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**COVER NOTE**

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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

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Delegations will find attached document SWD(2021) 44 final.

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SWD(2021) 44 final

**COMMISSION STAFF WORKING DOCUMENT**  
*Accompanying the document*

**Proposal for a Council Decision**

**concerning the dock dues in the French outermost regions and amending Decision No  
940/2014/EU**

{COM(2021) 95 final}

## Contents

1.	INTRODUCTION: POLITICAL AND LEGAL CONTEXT .....	4
1.1.	Introduction: Outermost regions.....	4
1.2.	Specific measure for certain French outermost regions .....	4
2.	PROBLEM DEFINITION .....	6
2.1.	Problem 1: Fragile economic growth .....	6
2.2.	Problem 2: Additional costs for local industries .....	11
2.3.	Problem 3: Certain shortcomings of the current regime .....	14
2.4.	Problem 4: Constraints to the development of regional trade .....	17
2.5.	How will the problems evolve? .....	20
3.	WHY SHOULD THE EU ACT? .....	21
4.	OBJECTIVES: WHAT IS TO BE ACHIEVED? .....	22
4.1.	General objectives .....	22
4.2.	Specific objectives.....	22
5.	WHAT ARE THE AVAILABLE POLICY OPTIONS? .....	22
5.1.	What is the baseline from which options are assessed? .....	22
5.2.	Description of the policy options .....	23
5.3.	Options discarded at an early stage .....	25
6.	WHAT ARE THE IMPACTS OF THE POLICY OPTIONS? .....	26
6.1.	Methodology.....	26
6.2.	Baseline .....	26
6.3.	Option 1 - Termination of the outermost region specific support.....	30
6.4.	Option 2 – Revision of criteria for the identification of eligible products and updates .....	33
6.5.	Option 3 – Revision of the maximum permitted differential .....	38
6.6.	Option 4 – Raising the turnover threshold of dock dues from EUR 300 000 to EUR 550 000 .....	39
6.7.	Option 5 – Revised monitoring arrangements.....	41
7.	HOW DO THE OPTIONS COMPARE? .....	43
7.1.	Effectiveness.....	43
7.2.	Efficiency .....	44
7.3.	Coherence .....	45

8.	PREFERRED OPTION .....	46
9.	HOW WILL ACTUAL IMPACTS BE MONITORED AND EVALUATED?.....	47
	ANNEX 1: PROCEDURAL INFORMATION.....	48
	ANNEX 2: STAKEHOLDER CONSULTATION.....	49
	ANNEX 3: ANALYTICAL METHODS .....	58
	ANNEX 4: EVALUATION .....	61
1.	Coherence .....	61
2.	Relevance .....	65
3.	Effectiveness.....	66
4.	EU added value.....	69
5.	Efficiency .....	71
	ANNEX 5: FURTHER INFORMATION ON DOCK DUES TAX.....	82

## Glossary

<i>Term or acronym</i>	<i>Meaning or definition</i>
CN	Combined Nomenclature
EMFF	European Maritime and Fisheries Fund
EPA	Economic Partnership Agreement
ESA	Eastern and Southern Africa. Six countries of the ESA region (Comoros, Madagascar, Mauritius, the Seychelles, Zambia and Zimbabwe) concluded an interim Economic Partnership Agreement with the EU at the end of 2007
EU	European Union
GDP	Gross domestic product
GRP	Gross regional product
IEDOM	Institut d'émission des départements d'outre-mer
INSEE	Institut national de la statistique et des études économiques
ISSG	Interservice Steering Group
ORs	Outermost regions
POSEI	Programme of options specifically relating to remoteness and insularity
SMEs	Small and medium-sized enterprises
TFEU	Treaty on the Functioning of the European Union
VAT	Value added tax
WTO	World Trade Organization

## 1. INTRODUCTION: POLITICAL AND LEGAL CONTEXT

### 1.1. Introduction: Outermost regions

Several regions of the European Union, known as the outermost regions (ORs), are located in areas that are remote from Europe. These are the French regions of Guadeloupe, French Guiana, Réunion, Martinique, Mayotte and Saint-Martin; the Azores and Madeira, which belong to Portugal; and the Spanish Canary Islands. These regions are an integral part of the EU and therefore need to comply with EU legislation. At the same time, and unlike the rest of the EU territory, they face permanent constraints related to their characteristics, in particular to remoteness, insularity, small size, difficult topography and climate, and economic dependence on a limited number of products.

*Figure 1: Geographical distribution of EU outermost regions*



Source: [https://ec.europa.eu/regional\\_policy/en/policy/themes/outermost-regions](https://ec.europa.eu/regional_policy/en/policy/themes/outermost-regions)

The special situation of these regions is recognised under Article 349 of the Treaty on the Functioning of the EU (TFEU). This article allows for specific measures to be taken for these regions as it acknowledges that the permanent and combined constraints affect their economic and social situation and severely restrain their development. It permits such measures provided that they do not undermine the integrity and the coherence of the EU legal order, including the internal market and common policies. Such measures concern various policies, including taxation, support to create jobs, boosting competitiveness and preserving the environment.

### 1.2. Specific measure for certain French outermost regions

This report concerns the existing indirect tax called dock dues ('octroi de mer'), one of the oldest forms of French taxation, and the oldest in the French outermost regions. This tax is in force in the French outermost regions of Martinique, Guadeloupe, French Guiana, Réunion and Mayotte. The tax is not applicable in Saint-Martin due to its free port status. The tax applies to imports of products, irrespective of their origin, and to

supplies of goods for consideration by persons engaged in production activities<sup>1</sup>. In principle, it applies equally to locally produced products and to imported products.

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). These competent authorities 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, departments, regions and communities inside each concerned outermost region) and, on the other hand (and under certain conditions), to a regional fund for development and employment. It has become an essential financial resource for these territories, to which the tax yield is almost entirely allocated. Detailed information on dock dues is provided in [Annex 5](#).

Council Decision No 940/2014/EU of 17 December 2014<sup>2</sup> authorises France to apply, until 31 December 2020, exemptions or reductions to dock dues in respect of certain locally produced 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 objectives of the existing Council Decision are to promote the socio-economic development of these outermost regions and to compensate for the higher production cost of local production in these French outermost regions. This decision allows France to offset the competitive disadvantages faced by the producers in these regions, without undermining the integrity and coherence of the EU legal order, including the internal market and common policies.

As the regime is due to expire on 31 December 2020, a decision regarding its future is urgently needed. As French outermost regions have been significantly impacted by the ongoing COVID-19 pandemic, the French authorities were unable to finalise the list of products to which total exemptions or reductions of dock dues should apply and therefore requested an extension to the date of application of the existing Council Decision to 30 June 2021.

Since there is a substantial risk of a legal vacuum and impact on producers in the French outermost regions if no proposal is adopted before 31 December 2020, the Commission proposed to extend the current Decision by a further 6 months. Thus, Council Decision (EU) 1793/2020/EU of 16 November 2020<sup>3</sup> extended the duration of Council Decision No 940/2014/EU for a further 6 months until 30 June 2021.

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<sup>1</sup> 'Production activities' means the manufacture, alteration or renovation of movable tangible property. Services, therefore, are outside the scope of this tax.

<sup>2</sup> [Council Decision No 940/2014/EU](#) of 17 December 2014 concerning the dock dues in the French outermost regions and repealing Decision Council 2004/162/EC of 10 February 2004, OJ L 367, 23.12.2014, pp. 1–5.

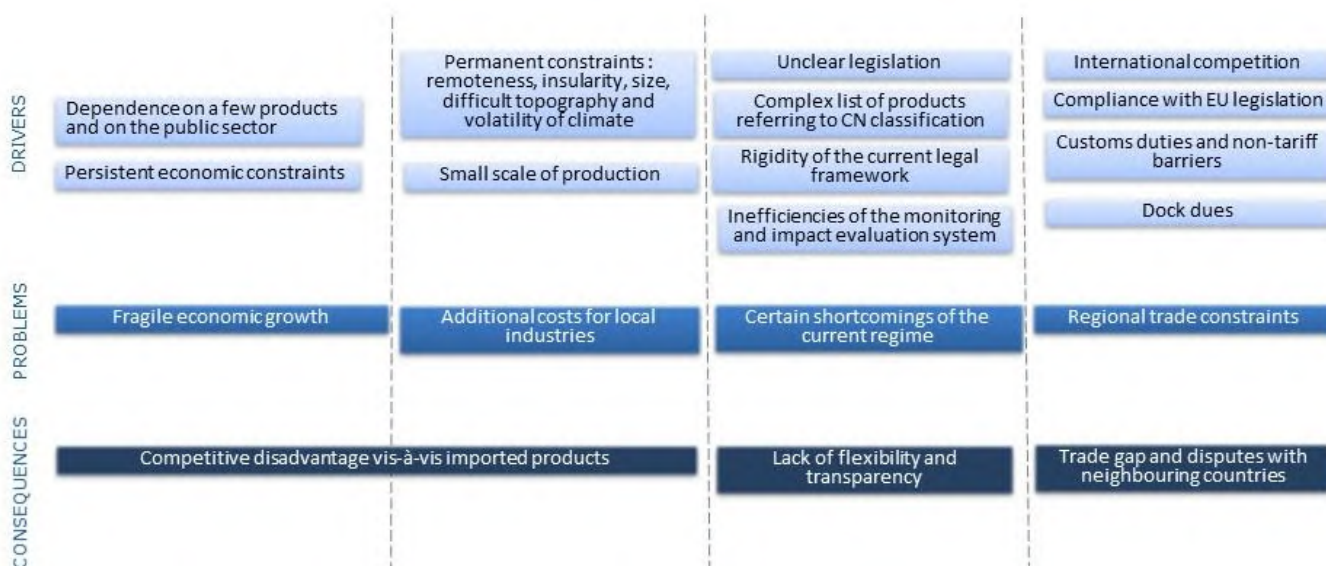
<sup>3</sup> [Council Decision \(EU\) 2020/1793](#) of 16 November 2020 amending the period of application of Decision No 940/2014/EU concerning the dock dues in the French outermost regions, OJ L 402, 1.12.2020, pp. 21–

The objective of this staff working document is to evaluate the current regime and analyse possible future options to take effect upon the expiry of the current measure in June 2021. This report is based on an external study by Economisti Associati<sup>4</sup> ('the study') commissioned by the European Commission.

## 2. PROBLEM DEFINITION

The constraints noted in Article 349 TFEU result in several problems for local producers in the French ORs. The problems differ between the various outermost regions and averaging the impact masks the often significant differences between them. The following problem tree outlines the problems, the drivers and their consequences.

**Figure 2. Problem tree**



### 2.1. Problem 1: Fragile economic growth

The economies of these remote regions are significantly below the level of gross domestic product (GDP) per capita of mainland France. Across the ORs, GDP per capita in terms of purchasing power standards (PPS) is below the GDP per capita PPS in France. Unemployment, including youth unemployment, in all regions is worryingly higher than in mainland France and above the EU average. Moreover, long-term exclusion from the labour market is also a characteristic of these regions.

According to the Institut national de la statistique et des études économiques (INSEE), approximately 30% and 39% of the population of Réunion and Martinique respectively lived below the poverty line in 2016<sup>5</sup>. In Mayotte, this rate rises to 82%<sup>6</sup> and one third of

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<sup>4</sup> Study on specific tax regimes for outermost regions belonging to France and Spain, Economisti Associati et al, 2020.

<sup>5</sup> No data for Guadeloupe or French Guiana, INSEE.

the population did not have access to running water. Table 1 below provides a summary of the key socio-economic indicators for each region and France.

**Table 1: Key socio-economic data (2018<sup>7</sup>) and unemployment data (2017<sup>8</sup>)**

	Guadeloupe	Martinique	Réunion	French Guiana	Mayotte	France
Total GDP (EUR million)	10 250	9 508	20 331	4 499	2 661	2 353 090
GDP per capita (EUR) PPS	21 900	23 300	21 200	14 400	9 000	31 500
GDP per capita PPS compared to all France average	69.5%	74.0%	67.3%	45.7%	28.6%	100%
Average annual GDP growth rate [2014-18 <sup>9</sup> ]	3.0%	0.3%	3.3%	1.9%	3.2%	2.0%
Unemployment rate <sup>10</sup>	23.1%	17.7%	24.0%	19.1%	35.0%	8.8%
Young people neither in employment nor in education and training (NEET rate <sup>11</sup> )	20.7%	19.9%	27.8%	33.1%	Not available	11.1%
Human Development Index 2010 <sup>12</sup>	0.822	0.813	0.775	0.739	0.637	0.883
Import (EUR million)	2 939	2 159	5 051	1 530	572	
Export (EUR million)	280	211	324	213	11	
Number of tourists	1 166 000	1 047 000	574 000	202 000	61 800	

**Source: IEDOM, Eurostat, INSEE.**

Those problems lead to strong social unrest that can paralyse these territories for weeks or even months at a time, for example the general strikes in French Guiana in 2017<sup>13</sup> and in Mayotte<sup>14</sup> and Réunion<sup>15</sup> in 2018.

<sup>6</sup> INSEE 2011.

<sup>7</sup> Eurostat 2018.

<sup>8</sup> IEDOM: Annual Report 2018.

<sup>9</sup> CAGR, based on IEDOM: Annual Reports 2018.

<sup>10</sup> IEDOM: Annual Reports 2018. INSEE Employment Surveys 2014-2018.

<sup>11</sup> Eurostat 2018.

<sup>12</sup> Agence Française de développement, document de travail n° 129, 'Quel niveau de développement des départements et collectivités d'outre-mer ? Une approche par l'indice de développement humain.'

<sup>13</sup> Laurence Marot, [https://www.lemonde.fr/societe/article/2017/04/22/en-guyane-un-accord-a-3-milliards-d-euros\\_511527\\_3224.html](https://www.lemonde.fr/societe/article/2017/04/22/en-guyane-un-accord-a-3-milliards-d-euros_511527_3224.html), lemonde.fr, 21 avril 2017.

<sup>14</sup> [https://www.francetvinfo.fr/monde/a-mayotte-on-peut-parler-de-paralyse-totale-du-territoire\\_2653188.html](https://www.francetvinfo.fr/monde/a-mayotte-on-peut-parler-de-paralyse-totale-du-territoire_2653188.html), sur francevinfo.fr, 12 mars 2018.

<sup>15</sup> [https://www.liberation.fr/france/2018/11/20/gilets-jaunes-couvre-feu-partiel-a-la-reunion-l-ile-est-paralysee\\_1693134](https://www.liberation.fr/france/2018/11/20/gilets-jaunes-couvre-feu-partiel-a-la-reunion-l-ile-est-paralysee_1693134), liberation.fr, 28 novembre 2018.

## What are the drivers of the fragile economic growth?

- *Dependence on a few products and on the public sector*

The French outermost regions share most of the features of small economies. In particular, like most small economies, the range of production is concentrated on a relatively narrow range of products with little diversification, meaning that the economy is highly exposed to sectoral or asymmetric shocks.

The economies of the French outermost regions are dominated by the non-commercial service sector. This sector covers activities of public administration, health, education and social work, and typically accounts for between 80-85% of the total value added. Public services are a major component of this sector, which contributes from 33.2% in Martinique to 54.8% in Mayotte<sup>16</sup> to the outermost regions' economy, as compared to 22.4% in mainland France<sup>17</sup>.

Tourism is one of the engines of these economies. The tourism sector represents in Martinique and Guadeloupe on average 10% of their GDP and several tens of thousands of direct and indirect jobs (nearly 14 000 jobs in Réunion<sup>18</sup>). The tourist industry in these territories generates directly about 5% of employment and indirectly about 10% (11.5% in Guadeloupe<sup>19</sup>).

The remaining industries pale in comparison to the service and tourism sectors. The secondary sectors<sup>20</sup> represent between 10% (Mayotte) and 16% (French Guiana) of value added, with industrial and manufacturing activities ranging from 3% to 9% of the total. Finally, agriculture and fisheries, although the smallest sector in the outermost regions in terms of added value, contribute more than double to the outermost regions' economy compared to the EU average: 3.8% of these regions' added growth against 1.6% at EU level<sup>21</sup>. Even with the gross value added of agriculture and fisheries being relatively small, they are important for the regional cultural identity, for the preservation of the landscape and tourism as well as for their employment intensity<sup>22</sup>. Overall, the outermost regions have less developed industry (7.5% of value added compared to 14.3% on the French mainland) and a significantly greater reliance on public sector services than the French mainland.

- *Persistent economic constraints*

Significant public support from France and the EU has helped develop infrastructure, provide services for the population, create jobs, invest in education and skills and

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<sup>16</sup> IEDOM: Annual Report on Martinique and Mayotte, 2018 (2015 data).

<sup>17</sup> INSEE 2018.

<sup>18</sup> IEDOM: Annual Reports 2018.

<sup>19</sup> IEDOM: Annual Reports 2018.

<sup>20</sup> The secondary sector covers all activities involving the processing of raw materials (manufacturing, construction industries).

<sup>21</sup> SWD(2017) 349 final.

<sup>22</sup> For example, 4% of the working population in Guadeloupe and Martinique work in the primary sector.

increase businesses' competitiveness. It also has helped enhance and diversify agricultural activities, preserve the environment and address climate change. Nevertheless, economic constraints remain linked to the permanent challenges these regions face, linked to their size, remoteness and insularity (insularity is not a characteristic of French Guiana). The evolution of the political, economic and social situation in the outermost regions in recent years – rising unemployment rates, especially alarming among young people, and, for some outermost regions, growing irregular migration and social crises – is a cause for concern<sup>23</sup>.

Local industries faces substantial *international competition*, in particular due to the practice of importing production surpluses and low-margin products from the EU and especially mainland France. Rather than storing certain food products (including milk, poultry, pork and beef) or selling them on the EU market at very low prices, some EU operators prefer to sell them in the outermost regions, where they are marketed at prices lower than those charged in mainland EU, even though they bear specific costs, in particular transport costs<sup>24</sup>. These products compete unfairly with local producers. These imports of discounted products destabilise the local market and make it very challenging to create import-substituting production for most goods<sup>25</sup>.

Furthermore, amendments to EU import regimes have significant impacts. The EU has concluded numerous trade agreements with third countries, particularly over the past decade. These agreements are most often asymmetrical in favour of third countries, to the detriment of agricultural and agri-food production in the French outermost regions<sup>26</sup>. This is reflected in the large trade deficit common to all the French outermost regions<sup>27</sup>. The trade deficit is mainly due to the elevated imports, which represent between 24% and 31% of GDP.

***Figure 3. Exports, imports (including from 'mainland' EU) and trade balance as a percentage of GDP in 2017***

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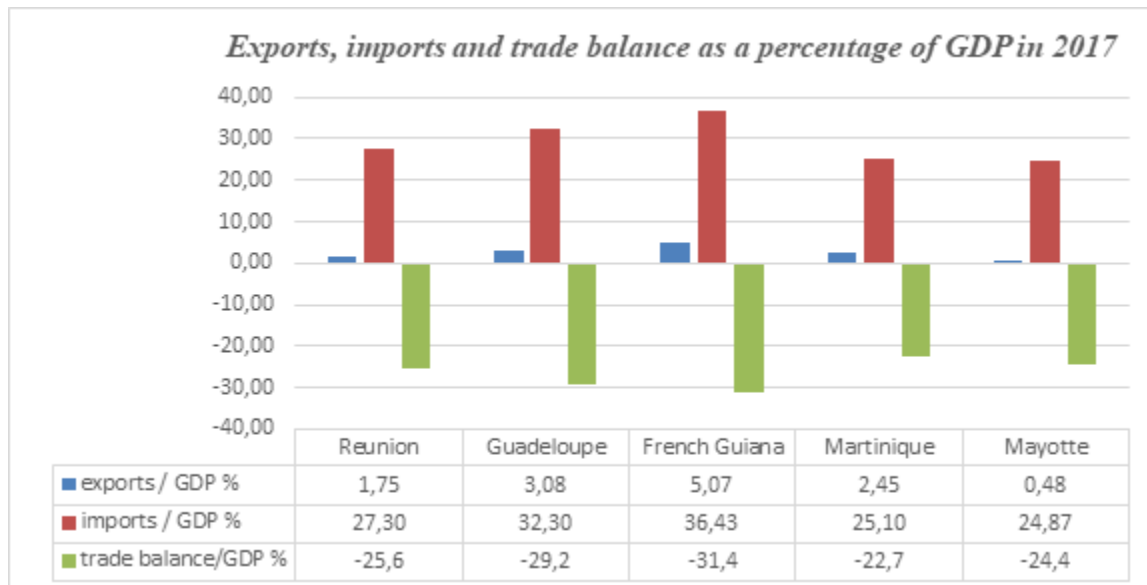
<sup>23</sup> [https://ec.europa.eu/regional\\_policy/sources/policy/themes/outermost-regions/pdf/rup\\_2017/com\\_rup\\_partner\\_en.pdf](https://ec.europa.eu/regional_policy/sources/policy/themes/outermost-regions/pdf/rup_2017/com_rup_partner_en.pdf)

<sup>24</sup> [https://www.senat.fr/enseance/2016-2017/288/Amdt\\_5.html](https://www.senat.fr/enseance/2016-2017/288/Amdt_5.html)

<sup>25</sup> POSEI France, rapport Annuel d'Exécution – année 2017.

<sup>26</sup> For example, since the late 1990s, rum producers in the Caribbean community and Dominican Republic (CARIFORUM) have exported under duty-free and quota-free conditions into Europe: [https://trade.ec.europa.eu/doclib/docs/2016/february/tradoc\\_154237.pdf](https://trade.ec.europa.eu/doclib/docs/2016/february/tradoc_154237.pdf).

<sup>27</sup> For example, agriculture and agri-food production represent more than 70% of the exports in Martinique.



**Source: the study.**

The *demographic situation* is highly variable and diverse for each region, and is a factor in the persistent economic challenges they face as a whole. Guadeloupe's population growth is low at 0.2% and the region is getting older. Martinique's population has, despite immigration, declined, with large numbers migrating to mainland France<sup>28</sup>. In Mayotte and French Guiana, the population has grown significantly, with approximately 40% of the population aged 20 years or less in French Guiana and 44% of the population aged 15 years or less in Mayotte<sup>29</sup>. While this is mainly due to positive demographic growth, these regions also experience significant irregular immigration. In French Guiana, 35% of the population does not have French nationality. Moreover, French Guiana is struggling to control significant migratory flows from Suriname, Brazil and Haiti. Similarly, 20 000 migrants from the Comoros Islands (about one tenth of the island's population) arrive in Mayotte every year. The population of Réunion is also growing due to natural increases, with 34% of its population younger than 20 years old, while its population over 60 is also increasing.

The persistent constraints facing these outermost regions also stem from *external factors*. The outermost regions are located in areas where countries have significant differences in their level of development. The outermost regions are directly exposed to the social and economic conditions, including low labour costs, that prevail in those countries<sup>30</sup>.

*Education* is another significant factor affecting their development. Guadeloupe, Réunion and Martinique all have high rates of early school dropout, while the condition of French Guiana's infrastructure significantly hampers the establishment of an effective educational system<sup>31</sup>. Illiteracy is a significant problem, one that contributes to the economic challenges. In 2018, 7% of the population in mainland France between the age

<sup>28</sup> [http://www.euroconsulting.be/wp-content/uploads/2017/01/fullrep\\_en1.pdf](http://www.euroconsulting.be/wp-content/uploads/2017/01/fullrep_en1.pdf)

<sup>29</sup> INSEE 2017.

<sup>30</sup> [http://www.euroconsulting.be/wp-content/uploads/2017/01/fullrep\\_en1.pdf](http://www.euroconsulting.be/wp-content/uploads/2017/01/fullrep_en1.pdf)

<sup>31</sup> Obsolete, non-existent, or poorly maintained infrastructure exposes the area to frequent medical crises and prevents the creation of an effective educational system: <http://www.egmontinstitute.be/content/uploads/2018/04/Outermost-Regions-PLS-v2.pdf>

of 16 and 65 years were illiterate. In comparison, 14% of the same age profile were illiterate in Martinique, with the figure rising to 22.6% in Réunion<sup>32</sup>. This creates a mismatch between the *skills and competencies* sought by employers and those offered by job seekers. The distance between where the jobs are located and where people live creates a further mismatch, as transport difficulties are particularly prevalent, limiting the possibility for job seekers to commute to possible job locations<sup>33</sup>.

## 2.2. Problem 2: Additional costs for local industries

The rationale of the dock dues regime is to support local products by reducing the competitiveness gap, caused by additional production costs, between local products and products sourced from elsewhere.

The latest assessment was completed in 2016 and estimated total additional costs in the French outermost regions to be EUR 4.51 billion, of which EUR 1.76 billion<sup>34</sup> was attributable to sectors supported by dock dues (manufacturing and the primary sector). Furthermore, additional cost assessments (taking the form of ‘product fiches<sup>35</sup>’) have been carried out regularly at individual product level to justify the differential treatment and set appropriate tax rates.

From the analysis of these ‘product fiches’, it emerged that the bulk of additional costs – approximately 83% on average – is generated by four cost factors, apparent in all French ORs: the additional costs of inputs (including freight costs); oversized equipment (idle production capacity); lower productivity of labour; and the need for larger stocks. However, there is variability in the assessments that seems unrelated to regional specificities, but which is connected instead to methodological incongruences and the inevitable subjectivity of businesses’ own estimates.

Despite these variations, the average estimate of additional costs is fairly consistent across the regions, amounting on average to 27% of turnover. The only exception is Mayotte, where the average additional costs amount to approximately 44% of turnover due to the more severe constraints and economic conditions of this region compared to the other regions.

**Table 2: Estimated additional costs as a percentage of turnover, by cost factor and by region**

	Cost of inputs	Stocks	Equip-ment	Maint.	Staff costs	Fin. costs	Energy	Others	Total partial	Total general	EUR million
<b>Martinique</b>	11.2%	0.0%	2.6%	0.8%	9.0%	1.0%	0.6%	1.9%	27.1%	27.9%	360.2

<sup>32</sup> INSEE, 2011.

<sup>33</sup> *La lettre du Centre d’Economie et de Management de l’Océan Indien n°20*, ‘La vie chère en Outre-Mer, un phénomène structurel ?’ – 2019.

<sup>34</sup> This figure is in the same order of magnitude of the latest dock dues evaluation (Technopolis, 2018, see table 2 below). The difference might be because the value of production of economic operators falling below the EUR 300 000 turnover threshold is no longer computed since the 2014 reform of the dock dues regime.

<sup>35</sup> ‘Product fiches’ detail, at product level, the estimated additional costs incurred by local economic operators compared to their competitors based on the French mainland.

