

the Russian Federation. With respect to local content requirements and exemption from duties and taxes when goods produced in free zones or special economic zones were released for free circulation into the rest of the Russian Federation, the aforementioned obligations would not apply to the goods of the juridical persons and individual entrepreneurs registered in the Kaliningrad and Magadan Regions, which had been registered and active under the previous Federal Laws No. 13-FZ of 22 January 1996 "On the Special Economic Zone in the Kaliningrad Region" on 1 April 2006, and No. 104-FZ of 31 May 1999 "On the special economic zone in the Magadan region" [date to be established after adoption of new law]. Such goods would continue to enjoy the treatment described in paragraphs [699 and 709], during transition periods ending on 31 March 2016 and [30 June 2010], respectively. The Working Party took note of these commitments].

### **Government Procurement**

711. Members requested information on laws, regulations and other measures relating to government procurement in the Russian Federation and on the meaning of "procurement for State needs." In particular, members requested further information on the status of the new legislation in this area, in particular on the federal law "On Placement of Orders for Deliveries of Goods, Performance of Works and Provision of Services for State and Municipal Needs".

712. The representative of the Russian Federation explained that "procurement for State needs" (Russian legislation did not contain the term "government procurement") was governed in the Russian Federation by the Civil Code of the Russian Federation; the Federal Law No. 94-FZ of 21 July 2005 "On Placement of Orders for Deliveries of Goods, Performance of Works and Provision of Services for State and Municipal Needs", which had entered into force on 1 January 2006, Federal Law No. 53-FZ of 2 December 1994 "On Procurement and Deliveries of Agricultural Goods, Raw Materials and Foods for the State Needs" (as last amended on 24 July 2007); Federal Law No. 60-FZ of 13 December 1994 "On Procurement of Goods for Federal State Needs" (as amended on 2 February 2006); Federal Law No. 213-FZ of 27 December 1995 "On the State Defence Order" (as amended on 2 February 2006). The placement of orders for State and municipal needs could be provided only through the procedures set by the Federal Law No. 94-FZ of 21 July 2005 "On Placement of Orders for Deliveries of Goods, Performance of Works and Provision of Services for State and Municipal Needs" (as last amended on 8 November 2007). To provide consistency of all laws, regulations and other requirements relating to procurement for State needs with Federal Law No. 94-FZ of 21 July 2005, the amendments to the abovementioned acts had been made by the Federal Law No. 19-FZ of 2 February 2006 "On amending certain legislative acts of the Russian Federation due to adoption of the Federal Law No. 94-FZ of 21 July 2005 "On Placement of Orders

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for Deliveries of Goods, Performance of Works and Provision of Services for State and Municipal Needs". When Federal Law No. 94-FZ of 21 July 2005 "On Placement of Orders for Deliveries of Goods, Performance of Works and Provision of Services for State and Municipal Needs" came into force on 1 January 2006, Federal Law No. 97-FZ of 6 May 1999 was abolished.

713. The principles and procedures for formation, placement, and fulfilment of orders for procurement and delivery of goods and services for State needs were set out in the above-mentioned acts. These texts took into consideration international practices in this field. According to the Federal Law No. 94-FZ procurement for State needs was the sphere of federal regulation, and, as stated in paragraph 2 of Article 65 of this Law, all legal acts would be applied to the extent they did not contradict to this Law. Russian legislation in this sphere was aimed at the development of fair competition, providing openness and transparency in placement of orders, and prevention of corruption and other abuses in the placement of State orders.

714. The Federal Law No. 94-FZ of 21 July 2005 "On Placement of Orders for Deliveries of Goods, Performance of Works and Provision of Services for State and Municipal Needs" applied to the placement of orders for deliveries of products, performance of works and provision of services for State (at federal and sub-federal level) and municipal needs, excluding those orders the amount of which would be lower than the maximum sum of payment in cash under one transaction between legal persons allowed by the Central Bank (in March 2007, this amount was RUB 60,000). The new law defined "State needs" as the needs of the Russian Federation for goods, works and services necessary for the execution of the functions of the Russian Federation, including the implementation of federal target programmes, execution of international obligations of the Russian Federation, including implementation of international projects in which the Russian Federation participated, as well as needs of the subjects of the Russian Federation for goods and services necessary for the execution of the functions of the subjects of the Russian Federation, including the implementation of regional target programmes, which were financed by the Federal budget, budgets of the subjects of the Russian Federation, and off-budget funds of the Russian Federation or of the subjects of the Russian Federation.

