

ANNEX A EXPROPRIATION

The Parties confirm their shared understanding that:

1. A measure or a series of measures by a Party cannot constitute an expropriation unless it interferes with a tangible or intangible property right or property interest in an investment.
2. Article 8.1 addresses two situations. The first is direct expropriation, where an investment is nationalized or otherwise directly expropriated through formal transfer of title or outright seizure.
3. The second situation addressed by Article 8.1 is indirect expropriation, where a measure or series of measures by a Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.
 - (a) The determination of whether a measure or series of measures by a Party, in a specific fact situation, constitutes an indirect expropriation, requires a case-by-case, fact-based inquiry that considers, among other factors:
 - (i) the economic impact of the measure, 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 an indirect expropriation has occurred;
 - (ii) the extent to which the measure interferes with distinct, reasonable investment-backed expectations; and
 - (iii) the character of the measure.
 - (b) Except in rare circumstances, non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as public health, safety, and the environment, do not constitute indirect expropriations.