Annex 10
referred to in Chapter 10

Expropriation

1. The Parties confirm their shared understanding that paragraph 1 of Article 10.9 addresses the following two situations:

(a) the first situation is direct expropriation, where investments are nationalized or otherwise directly expropriated through formal transfer of title or outright seizure; and

(b) the second situation is indirect expropriation, where a measure or series of measures of a Party has an effect equivalent to direct expropriation 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 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 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;

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

(c) the character of the measure, including its objectives.

3. Except in such circumstances as when a measure or 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, non-discriminatory measures of a Party that are designed and applied to protect legitimate public welfare objectives do not constitute indirect expropriation.