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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: COUNCIL DECISION concerning the dock dues in the French
outermost regions

COUNCIL DECISION No .../2014/EU

of ...

concerning the dock dues in the French outermost regions

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 349 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Parliament¹,

Acting in accordance with a special legislative procedure,

¹ OJ C , , p. .

Whereas:

- (1) The provisions of the Treaty, which apply to the outermost regions of the Union, of which the French overseas departments form part, do not authorise, in principle, any difference in taxation between local products and those from metropolitan France or the other Member States. However, Article 349 of the Treaty envisages the possibility of introducing specific measures for those regions because of the existence of permanent handicaps affecting the economic and social situation of the outermost regions.

- (2) Such specific measures must take account of the special characteristics and constraints of those regions, without undermining the integrity and the coherence of the Union legal order, including the internal market and common policies. The permanence and combination of handicaps suffered by the outermost regions of the Union as referred to in Article 349 of the Treaty (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.) increase 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 overseas departments. That would make it harder to maintain local production. For this reason, specific measures need to be taken in order to strengthen local industry by making it more competitive. Until 31 December 2014, Council Decision 2004/162/EC¹ authorises France, in order to restore the competitiveness of products produced locally, to apply exemptions or reductions to the dock dues for certain products produced in the outermost regions of Guadeloupe, French Guiana, Martinique, Réunion and, from 1 January 2014, Mayotte. The Annex to that Decision contains the list of products to which the tax exemptions or reductions may be applied. The difference between the taxation of products produced locally and that of other products may not exceed 10, 20 or 30 percentage points, depending on the product.

¹ Council Decision 2004/162/EC of 10 February 2004 concerning the dock dues in the French overseas departments and extending the period of validity of Decision 89/688/EEC (OJ L 52, 21.2.2004, p. 64).

- (3) France has requested that a system similar to that contained in Decision 2004/162/EC be maintained beyond 1 January 2015. France points out that the handicaps listed above are permanent, that the taxation arrangements established by Decision 2004/162/EC have made it possible to maintain and, in some cases, develop local production, and that those arrangements have not constituted an advantage for the beneficiary companies since, overall, imports of products subject to differentiated taxation have continued to increase.
- (4) For each of the outermost regions concerned (Guadeloupe, French Guiana, Martinique, Mayotte and Réunion), France has sent the Commission five series of lists of products for which it proposes applying differentiated taxation of 10, 20 or 30 percentage points, depending on whether or not the products are produced locally. The French outermost region of Saint Martin is not affected.
- (5) This Decision implements the provisions of Article 349 of the Treaty and authorises France to apply differentiated taxation to the products for which it has been proven: firstly, that local production exists; secondly, that significant importation of goods (including from metropolitan France and other Member States) exists which could jeopardise the continuation of local production; and thirdly, that additional costs exist which increase the cost price of local production in comparison with products produced elsewhere, compromising the competitiveness of products produced locally. The authorised tax differential should not exceed the proven additional costs. Applying those principles would allow the provisions of Article 349 of the Treaty to be implemented without going beyond what is necessary and without creating an unjustified advantage for local production so as not to undermine the integrity and the coherence of the Union legal order, including safeguarding undistorted competition in the internal market and State aid policies.

- (6) In order to simplify the obligations of small enterprises, tax exemptions or reductions should affect all operators whose annual turnover is at least EUR 300 000. Operators whose annual turnover is under that threshold should not be subject to dock dues; however, to balance this, they cannot deduct the amount of that tax borne upstream.
- (7) Similarly, coherence with Union law means ruling out the application of a tax differential for food products benefiting from aid under Chapter III of Regulation (EU) No 228/2013 of the European Parliament and of the Council¹. That provision prevents the effect of the financial aid to agriculture granted under the specific supply arrangements from being cancelled out or reduced by higher taxation of subsidised products by means of dock dues.
- (8) The objectives of supporting the social and economic development of the French overseas departments, already provided for in Decision 2004/162/EC, are confirmed by the requirements regarding the purpose of the dock dues. It is a legal obligation that the revenues from the dock dues are to be incorporated into the resources of the French overseas departments' economic and tax regime and allocated to an economic and social development strategy involving aid for promoting local activities.
- (9) It is necessary to extend the period of application of Decision 2004/162/EC by a further six months until 30 June 2015. That period would enable France to transpose this Decision into its national law.

