NOTICE OF ARBITRATION
UNDER THE ARBITRATION RULES OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW
AND
THE NORTH AMERICAN FREE TRADE AGREEMENT

CROMPTON CORPORATION

Claimant/Investor

v.

GOVERNMENT OF CANADA

Respondent/Party

Ogilvy Renault
Barristers & Solicitors
Suite 1600
45 O'Connor Street
Ottawa, Ontario
K1P 1A4

Gregory O. Somers/Benjamin P. Bedard/
Paul D. Conlin

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Counsel to the Claimant/Investor

Pursuant to Article 3 of the United Nations Commission on International Trade Law ("UNCITRAL") Arbitration Rules and Articles 1116, 1117 and 1120 of the North American Free Trade Agreement ("NAFTA"), the Claimant, Crompton Corporation initiates recourse to arbitration under the UNCITRAL Arbitration Rules.[1]

A. Consent and Waivers

1. Pursuant to Article 1121 of NAFTA, Crompton Corporation (the "Claimant") on its own behalf and that of Crompton Co./Cie (the "investment" or "enterprise") (individually and collectively called "Crompton") consent to arbitration in accordance with the procedures set out in NAFTA.

2. The Claimant on its own behalf and that of the enterprise waives its right to initiate or continue before any administrative tribunal or court under the laws of any Party, or other dispute settlement procedures, any proceedings with respect to the measures of Canada described herein that are alleged to be breaches referred to in Article 1116 and/or 1117, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the laws of Canada.

3. Attached hereto as **Schedule 1** are the consent and waiver of Crompton Corporation and the enterprise.

B. Demand that the Dispute be Referred to Arbitration

4. Pursuant to Article 1120(1)(c) of NAFTA, Crompton hereby demands that the dispute between it and the Government of Canada ("Canada" or "Canadian Government") be referred to arbitration under the UNCITRAL Arbitration Rules.

[1] General Assembly Resolution 31/98.

C. Names and Address of the Parties

5. Claimant: Crompton Corporation
199 Benson Road
Middlebury, Connecticut 06749
U.S.A.

6. Respondent/Party: Government of Canada
Office of the Deputy Attorney General of Canada
Justice Building
284 Wellington Street
Ottawa, ON K1A 0H8

7. Enterprise: Crompton Co./Cie
Research Laboratories
120 Huron Street
Guelph, ON N1H 6N3

D. Reference to Arbitration Clause that is Invoked

8. Crompton invokes Section B of Chapter 11 of NAFTA, and specifically relies upon Articles 1116, 1117, 1120 and 1122 of NAFTA as authority for the arbitration.

E. Reference to Contract out of Which Dispute Arises

9. The dispute is in relation to the Claimant's investment in Canada and the damages that have arisen out of measures undertaken by Canada that breach its obligations under Chapter 11 of NAFTA.

F. General Nature of the Claim and Indication of the Amount Involved

a) Procedural History

10. Notices of Intent to Submit a Claim to Arbitration were filed by Crompton on November 6, 2001 and April 4, 2002. In respect of those Notices of Intent, a Notice of Arbitration was filed by Crompton on October 17, 2002. A third Notice of Intent was filed by Crompton on September 19, 2002. The Notice of Arbitration herein relates to that third Notice of Intent. Given the questions of

fact and law in common between the two Notices of Arbitration, Crompton will be seeking that the two arbitrations be consolidated, pursuant to Article 1126.

b) Background Facts

11. Crompton alleges that Canada has breached and continues to breach its obligations under Chapter 11 of NAFTA including Articles 1102, 1103, 1104, 1105, 1106 and 1110 thereof.

12. Crompton incorporates by reference and restates the factual bases for the claim set forth in its October 17, 2002 Notice of Arbitration. A copy of that Notice of Arbitration is attached as **Schedule 2**. The October 17, 2002 Notice of Arbitration relates primarily to the actions of Canada by which it breached an agreement with Crompton concerning Crompton's "voluntary discontinuance" of lindane production for canola/rapeseed use. With respect to this Notice of Arbitration herein Crompton relies on the following additional facts.

