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January 22nd, 2002

Dear Madam and Sirs,

As Participating Organizations in the International POPs Elimination Network (IPEN), we are writing to express our grave concern over the Crompton Corporation's recent filing of a Notice of Intent to submit a claim against the Canadian Government under provisions of the North American Free Trade Agreement (NAFTA). Crompton is threatening to use the NAFTA Chapter 11 investor-state mechanism to attempt to coerce Canada into paying \$100 million in losses the corporation alleges it has sustained after it voluntarily agreed to surrender its registration and terminate its use of the persistent toxic substance lindane in its canola seed treatment products.

IPEN, whose secretariat is located in Toronto, is a worldwide network of more than 350 non-governmental organizations committed to work for a world in which persistent toxic substances no longer pollute our local and global environments or contaminate our food, bodies, or the bodies of our children and future generations. As IPEN Participating Organizations, we worked closely with governments to negotiate the Stockholm Convention on Persistent Organic Pollutants, which was adopted and signed by 90 countries in Stockholm in May last year. Canada became the first country to ratify the Convention on May 23, 2001.

Lindane—which Crompton seeks to protect through its NAFTA claim—is not yet covered by the Stockholm Convention, but on-going discussions are addressing the issue of chemicals that will be added to the Convention list in the future. Lindane is widely recognized as one of the most

dangerous of these additional substances being considered, and it is already listed as a dangerous substance for export under the “prior informed consent” mechanism of the International Rotterdam Convention on Prior Informed Consent. Lindane is a persistent organic pollutant in the organochlorine pesticide class.

Most organochlorine pesticides have been banned due to their toxicity, environmental persistence, and tendency to bioaccumulate. Lindane possesses all three of these highly undesirable characteristics. It is a known neurotoxicant in humans, and has been reported to cause seizures, tremors, memory impairment, irritability, and aggression following exposure. It is also a known endocrine disruptor in animals, and is associated with a range of serious effects on reproduction and development. Lindane is a suspected carcinogen, and it can cause abnormal brain wave patterns, interference with learning and temperature dysregulation, as well as hyper- and hypoactivity, anxiety, and other abnormal behavior.

This chemical is highly persistent in soil and has been found to contaminate many surface and ground waters in Canada. According to the 1997 Canadian Arctic Contaminants Report, lindane and its isomers are found more often than any other organochlorine in the Arctic atmosphere and marine, terrestrial and freshwater environments. Because it tends to accumulate in the environment and concentrate in fat, lindane residues have been reported in a variety of foods such as hamburger, frankfurters, fish, bologna, peanuts, butter, cookies, and candy bars. Additionally, the subsistence diets of indigenous populations in the Arctic region include marine mammals that have been found to contain high levels of lindane. Lindane is also found in breast milk, blood serum, fat and adipose tissue around the world. The US Environmental Protection Agency has concluded that lindane is transmitted “efficiently” through breast milk, and that nursing offspring are exposed to this contamination “during critical periods of post-natal development.”

Despite its toxicity and ubiquity, lindane has evaded appropriate regulation and elimination in North America. In Europe, all agricultural uses of lindane were recently banned. We are hopeful that the North America Regional Action Plan for lindane, which is currently being developed by the Commission for Environmental Cooperation’s Sound Management of Chemicals Working Group, will call for such a ban in North America.

Given the environmental and public health risks posed by lindane, we are particularly concerned that the Crompton Corporation is using the broad rights granted under NAFTA’s investment rules to undermine Canada’s attempts to regulate its use. Providing investors with compensation in cases of unjustifiable discriminatory conduct by governments may well be appropriate, but compensating investors for the costs imposed by legitimate regulatory actions by governments is not.

NAFTA clearly acknowledges the authority of each sovereign party to establish and enforce standards it deems necessary to protect its citizens in matters of health. However, ambiguities in the provisions of Chapter 11 have been used to tip the balance of the investor-state mechanism against the ability of governments to regulate in the public interest. Consequently, our organizations make the following three requests in response to Crompton’s notice of claim.

First, we call on the Government of Canada steadfastly to resist Crompton's threats. We are aware that when faced by a similar NAFTA challenge by the Ethyl Corporation, Canada chose to settle by withdrawing the regulation of MMT that was at issue. The right of Canadians to health and a healthy environment must no longer be subordinated to corporate rights. Canada must not allow foreign investors to dictate through Chapter 11 the approach it takes to regulating substances as dangerous as lindane. We will vigorously support through all the means available to us Canada's right and duty to regulate this dangerous substance.

Second, the Crompton claim and others like it illustrate the need to revisit the provisions of the NAFTA investment rules. The fact that the three NAFTA Parties attempted this past summer through an interpretive note to limit the scope of one of Chapter 11's provisions demonstrates that the three countries are beginning to recognize that Chapter 11 is deeply flawed. Interpretive notes, however, are unlikely to be effective in preventing the overly broad application of Chapter 11's rules. As a result the NAFTA Parties should reopen and renegotiate the provisions of Chapter 11 to ensure the ability of national and sub-national governments to protect their citizens and the environment from toxic substances—whether they are produced by foreign or domestic companies.

Third, looking forward to future trade and investment agreements (particularly the current Free Trade Area of the Americas negotiation), we urge all governments to seek alternatives to the NAFTA model of investment liberalization. As more and more corporations seek to use investment rules to challenge national regulatory decisions, public concern over this radical shift in power from the people to corporations will increase. These concerns may well undermine further economic integration efforts.

As evidenced by their reluctance to agree to negotiations on investment at the recent WTO Ministerial meeting in Qatar, citizens and governments in the developing world are increasingly suspicious that NAFTA-like investment rules will prevent them from ensuring that incoming private investment helps, rather than hinders, them in meeting their domestic priorities. NAFTA governments may have the resources to litigate a number of simultaneous investor claims under NAFTA; however, it is not clear that all governments are so situated. We stand ready to assist in developing a new approach that recognizes the need of corporations to protect themselves from abusive treatment while upholding the sovereign right of governments and communities to protect the health of their citizens and the environment.

Many of our organizations have not previously focused on the relationship between international investment rules such as NAFTA's and our efforts to eliminate POPs and other persistent toxic chemical substances. Now, the Crompton Corporation's attempt to subvert the regulatory process needed to control one of those substances has alerted all of us to the dangers posed by these rules. We respectfully urge you to respond vigorously to Crompton's allegations and to act forcefully in the public interest.

Yours sincerely,

Alaska Community Action on Toxics, USA
ARNIKA Association, Czech Republic

Asociacion Argentina de Medicos por el Medio Ambiente, AAMMA
Associacao de Combate aos POPs, Brazil
Baikal Environmental Wave, Russia
Canadian Environmental Law Association, Canada
Center for International Environmental Law, USA
Circumpolar Conservation Union, USA
Communities Against Toxics, UK.
Commonweal, USA
DASSUR, Mexico
Delta Institute, USA
Department of the Planet Earth, Washington, USA
Environmental Health Fund, USA
Egyptian Medical Students for Social Responsibility
Great Lakes United, Canada and USA
Greenpeace
Irish Doctors Association, Ireland
Mouvement pour les Droits et le Respect des Générations Futures (MDRGF), France
National Toxics Network, Australia
Pesticide Action Network, Germany
Pesticide Action Network, North America
Pesticide Action Network, UK
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