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# Administrative Appeals Tribunal of Australia

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## Re Gft Australia Pty Ltd and Collector of Customs [1992] AATA 348 (13 November 1992)

### ADMINISTRATIVE APPEALS TRIBUNAL

Re:  GFT  AUSTRALIA PTY LTD  
And: COLLECTOR OF CUSTOMS  
No. V92/444  
AAT No. 8374  
Number of pages - 17  
Customs

### COURT

ADMINISTRATIVE APPEALS TRIBUNAL  
GENERAL ADMINISTRATIVE DIVISION

Mrs R.A. Balmford(1) (Senior Member), A. Argent(1) (Member) and R.C. Gillham(1) (Member)

### CATCHWORDS

Customs - deductible financing costs - whether applicant 'permitted to delay' payment for goods in return for interest payment - whether request to purchaser to produce price list sufficient to bring paragraph (b) of definition of 'deductible financing costs' into operation

Words and Phrases 'deductible financing costs'

[Customs Act 1901 ss.154\(1\), 156, 159, 161](#)

[Customs Tariff Act 1987 s.13](#)

LNC (Wholesale) Pty Ltd v Collector of Customs [\(1988\) 83 ALR 559](#)

Re Telemecanique Ltd and Collector of Customs [\[1991\] AATA 166](#); [\(1991\) 14 AAR 21](#)

Re Saab-Scania Australia Pty Ltd and Collector of Customs [\(1990\) 11 AAR 247](#)

Saab-Scania Imports Pty Ltd v Collector of Customs (Unreported Federal Court Judgment, Nos NG 113 and 188 of 1990: decided 17 July 1991)

## HEARING

MELBOURNE



13:11:1992

## ORDER

The Tribunal affirms the decisions under review.

## DECISION

### Introduction

This is an application made under [section 273GA\(2\)](#) of the [Customs Act 1901](#) ('the [Act](#)') for review of two decisions by the respondent giving rise to a dispute referred to in sub-section 167(1) of the [Act](#). Those decisions are first, a decision to make a demand for payment of duty on certain goods being men's suits ('the subject goods') described on an invoice dated 22 January 1992; and second, a decision forming part of the process of making, or leading up to the making of, that first mentioned decision. The sum demanded was paid under protest by the applicant (  **GFT**  Australia') in accordance with sub-section 167(1).

2. The second decision referred to above, giving rise to the issue before the Tribunal, was the decision that an amount of \$206.88 described on the invoice as 'interest due on delayed payment terms', did not constitute 'deductible financing costs', and was therefore to be included in the determination of the customs value of the goods.

3. The Tribunal had before it the documents lodged by the respondent pursuant to [section 37](#) of the [Administrative Appeals Tribunal Act 1975](#) ('the [AAT Act](#)') and numbered T1 to T16, together with

other material lodged at the hearing. An order was made under [section 35](#) of the [AAT Act](#) restricting publication of certain documents containing confidential commercial information. Evidence was given at the hearing by Mr Stafrace, company secretary of the applicant. The applicant was represented by Mr Slonim, solicitor, and the respondent by Mr Hegarty of the Australian Customs Service.

### The Legislation

4. The relevant provisions of the [Act](#) appear in Division 2 of [Part VIII](#) and read as follows:

' 154.(1) In this Division, unless the contrary intention appears:

...

"deductible financing costs', in relation to goods in a sale, means any interest payable under a written contract, agreement or arrangement under which the purchaser is permitted to delay the payment of the price in return for the payment of that interest (whether or not also in return for an increase in the price or for the payment of an additional amount), being a contract, agreement or arrangement entered into between the purchaser and the vendor or another person in relation to the purchase of the goods, where:

- (a) the interest is distinguished to the satisfaction of a Collector from the price actually paid or payable for the goods;
- (b) if a Collector requires the purchaser to demonstrate to the satisfaction of a Collector that identical or similar goods are actually sold at the last-mentioned price - the purchaser so demonstrates; and
- (c) if a Collector requires the purchaser to demonstrate to the satisfaction of a Collector that the rate of the interest does not exceed the rate of interest in similar contracts, agreements or arrangements entered into in the country where, and at the time when, finance under the first-mentioned contract, agreement or arrangement was provided - the purchaser so demonstrates;

...

