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DEPARTMENT OF JUSTICE

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Mr. Robin Vos
Chairman
Assembly Committee on Organization
State Capitol
Post Office Box 8952
Madison, WI 53708

Dear Representative Vos:

¶1. In your capacity as Chairman of the Assembly Committee on Organization, you ask whether Wis. Stat. § 710.02(1), limiting the acreage in Wisconsin land that may be acquired, owned, or held by nonresident aliens and foreign corporations, applies to Members of the General Agreement on Trade in Services (GATS), an international agreement of which the United States of America is a Member.[1] You point out that the GATS directs its Members to accord to the services and service suppliers of all other Member nations "treatment no less favourable than it accords to its own like services and service suppliers." GATS art. XVII:1.[2] You also note that Wis. Stat. § 710.02(2)(b) exempts "[c]itizens, foreign governments or subjects of a foreign government whose rights to hold larger quantities of land are secured by treaty" from the acreage limitation.

¶2. I conclude that Wis. Stat. § 710.02(1) is generally inapplicable to GATS Members, their services, or their service suppliers to the extent they seek to acquire, own, or hold land for enumerated service-related uses. First, the aim of the GATS is to remove barriers to international trade in services, while the aim of the statute is to prevent large-scale ownership of land by nonresident aliens for agricultural and forestry purposes. The statute achieves this goal by prohibiting nonresident alien ownership of more than 640 acres of land for agricultural or forestry use. Meanwhile, separate provisions in the statute allow nonresident alien land ownership, with no

[1]"Member" is the term used to identify a nation participating in the World Trade Organization Agreement and other agreements, such as the GATS, engendered by the WTO. *See* 19 U.S.C. §§ 1677(30), 3501(10).
[2]The full cite is: General Agreement on Trade in Services art. XVII(1), Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1B.

acreage limitation, for most service-based (non-agricultural and non-forestry) purposes. Thus, as long as the nonresident alien will use Wisconsin land for a permissible service-based purpose (and not agriculture or forestry), the statutory acreage limitation does not apply. Second, even if the statute's acreage limitation did apply, GATS Members and their service suppliers are exempted from the acreage limitation by the statute's treaty exception with respect to the acquisition, ownership, or holding of land for purposes enumerated in the GATS.

Wis. Stat. § 710.02.

¶3. Wisconsin Stat. § 710.02(1) prohibits nonresident aliens from "acquir[ing], own[ing] or hold[ing] any interest . . . in more than 640 acres of land in this state." The earliest version of the law was enacted in 1887. *See* Wis. Stat. § 2200a (1889); 1887 Wis. Laws ch. 479. The 1887 enactment was one of the many "alien land laws" that swept the country "at that time stemming from what was regarded as undesirable results from nonresident alien ownership of large tracts of land." *Lehndorff Geneva, Inc. v. Warren*, 74 Wis. 2d 369, 386, 246 N.W.2d 815 (1976).[3] The statute was an instrument of agricultural protectionism, born in "a period of agricultural discontent in which legislatures feared 'the large scale engrossment of farm land by absentees,' with resentment directed against both aliens and corporations." *Id.* at 386 n. 32 (citation omitted). Eventually, this concern for agricultural land use extended to forestry uses as well. *See* 1983 Wis. Act 335, § 1; Wis. Stat. § 710.02(3).

¶4. There are exceptions to the acreage limitation. Since 1953, nonresident alien "[r]ailroad or pipeline corporations" have been allowed to acquire land in Wisconsin without limitation. Wis. Stat. § 710.02(2)(c).[4]

¶5. In 1983, two more exceptions were adopted. First, nonresident alien entities may now freely acquire land for these purposes: "exploration mining lease . . . and land used for mining and associated activities"; "[l]eases for exploration or production of oil, gas, coal, shale and related hydrocarbons, including by-products of the production, and land used in connection with the exploration or production"; and

[3]In *Lehndorff*, a corporation wholly owned by West German citizens attempted to purchase more than 640 acres of Wisconsin land for agricultural use. The company sought a declaratory judgment that Wis. Stat. § 710.02 violated the Treaty of Friendship, Commerce and Navigation between the United States and West Germany. The court concluded that Wisconsin's acreage limitation was permitted by treaty language reserving to each party the right to limit the other party's ability to acquire land for agricultural purposes. *Lehndorff*, 74 Wis. 2d at 3775-76.

