ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE
3 March 1997 *

In Case T-6/97 R,

Comafrica SpA, a company incorporated under Italian law, established in Genoa, Italy, and

Dole Fresh Fruit Europe Ltd & Co., a company incorporated under German law, established in Hamburg, Germany,

represented by Bernard O'Connor, Solicitor, and Bonifacio García Porras, of the Salamanca Bar, with an address for service in Luxembourg at the Chambers of Arsène Kronshagen, 22 Avenue Marie-Adélaïde,

applicants,

v

Commission of the European Communities, represented by Xavier Lewis, 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,

* Language of the case: English.

APPLICATION under Articles 185 and 186 of the EC Treaty for (i) an order suspending operation of Commission Regulation (EC) No 2035/96 of 24 October 1996 fixing the single reduction coefficient for the determination of the provisional quantity of bananas to be allocated to each operator in Categories A and B from the tariff quota for 1997 (OJ 1996 L 272, p. 6) in so far as that regulation affects the applicants or, alternatively, *erga omnes*, (ii) an order that the correct number of licences be issued to the applicants in accordance with their rights under Community law and (iii) any additional orders which the Court considers necessary for the purposes of granting interim relief to the applicants,

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

makes the following

Order

Legal background

1 Prior to 1993 the marketing of bananas within the Community took place under a variety of national arrangements. There were three main sources of supply: bananas produced within the Community itself, bananas produced in certain of the countries with which the Community had concluded the Lomé Convention (hereinafter 'ACP bananas'), and bananas produced in other countries (hereinafter 'third-country bananas').

2 A common organization of this market sector was introduced by 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, hereinafter 'Regulation No 404/93'), last

amended by Council Regulation (EC) No 3290/94 of 22 December 1994 on the adjustments and transitional arrangements required in the agriculture sector in order to implement the agreements concluded during the Uruguay Round of multilateral trade negotiations (OJ 1994 L 349, p. 105). Regulation No 404/93 had the effect of introducing as from 1 July 1993 a common import system to replace the various national systems which had hitherto operated.

3 Title IV of Regulation No 404/93, which deals with trade with third countries, provides for the opening of an annual tariff quota for imports of third-country bananas and non-traditional ACP bananas. The terms 'traditional imports' and 'non-traditional imports' of ACP bananas are defined in Article 15a of Regulation No 404/93. 'Traditional imports' means the quantities, listed in an annex to Regulation No 404/93, of bananas exported to the Community by each ACP State which has traditionally exported bananas to the Community. Bananas exported by the ACP States in excess of those quantities constitute 'non-traditional imports from ACP States'.

4 The first subparagraph of Article 18(1) of Regulation No 404/93 provides for the opening of a tariff quota of 2 100 000 tonnes (net weight) for 1994, and of 2 200 000 tonnes (net weight) for the following years, 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 (second subparagraph of Article 18(1) of Regulation No 404/93). Other than within the tariff quota, such imports are subject to a customs duty calculated on the basis of the Common Customs Tariff (Article 18(2) of Regulation No 404/93).

5 The fourth subparagraph of Article 18(1) of Regulation No 404/93 provides, however, that where Community demand increases, the volume of the tariff quota should be consequentially increased in accordance with the management committee procedure provided for in Article 27 of that regulation.

6 The detailed rules for the implementation of Title IV of Regulation No 404/93 were established by Commission Regulation (EEC) No 1442/93 of 10 June 1993 laying down detailed rules for the application of the arrangements for importing bananas into the Community (OJ 1993 L 142, p. 6, hereinafter 'Regulation No 1442/93'), last amended by Commission Regulation (EC) No 1409/96 of 19 July 1996 laying down detailed rules for the application of the arrangements for importing bananas into the Community, as regards eligibility criteria for category C operators and certain dates relevant to the administration of Community tariff quotas (OJ 1996 L 181, p. 13).

7 Amongst the detailed rules laid down in Regulation No 1442/93 for implementation of the regime established by Regulation No 404/93, as described above, are the following provisions.

8 According to Article 2 of Regulation No 1442/93, a distinction is drawn, for the purposes of the common organization, between operators who, prior to 1992, had marketed third-country bananas and/or non-traditional ACP bananas, designated as 'Category A' operators, those who had marketed Community bananas and/or traditional ACP bananas, designated 'Category B' operators, and those who commenced marketing bananas other than Community bananas and/or traditional ACP bananas as from 1992 or thereafter, designated as 'Category C' operators.

