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Committee on Trade-Related Investment Measures

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RUSSIAN FEDERATION – MEASURES IMPLEMENTING RUSSIA'S IMPORT SUBSTITUTION POLICY

QUESTIONS FROM THE UNITED STATES

The following communication, dated 26 April 2017, is being circulated at the request of the Delegation of the United States.

Last year, the United States and other Members posed questions regarding a number of measures that could be understood to reflect local content requirements imposed on purchases by state-owned enterprises (SOEs). See G/TRIMS/Q/RUS/4 (26 May 2016); G/TRIMS/Q/RUS/5 (27 September 2016). We remain concerned about a growing emphasis in the Russian Federation on local content requirements.

Further to our earlier questions, we note that on 16 September 2016, the Russian Federation issued Decree No. 925 "*On priority of commodities of Russian origin and work done and services provided by Russian persons over commodities originating from a foreign state and work done and services provided by foreign persons*" ("Decree No. 925" or "the Decree"). This Decree implements Article 3(8) of Federal Law No. 223 "*On purchases of goods and services by certain types of entities*" ("Federal Law No. 223") by establishing a 15 percent price preference for goods of Russian origin and to "works and services" performed and rendered by Russian entities.

1. It is our understanding that Federal Law No. 223 applies to purchases by SOEs, business enterprises in which the Russian state, regional, or municipal government owns more than 50 percent, and legal persons using State funding for certain investment projects. Is this description of the entities covered by Federal Law No. 223 correct? If not, please describe the types of entities covered by Federal Law No. 223.

2. It is our understanding that Government Decree No. 925 implements Article 3.8 of Federal Law No. 223 by establishing the terms under which SOEs and certain other legal persons must give priority to goods of Russian origin, and to works and services performed and rendered by Russian entities. Is our understanding of the purpose of Decree No. 925 correct?

3. According to our reading of paragraph 2 of Decree No. 925, if goods, works, or services are purchased through a tender process, in evaluating the tenders the price of a Russian offer (i.e., for Russian-made goods or Russian-supplied works or service) will be putatively reduced by 15 percent when compared against tenders involving foreign goods, works, or services. If the Russian tender is successful, however, the final contract will be for the full price. As a result, all else being equal, entities covered by Federal Law No. 223 must purchase Russian-produced goods unless those goods are more than 15% more expensive than imported goods. Is this a correct reading of paragraph 2? If not, could you please explain the mechanics of the process?

4. Paragraph 3 of Decree No. 925, which applies to so-called "reverse auctions" (where firms bid to provide goods, works, or services for the lowest price), appears to provide that the final price paid to a foreign firm who wins a contract to provide goods, works, or services will be 15% less than the contract price proposed in the winning proposal. Is this understanding correct? If not, could you please explain the mechanics of the process? Can you elaborate on the distinction between paragraph 2 and paragraph 3 of Decree No. 925?

5. Paragraph 4 of Decree No. 925 also appears to apply to reverse auctions, but applies when the winner of the auction has reduced the price to zero, but a contractual obligation remains. In such cases, the price to be paid will actually be 15 percent above the proposed price. Would you please explain how this process works? If the price of the contract has been bid down to zero, what is the calculation for determining 15 percent above that price?

6. Subparagraph 6(d) appears to describe a situation in which a supply bid, submitted under the process described in paragraph 2, includes a mix of Russian and foreign goods, works, or services. Is our understanding correct that the 15 percent price preference described in paragraph 2 will not be applied to any such supply bid if the price of the Russian-originated goods, works, or services represents less than 50 percent of the total price of the contract?

7. Subparagraph 6(e) appears to describe a situation in which a supply bid, submitted under the process described in paragraphs 3 or 4, includes a mix of Russian and foreign goods, works and/or services. It is our understanding that the 15 percent price preference described in paragraphs 3 or 4 will not be applied to any such supply bid in which the price of the Russian-originated goods, works or services represents more than 50 percent of the total price of the contract. Please explain the difference between subparagraphs 6(d) and 6(e). What is the rationale for subparagraph 6(e)?

8. Paragraph 8 of Decree No. 925 provides that the priority for tenders and auctions established by the Decree shall take into account the provisions of the General Agreement on Tariffs and Trade (GATT). How does the administration of the 15 percent price priority requirement for Russian goods take into account the national treatment provisions of Article III of the GATT 1947 or the Agreement on Trade-Related Investment Measures' prohibition on requiring or conditioning receipt of an advantage on the purchase or use of products of domestic origin?