ORDER OF THE COURT OF FIRST INSTANCE (Third Chamber)

13 December 2005 *

In Case T-381/02,

Confédération générale des producteurs de lait de brebis et des industriels de roquefort, established in Millau (France), represented by M. Jacquot and O. Prost, lawyers,

applicant,

supported by

United Kingdom of Great Britain and Northern Ireland, represented initially by P. Ormond and R. Caudwell, and subsequently by C. Jackson, acting as Agents, with an address for service in Luxembourg,

intervener,

* Language of the case: French.

Commission of the European Communities, represented by J. Iglesias Buhigues and A.-M. Rouchaud-Joët, acting as Agents, with an address for service in Luxembourg,

defendant,

supported by

Hellenic Republic, represented by V. Kontolaimos, I. Chalkias and M. Tassopoulou, acting as Agents, with an address for service in Luxembourg,

intervener,

APPLICATION for annulment of Commission Regulation (EC) No 1829/2002 of 14 October 2002 amending the Annex to Regulation (EC) No 1107/96 with regard to the name 'Feta' (OJ 2002 L 277, p. 10),

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (Third Chamber),

composed of M. Jaeger, President, J. Azizi and E. Cremona, Judges,

Registrar: E. Coulon,

makes the following

Order

Legal context

1 Article 1 of Council Regulation (EEC) No 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (OJ 1992 L 208, p. 1, 'the basic regulation') states that that regulation lays down rules on the Community protection of designations of origin and geographical indications of certain agricultural products and certain foodstuffs.

2 According to Article 2(2)(a) of the basic regulation, a 'designation of origin' is 'the name of a region, a specific place or, in exceptional cases, a country, used to describe an agricultural product or a foodstuff:

originating in that region, specific place or country,

and

— the quality or characteristics of which are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors, and the production, processing and preparation of which take place in the defined geographical area'.

3 Article 2(3) of the basic regulation provides as follows:

'Certain traditional geographical or non-geographical names designating an agricultural product or a foodstuff originating in a region or a specific place, which fulfil the conditions referred to in the second indent of paragraph 2(a) shall also be considered as designations of origin.'

4 According to Article 3 of the basic regulation, names that have become generic may not be registered.

5 For that purpose, the registration of the name of an agricultural product or foodstuff as a protected designation of origin must fulfil the conditions laid down by the basic regulation and, in particular, must comply with a specification set out in Article 4(1) of that regulation. Registration confers Community protection on the name in question.

6 Articles 5 to 7 of the basic regulation lay down a procedure for the registration of a designation, the so-called 'normal procedure', which enables any group, defined as an association of producers and/or processors working with the same agricultural product or foodstuff, or, subject to certain conditions, any natural or legal person, to apply for registration to the Member State in which the geographical area in question is situated. The Member State checks that the application is justified and forwards it to the Commission. If the latter considers that the name fulfils the

conditions for protection, it publishes in the *Official Journal of the European Communities* the specific information detailed in Article 6(2) of the basic regulation.

7 Article 7 of the basic regulation provides as follows:

'1. Within six months of the date of publication in the *Official Journal of the European Communities* referred to in Article 6(2), any Member State may object to the registration.

2. The competent authorities of the Member States shall ensure that all persons who can demonstrate a legitimate economic interest are authorised to consult the application. In addition and in accordance with the economic situation in the Member States, the Member States may provide access to other parties with a legitimate interest.

3. Any legitimately concerned natural or legal person may object to the proposed registration by sending a duly substantiated statement to the competent authority of the Member State in which he resides or is established. The competent authority shall take the necessary measures to consider these comments or objection within the deadlines laid down.

...'

8 If no Member State informs the Commission of an objection to the proposed registration, the name is to be registered in a register kept by the Commission entitled 'Register of protected designations of origin and protected geographical indications'.

9 If, in the event of an admissible objection, the Member States concerned fail to agree among themselves in accordance with Article 7(5) of the basic regulation, the Commission is to take a decision in accordance with the procedure laid down in Article 15 of the same regulation (the regulatory committee procedure). Article 7(5)(b) provides that, in taking a decision, the Commission is to have regard to 'traditional fair practice and ... the actual likelihood of confusion'.