9 Article 3(1) of Regulation No 1442/93 deems economic agents to be 'operators' in Category A and/or Category B 'where they have engaged in one or more of the following activities on their own account:

(a) the purchase of green third-country and/or ACP bananas from the producers, or, where applicable, the production, consignment and sale of such products in the Community;

(b) as owners, the supply and release for free circulation of green bananas and sale with a view to their subsequent marketing in the Community; the risks of spoilage or loss of the product shall be equated with the risk taken on by the owner;

(c) as owners, the ripening of green bananas and their marketing within the Community'.

10 Article 5 of Regulation No 1442/93 provides that, by 1 July for each year, the competent authorities of the Member States are to establish for each Category A and Category B operator registered with them the average quantities marketed during the three years prior to the year preceding that for which the quota was opened, broken down by reference to the different types of economic activity described in the definition of 'operators' in Article 3 (Article 5(1) and (2)). They are to notify the Commission of the total weighted reference quantities and the total quantities of bananas marketed in respect of each activity (Article 5(3)). That average is termed the operator's 'reference quantity'.

11 Article 6 of Regulation No 1442/93 provides as follows:

'Depending on the annual tariff quota and the total reference quantities of operators as referred to in Article 5, the Commission shall fix, where appropriate, a single reduction coefficient for each category of operators to be applied to the operators' reference quantities to determine the quantity to be allocated to each.

The Member States shall determine the quantities for each operator in categories A and/or B registered with them and shall notify the latter thereof individually at the latest by 1 November.'

12 On the basis of, *inter alia*, those provisions, the Commission adopted Regulation (EC) No 2035/96 of 24 October 1996 fixing the single reduction coefficient for the determination of the provisional quantity of bananas to be allocated to each operator in Categories A and B from the tariff quota for 1997 (OJ 1996 L 272, p. 6, hereinafter 'Regulation No 2035/96'). In the preamble to that regulation, the Commission emphasizes that, even though it had 'transmitted a proposal to the Council for a Regulation ... as regards the volume of the annual tariff quota for imports of bananas into the Community following the accession of Austria, Finland and Sweden ... , the Council ... has not taken any decision on increasing the tariff quota on the basis of the abovementioned proposal' (second recital). It further considers that 'the reference quantities of category A and B operators for 1997 should be determined provisionally so that import licences can be issued for the first quarters of the year' (third recital). Finally, it stresses that, since the notifications made by the Member States pursuant to Article 5(3) of Regulation No 1442/93 concerning the total reference quantities calculated for the operators registered with them and the total quantities of bananas marketed in respect of each activity by those operators 'reveal that the same quantities marketed in respect of the same activity have been counted twice for different operators in several Member States' and since the use of those reference quantities would lead 'to the determination of an excessively high single reduction coefficient which would penalize certain categories of operator', 'the reduction coefficient should be determined on the basis of the notifications by Member States minus the quantities counted twice as assessed by the Commission' (fifth and sixth recitals).

13 Article 1 of Regulation No 2035/96 provides:

'The provisional quantity to be allocated to each operator in Categories A and B for the period from 1 January to 31 December 1997 ... shall be calculated by applying to the operator's reference quantity, determined in accordance with Article 5 of Regulation (EEC) No 1442/93, the following single reduction coefficients:

— for each Category A operator: 0.601248,

— for each Category B operator: 0.470378'.

Facts and procedure

14 The applicants, Comafrica SpA and Dole Fresh Fruit Europe Ltd & Co., are members of the Dole group and are registered as Category A operators in Italy and Germany respectively.

15 By application lodged at the Registry on 15 January 1997, they brought an action seeking annulment by the Court of Regulation No 2035/96 'in so far as it affects the applicants, or alternatively ... *erga omnes*', an order that the Commission 'make good any damage ... caused to the applicants by wrongful adoption of Regulation (EC) No 2035/96' and pay interest thereon and, finally, 'any additional orders which the Court considers necessary'.