[4]*See* 1953 Wis. Laws ch. 55, amending Wis. Stat. § 234.23 (1953).

specified manufacturing and mercantile activities. Wis. Stat. § 710.02(2)(d)-(g). The manufacturing and mercantile categories, referenced in subsections (e) and (f), are extremely broad, embracing almost every conceivable business activity.[5] Activities relating to agriculture and forestry are expressly not included in the manufacturing and mercantile exemptions.[6] Thus, with these categorical exemptions, the statute now allows nonresident alien ownership of more than 640 acres of land for most *non-agricultural* and *non-forestry* purposes.

¶6. The second exception added by the 1983 Act eliminates the acreage limitation for: "Citizens, foreign governments or subjects of a foreign government whose rights to hold larger quantities of land are secured by treaty." Wis. Stat. § 710.02(2)(b). There is no legislative history explaining the reason for the treaty exception, but the Act expresses the legislature's desire to remove barriers to foreign investment while continuing to limit the right to use more than 640 acres of land for agricultural or forestry to resident landowners:

> **Legislative declaration.** The legislature recognizes the need to modify this state's restrictions on land ownership by nonresident alien and foreign business corporations and entities, so as to remove barriers to foreign investment in energy, mining, manufacturing and mercantile activities. Although this act removes acreage limits on land ownership by such persons for certain purposes, it is the legislature's intent that these liberalized provisions and exceptions be strictly construed, so as to continue to limit alien ownership of land used for agricultural or forestry purposes to not more than 640 acres. The legislature further declares that the exception granted to

[5]*See* 1983 Wis. Act 335. The specified manufacturing and mercantile activities are those catalogued in divisions C-I of "the standard industrial classification manual published by the U.S. printing office, 1972 and later editions." Wis. Stat. § 710.02(2)(e), (f). The divisions from the manual incorporated in the statute include a wide variety of commercial activities, including fifteen enumerated types of "Services," and a list of additional "Miscellaneous services." Exec. Office of the President, Office of Mgmt. & Budget, *Standard Industrial Classification Manual* 7-9, 53-406 (1987) ("SIC Manual"). The last print version of the SIC Manual was published in 1987. It was superseded in 1997 by the Exec. Office of the President, Office of Mgmt. & Budget, *North American Industrial Classification System* (2012) ("NAICS"). Updated editions of the bound NAICS appeared regularly between 1997 and 2012. Since 2012, NAICS updates can be found online at www.census.gov/eos/www/naics

[6]The divisions of the SIC Manual *not* incorporated in the statute are Division A: Agriculture, Forestry, And Fishing; Division B: Mining; and Division J: Public Administration. *SIC Manual* 7, 9, 21-52, 407-19.

> manufacturing activities shall not be construed to allow agricultural or forestry operations to be undertaken for purposes of supplying raw materials to such manufacturing activities.

1983 Wis. Act 335, § 1.

General Agreement on Trade in Services.

¶7. The history of the GATS begins with the General Agreement on Tariffs and Trade (GATT), a multilateral trade agreement created after World War II. *See* 19 U.S.C. § 3501(1); *China Liquor Distrib. Co. v. United States*, 343 F.2d 1005, 1006 (C.C.P.A. 1964). The intent of the GATT was to liberalize international trade by reducing discriminatory and protectionist tariffs and eliminating other trade barriers. The GATT has been amended over the years through a series of multilateral trade negotiations known as "rounds."

¶8. The Uruguay Round (1986-1994) established the World Trade Organization, the successor to the GATT. *See* 19 U.S.C. § 3501(8). It also produced the GATS, a multilateral agreement binding all WTO Members. *See* 19 U.S.C. § 3511(d)(14). As its name indicates, the GATS is specifically concerned with trade in *services*.

> The scope of the GATS is enormous; it covers virtually all types of services in almost all major countries. . . . The only services that the GATS explicitly excludes are government-provided. The GATS categorizes all other services into twelve sectors: business; communication; construction and engineering; distribution; educational; environmental; financial; health related and social; tourism and travel related; recreational, cultural and sporting; transport; and other services not included elsewhere. The business services sector is divided into five sub-sectors: professional, computer, research and development, real estate, rental/leasing, and other business services.

