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

**CROMPTON CORP.**

**Claimant/Investor**

**v.**

**GOVERNMENT OF CANADA**

**Respondent/Party**

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

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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 Corp. initiates recourse to arbitration under the UNCITRAL Arbitration Rules.<sup>1</sup>

**A. Consent and Waivers**

1. Pursuant to Article 1121 of NAFTA, Crompton Corp. (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. Crompton Corp. 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** is the consent and waiver of Crompton Corp. 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") be referred to arbitration under the UNCITRAL Arbitration Rules.

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<sup>1</sup> General Assembly Resolution 31/98.

**C. Names and Address of the Parties**

5. Claimant: Crompton Corp.  
World Headquarters  
Greenwich, Connecticut 06831  
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 arise out of measures undertaken by Canada that breach of the obligations under Chapter 11 of NAFTA.

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

a) Background Facts

10. 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.

11. The Claimant is a U.S. corporation established under the laws of the State of Delaware, with its head office at Greenwich, Connecticut. Crompton was formerly known as Uniroyal Chemical Company, Inc.
12. The Claimant is engaged in the manufacture and sale of specialty chemical products. These products are used in diverse business sectors including agriculture, housing and automotive products.
13. Crompton Co./Cie is a wholly-owned indirect subsidiary of the Claimant. Crompton Co./Cie is a Canadian company organized under the laws of Nova Scotia. It was formerly known as Uniroyal Chemical Co./Cie. Crompton Co./Cie has a manufacturing facility at Elmira, Ontario, which produces various products for several divisions of the Claimant, including lindane seed treatment products, the subject matter of this arbitration.
14. Lindane is an active chemical ingredient and principal component in the formulated seed treatment products manufactured and sold by Crompton Co./Cie under the trade names: Vitavax® RS Flowable, Vitavax RS Powder, Vitavax RS Dynaseal, Vitavax DP Systemic, Vitavax Dual Solution, Vitavax Dual Powder, and Cloak (“the Lindane Products”).
15. Lindane is a pest control product that is particularly successful in controlling damage done to canola and other crops by the flea beetle, an insect prevalent in Western Canada. It is an effective and efficient product when used to treat seeds prior to planting.
16. Specifically, the Lindane active ingredient is 99.5% pure gamma isomer which is not the HCH isomers previously linked to adverse ecological effect. There is no evidence that lindane in this form properly handled and used constitutes a health or environmental hazard.
17. Pursuant to the *Pest Control Products Act*, since 1978 the Lindane Products were registered for use in seed treatment of canola/rapeseed as well as for other crops. The Claimant, through its enterprise, has held the registration for these products

continuously and has been engaged in the manufacture and sale of the Lindane Products since that time.

18. Crompton Co./Cie is the major company in Canada that manufactures lindane-containing products for seed treatment and was, until the various matters referred to arbitration, the market leader for these products.
19. The Lindane Products business in Canada constitutes an "investment" pursuant to Section C of NAFTA Chapter 11.
20. Lindane is permitted for use in the United States on a number of crops and is awaiting registration for use on canola. Lindane is more cost-effective than other treatment products available in the United States. Following a recent review by U.S. EPA, lindane registrations are allowed to continue in the United States, despite the recent actions of Canada to deregister lindane.
21. In 1997-98 U.S. canola growers considered that they are at a competitive disadvantage to Canadian canola growers. Lindane use became a trade irritant between the two countries when the United States Government indicated that Canadian canola oil might be prohibited from entry into the U.S. on the basis that the seed from which the oil was made had been treated with a substance not yet authorized for that crop in the U.S.
22. To resolve this trade dispute, Canada agreed with the United States to cause the cessation in the manufacture and sale of lindane products by requiring registrants to "voluntarily discontinue" their product registrations.
23. It was the intention of Canada through the relevant Canadian regulatory agency, PMRA (Pest Management Regulatory Agency), to ensure the termination of the sale of these lindane products by July 1, 2001.
24. Despite the absence of an evidentiary basis for the suspension/termination of the product registrations, PMRA commenced a series of efforts to ensure compliance with the agreement with the U.S.