13. On December 19, 2001, after having already terminated the use of lindane as a seed treatment for canola, Canada, through the PMRA (Pest Management Regulatory Agency), announced it would terminate all remaining lindane uses either through "phase out by suspension of registrations or voluntary discontinuation."

14. By letter dated January 17, 2002 the PMRA attempted to coerce Crompton into "voluntarily withdrawing" its remaining product registrations by threatening to suspend Crompton's registrations on February 1, 2002 with no right to phase out use if Crompton did not agree to the "voluntarily withdrawal" by January 31, 2002.

15. Clearly from the January 17, 2002 letter, the PMRA, for reasons unknown to the Claimant, backed away from its original offer of a phase out period regardless of whether Crompton's registrations were terminated through suspension or voluntarily withdrawn. The offer of a phase out period was not withdrawn for

other registrants and the other registrants were, in fact, granted the phase out period.

16. Crompton informed the PMRA that it did not have grounds on which to terminate the registrations and that Crompton would not agree to a voluntarily withdrawal.

17. The PMRA followed through with its announced termination notwithstanding that it lacked a valid reason to do so and notwithstanding Crompton's objections.

18. On February 11, 2002, the PMRA terminated, through suspension, Crompton's lindane registrations for:

Vitavax RS Flowable Systemic Liquid Seed Protectant; Reg. No. 15533
Vitavax RS Powder Seed Treatment; Reg. No. 16451
Cloak Seed Treatment; Reg. No. 22121
Vitavax RS Flowable (Undyed) Seed Protectant; Reg. No. 24467
Vitavax RS Dynaseal Seed Protectant; Reg. No. 24482

19. These registrations were "terminated through suspension" because Crompton did not submit the required form letter of "voluntary" discontinuation by the January 31, 2002 deadline set by the PMRA.

20. On February 21, 2002, the PMRA terminated, through suspension, Crompton's remaining lindane registrations for:

Vitaflo DP Systemic Fungicide & Insecticide; Reg. No. 11422
Vitavax Dual Solution Systemic Fungicide & Insecticide; Reg. No. 14115
Vitavax Dual Powder Seed Protectant; Reg. No. 15537

21. The PMRA terminated these lindane registrations without the right to phase-out use notwithstanding the fact that Crompton had provided the sales and inventory information requested by the PMRA in order to be granted the right to phase-out use. The PMRA gave as its reason that Crompton had stated that in providing the information it was not concurring with the proposed "voluntary" discontinuation and that Crompton did not provide the required form letter of "voluntary

discontinuation" by the January 31, 2002 deadline. As noted above, the other lindane registrants were granted the phase out period.

22. The PMRA engaged in a series of actions between 1999-2002 that were designed to effectively take the remainder of the Claimant's investment. Those actions include, without limitation:

a. illegal and unwarranted suspension of Crompton's lindane registrations;

b. treating the Claimant in an unfair, biased and discriminatory manner;

c. attempting to deprive the Claimant of its rights under Canadian and international law including that of independent review, and significantly delaying the commencement of that independent review;

d. engaging in a study which made flawed determinations with respect to exposure risks to workers from lindane products; and

e. suspending the Claimant's registrations based on a fundamentally flawed risk assessment.

23. The effect of the measures was to take the Claimant's investment in a series of steps constituting a form of "creeping expropriation".

G. NAFTA Obligations Breaches

a) National Treatment – Article 1102

24. Crompton incorporates by reference its Article 1102 claim as stated in its October 17, 2002 Notice of Arbitration and repeats it as it relates to these additional facts.

25. Article 1102.1 of the NAFTA requires each NAFTA Party to accord to investors of another Party treatment no less favourable than that it accords, in like circumstances, to its own investors with respect to the establishment, acquisition,

expansion, management, conduct, operation, and sale or other disposition of investments.

