

**AN ARBITRATION UNDER CHAPTER 11 OF THE NAFTA
AND THE *UNCITRAL* ARBITRATION RULES, 1976**

between

ELI LILLY AND COMPANY

Claimant

and

GOVERNMENT OF CANADA

Respondent

(CASE NO. UNCT/14/2)

PROCEDURAL ORDER NO. 1

ARBITRAL TRIBUNAL:

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

26 May 2014

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1. **BACKGROUND**

- 1.1 Following the first procedural hearing held on 10 May 2014 and submissions of the Disputing Parties on procedural matters, the Arbitral Tribunal issues the present Order.

2. **THE DISPUTING PARTIES AND THEIR REPRESENTATIVES**

Article 4 UNCITRAL Arbitration Rules (1976)

- 2.1 The Claimant is:

Eli Lilly and Company

893 S Delaware St.
Indianapolis, IN 46285
United States

("Eli Lilly" or "the Claimant")

The Claimant is represented in this arbitration by:

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Wendy J. Wagner

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All correspondence and documents in this arbitration will be delivered to the addresses of counsel for the Claimant.

2.2 The Respondent is:

The Government of Canada

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

(“Canada” or “the Respondent”)

The Respondent is represented in this arbitration by:

Ms. Sylvie Tabet, General Counsel and Director
Mr. Christophe Douaire de Bondy, Deputy Director and A/Senior Counsel
Mr. Maxime Dea, Counsel
Mr. Adrian Johnston, Counsel
Ms. Yasmin Shaker, Counsel
Trade Law Bureau (JLT)
Foreign Affairs, Trade and Development Canada
125 Sussex Drive
Ottawa, Ontario K1A 0G2
Canada
Tel: +1 343 203 2224
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All hard copy correspondence and documents in this arbitration will be delivered to the attention of Mr. Douaire de Bondy at the address of counsel for the Respondent and all email correspondence will be delivered to both of the e-mail addresses listed above.

2.3 Any change or addition to a Disputing Party’s representatives listed above shall be promptly notified in writing by that Disputing Party to the other Disputing Party, the Arbitral Tribunal and the Tribunal Secretary.

3. **THE ARBITRAL TRIBUNAL**

Section II UNCITRAL Arbitration Rules (1976); Article 1123 NAFTA

3.1 The Arbitral Tribunal is composed of:

Professor Albert Jan van den Berg

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IT Tower, 9th Floor
Avenue Louise 480 B.9
1050 Brussels
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Mr. Gary Born, Partner

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gary.born@wilmerhale.com

Sir Daniel Bethlehem KCMG, QC

20 Essex Street
London, England WC2R 3AL
United Kingdom
Tel: +44 (0)20 7842 1200
Fax: +44 (0)20 7842 1268
DBethlehem@20essexst.com

3.2 Each arbitrator is and shall remain at all times impartial and independent of the Disputing Parties. Each arbitrator has provided the Disputing Parties with a signed Statement of Independence.

3.3 The Disputing Parties confirm that the Arbitral Tribunal has been duly constituted in accordance with Article 1123 of the NAFTA. The Disputing Parties have no objections whatsoever to the constitution of the Arbitral Tribunal or to the appointment of any Member of the Arbitral Tribunal in respect of matters known to them on the date of this Procedural Order.

- 3.4 In order for the Members of the Arbitral Tribunal to continue to fulfill their disclosure obligations, the Arbitral Tribunal seeks the cooperation of each Disputing Party in promptly drawing to the Arbitral Tribunal's attention any such circumstances known to that Disputing Party in respect of which it considers that further information would be appropriate as soon as such circumstances become known to that Disputing Party.

4. **ADMINISTERING AUTHORITY AND SECRETARY OF THE TRIBUNAL**

ICSID Administrative and Financial Regulation 25

- 4.1 By letter of April 10, 2014, the Disputing Parties confirmed their agreement to designate the Secretariat of the International Centre for Settlement of Investment Disputes ("ICSID") as the administering authority. ICSID shall render full administrative services in relation to this arbitration.
- 4.2 Further to the designation of ICSID as administering authority in this matter, an ICSID Secretariat legal counsel has been designated as the Secretary of the Arbitral Tribunal. The Secretary of the Arbitral Tribunal is and shall remain at all times impartial and independent of the Disputing Parties.
- 4.3 To send copies of communications by email, mail, and courier/parcel deliveries to the ICSID Secretariat, the contact details are:

