NOTICE OF INTENT
TO SUBMIT A CLAIM TO ARBITRATION
UNDER SECTION B OF CHAPTER ELEVEN OF THE
NORTH AMERICAN FREE TRADE AGREEMENT

CROMPTON CORP.

Applicant

v.

GOVERNMENT OF CANADA

Party

Crompton Corp. ("Crompton") hereby serves notice of intent to submit a claim to arbitration pursuant to Articles 1116 and 1119 of the North American Free Trade Agreement (NAFTA).

A. Name and Address of the Disputing Investor

Crompton
World Headquarters
Greenwich, Connecticut 06831
U.S.A.

B. Provisions of NAFTA Alleged to Have Been Breached

Crompton, the Investor, alleges that the Government of Canada has breached its obligations under Articles 1102, 1105, 1106 and 1110 of the NAFTA.

C. Issues and Factual Basis for the Claim

(i) Facts

1. The Investor, Crompton, is a U.S. corporation established under the laws of the State of New Jersey, with its head office at Greenwich, Connecticut. Crompton was formally known as Uniroyal Chemical Company, Inc.

2. Crompton 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.

3. Part of Crompton's business is the production and sale of crop protection products, including seed treatment products, fungicides, insecticides, herbicides and plant growth regulators.

4. Crompton Co./Cie ("Crompton Co.") is a wholly-owned indirect subsidiary of Crompton. Crompton Co. is a Canadian company organized under the laws of Nova Scotia. It was formerly known as Uniroyal Chemical Co./CIE. Crompton Co. has a manufacturing facility at Elmira, Ontario, which produces various products for several divisions of Crompton Corp., including seed treatment products.

5. All of Crompton Co.'s seed treatment products manufactured in Canada and for sale in Canada are sold to and marketed through Gustafson Partnership, an equal partnership of Crompton Co. and Bayer Inc. in Canada. Crompton earns a share of profit on sales made by Gustafson.

6. Lindane is an active chemical ingredient and principal component in the formulated seed treatment product manufactured and sold by Crompton Co. under the trade name Vitavax® rs Flowable ("the Lindane Product").

7. Crompton Co. is the major company in Canada that manufactures lindane-containing products for treatment of canola seeds. The other manufacturers, Aventis CropScience (formerly Rhone Poulenc Inc) and Syngenta Crop Protection Inc. (formerly Zeneca Inc. and Novartis Crop Protection Inc.), produced their lindane products in the United States. Substitute products are manufactured in Canada by Syngenta.

8. Pursuant to the *Pest Control Products Act*, the Lindane Product was registered for use in seed treatment of canola/rapeseed and other crops in late 1978. Crompton has held the registration for this product since 1978 and has been engaged in the manufacture and sale of the Lindane Product since that time.

9. Lindane use is not permitted for canola seed treatment in the United States, although it is registered for other seed treatment uses. Seed treatment products used to treat seeds must be registered with EPA in the United States before their lawful sale, distribution or importation.

10. As lindane is more cost-effective than other treatment products available in the United States, U.S. canola growers consider that they are at a competitive disadvantage to Canadian canola growers. Given the significant Canada-United States trade in canola products, lindane became a major trade irritant between the two countries.

11. In an effort to address this trade concern, the Canadian Pest Management Regulatory Agency (PMRA), which administers certain matters under the *Pest Control Products Act*, began efforts to effect a voluntary discontinuance by registrants of the sale of lindane-containing seed treatment products for canola/rapeseed and the use of such lindane-treated seed.

12. In March 1999, the PMRA announced that it had undertaken a review of all uses of lindane, with a completion target of December 2000. The EPA was also reevaluating the lindane use at that time, with study target dates of March-April 1999 and December 2000.

13. During 1998, the PMRA negotiated with the Canadian Canola Growers Association for the voluntary removal by December 31, 1999 of canola/rapeseed claims from labels of registered seed treatments, and for discontinuance of use of

products containing lindane for use on canola after July 1, 2001. Agreement was reached with the Association in November 1998 which was subject to the agreement of the registrants.

14. Crompton Co. did not agree to the same conditions as the other registrants. Although it would accept the December 31, 1999 deadline for removing canola/rapeseed claims on labels, it did not accept discontinued use after July 1, 2001. Crompton wanted use to continue indefinitely until stocks were depleted. Moreover, completion of the scientific review of lindane by December 2000 was considered a *sine qua non*.

