

**INTERNATIONAL CENTRE FOR SETTLEMENT  
OF INVESTMENT DISPUTES**

**ACCESS BUSINESS GROUP LLC**

**CLAIMANT**

**v.**

**UNITED MEXICAN STATES**

**RESPONDENT**

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**REQUEST FOR ARBITRATION**

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## INTRODUCTION

Access Business Group LLC (“Access” or “Nutrilite”) respectfully requests arbitration under the ICSID Convention of a legal dispute with the United Mexican States (“Mexico”) arising directly out of Access’s investments in Mexico.

Mexico has wrongfully expropriated Access’s investment in and on 280 hectares (approximately 700 acres) of income-producing property in the Municipality of San Gabriel (formerly Venustiano Carranza), State of Jalisco. In addition to acquiring the 280 hectares of real estate, Access has continued to invest, through its affiliate, Nutrilite S.R.L. de C.V. (“Nutrilite Mexico”), by constructing facilities for purposes of treating, processing, and packaging the plants, vegetables, and fruits that are cultivated on the property, as well as a research facility. Through its investment, Access provides employment directly to approximately 450 local workers, and enriches the lives of thousands of additional local Mexican nationals who directly benefit from the “seed-to-supplement” agricultural farming and product development activities that Access has made possible since 1994.

The expropriation constitutes a stark breach of international law and violates virtually every applicable substantive investment protection standard that Mexico has guaranteed to United States investors such as Access, including guarantees under both the 1994 North American Free Trade Agreement (“NAFTA”) and the 2020 United States-Mexico-Canada Agreement (“USMCA”) (collectively, the “Treaties”). Moreover, the illegal expropriation also contravenes Mexico’s domestic legislation concerning foreign investment protection (*Ley de Inversión Extranjera (última reforma publicada DOF 15-06-2018)*) and violates Mexico’s own domestic law concerning expropriation (*Ley de Expropiación (última reforma publicada DOF 27-01-2012)*).

Indeed, the purported grounds for the illicit taking of Access's investment directly and expressly conflict with a *Presidential Resolution* issued by Mexican President Manuel Ávila Camacho dated December 2, 1942, and subsequently rendered inoperative, in part, by a certificate of inaffectibility that followed. That *Presidential Resolution* remained in place at all times material to the facts alleged in this *Request for Arbitration*. In this same vein, the expropriation also conflicts with the undisputed ruling of Mexico's *Tribunal Unitario Agrario* and with a covenant entered into by the Government of Mexico itself and the Municipality of San Gabriel.

It follows that this illicit expropriation, in addition to undermining Mexico's legislative and international commitment to protecting foreign investments, also has placed into question the very normative standing of judicial pronouncements and *Presidential Resolutions*. Put simply, the government measure at issue quite remarkably has managed to cast its shadow on the legitimacy and normative standing of Mexico's judiciary, legislative pronouncements, and Presidential Decrees.

These consequences notwithstanding, perhaps the most tangible negative repercussion from the illegal taking will be borne by Mexican nationals whose standard of living shall be adversely compromised because of the dissolution of the micro- and macroeconomic benefits that Access's agricultural operations on the property contribute to the local economy and to the State of Jalisco more generally.

The dispute is described in greater detail, and the information required under the ICSID Institution Rules is provided, in the following pages.

## I. ICSID INSTITUTION DATA

1. Access respectfully provides the following information pursuant to the ICSID Institution Rules (“Init. R”).

### A. Information Pursuant to Institution Rule 2

2. This *Request for Arbitration* relates to an arbitration proceeding. (Init. R. 2(1)(a)).

3. The parties to the dispute are as follows (Init. R. 2(1)(c)):

#### Claimant:

Access Business Group, LLC  
7575 Fulton Street East  
Ada, Michigan 49355-0001  
United States of America

Access is represented in this proceeding by the law firm of Bryan Cave Leighton Paisner.

LLP. Contact details for communications in relation to this matter are:

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#### Respondent:

Sr. Alan Bonfiglio Ríos  
Director General de Consultoría Jurídica de Comercio Internacional  
Torre Ejecutiva  
Pachuca #189, Colonia Condesa, Alcaldía de Cuauhtémoc,  
C.P. 06140  
Ciudad de México - México

4. This *Request for Arbitration* has been signed and dated by Access's authorized representative on its final page. Proof of the representatives' authority to act on behalf of Access in this matter is attached as Annex 1. (Init. R. 2(1)(d)-(e)).

5. Access has obtained necessary internal authorization to file this *Request for Arbitration*. A copy of the authorization is attached as Annex 2. (Init. R. 2(1)(f)).

6. As described more fully here, there is a legal dispute between the parties arising directly out of Access's investment. The investment and its ownership and control are described in Part II(A) of this Request, *infra*. The relevant facts and claims are summarized in Parts II(B) and III of this Request, *infra*. The request for relief, including a description of Access's damages, is contained in Part IV of this Request, *infra*. (Init. R. 2(2)(a)).

7. Mexico's consent to submit this dispute to arbitration under the Convention is recorded in Article 1120(1)(a) of NAFTA (effective January 1, 1994), in Annex 14-C, paragraphs (1)-(2) of USMCA (effective July 1, 2020), and in Annex 14-D, Article 14.D.3(3) of USMCA (effective July 1, 2020). Access consents to submit this dispute to arbitration under the Convention, (effective as of the date of this Request). Thus, Access's consent is recorded in this Request, and the date of consent is the date indicated on the final page of this Request. (Init. R. 2(2)(b)((i)-(iii))).

8. Access has complied with all conditions for submission of the dispute to the Centre. (Init. R. 2(2)(b)(iv)). In connection with its submission of the dispute, Access further notes that:

- a. On October 11, 2022, Access provided Mexico with its *Notice of Intent to Submit a Claim to Arbitration*. A copy of Access's *Notice of Intent to Submit a Claim to Arbitration* (without appendices) is attached as Annex 3.

- b. Access waives its right to initiate or continue before any administrative tribunal or court under the law of any NAFTA Party, or any other dispute settlement procedures (other than arbitration under the Treaties), any proceedings with respect to the measures taken by Mexico that are here alleged to be breaches of the Treaties, except for court or administrative proceedings under Mexican law for injunctive, declaratory or other extraordinary relief, not involving the payment of monetary damages, and for the sole purpose of preserving Access's rights and interests during the pendency of the arbitration.
- c. The challenged measures taken by Mexico in this case have been premised upon Mexico's assertion that the real property underlying Access's investment is subject to *ejido* communal ownership under Mexican law. Through its subsidiary, Nutrilite Mexico, and in various capacities including that of defendant, injured third-party (*tercero perjudicado*), and interested third-party (*tercero interesado*), Access has been litigating that issue against Mexican governmental entities in the Mexican courts since at least the year 2000, including before the *Tribunal Unitario Agrario Distrito 13*; the *Tribunal Unitario Agrario Distrito 16*; the *Juzgado Primero de Distrito en Materia Administrativa del Tercer Circuito*, the *Primer Tribunal Colegiado en Materia Administrativa del Tercer Circuito*; the *Noveno Tribunal Colegiado en Materia Administrativa del Primer Circuito*; the *Juez Primero de Distrito del Centro Auxiliar de la Tercera Región*; the *Segundo Tribunal Colegiado en Materia Administrativa del Tercer*

*Circuito; the Juzgado Quinto de Distrito en Materia Administrativa, Civil y del Trabajo del Tercer Circuito; the Séptimo Tribunal Colegiado en Materia Administrativa del Tercer Circuito; the Sexto Tribunal Colegiado en Materia Administrativa; the Juzgado Décimo Noveno de Distrito en Materia Administrativa; and the Juzgado Segundo de Distrito en Materia Administrativa.*

