Annex 12
Referred to in Chapter 14 (Investment)

EXPROPRIATION

1. An action or a series of actions by a Party cannot constitute an expropriation unless it interferes with a tangible or intangible property right or property interest in an investment.

2. Paragraph 1 of Article 14.11 (Investment - Expropriation and Compensation) addresses two situations:

(a) direct expropriation, where an investment is nationalised or otherwise directly expropriated through formal transfer of title or outright seizure; and

(b) indirect expropriation, where an action or series of actions by a Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.

3. The determination of whether an action or series of actions 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:

(a) the economic impact of the government action, although the fact that an action or series of actions 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;

(b) the extent to which the government action interferes with distinct, reasonable investment-backed expectations; and

(c) the character of the government action, including its objectives.

4. Except in rare circumstances, such as when an action or a series of actions by a Party is so severe in light of its purpose that it cannot be reasonably viewed as having been

applied in good faith, non-discriminatory regulatory actions designed and applied by the Party for the purpose of legitimate public welfare objectives, such as the protection of public health, safety, and the environment, do not constitute indirect expropriation.