16 By separate document, registered at the Court on 15 January 1997, the applicants applied for interim measures under Articles 185 and 186 of the EC Treaty, asking the Court to (i) suspend the operation of Regulation No 2035/96 'insofar as it affects the applicants or, alternatively, *erga omnes*', (ii) order 'the issuance of the correct number of licences to the applicants in accordance with their rights under Community law' and (iii) to make 'any additional orders which the Court considers necessary for the purposes of granting interim relief to the applicants'.

17 At paragraph 6 of the application for interim measures, the applicants ask the Court, 'in the alternative and, or, in addition ... to oblige the Commission to allocate sufficient resources to ensure that the double counting and overclaims are remedied, in a timely and adequate manner'. Finally, the applicants seek 'an examination in this Court of the exact methods being used by the Commission and the Member States to verify the reference quantities of the operators'.

18 The Commission submitted its written observations by document lodged at the Court Registry on 23 January 1997. Oral argument was heard from the parties on 6 February 1997.

Law

19 Under Articles 185 and 186 of the Treaty and 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), Council Decision 94/149/ECSC, EC of 7 March 1994 (OJ 1994 L 66, p. 29) and Council Decision 95/1/EC, Euratom, ECSC of 1 January 1995 (OJ 1995 L 1, p. 1) the Court may, if it considers that circumstances so require, prescribe any necessary interim measures.

20 Article 104(1) of the Rules of Procedure of the Court of First Instance specifies that an application to suspend operation of any measure adopted by an institution, made pursuant to Article 185 of the Treaty, is admissible only if the applicant is challenging that measure in proceedings before the Court of First Instance and that an application for adoption of any other interim measure referred to in Article 186 of the Treaty is admissible only if it relates to the main proceedings before the Court.

21 As regards their content, Article 104(2) 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 the order of the President of the Court of First Instance of 17 December 1996 in Case T-164/96 R *Moccia Irme* v *Commission* [1996] ECR II-2261, paragraph 17).

Admissibility

22 The Commission contends that the applicants' claims for interim measures are in part inadmissible.

23 First, it considers that the request for suspension of operation of Regulation No 2035/96 *erga omnes* is inadmissible since a measure ordering suspension in such terms would affect not only the applicants but also all other operators who have not sought to have the regulation's operation suspended. An order for interim measures can produce effects only in regard to applicants who have established that they would suffer serious and irreparable harm if the interim measures sought were not granted.

24 That plea of inadmissibility raised by the Commission has no basis in law. Article 185 of the Treaty gives the Court of Justice and the Court of First Instance jurisdiction to order suspension of the application of any act 'contested' before them. Since acts which may be contested under the first paragraph of Article 173 of the Treaty are 'acts adopted jointly by the European Parliament and the Council, ... acts of the Council, of the Commission and of the ECB, other than recommendations and opinions, and ... acts of the European Parliament intended to produce legal effects *vis-à-vis* third parties', any person who has contested such an act, even if it produces general effects, may apply for suspension of its operation under Article 185.

25 Any effects which the order suspending operation may have as regards third parties who have not applied for such an urgent measure are taken into consideration by the judge hearing the application for interim measures when examining the merits of the application, in particular when balancing the interests involved and assessing whether the effects of any suspending order should be circumscribed.

26 Secondly, the Commission considers that the request for examination by the judge hearing the application for interim measures of the methods being used by the Commission and the Member States to verify operators' reference quantities is also inadmissible, since such a request is inappropriate in interlocutory proceedings: the measures being requested are measures of inquiry which fall under Article 65 of the Rules of Procedure. To grant them would, moreover, prejudge the substance of the case and is unnecessary in order to decide whether operation of Regulation No 2035/96 should be suspended or not.

27 It must be held that the request for examination by the judge hearing the application for interim measures of the methods being used by the Commission and the Member States in the procedure for fixing the reduction coefficient to be applied when issuing import licences for bananas to Category A and B operators for 1997 seeks the adoption of a measure which, in principle, is by nature a measure of organization of procedure or of inquiry, falling within the jurisdiction of the Court (Articles 64 and 65 of the Rules of Procedure), and not an interim measure to be adopted in the context of interlocutory proceedings. Such a measure does not seek to prevent serious and irreparable harm pending a decision on the merits but rather to provide the applicants with further evidence to show that their arguments are well founded. Consequently, in the context of the present interlocutory proceedings, this request must be dismissed as inadmissible.