¹ Regulation (EU) No 228/2013 of the European Parliament and of the Council of 13 March 2013 laying down specific measures for agriculture in the outermost regions of the Union and repealing Council Regulation (EC) No 247/2006 (OJ L 78, 20.3.2013, p. 23).

- (10) The arrangements are to apply for five years and six months, until 31 December 2020, when the current guidelines on regional State aid will also cease to apply. However, the results of applying those arrangements will first have to be assessed. France should, therefore, present, by 31 December 2017, a report on the application of the taxation arrangements introduced, in order to check the impact of the measures taken and their contribution to the maintenance, promotion and development of local economic activities, in the light of the handicaps affecting the outermost regions. The report should check that the tax benefits granted by France to products produced locally do not go beyond what is strictly necessary and that those benefits are still necessary and proportional. The report should also contain an analysis of the impact of the arrangements introduced on prices in the French outermost regions. On the basis of that report, the Commission should submit a report to the Council and, if necessary, a proposal for adapting the provisions of this Decision in the light of the findings.
- (11) In order to avoid any kind of legal vacuum, it is necessary for this Decision to apply from 1 July 2015.
- (12) This Decision is without prejudice to the possible application of Articles 107 and 108 of the Treaty.
- (13) The purpose of this Decision is to establish the legal framework for the dock dues from 1 January 2015. Given this urgency, an exception should be made to the eight-week period laid down in Article 4 of Protocol No 1 on the role of national parliaments in the European Union annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union,

HAS ADOPTED THIS DECISION:

Article 1

1. By way of derogation from Articles 28, 30 and 110 of the Treaty, France is authorised, until 31 December 2020, to apply exemptions or reductions to dock dues in respect of the products listed in the Annex which are produced locally in Guadeloupe, French Guiana, Martinique, Mayotte and Réunion, as outermost regions within the meaning of Article 349 of the Treaty.

Those exemptions or reductions must be in keeping with the economic and social development strategy of the outermost regions concerned, taking account of its Union framework, and contribute to the promotion of local activities while not adversely affecting the conditions of trade to an extent contrary to the common interest.

2. With reference to the rate of taxation applied to similar products not originating in the outermost regions concerned, the application of the total exemptions or reductions referred to in paragraph 1 may not result in differences of more than:
 - (a) 10 percentage points for the products listed in part A of the Annex;
 - (b) 20 percentage points for the products listed in part B of the Annex;
 - (c) 30 percentage points for the products listed in part C of the Annex.

France shall undertake to ensure that the exemptions or reductions applied to the products listed in the Annex do not exceed the percentage strictly necessary to maintain, promote and develop local economic activities.

3. France shall apply the tax exemptions or reductions referred to in paragraphs 1 and 2 to operators whose annual turnover is at least EUR 300 000. Operators whose annual turnover is below that threshold shall not be subject to dock dues.

Article 2

The French authorities shall apply the same taxation arrangements as those applied to products produced locally to products that have benefited from the specific supply arrangements under Chapter III of Regulation (EU) No 228/2013.

Article 3

1. France shall immediately notify the Commission of the taxation arrangements referred to in Article 1.
2. France shall submit, by 31 December 2017, a report on the application of the tax arrangements referred to in Article 1 to the Commission, indicating the impact of the measures taken and their contribution to the maintenance, promotion and development of local economic activities, in the light of the handicaps affecting the outermost regions.

On the basis of that report, the Commission shall submit a report to the Council and, if necessary, a proposal for adapting the provisions of this Decision.

Article 4

In Article 1(1) of Decision 2004/162/EC, the date '31 December 2014' is replaced by the date '30 June 2015'.

Article 5

Articles 1 to 3 shall apply from 1 July 2015.

Article 4 shall apply from 1 January 2015.

Article 6

This Decision is addressed to the French Republic.

Done at ...