715. Further the representative of the Russian Federation explained that the Russian Government used the instrument of federal target programmes in cases where a development task in social or economic sphere needed the efforts of several governmental authorities, both in sense of authority and of resources to be invested in order to achieve the goals. In most cases the targeted areas were those that lacked private investment and/or suffered from infrastructure constraints. Declaring a target to be covered by a federal programme did not just permit the allocation of special budget funds necessary to

finance measures addressing this target, but also stimulated State authorities to put specific efforts in that direction, and attracted the private sector to invest into the targeted area with a view to enjoying benefits in the future. Since it was one of the most transparent ways of allocating funds from the federal budget, target programmes were considered to be an important instrument of long-term economic policy of the State. The most representative programmes of this kind were connected with road-building, housing, development of public education, other social goals (support of children's education or public healthcare), preservation of historic, cultural and natural monuments, increasing of efficiency of State management (i.e., introducing IT technologies in the State institutions).

716. The representative of the Russian Federation stated that national treatment would be provided in connection with procurement for State needs, with regard to placement of orders for procurement of services or works supplied or performed by foreign suppliers, as well as of foreign goods, if national treatment for placement of orders was provided in respect of Russian goods, works or services supplied by Russian suppliers, by the respective foreign country.

717. Pursuant to Article 4.1 of the Federal Law No. 94-FZ of 21 July 2005 "On Placement of Orders for Deliveries of Goods, Performance of Works and Provision of Services for State and Municipal Needs" State customers could be bodies of State power of the Russian Federation, bodies of State power of the subjects of the Russian Federation, local self-governmental bodies, as well as recipients of the money from budget, authorized by the above mentioned bodies to place orders at the expense of budget funds. State customers could on a contractual basis involve a legal entity exclusively for the execution of the part of the functions of organisation and carrying out of procedures for the placement of an order for purchases for State needs. For example such an entity could provide technical and organizational assistance with carrying out of a tender, preparing the tender documentation, publishing the information about tender, etc. According to Article 6 of Law No. 94-FZ, the State customer would select an entity to provide technical assistance through an auction procedure. The State customer, however, was the actual purchaser and was legally responsible for all aspects of the procurement.

718. He added that the Federal Law No. 94-FZ of 21 July 2005 "On Placement of Orders for Deliveries of Goods, Performance of Works and Provision of Services for State and Municipal Needs" provided two ways of placement of orders: through the tender (in form of competition or auction, including the e-auction) and without tender (in form of request for quotations, from the sole supplier, or at commodity exchanges). The placement of orders with a sole supplier could be implemented only in cases, directly provided by the Federal Law No. 94-FZ of 21 July 2005. The law provided that the request for quotations could take place if: the price of State or municipal order did

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not exceed RUB 250,000, or the auction was recognized as missed and starting bid did not exceed RUB 250,000, or in cases of the purchases for providing of humanitarian aid or liquidation of the results of emergency situations of natural character. The placement of an order could be made at the commodity exchange if its amount exceeded RUB 5,000,000.

719. Members noted that the scope of government "purchases for State needs", as provided for in current legislation, appeared to go beyond "procurement" as defined in Article III:8 of the GATT 1994 and Article XIII:1 of the GATS, i.e., products and services purchased for governmental purposes and not with a view to commercial resale or with a view to use in the production of goods for commercial sale, or to use in the supply of services for commercial sale. Purchases for State needs also appeared to cover more than, the goods and services typically subject to the WTO Agreement on Government Procurement. Laws, regulations and other measures relating to purchases that were outside the scope of the GATT Article III:8 and GATS Article XIII:1 definitions would not be excluded from the coverage of the Agreements in Annex 1 of the Agreement Establishing the WTO. These members noted that under Russian law, "purchases for State needs," appeared to include, in addition to goods for governmental purposes, i.e., direct consumption and support, any products or services needed (a) by the government, (b) to realize government goal-oriented programmes, (c) to maintain State material reserves, or (d) for export deliveries to meet international economic commitments, including to honour the currency credits of the Russian Federation. They sought confirmation that, in making purchases that would not be considered government procurement within the meaning of GATT Article III:8 and GATS Article XIII:1, normal WTO provisions, including national treatment and MFN requirements, would apply; and, that the Russian Federation would ensure that goods and services purchased for State needs for governmental purposes, would not be resold in the commercial sphere or used in the production of goods or the supply of services for commercial sale.

