assurances of the representatives of South Africa and Southern Rhodesia that it was the desire of their Governments to bring about the completion of the union more expeditiously if that should prove at all possible.

19. The working party welcomes the proposal of the two Governments to submit to the CONTRACTING PARTIES a progress report after three years, a definite plan and schedule after five years, and copies of the annual reports of the Customs Union Council, and strongly recommends that the CONTRACTING PARTIES should formally request the two Governments to instruct the Council to include in each annual report a programme of the steps to be taken during the ensuing twelve months towards the attainment of the full customs union. Further, the working party recommends that the relationship of this Interim Agreement to the provisions of the General Agreement on Tariffs and Trade should be placed on record by means of a Declaration.[1]

VII. GENERAL QUESTIONS OF PROCEDURE

20. It was suggested at the meeting of the CONTRACTING PARTIES when the working party was appointed that its terms of reference might include an examination of the procedure to be established for the implementation of Article XXIV. The working party discussed this question and reached the conclusion that consideration by the CONTRACTING PARTIES of proposals for customs unions would have to be based on the circumstances and conditions of eac h proposal and, therefore, that no general procedures can be established beyond those provided in the article itself.

BRAZILIAN INTERNAL TAXES

First Report adopted by the CONTRACTING PARTIES *on 30 June 1949*

(GATT/CP.3/42)

1. The working party examined the question of internal taxes imposed by the Government of Brazil, in order to determine whether these were consistent with Brazil's obligations under the General Agreement.

2. Details of the taxes in question were furnished by the Brazilian delegation.

---

[1] See page 29.

3. With the agreement of the Brazilian representative, the working party decided to adopt, as the basis for its examination, the text of Article III of the General Agreement as modified by the protocol amending Part II and Article XXVI. At the time of examination, Brazil was bound by the provisions of the original and not of the amended text, but it was understood that the Government of Brazil intended to accept the protocol in the near future.

4. The working party agreed that a contracting party was bound by the provisions of Article III whether or not the contracting party in question had undertaken tariff commitments in respect of the goods concerned. The delegates of Brazil and India qualified their agreement by the statement that the obligations of Article III applied only in respect of goods exported by other contracting parties.

5. The working party then considered the Brazilian law 7404 of 1945. The Brazilian delegate agreed that the law imposed taxes which discriminated between products of national origin and like products supplied by other contracting parties, but pointed out that, during the period of provisional application, the application of the provisions of Article III of the Agreement was limited by the Protocol of Provisional Application in the sense that contracting parties were obliged to apply the provisions of Part II of the Agreement only " to the fullest extent not inconsistent with existing legislation ". The Brazilian delegate informed the working party that any change in the rates of tax established by this law could not have been effected by administrative action, but would have required amending legislation to be enacted by the Brazilian Congress. The working party therefore concluded that in view of the mandatory nature of law 7404 the taxes imposed by it, although discriminatory and hence contrary to the provision of Article III, were permitted by the terms of the Protocol of Provisional Application and need not be altered so long as the General Agreement was being applied only provisionally by the Government of Brazil.

6. The working party then examined law No. 494 of 1948, and first considered two particular taxes established by it, relating to *conhaque* and clocks and watches respectively.

7. With reference to amendment No. 7 made to Brazilian internal taxes by article I of law No. 494 of 1948, the Brazilian delegate explained that this amendment concerned beverages containing aromatic or medicinal substances and known as tar, honey or ginger *conhaque*, which were quite different from French cognac. He gave an assurance that the authorities responsible for administering the taxes were able to distinguish between those products (which were of strictly local origin and subject to a tax of 3.60 cruzeiros per litre)

and cognac imported from abroad. He made it clear that home-produced beverages similar to the cognac produced abroad were subject to the tax of 18 cruzeiros per litre. The members of the working party accepted this explanation, since the Brazilian delegate gave an assurance that careful instructions would be sent to the authorities administering the taxes, concerning the distinction to be drawn between these various products.

8. As regards alarm, table and wall or hanging clocks, the Brazilian delegate agreed that the law of 1948 had imposed a new discrimination which was not permitted by the terms of the Agreement even during the period of provisional application and agreed to recommend that the law should be modified in this respect. The delegate of Brazil pointed out that there was no domestic production of watches and that those imported into Brazil were supplied mostly by countries which were not contracting parties. He agreed, however, that watches would in future have a separate classification in the law and that the same rate of tax would be applied to the imported and to the (theoretical) domestic product.

9. The working party then considered as a whole the other taxes imposed by law No. 494 of 1948.

10. As regards cigarettes, the working party found that under the law No. 8538 of 1946 (which modified law 7404 of 1945 in respect of cigarettes) the difference between the highest tax charged on cigarettes of national origin and the tax charged on imported cigarettes was 2.70 cruzeiros per 20, whereas under the law of 1948 the tax on imported cigarettes was at the same level as the highest tax on cigarettes of national origin, and in both cases the tax had been raised to 8 cruzeiros per 20. The delegate of Brazil explained that the retail price on which the tax was based included the rate of tax itself.