25. Throughout most of 1999, the Claimant attempted to moderate, to the extent possible, the imposition of terms and conditions requiring the Claimant to cease the manufacture and sale of its Lindane Products.
26. On October 28, 1999, PMRA set the terms under which the Claimant would discontinue its product registration and cease such manufacture and sale including that (a) all registrants would be subject to the same regime; b) the Claimant would suspend its product registrations and cease manufacture by December 31, 1999; (c) PMRA alone and in conjunction with the United States was to conduct a product review of lindane by December 31, 2000 and, if found to be safe or the U.S. issued a tolerance (or conclude that none was necessary), the product registrations on canola would be reinstated; (d) all other uses of lindane on other crops would continue; and (e) Crompton could continue to sell its Lindane Product to July 1, 2001.
27. The Claimant has complied with all its obligations.
28. For reasons unknown to the Claimant, PMRA concluded that lindane was not to re-enter the Canadian market.
29. Following October 18, 1999, Canada, through PMRA, engaged in a series of acts designed to implement this conclusion and effectively take the Claimant's investment. Canada undertook these actions knowing that the Claimant was the market leader and that the measures would undermine the Claimant's investment.
30. The actions complained of include (but are not limited to and will be more fully set out in the Statement of Claim):
  - a. systematically breaching all of its obligations referred to in paragraph 26.
  - b. making statements which it knew would create uncertainty and distrust for the product.
  - c. exhibiting animosity and bias knowing it would harm the Claimant's goodwill and valuation.

- d. by refusing to reinstate the product registrations in the absence of any basis for suspension and in the face of PMRA's breach of its own obligation.
  - e. treating the Claimant in an unfair, biased and discriminatory manner.
  - f. depriving or attempting to deprive the Claimant of its rights under Canadian and international law including that of independent review.
  - g. engaging in a study of the Lindane Product which failed to do a proper risk assessment, used extraordinarily scant data and outdated information, contained flawed exposure assessments, and failed to consider alternative solutions and remediation.
  - h. discriminating against Crompton by permitting a potentially carcinogenic product (Helix and Helix XTra), a competing substitute product to those of Crompton, to be approved under criteria not applied to Crompton.
  - i. attempting to coerce Crompton to "voluntarily withdraw" its remaining product registrations and in the absence of acquiescence, the suspension of Crompton's remaining product registrations on other non-canola crops.
31. 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

32. Canada has failed to accord Crompton the treatment which it would and should accord to Canadian nationals including protection from arbitrary, discriminatory and malicious conduct in the management, conduct and operation of its investment.



b) Most- Favoured Nation Treatment – Article 1103

33. 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.

c) Standard of Treatment – Article 1103

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

d) Minimum Standard of Treatment – Article 1105

35. Canada has failed to accord to the Claimant treatment in accordance with international laws including fair and equitable treatment and full protection and security.
36. The actions of Canada in imposing terms, in failing to meet its obligations, in refusing to reinstate registrations, in discriminating against Crompton and favouring competitors, in conducting biased and improper reviews and advancing improper conclusions, suspending other uses and frustrating efforts to obtain independent review, all constitute breaches of Article 1105.
37. Canada is in breach of international law and its obligations under Article 1105 in respect of basic due process, economic rights and obligations of good faith and natural justice.

e) Performance Requirements – Article 1106

38. By banning the sale and use of lindane, Canada is effectively imposing a preference for substitute products produced and registered for use in Canada.
39. 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.
40. Canada failed to take the least restrictive action necessary for the protection of workers.

f) Expropriation – Article 1110

41. 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.
42. Any such measures are justified only if they are:
  - a. for a public purpose;
  - b. on a non-discriminatory basis;
  - c. in accordance with due process and Article 1105(1); and
  - d. on payment of compensation on a prescribed basis.
43. None of the measures, individually or collectively, meet any of the above criteria. Most particularly, no compensation has ever been paid or offered.

**H. Relief Sought and Damages Claimed**

44. 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.
45. 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, amounts for tax consequences as described below, both past and future, resulting from Canada's breaches which cannot adequately be compensated by restitution.
46. 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 obligation under Chapter 11 NAFTA for, but without limitation, loss of sales, profits, goodwill, investment and other costs related to the products. 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.

**I. Appointment of Arbitrators**

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

**J. Statement of Claim**

48. The Statement of Claim shall be filed as directed by the arbitrators in accordance with Uncitral Rules.
49. The Claimant will be filing a further Notice of Claim respecting the product suspensions of February 2002 of which the Notice of Intent was filed September 19, 2002.

DATED AT OTTAWA, ONTARIO, this

17<sup>th</sup> day of October, 2002.



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Counsel to Crompton Corp.

Served to:

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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 Corp. ("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 17 day of October, 2002.

Crompton Corp.

- by its duly authorized officer -



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Alfred Ingulli  
Executive Vice President

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

**CONSENT AND WAIVER**

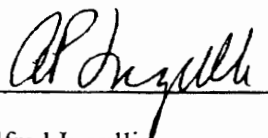
Crompton Co./Cie ("Crompton"), pursuant to Article 1121(1)(c) of the North American Free Trade Agreement ("NAFTA"), hereby demands that the dispute between it and the Government of Canada be referred to arbitration under the Uncitral Arbitration Rules.

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Dated this 17 day of October, 2002.

Crompton Co./Cie

- by its duly authorized officer -



Alfred Ingulli  
Executive Vice President  
Crompton Corp.