- d. In light of the more than twenty years of litigation of these issues in the Mexican courts that Access has undergone with favorable results that have been challenged, upheld, and, most recently, disregarded repeatedly, recourse to further litigation of the subject in Mexican courts is futile.
- e. Recourse to further litigation in Mexican courts also is obviously futile because the Mexican government has proceeded with the measures despite (i) the *Presidential Resolution* issued by Mexican President Manuel Ávila Camacho and dated December 2, 1942 declaring the 280 hectares in dispute to be exempt from transfer under the prior resolution upon which Mexico relies, (ii) agreements entered into between Mexico's Secretariat of Agrarian, Territorial and Urban Development ("SEDATU") and the *Ejido San Isidro* pursuant to which other land was conveyed to the *Ejido San Isidro* in lieu of the Nutrilite real property, and (iii) the holding of the *Tribunal Unitario Agrario* that the property ("Nutralite Property") (a) is private in nature, (b) is exempted from the August 23, 1939 land grant that forms the basis for Mexico's assertion of the property's *ejido* ownership

status, and (c) was duly and validly purchased by Nutrilite S.R.L. de C.V.<sup>1</sup> The Mexican government's determination to proceed with the measures despite the existence of a *Presidential Resolution* and agreements by the government itself that established the illegality of such measures – and, indeed, despite the existence of a court decision establishing their illegality – clearly establishes the futility of further recourse to domestic remedies.

9. In addition, Access has attempted to resolve its claims through consultation and negotiation, including (without limitation) two in-person meetings with Respondent's officials on January 5 and February 14, of 2023. However, no resolution was reached.

10. Access has been a national of the United States at all relevant times, including the date of consent (i.e., the date of this request). Documents reflecting Access's incorporation and continued existence under the laws of the State of Michigan, United States of America, are attached as Composite Annex 4. (Init. R. 2(2)(d)(i)).

## **B. Additional Information Pursuant to Rule 3**

### **1. Number and Appointment of Arbitrators**

11. There is no agreement between the parties regarding the number of arbitrators or the method for constitution of the Arbitral Tribunal. Consequently, Claimant proposes that, consistent with Articles 1123 and 1124 of NAFTA and Article 14.D.6 of USMCA, the tribunal comprise three arbitrators, one arbitrator to be appointed by each of the disputing parties and the third arbitrator to be named by the agreement of the two party-appointed neutral arbitrators subject to the written approval of such proposed President by the parties, , with the Secretary-General of ICSID to serve as appointing authority. Claimant further proposes that, if a tribunal has not been

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<sup>1</sup> See Expediente: 615/97, Acción: Ampliación de Ejido por Incorporación de Tierras al Régimen Ejidal, Tribunal Unitario Agrario, Poblado: "San Isidro", Municipio: "San Gabriel", Estado: Jalisco, Oficio: 0266/98.

constituted within a period of 75 days of the date of this Request, the Secretary-General appoint the arbitrators not yet appointed. (Init. R. 3(a)(i)).

12. Access appoints Professor Franco Ferrari of New York University School of Law as arbitrator in this matter.

## **2. Proposal Concerning Procedural Language**

13. Claimant proposes that the arbitration be conducted in the English language. (Init. R. 3(a)(ii)).

## **3. Claimant's Corporate Ownership**

14. Access is 100% owned by Alticor Corporate Enterprises Inc., a Delaware corporation. (Init. R. 3(b)).

# **II. SUMMARY OF RELEVANT FACTS**

## **A. The Parties**

15. Access is a for-profit corporation incorporated in and under the laws of the State of Michigan, United States of America, located at 7575 Fulton Street East, Ada, Michigan 49355-0001. At all times material to the claim, including the present, Access Business Group LLC owned Nutrilite Mexico.

16. As described below, Access has made an investment in the territory of Respondent. It is thus an "investor of a Party" within the meaning of NAFTA Art. 1139 and a "claimant" within the meaning of USMCA Art. 14.D.1.

17. Respondent United Mexican States is a sovereign State that is a Party to both NAFTA and USMCA.

**B. Claimant's Investment**

18. At all times material to the claim, including the present, Access owned Nutrilite Mexico, a Mexican company with its operations in Mexico.

19. Nutrilite Mexico acquired and improved 280 hectares of income-producing Nutrilite Property in the Municipality of San Gabriel (formerly Venustiano Carranza), State of Jalisco.

20. The first 160 hectares, known as estates "*Puerta del Petacal Tres y Cuatro*", were acquired on April 13, 1992.

21. The additional 120 hectares, known as estates "*Puerta del Petacal Uno y Dos*", were acquired on May 12, 1994.

22. The 280 hectares are contiguous.

23. After the acquisition of the Nutrilite Property, Access, through Nutrilite Mexico, continued to invest in the development of a "seed-to-supplement" research, organic farming, processing, and packaging operation on the property. This investment included, *inter alia*, the construction of various facilities on the property, including a dehydration plant,<sup>2</sup> a heat treatment plant,<sup>3</sup> a rotary dryer,<sup>4</sup> and a research facility.<sup>5</sup>

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<sup>2</sup> This improvement is a building with a 14,531 sq. ft. working area. It is constructed with brick walls and a tiled ceiling. The interior of the building is divided into five production sections, in addition to an office, a dressing area, a laundry room, and bathroom and showers for men and women.

<sup>3</sup> This improvement consists of a building with a working area of 13,465.65 sq. ft. It has a "pharmaceutical" graded construction. In addition to being equipped with standard air conditioning and a security system, the facility has HEPA filters to control particle size in the air, heat treatment equipment, dust collectors, a reverse osmosis system (to generate clean water), a water softener, an industrial steam boiler, and an equipment washing room. The office area consists of two stories.

<sup>4</sup> This improvement consists of a building with an 8,998 sq. ft. working area for dehydrating alfalfa. The structure also has an external facility with a soak hopper and a rotary dehydrator. All of the equipment necessary for dehydrating and grinding alfalfa is housed, operated, and maintained in this facility, including standard cyclone, mill, rotary valve, sifter, magnetic traps, and floor scales. The facility includes an equipment washing room and a custom quarantine area.

<sup>5</sup> This improvement consists of a building with 4,672 sq. ft. of working area that includes microbiology, laboratories, offices, and an auditorium.

24. These facilities are tangible “brick and mortar” improvements that, along with the balance of Access’s investment, added palpable value to the local and regional economy and reflect Access’s profound commitment to the host-State.

25. Access’s “seed-to-supplement” operations on the property include the farming of a wide array of organic products, including alfalfa, grapefruit, mandarin oranges, lemons, broccoli, kale, sage parsley, cacti, rosemary, and chia. Some are used as botanical ingredients for food and nutritional supplement products sold globally by Access through its subsidiaries around the world. All of the farming undertaken on the property is in compliance with the strictest national and international organic farming and certification standards, such that Nutrilite’s fruits, vegetables, and other plant products meet the requirements of the eight most exacting national and international agencies concerned with best practices in the context of organic farming.<sup>6</sup>

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<sup>6</sup> These eight agencies are the following:

(i) The CAC (The Codex Alimentarius Commission), a joint Food and Agriculture Organization (FAO), and World Health Organization (WHO), Food Standards Program established in 1963 that formulates voluntary international standards, codes of practice, and guidelines and codes of practice that actually constitute the Codex Alimentarius;

(ii) The IFOAM (The International Federation of Organic Agriculture Movements), a worldwide umbrella organization for the Organic Agriculture Movement, having approximately 800 affiliates in 117 countries;

(iii) The USDA (United States Department of Agriculture), a US government agency that, in part, provides leadership regarding food, agriculture, natural resources, and related issues;

(iv) The FDA (US Food and Drug Administration), a US government agency responsible for protecting the public health by laboring to assure the safety, efficacy, and security of human and veterinary drugs, biological products, medical devices, the US food supply, cosmetics, and products that emit radiation. The FDA also aspires to provide accurate, science-based health information to the general public;