For the Council

The President

ANNEX

A. List of products referred to according to the classification of the Common Customs Tariff nomenclature¹

1. Outermost region of Guadeloupe

0105 11, 0201, 0203, 0207, 0208, 0305 49 80, 0702, 0705 19, 0706 10 00 10, 0707 00 05, 0709 60 10, 0709 60 99, 1106, 2103 30 90, 2103 90 30, 2209 00 91, 2505, 2712 10 90, 2804, 2806, 2811, 2814, 2853 00 10, 3808, 4407 10, 4407 21 to 4407 29, 4407 99, 7003 12 99, 7003 19 90, 7003 20, 8419 19.

2. Outermost region of French Guiana

0105 11, 0702, 0709 60, 0805, 0807, 1006 20, 1006 30, 2505 10, 2517 10, 3824 50, 3919, 3920 43, 3920 51, 6810 11, 7215, 7606 except 7606 91, 9405 60.

¹ Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 256, 7.9.1987, p. 1).

3. Outermost region of Martinique

0105 11, 0105 12, 0105 15, 0201, 0203, 0207, 0208 10, 0209, 0305, 0403 except 0403 10, 0405, 0706, 0707, 0709 60, 0709 99, 0710 except 0710 90, 0711, 0801 11 to 0801 19, 0802 90, 0803, 0804 30, 0804 50, 0805, 0809 10, 0809 40, 0810 30, 0810 90, 0812, 0813, 0910 91, 1102, 1106 20, 1904 10, 1904 20, 2001, 2005 except 2005 99, 2103 30, 2103 90, 2104 10, 2505, 2710, 2711, 2712, 2804, 2806, 2811 except 2811 21, 2814, 2836, 2853 00 10, 2907, 3204, 3205, 3206, 3207, 3401, 3808, 3820, 4012 11, 4012 12, 4012 19, 4401, 4407 21 to 4407 29, 4408, 4409, 4415 20, 4421 90, 4811, 4820, 6306 12, 6306 19, 6306 30, 6902, 6904 10, 7006, 7003 12, 7003 19, 7113 to 7117, 7225, 7309, 7310 except 7310 21, 7616 91, 7616 99, 8402 90, 8419 19, 8902, 8903 99, 9406.

4. Outermost region of Mayotte

0407, 0702, 0704 90 90, 0705 19, 0709 99 10, 0707 00 05, 0708 90, 0709 30, 0709 60, 0709 93 10, 0709 99 60, 0714, 0801 11, 0801 12, 0801 19, 0803, 0804 30, 0805 10, 0904 11, 0904 12, 0905, 1806, 2309 90 except 2309 90 96, 3925 10 00, 3925 90 80, 3926 90 97, 3926 90 97, 6901, 6902, 9021 21 90.

5. Outermost region of Réunion

0105 11, 0105 12, 0105 13, 0105 15, 0207, 0208 10, 0208 90 30, 0208 90 98, 0209, 0301, 0302, 0303, 0304, 0305, 0403, 0405 except 0405 10, 0406 10, 0406 90, 0407, 0408, 0601, 0602, 0710, 0711 90 10, 0801, 0803, 0804, 0805, 0806, 0807, 0808, 0809, 0810, 0811, 0812, 0813, 0904, 0909 31, 0910 99 99, 1101 00 15, 1106 20, 1108 14, 1604 14, 1604 19, 1604 20, 1701, 1702, 1903, 1904, 2001, 2002 10, 2004 10 10, 2004 10 91, 2004 90 50, 2004 90 98, 2005 10, 2005 20, 2005 40, 2006, 2007 except 2007 99 97 10, 2103 20, 2103 90, 2104, 2201, 2309 90 except 2309 90 35 and 2309 90 96 90, 2710 19 81 to 2710 19 99, 3211, 3214, 3402, 3403 99, 3505 20, 3506 10, 3808 92, 3808 99, 3809, 3811 90, 3814, 3820, 3824, 3921 11, 3921 13, 3921 90 90, 3925 10, 3926 90, 4009, 4010, 4016, 4407 10, 4409 10, 4409 21, 4409 29, 4415 20, 4421, 4811, 4820, 6306, 6801, 6811 89, 7007 29, 7009 except 7009 10, 7312 90, 7314 except 7314 20, 7314 39, 7314 41, 7314 49 and 7314 50, 7606, 8310, 8418 50, 8418 69, 8418 91, 8418 99, 8421 21 to 8421 29, 8471 30, 8471 41, 8471 49, 8537, 8706, 8707, 8708, 8902, 8903 99, 9001, 9021 21 90, 9021 29, 9405, 9406, 9506 21, 9506 29, 9619.

