

Trinidad Cement Limited v The State of Trinidad and Tobago, Rock Hard Distribution Limited, Mootilal Ramhit and Sons Contracting Limited; and other Applications

Citation: [\[2019\] CCJ 4 \(OJ\)](#)
Date of Judgment: 6 August 2019
Nature of Judgment: Judgment on merits
Composition of the Court: President: A Saunders
Judges: J Wit, W Anderson, M Rajnauth-Lee and D Barrow

CCJ Application No	Parties	
TTOJ2018/001	Claimant	Trinidad Cement Limited
	Defendant	The State of Trinidad and Tobago
	Interveners	Rock Hard Distribution Limited Mootilal Ramhit and Sons Contracting Limited
TTOJ2018/002	Claimant	Trinidad Cement Limited and Arawak Cement Company Limited
	Defendant	The State of Barbados
	Intervener	Rock Hard Cement Limited
SLUOJ2018/001	Claimant	Rock Hard Distribution Limited
	Defendants	The State of Trinidad and Tobago The Caribbean Community
BBOJ2018/001	Claimant	Rock Hard Cement Limited
	Defendants	The State of Barbados The Caribbean Community
These Applications were consolidated by order of the Court dated 15 February 2019		

Counsel

- Trinidad Cement Limited and Arawak Cement Company Limited:
Mr Reginald T A Armour SC, Mr Gilbert Peterson SC, Mr Gregory Pantin,
Mr Miguel Vasquez and Mr Raphael Ajodhia, Attorneys-at-Law
- Rock Hard Cement Limited and Rock Hard Distribution Limited:
Mr Allan Wood QC and Ms Symone Mayhew, Attorneys-at-Law
- The State of Trinidad and Tobago:
Mrs Deborah Peake SC, Ms Tamara Toolsie, Mr Brent James and Ms Radha
Sookdeo, Attorneys-at-Law
- The State of Barbados:
Ms Donna Brathwaite QC, and Ms Gayl Scott, Attorneys-at-Law
- Mootilal Ramhit and Sons Contracting Limited:
Mr Ramesh Lawrence Maharaj SC, Mr Jagdeo Singh, Mr Dinesh Rambally, Mr
Kiel Taklalsingh and Mr Stefan Ramkissoon, Attorneys-at-Law
- The Caribbean Community:
Dr Corlita Babb-Schaefer and Mr O’Neil Francis, Attorneys-at-Law

Nature of Dispute

The dispute was one of four, which the Court consolidated, concerning the importation of extra-regional cement into the Caribbean Community (CARICOM). The main issue in the present proceedings was whether Rock Hard Cement Limited (RHCL) imported cement from Turkey and Portugal was to be classified as ‘building cement (grey)’, thereby attracting a tariff of 15%, or as ‘other hydraulic cement’, on which a tariff of 0-5% is payable. Claimants, Trinidad Cement Limited (TCL) and Arawak Cement Company Limited (ACCL) – regional manufacturers of cement – contended that a decision by the Council for Trade and Economic Development (COTED) classifying Rock Hard cement as other hydraulic cement was flawed.

Summary of Legal Conclusions and Orders

- The Court found that the COTED classification decision classifying Rock Hard cement as “other hydraulic cement” was validly made under Article 29(1) of the Revised Treaty of Chaguaramas (RTC) and there was no basis on which to impugn the decision.
- The Court ordered the parties and Interveners to file written submissions on costs in relation to all orders made in these consolidated applications.

Legal Provisions at Issue

- Articles 15(2), 18, 27, 29, 79, 82, 83(5), 187, 211, 214, 222 of the RTC

Other Relevant Community Law / Material Relied on

- Article 2 of the Annex to the Original Treaty of Chaguaramas concerning the Caribbean Common Market
- CARICOM Nomenclature, Heading 2707.50
- Revised Common External Tariff, General Note

Past CCJ Case Law

- *Shanique Myrie v The State of Barbados (No 2)* [2013] CCJ 3 (OJ)
- *Trinidad Cement Limited v The Caribbean Community* [2009] CCJ 4 (OJ)
- *Trinidad Cement Limited v The Caribbean Community* [2009] CCJ 2 (OJ)
- *Trinidad Cement Limited and Arawak Cement Company Limited v The State of Barbados, Rock Hard Cement Limited Intervening; Rock Hard Cement Limited v The State of Barbados and The Caribbean Community* [2019] CCJ 1 (OJ)
- *Trinidad Cement Limited v The State of Trinidad and Tobago, Rock Hard Distribution Limited and Mootilal Ramhit and Sons Contracting Limited, Intervening; Trinidad Cement Limited and Arawak Cement Limited v The State of Barbados and Rock Hard Cement Limited* [2018] CCJ 4 (OJ)

