

**Working Party on the Accession
of the Russian Federation**

**DRAFT REPORT OF THE WORKING PARTY ON THE
ACCESSION OF THE RUSSIAN FEDERATION
TO THE WORLD TRADE ORGANIZATION**

Revision

Members of the Working Party on the Accession of the Russian Federation to the WTO

Attached is the Secretariat's third revision of the Draft Report of the Working Party on the Accession of the Russian Federation to the WTO.

This document reflects the current state of play. As before, it is intended to provide focus to members of the Working Party for further multilateral work in developing consensus towards agreeing the terms of entry of the Russian Federation to the WTO. The text will necessarily evolve in line with future negotiations, as well as ongoing work on pending legislation in specific areas.

Commitments have not been taken up for discussion in the Working Party. The square bracketed commitment paragraphs contained in the text reflect proposals made earlier by WTO Members or included in this Revision at the request of the Russian Federation.

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Introduction

1. The Government of the Russian Federation applied for accession to the General Agreement on Tariffs and Trade (GATT 1947) in June 1993. At its meeting on 8 July 1993, the GATT Council of Representatives established a Working Party to examine the application of the Government of the Russian Federation to accede to the GATT 1947 under Article XXXIII of the General Agreement. Following the entry into force of the WTO Agreement on 1 January 1995, and in pursuance of the decision adopted by the WTO General Council on 31 January 1995, the GATT 1947 Working Party was transformed into a WTO Accession Working Party under Article XII of the Marrakesh Agreement Establishing the WTO. The terms of reference and the membership of the Working Party are reproduced in document WT/ACC/RUS/1/Rev.[...].

2. The Working Party met on 17-19 July 1995, 4-6 December 1995, 30-31 May 1996, 15 October 1996, 15 April 1997, 22-23 July 1997, 9-11 December 1997, 29 July 1998, 16-17 December 1998, and 25 May 2000 under the Chairmanship of H.E. Mr. W. Rossier (Switzerland), on 18 December 2000, 26-27 June 2001, 23-24 January 2002, 25 April 2002, 20 June 2002, 18 December 2002, 30 January 2003, 6 March 2003, 10 April 2003, 10 July 2003 and 30 October 2003 under the Chairmanship of H.E. Mr. K. Bryn (Norway), and on 5 February 2004, 2 April 2004, 16 July 2004 and [...] under the Chairmanship of H.E. Mr. S. Jóhannesson (Iceland).

Documentation Provided

3. The Working Party had before it, to serve as a basis for its discussions, a Memorandum on the Foreign Trade Regime of the Russian Federation (L/7410), supplements to the Memorandum on the regime in the areas of Trade-Related Investment Measures (WT/ACC/RUS/5), Trade in Services (WT/ACC/RUS/6), Trade-Related Aspects Of Intellectual Property Rights (WT/ACC/RUS/7), as well as questions submitted by Working Party members on the foreign trade regime of the Russian Federation together with replies thereto and other information provided by the Russian authorities listed in document WT/ACC/RUS/11/Rev[...] and legislative texts and other documentation listed in Annex I.

Introductory Statements

4. The representative of the Russian Federation recalled that his Government had been an observer to GATT 1947 since January 1992 when the Russian Federation continued the former USSR observer status. In this capacity, the Russian Federation had witnessed the successful conclusion of the Uruguay Round and followed its implementation.

5. In this context, he noted that his Government was confronted with a number of important tasks in the social, institutional, macroeconomic and investment fields. In particular, the Russian Federation had to overcome the decline in the standards of living of its population resulting from the economic and financial crisis of 1998. This could be only achieved through policies aimed at stimulating growth in the country's GDP by improving economic productivity, and expanding sources of investments. In his Government's view, this would also require the maintenance of a set of policies which could adequately develop competitive domestic markets for goods, services and capitals and enhance the role of smaller and medium size enterprises. Accordingly, since requesting accession to the GATT and afterwards to the WTO, the Russian Federation had undertaken an unprecedented process of reform of its economy progressively adopting laws and regulations consistent with WTO multilateral rules and disciplines. This process was primarily aimed at establishing the conditions for a dynamic market economy in the Russian Federation based on a stable and predictable legislative framework capable of sustaining long term economic growth and ensuring improvements in the standards of living and welfare of the Russian population as well as in the modernization of the Russian Federation's production capacity, and its international competitiveness. The government of the Russian Federation had set a clear list of programs, policies and priorities that had as their central goal rendering the Russian Federation a better, more competitive and rewarding place in which to work and do business. It was clear that the growing interdependence of national economies, global integration of markets and linkage between trade flows and investment required the Russian Federation to adjust its trade, financial and investment legislation to WTO rules and disciplines.

6. Members of the Working Party welcomed the Russian Federation's application for accession to the WTO and underscored the importance of a rapid integration of the Russian Federation into the multilateral trading system, both for the benefit of the Russian Federation and the world trading system as a whole. To this end, members considered that the enactment of relevant legislation consistent with WTO requirements and of provisions for its implementation was essential to the accession of the Russian Federation to the WTO, in order to ensure that Russia could be an effective participant in the WTO from the first day of its membership. Members of the Working Party equally stressed the need for completing the negotiations on commercially viable terms which should be mutually beneficial to the Russian Federation and WTO Members.

7. The Working Party reviewed the economic policies and foreign trade regime of the Russian Federation and the terms of a draft Protocol of Accession to the WTO. The views expressed by members of the Working Party on the various aspects of the Russian Federation's foreign trade regime, and on the terms and conditions of the Russian Federation's accession to the WTO are summarized below in paragraphs 8 to [...].

ECONOMY, ECONOMIC POLICIES AND FOREIGN TRADE

Fiscal and Monetary Policies

8. Members of the Working Party requested that the Russian Federation provide information on its fiscal and monetary policies, taxation system, developments in the State budget and plans for further changes and reform.

9. In response, the representative of the Russian Federation stated that current economic policies in the Russian Federation were aimed, inter alia, at "de-bureaucratization" of the economy, including elimination of unnecessary and burdensome administrative barriers, improvement of competition and investment attractiveness of the country, as well as at the achievement of its fiscal and monetary stability. In particular, the representative of the Russian Federation stated that current monetary policy was aimed at creating favourable preconditions for sustainable long-term economic development. This objective was being achieved by reducing inflation to the projected level as the fundamental monetary policy target and implementing policy of managed floating exchange rate of the national currency. All these activities were accompanied by measures to liberalize foreign exchange regulations.

10. Noting the above statement, some members of the Working Party considered that the Central Bank of the Russian Federation (CBR) in its conduct of monetary policy continued to rely unduly on management of the exchange rate and foreign reserves and on depository operations rather than on more standard monetary instruments, such as refinancing and interest rate management. These members asked the Russian Federation to further comment on these issues.

11. In response, the representative of the Russian Federation noted that the CBR used all available monetary instruments and methods apart from (exact meaning) those mentioned by some members. To achieve the monetary policy objectives and to respond more quickly and effectively to any changes in money and credit, including interbank interest rates fluctuations, the CBR actively used market instruments, combining operations to provide liquidity to banks with the operations of medium and long term sterilisation of temporarily free funds which helped the CBR to maintain balanced and relatively stable conditions on the money market. Principles for developing the monetary instruments system and its main elements had been established in 2002-2003. The diversity of monetary instruments implemented by the CBR was determined by the different needs of the credit institutions and combined standing facilities and regular market-based auctions. Monetary instruments and methods were adjusted depending on the economic situation in compliance with the legal framework. In accordance with Federal Law No.86-FZ of 10 July 2002 "On the Central Bank of

the Russian Federation (CBR)" (as amended), the principal instruments and methods of the CBR's monetary policy were the following:

- interest rates on the CBR's operations;
- ratios of the required reserves deposited with the CBR (the reserve requirements);
- open market operations;
- refinancing of credit institutions;
- currency interventions;
- the issue of bonds on its own behalf;
- setting targets for money supply growth.

12. Taking into consideration the situation of liquidity in the banking sector in the first half of 2004, the CBR had reduced required reserves ratios and brought them to the required reserves ratios of the European Central Bank. Moreover, the CBR had allowed use of averaging provisions for the part of the required reserves (the part of required reserves was held on an average daily basis on the correspondent (current) credit institutions' account over a one-month reserve maintenance period). To absorb liquidity, the CBR had held, in 2003-2004, regular deposit auctions to attract funds from credit institutions for four weeks to three months and reverse repo auctions to sell federal government bonds (OFZ) with an obligation of reverse repurchase for terms from 28 days to six months. To absorb free funds of credit organizations for a relatively long period and broaden the range of financial instruments, the CBR had restarted to issue its own bonds for a term of more than one year. For the purpose of absorbing excess of liquidity, the CBR had also used outright sales of government bonds from its portfolio at market yields without an obligation of reverse repurchase.

13. In addition to using market instruments to sterilize liquidity, the CBR preserved permanent access windows for credit institutions to place their free funds on deposit with the CBR. The CBR conducted deposit operations on standard terms and conditions at a fixed interest rate through the Reuters Dealing System and MICEX (Moscow Interbank Currency Exchange) System of electronic lot trading (SELT). At the same time, the CBR continued to provide funds to credit institutions through direct repo and Lombard auctions. Such operations were conducted for terms ranging from one day to 90 days. In addition, the CBR extended to banks intraday and overnight settlement loans, backed by federal government and local governments securities, mortgage bonds and CBR obligations (OBR). Credit institutions also had the opportunity to receive liquidity through foreign exchange swaps arranged with the CBR. An important monetary policy instrument used by the CBR was currency interventions (foreign exchange outright sales and purchases) in the exchange and over-the-counter segment of the domestic foreign exchange market.

14. Under the Federal Law "On the Central Bank of the Russian Federation (the Bank of Russia)" the CBR was required to annually submit to the State Duma draft "Guidelines for the Single State

Monetary Policy" for the coming year no later than 26 August and "Guidelines for the Single State Monetary Policy" for the coming year no later than 1 December. He added that pursuant to "The Guidelines for the Single State Monetary Policy for 2004" (The Monetary Policy Guidelines) the ultimate aim of the monetary policy implemented by the CBR was the reduction of inflation. The CBR had developed a monetary program with the objective to monitor monetary indicators on their compliance with the projected inflation level. The Monetary Policy Guidelines for 2004 could be found on the CBR's web-site (www.cbr.ru).

15. He noted that general budgetary policy was described in Resolution of the Government of the Russian Federation No. 910-r of 7 July 2001 "On the Program of Social and Economic Development of the Russian Federation with a View to the Medium-Term Perspective". Key policy objectives were: improvement and measuring of the effectiveness of expenditure-based budgetary policy; creation of a system for management of state assets and liabilities to add flexibility to current policy and properly control debt; improving the transparency of the budgetary procedures; and the reform of the tax system to improve equitability, transparency and lower the tax burden on businesses.

16. Concerning the tax system of the Russian Federation, the representative of the Russian Federation noted that the current forms of taxation in the Russian Federation were established by Law of the Russian Federation No. 2118-1 of 27 December 1991 "On the Basic Principles of the Taxation System in the Russian Federation". That Law distinguished between federal taxes, regional taxes, and local taxes. He noted, that Federal taxes comprised: the value-added tax, excise tax, uniform social tax, securities transaction tax, customs duty, royalty tax for use of natural resources and extraction of minerals, profit tax imposed on legal persons, income tax imposed on natural persons, state duties, succession and gift tax, tax on the use of the words "Russia", "the Russian Federation", gambling tax, water use tax.

17. The representative of the Russian Federation further mentioned that his country's monetary policy was undergoing a process of gradual changes in line with systemic economic and social reforms. The basic direction of such evolution was to achieve a balanced monetary system free of unnecessary restrictions and constraints for domestic and foreign economic operators. In this context, he described the basic elements of the evolving foreign exchange and payments system in the following section.

Foreign Exchange and Payments System

18. The representative of the Russian Federation recalled that his country had been a member of the International Monetary Fund (IMF) since 1992. The national currency - the Ruble (equal to 100 Kopeks) - was convertible to foreign currencies on the basis of current market rates.

19. Members of the Working Party noted their concerns in relation to certain foreign exchange control and regulatory measures in force, including restrictions on foreign exchange retention, restrictions on the rights of residents to acquire and hold foreign exchange and to have accounts in foreign banks, pre-payment requirements for imports, and the acquisition charge of one per cent levied on the purchase of foreign exchange. They requested information on the nature of the requirements in place, their legal basis, their purpose and WTO justification, the circumstances that led to their introduction and whether these circumstances still existed, and the Russian Federation's plans to eliminate restrictions which were still in place.

20. In response, the representative of the Russian federation stated that the CBR exercised control over timely and full transfer of export earnings to the country and over making payments for goods imported to the territory of the Russian Federation under pre-payment terms. The CBR also exercised control to enable the detection of fictitious foreign exchange operations by residents to off-shore zones. Enhanced requirements in respect of establishing correspondent relations and forming reserves were imposed on operations performed by authorized banks with resident banks registered in off-shore zones. The requirements differed depending on the group and the off-shore zone they related to. Relevant requirements and the classification of off-shore zones were defined in the Instructions of the CBR No.1317-y of 7 August 2003 "On the Procedure for Establishing Correspondent Relations Between Authorized Banks and Non-Resident Banks Registered in the States and in the Territories Granting Preferential Taxation Treatment and (or) not Envisaging Disclosure and Provision of Information in Performing Financial Operations (in Off-Shore Zones)" and No. 1318-y of 7 August 2003 "On Establishing and the Amount of the Reserve for Operations Performed by Crediting Organizations with Residents of Off-Shore Zones".

21. The representative of the Russian Federation further explained some main peculiarities of the new currency regulation enacted by Federal Law No. 173-FZ of 10 December 2003 "On Currency Regulation and Currency Control" (hereinafter – the Law).

22. The Law (in the wording of Federal Law No. 58-FZ of 29 June 2004), which had entered into force on 18 June 2004, aimed at the implementation of the State currency policy and stability of the Russian Federation's currency while at the same time ensuring the progressive liberalization of the

currency transactions regime. One of the main features of the new regulation was a shift from the previous principle “everything is forbidden except that is permitted by law” to “everything is permitted except that is forbidden by law”. This trend was reflected in Articles 7 and 8 of the Law, which established a closed list of currency operations pertaining to capital movement subject to special regulation. Outside this list, all currency transactions were conducted without restrictions. At the same time, the Law provided for a clear and balanced distribution of powers between the Government and the Central Bank in the field of regulation of currency transactions pertaining to capital movement. Pursuant to Article 7 of the Law, the Government was responsible for regulating currency transactions pertaining to capital movement connected with foreign trade operations. The joint competence of the Government and the Central Bank covered transactions connected with the purchase by residents of share fractions, deposits, shares in legal entities’ property (authorized or ownership capital, share fund of cooperative society) from non-residents or with entering deposits under simple partnership contracts signed with non-residents. The powers of the Central Bank in the sphere of regulation of currency transactions pertaining to capital movement were extended to operations related to granting and raising of credits and loans; operations with securities whose face-values were specified in Russian or foreign currency (including related payments, transfers and performance of obligations); and operations of credit organizations.

23. The Law also established an exhaustive set of instruments which could be used by the Government and the Central Bank to regulate currency transactions pertaining to capital movement: a) temporary reservation of a part of the currency transaction amount; and b) requirement to use special bank accounts in authorized banks.

24. The representative of the Russian Federation further stated that currency transactions pertaining to capital movement listed in Articles 7 and 8 of the Law were subject to restrictions only with the purpose of preventing substantial reductions in gold and foreign currency reserves; sharp fluctuations of exchange rate of currency of the Russian Federation, as well as of maintaining the stability of balance of payments. These restrictions were non-discriminatory.

25. He further noted that Federal Law No. 173-FZ of 10 December 2003 “On Currency Regulation and Currency Control” (in the wording of Federal Law No. 58-FZ of 29 June 2004) introduced a “negative list” approach: if the procedures for currency transactions and for using bank accounts (including the requirement of special bank accounts) were not established by the State bodies for currency regulation (the Government and the Central Bank of the Russian Federation) within the scope of this Federal law, currency transactions should be carried out, accounts should be opened and transactions through the accounts should be carried out without restrictions.

26. The law also stipulated that State bodies for currency regulation should not introduce more than one reservation requirement with respect to one particular type of currency transactions simultaneously. The procedure of reservation and return of reservation amount was established by the Central Bank of the Russian Federation. The amount of reservation should be brought in Russian currency. The calculation of the reservation amount was carried out by residents and non-residents independently. The amount of reservation pertaining to foreign currency transaction should be calculated at the official rate established by the Central Bank of the Russian Federation at a date of entering of the amount of reservation. Early return of total or part of reservation amount was authorized in cases stipulated by the Law. Interests were not charged for the amounts of reservation brought into accounts of authorized banks or the Central Bank. According to the Law, requirements of reservation and use of special bank accounts were in force until 1 January 2007.

27. The representative of the Russian Federation stated that, currently, his Government was not using instruments of regulation of currency transactions pertaining to capital movement connected with foreign trade operations pursuant to Article 7 of the Law. Accordingly, all currency transactions related to foreign trade operations listed in Article 7 could be conducted freely and without restrictions.

28. In response to further questions, the representative of the Russian Federation stated that the Central Bank had introduced five different categories of special accounts to be used by residents and non-residents while carrying out currency transactions related to granting and raising of credits and loans and operations with securities whose face-values were specified in Russian or foreign currency (including related payments, transfers and performance of obligations). The transfer to and writing-off from these accounts of money resources were subject to a different temporary reservation rate (varying from 3% of the total transaction amount for 365 calendar days to 50% for 15 calendar days) depending on the category of special account. The procedures for using special accounts and reservation requirements were set up by normative acts of the Central Bank (Instructions No. 116 of 7 June 2004, No. 114 of 1 June 2004, Directive No. 1465 of 29 June 2004). These instructions had entered into force on 18 June 2004 and the directive on 1 August 2004.

29. He added that pursuant to Article 21 of the Law, residents were bound to sell a part of their foreign currency earnings at a rate not exceeding 30% of the amount on the internal currency market. The actual mandatory surrender requirement set by the Central Bank was 25% (Directive of the Central Bank No. 1304 of 9 July 2003). The following foreign currency revenues were not subject to mandatory surrender requirements:

- the amount of foreign currency received by the Russian Federation Government, federal executives bodies authorized by the latter, by the Central Bank of the Russian Federation from transactions and deals being carried out by them (or on their behalf and/or at their expense) within the scope of their competence;
- the amount of foreign currency derived by authorized banks from bank transactions and other bargains with non-residents;
- residents' foreign currency earnings within the limits of the amount necessary to fulfil their obligations under credit and loan contracts signed with non-resident entities acting on behalf of foreign governments as well as with residents of OECD or FATF country members for a period exceeding two years.
- the amount of foreign currency derived from transactions involving the transfer by residents of external emissive securities (rights to external emissive securities).

30. The list of foreign currencies subject to obligatory sale through the Russian Federation's internal currency market of the would be established by the CBR. The mandatory surrender requirement was in force until 1 January 2007.

31. Some Members noted that there were three specific restrictions on the use of foreign exchange that affected trade and engaged WTO obligations. As the application of these restrictions had not been specifically approved by the International Monetary Fund, they should be eliminated by the date of its accession to the WTO, and Russia should confirm that it would not have recourse to such measures after accession:

1. The one per cent tax levied on the purchase of cash foreign currency operated as a de facto additional charge upon imports and was inconsistent with the provision of Article III on non-discrimination, Article VIII on charges covering the cost of services rendered, and the requirements of Article XI of the GATT 1994, as well as Article 4 of the WTO Agreement on Agriculture, which envisaged elimination of unjustifiable restrictions to export.
2. The provision that purchase of foreign currency for making advance payments for imports required opening a deposit in the currency of the Russian Federation, as well as all formalities fees and requirements which were to be observed pursuant to the provision, tied up capital of importers that could be used to purchase additional imports. It was inconsistent with the non-discrimination provisions of Article III as well as the provisions of XI of GATT 1994 and Article 4 of the WTO Agreement on Agriculture. They were also discriminatory in respect of imports from more distant countries, and, thus, did not comply with the provisions of Article 1 of the GATT 1994. For these reasons, several members urged the Russian Federation to consider the use of other methods to avoid illicit capital outflow.
3. The mandatory requirement to transfer 25 per cent of the currency earnings to the domestic currency applied to exporters of the production from the Russian Federation effectively increased import transaction costs, and did not comply with the requirement of Article XI of the GATT 1994 on the elimination of unjustifiable export restrictions. Furthermore, due to the fact that that requirement hindered the use of the currency earnings for subsequent entry, it was also inconsistent with non-discrimination requirements of Article III of the WTO Agreement on Agriculture. Some members further noted that the discussed requirement was

especially burdensome for smaller importers and could, thus, make trade payments more difficult.

32. In response, the representative of the Russian Federation stated that the one per cent tax levied on the amount of foreign currency in cash purchased by natural persons (not applicable to juridical persons) established by Federal Law No.120-FZ of 21 July 1997 "On the Tax Levied on Purchase of Foreign Currency Notes and Payment Documents in Foreign Currency" (with subsequent amendments) had been abolished on 1 January 2003 by Federal Law No. 193-FZ of 31 December 2002.

33. Some members noted that the above-mentioned measures continued to have a negative impact upon imports. The recently abolished 1% tax had operated as a de facto additional charge upon imports. The mandatory surrender requirements effectively increased import transaction costs, and the import prepayment requirements unjustifiably tied up capital of importers that could be used to purchase additional imports. Those members requested the Russian Federation to eliminate all such requirements by the date of its accession to the WTO and to enter a commitment not to have recourse to such measures after accession. In addition, Members noted in response to Russia's statement that such measures were necessary to ensure accumulation of foreign currency reserves, that these measures were no longer needed. Russia's foreign exchange reserves were at record high levels, equivalent to 50 per cent of external debt and more than six months of import cover. Finally, Russia's balance of payments position had improved dramatically since these controls had been imposed in 1998 during the financial crisis.

34. In response, the representative of the Russian Federation noted that, in his opinion, the sale of a part of currency revenue, a measure which was also used by a number of WTO Members, was not leading to discrimination against non-residents and internal market protection subject to Article III of the GATT 1994, as it regulated the operations of all resident legal entities. Nor was this measure related to any quantitative import restrictions in the sense of Article XI of the GATT 1994 or protection of domestic producers since after the sale of current revenue, the exporter had the possibility of acquiring foreign currency on the internal currency market for payment of imports without restrictions. This requirement was an important instrument guaranteeing the stability of the foreign exchange market and the predictability of the Ruble exchange rate dynamics, and a means to mobilize currency resources required to fulfill foreign payments obligations. The Russian Government considered it premature to abandon the mandatory surrender requirement and import prepayment requirement at this stage. These requirements were not intended to restrict rights and lawful interests of residents but to control and restrain currency outflow from the country. No deposit

was required in case of payments through letter of credit, bank guarantee, or where a risk insurance was available in respect on non-return of export exchange earnings.

35. While recognizing the liberalization efforts undertaken by the Russian Federation in this field, several members further considered it useful to be provided with an opportunity to review the content of the new package of banking laws and information on the banking reform policy recently promoted by the Russian authorities. Some members of the Working Party requested that the Russian Federation eliminate those foreign exchange requirements prior to or upon accession.

36. [The Russian Federation agreed to eliminate its import prepayment and export surrender requirements upon accession. The Working Party took note of this commitment.]

37. [The representative of the Russian Federation took note of concerns expressed by members of the Working Party.]

Investment Regime

38. The representative of the Russian Federation noted that the current policy of his Government in this area was directed to creation of conditions to promote the expansion of domestic and foreign investments, and also the formation of transparent and stable rules in the conduct of economic activities. The basic legal texts relating to the activities of foreign investors were set forth in the Constitution of the Russian Federation adopted on 12 December 1993; the Civil Code Part One No. 51-FZ of 30 November 1994 (as amended on 23 December 2003) and Part Two No. 14-FZ of 26 January 1996 (as amended on 29 June 2004); and a number of other legislative acts. Those legislative acts provided guarantees for the protection of foreign investors' rights and interests consistent with the Russian Federation domestic investment legislation and relevant international treaties to which the Russian Federation was a party.

39. In response to questions by some members of the Working Party, he added that the adoption of the Land Code of the Russian Federation (Federal Law No. 136-FZ of 25 October 2001 (as amended on 29 June 2004)), together with a number of legislative acts on "debureaucratization" (Federal Law No. 128-FZ of 8 August 2001 "On Licensing of Specific Types of Activity", Federal Law No. 134-FZ of 8 August 2001 "On the Protection of Legal Entities' and Individual Entrepreneurs' Rights in the Case of Exercise of State Control (Supervision)"), and the Tax Code of the Russian Federation had significantly contributed to the formation of a favourable investment climate and facilitated the investment activity of Russian and foreign companies in the Russian market.

40. In response to questions concerning the 2001 Land Code and the 2002 Agricultural Land Law the representative of the Russian Federation stated that the new Land Code of the Russian Federation (Federal Law of October 25, 2001, No. 136-FZ) provided that foreign nationals and foreign legal entities could acquire leasehold over land (Articles 22, 38). Articles 28, 36, 37, 38, 65 and 66 of the Land Code and relevant decisions of the President of the Russian Federation (as related to national security issues) governed the fixing of the purchase price and other conditions of sale. The purchase of land for construction purposes was subject to Articles 30, 31 and 32 of the Land Code. He noted that for national security reasons, foreign nationals and foreign legal entities could not own agricultural land, land located in the border territories determined as such by President of the Russian Federation in accordance with federal laws on State Border of the Russian Federation, or in closed administrative areas and other territories of the Russian Federation as specially stipulated by federal laws. Border zones were, as a rule, established within five kilometers (of the ward, city) from the State Border, the sea coast, banks of border rivers, lakes and other reservoirs and within the territories of the islands of these reservoirs.

41. In response to further questions, the representative of the Russian Federation noted that owners of buildings, constructions and/or facilities located on a land plot owned by another person or the state, could benefit from a preemptive right of purchase or lease in respect of such land plot, unless the Land Code, Decisions or Decrees of the President of the Russian Federation, or Decisions of the Head of the Security Council prohibited the purchase or lease of those lands.

42. Concerning commercial transactions in agricultural land, the representative of the Russian Federation noted that Federal Law No. 101-FZ of 24 July 2002 "On Commercial Transactions in Agricultural Land" permitted leasehold by foreign natural persons, foreign legal entities and legal entities with foreign participation exceeding 50 per cent for a period of up to 49 years.

43. In response to further questions concerning the tax regime and special concessions to attract foreign investors, the representative of the Russian Federation stated that the Ministry of Economic Development and Trade of the Russian Federation was the authority responsible for forming and implementing the investment policy of the Russian Federation. As of May 2003, the Russian Federation had concluded 57 bilateral investment treaties (BITs). In respect of investors and their investments, all BITs contained, *inter alia*, provisions on national treatment and MFN with exemptions, guarantees in case of expropriation and rules for reimbursement of losses, free transfer of profits and dispute settlement procedures.

44. He noted that in accordance with the existing legislation, investment incentives for foreign investors could be established. These incentives could, *inter alia*, include the following incentives if the volume of investment was greater than US\$100 million:

- VAT exemption: (i) for goods (with the exception of those subject to excise taxes) included in the fixed assets and imported by foreign investors as contributions to the charter (share) capital of organizations (enterprises) with foreign investments per Article 150.7 of Part II of the Tax Code of the Russian Federation (Federal Law No. 117-FZ of 5 August 2000 (as amended on 28 July 2004)); (ii) for goods (with the exception of goods subject to excise taxes) brought into the territory of the Russian Federation as aid (assistance) free of charge per Article 150.1 of Part II of the Tax Code of the Russian Federation.
- Customs duties exemption: Government Decree No. 883 of 23 July 1996 "Concerning Import Duty and Value Added Tax Exemptions for Goods Imported by Foreign Investors as Contributions to Charter (Pooled) Capital of Enterprises with Foreign Investments", provided for customs duties exemption for goods, which were to be imported into the customs territory of the Russian Federation as a foreign founding party's contribution to the charter (pooled) capital on condition that those goods:
 - were not excisable goods;
 - were classified as property, plant and equipment;
 - were imported within the time-limits established by the articles of association / incorporation of the enterprise.

45. He further noted that in accordance with the Federal Law No. 160-FZ dated 9 July 1999 "On Foreign Investment in the Russian Federation (as amended on 8 December 2003), the property of a foreign investor or a commercial legal entity with foreign investment could not be subject to forced seizure, including nationalization, requisition, except for the cases and reasons determined by a federal law or international treaty of the Russian Federation. Regarding payment of taxes and fees provided by the legislation of the Russian Federation, a foreign investor had a right to freely use on the territory of the Russian Federation the revenues and profits (which had been obtained from the investment released in the Russian Federation) for reinvesting in accordance with the legislation of the Russian Federation or any other purpose not contradicting the legislation of the Russian Federation. Foreign investors also had the right after fulfillment of tax and other obligations to export without hindrance any revenues, profits, and other legally acquired money sums in foreign currency from the Russian Federation in connection to investment made. A foreign investor could acquire stock and other securities of Russian commercial organizations and state securities in accordance with legislation of the Russian Federation on securities.

46. The representative of the Russian Federation added that a wide range investment projects were open to foreign investors. Information on investment projects was widely available, including from the Chamber of Commerce of the Russian Federation and the Russian Union of Entrepreneurs and Industrialists (Employers).

47. Article 4.1 of Federal Law No.160-FZ of 9 July 1999 "On Foreign Investments in the Russian Federation" ensured national treatment for foreign investors. However, exceptions could be imposed, for example, if required to protect the fundamental constitutional requirements or to ensure national security and defence interests, public order, morals, health, right and legitimate interests of other persons. The following security related restrictions were applied: (i) the Law of the Russian Federation No. 3297-1 of 14 July 1992 "On a Closed Administrative-Territorial Area" set forth certain restrictions including restrictions on entrepreneurial and economic activities; and (ii) Article 15.3 of the Land Code of the Russian Federation provided that foreign natural persons and foreign legal entities could not own land within the border territories designated by the President of the Russian Federation pursuant to the federal legislation On State Border of the Russian Federation and in other specially defined territories of the Russian Federation in accordance with federal laws.

State Ownership and Privatization

48. The representative of the Russian Federation said that governmental privatization policy was aimed at a structural reform of the Russian economy and at developing its private sector by expanding the scope of privatization. This policy also provided for: delivery of budget revenues; minimization of federal budget costs of public property management; encouragement of investment in the production sector of the Russian economy; improved opportunities for medium and small business to participate in privatization by means of diversifying the methods of privatization of State and municipal property; and the consolidation of real properties by means of attaching land plots to the privatized property. Privatization was based on the principles of transparency and predictability of privatization procedures, and State and municipal properties, and transparent procedures of State authorities and local administrations.

49. The representative of the Russian Federation stated that privatization of State enterprises was executed pursuant to the following legal acts:

- Federal Law No. 178-FZ of 21 December 2001 "On Privatization of State and Municipal Property";
- the State Program of "Privatization of State and Municipal Enterprises in the Russian Federation" (approved by Presidential Decree No. 2284 of 24 December 1993, as amended on 14 March 1996, 6 October 1997, 15 July 1998, 25 July, 1 August 2000, 3 April 2002, 19 November 2003);
- Basic Provisions of the State Program of "Privatization of State-Owned and Municipal Enterprises in the Russian Federation after 1 July 1994" (approved by Presidential Decree No. 1535 of 22 July 1994 as amended on 16 April 1998, 25 January 1999, 19 November 2003);

- the Conception of Management of State Property and Privatization in the Russian Federation (approved by Government Decision No. 1024 of 9 August 1999, as amended on 29 November 2000);
- Article 192 of the Budget Code of the Russian Federation, which provided for annual draft Privatization Programme to be submitted by the Government of the Russian Federation together with a draft law On the Federal Budget to the State Duma;
- the Rules of Elaboration of the Forecast Plan (Programme) of Privatization of Property in Federal Ownership (approved by Resolution of the Government of the Russian Federation No. 617 of 19 August 2002);
- the Rules of Drafting and Taking Decisions on the Terms of Privatization of Property in Federal Ownership (approved by Resolution of the Government of the Russian Federation No. 512 of 9 July 2002);
- the Rules of Determining of the Normative Price of State and Municipal Property Subject to Privatization (approved by Resolution of the Government of the Russian Federation No. 369 of 31 May 2002).

50. He further added that Federal Law No. 178-FZ of 21 December 2001 and the State Program "On Privatization of State and Municipal Property" listed the types of property which were excluded from privatization, including, *inter alia*, property classified under federal laws as a non-alienable object of civil rights - i.e. an object exempted from privatization, such as natural resources, budgetary funds, defense facilities and objects, sanitary and epidemiological services, etc. - and property that could only be in State or municipal ownership as established by federal laws.

51. Thus, in accordance with the Land Code of the Russian Federation No. 136-FZ of 25.10.2001 (as amended on 29.06.2004), Federal Law No. 101-FZ of 24.07.2002 "On the Turnover of Agricultural Land", and Federal Law No. 7-FZ of 10.01.2002 "On the Protection of the Environment", land of common use occupied by squares, streets, automobile roads etc., land situated within the borders of State reserves and national parks, as well as some categories of agricultural land were also not subject to privatization.

52. A list of objects and enterprises not subject to privatization, as established by federal laws, was contained in the State Program "On Privatization of State and Municipal Property". This list included, among others, mineral wealth, forest fund, water resources, air space, resources of the continental shelf, territorial waters and sea economic zones of the Russian Federation, budgetary and non-budgetary means, currency and other reserves, objects of historic and cultural heritage of federal value, State "unitary enterprises" and state institutions involved in the turnover of narcotics and psychotropic substances, nuclear stations and enterprises producing special nuclear and radio-nuclear materials, nuclear weapons, as well as enterprises performing scientific research and development works in the mentioned above areas, permanent-set objects of social servicing, including orphanages.

53. The representative of the Russian Federation further added that Russia's legislation on privatization – as listed above – did not contain any restrictions concerning foreign participation in privatization. He noted that the legislation required mandatory compliance with any restrictions contained in other legislation for certain categories of natural and legal persons, including foreigners, to protect constitutional order, public morals, the health and legal rights of citizens, the defensive capacity and security of the State etc. Federal Law No. 66-FZ of 13 April 1998 “On the Conversion of the Defense Industry in the Russian Federation”, for example, permitted the restriction of foreign participation in the privatization of enterprises, which carried out scientific and/or production activities related to defense and the security of the State, in order to prevent damage to the military and scientific potential of the Russian Federation and the expansion of weapons of mass destruction. Such restrictions were imposed in the form of Decisions on privatization.

54. He added that the requirements of the State Program of Privatization of State and Municipal Enterprises in the Russian Federation (approved by Presidential Decree No. 2284 of 24 December 1993) regarding foreign participation in privatization in the defense industry, the oil and gas industry, mining and processing of ores of strategic materials, precious and semiprecious stones, precious metals, radioactive and rare-earth minerals, certain transportation and communications industries, and municipal retail and wholesale enterprises, public catering and consumer services, small enterprises in industry, construction, and automobile transportation had been abolished by Presidential Decree No. 370 of November 2003. Foreign participation in privatization was now governed by Federal Law No. 160-FZ (1999) “On Foreign Investment in the Russian Federation” and Federal Law No. 178-FZ (2001) “On Privatization of State and Municipal Property.” Pursuant to Federal Law No. 160-FZ, foreign investors were allowed to participate in the privatization of federal and municipal property as noted above, unless the Government decided otherwise in each individual case.

55. Some members of the Working Party requested information on progress achieved in the privatization process and the percentage of trade accounted for by State-owned firms. These members noted that in many situations, a shareholding of as low as 25 % could amount to effective control, and, accordingly, requested information on the economic activity of companies with 25% or greater government shareholding. In response, the representative of the Russian Federation said that a total of 90,947 enterprises had been privatized between 1993 and 2001 (Table 2). He also provided information concerning privatization by sectors (Table 3). He noted that according to the Common Russian Classifier of Sectors of the Economy (approved by Decision No. 21/97 of Gosstandard of the Russian Federation on 29 October 1997, as amended on 15 January, 31 August 1999, 15 February 2000) "Industry" included fishing and mining, and wood-processing, timber-processing and cellulose and paper producing industries as a single category. Forestry (forestation, forest

regeneration) was a separate sector of economy and pertained to "Other areas of economy". According to the Conception of Management of State Property and Privatization in the Russian Federation (approved by Government Decision No. 1024 of 9 August 1999) only such enterprises could be maintained in the form of Federal State "unitary enterprises" which complied with the criteria stipulated in Government Decision No. 1348 of 6 December 1999 "On Federal State Unitary Enterprises Based on the Right of Economic Jurisdiction (maintenance of national defense and national interest, solution of social goals)".

56. In response to questions from members of the Working Party, the representative of the Russian Federation stated that the term "unitary enterprise" was defined by Federal Law No. 161-FZ of 14 November 2002 «On State and Municipal Enterprises" as "a commercial organization not endowed with the right of ownership of the property assigned to it by the property owner". Only State and municipal enterprises could be established as unitary enterprises and only the Government of the Russian Federation or federal executive authorities could establish a federal unitary enterprise. The property of unitary enterprises belonged by right of ownership to the Russian Federation, a subject of the Russian Federation or a municipal entity. State (or municipal) unitary enterprises were a form of legal entity aimed at making profit. Their activities were based mainly on commercial considerations. In response to further questions he noted that procedures for allocating and managing property assigned to a unitary enterprise were determined by the Government of the Russian Federation, the empowered regional State authorities of the Russian Federation and local administrations. In the event of bankruptcy, the persons responsible for the actions of the unitary enterprise, would bear subsidiary liability for the obligations of the enterprise where the property of the debtor was insufficient. A detailed description of these provisions is provided below in the section on State Trading Enterprises.

57. He added that in July 2003 his Government had approved a programme on privatization of State assets in 2004 and main objectives for privatization for the period up to 2006 (Government Decision No.1165-r of 15 August 2003). This programme aimed at encouraging Russian and foreign investors' activity, increasing economic efficiency, and raising budget revenues.

58. As of June 2003, his Government still owned a controlling stake in 9,860 State-owned companies - i.e. 'Federal State unitary enterprises' (GUPs) - and 4,250 incorporated companies. A total of 911 GUPs and 1,978 incorporated companies had been authorized for privatization in 2003. In 2004, State assets to be sold included stakes in Lukoil (7.6% of the second largest crude producer), the Moscow International Stock Exchange, the St Petersburg, Vladivostok, Archangel, Azov and Novorossiisk sea ports, and several steamship operators. In June 2004, there were 9,222 Federal State

unitary enterprises in the Russian Federation and the Government still owned shares in 3,905 joint stock companies. About 1,900 federal-owned objects, including some 600 joint stock companies of federal ownership were planned for privatization in 2005. Members of the Working Party invited the Russian Federation to enter a commitment to report on developments in its program of privatization as long as the privatization program was in existence and on other issues related to any ongoing economic reforms relevant to its obligations under the WTO.

59. [The representative of the Russian Federation confirmed the readiness of the Russian Federation to ensure the transparency of its ongoing privatization program and to keep WTO Members informed of progress in the reform of its economic and trade regime. He stated that his Government would provide annual reports to WTO Members (along the lines of that provided to the Working Party) on developments in its program of privatization as long as the privatization program was in existence. He also stated that his Government would provide annual reports on other issues related to economic reforms as relevant to its obligations under the WTO while the Russian Federation was still in the process of reforming its economy.]

60. [The representative of the Russian Federation took note of concerns expressed by members of the Working Party.]

Pricing Policies

61. The representative of the Russian Federation explained that an important objective pursued by his authorities was to introduce the principle of free market price formation based on supply and demand in the economic field. Therefore, prices in most sectors of the Russian economy were now determined freely by market forces. Presidential Decree No. 221 of 28 February 1995 "On Measures to Streamline the State Regulation of Prices (tariffs)" (as amended on 8 July 1995 and 8 April 2003) and Government Resolution No. 239 of 7 March 1995 "On Measures to Streamline the State Regulation of Prices (Tariffs)" (as last amended on 30 June 2002), established the main principles of State price (tariffs) regulation on the Russian domestic market. Price regulation was implemented by the Government of the Russian Federation, federal authorities and sub-federal bodies of executive power for the goods and services listed in Tables 4-6. Regulatory legislation issued by federal executive bodies concerning state regulation of prices for goods and services were subject to mandatory official publication, and all decisions by the Government of the Russian Federation concerning state regulation of prices and tariffs, including those for services of natural monopolies, were published in "Rossiiskaya Gazeta".

62. He noted that while contract prices for certain goods and services imported into the territory of the Russian Federation were subject to State price regulation, in reality, those prices were fixed by enterprises independently, subject to market conditions and the current regulatory provisions regardless of whether they were sold to domestic or foreign purchasers. Contract prices for goods and services exported from the territory of the Russian Federation and subject to State price regulation were in reality also fixed by enterprises depending on market conditions. However, in sectors where natural monopolies existed and in the case of products purchased exclusively or mainly by the State such as defense products, pricing was based on production costs and established in a way which excluded any possible abuse by the producer/supplier of its monopoly position. According to the legislation in place, the term “natural monopoly” was defined as the state of a market in which the satisfaction of the demand on this market was more effective in the absence of competition, due to specific technological production aspects (in connection with economies of scale), whereas services provided by the subjects of a natural monopoly could not be replaced in consumption by other services, while the demand on the given market for services provided by the subject of the natural monopoly depended to a lesser degree on changes in prices for these services than on the demand for other services. Production was not substitutable and the demand depended less on the price change than the demand on other markets. Pursuant to Article 4 of the Federal Law «On Natural Monopolies», natural monopoly sectors included transportation of oil and oil products along main pipelines; transportation of gas along pipelines; transfer of electric heat and power; transportation by rail; services of transport terminals, ports and airports; services of generally accessible electricity and postal and communication services, services on operating and dispatching management in energy sector– this list was exhaustive. No other sectors were considered to be natural monopolies.

63. The procedures and principles used for fixing prices of goods and services regulated by the State differed depending on the type of goods or services. For some goods a minimum price level was fixed (e.g. for alcoholic beverages above 28% vol.) while for others a maximum price level was settled (e.g. in railway transportation). For natural monopolies, prices (tariffs) or limits were established for every particular sector in accordance with the Art.6 of Federal Law No. 147-FZ of 17 August 1995 «On Natural Monopolies». In addition, in the case of air, road and river transport services involving competing groups of carriers, the profit margins and not the prices were set.

64. In reference to the Russian Federation's description of certain "natural" monopolies, some members requested additional information on whether prices charged by natural monopoly suppliers of goods and services differed depending on whether they were sold for domestic consumption. Those members also requested information on the pricing of certain services associated with the sale of goods – such as those related to goods destined for export rather than for domestic consumption.

65. Members of the Working Party sought further clarifications on the mechanisms for determination of State controlled prices and their relation to market and international prices and whether such prices, when charged by State trading enterprises, were in accordance with commercial considerations. The representative of the Russian Federation replied that the following elements were considered in determining the prices for specific products and services: the cost-effectiveness of their production including the production (marketing) expenses of products and services; taxes and other payments; the cost of fixed production assets; the requirement of investment for reproduction purposes; depreciation charges; estimated profits; remoteness of different consumer groups to the production site of products and services; adequacy of the quality of the products; and services produced and marketed to the consumer demand.

66. A member requested further clarification on the grounds for fixing the minimum price level of vodka, liquor products and other alcohol stronger than 28% vol. That member also asked the Russian Federation to explain how this practice could be in compliance with the Agreement on the Implementation of Article VII of GATT 1994.

67. He confirmed that minimum prices on vodka, liquor products and other alcohol stronger than 28 % vol. related only to the internal sale at the retail level of domestically produced and imported products, and were not applied in a discriminatory manner between domestically produced and imported products. He confirmed that this measure had no bearing on the customs valuation of the imported product.

68. Regarding price controls applied at the sub-regional level, some members of the Working Party enquired about the legal basis and scope of authority to apply price controls at this level, and about whether these measures were actually reviewed by the federal authorities.

69. The representative of the Russian Federation replied that regional governments regulated prices for some products and services, such as gas and solid fuel sold to the population, transportation of passengers and luggage by all means of public transport in municipal transport networks, communal services to households, water supply, and sewerage services. At the regional government level, prices for electrical energy provided by regional electrical companies were also regulated, as well as prices for all means of commuter passenger transportation (except railways) and communal services for the population (including housing rent). Decisions on pricing taken at the federal level by bodies authorized to regulate the activity of natural monopolies were compulsory for the regional executive bodies and local executive authorities. State regulation of prices for goods and services provided by local natural monopolies was carried out by regional executive bodies independently to

the extent provided by current regulatory provisions, taking into account recommended prices approved by federal executive bodies.

70. Some members also sought additional information on the Russian Federation's announcement of efforts to unify its domestic and foreign operating tariffs for railways, as well as a status report on developments. Noting that the Russian Federation had indicated that discriminatory pricing for transportation on railway freight could be eliminated by 1 March 2002, some members asked the Russian Federation if this measure had been implemented as planned. These members expected the Russian Federation to treat all import and export cargoes on the same basis as domestically produced goods, in line with the national treatment requirements of Article III, and to make a commitment to this in the Working Party Report.

71. In response, the representative of the Russian Federation explained that his authorities were prepared to introduce the same pricing scheme on import-export cargoes as it was for domestic products. He added that in August 2001 the first stage of unification for railway freight rates was implemented with the transition to payment for export and import cargoes shipped through Russian ports based on Price List No. 10-01 tariffs of the Ministry of Railways. These measures eliminated the existing differentiation in pricing for export and import cargoes shipped through Russian ports and domestically transported cargoes. Competent federal authorities were preparing the second stage of this tariff unification which would extend Price List 10-01 tariffs to import cargoes shipped through Russian border land checkpoints.

72. In response, some members of the Working Party stated that the Russian Federation should specify how and when it proposed to complete the elimination of the current discrimination vis-à-vis export and import cargoes. Those members also expressed concerns that differential rates continued to be charged for rail transportation of cargoes for export by land border crossings.

73. Regarding the reform of the railway system, the representative of the Russian Federation replied that a program of structural reforms had been adopted in Government Resolution No. 384 of 18 May 2001. The reform was organized in three phases. The first phase (2001-2002) included: the development of competition in the railway transportation sector, including the creation of cargo companies – operators, owning carriage rolling stock; the guarantee of non-discriminatory access to railway infrastructure for users of railway services; the establishment of independent structural divisions within the "The Russian railways" (OJSC) for carrying out different activities; and the introduction of separate accounting for each activity. The second phase (2003-2005) involved: the reorganization of the OJSC into independent structural divisions in affiliated companies executing different activities on railway transport; the transition to free pricing in competitive sectors; a study on

the organization and implementation of legal mechanisms, the consequences of the reorganization of the OJSC into independent structural divisions, and the expediency of such a reorganization. The third phase of the reform (2006-2010) was aimed at increasing investments into the sector by selling Government's shares of OJSC affiliated companies and of other companies established in this sector. This reform program was being carried out without serious changes or delay.

74. Some members of the Working Party asked whether gas liquids and condensate, e.g. those used for petrochemical feed stocks, were also included in the list of items under price control. These members expressed strong concerns about the trade distortions caused by State controls on the pricing of energy for domestic consumption (whether in the form of gas, oil or electricity). The effect of these controls was to depress prices for domestic industrial users, which could lead to a very wide differential between the price paid by domestic industrial users and the price paid by export customers as well as the world market price. Other members noted that the price for natural gas was below the full cost of production, including a reasonable profit, and was therefore inconsistent with commercial considerations. Referring to natural gas, these members considered that the fact that Russian industrial producers did not have to pay the full market price for their energy inputs, including gas, especially in energy-intensive industries and in industries that used gas as an input (rather than an energy source) constituted an unfair competitive advantage. This situation had implications for the ability of imported goods to compete on the Russian market and could lead to a displacement of member products from third country markets. In addition, Russian exports of "downstream" intermediate or finished goods, particularly of products that were energy-intensive such as fertilizers or metals, could take place at prices below their normal value, leading to the possibility of facing anti-dumping or countervailing actions in export markets.

