IN THE ARBITRATION UNDER CHAPTER TEN OF THE U.S.-COLOMBIA TRADE PROMOTION AGREEMENT AND THE 2021 UNCITRAL ARBITRATION RULES

SEA SEARCH-ARMADA LLC,

Claimant

-and-

THE REPUBLIC OF COLOMBIA,

Respondent.

PCA CASE NO. 2023-37

SECOND SUBMISSION OF THE UNITED STATES OF AMERICA

1. Pursuant to Article 10.20.2 of the U.S.-Colombia Trade Promotion Agreement ("TPA"), Procedural Order No. 4, and the Revised Procedural Calendar (as of 12 February 2025), the United States of America makes this submission on questions of interpretation of the TPA. The United States does not take a position in this submission on how the interpretation offered below applies to the facts of this case, and no inference should be drawn from the absence of comment on any issue not addressed below.[*]

2. The United States hereby reaffirms the views it expressed in its previous non-disputing party submission in this case, dated December 8, 2023, particularly as they relate to the Respondent's objections to the Tribunal's jurisdiction *ratione personae*, *ratione materiae*, *ratione temporis*, and *ratione voluntatis*.

[*] In footnotes to this submission, the symbol ¶ denotes the relevant paragraph(s) of the referenced document and the symbol § denotes the relevant section(s) of the referenced document.

Article 10.22 (Governing Law)

3. As we noted in our previous submission in this arbitration, TPA Article 10.22.1 states in relevant part that "the tribunal shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law."[1] General principles of international law concerning the burden of proof in international arbitration provide that a claimant has the burden of proving its claims, and if a respondent raises any affirmative defenses, the respondent must prove such defenses.[2]

4. In the context of an objection to jurisdiction, the burden is on the claimant to prove the necessary and relevant facts to establish that a tribunal has jurisdiction to hear its claim. Further, it is well-established that where "jurisdiction rests on the existence of certain facts, they have to be proven at the jurisdictional stage."[3] This burden remains on the claimant whenever the tribunal makes that jurisdictional determination, whether it does so as a preliminary matter, as was the case in *Bridgestone v. Panama*,[4] or after full briefing and a hearing on the merits, as in

[1] U.S.-Colombia TPA Art. 10.22.1. Pursuant to Article 10.22.2, the tribunal shall apply applicable rules of international law, along with the law of the respondent, to claims brought under Article 10.16.1(a)(i)(C) if the rules of law are not specified in an investment agreement or otherwise agreed to.

[2] BIN CHENG, GENERAL PRINCIPLES OF INTERNATIONAL LAW AS APPLIED BY INTERNATIONAL COURTS 334 (2006) ("[T]he general principle [is] that the burden of proof falls upon the claimant . . . ."); *Marvin Roy FeldmanKarpa v. United Mexican States*, NAFTA/ICSID Case No. ARB(AF)/99/1, Award ¶ 177 (Dec. 16, 2002) ("[I]t is a generally accepted canon of evidence in civil law, common law and, in fact, most jurisdictions, that the burden of proof rests upon the party, whether complaining or defending, who asserts the affirmative of a claim or defence.") (quoting Appellate Body Report, *United States – Measures Affecting Imports of Woven Wool Shirts and Blouses from India*, at 14, WT/DS33/AB/R (May 23, 1997)).

[3] *Phoenix Action, Ltd. v. Czech Republic*, ICSID Case No. ARB/06/5, Award ¶ 61 (Apr. 15, 2009); *Vito G. Gallo v. Government of Canada*, NAFTA/UNCITRAL PCA Case No. 55798, Award ¶ 277 (Sept. 15, 2011) ("Both parties submit, and the Tribunal concurs, that the maxim 'who asserts must prove,' or *actori incumbit probatio,* applies also in the jurisdictional phase of this investment arbitration: a claimant bears the burden of proving that he has standing and the tribunal has jurisdiction to hear the claims submitted. If jurisdiction rests on the existence of certain facts, these must be proven at the jurisdictional stage . . . ."); *Pac Rim Cayman LLC v. Republic of El Salvador*, ICSID Case No. ARB/09/12, Decision on Jurisdiction ¶ 2.8 (June 1, 2012) (finding "that it is impermissible for the Tribunal to found its jurisdiction on any of the Claimant's CAFTA claims on the basis of an assumed fact (i.e., alleged by the Claimant in its pleadings as regards jurisdiction but disputed by the Respondent). The application of that 'prima facie' or other like standard is limited to testing the merits of a claimant's case at a jurisdictional stage; and it cannot apply to a factual issue upon which a tribunal's jurisdiction directly depends, such as the Abuse of Process, Ratione Temporis and Denial of Benefits issues in this case.").

