L.N. 234 of 2004

EUROPEAN UNION ACT
(ACT NO. V OF 2003)

Implementation of the Safeguard Clause Order, 2004

BY virtue of the powers conferred under article 4(2) of the European Union Act, 2003, the Prime Minister and Minister of Finance has made the following Order:

Title and scope.

1. (1) The title of this Order is the Implementation of the Safeguard Clause Order, 2004.

(2) This Order shall come into force on the 1st May, 2004.

Interpretation

2. In this Order, unless the context otherwise requires:

"the Act" means the European Union Act;

"arrivals" refers to the entry of goods into Malta from another Member State of the European Community;

"the Commission" means the Commission of the European Union;

"the Community" means the territory of the countries that are members of the European Community;

"the competent authority" means the Ministry responsible for agriculture;

"goods" means both Community and non-Community goods unless otherwise specified;

"Member States" means countries that are members of the European Community;

"the Minister" means Minister responsible for agriculture; "person" means both a natural person or a corporate body;

"Safeguard Clause" means the legal instrument envisaging the possible application of protective measures as stipulated in Article 37 of the Treaty and Section 7(A)1(c) of Annex XI of the same, in relation to products listed in the Annex attached to this Order; "the Treaty" means the Treaty as defined in the Act.

Market surveillance.

3. (1) The competent authority shall conduct market surveillance in order to monitor and determine the arrivals and the trade flow development in Malta of the goods listed in the Annex.

(2) The competent authority shall take any such measures as may be necessary to implement the monitoring system referred to in sub-article (1) hereof. In particular, it may require traders to report at regular intervals the quantities, the prices at the wholesale level and the origin of the goods listed in the Annex.

(3) In implementing the provisions of this Order, the competent authority shall take into account data obtained by virtue of:

(a) Commission Regulation (EC) 599/2004 concerning the adoption of a harmonised model certificate and inspection report linked to intra-Community trade in animals and products of animal origin;

(b) notification and reporting obligations arising from Community law in relation to intra-Community trade in all animals and products referred to in Council Directive 90/425/EEC, all products of animal origin referred to in Council Directive 89/662 for which a health certificate is required, and all animal by-products referred to in Regulation (EC) No 1774/2002 of the European Parliament and of the Council for which the rules require prior notification;

(c) notification and reporting obligations in relation to non-Community goods; and

(d) any other notification and reporting obligations in relation to the goods listed in the Annex.

Protective measures.

4. (1) In accordance with Article 37 of the Treaty and subject to the prior authorisation of the Commission, the Minister may adopt protective measures as may be necessary for the implementation of the Safeguard Clause and may take any such measures and make any such provisions as may be necessary to give effect to the protective measures so adopted.

(2) For the purposes of this article any market entry restriction that may be envisaged to implement the protective measures, may take the form of marketing certificates issued under the procedures provided for in this Order.

Marketing certificates.

5. (1) Marketing certificates shall be issued by the competent authority to any person who files an application in relation to any or all of the goods listed in the Annex:

(a) for set quantities or maximum quantities and for a set period of validity, and

(b) within a maximum of three weeks from the closing date of a call for applications for marketing certificates issued by the competent authority.

(2) If the quantities specified in the applications exceed the quantities envisaged by the competent authority for the market by virtue of the implementation of the Safeguard Clause, then the competent authority shall reduce the quantities accordingly and proportionately taking into account the arrivals and trade flow development prior to the implementation of the Safeguard Clause.

(3) Goods originating from the Community shall, in no case, be treated less favourably than goods originating from outside the Community.

Security.

6. Marketing certificates shall be issued against payment by the trader of a deposit, by way of security, in order to ensure that the goods for which the certificate applies shall be marketed in Malta within the period of validity of the certificate. The security shall correspond to fifty per centum of the wholesale price of the quantity for which the certificate shall be valid:

Provided that the security referred to in this article shall be refunded to the trader as soon as he proves to the competent authority that the goods and quantities listed in the marketing certificate have been marketed in Malta during the period of validity of the certificate. Evidence shall be considered as sufficient if it is presented on an appropriate form and includes information on:

(a) the quantities of the respective goods;
(b) the delivery period or periods;
(c) the supplier of the goods;
(d) the name and address of the trader who was responsible for the first sale in Malta; and
(e) on request of the competent authority, the presentation of invoices.

Suspension of marketing certificates.

7. Marketing certificates shall be suspended for as long as the Commission provides in terms of any decision taken in accordance with Article 37 of the Treaty.

Information, trade records and inspections.

8. (1) For the purpose of this Order, the competent authority may inspect any relevant documents and can enter the business premises and store rooms of the traders and demand the necessary information to ensure adequate implementation of this Order. Any such inspection is to take place during office hours or by agreement.

(2) Traders shall keep all trade records, including stocks, and shall report to the competent authority any such information or data as may be required in terms of

this Order. Such trade records shall be kept for a period of five years unless long periods of retention are stipulated under other legal provisions other than this Order.

Infringements and penalties

9. (1) It shall be a breach of this Order if a person:

(a) does not submit or submits incorrectly or incompletely any data or information as may be required by the competent authority in terms of this Order;

(b) obtains a certificate through false or incomplete information;

(c) is responsible for the arrival in Malta of goods listed in the Annex without a marketing certificate when such a certificate is necessary in terms of this Order;

(d) purchases from other Member States of the European Union or from outside the Community, without the necessary marketing certificate, goods listed in the Annex for which a certificate is necessary;

(e) fails to keep records as required by this Order.

(2) Whosoever is in breach of this Order shall be subject to a penalty which shall, for a first offence, be not less than one thousand liri (Lm1,000) and not more than five thousand liri (Lm5,000) and to a further penalty of not less than twenty five liri (Lm25) and not more than fifty liri (Lm50) for each subsequent day that the offence continues. For subsequent offences, traders shall be liable to a penalty of not less than five thousand liri (Lm5,000) and not more than ten thousand liri (Lm10,000) and to a further penalty of not less than fifty liri (Lm50) and not more than one hundred liri (Lm100) for each subsequent day that the offence continues.

Annex

Category of Goods to which the Order applies

Sector	Goods
Dairy:	Milk (pasteurised, sterilised, ultra high temperature treated), Yoghurt, Ricotta cheese
Pork:	Meat in terms of Chapter 0203 and Chapter 1602 of the Common Customs Tariff
Poultry:	Meat in terms of Chapter 0207 and Chapter 1602 of the Common Customs Tariff
Eggs:	Chicken eggs for human consumption in terms of Chapters 0407, 0408 of the Common Customs Tariff
Wine:	Wine products in terms of Chapter 2204 of the Common Customs Tariff
Tomatoes	Tomatoes and tomato products in terms of Chapter 0702 and Chapters 2002, 2009, 2103, 2005 of the Common Customs Tariff
Fruit and vegetables:	Other fruit and vegetables with important domestic production

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