75. Those members recognized that this was an area where the Russian Federation had begun a process of regulatory reform, which could not be achieved overnight, and also understood that the Russian Federation could wish to maintain controls on the price of energy sold for domestic household consumption. Those members also stressed that increases in the price of natural gas could also lead to a return of the non-payment problem. Members considered that the opportunity of WTO accession should be taken to tackle the negative impact of dual pricing in favour of manufacturing industry at its source. They considered that the regulatory reform in the energy sector would also benefit the wider economy of the Russian Federation by allowing for a more rational resource allocation and stimulating greater investment and competitiveness.

76. The representative of the Russian Federation replied that underground resources within the territory of the Russian Federation, including subsoil domain and mineral resources contained therein,

energy and other resources, were the property of the State and were pertaining to the sovereign rights of the Russian Federation. Referring to the internal price of natural gas, he stated that the basic principle of price setting was to ensure economically viable production and recovery of costs, which also included costs of investments done or planned, and reasonable profits. That methodology was uniform and was applied to all gas consumers, except those situated in remote geographical locations, without exceptions, exemptions, discounts or preferences. The Energy Strategy of the Russian Federation for the period up to the year 2020 provided for an increase in natural gas prices. The retail price was also expected to grow. He added that the deregulated price, at which independent producers sold their gas, was close to the regulated price.

77. In response to the concerns raised by some members regarding the pricing of gas, he further noted that the final price of gas sold to domestic industrial users was regulated, whereas the price of exported gas was not. The price for gas purchased at its source was not regulated. He further added that his Government was of the view that the issue of pricing was not regulated by the WTO Agreement. Regarding the views of some members of the Working Party that the regulation of gas prices could imply an element of indirect subsidization of Russian industrial producers because those consumers did not pay a free market price for their energy inputs, he noted his Government's view that this did not constitute a subsidy pursuant to the WTO Agreement on Subsidies and Countervailing Measures. He added that the current practice of regulation of energy and natural gas prices in the Russian Federation was not different from similar practices of most of the WTO Members who continued to regulate energy prices.

78. He further noted that Order No. 12/1 of the Federal Energy Commission of 24 March 1999 "On Granting a 50 per cent Reduction of Prices of Gas to Enterprises which Produce Chemical Fertilizers, Chemical Protection for Plants and Raw Materials for Production Thereof, in 1999" had only been in effect during the year 1999 and that there were no other legal provisions that provided for similar price reductions for any other industries. Presently, the pricing of gas was determined by Resolution of the Federal Energy Commission No. 8/9 dated 6 February 2002 (Methodology of Determining Tariffs for Supply and Marketing Services provided by Gas Distribution Organizations). He noted that fertilizer industry consumers, in particular, were part of the group with the biggest amount of gas consumption – more than 100 000 m³ per year as they bought gas for further processing. He added that reform of the gas sector was under consideration.

79. Concerning electricity prices, he noted that such prices were regulated in a similar way to gas prices, in pursuance of Federal Law No. 41-FZ of 14 April 1995 "On state regulation of tariffs on electric and thermal power in the Russian Federation. Electrical energy prices provided by regional

electrical power-plants to the regional market were fixed both to industrial and household consumers. He added that the setting of prices of electricity supplied to commercial consumers was being reformed (although, like for gas, prices charged to individual household consumers would remain fixed for reasons of social protection). The concept of the reform had been approved by Government Regulation No.526 of 11 July 2001 «On reforming the electricity sector in the Russian Federation», which approved «The main trends of electricity reform in the Russian Federation». In pursuance of this regulation, a package of draft laws had been adopted on 26 March 2003). The electricity sector was regulated by Federal Law No.35-FZ « On electricity». The reform was planned to be carried out taking into consideration the results of the privatization of the electricity sector enterprises and aimed at the de-monopolization and development of competition in production, electricity selling, and service rendering; ensuring non-discriminatory access for the producers and consumers of electricity to the market infrastructure, and at ensuring the rights of investors, creditors and shareholders in case of structural reforms.

80. At a later stage, he noted that the first stage of the reform of the electricity sector had been finalized. It had resulted in the establishment of a competitive electricity market and in greater financial transparency in electricity enterprises. Wholesale and generating companies were being established, after which the 51% share that the Government had in these companies would be reduced. During the second stage, the constitution of a wholesale market and retail electricity market would be finalized in the European, Urals and Siberia energy regions. Tariff regulation would be maintained only for transportation and system services. The third stage was aimed at promoting investments in the electricity sector and at achieving a high level of competition in generation and distribution sectors. During this stage, the Government would also cease administrating competitive electricity sectors. Currently, up to 15% of all electricity was sold on the deregulated electricity market, which had been operating since November 2003. Electricity was sold to energy companies and industrial consumers, including steel and fertilizer producers.

81. In relation to members' concerns about the disparity between the price of gas sold to industrial consumers in the Russian Federation and the world price of gas, the representative of the Russian Federation stated that gas export prices were not regulated and were established on the basis of supply and demand in the importing country. He was of the view that there was no “world market price” for gas, and noted that for gas shipped to Europe, shipment and transport reflected a substantial part of the landed price. He added that the price of gas for internal consumption in the Russian Federation was fixed at a level that secured recovery of costs and an amount for profit.

82. Members of the Working Party noted that discussions in the Working Party had served to clarify the pricing of gas. However, those members remained concerned that the regulated price for gas used by industrial consumers was not fixed at a level that permitted a gas supplier a full and proper recovery of all costs and an amount for profit. They requested a confirmation from the Russian Federation that gas suppliers would act on the basis of commercial considerations, based on full recovery of costs and a reasonable profit.

83. In response to the concerns expressed, the representative of the Russian Federation indicated that producers/distributors of natural gas in Russia would operate, within the relevant regulatory framework, on the basis of normal commercial considerations, based on recovery of costs and profit. He confirmed that his Government's policy was to ensure that these economic operators, in respect of their supplies to industrial users, would recover their costs (including the cost of production, overheads, financing charges, transportation, maintenance and upgrade of extraction and distribution infrastructure, investment in the exploration and development of new fields) and would be able to make a profit, in the ordinary course of their business. He added that his Government would continue to price supplies for households and other non-commercial users, based on considerations of domestic social policy. [The Working Party took note of this commitment.]

84. [The representative of the Russian Federation confirmed the Russian Federation would apply price controls on products [and services] contained in Tables [...], and any similar measures, [including dual pricing,] that are introduced or reintroduced in future, in a WTO-consistent manner, and take account of the interests of exporting members as provided for in Article III:9 of the GATT 1994. From the date of accession, the Russian Federation will publish lists of goods and services subject to State price controls in its Official Gazette, including the list in Tables [...] and any changes from that list.]

85. [The representative of the Russian Federation confirmed that from the date of accession, when applying [internal maximum] price control measures in respect of products, the Russian Federation would comply with the provisions of the GATT 1994, and in particular with Article III:9 of that Agreement. The Working Party took note of this commitment.]

Competition Policy

86. The representative of the Russian Federation stated that his authorities attached great importance to competition policy, and had closely followed the activities of the WTO Working Group on the interaction between trade and competition policy. The basic goal of competition policy in the Russian Federation was to create a favorable climate for enterprises, and the facilitation of

competition and efficient functioning of the markets by preventing, restraining and eliminating monopolistic and anti-competitive practices among economic operators. The Russian Federation had adopted the following legislation: Federal Law No. 948-1 of 22 March 1991 "On Competition and Restriction of Monopoly Activity on Commodity Markets" (as amended on 24 June 1992, 25 May 1995, 2 January 2000 and 9 October 2002); the Code of Administrative Offences"; and Federal Law No 117-FZ of 23 June 1999 "On Protection of Competition in the Financial Services Market" (as amended on 1 July of 2002).

87. In response to requests from members of the Working Party for further information, the representative of the Russian Federation stated that any anti-competitive market structure and unfair business practices that impeded competition were subject to the anti-monopoly laws. In his view Russian legislation already in force contained all necessary elements for State supervision and control over arrangements and practices of economic operators that adversely effected competition, abuse of dominant position on the market by economic operators, and led to economic concentration.

88. He further added that the Federal Anti-Monopoly Service had succeeded the Ministry of the Russian Federation for Antimonopoly Policy and Entrepreneurship Support pursuant to Presidential Decree No. 314 of 9 March 2004. The main functions of the Federal Anti-Monopoly Service were to introduce legislative initiatives in the field of anti-monopoly activity and monitor compliance with anti-monopoly requirements by economic enterprises. The Anti-Monopoly Service also reviewed anti-monopoly aspects of establishment and mergers, share transactions and acquisitions. He noted that under Article 71.g of the Constitution of the Russian Federation, regional authorities did not have jurisdiction over competition policy.

89. He further noted that the Law of the RSFSR No.948-1 of 22 March 1991 (in the edition of 9 October 2002) "On Competition and Restriction of Monopoly Activity on Commodity Markets" concerned the breaking up of monopoly activity and unfair competition in commodity markets as well as anti-competitive behaviour by federal executive bodies and other governmental bodies of the subjects of the Russian Federation. Violation of the anti-monopoly legislation by officials of the federal executive bodies, the executive bodies of the subjects of the Russian Federation, local government, and other bodies and organizations vested with functions under the legislation as well as by natural persons, including individual entrepreneurs, could lead to civil, administrative or criminal liability.

90. In response to question from members of the Working Party, he added that foreign operators on commodity markets were granted national treatment and protected by Article 10 of Federal Law No.948-1 of 22 March 1991 (in the edition of 9 October 2002) "On Competition and Restriction

of Monopoly Activity on Commodity Markets". The Anti-Monopoly Service made no distinction between foreign and domestic operators.

91. In 2001, the Anti-Monopoly body had brought 1,500 complaints and notifications – three times more than in 2000 - 128 cases had been considered and 70 court orders had been issued. In total, 8,540 cases had been considered in 2001, among which were 3,129 cases of abuse of dominant position on commodity markets, 343 cases of unfair competition, 5,182 cases on the establishment, merger, and joining of commercial organizations, liquidation and separation of state and municipal unitary enterprises, as well as acquisition of shares in chartered capitals of commercial organizations. The total number of cases considered in 2001 exceeded that of 2000 by 31 per cent. Administrative sanctions had been applied in 5,337 cases. Fines had been imposed in 3,697 cases and 1,837 cases had resulted in administrative caution. 9,000 cases of violation of anti-monopoly legislation had been considered in the Russian Federation in 2002. Over 1,000 cases against federal executive authorities and local governments violating anti-monopoly legislation had been initiated in 2004. He added that, in order to eliminate unfair competition, the Anti-Monopoly Service provided extensive protection of rights to all participants of commodity markets. Most cases of unfair competition uncovered by the Anti-Monopoly Service of the Russian Federation and its regional divisions related to infringement of intellectual property rights and, in particular, to the illegal use of trademarks.

FRAMEWORK FOR MAKING AND ENFORCING POLICIES

Powers of executive, legislative and judicial branches of government

92. The representative of the Russian Federation stated that, in accordance with the Constitution, State power in the Russian Federation was exercised by the President of the Russian Federation, the Federal Assembly (the Council of the Federation and the State Duma), the Government of the Russian Federation, and the courts of the Russian Federation. The competence of each body of power was defined in Chapters 4, 5 and 6 of the Constitution of the Russian Federation, respectively. In response to further questions from members of the Working Party, he noted that judicial, legislative and executive power were all exercised separately.

93. A new system of federal executive bodies had been established by Presidential Decree No. 314 of 9 March 2004 (as amended on 20 May 2004) "On the System and Structure of the Federal Executive Bodies" in pursuance of ongoing administrative reform. The new system introduced federal ministries, federal services, and federal agencies as federal executive bodies with different spheres of competence. Federal ministries were responsible for determining State policy, preparing legislation in related fields, and coordinating and controlling the activity of federal services and

federal agencies under their authority. Federal services exercised control and supervision in related fields of activity, performed special functions related to national defence, State security, defence of the State borders of the Russian Federation, fight against crime, and public safety. Federal agencies rendered State services managing state-owned property as well as law-enforcement, except functions related to control and supervision.

94. The judicial system of the Russian Federation was regulated by Federal Constitutional Laws, No. 1-FKZ of 31 December 1996 "On Judicial System of the Russian Federation", No. 1-FKZ of 21 February 1994 "On Constitutional Court of the Russian Federation" (as amended on 8 February 2001), and No. 1-FKZ of 28 April 1995 "On Courts of Arbitration in the Russian Federation". Judicial power was exclusively exercised by courts manned by judges, juries, and arbitrators duly appointed under constitutional, civil, administrative and criminal court proceedings. Judgments, rulings, orders, summons and other lawful communications issued by the courts were binding upon all persons, entities or governmental authorities throughout the whole territory of the Russian Federation. Justice was equal for all. Courts should not favour any agency, person or otherwise complainant based on nationality, sex, race, language, political convictions or any other grounds unless established by federal laws. Failure to comply with a court judgment, or any other act of contempt of court, was a breach of federal law. The rules of civil procedure in federal courts of general jurisdiction were set out in the Civil Procedure Code of the Russian Federation No. 138-FZ of 14 November 2002 (as amended on 25 February 2004). Procedures for the settlement of disputes by arbitration courts were set out in the Arbitration Procedure Code of the Russian Federation No. 95-FZ of 24 July 2002 (as amended on 28 July 2004). He further noted that the State fees for claims or other statements or complaints submitted to the courts of general jurisdiction or to arbitration courts were established in Federal Law No. 2005-1 of 9 December 1991 "On State Fees".

95. The President of the Russian Federation was the Head of State. He determined the guidelines of domestic and foreign policies of the State. Pending resolution of a matter by the appropriate court, the President had the right to suspend the operation of acts of the executive power bodies of the "subjects"¹ of the Russian Federation if they were not in compliance with the Constitution of the Russian Federation, federal laws and international commitments of the Russian Federation.

96. Executive power in the Russian Federation was exercised by the Government of the Russian Federation. The Government ensured the implementation in the Russian Federation of a single trade,

¹ Proceeding from Article 5 (1) of the Constitution of the Russian Federation, the term "subjects" of the Russian Federation includes republics, regions, oblast, cities of federal importance, autonomous regions and autonomous areas. Article 65 of the Constitution contained the exhaustive list of "subjects" of the Russian Federation.

financial, credit and monetary policy, including the establishment of the customs tariff; the implementation of foreign policy; and the implementation of measures required to ensure the rule of law.

97. The Federal Assembly (the Parliament of the Russian Federation) was the representative of the legislative authority in the Russian Federation. It consisted of two chambers - the Council of the Federation and the State Duma. The Council of the Federation included two representatives from each subject of the Russian Federation: one from the legislative and one from executive body of state power. The composition of the Council of the Federation was also determined by Federal Law No. 113-FZ of 5 August 2000 "On the Order of Formation of the Council of the Federation of Federal Assembly of the Russian Federation". The State Duma consisted of 450 deputies elected for a term of four years. The composition of the State Duma was determined by Federal Law No. 121-FZ of 24 June 1999 "On Election of Deputies to the State Duma of the Russian Federation" (as amended on 12 April and 10 July 2001). Both chambers were involved, inter alia, in the adoption of the federal laws on federal budget, federal taxes and dues, financial, currency, credit, customs regulation and monetary issues, ratification and denunciation of international treaties and agreements of the Russian Federation.

98. The right of legislative initiative was vested with the President of the Russian Federation, the Members of the Council of the Federation, the Deputies of the State Duma, the Government of the Russian Federation, and the legislative bodies of the subjects of the Russian Federation. The right of legislative initiative was also vested in matters under their jurisdiction with the Constitutional Court of the Russian Federation, the Supreme Court of the Russian Federation, the Superior Court of Arbitration of the Russian Federation.

99. The representative of the Russian Federation further added that the Russian legal system was comprised of federal legal acts and legal acts of the subjects of the Russian Federation (sub-federal and regional governments). The federal legal system consisted of the Constitution; federal constitutional laws; federal laws; decrees and resolutions of the President of the Russian Federation; resolutions and orders of the Government of the Russian Federation; and acts of federal executive authorities. Acts of federal executive authorities (i.e. acts whose binding effect extended to all of the territory of the Russian Federation) included resolutions, orders, rules, instructions, regulations and decisions. This list was exhaustive. Recommendations, letters, telegrams, teletype messages are not regulatory legal acts (Order No. 217 of the Ministry of Justice of 14 July 1999). Such acts had a recommendatory character only and were intended for use within the relevant ministry or department. The legal system of the subjects of the Russian Federation consisted of their respective constitutions

(in the case of Republics,) or charters (in the case of other subjects of the Russian Federation); laws and other legal acts. The Constitution had overriding power and was applicable throughout the entire territory of the Russian Federation. All federal legal acts and legal acts of the subjects of the Russian Federation were required to be in conformity with the Constitution. Federal constitutional laws regulated matters directly provided for under the Constitution of the Russian Federation. Federal laws regulated areas of joint competence between the Russian Federation and its regions. The Constitution reserved certain subject matters to the exclusive jurisdiction of the Russian Federation and others to the joint jurisdiction of the Russian Federation and its subjects (Article 72).

100. He further noted that Presidential decrees and resolutions did not prevent the Federal Assembly from enacting a law covering the same subject matter. Such law could have a wider scope than that of Presidential decrees and resolutions. Government resolutions and orders (subsidiary legislation) were issued pursuant to and in furtherance of the Constitution, federal constitutional laws, federal laws and Presidential decrees and resolutions. The requirement for such resolutions and orders were, as a general rule, provided for in the relevant enabling law, decree or resolution. Those legislative acts were also binding throughout the entire territory of the Russian Federation and might be appealed in court. Acts of federal executive authorities were issued on the basis of and in furtherance of federal laws, presidential decrees and resolutions, and Government resolutions and orders. Those acts should be in compliance with the relevant enabling provisions. They had an auxiliary and detailing function.

**Government entities responsible for making and implementing policies affecting foreign trade;
Right of Appeal**

101. Members of the Working Party requested detailed information on the availability of administrative appeals, as well as the availability of appeals to an independent tribunal or judicial review. Those members also requested that the Russian Federation ensure that the central Government would monitor and take active steps to ensure that measures taken by sub-central authorities or other subjects of the Russian Federation such as WTO inconsistent legislation, actions or non-uniform application would be brought into conformity with Russia's obligations under the WTO Agreement promptly, particularly when such measures were notified to the central government by a WTO Member or other interested party. Those members noted that a right of appeal to an independent tribunal or judicial review should be provided to all participants in the Russian Federation economy.

102. In response, the representative of the Russian Federation replied that any decision by the state authorities, local administrations, community associations or officials could be appealed to a court

with respective jurisdiction. In the case of appeals against administrative action or inaction, at the discretion of the appellant, an appeal could also be addressed to either the Government or a Government agency controlling body responsible for the decision. He noted, also, that appeals against the decision of a lower court were also possible. He reiterated that the person aggrieved by the decision could decide whether to pursue an administrative review or court procedures.

103. In response to requests for additional information on the types of appeal mechanism available and the standing of an aggrieved party, the representative of the Russian Federation stated that Article 45 of the Customs Code provided that any person could lodge an appeal against a decision of the customs authorities of the Russian Federation and their officers, if such person (i) reasonably believed that their rights and lawful interests had been infringed, and (ii) where the conduct at issue affected such person directly and personally.

104. The procedure for appeals in respect of decisions, action (inaction) of the customs authorities and their officers was stipulated in Chapter 7 of the Customs Code and applied to any decisions, action (inaction) of the customs authorities and their officers. Under the Customs Code appeals were to be lodged with the superior customs authority directly or through the customs authority whose decision, action (inaction) was appealed against. Appeals against decisions, action (inaction) of federal executive bodies competent for customs-related matters were to be lodged with that federal executive body. Appeals could be lodged to a court simultaneously or consecutively to an administrative procedure. They could be lodged within 3 months from the date the appellant knew that his rights and lawful interests had been infringed or from the date of implementation of the decision taken by the customs authority or its officers. Appeals were to be submitted in written form. Appeals were to be processed by the customs authority within one month from the date of lodging the appeal. However, if necessary, the period for processing could be extended by the head of the customs authority for up to one month.

105. Appeals lodged against decisions, action (inaction) taken by a customs officer or a customs checkpoint concerning shipment of goods through the border, which did not exceed 1,5 million Rubles in value and (or) one vehicle, could be processed in a simplified appeal procedure. This involved an oral claim to a superior customs officer. Such appeals were dealt with by immediate ruling. The simplified appeal procedure did not preclude the appellant lodging an appeal via the normal procedure. Appeal decisions issued by the customs authority could be appealed against to the superior customs authority or court, or arbitration court. Pursuant to Article 46 of the Customs Code, the appeal mechanism envisaged by the Customs Code did not include decisions in respect of the Code of Administrative Offences No.195-FZ of 30 December 2001 (as amended on 28 July 2004).

Administrative appeal procedures were similar to those envisaged by the Customs Code, except under the Code of Administrative Offences, appeals could be lodged within 10 days after receipt of a copy of the decision appealed against and required to be processed within 10 days from the date of lodging the appeal.

106. In response to further questions, the representative of the Russian Federation stated that the procedure for appealing against decisions of tax bodies and actions or omissions of their officers was regulated by the Tax Code of the Russian Federation. Decisions issued by tax bodies, as well as actions and omissions by their officers, could be appealed to a supervising officer or a court, either simultaneously or consecutively. An appeal was required to be determined within one month from the date of lodging the appeal. The tax body was required to take a decision within one month, and the decision on the appeal was required to be notified to the person lodging the appeal within 3 days after the decision was taken. Fees for appeals submitted to courts were set out in Federal Law No. 2005-1 of 9 December 1991 "On State Duties".

107. As regards appeals and complaints in the sphere of technical regulation the representative of the Russian Federation noted that pursuant to Federal Law No. 184-FZ of "On Technical Regulation" refusal to register a voluntary certification could be appealed in a judicial procedure. With regard to mandatory conformity certification, an applicant could lodge a complaint with the authority on accreditation against unlawful actions of certification authorities and accredited testing laboratories (centers).

Division of authority between central and sub-central governments

108. Members of the Working Party sought confirmation concerning the uniform application of WTO provisions throughout the territory of the Russian Federation as well as by sub-central entities. They also invited the Russian Federation to provide more information on the hierarchy of legislative acts in the Russian Federation, sought an explicit statement on the status of international agreements like the WTO vis-à-vis Russian law and whether Russia's Protocol of Accession to the WTO was deemed to be a "treaty" for this purpose, and requested a description of how, in legal terms, the protocol package would be ratified and WTO rules and commitments implemented in the Russian Federation. Further information was sought on whether there were any areas relating to matters under WTO provisions where sub-federal entities might have exclusive jurisdiction. Those members also requested further clarification on whether the authorities of the Russian Federation would be required to submit the approved protocol package to sub-central entities for their approval in the ratification process.

109. In response, the representative of the Russian Federation stated that international treaties contracted by the Russian Federation were concluded on behalf of the Russian Federation by the President of the Russian Federation, the Chairman of the Government, as well as federal ministers, heads of other federal authorities, heads of diplomatic missions of the Russian Federation (if appointed) in accordance with Articles 12 and 13 of Federal Law No. 101-FZ of 15 July 1995 "On International Treaties of the Russian Federation". Once they had entered into force, international treaties were binding throughout the entire territory of the Russian Federation and, in the event of conflict, prevailed over domestic federal laws in accordance with Article 15 of the Constitution.

110. The representative of the Russian Federation further noted that according to Article 3 of Federal Law No. 164-FZ of 8 December 2003 "On the Fundamentals of State Regulation of Foreign Trade Activity" foreign trade in the Russian Federation was regulated by the Constitution of the Russian Federation, federal laws and other legal acts of the Russian Federation and by the international treaties to which the Russian Federation was a party. Article 6 of said Law provided for, *inter alia*, the jurisdiction of the Russian Federation to form the concept and strategy of the development of foreign trade relations and the basic principles of the foreign trade policy; to ensure the economic security and protection of the economic sovereignty and economic interests of the Russian Federation, as well as the economic interests of the subjects of the Russian Federation and of Russian natural and juridical persons; and to conclude international treaties in the field of foreign economic relations.

111. He further noted that if an international treaty of the Russian Federation affected issues falling within the jurisdiction of the subjects of the Russian Federation, such a treaty should be elaborated in co-ordination with relevant bodies of the interested subjects of the Russian Federation. This provision was contained in Federal Law No. 101-FZ of 15 July 1995 "On International Treaties of the Russian Federation". As regards international treaties of the Russian Federation affecting issues falling within the joint jurisdiction of the Russian Federation and the subjects of the Russian Federation, the Law established that federal bodies of executive power should send the main provisions or the draft of a treaty to the state power bodies of the interested subject of the Federation. Proposals received from the subjects were considered in the course of preparation of the draft of the international treaty.

112. He recalled that Federal Law 1999 No. 4-FZ of 4 January 1999 "On Co-ordination of International and Foreign Economic Ties of the Subjects of the Russian Federation" provided the subjects of the Russian Federation, *inter alia*, with the right to negotiate and conclude agreements with their partners on international and foreign economic ties. Such agreements could not contradict the federal legislation and the international commitments of the Russian Federation. The Law made it

compulsory for the subjects to notify the appropriate federal authorities before entering into negotiations, and set forth a procedure for prior approval of the draft agreed text of the agreement by the appropriate federal authorities. The agreements concluded by the subjects of the Russian Federation were not considered international treaties.

113. The representative of the Russian Federation noted that once signed, the Russian Federation's Protocol of Accession to the WTO would have the status of an international treaty. Consequently, according to Article 7 of the Civil Code, it would have direct effect in regard to relations regulated by the civil law except where national acts had to be passed for its enforcement. In accordance with Article 17 of Federal Law No. 110-FZ of 15 July 1995 "On International Treaties of the Russian Federation", the Protocol would be subject to ratification. After ratification, it would become an integral part of the legal system of the Russian Federation. Its provisions would apply throughout the territory of the Russian Federation.

114. Members of the Working Party expressed concerns in relation to non-WTO consistent actions of certain regional governments, often in the face of relevant federal legislation. In addition, Members of the Working Party requested clarification of the ability of the central government to take the initiative and responsibility for overruling or removing WTO-inconsistent measures taken by subjects of the Russian Federation. Some members of the Working Party requested a specific commitment from the Russian Federation that international treaties would be strictly observed throughout its territory.

115. In response, the representative of the Russian Federation noted that a special mechanism had been established to monitor and ensure that the legislation and practice of the subjects of the Russian Federation complied with federal laws. On 6 October 1999 Federal Law No. 184-FZ "On General Principles of the Organization of the Legislative (Representative) and Executive Authorities of State Power of the Subjects of the Russian Federation" had been enacted. The Public Prosecutor's Office administered the law. Following a complaint regarding the action or policy of a subject of the Russian Federation, the Public Prosecutor could seek an order or declaration from the Supreme Court or an appropriate lower body of the concerned subject invalidating the legislation or practice complained of, on the basis that the legislation or practice was inconsistent with respective federal legislation or international treaties of the Russian Federation. Presidential Decree No. 849 of 13 May 2000 "On the Authorized Representative of the President of the Russian Federation in a Federal District" empowered a presidential representative in a federal district to propose the suspension of acts of executive authorities of the subjects of the Russian Federation that contravened the Constitution, federal laws or international commitments of the Russian Federation. Similarly,

Presidential Decree No. 1486 of 10 August 2000 "On Supplementary Measures to Provide Integrity of Legal Treatment in the Russian Federation" created a federal registry of the legal acts of the subjects of the Russian Federation. All legal acts enacted by the subjects of the Russian Federation were notified to the Federal Ministry of Justice of the Russian Federation within 7 days of enactment for scrutiny and review. If the legislation was found to be inconsistent with federal laws, the Legislative Department of the Ministry of Justice could draft a presidential decree suspending the operation of the legislation, or seek an order from the Constitutional Court of the Russian Federation together with proposals for reconciling or rectifying the conflict. Acts or parts thereof determined by the Court to contravene the Constitution became invalid.

116. He further noted that, in accordance with the Constitution of the Russian Federation, the Constitution itself and federal laws had supremacy over the whole territory of the Russian Federation. The bodies of state authority, the bodies of local self-government, officials, private citizens and their associations were required to observe the Constitution of the Russian Federation and its laws. Federal Law No. 101-FZ of 15 July 1995 "On International Treaties of the Russian Federation contained rules ensuring the execution of the international treaties of the Russian Federation by the President and the Government of the Russian Federation, federal executive bodies, bodies of state authority of the relevant subjects of the Russian Federation.

117. [The representative of the Russian Federation confirmed that the provisions of the WTO Agreement should be applied uniformly throughout the Russian Federation's customs territory and other territories under the Russian Federation's control within its state border, including in regions engaging in border trade or frontier traffic, special economic zones, and other areas where special regimes for tariffs, taxes and regulations were established. He added that, when informed of a situation where WTO provisions were not being applied or applied in a non-uniform manner, central authorities would act to enforce WTO provisions without requiring the affected parties to petition through the courts.]

118. [The representative of the Russian Federation also confirmed that in matters involving international trade subject to WTO provisions, his authorities would provide judicial, arbitral or administrative recourse to an independent tribunal or judicial review, in conformity with WTO obligations, including, but not restricted to, Article X:3(b) of GATT 1994, and relevant provisions in the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights and the General Agreement on Trade in Services.]

119. [The representative of the Russian Federation confirmed that, from the date of accession, the Russian Federation would administer in a uniform, impartial and reasonable manner all its laws,

regulations, decisions and rulings of the kind described in Article X:1 of the GATT 1994. He further confirmed that the legislation of the Russian Federation would provide for the right to review of administrative actions and decisions in conformity with the provisions of Article X:3 b) of the GATT, Article 41.4 of the TRIPS Agreement and Article 6.2 of the GATS. The Working Party took note of these commitments.]

POLICIES AFFECTING TRADE IN GOODS

Registration requirements for import/export operations

120. The representative of the Russian Federation noted that his Government imposed no restrictions on the right of all enterprises to import or export, except for cases provided for in international agreements and federal laws. He noted that the State monopoly on foreign trade had been eliminated by Presidential Decree No. 213 of 15 November 1991 "On Liberalization of Foreign Economic Activity on the Territory of the Russian Soviet Federal Socialist Republic" (as amended on 27 October 1992). This principle was further embodied in Article 1 of the Civil Code and Article 8 of the Constitution.

121. The representative of the Russian Federation further noted that the background for export and import trade in the Russian Federation were set out in Federal Law No. 164-FZ of 8 December 2003 "On the Fundamentals of the State Regulation of the Foreign Trade Activity". Article 10 of that Law provided that legal persons established in accordance with Russian legislation, as well as natural persons that were citizens of the Russian Federation or possessed the right of permanent residence in the Russian Federation were permitted to undertake export and import operations in accordance with Russian legislation. Export and import operations did not require any additional special permission or activity license. This rule had few exceptions, in particular: alcoholic beverages, pharmaceuticals, and precious stones/metals.

122. In response to requests for further information on registration requirements for engaging in economic activity, the representative of the Russian Federation stated that registration of legal persons and natural persons as individual entrepreneurs was governed by Article 51 of the Civil Code and Federal Law No.129-FZ of 8 August 2001 "On State Registration of Juridical Persons and Individual Entrepreneurs" (as amended on 23 December 2003). Registration was carried out by the Federal Tax Service. Refusal of State registration was governed by Article 23 of the Law and could be appealed to court. Registration enabled legal persons/individual entrepreneurs to engage in economic activity, including foreign trade activity. The Law did not contain any restrictions or discrimination against foreign founders of legal persons.

123. To register, legal persons were required to submit the following documents, listed in Article 12 of the Law:

- an application based on the form established by Government Resolution No. 439 of 19 June 2002 (as amended on 26 February 2004);
- the decision whereby the legal person had been formed, in the form of minutes, agreement or any other document in compliance with Russian law;
- the constitutive documents of the legal person (originals or copies certified by a notary);
- for foreign legal persons, an extract from the register of legal persons of the country of origin or another equally effective proof of the legal status of a foreign legal entity being a founder;
- and a certificate of payment of state duty in the amount of 2,000 Rubles.

Under the Law, registration of a natural person as an individual entrepreneur required the following documents:

- an application based on the form approved by the Government of the Russian Federation;
- for citizens of the Russian Federation, a copy of the identification document of the natural person (i.e. passport - Presidential Decree No 232 of 13 March 1997);
- for foreign and Stateless persons, a copy of the document established by Federal Law or recognized under an international agreement of the Russian Federation as the identification document (identification documents were listed in Article 10 of Federal Law No. 115-FZ of 25 July 2002 "On The Legal Position of Foreign Citizens in the Russian Federation");
- a document confirming the right to reside in the Russian Federation;
- and a document confirming the payment of a 400 Rubles registration charge.

Pursuant to Article 9 of the Law, no other document – other than those listed in the Law – could be requested for registration.

124. In order to ensure transparency in registration, in accordance with Article 4 of Federal Law No.129-FZ, the Federal Tax Service of the Russian Federation was responsible for supervising the State Register, which contained information on the establishment, reorganization and liquidation of legal persons and other respective data. This information was available to any interested person upon request under the conditions established by the Law. This information was also posted on the web-site of the Federal Tax Service (www.nalog.ru) and updated on a monthly basis.

125. Several members of the Working Party noted that laws and regulations relating to the right to trade in goods, "registration requirements" or "activity licensing" should not operate to restrict imports in violation of the general prohibition on quantitative restrictions as under Article XI:1 of GATT 1994, nor should they discriminate against imported goods in violation of the non-discriminatory provisions of Article III:4 of GATT 1994. Furthermore, fees and charges levied on the right to import should be limited to the cost of services rendered as under Article VIII:1(a) of GATT 1994, and taxes and charges on the right to trade in imported goods should not lead to discrimination in favour of like domestic products as required by Article III:2 of GATT 1994.

126. In response the representative of the Russian Federation stated that, in his opinion, such matters as the right to trade in goods, “registration requirements” or “activity licensing” were regulated by the provisions of the WTO agreement on trade in services. Regarding Article VIII:1(a) of the GATT 1994, he noted that in his view it was only applicable to customs-related fees, namely customs fees, consular fees, and statistical fees, and did not apply to fees connected with registration requirements or activity licensing.

127. Some members requested additional information concerning the future elimination of activity licensing requirements in areas such as pharmaceuticals, alcoholic beverages, metals and precious stones. These members sought clarifications regarding the steps taken by the Russian authorities to bring existing practices into consistency with WTO requirements. Noting that the Ministry of Agriculture and the Federal Customs Service of the Russian Federation had recently made efforts to limit the number of both importing and exporting firms engaged in international trade of certain products, these members further requested an explanation on the reasons for these limitations and the legal basis upon which they might be taken for both domestic and foreign trading firms.

- **Alcoholic beverages**

128. Some members expressed concern over the restrictive consequences of the current activity licensing system for the sale of alcoholic beverages. They requested information on the Russian Federation's intention to introduce new legislation in this area. Noting that the fees charged for the right to trade in imported alcoholic beverages greatly exceeded those charged for domestic distribution or export, these members felt that more detail was also required on this and on any other activity licensing fees associated with importation. In particular, these members sought information on any plans for establishment of a State monopoly on alcoholic beverages.

129. The representative of the Russian Federation noted that activity licensing requirements for the importation and exportation of ethyl alcohol and alcoholic products, alcohol-containing products were aimed at protecting human life and health and at the proper collection of internal taxes. Federal Law No. 171-FZ of 22 November 1995 "On State Regulation of Production and Turnover of Ethyl Alcohol, Alcoholic and Alcohol-Containing Products" (as amended on 12 November 2003) established the legal basis for production and turnover of ethyl alcohol, alcoholic products (wine, alcoholic beverages, ethyl drinkable alcohol) and alcohol-containing products (alcohol-containing edible and non-edible products). Pursuant to this Law, natural and legal persons were required to obtain an activity license in the agencies of the Federal Tax Service after their State registration. Export/import activity licenses were being issued: for the purchase, storage and exports of ethyl

alcohol and alcoholic products; exports of alcohol products; and imports, storage and supply of ethyl alcohol and alcoholic products, alcohol-containing products.

130. Conditions and requirements to be fulfilled by legal persons and individual entrepreneurs were stipulated in Law N. 171-FZ. This Law established two kinds of export/import activity licenses: general licenses and licenses for a single contract. General licenses to import, store and supply alcoholic products were issued only to organizations with the paid-up authorized capital of no less than 40 thousand federal statutory minimal wages and which had been performing deliveries of alcoholic products for at least one year (while having the turnover of imported alcoholic products of at least 50 thousand deciliters over one year in equivalent to absolute alcohol). These licenses were issued for a term of up to three years. They could not restrict the volume of alcohol products. Single contract licenses (i.e. one-time licences) were issued for a term of up to five months to organizations to export and import, store and deliver alcoholic and alcohol containing edible products amounting to no more than 500 deciliters in equivalent to absolute alcohol with their customs value not exceeding 100 thousand federal statutory minimal wages. Licensing fees provided by Federal Law No. 5-FZ of 8 January 1998 "On Charges for Issuance of Licenses for Production and Turnover of Ethyl Alcohol, Alcohol Containing Products" are shown in Table 7. Licenses were required to be issued within 30 days after submission of the complete set of documents.

131. He added that in order to improve the system of import licensing in the Russian Federation, the State Duma had passed in the first reading - and was currently preparing for the second reading - a draft federal law "On Amending the Federal Law On Charges for Issuance of Licenses and Right for Production and Marketing of Ethyl Alcohol, Alcohol Containing and Other Alcoholic Products". This draft law was designed to provide a unified licensing fee rate (500 minimum wages) for the right of production, storage and sale of alcoholic products, the right to export ethyl alcohol and alcoholic products and the right to purchase ethyl alcohol, alcohol-containing and alcoholic products for import, storage and wholesale. He further confirmed that procedures would be simplified and that the principle of "one window" would apply for licensing. His Government would also simplify licensing procedures in the area of alcohol business activity by eliminating activity licences for imports and exports. This would lead to a system whereby activity licenses would be required only for doing business, i.e. producing, distributing, supplying and storing alcoholic beverages and ethyl alcohol – such licences would be valid for no less than 3 years - and whereby no specific activity requirement would be needed for import/export activities. He confirmed that the new licensing system would not have any turnover requirement and that the system would be in place upon accession. The representative of the Russian Federation further confirmed that the Russian Federation would

eliminate any discriminatory fee between imported and domestic products in relation to licensing procedures upon accession.

132. He added that 1750 licenses had been issued by the Ministry of Taxes and Fees of the Russian Federation in 2003, including 27 general licences and 64 activity licenses for the export of ethyl alcohol and alcoholic products - among which were 59 general licenses. Some 894 import licenses and 18 export licenses had also been issued within the first six months of 2004.

- **Pharmaceuticals**

133. The representative of the Russian Federation said that in order to protect human life and health, the right to import pharmaceuticals was granted to the following entities, in accordance with Federal Law 86-FZ of 22 June 1998 "On Medicines":

- enterprises manufacturing pharmaceuticals which imported pharmaceutical products for their own manufacturing of pharmaceuticals;
- wholesale enterprises of pharmaceuticals;
- research and development institutes and laboratories, which carried out development research and quality control, effectiveness, and safety of pharmaceuticals;
- foreign enterprises manufacturing pharmaceuticals and wholesalers of pharmaceuticals provided they had their own representations in the territory of the Russian Federation.

134. Pursuant to Federal Law No. 128-FZ of 8 August 2001 "On Licensing of Certain Types of Activities", the licensing requirements in respect of pharmaceuticals was maintained because of potential damage to rights, legal rights and health of Russian nationals. The only possible form of regulation was licensing. Licenses for the production or wholesale trade of these goods were issued for a period of five years. In accordance with Article 15 of Federal Law No. 128-FZ of 8 August 2001 "On Licensing of Certain Types of Activities", a fee of 1,300 Rubles was charged for the issuing of each license.

135. Some members of the Working Party requested the Russian Federation to confirm that the ability to request an activity license for trade in pharmaceuticals was reserved to Russian Federation firms and to explain what that meant in practice for foreign-owned firms in the Russian Federation, foreign exporting firms not established in the Russian Federation, and domestic or foreign individual entrepreneurs seeking to export pharmaceuticals to the Russian Federation.

136. In response, the representative of the Russian Federation recalled that foreign legal persons intending to import pharmaceuticals into the territory of the Russian Federation were required to open

a representative office in the territory of the Russian Federation; register as a legal person on the territory of the Russian Federation; hold a license for the relevant type of activity (pharmaceutical production or distribution) pursuant to the provisions of Law No. 128-FZ; and hold a license to import pharmaceuticals into the territory of the Russian Federation.

137. He further noted that such persons were subject to the same uniform procedures as provided under Government Resolution No. 1539 of 25 December 1998 "On Imports into and Exports from the Russian Federation of Medicines and Pharmaceutical Substances".

138. The representative of the Russian Federation recalled that under Article 21 of Federal Law No. 86-FZ of 22 June 1998 "On Medicines" domestic and foreign natural persons were not permitted to export pharmaceuticals to the Russian Federation.

139. In response to the statement that domestic and foreign natural persons were not permitted to export pharmaceuticals to the Russian Federation, some Members of the Working Party requested information on whether natural persons were permitted to manufacture pharmaceuticals in the Russian Federation. Those members noted that the fee for each importation was burdensome, delayed imports and unnecessarily added to the expenses of importation, and appeared to be a revenue measure.

140. In response, the representative of the Russian Federation explained that under Federal Law No. 128-FZ of 8 August 2001 "On Licensing of Certain Types of Activities" the manufacturing of pharmaceuticals in the Russian Federation could be carried out by both natural persons and legal persons. Regarding importation of pharmaceuticals, he noted that legal persons with foreign participation (including fully foreign-owned legal persons) enjoyed the same rights as other Russian legal persons in the Russian Federation and could obtain an activity license under the same conditions.

- Precious stones and metals

141. The representative of the Russian Federation noted that there were no statutory licensing or quantitative requirements for imports of precious stones and metals to the territory of the Russian Federation. Precious stones and metals had been excluded from the list of currency valuables pursuant to Federal Law No. 173-FZ of 10 December 2003 "On Currency Regulation and Currency Control" and data on extraction, transfer, and consumption of precious stones and metals had been excluded from the list of State secret data, in accordance with Federal Law No. 153-FZ of 11 November 2003 "On Amending Article 5 of the Federal Law of the Russian Federation On State Secrets". The November 2003 amendments simplified the procedure for performing transactions with precious stones and metals and made these transactions more transparent. In addition, amendments to

Presidential Decrees No. 742 of 21 June 2001, "On the Procedure of Importation into and Exportation from the Russian Federation of Precious Metals and Precious Stones" and No. 1373 of 30 November 2002 "On Regulations on Importation to the Russian Federation and Exportation from the Russian Federation of Raw Diamonds and Cut Diamonds" were being prepared. These amendments would abolish quantitative restrictions for platinum and platinum group metals, raw diamonds; allow exports of ferrous metals scrap and wastes; and permit the future liberalization of international trade involving these goods.

142. Some members requested further clarification on whether the Russian Federation maintained any restrictions or requirements other than tariffs on the importation of precious metals and stones, notably whether imports of these products were also restricted by import licensing, or whether it was necessary to import them through specific customs posts as was the case with diamond exports. These members also expressed concerns in relation to export requirements for precious stones and metals. In response, the representative of the Russian Federation stated that imports of precious stones and precious metals were carried out through specific customs posts (Presidential Decrees No. 742 of 21 June 2001 "On the Procedure of Importation into and Exportation from the Russian Federation of Precious Metals and Precious Stones" and No. 1373 of 30 November 2002 "On Regulations on Importation to the Russian Federation and Exportation from the Russian Federation of Natural Diamonds and Cut Diamonds"). He added that apart from customs tariffs and customs registration no other requirements were applied to imports of precious metals, precious stones and jewellery at the specific customs checkpoints.

- **Other licensing requirements**

143. Some Members of the Working Party expressed concerns in relation to licensing requirements governing access to oil and gas pipelines or other distribution networks for export products which could operate in a manner so as to restrict the volume of oil and gas exported from the Russian Federation, and could be inconsistent with the requirements of Article XI of the GATT 1994. They requested the Russian Federation to provide further information on the operation of these regimes, including on the regime for export licensing of energy products.

144. Concerning questions on licensing related to export or import of natural gas and electricity, the representative of the Russian Federation stated that there were no export/import licenses requirements for these products. He noted, however, that the licensing requirements governing access to pipelines or other distribution networks used for the export of those products were not applied so as to restrict the volume of gas and oil exported from the territory of the Russian Federation. The Ministry of Industry and Energy of the Russian Federation issued activity licenses to legal entities and

individual entrepreneurs. Activity licenses were granted for a five-year term. The effective term of the license could be extended on the licensee's application in accordance with the licence renewal procedure (Government Decision No. 637 of 28 August 2002 "On Licensing Activities in the Field of Operation of Electric Grids and Thermal Grids, the Transportation, Storage Processing and Sale of Oil, Gas and the Products of Processing Thereof"). Under Federal Law No. 128-FZ of 8 August 2001 "On Licensing of Specific Types of Activity" the following types of activity were subject to licensing:

- the operation of oil and gas production facilities;
- the processing of oil, gas and oil/gas processing products thereof;
- the transportation of oil, gas and oil/gas processing products;
- the storage of oil, gas and oil/gas processing products;
- the sale of oil, gas and oil/gas processing products;
- the activity of operating gas networks.

145. The representative of the Russian Federation recalled his earlier statements on registration requirements, and further stated that such requirements for export contracts had been originally introduced by Government Resolution No. 758 of 1 July 1994 "On Measures to Improve the State Regulation of Export of Goods and Services", and had been repealed by Government Resolution No. 300 of 21 March 1996 "On Recognizing as Invalidated Certain Decisions of the Government of the Russian Federation on the Issue of Registering Contracts in the Export of Commodities". Registration of import contracts had never been required in the Russian Federation, and the Russian Federation did not maintain any special registry of import or export contracts, excluding contracts for import or export of goods that are subject to measures justified by Article XXI of the GATT 1194. He also confirmed that his authorities had no plans to restore such registration in any form. He further stated that the subjects of the Russian Federation were not permitted to impose requirements on legal or natural persons that might affect their rights to engage in importation or exportation of goods.

146. Some members of the Working Party stated that the Russian Federation should undertake the following commitments in this area: the Russian Federation would guarantee that no restrictions would be maintained on the right to trade in goods except as would be consistent with WTO provisions and that all laws and regulations relating to trading rights would be applied in a manner consistent with relevant WTO obligations. Specifically, the Russian Federation should confirm that no restrictions would be maintained on the rights of individuals and enterprises, including those with foreign participation, to import and export goods into the customs territory of the Russian Federation except as would be consistent with provisions of the WTO Agreement. Nor would individuals and firms be restricted in their ability to import and export based on their registered scope of business. The criteria for registration and enrolment in the State Register of legal persons would be generally applicable and published in the Official Gazette, along with any further changes. Without prejudice to

other relevant provisions of the WTO Agreement, the Russian Federation should ensure that any laws and regulations relating to the right to trade in goods would not restrict imports of goods in violation of the general prohibition on quantitative restrictions under Article XI:1 of GATT 1994, nor should they discriminate against imported goods in violation of the non-discriminatory provisions under Article III:4 of GATT 1994. Any associated fees, taxes and charges should also be limited to the approximate cost of services rendered and their application should not lead to discrimination in favour of like domestic products. The Russian Federation should ensure full national treatment in respect of all laws, regulations and requirements concerning internal sale, offering for sale, purchase, transportation, distribution or use of imported alcoholic beverages and ethyl alcohol.

147. [The representative of the Russian Federation took note of the concerns expressed by members of the Working Party.]