(v) The SAGARPA (Secretaría de Agricultura, Ganadería, Desarrollo Rural, Pesca y Alimentación), a Mexican government instrumentality that traces its roots to 1917, when it was established as the Secretaría de Agricultura y Fomento. The agency’s name changed in 1946 to Secretaría de Agricultura y Ganadería, in 1976 to Secretaría de Agricultura y Recursos Hidráulicos, and in 2000 it adopted the current nomenclature. The SAGARPA is charged with maximizing the likelihood of best practices that would yield a sustainable and salubrious food supply for the national population of Mexico, as well as for exportation;

(vi) SENASICA (El Servicio Nacional de Sanidad, Inocuidad y Calidad Agroalimentaria), is a decentralized administrative body of the Mexican Ministry of Agriculture and Rural Development (SADER) whose mission includes safeguarding against the introduction into the national borders of pests and disease that may contaminate the agricultural sector;

(vii) The COFEPRIS (La Comisión Federal Para La Protección Contra Riesgos Sanitarios), is a Mexican government regulatory agency charged with regulating multiple health related issues in Mexico, including food safety and environmental protection; and

(viii) The EPA (U.S. Environmental Protection Agency), a US federal government agency tasked with protecting the general population and the environment from health risks arising from existing or potential

26. The property also includes considerable processing and packaging operations. The vegetables and plants are washed, appropriately shredded, dehydrated, thermally processed, packed, and stored. They are processed for loading and exportation. Significantly, the entire process is undertaken pursuant to strict organic and kosher certification from the agencies referenced immediately above.

27. The Nutrilite Property land and corresponding improvements, in addition to producing crops, is also particularly responsive to the production of seedlings for crops and the organic fertilizers that Nutrilite uses in the practice of organic agricultural farming. Thus, collateral ingredients necessary to cultivate, process, package, and store food and nutritional supplements are also grown here.

28. Additional portions of the Nutrilite Property land and corresponding improvements are used as buffers in order to prevent cross-pollination and contamination from non-organic sources. These buffer zones are essential to organic agricultural farming.

29. Finally, the Nutrilite Property land and corresponding improvements is also the site of scientific investigations focused on the adaptation and development of new crops to enhance Nutrilite's nutritional supplements.

30. The agricultural activity and buildings on the Nutrilite Property land and corresponding improvements are shown in a video narrative available online at <https://youtu.be/nvTeQo6T7NM>, and the building improvements on the property are further documented in Composite Annex 5.

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environmental hazards. The EPA, in addition to conducting scientific research on how best to develop and maintain a safe and productive environment, also develops and enforces environmental regulations, many of which concern organic agricultural harvesting.

31. Access's investment directly has contributed to the development of the economy of the host State. The Nutrilite operation on the Nutrilite Property land and corresponding improvements was the first source of employment in the local community. It did more than contribute to the local economy. The Nutrilite investment actually *created* that economy.

32. As part of Nutrilite's microeconomic contribution to the area, the infrastructure needed to create a productive economic environment was constructed. Nutrilite, with the support of the Tolimán government, built a six-kilometer highway to allow Nutrilite employees and workers in the areas adjacent to the Nutrilite Property access to the workplace directly from the municipality.

33. As part of this effort, more than just the "Petacal road" was constructed. A bridge was also built to facilitate travel.

34. In this same vein, Nutrilite spent significant resources for the enhancement of electric infrastructure in the area. The Juan Rulfo electric substation and corresponding electric line were refurbished in order to multiply electric output and distribution.

35. The consequences of a modernized electric substation, increased output, and updated distribution capabilities not only enhanced Nutrilite's operational efficiencies, but also attracted other investments to the area. With Nutrilite having incurred the initial upfront development costs, other investors were incentivized to develop the properties adjacent to El Petacal.

36. Nutrilite also financed the construction of a water treatment plant for the "El Petacal community." This contribution was critical to a viable economic infrastructure in the area. More meaningfully, however, it materially enhanced the local community's living standards and well-being.

37. In addition to the deployment of considerable resources in order to create and to develop a local economy, Nutrilite understood that economic growth cannot be severed from social and cultural development. Hence, Nutrilite contributed substantial resources for the construction of a church in honor of the Virgin of Fátima of El Petacal.

38. Similarly, Nutrilite dedicated meaningful resources towards the construction of a soccer/*fútbol* facility and the maintenance of elementary school facilities and gardens for the local children.

39. Nutrilite also built a community center. That center has served as an educational facility and meeting place where Nutrilite has sponsored events such as

- a. Nutrition programs,
- b. Courses on human values,
- c. English language courses,
- d. Arts and crafts workshops,
- e. Food supplement delivery programs and corresponding instructions, and
- f. A venue for the delivery of food pantry to senior citizens and local citizens with disabilities.

40. With Nutrilite's financial and quality of life support, the community center has served, among other things, as a venue for the sale of costume jewelry, a venue for first aid, and a place where local residents have engaged in the preparation of snacks and baked goods for the community, as well as a center for textile weaving.

41. Nutrilite made these investments because it expected to develop El Petacal indefinitely. Therefore, it created a community and not just workplace infrastructure.

**C. Mexico's Expropriation**

**1. Expropriation of the Nutrilite Property**

42. On July 1, 2022, the Mexican government, acting through SEDATU, provided Nutrilite Mexico with an initial notice of expropriation covering 120 hectares of the Nutrilite Property. (Annex 6).

43. On July 7, 2022, a second notice was delivered advising Nutrilite Mexico of a July 14, 2022 San Isidro Town Hall meeting regarding the alleged execution of pending matters under an August 23, 1939 *Presidential Resolution* (the "1939 *Presidential Resolution*"). (Annex 7).

44. At the July 14, 2022 meeting, the Mexican government advised Nutrilite Mexico that 120 hectares of the Nutrilite Property's land and corresponding improvements would be immediately given into the possession of the *Ejido San Isidro*, and the remaining 160 hectares constituting the balance of the Nutrilite Property would be expropriated in six months from that date.

45. As the basis for its expropriation of Access's investment, the Mexican government has relied upon the 1939 *Presidential Resolution* and a fictitious unexecuted allocation of land to the Town of San Isidro.

46. For example, the July 1, 2022 notice of expropriation is premised upon "the *Presidential Resolution* published in the Federation's Official Daily on November 18, 1939, pursuant to which the Town of San Isidro, and the Municipality of San Gabriel, in the state of Jalisco, benefitted by receiving 536 hectares of real property, and with respect to which 280 hectares [supposedly] *remain pending* because they were never allocated." (English translation; emphasis supplied).

47. Significantly, the *Presidential Resolution* referenced by the notice of expropriation was issued on August 23, 1939 by then-President Lázaro Cárdenas del Río. It is quizzical that somehow on July 1, 2022, fourteen Presidential administrations and eighty-three years later, SEDATU would seek the execution of what they unilaterally determined to be a “pending” allocation of property.

48. The implicit, and perhaps explicit, untested assumption is that during the intervening eighty-three years and fourteen Presidential administrations, the referenced allocation had remained pending. Nothing, however, can be further from the truth as a matter of fact and law.

## **2. The December 2, 1942 *Presidential Resolution***

49. It is a matter of public record that, as early as December 2, 1942, Mexican President Manuel Ávila Camacho, together with the then highest-ranking member of Mexico’s Department of Agriculture (*Jefe del Departamento Agrario*), Fernando Foglio Miramontes, modified the 1939 *Presidential Resolution* in order to exempt the Nutrilite Property from the estates that were to be transferred to the Town of San Isidro. In fact, on April 1, 1943, the Mexican government’s *Official Journal*<sup>7</sup> published the Presidential Exemption of the Nutrilite Property from the 1939 *Presidential Resolution*.

