benefit from a tax differential and products that do not.

That being said, dock dues have a recognised effect on economic development. They have more relevance to maintaining, rather than creating, employment, and developing local production pathways and making them sustainable. Dock dues have thus enabled employment to be maintained in sectors affected by the crisis such as the construction and public works sector. Because their markets are small, the French outermost regions are anything but robust and are vulnerable to one-off imports at prices much lower than market prices. In view of the additional costs to which they are subject, local businesses also have very limited opportunities of recourse to export markets.

Dock dues have also enabled production to be diversified, mainly in the agri-food sector (condiments, coffee, jams, etc. in Guadeloupe), and promising niche products to be developed (fruit juice, chicken croquettes, spectacle lenses, etc. in Réunion). They have also been key in supporting local production in these regions by enabling growth-generating investment to be made.

Finally, dock dues have positive effects on economic activity in the French outermost regions. The overall effect of dock dues (revenue + tax reductions benefiting local production) is estimated, for 2016, at 3.3 % of GDP in the French outermost regions (ranging from 2.6 % in Réunion to 5 % in Mayotte). Moreover, dock dues revenue represents between 40 % and 50 % of the revenue of the territorial collectivities of the French outermost regions. A portion of this revenue is allocated to the Regional Fund for Development and Employment (RFDE), the purposes of which are to help businesses become established, create jobs in the manufacturing sector and help bring about the infrastructure necessary for businesses to develop. This is reflected in the fact that local production of goods benefiting from a tax differential has, overall, increased in the majority of the French outermost regions (with the exception of Guadeloupe). Such production manages, across the board, to achieve the same performance levels as other forms of production, despite higher exposure to additional costs.

As a result, dock dues have a significant economic impact on the economic development of the French outermost regions.

3.2.3. The impact of dock dues on the balance of trade

Although the trade deficit went down by 3 % in the French outermost regions, it remains very high. Even if local production and exports have made more progress, imports (other than of hydrocarbons) have nonetheless increased throughout the French outermost regions. These imports still come mainly from France and other Member States of the European Union (75 % in Réunion, 85 % in Martinique, 74 % in Guadeloupe and 71 % in French Guiana in 2016). Imports of products from the African, Caribbean and Pacific (ACP) countries are only marginally

affected. The number of products from these countries – petroleum products, in the main – is in any case limited.

As regards, in particular, products benefiting from a tax differential, imports have continued to increase.

This demonstrates that the dock dues arrangements do not disrupt the foreign trade conducted by the territories concerned and prevent a potential deterioration in the balance of trade.

3.3. Arrangements that are still necessary and proportionate

The dock dues arrangements are still necessary in so far as the conditions that justified the option of differentiated taxation for certain products still apply and in so far as there are still additional production costs.

The Commission ascertained that these conditions were still being met. To that end, it analysed the development of those market shares representing local products benefiting from a dock dues tax differential compared to products imported into the French outermost regions. It also analysed the additional costs that increase the cost price of local production.

It emerged that additional costs had increased overall. Thus, the average rate of additional costs had increased in Guadeloupe from 26.7 % in 2012 to 30.5 % in 2015, and in Martinique from 29.7% in 2012 to 32.3% in 2016.

Moreover, the French outermost regions had not overcompensated for the additional costs on local businesses by applying tax differentials. Indeed, the differentials applied compensate, on average, for only half of these additional costs, in particular in Martinique (54 % in 2016) and Guadeloupe (40 % in 2015)⁴.

Thus, the additional costs borne by local businesses remain and are offset only partially by the tax differentials granted to certain products.

Analysis of the development of market shares, conducted on the basis of the data submitted in March 2018, showed that, although local production had increased overall in the French outermost regions, imports had increased more, and, as a consequence, the market share of local production in relation to overall consumption in the French outermost regions had fallen between 2014 and 2016.

This macro-economic analysis conceals the existence of very different situations. Some local products still hold only a small or very small share of the market despite benefiting from a tax differential for dock dues. In other cases, the tax differential for dock dues has allowed local products to take a share of the market equivalent to that taken by external products. These are the two most frequent scenarios.

