

AN ARBITRATION UNDER CHAPTER ELEVEN OF THE
NORTH AMERICAN FREE TRADE AGREEMENT

BETWEEN:

CHEMTURA CORPORATION
(formerly Crompton Corporation)

Claimant

and

GOVERNMENT OF CANADA

Respondent.

PROCEDURAL ORDER NO. 1

(21 January 2008)

ARBITRAL TRIBUNAL:

Professor Gabrielle Kaufmann-Kohler (Presiding Arbitrator)
The Honourable Charles N. Brower
Professor James Crawford

1. This first Procedural Order sets out the Procedural Rules that the Claimant and the Respondent ("the disputing parties") have agreed, and the Arbitral Tribunal has determined, shall govern this arbitration.
2. These Rules have been discussed between the disputing parties and the Arbitral Tribunal at the first procedural meeting held on 9 January 2008. In addition, the rules take into account the joint letter of the disputing parties to the Arbitral Tribunal of 7 December 2007 setting out agreed procedural matters and identifying areas where agreement had not been reached and the two letters of the disputing parties dated 3 January 2008.

I. Procedural Matters

A. Constitution of the Arbitral Tribunal (Article 1123 of the NAFTA)

3. The disputing parties agree and confirm that the Arbitral Tribunal has been duly constituted in accordance with Article 1123 of the NAFTA. Declarations of the Members of the Arbitral Tribunal as to their independence have been provided to the disputing parties.
4. The disputing parties confirm that they waive any possible objection to the constitution of the Tribunal and to the appointment of the Arbitrators on the grounds of potential conflict of interest and/or lack of independence or impartiality in respect of matters known to them at the date of signature of this Procedural Order.
5. The contact details of each Member of the Arbitral Tribunal are as follows:

Gabrielle Kaufmann-Kohler
Lévy Kaufmann-Kohler
3-5, rue du Conseil-Général
P.O. Box 552
1211 Geneva 4
Switzerland
Tel: +41 22 809 6200
Fax: +41 22 809 6201
Email : gabrielle.kaufmann-kohler@lk-k.com

James R. Crawford
Lauterpacht Centre for International Law
5 Cranmer Rd
Cambridge CB3 9BL
United Kingdom
Tel: +44 1223 335358
Fax: +44 1223 311668
Email: JRC1000@cam.ac.uk

The Hon. Charles N. Brower
20 Essex Street Barristers
20 Essex Street
London WC2R 3AL
United Kingdom
Tel: +44 (0) 20 7842 1200
Fax: +44 (0) 20 7842 1270
Email: cbrower@20essexst.com

Address for delivery of hard copies:
Iran-United States Claims Tribunal
Parkweg 13
NL-2585 JH The Hague
The Netherlands

B. Representation of the disputing parties (Article 4 of the UNCITRAL Arbitration Rules)

6. The Claimant is represented by:

Gregory O. Somers, Ogilvy Renault LLP
Paul Conlin, Ogilvy Renault LLP
Benjamin Bedard, Ogilvy Renault LLP
Alison FitzGerald, Ogilvy Renault LLP
Renée Thériault, Ogilvy Renault LLP

Mailing address:
Ogilvy Renault LLP
45 O'Connor Street
Suite 1500
Ottawa, Ontario K1P 1A4
Canada
Tel: +1-613-780-8661
Fax: +1-613-230-5459

Email distribution list:
gsomers@ogilvyrenault.com
pconlin@ogilvyrenault.com
bbedard@ogilvyrenault.com
afitzgerald@ogilvyrenault.com
rtheriault@ogilvyrenault.com

7. The Respondent is represented by:

Meg Kinnear, Director-General and Senior General Counsel, Trade Law Bureau,
Government of Canada
Christophe Douaire de Bondy, Counsel, Trade Law Bureau, Government of Canada
Lori Di Pierdomenico, Counsel, Trade Law Bureau, Government of Canada
Carolyn Elliott-Magwood, Counsel, Trade Law Bureau, Government of Canada

Mailing address:

Trade Law Bureau (JLT)
Lester B. Pearson Building, Flr. C7
125 Sussex Drive,
Ottawa, ON K1A 0G2
Canada
Tel: +1-613-943-2804
Fax: +1-613-944-0027

Email distribution list:

meg.kinnear@international.gc.ca
christophe.bondy@international.gc.ca
lori.dipierdomenico@international.gc.ca
carolyn.elliott-magwood@international.gc.ca
nicola.harapiak@international.gc.ca
elizabeth.hrubesz@international.gc.ca

- C. *Fees and Expenses of the Arbitral Tribunal; Administrative Services (Articles 38-41 of the UNCITRAL Arbitration Rules)*
8. Articles 38(a) to (f), 39(1) and (2), 40 and 41(1), (2), (4) and (5) of the UNCITRAL Arbitration Rules shall apply.
9. Fees and Expenses of the Arbitral Tribunal:
- a) Each member of the Arbitral Tribunal shall be remunerated at a rate of USD 4,000 for each day of participation in meetings of the Arbitral Tribunal or 8 hours of other work performed in connection with the proceeding or pro rata; and
 - b) Each member of the Arbitral Tribunal shall receive a charge of 10% of the hearing time reserved but not used as a result of a postponement or cancellation of a hearing less than 60 but more than 30 days prior to the commencement of the hearing and a charge of 30% for postponement or cancellation less than 30 days before the hearing.
 - c) The Members of the Arbitral Tribunal shall be reimbursed with respect to all disbursements and charges reasonably incurred in connection with this arbitration (including but not limited to travel expenses, telephone, fax, delivery, and copying).
 - d) All payments to the Arbitral Tribunal shall be made from the deposits referred to in the paragraph 15 below.
10. Costs incurred by the Tribunal for the proceedings, e.g. for hearing rooms, interpretation, transcript, will be paid by from the deposits referred to in paragraph 15 below.
11. The Arbitral Tribunal may retain one Administrative Secretary, whose fees and expenses shall be included in the costs of the arbitration within the meaning of Article 38(c) of the UNCITRAL Arbitration Rules. In addition to reimbursement for any direct expenses reasonably incurred, the Administrative Secretary shall receive a fee of USD 280 per hour.

12. With the consent of the parties, the Tribunal retains as Administrative Secretary:

Ms Aurélia Antonietti
Lévy Kaumann-Kohler
3-5, rue du Conseil-Général
P.O. Box 552
1211 Geneva 4
Switzerland
Tel: +41 22 809 6200
Fax: +41 22 809 6201
Email : aurelia.antonietti@lk-k.com

Ms Antonietti is independent of the parties. Her resume has been submitted to the parties.

13. PCA administrative support:

Upon request, staff of the Permanent Court of Arbitration (PCA) shall carry out administrative tasks on behalf of the Tribunal, including the organization of hearings or meetings at any location. Work carried out by a PCA legal counsel shall be billed at €175 per hour. PCA fees and expenses (such as air courier costs and bank transfer fees) shall be paid in the same manner as the Arbitral Tribunal's fees and expenses, subject to the approval of the Chairperson.

D. Apportionment of Costs and Advance Payments (Articles 38-41 of the UNCITRAL Arbitration Rules)

14. Without prejudice to the final decision of the Arbitral Tribunal regarding costs, the disputing parties agree to share equally advance payments to the Tribunal. Upon the issuance of an award, the Arbitral Tribunal may apportion the costs of the arbitration between the disputing parties if it determines apportionment is reasonable under the circumstances of the award.
15. Within 30 days from issuance of this Order, each disputing party shall pay an initial advance for costs in an amount of USD 100,000 to be placed with the PCA in the following account:

Bank:	ING Bank N.V., Schenkkade 65, 2595 AS The Hague, The Netherlands
Bank Identifier Code (BIC):	INGBNL2A
Account number:	02 02 86 511 (payments in USD)
IBAN:	NL75 INGB 0020 2865 11
Beneficiary:	Permanent Court of Arbitration/TRIB
Reference:	NAFTA Arbitration CC-C

16. The PCA will review the adequacy of the deposit from time to time and, at the request of the Tribunal, may invite the disputing parties to make supplementary deposits in accordance with Article 41(2) of the UNCITRAL Arbitration Rules.