Eve Ross, Comment, *A Venerable Profession Enters the Global Economy: South Carolina Lawyers and the General Agreement on Trade in Services (GATS)*, 57 S.C. L. Rev. 969, 975-76 (2006) (footnotes omitted) (catalogue of services derived from World Trade Organization, *Services Sectoral Classification List* (1991)).

¶9. The GATS is a Congressional-Executive agreement. *See* Proclamation No. 6763, 60 Fed. Reg. 1007 (Dec. 23, 1994); Ross, 57 S. Car. L. Rev. at 975. Congressional-Executive agreements are "'simply acts of Congress, ordinary legislation which enacts an international obligation by a majority vote of both the House and Senate, with the President's signature.'" *Id.* (quoting David J. Bederman, *International Law Frameworks* 167 (2001)); *accord Made in the USA Found. v. United States*, 242 F.3d 1300, 1305 n.12 (11th Cir. 2001); Restatement (Third) of Foreign Relations Law of the United States § 303(2) & cmt. e. & notes 7-9 (1987) (hereinafter Restatement). Notably, Congressional-Executive agreements have become the preferred mode for trade agreements. *See Made in the USA*, 242 F.3d at 1305 n.12; Restatement § 303, note 9 (trade agreements "are now commonly effected by Congressional-Executive agreement, in recognition of the special role of the House of Representatives in the raising of revenue").

¶10. Every GATS Member "uses a schedule of specific commitments to customize how the GATS will apply to them." Ross, 57 S.C. L. Rev. at 978. Each individual "Schedule of Specific Commitments," is "annexed to [the GATS] and . . . form[s] an integral part thereof." GATS art. XX. In this Schedule, the Member lists the "service sectors" it has agreed to include in its GATS commitments. The United States' Schedule includes business services, educational services, environmental services, financial services, health related and social services, tourism and travel related services, and transport services. The United States of America, Schedule of Specific Commitments at 15-73, Apr. 15, 1994 (hereinafter U.S. Schedule). Several of these service sectors are further subdivided into "subsectors." *See id.* Among the business service subsectors are "Services Incidental to Agriculture, Hunting and Forestry (except provision of agriculture machinery with drivers and crew, harvesting and related services, services of farm labour contractors and aerial fire fighting)." *Id.* at 39.[7] Services "incidental" to agriculture and forestry notwithstanding, the use of land for agriculture or forestry more generally does not constitute a "service" and does not appear in the U.S. Schedule of GATS-protected service sectors and subsectors.

[7]Given the parenthetical exceptions, it is unclear what services incidental to agriculture and forestry are envisioned here. The General Counsel for the United States Trade Representative (whose office is responsible for implementing the GATS) is unable to answer that question definitively, but explains that services "incidental" to a given activity are distinct from but unique to that activity. He suggests that services incidental to agriculture might include "animal boarding, care and breeding services, services to promote propagation, growth and output of animals," and that services incidental to forestry might include "timber evaluation, . . . [and] forest management including forest damage assessment services." This list is taken from Department of International Economic and Social Affairs, Statistical Office of the United Nations, *Provisional Central Product Classification (Statistical Papers, Series M No. 77)* 76 (1991).

¶11. The GATS requires "national treatment." GATS art. XVII:1. " 'National treatment means that foreign nationals should be given the same treatment in each of the member countries as that country makes available to its own citizens.' " *ITC Ltd. v. Punchgini, Inc.*, 482 F.3d 135, 162 (2nd Cir. 2007) (citations omitted). The GATS allows each Member to maintain laws or "[m]easures" inconsistent with the national treatment mandate by explicitly acknowledging the inconsistency in its Schedule of Specific Commitments. GATS art. XX. These inconsistent laws or measures are listed as "Limitations on National Treatment" in the U.S. Schedule.[8] The Schedule includes several federal and state laws restricting alien land ownership. *See* U.S. Schedule at 7-8. Although several limitations arising from Wisconsin law are included in the Schedule, Wis. Stat. § 710.02 is not one of them. *See* U.S. Schedule at 34, 56, 59-61, 65, 68.

