IN THE CARIBBEAN COURT OF JUSTICE
Original Jurisdiction

CCJ Application No TTOJ2016/001

Between

SM Jaleel & Co Ltd &
Guyana Beverages Inc **Claimants**

And

The Co-operative Republic of Guyana **Defendant**

THE COURT,

composed of D Byron, President, and A Saunders, J Wit, D Hayton and W Anderson, Judges

having regard to the originating application filed at the Court on 27th July 2016, together with the annexures thereto, the defence filed on 14th October 2016, the written submissions of the Claimants filed on 20th December 2016, the written submissions of the Defendant filed on 24th January 2017, the Claimants' addendum to their written submissions filed on 31st January 2017, the case management conference held on 1st November 2016, and to the public hearing held on 1st February 2017

and after considering the written submissions and the oral observations of:
- the Claimants, by Mr Hans Lim A Po, Attorney-at-Law
- the Defendant, by Dr C Denbow, SC, appearing with Mr Basil Williams, SC, Attorney General, Ms Sita Ramlal, Solicitor General, and Mrs Donna Denbow and Ms Judy Stuart, Attorneys-at-Law

issues on the **9th day of May, 2017** the following

JUDGMENT

Introduction

[1] S. M. Jaleel & Company Limited (SMJ) is a limited liability company incorporated in Trinidad and Tobago. The company manufactures and sells beverages contained in non-returnable containers. Such produce qualifies for Community treatment. SMJ holds all the shares in Guyana Beverages Inc. (GBI), a limited liability company incorporated in Guyana. Beverages made by SMJ are imported, sold and distributed in Guyana through GBI. For convenience, we will refer to SMJ and GBI as "the Claimants", embracing both of them or one of them as appropriate in context.

[2] In 1995, Guyana imposed an environmental tax of G$10 per beverage container on all imported non-returnable beverage containers pursuant to section 7A of the Customs Act[1] as amended by the Guyana Fiscal Enactments (Amendment) Act No. 3/95. The legislation did not contain an exemption in relation to non-returnable beverage containers which qualified for Community treatment, so raising a problem as essentially imposing a discriminatory import duty in breach of Article 15 of the Annex to the 1973 Treaty of Chaguaramas that was to the same effect as Article 87 of the Revised Treaty of Chaguaramas ("the RTC"). No tax, however, was payable in respect of locally made non-returnable containers. This meant that Guyanese manufacturers had a clear competitive advantage over manufacturers from other CARICOM States and discriminatory treatment had been meted out to those CARICOM manufacturers.

[3] In *Rudisa Beverages & Juices N.V. and Caribbean International Distributors Inc. v The State of Guyana*,[2] this Court held that the collection of the environmental tax under the above section 7A in relation to the taxation of Community goods was incompatible with Article 87(1) of the RTC. Guyana was ordered to cease the collection of the environmental tax on imported non-returnable beverage containers which qualify for Community treatment and to return the sums it had collected to the *Rudisa* claimants.

[4] The Claimants' claim is based essentially on the same facts as those put forward by the claimants in *Rudisa*. Relying on that precedent, the Claimants seek a declaration that Guyana breached the RTC in relation to them and an order that Guyana reimburses them the aggregate sum of environmental tax levied and collected from GBI from 1 January 2006 when the RTC took effect[3] through 7 August 2015. Such tax ceased to be leviable after the repeal of s 7A of the Customs Act by the Customs Amendment Act No 6 of 2015 that took effect on 5 August 2015, though environmental tax was still collected on 7 August 2015.

[5] Based on the decision in *Rudisa*, the Claimants are prima facie entitled to the relief sought. Guyana, however, has put forward two defences. First, it alleges that no reimbursement is required to the extent that the Claimants passed on the tax to purchasers of the beverages in circumstances where reimbursement of the

[1] CAP 82:01.
[2] [2014] CCJ 1 (OJ), (2014) 84 WIR 217.
[3] See *Hummingbird Rice Mills Ltd v Suriname* [2012] CCJ 1 (OJ), (2012) 79 WIR 448 at [17].

Claimants would unjustly enrich them ("the passing on defence"). Second, Guyana submits that the Claimants are barred by laches from maintaining any claim for the reimbursement because they failed to challenge the Defendant's collection of the environmental tax at the earliest possible reasonable opportunity ("the laches defence").

[6] On 31 October 2016 Guyana filed two applications to assist it in putting forward its passing on defence. The first sought an order for the Claimants to disclose and produce an extensive number of documents listed in a schedule which would allegedly help Guyana to prove that the Claimant had passed on the tax to purchasers and therefore suffered no economic loss. The second sought leave for Guyana to be allowed to adduce expert evidence and a report from two named persons.

[7] The applications were considered at the case management conference arranged for 1 November 2016. At the conference, however, it became clear that there were two preliminary points that needed to be decided so as to determine the extent of the documentary and expert evidence required for any hearing.

[8] The first preliminary issue concerns whether or not as a matter of law a defence of passing on is available for Guyana against the Claimants in the circumstances of this case when Guyana's collection of the environmental tax had been in breach of Community law under the RTC and no item relating to such tax had appeared on the Claimants' composite bills paid by customers, unlike the position where a specific amount of tax, like VAT, had been added to customers' bills.

[9] The second preliminary issue also concerns the extent of documentary evidence needed to be examined to determine the Claimants' claim. How far back can the Claimants go in their claim for reimbursement of the tax they paid? Is there a limited period for such a claim?

Is there a defence of "passing on" available to Guyana against the Claimants?

The background

[10] As in *Rudisa,* the Claimants' claim for reimbursement is squarely based[4] upon moneys having been paid to Guyana under alleged unlawful, ultra vires demands

[4] Upon principles established by *Woolwich Equitable Building Society v Inland Revenue Commissioners* [1993] AC 70 in a claim for money had and received. Further, as to such claims in the development of unjust enrichment, see Peter Birks, *Unjust Enrichment*

requiring payment of environmental taxes or duties in order for the Claimants to be able to sell their non-returnable beverage containers in Guyana. In *Rudisa* this Court stated[5],

> "The main relief the claimants are really seeking is the return of monies unlawfully collected from them in breach of Article 87… Based on the evidence presented …. the Court is satisfied that the Claimants have, up to 24 October 2013, actually paid sums totalling US$6,047,244.77 to the State of Guyana. The duties which resulted in the payment of these sums should never have been levied and, in principle, a Member State cannot be permitted to retain the benefit of its own wrongful conduct. So as to preclude the State of Guyana from being unjustly enriched and in order not to weaken the effectiveness of Community law, Guyana must return these sums to the claimants."