[4] *Bridgestone Licensing Services, Inc. and Bridgestone Americas, Inc. v. Republic of Panama*, ICSID Case No. ARB/16/34, Decision on Expedited Objections ¶ 118 (Dec. 13, 2017) ("*Bridgestone* Decision on Expedited Objections") (stating that "[w]here an objection as to competence raises issues of fact that will not fall for determination at the hearing of the merits, the Tribunal must definitively determine those issues on the evidence and give a final decision on jurisdiction").

Cortec Mining v. Kenya.[5] As the tribunal in *Bridgestone* explained, the burden of proving the facts necessary to establish jurisdiction remains with the claimant "[b]ecause the Tribunal is making a final finding on this issue," regardless of the stage at which its "final finding" is made.[6]

5. The United States also brings to the Tribunal's attention Decision No. 9 of the TPA Free Trade Commission, issued on January 15, 2025.[7] Article 10.22.3 of the TPA provides that:

> [a] decision of the Commission declaring its interpretation of a provision of this Agreement under Article 20.1.3 (Free Trade Commission) shall be binding on a tribunal, and any decision or award issued by a tribunal must be consistent with that decision.

6. Decision No. 9, which provides joint interpretations for, *inter alia*, articles 10.4, 10.5, and 10.7, was issued expressly pursuant to Article 20.1.3, and therefore is binding on the Tribunal pursuant to Article 10.22.3.

Article 10.4 (Most-Favored Nation Treatment)

7. To establish a breach of Article 10.4, a claimant must establish that it or its investments were accorded "treatment," were in "like circumstances" with investors or investments of a non-

[5] *Cortec Mining Kenya Ltd., Cortec (Pty) Ltd. and Stirling Capital Ltd. v. Republic of Kenya*, ICSID Case No. ARB/15/29, Award ¶ 250 (Oct. 22, 2018) (finding that "[t]he Claimants bear the onus of establishing jurisdiction under the BIT and under the ICSID Convention. The onus includes proof of the facts on which jurisdiction depends").

[6] *Bridgestone* Decision on Expedited Objections ¶ 153; *see also National Gas S.A.E. v. Arab Republic of Egypt*, ICSID Case No. ARB/11/7, Award ¶ 118 (Apr. 3, 2014) ("Such jurisdictional facts are not here subject to any 'prima facie' evidential test; and, in any event, that test would be inapplicable at this stage of the arbitration proceedings where the Claimant (as with the Respondent) had sufficient opportunity to adduce evidence in support of its case on the … jurisdictional issues and for the Tribunal to make final decisions on all relevant disputed facts.").

[7] Decision No. 9 of the Free Trade Commission of the United States-Colombia Trade Promotion Agreement (January 15, 2025) ("Decision No. 9"). As Decision No. 9 was issued after the Claimant's Revised Statement of Claim and Respondent's Statement of Defense, the United States understands that the parties to the dispute have not yet had an opportunity to react to the Decision. The United States hereby reserves its right to address any arguments the parties may raise in the future in response to Decision No. 9, either in a further written non-disputing party submission, or orally at a hearing.

Party, and received treatment "less favorable" than that accorded to investors or investments of a non-Party.[8]

8. A Party does not accord "treatment" within the meaning of Article 10.4 through the existence or substantive content of provisions in its other international agreements such as conditions to consent, procedural provisions, umbrella clauses, or clauses that impose autonomous fair and equitable treatment standards.[9] However, treatment accorded by a Party could include measures adopted or maintained by a Party in connection with carrying out its obligations under such provisions.[10]

Annex 10-A (Customary International Law)

9. Annex 10-A to the U.S.-Colombia TPA addresses the methodology for determining whether a customary international law rule covered by Article 10.5 has crystallized. To establish a breach of Article 10.5, a claimant must establish first, the existence and applicability of a relevant rule of customary international law that results from a general and consistent practice of States that they follow from a sense of legal obligation ("State practice and *opinio juris*"), and second, that a Party has engaged in conduct that violates that rule. Nothing in the Agreement delegates to arbitral tribunals the authority to develop the content of customary international law,