15. On October 27, 1999, after several exchanges with the PMRA, Crompton Co. confirmed agreement on final terms and conditions for voluntarily discontinuance. The terms and conditions were as follows:

(a) All other registrants of products used to treat canola that contain lindane also agree to voluntarily withdraw canola from their product labels by the end of 1999;

(b) PMRA and the EPA shall coordinate and collaborate on the timely review and re-evaluation of any new lindane data already submitted and/or to be submitted in accordance with any data call in or regulatory request and provide a scientific assessment of lindane by the end of 2000;

(c) In the event that both government agencies determine that lindane has adverse toxicological effects and deems it unsafe for use on canola as a seed treatment, Crompton Co. will not request the reinstatement of lindane use on canola in Canada;

(d) In the event the PMRA determines that lindane is safe to be used on canola as a seed treatment or EPA should issue a canola tolerance or determine that lindane is exempt from requiring a tolerance in canola,

Crompton Co. shall request from PMRA the reinstatement of products and uses of lindane on canola that were voluntarily withdrawn. PMRA agrees to grant such reinstatement within 30 days after Crompton Co.'s application for reinstatement and payment of a fee of $154.00, without any other pre-conditions, including the possibility that PMRA has not completed its re-evaluation of lindane prior to EPA issuing a canola tolerance or an exemption from tolerance. Thereafter, Crompton Co. reserves the right to recommence production of its lindane-containing product for use on canola/rapeseed in Canada and/or USA;

(e) Crompton Co. Lindane-based products will continue to be registered on all remaining crops, including mustard and cole crops listed on those product labels after the removal of canola/rapeseed. Crompton Co. reserves the right to continue to produce lindane products for such uses that remain on the label;

(f) All stocks of Crompton Co.'s products containing lindane for use on canola/rapeseed are allowed to be used up to and including July 1, 2001;

(g) Any stocks of Crompton Co's products containing lindane for use on canola/rapeseed that are produced prior to January 1, 2000 and that require rework by Crompton Co. can be reprocessed by Crompton Co. and used on canola/rapeseed. This is necessary as part of Crompton Co.'s Responsible Care and Product Stewardship program.

Crompton Co. requested written confirmation of the above understanding and undertook to follow with a request to remove canola/rapeseed treatment use from the label of its lindane-containing products.

16. On October 28, 1999, the PMRA confirmed the terms under which Crompton Co. would voluntarily remove canola/rapeseed from product labels of seed protectants containing lindane.by December 31, 1999, as well as its agreement to the other

terms set out in Crompton Co.'s letter of October 27, 1999. (A copy of PMRA's letter is attached.)

17. Crompton Co. subsequently complied with its obligations by filing for and obtaining an amendment of the control product registration and by ceasing production of lindane product on December 31, 1999.

18. Shortly before February 12, 2001, Crompton Co. became aware of statements attributed to the PMRA to the effect that the use of lindane-based seed treatment product for canola and the sale and planting of lindane-treated canola seeds would be prohibited after July 1, 2001. In addition, purchasers of lindane product and users thereof would be subject to criminal charges and fines of up to $200,000.

19. Crompton Co. wrote to the PMRA on February 12, 2001, (copy of letter attached) noting that such action would be contrary to the terms of the agreement contained in the October 1999 exchange of letters. A follow-up letter was sent to the PMRA on March 7, 2001 (copy attached) requesting that the PMRA take steps to correct the erroneous statements attributed to it. No response was received by Crompton Co., nor have any steps been taken to correct the erroneous statements.

20. As a result of the confusion created in the market by the position attributed to the PMRA, sales of the Lindane Product plummeted.

21. In addition to loss of revenues and profits, substantial costs would have to be incurred for the disposal of unsold stock.

22. Crompton Co. understands that the PMRA currently maintains that the agreement it entered into with Crompton Co., on behalf of the Government of Canada, is illegal and therefore not enforceable as against the Government of Canada but is binding and enforceable by the Government of Canada as against Crompton Co.

23. Crompton Co. has requested the reinstatement of its registration for the lindane-containing products but the PMRA has declined to reinstate the registration.

24. Contrary to the specific undertaking to treat all registrants in the same manner, PMRA has accorded different treatment to other registrants with respect to the withdrawal of lindane use on canola and changes to the registration.

25. Little has been done to date on the scientific review of lindane to be conducted by PMRA by December 2000.

(ii) Issues

26. The Government of Canada has breached its obligations under Article 1102 (National Treatment), Article 1105 (Minimum Standard of Treatment), Article 1106 (performance Requirements) and Article 1110 (Expropriation) of Chapter Eleven of the NAFTA. Crompton Corp., an investor of a Party as defined in Section C of Chapter Eleven of the NAFTA, has incurred damage by reason of that breach in relation to Crompton Co., an investment of Crompton as defined in Section C of Chapter Eleven of the NAFTA.

Article 1102 - National Treatment

27. 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.

28. Crompton Corp. has not been accorded treatment no less favourable than that accorded to Canadian investors in like circumstances with respect to the conduct

and operation of its investment. Crompton, through its investment Crompton Co., is the major manufacturer in Canada of lindane seed treatment products for canola seeds. Canadian companies produce or sell substitute products of much higher cost, with the result that they traditionally had only a small share of the market.

