JUDGMENT OF THE COURT OF FIRST INSTANCE (Second Chamber)

31 January 2008 *

In Case T-95/06,

Federación de Cooperativas Agrarias de la Comunidad Valenciana, established in Valencia (Spain), represented by S. Roig Girbes, R. Ortega Bueno and M. Delgado Echevarría, lawyers,

applicant,

v

Community Plant Variety Office (CPVO), represented by M. Ekvad, acting as Agent, assisted by D. O'Keefe, Solicitor, J. Rivas de Andrés and M. Canal Fontcuberta, lawyers,

defendant,

the other party to the proceedings before the Board of Appeal of the CPVO, intervening before the Court, being

* Language of the case: Spanish.

Nador Cott Protection SARL, established in Saint-Raphaël (France), represented by M. Fernández Mateos, S. González Malabia and M. Marín Bataller, lawyers,

ACTION against the decision of the Board of Appeal of the CPVO of 8 November 2005 (Case A 001/2005), concerning the grant of a Community plant variety right in regard to the mandarin variety Nadorcott,

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

composed of N.J. Forwood, acting for the President, I. Pelikánová and S. Papasavvas, Judges,

Registrar: K. Andová, Administrator,

having regard to the application lodged at the Registry of the Court on 21 March 2006,

having regard to the response of the CPVO lodged at the Registry of the Court on 7 July 2006,

having regard to the response of the intervener lodged at the Registry of the Court on 3 July 2006,

further to the hearing on 4 July 2007,

gives the following

Judgment

Legal context

1 Article 59 of Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights (OJ 1994 L 227, p. 1 ('the basic regulation') provides, in regard to objections to grant of right, that:

'1. Any person may lodge with the Office a written objection to the grant of a Community plant variety right.

2. Objectors shall be party to the proceedings for grant of the Community plant variety right in addition to the applicant. Without prejudice to Article 88, objectors shall have access to the documents, including the results of the technical examination and the variety description as referred to in Article 57(2).

…

5. The decisions on objections may be taken together with the decisions pursuant to Articles 61, 62 or 63.'

2 Article 67(1) of the basic regulation provides that '[a]n appeal shall lie from decisions of the Office which have been taken pursuant to Articles 20, 21, 59, 61, 62, 63 and 66'.

3 According to Article 68 of the basic regulation:

'Any natural or legal person may appeal, subject to Article 82, against a decision, addressed to that person, or against a decision which, although in the form of a decision addressed to another person, is of direct and individual concern to the former. The parties to proceedings may, and the Office shall, be party to the appeal proceedings.'

4 Article 49(1) of Commission Regulation (EC) No 1239/95 of 31 May 1995 establishing implementing rules for the application of the basic regulation (OJ 1995 L 121, p. 37), ('the implementing regulation') provides, under the title 'Rejection of the appeal as inadmissible', that, '[i]f the appeal does not comply with the provisions of the Basic Regulation and in particular Articles 67, 68 and 69 thereof or those of this Regulation and in particular Article 45 thereof, the Board of Appeal shall so inform the appellant and shall require him to remedy the deficiencies found, if possible, within such period as it may specify' and that '[i]f the appeal is not rectified in good time, the Board of Appeal shall reject it as inadmissible'.

5 Article 50 of the implementing regulation, dealing with oral proceedings before the Board of Appeal of the Community Plant Variety Office (CPVO), provides as follows:

'1. After the remittal of the case, the chairman of the Board of Appeal shall, without delay, summon the parties to the appeal proceedings to oral proceedings as provided for in Article 77 of the Basic Regulation and shall draw their attention to the contents of Article 59(2) of this Regulation.

2. The oral proceedings and the taking of evidence shall in principle be held in one hearing.

3. Requests for further hearings shall be inadmissible except for requests based on circumstances which have undergone change during or after the hearing.'

Background to the dispute

6 The applicant is a federation of unions of farming cooperatives in the provinces of Alicante, Castellón and Valencia (Spain), which in turn comprise almost all the local farming cooperatives in those three provinces.

7 On 22 August 1995, the breeder of the Nadorcott mandarin variety, Mr N., assigned his rights in regard to that variety to Mr M. On the same day, the latter filed an application with the CPVO for the grant of a Community plant variety right.

8 The application was published in the *Official Gazette of the CPVO* of 26 February 1996.

9 On 21 March 1997, Mr M. assigned his rights in regard to the Nadorcott variety to the intervener and informed the CPVO of that assignment.

10 The CPVO granted a Community plant variety right for the intervener's variety by Decision No 14111 of 4 October 2004 ('the decision granting the right').

11 The decision granting the right was published in the *Official Gazette of the CPVO* of 15 December 2004.

12 On 11 February 2005, the applicant appealed to the Board of Appeal against the decision granting the right. The grounds for the appeal were set out in a statement dated 14 April 2005. With regard, in particular, to the admissibility of the appeal, the applicant argued, in that statement, that the grant of a plant variety right in regard to the Nadorcott variety was of direct and individual concern to it. With regard to the substance of the case, it considered, *inter alia*, that the plant variety right was invalid for lack of novelty and distinctive character of the variety at issue.

13 On 24 February 2005, the intervener applied for leave to intervene and, on 29 July 2005, it submitted its arguments in a separate document. It contended that the applicant did not have *locus standi* because, *inter alia*, it was not directly and individually concerned by the decision granting the right. It also contended that the appeal was unfounded.

14 In its observations of 15 September 2005, the CPVO argued, first of all, that the appeal was inadmissible for want of *locus standi*. The CPVO also contended that the appeal should be dismissed on its substantive merits.

15 The hearing took place before the Board of Appeal on 8 November 2005. The applicant there argued that, pursuant to Article 49 of the implementing regulation, the Board of Appeal should have called upon it, before the hearing, to submit documents

establishing that its members were directly and individually concerned by the decision granting the right. The applicant asked for time to return to Spain to assemble and produce complete documentation to that effect, or at least to be allowed to produce at the hearing the incomplete documentation to that effect which its representatives had brought with them. It stated that that documentation included documents empowering it to bring an appeal on behalf of individual mandarin growers and a contract between Geslive (the body responsible for the management and defence in Spain of the intervener's rights in regard to the Nadorcott variety) and the Anecoop cooperative (a member of a union of cooperatives affiliated to the applicant) concerning payment by the latter of royalties for cultivation of the Nadorcott variety.

16 By decision of 8 November 2005 ('the contested decision'), the Board of Appeal dismissed the applicant's appeal as inadmissible on the ground that it did not have *locus standi*. It also rejected its application for leave to produce documents.

Forms of order sought

17 The applicant claims that the Court should:

— annul the contested decision;

— order the CPVO to pay the costs.

18 The CPVO contends that the Court should:

— declare the action to be unfounded in its entirety;

— order the applicant to pay the costs and, in the alternative, if the action is well founded, order the CPVO to bear only its own costs.

19 The intervener contends that the Court should:

— declare the action to be unfounded in its entirety;

— order the applicant to pay the costs.

Law

20 In support of its action, the applicant relies, essentially, on three pleas in law alleging, first, an infringement of Articles 49 and 50 of the implementing regulation and of the principle of care and attention and the principle of sound administration, second, error on the part of the Board of Appeal concerning the applicant's *locus standi* and, third, a failure to comply with the obligation to state reasons.

The first plea in law: infringement of Articles 49 and 50 of the implementing regulation, of the principle of care and attention and of the principle of sound administration

21 The first plea in law is divided into two branches alleging, first, infringement of Article 49 of the implementing regulation, and, secondly, infringement of Article 50 of the implementing regulation. In both branches, the applicant also alleges infringement of the principle of care and attention and of the principle of sound administration.

