**IN THE CARIBBEAN COURT OF JUSTICE**
**Original Jurisdiction**

**CCJ Application No TTOJ2018/001**

**Between**

| | |
|---|---|
| **Trinidad Cement Limited** | **Claimant** |
| **And** | |
| **State of Trinidad and Tobago** | **Respondent** |
| **And** | |
| **Rock Hard Distribution Limited** | **First Intervener** |
| **And** | |
| **Mootilal Ramhit and Sons Contracting Limited** | **Second Intervener** |

**CCJ Application No TTOJ2018/002**

**Between**

| | |
|---|---|
| **Trinidad Cement Limited**<br>**Arawak Cement Limited** | **Claimants** |
| **And** | |
| **State of Barbados** | **Respondent** |
| **And** | |
| **Rock Hard Cement Limited** | **Intervener** |

**THE COURT,**

composed of A Saunders, President, J Wit, W Anderson, M Rajnauth-Lee, and D Barrow, Judges

having regard to the Order made by the Court on 31 October 2018, granting the parties and the intervener leave to file written submissions on the jurisdiction of the Caribbean Community/

Council for Trade and Economic Development to classify the cement that is the subject matter of the Originating Application filed on the 4th day of July 2018 on behalf of the Claimant and the Court's reliance if any, on those reports submitted by the Caribbean Community or the Council of Trade and Economic Development relevant to the subject matter of the Originating Application, the written submissions of the Claimants and the Intervener filed on the 15th day of November 2018, the written submissions in reply on behalf of the Caribbean Community filed on the 22nd day of November 2018 and to the Case Management Conference held at the seat of the Court and by video conference on November 29, 2018,

and after considering the written submissions filed on behalf of:

- **The Claimant** in TTOJ2018/001, by Mr. Gilbert Peterson, SC, Mr. Gregory Pantin and Mr. Miquel Vasquez, Attorneys-at-Law
- **The Claimants** in TTOJ2018/002, by Mr. Reginald Armour, SC and Mr. Raphael Ajodhia, Attorneys-at-Law
- **The Intervener** in Rock Hard Distribution Limited and Rock Hard Cement Limited**,** by Mr Allan Wood, QC and Ms. Symone M. Mayhew, Attorneys-at-Law
- **The Caribbean Community,** by Ms Corlita Babb-Schaefer and Mr O'neil Francis, Attorneys-at-Law

and after delivery of Decision on the 29th day of November 2018

issues on the 11th day of December 2018 the following:

## Written Decision

### Jurisdiction of the Caribbean Community/Council for Trade and Economic Development to make classification determinations

[1] By Order dated 31 October 2018 this Court required the parties and interveners in TTOJ2018/001[1] and TTOJ2018/002[2] to file written submissions regarding the jurisdiction of the Caribbean Community (CARICOM) and/or the Council for Trade and Development (COTED) to classify the cement that is the subject matter of the originating applications in those cases, as well as regarding the jurisdiction of CARICOM and COTED to interfere with settled rights. The Order also required the parties and Interveners to present written submissions regarding this Court's reliance on reports submitted by CARICOM or COTED relevant to the subject matter of the originating applications.

[1] *Trinidad Cement Limited v The State of Trinidad and Tobago and Rockhard Distribution Limited and Mootilal Ramhit and Sons Contracting Limited* TTOJ2018/001
[2] *Trinidad Cement Limited & Arawak Cement v The State of Barbados and Rockhard Cement Ltd* TTOJ2018/002

[2] With one exception,[3] the parties and Interveners complied with the Order. Trinidad Cement Limited, the State of Trinidad and Tobago, Arawak Cement Limited, and Rockhard Cement all submitted that COTED had no jurisdiction to classify the cement. A common thread running throughout these submissions was that classification determinations are judicial or quasi-judicial acts and that none of the provisions of the Revised Treaty of Chaguaramas ("the Revised Treaty") expressly or impliedly conferred an adjudicative power on COTED to determine classification issues. Specifically, it was argued that Article 83 of the Revised Treaty which provides for the operation of the Common External Tariff ("CET") by COTED did not empower that body to make classification decisions.

[3] The State of Trinidad and Tobago also urged that recognition of jurisdiction in COTED to classify goods would be administratively unworkable as classification decisions arose daily and there was no prescribed frequency with which COTED, or its Customs Committee meets. Such jurisdiction, it argued, would also be inconsistent with the existence of legal procedures to resolve classification issues under domestic laws of Member States of the Community.

[4] There was a division of views on the question of whether it was permissible for this Court to rely on classification reports available from CARICOM or COTED. Trinidad Cement Limited contended that the Court should not rely on the World Customs Organisation (WCO) Report commissioned by the CARICOM Secretariat on behalf of COTED since the WCO lacked institutional knowledge on CARICOM matters and had failed to consider material facts in relation to the Revised Treaty and the CET in making its classification. Trinidad Cement Limited, Arawak Cement Limited and The State of Trinidad and Tobago considered that there were irregularities in the request by the Secretariat to WCO and that there were substantial flaws in the WCO analysis. In contrast, Rock Hard Cement Limited considered that the WCO Report should be treated as highly persuasive authority.

