

# Ynuico Ltd v Minister of Trade and Industry and others

Case CCT 47/95

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## Explanatory Note

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*The following explanation is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.*

The applicant was a tea supplier which had been denied an export permit by the Minister of Trade and Industry acting in terms of s 2(1)(b) of the Import and Export Control Act 45 of 1963. The section provides that the Minister of Trade and Industry may prescribe that specified goods may not be imported into the country except in accordance with the conditions stated in a permit issued by the Minister. The challenge to the constitutionality of the section was referred to the Constitutional Court by the Transvaal Provincial Division.

The applicant based its challenge on s 37 of the Constitution which stipulates that legislative authority shall vest in Parliament. The applicant argued that s 2(1)(b) conferred excessive legislative power on the Minister, in violation of s 37.

The Court upheld the constitutionality of the section, noting that the challenged section had been enacted before the interim Constitution came into operation on 27 April 1994. Moreover, the exercise of ministerial power granted under the challenged section, ie the issuance of a notice regulating tea importation, had occurred before the commencement of the interim Constitution. Both the challenged section and the notice could therefore be classified as laws in force prior to the commencement of the interim Constitution. Section 37 of the Constitution, which deals with legislative power only from the time the 1993 Constitution began to operate, therefore had no bearing on the matter. Further, all laws in force prior to the commencement of the interim Constitution remained in force by virtue of s 229 of the Constitution.

The case was remitted to the Transvaal Provincial Division for the determination of any outstanding issues.

The judgment of the Court was delivered by Didcott J and was concurred in by the other members of the Court.