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**REPORT ON ILLEGAL SURCHARGES
ON OIL-FOR-FOOD CONTRACTS
AND
ILLEGAL OIL SHIPMENTS FROM KHOR AL-AMAYA**

**PREPARED BY THE
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PERMANENT SUBCOMMITTEE
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***OIL FOR INFLUENCE: HOW SADDAM USED OIL TO
REWARD POLITICIANS AND TERRORIST ENTITIES UNDER THE
UNITED NATIONS OIL-FOR-FOOD PROGRAM***

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**MINORITY STAFF REPORT
ON
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May 17, 2005

I. EXECUTIVE SUMMARY

The U.S. Senate Permanent Subcommittee on Investigations is examining allegations of misconduct involving the United Nations Oil-for-Food (OFF) and Iraqi sanctions programs, and the extent to which such misconduct has involved U.S. persons and damaged U.S. interests.

To date, the Subcommittee has held two hearings, on November 15, 2004 and February 15, 2005, stemming from this investigation. The first hearing examined Iraq's demands for illegal kickbacks paid on humanitarian contracts issued under the OFF program and the scope of open oil sales that took place between Iraq and its neighboring countries under so-called "trade protocols" that were outside of the OFF program. The second hearing examined the inspection companies retained by the United Nations to monitor oil sales and humanitarian imports under the OFF program as well as issues related to management, audit and procurement oversight. This hearing also presented evidence that the United States and other U.N. member countries had acquiesced in Iraq's open sale of billions of dollars in oil to its neighbors, Jordan, Turkey, Egypt, and Syria, in violation of U.N. sanctions.

This Report is being released in connection with the Subcommittee's third hearing, and examines issues related to illegal surcharges paid on oil contracts under the OFF program and illegal oil shipments made from the Iraqi port of Khor al-Amaya.

Illegal Surcharges. The first part of this Report examines the illegal surcharges that Iraq demanded from persons who wanted to buy Iraqi oil under the Oil-for-Food program, using Bayoil (USA), Inc., a U.S. corporation, as a case history to illustrate what happened.

Over a two year period, from September 2000 until September 2002, the government of Iraq demanded that purchasers of Iraqi oil under the Oil-for-Food program pay a per-barrel surcharge to the Iraqi regime. Such payments violated U.N. sanctions. The surcharge amount varied over time, from a low of 10 cents to a high of 30 cents per barrel. Internal records kept by the Iraqi Oil Ministry's State Oil Marketing Organization (SOMO) show that, during the surcharge period, Iraq collected a total of about \$228 million. Using SOMO and other Iraqi records, Bayoil shipping documents, and U.S. Energy Information Administration import data, the Subcommittee Minority Staff estimated that, during the period surcharges were collected, the United States imported about 525 million barrels of Iraqi oil on which \$118 million in illegal

surcharges were paid. That means U.S. imports financed about 52 percent of the illegal surcharges paid to the Hussein regime. The Subcommittee Minority Staff has not seen evidence showing that U.S. companies knowingly purchased Iraqi oil on which an illegal surcharge had been paid; in fact, U.S. companies typically included a clause in their contracts requiring a seller to provide a warranty that no surcharge had been paid. Countries in the rest of the world, including Europe, Asia and Africa, imported about 475 million barrels for which about 48 percent of the illegal surcharges were paid, totaling about \$110 million. Ultimately, all of the surcharge payments went into the coffers of the Iraqi government, then under the control of Saddam Hussein.

During the surcharge period, Bayoil became the largest provider of Iraqi oil imports into the United States, importing over 200 million barrels. At a time when other companies around the world were sharply decreasing their purchases of Iraqi oil due to Iraq's surcharge demands, Bayoil increased both its total purchases and its share of Iraqi oil exports, at one point buying about 20 percent of all Iraqi oil sold under the Oil-for-Food program. Bayoil bought this oil primarily from individuals and companies holding oil allocations which had been granted by the Iraqi government or from companies contracting to load oil on behalf of those allocation holders. Bayoil acquired oil, for example, from Italtech, an Italian company owned by a business associate, Augusto Giangrandi; various Russian persons and entities, such as the Russian Presidential Council, Vladimir Zhirinovskiy, the Liberal Democratic Party of Russia, Rosneft, Rosnefteimpex and SOVOIL; and various Middle Eastern persons and entities, including Al-Hoda International Trading, a front company for Iraq, EMIROIL, and the National Oil Wells Maintenance Company.

Bayoil then sold the Iraqi oil primarily to U.S. oil companies and refineries which, in turn, sold refined petroleum products, like gasoline and heating oil, to American consumers.

Bayoil fostered corruption of the Oil-for-Food program by facilitating the payment of at least \$37 million in illegal surcharges to the Hussein regime on the oil it purchased; engaged in intensive lobbying efforts to influence the pricing of Iraqi oil and to oppose U.S. efforts to use that pricing to stop the illegal surcharges; and participated in an illegal trade boycott of Israel. Bayoil engaged in this misconduct for nearly two years, from 2000 to 2002, without attracting meaningful oversight from any U.S. agency. At the same time U.S. officials were urging the United Nations to institute pricing policies that would prevent the Saddam Hussein regime from imposing illegal surcharges, the United States was itself failing to ensure U.S. corporations such as Bayoil were not paying those surcharges. Last month, two years after the Oil-for-Food program ended, the United States indicted Bayoil for allegedly violating U.S. sanctions on Iraq, committing fraud, and engaging in a conspiracy to commit fraud, including by paying "millions of dollars in secret illegal surcharges to the Government of Iraq."

Khor al-Amaya Oil Shipments. Saddam's attempted corruption of the Oil-for-Food program through the imposition of illegal surcharges on the sale of Iraqi oil is a serious concern, but the Hussein regime obtained far greater illicit income through other schemes, some with the knowledge and tacit approval of the United States and other members of the U.N. Security

Council. Although Saddam Hussein obtained about \$228 million from the illegal surcharges, Iraq's direct and open oil sales to Jordan, Turkey, Syria, and Egypt, generated 40 times as much illicit income -- over \$8 billion. These oil sales were in violation of U.N. sanctions and were known to the United States and other U.N. member countries, but little was done to stop them. The Iraq Survey Group, a U.S. sponsored group which conduct extensive review of the effect of U.N. sanctions on Iraq, has estimated that smaller-scale smuggling, which it euphemistically termed "Border and Private Sector Cash Sales," provided the Hussein regime with another \$1.2 billion during the sanctions period.

The United States was not only aware of Iraqi oil sales which violated U.N. sanctions and provided the bulk of the illicit money Saddam Hussein obtained from circumventing U.N. sanctions. On occasion, the United States actually facilitated the illicit oil sales, as happened in the Khor al-Amaya incident in 2003. This incident involves the largest single illicit sale of oil transported by ship out of Iraq during the sanctions period. Over several weeks in February and March 2003, Iraq loaded over 7 million barrels of oil onto 7 seagoing oil tankers at the port of Khor al-Amaya in Southern Iraq. In exchange for this oil, the government of Jordan wired over \$53 million in hard currency to bank accounts under the control of the Hussein regime on the eve of the American invasion. Each of these massive oil tankers docked at the Khor al-Amaya port, filled its tanks with Iraqi oil, and traveled through the Persian Gulf, with the full knowledge and acquiescence of the Maritime Interdiction Force, then under the command of a U.S. naval officer. When word of these oil shipments hit the press and an outcry arose about this apparent blatant violation of U.N. sanctions, the evidence indicates that the United States continue to allow the shipments to proceed.

The oil loaded at Khor al-Amaya, which was supposedly intended to ensure an adequate supply for Jordan during a possible war, was sold by the Jordanian government at a significant profit. The \$53 million Jordan paid to Iraq just before the outbreak of the 2003 war was transferred to the Central Bank of Iraq, then under the control of Saddam Hussein.

Oversight Failures. According to many experts, U.N. sanctions on Iraq were successful in their main objective of preventing Iraq from rearming and acquiring weapons of mass destruction. In testimony before the Senate in 2001, for example, Secretary of State Colin Powell testified that, "The purpose of [the U.N.] sanctions was to go after weapons of mass destruction." He described the U.N. sanctions as "successful," explaining that "Saddam Hussein has not been able to rebuild his army He has fewer tanks in his inventory today than he had 10 years ago. Even though we know he is working on weapons of mass destruction, we know he has things squirreled away, at the same time we have not seen that capacity emerge to present a full-fledged threat to us." He concluded, "credit has to be given ... for putting in place a regime that has kept him pretty much in check."

At the same time, U.N. sanctions and the Oil-for-Food program were flawed. The flaws that enabled Saddam Hussein to amass billions of dollars in illicit income in violation of U.N. sanctions include Iraq's ability during the sanctions period to conduct open and illicit sales of oil

with its neighbors, facilitate smuggling across Iraqi borders, obtain illegal kickbacks on OFF contracts buying humanitarian goods, and obtain illegal surcharges on OFF contracts selling Iraqi oil.¹ The illegal surcharge payments and illegal Khor al-Amaya oil shipments addressed in this Report help illustrate the abuses that took place. They not only generated hard currency for Iraq in violation of U.N. sanctions, but also fostered a perception that the Oil-for-Food program was susceptible to corruption.

This Report shows that, in some respects, U.N. and U.S. officials took effective action to stop Iraq's illegal surcharge demands, in particular by setting Iraqi oil prices high enough to discourage the imposition and payment of surcharge amounts. But at the same time some U.S. officials were working with U.N. officials to devise effective pricing strategies, the United States was taking virtually no steps to ensure U.S. persons and companies were not paying Iraq the illegal surcharges. For example, Bayoil received minimal attention from the key U.S. agency charged with enforcing U.S. sanctions on Iraq, the Office of Foreign Assets Control (OFAC), despite Bayoil's prominence in the Iraqi oil trade and information indicating that intermediary companies like Bayoil were the most likely conduits for the payment of illegal surcharges to Iraq. Questions raised by U.N. Oil Overseers about Bayoil's OFF activities also produced no U.S. response.

When asked about its lack of oversight regarding the surcharge issue in general and Bayoil in particular, OFAC told the Subcommittee that it had assigned a low priority to OFF enforcement activities in light of its other responsibilities, limited staff, and perception that the Oil-for-Food program was a U.N. responsibility. U.N. Resolution 661, which established the Oil-for-Food program, was clear, however, that while the United Nations assumed lead responsibility for managing the OFF program, U.N. member states – including the United States – retained the responsibility to enact laws imposing trade restrictions on Iraq and to ensure compliance by their nationals. OFAC's failure to investigate Bayoil, review evidence of possible U.S. company involvement in Iraq's illegal surcharges, or actively monitor U.S. persons doing business in Iraq represented an abdication of OFAC's responsibility and an inappropriate attempt to shift the obligation to enforce U.S. sanctions law onto the United Nations.

With respect to the Khor al-Amaya incident, the United States not only failed to exert any effort to stop the oil tanker shipments, it appears to have facilitated them, despite widespread recognition that the shipments were a blatant violation of U.N. sanctions.

To protect future sanctions programs from similar types of abuses, the United Nations and its member countries need to place a higher priority on building anti-corruption measures into sanctions programs, including assigning clear responsibilities for detecting and preventing corruption and pushing member countries to take appropriate enforcement action against nationals engaged in wrongdoing. Member countries will also need to stop turning a blind eye to open violations of U.N. sanctions. On the part of the United States, OFAC must carry out its

¹ See Figure 1, "Illicit Iraqi Income 1991-2003," chart prepared by the Subcommittee Minority Staff depicting these four sources of illicit income for the Hussein regime.

responsibility to police compliance by U.S. persons, including through anti-corruption oversight and active enforcement. In turn, it is up to the Administration and the U.S. Congress to provide OFAC with adequate resources to conduct meaningful sanctions oversight and enforcement.

II. ILLEGAL SURCHARGES UNDER THE OIL-FOR-FOOD PROGRAM

Within days of Iraq's invasion of Kuwait in August 1990, the United Nations Security Council adopted Resolution 661, imposing a broad economic and military embargo on Iraq. On the economic side, U.N. Resolution 661 directed that "all States shall prevent ... the import into their territories of all commodities and products originating in Iraq" and "the sale or supply by their nationals . . . of any commodities or products" to Iraq.² The same week, President George H.W. Bush issued executive orders declaring that Iraq posed an "unusual and extraordinary threat to the national security and foreign policy of the United States" and imposing a U.S. trade embargo on Iraq in accordance with U.N. sanctions.³ Implementing federal regulations, issued by the U.S. Treasury Department's Office of Foreign Assets Control (OFAC) which administers U.S. sanctions programs, prohibited U.S. individuals and companies from executing contracts or otherwise transacting business in commodities bought from or sold to Iraq unless authorized by a specific OFAC license.⁴

Five years after the U.N. sanctions were first imposed, due to food and medicine shortages affecting ordinary Iraqis living under the trade embargo, the U.N. Security Council passed Resolution 986 authorizing the Iraqi government to sell oil under certain conditions. The primary conditions were that all Iraqi oil sale proceeds be deposited into an escrow bank account under U.N. control and these proceeds be used solely to purchase humanitarian goods, such as food and medicine, for the Iraqi people. In 1996, Iraq agreed to these terms, and the United Nations established the "Oil-for-Food" (OFF) program, administered by a newly established U.N. Office of Iraq Programme. U.S. sanctions regulations were modified to conform to the new OFF program; these regulations and other sanctions regulations related to Iraq remained in effect until May 2003, following the fall of the Hussein regime.

Iraqi oil sales under the Oil-for-Food program began in December 1996. During the program, Iraq sold over \$65 billion worth of oil; the proceeds from these sales were deposited into a U.N.-controlled account at BNP Paribas bank. During the OFF program, the United States became the largest single consumer of Iraqi oil, importing about 1.2 billion barrels overall, which has been estimated at about 50 percent of all the oil sold by Iraq under the OFF program.

² United Nations Security Council Resolution 661 (8/6/90).

³ See Executive Orders 12722 (8/2/90) and 12724 (8/9/90). The President imposed the trade embargo using authority granted under the International Emergency Economic Powers Act, 50 U.S.C. §1701. Successive executive orders by subsequent U.S. Presidents continued this trade embargo on Iraq until 2003.

⁴ See 31 C.F.R. 575.

Although some U.S. companies bought oil directly from Iraq in the first few phases of the OFF program, in subsequent phases Iraq imposed a policy which, in general, barred the issuance of Oil-for-Food oil contracts to U.S. companies or their affiliates.⁵ Instead, U.S. companies typically bought oil from individuals or companies who had been given Iraqi oil allocations or from companies which had contracted with an oil allocation holder to lift oil from Iraq. From 2000 to 2002, Bayoil (U.S.A.), Inc. and its affiliates, operating out of Houston, Texas, became one of the largest importers of Iraqi oil into the United States. The Justice Department indictment of Bayoil and its principal officers charges that, during this period, Bayoil and its three principals also “agreed to pay, did pay, and caused to be paid millions of dollars in secret illegal surcharges to the Government of Iraq.”⁶

In its efforts to import Iraqi oil into the United States, Bayoil and its officers failed to comply with U.S. laws and regulations and U.N. rules, engaged in an intensive lobbying effort to influence the official selling price of Iraqi oil and counter U.S. pricing efforts to stop illegal surcharges, participated in an illegal trade boycott of Israel, and facilitated the payment of at least \$37 million in oil surcharges outside of U.N. control to the regime of Saddam Hussein. Bayoil engaged in this misconduct for nearly two years, from 2000 to 2002, without attracting meaningful oversight from any U.S. agency. At the same time U.S. officials were urging the United Nations to halt the payment of oil contract surcharges to Saddam Hussein, the United States was failing to police one of the most visible U.S. corporations engaged in the Iraqi oil trade.

A. IRAQI OIL SURCHARGES

Documents and interviews of former officials in the Hussein regime show that Iraq imposed illegal surcharges on oil contracts issued under the Oil-for-Food program over a two year period, from September 2000 until September 2002. The surcharge amount varied over time, from a low of 10 cents to a high of 30 cents per barrel. Altogether, Iraq collected illegal surcharges totaling about \$228 million, of which \$118 million, or 52 percent, was paid on Iraqi oil shipments to the United States.

Imposing the Surcharges. Subcommittee interviews with high ranking Iraqi officials under the Hussein regime confirmed that Saddam Hussein first decided to impose a surcharge on Oil-for-Food oil contracts after the Director of the Military Industrial Commission (MIC) told Saddam Hussein that commercial traders outside Iraq were making large amounts of money from

⁵ See, e.g., Subcommittee Interview with Senior Hussein Regime Official No. 1 (4/14/05); letter dated 5/22/02, from Bayoil’s legal counsel, Dickstein Shapiro Morin & Oshinsky LLP, to OFAC; letter dated 12/15/98, from Iraqi Ambassador to Russia Dr. Hassan Fifahmi Juma to Vladimir Zhirinovskiy, Bates BAYOILUSA 009396 (apologizing that “Iraq cannot do any deals with American companies” and so cannot issue a contract to Bayoil to load oil allocated to Mr. Zhirinovskiy); Comprehensive Report of the Special Advisor to the DCI on Iraq’s WMD, 30 September 2004 (hereinafter cited as “ISG Report”), Annex B.

⁶ United States v. Chalmers, Case No. S1-05-Cr. 59(DC) (USDC SDNY), Indictment (April 2005).

trading in Iraqi oil.⁷ According to one senior Iraqi official, the MIC Director incorrectly advised Saddam Hussein that these profits amounted to about ten percent of the oil price. Upset that traders were making so much money from Iraqi oil, Saddam Hussein then directed the Oil Ministry to recover ten percent of the sales price.

One senior Iraqi official told the Subcommittee that both Saddam Hussein and the MIC Director fixed on the ten percent figure because that was the same figure that had recently been agreed upon for the “fees” to be imposed on imports of humanitarian goods under the Oil-for-Food program. Although the Iraqi official stated that this was “clearly ridiculous” – the profit per barrel realized by oil traders generally amounted to a few cents per barrel – he indicated that neither the MIC Director nor Saddam Hussein were familiar with the operation of world oil markets.

Subcommittee interviews confirm that when the Oil Minister told Saddam Hussein that the oil markets would not bear a ten percent surcharge, Saddam Hussein directed the Finance Minister, Hikmat Mizban Ibrahim al-Azzawi, to watch over the Oil Minister and ensure he implemented the surcharge as directed. Subcommittee interviews confirm, however, that the Oil Minister persuaded Saddam Hussein to convene a committee, consisting of Oil Minister Amir Rashid, Finance Minister Hikmat Mizban Ibrahim al-Azzawi, MIC Director Abd al-Tawab Mullah Huwaysh, Deputy Prime Minister Tariq Aziz, and Vice President Taha Yasin Ramadan, to determine the appropriate level of surcharges. According to one senior Iraqi official, it was following the decision of this committee, beginning in September 2000, that Iraq imposed a surcharge of ten cents per barrel on all exports of Iraqi oil. SOMO records show that this ten-cent per barrel surcharge was imposed during the remainder of Phase VIII of the Oil-for-Food program, which meant from September through December 5, 2000.

According to one senior Iraqi official, at a point in time after the ten-cent surcharge had been in effect for a while, the MIC Director suggested the surcharge be increased to \$2 per barrel. In response, another committee was formed and recommended a surcharge of 50 cents per barrel. In mid-November, Iraq’s State Oil Marketing Organization (SOMO) informed prospective purchasers that, beginning December 1, 2000, they would have to pay a 50-cent per barrel surcharge above the Official Sales Price (OSP) of Iraqi oil.⁸ SOMO also informed its customers that the surcharge was to be paid into a designated bank account outside the control of the United Nations, and customers that refused to pay the surcharge would not receive allocations of oil.

After a number of Iraq’s oil customers informed Iraqi officials that such payments would violate U.N. sanctions and, in any event, would make it uneconomical to purchase Iraqi crude,

⁷ Subcommittee Interview with Senior Hussein Regime Official No. 1 (4/14/05). See also ISG Report, Regime Strategic Intent, p.38.

⁸ See, e.g., “Iraq Tells Customers to Pay Premium Outside of UN Sanctions Regime,” IPR Strategic Business Information Database (11/16/00).

SOMO proposed an OSP for December that was widely recognized as substantially lower than the market price for Iraqi oil.⁹ Due to trade press articles and direct reports from oil buyers, however, the U.N. Oil Overseers were aware of Iraq's attempts to collect the 50-cent surcharge, and refused to support SOMO's below-market OSP proposal.

In response, Iraq announced that it was suspending its December oil exports. "Iraq is free to set crude prices according to its own interests," Deputy Prime Minister Tariq Aziz stated at the time. When Iraq's customers "refuse these prices, exports stop in the absence of new contracts."¹⁰

In mid-December, Iraq and the U.N. came to an agreement on the OSP for the next month, and Iraq resumed pumping oil for export. Iraq also renewed its demand to its customers for the payment of a surcharge, but lowered the amount to 40 cents per barrel.

On December 15, 2000, the U.N. 661 Committee issued a notice to all buyers of Iraqi oil:

- 1) The sanctions committee has not approved a surcharge of any kind on Iraqi oil.
- 2) Payments for purchasing Iraqi crude oil cannot be made to a non-UN account.
- 3) Therefore, buyers of Iraqi oil shall not pay any kind of surcharge to Iraq.¹¹

⁹ Under the Oil-for-Food program, all Iraqi oil was sold according to an OSP set by the U.N. 661 Committee, a committee which had been established by the U.N. Security Council and tasked with implementing U.N. sanctions on Iraq. Under OFF procedures, SOMO had sole authority to propose an OSP for Iraqi oil for a specified time period. SOMO was then required to present its proposal to the U.N. 661 Committee's Iraqi oil experts, called Oil Overseers, who analyzed the proposal, discussed its pricing elements with SOMO, and attempted to reach agreement on the OSP. Based upon this discussion, SOMO would then present a proposed OSP to the U.N. 661 Committee, and the Oil Overseers would provide a positive or negative recommendation on whether the SOMO proposal represented a fair market price. If no 661 Committee member objected, the OSP became final and remained in effect until SOMO determined that the market had changed and a new OSP was needed. If even one member of the 661 Committee objected to the proposed OSP, it would not go into effect and the prior OSP would continue.

The OSP was generally set as a specified differential to one of the global benchmarks for oil pricing, such as Brent crude oil, which generally serves a benchmark for oil going to Europe and Africa; or West Texas Intermediate (WTI) crude oil, which serves as a benchmark for oil going to North America. Most OSPs were adjusted after about a month. All direct purchasers of Iraqi oil in a given time frame were required to pay the OSP for Iraqi oil obtained during the specified time frame. Those who bought Iraqi oil from the initial purchaser would typically pay a premium over the OSP to cover transportation, insurance, other costs, and a reasonable profit for the initial purchaser. In instances where market oil prices were falling, however, subsequent purchasers were sometimes able to buy the oil at a discount from the initial OSP.

¹⁰ "Iraq Decides the Price of its Oil, Aziz Says," Agence France Presse (12/3/00). While dramatic, this suspension may have had little practical effect, since Iraq's customers were already refusing to purchase Iraqi oil as long as Iraq was demanding a 50-cent surcharge.

¹¹ United Nations 661 Committee fax dated 12/15/00, from the U.N. Oil Overseers to "Buyers of Iraqi Crude Oil," No. S/AC.25/2000/OIL/1330/FAX. A copy of this communication was included in the documents produced by Bayoil, at Bates BAY04-01295.

Prior to the imposition of the 50-cent surcharge, Iraqi oil sales amounted to approximately 2.3 million barrels per day. According to a senior Iraqi official, after the imposition of the 40-cent surcharge in January 2001, Iraqi oil sales dropped to about 300,000 barrels per day.¹² The Subcommittee was told that, to increase oil sales, Saddam Hussein agreed to lower the surcharge.¹³ SOMO records show that the assessed surcharge was then lowered to 30 cents per barrel for Iraqi oil being imported to North America and 25 cents per barrel for oil being imported to other locations.¹⁴ Iraq apparently also offered to give customers who had paid the higher 50- or 40-cent surcharges credit for any overpayment, so that they, in effect, paid the lower rate.¹⁵ With the lower surcharges in place, Iraqi oil exports rose by mid-February 2001, to nearly to pre-surcharge levels.

SOMO documents show that the surcharge remained at the 30 and 25 cents per barrel rates for more than a year.¹⁶ Following the end of the eleventh phase of the OFF program at the end of May 2002, SOMO lowered the surcharge rate, this time to 15 cents per barrel for all locations.¹⁷ Subcommittee interviews with senior Iraqi officials confirm that this step was taken to increase the volume of Iraq's oil exports.¹⁸ These interviews also confirm that, at the end of Phase 12 of the Oil-for-Food program, Iraq decided to terminate the surcharges altogether. In September 2002, Iraq cancelled all surcharge assessments.

Collecting the Surcharges. According to SOMO records,¹⁹ from September 2000 until September 2002, Iraq collected nearly 87 percent of the surcharges it assessed on OFF oil contracts.²⁰ The collected surcharges totaled about \$228 million.

¹² Subcommittee Interview with Senior Hussein Regime Official No. 1, (4/14/05).

¹³ Id.

¹⁴ Undated SOMO document entitled "Surcharge," in Arabic, with English translation (hereinafter "SOMO Surcharge document").

¹⁵ See "Iraq Decides the Price of its Oil, Aziz Says," Agence France Presse (12/3/00).

¹⁶ SOMO Surcharge document.

¹⁷ Id.

¹⁸ See, e.g., Subcommittee interview of Senior Hussein Regime Official No. 1, (4/14/05).

¹⁹ Both the Iraq Survey Group, which was sponsored by the United States and headed by David Kay and then Charles Duelfer, and the Independent Inquiry Committee, which is sponsored by the United Nations and headed by Paul Volcker, have examined and expressed support for the authenticity and reliability of the SOMO documents tracking oil contract surcharge payments.

²⁰ See SOMO Surcharge document, section entitled, "Fourth: Collecting the surcharge," ("But through the quick efforts, \$228 millions out of \$263 millions were collected, which means the percentage of collection reached 87% after using all different methods of payment").

One reason that SOMO's collection rate was so high may have been the regime's willingness to bar any person who failed to pay an assessed surcharge from obtaining a new oil allocation. The Subcommittee obtained evidence of several instances in which persons who failed to pay assessed surcharges did not receive further allocations. For example, when allocation holder Vladimir Zhirinovskiy failed to pay outstanding surcharges for an extended period of time, Iraq stopped providing him with allocations and a senior Iraqi official traveled to Russia to inform him: "Pay or get nothing." He subsequently took action to satisfy the outstanding surcharges.²¹ In another instance, Samir Vincent, an Iraq-born American, obtained Iraqi oil allocations through his company Phoenix International LLC, and sold them to Chevron Products Company, a division of Chevron U.S.A. Inc.²² SOMO records show that he incurred surcharges on the final two sets of oil allocations, which were purchased after Iraq had instituted its oil surcharge policy. According to SOMO documents, Phoenix paid a 10-cent surcharge assessed on the first set of allocations totaling \$8,000, but failed to pay a \$600,000 surcharge due on the second set of allocations. Phoenix apparently never received another allocation.²³

Using SOMO data, Table 1 summarizes the surcharge rates imposed by Iraq, the time periods during which they were imposed under the phases of the OFF program, and the total amount of surcharges that were assessed and actually collected by the Iraqi government from September 2000 to December 2002.

Iraqi Oil Surcharges: Assessed and Paid

U.N. OFF Phase	Dates	Surcharge Rate Assessed by Iraq (per barrel)	No. of Barrels Exported	Total Surcharges Assessed (\$)	Total Surcharges Paid (\$)
8	1 Sept. 00 - 5 Dec. 00	10¢	185,618,057	18,561,738	11,196,656
9	6 Dec. 00 - 3 June 01	30¢ to U.S. 25¢ to other	291,996,437	81,587,779	72,186,784

²¹ Subcommittee interview of former Vice President Taha Yassin Ramadan (4/18/05). For more information, see the Subcommittee Staff Report on Oil Allocations Granted to Vladimir Zhirinovskiy (5/17/05).

²² On January 18, 2005, Mr. Vincent pled guilty to illegally trading with and lobbying for the Iraqi government while Iraq was subject to U.S. and U.N. sanctions. United States v. Vincent, Criminal Case No. OS Cr. 59 DC (USDC SDNY 1/18/05), Information.

²³ ISG Report, Annex B.

10	4 July 01 - 30 Nov. 01	30¢ to U.S. 25¢ to other	301,187,733	85,669,148	82,170,996
11	1 Dec. 01 - 29 May 02	30¢ to U.S. 25¢ to other	228,943,384	64,059,424	53,959,301
12	30 May 02 - 4 Dec. 02	15¢	89,330,504	13,399,576	8,514,578
Totals	1 Sept 00 - 4 Dec. 02		1,097,076,115	263,277,666	228,028,316

Table 1. Between September 2000 and December 2002, Iraq collected over \$228 million in illegal surcharges. Data source: SOMO records.

Surcharges on U.S. versus Non-U.S. Iraqi Oil Shipments. A further analysis of available data yields an estimate that over half of the illegal surcharges paid to Iraq, \$118 million, were paid on Iraqi oil shipments sent to the United States.

This information can be derived from the SOMO records showing the amount of surcharges collected on Iraqi oil exports during each phase of the OFF program, and U.S. Energy Information Administration (EIA) data showing the amount of Iraqi oil imported into the United States during each of the relevant time periods. Altogether, from September 2000 to September 2002, about 525 million barrels of Iraqi oil were imported into the United States. Multiplying the total number of barrels imported into the United States during each phase of the OFF program by the surcharges assessed and collected barrels on oil destined for North America during each phase yields an estimated surcharge total of approximately \$118 million.²⁴ That means over half of the total surcharges collected by Iraq – \$118 million out of a total of \$228 million or 52 percent – were collected on Iraqi oil shipped to the United States.

The same data indicates that, during the surcharge period, about 475 million barrels of Iraqi oil were exported to Europe, Asia, and Africa; and a total of about \$110 million in surcharges was paid to Iraq by the initial purchasers of this oil. This \$110 million represents about 48 percent of the \$228 million in illegal surcharges collected by Iraq on oil contracts issued under the Oil-for-Food program. Figure 3 at the end of this Report depicts the relative amounts of illegal surcharges collected by the Hussein regime during the Oil-for-Food program for Iraqi oil exported to both U.S. and non-U.S. locations.²⁵

Paying the Surcharges. The Hussein regime required the initial purchasers of Iraqi oil – the oil allocation holders – to pay the assessed surcharges. Several methods of payment were

²⁴ For purposes of this estimate, overall surcharge rates for each phase were adjusted to reflect the extent to which surcharges were assessed but not fully paid.

²⁵ See Figure 3, “Illegal Surcharges on Iraqi Oil: Amounts Paid by Final Destination 2000-2002.”

used. According to SOMO documents, most surcharges were paid with wire transfers sent to bank accounts designated by the Iraqi government in the Al Ahli Bank in Oman, the French Bank in Lebanon, the Sardar Bank in Lebanon, the Central Bank of Iraq in Baghdad, or the Baghdad branch of the Rafidian Bank, which is a bank owned by the Iraqi government.²⁶ In other cases, cash payments were delivered to Iraqi embassies in Moscow, Athens, Cairo, Ankara, Yemen, Vietnam, Malaysia, Rome, Vienna, Damascus, and Geneva; these deposits were then transported to the Central Bank of Iraq by diplomatic courier. The Iraqi front company of AlWasel & Babel, headquartered in the United Arab Emirates, also received surcharge payments. In one unusual instance, an oil allocation holder, Vladimir Zhirinovsky, satisfied his surcharge obligations by transferring ownership of a building in Moscow to the Iraqi embassy.²⁷

B. BAYOIL AND IRAQI SURCHARGE PAYMENTS

From 2000 to 2002, Bayoil bought over 200 million barrels of Iraqi oil for which at least \$37 million in illegal surcharges were paid to the government of Saddam Hussein. Bayoil then sold this oil primarily to U.S. oil companies and refineries, obtaining reimbursement of its costs.

1. Bayoil in General²⁸

Bayoil (USA), Inc. is incorporated in Delaware, based in Houston, Texas, and owned by David B. Chalmers, Jr., who is the company's sole shareholder.²⁹ Bayoil Supply & Trading Ltd. is incorporated in the Bahamas, based in Nassau, and owned by Mr. Chalmers who, again, is the company's sole shareholder.³⁰ Other Bayoil affiliates include Bayoil, S.A., a Swiss corporation which is also wholly owned by Mr. Chalmers,³¹ and Bayoil Technologies which is apparently a corporation formed in Luxembourg.³²

²⁶ SOMO Surcharge document.

²⁷ Id. For more information, see Subcommittee Staff Report on Oil Allocations Granted to Vladimir Zhirinovsky (5/17/05).

²⁸ During its investigation, the Subcommittee attempted to interview Bayoil personnel, without success. The Subcommittee was able, however, to obtain and review a significant number of Bayoil documents, which were then compared with other documents and evidence collected during the investigation.

²⁹ See United States v. Chalmers, Case No. S1-05-Cr. 59(DC) (USDC SDNY), Indictment.

³⁰ Id.

³¹ See letters dated 1/10/97 and 5/22/02, from Bayoil's legal counsel, Dickstein, Shapiro Morin & Oshinsky LLP, to OFAC.

³² See "Dealing With Saddam's Regime: How Fortunes Were Made In Iraq Through The UN's Oil-For-Food Programme," Financial Times (4/8/04).

The Bayoil companies (hereinafter “Bayoil”) appear to have operated with a relatively small number of key personnel. The principals were Mr. Chalmers, a U.S. citizen living in Houston, Texas; John Irving, a British citizen based in London, England; and Ludmil Dionissiev, a Bulgarian citizen and U.S. permanent resident residing in Houston, Texas. In addition, Augusto Giangrandi, a sometime resident of Florida with dual citizenship in Chile and Italy, has served as chairman of the Bayoil company in the Bahamas and as a Bayoil agent in various oil sales.³³ During the periods relevant to this investigation, these and other individuals worked together to help Bayoil purchase Iraqi oil and sell it primarily to oil companies and refineries in the United States and Europe. In April 2005, Bayoil (USA), Inc., Bayoil Supply & Trading Ltd., and Messrs. Chalmers, Irving and Dionissiev were indicted in the United States for violating U.S. restrictions on doing business with Iraq, conspiracy to commit wire fraud, and wire fraud.³⁴

2. Bayoil and Iraq

Bayoil has a long history, extending over 20 years, of buying and selling Iraqi oil. In fact, Bayoil was the second company to lift Iraqi oil when Iraqi exports resumed at the beginning of the Oil-for-Food program in December 1996.³⁵ In later phases of the program, due to Iraq’s general policy against issuing OFF oil contracts to U.S. companies, Bayoil did not contract directly with Iraq, but typically bought oil from either oil allocation holders or intermediary companies which had agreed to lift oil for an allocation holder.

During the OFF program, Bayoil became the largest source of Iraqi oil imports into the United States, and touted this fact. In July 1998, for example, a Bayoil trader wrote: “There is absolutely no doubt, and it is internationally acknowledged that Bayoil is the prime supplier of Iraqi oil to the United States.”³⁶ A 2003 memorandum sent by Bayoil to the U.N. Office of Iraq Programme stated: “Bayoil has been the largest shipper/marketer of Iraqi crude’s to the U.S. since the oil began, mostly under contract from a wide range of S.O.M.O. allocation holders.” Citing the company’s shipment of 8 million barrels in February 2003, and 7 million barrels in March, Bayoil wrote that it was providing “40-60% of the U.S. deliveries, a market share consistent with our activities during typical periods since the program[’]s inception.”³⁷

³³ See, e.g., letter dated 9/9/99, from Augusto Giangrandi, as Chairman of Bayoil Supply & Trading Ltd., to the Iraq Ministry of Oil, SOMO, Bates SNT045424. This letter is signed before a notary public.

³⁴ See United States v. Chalmers, Case No. S1-05-Cr. 59(DC) (USDC SDNY), Indictment.

³⁵ See “First Iraqi crude loading completed, vessel sales,” Platt’s Oilgram Price Report (12/19/96). Another U.S. company, the Coastal Corporation, was the first to lift Iraqi oil under the Oil-for-Food program. Id.

³⁶ Letter dated 7/13/98, from Ludmil Dionissiev of Bayoil to Zia Bajaev of Gruppa Alliance, Bates BAY04-01481.

³⁷ Memorandum dated 3/13/03, from David Chalmers of Bayoil to U.N. Office of Iraq Programme, with a copy to the U.S. State Department, Bates BAY 04-01288-91.

A brief review of Bayoil's relationship with Iraq shows why it was able to become a prominent supplier of Iraqi oil to the United States.

Oil-For-Cluster Bombs. One of Bayoil's most important connections to the Iraqi Oil Ministry dates back to at least the mid 1980s, when the company performed a key role in transactions that enabled Iraq to obtain cluster bombs for use against Iranian troops in the Faw Peninsula during the Iran-Iraq war. During the 1980s and its war against Iran, Iraq purchased hundreds of millions of dollars in cluster bombs and other weapons from Carlos Cardoen, a notorious Chilean arms manufacturer.³⁸ In 1983, Mr. Cardoen hired Augusto Giangrandi, a dual national of Chile and Italy and a resident of Florida, to ship zirconium from the United States to Chile for use in the manufacture of cluster bombs, the vast majority of which were then sold to Iraq. In his application to the U.S. Department of Commerce for an export license for the zirconium, Mr. Giangrandi falsely stated that it would be used for mining explosives in Chile.

Iraq incurred large debts from purchasing these weapons. Beginning in 1985, Mr Giangrandi frequently traveled to Iraq on behalf of Cardoen Industries in order to collect on the debts and develop new business. Documents obtained by the Subcommittee describe how, on one such trip to Iraq in the mid-1980s, Mr. Giangrandi brought Bayoil into a deal to help Iraq satisfy its debts to Cardoen.³⁹ Mr. Giangrandi and David Chalmers of Bayoil negotiated an agreement with SOMO to finance Iraq's weapons purchases, in part, with oil instead of cash. According to the agreement, Bayoil would lift a quantity of oil, pay Iraq for only a portion of the value of the oil, and pay Cardoen the balance. Iraq would thereby reduce its weapons debt by the amount paid by Bayoil to Cardoen. This arrangement, in effect, allowed Iraq to trade oil for cluster bombs.⁴⁰

In the years following the agreement, Iraq entered into multiple contracts with Bayoil to ship Iraqi oil, and Bayoil became the largest single importer of Iraqi oil into the United States.⁴¹

³⁸ "Santiago Journal: Is He 'Merchant of Death' or Scapegoat for U.S.?", New York Times (5/15/93)(U.S. Customs Commissioner Carol Hallett is quoted calling him "a 'black widow' spider with a web of companies and bank accounts that 'circled the entire globe.'") See also, e.g., "Dealing With Saddam's Regime: How Fortunes Were Made In Iraq Through The UN's Oil-For-Food Programme," Financial Times (4/8/04).

³⁹ Documents under seal in Subcommittee files.

⁴⁰ See also "Bayoil Returns to Prominent Place Selling Iraqi Crude," Platts Oilgram News (12/17/96).

⁴¹ Document under seal in Subcommittee files. Prior to Iraq's invasion of Kuwait, Bayoil was lifting about 250,000 barrels per day of Iraqi oil. See "Bayoil Returns to Prominent Place Selling Iraqi Crude," Platts Oilgram News (12/17/96).

Over the years, Bayoil also maintained ties to Mr. Giangrandi, who became a key contact in its dealings with Iraqi officials.⁴²

At the same time, Mr. Giangrandi was maintaining his ties with Mr. Cardoen. In the summer of 1990, the U.S. Department of Commerce began an investigation into reports that Mr. Giangrandi was seeking an airworthiness certificate for a Bell 206 Long Range helicopter for export to Mr. Cardoen.⁴³ The Commerce Department believed that the helicopter was a prototype that would later be modified for military use and then sold to Iraq. According to the Department of Commerce, “Because of the August 1990 Iraqi invasion of Kuwait, the possibility of illegal exports to Iraq, and the [information about Mr. Giangrandi’s intent to export helicopters to Mr. Cardoen],” the U.S. Department of Commerce’s Office of Export Enforcement (OEE) initiated an investigation into the broader relationship between Mr. Giangrandi, Mr. Cardoen, and illegal arms sales to Iraq.⁴⁴ In 1994, the OEE notified Mr. Giangrandi of its intention to initiate an administrative action against him based on allegations that, between 1983 and 1988, Mr. Giangrandi had conspired with Mr. Cardoen and others to export U.S. origin zirconium from the United States to Chile contrary to the terms of the export licenses.⁴⁵

On September 15, 1994, Mr. Giangrandi and the Commerce Department entered into a consent agreement which barred Mr. Giangrandi from participating in any transaction involving U.S. exports for a period of ten years.⁴⁶ In 1995, the United States indicted Carlos Cardoen, his Chilean company, and others for export violations related to the zirconium transactions.⁴⁷ Mr.

⁴² During the 1980s, Mr. Giangrandi apparently deepened his relationship with Iraq through additional arms deals. For example, according to the Financial Times, “In 1989 Mr. Giangrandi and Mr. Cardoen acquired Cosmos, an Italian manufacturer of mini-submarines. The Iraqi navy was interested in their suitability and Mr. Giangrandi says he signed an agreement to sell three of them to Baghdad. The first Gulf war intervened and the submarines were never sold. But Mr. Giangrandi had made some powerful Iraqi friends.” “Dealing with Saddam’s Regime: How Fortunes were Made in Iraq Through the UN’s Oil-for-Food Program,” Financial Times (4/8/04).

⁴³ See “Enforcement Case Histories: Anatomy Of A Successful Investigation,” Bureau of Industry and Security, U.S. Commerce Department at www.bxa.doc.gov/Enforcement/CaseSummaries/CarlosCardoen.html.

⁴⁴ Id.

⁴⁵ The export of zirconium from the United States to Chile for use in the manufacture of cluster bombs also violated a U.S. arms embargo against Chile in place at the time.

⁴⁶ In re Augusto Giacono Giangrandi Valenzuela, 59 FR 48595 (9/22/94). The last five years of the denial period were suspended, with the possibility of waiver if Mr. Giangrandi met his obligations to the U.S. government and committed no new violations of the Export Administration Act.

⁴⁷ See U.S. v. Cardoen, 898 F. Supp. 1563 (S.D. Fl. 1995).

Giangrandi, who was not named as a defendant, signed a cooperation agreement and testified as a government witness in the case.⁴⁸

In the late 1990s, after his exclusion from U.S. export transactions, Mr. Giangrandi turned to other business ventures, at times participating in transactions involving Iraqi oil and Bayoil. In 1994, for example, he sold a company he had founded with Mr. Cardoen, called Cosmos, to Bayoil Technology.⁴⁹ During the first half of 1999, in connection with a Bayoil transaction to lift oil allocated to a Russian politician, Vladimir Zhirinovsky, Bayoil paid a 17-cent per barrel commission to United Management, a Chilean firm owned by Mr. Giangrandi.⁵⁰ Later in 1999, in his capacity as chairman of Bayoil Trading & Supply in the Bahamas, Mr. Giangrandi participated in negotiations with SOMO to obtain significant oil allocations for Bayoil.⁵¹ Around the same time, Mr. Giangrandi registered with the United Nations an Italian company he had formed earlier, called Italtech, so that it could purchase oil under the OFF program. In 2000, when other companies were reducing their oil purchases due to Iraq's surcharge demands, Mr. Giangrandi won oil allocations for Italtech totaling 37 million barrels. Over the next six months, Mr. Giangrandi, through Italtech, sold about 34 million of those barrels to Bayoil for export to the United States, while also paying illegal surcharges to the Iraqi government, as described below.