Lindsay Gastrell
ICSID – The World Bank
MSN J2-200
1818 H Street, N.W.
Washington, D.C. 20433
United States
Tel.: + 1 (202) 473-5018
Fax: + 1 (202) 522-2615
Email: lgastrell@worldbank.org

For local messenger deliveries, the contact details are:

Lindsay Gastrell
701 18th St, NW ("J Building")
2nd Floor
Washington, D.C. 20006
Tel.: + 1 (202) 473-5018

5. LEGAL SEAT OF THE ARBITRATION

Article 16 UNCITRAL Arbitration Rules (1976); Article 1130 NAFTA

- 5.1 The legal seat of the arbitration shall be Washington, D.C.
- 5.2 The Arbitral Tribunal may, in its discretion, convene hearings at any location other than the seat of arbitration and will decide on such location after hearing the Disputing Parties and taking into account all relevant circumstances.

6. APPLICABLE SUBSTANTIVE LAW

Article 33 UNCITRAL Arbitration Rules (1976); Article 1131 NAFTA

- 6.1 Article 1131 of the NAFTA provides that:

Article 1131: Governing Law

1. A Tribunal established under this Section shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law.
2. An interpretation by the Commission of a provision of this Agreement shall be binding on a Tribunal established under this Section.

7. APPLICABLE PROCEDURAL RULES

Article 1 UNCITRAL Arbitration Rules (1976); Articles 1120(1)(c), 1120(2), 1139 NAFTA

- 7.1 The procedure in this arbitration shall be governed by the *UNCITRAL Arbitration Rules (1976)* except as modified by the provisions of Section B of Chapter 11 of the NAFTA (*per* Article 1120(2) of the NAFTA).
- 7.2 If these provisions and rules do not address a specific procedural issue, the Arbitral Tribunal shall, after consultation with the Disputing Parties, determine the applicable procedure. In addition, the Arbitral Tribunal may seek guidance from, but shall not be bound by, the *2010 IBA Rules on the Taking of Evidence in International Commercial Arbitration*.

8. **PROCEDURAL LANGUAGE, TRANSLATION AND INTERPRETATION**

Articles 17 and 25(2) UNCITRAL Arbitration Rules (1976)

- 8.1 The proceedings shall be conducted in English.
- 8.2 All documentary evidence and legal authorities in a language other than English shall be submitted in the original along with a translation to English. Whenever lengthy documents need to be translated, the translation may be limited to the relevant passages together with such other portions of the document as may be necessary to put those passages in proper context. Each Disputing Party shall bear its own cost of translations. Translation of documents into English need not be certified. However, if a dispute arises as to the accuracy of a translation, the matter shall be decided by the Arbitral Tribunal. For ease of reference, the Disputing Parties shall paginate any translation in the same way as the original document.
- 8.3 Witness testimony in a language other than English shall be interpreted simultaneously to English. The costs of the interpreter(s) will be paid from the advance payments made by the Disputing Parties, without prejudice to the decision of the Arbitral Tribunal as to which Disputing Party shall ultimately bear those costs. The Disputing Parties shall notify the Arbitral Tribunal no later than the pre-hearing conference which witnesses and/or experts will require interpretation.

9. **BIFURCATION**

- 9.1 Liability and damages shall be dealt with in two separate phases in these proceedings.

10. **WRITTEN SUBMISSIONS**

Articles 15(3), 18-20, 22 UNCITRAL Arbitration Rules (1976)

- 10.1 The Claimant shall submit a letter designating their Notice of Arbitration as the Statement of Claim and the Respondent shall submit a Statement of Defence, following which the Claimant shall submit a Memorial and the Respondent shall submit a Counter-Memorial. After the production of documents phase (Section 12 below), the Claimant shall submit a Reply and the Respondent shall submit a Rejoinder. Each pleading shall include allegations of facts and law in a detailed, specific and comprehensive manner, together with all evidence upon which they rely such as documents, witness statements, and expert reports.

