31 March 1950

THE AUSTRALIAN SU

Report adopted by the CO

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1. The working party examined with the de
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with the provisions of the Agreement, the wor
had nullified or impaired the tariff concession
and agreed on the text of a recommendation
and Chilean Governments to arrive at a satis

The Australian representative stated that
conclusions reached by the working party in pa
in the annex to this report.

II. THE FACT

2. Prior to the outbreak of war in 1939, amm
commercial pooling arrangement operated by Nit

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	Tons	(1) *Estimated retail price on a commercial basis* (£A)	(2) *Retail Price under subsidized pooling arrangement* (£A)	(3) *Gross difference between columns (1) and (2)* (£A)
(a) Domestic supply of sulphate				
By-products	15,000	15 10s.	22 10s.	+ 30,000
Synthetic products	30,000	25		
(b) Foreign supply of sulphate				
Various sources	26,700	31 33	22 10s.	(approx.) - 275,000

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 Article XI, paragraph 1, and of Article III, paragraph 2, were not relevant.

8. 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 Article III, paragraph 2, read in conjunction with the interpretative note to that paragraph. The most-favoured-nation treatment clause in the General Agreement is limited to "like products". Without trying to give a definition of "like products", and leaving aside the question of whether the two fertilizers 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 per cent 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.

9. In view of the fact that Article III, paragraph 4, applies to "like products", the provisions of that paragraph are not applicable to the present case, for the reasons set out in paragraph 8 above. As regards the provisions of paragraph 9 of the same article, the working party was informed that a maximum selling price for ammonium sulphate was no longer fixed by governmental action and, in any event, noted that Australia had considered the Chilean complaint and had made an offer within the terms of that paragraph. Since it was not found that any of the substantive provisions of Article III were applicable, the exception contained in paragraph 8 *(b)* is not relevant.

10. The working party then examined the question of whether the Australian Government had complied with 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 can be considered as justifying any claim of injury under this article. It is recognized 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 been approved by the CONTRACTING PARTIES only at their present session, and that they require notification only 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 had discussed with the Chilean Government the possibility of limiting the effects of the subsidization, and has also discussed the matter with the CONTRACTING PARTIES, in accordance with the provisions of Article XVI.

11. Within the terms of reference of the working party, the examination of the relevant provisions of the General Agreement thus led it to the conclusion that no evidence had been presented to show that the Australian Government had 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 whether the injury which the Government of Chile said it had suffered represented a nullification of impairment of a benefit accruing to Chile directly or indirectly under the General Agreement and was therefore subject to the provision of Article XXIII. It was agreed that such impairment would exist if the action of the Australian Government which

subsidy would remain applicable to both fertilizers so long as there remained a local nitrogenous fertilizer shortage. The working party has no intention of implying that the action taken by the Australian Government

Annex

STATEMENT BY THE AUSTRALIAN REPRESENTATIVE

The Applicability of Article XXIII, paragraph 1(b), *to the Complaint of Chile regarding the Australian subsidy on Ammonium Sulphate*

1. The working party has concluded that the Australian subsidy on ammonium sulphate in so far as it might affect the competitive position of sodium nitrate and ammonium sulphate, constitutes actual or potential impairment of a benefit accruing to Chile under the General Agreement. The statement of the working party in paragraph 12 would seem to be derived from the following line of reasoning:

(a) The direct benefit acquired was the binding of the duty-free rate on sodium nitrate.

(b) The indirect benefit was the belief that in securing *(a)* above Chile had achieved a certain competitive relationship between sodium nitrate and ammonium sulphate, two fertilizers which Australia considers substantially different.

(c) The Australian subsidy had upset this competitive relationship.

(d) If in the light of pertinent circumstances and the provisions of the General Agreement this subsidy could not reasonably have been anticipated, then impairment within the meaning of Article XXIII existed.

2. The working party then went to considerable trouble to show why Chile could *not reasonably expect* that Australia, in abolishing its war-time emergency subsidies, would do so as the needs of its economy dictated rather than in accordance with the anticipation of Chile that these two fertilizers, possessing substantially different characteristics and uses and not being like products, would be treated in an identical manner. The question of what obligation with respect to ammonium sulphate Australia could reasonably have expected when she consented to a binding of the free-duty rate on sodium nitrate would seem to be no less relevant. Equally relevant is the question of whether Australia could reasonably have anticipated

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