[8] Decision No. 9 ¶ 2(a). This binding interpretation provided by the Free Trade Commission is consistent with long-held U.S. interpretations of the most-favored-nation treatment provisions of its free trade agreements and trade promotion agreements, including the U.S.-Colombia TPA. *See, e.g.*, *Vercara, LLC (formerly Security Services, LLC, formerly Neustar, Inc.) v. Republic of Colombia*, ICSID Case. No. ARB/20/7, Submission of the United States of America, ¶¶ 20-23 (May 13, 2022) ("*Neustar* Submission of the United States"); *Angel Samuel Seda and others v. Republic of Colombia*, ICSID Case No. ARB/19/6, Submission of the United States of America, ¶¶ 55-56 (Feb. 26. 2021) ("*Seda* Submission of the United States"); *see also Riverside Coffee, LLC v. Republic of Nicaragua*, CAFTA/ICSID Case No. ARB/21/16, Submission of the United States of America, ¶¶ 2-3 (March 15, 2024) ("*Riverside Coffee* Submission of the United States") (interpreting identical language in the CAFTA-DR); *Sargeant Petroleum LLC v. Dominican Republic*, CAFTA/ICSID Case No. ARB(AF)/22/1, Submission of the United States of America, ¶¶ 18-19 (Nov. 9, 2023) ("*Sargeant Petroleum* Submission of the United States") (same); *Gramercy Funds Management LLC, and Gramercy Peru Holdings LLC v. The Republic of Peru*, ICSID Case No. UNCT/18/2, Submission of the United States of America, ¶ 55 (June 21, 2019) ("*Gramercy Funds* Submission of the United States") (interpreting similar language in the U.S.-Peru TPA).

[9] Decision No. 9 ¶ 2(b). This binding interpretation provided by the Free Trade Commission is consistent with long-held U.S. interpretations of the most-favored-nation treatment provisions of its free trade agreements and trade promotion agreements, including the U.S.-Colombia TPA. *See, e.g.*, *Neustar* Submission of the United States, ¶ 23; *see also Riverside Coffee* Submission of the United States, ¶ 5 (interpreting identical language in the CAFTA-DR); *Sargeant Petroleum* Submission of the United States, ¶ 21 (same).

[10] *Id.*

which must be determined solely through a thorough examination of State practice and *opinio juris*.[11]

10. Examples of State practice may include relevant national court decisions or domestic legislation dealing with the particular issue alleged to be the norm of customary international law, as well as official declarations by relevant State actors on the subject.[12] Decisions of international courts and arbitral tribunals interpreting "fair and equitable treatment" as a concept of customary international law are not themselves instances of State practice for purposes of evidencing customary international law, although such decisions can be relevant for determining State practice when they include an examination of such practice.[13]

Article 10.5 (Minimum Standard of Treatment)

11. Article 10.5 does not currently require States to provide the same level of due process rights in administrative decision-making as in judicial proceedings. The concepts of legitimate expectations, transparency, and good faith are also not currently component elements of "fair and equitable treatment" subject to Article 10.5. The mere fact that a Party takes or fails to take an action that may be inconsistent with an investor's expectations does not constitute a breach of

[11] Decision No. 9 ¶ 3(a)(i). This binding interpretation provided by the Free Trade Commission is consistent with long-held U.S. interpretations of the minimum standard of treatment and customary international law provisions of its free trade agreements and trade promotion agreements, including the U.S.-Colombia TPA. *See, e.g., Neustar* Submission of the United States, ¶¶ 26-30; *Seda* Submission of the United States, ¶¶ 33-37; *see also Riverside Coffee* Submission of the United States, ¶¶ 11-14 (interpreting similar language in the CAFTA-DR); *Latam Hydro LLC et al. v. Republic of Peru*, ICSID Case No. ARB/19/28, Submission of the United States of America, ¶¶ 19-24 (Nov. 19, 2021) ("*Latam Hydro* Submission of the United States") (interpreting identical language in the U.S.-Peru TPA); *Gramercy Funds* Submission of the United States, ¶¶ 32-35 (same).

