INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Hiroshi Osumi

v.

Swiss Confederation

(ICSID Case No. ARB/26/1)

PROCEDURAL ORDER NO. 2
On Transparency and Confidentiality

Members of the Tribunal
Ms. Marinn Carlson, President of the Tribunal
Mr. Gabriel Bottini, Arbitrator
Mr. Peter Turner KC, Arbitrator

Secretary of the Tribunal
Ms. Geraldine R. Fischer

July 10, 2026

I. INTRODUCTION

1. On 27 May 2026, the Tribunal circulated a draft of this order ("Draft PO2") for discussion by the Parties.

2. On 22 June 2026, the Parties commented on Draft PO2.

3. On 29 June 2026, the first session was held. During the first session, the Parties and the Tribunal discussed the Parties' comments on Draft PO2 and the draft procedural order no. 1.

4. This Procedural Order No. 2 contains the Parties' agreements and the Tribunal's decisions concerning the confidentiality and transparency regime governing this case.

5. The legal framework applicable to these proceedings is determined by the Agreement on Free Trade and Economic Partnership between the Swiss Confederation and Japan (the "Japan-Switzerland FTA"), the ICSID Convention, and the 2022 ICSID Arbitration Rules.

6. In this Procedural Order No. 2, "Confidential or Protected Information" is information which is protected from public disclosure:

   (a) by the instrument of consent to arbitration;

   (b) by the applicable law or applicable rules;

   (c) in the case of information of a State party to the dispute, by the law of that State;

   (d) in accordance with the orders and decisions of the Tribunal;

   (e) by agreement of the parties;

   (f) because it constitutes confidential business information or protected personal information;

   (g) because public disclosure would impede law enforcement;

   (h) because a State party to the dispute considers that public disclosure would be contrary to its essential security interests;

(i) because public disclosure would aggravate the dispute between the parties; or

(j) because public disclosure would undermine the integrity of the arbitral process.

7. The Tribunal adopts the following confidentiality and transparency rules governing the proceedings.

II. CONFIDENTIALITY

8. Subject to the exceptions in paragraph 9 and the clarification in paragraph 10 below, and without prejudice to the publication, access and redaction regime set out in Section III of this Procedural Order No. 2 and the 2022 ICSID Arbitration Rules (to the extent not modified by this Procedural Order No. 2), the Parties shall keep confidential and not divulge, communicate or otherwise make available to any third party:

i. any documents created in the context of this arbitration, including submissions, witness statements, expert reports, communications, orders, procedural directions, hearing transcripts and recordings, decisions and awards, and any information contained in such documents.

ii. any documents *not* created in the context of this arbitration and filed or produced in this arbitration by the other Party, including exhibits and other documents in support of submissions and correspondence, and any information contained in such documents.

9. Paragraph 8 does not apply to documents or information that are: (i) otherwise in the public domain or publicly available, including pursuant to Section III below; or (ii) lawfully available to a Party independently of their submission, production or issuance in this arbitration. The Parties may disclose the documents or information referred to in paragraph 8: (i) to their professional advisors, translators/interpreters, witnesses and experts in this arbitration on the need-to-know basis and upon obtaining an advance written confidentiality undertaking; (ii) to the extent required of a Party by a legal duty; (iii) to protect or pursue a legal right in legal proceedings; and/or (iv) for the avoidance of doubt, to the extent necessary for, or resulting from, publication by ICSID in accordance with Section III of this Procedural Order No. 2, the 2022 ICSID Arbitration Rules (to the extent not modified by this Procedural Order No. 2), or any order or

decision of the Tribunal, subject in each case to the protection of Confidential or Protected information through the applicable redaction procedure.

10. For the avoidance of doubt, a Party may use the content of any document that it has created in the context of this arbitration (e.g., expert reports or submissions) in any other proceedings to which it is a party and such use shall be deemed to be covered by the exception under (iii) immediately above, provided that such use does not disclose the content of any document, or information obtained solely in the context of this arbitration from the other Party and solely relating to that other Party.

11. The Tribunal may issue additional rules and directions on confidentiality and will resolve any disagreement between the Parties related to confidentiality that may arise in the course of this arbitration.

III. TRANSPARENCY

A. AWARD (ICSID ARBITRATION RULE 62)

12. For the purposes of Article 48(5) of the ICSID Convention and ICSID Arbitration Rule 62, the Parties consent to the publication of the Award by ICSID on its website, with any redactions of Confidential or Protected Information agreed by the Parties.[1] The Parties shall provide ICSID with their jointly redacted text within 60 days after the dispatch of the Award.