<b>Guadeloupe</b>	9.5%	3.0%	3.7%	2.0%	4.9%	1.1%	0.7%	1.3%	26.2%	23.8%	261.5
<b>French Guiana</b>	7.6%	12.3%	5.3%	4.4%	0.0%	0.5%	0.0%	6.9%	37.0%	28.7%	155.5
<b>Mayotte</b>	9.7%	3.7%	8.8%	1.4%	23.2%	0.0%	1.7%	2.5%	50.9%	44.0%	59.2
<b>Réunion</b>	9.6%	2.5%	6.3%	1.4%	3.7%	0.6%	1.3%	2.1%	27.5%	24.1%	613.4
<b>Overall</b>	<b>9.5%</b>	<b>5.7%</b>	<b>4.7%</b>	<b>2.1%</b>	<b>6.5%</b>	<b>0.8%</b>	<b>0.7%</b>	<b>1.9%</b>	<b>31.8%</b>	<b>27.0%</b>	<b>1 449.8</b>

**Source:** The study (based on a sample of 1 233 additional costs point estimates, and for the monetary estimates, value of local production as reported in the latest dock dues evaluation (Technopolis, 2018))

## What are the drivers of additional costs for local industries?

- *Permanent constraints – remoteness, insularity, size, difficult topography and volatility of climate*

The economies of the French outermost regions are affected by their remoteness and distance to the European continent and France, their main supply market<sup>36</sup>. The French outermost regions are spread across the world and all are located over 7 500 km from Paris, with Réunion, the furthest, at almost 10 000 km from Paris.

This has a negative impact on most sectors affecting mobility of factors (labour and capital), trade and in general, all forms of integration with the mainland EU<sup>37</sup>. Remoteness is also synonymous with low spinoffs in terms of agglomeration economies<sup>38</sup>, which reduces the added value of economic operators and productivity per worker. Their remoteness also affects transport costs towards mainland Europe, with air and sea connections limited by the lack of critical mass and exposed to fluctuations in oil prices. It also creates a heavy dependence of productive activity on the maritime and air transport sector. Moreover, the limited number of regular trade routes to the outermost regions results in sporadic supplies of goods. This requires additional services such as storage, packaging and distribution of goods, and onward transportation costs. This results in additional costs for local industries.

The outermost regions are also isolated due to their insularity or due to the topography of the territory. Apart from French Guiana, 96% of which is covered by dense Amazon rainforest, the outermost regions are small oceanic islands. Accessibility issues affect these regions not only in their trade and exchanges with the EU, but also within their geographic areas and within the same archipelago<sup>39</sup>.

Guadeloupe, Martinique, Mayotte and Réunion have a small surface area, which is of volcanic origin and affected by seismic activity<sup>40</sup>. This results in very diverse relief from steep to flat, sometimes within the same region. This difficult topography explains the high population density in coastal areas of the outermost regions and the limited supply

<sup>36</sup> Mainland France remains in 2018 the main supplier of the French outermost regions with 58% of imports in Reunion and Guadeloupe, 52% in French Guiana, 53% in Mayotte and 70% in Martinique.

<sup>37</sup> [http://www.et2050.eu/TechNotes/ET2050\\_DiscNote16\\_OutermostRegions\\_v\(27\\_02\\_12\).pdf](http://www.et2050.eu/TechNotes/ET2050_DiscNote16_OutermostRegions_v(27_02_12).pdf)

<sup>38</sup> Specifically, the density of jobs, the availability of services to businesses and of a skilled labour force, the emergence and circulation of new ideas, modern and efficient infrastructures, and human capital.

<sup>39</sup> Guadeloupe is an archipelago, with six of its islands inhabited.

<sup>40</sup> Réunion is home to Piton de la Fournaise, one of the world's most active volcanoes, <https://en.reunion.fr/discover/the-volcanic-side/what-can-you-do-at-the-volcano>

of suitable land. It results in higher prices for such land, which also negatively impacts industry costs.

The climate of these regions varies from tropical (e.g. Guadeloupe, Martinique, Mayotte and Réunion) to equatorial (French Guiana). The tropical climate results in higher numbers of pests, which affect crop yields<sup>41</sup> and impacts the costs of raw materials for local economic operators. The climate also poses a high natural and environmental risk for crops.

The consequences of natural events such as floods, droughts, cyclones and tsunamis can be dramatic as due to the terrain most of the social and economic life is concentrated in the coastal areas, which are particularly exposed to extreme weather conditions<sup>42</sup>. Cyclones Bejjisa and Beguitta hit Réunion in 2013 and 2018 respectively, while hurricane Maria affected Guadeloupe and Martinique in 2017; the hurricane is estimated to have cost EUR 100 million in Guadeloupe<sup>43</sup> due to the structural damage caused by high winds and excessive rainfall. Managing these risks (by complying with anti-cyclonic and environmental standards and higher insurance costs) negatively impacts industry costs.

Furthermore, the high exposure of maritime freight to climate risks can result in disruptions in the supply chain, leading local economic operators to overstock products essential for production and to over-equip machine parts in the event of equipment breakdowns.

- *Small scale of production*

The French outermost regions have small local markets, as a consequence of their structural and geographic features. Local demand is weak because of both the small population and the limited purchasing power, which is on average lower than in the EU (see Table 1 above for details).

Moreover, the vast majority of local economic operators in the French outermost regions are SMEs. More specifically, 95% of them are micro-enterprises with an average number of employees of 2.1 units per economic operator.

This substantial number of SMEs is a significant obstacle in terms of development:

- The small size of SMEs, with a consequent lack of financial and human resources, is a strong barrier to entering new markets. SMEs are more affected by regulations, standards, labels and administrative formalities than larger companies. For example, in the sector of business services, costs incurred by SMEs when complying with administrative formalities can reach EUR 10 000<sup>44</sup>.

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<sup>41</sup> [http://www.euroconsulting.be/wp-content/uploads/2017/01/fullrep\\_en1.pdf](http://www.euroconsulting.be/wp-content/uploads/2017/01/fullrep_en1.pdf)

<sup>42</sup> [https://ec.europa.eu/regional\\_policy/sources/docgener/studies/pdf/rup\\_growth/rup\\_growth\\_sum\\_en.pdf](https://ec.europa.eu/regional_policy/sources/docgener/studies/pdf/rup_growth/rup_growth_sum_en.pdf)

<sup>43</sup> <https://la1ere.francetvinfo.fr/ouragan-maria-moins-100-millions-euros-degats-guadeloupe-bruno-maire-514807.html>

<sup>44</sup> Ecorys, *Administrative formalities and costs involved in accessing markets cross-border for provisions of accountancy, engineering and architecture services*, 2017.

- Limited innovation in many enterprises, especially in more traditional sectors such as manufacturing, makes SME products less competitive in external markets.
- In comparison to large enterprises, SMEs perform worse in terms of turnover and value added<sup>45</sup>.

In this context, it is difficult to increase production, operate large-scale operations and develop substantial internal markets. Local producers have limited capacities both to produce and to consume: they cannot achieve economies of scale, which are necessary to cover high transport costs or to compete against international competitors. The smaller scale production, together with difficult terrain, result in the underutilisation of machinery designed for higher volumes of production, which has a significant impact on the competitiveness of local producers. Moreover, the tropical climate and roughness of the terrain cause all machinery used to depreciate quicker. Waste management is a further factor affecting producers. There is limited landfill capacity and a lack of economies of scale for waste collection, treatment and/or recycling processes, in particular at the specific waste stream level (e.g. for organic waste). This can result in the need to export unusable waste at additional cost to be dealt with on the French mainland<sup>46</sup>.

As a result, many industrial sectors such as heavy industry are not represented in the French outermost regions. The range of production is concentrated on a relatively narrow range of products, meaning that the economy is highly exposed to sectoral or asymmetric shocks.

### **2.3. Problem 3: Certain shortcomings of the current regime**

One of the recurrent criticisms raised by economic operators (both importers and local producers) against this special tax regime is the lack of transparency in the policy process, leading to the application of tax differentials to certain categories of products, and to the quantification of such differential. In the current system, the French authorities and the EU authorities review, and approve or reject, individual product dossiers ‘one by one’ (currently amounting to some 1 130 dossiers), largely on the basis of petitioners’ data.

Overall, the total administrative cost of dock dues for economic operators (including exemptions on inputs and reimbursements) is estimated to be approximately EUR 600 000 per year. At a broader level, some current policy arrangements appear to be overly complex or rigid, possibly causing unnecessary burdens for EU and national authorities.

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<sup>45</sup> *EU policy framework on SMEs: state of play and challenges*, European Commission, 2019 <https://cor.europa.eu/en/engage/studies/Documents/EU-SMEs/EU-policy-SMEs.pdf>.

<sup>46</sup> [https://ec.europa.eu/regional\\_policy/sources/policy/themes/outermost-regions/pdf/green\\_circ\\_econ\\_report\\_en.pdf](https://ec.europa.eu/regional_policy/sources/policy/themes/outermost-regions/pdf/green_circ_econ_report_en.pdf)

One such aspect is the impossibility to revise the list of products<sup>47</sup> and the tax differentials extended to specific products without a legal amendment of the Council Decision. This hampers smooth adaptation of the regime to the evolving market and sectoral needs in the outermost regions and imposing an administrative burden on the authorities and the stakeholders involved.

Finally, the current monitoring requirements involve significant efforts by competent authorities, but the lack of a proper, harmonised monitoring framework and the less than optimal timing of the monitoring reports affect their informative value and utility for the policy process.

### **What is affecting the smooth functioning of the regime?**

- *Unclear legislation (lack of transparency)*

The criteria used to identify eligible products are formulated in generic terms and are included only in the recitals of the current Decision, fuelling the perception of a lack of transparency and of an excess of subjectivity in the decision-making process at all levels.

The Council Decision mentions three eligibility criteria: (1) the existence of local production; (2) the existence of significant import that could jeopardise local production; and (3) the existence of additional costs affecting the competitiveness of local products. Stakeholders noted that these criteria leave ample room for interpretation as regards the level of market share requested and the risk of ‘jeopardising local production’<sup>48</sup>.

- *Complex list of products referring to CN classification (4–10 digits) (lack of flexibility)*

The eligible products for reduction of, or exemption from, the tax are fixed for a seven-year period and are listed in the Annex to the Decision in three ‘lists’ characterised by different levels of the ‘maximum permitted tax differential’ using Combined Nomenclature codes (hereinafter ‘CN codes’<sup>49</sup>). In some cases, the product is listed using 8–10 digit CN codes, which are very specific (see table below). In the Council Decision, the supported products are grouped.

***Table 3: Example of products which benefit from the regime related to the manufacture of food products and beverages in Martinique***

<b>CN codes</b>	<b>% applicable</b>	<b>Description</b>
0403 10	30	Yogurt
0706 10 00 10		Carrots
0710	20	Vegetables (uncooked or cooked by steaming or boiling in water), frozen
0714	10	Manioc, arrowroot, salep, Jerusalem artichokes, sweet potatoes and similar roots and tubers with high starch

<sup>47</sup> The list of products is in the Annex to Council Decision No 940/2014/EU

<sup>48</sup> See the study.

<sup>49</sup> CN codes are a tool for classifying goods. CN codes can be divided into 4, 6 and 8 digits. A TARIC classification contains 10 digits. 4-digit CN codes are used for products of a kind, whereas each specific product has an 8-digit CN code.

		or inulin content, fresh, chilled, frozen or dried, whether or not sliced or in the form of pellets; sago pith
2204 21	30	Other wine; grape must with fermentation prevented or arrested by the addition of alcohol
1101 00 15	30	Wheat flour of common wheat and spelt

Any adjustment to the lists requires a legal amendment of the Council Decision. This applies both to the inclusion of certain product categories on the lists and their removal from them, and to the moving of certain product categories from one list to another. The process must follow the special legislative procedure under Article 349 TFEU, involving a significant investment of time and resources by the national and EU administrations.

The use of customs classification codes to identify local production in need of support is to facilitate the application of the tax to imported goods and, where relevant, to equivalent locally produced goods. However, the customs classification is not fit for the design, analysis and monitoring of sectoral development policies, which are instead typically defined on the basis of the economic activities classification (i.e. the NACE statistical classification).

This leads to disparities and fragmentations in the tax treatment of the outputs of similar production processes carried out by the same entities but classified differently for customs purposes. Such disparities might prevent operators from engaging in the production of new products that fall in the same segment of their existing production but have a different and not supported CN code. Inversely, certain CN categories encompass a wide range of different products, of which only one or few are locally produced, while the tax remains applicable to the entire category.

Furthermore, the legislation for CN codes is amended periodically and as a result specific products that were included originally in the Decision may unintentionally ‘fall’ off the list. Due to the use of 8–10 digit CN and TARIC codes respectively, new emerging local production activities that were not in place when the Decision was adopted are not covered. Changes in the level of compensation extended to certain industries to cope with changed conditions of competition (e.g. to cope with aggressive importation) cannot be addressed and removal of products no longer produced locally is not possible.

- *Inefficiencies of the monitoring and impact evaluation system*

Council Decision No 940/2014/EU contains specific provisions requiring France to submit a report to the Commission on the implementation of the dock dues regime and its impacts on local economic activities. This ‘mid-term’ report is the basis of the Commission’s report to the Council. The monitoring and evaluation arrangements of the regime are very burdensome both for the economic actors and the administrations. Considering the number of products at stake and the level of details required in the ‘product fiches’, the efforts deployed to implement these arrangements have been

significant. Furthermore, due to various limitations and constraints the results should be taken with caution<sup>50</sup>.

Moreover, the monitoring and evaluation arrangements are not always in line with the information needs as concerns timeliness, quantification and scope. The information provided did not give a complete picture of the economic and social impact on local production in the French outermost regions of the dock dues regime.

Overall, a picture emerges where approximations, uncertainties and theoretical assumptions are abundant. In most cases, these cannot be removed or substantial effort would be required just to obtain marginal improvements in the reliability of the assessment.

#### **2.4. Problem 4: Constraints to the development of regional trade**

The development of trade in the geographical areas of these regions is constrained by various factors such as transport costs, language barriers, import tariffs, different consumer preferences and compliance with EU legislation raising complaints from CARIFORUM<sup>51</sup> and Eastern and Southern African countries.

Despite the EU trade agreements with neighbouring countries of the French outermost regions, (e.g. the Cotonou agreement<sup>52</sup> with the African, Caribbean and Pacific Group of States), trade between the French outermost regions and regional partners remains limited. In the 2011-2018 period, French outermost regions imports from CARIFORUM followed a reverse U-shaped curve, from EUR 39.9 million in 2011 to EUR 45.5 million in 2018, but exceeded EUR 70 million in the 2012-2014 period. The import share from CARIFORUM is approximately 1% of the total, with some fluctuations over time (from an average 1.1% in 2011-2014, to 1.0% in 2016-2018). This amount is comparable to the overall intra-regional import pattern (2.7%).

In the 2011-2018 period, imports from the Eastern and Southern African countries concerned amounted to EUR 60 million per year on average, with an increase of approximately EUR 20 million between in 2016-2018 as compared with 2011-2014. In relative terms, this corresponds to a marginal increase of 0.2 percentage points in the share of imports from Eastern and Southern Africa, from 1.1% to 1.3%. The import distribution is very skewed, with Mauritius accounting for nearly 70% of the total, followed by Madagascar (29%). The other countries jointly account for only 1% of the total. Thus, the importance of trade flows with French outermost regions varies significantly across Eastern and Southern African countries.

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<sup>50</sup> For instance, the logic behind the comparison between the production costs of 'like products' in the outermost regions and in the mainland appears weak. This is because the structure of markets and competition in outermost regions and in the mainland is radically different (see the study).

<sup>51</sup> CARIFORUM is a subgroup of the Organisation of African, Caribbean and Pacific States and serves as a base for economic dialogue with the European Union. It was established in 1992. Its membership comprises the 15 Caribbean Community states.

<sup>52</sup> <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=LEGISSUM:r12101>

Moreover, the foreign trade coverage ratio (i.e. the ratio between the value of exports and that of imports) between French outermost regions and their regional neighbours is small or very small, due to significant imbalances in trade flows.

**Table 4 – External trade of French outermost regions, total and regional (in EUR million)**

	Guadeloupe		Martinique		French Guiana		Réunion		Mayotte	
	2013	2018	2013	2018	2013	2018	2013	2018	2013	2018
Total export	263	280	402	365	245	213	296	324	12	11
ACP Caribbean partners* / Indian Ocean region***	2	9	6	10	68	2	47	37	3.4	3.1
% of total exports	0.8%	3.2%	1.5%	2.7%	27.8%	0.9%	15.9%	11.4%	28.6%	29.2%
Non-ACP Caribbean partners**	1	8	4	5	0	0				
% of total exports	0.4%	2.9%	1.0%	1.4%	0.0%	0.0%				
Total import	2 731	2 939	2 730	2 718	1 545	1 530	4 426	5 051	479	572
ACP Caribbean partners / Indian Ocean region	78	80	55	43	37	18	52	47	26.2	32.5
% of total imports	2.9%	2.7%	2.0%	1.6%	2.4%	1.2%	1.2%	0.9%	5.5%	5.7%
Non-ACP Caribbean partners / Africa	138	62	47	44	15	19	168	133		
% of total imports	5.1%	2.1%	1.7%	1.6%	1.0%	1.2%	3.8%	2.6%		

**Source:** The study.

**Notes:** (\*) ACP Caribbean partners include Antigua and Barbuda, Bahamas, Barbados, Belize, Cuba, Dominica, Dominican Republic, Grenada, Guyana, Haiti, Jamaica, Saint Lucia, Saint Kitts and Nevis, St. Vincent and the Grenadines, Suriname, Trinidad and Tobago; (\*\*) Non-ACP Caribbean partners include the British and Dutch Overseas Territories and Countries of Anguilla, Aruba, British Virgin Islands, Cayman Islands, Montserrat, Turks and Caicos Islands, Netherlands Antilles; (\*\*\*) Indian Ocean region includes Comoros, Madagascar, Mauritius and the Seychelles, as well as French ORs (Réunion and Mayotte).

## What are the drivers of the constraints to the development of regional trade?

- *International competition*

Many neighbouring African, Caribbean and Pacific countries are unable to compete against cheaper products coming from the EU, US and Asia. For example, between 2009 and 2018, Caribbean countries' exports to EU partners remained rather stable (+1.4%) whereas their imports from the EU increased by almost 34%. This resulted in a growing negative trade balance<sup>53</sup>.

- *Compliance with EU legislation*

Production costs and as a result prices in the French outermost regions are often significantly higher than those in their neighbouring countries. There are several reasons for this, including the fact that wages and social protection costs in the French outermost regions are significantly higher due to French legislation<sup>54</sup>. According to INSEE, in 2015 the average annual net salary income of a worker in the French outermost regions ranged

<sup>53</sup> Eurostat Comext.

<sup>54</sup> Rules governing different employment contracts, minimum wage, leave, professional equality and strikes are set out in the [Code du travail](#). Social security rules are set out in the [Code de la sécurité sociale](#).

between EUR 15 200 and 16 600 (Mayotte excluded), which is a multiple of the amount paid in the non-EU neighbouring countries<sup>55</sup>.

Secondly, compliance with European social, safety<sup>56</sup> and environment protection<sup>57</sup> standards makes production activities in the ORs more expensive than in other countries. In many cases, manufacturing activities are generally subject to an authorisation procedure for environmental protection reasons<sup>58</sup>, which reviews the environmental dangers of the installation prior to authorisation. For example, producers of aluminium doors and windows in Guadeloupe and Martinique must comply with the EU's Construction Products Regulation (Regulation (EU) No 305/2011), which entails high compliance costs.

Stakeholders also note that national rules implementing the Union Customs Code are scattered across different documents, and application of the rules is vested with the national customs authorities, which can cause practical difficulties for African, Caribbean and Pacific countries and traders when they want to export goods to the EU and especially to French outermost regions. In particular, CARIFORUM countries express concerns regarding numerous and often changing technical EU regulations and sanitary and phytosanitary measures.

- *Customs duties and non-tariff barriers*

Despite the Economic Partnership Agreement (EPA) in force, customs tariffs and import restrictions have remained on a number of products imported into the Caribbean region and Eastern and Southern African countries. Furthermore, several CARIFORUM countries have not implemented their tariff commitments, and they maintain export duties and quantitative restrictions. These commitments are among the basic elements of the agreement, and the failure to implement these neutralises its impact in the countries concerned and limits the benefits for exporters and importers in the French outermost regions. CARIFORUM countries also have significant transparency deficits regarding their tariffs. These barriers make it *de facto* impossible or very expensive to export there.

There are also several other barriers that could discourage regional trade: (1) language barriers, cultural differences and, hence, different consumer preferences; (2) inadequate maritime logistics in the region and high shipping costs due to the limited volume of trade, which translate into relatively high costs for regional exports; and (3) fluctuations of the exchange rate.

- *Dock dues*

The dock dues regime is explicitly aimed at mitigating the dependency of French outermost regions on external imports and the risk that local production and local jobs in

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<sup>55</sup> <https://ilostat.ilo.org/topics/wages/>

<sup>56</sup> Directive (EU) 2015/2193 of the European Parliament and of the Council of 25 November 2015 on the limitation of emissions of certain pollutants into the air from medium combustion plants.

<sup>57</sup> See also Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment.

<sup>58</sup> Article L 511-1 et seq. of the French Environmental code: <https://www.georisques.gouv.fr/node/7605>.

these vulnerable remote regions of the EU could be jeopardised by free trade with third countries, including from regional neighbouring countries. For this reason, this special regime has been repeatedly criticised by CARIFORUM countries and by certain Eastern and Southern African countries (notably Mauritius) for constraining regional trade and for being in contradiction with the free trade principles underpinning the Economic Partnership Agreement with the EU. These stakeholders claim that the reduced rates applicable to products produced in the French outermost regions limits the growth of trade despite the close geographic proximity and similar cultural features.

Increasing regional trade is a major challenge for both the French outermost regions and their neighbouring countries. The constraints facing these regions in developing and improving local trade are due to several factors, including increased competition and their obligation to comply with EU legislation – which creates a competitive disadvantage for the outermost regions vis-à-vis their neighbours. No policy option within the context of an amendment or termination of the dock dues regime will reduce the effects of globalisation or EU legislation compliance costs. Furthermore, from the perspective of international trade rules it would be extremely problematic to justify the application of differentiated dock dues treatment (including quota systems) to selected neighbouring countries and this may also spark WTO disputes.

## **2.5. How will the problems evolve?**

In the 2017 Communication ‘A stronger and renewed strategic partnership with the EU’s Outermost Regions<sup>59</sup>’, the Commission noted that despite progress made over the years, these regions continue to face serious and permanent constraints. Furthermore, globalisation and climate change are amplifying these constraints. Diversification opportunities are limited due to the few resources at the disposal of these regions and the geographical and natural characteristics specific to their location and remoteness. Consequently, the economies of the outermost regions are fragile and any sustainable economic growth or desirable structural changes insecure. Economic crises are bound to affect the economies of the outermost regions to a greater extent than the mainland Europe – as demonstrated by the COVID-19 crisis – and recovery is slower.

The Communication stresses the need to build on the assets of the outermost regions, identifying new sectors of growth to enable growth and job creation. While this approach is important to address the numerous threats and challenges for the outermost regions, the regions’ traditional activities are also vital to their development as any sustainable structural change to the economies of the outermost regions will take time to materialise.

The costs faced by producers in the regions are higher in the outermost regions than in mainland France and are attributable to the factors identified in Article 349 TFEU. Overall, the dock dues regime has increased production levels and, as such, supported employment in the regions.

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<sup>59</sup> COM(2017) 623 final.

As many of the underlying drivers such as remoteness, insularity or climate, are of permanent nature, they will always act to the disadvantage of those regions. There are no grounds to consider that they would diminish significantly in the near future as they are inherent to small insular and remote economies in general. On the contrary, with global trade growing increasingly competitive, the market share of local products has declined in recent years and the ‘gap’ faced by the outermost regions might become even more difficult to bridge over time. Numerous cases were reported of imported goods sold at a price (tax included) lower than the production cost of the same good locally made. Hence, the dock dues regime is generally viewed by enterprises as a tool to help mitigate the unequal competitiveness of local production rather than as a development tool.

Transport infrastructures have been steadily built and in recent decades the outermost regions have experienced a mildly positive trend in the maritime and air transport of freight. However, accessibility issues will always affect the trade and exchanges of the outermost regions with the EU and within their geographic areas alike.

What we can reasonably conclude from the nature of the costs is that they can fluctuate but will never disappear altogether.

### **3. WHY SHOULD THE EU ACT?**

On the basis of Article 349 TFEU, the Council can adopt specific measures in favour of the EU outermost regions to adjust the application of the Treaties to those regions, including the common policies, because of the permanent constraints which affect the economic and social conditions of these regions. In its judgment of 15 December 2015<sup>60</sup>, the European Court of Justice clarifies the scope of the application of Article 349 TFEU on the basis of which the Council is entitled to adopt specific measures for the EU outermost regions.

The EU has been building a strong partnership with the outermost regions over the years. In 2004, the Commission presented its first strategy for the regions<sup>61</sup>, which was renewed in 2008,<sup>62</sup> in 2012<sup>63</sup>, when the strategy was aligned with Europe 2020 goals of sustainable growth, social development and creation of jobs, and in 2017, when the Commission strengthened and renewed its strategic partnership with these regions. Access to the EU single market is vital for the continued development of the outermost regions, as underlined in the 2017 Commission Communication ‘A stronger and renewed strategic partnership with the EU’s outermost region<sup>64</sup>’.

Maximising the potential of each outermost region can only benefit both the outermost regions and the EU as a whole.

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<sup>60</sup> Joined Cases C-132/14 to C-136/14.

<sup>61</sup> COM(2004) 343 final, 26.5.2004.

<sup>62</sup> COM(2008) 642 final, 17.10.2008.

<sup>63</sup> COM(2012) 287 final, 20.6. 2012.

<sup>64</sup> [COM\(2017\) 623 final](#).

## **4. OBJECTIVES: WHAT IS TO BE ACHIEVED?**

### **4.1. General objectives**

The situation of the outermost regions is recognised in Article 349 TFEU, which envisages specific measures for these regions to take account of their structural, social and economic situation. Measures adopted must mitigate the constraints faced by the regions and promote regional development without undermining the integrity and the coherence of the EU legal order, including the internal market and common policies.

### **4.2. Specific objectives**

The specific objectives of Council Decision No 940/2014/EU are:

- ensure optimal/sufficient support to the local industry in the French outermost regions, making it more competitive;
- stimulate economic activity and competitiveness in the French outermost regions;
- ensure coherence, proportionality, simplification and flexibility of the support instrument so as to preserve the integrity and the coherence of the EU legal order while providing for economic and legal certainty for the local industry in the French outermost regions;
- safeguard undistorted competition in the internal market and international trade;
- generate a positive social and economic effect, relevant for the outermost regions' regional development, competitiveness and tax revenues.

## **5. WHAT ARE THE AVAILABLE POLICY OPTIONS?**

### **5.1. What is the baseline from which options are assessed?**

For the purposes of this staff working document, there is a difference between 'no action' and the 'status quo'. Given that Council Decision No 940/2014/EU authorising tax differential in dock dues expires on 30 June 2021, a 'no action' scenario would imply that the current system of tax differentials expires on 30 June 2021 with no other regime put in place. This is, however, not considered to be a realistic baseline scenario due to the structural and permanent nature of the constraints faced by the outermost regions and the long-term existence and recent extensions of the regime.

As such, we assess the non-renewal of the regime as a 'new policy option', whereas the baseline option for this regime is defined as a 'business as usual' scenario, in which the derogation is renewed for a further 7 years, without any significant modification. The baseline assumes that the same maximum tax differential in dock dues continues after June 2021 for the locally manufactured products listed in the Annex to the current Decision. The updating of product lists will continue to require a legal amendment of the Decision.

The baseline also reflects the fact that there is no legal contradiction between the Economic Partnership Agreement (EPA) agreed by the EU with CARIFORUM or Eastern and Southern African countries, as the EPA explicitly includes a provision safeguarding the maintenance of dock dues in the French outermost regions with no requirement to revise the current dock dues policy.