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- 10.2 The Disputing Parties may include with their Reply and Rejoinder submissions only evidence responding to or rebutting matters raised by the other Disputing Party's immediately preceding written submission or documents produced by that other Disputing Party with, or in the period following, that submission.
- 10.3 On the date on which the submission is due, the relevant Disputing Party shall submit an electronic version of its written submissions, including its briefs, memorials, expert reports and witness statements, and an index of its exhibits and legal authorities by e-mail (in MS Word format or "searchable" PDF format) to the other Disputing Party, to the Secretary to the Tribunal, and to each arbitrator.
- 10.4 Within three business days following the filing of its written submissions by e-mail, the submitting Disputing Party shall send by courier one copy of its written submissions in the format (A4/Letter or A5) to be advised (including exhibits) to the other Disputing Party, to the Secretary to the Tribunal, and to each arbitrator. In addition, a USB key containing the submissions, the exhibits and the legal authorities in electronic format (in MS Word format or "searchable" PDF format) for each individual document (which should be clearly labelled) shall be sent by courier to the other Disputing Party, to the Secretary to the Tribunal, and to each arbitrator.
- 10.5 Submissions and correspondence shall be deemed to have been timely filed if sent via electronic mail on or before midnight (in Washington and Ottawa) on the date due.
- 10.6 In instances where the Arbitral Tribunal orders simultaneous filings, the procedure shall be as follows:
- a) Each Disputing Party shall file its submission with the Secretary of the Tribunal and the arbitrators by the agreed deadline.
 - b) Each Disputing Party shall then notify the other Disputing Party that it has filed its submission.
 - c) The Secretary of the Arbitral Tribunal will hold the submissions until both simultaneous submissions have been received. Once both submissions have been received, the Secretary of the Tribunal will then circulate the submissions to the Disputing Parties. Due to the agreed midnight deadline, it is understood that in some cases the Disputing Parties may not receive the submissions until the following morning. In such circumstances, the Secretary of the Tribunal will use best efforts to circulate the submissions by 9 a.m. the following morning.

11. EXHIBITS AND LEGAL AUTHORITIES

Articles 18(2), 19(4), 24 UNCITRAL Arbitration Rules (1976)

- 11.1 The Disputing Parties shall identify each exhibit and legal authority submitted to the Arbitral Tribunal with a distinct number.
- 11.2 Each exhibit submitted by the Claimant shall commence with the letter “C” followed by the applicable consecutive number, *i.e.* C-001, C-002, and so forth. Each exhibit submitted by the Respondent shall commence with the letter “R” followed by the applicable consecutive number, *i.e.* R-001, R-002, and so forth.
- 11.3 Each legal authority submitted by the Claimant shall commence with the letters “CL” followed by the applicable consecutive number, *i.e.* CL-001, CL-002, and so forth. Each legal authority submitted by the Respondent shall commence with the letters “RL” followed by the applicable consecutive number, *i.e.* RL-001, RL-002, and so forth.
- 11.4 The Disputing Parties shall submit all hardcopy exhibits in files with separate tabs for each exhibit.
- 11.5 It shall not be necessary for the Disputing Parties to submit hardcopies of their legal authorities.
- 11.6 Each pleading shall be accompanied by a cumulative index hyperlinked to the supporting exhibits and legal authorities.
- 11.7 The Disputing Parties shall submit all exhibits together with written submissions expressly referring to them. As a general rule, the Arbitral Tribunal shall not receive any evidence that has not been introduced with the written submissions.
- 11.8 In exceptional cases, the Arbitral Tribunal may allow a Disputing Party upon requesting leave and after hearing the other Disputing Party, to submit additional exhibits at a later stage of the proceedings if appropriate in view of all the relevant circumstances. The requesting Disputing Party may not annex the documents that it seeks to file to its request.
- 11.9 The use of demonstrative exhibits in aid of argument (such as charts or tabulations) will be allowed at oral hearings, provided that no new evidence is contained therein, and that such exhibits include citations to the relevant record. A hard copy of any such demonstrative exhibit shall be simultaneously provided by the Disputing Party submitting such exhibit to the other Disputing Party, to the Secretary of the Arbitral

Tribunal, and to each arbitrator.

- 11.10 All documents, including both originals and copies, submitted to the Arbitral Tribunal shall be deemed to be authentic unless disputed by the other Disputing Party, in which case the Arbitral Tribunal will determine whether authentication is necessary.
- 11.11 The Disputing Parties shall either submit all documents to the Arbitral Tribunal in complete form or indicate the respects in which any document is incomplete.