3. Bayoil and Surcharges

Bayoil was an active participant throughout the Oil-for-Food program, from 1996 to 2003, first buying millions of barrels of Iraqi oil directly from Iraq and then from a variety of oil allocation holders and intermediary companies. It bought oil from Mr. Giangrandi's company Italtech; from a host of Russian officials, political parties, and companies such as Vladimir Zhirinovsky, the Russian Presidential Council, Rosneft, Rosnefteimpex, and SOVOIL; and from various Middle Eastern individuals, organizations, and companies, including Al-Hoda International Trading, a front company for the Hussein regime; EMIROIL; and the National Oil

⁴⁸ Only three defendants actually appeared in court. The other defendants, including Mr. Cardoen, avoided arrest and remain fugitives. At the Cardoen trial, the defendants argued unsuccessfully that Mr. Cardoen had been cooperating with the U.S. Central Intelligence Agency (CIA) which had supported the supply of weapons to Iraq during the Iraq-Iran war, alleging that: "The CIA exercised actual governmental authority to covertly sanction the export transactions that gave rise to the indictment." *Id.* at 1575-7. In addition to testifying at this trial, Mr. Giangrandi also agreed to cooperate in three other cases involving weapons sales to Iraq.

⁴⁹ See, e.g., "Dealing With Saddam's Regime: How Fortunes Were Made In Iraq Through The UN's Oil-For-Food Programme," *Financial Times* (4/8/04).

⁵⁰ See Subcommittee Staff Report on Oil Allocations Granted to Vladimir Zhirinovsky (5/17/05).

⁵¹ See, e.g., letter dated 9/9/99, from Augusto Giangrandi, as Chairman of Bayoil Supply & Trading Ltd., to the Iraq Ministry of Oil, SOMO, Bates SNT045424. This letter is signed before a notary public.

Wells Maintenance Company; as well as from others.⁵²

During the surcharge period from September 2000 to September 2002, when other companies were decreasing their purchases of Iraqi oil due to Iraq's demand for surcharges, Bayoil took the opposite course and increased both its purchases and its share of Iraqi oil exports. For example, just prior to Iraq's imposition of the 30-cent surcharge in early 2001, Bayoil was lifting approximately 10-12 percent of Iraq's oil production; after the imposition of the 30-cent surcharge Bayoil's share nearly doubled, to about 20 percent of Iraq's oil exports.⁵³

Bayoil also increased its share of Iraqi oil exports to the United States. From the beginning of the imposition of surcharges in September 2000, Bayoil increased its share of U.S. imports from around 40 percent of all Iraqi oil imported into the United States to over 60 percent in a number of the following months.⁵⁴ Bayoil's increased activity also significantly increased the percentage of Iraqi oil production sold to the United States.⁵⁵

During the surcharge period, Bayoil bought over 200 million barrels of Iraqi oil. It acquired this oil from allocation holders or intermediary companies. In many instances, however, Bayoil assumed all of the commercial risks normally associated with direct purchases of oil: Bayoil provided the letters of credit for the initial purchase of the Iraqi oil; Bayoil chartered the vessels to load the Iraqi oil; Bayoil scheduled the loading dates and times with SOMO; and Bayoil incurred any demurrage charges from delays in loading the oil. The allocation holders and intermediary companies that sold cargos to Bayoil typically assumed no commercial risks, even though, on paper, they made the initial oil purchase. In these cases, Bayoil typically paid a commission to the allocation holder, the intermediary, or both, in amounts that ranged from a few cents to as much as 40 cents per barrel.⁵⁶ The presence of intermediary buyers and sellers who assumed no commercial risk was unprecedented in the oil

⁵² See Appendix to this Report, "Iraqi Oil Cargoes Bought by Bayoil for US Market on which a Surcharge was Paid."

⁵³ See Figure 4 which shows, for example, that in December 2001, Bayoil lifted approximately 21 percent of Iraq's total oil production. Figure 4, "Bayoil Cargoes as Percent of Iraq Oil Production July 1999 - April 2002." See also Memorandum dated 3/13/03, from David Chalmers of Bayoil to U.N. Office of Iraq Programme, with a copy to the U.S. State Department, Bates BAY 04-01288-91, at 1289.

⁵⁴ See Figure 5, "Bayoil Cargoes as Percent of U.S. Imports from Iraq January 2000 - April 2002." This significant increase in Bayoil's share of the U.S. market was mostly due to the large decrease in the volume of Iraqi oil purchased by other U.S. oil companies following the imposition of the 50-, 40-, and 30-cent surcharges.

⁵⁵ See Figure 6, "Percent of Iraqi Oil Production Imported by U.S. 1999-2002."

⁵⁶ See, e.g., Bayoil's handling of oil allocations provided to Vladimir Zhirinovskiy, as explained in the Subcommittee Staff Report on Oil Allocations Granted to Vladimir Zhirinovskiy (5/17/05).

markets.⁵⁷

Iraq required the holders of Iraqi oil allocations to ensure that assessed surcharges were paid. However, an allocation holder required to pay a 30-cent surcharge to Iraq would likely have made little or no profit – and perhaps would have even incurred a net financial loss – unless that allocation holder could pass on the cost of that surcharge to the next buyer of the oil, such as Bayoil. It is reasonable to conclude that allocation holders would not have agreed to transactions in which they would lose money, since that would have defeated the whole point of the oil allocation. The more likely arrangement was that Bayoil was informed of the required surcharges and either paid them directly or reimbursed the allocation holder for paying them.

The recent federal criminal indictment of Bayoil alleges just that type of arrangement:

[BAYOIL] agreed to pay, did pay, and caused to be paid millions of dollars in secret illegal surcharges to the Government of Iraq. These secret illegal surcharge payments covered oil purchased from in or about mid-2000, up to and including in or about early 2001 by CHALMERS and the BAYOIL COMPANIES from a foreign company that was operated by co-conspirators named as defendants herein (the “Foreign Company”) and whose operations were funded almost exclusively by CHALMERS and the BAYOIL COMPANIES. To conceal these illegal surcharge payments, CHALMERS agreed to pay the Foreign Company inflated commission prices on the original transactions, with the knowledge and expectation that the Foreign Company would then make the surcharge payments to the Government of Iraq.⁵⁸

Using SOMO and Bayoil records, the Subcommittee Minority Staff has calculated that, during the surcharge period, Bayoil paid, either directly or indirectly, illegal surcharges on Iraqi oil purchases of at least \$37 million. Both SOMO and Bayoil kept detailed records of their transactions, copies of which were obtained and analyzed by the Subcommittee. Certain SOMO records specify the amount of surcharges that were assessed and actually paid by each allocation holder who lifted Iraqi oil; these records also provide the U.N. contract approval number that each such allocation holder obtained in order to purchase the oil under the OFF program. Bayoil records identify each company from which it purchased each cargo of Iraqi oil; for most of these cargoes Bayoil records also identify the U.N. contract number under which the oil was lifted.⁵⁹ By using the U.N. contract numbers that appear in both sets of records, the Subcommittee Minority Staff was able to match specific surcharge payments to individual Bayoil cargoes. A

⁵⁷ Subcommittee interview of U.N. Oil Overseer (5/3/05).

⁵⁸ United States v. Chalmers, Case No. S1 05 Cr. 59 (USDC SDNY), Indictment.

⁵⁹ Due to the refusal of Bayoil employees to provide interviews, the Subcommittee Minority Staff has been unable to verify the accuracy and completeness of the Bayoil records provided to the Subcommittee. The Bayoil records provided to the Subcommittee do, however, appear internally consistent and do not appear to have been altered from their original form. They also appear consistent with the SOMO records and with other information obtained by the Subcommittee.

listing of each of these cargos, the persons involved in buying or selling the cargo, and the associated surcharge payments made to the Iraqi government appears as an Appendix to this Report. This Appendix identifies 102 cargoes purchased by Bayoil during the surcharge period, and the total of all the listed surcharge payments associated with these cargos is at least \$37 million.

In addition, for each cargo of oil purchased from Iraq, Bayoil records identify the costs it incurred associated with that cargo, the company or companies to which Bayoil sold the oil, and the funds obtained from the sale or sales. Presumably, in each case, Bayoil sought to sell the cargo for more than Bayoil had paid to obtain it. To the extent Bayoil was profiting from its transactions in Iraqi oil, Bayoil would have included all of its transactional costs in the sales price -- the cost of the oil, shipping costs, insurance costs, trading costs, and administrative costs, as well as any legal or illegal fees or surcharges. In other words, Bayoil would have "passed on" the cost of the surcharge (as opposed to the surcharge itself) to the next purchaser of the Iraqi oil. This analysis assumes, therefore, that the additional costs due to any surcharges paid were passed on by Bayoil to subsequent buyers during the surcharge period.

As explained above, the Subcommittee Minority Staff used Bayoil and SOMO records to estimate the amount of surcharges that were paid or financed by Bayoil with respect to Iraqi oil sold to U.S. and other companies during the surcharge period. Table 2 indicates the extent to which the \$37 million in surcharge costs were likely passed on to particular companies that purchased oil from Bayoil.

Companies Most Likely Affected by Bayoil’s Surcharge Payments for Iraqi Oil

Oil Company	Amount of Oil Purchased from Bayoil (barrels)	Cost of Bayoil Surcharge Payment “Passed on” to Bayoil Customers
Alon USA	24,313,123	\$981,725
Diamond	3,403,526	\$956,082
Equiva (Shell)	5,126,603	\$1,141,912
Exxon	15,078,007	\$2,366,466
Koch	4,954,401	\$1,294,619
Lyondell	2,895,482	\$834,082
Marathon	8,081,973	\$2,267,989
Premcor		
Premcor	9,664,533	\$1,393,957
PACC	12,286,095	\$2,517,969
Clark	22,649,307	\$1,354,224
Tosco	5,097,458	\$954,854
Valero	44,833,563	\$11,946,864
Other	45,808,761	\$8,866,197
TOTAL	204,192,735	\$36,876,940

*Table 2. Bayoil financed at least \$37 million in illegal surcharge payments on exported Iraqi oil, and then sold the oil to U.S. and other oil companies.
Data source: SOMO Surcharge document; Bayoil records.*

The Subcommittee Minority Staff has not seen any evidence showing that any U.S. company knowingly purchased Iraqi oil from Bayoil for which an illegal surcharge had been paid. In fact, U.S. companies purchasing Iraqi oil typically included a clause in their contracts requiring the seller to provide a warranty that no surcharges had been paid to Iraq in connection with the oil being sold. A typical warranty clause that appeared in Bayoil contracts reads as follows:

Seller warrants that the crude oil sold to buyer pursuant to this contract was obtained pursuant to all necessary approvals and in accordance with all applicable procedures of the United Nations (U.N.) Resolution 986 and the U.N. Security Council Committee

established by SCR 661 (1990). Seller also warrants that the provision of all applicable U.N. Resolutions have been complied with, including, without limitation, SCR 986 (1995), SCR 1111 (1997), SCR 1143 (1997) and SCR 661 (1990). Seller specifically warrants that no surcharge or other payment was made to SOMO by the seller, or to Seller's knowledge by any third party, outside the U.N. Escrow Account in obtaining the crude oil sold to buyer hereunder. Seller agrees to indemnify and hold buyer harmless from and against any loss ... arising out of or in connection with a breach of any of the warranties contained herein.⁶⁰

To the extent that Bayoil paid surcharges on the oil sold to these companies or knew of the payment of such surcharges by third parties, Bayoil was likely in breach of this warranty.

4. Bayoil and Italtch

Because it was a key supplier of Iraqi oil to Bayoil during the surcharge period, Italtch, the company controlled by Augusto Giangrandi, merits additional examination. Italtch apparently renewed its working relationship with Bayoil to purchase Iraqi oil in or around 1999. When the surcharge period began in September 2000, Italtch, like Bayoil, took advantage of other companies' reluctance to buy oil for which surcharges were demanded and significantly increased its participation in the Iraqi oil market. And, unlike Bayoil, as an Italian company, Italtch was able to convince SOMO to provide it with both oil allocations and direct contracts to lift the oil. According to one senior Iraqi official, Italtch was able to obtain an unusually large allocation near the end of 2000, because the Iraqis were "kissing feet to lift oil" when the surcharges were first imposed.⁶¹

During Phase 9 of the OFF program, which took place from December 5, 2000 until June 3, 2001, Italtch lifted, in total, more than 37 million barrels of Iraqi oil, which was the largest amount lifted by any company during any single phase of the entire OFF program.⁶² It sold about 34 million of these barrels to Bayoil.

Beginning in 1999 in Phase 8 of the OFF program, Bayoil and Italtch accelerated their working relationship, and in Phase 9, Italtch became Bayoil's primary supplier of oil. In May of 1999, for example, Bayoil characterized Mr. Giangrandi as the company's representative in Baghdad.⁶³ In September, as mentioned earlier, Mr. Giangrandi sent a letter to SOMO in which

⁶⁰ See, e.g., warranty clauses at Bates BAY04-00840; BAY04-00855; BAY12-01008; and BAY12-01067-68.

⁶¹ Subcommittee interview of Senior Iraqi Official No. 1 (4/15/05).

⁶² Italtch also received an allocation of 3.1 million barrels in Phase 8. SOMO Surcharge document.

⁶³ See, e.g., fax dated 5/27/99, with no transmission indications, from David Chalmers of Bayoil to United European Bank, Geneva ("As per our previous discussion, Augusto Giangrandi is now representing the company in
(continued...)

he presented himself as Chairman of Bayoil (Bahamas).⁶⁴ In December 1999, after having “had a word with Baghdad” and determined “it is to our benefit to state that the two companies are connected,” Italtch wrote a letter to SOMO and the Oil Ministry, addressed “To Whom it May Concern,” stating: “We write to confirm that Bayoil LTD and Italtch SRI are sister companies with common directors.”⁶⁵

The nature of the working relationship between Bayoil and Italtch is illustrated by a general revenue sharing agreement they executed in December 2000, at the outset of Phase 9.⁶⁶ Essentially, this agreement provided that, in exchange for making a commission-like payment to Italtch not to exceed 20 cents per barrel, Bayoil would buy any and all of the oil that Italtch obtained from Iraq, and arrange to load, transport, and sell it on the world market.⁶⁷ Under this arrangement, Italtch obtained the oil allocation from Iraq, signed the contracts with the United Nations to lift the oil, sold the oil to Bayoil, and Bayoil then assumed all of the commercial risks and expenses involved in actually loading, transporting, and selling the oil.⁶⁸ Once the United

⁶³ (...continued)
Baghdad.”).

⁶⁴ See, e.g., letter dated 9/9/99, from Augusto Giangrandi, as Chairman of Bayoil Supply & Trading Ltd., to the Iraq Ministry of Oil, SOMO, Bates SNT045424.

⁶⁵ Fax dated 10/27/99, from Hobi Sabih to Lucio Moriconi of Italtch, Bates IT-02401 (incorporating text of letter from Italtch).

⁶⁶ Bayoil document entitled, “Revenue Sharing Agreement,” dated 12/27/00, signed by Augusto Giangrandi for and on behalf of Italtch S.r.l. and by David Chalmers, Jr., for and on behalf of Bayoil Supply & Trading Ltd., Bates SNT 045541. Bayoil and Italtch had revenue-sharing agreements in prior phases as well.

⁶⁷ The key provisions in the revenue sharing agreement are as follows:

BAYOIL AGREES TO PURCHASE ALL QUANTITIES OF BOTH BASRAH LIGHT CRUDE OIL AND KIRKUK CRUDE OIL FROM ITALTECH, UNDER THE STANDARD SOMO CONTRACT TERMS AND CONDITIONS APPROVED BY THE UNITED NATIONS, AND SPECIFICALLY INCLUDING THE OBLIGATION TO NOMINATE LIFTING DATES AND ARRANGE SHIPMENTS, DESPITE UNCERTAIN MARKET CONDITIONS, AND PRIOR TO ESTABLISHMENT OF U.N. APPROVED PRICE FORMULAS APPLICABLE FOR EACH SHIPMENT.

THE TERMS OF THIS AGREEMENT SHALL PROVIDE FOR ITALTECH TO RECEIVE A REASONABLE SHARE OF REVENUES FROM THE SALE AND DISTRIBUTION OF SHIPMENTS BAYOIL LIFTS FROM THE PURCHASE CONTRACT, NOT TO EXCEED AN AMOUNT EQUAL TO US\$0.20 PER NET BARREL FOR TOTAL QUANTITIES LOADED UNDER THE CONTRACT AND AS A PROPORTION OF NET REVENUES OF APPROXIMATELY 40%.

⁶⁸ To ensure that Italtch could creditably sign contracts with SOMO and the United Nations to buy the oil allotted to it, Bayoil helped Italtch obtain letters and lines of credit at the banks where Bayoil had accounts. On December 6, 2000, for example, Bayoil asked its bank, UEB, to open two large lines of credit, in the amounts of 48 and 45 million euros each, for the benefit of Italtch. Bayoil specified that the credit was to be used for the purchase of Iraqi oil under the Oil-for-Food program—one shipment of 2 million barrels and another for a shipment of 1.8

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Nations actually approved the issuance of Contract No. M/09/07 to Italtch giving it the right to lift millions of barrels of Iraqi oil, Bayoil and Italtch entered into more a specific purchase/sale agreement stating that Bayoil would buy the oil under this contract from Italtch and pay Italtch a fee of 8 cents per barrel.⁶⁹

Bayoil records indicate Bayoil paid Italtch a total of more than \$10 million in per-barrel commission fees during Phases 8 and 9 of the OFF program.⁷⁰ While the purchase agreement for Phase 9 indicated that Italtch's commission was 8 cents per barrel, Bayoil appears to have paid Italtch substantially more, about 28 cents per barrel, on a number of contracts for which an illegal surcharge was assessed.

According to SOMO and Italtch documents, each of the barrels Italtch sold to Bayoil during Phase 9 were assessed a 30-cent per barrel surcharge.⁷¹ These records also show that, on many occasions, Italtch failed to pay these and other assessed surcharges, which apparently upset SOMO officials. According to a Financial Times (FT) article, in March 2001, SOMO Executive Director Saddam Hassan, a relative of Saddam Hussein, summoned Mr. Giangrandi to SOMO headquarters and demanded payment of the outstanding surcharges, which apparently then totaled more than \$8 million. According to FT, at this meeting Oil Minister Rashid told Mr. Giangrandi that, if he did not pay, Saddam Hussein "will cut my head off." According to the FT

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million barrels—and the amounts were to be paid into the BNP escrow account within thirty days of presentation of the appropriate documentation that the oil had been lifted. In either late December 2000 or early January 2001, for example, Bayoil opened a letter of credit for Italtch at Banque Bruxelles Lambert (Suisse) for about 40 million euros to be used to purchase 2.1 million barrels of Iraqi oil. On January 17, 2001, Bayoil directed another bank, Credit Agricole Indosuez Suisse SA, Geneva ("CAI"), to issue an "irrevocable documentary letter of credit by order of Italtch S.R.L. but under our entire responsibility, to BNP Paribas, New York." Bayoil specified that the requested credit line of 42 million euros was to be used to purchase 2 million barrels of Iraqi oil. In late January 2001, Bayoil helped open a similar letter of credit for Italtch for 46 million euros to be used to purchase 2.1 million barrels of Iraqi oil. Fax dated 1/22/01, with no transmission indications, from Jean Johnston of Bayoil to Banque Cantonale Vaudoise. On March 6, 2001, Bayoil opened still another letter of credit at CAI for Italtch for 38 million euros to be used to buy 1.9 million barrels of Iraqi oil for the U.S. market. Fax dated 3/6/01, with no transmission indications, from Bayoil to CAI.

Prior to helping Italtch obtain these letters of credit, in at least one instance, Bayoil appears to have advanced the funds Italtch needed to acquire an additional allocation of oil. On or about October 10, 2000, Bayoil appears to have deposited \$1 million into an Italtch account at UEB "for the sole purpose of establishing a credit line for Italtch to purchase Iraqi crude oil directly from SOMO, Baghdad." Italtch acknowledged that the funds were to be "blocked and not available for any other use and/or transfer from the Italtch account without prior authorization from Bayoil." Memorandum dated 10/10/00, from Italtch to Bayoil.

⁶⁹ Italtch document dated 12/27/00, from Italtch to Bayoil Supply & Trading Ltd. confirming "PURCHASE/SALE AGREEMENT" under "SOMO CONTRACT NO. M/09/07" at 2.

⁷⁰ Bayoil document entitled "Italtch Contract Allocations."

⁷¹ See SOMO Surcharge document; Italtch spreadsheet.

article, Mr. Giangrandi told the Iraqis that he “was worried about international scrutiny, warning that if he rushed the payment the UN would find out and he would be ruined.”⁷²

Mr. Giangrandi’s concern about making the surcharge payment was well founded. On March 21, 2001, Mr. Giangrandi was advised by his legal counsel Hunton & Williams not to pay the illegal surcharges:

“We are gravely concerned about the proposed payment to Alwasel & Babel of approximately \$8.2 million (U.S.) in connection with the purchase of oil from the Republic of Iraq. It is our opinion, based upon a careful review of the facts and law applicable to the situation, that proceeding with the proposed transaction could lead to your arrest, conviction and incarceration for violations of U.S. law.”⁷³

Hunton & Williams also told Mr. Giangrandi that due to his previous violations of U.S. law (referring to the export violations associated with the cluster bombs for Iraq), it was likely that law enforcement authorities were monitoring his activities:

“[W]e believe that all transactions with which you are involved will be closely monitored by criminal law enforcement agencies of the United States government. Thus, you are in a unique situation because the Government has advised you that it would scrutinize all transactions you are involved in – within and outside of the U.S. In fact, the proceedings for which you were previously sanctioned involved foreign transactions. Also, recall that the Government knows of your association with Dr. Carlos Cardoen. The Government is actively seeking to extradite Dr. Cardoen. This gives the Government even greater reason to fully monitor your conduct.”

The law firm’s 12-page letter then identified and explained the various criminal statutes under which he could be prosecuted if he proceeded to pay the surcharges. The letter closed with the following warning:

“Accordingly, it is our well-considered opinion that you may not proceed with the proposed transaction. Failure to heed this advice will likely lead to your arrest, conviction, and incarceration.

GOVERN YOURSELF ACCORDINGLY,

(signed and notarized)”

⁷² “Dealing with Saddam’s regime: how fortunes were made through the UN’s oil-for-food programme,” Financial Times (4/8/04). Other senior Iraqi officials interviewed by the Subcommittee stated the Financial Times articles had confused the Oil Minister with someone else, possibly General Amir Hamudi Hasan Al Sa’adi. The Subcommittee has been unable to interview the relevant persons to confirm the meeting described in the article.

⁷³ See letter dated 3/21/01, from Hunton & Williams to Mr. Giangrandi. Hunton & Williams also represented Mr. Giangrandi in the oil-for-cluster bombs case.

Despite this warning from his legal counsel, Mr. Giangrandi paid the government of Iraq over \$6 million in surcharges according to SOMO and Italttech records.

Bayoil documents show that, in early April 2001, shortly after Iraqi officials personally demanded that Mr. Giangrandi pay the surcharges owed by Italttech, Bayoil increased the amount of per-barrel compensation that it paid to Italttech, from 8 cents per barrel to 28 cents per barrel. On April 5, 2001, Bayoil prepared a worksheet totaling various expenses and amounts due to Italttech from Bayoil.⁷⁴ Another Bayoil document, undated, lists the cargoes that Bayoil obtained from Italttech under the December 2000 revenue sharing agreement, and identifies the “balance of payment due outside letter of credit (the letter of credit was issued for payment to the U.N. escrow account at BNP Paribas).” This document calculates the amounts due Italttech “outside of the letter of credit” at the rate of 8 cents per barrel.

Still another Bayoil document reflects nearly identical information, but instead of using the 8-cent per barrel rate as specified in the December 2000 agreement, uses a rate of 28 cents per barrel. Handwritten on this document is the notation, “accrue 28¢ per cargo,” and an additional column is handwritten and entitled, “USD Accrued 28¢ Amount.” The amount owed for each cargo, at the rate of 28 cents per barrel, is then handwritten in that column. Together, these two Bayoil records show that, in early April 2001, after Mr. Giangrandi was allegedly confronted in Baghdad by Iraqis demanding payment of Italttech’s outstanding surcharges, Bayoil carefully calculated how much it would owe Italttech if it paid an extra twenty cents per barrel over their agreed-upon price of 8 cents per barrel. The total was about \$6.19 million.

While the Subcommittee Minority Staff has no direct evidence that Bayoil then paid the \$6.19 million to Italttech, it does have evidence that, around the same time, Italttech paid the Iraq government about \$6.15 million. The evidence also shows that, in Iraqi oil transactions during this period, Bayoil was a major source of funding for Italttech.

To further understand how surcharges were assessed and paid on Italttech oil allocations, consider, for example, contract number M/09/07, which was the first Phase 9 contract that the United Nations approved between Italttech and SOMO, on December 22, 2000.⁷⁵ This contract originally gave Italttech the right to buy 8 million barrels of Iraqi oil, and eventually reached 32 million barrels.⁷⁶ Bayoil arranged for a number of shipments of oil under this contract. For each

⁷⁴ Fax dated 4/5/01, from Jean Johnston to Augusto Giangrandi.

⁷⁵ Approval from U.N. Oil Overseers for Contract Number M/09/07 (12/22/00), S/AC.25/2000/OIL/1330/OC.05.

⁷⁶ The contract was amended on January 19, 2001, and again on February 6, 2001, to reflect additional oil allocations. See Approval from U.N. Oil Overseers of Contract Number M/09/07 (1/19/01), S/AC.25/2000/OIL/1330/OC.05/add.2; Approval from The Oil Overseers under Security Council Resolution 986 (1995), Contract Number M/09/07, 6 February 2001, S/AC.25/2000/OIL/1330/OC.05/add.3. Italttech and Bayoil also entered into a side agreement on December 27, 2000, reflecting the terms of the U.N. contract, in which Italttech agreed to sell the oil to Bayoil. Like the U.N. contract, this side agreement was amended twice to reflect the

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shipment, Italtch documents show that it received an invoice from Alwasel & Babel General Trading requesting payment of a fee of 0.17 euros (at the time approximately 16 cents) per barrel.⁷⁷ Each of these invoices is also associated with an agreement between Alwasel & Babel and Italtch, signed by Mr. Giangrandi, in which Italtch agreed to pay the assessed fee in return for the allocation of oil. Alwasel & Babel was a front company for the Hussein regime that was used to collect surcharge payments. Because Alwasel & Babel was never granted the oil allocation it was purporting to sell to Italtch, it is reasonable to view Alwasel & Babel as acting on behalf of the Iraqi government and its invoices as requests for payment of an illegal surcharge. It appears that Mr. Giangrandi's legal counsel at the time interpreted the Alwasel & Babel invoices in just this manner, as explained in the firm's letter described earlier.

The evidence suggests that Italtch had ignored these and possibly other invoices until the alleged March 2001 confrontation in Baghdad, and then decided to pay at least a portion of Italtch's outstanding surcharges, enlisting Bayoil in that effort.

SOMO records show that, altogether over the 2-year surcharge period, Italtch was assessed surcharges totaling about \$11 million and actually paid about \$6.15 million.⁷⁸ According to SOMO records, Italtch did not pay any of the 10-cent surcharges assessed during Phase 8, totaling about \$316,000, or any of the 30-cent surcharges assessed on the first 5 million barrels allocated to it during Phase 9, totaling about \$1.5 million. The records indicate that Italtch did pay about two-thirds of the 30-cent surcharges assessed on the remaining oil it was allocated during Phase 9, totaling about 32 million barrels. According to the SOMO records, the total amount of surcharges due on the 32 million barrels was \$9.3 million. Italtch actually paid about 20 cents per barrel, or \$6.15 million, and apparently contested the remaining \$3 million.⁷⁹

⁷⁶ (...continued)

increased oil allocations. Italtch document dated 12/27/00, from Italtch to Bayoil Supply & Trading Ltd. (confirming "PURCHASE/SALE AGREEMENT" under "SOMO CONTRACT NO. M/09/07"); Italtch fax dated 1/22/01, from Italtch to Bayoil Supply & Trading Ltd. (containing "AMENDMENT NO. 1" to the 12/27/00 purchase/sale agreement), Bates SNT 045530; Italtch fax dated 2/7/01, from Italtch to Bayoil Supply & Trading Ltd. (containing "AMENDMENT NO. 2" to the 12/27/00 purchase/sale agreement), Bates SNT 045528.

⁷⁷ See Invoices from Alwasel & Babel General Trading to Italtch, December 1, 2000 - March 1, 2001. It is unclear why the request was for 16 cents per barrel instead of 30.

⁷⁸ SOMO Surcharge document.

⁷⁹ SOMO Surcharge document; letter dated 7/21/02, from Augusto Giangrandi on behalf of both Italtch and Bayoil to the Iraqi Oil Minister, Bates WM000029-31 (contesting payment of the \$3 million in surcharge payments by explaining that Italtch had already paid the requested amounts to the party from whom it had bought the oil and that party was supposed to have passed on the funds to SOMO). Another Italtch document dated four months later appears to list each of the checks the company actually issued to SOMO in payment of surcharge demands. See Italtch document entitled, "Settlement of the Due to SOMO on 12/03/01," Bates WM000025. Those checks total \$6.48 million, and identify another \$1.5 million in checks issued to other parties who were supposed to have passed on the amounts to SOMO. An Iraqi in detention interviewed by the Subcommittee stated he had helped Mr. Giangrandi obtain oil allocations and had been told by a business acquaintance – whom he could identify only as
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In sum, during the first half of 2001, Italttech provided Bayoil with 34 million barrels of Iraqi oil for shipment to U.S. markets. In connection with those barrels, Italttech appears to have paid more than \$6 million in illegal surcharges to the Iraqi government. At least some evidence suggests that Bayoil may have financed this \$6 million payment by Italttech.

C. BAYOIL LOBBYING TO INFLUENCE IRAQI OIL PRICES AND OPPOSE U.S. PRICING EFFORTS TO STOP SURCHARGES

In addition to paying or financing the payment of millions of dollars in illegal surcharges to the government of Iraq, Bayoil conducted a years-long lobbying effort aimed at keeping the official sales price of Iraqi oil as low as possible and opposing U.S. pricing efforts to stop the illegal surcharges. As explained earlier, the Official Sales Price (OSP) for Iraqi oil was established by the United Nations, in consultation with Iraq, and adjusted on a roughly monthly basis throughout the life of the OFF program. To influence the OSP, Bayoil directed a steady stream of communications to U.N., Iraqi, and U.S. officials, often coordinating its efforts with its business associate, Augusto Giangrandi, and his company Italttech. At times, Bayoil even supplied draft documents to other companies, particularly Russian oil purchasers, and asked them to forward the provided information under their own names to U.N. or Iraqi officials in a further attempt to influence U.N. pricing of Iraqi oil.

Documents obtained by the Subcommittee show that, over seven years, Bayoil sent a cascade of letters, memoranda, emails, and faxes to U.N., Iraqi and U.S. officials on OSP pricing issues. This evidence shows that it was not just foreign countries that were lobbying the United Nations in favor of Iraqi pricing proposals and against U.S. efforts to stop illegal surcharges, but also a U.S. company. Bayoil engaged in these lobbying efforts at the same time it appears to have been participating in surcharge payments sending millions of dollars to the Hussein regime.

Establishing OSPs. The OSP for Iraqi oil was determined by using a formula that incorporated various pricing factors such as oil grades, market premiums, and freight costs. Under the procedures of the OFF program, only Iraq's State Oil Marketing Organization (SOMO) had the authority to propose a new OSP. Typically, SOMO submitted proposed market factors for the OSP pricing formula to the U.N. Oil Overseers and also suggested a time period during which the OSP would be in effect. The U.N. Oil Overseers then analyzed the proposal and discussed the factors and time period with SOMO in an attempt to reach agreement on the OSP. Based upon this discussion, SOMO would submit a proposed OSP to the U.N. 661 Committee for approval. The Oil Overseers could also provide the Committee with a positive or negative recommendation on whether the proposed OSP would result in a fair market price for Iraqi oil. If no member of the 661 Committee objected, then the OSP became final and remained

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“Omar” – that Mr. Giangrandi had, in fact, paid the full \$10 million in surcharges assessed on his allocations. Subcommittee interview of Iraqi Detainee No. 3 (4/22/05).

in effect until SOMO determined that the market had changed and a new OSP was needed. If one or more Committee members objected to the proposed OSP, it did not go into effect, and SOMO would have to submit a revised proposal. Many OSPs remained in effect for about a month, while some lasted only 15 days and others stretched over a few months.

For the first 4 years of the OFF program, the OSP process apparently generated little controversy, and the U.N. Oil Overseers never had occasion to submit a negative recommendation on any OSP proposed by SOMO.⁸⁰ In late 2000, however, after Iraq began demanding the payment of surcharges on OFF oil sales and companies began complaining about the cost, SOMO attempted to propose OSPs that the Oil Overseers viewed as below market levels.⁸¹ On at least two occasions, the Oil Overseers advised the U.N. 661 Committee not to approve a SOMO proposal, because the proposed OSP was too low, and the Committee responded by disapproving it.⁸² Numerous Committee discussions of pricing and surcharge issues ensued throughout 2001 and 2002, often with the U.S. and U.K. members pressing the Committee to approve higher OSPs to preclude the payment of surcharges, while the Russian and Chinese members supported SOMO's price proposals as fair and reasonable.⁸³

Bayoil Lobbying From 1996 to 1997. From the beginning of the OFF program, Bayoil actively pressed the United Nations to set a low OSP in order to maximize its profits as a buyer of Iraqi oil. Evidence obtained by the Subcommittee Minority Staff indicates that Bayoil first began trying to influence the OSP in August 1996, before the first OFF oil contract was issued. A letter from Bayoil to SOMO states that, in response to a SOMO request, the company was submitting a "revised draft proposal" of a pricing formula modeled after one used by Saudi Arabia.⁸⁴ Bayoil stated that it looked forward "to discussing our proposal with you at your earliest convenience ... prior to S.O.M.O.'s discussions with the U.N."

⁸⁰ Subcommittee interview of U.N. Oil Overseer (5/3/05).

⁸¹ As explained earlier, a low OSP facilitated the payment of a surcharge, because an oil trader who bought Iraqi oil at a low OSP could then resell it at a higher price that allowed the trader not only to send the OSP to the U.N. escrow account, but also the surcharge payment to another bank account, and still make a profit. In contrast, a high OSP made it more difficult for an oil trader to resell the oil at a sufficiently high price to offset its costs, the surcharge, and also make a profit. According to the Oil Overseer interviewed by the Subcommittee, because Iraq officials did not have control over the oil sale proceeds deposited into the U.N.-controlled bank account, but did have control over the surcharge payments sent to outside bank accounts, Iraqi officials were in the odd position of advocating a low selling price for their own oil. The Overseer also explained that SOMO used various other methods to maintain or increase the margins of the purchasers. For example, SOMO officials were eager to request a revision of the OSP when markets moved lower but more hesitant to request revisions when market prices increased. SOMO officials also accommodated requested revisions to lifting dates and amounts of oil lifted proposed by its allocation holders in order to take advantage of market movements.

⁸² Only one "no" vote was needed under OFF rules for the 661 Committee to disapprove a proposed OSP.

⁸³ Subcommittee interview of U.N. Oil Overseer (5/3/05).

⁸⁴ Memorandum dated 8/23/96, from David Chalmers of Bayoil to SOMO, Bates BAY04-01716.

In January 1997, Bayoil wrote to SOMO complaining about the established pricing formula and stating, “[w]e understand that under the procedures established with the U.N. that S.O.M.O. may indicate a change in price formulas particularly after the first month if conditions so warrant.”⁸⁵ Bayoil then proposed new pricing components for oil deliveries to the U.S. market. In August 1997, Bayoil again urged SOMO to reduce the OSP, warning that refiners would buy their oil elsewhere: “We have all been waiting for a long time for the oil to come back onto the market and our independent refiners will have to make other accommodations shortly. Please do not let us and other good customers down.”⁸⁶

Bayoil also actively lobbied the United Nations to reduce the OSP, sending correspondence and meeting with key U.N. officials. In September 1997, for example, Bayoil called, wrote, and met with the then-sitting U.N. Oil Overseers to urge changes in the OSP formula.⁸⁷

Bayoil Lobbying From 1998 to 2000. Over the next three years, from 1998 to 2000, Bayoil sent a number of additional communications to the United Nations⁸⁸ and SOMO⁸⁹ with

⁸⁵ Memorandum dated 1/31/97, from David Chalmers of Bayoil to SOMO, Bates BAY04-00455-57.

⁸⁶ Memorandum dated 8/5/97, from David Chalmers of Bayoil to SOMO, Bates BAY04-00327.

⁸⁷ See, e.g., memorandum dated 9/10/97, from David Chalmers of Bayoil to U.N. Overseers, Bates BAY04-01500-01 (citing a telephone call and requesting a Friday meeting); memorandum dated 9/12/97, from David Chalmers of Bayoil to U.N. Overseers, Bates BAY04-01495-96 (expressing appreciation for Friday meeting and requesting another on Monday). Also in 1997, Bayoil appears to have hired a former senior U.N. official, Giandomenico Picco, to obtain advice on lobbying U.N. officials. In 1992, after serving in various U.N. posts for many years, including as Deputy Secretary General, Mr. Picco resigned and opened a consulting office, GDP Associates Inc. On a number of occasions from 1997 to 2003, Bayoil sent Mr. Picco draft documents or other information for his review and comment. On a few occasions, Mr. Picco appears to have sent copies of U.N. documents to Bayoil. See, e.g., fax dated 3/6/01, from Mr. Picco to David Chalmers of Bayoil, Bates BAY04-01163-72 (providing copies of three documents which had been presented to the U.N. 661 Committee on the issue of surcharges); and fax dated 7/11/02, from Mr. Picco to Mr. Chalmers of Bayoil, Bates BAY04-01029-34 (providing copy of a “UK Proposal for a Proactive Pricing Mechanism,” which may have been presented during a U.N. 661 Committee meeting on July 11, 2002).

⁸⁸ See, e.g., memorandum dated 10/28/98, from David Chalmers of Bayoil to Ambassador Antonio Montero, U.N. 661 Committee Chairman, with a copy to Eugene Young of the U.S. State Department, Bates BAY04-00278-79; memorandum dated 2/22/99, from David Chalmers of Bayoil to U.N. Overseers, Bates BAY04-01263; memorandum dated 2/16/00, from David Chalmers of Bayoil to U.N. Overseers, Bates BAY04-01278; memorandum dated 6/20/00, from David Chalmers of Bayoil to U.N. Overseers, Bates BAY04-01948-49; memorandum dated 9/13/00, from David Chalmers of Bayoil to U.N. Overseers, Bates BAY04-01268.

⁸⁹ See, e.g., memorandum dated 10/14/98, from David Chalmers of Bayoil to SOMO, Bates BAY04-00284-85; memorandum dated 2/22/99, from David Chalmers of Bayoil to SOMO, Bates BAY04-01265; memorandum dated 1/21/00, from David Chalmers of Bayoil to SOMO, Bates BAY04-00253-54; memorandum dated 3/30/00, from David Chalmers of Bayoil to SOMO, Bates BAY04-01979-80; memorandum dated 7/26/00, from John Irving of Bayoil to SOMO, Bates BAY04-01927; memorandum dated 7/28/00, from David Chalmers of Bayoil to SOMO, Bates BAY04-01917-18; memorandum dated 9/14/00, from David Chalmers of Bayoil to SOMO, Bates BAY04-01901-02; memorandum dated 11/13/00, from Augusto Giangrandi of Italtel to SOMO, Bates

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complaints about and recommendations for establishing various OSPs. For example, in October 1998, Bayoil wrote to the U.N. 661 Committee Chairman and U.S. State Department that it “regularly provide[d] S.O.M.O., the U.N. Overseers, and our Russian suppliers required market information regarding spot prices in the U.S. as well as freight market conditions ... in an effort to help S.O.M.O. and the U.N. establish fair market price formulas each month.”⁹⁰ Bayoil also complained that the November OSP prices were “completely out of line” and should be lowered. Bayoil sent similar correspondence in 1999 and 2000.

In addition to sending its own correspondence to U.N., Iraqi, and U.S. officials, on several occasions from 1998 to 2000, Bayoil supplied draft materials to other companies buying Iraqi oil and asked them to send the provided information under their own names to U.N. or Iraqi officials. Bayoil made this request to at least five companies, Alfa-Eco, Crown Trade & Finance, SOVOIL, Rosnefteimpex, and Petroleum Technical Services.⁹¹ During this time period, Bayoil was buying Iraqi oil from each of these companies.

Bayoil Lobbying in 2001. Bayoil’s lobbying efforts intensified in late 2000, after Iraq began demanding surcharges and oil purchasers began complaining to both U.N. and U.S. officials about the cost. In December 2000, the United Nations issued a statement stating that OFF contractors should not pay these surcharges.⁹² In February 2001, the United States formally raised the issue with the U.N. 661 Committee, and the Oil Overseers made Committee

⁸⁹ (...continued)
BAY04-01870-71.

⁹⁰ Memorandum dated 10/28/98, from David Chalmers of Bayoil to Ambassador Antonio Montero, U.N. 661 Committee Chairman, with a copy to Eugene Young of the U.S. State Department, Bates BAY04-00278-79 and 00288 (which notes that Mr. Chalmers also spoke with Mr. Young about the November OSP).

⁹¹ See, e.g., memorandum dated 6/11/98, from David Chalmers of Bayoil to Andrei Toutchnin of Alfa Eco, Bates BAY04-02252-54, substituting use of all capital letters (“Please send the following to S.O.M.O. for discussions” regarding “July Price Formula (North America)”); memorandum dated 10/23/98, from David Chalmers of Bayoil to Martin Figures of Crown Trade & Finance, Bates BAY04-00280-83, substituting use of all capital letters (“Attached is suggested letter to 661 Committee and copy of our letter. ... Please send the following to the Russian member 661 Committee”); memorandum dated 3/16/00, from David Chalmers of Bayoil to Andrei Toutchnin of Alfa Eco/TNK, Bates BAY04-01347- 48, (“Grateful if you could forward following to SOMO” re “April O.S.P.”); memorandum dated 7/28/00, from Ludmil Dionissiev of Bayoil to Sergei Sharaphov of SOVOIL AG, Zurich, Bates BAY04-01921, substituting use of all capital letters (“Please forward following to S.O.M.O.”); memorandum dated 7/28/00, from Ludmil Dionissiev of Bayoil to Mr. Poukhov of Rosnefteimpex, Bates BAY04-01922-23 (“I shall be very grateful to you if you send the following message to the general director of SOMO.”); memorandum dated 9/24/00, from David Chalmers of Bayoil to Nguyen Manh Hung of Petrovietnam and Petroleum Technical Services Company, Bates BAY04-01899-1900, (“per our usual practice of providing market information and price proposals to S.O.M.O. prior to the establishment of the monthly price, please forward our suggested fax to S.O.M.O. from PTSC on the subject as follows”); memorandum dated 10/4/00, from Ludmil Dionissiev of Bayoil to Mr. Poukhov of Rosnefteimpex, Bates BAY04-01891-93, substituting use of all capital letters (“Please forward following to S.O.M.O.”).

⁹² United Nations 661 Committee fax dated 12/15/00, from the U.N. Oil Overseers to “Buyers of Iraqi Crude Oil,” No. S/AC.25/2000/OIL/1330/FAX.

presentations on the surcharge issue and its relation to the OSP.⁹³ Among other matters, the Oil Overseers noted that “by far the largest part of Iraqi crude oil is nowadays sold via middlemen and traders” charging substantially more than the OSP – often between 20 and 70 cents more per barrel. The Oil Overseers also noted that SOMO seemed to be recommending OSPs that allowed “at least \$0.20 per barrel profit for traders/intermediaries” instead of the 5-cent per barrel profit the Overseers deemed reasonable.

