

were then released into the rest of the customs territory of the Russian Federation, would be subject to payment of those tariffs and taxes and customs formalities when entering the rest of the customs territory of the Russian Federation either in an unaltered form or after processing in the SEZs, without exception, and that the Russian Federation would not recognise such goods as CU goods, unless they had been subject to payment of such tariffs and taxes and customs formalities at the time of their release for free circulation into the rest of the customs territory of the Customs Union. The Russian Federation would take action to ensure that any agreements or decisions of the Customs Union relating to SEZs would be amended to conform to WTO requirements. The Working Party took note of these commitments].

- **Government Procurement**

858. 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". Members requested further information on the status of the legislation in this area, in particular, on 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 27 July 2010 (hereafter: Federal Law No. 94-FZ). ✓

859. The representative of the Russian Federation explained that "procurement for State needs" (the legislation of the Russian Federation did not contain the term "government procurement") was governed in the Russian Federation by: (i) the Civil Code of the Russian Federation; (ii) Federal Law No. 94-FZ, which had entered into force on 1 January 2006; (iii) 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 2 February 2006); (iv) Federal Law No. 60-FZ of 13 December 1994 "On Procurement of Goods for Federal State Needs", as amended on 24 July 2007 (hereafter: Federal Law No. 60-FZ); and (v) Federal Law No. 213-FZ of 27 December 1995 "On the State Defence Order" (as amended on 1 December 2007). The placement of orders for State and municipal needs could be provided only through the procedures set by Federal Law No. 94-FZ. To provide consistency of all laws, regulations and other requirements relating to procurement for State needs with Federal Law No. 94-FZ, the amendments to the above-mentioned Acts had been made by Federal Law No. 19-FZ of 2 February 2006 "On Amending Certain Legislative Acts of the Russian Federation due to the Adoption of Federal Law No. 94-FZ". When Federal Law No. 94-FZ came into force on 1 January 2006, Federal Law No. 97-FZ of 6 May 1999 was abolished. ✓

860. The principles and procedures for formation, placement, and fulfilment of orders for procurement (tendering procedures) and delivery of goods and services for State needs were set out in

12

the above-mentioned Acts. These texts took into consideration international practices in this field. According to 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 that Law, all legal acts would be applied to the extent they did not contradict that Law. The legislation of the Russian Federation 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.

861. Federal Law No. 94-FZ 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 August 2010, this amount was RUB 100,000). Federal Law No. 94-FZ 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.

862. Further the representative of the Russian Federation explained that, the Government of the Russian Federation used the instrument of federal target programmes in cases where a development task in the 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 enjoy 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 health care), preservation of historic, cultural and natural monuments, increasing the efficiency of State management (i.e., introducing IT technologies in the State institutions).

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

864. Pursuant to Article 4.1 of Federal Law No. 94-FZ, State customers could be State authorities of the Russian Federation, State authorities of the subjects of the Russian Federation, local self-governmental bodies, as well as budgetary institutions, other recipients of the money from the Federal budget, budgets of the subjects of the Russian Federation or local budgets 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 organising and carrying out the 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 a tender, preparing the tender documentation, publishing the information about the tender, etc. According to Article 6 of Federal Law No. 94-FZ, the State customer would select an entity to provide technical assistance through a placement of order, according to the procedures set up by that Law. State customers, however, were the actual purchasers and were legally responsible for all aspects of the procurement.

865. He added, that Federal Law No. 94-FZ provided two ways of placement of orders: (i) through the tender (in the form of competition or auction, including the e-auction); and (ii) without tender (in the form of requests 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 Federal Law No. 94-FZ. Federal Law No. 94-FZ provided that the request for quotations could only take place if: (i) the price of State or municipal order did not exceed RUB 500,000; or (ii) in cases of purchases for providing life support, humanitarian aid or liquidation of the results of emergency situations of natural character or the purchases for providing support for the operation of a customer in the territory of a foreign state, provided that a functioning market for such purchases existed in the territory of that foreign state. Customers or enabled authorities was not able to place orders by requests for quotations for deliveries of like goods, performances of like works and provision of like services, if its amount exceeded RUB 500,000 in a quarter. ✓

866. 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 re-sale 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 definitions in Article III:8 of the GATT 1994, and Article XIII:1 of the GATS, would not be excluded from the coverage of the Agreements in Annex 1 of the Marrakesh Agreement Establishing the World Trade Organization. These Members noted that the Law of the Russian Federation, "Purchases for State Need," appeared to include, in addition to goods for governmental purposes, i.e., direct consumption and support, any products or services needed: (i) by the Government; (ii) to realize government goal-oriented programmes; (iii) to maintain State material reserves; or (iv) 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 as government procurement within the meaning of Article III:8 of the GATT 1994 and Article XIII:1 of the GATS, 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 re-sold in the commercial sphere or used in the production of goods or the supply of services for commercial sale.

