

# WORLD TRADE ORGANIZATION

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## COMMUNICATION FROM POLAND

### Review of Article II Exemptions

#### Replies to Questions Posed on Poland's MFN Exemptions in the Course of the Review of MFN Exemptions

The attached communication has been received from the delegation of Poland with the request that it be circulated to Members of the Council for Trade in Services.

#### **A. ANSWER TO THE QUESTION POSED BY JAPAN NO 87:**

1. The measure inconsistent with Article II of the GATS is a compulsory arbitration of investor/state investment disputes.
2. There are different ways of the establishment of the dispute settlement procedures in all BITs. Generally there is the clause on the passing the dispute to an arbitration in the case of investor/state investment dispute. A treatment of an investor is a preferential of procedural character. Beside the a/m procedure an investor as a legal person can claim its rights before a court. Nevertheless, there are certain BITs in which an investor / state dispute is subject to the proceedings before a domestic court before starting a legal arbitration action.

#### **B. ANSWER TO THE QUESTION POSED BY JAPAN NO 88:**

3. A compulsory arbitration of investor/state investment disputes is included in the agreements on promotion and protection of foreign investments. Up to date Poland has concluded 61 such agreements. The involved countries are as follows: Albania, Argentina, Australia, Austria, Azerbaijan, Bangladesh, Belgium-Luxembourg, Belarus, Bulgaria, Canada, Chile, China, Croatia, Cyprus, the Czech Republic, Denmark, Egypt, Estonia, Finland, France, Germany, Greece, Hungary, India, Indonesia, Iran, Italy, Israel, Jordan, Kazakhstan, Kuwait, Lithuania, Latvia, Macedonia, Malaysia, Morocco, Moldova, Mongolia, the Netherlands, Norway, Portugal, Russia, Romania, Singapore, Slovakia, Slovenia, South Korea, Spain, Switzerland, Sweden, Thailand, Tunisia, Turkey, Ukraine, United Arab Emirates, United Kingdom, United States, Uruguay, Uzbekistan, Viet Nam, Yugoslavia.
4. In the BIT between Poland and Germany a dispute is subject to proceedings to a domestic court before starting a legal arbitration action. There are the dispute and negotiations between Poland and Germany on the interpretation of the a/m part of the legal text of the Agreement.

**C. ANSWER TO THE QUESTION POSED BY JAPAN NO 89:**

5. The international arbitration has considered the dispute brought by the German investor.

**D. ANSWER TO THE QUESTION POSED BY JAPAN NO 90:**

6. There has been noted an increased foreign investment inflow to Poland presented in statistics data. This is an encouraging example of the positive effect of the BIT existence thanks to the compulsory arbitration of investor / state investment disputes mechanisms.

**E. ANSWER TO THE QUESTION POSED BY JAPAN NO 91:**

7. The measure providing a compulsory arbitration's procedure secures such an investment and hence attracts foreign capital visible in Polish statistics data on foreign investment inflows.

**F. ANSWER TO THE QUESTION POSED BY JAPAN NO 92:**

8. Poland pursues its policy on the foreign investment protection based on a rule of a protection of investments flowing in and out of Poland. This is the basis of a choice of partners in the BITs concluded by Poland.

**G. ANSWER TO THE QUESTION POSED BY JAPAN NO 93:**

9. Please refer to the answer to the question No. 92.

**H. ANSWER TO THE QUESTION POSED BY HONG KONG, CHINA NO 4:**

10. In our opinion measures aimed at promotion and protection of investment in services sector are covered by the GATS and therefore require scheduling.

**I. ANSWER TO THE QUESTION POSED BY KOREA NO 16:**

11. There are no specific measures that go beyond limitations embodied in Poland's schedule of specific commitments. There has not been any review of this exemption so far. A reciprocity clause is included in the following number of international agreements concluded by Poland: promotion and protection of foreign investment, commerce treaties, business and economic relations treaties and navigation treaties.

12. Promotion and protection of foreign investment agreements are concluded with the following countries:

Albania, Argentina, Australia, Austria, Azerbaijan, Bangladesh, Belgium-Luxembourg, Belarus, Bulgaria, Canada, Chile, China, Croatia, Cyprus, the Czech Republic, Denmark, Egypt, Estonia, Finland, France, Germany, Greece, Hungary, India, Indonesia, Iran, Italy, Israel, Jordan, Kazakhstan, Kuwait, Lithuania, Latvia, Macedonia, Malaysia, Morocco, Moldova, Mongolia, the Netherlands, Norway, Portugal, Russia, Romania, Singapore, Slovakia, Slovenia, South Korea, Spain, Switzerland, Sweden, Thailand, Tunisia, Turkey, Ukraine, United Arab Emirates, United Kingdom, United States, Uruguay, Uzbekistan, Vietnam, Yugoslavia.

13. Commerce and economic relation treaties are concluded with the following countries:

Afghanistan, South Africa, Albania, Algeria, Angola, Argentina, Armenia, Australia, Azerbaijan, Bangladesh, Benin, Belarus, Bolivia, Brazil, Bulgaria, Cambodia, Cameroon, Chile, China, Croatia, Colombia, Congo, Costa Rica, Côte d'Ivoire, Cyprus, Czech, Egypt, Ecuador, Estonia, Ethiopia, Ghana, Georgia, Guyana, Guinea, Hungary, India, Indonesia, Iraq, Iran, Iceland, Israel, Japan, Jordan, Cambodia, Cameroon, Canada, Kazakhstan, Kenya, South Korea, North Korea, Kuwait, Kyrgyzstan, Laos, Lebanon, Libya, Liechtenstein, Lithuania, Latvia, Macedonia, Madagascar, Malaysia, Mali, Malta, Morocco, Mexico, Moldova, Mongolia, Myanmar, Nepal, Niger, Nigeria, Nicaragua, Norway, New Zealand, Pakistan, Panama, Peru, Philippines, Russia, Romania, El Salvador, Senegal, Singapore, Slovakia, Slovenia, Sri Lanka, Sudan, Syria, Switzerland, Thailand, Tanzania, Togo, Tunisia, Turkey, Uganda, Ukraine, United States, Uruguay, Uzbekistan, Venezuela, Vietnam, Yemen, Yugoslavia, Zimbabwe.