26. The Claimant has been accorded treatment less favourable than that accorded to Canadian investors in like circumstances with respect to the conduct and operation of its investment. At all relevant times, Crompton, through its investment Crompton Co./Cie, was the major manufacturer in Canada of lindane seed treatment products for canola seeds. Canadian companies now produce or sell substitute products of much higher cost, whereas prior to the actions taken by Canada which are the subject of this arbitration, the products of such companies were not sold in the Canadian market,.

27. The prohibition of the sale and use of the Lindane Product is discriminatory in effect. Non-national investors are harmed by the Government's actions. Canadian producers or sellers of substitute products, by contrast, will benefit as a result of the Government's action.

c) Most- Favoured Nation Treatment – Article 1103

28. Crompton incorporates by reference its Article 1103 claim as stated in its October 17, 2002 Notice of Arbitration and repeats it as it relates to these additional facts.

29. Canada has, on the same basis as outlined, failed to accord the Claimant treatment no less favourable than that accorded investors from non-Party nations by discriminating against Crompton to the advantage of MFN formulators.

30. In particular, the "no less favourable treatment" to which Crompton was entitled was breached when other registrants and other companies (including those from Most Favoured Nations) were accorded more favourable treatment.

d) Standard of Treatment – Article 1104

31. Crompton incorporates by reference its Article 1104 claim as stated in its October 17, 2002 Notice of Arbitration and repeats it as it relates to these additional facts.

32. Canada has failed to accord the Claimant the better of the treatment required by Articles 1102 and 1103.

e) Minimum Standard of Treatment – Article 1105

33. Crompton incorporates by reference its Article 1105 claim as stated in its October 17, 2002 Notice of Arbitration and repeats it as it relates to these additional facts.

34. Canada has failed to accord to the Claimant treatment in accordance with international law including fair and equitable treatment and full protection and security.

35. The actions taken by the Canadian Government, and specifically the PMRA, are unfair and inequitable. The termination of the lindane registrations is not based on credible scientific evidence, inasmuch as the study on which the termination was based was biased, incomplete and scientifically unsound. The methodology and standards used and applied were inconsistent with other studies of competing products.

36. The Canadian Government gave no consideration to alternative means of addressing the alleged concerns arising from the use of lindane products such as, for example, through the imposition of ameliorating steps and practices.

37. The Canadian Government breached commitments it had made to Crompton. The Canadian Government acted and made decisions in a manner that was not transparent. In particular, Canada took actions and made decisions based on factors or criteria unknown to Crompton and changed its position on matters without any advance notice to, or consultation with, Crompton. The Canadian Government did not provide Crompton with any meaningful opportunity to be heard prior to the termination of the its lindane registrations.

38. Canada's treatment of Crompton and its Lindane Product business was not in accordance with international law and was in breach of Canada's obligations

under Article 1105 in respect of basic due process, economic rights and obligations of good faith and natural justice.

f) Performance Requirements – Article 1106

39. Crompton incorporates by reference its Article 1106 claim as stated in its October 17, 2002 Notice of Arbitration and repeats it as it relates to these additional facts.

40. By banning the sale and use of lindane, Canada is effectively imposing a preference for substitute products produced and registered for use in Canada.

41. Absent valid scientific evidence that a ban on use is necessary to protect human health or the environment, there is no sustainable basis for a ban on lindane.

42. Although Canada is entitled to take measures which are necessary to protect human, animal or plant life or health, Canada is not permitted to take measures that are arbitrary or unjustifiable, or that constitute a disguised restriction on international trade and investment. Canada has breached these obligations. Moreover, the measures taken by Canada are not, in any event, the least trade restrictive measures necessary to achieve its objectives. If the protection of workers was Canada's concern, Crompton should have been informed of Canada's concerns and should have be given the opportunity to provide Canada with options which would have fully addressed Canada's concerns without requiring a prohibition of lindane. Canada did not invite or consider such options and chose the most restrictive option possible.

g) Expropriation – Article 1110

43. Crompton incorporates by reference its Article 1110 claim as stated in its October 17, 2002 Notice of Arbitration and repeats it as it relates to these additional facts.