To stop the surcharges, the U.N. Oil Overseers pushed SOMO to establish higher OSPs that would decrease the profit margin for intermediary traders and make it more difficult for them to resell Iraqi oil at a sufficiently high price to finance the payment of surcharges. Members of the 661 Committee, however, remained split in their support for higher OSP prices, with the United States and United Kingdom supporting higher OSPs, and Russia and China supporting lower OSPs. In addition, disagreements emerged over how long a particular OSP should be in place. Although a number of pricing mechanisms were discussed, no Committee consensus emerged. In or around October 2001, the United States and United Kingdom began, on their own initiative, to object to all prospective pricing proposals not in accordance with the U.S. and U.K. positions, and to agree only to the SOMO pricing proposals after the cargoes had been lifted, at which point there would be much less room for disagreement as to the actual market price in effect on the date of loading.. This approach, in effect, imposed a “retroactive pricing” approach to determining the OSPs.⁹⁴ Retroactive pricing was controversial, but because the U.S. and U.K. members acted within the 661 Committee rules, they were successful in establishing delayed OSPs with a retroactive effect.

The evidence shows that this pricing practice, which more closely aligned the OSPs with actual market prices, succeeded in eliminating the large profit margins for the middlemen and other downstream purchasers of Iraqi crude, which made it prohibitively expensive for these purchasers to pay surcharges to Iraq. Surcharges fell from 30 cents per barrel in 2001 to 15 cents per barrel in 2002, and finally disappeared near the end of 2002. The U.S. and U.K. members continued using the retroactive pricing approach to the end of the Oil-for-Food program, despite ongoing opposition from Iraqi officials, some countries, and some companies.

⁹³ See letter dated 2/6/01, from James B. Cunningham, Charge D’Affaires, U.S. Mission to the United Nations, to the U.N. 661 Committee Chairman, S/AC.25/2001/COMM.83; letter dated 2/13/01, from the U.N. Overseers to the U.N. 661 Committee Chairman, S/AC.25/2001/OIL/COMM.06; and letter dated 2/20/01, from the U.N. Overseers to the U.N. 661 Committee Chairman, S/AC.25/2001/OIL/COMM.07.

⁹⁴ Because OFF rules allowed a single 661 Committee member to veto a proposed OSP, the U.S. and U.K. members could unilaterally stop any price increase. Instead of exercising that veto, however, the U.S. and U.K. members simply threatened to veto a new OSP proposed for an upcoming month, until the month was nearly over. The U.S. and U.K. members were then able to compare the proposed OSP with actual market prices, and approve only those OSPs which closely reflected the actual market prices. It was this look-back feature, and the fact that the approved OSP was applied to a time period that had already largely lapsed, that caused the tactic to be referred to as “retroactive pricing.” Subcommittee interview of U.N. Oil Overseer (5/3/05).

Throughout the surcharge period, Bayoil complained to the United Nations⁹⁵ and SOMO⁹⁶ that the established OSPs were too high and should be reduced. For example, in October 2000, Bayoil complained to the U.N. Oil Overseers about “serious imperfections in the Iraqi OSP’s that ... [are] so seriously overvalued that we are certain that immediate adjustments are required for November liftings.”⁹⁷ Another Bayoil memorandum sent to the United Nations on the same day states: “Without doubt any continued imperfect pricing will lead to serious and on going difficulties and disruptions to the refiners in North America and the situation can only be described in the most pessimistic manner.”⁹⁸ In January 2001, Bayoil sent a note to SOMO stating, “I thought you may be interested in the short note I sent the Overseer’s which I felt compelled to write out of sheer frustration, which I am sure is mutually shared with you and your colleagues at SOMO.”⁹⁹

In February 2001, Bayoil worked with Augusto Giangrandi and others to launch a concerted effort to pressure the United Nations to use lower OSPs. On February 11, 2001, for example, Mr. Giangrandi’s company, Italtech, sent a memorandum to the Iraqi Oil Minister requesting “urgent cooperation between SOMO and ourselves, in order to mitigate a difficult situation” in which “the U.N. has continued to resist appropriate formula price changes,

⁹⁵ See, e.g., memorandum dated 10/25/00, from David Chalmers of Bayoil to U.N. Overseers, Bates BAY04-01242-45; memorandum dated 10/25/00, from David Chalmers of Bayoil to U.N. Overseers, Bates BAY04-01236-37; memorandum dated 10/25/00, from David Chalmers of Bayoil to U.N. Overseers, Bates BAY04-01238-41; memorandum dated 11/20/00, from David Chalmers of Bayoil to U.N. Overseers, Bates BAY04-01820-21; memorandum dated 11/20/00, from David Chalmers of Bayoil to U.N. Overseers, Bates BAY04-01838-40; memorandum dated 1/31/01, from David Chalmers of Bayoil to U.N. Overseers, Bates BAY04-00796-97; memorandum dated 1/31/01, from David Chalmers of Bayoil to U.N. Overseers, Bates BAY04-00798-99; memorandum dated 2/11/01, from David Chalmers of Bayoil to U.N. Overseers, regarding “February O.S.P. Formula Prices (N. America)”; memorandum dated 2/11/01, from Augusto Giangrandi of Italtech to U.N. Overseers, Bates BAY04-01178-82; memorandum dated 2/12/01, from Augusto Giangrandi of Italtech to Peter Kolby, Chairman of the U.N. 661 Committee, Bates BAY04-01176-77; memorandum dated 5/29/01, from David Chalmers of Bayoil to U.N. Overseers, Bates BAY04-01146.

⁹⁶ See, e.g., memorandum dated 12/12/00, from Augusto Giangrandi of Italtech to SOMO, Bates BAY04-01816-18; memorandum dated 12/17/00, from Augusto Giangrandi of Italtech to SOMO; memorandum dated 2/11/01, from Augusto Giangrandi of Italtech to the Minister of Oil of Iraq, Bates BAY04-1174-75; memorandum dated 6/29/01, from John Irving of Bayoil to SOMO, Bates BAY04-01111; memorandum dated 7/13/01, from David Chalmers of Bayoil to SOMO; memorandum dated 8/28/01, from John Irving of Bayoil to SOMO, Bates BAY04-01074-76.

⁹⁷ Memorandum dated 10/25/00, from David Chalmers of Bayoil to U.N. Overseers, at Bates BAY04-01242.

⁹⁸ Memorandum dated 10/25/00, from David Chalmers of Bayoil to U.N. Overseers, at Bates BAY04-01238.

⁹⁹ Memorandum dated 1/17/01, from David Chalmers of Bayoil to SOMO, Bates BAY04-01191.

including SOMO's proposed charges for February."¹⁰⁰ Italtech wrote that, "[i]n order for our efforts to be successful and effective it is imperative to get the support of the Ministry and SOMO, to also quickly address the issue in New York." The same day, Italtech wrote to the U.N. Oil Overseers objecting to their using price formulas "significantly different than those prices proposed by SOMO."¹⁰¹ The next day, Italtech wrote to the U.N. 661 Committee requesting "an immediate review of all price mechanisms."¹⁰²

On February 12, 2001, Bayoil wrote to the U.S. State Department asking for help in changing the OSP pricing mechanisms.¹⁰³ It explained the situation as follows.

"Bayoil has shipped oil from Iraq since the beginning of the oil-for-food program, primarily to the US, for distribution to many independent refiners. As such, although Bayoil has no contracts with SOMO, likely due to our American origins, we do provide regular market information to SOMO and the UN for purposes of establishing a fair pricing mechanism each month.

On balance ... we believe our market assessments have been considered by both parties until recently. It appears to many lifters during recent months ... the Overseers have been skeptical toward market assessments ... due to some new mandate, whereby any price mechanism approved would not theoretically allow a margin covering the recently reported request for some kind of surcharge.

While most lifters, including Bayoil, support the concept of these efforts by the Overseers, in practice it has contributed to the recent and current price formulas being completely uncompetitive with the market. ...

[W]e are compelled to appeal directly to the 661 Committee to approve and support proposed adjustments to the current price formulas to reflect ... market changes

Thank you for your attention to this most urgent matter."¹⁰⁴

In addition to sending this letter to the U.S. State Department, Bayoil asked one of its customers, a Russian company known as Rosnefteimpex, to send similar correspondence on OSP

¹⁰⁰ Memorandum dated 2/11/01, from Augusto Giangrandi of Italtech to the Minister of Oil of Iraq, Bates BAY04-1174-75 and IT-00357-58.

¹⁰¹ Memorandum dated 2/11/01, from Augusto Giangrandi of Italtech to U.N. Overseers, Bates BAY04-01178 and 1180 and IT-00361-65.

¹⁰² Memorandum dated 2/12/01, from Augusto Giangrandi of Italtech to Peter Kolby, Chairman of the U.N. 661 Committee, Bates BAY04-01176-77 and IT-00359-60.

¹⁰³ Letter dated 2/12/01, from David Chalmers of Bayoil to Eugene Young, US Representative to the UN 661 Committee, Bates BAY04-01173.

¹⁰⁴ *Id.* Ironically, at the same time Bayoil wrote this letter, it is alleged to have been buying millions of barrels of Iraqi oil from Italtech with full knowledge that Italtech was paying improper surcharges to Iraq outside of the OFF program. Bayoil then resold the oil to U.S. refineries at a high enough price to finance the surcharge costs Italtech had passed on to Bayoil.

pricing issues to U.N., Iraqi, and Russian officials. Bayoil's email to Rosnefteimpex states: "Please urgently forward on your letterhead the attached memo and graphs to the UN Overseers. Urgently send copies to ... SOMO ... Peter Kolby, Chairman 661 Committee ... [and] Ambassador Sergey Lavrov UN Representative Russian Federation."¹⁰⁵ Attached to the email are a 4-page memorandum purporting to be from the Russian company to the U.N. Overseers, and a 1-page letter from the company to the U.N. 661 Committee Chairman, with a copy to be sent to the Russian representative to the United Nations. Bayoil later obtained signed versions of both documents, indicating that Rosnefteimpex had actually sent them, as requested.¹⁰⁶

The evidence indicates that all six of the documents sent by Bayoil, Italtch, and Rosnefteimpex over a few days in February were part of a coordinated lobbying effort. A Bayoil email dated February 11, 2001, for example, sent by "DC" – presumably David Chalmers – to Augusto Giangrandi, lists all six documents in various stages of completion.¹⁰⁷ The Giangrandi letter sent to the Iraqi Oil Minister states plainly that Italtch was working with "concerned customers ... via submission of letters and reports ... to the UN Overseers, and 661 Committee members to initiate an immediate adjustment to formula prices."¹⁰⁸

Although its February 2001 lobbying effort was unsuccessful, Bayoil continued to try to influence U.N. pricing of Iraqi oil. One of the Oil Overseers during the surcharge period told the Subcommittee that a handful of companies were quite aggressive in pushing for lower OSPs and, without naming any of them, said that, after awhile, the Overseers stopped responding to their many letters and telephone calls.¹⁰⁹

At one point in June 2001, Bayoil wrote to the U.N. 661 Committee Chairman complaining of "a long standing prejudice toward myself and the company I am affiliated with, extended to

¹⁰⁵ Undated memorandum from David Chalmers of Bayoil to Mr. Poukhov of Rosnefteimpex, Bates BAYOILUSA 015198.

¹⁰⁶ See 4-page memorandum dated 2/11/01, from Mr. Poukhov of Rosnefteimpex to the U.N. Overseers, Bates BAY04-01197-1200 (signed by "Y.Poukhov"); and a 1-page memorandum dated 2/12/01, from Rosnefteimpex to Peter Kolby, U.N. 661 Committee Chairman, with a copy to Ambassador Sergey Lavrov, Russian Federation Representative to the United Nations, Bates BAY04-01201 (signed by "Y.Poukhov").

¹⁰⁷ See email dated 2/11/01, from "DC" to Augusto Giangrandi, Bates BAY04-01202. This email attaches copies of the Rosnefteimpex letters to the U.N. 661 Committee and U.N. Overseers; a copy of the Italtch letter to the U.N. 661 Committee; a copy of a draft Italtch letter to the U.N. Overseers "to be finalized in Houston in AM"; a copy of a draft Italtch letter to "MO," presumably the Iraqi Minister of Oil, for Giangrandi "to approve and instruct Italy"; and a copy of a draft letter, "[t]o be finalized," which is described as "to US from Bay" and which presumably refers to the letter actually sent the next day by Bayoil to the U.S. State Department.

¹⁰⁸ Memorandum dated 2/11/01, from Augusto Giangrandi of Italtch to the Minister of Oil of Iraq, Bates BAY04-1174-75.

¹⁰⁹ Subcommittee interview of U.N. Oil Overseer (5/3/05).

the companies we have contracted for supply, by the individual UN Overseer, Mr. Michael Tellings.”¹¹⁰ Bayoil wrote:

“[S]ince the start of the program until late last year, there were seldom differences between Bayoil’s market assessments ... and the final agreed formula between SOMO and the U.N. Overseers. Beginning late last year, there has been consistent differences between fair market formulas proposed by lifters, and the formula which the office of the Overseers would accept from SOMO. ... This development is widely known to be due to the hard line approach of Mr. Tellings which has led to widely reported friction between Mr. Tellings and SOMO, as well as most established lifters such as Bayoil who regularly contested the price formula. The prejudice ... is further evidenced by Mr. Tellings refusal to have a telephone conversation or meeting on the subject which is, of course, outside the guidelines and completely unprofessional.”

Bayoil returned to this theme repeatedly over the next two years, while continuing to send written communications to both U.N. and Iraqi officials objecting to the established OSPs.¹¹¹

Bayoil Lobbying from 2002 to 2003. In 2002, due to ongoing industry complaints about the use of retroactive pricing for OFF oil contracts, some 661 Committee member countries proposed alternative pricing mechanisms. U.S. State Department officials met with the U.N. Oil Overseers about these issues at least twice in the spring and summer of 2002, and determined to continue strong U.S. support for the U.N.’s pricing practices and its own retroactive pricing tactics.¹¹² In August 2002, several U.S. oil companies, including Valero and Vitol, and Texan oilman Oscar Wyatt, met with senior U.S. State Department officials in Washington, D.C. to complain about retroactive pricing in the Oil-for-Food program.¹¹³

Bayoil also intensified its lobbying efforts to curb U.S. support for retroactive pricing. In September 2002, for example, Bayoil sent two lengthy memoranda critical of the U.N.’s pricing practices and engaged in several related telephone conversations with the U.S. State Department

¹¹⁰ Letter dated 6/25/01, from David Chalmers of Bayoil to Peter Kolby, U.N. 661 Committee Chairman, Bates BAY04-01301-02. See also memorandum dated 1/24/02, from Bayoil to U.N. Overseers (describing hostile telephone conversation between John Irving of Bayoil and a U.N. overseer regarding how pricing formulas are calculated and citing “apparent prejudice toward Bayoil”).

¹¹¹ See, e.g., memorandum dated 8/8/01, from David Chalmers of Bayoil to U.N. Overseers, Bates BAY04-00772-75; memorandum dated 8/28/01, from John Irving of Bayoil to SOMO, Bates BAY04-001074-76.

¹¹² Subcommittee interview of State Department Official, April 28, 2005. The United States defended the U.N.’s retroactive pricing practices at a July 11, 2002 meeting of the U.N. 661 Committee. Id.

¹¹³ Id. The attendees had sent correspondence to the U.S. State Department complaining about retroactive pricing and requested the meeting. Bayoil apparently did not attend the August meeting.

office advising the U.S. Mission to the United Nations on retroactive pricing issues.¹¹⁴ Bayoil also appears to have engaged in discussions with key U.N. officials at this time.¹¹⁵ Correspondence from October 2002, indicates that Bayoil also worked with one of its Russian customers to try to influence U.N. 661 Committee members.¹¹⁶ In addition, Bayoil sent various memoranda to Iraqi officials advising them on the OSPs that should be proposed to the U.N. overseers.¹¹⁷ Despite these and other lobbying efforts, U.S. support for retroactive pricing continued.

In February and March 2003, Bayoil engaged in still another intensive lobbying effort on OSP pricing issues, sending multiple communications to U.N., Iraqi, and U.S. officials.¹¹⁸

¹¹⁴ See letter and memorandum dated 9/13/02, from John Irving and David Chalmers of Bayoil to Matthew McManus of the U.S. State Department; and memorandum dated 9/18/02, from John Irving of Bayoil to Matthew McManus of the U.S. State Department. See also internal Bayoil memorandum dated 9/23/02, from “David” to “John” re “Pricing Methodology Discussions U.N./State Department,” Bates BAYOILUSA 015148 (listing “key questions for further discussions”).

¹¹⁵ See, e.g., internal Bayoil memorandum dated 9/23/02, from “David” to “John” re “Pricing Methodology Discussions U.N./State Department,” Bates BAYOILUSA 015148; memorandum dated 9/26/02, from David Chalmers of Bayoil to U.N. Overseers, Bates BAY04-00757-68 (providing pricing recommendations to increase participation in Iraqi oil sales).

¹¹⁶ See, e.g., memorandum dated 10/11/02, from Alexander Lyssenko of Alfa-Eco to David Chalmers of Bayoil, Bates BAY04-01021 (“[W]e believe the existing pricing mechanism needs to be changed and on our part we are ready to start respective discussions with UN Security Counsel Committee. In this connection we would much appreciate if you could render us all possible assistance we may need in these discussions, such as preparation of necessary materials and expert judgments, as well as your participation in the talks.”); memorandum dated 10/17/02, from Mr. Chalmers to Mr. Lyssenko in response, Bates BAY04-01018-20 (“[K]ey Bayoil personnel, including myself, have been recently corresponding and meeting with appropriate U.N. and Committee officials for the purpose of conveying industry concerns over recent pricing disputes [W]e are pleased to learn from your letter ALFA-ECO’s interest to also take a pro-active approach with key U.N. officials to support changes in methods for establishing the price mechanisms”); memorandum dated 10/28/02, from Mr. Chalmers to Mr. Lyssenko, Bates BAY04-01325 (“[F]eel free to use any excerpts of our text and information for onward submission to SOMO.”).

¹¹⁷ See, e.g., memorandum dated 10/29/02, from David Chalmers of Bayoil to SOMO, Bates BAY04-01008-09; memorandum dated 10/29/02, from David Chalmers of Bayoil to SOMO, Bates BAY04-00273-74; memorandum dated 12/4/02, from David Chalmers of Bayoil to SOMO, Bates BAY04-02158-61.

¹¹⁸ See, e.g., memorandum dated 2/2/03, from David Chalmers of Bayoil to SOMO, Bates BAY04-00617-23 (regarding “Your monthly discussion with U.N. Overseers on OSP calculations for January (U.S. destinations)”); memorandum dated 2/24/03, from David Chalmers of Bayoil to SOMO, Bates BAY04-00645-49; memorandum dated 2/24/03, from David Chalmers of Bayoil to SOMO, Bates BAY04-00615-16; memorandum dated 2/26/03, from David Chalmers of Bayoil to SOMO, Bates BAY04-00652-54; memoranda dated 2/27/03, from John Overbey of Bayoil to U.N. Overseers, Bates BAY04-00638-41; memoranda dated 2/27/03, from John Irving of Bayoil to Matthew McManus of the U.S. State Department, Bates BAY04-00636-37 and 02148-49; email dated 2/27/03, from Jean Johnston of Bayoil to Mr. McManus (forwarding materials to Mr. McManus); email dated 3/10/03, from Mary Jenkins of Bayoil to Matthew McManus and D.E. Kirsch of the U.S. State Department, Bates BAY04-00598 (attaching 4 documents); email dated 3/10/03, from Mary Jenkins of Bayoil to Matthew McManus and D.E. Kirsch of the U.S. State Department, Bates BAY04-00602 (attaching 4 documents); email dated 3/13/03, from David Chalmers of Bayoil to Benon Sevan of the U.N. Office of Iraq Programme, with a copy to Matthew McManus and D.E. Kirsch of the U.S. State Department, Bates BAY04-002115-18 (together with an email of the same date

(continued...)

Among other activities, Bayoil wrote to the Iraqi Oil Minister informing him about its lobbying efforts with U.N. officials and asking SOMO to submit “price formulas consistent with our recommendations.”¹¹⁹ Bayoil also appears to have asked a U.S. company, Nucoastal, to use its influence with a company called “MEDNAFTA” to send suggested language to SOMO regarding an upcoming OSP.¹²⁰ Bayoil also contacted a well-known industry research group and asked it to weigh in with “relevant authorities” against retroactive pricing.¹²¹

On March 13, 2003, Bayoil sent a lengthy memorandum to the U.N. Office of Iraq Programme, with a copy to the U.S. State Department, again complaining about the U.N.’s pricing practices and failure to respond to industry concerns.¹²² The memorandum states that the U.N. Overseers are “in a deliberate and prejudicial way ignoring and/or discounting market information/analysis from certain companies (including Bayoil)”; they are “pre-advis[ing] S.O.M.O. of the price formulas S.O.M.O. must submit to gain their approval”; and there has

¹¹⁸ (...continued)

from Jean Johnston of Bayoil to D.E. Kirsch of the State Department forwarding the memorandum); memorandum dated 3/3/03, from John Overbey to U.N. Overseers, regarding “Additional Points of Consideration with respect to the Methodology of Assessing Sour Market Prices ...”; email dated 3/10/03, from Mary Jenkins of Bayoil to U.N. Overseers regarding “OSP Correspondence, Bates BAY04-00597 (attaching 4 documents).

¹¹⁹ Memorandum dated 3/15/03, from David Chalmers of Bayoil to the Iraqi Minister of Oil Amer Rasheed (“I would like to inform you that our company and others, have been recently corresponding to key U.N. officials, and 661 Representatives, regarding the recent difficulties experienced by S.O.M.O., with respect to obtaining approval from The Overseers for formula prices which reflect the actual market circumstances. It is in our view that these initiatives will shortly lead to more flexibility by The Overseers, and thus would hope to likewise see support from S.O.M.O. by submitting price formulas consistent with our recommendations.”).

¹²⁰ See memorandum dated 2/7/03, from David Chalmers of Bayoil to Oscar Wyatt of Nucoastal, and an email with the same date, from Mary Jenkins of Bayoil to “ow,” appearing to transmit the memorandum, Bates BAY04-00631-33 (“Pursuant to our telecons, please find below suggested text to S.O.M.O. Please forward to MEDNAFTA to forward to S.O.M.O.”).

¹²¹ See, e.g., email dated 2/27/03, from Jean Johnston of Bayoil to Larry Goldstein of the Petroleum Industry Research Association (PIRA), forwarding an email of the same date from John Overbey of Bayoil to Mr. Goldstein, Bates BAY04-00635 (Mr. Overbey stated in part: “With respect to our earlier conversations and correspondence on our concerns over the changing methodology being applied recently by the Overseers and the consequential competitive disadvantage as compared to other foreign supplies, we would like to provide you with some of our recent correspondence to the United Nations and State Department on this matter. ... We are hopeful you will concur with our position in this matter and relay your professional recommendations to the relevant authorities, during this week, while the market circumstances are being evaluated by the U.N.”). PIRA had previously sent a paper to the U.S. State Department critical of retroactive pricing. See “Iraqi Oil: A Love-Hate Relationship,” by the Petroleum Industry Research Foundation (June 2002); and a Bayoil email dated 7/1/02, from Ken Vestal to David Chalmers of Bayoil, Bates BAY04-01040-48 (indicating the report had been sent to the U.S. State Department). See also memorandum dated 3/7/02, from Ken Vestal to David Chalmers of Bayoil, Bates BAYOILUSA 015022 (referencing a discussion with “PIRA” about retroactive pricing).

¹²² Memorandum dated 3/13/03, from David Chalmers of Bayoil to the U.N. Office of Iraq Programme, Bates BAY04-01288-91, together with a document showing a number of emails, dated 3/13 and 3/14/03, showing that the memorandum had been sent to the U.N. Office of Iraq Programme; and memorandum dated 3/13/03, from David Chalmers of Bayoil to the U.N. Oil Overseers, Bates BAY04-01292-93.

been “a complete breakdown in confidence by the industry participants in the program.” The memorandum states that “Bayoil has no other choice than to immediately cease participation in the program, and support others to do likewise.” Bayoil also provided a copy of a memorandum that it had sent on the same day to the U.N. Overseers accusing them of prejudice and notifying them that Bayoil “has initiated a formal protest to the U.N. Office of Iraqi Programme, the 661 committee, and key member representatives about your actions.”¹²³

Despite its threat to cease participation in Iraqi oil sales, Bayoil continued to buy Iraqi oil and engage in additional lobbying efforts throughout 2003, continuing even after the United States invaded Iraq and displaced the Hussein regime.

Bayoil’s lobbying efforts targeted U.N., Iraqi, and U.S. officials with an unrelenting stream of documents over a seven-year period. This evidence shows that it was not just foreign countries that were lobbying U.N. officials in support of Iraq’s pricing proposals and against U.S. efforts to stop surcharges – a U.S. company was also an aggressive, behind-the-scenes participant that supported the efforts of Iraq and other countries in opposition to U.S. interests.

D. BAYOIL PARTICIPATION IN BOYCOTT OF ISRAEL

Evidence obtained by the Subcommittee Minority Staff establishes that Iraq, under the Hussein regime, prohibited the sale of Iraqi-origin oil to Israel, and that Bayoil complied with this prohibition. Bayoil’s actions appear to violate U.S. laws prohibiting U.S. companies or their foreign affiliates from complying with boycotts not approved by the United States.

U.S. Laws Prohibiting Boycotts. The Export Administration Act (EAA) and the Ribicoff Amendment to the 1976 Tax Reform Act (TRA), this country’s two major anti-boycott laws, prohibit all U.S. persons, including their foreign affiliates, from participating in boycotts of foreign countries that the United States does not sanction.¹²⁴ Violation of the Department of Commerce Export Administration Regulations (EAR) implementing these anti-boycott laws can result in civil penalties or, in the case of “knowing” violations, criminal penalties of up to \$50,000 or five times the value of the exports involved, whichever is greater, and imprisonment of up to five years. Violations of the TRA can also lead to the loss of tax benefits.

Bayoil Conduct. On September 9, 1999, Augusto Giangrandi, on behalf of Bayoil, wrote to the Iraqi Oil Ministry and SOMO to confirm Bayoil’s interest in purchasing “a minimum of 10,000,000 barrels of basrah light crude oil” during the sixth phase of the OFF program. He also

¹²³ Memorandum dated 3/13/03, from David Chalmers of Bayoil to the U.N. Oil Overseers, Bates BAY04-02119-20 (same memorandum as memorandum with Bates BAY04-01292-93).

¹²⁴ See, e.g., 15 CFR Chapter VII, Subchapter C, Part 760; 26 USC § 908. The EAA also requires persons to report requests they have received to comply with a boycott. The TRA requires taxpayers to report operations in or with or related to a boycotting country or requests to participate in or cooperate with an international boycott.

expressed Bayoil's interest in purchasing "20-30 million barrels minimum every six months."¹²⁵ On the same date, again acting as "Chairman, For and on behalf of Bayoil Supply & Trading Limited (BOTCO, Bahamas)," Mr. Giangrandi wrote the following note, which he signed and had notarized:

¹²⁵ Letter dated 9/9/99, from Augusto Giangrandi, Chairman, For and on behalf of Bayoil Supply & Trading Limited (BOTCO, Bahamas) to Ministry of Oil, State Oil Marketing Organization, Bayoil Bates Number SNT045424. Although Giangrandi's signature block states he is writing the letter for and on behalf of Bayoil, Bahamas, the letter blurs any distinction between the affiliated Bayoil entities. The letter states, "We are prepared to contract with you through our Bahamian company or any of our affiliates."

TO WHOM IT MAY CONCERN

We herewith confirm never to have sold directly or indirectly to Israel and further confirm that this policy will remain permanently in force during the entire validity of our contract.¹²⁶

Iraqi Policy of Prohibiting the Sale of Iraqi Oil to Israel. Subcommittee interviews with high-ranking officials of the Hussein regime confirm that, during the sanctions period, it was Iraq's policy to prohibit the sale of Iraqi oil to Israel. One senior official in the Oil Ministry during the Hussein regime stated that the initial drafts of the standard contract written by SOMO for crude oil to be purchased under the OFF program contained a clause explicitly prohibiting the purchaser of the Iraqi oil from subsequently selling the oil to Israel.¹²⁷ This high-ranking official persuaded SOMO not to include this explicit prohibition in the standard contract because, in his view, it would have been objected to by the United Nations and thereby impede Iraq's ability to sell its oil under the OFF program.

Instead, SOMO drafted standard contract language containing the following clauses regarding the destination of any crude oil purchased from SOMO:

1. BUYER shall at all times comply with all the laws, regulations and rules of the Republic of Iraq relating to destination of crude oil purchased hereunder in force from time to time.
2. BUYER undertakes that all laws, regulations and rules of the Republic of Iraq shall apply to the vessels employed by him to transport crude oil covered by this Contract.
3. BUYER undertakes, whenever required, to submit to SELLER or his representative within a reasonable time, the discharge certificate of each shipment duly endorsed by the Iraqi Representation (or any other acceptable representation) in the country of destination.¹²⁸

¹²⁶ Letter dated 9/9/99, from Augusto Giangrandi, Chairman, For and on behalf of Bayoil Supply & Trading Limited (BOTCO, Bahamas) to Ministry of Oil, State Oil Marketing Organization, Bayoil Bates Number SNT045426. Sergio Carlini, Director of Italtech, signed an identical pledge: "We herewith confirm never to have sold directly to Israel and further confirm that this policy will remain permanently in force during the validity of our contract." Letter dated 9/8/99, from Sergio Carlini to Whom It May Concern.

¹²⁷ Subcommittee Interview of Senior Iraqi Official No. 1 (4/17/05).

¹²⁸ Article Eleven of Section Two (General Conditions) of the SOMO standard Crude Oil Sales Contract. See, e.g., SOMO Crude Oil Sales Contract, 1996, Bates BAY04-01642-72. One contract in the Bayoil files had two page elevens—one with the above language for Article Eleven, and the other with an additional clause preceding the three requirements listed above: "Except to the extent inconsistent with the laws of BUYER'S country and the laws applicable to the Banque Nationale de Paris." See Bates BAY04-01534.

Although this language did not expressly mention Israel, it could be interpreted as seeking to accomplish a boycott of Israel in a manner that would not be so obvious to U.N. officials or U.N. member countries.

Many of the contracts that Bayoil entered into for the purchase of Iraqi oil from Iraqi oil allocation holders contained similar language:

THE BUYER UNDERTAKES THAT THE CRUDE OIL DELIVERED UNDER THIS AGREEMENT SHALL NOT BE IMPORTED BY ITSELF OR OTHERS TO ANY DESTINATION PROHIBITED BY THE GOVERNMENT'S COUNTRY IN WHICH THE CRUDE OIL WAS PRODUCED WITHOUT SELLER'S PRIOR ACCEPTANCE.¹²⁹

A prominent Iraqi businessman who did business in Iraq during the Hussein regime told the Subcommittee that he was familiar with the Iraqi oil trade during the OFF program. This individual stated it was necessary for persons seeking to purchase Iraqi oil to show they were not doing business with Israel in order to obtain a contract from SOMO.¹³⁰

Interviews with some of the most senior officials in the Hussein regime also confirm that Iraq prohibited the sale of its oil to Israel. In an interview with the Subcommittee, Iraqi Vice President Taha Yasin Ramadan explicitly stated that Iraq would not sell oil directly to Israel. "Everyone in Iraq would object to the sale of oil directly to Israel," Ramadan stated.¹³¹ Subcommittee staff then noted that Iraq would not sell oil directly to the United States but permitted Iraqi oil to be sold to buyers who then sold it to the United States. When asked whether Iraq would allow a company to purchase Iraqi oil if Iraq knew that the eventual destination was Israel, Ramadan replied:

Israel and the United States are totally different situations. Israel is an enemy of Iraq. Of course we would object if the oil were eventually going to Israel. And if we ever found out that somewhere down the road the oil would end up in Israel, we would never sell to them again.¹³²

¹²⁹ See, e.g., unsigned contract between Bayoil and Omni Oil Company, July 26, 2001; unsigned contract between Bayoil and Emiroil Est, August 3, 2001; unsigned contract between Bayoil and Gulf Petroleum Limited, August 14, 2001; unsigned contract between Bayoil and Gulf Oil and Gas International Corporation, September 6, 2001; unsigned contract between Bayoil and Rosnefteimpex NK "Rosneft," September 25, 2002.

¹³⁰ Subcommittee interview of Iraqi Detainee No. 1 (4/16/05).

¹³¹ Subcommittee interview with Taha Yasin Ramadan (4/18/05).

¹³² *Id.* Iraq has been in a permanent state of war with Israel since Israel became an independent state in 1948.

Former Presidential Secretary Abid Hamid Mahmoud al-Tikriti, who was in charge of Saddam Hussein's personal security, also stated that Saddam Hussein would not permit Iraqi oil to be sold, either directly or indirectly, to Israel. Mr. Mahmoud stated:

If Saddam or Taha Yasin knew that some of the oil would be going to Israel, they would not allow it. They were all extremists on that issue. They all knew Saddam's position and they agreed on it. All of the ministers were extremists on this issue. If they deny it, I will call them a liar.¹³³

Possible Continuation of Boycott. Bayoil documents indicate that key SOMO officials may have attempted to continue the boycott of Israel even after Saddam Hussein was deposed. In the summer of 2003, for example, following the fall of the Hussein regime, Bayoil began to market itself to SOMO officials, the Oil Ministry, and officials working with the Coalition Provisional Authority to rehabilitate Iraq's oil industry.¹³⁴ In an email to Bayoil's president on October 25, 2003, Bayoil's John Irving relates a conversation he had with the SOMO director of marketing and a person who appears to be another senior SOMO official.¹³⁵ While most of the email discusses matters related to pricing and marketing information, Item number seven reads as follows: "(7) I respectfully asked him if policy towards Israel had changed and he said 'NO!'" This evidence suggests that the policy of attempting to prohibit the sale of Iraqi oil to Israel may not have ended.

E. STOPPING THE SURCHARGES

From virtually the day Saddam Hussein began demanding that Oil-for-Food contractors pay illegal surcharges on contracts to buy Iraqi oil, the United Nations and its member countries learned of these demands and tried to end this abuse of the OFF program. Major questions are how Saddam Hussein was nevertheless able to collect \$228 million in surcharges over a two-year period, what actions were taken to stop the surcharges, and what lessons can be learned from this experience.

At the Subcommittee's February 15, 2005 hearing, U.S. Ambassador to the United Nations for Management and Reform Patrick F. Kennedy delineated the responsibilities of the member states in enforcing the Iraqi sanctions and the oil-for-food program requirements:

¹³³ Subcommittee interview of Abid Hamid Mahmoud al-Tikriti (4/19/05). The translator for this interview explained that the word "extremist" in this context is akin to "hard-line," or "absolutist," and does not imply a viewpoint that is not within the Iraqi political mainstream.

¹³⁴ See, e.g., draft memorandum dated 6/5/03, from Bayoil to SOMO, Oil Minister, and the Iraqi Oil Advisory Board.

¹³⁵ Email dated 10/25/03, from Bayoil's John Irving to David Chalmers, 5:18 AM.

The United Nations, first and foremost, is a collective body comprised of its 191 members. A fundamental principle inherent in the U.N. Charter is that all member states will uphold decisions taken by the Security Council. The effectiveness of the sanctions regime against Iraq and the integrity of the oil-for-food program depended completely on the ability and willingness of member states to implement and enforce the sanctions. In this regard, member states had the primary responsibility for ensuring that their national companies and their citizens complied with the states' international obligations.¹³⁶

The evidence indicates that, while the United Nations and several of its member states, including the United States and the United Kingdom, aggressively worked to try to prevent Iraq from imposing surcharges, there was virtually no effort by the United States to ensure that U.S. nationals were not paying surcharges. The United States imported about half the Iraqi oil exported during the surcharge period, and U.S. shipments of Iraqi oil accounted for about half of all the surcharge payments during this period. The United States' failure to determine whether U.S. nationals were paying the illegal surcharges amounts to an abdication of its responsibility to enforce the Iraqi sanctions.

1. Awareness of Surcharges

In late 2000 and early 2001, senior Iraqi officials openly discussed their desire to impose a 50-cent surcharge and, when that appeared infeasible, a 40-cent surcharge on OFF contracts to buy Iraqi oil.¹³⁷ Oil buyers immediately complained to the United Nations. Numerous articles about the surcharge issue appeared in the world press. Iraq even halted exports for several weeks in December in an unsuccessful, but very public, attempt to exert leverage on oil companies and the United Nations to authorize the payment of surcharges.

In late November 2000, as explained earlier, SOMO proposed a very low Official Sales Price (OSP) for Iraqi oil that would be sold in December. The United States expressed immediate concern about the low price due to the surcharge demands. A U.S. State Department cable reported that the U.N. Oil Overseers had refused to endorse the submitted prices because it "WOULD CREATE AN OPPORTUNITY FOR UNAUTHORIZED REBATES TO IRAQ BY UNSCRUPULOUS OPERATORS OUTSIDE THE OIL-FOR-FOOD PROGRAM."¹³⁸ The cable warned that Iraq was threatening to cut off its oil supplies if the U.N. 661 Committee did not agree to SOMO's proposed prices. It instructed our Embassies in Moscow and Paris to inform their host governments that Iraq was "BLATANTLY THREATENING THE SECURITY COUNCIL AND SEEKING TO DISRUPT WORLD MARKETS," the "U.S. SEES ITS NATIONAL INTERESTS IMPLICATED IN THIS IRAQI BEHAVIOR," that "THE U.S. IS DETERMINED TO SEE IRAQ FAIL IN THIS EFFORT," the U.S. was "WILLING TO WORK

¹³⁶ "The United Nations' Management and Oversight of the Oil-for-Food Program," hearing before the U.S. Senate Permanent Subcommittee on Investigations (2/15/05), testimony of Ambassador Patrick F. Kennedy.

¹³⁷ See Section IIA of this Report.

¹³⁸ Unclassified State Department cable (11/22/00), STATE224156.

WITH YOU AND OTHERS TO PROTECT OUR COMMON INTERESTS,” and that “THE SECURITY COUNCIL MUST STAND UNIFIED AGAINST THIS CHALLENGE TO THE COUNCIL’S AUTHORITY.”¹³⁹

On December 13, 2000, another State Department cable reported Iraq was still attempting to collect illegal surcharges:

RECENT PRESS REPORTS INDICATE THAT IRAQ IS ONCE AGAIN ATTEMPTING TO IMPOSE A SURCHARGE ON OIL BUYERS TO BE PAID INTO AN ACCOUNT NOT CONTROLLED BY THE UN. THE US BELIEVES SUCH AN ACTION—WHICH IS INTENDED TO EVADE UN SANCTIONS, DIVERTS FUNDS FROM THE OIL FOR FOOD PROGRAM AND PROVIDE THE BAGHDAD REGIME WITH A SOURCE OF ILLICIT INCOME—MUST BE STRONGLY OPPOSED. A NUMBER OF SHIPS ARE WAITING TO LOAD IRAQI OIL BUT HAVE NOT DONE SO, LENDING CREDENCE TO THE REPORTS THAT IRAQ IS DEMANDING THE SURCHARGE AND OIL PURCHASERS ARE BALKING.

* * *

WE ALL NEED TO BE VIGILANT TO IRAQ’S ATTEMPTS TO OBTAIN A SOURCE OF FUNDS NOT UNDER UN CONTROL.

* * *

WE ISSUED A PRESS STATEMENT ON DECEMBER 12 INTENDED TO ENSURE THAT OIL BUYERS KNOW THAT PAYING A SURCHARGE TO IRAQ IS NOT AUTHORIZED AND THAT THEY ARE UNDER CLOSE SCRUTINY.¹⁴⁰

On December 15, 2000, the U.N. 661 Committee issued a notice to all buyers of Iraqi oil stating:

- 1) The sanctions committee has not approved a surcharge of any kind on Iraqi oil.
- 2) Payments for purchasing Iraqi crude oil cannot be made to a non-UN account.
- 3) Therefore, buyers of Iraqi oil shall not pay any kind of surcharge to Iraq.¹⁴¹

On January 8, 2001, the Oil Overseers reported to the 661 Committee that they had received numerous reports from the oil industry that Iraq was attempting to collect a 50-cent surcharge, and there had been a significant drop in Iraqi oil exports over the previous weeks due to the reluctance of oil purchasers to pay the surcharges demanded.¹⁴² The Oil Overseers indicated they had received these reports directly from oil traders and oil companies, and had

¹³⁹ Id.

¹⁴⁰ Unclassified State Department cable (12/14/00), STATE236493.

¹⁴¹ United Nations 661 Committee fax dated 12/15/00, from the U.N. Oil Overseers to “Buyers of Iraqi Crude Oil,” No. S/AC.25/2000/OIL/1330/FAX.

¹⁴² See 661 Committee minutes; Subcommittee interview of Oil Overseer (5/3/05).

also read similar reports in the oil industry trade press. The Oil Overseers told the U.N. 661 Committee that as a result of the precipitous drop in exports following the imposition of the 50-cent surcharge, Iraq had lowered the surcharge to 40 cents per barrel.

2. Stopping the Surcharges Through OSP Pricing

A few months after the surcharges began, some members of the U.N. 661 Committee began urging the Committee to use OSP pricing policies to stop the surcharges. On February 7, 2001, for example, the United States Mission to the U.N. formally requested the U.N. Oil Overseers to report on the surcharge issue.¹⁴³ The U.S. letter stated, “It is important that the overseers not recommend to the Committee a pricing mechanism that leaves room for a surcharge.” The letter asked the Overseers to report on “whether or not there is room in the most recent pricing mechanisms proposed by SOMO for imposition of a surcharge.”

On February 13, 2001, the U.N. Oil Overseers reported to the 661 Committee on SOMO’s proposal for a February Official Sales Price (OSP) for Iraqi oil.¹⁴⁴ The Overseers noted that buyers of Iraqi oil were being asked to pay “a substantial premium over OSP’s; say between 20 and 70 cents a barrel,” and that “in absence of end-users paying premia of at least around 20-25 cents per barrel,” Iraq was declining to export the oil. The Overseers recommended that the OSP for Iraqi oil be revised more frequently than once a month in order to prevent the difference between the market price of Iraqi oil and the OSP from growing large enough to allow surcharges to be imposed on top of the OSP.

On February 20, 2001, the Overseers responded to the U.S. Mission’s request for a report on the surcharge issue.¹⁴⁵ The Overseers noted, “Many of the current contract holders seem to be intermediaries who are not known in the petroleum industry. They are very small in size and seem to have limited credit facilities. This means that, due to the large sums of money involved, they often cannot open letters of credit and/or charter ships on their own account.” End-users, such as oil refineries, were generally unwilling to purchase directly from these contract holders due to their limited assets and “the limited possibility for compensation in the event of non-performance.” Accordingly, the Overseers reported, the contract holders usually sold their oil to larger trading companies, who then sold the oil either to other trading companies or directly to the end-users. The Overseers explained that this scheme tended to inflate prices to the end-users, since each intermediary would raise the price of the oil to capture a profit. The Overseers wrote:

¹⁴³ See U.S. Mission letter to the U.N. 661 Committee (2/6/01).

¹⁴⁴ See “Letter dated 13 February 2001 from the Overseers addressed to the Chairman of the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait,” S/AC.25/2001/OIL/COMM.06.

¹⁴⁵ See “Letter dated 20 February 2001 from the Overseers addressed to the Chairman of the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait,” S/AC.25/2001/OIL/COMM.07.

“[S]ince December, end-users can consistently only buy Iraqi crude oil at a premium of 20-50 cents per barrel over the OSP To what extent, if any, these premia are being used to pay illegal surcharges to Iraq is unknown to the Oil Overseers. . . . However, direct contacts with traders and end-users in the oil industry confirm in broad terms what has been written in the professional press on this matter.”

