

Appendix E

TRANSMIT REPORT

1997.05-20 16:43

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FAX FACTS

DATE: May 20, 1997

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TO: Gianni Picco

COMPANY: _____

FAX NUMBER: _____

FROM: Jean Johnston/David B. Chalmers

NUMBER OF PAGES (INCLUDING COVER) 2

COMMENTS: _____

Robin thought you should see the approach we were taking. Please find below David Chalmers contact numbers:

U.N. Plaza Hyatt Hotel

Portable

BAY04-00439

DRAFT

TO: Gianni Picco
FAX: [REDACTED]
FROM: David B. Chalmers, Jr.
DATE: August 8, 2002

Dear Gianni:

The recently reported July price formula controversy is characterized by two key issues, whereby the current procedures for establishing price formulas have over time departed from the guidelines outlined under Resolution 986, and followed until this year, to today's practices for setting prices which is drawing criticism by the industry and detrimental to the future success of the program.

Firstly, the primary areas of concern relate to changes in methodologies applied by the U.N. Overseers for determining a "fair market" formula for particular periods, along with a change in the procedure for communications with S.O.M.O. and industry sources with respect to adhering to the strict guidelines under Resolution 966 pertaining to their responsibilities.

Secondly, as more widely reported, the procedure adopted over the past months by the 661 Committee, to hold formula prices submitted by S.O.M.O., with Overseer approval, has resulted in a broad base criticism by the industry for not adhering to Resolution guidelines as well as industry practice, which is potentially affecting the future success of the program.

With regard to the methodologies used by the Overseers for determining fair price formulas, it is evident from critical analysis of approved formulas over the history of the program, together with discussion with industry participants, that over time the Overseers have changed their methodology for calculating formulas and sourcing market information pertaining to the components of each formula in a manner that could be construed as more and more unpredictable, uncompetitive, or unfair over time. In fact, many industry participants hold a very cynical view that the Overseers will adopt whichever methodology that will yield the highest price for a respective period, in theory to reduce any potential financial gain for contract holders, which in turn, could result in the purported illegal payment of surcharges.

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FROM :GDP

FFX NO. [REDACTED]

Jul. 11 2002 04:34PM P1



[REDACTED] - New York, NY 10155
[REDACTED]

FACSIMILE TRANSMISSION

To: David Chalmers
Fax #:

From: Giandomenico Picco
Fax#: [REDACTED]

RE: FYI

Date: [REDACTED]

No. of pages (including this cover sheet): 6

OSP 2002**UK PROPOSAL FOR A PROACTIVE PRICING MECHANISM**

Since December 2000 the Iraq Sanctions Committee has continued to receive information from the Oil Overseers that substantial sums of money have been withheld from the UN/Iraq escrow account due to excessive levels of premia being charged by SOMO contract holders. The Committee continues to take note of the information supplied by the Oil Overseers that excessive premia could be realised as a result of extra-contractual arrangements, between SOMO and the contract-holders. The Iraq Sanctions Committee has never approved such arrangements. The Committee introduced retroactive price setting in October 2001 with the objective of combating these practices, which are detrimental to the OFF programme.

The Committee continues to work towards its objective of maximising the funding base of the OFF humanitarian programme in order to meet the basic humanitarian needs of the Iraqi population. In this context it sees it as its responsibility to facilitate the smooth flow of Iraqi oil into the markets at fair market value and in a manner consistent with Security Council resolutions.

To further this objective the Committee has decided to increase the attractiveness of Iraqi oil to end-users and established traders by allowing them, provided that certain conditions are satisfied, the choice between purchasing Iraqi oil on a proactive or a retroactive pricing basis. The Committee will also work towards its objective of minimising the risk of abusive practices that could lead to funds being withheld from the UN-Iraq account.

The Committee would therefore undertake the following:

1. SOMO AND CONTRACT HOLDERS

No change will be made to the existing system of registration of national oil purchasers by UN Member States and SOMO's discretion of awarding contracts to companies of its choice. The Oil Overseers are requested to allow for a contract holder's commission of five cents per barrel when submitting their price recommendations to the Iraq Sanctions Committee.

