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COUNCIL DECISION

of 10 February 2004

concerning the dock dues in the French overseas departments and extending the period of validity of Decision 89/688/EEC

(2004/162/EC)

(OJ L 52, 21.2.2004, p. 64)

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►**M1**	Council Decision 2008/439/EC of 9 June 2008	L 155	17	13.6.2008
►**M2**	Council Decision No 448/2011/EU of 19 July 2011	L 193	1	23.7.2011
►**M3**	Council Decision 2014/162/EU of 11 March 2014	L 89	3	25.3.2014

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COUNCIL DECISION

of 10 February 2004

concerning the dock dues in the French overseas departments and extending the period of validity of Decision 89/688/EEC

(2004/162/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 299(2) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament [1],

Whereas:

(1) Pursuant to Article 299(2) of the Treaty, the provisions of the Treaty apply to the outermost regions and hence the French overseas departments, taking account of their structural social and economic situation, which is compounded by their remoteness, insularity, small size, difficult topography and climate, economic dependence on a few products, the permanence and combination of which severely restrain their development. This Treaty provision dovetails with measures adopted previously in aid of the outermost regions, in particular the French overseas departments (DOMs), in Council Decision 89/687/EEC of 22 December 1989 establishing a programme of options specific to the remote and insular nature of the French overseas departments (Poseidom) [2].

(2) Article 2(3) of Council Decision 89/688/EEC of 22 December 1989 concerning the dock dues in the French overseas departments [3] states that in the light of the specific constraints on the overseas departments, partial or total exemptions from dock dues may be authorised for local production activities for a period of not more than 10 years from the date of the introduction of the charge. This period should have expired on 31 December 2002 as the system was introduced on 1 January 1993.

(3) Pursuant to Article 3 of Decision 89/688/EEC, the Commission had to submit a report on the implementation of the arrangements in order to ascertain the impact of the measures adopted and decide whether to maintain the possibility of exemptions. In the report that it sent to the Council on 24 November 1999, the Commission concludes that the four DOMs are in a much

[1] Opinion of 15 January 2004 (not yet published in the Official Journal).
[2] OJ L 399, 30.12.1989, p. 39.
[3] OJ L 399, 30.12.1989, p. 46. Decision as amended by Decision 2002/973/EC (OJ L 337, 31.12.2002, p. 83).

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more fragile economic and social situation compared with the rest of the European Union by virtue of being outermost regions. The Commission underlines the importance of dock dues and exemptions for local production in terms of the social and economic development of these regions.

(4) According to the Commission report of 14 March 2000 on the measures to implement Article 299(2) of the Treaty, this Article must be implemented in partnership with the Member States concerned on the basis of detailed requests from them.

(5) On 12 March 2002 France sent a request to the Commission to extend exemptions from dock dues for 10 years. The request did not specify which goods were to be exempted under the future system or the rate differentials between local products and imports or the grounds for these exemptions and rate differentials with regard to the handicaps of the DOMs. In these circumstances, in order to avoid a legal vacuum being created by the lack of a complete request, the period of application of Decision 89/688/EEC was extended by one year under Decision 2002/973/EC ([1]).

(6) On 14 April 2003 France sent a further request to the Commission, in response to the above requirements. In this request, the French authorities asked for the Council Decision to apply for a period of 15 years, subject to a three-yearly review of the need to adjust the scheme. France sought to apply a scheme of differential taxation of dock dues enabling goods from outside the DOMs to be taxed more heavily that products from the DOMs in question. The differential of 10 percentage points would apply mainly to basic products and those for which a balance has been achieved between local and external production. The 20-point differential would cover products requiring substantial investment which had an impact on the cost price of goods manufactured locally for a limited market. The 30-point differential would apply mainly to products manufactured by large-scale enterprises and to products which are extremely vulnerable to imports from the DOMs' neighbouring countries. The 50-point differential would apply, in Guyana and Réunion, to alcohol, in particular to rum. The French request sought additional measures such as permission not to require payment of dock dues on products manufactured locally by enterprises with an annual turnover of less than EUR 550 000, permission to apply a 15 % reduction in the taxable amount to dock dues for products manufactured locally, and permission for local authorities to take emergency measures to amend the list of products covered by a tax differential in respect of dock dues.

