Reports of Cases

JUDGMENT OF THE GENERAL COURT (Fifth Chamber, Extended Composition)

9 November 2022*

(Safeguard measures – Rice market – Imports of Indica rice originating in Cambodia and Myanmar/Burma – Regulation (EU) No 978/2012 – Concept of 'Union producers' – Concept of 'like or directly competing products' – Serious difficulties – Rights of the defence – Essential facts and considerations – Manifest errors of assessment)

In Case T-246/19,

Kingdom of Cambodia,

Cambodia Rice Federation (CRF), established in Phnom Penh (Cambodia),

represented by R. Antonini, E. Monard and B. Maniatis, lawyers,

applicants,

v

European Commission, represented by A. Biolan, H. Leupold and E. Schmidt, acting as Agents,

defendant,

supported by

Ente Nazionale Risi, established in Milan (Italy), represented by F. Di Gianni and A. Scalini, lawyers,

and by

Italian Republic, represented by G. Palmieri, acting as Agent, and by P. Gentili, avvocato dello Stato,

interveners,

THE GENERAL COURT (Fifth Chamber, Extended Composition),

composed, at the time of the deliberations, of S. Papasavvas, President, D. Spielmann, U. Öberg (Rapporteur), R. Mastroianni and R. Norkus, Judges,

* Language of the case: English.

Registrar: I. Kurme, Administrator,

having regard to the written part of the procedure,

further to the hearing on 30 March 2022,

gives the following

Judgment

1 By their action under Article 263 TFEU, the applicants, the Kingdom of Cambodia and Cambodia Rice Federation (CRF), seek annulment of Commission 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), by which the European Commission reintroduced the Common Customs Tariff duties on imports of that rice for a period of three years and introduced a progressive reduction in the rate of duty applicable ('the contested regulation').

Background to the dispute

2 Under 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) ('the GSP Regulation'), the European Union grants developing countries preferential access to its market in the form of a reduction in the ordinary duties of the Common Customs Tariff, which consists of a general arrangement and two special arrangements.

3 Under the special regime known as 'Everything But Arms', imports into the European Union of Indica rice originating in Cambodia and Myanmar/Burma ('the product concerned') benefited, under Article 18(1) of the GSP Regulation, from a total suspension of Common Customs Tariff duties.

4 On 16 February 2018, the Italian Republic, subsequently supported by other Member States, made a request to the Commission under Article 22 and Article 24(2) of the GSP Regulation calling for the adoption of safeguard measures in respect of the product concerned.

5 On 16 March 2018, the Commission initiated a safeguard investigation concerning imports of the product concerned, in order to obtain the information necessary to carry out an in-depth assessment.

6 The investigation covered the five last marketing years, namely, the period from 1 September 2012 to 31 August 2017 ('the investigation period').

7 On 5 November 2018, the Commission sent a general disclosure document informing interested parties, including the Cambodian Government, of the essential facts and considerations on the basis of which it was intended to re-establish temporarily the Common Customs Tariff duties on imports of the product concerned following the safeguard investigation carried out on the basis of Article 22 of the GSP Regulation ('the general disclosure document').

8 In particular, in the general disclosure document, first of all, the Commission defined the product concerned as milled or semi-milled Indica rice originating in Cambodia and Myanmar/Burma, imported in bulk or in packages, and then falling within subheadings of the combined nomenclature (CN) 1006 30 27, 1006 30 48, 1006 30 67 and 1006 30 98.

9 The Commission also established that milled or semi-milled Indica rice produced in the European Union was similar to, or directly in competition with, the product concerned, since that product has the same basic physical, technical and chemical characteristics, has the same uses and is sold through similar or identical sales channels, to the same type of customers, retailers or processors established in the European Union.

10 As regards the definition of the Union industry, the Commission stated that it consisted of rice millers processing rice grown/produced in the European Union, which was in direct competition with the product concerned. Contrary to the Italian Republic's request, it excluded rice growers from that definition and from the injury assessment, considering them to be suppliers of raw materials, and not millers of like or directly competing products, although it pointed out that it was possible that imports of the product concerned also had a significant impact on their situation. It also stated that questionnaires had been sent to some growers, but that, because of the significant fragmentation of the sector, the results painted only a very limited picture of the situation.

11 Next, the Commission established the trend in the consumption of Indica rice in the European Union on the basis of data converted into milled rice equivalent and collected from the Member States, and of import statistics made available by Eurostat. It noted a decrease of 6% during the investigation period.

12 In analysing the trend in imports of the product concerned, the Commission found a significant increase in the volume of imports from Cambodia and an increase of 9.7 percentage points in Cambodia's market share, and stated that Cambodia accounted for 25% of all imports at the end of the investigation period.

13 In the context of the price comparison, the Commission carried out an undercutting analysis. It took into account the average import prices from Cambodia and the unit sales prices of the Union industry and found significant price undercutting of EU prices by the price of those imports corresponding to 22%.

14 The Commission thus considered that imports from Cambodia had increased considerably in absolute terms and in market shares during the investigation period. It added that the combined weighted average import price had decreased during the investigation period, which showed significant undercutting by comparison with EU prices.

15 In order to determine the existence of serious difficulties experienced by the Union industry, the Commission evaluated macroeconomic indicators, such as the trend of the market share of the Union industry, which lost more than 20 percentage points, production volumes, which fell by almost 40%, stocks, which increased by 4%, and the area dedicated to growing Indica rice, which was reduced by 37%.

16 The Commission also stated that it had evaluated microeconomic indicators, such as the evolution of production capacity, which was difficult to evaluate because millers could use their milling capacity both for Indica and Japonica rice, whether the rice is grown in the European

Union or imported, the profitability of EU millers, which has remained stable, albeit low, and the unit prices of Indica rice from the millers included in the sample, which rose by 7%. It stated that, under pressure from low price imports of the product concerned, EU millers had concentrated their sales on smaller volumes of milled and semi-milled Indica rice and had focused on branded products, which had made it possible to preserve a stable level of profitability, to the detriment of market share.

17 Lastly, the Commission rejected the possibility that other factors, such as imports from third countries and the structural difficulties encountered by the Italian rice sector, had weakened the causal link between the serious difficulties encountered by the Union industry and imports of the product concerned.

18 In its observations of 16 November 2018 on the general disclosure document, the Cambodian Government disputed, inter alia, the Commission's calculations relating to the undercutting analysis. They claimed, in particular, that post-importation costs were not added for the purposes of calculating the export price for the Kingdom of Cambodia and that price undercutting was based on a comparison between average prices, without taking into account the difference in the level of trade.

19 According to the safeguard investigation, the Commission concluded that the product concerned was imported in volumes and at prices which caused serious difficulties for the Union industry. It adopted the contested regulation on the basis, in addition to the definitions and information set out in the general disclosure document and set out in that regulation, of the following factors.

20 First of all, the Commission stated, in response to the interested parties' comments following the communication of the general disclosure document, that, as regards the definition of the like or directly competing product, aromatic or fragrant Indica rice must also be included in the scope of the investigation.

21 Next, as regards the undercutting analysis, the Commission stated, in recitals 35 to 39 of the contested regulation, that it had reviewed its undercutting calculations in order to take account of the Kingdom of Cambodia's comments following the communication of the general disclosure document. It thus adjusted Union industry prices to take account of the costs of transporting rice between southern, which it stated to be Italy and Spain, and northern Europe, having considered that competition in respect of semi-milled and milled Indica rice predominantly takes place in northern Europe. It took into account an amount of EUR 49 per tonne, which it had estimated on the basis of information in the Italian Republic's complaint and verified during the on-the-spot investigation. It also adjusted import prices by taking into account post-importation costs, estimated at approximately 2% of the import price, using as its basis data obtained in an earlier investigation into another food product (satsumas). The Commission added that it had taken account of differences in the level of trade and carried out a price comparison between sales of milled rice in bulk and in packages. It reached the conclusion that price undercutting was 13% for sales in bulk and 14% for sales in packages.

22 Lastly, as regards the situation of Union growers, the Commission stated, in recital 74 of the contested regulation, that, while it is correct that the growers could switch their production between Indica and Japonica rice, such a change was nevertheless based on economic considerations, including demand and market prices. In that context, it stated that the investigation had confirmed that, when faced with increased competition from low priced imports of the product concerned, some growers had had no alternative but to switch to the

production of Japonica rice, so that it was neither a cyclical shift nor a deliberate choice but an act of self-defence. According to the Commission, that solution is not viable in the medium term since switching production from Indica to Japonica rice had caused an oversupply of Japonica rice on the market and price pressure for that type of rice. It concluded from this, therefore, that growers were in general in a difficult situation, although that finding had only limited weight, since the Union industry consists of rice millers and not growers, who are suppliers of the raw material.

Forms of order sought

23 The applicants claim that the Court should:

– annul the contested regulation;

– order the Commission to pay the costs.

24 The Commission, supported by the Italian Republic and by Ente Nazionale Risi, contends that the Court should:

– dismiss the action;

– order the applicants to pay the costs.

Law

25 In support of their action, the applicants put forward six pleas in law.

26 The first, second and third pleas allege infringement of Article 22(1) and (2) and Article 23 of the GSP Regulation, in that, in the first place, the Commission misinterpreted the concept of 'Union producers of like or directly competing products', secondly, the factors and calculations which served as the basis for the conclusion relating to the 'serious difficulties' caused to the Union industry are vitiated by errors and, thirdly, the analysis of undercutting and the adjustments made were incorrect.

27 The fourth plea alleges infringement of Article 22 of the GSP Regulation, in that the Commission's analysis of the causal link between the imports in question and the serious difficulties caused to the Union industry is vitiated by irregularities.

28 The fifth and sixth pleas allege infringement of the applicants' rights of defence and of Articles 14 and 17 of Commission Delegated Regulation (EU) No 1083/2013 of 28 August 2013 establishing rules related to the procedure for temporary withdrawal of tariff preferences and adoption of general safeguard measures under the GSP Regulation (OJ 2013 L 293, p. 16) ('the Delegated Regulation'), read in conjunction with Article 38 of the GSP Regulation, in so far as the Commission failed to communicate certain essential facts and considerations, or the details underlying them, on which its decision to reintroduce the Common Customs Tariff duties on imports of the product concerned was based.

29 The Court considers it appropriate to examine, first of all, the applicants' arguments alleging, in the first place, misinterpretation of the concept of 'Union producers of like or directly competing products', in the second place, errors vitiating the undercutting analysis and the adjustments made to it and, in the third place, infringement of the rights of the defence and of Article 17 of the Delegated Regulation.

The complaints relating to the concept of 'Union producers of like or directly competing products'

30 The applicants allege infringement of Article 22(1) and (2) and Article 23 of the GSP Regulation, in that the Commission misinterpreted the concept of 'Union producers of like or directly competing products' by limiting it by reference to the origin of the raw materials. It thus considered only producers of milled or semi-milled Indica rice processed from paddy rice produced or grown in the European Union.

