Octroi de mer

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Is it finally the moment of farewell for the 'Octroi de mer'?

The 'Octroi de mer', which sounds as if it would be more at home on a seafood menu, is in fact a tax[1]. Indeed it is an historic and venerable tax, first invented and imposed by the finance ministers of Louis XIV in 1670. It continued in France as a major source of state income until it was abolished for metropolitan France by the Laval government in 1943[2]. It has continued to this day in the four (DOMs), Martinique, Guadeloupe, Guyane and La Réunion and is about to be introduced in a fifth, Mayotte. It appears to be heading for its demise in 2014, at the hands of the EU. I use the word 'appears' advisedly as it has survived a number of abolitions in its long life. I will explain what it is, how it operates, why the EU wants an end to it, and why its supporters are working hard for another postponement of its abolition.

It is, broadly speaking, a sophisticated form of import duty. Indeed, an import duty, or a cluster of multiple import duties, is what it was until 1992, when it was modified and became more sophisticated to meet the requirements of the decision of the European Council of 22 December 1989. Originally the imported goods and the rates of impost were selected by the government; the enforcement and payment were through the *Douanes;* the importer could decide how much of the cost he could withstand and how much was to be passed on to the consumers within the frontier. Local industry would have some protection, the full cost-of-living brunt of a sales Tax would be mitigated, and the government got its money. Importantly, after 1943, in the DOMs it was the local government, the *Conseil General*, that got its money. The level of tax was locally imposed; the local customs men collected it as the goods went across the wharf; the proceeds were spent locally, financing local government.

1989 was the first EU attempt at abolition, but after much discussion and considerable French pressure, a compromise was achieved – of postponement coupled with modification. The postponement was for 15 years, until 2004. There was a presumption

[1] It is often translated into English, more prosaically, as 'Dock Dues'
[2] It was said to make food supplies more difficult. Probably it just annoyed the German occupiers and traders.

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that the tax would disappear in 2004, but in fact it was given another 10 years reprieve until 2014.The modifications of 1989 brought two major changes to the tax. The first was that the tax would apply to goods produced within the territory as well as to imports, but not necessarily at the same levels. The second was that the goods to be taxed would be on one of three lists – A, B and C – created by the EU, with varying bands of percentage impost. The reprieve of 2004 brought further minor alterations and a fine-tuning review in 2008. It is the 2004 extension for ten years that runs out in 2014 on July 1st.

The modifications were designed to level the playing field, but without major disruption. The social benefits – no price shocks and the protection of local industry – could continue by a manipulation of the differences between tax levels. All products, imported or locally produced, would be subject to the tax. The local product could have a low or zero rate of 'Octroi de mer': it was the differential that was now to provide the element of protection. So long as there was a significant differential, the aims of the tax could be met. The ball was now with the *Conseil General.* It was now for the most part responsible for generating its own finances. If it was to find enough money to finance all that was asked of it – the infrastructure, health, education, local and Communal services, and salaries (in all cases it was the major employer of the territory or island) – it would have to pitch the 'Octroi de mer', or at least the differential, high. If it was to keep the cost-of-living concerns of its electorate quiescent, it would have to pitch it low. In short, it was never an easy decision and a coming of age for the *élus* (the elected members) of the *Conseil General.*

The EU furnished the lists. The lists were based on stated criteria – 10% permitted on basic goods, 20% where heavy local investment would be required in a small market to compete with imports, and 30% on products of big companies where there was a great vulnerability to imports from major countries nearby, i.e. where without major protection a local producer would not stand a chance. Within these parameters the DOM through its *Conseil General* could set fine-tuned regimes with many different levels of percentage.[3]

It has to be remembered that in European terms, the territories concerned were not very large or important – the French DOMs and somewhat similar arrangements in Portuguese and Spanish islands. The 'Octroi de mer', in its old form (and similar schemes) caused offence by being contrary to EU principles of fair competition, rather

[3] To take some random examples: in Guadeloupe local yoghourt is zero-rated, imported yoghourt 17.5%. Animal food stuffs and cement 0%-14%, Rum (an important local industry but facing major competition) 0%-27.5%. In Martinique the highest level is 40%, on pornographic and violent films. One wonders whether this is an attempt to protect the local industry or the local morals.

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than by being statistically important in the overall picture of EU finances. It may have been a minute example of a tariff, but it certainly looked like a tariff and quacked like a tariff. There was at least an aura of unfair competition that could provide a basis for attacking what to many appeared a form of French exceptionalism. In parallel to the edicts of the EU Council, there have been a number of decisions[4] of the ECJ on the issue of tax on trade between EU members and RUPE territories such as DOMs which have not succeeded in clarifying the waters.

As 2014 rapidly approaches, there have been two developments. Firstly Mayotte, which has until now been funded directly from France, is to be placed under a regime of 'Octroi de mer' comparable with the other four DOMs from January 1st 2014, the date on which it becomes a Region Ultrapériphérique (RUPE) of the EU. The French government, in 2011, commissioned a report on the operation, strengths and weaknesses of the 'Octroi de mer' from the private consulting firm Louis Lengrand et Associés, known for their abilities in political and tax analysis and their powers of persuasion and influence in Brussels. The Lengrand Report, finalised in 2012, provided much of the basis for the Report to the Assemblée Nationale.

[4]First and most important was the Hansen case of 1989. Here the issue was the duty payable on Guadeloupian rum being imported into Germany. It was held that none was payable as Guadeloupe was within the confines of the EU. This was followed by the Lancry and Legros cases which appear to derogate from the simple principle of Hansen.

– Views expressed in this article are not necessarily those of SAGE International –

Images Accessed: 09/09/2013

Octroi de mer:
http://observatoire-outre-mer.interieur.gouv.fr/var/cache_glt/storage/images/media/images/octroi/1267-1-eng-GB/Octroi.jpg

Departments et territoires d' outré-mer:
http://www.saveurs-outre-mer.fr/Files/26655/carte-outre-mer.jpg

France logo:
http://www.ubifrance.com/medias/image/0 - Logo France JPEG.jpg

Port de Longoni, Mayotte:
http://58.img.v4.skyrock.net/9352/74699352/pics/2949098677_1_3.jpg

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