



## IV Annual Caribbean Court of Justice International Law Moot (2012)

Republic of Trinidad and Tobago

v

Belize

Smoothie Marvellous Juices Limited (“SMJ Ltd.”) was incorporated in Trinidad and Tobago on March 22, 1962, and has its head office in South Trinidad. SMJ Ltd. produces a wide range of juices comprising combinations of rich exotic tropical flavours which the company markets in the Caribbean, North and South America, and Europe. The company’s flagship product is the extremely popular *Fruiter* sold in 500ml plastic bottles. *Fruiter* regularly features in the top 3 most popular juice brands in the Member States of the Caribbean Community (“CARICOM”).

The Caribbean Regional Fisheries Mechanism (“the Mechanism”) was established by an Agreement (“the CRFM Agreement”) which was adopted and entered into force on February 4, 2002, and registered with the United Nations on February 3, 2004. Article 26 (1) provides that, “The Mechanism, its assets, property, income, operations and transactions shall be exempt from all direct taxation and from all customs duties on goods imported for its official use.” Article 28 requires every Member State of the Mechanism to take appropriate steps to make Article 26 (1) effective within its jurisdiction.

Pursuant to Article 2 (4) of the CRFM Agreement, the Government of Belize concluded a Headquarters Agreement with the Mechanism which was incorporated into local law by the Diplomatic Privileges (the Mechanism) Order made under the Diplomatic Privileges and Consular Convention Act (Cap. 23). Further to the Order, the Minister of Trade of Belize agreed that the Mechanism could import large quantities of the 500ml canned *Booster Juice* from the neighbouring Nicaragua to meet its official requirements and that these imports would be exempt from all import duties and tariffs. No issue of breach of intellectual or industrial property rights arose but it was immediately obvious that *Booster Juice* was virtually identical in composition, nutrition and taste to *Fruiter*.

In written correspondence with the Government of Belize, SMJ Ltd. complained that owing to the duty exemption it could not match the price at which the Mechanism sourced *Booster Juice* from Nicaragua. SMJ Ltd. argued that diplomatic and quasi-diplomatic exemptions from customs duties must be authorised by the Council for Trade and Economic Development (COTED) under the Revised Treaty of Chaguaramas Establishing the Caribbean Community Including the CARICOM Single Market and Economy (RTC or “Revised Treaty”). SMJ Ltd. stated that if the issue was not resolved expeditiously it would be forced to bring an action before the Caribbean Court of Justice (CCJ) against Belize for allowing the exemption.

In its written response, Belize stated that under the Headquarters Agreement, it was merely giving effect to a policy agreed by Trinidad and Tobago and other CARICOM Member States parties to the CRFM Agreement. Belize further stated that the importation of the canned *Booster Juice* offered a better environmental alternative than the importation of *Fruiter* in plastic bottles. It produced a study by the University of Belize (a state-sponsored institution) which showed that the Crooked Tree Wildlife Sanctuary was becoming “choked to death” by plastic bottles, thereby endangering the Yellow-headed parrot. The sanctuary is recognized under the Ramsar Convention as a wetland of international importance and the Yellow-headed parrot is a globally endangered species. The vast majority of the plastic bottles had contained SMJ Ltd.’s products.

SMJ Ltd. replied, maintaining its position that the matter of the exemption was for COTED under the Revised Treaty and stating that the RTC did not permit Belize to discourage or ban the importation of *Fruiter* on the environmental ground alleged. In talks with the Government of Trinidad and Tobago, the latter agreed to represent SMJ Ltd.’s interest to the Mechanism.

Pursuant to Article 29 (1) of the CRFM Agreement the matter was brought before the Ministerial Council of the Mechanism for decision and the Council voted against Trinidad and Tobago.

Following renewed representations by SMJ Ltd., the Government of Trinidad and Tobago decided to espouse a claim on behalf of the company before the CCJ. Belize, however, demanded arbitration under Article 29 (2) of the CRFM Agreement and indicated that given its election for such arbitration, the CCJ had no jurisdiction.

In its application before the CCJ, Trinidad and Tobago argued that:

1. By virtue of Articles 211 and 216 of the RTC, and the policy underpinning these provisions, the CCJ undoubtedly has jurisdiction to determine whether the Revised

Treaty permitted the importation of *Booster Juice* into Belize from Nicaragua without payment of the common external tariff.

2. The Revised Treaty contained no provision exempting from the common external tariff diplomatic imports to international organizations located in the territory of a Member State of CARICOM, and in these circumstances the tariff was due and payable on all imports from non-regional sources save and except where COTED granted a waiver or suspension which had not occurred in the present case.

By way of its response filed with the CCJ, Belize stated that:

1. By virtue of Article 30, Vienna Convention on the Law of Treaties, the jurisdiction of the arbitral tribunal under the CRFM Agreement must prevail so that the CCJ has no jurisdiction unless, possibly, both parties to the dispute had consented to that jurisdiction which Belize had assuredly not done.
2. The diplomatic exemption granted to the Mechanism was pursuant to the CRFM Agreement to which both Trinidad and Tobago and Belize were parties; the fact that some members of CARICOM may not yet have accepted the Agreement or that membership could include non-CARICOM States was irrelevant.
3. In any event, Belize was entitled to adopt measures to discourage the importation of *Fruiter* on the basis of Article 226 (1) (b) and (j) of the Revised Treaty, having regard to the effect of the *Fruiter* plastic container on the Crooked Tree Wildlife Sanctuary designated as a wetland under the Ramsar Convention on Wetlands of International Importance Especially as a Waterfowl Habitat. Belize noted that Trinidad and Tobago was also a party to the Ramsar Convention and also indicated that it would rely upon the WTO decision in *United States – Import Prohibition of Certain Shrimp and Shrimp Products* (2002) 41 ILM 149.

Trinidad and Tobago in reply:

1. Maintained its position, as stated in Paragraphs 1 and 2 of its application.
2. In relation to Paragraph 3 of the response by Belize, reserved its position on whether Article 226 (1) applied, noting that the application of that Article was restricted to Chapter 10 and therefore did not apply to Chapter 5 containing the rules on free

movement of goods of community origin; in any event, Belize had not fulfilled the substantive and procedural requirements of Article 226, particularly Paragraph (2).

Belize in further reply:

1. Maintained its position as stated in Paragraphs 1 and 2 of its reply.
2. As to Paragraph 2 of Trinidad and Tobago's response, noted that based on its argument in relation to jurisdiction, the absence of CCJ jurisdiction precluded the CCJ from enquiring into any requirement or obligation on Belize to notify COTED of the measures adopted to protect the Belizean environment; and further, that notification to COTED was a purely procedural matter that could not affect the substantive right to adopt appropriate environmental measures.

All case management procedures (including the grant of leave for the filing of the above documents) have been observed and the matter is set for hearing at the seat of the CCJ on Friday, March 23, 2012 with Thursday, March 22, 2012 set aside as a reserve day.

On the day of the hearing:

Leading Counsel for Trinidad and Tobago will argue the points in Paragraphs 1 and 2 of its application; and Junior Counsel will argue the points arising from Paragraph 3 of the response by Belize.

Leading Counsel for Belize will argue the points relating to Paragraphs 1 and 2 of its response to the application by Trinidad and Tobago; and Junior Counsel will argue points arising from Paragraph 3 of the response by Belize.