THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

Case No: 738/2010

In the matter between:

INTERNATIONAL TRADE ADMINISTRATION COMMISSION	**1st Appellant**
THE MINISTER OF TRADE AND INDUSTRY	**2nd Appellant**

and

SOUTH AFRICAN TYRE MANUFACTURERS CONFERENCE (PTY) LTD	**1st Respondent**
BRIDGESTONE SOUTH AFRICA (PTY) LTD	**2nd Respondent**
CONTINENTAL TYRE (SOUTH AFRICA) (PTY) LTD	**3rd Respondent**
DUNLOP TYRES INTERNATIONAL (PTY) LTD	**4th Respondent**
GOODYEAR TYRE AND RUBBER HOLDINGS (PTY) LTD `	**5th Respondent**

Neutral citation: *International Trade Administration Commission v SA Tyre Manufacturers Conference* (738/2010) [2011] ZASCA 137 (23 September 2011)

Coram: Harms AP, Mthiyane, Cloete, Cachalia and Shongwe JJA

Heard: 7 September 2011

Delivered: 23 September 2011

Summary: Dumping – application to impose anti-dumping duties – refusal – review

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O R D E R

On appeal from: North Gauteng High Court, Pretoria (Hartzenberg J sitting as court of first instance):

1 The appeal is upheld with costs, including the costs of three counsel.

2 The order of the court below is set aside and replaced with an order dismissing the application with costs, including the costs of three counsel.

J U D G M E N T

HARMS AP (MTHIYANE, CLOETE, CACHALIA and SHONGWE JJA concurring)

Introduction

[1] This case is about the dumping of certain types of tyres from China. Dumping is the introduction of goods into the commerce of a country or its common customs area at an export price less than the normal value of those goods in the country of origin. According to the General Agreement on Tariffs and Trade of 1947 (GATT) (referred to in more detail below) –

'[t]he contracting parties recognize that dumping, by which products of one country are introduced into the commerce of another country at less than the normal value of the products, is to be condemned if it causes or threatens material injury to an established industry in the territory of a contracting party or materially retards the establishment of a domestic industry.'[1]

[2] The South African Tyre Manufacturers Conference (Pty) Ltd is an industrial organisation representing the four local manufacturers of pneumatic rubber tyres, namely Bridgestone South Africa (Pty) Ltd, Continental Tyre South Africa (Pty) Ltd, Dunlop Tyres International (Pty) Ltd and Goodyear Tyre and Rubber Holdings (Pty) Ltd. As the names indicate, they are subsidiaries of or related to major international

1 Article VI para 1.

tyre manufacturers. These five (to whom I shall refer to as 'the manufacturers') applied to the International Trade Administration Commission ('ITAC') to investigate the possible dumping of tyres by manufacturers from the Peoples' Republic of China (PRC). ITAC, after a lengthy investigation, recommended to the Minister of Trade and Industry that he should terminate the investigation. The Minister accepted the recommendation.

[3] The manufacturers were dissatisfied and they applied on 1 October 2007 to the High Court, Pretoria, for a review of ITAC's recommendation and the Minister's decision. The grounds of review were countless but, as the high court (Hartzenberg J) said,

'the real and only objection raised by the applicants is that [ITAC] either deliberately or otherwise wrongly failed to investigate the market economy status of the PRC, which it was obliged to do in the light of the information available to it and in terms of the ITA Act, the Regulations and the relevant international treaties.'

The high court held that ITAC had a duty to investigate the market economy status of the PRC, something it failed or refused to do so. The court accordingly reviewed the relevant recommendation and decision, and set them aside. The present appeal by ITAC and the Minister is with the leave of the court below.

[4] The imposition of anti-dumping customs duties on offending goods is permitted in terms of an international agreement binding on the Republic and under our municipal law, provided the dumping harms or is likely to harm our domestic trade and industry.

'Anti-dumping duties are harnessed to counteract or reduce harmful dumping and other adverse trade practices.'

International Trade Administration Commission v SCAW South Africa (Pty) Ltd 2010 (5) BCLR 457 (CC) para 1.