## **5.2. Description of the policy options**

### ***Option 1 – Termination of the outermost regions specific support***

Under this policy option, the special regime for dock dues for the French outermost regions would not be renewed and would therefore expire on 30 June 2021. The tax differential in dock dues would disappear and all products, regardless of origin, would be subject to the same rate of dock dues.

This option would mean no further specific relief would be provided after 30 June 2021 to the local producers in the French outermost regions to mitigate the additional costs they face.

### ***Option 2 – Revision of criteria for the identification of eligible products and updates***

The selection of the specific products benefiting from reduced dock dues is based on the criteria listed in Recital 5 of the current Decision. These criteria are the existence of: (1) local production; (2) significant imports which could jeopardise local production; and (3) additional costs affecting the competitiveness of local products. The specific eligible products supported by the dock dues regime are then listed in the Annex to the Decision based on a coding ranging from CN4 to TARIC10.

Two policy options revising the identification of specific products are possible. The proposed changes are independent of each other, although some interconnections are evident.

#### *Option 2A: identification of eligible product at a higher classification level*

The proposed option envisages a shift in the method used to identify the products supported through the dock dues regime, namely from the current approach where each specific product is explicitly identified in the Decision (based on a coding ranging from CN4 to TARIC10) to a system where the Decision indicates only the eligible product categories (CN4), while specific products (CN8 or higher) would be included by national authorities in their legal and administrative frameworks.

This option would allow amendments to the specific products within a product category without the need for an amendment of the Decision at EU level.

#### *Option 2B: adoption of verifiable eligibility criteria*

This option proposes to adopt clearer and verifiable criteria for the selection of products benefiting from dock dues support in the legal text of the Decision. The current criteria of ‘existence of a significant production’ would be replaced by setting a minimum market

share threshold of 5%, while the criteria of ‘existence of a significant imports possibly jeopardising local production’ would be replaced by setting an upper market share threshold for imports of 10%. Possible derogations for special and duly justified cases would be possible.

### ***Option 3 – Revision of the maximum permitted tax differential***

Currently, the products supported through the dock dues regime are grouped in three distinct ‘lists’ in the Annex to the Decision, each having a different ‘maximum permitted differential’<sup>65</sup>. The ‘maximum permitted differential’ currently ranges from 10% (list A) to 20% (list B) and to 30% (list C). This ‘maximum permitted differential’ represents the upper ceiling and the competent authorities must ensure that the rate for specific products is equal to or less than the additional costs associated with the production of that product in the outermost regions.

Two policy options are available to increase the flexibility for the competent authorities in this regard. In both cases, the regime would be renewed with a reduced number of lists, either one or two. While the option of one list with one maximum permitted differential could potentially increase the flexibility for the competent authorities, it could result in additional burdens and costs. For this reason, the option of one list with one maximum permitted differential will be discarded and this option will instead focus on renewing the regime with two distinct lists in the Annex to the Decision. The two different maximum permitted differentials would be 20% and 30%.

### ***Option 4 – Raising the turnover threshold of the dock dues from EUR 300 000 to EUR 550 000***

Local economic operators with an annual turnover from relevant production activities<sup>66</sup> not exceeding EUR 300 000 fall outside the scope of the dock dues regime. This provision was introduced in 2014 and replaced the previous regime for small economic operators, which allowed the French authorities to apply a tax differential of 5% to products not listed in the Decision or increase by 5% the tax differentials applied to products, for local producers with a turnover not exceeding EUR 550 000 per year.

The French authorities support this option, which will increase the turnover threshold to EUR 550 000. This means that eligible economic operators will not be subject to dock dues and will have no dock dues reporting obligations.

### ***Option 5 – Revised monitoring arrangements***

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<sup>65</sup> The ‘maximum permitted differential’ is expressed as the difference, in percentage points, between the rate applied to products of external origin and the rate applied to local products.

<sup>66</sup> The ‘relevant’ turnover is the turnover which is derived from the production of goods subject to the dock dues regime, including products not benefitting from tax differentials and excluding other types of activities (e.g. the supply of services). This specification is currently not laid down in the Council Decision but is included in national legislation.

The proposed revision has the parallel objectives of: (1) reducing the burden of the unnecessary frequent re-assessment and renewal of the policy; and (2) enhancing the utility and effectiveness of monitoring and evaluation activities. As regards monitoring, the proposed revision consists of adopting a standardised structure for reporting based on a harmonised set of indicators common to all EU outermost regions benefiting from a special tax regime, and deemed sufficient to properly assess the impact of the regime.

As part of this option, it is proposed that the assessment of additional costs borne by local economic operators should be undertaken at CN4-level product categories, instead of the current mix of CN4, CN6, CN8 or TARIC10 codes.

Additionally, the timing of submission of the monitoring report could be moved back to the fifth year after the adoption of the policy, in order to ensure: (a) a greater availability of monitoring data; and (b) a closer alignment with the needs of the policy renewal process. The current monitoring system can be made more effective and informative by moving the timing of the mid-term report to Y+5 (where ‘Y’ stands for the first year of application of the Council Decision). In practice, for the period 2021-2027, the report would have to be submitted by the end of 2025 and spanning ideally the period 2019-2024.

### **5.3. Options discarded at an early stage**

#### *Direct support to local production and market access*

Under this alternative, the existing regime would be replaced with another EU measure to the same, or similar, effect. This approach can be further specified considering two main aspects: (a) the fiscal or non-fiscal nature of the replacement measure; and (b) the type of funding envisaged. In fact, the current dock dues regime is a fiscal measure entailing no expenditure of EU funds. Replacing it with a different kind of measure is not a suitable option for two main reasons:

- Replacing the current regime with a non-fiscal equivalent measure would *de facto* entail either extending the support through one of the existing EU schemes for the outermost regions, or creating a new scheme. This would mean finding additional EU resources for this purpose at a time when a number of EU funds and budgets are being reduced, and would also involve increasing the allocations and possibly creating ad hoc lines for the compensation of local production costs (to ensure the equivalence of the effects with the current regimes). This would have implications for EU-level policy design, the budget, and the specific programming and implementation of the aid. Responsibility for this change would fall outside of the remit of the DG TAXUD at the Commission and would involve other line departments. This option would add unnecessary costs and complexity to the regime, and would not be very feasible

- Currently, the budget for the dock dues regime (in terms of foregone tax revenue) is estimated by the French authorities at EUR 475 million per year<sup>67</sup>. At present, the measure is implemented at no cost for the EU budget as it consists of ‘non-collected’ taxes. Replacing it with an expenditure scheme of equivalent impact would therefore require additional monetary transfers of up to EUR 3.3 billion for the next EU programming period (2021-2027). This approach would evidently be very cost-inefficient.

Based on the above considerations, this option is discarded.

## **6. WHAT ARE THE IMPACTS OF THE POLICY OPTIONS?**

### **6.1. Methodology**

The impacts of the policy options have been assessed mainly on the basis of a study by the external contractor, Economisti Associati. The study was based on a combination of primary research, i.e. on (1) data gathered from all relevant stakeholders and independent research to triangulate findings; (2) a review of the existing literature and data; and (3) an economic and policy analysis.

For the quantitative estimates, the impacts are measured as the deviation of the variable assessed from the baseline, at the conventional date of 2027. This is sufficiently distant to allow short-term effects to play out, with the exception of the emerging effects of COVID-19. Full details on the methodology are provided in [Annex 3](#).

#### *Effects of the COVID-19 pandemic on the projections underlying the assessment*

The baseline scenario and the impacts from the various options have been assessed on the basis of the study carried out in late 2019-early 2020. As such, the effects of the COVID-19 pandemic are not taken into account. While in the first case the projected baseline may not be affected to a large extent, in the second case, the baseline scenario may overstate growth. The impacts of the options, however, are calculated on the basis of long-term elasticities and should, as a result, be less affected than the baseline.

### **6.2. Baseline**

In this context, the ‘no change’ scenario consists in renewing the special regime without any significant modification. In this sense, this scenario corresponds to the baseline situation.

The dock dues regime compensates only a portion of the estimated additional costs. On average, tax differentials address about half of additional costs, both in nominal terms and in monetary terms, i.e. measured in relation to the total tax charged on imports in EUR. With some exceptions, the tax differentials applied are fairly proportional to the additional costs declared for specific products.

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<sup>67</sup> As reported in Commission Decision C(2017)1661 final of 15.3.2017 in State aid case SA.46899 (2016/N) – France Taxe octroi de mer.

The results of the quantitative data analysis of the study suggest that in the absence of the dock dues support, the local production sectors' performance would have been significantly worse. About 37% of the value of dock dues-supported products (approx. EUR 850 million) was theoretically enabled by the tax differential mechanism, with positive repercussions also on: (1) employment – where there has a positive increase of between 3% and 9% in the dock dues sectors since 2014 (against a decline between 2% and 18% in the non-dock dues industries); and (2) the number of active enterprises, which has grown by approx. 1.7% in the same period (against an overall decline of 2.8%) (see Table 5 below). On the other hand, there is no evidence of benefits for the total value of investments or for the diversification of production.

**Table 5 – Number of active firms in the manufacturing and mining sectors in French outermost regions (Mayotte excluded)**

	2014	2015	2016	2017	2018*
<b>Number of active firms (with at least one employee)</b>					
Total manufacturing and mining	2 471	2 448	2 844	2 455	2 401
Dock dues industries	1 912	1 947	2 265	1 987	1 945
<i>Dock dues industries (in %)</i>	77%	80%	80%	81%	81%
<b>Firm size and employment in dock dues industries</b>					
% of micro firms	74.7%	74.6%	77.3%	73.7%	71.6%
% of small firms	23.0%	23.0%	20.8%	23.8%	25.8%
% of medium-sized firms	2.1%	2.3%	1.8%	2.3%	2.3%
% of large firms	0.2%	0.2%	0.1%	0.3%	0.3%

**Source:** The study (base on INSEE data).

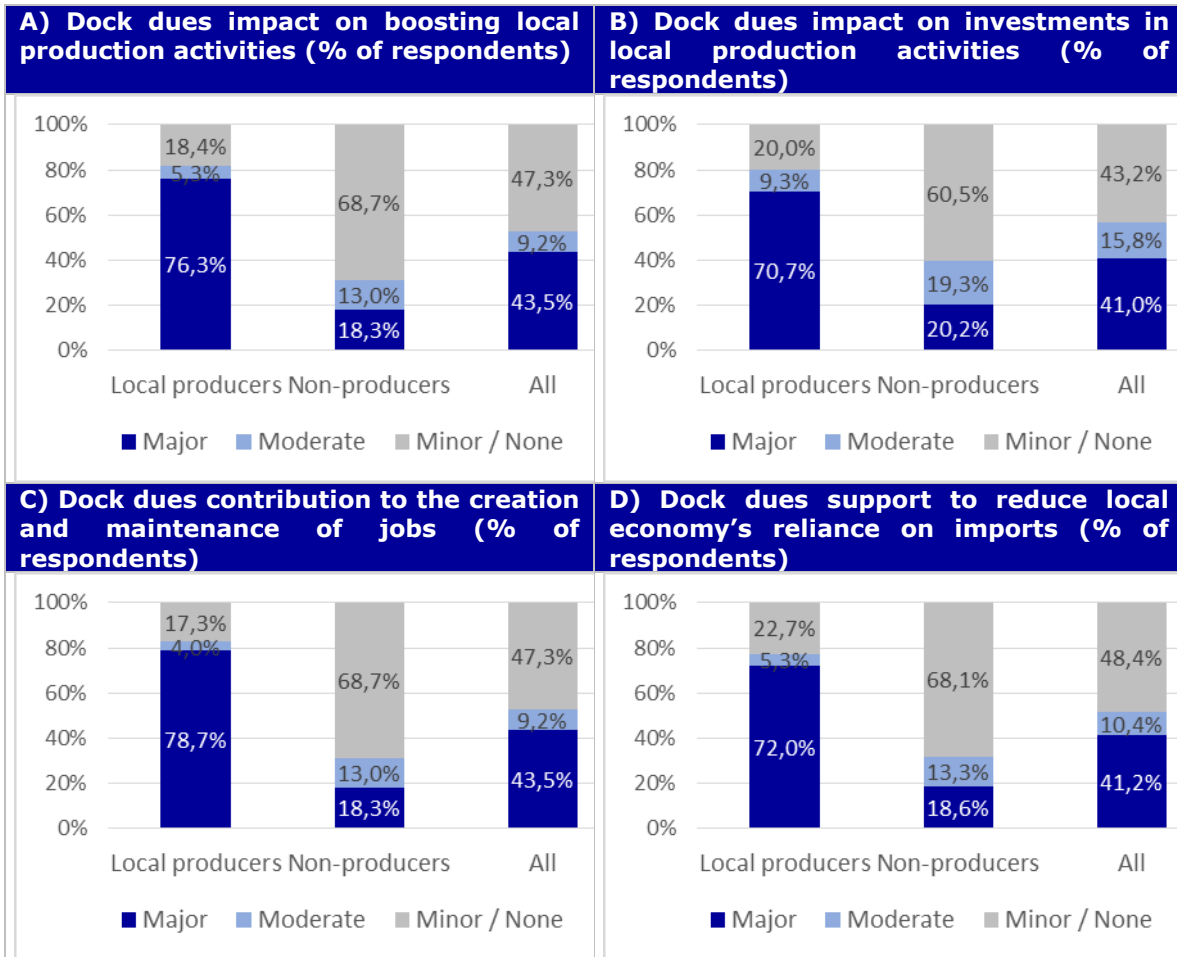
**Notes:** \* 2018 data are provisional.

Finally, the dock dues regime shows an overall positive balance between costs and benefits, with the estimated value of local production enabled by the special regime being approximately 2.5 times greater than its 'cost' in terms of foregone tax revenue.

Overall, the impact of the dock dues is seen in very different ways depending on the respondents to the survey of the study. Local producers are inevitably much keener to regard the importance of the dock dues as critical, while other respondents are much more sceptical. In particular, as summarised in Figure 4:

- over three quarters of local producers maintained that the dock dues had a major impact in boosting local production activities and supporting the creation and maintenance of employment in the French outermost regions. This share significantly declines among respondents active in sectors other than manufacturing, but still almost one third of these firms saw these impacts as moderate or major;
- respondents' feedback is only marginally less positive on the scheme's contribution to reducing the local economy's reliance on imports and to increasing investments in local production activities. Over 70% of the local producers assessed the impacts in these two areas as 'major', while more than 30% of non-producers considered these impacts as minor, non-existent.

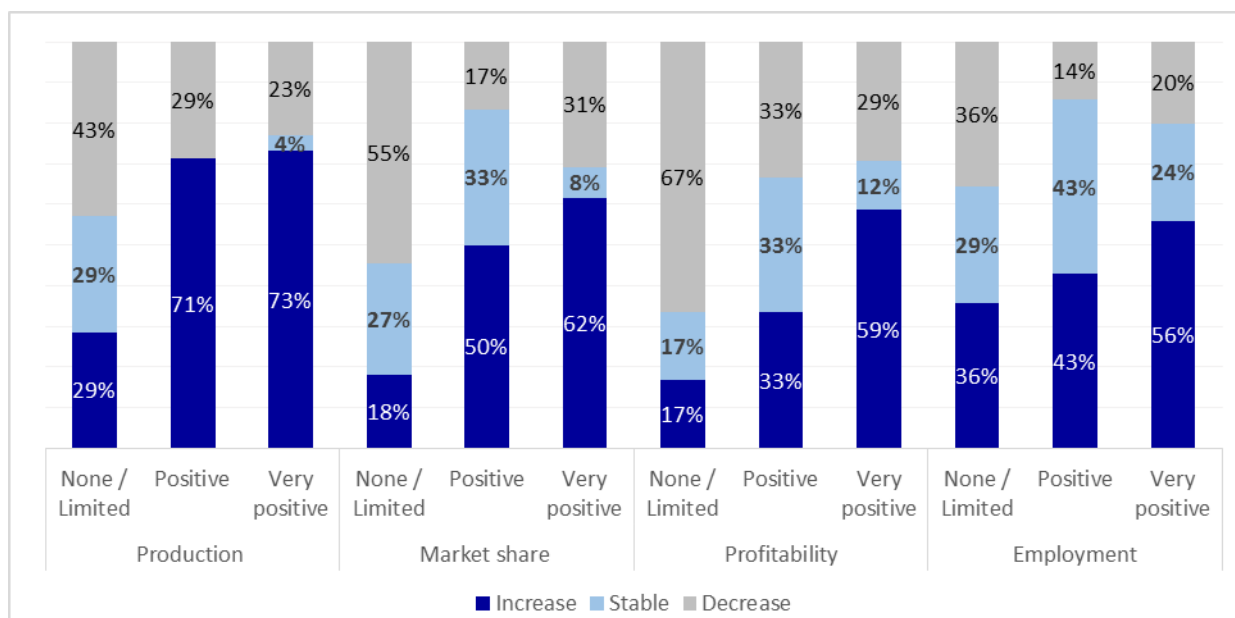
**Figure 4 – Business perception of dock dues impacts on economic performance**



**Source:** Business survey of the study.

Additional indications on the extent to which dock dues contributed to promoting local economic activities can be discerned by comparing the tax impact on price competitiveness with the firms' recent economic performance. As shown by Figure 5 below, the strength of the dock dues' impact on price competitiveness has a positive link with other aspects of the firms' performance. This seems to be especially true in the case of production: a 'very positive' tax impact in terms of price competitiveness is associated with over two thirds of firms reporting a positive past trend. On the contrary, over 70% of the firms indicating a small price competitiveness impact recorded a steady or negative past performance. In the case of employment and market share, a similarly positive, albeit less strong, relationship is detected. As for profitability, such a link is only detected in the case of firms experiencing a 'very positive' price-competitiveness impact, while the majority of firms mentioning a positive impact recorded a negative performance.

**Figure 5 – Dock dues price-competitiveness impact and business performance**



**Source:** Business survey of the study.

On the influence of dock dues on prices and the cost of living in French outermost regions, the study confirms the existence of significant price differences between French outermost regions and the French mainland, with gaps ranging between 7% and 12%, chiefly for food products, telecommunications, alcohol and tobacco products. According to the relevant literature, this gap is due to a combination of structural factors and fiscal policies, including dock dues.

However, only a minor share of the estimated dock dues' impact on household expenditure in French outermost regions can be attributed to dock dues-supported products. Rough estimates suggest that the additional tax levied on products subject to tax differentials does not exceed 1.5% of final consumption in those regions (but approximately 4% if only manufactured goods are considered).

**Table 6 – Incidence of the dock dues on final consumption, by tax component and region**

	French Guiana	Guadeloupe	Martinique	Réunion
Total dock dues as % of final consumption	4.6%	3.7%	3.6%	2.5%
<i>manufactured goods</i>	17.0%	12.9%	13.7%	9.8%
External dock dues as % of final consumption	4.3%	3.6%	3.4%	2.5%
<i>manufactured goods</i>	16.8%	12.7%	13.3%	9.5%
Revenues from products subject to tax differentials, as % of final consumption	1.3%	0.7%	1.4%	0.8%
<i>manufactured goods</i>	5.0%	2.7%	5.3%	3.2%

**Source:** the study.

### **6.3. Option 1 - Termination of the outermost region specific support**

The ‘do nothing’ scenario entails not renewing the current EU Decision for dock dues after it expires on 30 June 2021 and not replacing it with other EU support mechanisms. This would lead to the removal of the tax differential system based on the origin of products, although not necessarily to the withdrawal of the dock dues as a ‘budgetary’ measure.

The estimated impact of the measure is globally positive, so simply withdrawing it would predictably not lead to an improvement of the current situation, but rather to a worsening of it.

First and foremost, removing the dock dues tax differentials would severely affect the competitiveness of local economic operators engaged in production activities – manufacturing activities above all, followed by enterprises in the agriculture and fisheries sectors. The overwhelming majority of the affected economic operators would be SMEs, and the most severe impact would be borne by economic operators with a turnover lower than EUR 300 000 (approximately 3 500 in number), who benefit the most from the current regime, by not paying the dock dues tax. It is estimated that the dock dues special regime compensates some 49% of local producers’ additional costs (EUR 1.45 billion, or 27% of the value of local production), which corresponds to some 13% of the sales values of dock dues products. This means local producers would need to absorb roughly EUR 1.45 billion of additional costs or increase their prices by 13% on average in order to remain competitive. Some local producers might be able to reduce their trade margins, but others – approximately 76% according to survey results – would no longer be able to compete and might eventually cease activities.

On the other hand, an increase in the prices of local products would evidently have repercussions on sales and the market share of local products, the magnitude of which depends on the characteristics of the demand for each specific product affected. Assuming – for analytical purposes – that the demand for local products would go down by an equivalent 13%, the average market share of local dock dues products would decline by 5.5 percentage points, corresponding to approximately EUR 297 million. Summing up, the impacts on local production activities of a removal of dock dues support would involve:

- a) a decline in sales for the majority of local economic operators and in profitability for those able to absorb the additional costs, which would no longer be compensated for by the dock dues regime;
- b) a reduced contribution of the industrial sector to the local outermost regions’ economy, and enhanced dependence on the tertiary sector;
- c) a parallel decrease in the number of industrial enterprises, in the level of mobilised investment, and in employment in productive sectors;
- d) an increased dependence on external supply, as local production would be substituted by imported goods.

The above estimates are summarised in Table 7 below:

*Table 7 – Hypothetical impacts of the ‘do nothing’ scenario in French outermost regions*

	<b>TOT</b>
<b>Additional costs (EUR)</b>	1.450 million
<b>Additional costs (as a % of turnover)</b>	27%
<b>Dock dues total compensation (EUR)</b>	710 million
<b>Dock dues relative compensation (as a % of additional costs)</b>	49%
<b>Impact of removal of dock dues compensation (in %)</b>	13%
<b>Market share theoretically lost if additional costs are not absorbed (in % points)</b>	5.5%
<b>Corresponding impact on local production sales (in EUR)</b>	297 million

*Source: The study.*

The budgetary effects of this policy change are unpredictable as they depend on the actual policies deployed by competent authorities in response to the ‘do nothing’ scenario. In essence, if the removal of differentiated rates were to translate into an increase in internal rates to the same level of external dock dues rates, the collected tax revenues would clearly increase – and precisely by the current amount of the tax not collected because of exemptions (assuming demand is stable). Conversely, if the external rates are lowered to the level of the internal dock dues rate, a significant loss of tax revenue is expected, in the order of EUR 446 million i.e. 90% of the tax currently levied on the import of dock dues-supported products, approximately one third of the total dock dues receipts. The first approach is unrealistic, as it would lead to an increase in price levels that consumers would not be likely to accept. On the other hand, the second approach would deprive regional administrations of a significant share of their budget. In this scenario, the most efficient solution would be a ‘halfway’ solution i.e. (1) simultaneously decreasing external rates and increasing internal rates until the point of equilibrium that would offset any budgetary impact is reached; or (2) replacing the dock dues with another tax measure to the same effect.

For the same reasons, the ‘do nothing’ scenario’s impact on price levels is difficult to predict, as it depends on the approach chosen by competent authorities to level internal and external dock dues rates. In the more realistic scenario where tax rates would be adjusted to equal the current burden, no aggregate effects would in principle be registered. However, considering the oligopolistic features of the outermost regions’ markets, the actual change in price levels would largely depend on the evolution of competition: if local producers remain able to compete on the market, a generalised reduction in price levels can be expected, but if local production disappears due to the removal of dock dues, it can be expected that after an initial decrease prices would go up in the medium term due to reduced competition.

The results of regional trade data analysis highlight that the dock dues regime has a moderate impact on the value of French outermost regions’ imports from CARIFORUM and Eastern and Southern African countries. In fact, the expected increase of imports from CARIFORUM and Eastern and Southern African countries as a result of terminating the regime would be small (approximately EUR 2.2 million/year overall) compared to the benefits for other exporting countries and the possible damage for local production activities (up to nearly EUR 300 million):

- CARIFORUM (currently 3.7% on average), may boost imports by 3.3%, i.e. some EUR 1.5 million/year (based on current import value of EUR 45.5 million).
- Eastern and Southern African countries (currently 1.0% on average) may boost imports by 0.9%, i.e. some EUR 0.7 million/year (based on the current import value of EUR 79 million).

Above all, as shown in tables 8 and 9, a hypothetical complete removal of the dock dues differentials would benefit primarily exporters from the EU and third countries other than CARIFORUM and Eastern and Southern African countries.

**Table 8 – Simulation of the effects of removing tax differentials from a sample of products (CARIFORUM)**

	Imports from CARIFORUM (2018)	Imports from all other origins (2018)	Average dock dues differential applied to the product panel	Coefficient of variation of imports associated with dock dues differentials	Theoretical increase in imports from removal of dock dues differentials
Baseline	EUR 10.2 million	EUR 113.7 million	10.3%	-0.917	+9.9%
Removal of dock dues differentials	+ EUR 1.0 million	+ EUR 11.3 million	0%		

- *Source: the study.*

**Table 9 – Simulation of the effects of removing dock dues differentials from a sample of products (Mauritius)**

	Imports from ESA (2018)	Imports from all other origins (2018)	Average dock dues differential applied to the product panel	Coefficient of variation of imports associated with dock dues differentials	Theoretical increase in imports from removal of dock dues differentials
Baseline	EUR 12.7 million	EUR 128.6 million	9.3%	-0.917	+8.9%
Removal of dock dues differentials	+ EUR 1.1 million	+ EUR 11.4 million	0%		

- *Source: the study.*

Terminating the regime would have limited effects on the regulatory burden for economic operators. The implementation arrangements are straightforward and do not impose particularly complex or burdensome procedures on stakeholders. However, SMEs (with a turnover of less than EUR 300 000) who are out of the scope of dock dues would be brought back into the scope of the tax, with a resulting increase in regulatory burden. This option would impact approximately 3 500 economic operators. These economic operators would have to submit quarterly tax declarations and undergo all the administrative activities connected to dock dues (identification of appropriate CN codes, calculation of the tax, management of deductions on inputs, preparation of declarations, etc.) The annual cost of these activities had been estimated at approximately

EUR 1 081 per economic operator, so the potential aggregated savings would amount to approximately EUR 3 783 500<sup>68</sup>.

**Table 10 – Summary and rating of the expected impacts of option 1**

Impact area	Impact	Subject	Rating & magnitude	Notes
<b>Governance &amp; good administration</b>	<i>None expected</i>		<b>0</b>	
<b>Operating costs/ competitiveness of business</b>	<i>Severe reduction of competitiveness</i> of local products vis-à-vis imports	All economic operators	<b>-2</b>	
<b>Functioning of the market and competition</b>	<i>Major changes in the market structure</i> (increased import) and reduced competition	All economic operators	<b>-2</b>	
<b>Macroeconomic impacts</b>	<i>Worsening of trade balance</i> , and possible negative effects on <i>employment, investments</i> .	MS authorities	<b>-1</b>	Effects on consumer prices would depend on the policy adopted
<b>Regulatory costs &amp; savings for public authorities</b>	<i>None expected</i>		<b>0</b>	
<b>Regulatory costs for economic operators</b>	<i>Increase in regulatory costs</i> for SMEs with turnover less than EUR 300 000	SMEs	<b>-1</b>	Neutral for economic operators with turnover in excess of EUR 300 000
<b>Budgetary effects</b>	<i>Unpredictable</i> , but potentially significant depending on OR decisions	MS authorities	<b>-2/+2</b>	From (+2) if internal rates are increased to the external rates to (-2) if external rates are decreased in line with internal rates
<b>Trade flows and international relation</b>	<i>Removal of trade disputes</i> with EPA neighbouring countries and small increase in trade from these countries	EU authorities CARIFORUM and Eastern and Southern African countries	<b>+1</b>	

**Legend:** Rating scale: +2 major positive impact; +1 minor positive impact; 0 neutral impact; -1 minor negative impact; -2 major negative impact.