12. DOCUMENT PRODUCTION

- 12.1 On the relevant dates set forth in the Procedural Calendar (Annex B):
- a) Each Disputing Party may serve a request for production of documents on the other Disputing Party. Every request for production of documents shall precisely identify each document, or category of documents, sought and establish its relevance. Such a request shall not be copied to the Arbitral Tribunal or the Tribunal Secretary;
 - b) If and to the extent that a Disputing Party objects to the production of requested document(s), that Disputing Party shall submit such objection in writing to the requesting party only;
 - c) The Disputing Party which made the request shall comment in writing on any objection and submit the completed Redfern Schedule referred to in Section 12.2 below to the Secretary of the Tribunal and Arbitral Tribunal, with a copy to the other Disputing Party (in both Word and PDF formats);
 - d) The Arbitral Tribunal shall decide on any objections to production of requested documents; and
 - e) The Disputing Parties shall produce all documents for which no objection is sustained by the Arbitral Tribunal.
- 12.2 The request, responses or objections to the request, the reply to the responses or objections to the request, and the Arbitral Tribunal's decisions referred to in this Section shall be recorded in the Redfern Schedule attached at Annex A of this Order. This format shall be used with respect to the writings referred to in this Section, but

may be accompanied by a separate letter or brief in a format other than the Redfern Schedule.

- 12.3 Documents shall be disclosed in response to such a request in electronic format only by sending via courier by the date fixed by the Arbitral Tribunal for such disclosure, a CD-ROM, USB key or other similar media containing the documents in electronic format with each individual document clearly labelled with a unique identifying number. The media should also contain an index of the documents contained.
- 12.4 Documents so disclosed shall not be considered to be part of the record unless and until one of the Disputing Parties subsequently submits them in evidence to the Arbitral Tribunal in accordance with Section 11.
- 12.5 In addition, the Arbitral Tribunal may of its own motion order a Disputing Party to produce documents at any time.
- 12.6 Each Disputing Party may withhold from disclosure documents which it considers not subject to production based on a legal impediment or privilege, or special political or institutional sensitivity. If a Disputing Party withholds documents on one of these bases, it shall submit to the other Disputing Party either: (a) a log identifying such documents (or categories of documents) and the grounds for withholding; or (b) redacted versions of such documents identifying the grounds for withholding. Either Disputing Party may apply to the Arbitral Tribunal to resolve a question regarding the sufficiency of a log or redaction submitted under this Section.
- 12.7 Any disputes regarding the withholding of documents on the basis of a legal impediment or privilege, or special political or institutional sensitivity shall be resolved by the Arbitral Tribunal. In considering whether to exclude from production any documents on the grounds of a legal impediment or privilege, or special political or institutional sensitivity, the Arbitral Tribunal may consider, but is not bound by, Article 9 of the *IBA Rules on the Taking of Evidence in International Commercial Arbitration (2010)*.
- 12.8 In exceptional circumstances, if the propriety of an objection can be determined only by review of the document, the Arbitral Tribunal may determine that it should not review the document. In that event, the Arbitral Tribunal may, after consultation with the Disputing Parties, appoint an independent and impartial expert ("Confidentiality Advisor"), bound to confidentiality, to review any such document and to report on the objection. To the extent that the objection is upheld by the Arbitral Tribunal, the Confidentiality Advisor shall not disclose to the Arbitral Tribunal or to the other Disputing Party the contents of the Document reviewed. Any such Confidentiality

Advisor shall be required to sign an appropriate confidentiality undertaking.

13. WITNESSES

Articles 15(2) and 25 UNCITRAL Arbitration Rules (1976)

- 13.1 Any person may present evidence as a witness, including a Disputing Party or a Disputing Party's officer, employee, or other representative.
- 13.2 For each witness, a written and signed witness statement shall be submitted to the Arbitral Tribunal. The Arbitral Tribunal shall not admit testimony of a witness who has not submitted a written witness statement, unless the Arbitral Tribunal determines that extraordinary circumstances exist and upon a showing of good cause. If such testimony is admitted, the opposing Disputing Party shall be given an appropriate opportunity to respond to such testimony.
- 13.3 Witness statements shall be submitted together with the Disputing Parties' written memorials. The witness statements shall be numbered separately from other documents and include each witness' surname (e.g. "CWS (Claimant's witness statement) - [surname of witness]"). Where a witness submits more than one witness statement, his or her subsequent witness statements shall be numbered accordingly (e.g. "CWS - [surname of witness] - 2").
- 13.4 Each witness statement shall state: (1) the name and address of the witness; (2) his or her relationship to, and interest in, any of the Disputing Parties in this arbitration; and (3) the substance of the evidence that the Disputing Party will present through the testimony of the witness at the hearing. Each witness statement shall be signed by the witness, providing the date and place of signature.
- 13.5 By the date set forth in the Procedural Calendar (Annex B), each Disputing Party shall notify the other Disputing Party, with a copy to the Arbitral Tribunal and Tribunal Secretary, which witnesses of the opposing Disputing Party it wishes to cross-examine at the hearing. The Arbitral Tribunal will then indicate the witnesses not called by the Disputing Parties whom it wishes to question, if any.
- 13.6 Each Disputing Party shall be responsible for summoning its own witnesses to the applicable hearing, except when the other Disputing Party has waived cross-examination of a witness and the Arbitral Tribunal does not direct his or her appearance.