¶12. A state law that is both inconsistent with the GATS and not included in the Schedule of Specific Commitments is not per se invalid. It can be declared invalid only "in an action brought by the United States for the purpose of declaring such [State law, or the application of such a State law] invalid." 19 U.S.C. § 3512(b)(2)(A). In such a case, "the United States shall have the burden of proving that the law that is the subject of the action, or the application of that law, is inconsistent with the agreement in question." *Id.* at § 3512(b)(2)(B)(ii). According to the General Counsel of the United States Trade Representative, the United States has never brought an action against a state under 19 U.S.C. § 3512(b)(2).[9]

[8]Usually referred to as "reservations," such limitations are common in multilateral agreements. Restatement § 313.

[9]Thus, an inconsistent state law is not preempted by the Supremacy Clause. *See* U.S. Const. art. I, § 10, cl. 3. The U.S. Schedule, including the reservation of any limitations on national treatment imposed by state law, constitutes the United States' treaty obligation to its fellow GATS Members. If a state law limitation was left out of the U.S. Schedule, it is not subject to preemption, but to the remedial procedures set out in 19 U.S.C. § 3512(b).

Summary of analysis.

¶13. Against this background, I conclude that Wis. Stat. § 710.02(1) permits GATS Members and their service suppliers to acquire, own, or hold more than 640 acres of land for most service-related, non-agricultural, non-forestry uses enumerated in the GATS. There are two separate reasons for this conclusion. First, the acreage limitation prohibits the nonresident alien ownership of more than 640 acres for agricultural or forestry use, but exempts from this restriction most service-related uses of land by nonresident aliens. Second, the GATS comes within the statute's treaty exception. Thus, any possible conflict between the GATS requirements and the statutory restrictions would be subject to the treaty exception.

Wis. Stat. § 710.02 restricts land acquisition by nonresident alien service suppliers for agriculture and forestry, but not for most service-related uses.

¶14. The purpose of the acreage restriction in Wis. Stat. § 710.02(2) is to prevent the large-scale acquisition of Wisconsin land by nonresident aliens for agricultural or forestry purposes. Consistent with this limited reach, Wis. Stat. § 710.02(2) enumerates the non-agricultural, non-forestry activities to which the acreage restriction does not apply. Specifically, it does not apply to "[r]ailroad or pipeline corporations," or uses based on mining, manufacturing activities, mercantile activities, and exploration or production of potential fuel and energy sources. Wis. Stat. § 710.02(2)(c)-(g). Wisconsin's intent to open its land market for these activities but not agricultural and forestry purposes is spelled out in the legislative declaration of the 1983 Act (legislative intent is "to remove barriers to foreign investment in energy, mining, manufacturing and mercantile activities," while "continuing to limit alien ownership of land used for agricultural or forestry purpose to not more than 640 acres").

¶15. The statute defines the manufacturing and mercantile activities by reference to the *Standard Industrial Classification Manual* produced by the Office of Management and Budget. Wis. Stat. § 710.02(2)(e)-(f); *see supra* ¶ 5 & nn.5-6. These defined activities generally correspond to the business sectors and subsectors for which the United States has agreed to provide national treatment in its Schedule of Specific Commitments. *See supra* at ¶ 10. In my review, I found that nearly all the service sectors and subsectors in the Schedule are also listed in the *Manual* with one notable exception. "Services *Incidental* to Agriculture . . . and Forestry" are included in the U.S. Schedule but are not among the subsectors exempt from the acreage limitation under Wis. Stat. § 710.02(2)(e)-(f). *See supra* at ¶ 10. With these exceptions, nonresident alien service suppliers may freely acquire land in Wisconsin to use for any of the enumerated service-related purposes.

¶16. The statute prohibits nonresident alien land acquisition and ownership above 640 acres for agricultural or forestry purposes. The GATS does not require its Members to accord other Members or their service suppliers "national treatment" with respect to agricultural and forestry land acquisition and ownership. The only conceivable conflict between the statute and the GATS might arise if a Member or its service supplier sought to acquire more than 640 acres of land for a service incidental to agriculture, *e.g.*, animal boarding, or forestry, *e.g.*, timber evaluation.

GATS Members are exempt from the acreage limitation under the "treaty" exception.