50. The *Official Journal* reads, in pertinent part:

Based on what has been stated, the undersigned, the President of the Republic, based upon subsection xiii of article 27 of the Constitution, and also based on article 35 of the Agrarian Code currently in force, it is proper to cite as follows

AGREED:

I. – The three hundred hectares (300) are declared unencumberable, one hundred (100) hectares of which are seasonable and two hundred (200) hectares that remain are of the

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<sup>7</sup> *DIARIO OFICIAL: ORGANO DEL GOBIERNO CONSTITUCIONAL DE LOS ESTADOS UNIDOS MEXICANOS*, Director: Lic. CARLOS FRANCO SODI (*Sección Tercera*), Méjico, jueves 1º de abril de 1943, Tomo CXXXVII, Núm. 28, titled: *PODER EJECUTIVO – DEPARTAMENTO AGRARIO*.

quality of land to be used for summer pasturing that form part of the small agricultural producing property named Puerta del Petacal, which property is owned by Miss María Rojas, and located in the Municipality of Venustiano Carranza, in the State of Jalisco, which property must be registered with the referenced characteristic in the National Agricultural Registry [Registro, Agrario Nacional] prior to the property's survey and demarcation on the part of its owner.

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Issued in the Palace of the Executive Branch of the Union, in Mexico, D.F.

On December 2, 1942 – Manuel Ávila Camacho – Constitutional President of the United Mexican States. – Fernando Foglio Miramontes. – Head of the Department of Agriculture.<sup>8</sup>

51. Consequently, Access had no reason to understand that the Nutrilite Property suffered from any cloud on title arising from the 1939 Presidential Resolution. Indeed, no less an authority than Mexico's President Manuel Ávila Camacho had as a matter of public notice certified by dint of a Presidential Resolution that the contrary was true – some fifty-two years before Access acquired the property.<sup>9</sup>

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<sup>8</sup> (English translation). The Spanish language original provides:

*Por lo expuesto, el suscrito, Presidente de la República, con fundamento en la fracción xiii del artículo 27 Constitucional y en el artículo 35 el Código Agrario vigente, tiene a bien dictar el siguiente*

*ACUERDO:*

*I.- Se declaran inafectables las 300 Hs. (trecientas hectáreas), de las cuales 100 Hs. (cien hectáreas), son de temporal y 200 Hs. (doscientas hectáreas) de agostadero de buena calidad, que integran la pequeña propiedad agrícola en explotación denominada Puerta del Petacal, propiedad de la Señorita María Rojas, ubicada en el Municipio de Venustiano de Carranza, del Estado de Jalisco, debiendo inscribirse con tal carácter en el Registro Agrario Nacional, previo su deslinde por cuenta de la interesada.*

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*Dado en el Palacio del Poder Ejecutivo de la Unión, en México, D.F., a los dos días del mes de diciembre de mil novecientos cuarenta y dos. - Manuel Ávila Camacho – Rúbrica. – Presidente Constitucional de los Estados Unidos Mexicanos. – Fernando Foglio Miramontes. - Rúbrica. – Jefe del Departamento Agrario.*

A true and correct copy of this iteration of the *Official Journal* is attached as Annex 8.

<sup>9</sup> This *Presidential Resolution* possibly was discharged decades later. The legality of the discharge remains an issue. During the decades that it was indisputably in force, however, title to the municipality could not have been clouded by virtue of the 1939 *Presidential Resolution*, and, notably, for approximately forty-five years no claim could have been made that the 1939 *Presidential Resolution* was not fully discharged.

### 3. The Discharge Agreement

52. In the wake of the exemption of the Nutrilite Property from the 1939 *Presidential Resolution*, the Town of San Isidro ultimately received a substitute conveyance of property in satisfaction of the 1939 grant.

53. On March 14, 1994 two documents were executed that had the effect of discharging the August 23, 1939 *Presidential Resolution* purportedly conveying *El Petacal* to the Town of San Isidro. The first of these documents is self-described as:

**CONVENIO PARA EJECUTAR EN FORMA DEFINITIVA COMPLEMENTARIA LA RESOLUCION PRESIDENCIAL DE DOTACION DE TIERRAS, EN TERMINOS DEL ARTICULO 309 DE LA LEY FEDERAL DE REFORMA AGRARIA, CONCLUYENDO CON EL CONFLICTO SOCIAL SUSCITADO, QUE CELEBRAN LA SECRETARIA DE LA REFORMA AGRARIA REPRESENTADA POR SU TITULAR EL C. VICTOR M. CERVERA PACHECO Y LA ORGANIZACION DENOMINADA 'UNION CAMPESINA DEMOCRATICA', REPRESENTADA POR EL C. GERARDO AVALOS LEMUS, SECRETARIO GENERAL POR EL ESTADO DE JALISCO Y LOS REPRESENTANTES LEGALES DEL POBLADO 'SAN ISIDRO', A QUIENES EN LO SUCESIVO SE DENOMINARAN 'LA SECRETARIA' Y 'EL NUCLEO AGRARIO' RESPECTIVAMENTE DE ACUERDO A LOS SIGUIENTES ANTECEDENTES, DECLARACIONES Y CALUSULAS.**

(Emphasis in original, no accents in original.)

This document was signed by Victor M. Cervera Pacheco of the *Secretaría de la Reforma Agraria* (Secretariat of the Agrarian Reform), Mr. Gerardo Avalos Lemus on behalf of the organization identified as *Union Campesina Democrática* and Mr. Adolfo Reyes González, President of *El Comisariado Ejidal del Poblado San Isidro, Venustiano Carranza hoy San Gabriel, Jalisco*.

The Second of the documents similarly is self-described as follows:

**CONVENIO QUE CELEBRA LA SECRETARIA DE LA REFORMA AGRARIA, REPRESENTADA POR LOS CC. LICENCIADOS RAUL PINEDA PINEDA, OFICIAL MAYOR E IGNACIO RAMOS ESPINOZA, DIRECTOR EGNERAL DE ASUNOTOS JURIDICOS, LOS CC. REPRESENTANTES LEGALES DE LA ACCION DE DOTACION DE TIERRAS TRAMITADA POR EL POBLADO DENOMINADO 'SAN ISIDRO', MUNICIPIO DE VENUSTIANO CARRANZA HOY SAN GABRIEL, ESTADO DE JASLISCO Y LOS CC. ESPERANZA NAVA GOMEZ Y JOSE NAVA PALACIOS,**

*PROPIETARIA Y USUFRUCTA RIO VITALICIO RESPECTIVAMENTE, DEL PREDIO DENOMINADO 'PASO DE CEDROS' O 'POTRERO GRANDE', UBICADO EN EL MUNICIPIO DE TOLIMAN, ESTADO DE JALISCO, A QUIENES EN EL TEXTO DE ESTE CONVENIO SE LES DESIGNARA COMO 'LA SECRETARIA'. 'EL POBLADO' Y 'EL PROPIETARIO' RESPECTIVAMENTE, PARA SOLUCIONAR EL CONFLICTO SOCIAL EXISTENTE EN EL POBLADO SEÑALADO , EN CUANTO AL BIEN INMUEBLE QUE EN EL SE INDICA Y AL TENOR DE LAS DECLARACIONES Y CLAUSULAS QUE A CONTINUACION SE DETALLAN:*

(Emphasis in original, no accents in original.)

This document was signed by Raúl Pineda Pineda (*Oficial Mayor*) and Ignacio Ramos Espinoza (Director General of Legal Affairs) on behalf of the Secretaría de la Reforma Agraria, Ms. Esperanza Nava Gómez and José Nava Palacios as Proprietors, and Mr. Adolfo Reyes González, (President), Mario Rosales Laureano (Secretary), and Daniel Lázaro Durán (Treasurer) on behalf of *El Comisariado Ejidal del Poblado San Isidro, Venustiano Carranza hoy San Gabriel, Jalisco*, These documents are here jointly referred to as the “Discharge Agreement.”<sup>10</sup>

54. They reflect that the federal government of Mexico purchased the 280 hectares called “*Paso de Cedros*” or “*Potrero Grande*” for purposes of conveying this property to the Town of San Isidro in lieu of any claims that the Town of San Isidro may assert with respect to the *Subject Property* known as *El Petacal* pursuant to the August 23, 1939 Presidential Resolution. Moreover, the Discharge Agreement reflects that the residents of the Town of San Isidro accepted the conveyance of the 280 hectares referred to as “*Paso de Cedros*” or “*Potrero Grande*” in lieu of *El Petacal* and in complete satisfaction and discharge of all conveyance of property to the Town of San Isidro arising from the August 23, 1939 *Presidential Resolution*.

