LÉVY KAUFMANN-KOHLER
ATTORNEYS-AT-LAW

By e-mail
Mr Gregory Somers
Mr Paul Conlin
Mr Benjamin Bedard
Ms Alison FitzGerald
Ms Renée Thériault
Ogilvy Renault LLP
Suite 1500
45 O'Connor Street
Ottawa, Ontario K1P 1A4
Canada

Mr Christophe Douaire de Bondy
Ms Carolyn Elliott-Magwood
Ms Anne Kelly
Ms Sara Bassile
Trade Law Bureau (JLT)
Lester B. Pearson Building, Flr. C7
125 Sussex Drive
Ottawa, Ontario K1A OG2
Canada

Cc: By e-mail
James R. Crawford
Lauterpacht Centre for
International Law
5 Cranmer Rd
Cambridge CB3 9BL
United Kingdom

The Hon. Charles N. Brower
20 Essex Street Barristers
20 Essex Street
London WC2R 3AL
United Kingdom

Geneva, 18 March 2009
070689/00957996/NM

Ad hoc NAFTA Arbitration under UNCITRAL - Chemtura Corporation v. Canada

3-5, RUE DU CONSEIL-GÉNÉRAL, CASE POSTALE 552, CH-1211 GENÈVE 4
TÉL: +41 22 809 62 00 - FAX: +41 22 809 62 01 - INFO@LK-K.COM - WWW.LK-K.COM

Dear Counsel,

On behalf of the Arbitral Tribunal, please find attached Procedural Order No. 4 with its Appendices.

Best regards,

Gabrielle Kaufmann-Kohler

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. 4

(March 18, 2009)

ARBITRAL TRIBUNAL:

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

I. PROCEDURAL BACKGROUND

1. Procedural Order No. 1 ("PO No. 1") sets forth the timetable governing the procedure to be followed for the request for document production by each Party;
2. On 5 December 2008, each Party filed simultaneous document production requests.
3. On 23 January 2009, each Party filed its responses/objections to the other Party's document production request.
4. In the letter of 23 January 2009 enclosing its responses/objections to the Respondent's document production request, the Claimant requested an extension of time until 2 February 2009 in order to complete the search of its files and present a complete and final response. The Claimant undertook on this occasion not to examine or take delivery of the Respondent's documents produced until simultaneous exchange was possible.
5. By letter of 26 January 2009, the Respondent agreed to the extension and proposed a revised timetable.
6. On 27 January 2009, the Tribunal informed the Parties that it was inclined to agree with the revised timetable proposed by the Respondent, subject to the agreement of the Claimant.
7. On 28 January 2009, the Claimant agreed to the revised timetable proposed by the Respondent.
8. On 30 January 2009, the Tribunal confirmed the revision of the timetable governing the procedure to be followed for the remaining steps relating to the request for document production by each Party.
9. On 2 February 2009, each Party filed its responses/objections to the other Party's document production request in accordance with the revised timetable.
10. On 3 February 2009, the Respondent sought clarification from the Claimant regarding this latter's omission to respond to several requests concerning the issue of damages.
11. On 4 February 2009, the Claimant stated that, by oversight, it had filed a penultimate draft of its Redfern schedule on 2 February 2009, and attached the final version of this document. The Claimant also addressed in this letter the clarifications sought by the Respondent in its letter of 3 February 2009.
12. On 16 February 2009, each Party filed its Replies to the other Party's objections/responses in accordance with the revised timetable.

13. On 26 February 2009, the Respondent spontaneously produced a number of documents and provided further information in response to the request for clarification included in the Claimant's replies of 16 February 2009.

14. On 3 March 2009, the Tribunal invited the Claimant to clarify, in view of the Respondent's submission of 26 February 2009, whether (and, as the case may be, the extent to which) it intended to maintain its initial requests for document production or additional information.

15. By letter of 5 March 2009 enclosing a revised Redfern schedule (together referred to as "Submission of 5 March 2009"), the Claimant addressed the foregoing issue. It added unsolicited comments on the Respondent's alleged attempt to expand on its document requests in its replies of 16 February 2009 beyond those initially submitted on 5 December 2008.

16. On 9 March 2009, the Tribunal invited the Respondent to submit a response specifically limited to the Claimant's comments regarding the Respondent's alleged attempt to expand its document requests;

17. By letter of 11 March 2009, the Respondent addressed the foregoing issue.

II. DECISION

A. Applicable standards

18. Section 42 of PO No. 1 states, in relevant part, that: "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 [...] the disputing parties may refer any disputed request to the Arbitral Tribunal".