¶17. To the extent they seek to enforce their rights under the GATS, GATS Members and their service suppliers are covered by the treaty exception in Wis. Stat. § 710.02(2)(b). Section 710.02(2)(b) exempts from the acreage limitation "[c]itizens, foreign governments or subjects of a foreign government whose rights to hold larger quantities of land are secured by treaty." Whether the treaty exception applies to services and service suppliers of GATS Members depends on the answers to two subsidiary questions. First, is the GATS a "treaty" within the meaning of Wis. Stat. § 710.02(2)(b)? And, second, are GATS Members' service suppliers "citizens" or "subjects of a foreign government" within the meaning of the statute? The answer to both questions is "yes."

¶18. First, the GATS is a "treaty" under the statute. As the U.S. Supreme Court has recognized, the term "treaty" has more than one meaning. It may refer narrowly to Article II treaties or broadly to any international agreement recognized as binding under international law.

> The word "treaty" has more than one meaning. Under principles of international law, the word ordinarily refers to an international agreement concluded between sovereigns, regardless of the manner in which the agreement is brought into force. Under the United States Constitution, of course, the word "treaty" has a far more restrictive meaning.

Weinberger v. Rossi, 456 U.S. 25, 29 (1982) (citation omitted); *accord United States v. Belmont*, 301 U.S. 324, 330 (1937); *B. Altman & Co. v. United States*, 224 U.S. 583, 600 (1912); *Black's Law Dictionary* 1640 (9th ed. 2009). The "more restrictive meaning" referred to is, of course, based on the Treaty Clause, which gives the President the "Power, by and with the Advice and Consent of the Senate, to make

Treaties, provided two thirds of the Senators present concur." U.S. Const. art. II, § 2, cl. 2.

¶19. The term "treaty" is not defined in Wis. Stat. § 710.02(2)(b), elsewhere in the Wisconsin statutes, or in Wisconsin case law. In this definitional vacuum, it is appropriate to adopt the understanding of the term from federal case law, which in turn relies on international customary law. *See Abelesz v. Magyar Nemzeti Bank*, 692 F.3d 661, 685 (7th Cir. 2012). This approach is consistent with the general principle of statutory construction that an undefined statutory term well-known in the common law presumptively retains its common law meaning. *See id.* (international customary law is equivalent to Anglo-American common law); *In re Custody of D.M.M.*, 137 Wis. 2d 375, 389-90, 404 N.W.2d 530 (1987). Given their role in our federal system, the federal courts have substantial experience and expertise in the exposition of international customary law. *See* U.S. Const. art. II, § 2, cl. 2; 28 U.S.C. § 1331.

¶20. The U.S. Supreme Court has interpreted the term "treaty" to include executive agreements in two cases construing federal statutes. In *Weinberger*, it construed the following "treaty" exception in the Military Selective Service Act of 1967, which prohibited employment discrimination against American citizens in military facilities abroad:

> *"Unless prohibited by treaty*, no person shall be discriminated against by the Department of Defense or by any officer or employee thereof, in the employment of civilian personnel at any facility or installation operated by the Department of Defense in any foreign country because such person is a citizen of the United States or is a dependent of a member of the Armed Forces of the United States."

Weinberger, 456 U.S. at 27 n.3 (quoting 85 Stat. 355, note following 5 U.S.C. §7201 (1976 ed. Supp. IV); emphasis the Court's). The question before the Court was whether a Base Labor Agreement negotiated between the United States and the Republic of the Philippines was a "treaty" that would allow employment discrimination against American citizens under the Act. The BLA was an "executive agreement" that had not been "submitted to the Senate for its advice and consent." *Id.* at 32.

¶21. The Court held that the BLA came within the statute's treaty exception. *Id.* at 32. Noting the canon of construction that an ambiguous " 'act of congress ought

never to be construed to violate the law of nations, if any other possible construction remains,' " the Court concluded that "some affirmative expression of congressional intent to abrogate the United States' international obligations is required in order to construe the word 'treaty' . . . as meaning only Art. II treaties." *Id.* at 32 (quoting *Murray v. The Charming Betsy*, 2 Cranch 64, 118, 2 L.Ed. 208 (1804)).

¶22. In *B. Altman*, the Court decided that "treaty," as used in the Circuit Court of Appeals Act allowing direct Supreme Court review of cases involving " 'the validity or construction of any treaty,' " included a "commercial reciprocal agreement" negotiated between the United State and France "under the authority contained in § 3 of the Tariff Act of 1897." *B. Altman*, 224 U.S. at 594, 596 (citation omitted).