- 13.7 Each Disputing Party shall cover the costs of appearance of its own witnesses (except with respect to interpretation, addressed in Section 8 above). The Arbitral Tribunal will decide upon the appropriate allocation of such costs in the final award or at the time the arbitration is concluded.
- 13.8 If a witness cannot appear during the scheduled dates or without notice fails to appear when first summoned to a hearing, the Arbitral Tribunal may, at its discretion, summon the witness to appear a second time, if it is satisfied that: (1) there was a compelling reason for the witness' first failure to appear; (2) the testimony of the witness is relevant to the adjudication of the dispute; and (3) providing a second opportunity for the witness to appear will not unduly delay the proceeding.
- 13.9 The Arbitral Tribunal may consider the witness statement of a witness who provides a valid reason for failing to appear when summoned to a hearing, having regard to all the surrounding circumstances, including the fact that the witness was not subject to cross-examination. A witness who is not called for cross-examination has a valid reason not to appear. The Arbitral Tribunal may decline to consider the witness statement of a witness who fails to appear and does not provide a valid reason.
- 13.10 Witnesses shall be examined in person except in exceptional circumstances as determined by the Arbitral Tribunal.
- 13.11 At any hearing the examination of each witness shall proceed as follows:
- a) the Disputing Party summoning the witness may briefly examine the witness for the purpose of introducing the witness, correcting, if necessary, any errors in the witness statement and addressing matters arising after the witness statement was given, if any;
 - b) the adverse Disputing Party may then cross-examine the witness;
 - c) the Disputing Party summoning the witness may then re-examine the witness with respect to any matters or issues arising out of the cross-examination. At the discretion of the Arbitral Tribunal, the adverse Disputing Party may re-cross examine the witness, with the re-cross examination limited to the witness' testimony on re-examination; and
 - d) the Arbitral Tribunal may examine the witness at any time, either before, during or after examination by one of the Disputing Parties.

- 13.12 During the Pre-hearing Conference, the Arbitral Tribunal in consultation with the Disputing Parties shall determine which witnesses may be present in the hearing room during oral statements and testimony, and the order in which such witnesses shall be examined.
- 13.13 It shall not be improper for counsel to meet witnesses and potential witnesses to establish the facts, prepare the witness statements, and prepare the examinations. Once direct examination begins, a witness shall remain sequestered from counsel until his or her testimony is complete.

14. EXPERTS

Article 15(2) UNCITRAL Arbitration Rules (1976)

- 14.1 Each Disputing Party may retain and submit the evidence of one or more experts to the other Disputing Party, the Secretary to the Arbitral Tribunal and the Arbitral Tribunal. Expert reports shall be accompanied by any documents or information upon which they rely, unless such documents or information have already been submitted as exhibits with the Disputing Parties' memorials, in which case reference to such exhibits shall be sufficient. The procedural rules set out in the above Section 13 shall apply by analogy to the evidence of experts.
- 14.2 Each expert report shall include the information listed in Section 13.4 above, as well as a statement of qualifications of the expert in the claimed area of expertise. Each expert report shall attach a current *curriculum vitae* evidencing such qualifications.

15. PROCEDURAL REQUESTS

- 15.1 All procedural requests shall be made in writing. Unless otherwise ordered by the Arbitral Tribunal, the other Disputing Party shall have five business days, not including the day on which the request was made, to reply in writing to a request. No further submissions on a request shall be made by either Disputing Party without the express authorization of the Arbitral Tribunal in advance.

