

5. For the purposes of this Article, direct expropriation occurs where an investment is nationalised or otherwise directly expropriated through formal transfer of title or outright seizure and indirect expropriation results from a measure or series of measures of a Party that have an effect equivalent to direct expropriation without formal transfer of title or outright seizure.

In the context of a any dispute arising under Section C, the determination of whether a measure or series of measures of a Party constitute an indirect expropriation shall be determined through a case-by-case, fact-based inquiry that shall consider, among other factors:

- (a) the economic impact of the measure or series of measures, although the sole fact that a measure or series of measures of a Party has an adverse effect on the economic value of an investment shall not establish that an indirect expropriation has occurred;
- (b) the extent to which the measure or series of measures interfere with distinct, reasonable investment-backed expectations; and
- (c) the character of the measure or series of measures.

Except in rare circumstances, such as when a measure or series of measures are so severe in the light of their purpose that they cannot be reasonably viewed as having been adopted and applied in good faith, non-discriminatory measures of a Party that are designed and applied to protect legitimate public welfare objectives, such as health, safety and the environment, do not constitute indirect expropriation.

6. This Article shall not apply to the issuance of compulsory licenses granted in relation to intellectual property rights, or to the revocation, limitation or creation of intellectual property rights, to the extent that such issuance, revocation, limitation or creation is consistent with applicable international trade agreements to which both Parties are party.