B. List of products referred to according to the classification of the Common Customs
Tariff nomenclature

1. Outermost region of Guadeloupe

0302, 0306 15, 0306 16, 0306 19, 0307 91, 0307 99, 0403, 0407, 0409, 0807 11,
0807 19, 1601, 1602 41 10, 1604 20 10, 1806 31, 1806 32 10, 1806 32 90,
1806 90 31, 1806 90 60, 1901 20, 1902 11, 1902 19, 1905, 2105, 2106, 2201 90,
2202 10, 2202 90, 2207 10, 2208 40, 2309 90 except 2309 90 31 30, 2309 90 51 and
2309 90 96 90, 2523 29, 2828, 3101, 3102 90, 3103 90, 3104 20, 3105 20, 3208,
3209, 3305 10, 3401, 3402, 3406, 3917 except 3917 10 10, 3919, 3920, 3923,
3924 10, 3925 10, 3925 30, 3925 90, 3926 90, 4418 10, 4418 20, 4418 90, 4818 10,
4818 20, 4818 30, 4818 90, 4821 10, 4821 90, 4823 40, 4823 61, 4823 69,
4823 70 10, 4910, 4911 10, 6303 12, 6303 91, 6303 92 90, 6303 99 90, 6306 12,
6306 19, 6306 30, 6810 except 6810 11 10, 7213 10, 7213 91 10, 7214 20,
7214 99 10, 7308 30, 7308 40, 7308 90 59, 7308 90 98, 7309 00 10, 7310 10,
7310 21 11, 7310 21 19, 7310 29, 7314 except 7314 12, 7610 10, 7610 90 90,
7616 99 90, 9001 40, 9404 10, 9404 21, 9406 00 20.

2. Outermost region of French Guiana

0201, 0203, 0204, 0206 10 95, 0206 10 98, 0206 30, 0206 80 99, 0207 11, 0207 13, 0207 41, 0207 43, 0208 10, 0208 90 10, 0208 90 30, 0209 10 90, 0209 90, 0210 11, 0210 12, 0210 19, 0210 99, 0302, 0303 89, 0304, 0305 39 90, 0305 49 80, 0305 59 80, 0305 69 80, 0306 17, 0403 10, 0406 10, 0406 40, 0406 90, 0901 except 0901 90, 1601, 1602, 1604 11 to 1604 20, 1605 10 to 1605 29, 1605 52 to 1605 54, 1905, 2001 90 10, 2001 90 20, 2001 90 40, 2001 90 70, 2001 90 92, 2001 90 97, 2006 00 10, 2006 00 31, 2006 00 35, 2006 00 38 81, 2006 00 38 89, 2006 00 91, 2006 00 99 99, 2008 11, 2008 99 except 2008 99 48 19, 2008 99 48 99, 2008 99 49 80, 2103, 2105, 2106 90 98, 2201 , 2202, 2208 40, 2309 90 except 2309 90 96 90, 2309 90 96 30, 2309 90 31 30, 2309 90 35, 2309 90 43, 2309 90 41 20, 2309 90 41 80 and 2309 90 51, 2828 90, 3208 90, 3209 10, 3402, 3809 91, 3923 except 3923 10, 3923 40 and 3923 90, 3925, 3926 90, 4201, 4817, 4818, 4819 40, 4819 50, 4819 60, 4820 10, 4821 10, 4823 69, 4823 90 85, 4905 91, 4905 99, 4909, 4910, 4911, 5907, 6109, 6205, 6206, 6306 12, 6306 19, 6307 90 98, 6802 23, 6802 29, 6802 93, 6802 99, 6810 19, 6815, 7006 00 90, 7009, 7210, 7214 20, 7214 99, 7216, 7301, 7306, 7308 10, 7308 30, 7308 90, 7309, 7310 except 7310 21 11 and 7310 21 19, 7314, 7326 90 98, 7411, 7412, 7604, 7607, 7610 10, 7610 90, 7612 10, 7612 90 30, 7612 90 80, 7616 91, 7616 99, 7907, 8211, 8421 21 00 90, 8537 10, 9404 21, 9405 20, 9405 40.