16. NOTIFICATIONS AND COMMUNICATIONS

Article 15(3) UNCITRAL Arbitration Rules (1976)

- 16.1 Each Disputing Party shall address all communications, submissions and documents directly and simultaneously to each member of the Arbitral Tribunal, with a copy to the other Disputing Party and the Secretary to the Tribunal, subject to Section 10.6.
- 16.2 All notifications and communications in this arbitration shall be valid, provided that they are made: in the case of the Arbitral Tribunal, to each of its members at the addresses set out in Section 3 above, or as subsequently notified during the course of the proceedings; in the case of the Disputing Parties, to their respective counsel at the addresses set out in Section 2 above, or as subsequently notified during the course of the proceedings. Any changes in the addresses or other particulars set out in Section 2 above shall be notified to the Disputing Parties' counsel, the Arbitral Tribunal and the Secretary to the Tribunal. Prior to the receipt of such notification, all communications and notifications may be validly made to addresses set out in Section 2 above.
- 16.3 Subject to Section 10.4 above, all notifications and communications by the Disputing Parties and by the Arbitral Tribunal, except for awards, shall be made, by e-mail.

17. NON-DISPUTING NAFTA PARTIES

Article 1128 NAFTA

- 17.1 The Governments of Mexico and the United States may make submissions to the Arbitral Tribunal within the meaning of Article 1128 of the NAFTA by the date indicated in Annex B. Pursuant to Articles 1127, 1128 and 1129 of the NAFTA, non-disputing NAFTA Parties may attend oral hearings, and are entitled to receive a copy of confidential versions of transcripts, written submissions and exhibits, including witness statements and expert reports. Non-disputing NAFTA Parties shall be made aware of the Confidentiality Order, and pursuant to Article 1129 of the NAFTA, shall treat all information received from the Respondent as if they were a disputing Party, notably in respect of protection of confidential information.
- 17.2 The Disputing Parties shall have the opportunity to comment on any Article 1128 submission by the relevant date indicated in Annex B.

18. **AMICI**

- 18.1 If a request for the submission of an *amicus curiae* brief is filed by the date indicated in Annex B, the Arbitral Tribunal will give the appropriate directions in the exercise of its powers under Article 15 of the *UNCITRAL Arbitration Rules (1976)* and take into consideration the recommendation of the North American Free Trade Commission on non-disputing party participation of 7 October 2003.
- 18.2 By the relevant dates indicated in Annex B, the Disputing Parties shall have the opportunity to: (1) make submissions on any request for the submission of an *amicus curiae* brief; and (2) file simultaneous observations on issues raised in any *amicus curiae* brief submitted pursuant to a decision of the Arbitral Tribunal.

19. **CALENDAR**

- 19.1 The Procedural Calendar of this arbitration is attached as Annex B and made an integral part of this Order.

20. **STATUS OF ORDERS**

Article 15(1) UNCITRAL Arbitration Rules (1976)

- 20.1 Any Order of the Arbitral Tribunal may, at the request of a Disputing Party or at the Arbitral Tribunal's own initiative, be varied if the circumstances so require.

21. **FEES AND EXPENSES OF THE MEMBERS OF THE ARBITRAL TRIBUNAL**

Article 39 UNCITRAL Arbitration Rules (1976); ICSID Schedule of Fees; ICSID Administrative and Financial Regulation 14

- 21.1 Subject to revision, the time spent on this arbitration by the members of the Arbitral Tribunal shall be compensated at the rate of USD \$3,000, or such other fee as may be set forth from time to time in the *ICSID (Schedule of Fees)*, for each day of participation in meetings of the Arbitral Tribunal of eight hours of other work performed in connection with the proceeding or *pro rata*.
- 21.2 All direct travelling expenses reasonably incurred in relation to the arbitration shall be reimbursed within the limits set forth in *Regulation 14 of the ICSID Administrative and*

Financial Regulations and The Memorandum on the Fees and Expenses of ICSID Arbitrators.

- 21.3 Subject to the disbursement of any fees and expenses from the sums deposited in accordance with Section 22, all fees and expenses shall be paid within 30 days of their quarterly invoice. The Arbitral Tribunal may withhold any award or decision until such fees and expenses have been paid.

22. APPORTIONMENT OF COSTS AND ADVANCE PAYMENTS

Article 41 UNCITRAL Arbitration Rules (1976); ICSID Administrative and Financial Regulation 14

- 22.1 Without prejudice to the final decision of the Arbitral Tribunal regarding costs, the Claimant and the Respondent agree to share equally advance payments for the fees and costs of the Arbitral Tribunal and of ICSID as administering authority. Upon the issuance of an award, the Arbitral Tribunal may apportion the costs of the arbitration between the Disputing Parties if it determines apportionment is reasonable under the circumstances of the award.
- 22.2 By letter of 17 April 2014, ICSID requested that each Disputing Party pay US\$100,000 to defray the initial costs of the proceeding. ICSID received the Claimant's payment on 5 May 2014 and the Respondent's payment on 6 May 2014. ICSID shall request further advances as needed. Such requests shall be accompanied by a detailed interim statement of account.