The first branch: infringement of Article 49 of the implementing regulation, of the principle of care and attention and of the principle of sound administration

— Arguments of the parties

22 The applicant claims that, if its action does not comply with Article 68 of the basic regulation, the Board of Appeal must, in accordance with Article 49 of the implementing regulation, so inform it and request it to remedy the deficiencies found, if possible, within such period as the Board might specify. However, the Board of Appeal never informed the applicant that it did not have *locus standi* or request it to remedy that situation. The conduct of the Board of Appeal was thus based on an erroneous interpretation of Article 49 of the implementing regulation.

23 First of all, in the applicant's view, it is clear from the terms of Article 49 of the implementing regulation that that article does not refer solely to 'obvious defects in an application'. Given that that provision expressly mentions as one of those defects the inadmissibility referred to in Article 68 of the basic regulation, it is unlikely that the Community legislature intended to refer only to obvious defects, since inadmissibility

is never obvious. Thus, independently of the difficulty involved in correcting the deficiency, the Board of Appeal was bound by the obligation under Article 49 of the implementing regulation once it was possible to remedy the deficiency. The applicant relies in that regard not merely on the principle of care and attention and the principle of sound administration but also on a guarantee granted to the applicant by the Community legal order which may not be interpreted as restrictively as has been done in this case. The applicant also relies on the dismissal of the appeal for, allegedly, lack of *locus standi* on its part in order to point out that the Board of Appeal does not deny that the deficiency existed or that it still had doubts at the hearing as to the relevant factors in determining whether the applicant had *locus standi*.

24 Secondly, the applicant contests the Board of Appeal's interpretation of the expression 'if possible' in Article 49 of the implementing regulation. In the applicant's view, it was not for the Board of Appeal to consider whether the deficiency could be remedied easily and, even if it was required to carry out such a consideration, it still had to require the applicant to remedy the deficiency. Since it was for the party and not the Board of Appeal to seek to remedy the deficiency which had been found to exist, the Board of Appeal was not entitled to proceed immediately to a consideration of the question of whether the applicant was or was not in a position to remedy it. Such an interpretation leads to arbitrariness inasmuch as the exercise of the party's right is subject to the administration's perception of the party's capacity to exercise its right.

25 Thirdly, the applicant points out that Article 49 of the implementing regulation is drafted in imperative terms when it provides that 'the Board of Appeal shall so inform the appellant and shall require him to remedy the deficiencies found'. Thus, that article requires the Board of Appeal to inform the appellant of the deficiencies and request it to remedy them. It did not fulfil those two obligations. On the other hand, in the applicant's view, the Board of Appeal was not required to inform it that it had to produce documents in order to remedy the irregularity. Article 49 of the implementing regulation does not require it, the production of documents being one of the many means at the party's disposal to remedy the deficiency found to exist.

26 Fourthly, the applicant considers that informing it of the other parties' objections to the admissibility of the appeal does not justify the Board of Appeal's lack of care and attention in fulfilling its obligation under Article 49 of the implementing regulation. The Board cannot make the fulfilment of its obligation subject to a consideration of the contents of the parties' allegations nor act only if the parties make no reference to deficiencies referred to in Article 49 of the implementing regulation. The proceedings at issue are not a 'private judicial procedure'.

27 Fifthly, the applicant considers that the Board of Appeal overlooked the administrative nature of the proceedings when it formed the view that permitting the applicant to remedy its lack of *locus standi* would amount to pre-judging an issue that was the subject of dispute between the parties. It points out that inadmissibility is a matter of public policy which the body before which the matter is brought must consider of its own motion. It is thus of no consequence whether or not a lack of *locus standi* has been raised by the parties.

28 Finally, the applicant indicated for the first time at the hearing before the Court that the only document transmitted to it by the Board of Appeal before the hearing was a decision, dated 27 June 2005, staying the proceedings in which, without prejudice to the final decision, the Board of Appeal did not take the view that the appeal was manifestly unfounded. It claims that, on the basis of that decision and the fact that Article 49(1) of the implementing regulation was not applied, it had a legitimate expectation that its *locus standi* had been sufficiently established prior to the hearing.

29 The CPVO considers that the interpretation of Article 49 of the implementing regulation put forward by the applicant is without foundation. Since it considers that lack of *locus standi* is difficult to remedy, the CPVO contends that the reference to Article 49 of the implementing regulation made in Article 68 of the basic regulation can concern only the correction of purely formal errors. In addition, since the applicant replied during the written procedure to the intervener's allegations concerning the absence of direct and individual concern, the question of the applicant's *locus standi* had become a 'question of substance' in the case. It was thus unnecessary for

the Board of Appeal to correct that defect as if it were a formal error. Moreover, in the CPVO's view, accepting the powers of attorney granted by the individual growers would have amounted to permitting a new entity to become a party to the proceedings notwithstanding the fact that the period within which an appeal had to be brought had expired. Having brought the appeal in its own name, the applicant could not rely at the hearing on powers of attorney granted by individual growers who were not directly members of its organisation.

30 In the intervener's view, the Board of Appeal is not required to ascertain in advance whether it is clear from the documents produced by the applicant that it actually has *locus standi*. It is for the applicant to invoke its *locus standi* and submit relevant evidence thereof. Article 49 of the implementing regulation requires the Board of Appeal to ascertain whether that formal condition has been fulfilled but does not require it to ascertain whether the applicant actually has *locus standi*.

— Findings of the Court

31 In the present branch of its argument, the applicant claims, on the one hand, that the Board of Appeal did not inform it that it considered that the applicant did not have *locus standi* and, on the other, did not call upon it to show that it had such *locus standi*.

32 First of all, it must be ascertained whether the Board of Appeal infringed, as the applicant alleges, Article 49(1) of the implementing regulation. It should, as a preliminary point, be noted that that provision requires the Board of Appeal, on the one hand, to ascertain whether the appeal complies with the provisions of the basic regulation and the implementing regulation and, on the other, to inform an appellant of the deficiencies found and require it to remedy them, if possible, within such period as it may specify.

33 With regard to the obligation to ascertain whether the appeal complies with the provisions of the basic regulation and the implementing regulation, it should be noted that the other language versions of Article 49(1) of the implementing regulation refer to the compliance of the appeal with all the provisions of both regulations, whereas the French and Greek versions refer to a check by the Board of Appeal of compliance by the appeal only with Articles 67, 68 and 69 of the basic regulation and Article 45 of the implementing regulation. However, since the need for a uniform interpretation of Community regulations makes it impossible for a given piece of legislation to be considered in isolation and requires that, in case of doubt, it should be interpreted and applied in the light of the versions existing in the other official languages (see Case C-64/95 *Lubella* [1996] ECR I-5105, paragraph 17 and the case-law cited therein), the Court takes the view that the French and Greek versions of Article 49(1) of the implementing regulation do not give that passage a different meaning from that of the other language versions and that they must be interpreted and applied in the light of the versions which exist in the other official languages (see, to that effect, Case C-177/95 *Ebony Maritime and Loten Navigation* [1997] ECR I-1111, paragraphs 29 to 31).

34 With regard to the twofold obligation to inform and to request remedial action, it should be pointed out, first of all, that it can be seen from the Danish, Dutch, English, German, Italian and Spanish versions of Article 49(1) of the implementing regulation that the expression 'if possible' makes the obligation to inform and to request remedial action subject to the objective possibility that the deficiencies found can be rectified. Thus, contrary to what the applicant claims, that provision requires the Board of Appeal to assess whether it is possible for an appellant to remedy a deficiency in order to limit the request for remedial action to corrections which are possible. Since the objective of the obligation to inform and to request remedial action laid down in Article 49(1) of the implementing regulation is to permit an appellant to remedy the deficiencies found by the Board of Appeal within the period specified, it must be possible for those deficiencies to be remedied. However, as the CPVO and the intervener point out, a lack of *locus standi* cannot be remedied.