55. The Discharge Agreement subsequently was acknowledged and ratified by the Mexican government.

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<sup>10</sup> Discharge Agreement, Composite Annex 9.

56. The Agrarian Sector (*Sector Agrario*) of the Secretariat of the Agrarian Reform (*Secretaría de la Reforma Agraria*) asserted the following representations regarding the Mexican government's covenant (the legally binding agreement here referred to as the "Discharge Agreement"), with the residents of San Isidro regarding receipt of the "*Paso de Cedros*" or "*Potrero Grande*" land as full, complete, and final performance and execution on the part of the Mexican government of the *Presidential Resolution* of 1939. In the original Spanish, the Agrarian Sector's representation provides that

*Por otra parte cabe destacar que en ésta de mi cargo se cuenta con un expediente, en el que se encuentra un Convenio suscrito entre el Núcleo Agrario 'SAN ISIDRO', a través de su Organización Campesina UNIÓN CAMPESINA DEMOCRÁTICA, Representada por el C. Gerardo Avalos Lemus, y los Representantes Legales del Núcleo Agrario y la Secretaría de la Reforma Agraria, Representada por su Titular el C. Victor Cervera Pacheco, de fecha 14 de marzo de 1994, mediante el cual el Núcleo Agrario recibió de la Secretaría \$668,052.35 (seiscientos sesenta y ocho mil, cincuenta y dos pesos 35/100 M.N.), para que adquieran el Predio 'PASO DE CEDROS' o 'POTRERO GRANDE', ubicado en el Municipio de Tolimán, Estado de Jalisco, propiedad de la o, ESPERANZA NAVA GÓMEZ, en sustitución de las 280-00-00 has. de la 'HACIENDA DEL PETACAL', propiedad de María Rojas, que se les concedió mediante Resolución Presidencial de Dotación de Tierras, del 23 de agosto de 1939, consintiendo expresa y libremente el cambio de localización que posibilitara la aprobación del expediente de ejecución y la formulación e inscripción del Plano Definitivo en el Registro Agrario Nacional; trayendo como consecuencia dicho convenio, que previos los trámites realizados ante el Cuerpo Consultativo Agrario, este Órgano de consulta puso en Estado de Resolución el expediente referido ante el Tribunal Superior Agrario, quien con fecha 9 de diciembre de 1997, resolvió dotar al Núcleo Agrario, con 280-00-00 has. del predio denominado 'PASOS DE CEDROS' o 'POTRERO GRANDE', que fueron puestas a disposición de la Secretaría de la Reforma Agraria; habiéndose ejecutado por personal de dicho tribunal la resolución antes referida el 24 de febrero de 1998, según consta en el Acta que al efecto se levantó: en tales condiciones, se debe tener por ejecutada la Resolución Presidencial del 23 de agosto de 1939, publicada en el Diario Oficial de la Federación el 18 de noviembre de 1939, teniendo en cuenta que el libre y espontáneamente y sin presión alguna, suscribieron el referido Convenio, por el que aceptan el cambio de localización, que legitima su derecho sobre esta superficie.<sup>11</sup>*

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<sup>11</sup> See *Asunto: SE CONTESTA DEMANDA EXP. J. A. 350/16/2000*, presented by Lic. J. Leonel Sandoval Figueroa, of the Sector Agrario, Subordinación Jurídica Clave 13 04 308 01, Representación Regional Occidente, Pob:

#### **4. Judicial Confirmation of the Discharge Agreement and of the Discharge of the 1939 *Presidential Resolution***

57. The Mexican government decided to expropriate Access's investment based on the 1939 *Presidential Resolution*, notwithstanding the fact that the Mexican courts have ruled that the 1939 *Presidential Resolution* was already discharged by the acquisition of the substitute 280 hectares of *Paso de Cedros* or *Potrero Grande* property.

58. In judicial proceeding No. 615/97 (*Juicio Agrario* No. 615/97), the Honorable Judge Carmen Laura López of the *Tribunal Unitario Agrario* made clear that 280 hectares pertaining to the Haciendas "*Paso de Cedros*" or "*Potrero Grande*" had been conveyed to the Town of San Isidro pursuant to the 1939 *Presidential Resolution*, which fully discharged that resolution.<sup>12</sup>

59. Thus, the proposition in the first paragraph of the July 1, 2022 notice of expropriation asserting that 280 hectares arising from the 1939 *Presidential Resolution* inexplicably remained "pending" and that part of the 1939 *Presidential Resolution* was now being discharged some eighty-three years later, flies in the face of the *Tribunal Unitario Agrario*'s assertion to the contrary.

60. The government's assertion of a "pending" grant also ignores the historical reality that the 280 hectares known as "*Paso de Cedros*" or "*Potero Grande*" were in fact conveyed to the Municipality of San Gabriel in 1994 in lieu of the 280 hectares comprising the Nutrilite

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"SAN ISIDRO", MPIO: "SAN GABRIEL", antes Venustiano Carranza, EDO: JALISCO, at p 5 (attached as Annex 10).

<sup>12</sup> See *Judgment* pertaining to proceeding identified as:

Expediente: 615/97, Acción: Ampliación de Ejido por Incorporación de Tierras al Régimen Ejidal, Tribunal Unitario Agrario, Poblado: "San Isidro", Municipio: "San Gabriel", Estado: Jalisco, Oficio: 0266/98 (attached as Annex 11).

Property pursuant to the Discharge Agreement. The solitary reason for that conveyance and for the Discharge Agreement was to satisfy the 1939 *Presidential Resolution*.

61. Accordingly, the taking of the Nutrilite Property land and corresponding improvements cannot be justified as somehow transferring property to the Town of San Isidro, Municipality of San Gabriel, State of Jalisco, under, and nearly a century after, the supposedly still-pending 1939 *Presidential Resolution*.<sup>13</sup>

62. Indeed, the wrongful expropriation has the effect of providing the Town of San Isidro, Municipality of San Gabriel, State of Jalisco with almost *twice* the amount of property contemplated in the 1939 *Presidential Resolution*.

### III. MEXICO'S VIOLATION OF ITS TREATY OBLIGATIONS

63. Mexico's expropriation of Access's investment is contrary to multiple obligations under NAFTA and USMCA.

#### A. NAFTA Article 1110 (Expropriation and Compensation)

64. Article 1110 (Expropriation and Compensation) of NAFTA provides, in pertinent part:

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<sup>13</sup> See *Judgment* titled: Juicio Agrario No. 615/97, Poblado "San Isidro", Municipio: San Gabriel, Estado: Jalisco, Acción: Aplicación de Ejido por Incorporación de Tierras al Régimen Ejidal (Magistrado Poniente: Lic. Carmen Laura López), p 7 (attached as Annex 12), which in the Spanish language original reads:

*NOVENO.* – *La Secretaría de la Reforma Agraria, representada por el Oficial Mayor y el Director General de asuntos jurídicos, así mismo, por su titular, celebraron convenio el 14 de marzo de mil novecientos noventa y cuatro, con los representantes del poblado 'San Isidro', municipio de Venustiano Carranza, hoy San Gabriel, Estado de Jalisco, y la Organización denominada Confederación Unión Campesino Democrática: el objeto de resolver en definitiva la ejecución de la Resolución Presidencial del núcleo agrario, entregado en forma directa al núcleo gestor la cantidad de N\$ 668,052.35 (seiscientos sesenta y ocho mil cincuenta y dos nuevos pesos 35/100 M.N.), con apoyo económico subsidiario por parte del Gobierno Federal, para la adquisición de 334-02-61.76 (trescientas treinta y cuatro hectáreas, dos áreas, sesenta y una centiáreas, setenta y seis miliáreas) de temporal y agostadero cerril, que constituyen el predio denominado 'Paso de Cedros' o 'Potrero Grande', ubicado en el Municipio de Tolimán, Estado de Jalisco, propiedad de Esperanza Nava Gómez y José Nava Palacios; y cuya entrega material será realizada y distribuida, bajo la responsabilidad de la Delegación Agraria en la entidad, de la siguiente manera: 280-00-00 (doscientas ochenta hectáreas), para el poblado 'San Isidro' y el resto, o sea 54-02-61.76 (cincuenta y cuatro hectáreas, dos áreas, sesenta y una centiáreas, setenta y seis miliáreas), para el poblado 'San Antonio', ambos del Municipio de Venustiano Carranza, hoy San Gabriel, Estado de Jalisco.*

1. No Party may directly or indirectly nationalize or expropriate an investment of an investor of another Party in its territory or take a measure tantamount to nationalization or expropriation of such an investment ("expropriation"), except:

- (a) for a public purpose;
- (b) on a non-discriminatory basis;
- (c) in accordance with due process of law and Article 1105(1); and
- (d) on payment of compensation in accordance with paragraphs 2 through 6.

2. Compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place ("date of expropriation") and shall not reflect any change in value occurring because the intended expropriation had become known earlier. Valuation criteria shall include going concern value, asset value including declared tax value of tangible property, and other criteria, as appropriate, to determine fair market value.

3. Compensation shall be paid without delay and be fully realizable.

65. Quite remarkably, the expropriation of Access's investment managed to violate all four elements that must be present in order for an expropriation to comport with international law pursuant to Article 1110 (and the customary public international law of investment protection).

#### **1. No Compensation**

66. First, the taking was done without compensation, which by itself constitutes a clear violation of Article 1110.

#### **2. No Public Purpose**

67. Second, the taking was not for a public purpose. In fact, it undermines the public purpose doctrine incorporated into Article 1110.1(a) on multiple grounds.

68. Beyond the microeconomic and macroeconomic contributions arising from the income-producing nature of Access's investment (including employment of approximately 450 local workers), thousands of Mexicans have benefited from the production of products. Similarly,

hundreds of local inhabitants have reaped the benefits of employment on the Nutrilite Property land and corresponding improvements and financial and support by Nutrilite of the surrounding village schools, childcare, and healthcare facilities. These longstanding gains now have arbitrarily been placed in jeopardy.

69. The expropriation also flouts the public purpose predicate of NAFTA Article 1110.1(a) because it brings into irreconcilable and explicit conflict the judicial and the executive branches of Mexico's government, The *Tribunal Unitario Agrario* has held that the Nutrilite Property (i) is private in nature, (ii) is exempted from the August 23, 1939 land grant that President Lázaro Cardenas del Río conveyed to the Town of San Isidro, and (iii) was duly purchased by Nutrilite Mexico.<sup>14</sup>

70. In addition to creating an intra-governmental legitimacy crisis between the normative authority of national courts and an executive expropriation mandate that disavows national judicial precedent and international law, the taking of the Nutrilite Property land and corresponding improvements further delegitimizes Mexico's executive branch of government because the taking itself explicitly conflicts with SEDATU's own agreements with (i) the Town of San Isidro, and (ii) the Town of San Isidro and owners of the replacement "*Potrero Grande/Paso de Cedros*", pursuant to which land was conveyed to the Town of San Isidro in lieu of the Nutrilite Property.

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<sup>14</sup> See Expediente: 615/97, Acción: Ampliación de Ejido por Incorporación de Tierras al Régimen Ejidal, Tribunal Unitario Agrario, Poblado: "San Isidro", Municipio: "San Gabriel", Estado: Jalisco, Oficio: 0266/98.

See also *Asunto: SE CONTESTA DEMANDA EXP. J. A. 350/16/2000*, presented by Lic. J. Leonel Sandoval Figueroa, of the Sector Agrario, Subordinación Jurídica Clave 13 04 308 01, Representación Regional Occidente, Pob: "SAN ISIDRO", MPIO: "SAN GABRIEL", antes Venustiano Carranza, EDO: JALISCO.

71. The Mexican executive branch's non-compliance with its own agreement undermines any purported overriding public purpose that would justify the expropriation of the Nutrilite Property land and corresponding improvements.

72. The executive branch not only contravened judicial precedent, but also ignored its own judicially ratified agreement. The alleged public purpose presumably justifying the taking cannot justify this normative conflict between the executive and the legislative branches of government.

73. The expropriation of Access's investment runs afoul of Mexico's national legislation purporting to protect foreign investments and investors (*Ley de Inversión Extranjera (última reforma publicada DOF 15-06-2018)*). The wrongful taking of the investment is in derogation of this legislation that is critical to Mexico's continued economic development and, therefore, cannot be found to be consonant with the public purpose doctrine.

74. The expropriation of Access's investment additionally fails to meet the predicates of the public purpose doctrine because it is in derogation of Mexico's Expropriation Law (*Ley de Expropiación (última reforma publicada DOF 27-01-2012)*). Article 21 of the Expropriation Law states in part that

The application of this Law shall be construed as without prejudice **to the provisions of the international treaties to which Mexico is a party and, where applicable, of the arbitration agreements that are concluded.**<sup>15</sup>

(emphasis added).

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<sup>15</sup> *Ley de Expropiación*, (México) Art. 21 (1936 (rev. 2012) (*artículo reformado DOF 22-12-1993*), which states in its original Spanish:

*Esta Ley es de carácter federal en los casos en que se tienda alcanzar un fin cuya realización compete a la Federación conforme a sus facultades constitucionales, y de carácter local para el Distrito Federal. La aplicación de esta Ley se entenderá sin perjuicio de lo dispuesto por los tratados internacionales de que México sea parte y, en su caso, en los acuerdos arbitrales que se celebren.*

(Emphasis added).

75. The expropriation here at issue cannot be reconciled with a national legislative directive stating that, with respect to foreign (non-Mexican) investments and investors, international treaty law shall supersede domestic legislation on this issue. It thus follows that on this ground alone the public purpose requirement articulated in Article 1110.1 is not, and cannot be, met.

76. The illegal expropriation further contravenes the public purpose doctrine because it disavows the public policy underlying national development pursuant to foreign direct investments. To the contrary, a taking of this ilk can only have a chilling effect on foreign direct investments. It necessarily has an adverse effect on Mexico's economic and social development.

77. It cannot be construed that a taking

- a. inconsistent with juridical precedent,
- b. inimical to the host State's foreign investment protection legislation,
- c. in defiance of the host State's national expropriation law,
- d. that diminishes the micro- and macroeconomic effects of an investment that contributes to the foundational health and well-being of an entire regional population, and
- e. that has a chilling effect on social and economic development,

is consonant with the public purpose doctrine within the meaning of NAFTA Article 1101.1(a), or the customary public international law of investment protection.

### **3. Failure to Provide Non-Discriminatory Treatment**

78. The taking of Access's investment was executed on a discriminatory basis. No other privately-owned and comparable agricultural income-producing property suffered the same

fate within the last five years, *i.e.*, an expropriation without compensation, contrary to the public purpose doctrine, undertaken on a discriminatory basis, and bereft of any semblance of due process.

79. Access was not accorded the same treatment as Mexican nationals or other foreign investors who own and manage income-producing agricultural property in the State of Jalisco, or beyond.

80. The discriminatory taking without compensation, without more, constitutes a paradigmatic violation of NAFTA Article 1110 (Expropriation and Compensation).

