

## **Trinidad Cement Limited and TCL Guyana Incorporated v The State of the Co-operative Republic of Guyana**

Citation: [\[2009\] CCJ 1 \(OJ\)](#)  
Date of Judgment: 15 January 2009  
Nature of Judgment: Judgment on special leave  
Composition of the Court: President: M de la Bastide  
Judges: R Nelson, D Pollard, A Saunders, D Bernard, J Wit, D Hayton

<b>CCJ Application No</b>	<b>Parties</b>	
<b>AR 1 of 2008</b>	<b>Applicants</b>	Trinidad Cement Limited TCL Guyana Incorporated
	<b>Respondent</b>	The State of the Co-operative Republic of Guyana

### **Counsel**

- Applicants:  
Dr C Denbow SC, Attorney-at-Law
- Respondent:  
Mr D Singh SC, Attorney-General
- Caribbean Community:  
Ms C Thompson-Barrow, General Counsel
- State of Jamaica:  
Mr D Leys QC, Solicitor General
- State of Trinidad and Tobago:  
Mr E Prescott SC, Attorney-at-Law

### **Nature of Dispute**

This dispute concerned an allegation by the Applicants that the Respondent, the State of the Co-operative Republic of Guyana (Guyana), breached Article 82 of the Revised Treaty of Chaguaramas (RTC) by suspending the Common External Tariff (CET) on cement from third States, without the requisite authority of the Council for Trade and Economic Development

(COTED). The Applicants applied for special leave under Article 222 of the RTC to bring proceedings against Guyana. Earlier in the proceedings, the Court had issued an Interim Order directing the Registrar to issue a Notice inviting the Contracting Parties other than Guyana, as well as the Community, to submit written legal submissions on the question of whether the Applicants had satisfactorily complied with the conditions for private entities to establish *locus standi* under Article 222 of the RTC.

### Summary of Legal Conclusions and Orders

- The Applicants were granted special leave under Article 222 of the RTC.
- The Court reserved its order as to costs on the application to a later stage of the proceedings.

### Legal Provisions at Issue

- The Preamble of the RTC
- Articles 7, 32, 82, 211 and 222 of the RTC

### Other Relevant Community Law / Material Relied on

- Article XXIV of the Agreement Establishing the Caribbean Court of Justice (the CCJ Agreement)

### Past CCJ Case Law

- N/A

### Other Sources of International Law

- Articles 30 and 31 of the Vienna Convention on the Law of Treaties (VCLT)
- *Case concerning Avena and Other Mexican Nationals (Mexico v United States of America)* ICJ Reports, 2004
- *La Grand case (Germany v United States of America)* ICJ Reports 2001
- *Mavrommatis Palestine Concessions (Greece v UK)* PCIJ Reports, 1924, Series A, No 2
- International Law Commission's Commentaries on the Draft Articles on Diplomatic Protection 2006

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### Facts

The first Applicant, Trinidad Cement Limited (TCL), is a company incorporated in Trinidad and Tobago. The second Applicant, TCL Guyana Incorporated (TGI), is incorporated in Guyana and 80% of its shares are owned by TCL, the first Applicant. The Applicants are engaged in the manufacture and distribution of cement within the Caribbean Community (CARICOM). The Applicants applied to the Court for special leave to bring proceedings against the Respondent, Guyana, under Article 222 of the RTC. The Applicants intended to argue, if granted special leave from the Court, that Guyana had violated Article 82 of the RTC by suspending the CET on cement from third countries, without obtaining the requisite authority to do so from COTED.

## **Findings**

Guyana conceded that it had suspended the CET on cement without receiving the requisite authorisation from COTED to do so. Guyana argued, however, that the Applicants were not entitled to bring the proceedings because they had not satisfied the conditions laid down by the RTC for the institution of proceedings by a private entity. More specifically, Guyana contended that TGI could not be granted special leave because, under Article 222 of the RTC, (1) incorporation under the domestic law of a Member State is insufficient to establish that a company is a “person, natural or juridical, of a Contracting Party”, within the meaning of Article 222; and (2) upon a proper interpretation of Article 222(c) of the RTC, companies incorporated under the legislation of a Member State do not have the right to sue that Member State, as TGI intended to do in this case.

Turning to the first issue, the Court rejected Guyana’s contention that “persons, natural or juridical, of a Contracting Party” under Article 222 of the RTC means nationals of a Contracting Party as defined in Article 32(5)(a) of the RTC. The Court found, instead, that for a company to fall within the meaning of the phrase “persons, natural or juridical, of a Contracting Party”, it is sufficient for such an entity to be incorporated or registered in a Contracting Party. In rejecting Guyana’s contention, the Court disagreed with Guyana’s reliance on Article 32 of the RTC, which refers to “nationals” rather than “persons”, noting that Article 32 expressly applies only to Chapter Three of the RTC, which deals with the right of establishment, the movement of labour, the right to move capital and the right to provide services, rather than with the right of private parties to access the Court’s original jurisdiction. The Court further rejected Guyana’s reliance on Article XXIV of the CCJ Agreement, explaining that, under Article 30(3) of the VCLT, the RTC, in any event, supersedes the CCJ Agreement as the later treaty between the same contracting parties covering the same subject matter.

The Court then considered Guyana’s further argument that companies incorporated under the legislation of a Member State do not have the right to sue that Member State under Article 222 of the RTC. Guyana argued in this regard that, under Article 222(c) of the RTC, the Contracting Party of a private entity must always have the option of itself bringing any proceedings that a private entity desires to bring; that since the Contracting Party cannot have that option and simultaneously be also the defendant to those very proceedings, then, as a matter of compelling inference, the entire Article must be interpreted in a way to yield the result that, as a matter of policy, the RTC intends that a private entity cannot bring proceedings against its State.

The Court rejected Guyana’s arguments, explaining that when one considers Article 222 in light of its context, the intention of the Contracting Parties and the object and purpose of the RTC, it is clear that the provisions of Article 222(c) are meant to cater to and satisfactorily resolve a particular dilemma. If distinct and separate rights of action against a State in violation of the RTC are given to the Member States and private entities, then a means had to be found

to avoid duplication of suits. Article 222(c) is the mechanism used. It is a procedural device to avoid a State allegedly in violation being twice vexed, once by an injured private entity and again by the Contracting Party of that private entity. The Court accordingly concluded that Article 222(c) cannot and does not apply where the State against which proceedings are to be brought is the Contracting Party of the private entity seeking to institute such proceedings. In such a case, the private entity is not required to comply with the provisions of Article 222(c).

In light of the above, the Court granted special leave to the Applicants under Article 222 of the RTC, reserving its judgment on costs for the application to a later stage of the proceedings.

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