2. THE "GREENLIST"

Subject to the Sanctions Committee's approval by way of the no-objection procedure, a company will be allowed on the "Greenlist". The Committee will only allow on this list those companies that are either refiners of Iraqi crude oil or established crude oil traders that possess relevant commercial experience in lifting and shipping cargoes of crude oil. A request from a company to be put on the "Greenlist" should be submitted via the Oil Overseers and should be accompanied with a completed standardised questionnaire (attached). The questionnaire will contain relevant information about the company and its

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activities. Many of the companies that are currently involved in the physical lifting of Iraq oil would be expected to qualify for inclusion on the "Greenlist". The Committee on a monthly basis would review the "Greenlist". The Committee will not allow the continued presence of any companies on the list that have caused damage to the OFF programme e.g. by failing to lift the oil they have committed themselves to lift during a particular pricing period. The Committee will not accept companies that are affiliated with companies that are already on the list or which were deleted from that list.

3. PRICING OF IRAQI CRUDE OIL

The Committee will allow two alternative pricing systems: proactive *and* retroactive.

The *proactive system* will only be allowed under the following conditions:

- SOMO will submit [proactive] prices before a certain date. Such prices will need to be approved by the Iraq Sanctions Committee. The timing of the SOMO submission of oil prices should be in line with existing oil industry practices. Prices would be fixed for a full month and the Committee will not accept any requests for subsequent revisions of these prices.
- The company lifting Iraq crude oil *must* be on the "Greenlist".
- The lifting company should open the Letter(s) of Credit for volumes and destinations of their choice within three New York banking days of the Committee's approval of the crude oil prices. The volume(s) and destination(s) cannot subsequently be changed and the Committee will, for the purpose of deciding whether that company will qualify to retention on the "Greenlist" in future, consider this as a lifting commitment.
- The Letter(s) of Credit should both include the name of the contract holder from which the lifting company has bought the oil and the name of the "Greenlist" - lifting - company that opened the Letter of Credit on the contract holder's behalf.
- The Letter(s) of Credit should explicitly state the price as previously approved by the Sanctions Committee.

The *retroactive system* will prevail under the following conditions:

- In all cases if SOMO has not submitted (proactive prices) before a certain date or if the Committee has not approved these prices.
- If the lifting company is no longer on the "Greenlist".

FROM : GDP

FAX NO. [REDACTED]

Jul. 11 2002 04:34PM P4

- If the lifting company is on the "Greenlist" but wants to lift an (incremental) volume of oil for which no valid Letter of Credit was opened in time for it to qualify for proactive pricing.
- Approval of Letters of Credit, and therefore UN authorisation to export the cargo, can only be given if the pricing clause in the Letter of Credit reads :

"The price shall be [proactive cases only – agreed price mentioned] / as will be agreed [retroactive cases only – no prices mentioned] upon between SOMO and the United Nations".

4. MONTHLY REPORTING

The Oil Overseers will report to the Sanctions Committee on a monthly basis recording any failure by a company on the "Greenlist" to comply with its lifting commitment(s). In order for the Committee to decide whether such company should remain on the "Greenlist" the Oil Overseers will submit their report to the Iraq Sanctions Committee as soon as possible after the end of each month. The Sanctions Committee will then, on the basis of the standard 48-hour no-objection procedure, decide whether the company should be retained on the "Greenlist".

5. REVIEW

The Sanctions Committee will review the effectiveness of this proposal after six months.

6. IMPLEMENTATION

The Oil Overseers will submit to the Iraq Sanctions Committee a detailed proposal for the implementation of a proactive/retroactive system no later than 1 August 2002.

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QUESTIONNAIRE FOR GREENLIST APPLICATION

1) Full Company Name:

2) Registered Business address:

3) Name of contact person, telephone number and fax number:

4) How would you describe the activities of the Company?

- crude oil refining company;
- crude oil trading company;
- crude oil refining/trading company;
- other (please specify)

5) If the company* is a crude oil refining or refining/trading company, has the company processed any crude oil of Iraqi origin during the past twelve months?

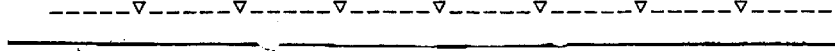
If so please supply the following information:

- the location(s) of the refinery which processed the Iraqi crude oil;
- whether the crude oil was purchased on an fob, C&F or delivered basis;
- The vessel name, bill of lading date, discharge date and discharge location of a recent delivery of Iraqi crude oil for processing in the company's refining system;

6) If the Company is a crude oil refining/trading company that has not refined any crude oil of Iraqi origin during the past twelve month or if the Company is a crude oil trading company, please supply the following information for three recent trades:

- Names(s) of vessels, equal or larger than LR2 size, which were chartered by or for account of the Company;
- Bill of Lading dates, load ports, types of crude oil and discharge ports for these three vessels;

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7) Sign and date the duly filled in questionnaire and forward it to the United Nations Oil Overseers at the following fax number: [REDACTED]

*In question 5) and 6) the word "Company" is meant to include all its affiliated companies.



