

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 amended on 02 February 2006); 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 amended on 27 July 2006). 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 02 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 for Deliveries of Goods, Performance of Works and Provision of Services for State and Municipal

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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 was 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

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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.]

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

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 Governmental Resolution No. 229-r of 20 February 2006 – 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 by 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.]

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 requirements guidelines The Working Party took note of this commitment]

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