35 In addition, Article 49(1) of the implementing regulation designates the matters which are to be remedied as 'irrégularités' in French, 'Mängel' in German,

'deficiencies' in English, 'irregolarità' in Italian, 'mangler' in Danish and 'irregularidades' in Portuguese, which suggests that this refers to the correction of formal errors (see, for example, the use of those terms in Rule 9(1) of Commission Regulation (EC) No 2868/95 of 13 December 1995 implementing Council Regulation (EC) No 40/94 on the Community trade mark (OJ 1995 L 303, p. 1), and Article 10(1) and (2) of Commission Regulation (EC) No 2245/2002 of 21 October 2002 implementing Council Regulation (EC) No 6/2002 on Community designs (OJ 2002 L 341, p. 28)). Similarly, the terms 'rectifié' in French, 'berichtigt' in German, 'berigtiges' in Danish, 'rettificato' in Italian and 'regularizado' in Portuguese, used in the second sentence of Article 49(1) of the implementing regulation, refer, rather, to the correction of formal errors (see, for example, Rule 53 in Regulation No 2868/95 and, for the French, German and Danish terms, Article 12(2) of Regulation No 2245/2002) and not to an application to introduce additional arguments or evidence that a party has not yet put forward and which relate to substantive aspects of the admissibility of its action, such as *locus standi*.

36 Thus, the view must be taken that Article 49(1) of the implementing regulation did not oblige the Board of Appeal to require the applicant to remedy a lack of *locus standi* that it had established, inasmuch as that deficiency is a substantive defect which cannot be 'rectified' within the meaning of the second sentence of that provision and for which there is no remedy.

37 Secondly, it must be considered that the obligation to inform is linked to that of requiring the applicant to remedy deficiencies capable of being remedied. Since Article 49(1) of the implementing regulation requires the Board of Appeal to ascertain whether the appeal complies with all the provisions of the basic regulation and the implementing regulation, it would otherwise be obliged to inform the applicant of all problems relating to admissibility, including those which could not be remedied, which would be contrary to the objective of that provision, as set out in paragraph 34 above. Although, in specific situations, informing an appellant of a problem of admissibility which cannot be remedied may certainly protect that appellant from a decision based on reasoning which has not been subject to an exchange of views, such a general obligation to inform would most often be a burden for the Board of Appeal and, at the same time, ineffective, since that appellant would be unable to

remedy the problem. In addition, it must be borne in mind that, in this case, the applicant's lack of *locus standi* had already been raised by the parties and was one of the elements in the case.

38 At the time of the application for leave to intervene, made on 24 February 2005, the applicant had been warned of the problem, with the effect that information from the Board of Appeal was no longer necessary for it to state its views. In its written statement of 14 April 2005, the applicant reacted to the intervener's allegations and set out the reasons why it considered that it had *locus standi*. In addition, the intervener, in its written statement of 29 July 2005, set out its arguments as to why the applicant lacked *locus standi* and the CPVO also argued in its written statement that the applicant did not have *locus standi*.

39 Moreover, contrary to the applicant's argument, the reference in Article 49(1) of the implementing regulation to Article 68 of the basic regulation does not contradict that interpretation because, when that provision is implemented, problems of a formal nature, which are amenable to remedy, may also arise. For example, since that provision provides a legal remedy available to legal persons, they are required by Article 82 of the basic regulation to indicate the location of their seat or establishment, or the domicile of a procedural representative. If such information is omitted, the Board of Appeal will be required to inform an appellant thereof and require it to remedy the deficiency.

40 It follows that the Board of Appeal did not infringe Article 49(1) of the implementing regulation by not informing the applicant of its view that the applicant did not have *locus standi* and by not calling on it to remedy that deficiency.

41 Secondly, with regard to the alleged infringement of the principle of care and attention and the principle of sound administration, it should be noted that the applicant did not mention any circumstances pointing to an infringement of those principles,

other than the fact that the Board of Appeal did not inform it of its view that the applicant did not have *locus standi* and did not call on it to remedy that deficiency. However, it is clear, in particular from paragraphs 34 to 40 above, that the Board of Appeal's position in that regard fulfilled the requirements of Article 49(1) of the implementing regulation and it was therefore not in breach of the principle of care and attention and the principle of sound administration.

42 Finally, with regard to the applicant's claim that it had a legitimate expectation that its *locus standi* had been sufficiently established before the hearing, it must be pointed out that the applicant raised that argument for the first time in the course of the hearing before the Court. However, the suspensory decision of 25 June 2005, on which the applicant relies in support of its legitimate expectation, was delivered in response to an application by the intervener that the suspensory effect of the applicant's appeal against the decision granting the plant variety right be lifted. It must be pointed out that that decision was adopted, not by the Board of Appeal, but by a separate committee empowered to issue decisions lifting the suspensory effect of appeals, the members of which, moreover, are not the same as those of the Board of Appeal. In addition, in paragraph 10 of its decision, the committee stated that it was difficult to assess, at that stage of the procedure, whether the applicant's appeal to the Board of Appeal was well founded, in particular because the intervener had not yet lodged its statement in intervention. It also pointed out that, without prejudice to the final position of the CPVO, it had not, however, been decided at that stage that the appeal was manifestly unfounded. It follows that the committee neither made a specific assessment as to the admissibility of the appeal nor referred to any such decision of the Board of Appeal. In addition, it made its assessments subject to the final decision. Under those circumstances, the view must be taken that that decision could not have given rise to a legitimate expectation on the applicant's part that it had established its *locus standi* before the Board of Appeal. Consequently, that argument must be rejected.

43 It follows that the first branch must be rejected.

The second branch: infringement of Article 50 of the implementing regulation, of the principle of care and attention and of the principle of sound administration

— Arguments of the parties

44 The applicant takes the view that the Board of Appeal ought to have held a further hearing under Article 50 of the implementing regulation in order to allow the other parties to examine the documents which it intended to produce with a view to establishing the admissibility of its appeal. The applicant observes in this regard that, according to the terms of Article 50 of the implementing regulation, the hearing is the stage of the procedure at which evidence is taken. It concludes that the Board of Appeal must, in application of the principle of sound administration, permit the production of all evidence which the parties consider necessary or, if that is not possible, hold a further hearing, as expressly provided for in the implementing regulation.

45 In the applicant's view, although the Community institutions have a certain discretion in the exercise of their powers, that discretion is none the less balanced by the principle of care and attention and the principle of sound administration, which require them to adopt decisions with full knowledge of all the facts. It can be seen from the case-law that where the Community institutions have a discretion, respect for the guarantees conferred by the Community legal order in regard to administrative procedures, among which is the obligation devolving on the competent institution to consider, carefully and impartially, all the relevant facts of the case, is of fundamental importance.

46 If the finding that the applicant did not have *locus standi* to challenge the decision to grant a plant variety right means that it is deprived of the effective legal remedy available to it, whether under Community law or national law, the Board of Appeal ought, in the applicant's view, to have permitted it to resolve the issue of admissibility with regard to which the Board had doubts.

47 The CPVO takes the view that the Board of Appeal was under no obligation to permit the applicant to produce the documents it wished, because those documents were irrelevant for the purpose of analysing the *locus standi* of the applicant, which had brought the appeal in its own name and not on behalf of specific individual growers. Admitting those documents would have constituted a failure to respect procedural guarantees by substantially modifying the appeal at the hearing stage. Moreover, the CPVO considers that since the Board of Appeal had decided that suppliers of material of the Nadorcott variety could be affected by the decision granting the plant variety right, the production at the hearing of a contract between Geslive and Anecoop concerning the payment of royalties would have had no effect on consideration of the applicant's *locus standi*. In addition, the rules governing procedure before the Board of Appeal did not prevent the applicant from submitting written observations on the arguments concerning inadmissibility contained in the intervener's statement of 29 July 2005 and the CPVO's statement of 15 September 2005. Finally, the decision as to whether a further hearing was appropriate is a matter which, in the CPVO's view, comes within the scope of the independence which a Board of Appeal should enjoy in regard to matters of procedural organisation.