(7) The Commission has assessed this request in the light of the scale of the handicaps affecting industrial production activities in the DOMs. The main handicaps found to affect the DOMs are the result of the factors listed in Article 299(2) of the Treaty: remoteness, insularity, small size, difficult topography and climate, economic dependence on a few products. From time to

([1]) OJ L 337, 13.12.2002, p. 83.

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time these areas are also affected by natural phenomena such as cyclones, volcanic eruptions and earthquakes.

(8) The remoteness of these regions considerably hinders the free movement of people, goods and services. The dependence on air and sea transport is compounded by the fact that these modes of transport are not fully liberalised and, as they are less efficient and more costly than road, rail or trans-European networks, they have a knock-on effect on production costs.

(9) Higher production costs are not only due to isolation but also to raw material and energy dependence, the obligation to build up stocks and difficulties affecting the supply of production equipment.

(10) The small size of the market and the low level of export activity because of the low purchasing power of the countries in the region, and the obligation to maintain diversified but small production lines in order to meet the requirements of a small market restrict the opportunities for economies of scale. 'Exporting' products made in the DOMs to metropolitan France or the other Member States is difficult because transport costs force up the cost of these products and hence their competitiveness. The weakness of the local market also leads to overstocking, which again affects firms' competitiveness.

(11) The need to bring in specialised maintenance teams that have been properly trained and are capable of intervening swiftly and the virtual impossibility of subcontracting, also raise firms' costs and affect their competitiveness.

(12) The combination of these handicaps means, in financial terms, that the cost price of goods produced locally is increased, so that without specific measures they could not compete with those produced elsewhere without such handicaps, even taking into account the cost of transporting such goods to the DOMs. If local products cannot compete it will become impossible to sustain local production, with harmful consequences in terms of employment for the inhabitants of the DOMs.

(13) Products from the DOMs face the additional handicap of having European cost prices which make it hard for their local products, especially agricultural products, to compete with those produced in neighbouring countries where labour costs are very much lower.

(14) The French request has been considered in the light of the principle of proportionality in order to ensure that, overall, the tax differentials which the French authorities would like to apply will not significantly exceed the scale of the handicaps faced by local products, in terms of cost price, compared with external products.

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(15) In the light of these considerations, the Commission therefore proposes to authorise the implementation of a tax applicable to a list of products for which tax exemptions or reductions can be envisaged for local products from the DOMs. The effect of this differentiated taxation is to restore the competitiveness of local production and so to enable employment-generating activities to be maintained in the DOMs. A separate list of products for each DOM must be drawn up because the local products from each DOM are different.

(16) However, it is necessary to meet a combination of the requirements of Article 299(2) and Article 90 of the Treaty and also to ensure the coherence with Community law and the internal market. This means only taking measures that are strictly necessary and proportionate to the objectives pursued, in the light of the handicaps of the DOMs' remoteness. The scope of the Community framework therefore consists of a list of sensitive products whose local production costs have been demonstrated to be significantly higher than the production costs of similar products from elsewhere. The level of taxation must, however, be modulated so that the sole purpose of the tax differential in dock dues is to offset the handicaps and not to turn this tax into a protectionist weapon that undermines the operating principles of the internal market.

(17) Similarly, coherence with Community law means ruling out a tax differential for agricultural products which benefit from aid under Articles 2 and 3 of Council Regulation (EC) No 1452/2001 of 28 June 2001, introducing specific measures for certain agricultural products for the French overseas departments (Poseidom) ([1]), and in particular the specific supply arrangements.

(18) The products which could be entitled to tax exemptions or reductions in favour of local production can be divided into three categories, according to the size of the tax differential that it is proposed to authorise: 10, 20 or 30 percentage points.

(19) However, it should be possible to exempt local producers with an annual turnover of less than EUR 550 000 from payment of the tax. For this purpose, where the products they manufacture are subject only to a tax reduction, it should be possible to exceed the maximum differentials authorised. This provision should not, however, result in an increase of more than five percentage points in the ceilings set.