FAX FACTS

DATE: 4/11/03

TO: Mr. Picco

ATTN: _____

FAX NO: 212-832-4970

PAGES AFTER COVER: 31 pages

FROM: David B. Chalmer Jr.

COMMENTS:

re: Memo/documents sent to
U.S. State Dept of State.

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BAY04-00475



BAYOIL

31 PAGES

TO: U.S. Department of State
 ATTN: Mr. Matthew T. McManus
 Division Chief-Energy Producer Affairs
 FAX: ~~XXXXXXXXXX~~
 FROM: David B. Chalmers Jr.
 Bayoil (USA) Inc.
 DATE: April 10, 2003

As per your request from Mr. John Irving (Bayoil, London), we are pleased to provide you fax copies of the following correspondence:

- I.
- i. Correspondence from National Oilwell Co. (contractual supplier Bayoil) to the 661 Committee Chairman.
 - ii. National Oilwell vessel nomination (Kirkuk)
 - iii. National Oilwell contract U.N. approvals
- II.
- i. Correspondence from Machinoimport (contractual supplier Bayoil), to the 661 Committee Chairman
 - ii. Correspondence Machinoimport to S.O.M.O.
 - iii. Machinoimport U.N. approval letter
 - iv. Machinoimport vessel nomination (Kirkuk)
 - v. Machinoimport contract U.N. approvals
- III. Documentation vessel "Hellespont Grand" confirmed to load Mina Al Bakr March 26th.
- i. Vessel nomination Bayoil/Trans Nafta
 - ii. Vessel nominations Bayoil/KHRIZOLIT
 - iii. S.O.M.O. nomination acceptance Trans Nafta
 - iv. S.O.M.O. nomination acceptance KHRIZOLIT
 - v. U.N. approval contract Trans Nafta
 - vi. Letter of Credit authorizations Trans Nafta
 - vii. Letter of Credit application Trans Nafta
 - viii. Vessel instructions (Hold at Fujairah, outside war zone, for further instructions.)

Best regards,

David B. Chalmers Jr.

BAY04-00476

An example of such practices as reported by industry observers in connection with the July price controversy, whereby the Overseers have used a methodology for calculating the U.S. market component of the formula by calculating average published prices. For

other types of oil (i.e. Mars crude), which apparently reflects a very different quality and market delivery period, while simultaneously not considering reported market assessments for Iraqi grades applicable to the July lifting period.

Additionally, as referred to above, the process for communications with S.O.M.O. has apparently evolved to a situation whereby the Overseers' office has pre-advised S.O.M.O. prior to their submission of price formulas, the only price formula they will forward to the Committee with approval, or otherwise imposing on S.O.M.O. the methodology for calculating monthly prices. As such, there is little chance of the Overseers having to defend their methods of determining prices if they are simply approving prices S.O.M.O. has itself submitted.

The second issue causing concern over the future success of the program results from the practice this year, whereby the 661 Committee has put on hold formulas submitted by S.O.M.O. prior to each lifting period, and approved by the Overseers, until the end of each calendar month, resulting in the requirement for S.O.M.O. to re-submit an acceptable price formula at that time. This so called retroactive pricing procedure was reported to be recommended by certain Overseers in theory to reduce the potential for certain contract holders from paying surcharges to S.O.M.O., due to the fact that imposing re-submitted prices at the end of each month reflecting any increase in market value over that time would accomplish this goal.

The reasons for overall concern over the recent adoption of this price policy and continued imposition of such a policy are threefold:

Firstly, that such practice is in contradiction to the procedures outlined in Resolution 986 under the pricing procedure which could have a negative impact on the program integrity.

Secondly, that the practice is in sharp contrast to industry practice, resulting in a clear prejudice of the program by key industry players, which in turn could greatly affect the future participation and success of the program.

Lastly, the logic for establishing such a retroactive pricing practice, for the purpose described above, lacks certain _____.

For example, the policy does not recognize that in theory the U.N. Overseers have not, or cannot, submit approved price formulas to the Committee, which already are calculated with no financial allowance or incentive to pay a purported surcharge. Also, more critically, the concept of applying any increase in market value applied to the final re-submitted price formula implies that Contract Holders, or Lifters are capable of predicting the future of market prices, which will compensate for paying a surcharge.

It is in the spirit of concern over the longer terms success of the "Oil-for-Food Program" that the above points are raised with respect to the current situation whereby oil export levels have been reduced and are erratic, resulting from decreasing industry participation and critical examination of the adherence to U.N. Guidelines.

Sincerely,

David B. Chalmers, Jr.