

UNDERSTANDING ON EXPROPRIATION

The Parties confirm their common understanding on expropriation:

1. Expropriation as referred to in paragraph 1 of Article 2.7 (Expropriation) may be either direct or indirect as follows:
 - (a) direct expropriation occurs if an investment is nationalised or otherwise directly expropriated through formal transfer of title or outright seizure; and
 - (b) indirect expropriation occurs if a measure or series of measures by a Party has an effect equivalent to direct expropriation, in that it substantially deprives the investor of the fundamental attributes of property in its investment including the right to use, enjoy and dispose of its investment, without formal transfer of title or outright seizure.

2. The determination of whether a measure or series of measures by a Party, in a specific factual situation, constitutes an indirect expropriation requires a case-by-case, fact-based inquiry that considers, *inter alia*:
 - (a) the economic impact of the measure or series of measures, although the fact that a measure or series of measures by a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that such an expropriation has occurred;
 - (b) the duration of the measure or series of measures or of its effects; and
 - (c) the character of the measure or series of measures, in particular its object, context and intent.

3. Non-discriminatory measures or series of measures by a Party that are designed to protect legitimate public policy objectives do not constitute indirect expropriation, except in the rare circumstances where the impact of such measure or series of measures is so severe in light of its purpose that it appears manifestly excessive.
