

IN THE CARIBBEAN COURT OF JUSTICE

Original Jurisdiction

CCJ Application No. SLUOJ2018/001

Between

ROCK HARD DISTRIBUTION LIMITED **Applicant/Proposed Claimant**

And

THE STATE OF TRINIDAD AND TOBAGO **Respondent/ Proposed Defendant**

THE CARIBBEAN COMMUNITY **Respondent/Proposed Defendant**

THE COURT,

composed of A Saunders, President, J Wit, W Anderson, M Rajnauth-Lee, and D Barrow,
Judges

having regard to the Application for Special Leave to commence proceedings and the Proposed Originating Application, together with the annexures thereto, filed on the 14th day of August 2018, the Request to be Heard filed on behalf of the State of Trinidad and Tobago on the 30th day of August 2018, the written submissions of the State of Trinidad and Tobago together with Affidavit in Support and annexures filed on the 8th day of November 2018, the written submissions in response of the Applicant filed on 15th day of November 2016 and to the Case Management Conference held at the seat of the Court and by videoconference on November 29, 2018,

and after considering the written submissions filed on behalf of:

- **The Applicant/Proposed Claimant**, by Mr Allan Wood and Ms. Symone M. Mayhew, Attorney at law
- **The Respondent/Proposed Respondent**, by Ms Deborah Peake, SC, Ms. Tamara Toolsie and Ms. Radha Sookdeo, Attorneys-at-Law

and after delivery of Decision on the 29th day of November 2018

issues on the 11th day of December 2018

Written Decision

Application for Special Leave to commence proceedings

- [1] The Applicant/Proposed Claimant, Rock Hard Distribution Limited, sought special leave from this Court under Article 222 of the Revised Treaty to commence proceedings against the Respondent/Proposed First Defendant, the State of Trinidad and Tobago and the Proposed Second Defendant, the Caribbean Community for *inter alia* (i) the alleged misclassification of imports of Rock Hard cement; and (ii) the alleged referral by the State of Trinidad and Tobago to the Council for Trade and Economic Development (COTED) for the classification of Rock Hard cement.
- [2] The Respondent objected to the special leave application on the basis that the Applicant failed to establish an arguable case that the Revised Treaty intended that a right or benefit conferred thereunder shall enure to it and that it sustained prejudice in respect of the State of Trinidad and Tobago's alleged misclassification of Rock Hard cement. The Respondent contended that the issue of the proper classification of Rock Hard cement for the purposes of the Common External Tariff (CET) was already the subject of consideration in two pending claims before this Court and that a multiplicity of claims in which identical issues arise for determination was not in keeping with the Court's overriding objective at Part 1.3 of the CCJ Original Jurisdiction Rules 2017. The Respondent urged this Court to refuse the application for special leave in the interest of justice as it constitutes an abuse of process.
- [3] The Court has considered the written submissions of the parties and concludes that the Applicant has met the requirements set out in Article 222.

Person natural and/or juridical of a Contracting Party

- [4] The Applicant is a person natural and/or juridical of a Contracting Party in that it is a company duly incorporated under the laws of St. Lucia with address at Hewanorra House, Trou Garnier Financial Center, Points Seraphine, Castries, St. Lucia. It is a regional distributor of Rock Hard cement which is a non-community good imported from Turkey into several Community States including Trinidad and Tobago through its local distributor, Mootilal Ramjit and Sons Contracting Limited.

Conferment of right and/or benefit and establishing prejudice

- [5] Even though the Applicant is not the importer of the cement in Trinidad and Tobago, as the regional distributor, it has a sufficient interest in the rate at which its cement is

imported in the State of Trinidad and Tobago and other member states. As an entity doing business in the Community, the Applicant is entitled to import goods into the community at the rates set out in the CET and in accordance with the correct classification of its cement under the CET. Any misclassification under the CET of the Applicant's goods on entry into Trinidad and Tobago is prejudicial to the Applicant as it results in the higher tariffs being applied to the Applicant's cement which will directly affect the Applicant's business.

Espousal of Claim

[6] The Contracting Party, St. Lucia, has declined/omitted to espouse the claim.

Interest of Justice/Abuse of Process

[7] The Applicant's Proposed Originating Application included a complaint that its cement was being incorrectly classified in Trinidad and Tobago as 'building cement grey' and it should be classified as "other hydraulic cement". At the hearing of TTOJ2018/001 in July 2018, both the Claimant, Trinidad Cement Limited and the Defendant, Trinidad and Tobago agreed that there was no dispute in that matter as to the classification of Rock Hard cement in Trinidad and Tobago. In TTOJ2018/002, the Claimants, Trinidad Cement Limited and Arawak Cement Company Limited, complained that the Defendant, Barbados, contravened Article 79 of the RTC by "unilaterally reducing the CET rate from 60% to 5% on HS 2523.90.00 'other hydraulic cement' and thereafter misclassifying cement imported by Rock Hard Cement Limited ("RHCL") under HS 2523.90.00 rather than HS 2523.29.10 'building cement (grey)". In its Defence, Barbados submitted that it was not in breach of the RTC as it "never unilaterally or otherwise reduced the CET on other hydraulic cement" and that there was no merit to the contention that Rock Hard cement was misclassified. As an intervener in those matters Rock Hard cannot widen the scope of those proceedings as it relates to the classification of its cement and must accept the cases as it finds them¹. As a result of its limited legal status, the Applicant filed this application in an effort to formalize its interest in the adjudication of the classification issue. It is consistent with the interest of justice that the Applicant should not be precluded from doing so on the basis of an abuse of process.

¹ See: Rule 14.6 CCJ Original Jurisdiction Rules 2017 and *Shanique Myrie v The State of Barbados [2012] CCJ 3 (OJ)* at [34].

Disposition

- [8] The Court holds that the Applicant has satisfied the requirements of Article 222 and grants special leave for it to commence proceedings in SLUOJ2018/001.

/s/ A Saunders

The Hon Mr Justice A Saunders (President)

/s/ J Wit

The Hon Mr Justice J Wit

/s/ W Anderson

The Hon Mr Justice W Anderson

/s/ M Rajnauth-Lee

The Hon Mme Justice M Rajnauth-Lee

/s/ D Barrow

The Hon Mr Justice D Barrow