

ORDER OF THE PRESIDENT OF THE COURT  
19 OCTOBER 1976 <sup>1</sup>

**Société pour l'Exportation des Sucres**  
**v Commission of the European Communities**

Case 88/76 R

In Case 88/76 R

SOCIÉTÉ POUR L'EXPORTATION DES SUCRES, a company limited by shares, having its registered office at 54 St. Katelijnevest, Antwerp, in the persons of Alain Grisar and Emond Muûls, members of the board, represented and assisted by Wilma Viscardini, of the Padua Bar, with an address for service in Luxembourg at the Chambers of Ernest Arendt, Centre Louvigny, 34 B/IV rue Philippe II,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Peter Gilsdorf, acting as Agent, assisted by Jacques Delmoly of the Legal Department, with an address for service in Luxembourg at the office of M. Cervino, Bâtiment Jean Monnet, Kirchberg,

defendant,

THE PRESIDENT OF THE FIRST CHAMBER OF THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

exercising the functions of the President of the Court in accordance with the second paragraph of Article 85, the first paragraph of Article 11, and Article 6 of the Rules of Procedure,

hereby makes the following

<sup>1</sup> - Language of the Case: French.

## ORDER

### Facts

Prior to 15 March 1976 the applicant obtained several export licences for sugar together with the fixing of the amounts to be received as refunds.

In consequence of an alteration in the rates of exchange communicated to the International Monetary Fund, it applied by letter of 1 July 1976 to the competent Belgian organization for cancellation of the licences pursuant to Regulations Nos 1134/68 and 557/76.

The organization refused the cancellation on the basis of Regulation No 1579/76 of the Commission (OJ L 172) which, with effect from 1 July 1976, abolished the right to cancellation in respect of export licences issued before 15 March 1976, which had not been used by 1 July 1976.

The applicant has, in consequence, instituted proceedings for the annulment in part of Regulation No 1579/76.

By application dated 1 October 1976 for a suspension of operation within the meaning of Article 83 of the Rules of Procedure, the applicant has requested the Court to 'direct

(a) that the validity of the export licences, the cancellation of which on 1 July 1976 was requested by the

applicant, shall be extended until one month after the date of judgment in the main action;

(b) in the alternative, that the deposit shall be forfeited only if the main application is dismissed and, consequently, after judgment is delivered thereon;

(c) that any other appropriate steps be taken'.

In a written statement dated 8 October 1976 the defendant, the Commission, argues that the application under (a) seeks something manifestly more than an interim measure, that the application under (b) is not justified on grounds of urgency, and that the application under (c) is inadmissible in that it is too vague and is unreasoned; and contends that the application should be dismissed.

As the President of the Court was prevented from attending, the parties duly summoned appeared before the senior President of Chamber and submitted their oral observations.

During the hearing, the applicant withdrew its application under (c) and applied for an order for costs against the defendant.

### Law

- 1 Under Article 83 (2) of the Rules of Procedure, a suspension of operation is subject to the existence of circumstances giving rise to urgency and to grounds establishing a *prima facie* case for the interim measure applied for.

- 2 On the one hand, the applicant was, after the contested refusal of cancellation, still free to make use of the licences in question until the date of their expiry.
- 3 On the other hand, in default of the contemplated export the legal consequence of the refusal of cancellation was that the deposit fell due on the date when the licences expired.
- 4 In the circumstances, the only measure of suspension of operation consistent with the subject of the dispute would be suspension of the date when the deposit falls due.
- 5 On the other hand, an extension of the validity of the licences would give the applicant a further advantage which is unconnected with the subject of the dispute or the difficulties which it involves.
- 6 In consequence, the application for an order granting such extension must be refused.
- 7 As regards the alternative application for an order that the deposit shall not be forfeited until the proceedings have been concluded by judgment the applicant, in its oral observations, stated that, even if the security were returned to it under a final judgment in its favour, the fact that, in the meantime, the deposit had been treated as forfeited would involve it in considerable expense by way of interest, which would not be recoverable.
- 8 The defendant has not contested this statement or has only done so half-heartedly and in vague terms.
- 9 In these circumstances, it is proper that the Commission should be directed to inform the competent Belgian authorities that the deposit in question cannot be treated as forfeited so long as the judgment of the Court terminating the proceedings is still pending.

Costs

- 10 Each party has asked that the other should be ordered to pay the costs.
- 11 At the present stage of the proceedings, the costs must be reserved.

On those grounds,

THE PRESIDENT

by way of interlocutory decision

hereby orders:

1. **The Commission shall inform the competent Belgian authorities that the deposit in dispute cannot be regarded as forfeited so long as the judgment of the Court terminating the proceedings is still pending;**
2. **Costs are reserved.**

Luxembourg, 19 October 1976.

A. Van Houtte  
Registrar

A. M. Donner  
President of the First Chamber