[11] Guyana's counsel had submitted that the G$10 tax per non-returnable beverage container, though not itemised in customers' bills, must have been passed on to the Claimants' customers so that Guyana should not have to reimburse the Claimants the tax it had collected because, if it did, the Claimants would be unjustly enriched at the expense of their customers. In *obiter dicta* the CCJ stated[6], "This could perhaps have been an attractive submission if Guyana had been able to produce evidence to show that the tax had in fact been passed on to consumers and that to award reimbursement will unjustly enrich the claimants: see, for example, *Société Comateb v Directeur Général des Douanes et Droits Indirects*[7]." Guyana, however, had presented no such evidence, while the Claimants had adduced cogent evidence to the contrary.

[12] The CCJ now has to determine whether as a matter of law there is available to Guyana a possible passing on defence in circumstances where both Guyana and the Claimants knew, even before the January 2006 inception of the original jurisdiction of this Court over breaches of the RTC, that Guyana's environmental tax was in violation of the RTC.[8] The Community's Council for Trade and Economic Development ("COTED") had been pressing Guyana on the discriminatory effect of its environmental tax since its 11th Meeting in May 2001,

(Clarendon Law Series, 2nd edn, OUP 2005), 286 – 290; James Edelman and Elise Bant, *Unjust Enrichment* (2nd edn, Hart Publishing, 2016), 9-15.

[5] *Rudisa* (n 2) at [29].

[6] *Rudisa* (n 2) at [30] (footnote omitted).

[7] [1997] 2 CMLR 649.

[8] See paragraph [13] of the Claimants' Originating Application, Record of Appeal, 144 - 148 and see Guyana's Defence, Record of Appeal, 7729 - 7733.

pursuing this further in its 14th, 17th, 18th, 19th and 20th Meetings to January 2006. Nevertheless, despite further repeated pressure from COTED Meetings, and even after this Court's decision in *Rudisa*, Guyana continued levying the ultra vires tax from the Claimants until 7 August 2015.

[13] Since Guyana could never have lawfully collected the tax from January 2006, it had *prima facie* to reimburse the Claimants the money that it should never have collected. Guyana submits, however, that despite its breach of the RTC since at least January 2006, it should be entitled to retain the amount of the tax that it can show the Claimants had passed on to their customers. This would, of course, mean that Guyana would, to the extent of that amount, escape with retaining moneys that it had unlawfully collected. Guyana, however, submits that this is justified to prevent the Claimants from being unjustly enriched by receiving from Guyana an amount of tax it had already recovered. This requires examination of who is being unjustly enriched at whose expense.

The need to clarify "unjust enrichment": EU law and national law

[14] It is easy to say that, as a matter of natural law, common law, civil law, sharia law or international law, where the outcome of a transaction is that a person has been "unjustly enriched" at another's expense then that unjust enrichment must be reversed. It is, however, crucial to investigate what specific categories of transactions have led to this generalised outcome. This has led to many scholarly books on the "Law of Unjust Enrichment", though such books do not cover all branches of the law which might broadly be considered to have the outcome of preventing someone being unjustly enriched e.g. contract law, property law, disgorgement of gains from misuse of a fiduciary position. Essentially, "unjust enrichment" has a "taxonomical function" referring to categories of cases where the law provides for restoration of what has been transferred from the claimant to the defendant.[9] The common law concerns itself with the concept of "unjust factors" while the civil law concerns itself with "lack of basis" or "lack of cause". Some very distinguished scholars led by the late Professor Birks have made a case for the common law to move to the civil law approach but both approaches

[9] *Equuscorp Pty Ltd v Haxton* [2012] HCA 7, (2012) 246 CLR 498 at [30]; *Roxborough v Rothmans of Pall Mall Australia Ltd* [2001] HCA 68, (2001) 208 CLR 516 at [26].

would seem to lead to the same conclusion in this case, so no more needs to be said about this issue.[10]

[15] The reference in *Rudisa* to *Comateb* is a useful starting point for examining ECJ cases where loose references were made to "unjust enrichment" without clarifying or explaining that concept. First, however, it is necessary to note that the ECJ "merely interprets the rules and principles of Community law (as well as deciding on the validity of provisions of Community law) whilst the task of deducing whether the provisions of national law to be applied in resolving the case are compatible with Community law is the responsibility of the national courts."[11] Cases involving allegations that national legislation is not compatible with European Community law are brought before national courts by persons whose rights are rooted in the direct effect of relevant provisions of EU law and reach the ECJ via a referral from the national courts. Thus, in all the ECJ passing on cases, the ECJ was focused upon national legislation that made specific provision for a passing on defence in respect of national taxes or charges allegedly levied in breach of EU law: *Hans Just I/S v Danish Ministry for Fiscal Affairs*[12], *Amministrazione delle Finanze dello Stato v SpA San Giorgio*[13], *Les Fils de Jules Bianco SA v Directeur General des Douanes et Droits Indirects*[14], *Comateb* and *Lady & Kid A/S v Skatteministeriet.*[15] Such legislation is designed to enable States to retain unlawfully collected taxes where the taxpayer has passed the burden of them on to purchasers of its goods. The Court notes that Guyana has no such national legislation for detailed examination but unjust enrichment principles underlying any defence of passing on may be considered to be part of Guyanese law.

[16] In *Hans Just* the ECJ stated[16] that Community law "does not require an order for the recovery of charges improperly made to be granted in conditions which would involve the *unjust enrichment* (emphasis added) of those entitled." In *San Giorgio* it stated[17] "Community law does not prevent a national legal system from

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[10] See *Deutsche Morgan Grenfell Group plc v HMRC* [2006] UKHL 49, [2007] 1 AC 558 at [150]- [158] (Lord Walker).
[11] *Amministrazione delle Finanze dello Stato v SpA San Giorgio* [1985] 2 CMLR 658, 667-668 (Advocate General Mancini).
[12] [1981] 2 CMLR 714.
[13] [1985] 2 CMLR 658.
[14] [1989] 3 CMLR 36.
[15] [2012] 1 CMLR 14.
[16] *Hans Just* (n 12) at [26].
[17] *San Giorgio* (n 13) at [13].

disallowing the repayment of charges where to do so would entail *unjust enrichment* (emphasis added) of the recipients." In *Les Fils*, Advocate General Slynn summarised the position[18] "that member-States may refuse repayment where it is established that the charge has been passed on and that there would be *unjust enrichment* (emphasis added) if repayment was ordered."