#### **6.4. Option 2 – Revision of criteria for the identification of eligible products and updates**

- *Option 2A: identification of beneficiary product at a higher classification level*

This option proposes that beneficiary product categories (CN4) are identified in the Decision and that the individual products (based on CN codes from 4 to 10) are included in the legal and administrative frameworks of the competent authorities in the outermost regions.

<sup>68</sup> Projet De Loi modifiant la loi n° 2004-639 du 2 juillet 2004 relative à l’octroi de mer, ÉTUDE D’IMPACT, 23 mars 2015.

One of the most tangible impact of this proposed option is the reduction of the regulatory burden for the French authorities and the Commission. This option could address the inflexibility of the regime by allowing amendments to specific products within the CN4 authorised categories, without the need for a legal amendment of the Council Decision. However, had the proposed option been in place, a legal amendment would still have been necessary for 39% of the products (28 products that belong to an entirely new CN4 category) added in 2019, as they would have not been included in authorised CN4 categories.

Some reduction of the economic operators' regulatory burden is also envisaged, but on a smaller scale. These benefits would not concern the justification required of new products, but they would concern more timely resolution of any issue deriving from the periodic revision of the HS/CN customs classification. For a rough understanding of the magnitude of benefits, it should be considered that half of the enterprises surveyed reported a change of CN code for at least one of the dock dues products in their portfolio, and for nearly 20% of respondents the time spent on identifying the correct coding is a source of 'major burden'.

For the products concerned, the advantage of greater flexibility is clear and direct: timelier adoption of the special regime, and therefore an enhanced impact on competitiveness and, possibly, growth. More specifically, compared to the current situation, new products could have access to different rates of dock dues before the next policy renewal (up to 7 years). Assuming local enterprises would schedule the launch of new production activities taking into consideration the entry in force of the special regime, the proposed option might reduce the time to market of new products by 2-3 years on average.

The general functioning of the market would also benefit, in principle, from more timely and flexible updates of product lists. More specifically, facilitating the development of new production activities would contribute to diversification of the local economy; where this translates into greater market competition, an improvement in consumer welfare is assumed.

However, the impact on the functioning of the market would be very modest since the support will be limited to products which belong to a eligible product categories (CN4), and thus to the supported sectors. The proposed option would regard only a small fraction of the supported products and with low-magnitude effects even if it can occasionally lead to non-negligible sectoral impact.

Moreover, based on the results of the retrospective evaluation, this option seems unlikely to lead to tangible macro-impacts, such as on the growth of industrial value added or employment.

This option could result in an increase in legal uncertainty for all stakeholders. The specific individual products (CN8 products) will not be listed in the Annex to the Council Decision. Instead, individual products will be authorised by the local authorities within the permitted product categories (CN4) by applying the market share criterion and if necessary the cases of derogation. However, official data on the local production (from

the customs) are not always available causing difficulties in determining with full accuracy the market share and decisions are open to interpretation especially regarding the case of derogation. Thus, the legal certainty of the eligibility of a product (CN8 product) would be reduced. This is in complete contrast to the current regime, where the beneficiary products are listed individually in the Annex to the Council Decision and the market share criterion is only assessed during the preparation of the list.

This will have an impact on the supported sectors. In case of non-compliance with the market share criterion, the products would be no longer covered by the Council Decision, therefore also raising an issue concerning their compliance with any future State aid decision that would have to be adopted on the scheme for the future<sup>69</sup>. Tax differentials in these cases would be illegal, and potentially incompatible aid and could be recovered from the beneficiaries. This issue is considered critical by the French authorities.

Like option 1 (termination), the budgetary effects of this option are unpredictable as they depend on the final specific products subject to this regime, the respective value of imports of these products and the tax differentials applied. Past trends suggest that the competent authorities would increase the external rates for the specific products rather than decrease the internal rates and as a result the more likely impact is an increase in tax receipts.

Assuming that the eligible product categories remain broadly in line with the current authorised products, no regional trade impacts are envisaged.

**Table 11 – Summary and rating of expected impacts of option 2A**

Impact area	Impact	Subject	Rating & magnitude	Notes
<b>Governance and good administration</b>	<i>Improved alignment</i> with needs, through enhanced subsidiarity in the policy update process but possible increase in disputes regarding individual products Increased legal uncertainty	EU / MS authorities	-2	Initially a negative impact in the absence of appropriate arrangements by the authorities to ensure legal certainty
<b>Operating costs/ competitiveness of business</b>	<i>Improved support</i> for emerging production activities, reducing time to market by approx. 2-3 years	Beneficiary economic operators	+1	
<b>Functioning of the market and competition</b>	<i>Small improvement in the functioning</i> of the market thanks to the possibility of quicker reaction to evolving conditions	All economic operators	+1	Assuming the frequency of changes remains low
<b>Macroeconomic impacts</b>	<i>Positive impact</i> , connected to the support in emerging sectors	All economic operators	0/+1	possible benefits (+1) only in emerging sectors
<b>Regulatory costs and savings for public authorities</b>	<i>Reduced burden</i> for the legal amendment of the Decision regarding product lists (61%) (+1) Developing new	EU / MS authorities	+1/-1	

<sup>69</sup> The current State aid decision approved the docks due differentials until 31 December 2020.

	arrangements to ensure legal certainty (-1)			
<b>Regulatory costs and savings for economic operators</b>	<i>Increased burden</i> linked to classification uncertainties/code changes <i>Increase in legal uncertainty</i> and associated costs	All economic operators	<b>-2</b>	Supported individual products are not listed in the Council Decision and non-compliance with the eligibility criteria could lead to non-compliance with any future State aid decision and potentially to the recovery of the aid
<b>Budgetary effects</b>	<i>Unpredictable</i> ; they depend on the policies chosen by MS authorities	MS authorities	<b>+1/-1</b>	
<b>Trade flows and international relation</b>	<i>None expected</i>		<b>0</b>	

**Legend:** Rating scale: +2 major positive impact; +1 minor positive impact; 0 neutral impact; -1 minor negative impact; -2 major negative impact.

- *Option 2B: adoption of verifiable eligibility criteria*

This option proposes to adopt the existing criteria for the selection of products benefiting from dock dues support in the legal text of the Decision in line with the current criteria, which take into consideration *inter alia* the market share of the product. This criterion may be waived for products in a residual or largely dominant position on the local market by providing a proper justification for support. This option would respond to the demand for greater clarity and objectivity expressed by most opponents of dock dues.

Concerning the impact on the competitiveness of local economic operators, the proposed option is in principle neutral, as it does not propose to modify the current scope of the special regime or the tax treatment of any particular products. The option would not have any different or additional effects from the baseline in this respect (outlined in Section 6.2 above).

However, including the criteria in the legal text improves legal certainty and makes the justification of support more transparent and verifiable. This could lead to an improved assessment of the real needs of producers and a timelier detection and resolution of possible incongruences in the product lists. The ensuing benefits of removing products which do not meet the eligibility criteria from the list would again regard the general proper functioning of the market, but the impact on the competitiveness of local enterprises would be negligible, since the market share of the excluded products would be either not significant or so large that arguably no support for competitiveness is required<sup>70</sup>. Products that do not meet the criteria, but still legitimately require the support of the octroi de mer regime could be granted from a derogation from the market share criteria with adequate justification.

From a budgetary perspective, no impact is envisaged under this option.

<sup>70</sup> It is important to recall that under the proposed option, a derogation from compliance with the prescribed market share window can still be obtained, if duly justified, so products falling above or below the established thresholds would not be automatically excluded.

The adoption of well-calibrated and verifiable criteria would be beneficial for all stakeholders, as follows:

- **Competent authorities.** The proposed inclusion of the existing criteria in the legal text would help competent authorities cope with potential increased pressure from stakeholders, which might accompany the proposed greater implementation flexibility outlined in option 2A.
- **Economic operators.** The adoption of objectively verifiable criteria would respond to the need for transparency and accountability which emerged from field work interviews with stakeholders from both productive sectors (i.e. the beneficiaries of the regime) and trade sectors (i.e. the ‘taxpayers’). In this sense, this option would improve implementation of the policy, preventing/removing the application of the special regime to products that do not arguably meet the required conditions, and ultimately contributing to eliminating competition distortions and to the proper functioning of the market. This could also have a minor positive impact on trade relations with neighbouring countries as transparency improves.

The proposed option could result in some additional regulatory burdens for competent authorities, as follows:

- The adoption of the necessary administrative framework and/or rules of procedure to enact the reform, i.e. the fixing of market share thresholds, the procedure for market share assessment, the method and criteria for special cases. This would be a one-off burden at the time of the adoption of the revised approach and then again for periodic revisions.
- The verification of compliance with criteria any time a request for support for a new product is received – although this can be considered negligible in terms of additional burden since the handling of new requests already involves administrative work in the current system.
- The drafting of proper dossiers to justify ‘special cases’, i.e. production that does not meet the prescribed thresholds for market share but nonetheless deserves a special tax treatment for other reasons, which competent authorities must duly clarify and document. Also in this case, the additional burden is presumably limited as competent authorities must already justify in the current regime the introduction of new products in the lists and, at any rate, this effort would be largely offset by the reduced administrative burden made possible by the greater flexibility.

**Table 12 – Summary and rating of expected impacts of option 2B**

<b>Impact area</b>	<b>Impact</b>	<b>Subject</b>	<b>Rating and magnitude</b>	<b>Notes</b>
<b>Governance and good administration</b>	<i>Enhanced transparency</i> in the selection of supported products	EU / MS authorities	+1	
<b>Operating costs/ competitiveness of business</b>	<b>Neutrality of effects</b> on the current state of play should be ensured	Beneficiary economic operators	0	
<b>Functioning of the market and</b>	<i>Reduced complaints</i> and disputes over unjustified	All economic	+1	

<b>competition</b>	disparities of treatment and unduly distortion	operators		
<b>Macroeconomics impacts</b>	<i>None expected</i>			
<b>Regulatory costs and savings for public authorities</b>	<i>Increased one-off burden</i> , related to the required ad hoc justification for special cases Enhanced legal certainty	MS authorities	<b>-1/0</b>	
<b>Regulatory costs and savings for economic operators</b>	Enhanced transparency and greater legal certainty		<b>+1</b>	
<b>Budgetary effects</b>	Neutral, by design (it does not enable changes which are already possible under the current system)	MS authorities	<b>0</b>	
<b>Trade flows and international relations</b>	None expected		<b>0</b>	

**Legend:** rating scale: +2 major positive impact; +1 minor positive impact; 0 neutral impact; -1 minor negative impact; -2 major negative impact.

### 6.5. Option 3 – Revision of the maximum permitted differential

This option revises the existing regime by grouping the supported products into two distinct lists in the Annex to the Decision, rather than the current system of three lists. The two different maximum permitted differentials would be 20% and 30%; however, the competent authorities would have to continue to ensure that the rate for specific products is equal or less than the additional costs associated with the production. Therefore the budgetary impact of the proposed option would be neutral ‘by design’: the option does not include the objective of increasing tax differentials or of modifying the intensity of aid, but rather is intended to allow revisions to accurately reflect the additional costs up to the ceiling of the list – where needed – without a legal amendment of the Decision. In this sense, the amount of tax levied would not be affected and the budgetary and trade impacts are neutral. In fact, this option regards essentially procedural aspects, meaning that its fundamental impacts fall in the category of governance and good administration, and addresses the inflexibilities of the regime. This option reduces some of the regulatory burden for competent authorities.

For the competitiveness of individual local production, the proposed option could be beneficial as it would enable timelier modification of the differential applied, i.e. without the restriction of periodic renewal or interim legal amendments. However, this concerns a limited number of products (i.e. those products currently on list A (10%) would now be included on a list with a maximum permitted differential of 20%) and an improved timeliness of 2-3 years compared to the present situation. Products on list B (30%) would be unaffected by this option. So, from a general market perspective and in aggregate terms (including macroeconomic aspects), the expected impacts would be barely noticeable.

This option allows for more flexible management of the differential rates applied by the competent authorities, without creating legal uncertainty.

**Table 13 – Summary and rating of expected impacts of option 3**

Impact area	Impact	Subject	Rating and magnitude	Notes
<b>Governance and good administration</b>	<i>Improved alignment with changes in additional costs</i> , with limited risk of increased pressure as differential rates must reflect additional costs	EU / MS authorities	+1	
<b>Operating costs/ competitiveness of economic operators</b>	<i>More timely revision of support</i> for specific products requiring higher differentials	Beneficiary economic operators	0/+1	Greater magnitude (+1) for the few specific products concerned
<b>Functioning of the market and competition</b>	<i>Improved functioning of the market</i> due to the possibility to react quicker to evolving conditions for products on list A (20%)	All economic operators	+1	No impact for products on list B (30%)
<b>Macroeconomics impacts</b>	<i>None expected</i>		0	
<b>Regulatory costs and savings for public authorities</b>	<i>Reduced burden as revisions within the maximum ceiling are possible without a legal amendment</i> Neutral impact if additional costs exceed the maximum ceiling as legal amendment still necessary	MS authorities	0/+1	
<b>Regulatory costs &amp; savings for economic operators</b>	None expected		0	
<b>Budgetary effects</b>	<i>Neutral</i> , by design (it does not enable changes which are already possible under the current system)	MS authorities	0	
<b>Trade flows and international relations</b>	None expected		0	

**Legend:** rating scale: +2 major positive impact; +1 minor positive impact; 0 neutral impact; -1 minor negative impact; -2 major negative impact.

## 6.6. Option 4 – Raising the turnover threshold of dock dues from EUR 300 000 to EUR 550 000

This option consists of increasing the turnover threshold for the exclusion of small firms from the application of the dock dues from the current threshold of EUR 300 000 to EUR 550 000. The main rationale behind this option is to extend the benefits of the exclusion to a greater number of small economic operators. Such benefits are of two main kinds: (1) reduction of the regulatory burden connected to the tax; and (2) reduction of the tax burden for SMEs:

- Reduction of burden. Economic operators falling outside the scope of dock dues are not required to submit quarterly tax declarations and undergo all the administrative activities connected to dock dues. The annual cost of these activities had been estimated at EUR 1 081 per economic operator, and the number of economic operators possibly concerned by the reform is estimated to be between approximately 180 and 220, so the potential aggregated savings would amount to between approximately EUR 194 000 and

EUR 240 000<sup>71</sup>. The reduction in the number of firms that fall within the scope of the policy would also decrease the workload for the competent tax administrations. Based on the parameters estimated in the French impact assessment of 2015, total savings of the proposed option would be EUR 300 per firm/year totalling approximately EUR 66 000 (all French outermost regions under the dock dues regime included).

- Reduction of the tax charge. Tax savings for concerned economic operators would amount to the internal dock dues rate currently applied on the delivery of local products, so the amount of savings would be greater in regions that apply a relatively high internal rate (such as French Guiana) and negligible where the internal dock dues rate is generally nil (e.g. Réunion). Based on the most recent estimates<sup>72</sup> provided by French authorities, the reduction of tax charges would amount to approximately EUR 1.22 million – i.e. some EUR 5 500 per beneficiary economic operator. This figure also represents the estimated increase in foregone tax revenues that can be expected. This relatively small amount results from the fact that these economic operators already benefit from a tax reduction or exemption on the products they sell and cannot benefit from tax deductions for imported inputs (‘exonérations des intrants’<sup>73</sup>).

These benefits increase competitiveness of SMEs that face proportionally higher tax compliance costs than larger enterprises<sup>74</sup>, as previously described in Section 2.2.

This option has little impact on competition. Most concerned enterprises compete only marginally, if at all, with imported products. Indeed, 45% of the tax revenues and almost 30% of the enterprises concerned are concentrated in the electricity and bakery sectors<sup>75</sup>. Electricity, which is produced mainly by small photovoltaic units, cannot be imported. It is the same for fresh bread and pastry goods that only compete with frozen goods.

In addition to the monetary savings described above, the increase in the turnover threshold might also encourage economic operators currently outside of the dock dues regime to grow. As anecdotally reported by stakeholders during field interviews, certain operators currently restrain their activities in order to remain under the EUR 300 000 ceiling so that they can benefit from the simplified regime. How widespread and strong this constraint is cannot be verified precisely. The study estimated that possibly 6% of the economic operators currently under the EUR 300 000 threshold<sup>76</sup> would move to the upper category.

Nevertheless, the exclusion of economic operators from the dock dues’ scope of application means a significant loss of monitoring data, specifically on the value and volume of production, on the number of economic operators engaged in the production of dock dues goods and – ultimately – on the extent of the foregone revenue and the cost of

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<sup>71</sup> Projet De Loi modifiant la loi n° 2004-639 du 2 juillet 2004 relative à l’octroi de mer, ÉTUDE D’IMPACT, 23 mars 2015.

<sup>72</sup> These estimates are based on the 2019 production figures provided by the French customs authorities.

<sup>73</sup> See Annex 5 for further details.

<sup>74</sup> European Commission Study on Tax Compliance Costs for SMEs, 2018: French enterprises record higher total enterprise tax compliance costs than their peers (EUR 7 998 for micro-sized enterprises).

<sup>75</sup> The balance of economic operators are in more than 60 different sectors, with 1 to 2 operators per sector.

<sup>76</sup> According to the French impact assessment of 2015 there were 3 456 firms under the EUR 300 000 threshold.

the measure. There are 1 042 enterprises currently submitting dock dues tax declarations (2018), while for some 3 500 economic operators engaged in the production of dock dues goods no data have been collected since 2014, affecting the robustness of the market share data for the products. Raising the current threshold to EUR 550 000 would reduce the number of monitored firms by between 17% and 21%. However, it will not affect the quality of the product fiche used to calculate the additional costs since they derive from empirical information provided by the concerned local economic operators regardless of their turnover<sup>77</sup>.

**Table 14 – Summary and rating of expected impacts of option 4**

Impact area	Impact	Subject	Rating and magnitude	Notes
<b>Governance and good administration</b>	<i>Expanded data gaps</i> , for the monitoring of implementation and impact	EU/ MS authorities	<b>-1</b>	
<b>Operating costs/ competitiveness of economic operators</b>	<i>Increased differential – de facto</i> – for the concerned <i>SMEs</i>	Beneficiary firms	<b>+1</b>	More relevant in OR with non-zero internal rates
<b>Functioning of the market and competition</b>	<i>None expected</i>		<b>0</b>	
<b>Macroeconomic impacts</b>	<i>Enhanced impact</i> for concerned economic operators	SMEs with turnover of less than EUR 500 000	<b>+1</b>	
<b>Regulatory costs and savings for public authorities</b>	<i>Reduced burden</i> , as number of economic operators within the scope of dock dues is reduced	MS authorities	<b>+1</b>	The estimated number of beneficiaries is limited
<b>Regulatory costs and savings for economic operators</b>	<i>Reduced burden</i> for tax declarations for the concerned economic operators	Beneficiary firms	<b>+1</b>	The estimated number of beneficiaries is limited
<b>Budgetary impact</b>	<i>Marginal increase in the foregone revenues</i> , but of limited magnitude	MS authorities	<b>0</b>	Mitigated by a restricted access to deductions and reimbursements
<b>Trade flows and international relations</b>	<i>None expected</i>		<b>0</b>	

**Legend:** rating scale: +2 major positive impact; +1 minor positive impact; 0 neutral impact; -1 minor negative impact; -2 major negative impact.

## 6.7. Option 5 – Revised monitoring arrangements

The heterogeneous content of the interim implementation report submitted by the national competent authorities to the Commission creates difficulties for data analysis. For this reason, option 5 proposes to harmonise the structure and the indicators provided in those reports in order to: (a) enhance their consistency over time; (b) make comparisons across regions possible and reliable; and (c) prevent and address the

<sup>77</sup> The preparation of product fiches is a participatory process, which involves the concerned industries as the main providers of data and estimates for the calculation of additional costs. The fiches are drawn up and validated by the competent authorities in France.

information ‘gaps’ characterising some of the past reports. All these outcomes would contribute to a better design and administration of the policy, providing the competent EU and French authorities with more robust evidence of the effects of the special regime on the local socio-economic structure (including in the medium/long run). This would include dimensions poorly investigated so far due to insufficient data, such as the impacts on market structure, on trade flows, on price levels and other macroeconomic indicators. To ensure compliance, the harmonised structure and the indicators for the mid-term report should be annexed to the Council Decision.

The benefits of the improved arrangements would go beyond institutional oversight. The mainstreaming of more robust and comprehensive impact evidence into the policy design can eventually improve its efficiency and help competent authorities correct possible distortions in the market, thus responding to concerns raised by various stakeholders and preventing the emergence of disputes. The ‘knowledge’ areas that might particularly benefit from the proposed overhaul of the system include: (a) the specific impact of the dock dues regime on sectoral value added (and employment); (b) the impact of the tax differentials on price levels; and (c) the assessment of the intensity of the aid, taking into account the other support measures.

The costs of this proposed option are those imposed on the competent authorities for the collection and processing of data and the preparation and transmission of the revised mid-term report. However, as monitoring obligations already exist in the current framework, the actual burden would be limited to the additional information requirements introduced with the revision. More specifically, the additional burden would consist of two activities:

- one-time familiarisation with the harmonised structure and the indicators requested;
- recurrent collection and processing of data which are not currently included in the periodic monitoring reports.

To minimise the additional burden, the proposed indicators have been selected considering the information already collected and reported by French authorities, or easily available, such as customs data. Modifications are introduced only where deemed important.

No additional burden for enterprises is expected. All the indicators listed derive from information collected by public authorities or statistical data. Some data do require the consultation of enterprises (e.g. the estimation of additional production costs), but this is information that is being collected anyway and not an obligation introduced by the policy option.

Estimating the additional costs at the level of CN4 product categories will reduce the number of separated additional costs assessments (product fiches) to be conducted, and ensure less administrative burden for competent authorities and private sector alike (i.e. beneficiaries of the special regime who are supposed to provide the necessary evidence for costs assessment). Based on the current situation, the number of products subject to

an assessment of additional costs would decrease by 35% (by 44% in French Guiana), cutting the current administrative burden accordingly.

The impact of the shift to CN4-level estimates in terms of degree of precision would be limited when compared to the current situation. Considering that CN4 categories are closer to the sector/branch structure of manufacturing and production activity, it is reasonable to assume that: (1) the difference within an individual category is typically of small magnitude; and (2) at any rate, the current degree of approximation with CN8-level estimates would not actually ensure higher precision.

**Table 15 – Summary and rating of expected impacts of option 5**

Impact area	Impact	Subject	Rating and magnitude	Notes
<b>Governance and good administration</b>	<i>More informative monitoring</i> , and better stock-taking of impacts also in comparative terms	EU/MS authorities	+2	
<b>Operating costs/ competitiveness of economic operators</b>	<i>Reduced burden</i> related to the provision of data for product fiches	Beneficiaries	+1	
<b>Functioning of the market and competition</b>	<i>Improved policy design and implementation</i> , preventing market distortions, and the risk of overcompensation	All economic operators	+1	Assuming the results of the analysis are fed back into policy design
<b>Macroeconomic impacts</b>	<i>Increased burden</i> , for filling information gaps and drawing up a small number of new indicators	EU authorities	-1	The burden varies across ORs
<b>Regulatory costs and savings for public authorities</b>	<i>Increased burden</i> , for familiarisation and drawing up new indicators, but <i>reduced burden</i> of processing product fiches	MS authorities	+1	
<b>Regulatory costs &amp; savings for economic operators</b>	None expected		0	
<b>Budgetary effects</b>	Neutral, by design (it does not enable changes which are already possible under the current system)	MS authorities	0	
<b>Trade flows and international relations</b>	None expected		0	

**Legend:** rating scale: +2 major positive impact; +1 minor positive impact; 0 neutral impact; -1 minor negative impact; -2 major negative impact.

## 7. HOW DO THE OPTIONS COMPARE?

For the purposes of this analytical report, all options have been assessed on whether they have a positive, negative or neutral effect relative to the baseline for effectiveness, efficiency and coherence.

### 7.1. Effectiveness

Overall, the policy aims to enhance the competitiveness of local industries and production activities mitigating the constraints caused by the outermost status of the

regions concerned. The proposed option 3 (two different maximum permitted tax differentials) aiming to facilitate the updating of the special regime to evolving needs could prove beneficial in this respect. Option 4 (the SME threshold) could help SMEs to develop further and increase their turnover to EUR 550 000. The impact of option 2A (CN4) would be more mixed as the increased legal uncertainty would mitigate the increased flexibility for the beneficiaries. Conversely, termination of the policy (option 1) would have, by definition, severe adverse effects on local producers' competitiveness.

The proposed policy revisions (options 2A, 2B, 3, 4 and 5) are also expected to improve the functioning of the market, mitigating the risk of undue distortions of competition, which is the second overall objective of the policy. This result would be achieved by a series of specific measures concerning: (1) the selection of eligible products; (2) the application of tax differentials in line with needs; (3) the prevention of overcompensation risks; (4) and the effective monitoring of the regime. Individually, all proposed measures would have moderate effects, but altogether they might respond effectively to various concerns raised by trade and service sectors over the fairness and proportionality of the regime. Also in this case, the effects of discontinuing the regime (option 1) would be markedly negative: various local producers would no longer be able to compete, and the market would become even more oligopolistic, with adverse effects also for consumers.

Ultimately, the policy aims to contribute to the social and economic development of those outermost regions. The proposed revisions of the current system would have limited effect in this area, first and foremost because they do not intend to modify the current scope and intensity of the support made available through the regime. The improvements described above might have beneficial effects in few specific product areas e.g. improving the alignment with needs or redressing existing distortions, but at the macroeconomic level these effects would hardly be noticeable. Instead, the negative impacts of discontinuation would probably be visible on the industrial value-added indicators and, potentially, on investments and employment.

## **7.2. Efficiency**

The policy options examined do not envisage changes that might affect the amount of tax revenues collected and, therefore, the budget of the regional administrations concerned. The only exception is the possible increase in the turnover threshold for exclusion of small firms from the application of the tax (option 4). However, here the magnitude of the revenue loss would be marginal. Otherwise, the budgetary effects of the proposed options would be either neutral by design, or ambivalent and unpredictable since they would depend on policy decisions made at the local level.

In terms of regulatory burden for EU and French authorities, the specific measures proposed for the revision of the policy are expected to have differentiated effects. Compared to the baseline situation, the impact of options 3 and 4 would contribute to reducing the current burden – especially because of the simplification and the greater flexibility introduced in the system. However, certain aspects such as the enacting of eligibility criteria for products (option 2B) could involve an increase in the efforts required. Additionally, certain aspects of option 5 (on the improvement of the monitoring

system) require additional efforts, especially in the initial phase. At any rate, the additional burden anticipated would remain limited and largely offset by the benefits of the proposed revisions. Option 2A could result in greater legal uncertainty and an increase in associated legal costs, reducing the overall efficiency of this option.

