

**ARBITRATION UNDER
CHAPTER ELEVEN OF THE NAFTA
AND THE UNCITRAL ARBITRATION RULES**

BETWEEN:

VITO G. GALLO

Claimant

AND

GOVERNMENT OF CANADA

Respondent

CONFIDENTIALITY ORDER

June 4, 2008

ARBITRAL TRIBUNAL

**Professor Juan Fernández-Armesto (President)
Professor Jean-Gabriel Castel, O.C.,Q.C.
J. Christopher Thomas, Q.C.**

Confidentiality Order

1. **Definitions:** For the purposes of this Confidentiality Order (“Order”):
 - (a) “disputing party” means, in the case of the Claimant, Vito G. Gallo, and his heirs, successors and assigns, and in the case of the Respondent, the Government of Canada;
 - (b) “confidential information” means any information designated by a disputing party as confidential. A disputing party may designate as confidential, and protect from disclosure, any information that may otherwise be released under the terms of this Order, on any of the following grounds:
 - (i) business confidentiality relating to the Claimant;
 - (ii) business confidentiality relating to a third party; and
 - (iii) information that could otherwise be protected from disclosure by legislation, including, as amended, the *Access to Information Act*, R.S., 1985, c. A-1, the *Canada Evidence Act*, R.S., 1985, c. C-5, the *Privacy Act*, R.S. 1985, c. P-21, the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F. 31 and the *Evidence Act*, R.S.O. 1990, c. E. 23;
 - (c) the designation of information on the grounds of “business confidentiality” in subparagraph (b) includes information that:
 - (i) describes trade secrets;
 - (ii) describes financial, commercial, scientific or technical information that is confidential business information and is treated consistently in a confidential manner by the party to which it relates, including pricing and costing information, marketing and strategic planning documents, market share data, or detailed accounting or financial records not otherwise disclosed in the public domain;
 - (iii) 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
 - (iv) the disclosure of which could interfere with contractual or other negotiations of the disputing party to which it relates.
 - (d) “privileged document” shall be a document subject to legal impediment or

privilege under applicable legal or ethical rules.

2. **Submission of documents with confidential information:** A disputing party may designate information as confidential by clearly identifying on each page of the document containing such information the notation “Confidential Information, Unauthorized Disclosure Prohibited” or some variation thereof, and shall take equivalent measures with respect to information contained in material produced in electronic and similar media.

When a disputing party files with the Tribunal material containing confidential information, it shall provide the other disputing party and the Tribunal with a redacted copy of that material within five business days of production of the unredacted version of the material.

3. **Confidentiality:** documents including confidential information shall only be disclosed to third parties in redacted version, in accordance with clause 5 of this Order or with the prior written consent of the disputing party that claimed confidentiality and, in the case of materials from third parties, the owner of such confidential information.
4. **Objections to confidentiality:** A disputing party may submit to the Tribunal its objections relating to the designation of information as confidential or the scope of the redaction. Such objection shall be made within 15 days of receipt of the document. The Tribunal will rule on such objections after receiving submissions from the disputing parties and in accordance with the terms of this Order. While the decision of the Arbitral Tribunal is pending, the information shall be treated as confidential.
5. **Disclosure to the public:** Either disputing party shall be free to disclose to the public, including by posting on the internet, all documents (including appendices and attached exhibits) submitted to or issued by the Arbitral Tribunal in the course of this arbitration. Documents with confidential information, designated as such in accordance with this Order, shall only be disclosed with appropriate redactions.

Privileged documents, or documents which are otherwise protected from disclosure under relevant law, shall not be disclosed; a disputing party may designate a document as privileged by clearly marking on each page the notation “Privileged – no disclosure” or some variation thereof, or the equivalent measure with respect to information stored in electronic or similar media;

Disclosure of hearing transcripts shall be governed by the rules established in the Procedural Order organizing such hearing.

6. **Objections to non disclosure:** In case of disagreement among the parties regarding the disclosure or non disclosure of a certain document, the Tribunal shall decide; such objection shall be made within 15 days of receipt of the document; disclosure

shall be postponed until the Tribunal has decided.

7. **Use of confidential or privileged information:** Unredacted versions of documents containing confidential information or documents marked privileged may be used only in these proceedings and may be disclosed only for such purposes to and among:
- (a) counsel to a disputing party whose involvement in the preparation or conduct of these proceedings is reasonably considered by the disputing party to be necessary;
 - (b) officials or employees of the disputing parties and the Province of Ontario, including any officials elected or appointed to public office, to whom disclosure is reasonably considered by a disputing party to be necessary;
 - (c) independent experts or consultants retained or consulted by the disputing parties in connection with these proceedings; or
 - (d) witnesses who in good faith are reasonably expected by a disputing party to offer evidence in these proceedings and only to the extent that the information is relevant to their expected testimony.

All persons receiving material in this proceeding containing confidential or privileged information shall be bound by this Order. Each disputing party shall have the obligation of notifying all persons receiving such material of the obligations under this Order.

It shall be the responsibility of the disputing party wishing to disclose material containing confidential or privileged information to any person mentioned in the preceding paragraphs (b), (c) or (d), to ensure that such person complies with the obligations under this Order. For that purpose such person shall execute a Confidentiality Agreement in the form attached as Appendix "A" before gaining access to any such material. Each disputing party shall maintain copies of such Confidentiality Agreements and shall make such copies available to the other disputing party upon order of the Tribunal or upon the termination of this arbitration. Where material containing confidential or privileged information is to be disclosed to a firm, organization, company or group, all employees and consultants of the firm, organization, company or group with access to the material must execute and agree to be bound by the terms of the attached Confidentiality Agreement.

8. **Amendment:** Upon consultation with the parties and for good cause, the Arbitral Tribunal may at any time amend this Confidentiality Order.

Place of arbitration: Vancouver, B.C.
Date: June 4, 2008

[signed]

Professor Jean-Gabriel Castel, O.C.,Q.C.

[signed]

J. Christopher Thomas, Q.C.

[signed]

Professor Juan Fernández-Armesto

APPENDIX “A”

CONFIDENTIALITY AGREEMENT

1. IN CONSIDERATION of being provided with materials in connection with the arbitration between Vito G. Gallo and the Government of Canada over which claims for confidentiality or privilege have been advanced (“confidential information”), I hereby agree to maintain the confidentiality of such material. It shall not be copied or disclosed to any other person nor shall the material so obtained be used by me for any purposes other than in connection with this proceeding.
2. I acknowledge that I am aware of the Confidentiality Order that has been agreed to by the disputing parties, a copy of which is attached to this Agreement, and agree to be bound by it.
3. I will promptly return all confidential or privileged information received by me in any format to the disputing party that provided me with such materials or the information recorded in those materials, or copies thereof, at the conclusion of my involvement in these proceedings.

SIGNED, SEALED AND DELIVERED before a witness this ____ day of _____, 20__.

(Print Name)

(Print Witness Name)

(Signature)

(Witness Signature)