Lastly, in the case of some other products, the information supplied shows that local products benefiting from differentiated taxation occupy almost all of the market, meaning that the share of ‘imported’ products is very small. In this case, local products appear, at first sight, to be competitive in relation to products from outside the French outermost regions. This impression may in some cases hide a fall in the market share by volume⁵. In other cases, the differentiated taxation of local products may, however, be justified in terms of the high additional costs associated with such products – costs that make them much more expensive than imported

⁴ The continued existence of additional production costs for each of the products on the list was the subject of a spot check.

⁵ This is particularly the case with regard to types of yoghurt in Martinique and Guadeloupe.

products and that are likely to put the industries concerned at risk⁶. In any case, it appears difficult, at this stage, to resolve this issue definitively for all the products concerned, given that the data available for the report relate to a period of less than three years. It is an issue that will have to be examined in detail if and when the French authorities ask to continue to be able to apply differentiated taxation after December 2020.

4. THE ADJUSTMENTS TO BE MADE TO THE COUNCIL DECISION OF 17 DECEMBER 2014

The last paragraph of Article 3 of the Council Decision of 17 December 2014 provides that the report to be submitted to the Council by the Commission may, if necessary, be accompanied by a proposal for adapting the provisions of this Decision. This is what has happened.

In their letter dated 15 March 2018, the French authorities asked that, with regard to four of the French outermost regions (French Guiana, Réunion, Martinique and Guadeloupe), adaptations be made to the list of products to which differentiated taxation may be applied. . An additional request for a new product to be included was made on 26 October 2018.

Of the above-mentioned requests, as many as 50 are for new products to be included on the lists. There are also requests (28 of them) for products on a list to be reclassified to enable a greater taxation differential, requests for a category of products to be expanded (7), and a number of requests for codes to be updated (9 products in French Guiana). All these represent almost 10 % of the products on the list. They are designed to re-establish businesses' competitiveness by compensating for a portion of the additional production costs that affect local production.

According to the information provided by the French authorities, the products thus targeted represent declared local production amounting to EUR 225 million for 2016, and imports amounting to almost EUR 212 million. Imports of the products concerned increased by almost 5 % over the period 2014-2016, and the products fall into a very broad range of categories.

The requests were motivated mainly by the appearance of new products and by increases in imports and in additional costs – increases that had led to a decrease in market share.

The Commission's proposal envisages amending the list of products to which differentiated taxation may be applied by accepting those changes requested by the French authorities for which due justification had been provided.

In the case of products that the French authorities had asked be included in, or reclassified on, the lists, the Commission checked whether local production existed and whether significant imports occurred which could jeopardise the maintenance of local production and whether there were additional costs which increased the cost price of local production compared with goods produced elsewhere, thereby making locally produced products less competitive.

With regard to local products occupying almost all the market, meaning that the portion of 'imported' products is very small, the Commission ascertained that there was an imminent and serious risk to local production.

In the case of agricultural products, the requests for inclusion or reclassification on lists are motivated by the need for local producers to diversify their production in order to deal better with the vagaries of the climate.

The various proposed adjustments to the Council Decision of 17 December 2014 are detailed in the draft Council Decision accompanying this report.

⁶ This is particularly the case with regard to cement and sugar cane.

5. GENERAL CONCLUSION

The information provided by the French authorities does not give a complete picture of the economic and social impact on local production in the French outermost regions of the application of differentiated dock-dues taxation to local products as compared with products from elsewhere.

What can, however, be emphasised are the very clear improvements to the quality of the information provided and to the way in which implementation of the arrangements is followed up.

The information provided shows that the differentiated dock-dues taxation arrangements have made it possible, for the majority of the products concerned, to maintain local production capable of occupying a greater or lesser share of the local market. In view of the constraints to which local businesses are subject, it is certain that, in many cases, local production could not have been maintained without this tax differential, and that would have had a detrimental economic and social effect.

Moreover, analysis of the information provided shows that the arrangements have a very limited effect on competition, trade and prices.

The arrangements are still, therefore, necessary and proportionate and are crucial to maintaining local production in the French outermost regions, where unemployment, particularly among young people, is the highest in Europe.

Because, moreover, a number of sectors are anything but robust and are vulnerable to economic changes⁷, it is clearly necessary, before the end of the period covered by the Council Decision of 2014, to adapt the list of products to which a tax differential may be applied.

⁷ Collapse in prices, downturn in the market, one-off imports of goods at prices very much lower than those of the market, etc.

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