[12] Decision No. 9 ¶ 3(a)(ii). This binding interpretation provided by the Free Trade Commission is consistent with long-held U.S. interpretations of the minimum standard of treatment and customary international law provisions of its free trade agreements and trade promotion agreements, including the U.S.-Colombia TPA. *See, e.g., Neustar* Submission of the United States, ¶ 27; *Seda* Submission of the United States, ¶¶ 33-37; *see also Riverside Coffee* Submission of the United States, ¶¶ 11-14 (interpreting similar language in the CAFTA-DR); *Latam Hydro* Submission of the United States, ¶¶ 19-24 (interpreting identical language in the U.S.-Peru TPA); *Gramercy Funds* Submission of the United States, ¶ 33 (same).

[13] Decision No. 9 ¶ 3(a)(ii). This binding interpretation provided by the Free Trade Commission is consistent with long-held U.S. interpretations of the minimum standard of treatment and customary international law provisions of its free trade agreements and trade promotion agreements, including the U.S.-Colombia TPA. *See, e.g., Neustar* Submission of the United States, ¶ 30; *Seda* Submission of the United States, ¶ 37; *see also Latam Hydro* Submission of the United States, ¶ 22 (interpreting identical language in the U.S.-Peru TPA); *Ballantine v. The Dominican Republic*, PCA Case No. 2016-17, Submission of the United States of America, ¶ 25 (July 6, 2018) ("*Ballantine* Submission of the United States) (interpreting identical language in the CAFTA-DR).

Article 10.5, even if there is loss or damage to the covered investment as a result; instead, something more is required.[14] Non-discrimination is also not currently a component element of "fair and equitable treatment" subject to Article 10.5 outside the context of discriminatory takings and discriminatory access to judicial remedies or treatment by the courts.[15] Arbitral tribunals may continue to examine State practice and *opinio juris* that can be relied upon to determine whether a customary international law rule covered by Article 10.5 has crystallized.[16]

12. The United States is also unaware of State practice or *opinio juris* supporting an assertion that the minimum standard of treatment under customary international law prohibits, without more, acts that could generally be described as "arbitrary" or "unreasonable."[17] Pursuant to Annex 10-A, it is the Claimant's burden to establish the existence and applicability of a relevant rule of customary international law that results from a general and consistent practice of States that they follow from a sense of legal obligation.

[14] Decision No. 9 ¶ 3(b). This affirmation provided by the Free Trade Commission is consistent with long-held U.S. interpretations of the minimum standard of treatment under customary international law. *See, e.g.*, *Neustar* Submission of the United States, ¶¶ 32-33; *Seda* Submission of the United States, ¶¶ 39-40; *see also Espiritu Santo Holdings, LP et al. v. United Mexican States*, NAFTA/ICSID Case No. ARB/20/13, Submission of the United States ¶¶ 22-23 (March 21, 2023) ("*Espiritu* Submission of the United States") (interpreting similar language in the NAFTA); *Latam Hydro* Submission of the United States, ¶¶ 26-27 (interpreting identical language in the U.S.-Peru TPA); *Ballantine* Submission of the United States, ¶ 23 (interpreting identical language in the CAFTA-DR).

[15] Decision No. 9 ¶ 3(b). This affirmation provided by the Free Trade Commission is consistent with long-held U.S. interpretations of the minimum standard of treatment under customary international law. *See, e.g.*, *Neustar* Submission of the United States, ¶ 36; *Seda* Submission of the United States, ¶ 41; *see also Espiritu* Submission of the United States ¶ 24 (interpreting similar language in the NAFTA); *Latam Hydro* Submission of the United States, ¶ 30 (interpreting identical language in the U.S.-Peru TPA); *Ballantine* Submission of the United States, ¶ 24 (interpreting identical language in the CAFTA-DR).

[16] Decision No. 9 ¶ 3(b). This affirmation provided by the Free Trade Commission is consistent with long-held U.S. interpretations of the minimum standard of treatment under customary international law. *See, e.g.*, *Neustar* Submission of the United States, ¶¶ 26-27; *Seda* Submission of the United States, ¶¶ 33-34; *see also Riverside Coffee* Submission of the United States, ¶¶ 11-12 (interpreting similar language in the CAFTA-DR); *Latam Hydro* Submission of the United States, ¶¶ 19-20 (interpreting identical language in the U.S.-Peru TPA); *Gramercy Funds* Submission of the United States, ¶¶ 32-33 (same).

