

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 16.4.2008
COM(2008) 191 final

Proposal for a

COUNCIL DECISION

amending, for the purposes of updating its annex, Decision 2004/162/EC concerning dock dues

(presented by the Commission)

1) CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

The purpose of the proposal is to update the lists of products eligible for full or partial exemption from dock dues, set out in the annex to 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.

- **General context**

The French authorities presented, on the basis of Article 3 of Decision 2004/162/EC, a request relating almost entirely to French Guiana and seeking to add products to the list of those eligible for differential taxation under the system of dock dues. The French authorities submitted an additional request in July 2006. For each of the products in question, the French authorities' request was examined to see whether one of the situations described in the above-mentioned Article 3 existed.

- **Existing provisions in the area covered by the proposal**

Pursuant to Article 299(2) of the EC Treaty, the Treaty applies to the French overseas departments, the Azores, Madeira and the Canary Islands. However, taking account of the structural social and economic situation of the French overseas departments, the Azores, Madeira and the Canary Islands, which is compounded by their remoteness, insularity, small size, difficult topography and climate, economic dependence on a few products, the permanence and combination of which restrain their development, the Council, acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament, adopts specific measures aimed, in particular, at laying down the conditions of application of the EC Treaty to those regions, including common policies. The Council is required, when adopting such measures, to take into account areas such as fiscal policy.

Decision 2004/162/EC, taken on the basis of Article 299(2) of the EC Treaty, authorises France, in the French overseas departments, to apply exemptions or reductions to the tax known as "dock dues" for certain products manufactured locally in the French overseas departments. With reference to the rate of taxation applied to similar products not originating in the French overseas departments, the maximum permitted tax differential is, depending on the products and on the overseas department in question, 10, 20 or 30 percentage points. The products eligible for exemption or reduction in dock dues are listed in an annex to the Council Decision. Council Decision 2004/162/EC is to apply until 1 July 2014, with a mid-term report to be drawn up in July 2008. Article 3 of that Decision states that the Council, acting by a qualified majority on a proposal from the Commission, shall adopt the measures necessary for the implementation of that Decision with regard to the updating of the lists of products in the Annex because of the emergence of new production in the French overseas departments and the taking of urgent measures if local production is threatened by certain commercial practices.

- **Consistency with the other policies and objectives of the Union and compliance with the specific criteria set out in Article 3 of Decision 2004/162/EC**

The measures provided for in Article 3 of Decision 2004/162/EC are based on Article 299(2) of the EC Treaty. They must therefore take account of the special characteristics and constraints of the outermost regions without undermining the integrity and the coherence of the Community legal order, including the internal market and common policies. In addition, the above-mentioned Article 3 itself sets additional criteria specific to the procedure for which it provides. It must be a matter of updating the list of products in the annex because of the emergence of new production in the French overseas departments or of taking urgent measures if local production is threatened by certain commercial practices.

All of these requirements were taken into account by a particularly thorough examination of the French authorities' request. Thus, whereas the French authorities' initial request related to around 130 products, the Commission considers that the updating of the list on the basis of Article 3 of Decision 2004/162/EC is justified in respect of only 19 products.

The Commission does not therefore propose, under the guise of "updating" the lists in the annex to the decision, adding products in cases where local production already existed at the time the initial request that gave rise to Decision 2004/162/EC was submitted. As for the second option under Article 3 of that Decision, this presupposes that "urgent measures" need to be taken because local production is "threatened" by "certain commercial practices". Therefore, the Commission does not propose making use of this provision where an increase in imports is due to reasons other than commercial practices, such as reorganisation of the local market in French Guiana concerning the production or marketing of certain products, or for unspecified reasons.

2) CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

The French authorities' request was a response to requests from the economic sectors concerned. In addition, representatives of the economic sectors most affected by the French authorities' request were present in the various delegations at several meetings held between the French authorities and Commission officials.

- **Collection and use of expertise**

No recourse to external expertise has been necessary.