[5] The municipal law referred to is the International Trade Administration Act 71 of 2002 ('the Act' or 'the ITA Act'), and its regulations. One of its objects is to provide for the control of the import of goods, and for the amendment of customs duties. For this, ITAC must investigate and evaluate applications for the amendment of customs duties with regard to inter alia anti-dumping duties, and to issue recommendations regarding the rates of duty (s 26(1)(c)(i)). It must take appropriate steps to give effect

to its recommendations (s 22). A report is provided to the Minister who, if he adopts the recommendations, may request the Minister of Finance to amend schedules to the Customs and Excise Act 91 of 1964 by notice in the Government Gazette. (See further s 55(2)(a) read with s 56(1) of the Customs and Excise Act and *Minister of Finance v Paper Manufacturers Association* 2008 (6) SA 540 (SCA) para 7.)

[6] The international agreement is GATT. Malan AJA explained the position as follows in *Progress Office Machines v SARS* 2008 (2) SA 13 (SCA) para 5:[2]

'South Africa is a founding member of the World Trade Organisation Agreement ("WTO") and also a signatory to the General Agreement on Tariffs and Trade of 1947 ("GATT"). The South African Government acceded to GATT and its accession was published in the *Government Gazette*. Parliament approved the agreement in the Geneva General Agreement on Tariffs and Trade Act 29 of 1948. The World Trade Organisation Agreement was the outcome of the so-called Uruguay Round of the GATT negotiations and was concluded in Marrakesh by the signing of some 27 agreements and instruments in April 1994 by the members including South Africa. The WTO Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the "Anti-Dumping Agreement") forms part of the WTO Agreement.'

[7] Dealing with the relationship between our national law and international law, Malan AJA added (at para 6):

'The effect of international treaties on municipal law is regulated by ss 231, 232 and 233 of the Constitution. Section 231(4) provides that "[a]ny international agreement becomes law in the Republic when it is enacted into law by national legislation." The WTO Agreement was approved by Parliament on 6 April 1995 and is thus binding on the Republic in international law but it has not been enacted into municipal law. Nor has the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade been made part of municipal law. No rights are therefore derived from the international agreements themselves. However, the passing of the [ITA Act] creating ITAC and the promulgation of the Anti-Dumping Regulations made under s 59 of [ITA Act] are indicative of an intention to give effect to the provisions of the treaties binding on the Republic in international law. The text to be interpreted, however, remains the South African legislation and its construction must be in conformity with s 233 of the Constitution.'

Dumping in terms of the ITA Act

[8] Dumping is defined in the Act as the introduction of goods into the commerce

2The footnotes have been omitted.

of the Republic or the Common Customs Area at an export price (the price actually paid or payable for goods sold for export, net of all taxes, discounts and rebates actually granted and directly related to that sale) that is less than the 'normal value' of those goods (s 1(2) read with s 32(2)(a)).

[9] 'Normal value' means, first of all, the comparable price paid or payable in the ordinary course of trade for like goods intended for consumption in the exporting country or country of origin (s 32(2)(b)(i)). There is, accordingly, dumping if the ordinary price of the goods in question in the country of origin is less than their calculated export price to this country or the Common Customs Area.

[10] If the price in the country of origin is not available, the Act permits ITAC to use one of two alternatives to determine the normal value of the goods. The first is a constructed cost of production of the goods in the country of origin when destined for domestic consumption together with 'a reasonable addition for selling, general and administrative costs and for profit' (s 32(2)(b)(ii)(aa)). And the second is 'the highest comparable price of the like product when exported to an appropriate third or surrogate country, as long as that price is representative' (s 32(2)(b)(ii)(bb)).

[11] There is another relevant provision of the Act, s 32(4), which forms the cornerstone of the case. It reads:

'If the Commission, when evaluating an application concerning dumping, concludes that the normal value of the goods in question is, as a result of government intervention in the exporting country or country of origin, not determined according to free market principles, the Commission may apply to those goods a normal value of the goods, established in respect of a third or surrogate country.'

[12] All these provisions find their antecedents in the WTO instruments mentioned but the Act does not replicate them in all respects. The regulations under the Act, however, supplement the Act in this regard. Apart from prescribing an elaborate procedure for investigation, it contains a number of substantive provisions.

[13] Regulation 8 deals in detail with the three methods to determine 'normal value' as defined in s 32(2). Relevant for present purposes is reg 8.14, which provides that in cases where the normal value needs to be determined as contemplated in s 32(4)of the Act, ITAC may determine the normal value of the

products under consideration for the foreign producer or country in question on the basis of, inter alia, the normal value established for or in a third or surrogate country. In a sense the regulation merely replicates the sub-section.

