



Reports of Cases

(Case T-246/19)

**Kingdom of Cambodia
and
Cambodia Rice Federation (CRF)
v
European Commission**

Order of the General Court (Fifth Chamber, Extended Composition), 10 September 2020

(Action for annulment – Imports of Indica rice originating in Cambodia and Myanmar/Burma – Safeguard measures – Implementing Regulation (EU) 2019/67 – Standing to bring proceedings – Interest in bringing proceedings – Rejection of the plea of inadmissibility)

1. *Actions for annulment – Natural or legal persons – Measures of direct and individual concern to them – Regulation imposing safeguard measures in respect of a product originating in a beneficiary country under the scheme of generalised tariff preferences – Measure liable to be of direct and individual concern to the beneficiary country and to a national association that defends the interests of the industry concerned*
(Art. 263, fourth para., TFEU; Commission Regulation 2019/67)

(See paragraphs 36-43)

2. *Actions for annulment – Natural or legal persons – Definition – Third States – Included*
(Arts 263, fourth para., TFEU)

(see paragraphs 44-51)

3. *Actions for annulment – Natural or legal persons – Measures of direct and individual concern to them – Whether directly concerned – Criteria – Regulation imposing safeguard measures in respect of product originating in a beneficiary country under the scheme of generalised tariff preferences – Direct concern of the beneficiary country and of a national association that defends the interests of the industry concerned*
(Art. 263, fourth para., TFEU; Commission Regulation 2019/67)

(see paragraphs 52-69, 95-109, 122)

4. *Actions for annulment – Natural or legal persons – Measures of direct and individual concern to them – Individual concern – Criteria – Regulation imposing safeguard measures in respect of a product originating in a beneficiary country under the scheme of*

generalised tariff preferences – Direct concern of the beneficiary country and of a national association that defends the interests of the industry concerned
(Art. 263, fourth para., TFEU; Commission Regulation 2019/67)

(see paragraphs 70-93, 95-102, 110-122)

5. *Actions for annulment – Natural or legal persons – Interest in bringing proceedings – Regulation imposing safeguard measures in respect of a product originating in a beneficiary country under the scheme of generalised tariff preferences – Action brought by the beneficiary country and a national association that defends the interests of the industry concerned – Admissibility*
(Art. 263, fourth para., TFEU; Commission Regulation 2019/67)

(see paragraphs 123-128)

Résumé

Under the regulation applying a scheme of tariff preferences,¹ the European Union grants developing countries preferential access to its market in the form of reductions in the normal Common Customs Tariff duties, which consists of a general regime and two special regimes. The ‘Everything But Arms’ regime (‘the EBA regime’) is a special regime for the least developed countries.

Under the EBA regime, imports into the European Union of Indica rice originating in Cambodia and Myanmar/Burma (‘the product concerned’) benefited from a full suspension of Common Customs Tariff duties. Following a request from certain Member States seeking the adoption of safeguard measures in respect of the product concerned, the Commission initiated a safeguard investigation and concluded that that product was imported in volumes and at prices that were causing serious difficulties to the EU industry. The Commission, in Implementing Regulation 2019/67² (‘the contested regulation’), decided to temporarily reintroduce the Common Customs Tariff duties on imports of the product concerned and introduced a progressive reduction in the rate of duty applicable over a period of three years.

The Kingdom of Cambodia and the Cambodia Rice Federation (CRF), an association that defends the interests of the Cambodian rice industry, brought an action before the Court for annulment of the contested regulation and the Commission raised a plea of inadmissibility. In support of its plea of inadmissibility, the Commission claimed, primarily, that the Kingdom of Cambodia and the CRF do not satisfy the requirements for standing to bring proceedings for the purposes of the fourth paragraph of Article 263 TFEU. In the alternative, the Commission submitted that the Kingdom of Cambodia and the CRF have no personal interest in bringing proceedings against the contested regulation.

However, the Court dismissed that plea of inadmissibility.

¹ Regulation (EU) No 978/2012 of the European Parliament and of the Council of 25 October 2012 applying a scheme of generalised tariff preferences and repealing Council Regulation (EC) No 732/2008 (OJ 2012 L 303 p. 1).

