ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE

21 March 1997 *

In Case T-79/96 R,

Camar Srl, a company incorporated under Italian law, having its registered office in Florence, represented by Wilma Viscardini Donà, assisted by Mariano Paolin and Simonetta Donà, of the Padua Bar, with an address for service in Luxembourg at the Chambers of Ernst Arendt, 8-10 Rue Mathias Hardt,

applicant,

supported by

Italian Republic, represented by Professor Umberto Leanza, Head of the Legal Department in the Ministry of Foreign Affairs, assisted by Pier Giorgio Ferri, Avvocato dello Stato, with an address for service in Luxembourg at the Italian Embassy, 5 Rue Marie-Adélaïde,

intervener,

* Language of the case: Italian.

Commission of the European Communities, represented by Eugenio de March, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

supported by

French Republic, represented by Frédéric Pascal, Attaché, and Catherine de Salins, Assistant Director in the Legal Affairs Directorate of the Ministry of Foreign Affairs, acting as Agents, with an address for service in Luxembourg at the French Embassy, 8B Boulevard Joseph II,

intervener,

APPLICATION to the President of the Court of First Instance pursuant to Article 186 of the EC Treaty for an order requiring the Commission to issue Camar Srl with import licences for the year 1997 for bananas from non-member countries or non-traditional ACP States in a quantity equal to the difference between the quantity of Somalian bananas which Camar Srl is able to import and the quantity which it imported during the years 1988, 1989 and 1990 and, in the alternative, for the adoption of such measures pending final judgment as he may consider appropriate in order to prevent Camar Srl from suffering irreparable damage

THE PRESIDENT OF THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES

makes the following

Order

The relevant provisions

1 Council Regulation (EEC) No 404/93 of 13 February 1993 on the common organization of the market in bananas (OJ 1993 L 47, p. 1, 'Regulation No 404/93') established, as from July 1993, a common system for imports in place of the various national systems previously prevailing. Regulation No 404/93 was subsequently amended by Council Regulation (EC) No 3290/94 of 22 December 1994 on the adjustments and transitional arrangements required in order to implement the agreements concluded during the Uruguay Round of multilateral trade negotiations (OJ 1994 L 349, p. 105).

2 Under the arrangements on trade with third countries, which are the subject of Title IV of Regulation No 404/93, a tariff quota is to be opened each year for imports of third-country bananas and non-traditional ACP bananas. The terms 'traditional imports' and 'non-traditional imports' are defined in Article 15a of Regulation No 404/93. 'Traditional imports from ACP States' means the quantities of bananas, specified in the annex to Regulation No 404/93, exported by each ACP

State which has traditionally exported bananas to the Community. The quantities of bananas exported by the ACP States which exceed the quantity defined above are 'non-traditional imports from ACP States'. For Somalia, the quantity of 'traditional imports' was fixed at 60 000 tonnes.

3 Article 18(1) of Regulation No 404/93 provides for the opening each year of a tariff quota of 2.2 million tonnes (net weight) for imports of third-country bananas and non-traditional ACP bananas. Within the framework of the tariff quota, imports of third-country bananas are subject to a levy of ECU 75 per tonne and imports of non-traditional ACP bananas are subject to a zero duty (Article 18(1), second subparagraph, of Regulation No 404/93). Bananas imported outside the tariff quota are subject to a customs duty calculated on the basis of the Common Customs Tariff (Article 18(2) of Regulation No 404/93).

4 Article 19(1) divides the tariff quota thus opened, allocating 66.5% to the category of operators who marketed third-country and/or non-traditional ACP bananas, 30% to the category of operators who marketed Community and/or traditional ACP bananas and 3.5% to the category of operators who started marketing bananas other than Community and/or traditional ACP bananas from 1992.

Article 19(4) provides:

'If the tariff quota is increased, the additional available quantity shall be allocated to operators in the categories referred to in paragraph 1 in accordance with the preceding paragraphs.'

5 Article 16(1) requires a forecast supply balance to be prepared each year on production and consumption in the Community and of imports and exports.

According to Article 16(3):

'Where necessary, in particular to take account of the effects of exceptional circumstances affecting production or import conditions, the balance may be adjusted during the marketing year. In such a case, the tariff quota provided for in Article 18 shall be adapted in accordance with the procedure laid down in Article 27.'