11. In all the remaining cases the rates of tax on the domestic product had been increased, and the differential of 100 per cent on the rate imposed on imported products had been retained, with the result that the absolute difference between the two rates had been increased although the proportionate relationship had been retained. The Brazilian delegate, supported by one other member of the working party, took the view that, since this proportionate relationship had already been established by the law of 1945, any increase in the absolute difference in the rates was permitted during the period of provisional application, so long as this proportion was retained.

12. The other members of the working party, however, took the view that the Protocol of Provisional Application limited the operation of Article III only in the sense that it permitted the retention of an

absolute difference in the level of taxes applied to domestic and imported products, required by existing legislation, and that no subsequent change in legislation should have the effect of increasing the absolute margin of difference. To take a case in point, the Brazilian law of 1945 required the tax on domestic liqueurs to be 3 cruzeiros and the tax on imported liqueurs 6 cruzeiros. The law of 1948 had raised the tax on domestic liqueurs to 18 cruzeiros and the tax on imported liqueurs to 36 cruzeiros. These members of the working party felt that while the Brazilian Government was entitled to raise the tax on the domestic product to 18 cruzeiros, the new tax on imported liqueurs could not in these circumstances exceed 21 cruzeiros if the increase were to be compatible with the requirements of Article III and the Protocol; it was evident to them that the structure of the law of 1945 (which imposed a margin of 100 per cent on imported products) could have been modified when the rates had been altered.

13. The Brazilian delegate adduced the further argument that the object of Article III was to prevent the protection of domestic products by the use of discriminatory taxes, and that therefore unless it could be shown that the effect of the law of 1948 had been to increase the protection of the national product, the law could not be held to be incompatible with the provisions of Article III. In support of this argument the Brazilian delegate said that Article III, paragraph 2, should be read in the light of paragraph 1 and of the interpretative note to paragraph 2.

14. Several members of the working party, on the other hand, took the view that the interpretative note to Article III, paragraph 2, modified the second sentence only of that paragraph, that taxes on imported products in excess of those on like domestic products were inherently protective and therefore in all cases contrary to Article III, and that the second sentence, as explained by the interpretative note, merely referred to certain other types of taxes which were proscribed by Article III because of the protective results which might occur.

15. The Brazilian delegate supported by two other delegates, advanced the view that unless damage to other contracting parties could be demonstrated, a breach of Article III could not be alleged. Three other members of the working party took the view that, whether or not damage was shown, taxes on imported products in excess of those on like domestic products were prohibited by Article III, and that the provisions of Article III were intended to prevent damage and not merely to provide a means of rectifying such damage. The Cuban delegate supported the interpretation of the Brazilian delegate in cases where there was no domestic production of the like imported product.

16. The delegate for Brazil had stated at the meeting of the CONTRACTING PARTIES that in respect of some of the products on which internal taxes were imposed there were hardly any imports from other contracting parties. He laid particular emphasis on the interpretative note to Article III, paragraph 2, and stated that none of the contracting parties was either greatly interested or affected by the levy of these internal taxes. He did not feel that in such a situation contracting parties were materially affected and could lodge a complaint. In this connexion, the delegate of Brazil submitted the argument that if an internal tax, even though discriminatory, does not operate in a protective manner the provisions of Article III would not be applicable. He drew attention to the first paragraph of Article III, which prescribes that such taxes should not be applied " so as to afford protection to domestic production ". His view of the obligations under Article III was, he said, borne out by the interpretative note to paragraph 2. The delegate for Brazil, supported by one delegate, suggested that where there were no imports of a given commodity or where imports were small in volume, the provisions of Article III did not apply. Another delegate took the view that the provisions of Article III applied in cases where there were small imports, but not in cases where there were no imports. The other members of the working party argued that the absence of imports from contracting parties during any period of time that might be selected for examination would not necessarily be an indication that they had no interest in exports of the product affected by the tax, since their potentialities as exporters, given national treatment, should be taken into account. These members of the working party therefore took the view that the provisions of the first sentence of Article III, paragraph 2, were equally applicable whether imports from other contracting parties were substantial, small or non-existent.

17. In conclusion the working party noted that the Brazilian Government had already called the attention of the Brazilian Congress to all existing laws providing for different levels of taxation with respect to domestic and imported products, in order to bring those laws into conformity with Article III of the General Agreement. The working party also accepted the statement by the Brazilian delegation that the Government was willing to send a further message to the congress asking it to proceed as soon as possible with the amendment of all such laws and in particular the law of 1948.

18. It was understood that in view of the constitutional procedure of Brazil such action by the Brazilian Congress, even in respect of the law of 1948, could not have an effective result before 1 January 1950.

19. In view of these statements the working party recommends to the CONTRACTING PARTIES that no further action in this matter be undertaken at the present session, but that at the next session the question should be reviewed in the light of action taken by the Brazilian Government by that date.

