

Trinidad Cement Limited v The State of Trinidad and Tobago, Rock Hard Distribution Limited and Mootilal Ramhit and Sons Contracting Limited; and another Application

Citation: [\[2018\] CCJ 4 \(OJ\)](#)
Date of Judgment: 11 December 2018
Nature of Judgment: Judgment on merits
Composition of the Court: President: A Saunders
Judges: J Wit, W Anderson, M Rajnauth-Lee and D Barrow

CCJ Application No	Parties	
TTOJ2018/001	Claimant	Trinidad Cement Limited
	Respondent	The State of Trinidad and Tobago
	Interveners	Rock Hard Distribution Limited Mootilal Ramhit and Sons Contracting Limited
TTOJ2018/002	Claimants	Trinidad Cement Limited Arawak Cement Limited
	Respondent	The State of Barbados
	Intervener	Rock Hard Cement Limited

Counsel

- Claimant in TTOJ2018/001:
Mr Gilbert Peterson SC, Mr Gregory Pantin and Mr Miquel Vasquez, Attorneys-at-Law
- Claimants in TTOJ2018/002:
Mr Reginald Armour SC and Mr Raphael Ajodhia, Attorneys-at-Law
- Intervener in Rock Hard Distribution Limited and Rock Hard Cement Limited:
Mr Allan Wood QC and Ms Symone M Mayhew, Attorneys-at-Law

- The Caribbean Community:
Dr Corlita Babb-Schaefer and Mr O’Neil Francis, Attorneys-at-Law

Nature of Dispute

This dispute concerned two proceedings involving alleged misclassification of cement by the State of Trinidad and Tobago and the State of Barbados, the two Respondents in TTOJ2018/001 and TTOJ2018/002 respectively. Trinidad Cement Limited (TCL), the Claimant in both proceedings, and Arawak Cement Limited, also a Claimant in the second proceeding, claimed that Rock Hard cement should be classified as building cement (grey) rather than as “other hydraulic cement”. The main issue concerned the jurisdiction of the Council for Trade and Economic Development (COTED) to make classification determinations and whether the Caribbean Community (CARICOM) and/or COTED could interfere with settled rights.

Summary of Legal Conclusions and Orders

- The Court found that COTED has competence but not *ipso facto* jurisdiction to classify goods that are the subject of the Common External Tariff (CET).

Legal Provisions at Issue

- Articles 15, 82, 83, 84, 214 and 222 of the RTC

Other Relevant Community Law / Material Relied on

- N/A

Past CCJ Case Law

- *Trinidad Cement Limited and TCL Guyana Incorporated v the State of the Co-operative Republic of Guyana* [2009] CCJ 1 (OJ)
- *Trinidad Cement Limited v Caribbean Community* [2009] CCJ 4 (OJ)

Other Sources of International Law

- *Reparation for Injuries Suffered in the Service of the United Nations*, Advisory Opinion, 1949 ICJ 174 (April 11)

Facts

The Claimants, Trinidad Cement Limited (“TCL”) and Arawak Cement Limited (“ACL”), cement manufacturing companies based in Trinidad and Tobago and Barbados respectively claimed that the Respondent States Trinidad and Tobago and Barbados violated Articles 82 and 83. The Claimants, Respondents and Interveners were of varying beliefs as to whether

Rock Hard cement should have been classified as building cement (grey) rather than “other hydraulic cement” in consultation with COTED or the Secretary-General of the Community on behalf of COTED. In this regard, parties were invited to make submissions on the jurisdiction of the Caribbean Community/COTED to make classification determinations pursuant to the Revised Treaty of Chaguaramas (RTC).

Findings

Having regard to the varying submissions made by the parties and interveners in the dispute, the Court found that COTED had jurisdiction, but not *ipso facto* compulsory or exclusive competence, to determine classification issues.

The Court examined the policy responsibilities and objectives of COTED under the RTC. Article 15 imposes a duty on COTED to promote the development and oversee the operation of the CSME. Article 82 requires COTED to set out plans and schedules in its relevant determinations under which Member States are mandated to establish and maintain a CET in respect of all goods which do not qualify for community treatment. Article 83(1) grants COTED the authority to alter or suspend the CET. Article 83(8) requires COTED to continuously review the CET to assess its impact on production and trade, and to secure its uniform implementation throughout the Community by reducing reliance on a discretionary application in the daily administration of the tariff. Article 84(10) imposes a duty on COTED to continuously review the schedule and list of goods and empowers COTED to review the Schedule to ensure that the objectives of the Community are satisfied.

Based on the foregoing provisions and international case law, the Court found that the doctrine of implied powers operates to support the proposition that COTED has the competence to engage in matters which, even if, they are not expressly stated in the RTC, are conferred upon it as being essential to the discharge of its functions. Considering the functions ascribed to COTED by Article 83(8), the Court reasoned that COTED had implied powers to engage in the classification of goods to harmoniously administer the CET in the region.

Further, the Court found that although classification issues could be properly addressed by COTED under COTED's rules of procedure, COTED did not, *ipso facto* have compulsory or exclusive competence to determine classification issues. The Court's jurisdiction in respect of classification issues would operate in cases where its duty to review the decisions of COTED is invoked or where the Court is bound to provide such guidance on the applicable legal principles as it considers appropriate.

Accordingly, the Court outlined three scenarios in which its jurisdiction may operate. First, where an issue of classification arises in domestic law that is not settled in the normal interchange between the customs officials and the importer. Second, the parties may through the support of relevant States seek special leave of the Court or request resolution before any court or tribunal as prescribed by the relevant laws of the Member State concerned. Third, a

party may, subject to any threshold or leave requirements, bring an action directly before the Court. Notwithstanding the foregoing, the Court noted that, where it is expedient to do so, it may seek assistance from CARICOM and COTED regarding scenarios 2 and 3 above.

In considering its treatment of relevant decisions of the World Customs Organization (WCO), the Court determined that such decisions would be highly persuasive and therefore ordinarily admissible in proceedings, barring some reason to disregard them. This is because the WCO has global authority for the classification of goods and its widely accepted Harmonised System of Classification, in use by the World Trade Organization (WTO), is the basis for the classification of goods for the CARICOM CET.

The Court, therefore, concluded that COTED, although not a court, has competence but no *ipso facto* jurisdiction to classify goods subject to the CET; and found that relevant decisions of the WCO are admissible in its proceedings, and are to be accorded such weight as the Court considers appropriate.

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