28 Thirdly, the Commission submits that the applicants' request for a measure ordering the Commission to allocate sufficient resources to ensure that the calculation of the reduction coefficient is based on accurate data should not be entertained in the context of the interlocutory proceedings. In any event, it states, the applicants have neither adduced any evidence that the Commission does not devote adequate resources in that regard nor given any indication as to what extra resources should be allocated.

29 It must be noted that this request seeks the adoption of a measure affecting the Commission's powers with regard to its own internal organization, namely its use of resources and staff. The powers of the judge hearing an interim application, in

particular under Article 186 of the Treaty, as regards urgent measures other than suspension of the operation of a Community act, are limited to the possibility of requiring one of the parties to the proceedings, including an institution, to ensure that a certain result is achieved pending the proceedings in the main action. The means necessary to achieve that result, particularly where they concern the internal organization of an institution, are not, in principle, taken into account when assessing the conditions which must be met for such measures to be adopted and may not, *a fortiori*, form the subject-matter thereof.

30 Furthermore, even if such a request could be admissible, the applicants have confined themselves to asking the Court 'to oblige the Commission to allocate sufficient resources to ensure that the double counting and overclaims are remedied, in a timely and adequate manner', without providing any details whatever concerning the Commission's relevant services or their operation (staff numbers and workload) nor any evidence as to their allegedly inadequate operation, so that in these interlocutory proceedings the Court has been given no means by which to evaluate the merits of the request.

Substance

The nature of the measures sought by the interim application

— Arguments of the parties

31 The Commission considers that the applicants' request for it to be ordered to issue the correct number of licences, to which they claim to be entitled, is unclear and ambiguous and should therefore not be entertained when the application for interim measures is examined.

32 In the Commission's view, the measure sought is in conflict with the allocation of responsibilities between the Commission and the Member States as laid down in the basic regulation establishing the common organization of the market in bananas. In particular, under Article 17 of Regulation No 404/93, as implemented by Article 9(5) of Regulation No 1442/93, licences are to be delivered by the competent authorities of the Member States and not by the Commission. Thus, to require the Commission to issue licences would run counter to the allocation of responsibilities within the common organization of the market in bananas.

33 Moreover, even if this request were to be construed as meaning that the Commission should be ordered to establish the correct reference quantities, it would remain ambiguous. If the Commission were required to establish the correct reference quantities on a provisional basis, such an order would no longer be an interim one but would produce effects identical to those sought in the main proceedings, since, if the main application were successful and Regulation No 2035/96 were annulled, the Commission would be under an obligation to re-examine the situation and adopt another regulation also laying down a provisional coefficient. Thus, in the Commission's submission, such a request should be dismissed in accordance with the relevant case-law, in particular the order in *Moccia Irme*, cited above. Finally, if the request seeks an order that the Commission establish the correct reference quantities on a definitive basis, it is premature. It goes beyond what the applicants seek in their main application, which is the annulment of a provisional regulation and not of a regulation fixing the definitive reference quantities for 1997, no such regulation having yet been adopted.

34 At the hearing, the applicants specified that the request for examination seeks only an order that the Commission correct the reduction coefficient fixed by Regulation No 2035/96 in such a way as to enable the national authorities to issue the applicants with the licences necessary to prevent an irreversible weakening of their position on the market.

— Findings of the President

35 As far as the nature of the measures sought by the interim application is concerned, the Commission's contention that a measure consisting in 'an order ... allocating [the applicants] licences based on their accurate reference quantities and in accordance with Community law' (paragraph 5 of the application for interim measures) would be inconsistent with the rules governing the allocation of responsibilities between the national authorities and the Commission, is unfounded. As the applicants have made clear in response to the questions put to them at the hearing, the measure sought entails nothing more than the correction by the Commission of the reduction coefficient fixed by Regulation No 2035/96.

36 Consequently, since the order sought relates only to the fixing of a new coefficient by the Commission, the request is strictly connected to the claim for suspension of operation of Regulation No 2035/96, such suspension being the inevitable prerequisite for the making of such an order.

37 The Commission's arguments to the effect that such an order would affect the main case, since it would require the Commission to fix a new reduction coefficient before the Court ruled on the substance and that it would be premature in that it would anticipate the fixing of the definitive reduction coefficient, do not in the present case relate to the actual nature of the interim measures sought but rather concern the examination of the factual and legal grounds establishing their urgency.

