

ANNEX 12-A
CUSTOMARY INTERNATIONAL LAW

The Parties confirm their shared understanding that “customary international law” generally and as specifically referenced in Article 12.5 results from a general and consistent practice of states that they follow from a sense of legal obligation. With regard to Article 12.5, the customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the economic rights and interests of aliens.

ANNEX 12-B EXPROPRIATION

The Parties confirm their shared understanding that:

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 in a covered investment.
2. Article 12.9.1 addresses two situations. The first is direct expropriation, where investments are nationalized or otherwise directly expropriated through formal transfer of title or outright seizure.
3. The second situation is indirect expropriation, where an action or a series of actions by a Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.
 - (a) The determination of whether an action or a 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,:
 - (i) the economic impact of the action or series of actions, although the fact that such action or series of actions has an adverse effect on the economic value of investments, standing alone, does not establish that an indirect expropriation has occurred;
 - (ii) the extent to which the action or series of actions interferes with distinct and reasonable expectations arising out of investments; and
 - (iii) the character and objectives of the action or series of actions, including whether such action is proportionate to its objectives.
 - (b) Except in rare circumstances, such as when an action or a series of actions by a Party is extremely severe or disproportionate in light of its purpose, non-discriminatory regulatory actions adopted by the Party for the purpose of legitimate public welfare do not constitute indirect expropriation.

ANNEX 12-C TRANSFERS

1. Nothing in this Chapter, Chapter 8 (Trade in Services), or Chapter 9 (Financial Services) shall be construed to prevent a Party from adopting or maintaining temporary safeguard measures with regard to payments and capital movements:

- (a) in the event of serious balance of payments or external financial difficulties or threat thereof; or
- (b) where, in exceptional circumstances, payments and capital movements cause or threaten to cause serious difficulties for the operation of monetary policy or exchange rate policy in either Party.

2. The measures referred to in paragraph 1:

- (a) shall not exceed a period of one year; however, if extremely exceptional circumstances arise such that a Party seeks to extend such measures, the Party will coordinate in advance with the other Party concerning the implementation of any proposed extension;
- (b) shall be consistent with the Articles of the *Agreement of the International Monetary Fund*;
- (c) shall not exceed those necessary to deal with the circumstances described in paragraph 1;
- (d) shall avoid unnecessary damage to the commercial, economic, or financial interests of the Parties;
- (e) shall not otherwise interfere with investors' ability to earn a market rate of return in the territory of the Party on any restricted assets;
- (f) shall be temporary and phased out progressively as the situation described in paragraph 1 improves;
- (g) shall not be confiscatory;
- (h) shall promptly be notified to the other Party;

- (i) are applied in a manner consistent with Articles 12.3 and 8.4 (National Treatment) and Articles 12.4 subject to the Schedule of Specific Commitments; and
- (j) shall not constitute a dual or multiple exchange rate practice.

3. Nothing in this Chapter, Chapter 8 (Trade in Services) or Chapter 9 (Financial Services) shall be regarded to affect the rights enjoyed and obligations undertaken by a Party as a party to the Articles of the *Agreement of the International Monetary Fund*.