

**IN THE MATTER OF AN ARBITRATION UNDER THE NORTH AMERICAN FREE
TRADE AGREEMENT AND THE AGREEMENT BETWEEN THE UNITED STATES
OF AMERICA, THE UNITED MEXICAN STATES, AND CANADA**

-and-

**THE ARBITRATION RULES OF THE UNITED NATIONS COMMISSION ON
INTERNATIONAL TRADE LAW (1976)**

-between-

**AMERRA CAPITAL MANAGEMENT, LLC,
AMERRA AGRI FUND, L.P.,
AMERRA AGRI OPPORTUNITY FUND, L.P., AND
JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, ON BEHALF OF THE
JPMORGAN CHASE RETIREMENT PLAN
(the “Claimants”)**

and

**THE UNITED MEXICAN STATES
(the “Respondent”)**

ICSID Case No. UNCT/23/1

**PROCEDURAL ORDER NO. 2
ON CONFIDENTIALITY**

Members of the Tribunal

Prof. Albert Jan van den Berg, Presiding Arbitrator
Mr. Eduardo Siqueiros T., Arbitrator
Prof. Jorge Viñuales, Arbitrator

Secretary of the Tribunal

Ms. Mercedes Cordido-Freytes de Kurowski, Legal Counsel, ICSID

Assistant to the Tribunal

Ms. Emily Hay

June 13, 2023

I. PROCEDURAL BACKGROUND

On April 14, 2023, the Tribunal held the First Session of the Tribunal with the disputing parties (“Disputing Parties” or “Parties”) by video conference.

On May 11, 2023, the Tribunal issued Procedural Order No. 1, which sets out the Parties’ agreement on matters concerning transparency, confidentiality and publication:

*“23. Transparency, Confidentiality and Publication
NAFTA Article 1137(4), and FTC Note of Interpretation of 31 July 2001, Section A: Access to Documents, Article 32.5 of the UNCITRAL Rules*

23.1. Matters concerning confidentiality and privacy of the arbitral proceedings, rulings, orders, decisions and the Award shall be the subject of a separate confidentiality order that the Tribunal will issue in consultation with the disputing parties (the “Confidentiality Order”).

23.2. ICSID shall have permission to publish the fact of the existence of the arbitration, the names of the parties, counsel representing the parties and the Members of the Tribunal on its website.

23.3. In accordance with NAFTA Annex 1137.4, the Note of Interpretation of the North American Free Trade Commission of 31 July 2001, and subject to the Confidentiality Order, ICSID shall publish redacted, public versions of decisions and procedural orders of the Tribunal, as well as the Award. For the sake of clarity, the parties’ pleadings and written submissions, witness statement, expert reports, transcripts, documentary evidence and legal authorities, or excerpts thereof, shall not be subject to publication.

23.1. The written submissions by the Governments of Canada or the United States of America (“Non-Disputing NAFTA Parties”) and the written submissions by third persons (amicus curiae) that have been admitted by the Tribunal shall be published on the dates determined by the Tribunal.”

On May 18, 2023, the Tribunal provided Draft Procedural Order No. 2 on Confidentiality (“Draft Confidentiality Order”) to facilitate the Parties’ discussions on the matter; inviting the Parties to confer with each other and submit a joint proposal (including indication of respective positions), by June 1, 2023.

On June 1, 2023, the Parties submitted their joint proposal on the Draft Confidentiality Order, indicating the items on which they agreed and their respective positions regarding the items on

which they disagreed.

II. ORDER

Having considered the Parties' joint proposal, the Tribunal issues the following Confidentiality Order:

1. In accordance with Section 23 of Procedural Order No. 1, this Confidentiality Order shall apply to the following documents (collectively "**Covered Documents**") that the ICSID Secretariat will publish on the Centre's website:
 - 1.1 Any rulings, orders, decisions and the Award issued by the Tribunal;
 - 1.2 Any submissions by the Non-Disputing NAFTA Parties; and
 - 1.3 Any written submission by third persons (*amicus curiae*) that have been admitted by the Tribunal.
2. Article 32(5) of the UNCITRAL Arbitration Rules provides that the Award may be made public only with the consent of both parties. The Parties consent to the publication of a redacted version of the Award in accordance with the terms of this Confidentiality Order. Neither party shall publish an unredacted version of the Award, and/or of any rulings, orders, or decisions, without the consent of the other Party.
3. Confidential information, as defined in Section 5 of this Confidentiality Order shall not be disclosed to the public except in accordance with the terms established herein or with the prior written consent of the Party that claimed confidentiality with respect to the information.
4. This Confidentiality Order governs issues relating to the disclosure of information to the public and is without prejudice to the right of the Disputing Parties to object to the production of documents on grounds of confidentiality in accordance with Section 15.6 of Procedural Order No. 1.
5. "**Confidential Information**" means any information designated by a Party as confidential pursuant to this Confidentiality Order. A Party may designate as confidential, and subject to