The regulatory burden imposed on enterprises would likely decrease – albeit moderately – under options 2B, 3, 4 and 5. In particular, moving from specific products (CN8) to broader categories (CN4) in terms of additional cost assessment (option 5) would make assessment less complex and would reduce the efforts required when justifying the application of tax differentials.

### 7.3. Coherence

In determining whether the proposed options are consistent with EU policy, the primary reference is the impact on governance and good administration. This includes – where relevant – consistency between the parallel State aid policy on dock dues and its possible evolution. As most of the proposed revisions explicitly address policy governance and implementation arrangements, generalised improvement can be expected under this scenario. This is especially true with options 2B, 3 and 5, which would enhance subsidiarity in policy implementation, while reinforcing monitoring and making rules and conditions clearer, more transparent and easily verifiable. Although option 2A would also enhance subsidiarity, this would possibly increase legal uncertainty and the number of disputes regarding individual products. Increasing the SME threshold would reduce the number of economic operators within the scope of dock dues; this would impact the availability of data.

Only the discontinuation scenario would have any impact on regional relations in that it would eliminate the root cause of complaints expressed by CARIFORUM and Eastern and Southern African countries regarding the claimed incompatibility of dock dues with the trade agreements stipulated with the EU. The removal of the dock dues as a whole would not significantly change the intra-regional trade exchange, but this contentious point would certainly be removed from the EU-CARIFORUM agenda. However, discontinuing support for the French outermost regions in taxation – without creating a new instrument/budget to address the constraints of these regions – would not be in line with the intent of the Commission Communication of 2017 and of Article 349 TFEU.

Table 16 – Summary of estimated impacts for each of the options considered

Option theme	Effective	Efficient	Coherent
Baseline: The derogation is renewed with no further policy changes	0	0	0
Option 1: Policy termination	--	-	0
Option 2A: Identification of beneficiary product at a higher classification level	+	-	-

Option theme	Effective	Efficient	Coherent
Option 2B: Adoption of verifiable eligibility criteria	+	+/0	+
Option 3: Revision of the maximum permitted differential	+	++	0
Option 4: Raising the turnover threshold of the dock dues from EUR 300 000 to EUR 550 000	+	++	-
Option 5: Revised monitoring arrangements	+	0	++

Legend: ++ positive effect expected; + moderate positive effect expected; 0 no effect or neutral impact expected; - moderate negative effect expected; -- negative effect expected; (all relative to baseline)

Source: Analysis of the study.

## 8. PREFERRED OPTION

Option 2B+3+4+5, which revises the current regime, is the preferred option. This would renew the special rules beyond June 2021 with the following changes:

- a) the adoption of verifiable eligibility criteria;
- b) the revision of the maximum permitted differential;
- c) the increase of the turnover threshold for exclusion from the scope of the tax;
- d) the revision of monitoring arrangements.

These amendments to the current regime will make the dock dues regime more transparent and flexible, while maintaining high levels of legal certainty. These options will enable the French authorities to amend the regime efficiently and effectively at Member State level in line with the set criteria.

These options, implemented together, are expected to have a greater positive impact than the baseline. In comparison, option 1 is ineffective and inefficient in comparison to the baseline: this is because terminating the regime would mean that its objectives would not be achieved and could lead to economic and social instability in the French outermost regions, with potentially significant consequences. Most stakeholders were also opposed to the termination of the regime.

Option 2A has been discarded as the French authorities consider that it would increase the legal uncertainty of the regime, which is a critical concern for them.

Finally, options 2B and 5 would be more consistent with other EU policy, whereas option 1 would not be consistent with EU policy for the outermost regions.

## **9. HOW WILL ACTUAL IMPACTS BE MONITORED AND EVALUATED?**

Monitoring the implementation and functioning of the derogation will fall to the French authorities and the Commission, as has been the case to date.

In accordance with Article 3 of the current Decision, the French authorities were requested to submit a report halfway through the life of the Decision to the Commission. This report was to enable the Commission to assess whether the reasons justifying the derogation still existed.

It is important that the French authorities continue preparing a monitoring report as they are best placed to gather the precise information from the impacted stakeholders. France will be asked to submit a monitoring report by 30 September 2025 for the period from 2019 to 2024<sup>78</sup>. This monitoring report will include any relevant information on the additional costs involved in the local production, economic distortions and market impacts. This report will contain the information needed to evaluate effectiveness, efficiency, consistency with other EU policies, continued relevance and EU added value of the new legislation. The monitoring report should also seek to collect input from all relevant stakeholders as regards the level and evolution of their additional production costs, compliance costs and any instances of market distortions.

To make sure that the information collected by the French authorities and analysed in the report contains the data the Commission needs to take an informed decision on the scheme's future validity and viability, the Commission will draw up specific guidelines on the required information. Such guidelines will be, to the extent possible, common to other similar schemes for the EU's outermost regions, governed by similar legislation.

This will enable the Commission to assess whether the reasons justifying the derogation still exist, whether the fiscal advantage granted by France is still proportionate and whether it is possible to envisage alternative measures to a tax derogation system that would also be sufficient to support competitive industries, taking into account their international dimension as well as the special status granted to the outermost regions under Article 349 TFEU.

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<sup>78</sup> The report should include 2019 data so that a baseline is established and so that the Commission is able to review the impact of the derogation covering the post-June 2021 period. The report should contain the most up-to-date data up to and including 2024, where possible.

## ANNEX 1: PROCEDURAL INFORMATION

### 1. Lead DG, Decide Planning/CWP references

The lead Commission service for this file is the Directorate-General for Taxation and the Customs Union (DG TAXUD).

This initiative got the following political agreements:

- Agenda Planning and roadmap: Proposal for a Council Decision replacing Council Decision No 940/2014/EU of 17 December 2014 concerning the dock dues in the French outermost regions of Guadeloupe, French Guiana, Martinique, Réunion and Mayotte (PLAN/2019/5286).

Due to its limited impacts, the file was not included in the Commission Work Programme.

### 2. Organisation and timing

The following DGs were invited to the interservice steering group (ISSG): AGRI, BUDG, CLIMA, COMP, DEVCO EMPL, ENV, GROW, HOME, JRC, MOVE, REGIO, SANTE, SG, SJ, TRADE, MARE.

A consortium led by Economisti Associati ('the Consultant') undertook the assignment entitled 'Study on specific tax regimes for outermost regions belonging to France and Spain' ('the study').

The study established the basis for what is known as a 'back-to-back exercise', with evaluation and a forward-looking assessment carried out simultaneously in accordance with the better regulation guidelines.

The objectives of the study were to analyse whether the fiscal advantages granted by some ORs (the Canary Islands in Spain and the French ORs of Guadeloupe, French Guiana, Martinique, Réunion and Mayotte) were fit for purpose, and the scale of the issues or weaknesses encountered in their application.

The study also assessed a range of policy options that could effectively address the socio-economic constraints that the outermost regions face, and described their possible impact on stakeholders.

## ANNEX 2: STAKEHOLDER CONSULTATION

### 1. Overview of consultation activities

The stakeholder consultation strategy was developed to ensure a wide and balanced coverage of the different entities involved in, subject to, or concerned by the design and implementation of the special tax regime. This was done by means of tailored tools and questionnaires. The perspectives and positions on dock dues were expected to vary significantly (a) between groups of stakeholders (policy makers, tax and customs administrations, enterprises, professionals, etc.), (b) geographically, between ‘mainland’ or outermost regions residents, and (c) for private-sector stakeholders, between the local producers benefiting from the regime (enterprises that are instead subject to direct tax charges, such as importers), and enterprises that are indirectly affected (e.g. local manufacturers using production inputs falling inside or outside the tax differential regime).

To comprehensively address all different perspectives and positions, the stakeholder consultation consisted of two main lines of work set out below.

- **Targeted interview programme involving field visits.** In-depth interviews were conducted with selected stakeholders, including EU institutions, French government authorities at national and local level, and economic operators and trade organisations representing both the local productive sectors (i.e. the beneficiaries of the special regime) and trade and service sectors that are directly or indirectly affected. A total of 80 stakeholders were interviewed, of which 55 in three French ORs (Réunion, Guadeloupe and Martinique).
- **Focused online survey of economic operators active in the French ORs.** A web-based survey of the economic operators located in the five French ORs was carried out in November 26-December 23 2019. The survey allowed firms’ views to be collected on the key features of the dock dues, i.e. positive impacts, side effects, changes needed, etc. It also allowed structured information to be gathered on the conduct and performance of local businesses which, to varying degrees, are affected by the special tax regime. The survey questionnaire was available in English and French, and customised to reflect the different effects of and views on the special tax regime based on the different groups of local businesses involved. These were local producers, and importers and distributors. A total of 196 valid replies were received from all five regions. The table below provides a summary of the responses to the survey by size of firm, origin and respondent economic activity.

**Table A2.1 – Response summary to the business survey**

Firm size	Number of respondents	Region	Number of respondents
Self-employed individual firms with no employees	28	Martinique	71
1-9 employees (micro enterprise)	74	Réunion	70

10-49 employees (small enterprise)	70
More than 50 employees (medium-large enterprise)	21
No answer	3
<b>Total</b>	<b>196</b>

Guadeloupe	34
French Guiana	19
Mayotte	2
<b>Total</b>	<b>196</b>

Main economic activity	Number of respondents
Productive activities	77
<i>Of which liable for dock dues</i>	71
Non-productive activities	119
<i>Of which traders/importers</i>	59
<b>Total</b>	<b>196</b>

Altogether, the consultation allowed us to gather three main kinds of information:

- (1) factual information on the legal and administrative arrangements for the special tax regime in the ORs concerned;
- (2) evidence of the performance of the tax regime, including the benefits delivered, the contribution to local development, and any possible issue or unintended effect registered;
- (3) stakeholders' expectations and views of possible policy scenarios for the future – including the revision of the current regime – and their forecasts concerning the effects of different possible EU actions.

## 2. Overall stakeholders' assessment of the dock dues regime

### ➤ ON THE COHERENCE AND RELEVANCE OF THE REGIME

The results of the study indicate that the scope of the dock dues regime is fairly comprehensive, satisfactorily addressing the needs of the economic operators concerned. This was confirmed by the majority of the key stakeholders consulted. Nonetheless, both local authorities and private-sector representatives reported some gaps in the scope of the dock dues, in particular as regards primary agriculture, fisheries and agri-food products. In addition, about half the local producers involved in the survey maintained that some products should be added to the dock dues list. In this regard, one of the problems lamented by stakeholders was the system's slowness to respond to the emerging needs of the local economy and to correct errors and omissions, when relevant. The lack of flexibility is due to the fact that the list of products with a differentiated tax rate is laid down in the Council Decision, and so any revision – e.g. the inclusion of new emerging production or the modification of the extent of the tax support – requires a burdensome legal amendment process or postponement until the next renewal of the policy.

Another, less severe, issue with reference to the scope of the dock dues was typically voiced by traders' representatives and concerns the identification of supported products through reference to CN categories. In some cases, these include items which are not produced locally, or which are produced in limited quantities. The results of the business survey confirm the existence of this issue, suggesting however that it does not represent a

major concern: fewer than one quarter of the respondents (22%) able to reply reported the existence of products with negligible production in the French ORs that should be removed from the dock dues list.

Overall, the process for establishing the list of products benefiting from fiscal advantages is described as participatory by both local authorities and representatives of the relevant private-sector associations. Still, the criteria adopted by competent authorities to select the products eligible for the support and to determine the level of support are not well-known outside the manufacturing sector. While most local producers (56%) reported familiarity with the criteria for the inclusion of certain products in the dock dues lists, only 17% of firms active in other sectors stated the same. As for the methods used to establish the tax differential applicable to dock dues products, respondents are even less knowledgeable: 86% of the non-producer firms and 57% of the local producers declared that they had little/no information about these methods.

**Table A2.2 – Stakeholders’ knowledge of the criteria underlying dock dues implementation**

	Total	Non-producers	Producers
Share of respondents with at least partial knowledge of the criteria for inclusion of certain products in the dock dues lists	32%	17%	56%
Share of respondents with at least partial knowledge of the methods used to establish the tax differential applicable to dock dues products	26%	14%	43%

*Source: Business Survey.*

#### ➤ IMPACT OF THE DOCK DUES ON PRICE COMPETITIVENESS

The importance of the dock dues regime in redressing the price competitiveness of local products was widely acknowledged by representatives of the relevant private-sector associations and manufacturing firms encountered during fieldwork, even though the price gap between locally produced goods and imported ones is not fully closed.

In the same vein, local producers involved in the survey attributed great importance to the dock dues in shaping the conditions for competition: over three quarters of the relevant respondents describe the tax as ‘essential’, adding that without the dock dues they could not compete. Almost 60% of importers also maintained that the dock dues ‘significantly’ affect the competitiveness of their imported products with dock dues differential rates.

**Table A2.3 – Stakeholders’ assessment of dock dues impact on price competitiveness**

	<b>% of local producers</b>		<b>% of importers</b>
Essential, without dock dues we could not compete with imported goods	77%	Significant, dock dues make our main imported product much less competitive	59%
Moderate, dock dues help us be competitive but there are other factors	5%	Moderate, dock dues do affect competitiveness but there are other factors at play	21%
Neutral, dock dues do not influence our competitiveness	8%	Limited, dock dues are only a minor factor in the dynamic of price	21%
Negative, dock dues are actually damaging our competitiveness	10%		

*Source: Business Survey (excluding ‘don’t know’ answers).*

➤ **PERCEIVED ADVANTAGES OF THE DOCK DUES REGIME**

The business survey investigated respondents’ views on the potential positive impacts of the dock dues regime on the local economy in general and on production activities specifically. Views largely differed between enterprises engaged in production activities and businesses operating in all other sectors: the former are inevitably much keener to describe dock dues as critically important, while the latter are much more sceptical. More specifically:

- over 80% of local producers maintained that the dock dues had a moderate/major impact in boosting local production activities and supporting the creation and maintenance of employment in the French ORs. This share is significantly lower among respondents active in other sectors, but the percentage of firms assessing these impacts as moderate or major is still significant (almost a third);
- the opinions of the local producers concerning the impact of the dock dues in terms of reducing the local economy’s reliance on imports and increasing investments in local production activities are only marginally less positive. In addition, a relevant share of non-producers held similar views in this regard;
- the effects of the dock dues on the expansion of the range of products available locally and the promotion of R&D and innovation in local industry were those aspects assessed as being least positive. This was largely due to the fact that a lower share of local producers (although still above 70%) considered them to have major or moderate importance.

Table A2.4 below illustrates the share of respondents assessing the positive impacts of the dock dues regime as ‘moderate’ or ‘major’.

**Table A2.4 – Stakeholders’ perception of the positive impacts of the dock dues**

Positive impact	% of respondents assessing impact as moderate or major		
	Total	Non-producers	Producers
Boosting local production activities	53%	31%	82%
Encouraging the diversification of local production activities	53%	36%	79%
Reducing the local economy’s reliance on imports	52%	32%	77%
Contribution to the creation and maintenance of jobs	53%	31%	83%
Fostering investments in local production activities	57%	39%	80%
Expanding the range of products available in the local market	49%	34%	73%
Fostering research and development and innovation in the local industry	46%	30%	71%

*Source: Business Survey (excluding ‘don’t know’ answers).*

➤ **PERCEIVED ADVERSE EFFECTS OF THE DOCK DUES REGIME**

The business survey also investigated respondents’ views on the potential negative effects of the dock dues regime on the local economy, market competition, regional trade, local consumption, and prices. As shown in Table A2.5 below, in this case too, views largely differed between enterprises engaged in production activities and businesses operating in all other sectors, but in the opposite direction. In particular, the table illustrates the share of respondents within each group assessing negative impacts as ‘moderate’ or ‘major’. The salient results can be summarised as follows:

- the majority of non-producer firms, ranging between 66% and 94%, assessed all the negative impacts as significant. Conversely, only a minority of local producers (typically between a quarter and a third) provided a similar assessment of the different impacts of the dock dues;
- the ranking order of the two groups of respondents was very similar, with inflation effects exerted by the tax directly (on imported consumer goods) and indirectly (by raising the overall costs of local production and service activities which import raw materials and supplies) enjoying the highest degree of consensus from both groups;
- conversely, the potentially negative effects of the tax on the efficiency of local producers, which may be discouraged to make efforts to boost productivity, and the fact that the fiscal advantages granted by the dock dues together with other aids to local production may cause an excessive distortion of competition, were considered as the least important by both groups;
- finally, a broadly similar share of respondents (about 30% of non-producers and 80% of local producers) deemed that the dock dues tend to draw resources towards existing ‘supported’ sectors, hampering the development of new ones, and negatively affect trade between the French ORs and neighbouring countries, including the members of CARIFORUM and the Eastern and Southern African community.

**Table A2.5 – Stakeholders’ perception of the negative impacts of the dock dues**

Negative impact	% of respondents assessing as impact moderate or major		
	Total	Non-producers	Producers
Because of dock dues support, local firms are not encouraged to boost efficiency and productivity	48%	66%	23%
The dock dues drive most investments and human resources to the ‘supported’ sectors, thus hampering the emergence of new activities in ‘non-supported’ sectors	56%	76%	27%
The dock dues influence demand, switching consumption from more taxed products to less/no taxed substitute products	53%	69%	31%
The addition of dock dues and other aids to local production produces an excessive distortion of competition	47%	68%	18%
Despite the exemptions, the dock dues affect the costs of imported raw materials and supplies, thus raising the overall costs of local production and service activities (such as tourism, etc.)	71%	89%	43%
The dock dues translate into higher prices for consumers	72%	94%	36%
The dock dues hamper trade with neighbouring countries (e.g. members of CARIFORUM or the Eastern and Southern African community)	62%	84%	30%

*Source: Business Survey (excluding ‘don’t know’ answers).*

#### ➤ PERCEIVED EFFICIENCY OF THE DOCK DUES REGIME

The dock dues regime does not create major problems in terms of implementation or major administrative burdens on competent authorities. In the same vein, public authorities generally agree that the tax enforcement burden arising from activities concerning products with dock dues differentials can be considered acceptable and fully justified by the benefits produced. On the other hand, more broadly, the process of revising the list and extending exemptions to specific products by legal amendment of the Council Decision is regarded as overly complex. The revision process requires the involvement of several stakeholders at national (central and local) and EU level, and can last up to 3 years, thus causing unnecessary burdens to EU and national authorities.

Likewise, the administrative and compliance costs of the dock dues regime are considered rather limited by private-sector representatives. The majority of the local producers involved in the survey assessed compliance with dock dues-related obligations as not particularly burdensome. In this context, the most burdensome task is considered the identification of the applicable customs codes and the corresponding dock dues rates, sometimes uncertain and potentially a cause of disputes and disparity of treatment. In particular, this task was assessed as a major burden by about a fifth of the local producers and a quarter of the direct importers.

The negative assessment concerning the customs classification of imported raw materials/supplies subject to the dock dues was confirmed by the feedback provided by direct importers, with over 60% of the importing firms reporting at least one change in the customs code and/or definition of the raw materials/supplies usually imported and almost 70% reporting difficulties, in most cases recurring, in appropriately identifying the applicable customs code and corresponding dock dues rate.

### 3. Stakeholder views on future policy scenarios

#### ➤ ATTITUDE TOWARDS THE RENEWAL OF THE DOCK DUES REGIME

Consultation with the local authorities gave a clear picture of the future of the current tax regime. The dock dues are considered important both for the public budget of the French ORs and to support local production activities, and renewal of the regime enjoys a widespread consensus. However, the consulted regional authorities highlighted the need for greater flexibility and a less cumbersome procedure to update the supported products list and the tax differentials applied.

The views of the private sector with regard to the renewal of the dock dues regime are strongly polarised, depending on the business activity and the different effects of the dock dues on this activity. As expected, respondents engaged in production activities typically benefiting from tax differentials largely supported renewal of the policy (86%). In addition, a majority of them (59%) deemed that no changes are needed to the current mechanism. Similar patterns can be found across the different regions.

Conversely, a majority (58%) of businesses operating in other sectors (i.e. not production activities) would prefer the current policy to be discontinued. In particular, most of the respondents would like the policy to be replaced with different forms of support for local production activities. For example, some respondents would prefer the dock dues to be replaced with a more equitable taxation, such as a ‘regional VAT’ with differentiated rates. Interestingly, however, a non-negligible share of the businesses operating in sectors other than production nonetheless favour a renewal of the policy.

The above results substantiate a point frequently made during field interviews: the dock dues regime is not problematic in itself, and can actually benefit local economies in many respects, but a number of design and implementation issues need to be resolved to reduce the distortive effects of the regime.

**Table A2.6 – Stakeholders’ attitude toward the renewal of the dock dues regime**

Scenarios	% of respondents		
	Total	Non-producers	Producers
Renew the Decision without major changes	34%	17%	59%
Renew the Decision, introducing some revisions	27%	26%	27%
Not renew the Decision, and introduce alternative support mechanisms	30%	44%	10%
Not renew the Decision	10%	14%	4%

*Source: Business Survey.*

#### ➤ STAKEHOLDER VIEWS ON POSSIBLE POLICY REVISIONS

Revisions to the current policy and its implementation arrangements were discussed with different stakeholders. The business survey also investigated the respondents’ positions on the possible areas for improvement. Table A.7 below shows the share of respondents

fully or partly agreeing with a set of proposed areas for revision of the policy, distinguishing between enterprises engaged in production activities and all other sectors. The salient results can be summarised as follows:

- with only a couple of exceptions, most of the proposed revisions were assessed positively by a majority of the respondents, irrespective of the sector of activity. The ranking order of the shares in two groups of respondents is similar, with improvement of the monitoring system on the whole, and price levels specifically, encountering the highest degree of support in both groups;
- local producers are more interested in improving the flexibility of the system, making modifications of the tax-supported product lists and the tax differentials applied more frequent and easier. In this regard, several enterprises specified that this flexibility is needed to better meet evolving needs, but should not translate into too frequent changes of the rates by local authorities, which would undermine the stability and predictability of the markets;
- conversely, non-producers expressed a more favourable view compared to producers of the possibility of adopting measures to mitigate obstacles to trade with regional neighbours caused by the dock dues. On this point, various stakeholders highlighted the need to consider other obstacles to trade with neighbouring countries, and not only those created by the dock dues;
- views on the turnover threshold for the applicability of the dock dues, currently set at EUR 300 000 annually, varied somewhat. A majority of respondents in both groups would be in favour of increasing the threshold, but a non-negligible share of non-producers would support a reduction;
- both groups substantially agree on the need for more transparent and clear criteria both for selecting the supported products and for establishing the applicable rates. From the perspective of non-producers, improved and transparent criteria should ensure that products for which no local production exists are excluded from the special regime.

**Table A2.7 – Stakeholders’ attitude toward proposed revisions of the dock dues regime**

Proposed Revisions	% of respondents agreeing with		
	Total	Non-producers	Producers
It should be possible to amend the list of products with differentiated dock dues rates more frequently and easily	69%	61%	81%
It should be possible to modify the permitted differential between external and internal dock dues rates more frequently and easily	67%	61%	75%
The criteria for updating the list of products with differentiated dock dues rates should be clearly and precisely laid down in EU policy	65%	62%	70%
The criteria for modifying the differentiated dock dues rates should be clearly and precisely laid down in EU policy	63%	61%	68%
The dock dues monitoring system should be improved, with the regular collection of market data on local production, import, employment, etc.	80%	83%	75%
The price levels of products imported and locally produced subject to dock dues should be periodically monitored	77%	76%	78%
The current dock dues exemption threshold for local producers – i.e. EUR 300 000 of annual turnover – should be raised, to lower the number of enterprises subject to the dock dues	60%	60%	61%
The current dock dues exemption threshold for local producers – i.e. EUR 300 000 of annual turnover – should be lowered, to increase the number of enterprises subject to the dock dues	25%	35%	9%
Measures to mitigate dock dues-related obstacles to trade with neighbouring countries should be devised	62%	70%	49%
Dock dues exemptions on the import of production inputs should be extended	60%	58%	64%

**Source:** Business Survey.

Additional suggestions were occasionally made by stakeholders: (a) to better invest the tax revenues collected in the development of local production activities; (b) to harmonise the tax base between external and internal dock dues, as the former currently include freight costs and the other production taxes paid on the mainland (e.g. the *éco-contribution* payable on certain production); and (c) to address the tax circumvention problem caused by e-commerce.

## ANNEX 3: ANALYTICAL METHODS

### 1. Datasets

The study required a robust foundation of quantitative data and statistics, and several datasets have been collected and gathered from a variety of sources. Publicly available data specifically regarding the ORs and the sectors benefiting from special regimes were limited, so to a large extent the raw data used in the study have been provided directly by the competent authorities (i.e. customs and tax administrations, statistical institutes, local governments etc.) and by the Commission.

Despite efforts, several data gaps and inconsistencies remained, inevitably affecting the significance of the quantitative analysis. Such limitations concerned, in particular: (a) the limited availability of local production data (at the level of disaggregation required); (b) the data gaps on actual dock dues rates (particularly internal rates before 2015); (c) the difficult matching between product data based on customs classification and on NACE classification; (d) the limited availability of monitoring data on the other aid measures implemented in the ORs; and (e) the unavailability of cost-price data. The data gaps concerned primarily the early period of implementation of the special regime, while in recent years the amount and the quality of the data collected at local level have largely improved.

The types of data collected for the study are summarised in the table below:

**Table A3.1 – Type of data collected**

1.1.1 Analytical areas	1.1.2 Datasets
1.1.3 Policy implementation 1.1.4	<ul style="list-style-type: none"> <li>• Data on permitted dock dues differentials</li> <li>• Data on actual dock dues differentials</li> <li>• Data on fiscal revenues</li> </ul>
1.1.5 Additional costs 1.1.6	<ul style="list-style-type: none"> <li>• Input-output data at ORs and mainland level</li> <li>• Micro-data from regional level estimates/product ‘fiches’</li> </ul>
1.1.7 Trade and market impacts 1.1.8	<ul style="list-style-type: none"> <li>• Data on imports, by product/origin</li> <li>• Data on local production, by product/sector</li> <li>• Other ‘control’ data for gravity modelling (distance etc.)</li> </ul>
1.1.9 Macroeconomic impacts 1.1.10	<ul style="list-style-type: none"> <li>• Macroeconomic data on employment</li> <li>• Macroeconomic data on industrial added value</li> <li>• Data on price levels</li> </ul>

### 2. Quantitative data methods

The raw data collected were gathered in a comprehensive database and assessed using quantitative methodologies in order to determine the impacts of special tax regimes on competitiveness, market, trade flows and tax revenues (including foregone revenues). As discussed above, the datasets presented issues of completeness and/or consistency that affected the robustness of the results. In such circumstances, the study findings were

integrated and supplemented with the qualitative evidence collected from the stakeholder consultation.

A summary of the approach adopted for the quantitative analysis is provided below, while a detailed technical description of the methods and models used, as well as the full results, are provided in subsequent sections.

***Review of policy implementation.*** The analysis focused on tax revenues from collected dock dues, broken down by external (on imports) and internal (on local production) tax receipts, as well as on the estimation of the ‘foregone’ dock dues revenue (i.e. tax not collected due to exemptions/reductions).