"price", in relation to goods the subject of a contract of sale, means an amount determined by a Collector, after disregarding value unrelated matters in relation to those goods, to be the sum of:

- (a) all payments that have been made, or are to be made, directly or indirectly, in relation to such goods, by or on behalf of the purchaser:
  - (i) to the vendor;
  - (ii) to any person related to the vendor unless a Collector is satisfied that the vendor has not derived and will not derive any direct or indirect benefit from the payment; or
  - (iii) to any other person for the direct or indirect benefit of the

vendor;

in accordance with the contract of sale; and

(b) all payments that have been made, or are to be made, directly or indirectly, in relation to such goods, by or on behalf of the purchaser:

(i) to the vendor;

(ii) to any person related to the vendor unless a Collector is satisfied that the vendor has not derived and will not derive any direct or indirect benefit from the payment; or

(iii) to any other person for the direct or indirect benefit of the vendor;

under any other contract, agreement or arrangement, whether formal or informal, being a contract, agreement or arrangement for the doing of anything to increase the value of the goods or that a Collector is satisfied is so closely connected with the contract of sale referred to in paragraph (a) and to the goods the subject of that contract that together they form a single transaction;

whether the payment is made in money or by letter of credit, negotiable instrument or otherwise, . . .

"identical goods", in relation to imported goods, has the meaning given by [section 156](#);

. . .

"similar goods", in relation to imported goods, has the meaning given by [section 156](#);

' 156.(1) Subject to subsection (2), a reference in this Division to identical goods, in relation to imported goods is a reference to goods that a Collector is prepared, or is required by their owner, to treat as identical goods in relation to the imported goods, being goods that the Collector is satisfied:

(a) are the same in all material respects, including physical characteristics, quality and reputation, as the imported goods;

(b) were produced in the same country as the imported goods; and

(c) were produced by or on behalf of the producer of the imported goods;

but not being goods in relation to which:

(d) art work, design work, development work, engineering work undertaken, or substantially undertaken, in Australia; or

(e) models, plans or sketches prepared, or substantially prepared, in Australia;

was or were supplied directly or indirectly by or on behalf of the purchaser free of charge or at a reduced cost for use in relation to their production.

(2) Where a Collector, after reasonable inquiry, is not aware of any

goods that may be treated under subsection (1) as identical goods in relation to the goods to be valued, the Collector shall disregard the requirement in paragraph (1)(c) for the purpose of treating goods as identical goods in relation to the imported goods.

(3) Subject to subsection (4), a reference in this Division to similar goods, in relation to imported goods, is a reference to goods that a Collector is prepared, or is required by their owner, to treat as similar goods in relation to the imported goods, being goods that the Collector is satisfied:

- (a) closely resemble the imported goods in respect of component materials and parts and in respect of physical characteristics;
- (b) are functionally and commercially interchangeable with the imported goods having regard to the quality and reputation (including any relevant trade marks) of each lot of goods;
- (c) were produced in the same country as the imported goods; and
- (d) were produced by or on behalf of the producer of the imported goods;

but not being goods in relation to which:

- (e) art work, design work, development work or engineering work undertaken, or substantially undertaken, in Australia; or
- (f) models, plans or sketches prepared, or substantially prepared, in Australia;

was or were supplied directly or indirectly by or on behalf of the purchaser free of charge or at a reduced cost for use in relation to their production.

(4) Where a Collector, after reasonable inquiry, is not aware of any goods that may be treated under subsection (3) as similar goods in relation to the goods to be valued, the Collector shall disregard the requirement in paragraph (3)(d) for the purpose of treating goods as similar goods in relation to the imported goods.

...

159.(1) Unless the contrary intention appears in this [Act](#) or in another [Act](#), the value of imported goods for the purposes of an [Act](#) imposing duty is their customs value and the Collector shall determine that customs value in accordance with this section.

(2) Where a Collector can determine the transaction value of imported goods, their customs value is their transaction value.

...

