

# Expropiaciones: métodos de determinación de daños

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Seminario sobre

**Determinación y  
Prueba de Daños**

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# I. Expropiaciones y determinación del daño

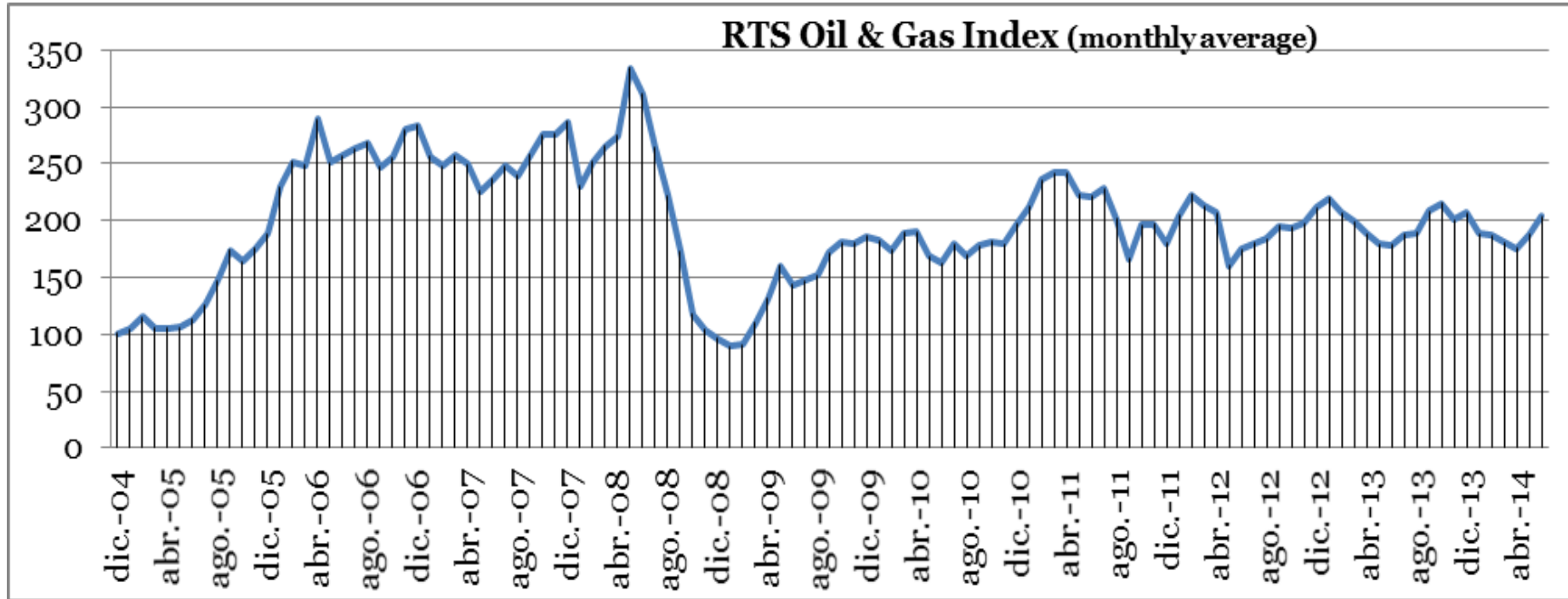
Tipo de expropiación	Estándar de valoración del daño	Método de valoración	Tipo de interés pre-laudo
"Legal", según Derecho Internacional aplicable	"Valor" del bien expropiado en el <u>momento de la expropiación</u>	<ul style="list-style-type: none"><li>• VJM<ul style="list-style-type: none"><li>• Descuento de flujos</li><li>• Múltiplos (EBITDA...)</li><li>• Transacciones comparables</li></ul></li><li>• Valores contables<ul style="list-style-type: none"><li>• Valor en libros</li><li>• Cantidad invertida ("<i>sunk costs</i>")</li></ul></li></ul>	<ul style="list-style-type: none"><li>• Fijado en el APRI</li><li>• Fijado por el Tribunal</li></ul>
"Illegal", según Derecho Internacional aplicable	"Estándar de la factoría de Chorzów"		