Through the spring and into the summer of 2001, the Oil Overseers became increasingly critical of SOMO’s price proposals and urged SOMO to propose higher OSPs. Individual U.N. 661 Committee members took different sides of the issue, with the U.S. and U.K. members supporting higher OSPs, and the Russian and Chinese members supporting SOMO’s recommendations as reasonable. A State Department cable sent on March 16, 2000, reported:

“EVEN WITH A GENERAL CONSENSUS IN THE [661] COMMITTEE THAT THESE ILLEGAL PAYMENTS ARE UNDERMINING THE OIL-FOR-FOOD PROGRAM AND THE UN SANCTIONS ON IRAQ, IT BECAME CLEAR THAT OUR PROPOSALS WILL BE DIFFICULT TO SELL.”¹⁴⁶

In early August, the British proposed that the OSP be revised every ten days, but the United States objected on the grounds that such frequent pricing would disrupt the oil markets. Several weeks later, the U.S. and U.K. agreed on a proposal to revise the OSP every fifteen days. Russia and China objected to the U.S.-U.K. proposal, insisting that pricing remain on a monthly basis. “In principle, we don’t like any change in the existing scheme, Russia’s deputy representative to the U.N. stated. “Oil exporters will experience difficulties in signing and fulfilling contracts.”¹⁴⁷ An official Iraqi newspaper stated, “Iraq is committed to prevent any change in what has been agreed concerning the fixing of the price of crude every 30 days.”¹⁴⁸

The U.N. 661 Committee stalemated on the U.S.-U.K. pricing proposal. The issue was elevated to the U.N. Security Council in mid-September, but the Security Council was no more able to resolve the issue than the 661 Committee. Unable to obtain consensus on either a pricing approach or the duration of the OSPs, in or around October 2001, the U.S. and U.K. Committee members began employing a delaying strategy that effectively achieved their aims. In essence, the U.S. and U.K. members began delaying approval of all price proposals until the specified time period had almost passed and oil was already loaded onto the purchasers’ vessels.¹⁴⁹ By waiting until after the buyers’ ships had loaded the oil, the OSP for that loading could be

¹⁴⁶ Unclassified State Department cable (3/21/01), USUNN00674.

¹⁴⁷ “U.S. Supports Britain in Move to Tighten Pricing of Iraqi Oil,” Washington Post (8/25/01).

¹⁴⁸ “Iraq Vows to Block British Bid to Change Oil Price Mechanism,” Business Recorder (8/28/01).

¹⁴⁹ Subcommittee interview of U.N. Oil Overseer (5/3/05). The United Kingdom apparently developed and proposed the retroactive pricing proposal; the United States then strongly supported it.

adjusted to closely reflect actual market prices, thereby eliminating the market speculation that occurs when prices are set weeks in advance of a particular loading.¹⁵⁰

This so-called “retroactive pricing” approach, which in effect was imposed by the United States and United Kingdom on the 661 Committee, succeeded in more closely aligning the OSP for Iraqi oil with world market prices, thereby eliminating the large profit margins that had allowed for the payment of illegal surcharges back to Iraq. In this respect, retroactive pricing “squeezed out” the surcharges.¹⁵¹ The United States maintained its support for this approach until the end of the Oil-for-Food program in 2003, despite ongoing opposition from some U.S. companies, including Bayoil, as well as from some foreign companies and some members of the United Nations.

Due to divisions among members of the U.N. 661 Committee, it took two years for an effective pricing system to be developed and stop the surcharges. The State Department’s U.S. Mission to the United Nations took the lead on this issue on behalf of the United States, and played an active and creative role in using retroactive pricing to stop the Iraqi surcharges. At the same time, the retroactive pricing approach never became the consensus position of the U.N. 661 Committee and continued to generate controversy.

3. U.S. Failure to Exercise Oversight of U.S. Nationals Buying Iraqi Oil

At the same time U.S. officials aggressively pursued action at the United Nations to prevent Iraq from imposing illegal surcharges, the United States failed to take meaningful action to ensure that U.S. nationals were not paying those surcharges.

A preliminary issue is who had responsibility for monitoring compliance and taking action to enforce the Iraqi sanctions, including the provisions of the OFF program. U.N. Security Council Resolution 661 (1990) set forth the basic responsibilities of U.N. Member States in enforcing the trade embargo against Iraq imposed by the resolution. In Resolution 661, the Security Council decided that “all States shall prevent”:

- (a) The import into their territories of all commodities and products originating in Iraq ...
- (b) Any activities by their nationals or in their territories which would promote or are calculated to promote the export or trans-shipment of any commodities or products from Iraq . . . [and]
- (c) The sale or supply by their nationals or from their territories or using their flag vessels of any commodities or products, including weapons or any other military equipment, whether or not originating in their territories but not including supplies intended for strictly medical purposes, and, in humanitarian circumstances, foodstuffs, to any person

¹⁵⁰ Retroactive pricing also eliminated SOMO’s ability to alter loading dates to provide buyers of Iraqi oil with more favorable market conditions at the time of loading. Id.

¹⁵¹ See Figure 2, “Iraqi Oil Production January 1999 - April 2003.”

or body in Iraq ... or to any person or body for the purposes of any business carried on in or operated from Iraq¹⁵²

U.N. Resolution 661 clearly assigned to Member States the responsibility to ensure that their own nationals acted in accordance with the terms of the resolution.

U.N. Security Council Resolution 986 (1995), which established the Oil-for-Food program, modified the Iraqi embargo in part by authorizing Member States to permit the import of Iraqi oil, subject to the approval by the U.N. 661 Committee of an application submitted by the State concerned, for each proposed purchase of Iraqi oil. Each application had to “includ[e] details of the purchase price at fair market value, the export route, the opening of a letter of credit payable to the escrow account. . . and of any other directly related financial or other essential transaction.” Oil purchases were also conditioned on “[p]ayment of the full amount of each purchase of Iraqi petroleum and petroleum products directly by the purchaser in the State concerned into the escrow account to be established by the Secretary-General for the purposes of this resolution.”¹⁵³

Under the relevant Security Council resolutions, then, the responsibility for ensuring compliance with U.N. sanctions on Iraq rested with individual nations. This approach was in keeping with standard U.N. practice, since the United Nations has no law enforcement authority and no ability to take enforcement action against the nationals of a particular country. Only Member States possess the legal authority to police individuals and entities within their jurisdictions.

U.N. Responsibilities. The U.N. offices and bodies charged with administering the Oil-for-Food program did have certain responsibilities for establishing program requirements, reviewing contracts and contractors, and monitoring – but not enforcing – program compliance.

The U.N. 661 Committee was assigned, for example, the responsibility to ensure that oil was purchased from Iraq “at fair market value.” To assist in this function, the U.N. 661 Committee employed three international oil experts, the U.N. Oil Overseers, to evaluate and make recommendations on whether SOMO’s proposed oil prices met that standard. In addition, the U.N. 661 Committee was responsible for reviewing and approving or disapproving each contract to be issued under the OFF program. The United Nations also established an Office of Iraq Programme (OIP) to carry out various administrative functions essential to effective program operation. For example, the United Nations, through the OIP, contracted with one inspection company, Saybolt, to ensure that only authorized amounts of oil were loaded onto ships pursuant to U.N.-approved oil export contracts, and another inspection company, Cotecna, to “authenticate” humanitarian goods delivered to Iraq to ensure those delivered goods matched the ones actually purchased by Iraq under U.N.-approved import contracts. The U.N. 661

¹⁵² U.N.S.C.R. 661 (1990).

¹⁵³ U.N.S.C.R. 986 (1995).

Committee also worked with the Maritime Interdiction Force to stop ships from violating the U.N. trade embargo by smuggling goods into or out of Iraq by sea.

Like the U.N. Security Council, the U.N. 661 Committee consisted of representatives from the Council's Member States, including the United States. Throughout the OFF program the U.N. 661 Committee operated under the principle of consensus voting – any single member could veto proposed Committee action. Hence, during the OFF program, it was the U.N. 661 Committee Member states, rather than the United Nations itself, that bore ultimate responsibility and accountability for Committee actions.

It was also clear throughout the OFF program, that the U.N. 661 Committee, OIP, the Oil Overseers and other U.N. personnel had neither the authority nor the resources to conduct meaningful, affirmative investigations into OFF wrongdoing – to determine, for example, whether approved OFF contractors or others were paying illegal surcharges to the Iraqi government outside of U.N. control or engaging in other acts of corruption.¹⁵⁴ None of the U.N. offices were assigned or expected to perform that type of affirmative oversight.¹⁵⁵ Even basic requests for information about specific allegations of wrongdoing usually had to be funneled through individual States with the authority to compel their nationals to respond to U.N. inquiries.

Nevertheless, on several occasions when allegations and evidence of specific acts of wrongdoing were brought to the attention of U.N. offices, they responded by attempting to gather more information; informing relevant member countries about the allegations and informally asking them to gather more information or investigate the matter; or by formally referring the matter to the U.N. 661 Committee which, in turn, could formally request relevant

¹⁵⁴ Subcommittee interview of U.N. Oil Overseer (5/3/05).

¹⁵⁵ *Id.* Benon Sevan, the OIP Director, consistently took this position. For example, in 1998, after giving a speech and in answer to a question about whether the United Nations was taking action to prevent contract kickbacks or illegal smuggling of oil or spare parts, Mr. Sevan responded as follows:

“I’d like to clarify from the beginning that while we have an observation mechanism, we are not a policing mechanism. It is not my job or my colleagues’ job to try to police as to what is happening outside the program. There are other organizations and other mechanisms established around Iraq which take care of those things in terms of smuggling, et cetera, so therefore, it’s not up to my job, to my colleagues to do it.

We just try to make sure that our observation mechanism and monitoring, we have a very good monitoring system in place regarding the arrival and utilization of spare parts, which was agreed by the council itself, by all the members, to make sure that things are used for the purpose they were authorized for.

Benon Sevan, Remarks Before the Middle East Institute (11/16/98). Benon Sevan made similar statements in several U.N. 661 Committee meetings, reflected in Committee minutes.

member countries to investigate the allegations.¹⁵⁶ This general approach, in which U.N. personnel did not affirmatively investigate wrongdoing but instead referred matters to member countries, reflects the standard division of responsibilities between the United Nations and its Member States. In general, under U.N. practice, it is the responsibility of the member countries to investigate and take appropriate enforcement action against individuals and entities within their jurisdictions.

These basic principles played out in the context of the surcharge issue. The United States aggressively used its position and authority as a U.N. 661 Committee member to devise policies that made it difficult for Iraq to impose and collect illegal surcharges. The United States did not, however, provide a similar level of effort outside the 661 Committee in discharging its responsibilities to ensure its own nationals were not paying illegal surcharges.

U.S. Responsibilities. With respect to sanctions on Iraq, several U.S. executive branch agencies had roles in carrying out and enforcing U.S. law and policy regarding U.N. and U.S. sanctions on Iraq and the Oil-for-Food program.

Most prominent was the U.S. Treasury Department's Office of Foreign Assets Control (OFAC) which administers over two dozen sanctions programs that the U.S. has imposed, including sanctions on Iraq.¹⁵⁷ According to its website, OFAC:

“administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals against targeted foreign countries, terrorists, international narcotics traffickers, and those engaged in activities related to the proliferation of weapons of mass destruction. OFAC acts under Presidential wartime and national emergency powers, as well as authority granted by specific legislation, to impose controls on transactions and freeze foreign assets under US jurisdiction. Many of the sanctions

¹⁵⁶ Subcommittee interview of U.N. Oil Overseer (5/3/05). The 661 Committee followed this practice, for example, when the captain of the oil tanker Essex informed the United Nations that his ship was carrying more Iraqi oil than had been authorized by its U.N.-approved contract. After obtaining his statement and supporting evidence, the 661 Committee requested that France and the Netherlands investigate and report back on the activities of certain nationals alleged to have been involved in the wrongdoing. A similar procedure was followed when the U.N. Oil Overseers received specific evidence of allegations involving a Swiss company, Glencore International AG and asked the Swiss Government to investigate and report on its findings. See, e.g., Letter dated 8 October 2001 from the Permanent Observer Mission of Switzerland to the United Nations Addressed to the Chairman, 661 Committee document S/AC.25/2001/COMM 465.

¹⁵⁷ For more information on OFAC's role in implementing the United States' sanctions against Iraq, see testimony of Juan Carlos Zarate, Assistant Secretary of the Treasury for Terrorist Financing and Financial Crimes, before the Subcommittee (11/15/04).

are based on United Nations and other international mandates, are multilateral in scope, and involve close cooperation with allied governments.”¹⁵⁸

To carry out its responsibilities, OFAC has about 140 employees engaged in licensing, compliance, and enforcement activities.

In January 1991, OFAC promulgated comprehensive regulations to implement U.N. Security Council Resolution 661 and the related U.S. Presidential Executive Orders imposing a trade embargo on Iraq.¹⁵⁹ Following the passage of Resolution 986, which created the Oil-for-Food program, OFAC amended its regulations to allow persons to apply to OFAC for specific licenses, on a case-by-case basis, to purchase oil from the Government of Iraq “in accordance with the provisions of U.N. SC Resolution 986, other relevant Security Council resolution, the Memorandum of Understanding, and other guidance issued by the 661 Committee.”¹⁶⁰ A specific license to purchase oil from Iraq granted the licensee authority “to perform a contract approved by the 661 Committee or its designee in accordance with its terms.”¹⁶¹ Hence, for U.S. nationals, it was not only a U.N. requirement, but a requirement of U.S. regulations that U.S. persons comply with the OFF program.

According to OFAC, “All U.S. persons must comply with OFAC regulations, including all U.S. citizens and permanent resident aliens regardless of where they are located.”¹⁶² Fines for violating OFAC regulations “can be substantial.”¹⁶³ Persons violating OFAC’s Iraqi sanctions regulations, for example, were subject to civil penalties of up to \$275,000 per violation and, for willful violations, criminal penalties of up to \$1 million in fines and not more than 12 years imprisonment, or both.¹⁶⁴

Several offices within the U.S. State Department also played key roles in the U.S. sanctions and OFF programs, including the U.S. Mission to the United Nations, which interacted

¹⁵⁸ United States Department of Treasury Office of Foreign Assets Control website, at <http://www.treas.gov/offices/enforcement/ofac/>.

¹⁵⁹ 31 C.F.R. Part 575 – Iraqi Sanctions Regulations (1991).

¹⁶⁰ 31 C.F.R. §575.523 (1996). OFAC also authorized the issuance of specific licenses to individuals assisting third-country persons obtaining oil from the Government of Iraq, *id.*, at §575.522; providing humanitarian goods to Iraq, *id.* at §575.525; and providing oil-field equipment to Iraq, *id.* at § 575.523. OFAC provided a general authorization to persons to import Iraqi-origin oil if the oil had already been exported from Iraq in accordance with a contract that already had been approved by the 661 Committee, *id.* at §575.526.

¹⁶¹ *Id.*

¹⁶² U.S. Department of Treasury, Office of Foreign Assets Control, Frequently Asked Questions, at <http://www.treas.gov/offices/enforcement/ofac/faq/>.

¹⁶³ *Id.*

¹⁶⁴ 31 CFR § 575.701 (1997).

directly with U.N. officials administering the OFF program; the Office of Economic Sanctions Policy, which handled a variety of compliance issues including reviewing OFF contractor applications and proposed contracts to ensure consistency with U.S. foreign policy; and the Energy Producing Country Affairs Division, which provided expertise on oil markets and OFF pricing issues. Experts from the U.S. Commerce Department and U.S. Energy Department also provided key advice and assistance. The State Department, however, had no regulatory authority or law enforcement responsibilities with respect to the application of Iraqi sanctions to U.S. persons.

Although each of these U.S. offices expended considerable resources on various aspects of the OFF program, virtually none of them exercised oversight over individual U.S. participants in the Iraq oil trade. The State Department, for example, does not usually engage in enforcement actions in U.S. sanctions programs. In fact, one State Department office told the Subcommittee that it operated under the philosophy that “in America you are presumed innocent until proven guilty,” and maintained a policy of not questioning U.S. companies about their actions in Iraq. It told the Subcommittee that it made no inquiries into whether particular U.S. companies might have been paying surcharges.

OFAC, on the other hand, has a standing enforcement program. OFAC told the Subcommittee, however, that it considered the Iraqi sanctions program unique among the two dozen sanctions programs it administered, due to extensive U.N. involvement. OFAC officials indicated that, in their view, it was the United Nations, not the United States, that was responsible for administering Iraqi sanctions.¹⁶⁵ In addition, OFAC considered it to be the U.N.’s primary responsibility to monitor and enforce compliance. With respect to issues involving Iraqi oil, OFAC officials noted that OFAC did not have any expertise in oil pricing or the operation of international oil markets, while the United Nations had a panel of world-class experts, the Oil Oversees, to help it manage and oversee the OFF program. For that reason, OFAC indicated that it deferred to the United Nations on procedures to approve contractors and individual contracts.

OFAC’s position on these issues suggests a fundamental misconception about the relative roles of U.N. and U.S. officials in ensuring sanctions compliance. OFAC apparently did not realize that, although the United Nations had the overall lead in administering the OFF program, U.N. Member States retained the primary responsibility to ensure that their nationals complied with the sanctions and OFF programs. Moreover, from a legal perspective, U.S. persons and companies were not bound by U.N. requirements, but only by the laws and regulations promulgated by individual U.N. member states, which meant that U.S. oversight was essential to enforce compliance with U.S. laws and regulations imposing sanctions on Iraq. OFAC’s misunderstanding of its enforcement responsibilities resulted in its devoting few resources to the oversight of U.S. participants in the OFF program, including Bayoil.

¹⁶⁵ Subcommittee interviews of OFAC officials (4/27/05 and 5/5/05).

Failure to Scrutinize Activities of U.S. Nationals. A striking contrast exists between the active efforts of the United States within the U.N. 661 Committee to stop Iraq's illegal surcharges through setting OSP prices, and its failure outside of the 661 Committee process to exercise meaningful oversight to determine whether U.S. nationals were paying illegal surcharges. This U.S. failure is even more striking in light of U.S. proposals to increase U.N. 661 Committee standards and oversight for the companies seeking U.N. approval to obtain Iraqi oil contracts.

To win an OFF contract, a person or company had to be designated a "national oil purchaser" by a specific U.N. Member Country. Member countries were supposed to evaluate each applicant for this designation and then forward only approved applications to the United Nations. In the United States, OFAC was assigned the responsibility of approving U.S. companies as "national oil purchasers," and issued federal regulations establishing a procedure for doing so.¹⁶⁶

OFAC told the Subcommittee, however, that it viewed its role as a purely ministerial effort to ensure that the applicants were, in fact, U.S. companies and had correctly completed the registration forms. These forms required the applicant to provide only basic information—such as the name, address, and telephone number of the applicant. OFAC then sent the applications to the U.S. State Department which, in turn, forwarded them to the United Nations. OFAC told the Subcommittee that it assumed the United Nations was performing a more substantive screening, since the Oil-for-Food program was a U.N.-run program.¹⁶⁷ In contrast, the U.N. Oil Overseers told the Subcommittee that they, too, performed a ministerial review of the applications, because according to the procedures established by the 661 Committee, it was the responsibility of the Member States to determine the qualifications of their "national oil purchasers."¹⁶⁸ Moreover, once the U.N. signaled its approval of a particular application, OFAC automatically issued a U.S. license to the approved applicant to perform OFF contracts.

In a number of instances, within the 661 Committee the United States objected to various persons and entities that had been approved by other countries to obtain oil contracts with Iraq.¹⁶⁹ In 2001, as the United States became increasingly concerned that intermediary companies were being used by Iraq as conduits for illegal surcharges, the United States began to urge the U.N. 661 Committee to impose more stringent requirements for companies seeking Iraqi oil contracts, such as additional financial and registration requirements. The U.S. proposals were objected to, however, by other 661 Committee members, including Russia. One State Department cable, written in June 2001, reported:

¹⁶⁶ See 31 CFR § 575 (Subpart E).

¹⁶⁷ Subcommittee interviews of OFAC officials (4/27/05) and (5/5/05).

¹⁶⁸ Subcommittee interview of U.N. Oil Overseer (5/3/05).

¹⁶⁹ See, e.g., Subcommittee Staff Report on Oil Allocations Granted to the Russian Presidential Council (5/17/05), at 4.

“RUSSIA OPPOSED SETTING INTERNATIONAL CRITERIA FOR COMPANIES ELIGIBLE TO PURCHASE IRAQI OIL AND MAINTAINED THAT NATIONAL MEASURES WERE ADEQUATE TO WEED OUT COMPANIES PAYING THE SURCHARGE.”¹⁷⁰

This cable also stated that the “national measures” taken to date had clearly been insufficient, as the surcharges were continuing:

“THE U.S., UK, NORWAY AND IRELAND ARGUED THAT COLLECTIVE MEASURES WERE NECESSARY. NATIONAL MEASURES, ON WHICH THE SYSTEM RELIED AT PRESENT, WERE CLEARLY NOT SUFFICIENT SINCE IRAQ CONTINUED TO COLLECT SIGNIFICANT SURCHARGE.”¹⁷¹

Despite the U.S. State Department’s awareness that national measures taken to date had been insufficient to stop the Iraqi surcharges, the United States took no action to ensure its own enforcement office, OFAC, strengthened its oversight efforts. Instead, OFAC continued its minimal, ministerial approach to OFF oversight.

As indicated earlier, soon after the illegal surcharges began, they became a major topic at the United Nations and U.N. 661 Committee. They were also the subject of multiple media stories, industry articles, and academic analysis. For example, in early February 2001, the Middle East Economic Survey (MEES), a respected source of information on Middle Eastern energy issues, reported U.S. refiners were “buying the overwhelming majority of Iraqi oil exports,” mostly through small companies and traders. The MEES noted that the U.S. companies were demanding written assurances that no surcharges had been paid on the oil, but also stated “Major consuming countries are turning a blind eye to Iraq’s efforts to impose the surcharge, perhaps because Iraqi oil supplies are needed in order to help bring world oil prices down.”¹⁷²

On Sunday, February 18, 2001, a column in a major Washington newspaper expanded on the MEES analysis and explicitly identified intermediary companies in the Iraqi oil trade as the likely source of surcharge payments.¹⁷³

“Baghdad’s take from [oil sales to Jordan, Turkey, Syria, and through the Persian Gulf] adds up to more than \$1 billion a year. But this illicit loot wasn’t enough for Saddam,

¹⁷⁰ Unclassified State Department cable (6/5/01), USUNN01314.

¹⁷¹ *Id.* It is perhaps worth noting that, by 2001, U.S. companies were no longer applying for or obtaining OFF contracts to buy Iraqi oil, due to the Iraqi policy barring direct contracts to U.S. interests. Thus, U.S. proposals would have affected only non-U.S. companies.

¹⁷² “US Snaps Up Most Iraqi Oil Exports,” Agence France Press (2/5/01).

¹⁷³ “Iraq Sanctions Ought to Target Saddam’s Helpers,” by David Ignatius, Washington Post (2/18/01).

and last November he got greedy. Baghdad announced that effective Dec. 1, companies buying Iraqi crude through the official 'oil-for-food' program would have to pay a 50-cent-per-barrel surcharge to a separate account controlled by the regime. Saddam apparently thought that with a tight oil market and rising prices, he could squeeze the major companies and force them to pay what amounted to a private kickback, according to Randa Takleddine, who covers oil for the Arabic daily Al Hayat.

But to Baghdad's surprise, TotalFinalElf and some other big companies that have been friendly with Iraq refused to pay. Official Iraqi exports plummeted – from about 2.1 million barrels per day in November to 1.2 million in December. As the oil market softened, the Iraqis cut the surcharge – first to 40 cents a barrel and then last month to between 25 and 30 cents. But still the majors wouldn't play – at least not directly.

In the shadows of the oil-trading world, however, a weird system has grown up over the past two months. Several dozen unknown companies have emerged as the main buyers of Iraqi crude. Based in places such as Belarus, Liechtenstein, and Malaysia, these appear to be "nameplate" companies that exist only on paper. They apparently pay the surcharges and then sell Iraqi crude to established oil-trading firms. Giant oil companies then buy the Iraqi crude from the traders. The majors demand assurances that the traders haven't paid any surcharge, but as one analyst notes, 'some of these traders will sell their mother for a buck.'

And who's indirectly buying the Iraqi oil? American consumers, that's who. As of February, notes Khadduri's newsletter, 'US refiners . . . are buying the overwhelming majority of Iraqi oil exports.' The newsletter explains that 'ExxonMobil, BP and Texaco have taken the initiative to acquire oil through third parties,' while TotalFinalElf and some other European and Japanese majors 'are still shying away from Iraqi oil.'

The lesson for the Bush administration is that Saddam's regime is so hungry for cash that it's taking risks—and making mistakes."

This article broadcast the same surcharge analysis being discussed within the U.N. 661 Committee to a wider U.S. audience, but no U.S. agency responded by initiating an analysis to determine whether U.S. companies like Bayoil were financing illegal surcharges at the expense of American consumers.

The United States did take some general steps. For example, a week after the U.N. 661 Committee issued a directive warning all OFF participants not to pay surcharges on OFF contracts, OFAC issued similar guidance to OFAC licensees, warning them not to pay surcharges into Iraqi-controlled accounts.¹⁷⁴ A few months later, in April 2001, the U.S. State

¹⁷⁴ See OFAC "Guidance on Payments for Iraqi-Origin Petroleum Pursuant to Licensed Purchases," (12/22/00).

Department sent a similar warning to about two dozen U.S. companies active in the Iraqi oil trade.¹⁷⁵

But aside from these general warnings, the Subcommittee Minority Staff has been unable to identify any action taken by any U.S. agency to determine whether U.S. companies were paying or financing illegal Iraqi surcharges. For example, neither OFAC nor the State Department ever conducted a survey or asked U.S. oil companies or traders for information about who was selling them Iraqi oil, what pricing mechanisms were being used, and whether they had been asked for or were aware of surcharges or commissions being paid on that oil. Despite a massive influx of Iraqi oil into the United States during the surcharge period – a two-year period during which U.S. companies bought a significantly greater percentage of Iraq’s oil than in past years¹⁷⁶ – neither OFAC nor the State Department made any specific inquiries to U.S. oil companies or traders that might have prevented or discouraged them from buying oil on which surcharges had been paid.

Failure to Examine Licensed Activity. The United States not only failed to conduct any affirmative inquiry into possible U.S. company involvement with the payment of illegal surcharges, the United States also failed to make use of its licensing authorities to obtain information about transactions in Iraqi oil.

OFAC is, again, the key office, since it was responsible for issuing the licenses allowing U.S. persons to engage in business transactions with Iraq. OFAC established detailed licensing procedures which applied to not only U.S. persons seeking to buy oil directly from Iraq, but also U.S. persons seeking to join efforts by non-U.S. persons to buy this oil.¹⁷⁷

OFAC’s regulations allowed U.S. persons, under a general license, to enter into contracts and contract negotiations with the government of Iraq to purchase Iraqi oil, provided that contract performance was made contingent upon OFAC approval of the contract itself.¹⁷⁸ That

¹⁷⁵ See “State Department urges US oil firms to shun ‘tainted’ Iraqi crude,” Agence France Presse (4/23/01). The State Department has told the Subcommittee that, to date, it has been unable to locate a copy of the document it sent out on this date.

¹⁷⁶ See Table 5.

¹⁷⁷ OFAC regulations stated that if a U.S. person wanted to engage in transactions incidental to UNSCR 986 activities by a person not from the United States or Iraq – a so-called “third-country national” – that activity would also require specific OFAC licensing. 31 CFR § 575.418; see also 31 CFR §§ 575.523(d), 575.524(d), 575.525(d).

¹⁷⁸ 31 CFR § 575.522(a) (1997).

meant U.S. persons were allowed to participate in contract negotiations with Iraq, provided they obtained U.S. and U.N. approvals before actually buying any oil.¹⁷⁹

In theory, the U.S. licensing process provided multiple opportunities for contract oversight. Prospective contractors had to get a contingent contract to buy oil from the Iraqi government; submit it to OFAC for preliminary approval; if OFAC approved, OFAC sent the contract to the State Department to determine whether the proposed contract was consistent with U.S. foreign policy; if the State Department approved, the contract was sent to the United Nations; and if the United Nations approved, the contract was sent back to OFAC which then issued a specific license to buy the oil.¹⁸⁰ In practice, few U.S. companies applied for a license to buy oil from Iraq, due to the Iraqi policy against issuing OFF contracts directly to American companies. Instead, most bought Iraqi oil indirectly, from someone other than the Iraqi government.

In the few cases where U.S. companies did apply for a license to buy Iraqi oil, OFAC told the Subcommittee that OFAC did not perform any substantive review of the contract terms, examine any pricing issues, or conduct any inquiry into the parties involved before issuing a license. In most instances, according to OFAC officials, a person who had obtained a contract with Iraq for the purchase of oil did not even submit a copy of that contract to OFAC when applying for a specific license to execute the contract. Instead, OFAC told the Subcommittee that its role in the process was purely ministerial, consisting primarily of forwarding the licensing application, with appropriate paperwork, to the U.S. State Department to determine whether the proposed contract was consistent with U.S. foreign policy. The State Department apparently also provided minimal oversight of OFF contracts to buy oil from Iraq.¹⁸¹ Instead, oil contracts were forwarded to the United Nations, and it was left up to the United Nations to determine whether the terms of a specific contract were appropriate under the U.N. sanctions program.

OFAC also performed a cursory review of license applications submitted by U.S. persons seeking to assist third-party nationals in buying oil from Iraq. OFAC told the Subcommittee

¹⁷⁹ Although U.S. persons could negotiate with Iraq for an oil contract, they were not allowed to travel to Iraq for that or any other purpose, without a separate OFAC license.

¹⁸⁰ Section 575.523(a) of the OFAC regulations provided that specific licenses may be issued on a case-by-case basis to permit U.S. persons to purchase oil from the Government of Iraq, and that such licensees were authorized to perform contracts approved by the U.N. 661 Committee in accordance with its terms. The requirement for a specific OFAC license was intended to serve two functions: first, it authorized the U.S. person to perform the OFF contract, and, second, it informed the United Nations that such U.S. person was authorized to perform that contract.

¹⁸¹ This lack of substantive review within the executive branch of OFF contracts to buy oil from Iraq is in contrast to extensive State Department review of OFF contracts to sell humanitarian goods to Iraq. The United States reviewed virtually all OFF contracts seeking to sell goods to Iraq in order to prevent the sale of prohibited military or dual use equipment, put holds on and objected to many of those contracts, and was effective in preventing the Iraqi government from rebuilding its military or acquiring weapons of mass destruction.

that, when processing these license applications, OFAC did not review or inquire into the identity of the third-country national or the nature of the transactions. In addition, according to OFAC, this license could be used to provide indirect assistance to third-party nationals who were not even named in the license. Thus, for example, when Bayoil USA obtained a license to assist its Bahamas affiliate to buy Iraqi oil, OFAC allowed Bayoil USA to use the same license to indirectly assist -- through Bayoil Bahamas -- other, unidentified third party nationals such as Italtech and various Russian companies which were also seeking to buy Iraqi oil. This approach meant that a license for a U.S. person to assist a third-country national to buy oil from Iraq was not used by OFAC to gather information about Iraq exports or U.S. business dealings in Iraq, but functioned simply as a pro forma registration requirement.

Failure to Examine Bayoil's Activities. The United States also failed to exercise any oversight of Bayoil. Bayoil was well known during the surcharge period as an active participant in the Iraqi oil trade and a primary supplier of Iraqi oil imports to the United States. In fact, Bayoil advertised its role in the correspondence it was sending to a variety of U.N. and U.S. officials on Iraqi oil pricing issues, as explained earlier. In addition, several oil trade press articles discussing the surcharge issue also explicitly identified Bayoil as a company which was then actively buying and selling Iraqi oil.¹⁸²

Not only that, on two occasions in 2001 and 2002, the U.N. Oil Overseers specifically asked the U.S. State Department to help them obtain certain information from Bayoil related to specific oil shipments. The State Department, in turn, referred both matters to OFAC. OFAC never responded to the State Department's request, and the State Department never provided the U.N. Oil Overseers with the requested information on Bayoil. These inquiries also never triggered any substantive review of Bayoil by either OFAC or the State Department.

The first U.N. inquiry took place in the summer of 2001, after the U.N. Oil Overseers obtained information indicating that a number of companies, including Bayoil, may have been "transshipping" Iraqi oil in violation of OFF program requirements. Under the OFF program, Iraqi oil was priced according to the final destination of the oil. Generally, oil sent to the U.S. was priced less than oil destined for Europe, in part to compensate for the additional cost of shipping it across the Atlantic Ocean. This pricing policy was in accordance with industry practice for other types of Middle Eastern oil. The U.N.-approved contracts all contained a clause that prohibited a buyer of Iraqi oil from "transshipping" the oil -- that is, unloading the oil at any destination other than the designated final destination, and then putting it on a different ship. This prohibition on transshipment was meant to prevent cheaper-priced Iraqi oil that had been marked for North America from being unloaded in Europe instead, thereby undercutting legitimate purchasers in Europe and reaping unjustified profits for the seller. Transshipment was

¹⁸² See, e.g., "Iraq Dodges UN in \$70 Million Crude Export Bid," The Oil Daily (10/5/01); "Little Progress at UN on Dispute over Iraqi Oil Surcharge," Platt's Oilgram News (12/15/00); "UN Rejects Some New Iraqi Crude Prices," Platt's Oilgram News (7/12/01).

a particular concern in the OFF program, as the excess profits resulting from the switching of a destination could be a source of funds to pay illegal surcharges to the Iraqi government.¹⁸³

After hearing several reports of transshipments, the U.N. Oil Overseers attempted to contact the companies involved to determine whether the actual destination of the crude oil was consistent with the designated destination in the U.N.-approved contract. Among these companies, Bayoil was particularly aggressive in refusing to provide the requested information.¹⁸⁴

The Overseers were concerned about several specific shipments in which Bayoil unloaded oil marked for North America at the Red Sea entrance of the SUMED oil pipeline, a pipeline which runs parallel to the Suez Canal. The Overseers wanted to know whether this transshipment, which violated Bayoil's U.N.-approved contracts, resulted in a change of destination of the oil from North America to Europe or Africa, or whether Bayoil had instead re-loaded the oil in the Mediterranean and actually shipped it to North America.¹⁸⁵

Bayoil initially refused to provide any information in response to the Oil Overseers' request. In a letter addressed to the Chairman of the 661 Committee, Bayoil's president complained of the "compelling evidence of a long standing prejudice toward myself and the company I am affiliated with." He stated "the documentation request is completely outside the [Oil Overseer] Mr. Tellings's authority and mandate under the program." He informed the 661 Committee he would "respectfully decline Mr. Telling's request for information outside the authority of this office, while maintaining our accountability to all our suppliers, including SOMO, with respect to meeting contractual terms and conditions."¹⁸⁶

In a July 14, 2001, letter to the U.N. Overseers, Bayoil wrote that it was "perplexed" by the Overseers' request for information about the transshipments, but "exclusively as a matter of courtesy" would nonetheless provide certain information "in the spirit of cooperation." Bayoil then provided, for each of the shipments, the vessel name, quantity of oil loaded, bill of lading

¹⁸³ Subcommittee interview of U.N. Oil Overseer (5/5/05).

¹⁸⁴ Id.

¹⁸⁵ Transshipment of oil through the SUMED pipeline for oil aboard tankers that were too large to pass through the Suez Canal was a technique used by shippers of oil from the Middle East with North American destinations to avoid having to sail around the Cape of Good Hope; this shortcut could reduce the journey to North American by about twelve days. The Oil Overseers desired more information so they could determine whether the transshipment was due to a legitimate desire to save costs or some other motive, including the need to find a way to accommodate Iraq's surcharge demands. Id. All of the shipments involved were shipments for which Iraq assessed surcharges.

¹⁸⁶ Memorandum dated 6/25/01, from Bayoil to the U.N. 661 Committee Chairman, Bates BAY04-01301. A Bayoil document labeled "Draft" indicates that Bayoil may have made the same complaints about the Oil Overseers to the Russian mission to the U.N. Draft Memorandum dated 6/25/01, from Bayoil to the U.N. Mission of the Russian Federation, Bates BAYOILUSA 015391.

date, loading port, destination, and routing to the final destination (i.e. through the SUMED or around the Cape of Good Hope).¹⁸⁷ This information, however, was not responsive to the Overseers' request for documentation showing the actual, final destination of the oil aboard those ships.

As a result, the U.N.'s Office of Iraq Programme contacted the U.S. Mission to the United Nations and asked the United States to require Bayoil to provide the information to the United Nations. In turn, on August 17, 2001, the State Department formally requested OFAC to "contact Bay Oil and urge that the company respond quickly and completely to the Office of the Iraq Program's request for information."¹⁸⁸

OFAC records indicate that OFAC did not act on the State Department's request for eight months. It was not until April 23, 2002, that OFAC responded to the State Department's request by writing to Bayoil to request "a complete report in writing concerning your transactions conducted pursuant to the OFAC Licenses or otherwise subject to the provisions of the Reporting Regulations."¹⁸⁹ OFAC's request to Bayoil did not include any request for the specific information that had been sought by the United Nations. OFAC officials told the Subcommittee that OFAC personnel recalled that the matter involved suspected surcharges, but did not believe they had the authority to request any information other than regarding "licensed activities."¹⁹⁰

In May 2002, Bayoil responded that it no longer contracted directly with Iraq and so had no licensing activity to report.¹⁹¹ Since it had not been asked for specific shipment information, Bayoil did not supply any of the information that had been sought by the United Nations.

OFAC did not submit Bayoil's response either to the State Department or to the United Nations. Instead, OFAC telephoned Bayoil to request "authorization from Bayoil to disclose the Report to the United States Department of State and to the United States Mission to the United

¹⁸⁷ Memorandum dated 7/14/01, from Bayoil to the U.N. Overseers, Bates BAYOILUSA015393.

¹⁸⁸ Memorandum dated 8/17/01, from Bruce Williamson, Acting Director, Office of Economic Sanctions Policy, to R. Richard Newcomb, Director, OFAC.

¹⁸⁹ Letter dated 4/23/02, from David H. Harmon, Chief, Enforcement Division, OFAC, to Bayoil, Inc.

¹⁹⁰ Subcommittee interview of OFAC officials (5/5/05).

¹⁹¹ The May 2002 letter from Bayoil stated that "it and its affiliates engaged in only one transaction involving Iraqi crude oil pursuant to the OFAC Licenses." The response also stated, "Bayoil believes that its failure to be offered any oil contract allocations after 1997 was due to an Iraqi government policy not to sell its crude to any entity with a possible U.S. interest. Seeing no apparent change in this Iraqi policy, Bayoil determined that continuing to obtain OFAC licenses in the hope of a future contract was a waste of its time and resources, and thus no further licenses were requested" In light of Bayoil's extensive business dealings with Iraq, however, this response was highly misleading. Letter dated 5/22/02, from Bayoil's legal counsel, Dickstein, Shapiro, Morin & Oshinsky, LLP, to OFAC.

Nations.”¹⁹² On July 2, 2002, Bayoil wrote to OFAC to authorize the transmission of the Report, “subject to the condition that such Report not be disclosed by Recipients to any other person or entities (including other U.N. Missions) without Bayoil’s prior consent.”¹⁹³ According to OFAC officials interviewed by the Subcommittee, this latter condition would have prevented the transmission of the Report to U.N. officials. But according to OFAC officials interviewed by the Subcommittee, the information was never even provided to the State Department. OFAC personnel prepared a document to forward Bayoil’s response to the State Department but never actually transmitted the document. Hence, the U.S. never responded to the U.N.’s request for assistance in obtaining information about the U.N.’s concerns that Bayoil had violated the terms of the U.N.-approved contracts. Significantly, a violation of the terms of the U.N.-approved contract would also have constituted a violation of the OFAC license under which the contract was authorized.

Meanwhile, the Oil Overseers, acting under the authority of the U.N. 661 Committee and the Security Council, continued to demand the information directly from Bayoil. On November 28, 2001, the Overseers wrote to Bayoil to “restate the information we require.” Specifically, the Overseers sought “the relevant logistical information” about two specific shipments by Bayoil, one that had been purchased from Italtch, and another that had been purchased from the Russian company Rusnafteimpex. The Overseers told Bayoil, “As nearly six months have now passed since we first requested this information, we would like to advise that, in absence of a prompt response, we have to inform the United Nations Sanctions Committee of this situation.”¹⁹⁴

On January 10, 2002, the Oil Overseers again wrote to Bayoil. In this correspondence, the Overseers wrote:

“Our understanding on this issue is as follows. Both cargoes of oil were bought by Bayoil Supply and Trading . . . and that this company was involved in the shipment of this oil to its ultimate destinations. The clause in the SOMO oil purchase contract (letter of credit), which prohibits transshipment, was not adhered to and this oil was pumped via the SUMED pipeline into other vessels.

Although we have no reason to believe that any violation of destination restrictions has taken place, you will appreciate that monitoring of this is difficult in cases like this where the oil has been transshipped.

Albeit that some information has been provided, this remains incomplete. In order to eliminate any doubt and to satisfy that no money has been withheld from the UN-Iraq

¹⁹² Letter dated 7/2/02, from Bayoil’s legal counsel, Dickstein, Shapiro, Morin & Oshinsky, LLP, to OFAC.

¹⁹³ Id.

¹⁹⁴ Fax dated 11/28/01, from the U.N. Oil Overseers to Bayoil, U.N. Security Council document S/AC.25/2001/OIL/1360.

account, we urge you again to supply us with all the relevant information on this matter. Specifically, for the aforementioned vessels we require discharge dates and discharge volumes.”¹⁹⁵

Once again, the Oil Overseers threatened, if the information was not forthcoming, to inform the Director of the Office of Iraq Programme “for the purpose of briefing the 661 Sanctions Committee.”

Bayoil again responded with charges of bias and prejudice against the Oil Overseers. Bayoil wrote it was “surprised by the continued request directly to Bayoil relating to specific detailed information,” and was “greatly concerned” that the Oil Overseers were “on some kind of mission to find fault with our Company.” It charged the Overseers with “apparent prejudice toward Bayoil,” and felt “compelled” to respond to the Overseers’ “over-zealous efforts to audit our company’s indirect participation in the Oil Sale program.” Bayoil stated that with respect to the Overseers’ “ultimatum in connection with the documentation requested,” the company did “not feel currently obligated to provide such information under such circumstances, particularly as the information requested is likely to be used out of context.”¹⁹⁶

In January 2002, the U.N. Oil Overseers apparently made a second request that followed the same path through the U.S. State Department to OFAC. OFAC has no records associated with this second request and was unable to provide the Subcommittee Minority Staff with any information about it. There is no evidence that OFAC engaged in any effort to obtain the requested information. OFAC also did not obtain any other reports from Bayoil on its business dealings in Iraq.¹⁹⁷

Ultimately, the Oil Overseers never were able to obtain the information they sought from Bayoil. Bayoil refused to provide the information, and the Overseers’ attempts to work through

¹⁹⁵ Fax dated January 10, 2002, from the Oil Overseers to Bayoil, U.N. Security Council document S/AC.25/2001/OIL/1382.

¹⁹⁶ Memorandum dated 1/24/02 from Bayoil to UN Oil Overseers, Bates BAYOILUSA015308-10.

