

ANNEX 8-A

EXPROPRIATION

The Parties confirm their shared understanding that:

1. Expropriation may be direct or indirect:
 - (a) direct expropriation occurs when 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 of 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 of a Party, in a specific fact situation, constitutes an indirect expropriation requires a case-by-case, fact-based inquiry that takes into consideration, among other factors:
 - (a) the economic impact of the measure or series of measures, although the sole fact that a measure or series of measures of a Party has an adverse effect on the economic value of an investment does not establish that an indirect expropriation has occurred;
 - (b) the duration of the measure or series of measures of a Party;
 - (c) the extent to which the measure or series of measures interferes with distinct, reasonable investment-backed expectations; and
 - (d) the character of the measure or series of measures, notably their object, context and intent.
 3. For greater certainty, except in the rare circumstance when the impact of a measure or series of measures is so severe in light of its purpose that it appears manifestly excessive, non-discriminatory measures of a Party that are designed and applied to protect legitimate public welfare objectives, such as health, safety and the environment, do not constitute indirect expropriations.
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ANNEX 8-B

PUBLIC DEBT

1. For the purposes of this Annex:

negotiated restructuring means the restructuring or rescheduling of debt of a Party that has been effected through

- (a) a modification or amendment of debt instruments, as provided for under their terms, including their governing law, or
- (b) a debt exchange or other similar process in which the holders of no less than 75 per cent of the aggregate principal amount of the outstanding debt subject to restructuring have consented to such debt exchange or other process; and

governing law of a debt instrument means a jurisdiction's laws applicable to that debt instrument.

2. No claim that a restructuring of debt of a Party breaches an obligation under Sections C and D may be submitted, or if already submitted continue, under Section F if the restructuring is a negotiated restructuring at the time of submission, or becomes a negotiated restructuring after such submission, except for a claim that the restructuring violates Article 8.6 or 8.7.
3. Notwithstanding Article 8.22.1(b) and subject to paragraph 2, an investor of a Party may not submit a claim under Section F that a restructuring of debt of a Party breaches an obligation under Sections C and D (other than Article 8.6 or 8.7) ⁽¹⁾ unless 270 days have elapsed from the date of submission by the claimant of the written request for consultations pursuant to Article 8.19.
4. For greater certainty, **debt of a Party** means a debt instrument of any level of government of a Party.

⁽¹⁾ For greater certainty, mere differences in treatment accorded by a Party to certain investors or investments on the basis of legitimate policy objectives in the context of a debt crisis or threat thereof, including those differences in treatment resulting from eligibility for debt restructuring, do not amount to a breach of Article 8.6 or 8.7.

ANNEX 8-C

EXCLUSIONS FROM DISPUTE SETTLEMENT

A decision by Canada following a review under the *Investment Canada Act*, R.S.C. 1985, c. 28 (1st Supp.), regarding whether or not to permit an investment that is subject to review, is not subject to the dispute settlement provisions under Section F, or to Chapter Twenty-Nine (Dispute Settlement). For greater certainty, this exclusion is without prejudice to the right of a Party to have recourse to Chapter Twenty-Nine (Dispute Settlement) with respect to the consistency of a measure with a Party's reservations, as set out in the Party's Schedule to Annexes I, II or III, as appropriate.

ANNEX 8-D

JOINT DECLARATION CONCERNING ARTICLE 8.12.6

Mindful that the Tribunal for the resolution of investment disputes between investors and states is meant to enforce the obligations referred to in Article 8.18.1, and is not an appeal mechanism for the decisions of domestic courts, the Parties recall that the domestic courts of each Party are responsible for the determination of the existence and validity of intellectual property rights. The Parties further recognise that each Party shall be free to determine the appropriate method of implementing the provisions of this Agreement regarding intellectual property within their own legal system and practice. The Parties agree to review the relation between intellectual property rights and investment disciplines within three years after entry into force of this Agreement or at the request of a Party. Further to this review and to the extent required, the Parties may issue binding interpretations to ensure the proper interpretation of the scope of investment protection under this Agreement in accordance with the provisions of Article 8.31.3.

*ANNEX 8-E***JOINT DECLARATION ON ARTICLES 8.16, 9.8, AND 28.6**

With respect to Articles 8.16, 9.8 (Denial of benefits) and 28.6 (National security), the Parties confirm their understanding that measures that are 'related to the maintenance of international peace and security' include the protection of human rights.

ANNEX 8-F

DECLARATION BY CANADA ON THE INVESTMENT CANADA ACT

Canada will increase the threshold for review under the *Investment Canada Act*, R.S.C. 1985, c. 28 (1st Supp.) ('ICA') to CAD \$1.5 billion once this Agreement is implemented.

Any future amendments to the ICA would be subject to the requirement that such amendments could not decrease the conformity of the ICA with the investment obligations of this Agreement.

As set out in Canada's ICA reservation (Annex I-C-1), the higher threshold will apply to an acquisition of a Canadian enterprise by an investor of the European Union that is not a state enterprise. The determination of whether the acquirer is an investor of the European Union would be based on whether a national of the European Union controls the acquirer in law, or in the absence of a majority ownership, whether nationals of the European Union control the acquirer in fact such as through the ownership of voting interests or through the nationality of members of the board of directors. Moreover, enterprises of the European Union that are controlled by nationals from Canada's existing Free Trade Agreement partners with which Canada has taken investment commitments would also benefit from the higher threshold.

Canada will amend its ICA to provide for the changes necessary for the higher review threshold stated above upon the entry into force of this Agreement.