[17] In *Comateb* the ECJ ruled,[19]

> "a Member State may resist repayment to the trader of a charge levied in breach of Community law only where it is established that the charge has been borne in its entirety by another person and that *reimbursement of the trader would constitute unjust enrichment* (emphasis added). It is for the *national courts* (emphasis added) to determine in each case, whether those conditions have been satisfied. If the burden of the charge has been passed on only in part, it is for the national authorities to reimburse the trader the amount not passed on."

[18] This ruling was in response to a reference that assumed that unlawful dock dues had been passed on by the importers to purchasers of the importers' goods, though, at the hearing, the importers claimed that passing on the dues to purchasers could not be considered an automatic consequence of incorporating into the price of goods a sum equivalent to the dock dues. The goods were sold at a composite price not itemising the unlawful dues. The question for the ruling was[20] "essentially whether the refusal to reimburse a charge levied in breach of Community law, on the ground that the charge has been passed on to the purchaser of the goods, even though it is the Member State's own legislation which requires undertakings to incorporate the charge into the cost price of the goods sold, must be deemed to make it virtually impossible or excessively difficult to obtain reimbursement", so as to be incompatible with Community law.

[19] Advocate General Tesauro in his opinion to the ECJ, having considered the exceptional difficulties in the real economy in establishing the passing on of the dues, further questioned[21] whether in the circumstances it was "reasonable to apply the concept of unjust enrichment. The answer is that it is not - simply in

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[18] *Les Fils* (n 14) at [43].
[19] *Comateb* (n 7) at [35].
[20] *Comateb* (n 7) at [6] (Advocate General Tesauro).
[21] *Comateb* (n 7) at [21] (footnote omitted). Advocate General Geelhoed endorsed this in *Commission of the European Communities v Italian Republic* Case C-129/00, [2003] ECRI 14637 at [82]. Further see *Revenue and Customs v The Investment Trust Companies* [2017] UKSC 29 at [59].

terms of the general theory of the law. I do not in fact believe it can be right to describe as unjust enrichment the profit derived by an individual from the reimbursement of a charge unduly required and levied by the authorities. More especially, I do not believe that the State, which itself has actually obtained unjust enrichment by levying - for years, even - an unlawful charge, may then specifically rely on a principle of that kind to refuse to repay the sums unduly paid." He supported this by referring[22] to Professor Hubeau's view[23] that if there is any enrichment without a legal justification it is that of the State receiving the tax that turns out never to have been payable and not that of the taxpayer. He referred[24] to the Opinion in *San Giorgio* of Advocate General Mancini[25], who had instanced the case where "A is a gentleman who, making a free choice, purchases on the open market a particular item at the price fixed by B and regarded as appropriate by A", and who had concluded that A's impoverishment in paying the contractual price could not be regarded as enriching B without justifiable cause. Both he and Advocate General Mancini conceded, however, that there could be exceptional cases where a specific tax item could be identified as passed on to customers and the taxpayer could be unjustly enriched if recovering tax from customers and the State.

[20] In the context of an open market affording choice to customers in respect of goods sold without the unlawful tax being identifiable (as in itemised bills) Advocate General Tesauro boldly recommended[26] that the ECJ "rule explicitly that passing on the charge to third parties that have purchased the goods in no way affects the right of the individual to reimbursement of the sums unduly paid."

[21] The ECJ refused to go that far, as seen in its ruling at [17] above. It seems that this was because s 352A of the relevant Customs Code made express provision for a person who had paid duties or charges that were not due: "that person may obtain reimbursement of such duties or charges, provided that they have not been passed on to the purchaser." Some leeway had to be allowed to States to give effect to their national legislation, especially when the reference had assumed that

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[22] *Comateb* (n 7) at [14].
[23] Francis Hubeau, 'La répétition de l'indu en droit communautaire' in (1981) *Revue trimestrielle de droit européen*, 442, 451.
[24] *Comateb* (n 7) at [21], footnote 27.
[25] *San Giorgio* (n 13), 674- 675.
[26] *Comateb* (n 7) at [24].

passing on had occurred. Thus, the ECJ left it to the national courts to determine when a State could resist repayment to a trader where reimbursement of the trader would involve unjust enrichment in an undefined sense due to passing on of duties or charges.

[22] This was reinforced in *Lady & Kid* where the ECJ stated[27], "However, by way of exception to the principle of reimbursement of taxes incompatible with EU law, repayment of a tax wrongly paid can be refused where it would entail *unjust enrichment* (emphasis added) of the persons concerned."

[23] Thus, these cases establish that a nation may rely upon specific passing on legislation entitling a State to refuse to reimburse national taxes or charges levied in breach of EU law but only where reimbursement "would entail unjust enrichment" (in an undefined sense) of recipient taxpayers in the view of national law. The ECJ in *Lady & Kid* further ruled in restrictive fashion, "The rules of EU law on recovery of sums wrongly paid must be interpreted to the effect that recovery of sums wrongly paid can give rise to *unjust enrichment* (emphasis added) only when the amounts wrongly paid by a taxpayer under a tax levied in a Member State in breach of EU law have been passed on *direct* (emphasis added) to the purchaser"[28]. Such a direct passing on might occur where an amount of tax levied in breach of EU law by a trader had by national law to be itemised on bills presented for payment to purchasers of the trader's goods.

[24] The ECJ cases also establish that the burden of proof cannot be placed upon the taxpayer to show that it has not passed on the tax to customers.[29] This view has also been taken in domestic jurisdictions.[30] This Court considers that, for the reasons below, this approach is the right one.

[25] It is to be noted that for a trader to continue in business and make a living he is concerned all the time with passing on all his costs, including overheads, and

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[27] *Lady & Kid* (n 15) at [18].
[28] *Lady & Kid* (n 15) at [28].
[29] *Les Fils* (n 14) at [8], [12] and [13].
[30] *Waikato Regional Airport Ltd v Attorney General of New Zealand* [2003] UKPC 50 at [78]. The contrary view of La Forest J in *Air Canada v British Columbia* [1989] SCC 95 (CanLII), [1989] 1 SCR 1161, 1203 was utterly rejected by *Kingstreet Investments Ltd v New Brunswick (Finance)* [2007] SCC 1 (CanLII), [2007] 1 SCR 3 going so far as to reject any defence of passing on where *ultra vires* taxes had been collected.

adding on a profit margin that keeps customers coming to him despite competition from other traders. He then needs to pass on any tax imposed by unlawful, ultra vires legislation which enriches the State at his expense. Trying to identify what particular costs have or have not been passed on creates enormous evidential difficulties due to the interaction of various and complex considerations affecting commercial strategy and motivations. For instance, a wealthy company rather than leave a market where it had established a decent share of the relevant market might be prepared to absorb a certain amount of losses till the relevant unlawful tax had been repealed and reimbursement of the tax obtained. Thus, it is only proper that the onus is upon the State to try to clarify the confused situation that it has created.