[to be completed]

1. Import Regulations

Customs Regulations and Customs Tariff

148. The representative of the Russian Federation recalled that the Russian Federation had been an active participant at the World Customs Organization (WCO) even before gaining full membership to it on 8 July 1993. The Russian Federation had also joined the International Convention on the Harmonized Commodity Description and Coding System on 1 January 1997. Federal Law No. 5003-1 of 21 May 1993 "On Customs Tariff" (as last amended on 29 June 2004) and the Customs Code of the Russian Federation (Federal Law No. 61-FZ of 28 May 2003) constituted the legal framework for the customs regime of the Russian Federation. The existing Law "On Customs Tariff" and the draft Federal Law "On Amending the Law of the Russian Federation On Customs Tariff" provided for customs tariff regulation of import and export of goods and determination of customs value of goods in compliance with WTO rules and disciplines. Customs administration and customs procedures were governed by the Customs Code.

149. Members of the Working Party considered that the Russian Federation should provide a description of changes to customs regulations, procedures and practices following the enactment of the Customs Code in 2003, together with copies of all relevant implementing instruments in a WTO working language. Referring to the draft proposal before the State Duma for revising Federal Law No. 5003-1 of 21 May 1993 "On Customs Tariff" (as amended on 29 June 2004), several members

asked the Russian Federation to explain how this proposal related to the new Customs Code (Federal Law No. 61-FZ of 28 May 2003).

150. With respect to concerns of some members of the Working Party, the representative of the Russian Federation noted that the customs bodies made up a single federal centralized system and that their functions were established by the provisions of the Customs Code. In cases directly defined by the statutes of the customs legislation and other legal acts of the Russian Federation, the State Customs Committee (SCC) could issue, within the limits of its competence, normative legal acts pertaining to customs. Only some provisions of the Customs Code were not directly applicable. The lists of documents and information, for example, including information required to fulfil customs registration formalities were defined by the State Customs Committee.

151. Some members expressed concern regarding possible inconsistencies in the application of customs laws and regulations by regional customs authorities and stressed the need to ensure uniform and transparent implementation of customs regulations throughout the entire territory of the Russian Federation. Many members also sought a clarification of Customs Order No. 25 of 15 January 2001 and other related orders of the SCC which limited the numbers of customs land checkpoints for goods imported from 14 countries, including a number of ASEAN countries. Noting that ten out of these 14 countries were WTO Members, these Members requested a commitment from the Russian Federation that this particular order and other related orders would be repealed and would not be introduced in the future.

152. In response, the representative of the Russian Federation confirmed that Customs Order No. 25 of 15 January 2001 had been abolished by Customs Order No. 517 of 24 May 2002. He explained that the new Customs Code was based on generally accepted international rules, including the Kyoto Convention 2000. To prevent customs authorities from using their own discretion in decision-making, the vast majority of provisions of the Customs Code of the Russian Federation were of direct application. To ensure transparency, the Customs Code provided that relevant authorities should publish legal acts of customs regulations in the official publications. The Customs Code contained detailed provisions related to WTO rules and disciplines in particular those to protect intellectual property rights, and was drafted in a manner to comply with the Agreement on Rules of Origin. Articles 45-57 of the Code contained improved provisions on right of appeal so as to ensure compliance of customs administrations and their officers with legislative requirements in their decision-making, action or inaction. Right of appeal could be exercised through lodging a complaint with the superior customs administrations and/or through judicial procedures. (for further details, see the section on "Right of appeal").

153. In response to questions regarding the relationship between the Customs Code and the draft Federal Law “On Amending the Law On Customs Tariff”, the representative of the Russian Federation explained that the Customs Code was a framework law. The draft Federal Law “On Amending the Law On Customs Tariff” had been presented by the Government and had passed first reading in the State Duma. That draft Law provided methods to determine the customs value of goods in accordance with the provision of the Customs Code and in consistency with the provisions of the Agreement on Implementation of Article VII of the GATT 1994.

154. He recalled that the Customs Code set out a list of customs payments, a list of declarants and any other persons responsible for payment of customs duties pursuant to the Customs Code, as well as the legal grounds for exemption from such payments. The Customs Code also stipulated the grounds for deferment of payments and making payments in instalments. It provided a list of circumstances when deferment of payments and making payments in instalments would not be excluded and contained methods to secure customs payments, including: personal guarantee; payment in cash at the cashier’ desk or transfer of funds to the account of the customs office at the federal treasury (cash deposit); bank guarantee; mortgaging of goods and other property.

155. The Customs Code established the right of the participant in foreign trade activity, when securing a customs payment, to use any kind of security envisaged by the Code, provided that the security used was also recognized as reliable by the customs authority. He further recalled that the Code provided a detailed description of the procedure for the recovery of unpaid customs payments. The Code also set out the mechanism for recovery of overpaid or over-recovered customs payments. The customs authority was required to inform the payer of the overpaid or over-recovered customs payments within one month of the detection of the overpayment or over-recovery.

156. Several members further noted that the legislation currently applied did not appear to fully implement Article 13 of the Agreement on the Implementation of Article VII of GATT 1994 which provided for a guarantee system allowing an importer to withdraw goods from customs pending final determination of the customs value. This was a critical provision as it ensured that customs procedures did not, in themselves, block imports. These members sought a confirmation that relevant Customs decisions, e.g. Orders and Letters, and decisions of local customs authorities that traders and other interested parties needed to be able to review and understand would be made available promptly and at reasonable cost. Information was also required on how the SCC and its regional offices published and/or made available their rulings and other information for importers and exporters. Furthermore, administrative orders issued by the SCC were sometimes issued as 'secret orders' and their contents were not publicized to traders.

157. In response, the representative of the Russian Federation stated that the procedure for publication and making effective regulatory legal acts of federal executive authorities (including the SCC) was governed, in particular, by Presidential Decree No. 763 of 23 May 1996 "On the Procedure for Publication and Taking Effect of Acts of the President of the Russian Federation, the Government of the Russian Federation, and Regulatory Legal Acts of Federal Executive Authorities"; Government Resolution No. 1009 of 13 August 1997 "On the Approval of the Rules for Preparing the Normative Legal Acts of the Federal Bodies of the Executive Power and Their State Registration"; and the Order of the Ministry of Justice No. 217 of 14 July 1999 "On the Approval of the Explanations on the Application of the Rules for the Preparation of Normative Legal Acts of the Federal Bodies of Executive Power and Their State Registration. Normative legal acts of the SCC (e.g. acts with a binding effect throughout the territory of the Russian Federation) included its regulations, orders, rules, instructions, dispositions and administrative decrees. Briefings, letters, telegrams, teletype letters were not considered as normative legal acts but acts which could only have a recommendatory character and be used internally for the sole purpose of a State body. Normative legal acts of the SCC were subject to mandatory publication with the exception of acts or parts thereof constituting state secrets or confidential information. Exhaustive lists of such information and data had been approved by various Presidential decrees. The official organs for publication were Rossijskaya Gazeta and the Bulletin of Regulatory Acts of Federal Bodies published by Yuridicheskaya Literatura publishing house of the President's Administration edited monthly since 1998. Regulatory legal acts of the SCC subject to State registration with the Ministry of Justice became enforceable only after they had been registered and officially published.

158. In response to questions from members of the Working Party concerning "secret orders" made to customs officials by customs authorities, the representative of the Russian Federation noted that problems had occurred regarding certain unpublished administrative orders. He added that Article 24 of the Customs Code required customs authorities to make available freely and free of charge, including by information technology, all legal acts even in draft form. Legal acts had to be registered and published officially. They normally entered into force not earlier than ten days after the date of publication. He noted that "secret orders" were sometimes required for performing operational and investigation activities, rather than implementation of ordinary customs legislation.

159. He further added that customs authorities were responsible for providing advisory services to all interested persons with regard to customs issues such as classification and valuation and other issues within their competence. Such services were to be delivered as quickly as possible, and no later than one month from the date of receipt of the enquiry.

160. [The Russian Federation undertook bilateral market access negotiations on goods with [some] members of the Working Party. The results of these negotiations are contained in the Schedule of Concessions and Commitments on Goods and form Annex 1 to the Draft Protocol.]

[to be completed]

Ordinary Customs Duties

161. The representative of the Russian Federation noted that the structure of the Russian Federation's customs tariffs was regulated by Federal Law No. 5003-1 of 21 May 1993 "On Customs Tariff" (as last amended on 29 June 2004). Tariff rates could be changed by Government decisions based on proposals by the Interministerial Commission on Customs and Tariff Policy and Trade Remedies Measures, also taking into account the Russian Federation's international commitments.

162. The Import Tariff currently applied in the Russian Federation was based on the 2002 Harmonized Commodity Description and Code System of the World Customs Organization. This system had been introduced on 1 January 2002 by Government Resolution No. 830 in replacement of the HS 96 system previously used. The customs tariff consisted of 11,032 tariff lines. The significant majority of tariff items were subject to *ad valorem* tariffs; 1,538 tariff items were subject to compound (mixed) rates (*ad valorem* and specific duties). Compound tariff rates were applied to meat, butter and cheeses, flowers, bananas, coffee and tea, rice, vegetables, plant oils, preserved vegetables, cosmetics, leather and fur articles, footwear, apparels, home electronics, watches, cars and furniture. 92 tariff items were subject to specific rates (*i.e.* apples, chocolate, beer, strong alcoholic beverages). The *ad valorem* rates and *ad valorem* equivalents of combined and specific rates ranged from 0 to 30 per cent, except for:

- sugar;
- ethyl alcohol and beer;
- used buses older than 7 years;
- used passenger motor cars older than 7 years;
- used trucks older than 7 years
- furniture with a cost lower than 1,8 euro per 1 kg.

163. Tariff rates (Tables 8 and 9) were established following the basic criteria that (i) tariffs were the major trade policy measure applied to protect domestic industrial and agriculture production; (ii) tariffs were considered measures of both trade and fiscal policy; (iii) tariffs were a function of economic development, in particular, the restructuring of the economy. The most recent version of the Customs Tariff of the Russian Federation, introduced by Government Resolution No. 830 of 30

November 2002, contained MFN rates of import customs duties for all 11,032 tariff lines. The number of tariff lines with rates above 20% had been maintained (poultry meat, sugar, beer, pure alcohol, vehicles older than 7 years and cheap furniture - see list in Table 8. The rates of customs duties applicable to products originating from the countries with which the Russian Federation did not apply MFN treatment amounted to the double of MFN rates. The import customs duties applicable to products eligible for tariff preferences and originating from countries enjoying the Russian Federation's GSP scheme were levied at the level of 75 per cent of the MFN rates.

164. Government Resolution No. 886 of 27 November 2000 substantially revised downwards and levelled out the customs duties (in approximately 3,500 tariff positions out of 11,032). As a result, customs tariffs for nearly all goods categories were grouped under broader headings (raw materials, semi-finished products, finished products, foodstuffs) with duty levels of 5, 10, 15 and 20 per cent, respectively. These changes, which took effect on 1 January 2001, were aimed at liberalization of imports of modern technologies and machinery into the Russian Federation, countering illegal practices at customs and improving the effectiveness of customs payment collection.

165. The representative of the Russian Federation stated that the methodology for calculating the specific part of combined duties was as follows: for products imported into Russian territory from countries other than CIS and subject to a combined duty, the import value of the product (in Euro) was divided by its physical quantity. The specific part was calculated by taking from the average unit price so obtained the percentage corresponding to the ad valorem part of the duty. The calculations were made on the basis of the Russian Federation's official customs statistics for the three years preceding the year of introduction of the specific component for which statistics were available.

166. Following requests from some members, the representative of the Russian Federation stated that the new commodity description and classification system based on HS 2002, which had entered into force on 1 January 2002, was available at the WTO Secretariat in the English language in electronic format. He stated that, upon request, members could have the lists of the Russian Federation's MFN partners and GSP recipients. He added that the Russian Federation was ready to convert the results of its tariff negotiations from HS 1996 to HS 2002.

167. Noting the above statements, some members asked the Russian Federation to clarify whether the expected changes to the customs legislation would also exclude the possibility to apply double MFN tariff rates to goods originating from WTO members, thereby ensuring conformity with the requirements of Article I of GATT 1994. Those members considered that this issue required a substantive response, as the maintenance of double-tariffs to WTO Members was unjustified and discriminatory.

168. In response, the representative of the Russian Federation confirmed that goods imported from some WTO Members were subject to double MFN tariff rates in the Russian Federation. He stated that the current problem of non-MFN tariff rates to goods originating from some WTO Members resulted from the absence of bilateral trade agreements between Russia and these Members, notably: Antigua and Barbuda, Bahrain, Barbados, Belize, Brunei Darussalam, Central African Republic, Côte d'Ivoire, Democratic Republic of the Congo, Dominica, Dominican Republic, Fiji, Guatemala, Haiti, Hong Kong (China), Lesotho, Macao (China), Malawi, Maldives, Namibia, Niger, Papua New Guinea, Paraguay, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Senegal, Solomon Islands, Suriname, Swaziland, Togo, Trinidad and Tobago, and the United Arab Emirates. He added that all these countries and customs territories were beneficiaries of the Russian GSP scheme. Therefore, goods originating from those territories were taxed at 75 % of the corresponding MFN rate. He further added that following accession to the WTO the Russian Federation would apply MFN treatment in accordance with its rights and obligations under the WTO agreement.

Tariff Quotas

169. Many members expressed concerns regarding the Russian Federation's intention to have recourse to TRQs, particularly on products currently subject to tariffs only. These members considered that the introduction of new TRQs would be a step backward from trade liberalization that should be expected by acceding to the WTO. They requested a description of the current and prospective legal authority for auctioning licenses and quotas in the Russian Federation and noted that any method of allocating quotas or licenses should be consistent with WTO provisions, notably Articles II, XI, and XIII of GATT 1994, the Agreement on Import Licensing Procedures and Article 4 of the Agreement on Agriculture. Several members also stressed that, in order for TRQs to be introduced, the Russian Federation had to ensure that these TRQs would preserve existing levels of trade, provide annual growth and would be limited in time. In any case, full details of tariff quota administration measures should be provided in order to assess their conformity with WTO provisions.

170. The representative of the Russian Federation replied that Federal Law No. 5003-1 of 21 May 1993 "On Customs Tariff" provided the general legal framework for the establishment of tariff rate quotas (TRQs). Concerning the TRQ for sugar, he noted that this TRQ had been applied before 2004 to imports of raw sugar originating from GSP beneficiaries. This TRQ was imposed pursuant to Government Resolution No. 536 of 15 July 2002. In 2003, this TRQ had amounted to 3,950,000 metric tons and had been distributed among importers by auctions on the stock exchange. The procedure for holding auctions was laid down in Government Resolution No. 1299 of 31 October 1996 "On the procedure for Holding Tenders and Auctions for Sale of Quotas when Quantitative Limitations and Licensing of Export and Import of Goods are Introduced in the Russian Federation".

He added that the TRQ on raw sugar had been eliminated pursuant to Government Resolution No.720 of 29 November 2003. Currently, raw sugar imports were subject to import tariffs only.

171. With regard to meat, he noted that in 2003-2004 a two-level tariff had been applied to imports of beef (HS 0201 and 0202) and pork (HS 0203). The legal basis for this measure were Government Resolutions No.49 and No.50 of 23 January 2003 and No. 721, 722, 723 of 29 November 2003. This measure provided an opportunity to import 420,000 tons of beef and 450,500 tons of pork per year at a lower duty. Quantities allowed for importation in 2004 were as follows:

- frozen beef: 420,000 tons. This TRQ was shared into four categories of countries: 1) the European Union, including as of 1 May 2004 Hungary, Cyprus, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia, the Czech Republic, and Estonia – 331,800 tons; 2) the United States– 17,200 tons; 3) Paraguay-3,000 tons; and 4) other countries – 68,000 tons. (Government Resolution No. 723 of 29 November 2003);
- fresh or chilled beef (HS 0201, sub-position 0201 10 000 1, 0201 20 200 1, 0202 20 300 1, 0201 20 500 1, 0201 20 900 1, and 0201 30 000 beginning from 1 August 2003 - Government Resolution No. 417 of 11 July 2003):, 11,000 tons 500 kg for the five last months of 2003 and 27,500 tons for 2004. This TRQ was shared into two categories of exporters: 1) the European Union, including as of 1 May 2004 Hungary, Cyprus, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia, the Czech Republic, and Estonia – 27,000 tons; and 2) other countries- 500 tons (Government Resolution No.722, of 29 November 2003);
- pork: 450,000 tons. This TRQ was shared into four categories of exporters: 1) the European Union, including as of 1 May 2004 Hungary, Cyprus, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia, the Czech Republic, and Estonia - 227,300 tons; 2) the United States - 42,200 tons; 3) Paraguay - 1,000 tons; and 4) other countries - 179,500 tons. (Government Resolution No.721 of 29 November 2003).

172. Imports in excess of these amounts were subject to a higher duty. The Ministry of Economic Development and Trade of the Russian Federation was the body responsible for TRQ administration and issuing non-automatic licenses for imports under TRQs. For pork and beef, 90 per cent of the import volume was distributed by granting licenses to historical importers based on their representative imports over last three years (2000-2002) with a portion (10 per cent) reserved for new entrants. These 10 per cent were distributed by auctions on the stock exchange. The representative of the Russian Federation further added that since TRQs were a new regulatory instrument for his country, there could be changes in administration methods in order to achieve the effective use of TRQs.

173. In respect of imports of poultry, he explained that his Government had imposed safeguard measures as from May 2003. The legal basis for this measure in 2004 was Governmental Resolution No. 724 of 29 November 2003 “On specifics of application of special safeguard measure in respect of import of poultry in 2004”. In accordance with that resolution, the annual quota of imports of poultry

had been established at the level of 1050 million tons, out of which 771,9 thousand tons were to be imported from the USA, 205 thousand tons from the EC, 5 thousand tons from Paraguay and 68 thousand tons from other third countries. In response to questions from members, the representative of the Russian Federation said that his Government intended to consider conversion of the safeguard quota into a TRQ.

174. Several members stated that to the extent that the auction charges associated with the allocation of TRQs exceeded the Russian Federation's tariff bindings, they would be inconsistent with the Russian Federation's obligations under Article II of the GATT, and allocation of quotas without regard to Articles XI and XIII would also violate WTO provisions. These members sought a commitment from the Russian Federation that any fees, charges or revenues collected would not exceed the bound rate of duty established for the product concerned. Some members also maintained that the auctioning method for distributing TRQs was not fully consistent with the GATT 1994 and discriminated against those members that did not provide export subsidies.

175. Noting that Federal Law No. 5003-1 of 21 May 1993 "On Customs Tariff" prohibited access under TRQs from being granted to products originating from MFN suppliers, some Members requested confirmation of whether the Russian Federation also intended to provide legal authorization for using TRQs to regulate general imports or if this would be limited to GSP imports. These Members required a more precise understanding of the methods of allocation and other aspects of the system that the Russian Federation intended to adopt in this field.

176. Some members requested a clarification of whether only Russian legal or natural persons could participate in TRQ auctions. These Members also requested a confirmation that there were no legal requirements to participate in TRQ auctions that could favour local production, such as requirements to enter into contracts to purchase domestic products or requirements to provide domestic producers with inputs. In addition, some Members also requested that the Russian Federation enact amendments to the Tax Code to ensure MFN access to the system of TRQs.

177. In response, the representative of the Russian Federation replied that foreign-owned firms established as Russian legal entities could participate in TRQ auctions as well. He also confirmed that there were no other legal requirements to participate in TRQ auctions that could favour local production.

178. Recalling discussions in the "Import Licensing" section of this Draft Report below, Members of the Working Party requested Russia to provide additional information on new import licensing

requirements, announced in January 2003, for imports of poultry (to allocate quotas in the context of taking a safeguard action), and beef and pork (through establishment of de facto tariff rate quotas).

179. In response, and recalling discussions in the "Import Licensing" section of this Draft Report below, the representative of the Russian Federation stated that following the adoption of the safeguard-quota measures for poultry on 1 May 2003, an importer was required to obtain an import license from MEDT. The importation of poultry, as well as beef and pork also required a permit from the Federal Veterinary Service. 90 % of import licences were granted to historical importers based on average imports from 2000- 2002, with a 10% portion reserved for new entrants.

180. The representative of the Russian Federation confirmed that import licences were not transferable, but noted that unused import licences would be reallocated. According to information published on MEDT's website on 4 March 2003, importers that had received a share of the quota based on historical trade shares could apply for a license by 20 March 2003 for TRQs on beef and pork, and quota on poultry, as described below. Applications submitted after that date had not been accepted. The representative of the Russian Federation reported that import licences had been issued starting on 1 April 2003, the same day the TRQs for beef and pork had become effective. He further stated that import licences for importers that had received an allocation through the auctioning system had been issued between 1 June and 1 December 2003. Importers had received a licence after submission of an application for the licence and a copy of a certificate confirming that the applicant was registered by a regional tax authority as a tax-payer. Import licences had been issued for each commercial contract and were valid until 31 December 2003. A fee of 3,000 Rubles was charged for each licence. This fee had not been reimbursed in the event the importer did not use the license.

181. In response, Members of the Working Party stated that the system described did not work well in practice, and made it extremely difficult to actually export poultry, beef, and pork to the Russian Federation. Use of historical suppliers was particularly problematic as many had been one-time shippers and no longer were participants in the market. As a consequence, many importers received quota allocations so small that they were not economically viable (in some instances, importers were given quota allocations as low as 10 kilograms), and only a very small portion of the total quotas was being held for new entrants. They also noted that no mechanism for re-allocation of unused licenses had been developed in advance of the introduction of this new system, and it did not appear that full utilisation of the quotas and tariff-rate quotas, which already contemplated reduced imports, would be possible. Members also noted that suppliers situated geographically distant from the Russian Federation experienced additional difficulties due to shipping time.

182. Members also noted that the Ministry of Agriculture's Veterinary Service required that importers obtain an import permit, in addition to veterinary and sanitary certification requirements (and now the import license), to be able to import beef, pork, and poultry into the Russian Federation. Those members considered that those import permits were also subject to the disciplines of the WTO Agreement on Import Licensing Procedures. Members noted that in January 2003, the Veterinary Service abruptly cancelled existing import permits for beef, pork, and poultry and established a new system for issuing import permits. Members noted that no information had been published or provided to Working Party participants on the new requirements for obtaining import permits.

183. In response, the representative of the Russian Federation stated that importers would be required to present an import license from MEDT as a precondition to import. This requirement also applied for imports of products that would be used for further processing or into retail sale.

184. The representative of the Russian Federation noted that the distribution of quotas for imports of all products were made in accordance with the provisions of the WTO agreements and were based on the historical shares of Russia's main suppliers for the respective products in the years 1999-2001, which were the years immediately preceding the year when the decision to introduce the TRQs for beef and pork and special safeguard quotas for poultry had been taken (2002), and for which information was available. He confirmed that all supplying members were invited to consult with his Government about country-specific allocations of quotas. Some of these consultations had been successfully concluded and their results were now being implemented.

185. He noted that his Government was prepared to continue such consultations and to address the question of redistribution of unused country specific quotas.

[to be completed]

Tariff Exemptions

186. The representative of the Russian Federation said that pursuant to Article 34 of Federal Law No. 5003-1 of 21 May 1993 "On Customs Tariff" (as amended on 29 June 2004), tariff exemptions were granted in accordance with the procedures established by the Government and Articles 35, 36 and 37 of the Law. Such decisions included: Government Resolution No. 1041 of 8 September 1994 "On the Procedure for Exemption of Goods Imported to the Customs Territory of the Russian Federation and Exported from This Territory for Purposes of Eliminating the Aftermaths of Accidents, Catastrophes and Natural Disasters from Customs Duties" (as amended on 26 July 1996), Government Resolution No.497 of 19 May 1994 "On Tariff Preferences in Respect of Oil and Oil

Products Manufactured by Enterprises with Foreign Investment and Exported from the Russian Federation” (as amended on 13 October 1995), and Government Resolution No. 413 of 23 April 1998 "On Additional Measures to Attract Investments for Development of Domestic Car Making".

187. Article 35 of Law No. 5003-1 established the list of goods which were not subject to customs duties, such as goods in transit; items imported by foreign diplomatic and consular offices in the Russian Federation in accordance with their needs and requirements for official purposes; articles for personal use when travelling abroad; goods destined for disaster relief and humanitarian purposes; industrial and other equipment related to foreign investment, etc. Exemptions could be also granted under Articles 36 and 37 of the Law on the basis of tariff rate quotas; tariff preferences; free trade agreement and GSP scheme. Tariff exemptions other than those provided for in the context of a free trade agreement or GSP scheme were applied on a MFN basis. He also added that no tariff exemptions, other than those provided for in the legislation in force, were envisaged in the draft law “On Amending the Law on the Customs Tariff (which had passed first reading in the State Duma on 5 August 2004).

188. Some members noted that certain tariff exemptions granted currently or in the recent past for investment purposes (automobiles and PSA projects) or to promote domestic industry (aircraft) continued to be of concern. These members sought a commitment from the Russian Federation to use its authority to grant such exemptions in conformity with WTO provisions.

189. The representative of the Russian Federation replied that these types of exemptions were discussed in the sections on "TRIMs" and "Industrial Subsidies" of this Draft Report.

Other Duties and Charges

190. The representative of the Russian Federation stated that the Russian Federation had not applied any duties and charges (ODCs) within the meaning of Article II:1(b) of the GATT 1994. Authority to apply such measures, however, was provided for in Article 34 of Federal Law No. 5003-1 of May 21 1993 “On Customs Tariff” (as amended on 29 June 2004).

191. Noting this statement, several members asked the Russian Federation to bind at zero all such ODCs in its Schedule of Concessions and Commitments on Goods and to undertake a commitment that it would not apply such measures except in conformity with WTO obligations.

192. [The representative of the Russian Federation confirmed that the Russian Federation would not apply other duties and charges on imports other than ordinary customs duties from the date of accession, and that any such charges applied to imports after accession would be in accordance with

WTO provisions. He further confirmed that the Russian Federation would not list any other charges in its Schedule under Article II:1(b) of GATT 1994, binding such charges at zero.]

Fees and Charges for Services Rendered

193. Several members asked for a description of how the Russian Federation intended to modify its customs fees regime, as the Russian Federation had indicated its intention to revise its import fee structure and that relevant provisions had been included in the new Customs Code, which had entered into force on 1 January 2004. Noting that under current legislation, fees charged for customs clearance were calculated on an *ad valorem* basis, these members questioned how they would relate to the cost of services rendered and stressed their expectation that the Russian Federation should meet the relevant obligations provided for in GATT 1994.

194. The representative of the Russian Federation replied that before the adoption of the new Customs Code of the Russian Federation No. 61-FZ of 28 May 2003 (as amended on 20 August 2004) there were six types of fees and charges for services rendered levied in relation to importation or exportation. The new legislation, which had come into force on 1 January 2004, provided for only two types of fees, i.e. (i) charges for customs clearance; and (ii) charges for the escort of goods. Customs fees for the escort of goods were calculated as fixed sums, corresponding to the overall value of services rendered, and fees for customs clearance were applied temporarily on an *ad valorem* basis (Table 10). Fees for customs clearance were collected pursuant to the Instructions No. 640 "On Collecting Customs Fees for Customs Clearance" approved by State Order of the Customs Committee on 7 June 2004. Revenues generated by those fees were remitted to the general revenues of the State budget.

195. He added that new draft amendments to the Customs Code (which had passed first reading in the State Duma on 5 August 2004) provided explicitly that customs fees were not permitted to exceed the approximate cost of the expenses of the customs authorities for performing certain operations, and provided for a third type of customs fee – "charges for the storage of goods". The precise level of fees and procedures for their application would be contained in implementing regulations to come into effect soon after the amended legislation would enter into force. These fees would be applied to all imports from all sources and to exports to all destinations. An exhaustive list of goods exempt from application of the storage fee for certain reasons was stipulated in the Instructions No. 640 "On Collecting Customs Fees for Customs Clearance" approved by the Order of the State Customs Committee on 7 June 2004. He also added that, pursuant to the provisions of the Customs Code of the Russian Federation, the customs fee for the storage of goods was not applied temporarily, but a person placing goods at a bonded warehouse had to reimburse costs concerned with the storage of goods at

the amount stipulated by the contract for storage concluded with a customs office. Provisions of the contract would be regulated by the provisions of civil law of the Russian Federation pertaining to a public contract (Article 897 of the Civil Code of the Russian Federation). Revenues generated by these charges were also remitted to the general revenues of the State budget.

196. He further noted that, in accordance with Article 30 of Law No. 164-FZ "On the Fundamentals of State Regulation of Foreign Trade Activity" of 8 December 2003 (as amended on 22 August 2004), all payments collected on exports and imports of goods which were neither customs duties nor other taxes should not exceed the approximate cost of services rendered and be a means of protection of goods of Russian origin or of taxation for fiscal purposes. Revenues generated by those fees were remitted to the general revenues of the State budget.

197. In response to further comments he said that detailed information on licence fees was provided in the section on Import Licencing Systems (Paragraph [246] of the draft Working Party Report).

[to be completed]

Other Fees

198. Some Members requested clarification on any other fees or charges applied to imports or to the act of importation. In this regard, they sought information on possible discriminatory or otherwise WTO-inconsistent application of port user fees between foreign and domestic users, State duties or consular fees.

199. The representative of the Russian Federation stated that the port fees used in commercial seaports (Tables 11(a) on "Port Fees Used by Group of Vessels" and (b)) of the Russian Federation had been approved by the Ministry of Transport of the Russian Federation on 21 July 1995. Port-charges included: tonnage (to be collected per 1 m³ of vessel conventional capacity, separately for each arrival into the port and departure from it) and beaconage (to be collected per 1 m³ of vessel conventional capacity upon each arrival into the port and its departure. Exempted from beaconage were vessels calling for refuge to perform an emergency repair and the vessels of group "D". Vessels of groups "E" and "G" were exempted from the beaconage dues unless they performed cargo handling and operations of a commercial nature at the port), canal dues (to be collected for 1 m³ of vessel conventional capacity upon each pass of canal in one direction), and wharfage dues (to be collected per 1 m³ of vessel conventional capacity for each day of vessel being alongside. Wharfage dues were collected from vessels staying alongside the berth. For the vessels of groups "A", "B" and "H"

wharfage dues were charged per 1 m³ of the conventional volume of the vessel for each day of the vessel's stay alongside the berth. The time of stay at a berth was rounded off upward to one-half of the day. The vessels of groups "C", "D", "E", "F" and "G" were charged berth dues (per 1 m³ of the conventional volume for each call), anchor dues (to be collected for 1 m³ of vessel conventional capacity for each hour of anchorage in the outer or inner harbour in excess of 12 hours - incomplete hour of anchorage was considered as a complete hour of anchorage), ecological dues, pilotage dues, and navigation dues. Port-charges were collected in commercial seaports of the Russian Federation, irrespective of their form of organization, legal status and pattern of ownership, from Russian and foreign vessels and floating facilities on the basis of the non-discrimination principle.

200. The application of State Duties by the Russian Federation for the performance of legally significant actions was provided for in Law No. 2005-1 of 9 December 1991 "On State Duty" (as amended on 22 August 2004). He further noted that the State duty applicable (Table 12) for the processing of imports or exports by customs and for other purposes related to trade had been established in accordance with Federal Law No. 226-FZ of 31 December 1995 "On Amending the Law of the Russian Federation on the State Duty" (as amended on 14 November 2002 - No. 137-FZ). State duties were to be collected for the performance of legally valid actions or for the issuance of documents by bodies or official persons authorized for this purpose and only in a few cases required by the legislation.

201. Regarding State duties, several members questioned again how an ad valorem State duty for the attestation of agency agreements and for accepting money and securities in deposit could relate to the cost of the service rendered. They also requested clarification on whether these duties applied in the act of importation or exportation, and what sorts of customs documents required a stamp tax. Regarding fees that were applied to imports for requirements, such as standards certification or vehicle taxes, these members also noted that these fees were not consistent with Article III of the GATT 1994 as they were not equally applied to domestic products and should be revised or eliminated prior to accession. Clarification was also requested regarding the nature of the services rendered by the additional customs charge for customs clearance, and on the precise meaning of "legally significant action" for performing other notary actions" or "for the performance of the technical work for the making of the documents".

202. In response, the representative of the Russian Federation stated that pursuant to Law No. 2005-1 of 9 December 1991, "On State Duty" (as amended on 22 August 2004), "legally significant actions" were the following:

- statements of claim and other claims and complaints filed with courts of general jurisdiction, arbitration courts and the Constitutional Court of the Russian Federation;
- notarial acts by public notaries employed by notary offices or duly authorized officials of executive authorities, local administrations and consular offices of the Russian Federation;
- state registration of vital records and other legally significant actions performed by vital statistics offices;
- issuance of documents by courts, institutions and agencies for consideration and issuance of documents associated with acquisition of Russian citizenship (national status) or denunciation thereof and performance of other legally significant actions.

203. He further stated that appeal of decisions and actions (inactions) of customs bodies in the court of justice or in the arbitration court were subject to a State duty at the rate established in the Law “On the State Duty”.

204. In response to further questions, he stated that mandatory customs operations and procedures, authentication of customs documents, attestation of agency agreements and acceptance of money and securities in deposit by customs bodies did not require any payments, such as State duty. He added that, pursuant to the Instructions “For Collecting Customs Fees for Customs Clearance” approved by Order of the State Customs Committee No. 640 of 7 June 2004, operations of importation and exportation of securities in foreign currency by legal entities were subject to a customs fee for customs clearance of 300 Rubles per consignment.

205. Referring to consular fees, he noted that in accordance with the Vienna Convention on Consular Relations (1963) and Consular Articles provisions (1976), the main objective of the consular offices was the protection of rights and legal interests of Russian citizens and legal entities abroad. Consular offices of the Russian Federation collected fees for the issuance of documents of legal significance to Russian natural persons or legal entities constantly or temporarily residing or located in foreign countries, as well as to citizens of foreign States, foreign legal entities, persons without citizenship. Acts performed by the Russian consular offices included those related to passport and visa matters, citizenship, certification and notarization of documents, power of attorney notarization. None of these acts were directly related to exports or imports of goods.

206. Noting the statement above, some members sought clarification from the Russian Federation on whether consular fees were levied on consular operations involving importation or exportation. In particular, they asked the Russian Federation to confirm whether a requirement for authentication of customs documentation by Russian Federation consulates overseas prior to exportation existed. Some members expressed concerns about the charging of fees for consular purposes that were connected with importation (Table 13) at a lower rate from certain countries where the service was performed

(the Baltic countries and CIS countries) as this practice would be in violation of Article I of the GATT 1994 and should be eliminated prior to accession. Other members of the Working Party expressed concern about the discriminatory application of consular fees by sub-federal entities, apparently in contravention of Russian Federation legislation. Those members requested that the Russian Federation enter a commitment to apply a uniform consular fee policy to all and to eliminate current discriminatory practices prior to accession.

207. The representative of the Russian Federation responded that his Government imposed no requirement for the issuance of consular invoices or certificates for exports to the Russian Federation, nor for the authentication of customs documentation required for importation. He confirmed that consular fees were charged only by the consular offices of the Russian Federation. No consular offices were established by sub-federal entities and no consular fees were applied at sub-federal level. He also noted that the consular fees listed in Table 13 were not connected with the type of consular acts covered by Article VIII:4(a) of the GATT 1994, and were not in any way directly related to exportation or importation. These acts were covered by bilateral consular treaties and performed mainly in respect of the Russian citizens and Russian legal entities (e.g. fees for consular service of sea and aircraft were collected only from the Russian vessels). Such bilateral treaties, providing for differential treatment for consular services on reciprocal basis, were common among the WTO Members.

208. The representative of the Russian Federation confirmed that the lists of fees and charges for customs services, port fees used in commercial seaports and State duties related to import and export (listed in Tables [10, 11, 12...]) were complete and accurate.

209. [The representative of the Russian Federation confirmed that the Russian Federation would ensure that any fees and charges for services rendered listed in Tables [10,11,12...] or introduced in the future would only be applied in conformity with the relevant obligations of the GATT 1994, and that any application of fees and charges by the Russian Federation for services rendered or in connection with importation or exportation would be in accordance with the relevant provisions of the WTO Agreement, in particular Articles VIII and X of GATT 1994, from the date of accession. He further confirmed that, after accession, information regarding the application and the level of any such fees, revenues collected and their use, would be provided to WTO Members upon request.]

210. [The representative of the Russian Federation confirmed that, from the date of accession, the Russian Federation would conform with the provisions of Articles VIII of the GATT 1994 relating to fees and charges imposed on or in connection with importation or exportation of goods. Members of the Working Party took note of that commitment.]

[to be completed]

Application of Internal Taxes on Imports

- Excise Taxes

211. The representative of the Russian Federation noted that until January 1997 excise taxes on certain products differentiated between imported and domestically-produced goods. Federal Law No. 12-FZ of 10 January 1997 "On Excise Tax" had unified excise tax rates for imported and domestic products. In pursuance of Chapter 22 ("Excise Tax") of the Tax Code (Federal Law No. 110-FZ of 24 July 2002 "On the Introduction of Chapter 22 Into Force"), excise tax rates for imports and those for domestic products were identical and in conformity with Article III of GATT 1994. The products subject to excise taxes and to respective tax rates were enumerated in Table 14.

212. He further noted that only cigarettes were partially subject to *ad valorem* rates. The tax base for calculating the excise tax for those products was the selling price exclusive of VAT for domestic products and the sum of their customs value and the payable customs duty exclusive of VAT for the *ad valorem* part of the excise tax for imported cigarettes.

213. Natural gas imported to the Russian Federation was free from excise tax. If excisable goods were placed under customs treatment of transit, bonded warehouse, re-export, processing under customs control, free customs area, bonded warehouse, destruction and refusal in favour of the State the excise tax was not paid. Products for which a zero level excise tax was indicated (e.g. beer with an alcohol content of 0,5 per cent inclusive) were included in the list of excisable goods only for more effective State monitoring of their turnover. Historically, excise taxes had been applied differently to imports from CIS countries than to imports from non-CIS countries. From 1 July 2001, when Chapter 22 of the Tax Code had entered into force, excise taxes had been levied in a uniform manner on all imports based on the country of destination principle, except for Belarus. In the case of Belarus, excise taxes were charged based on the country of origin principle, by virtue of Article 27 of the Agreement between the Russian Federation and the Republic of Belarus of 8 December 1999 "On the Creation of a Union State".

214. He further noted that the Union States of Belarus and the Russian Federation maintained a uniform principle in respect of levying indirect taxes irrespective of the actual location of the taxpayer within its territory. In this regard and pursuant to Article 13 of Federal Law No. 118-FZ of 5 August 2002 “On Enacting Part II of the Tax Code of the Russian Federation and Amending Certain Tax Acts of the Russian Federation”, the amount of excise tax payable on excisable goods originating in and imported from the Republic of Belarus into the Russian Federation was reduced by the amount of excise tax paid in the country of origin. A convergence of lists of excisable goods and marginal excise tax rates was envisaged, *inter alia*, as part of the establishment of the Common Economic Area envisaged with the Republic of Belarus.

215. Noting that when excise taxes were collected on imports from Belarus to the Russian Federation there was still a deduction from the charge for excise taxes applied in Belarus, some members maintained that this could violate Article I of the GATT 1994 by providing better treatment to imports from Belarus than from other suppliers. These members asked the Russian Federation to indicate how it intended to bring this practice into conformity with WTO provisions prior to accession. One member noted that Article XXIV of the GATT did not contain any provisions related to domestic taxation policy. The practice of discriminatory application of domestic taxes on imports was a violation of Article III of the GATT, whether the imports originated from preferential trading partners or from MFN trading partners. This member requested that the Russian Federation eliminate the discrimination in its taxation policy *vis-à-vis* Belarus prior to its accession to the WTO. In response, the representative of the Russian Federation stated that this issue would be discussed at a later stage.

216. Some Members noted that excise taxes on imports of automobiles were applied on the basis of the engine size, which was an unjustified discrimination against trade in similar products. Members also sought information on an announced prospective application of a similar discriminatory excise tax on agricultural machinery on the same basis. In their view, these measures were not in conformity with WTO provisions, e.g., Articles III or XI of the GATT 1994.

217. The representative of the Russian Federation replied that the issue of excise taxes on imports of automobiles was not having a discriminatory effect on imports as excise tax rates for imports and domestic products were identical under Article 193 of the Tax Code and that agricultural machinery was not subject to excise taxes.

218. Several members expressed appreciation for the comprehensive listing of excise taxes and other information on their application to domestic and imported goods. They noted that the differentiation of excise tax rates within specific categories of alcoholic beverages, e.g., for different

types of beer, wine, and spirits, might have a *de facto* discriminatory effect on imports. In addition, a higher excise tax was levied on alcoholic beverages containing more than 28 per cent alcohol by volume. At a later stage members sought confirmation that any differential in the rates of excise tax applied to alcoholic beverages had been eliminated and information on how the Russian Federation intended to eliminate these measures and bring its excise tax regime on alcohol and alcoholic beverages into conformity with WTO Agreements. Furthermore, on alcoholic beverages, some Members sought clarification regarding the Russian Federation's excise warehouses and whether this would be extended to imported products. They considered that an extension to imported products would create a barrier to trade and could have a discriminatory result.

219. In response, the representative of the Russian Federation stated that the differentiation of excise tax rates applied to specific categories of alcoholic beverages (beer, wine and spirit) was based on the principle of harmonizing the applied rate with the concentration of pure alcohol in those beverages and was not having a discriminatory effect on imports. For example, Russian produced wines (fortified wines) were subjected to the highest excise rates in comparison with imported wines (natural wines). The representative of the Russian Federation confirmed that the Russian Federation would not apply any system of excise taxation to imported alcoholic products that would be discriminatory.

220. With respect to the excise warehouses for alcoholic beverages, the representative of the Russian Federation explained that this practice was applicable only with regard to domestically produced goods. The representative of the Russian Federation confirmed that if changes were to be made to the system of taxation and controls of alcoholic products, his Government would make sure to avoid creating market conditions that would be less favourable to imported products than to domestic products.

221. Noting further that differential rates of excise tax were levied on natural gas depending on whether it was sold in the Russian Federation for export to other CIS countries (15 per cent), or whether it was for export to other countries (30 per cent), some members felt that this practice was discriminatory and asked how the Russian Federation would bring it in conformity with WTO rules upon accession. Moreover, a more detailed clarification was needed on the national treatment implications of calculating excise taxes on imports on the customs value plus the total of customs duties and levies payable, while the excise taxes on domestically produced goods were based on actual value only. Members sought the elimination of these practices and a commitment from the Russian Federation that full conformity with WTO provisions would be ensured in the application of excise taxes as from the date of accession to the WTO.

222. In response to concerns about the inclusion of the customs duty in the taxable base for the purposes of the value-added tax and excise taxes levied on imports of goods to the customs territory of the Russian Federation, the representative of the Russian Federation stated that this requirement of the Russian legislation was consistent with the practice of implementation of the GATT 1994.

223. The representative of the Russian Federation clarified that the excise tax on sales of natural gas had been eliminated as of 1 January 2004 and replaced by a 30 per cent export duty. He also added that the *ad valorem* part of combined rate of excise tax for cigarettes was equal to one per cent. The methodology of accruing the basis described in the document WT/ACC/SPEC/RUS/25/Rev.1 could not hamper imports. The new scale of excise tax was provided in Table 14.

- **Value Added Tax**

224. Some members requested confirmation that VAT was now applied in an uniform manner to all domestic and imported products and that from 1 July 2001 this was also the case with respect to CIS countries. Clarification was also requested on whether the same principle applied to imports and exports of energy products such as gas and oil. A member requested clarification concerning the different VAT treatment of ice-cream produced from milk and dairy products (10 per cent) and ice-cream produced from fruits and berries (20 per cent).

225. The representative of the Russian Federation replied that, in accordance with Chapter 21 of the Tax Code (Federal Law No. 117-FZ of 5 August 2000 and Federal Law No. 118-FZ of 5 August 2000 "On Introduction of Part Two of the Tax Code"), VAT was applied in an uniform manner to almost all domestic and imported products on the basis of the country of destination principle, and that it has also been the case with CIS countries since 1 July 2001. The only exception related to bilateral trade with Belarus, where VAT was levied in the country of origin. As for the exportation of crude oil and natural gas, VAT would be levied in the country of destination also with respect to bilateral trade with CIS countries from the year 2005 or 2006. By that time, VAT should be levied on imports of these products, and exports should be eligible for VAT exemption as all other exports.

226. Noting that that the application of domestic taxes to Belarus was still based on the country of origin, some members asked the Russian Federation to indicate how, and in what time-frame, the Russian Federation intended to proceed to convert its taxation system with Belarus. These members also asked for a list, by HS tariff lines, of oil and gas import items for which the level of application of VAT continued to be based on the country of origin. They further requested the Russian Federation to provide a more precise timetable for unifying the application of VAT on all products on the basis of

the country of destination principle, i.e. to indicate a date by which these measures would be in conformity with the WTO.

227. In response, the representative of the Russian Federation stated that the Russian Federation and Belarus had signed a bilateral Treaty "On the Creation of the Union State" on 8 December 1999 leading, *inter alia*, to the formation of a single economic space based on unified legislation. Work was being done to address the issue of taxation within this single economic space. He further stated that the only difference in the exportation of crude oil and natural gas (HS 2709 and 2711.21, respectively) to CIS countries in comparison with the exportation of these products to other countries was that VAT was not reimbursed to Russian exporters in the case of export to CIS countries. This practice was slated to be changed, as described in paragraph [...] above. Further clarification on the creation of the single economic space with Belarus will follow at a later stage.

228. He noted that VAT was levied at a single rate of 18 per cent with some exemptions listed in Tables 15(a) and 15(b). All these exemptions were applied in non-discriminatory manner both to domestic output and imports of similar products. Also exempt from VAT were goods placed under the customs treatment of transit customs warehouse; re-export; duty free shop; processing under customs control; free customs zone; free warehouse; destruction and refusal in favour of the State. The tax base for the imposition of the VAT included excise taxes, if any. For imported goods customs duties were also included in the tax base.

229. Referring to the list of VAT exemptions listed in Table 15(a), some members noted that a reference was made therein that "sale of products of own manufacture of organizations engaged in the production of agricultural products which generate 70 per cent and more of the overall share of incomes from the sale in the total sum of their incomes" were exempted from VAT. They enquired about the products in question and whether imports of similar products did also qualify for exemption and, more generally, how the exemption of domestic agricultural output from VAT could be justified under Article III:2 of the GATT 1994. Noting that fish caught on the high seas by Russian registered vessels were also VAT exempted, these members further inquired whether this exemption was extended to imported fish products as well. Some members also inquired whether the provision for VAT exemption for certain agricultural producers, or producers in any other sector, also applied where output was bartered for goods or services or used as payment in kind for discharging financial obligations to financial institutions or other creditors. If that was the case, these members requested full details on the legal basis for such goods and services being deemed to satisfy the relevant criteria for VAT exemption.

230. Members also noted that there existed discriminatory VAT application in the automotive sector, in that used cars imported by individuals were not charged a VAT or excise tax. They also noted that the VAT was applied on an arbitrary basis on medical equipment, medical devices, and pharmaceuticals. These measures were not in conformity with Article III of the GATT 1994. Some Members also expressed concern about the practice of Russian customs to apply the previously existing VAT rate of 20 per cent to imports of pharmaceutical products instead of the special VAT rate of 10 per cent introduced by the Tax Code and sought confirmation from the Russian Federation that this practice had been abolished. In addition, these Members sought clarification on the application of the 20 per cent VAT on imports of pharmaceutical products for clinical trials. In addition to a discriminatory VAT (20 per cent instead of 10 per cent), which customs tended to apply in the absence of a special permit from the Ministry of Health, these Members stated that the Tax Code Part 2 allowed for exemptions and asked the Russian Federation to consider VAT exemption of these products as they were not for resale.

231. The representative of the Russian Federation replied that, in the case of fish caught on the high seas by Russian registered vessels, the VAT collection resulted from the fact that fish so caught was considered to be Russian produced fish and, as such, its delivery into the customs territory of the Russian Federation did not constitute an importation. These goods were thus not subject to VAT when imported into the customs territory of the Russian Federation but were subject to VAT when the first transaction was performed.