Other Sources of International Law

- WTO Agreement on Technical Barriers to Trade
- WTO Trade Facilitation Agreement
- WTO Appellant Body Report, *EC – Asbestos*
- WTO Appellate Body Report, *Canada – Periodicals*
- WTO Appellate Body Report, *Chile – Alcoholic Beverages*
- WTO Appellate Body Report, *Korea – Alcoholic Beverages*
- WTO Appellate Body Report, *Japan – Alcoholic Beverages*
- Article III:2 of the General Agreement on Tariffs and Trade 1994 (GATT 1994)
- Article XI:1 of the GATT 1994
- Article XXIV of the GATT 1994
- GATT Panel Report, *EEC-Payments and Subsidies paid to Processors and Producers of Oilseeds and Related Animal-Feed Proteins L/6627*
- WTO Nairobi Ministerial Declaration of 2015
- *Reparations for Injuries Suffered in the Service of the United Nations*, ICJ Advisory Opinion, 1949 ICJ 174

Facts

On 28 January 2019, COTED purported to decide, by a three-quarters majority vote in accordance with Article 29 of the RTC, that Rock Hard cement imported into CARICOM from

Turkey and Portugal was to be classified under Tariff Heading 2523.90.00 as ‘Other hydraulic cement’, attracting a tariff of 0-5%, rather than ‘Building cement (grey)’, which attracts a tariff of 15%.

Findings

With respect to COTED’s classification, the regional manufacturers of cement in the Community, namely, TCL and ACCL, contended that COTED’s classification decision was procedurally flawed, and that COTED had placed too great reliance on advice given by the World Customs Organization (WCO), in preference to the economic objectives of the tariff regime governing the CARICOM Single Market and Economy (CSME).

The Court first considered an argument of Trinidad and Tobago, a Defendant in the proceedings, that COTED’s classification decision was procedurally flawed because it was not made with the three-quarters majority vote required by Article 29 of the RTC. Trinidad and Tobago had argued that all 15 members of the Community, including The Bahamas and Montserrat, were entitled to one vote under Article 27 of the RTC. Since three-quarters of 15 was 11.25, this had to be rounded up to 12 votes, being the next whole number. Given that only 11 Member States voted in favour of classifying Rock Hard cement as other hydraulic cement, Trinidad and Tobago submitted that the decision of COTED was not made in compliance with Article 29. The Court rejected this argument, noting that the right of each Member State under Article 27 to cast one vote on COTED decisions must be read as modified by the subsequent Agreement between the Community and The Bahamas, under which The Bahamas is a Member of the Community, but does not have the right to vote on matters such as that which concerned the COTED classification decision. In these circumstances, the majority vote needed was at least 11 votes, and the decision of COTED was therefore validly made in accordance with Article 29 of the RTC.

The Court then turned to consider Trinidad and Tobago’s argument that COTED’s Classification decision was flawed because COTED had failed to provide reasons for its decision. The Court considered that, although there is no express provision under the RTC requiring Ministerial Councils such as COTED to give reasons for their decisions, the obligation to give reasons is inherent in the very notion of judicial review sanctioned by the RTC. The giving of reasons facilitates judicial review by, for example, ensuring that decision-making is not arbitrary or disproportionate. While COTED had failed to provide reasons for its decision, the Court considered that no consequences should follow from this failure. In this regard, the Court pointed out that the evidence before it made clear that COTED had based its classification decision on the advice obtained from the WCO and its HS Committee, which advice Member States were fully aware of.

The Court next turned to consider the argument of Trinidad and Tobago, TCL and ACCL that COTED had placed undue reliance on the WCO’s classification advice. The Court disagreed, noting that, since the WCO has global responsibility for the classification of goods under the

Harmonisation System, a classification opinion from the WCO classifying Rock Hard cement under a HS subheading is highly relevant and very persuasive.

Finally, the Court considered the argument of TCL and ACCL that Rock Hard cement was properly classified as ‘building cement (grey)’ as it was in direct competition with TCL’s regionally produced ‘building cement (grey)’. The Court disagreed, noting that competition between Rock Hard cement and cement produced regionally by TCL and ACCL may very well be relevant to tariff setting, which involves an exercise that is different from classification. The latter involves placing a commodity under its proper tariff heading based on its composition and physical characteristics. It is for COTED to decide upon the level of protection to be given to regional production that competes with extra-regional goods, within the limits of any relevant international obligation, whatever the classification of the extra- regional goods may be. That protection may be given by adjustment in the rate of the tariff, not by adjusting the classification of the relevant goods.

In light of the above, the Court held that there was no basis to impugn the classification decision of COTED, and that Rock Hard cement is properly classified as ‘other hydraulic cement’, attracting the applicable CET of 0-5%.

The Court ordered the parties and Interveners to file written submissions on costs in relation to all orders made in these consolidated applications.

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