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D R A F T

REPORT OF WORKING PARTY G ON THE AUSTRALIAN SUBSIDY ON AMMONIUM SULPHATE

I. INTRODUCTION

1. The Working Party examined with the delegations of Australia and Chile the factual situation resulting from the removal, on the 1st July 1949, of nitrate of soda from the pool of nitrogenous fertilisers which is subsidised by the Australian Government. It then considered whether the measure taken by the Australian government constituted a failure by the Australian government to carry out its obligations under the Agreement, within the terms of Article XXIII.

Having come to the conclusion that the measure taken by the Australian government did not conflict with the provisions of the Agreement, the Working Party then examined whether the Australian measure had modified or impaired the tariff concession granted by Australia to Chile on nitrate of soda in 1947, and agreed on the text of a recommendation which, in its opinion, would best assist the Australian and Chilean governments to arrive at a satisfactory adjustment.

The Working Party wishes to place on record its high appreciation of the friendly and cooperative spirit of the Australian and Chilean representatives which enables it to submit to the Contracting Parties a unanimous report.

II. THE FACTS OF THE CASE

2. Prior to the out-break of war in 1939, ammonium sulphate was distributed in Australia by a commercial pooling arrangement operated by Nitrogenous Fertilisers Pty. Ltd., a private enterprise; that corporation bought ammonium sulphate from the local producers (both by-product and synthetic sulphate) and from foreign sources of supply; the ammonium sulphate from all sources was sold to consumers at a uniform price. The distribution of imported sodium nitrate was effected by independent agencies.

3. In view of the scarcity of ammonium sulphate during the war, the Australian government purchased sodium nitrate from abroad and appointed Nitrogenous Fertilisers Pty. Ltd. to act as distributing agent for the Commonwealth for all nitrogenous fertilisers, which were sold to consumers at a uniform price of £ A 16.10 per ton. During the first year of the operation of the pooling arrangement, the company could supply the market without any loss; during the later years, the Australian government undertook to meet the deficit of the company on the sales of both ammonium sulphate and sodium nitrate. This

financial support by the Commonwealth government had the effect of a subsidy on imported fertilisers.

4. As from 1st July 1949, Nitrogenous Fertilisers Ltd. ceased to distribute sodium nitrate, the trade of which reverted to the pre-war commercial channels. The Australian government continued, however, to purchase abroad ammonium sulphate which it sold to Nitrogenous Fertilisers Ltd. at landed cost. The retail price of ammonium sulphate, both domestic and imported, was raised, by stages, to £A. 22.10 per ton and the Australian government agreed to meet any loss on procurement or disposition of sulphate which might be incurred by Nitrogenous Fertilisers Ltd., up to an amount of approximately £A. 500.000.

5. On the basis of information supplied by the Australian representatives, the financial implications of that arrangement for 1949-50 may be summarised as follows:

	tons	retail price on a commercial basis	retail price under the pooling arrangements	profit + loss -
a) <u>domestic supply of sulphate</u>				
by-products	15,000	£A. 15.10	£A22.10	+£A30,000
synthetic products	30,000	£A. 25.		
b) <u>foreign supply of sulphate</u>				
various sources	26,700	£A. 31.0 - £A. 33.0	£A22.10	approx. -£A275,000

<u>Note</u>

In the absence of a subsidy the selling price of ammonium sulphate through Nitrogenous Fertilisers Pty. Ltd. would have been about £A. 28 per ton.

6. The subsidy on sulphate of ammonia was maintained because users of that fertiliser would have been prevented, by domestic price control and long-term contracts, from increasing their selling price in order to take account of the increased cost of ammonium sulphate which would have resulted from the discontinuance of the subsidy. The same conditions did not exist in the case of sodium nitrate as the users of that fertiliser were no longer subject to price control arrangements and adequate supplies to meet all demands were available. The un-subsidised retail price of nitrate of soda is estimated at £A.33.10 by the representative of Australia and at £A. 31.10 by the representative of Chile, as compared with £A. 28 for ammonium sulphate.