² Implementing Regulation (EU) 2019/67 of 16 January 2019 imposing safeguard measures with regard to imports of Indica rice originating in Cambodia and Myanmar/Burma (OJ 2019 L 15, p. 5)

As regards standing to bring proceedings, the Court recalled that, under the fourth paragraph of Article 263 TFEU, any natural or legal person has standing to bring proceedings for annulment of an act which is not addressed to them, where that act is of direct and individual concern to them or, in the specific case of a regulatory act not entailing implementing measures, if that act is of direct concern to them. In the present case, without ruling on whether the contested regulation constitutes a regulatory act not entailing implementing measures, the Court examined whether the Kingdom of Cambodia and the CRF could be classified as natural or legal persons directly and individually concerned by the contested regulation, which was not addressed to them.

In that regard, the Court, in the first place, confirmed that the expression ‘any natural or legal person’ in the fourth paragraph of Article 263 TFEU must be understood as also covering States which are not members of the European Union, such as the Kingdom of Cambodia. Such a purposive interpretation is consistent with the principle of effective judicial protection and the objective of that provision, which is to grant adequate judicial protection to all persons, natural or legal, who are directly and individually concerned by acts of the institutions of the European Union. In addition, although non-Member States may not claim the status of litigant conferred on the Member States by the EU system, they may nevertheless bring proceedings under the right of action conferred on legal persons. Moreover, neither the fourth paragraph of Article 263 TFEU nor any other provision of primary EU law excludes third States from the right to bring an action for annulment.

In the second place, the Court found that the Kingdom of Cambodia and the CRF, in so far as the latter is acting on behalf of one of its exporting members which was identified by the Commission in the contested regulation and of its exporting members identified and concerned by the procedure which led to the adoption of that regulation, are directly and individually concerned by that regulation, within the meaning of the fourth paragraph of Article 263 TFEU.

In accordance with settled case-law, direct concern requires, first, that the contested measure directly affects the legal situation of the natural or legal person and, secondly, that it leaves no discretion to the addressees who are entrusted with the task of implementing it. By temporarily terminating the preferential access to the EU market enjoyed, on the one hand, by the Kingdom of Cambodia as a country benefiting from a full suspension of Common Customs Tariff duties and, on the other hand, exporting members of the CRF which benefited from such preferential access to the EU market by means of a special scheme of tariff preferences, the contested regulation changes both the legal and economic conditions under which the marketing of Indica rice originating in Cambodia takes place on the EU market. The contested regulation therefore directly and substantially affects the legal position of the Kingdom of Cambodia and that of the members of the CRF identified or concerned. Furthermore, while it is true that the contested regulation lays down measures that apply primarily to importers established in the European Union, those measures have the effect of limiting the access of the Cambodian State and the exporting members of the CRF to the EU market, without the Member States having any discretion of their own in that regard.

According to case-law, individual concern arises where a natural or legal person’s legal situation is affected by the act in question by reason of certain attributes peculiar to him or her, or by reason of a factual situation which differentiates him or her from all other persons and thereby distinguishes him or her individually in the same way as the addressee of such a decision. In that regard, the Court pointed out that the legislative nature of a contested act does not preclude it from being of direct and individual concern to certain interested legal or natural persons. Therefore, the fact that the contested regulation seeks to reintroduce the Common Customs

Tariff duties with respect to all imports of the product concerned into the European Union does not in fact make it impossible for the Kingdom of Cambodia, or for the members of the CRF identified or concerned, to be individually concerned by that regulation.

In the present case, the individual concern of the Kingdom of Cambodia results from the fact that, as a beneficiary country of the EBA regime, identified in the contested regulation, which played an active part in the procedure leading to the adoption of the contested regulation, and in respect of which the consequences of the safeguard measures were taken into account for the purpose of setting the Common Customs Tariff duties, it forms part of a closed class of operators and is in a situation which is differentiated from that of any other person. The same applies to the members of the CRF, exporters of Indica rice originating in Cambodia to the European Union, since they were expressly named in the contested regulation and participated in the procedure leading to the adoption of that regulation, in which information relating to their business activities was used to impose the safeguard measures against them and for which the consequences of those measures were taken into account for the purpose of setting the Common Customs Tariff duties, irrespective of the fact that the safeguard measures were introduced by reference to the Kingdom of Cambodia and not by reference to those exporters.

As regards their interest in bringing proceedings, the Court concluded that the Kingdom of Cambodia and the CRF have an interest in seeking the annulment of the contested regulation. The annulment of the Common Customs Tariff duties reintroduced by that regulation on imports into the European Union of Indica rice originating in Cambodia, is liable to procure an advantage to the Kingdom of Cambodia and the members of the CRF identified in or concerned by the procedure which led to the adoption of that regulation.