232. In response to the concerns of members concerning VAT exemption for agricultural products of some producers, he further explained that these products substituted payments for the job of natural persons employed by those producers. Such a form of payments was used in the agricultural sector by entities in critical situation with no actual money either to pay salaries or VAT when paying for the job of employed persons by agricultural products. There were few such cases. The agricultural products at issue were unprocessed products of plant growing and cattle breeding (meat, fish, eggs, vegetables, fruits etc.). This provision was not applied to the cases when the output of the above-mentioned producers was bartered for goods or services, or used as payment to reimburse financial obligations to financial institutions or other creditors.

233. As regards application of VAT in the automotive sector and the fact that used cars imported by natural persons were not charged a VAT or excise tax, the representative of the Russian Federation explained that Government Resolution No. 718 of 29 November 2003 "On the Approval of the Regulations on the Application of the Uniform Rates of the Customs Duties and Taxes with Respect to Goods Transferred across the Customs Border of the Russian Federation by Natural Persons for

Personal Use" provided that imports by natural persons of motor cars into the customs territory of the Russian Federation should be applied a single payment, which comprised customs duty, VAT and excise tax. The representative of the Russian Federation added that Government Resolution No. 718 equalized customs payments made by legal and natural persons in the importation of motor cars into the customs territory of the Russian Federation. He noted that VAT application in the automotive sector was not having a discriminatory effect on imports. On the application of VAT on pharmaceutical products, the representative of the Russian Federation confirmed that there were no more irregularities and that a 10 per cent VAT was applied (not 20 per cent). In response to the question on VAT for clinical trials, he stated that customs applied a 20 per cent VAT if no special permit was issued by the Ministry of Health as they were then considered as chemical products.

234. [The representative of the Russian Federation confirmed that from the date of accession, the Russian Federation would apply its domestic taxes, including VAT, excise taxes, and other taxes applied to goods including those listed in Table [...] and paragraphs [...] in compliance with Articles I and III of the GATT 1994, in a non-discriminatory manner to imports regardless of the country of origin and to domestically produced goods, without exceptions, regardless of the regional destination of goods.]

235. [The representative of the Russian Federation confirmed that, from the date of accession, the Russian Federation would apply internal taxes applied to imported products in accordance with the provisions of the GATT 1994, in particular its Articles I:1 and III:2. The Working Party took note of this commitment.]

[to be completed]

Quantitative Import Restrictions, including Prohibitions and Quotas

236. The representative of the Russian Federation confirmed that the Russian Federation did not maintain any quantitative import restrictions, prohibitions or quotas in the meaning of Article XI of the GATT 1994, except in certain cases provided for in Federal Law No. 164-FZ of 8 December 2003 "On the Fundamentals of State Regulation of Foreign Trade Activity", which came into force on 15 June 2004. Pursuant to Article 21 of Federal Law No. 164-FZ, imports of goods should be free of any quantitative restrictions. However, import restrictions could be applied pursuant to Article 32 of Federal Law No 164-FZ and in accordance with federal laws and international treaties of the Russian Federation as measures not carrying an economic character and affecting foreign trade in goods. In his view, these measures were justifiable under Articles XX and XXI of the GATT 1994.

237. In addition, pursuant to paragraph 2.2 of Article 21 of Federal Law No. 164-FZ of 8 December 2003 "On the Fundamentals of State Regulation of Foreign Trade Activity", the Government of the Russian Federation could, in exceptional cases, introduce import restrictions on agricultural or fishery products imported into the Russian Federation in accordance with Article XI:2 of the GATT 1994 when such measures were necessary to (a) reduce the production or sale of similar products of Russian origin; (b) reduce the production or sale of goods of Russian origin that could be directly replaced with imported goods unless there was a large-scale production of similar goods in the Russian Federation; (c) remove from the market a temporary surplus of similar goods of Russian origin by providing the available surplus of such goods to some groups of Russian consumers either free of charge or at prices inferior to market prices; (d) remove from the market a temporary surplus of goods of Russian origin that may be directly replaced with imported goods unless there was a large-scale production of similar goods in the Russian Federation by providing the available surplus of such goods to some groups of Russian consumers either free of charge or at prices inferior to market prices; and (e) limit the production of products of animal origin whose production was dependent upon goods imported into the Russian Federation, provided the production of similar goods in the Russian Federation was relatively small.

238. He further stated that pursuant to Article 13 of Federal Law No. 164-FZ of 12 December 2003, the Government of the Russian Federation was authorized to apply quantitative import restrictions, prohibitions and quotas upon its own initiative or upon proposal of the Ministry of Economic Development and Trade of the Russian Federation, which was the federal executive body responsible for regulating foreign trade.

239. Noting the statement of the representative of the Russian Federation that measures applied on the basis of Article 32 of Federal Law No.164-FZ were justifiable under Articles XX and XXI of GATT 1994 and other respective provisions of the WTO agreement, a member considered that certain elements of that Article 32, such as paragraph 6, reached beyond grounds provided for under the GATT, in particular Articles XX and XI. This member requested a commitment that the Russian Federation would apply Article 32 of Federal Law No. 164-FZ in strict conformity with WTO provisions.

240. The representative of the Russian Federation noted that the temporary ban on the importation of ethyl alcohol enforced under Federal Law No. 61-FZ of 31 March 1999 "On Temporary Ban on Ethyl Alcohol Imports" had been terminated on 31 December 2001. He further said that Article 13 of Federal Law No. -171-FZ of 22 November 1995 "On State Regulation of Production and Turnover of Ethyl Alcohol, Alcoholic and Alcohol-Containing Products" restricted imports of distilled spirits to no

more than 10 per cent of alcohol sales in the Russian Federation. Within this quota, not less than 60 per cent of imports should contain 15 per cent of alcohol or less. He noted, however, that the provisions of that Article had never been implemented.

241. Noting the Russian Federation's statement concerning the lifting of the temporary ban on imports of ethyl alcohol, some members requested clarification on whether the Russian authorities considered that imports of ethyl alcohol could still be affected by Government Resolution No. 1292 of 3 November 1998 "On the Approval of Rules for the Issuance of Quotas for the Manufacture of Ethyl Alcohol from All Types and Special Permits for Its Delivery" (as amended on 17 December 2001). As this Resolution seemed to contemplate placing quotas on deliveries by domestic producers, the issue remained as to whether the Russian Federation eventually planned to place quotas on imports. As for the reference to a law in force, but not applied, that restricted imports of distilled spirits to no more than 10 per cent of the Russian market and stipulated that within this quota at least 60 per cent of imports should contain 15 per cent of alcohol or less, some members requested a clarification as to whether the Russian authorities actually intended to repeal this law.

242. In response, the representative of the Russian Federation stated that the rules of putting quotas on production of ethyl alcohol from all types of raw materials, methylated spirits and alcohol-containing solutions had been recognised as invalid by Resolution of the Supreme Court of the Russian Federation No. GKPI 2001-783 of 16 May 2001 "On Recognition as Invalid and Inapplicable the Rules on Putting Quotas on Production of Ethyl Alcohol and Alcohol-Containing Solution, Approved by the Resolution of the Government of the Russian Federation No 1292 of 3 November 1998". The rules of issuance of special permits for delivery (release) of ethyl alcohol produced from all types of raw materials, methylated spirits and alcohol-containing solutions had been recognised as invalid and inapplicable by Resolution of the Supreme Court No. GKPI 00-1251 of 23 November 2000 "On Recognition as Invalid and Inapplicable the Rules of Issuance of Special Permits for Delivery (Release) of Ethyl Alcohol Produced from All Types of Raw Materials, Methylated Spirits and Alcohol-Containing Solutions, Approved by the Resolution of the Government of the Russian Federation No 1292 of 3 November 1998". No quotas on imported alcoholic products were planned in future. He further confirmed that the provisions of Article 13 of Federal Law No. 171-FZ of 22 November 1995 "On State Regulation of Production and Turnover of Ethyl Alcohol, Alcoholic and Alcohol-Containing Products" had never been applied and that no agency in the Russian Federation was appointed to oversee its implementation.

243. He further noted that even after the draft law "On Amending the Federal Law "On State Regulation of Production and Turnover of Ethyl Alcohol, Alcoholic and Alcohol-Containing

Products”, currently in the State Duma, would have been passed, it would not repeal Federal Law No. 171-FZ. The draft law would make a number of amendments to the existing law, including the elimination of the import quota and introduction of automatic import licensing, which were intended to achieve WTO compliance.

244. Noting that the Russian Federation did not exclude the introduction of a State monopoly on the distribution of alcoholic products, some Members requested Russia to ensure that, in the event of such introduction, it would not create a disguised restriction to imports of alcoholic products into Russia nor that it would create unduly burdensome procedures for imports.

245. The representative of the Russian Federation added that, following the requisite investigation, the Russian Federation had introduced safeguard measures in 2003 in the form of an import quota for a four year period on imports of fresh, chilled and frozen poultry under HS 0207, including boneless poultry (HS 020714100 and 0207271000) on the basis of Articles 4 and 6 of Federal Law No. 63-FZ of 14 April 1998 “On the measures for protection of the economic interests of the Russian Federation in foreign trade in goods” (Government Resolution No. 48 of 23 January 2003 “On measures to protect the poultry farming of the Russian Federation”). This quota was administered by issuance of non-automatic licenses by the Ministry of Economic Development and Trade, as described in the "Tariff Quotas" section of this draft Report. The amount of quota was as follows: 2003 (9 months) – 744,000 tons; 2004 – 1,050,000 tons; 2005 – 1,050,000; 2006 (3 months) – 306,000 tons.

[to be completed]

Import Licensing Systems

246. The representative of the Russian Federation stated that his country's import licensing system was regulated by Federal Law No. 164-FZ of 8 December 2003 “On the Fundamentals of State Regulation of Foreign Trade Activity”, which had come into force on 15 June 2004. This Law maintained the previous import licensing system, established by Federal Law No 157-FZ of 13 October 1995 “On the State Regulation of Foreign Trade Activities”. The list of products subject to licensing is provided in Tables 16(a) and 16(b). Article 13 of Federal Law No. 164-FZ stipulated that the procedure for the importation of precious stones and precious metals should be established by Presidential Decrees, whilst the procedure for the importation of nuclear and radioactive materials –as well as for the importation of certain types of goods affecting state security, life or health of citizens, property of physical and juridical persons, state and municipal property, the environment, life and health of animals and plants should be established by the Government.

247. Government Resolution No. 1299 of 31 October 1996 "On Rules of Conduct of Auctions and Tenders on Sale of Quotas in Cases of Introduction of Quantitative Restrictions and Licensing of Exported and Imported Goods, Works and Services in the Russian Federation" (as last amended on 15 December 2000), introduced a uniform procedure for the licensing of imports. Under this Resolution, all Russian participants in foreign trade activities had the right to obtain import licenses without regard to the form of their property, registration location or market position. The Ministry of Economic Development and Trade issued licenses upon receipt of the following documents: an application for license, copy of the contract, copy of a certificate confirming that the applicant was registered with a regional tax authority as a tax-payer, copies of the registration documents, copy of the applicant's charter, and a copy of the certificate of State registration approval of the federal agency responsible for specific sensitive goods (for non-automatic license only) and licensing. Licenses were, as a rule, valid for up to 12 months but could be extended upon request of the license holder. Licenses were required to be issued within 25 days after the complete set of documents had been submitted. Pursuant to Order No. 363 of 6 August 1999 of the Ministry of Trade "On Approval of Regulation on Fixing the Charges for Issuance, Reissuance and Extension of Licenses for Export and Import of Goods (Works, Services), Certificates of Barter Transactions", the fee charged for the issuance of an import/export license amounted to 3000 Rubles for a one-time license and 15 000 Rubles for a general license. Applications could only be rejected if one of the required documents was missing, if the information submitted by the applicant was false, or if the importer or exporter did not fulfill the conditions stipulated in international conventions for specific goods.

248. He added that his Government was working on a draft Government Resolution "On the Procedure for Licensing Export and Import of Goods (work, services) in the Russian Federation", which would reduce the list of documents required to obtain a licence and simplify the terms of issuance of a licence. The Ministry of Economic Development and Trade would issue three types of licenses: one-time, general and exclusive. Under this draft, licenses would have to be issued within 20 calendar days after the complete set of documents had been submitted. The fee charged for issuing a license would amount to the approximate cost of services rendered, such as registration and examination of the documents submitted for the license; issuance of the license, maintenance of the federal licence data bank.

249. The representative of the Russian Federation further added that in order to monitor imports and exports of certain types of goods, a draft Government Resolution "On the Procedure for Monitoring Export and Import of Certain Types of Goods" would be prepared. The monitoring of exports and imports of certain types of goods would be established by the Government. Imports and exports of certain types of goods would be subject to permission by the Ministry of Economic

Development and Trade. Such permissions would be issued, as a general rule, within three working days upon the application of the participant in foreign trade activity.

250. The purpose of the licensing regime was to monitor and control imports of goods which, for various reasons, were classified as sensitive for the Russian Federation and the international community. Import licenses in force were justifiable under Articles XX and XXI of the GATT 1994 and the corresponding provisions of the WTO Agreement on Import Licensing Procedures as, in accordance with Federal Law No. 164—FZ of December 2003, licenses were required for the purpose of fulfilling international agreements; ensuring state security; the protection of human, animal and plant health; the protection of the environment; the protection of physical or legal persons' property, and State or municipal property. According to the Article 24 of Federal Law No. 164-FZ, licensing was also required in the event of temporary quantitative restrictions on imports of certain types of goods. Licenses were generally issued by the Ministry for Economic Development and Trade of the Russian Federation. In the case of weapons, ammunitions and dual-purpose goods, licenses were issued by the Ministry of Defense of the Russian Federation. The licensing regime was applied to imports from all countries, including imports from CIS countries without discrimination as regards the country of origin.

251. Several members of the Working Party expressed concern regarding the Russian Federation's justification for the application of non-automatic import licenses for products listed in Table 16(a) per Article XX of the GATT 1994. These members requested additional explanation to understand how the provisions in the chapeau of Article XX would be met. They noted that, while import licensing might be an appropriate mechanism to administer certain controls, the justification for these controls, as well as the specifics of the import licensing procedures used to administer them, needed in all cases to be fully in accordance to WTO provisions, including those on non-discrimination.

252. In response, the representative of the Russian Federation said that the Russian Federation had no intention to limit the quantity and value of imports, except as provided for in international conventions such as the Montreal Protocol or the Basel Convention or for the implementation of other measures justified under the WTO agreement.

253. Several members replied that the current application of licensing requirements to products such as pharmaceuticals, sugar, alcoholic beverages clearly operated to restrict imports. They requested the Russian Federation to explain how these restrictions would be modified or eliminated to meet WTO requirements.

254. In response, the representative of the Russian Federation explained that import licensing of pharmaceuticals and alcoholic beverages was justified by Article XX(b) of the GATT 1994 and was aimed at implementing the Government's policies in the field of human and animal life and health protection.

[to be completed]

- **Sugar**

255. Some members asked for more detailed information on how the Russian authorities considered that each of the requirements of Article 1 and 3 of the Agreement on Import Licensing Procedures had been met in relation to non-automatic import licensing in the administration of its TRQ for raw sugar (HS 1701.11).

256. The representative of the Russian Federation responded that Government Resolution No. 1580 "On the Introduction of Amendments and Addenda to the Regulations on the Procedure for Licensing the Export and Import of Goods (Works, Services) in the Russian Federation", which regulated import or export licensing, had been issued on 29 December 1998. After that, the list of goods subject to import or export licensing regime had been amended on several occasions with a view to minimizing the number of products concerned. The most recent Resolutions on this matter (Resolutions No. 560 of 26 July 2001 "On the Abolishment of the Licensing of the Import of White Sugar to the Russian Federation" and No. 757 of 18 December 2003 "On the Abolishing of the Licensing of the Import of Raw Sugar to the Russian Federation") had removed raw and white sugar from the list of products requiring an import license. He added that pursuant to Government Resolution No.782 of 17 July 1998 (as amended on 18 December 2003) imports of glucose syrup required licensing. This measure, however, had a temporary surveillance character and had been taken in order to collect trade data that could be used, if necessary, to justify possible measures aimed at regulating imports. These licenses were issued automatically without quantitative restrictions.

- **Alcoholic beverages and Alcohol-Containing Products**

257. Noting that for alcoholic beverages and alcohol-containing products, import licenses were only issued where the applicant already had an activity licence, some members requested information on the rationale for this apparent duplicative requirement. They also required information on the number of licenses issued every year and on how many of these were currently in force. These members requested the Russian Federation to make a commitment that any import licenses on ethyl alcohol, alcoholic drinks, alcohol-containing products and pharmaceutical products would be granted

automatically on the basis of a regime compatible with WTO requirements, including Article 2 of the WTO Agreement on Import Licensing Procedures.

258. In response, the representative of the Russian Federation said that pursuant to Federal Law No. 164-FZ of 8 December 2003 "On the Fundamentals of State Regulation of Foreign Trade Activity", and Government Resolutions No. 77 of 28 January 1997 and No. 114 of 2 February 1998, the Ministry for Economic Development and Trade issued licenses for the importation of strong alcoholic beverages (of an alcoholic strength exceeding 28% Vol. - only vodka and competing alcoholic beverages were subject to licensing according to the HS code of the Russian Federation). Such licenses were issued only to those holding an activity license to import alcohol, as provided for by Federal Law No. 171-FZ of 22 November 1995 "On State Regulation of Production and Turnover of Ethyl Alcohol, Alcoholic and Alcohol-Containing Products". He further noted that the Ministry of Economic Development and Trade issued licenses upon receipt of the documents listed in paragraph [247] of this draft Report. In his view, import licensing of alcohol and alcohol-containing products was undertaken for purposes consistent with the requirements of Article XX (c) of the GATT 1994. However, the representative of the Russian Federation confirmed that the non-automatic import licensing requirement for alcoholic beverages and alcohol-containing products would be eliminated and replaced upon accession by an automatic licensing procedure whereby licences would be issued upon submission of the appropriate and complete documentation as described above. He further confirmed that procedures would be simplified and that the "one window" principle would apply for licensing. Changes to this system are described in the section on "Registration requirements for import/export operations".

- **Pharmaceuticals**

259. Some members noted that pharmaceutical licensing requirements were extremely burdensome and constituted a problem for their exporters. A major obstacle was that pharmaceuticals had to be re-registered periodically, e.g. once every four years, and this re-registration was not automatic, often resulting in firms losing their current licence and being unable to import products for a period of time. Regarding Government Resolution No. 1539 "On the importation in and the exportation from the Russian Federation of Medicaments and Pharmaceutical Substances", some members indicated that Paragraph 2 of that resolution appeared to suggest that foreign manufacturers were required to have offices in the Russian Federation in order to obtain an import license. They requested clarification as to whether this would imply that foreign manufacturers of pharmaceuticals should have an office in the Russian Federation to obtain a license to import, and noted that in this case such a requirement would be inconsistent with WTO provisions. In addition, they asked the Russian Federation to

elaborate on the purpose of these requirements, particularly in the case of licensing products such as flavourings and dual use precursor chemicals, and on whether they required the examination of every contract to import. Members also expressed concerns regarding treatment of imports when there were differences between the quantity shipped and that listed in the contract. In some cases small disparities had resulted in a refusal to permit import even of the contracted amount. Members also requested information on possible expedited procedures to obtain licenses for any significant overage. Those members also recalled the concerns raised under the section on "Registration requirements for import/export operations" of this draft Report (above).

260. In response the representative of the Russian Federation explained that in accordance with Federal Law 86-FZ of 22 June 1998 "On Medicines" and Federal Law No. 128-FZ "On Licensing of Certain Types of Activities", foreign enterprises (producers and wholesalers) were entitled to import and/or export pharmaceuticals to/from the territory of the Russian Federation if they had a representative office in the Russian Federation, which had been granted a license for this type of activity (pharmaceutical production or distribution) and a licence for importation. The issuance of a licence for pharmaceutical activity or production allowed the legal entity to obtain a license for importation and/or exportation of medicines. The fee charged for the issuance of the licence to import/export medicines amounted to 3,000 Rubles (about US\$100). He also noted that they were subject to the same uniform procedures as provided under Government Resolution No. 1539 of 25 December 1998 "On Imports into and Exports from the Russian Federation of Medicines and Pharmaceutical Substances".

261. Noting the concerns expressed by of the Members regarding the treatment of imports when there were differences between the quantity shipped and that listed in the contract, the representative of the Russian Federation explained that the quantity shipped could be smaller then that listed in the contract, but not larger.

262. Noting further that pharmaceutical exporters had expressed concern over certain Russian import licensing requirements (for instance if the molecule unique to the pharmaceutical had not changed periodic renewal of licenses appeared unnecessary and could be expensive and burdensome to industry), some members asked whether such requirements were equally applied to similar domestic products, as this could constitute a violation of Article III of the GATT 1994. Noting that some pharmaceutical exporters had expressed concern that the administration of licenses by the Ministry of Health and Social Development and the Ministry of Economic Development and Trade did not presently meet WTO requirements such as transparency, fees for services rendered, processing within a reasonable timeframe and forbearance on minor documentation errors, these members

requested clarification on the steps that the Russian Federation intended to take to ensure that the administration of import licenses would conform to WTO requirements. In this regard, some members asked the Russian Federation to explain how the 0.05 per cent administrative fee charged by the Ministry of Health and Social Development for issuing permits to import pharmaceutical products was consistent with the requirements of Article VIII of the GATT 1994.

263. Some members requested additional clarification on the status of any legislative initiative in the Russian Federation which could operate to restrict imports of pharmaceuticals having domestic analogues. These members felt that, if adopted, such legislation could be inconsistent with the provisions of Articles III and XI of the GATT 1994. They asked the Russian Federation to confirm that activity licenses would be made available to all registered companies (domestic or foreign), which satisfied government regulatory criteria. They noted that this would not prevent the Russian Federation from operating state-trading enterprises or applying controls on imports and exports for example for purposes of human health, as long as these were applied in a manner consistent with relevant WTO obligations. Noting further that the Russian Federation had acknowledged that the current law concerning pharmaceuticals (Federal Law No. 86 "On medicines" of 22 June 1998) was inconsistent with the new draft Foreign Trade and Import/Export Licensing Laws, some members expected that this law would be amended or repealed to ensure WTO conformity by the date of accession.

264. The representative of the Russian Federation replied that there were no plans in the Russian Federation to introduce new legislation which could operate to restrict imports of pharmaceuticals having domestic substitutes. Activity licences were made available to all registered companies (domestic or foreign owned) which satisfied government regulatory criteria. For issuance of preliminary permits for imports of pharmaceutical products the Ministry of Health and Social Development of the Russian Federation charged a fee of 0.05 per cent of the contract value of the goods. He also added that, by way of legislative and regulatory development, work was currently underway to modify procedures for imports of pharmaceutical substances and medicines into the Russian Federation. He also referred to his explanations under the above section on "Registration requirements for import/export operations".

265. Some members of the Working Party stated that their traders had experienced difficulties with other Ministries or institutions charging extra fees in connection with importation permits based upon the contract value of the goods. Those members requested that Russia entered a commitment to eliminate all non-WTO consistent measures upon its accession to the WTO.

- **Polycarbonates**

266. For the purpose of fulfilling Russia's international obligations on protection of copyright and related rights, a draft Government Resolution "On Introducing in the Russian Federation Import Licensing of Polycarbonates for Producing Optical Media" has been elaborated. The draft was to be submitted to the Government. Due to be introduced on 1 January 2005, the licensing requirement would help to raise the efficiency of measures on the discontinuance of illegal production and turnover of optical media in Russia.

- **Technology Products**

267. Some members expressed their concerns that imports into Russia of all encryption products were subject to non-automatic licensing, irrespective of whether these products could be considered sensitive or not with respect to national security. The fact that current Russian legislation did not provide a clear definition of which encryption products were subject to import licensing led to a situation in which all imports of encryption products were made subject to non-automatic licenses, including those which are part of mass consumer products and which were internationally recognised as posing no risk to national security. They also considered that the licensing process was non-transparent and led to a situation where domestic products had a more favourable treatment than foreign products. They requested the Russian Federation to commit to take measures to facilitate trade in non-sensitive encryption products by addressing these concerns by the time of its WTO entry.

268. The representative of the Russian Federation explained that legislation had been prepared to render the process of licensing transparent and predictable, and that the relevant rules and regulations applicable to licensing of this kind of equipment would be made available to the Members. The licensing procedure would be proportional in terms of time-frame, not exceeding three months. The Russian Federation would set transparent and cost-based fees for the license procedures. It would exempt from import licensing requirements those encryption devices, which, due to their parameters, characteristics and areas of exploitation, were out of export control in accordance with Wassenaar agreements and would maintain this list in consultation with its main trading partners. He also noted that the Russian Federation would ensure equal requirements and procedures for imported encryption devices and locally produced products for use on the territory of the Russian Federation. He confirmed that these measures would be in place by the time of WTO accession.

269. Members requested further information on the exemptions from import licensing requirements and procedures that would be used to develop and maintain the list of exempted products. These members had continuing concerns that commonly traded products would be subject to licensing requirements.

270. [The representative of the Russian Federation confirmed that the Russian Federation would eliminate from the date of accession, and would not introduce, reintroduce or apply, quantitative restrictions on imports or other non-tariff measures such as quotas, bans, permits, prior authorization requirements, licensing requirements or other requirements or restrictions having equivalent effect that could not be justified under the provisions of the WTO Agreements. The import licensing regime from the date of accession would be fully in accordance with all relevant provisions of the WTO, including the Agreement on Import Licensing Procedures. He further confirmed that the legal authority of the Government of the Russian Federation to suspend imports or to apply licensing requirements that could be used to suspend, ban or otherwise restrict the quantity of trade would be applied from the date of accession in conformity with the requirements of the WTO, in particular Articles III, XI, XII, XIII, XIX, XX and XXI of GATT 1994, and the WTO Agreements on Agriculture, the Application of Sanitary and Phytosanitary Measures, Import Licensing Procedures, Safeguards, Technical Barriers to Trade and the Understanding on Balance-of-payments Provisions of the GATT 1994.]

271. [The representative of the Russian Federation confirmed that, from the date of accession, the Russian Federation would conform with the provisions of Article XI of the GATT 1994. He further confirmed that the Russian Federation would not apply import prohibitions or restrictions that cannot be justified under the relevant provisions of the WTO Agreements, including Articles XII, XIII, XIX, XX, XXI of the GATT 1994. The import licensing regime, from the date of accession, would be in accordance with the provisions of the Agreement on Import Licensing Procedures. The Working Party took note of these commitments.]

[to be completed]

Customs Valuation

272. The representative of the Russian Federation stated that the basic provisions relating to customs valuation practices in the Russian Federation were contained in Federal Law No. 5003-1 of 21 May 1993 "On Customs Tariff", Government Resolution No. 856 of 5 November 1992 "On the Procedure of Customs Valuation of Products Imported into the Territory of the Russian Federation", the Customs Code (Federal Law No.61-FZ of 28 May 2003), the Code on Administrative Offences No.195-FZ of 30 December 2001, and the Arbitration Procedural Code No.95-FZ of 24 July 2002. The rules for determining customs values were based on the provisions of the WTO Agreement on Implementation of Article VII of GATT 1994. All six methods of customs valuation applied were based on the provisions of Articles 1, 2, 3, 5, 6, 7 and 8 of that Agreement.

273. Members of the Working Party noted that specific issues of concern in this area included the use of de facto fixed import prices for some goods, the need to include more precise provisions for valuation of imports possibly involving related parties, and the inclusion of the Interpretative Notes to the Agreement in legal texts. They described in detail the areas where additional legal provisions were necessary to achieve compliance with the WTO Agreement.

274. In response, the representative of the Russian Federation stated that in accordance with the Customs Code and in line with the provisions of Article 17 of the WTO Agreement on Implementation of Article VII of the GATT 1994, the State Customs Committee of the Russian Federation (SCC) had been implementing a special technique of customs control aimed at preventing gross under-invoicing of customs value through the use of false documents stating a clearly understated contractual price.

275. Members reiterated ongoing concerns related to the current administration of the Customs system, such as the inconsistency of the current legislation with WTO and other norms, the inconsistent application of legislation, and the consequent lack of predictability and certainty. Those members requested that the Russian Federation detail the further adjustments that would be made in order to bring the Russian Federation Customs law and practice into full conformity with WTO and other requirements. They noted that existing procedures in the WTO Agreement that facilitated importation were important benefits for WTO Members and should be introduced by the Russian Federation upon accession. Members also reiterated the importance of ensuring that aids to application of the Customs Valuation Agreement such as the Interpretative Notes and Decisions on Carrier Media be enshrined in the new legislation and clearly spelled out.

276. Noting that the Russian Authorities had mentioned a special technique of customs control introduced by the SCC in order to prevent under-invoicing of customs value, some members requested clarification on the modalities of application and legal justification of this special technique. Minimum or arbitrary valuation methods, even if intended to address a specific problem, would have to be eliminated prior to accession and replaced with procedures meeting WTO requirements. Members expressed concern about the special techniques of customs control to prevent commercial valuation fraud. In particular, members sought information on how the special technique was applied, to what products, such as flat glass, and how that system would be eliminated.

277. In response, the representative of the Russian Federation said that the "special technique" of customs valuation used with respect to the valuation of certain imported products (described in WT/ACC/RUS/28 and WT/ACC/SPEC/RUS/33) entrusted the decision-making authority of the customs bodies with the task of checking the truth and accuracy of the stated value of products. The

relevant customs bodies were vested with certain functions to control customs value, and those situations in which such functions could be performed were specified and the operational procedures of the customs bodies at the various levels (custom-house, regional customs authority, SCC staff) defined. This technique was not meant to replace the applicable Russian legislation on customs valuation based on the use of the transaction value as a main method of customs valuation.

278. He added that SCC Order No.1329 of 10 December 2002 "On Measures to Strengthening of Control of Customs Value", which had been adopted in order to prevent under-invoicing of customs value, had been invalidated by SCC Order No.755 of 30 June 2004 "On Measures for Strengthening of Control of Customs Value", which aimed at raising the efficiency of the work of customs bodies in valuating goods imported into the customs territory of the Russian Federation.

279. He noted that actions by the SCC could be appealed in accordance with the procedure established by the Customs Code, notably under Article 47 which required that the initial appeal should be filed with the higher customs administration of the Russian Federation (Federal Law No. 61-FZ of 28 May 2003), as outlined in paragraph [105] above. The draft Federal Law "On Amending the Law of the Russian Federation 'On Customs Tariff'" was intended to ensure consistency of the Russian Federation customs valuation procedures with the provisions of the WTO Agreement on Implementation of Article VII of GATT 1994.

280. He further explained that the draft Federal Law "On Amending the Law of the Russian Federation 'On Customs Tariff'", which his Government eventually planned to incorporate into Federal Law No. 5003-1 of 21 May 1991 "On Customs Tariff", would establish a predictable and transparent regime in this area. The draft Law had been elaborated with regard to Article VII of the GATT 1994 and the Agreement on Implementation of Article VII of the GATT 1994. It amended the Russian legislation on customs valuation in accordance with the provisions of the Interpretative Notes and brought the texts of the Law "On Customs Tariff" in full conformity with the Customs Valuation Agreement. In response to further requests from members, the representative of the Russian Federation stated that the Interpretative Notes annexed to the Customs Valuation Agreement would be partially included in a federal law. The rest would be included through implementing regulations of the Government.

281. The representative of the Russian Federation stated that the amendments to the Customs Tariff Law and its implementing legislation, as well as the provisions of the new Customs Code would address a number of members' concerns. The methods of valuation provided for in the WTO Agreement were contained in Articles 13-19 the draft Federal Law "On Amending the Law of the Russian Federation "On Customs Tariff".

282. He noted that Article 20 provided for the use of the fallback method. If the customs value of the imported goods could not be determined under the provisions of Articles 14, 16-19 in this draft law, the customs value would have to be determined using reasonable means consistent with the principles and general provisions of this draft law.

283. The methods of customs valuation used under this Article were the same as those provided by Articles 14, 16 – 19 of the draft Law. Certain discretion was allowed in determining customs value, i.e.

- determination of customs value could be based on the transaction value of identical or similar goods produced in the country other than the country of the goods being valued;
- in determining customs value using the transaction value of identical or similar goods, the requirement of Articles 16 or 17 that the identical or similar goods should be exported at or about the same time as the goods being valued could be reasonably flexible;
- customs values of identical or similar imported goods already determined under the provisions of Articles 18 and 19 of this Law could be used in determining customs value;
- in determining customs value using the deductive method, the "90 days" requirement established by item 4 of Article 18 of this Chapter could be administered flexibly.

284. The representative of the Russian Federation added that pursuant to Article 318 of the Customs Code of the Russian Federation (Federal Law No. 61-FZ of 28 May 2003) customs payments included: import customs duty; export customs duty; value-added tax levied upon importation of goods into the customs territory of the Russian Federation; excise tax levied upon importation of goods into the customs territory of the Russian Federation; and customs fees.

285. Members of the Working Party thanked the Russian Federation for its explanations of the provisions of the new legislation, and noted that the new draft Law amending the Customs Tariff Law appeared to address many of their concerns. However, some aspects of the WTO Agreement did not appear to be reflected in the new text. These included deficiencies related to (1) acceptance of a related party transaction value and the circumstances of sale test; (2) the circumstances under which information was required from declarants; (3) when the deductive method could be used and use of the “fallback” method of valuation; and (4) the establishment of a publication requirement for the rate of exchange used in valuation, confidentiality requirements for data provided, and the right of appeal “without penalty” to a judicial authority. The draft law also lacked a provision for the acceptance of paragraph 2 of Decision 4.1 of the Committee on Customs Valuation which provided that the “Valuation of Carrier Media Bearing Software, for Data Processing Equipment” should be based on the value of the media, and Decisions 3.1 on the “Treatment of Interest Charges in the Customs Value of Imported Goods.”

286. Members also noted that the draft Law did not elaborate on existing, and inadequate, provisions in the Customs Code for the use of a surety bond to allow clearance of goods through customs if the final determination of customs value had been delayed, and many of the Interpretative Notes to the Customs Valuation Agreement, which were an integral part of the Customs Valuation Agreement were not fully reflected in the draft Law or other existing legislation. Members sought assurances that these deficiencies would be addressed and corrected in the draft law or its implementing regulations prior to their implementation. They also requested the Russian Federation to supply the Working Party with a translation, in a WTO Working language, of the Amended Customs Tariff Law and its implementing regulations as soon as possible. In addition, members sought a commitment that the new legislation would be fully implemented so as to secure complete compliance with the WTO Agreements.

287. In response, the representative of the Russian Federation noted that the draft Federal Law “On amending the Law of the Russian Federation “On Customs Tariff” contained a provision based on Article 4 of the Agreement on Implementation of Article VII of the GATT 1994. Terms such as identical goods, similar goods, and related parties in the Law were used as they were described in Article 15 of the Agreement.

288. Along with the legislative acts adopted at the beginning of the 1990s, the Customs Code contained provisions on customs valuation. The Code established confidentiality requirements for all information presented by declarants for customs purposes, including valuation, risk management as an instrument of customs control and customs value control (additional information could be required when customs authorities had reasons to doubt the accuracy of the declared value pursuant to Article 17 of the Agreement and Decision 6.1 of the Committee on Customs Valuation), rate of exchange for customs valuation, and release under guarantee if the final determination of customs value was delayed. According to Article 15 of Federal Law No.86-FZ of 10 July 2002 “On the Central Bank of the Russian Federation” (as amended on 10 January and 23 December 2003), the Central Bank fixed and published the official exchange rates of foreign currencies with respect to the Ruble. Appeal procedures for customs matters were regulated by the Customs Code, the Code on Administrative Offences No.195-FZ of 30 December 2001, and the Arbitration Procedural Code No. 95-FZ of 24 July 2002.

289. The representative of the Russian Federation noted that under the legislation in force and the draft Federal Law “On Amending the Law of the Russian Federation “On Customs Tariff” minimum prices were not applicable for customs valuation purposes.

290. [The representative of the Russian Federation confirmed that the Russian Federation would apply its customs valuation laws, regulations and practices in full conformity with the relevant WTO provisions, including the Agreement on Implementation of Article VII of GATT 1994, from the date of accession without recourse to any transition period. [He further confirmed that, in determining the value of imports, the Russian Federation would apply the provisions of paragraph 2 of Decision 4.1 of the Committee on Valuation of Carrier Media Bearing Software for Data Processing Equipment and Decision 3.1 on the Treatment of Interest Charges in Customs Value of Imported Goods and for the Valuation of Carrier Media Bearing Software for Data Processing Equipment.] He also confirmed that the Russian Federation would not use any form of minimum value, reference price, or fixed valuation schedule establishing the value of imports and exports or to apply duties and taxes from the date of accession. He added that, as an international agreement, the provisions of the WTO Agreement on the Implementation of Article VII of the GATT 1994 would supersede domestic law after accession. The Working Party took note of these commitments.]

291. [The representative of the Russian Federation confirmed that, from the date of accession, the Russian Federation would conform with the provisions of Article VII of the GATT 1994 and the Agreement on Implementation of Article VII of the GATT 1994. The Working Party took note of this commitment.]

[to be completed]

Rules of Origin

292. The representative of the Russian Federation stated that the Russian Federation closely followed the work of the World Customs Organization (WCO) and the WTO regarding the application and harmonization of non-preferential rules of origin. The principles for determining the country of origin of goods were based on international practices and implemented the recommendations of the Kyoto Convention. The procedures for determining the country of origin of goods were established pursuant to the provisions of Federal Law No. 5003-1 of 21 May 1993 "On Customs Tariff" (as last amended on 29 June 2004). Goods were recognized as originating from a specific country if they were wholly made in that country or substantially transformed in accordance with criteria set forth in the Law. The country of origin of goods might also be understood to mean a group of countries, customs unions, a region or a part of a country, if it was necessary to identify them with a view to determining the origin of goods. The provisions of Federal Law No. 5003-1, which related to the determination of the country of origin of goods, had been incorporated in the new Customs Code, which had entered into force on 1 January 2004 (Federal Law No. 61-FZ of 28 May 2003).

293. The representative of the Russian Federation noted that, pursuant to the Customs Code, by default, MFN treatment was granted if the country of origin was declared and accepted as being the MFN country of origin. Where MFN treatment existed in respect of the exporting country, customs duties were charged at the Customs Tariff rates. Pursuant to Article 38 of the Customs Code, customs duties were charged at the double rate only when the customs bodies discovered the lack of signs proving that the goods at issue had originated from a country in respect of which Russia did not apply MFN treatment. If customs bodies had no reasons to consider a good as originating from a country in respect of which Russia did not apply MFN treatment, customs duties would be charged at the Customs Tariff rates irrespective of the availability or absence of Certificate of origin.

294. He stated that pursuant to Article 36 of the Customs Code, certificates of origin constituted an indisputable documentary proof of the country of origin of goods issued by the competent body or organization of a given country or of the country of exportation, provided the latter issued certificates based on information obtained from the country of origin of the said goods. Certificates of origin should contain a written statement by the consignor that goods satisfied the respective criteria of origin, and written confirmation by the duly authorized body of the exporting country which had issued the certificate that the data indicated therein were true and correct (Article 31 of the Federal Law No. 5003-1 of 21 May 1993 "On Customs Tariff"). The certificate of origin should be submitted alongside the customs declaration and other documents presented for customs clearance. If doubts existed about the validity of a certificate or the accuracy of the data indicated therein, including the country of origin, the Russian customs agency could approach the organizations that had issued the certificate or other authorities of the country indicated with a request for clarification. In these circumstances, goods would not be regarded as originating from a given country until a duly executed certificate of origin or requested data were submitted. Failure to submit a duly executed certificate or data about the origin of goods would not constitute grounds for refusal to clear such goods across the customs border. However, goods whose origin had not been clearly established, would be cleared only after the payment of customs duties at the double MFN rates of the Customs Tariff.

295. He further stated that the determination of the origin of goods originating from developing countries eligible for the system of preferences maintained by the Russian Federation was governed by the "Rules of Origin of Goods Originating from Developing Countries for the Purposes of Tariff Preferences under the General Preferences System" incorporated in the Agreement of the CIS states of 12 April 1996 "On Rules of Origin of Goods Originating from Developing Countries for the Purposes of Tariff Preferences under the General Preferences System". As for the rules of origin within free trade agreements, additional criteria of direct purchase were used, along with requirements that the exporter be legally established in a Party to the Agreement (Decision of the Heads of Government of

other CIS Countries of 18 October 1996). In respect of goods originating from CIS countries, he said that the Russian Federation adhered to the "Rules of Origin of Goods" approved by the Council of Heads of CIS Governments on 30 November 2000. These rules had been developed pursuant to the international practice of determination of origin. There were no special arrangements for the determination of the country of origin of goods within the framework of the Eurasian Economic Community.

296. Noting that the rules of origin provisions contained in Federal Law No. 5003-1 of 21 May 1993 "On Customs Tariff" did not appear to fully reflect the requirements of the WTO Agreement, several Members of the Working Party felt it essential to ensure that the new Customs Code would provide revised rules of origin consistent with WTO provisions. These members also requested a clarification on whether these new laws would cover both preferential and non-preferential rules of origin. Noting that goods, whose origin had not been clearly established, were cleared through customs only after payment of customs duties at a double MFN rate of the Customs Tariff, some Members asked the Russian Federation to clarify whether in such cases it was possible to submit a certificate of origin subsequent to customs clearance and, if origin was subsequently satisfactorily established, whether excess duties were then refunded. Some members also expressed concerns and requested a clarification regarding the consistency with the WTO Agreement on Rules of Origin of the Russian-stated practice that "the country of origin could also be understood to mean a group of countries, customs unions, a region or part of a region, if this was necessary to identify them with a view to determining the origin of goods". Members also sought clarification on the requirement that the exporter be legally established resident in a Party to the Agreement, and asked if corporate registration would satisfy that requirement, or whether there were other criteria.

297. In response, the representative of the Russian Federation stated that according to Article 37 of the Customs Code, when goods were brought into the customs territory of the Russian Federation, the declarant, i.e. the person declaring the goods or on behalf of which the goods were declared (Article 11 of the Customs Code), had to present a document confirming the country of origin of the goods to benefit from preferential tariffs in accordance with international treaties or legislation of the Russian Federation. In this case, the document confirming the country of origin of the goods had to be presented to the customs body simultaneously with the customs declaration. The customs authorities had the right to ask the declarant to present documentary proofs of the country of origin of the goods in other cases only if they discovered signs of authenticity of the declared information denoting the country of origin of the goods, as far as such information could affect the application of the customs duties, taxes, and/or restrictions and prohibitions stipulated by the Federal Law of the Russian

Federation on the State Regulation of Foreign Trade Activity. As for the requirement that the exporter be legally established in a Party to the Agreement there were no any other criteria apart from registration.

298. Several Members requested information on the right to request an origin determination from the Government prior to shipment, and requested a commitment that these provisions be applied in line with the requirements of Article 2(h) and Annex II, paragraph 3(d) of the Agreement on Rules of Origin. They sought information on where these provisions could be found in the Russian Federation's customs legislation. They also indicated that Russia's preferential rules of origin for CIS countries and other preferential trade agreements to which the Russian Federation belonged should fully reflect the interim rules of Annex II of the Agreement. In this regard, these Members requested clarification on whether the "Decision of the Council of the Governments of the Commonwealth of Independent States on the Rules for the Determination of a Country of Goods' Origin" of 24 September 1993 met these requirements, and sought a commitment as to their implementation upon accession. Some members also asked a clarification on whether customs procedures did include any guarantee system which allowed release of goods pending determination of preferential origin and how any associated rectification procedure (subsequent refund or recovery of customs duties) actually operated. These members also inquired on whether provisions existed in Russian customs laws for the protection of confidential information supplied for the purpose of application of the rules of origin.

299. In response, the representative of the Russian Federation stated that Articles 393 to 396 of the previously applied Customs Code provided that customs authorities were entitled to issue a provisional decision with respect to the origin of goods, prior to import of these goods into the territory of the Russian Federation. To further develop these provisions, the State Customs Committee (SCC) had introduced a "Regulation on the procedure for taking preliminary decisions with respect to the country of origin of goods". He added that with regard to compliance with the requirements of Article 2(h) and Annex II, paragraph 3(d) of the Agreement on Rules of Origin, Articles 393-396 of the previous Customs Code of the Russian Federation provided for the possibility of preliminary (prior to shipment) origin determination by customs administrations. In furtherance of these Articles, the State Customs Committee had prepared and passed a Regulation on the procedure for origin determination prior to shipment, and provisions authorizing such measures had been included in Articles 40-44 of the new Customs Code. General rules of confidential information were contained in Article 139 of the Civil Code and Article 10 of Law No. 948-1 of 22 March 1991 "On Competition and Restriction of Monopoly Activity on the Commodity Markets" (for further details see paragraph [598] of this draft Report).

300. Members of the Working Party thanked the representative of the Russian Federation for this information, but noted that the new Customs Code did not appear to provide for a time period of no later than 150 days after a request for issuing a preliminary decision on the origin of a product had been submitted, provided that all required information had been submitted. They requested that the requirements of Article 2(h) and Annex II, paragraph 3(d) of the Agreement on Rules of Origin be identified in Russia's legislation or provided for in new legislation. Those Members also requested information on whether Russia's preferential rules of origin for the FTAs with CIS, Yugoslavia, EAEC, the Common Economic Space, or other such agreements, reflected the interim rules of the WTO Agreement in Annex II of the Agreement.

301. Some members reiterated their concerns regarding the customs regulation and simplification of border control measures and necessity of bringing all these inconsistencies into full conformity with WTO rules. Some Members also stated that the Russian Federation had not provided satisfactory responses to problems concerning the administration of certificates of origin, which had serious economic consequences for some Members' national economy. Those Members therefore, sought a commitment from the Russian Federation to prevent the illegal flow of smuggled goods from its territory and to remove all customs formalities, which represented hidden barriers to trade and major trade distorting measures, prior to its accession to the WTO.

302. One member reiterated that the Decrees of the State Customs Committee of the Russian Federation No. 961-r dated 4 October 2001 and No. 1002 dated 19 October 2001 ran counter to the provisions of the Constitution of the Russian Federation, particularly Article 15 which stated that "if an international treaty to which the Russian Federation is party provides for other rules than those set forth by Russian Federation domestic law, the rules of the international treaty should apply". That Member was of the view that those Decrees of the State Customs Committee violated the provisions of the bilateral agreement between this member and the Russian Federation on Customs Check Points, and should immediately be eliminated to ensure the consistency with the requirements of that bilateral agreement.

303. In response, the representative of the Russian Federation stated that the new Customs Code of the Russian Federation contained provisions to fully reflect the requirements of the Agreement on Rules of Origin in Chapter 6, paragraphs 1-3, and defined the country of origin of a particular product as either the country where the product was produced wholly or was subject to sufficient transformation in accordance with the criteria or procedure established by the Code, the two of them complying with the Agreement on the Rules of Origin.

304. Concerning the requirements of Article 2 (h) and Annex II, paragraph 3 (d) of the Agreement on Rules of Origin, he noted that they were reflected in SCC Order No.920 of 22 August 2003 "On the Approval of the Regulations on the Procedure for Taking Preliminary Decisions on the Classification of a Commodity in Accordance with Commodity Classification of Foreign Economic Activity and on the Country or Origin of a Commodity". Preliminary decisions on the origin of a product had to be taken within 90 days from the date of receipt of a request by the customs body. Preliminary decisions were valid for five years unless they were changed, withdrawn or terminated.

305. He further noted that the Customs Code supplied an exhaustive list of the kinds of goods which were considered to be produced wholly in the country. The Customs Code also established the criteria of sufficient transformation and listed the operations which did not satisfy those criteria, but in a non-exhaustive manner, additions could be made by the Government of the Russian Federation. The Customs Code established the cases where certificates of origin were mandatory. In the other cases, the customs authorities had the right to require the provision of a certificate of origin only when there was a motivated reason to believe that the information on the country of origin of goods was false.