48 The intervener considers, in addition, that the Board of Appeal was entitled to dismiss the applicant's appeal, since the admission of new documents would have necessitated the holding of a further hearing, contrary to the principle of a single hearing laid down in Article 50 of the implementing regulation.

— Findings of the Court

49 First of all, it should be borne in mind that the applicant applied to the Board of Appeal, principally, for an adjournment to permit it to prepare and submit at a later date to the Board of Appeal a complete set of documents establishing that

its members were directly and individually concerned by the decision granting the plant variety right. In the alternative, it applied for leave to produce at the hearing the incomplete set of documents which its representatives had brought with them, including powers of attorney entitling the applicant to bring an appeal on behalf of individual growers and a contract between the Anecoop cooperative and Geslive concerning the payment of royalties for cultivation of the Nadorcott variety.

50 With regard, first, to the alleged infringement of Article 50 of the implementing regulation, it should be pointed out that Article 50(1) and (2) provide for a rapid disposal of disputes by means of oral proceedings to which the parties are to be summoned without delay and which are to be held in one hearing. It is clear from Article 50(3) that a party may request a further hearing only where it is made necessary by a change in circumstances which occurred during or after the hearing.

51 It must be stated, first of all, that the documents which the applicant wished to produce were not based on circumstances which had undergone change during or after the hearing. The contract and the powers of attorney which the applicant wished to submit at the hearing are obviously documents which had been drawn up before that hearing. In any event, neither those documents nor the additional powers of attorney which the applicant wished to produce after the hearing can be regarded as revealing a change in the facts of the case. The CPVO and the intervener rightly point out that the applicant brought the appeal in its own name and cannot be substituted, during the course of the proceedings, by other persons who did not bring an appeal within the prescribed time-limits. In addition, the contract does not reveal any new fact since, as the Board of Appeal pointed out, it merely stresses the fact that individual mandarin growers and, as the case may be, Anecoop, must pay royalties for the supply and use of the protected variety. However, that obligation flows directly from the system of protection of plant varieties and the Board of Appeal accepted it without any need for it to be proved.

52 Secondly, even supposing that the alleged evidence was relevant, the applicant had several months between the time at which the intervener and the CPVO lodged their statements and the hearing. During that period, it could have drawn up and transmitted the documents or, at the very least, applied to the Board of Appeal for an adjournment so that all the evidence could be considered at a single hearing. There is nothing to indicate that, if the applicant had shown due diligence in preparing for the hearing, the taking of evidence could not have been completed in a single hearing.

53 It follows that, since the circumstances of the case do not fulfil the conditions laid down in Article 50 of the implementing regulation for the holding of a further hearing, the Board of Appeal did not infringe that provision when it rejected the applicant's requests.

54 Secondly, with regard to the alleged infringement of the principle of due care and attention and the principle of sound administration, it should be noted that the applicant has failed to adduce any evidence establishing an infringement of those principles other than the fact that the Board of Appeal did not permit the applicant to submit the evidence which the applicant's representatives had brought to the hearing or which they wished to draw up at a later date. It follows that Article 50 of the implementing regulation did not require the Board of Appeal to permit the parties to submit all the evidence which they considered necessary. On the contrary, in the interests of sound administration, the Board of Appeal must, in accordance with that provision, accept evidence which requires a further hearing to be held only when it is relevant evidence based on circumstances which have undergone change during or after the hearing.

55 It has also been pointed out that, in this case, it has not been established that the evidence which the applicant wished the Board of Appeal to consider was based on circumstances which had undergone change during or after the hearing (see paragraph 51 above). In addition, the evidence offered was not relevant to the case (see

paragraph 51 above) and was not submitted in time to allow it to be examined in a single hearing (see paragraph 52 above). Under those circumstances, the terms of Article 50 of the implementing regulation precluded the admission of such evidence. It follows that the Board of Appeal could not have infringed the principle of due care and attention and the principle of sound administration when it refused to accept such evidence.

56 Consequently, the second branch must be rejected.

57 It follows from the foregoing that the first plea in law must be rejected.

The second plea in law: error on the part of the Board of Appeal concerning the applicant's locus standi

58 The second plea in law is divided into two branches, the first of which submits that the applicant and its members are individually concerned by the decision granting the plant variety right and the second of which alleges a failure to provide effective judicial protection.

The first branch: the submission that the applicant and its members are individually concerned by the decision granting the plant variety right

— Arguments of the parties

59 First of all, the applicant complains that the Board of Appeal focused on the fact that the applicant is an association and overlooked the *locus standi* of its members.

Consideration should not be given exclusively to whether the applicant itself had *locus standi* in regard to the decision granting the plant variety right but should also be given to whether its members or its members' members (in this case, Copal de Algemesi, a member of Anecoop) had *locus standi*. However, in the contested decision, the Board of Appeal did not take account of the Court's case-law to the effect that associations of undertakings are also entitled to apply for the annulment of measures if their members could have so applied individually.

60 Secondly, the applicant takes the view that the Board of Appeal was wrong to make recognition of its *locus standi* subject to recognition of the *locus standi* of all its members. Thus, the Board of Appeal attached importance to the fact that only some of the applicant's members are concerned by the decision granting the plant variety right in their capacity as growers whereas others may well not be concerned. However, according to the case-law, associations at least one of the members of which could itself bring the action have *locus standi*.

61 Thirdly, the applicant contests the Board of Appeal's opinion on the question whether the applicant really represents the general interests of the growers concerned. In the applicant's view, the Board of Appeal failed to take account of the fact that it contested the protection granted to the Nadorcott variety on behalf of all the growers who are members of the cooperatives since, according to Article 2(a) of its statutes, it represents the unions of cooperatives, which did not express any objection to the appeal at issue and which themselves represent the cooperatives. In addition, it follows from the case-law that all the members of an association are deemed to have authorised that association to act in their name if the statutes so provide and if the members have raised no objection.

62 Fourthly, the applicant considers that the Board of Appeal erred in deciding that the decision granting the plant variety right did not concern it individually on the ground that it did not possess certain attributes which are specific to it and is not in a situation in which it is differentiated from all other persons. It is clear from the case-law that that condition is fulfilled when the legal position of the undertaking in

question is affected by the contested measure by reason of certain attributes which are specific to it, or by reason of circumstances in which it is differentiated from all other persons, and by virtue of these factors is distinguished individually in the same way as the addressee of the decision. The fact that the measure produces effects in regard to all the traders concerned does not prevent the measure in question from being of individual concern to some of them.

63 First of all, with regard to the applicant's capacity as a supplier of plant material, the consequence of the decision granting the right is that any person wishing to be involved in the reproduction or supply of plant material must be in possession of a licence granted by the holder of the plant variety right. As a result, it is necessary to consider whether the legal position of the applicant's members is affected in a manner different from that of other reproducers or suppliers of plant material. The decision granting the plant variety right has caused some of the applicant's members supplying the Nadorcott variety to cease doing so, resulting in significant damage, and that distinguishes them individually from all other suppliers of plant material. Although the Board of Appeal mentions in the contested decision that Anecoop provides such plant material, it omitted that fact subsequently and focused on the fact that the applicant did not itself supply plant material. However, consideration of Anecoop's situation would have shown that the applicant had *locus standi* to seek annulment of the decision granting the plant variety right.

64 Secondly, with regard to its capacity as a grower, the applicant stresses that it did not claim to represent the general interests of growers in support of its claim to be individually concerned. On the other hand, the applicant considers that it has *locus standi* because it represents the interests of members who are directly affected in their capacity as growers. The applicant points out that, since 90% of the companies which prepare the Nadorcott variety are established in Valencia, it is impossible to contend that the decision to grant the plant variety right has the same effects on it as on other federations of growers or cooperatives in the Community. The cooperatives concerned distribute more than half of the citrus fruit originating in Valencia and, as the applicant's membership includes almost all of those cooperatives, its members are among the persons primarily affected by the decision to grant the plant variety right.

