



24 January 2018

(18-0576)

Page: 1/3

Committee on Trade-Related Investment Measures

Original: English

**RUSSIAN FEDERATION – MEASURES IMPLEMENTING
RUSSIA'S IMPORT SUBSTITUTION POLICY**

QUESTIONS FROM THE UNITED STATES FOR THE RUSSIAN FEDERATION REGARDING
THE RULES FOR A PRODUCT TO QUALIFY AS "MADE IN RUSSIA" FOR THE PURPOSES
OF PURCHASES BY AN ENTITY COVERED BY LAW NO. 223-FZ,
LAW NO. 249-FZ AND/OR LAW NO. 488-FZ

The following communication, dated 22 January 2018, is being circulated at the request of the Delegation of the United States.

Federal Law No. 223-FZ "On the Purchasing of Goods, Works, and Services by Certain Types of Legal Entities" (18 July 2011) authorizes the Government of Russia to establish priority for "Russian" goods, works, and services in purchases by a defined group of "covered entities." Those covered entities include companies that are owned by federal-, regional-, or municipal- levels of the government; business entities in which government ownership exceeds 50 percent; unitary enterprises; and certain federally funded government institutions.

Federal Law No. 249-FZ, "On Amending the Federal Law 'On the Purchasing of Goods, Works and Services by Certain Types of Legal Entities' and Article 112 of the Federal Law 'On the Contract System for the Procurement of Goods, Works, and Services for State and Municipal Needs'" (13 July 2015) expanded the definition of "covered entities" to include (1) business entities in which the government's share of authorized capital is less than 50 percent and "other legal entities not otherwise specified" where such entities are carrying out investment projects worth 10 billion rubles (~\$150 million) or more; and (2) entities carrying out investment projects which receive state guarantees and/or which receive financial support for more than 10 percent of the project's costs from the federal budget, the National Wealth Fund, and/or Vnesheconombank. (Law No. 249-FZ also established the Import Substitution Commission.)

Finally, Federal Law No. 488-FZ, "On Industrial Policy in the Russian Federation" (31 December 2014) establishes a priority for industrial products produced in Russia in purchasing by SOEs and gives the Government the right to establish requirements for the inclusion in purchasing contracts of additional terms to ensure the development of production of industrial products in Russia.

Taken together, these laws grant the Government of Russia the authority to restrict the purchasing decisions of a large part of the Russian economy, separate and distinct from government procurement. Based on the authority in those laws, the Government of Russia has issued a variety of measures requiring certain entities to give priority to Russia goods, works and services. Those measures include, but are not limited to:

- Resolution No. 708, dated 16 July 2015 "On Special Investment Contracts in Certain Spheres of Industry."

-
- Resolution No. 719, dated 17 July 2015, "On the Criteria for Classification of Industrial Products as Industrial Products without Analogues Manufactured in the Russian Federation."
 - Resolution No. 785, dated 4 August 2015, "On the Government Commission on Import Substitution."
 - Resolution No. 1169, dated 29 October 2015, "On the Procedure for Monitoring the Compliance of Plans for the Procurement of Goods, Works, and Services; Plans for the Procurement of Innovative Products, High-Tech Products; Pharmaceuticals; Amendments to Such Plans; Conformity Assessment of the Drafts of Such Plans; Draft Amendments to Such Plans; with the Requirements of Legislation of the Russian Federation Providing for the Participation of Small and Medium Enterprises in Procurement; and the Procedure and Deadlines for the Suspension of the Implementation of the Indicated Plans Based on Such Assessment and Monitoring."
 - Order No. 2258-r dated 6 November 2015, "On Approving the List of Specific Purchasers Whose Draft Plans for Purchases of Goods, Works, and Services; Draft Plans for Purchases of Innovative Products, High-Tech Products, and Medicines; and Draft Amendments to Such Plans are Subject to Evaluation by the 'Federal Corporation for the Development of Small and Medium Business' before their Confirmation for Compliance with the Requirements of Russian Legislation Providing for the Participation of Small and Medium Enterprises in Purchasing."
 - Order of the Ministry of Industry and Trade No. 3568, dated 12 November 2015, "On Approval of the Procedure for Confirmation of the Production of an Industrial Product in the Territory of the Russian Federation and the Procedure for Determination of the Differences in the Parameters of an Industrial Product Regarding its Functional Purpose or a List of Functions Performed, its Range of Uses, Quality Characteristics (Duration of Warranty Period, Effective Life or Service Life, Reliability, Energy Consumption, Ecological Compatibility, Physical, Chemical, Mechanical, or Organoleptic Properties Not Solely Related to the Exterior Appearance of the Industrial Product and Essentially Influencing the Functional Purpose, Range of Uses, or Quality Characteristics of an Industrial Product), from the Parameters of an Industrial Product Produced in the Russian Federation."
 - Order No. 2744-r dated 29 December 2015 "On Approval of the List of Certain Types of Industrial Products, Which is Included in the 'List of Long-Term Industrial Product Requirements Needed to Implement Investment Projects,' and the Purchase of Which Cannot be Carried out by the Purchasers or Legal Persons Referenced in Part 5 of Article 1 of the Federal Law 'On the Purchase of Goods, Works, and Services by Certain Kinds of Legal Entities,' without Approval of the Performance Features of Such Products from the Government Import Substitution Commission."
 - Order No. 2781-r dated 31 December 2015 "On Approval of Certain Types of Industrial Products."
 - Resolution No. 1521 dated 31 December 2015 "On the approval of the criteria for classifying the product as a product of machine building, the price of a unit of engineering products, in excess of which information on such products is included in lists of prospective needs for products of engineering that are formed by customers or legal entities necessary for the implementation of investment projects."
 - Government Decree No. 925 of 16 September, 2016 "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".

The United States has already asked Russia for information on a number of these measures, but has not yet received any answers.

Questions:

1. Please identify all of the legal measures that establish the rules for a product to qualify as "Made in Russia" for the purposes of purchases by an entity covered by Law No. 223 and/or Law No. 249.
2. Please provide a comprehensive list of products that require a "Made in Russia" designation for purchases by an entity covered by Law No. 223 and/or Law No. 249.
 - a. For those products that require a "Made in Russia" designation for purchases by an entity covered by Law No. 223 and/or Law No. 249, how is local content defined and calculated?
 - b. For those products that require a "Made in Russia" designation for purchases by an entity covered by Law No. 223 and/or Law No. 249, which government entity is responsible for determining whether a particular product shall be designated "Made in Russia"?
3. What is the process for developing the criteria for a product to earn the "Made in Russia" designation for purchases by an entity covered by Law No. 223 and/or Law No. 249?
4. We understand that on December 31, 2017, President Putin signed "Law No. 496-FZ "On Amendments to the Federal Law "On Procurement of Goods, Works, Services by Individual Types of Legal Entities" (31 December 2017). This law authorizes the government to establish and impose local content requirements on aircraft and ships when purchased by an entity covered by Law No. 223 and/or Law No. 249.
 - a. Please describe the types of local content requirements that the government is authorized under the law to apply to an aircraft or ship in order for it to qualify as "Made in Russia" for purchase by an entity covered by Law No. 223 and/or Law No. 249.
 - b. Does the law prohibit the purchase by a private enterprise of aircraft or ships that do not meet the "Made in Russia" criteria?
