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REPORT FROM THE COMMISSION TO THE COUNCIL

concerning the dock dues tax arrangements in the French overseas departments

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1. BACKGROUND

The Treaty on the Functioning of the European Union (TFEU), which applies to the outermost regions of the EU, including the four French overseas departments (DOMs), does not in principle allow any difference in the DOMs between the taxation of local products and the taxation of products from metropolitan France or the other Member States. Article 349 of the TFEU (former Article 229(2) of the EC Treaty) provides, however, for the possibility of introducing specific measures for those regions because of the permanent handicaps which affect the economic and social conditions of the outermost regions.

Council Decision 2004/162/EC of 10 February 2004, adopted on the basis of Article 299(2) of the EC Treaty, authorises France, up to 1 July 2014, to apply exemptions from or reductions in the tax known as "dock dues" to certain products manufactured in the DOMs. The Annex to that Decision contains a list of products to which the tax exemptions and reductions may be applied. The difference between the taxation of locally manufactured products and the taxation of other products may not exceed 10, 20 or 30 percentage points, depending on the product.

Decision 2004/162/EC sets out the reasons for adopting the specific measures, which include isolation, raw material and energy dependence, the obligation to build up stocks, the small size of the local market and the low level of export activity. The combination of these handicaps means that production costs, and therefore the cost price of goods produced locally, are increased, so that without specific measures they would be less competitive than goods produced elsewhere, even taking into account the cost of transporting the latter to the DOMs. This would make it harder to maintain local production. The specific measures contained in Decision 2004/162/EC were thus designed to strengthen local industry.

Article 4 of Decision 2004/162/EC provides that the French authorities must present to the Commission by 31 July 2008 a report on the application of the tax arrangements authorised by the Decision, in order to check the impact of the measures taken and their contribution to promoting or maintaining local economic activities, taking account of the handicaps affecting the outermost regions. On the basis of this report, the Commission must present a report to the Council giving a full economic and social analysis and, where appropriate, a proposal for adapting the provisions of Decision 2004/162/EC.

On 31 July 2008 the French authorities accordingly submitted their report to the Commission. On 22 December 2008 a supplement was submitted, and the further information requested by the Commission on 16 April 2009 was sent to it on 16 April 2010. These documents are set out (in French only) in a Commission working paper which is separate from this report.

The report from the French authorities includes a request for the list of products to which differentiated taxation may be applied to be updated for French Guiana. This request, which initially concerned approximately 80 products, was subsequently streamlined and, in its definitive form of 16 April 2010, concerns only 64 products.

2. MAIN ELEMENTS CONTAINED IN THE FRENCH AUTHORITIES' REPORT

The report first recapitulates the stages whereby the 2004 Council Decision was implemented in the DOMs. It then states the view that the differentiated tax arrangements for the dock duties do not constitute an obstacle to trade with the DOMs, since the flow of imports into each of the four DOMs of the products to which a tax differential was applied has continued to grow since 2004. The tax differential has not stopped the products concerned from being brought into the DOMs from outside.

The report states that, although overall inflation is higher than in metropolitan France, this is not the case for the manufactured products which are most affected by the tax differentials. The report does not discuss the effect of the dock dues on the general level of prices in the DOMs or the difference between that level and the general price level in metropolitan France.

In terms of assistance to enterprises, the report notes that it is difficult to put an exact figure on the impact of the tax differentials because of the other regional aid in place for enterprises in the DOMs. It concludes that the differentiated tax arrangements for dock dues are an essential prop to the profitability and survival of many production activities in the DOMs. Thus, it notes, even taking account of all the assistance received, enterprises in the DOMs, apart from the largest ones, always have net results that are two points lower than those of enterprises in metropolitan France. As to the largest enterprises, the tax differentials on the dock dues encourage them to invest, which has helped to maintain economic growth in the DOMs.

Revenue from dock dues was approximately EUR 923 million in 2006, 95% of which came from dock dues on "imports". The report provides information on how the revenue from dock dues has been used.

In the supplement to the report, received in December 2008, the French authorities provided an update based on the figures for 2007. The revenue from dock dues rose from EUR 923 million to EUR 957 million. The proportion used to finance investments in the DOMs increased to 31%. The tax differentials did not halt the growth in imports, although the growth was smaller, except in Guadeloupe.

The share of local production in supplying local demand in the DOMs ranges from 29.1% in French Guiana to 36.7% in Martinique. The figures provided do not distinguish between products which benefit from a tax differential for dock dues and those that do not.

The supplement to the report states that it has not so far been possible to quantify the effects of the dock dues tax differentials on employment in the enterprises producing the products concerned. However, it does provide some general data on unemployment and paid employment in the DOMs.