867. 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 [861]. Furthermore, neither Federal Law No. 94-FZ nor other legislation on the purchases for State needs in force contained provisions allowing procurement for State needs to encompass purchases with the aim of commercial re-sale 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 was why the definition of the State needs elaborated in Article 3 of Federal Law No. 94-FZ 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.

868. 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, 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.

869. 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 grain crops and described in the section on State-Trading Enterprises, these operations were not subject to regulations on the government procurement in the meaning of Article III:8(a) of the GATT 1994, but were commercial transactions. As for nuclear fuel, the legislation of the Russian Federation did not contain any restriction on the participation of foreign entities in regard to the purchases of TVEL and such purchases were made based on commercial considerations.

870. [The representative of the Russian Federation confirmed that, in respect of procurement of goods and services, including by State-owned and State-controlled enterprises, which were not purchased for governmental purposes, but with a view to commercial re-sale or with a view to use for production of goods and supply of services for commercial sale, such purchases and sales would not be considered to be "government procurement" within the meaning of Article III:8(a) of the GATT 1994 and XIII:1 of the GATS, and thus, the Russian Federation and the competent bodies of the CU would comply with all applicable provisions of the WTO Agreement. The Working Party took note of this commitment.] ✓

871. 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 the 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", Presidential 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.

872. In response to questions about transparency in procurement for State needs, the representative of the Russian Federation noted that Federal Law No. 94-FZ 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 that Law, notices of invitations to tenders 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 tenders would have to indicate the form of tender; the name and address of the State customer; the subject of the State contract; the place of delivery of the goods, performance of the work, or supply of the services; the initial (maximum) price of the contract; the procedure, time-limit and place for delivery of tender's application documents; criteria of the place, time and date of the evaluation of bids; and benefits (if such were provided by the State customer) to the penitentiary organizations and organizations of disabled persons. The winner would be determined in accordance with the rules established in that 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. ✓

873. According to Article 16 of that Law, all the information concerning procurement was placed on the official website of the Russian Federation, determined by the Government Resolution No. 229-r of 20 February 2006 (www.zakupki.gov.ru). The official website of the Russian Federation contained information on all of the addresses of the official websites of the subjects of the Russian Federation. An official website of a subject of the Russian Federation contained information on all official websites of the municipal units located in the territory of this subject of the Russian Federation. The information was placed on the official websites and accessible free of charge. ✓

874. Federal Law No. 94-FZ also contained the detailed rules for administrative appeal of actions (inaction) of State customers, stipulated in paragraph [864]. 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. ✓

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

876. [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 accession of the Russian Federation to the WTO and to ensure that from the date of accession, 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 WTO 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 four years 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 accede to that Agreement. The Working Party took note of these commitments.] ✓

877. [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

878. The representative of the Russian Federation stated that, in his view, the Russian Federation granted freedom of transit through its territory as prescribed by Article V of the GATT 1994. Article 31 of Federal Law No. 164-FZ of 8 December 2003 "On the Fundamentals of State Regulation of Foreign Trade Activity" (as last amended on 2 February 2006) provided, as a basic principle, for freedom of transit through the territory of the Russian Federation, via routes, whichever was most convenient for international transit, and that no distinction was made which was based on the flag of the vessels, the place of origin, departure, entry, exit or destination, or on any circumstances relating to the ownership of goods, of vessels or of other means of transport. In such a way freedom for traffic in transit to or from the territory of the WTO Members was provided.

879. He added that the basic principles of these provisions had not been affected by the participation of the Russian Federation in the Customs Union with Kazakhstan and Belarus. Operationally, however, from 1 July 2010, customs control of goods in transit through the territory of the Russian Federation was based on the provisions of Chapter 32 of the CU Customs Code. The provisions of the previous Customs Code of the Russian Federation Federal Law No. 61-FZ of 28 May 2003 (as last amended on 24 November 2008) concerning transit control and other relevant Russian Federal legislation, regulations, and SCC and FSC Orders continued to apply to the extent