## Estándar de la fábrica de Chorzów (“*Jósuf*”)

- “Reparation must, as far as possible, wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed.
- “Restitution in kind, or, if this is not possible, payment of a sum corresponding to the value which a restitution in kind would bear“
- “Illegal expropriation obligates the respondent to restore the undertaking and, if this be not possible, to pay its value at the time of the indemnification, which value is designed to take the place of restitution which has become impossible. Given that the parties were 'agreed' that restitution was impossible, Poland was obligated to pay the 'value' of the property in lieu of restitution.”

Ruling (year)	Type of expropriated assets	Effective expropriation (year)	Post-expropriation developments	Quantification of damages by Tribunal	
				Compensation	Pre-award interest
Chorzów factory (1928)	Nitrates factory	1922	Unknown	Undetermined. PCIJ commissioned expert report on FMV as of expropriation date, financial results between expropriation and judgment date, and FMV as of the judgment date, but Parties settled before and the commission of experts was disbanded.	
ADC v Hungary (2006)	Concession of Budapest International airport	2001	Significant increase in airport business	FMV of concession as of <b>award date</b> (calculated by DCF) + lost dividends	6%, compounded monthly
Siemens v Argentina (2007)	Concession of immigration and national identification system	2001	System discontinued	Sunk costs (adjusted <b>book-value</b> of investment), but no lost dividends.	6 month US \$CDs (2.66%) compounded annually
Vivendi v Argentina (2007)	Concession of water and sewage system	1997	Unknown	Sunk costs (equity investment and loans), but no lost dividends.	6% , compounded annually
Kardassopoulos & Fuchs v Georgia (2010)	Shares of small company granted early concession of big pipeline project	1996	Pipeline included in a much bigger concession contract	FMV of shares <b>slightly before expropriation</b>	6 month US \$ Libor +4 compounded semi-annually
Unglaube v Costa Rica (2012)	Small strip of seashore land, near resort and National Park	2003	Price of plots rose sharply until July 2006, then declined substantially	FMV of land as of January 1, 2006 (i.e. <b>6 months before the market peak</b> )	5-year US Treasury Bills, compounded semi-annually
Yukos (2014)	Shares of big, integrated oil company, listed in the Moscow Stock Exchange	2004	High profitability. Virtual increase in share value until mid-2008, with subsequent decline.	Notional <b>market value</b> of shares as of <b>award date</b> + lost dividends	10-year US Treasury bond (3.389%), simple (i.e. not-compounded)

# Yukos: evolución posterior de petroleras rusas



## Expropiaciones ilegales: preguntas claves

- *¿Habrían sido los expropiados capaces de mantener su inversión?*
- *Tras la expropiación ¿habría sido rentable la empresa? ¿se habría revalorizado la inversión?*
- *En caso de respuestas afirmativas:  
¿habrían vendido los inversores su inversión antes de la fecha del laudo? ¿cuándo lo habrían hecho?*

## II. Métodos de valoración: descuento de flujos

- Condición de aplicación: las previsiones deben tener base objetiva y no ser un mero “cuento de la lechera” (“sueños de fortuna”)
  - Mi tesis: “In dubio, *pro-book value*”
- Debates típicos:
  - Estimación del tipo de descuento como “*weighed average cost of capital*” (wacc): ¿qué coste atribuir a los recursos propios (“*cost of equity*”)?
  - Al calcular la prima de riesgo en el coste de capital ¿debe incluirse el aumento provocado por la conducta hostil del Gobierno expropiador?

*Sí (Tidewater vs Venezuela, Venezuela Holdings vs Venezuela) No (Gold Reserve vs Venezuela)*
  - El tipo de descuento (wacc) ¿debe utilizarse también como tipo de interés pre-laudo (para evitar un supuesto “*invalid round tripping*”)?

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