13. If the Parties do not agree on a jointly redacted text, they shall, within 60 days after the dispatch of the Award, inform ICSID and provide their respective proposals for redaction.

B. ORDERS AND DECISIONS (ICSID ARBITRATION RULE 63)

14. Upon request of a Party to ICSID, ICSID shall publish the orders and decisions of the Tribunal, with any redactions agreed by the Parties or decided by the Tribunal, in accordance with Section G below.

[1] Pursuant to ICSID Arbitration Rule 72(2) this procedural order shall continue to apply to an interpretation, revision or annulment proceeding with necessary modifications, unless the Parties agree or the Tribunal or Committee orders otherwise.

C. WRITTEN SUBMISSIONS (ICSID ARBITRATION RULE 64)

15. (i) Subject to paragraph 15(ii) below, the Parties do not consent to the publication of the Parties' written submissions by ICSID.

(ii) If a Party seeks the publication by ICSID of its own main written submissions (memorial, counter-memorial, reply and rejoinder, without witness statements, expert reports, legal authorities and exhibits), it shall notify ICSID and the other Party thereof, after which the procedure set out in Section G below shall be followed.

D. SUPPORTING DOCUMENTS (ICSID ARBITRATION RULE 64)

16. Supporting documents, including exhibits, legal authorities, witness statements and expert reports (including annexes, appendices or exhibits thereto) shall not be published by ICSID.

E. HEARINGS (ICSID ARBITRATION RULE 65(1)–(2))

17. Hearings shall not be open to the public.

F. TRANSCRIPTS OF HEARINGS (ICSID ARBITRATION RULE 65(3))

18. Upon request of a Party to ICSID, ICSID shall publish transcripts of hearings (but not recordings), unless the other Party objects within 21 days of such request. In case the other Party does not object, the Party requesting publication may share redactions with the other Party within 21 days, after which the other Party may make further redactions within 21 days. ICSID shall then publish the document with the redactions made by either Party.

G. PROCEDURE FOR REDACTIONS – NON-DISCLOSURE OF CONFIDENTIAL OR PROTECTED INFORMATION (ICSID ARBITRATION RULE 66) AND DATA PRIVACY

19. With respect to publication pursuant to Sections B and C above, any Confidential or Protected Information that is submitted to the Tribunal shall be protected from disclosure and publication in accordance with the procedure set forth below.

20. The Tribunal is mindful of the need to protect the personal data of individuals and draws the Parties' attention to Section 25 of Procedural Order No. 1. When identifying Confidential and Protected Information in accordance with paragraph 21 below, the

Tribunal recommends that the Parties redact, to the extent possible, the names of individuals, possible identifiers (such as position, title, nationalities) and information that can be considered sensitive regarding any individuals mentioned in any document to be published.

21. Within 21 days from the date of (i) a request for publication of a decision or order pursuant to section B above or (ii) a notification requesting the publication of a written submission pursuant to paragraph 15(ii) above, either Party may give written notice to the Tribunal and the other Party that it requests the non-disclosure of certain information it considers Confidential or Protected Information, by submitting a redacted version of the document. Absent such a notice within the 21-day timeline, the Tribunal will authorize ICSID to publish the document without redactions from the Parties.

22. Within 14 days of receipt of the notice referred to in paragraph 21, the other Party may raise objections to the proposed redactions.

23. If no objections are raised within the deadline established in paragraph 22, the Tribunal will authorize ICSID to publish the document at issue with the requested redactions.

24. If objections are raised within the deadline established in paragraph 22, the Parties shall confer and seek to agree on redactions within 14 days of receipt of the objections to the proposed redactions. If the Parties reach an agreement, the Tribunal will authorize ICSID to publish the document at issue with the agreed redactions.

25. If objections remain unresolved, the Party requesting the disputed redactions shall submit a Transparency Schedule in the format of Annex A to the other Party within 14 days, after which the other Party shall, within 14 days, add its replies thereto and submit it to the Tribunal. The Tribunal shall resolve the disputed redactions requests, communicate its decision to the Parties, and direct them to provide a redacted version of the document. Upon receipt of the redacted document, the Tribunal will authorize ICSID to publish the document.

On behalf of the Tribunal,

[Signed]

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Ms. Marinn Carlson
President of the Tribunal
Date: July 10, 2026

ANNEX A

TRANSPARENCY SCHEDULE

[insert Party]	Request [1]
Information sought to be protected from disclosure	
Legal basis for protection	
Comments	
Reply by opposing Party	
Decision	