- The ‘collected revenues’ data were provided for most products/years by customs authorities or other competent authorities. When not available, the revenues were estimated by applying the relevant tax rate to the tax base, i.e. the value of imports or local production.
- For the ‘foregone dock dues revenue’, the official estimates were triangulated by calculating the amount of exemptions at product level (multiplying the value of local production by the corresponding tax differential applied) and aggregating the results.

***Analysis of additional costs and competitiveness.*** Additional costs provided at micro level (i.e. in product *fiches* or reports) were first triangulated using input/output tables available for the ORs<sup>79</sup>. The matching disclosed disparities in both the total additional costs for a given sector but also in the distribution of the cost factors (i.e. transports, labour, energy, etc.). The compiled and systematised micro-data were then used to assess how much of these costs were compensated by dock dues differential rates (with reference to the value of ‘foregone revenues’). This analysis was done at product level as well as at aggregated level.

***Analysis of trade and market impact.*** Using two separate models, imports and local production were modelled as a function of the actual dock dues differential rates and of the internal dock dues rates. The main difficulty consisted in the comparability of the value of local production and imports for different products. To overcome this difficulty, three measures were adopted: (i) using the logarithm of variables so that impact of dock dues differential was expressed in percentage terms, (ii) aggregating the products (dependent variable) at the 4-digit CN level, and (iii) applying individual fixed effects for each 4-digit CN level product.

- The impact on trade is estimated based on gravity modelling of imports of products (CN4 level) between ORs and other countries (including mainland). In addition to

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<sup>79</sup> In input-output tables, payments made by a sector to other sectors (for example agricultural products, energy, water, transportation) and to production factors (for example labour, capital, land) are valued for a given year, in effect providing its cost structure. The resulting estimates of additional costs for each sector can therefore be compared with estimated additional costs based on micro-level data used in the French ORs.

dock dues rates, other variables including economic weight and distance of the trading partners are used as explanatory variables to predict trade flows.

- The impact on local production was estimated based on data panel modelling. To overcome the data gaps, only products (CN4 level) for which comprehensive data on local production were available were considered.

*Analysis of macroeconomic impacts.* The impact on added value and employment of dock dues differential rates were estimated by extrapolation of the impact on local production. For each economic branch, ratios of added value over local production and employment over local production are estimated using data from economic accounts. The impact on added value and employment are then derived from the impact on local production, assuming that these ratios are constant. Finally, to estimate the impact of dock dues on retail prices, it was assumed that the tax paid was fully passed on to consumers. Then, the tax receipts – increased by retailer margins – were related to household expenditure to derive an index of the maximum additional price borne by final consumers. The results were triangulated with the official price index statistics in the ORs compiled by national statistical institutes as well as with other literature sources.



## ANNEX 4: EVALUATION

The scope of the evaluation is a retrospective assessment of the derogation during 2014-2019. The evaluation assesses the performance of the Council decision against the basic evaluation criteria of relevance, effectiveness, efficiency, coherence and EU added value, in line with the better regulation guidelines. The evaluation is based on the external ‘back-to-back’ study with an evaluation and forward-looking assessment of the Decision carried out simultaneously in accordance with better regulation guidelines.

### 1. Coherence

The dock dues special regime is part of the overall EU strategic approach for ORs, and its coherence is mainly ensured by the substantial alignment of its objectives with the broad EU strategic framework. In particular, the dock dues regime addresses two interrelated objectives of the 2017 Communication on a stronger and renewed strategic partnership with the EU outermost regions:

- **‘Building on the ORs’ assets’** is the first objective of the 2017 Communication. The dock dues system fosters this objective by promoting and sustaining local production activities, which, in turn, helps attract investment, building capacity and skills and reducing dependence on the mainland.
- **‘Enabling growth and job creation’** remains a central objective of the strategy. The Communication aimed to promote the diversification of local economies and, in particular, foster activities with high value added and job creation potential.

The third aspect of the EU Communication consists of scaling up ORs’ cooperation with their neighbourhood, through policy dialogue, territorial cooperation programmes, trade agreements, etc. The dock dues regime is not contributing to this goal; on regional trade, it may in fact constitute an obstacle to greater integration. This is an inevitable effect due to the nature of the scheme and to its underlying rationale. The claimed obstacles to regional trade form the basis of formal complaints formulated by EU trade partners.

**EU policy for the ORs includes a number of other measures for ORs** financed partially under the European structural and investment funds (ESIF) and/or through a series of specific regional State aid measures. The study notes that various other measures address the same targets as the dock dues regime. At a general level, these measures are coherent with the objective of dock dues, that of strengthening the competitiveness of local producers in the manufacturing sector as well as agriculture and fisheries. Various measures also aim to reduce the labour-related costs of firms based in the French ORs. At enterprise level, administrative procedures are in place to avoid the risk of cumulation leading to an excess of compensation, while at macro level it has been verified that the sum of dock dues and of the other compensation schemes does not exceed the estimated additional costs caused by structural constraints (some 40-45% of the estimated additional costs are compensated overall). Overlap is minimised and overcompensation, if any, is limited.

Most of these schemes are part of the EU's general strategic approach towards the EU ORs. Progress towards implementing this strategic approach is monitored regularly. This process allows coordination at a general level.

Conversely, there is limited operational-level coordination or mechanisms to ensure coherence in the implementation of the different schemes, maximising synergies and preventing duplication of efforts or, possibly, mutually conflicting interventions.

The dock dues regime constitutes an evident derogation from EU policy on internal markets and competition, whose legal basis is firmly anchored in Article 349 TFEU. The differentiated rates regime constitutes regional State aid and is, therefore, subject to the relevant EU legislation and controls. The dock dues State aid policy contains the explicit request to ensure continuous and accurate monitoring and quantification of the additional costs covered by the scheme to avoid the risk of overcompensation.

The compatibility of dock dues from a State aid perspective has been verified and showed that the differential applied remains below the estimated additional costs.

*As concerns external trade*, the EU general approach for ORs pursues two main objectives: (a) strengthening the integration of ORs in their regional neighbourhood, and (b) taking into account the OR's interest in trade agreements negotiated by the EU to avoid adverse effects on the local economy.

In the case of dock dues, these two objectives are difficult to reconcile, and the regime has been criticised repeatedly by CARIFORUM countries and by certain Eastern and Southern African (ESA) countries, which claimed that dock dues are contrary to the spirit of the Economic Partnership Agreement (EPA) these countries have signed with the EU. Beyond legal considerations – the dock dues are formally recognised and accepted by the EPA – and economic motives supporting the existence and maintenance of the dock dues in the ORs, the results of regional trade data analysis highlight that dock dues differentials have moderate impact on the value of French ORs' imports from CARIFORUM and ESA countries and that a hypothetical complete removal of the dock dues would benefit primarily exporters from the EU and third countries other than CARIFORUM and ESA.

- *The trade flows from CARIFORUM* countries to the relevant French ORs (Martinique, Guadeloupe, and French Guiana) did not substantially differ from the export trends from CARIFORUM to the EU. The import share from CARIFORUM is approximately 1% of the total, which is comparable to intra-CARIFORUM trade (approx. 2.7%<sup>80</sup>).

CARIFORUM laid down a list of 48 products that its member countries would be interested in exporting to French ORs and for which the dock dues regime is considered an obstacle. The incidence of dock dues differentials on the import value of these products is roughly 10%, i.e. around EUR 7.8 million for the overall 2011-2018 period

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<sup>80</sup> The study analysed the intra-regional import value for the eight main CARIFORUM economies, based on UN Comtrade data, and compared it with the total imports in these countries. The results indicate that the share of CARIFORUM imports originating in the CARIFORUM region amounts to 2.7% of the total.

(based on 2018 rates). However, this estimate may be inflated as it does not consider the exemptions for production inputs that can be laid down by each OR (*exonérations des intrants*).

The study assessed the general impact of the dock dues on imports by carrying out a simulation of the effects of removing dock dues differentials from the listed products, as demanded by CARIFORUM. The removal of dock dues differentials may lead to a 9.9% increase in the imports of listed products. In monetary terms, imports from CARIFORUM would increase by approximately EUR 1 million/year, while imports from other countries (including the mainland) would increase by an estimated EUR 11.3 million. In other words, in the absence of evidence of differentiated effects across regions, CARIFORUM would benefit from less than a tenth of the export opportunities created by the removal of the dock dues differential from the listed products. Compared to the current levels, the growth in CARIFORUM total exports to French ORs would amount to a small +1.7%.

**Table A4.1 – Simulation of the effects of removing dock dues differentials from the panel of products in CARIFORUM’s list**

	Imports from CARIFORUM (2018)	Imports from all other origins (2018)	Average dock dues differential applied to the product panel	Coefficient of variation of imports associated with dock dues differentials	Theoretical increase in imports from removal of dock dues differentials
Baseline	EUR 10.2 million	EUR 113.7 million	10.3%	-0.917	+9.9%
Removal of dock dues differentials	+ EUR 1.0 million	+ EUR 11.3 million	0%		

**Source:** the study

These results do not cover the effects on local production in the ORs, but considering that it currently amounts to EUR 6.7 million – primarily cement, rum, water and, to a lesser extent, flour – an increase in imports worth EUR 12.3 million may re-size internal production activities significantly.

However, the increase of imports from CARIFORUM in the French ORs could not be compensated by new opportunities offered by a reduction of trade barriers on CARIFORUM’s side, as part of EPA implementation. Based on the analysis of CARIFORUM’s Market Access Offer, there are some 339 goods internally produced in at least one French OR for which an analysis of trade conditions is worthwhile. Potential benefits would concern only 15% of the products considered (around 50). For these products, the average tariff reduction envisaged is 6.6%. In other words, no change in the current situation is envisaged under the Market Access Offer for the majority of the products of potential interest for French ORs.

- Some of the considerations concerning bilateral trade and EPA in the CARIFORUM region apply also to trade with the five signatories of the interim EPA with the EU in the ESA region, namely Comoros, Madagascar, Mauritius, the Seychelles and Zimbabwe. The total imports in the French ORs considered amounted to more than EUR 5.6 billion in 2016-2018. The import share from

these countries is approximately 1.3% of the total, which is comparable to intra-CARIFORUM trade (about 3%)<sup>81</sup>.

Mauritius laid down a list of 46 products for which a request for removal of the dock dues was made. The incidence of dock dues differentials on the import value of these products is roughly 9.3%, i.e. some EUR 6.9 million for the overall 2011-2018 period. However, this estimate may be inflated as it does not consider the exemptions for production inputs that can be laid down by each OR (*exonérations des intrants*).

The study assessed the general impact of the dock dues on imports by carrying out a simulation of the effects of removing dock dues differentials from the listed products, as demanded by Mauritius. The removal of the dock dues differentials may lead to a 8.9% increase in the imports of listed products. In monetary terms, imports from ESA would increase by some EUR 1.1 million a year, while imports from other countries (including the mainland) would increase by an estimated EUR 11.4 million. In other words, in the absence of evidence of differentiated effects across regions, ESA countries would benefit from a tenth of the export opportunities created by the removal of the dock dues differential from the listed products. Compared to the current levels, the growth in ESA total exports to French ORs would amount to a small +1.5%.

**Table A4.2 – Simulation of the effects of removing dock dues differentials from the panel of products in the list submitted by Mauritius**

1.1.11	1.1.12	Imports from ESA (2018)	1.1.13	Imports from all other origins (2018)	1.1.14	Average dock dues differential applied to the product panel	1.1.15	Coefficient of variation of imports associated with dock dues differentials	1.1.16	Theoretical increase in imports from removal of dock dues differentials	
1.1.17	Baseline	1.1.18	EUR 12.7 million	1.1.19	EUR 128.6 million	1.1.20	9.3%	1.1.21	-0.917	1.1.22	+8.9%
1.1.23	Removal of dock dues differentials	1.1.24	+ EUR 1.1 million	1.1.25	+ EUR 11.4 million	1.1.26	0%	1.1.27		1.1.28	

**Source:** the study

The results of the model do not cover the effects on local production in the ORs, but considering that it possibly amounts to EUR 58.9 million in 2016 – of which 94% referring to Réunion – an increase in imports worth EUR 12.5 million may have a

<sup>81</sup> For a benchmarking of this figure, the intra-regional imports value for the four main trade partners of French ORs was examined: Mauritius, Comoros, Madagascar and the Seychelles, based on UN Comtrade data, and compared it with total imports in these countries. The data show that, overall, internal trade within the four ESA countries amounts to around 3.0% of their total imports.

tangible impact on internal production activities (some 20% of internal production might be possibly substituted).

## 2. Relevance

The study also evaluates whether the criteria used to select the product for reductions or exemptions to dock dues are still relevant compared to the general needs of all stakeholders.

The study found that:

- for the majority of the dock dues products, local production accounted for a minority share of the market. In all ORs, the median value of the market share distribution fell in the 32%-37% range, except French Guiana, where it is 21%;
- local products with less than 20% of market share accounted for some 40% of the dock dues lists, on average, while local products with less than 5% of the market account for around 20% (slightly higher in French Guiana and lower in Mayotte);
- less than 20% of products in the dock dues lists held more than 80% of the respective markets; for some 6.5% of them, the market share exceeded 95%;
- for nearly half of products examined (44%), market share was in the range 20%-80%.

The above data indicate that there are cases where the market share criteria may not be sufficient to justify the inclusion of certain products in the dock dues list, since local production is either marginal or local producers are in a largely dominant position. The strategic value of certain production may certainly justify derogating from the 'market share' criterion, but the absence of explicit and transparent rules has seemingly fuelled distrust among certain economic operators on how the special regime is implemented.

The results of the stakeholder consultation found that the scope of the dock dues regime is fairly comprehensive, and satisfactorily addresses the needs of the economic operators concerned. However, it suggests that there are some gaps in the scope of the dock dues, with half of the local producers involved in the survey maintaining that there are products that should be added to the dock dues list. This is due to the lack of flexibility in the revision process of the lists, which makes it difficult to give a timely response to emerging needs in the local economy and – where relevant – to correct errors and omissions.

However, the main reported issue regards the application of tax differentials to products for which it is claimed that there is no 'equivalent' local production. The issue is generally connected to certain CN categories that include heterogeneous products of which only some are produced locally.

Furthermore, local producers with an annual turnover below EUR 300 000 fall outside the scope of the dock dues, and no reporting is required. Before 2014, all the firms were in

scope of the regime, but firms with a turnover below EUR 550 000 were exempted<sup>82</sup>. This reform was criticised as it mainly affected small firms and artisans poorly equipped to deal with the ensuing increase in administrative charges.

### 3. Effectiveness

The effectiveness of the dock dues regime was evaluated by assessing the extent to which the regime supported industry.

The dock dues regime aims to reduce the competitiveness gap between local products and imports from ‘mainland’ France or the EU which is caused by additional production costs.

Quantitative assessments of such additional costs are carried out periodically<sup>83</sup>. However, the exercise remains subject to intrinsic methodological limitations<sup>84</sup> and thus estimates have to be made with due caution.

The latest assessment was completed in 2016 and estimated the total additional costs in French ORs at EUR 4.51 billion, of which EUR 1.76 billion was attributable to sectors supported by dock dues (manufacturing and the primary sector). Furthermore, additional cost assessments have been regularly carried out at product level to justify the differential treatment and establish the appropriate tax rates. From the analysis of these ‘product *fiches*’, it emerges that bulk of the additional costs (approximately 83% on average) is generated by four cost factors, registered in all French ORs:

- additional costs of input (including freight costs and higher prices due to limited bargaining power);
- diseconomies of scale affecting both the depreciation and idle production capacity of equipment and reduced productivity of labour;
- the need for larger stocks, requiring extra storage capacity
- increasing financial costs.

Overall, despite the variability described, the average estimate of additional costs is fairly consistent across regions, amounting on average to 27% of the enterprise turnover. The only exception is represented by Mayotte, where the average additional costs amount to approximately 44%.

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<sup>82</sup> There was, however, an administrative obligation for exempted firms to nonetheless fill in and submit tax declarations.

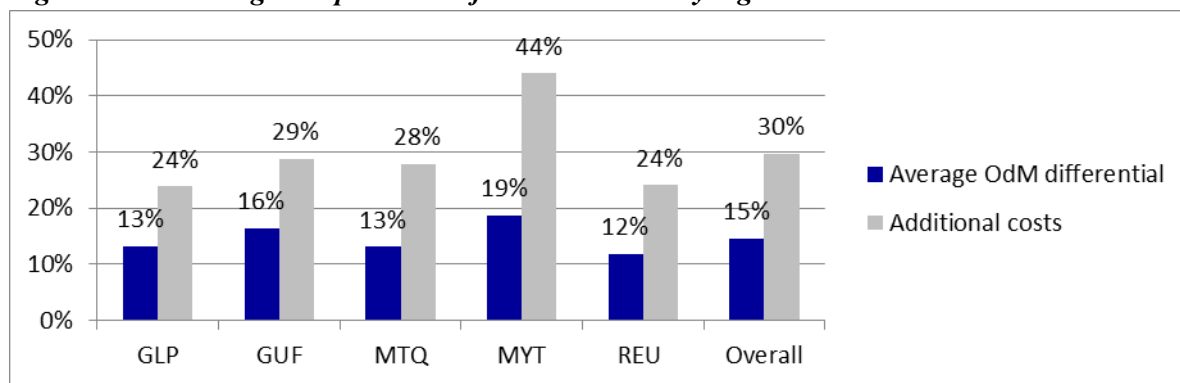
<sup>83</sup> The methodology developed in the study prepared for the European Commission, ‘*Etude sur l’identification et l’estimation des effets quantifiables des handicaps spécifiques propres aux régions ultrapériphériques ainsi que des mesures applicables pour réduire ces handicaps*’, Louis Lengrand & Associés and Université Libre de Bruxelles, January 2006, has remained the main reference for other studies.

<sup>84</sup> Additional costs are defined in relative terms, i.e. with respect to the production costs on mainland. However, the structure of market and competition in French ORs and in mainland France are radically different, as is the production structure. A large player in the ORs would be considered small on the mainland, and while in the ORs industries are required to adopt multi-product strategies to serve their market, mainland enterprises increasingly move toward extreme specialisation. In this sense, it is not clear which comparators should be selected and under which conditions, to ensure the validity of the comparison exercise.

However, there is variability in the assessments that seems unrelated to regional specificities but rather is connected to methodological incongruences and the inevitable subjectivity of business' own estimates. The validity of 'product fiches' for policy purposes should not be overestimated, therefore.

The tax differential typically compensates only a portion of the estimated additional costs, i.e. around half, with limited differences across ORs, as seen in Figure A4.1 below.

**Figure A4.1 – Average compensation of additional costs by region**



*Source: the present study.*

*Notes: the year of the additional cost estimation and of the dock dues differential applied do not always coincide.*

The extent of the compensation roughly corresponds to the amount of tax revenue collected on the dock dues-supported products. Thus, the analysis largely confirms the above estimates, showing that the **overall extent of the compensation of additional costs would amount to around 49%** on average.

Finally, we have examined the correlation that might exist between the tax differentials and the estimated additional costs to verify whether the extent of the support is proportionate to need. As Table A4.1 shows, such correlation is moderate in all French ORs (approximately 0.45-0.55) except Martinique, where no correlation can be found. The coefficient is stronger when the correlation is made with the maximum permitted differentials.

**Table A4.3 - Correlation between additional costs and tax differentials applied to dock dues products in French ORs**

1.2	1.3 GUF	1.4 GLP	1.5 MTQ	1.6 MYT	1.7 REU
1.8 Correlation Coefficient - actual dock dues differential	1.9 0.41	1.10 0.47	1.11 0.02	1.12 0.51	1.13 0.53
1.14 Correlation Coefficient - permitted dock dues differential	1.15 0.58	1.16 0.55	1.17 0.11	1.18 0.75	1.19 0.58

*Source: the study.*

*Notes: based on a sample of 544 products for which sufficient data were available.*

With some exceptions, the tax differentials applied were fairly proportionate to the additional costs declared for specific products.

### ***Impact of dock dues on price competitiveness***

The results of the quantitative data analysis suggest that in the absence of the dock dues support, ***performance of the local production*** sectors would have been significantly worse. About 42% of the value of dock dues-supported products (around EUR 975 million) was theoretically enabled by the tax differential mechanism. This had positive repercussions on ***employment***, which registered an increase of 3-9% in the dock dues sectors from 2014, in contrast to a decline in the non-dock dues industries, and on the ***number of active enterprises***, which grew by approximately 1.7% in the same period, in contrast to an overall decline of 3%.

Those findings are confirmed by the stakeholder consultation, which highlighted the ***importance of the dock dues for their competitiveness*** among local economic operators, even though the price gap between their products and imported ones is not fully closed.

However, the value of ***imports of products*** subject to the dock dues differential regime increased by approximately 16% between 2014 and 2018, while in the same period local production grew by less than 8%<sup>85</sup>. The ***market share of local products*** has declined over time. The same trend is registered in all ORs, but possibly less marked in Martinique because of comparatively more stagnant import levels. Based on the available data, the average market share of dock dues-supported local products declined from 49% to 36% in 2018, but figures should be taken with some caution because of discontinuities in the data series available. The results of the survey are substantially consistent with the above trends.

There is no evidence of benefits in the total value of investments and the diversification of production. In efficiency terms, the performance of the special regime is fairly positive with a 1:2.5 ratio between the ‘cost’ of the measure (the foregone tax revenue) and the additional local production it possibly enables.

The aggregated value of local production activities in French ORs has been growing at a moderate pace in the period examined in this study. Between 2006 and 2014, the value of production (at current prices) registered an annual average growth ranging from 1.7% in the Antilles to 3.9% in French Guiana.

- The aggregated turnover of the manufacturing sector – that is the sector mostly supported by the dock dues regime – generally registered lower growth rates than the overall OR economy. The global financial crisis caused a drop in the value of local production and, with few exceptions, by 2014 it had not yet returned to the pre-crisis levels. This is especially the case with agri-food industries, while the other industrial branches registered a faster recovery, particularly in Guadeloupe.

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<sup>85</sup> Based on the trends registered in French Guiana, Martinique and Guadeloupe on a sample of products for which time series were available.

- The primary sector was lightly hit by the effects of the global crisis, but its performance varies significantly across ORs: agricultural activities performed better than the average in Martinique and French Guiana due to the growth of the banana and forestry branches. Fisheries and aquaculture registered good growth rates in Réunion and Guadeloupe. All these activities have been supported by dock dues, but also by other aid schemes, so only part of this impact can be attributed to dock dues.
- The other sectors examined, i.e. trade, construction and accommodation and food activities generally performed worse than the overall OR economy, with the notable exception of construction in French Guiana and accommodation and food in Réunion. These sectors are not supported by dock dues – on the contrary, they can be affected by them – but the analysis of trends show that, after the drop in 2009 due to the global crisis, their growth index evolved similarly or more positively than manufacturing activities supported by dock dues.

#### 4. EU added value

##### *The benefits for the local economy*

The baseline assumption made by the majority of local producers consulted is that without dock dues it would not be possible to maintain industrial activities in French ORs able to compete with external products.

The dock dues regime is mainly viewed as a tool for preventing and mitigating the decline and disappearance of local industry rather than a development tool.

The quantitative model suggests that an increase in the tax differential of one percentage point is correlated with an increase of 3.28% in production value.

If the above estimate is applied to the overall value of production of the goods concerned, the ‘virtual’ effects of dock dues can be associated with some 37% of the value of local production of the supported goods, i.e. approximately **EUR 850 million**<sup>86</sup>. The monetary magnitude of impacts evidently varies with the intensity of aid (i.e. the tax differential). So, for instance, the impact on the primary sector is much higher in French Guiana, where the average differential for this sector is 26%, as compared to Réunion, where it is only 5%.

##### *Impact on import substitution*

One criterion to measure the impact on imports is the extent of their substitution with locally manufactured products.

The total value of imports in the French ORs registered mild growth in recent years, more marked in Réunion and Guadeloupe while slightly lower in Martinique. Despite the differential tax regime, the import of products supported by dock dues has been growing at a faster pace than total imports, i.e. 3.7% year-on-year against 1.6% (2014-2018). This

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<sup>86</sup> Based on 2016 production data.

effect is registered in all ORs except Guadeloupe, where the growth rate has been the same. This suggests that, at aggregated level, the dock dues differentials are unlikely to disrupt the import flows of the products concerned.

At product level, the impact may differ, but the market share of dock dues-supported local products vis-à-vis imports has fallen over time for the majority of products considered (i.e. 62% of three ORs' sample). Thus, the *substitution of local products with imported ones* was more frequent than the opposite. In only a few cases was the import market share reduction significant (i.e. greater than 25%), but it mostly concerned products with limited market value.

Overall, the results indicate that tax differentials do affect imports and, specifically, *a one percentage point increase in the tax differential is associated with a 0.92% decrease in imports*. However, the explanatory power of the model is fairly low, so other factors are at play. Based on this estimate, in the hypothetical scenario of removal of dock dues differentials, the value of import products could be some EUR 275 million greater than today.

### ***Integration in the EU and in the regional market***

The trade balance of all French ORs has slightly worsened over the past 5-6 years, mainly due to an increase in imports that is higher than that for exports. All regions are heavily dependent on trade with mainland France, whose contribution to total imports and exports increased in all regions, and especially in French Guiana. In 2018, imports from mainland France accounted for between 52% and 58% of total imports and between 32% and 49% of total exports of French ORs. At first look, therefore, it seems that the dock dues regime has not represented an obstacle to the commercial exchanges between French ORs and mainland France.

Conversely, commercial exchanges between French ORs and regional partners are rather limited compared to those with the EU, but some significant differences characterise different regional areas. In absolute terms, the inward and outward trade flows of Guadeloupe inside the Caribbean region increased in the 2013-2018 period. In the same period Martinique registered a fall in both imports from and exports to the Caribbean region. In relative terms, the intra-regional exchange has remained limited for both ORs and the trade deficit has remained substantial: in 2018 the export/import ratio amounted to 0.23 for Martinique and 0.11 for Guadeloupe. As for French Guiana, the value of regional exports massively declined in the past years, and accounted for less than 1% in the past year. This is essentially due to the fall of exports to Trinidad and Tobago following the slowdown of oil exploration activities off the coast of Guiana. Exports of Réunion and Mayotte with partners in the Indian Ocean region represent a relevant share of the total. However, this value also includes intra-OR trade. Imports from regional partners account for a small share of the total, given the prominence of imports from mainland, but in absolute terms they largely exceed exports: in 2018 the export/import ratio – excluding intra-OR exchanges – amounted to 0.69 for Réunion and 0.05 for Mayotte.

