ORDER OF THE PRESIDENT OF THE COURT
26 September 1988 *

In Case 229/88 R

Cargill BV, a company incorporated under Netherlands law, whose registered office is in Amsterdam, Netherlands,

Speelman's Oliefabrieken BV, a company incorporated under Netherlands law, whose registered office is in Rotterdam, Netherlands,

BEOCO Ltd, a company incorporated under English law, whose registered office is in Liverpool, England,

BOCM Silcock Ltd, a company incorporated under English law, whose registered office is in Hampshire, England,

Cargill UK Ltd, a company incorporated under English law, whose registered office is in Hull, England,

Erith Oil Works Ltd, a company incorporated under English law, whose registered office is in Erith, England,

Louis Dreyfus & Co. Ltd, a company incorporated under English law, whose registered office is in London, England,

Compagnie Cargill SA, a company incorporated under French law, whose registered office is in Saint-Germain-en-Laye, France,

CEDOL SA, a company incorporated under French law, whose registered office is in Boulogne-Billancourt, France,

Comexol SA, a company incorporated under French law, whose registered office is in Paris, France,

NV Cargill, a company incorporated under Belgian law, whose registered office is in Antwerp, Belgium,

NV Vamomills, a company incorporated under Belgian law, whose registered office is in Kortrijk, Belgium,

* Language of the Case: English.

A/S Carl Rasmussen Korn og Foderstoffer Gamby, a company incorporated under Danish law, whose registered office is in Søndersø, Denmark,

DS Industries APS, a company incorporated under Danish law, whose registered office is in Copenhagen, Denmark,

Palolio & Palvino SpA, a company incorporated under Italian law, whose registered office is in Naples, Italy,

ADM Ölmühlen GmbH, a company incorporated under the law of the Federal Republic of Germany, whose registered office is in Hamburg, Federal Republic of Germany,

Brökelmann & Co. Ölmühle und Raffinerie KG, a company incorporated under the law of the Federal Republic of Germany, whose registered office is in Hamburg, Federal Republic of Germany,

Deutsche Conti-Handelsgesellschaft mbH, a company incorporated under the law of the Federal Republic of Germany, whose registered office is in Hamburg, Federal Republic of Germany,

Ölmühle Hamburg AG, a company incorporated under the law of the Federal Republic of Germany, whose registered office is in Hamburg, Federal Republic of Germany,

O. & L. Sels, a company incorporated under the law of the Federal Republic of Germany, whose registered office is in Neuss, Federal Republic of Germany,

C. Thywissen, a company incorporated under the law of the Federal Republic of Germany, whose registered office is in Neuss, Federal Republic of Germany,

Union Deutsche Lebensmittelwerke GmbH, a company incorporated under the law of the Federal Republic of Germany, whose registered office is in Hamburg, Federal Republic of Germany,

Huileries de l'Arceau SA, a company incorporated under French law, whose registered office is in Lézay, France,

represented by H. J. Bronkhorst, advocate with the right of audience before the Hoge Raad (Supreme Court) of the Netherlands, and E. H. Pijnacker, of the

Amsterdam Bar, with an address for service in Luxembourg at the Chambers of J. Loesch, 8 rue Zithe,

applicants,

v

Commission of the European Communities, represented by D. Grant Lawrence, acting as Agent, and P. Oliver, members of the Commission's Legal Department, with an address for service in Luxembourg at the office of Georgios Kremlis, a member of the Commission's Legal Department, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION principally for the suspension of the operation of Commission Regulation (EEC) No 1587/88 of 7 June 1988 suspending advance fixing of the subsidy for colza, rape and sunflower seed (Official Journal 1988, L 141, p. 55) and for an interim measure ordering the Commission to take all appropriate steps to ensure that, on the third working day following the day on which such suspension is ordered, certificates will be issued to the applicants providing for advance fixing of the subsidy for the processing of oil seeds at the rate applicable on 7 June 1988 relating to the quantities of rape, colza or sunflower seed indicated in their applications for advance fixing lodged on 7 June 1988,

THE PRESIDENT OF THE COURT OF JUSTICE
OF THE EUROPEAN COMMUNITIES

makes the following

Order

1 By application lodged at the Court Registry on 10 August 1988, the applicants brought an action under the second paragraph of Article 173 of the EEC Treaty requesting the Court to declare void Commission Regulation (EEC) No 1587/88 of 7 June 1988 suspending advance fixing of the subsidy for colza, rape and sunflower seed (Official Journal 1988, L 141, p. 55).