65 Since almost all of the production of the Nadorcott variety originates in Valencia, the fact that the consequence of the decision granting the plant variety right is that all growers in the Community must pay royalties in order to grow the Nadorcott variety implies that, if such royalties are not paid, practically all of Valencia's production would be unlawful. Only those growers would be required from that time on either to pay to have a licence or destroy their groves, which would affect their competitive position on the market at the time at which their produce was being marketed. It is thus incorrect to state that the decision granting the plant variety right affects the applicant's members in the same way as any other grower who will cultivate the variety at issue in the future since its members possess a series of attributes which distinguish them from all other growers.

66 Thirdly, the applicant considers that its members have the same characteristics as the company Van Zanten Plants ('Van Zanten'), which brought an appeal before the Board of Appeal (Cases A 005/2003 and A 006/2003). Since Van Zanten was the worldwide distributor for a protected variety which, in its view, was similar to a new variety in respect of which the CPVO had granted a Community plant variety right, the Board of Appeal recognised it as having *locus standi*. The Board of Appeal took the view that there would be confusion on the markets if the similarity of the varieties was shown to exist and that, therefore, Van Zanten would be forced to defend its rights by bringing actions for infringement.

67 The applicant considers that the situation is similar in this case since the decision granting the right forces its members to uproot all their plants if they do not accept the costly conditions imposed by the intervener. Since the applicant is the representative of undertakings which supply material of the Afourer variety, which is a competitor of the Nadorcott variety, it is individually affected inasmuch as, in both cases, it is a competitor of the undertaking seeking protection. The Board of Appeal should have taken account of the applicant's position as a negotiator and competitor, as it did in the *Van Zanten* case.

68 Fourthly, the applicant complains that the Board of Appeal wrongly excluded the application to this case of the Community case-law on State aid. It considers that the procedure for opposing a plant variety right is not so different from the procedure in regard to State aid that the case-law concerning *locus standi* to bring actions against Commission decisions on State aid would not be applicable to it. It is clear from that case-law that the 'parties concerned' within the meaning of Article 88(2) EC also include the persons, undertakings or associations whose interests might be affected by the grant of the aid, in particular competing undertakings and trade associations (Case 323/82 *Intermills* v *Commission* [1984] ECR 3809, paragraph 16, and Case C-204/97 *Portugal* v *Commission* [2001] ECR I-3175, paragraph 31). In the applicant's view, the *locus standi* of undertakings competing with the undertaking to which State aid has been granted does not flow from the particularities of the procedure for review of State aid laid down in Articles 87 EC and 88 EC. That status flows, in fact, from the effects of the State aid on the competitive position of traders in the same market which have not been granted such aid. In the applicant's view, the situation is similar here, with the result that it is possible to apply that case-law to the present case.

69 Moreover, in the applicant's view, the rights of third parties who wish to challenge the grant of right in respect of a plant variety are not limited to the objection procedure laid down in Article 59 of the basic regulation. They may also lodge an appeal under Article 67 et seq. of that regulation. The objection procedure under Article 59 of the basic regulation, which permits the parties to contest only the facts on the basis of which the CPVO has granted the right, is intended to achieve objectives that differ from those of the appeal under Article 67 of the basic regulation. In the applicant's view, by overlooking that possibility of appeal, the Board of Appeal has also gone against the practice in its decisions regarding *locus standi*. In its decision in *Van Zanten*, it stated that Article 67 of the basic regulation does not prevent third parties lodging an appeal under that provision on the ground that they had not previously lodged an objection. However, the Board of Appeal did not indicate why participation in the procedure for the grant of the right was relevant in this case.

70 Like the beneficiary of State aid, the owner of a protected variety acquires, in the applicant's view, an advantage over its competitors which affects its competitive position. It is clear from the case-law that, although the competitive position of direct competitors of the beneficiaries of State aid was necessarily affected by that aid, their position in the market would not be substantially affected as long as all farmers in the Community are to be regarded as competitors of the beneficiaries of the aid. In this case, the growers represented by the applicant are substantially affected by the protection granted to the Nadorcott variety. They are placed at a disadvantage compared with any Community grower wishing to begin cultivating that variety because they were already cultivating it at the date on which the decision granting the plant variety right was adopted. In the applicant's view, the growers who do not already own mandarin trees of that variety will be able to choose another variety if the conditions for the granting of a licence offered to them by the holder of the right do not appear acceptable to them without that having serious consequences for their economic activity. On the other hand, growers who already have trees of that variety in their groves will have to root them up. Since the 'useful life' of such trees is about 20 years, hardly any of the growers have yet obtained a return on their investment in their groves. Consequently, the situation of the applicant's members is not comparable to that of other growers and the decision granting the plant variety right substantially affects those members' competitive position.

71 Finally, with regard to the case-law requiring an applicant to have taken part in the administrative procedure in order to be recognised as having *locus standi* to seek the annulment of a Commission decision concerning State aid, the applicant points out that the procedure before the Board of Appeal is also an administrative procedure. Since it is part of the administrative body which has the power of decision in regard to plant variety rights, the Board of Appeal is not a court. Consequently, an appeal lodged against a decision of the CPVO is a step in the administrative procedure which leads to the grant of a plant variety right. The applicant therefore took part in the administrative procedure.

72 The CPVO considers, from the outset, that the formulation of Article 68 of the basic regulation is identical to Article 230 EC. It therefore takes the view that examination of this plea should be based on the judicial interpretation of the concept of a person

to whom a measure is 'of direct and individual concern' which appears in the latter provision. The case-law recognises the *locus standi* of a professional association set up to defend the interests of its members where it is differentiated by reason of the impact on its own interests, where it represents the interests of persons who themselves would have had *locus standi* and where a legal provision expressly confers upon it a number of powers of a procedural nature.

73 First of all, the CPVO takes the view that, according to the case-law, a measure does not individually concern an applicant when his situation was not taken into account when the measure was being adopted, with the result that he is affected in the same way as all other persons in the same situation. In this case, it has not been shown that the applicant is a supplier of plant material and, in any event, it does not have characteristics of its own or circumstances which distinguish it from other suppliers of plant material.

74 Secondly, the CPVO considers that, according to the applicant's statutes, its direct members are unions of cooperatives and not the cooperatives themselves or the mandarin growers. Thus, the applicant could legitimately represent the interests of the unions of cooperatives, but it has put forward no evidence showing that those unions, which merely defend the general interests of their members, are directly concerned. In addition, in so far as certain of its members can supply plant material, the applicant has established no specific characteristic which distinguishes them from other suppliers. With regard to the situation of the individual growers, the CPVO points out that the applicant brought the action in its own name and there is nothing in its statutes to suggest that it is entitled to bring legal proceedings to defend the interests of specific mandarin growers. Furthermore, the individual interests of some mandarin growers differ from the general interests of the cooperatives that the applicant can represent. Finally, the growers of the Nadorcott variety, indirect members of the applicant, are affected only by reason of an objective factual situation that in no way distinguishes them from other growers of that variety, since the obligation to pay royalties to grow the variety which is now protected flows directly

from the Community system of plant variety rights. In particular, it is clear from the case-law that it is not sufficient that a measure has greater economic repercussions for some traders than for other traders in the sector for them to be regarded as individually concerned by that measure.