Urgency

— Arguments of the parties

38 The applicants submit that the application of Regulation No 2035/96 fixing the provisional reduction coefficient for 1997 causes them irreparable harm as regards their market position not only for 1997 but also for subsequent years.

39 The fixing of the definitive coefficient for 1997 cannot change the situation created by the regulation in issue since, in principle, there would be no difference in the analysis of the data and thus of the reference quantities taken into consideration in the fixing of the provisional reduction coefficient. Moreover, the applicants submit, Regulation No 2035/96 fixes the reduction coefficient applicable to import licences issued to Category A and B operators for the first three quarters of 1997. Thus, even if, when fixing the definitive coefficient, the Commission were to eliminate all overclaims and inaccuracies in the figures which it took as its basis when adopting Regulation No 2035/96 and even if those corrections entitled the applicants to extra licences, they would not be in a position to use those licences in the fourth quarter of 1997, since they would have suffered considerable loss and would not have sufficient time to dispose of such large quantities of imported bananas on the Community market, on which, moreover, there is a considerable decline in demand at that time of year.

40 According to the applicants, that definitive loss of market share during the current year will also have effects during subsequent years. They state that, since future rights to licences are dependent on quantities marketed in the past, if the actual licences granted in any one year are for lower quantities because of over-applications, an operator making accurate claims based on his past marketing performance will, over time, lose all future licence rights. Therefore, as a result of the

application of Regulation No 2035/96, the applicants will only be able to import an ever-decreasing quantity of bananas in the future. A judgment in their favour in the main action could not repair such damage, particularly because, if it were to be delivered in two years' time, their present expectations could not be satisfied, since the decision to redress the reduction coefficient would be too late to affect the level of imports for 1997.

41 The Commission considers that, contrary to what the applicants claim, the adjustment of the reference quantities on adoption of the regulation fixing the definitive coefficient for 1997 and the fixing, in the light of the annual tariff quota, of the different quotas for which the Member States may issue import licences make it possible, if necessary, to correct the figures for the quantities of bananas marketed. The market position of Comafrica and Dole is thus not weakened.

42 In addition, the Commission stresses that serious and irreparable harm cannot be caused by a provisional regulation, since a provisional regulation exists to be revised. It is the definitive regulation which in fact fixes the reference quantities for the marketing year in question. It is thus on the basis of that definitive regulation that, the Commission asserts, that year will be used as a reference year in the future, subject to such modifications as may be necessary at a later stage. Thus, if any serious and irreparable harm were to be caused in the form of erosion of the applicants' rights, it would be caused by the definitive regulation, not the provisional one.

43 Finally, the Commission submits that, in any event, any harm which the applicants may have suffered as a consequence of the fixing of the reference quantities by Regulation No 2035/96 is a loss which can be compensated. The applicants, it claims, concede this themselves, since they have lodged an application in the main proceedings for an award of damages under Articles 178 and 215 of the Treaty.

— Findings of the President

44 The serious and irreparable harm on which the applicants base their application for interim measures comprises (i) the definitive loss, for the current marketing year, of a considerable part of their rights to import bananas as a result of the application to their reference quantities, in accordance with Article 6 of Regulation No 1442/93, of the reduction coefficient fixed by Regulation No 2035/96 and (ii) the erosion of such import rights in the future as a result of the reduction of the number of import licences issued in 1997, which will be taken into consideration when their reference quantities for future years are calculated.

45 However, even if the application of the reduction coefficient laid down in Regulation No 2035/96 for Category A operators, which is 0.601248 and thus involves a greater reduction than would that of 0.861645 calculated by the applicants, does entail a reduction of the applicants' import rights in relation to those to which they consider themselves entitled, they have not demonstrated that such harm is serious and irreparable.

46 It has consistently been held that damage of a purely financial nature cannot in principle be regarded as irreparable, or even as being reparable only with difficulty, if it can ultimately be the subject of financial compensation (see, *inter alia*, the orders in Case T-185/94 R *Geotronics* v *Commission* [1994] ECR II-519, paragraph 22, and Case T-2/95 R *Industrie des Poudres Sphériques* v *Council* [1995] ECR II-485, paragraph 28).