10 Article 14(1) and (2) of the basic regulation relates to conflict between a trade mark and a designation of origin or a geographical indication. In this respect it provides as follows:

'1. Where a designation of origin or geographical indication is registered in accordance with this Regulation, the application for registration of a trade mark corresponding to one of the situations referred to in Article 13 and relating to the same type of product shall be refused, provided that the application for registration of the trade mark was submitted after the date of the publication provided for in Article 6(2).

Trade marks registered in breach of the first subparagraph shall be declared invalid.

This paragraph shall also apply where the application for registration of a trade mark was lodged before the date of publication of the application for registration provided for in Article 6(2), provided that that publication occurred before the trade mark was registered.

2. With due regard for Community law, use of a trade mark ... which was registered in good faith before the date on which application for registration of a designation of origin or geographical indication was lodged may continue notwithstanding the registration of a designation of origin or geographical indication, where there are no grounds for invalidity or revocation of the trade mark as provided respectively by Article 3(1)(c) and (g) and Article 12(2)(b) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks.

...'

11 Article 17 of the basic regulation establishes a registration procedure, known as the 'simplified procedure', which differs from the normal procedure. In the simplified procedure, the Member States notify the Commission which of their legally protected names or names established by usage they wish to register pursuant to the basic regulation. The procedure referred to in Article 15 of the basic regulation applies mutatis mutandis. The second sentence of Article 17(2) of that regulation states that the opposition procedure provided for in Article 7 is not applicable in the context of the simplified procedure.

Facts giving rise to the dispute

12 By letter of 21 January 1994, the Hellenic Government requested the Commission to register the name 'Feta' as a protected designation of origin pursuant to Article 17 of the basic regulation.

13 On 19 January 1996 the Commission submitted to the regulatory committee set up by Article 15 of the basic regulation a proposal for a regulation containing a list of names which could be registered as protected geographical indications or designations of origin, in accordance with Article 17 of the basic regulation. The list included the word 'Feta'. As the regulatory committee did not deliver an opinion on this proposal within the prescribed time-limit, on 6 March 1996 the Commission forwarded it to the Council in accordance with the fourth paragraph of Article 15 of the basic regulation. The Council did not give a decision within the three-month time-limit laid down in the fifth paragraph of Article 15 of the basic regulation.

14 Consequently, pursuant to the fifth paragraph of Article 15 of the basic regulation, the Commission adopted on 12 June 1996 Regulation (EC) No 1107/96 on the registration of geographical indications and designations of origin under the procedure laid down in Article 17 of [the basic regulation] (OJ 1996, L 148, p. 1). Pursuant to Article 1 of Regulation No 1107/96, the name 'Feta', which appeared in Part A of the Annex to that Regulation, under the heading 'Cheeses' and under the country name 'Greece', was registered as a protected designation of origin.

15 By judgment of 16 March 1999 in Joined Cases C-289/96, C-293/96 and C-299/96 *Denmark and Others* v *Commission* [1999] ECR I-1541, the Court of Justice annulled Regulation No 1107/96 in so far as it registered 'Feta' as a protected designation of origin. In the judgment the Court observed that when the Commission examined the question whether 'Feta' was a generic name, it did not take due account of all the factors which the third indent of Article 3(1) of the basic regulation required it to take into consideration.

16 Following that judgment, on 25 May 1999 the Commission adopted Regulation (EC) No 1070/1999 amending the Annex to Regulation No 1107/96 (OJ 1999 L 130, p. 18) and removing the name 'Feta' from the register of protected designations of origin and protected geographical indications and from the Annex to Regulation No 1107/96.

17 After subsequently reconsidering the Greek Government's request for registration, the Commission submitted a draft regulation to the regulatory committee, pursuant to the second paragraph of Article 15 of the basic regulation, proposing the registration of the name 'Feta', on the basis of Article 17 of that regulation, as a protected designation of origin in the register of protected designations of origin and protected geographical indications. As the committee did not express an opinion on that proposal within the prescribed period, the Commission submitted it to the Council in accordance with the fourth paragraph of Article 15 of the basic regulation.