23. PRE-HEARING CONFERENCE

- 23.1 A pre-hearing conference shall be held on the date indicated in Annex B by telephone or videoconference between the Arbitral Tribunal, or its President, and the Disputing Parties in order to resolve any outstanding procedural, administrative, and logistical matters in preparation for the hearing.

24. RECORD OF HEARINGS

Article 25 UNCITRAL Arbitration Rules (1976)

- 24.1 The hearing on the merits shall be open to the public, except when necessary to

protect confidential information. The hearing shall be made accessible to the public in real time via closed-circuit television broadcast to a World Bank room other than the room in which the hearing is held, subject to a time delay and any other arrangements needed to safeguard confidential information.

- 24.2 Sound recordings shall be made of all hearings and sessions. The sound recordings shall be provided to the Disputing Parties and the Members of the Arbitral Tribunal.
- 24.3 Verbatim transcripts in English shall be made of any hearing other than hearings on procedural issues.
- 24.4 Live Note transcription software, or comparable software, shall be used to make the hearing transcripts instantaneously available to the Disputing Parties and Members of the Arbitral Tribunal in the hearing room. The transcripts of proceedings should be made available on a same day service basis where practicable.
- 24.5 The Arbitral Tribunal shall establish, as necessary, procedures and schedules for the correction of transcripts. If the Disputing Parties disagree on corrections to be made to transcripts, the Arbitral Tribunal shall determine whether or not any such corrections are to be adopted.

25. POST-HEARING MEMORIALS AND STATEMENTS OF COSTS

Articles 22, 38, 40(3) UNCITRAL Arbitration Rules (1976)

- 25.1 At the pre-hearing conference, or during the course of the hearing, it shall be decided whether the Disputing Parties shall file Post-Hearing Memorials and/or Reply Post-Hearing Memorials.
- 25.2 At the pre-hearing conference, the Arbitral Tribunal, in consultation with the Disputing Parties, shall decide when and in what form the Disputing Parties will file evidence regarding the quantification of the costs of arbitration.

26. QUORUM

Article 31(2) UNCITRAL Arbitration Rules (1976)

- 26.1 The presence of all three members of the Arbitral Tribunal shall constitute a quorum and shall be required to conduct proceedings unless the Disputing Parties agree

otherwise.

- 26.2 In cases of urgency, the presiding arbitrator may decide procedural matters alone, after reasonable efforts to consult with the other members of the Arbitral Tribunal.

27. DECISIONS OF THE ARBITRAL TRIBUNAL

Article 31(1) UNCITRAL Arbitration Rules (1976)

- 27.1 Subject to Section 26, the Arbitral Tribunal shall make any award or other decision by a majority of its members.
- 27.2 All awards and decisions shall be deemed to be made at the legal seat of the arbitration, regardless of where the award or decision is signed.

28. TIME LIMITS

Article 23 UNCITRAL Arbitration Rules (1976)

- 28.1 The Arbitral Tribunal shall, in consultation with the Disputing Parties, fix the time limits in respect of all documents to be filed. In case of urgency, the President may fix a time limit or amend an existing time limit.

29. CONFIDENTIALITY AND PRIVACY

Annex 1137.4, NAFTA Chapter 11; Note of Interpretation of the NAFTA Free Trade Commission of 31 July 2001

- 29.1 Matters concerning confidentiality and privacy of the arbitral proceedings, rulings, orders, decisions and awards shall be the subject of a separate Confidentiality Order.

30. PUBLICATION

Annex 1137.4, NAFTA Chapter 11; Note of Interpretation of the NAFTA Free Trade Commission of 31 July 2001

- 30.1 In accordance with Annex 1137.4 of the NAFTA, the Note of Interpretation of the NAFTA Free Trade Commission of 31 July 2001, and subject to the Confidentiality Order, ICSID shall publish redacted, public versions of pleadings and written

submissions of the Disputing Parties and decisions of the Arbitral Tribunal, including the Notice of Arbitration, Statements, Memorials, witness statements, transcripts of hearings, procedural rulings and Orders and Awards.

31. DISPOSAL OF THE RECORD

- 31.1 Six months after the Arbitral Tribunal has notified the final award to the Disputing Parties, the arbitrators shall be at liberty to dispose of the record of the arbitration, unless the Disputing Parties ask that the documents be returned to them or to their counsel, which will be done at the expense of the requesting Disputing Party.