161.(1) The transaction value of imported goods is an amount equal to the sum of their adjusted price in their import sales transaction and of their price related costs to the extent that those costs have not been taken into account in determining the price of the goods.

(2) In this section:

"adjusted price", in relation to imported goods, means the price of the goods determined by a Collector who deducts from the amount that, but for this subsection, would be the amount of that price, such amounts as the Collector considers necessary to take account of the following matters:

- (a) deductible financing costs in relation to the goods;
- (b) any costs that the Collector is satisfied:
  - (i) are payable for the assembly, erection, construction or

maintenance

- of, or any technical assistance in respect of, the goods;
- (ii) are incurred after importation of the goods into Australia; and
- (iii) are capable of being accurately quantified by reference to the import sales transaction relating to the goods;
- (c) Australian inland freight and Australian inland insurance in relation to the goods;
- (d) deductible administrative costs in relation to the goods;
- (e) overseas freight and overseas insurance in relation to the goods.'

5. Sub-sections 13(1) and (2) of the [Customs Tariff Act 1987](#) (the [Tariff Act](#)) read, so far as relevant:





'13.(1) Unless the contrary intention appears, where, in Schedule 3, 4, or 5, reference is made to a percentage in relation to goods . . . the reference is to . . . that percentage of the value of the goods .



..



(2) The value of any goods for the purposes of this [Act](#) is, unless the contrary intention appears, the customs value of the goods ascertained or determined in accordance with Division 2 of the [Part VIII](#) of the [Customs Act 1901](#).'

6. It is the contention of the applicant that the amount here in question and referred to in paragraph 2 supra constituted interest paid to the supplier of the goods as consideration for the agreement by that supplier to extend the term of payment for each shipment to 180 days; and was thus a 'deductible financing cost' within the meaning of the definition in [section 154](#) of the [Act](#), so as to be expressly excluded by [section 161](#) of the [Act](#) from the calculation of the transaction value of the goods. The significance of this submission is that the 'transaction value' becomes, by virtue of sub-section 159(2) of the [Act](#), the 'customs value', and the effect of sub-section 159(1) of the [Act](#) and sub-sections 13(1) and (2) of the [Tariff Act](#) is that the customs value provides the base figure for the calculation of ad valorem duty. If the submission is successful, the amount in question will not be included in that base figure.



## The evidence



7. Mr Stafrace has been secretary and finance manager of the applicant company since 1989. He said that the applicant is an importer into Australia of men's and women's wear from a number of different countries. Fifty-five per cent of its imports are purchased either directly or indirectly from Gruppo Finanziario Tessile S.p.A. ('Gruppo') of Turin, Italy. Men's clothes are purchased from  **GFT**  Uomo ('Uomo'), an operating division of Gruppo; women's clothes are purchased from  **GFT**  Donna S.p.A. ('Donna'), a wholly owned subsidiary of Gruppo with which we are not here concerned. There are formal distribution agreements between the applicant and Uomo and Donna respectively. The subject goods were purchased from Uomo.



8. Gruppo is both a manufacturer and marketer and has licence agreements with a number of design houses. Uomo comprises different sales and marketing teams representing different design groups.  **GFT**  Australia deals with teams representing Valentino, Louis Feraud, Ungaro, Armani and Private Label collections.



9. Prices are negotiated twice each year, for the spring/summer range of products and the autumn/winter range, approximately 18 months ahead of the relevant season in Australia. Negotiations take place in Turin and elsewhere. Before leaving for Turin, the sales and marketing staff of  **GFT**  Australia have examined the domestic market and determined where each range of product is to be positioned in respect of price so as to be competitively saleable in the relevant season.

10. In Turin (or elsewhere) the applicant's sales and marketing teams negotiate with the corresponding teams of each design group and establish a price which is consistent with the proposed market positioning of that range of products. Negotiations are in Australian dollars. Once the price is agreed by sales and marketing staff, Mr Stafrace and his financial staff negotiate separately with the Treasury department of Gruppo for the trading terms in respect of the season in question. Different trading terms may be negotiated with different divisions or subsidiaries of Gruppo: for the spring/summer 1993 season terms of payment for different divisions or subsidiaries ranged from 7 to 180 days. Once negotiated, prices for a season never vary. Despite the last sentence of paragraph 3.5 of the distribution agreement, set out in paragraph 13 infra, the interest rate has never been varied during the season of operation of a price list. The prime interest rate in Italy at the time of the hearing was around 11 per cent.