[14] In terms of the WTO agreements, dumping may only be subject to anti-dumping measures if there is material injury to the local industry and a causal link between the dumping and the material injury. These requirements are reflected in the regulations. Regulation 13 provides that in determining material injury to the local industry ITAC must consider whether there has been a significant depression and/or suppression of the industry's prices and must further consider whether there have been significant changes in the domestic performance of the industry in respect of a number of potential injury factors.

[15] Regulation 16 states that ITAC must determine whether there is a causal link between the dumping and the material injury determined under reg 13. In considering whether there is a causal link ITAC must consider all relevant factors, including, but not limited to those listed. ITAC must also consider all relevant factors other than dumping that may have contributed to the industry's injury; and the injury caused by such other factors may not be attributed to the dumping provided that (ie unless) an interested party has submitted, or ITAC otherwise has, information on such factor or factors.

[16] Save for a footnote or two I do not intend to refer to the different WTO instruments that underpin the Act or regulations because it has not been suggested that they affect their clear meaning. The interpretational duty imposed by s 233 of the Constitution accordingly has no material bearing on this case.

The China Protocol

[17] The manufacturers relied on the China Protocol ('Protocol on the Accession of the People's Republic of China between China and the WTO'), arguing that ITAC had to investigate their complaint under art 15 of the Protocol. China joined the WTO by acceding to the WTO Agreement in terms of the Protocol on 10 November 2001. The Protocol governs the terms of China's membership of the WTO. Article 15 deals with the determination of 'normal value' and it permits a member country to refuse to use China's domestic prices unless the producers under investigation 'can clearly

show that market economy conditions prevail in the industry'.

[18] It is not necessary to say more about the Protocol because the manufacturers, quite rightly, accepted during argument that although South Africa was entitled to adopt the advantages of the Protocol through legislation, it has not done so; and even if South Africa were a party to the Protocol, which it is not, private parties cannot derive any rights from it. As Malan AJA said, no rights are derived from international agreements themselves. And since the Protocol is not part of international law, the ITA Act and regulations cannot be interpreted with reference thereto under s 233 of the Constitution.

The application for remedial action

[19] As mentioned, the manufacturers filed an application with ITAC for remedial action against the alleged dumping of tyres manufactured or produced in or exported from the PRC during June 2005. Their complaint was directed against Chinese exporters and local importers. The application was in the prescribed form and consisted of answers to a detailed questionnaire. They did not state the domestic PRC prices of the tyres involved. Instead, the information on which they relied was contained in a section entitled 'Normal value for countries with present or past government intervention', which dealt with the question whether the normal value of the goods concerned was affected by past or present government intervention such that the normal value does not properly reflect the intrinsic value of the product. They nominated Chinese Taipei as the surrogate country and provided a price list that had been supplied to them on a confidential basis by (presumably) a Taiwanese importer. They found that exports to our country or common customs area cost appreciably less than exports to the surrogate country and they then calculated the dumping margin for different types of tyres. Their calculations offered a compelling case for dumping.

[20] As will be recalled, the use of a surrogate country as a benchmark is possible under two circumstances. The first is where the normal value cannot be established and the second is under s 32(4). Although the manufacturers did not refer to s 32(4) in their submission, it is probably what they had in mind. However, they did not allege that the normal value of the goods in question was not determined according

to free market principles as a result of government intervention in the exporting country or country of origin, and no facts were set out in the submission which could support such a conclusion.

ITAC's investigation

[21] On 28 October 2005, ITAC published its notice of initiation of the investigation into the alleged dumping of PRC tyres. The notice stated that the manufacturers had submitted sufficient evidence and established a prima facie case that enabled ITAC to arrive at a reasonable conclusion that an investigation should be initiated on the basis of dumping, material injury and causality. It said that the allegation of dumping was based on the comparison between the normal values and the export prices from the PRC. The normal values were calculated using the price list for Chinese Taipei. The export price was determined on local official import statistics.

[22] There is no indication in the initiation document that ITAC considered the applicability of s 32(4). As mentioned, the information provided to it could also have been the basis for a determination under the second alternative under s 32(2).