19. Section 43 of PO No. 1 further states that: "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".

20. The Tribunal thus has discretion to rule on document production requests. In the exercise of its discretion, the Tribunal must refer to the standards just referred to and may seek guidance, but is not bound by, the International Bar Association's Rules on the Taking of Evidence ("IBA Rules") with the exception of Article 3.12 IBA Rules, regarding confidentiality (section 41 of PO No. 1).

B. Claimant's request for document production

21. Having considered the arguments of both Parties relating to the request for document production submitted by the Claimant, and on the basis of the reasons specified for each request in Appendix I to the present Order, the Tribunal concludes as follows:

(i) The Tribunal understands that the Claimant does no longer seek a ruling from the Tribunal in connection with requests no. 20, 21, 23, 28, 29, 34, 35, 41, 43, 45, 46, 48, 50, 55, 56, 58, 63, 64, 67, 68, 70, 71, 74, 77, 78, 80, 85, 86, 90, 91, 92, 93, 94, 95, and 96.

(ii) The Tribunal takes note of Claimant's concerns about the Respondent's inability to locate certain documents addressed under requests no. 9, 21, 23, 32, and 42. The Tribunal observes, however, that the Claimant does not seek a ruling for two out of the five requests (requests 21 and 23) addressing the documents mentioned by the Claimant in its letter of 5 March 2009 under the heading "Canada's Stated Inability to Locate Documents" (pp. 2-3). The Tribunal will therefore not rule on requests no. 21 and 23.

(iii) The Tribunal also takes note of the Respondent's observations regarding the interpretation of the evidence by the Claimant in connection with the formulation of the reasons for and/or the requests no. 1, 25, 38, 54, 76, 82, and 88.

(iv) Requests no. 1, 3, 4, 5, 7, 8, 14, 16, 22, 30, 31, 37, 44, 47, 49, 51, 53, 54, 59, and 60 are granted to the extent that documents covered by such requests have not already been produced.

(v) Requests no. 9, 12, 15, 17, 18, 24, 25, 27, 32, 33, 36, 38, 39, 40, 52, 57, 61, 62, 65, 66, 69, 73, 75, 76, 84, 87, 88, and 89 are granted to the extent specified by the Claimant in its Replies to the Respondent's objections/responses, as revised (as applicable) by the Claimant's Submission of 5 March 2009.

(vi) With respect to requests no. 14, 15, 17, 18, 27, 32, 57, 61, 65, 66, 69, 75, 76, 84 and 88, for the avoidance of doubt, the Respondent is specifically required, as the case may be, to state the basis of its privilege claim and/or to provide the specific information/confirmation sought by the Claimant.

(vii) Requests no. 2, 6, 10, 11, 13, 19, 26, 42, 72, 79, 81, 82, 83, 97, 98, 99, 100, 101, 102, 103, 104, 105, and 106 are denied, being understood that such denial does not affect documents already voluntarily produced, if any.

C. Respondent's request for document production

22. Having considered the arguments of both Parties relating to the request for document production submitted by the Respondent, and on the basis of the reasons specified for each request in Appendix II to the present Order, the Tribunal concludes as follows:

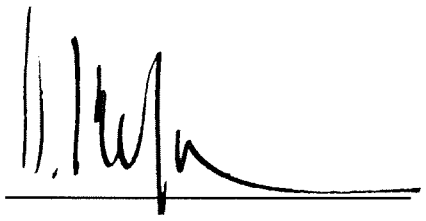
    (i) The Tribunal understands that the Respondent is satisfied with the responses provided by the Claimant to the Respondent's requests no. 11, 15, 18, 21, 22, 24, 25, 26, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, and 40.

    (ii) The Tribunal takes note of the Claimant's observations regarding the competing positions of the Parties in connection with the formulation of requests no. 10, 12, 16, 17 and 19.

    (iii) Requests no. 1, 2, 3, 4, 8 and 13 are granted to the extent that documents covered by such requests have not already been produced.

    (iv) Requests no. 5, 6, 7, 9, 10, 12, 14, 16, 17, 19, 20, 23 and 27 are granted to the extent specified by the Respondent in its Replies to the Claimant's objections/responses.

For the Arbitral Tribunal,



Gabrielle Kaufmann-Kohler
Tribunal Chair