3. Outermost region of Martinique

0210 11, 0210 12, 0210 19, 0210 20, 0210 99 41, 0210 99 49, 0210 99 51,
0210 99 59, 0302, 0303, 0304, 0306, 0307, 0403 10, 0406 10, 0406 90 50, 0407,
0408 99, 0409, 0601, 0602, 0603, 0604, 0702, 0704 90, 0705, 0710 90, 0807, 0811,
1601, 1602, 1604 20, 1605 10, 1605 21, 1605 62, 1702, 1704 90 61, 1704 90 65,
1704 90 71, 1806, 1902, 2005 99, 2105, 2106, 2201, 2202 10, 2202 90, 2208 40,
2309 except 2309 90 96 30, 2517 10, 2523 21, 2523 29, 2811 21, 2828 10, 2828 90,
3101, 3102, 3103, 3104, 3105, 3208, 3209, 3210, 3211, 3212, 3213, 3214, 3215,
3303, 3304, 3305, 3402, 3406, 3917, 3919, 3920, 3921 11, 3921 19, 3923 21,
3923 29, 3923 30, 3924, 3925, 3926 10, 3926 30, 3926 90 92, 4418 10, 4418 20,
4418 90, 4818 10, 4818 20, 4818 30, 4818 90, 4819, 4821, 4823, 4902, 4907 00 90,
4909, 4910, 4911 10, 6103, 6104, 6105, 6107, 6109 10, 6109 90 20, 6109 90 90,
6203, 6204, 6205, 6207, 6208, 6805, 6810 11, 6810 19, 6810 91, 6811 81, 6811 82,
7015 10, 7213, 7214, 7217, 7308, 7314, 7610, 8421 21, 8708 21 90, 8708 99 97,
8716 40, 8901 90 10, 9021 21, 9021 29, 9401 30, 9401 51, 9401 59, 9401 69,
9401 71, 9401 79, 9401 90, 9403, 9404 10, 9404 21, 9405 60.

4. Outermost region of Mayotte

0301, 0302, 0303, 0304, 0305, 4407, 4409, 4414, 4418, 4419, 4420, 4421, 4819,
4821, 4902, 4909, 4910, 4911, 7003, 7005, 7210, 7212 30, 7216 61 90, 7216 91 10,
7301, 7308 30 7312, 7314, 7326 90 98, 7606, 7610 10, 8310, 9401 69, 9401 90 30,
9403 20 80, 9403 40, 9406 00 31, 9406 00 38.

5. Outermost region of Réunion

0306 11, 0306 16, 0306 17, 0306 21, 0306 26, 0306 27, 0307 11, 0307 19, 0307 59, 0409, 0603, 0604 20 40, 0604 90 91, 0604 90 99, 0709 60, 0901 21, 0901 22, 0910 11, 0910 12, 0910 30, 0910 91 10, 0910 91 90, 1516 20, 1601, 1602, 1605, 1704, 1806, 1901, 1902, 1905, 2005 51, 2005 59, 2005 99 10, 2005 99 30, 2005 99 50, 2005 99 80, 2008 except 2008 19 19 80, 2008 30 55 90, 2008 40 51 90, 2008 40 59 90, 2008 50 61 90, 2008 60 50 90, 2008 70 61 90, 2008 80 50 90, 2008 97 59 90 and 2008 99 49 80, 2105, 2106 90, 2208 40, 2309 10, 3208, 3209, 3210, 3212, 3301 12, 3301 13, 3301 24, 3301 29, 3301 30, 3401 11, 3917, 3920, 3921 90 60, 3923, 3925 20, 3925 30, 4012, 4418, 4818 10, 4819 10, 4819 20, 4821, 4823 70, 4823 90, 4909, 4910, 4911 10, 4911 91, 7216 61 10, 7308 except 7308 90, 7309, 7310, 7314 20, 7314 39, 7314 41, 7314 49, 7314 50, 7326, 7608, 7610, 7616 91, 7616 99 90, 8419 19, 8528 51, 8528 71, 8528 72, 8528 73, 9401 except 9401 10 and 9401 20, 9403, 9404 10, 9506 99 90.