17. Upon request, the PCA shall provide a detailed statement of account with respect to the deposit.
18. The unused balance held on deposit at the end of the arbitration shall be returned to the disputing parties as directed by the Tribunal.
19. The PCA will administer the deposit free of charge, but any transfer fees or other bank charges will be charged to the account, and no interest will be paid on the deposit.

E. Place of Arbitration (Article 1130 of NAFTA; Article 16 of the UNCITRAL Arbitration Rules)

20. The place of arbitration is the City of Ottawa, in the Province of Ontario, Canada.
21. Without prejudice to paragraph 20, meetings and hearings may be held at other locations if so decided by the Arbitral Tribunal, after consultations with the disputing parties.

F. Applicable Arbitration Rules (Article 1120 of the NAFTA; Article 1 of the UNCITRAL Arbitration Rules)

22. The applicable arbitration rules are the UNCITRAL Arbitration Rules, except to the extent that they are modified by the provisions of Section B of NAFTA Chapter 11.

G. Applicable Law (Article 1131 of NAFTA; Article 33 of the UNCITRAL Arbitration Rules)

23. The governing law for this arbitration is the NAFTA and applicable rules of international law.

H. Service of Documents and Copies of Instruments (Article 15(3) of the UNCITRAL Arbitration Rules)

24. The disputing parties agree to send all correspondence and submissions, including pleadings and memorials (with attachments), by e-mail simultaneously to opposing counsel and the Members of the Arbitral Tribunal and to the Administrative Secretary of the Arbitral Tribunal at the addresses indicated above on the date the submission in question is due.
25. The disputing parties agree to provide two hard copies of the materials referred to in paragraph 24 to opposing counsel and three hardcopies thereof to the Members of the Arbitral Tribunal and one hard copy to the Administrative Secretary of the Tribunal at the addresses indicated above. The hard copies of such documents will be sent by facsimile, by courier or by hand to opposing counsel and to the Members of the Arbitral Tribunal at the addresses indicated above and to the Administrative Secretary of the Arbitral Tribunal. Each disputing party shall also provide digital copies of the submissions including witness statements, expert reports, documentary exhibits and legal authorities (if possible in searchable form).

I. Confidentiality (Articles 25(4) and 32(5) of the UNCITRAL Arbitration Rules)

26. The Arbitral Tribunal's Confidentiality Order of 21 January 2008 applies to these proceedings.

J. Procedural Language (Article 17 of the UNCITRAL Arbitration Rules)

27. The arbitration shall be conducted in English.
28. All documentary evidence in a language other than English shall be translated to English by the disputing party submitting that evidence. Witness testimony in a language other than English shall be translated simultaneous to English, the cost of which shall be borne by the disputing party calling that witness.

K. Quorum

29. The presence of all three members of the Arbitral Tribunal shall constitute a quorum and all members must be physically present at hearings. The members of the Arbitral Tribunal may hold other meetings with the disputing parties by telephone or video conference if reasonable under the circumstances.
30. Procedural matters may be decided by the Presiding Arbitrator alone.

L. Record of Hearings (Article 25(3) of the UNCITRAL Arbitration Rules)

31. The hearings before the Arbitral Tribunal shall be transcribed. The first meeting with the Arbitral Tribunal as well as other procedural or organizational hearings shall not be transcribed but shall be tape-recorded.
32. Live Note transcription software, or comparable software, shall be used to make the hearing transcripts instantaneously available to the disputing parties and Members of the Arbitral Tribunal in the hearing room. The disputing parties further agree that transcripts of proceedings should be made available on a same day service basis.
33. The Arbitral Tribunal shall establish, as necessary, procedures and schedules for the correction of transcripts. If the disputing parties disagree on corrections to be made to transcripts, the Arbitral Tribunal shall determine whether or not any such corrections are to be adopted.

