REPORT FOR THE HEARING
delivered in Case C-229/88 *

I — Facts and procedure

1. The common organization of the market in oils and fats is governed by Regulation (EEC) No 136/66/EEC of the Council of 22 September 1966 (Official Journal, English Special Edition 1965-66, p. 221).

2. In order to encourage the oilseed processing industry to use seeds originating in the Community, Article 27(1) of Regulation No 136/66, as amended by Council Regulation (EEC) No 1454/86 of 13 May 1986 (Official Journal L 133, 21.5.1986, p. 8) provides that if the target price for a species of seed is higher than the world market price, aid is to be granted for seed of that species harvested and processed in the Community. Subject to certain minor exceptions and without prejudice to the special provisions laid down in Article 27a, the amount of that aid is to be equal to the difference between the world market price and the target price.

3. The Council laid down the rules applicable to the grant of the subsidy for oilseeds in Regulation (EEC) No 1594/83 of 14 June 1983 on the subsidy for oilseeds (Official Journal 1983, L 163, p. 44), amended by Council Regulation (EEC) No 935/86 of 25 March 1986 (Official Journal 1986, L 87, p. 5). The detailed rules for the application of the subsidy system were laid down in Commission Regulation (EEC) No 2681/83 of 21 September 1983 (Official Journal 1983, L 266, p. 1).

4. According to the second subparagraph of Article 3(2) of Regulation No 1594/83, as amended by Regulation No 935/86, the amount of the subsidy is to be that which is applicable on the day on which the Member State concerned identifies the seed. However, Article 4 provides that the person concerned may apply to have the amount of the subsidy fixed in advance. In such a case, as can be seen from the third subparagraph of Article 3(2), the amount of the subsidy is that which is applicable on the day on which the application for advance fixing is lodged and is applied to seeds identified during the period of validity of the advance-fixing part of the certificate which, according to Article 11 of Regulation No 2681/83, is, in principle and unless a derogation is granted by the Commission, five months for colza and rape seed and four months for sunflower seed, the time-limit to run from the month following that during which the application was lodged. In both cases, the Commission may, in certain cases, extend the period of validity of the certificates. The amount of the subsidy depends on the species, the period and the country in which the seeds are harvested or processed.

5. The advance-fixing part of the certificate is in principle issued on the first working day following that on which the application is lodged, subject to Article 8 of Regulation No 1594/83, as amended by Regulation No 935/86, which provides as follows:

'1. In the case of an abnormal situation which results or could result in a disturbance on the Community market for

* Language of the case: English.

oilseeds, it may be decided to suspend the advance fixing of the subsidy for the period necessary to re-establish the balance in the market.

2. The suspension referred to in paragraph 1 may be extended to the advance-fixing parts of the certificate referred to in Article 4 which have been requested and have not yet been issued in the case:

(a) where there is a material error in the amount of the subsidy which is published,

(b) where certain factors may create a monetary distortion between Member States,

and when these cases may create a discrimination between interested parties.

3. Suspension of advance fixing shall be decided in accordance with the procedure laid down in Article 38 of Regulation No 136/66/EEC.

However, in case of emergency, the Commission may decide on this suspension; in such a case, the period of suspension shall not exceed five days.'

6. The applicants, whose activities consist, in particular, of the processing of oilseeds, applied on 7 June 1988 to the competent authorities for the advance fixing of the processing subsidy in respect of a total quantity of approximately 370 000 tonnes of colza seed, rape seed and/or sunflower seed.

7. The rates applicable at that time were laid down in Commission Regulation (EEC) No 1507/88 fixing the amount of the subsidy on oilseeds (Official Journal 1988, L 135, p. 31), which entered into force on 1 June 1988.

8. However, on 7 June 1988, the Commission, considering that the conditions laid down in Article 8 of Regulation No 1594/83, as amended, were fulfilled, adopted Regulation (EEC) No 1587/88 (Official Journal L 141, p. 55), which suspended advance fixing of the subsidy for colza, rape and sunflower seed in the case of certificates the applications for which were lodged from 7 to 11 June 1988.