6 Article 30 is worded as follows:

'If specific measures are required after July 1993 to assist the transition from arrangements existing before the entry into force of this regulation to those laid down by this regulation, and in particular to overcome difficulties of a sensitive nature, the Commission, acting in accordance with the procedure laid down in Article 27, shall take any transitional measures it judges necessary.'

7 Article 27, referred to in particular by Articles 16 and 30, authorizes the Commission to adopt implementing measures in accordance with what is known as the Management Committee procedure. That article provides, in particular, that the Committee is to deliver its opinion on the measures to be adopted within a time-limit to be set by the Chairman according to the degree of urgency, and the Committee is to adopt measures which apply immediately.

Facts and procedure

8 The applicant, the Italian company Camar Srl, is the only 'traditional importer' of bananas from Somalia. It was formed in 1983 with the particular object of importing bananas produced in that country into Italy.

9 1983 also saw the formation of Somalfruit SpA, a semi-public corporation in which the Somali Government has a minority holding and the majority holding belongs to the Italian investment group which created Camar. That company produces Somalian bananas.

10 Between 1984 and 1990 Somalian banana cultivation reached its zenith, attaining an annual production of 90/100 000 tonnes. Part of that production was imported into Italy by Camar. In 1990, specifically, Camar imported 45 130 tonnes.

11 On 31 December 1990 civil war broke out in Somalia and the normal flow of Camar's imports was interrupted.

12 Camar continued supplying the Italian market by buying a quantity of bananas from two ACP countries, Cameroon and the Windward Islands, and from certain third countries.

13 From July 1993, when the common organization of the market was established, until the end of 1996, Camar was issued with Category A import licences (for 4 008.521 tonnes in 1993, 8 148, 691 tonnes in 1994, 3 423.761 tonnes in 1995 and 5 312.671 in 1996) and also with Category B licences (for quantities of 5 622.938 tonnes in 1993, 10 739.088 in 1994, 6 075.934 tonnes in 1995 and 2 948.596 tonnes in 1996).

14 During that period quantities of bananas imported from Somalia, again by the applicant, amounted to approximately 482 tonnes in 1993, 1 321 tonnes in 1994, 14 140 tonnes in 1995 and 15 780 tonnes in 1996.

15 Camar repeatedly requested the Commission to increase its third-country banana quota by an amount equal to the difference between the traditional quantity of Somalian bananas provided for by Regulation No 404/93 (60 000 tonnes) and the quantities actually imported or which could be imported into the Community by Camar and to issue it with the licences corresponding to the difference between those quantities. The applicant therefore asked the defendant to adopt measures similar to those taken after cyclones Debbie, Iris, Luis and Marilyn. On 24 January 1996 the applicant, formally submitting the requests in question for the marketing year 1996, put the Commission on notice that it was calling on it to act under Article 175 of the EC Treaty.

16 By application lodged at the Registry of the Court of First Instance on 28 May 1996, Camar requested the Court, first, to declare, in accordance with Article 175 of the EC Treaty, that 'the Commission has infringed Article 30 of Regulation No 404/93 and the second subparagraph of Article 40(3) of the EC Treaty, by failing to take the steps necessary to enable the applicant to overcome the difficulties arising from the fact that, on account of the crisis in Somalia, it is impossible to procure sufficient quantities of Somalian bananas to meet traditional marketing needs, and from the fact that, by virtue of the restrictions imposed by Council Regulation No 404/93, it is impossible to use bananas from other sources', second, to 'declare that the Commission is under a duty to take adequate measures for the future' and, third, to 'order the Commission to pay compensation, pursuant to Article 178 and the second paragraph of Article 215 of the EC Treaty, for the damage suffered by the applicant as a result of the Commission's failure to act'.

17 By separate document lodged at the Registry of the Court of First Instance on 27 January 1997, the applicant also applied for interim measures pursuant to Article 186 of the Treaty, seeking 'an order that in the course of 1997 the Commission should issue Camar Srl with additional licences for the import of bananas from non-member countries or non-traditional ACP States at the rate of duty applicable

under the Common Customs Tariff in an amount equal to the difference between the quantity of Somalian bananas which Camar Srl is able to import in 1997 and the quantity imported by it during the years 1988, 1989 and 1990', and requesting 'in the alternative, that the Court should adopt such other measures pending final judgment on the action for declaration of failure to act (...) as it may think fit in order to prevent Camar from suffering irreparable damage'.