[26] A trader's ability to pass on the economic burden of a tax depends upon the relative elasticities of supply and demand for the trader's goods, elasticity being a measure of responsiveness of quantities supplied and demanded to changes in price.[31] If the trader raises its prices, its sales - and therefore its profits - are likely to fall unless it raises its quality which could incur extra cost, while extra costs may be incurred via advertisements and extra sales staff in trying to maintain sales. Only in an unreal world when volume of demand for a product is perfectly inelastic and purchasers will purchase the same amount of product regardless of the price charged will no loss be suffered by a price rise passing on the tax. On the other hand, a trader could keep prices at the pre-tax level but increase its volume of sales, though such increase might still result in lower profits than before the price rise, especially if extra costs were incurred to achieve such volume. Also, customers' resistance to increased prices could lead a trader to try to absorb a tax by cutting its expenses, whether resulting in a higher or lower profit margin than normal, for example by finding a cheaper source of supplies or conducting business from cheaper rented premises or persuading its staff to put in unpaid overtime or not use their full holiday allowances or by reducing its staff or by introducing more efficient methods of producing the product it makes and sells.

[31] Further, see Bernard Rudden and William Bishop, '*Gritz* and *Quellmehl*: Pass it on', (1981) 6 European LR 243; Michael Rush, *The Defence of Passing On* (Hart Publishing 2006), 194-203; *Kingstreet Investments Ltd v New Brunswick (Finance) Corporation* 2007 SCC 1 (CanLII), [2007] 1 SCR 3 at [48]- [49] (Bastarache J); and *Berkshire Golf Club v HMRC* [2015] UKFTT 627 (Tax Chamber).

[27] Returning for guidance to the ECJ case law, the ECJ in *Ministerio delle Finanze v IN.CO.GE. '90 Srl*[32] ruled,

> "the obligation on a national court to disapply national legislation introducing a charge contrary to Community law must lead that court, in principle, to uphold claims for repayment of that charge. Such repayment must be ensured *in accordance with the provisions of its national law* (emphasis added), on condition that those provisions are not less favourable than those governing similar domestic actions and do not render virtually impossible or excessively difficult the exercise of rights conferred by Community law."

It is for each State how it safeguards rights of individuals under EU Community law, but "that principle cannot have the consequence of restricting or undermining the substance of those rights."[33] This is the result of the overriding principle requiring full effectiveness to be given to persons' rights under EU Community law, such principle also being fundamental to CARICOM Community law in respect of rights established via the procedure in Article 222 of the RTC.[34]

[28] Thus, the basic EU position is that the supervisory EU law defers to national law, so that passing on is a defence to the extent that the claimant would otherwise be unjustly enriched in the eyes of national law. A Member State must therefore repay a trader the amount of ultra vires tax unlawfully collected from him unless the State proves that its reimbursement of the trader would, under national law, constitute unjust enrichment of the trader because the tax had been passed on direct to its customers for example, where the tax had been itemised on the customers' bills, showing the tax to be an extra cost passed on by the trader.[35]

The position of the CCJ under the RTC

[29] This Court, unlike the ECJ, has no mandate to defer to national law, but, of course, in developing Community law it will have regard to principles of international law including the general principles of law as reflected, for instance,

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[32] [1998] ECR I-6307, Case C-10/97 at [29].
[33] *Irimie v Administrația Finantelor Publice Sibiu*, Case C-565/11, [2013] STC 1321 at [22] (Advocate General Wathelet).
[34] *Trinidad Cement Ltd v Co-operative Republic of Guyana* [2009] CCJ 5 (OJ), (2009) 75 WIR 327 at [24]-[27]; *Rudisa* (n 2) at [29].
[35] See English Value Added Tax Act 1994, s 80(3) as amended by Finance Act 1997, s 46; *Marks & Spencer plc v Commissioners of Customs and Excise (No 5)* [2003] EWCA Civ 1448, [2004] 1 CMLR 8 (reversed on other grounds in [2009] UKHL 8, [2009] 1 All ER 939 after a reference to the ECJ); and *Revenue and Customs v The Investment Trust Companies* [2017] UKSC 29 at [81].

in national law reflecting common values and interests.[36] This Court is in a stronger position than the ECJ in that, unlike the ECJ, it has the original exclusive jurisdiction to interpret *and* apply CARICOM Community law under the RTC. It has to develop a CARICOM Community law uniformly applicable throughout CARICOM. This Court in its original jurisdiction has to determine for itself what are persons' rights enforceable via Article 222 of the RTC and what is needed to make these rights fully effective.[37] Nevertheless, when concerned with unjust enrichment, as Dr Schreuer has written[38], "Obviously, the various solutions and delimitations worked out in different domestic legal systems can be drawn upon as a source of wisdom and experience." He thus instanced several international law cases where the tribunal had drawn upon unjust enrichment principles in civil law or common law to award[39] or to refuse[40] restitutionary compensation.

[30] This Court in dealing with the current circumstances must, of course, take account of fundamental provisions of the RTC that provide guidance as to what may constitute "unjust" enrichment. In Chapter Five on Trade Policy, Article 78 states, "The goal of Community trade policy shall be the sustained growth of intra-Community and international trade and mutually beneficial exchange of goods and services among the Member States and between the Community and third States." This is with a view to "full integration of the national markets of all Member States of the Community into a single unified and open market area." Article 70 requires Member States to "establish and maintain a regime for the free movement of goods and services within the CSME" and "to refrain from trade policies and practices, the object or effect of which is to distort competition, frustrate free movement of goods and services or otherwise nullify or impair benefits to which other Member States are entitled under this Treaty."

[31] The rest of Chapter 5 develops those themes. Thus, Article 87 prohibits Member States imposing import duties on goods of Community origin and Article 90

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[36] In *TCL v Caribbean Community*, [2009] CCJ 2 (OJ, 74 WIR 319, at [41], the Court stated: 'The Court may also consider "the general principles of law recognized by civilized nations". If one applies Article 217 of the Revised Treaty the principles of law common to the principal legal systems of the Community are a source of law for this Court, as it is for the International Court of Justice: see Article 38(1)(c) of the Statute of the International Court of Justice. This Court may take into account the principles and concepts common to the laws of Member States. The search is for general principles of law common to Member States…If the general principle is widely accepted throughout the Community and relevant it may become part of Community law.'