Second Report adopted by the CONTRACTING PARTIES *on 13 December 1950*

(GATT/CP.5/37)

1. The working party was asked to examine a draft law (No. 483-50) modifying the present legislation on consumption taxes which has been prepared by the Government of Brazil and submitted to its legislature, and to advise on the conformity of the draft with relevant provisions of the General Agreement and the Protocol of Provisional Application.

2. In commencing its deliberations, the working party noted that during discussions of this question by the CONTRACTING PARTIES the Brazilian Government had indicated that it was prepared to ask Congress to proceed as soon as possible with the amendment of all existing laws providing for different levels of taxation with respect to domestic and imported products, and in particular law No. 494 of 1948, in order to bring them into conformity with Article III of the General Agreement. In a communication to the Executive Secretary following a further examination of the question at the fourth session, the Government of Brazil advised that a message had been sent to the Congress requesting action towards amending all existing laws which provide for different levels of taxation for domestic and imported products in order to bring them into conformity with Article III. The working party proceeded to examine the draft law, No. 483-50, in the light of the conclusions reached in previous discussions by the CONTRACTING PARTIES.

3. The Brazilian delegation informed the working party that the draft law was a first step in what would be a gradual process of removing all the discriminatory taxes. The draft law was intended to remove the new or increased discrimination between domestic and foreign products which had been introduced since 30 October 1947, and, in addition—although this was not required so long as the Agreement was being applied only on a provisional basis—it provided, on some commodities, for the removal of some of the discrimination which had existed prior to that date.

4. With reference to the removal of the margins of discrimination which existed prior to 30 October 1947, the Brazilian delegation stated

that its Government reserved the right to incorporate such margins of discrimination into the customs duties. The delegation of Brazil advanced economic and legal arguments to support this view. The representative of Chile suggested that there might be justification in this case on various, and particularly economic, grounds for the conversion of the internal tax discrimination into customs duties. The representatives of France, Greece, the United Kingdom and the United States, on the other hand, pointed out that while a government would have the legal right to convert internal tax margins into customs duties in respect of tariff items not included in its schedule to the General Agreement, it would not have that right in respect of scheduled items except through the procedures of the Agreement for the modification of concessions. The Chairman expressed the view that the working party's terms of reference did not permit it to reach a conclusion on this matter. The majority of the working party agreed with his view, and felt that it would not be necessary to decide this issue in present circumstances. The representative of Brazil stated that in that event his Government would reserve the right to modify the draft law to retain only those provisions which are strictly necessary to eliminate the new or increased discrimination introduced since 30 October 1947.

5. The Brazilian delegation made available to the working party two documents containing, respectively, a translation of the draft law, and translations of extracts from laws and decrees at present in force in order that the amendments being introduced by the draft law might be more readily understood. Nevertheless, members of the working party found some difficulty in understanding the full significance of many provisions of the draft law and sought additional information and explanations from the representatives of Brazil.

6. On the basis of the information available to the working party in the form of written and oral statements, it appeared to the working party that, except in the respects noted below, the draft law would remove the new and increased internal tax discrimination introduced since 30 October 1947, and bring Brazil's consumption tax legislation into conformity with the General Agreement as applied under the Protocol of Provisional Application. The exceptions are as follows:

(*a*) The increase in the internal tax discrimination on playing cards resulting from legislation subsequent to 30 October 1947 (*i.e.*, decrees pursuant to law No. 494 of 1948) would not be removed by the draft law. The Brazilian representative stated that his delegation would recommend an appropriate amendment to take care of this.

(*b*) Most members of the working party were of the opinion that on cigars, cheroots, snuff, shredded and cut tobacco and

tobacco in powder (sections 1, 3 and 4 of paragraph XXIV in schedule D of the consolidation of consumption taxes) the margins of discrimination had been increased since 30 October 1947. The representative of Brazil did not agree, but nevertheless stated that he was willing to propose the modifications necessary to eliminate the margins of discrimination which most members of the working party concluded had been introduced since 30 October 1947.

7. The working party noted that various provisions (paragraphs 8, 11, and 12 of article I of the draft law) would eliminate the discrimination in question only with respect to products imported from the contracting parties. The question was raised in the working party as to the treatment which would be accorded to products of the contracting parties which were not imported directly, but came to Brazil in transit through a third country. The representative of Brazil assured the working party that products of any contracting party which entered Brazil after coming in transit through a third country would receive the same treatment as if the goods in question had been imported directly from a contracting party.

8. Finally, the working party considers that the review of draft legislation by the CONTRACTING PARTIES with a view to determining whether such legislation is in conformity with the General Agreement in no way prejudices the right of any contracting party, subsequent to such review, to raise any question as to the consistency of such legislation with the provisions of the Agreement.

THE AUSTRALIAN SUBSIDY ON AMMONIUM SULPHATE

Report adopted by the CONTRACTING PARTIES *on 3 April 1950*

(GATT/CP.4/39)

I. INTRODUCTION

1. The working party examined with the delegations of Australia and Chile the factual situation resulting from the removal, on 1 July 1949, of nitrate of soda from the pool of nitrogenous fertilizers which is subsidized 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