IN THE ARBITRATION UNDER CHAPTER TEN OF THE
DOMINICAN REPUBLIC—CENTRAL AMERICA—UNITED STATES FREE TRADE AGREEMENT
AND THE ICSID ARBITRATION RULES
BETWEEN

RAILROAD DEVELOPMENT CORPORATION

Claimant/Investor,

-and-

THE REPUBLIC OF GUATEMALA,

Respondent/Party.

ICSID Case No. ARB/07/23

SUBMISSION OF THE UNITED STATES OF AMERICA

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1. Pursuant to Article 10.20.2 of the Dominican Republic-Central America-United States Free Trade Agreement ("CAFTA-DR"), the United States of America makes this submission on a question of interpretation of the Agreement. The United States does not take a position, in this submission, on how the interpretation it offers 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. CAFTA-DR Article 10.5(1) requires that each Party "accord to covered investments treatment in accordance with customary international law, including fair and equitable treatment and full protection and security." CAFTA-DR Article 10.5(2) specifies that, "[f]or greater certainty, paragraph 1 prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to covered investments. The concepts of 'fair and equitable treatment' and 'full protection and security' do not require treatment in addition to or beyond that which is required by that standard, and do not create additional substantive rights." In CAFTA-DR Annex 10-B, "[t]he Parties confirm[ed] their shared understanding that 'customary international law' generally and as specifically referenced in Article[] 10.5 . . . results from a general and consistent practice of States that they follow from a sense of legal obligation."

3. These provisions demonstrate the CAFTA-DR Parties' express intent to incorporate the minimum standard of treatment required by customary international law as the standard for treatment in CAFTA-DR Article 10.5. Furthermore, they express an intent to guide the interpretation of that Article by the Parties' understanding of customary international law, *i.e.,* the law that develops from the practice and *opinio juris* of States themselves, rather than by interpretations of similar but differently worded treaty provisions. The burden is on the claimant to establish the existence and applicability of a relevant obligation under customary international law that meets these requirements.

Respectfully submitted,

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