

DRAFT:HGF

For review of counsel -

November 25, 1985

*Bernie 2.411
FRI
JHR*

PARAQUAT POSITION PAPER

Two central issues need resolution. One is the fundamental issue of the Chevron/ICIA relationship for the duration of and beyond the present contract which, if not renewed, is slated to expire by 1990.

Chevron is committed to a presence in the marketplace in the U.S., and possibly, select countries worldwide beyond the year 1990.

The second and more immediate issue deals with the ICIA dealer rebate vis a vis the present contract, and Chevron's interpretation of the intent of that contract.

DEALER REBATES

Chevron finds itself at an impasse in its efforts to resolve the contract dispute with ICIA.

It has resulted in a deterioration of the otherwise excellent ICI/Chevron relationship. Much management time is now spent administering the contract in an atmosphere of acrimony and mistrust.

The point of contention is a dealer rebate of \$2/gal. granted by ICIA in 1984 and \$2.50/gal. granted in 1985. By Chevron's estimate this should have translated into a cost reduction of \$1.54M for Chevron's Paraquat concentrate purchases for 1984, and \$1.86M in 1985. Chevron's position is based on the intent of the existing contract.

#2

ICIA maintains that the letter of the contract covers only distributor rebates and not dealer rebates in the calculation of Chevron's concentrate price..

Efforts to resolve this dispute through correspondence and personal meetings with all levels of management in ICIA as well as a personal, high level meeting with ICIA U.K. have failed.

If our attempt to resolve the issue with ICIA in the U.K. should also remain fruitless, Chevron would consider to seek redress through the Courts. *arb*

It is the opinion of Chevron's Legal counsel *PM's* that Chevron's position in any lawsuit, would be very good.

Under the November 6, 1981 Agreement between Chevron and ICIA, the price that Chevron pays to ICIA for Paraquat concentrate is a calculated percentage (now slightly less than 60%) of the "ICIA Formulated Product Price." The "ICIA Formulated Product Price is defined as follows:

"The ICIA Formulated Product Price shall be established for each six-month period during the term hereof by calculating the weighted average net selling price of ICIA's Formulated Paraquat sold for use in the U.S. by ICIA or its Affiliates during such six-month period. The net selling price shall be ICIA's published distributor price for its Formulated Paraquat minus the cumulative total of (i) all discounts, including such discounts and seasonal ordering discounts,

(ii) incentive payments paid to distributors and the effective value (using

when applicable the published distributor prices in effect at the time of transfer) of other ICIA products given to ICIA's Paraquat distributors as promotional items, and (iii) ICIA's cost of extending payment terms to its distributors for periods beyond 60 days (calculated using the prime rate in effect at the opening of banking business on the last business day of the six-month period at Citibank's principal office in New York, New York)" (emphasis added).

It seems clear that the intent of this provision was that Chevron's buying price be based on ICIA's "net" realizations from the sale of Paraquat. Because ICIA's dealer rebate program is economically equivalent to a direct reduction in the distributor's price from ICIA, it should be treated in the same way. The rebate has the effect of lowering the dealer's buying price by the amount of the rebate, and it makes the ICIA distributor more competitive by exactly that amount.

ICIA's position is that because this provision only refers to incentive payments "paid to distributors", payments to dealers are not to be considered in the calculation. This position is an unreasonable one and is clearly inconsistent with the intent of the agreement.

First, the agreement refers to ICIA's "net" price. Certainly, the amount of the rebate directly reduces the "net" received by ICIA. Next, the first clause of the provision refers to "all discounts". Since the dealer rebate is exactly equivalent in economic effect to a discount to the distributor, it should be treated in the same manner under the agreement. Finally, the absurdity of ICIA's position can be demonstrated if you consider an increase in the dealer rebate to \$10 of \$15 per gallon. Under ICIA's interpretation of the agreement, Chevron would then be paying a higher effective price for Paraquat than would ICIA's distributors. This absurd result is so much at odds with the clear intent of the contract as to demonstrate

3F4
the unreasonability of ICIA's position.

CHEVRON'S PRESENCE IN THE MARKETPLACE

The current contract with ICIA will expire in 1990. Notice by either party would have to be given in 1988.

Two scenarios can be visualized for a continued presence in the marketplace by Chevron. One would propose a continued agreement with ICIA beyond the expiration date by extending the present contract or a modified version thereof. A second option for Chevron, in case ICIA should elect to terminate the arrangement would be to market Paraquat from other sources. Since Chevron owns the registrations in the U.S. independent from any arrangements with ICIA, ^{THE COMPANY} ~~it~~ would therefore be in a position to procure and market Paraquat from sources other than ICIA. In addition, Chevron would have the option to apply for registrations in other countries in competition with ICIA.

Paraquat per se has no composition of matter patents. The only protection ICIA currently enjoys is through a series of process patents which do not provide a strong position. Thus, Chevron would have to assure only that any Paraquat sold in competition with ICIA is not manufactured by a process infringing on covered ICI technology. The groundwork for a reliable Paraquat supply, however, has to be laid early.

It may be important to note that Mr. Hayes' predecessor, Mr. Hempel, has mentioned to Mr. Eckart in 1985 that it is a foregone conclusion that ICIA will give notice to Chevron at the proper time, and that ICIA does not intend to supply Chevron with

Paraquat beyond 1990. ICIA would be able to sell Paraquat in the U.S. even if no further business arrangements were in existence. Chevron had allowed ICIA to obtain separate registrations based on Chevron data.

It would, of course, be to the benefit of both companies if a modus vivendi could be found whereby Chevron were able to draw on the large capacity (5000 tons per year) of ICIA's U.S. Paraquat plant. Chevron is well established in the marketplace and it's product stewardship is undisputed.

Paraquat itself has lost some of its luster due to regulatory pressures and competition from new products. It is Chevron's opinion that the Paraquat market in the U.S. has matured with little opportunity left to increase sales. New competitive products have arrived, some with superior efficacy (Roundup, Monsanto; Bronco, Monsanto; Bladex, Shell; Basta, HOECHST). ^a ~~None of these new products share the actual toxicological problems with Paraquat from ingestion or any of the perceived problems from exposure. Because of the toxicological problems surrounding Paraquat, no new registrations have been granted since 1975.~~

do

SAR
Commentsis this the only record
do we know how to say this