11.  **GFT**  Australia has been trading with Uomo at 180 days ex-factory terms for four years. Until mid-1991 it mostly paid on time: since the recession, its customers have had cash flow problems and as a result it has been falling behind in payments to Uomo. Although there is provision for penalty interest for late payment, such interest has never been charged. Early payment is never made; wholesale prices are fixed in advance and all cash flow projections are on the basis of the agreed period for payment.

12. On returning to Australia with price lists,  **GFT**  Australia staff obtain orders from customers. Orders are then placed with Gruppo, against those orders from customers, in the expectation that all goods imported will be sold. We have no reason to doubt the evidence of Mr Stafrace contained in this and the preceding five paragraphs and we find accordingly.





13. The relevant provisions of the distribution agreement dated 1 May 1991 between  **GFT**  Australia and Gruppo read as follows:



'3.1 All products shall be sold by (Gruppo) to  **GFT**  Australia on an FOB port of exit basis and in the currency which the parties shall mutually agree to from time to time.

...

3.3 Gross selling prices shall be subject to negotiation by  **GFT**  Australia each selling season and previous buying levels will be taken into account in the provision of future volume discounts.

...

3.4 Gross selling prices shall not include any of the following, all of which shall be borne by  **GFT**  Australia: costs of transportation of the products from the port of exit in Italy to  **GFT**  Australia, storage costs, maritime and air insurance, ocean or air bills of lading, consular invoices, any applicable sales, use or excise taxes, import duties or surcharges, importer brokerage fees, charges and stamps and any other similar costs incurred in transportation, storage and importation of the products.

3.5 Gross selling prices shall be fixed on the basis that payment will be made within 30 days after delivery at the exchange rate applicable on that date. If extended credit terms are agreed upon, then the gross selling price shall be adjusted in accordance with (Gruppo's) forward estimates for movements in international currencies and  **GFT**  Australia shall pay interest on the gross selling price as adjusted. The interest rate shall be the prevailing interest rate in Italy at the time the products are shipped but may be varied in accordance with alterations brought about by Banker initiatives at any time prior to agreed settlement dates.

...

3.6 Withholding taxes, charges and any sums which require to be retained in Australia in relation to interest payments remitted to (Gruppo) shall form a deduction from all sums remitted.

...

8.4 This agreement sets forth the entire agreement and understanding between the parties relating to the subject matter contained herein and







merges all prior discussions between them, and neither party shall be bound by any definition, condition, warranty or representation other than as expressly stated in this agreement or as subsequently set forth in writing and executed by the party to be bound thereby.'

14. The invoice in respect of the subject goods is dated 22 January 1992. It relates to 2 items of model number 'X' and 10 items of model number 'Y', the prices of each model being shown. At the foot of the invoice is the endorsement:

'The above prices are inclusive of 5.5% of interest due on delayed payment terms equal to AUD (Australian dollars) \$206.88.'

'5.5% of interest on delayed payment terms' (180 days less 30 days making 150 days) indicates an annual interest rate of 13.2 per cent, somewhat higher than the figure given by Mr Stafrace as the present prime rate in Italy.

15. Mr Hegarty drew to the attention of Mr Stafrace an invoice dated 15 April 1991 in respect of, inter alia, items of models 'X' and 'Y', at the same prices as shown in the invoice of 22 January 1992, which would indicate that the goods in each case formed part of the same seasonal range and thus had been the subject of the same negotiations. The invoice of 15 April 1991 is endorsed 'Interest 1.5% per month included in prices', indicating an annual interest rate of 18 per cent. Asked to explain why the prices remained the same although the interest rate varied, Mr Stafrace said that he could not explain without the supporting documentation. Later he said that it might have related to problems with the change in the computer program required to show the interest rate separately for the purposes of paragraph (a) of the definition of 'deductible financing costs' in sub-section 154(1) of the [Act](#).  **GFT**  Australia was a very small customer of Gruppo, and there had been difficulties in persuading Gruppo to make the change to the program. He said that  **GFT**  Australia did not pay withholding tax in respect of the interest, but since July 1991 had been making provision for it pending the outcome of these proceedings. No deduction in respect of withholding tax had been made pursuant to clause 3.6 of the distribution agreement.