14. Navigation treaties are concluded with the following countries:

Albania, Algiers, Belarus, Bulgaria, Brazil, Cuba, Cyprus, Egypt, France, Germany, Greece, Guinea, Hungary, India, Italy Japan, the Netherlands, Pakistan, Portugal, Sri Lanka.

**J. ANSWER TO THE QUESTION POSED BY JAPAN NO 280:**

15. The measure inconsistent with Article II GATS is in fact a reciprocity clause affecting commercial presence of foreign service suppliers. It covers the entire trade in services which is subject to GATS provisions.

**K. ANSWER TO THE QUESTION POSED BY JAPAN NO 281:**

16. A reciprocity clause is included in the following number of international agreements concluded by Poland in the area of commerce and navigation, business and economic relations as well as in promotion and protection of foreign investment.

17. Promotion and protection of foreign investment agreements are concluded with the following countries:

Albania, Argentina, Australia, Austria, Azerbaijan, Bangladesh, Belgium-Luxembourg, Belarus, Bulgaria, Canada, Chile, China, Croatia, Cyprus, the Czech Republic, Denmark, Egypt, Estonia, Finland, France, Germany, Greece, Hungary, India, Indonesia, Iran, Italy, Israel, Jordan, Kazakhstan, Kuwait, Lithuania, Latvia, Macedonia, Malaysia, Morocco, Moldova, Mongolia, the Netherlands, Norway, Portugal, Russia, Romania, Singapore, Slovakia, Slovenia, South Korea, Spain, Switzerland, Sweden, Thailand, Tunisia, Turkey, Ukraine, United Arab Emirates, United Kingdom, United States, Uruguay, Uzbekistan, Vietnam, Yugoslavia.

18. In the BIT between Poland and Germany a dispute is subject to proceedings to a domestic court before starting a legal arbitration action. There are the dispute and negotiations between Poland and Germany on the interpretation of the a/m part of the legal text of the Agreement.

19. Commerce and economic relation treaties are concluded with the following countries:

Afghanistan, South Africa, Albania, Algeria, Angola, Argentina, Armenia, Australia, Azerbaijan, Bangladesh, Benin, Belarus, Bolivia, Brazil, Bulgaria, Cambodia, Cameroon, Chile, China, Croatia, Colombia, Congo, Costa Rica, Côte d'Ivoire, Cyprus, Czech, Egypt, Ecuador, Estonia, Ethiopia, Ghana, Georgia, Guyana, Guinea, Hungary, India, Indonesia, Iraq, Iran, Iceland, Israel, Japan, Jordan, Cambodia, Cameroon, Canada, Kazakhstan, Kenya, South

Korea, North Korea, Kuwait, Kyrgyzstan, Laos, Lebanon, Libya, Liechtenstein, Lithuania, Latvia, Macedonia, Madagascar, Malaysia, Mali, Malta, Morocco, Mexico, Moldova, Mongolia, Myanmar, Nepal, Niger, Nigeria, Nicaragua, Norway, New Zealand, Pakistan, Panama, Peru, Philippines, Russia, Romania, El Salvador, Senegal, Singapore, Slovakia, Slovenia, Sri Lanka, Sudan, Syria, Switzerland, Thailand, Tanzania, Togo, Tunisia, Turkey, Uganda, Ukraine, United States, Uruguay, Uzbekistan, Venezuela, Vietnam, Yemen, Yugoslavia, Zimbabwe.

20. Navigation treaties are concluded with the following countries:

Albania, Algiers, Belarus, Bulgaria, Brazil, Cuba, Cyprus, Egypt, France, Germany, Greece, Guinea, Hungary, India, Italy Japan, the Netherlands, Pakistan, Portugal, Sri Lanka.

**L. ANSWER TO THE QUESTION POSED BY JAPAN NO 282:**

21. A commonly used way to secure the balance of rights and obligations by the parties to the international agreement is to make commitments on a reciprocity basis. Poland followed this procedure.

**M. ANSWER TO THE QUESTION POSED BY JAPAN NO 283:**

22. Poland does not exclude such a possibility.

**N. ANSWER TO THE QUESTION POSED BY JAPAN NO 307:**

23. Audio-visual services are of the different kind than other commercial services it must be pointed out that they are cultural services based on the regional and national tradition and heritage. Measures aim to achieve cultural diversity objective within the region. To achieve this general objective it is necessary to go beyond MFN clause and therefore the existing exemption from Article II GATS.

**O. ANSWER TO THE QUESTION POSED BY JAPAN NO 308:**

24. Preservation and promotion of regional identity are a part of cultural diversity objective and include audio-visual domain.

25. As far as policy objectives are concerned measures aiming to preserve and promote cultural diversity include the diffusion of works of original expression in specific and rare languages, promoting social and intellectual representations, reflection and transmission of creations linking with various aspects of European heritage and common identity.

**P. ANSWER TO THE QUESTION POSED BY CHILE NO 9:**

26. There is no difference between these two concepts.

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