

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

Citation:	[2009] CCJ 5 (OJ)
Date of Judgment:	20 August 2009
Nature of Judgment:	Judgment on merits Judgment on costs
Composition of the Court:	President: M de la Bastide Judges: R Nelson, A Saunders, J Wit and D Hayton

CCJ Application No	Parties
OA 2 of 2009	Claimants Trinidad Cement Limited TCL Guyana Incorporated Defendant The State of the Co-operative Republic of Guyana

Counsel

- Claimants:
Dr C Denbow SC, Attorney-at-Law
- Defendant:
Professor K Massiah SC and Mr Kamal Ramkarran, Attorneys-at-Law

Nature of Dispute

The dispute concerned a claim by Trinidad Cement Limited (TCL) and TCL Guyana Incorporated (TGI) that the State of the Co-operative Republic of Guyana (Guyana) violated Article 82 of the Revised Treaty of Chaguaramas (RTC) by removing the Common External Tariff (CET) on cement without the requisite authorisation from the Council for Trade and Economic Development (COTED). In an earlier stage of the proceedings, the Court made an order granting special leave to the Claimants under Article 222 of the RTC to pursue their claim against Guyana.

Summary of Legal Conclusions and Orders

- The Court concluded that Guyana breached Article 82 of the RTC by failing to implement and maintain the CET.

- The Court ordered Guyana to implement and maintain the CET on cement from non-CARICOM sources within 28 days of the Order.
- The Court dismissed the Claimants' claims for damages.
- The Court awarded the Claimants two thirds of their costs in the proceedings.

Legal Provisions at Issue

- Articles 9, 82 and 83 of the RTC

Other Relevant Community Law / Material Relied on

- N/A

Past CCJ Case Law

- *TCL v The Caribbean Community* [2009] CCJ 4 (OJ)

Other Sources of International Law

- *Brasserie du Pêcheur SA v Germany and R v Secretary of State for Transport ex parte Factortame Ltd* (Joined Cases C-46/93 and C-48/93, [1996] ECR I-1029)
- *C-6 and 9/90 Francovich v Italy* [1991] ECR-1-5357
- *Re Letelier and Moffitt* 88 ILR 727
- *Lausitania* (1923), RIAA
- International Law Commission's Draft Articles on State Responsibility for Internationally Wrongful Acts (2001) (Chapter III)
- *Velasquez Rodriguez*, Judgment of 21 July [1989], 95 ILR 232
- *Manfredi v Lloyd Adriatico Assicurazioni SpA* [2006] 5 CMLR 1

Facts

The first Claimant, TCL, is company incorporated in Trinidad and Tobago. The second Claimant, TGI, is incorporated in Guyana and 80% of its shares are owned by TCL. TGI also imports bulk cement from TCL. Under Guyanese law, the rate of the CET applicable to building cement from non-CARICOM sources was 15%.

The dispute arose out of a letter by the Minister of Finance in Guyana, dated 22 September 2006, notifying the Commissioner General of the Guyana Revenue Authority that "approval has been granted for the removal of the customs duty on building cement imported from outside of CARICOM ... with effect from 2 October 2006 for a period of one (1) year". The removal of the CET was extended yearly and, up to the date of the Court proceedings, the CET on cement remained suspended in Guyana. As a result of the suspension, cement from non-CARICOM countries such as Venezuela, Colombia and the Dominican Republic was imported into Guyana free from the payment of the CET.

Findings

TCL and TGI claimed that Guyana violated Article 82 of the RTC and requested: (a) a declaration that Guyana was in violation of the RTC; (b) a mandatory order directing the government of Guyana to reinstate the CET on cement; and, (c) damages.

The Court found that Guyana breached Article 82 of the RTC by failing to implement and maintain the CET. The Claimants were entitled to the benefit of having the CET maintained by Guyana subject to Guyana's right to make an application for suspension to COTED or the Secretary-General pursuant to Article 83 of the RTC.

With respect to whether Guyana was liable for damages, the Court found that although the RTC contains no provisions on sanctions for breach, the principal of state liability, derived from the case law of the European Court of Justice (ECJ), applies under the RTC. To prove state liability a party must demonstrate: (a) that the provision alleged to be breached was intended to benefit that person; (b) that such breach is serious; (c) that there is substantial loss; and, (d) that there is a causal link between the breach and the loss or damage. Regard could also be had to the justification advanced by the State.

The Court found that, in this case, although the breach was serious, TGI, as an importer, had not demonstrated special circumstances to establish the requisite proximity between breach and loss to TGI. With respect to exemplary damages, the weight of academic opinion and prior case law did not persuade the Court that exemplary damages should be awarded.

In light of the above, the Court granted an Order requiring Guyana to re-impose the CET within 28 days, and to maintain it until and unless a suspension is authorised by COTED or the Secretary-General pursuant to Article 83. Guyana was further ordered to pay two thirds of Claimants' costs (to be taxed if not agreed).

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