18 The Commission submitted its written observations by document lodged at the Court Registry on 11 February 1997. The French Republic and the Italian Republic, which have intervened in support of the defendant and the applicant respectively, submitted their written observations by documents lodged at the Court Registry on 10 February 1997 and 13 February 1997 respectively.

19 The parties presented their oral arguments on 28 February 1997.

Law

20 Pursuant to Articles 185 and 186 of the Treaty in conjunction with Article 4 of Council Decision 88/591/ECSC, EEC, Euratom of 24 October 1988 establishing a Court of First Instance of the European Communities (OJ 1988 L 319, p. 1), as amended by Council Decision 93/350/Euratom, ECSC, EEC of 8 June 1993 (OJ 1993 L 144, p. 21), and Council Decision 94/149/ECSC, EC of 7 March 1994 (OJ 1994 L 66, p. 29), the Court may, if it considers that the circumstances so require, order that operation of the contested act be suspended or prescribe any other necessary interim measures.

21 Article 104(2) of the Rules of Procedure provides that applications for interim measures must state the circumstances giving rise to urgency and the pleas of fact and law establishing a prima facie case for the interim measures applied for. The

measures sought must be provisional in that they must not prejudge the decision on the substance (see, most recently, Case T-6/97 R *Comafrica and Dole* v *Commission* [1997] ECR II-291, paragraph 21).

Arguments of the parties

Prima facie case

22 As regards the existence of a prima facie case, the applicant points out that, according to the case-law of the Court of Justice (Case C-280/93 R *Germany* v *Council* [1993] ECR I-3667 and Case C-68/95 *T. Port* v *Bundesanstalt für Landwirtschaft und Ehnährung* [1996] ECR I-6065, paragraphs 34 to 42), the Commission is required to take action on behalf of traders, using the powers conferred on it by Article 30 of Regulation No 404/93, and adopt measures which derogate from the general rules laid down by that regulation. That obligation, according to the applicant, necessarily applies where the provisions concerning the common organization of the markets in the banana sector are excessively restrictive of traders' fundamental rights, for example the right to property and the right to carry on business activities freely, on account of a particular situation caused by the organization of domestic markets prior to the entry into force of Regulation No 404/93 and linked to the transition from that organization to the Community system.

23 According to the applicant, it is beyond dispute that since the establishment of the common organization of the markets Camar, which traditionally supplied the Italian market, has been unable to replace Somalian bananas, which are in short supply because of the outbreak of civil war, with bananas either from other ACP countries or from third countries. On the one hand, the Community system currently in force grants the benefit of exemption from tariff duties on traditional quantities only to traditional importers from those countries. Camar, therefore, cannot increase its imports from those countries so as to cover the shortfall in Somalian bananas compared with the quantities which it normally markets, except at the

price of huge investments in those territories. On the other hand, by contrast with the situation under the Italian system before the establishment of the common organization, third-country bananas can be imported at the normal rate of customs duty only if the importer possesses licences. Even if the rules in force do permit traders in ACP bananas to have access to the tariff quota for third-country bananas, that opportunity is entirely dependent on the quantities of ACP bananas marketed during a given reference period. The applicant claims that, since it was unable to import bananas either from Somalia or from other ACP countries, not only was it cut off from its traditional source, Somalia, by circumstances beyond its control, but also it found it impossible to replace Somalian bananas with bananas from other countries.

24 In addition, the applicant maintains that while its situation is similar to that of ACP importers unable to supply themselves from their traditional sources because tropical storms have damaged production — a situation in which the Commission took *ad hoc* measures —, the defendant has not put in hand any measures to resolve that situation, but has allowed Camar to remain in a position in which it is unable to obtain additional licences for quantities of bananas equal to those it has lost.

25 The Commission and the French Government observe that, contrary to the applicant's assertion, no parallel can be drawn between Somalia's situation and that of countries struck by tropical storms, and that the situation in Somalia therefore cannot justify adopting measures like those taken in response to tropical storms. In the latter case, all the conditions for application of Article 16(3) of Regulation No 404/93 were satisfied, in particular the existence of exceptional circumstances and the previous existence, in the domestic organization of markets, of specific mechanisms for protecting traders. Neither of those two requirements is satisfied in Camar's case since, first, the war in Somalia caused a shortage of bananas before the tariff quota was fixed and thus the supply problem was not inherent in the

transition from existing domestic arrangements to the common organization of the markets and, second, the Italian national system did not provide for any mechanism for protecting the interests of importers of those bananas. In consequence, while the Commission intended, by adopting the measures concerning tropical storms, to ensure an adequate supply for the Community market and to provide some compensation for the traders who had suffered losses, such measures cannot be adopted where a country at war for some years either cannot guarantee at all, or can guarantee only with great difficulty, the production and marketing of bananas.