Procedural Order No. 2 - Confidentiality

the terms and procedures of this Confidentiality Order, protect from disclosure to the public, any information that may otherwise be released, on any of the following grounds:

- 5.1 Business confidentiality, which includes:
 - 5.1.1 Commercial business and trade secrets;
 - 5.1.2 Financial, commercial, scientific or technical information that is treated consistently in a confidential manner by the Party or third party to which it relates, including, but not limited to, information on prices, costs, strategic and marketing plans, market share data, accounting or financial records not otherwise disclosed in the public domain;
 - 5.1.3 Information the disclosure of which could result in material financial loss or gain to, or could reasonably be expected to prejudice the competitive position of, the Disputing Party to which it relates; and
 - 5.1.4 Information the disclosure of which could interfere with contractual or other negotiations of the Disputing Party to which it relates.
 - 5.2 Communications exchanged between the Parties in furtherance of settlement discussions and any settlement negotiations and agreements that may arise in the course of the arbitration;
 - 5.3 Business confidentiality relating to a third Party; and
 - 5.4 Information protected from public disclosure by a legal obligation or legislation, including but not limited to, and as amended, Mexico's Federal Law on Transparency and Access to Public Information (*Ley Federal de Transparencia y Acceso a la Información Pública*), General Law on Transparency and Access to Public Information (*Ley General de Transparencia y Acceso a la Información Pública*) and the Federal Tax Code (*Código Fiscal de la Federación*).
6. If a Party wishes to declare certain information contained in a Covered Document to be Confidential Information, within a period of 15 days from the date of the filing or issuance of

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the Covered Document, it shall notify the other Party of the information that it considers should be protected and shall provide its redacted version¹ to the other Party. The Parties will seek to reach an agreement about the information that must be eliminated from the Covered Document before it is published.

7. A redacted version for publication purposes (as agreed by the Parties, or if disputed, as the case may be, in accordance with the instructions of the Tribunal) of the Covered Document shall be provided by the Parties to the Secretary of the Tribunal, within 90 days from its filing or issuance.
8. After this period, in the absence of a declaration of confidentiality by either Party or provision of a redacted version to the Secretary of the Tribunal that has been agreed or resolved in the manner provided below, it will be understood that the information in the Covered Document is of a public nature and can be published.
9. Neither the Parties nor the Tribunal may make publicly available information that either Party has properly designated as confidential, subject to the dispute resolution procedure established in Section 10 of this Order.
10. Disputes related to a Party's designation of Confidential Information may be submitted to the Tribunal for determination, pursuant to the following procedure:
 - 10.1 If a Party opposes any redactions that the other Party proposes, it shall so notify the other proposing Party within 15 days of receiving the redacted Covered Document in question, providing its reasons for objecting.
 - 10.2 If the Parties cannot agree on the resolution of any dispute within 30 days, either Party may submit the matter to the Tribunal for a decision that the Tribunal shall endeavor to render within 30 days.

¹ For greater certainty, a "redacted version" is any Covered Document that may be disclosed to the public pursuant to this Order and Procedural Order No. 1 that contains Confidential Information that has been redacted by one of the Parties.

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- 10.3 If the Tribunal determines that the information was not properly designated, the proposing Party that has submitted the document shall prepare a new redacted version, in accordance with the Tribunal's instructions. Only the approved revised redacted version shall be published on the ICSID website.
11. Any dispute between the Parties regarding the confidentiality of certain information included in any of the documents identified in numeral 1 shall be decided by the Tribunal.²
12. Unless the Parties agree otherwise, it is recalled that pursuant to Section 23.3 of Procedural Order No. 1 "the parties' pleadings and written submissions, witness statement, expert reports, transcripts, documentary evidence and legal authorities, or excerpts thereof, shall not be subject to publication." Such documents are not Covered Documents under this Procedural Order.
13. Notwithstanding any other provision in this Order, the Disputing Parties may make such disclosure of documents or information pursuant to Articles 1127 and 1129 of the NAFTA. 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, particularly with respect of protection of confidential information.
14. The Parties reserve their right to amend this Order in the course of the arbitration.

[Signed]

Prof. Albert Jan van den Berg
President of the Tribunal
Date: June 13, 2023

² The Parties agree that in the event of a dispute regarding proposed redactions to the Award, the power to decide on such dispute shall reside in the former Members of the Tribunal, even if such Tribunal is at that time *functus officio*.