#### **4. No Due Process and International Law Compliance, Including Fair and Equitable Treatment and Full Protection and Security**

81. The Nutrilite Property was taken without even a pretense of due process.<sup>16</sup>

82. Neither Access nor Nutrilite Mexico was provided with notice of a hearing to obviate, let alone challenge, the expropriation. Instead, Access, constructively through Nutrilite Mexico, was served with two notices informing Access that the Nutrilite Property land and its corresponding improvements had been expropriated.

83. As described above, both notices are foundationally flawed in their reliance upon the 1939 *Presidential Resolution*, for multiple reasons. As acknowledged by the 1942 *Presidential Resolution*, the Discharge Agreement, and decisions of the Mexican courts, the 1939 *Presidential Resolution* had already been discharged with respect to the Nutrilite Property.

84. Access had every right to rely on the legal and factual proposition that the 1939 *Presidential Resolution* had been fully discharged. Further, due process dictated that any challenge to Access's ownership of the Nutrilite Property land and corresponding improvements would first

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<sup>16</sup> Significantly, Article 1110.1 (c) provides that a lawful expropriation must be "in accordance with due process of law and Article 1105(1)." In turn, NAFTA Article 1105.1 (*Minimum Standard of Treatment*) states that "[e]ach Party shall accord to investments of investors of another Party treatment in accordance with international law, including *fair and equitable treatment* and full protection and security." (Emphasis supplied.)

necessitate airing in a judicial venue legitimate and substantive grounds in furtherance of any such challenge. No comparable hearing preceding the unilateral expropriation ever took place. The taking lacked every vestige of due process and violates NAFTA Article 1110.1(c).

85. The expropriation of Access's investment violates Article 1110.1(c) on the additional ground (beyond lack of due process) that it failed to provide fair and equitable treatment, which was required because Article 1110.1(c) expressly incorporates Article 1105.1 (Fair and Equitable Treatment).

86. The fair and equitable treatment protection standard was violated in part because of Access's fully legitimate and reasonable expectation that its ownership of the Nutrilite Property land and corresponding improvements was not susceptible to any challenge, let alone one premised on the alleged enforcement of a fictitious pending land transfer pursuant to the 1939 *Presidential Resolution*.

87. Three foundational propositions are critical to Access's fair and equitable treatment claim.

88. First, the December 2, 1942 *Presidential Resolution* had expressly exempted the Nutrilite Property from the operation of the 1939 *Presidential Resolution*. Access had no reason to consider that the Nutrilite Property suffered from any cloud on title arising from the 1939 resolution.

89. Second, Access's expectation that its investment would not be the subject of an expropriation for any reason, let alone the 1939 *Presidential Resolution*, was reasonable and well-founded. The legitimacy and reasonableness of this expectation is all the more poignant because of the evident macro- and microeconomic contribution that the Nutrilite operation has made to the local economy and that of the State of Jalisco more generally, as described above. It defies logic

to imagine that an investor responsible for the development of a regional geopolitical economy would have its property expropriated in direct and explicit violation of international law and the very statutory rubrics of the host State.

90. Third, Access's reasonable expectations of stability and support from the local and federal governments in part were based on the agricultural productivity of the Nutrilite Property, as described above. The Nutrilite operation on the property itself constituted a basis for reasonable expectations of support from all levels of the Mexican government.

91. The Nutrilite activities on the property are pivotal to Access's fair and equitable treatment protection expectations. The scope, legality, transparency, and longstanding productive activity sustained on the Nutrilite Property land and corresponding improvements over the course of approximately twenty-eight years further bolstered Access's expectations that the host-State would honor its treaty obligation to provide fair and equitable treatment, including in connection with any expropriation.

92. Moreover, Access's construction of brick-and-mortar processing and research facilities on the property, which added value to the local and regional economy and reflected Access's profound commitment to the host-State, further underscored Access's expectations that its investment would be accorded fair and equitable treatment.

93. The taking here at issue eviscerates Access's interest in the Nutrilite Property, including its improvements, and irreparably precludes the continuation of the Nutrilite operation.

94. For the reasons stated here, and in prior sections, the fair and equitable treatment component of NAFTA Article 1110.1(c) (citing to Article 1105.1), has been breached in the context of Article 1110.1(c) and separately pursuant to the very elements of the fair and equitable treatment protection standard contained in Article 1105.1.

**B. NAFTA Article 1102 (National Treatment)**

95. Mexico has also violated Articles 1102.1 and 1102.2 of NAFTA by failing to accord Access and its investment treatment no less favorable than that which Mexico accords, in like circumstances, to its own investors and investments.

96. The grounds for this discriminatory treatment, in part, have been set forth (without limitation) in connection with the discussion of Article 1110.1(b) above. Under the purported banner of executing in July 2022 a *Presidential Resolution* issued on August 23, 1939, which was abrogated in relevant part by a subsequent *Presidential Resolution* on December 2, 1942 before being discharged decades later through the 1994 agreement, the Mexican government singled out Access and expropriated 280 hectares of income-producing property known as “*El Petacal*.”

97. There is no record of the Mexican government expropriating any similarly situated investment of a Mexican investor in violation of Mexico’s own legislative and constitutional strictures addressing government takings. As referenced above, the expropriation of the Nutrilite Property was in direct and explicit violation of (i) Mexico’s national Investment Law (*Ley de Inversión Extranjera (última reforma publicada DOF 15-06-2018)*), (ii) Mexico’s national Expropriation Law (*Ley de Expropiación (última reforma publicada DOF 27-1-2012)*), as well as (iii) the conventional (NAFTA 1994) and customary public international law of investment protection.<sup>17</sup>

98. There is no recent or contemporaneous conduct on the part of the Mexican government with respect to Mexican investors and investments comparable to the conduct in

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<sup>17</sup> NAFTA Article 1131 (*Governing Law*) in part reads:

1. A Tribunal established under this Section shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law.

relation to Access and Access's Nutrilite operation on the Nutrilite Property, where the Mexican government (i) arbitrarily, (ii) based on pure political expediency, (iii) without any due process, and (iv) without compensation, expropriated income-producing agricultural property.

99. Mexico accorded Access and its investment treatment less favorable than that accorded to comparable Mexican investments and investors because of Access's status as a non-Mexican national.

100. This conduct is in violation of NAFTA Articles 1102.1 and 1102.2 (National Treatment) and, therefore, gives rise to liability on the part of the Mexican government and correspondingly imposes on the Mexican government an obligation to compensate Access.

**C. NAFTA Article 1105 (Minimum Standard of Treatment)**

101. NAFTA Article 1110.1(c) explicitly references, using the conjunctive "and", due process of law *and* Article 1105.1. For the reasons articulated above, Mexico's conduct with respect to Access and its investment also violated the minimum standard of treatment required under Article 1105.1.

**D. USMCA Article 14.8 (Expropriation and Compensation)**

102. Article 14.8 (Expropriation and Compensation) of USMCA provides, in pertinent part:

1. No Party shall expropriate or nationalize a covered investment either directly or indirectly through measures equivalent to expropriation or nationalization (expropriation), except:

(a) for a public purpose;

(b) in a non-discriminatory manner;

(c) on payment of prompt, adequate, and effective compensation in accordance with paragraphs 2, 3, and 4; and

(d) in accordance with due process of law.

2. Compensation shall:

(a) be paid without delay;

(b) be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place (the date of expropriation);

(c) not reflect any change in value occurring because the intended expropriation had become known earlier; and

(d) be fully realizable and fully transferable.

103. Mexico's expropriation of Access's investment violated USMCA Article 14.8 for the same reasons identified above in connection with NAFTA: it was conducted without compensation, with no public purpose, in a discriminatory manner, and in the absence of due process of law.