C. List of products referred to according to the classification of the Common Customs
Tariff nomenclature

1. Outermost region of Guadeloupe

0901 21, 0901 22, 1006 30, 1006 40, 1101, 1701, 2007, 2009 except 2009 11 99 98, 2009 49 99 90, 2009 79 19 90, 2009 89 69 90, 2009 89 73 90, 2009 89 97 99, 2009 90 59 39 and 2009 90 59 90, 2208 70¹, 2208 90¹, 7009 91, 7009 92.

¹ Only rum-based products under heading 2208 40.

2. Outermost region of French Guiana

1702, 2007, 2009 except 2009 11 99 98, 2009 31 19 99, 2009 49 99 90, 2009 89 36 90, 2009 81 99 90 and 2009 90 98 80, 2203, 2208 70¹, 2208 90¹, 4403 49, 4403 99 95, 4407 22, 4407 29, 4407 99 96, 4409 29 91, 4409 29 99, 4418 10 10, 4418 10 90, 4418 20 10, 4418 20 80, 4418 40, 4418 50, 4418 60, 4418 90, 4420 10, 9403 40 10, 9406 00 11, 9406 00 20, 9406 00 38.

3. Outermost region of Martinique

0901 21, 0901 22, 1006 30, 1006 40, 1101 00 11, 1101 00 15, 1701, 1901, 1905, 2006 00 10, 2006 00 35, 2006 00 91, 2007 except 2007 10 99 15, 2007 99 33 15, and 7 99 39 29, 2008 except 2008 20 51, 2008 50 61 90, 2008 60 50 10, 2008 80 50 90, 2008 93 93 90, 2008 97 51 90, 2008 97 59 90, 2008 99 48 94, 2008 99 48 99, 2008 99 49 80 and 2008 99 99 90, 2009 except 2009 11 99 96, 2009 11 99 98, 2009 19 98 99, 2009 29 99 90, 2009 39 39 19, 2009 39 39 99, 2009 49 30 91, 2009 49 30 99, 2009 49 91 90, 2009 69 51 10, 2009 79 11 91, 2009 79 11 99, 2009 89 97 99², 2009 89 99 99² and 2009 90 59 90², 2203, 2204 29, 2205, 2208 70¹, 2208 90¹, 7009 91, 7009 92, 7212 30, 9001 40.

¹ Only rum-based products under heading 2208 40.

² Where the Brix value of the produce is higher than 20.

4. Outermost region of Mayotte

0401, 0403, 0406, 1601, 1602, 1901, 1905, 2105, 2201, 2202, 2203, 3301 29 11, 3301 29 31, 3401, 3402, 9404 29 90.

5. Outermost region of Réunion

0905 10, 1512 19, 1514 19 90, 1515 29, 2009 except 2009 11 99 96, 2009 19 98 99, 2009 29 99 90, 2009 39 31 19, 2009 69 19 10, 2009 69 51 10, 2009 79 19 90, 2009 79 98 20, 2009 89 69 90¹, 2009 89 73 90, 2009 89 97 99¹, 2009 89 99 99¹, 2009 90 51 80 and 2009 90 59¹, 2202 10, 2202 90, 2203, 2204 21 79, 2204 21 80, 2204 21 83, 2204 21 84, 2204 29 83, 2204 29 84, 2206 00 59, 2206 00 89, 2208 70², 2208 90², 2402 20, 7113, 7114, 7115, 7117, 7308 90, 9404 21 10, 9404 21 90, 9404 29 10, 9404 29 90.

¹ Where the Brix value of the produce is higher than 20.

² Only rum-based products under heading 2208 40.