26 Moreover, the defendant maintains that such measures cannot be granted under Article 30 of Regulation No 404/93, which the applicant relies on in alleging that the Commission failed to act, within the meaning of Article 175 of the Treaty, since according to the case-law of the Court of Justice Article 30 cannot serve as a basis for adopting regulations concerning tropical storms. That article therefore cannot constitute a legal basis for the measures sought by the applicant.

27 Second, the Commission disputes the applicant's assertion that, as a result of the establishment of the common organization of the market, it can no longer replace Somalian bananas (unavailable because of the war) with other traditional ACP bananas. Not only is that assertion not supported by any evidence, but also it does not even correspond with the truth. The Commission points out in this connection, first, that imports of traditional ACP bananas into the Community are still lower than forecast in the annex to Regulation No 404/93 and various other non-traditional traders have begun to import into the Community ACP bananas from Côte d'Ivoire, Jamaica and Cameroon (as is apparent from the data supplied by the Member States and the Commission) and, second, that there is a new non-traditional trader importing Somalian bananas into Italy.

Urgency

28 In order to demonstrate that the damage which it risks suffering should it not be granted the interim measures sought in these proceedings for interim relief is serious and not easily reparable, Camar puts forward essentially two factors.

29 First, success in its main action would not lead to the issue of import licences for third-country or non-traditional ACP bananas for the present marketing year but would merely permit such licences to be issued in the future, leaving its present situation unchanged. Consequently, the applicant, a traditional importer from Somalia, would perforce have to be satisfied with the import of bananas in the 1996 marketing year amounting to 15 780 tonnes compared with the 60 000 tonnes which it usually imported before the outbreak of the war.

30 Second, the applicant claims that the current situation in Somalia makes it impossible to import more than 20 000 to 22 000 tonnes since, even though local production has increased, the applicant is unable to import the quantities of bananas which it had been able to export from that country before the war broke out. Those problems are due to both climatic conditions and the closure of the port of Mogadishu, as a consequence of which it is necessary to load the bananas in the bay of Merca. In any event, since it is now possible to export from Somalia only at extremely high cost, local production is seriously discouraged.

31 Consequently, if Camar does not obtain the additional licences sought in this application for interim measures, the distribution network which it has itself created in Italy will be broken up, since the quantities of bananas available to it will be quite inadequate to meet the costs of a structure designed to cope with a much greater commercial capacity and to satisfy the demand of the ripeners it has traditionally supplied. The applicant has, in fact, already exhausted its financial

resources in dealing with such a difficult situation and, while it is not in danger of having immediately to cease trading, it might be heading towards insolvency, if measures are not adopted which affect its situation.

32 The Italian Government confirms that the very survival of Camar, which essentially operates as an importer of bananas into Italy, is at risk in a situation such as this in which it is prevented from having access to alternative supplies to replace Somalian supplies. Accordingly, the interim measures requested are essential if serious and irreparable damage is to be avoided.

33 The Commission disputes the data put forward by the applicant to establish urgency (*periculum in mora*) in these proceedings.

34 According to the defendant, the claim that there has been only a slight increase in local production in Somalia is belied by a note from Somalfruit of 23 November 1996 which says that the forecast for exports of Somalian bananas for 1997 is 60 000 tonnes, that is to say the entire quantity indicated for 'traditional' exports from that country in the Annex to Regulation No 404/93.

35 In addition, the Commission states that the figures mentioned by the applicant concerning its imports within the framework of the tariff quota provided for by Regulation No 404/93 are incorrect. Since the establishment of the common organization of the banana market until 1997, Camar has received both category A and category B licences, contrary to what it asserts. In particular, the applicant was issued with more than 6 000 category A and more than 3 500 category B licences for 1996. The Commission also considers that in examining the number of licences held by the applicant, it is necessary to take into account also the licences issued to the company Tico, with which Camar has set up a joint venture enabling it to use the licences issued to that company as well.

36 In conclusion, according to the defendant, in addition to the 60 000 tonnes of bananas actually available in Somalia, the applicant can import bananas for which Tico and it have in fact obtained licences for this year.