***Table A4.4 – External trade of French ORs, total and regional (in EUR million)***

	Guadeloupe		Martinique		French Guiana		Réunion		Mayotte	
	2013	2018	2013	2018	2013	2018	2013	2018	2013	2018
Total export	263	280	402	365	245	213	296	324	12	11
ACP Caribbean partners*/Indian Ocean region***	2	9	6	10	68	2	47	37	3.4	3.1
% of total exports	0.8%	3.2%	1.5%	2.7%	27.8%	0.9%	15.9%	11.4%	28.6%	29.2%
Non-ACP Caribbean partners**	1	8	4	5	0	0				
% of total exports	0.4%	2.9%	1.0%	1.4%	0.0%	0.0%				
Total import	2 731	2 939	2 730	2 718	1 545	1 530	4 426	5 051	479	572
ACP Caribbean partners/Indian Ocean region	78	80	55	43	37	18	52	47	26.2	32.5
% of total imports	2.9%	2.7%	2.0%	1.6%	2.4%	1.2%	1.2%	0.9%	5.5%	5.7%
Non-ACP Caribbean partners/Africa	138	62	47	44	15	19	168	133		
	5.1%	2.1%	1.7%	1.6%	1.0%	1.2%	3.8%	2.6%		

*Source: INSEE (and IEDOM annual reports for Mayotte)*

*Note: (\*) ACP Caribbean partners include Antigua and Barbuda, Bahamas, Barbados, Belize, Cuba, Dominica, Dominican Republic, Grenada, Guyana, Haiti, Jamaica, Saint Lucia, Saint Kitts and Nevis, St. Vincent and the Grenadines, Suriname, Trinidad and Tobago; (\*\*) Non-ACP Caribbean partners include the British and Dutch Overseas Territories and Countries of Anguilla, Aruba, British Virgin Islands, Cayman Islands, Montserrat, Turks and Caicos Islands, Netherlands Antilles; (\*\*\*) Indian Ocean region includes Comoros, Madagascar, Mauritius and the Seychelles, as well as the French ORs (Réunion and Mayotte).*

The results of the gravity model indicate that the dock dues special regime may **constrain the import of certain products** in French ORs and therefore can have an impact in reducing overall external trade. However, the magnitude of such effects seems limited, in particular:

- in the absence of dock dues, imports from the French mainland would increase by approximately 2% (EUR 189 million overall), ranging from 1.7% in Guadeloupe to 3.8% in Martinique;
- imports from the rest of the EU would increase by a minimum of 0.2% in Mayotte, up to 0.5% in Martinique (EUR 47 million, excluding France);
- as regards total imports from the CARIFORUM region by the three ORs in the region (Guadeloupe, Martinique and French Guiana) an overall increase of approximately EUR 3.0 million can be expected;
- finally, total imports from ESA countries by Réunion and Mayotte would increase by around EUR 2.6 million.

## 5. Efficiency

### *Administration and enforcement burden*

The implementation arrangements for the dock dues regime are not particularly complex, mainly consisting of a few administrative activities for the private sector, i.e. filling in quarterly and customs declarations and requesting a tax exemption for imported inputs. Likewise, competent authorities – customs and regional authorities – did not report that procedures are particularly complex or burdensome.

As regards the quantification of the administrative burden for local producers liable for the tax, estimates include all dock dues-related administrative activities, such as classification of the products and identification of the applicable rates, interacting with customs and tax authorities, and preparing quarterly declarations. Based on the survey replies, the staff time spent by these firms to deal with the management of the dock dues typically ranges from a few hours per year (i.e. about 1 working day per year) to one half or full working day per month (i.e. 6-10 working days per year). As a result, an average value of 4 working days per year can be estimated for a normally efficient firm. In 2018, the estimated annual cost amounted to about EUR 600 000.

The tax enforcement burden for local authorities arising from activities related to the dock dues special regime is also regarded as relatively small. For instance, in the case of Guadeloupe, supervision and administration of the dock dues is entrusted to the Directorate of Indirect Taxation, which comprises six staff (one director, one head of department, two instructors and two assistants). About 85% of the total staff working time in this Directorate concerns the dock dues. Still, the majority of the working time is dedicated to handling daily requests for tax exemption on production inputs, while the share of time specifically devoted to dealing with products with tax differentials is roughly estimated at about 15% of the total, primarily by the director and the head of department.

### ***The amendment of dock dues product lists***

In the past years the lists of products in the Annex to the Council Decision had to be revised and updated to respond to the evolving conditions of local markets and competition and/or to address incongruences and other issues. The process for updating the lists, however, is far from straightforward, as any revision requires a legal amendment of the Council Decision. This applies to both including/removing certain product categories in/from the lists, and moving certain product categories from one list to another. The process has to follow the ordinary procedure, with a significant investment of time and resources by national and EU administrations.

Overall, the revision process can last up to 3 years, and requires the involvement of several stakeholders.

### ***The monitoring arrangements***

EU policy requires that the benefits of the tax exemptions do not exceed what is necessary to compensate the additional costs faced by local production activities, and that the impact on price levels and the effects on local socio-economic development are monitored. A reporting obligation was introduced in the dock dues Decision precisely to this effect.

Accordingly, in 2017, the French authorities entrusted the preparation of an evaluation report on the implementation and impact of the dock dues to an external consultant, under the supervision of a steering committee. The process lasted about a year, during which the committee met approximately 4-5 times and about 10 additional technical meetings were held in parallel. The French authorities submitted the evaluation report<sup>87</sup> to the Commission in February 2018.

This report was followed by specific evaluation reports for each French OR, accompanied by requests to adapt the lists of products to which differentiated dock dues rates may apply. These reports broadly follow a common structure. However, the quantity and quality of information provided vary across regions. From a geographical point of view, the most significant information gaps are detected in the case of Mayotte, due to the fact that the arrangements came into effect only recently, and also that for Mayotte the availability of statistical data is in general more limited. In terms of content, the lack of information on price levels for products that are subject to differentiated taxation represents the largest gap in information.

The regional reports are essentially monitoring documents, providing a more or less detailed analysis of the development of local production and imports for the sectors, sub-sectors and/or product categories benefiting from a tax differential in 2014-2016. While the informative content of these reports is hardly in dispute, evaluations are extremely limited, and do not include any assessments of the extent to which the dock dues helped maintain or promote local production or of the impact of the tax on price levels.

As clearly stated in the Report to the Council<sup>88</sup>, there have been improvements overall but the utility of the monitoring system is still far from optimal: ‘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.’

According to the French authorities, there is indeed room to deepen the analysis of the impact of dock dues at both macro level (regional economy) and micro level (individual firm). However, they also stressed the severe challenges posed to this aim by the limited availability/reliability of statistical data as well as by tax confidentiality provisions, which restrict access to some relevant information.

### ***The budgetary impacts of dock dues***

The dock dues exemptions/reductions constitute a fiscal loss equal to the amount of tax not collected. However, one of the main rationales of the dock dues lies in its differentiated

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<sup>87</sup> Technopolis, *Evaluation de l’octroi de mer, Rapport Final*, 31.01.2018 (for the Ministry of the Overseas).

<sup>88</sup> COM(2018) 824 final.

rates regime. If tax differentials were not permitted, the dock dues regime would have no reason to remain in place, as its budgetary effect could also be obtained by a regional VAT. Thus, the foregone revenues linked to dock dues exemptions constitute a *virtual loss of revenue* for the regional authorities.

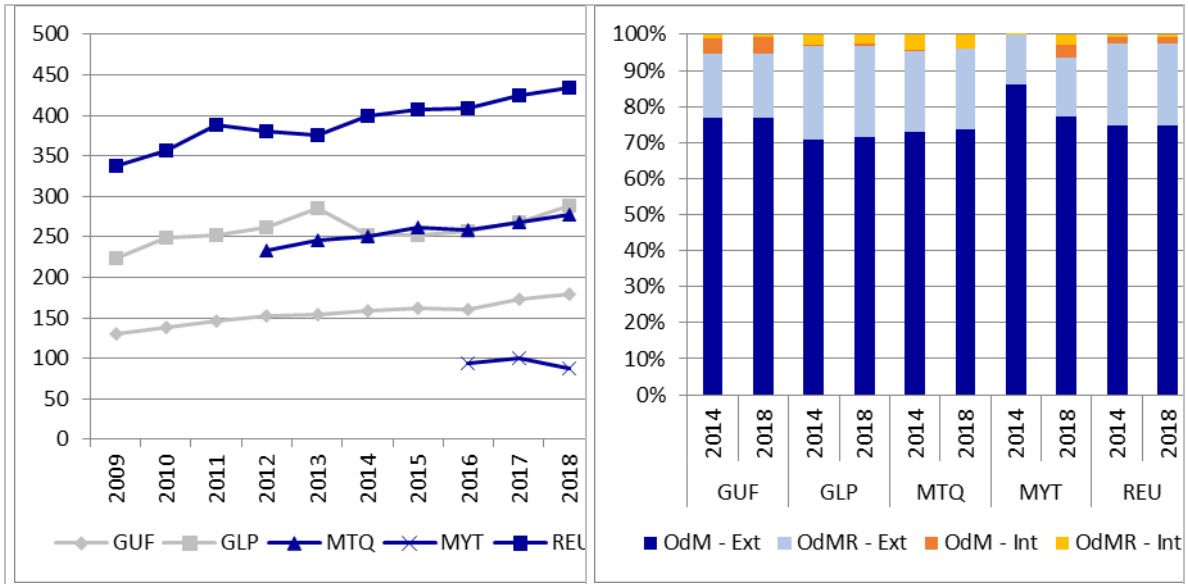
The *dock dues tax receipts* have been steadily rising over time in all ORs (except Mayotte in 2018) at a pace that in 2014-2018 ranged from 2.2% year-on-year (Réunion) to 3.7% (Guadeloupe). In all ORs the overwhelming majority of receipts are collected on imports, with the internal dock dues accounting for only between 2.5% (Réunion) and 5.5% (French Guiana) of the total. The regional component is comparatively higher in the Antilles ORs (between 26% and 29%) than in Mayotte or French Guiana (19%-20%).

Overall, the dock dues tax receipts have a non-negligible *impact on ORs' public budget*. In particular, in Mayotte and French Guiana, the total receipts account for approximately 4% of the regional GDP, in Guadeloupe and Martinique around 3%, and in Réunion about 2.3%.

The tax receipts data reported in Figure A 4.2 refer to the entire dock dues regime and not only the products subject to the differentiated rate regime. No official figures for this group of products are available, but they can be estimated based on the disaggregated product level data on import and local production. The tax receipts collected on the *products benefiting from tax differentials* account overall for 42% of total dock dues revenues, ranging from 48% in Réunion to 19% in Mayotte. Receipts from the internal dock dues are generally limited, amounting to 6% of the total receipts from supported products. In Réunion, where for most of the supported products the internal rate is zero, this component amounts to 1%, while in Martinique it represents a non-negligible share of 12%.

**Figure A4.2 – The trends and composition of dock dues tax receipts in French ORs**

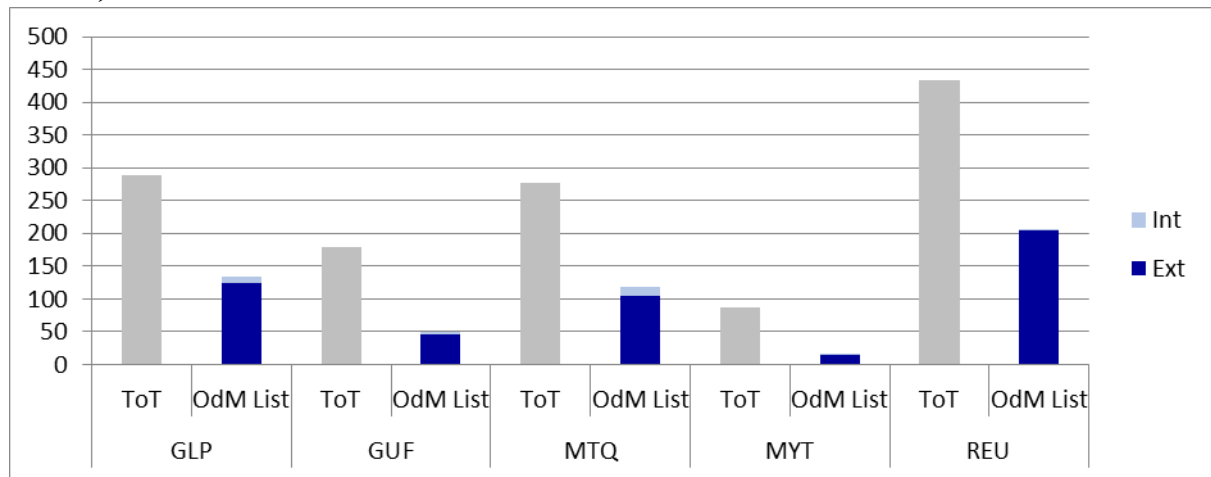
Trends in overall dock dues receipts (EUR million)	Share of the different components of dock dues receipts
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Source: the study.

Legend: OdMR = regional component of dock dues; Ext=external (tax on imports); Int=internal (tax on local production).

Figure A4.3 – Dock dues tax collected on products in the Decision list (2018, EUR million)



Source: the study.

Legend: OdM list = products listed in the Council Decision; Tot= receipts from all products; Ext=external dock dues; Int=internal dock dues.

The amount of foregone revenue is difficult to calculate precisely. An accurate estimation would require data on the market value of locally produced goods delivered internally (i.e. not exported), for all the products subject to a differentiated regime.

The different foregone revenue estimates that have been gathered are reported in Table A4.5 below. As comparing figures clearly shows, estimate variability is significant, and depending on the source, a rising or a declining trend can be identified. However, in terms of scale, the various estimates appear compatible.

Table A4.5 – The available estimates on the dock dues foregone revenue in French ORs

Indicator	Year	GLP	MTQ	GUF	REU	MYT	TOT
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<b>Dock dues evaluation 2018</b>	2016	53.1	90.3	25.3	120.4	12.3	<b>301.4</b>
<b>Regional monitoring reports</b>	2016	62.7	109.6				
	2014	53.8	102.1				
<b>State aid monitoring</b>	2017						<b>287.4</b>
	2014						<b>375.8</b>
<b>Study own estimation</b>	2018	64.1	111.6	12.5*	16.5*	6.4*	<b>211.1</b>
	2016	63.0	109.4	29.2	129.3	12.8	<b>343.7</b>

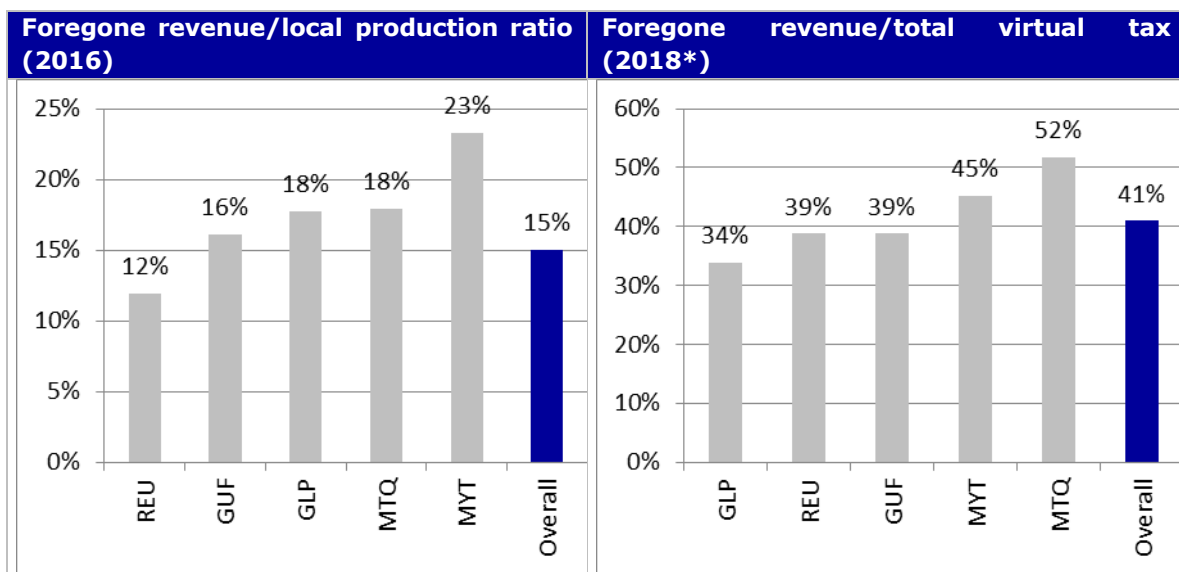
Source: the study, Technopolis 2018, dock dues regional monitoring reports (2018), DG COMP State aid register.

Note: (\*) underestimated figures due to missing information on the value of local production where the internal dock dues rate is zero.

The budgetary impact of foregone revenue has been assessed using two metrics:

- The first metric is the **ratio between foregone revenues and the value of local production**, which provides an indicator of the intensity of the measure. In 2016, the overall ratio for the five French ORs accounted for 15%, ranging from as low as 12% in Réunion (up to 23% in Mayotte)
- The second metric is the **balance between tax collected and not collected**. The results show that some 41% of the total ‘virtual’ tax is not collected, ranging from 34% in Guadeloupe to 52% in Martinique.

Figure A4.4 – The level of foregone revenue compared to local production value and total tax



Source: the study.

Note: (\*) In Figure B the data for REU, GUF, MYT actually refer to 2016.

### The efficiency of dock dues

How well the budgetary effects of the dock dues regime have converted into benefits remains very complex to quantify, due to the reported data validity limitations and the absence of a clear baseline for a counterfactual analysis. Still, results of the analysis conducted in the previous section allow for the elaboration of a general conversion index for the dock dues special regime. The index is calculated as the ratio between the additional

production virtually enabled by tax differentials and the cost of the special regime in terms of foregone tax revenues. As shown in Table 4.24 below, this ratio is 1:2.5, that is, one euro of foregone revenue can be roughly associated with 2.5 euro of local production.

Similarly, it is possible to estimate efficiency in terms of **employment**, by estimating the amount of foregone revenue associated with the number of jobs hypothetically enabled by dock dues differentials (i.e. based on the additional value added generated). As Table A4.6 shows, in this metric the efficiency of the scheme can be roughly estimated at less than EUR 80 000 per job<sup>89</sup>.

**Table A4.6 – Efficiency indexes of the dock dues regime**

<b>Dock dues foregone revenues</b>	<b>Production value associated with dock dues</b>	<b>Associated jobs</b>	<b>Monetary Ratio (conversion index)</b>	<b>EUR per job</b>
EUR 344 million	EUR 850 million	4 304	<b>1:2.5</b>	<b>79 925</b>

One of the possible ‘externalities’ of the dock dues regime concerns its repercussions on the retail price of consumer goods and, therefore, on the cost of living in the French ORs and the purchasing power of residents. According to survey results, the perception of a moderate or major impact prevails (72%) among respondents. As expected, this share further increases among traders and service businesses, reaching 94% of relevant respondents. In contrast, the majority of local producers denied the existence of a similar inflationary effect or assessed it as minimal. Still, a non-negligible share (36%) believes that the dock dues translate into higher consumer prices.

Notably, stakeholder perceptions seldom distinguish between the impact of the tax differential regime – which is the main subject of the EU policy – and the dock dues on the whole, i.e. including the numerous products not subject to tax differentials. Such a distinction is particularly relevant in the regions – especially the Antillean ORs – where a positive tax is also applied on a vast range of locally manufactured goods.

Secondly, in order to fully appreciate the impact of the special regime on final prices, it should be taken into account that the VAT applied in French ORs is much lower than in mainland France, so the inflationist effects of the dock dues are somewhat compensated by the lower VAT.

The French statistical institute INSEE carries out periodic analysis of **price levels in the ORs in comparison with the mainland**. The assessment is based on the price of similar baskets of goods, adjusted to reflect the different consumption patterns across ORs and vis-à-vis the mainland. The results of INSEE price gap assessment are reported in Table A4.7 and Figure A4.5 below. The specifics are set out below.

<sup>89</sup> There are no standard benchmarks for this metric, but for indicative purposes it is worth citing: (a) the CSES, ‘Study on measuring employment effects’, June 2006, which examined the impact of EU Structural Funds on employment, estimating the cost per job at EUR 36 000 on average; (b) the more recent evaluation of the ERDF and Cohesion Fund (2014), concluded that an overall investment of EUR 269.9 billion led to the creation of about 1 million jobs, i.e. a ratio of EUR 270 000 per job (see SWD(2016) 318 final)

- The comparative review of price levels conducted by INSEE confirms the existence of notable price differences between French ORs and mainland France<sup>90</sup>. For ORs' typical product basket, local prices are higher by 3%-7% (with the exception of Mayotte, where prices are lower). However, if related to the mainland's product basket the gap soars to 10% in Réunion and 17% in the Antillean ORs. The gap has apparently widened over time, especially in the Antillean ORs (but data are not fully comparable due to methodological changes).
- The gap is primarily caused by food products, which are about 30% more expensive in the ORs than in the mainland. Notable differences are registered also for communications services (+28%) and for alcoholic beverages and tobacco products, but with different patterns across ORs (very large gap in Mayotte, nearly no gap in French Guiana).
- The comparison with previous estimates processed by INSEE, although based on a methodology which is not fully comparable, suggests that the price gap has not gone down over time. On the contrary, it may have grown, especially in the Antillean ORs.
- The only area where ORs' prices are lower than on the mainland is transports (-2.4% on average).

**Table A4.7 – Estimated price level difference between ORs and the mainland (INSEE, data in %)**

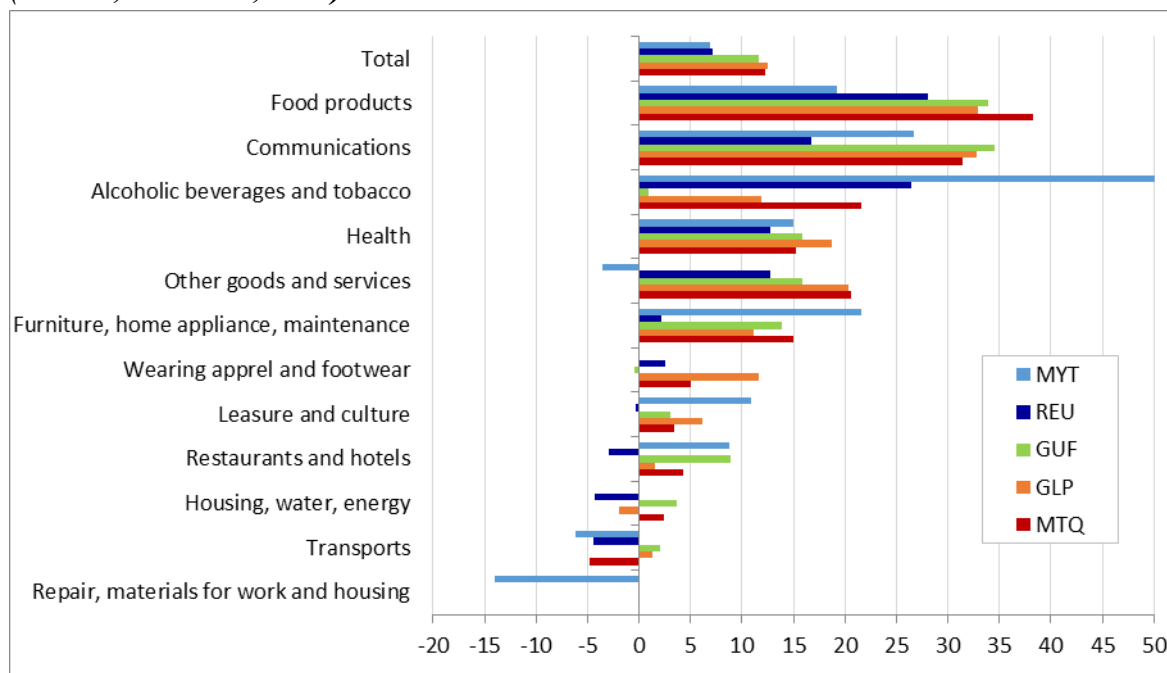
	Estimated gap based on mainland's product basket*			Estimated gap based on OR's product basket**		Average gap***
	1992	2010	2015	2010	2015	2015
Martinique	8.4	16.9	17.1	-2.9	-7.1	12.3
Guadeloupe	10.0	14.8	17.0	-2.2	-7.5	12.5
French Guiana	20.5	19.6	16.2	-6.4	-6.8	11.6
Réunion	15.6	12.4	10.6	-0.4	-3.6	7.1
Mayotte	-	-	16.7	-	2.0	6.9

**Source:** INSEE spatial comparison survey on consumer price levels

**Notes:** (\*) variation in the consumption budget of a mainland household that would live in the OR while maintaining its mainland consumption habits. (\*\*) variation in the cost of the basket of consumption of an OR household if it bought its products at prices charged in the French mainland. (\*\*\*) geometric average (based on Fisher price index). The methodology was refined over time, so estimates from different years are not fully comparable. For certain items, data for Mayotte are unavailable, so the comparison should be taken with greater caution.

<sup>90</sup> INSEE Première N°1589, Avril 2016.

**Figure A4.5 – Price level difference between ORs and the mainland, by main items (INSEE, data in %, 2015)**



**Source:** INSEE spatial comparison survey on consumer price levels

**Notes:** The figures displayed are the geometric average (Fisher price index) of the two estimation methods shown in Table A4.5. The item classification for Mayotte partly differs from the classification used for the other ORs.

There is an intense debate in France on the **underlying causes of high consumer price levels** in the ORs<sup>91</sup>. In his intervention to a recent conference on the cost of living in the ORs organised by the French Ministry of the Overseas<sup>92</sup>, the Director of CEMOI<sup>93</sup>, Professor J.F. Hoarau, highlighted the essentially structural features of the problem, in particular<sup>94</sup>:

- the lack of competitiveness of local enterprises, due not only to the additional costs of operating in the ORs, but also to the limited room for productivity gain caused by the regulatory framework, which imposes the same salaries and conditions as on mainland;
- the oligopolistic structure of the OR markets, which inevitably results in higher prices.

In this context, the dock dues – beside their direct effect on price – may still exacerbate the situation as they encourage rent-seeking practices among local players in dominant positions, and the possible alignment of the price of imported products with the level of more expensive local products.

<sup>91</sup> For an overview of the debate see: Christian Montet, Florent Venayre. ‘La loi REOM contre la vie chère en outre-mer: Une construction difficile entre concurrence et administration des prix.’ Revue Lamy de la Concurrence, Editions Lamy/Wolters Kluwer, 2013, 35 (Avril-Juin), pp.131-140.

<sup>92</sup> Rencontre - Lutter contre la vie chère en outre-mer : Enjeux et perspectives, 12 December 2019. The conference involved, among others, the Observatoire des prix, des marges et des revenus (OPMR) of Réunion, as well as representatives from INSEE, IEDOM, Afd and Autorité de la Concurrence, and other relevant institutions.

<sup>93</sup> Centre d’Économie et de Management de l’Océan Indien (CEMOI, Université de La Réunion)

<sup>94</sup> Source: Jean-François Hoarau, ‘La vie chère en Outre-Mer, un phénomène structurel ?’, appeared on Outremer360, 6 January 2020.

These aspects have been investigated in a report published in July 2019 by the French Competition Authority, which identified, among others, the following drivers<sup>95</sup>:

- distributors' trade margins in the ORs are generally higher than in the mainland, but the difference explains only part of the price gap. More significant impact is due to the cumulation of margins along the value chain, and the role played by importers and wholesalers in this respect;
- on average, retail trade distribution is more concentrated than in the mainland, with also greater barriers to entry for new players;
- the '*bouclier qualité prix*' (quality/price protection) – i.e. the scheme in place to make certain basic products available at a moderate price (through agreements with value-chain players) is not effectively implemented;
- there is often vertical integration in the distribution chain, with large distributors also acting as importers/wholesalers, which may raise competition issues;
- freight costs are limited (less than 5% on average) but rising, and may have a non-negligible impact on products with limited added value;
- local production faces competitiveness issues due to the structural constraints of OR markets. Additionally, the small size of local markets encourages concentration (except for fresh products).

