



**economic
development**

Economic Development Department
REPUBLIC OF SOUTH AFRICA

Press release

Constitutional Court dismisses challenge to state's scrap metal export rules.

The Constitutional Court has dismissed an application by a local exporter of scrap metal for leave to appeal the judgment of the High Court of South Africa and the Supreme Court of Appeal upholding the State's scrap metal export provisions, known as the price preference system, and ITAC's decision to refuse to issue export permits to the SA Metal Group. This brings to an end almost four years of litigation over the lawfulness of the price preference system and the refusal by ITAC to issue export permits in accordance with that system. (ITAC is the International Trade Administration Commission, a statutory body in South Africa responsible for administration of trade policy).

The legal action was initiated after Minister of Economic Development issued a Trade Policy directive requiring ITAC to administer a price-preference for local foundries and steel mini-mills on all scrap metal collected locally before they were offered for export.

Scrap metal is an input in the making of steel products.

This Policy Directive was part of government's plan to promote local industrialisation and the beneficiation of local scrap metal. This follows significant job losses and de-industrialisation in the steel industry. It was also introduced to support the national infrastructure plan and to support lower carbon emissions in the making of steel products. (Scrap metal uses less energy than the making of steel products from iron-ore).

The Trade Policy Directive by the Minister of Economic Development and the decisions of ITAC were taken on review by scrap-metal exporters, to the Gauteng and Western Cape High Courts and later to the Supreme Court of Appeal. Cases were brought by the Metal Recyclers Association and later by the SA Metals Group. One court application was withdrawn before it was heard. In all other instances, the cases were decided in favour of the state, with cost orders against the applicants in these courts. The Constitutional Court dismissed the application for leave to appeal on the grounds that it had no reasonable prospect of success.

Welcoming the decision today, Minister of Economic Development Ebrahim Patel said that the decision makes it clear that rational decisions by the state in favour of job creation and industrialisation would be upheld by the courts.

"Our Constitution enables government to intervene in support of legitimate public purposes. Government will act to ensure that our industrial base and employment are supported," Minister Patel said today.

“Prior to the Trade Policy directive, we saw a significant increase in export of the raw material to the detriment of local industry. Volumes of ferrous scrap metals increased by 340% between 2003 and 2012, while the value thereof (in Rand) increased by 1060%. Since the introduction of the Trade Policy directive, export levels dropped and local foundries and mini-mills reported an improvement in the supply of scrap metals. Government is now looking at apparent evasion of the provisions through reclassification of exports and will act against transgressors of the law,” Minister Patel said.

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