37 The French Government points out that the serious and irreparable damage pleaded by the applicant is not caused by any failure to act on the part of the Commission, as alleged in the main proceedings, and that, in consequence, the grant of the interim measures applied for would be contrary to the case-law of the Court of Justice, according to which a party seeking an interim measure must adduce evidence that it has suffered damage as a result of the adoption of the contested measure (order of the Court of Justice in Case 77/87 R *Technointorg* v *Council* [1987] ECR 1793, paragraph 17).

38 According to the French Government, the applicant has provided only a few particulars concerning the commercial policy it has pursued since the common organization of the markets came into force, complaining of problems in supplying itself with Somalian bananas and in obtaining licences. In point of fact, the applicant's economic problems are explicable by the fact that the American company Dole has set up in Somalia and that some of the bananas grown there are imported into Italy by Comafrica, which forms part of the Dole group. Furthermore, continues the French Government, at the time when the common organization of the market in bananas was established, Camar, as an importer of traditional ACP bananas, was entitled to a number of B licences calculated not only by reference to the quantities of bananas imported in 1991, the year after war broke out, during which Camar suffered a loss on its imports from Somalia, but also by reference to Somalian exports for the years 1989 to 1990. To issue additional licences, as requested in this application for interim measures, would be contrary to the interests of the other traders and, above all, with the objectives pursued by the Community legislature (see, on this subject, Case C-280/93 *Germany* v *Council* [1994] ECR I-4973), since it would be tantamount to giving Camar a competitive advantage to the detriment of the other traders. In the circumstances of this case, Camar

would individually achieve the replacement of its right to import 'unused' traditional ACP bananas (the 60 000 tonnes fixed for Somalia by Regulation No 404/93) by the right to import third-country and non-traditional ACP bananas. Such a measure would be contrary to Regulation No 404/93, which does not permit importation rights to be altered. Moreover, any increase in the volume of the tariff quota would entail repercussions on the price of bananas, irrespective of their origin.

Findings of the President, hearing the application for interim relief

39 Article 186 of the Treaty provides that the Community judicature may in any cases before it prescribe any 'necessary interim measures'.

40 In accordance with Article 104(2) of the Rules of Procedure, an application for the adoption of interim measures 'shall state the subject-matter of the proceedings, the circumstances giving rise to urgency and the pleas of fact and law establishing a prima facie case for the interim measures applied for'. It is settled case-law that in assessing the urgency of interim measures, the Court must consider whether, pending the decision on the merits of the case, the applicant may suffer serious and irreparable damage which cannot be made good by the judgment in the main proceedings.

41 By this application for interim measures under Article 186 of the Treaty, the applicant is primarily seeking to obtain the issue of 'additional licences for the import of bananas from non-member countries or non-traditional ACP States at the rate of duty applicable under the Common Customs Tariff' and, in the alternative, requesting the Court to adopt such 'measures pending final judgment on the action

for declaration of failure to act as it may think fit in order to prevent Camar from suffering irreparable damage'. That request for 'additional' licences or measures correcting the Commission's distribution of licences for 1997 is in essence based on Article 30 of Regulation No 404/93.

42 That article, as already stated, confers on the Commission the power to take any transitional measures 'to assist the transfer from arrangements existing before the entry into force of this regulation (...), and in particular to overcome difficulties of a sensitive nature' caused by that transfer. According to settled case-law, those transitional measures are intended to deal with disturbances in the internal market in consequence of replacement of the various national measures by the common organization of the market and their purpose is to address difficulties encountered after establishment of the common organization of the market but originating in the state of national markets prior to the adoption of Regulation No 404/93 (order of the Court of Justice in Case C-280/93 R *Germany* v *Council*, cited above, judgments in Case C-68/95 *T. Port* v *Bundesanstalt für Landwirtschaft und Ehnährung*, cited above, and Joined Cases C-9/95, C-23/95 and C-156/95 *Belgium* v *Commission* [1997] ECR I-645).

43 In particular, according to the Court of Justice, Article 30 of the regulation requires the Commission to lay down rules catering for cases of hardship where importers meet difficulties 'threatening their existence when an exceptionally low quota has been allocated to them (...) where those difficulties are inherent in the transition from the national arrangements existing before the entry into force of the regulation to the common organization of the market and are not caused by a lack of care on the part of the traders concerned' (Case C-68/95 *T. Port*, cited above, paragraph 43).