In this framework, dock dues are an additional driver of price levels. In this respect the report of the French Competition Authority states:

‘Finally, it can be considered that to the extent that the objective of dock dues differentials is to encourage the consumption of local products compared to that of imported products, its participation in the cost of living is strengthened. As the cost of local production is potentially higher than that of substitutable imported products, including approach costs, the dock dues system has the effect of increasing the cost of a consumption basket by bringing the prices of imported products and local products closer together, rather than exempting the latter from competitive pressure.

Overall, dock dues are likely to increase the prices to the consumer. It weighs on productivity gains in historic sectors, and on investment and employment in new sectors. More generally, it slows, by its weight and its complexity, the adaptation of the OR productive system. Finally, for its importance for the financial resources of local authorities, it encourages them to seek increases in taxable imports rather than promote the development of local activity<sup>96</sup>.

The lack of detailed price data hampers a precise assessment of the extent of the impact of dock dues on price levels<sup>97</sup>. However, analysis of tax revenues and consumption expenditure allowed a rough estimation of the *magnitude of the contribution of dock*

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<sup>95</sup> French Competition Authority, *Avis n° 19-A-12 du 4 juillet 2019 concernant le fonctionnement de la concurrence en Outre-Mer*.

<sup>96</sup> *Ibid.*, p. 24 (our translation).

<sup>97</sup> The issue was noted also by the French Competition Authority, which recommended strengthening the capacity of the local observatories of prices and margins with the means necessary to fully carry out their tasks. *Ibid.* p. 3.

*dues to the cost of living* in French ORs. The analysis compares dock dues revenues to household consumption expenditure (see Annex C for the full analysis<sup>98</sup>). Assuming, for analytical purpose, that the tax borne by producers and importers is fully passed on to consumer prices, the effect of dock dues on consumer expenditure would be roughly equal to the amount of tax revenues increased by a retail mark-up that, along with INSEE estimates, can be set conventionally at 30%<sup>99</sup>. The main results are shown in Table A4.8.

- The impact is mainly due to the external dock dues, while the tax collected on products with a dock dues differentiated rate represents one third of the total impact and does not exceed 1.5% of final consumption in any OR.
- As expected, the impact of the dock dues is higher for manufactured goods, with the tax levied on products supported by dock dues amounting to between 2.7% (in Guadeloupe) and 5.3% (in Martinique) of the value of household consumption.
- When these figures are compared with the INSEE estimates of price differentials with the mainland (Table A4.7) it appears that the dock dues regime (i.e. considering only products subject to differentiated tax rates) explains less than one tenth of the registered price gap.

**Table A4.8 – Effect of the dock dues on final consumption, by tax component and OR**

	French Guiana	Guadeloupe	Martinique	Réunion
<b>Total dock dues as % of final consumption</b>	4.6%	3.7%	3.6%	2.5%
<i>manufactured goods</i>	17.0%	12.9%	13.7%	9.8%
<b>External dock dues as % of final consumption</b>	4.3%	3.6%	3.4%	2.5%
<i>manufactured goods</i>	16.8%	12.7%	13.3%	9.5%
<b>Revenues from products subject to dock dues differentials, as % of final consumption</b>	1.3%	0.7%	1.4%	0.8%
<i>manufactured goods</i>	5.0%	2.7%	5.3%	3.2%

*Source: the study.*

To sum up, dock dues contribute to the cost of living in the ORs, as do other structural features of local markets and competition. However, *only a small share of this impact relates to the tax differential regime permitted by EU policy*, while the bulk is due to the rates applied to the import of products for which no differential treatment is envisaged.

<sup>98</sup> Data on tax collected at product level provided by customs refer to year 2018, while data on household final consumption by economic accounts refer to year 2014. Data were adjusted using the ratio of revenues collected in 2014 divided by revenues collected in 2018, to ensure consistency.

<sup>99</sup> The figure rounds up the INSEE estimated average sales margin (29.1%) for retail activities (vehicles not included).

## ANNEX 5: FURTHER INFORMATION ON DOCK DUES TAX

### ➤ ORIGINS AND POLICY FRAMEWORK

The origin of the *Octroi de mer* (dock dues) dates back to the tax levied on goods entering French colonies since the 17th century. In the course of the 19th century, an ‘*octroi aux portes de mer*’ was adopted first by Martinique as a tool to finance the local public budget and subsequently by Guadeloupe, Réunion and, eventually, French Guiana. From being a pure instrument of fiscal autonomy, the dock dues acquired a second growth-oriented objective in the 1970s, first in Martinique and then in the other ORs. In that period the tax rates started being modulated based on the estimated competitiveness gap faced by local production vis-à-vis imports, and were therefore used as a tool to promote the development of local industry and substitute imports.

With the integration of French ORs into the European Community, compatibility of dock dues with the principle of free circulation of goods within the internal market became an issue. **Council Decision 89/688**, which entered into force in 1993, recognised the need to strike a balance between the importance of the dock dues in supporting local production and ensuring the self-reliance of ORs (in accordance with the then Article 227 (2) of the Treaty), and the need to complete the internal market. The reform extended the application of the dock dues to all products, be they imported or produced in the ORs, while at the same time allowing the competent French authorities to apply total or partial exemptions for local products. The Decision did not indicate which products or the level of exemptions permitted, but stated that ‘these exemptions must contribute to the promotion or maintenance of an economic activity in the French overseas departments and be in line with the economic and social development strategy of each French overseas department, taking account of its Community aid framework, while not being such as to adversely affect the terms of trade to an extent contrary to the common interest’<sup>100</sup>.

The following period was characterised by several **legal disputes** brought before the Court of Justice of the European Union concerning the compatibility of the dock dues regime and its *de facto* equivalence to a customs duty<sup>101</sup>. In its Order of 7 June 1998, the Court eventually concluded that: ‘Council Decision 89/688/EEC [...] precludes exemptions of a general or systematic order, which would thus amount to the reintroduction of a charge having an effect equivalent to that of a customs duty. That decision does, however, authorise exemptions which are necessary, proportionate and precisely determined [...]’<sup>102</sup>.

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<sup>100</sup> COUNCIL DECISION of 22 December 1989 concerning dock dues in French overseas departments.

<sup>101</sup> See: C-163/90 *Administration des Douanes et Droits Indirects v Legros and Others*; (C-212/96) *Chevassus-Marche v Conseil Régional de La Réunion*; Joined Cases (C-37/96) and (C-38/96) *Sodiprem and Others v Direction Générale des Douanes*; *Société Béton Express* (C-405/96); *Société Nouvelle de Concassage* (C-406/96); *Société Bourbon Lumière* (C-407/96); *Société Ouest Concassage* (C-408/96) et al.

<sup>102</sup> CJEU, order of 7. 7. 1998 — Joined cases C-405/96, C-406/96, C-407/96 and C-408/96.

This jurisprudence informed the subsequent revision of the special tax regime, adopted under Council Decision 162/2004/EC and renewed under **Council Decision No 940/2014/EU** – amended in 2019 and in 2020 – which is currently in force until the end of June 2021. The reform consisted of the explicit identification and justification of the local products requiring tax exemption and the establishment of maximum thresholds for such exemptions, differentiated by product and consistent with current actual needs. In EU law, the underlying basis for the Decision remains the TFEU, in particular Article 349, which envisages the possibility of introducing special measures for ORs because of the existence of permanent constraints affecting their economic and social situation<sup>103</sup>.

The dock dues special tax regime not only derogates from the EU internal market rules but constitutes, at the same time, a form of regional State aid. Since its establishment, therefore, it has required the adoption of specific authorisation under EU State aid policy. The first ‘no objection’ was adopted in 2004 (N 107/04) with reference to the then Council Decision 2004/162/EC. The estimated value of aid was set at EUR 165 million/year, and the expiration date to end 2016. The measure was subsequently prolonged under the same conditions. The State aid decision currently in force – SA 46899 (2016/N)<sup>104</sup> – was adopted by the Commission in 2017 in relation to the renewed EU fiscal policy (Decision No 940/2014/EU), and is set to expire at the end of 2020. The scope was extended to Mayotte and the budget raised to EUR 475 million a year (of which EUR 25 million for support to the firms exempted from the dock dues because of their small size). Unlike the similar AIEM scheme applied in the Canary Islands, France did not make use of the notification exemption under the general block exemption regulation<sup>105</sup> (GBER) because the requirements of the GBER regime on the cumulation of aid (Article 15 GBER) were difficult to comply with, since French ORs’ enterprises benefited from several other support measures.

At country level, the legal framework currently in force was adopted under the French *loi n° 2015-762* (which replaced the previous *loi n° 2004-639*) and the implementing decree n° 2015-1077. The legitimacy of the current dock dues arrangements was also confirmed by a 2018 decision of the French Constitutional Court, in response to a question on the possible disparities in fiscal treatment caused by the exemptions<sup>106</sup>.

#### ➤ **IMPLEMENTING ARRANGEMENTS**

The dock dues is an indirect tax that can be levied on two types of transaction, namely (a) imports of goods and (b) sales of locally produced goods. More specifically, the dock dues regime consists of the following components:

- **external dock dues** (*‘Octroi de mer externe’*), levied on imported goods, including products from other French ORs (with the exception of merchandise trade between

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<sup>103</sup> An Opinion issued in 2015 by the CJEU (for the joined cases C 132/14, C 133/14, C 134/14, C 135/14 and C 136/14) clarified that Article 349 does not allow only derogating from the relevant provision of the Treaties, but can be retained *per se* as sufficient legal basis for establishing specific conditions of application of the EU law in the ORs, including secondary legislation.

<sup>104</sup> C(2017)1661 final. *Aide d'État SA.46899(2016/N)– France Taxe octroi de mer.*

<sup>105</sup> Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, amended by Commission Regulation (EU) 2017/1084 of 14 June 2017.

<sup>106</sup> *Décision n° 2018-750/751 QPC du 7 décembre 2018, Société Long Horn International et autre [Régime juridique de l'octroi de mer].*

Guadeloupe and Martinique, as explained below), mainland France, EU and third countries;

- **internal dock dues** (*Octroi de mer interne*), levied on local production;
- **regional dock dues** (*Octroi de mer regional*) – an extra rate that regional authorities can apply in addition to the standard (external and internal) dock dues.

The tax base and applicability of the dock dues differ partly across transaction type, as follows:

- **Imports.** In the case of imports – including from the mainland and the EU – the external dock dues are levied on the customs value of goods, comprising shipment and insurance costs, i.e. the cost, insurance, and freight (CIF) value. The tax becomes chargeable upon entry of the product into the region or when it is released for consumption, in the case of goods introduced under tax suspension arrangements or other special customs regimes/procedures (e.g. customs warehousing, free zone, inward processing, temporary admission, etc.). External dock dues must be paid at the time of the customs declaration.
- **Local production.** In the case of locally produced goods, the amount of internal dock dues is calculated on the producer selling price, net of value added tax and excise duties, and becomes chargeable at the time of delivery. Payment of the dock dues is due quarterly, based on the tax declarations filed by taxpayers with the territorially competent *customs* office. The concept of ‘production’ encompasses manufacturing, processing and renovation activities as well as agriculture and mining operations. Since the end of 2016, in accordance with the *loi n° 2016-1918*, the act of processing requires a change in tariff heading (4-digit code) to trigger the application of dock dues. Since 2014, local economic operators with an annual turnover from relevant production activities not exceeding EUR 300 000 fall outside of the field of application of the regime<sup>107</sup>.

A series of **exemptions** are laid down in the law, including mandatory and optional exemptions. The mandatory exemptions cover import under a franchise regime, export of local products (including external delivery to the mainland and the EU), and merchandise trade within the *Marché Unique Antillais* (MAU), as well as between MAU and French Guiana, which is subject to a specific regime aimed at avoiding double taxation.

As regards optional exemptions, the most important one for imports is the **exemption on inputs** (*exonération des intrants*) which is applied to some raw materials or capital goods that are used by local economic activities. Local authorities can exempt the imports of these goods from the payment of the external dock dues rate (the regional dock dues normally remain due) through specific deliberations that specify the eligible sectors (by NAF activity code) and the tariff positions of the imported goods specifically targeted. The rationale for this exemption is to avoid hampering the competitiveness of local producers – which is the objective of the dock dues special regimes – by taxing the production inputs that they cannot procure locally. The access to this facility is subject to two main conditions: (a) the exemption is applied only to direct imports (including through a delegated agent), and (b) in the case of capital goods, they have to be retained for at least 3 years. This exemption is in principle available also to small enterprises falling outside of the scope of the dock dues (i.e. with an annual turnover lower than

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<sup>107</sup> This provision replaced a similar facilitation for small firms included in the 2004 Decision, which allowed competent authorities to further reduce by five percentage points the rates applied to local companies having a relevant turnover below EUR 550 000.

EUR 300 000) but they seldom benefit from it, as they rarely procure their production inputs through direct importation.

As regards local production activities, the main optional exemption – which is also the main subject of this study – consists of *reduced dock dues rates* applied to certain categories of products falling in the scope of the Council Decision, as detailed in the next section. This exemption covers the vast majority of locally produced goods, but, overall, it concerns only a minor share of the scope of the dock dues. In fact, unlike the similar Canarian AIEM regime, the dock dues apply to virtually all product categories imported or produced in the French ORs, and the products subject to differentiated rates are only a small part of the full list.

Another significant difference to the Canarian AIEM regime regards the *deductibility* of the dock dues, through a mechanism similar to VAT. In practice, a firm may compensate the dock dues due on final goods sold locally with the amount of the dock dues paid on the intermediate goods imported and/or purchased from a local supplier. The deduction is made by the taxpayer and shown in the quarterly declaration. If the amount of the tax deductible exceeds the amount of tax due on sales, however, the excess is not refundable, and is carried over to the next declaration, with the exception being when the tax credit is generated by (a) the acquisition of capital assets, or (b) the purchase of inputs used to produce goods locally, which are then exported; when the exceptions are met, the credit can be refunded.

#### ➤ **TAX SCOPE AND RATES**

The dock dues rates (external, internal and regional) are fixed independently by each OR, through deliberations of the Regional, Territorial or Department Councils – depending on the specific institutional set-up (see Section 2.1). In accordance with national legislation, as amended in 2015<sup>108</sup>, the dock dues rates have to be set with reference to CN8 classification or TARIC 10-digit codes (when so expressed in the dock dues Decision). In addition to the maximum thresholds established in the Council Decision, the deliberations must comply with certain thresholds established in the law, namely: (a) 90% maximum rate for alcoholic products and manufactured tobacco; and (b) 60% for other products<sup>109</sup>. As for the regional dock dues, the law sets the ceiling rate at 5% for French Guiana and 2.5% for the other French ORs. The rates can be periodically revised by the regional competent authorities to take into account the evolving financial needs of the local communities, the socio-economic developments of the region as well as the updates of the tariff and statistical nomenclature.

Each region applies a different set of internal or external dock dues rate levels, ranging from 8 in Mayotte up to 32 in French Guiana. The *dock dues base rate* – i.e. the rate applied to the majority of positions – also varies significantly across regions, from 6.5% in Réunion to 9.5% in Guadeloupe and Martinique, 17.5% in French Guiana and 20% in Mayotte (see Table 2.2). The higher rates applied in French Guiana and Mayotte reflect the fact that no VAT is applied there, while in the other three regions a standard VAT rate of 8.5% is levied (compared to the standard VAT rate of 20% in mainland France).

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<sup>108</sup> See Article 12 of decree n° 2015-1077, modifying Article 27 of loi n° 2015-762.

<sup>109</sup> In the case of Mayotte, maximum rates can be increased by half and are thus capped at 135% and 90%, respectively.

**Table A5.1 – Dock dues and VAT rates in French outermost regions (2019)**

	French Guiana	Guadeloupe	Martinique	Réunion	Mayotte
<b>Number of dock dues rate levels</b> ( <i>external &amp; internal</i> )	32	13	14	17	8
<b>Dock dues base rate</b> (excluding regional Dock dues)	15%	7%	7%	4%	17.5%
<b>Overall dock dues base rate</b> ( <i>including the 2.5% regional dock dues</i> )	<b>17.5%</b>	<b>9.5%</b>	<b>9.5%</b>	<b>6.5%</b>	<b>20.0%</b>
<i>Standard VAT rate</i>	<i>N/A</i>	8.5%	8.5%	8.5%	<i>N/A</i>

**Source:** the study

EU policy permits the application of differentiated tax rates based on the internal or external origin of the product, under the following conditions: (a) existence of local production, (b) existence of significant imports that could threaten local production, and (c) additional production costs for local products compared to imported products, caused by the structural handicaps affecting ORs. The products which comply with these criteria (the ‘supported products’) have been included in positive lists in the Annex to the relevant Council Decision. EU policy not only establishes which products can benefit from the differentiated rates regime, but also the *maximum permitted tax differential*. This is expressed in percentage points and represents the upper threshold that the local competent authorities must respect when setting the *actual tax differential*, which can also be lower than the maximum allowed. It should be noted that the threshold is expressed in terms of the difference between the external and internal rates, so for example, a tax differential of 10% may stem from an external rate of 10% and an internal rate of 0%, but also from an external rate of 25% and an internal rate of 15%. In other words, the existence of a tax advantage for certain local products does not impede the levying of a (smaller) tax on their production.

In the Council Decision, the supported products are grouped in three ‘lists’ characterised by different levels of the ‘maximum permitted tax differential’, as shown in Table A5.2 below. The inclusion of a given product in the appropriate list is based on an estimation of the additional local production costs that the policy intends to compensate. Any revision of the lists in Annex to the Council Decision, i.e. to introduce a new product or to move a product from one list to another, requires a formal amendment of the Decision itself.

As the table shows, the composition of the lists varies from 84 product categories in Mayotte to more than 270 in Martinique and Réunion. Overall, nearly 660 different product categories are subject to tax differentials under the dock dues regime in the French ORs. The local products that most frequently register high tax differentials include food commodities like rice, wheat flour, coffee, fruit juice, etc. as well as alcohol, alcoholic beverages and intermediate inputs (sugar cane, grape must and other fermented beverages).

In general, full exemptions are rarely applied, with the notable exception of Réunion, where zero rates are set on almost all supported products (with the exception of alcoholic beverages and tobacco, for example). In Guadeloupe and Martinique, there are no cases of full exemptions: the regional dock dues component is always charged. In French Guiana, a minority of local products are fully exempted, while in the majority of cases a reduced regional rate of 1% is levied. Finally, in Mayotte, only a couple of products are fully exempt. For all other supported products, the regional dock dues are levied (at the

base rate of 2.5%) and, in a dozen cases, a positive internal rate is also applied (typically, 7.5%).

Table A5.2 also reports estimates of the extent of dock dues tax differentials actually applied in French ORs. In nominal terms, and based on the full list of CN8 products concerned, the average dock dues differential applied across ORs ranges from 8% in Réunion to 15% in Mayotte. For economic analysis, a more significant indicator of the actual extent of differential is the ratio between the total monetary value of tax reductions and the monetary value of the local production concerned. The results show that the dock dues differentials account on average from 12% (Réunion) to 23% (Mayotte) of local production value, with a (weighted) average value of dock dues differentials for all French ORs of 15%.

**Table A5.2 – Dock dues tax differentials and the number of product categories concerned**

	Max. tax differential permitted	Number of products subject to special regime				
		French Guiana	Guadeloupe	Martinique	Réunion	Mayotte
List A	10%	18	42	96	135	30
List B	20%	163	101	152	98	38
List C	30%	27	19	26	38	16
<i>Total</i>		<i>208</i>	<i>162</i>	<i>274</i>	<i>271</i>	<i>84</i>
<i>Nominal dock dues differential applied (simple average)</i>		<i>14%</i>	<i>13%</i>	<i>14%</i>	<i>8%</i>	<i>15%</i>
<i>Actual dock dues differential applied (weighed average)</i>		<i>16%</i>	<i>18%</i>	<i>18%</i>	<i>12%</i>	<i>23%</i>

**Source:** the study

#### ➤ TAX REVENUE AND ALLOCATION

The dock dues ‘taxpayer’ includes two main categories of operators:

1. **importers**, who are subject to the external dock dues (including the regional dock dues); and
2. **local producers**, with an annual turnover of production of at least EUR 300 000, who are subject to the internal dock dues.

Based on information collected from French customs, in 2018 the total number of local producers subject to the internal dock dues in all French ORs was just above 1 000. It is important to highlight that this figure does not include the numerous local firms engaged in production activities but falling outside the scope of the tax because of their small size. Furthermore, about half of these 1 000 firms did not actually pay any dock dues, because of the exemptions. As shown in Table A5.3 below, the share of local firms that were actually charged varies significantly across regions, from 90% in Guadeloupe and Mayotte to 7% in Réunion. This variance reflects the different arrangements adopted by regional authorities, with Réunion applying positive internal dock dues to less than 10 products, for example.

The number of subjects liable to the payment of the external dock dues is much greater, exceeding 31 000 units in 2018. However, this figure concerns any recipients of imported goods subject to the dock dues taxation, comprising individuals/occasional importers, and including all products, and not only those subject to the differential regime. In this sense, the figure is not comparable with the above number of firms subject to the internal

dock dues. The evidence from fieldwork indicates that the number of specialised importers engaged in the trade of products subject to the dock dues differential is significantly lower.

**Table A5.3 – Number of subjects liable to the dock dues in the French ORs (2018)**

	French Guiana	Guadeloupe	Martinique	Réunion	Mayotte	TOTAL
No of firms subject to internal dock dues	136	215	298	354	39	1 042
No of firms that actually paid any internal dock dues	65	191	228	24	37	545
<i>in % of the firms liable for tax payment</i>	48%	89%	77%	7%	95%	52%
No of firms subject to external dock dues	3 681	6 612	5 819	13 076	2 489	31 677

**Source:** French Customs

Between 2014 and 2018, the annual yield of the dock dues of all French ORs grew from **EUR 1 140 million** to **EUR 1 270 million**. The differences in total tax yield across regions are largely due the different size of their economies, with Réunion accounting for about one third of the total dock dues receipts and Mayotte for only 8%. The regional dock dues account for about 25% of total dock dues receipts, on average, but less in French Guiana and Mayotte, where the standard dock dues base rate is comparatively higher than in the other regions.

When the respective contribution of the internal and external dock dues component to the total tax yield is considered, it clearly emerges that the bulk of dock dues receipts comes from imports. As shown in Table A5.4 below, the internal dock dues receipts account for only 2%-4% of the total dock dues revenues, except in French Guiana, where they are 7%. Figures include the receipts collected on both products with tax differentials and those with no differential applied. The dock dues are also the main tax levied on imports, with an average incidence of 63.4% of total duties (higher in French Guiana and Mayotte, which do not apply VAT).

**Table A5.4 – Dock dues receipts, by OR and tax component (avg. 2015-2018, EUR million)**

	French Guiana	Guadeloupe	Martinique	Réunion	Mayotte	Total
External dock dues (regional dock dues included)	157.8	257.4	254.6	409.3	89.9	1 169.0
Internal dock dues (regional dock dues included)	11.0	9.3	11.7	9.3	3.8	45.1
<b>Total dock dues</b>	<b>168.8</b>	<b>266.7</b>	<b>266.4</b>	<b>418.6</b>	<b>93.7</b>	<b>1 214.1</b>
<i>External dock dues in % of total</i>	93%	97%	96%	98%	96%	96%
<i>Internal Dock dues in % of total</i>	7%	3%	4%	2%	4%	4%
<b>Incidence of dock dues on the total tax and duties levied on imports</b>						<i>Average</i>
<i>Dock dues</i>	70.9%	63.5%	54.8%	52.0%	75.8%	63.4%
<i>VAT</i>	-	26.4%	22.8%	29.1%	-	26.1%
<i>Others (tariff, excise</i>	29.1%	10.1%	22.4%	18.9%	24.2%	20.9%

duties etc.)						
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**Source:** the study. The data on incidence are drawn from *Rapport Ferdi 2020*.<sup>110</sup>

The dock dues receipts are divided between the state, the municipalities and the regions/departments/collectivities, as follows:

- some 1.5% (2.5% until 2017) is allocated to the State to cover the tax implementation and enforcement costs;
- the remaining 98.5% is allocated to the municipalities' operational budget in the form of a '*dotation globale de garantie*' (DGG). Every year, the value of this DGG is adjusted by customs in relation with the economic development registered (i.e. both the consumer price index and the national GDP);
- any possible surplus, after the DGG allocations, is allocated to the *Fonds Régional pour le Développement et l'Emploi* (FRDE), which is a regional fund set up in each French OR in the early 90s. The FRDE resources are distributed as follows: (a) 80% to the municipalities' investment budget, and (b) 20% to regions and departments;
- the tax yield of the regional dock dues component follows a different path and is directly and entirely allocated to regions and departments.

As a result, the dock dues constitute the first source of fiscal revenue for OR municipalities. According to the figures provided by the Directorate General of Local Authorities, in the past 3 years dock dues receipts represented between 36% (in Réunion) and 76% (in Mayotte) of ORs' resources (see Table 2.6). The dock dues also account for a smaller, but still significant, share of the tax revenues of regions and departments, ranging from 12% in Martinique and French Guiana to more than 40% in Guadeloupe.

**Table A5.5 – Dock dues share of fiscal revenues of local authorities**

	2016	2017	2018		2016	2017	2018
<b>Municipalities</b>				<b>Regions/Departments / Collectivities</b>			
<b>French Guiana</b>	41.5%	43.8%	45.7%	<b>French Guiana</b>	17.0%	11.6%	12.5%
<b>Guadeloupe</b>	42.3%	42.5%	43.5%	<b>Guadeloupe</b>	41.4%	40.7%	40.0%
<b>Martinique</b>	47.0%	47.2%	47.1%	<b>Martinique</b>	12.5%	15.5%	11.8%
<b>Réunion</b>	36.2%	36.2%	36.1%	<b>Réunion</b>	27.0%	24.6%	23.4%
<b>Mayotte</b>	59.2%	61.8%	76.5%	<b>Mayotte</b>	35.5%	26.0%	22.9%

**Source:** '*Rapport sur les finances des collectivités locales*' prepared by the Observatoire des finances et de la gestion publique locales (various years).

The '*foregone tax revenue*' (*dépense fiscale*) corresponds to the tax receipts not collected because of the exemptions in place on local production. The foregone tax revenue is, in this sense, an indicator of the global value of the support extended under the dock dues special regime. It is calculated on the basis of data from the customs authority as the gap between the internal dock dues revenues actually collected and the potential revenues that would have been collected if tax differentials were not in place (assuming no change in the local production value). According to the dock dues evaluation carried out in 2018<sup>111</sup>, the aggregate foregone revenues amounted to approximately **EUR 301.5 million** (2016), of which 14% from the regional dock dues. This figure represents some 5.4% of the total value of the local production of French ORs, but, in comparative terms, the incidence of foregone revenue is higher in Martinique (7%) and Mayotte (9.2%) than in the other ORs (Table 2.7). The estimated foregone revenue for 2017 communicated to the

<sup>110</sup> Rapport Ferdi | Geourjon A-M. Laporte B. '*Impact économique de l'octroi de mer dans les Départements d'Outre-mer français.*' March 2020.

<sup>111</sup> Technopolis et al., '*Evaluation de l'octroi de mer*', 2018, for the Ministry of the Overseas.

Commission under the State aid reporting arrangement amounts to EUR 287.4 million, but no breakdown by region is available.