(20) For the sake of consistency, the planned exemption from dock dues on locally manufactured products not listed in the Annex for firms with an annual turnover of less than EUR 550 000, should be such that the tax differential for such products depends on whether or not such products are locally manufactured. As in the previous case, this tax difference should not exceed five percentage points.

([1]) OJ L 198, 21.7.2001, p. 11. Regulation as amended by Regulation (EC) No 1782/2003 (OJ L 270, 21.10.2003, p. 1).

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(21) The objectives of supporting the social and economic development of the DOMs, already provided for in Decision 89/688/EEC, are confirmed by the requirements regarding the purpose of the tax. It is a legal obligation that the revenues from this tax are to be incorporated in the resources of the DOMs' economic and tax regime and allocated to an economic and social development strategy involving aid for promoting local activities.

(22) The importance of updating the lists of products in the Annex, made necessary by the possible emergence of new production activities in the DOMs, of safeguarding local production if it is threatened by certain commercial practices, and, consequently, of the need to change the amount of exemptions from or reductions in the dues applicable mean that the Council itself must be able to adopt the measures necessary for the application of this Decision, particularly as such measures may have a major budgetary impact for the recipients of dock dues revenue. Furthermore, the need for action concerning such measures to be taken as a matter of urgency justifies the Council's adopting the relevant provisions in accordance with an accelerated procedure, acting by qualified majority on a Commission proposal.

(23) France should notify the Commission of any arrangement adopted in the light of this Decision.

(24) The arrangements are set to last for 10 years. It will nevertheless be necessary to evaluate the proposed system at the end of a five-year period. The French authorities should therefore present a report to the Commission by 31 July 2008 on the application of the arrangements authorised, in order to assess the impact of the measures taken and their contribution to promoting or maintaining local economic activities, in the light of the handicaps affecting the DOMs. On this basis, the lists of products and the authorised exemption will be revised as necessary.

(25) To ensure continuity with the arrangements provided for in Decisions 89/688/EEC and 2002/973/EC this Decision should apply from 1 January 2004. However, in order to enable the French authorities to adopt a national law in order to implement this Decision, it is proposed that the provisions of the Decision concerning the products entitled to a tax differential and the adoption of the measures necessary for the implementation of the Decision should take effect on 1 August 2004, and to avoid any sort of legal vacuum, the application of Decision 89/688/EEC should be extended until 31 July 2004,

HAS ADOPTED THIS DECISION:

Article 1

1. ►**M3** By way of derogation from Articles 28, 30 and 110 of the Treaty on the Functioning of the European Union (TFEU), the French authorities shall be authorised, until 1 July 2014, to apply exemptions or reductions to the dock dues tax in respect of the products listed in the Annex which are produced locally in Guadeloupe, Guyana, Martinique, Mayotte and Réunion as outermost regions within the meaning of Article 349 TFEU. ◄

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These exemptions or reductions must be in keeping with the economic and social development strategy of the DOMs, taking account of its Community framework, and contribute to promoting local activities while not being such as to adversely affect the terms of trade to an extent contrary to the common interest.

2. With reference to the rate of taxation applied to similar products not originating in the DOMs, the application of the exemptions or reductions referred to in paragraph 1 may not result in differences of more than:

(a) 10 percentage points for the products listed in part A of the Annex;

(b) 20 percentage points for the products listed in part B of the Annex;

(c) 30 percentage points for the products listed in part C of the Annex.

3. In order to allow the French authorities to exempt products produced locally by a trader with a turnover of less than EUR 550 000, the differentials provided for in paragraph 2 may be increased by a maximum of five percentage points.

4. For products not listed in the Annex which are produced locally by a trader referred to in paragraph 3, the French authorities may nonetheless apply a difference in taxation in order to exempt them. This shall not, however, exceed five percentage points.

Article 2

The French authorities shall apply the same taxation arrangements as those applied to products produced locally to products that have benefited from the specific supply arrangements under Articles 2 and 3 of Regulation (EC) No 1452/2001.