The Australian imports of sodium nitrate during the post-war period were limited to the amounts allocated by the IEFC until June 1949. The total imports for 1949-1950 are estimated at about 14.000 tons, a figure substantially higher than the total imports for 1948-1949 of about 7,000 tons. However, according to information supplied by the Australian representative the agricultural demand for nitrate of soda had dropped from 6,300 tons in 1947-48 to 450 tons in 1948-49 (when nitrate of soda was sold under the pooling arrangement) at the same price and on the same conditions as sulphate of ammonia. It is expected that about

the same amount will be used in agriculture in 1949-50 under the new arrangements.

III. CONSISTENCY OF THE AUSTRALIAN MEASURES WITH THE PROVISIONS OF THE GENERAL AGREEMENT

7. The removal of nitrate of soda from the pooling arrangements did not involve any prohibition or restriction on the import of sodium nitrate and did not institute any tax or internal charge on that product. The Working Party concluded therefore that the provisions of paragraph 1 of Article XI and of paragraph 2 of Article III were not relevant.

8. From the information made available by the Australian representative it is clear that the pooling arrangements did not result in the subsidisation of local production of ammonium sulphate and that the whole of the financial contribution of the Australian government was devoted to the supply of imported sulphate. Consequently, the measure taken by the Australian government does not come within the scope of paragraph 4 of Article III. For the same reasons, the Working Party felt that the provisions of paragraph 8 (b) of Article III were not applicable in this case. As regards the provisions of paragraph 9 of the same Article, the Working Party was informed that the selling price for ammonium sulphate was not fixed by governmental action and that furthermore the Australian government had made an offer to the Chilean government with a view to avoiding to the fullest practicable extent any prejudicial effects.

9. As regards the applicability of Article I to the Australian measure, the Working Party noted that the General Agreement made a distinction between "like products" and "directly competitive or substitutable products". This distinction is clearly brought out in paragraph 2 of Article III, read in conjunction with the interpretative note to that paragraph. For the purposes of the General Agreement the most-favoured-nation treatment clause is limited to "like products". Without trying to give a definition of "like products" and leaving aside the question whether the two fertilisers are directly competitive, the Working Party reached the conclusion that they were not to be considered as "like products" within the terms of Article I. In the Australian tariff the two products are listed as separate items and enjoy different treatment. Nitrate of soda is classified as item 403 (C) and sulphate of ammonia as item 271 (B). Whereas nitrate of soda is admitted free both in the preferential and most-favoured-nation tariff, sulphate of ammonia is admitted free only for the preferential area and is subject to a duty of 12½% for the m-f-n countries; moreover, in the case of nitrate of soda the rate is bound whereas no binding has been agreed upon for sulphate of ammonia. In the tariffs of other countries the two products are listed separately; in certain cases the rate is the same but in others the treatment is different; for instance in the case of the United Kingdom nitrate of soda is admitted free whereas a duty of £4 per ton is levied on ammonium sulphate.

10. The Working Party then examined whether the Australian government had conformed to the terms of Article XVI on subsidies. It noted that, although this Article is drafted in very general terms, the type of subsidy which it was intended to cover was the financial aid given by a government to support its domestic production and to improve its competitive position either on the domestic market or on foreign markets. Even if it is assumed that the maintenance of the Australian subsidy on ammonium sulphate is covered by the terms of Article XVI, it does not seem that the Australian government's action has been in conflict with the provisions of that Article. It is recognised that the Contracting Parties have not been notified by the Australian government of the maintenance of that subsidy, but the Working Party noted that the procedural arrangements for such notifications under Article XVI have only been approved by the Contracting Parties at their present Session, and that they only require notification after imposition of the measure. Moreover, the Chilean government has not suffered any injury from this failure to notify the Contracting Parties as it is established that the Chilean Consul General had an opportunity to discuss this matter with the Australian authorities before the decision to discontinue the subsidy on sodium nitrate had been enforced. The Australian government has discussed with the Chilean government the possibility of limiting the effects of the subsidisation and has also accepted to discuss the matter with the Contracting Parties, in accordance with the provisions of Article XVI.