75 Thirdly, the CPVO points out that the basic regulation, in particular Article 59 thereof, confers a number of powers of a procedural nature on parties which take part in the grant procedure before the CPVO. It draws attention to the fact that the applicant became aware of the application for protection published in the *Official Gazette of the CPVO* of 26 February 1996 and raised no objection. Consequently, it could not have been individually concerned on the basis of the powers of a procedural nature which it could have obtained by taking part in that procedure. Moreover, the procedure laid down in Article 59 of the basic regulation would be rendered meaningless if, rather than submitting their observations during the administrative procedure, all those who wished to oppose the grant of a plant variety right could await the end of the procedure before the CPVO and then lodge an appeal alleging that the right granted was invalid. Finally, there is a fundamental difference between the situation of Van Zanten, which was the exclusive distributor on behalf of the holder of a plant variety right registered with the CPVO which was in direct competition with the new variety in respect of which a right had been granted, and the situation of the applicant, which does not claim that it or its members have subjective rights which are registered and enjoy protection.

76 The intervener puts forward essentially the same arguments as the CPVO.

— Findings of the Court

77 It should be noted at the outset that, since the decision granting the plant variety right was not addressed to the applicant, the latter must, in accordance with Article 68 of the basic regulation, be directly and individually concerned by the decision in order to be able to lodge an appeal before the Board of Appeal.

78 It must in that regard be pointed out, first of all, that the Spanish and Italian versions of Article 68 of the basic regulation provide, respectively, that the persons entitled to appeal are those who are concerned 'directa y personalmente' and 'direttamente e personalmente'. However, the English, German, Portuguese, Danish, Maltese, Dutch, Polish, Swedish and Greek versions accord with the terms used in the French version: 'directement et individuellement'. It should be borne in mind in this connection that the need for a uniform interpretation of Community regulations requires that, in case of doubt, they should be interpreted and applied in the light of the versions existing in the other official languages (see paragraph 33 above). It must therefore be concluded that the Spanish and Italian versions do not confer a different meaning on that passage to that of the other language versions and that they must be interpreted in the light of the other official language versions (see, to that effect, *Ebony Maritime and Loten Navigation*, paragraphs 29 to 31).

79 Consequently, the terms of Article 68 of the basic regulation must be regarded as being identical to those of the fourth paragraph of Article 230 EC. However, as those terms have been specifically interpreted by the Court of Justice (judgment in Case 25/62 *Plaumann* v *Commission* [1963] ECR 95, at p. 107), this Court takes the view that care should be taken to provide a consistent interpretation of the concept of a person to whom a measure is 'of individual concern' in so far as the terms of the basic regulation do not prevent it.

80 In that context, it should be pointed out, secondly, that Article 59(1) of the basic regulation permits any person to lodge with the CPVO a written objection to the grant of a Community plant variety right and Article 59(2) provides that objectors are to be party to the proceedings for grant of the Community plant variety right in addition to the applicant. Furthermore, Article 59(5) of the basic regulation provides expressly that the CPVO is to take decisions on objections together with the decisions refusing applications for a Community plant variety right, decisions granting such a right and decisions concerning variety denominations. It can be seen from Article 67(1) of the basic regulation that an appeal lies to the Board of Appeal from decisions concerning objections. Consequently, since objectors are persons to whom such decisions are addressed within the meaning of Article 68 of the basic regulation,

any person who wishes to oppose the grant of a plant variety right may, by virtue of having taken part in the administrative procedure, lodge an appeal before the Board of Appeal.

81 Moreover, under Articles 20 and 21 of the basic regulation, any person may, after a plant variety right has been granted and independently of an appeal lodged before the Board of Appeal, apply to the CPVO for a declaration that the right is null and void or to have it cancelled on the ground that the conditions laid down in Articles 7 to 10 of that regulation were not complied with.

82 Under those circumstances, the interpretation of the term 'individually' advocated by the applicant is not necessary in order to protect the interests of third parties.

83 Thirdly, it must be pointed out that the CPVO is correct in its submission that the structure of the basic regulation requires a more restrictive interpretation of the term 'individually' than that claimed by the applicant. A broad interpretation would permit any person wishing to oppose the grant of a plant variety right to plead the invalidity thereof in an appeal brought after the procedure in which the right was granted rather than submitting his observations during that procedure, which is both long and complex by reason of the technical examinations which are necessary. Consequently, the interpretation put forward by the applicant would undermine the usefulness of such a procedure, whereas an interpretation such as that adopted in the judgment in *Plaumann* v *Commission* would encourage persons concerned to submit their observations during the administrative procedure for the grant of the right.

84 In the light of the foregoing, the Court takes the view that reference should be made to *Plaumann* v *Commission* in order to determine whether a person is individually concerned within the meaning of Article 68 of the basic regulation.

85 It follows that the applicant must be affected by the decision granting the plant variety right by reason of certain attributes which are peculiar to it or by reason of circumstances in which it is differentiated from all other persons and distinguished individually just as in the case of the person addressed (*Plaumann* v *Commission*).

86 It is in that regard clear from the case-law that a professional association set up to protect and represent the interests of its members has standing to bring an action for annulment, firstly, where the association is differentiated by reason of the adverse impact on its own interests as an association, in particular because its position as a negotiator has been affected by the measure of which the annulment is sought, secondly, where the association represents the interests of undertakings which themselves have *locus standi* and, thirdly, where a legal provision expressly confers upon it a number of powers of a procedural nature (order in Case T-381/02 *Confédération générale des producteurs de lait de brebis et des industriels de Roquefort* v *Commission* [2005] ECR II-5337, paragraph 54 and the case-law cited therein).

87 In the first place, with regard to adverse impact on the applicant's own interests, it must first be noted that it does not claim to be itself a grower or a supplier of plant material.

88 Secondly, the applicant does not claim to be the holder of subjective rights registered at national or Community level which enjoy protection. It follows that it is not affected as the holder of rights and is not in a situation comparable to that of Van Zanten.

89 Thirdly, in so far as it argues the point, the applicant has produced no evidence in support of the allegation that its position as a negotiator has been affected by the decision granting the right.

90 Finally, since it follows from the foregoing that the circumstances relied on by the applicant do not establish that its own interests have been affected by the decision granting the right, the question of the extent to which the applicant is differentiated from other similar federations in the Community is irrelevant. In any event, the mere fact that, according to the applicant, 90% of the companies which process and package the variety at issue are established in Valencia does not enable the applicant to be distinguished from other federations with regard to the grant of the plant variety right. It is not sufficient that a measure should have greater economic consequences for some traders than for others in the sector in order for the former to be regarded as individually affected by the measure (see, to that effect, the order in Case T-173/98 *Unión de Pequeños Agricultores* v *Council* [1999] ECR II-3357, paragraph 50, and the case-law cited in paragraphs 102 and 103 below).

91 Consequently, the applicant has failed to demonstrate that its own interests as an association were affected by the decision granting the right.

92 In the second place, with regard to the hypothesis that the applicant represents the interests of undertakings which have *locus standi*, it is necessary to establish, on the one hand, whether, according to its statutes, the applicant represents the interests of its members in the context of the appeal before the Board of Appeal and, on the other, whether they would have *locus standi* (see, to that effect, *Confédération générale des producteurs de lait de brebis et des industriels de Roquefort* v *Commission*, paragraph 61).

93 Firstly, with regard to the applicant's members and their interests, it should be pointed out that, according to Article 4 of its statutes, unions of cooperatives in the provinces of Alicante, Castellón and Valencia which meet certain criteria may be members of the applicant. It also follows from Article 2 of its statutes that the applicant represents its members. Consequently, the applicant may represent the interests of the unions of cooperatives which are its members.

94 With regard to the question whether the applicant's members have *locus standi*, it must be stated that the applicant did not produce, either before the Board of Appeal or the Court, any evidence establishing that those members were individually affected by the decision granting the right. It should in this regard be borne in mind that those members are unions of cooperatives which do not themselves grow mandarins but which have the task of defending the general interests of their own members, the agricultural cooperatives. Although the applicant claimed in its written pleadings that the Anecoop cooperative is one of its members and supplies plant material to growers, it admitted at the hearing that Anecoop was not one of its members but a member of a union of cooperatives which was itself one of the applicant's members. Moreover, it produced no evidence capable of establishing that the effect of the decision granting the right on that supplier was different from the effect on any other supplier of plant material. Consequently, it must be concluded that Anecoop is concerned by the decision granting the right only by reason of an objective situation in which it is not differentiated from other suppliers of plant material in the sector.