¹⁹⁷ On February 2, 2005, Chairman Coleman and Ranking Member Levin wrote to OFAC to request various information about OFAC’s licensing requirements and activities; the letter included a request for “all reports submitted by Bayoil pursuant to its OFAC licenses.” OFAC’s response, dated March 24, 2005, stated: “The licenses issued to Bayoil required that the licensees keep full and accurate records of their transactions and be prepared to make them available for examination upon demand for at least five years from the date of each transaction rather than file periodic reports. Accordingly, Bayoil did not file periodic reports.” OFAC’s response to the Subcommittee thus did not include any reports.

In addition, when the Subcommittee asked OFAC to provide a copy of all documents related to Bayoil, OFAC initially failed to identify and provide copies of the April 2002 letter from its enforcement chief and Bayoil’s May 2002 response. Instead, the Subcommittee Minority Staff located copies of these documents in Bayoil’s files. When the Subcommittee Minority Staff provided copies to OFAC, OFAC confirmed finding copies of the documents in the files of one of its enforcement investigators. OFAC stated the omission was inadvertent and resulted from an antiquated recordkeeping system that did not link related licensing and enforcement files.

the U.S. Mission at the U.N. so that U.S. authorities would require Bayoil to provide that information were unsuccessful.

When asked why OFAC did so little work in light of the OFF surcharge issue and Bayoil's prominence in the Iraqi oil trade, OFAC officials offered several explanations. OFAC officials told the Subcommittee that, in 2001, it had only 3 or 4 individuals working on enforcement matters for all 30 sanctions programs it administered. Among these programs, OFAC told the Subcommittee it had assigned the OFF program a low enforcement priority since it was perceived as a U.N. responsibility. In addition, OFAC explained that its normal enforcement activity consisted of examining licensing violations and evaluating questionable financial transactions, not ferreting out the type of contract corruption associated with the payment of illegal surcharges. With respect to the second request in 2002, OFAC explained that, after the 9-11 attack on the United States in the fall of 2001, it had instructed its enforcement personnel to set a priority on investigations related to terrorism and did not devote many resources to OFF-related inquiries. OFAC indicated that, if faced with the same circumstances today, it would make the same decision to devote minimal enforcement efforts to OFF licensing violations, in light of its limited resources and many other responsibilities.

F. LESSONS LEARNED

In a two year period from September 2000 to September 2002, Bayoil bought more than 200 million barrels of Iraqi oil for which at least \$37 million in illegal surcharges were paid to the Hussein government in violation of U.N. sanctions and the OFF program. Bayoil then sold this oil to U.S. oil companies which, in turn, sold refined petroleum products, like gasoline and heating oil, to American consumers.

Over half of Iraqi oil sold during the surcharge period was imported into the United States – 525 million barrels of oil on which illegal surcharges totaled \$118 million. These surcharge payments not only provided hard currency to Iraq outside of U.N. control, they fostered the perception that the Oil-for-Food program was susceptible to corruption.

Although it took two years, the United Nations and its member countries did put a stop to Iraq's demands for illegal surcharges, primarily through OSP pricing policies that made it uneconomical for companies to buy Iraqi oil that included surcharge costs. The State Department's U.S. Mission to the United Nations, in particular, played an active and creative role in using OSP pricing to stop the surcharges and in standing firm in the face of opposition from some U.S. oil companies and some other countries.

In contrast, the United States did not exercise meaningful oversight to detect or stop particular persons and companies within its jurisdiction from paying the illegal surcharges demanded by Iraq. Under the United Nations resolutions imposing the trade embargo on Iraq and then the Oil-for-Food program, it was the responsibility of member States to implement and enforce the sanctions program with respect to their nationals. As Ambassador Kennedy testified:

The effectiveness of the sanctions regime against Iraq and the integrity of the oil-for-food program depended completely on the ability and willingness of member states to implement and enforce the sanctions. In this regard, member states had the primary responsibility for ensuring that their national companies and their citizens complied with the states' international obligations.¹⁹⁸

Despite widespread knowledge that intermediary companies like Bayoil were the most likely conduits for illegal surcharge payments to Iraq, Bayoil received minimal attention from the U.S. agency charged with enforcing U.S. sanctions on Iraq. OFAC's failure to monitor OFF licensees in general or conduct an inquiry into whether U.S. companies were involved in paying illegal surcharges appears to have stemmed primarily from two factors: a fundamental misconception of its enforcement responsibilities as opposed to those of the United Nations, and the limited resources OFAC had to devote to sanctions enforcement. Both factors appear to have contributed to Bayoil's escaping OFAC scrutiny during the height of the surcharge period, despite its prominence as a U.S. importer of Iraqi oil, its role as an intermediary company susceptible to surcharge demands, and inquiries from U.N. Oil Overseers raising questions about the company's OFF activities.

Lessons to be learned from the OFF surcharge scandal are at least fourfold. The first lesson is that international sanctions programs are subject to corruption, and attention and resources need to be devoted at the beginning of any sanctions program to recognizing this vulnerability, assigning clear responsibilities for anti-corruption oversight, and devoting resources to addressing this issue. Second, the United States, through OFAC, must recognize its responsibility to police sanctions compliance by U.S. persons, even for programs overseen in part by the United Nations. Third, OFAC should devise anti-corruption oversight strategies that will detect and prevent U.S. persons from contributing to the corruption of a sanctions program. Fourth, the Administration and the U.S. Congress should devote adequate resources to enable OFAC to exercise meaningful oversight of U.S. persons' compliance with sanctions requirements, including through anti-corruption measures, affirmative investigations, and enforcement actions.

¹⁹⁸ "The United Nations' Management and Oversight of the Oil-for-Food Program," hearing before the U.S. Senate Permanent Subcommittee on Investigations (2/15/05), testimony of Ambassador Patrick F. Kennedy.

III. KHOR AL-AMAYA OIL SHIPMENTS

A. INTRODUCTION

Saddam Hussein's corruption of the Oil-for-Food program through the imposition of illegal surcharges on the sale of Iraqi oil is a serious concern, but his regime obtained far greater illicit income through other schemes, some with the knowledge and tacit approval of the United States and other members of the U.N. Security Council.¹⁹⁹ For example, although Iraq obtained about \$228 million from the illegal surcharges, its open and direct oil sales to Jordan, Turkey, Syria, and Egypt outside of the OFF program generated over \$8 billion for the regime.²⁰⁰ The Iraq Survey Group estimated that smuggling, which it euphemistically termed "Border and Private Sector Cash Sales," provided another \$1.2 billion to the Hussein regime during the sanctions period.

This section examines the largest single instance of an illicit oil sale during the sanctions period in which the oil was transported by ship out of Iraq. These illegal oil shipments netted more than \$53 million in hard currency for the Hussein regime on the eve of the American invasion in March 2003, and took place with the full knowledge and acquiescence of the United States government.

Generally, the United States aggressively sought to prevent the illegal transport of Iraqi oil by vessels traveling through the Persian Gulf. The United States provided the bulk of the naval resources and personnel for the U.N.'s Maritime Interdiction Force (MIF), which patrolled the Persian Gulf to prevent oil shipments in violation of U.N. sanctions.²⁰¹ The MIF routinely boarded vessels in the Persian Gulf to inspect cargoes and monitor sanctions compliance. Thousands of such MIF inspections were performed during the sanctions period. Vessels caught with illicit oil were diverted to ports in Bahrain and the UAE, the cargoes were confiscated and sold on the open market, and the vessels themselves were, in many cases, seized and auctioned.²⁰² Most of the illicit oil sales during the sanctions period were carried out through the

¹⁹⁹ For example, Iraq's open sales to Jordan, Turkey, Egypt, and Syria occurred with the full knowledge of the United States. See prior Subcommittee hearings on the Oil-for-Food program (11/15/04 and 2/15/05).

²⁰⁰ See Comprehensive Report of the Special Advisor to the DCI on Iraq's WMD (9/30/04) (hereinafter cited as "ISG Report"), Regime Finance and Procurement, pp. 19-28. In interviews with the Subcommittee, a former high-ranking official in the Hussein regime stated that, in his opinion, it was "ridiculous" for Iraq to expend so much energy and effort to obtain a few cents per barrel in illegal surcharges on oil sold through the OFF program, for a total amount of "only about \$200 million," when much greater revenues could be obtained from open or illicit oil sales. Subcommittee Interview of Senior Hussein Regime Official No. 1 (4/20/05).

²⁰¹ The MIF is often incorrectly referred to as the "Multinational Interception Force."

²⁰² See, e.g., unclassified U.S. State Department cable dated 6/19/97, re "Iraq Sanctions Enforcement: Update to Shipping Procedures in the Arabian Gulf," 1997STATE1200071 (providing MIF rules for inspecting ships). See also, e.g., "Seized Ships Reduced to Scrap," *Gulf News* (6/26/02).

use of small barges and ships where the oil storage tanks could be disguised from the casual observer or observer-at-a-distance.

A prominent Iraqi businessman claimed in interviews with the Subcommittee to have been a major smuggler of oil out of Iraq through the Persian Gulf.²⁰³ The interviewee asserted his smuggling had been an act of patriotism, since the money Iraq obtained from the smuggled oil was used to purchase food, medicine, and other goods for the Iraqi people. He stated that the MIF had been vigilant in the Persian Gulf, so he had directed his barges into Iranian territorial waters, where the MIF was not authorized to operate. For the privilege of transiting in Iranian waters for this purpose, he stated that he paid Iranians millions of dollars. The total amount of oil smuggled through the Persian Gulf, according to the interviewee, by all smugglers, over the dozen years of the sanctions period, amounted to approximately 15 million barrels.

Although the United States, through the MIF, had vigilantly patrolled the Persian Gulf for more than a decade to thwart the illicit transport of Iraqi oil in 10,000- and 20,000-barrel barges, in a period of several weeks before the 2003 invasion of Iraq, the United States acknowledged and permitted seven large seagoing oil tankers to load millions of barrels of oil in violation of U.N. sanctions and then pass unfettered through the Persian Gulf. The Subcommittee Minority Staff's investigation has uncovered new details about these shipments of oil from the Khor al-Amaya port in Iraq, but significant questions still remain as to why the United States acquiesced in such a blatant violation of U.N. sanctions.

Despite the explanations offered by some of the entities involved – that the Khor al-Amaya shipments were authorized under the Iraq-Jordan trade protocol, or were intended to establish a floating strategic oil reserve for Jordan due to the impending war in Iraq – neither the United Nations or the United States ever issued any documentation certifying that the oil had been legally obtained in accordance with U.N. sanctions. The absence of any such U.N. or U.S. documentation effectively prevented this oil from being sold to U.S. persons or imported into the United States.

B. THE IRAQI PORTS OF MINA AL-BAKR AND KHOR AL-AMAYA

The Iraqi ports of Mina al-Bakr and Khor al-Amaya are separated by about 5 to 7 nautical miles on the southern tip of Iraq on the Persian Gulf. On a clear day, with the use of binoculars, large tankers loading oil at Khor al-Amaya can be spotted from Mina al-Bakr.

During the sanctions period, Mina al-Bakr was the only Iraqi port in the Persian Gulf where U.N.-authorized exports of Iraqi oil under the Oil-for-Food program could be loaded onto seagoing tankers. From the oilfields in southern and central Iraq, oil was transported by pipeline to the Mina al-Bakr terminal. Port personnel then directed the oil from the pipeline into large storage tanks on the seagoing vessels. Oil tankers at the al-Bakr terminal were loaded under the supervision of U.N. inspectors, who ensured the amounts loaded onto the tankers conformed to

²⁰³ Subcommittee interview of Iraqi Detainee No. 1 (4/21/05).

contracts issued under the OFF program. A Dutch inspection company, Saybolt, performed this function under contract with the United Nations.

During the 1970s, Khor al-Amaya had also functioned as a port that loaded Iraqi oil into seagoing vessels, using a separate branch of the same pipeline that served Mina al-Bakr, but its facilities and oil equipment were destroyed during the Iraq-Iran war, and it stopped functioning as a port in 1980. During the latter 1990s, Iraq submitted a number of contracts to repair the Khor al-Amaya terminal to the U.N. 661 Committee for approval, but the United States put holds on those contracts. Beginning in 2000, however, the United States began to allow selected contracts for repairing Khor al-Amaya to be approved; by 2002 the United States no longer placed any holds on these contracts. By early 2003, Khor al-Amaya had essentially been rehabilitated, but Iraq did not have U.N. approval to use the Khor al-Amaya facility for OFF exports. Without U.N. approval, any loading of oil from Khor al-Amaya would have violated the U.N. sanctions program against Iraq.

C. THE 2003 KHOR AL-AMAYA INCIDENT

1. Iraq Approves Sending Oil Tankers to Khor al-Amaya

According to a former high ranking official in the Hussein regime interviewed by the Subcommittee, sometime in late 2002 the Iraqi Ambassador in Jordan telephoned the Iraqi Oil Minister to inform him that a person “will come to visit you to buy oil.”²⁰⁴ According to this official, the Ambassador told the Oil Minister, “Please facilitate his mission.”

In December 2002 or January 2003, according to the interviewee, the individual mentioned by the Ambassador visited the Oil Minister who was then Samir al-Najim.²⁰⁵ The visitor allegedly told the Oil Minister that he wanted permission to buy oil from the port of Khor al-Amaya. According to the interviewee, the Oil Minister thought the visitor’s request was very strange, since al-Bakr was the only approved port for Iraqi oil exports, and he believed the American ships patrolling the Persian Gulf would certainly spot and stop any ship that tried to load oil in plain view at Khor al-Amaya. The Subcommittee was told that the visitor explained that he wanted to buy the oil from Khor al-Amaya because the oil from there would be “a very cheap price because it was a black market.”

According to the interviewee, when the visitor explained that the vessel to be loaded at Khor al-Amaya was a large tanker with a capacity of 750,000 barrels, the Oil Minister asked

²⁰⁴ Subcommittee interview of Senior Iraqi Official No. 7 (4/20/05). This official also told the Subcommittee that the person who visited the Iraqi Oil Minister to request approval for the Khor al-Amaya shipments could have been either Zeid Khorma “or his brother.” Subcommittee interview of Senior Iraqi Official No. 7 (4/17/05).

²⁰⁵ Mr. Najim had replaced Amir Rashid, who had retired at age 63, having served one year beyond the mandatory retirement age for Iraqi officials. Mr. Najim reportedly had little or no experience in the oil industry or oil trading.

how he was going to get by the American defenses. “Brother,” the interviewee recalled the visitor saying, “this is for the sake of the people who work for the defense of the United States. It will pass through safely.” The visitor then added, “We will pay cash if anyone stops us.”

The Oil Minister allegedly told the visitor he had to think about it overnight and seek approval. The Subcommittee was told that the Oil Minister telephoned Vice President Taha Yasin Ramadan that evening and informed him about the visitor’s request, including the visitor’s statement that the oil was “for the sake of the people who work for the defense of the United States.” The Subcommittee was told that the Vice President answered, “Let it go.”

In interviews with the Subcommittee, Vice President Ramadan confirmed that the Oil Minister had called him to request permission to load oil at Khor al-Amaya.²⁰⁶ Mr. Ramadan specifically recalled that he had approved the Khor al-Amaya shipments without hesitation. He also stated he was unaware of the final destination of the oil or any other details of the shipments.

The first loading of oil from Khor al-Amaya took place in mid-February 2003. As the Oil Minister had feared, it attracted immediate attention and, within days, the media began reporting that an oil tanker was lifting oil from Khor al-Amaya in violation of U.N. sanctions. According to the interviewee, the Oil Minister became angry, because the incident had become an international embarrassment for Iraq. Another former high-ranking Iraqi official told the Subcommittee that he would never have permitted the large-scale loading of oil at Khor al-Amaya, because he believed it was a “set-up” by the Americans to catch the Iraqis violating U.N. sanctions, which then could be used as a pretext for an American military attack on Iraq.²⁰⁷

The Subcommittee was told that, when the visitor returned to the Oil Minister’s office several days later, seeking approval for additional shipments from Khor al-Amaya, the visitor sought to reassure the Oil Minister by saying, “Listen, you will never hear about this in the press any more. The U.S. forces will make them be quiet.” The interviewee recalled there were several additional shipments from Khor al-Amaya, but did not remember the precise number.

In response to questions, the interviewee reported that Iraq sold the oil delivered through the port at Khor al-Amaya for a price between \$7 and \$9 per barrel.²⁰⁸ He told the Subcommittee that he pressed to increase the price to \$12 per barrel, but was unsuccessful. At the time, West Texas Intermediate crude was selling near \$30 per barrel, and grades of oil comparable to Basrah Light, the grade of Iraqi oil lifted from Khor al-Amaya, were selling at about \$23 per barrel. The Subcommittee was told that the Iraqis required the entire purchase price for a shipment to be wired to a bank in Jordan prior to commencing the loading of the oil at Khor al-Amaya.

2. Shipments of Oil from Khor al-Amaya

²⁰⁶ Subcommittee Interview of Vice President Taha Yasin Ramadan (4/18/05).

²⁰⁷ Subcommittee Interview of Senior Hussein Regime Official No. 1 (4/17/05).

²⁰⁸ SOMO documents state the price was fixed at \$50 per ton, which, based on the quality of crude oil involved, would amount to about \$7 per barrel. See Section 3, below.

Seven vessels loaded 7.7 million barrels of Iraqi oil from the Khor al-Amaya port in February and March 2003. This information is derived from multiple sources, including internal SOMO documents, actual shipping records, and information provided by companies involved in the loading, transport, and sale of the oil. This information is displayed in Table 3.

**Shipments of Oil from Khor al-Amaya
February to March 2003**

Vessel	Date Loaded (2003)	Amount of Oil Loaded (barrels)	Disposition	Payment Amount to SOMO
Argosea	Feb. 12 - Feb. 18	985,700	Aden, Yemen and Aqaba, Jordan	\$ 6,754,501.00
Eagle	Feb. 18 - Feb. 22	998,300	Ship-to-Ship transfer (STS) to Marine Pacific at Fujairah, UAE	\$ 6,890,063.00
Arcadian	Feb. 24 - March 1	1,633,100	STS to Empress Des Mer at Fujairah, UAE	\$ 11,155,102.00
Sea Victory	March 1	1,639,000	STS to Marine Pacific at Fujairah, UAE	\$ 11,277,266.00
Seacross II	March 10	1,020,100	STS to Marine Pacific at Fujairah, UAE	\$ 7,059,505.00
Mint Prosperity	Not available	1,374,500	STS to Empress des Mer at Fujairah, UAE	\$ 9,491,850.00
Endeavour 2	Not available	91,500	STS to Empress des Mer at Fujairah, UAE	\$ 631,737.00
TOTAL		7,742,200		\$ 53,360,024.00

Table 3. Records analyzed by the Subcommittee Minority Staff indicate seven shipments of oil from the port of Khor al-Amaya in violation of U.N. sanctions.

Data source: The Subcommittee has actual shipping records for the Argosea, Eagle, Arcadian, Sea Victory, and Seacross II. Internal SOMO documents provide loading data and payment amounts. Although the SOMO documents do not refer to specific vessels, based upon an analysis of all the available evidence, the Subcommittee Minority Staff has identified the vessels that it believes are most likely associated with particular loadings. Identification of the Mint Prosperity and Endeavour 2 as two of the seven ships containing oil from Khor al-Amaya is inferred from Bayoil documents identifying cargoes for sale by Jordan.

The evidence indicates that at least five of the seven of the ships loading oil from Khor al-Amaya were chartered by a Jordanian company called Millenium for the Trade of Raw Materials & Mineral Oils (“Millenium”), on behalf of the Jordan government’s Ministry of Energy and Natural Resources. In some instances, the Shaheen Business Investment Group

(“SBIG”), the parent of Millenium, participated in or controlled the chartering process. In an email, Millenium described its extensive commercial business interests in the Middle East as follows:

Very briefly, it [Millenium] is part of SBIG S.A. which is a holding company for a number of well established businesses in the Middle East involved in numerous international business ventures. We are, in addition, the dealers for BMW, Rover, Land Rover, and Mini vehicles in Jordan and our most recent activity entails building a CKD plant for Land Rover in Jordan. More importantly, we have been awarded by the Government of Jordan a license to erect and operate a 60,000 barrels per day crude oil refinery with a total cost of approximately \$600 million.²⁰⁹

Millenium contracted with a Connecticut-based shipbroker, Odin Marine, Inc. (“Odin Marine”), to locate and charter five oil tankers to carry Iraqi oil through the Persian Gulf.²¹⁰ Odin Marine, in turn, contacted other shipbrokers that knew of vessels which met Millenium’s specifications. The arrangement is similar to that of a typical real-estate transaction, in which both the buyer and the seller employ their own agents to facilitate the transaction. A distinctive feature of ship charters is that the charterer provides the mission and direction for the chartered ship, while the shipowner provides the vessel, crew, and captain.

Documents obtained by the Subcommittee indicate that Millenium chartered a total of seven vessels that actually loaded oil at Khor al-Amaya and several additional ships that did not actually lift oil from that port. For example, Odin Marine records indicate that Millenium chartered the M/T Violando in early February 2003, but the Violando never loaded or discharged any oil at Khor al-Amaya.²¹¹ A Bayoil document identified a total of eight vessels that were supposedly chartered by Millenium, including the Violando, and were either “fixed but not loaded” or “fixed and failed.”²¹²

Another Bayoil document notes that while some vessel owners had become hesitant to load oil from Khor al-Amaya after the press raised questions about the legality of the shipments, when no action was taken against the ships or their cargoes, the owners were beginning to “feel very comfortable” about contracting with Millenium.

“M/T Violando: as of today March 10, 2003 became free as Golandris told Millenium that they did not want to call at Khor Al Maya deeming the charter party null and void

²⁰⁹ Email dated 2/21/03, from Odin Marine Inc. to Petrian Shipbrokers, 7:42:59 AM.

²¹⁰ Millenium apparently also contracted with one or more non-U.S. shipbrokers, but the Subcommittee Minority Staff has been unable to identify those parties.

²¹¹ Email dated 3/24/05, from Odin Marine to Subcommittee, 9:45 AM.

²¹² Undated document produced by Bayoil, Bates BAY14-01878-79 (text says at one point it is providing information “as of today March 10, 2003” and later “just yesterday March 25th”).

because charterers did not produce legal documentation. M/T Violando was replaced with M/T Hua San, which after long negotiations also failed. After all the hype created by the Wall Street piece about these illegal activities nothing has been done and in the shipping community all owners feel very comfortable fixing with the Millenium. Finally, it is also clear that Millenium will continue seeking tonnage; just yesterday March 25th I heard through several sources that they are currently negotiating a very old Suezmax for about 35K day. Again what plans Millenium might have for the short-term is really unknown but it appears that Millenium is gearing up to continue the chartering of ships and now all NY brokers are showing them all possible tonnage that might come available in the Gulf.”²¹³

3. \$53 Million Payment for Khor al-Amaya Oil Shipments

Internal SOMO documents show that the government of Jordan paid more than \$53 million for the seven oil cargoes loaded at Khor al-Amaya. The payment records also provide additional detail about the shipments.

The key document is an internal SOMO “Oil Allocation Notebook” which includes an appendix providing a detailed accounting of the payments made for the Khor al-Amaya cargoes.²¹⁴ The appendix states that, during February and March 2003, two senior Iraqi officials, Taha Al-Gazarawi²¹⁵ and Minister of Oil Samir Abdul Aziz Al Najem, were instructed to allot seven shipments of oil to a Jordanian company called Al Alfiyah Company for the benefit of Akram Shaheen. Akram Shaheen was a co-owner of the Shaheen Business and Investment Group (SBIG), the parent company of Millenium.

The SOMO appendix states that the shipments were “outside the agreement of 13 stages,” meaning outside of the Oil-for-Food program, but part of the “Iraq/Jordan Protocol Agreement.” It states that the “loading was completed during the months of February and March 2003” and applied to “crud[e] oil shipment loads from port of Khor Al ‘Amia.” The appendix indicates that all payments for the shipments were made in euros by Mr. Shaheen and deposited with the Bank of Jordan “for the benefit to” Mr. Gazarawi and Mr. Najem. It also states that the funds were later “transferred to Iraqi Central Bank account in Jordan.”

The SOMO appendix includes two charts showing the dates and amounts of the deposits made by Mr. Shaheen. The first chart shows the deposits in euros, which was the currency Mr. Shaheen actually used; the second chart shows the same deposits converted into U.S. dollars. Altogether, as indicated in Table 3 above, Mr. Shaheen made seven payments totaling

²¹³ *Id.* at 1879.

²¹⁴ SOMO Oil Allocation Notebook, Appendix No. 3.

²¹⁵ This appears to be a reference to Iraqi Vice President Taha Yasin Ramadan al-Jizrawi.

\$53,360,022. The appendix notes that this \$53 million reflects a charge of “\$50 per ton” for the oil. With seven barrels in a ton, that price indicates that Jordan paid just over \$7 per barrel.

4. U.N. Knowledge of Khor al-Amaya Oil Shipments

The first ship to load oil from Khor al-Amaya was the *Argosea*, an oil tanker owned by the Athens-based Tsakos Group. The ship’s captain was named Vladimir.²¹⁶ The ship docked at Khor al-Amaya and began loading oil on or around February 12, 2003. It appears that this loading took U.N. personnel by surprise.

Saybolt inspectors immediately detected the unauthorized loading of oil at Khor al-Amaya onto the *Argosea*. Saybolt was under contract with the United Nations to monitor oil loadings under the Oil-for-Food program and had inspectors stationed at Mina al-Bakr. These inspectors routinely oversaw loadings of oil at the al-Bakr terminal to ensure that only the amounts of oil authorized by the United Nations were loaded onto vessels docking at that port.

The first indication Saybolt inspectors had of the *Argosea* was when Iraq began diverting some of the oil in the pipeline away from the al-Bakr terminal and to Khor al-Amaya. The reduced flow rate and the lower pressure within the pipeline were immediately apparent to the Saybolt inspectors.²¹⁷ In addition, the reduced flow rates delayed the completion of oil loadings at al-Bakr, causing financial losses to the ships loading there in accordance with the U.N.’s OFF program and generating surprise and anger among the crews, shipowners, and other parties.

On or about February 13, 2003, Saybolt inspectors visually spotted the ship at the Khor al-Amaya terminal for the first time. Saybolt personnel at Mina al-Bakr immediately telephoned Peter Boks, the executive director of Saybolt International in the Netherlands.²¹⁸ Mr. Boks then telephoned David Russell, who apparently worked for the U.S. Maritime Liaison Office in Bahrain and regularly interacted with the Maritime Interdiction Force (MIF). Mr. Boks informed Mr. Russell that Saybolt inspectors had sighted an oil tanker loading oil at the unauthorized port of Khor al-Amaya. At that time, Saybolt and MIF officials routinely exchanged information about shipping events in the Persian Gulf.

On February 17, 2003, Mr. Boks followed up with an email to Mr. Russell, providing the ship’s name, the *Argosea*, its management, owner, and flag. Mr. Russell responded to Mr. Boks by email the same day, writing:

²¹⁶ None of the documents identify this captain by his last name.

²¹⁷ Subcommittee interview of Peter Boks (2/10/05).

²¹⁸ *Id.* Mr. Boks told the Subcommittee that he’d been very surprised to learn of the reported sighting, since he considered an oil tanker’s loading at Khor al-Amaya to be a “brazen” violation of U.N. sanctions and the OFF program.

“Peter

Thanks for the additional info.

We’re still checking on this curious event. I still don’t understand it, or how these people think they can get away with this.

Dave”²¹⁹

Mr. Boks also informed Benon Sevan, head of the U.N. Office of Iraq Programme, about the Khor al-Amaya loadings. In an email sent to Mr. Sevan on February 18, 2003, Mr. Boks wrote:

“Benon,

Just to let you know;

Tv, “Argosea” has completed loading from Khor Al Amayah.

Rumour is that following vessel’s are scheduled to load at the same location.

Tv. “Violanda”, Tv. “Seacross II”, Tv. “New Jane”, Tv. “Eagle”, Tv. “Artines” & Tv. “Navarino”

Product if offered on the market by a company Apex Oil & Trading, and is loaded under the “Jordanian agreement”.

In the meantime, it also seems that a cargo (Iraqi Crude Oil) was loaded in Aqaba on Tv. “Berge Chief”.

Please call me if more info is required.

Best regards,

Peter”²²⁰

Mr. Boks told the Subcommittee that he also spoke with Mr. Sevan by telephone about this matter, and Mr. Sevan thanked him for the information and said he would alert other U.N. personnel.²²¹

Mr. Sevan apparently informed the U.N. Oil Overseers about the Khor al-Amaya sighting. Michel Tellings, one of the U.N. Oil Overseers during this period, told the

²¹⁹ Email dated 2/17/03, from Dave Russell to Peter Boks.

²²⁰ Email dated 2/18/03, from Peter Boks to Benon Sevan, 5:37 PM.

²²¹ Subcommittee interview of Peter Boks (2/10/05). Saybolt inspectors continued to report sightings of additional ships docking and loading oil at Khor al-Amaya over the next few weeks. Mr. Boks told the Subcommittee that he had been surprised at the time that the United Nations appeared to take no action in response.

Subcommittee that he had been very surprised at the time to learn about the visual sighting of a large tanker at the Khor al-Amaya terminal.²²² Mr. Tellings indicated that he'd promptly called an official in the U.K. Mission to the United Nations, Gerard McGurk, but was unable to reach him. Mr. Tellings indicated that he then called Andrew Hillman, head of the U.S. Mission to the United Nations, and informed Mr. Hillman of the unauthorized loadings at Khor al-Amaya. Mr. Tellings said he asked Mr. Hillman to pass this information along to the U.K. Mission as well. In response to this call from the U.N. Oil Overseer, a State Department official working at the U.S. Mission in New York at the time told the Subcommittee that the U.S. Mission immediately alerted State Department officials in Washington, D.C. who, in turn, immediately passed the information on to the U.S. Department of Defense.²²³

Mr. Tellings told the Subcommittee that, a few days later, he telephoned Andrew Hillman again, this time informing him that more vessels had arrived at Khor al-Amaya. Mr. Tellings said that he was surprised at the time that there still was "no response from Washington." Mr. Tellings said that he also telephoned the U.K. Mission again, but there was "no response" from the United Kingdom either.

In addition to contacting the U.S. and U.K. Missions, the U.N. Oil Overseers contacted the captain of the *Argosea* on several occasions and informed him that the vessel was carrying oil in violation of U.N. sanctions.²²⁴

Soon after the *Argosea* began loading oil at Khor al-Amaya, articles began appearing in both the trade press and in mainstream newspapers about the incident. Some articles announced that the United Nations had stopped a massive smuggling operation attempting to load Iraqi oil in violation of U.N. sanctions. On February 21, 2003, for example, one publication reported: "A smuggling scheme allegedly devised by a Jordanian businessman and Iraqi officials was thwarted before the proceeds of illicit sales of million of barrels of Iraqi crude could secretly escape United Nations control and fatten the coffers of the Iraqi regime."²²⁵ As was to become apparent over the next few weeks, however, detection of the loadings did not lead to action by the MIF, the United Nations, or the United States to stop the loadings.

Subsequent articles reported that the Khor al-Amaya operation was, in fact, continuing. "After unraveling last week's scheme shortly after it began," one trade publication wrote: "UN diplomats expressed confidence that they had scared off the Jordanian businessmen and Iraqi officials involved in the smuggling. UN diplomats had informed the Multinational Intervention Force [*sic*] (MIF), which patrols the Gulf for oil smugglers, of all suspected ships in the region.

²²² Subcommittee interview of U.N. Oil Overseer (2/8/05).

²²³ Subcommittee interview of Ambassador Patrick Kennedy (2/4/05).

²²⁴ See email dated 2/20/03, from Tsakos Hellas to Petrian Shipbrokers and Odin Marine, 12:38:13 PM; and email dated 2/24/03, from Odin Marine to Jamil Sayegh, SBIG Holdings, 5:51:15 PM.

²²⁵ "Shipowners Scuttle Iraqi Oil Smuggling Scheme," Oil Daily (2/21/03).

But several sources confirmed on Wednesday that an unauthorized ship had berthed at Khor al-Amaya . . . and had started loading.”²²⁶

On February 21, 2003, a major U.S. publication carried a front-page article on the Khor al-Amaya incident, bringing it to the attention of a wider audience.²²⁷ The article quoted an unnamed U.N. diplomat saying: “These Iraqi shipments are huge. Until now their smuggling activities were on vessels that were about to sink, but these are ones where they have managed to dupe reputable ship owners.” The article quoted a MIF spokesperson, Jeff Alderson, as saying that “he had ‘no information as of right now’ about the possible shipments, but added that as a matter of policy the MIF doesn’t comment until after a ship has been halted or cleared.” The article also reported that a “White House official said he was not aware of the reports of illegal oil sales,” while a spokesperson for U.S. Ambassador to the United Nations John Negroponte “denounced the shipments as ‘immoral.’”

On February 27, 2003, a trade publication stated that sources were reporting that the Khor al-Amaya oil shipments were for the purpose of building a floating strategic storage reserve for Jordan in anticipation of a U.S. invasion of Iraq.²²⁸ According to these sources, this arrangement “may have been entirely legitimate under Jordan’s special deal to buy Iraqi crude outside the reach of the UN program.” Another source cited in the article offered another explanation: “Instead of using the ship just for floating storage, Jordan may have planned to on-sell the crude at a fat profit.”

At a State Department press briefing held on January 13, 2005, State Department spokesperson Rick Boucher described the United States’ response in 2003, to the reports about the Khor al-Amaya incident as follows:

“We were aware of reports of loadings of oil at Khor al-Amaya, as was reported at the time, in February of 2003, and our mission at the United [Nations] informed us immediately when they got these reports from the UN. The Department then passed its information to the Maritime Interdiction Force for investigation. I’ll remind you that the United States did a great deal during this period to enforce Security Council sanctions against Iraq. The Maritime Interdiction Force, supported by some 20 nations, boarded and inspected over 15,000 vessels during the time of sanctions, and diverted over 1,000 of them.

²²⁶ Energy Intelligence Briefing (2/26/03).

²²⁷ “Iraq is Shipping Large Cargoes of Crude, Violating U.N. Rules,” Wall Street Journal (2/21/03).

²²⁸ “Is Iraq ‘Smuggling’ Part of Stock Build?,” Platts Oilgram News (2/27/03).

So as far as the specific loading, what went on in the field, we are still looking into it. But I remind you, we had a very active program passing information and then taking real action on the high seas to stop this kind of oil export.”²²⁹

In the three months prior to the American invasion of Iraq in March 2003, the U.N. 661 Committee met formally only once, in January 2003, but met informally a number of times. The Subcommittee was told that, subsequent to the press reports about Khor al-Amaya, at an informal meeting in February 2003, the 661 Committee Chairman asked the U.S. and U.K. representatives if they had any information on the alleged smuggling, and they told the Chairman they would refer the question back to their capitals.²³⁰ Soon afterward, however, the United States invaded Iraq, and the United States asked the 661 Committee to halt all meetings for a period of time. The 661 Committee never met again, and neither the United States nor the United Kingdom ever provided any additional information on these incidents.

5. U.S. Knowledge of Khor al-Amaya Oil Shipments

The evidence is clear that the U.N. Oil Overseers notified the United States of the Khor al-Amaya loadings as soon as they learned of them in mid-February 2003. In addition, there is significant evidence that the United States knew of plans to load the oil even before some of the chartered ships arrived in Iraq.

Ship communications obtained by the Subcommittee indicate that the U.S. Navy, which was then in command of the Maritime Interdiction Force, was informed before-the-fact that oil tankers would be docking at Khor al-Amaya, and had been instructed to permit the loadings of oil and not confiscate any of the ships or cargoes.

On February 9, 2003, three days prior to the commencement of the loading of the *Argosea* at Khor al-Amaya, a “PRIVATE & CONFIDENTIAL” fax from Capt. Jamil Sayegh of Millenium, the Jordanian company that had chartered the *Argosea*, provided the following direction in the “Voyage Instructions” sent to the *Argosea*’s Captain Vladimir:

3- THE US NAVY WILL CALL YOU OFFSHORE BAHRAIN FOR VESSEL’S INSPECTION. THEY ARE ALREADY AWARE ABOUT YOUR PASSAGE AND ITENERARY [*sic*]. AUTHORIZATION IS GRANTED FOR YOUR SHIP TO PROCEED TO BAQR AND BACK TO FUJAIRAH WITH

²²⁹ Transcript of U.S. State Department Daily Press Briefing, US Fed News (1/13/05).

²³⁰ Subcommittee interview of U.N. official (2/10/05).

FULL CARGO LOAD. PLS COOPERATE AS USUAL AND PROVIDE U.S. NAVY WITH ANY INFORMATION THEY REQUIRE.²³¹

The Voyage Instructions also included the following additional direction, in capitalized, bold, large-font letters:

MOREOVER, APART FROM CARGO WORKS AND MINIMUM NORMAL ROUTINE SHIPPING FORMALITIES, MASTER TO ENSURE THAT NO INFORMATION OF ANY KIND IS GIVEN TO ANY PERSON /// REPEAT ANY PERSON/// AT THE LOADING PORT WITH REGARD TO ARRANGEMENTS MADE OR MENTIONED HERE ABOVE.²³²

Once the Argosea reached al-Bakr, Millenium redirected the ship to Khor al-Amaya. An email sent by the Argosea's shipowner to its agent, Petrian Shipbrokers, and the charterer's agent, Odin Marine, a week after the events in question recounts what happened after the ship entered Iraqi waters. This email indicates that the vessel had reported its position and intended destination to both a U.N. checkpoint and a "UN Naval vessel." The shipowner wrote:

1. Charterers original instructions were for vessel to load MINA AL BAKR.
2. On this basis the vessel reported her entry to Iraqi waters to the UN Check Point off IRAQ, to load from MINA AL BAKR.
3. Upon arrival at MINA AL BAKR the Charterers instructions were for vessel to load from KHAWR AL AMAYA Terminal.
4. The vessel shifted from MINA AL BAKR anchorage to KHAWR AL AMAYA terminal. During this passage the vessel was contacted by [a] UN Naval vessel to whom the Master reported that he is proceeding to load from KHAWR AL AMAYA terminal. The UN Naval vessel acknowledged this advice and told the Master that it was OK to proceed.
5. Vessel loaded as per Charterers instructions from KHAWR AL AMAYA Terminal.
6. The Master reported that it was the first vessel that loaded since 1980."²³³

This email indicates that the a "U.N. naval vessel" – which likely was commanded by a U.S. naval officer – was informed beforehand that the Argosea was planning to dock and load oil at

²³¹ Fax dated 2/9/03, from Millenium for the Trade of Raw Materials & Minerals to Master of M/T Argosea.

²³² Id.

²³³ Email dated 2/20/03, from Tsakos Hellas to Petrian Shipbrokers and Odin Marine, 12:38:13 PM.

Khor al-Amaya. The email states that the “UN Naval vessel acknowledged this advice and told the Master that it was OK to proceed.”²³⁴

The shipowner’s email also conveyed concern about the legality of its cargo. The shipowner informed both Petrian Shipbrokers and Odin Marine that the ship had been contacted by a Wall Street Journal reporter who said that the ship had taken Iraqi oil from a terminal that was not approved by the United Nations. The shipowner further reported that a “U.N. officer” -- apparently one of the U.N. Oil Overseers -- had advised Odin Marine that the ship had “loaded from a non UN approved terminal.” The shipowner demanded “a full and clear explanation” from the charterer as to how to respond to press inquiries and U.N. “advices” that the vessel had “loaded illegal cargo from a non UN approved Iraqi terminal.”²³⁵

In response, Millenium emailed Odin Marine with instructions for the ship to “refrain communicating with the media or disclosing any information as per our charter party and confidentiality agreement.”²³⁶ Millenium told Odin Marine that “numerous details” about their contractual arrangements had already been disclosed, which “is in no doubt a great violation of all the documents we signed.” Millenium emphasized:

More importantly and as a final statement our transaction has the legitimate cover. The Arabian Gulf where all vessels are operating in and within are under the full control and strict scrutiny of the UN Naval Forces through an air tight control and observation system.

Should any UN official in whatever capacity does have anything, they should be communicating with the law enforcement in the Gulf (UN Naval) and pass on their remarks and observations asking for follow up from the UN Naval forces. It remains within the UN Naval capacity and authority to verify and scrutinize the information they are receiving from any UN offic[ial] in New York and to take the necessary action. So far and reflecting the legitimacy of our operation, the past experience with the previous vess[e]ls and the upcoming ones reflect the reality and we leave it for you to draw your own conclusions.²³⁷

Odin Marine forwarded Millenium’s message to the shipowner’s broker, Petrian.

²³⁴ In February 2005, the Subcommittee asked the U.S. Department of Defense (DOD) for information about the Khor al-Amaya incident and the role of the U.S. Navy. DOD has not provided any information in writing and has declined to date to provide an unclassified oral briefing.

²³⁵ Id.

²³⁶ Email, dated 2/21/03, from Odin Marine to Petrian Shipbrokers, 3:56:56 PM (forwarding Millenium message).

²³⁷ Id.

On the same date, February 21, 2003, Odin Marine forwarded to Petrian Shipbrokers another message it had received from Millenium providing assurances of the legality of the shipments. Millenium wrote:

Once again, we assure you based on our agreement that the owners will not be subject to any legal procedure initiated against them of whatsoever nature due to this operation. The fact that further documents and information could not be provided does not and should not lead to the impression that this is an illegitimate transaction and hereby request all parties to adhere and abide by the confidentiality agreement we have.

Noting that the owners are aware of the ships that have been granted safe passage while going in and out . . . [This] should give them the extra comfort and reaffirm all the above.

* * *

More importantly, as you are fully aware, any vessel carrying illegal cargo is subject to confiscation and that the sole authority and party to carry out such confiscation is the UN Naval Forces. Considering that as stated above the ships are granted safe passage in and out by the UN Naval Forces only confirms the legitimacy of our operation.²³⁸

Three days later, on February 24, 2003, after more press articles and inquiries from a U.N. Oil Overseer about the shipments, Odin Marine asked Millenium to provide “written proof” of the legality of the oil cargo from Khor al-Amaya:

In view of all the hoop-la that has gone on in the press, and the phone calls from Mr. Morten Burr-Jensen of the U.N. since last Thursday, owners are requesting that [Millenium] supply written proof that the cargoes to be loaded in alAmaya are “lawful merchandise according to relevant UN regulations and international law.”²³⁹

In response to Odin Marine’s request, on February 28, 2003, Millenium provided Odin Marine a written explanation of the legal authority for the Khor al-Amaya shipments.²⁴⁰ Millenium stated that the Khor al-Amaya shipments had been undertaken pursuant to the Iraq-Jordan trade protocol that Jordan had entered into with Iraq pursuant to Article 50 of the U.N. Charter, and which had been in continuous operation since 1990. Millenium claimed the Jordan protocol with Iraq “has been approved by the UN in general and by the UN Sanctions committee in particular; i.e. approved in line with the Oil-for-Food Program though in practical terms it is not hermetically governed by this Program.” “Although this is public information,” wrote

²³⁸ Email dated 2/21/03, from Odin Marine to Petrian Shipbrokers, 1:31:06 PM (forwarding Millenium message).

²³⁹ Email dated 2/24/03, from Odin Marine to Jamil Sayegh, SBIG Holdings, 5:51:15 PM.

²⁴⁰ Email dated 2/28/03, from Odin Marine to Silver Line Ltd., 7:58:06 PM (forwarding Millenium message).

Millenium, “very few parties are aware of it and it is of great importance to Jordan and other concerned parties not to highlight these facts.” Millenium urged all parties to maintain confidentiality regarding the Khor al-Amaya shipments.

Millenium further stated, “[T]he US Administration routinely waives sanctions in order to provide aid to Jordan,” which, according to Millenium, “undoubtedly demonstrates the full endorsement of both the Executive and Legislative branches of the United States Government of Jordan’s exemption regarding the importation of Iraqi crude oil.” Millenium also faxed to Odin Marine a passage from Congressional Research Service Issue Brief (IB92117) explaining the operation of the Iraq-Jordan protocol.