31 According to the applicants, however, although the products that may be the subject of safeguard measures are products 'originating in a beneficiary country', the same is not true of 'like or directly competing products'. Article 22(1) of the GSP Regulation does not justify any restriction based on the raw material used to manufacture the like or directly competing product. The Commission should have taken into account only the basic physical, technical and chemical characteristics of the product concerned, its use, sales channels and types of customers.

32 All EU rice millers are thus concerned, including those producing milled or semi-milled rice from paddy rice that does not come from the European Union. Therefore, by taking account solely of Union producers of like or directly competing products made from raw materials produced in the European Union, the Commission gathered information on serious difficulties from only some of the producers concerned.

33 The Commission submits that, under Article 22(2) of the GSP Regulation, 'like or directly competing products' are determined on the basis of the 'product under consideration'.

34 The 'product under consideration' is milled or semi-milled Indica rice originating in Cambodia and Myanmar/Burma. In order to be regarded as originating in a country, the rice must have been grown or harvested there. Therefore, the corollary of the 'product under consideration' is milled or semi-milled Indica rice produced in the European Union from rice cultivated or grown in the European Union. The applicants' arguments should therefore be rejected as unfounded.

35 The Commission adds that, even if it had erred in the definition of the Union industry and had taken the view that Union producers of milled or semi-milled Indica rice produced from imported rice should be included in the definition of the Union industry, the investigation would have reached the same conclusion.

36 The Italian Republic submits that, under Article 22(3) of the GSP Regulation, the concept of 'Union producers' is purely economic. It is therefore necessary to focus on those producers who suffer deterioration in their economic or financial situation. The origin of the raw material is therefore fundamental. It also maintains that the applicants' argument in that regard is new because it was not raised during the administrative procedure, with the result that it is inadmissible.

37 Ente Nazionale Risi essentially refers to the Commission's arguments.

38 As a preliminary point, concerning the Italian Republic's allegation that some of the applicant's arguments should be rejected as they were raised for the first time before the Court, the Court notes that according to case-law, nothing prevents the party concerned from formulating against the contested decision a legal plea which was not raised at the stage of the administrative procedure (see, by analogy, judgment of 11 May 2005, *Saxonia Edelmetalle and ZEMAG* v *Commission*, T-111/01 and T-133/01, EU:T:2005:166, paragraphs 67 and 68 and the case-law cited).

39 Accordingly, the applicants' arguments concerning the taking into account of Union producers who use paddy rice produced or grown outside the European Union cannot be rejected as inadmissible.

40 Next, the Court notes that the safeguard measures at issue in the present case form part of the trade protection measures referred to in Article 207(1) TFEU (see, to that effect, Opinion 2/15 (Free Trade Agreement with Singapore) of 16 May 2017, EU:C:2017:376, paragraphs 10, 42 and 43, and judgment of 20 October 2021, *Novolipetsk Steel* v *Commission*, T-790/19, not published, EU:T:2021:706, paragraphs 43, 44, 68 and 76), as is also apparent from the notice of initiation of the safeguard investigation issued by the Commission.

41 In the sphere of the common commercial policy and, most particularly, in the realm of measures to protect trade, it is settled case-law of the Court that the EU institutions enjoy a broad discretion by reason of the complexity of the economic and political situations which they have to examine, so that judicial review of that broad discretion must be limited to verifying whether the relevant procedural rules have been complied with, whether the facts relied on have been accurately stated and whether there has been a manifest error in the appraisal of those facts or a misuse of powers (see, to that effect, judgment of 20 January 2022, *Commission* v *Hubei Xinyegang Special Tube*, C-891/19 P, EU:C:2022:38, paragraphs 35 and 36 and the case-law cited).

42 In that regard, it is clear from settled case-law that the General Court's review of the evidence on which the EU institutions based their findings does not constitute a new assessment of the facts replacing that made by the institutions. That review does not encroach on the broad discretion of those institutions in the field of commercial policy, but is restricted to showing whether that evidence was able to support the conclusions reached by the institutions. The General Court must therefore not only establish whether the evidence put forward is factually accurate, reliable and consistent but also ascertain whether that evidence contained all the relevant information which had to be taken into account in order to assess a complex situation and whether it was capable of substantiating the conclusions reached (see judgment of 20 January 2022, *Commission* v *Hubei Xinyegang Special Tube*, C-891/19 P, EU:C:2022:38, paragraph 37 and the case-law cited; see also, by analogy, judgment of 15 February 2005, *Commission* v *Tetra Laval*, C-12/03 P, EU:C:2005:87, point 39).

43 Under Article 22(1) of the GSP Regulation, where a product originating in a beneficiary country of any of the preferential arrangements referred to in Article 1(2), is imported in volumes and/or at prices which cause, or threaten to cause, serious difficulties to Union producers of like or directly competing products, normal Common Customs Tariff duties on that product may be reintroduced.

44 It is apparent from that provision that the determination of the existence or the risk of serious difficulties encountered by Union producers manufacturing like or directly competing products is to be based on positive evidence and involves an objective examination of both the volume and/or prices of the imports in question and the impact of those imports on Union producers.

45 The concept of 'Union producers of like or directly competing products', as referred to in Article 22 of the GSP Regulation, is a legal concept which must be interpreted on the basis of objective factors. Since this is a question of law, the Courts of the European Union must carry out a comprehensive review of the interpretation to be given to that concept.

46 In that regard, the Court notes that, although the concept of 'Union producers' is not expressly defined by the GSP Regulation, it is presented immediately by reference to the particular products which must be manufactured by the industry concerned. Thus, only Union producers 'of like or directly competing products' of imports originating in a country benefiting from preferential arrangements are covered by Article 22 of that regulation.

47 The choice of the foreign product which is the subject of the safeguard investigation therefore determines the scope of the analysis of the domestic industry or, in other words, of like or directly competing products of imported products, which, in turn, makes it possible to identify the 'producers' of those products. There is therefore a link between the imported products and the Union producers benefiting from the safeguard mechanism. It is on that basis that the Commission determines whether Union producers have experienced or are likely to face serious difficulties as a result of the imports covered by the safeguard measures.

48 In those circumstances, the examination of whether the Commission's definition of Union producers of like or directly competing products is well founded must be carried out in the light of the characteristics of the imported product as defined by the Commission.

49 The Court will therefore examine, in the first place, the definition of imported product adopted by the Commission in the context of the safeguard investigation and, in the second place, whether the Commission's interpretation of 'like or directly competing products' and 'Union producers' is consistent with Article 22 of the GSP Regulation.

The definition of imported product adopted by the Commission in the contested regulation

50 In the present case, it is apparent from recitals 13 and 14 of the contested regulation that the Commission defined the imported product concerned as semi-milled or milled Indica rice originating in Cambodia and Myanmar/Burma and falling within CN subheadings 1006 30 27, 1006 30 48, 1006 30 67 and 1006 30 98.

51 In that regard, in the first place, the Court observes that the term 'product concerned', used in the contested regulation, is the concrete expression of the general concept of 'product under consideration' in Article 22(2) of the GSP Regulation, since the purpose of the contested regulation is to implement that article in the field in question. It follows that the constituent elements of the concept of 'product under consideration' for the purposes of the GSP Regulation necessarily determine those to be attributed to the 'product concerned' for the purposes of the contested regulation (see, by analogy, judgment of 17 March 2016, *Portmeirion Group*, C-232/14, EU:C:2016:180, paragraphs 38 and 39).

52 Although the GSP Regulation does not expressly specify the scope of the concept of 'product under consideration', it is clear from Article 22(1) of that regulation that the starting point for the adoption of safeguard measures is that of serious difficulties caused or likely to be caused by the importation, in certain volumes and/or at certain prices, of a 'product originating in a beneficiary country' of any of the preferential arrangements referred to in that regulation. The concept of 'product under consideration' in Article 22(2) of the GSP Regulation must therefore be interpreted in the light of paragraph 1 of that article.

53 Recital 23 and Article 33 of the GSP Regulation provide that the rules concerning the definition of the concept of originating products are laid down in Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ 1993 L 253, p. 1).

54 Since Regulation No 2454/93 has been repealed, those provisions must be read as now referring to Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ 2013 L 269, p. 1), which must be read in conjunction with Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation No 952/2013 as regards detailed rules concerning certain provisions of the Union Customs Code (OJ 2015 L 343, p. 1), and Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation No 952/2013 (OJ 2015 L 343, p. 558). Those regulations define, inter alia, what is meant by a product 'originating' in a country.

55 Thus, under Article 41 of Delegated Regulation 2015/2446, products wholly obtained in that country, within the meaning of Article 44 of that regulation, and products obtained in that country which incorporate materials which have not been wholly obtained there, provided that such materials have undergone sufficient working or processing within the meaning of Article 45 of that regulation, are to be regarded as originating in a beneficiary country of the generalised system of preferences.

56 Article 44(1)(b) of Delegated Regulation 2015/2446 states that plants and vegetable products grown or harvested in a beneficiary country are to be considered to be wholly obtained there.

57 Article 47(1)(f) of Delegated Regulation 2015/2446 adds, however, that the husking and the partial or total milling of rice and the polishing and glazing of cereals and rice are operations regarded as insufficient working or processing to confer the status of originating products, whether or not the requirements laid down in Article 45 of that regulation are fulfilled.

58 It follows from those provisions that, in order to be regarded as originating in a country benefiting from preferential arrangements, the rice must have been grown or harvested there or could even have been subject to certain working or processing, excluding husking, partial or total milling, polishing and glazing.

59 In the second place, the Court finds that there are three main varieties of rice. Round grain rice, semi-long grain, also known as Japonica, and long grain rice, also known as Indica.

60 Before they can be consumed, the various varieties of rice must be processed. As is apparent from Chapter 10 of Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1987 L 256, p. 1), four stages of rice processing are generally distinguished:

– paddy rice: rice which has retained its husk after threshing;

– husked rice: rice from which only the husk has been removed;

– semi-milled rice: rice from which the husk, part of the germ, and the whole or part of the outer layers of the pericarp, but not the inner layers, have been removed;

– wholly milled rice: rice from which the husk, the whole of the outer and inner layers of the pericarp, the whole of the germ in the case of long or medium grain rice, and at least part thereof in the case of round grain rice, have been removed, but in which longitudinal white striations may remain on not more than 10% of the grains.

61 Both wholly milled rice and semi-milled rice are therefore obtained by the processing of paddy rice. Since paddy rice is a rice in its harvested state, still with its husk, that processing requires at least the husking of the rice.

62 Since husking is an operation which is considered insufficient to confer the status of originating product on rice, as is clear from Article 47(1)(f) of Delegated Regulation 2015/2446 and paragraph 57 above, milled or semi-milled Indica rice must be produced in a beneficiary country from paddy rice grown or harvested in that country in order to be classified as a product 'originating in' that country, within the meaning of Article 22(1) and Article 33 of the GSP Regulation.

63 In the present case, the product under consideration is therefore milled or semi-milled Indica rice originating in Cambodia and Myanmar/Burma produced from rice grown or harvested there.

The concept of 'like or directly competing products' and the definition of the Union industry

64 As a preliminary point, the Court notes that, unlike in the anti-dumping and anti-subsidy contexts, safeguard investigations are not limited to Union producers of 'like products'. Producers of 'directly competing' products must also be considered.