'Deductible financing costs'

16. In *LNC (Wholesale) Pty Ltd v Collector of Customs* ([1988](#)) [83 ALR 559](#) the Federal Court was concerned with Division 2 of [Part VIII](#) of the [Act](#). At pages 568-569, Davies and Einfeld JJ. said:

'Thirdly, the legislation provides a basis of valuation that is less theoretical and more practical than the Brussels Definition of Value. Primacy is given to the price actually paid or payable adjusted in accordance with a number of simply stated rules. It is appropriate in the application of these rules to eschew technicality and subtlety and to take a practical commercial view of transactions.

*In Commissioner of Inland Revenue v Littlewoods Mail Order Stores Ltd*

[\(1962\) 2 All ER 279](#) at 284, Viscount Simonds, with whom Lord Devlin concurred, referred to the familiar proposition "that the substance alone of the transaction is to be looked at". Thus, when the definition of price refers to "the aggregate of all payments made, or to be made, directly or indirectly, in connection with the goods by the purchaser to or for the benefit of the vendor . . . in accordance with the contract", the legislation is looking to what has occurred as a matter of fact, having regard to the substance rather than the form of the transaction, though that is not to deny that the substance of a transaction "is that which results from the legal rights and obligations of the parties ascertained upon ordinary legal principles", per Lord Tomlin in *Commissioners of Inland Revenue v Duke of Westminster* [\(1836\) AC 1](#) at 20-1.

Thus, in *Mutual Finance Ltd v Davidson* [\(1963\) 1 WLR 134](#), the Court of Appeal considered an issue arising under the Hire Purchase Acts 1938-1954 (UK). The issue was whether the hire purchase price exceeded 300 pounds. The single price paid by the finance company to the motor dealer, and which the purchaser had to pay off by instalments to the finance company, contained as an element the cost of insurance which the motor dealer had agreed to arrange on the purchaser's behalf. At 139, Ormerod L.J. said:

"The real position is that the hirer purchased a car, which he could take out on the road, and, therefore, in respect of which an insurance policy had been taken out. If that be the right view to take, then it was proper to include this sum in the hire-purchase price, and the Hire Purchase Acts 1938-1954 would not apply."

Donovan and Pearson L.JJ. expressed like views save that their Lordships excluded from their consideration what the position would have been if the cost of the insurance had been separately provided for. With that qualification, Pearson L.J. said (at 144) that the insurance element was not to be excluded from the price for it was not a foreign or extraneous element but a genuine part of the price.'

17. With that principle in mind, we turn to consider whether, on the evidence before us, the payment of \$206.88 is a 'deductible financing cost' within the meaning of the definition in sub-section 154(1), so as to be excluded by section 161 from the calculation of the transaction value of the goods. We were referred to the decisions of the Tribunal in *Re Telemecanique Ltd and Collector of Customs* [\[1991\] AATA 166](#); [\(1991\) 14 AAR 21](#) and *Re Saab-Scania Australia Pty Ltd and Collector of Customs* [\(1990\) 11 AAR 247](#) and to the decision of Einfeld J. in the latter case on appeal (*Saab-Scania Imports Pty Ltd v Collector of Customs Nos NG 113 and 188 of 1990*, decided on 17 July 1991). Each of these cases turned on its own facts, and neither was directly in point in the matter before us.

18. Mr Hegarty sought to convince us that the amount in question could not be 'distinguished . . . from the price actually paid or payable for the goods', and thus did not comply with paragraph (a) of the definition. However, in our view, the applicant's submission fails at an earlier stage.

19. The opening paragraph of the definition of 'deductible financing costs' reads, so far as presently relevant:

"deductible financing costs", in relation to goods in a sale, means any interest payable under a written contract, agreement or arrangement under which the purchaser is permitted to delay the payment of the price in return for the payment of that interest.'