Despite this lengthy email from Millenium, Odin Marine decided to contact U.S. authorities to make sure it was not party to any transaction in violation of U.N. sanctions or U.S. law, or which was not in accordance with U.S. foreign policy.²⁴¹ Odin Marine’s General Counsel first called the U.S. Department of Commerce “to ascertain their position on Millenium’s charter activities and carriage of oil to Jordan’s port for the Jordanian government.”²⁴² The Commerce Department referred him to the U.S. Treasury Department’s Office of Foreign Assets Control (OFAC), which administers U.S. sanctions on Iraq. On March 4, 2003, in response to messages he left at OFAC, Odin Marine’s General Counsel received a call from a U.S. official whom he thought worked for OFAC, but was actually employed by the State Department. The General Counsel told the Subcommittee that he personally explained the entire matter to this State Department official, including that the ship charters had been obtained by a Jordanian company, Millenium, which claimed to be acting on behalf of the Jordanian government, and that Millenium had told his company the ships loading at Khor al-Amaya were operating under an exception to the U.N. sanctions on Iraq, since the tankers were carrying oil for Jordan. He said that he told the State Department official that his company was willing to turn over the oil to the MIF if the United States wanted them to do that.

The State Department official promised to call back. The General Counsel memorialized his second conversation with this State Department official in an email to another Odin Marine employee.²⁴³ He wrote:

“She called back in about 2 hours and said that her office was ‘AWARE OF THE SHIPMENTS AND HAS DETERMINED NOT TO TAKE ACTION.’ She did not add ‘at this time.’ I noted that a further shipment was sought by Millenium and did she have any advice on that. She repeated the quoted response and would say no more. I asked

²⁴¹ Subcommittee conversations with Odin Marine (2/11/05).

²⁴² Email dated 3/4/03, from Odin Marine General Counsel, Howard Jaffe, to Odin employee, Michael Richards, 3:55:13 PM.

²⁴³ Email dated 3/4/03, from Odin Marine General Counsel, Howard Jaffe, to Odin employee, Michael Richards, 3:55:13 PM.

her to contact me if there was any change in position as my client's wished to act in the best interests of the U.S. It appears that they do not want to harm Jordan by interfering with its quest for oil before the impending conflict by seizing it."²⁴⁴

Odin Marine told the Subcommittee that this conversation reassured the U.S. company that the United States was fully informed of the Khor al-Amaya shipments and had no objection to them or to a U.S. company's participation in them. The company indicated that there was no indication that Odin Marine should obtain a license from OFAC to transact business in Iraq, and no impediment to proceeding with the Khor al-Amaya shipments.

In an email sent on February 25, 2003, Millenium provided explicit guidance to Odin Marine as to how all vessels loading at Khor al-Amaya were to interact with the MIF, and how the MIF would respond. This email explicitly identified MIF Commander Harry French, who was then and is now a U.S. naval officer, as the key contact for ship communications.²⁴⁵ Millenium instructed Odin Marine as follows:

"1. All chartered vessels coming into Khawr Amaya to provide the Un Naval check point with the name of the vessel, name of Charterer, and name of loading port. This

²⁴⁴ In commenting about Jordan's "quest for oil before the impending conflict," the General Counsel of Odin Marine was referring to a common justification offered for the Khor al-Amaya shipments -- Jordan's need to ensure it had an adequate supply of oil if war broke out in Iraq. In early 2003, Jordan had begun taking a number of measures to protect itself against an oil supply disruption. For example, Jordan chartered the "M/T Berge Chief," a Norwegian tanker with a storage capacity of about 2 million barrels, and maintained it at an anchorage offshore of Aqaba. Jordan entered into agreements with Saudi Arabia, the United Arab Emirates, and Kuwait to obtain a three-month supply of free oil. Jordan also obtained hundreds of millions of dollars in outright grants from other nations, including the United States, to ease the economic impact of the war in Iraq. Additionally, Jordan purchased more than 7 million barrels of oil from Iraq in the Khor al-Amaya incident at issue in this Report.

On the other hand, at the same time as Jordan was buying oil from Khor al-Amaya, it was selling a large amount of crude oil then in storage in Jordan. Shipping records obtained by the Subcommittee indicate that on February 5, 2003, the ship "M/T Artemis" arrived at the Jordanian port of Aqaba for use by the Jordanian Ministry of Energy and Mineral Resources. At Aqaba, the Artemis was loaded with about 1 million barrels of Arab Light crude oil, which is roughly comparable to Iraqi Basrah Light. According to shipping documents, the Artemis departed with this oil for Aden, where it arrived on March 22, 2003, and discharged its cargo on March 26 "to Aden Refinery Company and Al Hoda International Trading Co., at the port of Aden without production of the original bill of lading." Email dated 2/5/03, from Odin Marine to Marine SBIG; email dated 3/26/03, from Odin Marine to Capt. Ghazi Abu Laila, 8:01:51 AM.; email dated 3/24/05, from Odin Marine to the Subcommittee, 9:45 AM.

As events unfolded, Jordan apparently experienced a two-month disruption of oil imports from Iraq. Citing security and safety concerns, Jordan suspended all oil imports from Iraq on March 23, 2003, three days after the war in Iraq began; it resumed those imports two months later in mid-May. See, e.g., "Jordan Refuses to Comment on Prospects of Oil Supplies from Saudi, Kuwait," BBC Monitoring International Reports (4/7/03).

²⁴⁵ The Subcommittee asked DOD to arrange an interview with Commander French. DOD offered to allow him to speak to the Subcommittee in a classified setting, but to date has failed to respond to the Subcommittee's request for an interview that would discuss only unclassified matters. The Subcommittee has been told that additional DOD personnel with information about the Khor al-Amaya incident include Naval Commanders Hensen and Carreras.

communication to take place between the Master of the concerned vessel and whichever UN Naval ship on duty in the vicinity.

2. Upon completion of loading and while approaching the UN Naval check point, the Master to contact the UN Naval ship on duty at that time and give them all the details including quantity loaded, name of charterer, the terminal of loading and then get the necessary clearance accordingly.

3. At anchorage, Master will contact Commander Harry French and get the NO OBJECTION message from him. Mr. Young of Odin Marine to contact Commander French as well in order to verify and confirm the communication between the Master and Commander French. Mr. Young will seek the NO OBJECTION message in the text and format agreed between us.”²⁴⁶

Millenium instructed its chartered vessels on the key phrase to be used to obtain permission from the MIF for passage:

“4.C. The message that should be sent by either the ship master or Mr. Young is the following: ‘We are loading crude oil from the terminal at Khawr Amaya for Millenium: do you have any objection?’”²⁴⁷

Millenium also directed its personnel to keep communications with the MIF to a minimum:

“It is very advantageous that Mr. Young served in the Coast Guard as he can relate to and understand the situation and how officers feel uncomfortable about going through unnecessary extended communications.”²⁴⁸

A “Note to File” written by David Young of Odin Marine indicates that Commander French appeared to be under similar instructions to provide Mr. Young with only the minimal information necessary for their particular interaction. Mr. Young’s note states:

“[T]he M/T Tanker “Arcadian I” was due to sail Khor al Amaya March 1st at 0900 with the tide. Commander French advised that he had no objections. He [also] said that he was sorry he could not say anything more. I told him I completely understood and did not expect him to say anything more.

He asked how many shipments this was. I told him this was the third vessel that had actually loaded (i.e. Argosea, Eagle, and now Acadian I [*sic*]) He asked how many more vessel[s] I expected. I told him one vessel I thought was going to be confirmed in the

²⁴⁶ Email dated 2/25/03, from Millenium to Michael Richards of Odin Marine, 2:11:17 PM. “Mr. Young” refers to David E. Young, who was then executive vice president of Odin Marine.

²⁴⁷ *Id.*

²⁴⁸ *Id.*

morning (did not mention name of vessel to him but was thinking of M/T Sea Victory). I also told Commander French that we had a couple vessels that were hesitant to load due to the recent publicity etc – and may pull out of these charter parties. He related that the recent publicity had made his life very difficult and could understand how recent events could make things difficult in this regard.

I also asked Commander French as a method of procedure if I could continue to call him to request permission for vessels to proceed to and depart from Iraq and he said that would be okay.”²⁴⁹

Mr. Young described Commander French as “Coast Guard Lia[i]son to USN Central Command in Bahr[a]in.”

Presumably, each vessel that loaded oil at Khor al-Amaya followed the instructions provided by Millenium. Upon arrival, they checked in with the MIF; provided details about their plans to load Iraqi oil from Khor al-Amaya, an unauthorized port under the OFF program; asked the MIF if it had any objection; and, hearing none, proceeded to the port. One person interviewed by the Subcommittee said that it was his understanding that, on some occasions, MIF vessels even escorted the chartered ships to ensure their safe passage through the Persian Gulf.²⁵⁰ From February to March 2003, seven vessels loaded a total of over 7.7 million barrels of Iraqi oil from Khor al-Amaya.

6. Final Destination of Khor al-Amaya Oil

Although oil loaded at Khor al-Amaya was described as undertaken pursuant to the Iraq-Jordan trade protocol or as part of a plan to establish a floating strategic oil reserve for Jordan during the U.S. invasion of Iraq, most of the 7.7 million barrels of oil loaded at Khor al-Amaya never reached Jordan.

As Table 4 indicates, at most it appears that only one of the tankers that lifted oil from Khor al-Amaya ultimately discharged any cargo in Jordan.

²⁴⁹ Note to File dated 3/2/03, authored by David Young of Odin Marine.

²⁵⁰ Subcommittee interview of Odin Marine (2/11/05).

Final Destination of Oil Exported from Khor al-Amaya

Original Vessel Lifting Oil from Khor al-Amaya	Initial Disposition	Final Disposition	Date of Final Disposition
Argosea	UAE port of Fujairah; Yemeni port of Aden	Jordanian port of Aqaba	April 18, 2003
Eagle	Ship-to-Ship (STS) transfer of oil to the Marine Pacific at the Fujairah port	STS of approx. 2.5 million barrels from Marine Pacific to Hellespont Embassy on June 9, 2003. Approx. 2.5 million barrels on Hellespont Embassy sold to Al Huda International Trading Co. on June 18, 2003 @ \$20.65/barrel; sent to Midor Refinery, Egypt.	June 18, 2003
Sea Victory	STS to Marine Pacific at the Fujairah port		
Seacross II	STS to Marine Pacific at the Fujairah port		
Arcadian	STS to Empress des Mer at the Fujairah port	Approx. 2.9 million barrels aboard Empress Des Mer discharged at Egyptian port of Ain Sukhna	Late 2003
Mint Prosperity*	STS to Empress des Mer at the Fujairah port*		
Endeavour 2*	STS to Empress des Mer to the Fujairah port*		

Table 4. According to shipping documents available to the Subcommittee, only one of the seven tankers that loaded oil from Khor al-Amaya transported oil to Jordan.

* The Mint Prosperity and Endeavour data is inferred from references in Bayoil documents and shipping totals. The total amount of oil that was available for sale, according to Bayoil documents, is about 1.6 million barrels less than the amount that was loaded according to SOMO documents. The Subcommittee Minority Staff has been unable to account for this difference.

The Argosea’s initial destination after loading at Khor al-Amaya was Fujairah, a port just outside the Straits of Hormuz on the coast of the United Arab Emirates, where the ship set anchor on February 20, 2003. The next communication in the records obtained by the Subcommittee indicates that on March 29, 2003, Millenium instructed the Argosea to “heave up anchor and proceed A.S.A.P. at full speed to Aqaba, Jordan to discharge.”²⁵¹ Two days later, Odin Marine asked Petrian Shipbrokers to notify the Argosea’s owners that the “vessel is

²⁵¹ Email dated 3/20/03, from Millenium Marine Division to Argosea.

presently enroute to Aqaba ETA 7 April 03 to discharge its cargo of crude oil (with possible change of disport within the trade area agreed).²⁵²

The next day, however, on April 1, 2003, Millenium directed the Argosea's Captain to proceed to Yemen to discharge its cargo:

“DEAR CAPT VLADIMIR

PLS NOTE YOUR DISCH PORT IS ADEN IN YEMEN
KINDLY ADVISE YOUR ETA ADEN ANCHORAGE

REGARDS

J. SAYEGH
MILLENIUM²⁵³

On April 3, 2003, Millenium provided more specific instructions to the Argosea, including the following:

“FOR ALL YOUR SHIP BUSINESS AND DISCH, FM TIME YOU DROP ANCHOR TILL COMPLETE DISCH'G WOULD BE HANDLED BY JORDAN NATIONAL SHIPPING WHO WOULD CONTACT YOU LATER ON 3RD APRIL, PLS FOLLOW THEIR OPERATIONAL INSTRUCTIONS.”²⁵⁴

The direction to discharge the cargo in Yemen greatly concerned the Tsakos Group, which owned the Argosea, since it appeared to contradict Millenium's previous assertions that the cargo had been obtained for use by Jordan under Article 50 of the U.N. charter. The shipowner expressed concern, under this rationale, about delivering the oil to any country other than Jordan without violating U.N. sanctions. In an apparent communication to Millenium, the shipowner pointed out that it had previously discussed this issue with the company as follows:

“[W]e highlighted:

1. that there was considerable media speculation that the cargo was unlawful, to which you and your government insisted that the cargo was for the use of the Jordanian state, and that you were permitted to export the cargo from Iraq by the tacit consent of the United Nations under Article 50 of the UN Charter:

²⁵² Email dated 3/31/03, from Odin Marine to Petrian Shipbrokers.

²⁵³ Fax dated 4/1/03, from SBIG Head Office to Master of Argosea.

²⁵⁴ Email dated 4/3/03, from Odin Marine to Jamil Sayegh, SBIG Holdings, 8:3016 AM .

2. that there was media speculation that the cargo was not for the use of the Jordanian state and that even if para 1 above was accepted, if it became clear that the cargo was to be delivered to non-Jordanian state interests, the rationale under the UN charter (Art. 50) would no longer be available and Owners would have to treat the cargo/order for delivery as unlawful. As a result, the indemnity provided by the Jordanian government on 13th March 2003 was drafted to ensure that the delivery was to Jordanian state interests through Millenium.

You have now changed your orders for Aqaba and have directed the vessel to deliver the cargo at Aden. Given the two matters highlighted above, we are duty bound to enquire on behalf of the Owners of the vessel for details as to the circumstances in which cargo destined for use by the Jordanian state should be discharged at Aden. We very much wish to work with you and to accommodate your reasonable and lawful orders but consider that it is imperative that you please let us have as much information as possible in order to demonstrate to us that the cargo is still destined for use by Jordanian state interests despite being ordered to be delivered at Aden.

We look forward to your reply.”²⁵⁵

When the Argosea arrived at the Yemeni port of Aden on April 3, 2003, all of the berths at the port were full, so the ship initially remained at anchor in the harbor. From the documents provided to the Subcommittee, it appears that the Argosea remained at Aden for seven days. The Subcommittee Minority Staff was unable to determine whether the Argosea discharged any of its cargo during its week-long stay at Aden.

While the Argosea was anchored at Aden, the shipowner apparently also began expressing concerns about the bill of lading for its cargo of oil. Bills of lading are essential shipping documents. They describe the type and quantity of goods being shipped, as well as the ports of loading and discharge, and serve as a document of title, a contract of carriage, and a receipt of goods. In the case of the OFF program, a bill of lading was part of the documentation required by the United Nation. Without the bill of lading, many lenders and buyers of oil might consider a cargo contraband and refuse to provide financing or funds for its purchase.

On April 10, 2003, Petrian Shipbrokers reported to Odin Marine that the Argosea shipowner had advised “that [vessel] will discharge against original [Bill of Lading] although apparently these need to be reissued after the old ones are cancelled. The owner’s operator is of the understanding that his boss has sent a msg regarding [Bill of Lading] directly to charterers – I have asked for them to send us a copy.”²⁵⁶ On the same day, the shipowner, the Tsakos Group, sent a message informing the Argosea that a new set of bills of lading would be produced for the

²⁵⁵ One-page document provided by Odin Marine, incorporating two undated emails including one from Tsakos Shipping Athens to Millenium, with identifying number RefNum: 2181783.

²⁵⁶ Email dated 4/10/03, from Petrian Shipbrokers to Odin Marine, 11:54:47 AM.

cargo, changing the cargo's consignee to the "Ministry of Energy and Mineral Resources, the Government of the Hashemite Kingdom of Jordan," and designating the port of discharge to be "Aqaba, Yemen."²⁵⁷ The shipowner's message also stated that once the charterer, Millenium, provided the vessel with the new bills of lading, discharge could commence.

Presumably, a key issue in the bills of lading applicable to the Argosea's oil cargo was information showing that the destination port was Aden, Yemen instead of Aqaba, Jordan, thereby raising concern that the shipment was not for Jordan's use under the Iraq-Jordan protocol. Another issue may have been information showing where the cargo originated, since Khor al-Amaya was an unauthorized port under the OFF program and it is possible that no bill of lading was provided during the initial loading process. It is unclear how these matters were addressed in either the original or replacement bills of lading described in the Argosea communications. Also unclear are the procedures and circumstances under which Millenium produced both the original and replacement bills of lading for the Argosea's oil cargo.

On April 16, 2003, the Argosea reached the Jordanian port of Aqaba and shortly afterward began discharging oil. The Subcommittee Minority Staff has been unable to determine how much, if any, Iraqi oil the Argosea discharged at Aden, and how much it discharged at Aqaba. The Subcommittee Minority Staff has also been unable to obtain copies of the original or subsequent bills of lading for the Argosea's cargo.

The cargoes of three other ships that loaded in Khor al-Amaya were eventually consolidated and shared a final destination. These cargoes, from the Eagle, Sea Victory, and Seacross II, were sent to the UAE port of Fujairah just outside the Persian Gulf. Beginning in late March, the cargoes from all three ships were transferred to storage tanks on a large oil tanker named the Marine Pacific. In early June, the Iraqi oil aboard the Marine Pacific was transferred to still another oil tanker, the Hellespont Embassy. Some evidence, as discussed in the next section, indicates that Bayoil may have furnished the Hellespont Embassy to Millenium. On June 18, 2003, according to documents produced by Bayoil, Millenium sold the 2.5 million barrels of Iraqi oil aboard the Hellespont Embassy to Al Hoda International Trading Company ("Al Hoda"). Al Hoda is known to be a front company for the Hussein regime.²⁵⁸ The Bayoil documents also indicate Al Hoda may have paid Millenium \$20.65 per barrel for the oil.²⁵⁹

²⁵⁷ Email dated 4/10/03, from Petrian Shipbrokers to Odin Marine, 12:59:55 PM. It is not clear from this document whether the reference to "Aqaba, Yemen" is a typographical error or refers to two distinct ports of discharge.

²⁵⁸ ISG Report, Vol. III, Regime Finance and Procurement, pp.82, 90-91, 291 (September 2004). Interviews by Subcommittee staff with senior Iraqi officials in the Hussein regime confirmed that the Government of Iraq owned 50 percent of Al Hoda International Trading, provided direction to its operations, and shared in the company's profits.

²⁵⁹ One Bayoil memo characterized Al Hoda's offer as "bunch of peasants at 20.65"; another stated: "COMPETITION (AL HODA) 20.65 (we think) – laundry money." Email dated 6/17/03, from John Irving to David
(continued...)

It appears likely that the cargoes of the three remaining ships that loaded oil at Khor al-Amaya, the Arcadian, Mint Prosperity and Endeavour 2, were also consolidated and sold together. The Arcadian's cargo was sent to Fujairah, where it was transferred onto a ship called the Empress des Mer. Bayoil's documents indicate the Empress des Mer carried a total of nearly 2.9 million barrels of Iraqi oil, of which about 1.6 million barrels came from the Arcadian.²⁶⁰ The shipping records obtained by the Subcommittee do not indicate the origin of the additional barrels of Iraqi oil aboard the Empress des Mer. However, a Bayoil memorandum dated May 13, 2003, specifically identifies the cargoes aboard the Mint Prosperity and the Endeavour 2, together with the cargoes from Khor al-Amaya aboard the Arcadian and the Marine Pacific, as potentially available for purchase from Millenium.²⁶¹ It appears, therefore, that the cargoes aboard the Mint Prosperity and the Endeavour may have been transferred onto the Empress des Mer. According to the owner of the Empress des Mer, the Iraqi oil stored aboard that ship was discharged in Egypt.²⁶² The Subcommittee Minority Staff was unable to determine who, if anyone, purchased this oil from Jordan.

7. Bayoil Attempt to Purchase Khor al-Amaya Oil from Jordan

An additional curious aspect of the Khor al-Amaya shipments is the emergence of Bayoil as a potential purchaser of the oil from the Jordanian government. Although, in the end, Bayoil was unable to purchase the cargoes despite strenuous efforts, documents related to those efforts yield additional information about the disposition and legality of the shipments.

Bayoil apparently learned of the Jordanian-chartered oil tankers carrying Iraqi oil in early March 2003. A memorandum in Bayoil files, apparently written in March 2003, provides detailed and generally accurate information about the chartered vessels.²⁶³ An email from John Irving to David Chalmers dated March 24, 2003 – four days after the U.S. invasion of Iraq began – states that a number of persons were interested in purchasing the Khor al-Amaya cargoes.²⁶⁴ In mid- to late-May, Bayoil began negotiating with Petrolina, a Jordanian company, to either store

²⁵⁹ (...continued)

Chalmers, Jr and other Bayoil personnel, 3:26 PM; email dated 6/16/03, from John Irving to Jean Johnston, 4:01 PM, Bates BAY14-01796.

²⁶⁰ See, e.g., draft request dated 6/17/03, from Bayoil to Banque Cantonale Vaudoise for a letter of credit financing the purchase of 2.87 million barrels of Iraqi oil on the Empress de Mer.

²⁶¹ See memorandum dated 5/13/03, from John Irving to David Chalmers, re "Petrolina: conversation with Ali Jaffri."

²⁶² Subcommittee interview of Tankship Ltd. (4/20/05).

²⁶³ Undated document produced by Bayoil, Bates BAY14-01878-79 (contains detailed information obtained "through our market intelligence" about "Jordanian-chartered ships loading" oil at Khor al-Amaya)(text says at one point it is providing information "as of today March 10, 2003" and later "just yesterday March 25th").

²⁶⁴ Email dated 3/24/03, from Bayoil's John Irving to David Chalmers, 8:25 AM.

or purchase, or both, the Iraqi crude oil held by the Jordanian Ministry in ships anchored at Fujairah.²⁶⁵ Among the Bayoil documents obtained by the Subcommittee is a storage charter agreement between Bayoil and the Jordanian Ministry of Energy & Mineral Resources for Bayoil to provide floating storage of the Ministry's oil on the vessels Hellepont Embassy and Hellepont Grand.²⁶⁶ Because this agreement is unsigned, it is not definitive evidence of an actual contract between Bayoil and the Jordan Ministry. About two weeks later, the Iraqi crude that had been stored on the Marine Pacific was transferred to the Hellepont Embassy. However, the Subcommittee Minority Staff has not been able to conclude with certainty that the Hellepont Embassy was then under charter to Bayoil.

During the same period of time, Bayoil began discussions with Petroline for the outright purchase of the Iraqi oil. Bayoil was both negotiating with Petroline and using Ali Jaffri of Petroline as an agent in its negotiations with the Jordanian government. A Bayoil memorandum indicates that Mr. Jaffri had access to the Jordanian Prime Minister.²⁶⁷ The same memorandum describes a conversation with Ali Jaffri in which he provides his perspective on the legality of the shipments:

“On the question of the PROTOCOL – Ali said that this had been signed between Iraq and Jordan and had been vetted by the US State Department. This is one of the areas he will check tomorrow. He said if it was not clear why then was CALTEX looking to do the same deal for either Far East or South Africa.”²⁶⁸

At the same time that Bayoil began negotiating with Petroline to buy the Jordanian oil from Khor al-Amaya, the Jordanian Minister of Energy was denying press reports that Jordan was attempting to sell Iraqi oil that had been sold to Jordan before the war. “The minister stressed that the quantities of oil, which are in Aqaba or at the refinery in Al-Zarqa, are a strategic reserve to be used for refining and local consumption, adding that Jordan has no oil to sell and that there are no Jordanian companies to sell oil.”²⁶⁹

²⁶⁵ Memorandum dated 5/19/03, from Bayoil Supply & Trading Limited to Petroline FZC, “Ref: Oil Storage/Purchase Proposal.”

²⁶⁶ Memorandum dated 5/22/03, from Bayoil Supply & Trading Limited to Petroline FZC, “Ref: Oil Storage Contract Dated May 22, 2003.”

²⁶⁷ Email dated 5/13/03, from John Irving to David Chalmers, 5:12 AM.

²⁶⁸ *Id.* It is not clear whether Jaffri's claim that the “protocol” had been vetted by the State Department was a reference to the official trade protocol between Iraq and Jordan that was publicly known or these specific shipments.

²⁶⁹ “Jordanian Minister Denies Reports Local Companies Offered to Sell Iraqi Oil,” BBC Worldwide Monitoring (5/22/03). This media report also stated that Jordanian companies were having difficulty selling the oil, because it was “exported three months ago when Iraq reactivated an abandoned seaport in Khawr al-Amaya on the Gulf a few weeks before the war broke out, thus violating the sanctions the United Nations imposed on Iraq.”

In early June, Bayoil began negotiating directly with the Jordanian Ministry of Energy and Mineral Resources for the purchase of the Iraqi oil aboard the Marine Pacific and Empress des Mers. Bayoil began drafting a formal purchase offer and arranged a meeting with the Jordanian Minister of Energy to discuss the proposed sale.

On June 10, 2003, the Jordanian Minister of Energy and Mineral Resources met in Amman with three persons representing Bayoil, John Irving, Augusto Giangrandi, and Zeid Khorma.²⁷⁰ According to Mr. Irving, the Minister indicated that Jordan already had entered into a contract for the cargo aboard the Empress des Mer. The Minister allegedly explained that the cargo aboard the Marine Pacific had just been transferred onto the Hellespont Embassy, and according to Mr. Irving's email, the Minister "would like to keep these bbls on same ship and re-charter ship to Bayoil at same rate." The Minister allegedly asked Bayoil to provide proposals for discussion later that evening or the next morning.²⁷¹

Bayoil documents indicate that Mr. Chalmers was extremely concerned about the legal status of the Iraqi oil they were seeking to purchase. Mr. Chalmers apparently discussed with his attorneys the extent to which the Iraqi sanctions regulations applied to oil acquired before the invasion and, specifically, whether the manner in which this oil was acquired could cause it to be

²⁷⁰ Email dated 6/10/03, from John Irving to David Chalmers, 5:34 AM, BAY14-01835.

A former high-ranking Iraqi official interviewed by the Subcommittee stated that Zeid Khorma "or his brother" was the person who visited the Iraqi Oil Minister to request approval for the Khor al-Amaya shipments in 2003. Subcommittee interview of Senior Iraqi Official No. 7 (4/17/05). Evidence uncovered by the Subcommittee Minority Staff indicates that Zeid Khorma's association with Augusto Giangrandi dates back to at least the mid-1980s, when Mr. Khorma was Carlos Cardoen's representative in Baghdad, and Mr. Giangrandi was helping Cardoen Industries supply Iraq with cluster bombs. See Section IIB(2) of this Report above.

Mr. Khorma also allegedly helped smuggle into Iraq a key ingredient for Scud rocket fuel. In 1994, Mr. Khorma is alleged to have paid \$50,000 to arrange the shipment from China to Iraq of 30 tons of ammonium perchlorate, a key component in the production of solid rocket fuel for Iraqi Scud missiles. The ammonium perchlorate was falsely labeled as aluminum sulfate and found on a German ship docked in Saudi Arabia. See, e.g., "HK Firm Used to Send Missile Fuel to Iraq Say Investigators," South China Morning Post (Hong Kong)(12/18/94). U.S. Customs agents were quoted as saying that Zeid Khorma "is believed to be a supplier of illegal goods through Iraqi government contacts, with the help of his father and brother." "U.S. Customs: 2 Nabbed in Iraq Export Plan," United Press International (1/11/95).

In January 1995, U.S. authorities arrested Zeid Khorma's brother Mosab, along with his father Ahmad, in New York, and charged them with "knowingly and willfully conspiring to violate" the Iraqi sanctions regulations and executive orders "by exporting and intending to export goods from the U.S. to Iraq." Another individual, Kim Kyung-Il, also known as "Storm Kheem," was charged with felony offenses for alleging accepting payments from Zeid Khorma to ship the ammonium perchlorate. Criminal Case 0:95-mj-00041-ARL-1 (USDC EDNY). Zeid Khorma, who then resided in Jordan, was not indicted.

In August 1995, all charges against the Khormas were dismissed. In March 1996, Kheem pled guilty and was sentenced to six months of house arrest, a \$100 "special assessment," and five years of probation with 350 hours of community service.

²⁷¹ Email dated 6/10/03, from John Irving to David Chalmers, 5:34 AM, Bates BAY14-01835.

“deemed tainted.”²⁷² His concern apparently arose in part because the banks Bayoil had asked to issue letters of credit to finance the oil purchase had requested either: proof that payment for the cargo had been made to SOMO – which Bayoil could not provide since Jordan refused to disclose its role in paying SOMO – or, in the alternative, a statement from OFAC that there were no restrictions on the importation of the Khor al-Amaya oil into the United States.²⁷³

Later on June 10, 2003, Bayoil submitted a written offer to the Jordanian Ministry to purchase the oil on both the Hellepont Embassy and Empress des Mer. The next day, June 11, 2003, Bayoil representatives John Irving, Augusto Giangrandi, and Zeid Khorma met again with the Minister of Energy, who was accompanied by another Jordanian Ministry official, Farouq al-Hyari. According to Mr. Irving, the participants discussed pricing and then turned to the shipping documents needed by Bayoil to obtain financing from a bank for the transaction.²⁷⁴ According to Mr. Irving, the Jordanian Minister of Energy balked at many of the documentation requirements, because Jordan did not want its role or the nature of the transaction to become public. For example, an Irving email states: “M said no way would J ‘go public’ on these bbls lifted from 03 and indeed it was very simple: ‘the bbls are to be lifted ex Fujairah.’”²⁷⁵

According to Mr. Irving, the Jordanian Minister of Energy appeared annoyed that the legitimacy of the shipments was being questioned, alleging that the Prime Minister of Jordan had told him that the shipments had the “direct approval of the White House”:

“M said that he had had a meeting with the “higher authority” [*sic*] that morning (we know he met the PM) and that the movement of these bbls had the direct approval of the ‘White House’. We believe that approval was succinct at the time of original lifting and has been stated more forcefully at the Aqaba meeting early June”²⁷⁶

The participants also discussed how to construct a rationale for why Jordan was now selling the Iraqi barrels it had supposedly acquired for a strategic oil reserve:

“[Farouq al-Hyari] is working on this document today. Basically it is going to state that J has these bbls for strategic stock reasons and quality discovery means that they cannot process these bbls in J for environmental reasons (J refineries lack hydrotreating

²⁷² Email dated 6/10/03, from Bayoil’s Jean Johnston to John Irving, 6:22 PM, Bates BAY14-01736.

²⁷³ Id.

²⁷⁴ Email dated 6/11/03, from Bayoil’s John Irving to David Chalmers and others, 8:23 AM, Bates BAY14-01817.

²⁷⁵ Id. Bayoil emails often used abbreviations or codes to refer to persons and places. In this email, “M” refers to the Jordanian Minister of Energy, “bbls” stands for “barrels,” “J” refers to Jordan, and “03” refers to Iraq.

²⁷⁶ Id.

facilities.) There is evidence that these bbls have resulted in a recent refinery [shutdown] for 22 hours but FH denied this. This doc will also highlight the reasons for re-sale.”

Other than this email, the Subcommittee Minority Staff has not located any other indication in the Bayoil documents that the Iraqi oil was unsuitable for Jordan’s refineries. In fact, in a subsequent Bayoil memorandum, John Irving seems to be irritated that a competitor was espousing the same rationale for the sale of the oil that Bayoil had “drummed up” for the Jordanian Ministry:

“[Zeid Khorma] went to check with one of his contacts what “others” were doing During the course of this meeting he got hold of an offer made 11th June from “Canadian Habitat International” based in Abu Dhabi which referred exactly to some of our wording discussed yesterday in the Ministry. In particular we had drummed up this strategic stock issue and here came the Canadian offer indicating precisely our wording.”²⁷⁷

Jordan’s unwillingness, or inability, to provide formal documentation legitimizing the purchase of the Iraqi crude proved to be an insurmountable obstacle for Bayoil. On June 12, 2003, Bayoil’s attorneys wrote to OFAC seeking “clarification” that would provide authority for Bayoil to import the Khor al-Amaya oil.²⁷⁸ Bayoil stated this clarification was necessary in order to “satisfy the demands of the Bureau of Customs and Border Protection and the foreign banks expected to finance the proposed transaction.” Bayoil wrote:

“We have been advised the Government of Jordan has offered two cargoes of Iraqi crude oil to Bayoil’s affiliate for purchase, which Bayoil proposes to transport and/or distribute to customers in the United States. It is our understanding that this crude oil was acquired by the Government of Jordan prior to the issuance of the Executive Order and the General License [removing the Iraqi sanctions]. Bayoil has been led to believe that this crude oil was loaded at Khor Al Maya, Iraq, during late February 2003.”

Bayoil told OFAC that, with respect to Iraqi oil lifted prior to the end of sanctions on May 22, 2003, the U.S. Bureau of Customs and Border Protection was still requiring documentation showing that the oil had been obtained in accordance with the U.N.’s Oil-for-Food program. For example, Bayoil told OFAC that the Bureau wanted both a copy of the U.N. 661 Committee approval of the contract to buy the oil, and a U.N. inspection certificate showing that the cargo had been properly loaded and inspected at an authorized Iraqi port. Bayoil told OFAC: “We have been advised that neither documents are available with respect to the purchase of this crude oil.”

²⁷⁷ Email dated 6/12/03, from John Irving to David Chalmers, 9:58 AM.

²⁷⁸ Letter dated 6/12/03, from Bayoil’s legal counsel, Dickstein, Shapiro, Morin & Oshinsky, LLP to OFAC.

The next day, June 13, Bayoil's attorneys again wrote to OFAC, seeking expedited treatment of their request.²⁷⁹ In this letter, Bayoil noted the two ships "are valued at approximately \$120 million," and that if Bayoil could not "obtain comfort" from OFAC by close of business on June 16, "it is likely the Government of Jordan will sell these cargoes to another non-U.S. buyer."

On June 18, 2003, OFAC wrote to the U.S. State Department seeking guidance on Bayoil's request.²⁸⁰ OFAC asked the State Department whether the Khor al-Amaya cargoes "should be construed as a legal or an illegal export pursuant to the United Nations embargo." According to OFAC, the State Department never provided any response to their letter or Bayoil's request.

Ultimately, Bayoil's inability to obtain formal documentation, either from Jordan or OFAC, attesting to the legality of the oil from Khor al-Amaya, apparently prevented Bayoil from obtaining a financing commitment or letters of credit to support its purchase of the oil. In mid-June 2003, Jordan sold the three cargoes that had been consolidated on the Marine Pacific and moved to the Hellespont Embassy, to Al Hoda International Trading. Al Hoda then delivered the oil to the Midor Refinery near Alexandria, Egypt.

The loss of this cargo to Al Hoda and Bayoil's ongoing difficulties in its attempt to buy the remaining oil on the Empress des Mer led to recriminations between Bayoil's John Irving and Zeid Khorma, Bayoil's agent in Jordan. A series of emails between Mr. Irving and Mr. Khorma reveals the tension between the two, as well as their beliefs that the disposition of these barrels had risen to a "political level" within Jordan and the United States. For example, on July 1, 2003, Mr. Khorma wrote:

"Believe me I am as frustrated as you are. The situation as it stands now, has reached a political level, and not a commercial one. Yes we were told that Cargo would be offered to our directions if the [letter of credit from Al Hoda] is not established. However since the high authority taking care of the matter is currently unavailable till tomorrow afternoon, we will have to wait till then.

Believe me John, the level we are talking to at this time is the highest and this restricts us by not going below. However I will try to call them tonight to see what indication we will get.

I wish I had more news for you, but believe me the level we have reached is now the highest.

best regards

²⁷⁹ Letter dated 6/13/03, from Bayoil's legal counsel, Dickstein, Shapiro, Morin & Oshinsky, LLP to OFAC.

²⁸⁰ Memorandum dated 6/18/03, from R. Richard Newcomb, Director, OFAC, to George A. Glass, Director, U.S. Department of State/EB/ESP.

Zeid”²⁸¹

After two more emails from Mr. Khorma providing updates on discussions at the “highest levels” in Jordan regarding the sale of the second cargo of oil to Bayoil, and urging Mr. Irving to continue to wait for a decision, Mr. Irving wrote to Mr. Khorma:

“This is good news. However we have been here before.

Also for you to say ‘we have done a lot so that you guys better perform’ and, in the same sentence, to question the right of the WH to check some issues with the J Govn pertaining these bbls, places you in a position way above your stated position as an ‘agent’ – or facilitating broker – on these bbls.

We will not accept these inappropriate statements coming from you. All we want from you is detailed information which we are not receiving. All we are receiving are assurances and extended calendars.

This whole issue now depends upon OFAC of which the Minister gave us assurances (June 11 in case you had forgotten) that he had ‘received approval at the highest level’ which, may I remind you, you interpreted as being the White House. In addition you said that this point had been covered at Aqaba as well. Therefore it is perfectly valid for the US to be completing the ‘circle’ – a fact you fail to understand.

In addition the fact that we are keeping a ship close to Empress at \$X,000 pd is an indication of our intent.

Perhaps, Zeid, the ‘performance’ issue is somewhere else, and this is a matter of internal debate in Bayoil at the moment.

Think about it.”²⁸²

On July 6, Mr. Khorma emailed Mr. Chalmers with “an official notification of release from responsibility towards the Jordan deal.” Apparently in reference to his conversations with Mr. Irving, Mr. Khorma told Mr. Chalmers, “I have never had anyone address me or my country with the manner spoken to me, nor has anyone ever hang up on me.” Mr. Khorma told Mr. Chalmers their friendship was too valuable to lose over a business deal, but his honor did not

²⁸¹ Email dated 7/1/03, from Zeid Khorma to John Irving, 11:48 AM.

²⁸² Email dated 7/3/03, from John Irving to Zeid Khorma, 9:11 AM.

permit him to continue with this particular transaction. Mr. Khorma concluded by telling Mr. Chalmers, “I spoke to Augusto and gave him full details of the situation of the cargo.”²⁸³

For the remainder of the summer and into the fall of 2003, Augusto Giangrandi and Bayoil appear to have turned their attention to building relationships with the new leadership in SOMO and the Oil Ministry after the Hussein regime was deposed. In late November, Mr. Giangrandi raised the possibility that Bayoil could still purchase the Iraqi oil aboard the *Empress des Mer*. A note from John Irving to Mr. Giangrandi expressed surprise that Mr. Giangrandi was trying to resurrect this oil sale. Mr. Irving recounted their unsuccessful dealings to date, and wondered what, in Mr. Giangrandi’s view, had changed:

“We have made a concerted effort to purchase such quantities via your assistance previously on the basis we were assured that such a transaction was approved at the highest levels in D.C.

As such we applied for an OFAC license for a provisional transaction which after six plus weeks of work by our D.C. attorney[s] (\$10,000+), are were [*sic*] advised that no such license would be granted, without explanation.

Therefore, since these facts were related to you and we don’t have a ‘get out of jail free card,’ we are surprised by your continued inquiry about our interest or suggestions to push OFAC. What has really changed or what evidence exist which implies a change in policy in this matter?”²⁸⁴

From a subsequent email from Mr. Irving to Mr. Chalmers, it appears that Mr. Giangrandi explained to Mr. Irving that a deal Jordan had made with another purchaser for the *Empress des Mer* oil had fallen through, and so Jordan had inquired as to whether Bayoil were still interested. In December 2003, Mr. Chalmers told Mr. Irving he was “not interested in these [barrels] (if they are still there) due to customs issues and political uncertainties surrounding these historical bbls and to quality degradation issues.”²⁸⁵ At this point, Bayoil’s involvement in the Khor al-Amaya oil shipments appears to have ended.

D. KHOR AL-AMAYA AND THE IRAQ-JORDAN TRADE PROTOCOL

Repeatedly at key points during the saga of the Khor al-Amaya oil shipments, participants claimed the shipments did not violate U.N. sanctions, because they had taken place

²⁸³ Email dated 7/6/03, from Zeid Khorma to David Chalmers 1:13 PM.

²⁸⁴ Email dated 12/1/03, from Bayoil’s John Irving to David Chalmers (forwarding an email of the same date from Mr. Irving to Augusto Giangrandi).

²⁸⁵ Email from Bayoil’s John Irving to David Chalmers (12/1/03) 3:22 AM.

under the Iraq-Jordan trade protocol which had been approved by the United Nations. Jordan made this claim to shipbrokers, shipowners, and captains when asking them to help load and transport the oil; Jordan made the same argument in sales negotiations with Bayoil; and Bayoil offered the same rationale when trying to get lenders, U.S. Customs, and OFAC officials to endorse the legitimacy of the cargo. The evidence indicates, however, that the Khor al-Amaya oil shipments were not sold according to the pricing formula in the Iraq-Jordan trade protocol and did not meet the characteristics of the trade conducted under the protocol. Moreover, despite requests from interested parties, neither the United Nations nor the United States ever agreed to characterize the Khor al-Amaya cargoes as the product of transactions in accordance with U.N. sanctions.

Background. Jordan and Iraq have been close trading partners ever since both countries came into existence after the first World War. Initially, both countries were ruled by the Hashemite family: Faisal became King of Iraq and his brother, Abdullah, became King of Jordan. During the Iran-Iraq war, Jordan supplied essential agricultural and industrial goods to Iraq, and, in return, Iraq supplied Jordan with “cheap oil, grants, and low-interest loans.”²⁸⁶

The sanctions imposed upon Iraq immediately after Saddam Hussein invaded Kuwait had a particularly severe effect on Jordan. Jordanian exports plummeted, and Jordanian businesses associated with Iraq’s exports – nearly 70 percent of which traveled through the Jordanian port of Aqaba – were severely affected. Jordan’s oil supplies were also disrupted; prior to imposition of U.N. sanctions, Iraq had supplied about 80 percent of Jordan’s oil at below-market rates.²⁸⁷ An influx of over a million refugees from Iraq into Jordan further strained Jordan’s economy.

On August 20, 1990, fourteen days after the United Nations Security Council adopted Resolution 661 imposing sanctions on Iraq, Jordan informed the Security Council that it would comply with the provisions of the resolution, but that such compliance would lead to “extreme economic hardships to Jordan and its population,” and sought consultation to alleviate those hardships as provided under Article 50 of the United Nations Charter.²⁸⁸ Article 50 provides:

If preventive or enforcement measures against any state are taken by the Security Council, any other state, whether a Member of the United Nations or not, which finds itself confronted with special economic problems arising from the carrying out of those

²⁸⁶ “The 1991 Gulf War and Jordan’s Economy,” *Middle East Review of International Affairs*, Vol. 6, No. 2 (June 2002).

²⁸⁷ *Id.* Jordan’s economy also was affected by its political isolation due to its failure to join the coalition opposing Iraq’s invasion of Kuwait.

²⁸⁸ See letter dated 8/20/90, from the Permanent Representative of Jordan to the United Nations Addressed to the President of the Security Council, United Nations Security Council document S/21620 (8/24/90). Jordan’s letter identified a host of negative economic consequences from the Iraqi embargo. Overall, Jordan stated it would incur a “direct financial loss” of at least \$1.5 billion annually, and cited consequences that could subject its economy to “total collapse.”

measures shall have the right to consult the Security Council with regard to a solution of those problems.