> While it may be true that this commercial agreement . . . was not a treaty possessing the dignity of one requiring ratification by the Senate of the United States, it was an international compact, negotiated between the representatives of two sovereign nations, and made in the name and on behalf of the contracting countries, and dealing with important commercial relations between the two countries, and was proclaimed by the President. If not technically a treaty requiring ratification, nevertheless it was a compact authorized by the Congress of the United States, negotiated and proclaimed under the authority of its President.

Id. at 601.

¶23. Against this background, the term "treaty" in Wis. Stat. § 710.02(2)(b) should be interpreted as including the GATS, a Congressional-Executive agreement. *Cf. K.S.B. Techical Sales Corp. v. N. Jersey Dist. Water Supply Comm'n*, 381 A.2d 774, 778 (N.J. 1977) (concluding that the GATT, an executive agreement, was a "treaty" under the Supremacy Clause); *Baldwin-Lima-Hamilton Corp. v. Superior Court*, 208 Cal. App. 2d 803, 820 (Cal. Dist. Ct. App. 1962) (same); *Territory of Hawaii v. Ho*, 41 Haw. 565, 565 (Haw. Terr. 1957) (same). Significantly, Wis. Stat. § 710.02(2)(b) was adopted in 1983, just one year after *Weinberger* was decided.
See 2B N. Singer & J.D. Singer, *Sutherland Statutory Construction* 143 (7th ed. 2012) ("All legislation is interpreted in light of the common law . . . existing at the time of its enactment."). The legislature presumably adopted the treaty exception with full knowledge of *Weinberger*'s broad interpretation of the term

"treaty" and thus intended to incorporate the *Weinberger* Court's interpretation of "treaty" when it used the term in constructing the 1983 amendments. *See*, *e.g.*, *Strenke v. Hogner*, 2005 WI 25, ¶ 28, 279 Wis. 2d 52, 694 N.W.2d 296 ("The legislature is presumed to act with full knowledge of existing case law when it enacts a statute.").

¶24. The GATS is analogous to the agreements at issue in *Weinberger* and *B. Altman*. It was "negotiated between the representatives of . . . sovereign nations, and made in the name and on behalf of the contracting countries, and dealing with important commercial relations between [them]." *B. Altman*, 224 U.S. at 601. Like the statutes in those cases, the statute here contains no "affirmative expression of [legislative] intent to abrogate the United States' international obligations." *Weinberger*, 456 U.S. at 31-32. And, like the statute in *Weinberger*, Wis. Stat. § 710.02(2)(b) recognizes a treaty exception to the enforcement of a general statutory proscription. *Id.* Construing the GATS to be a "treaty" is consistent with the canon that an ambiguous "act of congress ought never be construed to violate the law of nations if any other possible construction remains." *The Charming Betsy*, 2 Cranch at 118. The fact that the law here is an act of the Wisconsin legislature rather than of Congress reinforces the conclusion: unlike the U.S. Congress, a state legislature has no authority to interfere in international agreements. *See Belmont*, 301 U.S. at 331 ("To counteract [an international compact] by the supremacy of the state laws, would bring on the Union the just charge of national perfidy. . . .") (internal quotation marks and citation omitted); *accord United States v. Pink*, 315 U.S. 203, 230-34 (1942).

¶25. This interpretation is consistent with the Wisconsin legislature's expression of intent regarding 1983 Wis. Act 335, § 1: "The legislature recognizes the need to modify this state's restrictions on land ownership by nonresident and foreign business corporations and entities, so as *to remove barriers to foreign investment in energy, mining, manufacturing and mercantile activities*." The liberalizing intent of this declaration would be stymied by a restrictive interpretation of the word "treaty" as limited to Article II treaties.

¶26. I also conclude that the service suppliers of GATS Members are protected by the treaty exception to the extent that they seek to acquire, own, or hold land for service-related uses enumerated in the U.S. Schedule. The treaty exception exempts "[c]itizens, foreign governments or subjects of a foreign government" from the acreage limitation. Wis. Stat. § 710.02(2)(b). The exception clearly applies to individual nonresident aliens, who are, by definition, either "[c]itizens . . . or subjects of a foreign government." Less obvious is whether the exception applies equally to

corporations, limited liability companies, partnerships, associations, and trusts.[10] The U.S. Schedule guarantees "national treatment" to all GATS Members and their service suppliers. Under the GATS, " 'service supplier' means any *person* that supplies a service." GATS art. XXVIII(g). " '[P]erson' means either a natural person or a juridical person." *Id.* at (j). " '[J]uridical person' means any legal entity duly constituted or otherwise organized under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association." *Id.* at (l). The question is whether the "citizen or subject" terminology of Wis. Stat. § 710.02(2)(b) includes these "juridical persons."