The submission of the applicant is, in effect, that the original terms of payment are the 30 day terms set out in clause 3.5 of the distribution agreement (see paragraph 13 supra). The negotiated terms in respect of the season for which the subject goods were purchased were 'extended credit terms' for 180 days payment. There is an interest component in the price paid for the goods which is to cover that variation of the distribution agreement. That component is added, pursuant to clause 3.5, to the price negotiated by the sales and marketing team.



20. The invoice of 15 April 1991, referred to in paragraph 15 supra, bears three endorsements; viz:

'Terms: 180 days from invoice date end of month; '  
'interest 1.5% per month included in prices;'  
'overdue accounts will be charged with interest at 1.5% per month.'

Several invoices dated 12 February 1991 were similarly endorsed. The invoice dated 22 January 1992, relating to the subject goods, bears the first of those endorsements, not the second or third, and the statement already cited, that 'the above prices are inclusive of 5.5% of interest due on delayed payment terms, equal to AUD \$206.88'. One of the invoices of 12 February 1991 included items of goods 'X' and 'Y' at the same prices as shown on the invoice relating to the subject goods and thus no doubt related to the same seasonal range and the same negotiations. The invoices of 15 April and 12 February 1991, however, predate the distributorship agreement.

21. We should say that the omission from the invoice relating to the subject goods of any reference to interest on overdue accounts was not put to Mr Stafrace at the hearing and we make no comment thereon. We have found (see paragraph 10 supra) that the payment of interest on overdue accounts was a condition of the agreement covering the relevant seasonal range.

22. These invoices constitute almost the only material before the Tribunal, additional to the distribution agreement, which could be said to form part of 'a written contract agreement or arrangement' in terms of the definition of 'deductible financing costs', providing for 180 day terms or

for the payment of interest. The only other such material is a letter from Gruppo to  **GFT**  Australia dated 8 July 1992, which relates to the Spring/Summer 1993 season and is not directly relevant to the subject goods. That letter reads as follows, so far as relevant:

'It is hereby confirmed that following discussions in Torino this week, we agree that the following trading terms will be applied to Season 57, S/S 93 for Uomo and Donna Division merchandise purchased:-

Ex Factory prices

 **GFT**  Uomo Collezione - 180 Credit Terms

 **GFT**  Donna Collezione - 120 Credit Terms

We note that our standard trading terms for these (sic) season are 30 days.

(Gruppo) also reserves the right under its terms and conditions of sale to charge additional interest penalty if the agreed trading terms are not met.'

23. In the absence of authority, we are satisfied, given the accepted meanings of the words which Parliament has chosen to use, that the adjective 'written' in that part of the definition of 'deductible financing costs' is intended to attach to the nouns 'agreement' and 'arrangement' as well as to the noun 'contract'. If that were not so, there would be no purpose in the inclusion of 'written' before 'contract'.



24. The first meaning of the transitive verb 'delay' which is used in that definition in the second edition of the Oxford English Dictionary is:



'To put off to a later time; to defer, postpone.'

25. It should be noted that the definition of 'deductible financing costs' operates 'in relation to goods in a sale'. The expression 'permitted to delay the payment of the price', must be read in that context, and in the light of the meaning of 'delay' cited in the preceding paragraph. Reading the expression thus, it must, in our view, be intended to refer to the situation where payment for goods in a sale is made late, that is after the period agreed to in the particular contract of sale relating to the particular goods in question. It is not intended to refer to an agreement which varies, in respect of a collection of sales such as the sale of a season's range, the period of payment provided for in a general contract setting out the terms on which goods will generally be sold by the same vendor to the same purchaser.

26. Thus, in the present case, were payment to be made under one of the invoices of 15 April and 12 February after the agreed period of 180 days, and were interest to be charged at 1.5 per cent per month, in accordance with the endorsement on the invoice, that interest would be 'payable under a written contract, agreement or arrangement under which the purchaser is permitted to delay the payment of the price in return for the payment of that interest', and, as a consequence, such interest

would be correctly included as 'deductible financing costs'.