65 In any event, even in the area of anti-dumping, the Court has never accepted arguments aimed at establishing that the 'product under consideration' forming the subject of an investigation must include only 'like products' within the meaning of Article 1(4) of Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union (OJ 2016 L 176, p. 21; 'the anti-dumping regulation'), namely "product[s] which [are] identical, that is to say, alike in all respects, to the product under consideration, or in the absence of such product[s], other product[s] which, although not alike in all respects, ha[ve] characteristics closely resembling those of the product under consideration' (Opinion of Advocate General Wathelet in *Portmeirion Group*, C-232/14, EU:C:2015:583, point 49).

66 Since the case-law has confirmed therefore that, in the context of an anti-dumping investigation, the concept of 'like product' must be understood broadly, the same must apply to the concept of 'like or directly competing product' in the related area of safeguard measures.

67 In the present case, it is apparent from the considerations set out in Title 2.2 of the contested regulation and from the documents before the Court that the Commission considered that milled or semi-milled Indica rice processed from paddy rice grown or harvested in the European Union constituted the 'like or directly competing product', which it took into account for the purposes of assessing the existence of serious difficulties encountered by Union producers.

68 The Commission relied on the essential physical, technical and chemical characteristics of the products, their end use and their distribution channels in order to determine the like or directly competing products of the product concerned. However, it added an additional criterion, namely that of the origin of the raw material.

69 Having applied the criterion of origin to all like or directly competing products, the Commission, in recitals 22 and 23 of the contested regulation, defined the Union industry by reference to the origin of the supplies of paddy rice to EU millers for processing, and excluded growers, considering them to be suppliers of raw materials only. In its written pleadings and at the hearing, the Commission thus stated that it had excluded from the injury analysis EU millers producing milled or semi-milled Indica rice from imported paddy rice.

70 In that regard, in the first place, concerning the concept of 'like or directly competing products', the Court notes that Article 22(2) of the GSP Regulation merely defines the concept of 'like product' as being an identical product, that is to say, alike in all respects to the product under consideration, or, in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration.

71 In the light of the wording of Article 22(1) and (2) of the GSP Regulation, a product originating in a beneficiary country or a product under consideration is the starting point for the definition of 'like product'. As is apparent from paragraph 64 above, since the GSP Regulation covers both 'like products' and 'directly competing' products, it is appropriate to apply, to the determination of 'like or directly competing products', criteria equivalent to those which are relevant to the determination of the product under consideration.

72 However, that provision should not be understood as implicitly applying the rules of origin of the product under consideration to like products or directly competing products.

73 It is clear, as the applicants correctly submit, that, although the EU legislature took the trouble expressly to specify the importance of the criterion of origin with regard to products originating in a country benefiting from preferential tariff arrangements, it did not do so in relation to products manufactured by Union producers. The explicit reference to the rules of origin in respect of imported products alone contrasts with the lack of precision in that regard concerning like or directly competing products.

74 Moreover, it is expressly stated in recital 23 and Article 33 of the GSP Regulation that the purpose of the rules of origin applicable to imported products is to ensure that the scheme of generalised tariff preferences benefits only those countries it is intended to benefit.

75 The wording of Article 22(1) and (2) of the GSP Regulation is quite different since it neither states nor suggests that the analysis of the impact of imports of a product originating in a beneficiary country on the economic or financial situation of Union producers must, in all circumstances, take into account the origin of the products manufactured by those producers and thus limit those Union producers who are entitled to the protection provided for by that provision.

76 The Commission's interpretation, that the origin of products manufactured by Union producers is an essential factor in determining 'like or directly competing products', would have the consequence of depriving some of those producers, manufacturing products one of the components of which is imported or the raw material of which has undergone processing depriving those products of the classification of 'originating products' within the meaning of Delegated Regulation 2015/2446, of the possibility of applying for the adoption of safeguard measures or of being included in a safeguard investigation solely on the ground that their product does not 'originate' in the European Union as do the products under consideration. It cannot be accepted that such a limitation was intended by the EU legislature.

77 The Commission is therefore wrong to take the view that 'like or directly competing products' should be subject to the condition of origin of products imported from countries benefiting from tariff preferences, within the meaning of Article 33 of the GSP Regulation and of Delegated Regulation 2015/2446.

78 In the second place, in order to determine what is meant by 'like or directly competing products', within the meaning of the GSP Regulation, it is necessary to be guided by the relevant criteria for determining, inter alia, the 'like product' or 'product concerned' under the anti-dumping regulation, since, as in the anti-dumping context, the determining criteria in a safeguard investigation are aimed, in essence, at ascertaining that there is a sufficient degree of competition between the product under consideration and the like or directly competing product (see, by analogy, judgment of 25 January 2017, *Rusal Armenal* v *Council*, T-512/09 RENV, EU:T:2017:26, paragraph 150).

79 That is all the more so in the present case since, as mentioned in paragraphs 64 and 65 above, safeguard investigations are not limited to Union producers of 'like products', since the producers of 'directly competing' products must also be considered.

80 The purpose of the definition of like or directly competing product in the context of a safeguard investigation is to aid in drawing up the list of products manufactured by Union producers which will, if necessary, be the subject of the injury assessment. For the purposes of that process, the Commission may take account of a number of factors, such as the physical, technical and chemical characteristics of the products, their use, interchangeability, consumer perception, distribution channels, manufacturing process, costs of production and quality (see, by analogy, judgments of 11 July 2013, *Hangzhou Duralamp Electronics* v *Council*, T-459/07, not published, EU:T:2013:369, paragraph 69 and the case-law cited, and of 25 January 2017, *Rusal Armenal* v *Council*, T-512/09 RENV, EU:T:2017:26, paragraph 151 and the case-law cited).

81 It necessarily follows that products which are not identical to the product under consideration may be grouped together under the same definition of like or directly competing product and, together, be subject to a safeguard investigation (see, by analogy, judgment of 28 February 2017, *JingAo Solar and Others* v *Council*, T-158/14, T-161/14 and T-163/14, not published, EU:T:2017:126, paragraph 86 and the case-law cited).

82 The similarity of the products must be evaluated having regard in particular to the preferences of the end users, given that demand for the basic product on the part of processing undertakings depends on demand by end users (see, by analogy, judgment of 15 October 1998, *Industrie des poudres sphériques* v *Council*, T-2/95, EU:T:1998:242, paragraph 213).

83 It is in the light of those considerations that the examination of the validity of the inclusion of a specific product in the list of like or directly competing products, or of its exclusion from that list, must be carried out.

84 The decisive question in the present case is therefore whether milled or semi-milled Indica rice produced in the European Union is, irrespective of the origin of the paddy rice from which it is processed, like or directly competing with milled or semi-milled Indica rice originating in Cambodia. As is apparent from paragraphs 71 and 78 to 82 above, a number of factors must be examined, such as the characteristics, use and distribution channels for the latter, in the light of those of milled or semi-milled Indica rice originating in Cambodia and their interchangeability.

85 Since the Commission has already considered that this was so in the case of milled or semi-milled Indica rice processed from paddy rice grown or harvested in the European Union, it is necessary to examine whether the same applies to milled or semi-milled Indica rice produced in the European Union from imported paddy rice.

86 In that regard, the Court finds that milled or semi-milled Indica rice processed from paddy rice imported into the European Union has the same basic physical, technical and chemical characteristics and serves the same end uses, is milled by the same operators, is sold through the same distribution channels and is in competition with milled or semi-milled Indica rice processed from paddy rice grown or harvested in the European Union.

87 First, the Commission stated, in recital 64 of the contested regulation, that consumers generally do not differentiate between Union products and those which are imported and consumers who purchase rice from retailers do not generally know the origin of the product.

88 The Commission also stated, in recital 18 of the contested regulation, that both Union-produced and imported milled or semi-milled Indica rice have the same basic physical, technical and chemical characteristics, have the same uses and are sold via similar or identical sales channels to the same type of customer. Yet, it must be observed that if Indica rice produced in a third country from paddy rice originating in that country has the same basic characteristics as Indica rice produced in the European Union from paddy rice originating in the European Union, the same must apply to Indica rice produced in the European Union from paddy rice imported from a third country.

89 Secondly, as is apparent from the replies to the questions put by the Court at the hearing and from the minutes of the hearing, it is not disputed in the present case that, from the millers' point of view, milled or semi-milled Indica rice is interchangeable and substitutable for other milled or semi-milled Indica rice, regardless of its origin, in so far as millers can process both rice produced in the European Union and imported rice. At the hearing, the Commission also stated that it was the same product, only the origin being different.

90 Milled or semi-milled Indica rice, whatever the origin of the raw material used for its processing, therefore has basic physical, technical and chemical characteristics and has the same use. In other words, milled or semi-milled Indica rice is interchangeable or substitutable with other milled or semi-milled Indica rice, both for EU millers and for consumers.

91 Thus, irrespective of the origin of the raw material from which it was processed, milled or semi-milled Indica rice produced in the European Union must be classified as a like or directly competing product of milled or semi-milled Indica rice originating in Cambodia.

92 Since the Commission's analysis must take into account all Union producers manufacturing like or directly competing products in order to obtain a reliable picture of their economic situation, the Commission was required, in the analysis of the effects of imports of Indica rice from Cambodia on the prices of the Union industry, to take into consideration all EU millers producing milled or semi-milled Indica rice, irrespective of the origin of the paddy rice they process. That was not the case here.

93 As the applicants correctly point out, the incorrect definition of Union producers thus also vitiated the analysis of the existence of serious difficulties, since the Commission excluded some of the producers from the injury assessment.

94 Any other interpretation would amount to giving the Commission the opportunity to influence, arbitrarily, the result of the calculation of the undercutting margins, by excluding one or more types of the product at issue and, therefore, certain Union producers.

95 In the third place, the Court notes that the restriction, made by the Commission, of the concept of 'Union producers manufacturing like or directly competing products' to EU millers who process Indica rice originating in the European Union seeks in reality to include, indirectly, Union growers in the analysis of the injury attributed to rice millers. By limiting the definition of the Union producers to be taken into account for the purposes of assessing injury by reference to the origin of the raw material processed into milled or semi-milled Indica rice, the Commission de facto extended the scope of protection to Union growers, only the latter being actually concerned by rice grown in the European Union. Such an interpretation cannot, however, be justified in the light of the definition of the Union industry set out in recitals 22 and 23 of the contested regulation, which refers expressly only to EU millers.

96 The Commission could have expressly widened, under its broad discretion, the definition of the Union industry to growers of like or directly competing products, as requested by the Italian Republic during the investigation. However, it should then have expressly included them in the injury analysis and provided evidence of the serious difficulties which they encounter or may encounter.

97 It follows from all the foregoing that the Commission erred in law and made a manifest error of assessment by arbitrarily limiting the scope of its investigation concerning the injury caused to the Union industry solely to millers of milled or semi-milled Indica rice processed from paddy rice grown or harvested in the European Union.

98 Moreover, the Commission's arguments that, despite those errors, the safeguard investigation would have led to the same conclusion cannot be accepted.