720. In response, the representative of the Russian Federation stated that Federal Law No. 94-FZ, which replaced Federal Law No. 60-FZ with regard to placement of orders for State and municipal needs established the definition of State needs mentioned in paragraph [714]. Furthermore, neither the new Federal Law No. 94-FZ of 21 July 2005 "On Placement of Orders for Deliveries of Goods, Performance of Works and Provision of Services for State and Municipal Needs" nor other legislation on the purchases for State needs in force contain provisions, allowing procurement for State needs to encompass purchases with the aim of commercial resale or use in production of goods or the supply of services for commercial sale. Directly engaging in commercial activity did not constitute the function of the state; that is why the definition of the State needs elaborated in Article 3 of the Federal Law No. 94-FZ of 21 July 2005, referred to the execution of functions of the State as an

aim of the purchases for State needs. Enterprises owned by the State ran their business on their own and the profit which resulted from such activity was subject to distribution by the enterprises and not by the State. Thus, in his view, the activity of such enterprises did not constitute the activity of the State. With respect to target programmes, the aim of these programmes was to resolve systemic problems in the sphere of state, social and cultural development of the Russian Federation, i.e., to achieve governmental purposes and not to engage in commercial activity.

721. Members continued to express concerns regarding the role of the State in the commercial sphere in the Russian Federation. The practice of the Government of the Russian Federation of negotiating and concluding contracts for the sale of gas appeared to be an example of where the Government was engaged in "commercial activity". Moreover, members noted that the Government, as such, was represented on the board of directors of many joint-stock companies, and in some companies, exercised special rights as a shareholder through the so-called "golden share." Thus, in while engaging in commercial activity might not be defined as a governmental purpose or governmental function, in their view, the Government of the Russian Federation, i.e., the state, did engage in commercial activity. [Placement of this paragraph in this or another section still under discussion.]<sup>118</sup>

722. In response to a member who asked whether operations of the FFMA or purchases of TVEL for nuclear power could be considered purchases for State needs, the representative of the Russian Federation said that, as for the operations of the FFMA connected with the organization and performance of State interventions of grains crops and described in the section on STEs, these operations were not the subject of regulation by the rules on the government procurement in the meaning of Article III:8 (a) of the GATT 1994, but were commercial transactions. As for nuclear fuel, Russian legislation did not contain any restriction on participation of foreign entities in regard to the purchases of TVEL; and such purchases were made based on commercial considerations.

723. [The representative of the Russian Federation confirmed that in respect of procurement by government agencies of goods and services not purchased for governmental purposes, and with a view to commercial resale or with a view to use for production of goods and supply of services for commercial sale, the provisions of the WTO Agreement would apply. [Further, when State-owned and State-controlled enterprises are purchasing or selling goods and services for commercial resale or

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<sup>118</sup> One Member believed that this paragraph was well placed under the Government Procurement section as it was easier to understand the broad nature of "State needs" as defined by Russia which extended beyond GATT III: 8: 1(a) and GATS XIII: 1). This Member stated that if the alternative place proposed was to be the section where State Enterprises were being discussed, then this Member could agree with this placement change provided that all information on State Enterprises remained together. The representative of the Russian Federation continued to believe that this paragraph was to be removed to another section of this Report.

production of goods and supply of services for commercial sale, these purchases and sales would be based on commercial considerations.] The Working Party took note of these commitments.<sup>119</sup>

724. In response to a request from a member regarding the involvement of the Russian Federation in barter trade, the representative of the Russian Federation stated that legal provisions for such trade could be found in Federal Law No. 164-FZ of 8 December 2003 "On the Fundamentals of State Regulation of Foreign Trade Activity", President Decree No. 1209 of 18 August 1996 "On State Regulation of Foreign-trade Barter Transactions" and Government Resolution No. 1300 of 31 October 1996 "On the Measures for State Regulation of Foreign Trade Barter Transactions." In response to a request from a member for information on whether barter trade was used in the context of purchases of goods or services for State needs, the representative of the Russian Federation stated that there were no more government-to-government barter Agreements, and special bilateral barter arrangements established in the wake of the August 1998 financial crisis to provide trade in vital commodities had lapsed.

725. In response to questions about transparency in procurement for State needs, the representative of the Russian Federation noted that the Federal Law No. 94-FZ of 21 July 2005 "On Placement of Orders for Deliveries of Goods, Performance of Works and Provision of Services for State and Municipal Needs" contained provisions providing for transparency of procurement of goods and services for State needs. Procurement was mainly carried out by open invitation to tender. Under the law, notices of invitations to tender would have to be published 30 days before the opening of the tender in an official publication and on an internet site, both determined by the Government of the Russian Federation, the supreme executive body of the subject of the Russian Federation or local authorities respectively. Notices of invitations could also be published, upon decision of the State customer, in English, in other printed mass media with international circulation. Notices of invitations to tender would have to indicate the form of tender; the name and address of the State customer; the source of finance of the order; the subject of the State contract; the required date of delivery of the goods, performance of the work, or supply of the services; the initial price of the contract; the procedure, time-limit and place for delivery of tender's application documents; the procedure and time-limit for the submission of bids; criteria of the evaluation of bids; place, time and date of the evaluation of bids; benefits (if such were provided by the State customer) to the penitentiaries organizations and organizations of disabled persons; the amount of security if the obligation to provide security was set by the State customer. The winner would be determined in

