

Commodity Futures Trading Commission  
CEA CASES

**NAME:** CARGILL, INCORPORATED, AND ERWIN E. KELM

**DOCKET NUMBER:** 58

**DATE:** JUNE 11, 1953

**DOCUMENT TYPE:** COMPLAINT

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re Cargill, Incorporated, and Erwin E. Kelm, Respondents

CE- A Docket No. 58

Complaint and Notice of Hearing under Section 6(b) of the Commodity Exchange Act

The Secretary of Agriculture has reason to believe that the respondents, Cargill, Incorporated, and Erwin E. Kelm, have attempted to manipulate and did manipulate the market price of a commodity in interstate commerce and for future delivery on or subject to the rules of a board of trade, and have otherwise violated the Commodity Exchange Act (7 U.S.C., Chapter 1) and the rules and regulations of the Secretary of Agriculture and the orders of the Commodity Exchange Commission promulgated thereunder. In accordance with the provisions of section 6(b) of the Commodity Exchange Act (7 U.S.C. 9), this complaint and notice of hearing is issued alleging as follows:

I

Respondent Cargill, Incorporated, is a corporation organized under the laws of the State of Delaware, with its principal office and place of business in Minneapolis, Minnesota, and branch offices throughout the United States. The said corporation conducts various commercial enterprises, including the business of grain importing and merchandising,

and it engages in futures trading for its own account on boards of trade in the United States and Canada, including the Board of Trade of the City of Chicago, the Minneapolis Grain Exchange, Minneapolis, Minnesota, and the Winnipeg Grain Exchange, Winnipeg, Manitoba. Cargill Incorporated was at all times material to this complaint and is now a registered futures commission merchant under the provisions of the Commodity Exchange Act, and the holder of membership trading privileges on various boards of trade designated as contract markets under the said Act.

II

Respondent Erwin E. Kelm, an individual residing in Minneapolis, Minnesota, is vice president of Cargill, Incorporated.

III

Cargill Grain Company, Limited (hereinafter referred to as Cargill Limited), not a respondent herein, is a corporation organized under the laws of Canada and is a wholly owned subsidiary of Cargill, Incorporated.

IV

With respect to the transactions described in this complaint, Cargill Limited was controlled by its parent organization, Cargill, Incorporated.

## V

The Board of Trade of the City of Chicago (hereinafter called the Chicago Board of Trade) was at all times material to this complaint a duly designated contract market under the Commodity Exchange Act.

## VI

During June and July 1951, Cargill Incorporated held net short positions in oats futures on the Chicago Board of Trade of approximately 12,000,000 to 17,000,000 bushels. Beginning in August 1951 and continuing throughout that year, Cargill Incorporated sold additional large quantities of oats futures on the Chicago Board of Trade and thereby increased its short positions in oats futures so that it was short more than 31,000,000 bushels during the latter part of October 1951. In November and December 1951 the short positions of Cargill Incorporated in oats futures on the Chicago Board of Trade ranged from approximately 28,000,000 to more than 31,000,000 bushels.

## VII

Between July 1951 and January 1952, at the same time that Cargill Incorporated was selling large quantities of oats futures and increasing its short positions on the Chicago Board of Trade as described in paragraph VI, it was buying substantial quantities of oats futures on the Winnipeg Grain Exchange and thereby establishing long positions in that market. All such purchases were made through Cargill Limited, who entered them on its books in an account in the name of Cargill Incorporated. From time to time during this period, while the Chicago selling and Winnipeg buying operations were in progress, Cargill Limited, pursuant to an arrangement with its parent organization, transferred to an

account carried in its own name on its own books varying quantities of the long Winnipeg oats futures which it had previously purchased and entered on its books in the account of Cargill Incorporated. In connection with each such transfer of long Winnipeg oats futures, Cargill Limited entered into an arrangement with Cargill Incorporated calling for the delivery by Cargill Limited to its parent organization of an equivalent quantity of cash oats, delivery to be made as and when determined by Cargill Incorporated. Cargill Incorporated then made entries on its books which, in effect, substituted forward purchases of cash oats from Cargill Limited for the equivalent quantity of long Winnipeg oats futures which had been transferred to the account of Cargill Limited as above described. The total quantity of Winnipeg oats futures purchased by Cargill Incorporated during this period and thus transferred to Cargill Limited was approximately 16,000,000 bushels. These transfers were so arranged as to time and quantity that at all times during the said period the books and records of Cargill Incorporated and the reports which it submitted to the Commodity Exchange Authority showed less than 3,000,000 bushels of its short oats futures positions on the Chicago Board of Trade as representing speculative trading. In its reports to the Commodity Exchange Authority, Cargill Incorporated used the above described arrangement with its wholly owned subsidiary as the basis for showing its short oats futures positions on the Chicago Board of Trade as being hedges against forward purchases of cash oats. In November and December 1951, as a result of such arrangement and

transfers of futures, Cargill Limited held long positions in oats futures on the Winnipeg Grain Exchange ranging from approximately 14,000,000 to 16,000,000 bushels.