2 By an application lodged at the Court Registry on 31 August 1988 the applicants applied pursuant to Articles 185 and 186 of the EEC Treaty and Article 83 of the Rules of Procedure for the following measures of interim relief:

(a) an order suspending the operation of Regulation No 1587/88;

(b) an interim measure ordering the Commission to take all appropriate steps to ensure:

(i) that on the third working day on which such suspension is ordered, certificates will be issued to the applicants providing for advance fixing of the subsidy for the processing of oil seeds at the rate applicable on 7 June 1988 relating to the quantities of rape, colza or sunflower seed indicated in their applications for advance fixing lodged on 7 June 1988; and

(ii) that the applicants will be granted cancellation, without forfeiture of the security, of their applications for advance-fixing certificates which were requested and obtained after 8 June 1988 but have not been used, in so far as they relate to quantities of rape, colza or sunflower seed which do not exceed the quantities for which certificates will be issued pursuant to the interim relief sought.

3 The defendant submitted its written observations on 13 September 1988. Since the parties' written submissions contain the information required for a decision on the application for interim relief, it was not considered necessary to hear oral argument.

4 Before considering whether the application for interim relief is well founded, it is appropriate to give a brief account of the facts of the case and the relevant legal provisions.

5 On 7 June 1988 the applicants, which are engaged in particular in the processing of oil seeds, lodged with the competent authorities applications for advance fixing

of the subsidy for the processing of quantities of colza, rape and sunflower seed totalling some 370 000 tonnes.

6 Article 27 of Regulation No 136/66 of the Council of 22 September 1966 on the establishment of a common organization of the market in oils and fats (Official Journal, English Special Edition 1965-66, p. 221) introduced a system of subsidies for the processing of certain oil seeds, including those mentioned above. Article 27 (1) provides that the subsidy is, in principle, to be equal to the difference between the target price in force for the particular species of seed and the world market price for that seed.

7 The Council laid down the rules for the grant of the subsidy for oil seeds in Regulation No 1594/83 of 14 June 1983 on the subsidy for oil seeds (Official Journal 1983, L 163, p. 44), as amended by Council Regulation No 935/86 of 25 March 1986 (Official Journal 1986, L 87, p. 5). Detailed rules for that system of aid were laid down by Commission Regulation No 2681/83 of 21 September 1983 (Official Journal 1983, L 266, p. 1).

8 Under 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 that which is applicable on the day on which the Member State identifies the seed. Article 4 provides, however, that at the request of the person concerned the amount of the subsidy may be fixed in advance. In that case, under the third subparagraph of Article 3 (2), the amount of the aid is that applicable on the day the application for advance fixing is lodged and is to be applied to seeds identified during the period of validity of the advance-fixing part of the certificate which, under Article 11 (1) of Regulation No 2681/83, is, in principle, save where an extension is granted by the Commission, five months for colza and rape seed and four months for sunflower seed; that period begins to run from the month following that during which the application is lodged.

9 As a rule the advance-fixing part of the certificate is to be issued on the first working day following the day on which the application is lodged, subject to Article 8 of Regulation No 1594/83 which provides that in the case of an

abnormal situation which results or could result in a disturbance on the Community market for oil seeds, the Commission may under certain conditions suspend the advance fixing of the subsidy.

10 On 7 June 1988 the Commission, considering that the conditions set out in Article 8 of Regulation No 1594/83 were satisfied, adopted the regulation suspending the advance fixing of the subsidy for colza, rape and sunflower seed in the case of certificates the application for which was lodged from 7 to 11 June 1988.