18 As the Council did not give a decision on the draft within the period laid down in the fifth paragraph of Article 15 of the basic regulation, on 14 October 2002 the Commission adopted Regulation (EC) No 1829/2002 amending the Annex to Regulation (EC) No 1107/96 with regard to the name 'Feta' (OJ 2002 L 277, p. 10, 'the contested regulation'). Under that regulation the name 'Feta' was once again registered as a protected designation and was added to the Annex to Regulation No 1107/96, in Part A, under the headings 'Cheeses' and 'Greece'.

Procedure

19 By application received at the Court Registry on 18 December 2002 the applicant brought the present action.

20 By letter of 30 January 2003 the Commission requested that the case be suspended until judgment was given in Joined Cases C-465/02 and C-466/02.

21 By letter of 24 February 2003 the applicant gave notice that it had no objection to the request for suspension.

22 By decision of 19 March 2003 the Court rejected the request for suspension and ordered the continuance of the procedure.

23 By separate document received by the Court Registry on 26 May 2003, the Commission raised an objection of inadmissibility pursuant to Article 114 of the Rules of Procedure of the Court of First Instance. On 7 July 2003 the applicant lodged its written observations on this plea.

24 By separate documents received by the Court Registry on 16 April and 2 May 2003 respectively, the Hellenic Republic and Syndesmos Ellinikon Viomichanion Galaktokomikon Proïntion (SEV-GAP) (Association of Greek Dairy Product Industries) sought leave to intervene in support of the form of order sought by the Commission.

25 By separate document received by the Court Registry on 28 April 2003, the United Kingdom of Great Britain and Northern Ireland sought leave to intervene in support of the forms of order sought by the applicant.

26 By separate document received by the Court Registry on 30 April 2003, the Region of Languedoc-Roussillon sought leave to intervene in support of the forms of order sought by the applicant.

27 By order of 26 August 2003, the Hellenic Republic and the United Kingdom of Great Britain and Northern Ireland were granted leave to intervene.

28 By letter of 19 September 2003 the United Kingdom of Great Britain and Northern Ireland gave notice that it would not lodge a statement in intervention.

29 On 6 October 2003 the Hellenic Republic lodged a statement in intervention in support of the forms of order sought by the Commission.

30 By letter of 17 August 2004 the Region of Languedoc-Roussillon notified the Court of its intention to withdraw its intervention.

31 By order of 19 October 2004 the Region of Languedoc-Roussillon was removed from the case as an intervener.

Forms of order sought

32 In its application the applicant claims that the Court should:

— annul the contested regulation in so far as it registers the name 'Feta';

— order the Commission to pay the costs.

33 In its preliminary objection of inadmissibility, the Commission contends that the Court of First Instance should:

— dismiss the action as inadmissible;

— order the applicant to pay the costs.

34 In its observations on the preliminary objection of inadmissibility, the applicant claims that the Court should:

— dismiss the preliminary objection of inadmissibility;

— declare the application admissible;

— order the Commission to pay the costs.

35 In its statement in intervention, the Hellenic Republic contends that the Court should dismiss the application as inadmissible.

Law

36 In this action the applicant, an inter-trade organisation consisting of the Fédération régionale des syndicats des éleveurs de brebis (Regional Federation of Sheep Farmers' Associations) and the Fédération des syndicats des industriels de roquefort (Federation of Roquefort Producers' Associations) seeks the annulment of the contested regulation. It alleges in particular infringement of Articles 2, 3 and 17 of the basic regulation and infringement of the principles of proportionality and of legitimate expectation.

37 The Commission and the Hellenic Republic, intervening in support of the applicant, submit that the application is inadmissible on the ground that the applicant has no standing to bring proceedings for the purpose of the fourth paragraph of Article 230 EC. The Hellenic Republic also submits that the action was brought after expiry of the time-limit.

38 Under Article 114(1) of its Rules of Procedure, the Court of First Instance may give a decision on admissibility, without going into the substance of the case, where a party has made an application to that effect. Under Article 114(3), unless the Court decides otherwise, the remainder of the proceedings is to be oral. In the present case, the Court considers that the information in the documents before it is sufficient and that there is no need to proceed to the oral stage of the proceedings.

