



CARIBBEAN COURT OF JUSTICE

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CCJ ISSUES DECLARATIONS AGAINST CARICOM AND BARBADOS BUT CEMENT TARIFF INCREASE STANDS

Port of Spain, Trinidad and Tobago. In a judgment released today, the Caribbean Court of Justice (CCJ) upheld the decision of the Council for Trade and Economic Development (COTED) to raise the tariff on “other hydraulic cement” imported into Barbados. The CCJ declared, however, that the Caribbean Community (CARICOM) and Barbados failed in their respective duties to conduct prior consultation with the importers, Rock Hard Cement Limited (“Rock Hard”). The Court’s decision was given in the original jurisdiction matter of *Rock Hard Cement Limited v The State of Barbados and The Caribbean Community and Arawak Cement Company Limited, Intervening [2020] CCJ 2 (OJ)*.

On June 17, 2019, COTED, the organ of CARICOM responsible for altering or suspending the Common External Tariff (CET), approved the application of Barbados to suspend the CET of 5% on other hydraulic cement in order to replace it with a tariff of 35%. The suspension was authorised for a period of two years and not the five years requested.

Rock Hard imports other hydraulic cement manufactured in Turkey into Barbados. Rock Hard was not consulted or notified before the application to raise the tariff was made or granted although both Barbados and COTED were aware of the impact the COTED decision would likely have had on that company. Rock Hard claimed that the decision to raise the tariff should be annulled because it had a legitimate expectation that Barbados would keep the tariff steady at the CET rate of 5%. The basis of this legitimate expectation was alleged representations made to Rock Hard by Barbadian officials in 2015 when Barbados reduced the tariff from 60%, where it stood in 2015, to the CET rate of 5%.

The Court held that, in order for Rock Hard to succeed in the Court’s Original Jurisdiction, the alleged representations that gave rise to its expectation must have come from CARICOM, but there was no claim or evidence that it was COTED that made the alleged representations to Rock Hard. The Court held that subsequent knowledge by COTED of the alleged representations could not make COTED a party to them as those representations had not been made on COTED’s behalf. The Court also dismissed Rock Hard’s claims that the COTED decision was arbitrary or irrational. The Court stated that the rationale and justification presented to COTED by Barbados were supported by the factual circumstances and that in any event the grounds on which the request was approved clearly fell within a category which allows COTED a broad discretion and where the scope for the Court’s intervention is narrow.

On the other hand, the Court decided to declare that Barbados and CARICOM had failed to ensure that Rock Hard was consulted before the application for the suspension was approved. Because the consultation required for an application of this type was limited to obtaining information as to the impact of the proposed tariff increase, the Court decided that the effect of the failure to consult did not call for annulment of the decision. The Court expressed dismay that CARICOM had failed to maintain an effective system of consultations at the national and regional level as required by Article 26 of the Revised Treaty of Chaguaramas (RTC). The Court noted that the agreed procedures for the processing of requests to COTED, such as this one made by Barbados, had not yet been formally brought into force. The Court found that this was a weakness in the system.

The Court concluded by stating that it is a matter of Barbadian domestic policy whether that State wished to adopt measures to facilitate the importation of cement produced extra-regionally or encourage locally produced cement manufactured by Arawak Cement Company Limited. The Court emphasised, however, that any such measures and the processes accompanying them must comply with the rule of law.

The judgment was delivered by the full Bench of the CCJ comprising the President, the Honourable Mr Justice Adrian Saunders and the Honourables Justice Jacob Wit, Justice Winston Anderson, Justice Maureen Rajnauth-Lee, Justice Denys Barrow, Justice Andrew Burgess and Justice Peter Jamadar. Mr Allan Wood, QC and Ms Symone Mayhew, QC appeared for Rock Hard Cement Limited. Ms Gayle Scott and Mr Jared Richards appeared for the State of Barbados. Dr Corlita Babb-Schaefer and Mr O'Neil Francis appeared for the Caribbean Community and Mr Eamon Courtenay, SC and Mr Raphael Ajodha appeared for Arawak Cement Company Limited.

The full judgment of the Court and a judgment summary are available on the Court's website at www.ccj.org.

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About the Caribbean Court of Justice

The Caribbean Court of Justice (CCJ) was inaugurated in Port of Spain, Republic of Trinidad and Tobago on 16 April 2005 and presently has a Bench of seven judges presided over by CCJ President, the Honourable Mr Justice Adrian Saunders. The CCJ has an Original and an Appellate Jurisdiction and is effectively, therefore, two courts in one. In its Original Jurisdiction, it is an international court with exclusive jurisdiction to interpret and apply the rules set out in the Revised Treaty of Chaguaramas (RTC) and to decide disputes arising under it. The RTC established the Caribbean Community (CARICOM) and the CARICOM Single Market and Economy (CSME). In its Original Jurisdiction, the CCJ is critical to the CSME and all 12 Member States which belong to the CSME (including their citizens, businesses, and governments) can access the Court's Original Jurisdiction to protect their rights under the RTC. In its Appellate Jurisdiction, the CCJ is the final court of appeal for criminal and civil matters for those countries in the Caribbean that alter their national Constitutions to enable the CCJ to perform that role. At present, four states access the Court in its Appellate Jurisdiction, these being Barbados, Belize, Dominica and Guyana. However, by signing and ratifying the Agreement Establishing the Caribbean Court of Justice, Member States of the Community have demonstrated a commitment to making the CCJ their final court of appeal. The Court is the realisation of a vision of our ancestors, an expression of independence and a signal of the region's coming of age.

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