[17] *See, e.g. Glamis Gold, Ltd. v. United States of America,* NAFTA/UNCITRAL, Counter-Memorial of Respondent United States of America, at 216, 227 (Sept. 19, 2006) (rejecting claimant's assertion that the minimum standard of treatment under customary international law requires a State to "refrain from acting in an arbitrary or unjust manner"); *ADF Group, Inc. v. United States of America*, ICSID Case No. ARB(AF)/00/01, Post-Hearing Submission of Respondent United States of America on Article 1105(1) and *Pope & Talbot*, at 21-22 (June 27, 2002) (distinguishing the treaty at issue in the ICJ's decision in *ELSI*, which included an express reference to "arbitrary" conduct, from the provision in the NAFTA requiring the minimum standard of treatment under customary international law).

13. The obligation at Article 10.5.2(b) to "provide the level of police protection required under customary international law" does not require a Party to prevent economic injury inflicted by third parties, provide for legal security, provide for stability of a Party's legal environment, or guarantee that aliens or their investments are not harmed under any circumstances.[18]

Article 10.7 (Expropriation and Compensation) and Annex 10-B (Expropriation)

14. Article 10.7 of the TPA provides that no Party may expropriate or nationalize a covered investment (directly or indirectly) except for a public purpose; in a non-discriminatory manner; on payment of prompt, adequate and effective compensation; and in accordance with due process of law. If an expropriation does not conform to each of the specific conditions set forth in Article 10.7.1, paragraphs (a) through (d), it constitutes a breach of Article 10.7. Any such breach requires compensation in accordance with Article 10.7.2.[19]

15. As the *Glamis* tribunal recognized in interpreting similar language in the NAFTA, the term expropriation "incorporates by reference the customary international law regarding that subject."[20] In this connection, it is a principle of customary international law that in order for there to have been an expropriation, a property right or property interest must have been taken.[21] As such, and given that Article 10.7 protects "investments" from expropriation, the first

[18] Decision No. 9 ¶ 3(d). This affirmation provided by the Free Trade Commission is consistent with long-held U.S. interpretations of the minimum standard of treatment under customary international law. *See, e.g.*, *Seda* Submission of the United States, ¶¶ 43-44; *see also B-Mex LLC v. United Mexican States*, NAFTA/ICSID Case No. ARB(AF)/16/3, Fourth Submission of the United States of America, ¶¶ 48-49 (June 13, 2022) (interpreting similar language in the NAFTA); *Lion Mexico Consolidated L.P. v. United Mexican States*, ICSID Case No. ARB(AF)/15/2, Submission of the United States of America, ¶ 17 (June 21, 2019) (same); *Daniel W. Kappes and Kappes et al. v. Republic of Guatemala*, CAFTA/ICSID Case No. ARB/18/43, Submission of the United States of America, ¶ 23 (Feb. 19, 2021) (interpreting identical language in the CAFTA-DR).

[19] As the tribunal in *British Caribbean Bank v. Belize* confirmed with respect to very similar treaty language: "at no point does the Treaty, being a *lex specialis*, distinguish between lawful and unlawful expropriation. . . . Once the violation of the Treaty provisions regarding expropriation is established, the State has breached the Treaty." The tribunal, noting that the language "specifically negotiated" by the treaty parties required that compensation "*shall* amount to the . . . fair market value of the investment expropriated before the expropriation," found no room for interpreting this language to allow for another standard of compensation in the event of a breach. *British Caribbean Bank Ltd. v. Government of Belize*, PCA Case No. 2010-18, Award ¶¶ 260-62 (Dec. 19, 2014) (emphasis added).

[20] *Glamis Gold, Ltd. v. United States of America*, NAFTA/UNCITRAL, Award ¶ 354 (June 8, 2009) ("*Glamis Gold* Award").

[21] *See, e.g.*, Rosalyn Higgins, *The Taking of Property by the State: Recent Developments in International Law*, 176 R.C.A.D.I. 259, 272 (1982) ("Higgins") ("[O]nly *property* deprivation will give rise to compensation.") (emphasis

step in any expropriation analysis must be an examination of whether there is an investment capable of being expropriated. It is necessary to look to the law of the host State[22] for a determination of the definition and scope of the alleged property right or property interest at issue, including any applicable limitations.[23]

16. In addition, whether an action or series of actions by a Party constitutes an expropriation shall be determined in accordance with Article 10.7.1 and Annex 10-B (Expropriation). With respect to Paragraph 3(a)(i) of Annex 10-B, for an expropriation claim to succeed, the claimant must demonstrate that the government measure at issue destroyed all, or virtually all, of the economic value of its investment, or interfered with it to such a similar extent and so restrictively as to support a conclusion that the property has been taken from the owner.[24]