[37] See *Trinidad Cement Ltd* and *Rudisa* supra (n 34).

[38] Christoph H Schreuer, 'Unjustified Enrichment in International Law', (1974) 22 Am J Comp L, 281.

[39] *Leslie Caro v Norddeutscher Lloyd* [1927-28] 7 TAM 398 ; *United States of America v Republic of Peru* (the *Landreau* Claim) (1922) 1 RIAA 352 (*quantum meruit* award); *William A Parker v United Mexican States* (1926) 4 RIAA 35 (quasi-contract liability).

[40] *Lighthouses Arbitration* (1956) 12 RIAA 155 (enrichment held by Permanent Court of Arbitration not to be without a just legal basis as pursuant to contract).

proscribes the discriminatory application of fiscal charges by Member States on Community goods. Earlier Article 7 proscribes any discrimination on grounds of nationality only, while Article 9 requires Member States to "facilitate the achievement of the objectives of the Community" and to "abstain from any measures which could jeopardise the attainment of the objectives of this Treaty."

[32] Finally, it is notable that in order to facilitate the goals of the RTC, private persons are permitted to bring proceedings before this Court if certain conditions set out in Article 222 are satisfied. In particular, the first two conditions require that this Court has determined that the RTC "intended that any right or benefit conferred by or under this Treaty on a Contracting Party shall enure to the benefit of such person directly" and "the persons concerned have established that such persons have been prejudiced in respect of the enjoyment of the right or benefit" mentioned above.

[33] It is worthwhile being reminded that the Preamble to the RTC emphasises that the signatories are "Resolved to establish conditions which would facilitate access by their nationals to the collective resources of the Region on a non-discriminatory basis"; "Desirous further of establishing and maintaining a sound and stable macro-economic environment that is conducive to investment, including cross-border investment and the competitive production of goods and services in the Community"; "Mindful further that the benefits expected from the establishment of the CSME are not frustrated by anti-competitive business conduct whose object or effect is to prevent, restrict, or distort competition"; "affirming also that the original jurisdiction of the Caribbean Court of Justice is essential for the successful operation of the CSME."

Unlawfully collected taxes and unjust enrichment

[34] In the light of paragraphs [30]-[33] above it is clear that this Court is entitled to hold that Guyana has been unjustly enriched at the Claimants' expense when collecting the unlawful environmental tax directly from the Claimants in clear breach of its fundamental obligations under the RTC. This tax clearly did not encourage cross-border investment but tended to frustrate free movement of goods, distorted competition and discriminated against the Claimants who should have been protected as belonging to the Community. It tended to frustrate the

objective of free trade within the Community pursuant to Chapter Five of the RTC. In these circumstances, Guyana appears to have no legal basis whatsoever for retaining any of the *ultra vires* tax collected by it from the Claimants, affirmative answers having been given to the standard common law unjust enrichment questions[41]: Was the defendant enriched? Was this at the expense of the claimants? Was the defendant's enrichment unjust? This position substantially reflects the civil law position where an enrichment that cannot be justified by a legal basis or "causa" cannot be retained but must be restored to the person at whose expense the enrichment was obtained.[42] Thus, Guyana must discharge its obligation to repay that money to the Claimants, their resulting enrichment being perfectly justified as accruing in discharge of Guyana's debt.

[35] Guyana, however, seeks to bring in the position of third parties, the Claimants' customers. It submits that if it has to reimburse the Claimants the amount of tax that it shows the Claimants to have passed on to their customers, the Claimants will then have been unjustly enriched to that extent by their dealings with their customers, so that the amount of that unjust enrichment can be set off against Guyana's liability.

[36] What, however, can be unjust in the enrichment of a trader in the case of a customer's bill for bottled beverages containing a composite price that covers all the trader's hidden costs, including a tax cost, when the customer freely chose to pay the requested price for those beverages rather than other beverages in the market place, taking account of the price and the taste of the bought beverages?[43] The customer fully intended to pay the composite price under a valid contract, whatever the costs and profit or loss margin, and the trader fully intended to sell at that price. The two parties had consented to enter into a valid agreement, while general principles of international law, taking account of the general principles of law recognised by civilised nations, include principles of consent and the legal validity of agreements.[44] Thus, the trader is fully beneficially entitled to the proceeds of sale of its beverages. When the trader's efforts have enabled it to cover all its costs and stay in business despite having been hit with an *ultra vires*

[41] *Banque Financière de la Cité v Parc (Battersea) Ltd* [1999] 1 AC 221 at 227; James Edelman & Elise Bant, *Unjust Enrichment* (2nd edn, Hart Publishing 2016), 6.
[42] See Peter Birks, *Unjust Enrichment*, (Clarendon Law Series, 2nd edn, OUP 2005), 102-103.
[43] Further see Michael Rush, *The Defence of Passing On* (Hart Publishing, 2006), 188-189, 217-218 and 230-234.
[44] Ian Brownlie, *Principles of Public International Law* (7th edn, OUP 2008), 16 and 19.

tax, which it then claims back, Guyana cannot just thank the trader for its efforts and then expropriate by way of set off whatever amount of the tax cost that the trader had managed to cover. To permit this would be to allow Guyana unjustly to enrich itself by exploiting the trader's legitimate efforts and by making an illegal profit out of legislation known to be unlawful.

[37] Thus, in the current circumstances of composite bills for non-returnable beverages no unjust enrichment of the Claimants has flowed from any passing on of the G$10 per beverage container. It follows that no passing-on defence is available to Guyana.

[38] It has been correctly stated[45], "Restitutionary relief… does not seek to provide compensation for loss. Instead, it operates to restore to the plaintiff what has been transferred from the plaintiff to the defendant whereby the defendant has been unjustly enriched." The Claimants would be prejudiced in the enjoyment of their rights and benefits under the RTC as required under article 222(b) if they were denied restoration of their money paid to Guyana pursuant to the ultra vires tax.

Rejection of Guyana's passing on defence and the related applications

[39] This Court holds that unjust enrichment precludes any defence of passing on being available to Guyana in the circumstances of this case. Thus Guyana's two applications of 31 October 2016 are dismissed. It follows that, subject to the laches defence, the claimants would be entitled to judgment without the need for any further hearing.

