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Protecting foreign investments against expropriation: a comparative study of Japan's EPAs

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Title:	Protecting foreign investments against expropriation: a comparative study of Japan's EPAs
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Abstract:	Expropriation is the most traditional type of political risk. However, there is no consistency in the protection against expropriation according to international jurisprudence. This paper analyses what constitutes expropriation and the conditions of non-compensable takings, as well as examining what international tribunals require in order to accept a claim of expropriation. Moreover, the paper highlights the evolved role of the FET standard in successfully supporting claims that under expropriation, clauses are likely to be rejected. As case study, this paper analyses recent EPAs (2006-2009) entered into force between Japan and five ASEAN member-countries. It develops quantitative measures (a score card) to provide several snapshots of key legal elements for the protection of foreign investments in the power sector in each of the countries. In comparing the five EPAs, it is found that the power sector is reserved to a different extent with regards to expropriation and FET standards.