## VIII

On January 3, 1952, as a result of the transactions described in paragraphs VI and VII, Cargill Incorporated had a net short position on the Chicago Board of Trade of approximately 11,500,000 bushels of March 1952 oats futures and approximately 18,500,000 bushels of May 1952 oats futures, while Cargill Limited had net long positions on the Winnipeg Grain Exchange totalling approximately 16,000,000 bushels in May and July 1952 oats futures, such positions representing purchases originally made by Cargill Incorporated and then transferred to Cargill Limited, as described in paragraph VII.

## IX

Between February 15 and March 13, 1952, Cargill Incorporated unloaded into its elevator at Chicago, in position for delivery in satisfaction of futures contracts sold on the Chicago Board of Trade, approximately 1,281,000 bushels of oats which it had previously imported from Canada and had been holding in winter storage in boats at Chicago.

## X

During January and February and the first two business days of March 1952, Cargill Incorporated closed out its short position in

March 1952 oats futures on the Chicago Board of Trade by purchases of approximately 7,500,000 bushels of March 1952 oats futures and deliveries of 4,000,000 bushels of cash oats. On March 3, 1952, after closing out its short position in March 1952 oats futures, Cargill Incorporated continued to buy March 1952 oats futures on the Chicago Board of Trade, and at the close of business on that day it held a long position in such future. Thereafter, throughout the remainder of that month, Cargill Incorporated continued to buy and hold for delivery substantial additional quantities of March 1952 oats futures with the result that, between March 4 and March 24, 1952, Cargill Incorporated received in satisfaction of its long March 1952 oats futures position approximately 2,750,000 bushels of the oats which it had previously delivered during that month against its short position in such future, as described above.

## XI

From time to time during April and May 1952, Cargill Incorporated called upon Cargill Limited for delivery of varying quantities of oats under the arrangement described in paragraph VII, whereupon Cargill Limited purchased oats in Canada and turned them over to Cargill Incorporated by whom they were imported into the United States. During April and May 1952, Cargill Incorporated imported 21 cargoes or boatloads of Canadian oats in this manner, for a total of approximately 8,500,000 bushels. Cargill Limited purchased all or substantially all of such

oats from the Canadian Wheat Board, and as each purchase was made Cargill Limited turned over to the Canadian Wheat Board a corresponding amount of the long Winnipeg oats futures which it had previously transferred from the account of Cargill Incorporated to its own account, as described in paragraph VII.

## XII

The oats imported by Cargill Incorporated as described above were purchased by Cargill Limited at prices which, when adjusted for all pertinent factors, ranged from 4 to 14 cents per bushel higher than could have been realized by Cargill Incorporated from deliveries of such oats against sales of futures at current prices on the Chicago Board of Trade. Eleven cargoes, totaling approximately 4,840,000 bushels, were unloaded at Chicago into a grain elevator owned and operated by Cargill Incorporated, and thereby placed in position for delivery in satisfaction of futures sold on the Chicago Board of Trade. The remaining ten cargoes, totalling approximately 3,600,000 bushels were unloaded at Buffalo, N. Y.

## XIII

On January 3, 1952, Cargill Incorporated had a net short position of approximately 18,500,000 bushels of May 1952 oats futures on the Chicago Board of Trade. During the next four months, Cargill Incorporated closed out or covered about two-thirds of this position by

purchases of approximately 12,000,000 bushels of May 1952 oats futures, so that at the close of business on April 30, 1952 it held a net short position of approximately 6,500,000 bushels. On May 1, 1952 Cargill Incorporated again began to sell May 1952 oats futures, and between May 1, 1952 and May 15, 1952, it sold approximately 1,900,000 bushels, thereby increasing its short position in such future to approximately 8,400,000 bushels. On May 16, 1952 Cargill Incorporated resumed covering operations, and during the five trading days which remained in that month it bought approximately 4,600,000 bushels of futures and delivered approximately 4,900,000 bushels of oats against its short position. As a result of such purchases and deliveries, Cargill Incorporated closed out its short position in May 1952 oats futures on May 21, 1952, the last day of trading in such future, and at the close of business on that day held a long position of approximately 1,035,000 bushels. The next day Cargill Incorporated received, in satisfaction of this long position, 1,035,000 bushels of the oats which it had delivered during the five preceding business days against its short position in such future, as described above.