306. He noted that in the event that goods were supplied in a dismantled or not assembled state over several shipments - when it was impossible to deliver the whole lot at one time due to industrial or transportation problems or when the lot of goods had, by mistake, been divided into parts - the Customs Code established a number of peculiarities to assist in determining the country of origin of goods (the indicated goods could, at the discretion of the importer, be considered as one shipment).

307. Concerning the application of preferences, he noted that the document confirming the country of origin of goods would be the Certificate of Origin or the Declaration on the Origin of Goods. He added that the Customs Code provided that the Government of the Russian Federation could establish a procedure for the application of criteria of substantial transformation for particular goods for a particular country to whom the Russian Federation granted tariff preferences. He also noted that Article 32.5 of the Customs Code provided that the term for application of the rules of direct purchase and direct shipping for granting preferential tariffs were also established by the Government. Upon accession, the preferential rules of origin applied by the Russian Federation would reflect the interim rules of the WTO Agreement in Annex II of the Agreement, including the provisions for transparency, right of appeal, and notification to the Committee on Rules of Origin.

308. The representative of the Russian Federation stated that according to Article 38 of the Customs Code in cases when documents confirming the country of origin of goods were lacking or when there were signs that the documents presented had been drawn up inappropriately and/or that

they contained unreliable information, the following actions had to be taken before the filing of the documents confirming the country of origin of the goods or the provision of more precise information:

- customs duties would be paid at non-MFN rates if the customs body discovered signs that the country of origin of the goods was a country with which trading and political relations did not envisage MFN treatment or a security would have to be provided for the payment of customs duties at the said rates;
- Article 355 of the Customs Code of the Russian Federation (Federal Law No. 61-FZ of 28 May 2003) set out the mechanism for recovery of overpaid or over-recovered customs payments. The customs authority was required to inform the payer of the overpaid or over-recovered customs payment within one month from the date of detection of the overpayment or over-recovery.
- when the certificate was accepted, after release of the goods MFN treatment or tariff preferences would be applied to the goods for one year and the importer could recover the difference in the duties paid. Customs duties were reimbursed upon the submission, by the payer, of a request within one year from the date of occurrence of the incident of overpayment of the customs duties. Such a request had to be submitted to the customs office to which duties had been paid.

309. [The representative of the Russian Federation confirmed that from the date of accession of the Russian Federation's laws and regulations on rules of origin for both MFN and preferential trade would be applied in conformity with the provisions of the WTO Agreement on Rules of Origin, including the provisions of Annex II, and that these provisions would be established in the Russian Federation's legal framework. He further confirmed that, in line with the requirements of Article 2(h) and of Annex II, paragraph 3(d), both for non-preferential and preferential rules of origin, its customs authorities would provide an assessment of the origin of the import and outline the terms under which such an assessment would be provided upon the request of an exporter, importer or any person with a justifiable cause. According to the provisions of the WTO Agreement on Rules of Origin specified above, any request for such an assessment would be accepted even before trade in the goods concerned had begun, and any such assessment would be binding for three years.]

310. [The representative of the Russian Federation confirmed that, from the date of accession, the Russian Federation would conform with the provisions of the Agreement on Rules of Origin. The Working Party took note of this commitment.]

Other Customs Formalities

311. Several members stressed that the simplification of border controls and customs documentation necessary for importation in the Russian Federation would have a favourable impact through reduced costs and improved efficiency for Russian traders. In response, the representative of

the Russian Federation stated that customs formalities in the Russian Federation were applied in accordance with the internationally accepted rules and were based on the Kyoto Convention.

312. Noting that his country was experiencing a huge volume of uncontrolled entry of smuggled goods from the Russian Federation which seriously injured its domestic market, a Member asked the Russian authorities to clarify how they intended to fully control the Russian Federation's customs border in its entirety to prevent exit of smuggled goods from Russian territory continuing to damage small and vulnerable neighbouring countries. This member believed that regulations imposed by the Russian Federation on imports of certain types of products (wine and wine products, petroleum products, tobacco products, chicken meat, etc.) which authorized only certain check-points often located away from the exporting countries, even in the case of neighbouring countries, to handle these goods, represented hidden impediments to trade. He therefore requested that the Russian Federation ensure these requirements be removed or significantly simplified.

313. One member of the Working Party noted that under State Customs Committee Orders No. 155 of 14 February 2001 "On the Procedure for Coordination of Decisions to Release Goods for Free Circulation" and No. 949 of 31 December 1999 on "Amending Order No. 258 of the SCC of 26 April 1996 (in the wording of Order No. 43 of the SCC of 31 January 1997 and as amended on 10 March 2000) certain goods that qualified as high-risk (e.g. certain foodstuffs) were not released for free circulation without the specific approval of a higher customs authority. The process of obtaining such approval could last from one to two weeks. Under rules introduced in October 2001 by the North Western Customs Authority, shipments of "risk products" (a wide group of products including coffee, furniture, tyres and washing machines) were subject to burdensome documentary requirements, including in relationship to the ownership of the vehicle transporting the goods. The Russian Federation had also imposed restrictions that required customs clearance for certain goods, including textiles, clothing and electrical products, to take place only on borders with certain Asian countries as well as in certain ports and airports. Consequently, such items originating in Asia could no longer be exported to the Russian Federation via that Member's customs territory. As well as raising concerns in relation to conformity with WTO requirements on trade in transit, these decrees made it possible for companies exporting to the Russian Federation to use raw materials from the Far East for sub-contracting and subsequently created a barrier to business cooperation. The cumulative effect was that exporters to the Russian Federation faced unpredictable, non-transparent, lengthy and generally burdensome customs procedures for imported goods at the point of entry into the Russian Federation's customs territory. Checks on imported goods should not be applied in a heavy-handed or non-transparent way. Those members considered that Russia should enter a commitment to respect standard WTO requirements of transparency, predictability and uniform application in this regard.

314. Another Member said that his authorities had concerns with the practice used by the Russian Federation customs bodies in respect of the transport companies of this member. He noted that country-specific restrictive customs procedures were incompatible with WTO provisions, notably those in Articles I and VIII of GATT 1994. This member requested the Russian Federation to ensure that these and other country specific measures relating to customs procedures would be brought in full conformity with the WTO requirements prior to accession.

315. The representative of the Russian Federation stated that measures mentioned by members, including the designation of customs clearance of particular goods to certain border customs points, were aimed to increase predictability and accuracy of customs procedures for traders and transporters, not to act as a hidden or unnecessary restriction to trade, bearing in mind the following factors: (1) the unprecedented length of Russia's borders; and (2) insufficient resources to equip all border customs points with necessary equipment and storage facilities. These procedures were in accordance with the International Convention on the Simplification and Harmonization of Customs Procedures (Kyoto 2000), in particular, with its Specific Annex A, Chapter 1. The Russian Federation expected that gradually the majority of border customs points would be prepared to process all goods crossing the border and that the Russian Federation was ready meanwhile to constructively address to the extent possible any specific concerns of Members with a view to facilitating trade flows.

316. The representative of the Russian Federation informed the Working Party that State Customs Committee Order No. 155 of 14 February 2001 "On the Procedure for Coordination of Decisions to Release Goods for Free Circulation" mentioned in paragraph [313] had been invalidated by State Customs Committee Order No. 828 of 5 August 2002.

317. He added that, in accordance with the Customs Code, the federal executive governmental body in charge of customs affairs was entitled to designate specific customs points for the declaration of specific types of goods in order to ensure the effectiveness of control over the observance of the customs legislation, only:

- (i) if it was necessary to use specialised equipment and/or special knowledge to perform customs formalities in respect of such goods as cultural valuables, weaponry, military material and ammunition, radioactive and fission materials;
- (ii) depending on the means of transport used to perform international carriage of goods (motor vehicles, seagoing vessels, riverboats, aircraft, railway cars, pipelines, or electric power lines). Restrictions with regard to the kind of transport could only be applied along with the other restrictions described in this paragraph. The definition of the kind of transport to which restrictions could be applied was essential to minimize the negative consequences for trade, linked to the establishment of restrictions, and was determined based on the largest possibility of violating customs legislation could take place.

- (iii) when the movement across the customs border concerned goods which had been involved in frequent breaches of customs legislation or were subject to bans and restrictions established under the legislation of the Russian Federation on State regulation of foreign trade activity;
- (iv) when special control was needed for goods containing objects of intellectual property according to the list established by the Government of the Russian Federation.

318. He further added that pursuant to Article 125 of the Customs Code, legislation designating specific places for the declaration of certain types of goods would enter into force not earlier than 90 days from the day of their official publication. The list of such goods was contained in the Table 17(a) in accordance with Article 125 of the Customs Code of the Russian Federation.

319. According to Paragraph 2 of Article 402 of the Customs Code, the Federal Customs Service in co-ordination with the Ministry of Economic Development and Trade of the Russian Federation could determine that a particular customs office could have the exclusive right to carry out customs procedures in respect of certain categories of goods. The list of such goods was contained in the Table 17(b) pursuant to Article 402 of the Customs Code.

320. Members of the Working Party stated that they expected the Russian Federation to undertake a commitment that upon accession all regulations, formalities and requirements connected with the importation of goods, including in relation to statistical control, customs clearance, documents, documentation and certification, inspection and analysis, and any changes to these regulations, formalities and requirements would be published sufficiently in advance and would be applied in a uniform, impartial and reasonable manner across the customs territory of the Russian Federation, consistent with WTO requirements, including Articles VIII and X of the GATT 1994. Customs regulations, formalities and requirements should also be applied and operated in a fashion consistent with WTO requirements. They noted that industry and exporters had regular experience of inconsistencies between administrative decisions taken by the Russian Federation authorities and the prevailing Russian Federation legislation. Moreover, inconsistencies appeared to exist between the general legislative framework and subsidiary regulations and administrative guidance issued by the Russian Federation government bodies (such as the SCC).

321. With respect to the concerns of members of the Working Party raised in paragraph [320], the representative of the Russian Federation referred to the Section on Transparency of the Report of the Working Party. He added that the provisions of legal acts of the federal executive governmental body charged with customs affairs should not conflict with the provisions of customs legislation and other legal acts of the Russian Federation and/or should not establish requirements, bans and restrictions not envisaged by customs legislation and other legal acts of the Russian Federation.

322. He further added that the uniform application of customs procedures was required by Article 1 of the Customs Code which stated that the federal executive governmental body charged with customs affairs would ensure the uniform application of customs legislation by all customs bodies in the territory of the Russian Federation. He also noted that according to Article 6 of the Customs Code the normative legal acts could only be pronounced inconsistent with the Customs Code in a judicial procedure. The State would be obliged to compensate the losses incurred by persons as a result of the untimely adoption, entry into force, and/or publication of a normative legal act whose adoption was stipulated by the Customs Code and to reimburse the losses caused as a result of inaccurate information circulated by customs authorities.

Preshipment Inspection

323. Noting that the Russian authorities had stated that the Russian Federation did not currently require any inspection services prior to shipment but was considering possible future recourse to such measures, members of the Working Party asked the Russian Federation to identify its laws and regulations for employing pre-shipment inspection and to undertake a commitment indicating that if such services should be employed in the future, they would conform to WTO provisions in their operations, e.g. in the application of fees for services rendered, observance of other WTO requirements in customs processing, and in providing right of appeal to the Government.

324. Some members of the Working Party requested information on the timeframe and reasons for which the Russian Federation planned to introduce pre-shipment inspection. Those members further stated that although the WTO Agreement did not preclude recourse to pre-shipment inspection subject to meeting a range of requirements, some members believed that this would be a backward step and expressed their preference to see the Russian Federation engaging customs reforms that would address problem areas. Some members stated that the use of pre-shipment inspection services could gradually erode a country's ability to perform certain services itself. Those members asked whether the government of the Russian Federation would take steps to ensure that any fees or other formalities imposed by any pre-shipment inspection entity would be fully in conformity with WTO rules, such as the Agreements on TBT, SPS, Article VIII and the Agreement on Customs Valuation. Those members also sought assurances that the traders would have available a right of appeal (both administrative and judicial, as described above in this Draft Report) from any decisions of the pre-shipment inspection entity. Those members also requested information on the expected duration of any such measure.

325. In response, the representative of the Russian Federation indicated that pursuant to the provisions of Federal Law No. 164-FZ of 28 December 2003 "On the Fundamentals of the State

Regulation of the Foreign Trade Activity”, the Government of the Russian Federation was authorized to introduce pre-shipment inspection with respect to certain types of goods in order to protect consumer’s rights and interests, as well as to discontinue the unfair practice of distortion of official information, including the deliberate lowering of customs values. Pre-shipment inspection could be introduced as a temporary measure for a period of three years maximum. Pre-shipment inspection should be conducted in a transparent manner; the procedures and criteria, used for inspection, should be objective and be applied on an equal basis to all importers of goods; the information on the inspection requirement, should be available to all importers of goods; the information received in the course of the pre-shipment inspection should be treated as business confidential.

326. He added that pursuant to Federal Law No. 164-FZ a draft Government Resolution “On the Approval of the Regulations on Pre-shipment Inspection” has been elaborated in accordance with the WTO Agreement on Pre-shipment Inspection. According to this draft Resolution pre-shipment inspection activities included verification of quality, quantity, customs classification and price of goods, including financial terms of the contract; and issuance of a certificate on pre-shipment inspection or reasons for refusal to issue such certificate. The list of goods subject to pre-shipment inspection had to be approved by the Government of the Russian Federation, along with implementing regulations setting the rights, obligations and responsibility of the persons involved in pre-shipment inspection activities; the procedures for settling disputes that may arise between the pre-shipment inspection company and the importer of goods; and the procedures for controlling the activity of pre-shipment inspection companies. The time limit for carrying out pre-shipment inspection could not, as a rule, exceed three working days.

327. [The representative of the Russian Federation confirmed that if a pre-shipment inspection system would be introduced in the future, it would be temporary. The Government of the Russian Federation would take responsibility to ensure that the operations of any pre-shipment inspection companies it retained would comply with the requirements of the WTO Agreements, in particular the Agreements on Pre-shipment Inspection, Import Licensing Procedures, Customs Valuation, Sanitary and Phytosanitary Measures and Technical Barriers to Trade. He further confirmed that charges and fees applied by such companies would be consistent with Article VIII of the GATT 1994, and that such system would comply with the due process and transparency requirements of the WTO Agreements, in particular Article X of the GATT 1994, and the Agreement on the Implementation of Article VII of the GATT 1994. The Working Party took note of these commitments.]

328. [The representative of the Russian Federation confirmed that, should a pre-shipment inspection system be introduced, it would be applied in conformity with the provisions of the Agreement on Preshipment Inspection. The Working Party took note of this commitment.]

[to be completed]

Balance of payments

329. The representative of the Russian Federation noted that Article 15 of Federal Law No. 63-FZ of 14 April 1998 "On Measures to Protect the Economic Interests of the Russian Federation with Respect to Foreign Trade in Goods" provided the legal framework for trade remedy measures, including to safeguarding the country's balance of payments as well as anti-dumping, countervailing, and safeguard measures. In accordance with this law, and due to particular balance of payment difficulties, Government Resolution No. 791 of 17 July 1998 "On Introduction of an Additional Import Duty" had introduced a special import surcharge at a rate of 3 per cent ad valorem applied to all tariff items. Government Resolution No. 235 of 27 February 1999 had eliminated the import surcharge from 1 March 1999.

330. Noting the repeal of the balance of payments measure, some members asked whether similar import surcharges would be authorized under any of the new customs laws, notably the amendments to the Customs Tariff Law, the new Customs Code, and Chapter 27 of the new Tax Code. In this regard, these members sought a commitment confirming that as from the date of accession the Russian Federation would apply any such measures, either for BOP or other purposes, in full conformity with WTO provisions.

331. In response, the representative of the Russian Federation stated that Article 38 of Federal Law No 164-FZ provided, for the purposes of protecting the Russian Federation's external financial position and maintaining the equilibrium of the balance of payments, that the Government could adopt a decision to impose measures towards restriction of foreign trade in goods. The restriction of trade in goods could be implemented by means of introducing an import quota or other measures for a term required to restore the equilibrium of the balance of payments of the Russian Federation with due regard to the international obligations of the Russian Federation. He further noted that, should such measures be imposed, the Government would designate a federal executive body responsible for the implementation of these measures. Any decision on the imposition of measures restricting foreign trade in goods in the case specified under Article 38 of Federal Law No. 164-FZ of 8 December 2003 was required to be made by the Government upon recommendation of the Central Bank.

332. Several members considered that a commitment was required from the Russian Federation that the provisions of Federal Law No. 63-FZ that addressed trade remedies, including those applied for balance-of-payments purposes, would only be replaced by other legal provisions that would conform to relevant WTO provisions, in particular the WTO Agreements on Safeguards, Antidumping, and Subsidies and Countervailing Measures, and Article XII of GATT 1994 and the Understanding on the Balance of Payments Provisions of GATT 1994.

Anti-dumping, countervailing and safeguard measures

333. Concerning anti-dumping, several members noted that Federal Law No 63-FZ did not secure full conformity with relevant WTO provisions. In particular, investigations seemed to be limited to injury and causality aspects without requiring a proper determination of dumping, while any measures applied would be expected to remain in place for "a limited period of time necessary to eliminate injury", thus not necessarily complying with the five-year maximum duration provided for measures undertaken under the WTO Agreement on Implementation of Article VI of the GATT 1994.

334. In response, the representative of the Russian Federation stated that Federal Law No. 165-FZ "On Safeguards, Antidumping and Countervailing Measures Applied to Imports of Products" had been enacted on 8 December 2003 with the objective of introducing full conformity with WTO Agreements. This law replaced the relevant provisions of Federal Law No. 63-FZ of 14 April 1998 "On Measures to Protect the Economic Interests of the Russian Federation in Foreign Trade in Goods" (with minor exceptions, such as paragraph 26 of Article 2 and Articles 6.5, 24, 25). Federal Law No. 165-FZ established procedures for the application, investigation, and imposition of safeguards, anti-dumping and countervailing measures. Under this Law, anti-dumping, safeguards and countervailing measures could be introduced only following an investigation showing evidence of substantially increased, dumped or subsidized imports, serious or material injury to domestic industry or threat of such injury and causality between these developments. The measures could only be in place for a limited period of time necessary to eliminate the injury. The Law made more precise the terminology in these areas in compliance with the rules and provisions of WTO. It provided a clear distinction between serious and material injury and expanded the Government's authority on the initiation and investigation phase of the inquiry. The Law defined actionable subsidies in full consistency with WTO provisions. The definition of the dumping margin corresponded to Article 2 of the Agreement on implementation of Article VI of the GATT 1994. The Law set a five-year maximum duration for antidumping and countervailing measures and eight-year for safeguards. He further added that Federal Law No. 165-FZ had been applied since its entry into force on 15 December 2003. Any investigation which had been initiated upon a written application lodged

prior to the entry into force of Federal Law No. 165-FZ would be conducted under the still operative Federal Law No. 63-FZ.

335. He further noted that the main improvements contained in Federal Law No. 165-FZ of 8 December 2003 vis-à-vis Federal Law No. 63-FZ were the detailed description of the investigation procedure and concepts such as increased imports, dumping, subsidies, serious and material injury, threat thereof, causal link, the definition of Russian industry, and other matters. Several provisions of Federal Law No. 165-FZ were directed at improving the mechanism of introduction, application, reconsideration and cancellation of safeguard, antidumping and countervailing measures. The provisions determining the procedure for the application of safeguard, antidumping and countervailing measures (including temporary duties, and securities) were framed in a more detailed and intelligible manner.

336. He further noted that Federal Law No. 165-FZ of 8 December 2003 empowered the responsible federal executive body (once an investigation had been undertaken pursuant to this Law) to propose the application of safeguard, antidumping or countervailing measures. It also permitted the responsible authority to propose their introduction, review and cancellation. Following such a proposal, the decision to impose a measure would be taken by the Government of the Russian Federation.

337. A Member pointed out that Article 16.3 of Federal Law No. 165-FZ did not contain all provisions of Article 9 of the Agreement on Implementation of Article VI of the GATT 1994. In particular it did not foresee the possibility of a newcomer review according to Article 9.5 of the Agreement on Implementation of Article VI of the GATT 1994. He invited the Russian Federation to enter to a commitment reflecting that although the Law did not expressly foresee prompt newcomer reviews, the provisions of Article 9.5 of the Agreement on Implementation of Article VI of the GATT 1994 would be fully respected and newcomer reviews would be promptly carried out according to this provision.

338. A Member noted that Article 6.1 of Federal Law No. 165-FZ provided opportunity for the Russian Federation to impose safeguard measures when imports rose in relation to domestic consumption. However, Article 2 of the Agreement on Safeguards only allowed the imposition of safeguard measures when imports rose in absolute terms or in relation to domestic production. This member invited the Russian Federation to enter to a commitment reflecting that the Russian Federation would fully comply with the provisions of Article 2 of the Agreement on Safeguards and only impose measures in the event of imports increasing in absolute terms or relative to domestic production.

339. The same Member pointed out that Article 8 of Federal Law No. 165-FZ did not contain any reference to the existence of "critical circumstances" before imposition of provisional safeguard measures, as provided by Article 6 of the Agreement on Safeguards. He invited the Russian Federation to enter to a commitment reflecting that the Russian Federation would only apply provisional measures pursuant to the provisions of Article 6 of the Agreement on Safeguards when critical circumstances appeared.

340. The Member further noted that Article 9 of Federal Law No. 165-FZ regarding the application of safeguard measures only partly reflected Article 5.2 (b) of the Agreement on Subsidies and Countervailing Measures since it omitted to state the obligation of the Russian Federation to hold consultations with Members on allocation of quotas in the occurrence of disproportionate imports. This member invited the Russian Federation to enter to a commitment reflecting that the provisions of the Agreement on Subsidies and Countervailing Measures would be fully respected and that in the event of such a situation, the Russian Federation would hold consultations under Article 12.3 of the Agreement on Subsidies and Countervailing Measures with supplying Members.

341. Noting the assurances given by the representative of the Russian Federation on the new legislation on trade defence instruments, some members of the Working Party requested that the Russian Federation detail its plans for the elimination of currently applied measures that might not meet the requirements of the WTO Agreements and the GATT 1994 after implementation of the new legislation.

342. A Member enquired about the exact text and meaning of Article 13.3 of Federal Law No. 165-FZ of 8 December 2003 "On Safeguards, Antidumping and Countervailing measures applying to imports of Products". Its provisions did not seem to require that – even though required by Article 3.2 of the Agreement on Implementation of Article VI of the GATT 1994 - consideration shall be given whether price undercutting was « significant » or that the effects of imports was to depress prices to a « significant » degree or prevent price increases which otherwise would have occurred to a « significant » degree. This member invited the Russian Federation to enter to a commitment reflecting that although the word « significant » was not used in Article 13.3 of Federal Law No. 165-FZ, the provisions of Article 3.2 of the Agreement on Implementation of Article VI of the GATT 1994 would be fully respected. Such criterion was supposed to be applied by virtue of the rules of Article 29.5 of the same law providing that an investigation should be stopped in case the margin of dumping was de minimis or the volume of imports was negligible.

343. Concerning measures applied pursuant to Federal Law No. 63-FZ, some members of the Working Party requested the Russian Federation to confirm that, notwithstanding Article 18.3 of the

Agreement on Implementation of Article VI of the GATT 1994, the Russian Federation would apply the provisions of the Agreement on Implementation of Article VI of the GATT 1994 to proceedings under Article 9.3, including the calculation of margins of dumping, in connection with anti-dumping measures adopted before the entry into force of the Draft Protocol ("existing measures"), to reviews of existing measures initiated under Articles 9.5, 11.2 and 11.3 pursuant to requests made on or after the entry into force of the Draft Protocol (any review of an existing measure of Article 11.3 would be initiated no later than five years from its date of imposition), and provide the type of judicial review described in Article 13 of the Agreement on Implementation of Article VI of the GATT 1994 with regard to proceedings under Article 9.3 and reviews under Articles 9.5, 11.2 and 11.3.

344. Some members of the Working Party further requested the Russian Federation to confirm that the Russian Federation would provide the type of judicial review described in Article 23 of the Agreement on Subsidies and Countervailing Measures with regard to reviews under Articles 19.3, 21.2 and 21.3 to ensure that all investigations initiated and measures imposed in the area of trade defense instruments (i.e. anti-dumping, countervailing and safeguard measures) were fully consistent with WTO requirements upon accession and that all relevant legislation in place at the time of accession or implemented in the future was in full conformity with the relevant provisions of the relevant WTO Agreements.

345. In response, the representative of the Russian Federation stated that many members of the WTO currently maintained WTO-inconsistent trade remedy measures against exports from the Russian Federation. He noted that the Russian Federation expected that upon its accession to the WTO, all such measures by Members would be brought into conformity with the WTO Agreements and the GATT.

346. [The representative of the Russian Federation confirmed that upon accession to the WTO the Russian Federation would ensure that the application of such measures was in full conformity with the relevant WTO provisions, including Articles VI and XIX of the GATT 1994 and the Agreement on the Implementation of Article VI, the Agreement on Subsidies and Countervailing Measures, and the Agreement on Safeguards. He also stated that the Russian Federation would fully comply with the provisions of Article 2 of the Agreement on Safeguards, would impose safeguard measures in the event of imports increasing in absolute terms or relative to domestic production, would only apply provisional measures pursuant to the provisions of Article 6 of the Agreement on Safeguards, and would hold consultations with supplying Members on allocation of quotas in case of disproportionate imports.]

347. [The representative of the Russian Federation confirmed that, from the date of accession, the Russian Federation would conform with the provisions of the Agreement on Implementation of Article VI of the GATT 1994, the Agreement on Subsidies and Countervailing Measures and the Agreement on Safeguards. The Working Party took note of this commitment.]

[to be completed]

2. Export Regulations

Export Duties

348. The representative of the Russian Federation stated that export duties, ranging from three to 50 per cent, had been imposed mainly for fiscal purposes and in very few cases (raw hides and skins, scrap and waste of non-ferrous and ferrous metals, timber, oil seeds) to ensure the availability of materials essential to the domestic industry, to prevent shortages in domestic supply and to address social concerns. He explained that over the last years the number of products on the list of export duties had been reduced by around 50 per cent and their average level had decreased from 12 to 6.5 per cent. For the last three years, the number of products subject to export duties had been reduced from 1200 to 480 tariff lines. This trend was continuing. Export duties were applied on an MFN basis except for goods exported to parties of the Agreement on creation of the Customs Union. He confirmed that export duties were also applied to goods exported to CIS countries (not to the Customs Union) with which Russia had concluded free trade agreements. All changes in export duties were published officially. At a later stage and in response to requests from members of the Working Party, the representative of the Russian Federation provided a complete list of export duties of the Russian Federation in Annex I of WT/ACC/SPEC/RUS/25/Rev.3/Add.2.

349. Several members were of the view that export duties acted as indirect subsidies to domestic down-stream users and could thus distort international trade. Noting that the Russian Federation had argued that export duties were levied mainly for fiscal purposes, some members expressed concerns that the effect of these duties was to discriminate against foreign buyers and to raise the level of the export price so that third-country producers encountered their own difficulties of supply for the products concerned; suffered from increased production costs resulting from higher input or energy costs; and/or faced a situation where they lost relative competitiveness on the global market for downstream products as a result of the indirect price support given to domestic Russian producers competing in the same markets. This was particularly the case as a result of export duties on minerals, petrochemicals, natural gas, raw hides and skins, ferrous and non-ferrous metals and scrap. These members requested the Russian Federation to make a commitment to phase out export duties

under modalities and a timetable would need to be established. The Russian Federation should also commit that export duties would not be applied on other products and that, once eliminated, export duties on products currently affected would not be reintroduced. Some members also requested the Russian Federation to reduce the number of products subject to the export duties, especially the products with higher value added (e.g. a coniferous bonded wood), so that the negative impact in trade in such products with higher value added could be minimised.

350. Some members of the Working Party stated that Russia should describe its future plans in conjunction with application of export tariffs, VAT, and excise changes to exports. In particular, those members sought confirmation that Russia removed some export duties and information on Russia's plans in this regard. In light of recent improvements in the economic situation in the Russian Federation, those members enquired whether the export taxes were still necessary to deal with external debt. Some Members sought clarification on the intended increase of export duties on oil and natural gas and expressed concern about the potential impact on prices. Some members of the Working Party, however, stated that they considered that export duties could play a role as a legitimate tool of trade policy.

351. In response, the representative of the Russian Federation stated that export duties played an important fiscal and regulatory role in the Russian Federation. Export duties payable on a limited number of goods had been introduced as a temporary measure to respond to a sharp plunge of the Ruble in August 1998, which gave the exporters a significant edge in the form of additional income over sales of goods on the domestic market to satisfy its immediate needs. He noted that, in most cases, export duties did not affect the price at which an exported commodity was purchased. As for the 30 per cent export duty on natural gas, he explained that this export duty had replaced the preexisting excise taxes on natural gas (see also the section on "Excise Taxes"). He further noted that the level of export duties on crude oil was linked to the world price of crude oil and therefore, fluctuated accordingly. Export duties of a fiscal nature permitted the Russian Federation to replenish the Budget (which was also required to perform Russia's international financial commitments) whereas export duties of a regulatory nature were used to address both social and economic needs. As for the export duties imposed for social reasons, he explained that they concerned goods such as non-ferrous scrap, which was product mainly destined for exportation as there was hardly any domestic demand. He further explained that this export duty was also linked to the need to prevent illegal production of non-ferrous scrap and was considered the most effective way to curb this phenomenon as it made exports of this product non-economical. He added that his Government was considering other means to address this problem, such as a licensing mechanism to monitor exports. He further noted that export duties were subject to a regular review mechanism. He stated that export

duties could not be considered as a subsidy in the sense of Agreement on Subsidies and Countervailing Measures, and its effect to the industry was nearly equivalent to those of import duties.

352. He further observed that export duties were permitted under WTO rules, and that many Members of the WTO applied export duties as an instrument of trade policy. In this regard, his country considered that the request of several members that Russia establish a timetable to completely phase-out export duties was excessive. He nevertheless confirmed the readiness of his Government to phase-out or reduce most of the currently applied export duties and not to increase the level of others against the currently applied level, without prejudice to the Russian Federation's rights to introduce or to reintroduce export duties in compliance with WTO provisions.

353. [The representative of the Russian Federation confirmed that the Russian Federation would apply from the date of accession export restrictions, in particular export duties and VAT, on a non-discriminatory basis vis-à-vis all WTO Members without any exemptions.]

354. [The representative of the Russian Federation confirmed that, from the date of accession, the Russian Federation would introduce new, or reintroduce export duties eliminated before or after the accession, in conformity with the provisions of the GATT 1994. The Working Party took note of this commitment. The list of concessions on export duties that the Russian Federation would grant after its accession would be enclosed to the Protocol of Accession.]

[to be completed]

Quantitative Export Restrictions, Including Prohibitions and Quotas

355. Some members requested details on the export restrictions abolished in 1996 and thereafter. These members also sought a clarification regarding the reference to "essential national interests" as a justification for export quotas and any possible relation of this reference to relevant WTO provisions that referred to essential security interest.

356. The representative of the Russian Federation stated that according to Article 21 of Federal Law No. 164-FZ of 8 December 2003 "On the Fundamentals of State Regulation of Foreign Trade Activity", the importation and exportation of goods could be exercised without any quantitative restrictions, unless expressly permitted by that Law. Concerning export restrictions, the Law provided that, in exceptional cases, the Government of the Russian Federation could introduce temporary export prohibitions or restrictions to prevent or diminish critical shortages of foodstuffs or other products substantially important to the domestic market of the Russian Federation.

357. The representative of the Russian Federation further stated that under Article 32 of Federal Law No. 164-FZ, measures with no economic character and concerning foreign trade in goods could be introduced in accordance with federal law and international treaties of the Russian Federation. He also stated that such measures could not be enacted or applied in a manner, which would constitute a means of unjustifiable discrimination, or a disguised restriction on international trade in goods. As a consequence, Russia was reviewing export restrictions and bans in place with a view to removing measures that would not meet these criteria. He added that this provision could not be applied to goods originating in countries or groups of countries towards which the Russian Federation had no mutual legal obligation to accord treatment no less favourable than that accorded to other countries or groups of countries.

358. Some members of the Working Party noted that quantitative export restrictions, including quotas, bans and non-automatic licensing restrictions were prohibited by the GATT unless specifically justified and requested Russia to list, identify by HS tariff number, and justify any current export bans or quantitative restrictions in place. Those members also requested additional information on export bans or quantitative restrictions currently in place, in particular those concerning the prohibition on export of unprocessed precious metals and stones, the quantitative restrictions on export of natural gas (and the consistency of both measures with the requirements of Article XI of the GATT 1994), and a list of all quantitative restrictions eliminated since 1996.

- **Precious stones and metals**

359. The representative of the Russian Federation noted that quotas were imposed on the exportation of the following goods: platinum and platinum group metals, non-refined nuggets of precious metals, non-ferrous metals containing precious metals (copper, lead, zinc concentrates), raw diamonds (the list of goods, by HS code, subject to quantitative restrictions is provided in Presidential Decree No. 742 of 21 June 2001 "On the Procedure for Import to and Export from the Russian Federation of Precious Metals and Precious Stones").

360. All documentation and procedures for exports or imports of these goods were to be completed at the relevant customs checkpoints. Export quotas on platinum and platinum group metals, and non-refined nuggets of precious metals were allocated by the Government in accordance with Presidential Decrees No. 1373 of 30 November 2002 "On Approval of Regulation on Import to and Export from the Russian Federation of Natural and Cut Diamonds" and No. 742 of 21 June 2001 "On the Procedure of Import to and Export from the Russian Federation of Precious Metals and Precious Stones". The quota requirement also extended to exports of non-ferrous metals containing precious

metals (copper, lead, zinc concentrates). Exports licenses were issued by the Ministry of Economic Development and Trade. The quota on exports of raw diamonds applied to:

- agents engaged in natural diamonds' extraction (except for industrial diamonds);
- State Unitary Enterprise "Vneshneekonomicheskoye Obyedineniye "Almazjuvelirexport" (when supplied from the State Fund of Precious Metals and Precious Stones of the Russian Federation or from the State funds of precious stones and precious metals of the subjects of the Russian Federation);
- agents engaged in the manufacturing of cut diamonds.

361. The representative of the Russian Federation noted that the exportation of waste and scrap of precious metals, ores and concentrates of precious metals and unprocessed precious metals was prohibited in the Russian Federation. He added that in accordance with the Presidential Decree No. 742 of 21 June 2001 "On the Procedure of Importation into and Exportation from the Russian Federation of Precious Metals and Precious Stones", export licensing was mandatory for exports of refined platinum and platinum group metals in the form of ingots, plates, powder and granules; unprocessed precious metals (excluding natural pieces of metals not subject to refining); unprocessed gold and silver (only refined in the form of ingots, plates, powder and granules as well as gold used to produce coins); natural processed and unprocessed precious stones (sapphire, ruby, emerald); minerals (only unique amber pieces); mineral and secondary raw materials containing precious metals, including concentrated ores and residuals of non-ferrous metals and their semi-manufactures. He added that Information on the formalities for obtaining an export licence was provided in the section on "Export Licensing Procedures".

362. The representative of the Russian Federation noted that work had been conducted to bring national legislation on export restrictions into accordance with WTO disciplines. Presidential Decree No. 742 of 21 June 2001 "On the Procedure for Importation into and Exportation from the Russian Federation of Precious Metals and Precious Stones" had abolished import licensing of precious metals and precious stones, and quantitative export restrictions and export licensing of articles made of precious stones and meant for industrial-technical purposes; precious metals in the form of products and articles; as well as articles of precious stones and natural pearls and coins. Presidential Decree No. 1373 of 30 November 2002 "On Regulations on Importation to the Russian Federation and Exportation from the Russian Federation of Natural Diamonds and Cut Diamonds" had abolished the need to obtain a license to import cut diamonds and natural diamonds. Under Presidential Decree No. 1373, agents engaged in the manufacturing of cut diamonds were entitled to export and/or remove from customs treatment for processing outside the customs territory up to 15 per cent of the value of the natural diamonds they had purchased within the year from agents of natural diamonds' extraction

or the State Fund of Precious Metals and Precious Stones of the Russian Federation. The Ministry of Economic Development and Trade issued licenses for the exportation of natural diamonds and cut diamonds.

363. He further stated that amendments to Presidential Decrees No. 742 of 21 June 2001 "On the Procedure for Importation into and Exportation from the Russian Federation of Precious Metals and Precious Stones" and No. 1373 of 30 November 2002 "On Regulations on Importation to the Russian Federation and Exportation from the Russian Federation of Natural Diamonds and Cut Diamonds" were under preparation. These amendments were aimed at abolishing quantitative export restrictions on unwrought platinum and metals of the platinum group and raw materials containing precious stones, removing bans on the export of certain types of goods, such as wastes and scraps of precious metals; precious metals ores and concentrates, and at future liberalization of international trade involving this category of goods.

364. The representative of the Russian Federation added that the Russian Federation intended to bring Federal Law No. 41-FZ of 26 March 1998 "On Precious Metals and Precious Stones" in accordance with the new legislation, namely Federal Law No. 173-FZ of 10 December 2003 "On Currency Regulation and Currency Control" and Federal Law No. 164-FZ of 8 December 2003 "On the Fundamentals of State Regulation of Foreign Trade Activity". Under Federal Law No. 173-FZ precious metals and precious stones were not recognized as currency valuables. This category of goods was therefore not subject to currency legislation. Furthermore, pursuant to Federal Law No. 153-FZ of 11 November 2003 "On Amending Article 5 of the Federal Law of the Russian Federation On State Secrets" data on extraction, transfer, consumption of precious stones and metals had been excluded from the list of state secret data. The amendments simplified the procedure for performing transactions with precious stones and metals and made these transactions more transparent.

365. [The representative of the Russian Federation confirmed that the Russian Federation would abide by WTO provisions in respect of export bans and other quantitative restrictions and would eliminate upon accession all such export restrictions, unless they could be specifically justified under WTO provisions, in particular Articles XI, XX and XXI of the GATT. The Working Party took note of this commitment.]

366. [The representative of the Russian Federation confirmed that, from the date of accession, the Russian Federation would conform with the provisions of Article XI of the GATT 1994. He further confirmed that the Russian Federation would not apply export prohibitions or restrictions that cannot

be justified under the relevant provisions of the WTO Agreements, including Articles XVII, XX, XXI of the GATT 1994. The Working Party took note of these commitments.]

[to be completed]

Export Licensing Procedures

367. The representative of the Russian Federation stated that export licensing procedures in operation in the Russian Federation were the same as import licensing in that they were regulated by Government Resolution No. 1299 of 31 October 1996 "On the Procedure for Conducting Tenders and Auctions for Distribution of Quota upon Introduction of Quantitative Restrictions and Licensing of Export and Import of Goods (Works, Services) in the Russian Federation". The most sensitive goods were subject to non-automatic licensing (Table 18(a)). A limited number of goods were subject to automatic licensing for the purpose of monitoring trade flows (Table 18(b)). Licenses were issued by the Ministry of Economic Development and Trade upon receipt of the following documents: an application for the license, a copy of the contract, a copy of a certificate confirming that the applicant was registered by a regional tax authority as a tax-payer, copies of the registration documents, a copy of the applicant's charter, and a copy of the certificate of State registration approval of the federal agency responsible for the specific sensitive goods (Government Resolution No. 1299 of 31 October 1996). Under Federal Law No. 164-FZ "On the Fundamentals of State Regulation of Foreign Trade Activity", normative legal acts affecting the right to carry out foreign trade activity were to enter into force at the same time on the whole territory of the Russian Federation after their official publication in the order provided for by the Russian legislation. Pursuant to Government Resolution No. 1299 of 31 October 1996 "On the Procedure for Conducting Tenders and Auctions for Distribution of Quota upon Introduction of Quantitative Restrictions and Licensing of Export and Import of Goods (Works, Services) in the Russian Federation», tender announcements had to be published in mass media ("Rossiyskaya Gazeta", "Parlamentskaya Gazeta", etc.) at least 30 days prior to the date of the tender. Information on tenders, auctions and procedures for holding tenders and auctions for the sale of a quota was published on the webpage of the Ministry of Economic Development and Trade at www.economy.gov.ru. Additional information is provided in the Section "Import Licensing Systems" of this draft Report.

368. Several members of the Working Party expressed concerns about the export licensing regime, whilst noting that the Russian Federation did not presently apply many export quotas. Those members considered that a system of non-automatic export licensing, however, applied to a wide range of products and that such measures had the potential to be applied in a manner contrary to the general prohibition of quantitative restrictions on export provided under Article XI of the GATT

1994. In the case of precious metals and stones, the legislation on export licensing made export licenses for certain products subject to a quota (Presidential Decree No. 742 of 21 June 2001 "On the Procedure of Importation into and Exportation from the Russian Federation of Precious Metals and Precious Stones"). Under that Decree, exports of platinum were permitted under licence within quantitative limits. While a rationale could exist for the application of certain controls on exports under the relevant GATT exceptions clauses (including Articles XX and XXI), for example in respect of the exports of dual use goods, hazardous products, endangered species etc, the rationale for such controls on the exports of other goods, particularly pharmaceuticals, precious metals and stones other than gold and silver was less clear. Automatic licensing, which was already applied for exports of raw hides and skins, provided a mechanism to monitor export flows, if this was considered desirable. However, as discretionary controls on these particular products are unlikely to meet the relevant criteria of the GATT exceptions clauses, it was essential that any licensing regime be genuinely automatic in order to avoid restrictions on trade.

369. Several members also requested more information on the procedures followed and fees charged in connection with the issuance of export licenses. They requested confirmation that any fees charged on exports were related to the cost of service rendered in accordance with WTO provisions. Some members questioned whether the restrictions on precious metals and stones, semi-precious stones, objects made thereof, certain alloys, semi-fabricates, ores, concentrates and wastes could be justified under the WTO provisions invoked by the Russian authorities. These members considered that the Russian Federation should provide a more detailed explanation of the measures applied on these products that the Russian Federation was seeking to justify under Article XV:9(b) of the GATT 1994, including a description of each measure and its legal basis; the bodies involved in applying those measures including details of their responsibilities; the products affected by each measure; the export licensing procedures applicable, including details of any restrictions on eligibility for export licenses, and other terms and conditions associated with their issuance; the provisions of the Russian Federation's exchange arrangements with the IMF currently in force that required the Russian Federation to adopt or maintain the measures applied by means of non-automatic export licensing that the Russian Federation was seeking to justify under Article XV:9(b) of GATT 1994; and the Russian Federation's plans to eliminate all measures applied by means of non-automatic export licensing that might be required under those arrangements at the conclusion of their term.

370. In response, the representative of the Russian Federation stated that the procedure for issuing an export licence was regulated by Government Resolution No. 1299 of 31 October 1996 "On the Procedure for Holding Tenders and Auctions for the Sale of Quotas When Introducing Quantitative Restrictions and Licensing the Export and Import of Goods (Works, Services) in the Russian

Federation". Corresponding charges were regulated by Order No. 363 of 6 August 1999 of the Ministry of Trade "On Approval of Regulation on Fixing the Charges for Issuance, Reissuance and Extension of Licenses for Export and Import of Goods (Works, Services), Certificates of Barter Transactions", which set the fee charged for the issuance of an import/export license at 3000 Rubles for a one-shot licence and 15 000 Rubles for a general licence. Work had been conducted in the Russian Federation to bring national export licensing legislation into conformity with WTO disciplines. Specifically, Federal Law No. 157-FZ "On the State Regulation of Foreign Trade Activity" had been replaced by Federal Law No. 164-FZ "On the Fundamentals of State Regulation of Foreign Trade Activity", which has been adopted on 8 December 2003 and had come into force on 15 June 2004. Corresponding amendments would be made to Government Resolution No. 1299 of 31 October 1996 "On the Procedure for Holding Tenders and Auctions for the Sale of Quotas When Introducing Quantitative Restrictions and Licensing the Export and Import of Goods (Works, Services) in the Russian Federation".

371. He further noted that work was also being conducted to bring the Russian Federation's export licensing for precious metals and stones into accordance with WTO disciplines. Specifically, amendments to Presidential Decrees No. 742 of 21 June 2001 "On the Procedure of Importation into and Exportation from the Russian Federation of Precious Metals and Precious Stones" and No. 1373 of 30 November 2002 "On Regulations on Importation to the Russian Federation and Exportation from the Russian Federation of Natural Diamonds and Brilliants" had been drafted, taking due account of other international commitments relevant for trade in natural and cut diamonds. These amendments were aimed to reduce the number of licensed goods and remove bans on the export of certain types of goods, as well as to the future liberalization of international trade involving this category of goods. The representative of the Russian Federation also noted that documents required for the issuance of a licence included: (i) for exports of precious stones and precious metals, a certificate of special registration in the State Assay Chamber of the Ministry of Finance (the Federal Law No. 41-FZ of 26 March 1998 "On Precious Metals and Precious Stones") and for crediting organizations, an authorization of the Central Bank or of a credit institution licensed by the Central Bank to perform operations with precious metals (Federal Law No. 395-1 of 2 December 1995 "On Banks and Banking"); and (ii) for exports of ores of non-ferrous metals containing precious metals, a decision of the Ministry of Finance and the Ministry of Industry and Energy regarding the practicability and feasibility of commercial recovery of precious metals (Presidential Decree No. 742 of 21 June 2001 "On the Procedure of Importation into and Exportation from the Russian Federation of Precious Metals and Precious Stones"). He also referred to the information contained in the section "Quantitative export restrictions, including prohibitions and quotas".

372. Concerning queries by members of the Working Party on export licensing of medicines and pharmaceuticals, he noted that pursuant to Government Resolution No. 854 of 06 November 1992, exports of raw materials for the manufacturing of medicines were subject to a licence by the Ministry of Economic Development and Trade in agreement with the Ministry of Health and Social Development and the Federal Service for Surveillance in the Sphere of Ecology and Natural Management of the Russian Federation. According to Federal Law No. 86-FZ of 22 June 1998 "On Medicines", pharmaceuticals could be exported by legal persons having a license for the production or wholesale trade of these goods. Under this Law, pharmaceuticals also included raw materials for the manufacturing of medicines. This measure was applied to protect national interests, including both safeguarding animals and plants and protecting non-renewable natural resources.

373. In response to questions regarding licensing requirements in the field of energy, the representative of the Russian Federation clarified that there were no export licensing requirements for export of gas, oil and oil products. Concerning activity licensing requirements, he referred to the section "Registration requirements for import/export operations".

374. [The representative of the Russian Federation confirmed that from the date of accession, all export licensing requirements or other export control requirements would be applied in conformity with WTO provisions including those contained in Articles XI, XVII, XX and XXI of the GATT 1994. In this regard, Russia had replaced the licensing restrictions on exports of precious stones, diamonds, and metals with an automatic licensing regime. The Working Party took note of this commitment.]

375. [The representative of the Russian Federation confirmed that, from the date of accession, the Russian Federation would apply export licensing procedures in conformity with the provisions of the GATT 1994, and in particular of its Article XI. The Working Party took note of this commitment.]

[to be completed]

Other Customs Export Formalities

376. The representative of the Russian Federation stated that, according to Article 119 of the Customs Code (Federal Law No. 61-FZ of 28 May 2003), goods and vehicles could depart from the customs territory of the Russian Federation at State Border check-points or at other places established in compliance with the legislation on the State Border of the Russian Federation during the customs bodies' working hours. The provisions of the Article 119 did not extend to goods carried by sea (river) vessels and aircraft crossing the customs territory of the Russian Federation without stopping

at a port or an airport located in the customs territory of the Russian Federation, i.e. such goods were not subject to customs formalities. Pursuant to Law No.4730-1 of 1 April 1993 "On the State Border of the Russian Federation" (as last amended on 30 June 2003), State border check-points were established by the Government upon proposal of federal executive bodies, the subjects of the Russian Federation as approved by the border guard agencies and frontier troops, and the other federal executive bodies concerned, taking into account taken the interests of adjacent and other foreign States.