95 It must also be pointed out that the applicant has produced no evidence that its members are in a comparable situation to that of Van Zanten or that they could have taken part in the procedure leading to the grant of the plant variety right.

96 The applicant has thus failed to establish that its members would have had *locus standi* to lodge an appeal before the Board of Appeal against the decision granting the right.

97 Secondly, in so far as the applicant also refers to the effect on individual mandarin growers who are members of the cooperatives which are members of the unions of cooperatives which are, in their turn, members of the applicant, it must be pointed out that, in accordance with Article 4 of its statutes, neither the cooperatives themselves nor the individual mandarin growers can be members of the applicant. In addition, it follows from Article 2 of those statutes that the purpose of the applicant is solely the advancement of its members' interests. Thus, the applicant's statutes do not indicate that it is entitled to bring legal proceedings to defend the interests of

certain specific mandarin growers who are indirect members of its own members. In so far as the applicant considers that it follows from laws and decrees in force in Spain that it is entitled to represent its members' members, it must be pointed out that it put forward that argument for the first time at the hearing before the Court and that those laws and decrees are not on the case-file. Moreover, the CPVO rightly points out that the interests of the unions of cooperatives which, according to Article 2 of its statutes, the applicant may represent cannot be presumed to be identical to those of certain individual growers.

98 In that context, the applicant complains that the Board of Appeal required that all its members should have *locus standi*, whereas it follows from the case-law that associations of which at least one member could itself validly bring the action have *locus standi*. It must be pointed out in this regard that the Board of Appeal examined whether the individual growers were affected in order to determine if they all had a common interest that the applicant might possibly defend on the basis of its statutes. Since it considered that that was not the case, inasmuch as the interests of the growers could differ, the Board of Appeal merely pointed out that there were doubts as to whether the applicant represented a general interest of the growers as a category. Consequently, it must be held that, contrary to the applicant's argument, the Board of Appeal did not require all the applicant's members to have *locus standi*.

99 Finally, it must also be pointed out that the applicant lodged the appeal in its own name and not in that of specific mandarin growers.

100 Consequently, the applicant cannot be regarded, in this case, as representing the interests of individual mandarin growers before the Board of Appeal.

101 For the sake of completeness, it must also be concluded that the individual mandarin growers are not individually affected by the decision granting the right.

102 It is necessary to note in this regard that it is certainly true that the fact that the decision affects all the traders concerned does not exclude the possibility that some of them might be individually concerned (order in Case T-154/02 *Villiger Söhne* v *Council* [2003] ECR II-1921, paragraph 40 and the case-law cited therein). However, it is not sufficient that a measure should have greater economic repercussions for some traders than for other traders in the sector in order for the former to be regarded as individually concerned by that measure (see, to that effect, *Unión de Pequeños Agricultores* v *Council*, paragraph 50). Even if an applicant may be regarded as being the only person affected in a particular geographical area and as the principal producer or supplier of the product in a particular country or geographical area, it will not have *locus standi* (see, to that effect, Case 11/82 *Piraiki-Patraiki and Others* v *Commission* [1985] ECR 207, paragraphs 13 and 14, and Case T-138/98 *ACAV and Others* v *Council* [2000] ECR II-341, paragraphs 64 to 66).

103 Thus, the fact that the grant of the plant protection right had greater economic repercussions for some traders than for others in the sector by virtue of the fact that they had already planted trees of the protected variety and that 90% of growers affected were in the geographical area of Valencia is not sufficient to distinguish them individually. The growers whom the applicant claims to represent are affected by the obligation to pay royalties only by reason of an objective factual situation that in no way distinguishes them from other growers of the variety, since that obligation flows directly from the Community system of plant variety rights. In addition, the activities of the growers concerned can be carried out by anyone, now or in the future.

104 It must also be pointed out that the applicant has adduced no evidence to show that the growers and suppliers of plant material whom it claims to represent would have

taken part in the procedure for the grant of the plant variety right or that they were in a comparable situation to that of Van Zanten. In particular, the fact that the decision granting the right might force the growers to uproot their trees and might affect the possibility of the suppliers to supply material of the Afourer variety, a competitor of the Nadorcott variety, if they did not agree to pay royalties does not demonstrate the existence of particular characteristics or situations which differentiate them from any other grower or supplier in the same objective factual situation. In addition, the competitive relationships to which the applicant refers in that regard are not comparable to those at issue in the case concerning Van Zanten, the subjective protected rights of which had been contested.

105 It follows from the foregoing that the applicant has not established that it represented the interests of growers or suppliers of plant material who themselves would have had *locus standi*.

106 In the third place, with regard to legal provisions which expressly confer upon the applicant a number of powers of a procedural nature, it should first be pointed out that, although it is true that the applicant refers to Article 59 of the basic regulation, this is only to underpin the idea that that article seeks to attain different objectives to those of Article 67 et seq. of the basic regulation and that participation in the procedure for the grant of the right is not a condition precedent for lodging an appeal.

107 Secondly, the applicant is in error as to the origin of the procedural rights on which it might base *locus standi* before the Board of Appeal. As the admissibility of the appeal before the Board of Appeal had to be determined, the procedural rights to be safeguarded in that appeal could only be those which arose from the earlier administrative procedure in which the plant variety right had been granted. However, since the applicant did not take part in the procedure in which the right was granted, it cannot claim any procedural right related to that procedure which it could seek to have protected.

108 Thirdly, the applicant also relies on the application to the facts of the present case of the case-law on State aid, to the effect that the parties concerned referred to in Article 88(2) EC are not only the undertakings which enjoy the benefit of aid but also persons, undertakings or associations the interests of which might be affected by the grant of the aid, in particular competing undertakings and trade associations (see paragraph 68 above). However, the applicant's reference to the case-law on State aid is not relevant in this case.

109 It must be borne in mind in this regard that that case-law applies only where the person bringing the action is seeking, by instituting proceedings, to safeguard the procedural rights available to him under Article 88(2) EC (Case C-78/03 P *Commission* v *Aktionsgemeinschaft Recht und Eigentum* [2005] ECR I-10737, paragraph 35) of which the Commission deprived him during the formal phase of the examination. However, Articles 59, 67 and 68 of the basic regulation confer broader rights than those recognised in the case-law cited in paragraph 68 above inasmuch as they allow any person who has raised a written objection to the grant of the plant variety right in the course of the administrative procedure to lodge an appeal before the Board of Appeal (see paragraph 80 above). Thus, since the exercise of procedural rights depends solely on the applicant's having taken the initiative in good time, the case-law on State aid cannot be applied in this case.

110 For the sake of completeness, in so far as the applicant refers to an alleged competitive situation which justifies the application by analogy of the case-law cited in paragraph 68 above, it must be pointed out that the applicant has produced no evidence that it had a competitive relationship with the holder of the right.

111 In the light of all of the foregoing, the first branch must be rejected.

The second branch: lack of effective judicial protection

— Arguments of the parties

112 According to the applicant, the appeal provided for in Article 67 of the basic regulation is the only effective remedy open to it against the decision granting the right. Once the period for lodging an appeal had expired, the Community plant variety right could no longer be contested by any authority or any national court. In the case concerning Van Zanten, that was one of the grounds on which the Board of Appeal expressly based itself in finding that that company had *locus standi*. The Court of Justice has held that individuals are entitled to effective judicial protection of the rights which they derive from the Community legal order, and that the right to such protection is one of the general principles of law stemming from the constitutional traditions common to the Member States.