## XIV

The transactions described in paragraphs VI to XIII, were initiated by and carried out under the direction of respondent Erwin E. Kelm, acting as an officer of the corporate respondent, Cargill Incorporated.

## XV

The respondents, Cargill Incorporated and Erwin E. Kelm, entered into and consummated the transactions described in paragraphs VI to XIII for the purpose and with the intent of creating prices and price relationships which would enable the corporate respondent to realize a profit. Such transactions caused prices of cash oats and oats futures in the United States to be lower than they would have been otherwise, and brought about unwarranted changes in the spread or differential between the prices of different futures in the United States, and between prices in the United States and prices in Canada. By reason of such acts, the respondents, Cargill Incorporated and Erwin E. Kelm attempted to manipulate and did in fact manipulate the price of a commodity in interstate commerce and for future delivery on a board of trade, in violation of sections 6(b) and 9 of the Commodity Exchange Act (7 U.S.C. 9, 13).

## XVI

From June 1951 through May 1952, as a result of the transactions described in paragraphs VI to XIII, Cargill Incorporated had net short positions in oats futures on the Chicago Board of Trade ranging from approximately 9,500,000 to 31,500,000 bushels. During most of this period, a substantial part of such positions, ranging from approximately 3,500,000 to 13,000,000 bushels, consisted of spreading in the same grain between markets and was speculative in nature. By reason thereof,

the respondents, Cargill Incorporated and Erwin E. Kelm, willfully violated section 4a of the Commodity Exchange Act (7 U.S.C. 6a) and the order of the Commodity Exchange Commission establishing limits on speculative positions in oats for future delivery (17 CFR 150.1).

## XVII

From June 1951 through May 1952, Cargill Incorporated submitted daily and weekly reports to the Commodity Exchange Authority pursuant to the requirements of section 4i of the Commodity Exchange Act (7 U.S.C. 6i) and sections 2.10, 2.11, 2.16, 2.17, and 2.21 of the rules and regulations thereunder (17 CFR 2.10, 2.11, 2.16, 2.17, 2.21). In its daily reports, Cargill Incorporated classified almost all of its net short positions in oats futures on the Chicago Board of Trade as hedging, whereas in truth and in fact, during most of this period a substantial part of such positions consisted of spreading in the same grain between markets and was speculative in nature, as set forth above. In its weekly reports Cargill Incorporated showed, as forward purchases of cash oats, quantities which actually represented long oats futures positions on the Winnipeg Grain Exchange held in the name of its wholly owned subsidiary, Cargill Limited, as described in paragraphs VII and VIII. Such long oats futures positions were not disclosed on either the daily or weekly reports submitted by Cargill Incorporated during the said period. By reason of such classifications and omissions,

respondent Cargill Incorporated submitted false reports to the Commodity Exchange Authority, in willful violation of section 4i of the Commodity Exchange Act and sections 2.10, 2.11, 2.16, and 2.17 of the rules and regulations thereunder.

Therefore, the said respondents, Cargill Incorporated and Erwin E. Kelm, are hereby notified to be and appear at a hearing to be held at 10:00 o'clock, a.m., Central Standard Time, on the 18th day of August, 1953, in Room 510, Grain Exchange Building, Minneapolis, Minnesota, before a referee designated to conduct such hearing and then and there show cause, if any there be, why an order should not be made directing that all contract markets refuse all trading privileges to the respondents until further notice by the Secretary of Agriculture.

The respondents will have 20 days after the receipt of this notice of hearing in which to file with the hearing clerk, United States Department of Agriculture, in triplicate, an answer fully and completely stating the nature of the defense and admitting or denying specifically and in detail each material and relevant allegation of this complaint. Allegations that are not answered will be deemed admitted for the purpose of this proceeding.

It is ordered that this complaint and notice of hearing be served on the respondents by delivery of a true copy thereof by an employee of

the Department of Agriculture, or by registered mail, at least 20 days prior to the date set for hearing.

Done at Washington, D. C., this

11 day of June, 1953.

/s/ True D. Morse

Acting Secretary of Agriculture

**LOAD-DATE:** June 12, 2008

