

Hummingbird Rice Mills Limited v Suriname and The Caribbean Community

Citation: [\[2012\] CCJ 1 \(OJ\)](#)
Date of Judgment: 23 February 2012
Nature of Judgment: Judgment on merits
Composition of the Court: Judges: R Nelson, A Saunders, J Wit, D Hayton and W Anderson

CCJ Application No	Parties
OA 1 of 2011	Claimant Hummingbird Rice Mills Limited Defendants Suriname The Caribbean Community

Counsel

- Hummingbird Rice Mills Limited:
Mr Elvis Connor and Ms Linda Greene, Attorneys-at-law
- Suriname:
Mr Hans Lim A Po, Attorney-at-Law
- The Caribbean Community:
Ms Safiya Ali, Ms Gladys Young and Dr Chantal Ononaiwu Attorneys-at-Law
- The State of Trinidad and Tobago:
Ms Christlyn Moore and Mr Christopher Sieuchand, Attorneys-at-Law

Nature of Dispute

The dispute involved a claim by Hummingbird Rice Mills Limited, a Trinidad and Tobago company that produces flour, that Suriname, with the unlawful acquiescence of the Caribbean Community (CARICOM), the Council for Trade and Economic Development (COTED) and the Secretary-General of the Caribbean Community (CARICOM), had failed to implement the Common External Tariff (CET) on flour, contrary to Articles 82 and 83 of the Revised Treaty of Chaguaramas (RTC).

Summary of Legal Conclusions and Orders

- The Court found that Suriname breached its obligations under Article 82 of the RTC to establish and maintain the CET during the relevant period.
- The Court ordered that written submissions for costs were to be filed and exchanged within 21 days of the judgment.

Legal Provisions at Issue

- Articles 9,15, 82, 83 and 222 of the RTC

Other Relevant Community Law / Material Relied on

- N/A

Past CCJ Case Law

- *Hummingbird Rice Mills Limited v Suriname and The Caribbean Community* [2011] CCJ 1 (OJ)
- *TCL v The Caribbean Community* [2009] CCJ 4 (OJ)
- *Trinidad Cement Limited and TCL Guyana Incorporated v Republic of Guyana* [2009] CCJ 5 (OJ)

Other Sources of International Law

- *Portugal v Commission Case C-88/03*, [2006] ECR
- *Barcelona Traction, Light and Power Co*, ICJ Rep 1970
- *Vienna Convention on the Law of Treaties 1969*

Facts

The Claimant, Hummingbird Rice Mills Limited is incorporated in Trinidad and Tobago and is engaged in the production of flour. The dispute arose out of a letter issued by the Ministry of Trade and Industry in Trinidad and Tobago in February 2006 notifying the CARICOM Secretariat of Suriname's failure to impose the 25% CET on wheat or meslin flour between January 2006 and 14 June 2010 ("the relevant period"). This information was passed onto COTED, which, under Article 15 of the RTC, is tasked with overseeing the operation of the CARICOM Single Market. COTED allowed for the launching of an investigation into the matter by Suriname. Four and a half years later, in 2010, Suriname enacted a Ministerial Decree allowing for the State's full compliance with the CET.

Findings

The Claimant claimed that Suriname breached (1) Article 82 of the Revised Treaty of Chaguaramas (RTC) by not implementing the Common External Tariff (CET); and (2) Article 83 of the RTC by failing to incorporate the CET into its domestic laws. The Claimant further alleged that the Secretary-General of CARICOM, through COTED, unlawfully accepted

Suriname's undertakings and acquiesced in COTED's extensions of time granted for compliance with the CET. Moreover, the Claimant alleged that the Secretary-General illegally and irrationally made an implied decision to authorise the suspension of the CET over the relevant period. The Claimant claimed damages for loss resulting from Suriname's violation of Articles 82 and 83 of the RTC, as well as COTED's alleged failure to enforce Suriname's compliance with the CET over the relevant period.

With respect to Suriname's claim under Article 82 of the RTC, the Court affirmed that Article 82 imposes an unambiguous obligation on Member States to maintain and establish a CET of 25% on wheat or meslin flour imported from extra regional sources. Notwithstanding the explanations offered by Suriname, the breach was unacceptable.

As regards Suriname's claim under Article 83 of the RTC, the Court found that there was no evidential justification to support the claim that the Secretary-General could or did in fact grant authorisation to Suriname to suspend the CET. Moreover, the allegation of dereliction of duty against the Secretary-General and COTED concerned their broader institutional responsibilities of office and therefore could not be properly brought under Article 83 of the RTC, which sets out specific responsibilities of COTED and the Secretary-General with respect to applications for the suspension of the CET.

The Court further found that in the absence of a specified mandate from COTED, there was no justiciable basis for claims relating to the detailed responsibilities of the Secretary-General in relation to the monitoring and implementation of the CET. The Secretary-General had fulfilled his responsibility under Article 24 of the RTC by reminding Suriname of COTED's decisions which required Suriname to impose the CET on flour. Consequently, the Court concluded that the Secretary-General had fulfilled his general role of ensuring compliance with the CET and the claim for unlawful conduct by the Community in relation to the conduct of the Secretary-General was dismissed.

With respect to the Claimant's claim for damages in respect of loss suffered as a result of Suriname's failure to impose the CET over the relevant period, the Court confirmed that a State may incur non-contractual liability for damages for breach of the RTC provided that the Claimant can demonstrate that the provision alleged to be breached was intended to benefit that Claimant; that such a breach is serious; that there is substantial loss; and, that there is a causal link between the breach by the State and the loss or damage to the Claimant. The Claimant had met certain elements of the test, namely, that there had been a breach of a provision intended to benefit the Claimant and the breach was a serious one. The claim for damages failed, however, as the Claimant failed to adduce sufficient evidence to prove that it suffered substantial loss resulting from the failure of Suriname to apply the CET in accordance with its obligation under Article 82 of the RTC. Therefore, despite the severity of Suriname's breach, the Claimant was denied damages as it had failed to provide adequate evidence to maintain claim for losses.

Considering the above, the Court declared that Suriname had breached its obligations under Article 82 of the RTC to establish and maintain the CET over the relevant period and ordered written submissions on costs to be filed and exchanged by the parties within 21 days of its judgment.

This summary should not be used as a substitute for the decision of the Caribbean Court of Justice.