11. The examination of the relevant provisions of the General Agreement thus led the Working Party to the conclusion that the Australian government has not failed to carry out its obligations under the Agreement.

IV. NULLIFICATION OR IMPAIRMENT OF THE CONCESSION GRANTED TO CHILE ON SODIUM NITRATE

12. The Working Party next considered the question whether the injury which the Government of Chile claimed it had suffered was the nullification or impairment of a benefit accruing to that Government directly or indirectly under the General Agreement. It was agreed, in view of the application, under war powers of the Australian government, of the subsidisation at the same time with respect to sodium nitrate and ammonium sulphate (and at approximately the same time with respect to super-phosphate also), the continuation, under reduced post-war powers, of the subsidy with respect to all three fertilisers during the 1947 tariff negotiations, and of all the circumstances involved, it would appear that the Government of Chile was reasonable in assuming, when negotiating for the duty-free binding of sodium nitrate, that the war-time fertiliser subsidy would not be removed with respect to sodium nitrate before it was removed with respect to ammonium sulphate. For that reason, and not because the imposition of a subsidy would normally come within the scope of Article XXIII, the withdrawal of the subsidy with respect to sodium nitrate alone in 1949 upset a competitive situation on which the Chilean government could reasonably have relied in negotiating the concession, and the Australian action should therefore be considered as relating to a benefit accruing to Chile under the Agreement.

13. Having thus concluded that there was a prima facie case that the value of the concession granted to Chile had been impaired as a result of a measure which did not conflict with the provisions of the General Agreement, the Working Party was faced by the difficulty of assessing the financial implications of such an impairment. In order to appraise the extent of the impairment it would have been necessary to estimate the probable agricultural demand for sodium nitrate in the absence of a subsidy on ammonium sulphate. The pre-war figures of consumption could not serve as a basis in view of the changes in the marketing conditions of the two fertilisers and the agricultural situation in Australia. The war-time and post-war figures were not reliable as the scarcity of ammonium sulphate had abnormally increased the demand for sodium nitrate during that period. It would also have been necessary to estimate the price elasticity of the demand for sodium nitrate in Australia in order to ascertain to what extent the price differential resulting from the maintenance of a subsidy on ammonium sulphate (amounting to about £A6.10) has actually reduced agricultural demands for sodium nitrate.

14. The Australian representative outlined the reasons why his government had reached the conclusion that the measure taken had not caused a serious prejudice to the Chilean interests. The Chilean representative stated that his government did not press for a discussion of the question of the degree of damage and would be satisfied if an arrangement could be made to remove the cause of the present competitive inequality between the two fertilisers. Such an arrangement would not necessarily involve the restoration of the previous subsidy on sodium nitrate but could provide for the two products to be placed on the same footing, either by the elimination of the subsidy on both products or by the maintenance of a subsidy for both products in certain cases.

15. As the declared intention of the Australian government in maintaining the subsidy on ammonium sulphate was to give financial aid, not to the producers of a certain type of fertiliser, but to the producers of certain crops, whose selling price was limited by price control and who preferred to use ammonium sulphate for technical reasons, irrespective of price considerations, the Working Party came to the conclusion that a satisfactory adjustment would be achieved if the Australian government could consider the possibility of modifying the present arrangements in such a way as to achieve that object while giving to the two types of fertilisers equal opportunity to compete on its market.

16. In the light of the considerations set out above, the Working Party suggests to the Contracting Parties the consideration and approval of the following recommendation :

> [The Contracting Parties recommend that the Australian government consider, with due regard to its policy of stabilizing the cost of production of certain crops, means to remove any competitive inequality between the two products which may in practice exist as a result of the removal of nitrate of soda from the operations of the subsidized pool of nitrogenous fertilisers.]