17. With respect to Paragraph 3(a)(ii) of Annex 10-B, whether an investor's investment-backed expectations are reasonable depends, to the extent relevant, on factors such as whether

---

in original); Rudolf Dolzer, *Indirect Expropriation of Alien Property*, ICSID REVIEW: FOREIGN INV. L.J. 41, 41 (1986) ("Once it is established in an expropriation case that the object in question amounts to 'property,' the second logical step concerns the identification of 'expropriation.'"); *Glamis Gold* Award ¶ 356 ("There is for all expropriations, however, the foundational threshold inquiry of whether the property or property right was in fact taken."). This principle of customary international law is reflected in 2012 U.S. Model BIT, ann. B (*Expropriation*) ¶ 2.

[22] *See, e.g.*, Higgins 270 (for a definition of "property . . . [w]e necessarily draw on municipal law sources"); Campbell McLachlan et al., *Expropriation*, INTERNATIONAL INVESTMENT ARBITRATION: SUBSTANTIVE PRINCIPLES ¶ 8.64 (2d ed. 2017) ("The property rights that are the subject of protection under the international law of expropriation are created by the host State law. Thus, it is for the host State law to define the nature and extent of property rights that a foreign investor can acquire."); *EnCana Corporation v. Republic of Ecuador*, UNCITRAL, LCIA Case No. UN3481, Award ¶ 184 (Feb. 3, 2006) ("[F]or there to have been an expropriation of an investment or return (in a situation involving legal rights or claims as distinct from the seizure of physical assets) the rights affected must exist under the law which creates them . . . .").

[23] *See Glamis Gold Ltd. v. United States of America*, NAFTA/UNCITRAL, Rejoinder of Respondent United States of America, at 11 (Mar. 15, 2007) (agreeing with expert report of Professor Wälde that in an instance where property rights are subject to legal limitations existing at the time the property rights are acquired, any subsequent burdening of property rights by such limitations does not constitute an impairment of the original property interest).

[24] Decision No. 9 ¶ 4(a)-(b). This binding interpretation provided by the Free Trade Commission is consistent with long-held U.S. interpretations of the expropriation provisions of its free trade agreements and trade promotion agreements, including the U.S.-Colombia TPA. *See, e.g.*, *Seda* Submission of the United States ¶¶ 24-25; *see also Riverside Coffee* Submission of the United States ¶¶ 26-27 (interpreting identical language in the CAFTA-DR); *Sargeant Petroleum* Submission of the United States ¶¶ 44-45 (same); *Espiritu* Submission of the United States ¶ 32 (interpreting similar language in the NAFTA); *Italba Corporation v. The Oriental Republic of Uruguay*, ICSID Case No. ARB/16/9, Submission of the United States of America, ¶ 33 (September 11, 2017) ("*Italba* Submission of the United States") (interpreting similar language in the U.S.-Uruguay BIT).

the government provided the investor with binding written assurances and the nature and extent of governmental regulation or the potential for government regulation in the relevant sector.[25]

Respectfully submitted,

Lisa J. Grosh
Assistant Legal Adviser
John D. Daley
Deputy Assistant Legal Adviser
David M. Bigge
Chief of Investment Arbitration
Matthew S. Hackell
Jennifer E. Marcovitz
Attorney-Advisers
Office of International Claims and
Investment Disputes
UNITED STATES DEPARTMENT OF STATE
Washington, D.C. 20520

March 7, 2025

[25] Decision No. 9 ¶ 4(c). This binding interpretation provided by the Free Trade Commission is consistent with long-held U.S. interpretations of the expropriation provisions of its free trade agreements and trade promotion agreements, including the U.S.-Colombia TPA. *See, e.g.*, *Seda* Submission of the United States ¶ 26; *see also Riverside Coffee* Submission of the United States ¶ 28 (interpreting identical language in the CAFTA-DR); *Sargeant Petroleum* Submission of the United States ¶ 46 (Nov. 10, 2023) (same); *Espiritu* Submission of the United States ¶ 33 (interpreting similar language in the NAFTA); *Italba* Submission of the United States, ¶ 34 (interpreting similar language in the U.S.-Uruguay BIT).