

ANNEX B.10

Expropriation

The Parties confirm their shared understanding that:

- (a) indirect expropriation results from a measure or a series of measures of a Party that has an effect equivalent to direct expropriation without formal transfer of title or outright seizure;
- (b) the determination of whether a measure or a series of measures of a Party constitutes an indirect expropriation requires a case-by-case, fact-based inquiry that considers, among other factors:
 - (i) the economic impact of the measure or the series of measures, although the sole fact that a measure or a series of measures of a Party have an adverse effect on the economic value of an investment does not establish that an indirect expropriation has occurred,
 - (ii) the extent to which the measure or the series of measures interferes with distinct, reasonable investment-backed expectations, and
 - (iii) the character of the measure or the series of measures;
- (c) except in rare circumstances, such as when a measure or a series of measures is so severe in the light of its purpose that it cannot be reasonably viewed as having been adopted and applied in good faith, a non-discriminatory measure of a Party that is designed and applied to protect legitimate public welfare objectives, such as health, safety and the environment, does not constitute indirect expropriation.