32. IMMUNITY FROM SUIT

- 32.1 The Disputing Parties shall not seek to make the Arbitral Tribunal or any of its members liable in respect of any act or omission in connection with any matter related to this arbitration, save where the act or omission is shown by that party to constitute conscious and deliberate wrongdoing. The Disputing Parties shall not require any member of the Arbitral Tribunal to be a party or witness in any judicial or other proceedings arising out of or in connection with this arbitration.

Date: 26 May 2014

For the Arbitral Tribunal

[Signed]

Professor Albert Jan van den Berg

ANNEX A

Model Redfern Schedule for Document Disclosure

Requesting Party: _____

1	2	3		4	5	6
No.	Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party		Responses / Objections to Document Request	Reply to Objections to Document Request	Arbitral Tribunal's Decisions
		Ref. to Submissions, Exhibits, Witness Statements or Expert Reports	Comments			

Eli Lilly and Company v. Government of Canada
(Case No. UNCT/14/2)

Procedural Order No. 1

ANNEX B

Procedural Calendar

Description	By	Days	Date	PO1 §
First Procedural Hearing	All		Sat 10-May-2014	1.1
Draft Procedural Order No. 1	Tribunal	4	Wed 14-May-2014	
Comments on Draft Procedural Order No. 1	Claimant and Respondent	9	Fri 23-May-2014	
Final Procedural Order No. 1	Tribunal	3	Mon 26-May-2014	
Letter designating the Notice of Arbitration as the Statement of Claim	Claimant	4 days from first hearing	Wed 14-May-2014	10.1
Statement of Defense	Respondent	47	Mon 30-Jun-2014	10.1
Memorial on Liability and Jurisdiction	Claimant	91	Mon 29-Sep-2014	10.1
Counter-Memorial on Liability and Jurisdiction	Respondent	120	Tue 27-Jan-2015	10.1
<i>Production of Documents Phase</i>				
Requests for Production of Documents	Claimant and Respondent	21	Tue 17-Feb-2015	12.1(a)
Objections	Claimant and Respondent	21	Tue 10-Mar-2015	12.1(b)
Responses to Objections	Claimant and Respondent	14	Tue 24-Mar-2015	12.1(c)
Decision on Requests	Tribunal	14	Tue 07-Apr-2015	12.1(d)
Production of Non-Objected Documents and as Ordered	Claimant and Respondent	76	Mon 22-Jun-2015	12.10(e)
Reply on Liability and Jurisdiction	Claimant	81	Fri 11-Sep-2015	10.1
Rejoinder on Liability and Jurisdiction	Respondent	88	Tue 08-Dec-2015	10.1

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(Case No. UNCT/14/2)

Procedural Order No. 1

Description	By	Days	Date	PO1 §
Deadline for NAFTA Article 1128 submissions and for applications for leave to file non-disputing party (<i>amicus</i>) submissions, if any	TBD	45	Fri 22-Jan-2016	17.1, 18.1
Comments on applications for leave to file non-disputing party (<i>amicus</i>) submissions, if any	Claimant and Respondent	7	Fri 29-Jan-2016	18.2
Decision on applications for leave to file non-disputing party (<i>amicus</i>) submissions, if any	Tribunal	21	Fri 19-Feb-2016	18.1
Comments on non-disputing party (<i>amicus</i>) submissions and NAFTA Article 1128 submissions on non-disputing party (<i>amicus</i>) submissions, if any	Claimant and Respondent; TBD	21	Fri 11-Mar-2016	17.2, 18.2
Notification of Witnesses and Experts	Claimant and Respondent		TBD	13.5, 14.1
Notification of Witnesses and Experts not Called	Tribunal		TBD	13.5, 14.1
Pre-Hearing Telephone Conference	All		TBD	23
Hearing Commencement	All		Mon 30-May-2016	24
Hearing Ends	All	10	Thu 09-Jun-2016	24
Simultaneous Post-Hearing Submissions, if any	Claimant and Respondent		TBD	25.1
Simultaneous Reply Post-Hearing Submissions, if any	Claimant and Respondent		TBD	25.1
Simultaneous Cost Submissions	Claimant and Respondent		TBD	25.2
Partial Award on Liability	Tribunal		TBD	27
[Organizational Conference to Determine the Procedural Calendar for the Quantum Phase]	All		TBD	