99 According to the case-law, the legality of an EU measure must be assessed on the basis of the facts and the law as they stood at the time when the measure was adopted, with the result that the General Court cannot substitute other grounds relied on for the first time before it for the grounds relied on during the investigation procedure (see judgments of 3 September 2015, *Inuit Tapiriit Kanatami and Others* v *Commission*, C-398/13 P, EU:C:2015:535, paragraph 22 and the case-law cited, and of 1 June 2017, *Changmao Biochemical Engineering* v *Council*, T-442/12, EU:T:2017:372, paragraph 153 and the case-law cited). The assessments made by the Commission in its written pleadings and at the hearing, relating to the fact that the import volumes of Indica rice into the European Union were low, constitute such grounds relied on for the first time before the General Court.

100 The applicants' complaints concerning the Commission's misinterpretation of the concept of 'Union producers of like or directly competing products' must therefore be upheld.

101 In the alternative, however, the Court will also examine the applicants' arguments relating to the undercutting analysis and the adjustments made to it as well as those relating to the infringement of their rights of defence.

The complaints relating to the undercutting analysis and the adjustments

102 The applicants allege, in essence, infringement of Article 22(1) and (2) and Article 23 of the GSP Regulation, in that, when comparing the prices of imports from Cambodia with EU prices, the Commission incorrectly adjusted EU prices and relied on uncertain data to adjust post-importation costs.

103 In that regard, the applicants maintain that there is nothing to support the Commission's assertion that, whilst milled or semi-milled rice is produced in southern Europe, the competition relating to that rice takes place mainly in the north. Eurostat's data on imports from Cambodia and certain replies to the questionnaires sent by the Commission indicate that a significant proportion of imports relate to southern Europe. The adjustment of all EU prices thus makes the comparison with the prices of imports from Cambodia unfair, since the prices of those imports did not undergo the same adjustment. According to the applicants, the Commission should therefore have compared the prices from the Kingdom of Cambodia after importation with the ex-works prices of EU millers.

104 The applicants add that, in the anti-dumping context, the adjustment of transport costs can be made only in exceptional circumstances and must be limited to sales that are specifically concerned by those circumstances. However, in the present case, there is no exceptional circumstance that would justify departing from the normal method of calculating undercutting. In any event, the Commission should have identified the proportion of Union industry sales that warranted adjustment.

105 The applicants also dispute the validity and reliability of the source data on which the Commission relied in order to determine that transport costs in the European Union amounted to a uniform EUR 49 per tonne and that the post-importation costs from Cambodia corresponded to approximately 2% of the import price. As regards post-importation costs, they submit that, even if the Commission relied on data collected in a 2004 safeguard investigation concerning satsumas, the costs under consideration are not current and the conditions for the transport of satsumas are different from those of rice.

106 The Commission submits that the GSP Regulation does not require any undercutting analysis, since Article 22(1) of that regulation refers only to imports 'in volumes and/or at prices' causing serious difficulties. Therefore, the standard of proof required and the level of detail of such an analysis are lower in an investigation carried out under the GSP Regulation than in the context of an anti-dumping investigation.

107 As regards the adjustment of EU prices, the Commission maintains that competition between Indica rice originating in the European Union and that originating in Cambodia takes place in northern Europe, whether or not the circumstances of the present case are considered to be exceptional. The fact that Japonica rice is mainly used in southern Europe, while in the north Indica rice is favoured, is a clear fact, illustrated by the geographical spread of exports of Indica rice from Cambodia to the European Union. That adjustment of EUR 49 per tonne is also based on objective evidence and is standard practice, including in anti-dumping proceedings.

108 It adds that, even if the adjustment for transport costs in the European Union had not been taken into account, the Cambodian prices would, in any event, have led to undercutting of the prices of Union producers of at least 5.4% for bulk sales and 8.5% for sales in packages, which, together with the other factors examined by the Commission, suffice to demonstrate the existence of serious difficulties, within the meaning of Article 22 of the GSP Regulation.

109 As regards the adjustment of import prices, the Commission states that, since the applicants did not indicate a specific amount for post-importation costs, it relied on data from 2014 from an expiry review of anti-dumping measures imposed on certain prepared or preserved citrus fruits.

110 The Italian Republic supports the Commission's arguments and adds that the assessment of serious difficulties could be based exclusively on volumes and market shares. Moreover, Article 22 of the GSP Regulation does not require that the cause of the serious difficulties identified by the Commission should be exclusive or certain.

111 Ente Nazionale Risi, in essence, supports the Commission's arguments.

112 The Court finds that it is clear from a combined reading of Article 22(1) and Article 23(j) of the GSP Regulation that the prices of imported products and like or directly competing products are one of the essential factors which the Commission may, inter alia, take into account in its analysis of the existence of serious difficulties caused or likely to be caused to Union producers by the imports in question.

113 The GSP Regulation does not contain a definition of the concept of price and does not lay down an express obligation to carry out an analysis of price undercutting or of the calculation method as regards the determination of the effect of imports of the product concerned on the Union industry.

114 On the other hand, Articles 22 and 23 of the GSP Regulation refer to the conditions which make it possible to establish that the volumes and/or prices of imports of a product under consideration cause, or threaten to cause, serious difficulties to Union producers of like or directly competing products and, ultimately, to reintroduce Common Customs Tariff duties in order temporarily to bring to an end the deterioration in the economic and/or financial situation of Union producers.

115 There are therefore not one but several methods of analysis for examining whether the conditions laid down in Articles 22 and 23 of the GSP Regulation are satisfied. However, the choice between different methods of calculation requires an appraisal of complex economic situations, so that the Commission has some discretion when it chooses the method by which it must ascertain whether those conditions are satisfied.

116 However, the Court notes that, although the Court of Justice recognises that the Commission has a broad discretion in complex economic matters, that does not mean that the EU judicature must refrain from reviewing the Commission's interpretation of economic information.

117 As is clear from the case-law referred to in paragraph 42 above, not only must the EU judicature establish whether the evidence put forward is factually accurate, reliable and consistent but also must ascertain whether that evidence contains all the relevant information which must be taken into account in order to assess a complex situation and whether it is capable of substantiating the conclusions reached.

118 In the present case, it is apparent from recitals 61, 64, 76 and 77 of the contested regulation that the Commission relied on both the volumes and prices of imports of milled or semi-milled Indica rice originating in Cambodia in order to conclude that they were causing serious difficulties for Union producers of like or directly competing products, which it also confirmed at the hearing.

119 In that regard, as has been stated in paragraphs 13 to 21 above, the Commission carried out an undercutting analysis, under which, in the general disclosure document, it demonstrated undercutting of EU prices by the prices of imports from Cambodia corresponding to 22%.

120 Following the disclosure of that document, the Kingdom of Cambodia asked, inter alia, whether the post-importation costs had been taken into account in the calculation of the undercutting margin. In response to the observations of the interested parties, including those of the Kingdom of Cambodia, the Commission reviewed its undercutting calculations and adjusted, on the one hand, the prices of the Union industry to take account of a uniform amount of EUR 49 per tonne in respect of the costs of transporting rice from southern to northern Europe and, on the other hand, import prices by taking into account post-importation costs, estimated at around 2% of the import price. After stating that it had also taken account of differences in the level of trade and compared the sale prices of milled rice sold in bulk with those of rice sold in packages, it concluded that price undercutting was 13% for sales in bulk and 14% for sales in packages.

121 In the first place, the Court finds that, despite such adjustments made during the administrative procedure, the Commission's conclusions concerning the deterioration in the economic situation of the Union industry caused by imports of Indica rice from Cambodia are based on price undercutting before adjustments, which is 22% undercutting, as is apparent from recitals 56, 60 and 63 of the contested regulation.

122 It is true that the Commission, in its replies to the questions put by the Court by way of measures of organisation of procedure, stated that it had failed to correct those references to undercutting of 22%, and that it was appropriate to read the undercutting margins specified in recitals 56, 60 and 63 of the contested regulation as being 13% for bulk sales and 14% for sales in packages. Nevertheless, the Court notes that, although recitals 56 and 60 of the contested regulation are identical to recitals 41 and 44 of the general disclosure document, recital 63 of the contested regulation was added subsequently and the 22% undercutting was taken into account by the Commission at the time of the adoption of the contested regulation.

123 The Commission therefore erred in fact in concluding, in the contested regulation, that the situation of the Union industry had deteriorated in economic terms in that it was subject to significant price undercutting of 22%.

124 In the second place, the Court notes that, as the Commission rightly points out, if a party claims adjustments in order to make import prices and prices of the Union industry comparable for the purpose of determining the undercutting margin, that party must prove that its claim is justified. Thus, where a producer claims that an adjustment of the normal value, in principle downward, applies, it is for that operator to indicate and to establish that the conditions for granting such an adjustment are satisfied (see, by analogy, judgment of 26 October 2016, *PT Musim Mas* v *Council*, C-468/15 P, EU:C:2016:803, paragraph 82 and the case-law cited; see also, to that effect, Opinion of Advocate General Mengozzi in Joined Cases *Changshu City Standard Parts Factory and Ningbo Jinding Fastener* v *Council*, C-376/15 P and C-377/15 P, EU:C:2016:928, point 97 and the case-law cited).

125 Similarly, it is for the Commission, when it considers that it must make an adjustment, to base its decision on direct evidence, or at least on consistent circumstantial evidence, pointing to the existence of the factors for which the adjustment was made, and to determine its effect on price comparability (see, to that effect, judgments of 16 February 2012, *Council and Commission* v *Interpipe Niko Tube and Interpipe NTRP*, C-191/09 P and C-200/09 P, EU:C:2012:78, paragraphs 58 and 61 and the case-law cited, and of 10 March 2009, *Interpipe Niko Tube and Interpipe NTRP* v *Council*, T-249/06, EU:T:2009:62, paragraph 180 and the case-law cited).

126 In the present case, in recitals 34 and 35 of the contested regulation, the Commission stated that the Kingdom of Cambodia '[had] questioned the methodology used by [it] to calculate the undercutting margins', that 'they claimed that post-importation costs [had] not [been] added to calculate the Cambodian export price' and that 'in view of the arguments received …, [it had] decided to review its undercutting calculations in order to include relevant post-importation or transport costs'.

127 It must therefore be held that, following observations on the general disclosure document, the Commission had accepted the need to make adjustments to the undercutting analysis. In accordance with the case-law cited in paragraphs 42 and 125 above, it was therefore incumbent on it to rely on direct evidence, or consistent circumstantial evidence, to establish the existence of the factors for which the adjustments had been made and to determine their impact on price comparability, and the Court must examine the reliability, consistency and relevance of the evidence relied on by the Commission in support of its conclusions.

128 In that regard, the calculation of the price undercutting of the imports is carried out for the purposes of determining the existence of injury suffered by the Union industry by reason of those imports and is used, more broadly, to assess that injury and to determine the injury margin, namely the injury elimination level. The objective examination of the impact of the imports requires a fair comparison to be made between the price of the product concerned and the price of the like product of that industry when sold in the territory of the Union. In order to guarantee the fairness of that comparison, prices must be compared at the same level of trade. A comparison of prices obtained at different levels of trade, that is to say, one which does not include all the costs relating to the level of trade which must be taken into account, would necessarily be misleading in its results and would not allow a correct assessment to be made of the injury to the Union

industry. Such a fair comparison is a prerequisite of the lawfulness of the calculation of the injury to that industry (see, to that effect and by analogy, judgment of 10 April 2019, *Jindal Saw and Jindal Saw Italia* v *Commission*, T-300/16, EU:T:2019:235, paragraph 239 and the case-law cited).