**E. USMCA Article 14.4 (National Treatment)**

104. As discussed above in connection with NAFTA Articles 1102 and 1110, Mexico also has violated Articles 14.4.1 and 14.4.2 of USMCA by failing to accord Access and its investment treatment no less favorable than that which Mexico accords, in like circumstances, to its own investors and investments.

**IV. ACCESS'S DAMAGES AND CLAIMS FOR RELIEF**

105. The Nutrilite operation on the 280 hectares is unique. Consequently, the quantification of its value, and of Access's damages, is premised on its "seed-to-supplement" process and its part in a holistic methodology used in Access's and its subsidiaries' manufacturing-direct sales process. The Nutrilite operation is the underpinning of this broader process that is both interconnected and interdependent with Access's global operations. No single operational phase in this continuum can be affected without altering the process in its entirety.

106. Therefore, the pecuniary damages analysis underlying Access's claim quantifies losses that include those arising from

- a. A complete loss of a product line that cannot be replicated elsewhere within a thirty-six (36) month timeframe,
- b. A supply chain disruption that cannot be mitigated within a thirty-six (36) month period of time,
- c. The cost of idle equipment,
- d. The cost of idle employees,
- e. The cost of the loss of real property (including improvements),
- f. The cost of relocating the Nutrilite operations to a different jurisdiction, as the Mexican government's conduct with respect to Access's investments means that it cannot be deemed a reliable jurisdiction for the protection of foreign investments, and
- g. Lost profits calculated for the thirty-six (36) month period.

107. This three-year period is the assumed time that it would take to establish some semblance of an operational equivalent to the current Nutrilite "seed-to-supplement" operation that the current property sustains, during which time global production and resultant sales of Nutrilite products that are currently developed using raw materials would be non-existent.

108. Set forth below are the damages associated with three of the most pragmatically conceptual options for mitigating the loss of the Nutrilite operations and a fourth possible option that contemplates a purchase and/or lease of property in the United States where Access has no operations:

<p><b>OPTION 1</b></p>	<p><b>Farming:</b> Assuming complete loss of spinach and remaining items are transferred to External Buyout Supplier. Sustainable and reliable sources for organic Spinach are difficult to locate/ do not exist.</p> <p><b>Processing:</b> External Buyout Supplier to source feedstock and all processing</p> <p><b>Total Additional Impact</b></p> <ul style="list-style-type: none"> <li>▪ One Time Cost - \$10M</li> <li>▪ Additional Cost/Year - \$3.5M + spinach loss Annual \$630M Revenue &amp; \$430M Margin</li> <li>▪ Three-year loss of Nutrilite product sales &gt; \$3B revenue (\$1B ann.) &amp; \$2.2B margin (\$0.7B ann.)</li> </ul> <p style="text-align: center;">○</p>
<p><b>OPTION 2</b></p>	<p><b>Farming:</b> (1) Assuming Trout Lake Farm (TLF), Access’s farming operation in Washington, could incorporate growth of Spinach and Alfalfa in its existing operations, and the remaining El Petacal crops are split and transferred to (2) Access’s farming operation in Brazil (BZL) and (3) External Buyout Supplier.</p> <ul style="list-style-type: none"> <li>▪ TLF would need to lease additional land</li> <li>▪ Spinach – difficult to find sustainable and reliable sources for organic crop but would try again to qualify at TLF. Background: tried to qualify TLF twice (2013 and 2015) but failed at micro-qualification.</li> <li>▪ BZL may have open acreage for El Petacal crops and also could look at utilizing partner growers but would need to adapt operations for processing in time for further shipments.</li> </ul> <p><b>Processing:</b> (1) Expansion at Access’s Quincy Heat Treat Milling (HTM); (2) Development of Heat Treat Milling operations in Brazil to properly stabilize and process product in proper amount of time to ship; (3) External Buyout Supplier to source feedstock and processing</p> <p><b>Total Additional Impact</b></p> <ul style="list-style-type: none"> <li>▪ One Time Cost - \$32M</li> <li>▪ Additional Cost/Year - \$23M</li> <li>▪ Three-year loss of Nutrilite product sales &gt; \$3B revenue (\$1B ann.) &amp; \$2.2B margin (\$0.7B ann.)</li> </ul>
<p><b>OPTION 3</b></p>	<p><b>Farming:</b> (1) Assuming Access’s Trout Lake Farm (TLF), in Washington, could grow Spinach and Alfalfa and (2) remaining El Petacal crops are transferred to External Buyout Supplier.</p> <ul style="list-style-type: none"> <li>▪ TLF would need to lease additional land</li> <li>Spinach – difficult to find sustainable and reliable sources for organic crop but would try again to qualify at TLF. Background: tried to qualify TLF twice (2013 and 2015) but failed at micro-qualification.</li> </ul> <p><b>Processing:</b> (1) Expansion at Quincy Heat Treat Milling (HTM); (2) External Buyout Supplier to source feedstock and processing</p>

	<p><b>Total Additional Impact</b></p> <ul style="list-style-type: none"> <li>▪ One Time Cost - \$20M</li> <li>▪ Additional Cost/Year - \$13M</li> <li>▪ Three-year loss of Nutrilite product sales &gt; \$3B revenue (\$1B ann.) &amp; \$2.2B margin (\$0.7B ann.)</li> </ul>
<b>Other</b>	<p><b>Farming:</b> Purchase and/or lease all new land in the United States</p> <p><b>Processing:</b> (1) Expansion at Quincy Heat Treat Milling (HTM); (2) Development of Heat Treat Milling operations in another US location for dual operations</p> <p><b>Total Additional Impact</b></p> <ul style="list-style-type: none"> <li>▪ One Time Cost \$\$\$ + \$10M for HTM</li> <li>▪ Additional Cost/Year - \$\$\$ + \$4.4M for HTM</li> <li>▪ Three-year loss of Nutrilite product sales &gt; \$3B revenue (\$1B ann.) &amp; \$2.2B margin (\$0.7B ann.)</li> </ul>

109. A detailed spreadsheet supporting the preceding schematic is attached as Annex 12.

110. Accordingly, Access seeks compensation in an amount not less than USD 3,000,000,000.

**V. CONCLUSION**

111. Access respectfully requests registration by ICSID of this *Request for Arbitration* and that a duly-appointed Arbitral Tribunal issue an award granting, without limitation, the following relief:

- a. A declaration that Mexico has violated the Treaties with respect to Access and its investment;
- b. Compensation to Access for its damages, to be developed and quantified in the course of this proceeding, in an amount not less than USD 3,000,000,000;

- c. Reimbursement of all costs and fees associated with this proceeding, including all professional fees and disbursements;
- d. An award of compound interest until the date of Mexico's final satisfaction of the award at a rate to be fixed by the Tribunal; and
- e. Such other relief as counsel may propose and the Tribunal may deem appropriate.

Dated: April 13, 2023

Respectfully,

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*Counsel for Access Business Group, LLC*

## ANNEXES

1. Annex 1 - Proof of representatives' authority to act on behalf of Access Business Group LLC in this matter
2. Annex 2 – Proof of Access Business Group LLC's internal authorization to file *Request for Arbitration*
3. Annex 3 - Article 1119 *Notice of Intent to Submit a Claim to Arbitration* dated October 11, 2022
4. Composite Annex 4 - Documents reflecting Access Business Group LLC's incorporation and continued existence under the law of Michigan
5. Composite Annex 5 – Aerial plans and YouTube link
6. Annex 6 - July 1, 2022 Notice 1
7. Annex 7 - July 7, 2022 Notice 2
8. Annex 8 - April 1, 1943 *Official Journal*
9. Composite Annex 9 – Discharge Agreement
10. Annex 10 - *Secretaría de la Reforma Agraria Answer*
11. Annex 11 – 2014 *Judgment in proceeding 615/97*
12. Annex 12 – 1997 *Judgment in proceeding 615/97*
13. Annex 13 - 19-page spreadsheet supporting damages analysis