The supplement also states that the impact of the dock dues on the general price level of the products covered by differentiated taxation and on the inflation rate in the DOMs cannot be determined on the basis of the data available. All that is available is data on product price trends (for products covered by the tax differential and for other products). The information provided leads to different conclusions for the different DOMs.

Lastly, the supplement to the report includes additional information relating to the request that the list of products to which differentiated taxation may be applied be updated for French Guiana.

By letter of 15 April 2009 the Commission informed the French authorities that the information provided was insufficient to assess the real effects of the tax differentials on activity in the DOMs. The French authorities were accordingly asked to provide, for each DOM and for each category of product benefiting from a dock dues tax differential in the DOM concerned, an evaluation of the impact of the arrangement in terms of maintaining and promoting local activity and in terms of trading conditions.

On 16 April 2010 the French authorities sent the Commission tables containing, for each of the 32 major categories of product benefiting from such a differential, information on the amount of aid received by the enterprises concerned under these arrangements, the profits or losses made by those enterprises, the number of their paid employees, the share of locally produced products in total sales of such products, and export trends.

The French authorities altered their request for French Guiana, which now only refers to 64 products, and provided various additional details requested by the Commission in its letter of 15 April 2009.

3. COMMISSION ANALYSIS

The Commission regrets that a precise evaluation of the impact of the measures taken for each category of product benefiting from a dock dues tax differential and the extent to which they helped to maintain or promote local economic activity could not be provided by the French authorities in July 2008 as stipulated in Article 4 of Decision 2004/162/EC. The fact that this study was not undertaken until later delayed the provision of information to the Commission and meant that the information is in part fragmentary and in part very limited, or even non-existent.

In view of the submission date of the report from the French authorities (July 2008), it is difficult to study, over a long period, the impact of the tax differentials applied under Decision 2004/162/EC. The French authorities did not provide data for 2004 because Decision 2004/162/EC has applied only from 1 August 2004 and the dock dues arrangements applicable before that date were not necessarily the same as those which applied from that date making the data for 2004 scarcely usable.

As a result of all these factors, the Commission is unable to present a report containing "a full economic ... analysis", as Article 4 of Decision 2004/162/EC requires. Since the Commission is heavily dependent on the information supplied by France and does not have any other means of gathering more information, its analysis is necessarily based on the information received. The following conclusions can be drawn from the information provided.

3.1. The DOMs are still affected by handicaps

Although the French authorities' report does not go into this matter, it is clear that the handicaps referred to above which affect DOM products and were the justification for Decision 2004/162/EC still persist. They are structural handicaps connected with the remote and insular nature of the DOMs, with all the implications they entail in terms of higher costs for local production.

3.2. The consequences of applying differentiated rates of dock dues to products

Only fragmentary information could be obtained on the impact of the differentiated taxation on growth and employment in each sector under consideration. In terms of employment, the number of jobs in the sectors benefiting from a tax differential for dock dues remained unchanged overall between 2005 and 2007. In Guadeloupe employment fell by over 1 000 jobs, mainly in the livestock and fisheries sectors. In Martinique it was more or less stable for the same categories of enterprise over the same period. The trend for Réunion cannot be determined on the basis of the figures provided.

The data submitted also provide information on the profit trends for enterprises whose products are made locally. However, the information is patchy and leads to some highly contrasting conclusions for different sectors. Furthermore, the level of enterprises' profits is obviously not determined solely by whether or not their products benefit from differentiated taxation for dock dues.

The data supplied on 16 April 2010 show that situations vary greatly regarding the respective shares of the market occupied by local products benefiting from the tax differential on the one hand and products coming from outside the DOMs on the other. Some local products still hold only a 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 approximately equivalent to that taken by external products. These are the two most frequent scenarios and this accords with the information provided in the initial report of 31 July 2008, according to which the flow of "imports" into each of the four DOMs has continued to grow since 2004 despite the tax differentials for dock dues. Imports of products from the ACP countries are affected only marginally. The number of products concerned (mainly petroleum products) is in any case limited.

Lastly, in the case of some other products, the information provided shows that the local products benefiting from differentiated taxation occupy nearly all, if not all, of the market, meaning that the share of "imported" products is very small, or sometimes even non-existent. This raises questions about whether differentiated taxation should be maintained in such cases, where at first glance the local products appear to be competitive against products from outside the DOMs. At this stage it is difficult to come up with a definitive answer for all the products concerned, since the data available for the report cover only three years. This issue will have to be studied in detail if the French authorities ask to continue to apply a tax differential after July 2014. However, in some cases it seems that Decision 2004/162/EC should be amended at once (see below).