377. Members of the Working Party expressed concern about the Russian Federation's practice of maintaining only a very limited number of customs checkpoints authorized for exportation of certain products such as forestry products such as logs, and metal scrap, and also the practice to close promptly certain customs checkpoints, thus creating serious impediments to trade. Some members of the Working Party requested further clarification on SCC Decree No. 1002 of 19 December 2001 "On Appointing Exportation Check-Points" which stipulated the customs clearance checkpoints that might be used for exportation of certain timber products by rail or road. A member noted that this Decree had been provisionally amended on 14 January 2002 to include customs clearance checkpoints at its country borders with the Russian Federation and asked whether the Russian Federation intended to make a definitive amendment to SCC Decree No. 1002 so as to avoid possible trade distorting effects. Another member asked for information on the sorts of timber products covered by the Russian measures and a clarification on whether this restricted use of checkpoints for exports would also cover additional products. Other members asked for a status report on such provisions for exports of textiles, and asked the Russian Federation to identify and describe for the Working Party any other export measures like the one described in these paragraphs.

378. In response, the representative of the Russian Federation noted that the policy of his Government was to base identification of designated customs check points on the provisions of the International Convention on the Simplification and Harmonization of Customs Procedures (Kyoto 2000), in particular, its Specific Annex A, Chapter 1. He further stated that the new Customs Code permitted the relevant body to designate specific customs offices for the declaration of specific types of goods for the purpose of ensuring the effectiveness of control over the implementation of customs legislation. The grounds for establishing such points were the same as those for imports, which were specified in paragraph [317] of the section "Other customs formalities for imports". He also noted that an exhaustive list of possible export restrictions was established by Federal Law.

379. The representative of the Russian Federation further added that SCC Order No. 1002 of 19 October 2001 "On Appointing Exportation Check-Points" for certain types of timber products

(codes of Commodity Nomenclature of Foreign Economic Activity of Russia: from 4401 10 0000 fuel wood in the form of logs and lumber; 4403; from 4404 chopped wood, piles and spiles, sharpened but not length sawed; 4406; 4407; 4409) currently did not apply as provided for by the special instruction of the SCC No. TF-3705-3713 of 11 February 2002.

380. Other members of the Working Party raised concerns about SCC Order No. 1219 "On Defining Places for the Customs Formalization and Export of Ferrous and Non-Ferrous Metals Scrap and Wastes" of 27 December 2000, which provided that non-ferrous and ferrous metal scrap could be exported only through the seaports of the Russian Federation. Those members requested the Russian Federation to ensure that these and other measures related to exportation would be brought in full conformity with WTO provisions upon accession.

381. The representative of the Russian Federation informed the Working Party that SCC Order No. 1219 of 27 December 2000 "On Defining Places for the Customs Formalization and Export of Ferrous and Non-Ferrous Metals Scrap and Wastes" had been invalidated by SCC Order No. 98 of 28 January 2004.

3. Internal Policies Affecting Foreign Trade in Goods

Industrial policy, including subsidy policies

382. The representative of the Russian Federation noted that under current Russian legislation the following types of state support (financial contribution) were available to industry: (i) direct transfers of budgetary funds, including those under federal targeted and investment programs; (ii) grants and subventions (earmarked grants) to regions; (iii) budgetary loans, credits and guarantees; and (iv) deferred payments and exemptions with respect to payable taxes and customs duties. Tariffs with respect to services provided by natural monopolies could be established by decisions of federal and regional tariff regulating authorities on the non-discrimination base and taking into account their economic viability. Total State support averaged US\$12 billion a year, including US\$10 billion from the federal budget (average data for 1997-1999). Support was accorded both at the federal and sub-federal levels.

383. Direct transfers constituted the main element of state support to industrial production sector (around 40 per cent). Such support was concentrated in the coal mining industry and it was carried out in accordance with the program of restructuring of the coal sector aimed at acceleration of transfer to non-subsidized activities, enforcement of government control and higher effectiveness of use of state resources. The Ministry of Finance had concluded treaties for an overall amount of 1,234 billion

Rubles on the implementation of investment projects in the coal industry on a competitive basis. In 2001-2002, 426,8 million Rubles had actually been spent out of this sum (80 million in 2001 and 346,8 million in 2002). No export subsidies of any kind within the definition of Article 3 of the Agreement on Subsidies and Countervailing Measures were available to the coal industry. The remaining amount of direct transfers was provided for under federal targeted programs, 38 per cent of which were destined to programs (projects) associated with the development of industrial production. At present, no subsidies existed in the Russian Federation which could be considered as export subsidies.

384. Concerning questions on the coal industry, the representative of the Russian Federation replied that per Government Resolution No. 1523 of 3 December 1997 "On State Financing of Restructuring of the Coal Industry" the main directions of current supports were measures to enhance social security of employees and secure conditions of work in coal mining and liquidation of particularly loss-making mines. No resources were allocated for export subsidies. He stated that those directions would be retained in the future. He provided details of the amounts of the subsidies paid between 2000 and 2002 in document WT/ACC/SPEC/RUS/31. He further noted that since 2002 the federal budget had not provided production support.

385. In response to requests from some members to describe export and import substitution subsidies, both at the federal and sub-federal levels, the representative of the Russian Federation noted that financial contribution to the regions of the Russian Federation did not directly related to the development of industrial production, but was aimed at reducing regional financial disparities. The bulk of transfers was provided on the basis of objective indicators characterizing the social situation in the regions (82.5 per cent of the total amount). The rest was paid for deliveries of supplies of food and fuel to Far North areas (11.5 per cent) and special ("closed") territorial areas. The same forms of state support to industrial production sectors were used by the sub-federal governments of the Russian Federation. Such support mostly aimed at the financial rehabilitation of enterprises, resolution of social problems, and reimbursement of losses. Less than 6 per cent of the total amount of support was destined to production development.

386. In response to questions from members of the Working Party, the representative of the Russian Federation confirmed that his authorities had not identified any export subsidies that would follow within the purview of prohibited export subsidies under the relevant provisions of the WTO Agreement.

387. Noting that WTO rules on subsidies covered government benefits beyond those explicitly financed through budgetary allocations, some members requested that the Russian Federation address

all forms of subsidies that could be notified under the WTO Agreement on Subsidies and Countervailing Measures. Several Members also requested that the Russian Federation revise its domestic law/regulations with a view to eliminating all prohibited subsidies at all levels of government from the date of accession. They requested updated information on the Russian Federation's comprehensive draft law on State Aids, including a description of its purpose, scope and provisions, and an indication of when it might be implemented.

388. In response, the representative of the Russian Federation stated that the provision of subsidies in the Russian Federation was regulated by budget legislation, tax, customs and antimonopoly legislation. The drafting of specific legislation on subsidies (the State Aid Law) had been suspended due to amendments to the antimonopoly legislation, in particular amendments to Law of the RSFSR No. 948-1 of 22 March 1991 "On Competition and Restriction of Monopoly Activity on Commodity Markets" (as amended on 9 October 2002). The amendments made to the above-mentioned Law would ensure control over subsidies prohibited under the provisions of the WTO Agreement on Subsidies and Countervailing Measures.

389. Some members of the Working Party asked to what extent loans at below market interest rates provided under Government Resolution No. 538 of 15 May 1999 "On Providing Budgetary Loans to Finance the Implementation of High-Return Contracts for Production and Supply of Products, Including Export Supplies" were contingent upon export performance, and requested clarification whether that Resolution had been repealed. Some members also asked for further details regarding current subsidies paid to the coal sector. Some members of the Working Party also noted that certain subsidy programs, such as production sharing agreements and other programs for the automotive and civil aircraft industry appeared to provide subsidies which constituted prohibited subsidies pursuant to Article 3(1)(b) of the Agreement on Subsidies and Countervailing Measures. In addition, aspects of certain rail freight tariffs also appeared to conflict with Article 3(1)(a) of that Agreement. Members of the Working Party requested that the Russian Federation eliminate all such programs from the date of accession. These members also questioned whether or not budget subsidies currently existed in the Russian Federation, which could be considered export subsidies.

390. In response to further questions he noted that pursuant to Government Resolution No. 538 of 15 May 1999 "On Providing Budgetary Loans to Finance the Implementation of High-Return Contracts for Production and Supply of Products, Including Export Supplies" loans equal to 50.0 million Rubles had been granted from the federal budget to OAO "Rostselmash" in 1999. In 2000-2002 that Resolution was not in force and no funds had been granted from the federal budget.

In the 2001-2002 federal budget, federal credit arrangements had been provided on a competitive basis for the implementation of investment projects in coal industry.

391. Some members stated that the Russian Federation should recognize that natural monopoly or other pricing could constitute a subsidy under the WTO Agreement on Subsidies and Countervailing Measures. These members asked the Russian Federation to provide a description of the existing pricing mechanisms and any reforms under way to bring domestic prices for oil, natural gas and electricity closer to world market prices. In particular, those members requested that the Russian Federation provide details of the recent reforms of the pricing of electricity to commercial consumers.

392. In response, the representative of the Russian Federation pointed out that his authorities continued to believe that natural monopoly or pricing did not constitute a subsidy under the WTO Agreement on Subsidies and Countervailing Measures. Regarding domestic prices for oil, natural gas and electricity, he referred to the information provided in the section "Pricing Policies" of this Draft Report.

393. The representative of the Russian Federation said that the principles and mechanisms of granting export credits and export credit guarantees were foreseen in the Concept of Development of Financial Support (Guarantees) of Export of Industrial Products in the Russian Federation adopted under Government Resolution No.1493-r of 14 October 2003. The Concept envisaged procedures for granting:

- State guarantees against political and long-term commercial risks arising during implementation of export contracts with foreign importers. State guarantees would only be provided if the Government of the foreign importer also guaranteed the same level of payment to be made pursuant to the same export contract guaranteed by the Russian Federation and the country of the government was on the list of foreign states approved on an annual basis by the Government of the Russian Federation. The amount of the guarantee fee would be based on the cost of service rendered by the bank involved in the operation of the guarantee scheme and connected with development of respective documents and would cover the long-term operating costs and losses of the program.
- Export credits to be given to importers of Russian industrial products. Such credits were aimed at equilization of costs for export credits which existed on foreign financial markets with respective costs in Russia.
- Compensation of interest rates to Russian banks engaged in the crediting of exporters of Russian products aimed at equilization of costs for export credits which existed on foreign financial markets with respective costs in Russia.
- Export credits.

394. A mechanism of granting credits and guarantees compliant with the rules and norms of the WTO Agreement on Subsidies and Countervailing Measures was being elaborated in furtherance of the Concept.

395. Several members asked the Russian Federation to confirm that all subsidy programs at all levels of government would be administered in line with the WTO Agreement on Subsidies and Countervailing Measures and that upon accession all necessary information on all subsidies programs at all levels of government would be notified to the Committee on Subsidies and Countervailing Measures in accordance with Article 25 of the Agreement.

396. [The representative of the Russian Federation confirmed that for all federal and regional subsidy measures identified, the Russian Federation would revise its domestic law or regulations to eliminate all prohibited subsidies within the meaning of Article 3 of the WTO Agreement on Subsidies and Countervailing Measures, and Article XVI of the GATT 1994 at the levels of government – including, but not limited to, exemptions, reductions, deferrals or forgiveness of taxes and custom duties to enterprises which were contingent upon export performance or the use of domestic over imported goods from the date of accession. He further confirmed that such prohibited subsidies would not be introduced in the future, and that export financing and other export promotion policies would be operated in conformity with WTO provisions. [He further confirmed that the Russian Federation would, upon accession, grant no subsidies contingent upon the use of domestic over imported goods in the meaning of Article 3:1(b) of the WTO Agreement on Subsidies and Countervailing Measures and that this commitment would cover subsidies at all levels of government, including exemptions, reductions, deferrals or forgiveness of taxes and duties to enterprises which were contingent upon export performance or the use of domestic over imported goods.] He also confirmed that the Russian Federation would administer any subsidy programs in place or established after accession at all levels of government in conformity with the WTO Agreement on Subsidies and Countervailing Measures and that all necessary information on programs be notified (if such programs existed) and be provided to the Committee on Subsidies and Countervailing Measures in accordance with Article 25 of the Agreement upon entry into force of the Russian Federation's Protocol of Accession to the WTO. He noted that Russia had provided members with a limited amount of information on subsidies during the accession discussions and confirmed that Russia would provide a draft notification covering all subsidy programs at all levels of government prior to accession for review and would comply with its notification obligations under the WTO Agreement on Subsidies and Countervailing Measures immediately upon accession. He also confirmed that the Russian Federation would not invoke any of the provisions of Articles 27, 28, 29 of the Agreement on Subsidies and Countervailing Measures.]

397. [The representative of the Russian Federation confirmed that, from the date of accession, the Russian Federation would apply its internal subsidy policies affecting foreign trade in industrial goods in conformity with the Agreement on Subsidies and Countervailing Measures. The Working Party took note of this commitment.]

[to be completed]

Technical Barriers to Trade

398. The representative of the Russian Federation said that prior to the administrative reforms carried out in pursuance of President Decree No.314 of 9 March 2004 “On the System and Structure of the Federal Executive Bodies” (in the wording of 20 May 2004), the federal authority for standardization, metrology and certification matters was the State Committee of the Russian Federation for Standardization and Metrology (Gosstandart). Gosstandart acted directly or through its subordinate centres for standardization, metrology and certification in the regions and State inspectors, performing surveillance over compliance with mandatory technical regulations and national standards (where no technical regulations existed) and providing uniformity in the units of measure.

399. As a result of administrative reform, Gosstandart had been reorganized into the Federal Agency for Technical Regulation and Metrology, which shared the functions related to technical regulations with the Ministry of Industry and Energy. Thus, pursuant to Government Resolution No.179 of 7 April 2004 “On the Competence of the Ministry of Industry and Energy of the Russian Federation”, the Ministry of Industry and Energy was in charge of the legal regulation and elaboration of the State standardization policy and the development of accreditation and voluntary certification systems.

400. Pursuant to Government Resolution No. 294 of 17 June 2004 “On the Federal Agency for Technical Regulation and Metrology”, the Federal Agency for Technical Regulation and Metrology (further Rostechregulation) was entitled, inter alia, to perform expert assessments of national standards, promulgate notifications on the elaboration and completion of public discussions related to draft technical regulations and national standards, develop a program for the elaboration and approval of national standards, carry out accreditation procedures, and perform the functions of the national body on standardization on the basis of the procedure determined by the federal body on technical regulation. The Federal Agency also maintained the federal information data base of technical regulations and standards, the list of goods subject to mandatory conformity assessment, as well as registers of conformity declarations that had passed registration, of certificates that had been issued,

of voluntary certification, and of accredited organizations that performed activities on the assessment of conformity of goods, production processes, and services to the established requirements of quality and safety as well as activities related to ensuring the unity of measures.

401. Legislation pertaining to standardization, metrology and certification is listed in Annex 2. The representative of the Russian Federation noted that this legal framework required products to meet the mandatory technical, pharmacological, sanitary, veterinary, phytosanitary and ecological requirements determined by the Russian Federation. In particular, imports of products into the territory of the Russian Federation were restricted if the products in question did not meet the statutory requirements, did not have a certificate, marking or a corresponding sign as envisaged by federal laws and other legal acts of the Russian Federation, or were banned from use as harmful consumer goods.

402. Prior to the entry into force of the Federal Law "On Technical Regulation" on 1 July 2003, State standards approved by Gosstandart, sectoral standards approved by the federal executive authorities, standards of enterprises, standards of scientific, technical, engineering institutions and other societies were operative in the Russian Federation. No regional standards existed in the Russian Federation. State standards and other documents approved by the federal executive authorities contained mandatory requirements intended to ensure the safety of products, works, and services for the environment, life, health, and property; technical and informational compatibility; interchangeability of products; uniformity in the methods of control and marking; and other requirements established by the legislation of the Russian Federation. Technical committees for standardization had been set up for the development of national standards and participation in the development of international and CIS interstate standards.

403. The representative of the Russian Federation stated that standards issued by ISO, IEC, ITU, EEC UN, the Codex Alimentarius were regarded by the Russian Federation as the fundamental international standards. He recalled that since 1997 and subject to the State standardization plans, the Russian authorities annually developed and implemented State standards, over 50 per cent of which had already been harmonized with their international counterparts. The level of harmonization of domestic standards with international standards was currently about 35 per cent.

404. Conformity of products subject to mandatory certification was confirmed by a conformity certificate issued by certification authorities, or a declaration of conformity registered with the certification authority. Such a certificate was submitted to customs authorities together with the cargo customs declaration, and was necessary to obtain the permission to import the products in question into the Russian Federation.

405. He noted that work on mandatory certification of goods in the GOST R certification system was currently conducted by Russian authorities and laboratories as well as foreign authorities and test laboratories accredited in accordance with the established procedure. Certification authorities and test laboratories were accredited in accordance with ISO/IEC Guideline 65 and ISO/IEC Standard 17025. A uniform accreditation procedure was applied to both Russian and foreign certification authorities and laboratories. The list of accredited certification authorities and test laboratories was published on Rostechregulation webpage (www.gost.ru).

406. Conformity to mandatory requirements had commonly been subject to mandatory certification. However, as of July 1999 certain products had been transferred to the conformity declaration procedure. The list of products subject to mandatory certification was provided in Government Resolution No. 1013 of 13 August 1997 "On the Approval of the List of Goods Subject to Mandatory Certification and the List of Works and Services Subject to Mandatory Certification" and the list of products for which safety may be confirmed by conformity declaration in Government Resolution No. 766 of 7 July 1999 "On the Approval of the List of Products Whose Conformity May Be Confirmed by Conformity Declaration".

407. In order to further reduce the list of goods subject to mandatory certification and allow conformity confirmation by declaration of conformity for a larger number of goods, the Government of the Russian Federation had passed Resolution No. 287 of 29 April 2002 "On Amendments to the List of Goods Subject to Mandatory Certification, to the List of Works and Services Subject to Mandatory Certification, and to the List of Products Whose Conformity May Be Confirmed by Conformity Declaration". As a result, the list of products for which conformity could be confirmed by conformity declaration had tripled, and the list of products subject to mandatory certification had been reduced by 20%.

408. Pursuant to Gosstandart Resolution No. 64 of 30 July 2002, the Nomenclature of Products and Services (Works) Subject to Mandatory Certification Pursuant to Legislative Acts of the Russian Federation and the Nomenclature of Products Whose Conformity May Be Confirmed by Conformity Declaration had been introduced on 15 December 2002 (Resolution No. 64 had been passed in furtherance of Government Resolution No. 287 of 29 April 2002). The Nomenclature determined the documents (national standards and others), which contained requirements applicable to the products included in the list approved by the Government.

409. Federal Law No. 184-FZ of 27 December 2002 "On Technical Regulation" (further referred to as the Federal Law) provided a new legal framework for technical regulations, standards and

conformity assessment systems. The Federal Law provided for the following main principles based on the provisions of the WTO TBT Agreement:

- Application of non-discriminatory and national treatment. Technical regulations were to be applied in the same manner and to the same extent irrespective of the country and/or place of origin of products or processes of production, operation, storage, transportation, marketing and utilization, the nature and details of the transactions and/or natural or legal persons (Article 7.6 of the Federal Law).
- Elimination of technical barriers to trade. Requirements of technical regulations should not create any barriers to business activity beyond the minimum necessary to achieve the objectives of protection of human life or health, property of natural and legal persons, state or municipal property, protection of the environment, life or health of animals and plants, prevention of activities which could violate the interests of consumers (Articles 6 and 7.2 of the Federal Law).
- Harmonization of technical regulations, conformity assessment procedures, and standards with their international counterparts and voluntary application of standards. International standards and/or national standards could be used in full or in part as the basis for development of draft technical regulations. The Government of the Russian Federation developed proposals to ensure conformity of technical regulation to the international norms and rules (Articles 7.8 and 7.12 of the Federal Law).
- Standardization should be carried out according to the following principles: voluntary application of standards; use of an international standard as the basis for development of a national standard, except where such application was considered to be impossible due to unsuitability of requirements of the corresponding international standard to climatic and geographical peculiarities of the Russian Federation, its technical and/or technological peculiarities or for other reasons, or where the Russian Federation had objected to the adoption of such international standard or any of its provisions in accordance with the established procedures (Article 12 of the Federal Law).
- Transparency in the development of technical regulations and standards (Article 9 of the Federal Law).
- A notification about development of a draft technical regulation should be published in the print of the federal executive body on technical regulations and in the general information system in electronic-digital format.
- The notification about development of the draft technical regulation should contain information on the products, processes of production, operation, storage, transportation, marketing and utilization, in relation to which the requirements had been developed, with a summary of the purpose of the technical regulation and an explanation of the necessity of the technical regulation. The notification should specify whether the requirements being developed differed from international standards or obligatory requirements valid in the territory of the Russian Federation and should contain information on a method of familiarization with the draft technical regulation, the denomination or surname, name and patronymic of the developer of the given draft technical regulation, as well as his/her postal and e-mail (if any) addresses for the receipt of written notices from interested persons.
- The draft technical regulation should be made available to interested persons for familiarization as of the date of publication of the notification. The developer was requested

to supply, upon demand, any interested person with a copy of the draft technical regulation. The payment for issuing the copy should not exceed the cost of its manufacture.

- The developer was required to carry out a public discussion on the draft technical regulation, make a list of written notices received from interested persons, summarize the content of such notices and the results of the discussion and to update the draft technical regulation taking into account the written notices received.
- The developer was required to save the written notices received from interested persons up to the date of the entry into force of the technical regulation, as provided for in the appropriate normative legal act, and upon request, to hand them over to deputies of the State Duma, representatives of federal executive bodies and expert commissions on technical regulating (specified in Article 9 of the Federal Law).
- The period for public discussion of the draft technical regulation - from the date of publication of the notification about development of the draft technical regulation up to the date of publication of the notification about completion of the public discussion - could not be inferior to two months.
- The notification about completion of the public discussion of the draft technical regulation had to be published in the print of the federal executive body on technical regulation and in the general information system in electronic-digital format.
- The notification about completion of the public discussion should include information on a method of familiarization with the draft technical regulation, the list of written notices of interested persons, and the denomination or surname, name and patronymic of the developer of draft technical regulation, along with his/her postal and e-mail (if any) addresses.
- From the date of publication of the notification about completion of the public discussion, the updated draft technical regulation and the list of written notices received should be available to interested persons for familiarization.
- Establishment of conformity assessment procedures according to the following principles: non discrimination between domestic and imported products both in terms of procedures and in terms of fees, proportionality of procedures to the risk of the products, transparency, predictability and expeditiousness of the procedures, and protection of confidentiality.
- Achievement of mutual recognition of conformity assessment results (Article 30 of the Federal Law).
- Technical regulations should contain requirements in terms of performance of products, processes of production, operation, storage, transportation, marketing, and utilization rather than requirements regarding design or descriptive characteristics, except where the purposes of adopting such technical regulation could not be achieved in the absence of requirements in respect of design and descriptive characteristics in view of the risk of damage.

410. He further noted that Federal Law No. 184-FZ of 27 December 2002 "On Technical Regulation" established technical regulations, which provided binding specifications with respect to goods and their production processes as regulatory tools to ensure safety and quality of products, as well as a legislative framework for a single information system to provide users, including foreign users, with information on operative documents and documents under development, i.e. a single

enquiry point. The Law also provided that mandatory conformity confirmation works would be paid by the applicant. The method for calculating the cost of mandatory conformity assessment was determined by the Government and was based on uniform fees calculation rules for identical or similar products irrespective of the country and/or place of origin or identity of the applicant (Article 23). The Law introduced the principle of a uniform system and rules of accreditation.

411. A technical regulation could provide the rules and forms of conformity assessment (including schemes of conformity confirmation) depending on the risks involved, deadlines for conformity assessment in relation to every regulated object and/or requirements in respect of terminology, packing, marking or labeling and the rules of their affixation.

412. Mandatory requirements for products, processes of production, operation, storage, transportation, marketing and utilization, rules and forms of conformity assessment, rules for identification, requirements in respect of terminology, packing, marking or labeling and the rules of their affixation contained in technical regulations were exhaustive and were applied directly throughout the territory of the Russian Federation. Such requirements were modified only by making amendments and supplements to the corresponding technical regulation.

413. Any requirements in respect of products, processes of production, operation, storage, transportation, marketing and utilization, rules and forms of conformity assessment, rules for identification, requirements in respect of terminology, packing, marking or labeling and the rules of their affixation that were not included in technical regulations were not mandatory.

414. The new Federal Law also foresaw the implementation of the rules of the Code of Good Practice for the Preparation, Adoption, and Application of Standards (Annex 3 of the TBT Agreement). Sectoral standards were not envisaged under the Law as regulatory documents. All existing sectoral standards were to be transformed into national standards or standards of organizations prior to 2010. Standards of the Regions of the Russian Federation were also not envisaged under that law.

415. As of 1 July 2003, mandatory technical regulations, including mandatory conformity assessment could be established by Federal Laws, Government Resolutions, and Presidential Decrees only. The only exceptions included: requirements connected with ensuring of integrity and sustainable functioning of the global communications network of the Russian Federation on and the use of the radio frequency spectrum; defense products (works, services) used to protect data which constituted a State secret under Russian legislation or related to protected information of restricted

access; and products (works, services) whose data constituted a State secret. As a result, the list of mandatory requirements had been significantly reduced.

416. As of 1 July 2003, the authority of federal executive bodies in the area of technical regulations had been restricted to the issuance of acts of a recommendatory nature only, with the exception of the mentioned above cases. As of this date and until the issuance of corresponding technical regulations, or should such regulations not be issued by 1 July 2010, the requirements regarding products, processes of production, operation, storage, transportation, marketing, utilization, and conformity assessment procedures established by the documents of the federal executive authorities prior to 1 July 2003 were subject to obligatory implementation only to the extent that they ensured: protection of human life or health, property of natural and legal persons, and State or municipal property; protection of the environment and of animal and plant life or health; and prevention of activities which could violate the interests of consumers.

417. Until the adoption of corresponding technical regulations, veterinary, sanitary, and phytosanitary technical regulation would remain in place in accordance with Federal Law No. 99-FZ of 15 July 2000 "On Quarantine of Plants" and Federal Law No. 4979-1 of 14 May 1993 "On Veterinary Practices".

418. Until the adoption of a general technical regulation with respect to nuclear and radiological safety, nuclear and radiological safety technical regulation would remain in place in accordance with Federal Law No. 170-FZ of 21 November 1995 (as amended on 11 November 2003) "On the Use of Atomic Energy" and Federal Law No. 3-FZ of 9 January 1996 "On Radiological Safety of the Population".

419. Federal Law No. 184-FZ of 27 December 2002 "On Technical Regulation" also contained a number of norms, which determined alterations in the procedures for mandatory conformity assessment. The Federal Law provided that until the corresponding technical regulations had come into effect, the Government would determine and annually supplement the list of products for which mandatory certification would be substituted by a conformity declaration. Thus, the list of products subject to mandatory certification could only be reduced, unless otherwise provided by the corresponding technical regulation. Products, which had been included in the list of products subject to a conformity declaration, were automatically excluded from the list of products subject to mandatory certification.

420. Pursuant to paragraph 1 of Article 24 of the Federal Law, persons applying for a conformity declaration had to be registered in accordance with Russian legislation as legal persons or individual

entrepreneurs who were manufacturers and sellers, or represented a foreign manufacturer. In the latter case, a contract ensuring conformity of the products to technical regulations and liability for non-conformity of the delivered products is required. Paragraph 4 of Article 46 of the Federal Law limited the possibility to adopt a conformity declaration on the basis of one's own evidence prior to the adoption of technical regulations to domestic and foreign manufacturers - sellers could not adopt such declarations.

421. Pursuant to Paragraph 3 and 4 of Article 24 of the Federal Law when declaring the conformity on the basis of own proofs and those obtained with participation of a third party, an applicant, at his own will and in addition to his own proofs formed in the order provided for in Clause 2 of this Article, should:

- include in evidentiary materials the reports of researches (tests) and measurements carried out in accredited test laboratory (center);
- submit the certificate of quality system, in relation to which there is provided for the control (supervision) of certification body, which has issued the given certificate, over certification object.

The certificate of a quality system may be used together with the proofs when assuming the supplier's declaration for any products, except for the case when technical regulations stipulate for such products other form of conformity assurance.

422. The contents of the documentary evidence were to be determined by a particular technical regulation. Previously adopted normative legal acts provided that the conformity declaration could be adopted by Russian manufacturers (sellers, executors) or organizations registered as juridical persons in the Russian Federation and representing the interests of the relevant foreign manufacturers (sellers, executors). Quality system certificates could constitute the basis for the adoption of a conformity declaration.

423. The representative of the Russian Federation noted that in respect of mandatory certification Paragraph 1 of Article 25 of the Federal Law provided that certification schemes applied for certification of certain sorts of products should be determined in the relevant technical regulations and not by the certification authority. The validity of conformity certificates and conformity declarations were to be established in the relevant technical regulation. The procedure for certification previously applied provided for the validity of certificates to be determined by the certification authority with due regard to the validity term of the normative documents related to the production as well as to the term for which the production or the quality system had been certified (provided that this was envisaged by the certification scheme) but no longer than three years.

424. According to Paragraph 1 of Article 27 of the Federal Law, mandatory marks were marks of circulation of a product on the market informing the purchasers on the compliance of the product with technical regulations. Under previous legislation (Federal Law No. 5151-1 of 10 June 1993 "On Certification of Goods and Services") each mandatory certification system had its own confirmation mark.

425. Pursuant to Paragraph 1 of Article 29 of the Federal Law, customs clearance of products subject to mandatory conformity assessment required submission of a conformity certificate or a conformity declaration. Lists of such products, including the HS Codes description, were to be approved on the basis of technical regulations by the Government. Previously, in order to be granted the right to export products subject to mandatory certification a conformity certificate was required (Federal Law "On Certification of Goods and Services"). For this reason the Government had adopted Resolution No. 72 of 10 February 2004 "On Amending the List of Goods Subject to Mandatory Certification, the List of Products Whose Conformity Can Be Confirmed by a Declaration of Conformity, and on Recognizing as Invalidated the List of Works and Services Subject to Mandatory Certification".

426. In order to bring the Nomenclatures into conformity with the requirements of Article 46 of Federal Law No. 184-FZ of 27 December 2002 "On Technical Regulation", Gosstandart had passed Resolution No. 51 of 5 July 2003 "On Making Amendments to the Nomenclature of Products and Services (Works) Subject to Mandatory Certification Pursuant to Legislative Acts of the Russian Federation, and the Nomenclature of Products Whose Conformity May Be Confirmed by Conformity Declaration".

427. Rostechregulation are now in charge of accreditation and conducting GOST R mandatory certification. In cases envisaged by Russian legislative acts with respect to certain types of products, this task could be entrusted to other governmental bodies of the Russian Federation. The forms of conformity confirmation of products determined before the 1 July 2003 by Gosstandart or other governmental bodies of the Russian Federation with due regard to established international practices would remain in effect until the issuance of new technical regulations. However, from 1 July 2003, new forms of conformity confirmation would have to be introduced by technical regulations.

428. As a result of the adoption of Government Resolution No. 72 of 10 February 2003, the list of goods to be declared had been increased by 32%. According to preliminary assessments, upon entry into effect of all technical regulations envisaged by the program of technical regulations approximately 60% of goods would be subject to conformity declaration and 40% to conformity certification.

429. Requirements connected with ensuring of integrity and sustainable functioning of the global communications network of the Russian Federation were established and governed by the legislation of the Russian Federation on communication.

430. Pursuant to Article 41 of Federal Law No. 126-FZ of 7 July 2003 "On Communications" which had come into force on 1 January 2004, mandatory conformity assessment of telecommunications facilities was conducted in order to ensure the integrity and stability of the global electrical communications network of the Russian Federation. Conformity assessment was mandatory for telecommunication facilities used in public telecommunication networks, and industrial telecommunication networks and special telecommunication networks if connected to public networks.

431. Conformity of these telecommunication facilities to technical regulations adopted under Russian legislation by regulatory legal acts of the federal executive authority for communications could be confirmed by mandatory certification or conformity declaration. The list of telecommunication facilities subject to mandatory certification approved by the Government of the Russian Federation.

432. Some members expressed concern that Federal Law No. 126-FZ of 7 July 2003 "On Communications" did not contain enough guarantees that the elements of transparency and predictability of the TBT Agreement would be fully respected, namely, when the normative legal acts were drafted and approved. Furthermore, Federal Law No. 126-FZ did not provide for sufficient guarantees that the current system of conformity assessment, according to which all information technology and telecommunications equipment were subject to mandatory certification and to certificates of a limited validity period (maximum 36 months), would be revised. They requested the Russian Federation to take commitments that it would take measures to facilitate trade in information technology and telecommunications equipment products by addressing these concerns by the time of its WTO entry.

433. The representative of the Russian Federation confirmed that his Government would base all normative legal acts determining technical requirements for communications facilities and elaborated in pursuance with Federal Law No. 126-FZ of 7 July 2003 "On Communications" on the principles of transparency and predictability. To meet this objective, a Government Resolution would be adopted, which would determine that "normative legal acts" were to comply with the transparency principles set forth in the TBT Agreement for the adoption of normative legal acts. The Russian Government would also limit the scope of the "normative legal acts" to regulation related to essential public interests as defined in the TBT Agreement and the Telecommunications Annex of the GATS. He

added that, by the end of 2010, mandatory requirements for communications facilities used in public networks, technological networks and special networks connected to public networks, would be limited to the requirements of technical regulations and the requirements to ensure the integrity and stability of the single electric communications network of the Russian Federation.

434. Furthermore, the representative of the Russian Federation confirmed that the Russian Federation would implement a simplified procedure for extending the validity of certificates and declarations of conformity for equipment which had not been substantially changed. In the longer term, the Russian Federation would consider the possibility to phase out recertification and redeclaration of such equipment. Finally, he confirmed that Russia would facilitate the operation of the production quality control system through mutual recognition of production quality control systems certified to comply with international quality control standards or by negotiating international agreements. [The Working Party took note of these commitments.]

435. Accreditation documents issued in accordance with the established procedure to certification authorities and accredited test laboratories (centers) prior to the entry into force of Federal Law No. 184-FZ of 27 December 2002 «On Technical Regulation» and Federal Law No. 126-FZ of 7 July 2003 "On Communications", as well as documents confirming conformity (conformity certificate, conformity declaration) and adopted prior to the entry into force of the Federal Laws «On Technical Regulation» and "On Communications" were considered to be valid until the expiration period specified therein.

436. A technical regulation contained requirements in terms of performance of products, processes of production, operation, storage, transportation, marketing and utilization, but did not contain any requirements for design or descriptive characteristics, except where the purposes of adopting such technical regulation as specified in Clause 1 of Article 6 of the present Federal law could not be achieved in the absence of requirements in respect of design and descriptive characteristics in view of the risk of damage.

437. All necessary technical regulations had to be adopted within seven years from the date of entry into force of the Federal Law. Thus, prior to 2010 all existing mandatory requirements for products, processes of production, operation, storage, transportation, marketing, and utilization would have been reviewed or reconciled transformed into technical regulations. Mandatory requirements for products, processes of production, operation, storage, transportation, marketing and utilization, in respect of which technical regulations would not have been adopted within the specified period, would cease to be effective.

438. Thus, from 1 July 2010 all mandatory requirements for products, processes of production, operation, storage, transportation, marketing, and utilization, the rules for identification of a regulated object for the purposes of application of a technical regulation, the rules and forms of conformity assessment (including schemes of conformity confirmation) depending on the risks involved, deadlines for conformity assessment in relation to every regulated object and/or requirements in respect of terminology, packing, marking or labeling and the rules of their affixation would be contained in technical regulations only.

439. For this purpose and to ensure conformity of technical regulations to international norms and rules, the Government of the Russian Federation had approved a technical regulations development program which would be annually updated and published. This Programme was expected to be submitted to the Government in July 2004.

440. The development of technical regulations would proceed in parallel with the development of draft national standards on the basis of application of corresponding international standards. International and/or national standards had to be used in full or in part as the basis for development of draft technical regulations and as the basis for ensuring compliance with technical regulations. Rostechregulation, as the national standardization authority, approved and published the list of national standards which could be applied on a voluntary basis to ensure compliance with technical regulations in its media resource and in a publicly accessible information system in digital format.

441. The recognition of certificates of supplying countries, which had not been issued in the mandatory certification system GOST R, was carried out by reference to interstate agreements and international certification systems to which the Russian Federation had acceded. The Russian Federation recognized the results of conformity confirmation procedures of those international systems to which it had acceded (Geneva Agreement of 1955 on Mechanical Vehicles, Brussels Convention on Reciprocal Recognition of Proof Marks of Handguns and Cartridges, IEC Quality Assessment System for Electronic Components (IECQ), IEC System for Conformity Testing and Certification of Electrical Equipment (IECEE), IEC Scheme for Certification to Standards for Electrical Equipment for Explosive Atmospheres (IECEX)). In other cases the procedures for recognizing foreign conformity assessment documents were determined on the basis of multilateral and bilateral agreements.

442. A Federal Data Bank of Technical Regulations and Standards had been established to perform all information procedures and a Single Enquiry Point contemplated under the WTO Agreements on TBT and SPS had been established to provide users with access to Russian regulations, standards, rules, and conformity assessment procedures. The enquiry point was located within

Rostechregulation at the following address: Russian Federation, 4, Granatniy Pereulok, 103001, Moscow, e-mail: ENPOINT@VNIIKI.RU, website – <http://www.ricwto.ru>; <http://www.vniiki.ru>; <http://www.gost.ru>, Tel/Fax: (007 095) 230 2598.

443. Since December 2003, Gosstandart had also launched the "Newsletter (Vestnik) of Technical Regulation", an official publication which contained all notifications of the development and of the end of public discussions on technical regulations, reports of expert commissions on technical regulations, draft legislative acts, and other regulatory legal documents in the area of technical regulation.

444. [The representative of the Russian Federation confirmed that the Russian Federation would conform with the provisions of the Agreement on Technical Barriers to Trade from the date of accession. The Working Party took note of this commitment.]

[to be completed]

Sanitary and Phytosanitary Measures

445. The representative of the Russian Federation stated that protection of human health was currently regulated by Federal Law No. 52-FZ of 30 March 1999 "On Sanitary and Epidemiological Well-Being of the Population"; Federal Law No. 5487-1 of 22 July 1993 "Fundamentals of Health Legislation of the Russian Federation"; "Regulations of the State Sanitary and Epidemiological Service of the Russian Federation" and "Regulations on State Sanitary and Epidemiological Standardization" approved by Government Resolution No. 554 of 24 July 2000; and terms and provisions of other federal laws and resolutions of the Government of the Russian Federation concerning provision of safety of goods and products for human health and environment (e.g. Federal Laws "On Environmental Protection"; "On Consumer Rights Protection"; and "On Quality and Safety of Food Products"). The representative of the Russian Federation stressed that sanitary and phytosanitary measures were implemented by the Ministry of Health and Social Development (MOHSD) and the Ministry of Agriculture (MOA) which were in charge of food safety, protection of human, animal and plant health. Referring to sanitary measures, the representative of the Russian Federation explained that the Ministry of Health and Social Development (Federal Service for Surveillance on Consumer Rights Protection and Human Well-being), which was part of the Department on State Sanitary and Epidemiological Surveillance ("Gossanepidnadzor") (and two other services), was the federal executive authority in charge of ensuring sanitary and epidemiological well-being of the population.

446. Under Russian legislation, the safety of goods produced by domestic manufacturers and imported into the territory of the Russian Federation which constituted a potential danger for human health and the environment was regulated by sanitary rules, norms and hygiene regulations (safety criteria). Sanitary rules, norms and hygiene regulations (criteria) for foodstuffs had to be science-based. Leading scientific-research institutes, departments of medical colleges, and other interested academic and practice institutions were to participate in their elaboration. Pre-existing sanitary rules, norms and hygiene regulations for foodstuffs were being reviewed from the point of view of the need for harmonization and were brought into conformity with directives and recommendations of the Codex Alimentarius Commission (a list of reviewed documents is provided in Annex 1). Sanitary normative legal acts and mandatory hygiene requirements on products, production processes, use, storage, transportation, sale, and utilization were being elaborated to comply with the principles of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures and Federal Law No. 184-FZ of 27 December 2002 "On Technical Regulation". A number of federal laws on technical regulations had been drafted to replace the relevant sanitary rules pursuant with the Federal Law "On Technical Regulation". These draft laws had been published in a Newsletter on Technical Regulation (Vestnik) and placed on the website of Gossanepidnadzor. An open and science-based infrastructure of State sanitary and epidemiological regulations had been created and was now functioning.

447. He added that new sanitary rules and safety criteria were developed based on the findings of comprehensive scientific research and epidemiological studies, as well as monitoring of human health and harmful environmental factors (Article 38 of Federal Law No. 184-FZ of 27 December 2002 "On Technical Regulation"). Sanitary requirements only aimed at ensuring the safety of products and at preventing any threat to human life and health. These requirements were established by reference to the existing international norms, rules, and recommendations, as well as the results of relevant research conducted in other countries. All sanitary and epidemiological requirements were applied uniformly without discrimination to both domestic and imported products and did not, in his view, contradict the provisions of the WTO SPS Agreement. These requirements were performed under Federal Law No. 52-FZ of 30 March 1999 (as amended on 30 June 2003) "On Sanitary Epidemiological Well-Being of Population" (Articles 1, 15, 38) and Federal Law No. 184-FZ of 27 December 2002 "On Technical Regulation" (Articles 7 and 8). Under current legislation, an applicant had the right to appeal a decision of Gossanepidnadzor through administrative or judicial procedures.

448. The procedure for sanitary-and-epidemiological examination of products and for issuing a sanitary and epidemiological approval on the conformity of products with State sanitary and epidemiological rules and norms was established under the "Procedure for Conduct of a Sanitary and

Epidemiological Examination of Products", approved by MOHSD Order No. 325 of 15 August 2001 as amended by Order No. 84 of 18 March 2002. This Order also contained a list of products subject to sanitary and epidemiological examination.

449. He further noted that all products produced in and imported into the territory of the Russian Federation for distribution to the population and use in industry, agriculture, civil construction development, for transport requiring direct human involvement, or for private and household use, had to conform to the requirements of sanitary and epidemiological rules, norms and hygiene regulations (Articles 13, 15, 16 of Federal Law No. 52-FZ). Such conformity was to be confirmed by a sanitary-epidemiological approval or a registration certificate.

450. Sanitary and epidemiological examination of products was conducted prior to the commencement of industrial production in the territory of the Russian Federation, and in the case of imported products prior to the conclusion of the contract to supply products of a specified type or based upon an enquiry of an exporter interested in supplying products to the Russian market. The examination consisted of an assessment of the documentation submitted, the conduct, where necessary, of additional laboratory examination, and the issuance of a positive or negative sanitary and epidemiological approval for a given type of products valid for five years, which could be extended provided there were no violations of the regulations. Applications for a sanitary epidemiological approval had to be submitted to one of Gossanepidnadzor's regional centres authorized to conduct State sanitary and epidemiological surveillance (Gossanepidnadzor). Sanitary and epidemiological approvals were issued once and were valid throughout the territory of the Russian Federation. Imports of products that had not passed a prior hygienic assessment were subject to hygienic examination upon importation. In such cases, hygienic approvals were valid for that particular consignment only. State sanitary and epidemiological surveillance was conducted by the regional centers of Gossanepidnadzor at the stage of distribution of products on Russia's domestic market. Regional Centers of Gossanepidnadzor were subordinated to the Ministry of Health and Social Development of the Russian Federation (the Department of Gossanepidnadzor).

451. He further stated that Government Resolution No. 987 of 21 December 2000, "On State Surveillance and Control in Ensuring Quality and Safety of Foodstuffs" delineated the functions of the authorities and institutions of the State Veterinary Service of the Russian Federation and the State Sanitary and Epidemiological Service of the Russian Federation for the—conduct of expert examinations of animal products. A sanitary and epidemiological approval regarding domestic and imported goods was confirmation of their conformity with the requirements of sanitary legislation. For exportation, importation, and domestic circulation of products, the State Veterinary Service of the

Russian Federation had to certify that animal products were safe from a veterinary viewpoint and complied with veterinary norms and requirements.

452. The representative of the Russian Federation emphasized that Federal Laws No. 52-FZ of 30 March 1999, "On Sanitary and Epidemiological Well-Being of the Population", Federal Law No. 29-FZ of 2 January 2000 "On Quality and Safety of Foodstuffs", and Government Resolution No. 988 of 21 December 2000 "On the State Registration of New Foodstuffs, Materials and Items" imposed uniform requirements when conducting State registration of new foodstuffs, materials and items first produced in the territory of the Russian Federation (Russian goods), and for goods imported into the Russian Federation for the first time. State registration of imported foodstuffs was the competence of the MOHSD. Approval of the MOA was only required for registration of products of animal origin. Sanitary epidemiological assessment and State registration of products constituted a single process. Based on the results of the sanitary epidemiological assessment, a sanitary epidemiological approval, or a registration certificate or if such products were subject to State registration, was to be issued.

453. He further noted that a registration certificate was issued for any type of product for the whole period of industrial production in the case of Russian products, or the period of supplies in the case of imported products. State registration of potentially hazardous substances and types of products was performed by the MOHSD and, in the case of new food products of animal origin, by the MOHSD in conjunction with the MOA (Government Resolution No. 262 of 4 April 2001 "On State Registration of Certain Types of Products Presenting Potential Threat for Human Life and Health and Certain Types of Products First Imported to the Territory of the Russian Federation"; Government Resolution No. 987 of 21 December 2000 "On State Surveillance and Control in Ensuring Quality and Safety of Food Products"; and Government Resolution No.988 of 21 December 2000 "On State Registration of New Food Products, Materials and Items"). Lists of products subject to State registration were attached to the above Government Resolutions. His Government had planned to introduce State registration as from 1 January 2003, but the introduction of such a measure had been rescheduled for 1 January 2004 pursuant to Government Resolution No. 90 of 11 February 2003. In order to substantially reduce the list of products subject to State registration, the MOHSD had elaborated and submitted to the Government draft amendments to Resolution No. 90. Currently, no final decision had been made on the time of introduction of State registration for certain foodstuffs. The requirements and criteria with respect to safety of products for human health and the environment pursuant to Articles 1, 2, 12, 13, 15, 16, 37, 38, 39, 41 and 42 of Federal Law No. 52-FZ were implemented by State sanitary and epidemiological rules and norms which were regulatory legal acts binding all citizens, individual entrepreneurs and legal entities. All sanitary and epidemiological

requirements valid within the territory of the Russian Federation were implemented only through federal rules approved and enacted by the MOHSD.

454. Referring to veterinary measures, the representative of the Russian Federation noted that the activities performed by the State Veterinary Service were regulated by Federal Law No. 4979-1 of 14 May 1993 "On Veterinary Practices", Government Resolution No. 706 of 19 June 1994 on "Regulations on State Veterinary Surveillance in the Russian Federation", Government Resolution No. 830 of 29 October 1992 on "Regulations on the State Veterinary Service of the Russian Federation for Protection of the Russian Territory Against Importation of Infectious Animal Diseases from Abroad"; Government Resolution No. 1263 of 29 September 1997 on "Regulations on the Procedure for Examination of Low Quality or Hazardous Food Inputs and Products, Their Use and Destruction"; "Regulations on Division of Functions of State Veterinary Surveillance in Processing and Storage Enterprises of Animal Products" No. 13-7-2/173 of 14 October 1994 approved by the Chief State Veterinary Inspector of the Russian Federation; Government Resolution No. 987 of 21 December 2000 "On State Surveillance and Control in Ensuring Quality and Safety of Food Products" and Government Resolution No. 26 of 18 January 2002 "On the State Registration of Feedstuffs Received from Genetically Modified Organisms"; Instruction No. 13-7-2/871 of 12 April 1997 "On the Procedure for Issuance of Veterinary Accompanying Documents for Cargoes Controlled by the State Veterinary Surveillance Agency" approved by the Ministry of Agriculture of the Russian Federation; and other legislative documents, notably Federal Law No. 184-FZ of 27 December 2002 "On Technical Regulation", Federal Law No. 29-FZ of 2 January 2000 "On Quality and Safety of Foodstuffs", Federal Law No. 134-FZ of 8 August 2001 "On Protection of Rights of Legal Entities and Individual Entrepreneurs for the Purposes of State Control (Surveillance) Procedures".

