

Case T-70/99 R

Alpharma Inc.

v

Council of the European Union

(Procedure for interim relief — Suspension of operation of Regulation (EC) No 2821/98 — Withdrawal of bacitracin zinc from the list of authorised additives — Directive 70/524/EEC — Urgency — Balancing of interests)

Order of the President of the Court of First Instance, 30 June 1999 II - 2030

Summary of the Order

1. *Applications for interim measures — Conditions for admissibility — Consideration of the admissibility of the main application — Inappropriate — Limits*
(EC Treaty, Arts 185 and 186 (now Arts 242 EC and 243 EC); Rules of Procedure of the Court of First Instance, Art. 104(1))
2. *Applications for interim measures — Suspension of operation of a measure — Interim relief — Conditions for granting — Urgency — Serious and irreparable damage — Pecuniary damage*
(EC Treaty, Arts 185 and 186 (now Arts 242 EC and 243 EC); Rules of Procedure of the Court of First Instance, Art. 104(2))

3. *Applications for interim measures — Suspension of operation of a measure — Conditions for granting — Balancing of all the interests at stake — Priority to be given to protection of public health over economic considerations*
 (EC Treaty, Arts 185 and 186 (now Arts 242 EC and 243 EC); Rules of Procedure of the Court of First Instance, Art. 104(2))

1. The issue of the admissibility of the main action should not be examined in proceedings for interim relief, so as not to prejudice the Court's decision on the substance of the case. It may nevertheless appear necessary, when it is contended that the main application to which the application for interim measures relates is manifestly inadmissible, to establish whether there are any grounds for concluding that the main application is *prima facie* admissible.

2. The urgency of an application for interim measures must be assessed in relation to the necessity for an interim order to prevent serious and irreparable damage to the party applying for those measures. It is for the party seeking suspension of operation of an act to prove that it cannot wait for the outcome of the main proceedings without suffering damage that would entail serious and irreparable consequences. The Court hearing an application for interim measures may, in its consideration of the criterion of urgency, take such damage into account only in so far as it may be caused to the interests of the party seeking interim relief; any damage caused to another party may be taken into consideration only when the Court comes to balance the interests at stake.

Damage of a purely pecuniary nature cannot, save in exceptional circumstances, be regarded as irreparable or even as being reparable only with difficulty, if it can ultimately be the subject of financial compensation.

3. When the Court hearing an application for suspension of operation of a measure weighs the various interests at stake, it must determine whether annulment of the contested act by the Court hearing the main action would allow the situation brought about by its immediate implementation to be reversed and, conversely, whether suspension of the operation of that act would be such as to prevent its being fully effective in the event of the main application being dismissed.

There can be no question but that the requirements of the protection of public health must take precedence over economic considerations. In addition, where there is uncertainty as to the existence or extent of risks to human health, the institutions may take protective measures without having to wait until the reality and seriousness of those risks become fully apparent.

The Court must therefore dismiss the application for suspension of operation of Regulation No 2821/98 withdrawing antibiotics such as bacitracin zinc from the list of additives the incorporation of which in feedingstuffs is author-

ised at Community level, since there is a risk that the use of such substances would increase antimicrobial resistance in human medicine, with very serious consequences for public health.