129 First, concerning the adjustment of EU prices to take into account transport costs from southern to northern Europe in the uniform amount of EUR 49 per tonne, the Court notes that the practice of comparing 'ex-works' prices, excluding transport costs, of goods of the Union industry with the 'cost, insurance, freight' (CIF) prices to the Union border of imports has been recognised on numerous occasions in the case-law (see, by analogy, judgments of 30 November 2011, *Transnational Company 'Kazchrome' and ENRC Marketing* v *Council and Commission*, T-107/08, EU:T:2011:704, paragraph 55 and of 10 April 2019, *Jindal Saw and Jindal Saw Italia* v *Commission*, T-300/16, EU:T:2019:235, paragraphs 243 to 249; Opinion of Advocate General Slynn in *France* v *Commission*, 181/85, EU:C:1986:491, points 708 and 709).

130 At the stage of the proceedings before the Court, the Commission relies on exceptional circumstances justifying such an adjustment, the aim of which is to take account of the costs necessary to bring the product to the place where competition takes place, namely northern Europe, and refers to its practice introduced in Commission Implementing Regulation (EU) 2019/1688 of 8 October 2019 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of mixtures of urea and ammonium nitrate originating in Russia, Trinidad and Tobago and the United States of America (OJ 2019 L 258, p. 21), and Commission Implementing Regulation (EU) 2019/576 of 10 April 2019 imposing a provisional anti-dumping duty on imports of mixtures of urea and ammonium nitrate originating in Russia, Trinidad and Tobago and the United States of America (OJ 2019 L 100, p.7).

131 However, as the applicants correctly submit, in recitals 108 to 110 of Implementing Regulation 2019/1688 and in recitals 127 and 129 of Implementing Regulation 2019/576, the Commission stated that its usual practice was to compare the Union border CIF price of the exporting producers to the ex-works price of the Union producers. It is also apparent from those recitals that the Commission departs from that standard approach and adjusts certain Union industry sales where such a departure is justified by exceptional circumstances. It states that it will then be able to limit the adjustment to the proportion of sales affected by the exceptional situation.

132 In the present case, the Commission puts forward no such exceptional circumstances in the contested regulation, which would justify, as regards sales of Indica rice in the Union, the need to take into account transport costs from southern to northern Europe. It relies on the circumstances of the present case only at the stage of the rejoinder, whereas it relied on such special circumstances in the actual text of the implementing regulations to which it refers.

133 Moreover, the Commission has not provided any direct evidence or reliable and relevant circumstantial evidence in support of its assertion that it is an 'undisputed fact' that the place where Indica rice is in competition in the European Union is northern Europe, so that it was necessary to take into account the prices of the Union industry after the whole of milled or semi-milled Indica rice from southern Europe has been transferred to northern Europe and not to adjust the transport costs in proportion to the sales of rice in the various geographical areas of the Union.

134 In the first place, although, in recital 36 of the contested regulation, the Commission stated that 'southern' Europe consisted of Italy and Spain, it defined it, in its defence, as consisting of Italy, Spain and Greece, to which it subsequently added Portugal.

135 Next, in reply to the questions put by the Court by way of measures of organisation of procedure, the Commission submitted two publications in which that 'undisputed' fact was allegedly referred to and explained by statistics.

136 However, first, the Court notes that one publication is a Commission fact sheet on rice, in which it is stated, without that assertion being supported by evidence, that 'Indica rice (long grain) is the 'traditional' Asian rice, representing [around] 25% of EU rice production and mainly consumed in North Europe'.

137 Secondly, the Commission produced a table, published in an article dated December 1995 on rice quality in the European Union, which establishes a numerical estimate of the consumption of Indica and Japonica rice in 1993 and 1994 for each of the twelve countries then members of the European Union.

138 Although that table provides information on rice consumption habits in the European Union 30 years ago, such practices are likely to have changed significantly, as the applicants rightly submitted in their observations on the Commission's replies and at the hearing. It is also apparent from that document that Italy, Spain, Greece and Portugal retain approximately 11.8% of EU Indica rice consumption and the Commission itself acknowledged that 12% of imports from Cambodia went to those 'southern' countries.

139 Lastly, although, in recital 36 of the contested regulation, the Commission states that it relied on information included in the complaint and verified during the on-the-spot investigation, it is clear that the Italian Republic's complaint contains no information relating to transportation costs in the European Union of such an amount and that the verifications which the Commission carried out during the on-the-spot investigation are not part of the file.

140 At the stage of the defence, the Commission stated that the objective evidence justifying an adjustment for transport costs in the European Union in the amount of EUR 49 per tonne, namely a statement by the Italian Rice Millers Association (AIRI), verified on-spot at two Italian millers included in the sample, was included in the file, but was not accessible to the applicants as a result of a request for confidential treatment. It added that, even in the absence of an adjustment for transport costs, the analysis would have demonstrated the existence of price undercutting by Union producers of at least 5.4% for bulk sales and 8.5% for sales in packages.

141 It is true that, under Article 17(3) of the Delegated Regulation, access by the parties to information concerning Commission decisions is expressly restricted by the confidentiality of such information, as is apparent from paragraph 171 below. The principles governing the interested parties' right to information must, therefore, be reconciled with the requirements of confidentiality, in particular the obligation for the EU institutions to respect business secrecy (see, by analogy, Opinion of Advocate General Pitruzzella in *Donex Shipping and Forwarding*, C-104/19, EU:C:2020:159, point 61 and the case-law cited).

142 Nevertheless, according to the case-law cited in paragraph 99 above, the legality of an EU measure must be assessed on the basis of the facts and the law as they stood at the time when the measure was adopted, with the result that the Court cannot substitute other grounds relied on for the first time before it for the grounds relied on during the investigation procedure. This applies to the assessments made by the Commission in its written pleadings, by which it states, without further

explanation, that, in the absence of an adjustment for transport costs, the prices of imports from Cambodia would have resulted in price undercutting by the Union producers of at least 5.4% for sales in bulk and 8.4% for sales in packages.

143 The refusal to disclose the information in question cannot, moreover, be justified by a ground relied on during the procedure before the Court (see, to that effect, judgment of 1 June 2017, *Changmao Biochemical Engineering* v *Council*, T-442/12, EU:T:2017:372, paragraph 153).

144 In any event, it has previously been held that the information necessary to determine whether, in the light of the structure of the market, the adjustment in dispute was appropriate is not confidential, since it is a question of defining, and giving reasons to justify, the level of trade of the Union products corresponding to that of imported products and making an appropriate adjustment in order to take account of all relevant costs (see, by analogy, judgment of 17 February 2011, *Zhejiang Xinshiji Foods and Hubei Xinshiji Foods* v *Council*, T-122/09, not published, EU:T:2011:46, paragraph 86).

145 The Commission cannot therefore validly rely on the confidentiality of all the information which led to an adjustment of the transportation costs within the European Union of a uniform amount of EUR 49 per tonne.

146 The Court also observes that on 8 February 2022, following questions and the Court's request for production of a document by way of measures of organisation of procedure, the Commission reiterated that AIRI's statement was confidential.

147 However, on 10 February 2022, it stated that it had obtained confirmation from AIRI that, in view of the time which had elapsed since the administrative procedure, the request for confidentiality concerning the statement relating to transport costs was discontinued. It added that it would produce that statement on 18 February 2022, in its replies to the Court's questions, and that all parties could have access to it.

148 It is apparent from the documents before the Court that the Commission only produced an exchange of emails between it and Ente Nazionale Risi, in which there is a screenshot showing a table of the costs of transporting rice in bulk and in large bags. The amount of EUR 49 is referred to therein as corresponding to the costs of transporting rice in large bags conveyed from Italy to Belgium. However, the source document from which that data originated, or the calculations which allowed that data to be obtained, was not communicated to the Court.

149 The geographical spread underlying the 'undisputed fact' that competition in milled or semi-milled Indica rice in the European Union took place in northern Europe is therefore not supported by reliable and relevant evidence. The same is true of the Commission's decision to apply to the entire production of Indica rice in the European Union the uniform rate of EUR 49 per tonne in respect of transport costs, without limiting the adjustment to a certain proportion of sales of milled and semi-milled Indica rice in the European Union which actually requires transport from southern to northern Europe.

150 In the second place as regards the adjustment of import prices, the Commission stated, in recital 36 of the contested regulation, that it had relied on 'data obtained in the framework of an earlier investigation concerning another food product, i.e. satsumas'. It did not, however, provide

reliable and coherent direct evidence or consistent circumstantial evidence as regards the investigation in question and the data from which it was concluded that the post-importation costs should be estimated at approximately 2% of the import price in the present case.

151 Although the applicants made the assumption that the investigation in question was a 2003/2004 investigation, and raised complaints regarding the use of such previous data, the Commission, at the stage of the defence, refuted that assumption and stated that the data in question were 2014 data from an expiry review of anti-dumping measures on certain prepared or preserved citrus fruits.

152 Admittedly, it has already been held, in a case concerning imports of prepared or preserved citrus fruits originating in China, that an adjustment of the import price to 2% was small, so that it was reasonable to assume that it included only the costs incurred up to the arrival of the goods at the importer's warehouse (judgment of 17 February 2011, *Zhejiang Xinshiji Foods and Hubei Xinshiji Foods* v *Council*, T-122/09, not published, EU:T:2011:46, paragraph 85).

153 However, even on the assumption that the applicants must have understood that the adjustment in question stemmed from a 2014 investigation and included only the costs incurred up to the arrival of the goods at the importer's warehouse, there is no element in the information disclosed to them during the administrative procedure or which appears in the contested regulation as to why that stage of the distribution chain of imported products is equivalent to the 'northern Europe' level of the Union industry, or how the transportation prices of satsumas are equivalent to those of rice, a less easily perishable dry good, and, as a consequence, why that adjustment is appropriate in the present case.

154 The Court therefore finds that the evidence on which the Commission relies in order to justify that adjustment is not sufficiently convincing, or is non-existent, and cannot be regarded as direct evidence or circumstantial evidence, establishing the existence of the factor on the basis of which the adjustment of import prices was made and determining its impact on price comparability.

155 In the third place as regards the adjustment of the undercutting analysis in order to take account of differences in the level of trade and to compare the prices of milled rice sold in bulk with those of rice sold in packages, it must be pointed out that the Commission has not adduced any direct evidence in support of that adjustment, nor any circumstantial evidence establishing the existence of the factors in respect of which that adjustment was made and determining its impact on price comparability.

156 It follows from all the foregoing that the Commission did not rely on direct evidence or reliable and relevant circumstantial evidence supporting its decision to make adjustments in the context of the undercutting analysis.

157 Accordingly, the applicants' complaints alleging manifest errors of assessment must also be upheld in so far as the Commission made adjustments to EU prices and import prices.