[23] The prescribed investigation followed. There is no need to relate the detail which is to be found in the 4000 pages that were placed before us. The following should suffice: Seven Chinese exporters and a number of local importers responded to the initiation notice. The responses were in some respects deficient and deficiency letters were issued. The manufacturers commented on the responses as amplified. Further deficiency letters were issued to three exporters. Three qualified inspectors visited the Chinese companies and local companies. Finally, ITAC conducted an oral hearing on 26 May 2006 during which it listened to the manufacturers' extensive submissions.

[24] On 12 July 2006, ITAC published its preliminary determination. It came to the conclusion that four exporters did not dump tyres but because of the lack of cooperation from other Chinese exporters a provisional anti-dumping duty could be justified in respect of them. It so advised the Minister and on 28 July 2006 gazetting of the imposition of provisional payment on certain new tyres imported from or originating in the PRC occurred. The four cooperating Chinese exporters were excluded.

[25] The manufacturers used the opportunity to comment in great detail on the preliminary report. Avoiding the detail, the crux of the comments relating to the four cooperating exporters was this:

'It was not indicated that the investigation [into Aeolus, one of the exporters] was initiated on the basis of treating China as a non-market economy country. The Commission initiated the investigation using a surrogate country normal value, thereby accepting that any exporter in China has the burden of proof to refute that it is operating under non-market conditions before it can be granted market economy status. Such burden can only be met if specific information has been submitted to rebut the prima facie case.'

Similar statements were made concerning the other three exporters, Triangle, GITI and Shandong Chengshan.

[26] In support of the allegation that the exporters did not discharge their onus to show that the PRC is a market economy country or that they were operating under market conditions, the following general allegations concerning state involvement by the PRC's government were made (taken from a footnote in the judgment below):

'In this regard the first applicant emphasized a number of aspects some of which were the fact that some exporters were government owned, that some exporters may not undergo structural investment reform without state approval, that organized labour has little influence over wage rates and working conditions of the labour force, that State-owned banks provide capital at low rates to exporting companies, that government policy was that the manufacturing industry was quota driven which lead to overcapacity and deflation of prices, that despite increased costs of raw materials Chinese tyre prices had not been increased, whilst manufacturers in the rest of the world had to increase their prices at least once during the preceding 18 months, that as the Chinese government controls the Chinese energy sector it is possible that through low oil prices carbon black is supplied to tyre manufacturers at less than market prices, that the Chinese government does the research in the tyre industry whereas in free market economies manufacturers have to do their own research, that many Chinese industries obtained their capital equipment free or at less that market value, that industries receive government loans at low rates and that often the loans are only to be repaid partially, that contrary to the WTO Anti-Dumping Agreement there is a double conversion of foreign exchange into domestic currency, that the exchange rate is fixed at a rate that discourages imports and encourages exports, that US trade representatives allege a lack of transparency, that the US has yet to find any industry in the PRC that operates under free market conditions and that the European Commission has only granted market economy status to a very limited number of individual companies in the PRC.'

[27] The manufacturers' case, accordingly, was based on the assumption that, because of the China Protocol, they had certain rights and ITAC had duties not reflected in the Act or regulations, and the exporters carried an onus to prove that the PRC has a market economy . As already mentioned, this assumption was wrong. There is also no onus under the ITA Act: ITAC has to conduct an investigation and has to reach a conclusion based on the facts at its disposal. Before it can recommend the imposition of anti-dumping duties, it has to be satisfied that its factual findings underpin the recommendation.

The final determination

[28] ITAC published its final determination, the subject of the review application, during February 2007. Two further companies had, in the meantime, submitted information that ITAC was able to verify. ITAC confirmed its preliminary conclusion in respect of the cooperating four companies and in addition found that these two also did not dump tyres. But it assumed, in the absence of cooperation from the other exporters, that they were guilty of dumping by not having sought to displace the prima facie case set out in the initiation document. ITAC accordingly recommended to the Minister that the investigation be terminated, something the Minister accepted.

[29] ITAC further found that the industry suffered material injury but that other factors sufficiently detracted from the causal link between the unacceptable dumping and the material injury experienced. (In the light of my conclusions later in this judgment it will not be necessary to revert to this issue.)

[30] Concerning the determination of 'normal value', ITAC in respect of each of the six exporters concluded that they all set their selling prices in China in the ordinary course of trade and that, therefore, the first definition of 'normal value' – 'the comparable price paid or payable in the ordinary course of trade for like goods intended for consumption in the exporting country or country of origin' – had to be applied in the calculation.