113 The Court of Justice has also held that respect for that right within the Community legal order requires that natural and legal persons must be able, depending on the case, to plead the invalidity of Community measures of general scope either indirectly, before the Community Courts, or before the national courts. The existence or non-existence of a system of remedies is an essential factor in considering whether an applicant is individually affected inasmuch as the Court of Justice has ruled that that condition must be interpreted in the light of the principle of effective judicial protection by taking account of the various circumstances that may distinguish an applicant individually.

114 The applicant considers that it is individually affected by reason of the lack of any remedy before the national or Community courts other than that provided for in Article 67 of the basic regulation. In the applicant's view, the contested decision deprived it of the only effective judicial protection available to it.

115 The CPVO takes the view that the applicant could have opposed the grant of the plant variety right and that, if it had taken part in the opposition procedure, it would in all probability have been individually concerned. Moreover, it is clear from the case-law that the Community Courts cannot declare an action admissible on the ground that there is no remedy before a national jurisdiction. The interest of the Community legal order requires that there should be a system of judicial review of administrative decisions. However, the decision granting the right is not exempt from judicial review inasmuch as any person directly and individually affected by it may challenge it before the Board of Appeal.

— Findings of the Court

116 It is clear from well-established case-law on the fourth paragraph of Article 230 EC that, while it is true that the condition of individual concern laid down in that provision must be interpreted in the light of the principle of effective judicial protection by taking account of the various circumstances that may distinguish an applicant individually, such an interpretation cannot have the effect of setting aside the condition in question, expressly laid down in the Treaty, without going beyond the jurisdiction conferred by the Treaty on the Community Courts (Case C-50/00 P *Unión de Pequeños Agricultores* v *Council* [2002] ECR I-6677, paragraph 44; Case C-167/02 P *Rothley and Others* v *Parliament* [2004] ECR I-3149, paragraph 47; and Case C-263/02 P *Commission* v *Jégo-Quéré* [2004] ECR I-3425, paragraph 36). Since it has been pointed out in paragraphs 78 to 84 above that the concept of a person to whom a decision is of 'individual concern' within the meaning of Article 68 of the basic regulation must be applied in the light of the case-law on admissibility of actions brought under the fourth paragraph of Article 230 EC, those considerations apply equally to the present case.

117 Moreover, it should be borne in mind that, according to Articles 59, 67 and 68 of the basic regulation, any person who has raised a written objection to the grant of the plant variety right in the course of the administrative procedure may lodge an

appeal before the Board of Appeal (see paragraph 80 above). In addition, Article 68 of the basic regulation makes the same remedy available to persons to whom the decision adopted at the end of that procedure is not addressed but to whom it is of direct and individual concern. Consequently, since an appeal before the Board of Appeal permits a further appeal to the Community Courts, the applicant is mistaken in alleging a lack of effective judicial protection in this case.

118 It follows that that branch must be rejected.

119 It follows from all of the foregoing that the second plea in law must be rejected.

The third plea in law: failure to fulfil the obligation to state reasons

Arguments of the parties

120 The applicant points out that the Court of Justice has ruled that for the statement of the reasons on which a measure is based to be regarded as adequate, it must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in question in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the competent court to exercise its power of review. The contested decision, it argues, does not fulfil that requirement inasmuch as the Board of Appeal did not consider the *locus standi* of the Anecoop cooperative, notwithstanding the fact that, as the Board of Appeal accepts, its activities will be seriously affected by the decision granting the right. The applicant points out that that fact must be taken together with the Board of Appeal's refusal to permit further documents to be placed on the file with a view to proving

that its members have been seriously affected in their capacity as suppliers of plant material. The Board of Appeal did not consider whether its members were individually concerned in that capacity by the decision granting the right. Moreover, the claim by the Board of Appeal that the situation of a dealer in reproductive material of the protected variety could be held by many people and does not differentiate the applicant from any other operator in the sector concerned is, the applicant argues, supported by no documentation or information.

121 In addition, in order to refute the applicant's *locus standi* as a grower, the Board of Appeal merely stated that it represented the interests of growers, without having carried out any further consideration. Consequently, the Board of Appeal has not stated the reasons on which its decision is based in regard to that point.

122 Finally, by failing to demonstrate in what manner the procedure in regard to State aid differs from the procedure under the basic regulation and why those differences are so important that they prevent the application by analogy to this case of the principles established in regard to State aid, the Board of Appeal, the applicant argues, failed to fulfil its obligation to state reasons.

123 The CPVO and the intervener dispute the applicant's arguments.

Findings of the Court

124 The obligation to state reasons is an essential procedural requirement, as distinct from the question whether the reasons given are correct, which goes to the substantive legality of the contested measure (Case C-17/99 *France* v *Commission* [2001] ECR I-2481, paragraph 35). In addition, according to consistent case-law, the statement of

reasons required under Article 253 EC must show in a clear and unequivocal manner the reasoning of the author of the act. That duty has two purposes: to allow interested parties to know the justification for the measure so as to enable them to protect their rights and to enable the Community judicature to exercise its power to review the legality of the decision (Case C-350/88 *Delacre and Others* v *Commission* [1990] ECR I-395, paragraph 15; Case T-188/98 *Kuijer* v *Council* [2000] ECR II-1959, paragraph 36; and Case T-16/02 *Audi* v *OHIM* (*TDI*) [2003] ECR II-5167, paragraph 88).

125 In the present case, it is clear from all of the foregoing that the contested decision permits the applicant to safeguard its rights and enables the Court to exercise its power of review. Moreover, the Board of Appeal considered the applicant's *locus standi* in the light of the alleged activities of the Anecoop cooperative (point 3, 4th and 5th paragraphs, of the grounds for the contested decision), of the possibility that the applicant might represent individual mandarin growers (point 3, 8th to 10th paragraphs, of the grounds for the contested decision) and of the possible application of the case-law on State aid to the facts of the case (point 3, 11th paragraph, of the grounds for the contested decision). The Board of Appeal set out the reasons why it considered that the three hypotheses were not applicable or were insufficient to establish the applicant's *locus standi*. It follows that the applicant is not justified in arguing that the contested decision is vitiated by an inadequate statement of reasons.

126 In any event, it is clear from the case-law that an applicant has no legitimate interest in securing the annulment of a decision on the ground of a formal defect where the annulment of the decision could only give rise to another decision substantially identical to the decision annulled (Case 117/81 *Geist* v *Commission* [1983] ECR 2191, paragraph 7; Case T-43/90 *Díaz García* v *Parliament* [1992] ECR II-2619, paragraph 54; and *TDI*, paragraph 97; see also, to that effect, Case T-261/97 *Orthmann* v *Commission* [2000] ECR-SC I-A-181 and II-829, paragraphs 33 and 35).

127 In the present case, it is clear from an analysis of the second plea in law (see paragraphs 77 to 110 and 116 to 119 above) that the applicant has put forward no argument establishing that it had *locus standi* under Article 68 of the basic regulation and that, consequently, the annulment of the contested decision for want of a sufficient statement of reasons could only give rise to another, substantially identical, decision. It must therefore be concluded that the applicant has no legitimate interest in the annulment of the contested decision on ground of the possible lack of an adequate statement of reasons.

128 Consequently, the third plea in law must be rejected.

129 Under those circumstances, the action must be dismissed.

Costs

130 Under Article 87(2) of the Rules of Procedure of the Court of First Instance, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since both the CPVO and the intervener have applied for costs and the applicant has been unsuccessful, the latter must be ordered to pay the costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Second Chamber)

hereby:

1. **Dismisses the action;**

2. **Orders the Federación de Cooperativas Agrarias de la Comunidad Valenciana to pay the costs.**

Forwood Pelikánová Papasavvas

Delivered in open court in Luxembourg on 31 January 2008.

E. Coulon N.J. Forwood

Registrar For the President

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