



## CARIBBEAN COURT OF JUSTICE

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**MEDIA RELEASE**  
(For immediate release)

**No. 08:2022**  
**4 March 2022**

### **CCJ DISMISSES ROCK HARD APPLICATION AGAINST TARIFF INCREASE ON CEMENT IN TRINIDAD AND TOBAGO**

**Port of Spain, Trinidad and Tobago.** In a judgment released in the Original Jurisdiction matter of *Rock Hard Distribution Limited, Rock Hard Distributors Limited and Mootilal Ramhit and Sons Contracting Limited v The State of Trinidad and Tobago and The Caribbean Community, The State of Belize and Trinidad Cement Limited Intervening [2022] CCJ 1 (OJ)*, the Caribbean Court of Justice (CCJ) dismissed the originating application to annul the decision of the Council for Trade and Economic Development (COTED), which allowed an increase in the tariff on “other hydraulic cement” imported into Trinidad and Tobago. The Court also ordered the parties to make submissions on costs.

In 2020, COTED, an organ of the Caribbean Community (CARICOM), granted an application by Trinidad and Tobago to suspend the Common External Tariff (CET) of 5% and substitute a rate of 50% on other hydraulic cement, which was being imported by the Claimants. The higher rate was applicable for all of 2021. The Claimants commenced these proceedings to challenge both the process by which Trinidad and Tobago made the application and the Decision by COTED to allow the suspension and increased rate.

The Claimants alleged that the COTED Decision was flawed because it was not based on accurate, relevant, sufficient, and timely information provided by Trinidad and Tobago. They also claimed that they were not properly consulted and that correct procedure had not been followed. The Claimants further argued that the Decision was disproportionate and jeopardised the expansion of trade and economic relations with States outside of CARICOM, one of the objectives of CARICOM and that the Decision was given for an improper purpose. An important complaint was also that COTED had wrongly allowed Trinidad and Tobago to impose a tariff rate for other hydraulic cement far beyond their World Trade Organization (WTO) bound rate of 5%, which is the maximum rate of duty permitted by the WTO.

Trinidad and Tobago and CARICOM did not agree and made ample written and oral submissions to this effect. They were assisted in their defence by the two interveners, the State of Belize and the local cement producer, Trinidad Cement Limited (TCL). At the trial, several witnesses and two experts in WTO law were heard and cross-examined.

The Court frontally addressed the WTO point, ruling that it had jurisdiction to decide whether and to what extent WTO law is part of Community law, and whether and to what extent CARICOM, upon a proper interpretation of the Revised Treaty of Chaguaramas (RTC), would be bound by WTO law. However, the

Court concluded that, in relation to the setting of tariff rates, CARICOM was not bound by that law. A pronouncement about the WTO bound rate, and the legality of a tariff duty in violation of that WTO rate, would, therefore, go beyond the limits of the Court's jurisdiction.

The Court reasoned that, as CARICOM is part of the "WTO universe", it is expected that COTED will have regard to the WTO bound rate of Member States when called to make decisions on the suspension or alteration of the CET as was previously indicated by this Court in 2019. This, however, did not mean that CARICOM was *legally bound* by WTO law. Among other things, CARICOM, unlike its Member States, was not a member of the WTO, WTO law is not part of customary international law, and it does not cover or restrict the powers of COTED in Caribbean Community law.

The Court also reminded the parties that, in CET matters, COTED has a broad discretion and that the Court will only interfere with such a decision if it is manifestly wrong. As such, the Court found that, on the bases argued by the Claimants, the COTED Decision could neither be successfully challenged, nor could the annulment of the Decision be justified. The Court did indicate, however, that the consultation process in Trinidad and Tobago could have been more extensive and more transparent. On the other hand, the fact that COTED was not provided with all of the information that could have aided them to make its decision was to a certain extent, due to the Claimants' own fault, as they had not taken the opportunity to engage with the competent authority of that State while they should have done so.

In relation to the procedure followed by Trinidad and Tobago and COTED, the Court noted that there is a procedure provided for in Part C of the Revised Procedure and Forms in support of the Protocol to Amend Article 83 of the RTC. Although Part C is not formally operative, the Court emphasised an earlier decision that a fair procedure is required. Since the members of COTED themselves had agreed to the procedure contained in Part C, the Court ruled that this Part should be followed in its essence or spirit, if not to the letter. The Court found, though, that the prescribed procedure was basically followed in this case, although there were some flaws. Given the circumstances, the Court found that these flaws were not sufficient to vitiate the Decision of COTED.

The Court rejected the submission that the objective of expansion of trade with States outside of CARICOM had been prejudiced by the COTED Decision. In the Court's view, this was just one of CARICOM's objectives. There were others that may conflict with that objective, such as the fundamental objective of CARICOM to create a protected market for producers and manufacturers in CARICOM. The Court also pointed out that the provisions in Article 78(2)(c), (2)(d), (3)(b) and (4) of the RTC, for example, make clear that the expansion of trade with third countries specifically focusses on exports and that, where "imports" are mentioned, the reference is limited to the importation of goods or products of CARICOM origin. It does not cover the importation of products from States outside of CARICOM.

None of the submissions of the Claimants having been successful, the Court dismissed the originating application in its entirety. The Court invited the Parties to make submissions on costs within fourteen days.

The Judgment was delivered by the Court, which consisted of the Honourable Justices Jacob Wit, Winston Anderson, Maureen Rajnauth-Lee, Denys Barrow and Peter Jamadar.

Mr Ian Benjamin SC, Mr Jagdeo Singh, Mr Justin Phelps, Ms Karina Singh and Ms Nalini Jagnarine appeared for the Claimants. Ms Deborah Peake SC, Ms Tamara Toolsie, Mr Brent James and Ms Radha Sookdeo appeared for the First Defendant, while Dr Corlita Babb-Schaefer and Mr O'Neil Francis appeared for the Second Defendant. The First Intervener was represented by Mr Eamon Courtenay SC and Ms Samantha Matute-Tucker, the Second Intervener by Mr John Jeremie SC and Mr Raphael Ajodhia, and Mr Rene Williams held a watching brief for the State of Saint Lucia.

The full judgment of the Court and a judgment summary are available on the Court's website at [www.ccj.org](http://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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