In September 1990, the U.N. 661 Committee issued a “Special Report” on Jordan’s Article 50 request “with regard to special economic problems arising from the carrying out of the measures contained in resolution 661 (1990).”²⁸⁹ The 661 Committee “express[ed] concern at the unique economic difficulties confronting Jordan,” “recognize[d] the need to deal on a continuing basis with Jordan’s unique economic difficulties,” and requested the Secretary General to work with Jordan to develop appropriate remedies, “including especially the question of supply of petroleum and its derivatives.”

An Annex to the Special Report included a response from the Jordanian Ambassador to questions posed by the U.N. 661 Committee. In it, Jordan disclosed that its annual oil imports from Iraq totaled 16 million barrels of crude oil per annum at \$16 per barrel. Jordan also stated:

“Until this supply can be ensured, Jordan should be given waiver on an interim basis to continue importing oil and oil derivatives from Iraq. It is being understood that all such imports will be halted once an alternative source of energy is ensured provided the above prices are applicable and financing is made against loans to be repaid over a period of 30 years with 10 years’ grace period at a 3 per cent interest rate per annum.”

Neither the U.N. 661 Committee nor the U.N. Security Council ever formally approved Jordan’s request for assistance under Article 50.²⁹⁰ The U.N. 661 Committee did, however, recommend that the U.N. Security Council “take note” of Jordan’s trade with Iraq. The U.N. Security Council received this recommendation from the 661 Committee, but did not take any formal action in response. According to the Iraq Survey Group, “Essentially, the Committee neither approved nor condemned Jordan because of its dependence on Iraqi oil at the time.”²⁹¹

For the first few years of the sanctions, Jordan regularly reported to the U.N. Security Council on its trade with Iraq under this arrangement. Jordan also regularly informed the U.N. 661 Committee of goods it exported to Iraq, such as food and medicine, and the quantity of oil and fuel oil it imported from Iraq. In the mid-1990s, the Jordanian reports became less frequent,

²⁸⁹ Special Report of the Security Council Committee Established by Resolution 661 (1990) Concerning the Situation Between Iraq and Kuwait on the Communication Received from Jordan with Regard to Special Economic Problems Arising from the Carrying Out of the Measures contained in Resolution 661 (1990), U.N. Security Council Document S/21786 (9/18/90).

²⁹⁰ The U.N. Security Council did not approve any of the multiple Article 50 requests made during the sanctions period.

²⁹¹ ISG Report, Regime Finance and Procurement, p. 24.

but resumed in regularity after a request from the U.N. 661 Committee. By the late 1990s, though, these reports became sporadic.²⁹²

Iraq-Jordan Protocol. Jordan's trade with Iraq, including its oil trade, was conducted according to "protocols" that were negotiated annually between Iraq and Jordan. As described by the Iraq Survey Group, under these protocols, "Iraq trucked both crude oil and oil products – fuel oil, gas oil, LPG, base oil, and gasoline—to Jordan under the agreement, according to SOMO records. Crude shipments rose from about 45,000 barrels per day (bbl/d) in 1990 to 79,000 bbl/d by 2002."²⁹³

The vast majority of Jordan's trade with Iraq was conducted through credit arrangements, with no cash being provided to Iraq. The Iraq Survey Group explained, "The Jordan Protocol is generally referred to (by Jordanian and Iraqi officials) as a 100 percent credit account, with no cash being provided to Iraq." According to SOMO documents obtained by the ISG, a "small portion" of the trade was conducted according to a 60 percent credit and 40 percent cash arrangement: "SOMO documents list oil sales to the Jordanian Ministry of Energy and Minerals on a 60-percent credit, 40-percent cash basis. Contracts of this type are listed only for 2002 and are valued at only \$6.2 million."²⁹⁴ Due to this atypical financing arrangement, the ISG Report stated, "It is possible, maybe even likely, that Iraqi oil sales under the 60/40 arrangement ... are not technically part of the trade Protocol."²⁹⁵

Annex A of the Iraq Survey Group report contains a translation of the 2003 Iraq-Jordan Trade Protocol, which was in place at the time of the Khor al-Amaya incident.²⁹⁶ The translated protocol contains language indicating that the protocol was never intended to apply to Iraqi oil shipments carried on seagoing tankers for sale to third parties.

The first of three parts of the 2003 Iraq-Jordan trade protocol was signed in Baghdad, on November 21, 2002, by Iraqi Oil Minister Rashid and Jordanian Minister of Energy and Minerals Mohamed Batayinah. The first part of the protocol stated that Saddam Hussein had "authorized a grant of \$300 million to the people of Jordan. The grant will be from the value of oil and its derivatives that Jordan imports during 2003." The agreement specified that this grant would be provided in monthly installments of \$25 million, to be deducted by the value of the oil sold by Iraq to Jordan. It further provided, "All dues from crude oil that is imported from Iraq to Jordan in 2003 shall be paid in cash," and that such funds shall be used "for financing exports

²⁹² Subcommittee Minority Staff review of U.N. 661 Committee minutes, 1990-2002.

²⁹³ ISG Report, Regime Finance and Procurement, p. 24.

²⁹⁴ *Id.* at 25.

²⁹⁵ *Id.*

²⁹⁶ *Id.* at 146-153.

related to improving, supplementing, necessity, and spares from the Jordanian Oil Refinery Company, for the benefit of the Iraqi Ministry of Oil.”

The second part of the protocol was agreed to on the same date as the first part. It specified the daily amounts of crude oil and refined products to be supplied by Iraq to Jordan for each of the twelve months in 2003. For the first five months of 2003, the agreement contemplated that Iraq would provide Jordan with about 12,000 tons of oil per day, which is equivalent to about 100,000 barrels of oil per day. This part of the protocol also provides a formula for determining the price of crude oil provided to Jordan. That formula is based, in part, on the price of Iraqi oil being sold to Europe, minus an allowance of 95 cents per barrel for the cost of transporting the oil by truck from the city of Haditha, in western Iraq, to Jordan.²⁹⁷

Khor al-Amaya Oil Shipments. The Khor al-Amaya oil shipments were not sold according to the pricing formula in the Iraq-Jordan trade protocol, and the shipments did not meet the characteristics of the trade conducted under the protocol. Moreover, despite requests from interested parties, neither the United Nations nor the United States ever agreed to describe the Khor al-Amaya cargoes as the product of transactions in accordance with U.N. sanctions.

In early 2003, when the Khor al-Amaya oil shipments were first purchased by Jordan, the pricing terms in the 2003 Iraq-Jordan trade protocol would not have produced the low \$7 per barrel rate that Jordan actually paid for the oil. For example, under the protocol’s pricing formula, even if Basrah Light crude oil were selling as low as \$20 barrel for European purchasers, the price to Jordan under the protocol, even after application of the transportation and 40 percent discounts, would have been \$11 per barrel. The Khor al-Amaya price of \$7 per barrel is so substantially less, that it indicates the shipments were not priced according to the formula specified in the Jordan-Iraqi protocol in effect at the time.

Further evidence that the Khor al-Amaya shipments were not contemplated by the protocol is provided in the third part of the protocol, which specifies various quantities and transportation costs for Iraqi oil to be delivered to Jordan. The text provisions establish costs for

²⁹⁷ The protocol states:

“Between January 1st, 2003 and December 31, 2003, the price of crude oil shall be in accordance with the pricing formula demonstrated below:

The light, Basra crude oil price shall be paid in USD per barrel, the price is for a tank load from station (T1) in Iraq that will be equal to the light Basra crude oil that is announced for Europe, from the delivery of the Arab Gulf for the month that the load occur, minus \$0.95 per barrel, from December 31, 2002, a review on the amount will occur if changes ensue on transportation fare.

In case the actual price is higher than \$20 per barrel, the Jordanian side will be granted a deduction of 40% for the increase for the light Basra crude oil that is announced in Europe.”

The “T1” station is a crude oil pumping station near the city of Haditha, 150 miles northwest of Baghdad, and 200 miles northeast of the Jordanian border. Under the previous Jordan-Iraq protocols as well, oil was delivered by pipeline to the T1 station, where it was then loaded onto trucks for transportation by road into Jordan for use in the Zarqa refinery.

“tanker” trucks traveling on roads between Iraq and Jordan; they do not contemplate tanker ships.

For example, the protocol states: “Starting 2/1/2003 the Iraqis will continue to deliver 28% of Jordan’s needed crude oil shipments which quantities and daily average have been decided [in the November 21, 2002 agreement.]” It identifies the “shipping cost” as 10 Jordanian dinars per ton “minus 200 Jordanian Fils towards safety, transportation arrangement and *road maintenance* for the oil tankers during the bidding execution period.” (Emphasis added.) Another paragraph states: “Arrangements and communication will be maintained regarding *road maintenance* between the crude oil shipping stations in (T1) and the Iraqi-Jordanian border, in order to follow up and implement the plan in the shortest possible period and to improve the crude oil tanker’s line.” (Emphasis added.) Yet another section makes it clear that the term “tankers” refers to trucks: “The Iraqi side will commit to the predetermined regulation number (42) of 2002 and the decisions issued by the Jordanian Cabinet of Ministers when dealing with the maximum dimensions, total weight, and engine capacity of the crude oil tankers. According to the Minister’s Cabinet decision number 1626 dated 6/25/2002, the maximum total weight should not exceed five tons per truck (tanker), excluding the liquid gas tankers.”

The protocol’s focus on tanker trucks is a logical reflection of the fact that the overland transport of oil between Jordan and Iraq, which share a common border, was economically beneficial for both countries. In the twelve years since the U.N. and the U.S. “took note” of Iraq-Jordan trade, the evidence indicates that Iraqi oil was routinely supplied to Jordan by truck, as indicated in the trade reports supplied by Jordan to the U.N. 661 Committee. In fact, the Subcommittee Minority Staff is unaware of any deliveries by ship of Iraqi oil to Jordan during the sanctions period, outside the OFF program, other than the Khor al-Amaya incident, and unaware of any instance in which the Iraq-Jordan protocol was used or interpreted in a manner suggesting that Jordan had authority to export Iraqi oil in large tankers through the Persian Gulf outside the Oil-for-Food program.

Additionally, the oil trade under the Iraq-Jordan protocol appears to have applied to oil purchased by Jordan for its own use; no protocol provisions appear to contemplate Jordan’s buying below-market oil from Iraq for resale to other countries or oil traders. Moreover, Jordan’s customary practice was to report all trade occurring under the protocol to the United Nations in regular trade reports provided to the U.N. 661 Committee. The evidence suggests, however, that Jordan never informed the 661 Committee about the Khor al-Amaya incident -- before, during, or after it occurred.

The following table summarizes how the Khor al-Amaya oil shipments differed from typical oil shipments that took place under the Iraq-Jordan trade protocol.

Comparison of Trade Protocol and Khor al-Amaya Oil Shipments

	Method of Transportation	Resale of Oil Outside Jordan	Subject to Price Formula	Jordan Informed UN
Typical Oil Shipments via Trade Protocol	Trucks, weight of 5 tons (max)	No	Yes	Yes
Khor al-Amaya Oil Shipments	Ships, weight of 90,000 - 260,000 tons	Yes	No	No

Table 5. Key differences between Khor al-Amaya oil shipments and typical oil shipments conducted under the Iraq-Jordan trade protocol.

High-ranking Iraqi officials interviewed by Subcommittee staff stated that the Iraqi Oil Ministry had not considered the Khor al-Amaya oil shipments to have been permitted under U.N. sanctions and had been concerned about possible action by the Maritime Interdiction Force to confiscate the oil. Senior oil ministry officials familiar with the oil trade under the Iraq-Jordan protocols told the Subcommittee that they did not participate in any discussions with Jordanian officials about the Khor al-Amaya shipments, nor were these shipments discussed with Jordan in connection with negotiations over the 2003 trade protocol. Iraqi Vice President Ramadan indicated that he did not have any contacts with Jordanian officials about the Khor al-Amaya oil shipments.

Finally, as Bayoil's experience demonstrates, Jordan was never able to provide, and Bayoil was never able to obtain, documentation from either the United Nations or the United States indicating that these shipments had been made in accordance with U.N. requirements for Iraqi oil sales under the Oil-for-Food program or satisfied U.S. requirements permitting Iraqi oil imports into the United States. Throughout the summer of 2003, Bayoil aggressively tried to obtain documentation from either Jordan or OFAC attesting to the legality of the oil shipments loaded at Khor al-Amaya, so that Bayoil could obtain financing, buy the oil, and import it into the United States. At one point, Bayoil informed OFAC that no documents were available showing that the shipments were made in accordance with the OFF program, but asserted the shipments were nonetheless legal and did not violate U.N. sanctions or U.S. law.²⁹⁸ OFAC never

²⁹⁸ Letter dated 6/12/03, from Bayoil's legal counsel, Dickstein, Shapiro, Morin & Oshinsky, LLP to OFAC.

responded to Bayoil's multiple requests for a statement that the Khor al-Amaya exports from Iraq did not violate U.N. sanctions.

Jordan and Bayoil asserted that, because the United Nations looked the other way and allowed direct oil sales between Iraq and Jordan carried out by truck, it should do the same for oil sales between Iraq and Jordan carried out by ship. But the oil transported by truck was for Jordan's own use and did not require international documentation signifying compliance with U.N. sanctions and the Oil-for-Food program. In the Khor al-Amaya incident, Jordan tried to resell the oil it obtained from Iraq at below-market prices. In that situation, oil traders, their lenders, and the countries asked to accept the imports were being asked, not simply to look the other way from a transaction between Iraq and Jordan, but to take an affirmative position that the oil sales had complied with U.N. sanctions. Neither the United Nations nor the United States would supply written documentation signifying that the Khor al-Amaya oil sales had been made in accordance with U.N. sanctions and the Oil-for-Food program.

E. U.S. GOVERNMENT RESPONSE TO SUBCOMMITTEE INQUIRIES

The information gathered by the Subcommittee on the 2003 Khor al-Amaya incident is extensive, but not yet complete. Two of the least forthcoming parties about this matter have been the U.S. Department of State and the U.S. Department of Defense. The Subcommittee has made several requests to both the State Department and the Defense Department to provide basic information about the Khor al-Amaya incident and about the functioning of the Maritime Interdiction Force. The Subcommittee also asked them to comment, in an unclassified manner, on evidence indicating that the United States was aware of and permitted the Khor al-Amaya shipments in violation of U.N. and U.S. sanctions on Iraq. Neither the State Department nor the Defense Department has provided the requested information.

On February 8, 2005, Chairman Coleman and Ranking Minority Member Levin wrote to Secretary of Defense Donald H. Rumsfeld requesting information about the operations of the Maritime Interdiction Force. The letter requested general information about MIF operations during the sanctions against Iraq and the following specific information about the MIF's actions in response to the Khor al-Amaya shipments:

“It has been reported that, in February 2003, as many as 14 tankers loaded at least 7 million barrels of oil at or near the K[hor] al-Amaya port in Iraq in apparent violation of U.N. sanctions on Iraq (hereinafter “K[hor] al-Amaya oil”).

(a) The U.S. Department of State has informed the Subcommittee that, in February 2003, it was notified of the ships loading K[hor] al-Amaya oil and immediately notified the Department of Defense (DOD). Please confirm that this notification took place and provide copies of all related documentation.

(b) On January 13, 2005, the Financial Times reported that Saybolt, a Dutch company under contract with the U.N. to oversee oil exports from Iraq, sent an email on February 17, 2003, to the U.S. Navy's Maritime Liaison Office (MLO) in Bahrain, which coordinated MIF activities, notifying the office of the ships loading K[hor] al-Amaya oil and received an acknowledgment from the MLO on the same day. Please confirm that this notification took place and provide copies of all related documentation.

(c) It has been reported that other parties in addition to the State Department and Saybolt notified DOD or the MIF about the ships loading K[hor] al-Amaya oil. Please confirm whether these notifications took place and provide copies of all related documentation.

(d) Please describe what actions DOD and the MIF took in response to being notified about ships loading K[hor] al-Amaya oil. Is it accurate that the MIF took no action to board, divert, or otherwise intercede with these ships?

(e) On February 3, 2005, the Los Angeles Times reported that, "Oil traders were told informally that the U.S. let the tanks go because Amman [Jordan] needed oil to build up its strategic reserves before the U.S.-led invasion of Iraq" and that U.N. officials had "confirmed" this description of events.

(i) Did DOD or any U.S. official make an affirmative decision not to intercede with the ships loading K[hor] al-Amaya oil? If so, who made that decision and why?

(ii) Did DOD ever advise the MIF not to intercede with the ships loading K[hor] al-Amaya oil? Is DOD aware of any action taken by any U.S. official to advise the MIF not to intercede with the ships loading K[hor] al-Amaya oil?

(iii) What is DOD's understanding regarding the role of Jordan or any Jordanian business relative to the K[hor] al-Amaya oil?

(iv) Please provide copies of all documentation related to the decision by MIF on how to handle the ships loading K[hor] al-Amaya oil.

(f) The Financial Times reported that the K[hor] al-Amaya oil was sold to the "Middle East Oil Refinery, in Alexandria, Egypt; to a refinery in Aden, Yemen; and to Malaysia and China." What is DOD's understanding of what happened to the K[hor] al-Amaya oil? Please provide copies of all documentation related to the disposition of the K[hor] al-Amaya oil.

(g) The Financial Times reported that the K[hor] al-Amaya oil was sold for at least \$150 million in "illegal profits" and "[a]bout another \$50 million went to [Saddam]

Hussein's cronies." What is DOD's understanding regarding any funds produced by the transfer of the K[hor] al-Amaya oil, including the extent to which any such funds were provided to persons associated with Saddam Hussein? Is there any evidence that funds associated with K[hor] al-Amaya oil have been used to support the insurgency effort in Iraq? Please provide copies of all documentation related to any funds produced by the transfer of the K[hor] al-Amaya oil.²⁹⁹

The Defense Department has not provided any information in response to this letter.

At the Subcommittee's February 15, 2005, hearing on the Oil-for-Food program, Senator Levin asked a representative of the State Department, Patrick Kennedy, Ambassador to the United Nations for Management and Reform at the U.S. Mission to the United Nations, to comment on the K[hor] al-Amaya shipments:

"I would ask that we make part of the record a number of documents which I will ask the Ambassador to comment on for the record relative to some ship deliveries ... of Iraqi oil ... for Jordan, which apparently were escorted by American ships. There have been a number of press reports on those deliveries and I would ask that we make part of the record at this time a number of documents which we have received by subpoena in the record."³⁰⁰

After the hearing, on March 9, 2005, Chairman Coleman and Ranking Minority Member Levin wrote to Ambassador Kennedy, repeating the request for the State Department's comments on the three K[hor] al-Amaya documents included in the hearing record, and asked for the following additional information:

- (1) Please indicate the extent to which these documents are factually accurate in relation to the 2003 oil shipments.
- (2) Please indicate the extent to which these documents provide accurate information about whether the oil shipments were undertaken with the knowledge and approval of the U.N., the 661 Committee, and the United States, and please identify and correct any factual inaccuracies in this respect.
- (3) Please describe the involvement of the State Department, if any, in developing the position of the United States Government with respect to these 2003 oil shipments and provide the name of the senior decisionmakers, if any.

²⁹⁹ Letter dated 2/8/05, from the Subcommittee to Defense Secretary Donald Rumsfeld,.

³⁰⁰ "The United Nations' Management and Oversight of the Oil-for-Food Program," hearing before the U.S. Senate Permanent Subcommittee on Investigations (2/15/05), unpublished transcript (in Subcommittee files).

- (4) Please describe the involvement of the State Department, if any, in developing the position of the United States Government with respect to the oil protocols that existed between the government of Iraq and Jordan and provide the name of the senior decisionmakers, if any.
- (5) During prior communications with the Subcommittee, you indicated that the State Department received notice of the oil shipments in 2003, and, in turn, informed the Department of Defense (DOD). Please indicate, by name and job title, who at the State Department received the information about the oil shipments, who communicated the information to DOD, and who was contacted at DOD. ...
- (7) Please describe the involvement of the State Department, if any, in communicating its position on the 2003 oil shipments to the Office of Foreign Assets Control, DOD, the Maritime Interdiction Force, or entities involved in the loading and transport of oil from K[hor] al-Amaya; and what information, if any, its personnel communicated regarding these oil shipments.³⁰¹

The State Department has not provided any information in response to either the letter or Senator Levin's oral request at the February 2005 hearing.

Finally, both the State and Defense Departments have declined Subcommittee requests to make specific individuals available for an interview in an unclassified setting. The State Department, for example, has failed to date to arrange an interview of Amy Schedlebauer, the State Department official who allegedly advised a U.S. company that the United States was aware of the Khor al-Amaya shipments and had determined to take no action in response. The Defense Department failed to date to arrange an interview in an unclassified setting of U.S. Naval Commander Harry French who, in his role with the Maritime Interdiction Force, appears to have been personally informed of each oil tanker wishing to dock at Khor al-Amaya and responded that the MIF had no objection.

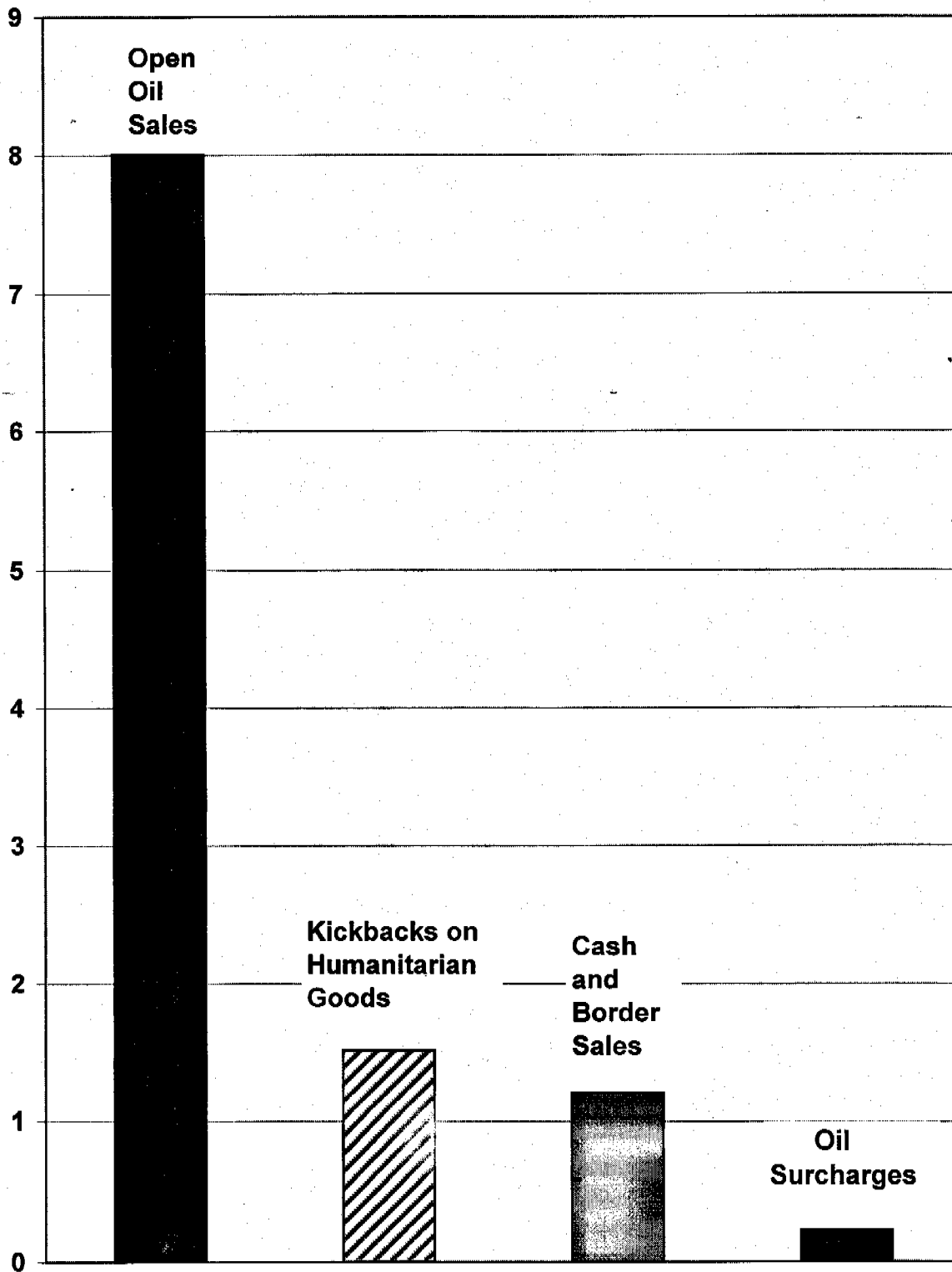
✧ ✧ ✧

³⁰¹ Letter dated 3/9/05, from the Subcommittee to Ambassador Patrick F. Kennedy, U.S. Department of State.

Figure 1

Illicit Iraqi Income 1991-2003

Billions of
Dollars

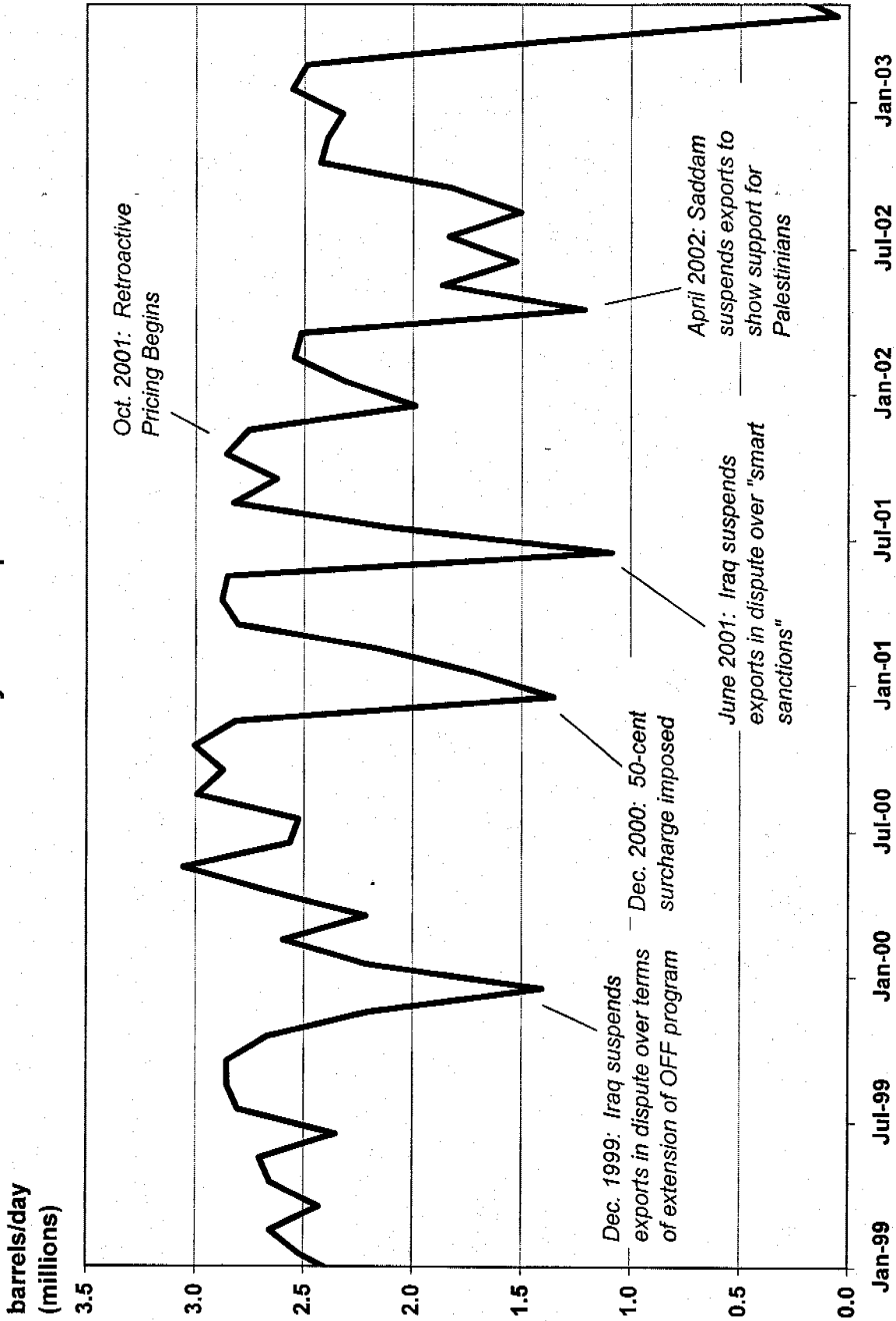


Data source: ISG Report, 9/04

Chart prepared by: Senate Permanent Subcommittee on Investigations,
Minority Staff

Figure 2

Iraqi Oil Production January 1999 - April 2003



Data source: U.S. Energy Information Administration

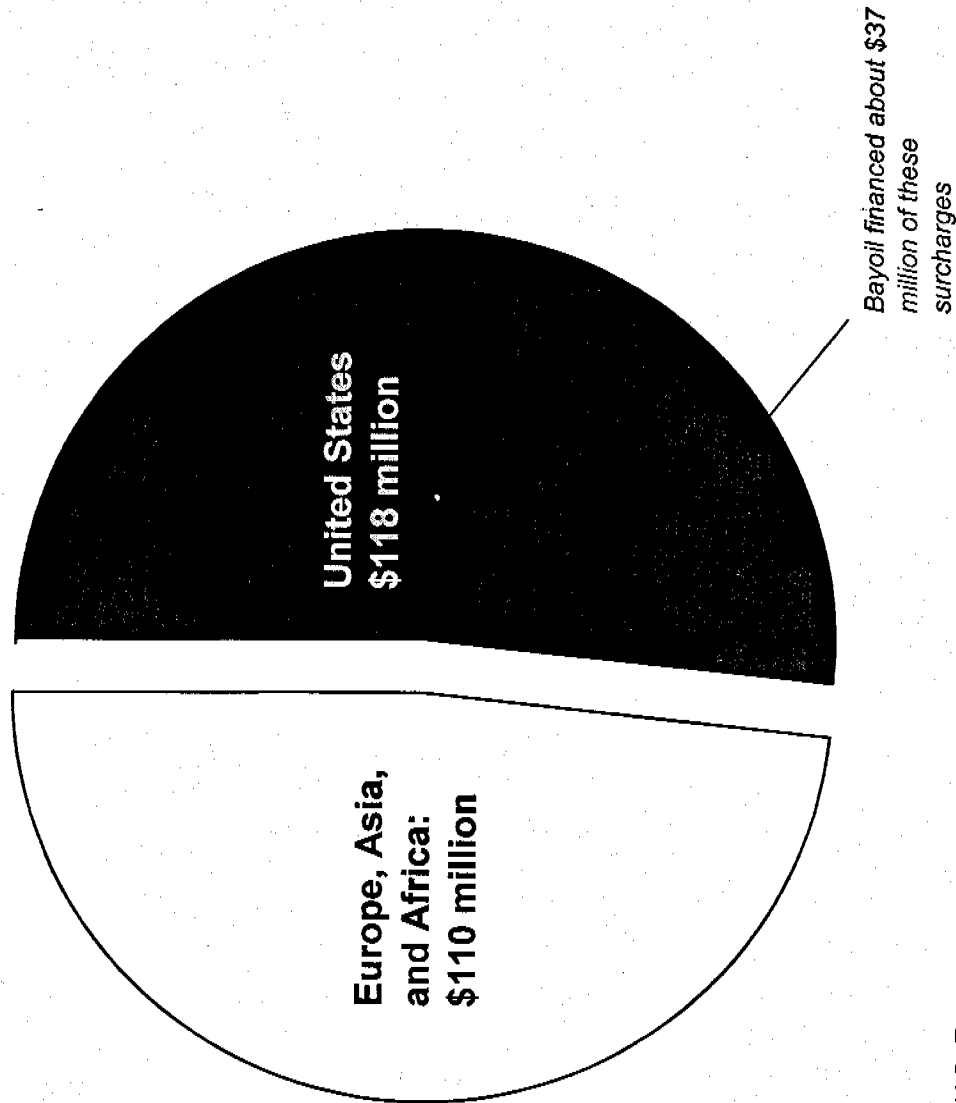
Chart prepared by:

U.S. Senate Permanent Subcommittee on Investigations, Minority Staff

Figure 3

Illegal Surcharges on Iraqi Oil: Amounts Paid, by Final Destination 2000 - 2002

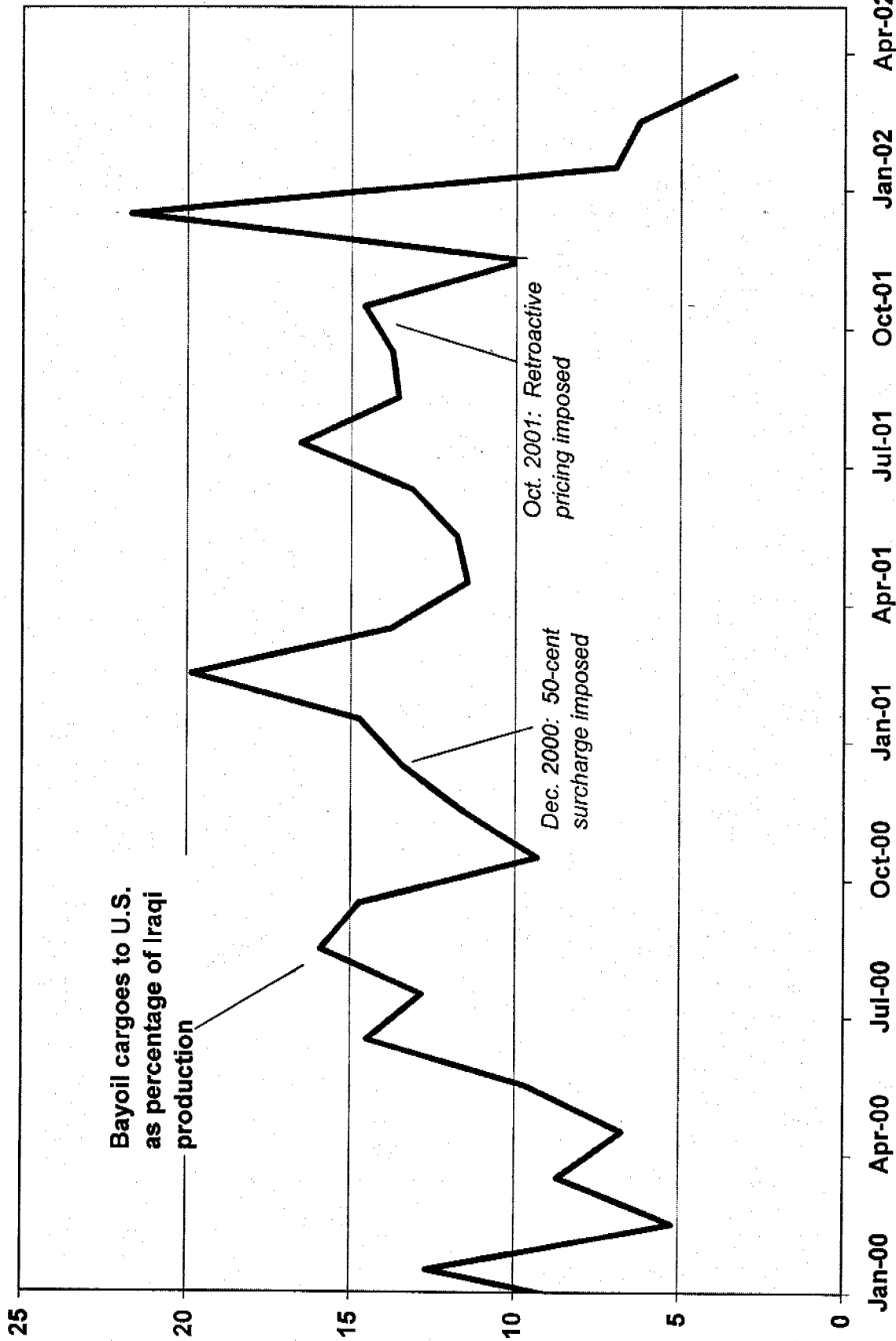
U.S.:	\$118 million
Non-U.S.:	\$110 million
Total:	\$228 million



Data source: These estimates are based on U.S. Energy Information Administration import data, Iraqi surcharge records, and Bayoil documents.
Chart prepared by: U.S. Senate Permanent Subcommittee on Investigations, Minority Staff.

Figure 4

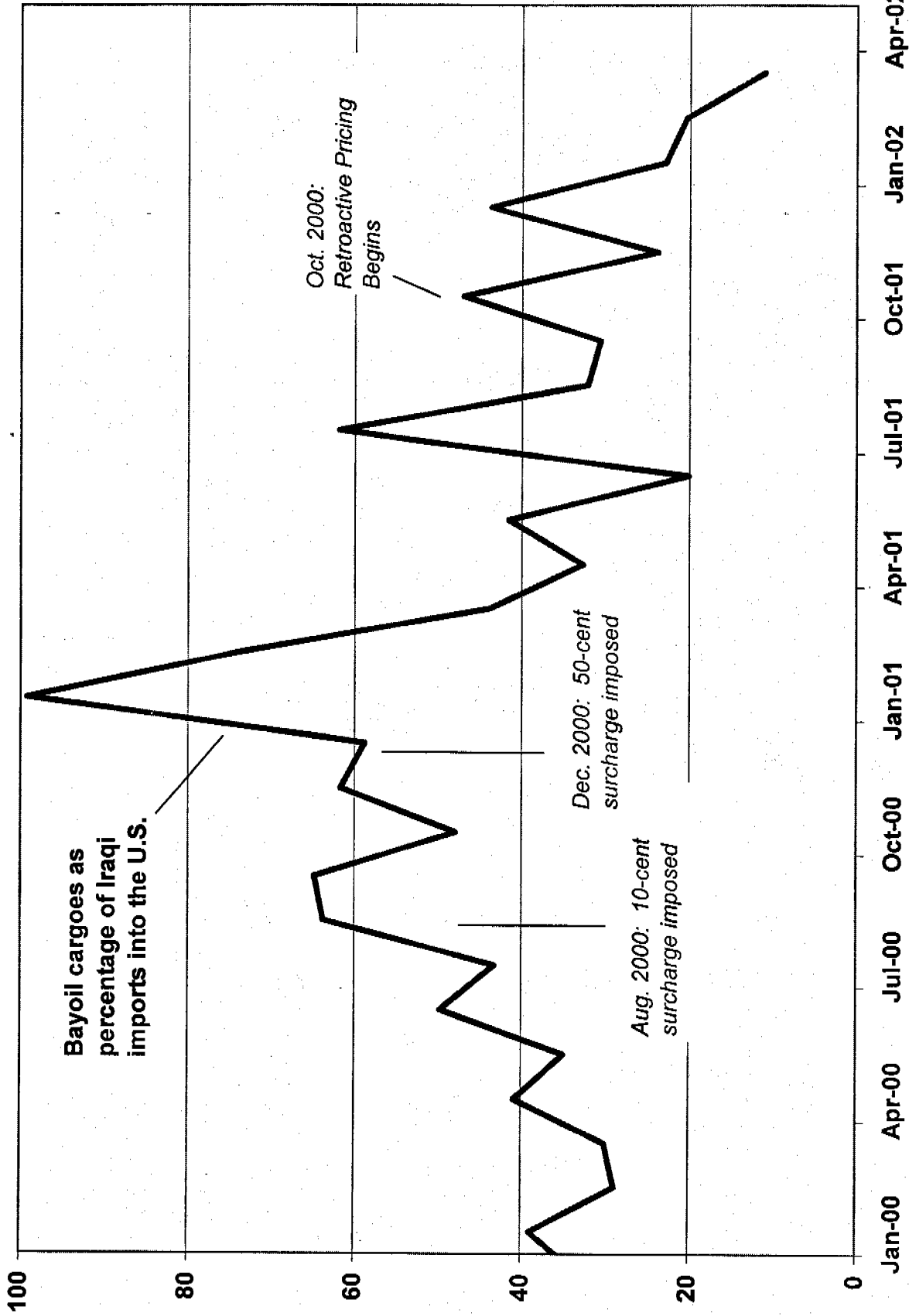
Bayoil Cargoes as Percent of Iraq Oil Production July 1999 - April 2002



Data source: U.S. Energy Information Administration, Bayoil documents
Chart prepared by:
U.S. Senate Permanent Subcommittee on Investigations, Minority Staff

Figure 5

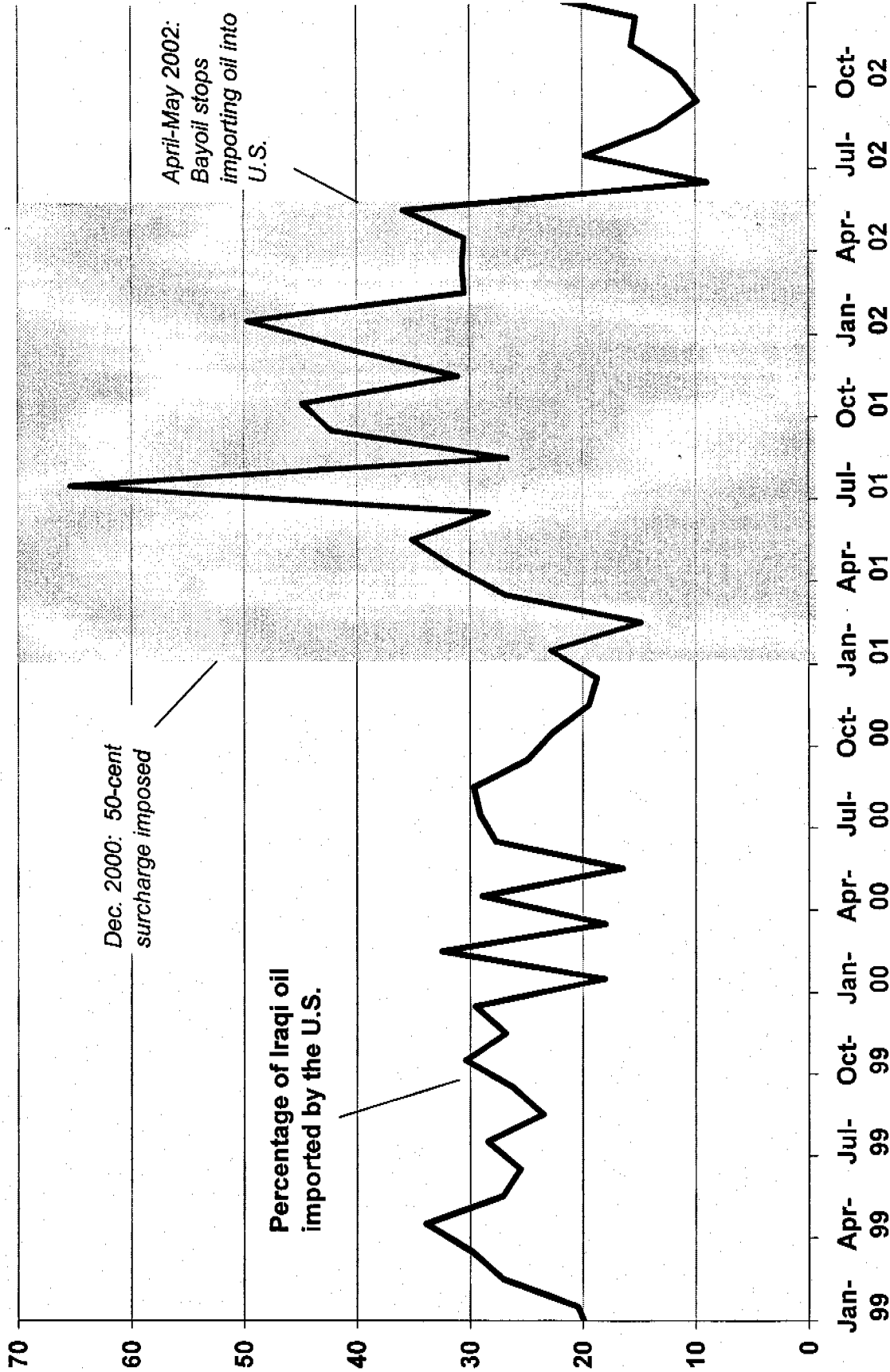
Bayoil Cargoes as Percent of U.S. Imports from Iraq January 2000 - April 2002