44 The Court of Justice has also recognized that, where the Commission fails or refuses to adopt such provisions, the trader concerned may bring an action under

Article 175 or 173 of the Treaty respectively and in the course of those proceedings may make an application for interim measures under Article 186 of the Treaty (Case C-68/95 *T. Port*, cited above, paragraphs 58 to 60).

45 In the context of these proceedings, the measures primarily sought are the granting of banana import licences in derogation from the limits set for quantities of bananas imported into the Community from third countries and non-traditional ACP states within the tariff quota fixed for 1997, and in derogation also from the procedure for allocating licences to importers for the current marketing year.

46 In the circumstances of this case, having regard to the nature and content of the measures sought by Camar, the President of the Court must verify not only that the requirements laid down by Article 104 of the Rules of Procedure for granting interim measures have been satisfied but also that the limits imposed on the introduction of derogations from the general system of allocating licences by the basic regulation on the common organization of the markets (Regulation No 404/93), and in particular Article 30, have been complied with.

47 Failure to satisfy those requirements could have the effect of altering the entire system of banana imports into the Community, prejudice the rights of traders in the sector and thus upset the balance of interests upheld by the provisions of the common agricultural policy concerning the common organization of the markets in question.

48 During the written and oral parts of the procedure the applicant maintained that in this instance all the requirements laid down by Article 30 for the issue of

'additional' licences had been satisfied. The outbreak of war in Somalia at the end of 1990 had prevented Camar from importing into Italy the same quantity of bananas which it normally imported. That reduction, which took place in the years immediately prior to the entry into force of Regulation No 404/93, had an adverse effect on its right to a substantial number of licences for imports from third countries and non-traditional ACP States. In consequence, while, by virtue of the Italian legislation then in force, which permitted it to import from third countries, Camar was able to make good the losses suffered as a result of the war before the common organization of the market was established, once that organization had been established the applicant lost all chance of recovering its losses.

49 The Commission challenges all the evidence adduced by Camar in support of its application. In particular, it points out, on the one hand, that ever since the common organization of the market was established, Camar has received A licences enabling it to import bananas from third countries within the framework of the tariff quota and, on the other, that as from 1993 the applicant could, like other undertakings in the same sector, import bananas from ACP States other than Somalia. The defendant adds that it is open to Camar, in fact, to import during the current marketing year the entire quantity of Somalian bananas provided for in the annex to Regulation 404/93 as the quota of 'traditional' imports of Somalian bananas.

50 The President of the Court finds that the evidence supplied by the Commission concerning the production in Somalia of a sufficient quantity of bananas to enable Camar to resume its traditional imports from Somalia is confirmed by the note, dated 23 November 1996, produced by the defendant, from the banana-producing company in Somalia, Somalfruit, which states that forecast banana production for 1997 amounts to 60 000 tonnes. Camar does not dispute that forecast, but merely alleges that there are transport problems due in particular to the closure of the port

of Mogadishu and the fact that the only way to import bananas is through the bay of Merca. The applicant does not, however, give details of the extent of those problems and adduces no evidence to prove that for those reasons it was impossible for it to import more than 20 000 to 22 000 tonnes of bananas from Somalia in 1997.

51 The forecast of 60 000 tonnes' production of Somalian bananas supports the prima facie conclusion that, as they now stand, the rules governing the common organization of the banana markets do not appear to restrict the opportunities for the applicant to import bananas from Somalia within the framework of the tariff quota provided for by Regulation No 404/93 and that, for the marketing year 1997, there do not appear to be any difficulties — caused by the transition from the national arrangements existing before the entry into force of Regulation No 404/93 to the present arrangements under the common organization of the markets — which could threaten Camar's survival (Case C-68/95 *T. Port*, cited above, paragraph 43).

52 Consequently, there do not appear to be factors requiring the adoption of measures correcting the current allocation of import licences for the present year, such as issuing licences to Camar, as it has requested, or any other alternative measures.

53 In consequence, and without there being any need to examine the pleas in law and arguments put forward by the applicant in support of adoption of the measures sought, Camar's application for interim relief must be dismissed.

On those grounds,

THE PRESIDENT OF THE COURT OF FIRST INSTANCE

hereby orders:

1. The application for interim relief is dismissed.

2. Costs are reserved.

Luxembourg, 21 March 1997.

H. Jung — A. Saggio

Registrar — President