The laches defence

[40] The Defendant contends that even if the passing on defence is not available, the Claimants are nonetheless barred from obtaining reimbursement because of the doctrine of laches. The Defendant argues that the Claimants were aware that the environmental tax was inconsistent with the RTC even before the 1st of January 2006: the date of the Treaty's entry into force. Further, from that date of entry into force, Article 222 of the RTC gave private entities of Member States, such as the Claimants, the right of access to the original jurisdiction of this Court to

[45] *Commissioner of State Revenue (Victoria) v Royal Insurance Australia Ltd* [1994] 4 LRC 511, 527, (Mason CJ) endorsed in *Roxborough v Rothmans Pall Mall* [2012] HCA 68, (2001) 208 CLR 516, [26]-[27]. To similar effect see *Revenue and Customs v The Investment Trust Companies* [2017] UKSC 29 at [42] and [60] (Lord Reed).

institute proceedings to enforce rights and benefits enuring to them under the Treaty. Despite this, the Claimants did not initiate proceedings against the Defendant until March 7, 2016, over a decade later. The Defendant submits that this substantial delay disentitles the Claimants from enforcing any right they may have had to reimbursement of the taxes.

Is laches applicable under the RTC and on what legal foundation?

[41] The doctrine of laches, often called extinctive prescription in international law, is generally defined as "the bar of claims by lapse of time".[46] There can be little doubt that prescription is regarded as a principle of international law, the law that this Court in its original jurisdiction is required to apply (See: Article 217(1) RTC). Undue delay in presenting an international claim can bar such a claim based on several underlying principles: acquiescence, estoppel or prescription, the latter usually but not necessarily founded on "the highest equity" or laches as known in common law jurisdictions. The legal foundations of these principles are quite different: "Even though the application of the principles may produce the same consequences, each doctrine invokes a distinct legal analysis and often rests on different forms of evidence."[47]

[42] One of the most widespread justifications for prescription is the avoidance of possible injustice to the defendant[48]. But there are other reasons and considerations for prescription, in particular that "great principle of peace", as it was called in the *Spader Case*[49]. The principle of public policy, the common good, requires order, social stability and peace within a community. The 1930 Codification Conference of the League of Nations noted that a bar of stale claims is "a necessary condition for maintaining order in any society."[50] Prescription is therefore by its very essence part of the law, including international law, as it will "prevent a State from being indefinitely threatened with international proceedings."[51]

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[46] Ashraf Ray Ibrahim, 'The Doctrine of Laches in International Law', (1997) 83 Va L Rev 647, 650-651.
[47] Ibid, 654.
[48] *Gentini Case* (1903-1905) 10 RIAA 558 (Umpire Ralston).
[49] (1903-1905) 9 RIAA 223.
[50] Ibrahim (n 46), 667 which cites Minutes of the Third Committee, Conference for the Codification of International Law, League of Nations Doc. C.351(c) M.145(c), *reprinted in* 4 Conference for the Codification of International Law 1575-1581 (1930) (Shabtai Rosenne ed., 1975), 1581.
[51] Ibid. Already in the *Gentini Case*, Umpire Ralston referred to the maxim *Res Reipublicae ut sit litium*, which in this context can be translated as "It is in the interest of the State(s) or the Community as a whole, that there be a limit to litigation.".

[43] The Caribbean Community finds its legal foundation in the Revised Treaty of Chaguaramas (RTC) which is binding upon all its Member States and must be performed by them in good faith[52]. This overarching principle of good faith governs not only the way in which Member States must act in the observance of the treaty but also the behaviour of those who claim or seek to enforce rights arising under that treaty. The principle requires the parties to a dispute under the RTC to demonstrate reasonable regard for the other's rights and interests. Even those who are the wholly innocent victims of wrongful conduct by a Member State, need to exercise the discretion to seek relief against that State reasonably and in good faith.[53]

[44] The underlying rationale is that law, in this case Community law, as enshrined in the treaty and developed by the Court, should not only aim to prevent and repair individual loss and injustice but also to preserve and protect the economic welfare and prosperity of the Community as a whole. This can be derived from the Preamble to the RTC where the Member States reference, inter alia, "improving the standard of living of their peoples", the essence of "the economic and social development of the peoples of the Community", contributing to "the expansion and viability of national economies of the Community" and the "economic and social cohesion in the Community." On this basis, those who have suffered damage or loss because of a State's breach of the treaty, have a duty to mitigate the loss or damage, a principle that can be found in every legal system.

[45] Closely related to that duty, although not entirely the same, is the duty to be reasonably diligent in enforcing one's rights. As the ECJ stated in *Brasserie du Pêcheur/Factortame*:

> "In particular, in order to determine the loss or damage for which reparation may be granted, the national court may inquire whether the injured person showed reasonable diligence in order to avoid the loss or damage or limit its extent and *whether, in particular, he availed himself in time of all the legal remedies available to him* (emphasis added).
>
> Indeed, it is a general principle common to the legal systems of the Member States that the injured party must show reasonable diligence in

[52] Vienna Convention on the Law of Treaties (VCLT), Art 26: *Pacta sunt servanda*. See also Steven Reinhold, 'Good Faith in International Law', (2013) 2 UCL Journal of Law and Jurisprudence, 40 - 63.
[53] See also United Nations, Yearbook of the International Law Commission 2001, Volume II, UN Doc A/CN.4/SER.A/2001/Add.1 (Part 2), 93.

> limiting the extent of the loss or damage, *or risk having to bear the damage himself* (emphasis added)."[54]

[46] It has been said that Limitation laws, "quicken diligence by making it, in some measure, equivalent to right."[55] But when can a claimant be considered reasonably diligent? In this Court's view a limitation period should be fixed beyond which a claim will be barred as this will establish legal certainty. But who must fix that period and how should that be done?

Determination of period after which claims become stale

[47] At the thirty-third session of the Institute of International Law held at The Hague in August 1925[56], a resolution was adopted that practical considerations of order, of stability and of peace, should include the limitation of actions for obligations between states and that these considerations were encompassed by the general principles of law recognised by civilised nations, which international tribunals are called upon to apply. The Report further noted that in the absence of a conventional rule in force in the relations of the litigant states, fixing the limitation period is a question left entirely to the decision of the international judge.

