



**February 12, 2016**

Arbitral tribunal:  
Professor Albert Jan van den Berg (President)  
Sir Daniel Bethlehem QC  
Mr. Gary Born

Via email: [lgastrell@worldbank.org](mailto:lgastrell@worldbank.org)

RE: Canadian Chamber of Commerce application of non-disputing parties for leave to file a written submission - **Eli Lilly and Company v. Government of Canada (ICSID Case No. UNCT/14/2) - Amici Curiae**

**Statement:**

The Canadian Chamber of Commerce hereby applies for leave to file a non-disputing party submission in the arbitration between Eli Lilly and Company (Claimant) and the Government of Canada under NAFTA's Chapter 11 and the UNCITRAL arbitration rules.

**Applicant:**

The Canadian Chamber of Commerce currently operates as a non-profit organization. No part of the association's income is payable to or otherwise available for the personal benefit or proprietor, member or shareholder of the association.

The Canadian Chamber of Commerce is the national leader in public policy advocacy on national and international business issues and is focused on fostering a strong, competitive economic environment that benefits Canada and improves the standard of living of all Canadians.

Our members include Chambers of Commerce and Boards of Trade, corporate members, associations – businesses of all sizes, in all sectors of the economy and all regions of Canada.

Since 1925, the Canadian Chamber of Commerce has connected businesses of all sizes, from all sectors and from all regions of the country to advocate for public policies that will foster a strong, competitive economic environment that benefits businesses, communities and families across Canada.

With a network of over 450 chambers of commerce and boards of trade, representing 200,000 businesses of all sizes in all sectors of the economy and in all regions, we are the largest and most

influential business association in Canada.. The primary and vital connection between business and the federal government, our views are sought and respected by government, business leaders and the media because of our well-researched reports, position papers and policy resolutions that reflect a broad business perspective.

**Disclosure:**

Eli Lilly and Company is a member in good standing of the Canadian Chamber of Commerce.

**Financial or Other Assistance in Preparing Submission:**

No government, person or organization has provided financial or other assistance in the preparation of this document.

**Nature of Interest in the Arbitration:**

Along with our artists and inventors, Canadian businesses of all sizes depend on their intellectual property (IP). Intellectual property rights drive job creation, economic growth and innovation. By defining and better protecting IP rights, Canada will continue to develop a marketplace that rewards investments in innovation and creation, fostering stronger economic growth, new jobs and greater prosperity.

The impact of the decision in this case on the intellectual property chapters of current and future trade agreements as well as the implications for the application of trade law in Canada holds significant interest for all Canadian business. The Canadian Chamber of Commerce is actively and consistently engaged with government and the media on issues related to international trade and intellectual property.

**Specific Issues of Fact or Law:**

This brief posits that society benefits from a robust, predictable IPR regime that is consistent with international norms, that innovation is intrinsically tied to IPR, and that deviation from international norms on utility and sound prediction will have negative consequences on Canada's ability to attract investment and generate wealth in a global knowledge-based economy by introducing uncertainty into the business framework.

Specifically:

- This case will have global implications for the pharmaceutical industry;

- Further disintegration of life sciences research and development (R&D) investment;
- While the focus of the “promise doctrine” remains on how it impacts the pharmaceutical industry, the doctrine applies sectors;
- The uncertainty generated by Canada’s courts through the invalidation of patents has a negative impact on attracting investment, making access to capital more difficult;
- Canada’s business landscape is comprised primarily of SMEs for whom access to capital is critical.

**Why the tribunal should accept this submission:**

The attached brief is intended to provide context regarding the Canadian business climate, the existing patent framework, the nature of Canadian innovation performance and the impact of uncertainty on Canada’s ability to attract investment and provide access to capital. An attempt has been made to draw conclusions about the relationship between intellectual property rights frameworks and innovation performance. An attempt has also been made to identify facts impacting industries beyond the life sciences that may not otherwise find audience within these arbitration proceedings.

Respectfully submitted:

[signed]

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