455. The procedure for lodging appeals against decisions taken by officials of the State Veterinary Service could be performed, in a subordinate manner, by a veterinary inspector of a lower authority to a veterinary inspector of a higher authority and the Chief State Veterinary Inspector of the Russian Federation. Appeals against decisions taken by the Chief State Veterinary Inspector of the Russian Federation had to be performed in accordance with the legislation in force.

456. He further noted that the Russian Federation had agreements on veterinary certificates for most types of animal products with the State veterinary services of many exporting countries. Exports of animal products under approved veterinary certificates ~~was~~ were not a mandatory procedure for exporting countries. In the absence of approved veterinary certificates, animal products were exported to the Russian Federation under general veterinary certificates based on veterinary requirements in respect of imports of animal products listed in the letter of the State Veterinary

Service No. 13-8-01/1-1 – 3-7 of 23 December 1999. Veterinary certificates contained guarantees of the State Veterinary Service of the exporting country that the products fulfill the terms and conditions of import. The certificate also included information on the situation in the exporting country at the moment of export of products and raw materials of animal origin to the Russian Federation with regard to highly dangerous animal diseases such as foot-and-mouth disease, cattle plague, African swine fever, etc. The certificate should also confirm the absence of such diseases. The requirement imposed by the State Veterinary Service to foreign countries to confirm the absence of some diseases was justified by the fact that these diseases did not exist in all Russian regions and that the Russian Federation carried out Programmes of prevention and termination of such diseases. In his view, the requirement did not contradict the WTO SPS Agreement nor the Code of the International Epizootics Office (IEO) (Paragraph 1.2, Chapter 1.2.1). The actual import conditions were contained in the veterinary certificate. The list of products subject to controls by the State Veterinary Service (Letter No. 13-8-01/3009 of 16 May 2000 of the Veterinary Department of the Ministry of Agriculture) had been compiled in accordance with the Goods Nomenclature of Foreign Economic Activity and only included those items which were a potential source of infectious animal diseases or poisoning, and thus a threat to human and animal security and health. International veterinary cooperation was carried out on the basis of bilateral cooperation agreements and the Code of the International Epizootics Office (IEO). Veterinary and sanitary measures were non-discriminatory and identical for all exporting countries.

457. For imports and transit of controlled cargoes regulated by the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), an additional permit from the CITES agency in the exporting country was required in addition to the required documents (CITES agencies were the Ministry of Natural Resources and the State Committee of the Russian Federation for Fishery – for sturgeon fish species). Imports and exports of pedigree animals, apart from the authorization from the Chief State Veterinary Inspector of the Russian Federation and veterinary certificate, required an "extract from the State registry of selection achievements allowed for use with respect to the imported plant seeds, pedigree animals" for imports, and "confirmation of compliance with the requirements with respect to protection of patent holder rights with respect to the exported plant seeds, pedigree animals" for exports, signed by the Deputy Minister of Agriculture of the Russian Federation. Imports of veterinary preparations were regulated by Government Resolution No. 1539 of 25 December 1998 "Regulations on Imports into and Exports from the Russian Federation of Medicines and Pharmaceuticals". Imports of cargoes controlled by the State Veterinary Surveillance Agency were restricted to designated cross-border checkpoints at railway and car stations, at seaports, airports and other specially equipped places open for international communications and having cross-border veterinary checkpoints installed.

458. For countries with a bad epizootic situation with regard to transmissible animal diseases, a mutual understanding could be achieved contemplating the presence of Russian Veterinary Inspectors to control compliance of raw meat consignments intended for shipment to the Russian Federation with Russian Federation veterinary requirements. The Russian Veterinary Inspector would decide whether a particular meat consignment was eligible for shipment to the Russian Federation based on the epizootic situation, the conditions of processing and storage of meat in the exporting country. Consignments so inspected avoided any delays at cross-border or return to the exporting country.

459. International transit of cargoes controlled by the State Veterinary Service through the Russian Federation was conducted in accordance with the provisions of the International Epizootics Office's International Veterinary Code. No written authorization from the Chief State Veterinary Inspector of the Russian Federation was required for international transit of raw produce and products of animal origin through the Russian Federation. When crossing the border of the Russian Federation the cargo was inspected by the State Veterinary Inspector of the appropriate cross-border surveillance veterinary checkpoint. International transit of live animals through the Russian Federation required written authorization from the Chief State Veterinary Inspector of the Russian Federation, on the basis of a request from the central veterinary authority of the importing country, indicating the points of import, export, route, stops, transfers, animal feeding and watering sites (Chapter 1.4.3 of the International Veterinary Code of the International Epizootics Office (OIE)). The main purpose of the existing procedure for international transit of live animals was to protect the territory of the Russian Federation from importation of various diseases and to prevent, to the maximum extent possible, the spread of such diseases during transportation of the animals through the territory of the Russian Federation, the unloading for rest, feeding, watering, collection and disposal of manure, bedding, etc.

460. Referring to phytosanitary measures, the representative of the Russian Federation noted that policies and regulations on plant quarantine were determined by the Ministry of Agriculture (its State Service for Quarantine of Plants or Rosgoskarantin). Import quarantine permits were issued under Government Resolution No. 268 of 23 April 1992 "On State Service for Quarantine of Plants in the Russian Federation", as amended and supplemented by Government Resolution No. 1143 of 1 October 1998. The list of products subject to phytosanitary controls in accordance with the Goods Nomenclature of the Foreign Economic Activity of the Russian Federation was provided in the "Nomenclature of Main Types of Products, Cargoes and Materials (Goods) Subject to Quarantine, for which imports into and exports from the Russian Federation required authorization by the agencies of the State Service for Quarantine of Plants of the Russian Federation", approved by the Ministry of Agriculture on 19 March 1999 (as amended on 25 December 2001).

461. Imports to the Russian Federation of products subject to quarantine required an import quarantine permit. Should the imported regulated products be intended for several regions, the import quarantine permit was issued by State Service for Quarantine of Plants of the Russian Federation. When only one region was targeted, the import quarantine permit was issued by the respective regional State service for quarantine of plants. Applications for an import quarantine permit were required to state the product in question, the country of origin, the exporting country, volume, time-frame for importation, destinations, and cross-border checkpoints. The import quarantine permit indicated the phytosanitary requirements for the products subject to quarantine. Each consignment of products subject to quarantine had to be accompanied by a phytosanitary certificate confirming the phytosanitary state of the product to conform to the conditions specified in the import quarantine permit. Phytosanitary certificates were issued by agencies of the State service in charge of plant quarantine in the exporting country. Phytosanitary measures maintained by the Russian Federation were based on the recommendations and principles of the International Plant Protection Convention (Rome, 1951, 1997) that the Russian Federation had acceded in its revised version, as well as those of the European and Mediterranean Plant Protection Organization (to which the Russian Federation (USSR) was a member since 1957 and an executive member since 1997).

462. The representative of the Russian Federation stated that pursuant to Federal Law No. 184-FZ of 27 December 2002 “On Technical Regulation” mandatory requirements applied to products would be contained in new technical regulations (general and special). Amendments would be made to the relevant legislation in order to bring it in compliance with the mentioned above Federal law. A list of normative legal acts pending amendments, technical regulations which were being elaborated as well as the time-frame for such amendments and elaboration of technical regulations were contained in the Inter-Agency Programme of Measures. The provisions of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures such as “the stand-still principle”, a single enquiry point, transparency, preparation of notifications, publication of measures taken in order to ensure the possibility of relevant comments, providing an adequate time period for comments, scientific evidence for the measures taken, and risk assessment, non-discrimination in trade and others were already envisaged in Federal Law No. 184-FZ of 27 December 2002 “On Technical Regulation”. In order to implement the provisions of the Federal Law “On Technical Regulation”, the Government had passed the following Resolutions elaborated by Gosstandart jointly with the interested ministries:

- Resolution on the procedure for publication and the amount of fees for publication of a notification of the development, discussion, and expert review of a draft technical regulation, draft legislative acts, and other regulatory legal acts on technical regulations (No. 673 of 5 November 2003)

- Resolution on the federal data bank of technical regulations and standards and the single information system on technical regulation (No. 500 of 15 August, 2003)
- Resolution on the establishment and functioning of expert commissions for technical regulation (No. 513 of 21 August 2003).

463. Since the entry into force of Federal Law No. 184-FZ of 27 December 2002 "On Technical Regulation" on 1 July 2003, technical regulations or, if they had not been adopted by 1 July 2010, requirements on products, production processes, use, storage, transportation, sale and utilization established by the normative legal acts of the Russian Federation and regulations of federal executive bodies were to be applied only to the extent as they protected human health, the environment, and animal and plant life and health, and in order to prevent actions which could mislead consumers (Article 46 of the Federal law).

464. He added that Russian legislation on technical regulation comprised Federal Law No. 184-FZ of 27 December 2002 "On Technical Regulation" and federal laws and other normative legal acts of the Russian Federation adopted in accordance with this law. Provisions of federal laws and other normative legal acts which concerned the application of Federal Law No. 184-FZ (inter alia, those which directly or indirectly provided for performing control (surveillance) over observance of technical regulation requirements) were to fully comply with Federal Law No. 184-FZ (Articles 4.1 and 4.2). For this reason, all legislation on sanitary and phytosanitary measures was currently being analyzed with a view to bring it in compliance with Federal Law No. 184-FZ, the requirements of which were based on the provisions of the Agreement on the Application of Sanitary and Phytosanitary Measures.

465. He further noted that all regulatory legal acts related to sanitary measures had to be published in official editions : Rossiyskaya Gazeta (the Russian Newspaper), the Bulletin of regulatory acts of Federal Executive Authorities of the Administration of the President of the Russian Federation (Presidential Decree No. 763 of May 23, 1996 "On the Procedure for Publication and Taking Effect of Acts of the President of the Russian Federation, the Government of the Russian Federation, and Regulatory Legal Acts of Federal Executive Authorities"); the Bulletin of regulatory documents and guidelines of Gossanepidnadzor of the Ministry of Health and Social Development of the Russian Federation; and various specialized scientific journals and manuals (Nutrition Care, Health Care at Workplace, Radiation Hygienics, Toxicology Newsletter, etc.). Draft sanitary rules were published in the Newsletter of the Russian Enquiry Point and specialized journals. Regulatory documents took effect no earlier than three months after their approval, unless a direct threat to human health and life was involved.

466. New legislation and regulations concerning veterinary measures after approval were published in the journals "Veterinary Science and Practice", "Veterinary Newspaper", the newspaper "Veterinary Consultant", and other special publications. Since December 2003, Gosstandard had been publishing an official "Newsletter (Vestnik) of Technical Regulation", which contained all notifications concerning the development and end of public discussions on technical regulations, reports of expert commissions on technical regulations, draft legislative acts, and other regulatory legal documents in the area of technical regulation. A specialized single Information Center (Enquiry Point) for TBT/SPS (WTO RIC (SPS/TBT)) ensuring transparency of veterinary, sanitary, and phytosanitary measures and providing access to relevant documentation had been set up and was functioning (<http://www.ricwto.ru>).

467. Noting that the information provided above constituted a useful compendium of current practice in the Russian Federation, members of the Working Party felt that this information was still insufficient to assess to what extent the current regime was consistent with WTO provisions. More information on currently applied phytosanitary measures was also required. In this connection members stressed that lack of clarity in the way in which the Russian Federation proposed to ensure that its SPS regime, as in case of any other NTMs, could prevent bilateral market access negotiations being effectively pursued. While recognizing that the Russian Federation was taking steps to strengthen its SPS regime and bring it into compliance with WTO rules, members further considered that there was still substantial work ahead for the Russian Federation to develop a predictable, transparent, and science-based regulatory system that would ensure due legal process and sustained adherence to international obligations. In practice this could be attained by achieving compliance with WTO obligations, particularly regarding the following principles of the SPS Agreement: transparency of measures through information to other WTO Members; consistency, coherency and proportionality of measures; non-discriminatory nature of measures, including the need for requirements affecting imports not to be more restrictive than those affecting domestic production; adoption of international standards set by Codex, OIE and IPPC for import rules (the rules must be based on transparent scientific risk assessment in case they go beyond the international standards, or where no international standards exist); applications of the principles of regionalisation; and, acceptance of certificates and other guarantees given by a third country (including the European Union) competent authorities as the basis for imports. Members stressed that the Russian Federation needed to bring its legislative and regulatory procedures into compliance with WTO requirements, and provide the necessary legislative acts and documentation to demonstrate how these current deficiencies would be addressed. They considered that an update of the Russian Federation SPS Action Plan would be particularly helpful at this stage of work.

468. In response, the representative of the Russian Federation provided detailed information on the current and planned SPS regime in notes “Sanitary and Phytosanitary Regulation in the Russian Federation” circulated to the Working Party as Job No. 366, Non-Paper of 18 January 2002, “Sanitary and Phytosanitary Measures” submitted by the Russian Federation - Job No. 2560.3, Non Paper No. 26 of 1 April 2003, and Checklists of Technical Barriers to Trade and Sanitary and Phytosanitary Issues in the Accession of the Russian Federation to the WTO – WT/ACC/SPEC/RUS/13/Rev.3 of 18 October 2002, as well as Annexes 1 and 2 of WT/ACC/SPEC/RUS/29/Add.1 of 21 January 2003.

469. In response, some members of the Working Party stated that they required additional information on new legislation in order to determine how key aspects of the SPS Agreement would be met. Those members requested that the Russian Federation explain how it was possible that all those measures were applied only to the extent necessary to protect human, animal or plant health, and the conduct of risk assessment in that regard. Those members noted that insufficient explanation had been provided for the multiple certification requirements were currently applied to animal products imported into the Russian Federation in terms of the requirements of Article 2 of the Agreement on SPS. Those members also raised concerns with respect to measures (such as testing or conformity assessment) applied to imports that were more restrictive than measures applied to domestic production, despite similar or identical conditions, in apparent inconsistency with the requirements of Article 2.3 of the Agreement on SPS, for example, in relation to certification required of dairy products. Some members of the Working Party also sought additional clarifications of the steps that would be taken by the Russian Federation to ensure that it met the transparency and notification requirements of the Agreement on SPS from the date of accession to the WTO. Those members stated that their concerns related also to insufficient or inadequate periods for notification of new or amended measures, which in effect did not allow time for producers to adjust to new conditions. Those members also repeated their concerns that the Russian Federation did not meet the requirements of Article 6 of the Agreement on SPS.

470. Some members raised concerns about the assessment of risks of certain measures, for example the use of salt as a preservative for fish exports. Those members also raised concerns about the lack of policies to accept equivalent measures of WTO Members, or that in certain cases the Russian Federation required frequent access to inspection and testing establishments within the territory of WTO Members.

471. Members of the Working Party sought a commitment that the Russian Federation would fully apply the WTO Agreement on SPS upon accession.

472. [The representative of the Russian Federation confirmed that the Russian Federation would conform with the provisions of the Agreement on the Application of Sanitary and Phytosanitary Measures with recourse to a transitional period of three years from the date of accession to the WTO. The Working Party took note of this commitment.]

[to be completed]

Trade-related Investment Measures (TRIMs)

473. Members requested information on TRIMs addressing measures in place, particularly with respect to production sharing agreements and the investment-promoting legislation for the automotive sector.

474. In response, the representative of the Russian Federation said that the following laws and regulations were relevant for the consideration of the question of consistency of the Russian legislation with the provisions of the TRIMS agreement: Federal Law No. 225-FZ, of 30 December 1995 "On Production Sharing Agreements" (as amended of 6 June 2003); Presidential Decree No. 135 of 5 February 1998 "On Additional Measures to Attract Investments for Development of Domestic Car Making"; and Resolution of the Government of the Russian Federation No. 413 of 23 April 1998 "On Additional Measures to Attract Investments for Development of Domestic Car Making".

- Production Sharing Agreements

475. The representative of the Russian Federation noted that the Federal Law No. 225-FZ of 30 December 1995 "On Production Sharing Agreements" (as amended of 06 June 2003) set out the legal framework for relations arising in the course of Russian and foreign investment in search, exploration and mining of minerals in the Russian Federation. A "production sharing agreement" was a contract in which the Russian Federation provided to an investor, in consideration for value received and for a limited term, exclusive rights to perform search, exploration and mining of minerals in a subsoil plot specified in such agreement and any related works, and the investor undertook to perform the said works at his own risk and expense. The rights and obligations of the parties to a production sharing agreement were governed by the Russian Federation's civil legislation. The term of the Agreement was defined by the parties in compliance with the legislation of the Russian Federation applicable as of the date of the Agreement's conclusion.

476. Federal Law No. 225-FZ of 30 December 1995 "On Production Sharing Agreements" (as amended of 06 June 2003) also contained the requirement that the Parties include in such an

agreement an obligation to buy no less than 70 per cent of Russian technical equipment for natural resources extraction, their transportation and processing.

477. The representative of the Russian Federation also noted that the production sharing agreements concluded before the entry into force of Federal Law No 225-FZ - except the Production sharing agreement on Chayvinskoe, Odoptinskoe and Arkutun-Daginskoe oil and gas condensing fields (Sakhalin-1) - contained provisions according to which a company or an operator could give preference to Russian equipment while realizing projects.

478. The representative of the Russian Federation noted that Federal Law No. 225-FZ of 30 December 1995 "On Production Sharing Agreement" (as amended of 6 June 2003) was applicable to agreements concluded prior to the entry into force of Federal Law No. 225-FZ only to the extent that the law did not conflict with the provisions of these production sharing agreements.

479. Three production sharing agreements had been concluded and were implemented:

- (a) Production sharing agreement on Chayvinskoe, Odoptinskoe and Arkutun-Daginskoe oil and gas condensing fields (Sakhalin-1). This agreement had been concluded in 1995 and was valid for 25 years (extendable);
- (b) Production sharing agreement on Piltun-Astokhskoe and Lunscoe oil and gas fields (Sakhalin-2). This agreement had been concluded in 1994 and was valid for 25 years (extendable);
- (c) Production sharing agreement on oil-field development and oil production on Kharyaguinskoe oilfield. This agreement had been concluded in 1995. It was valid for 20 years and could be extended for a further 13 years.

480. Although the agreement on exploration of the southern part of the Samotlorskoe oil and gas condensing field had been concluded between the Government of Russian Federation, the Administration of Hanty-Mansijsk region and Joint Stock Company "Samoltorneftegaz" it had not yet been executed.

481. Pursuant to Federal Law No. 225-FZ of 30 December 1995 "On Production Sharing Agreement" (as amended of 06 June 2003), an Agreement whose provisions had not entered into force within one year after signature of the Agreement, would be terminated on the expiry of that period, i.e. the special procedure for calculating and paying taxes and fees established by the Tax Code and other acts of taxation of the Russian Federation for this agreement would not be applied and this field's exploration would be realized on common terms of taxation, without recourse to provisions of Federal Law No. 225-FZ.

- **Domestic car-industry**

482. The representative of the Russian Federation noted that Presidential Decree No. 135 of 5 February 1998 "On Additional Measures to Attract Investments for Development of Domestic Car Making", and Government Resolution No. 413 of 23 April 1998 "On Additional Measures to Attract Investments for Development of Domestic Car Making" permitted automobile and spare parts production within a "bonded warehouse" under special conditions. These acts covered projects with investments of no less than 1500 millions Rubles and established that:

- the share of costs incurred in Russia after 5 years of the project life had to account for no less than 50 per cent of production costs of the end-product;
- the Government of the Russian Federation annually determined the amounts of quotas within which the goods produced in a "bonded warehouse" could be exported customs free to the rest of the Russian territory. Customs payments on imports from the territory of a "bonded warehouse" zone into the rest of the Russian territory exceeding such quota were made on normal terms;
- in order for cars imported into the Russian territory from a "bonded warehouse" to qualify as a product originating from the Russian territory and benefiting from duty free treatment, the components used for the production of such car had to represent no less than 50% of the value of the final product at the end of the fifth year until the end of the investment agreement. Components which were not recognized as originating from the Russian Federation when imported into the main territory of the Russian Federation from warehouse and subject to the customs legislation of the Russian Federation, and components of foreign origin, which had been used in their manufacture, were applied customs fees at the rates applied to means of automotive transportation and automotive components which had been in effect at the moment of their importation from free warehouse to the main territory of the Russian Federation.

The term of these preferences could not be extended beyond the investment project period, and could not be longer than seven years. This term was calculated from the date of granting a "bonded warehouse" license. In accordance with these acts four investment agreements had been concluded:

- with the Finance and Industry Holding "Doninvest" for the production development on SC "Taganrog car plant" (agreement concluded in 1999);
- with the Russian-French firm JSC "Avtoframos" (agreement concluded in 1999, but no preferences granted);
- with the Russian-American firm SC "Ford Vsevolzhsk" (pursuant to Government Resolution No. 259-r of 17 February 2000, the State Customs Committee granted a "bonded warehouse" license valid for 7 years);
- with the Russian-Italian firm SC Nizhegorod Motors (agreement concluded in 1998).

483. These agreements provided for car assembly units in the Russian Federation by the companies "Daewoo", "Renault"; "Ford Motors" (US) and "FIAT", respectively. The agreements with

“Renault” and “FIAT” cars had not been pursued yet. The agreement with “Daewoo” car had been in force for two years but had been invalidated in 2001. The agreement with “Ford Motors” was still in force. There were plans to conclude a similar investment agreement with the Joint Stock Company “GM-Avtovaz”. Russian legislation did not require foreign car-manufacturers party to the agreement to be incorporated in the Russian Federation. In response to further questions, the representative of the Russian Federation stated that, although those agreements contained common requirements to use domestically produced goods in the production process, the Government of the Russian Federation would be willing to consider freezing conclusion of new agreements which contained provisions of such kind after its accession to the WTO.

- **Aircraft area**

484. In response to members of the Working Party's concerns regarding the aircraft sector, the representative of the Russian Federation noted that Government Resolution No. 574 of 2 August 2001 "On Certain Issues of Regulation of Temporary Imports of Aircraft" superseded Government Resolution No. 716 of 7 July 1998 "On Additional Measures of State Support for Civil Aviation in Russia" and terminated the full exemption from customs duties and taxes for temporary import for aircraft, spare parts and engines and simulators which were imported under investment agreements. No investment agreements had been concluded since the adoption of Government Resolution No.574 of 2 August 2001 "On Certain Issues of Regulation of Temporary Imports of Foreign Made Aircraft".

485. Some members considered that the investment regime for the car sector as well as the regime for Production Sharing Agreements contained local content requirements which could be considered inconsistent with the TRIMs Agreement. While noting that existing programs might be terminated or modified, several members requested confirmation that the Russian Federation would eliminate any existing TRIMs upon accession.

486. [The representative of the Russian Federation confirmed that, from the date of accession, the Russian Federation would eliminate and would not maintain any measures inconsistent with the WTO Agreement on Trade-related Investment Measures (TRIMs), and would apply this Agreement without recourse to any transition period.]

487. [The representative of the Russian Federation confirmed that, from the date of accession, the Russian Federation would conform with the provisions of the Agreement on Trade-Related Investment Measures, and in particular would not conclude new agreements with foreign investors which contain provisions contrary to those prohibited by the TRIMS Agreement. The Working Party took note of this commitment.]

State-trading enterprises

488. The representative of the Russian Federation said that under Article 26 of Federal Law No. 164-FZ of 8 December 2003 "On the Fundamentals of the State Regulation of the Foreign Trade Activity", an exclusive right to export and/or import certain types of goods could be granted to some organizations. The list of organizations (as well as types of goods) to which such rights should be granted was determined by federal laws. The exclusive right to export and/or import should be implemented through licensing.

489. Pursuant to Article 26, enterprises which had been granted exclusive or special rights or privileges to export and/or import certain types of goods were required to act in a non-discriminatory manner and in accordance with commercial considerations.

490. The representative of the Russian Federation confirmed that his authorities considered that only two State-trading enterprises in the Russian Federation were required to be notified pursuant to the notification requirements of Article XVII of the GATT 1994. Those enterprises and the product/products which had special powers or privileges were: the Russian Joint Stock Company (RJSC) Gazprom – natural gas; the Russian Joint Stock Company (RJSC) UES of Russia – electricity; and the State Enterprise (SE) Almazyuvelir Export Foreign Trade Association – raw materials containing platinum and platinum group metals. The enterprises, which had been granted exclusive or special rights or privileges in the exercise of which they influenced, through their purchase or sales, the level or direction of imports or exports, made their purchases and sales on the basis of commercial considerations. In the view of the Russian Government, there were no other enterprises in the Russian Federation, either State-owned or privately-owned, which had been granted, formally or in effect, exclusive or special rights or privileges, including statutory or constitutional powers in the exercise of which their purchases or sales might influence the level or direction of imports or exports. Regarding the Russian Joint Stock Company (RJSC) Gazprom – (natural gas) the representative of the Russian Federation noted that in his opinion Gazprom could not be considered as a state trading enterprise since it was not neither a monopoly and did not have exclusive or special rights or privileges. Detailed information on enterprises which could be considered as state-trading enterprises is contained in document WT/ACC/RUS/18, subsequently revised in document WT/ACC/RUS[...] (to be circulated).

491. Some Members of the Working Party requested additional information on the special privileges accorded "unitary enterprises". Some Members stated that the Russian Federation should consider entering a commitment to ensure that the requirements of Article III and XVII of the GATT 1994 were fully met from the date of accession.

492. In response to further questions concerning "unitary" enterprises the representative of the Russian Federation stated that, by definition, those enterprises were not State trading enterprises as they operated as commercial enterprises, and did not enjoy any privileges in the sense of Article XVII of the GATT 1994. A State (or municipal) unitary enterprise was a form of legal entity aimed at making profit. Its activity was based on commercial considerations. Pursuant to Article 113 of the Civil Code of the Russian Federation, the only characteristic that distinguished a State (or municipal) unitary enterprise from other forms of commercial organizations was that it did not own the property assigned to it. The property of State (or municipal) unitary enterprises was State-owned (or municipal-owned) and had been assigned to it by right of economic or operational management. The Russian legislation in force did not envisage any special rights or privileges to be granted specifically to State (or municipal) unitary enterprises by virtue of its status. The civil legislation of the Russian Federation prohibited the State from interfering with the commercial activities of both commercial and non-commercial organizations.

493. Some Members were particularly concerned that the pricing practices followed by Gazprom (about 38% State owned), which they considered to be a state-trading enterprise, could not be regarded as being based on commercial considerations. Specifically, sales for export were subject to controls in relation to quantity and price, and the sale of gas for domestic industrial consumption was at a price level considerably below that applied for exports which were linked to the prevailing world market price. Artificially low domestic energy prices could also lead to indirect subsidization of downstream industries and to exports of value-added intermediate and finished goods at prices below their normal value. In this context, those Members noted that the cost of producing natural gas for Gazprom, had been estimated to be approximately US\$ 41 per tcm compared to controlled domestic prices of US\$ 16 per tcm. In light of these facts, those Members requested an explanation as to how Gazprom was selling in the domestic market "solely in accordance with commercial considerations" as required by Article XVII:1(b) of the GATT. Those members noted that Gazprom, or its subsidiaries, also appeared to be a participant in the fertilizer industry.

494. The representative of the Russian Federation replied that the export price for gas was not regulated by the Government; the prices and quantities for deliveries of gas for exports were those which were negotiated between supplier and buyer. The Government determined only the principles of calculating the tariffs for gas transportation by gas-transporting systems and prices of natural gas for sale on the wholesale market in the Russian Federation. As regards prices for internal consumption, they were established at the level which reflected supply and demand, where any increase of price could lead to the inability of consumers to pay and hence to decrease sales with respective fall of profits for suppliers. As for the rest, Gazprom determined the levels of internal

calculated prices and payment procedures for gas supply independently. The representative of the Russian Federation also noted that in 2004 the cost of natural gas for Gazprom was US\$28 per tcm while domestic wholesale prices (VAT excluded) amounted to US\$32 per tcm and domestic retail prices (VAT excluded) to US\$36 per tcm. He also mentioned that similar approaches towards regulation of prices for gas were used by WTO Members. Furthermore, according to Annex 1 to the GATT 1994 (Notes and supplementary provisions), the provisions of Article XVII of the GATT 1994 did not preclude the application, by a State enterprise, of different prices for the sales of its products on different markets, provided that such prices were charged for commercial reasons to meet the conditions of supply and demand on export markets. He added that, in his opinion, Gazprom's commercial activity was fully in line with Article XVII of GATT.

495. Some Members of the Working Party further stated that in addition to the significant trade distortion which these pricing practices could cause, they were concerned that current prices to domestic industrial customers could take place at rates that did not ensure "adequate remuneration" as provided for under Article 14(d) of the WTO Agreement on Subsidies and Countervailing Measures and thus would confer a benefit to domestic industrial users. Accordingly, in the absence of further information, it was difficult to understand the assertion that those enterprises operated on the basis of commercial considerations. More generally, Members observed that this situation gave rise to questions as regards its compatibility with WTO requirements, not only in relation to Article XVII but also in relation to Articles XI and XVI of the GATT 1994 and the WTO Agreement on Subsidies and Countervailing Measures. These Members invited the Russian Federation to provide further information on the operation of these enterprises, particularly as regards the manner in which prices were set for the export of natural gas, and how those pricing structures were consistent with the suggestion that those enterprises operated under commercial considerations. In response, the representatives of the Russian Federation noted that gas prices and tariffs on gas transportation services, or their marginal levels were set at the rate that ensured:

- Cost-recovery of economically valid costs associated with gas extraction, transportation, processing, distribution and supply (sale);
- Incorporation into regulated prices of all taxes and other mandatory payments pursuant to the Russian Federal law;
- Valid profit gains;
- Investment – corporate owners' of funding possibilities regarding gas supply networks, extending gas recovery operations, gas pipelines, and underground gas storage facilities;
- Meeting solvent gas demand – attaining a balance of buyers' and gas suppliers' economic interests;

- As primary data for calculating gas prices and gas transportation tariffs, an estimated output of goods/services and projected total receipts were used.

496. Some Members expressed concerns about the activities of the State-owned telephone company Svyazinvest, in particular that it had used its influential market position to require its Russian cable suppliers to procure optical fibre from a single supplier based on that supplier's agreement to produce cable in the Russian Federation at a later date. Those Members were of the view that such conduct was not consistent with commercial considerations as specified in Article XVII of the GATT 1994.

497. In response to the concerns about Svyazinvest's actions, the representative of the Russian Federation stated that JSC Svyazinvest had been established under Presidential Decree No. 1989 of 10 October 1994 "On the Specific Aspects of State Management of the Electric Communication Network for General Use of the Russian Federation" and Government Resolution No. 1297 of 11 November 1994 "On Establishing Joint-Stock Company "Svyazinvest" in order to attract additional investments for the development of the general electric communications network of the Russian Federation. JSC Svyazinvest had been established as a result of the consolidation of federal-owned shares of joint-stock electric communication companies which had been set up during the privatization process of electric communication State enterprises. At the time of the establishment of the JSC Svyazinvest 100 per cent of its shares were federal-owned. The State had been the sole shareholder of the company until mid 1997. Currently, the State was the main but not the sole share-holder of "Svyazinvest" - 25% of the shares +1 had gone to Mustcom. Ltd.

498. JSC Svyazinvest coordinated the work of its subsidiaries to facilitate the dynamic and proportionate development of an electric communication grid in the Russian Federation. The Company did not take part in its subsidiaries' activities on purchasing of equipment. The company was mostly engaged in rendering services in the telecommunication sector, which fell within the scope of application of the GATS. Thus, no exclusive or special rights or privileges were granted to the JSC Svyazinvest within the meaning of Article XVII of the GATT 1994.

499. In response to questions from Members regarding JSC Alrosa's privileges with respect to exports of raw diamonds, the representative of the Russian Federation clarified that Presidential Decree No. 1373 of 30 November 2002 "On the endorsement of regulation on imports in and exports from the Russian Federation of raw natural diamonds and cut diamonds" (entered into force on 6 February 2003) had abolished all exclusive rights of Alrosa. At present, Alrosa had no exclusive or special privileges and was not a State-trading enterprise.

500. Some Members requested further information on the role of marketing enterprises such as Exportkhleb, Prodintorg, and Roskhleboprodukt in agricultural trade, and a description of the legislation that had specifically ended the special rights and privileges that these organizations had traditionally received as monopoly trade or marketing entities. These Members also asked for further information on the extent to which the Russian Federation's agricultural trade was still conducted through inter-governmental agreements between the Russian Federation and other countries, especially CIS countries, and on whether any government-to-government barter arrangements were still in place.

501. The representative of the Russian Federation noted that some enterprises (Roschleboprodukt and Roscontract) had been granted exclusive and special rights in 1993 and 1994 in the context of bilateral barter trade with some CIS countries performed under the framework of special intergovernmental agreements for those calendar years. Such exclusive rights had expired completely on 31 December 1995 when the agreements expired and had never been resumed. At present, the Russian Federation did not conduct barter trade with any of the CIS countries.

502. Regarding the concerns of some Members in respect of the special export regime for wheat exported to Ukraine, the representative of the Russian Federation stated that a special intergovernmental Agreement on export supplies of wheat to Ukraine from August to October 2003 had been concluded in August 2003. This agreement was not concerned with barter trade. Under the Agreement, the State unitary enterprise "Federal Agency on the Foods Market Regulation" had been entitled to conclude contracts on wheat supply in accordance with the Agreement. However, these rights had expired upon termination of the supply periods, as defined in the Agreement.

503. The representative of the Russian Federation noted that under Government Resolution No. 1224 of 26 September 1997 "On the Foundation of the State Unitary Enterprise – the Federal Agency for Food Market Regulation by the Ministry of Agriculture and Food of the Russian Federation", the Federal Agency for Food Market Regulation had replaced the Federal Food Corporation with a modified institutional and legal framework. The mission of the Agency was to develop and regulate the market of agricultural products. Pursuant to Resolution No. 1124, the agency was a commercial organization established in order to meet social needs and make profit. Its main activities included:

- monitoring the current state of the agricultural, raw materials, and foodstuffs market, creating a system providing informational support to market entities , analyzing and forecasting the situation on the market;

- boosting competition in purchase and sale of agricultural products, raw materials, and foodstuffs;
- organizing and carrying out purchase and sale-related intervention in order to promote stability on the market of agricultural products, raw materials, and foodstuffs;
- ensuring guarantees in carrying out operations with agricultural products, raw materials and foodstuffs;
- performing the functions of the state purchaser on establishing the operative reserve of the Government of the Russian Federation and performing deliveries to polluted territories.

504. Pursuant to Government Resolution No.756 of 11 October 2002 “On Performing in 2002-2003 State Purchase Interventions for Regulation of the Grain Market” in 2002-2003, the Federal Agency was entitled to organize and perform state purchase interventions of grain crops produced in the territory of the Russian Federation in 2002. The products purchased thereby formed the reserves of the intervention fund. Pursuant to Government Resolution No.580 of 30 August 2001 “On Approving the Rules of Exercising State Purchase and Sale Intervention for the Regulation of the Market of Agricultural Products, Raw Materials, and Foodstuffs”, reserves of the intervention fund had being recognized as State property to be sold and used upon decision of the Government. Thus, pursuant to Government Resolution No. 44 of 30 January 2004 “On Performing State Goods Interventions on the Grain Market in 2004”, grain purchased in 2002-2003 through state purchase interventions was to be sold through auctions to flour-and-cereals industry organizations for subsequent processing. It was not subject to exportation. Thus, the federal state unitary enterprise “Federal Agency for the Regulation of the Foodstuffs Market” had no special or exclusive rights and privileges, which could affect the amount and direction of import/export and, consequently, was not a State trading enterprise within the meaning of Article XVII of the GATT 1994.

505. Regarding concerns of some Members that enterprises which were selling alcohol were given exclusive rights, the representative of Russian Federation stated that Russian legislation provided the possibility, for some enterprises, of obtaining exclusive rights for export/import of ethyl spirit. According to Article 9 of Federal Law No.171-FZ of 22 November 1995 “On state regulation of producing and turnover of ethyl spirit, alcoholic and spirit containing production”, only unitary enterprises and organizations in which the State possessed at least 51% of the shares were entitled to export and import ethyl spirit if they had appropriate licenses for carrying out of such activity. Nevertheless, no licenses for exportation/importation of ethyl spirit had been released during the past few years. Consequently, at present, none of these enterprises was using any exclusive or exceptional rights to export/import ethyl spirit.

506. Several members requested further information regarding a recent government resolution that imposed licensing requirements on procurement, processing, storing, and marketing of grain and grain products for state needs, as well as on production of most grain products (bread, flour, etc.), and clarification on the purpose of these licenses and on whether both foreign and domestic companies were subject to them. Concerning reports that 150 bankrupt grain facilities (mills, storage facilities, etc.) had been reverted to state control, some members requested clarification on how this process was being implemented and what role the Government would play in the operation and management decisions of these facilities. In addition to listing state-trading enterprises, these members also asked for confirmation that, upon accession, the Russian Federation's state-trading enterprises would be administered and operated in conformity with WTO provisions, including Article XVII and the Understanding.

507. The representative of the Russian Federation further noted that a full list of functions and the working procedure of the federal agency for the regulation of the food market was enclosed in Government Resolution No. 1224 of 26 September 1997 "On the Foundation of the State Unitary Enterprise – the Federal Agency for Food Market Regulation by the Ministry of Agriculture and Food of the Russian Federation". Government Resolution No. 414 of 13 June 2002 "On Approval of the Regulation of Licensing of the Storage of Grain and Products Received as a Result of Its Remaking" approved the provision on licensing of storage of grain and products received as a result of its remaking. The major aim of this provision was for legal entities and individual entrepreneurs to observe the rules of storage of grain and other products. Government Resolution No. 414 had also invalidated former Government Resolution No. 43 of 22 January 2002 "On Licensing of Purchase, Remaking, Storage and Realizing of Grain and Products Received as a Result of Its Subsequent Remaking Which is Meant for State Needs on Production of Bread, Macaroni, Flour, Groats and Other Grain Foods". He added that statements on reverting 150 bankrupt grain facilities to State control were unfounded.

508. Members of the Working Party stated that they expected the Russian Federation to ensure that the practices of existing state-trading enterprises and other enterprises enjoying special or exclusive privileges would be brought into line with relevant WTO requirements as from the date of accession. Purchases and sales by such enterprises, whether state-owned, state-invested or enjoying any special or exclusive privileges (including practices such as state orders, purchases for state needs, state-designated trading, state goods distribution, and government-to-government agreements for the supply/purchase of products), should be based solely on commercial considerations, without any government influence or application of discriminatory measures.

509. [The representative of the Russian Federation confirmed that, from the date of accession, State-owned enterprises and other enterprises with special or exclusive privileges, including those listed in paragraphs [...], would make purchases, which were not intended for governmental use, and sales in international trade in accordance with commercial considerations, including price, quality, availability, marketability and transportation, and would afford enterprises of WTO Members adequate opportunity in conformity with customary practice, to compete for such purchases or sales. Such enterprises would act in conformity with WTO provisions, including Article XVII of the GATT 1994, the Understanding on Article VII of the GATT 1994, and the Understanding on Article VIII of the GATS. [Additional specific language may be needed to address fertilizers. He further confirmed that the Federal Agency for Food Market Regulation, established under Government Resolution No. 1224 of 27 September 1997 did not provide domestic support nor export subsidies in any form. He also confirmed that the Russian Federation would notify enterprises falling within the scope of Article XVII prior to accession, and would observe the obligations of non-discrimination and application of commercial considerations for trade transactions for these enterprises.]

510. [The representative of the Russian Federation confirmed that, from the date of accession, his Government would apply its laws and regulations governing exports and imports of goods by the state-trading enterprises in conformity with the provisions of Article XVII of the GATT 1994 and the Understanding on the Interpretation of Article XVII of the GATT 1994. The Working Party took note of these commitments.]

Free Zones and Special Economic Zones

511. The representative of the Russian Federation noted that, although Russian legislation provided for the establishment of free-trade zones. Only the Kaliningrad region Special Economic Zone (SEZ) was operative due to its specific geographical location. Current legislation also provided for the establishment of SEZs in the Magadan region and in Nakhodka, but these zones were not active.

512. The Kaliningrad SEZ was directly administered by the regional authorities. Pursuant to Federal Law No. 13-FZ of 22 January 1996 "On The Special Economic Zone in the Kaliningrad Region" (as amended on 8 December 2003) domestic and foreign investors and entrepreneurs investing in the Kaliningrad Region enjoyed tax and other privileges provided for under the legislation of the Russian Federation and the Kaliningrad Region. Privileges granted included:

- exemption from customs duties, VAT and excise taxes;

- release from mandatory sale by residents of a part of their earnings in foreign currency on the internal exchange market;
- exemptions from trade remedy measures and other measures on State non-tariff regulation of foreign trade for goods manufactured in the SEZ and exported to other countries or to the rest of the customs territory of the Russian Federation, and for goods imported from other countries into the SEZ or exported to foreign countries; and
- privileges for Russian and foreign banks establishing in the region, in connection with the implementation of the Federal State Programme for the Development of the Special Economic Zone in the Kaliningrad Region. Federal Law No. 13-FZ of 22 January 1996 "On the Special Economic Zone in the Kaliningrad Region" did not define any particular privileges. Currently, these privileges were not applied.

513. Under current legislation, no export performance or local content criteria were imposed on firms operating in the Kaliningrad Region. In addition, the privilege of exemption from VAT and excise taxes for excisable goods had been temporarily suspended between 1 January and 31 December 2004 pursuant to Federal Law No. 186-FZ of 23 December 2003 "On the Federal Budget For the Year 2004".

514. Pursuant to Federal Law No. 13-FZ of 22 January 1996 "On the Special Economic Zone in the Kaliningrad Region" (as amended on 12 December 2003), products originating from the special economic zone (SEZ) territory and exported to the rest of the customs territory of the Russian Federation were exempted from import duties and other charges, except customs clearance fees. Products originating from the SEZ of Kaliningrad and exported to other countries were exempted from export duties and charges levied, except customs clearance fees. The origin of goods from the SEZ territory had to be confirmed by a certificate issued by the Kaliningrad Chamber of Commerce and Industry. Goods imported to the SEZ from other countries were exempted from import customs duties and other charges - except customs fees and, in 2004, excise taxes and VAT pursuant to Federal Law No. 186-FZ - upon customs clearance. Goods imported to the SEZ from other countries and further brought to the rest of the customs territory of the Russian Federation or to the territory of other countries which were parties to the Customs Union (except for products transformed in the SEZ and considered to originate from the SEZ) were subject to customs duties and other charges upon customs clearance. Profits in foreign currency resulting from exportation and income generated by the application of intellectual property rights in the SEZ territory were not subject to any mandatory sale of foreign currency by residents on the domestic foreign currency market of the Russian Federation.

515. He further added that under Article 7 of Federal Law No. 13_FZ of 22 January 1996 "On the Special Economic Zone in the Kaliningrad Region", a product was deemed to be manufactured in the Special Economic Zone provided that the processing value added amounted to no less than 30 per cent - or 15 per cent in the case of electronics and sophisticated home appliances - and its

processing resulted in a change of the HS code of such product according to the customs classification. The procedure for determining that a product originated in the special economic zone was provided in Joint Resolution of the Administration of Kaliningrad Region and the SCC of Russia No. 296_r/01_14/1365 of 31 December 1998 "On Approval of the Procedure for Determination of Goods as Originating from the Special Economic Zone of Kaliningrad Region" (registered by the Ministry of Justice in Regulation No. 1892 of 9 July 1999). Under this Resolution, the following products were deemed to be manufactured in the Special Economic Zone:

- goods completely manufactured or sufficiently processed in the territory of the Special Economic Zone in the Kaliningrad Region by Russian legal entities or by individual entrepreneurs registered according to the established procedure in the territory of the Special Economic Zone;
- sea fishery products caught and/or manufactured in the World Ocean by vessels belonging to economic entities of the Special Economic Zone or by vessels leased (chartered) by such persons; and
- goods listed in Article 31 of Customs Code (inter alia, products made in this country from animals bred herein).

516. He noted that in order to stabilize the socio-economic situation in the Kaliningrad region, the Government of the Russian Federation had the right, upon suggestion of the Administration of the Kaliningrad region, to impose limitations on the special customs treatment of the Kaliningrad SEZ. In accordance with Government Resolution No. 526 of 14 July 2000 "On Establishing for the Years 2000-2005 Quantitative Restrictions on Certain Types of Goods Imported from Other Countries to the Territory of the Special Economic Zone of the Kaliningrad Region under the Free Customs Zone Treatment", goods imported into the SEZ territory in quantities exceeding the quantities determined by the Resolution did not enjoy free customs zone treatment. Goods imported into the SEZ in excess of quota were subject to customs duties and other charges upon customs clearance. Such limitations were applied erga omnes according to the applied customs tariff and did not constitute quantitative restrictions. The main groups of goods mentioned in the Resolution included: foodstuffs, alcoholic products, building and construction materials, furniture, jewellery, and articles made of precious metals. Government Resolution No. 830 of 24 June 1998 "On Establishing for the Years 1998-2000 Quantitative Restrictions on Certain Types of Goods Imported from Other Countries to the Territory of the Special Economic Zone of the Kaliningrad Region under the Free Customs Zone Treatment" envisaged the distribution of quotas by auctioning. The procedure for holding auctions was established by Resolution No. 830.

517. The representative of the Russian Federation further noted that customs control over goods entering the territory of the Kaliningrad Region for their subsequent use in the production process (i.e.

spare parts, components, etc.) was performed by the customs authorities of the Kaliningrad region in cooperation with companies which had been established on the initiative of and in cooperation with the Chamber of Commerce of the Kaliningrad Region and the customs authorities. The companies exercised surveillance over the goods entering the Kaliningrad Region free of customs payments throughout the whole production process. An expert opinion of the companies was required to obtain the final product and receive a certificate proving that the goods originated in the Kaliningrad Region. The opinion had to, *inter alia*, state the fact that all imported goods had been used in the production process, the calculation of the added value, etc. This control system prevented the re-exportation, from the Kaliningrad Region to the rest of the customs territory of the Russian Federation, without further processing of goods imported free of customs duties.

518. Members of the Working Party requested further information in order to assess whether the existing free zone in Kaliningrad, or those other free zones provided for in additional legislation, might pose certain WTO-consistency problems. They asked how Russia's WTO obligations would be enforced in the zones after accession, and in particular, whether Articles I and III of the GATT 1994 would be applied and whether incentives granted to firms establishing in the SEZs were or would be based on export performance or local content requirements. Other issues raised in this connection concerned the need to restore any tariffs or taxes from imported goods or inputs used in the manufacturing process to goods eventually exported to the rest of the Russian Federation. One Member sought information about the basis on which goods manufactured in Kaliningrad were deemed to have transformed imported inputs sufficiently to eliminate the need to pay the duties and taxes originally exempted when the inputs were imported. Another member noted that no level of transformation would be sufficient to eliminate the need to restore exempted duties and taxes, as rules of origin operated between countries, not parts of countries. Other Members sought information on what other benefits, if any, in terms of tax exemptions or otherwise, were available to firms that located there. A description of the provisions for firms located in the special economic zones of Magadhan and Nakhodka was also requested.

519. In response, the representative of the Russian Federation informed members of the Working Party that Federal Law No. 176-FZ of 24 December 2002 "On the Federal Budget for 2003" had abrogated the excise and VAT exemptions for imports of excisable goods under free customs zone regime of the territory of the Kaliningrad SEZ in the year 2003. However, if such goods were later exported to other regions of the Russian Federation, customs import duties were payable in full, with the exception of goods processed or deemed to have been processed in the Kaliningrad Region.