M. Decisions of the Arbitral Tribunal (Article 31 of the UNCITRAL Arbitration Rules)

34. Subject to paragraphs 30 and 35, the Arbitral Tribunal shall make any award or other decision by a majority of its members, which shall be deemed to be made in Ottawa, regardless of where it is signed.

N. Delegation of Power to Fix Time Limits

35. The Arbitral Tribunal shall, in consultation with the disputing parties, fix the time limits in respect of all documents to be filed. In case of urgency, the presiding arbitrator may do so.

O. Written and Oral Procedures – Pleadings: Number, Sequence, Time Limits (Articles 18-23 of the UNCITRAL Arbitration Rules)

36. Expert reports, witness statements and other evidence on which a disputing party intends to rely are to be included with the Memorial and Counter-Memorial. The Reply and Rejoinder may only contain evidence that is responsive to the other disputing party's last preceding submission.
37. The schedule for the proceedings is as follows:

Date	Action
2 June 2008	Chemtura's Memorial
20 October 2008	Canada's Counter Memorial
5 December 2008	Simultaneous requests for document production submitted to the Tribunal
23 January 2009	Simultaneous production of documents or objections to production
6 February 2009	Simultaneous responses to objections
On or around 6 March 2009	Tribunal's order on production
20 March 2009	Production of documents
15 May 2009	Chemtura's Reply
10 July 2009	Canada's Rejoinder
20 July 2009	Pre-hearing telephone conference
7 August 2009	Agreed Statement of Facts and hearing bundle (in CD-Rom and paper format)
2, 3, 4, 5 and 7, 8, 9, 10, and if needed 11 September 2009	Hearing

38. The Memorial and Counter Memorial shall append the documentary evidence, witness statements, and experts reports on which the Parties wish to rely, subject to matters arising from the later document production. The Reply and Rejoinder shall append documentary evidence, witness statements, and expert reports in rebuttal of the opponent's prior submission and arising out of the document production.
39. At the pre-hearing telephone conference, the Tribunal will consult with the disputing parties on all outstanding organizational and procedural matters in connection with the hearing. It will also discuss possible submissions by the other governments and post-hearing briefs.
40. Any amendments to the claim shall be governed by the NAFTA and Article 20 of the UNCITRAL Arbitration Rules.

P. Production of Evidence (Articles 24-25 of the UNCITRAL Arbitration Rules)

41. The disputing parties agree that the International Bar Association's *Rules on the Taking of Evidence* ("IBA Rules") shall be used as guidance in this proceeding with the exception of Article 3.12, regarding confidentiality.
42. The disputing parties may request documents from each other. Any request shall identify a specific document or a limited and specific category of documents and establish the relevance of each document or category of documents. Within the time limit set above, the disputing parties may refer any disputed request to the Arbitral Tribunal. These requests, which may be made only after the disputing parties have exchanged their Memorial and Counter-Memorial as provided above, shall be presented in the form of a table ("Redfern Schedule") comprising four columns:
 - first column: identification of the document(s) or the category or categories of document(s) that have been requested;
 - second column: short presentation of the reasons of each request;
 - third column: a summary of the objections by the other disputing party to the production of the requested document(s);
 - fourth column: left blank for the decision of the Arbitral Tribunal.

The third column shall be completed at the time of the filing of the objections to production (23 January 2009). The second column may be supplemented at the time of the responses to objections (6 February 2009).

43. The Arbitral Tribunal may then, in its discretion, order one disputing party to communicate to the other documents or limited categories of documents. In the exercise of its discretion, the Arbitral Tribunal will have regard to the specificity of the request, the relevance of the requested documents, the fact that they are in the possession, power or control of the disputing party from whom they are requested, the legitimate interests of the opposing disputing party, including any applicable privileges, and all surrounding circumstances.

- 44. Documents so communicated shall not be considered on record unless and until the requesting disputing party subsequently produces them.
- 45. In addition, the Arbitral Tribunal may of its own motion order a disputing party to produce documents at any time.

Q. Witnesses and Experts

- 46. As indicated above, the disputing parties can file expert reports or witness statements.

