

U.S. Model BIT (1984)	U.S./ Uruguay BIT (2004)
<p>Fair & Equitable Treatment/ CIL: Article II(2)</p> <p>Investments shall at all times be accorded fair and equitable treatment, shall enjoy full protection and security and shall in no case be accorded treatment less than that required by international law. Neither Party shall in any way impair by arbitrary and discriminatory measures the management, operation, maintenance, use, enjoyment, acquisition, expansion, or disposal of investments. Each Party shall observe any obligation it may have entered into with regard to investments.</p>	<p>Fair & Equitable Treatment/ CIL: Article 5(1), (2), (3) & Annex A</p> <ol style="list-style-type: none"> 1. Each Party shall accord to covered investments treatment in accordance with customary international law, including fair and equitable treatment and full protection and security. 2. For greater certainty, paragraph 1 prescribes the customary international law minimum standard of treatment or aliens as the minimum standard of treatment to be afforded to covered investments. The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by that standard, and do not create additional substantive rights. The obligation in paragraph 1 to provide: <ol style="list-style-type: none"> (a) "fair and equitable treatment" includes the obligation not to deny justice in criminal, civil, or administrative adjudicatory proceedings in accordance with the principle of due process embodied in the principal legal systems of the world; and (b) "full protection and security" requires each Party to provide the level of police protection required under customary international law. 3. A determination that there has been a breach of another provision of this Treaty, or of a separate international agreement, does not establish that there has been a breach of this Article. <p><u>ANNEX A – Customary International Law</u></p> <p>The Parties confirm their shared understanding that "customary international law" generally and as specifically referenced in Article 5 and Annex B results from a general and consistent practice of States that they follow from a sense of legal obligation. With regard to Article 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.</p>
<p>Expropriations: Article III(1)</p> <p>Investments shall not be expropriated or nationalized either directly or indirectly through measures tantamount to expropriation or nationalization ("expropriation") except for a public purpose; in a non-discriminatory manner; upon payment of prompt, adequate and effective compensation; and in accordance with due process of law and the general principles of treatment provided for in Article II (2). Compensation shall be equivalent to fair market value of the expropriated investment immediately before the expropriatory action was taken or became known; include interest at a commercially reasonable rate from the date of expropriation; be paid without delay; be fully realizable; and be freely transferable at the prevailing market rate of exchange on the date of expropriation.</p>	<p>Expropriations: [comparable to old, but adds Annex B]</p> <p><u>ANNEX B – Expropriation</u></p> <p>The Parties confirm their shared understanding that:</p> <ol style="list-style-type: none"> 1. Article 6(1) is intended to reflect customary international law concerning the obligation of States with respect to expropriation. 2. 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. 3. Article 6(1) addresses two situations. The first is known as direct expropriation, where an investment is nationalized or otherwise directly expropriated through formal transfer of title or outright seizure. 4. The second situation addressed by Article 6(1) is known as 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. <ol style="list-style-type: none"> (a) 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: <ol style="list-style-type: none"> (i) 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; (ii) the extent to which the government action interferes with distinct, reasonable investment-backed expectations; and

	<p>(iii) the character of the government action.</p> <p>(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.</p>
<p>Exceptions: Article X(1)</p>	<p>Exceptions: Article 18</p>
<p>This Treaty shall not preclude the application by either Party of measures necessary for the maintenance of public order, the fulfillment of its obligations with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests.</p>	<p>Nothing in this Treaty shall be construed:</p> <ol style="list-style-type: none"> 1. to require a Party to furnish or allow access to any information the disclosure of which it determines to be contrary to its essential security interests; or 2. to preclude a Party from applying measures that it considers necessary for the fulfillment of its obligations with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests. <p><i>New Exceptions:</i> <u>Financial Services: Article 20(1)</u></p> <p>Notwithstanding any other provision of this Treaty, a Party shall not be prevented from adopting or maintaining measures relating to financial services for prudential reasons, including for protection of investors, depositors, policy holders, or persons to whom a fiduciary duty is owed by a financial services suppliers, or to ensure the integrity and stability of the financial system....</p> <p><u>Interpretations by the Parties: Article 30(3)</u></p> <p>A joint decision of the Parties, each acting through its representative designated for purposes of this Article, declaring their interpretation of a provision of this Treaty shall be binding on a tribunal, and any decision or award issued by a tribunal must be consistent with that joint decision.</p>