47 In the present case, the loss of market share which the applicants will allegedly suffer as a result of the regulation in issue (as indicated at paragraph 89 of the main application, namely an incorrect reduction of [details omitted] in banana imports

by Comafrica and [details omitted] for Dole, forms, as they have stressed, part of a gradual loss which they have suffered since the common organization of the market in bananas was set up [details omitted]. The additional loss which they claim that they will wrongfully have to suffer during the current marketing year cannot be regarded, for undertakings of their size, as being such as to cause them serious harm (see the order in Case 20/81 R *Arbed and Others* v *Commission* [1981] ECR 721, paragraph 14).

48 Furthermore, such a reduction in the applicants' market share also appears to be reparable. First, the Commission must, during the course of the year, fix a definitive reduction coefficient to be applied, under Article 6 of Regulation No 1442/93, to the reference quantities of Category A operators for 1997. Second, as the Commission pointed out at the hearing, ever since the establishment of the common organization of the market in bananas, it has had to fix, pursuant to Article 9 of Regulation No 1442/93, indicative quantities for each quarter for the purposes of issuing import licences in the framework of the annual tariff quota. So it cannot be ruled out that, following the adoption of those regulations, the applicants may be in a position in the last quarter or quarters of the current marketing year to recoup the loss which they claim they will have to suffer during the earlier part of the year. They have not put forward any evidence during the present proceedings to show that such a possibility is to be ruled out.

49 Moreover, if that were not possible, any definitive reduction in the quantities of bananas which the applicants will be able to import in 1997 would constitute an economic loss which could be made good by the means of redress provided for in the Treaty, in particular in Articles 178 and 215.

50 Nor are the other losses which the applicants claim might occur in the future, following the determination, by Regulation No 2035/96, of incorrect reference quantities for 1997, serious and irreparable. Those losses consist of an alleged erosion of their import rights as a result of the reduction of the number of licences issued to them in 1997. However, contrary to what the applicants state, it would run counter to the principles underlying the legislation in this field if the reference quantities taken into consideration for calculating any reduction coefficients necessary for future years (Articles 5 and 6 of Regulation No 1442/93) were not those taken by the Commission as its basis for fixing the definitive reduction coefficient. In the present case, therefore, to grant the applicants' requests that, before the definitive reduction coefficient is fixed for the current marketing year and until judgment is given on the main application, operation of Regulation No 2035/96 be suspended and that a coefficient be fixed so as to make it possible to issue them with the number of import licences to which they consider themselves entitled would be tantamount to encroaching on the Commission's powers to establish such a coefficient (see the order in Case 294/86 R *Technointorg* v *Commission* [1986] ECR 3979, paragraph 25). Besides, it will be possible to challenge the future regulation fixing the definitive reduction coefficient by the procedures laid down in the Treaty.

51 Upholding the interim application would, furthermore, entail the adoption of measures which would not be provisional but which would produce effects identical to those sought in the main application, since they would merely anticipate what would ensue from annulment of Regulation No 2035/96 by correcting the provisional reduction coefficient until the Commission adopted the definitive coefficient. Since, in accordance with Article 107(4) of the Rules of Procedure, the measures which may be ordered in interlocutory proceedings must be interim measures, in the sense that they must in principle cease to produce their effects as soon as final judgment is given in the case and must not in any way anticipate the Court's decision on the substance, and since they must be ancillary in the sense that they must only seek to safeguard, during the course of the procedure before the Court, the interests of one of the parties to the proceedings in order to prevent the judgment in the main proceedings from being rendered illusory by being deprived of any practical effect (see the orders in Case C-313/90 R *CIRFS and Others* v *Commission* [1991] ECR I-2557, paragraphs 23 and 24, and *Moccia Irme*, cited above, paragraph 29), this application for interim measures cannot be granted.

52 Consequently, since the applicants have not duly supported their application for interim measures by demonstrating the risk of harm if those measures are not granted, that application must be dismissed, without there being any need to consider whether the pleas in law and arguments put forward in support of the main action appear prima facie well founded.

On those grounds,

THE PRESIDENT OF THE COURT OF FIRST INSTANCE

hereby orders:

1. The application for interim measures is dismissed.

2. Costs are reserved.

Luxembourg, 3 March 1997.

H. Jung

Registrar

A. Saggio

President