Plea of inadmissibility, raised by the Hellenic Republic, alleging the belatedness of the action

39 The Hellenic Republic submits that the action is inadmissible on the ground that it was brought after expiry of the time-limit. The contested regulation was published on 15 October 2002 and, as the action was not brought until 18 December 2002, the two-month period laid down by the fifth paragraph of Article 230 EC was not observed.

40 It must be observed that this plea of inadmissibility is manifestly unfounded. Under Article 102(1) of the Rules of Procedure, the time-limit begins to run only from the end of the 14th day following publication of the measure in question. To this must be added the 10-day extension on account of distance pursuant to Article 102(2) of the Rules of Procedure. Therefore the present action was brought within the prescribed time-limits.

Plea of inadmissibility on the ground that the applicant has no standing to bring proceedings

Arguments of the parties

41 The Commission submits that the action relates to a regulation of general application within the meaning of the second paragraph of Article 249 EC, and that the regulation is not of individual concern to the applicant.

42 The applicant considers that the action is admissible.

43 The applicant submits, first, that it has standing to bring proceedings because it is authorised to defend the interests of its members in the framework of the present proceedings. It considers that it is clear from its statutes that it has the object inter alia of 'defending the economic interests common to sheep farmers and to Roquefort producers'. According to the applicant, the object of its statutes and the means conferred upon it to attain that object are sufficiently broad to cover the present action. Furthermore, the applicant is an inter-trade organisation, recognised as such by a French decree which has the object of regulating the market in ewes milk in the Roquefort production basin and, as such, defends the interests of all farmers and all industrial processors of ewes milk. The applicant adds that an ad hoc power was conferred on its chairman to act in judicial proceedings in the applicant's name in the context of the present action.

44 Second, the applicant claims that Regulation No 1829/2002 is of individual concern to its members. According to the applicant, apart from the Greek producers of feta cheese made from ewes milk who can continue to use the name 'Feta', the French producers who are its members are the only ones who produce and market a really

significant quantity of feta cheese made from ewes milk. Because of this specific factor, the applicant's members form a 'closed circle' of traders within the meaning of the case-law.

45 Third, the applicant claims that the French producers of feta cheese made from ewes milk have filed and actually use trade marks which include the word 'Feta'. Thus, the applicant submits that, following the judgment in Case C-309/89 *Codorníu* v *Council* [1994] ECR I-1853, the registration of those trade marks serves to distinguish its members individually.

46 Fourth, the applicant takes the view that, in so far as a producer of feta cheese receives Community financing under Council Regulation (EEC) No 355/77 of 15 February 1977 on common measures to improve the conditions under which agricultural products are processed and marketed (OJ 1977 L 51, p. 1), the Commission ought to have taken account of the particular situation of that producer, whose situation differs from that of any other operator.

47 Lastly, the applicant submits that the Commission's use of the simplified procedure referred to in Article 17 of the basic regulation deprived the applicant of the procedural safeguards provided by the normal procedure which, under Article 7 of the basic regulation, enables any natural or legal person who is legitimately concerned to oppose the proposed registration.

Findings of the Court

48 The fourth paragraph of Article 230 EC provides that any natural or legal person may institute proceedings against decisions which, although in the form of a regulation, are of direct and individual concern to that person.

49 According to settled case-law, the criterion for distinguishing between a legislative act and a decision must be sought in the general application or otherwise of the measure in question (order in Case C-10/95 P *Asocarne* v *Council* [1995] ECR I-4149, paragraph 28, and order in Case C-87/95 P *CNPAAP* v *Council* [1996] ECR I-2003, paragraph 33). A measure is of general application if it applies to objectively determined situations and produces its legal effects with respect to categories of persons envisaged in the abstract (Case T-482/93 *Weber* v *Commission* [1996] ECR II-609, paragraph 55, and the case-law cited).

50 In the present case, the contested regulation gives the name 'Feta' the protection for designations of origin provided by the basic regulation.