Article 3

The Council, acting by qualified majority on a proposal from the Commission, shall adopt the measures necessary for the application of this Decision with regard to the updating of the lists of products in the Annex because of the emergence of new production in the DOMs and the taking of urgent measures if local production is threatened by certain commercial practices.

Article 4

France shall immediately notify the Commission of the taxation arrangements referred to in Article 1.

The French authorities shall present to the Commission by 31 July 2008 a report on the application of the taxation arrangements referred to in Article 1, in order to check the impact of the measures taken and their contribution to the promotion or maintenance of local economic activities, in the light of the handicaps affecting the outermost regions.

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On the basis of this report, the Commission shall present a report to the Council giving a full economic and social analysis, and where appropriate a proposal for adapting the provisions of this Decision.

Article 5

Articles 1 to 4 shall be applicable as from 1 August 2004.

Article 6 shall be applicable as from 1 January 2004.

Article 6

The period of validity of Decision 89/688/EEC is hereby extended to 31 July 2004.

Article 7

This Decision is addressed to the French Republic.

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ANNEX

A. **List of products referred to in Article 1(2)(a) according to the classification of the Common Customs Tariff nomenclature** [1]

1. Department of Guadeloupe

0105, 0201, 0203, 0205, 0207, 0208, 0209, 0305 except 0305 10, 0403, 0405, 0406, 08 except 0807, 1106, 2001, 2005, 2103, 2104, 2209, ►M2 ———— ◄, 2505, 2710, 2711 12, 2711 13, 2712, 2804, 2806, 2811, 2814, 2836, 2851 00, 2907, 3204, 3205, 3206, 3207, 3211 00 00, 3212, 3213, 3214, 3215, 3808, 3809, 3925 except 3925 10 00, 3925 20 00, 3925 30 00 and 3925 90, 4012, 4407 10, 4409 except 4409 20, 4415 20, 4818 except 4818 10, 4818 20 and 4818 30, 4820, 7003, 7006 00, 7225, 7309 00, 7310, 7616 91 00, 7616 99, 8419 19 00, 8471, 8902 00 18 and 8903 99, ►M2 0210, 0702, 0705, 0706 10 00, 0707 00, 0709 60, 0709 90, 2309, 6805 ◄.

2. Department of Guyana

3824 50 and 6810 11, ►M2 1006 20, 2201 ◄.

3. Department of Martinique

0105, 0201, 0203, 0205, 0207, 0208, 0209, 0305, 0403 except 0403 10, 0406, 0706 10 00, 0707, 0709 60, 0709 90, 0710, 0711, 08 except 0807, 1106, 1209, 1212, 1904, 2001, 2005, 2103, 2104, 2209, 2302, 2505 10 00, 2505 90 00, 2710, 2711 12, 2711 13, 2712, 2804, 2806, ►M2 ———— ◄, 2814, 2836, 2851 00, 2907, 3204, 3205, 3206, 3207, 3211 00 00, 3212, 3213, 3214, 3215, 3808 90, 3809 91, 3820 00 00, 4012, 4401, 4407, 4408, 4409, 4415 20, 4418 except 4418 10, 4418 20, 4418 30, 4418 50 and 4418 90, 4421 90, 4811, 4820, 6902, 6904 10 00, 7003, 7006 00, 7225, 7309 00, 7310, 7616 91 00, 7616 99, 8402 90 00, 8419 19 00, 8438, 8471 and 8903 99, ►M2 1008 90 90, 1102, 2517 10 ◄.