- **Impact assessment**

The aim of the proposal is to adopt an implementing measure for Decision 2004/162/EC. The only matter to be examined thus consists of determining, for each product involved in the French Government's request, whether the conditions set out in Article 3 of that decision are fulfilled for the purposes of updating the lists of products in the annex to that decision.

Under the procedure set out in Article 3 of Decision 2004/162/EC, there is no option possible other than to update the list or to refrain from doing so.

3) LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

To add, for French Guiana, 19 products to the lists of products in the annex to Decision 2004/162/EC, to which France would then be authorised, within certain limits, to apply exemptions or reductions to the tax known as "dock dues" for certain products manufactured locally in the French overseas departments.

- **Legal basis**

Article 3 of Council Decision 2004/162/EC of 10 February 2004.

- **Subsidiarity principle**

Only the Council is authorised to change, on the basis of Article 3 of Decision 2004/162/EC, the list of products covered by that act.

The proposal therefore complies with the subsidiarity principle.

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reasons.

Its purpose is to update Decision 2004/162/EC by adding further products to its annex. However, only those products in respect of which such a change proved justified in the light of the criteria set out in Article 3 of said Decision are to be added.

Similarly, the maximum differential proposed for each product affected by this proposal is limited to what is necessary in view of the handicap that the local production concerned suffers in each case. In this way, the tax burden on products imported into French overseas departments will not exceed what is necessary to restore the competitiveness of products manufactured locally vis-à-vis imported products.

- **Choice of instruments**

Proposed instrument: Council Decision.

Other means would not have been appropriate for the following reasons:

The only instrument provided for in Article 3 of Decision 2004/162/EC is a decision to be adopted by the Council, which is what the Commission is proposing.

4) BUDGETARY IMPLICATION

The proposal has no implication for the Community budget.

5) ADDITIONAL INFORMATION

- **Detailed explanation of the proposal by chapter or by article**

Point 1 of the annex to the proposed decision would add, in respect of French Guiana, 18 products to part B of the annex to Decision 2004/162/EC, i.e. the list of products for which, compared with the rates of taxation applied to similar products not originating in the French overseas departments, the maximum permitted tax differential is 20 percentage points.

Point 2 of the annex to the would decision proposes to add, again for French Guiana, one product to part C of the annex to Decision 2004/162/EC, i.e. the list of products for which, compared with the rates of taxation applied to similar products not originating in the French overseas departments, the maximum permitted tax differential rate is 30 percentage points.

The products involved and the reasons that justify the updating of Decision 2004/162/EC are set out in recitals 4 et seq. of the proposal for a Council Decision.

Proposal for a

COUNCIL DECISION

amending, for the purposes of updating its annex, Decision 2004/162/EC concerning dock dues

(Only the French text is authentic)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to 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[1], and in particular Article 3 thereof,

Having regard to the proposal from the Commission[2],

Whereas:

(1) Decision 2004/162/EC authorises the French authorities to apply exemptions or reduction to dock dues for products manufactured locally in the French overseas departments and listed in its annex. The maximum permitted tax differential is, depending on the products and on the overseas department in question, 10, 20 or 30 percentage points.

(2) Article 3 of that Decision provides for the updating of the lists of products in the annex thereto because of the emergence of new production in the French overseas departments and of the taking of urgent measures if local production is threatened by certain commercial practices.

(3) The French authorities have submitted to the Commission a request for products to be added to the lists of products eligible for differential taxation. For each of the products involved, the French authorities' request has been examined in the light of the conditions set by the above-mentioned Article 3. Subsequent to their request dated 14 March 2003, which gave rise to Decision 2004/162/EC, new production activities have emerged in French Guiana. It was not therefore possible to include these products in the list of products set out in the annex to Decision 2004/162/EC. One of the two alternative conditions set out in Article 3 of that Decision is therefore satisfied.