9. On the same day, the Commission adopted Regulation (EEC) No 1584/88 of 7 June 1988 (Official Journal 1988, L 141, p. 48) fixing the new amount of the subsidy on oilseeds at a rate below that in force on 7 June 1988, particularly in regard to colza, rape and sunflower seed.

10. Following the adoption of Regulation No 1587/88, the applicants were informed by their national authorities of the contents of that regulation and of the rejection of their applications for advance fixing of the subsidy, lodged on 7 June 1988.

11. They therefore brought these proceedings for a declaration that Commission Regulation No 1587/88 suspending advance fixing of the subsidy for colza, rape and sunflower seed is void in so far as it applies to applications lodged on 7 June 1988.

12. The application was received at the Court Registry on 10 August 1988.

13. By application lodged at the Court Registry on 31 August 1988, the applicants applied under Articles 185 and 186 of the

EEC Treaty and Article 83 of the Rules of Procedure for the suspension of the operation of Regulation No 1587/88 and for an interlocutory order requiring the Commission to take appropriate measures to ensure that, on the third working day after the date on which the order suspending operation of the decision is made, the applicants obtain advance-fixing certificates for the processing of oilseeds at the subsidy rates applicable on 7 June 1988 relating to the quantities of rape or colza seed or sunflower seed indicated in the applications for advance fixing lodged by them on 7 June 1988. The application for interim measures was dismissed by order of the President of the Court of 26 September 1988.

14. In a document relating to a procedural issue lodged at the Court Registry on 28 October 1988, the Commission raised an objection of inadmissibility and asked the Court, under Article 91 of the Rules of Procedure of the Court, to rule on that objection without deciding the substance of the case.

15. The applicants submitted their written observations in reply to the objection of inadmissibility on 13 January 1989.

16. Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General the Court decided to open the oral procedure on the question of admissibility only without any preparatory inquiry.

17. By order of 21 June 1989, the Court also decided, pursuant to Article 95(1) and (2) of the Rules of Procedure, to assign the case to the Fourth Chamber.

II — Conclusions of the parties

1. The Commission claims that the Court should:

(i) dismiss the application as inadmissible;

(ii) order the applicants to pay the costs, including those in Case C-229/88 R.

2. In their written observations submitted in reply to the Commission's objection of inadmissibility, the applicants contend that the Court should dismiss the objection.

III — Submissions and arguments of the parties

1. The Commission points out first of all that in the Court's case-law the consistent interpretation of the second paragraph of Article 173 of the Treaty has been that the aim of the paragraph is, in particular, to avoid the possibility that the Community institutions, simply by choosing the form of a regulation, can exclude proceedings by an individual against a decision which concerns him directly and individually and to emphasize that the choice of form cannot change the nature of a measure.

It points out that the contested regulation was not adopted by it on the basis of the applicants' requests, nor on the basis of a series of requests which it could determine and individualize (including those of the applicants). It was on the basis purely of figures divided up by national organizations that it had to judge the situation of the Community market.

In other words, the fact that the applicants had submitted requests for advance fixing of the subsidy was not known to the Commission, any more than the number and identity of other operators who had submitted the same request. Not only were the applicants' individual situations not known to the Commission but it was unable to distinguish the applicants' situations from those of an undetermined number of other Community traders. The Commission considers that, to define the nature of the contested measure, reference must be made to the regulatory framework, the aim and the effects of the measure.

It considers first that it is clear from the preamble to Regulation No 1587/88 that that regulation was adopted within the framework of general rules, of which it constitutes an ordinary application. The regulation is based on Article 8(3) of Council Regulation No 1594/83, as amended by Regulation No 935/86, cited above, which gives the Commission the power, without consulting the Management Committee, to suspend advance fixing of the subsidy in case of emergency and for a maximum period of five days. Article 8(2) of the regulation describes the situation in which suspension can be adopted.