29. 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.

Article 1105 – Minimum Standard of Treatment

30. Article 1105 requires each NAFTA Party to accord to investments of investors of another Party treatment in accordance with international law, including fair and equitable treatment and full protection and security.

31. Crompton Co. has not been accorded the minimum standard of treatment required in Article 1105. The Government has reneged on all of its commitments outlined in its letter of October 28, 1999, where it accepted the conditions set out by Crompton Co. in its letter of October 27, 1999.

32. Crompton Co. has met all of its obligations, including ceasing production of the Lindane Product on December 31, 1999, removing canola/rapeseed from the claims on its product labels, seeking withdrawal of its registration for the Lindane Product under the *Pest Control Products Act* and ceasing sales of the product by July 1, 2001.

33. The Government has failed to live up to its end of the bargain, arguing that the agreement is illegal and non-enforceable as against it. In the light of this about-face by the Government, Crompton Co. has requested that its registration for the lindane products for use on canola seeds be reinstated, but the Government has

declined the request. In addition, other registrants have been accorded different registration rights.

34. The Government has not undertaken the promised scientific review of lindane. Although a target date for completion was set at December 2000, little action has been taken to conduct such a review and on timely basis. No explanation has been provided by the Government for its failure to conduct the promised review. No new target date has been announced for any such review. Crompton and Crompton Co. consider that this review, if properly conducted, would have resulted in a reinstatement of the use of the lindane products because there is no basis for its prohibition on health or environmental grounds.

35. Crompton Co. was not informed about the change in policy with respect to use after July 1, 2001. Nor was it given an opportunity to make submissions.

36. Crompton Co. has sought an explanation for the Government's arbitrary about-face on numerous occasions but has received no substantive reply to its letters. It is clear that the Government has bowed to pressure from the United States whose canola growers have complained that they are at a competitive disadvantage to Canadian growers who have been able to use the Lindane Product for treating and/or planting lindane-treated canola seeds. The Lindane Product is considerably less expensive than alternative products available in the United States and Canada.

Article 1106 – Performance Requirements

37. Article 1106.1(c) of the NAFTA states that no Party may impose or enforce a preference to goods produced or services provided in its territory, in connection with the conduct or operation of an investment of an investor of a Party in its territory.

38. By banning the sale and use of the Lindane Product the Government is in violation of Article 1106. The Lindane Product is not produced in Canada except by Crompton Co. By banning the Lindane Product, the Government is imposing a preference for the substitute products produced in Canada.

39. There is no scientific basis for banning the use of the Lindane Product for canola seeds as there is no conclusive scientific evidence that such action is necessary to protect human health or the environment.

Article 1110 - Expropriation

40. Under Article 1110 of the NAFTA, no Party may directly or indirectly expropriate an investment of an investor of another Party in its territory or take a measure tantamount to expropriation, except for a public purpose, on a non-discriminatory basis, in accordance with due process of law and Article 1105.1 and on payment of compensation.

41. By banning the use of Lindane Product after July 1, 20001, and by failing to live up to its undertaking to conduct a review of lindane, the Government has taken measures tantamount to expropriation.

42. Sales of the Lindane Product plummeted following publicity with respect to criminal sanctions to be applied in connection with the use of the product or the use of canola seed treated with the product after July 1, 2001. Crompton Co. has suffered significant loss of sales as well as profit from Gustafson sales.

43. The most significant business line for Crompton Co. has been put out of business and there is no prospect (except by legal challenge) of its renewing such business line given the Government's failure to undertake a scientific review and its commitment to the United States to ban use after July 1, 2001.

44. There is no proven health or environmental basis for banning the sale or use of the Lindane Product for canola.

45. Foreign-owned investments are negatively affected by the ban on sale and use of the Lindane Product. Canadian-owned investments stand to gain significantly in sales and profits.

46. Crompton Co. was not informed that the promised scientific review would not be undertaken. Crompton Co. was not informed of the Canada-United States Memorandum of Understanding before or during its negotiations by the governments of the proposed content that included the discontinuance of the use of lindane products on canola/rapeseed. Crompton Co. was not provided with any notice of or explanation for the Government's about-face in its policy.

47. Crompton has not been paid any compensation for the expropriation of Crompton Co.'s major business line.

Relief Sought and Damages Claimed

48. Crompton is requesting reinstatement of its registrations for lindane-containing products for canola seed.

49. Crompton is seeking damages in the amount of approximately $100 million for loss of sales, profits and goodwill, plus costs associated with these proceedings, including fees and disbursements, plus prejudgment and post-judgment interest at a rate to be fixed by the tribunal.

50. Crompton seeks such further relief that this tribunal may deem appropriate.

DATED AT OTTAWA, this 6th day of November, 2001.

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