(4) The handicap suffered by these new products in comparison with imported products, because of the increased costs of producing these products by (often very small) businesses with production activities in French Guiana should therefore be examined. These increased costs are caused inter alia by the remoteness, the difficult climate and

---

1 OJ L 52, 21.2.2004, p. 64

2 OJ C […], […], p. […].

the small scale of the local market. Remoteness brings about high transport costs and, due to delivery times, forces businesses to maintain bigger stocks of raw materials and spare parts to repair the machines used in manufacturing. Similarly, a consequence of the small scale of the local market is often that the means of production are on a larger scale than is needed for the quantities produced. The French authorities have put a figure on the handicap suffered by each category of products manufactured locally on the basis of the factors relevant to each of them.

(5) In October 2003 a new business was set up and started production of yogurt and other dairy products such as curd cheese (heading 0403 including sub-headings 0403 10 and 0403 90 according to the classification of the Common Customs Tariff nomenclature). However, only production of yogurt (heading 0403 10 according to the classification of the Common Customs Tariff nomenclature) was envisaged at the time of the initial request, which was prior to the beginning of production activity. It turns out that the activity conducted by the business also includes products under heading 0403 90. According to the information submitted by the French authorities, the cost price of the products in question produced locally is more than 20% higher than that of the same products imported from elsewhere. In order to compensate for the handicap suffered by this new local production, heading 0403 90 should, in respect of French Guiana, be included in part B of the annex to Decision 2004/162/EC, which sets out the list of local products eligible for a tax differential of 20 percentage points in comparison to products not produced in French overseas departments.

(6) In September 2005 a business started a coffee roasting activity. Alongside this, an agricultural activity producing raw coffee is in the process of being set up. This activity is to supply the raw material to the coffee roasting business. Eventually, these activities, taken as a whole, are expected to satisfy some of the demand for coffee in French Guiana. According to the information submitted by the French authorities, the cost price of coffee roasted locally is more than 20% higher than that of imported roasted coffee. In order to compensate for the handicap suffered by this new local production, roasted coffee (heading 0901 21 according to the classification of the Common Customs Tariff nomenclature) should, in respect of French Guiana, be included in part B of the annex to Decision 2004/162/EC, which sets out the list of local products eligible for a tax differential of 20 percentage points in comparison to products not produced in French overseas departments.

(7) At the beginning of 2006 a business started an activity manufacturing chocolate and cocoa-derived products (headings 1801, 1802, 1803, 1805 and 1806 according to the classification of the Common Customs Tariff nomenclature). Alongside this, an agricultural activity producing cocoa is in the process of being set up. Eventually, these activities, taken as a whole, are expected to satisfy some of the demand for chocolate in French Guiana. According to the information submitted by the French authorities, the cost price of chocolate and cocoa-derived products produced locally is more than 20% higher than that of the same products imported from elsewhere. In order to compensate for the handicap suffered by this new local production, headings 1801, 1802, 1803, 1805 and 1806 should, in respect of French Guiana, be included in part B of the annex to Decision 2004/162/EC, which sets out the list of local products eligible for a tax differential of 20 percentage points in comparison to products not produced in French overseas departments.

(8) In September 2005 a business was set up that developed an activity manufacturing cassava chips, banana chips and roasted peanuts (headings 2008 11 and 2008 99 according to the classification of the Common Customs Tariff nomenclature). According to the information submitted by the French authorities, the cost price of the products in question produced locally is more than 20% higher than that of the same products imported from elsewhere. In order to compensate for the handicap suffered by this new local production, headings 2008 11 and 2008 99 should, in respect of French Guiana, be included in part B of the annex to Decision 2004/162/EC, which sets out the list of local products eligible for a tax differential of 20 percentage points in comparison to products not produced in French overseas departments.

(9) A beer brewing company, set up in 2006, started producing beer in 2007 (heading 2203 according to the classification of the Common Customs Tariff nomenclature). According to the information submitted by the French authorities, the cost price of beer produced locally is more than 30% higher than that of imported beer. In order to compensate for the handicap suffered by this new local production, heading 2203 should, in respect of French Guiana, be included in part C of the annex to Decision 2004/162/EC, which sets out the list of local products eligible for a tax differential of 30 percentage points in comparison to products not produced in French overseas departments.