[31] In view of the findings of the court below and the manufacturers' argument it is necessary to refer to other statements and findings set out in the determination. ITAC explained at the outset that it exceeded the normal 12-month investigation period because of, inter alia, non-market economy issues and issues relating to the

deficiencies of the responses of the exporters raised during the investigation. It added pertinently the following:

'In addition to the information supplied by the exporters in the questionnaires, the Commission considered the following factors which affect the setting of prices by the tyre industry in the PRC:

1. There are more than four hundred producers of tyres in the PRC, many of which are small.

2. The six exporters that responded in this investigation are all large producers that produce tyres to international standards and are also suppliers of original equipment to the motor vehicle assembly plants. All six companies are profitable.

3. The multinational tyre companies such as Firestone, Dunlop and Goodyear are also present in the PRC market.

4. All the co-operating producers export to many countries – one producer to more than one hundred and sixty countries. One company also produces tyres for Goodyear under their own brand name.

5. It is clear that competition exists between the tyre producers in the PRC.

6. All six of the co-operating exporters have large advertising budgets promoting their own brand names in the process of competing for market share. Advertising billboards promoting each of the company's brands and their products were evident at all major centres, airports as well as on buses.'

The judgment of the high court

[32] The judgment below proceeded on the basis that the case presented to ITAC was that there was dumping from a country without a free market economy. Accordingly, said the learned judge,

'the most important aspect of ITAC's investigation was to determine whether the economy of the exporting country is a free market economy or not. Only if the conclusion was that it was a free market economy the next step in the exercise would have been to determine what the normal prices, in the ordinary course of business, are.'

Because ITAC failed or refused to perform this exercise, he held, ITAC had failed to apply its mind properly to the investigation.

[33] I am, with all due respect, unable to agree. The judgment does not accord with the wording of s 32. The section nowhere requires any investigation into the question whether the exporting country has a free market economy or not.[3] I also do

3Article VI Annex para 2 of GATT is instructive (emphasis added):

not find anything in the section that entitles an applicant to prescribe the method which ITAC has to adopt when it determines normal value.

[34] It will be recalled that s 32(4) provides as follows:

'If the Commission, when evaluating an application concerning dumping, concludes that the normal value of the goods in question is, as a result of government intervention in the exporting country or country of origin, not determined according to free market principles, the Commission may apply to those goods a normal value of the goods, established in respect of a third or surrogate country.'

It appears to me to be evident that if ITAC concludes that the normal value (local price) of the goods *in question* was not determined according to free market principles it only then proceeds to consider whether or not that was as a result of government intervention. If, however, it concludes that the normal value of the goods in question was determined according to free market principles the question whether or not there was government intervention does not arise.

[35] The words 'goods in question' indicate that one is not concerned with the country as a whole or even any particular enterprise but with the particular goods from a particular source.

[36] If the two jurisdictional facts are established, a discretion arises and ITAC 'may' apply 'to *those goods* a normal value of the goods, established in respect of a third or surrogate country.' Although not expressly but necessarily so qualified, it may(as in respect of the second alternative) only do so 'as long as that price is representative' – it is the price and not the country that has to be representative.[4]

[37] I accordingly find little fault with the following statement of the law as set out in the answering affidavit (emphasis added):

'ITAC may only depart from the country of origin normal value if it concludes, in the course of its determination, that the country of origin normal value is not determined according to free market principles as a result of government intervention. It is not obliged to enquire in this question. It is not even obliged to consider it *unless there is substantial reason to think*

'It is recognized that, in the case of imports from a country which has a *complete or substantially complete monopoly of its trade* and *where all domestic prices are fixed by the State*, special difficulties may exist in determining price comparability for the purposes of paragraph 1, and in such cases importing contracting parties *may* find it necessary to take into account the possibility that a strict comparison with domestic prices in such a country may not always be appropriate.'

4Compare the wording of the Anti-dumping Agreement art 2.2.

that the country of origin normal value may not be determined according to free market principles. It must then consider the available evidence and come to a conclusion one way or the other.'