51 That protection consists in reserving the use of the designation 'Feta' to the original producers in the defined geographical area whose products comply with the geographical and quality requirements laid down in the specifications for the production of feta. As the Commission has rightly emphasised, the contested regulation, far from being addressed to specified operators, such as the applicant, recognises that all undertakings whose products satisfy the prescribed geographical and qualitative requirements have the right to market them under the above-mentioned designation and refuses that right to all producers whose products do not fulfil those conditions, which are identical for all undertakings. The contested regulation applies in the same way to all manufacturers — both present and future — of feta who are legally authorised to employ that name as it does to all those who will be prohibited from using it after the end of the transitional period. It is not aimed solely at producers in the Member States but also produces legal effects in respect of an unknown number of producers in non-member countries wishing to import feta cheese into the Community, either now or in the future (order of 6 July 2004 in Case T-370/02 *Alpenhain-Camembert-Werk and Others* v *Commission* [2004] ECR II-2097, paragraph 54).

52 Therefore the contested regulation is a measure of general application within the meaning of the second paragraph of Article 249 EC. It applies to objectively determined situations and produces its legal effects in respect of categories of persons envisaged in the abstract (see, to that effect, orders in Case T-109/97 *Molkerei Grossbraunshain and Bene Nahrungsmittel* v *Commission* [1998] ECR 3533; Case T-114/96 *Biscuiterie-confiserie LOR and Confiserie du Tech* v *Commission* [1999] ECR II-913, paragraphs 27 to 29; Case T-114/99 *CSR Pampryl* v *Commission* [1999] ECR II-3331, paragraphs 42 and 43; and *Alpenhain-Camembert-Werk and Others* v *Commission*, paragraph 55). Moreover, that general application arises from the object of the measures in question, which is to protect, erga omnes and throughout the European Community, duly registered geographical indications and designations of origin.

53 However, the possibility cannot be ruled out that a provision which, because of its nature and scope, is of a legislative character, may be of individual concern to a natural or legal person.

54 In this connection, it must be observed that an inter-trade association formed to defend and represent its members' interests has standing to bring an action for annulment in three kinds of situations: first, where a statutory provision expressly confers upon it a number of powers of a procedural nature; second, where the association represents the interests of undertakings which would themselves have standing to bring an action; and, third, where the association itself is distinguished individually by reason of damage to its own interests as an association, in particular

because its position as a negotiator is affected by the measure of which it seeks annulment (see order of 8 September 2005 in Joined Cases T-295/04 to T-297/04 *ASAJA* v *Council* [2005] ECR II-3151, paragraph 50).

55 The applicant in the present case does not claim that it has standing to bring an action because its own interests are affected, but submits only that the action is admissible as coming within the first two situations.

56 With regard to the first situation, namely the existence of a statutory provision expressly conferring upon inter-trade associations a number of powers of a procedural nature, the applicant claims that it has a procedural right conferred by Community legislation, in particular Article 7 of the basic regulation. It also considers that it would have had a right to object if the Commission had followed the normal registration procedure in the case of the name 'Feta'.

57 This argument cannot succeed. It is clear that the basic regulation confers no procedural right on trade associations themselves, such as the applicant.

58 In addition, the Court has already held that the basic regulation does not create specific procedural safeguards at Community level in favour of private individuals (see orders in *Molkerei Grossbraunshain and Bene Nahrungsmittel* v *Commission*, paragraph 67, and *Alpenhain-Camembert-Werk and Others* v *Commission*, paragraph 67).

59 The Court of Justice confirmed this case-law in the order in Case C-447/98 P *Molkerei Grossbraunshain and Bene Nahrungsmittel* v *Commission* [2000] ECR I-9097, paragraphs 71 to 73 (see also, to that effect, order in Case C-151/01 P *La Conqueste* v *Commission* [2002] ECR I-1179, paragraphs 43 and 44).

60 It follows that the argument alleging procedural rights in favour of the association itself or its members is not such as to distinguish the applicant individually.

61 With regard to the second situation in which an association may bring an action for annulment, it is necessary to ascertain, first, whether the applicant represents its members' interests in accordance with its statutes in the context of the present action and, secondly, whether its members would have standing to institute proceedings.