[3] The Second Intervenor, Mootilal Ramhit and Sons Contracting Limited

[5] In its written submissions, CARICOM noted the duty of COTED to administer the CET regionally and to impose the CET on all goods which do not qualify for Community treatment and argued that this implied the power to classify goods. Classification of goods is a condition precedent to the imposition of the CET. It was therefore necessary to imply a power in COTED to classify goods subject to the tariff. Further, it was urged that the WCO classification opinions, based as they are on the Harmonised System (Harmonised Commodity Description and Coding System) which governs the CET, can properly be relied upon by this Court as an important aid to interpretation of the scope of the various tariff headings of the CET.

[6] In coming to its decision on the jurisdiction of COTED to classify goods, this Court examined the relevant Revised Treaty provisions in light of the object and purpose of the Treaty in a manner that renders the Treaty effective.[4] It is significant that the Revised Treaty tasks COTED with the duty (1) to promote the development and oversee the operation of the CSME (Article 15); (2) to set out plans and schedules in its relevant determinations in accordance with which Member States are mandated to establish and maintain a CET in respect of all goods which do not qualify for community treatment (Article 82); (3) to alter or suspend the CET (Article 83 (1)); and (4) to continuously review the CET to assess its impact on production and trade, as well as to secure its uniform implementation throughout the Community, in particular by reducing the need for discretional application in the day to day administration of the tariff (Article 83 (8)). In respect of the community rules of origin, Article 84 (10) requires that COTED keeps the schedule and lists of goods under continuous review and empowers that body to amend the Schedule "in order to ensure the achievement of the objectives of the Community." These are important policy responsibilities and objectives specifically within the purview of COTED.

[7] The Court is persuaded that these provisions permit application of the doctrine of implied powers applicable to international organizations. The case of *Reparation for Injuries suffered in the Service of the United Nations*,[5] supports the proposition that COTED has competence to engage in matters which, even if they are not expressly

[4] *Trinidad Cement Limited et al v Guyana* (2009), [38]
[5] Advisory Opinion, 1949 ICJ 174 (April 11)

stated in the Revised Treaty, are conferred upon it as being essential to the discharge of its functions. The Court therefore considers that the competence to continuously review the CET, to assess its impact on production, as well as to secure its uniform implementation throughout the Community, in particular, by reducing the need for discretionary application in the day to day administration of the tariff (Art 83(8)) support the view that COTED has competence to engage in the classification of goods so as to facilitate the regional and harmonious administration of the CET.

[8] The Court therefore considers that classification issues may properly be considered by COTED pursuant to its rules of procedures or by order from this Court. The Court emphasises, however, that COTED does not, *ipso facto*, have compulsory or exclusive competence to determine such issues. This Court, as the guardian of the Treaty has a duty to judicially review decisions of COTED and to provide such guidance on the applicable legal principles as it considers appropriate[6]. As a practical matter, where an issue of classification arises in domestic law which is not settled in the normal interchange between the customs officials and the importer, the matter may be resolved in one of at least three ways. Firstly, either party may seek the support of the relevant State in bringing the matter to the attention of COTED which, subject to its rules of procedure shall, as expeditiously as possible, provide its advice or determination on the issue. An affected party that is dissatisfied may, subject to satisfying any threshold or leave requirements (e.g., Article 222), seek review of the decision in this Court. Secondly, either party may seek resolution of the dispute before any court or tribunal as prescribed in the relevant laws of the Member State concerned. Where the classification dispute involves a question concerning the interpretation or application of the Revised Treaty the court or tribunal shall, under the terms of Article 214, refer the issue to this Court for determination. Thirdly, either party may, subject to any threshold or leave requirements (e.g. Article 222) bring an action directly before this Court; however, the Court will be astute to ascertain whether, having regard to the other means of dispute resolution, the interests of justice require adjudication of such an action. In the second and third scenarios, the Court may, if it considers it expedient to do so, seek assistance from CARICOM or COTED.

[6] *TCL v. Caribbean Community* [2009] CCJ 4 (OJ)

[9] The Court considers that relevant decisions of the WCO on classification of goods are admissible in its proceedings. At least one Member State of the Community is a member of the WCO which has global responsibility for classification of goods under the widely accepted Harmonised System. The HS, widely used in the World Trade Organisation, is the basis for classification of goods for the CARICOM CET. Accordingly, relevant decisions of the WCO will normally be highly persuasive unless it is shown that there are good reasons for not relying on them.

**Disposition**

[10] The Court decides that COTED, while not a court, has competence but not *ipso facto* jurisdiction to classify goods which are the subject of the CET. The Court also decides that relevant decisions of the WCO are admissible in its proceedings and are to be accorded such weight as the Court considers appropriate.

/s/ A Saunders

**The Hon Mr Justice A Saunders (President)**

**/s/ J Wit**

**The Hon Mr Justice J Wit**

**/s/ W Anderson**

**The Hon Mr Justice W Anderson**

**/s/ M Rajnauth-Lee**

**The Hon Mme Justice M Rajnauth-Lee**

**/s/ D Barrow**

**The Hon Mr Justice D Barrow**