

Trinidad Cement Limited and Arawak Cement Limited v The State of Barbados and Rock Hard Cement Limited

Citation: [\[2018\] CCJ 5 \(OJ\)](#)
Date of Judgment: 11 December 2018
Nature of Judgment: Judgment on Interim Measures (Intervener seeks to have interim measures discharged)
Composition of the Court: President: A Saunders
Judges: J Wit, W Anderson, M Rajnauth-Lee and D Barrow

CCJ Application No	Parties	
TTOJ2018/002	Claimants	Trinidad Cement Limited
		Arawak Cement Limited
	Defendant	The State of Barbados
	Intervener	Rock Hard Cement Limited

Counsel

- Trinidad Cement Limited and Arawak Cement Company Limited:
Mr Reginald T A Armour SC and Mr Raphael Ajodhia, Attorneys-at-Law
- The State of Barbados:
Ms Jennifer Edwards QC, Solicitor General and Ms Anika Jackson,
Attorney-at-Law
- Rock Hard Cement Limited:
Mr Allan Wood QC and Ms Symone Mayhew, Attorneys-at-Law

Nature of Dispute

The dispute concerned a claim by Trinidad Cement Limited (TCL) and its Barbadian subsidiary Arawak Cement Company Limited (ACCL) against the State of Barbados. The Claimants alleged that (a) the Defendant State had wrongfully lowered the Common External Tariff (CET) of 60% on the importation of extra-regional “other hydraulic cement” agreed to by the Council for Trade and Economic Development (COTED) and (b) the misclassification of that cement contrary to Articles 9, 26, 32, 79 and 83 of the Revised Treaty of Chaguaramas (RTC). The Claimants were granted interim measures that mandated that Barbados apply a 60% tariff

to the Intervener's, Rock Hard Cement Limited (RHCL), extra-regional 'other hydraulic' cement under Article 218 of the RTC. RHCL however sought to have the interim order discharged.

Summary of Legal Conclusions and Orders

- The Intervener's application to discharge the interim measures was refused.
- Costs to be determined upon the resolution of the Originating Application.

Legal Provisions at Issue

- Article 218 of the RTC

Other Relevant Community Law / Material Relied on

- Rule 12 of the CCJ Original Jurisdiction Rules 2017

Past CCJ Case Law

- N/A

Other Sources of International Law

- *Commission of the European Communities v Argedon GmbH* ECJ 14.02.2002 C-440/01
- *European Medicines Agency (EMA) v Pari Pharm GmbH and Novartis Euripharm Ltd* CJEU 18.10.2016 C-406/16

Facts

The Claimants, TCL and its Barbados subsidiary, ACCL commenced proceedings against Barbados and RHCL, over the government reducing the CET on extra regional "other hydraulic" cement as well as the misclassification of extra-regional cement imported by RHCL as "other hydraulic cement. The Claimants obtained an order for interim measures in response to RHCL's importation of cement from Turkey into Barbados during the relevant period and Barbados' classification of it as "other hydraulic cement" and levying a tariff of 5%. The Claimant maintained that Barbados is obliged to levy tariff of 60% as was agreed to by COTED. The Claimants were made aware of numerous imported shipments by RHCL and had initially demanded that RHCL not distribute the imported cement prior to the determination of the substantive claim. Following RHCL's refusal to discontinue distribution, the Claimants applied for interim relief under Part 12 of the Court's Rules to mandate that Barbados apply a 60% tariff on "other hydraulic" cement pending the determination of the merits of the claim to avoid serious market disruption. This was contended by RHCL since a material change in the circumstances of the case given the effect of Barbados defence that it had mistakenly authorised RCHL's derogation of the CET. RHCL argued that this combined with the vacation of the hearing date made the company likely to suffer even greater prejudice.

Findings

RHCL sought to have the interim order discharged as it would “spell disaster” for the Company and its ancillary group of companies by causing irreparable harm since the company would be unable to sustain imports at such a high rate resulting in companies having to cease business and job cuts.

The Court found that it was established that a change in circumstances referred to the occurrence of any factual or legal matter such as to call into question the assessment by the judge who heard the application, regarding the pre-requisites for the granting of the interim measures. The Claimants had succeeded in making out a prima facie case. Further shipments by the Intervener would cause unquantifiable losses and the Claimant had undertaken for damages. Such circumstances were held to be unchanged and affected by Barbados’ defence and the vacation of the date for the hearing of the substantive claim. First, Barbados’ defence that it had mistakenly applied the increased tariff of 60% on all cement including on “other hydraulic” cement imported by RHCL pursuant to a national order could not be considered a change of circumstances. This was because Barbados had failed to correct this alleged mistake nor had it ever in practice charged the 60% tariff on the importation of Rock Hard’s cement. Therefore, it was side-lined pending further investigation being regarded at the current stage as its contention had not effect on the immediate issue. As such, this was not considered a sufficient reason to discharge the order.

Second, the Court found that the vacation of the hearing date, by itself does not amount to a change in circumstances warranting the discharge or variation of the order. The Court did not make its original order on the premise that there would be no shipment that the order would affect, and implicitly if that outlook changed and a shipment was expected that would be a reason to do so. This change therefore could have no substantial effect on the circumstances prior to the granting of the order.

The Court’s findings in this judgement were not based on the substantive issue surrounding the applicable tariff payable on “other hydraulic cement”. Rather it reflected an assessment on what is necessary for the Court to cancel or vary an interim order. The latter substantial issue was left for a subsequent judgment on merits.

Finally, the Court held that costs were to be determined upon the resolution of the Originating Application.

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