62 On this point it must be observed, as a preliminary point, that, according to Article 1 of its statutes, the members of the Confédération générale des producteurs de lait de brebis et des industriels de roquefort are, on the one hand, the Fédération régionale des syndicats des éleveurs de brebis and, on the other, the Fédération des syndicats des industriels de roquefort. The former brings together municipal and inter-municipal sheep farmers' associations and the latter brings together the Syndicat aveyronnais des fabricants de fromage de roquefort (Aveyron Association of Roquefort Cheese Producers) and the Chambre syndicale des industriels de roquefort (Roquefort Producers Chamber).

63 Consequently, the applicant's members are federations of associations and not cheese producers. However, as the arguments adduced by the applicant to show that the members it represents have standing to bring an action relate not only to the federations which are its members, but also to the individual cheese producers who are in turn members of those federations, the admissibility of the action will be examined in relation to both situations.

64 With regard to the federations of associations, it must be observed that the applicant has produced no evidence to show that they have standing to bring the present action.

65 Furthermore, the federations are merely defending the general interests of their members working in the cheese sector, the producers of ewes' milk in the Fédération régionale des syndicats des éleveurs de brebis and the milk processors in the Fédération des syndicats des industriels de roquefort. Those two federations' own interests are not jeopardised by the contested regulation, which does not affect them by reason of characteristics specific to them or a factual situation which differentiates them from all other persons.

66 Consequently, the contested regulation is not of individual concern to federations of associations which are the applicant's members, as the regulation applies to objectively determined situations and produces its legal effects with respect to categories of persons envisaged in the abstract.

67 Therefore the two federations which are members of the applicant association do not have standing to bring an action.

68 With regard to the individual cheese producers who are members of the federations which are in turn members of the applicant, it is necessary first of all to determine whether the applicant validly represents them for the purposes of the present action.

69 In this connection its must be observed that the applicant states a number of times in its pleadings that it represents general interests distinct from the individual interests of some of its members. Thus in its application it merely claims that it has the function of organising the collection and quality control of ewes milk, regulating the milk market, arranging collective advertising and operating a price equalisation system for milk amongst the different users. Likewise, in its observations on the plea of inadmissibility, it emphasises that it does not 'defend ... the interests of any particular undertaking or any particular farmer'. It also submits that its work 'aims in particular to provide an outlet for the ewes milk farmers and producers of the Roquefort basin'.

70 Furthermore, the social object of the applicant, which appears in Article 4 of its statutes, sets out general aims relating to the study and defence of the common economic interests of sheep farmers and Roquefort producers.

71 It follows, first, that it does not appear that the applicant has the task of defending in the courts the interests of certain producers of feta and, second, that, having regard to its statutes and its pleadings, the applicant is not responsible for defending the individual interests of certain feta cheese producers who are members of federations which are in turn members of the applicant, but solely to protect general and

collective interests in the sector of the ewes milk market of the Roquefort basin and the name 'Roquefort'.

72 In those circumstances, the applicant cannot be regarded as representing validly the interests of certain producers of feta for the purposes of the present action.

73 For the sake of completeness, assuming that the applicant can validly represent individual cheese producers in accordance with its statutes, it is then necessary to determine whether those producers have standing to bring an action for annulment of the contested regulation and, in particular, whether they have a legal interest in bringing proceedings and whether they are individually concerned by the regulation.

74 On this point, with respect to, first, the applicant's allegations that only the French producers who are its members have a really significant production of feta cheese made from ewes milk and that they therefore form a closed circle and are distinguished individually, it must be said that the applicant association's arguments are irrelevant.

75 According to settled case-law, the general scope and hence the legislative nature of a measure are not called into question by the fact that it is possible to ascertain with a greater or lesser degree of accuracy the number or even the identity of the persons to which it applies at any given time, as long as there is no doubt that the measure is applicable as the result of an objective situation of law or of fact which it specifies and which is in harmony with its ultimate objective (Case 6/68 *Zuckerfabrik Watenstedt* v *Council* [1968] ECR 409, 415, and order in Case T-183/94 *Cantina cooperativa fra produttori vitivinicoli di Torre di Mosto and Others* v *Commission* [1995] ECR II-1941, paragraph 48).