Data source: U.S. Energy Information Administration, Bayoil documents
Chart prepared by:
U.S. Senate Permanent Subcommittee on Investigations, Minority Staff

Figure 6

Percent of Iraqi Oil Production Imported by U.S. 1999 - 2002



Data source: U.S. Energy Information Administration

Chart prepared by:

U.S. Senate Permanent Subcommittee on Investigations, Minority Staff

Bayoil Cargo U.N. Number/Contract (V-xxxxx) Number	Iraqi Oil Allocation Holder	Iraqi Oil Allocation Holder (U.N. Contract Holder)	Vessel Name	Bank	Total Barrels Purchased by Bayoil (barrels)	Place Bayoil Loaded Oil B=Basrah K=Kirkuk	Purchaser from Bayoil	Amount Purchased from Bayoil (barrels)	Surcharge Rate Assessed (\$/barrel)	Surcharge Rate Paid (\$/barrel)	Total Surcharge Paid (\$)
50104 M/08/40	Mr. Zhirinovsky (Russian)	TNK	BERGE BOSS	Paribas	2,073,906	B	Exxon	497,715	0.18	0.10	49,772
50104							Clark	550,456	0.18	0.10	55,046
50104							Phillips	496,717	0.18	0.10	49,672
50104							Tosco	517,470	0.18	0.10	51,747
50104								2,062,358			
50107 M/08/40	Mr. Zhirinovsky (Russian)	TNK	BERGE PHOENIX	BBL	2,010,489	B	Lyondell	482,503	0.18	0.30	144,751
50107							Valero	532,426	0.18	0.30	159,728
50107							Exxon	501,856	0.18	0.30	150,557
50107							Clark	522,726	0.18	0.30	156,818
50107								2,039,511			
50109 M/08/66	Petrovietnam	PETROVIETNAM	FRONT SUN	Paribas	993,510	K	Crown (CIF)	993,510	0.10	0.10	99,351
50108 M/08/24	ALFA-ECO	ALFA-ECO	STENA COMPANION (2)	UEB	1,972,954	B	Equiva	1,050,000	0.10	0.10	105,000
50108					400,000	B	Tosco	240,013	0.10	0.10	24,001
50108					2,372,954		Clark	546,227	0.10	0.10	54,623
50108							Clark	536,171	0.10	0.10	53,617
50108								2,372,411			
50110 M/08/66	Petrovietnam	PETROVIETNAM	SKYROS	UEB	2,111,018	B	Tosco	476,089	0.10	0.10	47,609
50110							Clark	537,439	0.10	0.10	53,744
50110							Clark	541,818	0.10	0.10	54,182
50110							Clark	542,583	0.10	0.10	54,258
50110								2,097,929			
50112 M/08/66	Petrovietnam	PETROVIETNAM	STAVANGER PRINCE	Paribas	519,581	K	Valero	520,897	0.10	0.10	52,090
50111 M/08/24	ALFA-ECO	ALFA-ECO	AMAZON EAGLE (5)	Paribas	700,000	B	Sea Giant at Fujairah B/L		0.10		
50111		TNK	ITALTECH		1,050,000	B			0.10		
50111		ONCE	SEA GIANT (3)		157,223	B			0.10		
50111					1,944,946		Clark	494,656	0.10	0.10	49,466
50111							Clark	506,938	0.10	0.10	50,694
50111							Clark	505,399	0.10	0.10	50,540
50111							Exxon	491,263	0.10	0.10	49,126
50111								1,998,256			

Iraqi Oil Cargoes Bought by Bayoil for US Market
on which a Surcharge was Paid
SEPTEMBER 2000 - MARCH 2002

Appendix to Report on Illegal Surcharges on Oil for Food
Contracts and Illegal Oil Shipments from Khor al-Amaya

Bayoil Cargo U.N. Number (V-xxxxx)	Contract Number	Date Loaded	Iraqi Oil Allocation Holder	Lifter of Iraqi Oil (U.N. Contract Holder)	Vessel Name	Bank	Total Barrels Purchased by Bayoil (barrels)	Place Bayoil Loaded Oil B=Basrah K=Kirkuk	Purchaser from Bayoil	Amount Purchased from Bayoil (barrels)	Surcharge Rate Assessed (\$/barrel)	Surcharge Rate Paid (\$/barrel)	Total Surcharge Paid (\$)
50111	M/08/24	10/26/00	ALFA-ECO	ALFA-ECO	A. EAGLE		1,907,223		Reverse (OLYMPIA SPIRIT)	-1,868,880	0.10	0.10	-186,888
50111									PACC (Clark)	496,787	0.10	0.10	49,679
50111									N. Amorgos	611,015	0.10	0.10	61,102
50111									Alegend	503,034	0.10	0.10	50,303
50111					OLYMPIC SPIRIT		2,482,908		to LOOP		0.10		
50111									TOSCO	525,000	0.10	0.10	52,500
50111									TOSCO	193,680	0.10	0.10	19,368
50111									BP	300,000	0.10	0.10	30,000
50111									ENRON	300,000	0.10	0.10	30,000
50111									AMOCO	500,000	0.10	0.10	50,000
50111									TOSCO	300,000	0.10	0.10	30,000
50111									TOSCO	344,664	0.10	0.10	34,466
50111										2,463,344			
50115	M/08/40	11/11/00	Mr. Zhirinovskiy (Russian)	TNK	LICORNE PACIFIQUE	Paribas	1,882,481	B	TOSCO	525,000	0.18	0.30	157,500
50115									Bayoil Storage	856,321	0.18	0.30	256,896
50115									TOSCO	525,000	0.18	0.30	157,500
50115									TOSCO	331,321	0.18	0.30	99,396
50115									VALERO	54,281	0.18	0.30	16,284
50115									VALERO	447,719	0.18	0.30	134,316
50115										2,739,642			
50118	M/08/05	11/13/00	Sonatrach (Algerian)	SCANDINAVIAN/ACTEC	SETEBELLO (2)	Paribas	2,136,106	B	CHEVRON CLARK	471,165	0.10	0.10	47,117
50118									Shuttle to O.SPIRIT	547,216	0.10	0.10	54,722
50118									Shuttle to O.SPIRIT	611,015	0.10	0.10	61,102
50118										503,039	0.10	0.10	50,304
50118										2,132,435	0.10	0.10	
50122	M/09/07	12/29/00		ITALTECH	AMAZON FALCON (4)	UEB	2,022,854	K	EXXONMOBIL Rotterdam	2,022,854	0.29	0.19	384,342

Bayoil Cargo U.N. Number Contract (V-xxxx) Number	Iraqi Oil Allocation Holder	Lifter of Iraqi Oil (U.N. Contract Holder)	Vessel Name	Bank	Total Barrels Purchased by Bayoil (barrels)	Place Bayoil Loaded Oil B=Basrah K=Kirkuk	Purchaser from Bayoil	Amount Purchased from Bayoil (barrels)	Surcharge Rate Assessed (\$/barrel)	Surcharge Rate Paid (\$/barrel)	Total Surcharge Paid (\$)	
50127	MI09/07	1/27/01	ITALTECH	AMAZON FALCON (5)	BCV	2,150,170	K	PACC (Clark)	553,020	0.29	0.19	105,074
50127								Valero	523,690	0.29	0.19	99,501
50127								Clark	547,222	0.29	0.19	103,972
50127								Clark	520,394	0.29	0.19	98,875
50127									2,144,326		0.19	407,422
50117C	MI08/40	1/12/01	Mr. Zhirinovskiy (Russian)	ASTRO BETA (2)		1,820,015	B	Valero	523,939	0.18	0.20	104,788
50117C								Coastal	502,534	0.18	0.20	100,507
50117C								Sun Storage	394,804	0.18	0.20	78,961
50117C								Exxon	319,817	0.18	0.20	63,963
50117C								ALON USA	74,968	0.18	0.20	14,994
50117C									1,816,062			
50124	MI09/07	1/20/01	ITALTECH	TINA (3)	UEB	2,371,092	B	SETTEBELLO (3)	2,211,564	0.29	0.19	420,197
50124B	MI09/07	2/7/01	ITALTECH	SETTEBELLO (3)	UEB	2,211,564	B	GULFSTREAM (Curacao)	501,496	0.29	0.19	95,284
50124B								GULFSTREAM (Curacao)	402,978		0.19	76,566
50124B								Hovensa (St. Croix)	1,309,564		0.19	248,817
50124B									2,214,038			
50131	MI09/07	2/10/01	ITALTECH	AMAZON EAGLE (7)	UEB	2,140,302	K	Enron	535,815	0.29	0.19	101,805
50131								Clark	524,155		0.19	99,589
50131								Valero	527,540		0.19	100,233
50131								Valero	542,863		0.19	103,144
50131									2,130,373			
50123	MI09/07*	1/29/01	ITALTECH	HELLESPONT PARADISE	UEB	2,103,854	B	AGIP	987,018	0.29	0.19	187,533
50123								Petrogal	1,014,405		0.19	192,737
50123									2,001,423			
50128	MI09/07*	1/24/01	ITALTECH	GOLDEN FOUNTAIN	CAI	2,007,757	B	Exxon	964,154	0.29	0.19	183,189
50128								Exxon	886,334		0.19	168,403
50128									1,850,488			
50129	MI09/28	1/27/01	NAFTA	HELLESPONT CAPITOL	Paribas	2,635,342	B	BP	467,560	0.30	0.30	140,268

Bayoil Cargo U.N. Number (V-xxxxx)	Iraqi Oil Allocation Holder	Lifter of Iraqi Oil (U.N. Contract Holder)	Vessel Name	Bank	Total Barrels Purchased by Bayoil (barrels)	Place Bayoil Loaded Oil B=Basrah K=Kirkuk	Purchaser from Bayoil	Amount Purchased from Bayoil (barrels)	Surcharge Rate Assessed (\$/barrel)	Surcharge Rate Paid (\$/barrel)	Total Surcharge Paid (\$)
50129 M/08/100	Mr. Ghassan Zakariya (Syrian)	CAMTECH					Gulf/DPVSA	504,774	0.30	0.30	151,432
50129							PACC (Clark)	541,911	0.30	0.30	162,573
50129							Tosco	300,000	0.30	0.30	90,000
50129							Morgan Stanley	114,758	0.30	0.30	34,427
50129							Morgan Stanley	114,953	0.30	0.30	34,486
50129							Morgan Stanley	77,708	0.30	0.30	23,312
50129							Marathon	500,000	0.30	0.30	150,000
50130 M/09/25			MAJESTIC UNITY (5)	Paribas	2,027,902	B	ExxonMobil	997,029	0.27	0.27	269,198
50130							ExxonMobil	975,457	0.27	0.27	263,373
50130								1,972,486			
50120 M/09/07		ITALTECH	ASTRO BETA	BBL	1,883,686	B	Gulf/DPVSA	494,378	0.29	0.19	93,932
50120							Diamond	407,162	0.29	0.19	77,361
50120							Exxon	493,193	0.29	0.19	93,707
50120							Exxon	483,668	0.29	0.19	91,897
50120								1,878,401			
50134 M/09/07		ITALTECH	TINA (4)	UEB	2,376,927	B	Enron	394,482	0.29	0.19	74,952
50134							Valero	501,182	0.29	0.19	95,225
50134							Exxon	495,710	0.29	0.19	94,185
50134							Exxon	499,605	0.29	0.19	94,925
50134							Valero	488,141	0.29	0.19	92,747
50134								2,379,120			
50136 M/09/07		ITALTECH	OLYMPIC BREEZE	UEB	1,959,234	K	Koch	487,009	0.29	0.19	92,532
50136							Koch	491,554	0.29	0.19	93,395
50136							Coastal	491,461	0.29	0.19	93,378
50136							Valero	481,887	0.29	0.19	91,559
50136								1,951,911			
50133 M/09/07		ITALTECH	GOLDEN FOUNTAIN	BCV	2,002,056	B	Exxon	491,965	0.29	0.19	93,473
50133							PACC (Clark)	507,501	0.29	0.19	96,425
50133							Coastal	499,362	0.29	0.19	94,879
50133							Enron	504,820	0.29	0.19	95,916
50133								2,003,648			

Bayoil Cargo Number (V-xxxx)	U.N. Contract Number	Date Loaded	Iraqi Oil Allocation Holder	Lifer of Iraqi Oil (U.N. Contract Holder)	Vessel Name	Bank	Total Barrels Purchased by Bayoil (barrels)	Place Bayoil Loaded Oil	Purchaser from Bayoil	Amount Purchased from Bayoil (barrels)	Surcharge Rate Assessed (\$/barrel)	Surcharge Rate Paid (\$/barrel)	Total Surcharge Paid (\$)
50139	M/09/07*	3/11/01		ITALTECH	BERGE BOSS	BCV	2,050,910	B	Exxon	495,700	0.29	0.19	94,183
50139									Valero	524,837	0.29	0.19	99,719
50139									Exxon	498,149	0.29	0.19	94,648
50139									PACC (Clark)	526,013	0.29	0.19	99,942
50139										2,044,699			
50142	M/09/07*	3/22/01		ITALTECH	HELLESPONT PARADISE	UEB	2,073,230	B	Marathon	500,000	0.29	0.19	95,000
50142									Marathon	500,000	0.29	0.19	95,000
50142									Marathon	170,000	0.29	0.19	32,300
50142									Tosco	500,000	0.29	0.19	95,000
50142									Vitol	100,000	0.29	0.19	19,000
50142									Morgan Stanley	305,841	0.29	0.19	58,110
50142										2,075,841			
50132	M/09/07	2/16/01		ITALTECH	OLYMPIC SPIRIT (2)	Paribas	2,607,148	B	ELF	517,174	0.29	0.19	98,263
50132									Storage	532,513	0.29	0.19	101,177
50132									ALON USA	88,875	0.29	0.19	16,886
50132									ALON USA	88,180	0.29	0.19	16,754
50132									ALON USA	87,016	0.29	0.19	16,533
50132									ALON USA	40,999	0.29	0.19	7,790
50132									ALON USA	88,418	0.29	0.19	16,799
50132									ALON USA	68,090	0.29	0.19	12,937
50132									ALON USA	13,807	0.29	0.19	2,623
50132									ALON USA	59,059	0.29	0.19	11,221
50132									Enron	524,414	0.29	0.19	99,639
50132									Exxon	499,422	0.29	0.19	94,890
50132									Valero	525,577	0.29	0.19	99,860
50132										3,133,544			
50140	M/09/07*	3/15/01		ITALTECH	MARINER	CAI	1,910,662	B	Exxon	478,275	0.29	0.19	90,872
50140									Valero	476,063	0.29	0.19	90,452
50140									ELF	474,369	0.29	0.19	90,130
50140									Exxon	475,113	0.29	0.19	90,271
50140										1,903,820			
50141	M/09/07	3/23/01		ITALTECH	SETTEBELLO	UEB	2,100,011	K	Total	2,100,011	0.29	0.19	399,002

Bayoil Cargo Number (V-xxxx)	U.N. Contract Number	Date Loaded	Iraqi Oil Allocation Holder	Lifter of Iraqi Oil (U.N. Contract Holder)	Vessel Name	Bank	Total Barrels Purchased by Bayoil (barrels)	Place Bayoil Loaded Oil (B=Basrah K=Kirkuk)	Purchaser from Bayoil	Amount Purchased from Bayoil (barrels)	Surcharge Rate Assessed (\$/barrel)	Surcharge Rate Paid (\$/barrel)	Total Surcharge Paid (\$)
50147	M/09/59	4/3/01		SLAVNEFT	STAVROS G.L.	UEB	2,092,093	B	Clark	344,373	0.29	0.28	97,458
50147	M/09/25			ROSNEFT		UEB	250,000	B	Valero	479,252	0.27	0.29	138,983
50147							2,342,093		PACC (Clark)	550,718	0.27	0.29	159,708
50147									Storage	451,888	0.27	0.29	131,048
50147									PACC	135,561	0.27	0.29	39,313
50147									PACC	113,936	0.27	0.29	33,041
50147									PACC	124,811	0.27	0.29	36,195
50147									ALON USA	77,580	0.27	0.29	22,498
50147									Valero	505,985	0.27	0.29	146,736
50147									Valero	2,784,104			
50136	M/09/59	4/23/01		SLAVNEFT	AMAZON	Paribas	2,098,080	K	Clark	512,285	0.29	0.29	148,563
50136					EAGLE (8)				Valero	534,675	0.29	0.29	155,056
50136									Valero	531,233	0.29	0.29	154,058
50136									Valero	516,468	0.29	0.29	149,776
50136									Valero	2,094,661			
50148	M/09/45	5/10/01		BETOIL (MOACO)	ASTRO	Paribas	1,882,126	K	Valero	526,940	0.30	0.22	117,508
50148					GAMMA(5)				Clark	529,413	0.30	0.22	118,059
50148									Storage	300,960	0.30	0.22	67,114
50148									ALON USA	70,555	0.30	0.22	15,734
50148									ALON USA	144,907	0.30	0.22	32,314
50148									ALON USA	84,667	0.30	0.22	18,881
50148									Valero	512,997	0.30	0.22	114,398
50148									Valero	2,170,439			
50144	M/09/92	5/5/01		PETRACO	HELLESPONT	BBL	1,995,021	B	Atlantic	478,760	0.30	0.30	143,628
50144	M/09/87			ERDEM			457,000	B	Coastal	503,174	0.30	0.30	150,952
50144							2,452,021		Valero	489,307	0.30	0.30	146,792
50144									Marathon	489,858	0.30	0.30	146,957
50144									Atlantic	491,381	0.30	0.30	147,414
50144									Atlantic	2,452,480			
50143	M/09/79	5/3/01		PETROLINE (U.A.E.)	SKYROS (2)	BBL	2,013,893	B	Koch	489,693	0.30	0.30	146,908
50143									Valero	520,664	0.30	0.30	156,199
50143									Diamond	481,103	0.30	0.30	144,331
50143									Valero	521,360	0.30	0.30	156,408
50143									Valero	2,012,820			

Bayoil Cargo: U.N. Number Contract (V-xxxx) Number	U.N. Number Contract	Iraqi Oil Allocation Holder	Lifter of Iraqi Oil (U.N. Contract Holder)	Vessel Name	Bank	Total Barrels Purchased by Bayoil (barrels)	Place Bayoil Loaded Oil B=Basrah K=Kirkuk	Amount Purchased from Bayoil (barrels)	Surcharge Rate Assessed (\$/barrel)	Surcharge Rate Paid (\$/barrel)	Total Surcharge Paid (\$)
50150	M/09/76	5/31/01	MARBEL (U.K.)	ZANTE	Paribas	1,559,776	K	452,778	0.30	0.30	135,833
50150	M/09/45		MOACO (Cyprus)			133,000	K	326,536	0.30	0.30	97,981
50150						1,692,776		453,181	0.30	0.30	135,954
50150								448,612	0.30	0.30	134,584
50150			See STAVROS G.L. Split				→	71,636	0.30	0.22	15,975
50150								80,492	0.30	0.22	17,950
50150								125,015	0.30	0.22	27,878
50150								17,617	0.30	0.22	3,929
50150								19,085	0.30	0.22	4,256
50150								1,994,952			
50145	M/09/25	5/31/01	ROSNEFT	ASTRO BETA (4)	CAI	1,860,777	B	500,857	0.27	0.28	141,743
50145								379,254	0.27	0.28	107,329
50145								544,498	0.27	0.28	154,093
50145								430,885	0.27	0.28	121,940
50145								1,855,494			
50151	M/09/87	5/31/01	ENERGY (Ukraine)	TINA (5)	CAI	1,928,233	B	476,455	0.30	0.30	142,937
50151								495,181	0.30	0.30	148,564
50151								941,585	0.30	0.30	282,476
50151								1,913,221			
50153	M/09/15	7/12/01	AL-HODA	AMAZON EAGLE (9)	Paribas	2,092,152	K	514,417	0.30	0.30	154,325
50153								540,176	0.30	0.30	162,053
50153								17,249	0.30	0.30	5,175
50153								129,644	0.30	0.30	38,893
50153								100,039	0.30	0.30	30,012
50153								86,623	0.30	0.30	25,987
50153								169,047	0.30	0.30	50,714
50153								514,800	0.30	0.30	154,440
50153								518,084	0.30	0.30	155,425
50153								2,590,079			
50156	M/09/32	7/19/01	EMIROIL	SKYROS (3)	Paribas	2,096,868	K	521,244	0.30	0.17	86,005
50156								533,184	0.30	0.17	87,975
50156								504,301	0.30	0.17	83,210
50156								530,812	0.30	0.17	87,584
50156								2,089,541			

Bayoil Cargo U.N. Number (V-xxxx) Number	Contract Number	Date Loaded	Iraqi Oil Allocation Holder	Lifter of Iraqi Oil (U.N. Contract Holder)	Vessel Name	Bank	Total Barrels Purchased by Bayoil (barrels)	Place Bayoil Loaded Oil B=Basrah K=Kirkuk	Purchaser from Bayoil	Amount Purchased from Bayoil (barrels)	Surcharge Rate Assessed (\$/barrel)	Surcharge Rate Paid (\$/barrel)	Total Surcharge Paid (\$)
50155	M/10/14	7/20/01	Petrovietnam	PTSC	ASTRO	BBL	583,638	K	Equiva	473,344	0.30	0.12	57,275
50155		7/21/01		PTSC	GAMMA (6)	BBL	1,286,118	K	Valero	444,195	0.30	0.12	53,748
50155							1,869,756		Valero	471,750	0.30	0.12	57,082
50155									Atlantic	172,805	0.30	0.12	20,909
50155									Atlantic	298,942	0.30	0.12	36,172
50155										1,861,036			
50149	M/09/126	7/13/01		PTSC	HELLESPONT PARADISE (5)	BCV	2,083,020	B	Valero	525,904	0.30	0.30	157,771
50149									Marathon	1,050,000	0.30	0.30	315,000
50149									Marathon	507,656	0.30	0.30	152,297
50149										2,083,560			
50152	M/09/25	7/13/01		ROSNEFT FEDERAL	OLYMPIC SPIRIT (3)	Paribas	1,999,925	B	PACC	543,676	0.27	0.27	145,705
50152	M/09/57						600,000	B	Diamond	547,902	0.30	0.30	164,371
50152							2,599,925		Valero	532,929	0.30	0.30	159,879
50152									Marathon	508,592	0.30	0.30	152,578
50152									Enron/CITGO	150,000	0.30	0.30	45,000
50152									Tosco	319,221	0.30	0.30	95,766
50152										2,602,320			
50161	M/10/15	8/21/01	Mr. Isakov (Russian)	ROSNEFT	STENA CONVOY	CAI	1,822,670	K	STORAGE	384,481	0.28	0.28	109,193
50161									Atlantic	476,375	0.28	0.28	135,291
50161									Koch	475,214	0.28	0.28	134,961
50161									Diamond	481,681	0.28	0.28	136,797
50161									ALON USA	139,006	0.28	0.28	39,478
50161									ALON USA	20,097	0.28	0.28	5,708
50161									ALON USA	93,051	0.28	0.28	26,426
50161										2,069,905			
50157	M/09/15	8/6/01		AL-HODA FEDERAL	HELLESPONT CAPITOL (3)	Paribas	2,042,355		STORAGE	290,512	0.30	0.30	87,154
50157	M/09/57					Paribas	400,000			150,987	0.30	0.30	45,296
50157										139,525	0.30	0.30	41,858
50157										502,808	0.30	0.30	150,942
50157										496,811	0.30	0.30	149,043
50157										549,830	0.30	0.30	164,949
50157										525,000	0.30	0.30	157,500
50157										73,510	0.30	0.30	22,053
50157										2,728,983			

Bayoil Cargo U.N. Number (V-xxxx) Number	Iraqi Oil Allocation Holder	Date Loaded	Lifter of Iraqi Oil (U.N. Contract Holder)	Vessel Name	Bank	Total Barrels Purchased by Bayoil (barrels)	Place Bayoil Loaded Oil B=Basrah K=Kirkuk	Purchaser from Bayoil	Amount Purchased from Bayoil (barrels)	Surcharge Rate Assessed (\$/barrel)	Surcharge Rate Paid (\$/barrel)	Total Surcharge Paid (\$)
50160 M/10/24	Dr. Shakir Al Khafaji	8/1/01	OMNI	STENA COMPANION (3)	Paribas	2,070,270	B	STORAGE	197,959	0.30	0.30	59,388
50160 M/10/15	Mr. Isakov (Russian)		ROSNEFT		Paribas	200,000	B	Premcor	197,959	0.28	0.28	56,220
50160						2,270,270		Valero	501,877	0.28	0.28	142,533
50160								Koch	198,035	0.28	0.28	56,242
50160								Koch	325,402	0.28	0.28	92,414
50160								Valero	538,440	0.28	0.28	152,917
50160									1,959,672			
50162 M/09/32		8/25/01	EMIROIL	ASTRO BETA	Paribas	1,996,646	K	Equiva	579,216	0.30	0.17	95,571
50162								STORAGE	197,784	0.30	0.17	32,634
50162								ALON USA	88,531	0.30	0.17	14,608
50162								ALON USA	20,336	0.30	0.17	3,355
50162								ALON USA	88,834	0.30	0.17	14,658
50162								Valero	544,203	0.30	0.17	89,793
50162								Valero	539,257	0.30	0.17	88,977
50162									2,058,161			
50159 M/10/15	Mr. Isakov (Russian)	8/15/01	ROSNEFT	MAGDELAINE	CAI	1,911,822	B	Equiva	477,889	0.28	0.28	135,720
50159								Lyondell	464,819	0.28	0.28	132,009
50159								Valero	526,471	0.28	0.28	149,518
50159								PACC	449,673	0.28	0.28	127,707
50159									1,918,852			
50166 M/10/19	Mr. Zhirinovsky (Russian)	9/3/01	MACHINO-IMPORT (Russia)	AMAZON EAGLE (10)	BCV	2,096,421	K	Atlantic	189,102	0.30	0.30	56,731
50166								Atlantic	360,234	0.30	0.30	108,070
50166								STORAGE	496,936	0.30	0.30	149,081
50166								ALON USA	88,771	0.30	0.30	26,631
50166								ALON USA	199,996	0.30	0.30	59,999
50166								ALON USA	210,168	0.30	0.30	63,050
50166								Diamond	528,739	0.30	0.30	158,622
50166								Valero	522,652	0.30	0.30	156,796
50166									2,596,598			
50163 M/10/14	Mr. Isakov (Russian)	8/26/01	Petrovietnam	PTSC	BBL	1,981,002	B	STORAGE	684,508	0.30	0.12	82,825
50163								Marathon	1,050,000	0.28	0.28	298,200
50163								Marathon	396,930	0.28	0.28	112,728
50163									2,131,438			

Bayoil Cargo U.N. Number	Contract Number (V-xxxx)	Iraqi Oil Allocation Holder	Date Loaded	Lifter of Iraqi Oil (U.N. Contract Holder)	Vessel Name	Bank	Total Barrels Purchased by Bayoil (barrels)	Place Bayoil Loaded Oil B=Basrah K=Kirkuk	Purchaser from Bayoil	Amount Purchased from Bayoil (barrels)	Surcharge Rate Assessed (\$/barrel)	Surcharge Rate Paid (\$/barrel)	Total Surcharge Paid (\$)
50163B	M/10/14	Petrovietnam	10/15/01	ex STORAGE	ST. VASSILOS	BBL	333,430	B	Valero	331,495	0.30	0.12	39,779
50163C	M/10/14	Petrovietnam	11/17/01	ex STORAGE	SEA NESTOR	BBL	349,202	B	Hovensa	349,616	0.30	0.12	41,954
50171	M/09/83		9/26/01	CONSULT AND	ALDAWHA	Paribas	1,001,901	K	Valero	248,298	0.27	0.28	68,282
50171									Valero	249,241	0.27	0.28	68,541
50171										497,539			
50172	M/10/77	Mr. Ali Ballot (Lebanese)	10/1/01	PRIMACOSA (Cyprus)	SABINE	BBL	1,001,791	K	Hovensa	100,905	0.30	0.30	30,272
50154	M/10/15	Mr. Isokov (Russian)	9/8/01	ROSNEFT (Russia)	SAHARA	Paribas	2,356,360	B	Valero	531,027	0.28	0.28	150,812
50154									Premcor	451,617	0.28	0.28	128,259
50154									Valero	531,574	0.28	0.28	150,967
50154									STORAGE	384,741	0.28	0.28	109,266
50154									Premcor	149,303	0.28	0.28	42,402
50154									PACC	219,417	0.28	0.28	62,314
50154									PACC	450,147	0.28	0.28	127,842
50154										2,717,826			
50164	M/10/15	Mr. Isakov (Russian)	9/15/01	ROSNEFT (Russia)	NOTO	CAI	1,990,489	B	Valero	511,591	0.28	0.28	145,292
50164									Diamond	485,347	0.28	0.28	137,839
50164									Valero	499,518	0.28	0.28	141,863
50164									Valero	491,668	0.28	0.28	139,634
50164										1,988,124			
50167	M/10/58	Mr. Wafa Tawfiq Alsayigh (Palestinian)	10/13/01	NATIONAL OIL WELLS MAINTENANCE CO. (Qatar)	ATLANTIS	BCV	1,000,452	K	Valero	249,074	0.30	0.30	74,722
50167									Valero	249,983	0.30	0.30	74,995
50167									Valero	499,947	0.30	0.30	149,984
50167										999,004			
50165	M/10/67	Mr. Zhirinovskiy (Russian)	10/1/01	LUKOIL (Russia)	LICORNE	Paribas	1,908,566	K	Valero	456,112	0.30	0.30	136,834
50165									Valero	476,051	0.30	0.30	142,815
50165									Equiva	474,373	0.30	0.30	142,312
50165									Valero	211,009	0.30	0.30	63,303
50165									Valero	290,706	0.30	0.30	87,212
50165										1,908,251			

Bayoil Cargo U.N. Number (V-xxxx)	Contract Number	Iraqi Oil Allocation Holder	Date Loaded	Lifter of Iraqi Oil (U.N. Contract Holder)	Vessel Name	Bank	Total Barrels Purchased by Bayoil (barrels)	Place Bayoil Loaded Oil B=Basrah K=Kirkuk	Purchaser from Bayoil	Amount Purchased from Bayoil (barrels)	Surcharge Rate Assessed (\$/barrel)	Surcharge Rate Paid (\$/barrel)	Total Surcharge Paid (\$)
50168	M/10/13	US Person	10/2/01	MED NAFTA	HELLESPONT PARADISE (6)	Paribas	2,080,447	B	Valero	2,087,393	0.30	0.30	626,218
50169	M/10/15	Mr. Isakov (Russian)	10/9/01	ROSNEFT	OLYMPIC SPIRIT	CAI	2,586,824	B		548,320	0.28	0.28	155,723
50169										524,076	0.28	0.28	148,838
50169										532,434	0.28	0.28	151,211
50169										525,154	0.28	0.28	149,144
50169										465,784	0.28	0.28	132,283
										2,595,768			
50170	M/10/58	Mr. Wafa Tawfiq Alsayigh (Palestine)	10/30/01	NATIONAL (Qatar)	AMAZON EAGLE (11)	BCV	1,050,000	K	Valero	523,995	0.30	0.30	157,199
50170	M/10/60	Mr. Filluni (Italian)		PETROLINE (U.A.E.)		BCV	1,046,838	K	Valero	522,679	0.30	0.30	156,804
50170							2,096,838		Valero	527,050	0.30	0.30	158,115
50170									Valero	517,612	0.30	0.30	155,284
										2,091,336			
50174	M/10/22+M/10/68	Dr. Temam Shehab (Syrian)/The Iraqi Austrian Society	10/18/01	AL-HODA (UAE)	TINA (6)	Paribas	2,022,622	B	Koch	527,712	0.30	0.30	158,314
50174	M/10/88	Mr. Jehad Karam (Lebanese)		PRIMACOSA (Cyprus)		Paribas	300,000	B	Premcor	519,529	0.30	0.30	155,859
50174									Valero	536,615	0.30	0.30	160,985
50174									Koch	524,193	0.30	0.30	157,258
50174									Valero	217,969	0.30	0.30	65,391
										2,326,018			
50178	M/10/60	Mr. Filluni (Italian)	11/15/01	PETROLINE (UAE)	FRONT WARRIOR	Paribas	1,002,406	K	Valero	349,150	0.30	0.30	104,745
50178									Valero	651,787	0.30	0.30	195,536
50178										1,000,937			

Bayoil Cargo U.N. Number	Iraqi Oil Allocation Holder	Date Loaded	Lifter of Iraqi Oil (U.N. Contract Holder)	Vessel Name	Bank	Total Barrels Purchased by Bayoil (barrels)	Place Bayoil Loaded Oil B=Basrah K=Kirkuk	Purchaser from Bayoil	Amount Purchased from Bayoil (barrels)	Surcharge Rate Assessed (\$/barrel)	Surcharge Rate Paid (\$/barrel)	Total Surcharge Paid (\$)
50173	Mr. Zhirinovsky	10/14/01	LUKOIL	ASTRO GAMMA (7)	Paribas	1,833,263	B	Chevron	466,474	0.30	0.30	139,942
50173								Valero	297,108	0.30	0.30	89,132
50173								PACC	550,174	0.30	0.30	165,052
50173								Valero	522,148	0.30	0.30	156,644
50173									1,835,904			
50180	The Roman Labor Party	11/13/01	PETROLINE	OLYMPIC FLAIR	Paribas	1,037,579	K	Valero	499,862	0.30	0.30	149,959
50180								Valero	536,909	0.30	0.30	161,073
50180									1,036,771			
50181	Russian Communist Party	11/28/01	SCANDI/ACTEC	VENETIA	BBL	1,003,709	K	Valero	526,391	0.29	0.29	152,653
50181								Diamond	471,592	0.29	0.29	136,762
50181									997,983			
M/10/15 +	Mr. Isakov (Russian)/Mr. Tatrinco -- Tatarstan (Russian)	11/2/01	ROSNEFT	HELLESPOINT CAPITOL (4)	CAI	1,810,523	B	Premcor	494,844	0.30	0.30	148,453
50175			MARBEL		CAI	650,000	B	STORAGE	457,146	0.27	0.26	120,229
50175						2,460,523		Premcor	199,030	0.27	0.26	52,345
50175								Premcor	260,410	0.27	0.26	68,488
50175								Valero	517,634	0.27	0.26	136,138
50175								Premcor	499,206	0.27	0.26	131,291
50175								Valero	490,516	0.27	0.26	129,006
50175									2,918,786			
50176	Yugoslavian Jul Party	11/12/01	PETROLINE	ASTRO BETA (6)	Paribas	1,840,034	B	Valero	456,326	0.30	0.30	136,898
50176								Valero	472,683	0.30	0.30	141,805
50176								Lyondell	453,765	0.30	0.30	136,130
50176								Premcor	467,086	0.30	0.30	140,126
50176									1,849,860			

Bayoil Cargo U.N. Number	Iraqi Oil Allocation Holder	Lifter of Iraq Oil (U.N. Contract Holder)	Vessel Name	Bank	Total Barrels Purchased by Bayoil (barrels)	Place Bayoil Loaded Oil B=Basrah K=Kirkuk	Purchaser from Bayoil	Amount Purchased from Bayoil (barrels)	Surcharge Rate Assessed (\$/barrel)	Surcharge Rate Paid (\$/barrel)	Total Surcharge Paid (\$)
50179	Mr. Shafranik	GLENCORE	LICORNE	Paribas	1,920,929	K	Lyondell/CITGO	501,781	0.30	0.30	150,534
50179	Holder of M/10/39 is SOYUZNEFT&GAS		PACIFIQUE (4)				Valero	518,902	0.30	0.30	155,671
50179							Valero	483,323	0.30	0.30	144,997
50179							STORAGE	406,631	0.30	0.30	121,989
50179							ALON USA	129,525	0.30	0.30	38,858
50179							ALON USA	276,435	0.30	0.30	82,931
50179								2,316,597			
50184	Mr. Abdullah Alhorani	NATIONAL OILWELL (Qatar)	FRONT VIEWER	Paribas	1,047,011	K	Equiva	303,854	0.28	0.30	91,156
50184							Equiva	217,901	0.28	0.30	65,370
50184							Valero	513,389	0.28	0.30	154,017
50184								1,035,144			
50182		AL-HODA (UAE)	SETEBELLO (7)	Paribas	2,063,333	B	PACC	558,231	0.30	0.30	167,469
50182							Premcor	486,976	0.30	0.30	146,093
50182							Hovensa	1,015,433	0.30	0.30	304,630
50182								2,060,640			
50187	Russian Communist Party	SCANDINAVIAN/ACTEC (UAE)	GENMAR ALTA	Paribas	1,034,796	K	Valero	262,266	0.29	0.29	76,057
50187							Valero	250,616	0.29	0.29	72,679
50187							Equiva	514,163	0.29	0.29	149,107
50187								1,027,045			
50183	United Party (Russian)	EMERCOM (Russia)	AMAZON EAGLE (12)	BCV	2,105,469	K	Valero	532,380	0.29	0.29	154,390
50183							Valero	546,826	0.29	0.29	158,580
50183							Equiva	523,890	0.29	0.29	151,928
50183							PACC	360,976	0.29	0.29	104,683
50183							STORAGE	120,424	0.29	0.29	34,923
50183							ALON USA	119,734	0.29	0.29	34,723
50183								2,204,230			
50188	Russian Communist Party	SCANDINAVIAN/ACTEC (UAE)	JAMES SULLIVAN	Paribas	974,158	K	Valero	248,438	0.29	0.29	72,047
50188							Valero	182,667	0.29	0.29	52,973
50188							Valero	535,368	0.29	0.29	155,257
50188								966,473			

**Iraqi Oil Cargoes Bought by Bayoil for US Market
on which a Surcharge was Paid
SEPTEMBER 2000 - MARCH 2002**

Appendix to Report on Illegal Surcharges on Oil for Food
Contracts and Illegal Oil Shipments from Khor al-Amaya

Bayoil Cargo U.N. Number/Contract Number (V-xxxx)	Iraqi Oil Allocation Holder	Iraqi Oil Holder (U.N. Contract Holder)	Vessel Name	Bank	Total Barrels Purchased by Bayoil (barrels)	Place Bayoil Loaded Oil B=Basrah K=Kirkuk	Purchaser from Bayoil	Amount Purchased from Bayoil (barrels)	Surcharge Rate Assessed (\$/barrel)	Surcharge Rate Paid (\$/barrel)	Total Surcharge Paid (\$)
50186 MI/10/100	Mr. Mohammed Helmi (Egyptian)	BC INTL (PRIMACOSA, Cyprus)	STAVROS G.L. (3)	CAI	1,050,000	B	PACC	452,227	0.30	0.30	135,668
50186 MI/10/88	Russian Communist Party	PRIMACOSA			735,000	B	Valero	129,194	0.30	0.30	38,758
50186 MI/10/16	Mojahedie Khalq (Iranian)	MARBEL			525,000	B	Valero	342,854	0.27	0.30	102,856
50186 MI/10/91	Mr. Ziyad Abu Alraghib (Jordanian)	BC INTL			26,475	B	Lyondell	450,099	0.30	0.30	135,030
50186					2,336,475		Valero	460,600	0.30	0.30	138,180
50186							PACC	502,205	0.30	0.30	150,662
50186								2,337,179			
50185 MI/11/40	Dr. Temam Shehab (Syrian)	AL-HODA (UAE)	FRONT STRIVER	Paribas	1,049,385	K	Valero	521,204	0.30	0.30	156,361
50194 MI/11/39	Russian Communist Party	SCANDINAVIAN/ACTEC (UAE)	FRONT SKY	BCV	1,047,832	K	Valero STORAGE	527,045	0.29	0.28	148,100
50194							ALON USA	516,333	0.29	0.28	145,090
50194							ALON USA	216,426	0.29	0.28	60,816
50194							ALON USA	63,069	0.29	0.28	17,722
50194							ALON USA	121,320	0.29	0.28	34,091
50194							ALON USA	113,663	0.29	0.28	31,939
50194								1,557,856			
50189 MI/11/20	Alhoda Co. (UAE)	AL-HODA (UAE)	STENA CONSTELLATION	Paribas	1,000,000	K	Valero	496,674	0.25	0.30	149,002
50189 MI/11/93	Ministry of Energy & Mineral Resources (Jordan)	AL-HODA (UAE)			902,004	K	Koch	478,510	0.30	0.30	143,553
50189					1,902,004		Marathon	477,721	0.30	0.30	143,316
50189							Valero	447,260	0.30	0.30	134,178
50189								1,900,165			

Bayoil Cargo U.N. Number (V-xxxxx)	Contract Number	Date Loaded	Iraqi Oil Allocation Holder	Lifter of Iraqi Oil (U.N. Contract Holder)	Vessel Name	Bank	Total Barrels Purchased by Bayoil (barrels)	Place Bayoil Loaded Oil B=Basrah K=Kirkuk	Purchaser from Bayoil	Amount Purchased from Bayoil (barrels)	Surcharge Rate Assessed (\$/barrel)	Surcharge Rate Paid (\$/barrel)	Total Surcharge Paid (\$)
50190	M/10/83	2/1/02	Russian Communist Party	SCANDINAVIAN/ACTEC (UAE)	LICORNE PACIFIQUE (5)	BBL	1,905,238	K	Valero	497,745	0.29	0.29	144,346
50190									Marathon	475,214	0.29	0.29	137,812
50190									STORAGE	478,789	0.29	0.29	136,849
50190									Equiva	199,393	0.29	0.29	57,824
50190									Equiva	312,580	0.29	0.29	90,648
50190									Exxon	446,806	0.29	0.29	129,574
50190										2,410,527			
50191	M/11/16	2/2/02	Mr. Shaher Abdulhaq (Yemen) Alhoda Co. (UAE)	SHAHER (Yemen) AL-HODA (UAE)	TINA (7)	CAI	1,344,448	B	PACC	458,762	0.30	0.30	137,629
50191	M/11/20						1,000,000		Valero	192,856	0.25	0.25	48,214
50191							2,344,448		Valero	252,539	0.25	0.25	63,135
50191									Valero	477,541	0.25	0.25	119,385
50191									Lyondell	542,515	0.25	0.25	135,629
50191									Exxon	425,034	0.25	0.25	106,259
50191										2,349,247			
50195	M/10/25	3/4/02	The Russian Committee for Solidarity with Iraq (Mr. Rudasiev)	HYPERBOREY (Ukraine)	HELLESPONT GRAND	Paribas	1,940,324	B	Atlantic	475,171	0.30	0.03	14,730
50195	M/11/24		Mr. Jehad Mekram (Lebanese)	PRIMACOSA (Cyprus)			250,000		Premcor	539,633	0.26	0.03	16,189
50195	M/11/81		Mr. Ziyad Abu Alraghib (Jordanian)	BC INT'L			350,000		Premcor	543,625	0.30	0.03	15,765
50195							2,540,324		STORAGE	494,080	0.30	0.03	14,328
50195									STORAGE	490,727	0.30	0.03	14,231
50195									Premcor (ex stor)	520,748	0.30	0.03	15,102
50195									PACC (ex stor.)	464,437	0.30	0.03	13,469
50195										3,528,421			
													37,412,654