[48] The essence of these remarks was reflected and approved by the Greco-Bulgarian Mixed Arbitral Tribunal in the case of *Sarropoulos v Bulgarian State*[57] :

> "Positive international law has not so far established any precise and generally adopted rule either as to the principle of prescription as such, or as to its duration. Neither do arbitral decisions or opinions of writers yield any agreed solution.
>
> 'However, prescription appears to constitute a positive legal rule in almost all systems of law. It is an expression of a great principle of peace which is at the basis of the common law and of all civilized systems of jurisprudence**.** *Stability and security in human affairs require that a delay should be fixed outside which it should be impossible to invoke rights or obligations*....(emphasis added)".

[49] This line of thought was reiterated by the Commission of Arbitration in the *Ambatielos Claim*[58]:

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[54] *Brasserie du Pêcheur SA v Federal Republic of Germany* and *The Queen v. Secretary of State for Transport, ex parte Factortame Ltd and Others* [1996] QB 404, (1996) C-46/93 and C-48/93, [1996] ECR I-1029, at [84] and [85].
[55] See Joseph Story, *Conflict of Laws* (3rd edn, - 1846), 962.
[56] (1925) 19(4) *American Journal of International Law*, 760.
[57] Annual Digest, 1927-8 Case No 173, 263.
[58] (1956) 12 RIAA 91, 103.

> "There is no doubt that there is no rule of international law which lays down a time limit with regard to prescription, *except in the case of special agreements to that effect* (emphasis added), and accordingly … the determination of this question is "left to the unfettered discretion of the international tribunal which, if it is to accept any argument based on lapse of time, must be able to detect in the facts of the case before it the existence of one of the grounds which are indispensable to cause prescription to operate."

[50] The establishment of a limitation period for the filing of proceedings is one of a variety of procedural matters for which no provision is made in the RTC. In the European Union, individuals file their cases in domestic courts and the issue of limitation of actions is, in principle, resolved by having regard to the procedural law of the state in which the case is filed. This is in keeping with the broader principle of national procedural autonomy laid down by the ECJ in cases such as *Rewe-Zentralfinanz eG andRewe-Zentral AG v Landwirtschaftskammer für das Saarland* [59].

[51] The adoption by this Court of European precedents that bear on limitation of actions, at least for cases filed directly before this Court, would be wholly inapt. The legal infrastructure supporting the institution of cases before this Court envisages that both the procedural and substantive law applied by this Court are to be premised on "such rules of international law as may be applicable" and should be uniform throughout the Community. A defendant State, Guyana in this instance, cannot advance its own municipal law to attempt to bar or limit a Claimant's cause of action instituted in this Court. This is in keeping with The Vienna Convention on the Law of Treaties which outlines that a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.[60]

[52] Further, as Alina Kaczorowska-Ireland points out in relation to limitation periods and other procedural matters in the European Union[61]:

> "Leaving such important matters to be decided by national procedural rules which, on the one hand, are different in different Member States and, on the other hand, do not take into account the peculiarity of EU law, could undermine the extent of the protection of the rights conferred by

[59] Case T-33/76. See also *Comet BV v Produktschap voor Siergewassen*, Case T-45/76 and *Cuadrench Moré v Koninklijke Luchtvaart Maatschappij NV* [2013] 2 ALL ER (Comm) 1152.
[60] See also the *Spader* Case (n 49).
[61] Alina Kaczorowska-Ireland, *European Union Law* (4th edn, Routledge 2016), 380.

> EU law on individuals, prejudice legal certainty and justice, and call into question the authority of EU law."

If one were to substitute for "EU" the word "CARICOM ", the above quotation would be prescient.

[53] Some treaties, as indicated in the *Ambatielos* Claim, establish definitive time limits for the presentation of claims before international tribunals. For example, the Convention on the Limitation Period in the International Sale of Goods (Limitation Convention) prescribes a limitation period of four years. Article 1116(2) of the NAFTA treaty bars an investor from making a claim "if more than three years have elapsed from the date on which the investor first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the investor has incurred loss or damage." The 1930 Codification Conference of the League of Nations suggested that: "The claim against the State must be lodged not later than two years after the judicial decision [the date when local remedies were exhausted] has been given, unless it is proved that special reasons exist which justify extension of this period."[62] See also the International Law Commission's 1958 Draft Articles where the Special Rapporteur stated: "the time limit is short, in keeping with modern procedure and with the changed conditions of international life…"[63] Later revisions of the Law Commission's Draft, however, deleted the explicit time limit altogether, preferring the formulation: "If the presentation of a claim is delayed, after the exhaustion of local remedies …, for a period of time which is unreasonable under the circumstances, the claim shall be barred by the lapse of time."[64] No precise definition is given of what constitutes a "period of time, which is unreasonable." It has been considered preferable to leave this matter to judicial determination in the light of all the facts and circumstances of each case.[65]

[54] International law looks to general principles of law recognized by civilized nations as "an indication of policy and principles" that are useful in international jurisprudence. Among the factors which will determine the length of permissible

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[62] League of Nations publication, V.Legal, 1930.V.17 (document C.351(c) M.145(c).1930, 237.
[63] United Nations, Yearbook of the International Law Commission 1958, Volume II, UN Doc A/CN.4/SER.A/1958/Add. l, 67.
[64] United Nations, Yearbook of the International Law Commission 1969, Volume II, UN Doc A/CN.4/SER. A/1969/Add. 1, p 147. These revisions seem to be based on the Harvard law School's Draft Convention on the International Responsibilities of States for Injuries to Aliens (1961).
[65] F V García-Amador, Louis B Sohn & Richard.R Baxter, Recent Codification of the Law of State Responsibility for Injuries to Aliens (Oceana Publications, 1974), 313.

delay, the actual practice of states in dealing with claims is of supreme importance[66]. It was noted by the Iran-US Claims Tribunal in *Iran National Airlines v United States* that although "municipal statutes of limitation are not necessarily binding on claims before international tribunals … such periods may be taken into account when determining the effects of an unreasonable delay in pursuing a claim before such a tribunal [applying international law]."[67]

[55] It may be argued that the cause of action in question here is unknown to domestic law but, without determining that point, the Court can in any event consider what might be the closest analogue, namely, actions for money had and received. The range among the Member States is from 3 years in the case of Guyana[68] to as many as 30 years in the case of Suriname although that latter period may be lessened to 5 years if the Surinamese Draft Civil Code is adopted.[69] Most states prescribe a period of 6 years[70] while Trinidad and Tobago has a 4-year time limit.[71]

[56] Leaving aside the position in Suriname which is a clear outlier in this regard, the Court finds that a period of five years is neither too long nor unduly short for a claimant to commence proceedings. The Court considers that this time limit will protect states from being vexed by claims relating to long-past incidents about which their records may no longer be in existence and as to which their witnesses may well have no accurate recollection. It will above all encourage claimants to bestir themselves and file suit in a timely fashion. This 5-year period permits adequate access to justice and is consistent with both international and regional standards. It will run from the time that the claimant knew or at the very least reasonably should have known that the defendant State was in breach of the treaty.