4. Department of Réunion

0105, 0207, 0208, 0209, 0301, 0302, 0303, 0304, 0305, 0403, 0405, 0406, 0407, 0408, 0601, 0602, 0710, 0711, 08, 0904, 0905 00 00, 0910 91, 1106, 1212, 1604 14, 1604 19, 1604 20, 1701, 1702, 1902 except 1902 11 00, 1902 19, 1902 20, 1902 30 and 1902 40, 1904, 2001, 2005 except 2005 51, 2006, 2007, 2103, 2104, 2201, 2309, 2710, 2712, 3211 00 00, 3214, 3402, 3505, 3506, ►M2 ———— ◄, 3705 90 00, ►M2 ———— ◄, 3808, 3809, 3811 90, 3814 00, 3820, 3824, 39 except 3917, 3919, 3920, 3921 90 60, 3923, 3925 20 00 and 3925 30 00, 4009, 4010, 4016, 4407 10, 4409 except 4409 20, 4415 20, 4421, 4806 40 90, 4811, 4818 except 4818 10, 4820, 6306, 6809, 6811 90 00, 7009, 7312 90, 7314 except 7314 20, 7314 39 00, 7314 41 90, 7314 49 and 7314 50 00, 7606, 8310, 8418, 8421, 8471, 8537, 8706, 8707, 8708, 8902 00 18, 8903 99, 9001, 9021 29 00, 9405, 9406 except 9406 00 and 9506.

▼M3

5. Mayotte as outermost region

0904 11, 0904 12, 0905, 1806, 3925 10 00, 3925 90 80, 3926 90 90, 3926 90 97, 6901, 6902, 9021 21 90.

[1] Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 256, 7.9.1987, p. 1). Regulation as last amended by Commission Regulation (EC) No 2344/2003 (OJ L 346, 31.12.2003, p. 38).

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B. **List of products referred to in Article 1(2)(b) according to the classification of the Common Customs Tariff nomenclature** [1]

1. Department of Guadeloupe

►M2 ——— ◄, 0301, 0302, 0303, 0304, 0305 10, 0306, 0307, 0407, 0409 00 00, 0601, 0602, 0603, 0604, ►M2 ——— ◄, 0807, 1008 90 90, 1601, 1602, 1604 20, 1605, 1702, 1704, 1806, 1902, 1905, 2105 00, 2201 10, 2202 10 00, 2202 90, ►M2 ——— ◄, 2523 21 00, 2523 29 00, 2828 10 00, 2828 90 00, 3101 00 00, 3102, 3103, 3104, 3105, 3301, 3302, 3305, 3401, 3402, 3406 00, 3917, 3919, 3920, 3923, 3924, 3925 10 00, 3925 20 00, 3925 30 00, 3925 90, 3926 10 00, 3926 90, 4409 20, 4418, 4818 10, 4818 20, 4818 30, 4819, 4821, 4823, 4907 00 90, 4909 00, 4910 00 00, 4911 10, 6306, ►M2 ——— ◄, 6810, 6811 90 00, 7213, 7214, 7217, 7308, 7314, 7610 10 00, 7610 90 90, 9401, 9403, 9404 and 9406, ►M2 3208, 3209, 3210, 7015 10 00 ◄.

2. Department of Guyana

0303 79, 0306 13, 0403 10, ►M2 ——— ◄, 1006 30, ►M2 ——— ◄, 2309 90, 2505 10 00, 2517 10, ►M2 ——— ◄, 3208 20, 3209 10, 3917, ►M2 ——— ◄, 3925, ►M2 ——— ◄, ►M2 ——— ◄, ►M1 0403 90, 0901 21, 1801, 1802, 1803, 1805, 1806, 2008 11, 2008 99, 2703, 3921 11, 3922 10, 7411, 7412, 7419 91, 7907 00 10, 7907 00 90 and 9404 21, ◄ ►M2 0201, 0202, 0203, 0204, 0208, 0210, 0304, 0305, 0401, 1905, 2105, 2523 29, 3919, 3926, 4910, 4911, 6109, 6205, 6206, 6810 19, 6815, 7210, 7214 20, 7216, 7217 90 90, 7308, 7309, 7310, 7314, 7610 ◄.