¶27. Corporations are generally considered legal "persons" under federal and state law. *See*, *e.g.*, *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310 (2010); *Trs. of Dartmouth Coll. v. Woodward*, 17 U.S. (4 Wheat.) 518, 667 (1819); Wis. Stat. § 990.01(26); § 180.0302. The same is true of limited liability companies, partnerships or associations. Wis. Stat. § 178.01(2)(e); *accord* 1 U.S.C. § 1; Wis. Stat. § 990.01(26). A corporation created under the laws of a foreign nation is deemed a *citizen* or *subject* of that nation. *See* 28 U.S.C. § 1332(c)(1); *JPMorgan Chase Bank v. Traffic Stream (BVI) Infrastructure Ltd.*, 536 U.S. 88, 91-92 (2002); *Barcelona Traction, Light & Power Co.* (Belg. v. Spain), 1970 I.C.J. 3, 42-43 (Feb. 5). The question is most often litigated in federal diversity cases. *See*, *e.g., JPMorgan*, 536 U.S. at 91-92; *see also* 28 U.S.C. § 1332(a)(2) (federal courts have jurisdiction over civil actions between "citizens of a State and *citizens or subjects* of a foreign state").

¶28. Despite this general approach, the meaning of the terms "citizen" and "subject" must nevertheless be determined independently in each individual statute. The interpretation of these words in a particular act "depends upon the intent, to be gathered from the context and the general purpose of the whole legislation in which it occurs." *Swiss Nat'l Ins. Co. v. Miller*, 267 U.S. 42, 46 (1925) (citations omitted); *see also Vill. of Tigerton v. Minniecheske*, 211 Wis. 2d 777, 783-84, 565 N.W.2d 586 (Ct. App. 1997).

¶29. I conclude that the phrase "[c]itizens … or subjects of a foreign government" in Wis. Stat. § 710.02(2)(b) includes all "juridical person[s]" "duly constituted or otherwise organized" under the laws of GATS Members. GATS art.

[10]The acreage limitation applies to nonresident aliens and corporations not created under federal or state law; corporations, limited liability companies, partnerships or associations with more than twenty percent ownership by nonresident aliens or corporations; and trusts with more than twenty percent of their assets held for the benefit of nonresident aliens or foreign corporations. Wis. Stat. § 710.02(1)(a)-(c).

XXVIII(l). Given its statutory context, a broad construction of the citizen or subject language clearly comports with the expressed legislative intent "to remove barriers to foreign investment in energy, mining, manufacturing and mercantile activities." 1983 Wis. Act 335, § 1. Furthermore, like the term "treaty," this language should be interpreted pursuant to the principle that ambiguous statutes should be construed to accord with "the law of nations." *The Charming Betsy*, 2 Cranch at 118. The construction that best comports with the GATS is the one that broadly equates citizens and subjects with all juridical persons. Meanwhile, the Wisconsin language is very close to the language of the federal diversity statute, which unquestionably treats foreign corporations and other juridical persons as citizens of their place of incorporation or principal place of business. *Compare* Wis. Stat. § 710.02(2)(b) *with* 28 U.S.C. § 1332(a)(2) and (4).

* * * * *

¶30. I conclude that Wis. Stat. § 710.02(1) is generally inapplicable to GATS Members, their services, or their service suppliers to the extent they seek to acquire, own, or hold land for service-related uses enumerated in the U.S. Schedule. First, Wis. Stat. § 710.02(2) does not limit land acquisition by nonresident aliens and foreign corporations for most service uses to which the United States agreed to provide national treatment under the GATS. On the contrary, the statutory acreage limitation applies to agricultural or forestry uses only. Second, the treaty exception in Wis. Stat. § 710.02(2)(b) applies to GATS Members, their services, and their service suppliers.

Sincerely,

J.B. VAN HOLLEN
Attorney General

JBV:MFW:mlk