

## Case C-365/89

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**Cargill BV**

**v**

**Produktschap voor Margarine, Vetten en Oliën**

(Reference for a preliminary ruling  
from the College van Beroep voor het Bedrijfsleven)

(Validity of Commission Regulation (EEC) No 1358/89 of  
18 May 1989 amending Regulation (EEC) No 735/85 of  
21 March 1985 fixing the amount of the subsidy on oil seeds)

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### Summary of the Judgment

1. *Agriculture — Common organization of the markets — Oils and fats — Subsidy for oil seeds — Amount required to correspond to the difference between the target price and the world market price — Fixing at an excessively high level following the application of an incorrect exchange rate for the ECU — Illegality*  
(Council Regulation No 136/66, Article 27(1); Commission Regulation No 735/85)

2. *Acts of the institutions — Withdrawal — Unlawful measures — Conditions*

1. Subsidies for oil seeds granted pursuant to Article 27(1) of Regulation No 136/66 are in breach of that provision whenever the actual amount of those subsidies exceeds the difference between the target price and the world market price for a

particular species. It follows that Regulation No 735/85 fixing the amount of the subsidy in that sector is invalid in so far as it uses an incorrect exchange rate for converting the ECU into the currency of the processing country and, as a

result, fixes the final aid at a level which exceeds the difference between those two prices.

of the measure, who has been led to rely on the lawfulness thereof.

2. While it must be acknowledged that any Community institution which establishes that a measure which it has just adopted is tainted with illegality has the right to withdraw it within a reasonable period, with retroactive effect, that right may be restricted by the need to fulfil the legitimate expectations of a beneficiary

The withdrawal of a measure vitiated by a manifest error which cannot have escaped the attention of the traders concerned, carried out less than three months after a judgment of the Court has revealed the need for it, is not open to criticism in the light of the above requirements.

## REPORT FOR THE HEARING in Case C-365/89 \*

### I — Facts and procedure

#### 1. *Legal background*

1. Pursuant to Article 27 of Council Regulation No 136/66/EEC on the establishment of a common organization of the market in oils and fats (Official Journal, English Special Edition 1966, p. 221), a subsidy is to be granted for oil seed harvested and processed within the Community, where the target price in force for a species of seed is higher than the world market price for that seed. The general principles governing the grant of that subsidy are laid down in Council Regulation (EEC) No 1594/83 of 14 June 1983 (Official Journal 1983 L 163, p. 44), and

the detailed rules for its application in Council Regulation (EEC) No 2681/83 of 21 September 1983 (Official Journal 1983 L 266, p. 1). The amount of the subsidy, equal to the difference between those two prices, is fixed by the Commission whenever the market situation makes it necessary and in such a way as to ensure its being applied at least once a week (Article 33(1) of Regulation No 2681/83).

2. Pursuant to Article 33 of Regulation No 2681/83 those regulations, adopted at periodic intervals, indicate, in Annex I the amount of the subsidy in ECUs ('gross' aid), in Annex II the amount so calculated converted into each of the national currencies plus or minus the differential amount ('final' aid) and, finally, in Annex III the spot and forward rates of the ECU to be used for converting final aid into the currency of the processing Member State

\* Language of the case: Dutch.