27. There is no evidence before us as to the terms of any general distributorship agreement between Gruppo and  **GFT**  Australia for any period before 1 May 1991. No doubt there was such an agreement, but we are unable to make any assumption as to what its terms might have been. Thus, so far as the invoices of 15 April and 12 February 1991 are concerned, we have no evidence as to whether the provision for 180 days terms was or was not consistent with any such general agreement. However, Mr Stafrace's evidence is and we have found, that dealings between these parties for the last four years have been on 180 day terms.

28. The suggestion is that, so far as it relates to the subject goods and other goods in the same seasonal range, the agreement of 1 May 1991, providing for 30 day terms has been varied by a subsequent agreement for 180 day terms; and by that subsequent agreement,  **GFT**  Australia has been 'permitted to delay the payment of the price'. As we have said in paragraph 25 supra, we do not consider that the expression 'permitted to delay the payment of the price' is intended to describe that situation.

29. Accordingly, we find that no amount was paid in respect of the subject goods constituting 'interest payable under a written contract, agreement or arrangement under which the purchaser is permitted to delay the payment of the price in return for the payment of that interest'. That being so, the amount of \$206.88 does not constitute 'deductible financing costs' in terms of the definition in sub-section 154(1) of the [Act](#). For the reasons given, the decisions under review will be affirmed.



Paragraphs (b) and (c) of the definition of 'deductible financing costs'

30. There is another matter to which we should refer, although it is not necessary to our decision. Paragraph 19 of the statement lodged by the respondent pursuant to paragraph 37(1)(a) of the [AAT Act](#) ('the [section 37](#) statement') reads as follows:

'Furthermore the criteria of paragraph (b) of the definition (of "deductible financing costs") have not been met to the reasonable satisfaction of the Collector in that ACS enquiries revealed no evidence of an identifiable base price - a cash price at which identical or similar garments were sold.'

31. The statement of facts and contentions filed by the respondent prior to the hearing made no reference to paragraph (b) of the definition of 'deductible financing costs', and nor did the outline of the respondent's submissions handed up by Mr Hegarty at the hearing. The terms of paragraph 19 of the [section 37](#) statement, however, put the Tribunal on its enquiry as to whether the provisions of paragraph (b) were complied with, and it raised the matter with the representatives of the parties. Paragraph (b) reads:

'(b) if a Collector requires the purchaser to demonstrate to the satisfaction of a Collector that identical or similar goods are actually sold at the last-mentioned price - the purchaser so demonstrates; and'

32. Mr Slonim said that his instructions were that no requirement in accordance with that paragraph had been made of his client. Mr Hegarty drew the attention of the Tribunal to a letter dated 13 March 1992 from the respondent to the applicant requesting 'a copy of  GFT  Italy's master price list for Australia'. He said that the normal practice of the respondent in the context of paragraph (b) was simply to request production of a price list, or evidence of a cash price, and that in this case a price list had been requested. This request was what was referred to in paragraph 19 of the [section 37](#) statement as 'ACS enquiries'.

33. In the view of the Tribunal this practice is not effective. The making of enquiries by the Australian Customs Service does not bring paragraph (b) into operation. Paragraph (b) only comes into operation if a Collector 'requires the parties to demonstrate . . . that identical or similar goods are actually sold at the last-mentioned price'. To request a price list is not to 'require the parties to demonstrate . . .' in terms of paragraph (b). The definitions of 'identical goods' and 'similar goods' appearing in section 156 are elaborate and complex. Paragraph (b), if properly invoked, enables the purchaser to demonstrate, if possible, by whatever means may be appropriate, that goods falling within those elaborate and complex definitions are sold at the price in question. On the evidence before us, no such requirement has been made and accordingly paragraph (b) has no applicability to this matter.

34. The operation of paragraph (c) of the definition was not referred to in the [section 37](#) statement and Mr Hegarty advised the Tribunal that that matter was not in issue. We assume therefore that no request under that paragraph was made. Thus, in order to establish that the amount in question constituted 'deductible financing costs', the applicant needed to satisfy the extensive introductory part of the definition and paragraph (a); but there having been no requirement made under either of paragraphs (b) and (we assume) (c), it did not need to comply with either of those paragraphs.

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