Witnesses:

- 47. Any person may present evidence as a witness, including a disputing party or a disputing party's officer, employee or other representative.
- 48. For each witness, a written and signed witness statement shall be submitted to the Arbitral Tribunal, unless the parties cannot obtain such a statement from a witness for a legitimate reason which such disputing party will explain to the Arbitral Tribunal. Each witness statement shall state the witness's name, birthday, present address and involvement in the case, and append a passport photograph of the witness.
- 49. Each disputing party shall be responsible for summoning its own witnesses to the applicable hearing, except when the other disputing party has waived cross-examination of a witness or expert and the Arbitral Tribunal does not direct his or her appearance.
- 50. Each disputing party shall advance the costs of appearance of its own witnesses. The Arbitral Tribunal will decide upon the appropriate allocation of such costs in its final award.
- 51. At the request of a disputing party, the Arbitral Tribunal may summon a witness to appear.
- 52. If a witness fails to appear when first summoned to a hearing, the Arbitral Tribunal may summon the witness to appear a second time if it is satisfied that there was a valid reason for the first failure to appear and that the testimony of the witness is relevant.
- 53. The Arbitral Tribunal may consider the witness statement of a witness who provides a valid reason for failing to appear when summoned to a hearing or whose cross examination has been waived, having regard to all the surrounding circumstances. The Arbitral Tribunal shall not consider the witness statement of a witness who fails to appear or whose cross examination has not been waived, and does not provide a valid reason.
- 54. At the hearing, the examination of each witness shall proceed as follows:
 - a) the disputing party summoning the witness may briefly examine the witness, if it is considered necessary to complete the witness statement;

- b) the adverse disputing party may then cross-examine the witness;
 - c) the disputing party summoning the witness may then re-examine the witness with respect to any matters or issues arising out of the cross-examination, with re-cross examination in the discretion of the Arbitral Tribunal; and
 - d) the Arbitral Tribunal may examine the witness at any time, either before, during or after examination by one of the disputing parties.
55. A fact witness shall not be present in the hearing room during the hearing of oral testimony, or read any transcript of any oral testimony, prior to his or her examination, except with the express permission of the Tribunal. This limitation does not apply to expert witnesses.
56. The Arbitral Tribunal shall, at all times, have complete control over the procedure for hearing a witness. The Arbitral Tribunal may in its discretion:
- a) refuse to hear a witness if it considers that the facts with respect to which the witness will testify are either proven by other evidence or are irrelevant;
 - b) limit or refuse the right of a disputing party to examine a witness when it appears that a question has been addressed by other evidence or is irrelevant; or
 - c) direct that a witness be recalled for further examination at any time.
57. It shall not be improper for counsel to meet witnesses and potential witnesses to establish the facts, prepare the witness statements, and prepare the examinations.

Experts:

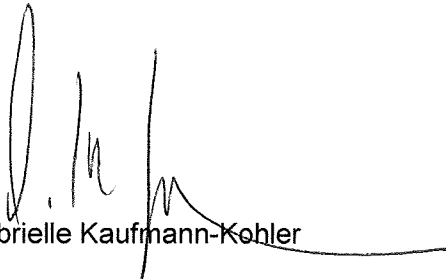
58. Each disputing party may retain and submit the evidence of one or more experts to the Arbitral Tribunal. The procedural rules set out above shall apply by analogy to the evidence of experts.
59. Subject to NAFTA Article 1133, the Arbitral Tribunal may, on its own initiative or at the request of a disputing party, appoint one or more experts. The Arbitral Tribunal shall consult with the disputing parties on the selection, terms of reference (including expert fees) and conclusions of any such expert. The Arbitral Tribunal may, on its own initiative or at the request of any disputing party, take oral evidence of such expert(s). The procedural rules set out above shall apply by analogy.

R. Amicus Curiae

60. If a request for the submission of an amicus curiae brief is filed, the Tribunal will give the appropriate directions in the exercise of its powers under Article 15 UNCITRAL Rules and taking into consideration the recommendation of the North American Free Trade Commission of 7 October 2003.

Date: 21 January 2008

Place of signature: Geneva



Gabrielle Kaufmann-Köhler