

**IN THE MATTER OF AN ARBITRATION UNDER THE  
NORTH AMERICAN FREE TRADE AGREEMENT  
and  
THE AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF  
FRANCE AND THE GOVERNMENT OF THE UNITED MEXICAN STATES ON THE  
RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS  
and  
THE AGREEMENT BETWEEN THE PORTUGUESE REPUBLIC AND THE UNITED  
MEXICAN STATES ON THE RECIPROCAL PROMOTION AND PROTECTION OF  
INVESTMENTS  
and  
*EL ACUERDO ENTRE EL GOBIERNO DE LOS ESTADOS UNIDOS MEXICANOS Y EL  
GOBIERNO DE LA REPUBLICA ARGENTINA PARA LA PROMOCIÓN Y PROTECCIÓN  
RECÍPROCA DE LAS INVERSIONES***

**- and -**

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

**- between -**

**CARLOS SASTRE AND OTHERS  
(the “Claimants”)**

**and**

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

**ICSID Case No. UNCT/20/2**

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**PROCEDURAL ORDER NO. 4  
DOCUMENT PRODUCTION**

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*Tribunal*

Prof. Eduardo Zuleta (Presiding Arbitrator)

Dr. Charles Poncet

Mr. Christer Söderlund

*Secretary of the Tribunal*

Ms. Geraldine R. Fischer

June 16, 2021

## **I. INTRODUCTION**

1. In accordance with Section 15 of Procedural Order No. 1 and Annex A of Procedural Order No. 3, the Parties submitted their document production requests including (a) requests for production to which a Party had initially objected, but finally agreed to produce; and (b) requests for production that require a decision from the Tribunal.
2. Section 15 of Procedural Order No. 1 provides that “[t]he Tribunal shall be guided by Articles 3 and 9 of the International Bar Association Rules on the Taking of Evidence in International Arbitration (2010) (“IBA Rules”) in relation to document production in this case.”
3. The Tribunal has reviewed: (a) the Claimants’ request for document production, the Respondent’s objections and the Claimant’s reply to said objections, which appear in the Redfern Schedule prepared by the Claimants (the “Claimants’ Redfern”); and (b) the Respondent’s request for document production, the Claimants’ objections and the Respondent’s reply to said objections, which appear in the Redfern Schedule prepared by the Respondent (the “Respondent’s Redfern”).
4. In addition to the IBA Rules, the Tribunal has considered Procedural Order No. 1 and the burden of proof.
5. The Tribunal further notes that, in response to a request for clarification made by the Tribunal on June 3, 2021, Claimants submitted a clarification to its Reply to Respondent’s Redfern Schedule. On June 11, 2021, the Respondent submitted its observations on Claimant’s June 4, 2021 clarification.
6. In the Claimants’ June 4, 2021 clarification to its Reply to Respondent’s Redfern Schedule, (a) the Claimants eliminated the reference to privilege and indicated that they did not have documents responsive to the given request, and (b) privilege was claimed only with respect to categories 3 and 7 of Respondent’s Redfern. As to the former, the Tribunal requires confirmation from the Claimants that they searched in good faith for the documents, privileged or not, responsive to the Respondent’s request and found none.
7. The Parties have discussed in general whether electronic documents shall be produced in their native format with metadata intact. The Tribunal will decide on this matter when and if one or both Parties submit a specific request identifying the documents that shall be disclosed with metadata intact.

## **II. DECISION OF THE ARBITRAL TRIBUNAL**

8. In light of the above, after having carefully reviewed the requests for production, objections and replies submitted by the Parties in the Claimants' Redfern and the Respondent's Redfern, and having considered each request in light of the legitimate interest of the other Party, taking into account all the relevant circumstances, including the fundamental principle of the integrity of the arbitral process, the Tribunal decides as indicated for each request in the Claimants' Redfern (Annex A) and the Respondent's Redfern attached to this Procedural Order (Annex B).
9. Claimants must submit the privilege log for category 7 of Respondent's Redfern on or before June 23, 2021.
10. The Tribunal orders Claimants to confirm, on or before June 23, 2021 that as regards categories 1, 4, 8, 9, 10, 11, 13, 14, 17, 21, 22, 24, 26, 27, 28, 29, 30, 37, 38, 41, 42, 44, 47, 49, 50, 52, 58, 59, 60, 61, 63, 64, 65, 66, 67, 69, 72, 74, 75, 77, 82, 83, 84, 85, 86, 87 and 88 of Respondent's Redfern, they conducted a diligent search in good faith and found no documents, whether privileged or not, responsive to such categories.
11. The production of documents ordered by the Tribunal shall take place on July 7, 2021, as provided in Annex A (Procedural Calendar) to Procedural Order No. 3.

On behalf of the Tribunal,

[Signed]

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Mr. Eduardo Zuleta  
President of the Tribunal  
Date: June 16, 2021