The complaints alleging infringement of the applicants' rights of defence and of the obligation to disclose the essential facts and considerations or the details underlying them

158 The applicants allege, in essence, infringement of their rights of defence and of Article 17(1) to (4) of the Delegated Regulation, read in conjunction with Article 38(3) of the GSP Regulation, in that the Commission failed to disclose, before adopting the decision to re-establish the Common Customs Tariff duties on imports of Indica rice originating in Cambodia, certain essential facts and considerations, or the details underlying them, on the basis of which it took its final decision.

159 First of all, the applicants submit that the Commission did not disclose to them either the undercutting analysis or the adjustments made after the comments which followed notification of the general disclosure document, or the source data relating thereto, concerning post-importation costs, the costs of transporting rice from southern to northern Europe, and the distinction between the price of sales in bulk and sales in packages.

160 Nor did the Commission disclose the data on which the calculation of the consumption and injury indicators was based, such as market shares and sales volumes, trends in EU production, imports and the prices of those imports, including data received from the Member States and Eurostat and the figures established on the basis of those data, nor the analysis by which it applied the conversion rate for semi-milled rice into milled rice equivalent.

161 Those elements are clearly essential facts and considerations, and the data used in that regard are the details underlying them, with the result that, under Article 17(1) to (4) of the Delegated Regulation, the Commission was under an obligation to disclose them, including publicly accessible data.

162 Next, the applicants submit that, although their comments after the notification of the general disclosure document made it possible to reduce the undercutting margin significantly from 22 to 13% for sales in bulk and to 14% for sales in packages, it cannot be ruled out that the disclosure of the undercutting analysis and the adjustments made thereto, source data in that regard and other important factors could have enabled them to make additional observations. By failing to disclose that information, which the Commission acknowledged, it deprived the applicants of the opportunity to submit their observations in that regard, which could have led the Commission to amend some of its findings and to a further fall in the undercutting margin, or even to call into question the analysis of the causal link between the alleged serious difficulties and imports of milled or semi-milled Indica rice originating in Cambodia.

163 Lastly, according to the applicants, none of the undisclosed material was confidential. Even if some of that material was, it should, under Article 38(3) and (5) of the GSP Regulation, have been the subject of a request for confidentiality and, in any event, disclosed in general terms or in the form of a summary.

164 First of all, the Commission submits that the undercutting analysis and the underlying data could be understood by the applicants in the light of the information contained in the general disclosure document, which concerned the price of imports from Cambodia and the unit prices of the sampled EU millers. Although it admits that it did not disclose the adjustments to that analysis and the underlying facts, it adds that they were made following observations from the interested parties on the general disclosure document and that they led to a decrease in undercutting, so

that those adjustments are favourable to the applicants. It also states that price undercutting is only one of the elements taken into account when assessing serious difficulties caused to the Union industry.

165 The Commission adds that the data underlying the adjustment concerning transport costs from southern to northern Europe was not accessible to the applicants because of a confidentiality request.

166 Next, as regards consumption and injury indicators, although the Commission acknowledges that these are essential facts, it claims that they were included in the general disclosure document. As for the data on the basis of which those indicators were calculated, they are not essential facts or considerations that must be disclosed to the applicants. The applicants could also have made their own calculations on the basis of information included in the general disclosure document or which was publicly available.

167 In that regard, the Commission also refers to Article 16(1) of the Delegated Regulation and Article 12(1) of Decision (EU) 2019/339 of the President of the European Commission of 21 February 2019 on the function and terms of reference of the hearing officer in certain trade proceedings (OJ 2019 L 60, p. 20), which provide that a hearing officer may intervene at the request of an interested party, to review, inter alia, refusals to provide access to the constituted file and disputes on the confidentiality of documents.

168 It is clear from those provisions that the applicants should have requested, during the administrative procedure, access to the data underlying the consumption and injury indicators and the calculation relating to the rice conversion rate. They are therefore no longer entitled to complain before the Court that they were not disclosed.

169 Lastly, the Commission maintains that any irregularities resulting from the failure to disclose certain information to the applicants cannot lead to the annulment of the contested regulation, since the applicants have not shown that the administrative procedure could have led to a different result if such information had been disclosed to them.

170 The Italian Republic and Ente Nationale Risi refer, in essence, to the Commission's arguments.

171 Article 17 of the Delegated Regulation, entitled 'Communication of information', provides:

'1. The Commission shall disclose the details underlying the essential facts and considerations on the basis of which the Commission's decisions are taken.

2. Disclosure shall be given in writing. It shall contain the Commission's findings and shall reflect its intention to reintroduce normal Common Customs Tariff duties or not.

3. Disclosure shall be made, with due regard to the protection of confidential information, as soon as possible and, normally, not later than 45 days prior to a definitive decision by the Commission of any proposal for final action and in any case at an appropriate time for the parties to make comments and for those comments to be considered by the Commission. Where the Commission is not in a position to disclose certain facts or considerations at that time, these shall be disclosed as soon as possible thereafter.

4. Disclosure shall not prejudice any subsequent decision which may be taken but where such decision is based on any different facts and considerations, these shall be disclosed as soon as possible.

5. Submissions made after disclosure is given shall be taken into consideration only if received within a period to be set by the Commission in each case, which shall be at least 14 days, due consideration being given to the urgency of the matter.'

172 First of all, the Court observes that that provision does not make the Commission's disclosure obligation subject to any request from interested parties, seeking the details underlying the essential facts and considerations on the basis of which a safeguard measure is envisaged and of which the applicants wish to be aware.

173 The Commission's interpretation of that provision, according to which the applicants should have requested access to the data at issue, is based on anti-dumping proceedings, in which the anti-dumping regulation confers procedural rights and guarantees on certain interested parties, but the exercise of those rights and guarantees depends on the active participation by those parties in the proceedings in question, which must take the form, at the very least, of the submission of a written request within a stated deadline (judgment of 9 July 2020, *Donex Shipping and Forwarding*, C-104/19, EU:C:2020:539, paragraph 70).

174 While the possibility of receiving final disclosure and subsequently submitting observations in that regard is, in the context of the anti-dumping regulation, subject to the submission of a request to the Commission, such a request is not, however, required by Article 17 of the Delegated Regulation.

175 Next, the Court notes that Article 16 of the Delegated Regulation and Article 12(1) of Decision 2019/339 relate to the involvement of a Hearing Officer during the administrative phase and refer to the specific situation in which the parties concerned have made a request for access to the constituted file or to a specific document, access to which was refused by the Commission and where it is necessary to resolve, inter alia, a dispute concerning the confidentiality of certain documents.

176 That right of interested parties to request access in writing to the file during the administrative phase and the question of any intervention by the Hearing Officer in the event of refusal or a dispute concerning the confidentiality of certain documents are distinct from the Commission's obligation to disclose the details underlying the essential facts and considerations on which it based its final decision, within the meaning of Article 17 of the Delegated Regulation.

177 Therefore, contrary to what is maintained by the Commission, the applicants were not subject to any prior obligation to request, during the administrative procedure, access to the information referred to in Article 17 of the Delegated Regulation in order to be able to rely on an infringement of that provision and of their rights of defence before the General Court.

178 Lastly, the Court notes that, according to the case-law, the rights of the defence include both the right to be heard and the right of access to the court file and are among the fundamental rights forming an integral part of the EU legal order and enshrined in the Charter of Fundamental Rights of the European Union (see, to that effect, judgment of 3 July 2014, *Kamino International Logistics and Datema Hellmann Worldwide Logistics*, C-129/13 and C-130/13, EU:C:2014:2041, paragraph 28 and the case-law cited).

179 As investigative proceedings preceding the adoption of regulations imposing safeguard measures may directly and individually affect the parties concerned and entail adverse consequences for them, the Commission is required to comply with certain procedural principles and guarantees (see, to that effect, judgment of 10 April 2019, *Jindal Saw and Jindal Saw Italia* v *Commission*, T-300/16, EU:T:2019:235, points 74 and 76).

180 Thus, it is settled case-law that, in performing their duty to provide information, the EU institutions must act with all due diligence by seeking to provide the undertakings concerned, as far as is compatible with the obligation not to disclose business secrets, with information relevant to the defence of their interests, choosing, if necessary on their own initiative, the appropriate means of providing such information. The undertakings concerned should, in any event, have been placed in a position during the administrative procedure in which they could effectively make known their views on the correctness and relevance of the facts and circumstances alleged and on the essential facts and considerations on the basis of which the Commission took its decisions and assessed the existence of serious difficulties caused or likely to be caused to the Union industry resulting from imports of the product originating in a beneficiary country (see, by analogy, judgment of 16 February 2012, *Council and Commission* v *Interpipe Niko Tube and Interpipe NTRP*, C-191/09 P and C-200/09 P, EU:C:2012:78, paragraph 76 and the case-law cited).

181 More specifically, the right to be heard guarantees every person the opportunity to make known his views effectively during an administrative procedure and before the adoption of any decision liable to affect his interests adversely (judgments of 4 April 2019, *OZ* v *EIB*, C-558/17 P, EU:C:2019:289, paragraph 53, and of 25 June 2020, *HF* v *Parliament*, C-570/18 P, EU:C:2020:490, paragraph 58).

182 In order for the interested party's submission of views to be effective, it is therefore necessary that they have been submitted in good time so that the Commission may take cognisance of them and assess, with all the requisite attention, their relevance for the content of the measure being adopted.

183 In the context of safeguard measures adopted on the basis of the GSP Regulation, Article 17 of the Delegated Regulation lays down certain detailed rules for the exercise of the right of interested parties to make comments and thus establishes their right to be heard. That article lays down, in paragraph 1 thereof, the requirement for the Commission to disclose the details underlying the essential facts and considerations on the basis of which its decisions are taken.

184 Such an obligation applies, a fortiori, with regard to the essential facts and considerations themselves, especially since Article 17(3) and (4) of the Delegated Regulation expressly refer to the disclosure of 'facts and considerations'.

185 That article also provides, in paragraph 3, that disclosure is to be made as soon as possible and, normally, not later than 45 days prior to a definitive decision by the Commission. In any event, it must intervene at an appropriate time for the parties to make comments and for those comments to be considered by the Commission. That article further provides, in paragraph 4, that where the Commission intends to take a subsequent decision on the basis of facts and considerations different from those previously disclosed, it must disclose those facts and considerations as soon as possible.

186 The wording of Article 17 of the Delegated Regulation contains no indication that that disclosure is purely indicative. Certain language versions of that provision, such as the English and French versions, which use the verbs 'shall' and 'doivent', respectively, or the present indicative, refer expressly to an obligation for the Commission to disclose the details underlying the essential facts and considerations or different facts and considerations on the basis of which it takes its decisions, within the time limits.

187 It is in the light of those principles that the applicants' complaints relating to the information which the Commission failed to disclose must be examined. To that end, the Court decides to analyse the complaints relating to the non-disclosure, first, of the data underlying the consumption and injury indicators and, secondly, of the undercutting analysis and the adjustments made following the comments of the interested parties on the general disclosure document.