76 That is the case here since the contested regulation affects, without differentiation, all producers, present and future, who wish to market cheese under the name 'Feta' in the Community. The producers of cheese made from ewes milk or Roquefort cheese are therefore affected in the same way as all other undertakings whose products are likewise not in conformity with the requirements of the contested regulation.

77 With regard, secondly, to the applicant's allegations that some of its members, producers of feta cheese, have filed and used trade marks with the word 'Feta', namely 'Salakis — feta brebis', 'Valbreso feta' and 'Salakis, la feta au bon lait de brebis', the use of which has been called into question by the contested regulation, it must be observed that the regulation does not affect a specific right within the meaning of the case-law (order in Case T-215/00 *La Conqueste* v *Commission* [2001] ECR II-181, paragraph 39, and case-law cited) acquired by feta cheese producers who own trade marks containing the name 'Feta'.

78 The adoption of the contested regulation has not deprived the proprietors of those trade marks of the possibility of using their trade mark rights since, under Article 14(2) of the basic regulation, the use of such trade marks, provided that they are registered in good faith before the date on which the application for registration of the name 'Feta' is lodged, may continue notwithstanding the registration of the said designation of origin. The proprietors of trade marks may lose the right to use them only in a situation where there are grounds for invalidity or revocation of the trade marks as provided for by Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ 1988, L 40, p. 1).

79 With regard to trade marks containing the name 'Feta' registered after the application to register the name 'Feta', it must be observed, first, that the proprietors of such marks cannot rely on the judgment in *Codorníu* v *Council* because, unlike the facts giving rise to the present case, the trade marks in question in that case were not registered and used for a long period before the adoption of the Regulation registering the name 'Feta'.

80 Therefore the contested regulation does not affect a specific right of the producers of 'Feta' cheese arising from the registration of trade marks including the word 'Feta', which is capable of distinguishing them from all other operators.

81 Third, regarding the applicant's allegation that the Commission ought to have taken into account the situation of a producer who received Community financing, suffice it to observe that the applicant did not state the specific provisions by virtue of which the Commission ought to have taken that particular producer's situation into account (see, to that effect, Case C-390/95 P *Antillean Rice Mills and others* v *Commission* [1999] ECR I-769, paragraph 25). Even if the applicant had done so, it cannot be inferred in any event, from a mere finding that the Commission has an obligation to inquire into the repercussions which the measure in question may have for certain undertakings, that it is of individual concern to them within the meaning of the fourth paragraph Article 230 EC (see, to that effect, Case C-142/00 P *Commission* v *Nederlandse Antillen* [2003] ECR I-3483, paragraph 75).

82 It follows from all the foregoing considerations, first, that the applicant has no procedural rights of its own and, second, that it does not represent the interests of

members who would have standing to bring the present action because, under its statutes, it does not have the function of defending before the courts the interests of feta producers and is responsible for the protection of collective interests only, not for representing only one of its members as the proprietor of a trade mark, and in any event those producers would not have standing to bring an action.

83 The present action must therefore be dismissed as inadmissible.

84 Consequently, it is unnecessary to give a ruling on the application for intervention lodged by SEV-GAP.

Costs

85 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. As the applicant has been unsuccessful, it must, having regard to the Commission's application, be ordered to pay its own costs and those of the Commission.

86 Under the first paragraph of Article 87(4) of the Rules of Procedure, Member States which intervene in the proceedings are to bear their own costs. In the present case, the Hellenic Republic and the United Kingdom of Great Britain and Northern Ireland must be ordered to pay their own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Third Chamber)

hereby:

1. **Dismisses the action as inadmissible;**

2. **Orders the applicant to bear its own costs and to pay those incurred by the Commission;**

3. **Orders the Hellenic Republic and the United Kingdom of Great Britain and Northern Ireland to bear their own costs.**

Luxembourg, 13 December 2005.

E. Coulon

Registrar

M. Jaeger

President