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<sup>119</sup> [RF comment- commitment language to be further discussed] [Placement of this paragraph in this or another section still under discussion.] One Member expressed the preference to include all the language from all the brackets to provide clarity to the commitment. In response, the representative of the Russian Federation reiterated that the substance and placement of paragraph [723] would be further discussed.

accordance with the rules established in the law. The winner would be notified in writing within three days after conclusion of the tender, and the results of the tender, including the name of the winner, the subject and the price of the contract, would be published in the official publication and on the official internet site.

726. According to Article 16 of the Law, all the information concerning procurement was placed on the official site of the Russian Federation, determined by the Government Resolution No. 229-r of 20 February 2006 – [www.zakupki.gov.ru](http://www.zakupki.gov.ru). The site also could be used for placing information of regional or municipal customers, if the regional or municipal authorities had no official site. The information was placed on the official sites and accessible free of charge.

727. This law also contained the detailed rules for administrative appeal of actions (inaction) of State customers, stipulated in paragraph [717] of the section. Such an appeal was possible to be made until the conclusion of the procurement contract. After such conclusion, disputes would be dealt with by the judicial system.

728. Some members asked the Russian Federation to enter a commitment to become an observer to the WTO Agreement on Government Procurement and to initiate negotiations for accession to this Agreement upon accession.

729. [The representative of the Russian Federation confirmed the intention of the Russian Federation to join the WTO Agreement on Government Procurement and to notify the Committee on Government Procurement to this effect at the time of Russia's accession to the WTO and to ensure that ~~from~~ this date, its government agencies would award contracts in a transparent manner according to published laws, regulations and guidelines. He also confirmed that the Russian Federation would request observership in the Agreement on Government Procurement at the time of its accession to the WTO [and would initiate negotiations for membership in the WTO Agreement on Government Procurement by tabling an Appendix 1 offer within [... time] of accession. He confirmed that, if the results of the negotiations were satisfactory to the interests of the Russian Federation and the other Members of the Agreement, the Russian Federation would complete negotiations for membership in the Agreement within [... time] thereafter:] The Working Party took note of these commitments.]

**729bis.** [The representative of the Russian Federation also confirmed that until the Russian Federation accedes to the Agreement on Government Procurement, all government agencies at the central and sub-national level, as well as any of its public entities other than those engaged in exclusively commercial activities, would conduct their procurement, in a transparent manner and provide all foreign suppliers with equal opportunity to participate in that procurement

pursuant to the principle of MFN treatment, i.e., if a procurement was opened to foreign suppliers, all foreign suppliers would be provided with equal opportunity to participate in that procurement (e.g., through the bidding process). The Working Party took note of this commitment.]<sup>120</sup>

[One member proposed the representative of the Russian Federation to confirm that until the Russian Federation accedes to the Agreement on Government Procurement, all government agencies at the central and sub-national level, as well as any of its public entities other than those engaged in exclusively commercial activities, would conduct their procurement, in a transparent manner and provide all foreign suppliers with equal opportunity to participate in that procurement pursuant to the principle of MFN treatment, i.e., if a procurement was opened to foreign suppliers, all foreign suppliers would be provided with equal opportunity to participate in that procurement (e.g., through the bidding process).

In response, the representative of the Russian Federation noted that in his view nothing in the WTO agreements provided for the MFN treatment obligation with respect to participation of all foreign suppliers in government procurement; respectively, the Russian federation was not in position to accept such commitment.]

730. [The representative of the Russian Federation confirmed that, from the date of accession, the Russian Federation would ensure that its governmental agencies would place orders for deliveries of goods and supply of services for State needs in a transparent manner according to published laws, regulations and guidelines. The Working Party took note of this commitment.]

#### **Regulation of Trade in Transit**

731. The representative of the Russian Federation noted that, at present, transit of goods through the territory of the Russian Federation was free of customs duties, VAT and excise tax and of the application of any economic restrictions and prohibitions stipulated by the legislation on State regulation of foreign trade activity. The Russian Federation granted freedom of transit through its territory as prescribed by Article V of the GATT 1994 as well as on the basis of international treaties to which it was a party.

732. In response to questions from members of the Working Party concerning the different rules and practices applied to transit of goods through the territory of the Russian Federation under different methods of transport, the representative of the Russian Federation noted that Article 31 of Federal

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<sup>120</sup> A member's proposal. The Russian Federation does not agree with this language.

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