The data underlying the consumption and injury indicators

188 In the present case, in the general disclosure document, the Commission disclosed to the interested parties the facts and considerations which it considered essential and on the basis of which it intended temporarily to reintroduce the Common Customs Tariff duties on imports of Indica rice originating in Cambodia, including the figures relating to the consumption and injury indicators and the analysis of the trends which those indicators demonstrated, as is apparent from paragraphs 11 to 16 above.

189 The Court points out that, as is apparent from paragraphs 172 to 186 above, Article 17 of the Delegated Regulation does not make the Commission's disclosure obligation subject to any active participation by the interested parties in the administrative procedure. Furthermore, the rights of the defence, observance of which the Commission is required to ensure in an investigation concerning the adoption of safeguard measures on the basis of the GSP Regulation, are applied in the Delegated Regulation through a complete system of procedural guarantees designed, inter alia, to enable interested parties effectively to defend their interests.

190 In that regard, it must be pointed out that Article 17(1) of the Delegated Regulation does not limit the Commission's disclosure obligation to the essential facts and considerations on the basis of which it takes its decisions, but refers expressly to the details underlying them.

191 The Commission acknowledged that the consumption and injury indicators were essential facts. The information and data underlying those indicators are therefore details underlying essential facts and considerations, which had to be disclosed to the applicants, in accordance with Article 17 of the Delegated Regulation.

192 As regards, first of all, the conversion rates for semi-milled rice into equivalent milled rice, it is apparent from footnote 5 of the general disclosure document that the Commission stated that that conversion rate was fixed by Commission Regulation (EC) No 1312/2008 of 19 December 2008 fixing the conversion rates, the processing costs and the value of the by-products for the various stages of rice processing (OJ 2008 L 344, p. 56), and that it applied both to imports and to volumes produced in the European Union. The conversion rate between semi-milled rice and milled rice is laid down in Article 1(3) of that regulation, so that the applicants had access to that information. No infringement of the rights of the defence can be found in that regard.

193 Next, as regards the data which enabled the Commission to establish the figures relating to consumption in the Union, the market shares held by the Union industry and by the Kingdom of Cambodia, the trend of imports of Indica rice originating in Cambodia and their prices and the production, stock and area allocated by the Union industry to the cultivation of Indica rice, referred to in recitals 19, 21, 24, 26, 33, 35, 36 and 38 of the general disclosure document, and in recitals 25, 27, 30, 32, 47, 49, 52 and 53 of the contested regulation, it must be noted that it is only stated therein that those figures were compiled by the Commission based on data received from the Member States or Eurostat data.

194 However, it appears that the Eurostat data in question or the data received from the Member States were not included in the file made available to the applicants and the hyperlink in footnote 4 to the general disclosure document refers to the general presentation of the Common Agricultural Policy of the European Union with regard to 'cereals, oilseeds, protein crops and rice' on the Commission's website.

195 The Commission cannot rely in that regard on paragraph 372 of the judgment of 27 September 2006, *Archer Daniels Midland* v *Commission* (T-329/01, EU:T:2006:268). It is apparent from that judgment that the publicly available publication at issue in that case consisted of a specific publication which had been expressly referred to in a footnote to the statement of objections. In the present case, by contrast, the hyperlink in footnote 4 of the general disclosure document does not refer directly to the data made available by Eurostat and that data, like the data received from the Member States, were not disclosed to the applicants in any other way.

196 In any event, even though the Eurostat statistics were publicly available and the applicants had access to the final figures relating to the consumption and injury indicators in the general disclosure document, the Commission did not explain the methodology followed, where appropriate, in order to combine the data received from the Member States with the Eurostat statistics for the purpose of establishing the final data contained in the general disclosure document and the contested regulation.

197 Consequently, the Commission infringed Article 17 of the Delegated Regulation by failing to disclose Eurostat information and data from the Member States obtained for the purposes of the investigation and calculation of the consumption and injury indicators to the interested parties in good time.

198 Lastly, as regards, in particular, the data used in order to determine EU production, the Commission acknowledges that it provided only a partial calculation, since the data did not reflect the opening stock or the use of rice as seeds. It adds, however, that that calculation was in line with the calculation of the balance sheet and that the applicants could have understood it on the basis of the balance sheet for rice to which they had access.

199 Admittedly, it is apparent from the balance sheets concerning rice, annexed to the applicants' written pleadings, that the figures relating to the closing stocks in recital 36 of the general disclosure document, and reproduced in recital 52 of the contested regulation, correspond to the difference between, on the one hand, the sum of the beginning stocks, usable production and imports and, on the other hand, total domestic use and exports. However, although that accounting formula makes it possible to calculate the closing stocks, it was only described by the Commission in its pleadings before the Court. By contrast, it is in no way apparent from the general disclosure document and the Commission does not claim to have disclosed it to the applicants during the administrative procedure.

200 Furthermore, although the applicants had access to two balance sheets concerning rice covering the investigation period, it is apparent from the Commission's replies to the questions put by the Court by way of measures of organisation of procedure that the Commission relied on another balance sheet, from 2018, the figures of which resulted from a compilation of data carried out by the Commission which differed in certain respects from the figures set out in the applicants' balance sheets concerning rice. That balance sheet was not disclosed to the applicants during the administrative procedure, nor the underlying data and the methodology used by the Commission to compile those data.

201 Moreover, although the Commission submits that it was clearly stated in recital 18 to the general disclosure document that the data concerning Union producers' sales had been calculated on the basis of the rice balance sheets, by adding the beginning stocks and usable production and deducting seeds, exports and ending stocks, and that this is a 'recognised accounting formula', the Court notes that that recital states that 'the consumption of Indica rice in the Union was established on the basis of the data collected by the Member States by the Commission and import statistics available through Eurostat'. There is no mention of the volume of sales or of the accounting formula used by the Commission.

202 Similarly, the calculation method used by the Commission to reach the final consumption figures in the European Union, which are set out in recital 19 of the general disclosure document and are reproduced in recital 25 of the contested regulation, is not identifiable in the general disclosure document.

203 The applicants did not therefore have at their disposal the details underlying the consumption and injury indicators nor the relevant information for reproducing the Commission's calculations in that regard, since the Commission had failed to fulfil its obligation to disclose information, within the meaning of Article 17 of the Delegated Regulation.

204 It is conceivable that the applicants would have been better able to defend themselves if it were not for those irregularities.

205 According to the case-law of the Court of Justice, although an applicant cannot be required to show that the Commission's decision would have been different in content in the absence of the procedural error in question, but simply that such a possibility cannot be totally ruled out, since that party would have been better able to defend itself had it not been for that error, the fact remains that the existence of an irregularity relating to the rights of the defence can result in the annulment of the measure in question only where there is a possibility that, due to that irregularity, the administrative procedure could have resulted in a different outcome, and thus in fact adversely affected the rights of defence (see, to that effect, judgment of 16 February 2012, *Council and Commission* v *Interpipe Niko Tube and Interpipe NTRP*, C-191/09 P and C-200/09 P, EU:C:2012:78, paragraphs 78 and 79 and the case-law cited).

206 It has previously been held that that requirement is satisfied where an applicant, not having had access to the documents which had to be disclosed to it pursuant to the rights of the defence, has not been able effectively to submit its observations and has thus been deprived of even a slight chance that it would have been better able to defend itself (see, to that effect, judgment of 16 January 2019, *Commission* v *United Parcel Service*, C-265/17 P, EU:C:2019:23, paragraph 56).

207 In such a case, a failure to disclose documents in the file on which the administration or an EU institution relied inevitably affects, with regard to the protection due to the rights of the defence, the legality of measures taken at the end of a procedure likely to adversely affect the applicant (see, to that effect, judgments of 4 April 2019, *OZ* v *EIB*, C-558/17 P, EU:C:2019:289, paragraph 78, and of 25 June 2020, *HF* v *Parliament*, C-570/18 P, EU:C:2020:490, paragraph 73).

208 In the particular circumstances of the present case, the applicants' lack of access to the calculations of the consumption data and the indicators of serious difficulties was therefore such as to limit their ability to submit relevant observations. The fact that they did not have, in the present case, certain information concerning the calculation methodology is relevant for the purpose of assessing whether the outcome of the procedure could have been different if the Commission had disclosed those calculations.

209 The fact of having all the information relating to the consumption and injury indicators and the detailed calculations made by the Commission and not just the data used for those calculations is, in general, capable of enabling the applicants to make observations that are more useful for their defence. They can then verify exactly how the Commission used those data and compare them with their own calculations, which would enable them to identify possible errors made by the Commission which would otherwise be undetectable (see, by analogy, judgments of 30 June 2016, *Jinan Meide Casting* v *Council*, T-424/13, EU:T:2016:378, paragraph 208 and of 1 June 2017, *Changmao Biochemical Engineering* v *Council*, T-442/12, EU:T:2017:372, paragraph 156).

210 As is apparent from paragraphs 196 and 199 to 202 above, obtaining the data and calculation methods underlying the consumption and injury indicators would have constituted for the applicants a substantial increase in information which, in view of the circumstances of the case, would have enabled them to submit more relevant observations than those which they had already submitted, in particular, following communication of the general disclosure document.

211 Therefore, it is possible that, as a result of that irregularity, the outcome of the administrative procedure might have been different and thus the applicants' rights of defence were specifically undermined.

The undercutting analysis and the adjustments

212 It is apparent from recitals 33 to 42 of the contested regulation that the undercutting analysis and the adjustments made by the Commission are essential elements of the undercutting calculations. Furthermore, the Commission stated, in its written pleadings, that price undercutting was one of the elements behind the conclusion as to the existence of serious difficulties caused to the Union industry. It also confirmed at the hearing that it relied on the undercutting analysis in order to conclude that there was a causal link between the serious difficulties encountered by the Union industry and imports milled or semi-milled Indica rice originating in Cambodia.

213 As regards, in the first place, the undercutting analysis, it should be noted that, in the general disclosure document, the Commission indicated the import prices from Cambodia and the unit prices of the sampled EU millers.

214 It is apparent from the documents before the Court that the applicants correctly grasped the scope of that information and were in a position to carry out their own calculations as regards the undercutting margin of 22%. The failure to disclose to the applicants the calculation of the undercutting margin, as disclosed in the general disclosure document, did not therefore deprive them of any opportunity to submit certain relevant comments.

215 However, as is apparent from paragraphs 194 to 196 above, the Commission did not disclose the Eurostat data, including those which enabled it to establish the figures relating to the trend in the prices of imports from Cambodia, in breach of its obligation to disclose information within the meaning of Article 17 of the Delegated Regulation.

216 As regards the figures establishing the trend of EU prices, it is apparent from recital 39 of the general disclosure document and from recital 54 of the contested regulation that they were compiled on the basis of the replies to the questionnaires of the EU millers in the sample. Although it is apparent from the documents in the case that the applicants had access to those replies, it must be pointed out that the parts relating to prices were stated to be confidential. As the applicants rightly point out, the aggregate data of EU millers are not confidential and are set out in recital 39 of the general disclosure document, reproduced in recital 54 of the contested regulation. In contrast, the applicants do not claim that the millers' individual data should have been disclosed to them, with the result that they cannot rely on an infringement of their rights of defence in that regard.