44. The effect of the series of steps taken by Canada between 1999 and 2002 is, individually and cumulatively, to take a measure or measures tantamount to expropriation of the Claimant's investment.

45. By terminating the remaining non-canola lindane uses the Government of Canada has ended Crompton's business of producing and selling lindane for use in Canada. This constitutes a substantial taking of Crompton's lindane business. The Government of Canada's actions are both directly and indirectly tantamount to expropriation.

H. Relief Sought and Damages Claimed

46. The Claimant and its enterprise have incurred damages by reason of and arising out of breaches by Canada of the obligations under Chapter 11 of NAFTA.

47. Pursuant to Article 1135(b), Crompton is requesting by way of restitution the (a) reinstatement of all registrations relating to its lindane products; and (b) such damages, costs, interest, and amounts for tax consequences as described below, both past and future, resulting from Canada's breaches which cannot adequately be compensated by restitution.

48. Alternatively, pursuant to Article 1135(a), Crompton claims the following:

i. An award in the amount of approximately $100 million (U.S.) or damages caused by Canada's breaches of its obligations under Chapter 11 NAFTA for, without limitation, loss of sales, profits, goodwill, investment and other costs related to the products arising from the breaches. These damages are suffered by the Claimant and its enterprise.

ii. Costs associated with these proceedings including counsel, expert and arbitration fees and disbursements.

iii. Pre and post-judgment interest at a rate to be fixed by the arbitrators.

iv. Amounts for tax consequences of the award sufficient to maintain the integrity of the award on a net-net basis.

v. Such further and other relief as counsel may advise or as may be deemed just.

49. The relief and damages claimed in this Notice of Arbitration are separate from, and in addition to, the relief and damages claimed in the October 17, 2002 Notice of Arbitration.

I. Appointment of Arbitrators

50. The Claimant proposes that there be three arbitrators and that the arbitration take place in Ottawa, Ontario.

J. Statement of Claim

51. The Statement of Claim shall be filed as directed by the arbitrators in accordance with UNCITRAL Rules.

DATED AT OTTAWA, ONTARIO, this 10th day of February, 2005.

Gregory O. Somers/Benjamin P. Bedard/
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Counsel to Crompton Corporation

Served to:

Office of the Deputy Attorney General of Canada
Justice Building
284 Wellington Street
Ottawa, Ontario
K1A 0H8

SCHEDULE 1

The Government of Canada
Office of the Deputy Attorney General of Canada
Justice Building
284 Wellington Street
Ottawa, Ontario
K1A 0H8

CONSENT AND WAIVER

Crompton Co./Cie ("Crompton"), pursuant to Article 1121(1)(c) of the North American Free Trade Agreement ("NAFTA"), hereby demands that the dispute between it and the Government of Canada be referred to arbitration under the Uncitral Arbitration Rules.

Pursuant to Article 1121(1)(b) of NAFTA, Crompton hereby waives its right to initiate or continue before any administrative tribunal or court under the laws of any Party, or other dispute settlement procedures, any proceedings with respect to the measures of the Government of Canada which Crompton alleges to be breaches of NAFTA obligations referred to in Article 1116 and/or 1117, except for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the laws of Canada.

Dated this 9th day of February, 2005.

Crompton Co./Cie

- by its duly authorized officer -

Alan Stratton
President

SCHEDULE 2

The Government of Canada
Office of the Deputy Attorney General of Canada
Justice Building
284 Wellington Street
Ottawa, Ontario
K1A 0H8

CONSENT AND WAIVER

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Dated this 9th day of February, 2005.

Crompton Corporation

- by its duly authorized officer -

Lynn Schiefsky
Senior Vice President and General Counsel