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[66] B E King, 'Prescription of Claims in International Law', (1934) 15 British Ybk Intl L 82, 93.
[67] (1987) 17 Iran-U.S. Claims Tribunal Rep. 187, 190. See also *Alan Craig v Ministry of Energy of Iran* (1984) 3 Iran-U.S. Claims Tribunal Rep. 280 [Annex W155].
[68] Limitation Act, CAP 7:02, s 6. See also *Kleinwort Benson Limited v Sandwell Borough Council* [1994] 4 All ER 890, 942-943. Nothing cautionary on limitation point – at the time of the case in 1994 no assistance was available for mistakes of law, only mistakes of fact. Arden LJ in Test Claimants in the FII Group Litigation v Revenue and Customs Commissioners [2010] EWCA Civ 103, [2010] STC 1251 at 231 refers to 6 year period unless not discoverable by mistake.
[69] s. 3:309.
[70] See for example Limitation Act (Antigua and Barbuda) Act No 8 of 1997, s 7; Limitation Act (Bahamas), CAP 83, s 5; Limitation of Actions Act (Barbados), CAP 231, s 14; Limitation Act (Belize), CAP 170, s 4; Limitation Act (Saint Christopher and Nevis), CAP 5:09, s 4(1); Limitation Act (Saint Vincent and the Grenadines), CAP 129, s 7. In the case of Jamaica, see the Limitation of Actions Act, s 46 and *International Asset Services Limited v Arnold Foote* (Supreme Court of Jamaica, 28 January 2009) (CARILAW) JM 2009 SC 9 (Williams J).
[71] Limitation of Certain Actions Act, CAP 7:09, s3.

The Application of Prescription in this Case

[57] Accordingly, the Court holds that actions against a Member State for repayment of taxes unlawfully collected must be lodged within five years of the date on which the claimant first acquired, or reasonably should have first acquired, knowledge of the alleged breach, unless it is proved that there are special reasons which justify an extension of that period. The claim is considered lodged on the date the application for special leave is filed and any reliance on prescription by the Defendant State must be clearly pleaded as was done by Guyana.

[58] It is clear that there are no special reasons to justify any extension of the period in this case as the Claimants were aware that the environmental tax was inconsistent with the RTC even before the 1st of January 2006: the date of the Treaty's entry into force. It was only until a few days before filing their Application for Special Leave that Guyana was made aware of this claim. This is not a case of a single breach of the Treaty but one of continuing or, more precise, recurrent breaches on the part of Guyana. With each prejudicial application of the tax provision to the Claimants there was a fresh breach by Guyana of the RTC and a fresh cause of action arose. Time ran therefore against the Claimants from the time, respectively, of each successive unlawful payment' their right of action for reimbursement being complete at that time.[72] It follows that since the Claimants did not bring their action against Guyana until filing their Application for Special Leave on 7 March 2016 they can only claim reimbursement of payments of unlawfully imposed environmental tax from 7 March 2011. As the last payment of unlawful tax was made on 7 August 2015, the claim is limited to the period of 7 March 2011 through 7 August 2015.[73] No further hearing is necessary to arrive at a final judgment.

Interest

[59] The order sought in the Originating Application by the Claimants in dealing with interest merely seeks "the State of Guyana to pay interest on the sums payable by this judgment at a rate of 4% per annum from the date of this judgment". This is consistent with the order in *Rudisa* and is granted. Earlier in the Application, however, there was a submission that interest on the monies to be paid be ordered

[72] *Kingstreet Investments Ltd v New Brunswick (Finance)* [2007] 1 SCR 3, 2007 SCC 1 (CanLII) at [61].
[73] The Instrument requiring cessation was enacted on 5 August but it was apparently never fully implemented until after 7 August 2015.

at a rate to be determined by the Court as of the time that the Court deems appropriate in the interests of justice." The Claimants took no heed of what the Court emphasised in *Rudisa*[74]. In the absence of detailed particulars in the Application to be supported in due course by requisite cogent evidence, this Court cannot come to a proper quantification of interest and it is too late to seek to amend the Application.

Conclusion

[60] The Court finds that Guyana has breached Article 87(1) of the RTC by imposing an environmental tax on imported non-returnable beverage containers which qualify for Community treatment. The Claimants are entitled to the return of environmental tax paid by them from 7 March 2011 to 7 August 2015, the agreed aggregate figure to be submitted to the Court as soon as practicable and no later than 9 June 2017.

[61] The Claimants have substantially succeeded on their claims. As the Defendant has succeeded on a part of their laches defence, the Court awards the Claimants 70% of their costs pursuant to its powers under Rule 31.1 of the Caribbean Court of Justice (Original Jurisdiction) Rules ("the OJR").

[62] For the reasons stated by this Court in *Rudisa* the Court has a responsibility to monitor compliance with its orders. This responsibility is reflected in Rules 30.3(3) and 30.3(4) of the OJR and also in the Court's practice so far as it has allowed parties to apply to the Court in respect of matters arising out of its judgment and orders.

Declaration and Orders:

[63] The Court declares that the collection of the environmental tax under section 7A of the Customs Act in relation to Community goods is incompatible with Article 87(1) of the RTC.

[64] The Court also orders the State of Guyana:

1) To pay to the Claimants the aggregate sum paid by the Claimants by way of environmental tax from 7 March 2011 through to 7 August 2015;

[74] *Rudisa* (n 2) at [38].

2) To pay interest on the sums payable by this judgment at the rate of 4% per annum from the date of the judgment;
3) To pay 70% of the costs of these proceedings to be taxed if not agreed on or before 9 June 2017;
4) To file with the Court on or before 9 December 2017 a report on its compliance with those orders unless the Claimants have previously filed a notice of compliance.

[65] The parties shall have liberty to apply.

/s/ CMD Byron

The Rt Hon Sir D Byron (President)

/s/ A Saunders

The Hon Mr Justice A Saunders

/s/ J Wit

The Hon Mr Justice J Wit

/s/ D Hayton

The Hon Mr Justice D Hayton

/s/ W Anderson

The Hon Mr Justice W Anderson