

# Attack on chicken import limits revived

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South African poultry producers will be getting another opportunity to mount a legal challenge against the chicken import restriction that was introduced in Namibia as an infant industry protection measure almost five years ago.

This is the upshot of an appeal judgement that was delivered in the Supreme Court in Windhoek yesterday.



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The Supreme Court ruled in favour of an appeal that the South African Poultry Association and five individual poultry producers from South Africa lodged against a July 2016 High Court judgement in which judge Shafimana Ueitele dismissed their bid to have the chicken import restriction set aside. Judge Ueitele dismissed the legal challenge against the import restriction based on a finding that the court application of the association and five poultry producers had not been launched within a reasonable time.

The finding that the legal challenge against the import restriction had been unreasonably delayed could not be faulted, appeal judge Dave Smuts stated in the Supreme Court's judgement. However, he also reasoned that judge Ueitele should have weighed up the merits and prospects of success of the legal attack on the import restriction before he decided not to condone the delay that preceded the launch of the legal proceedings in the High Court.

The issues raised in the matter - including the extent to which international trade treaties form part of the domestic law of

Namibia and can be enforced by the country's courts - were of considerable public importance, and it was in the public interest that they had to be ventilated and decided, judge Smuts remarked.

With acting judges of appeal Theo Frank and Yvonne Mokgoro agreeing with judge Smuts' judgement, the Supreme Court set aside the High Court's decision, granted condonation for the delay in launching the initial application to have the import restriction reviewed and set aside, and directed that the case should go back to the High Court to be decided.

The then minister of trade and industry, Calle Schlettwein, set a limit on the importation of poultry products into Namibia in a notice that was published in the Government Gazette on 5 April 2013. The import restriction was meant to provide protection to the fledgeling Namibian poultry industry after Namib Poultry Industries set up a chicken production plant between Windhoek and Okahandja.

## **Granting of infant industry protection in violation of Southern African Customs Union agreement, trade protocols**

It was only in mid-April 2014 - more than a year after the notice announcing the import restriction had been published - that an application was filed by the South African Poultry Association and poultry exporters Crown Chickens, Supreme Poultry, Rainbow Farms, Astral Foods and Afgri Poultry to have the restriction reviewed and set aside. The association and its co-applicants are contending that the granting of infant industry protection to Namib Poultry Industries violates the Southern African Customs Union agreement and the Southern African Development Community protocol on trade and that an unfair procedure was followed before the import restriction was introduced.

Heavyweight legal teams represented the parties involved in the case when the appeal was heard in November last year. South African senior counsel David Unterhalter, together with Andrew Corbett, SC, Max du Plessis and Deon Obbes, represented the association and the five individual poultry producers.

The government and minister of trade and industry were represented by Sisa Namandje and government lawyer Lovisa Ihalwa, while senior counsel Jeremy Gauntlett, assisted by Frank Pelser and Ramon Maasdorp, represented Namib Poultry Industries.

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