11 On the same day the Commission adopted Regulation No 1584/88 of 7 June 1988 (Official Journal 1988, L 141, p. 48) fixing the amount of the subsidy for oil seed, in particular for colza, rape and sunflower seed, at a rate lower than that in force on 7 June 1988.

12 According to Article 185 of the EEC Treaty, actions brought before the Court of Justice do not have suspensory effect. The Court of Justice may, however, if it considers that the circumstances so require, order that application of the contested measure be suspended. Furthermore, under Article 186 of the EEC Treaty, the Court may in any cases before it prescribe any necessary interim measures.

13 In order for an interim measure such as that requested to be granted, Article 83 (2) of the Rules of Procedure requires that the application should state the circumstances giving rise to urgency and the factual and legal grounds establishing a prima-facie case for the interim measure applied for.

14 As the Court has consistently held, measures of this nature cannot be considered unless they are provisional in the sense that they do not prejudge the decision on the substance of the case (see in particular the Order of the President of the Court of 7 July 1981 in Joined Cases 60 and 190/81 R *IBM* v *Commission* [1981] ECR 1857, at p. 1862) and that the urgency of the application for interim measures must

be assessed in the light of the extent to which such measures are necessary in order to avoid serious and irreparable damage to the party seeking them.

15 In that regard, the applicants state that, as undertakings buying and processing raw materials and selling the finished product on a continuous basis, they will very soon be obliged, in order to maintain that continuity, to make use of the certificates obtained after 8 June 1988 granting lower subsidy amounts than those applied for on 7 June 1988. The applicants believe that once they have used those certificates it will be impossible for them to be restored to their original position. The only possibility open to them will be to apply for compensation for the losses definitively suffered which they evaluate at approximately ECU 24 million. They therefore conclude that, because of that unavoidable change in their situation in the near future when damage that at this stage can still be prevented will be suffered irreversibly, *restitutio in integrum* will no longer be possible when the Court arrives at a decision in the main proceedings and can only be achieved if interim relief is granted obliging the Commission to ensure that certificates will be issued to them for the quantities concerned at the subsidy rate applicable on 7 June 1988.

16 It follows from the foregoing that the only damage alleged is of a financial nature, equivalent to the difference between the amount of the subsidies applicable to the quantities concerned at the rates in force on 7 June 1988 and the amount resulting from the new rates in force since 8 June 1988 pursuant to Commission Regulation No 1584/88.

17 As is clear in particular from the Order of the President of the Court of 16 October 1977 in Case 113/77 R (*NTN Toyo Bearing* v *Commission* [1977] ECR 1721), damage of that nature is, in principle, not considered to be serious and irreparable unless, in the event of the applicants' being successful in the main action, it could not be wholly recouped.

18 That does not appear to be the case here. Any such damage could be recouped by the applicants' bringing an action for compensation on the basis of Article 178 and the second paragraph of Article 215 of the EEC Treaty, so that it cannot be

regarded as irreparable (see in particular in this connection the Orders of the President of the Court of 15 July 1983 in Case 120/83 R *Raznoimport* v *Commission* [1983] ECR 2573, and of 17 December 1986 in Case 294/86 R *Technointorg* v *Commission* [1986] ECR 3979).

19 Furthermore, as the Commission has emphasized, if, in the main proceedings, the Court were to declare the contested regulation void, the Commission would be obliged to adopt the measures necessary to nullify the effects of the void regulation which it would do by retroactively granting the subsidy at the rate in force on 7 June 1988.

20 It follows from the foregoing that the applicants have failed to prove that they would suffer serious and irreparable damage if the interim relief they seek is not granted and they have therefore not succeeded in establishing that the circumstances give rise to urgency.

On those grounds,

THE PRESIDENT,

by way of an interlocutory ruling,

hereby orders:

(1) The application for the adoption of interim measures is dismissed.

(2) Costs are reserved.

Luxembourg, 26 September 1988.

J.-G. Giraud
Registrar

A. J. Mackenzie Stuart
President