3. Department of Martinique

0210, 0302, 0303, 0304, 0306, 0307, 0403 10, 0405, 0407, 0409 00 00, 0601, 0602, 0603, 0604, 0702, 0705, 0807, ►M2 ——— ◄, 1601, 1602, 1604 20, 1605, 1702, 1704, 1806, 1902, 2105 00, 2106, 2201, 2202 10 00, 2202 90, 2309, 2523 21 00, 2523 29 00, 2828 10 00, 2828 90 00, 3101 00 00, 3102, 3103, 3104, 3105, 3301, 3302, 3305, 3401, 3402, 3406 00, 3808 except 3808 90, 3809 except 3809 91, ►M2 ——— ◄, 3917, 3919, 3920, 3923, 3924, 3925, 3926, 4418 10, 4418 20, 4418 30, 4418 50 and 4418 90, 4818, 4819, 4821, 4823, 4907 00 90, 4909 00, 4910 00 00, 4911 10, 6103, 6104, 6105, 6107, 6203, 6204, 6205, 6207, 6208, 6306, 6805, 6810, 6811 90 00, 7213, 7214, 7217, 7308, 7314, 7610, 9401, 9403, 9404, 9405 60 and 9406.

4. Department of Réunion

0306, 0307, 0409 00 00, 0603, 0604, 0709 60, 0901 21 00, 0901 22 00, 0910 10 00, 0910 30 00, ►M2 ——— ◄, 1508 90, ►M2 ——— ◄, 1512 19, 1515 29, 1516, 1601, 1602, 1605, 1704, 1806, 1901, 1902 11 00, 1902 19, 1902 20, 1902 30, 1902 40, 1905, 2005 51, 2008, 2105 00, 2106, ►M2 ——— ◄, 3208, 3209, 3210, 3212, 3301, 3305, 3401, 3917, 3919, 3920, 3921 90 60, 3923, 3925 20 00, 3925 30 00, 4012, 4418, 4818 10, 4819, 4821, 4823, 4907 00 90, 4909 00, 4910 00 00, 4911 10, 4911 91, 7308, 7309 00, 7310, 7314 20, 7314 39 00, 7314 41 90, 7314 49, 7314 50 00, 7326, 7608, 7610, 7616, 8419 19 00, 8528, 9401, 9403, 9404 and 9406 00.

▼M3

5. Mayotte as outermost region

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

▼B

C. **List of products referred to in Article 1(2)(c) according to the classification of the Common Customs Tariff nomenclature** [1]

1. Department of Guadeloupe

0901 11 00, 0901 12 00, 0901 21 00, 0901 22 00, 1006 30, 1006 40 00, 1101 00, ►M2 ——— ◄, 1701, 1901, 2006, 2007, 2009, 2106, 2203 00, 2208 40, ►M2 ——— ◄, 3705 10 00, 3705 90 00, 7009 91 00, 7009 92 00, ►M2 ——— ◄, 7113, 7114, 7115, 7117, 9001 40, 2208 70 [2] and 2208 90 [2].

2. Department of Guyana

2208 40, 4403 49, 4407 29 and ►M1 2203, ◄ ►M2 1601, 1602, 1702, 2001, 2006, 2007, 2009, 2103, 2106, 2202, 2208 70 [2], 2208 90 [2], 3923, 4403 99 95, 4407 22, 4407 99 96, 4409 29 91, 4409 29 99, 4418 except 4418 10 50, 4418 20 50, 4418 71, 4418 72 and 4418 79, 9403 40 10, 9406 except 9406 00 31 ◄.

3. Department of Martinique

0901 11 00, 0901 21 00, 0901 22 00, 1006 30, 1006 40 00, 1101 00, ►M2 ——— ◄, 1701, 1901, 1905, 2006, 2007, 2008, 2009, 2203 00, 2208 40, ►M2 ——— ◄, 3208, 3209, 3210, 7009, 7015 10 00, 7113, 7114, 7115, 7117, 9001 40, 2208 70 [2] and 2208 90 [2].

4. Department of Réunion

2009, 2202 10 00, 2202 90, 2203 00, 2204 21, 2206 00, 2208 40, 2402 20, 2403, 7113, 7114, 7115, 7117, 8521, 2208 70 [2] and 2208 90 [2].

▼M3

5. Mayotte as outermost region

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

[1] Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 256, 7.9.1987, p. 1). Regulation as last amended by Commission Regulation (EC) No 2344/2003 (OJ L 346, 31.12.2003, p. 38).

[2] Only rum-based products under heading 2208 40.