4. AMENDMENTS TO THE 2004 DECISION

The last paragraph of Article 4 of Decision 2004/162/EC provides that the report from the Commission to the Council may, where appropriate, be accompanied by a proposal for adapting the provisions of the Decision. Such is the case here. This report is accompanied by a proposal for a Council Decision on the points set out below.

4.1. Extending the list of products to which differentiated dock dues taxation may be applied in French Guiana

The French authorities have already asked the Commission in the past to present a proposal for a Council Decision under Article 3 of Decision 2004/162/EC increasing the number of products to which differentiated dock dues taxation may be applied in French Guiana. Essentially this request could not be satisfied at the time because neither of the scenarios envisaged in this provision, namely the emergence of new production or a threat to local production caused by certain commercial practices, applied. For the few French Guianese products which did fall within the scope of Article 3, the Council adopted Decision 2008/439/EC on 9 June 2008.

The French authorities repeated their request concerning French Guiana in their report to the Commission of 31 July 2008. In its most recent form, the request relates to 64 additions or changes. The Commission's proposal, as regards French Guiana, would add 46 completely new products to the different lists of products to which differentiated taxation may be applied and would increase the authorised differential or expand the scope of application for six products. The 46 completely new products include 43 products which are already produced locally and three which are not, but for which there are specific plans to start production.

The proposed changes to Decision 2004/162/EC are set out in detail in the proposal for a Council Decision accompanying this report.

4.2. Other proposed changes

When the various statistical documents annexed to the report from French authorities were examined it was found that a number of points in Decision 2004/162/EC needed to be amended. These changes do not undermine the overall structure of the arrangements provided for in the Decision, which applies until 1 July 2014. However, in certain specific cases the original Decision should be amended now to take account of situations that were noted when the French authorities' report was examined or as a result of questions asked. There are several reasons for the proposed changes.

Firstly, it was found that since 2004 local production of some products had ceased, or else the French authorities are no longer applying the dock dues tax differential to some other products because those produced locally are now selling at prices matching those produced outside the DOM concerned. There is therefore no longer any reason to retain these products on the list of products for which differentiated taxation is authorised.

It was also found that for a number of products the dock dues tax differential actually applied is, for various reasons, significantly lower than the maximum differential authorised by Decision 2004/162/EC. While it is true that the Decision was intended to allow the French authorities some flexibility in determining what tax differentials to actually apply, and there is no intention of reversing this flexibility, there are nevertheless situations in which there is a big difference between the maximum authorised tax differential and the differential actually applied. Situations in which the tax differential actually applied is more than 10 percentage points lower than the differential authorised were therefore examined. In some cases the Commission concluded that the maximum differential currently authorised should not be maintained, but reduced. These cases are specified in the proposal for a Council Decision.

Lastly, in the case of some twenty other products to which differentiated taxation is applied, the local products occupy nearly all, if not all, of the market, meaning that the share of products coming from outside was zero (no "imports") in 2005, 2006 and 2007. As already stated, the Commission has doubts as to whether a tax differential needs to be maintained for these products, particularly as there is already significant local production, from which one may conclude that the products made locally are no less competitive than the "imported" products, and this point should be reconsidered, if appropriate, when Decision 2004/162/EC expires. However, the Commission considers that two products produced on a significant scale locally should be removed from list A of the Annex to the Decision at once, as part of the mid-term adjustment. For Guadeloupe the products concerned are certain food production residues (product 2302). For Réunion the products concerned are certain residues from the manufacture of wood pulp (product 3804 00).

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 DOMs of the application of a tax differential to dock dues for local products as compared with products from outside the DOMs. The patchy information provided does, however, show that the differentiated tax arrangements for dock dues has in most cases allowed local production of the products concerned to be maintained and to occupy a greater or lesser share of the local market. Very probably, local production could in many cases not have been maintained without this tax differential, and that would have had a detrimental economic and social effect.

In certain cases where local products hold the lion's share, if not almost all, of the market the Commission has more doubts about the need to maintain the tax differential. These doubts are even stronger in those cases where there are no products of a given category coming in from outside at all. This point should, if appropriate, be examined in detail at the end of the period covered by Decision 2004/162/EC. However, for now the Commission proposes removing two products from the list of products to which the tax differential may be applied.

Although the question of how to restore competitiveness to local products in relation to "imported" products is essentially a matter for the French authorities, the Commission regrets that the report from the French authorities does not contain any information on the impact of the differentiated tax arrangements for the products on the general level of prices in the DOMs, and not only on inflation, since the effect of the differentiated taxation is to alter competition between products on the basis of the highest cost price, which is that of products made in the DOMs.