(10) In 2005 a Guianese business started an activity involving the recovery of rice husk residues for use in the manufacture of a product similar to peat (fuel, litter). This new activity would not be economically viable if peat produced outside French Guiana (heading 2703 according to the classification of the Common Customs Tariff nomenclature) could not be subject to differential taxation in French Guiana. According to the information submitted by the French authorities, although this is a product made from agricultural waste, the processing costs are such that it cannot compete with peat imported into French Guiana, even if transport costs are taken into account. According to the French authorities, the production costs of this product are considerably higher than those for peat because of the very small size of the Guianese business that has developed it (six employees) and the quasi-craft industry nature of this activity, whereas peat is produced industrially in Europe and there is no local peat production in Guyana. Even taking into account the transport costs of peat imported from Europe, the cost price of the product made from rice husks remains more than 20% higher than that of imported peat. Without special measures, the activity carried out by this Guianese business would not, therefore, be economically viable, hence the need to restore its competitiveness. In order to compensate for the handicap suffered by this new local production competing with peat, heading 2703 should, in respect of French Guiana, be included in part B of the annex to Decision 2004/162/EC, which sets out the list of local products eligible for a tax differential of 20 percentage points in comparison to products not produced in French overseas departments. Although it is limited to peat, this differential will make it possible to maintain the activity related to the production of said local fuel, which will be taxed at the rate to which peat produced locally would be subject if such production existed.

(11) In 2005 a Guianese business started production of foam mattresses and polystyrene products (headings 3921 11 and 9404 21 according to the classification of the Common Customs Tariff nomenclature). According to the information submitted by the French authorities, the cost price of the products in question produced locally is more than 20% higher than that of the same products imported from elsewhere. In

order to compensate for the handicap suffered by this new local production, headings 3921 11 and 9404 21 should, in respect of French Guiana, be included in part B of the annex to Decision 2004/162/EC, which sets out the list of local products eligible for a tax differential of 20 percentage points in comparison to products not produced in French overseas departments.

(12) In 2005, a Guianese business started production of PVC shower cubicles (heading 3922 10 according to the classification of the Common Customs Tariff nomenclature). According to the information submitted by the French authorities, the cost price of shower cubicles produced locally is more than 20% higher than that of the same products imported from elsewhere. In order to compensate for the handicap suffered by this new local production, heading 3922 10 should, in respect of French Guiana, be included in part B of the annex to Decision 2004/162/EC, which sets out the list of local products eligible for a tax differential of 20 percentage points in comparison to products not produced in French overseas departments.

(13) In 2007 a Guianese business started production of zinc and copper gutters (headings 7411, 7412, 7419 91, 7907 00 10 and 7907 00 90 according to the classification of the Common Customs Tariff nomenclature). According to the information submitted by the French authorities, the price of the products in question produced locally is more than 20% higher than that of the same products imported from elsewhere. In order to compensate for the handicap suffered by this new local production, headings 7411, 7412, 7419 91, 7907 00 10 and 7907 00 90 should, in respect of French Guiana, be included in part B of the annex to Decision 2004/162/EC, which sets out the list of local products eligible for a tax differential of 20 percentage points in comparison to products not produced in French overseas departments;

HAS ADOPTED THIS DECISION:

Article 1

The Annex to Decision 2004/162/EC is amended in accordance with the Annex to this Decision.

Article 2

This Decision is addressed to the French Republic.

Done at Brussels,

For the Council
The President

ANNEX

The Annex to Decision 2004/162/EC is hereby amended as follows:

1) In part B, point 2, the following products shall be inserted:

"0403 90, 0901 21, 1801, 1802, 1803, 1805, 1806, 2008 11, 2008 99, 2703, 3921 11, 3922 10, 7411, 7412, 7419 91, 7907 00 10, 7907 00 90 and 9404 21".

2) In part C, point 2, the following product shall be inserted:

"2203".