[38] I also disagree on a factual level with the approach of the high court. It is apparent that ITAC did not, in determining the 'normal value', simply establish the comparable price paid in the ordinary course of business in the PRC. It had, in addition to the factors mentioned earlier, regard to shareholding and composition of boards of directors, raw materials and other cost components for production, finance and investment, intellectual property rights and legal requirements, production facilities, production and investment, sales, financial statements, accounting principles and practice and foreign currency transactions – all, I would venture to suggest, relevant not to actual local prices but rather to free market economy principles.

[39] To the extent that the report might not be explicit enough, the answering affidavit of the Chief Commissioner (Mr Tsengiwe) stated unequivocally that, having taken into account a list of 13 factors, ITAC had determined that 'the threshold test in section 32(4) was not met.' He said that they indicated to ITAC that the prices and costs of the cooperating exporters were determined according to free market principles and that because ITAC did not come to a conclusion of the kind contemplated in s 32(4), it was not permitted to use the surrogate country method for determining country of origin normal value. It may be mentioned that the replying affidavit did not in any real terms traverse these allegations.

Conclusion

[40] The manufacturers were entitled, in terms of s 46(1) of the ITA Act, to apply to the high court for a review of any determination, recommendation or decision of ITAC that affected them. The grounds of review are to be found in the Promotion of Administrative Justice Act 3 of 2000 ('PAJA'). In spite of the shotgun approach in the affidavits (and to a lesser extent in the heads of argument) the manufacturers did not state in the heads on which provision in PAJA they wished to rely.

[41] If regard is had to the summary of their argument it would appear that their case may have been that ITAC was materially influenced by an error of law (s 6(2)

(d)); or that the determination was not rationally connected to the information before ITAC (s 6(2)(f)(ii)(cc)). Hartzenberg J, it seems, reviewed the recommendation on the ground that a mandatory and material procedure prescribed by the ITA Act was not complied with (s 6(2)(b)).

[42] The problems with the manufacturers' case are manifold. They approached the matter as if it were a rehearing and not a review; they misread s 32 and consequently asked the court below the wrong question (does the PRC have a market economy?) which inevitably led to the wrong answer; they assumed that the China Protocol gave them rights; they assumed that the Chinese exporters had an onus to discharge under the Protocol; and they failed to have regard to the functions of ITAC. In this regard it is necessary to refer to the *Scaw* case (supra) and more particularly to the passage where Moseneke DCJ dealt with the doctrine of separation of powers which concluded in these words (at para 102):

'It seems to me self-evident that the setting, changing or removal of an anti-dumping duty in order to regulate exports and imports is a patently executive function that flows from the power to formulate and implement domestic and international trade policy. That power resides in the kraal of the national executive authority.'

[43] As far as irrationality is concerned, much was made of the fact that ITAC had held in the interim report that the PRC did not have a market economy and nevertheless came to the opposite conclusion in the final report. I have already indicated that the interim report did not make any such finding and, if it had, it would have been irrelevant. I also do not find it incongruous that ITAC made a prima facie finding based on ex parte representations and came to another conclusion after having heard both sides. I would have thought that this is why we attach value to the audi principle.

[44] Another ground of irrationality raised was that ITAC had found that six Chinese exporters did not dump but that all the others did. Although there are about 400 manufacturers, the percentage dumped by the non-cooperating companies varied (depending on the type of tyre) between 4.2 and 6.5 per cent. These imports were then subjected to anti-dumping duties. The court below, adopting the argument, said that it was impossible to understand on what basis some factories in the same industry operating under the same conditions could be regarded as

operating under free market conditions and the other 396 not. With due respect, as ITAC explained, they had a prima facie case of dumping. The cooperating exporters were able to rebut that case; the others did not attempt to do so. One may not agree with the reasoning, but one cannot say that it was irrational.

[45] The manufacturers, in conclusion, made some written submissions concerning bias, alleging that ITAC had accommodated the exporters unfairly. They wisely did not make any oral submissions in this regard. This is understandable because bias was not raised as a ground of review in the founding or the two supplementary founding affidavits; the 'evidence' on which they sought to rely came from the replying affidavit; and the argument did not take any account of ITAC's evidence.

[46] It follows that the appeal stands to be upheld with costs. The appellants asked for the costs of three counsel which, in the circumstances of the case, is justified.

Order

1 The appeal is upheld with costs, including the costs of three counsel.

2 The order of the court below is set aside and replaced with an order dismissing the application with costs, including the costs of three counsel.

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L T C Harms
Acting President

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