217 As regards, in the second place, the adjustments made to the undercutting analysis, it is clear that that they were referred to for the first time in the contested regulation. It is also apparent from recitals 34 to 37 of that regulation that they were adopted by the Commission in order to respond to the comments of the interested parties, including the Kingdom of Cambodia, following disclosure of the general disclosure document, and to ensure a fair comparison.

218 The adjustments made to the undercutting analysis are therefore not only essential facts and considerations on the basis of which the Commission decided to re-establish temporarily the Common Customs Tariff duties on imports of Indica rice originating in Cambodia, but also led to a change in the undercutting margins and final conclusions which had previously been disclosed to the interested parties in the general disclosure document.

219 The adjustments thus made changes to the trends on which the injury assessment was based, since the Commission referred, in addition to the general undercutting margin of 22%, already set out in the general disclosure document, to a new 13% margin for sales in bulk and 14% margin for sales in packages, in the contested regulation.

220 Under Article 17(4) of the Delegated Regulation and in the light of the applicants' right to be heard, as the Commission's decision was based on facts and considerations different from those previously disclosed, it was obliged to disclose to the applicants the adjustments made to the undercutting analysis and, a fortiori, the undercutting analysis after adjustment, as soon as possible. However, the Commission concedes that it did not provide any information enabling the applicants to acquaint themselves with those adjustments before the contested regulation was adopted and to make known their views with regard to them.

221 Admittedly, as mentioned in paragraph 141 above, information must be disclosed with due regard to the protection of confidential information. However, the Commission did not assert during the administrative procedure, or in the contested regulation, that the information in question was confidential data to which it could not give access to the applicants.

222 It relied solely on the confidentiality of the evidence justifying the adjustment of EU prices at the stage of the defence. In any event, it is apparent from paragraph 145 above that the Commission could not validly rely on the confidentiality of all the information which led to the adjustment of transport costs in the European Union in a uniform amount of EUR 49 per tonne.

223 Furthermore, whilst, under Article 17(3) of the Delegated Regulation disclosure is made with due regard to protection of confidential information, respect for that confidential information cannot deprive the rights of the defence and the right to effective judicial protection of their substance (see, to that effect, judgment of 20 March 1985, *Timex* v *Council and Commission*, 264/82, EU:C:1985:119, paragraph 29).

224 In addition, Article 38(5) of the GSP Regulation states, in essence, that paragraphs 1 to 4 of that article, relating to the use of information, including information which has been the subject of a request for confidential treatment, do not preclude the Commission from referring to general information and, in particular, to the reasons on which decisions taken pursuant to the GSP Regulation are based, while taking account, however, of the legitimate interests of the natural and legal persons concerned that business secrets are not disclosed.

225 According to the case-law, the sufficiency of the information provided by the Commission must be assessed in relation to how specific the request for information was (see, by analogy, judgments of 18 December 1997, *Ajinomoto and NutraSweet* v *Council*, T-159/94 and T-160/94, EU:T:1997:209, paragraph 93, and of 1 June 2017, *Changmao Biochemical Engineering* v *Council*, T-442/12, EU:T:2017:372, paragraph 143).

226 In that context, the Commission must seek, as far as was compatible with the obligation not to disclose business secrets, to provide the interested parties with information relevant to the defence of their interests, choosing, if necessary on its own initiative, the appropriate means of providing such information (see, by analogy, judgments of 20 March 1985, *Timex* v *Council and Commission*, 264/82, EU:C:1985:119, paragraph 30 and of 1 June 2017, *Changmao Biochemical Engineering* v *Council*, T-442/12, EU:T:2017:372, paragraph 141).

227 In the present case, it is not disputed that the Commission did not provide any information concerning the adjustment of EU prices during the administrative procedure.

228 The same is true of the adjustment of import prices and the adjustment for the purposes of taking account of differences in the level of trade and of comparing the prices of milled rice sold in bulk with those of rice sold in packages, which appeared in the contested regulation, without the Commission providing any information concerning the calculations made and the data used to make such adjustments. Moreover, the contested regulation does not refer to any valid justification for a possible refusal to disclose those adjustments.

229 Since the adjustments made to the undercutting analysis constitute essential facts and considerations on the basis of which the Commission took the decision to reintroduce the Common Customs Tariff duties on imports of Indica rice originating in Cambodia, the

Commission was under an obligation to disclose them to the applicants, together with the details underlying them. Article 17 of the Delegated Regulation and the applicants' right to be heard were therefore infringed.

230 As is apparent from the case-law cited in paragraphs 205 to 207 above, an infringement of the rights of the defence may result in the annulment of a decision adopted at the end of a procedure where it is possible that, as a result of that irregularity, the outcome of the administrative procedure might have been different, and where the applicants were deprived of even a slight chance of better defending themselves had there been no procedural irregularity.

231 In the present case, the applicants submitted, during the investigation procedure, a number of observations on the basis of the information already available to them, some of which resulted in a change in the undercutting margin calculations.

232 It is apparent from recitals 34 and 35 of the contested regulation that the Kingdom of Cambodia disputed the methodology used by the Commission to calculate the undercutting margin in the general disclosure document and claimed that import prices had to be adjusted by including post-import costs. In response to those observations, the Commission decided to review its calculations in order to take into account not only post-importation costs but also the relevant transport costs in the European Union, as well as differences in the level of trade affecting price comparability, as has already been referred to in paragraphs 119, 120 and 126 above.

233 Furthermore, as the applicants themselves stated at the hearing, they produced, in their observations on the Commission's replies to the questions put by the Court by way of measures of organisation of procedure, and in particular in response to the Commission's table establishing a numerical estimate of consumption of Indica rice and Japonica rice in the European Union for 1993 and 1994, a table relating to 1995 and 1996, which showed different consumption habits, in particular in respect of Italy and Portugal.

234 It is therefore clear that the applicants would have been better able to defend themselves in the absence of procedural irregularities relating to the non-disclosure of the data underlying the undercutting analysis and the adjustments at issue and that it cannot be ruled out that their arguments in that regard could have influenced the content of the Commission's decision, in particular in view of the fact that the Commission had already changed its position and the undercutting calculations as a result of the comments which had been submitted to it by the interested parties after the communication of the general disclosure document (see, to that effect, judgment of 1 October 2009, *Foshan Shunde Yongjian Housewares & Hardware* v *Council*, C-141/08 P, EU:C:2009:598, paragraph 92).

235 In addition, since it is a prerequisite of the lawfulness of the undercutting calculations enabling the existence of serious difficulties to be determined that a fair comparison be made between the import price and the Union industry price, that is, at the same level of trade, the applicants cannot be regarded as having been placed in a position in which they could effectively make known their views when they were not provided with any information to show that the comparison was fair (see, by analogy, judgment of 17 February 2011, *Zhejiang Xinshiji Foods and Hubei Xinshiji Foods* v *Council*, T-122/09, not published, EU:T:2011:46, paragraph 85).

236 As the applicants pointed out, in essence, at the hearing, the fact that they did not have, in the present case, information concerning the adjustments and calculations of the undercutting margins is relevant for the purpose of assessing whether the outcome of the procedure could

have been different if the Commission had disclosed them. At the time when the contested regulation was adopted, the applicants had only a general knowledge of the calculation of the undercutting margin of 22%. They were unaware, in particular, before that date, that the import prices and Union industry prices had been adjusted by the Commission. None of the information disclosed to them during the administrative procedure was devoted to the question of how the undercutting calculations had been revised to arrive at an undercutting of 13% for bulk sales and 14% for sales in packages, or to the reasons for the choice of an import adjustment estimated at 2% of the import price and an adjustment to the Union industry prices in a uniform amount of EUR 49 per tonne.

237 If the applicants had been in possession of the undercutting analysis and its adjustments, as well as the undercutting margin calculations, they would have been able, at the very least, to submit comments on the results which the Commission had arrived at. The applicants could thus, if necessary, have compared those results with their own results. As a result, they would, if necessary, have been in a position to challenge more specifically the method used by the Commission and would have had a greater chance of having their objections taken into account by the Commission.

238 The obtaining of information on the adjustments and calculations of the new undercutting margins and the detailed calculations made by the Commission therefore clearly constituted a substantial increase in the information held by the applicants which, in view of the circumstances of the case, was such as to enable them to submit more relevant observations than those already submitted by the Kingdom of Cambodia.

239 Therefore, it cannot be ruled out that, had the applicants had the undercutting margin calculations in their possession, they would have been able to make use of that information in a way that would be useful for the exercise of their rights of defence.

240 Accordingly, the applicants are right to rely on an infringement of their rights of defence and of Article 17 of the Delegated Regulation, and it is possible that the outcome of the administrative procedure might have been different, thus their rights of defence were specifically undermined.

241 In the context of examining an infringement of the rights of the defence, account cannot be taken of the fact alleged by the Commission that the applicants could request it, after disclosure of the general disclosure document, to take account of post-importation costs. Such a factor cannot affect, where relevant, the question whether there has been an infringement of the rights of the defence. What is important in order to ensure that the rights of the defence are observed is the possibility for the party concerned to know the details underlying the essential facts and considerations on the basis of which the Commission took the decision to reintroduce the Common Customs Tariff duties. For the same reasons, the factors which demonstrate that the comparison of the import price and the Union industry price was made at the same level of trade are of vital importance for the purpose of ensuring the effective exercise of the rights of the defence (see, by analogy, judgment of 17 February 2011, *Zhejiang Xinshiji Foods and Hubei Xinshiji Foods* v *Council*, T-122/09, not published, EU:T:2011:46, paragraphs 90 and 91).

242 The fact that the adjustments made at the stage of the contested regulation were favourable to the applicants, the undercutting having gone from 22% to 13% for bulk sales and 14% for sales in packages, respectively, is therefore irrelevant.

243 The applicants' complaints alleging infringement of their rights of defence and of Article 17 of the Delegated Regulation must therefore be upheld.

244 It follows from all the foregoing that the contested regulation must be annulled.

Costs

245 Under Article 134(1) of the Rules of Procedure of the General Court, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has been unsuccessful, it must be ordered to bear its own costs and to pay those of the applicants, in accordance with the form of order sought by the applicants.

246 In addition, under Article 138(1) of the Rules of Procedure, the Member States and institutions which have intervened in the case are to bear their own costs. Under Article 138(3) of the Rules of Procedure, the Court may order an intervener other than those referred to in paragraph 1 to bear his own costs.

247 The Italian Republic and Ente Nazionale Risi must therefore be ordered to bear their own costs.

On those grounds,

THE GENERAL COURT (Fifth Chamber, Extended Composition)

hereby:

1. **Annuls Commission 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;**

2. **Orders the European Commission to bear its own costs and to pay the costs incurred by the Kingdom of Cambodia and by Cambodia Rice Federation (CRF);**

3. **Orders the Italian Republic and Ente Nazionale Risi to bear their own costs.**

Papasavvas Spielmann Öberg

Mastroianni Norkus

Delivered in open court in Luxembourg on 9 November 2022.

E. Coulon M. van der Woude
Registrar President