According to the Commission, the provisions on suspension are one of the essential elements of the subsidy scheme as defined by the Council since they represent the consideration for the derogation from the general rule that the amount of the subsidy is that applicable on the day on which the Member State concerned identified the seed, that is to say, the derogation allowing advance fixing on mere request.

As regards the purpose and the effects of Regulation No 1587/88, the Commission points out that the aim of that regulation was to end temporarily and as soon as possible prefixing of aid in order to remedy the abnormal situation which was developing and to avoid speculative use of that possibility, given the considerable increase in the world market price.

The suspension is of general application from its date of entry into force both for reasons of effectiveness and with a view to providing equal treatment for Community traders. It applies to traders who would have considered submitting a request during the period of application of the suspension as well as to those who have already submitted a request but to whom no certificate had been issued. In other words, the contested measure was intended to produce effects on all the enterprises in the sector concerned.

The Commission thus considers that an examination both of the regulatory framework of which the contested regulation is part and of its purpose and effect show that it is in the nature of a regulation of general application.

Finally, the Commission draws attention to the judgment of 25 March 1982 in Case 45/81 *Moksel* v *Commission* [1982] ECR 1129, the facts of which are in its view similar to the facts in the present case. In that case, the Court had to decide on the admissiblity of an application for the annulment of a Commission regulation suspending the advance fixing of export refunds for certain agricultural products. The Court held that the application was inadmissible because the contested act was adopted in the framework of a body of general rules and because it covered not only applications already submitted but also

those which might have been submitted at a later date.

The Commission considers that, having regard to the foregoing, the Court should dismiss the application as inadmissible.

2. The applicants claim that their application is admissible.

In order to show that they are directly concerned by the contested regulation, the applicants claim that even if the actual decision to grant or refuse advance-fixing certificates is a matter for the Member States, they have no discretion in that regard.

In order to show that they are individually concerned, the applicants state that at the date on which Regulation No 1587/88 entered into force, the number and the identity of the importers who had lodged an application for advance fixing was already established and could be verified. They consider that by deciding to extend the suspensory measure to pending applications pursuant to Article 8(2) of Regulation No 1594/83, Regulation No 1587/88 directly and specifically sought to affect the legal position of those traders who had given a commitment to the Community by applying for advance fixing on 7 June 1988, because at the time the decision was taken, no more applications could be added and, therefore, the applicants constituted a closed circle.

Furthermore, the applicants consider that it is of no importance that Regulation No 1587/88 was adopted on the same date as the applications were lodged because, in their view, all that counts is the fact that the Commission, at the moment that it took its decision, was fully informed of the definitive quantities for which applications had been lodged on that day and, consequently, it adopted the contested decision having regard to those particular quantities.

In view of its legal basis and its objectives, Regulation No 1587/88 should be divided into two parts: one part relating to pending applications and the other to applications to be made in the future. Since the application for annulment is addressed only to the first part, the interests of the closed circle of traders affected thereby cannot be amalgamated with the interests of those affected by the second part. Thus, these proceedings are directed against one part of a double decision which the Commission has erroneously presented as one single decision.

Moreover, the applicants consider that the judgment in *Moksel* has remained unique and that the reasoning developed in that case has been employed in no other judgment.

The Court should therefore declare the application admissible as it did in the judgments of 23 November 1971 in Case 62/70 *Bock* v *Commission* [1971] ECR 897, of 13 May 1971 in Joined Cases 41/70 to 44/70 *International Fruit Company* v *Commission* [1971] ECR 411, of 17 January 1985 in Case 11/82 *Piraiki-Patraiki* v *Commission* [1985] ECR 227, of 18 November 1975 in Case 100/74 *CAM* v *Commission* [1975] ECR 1393 and of 3 May 1978 in Case 112/77 *Töpfer* v *Commission* [1978] ECR 1019.

M. Díez de Velasco
Judge-Rapporteur