520. Current legislation also provided for the establishment of SEZs in the Magadan region and in Nakhodka, but these zones were not active. The Free Economic Zone "Nakhodka" had been established in October 1990, as the Russian Federation's first free economic zone. Its free economic regime was regulated by Resolution of the Russian Federation's Supreme Council of 24 October 1990 "On Creation of a Free Economic Zone Situated on the Town of Nakhodka of Primorsky Krai", and Government Resolution No. 1033 of 8 September 1994 "On Certain Measures of Development of the Free Economic Zone of Nakhodka". Exports and imports of goods to and from the Free Economic Zone "Nakhodka" were regulated by the ordinary customs regime. There were no exemptions from tariffs, taxes or other trade measures granted to imports into the Nakhodka free zone, as this existed for the Kaliningrad Region.

521. Exemptions granted under the Resolution of the Russian Federation's Supreme Council of 24 October 1990 included: exemption from customs duties of goods and other property imported into and exported from the Nakhodka Free Economic Zone; and for goods and other property carried from the territory of the Nakhodka Free Economic Zone to other regions of the Russian Federation, customs duties were imposed only on the portion of the goods and property of foreign origin, the amount of which was determined according to the country of origin rule. Goods and other property imported into and exported from the territory of Nakhodka Free Economic Zone were subject to obligatory declaration.

522. The transit or resale of goods that have not been processed within the zone, through the territory of the Nakhodka Free Economic Zone to other regions of the Russian Federation and the delivery of goods for export from other areas of the Russian Federation did not enjoy any tariff or customs exemptions.

523. The representative of the Russian Federation added that the SEZ legislation in force creating the Kaliningrad Region and the Magadan and Nakhodka free zones did not impose any requirements related to export performance or local content criteria on companies operating in the SEZs.

524. The Magadan special economic zone (SEZ) had been established in accordance with Federal Law No.104-FZ of 31 May 1999 "On the Special Economic Zone in the Magadan Region". The SEZ was exempted from federal taxes (except deductions made to the Pension Fund and the Social Insurance Fund of the Russian Federation) until 31 December 2005. From 1 January 2006 to 31 December 2014, subjects of the SEZ would also be exempted from taxes on profits invested in the development of production and social sphere in the territory of the Magadan region. Goods imported into the special economic zone were not subject to customs duties. Foreign-made goods exported from the territory of the Magadan region to the rest of the customs territory of the Russian Federation

were subject to normal customs duties. The Government of the Russian Federation could, upon request of the authority of the SEZ, impose restrictions in respect of customs treatment and exceptions from customs treatment. The procedure for imposing limitations on special customs treatment in the Magadan SEZ was identical to the procedure for imposing limitations on special customs treatment in the Kaliningrad SEZ. Currently, no limitations were applied.

525. Members stressed that the Russian Federation should revise its domestic laws and regulations to eliminate any measures in place in the Russian Federation's free zones or other special economic areas that were not in conformity with WTO provisions upon accession, in particular incentives tied to export requirements, other subsidies, and TRIMs, so as to ensure enforcement of its WTO obligations in those zones. Members asked the Russian Federation to consider entering a commitment concerning these issues. The commitment should address the application of WTO provisions within the zones, and the application of normal customs formalities on goods imported from the zones sold elsewhere in the Russian Federation, including the application of tariffs and taxes that had not been applied to inputs imported for processing into manufactures.

526. [The representative of the Russian Federation confirmed that any free zones or other special economic areas authorized in the Russian legislation, including those in paragraphs [...], would be administered in conformity with WTO provisions, and that the Russian Federation would ensure enforcement of WTO provisions in the zones. The right of firms to establish and operate in these areas would not depend on export performance, trade balancing, or local content criteria. In addition, goods produced in these areas under provisions that exempt import from tariffs and certain taxes would be subject to normal customs formalities when entering the rest of the Russian Federation, including the application of tariff and taxes.]

Government Procurement

527. Members of the Working Party invited the Russian Federation to provide information on its government procurement practices in particular on the existing procurement regime at both federal and sub-federal levels. Some members also expressed interest in a commitment from the Russian Federation to become an observer to the WTO Agreement on Government Procurement and to initiate negotiations for accession to this Agreement upon accession.

528. The representative of the Russian Federation replied that "procurement for state needs" (Russian legislation did not contain the term "government procurement") was governed in the Russian Federation by the following regulatory acts: the Civil Code of the Russian Federation; Federal Law No. 53-FZ of 2 December 1994 "On Procurement and Deliveries of Agricultural Goods, Raw

Materials and Foods for the State Needs"; Federal Law No. 60-FZ of 13 December 1994 "On Procurement of Goods for Federal State Needs" (as amended on 23 December 2003); Federal Law No. 213-FZ of 27 December 1999 "On the State Defence Order" (as amended on 6 May 1999); Federal Law No. 597-FZ of 6 May 1999 "On Tenders for Placement of Orders for Deliveries of Goods, Performance of Works and Provision of Services for State Needs"; Presidential Decree No. 305 of 8 April 1997 "On priority measures to prevent corruption and reduce budget expenses in the course of organization of procurement of goods for state needs"; Government Resolution No. 1222 of 26 September 1997 "On goods to be procured for state needs without conducting tenders (auctions)" (as amended on 9 January 2001); and Government Resolution No. 26 of 11 January 2000 "On the Federal System of Regulation of the Goods for Federal State Needs." A new draft Federal Law "On Placement of Orders for Delivery of Goods, Performance of Works and Provision of Services for State Needs" had been approved by the Government on 13 May 2004. The new Law would apply to all purchases and deliveries of products, made in the territory of the Russian Federation and would be financed by the Federal budget, budgets of the subjects of the Russian Federation, off-budget funds of the Russian Federation and of the subjects of the Russian Federation. Purchases for state needs in 2003 amounted to 615 billion Rubles.

529. 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 and in the new draft law. These texts took into consideration the provisions of the UNCITRAL Model Law "On procurement of goods (works) and services", and therefore corresponded to international practices in this field. The subjects of the Russian Federation and local Governments were required to align their normative legal acts with the Federal requirements of the Presidential Decree. The regime for procurement for State needs provided for transparency, non-discrimination in procurement and required the uniform application of procurement measures at both federal and sub-federal levels. It also provided for challenging procurements.

530. Members requested further information on the status of the proposed new legislation in this area, in particular on the draft federal law "On Placement of Orders for Delivery of Goods, Performance of Works and Provision of Services for State Needs". In addition, information was sought on the involvement of the Russian Government in barter trade, the role of unitary enterprises in purchases for State needs, including the legal basis for those measures.

531. Members noted that the scope of government "purchases for State needs", as provided for in current legislation and in the new draft law, appeared to go beyond "procurement" as defined in Article III:8 of the GATT 1994, i.e., "products 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,” and the goods and services subject to the WTO Agreement on Government Procurement. Such purchases that were outside the scope of the Article III:8 definition would not be excluded from the coverage of the Agreements in Annex 1 of the Agreement Establishing the WTO. They noted that under Russian law, “purchases for state needs,” appeared to include in addition to goods for governmental consumption and support, any products or services needed (a) by the government, (b) to realize government 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. Consequently, they sought information from the Russian Federation on the kinds of purchases of goods and services involved in “purchases for State needs.” They enquired, for example, whether purchases for State needs could include purchases of agricultural or other goods for further manufacture or distribution to the population. They also sought confirmation that, in making purchases that would not be considered government procurement, the Russian Federation would apply normal WTO provisions, including national and MFN treatment.

532. In response, the representative of the Russian Federation stated that the new draft law aimed at: the creation of a basic statutory legal act that regulated procurement for State needs; ensuring transparency of "procurement for State needs"; stimulation of fair competition and budget economy; elimination of possible abusive practices; and formation of the "procurement for State needs" legislation of the Russian Federation. The representative of the Russian Federation further noted that neither the federal law "On Procurement of Goods for Federal State Needs" currently in force nor the new draft federal law set forth provisions on purchase of products for governmental purposes with a view to commercial resale or with a view to use in the production of goods for commercial sale.

533. The representative of the Russian Federation further noted that the draft federal law would eliminate certain current restrictions on participation by foreign suppliers in the deliveries of goods and services for State needs. Clearer regulations for the conduct of procurement would be established. The draft law would also ensure transparency of the procurement of goods and services for public needs and stimulate effective competition and effective use of budgetary funds. He further added that the draft federal law covered all goods and services procurements and deliveries in the territory of the Russian Federation financed with the funds of the Federal Budget of the Russian Federation, regional budgets and non-budgetary funds of the Federation and Russian Regions.

534. The representative of the Russian Federation noted that according to Article 5 of the draft federal law “On Placement of Orders for Delivery of Goods, Performance of Works and Provision of Services for State Needs”, State purchasers should be federal executive bodies, executive bodies of

the subjects of the Russian Federation, or other entities financed by the budget. State purchasers could on the contractual basis delegate the implementation of a part of the tender for purchases to other legal entities irrespective of their organization and legal form. He added, in response to concerns raised in paragraph [530], that State and municipal unitary enterprises could, as commercial organizations performing their activities on commercial considerations, be involved in the purchase of goods for State needs.

535. Concerning purchases for State needs that went beyond procurement of goods and services for direct use and consumption of government agencies, Presidential Decree No. 305 of 8 April 1997 prohibited discrimination with respect to suppliers for certain categories of purchases, and Article 6 of Federal Law No. 97-FZ provided that foreign suppliers of goods, works and services had the right to take part in tenders, if domestic manufacture was absent or economically unjustified. As for the role of unitary enterprises in purchases for State needs, the representative of the Russian Federation noted that neither the Federal Law "On Procurement of Goods for Federal State Needs" currently in force nor the new draft federal law set forth provisions on special privileges for unitary enterprise in this area.

536. Concerning 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." Pursuant to Federal Law No. 164-FZ, those normative legal acts should be applied to the extent that they did not contradict the provisions of Law No. 164-FZ, before the adoption of new normative legal acts in this area.

537. The same duties and taxes applied to barter trade transactions as to ordinary commercial transactions. 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.

538. [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 its accession to the WTO and ensure that by this date, its public contracting entities 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.]

539. [The representative of the Russian Federation took note of concerns expressed by members of the Working Party.]

[to be completed]

Regulation of Trade in Transit

540. 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. The only charges levied were those for transportation, commensurate with administrative expenses or with the cost of services rendered.

541. In response to the questions 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 Law No 164-FZ of 8 December 2003 "On the Fundamentals of State Regulation of Foreign Trade Activity" provided for freedom of transit of all goods by railway, road, river and air ways mostly convenient for international transportation as a basic principle. Pursuant to Article 167 of the Customs Code (No. 61-FZ of 28 May 2003), international customs transit was a customs procedure under which foreign goods, which were transiting in the customs territory of the Russian Federation in customs custody between the point of their entry to and departure from the customs territory of the Russian Federation (i.e. if the said transit constituted a part of their itinerary which began and ended outside the boundaries of the customs territory of the Russian Federation), were exempted from any customs taxes and duties or application of any economic restrictions and prohibitions. Any foreign merchandise could be subject to the customs procedure of international customs transit, except goods whose transit was prohibited pursuant to federal laws, other statutes and legal norms of the Russian Federation and international treaties to which the Russian Federation was a party.

542. He further noted that the Customs Code of the Russian Federation (Federal Law of 28 May 2003 No 61-FZ) provided that the terms of transit of goods from outside the Russian Federation were the same as the terms regulating the application of internal customs transit procedures. Pursuant to Article 79 of the Customs Code, internal customs transit was the customs procedure under which foreign goods were transported within the customs territory of the Russian Federation without any payment of customs duties, taxes, application of restrictions of an economic nature established according to Russian legislation on State regulation of foreign trade activity. Internal customs transit was applied in the transportation of goods: from the place of their arrival to the location of the customs authority of destination (Customs Code, Article 92); from the place of location of goods when they are declared to the place of their outbound of the customs territory of the Russian Federation; between bonded warehouses, customs warehouses; and in other instances of transportation of foreign goods across the customs territory of the Russian Federation if no security had been provided for the payment of customs charges for such goods. Pursuant to the Customs Code, customs transit required a written permission issued by the customs office. Permission was granted upon the observance of the following requirements, stipulated in Article 80 of the Customs Code: 1) the goods should not be prohibited from importation into the customs territory of the Russian Federation according to the legislation in force ; 2) the imported goods should have been subject to border control at the point of their entry if the said goods were to be subject to such control under Russian legislation; 3) the goods should have all requisite permissions and, if required, licenses; 4) the goods should have been recorded in respective transit declaration and thereby declared to customs authorities; 5) the goods should have been properly identified; 6) the means of transport should be properly equipped when the goods were to be transported with requisite customs seals and stamps affixed; 7) all requisite measures required by the customs legislation of the Russian Federation should have been observed.

543. Several members of the Working Party noted that a sufficient description of Russian provisions on transit was still required to confirm whether the Russian Federation's policies for trade in transit were in conformity with WTO provisions, in particular Article V of the GATT 1994. Concerns were raised on SCC Order No.631 of 2 July 2001 "On the Application of Order of the State Customs Committee of the Russian Federation No.25 of 15 January 2001", which appeared to provide for measures inconsistent with WTO requirements in this area. Questions were asked regarding the circumstances under which the Russian Federation might currently impede transit of other countries' exports through its territory; the charges for transit escort and the reasons for their application; and the provisions for the transit of goods of dual usage. A Member expressed concerns about the practice of the application of specific customs procedures by the Russian authorities in respect of this Members' transport companies. That Member noted that country-specific restrictive transit procedures were

incompatible with WTO provisions, notably Articles I and V of the GATT 1994. It requested the Russian Federation to ensure that these and any other country-specific measures of transit procedures would be brought into conformity with WTO requirements upon accession. Other Members asked that the Russian Federation identify how it would eliminate WTO-inconsistent measures, such as State Customs Committee Order No.631 of 2 July 2001. Those members asked the Russian Federation to ensure that all WTO obligations providing for freedom of transit (and associated disciplines dealing with, for example, fees and charges) would be applied to all products. Those members noted, in particular, concerns with regard to certain transit arrangements for energy products such as oil and gas.

544. With regard to concerns of some WTO members related to SCC Order No.631 of 2 July 2001 "On the Application of Order of the State Customs Committee of the Russian Federation No.25 of 15 January 2001", he confirmed that this Order had been abolished by SCC Order No. 517 of 24 May 2002. In accordance with the Instructions on Levying of Customs Fees for Customs Clearance approved by SCC Order No. 640 of 7 June 2004 commodities placed under the customs regime of international transit were subject to customs fees for customs clearance except for cases provided for by the normative legal acts of the Russian Federation, in particular Paragraph 6 of the Instructions approved by SCC Order No. 640 of 7 June 2004

545. In response to questions on the ban on transit over the territory of the Russian Federation, the representative of the Russian Federation stated that aircrafts carrying armaments, military equipment, military property were forbidden to transit the territory of the Russian Federation without landing. Import to, export from, and transit of explosives for industrial purposes by juridical persons over the territory of the Russian Federation as part of the accompanied or unaccompanied luggage and hand luggage, and their cargo shipment to natural persons' addresses was also forbidden. Apart from that, there was a set of special rules on transit of narcotics, substances with psychotropic effects, poisons and substances listed in Tables I and II of the "Convention of the United Nations Organization Against Illegal Circulation of Drugs and Psychotropic Substances" of 1988. These rules complied with the norms of international law.

546. He further noted that upon departure of the goods from the customs territory of the Russian Federation, the carrier or expeditor had to present the declaration relevant to the cargo. Article 87 of the Customs Code (Federal Law No 61-FZ of 28 May 2003) defined customs escort of goods as escort, by an authorized customs officer, of means of transport carrying merchandise subject to domestic customs transit procedure. Customs authorities had the right to put goods in transit under customs escort in the following cases:

- non-payment of customs duties and taxes stipulated by Chapter 31 of the Customs Code;
- when haulage of specific kinds of goods was predicated on the risk analysis and risk management system stipulated by the Customs Code;
- failure by the carrier, at least once within a year from the date of application for domestic customs transit, to deliver goods to the point of destination;
- re-exportation of merchandise delivered to the Russian Federation by mistake or of goods whose importation into the Russian Federation was prohibited, in case the place of the actual crossing by the said goods of the customs border of the Russian Federation during their exportation did not coincide with the location of said goods;
- haulage of the goods subjected to the restrictions and prohibitions stipulated by the Russian legislation on the State regulation of foreign trade activity;
- the place of destination of goods was not a location of a customs office; and
- if the goods were prohibited from importation or did not have all the requisite permits and licenses required for their transit along the customs territory of the Russian Federation and due to that facts the permission for the domestic customs transit could not be issued, provided that the customs body authorised delivery of the said goods to the temporary storage warehouse or other places constituting the customs control zone.

547. Customs escort of goods was to be carried out only to ensure observance of Russian customs legislation on internal customs transit. Expenses associated with customs escort had to be fully reimbursed in the form of customs duties levied in accordance with the Russian legislation on taxes and duties.

548. [The representative of the Russian Federation confirmed that the Russian Federation would apply all its laws and regulations governing transit of goods, including energy, in conformity with the provisions of Article V of the GATT 1994 and other relevant provisions of the WTO Agreement. [The Working Party took note of this commitment.]]

Policies Affecting Foreign Trade in Agricultural Products

549. The representative of the Russian Federation said that the key long-term objectives of the Russian agricultural sector were the establishment of an effective and competitive agro-industrial production and the provision of a sufficient degree of food security for the Russian population. These objectives required a comprehensive program of policy measures of both a short-term and a long-term nature. Pursuant to the Protocol No. 25 of 27 July 2000 on "Priority Trends of Agri-Food Policy of the Government of the Russian Federation for 2001 – 2010", approved by the Government on 27 July 2000, the Russian agricultural sector needed first and foremost to address the problems that had been accumulated over the years preceding the reform and during the reform, and notably the

sectoral imbalance of prices and revenues which was a major adverse factor in agrarian production, low profitability, and the development of a material base.

550. He described the current priorities of the agro-food policy and the agrarian reform in the Russian Federation and provided detail on agricultural support measures and policies falling under the green and amber boxes defined under the WTO Agreement on Agriculture. He said that, taking into account such factors as the geography of agricultural production in the Russian Federation, its vast territory, actual state of development of transportation system and infrastructures supporting exports of agricultural products, use of export subsidies by some of the Russian Federation's major partners and also the prevailing conditions for competition on world agricultural markets, the Russian Government came to the conclusion that export subsidies consistent with the WTO Agreement on Agriculture could also be used. Therefore, the Russian Federation intended to reserve its right to use export subsidies subject to: (a) agreed reductions with WTO Members over a fixed period of time; and (b) the results of the on-going WTO negotiations on agriculture.

551. Members noted that a more comprehensive and up-to-date submission of the Russian Federation's agricultural support policies was still required. They stressed that such information was needed in order to establish a detailed description of the Russian Federation's agricultural policies on which appropriate commitments could be determined. While recognising the possibility of having recourse to "amber box" measures under the WTO Agreement on Agriculture, several members considered that in determining its requirements and level of commitments the Russian Federation should give emphasis to the use of "green box" measures that could achieve the desired reform objectives pursued by the Russian Federation in the field of agriculture. Some members further argued that in the current context they considered it inappropriate for any country to accede to the WTO with export subsidy commitments. These members stressed the need that the Russian Federation should bind its export subsidies at zero. In this respect, these members also stressed that the disciplines contained in the WTO Agreement on Agriculture on export credits, export credit guarantees or insurance programmes needed to be applied by the Russian Federation so as to avoid circumvention of the commitment not to provide export subsidies.

552. [The representative of the Russian Federation confirmed that by the date of accession, the Russian Federation would not maintain or introduce any export subsidies on agricultural products. The Working Party took note of this commitment.]

553. The Russian Federation's concessions on agricultural tariffs, and commitments on domestic support and on export subsidies for agricultural products were contained in the Schedule of Concessions and Commitments on Goods annexed to the Draft Protocol.

554. [Commitment language in this section will be considered by the Russian Federation at a later stage.]

Trade in Civil Aircraft

555. Some members of the working Party asked that the Russian Federation enter a commitment to join the Agreement on Trade in Civil Aircraft upon accession. Members of the Working Party also requested that the Russian Federation implement the agreement without exceptions and without recourse to any transitional period, and that the Russian Federation should ensure that all internal taxes would be applied to the sale or lease of civil aircraft in a non-discriminatory fashion between imported and domestically produced goods and between goods imported from third countries.

556. Some members of the Working Party also requested that Russia provide additional information on its current activities, e.g., licensing and tariff suspensions, that might operate to increase market access in Russia for aircraft. In response, the representative of the Russian Federation stated that the degree of exploitation of the manufacturing facilities in the aviation industry in the Russian Federation did not exceed 10–15 per cent. As a result, most enterprises of the aviation sector suffered losses, thus substantially limiting the possibilities of financing the procedures for modernization of the facilities, introduction of modern manufacturing and servicing technologies. Over 50 per cent of the currently operated technological and experimental equipment required renewal. The integrated corporate structures established in the aviation sector cannot remedy the situation due to the shortage of their revenues. He noted that Government Resolution No. 574 dated 2 August 2001 had cancelled investment incentives (exemption from customs duties and taxes) in this sector. He further recalled that Government Resolution No. 574 of 2 August 2001 "On Certain Issues of Regulation of Temporary Imports of Foreign Made Aircraft" had superseded Government Resolution No. 716 of 7 July 1998 "On Additional Measures of State Support for Civil Aviation in Russia".

557. In response to several members request for a commitment by Russia to join the Agreement on Trade in Civil Aircraft upon accession, he stated that the current situation of the aviation sector made it impossible for the Russian Federation to join the Agreement On Trade in Civil Aircraft and implement its requirements.

Textiles

558. Some members noted that upon its accession to the WTO, the provisions of the WTO Agreement on Textiles and Clothing (ATC) would also become relevant for the Russian Federation.

In this connection, a member said that its bilateral quotas on imports from the Russian Federation of certain textile and clothing products would become the starting-point for further liberalisation under the terms of that Agreement. In order to ensure an orderly transfer to this new status and to guarantee the benefits of ATC trade liberalisation for Russian exports, that member sought an appropriate commitment in the Draft Report.

559. Another member of the Working Party stated that the quantitative restrictions on imports maintained by WTO Members on textiles and clothing products originating from the Russian Federation that were in force on the date prior to the date of accession of the Russian Federation to the WTO should be notified to the Textiles monitoring Body (TMB) by the members maintaining such restrictions and would be applied for the purposes of Article 2 of the WTO Agreement on Textiles and Clothing. Thus, for the purpose of the Russian Federation's accession to the WTO, the phrase "day prior to the date of entry into force of the Agreement on Textiles and Clothing" should be deemed to refer to the day prior to the date of accession of the Russian Federation to the WTO. To this base level the increase in growth rates provided for in Articles 2.13 and 2.14 of the Agreement on Textiles and Clothing should be applied, as appropriate, in the Agreement on Textiles and Clothing from the date of the Russian Federation's accession to the WTO.

560. In response, the representative of the Russian Federation raised concern in respect of the application of the provisions of Article 2 of the WTO Agreement on Textiles and Clothing and stated that this issue required further clarification.

TRADE-RELATED INTELLECTUAL PROPERTY REGIME (TRIPS)

1. General

561. The representative of the Russian Federation said that Russian legislation envisaged civil, administrative and criminal measures for the protection of intellectual property rights. Civil protection of intellectual property was exercised in pursuance with the Civil Code, the Patent Law, the Law of the Russian Federation "On Trademarks, Service Marks, and Appellations of Origin of Goods", the Law of the Russian Federation "On Copyright and Related Rights", the Law of the Russian Federation "On Legal Protection of Layout Designs of Integrated Circuits", the Law of the RSFSR "On Competition and Restriction of Monopoly Activity on Commodity Markets", the Law of the Russian Federation "On Attainments in Selection", the Federal Law "On Commercial Secrets", etc. Criminal liability was established in the case of infringement of copyright and related rights (Article 146 of the Criminal Code); infringement of inventive and patent rights (Article 147 of the Criminal Code); illegal use of a trademark (Article 180 of the Criminal Code); and illegal receipt and

disclosure of information containing commercial, tax or bank secrets (Article 183 of the Criminal Code). Administrative liability for infringements of copyright and related rights, inventive and patent rights was envisaged by Article 7.12 of the Code on Administrative Offences. Administrative liability for disclosure of information, the access to which was limited by federal law (except for cases when the disclosure of such information involved criminal liability), by persons who had received access to such information in connection with performance of a service or professional duties was envisaged by Article 13.14 of the Code and liability for illegal use of a trademark by Article 14.10 of the Code. The new Customs Code of the Russian Federation had a special Chapter 38 on “Measures Taken by the Customs Authorities in Respect of Certain Goods” which dealt with the regulation, by customs authorities, of relations on the protection of intellectual property rights in import-export transactions (border measures). In accordance with the Constitution, federal laws had a supreme juridical force and were applied equally on the whole of the territory of the Russian Federation.

562. In his view, the national system of protection of intellectual property rights complied with the basic international standards adopted in this field, including the provisions of the WTO Agreement on TRIPS. The Constitution determined the basic political trends in the field of intellectual property in Russia. Article 44, paragraph 1 of the Constitution of the Russian Federation guaranteed freedom of literary, artistic, scientific, technical and other types of creative and educational activity and provided their legal protection. The whole system of the Russian legislation in force supported the implementation of that constitutional right. A number of international agreements signed by the Russian Federation constituted an integral part of this system. Commenting on specific aspects of ongoing legislative work in the area of TRIPS and in response to specific inquiries by some Members of the Working Party, the representative of the Russian Federation noted that the Russian legislation on intellectual property rights was consistent with the national treatment and most favoured nation principles.

563. He further added that regulation and enforcement of intellectual property rights were performed in the Russian Federation by several governmental bodies, namely:

- the Ministry of Education and Science of the Russian Federation (performing the functions of the former Ministry of Education) and the subordinate Federal Agency for Intellectual Property, Patents and Trademarks (Rospatent);
- the Ministry of Culture and Mass Media of the Russian Federation (performing the functions of the former Ministry of Culture of the Russian Federation and the Ministry of Press, Television and Radio Broadcasts and Mass Media of the Russian Federation) and the subordinate Federal Service for Enforcement of the Mass Media Legislation and Protection of Cultural Heritage, Federal Agency for Culture and Cinematography and Federal agency for Press and Mass Media.

- the Ministry of Economic Development and Trade of the Russian Federation and the subordinate Federal Customs Service (formerly known as the SCC);
- the Ministry of Industry and Energy of the Russian Federation (performing the functions of the former Ministry of Science and Technologies);
- the Ministry of Health and Social Development of the Russian Federation and the subordinate Federal Service for Supervision of Protection of Consumers' Rights and Human Welfare (performing the functions of the former State Inspection on Trade, Product Quality and Protection of Consumers' Rights which was subordinated to the Ministry of Economic Development and Trade of the Russian Federation) and Federal Service for Supervision in the Sphere of Public Health and Social Development;
- the Ministry of Internal Affairs of the Russian Federation;
- the Ministry of Justice of the Russian Federation;
- the Federal Antimonopoly Service (formerly known as the Ministry of the Russian Federation for Antimonopoly Policy and Entrepreneurship Support (MAP of Russia).

564. In addition, a Government Commission for Counteracting Intellectual Property Infringements had been appointed to coordinate and guide the joint efforts of these government authorities in the field of intellectual property protection.

565. The main objectives of the Commission were to ensure the implementation of a single government policy on protection and use of intellectual property rights, including copyright and related rights in the Russian Federation; improve the legislation on protection and use of intellectual property; prevent the illegal turnover of items protected by intellectual property rights, etc. The Commission was a continuing body, working on a regular basis according to the Plan of top-priority measures for the current year..

566. In accordance with the Plan for 2004, the Commission led and coordinated the activity of authorities in five spheres: legislative, administrative, organizational, preventive and providing information to the public. In the legislative sphere the Commission had speeded up the work in drafting the laws "On Amendments to the Law on Copyright and Related Rights" and "On Commercial Secrets" as it was foreseen in the Plan (these laws had been adopted). Under its leadership a draft Decision "On the Establishment of Licensing of Import of Polycarbonates for Manufacturing Optical Carriers of the Information in the Russian Federation" had been elaborated and submitted to the Government. This Decision provided for additional measures regulating manufacture and turnover of the production of optical carriers by establishing import license controls for raw material for the manufacturing of such products. One of the activities of the Commission in the administrative sphere was improving customs and police officials skills in the field of protection of intellectual property rights. The Commission also took organizational and preventive measures,

and measures providing information to the public with a view of increasing the awareness and popularity of legal production and advertising against counterfeit production in the mass media.

567. Control and supervision over the implementation of intellectual property legislation and the conduct of preliminary investigations on criminal cases concerning infringement of copyright and related rights and inventor and patent rights were carried out by the Office of Public Prosecutor. Courts of general jurisdiction and arbitration courts of the Russian Federation heard cases on infringement of intellectual property rights in accordance with the relevant procedural laws. He further noted that his country had been a member of the World Intellectual Property Organization since 1970 and was a party mostly to all the treaties which had defined internationally agreed basic standards of intellectual property protection in each country. Specifically, it concerned international conventions mentioned in Article 1:3, including footnote 2, of the TRIPS Agreement.

568. He also confirmed that the Russian Federation was a party to the "Paris Convention" (the Paris Convention for the Protection of Industrial Property); the "Paris Convention (1967)" (the Stockholm Act of this Convention of 14 July 1967); the "Berne Convention" (the Berne Convention for the Protection of Literary and Artistic Works); the "Berne Convention (1971)" (the Paris Act of this Convention of 24 July 1971); the "Rome Convention" (the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, adopted at Rome on 26 October 1961); the Madrid Agreement Concerning the International Registration of Marks (Stockholm Act); the Patent Cooperation Treaty (PCT); the Rome Convention for the Protection of Performers; Producers of Phonograms and Broadcasting Organizations (1961), etc. A more complete list is provided in documents WT/ACC/RUS/29 of 13 November 1998, and WT/ACC/RUS/29/Rev.1 and WT/ACC/RUS/41 of 26 October 2000.

569. He added that, despite the fact that the Russian Federation was not a party to the Treaty on Intellectual Property in Respect of Integrated Circuits (IPIC), adopted in Washington on 26 May 1989, Federal Law No. 82-FZ of 9 July 2002 "On Amendments to the Law "On Legal Protection of Layout Designs of Integrated Circuits" reflected the provisions of the IPIC Treaty.

Fees and duties

570. Fees and duties for the patenting of inventions, utility models and industrial designs, the registration of trademarks, service marks, and appellations of origin, the granting of rights to use appellations of origin, and the official registration of computer programs, databases, and layout designs of integrated circuits were collected in accordance with Council of Ministers/Government Regulation No. 793 of 12 August 1993, as amended by Government Ordinances No. 382 of

23 April 1994, No. 989 of 9 October 1995, No. 423 of 16 April 1997, No. 1058 of 20 August 1997, No. 372 of 31 March 1998, No. 8 of 14 January 2002 and No. 403 of 4 March 2003. Legal entities and individuals of the Russian Federation and of countries that were parties to international agreements on mutual payments in Rubles with the Russian Federation, paid duties and fees in Russian Rubles. Legal entities and individuals of other countries paid duties and registration fees in US dollars.

2. Substantive standards of protection, including procedures for the acquisition and maintenance of intellectual property rights

Copyright and Related Rights

571. The representative of the Russian Federation said that copyright and related rights were protected by Federal Law No. 3531-1-FZ of 9 July 1993 "On Copyright and related Rights", as amended on 20 July 2004 by Federal Law No. 72-FZ "On Amendments to the Law on Copyright and Related Rights". Law No. 72-FZ established national treatment in respect of protection of copyright, retroactive protection of works and aimed at bringing the Law "On Copyright and Related Rights" into compliance with the provisions of the WIPO Copyright Treaty and the WIPO Performance and Phonograms Treaty. Its provisions were based on the provisions of the TRIPS Agreement, Berne Convention, and Rome Convention. In his view, the provisions of the Russian legislation on copyright (including those relating to the protection of computer programs and databases) were in conformity with the provisions of the Berne Convention for the Protection of Literary and Artistic Works (including Article 6 bis) and the relevant provisions of the WTO Agreement on TRIPS.

572. In particular, the Russian legislation protected not only personal non-proprietary rights of authors, such as authorship right, right to name, publication right, right to protect reputation of the author, but also property rights of authors which could be inherited. In accordance with Article 9 of the Law "On Copyright and Related Rights", copyright protection was provided for work from the date it was created.

573. In general, copyrights were valid during the life of the author and during 50 years after his/her death. In certain cases stipulated by the law, the term for protection was calculated on the basis of other dates (for instance from the date of latest death of a co-author where a work had been created in co-authorship). Federal Law No. 72-FZ extended the term for protection to 70 years after the death of the author.

574. Related rights of performers were protected for 50 years from the date of first performance; in the case of phonogram's producers, protection was provided for 50 years from the date of first promulgation or, should the phonogram not have been promulgated during this period, of first recording; rights of TV and radio broadcasting organizations remained valid for 50 years from the date of first broadcast, and the rights of cable TV organizations remained valid for 50 years from the date of first cable transmission.

575. Federal Law No. 72 had introduced national treatment in respect of protection of copyright and retroactive protection of works. Previously, under Article 28 of the 1993 Law «On Copyright and Related Rights», products which had never been protected on the territory of the Russian Federation were considered as public domain and not subject to protection. Thus, all foreign works published before 23 May 1973 (the date at which of the Russian Federation had joined the Universal Copyright Convention of September 1952) were not protected. However, with the adoption of Federal Law No. 72-FZ, the provision on absence of retroactive protection had been excluded. The reservation on Article 18 of the Berne Convention would be lifted after the entry into force of the Law and some internal procedures.

576. He added that after the entry into force of Law No. 72-FZ and the implementation of the required national procedures, the Russian Federation intended to accede to the WIPO Copyright Treaty and Performances and Phonograms Treaty. He noted that Article 1 of the TRIPS Agreement did not require WTO Members to join these treaties.

577. He further noted that Russia had become a party to the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (1961) on 26 May 2003 with the following reservations: non-application of the phonogram criteria (in accordance with paragraph 1(b) of Article 5 of the Convention); protection of broadcasting in accordance with paragraph 2 of Article 6 of the Convention; and non-application and limitation of protection under Article 12 of the Convention with regard to phonograms.

Trademarks

578. The representative of the Russian Federation noted that protection of trademarks and service marks was regulated by Law No. 3520-1 of 23 September 1992 "On Trademarks, Service Marks and Appellations of Origin", as amended by Federal Law No. 166-FZ of 11 December 2002 "On Amending the Law "On Trademarks, Service Marks and Appellations of Origin". The amended provisions of the Law No. 3520-1 conformed to the provisions of the Paris Convention for the Protection of Industrial Property and the relevant provisions of the WTO Agreement on TRIPS,

including those which governed protection of well-known marks with respect to non-homogeneous goods. The updated Russian legislation in force allowed for protection of well-known trademarks.

579. The Law No. 3520-1 (as amended by Federal Law No. 166-FZ) included the definition of a well-known trade-mark, which was based on the provisions of the updated law and totally conformed to the Joint Recommendation on the Provisions of the Protection for Well-Known Trade Marks of the Paris Union Assembly and General Assembly of WIPO. The legislation did not require the registration of well-known trademarks. Any trademark claiming to be well-known should be recognized as such by a competent authority, i.e. the Patent Dispute Chamber of Rospatent. This procedure for granting protection was fully consistent with Article 6 bis of the Paris Convention. The provisions of criminal and civil legislation applicable to "ordinary" trademarks were also applicable to well-known trademarks. Among the remedies taken were recognition of the right, prevention of infringement, compensation of losses, criminal and administrative liability.

Geographical Indications

580. The representative of the Russian Federation stated that prior to 1992, geographical indications in the Russian Federation were protected by considering the use of false or misleading geographical indications as a form of unfair competition or a violation of consumer rights (this was done by antitrust -antimonopoly- agencies or courts respectively). Since 1992, appellations of origin were accorded special protection under Law of the Russian Federation No. 3520-1 of 23 September 1992 "On Trademarks, Service Marks and Appellations of Origin". Protection for such types of geographical indications was provided for under Article 6 of that Law, which prohibited registration of trademarks containing indications of the place of production of goods as well as trademarks containing false indications or indications which might mislead the customer as to the identity of the producer of goods. Protection of appellations of origin existed for all kinds of goods – food and manufactured goods alike. According to Article 47 of the same law, the right to register an appellation of origin in the Russian Federation was granted to persons and legal entities of those States that provided similar rights to Russian persons and legal entities.

581. The representative of the Russian Federation further stated that the provisions ensuring the protection of geographical indications in the Russian Federation complied with the Paris Convention for the Protection of Industrial Property and the relevant provisions of the WTO Agreement on TRIPS. The amendments made to Law No. 3520-1 of 23 September 1992 "On Trademarks, Service Marks and Appellations of Origin" were consistent with those provisions of the TRIPS Agreement related to additional protection of geographical indications of wines and spirits, and extended to

geographical indications protected by WTO Members. National treatment envisaged by the Law was restricted by the reciprocity principle. According to that principle, the right to registrate appellations of origin in the Russian Federation was granted to legal entities and individuals from those States which provided similar rights to Russian individuals and legal entities, i.e. after accession to the WTO, the right to registrate appellations of origin would be given to all natural persons and legal entities of WTO member-States by virtue of this principle. The procedure for the application for registration of appellations of origin by foreigners was similar to a number of other countries where registration systems were implemented.

582. In response, some Members of the Working Party stated that they considered that the registration and protection of appellations of origin should be based on the requirements of the TRIPS Agreement, and not depend on whether mutual bilateral recognition agreements existed.

Inventions and Industrial Designs

583. The representative of the Russian Federation stated that inventions and industrial designs were protected by the provisions of Patent Law of the Russian Federation No. 3517-1 of 23 September 1992 (as amended by Federal Law No. 22-FZ of 7 February 2003). Federal Law "On amendments to the Patent Law of the Russian Federation" No. 22-FZ reflected the provisions of Article 31 of the WTO Agreement on TRIPS by extending the scope of currently existing provisions on "compulsory licensing".

584. Under the Patent Law of the Russian Federation (as amended by Federal Law No. 22-FZ), a patent might not be obtained in relation to the following: plant varieties, animal breeds, layout designs of integrated microcircuits, solutions violating social interests or humanitarian and moral principles. This amendment corresponded to Article 27.3 of the WTO Agreement on TRIPS. Under the Patent Law in force, the validity term of patents for all kind of inventions was 20 years, starting from the date when the application was submitted. This term corresponded to the relevant provisions of Article 33 of the WTO Agreement on TRIPS. The Patent Law (as amended by Federal Law No. 22-FZ) provided for the possibility of extending such term for pharmaceutical products (medicines), pesticides and agricultural chemicals, if their use had been based on a consent of an authorized State body. In such cases, the general 20 year term could be extended for up to 5 years. The Patent law also established civil, administrative and criminal liability for illegal use of patents, inventions and industrial designs. In his view, these provisions were in conformity with the Paris Convention and the relevant provisions of the WTO Agreement on TRIPS.

585. Some Members expressed concern that the Law did not provide for the reversal of the burden of proof in judicial proceedings involving process patents, as required by Article 34 of the TRIPS Agreement.

586. In response, the representative of the Russian Federation noted, that the approach envisaged by Article 34 of the TRIPS Agreement in respect of the method of receipt of a product was reflected in paragraph 1 of Article 10 of the Patent Law. If the product received as a result of the patented method was a new product, an identical product would be considered as received as a result of the patented method if not proved otherwise. The burden of proof was therefore with the defendant.

Plant Variety and Animal Breed Protection

587. The representative of the Russian Federation stated that plant varieties and animal breeds were protected in accordance with Law of the Russian Federation No. 5605-1 FZ of 6 August 1993 "On Selection Attainments". In his view, the provisions of this Law were in conformity with international legal instruments, such as the UPOV Convention and the WTO Agreement on TRIPS.

Layout Designs of Integrated Circuits

588. The representative of the Russian Federation said that layout designs of integrated circuits were protected in accordance with Law of the Russian Federation No. 3526-1 of 23 September 1992 "On Legal Protection of Layout Designs of Integrated Circuits". In the Russian Federation's view, the provisions of this Law were in conformity with the provisions of the Treaty on Intellectual Property in Respect of Integrated Circuits (Washington Treaty). In addition, Federal Law No. 82-FZ of 9 July 2002 "On amendments to the Law 'On Legal Protection of Layout Designs of Integrated Circuits'" contained provisions aimed at satisfying the requirements of the TRIPS Agreement which were additional to those of the Washington Treaty.

Requirements on undisclosed information, including trade secrets and test data

589. The representative of the Russian Federation said that apart from the above mentioned normative legal acts, Russian legislation contained a number of normative legal acts which regulated and determined the mechanism for ensuring protection of undisclosed information, namely Federal Law No. 24-FZ of 20 February 1995 «On Information, Providing and Protecting Information» (as amended on 10 January 2003), Law of the Russian Federation No. 5351-1 of 9 July 1993 "On Copyright and Related Rights" (as amended on 19 July 1995 and on 17 July 2004), Patent Law of the Russian Federation No. 3517-1 of 23 September 1992 (as amended on 7 February 2003), Federal Law

No. 98-FZ of 29 July 2004 “On Commercial Secrets”, as well as a number of regulations, in particular President Decree No. 188 of 6 March 1997 “On Approving a List of Confidential Data”.

590. These normative legal acts prohibited disclosure of commercial secrets and/or its illegal use without the owner’s consent. They granted the owners and other eligible persons protection of their legitimate rights, inter alia, by stopping actions which could infringe or threaten an infringement of their rights. Persons who followed the mandatory procedure for submitting the documents to the authorized State bodies and organizations were not deprived of their legal rights to these documents and to the use of the information contained therein.

591. According to Federal Law No.24-FZ of 20 February 1995 “On Information, Providing Information and Protection of Information”, confidential information was understood as documentary information, the access to which was limited in accordance with Russian legislation. President Decree No. 188 of 6 March 1997 established the list of data of confidential character. This list included: (i) secret of private (individual) life (information on the facts, events and circumstances of private (individual) life of a citizen allowing the identification of his personal identity (personal data), except for the information subject to dissemination in mass media in cases envisaged by federal laws; (ii) information related to professional activity with limited availability according to the Constitution of the Russian Federation and federal laws (medical, notarial, lawyer secrecy, secrecy of correspondence, telephone conversations, mail, telegraph and other messages, etc); (iii) service secrets; (iv) commercial secrets; and (v) information on the contents of inventions, utility models and industrial designs prior to the official publication of information about them. The protection of such information was guaranteed by application of the civil, labor, administrative and criminal legislation.

592. In addition, protection of undisclosed information, as provided in Section 7 of the WTO Agreement on TRIPS, was ensured by virtue of Article 139 of the Civil Code. In particular, this Article stipulated legal protection of undisclosed information, which constituted official or commercial secrets, including information related to products yet to be patented.

593. According to Article 139 of the Civil Code, information constituted official or commercial secret, when such information had real or potential commercial value because it was secret, i.e. not known to third persons, when there was no free legal access to it and that its holder had taken steps to protect its confidentiality. The Russian legislation provided instruments for protection of the holder's legal rights, including the right to put an end to activities violating his/her rights or threatening to violate them. These provisions fully corresponded to the requirements of Article 39, paragraph 2, of the TRIPS Agreement. Persons having obtained information containing official or commercial secrets by illegal means were obliged to compensate the damages caused. So were employees having

disclosed official, commercial or other secret in violation of their labour contract, contract, or law, and contractors having disclosed official, commercial or other secret in violation of their civil contract (Articles 57 and 243 of the Labor Code of the Russian Federation). Different kinds of liability (administrative, criminal, etc.) could be applied to officials having disclosed such information, including officials who had used undisclosed information presented for clinical tests of medicinal products without the consent of the holder

594. The Code of the Russian Federation on Administrative Offences provided for administrative responsibility (in form of fine) for offences in the field of information, including responsibility for disclosure of information, the access to which was limited by federal law (except for cases when the disclosure of such information involved criminal liability), by persons who had received access to such information in connection with performance of a service or professional duties (Article 13.14 of the Code of Administrative Offences). Article 183 of the Criminal Code established criminal punishment for illegal receipt and disclosure of information containing commercial, tax or bank secrets.

595. Federal Law No. 98-FZ of 29 July 2004 “On Commercial Secrets” regulated the protection of commercial secrets, ascription of information to commercial secrets, transfer of such information, and protection of its confidentiality. It also determined the list of data that could not be considered a commercial secret (for example, data containing constituent documents of a legal entity). The Law applied to information that contained a commercial secret independently of the type of media on which it was stated. Scientific, technical, technological, industrial, financial, economic and any other type of information (including know-how) that had real or potential commercial value because it was secret, i.e. not known to third persons, had no free legal access and was subject to an obligation of commercial secrecy by its holder could be considered a commercial secret.

596. The Law also provided the information holder with the right and possibility to prevent third persons from obtaining, disclosing, or using confidential information without his/her permission by: (i) limiting or prohibiting access to the information containing a commercial secret, defining the procedure and conditions of access to this information; (ii) requesting the natural persons and legal entities who had gained access to commercial secrets, and State and local authorities to which the commercial secret had been given, to observe the obligations of confidentiality of information; and (iii) protecting his rights in case of disclosure, illegal receipt or illegal use of the information containing a commercial secret by third persons, including the demand of compensations of damages caused by violation of his rights. If necessary, the holder of a commercial secret had the right to apply

means and methods of technical protection of confidentiality of information, and other means that were in compliance with the Russian legislation.

597. The Law also contained provisions protecting confidentiality of information within the framework of labor and civil relations and when such information was provided to State bodies. Article 13 of the Law required State and municipal authorities to create conditions guaranteeing protection of confidentiality of information provided to them by juridical persons and individual entrepreneurs. State and municipal authorities' officials could not disclose, transfer to third persons or other State and municipal authorities or take personal advantage of information containing a commercial secret that had become known to them in the course of their duties, while providing services, without permission of the holder. In case of violation of confidentiality of information, State and municipal authorities' officials were subject to disciplinary, civil, administrative and criminal liability in accordance with Russian legislation.

598. The acquisition, use, or disclosure of scientific, technical, production, or commercial information, including commercial secrets, without the owner's consent were not permitted pursuant to Article 10 of Law No. 948-1 of 22 March 1991 "On Competition and Restriction of Monopoly Activity on Commodity Markets".

599. The provisions of the above-mentioned laws prohibited the use of undisclosed information without the consent of the right holder. All these provisions (including the prohibition of disclosure and use of confidential (undisclosed) information without the owner's permission) were applicable to the protection of confidential (undisclosed) information related to pharmaceutical and argochemical products containing new chemical substances.

600. In addition, the Rules of Laboratory Practice (Order of the Ministry of Health of the Russian Federation No. 267 of 19 June 2003) envisaged by Law No.86-FZ of 22 June 1998 "On Medicines" protected undisclosed information related to tests on medicines. The Rules determined mandatory requirements concerning the holding and carrying out of pre-clinical tests on medicines to protect undisclosed information.

601. The Rules of Clinical Practice (Order of Ministry of Health and Social Security No. 266 of 19 June 2003) established requirements in terms of planning, realization, control of clinical researches and documentary registration of their results aimed at ensuring reliability and accuracy of information received during the tests. According to Article 11 of the Patent Law, the carrying out of clinical tests on medicines was not considered a violation of the exclusive right of the patent holder (owner of a patent on a medical product). At the same time, if a new medicine was identical to a medicine

protected by a patent for invention, the release of such medicine into the market was possible only with the permit of the legal owner.

602. He added that regarding patented pharmaceuticals and agrochemical products, protection of undisclosed information provided under Russian legislation was in conformity with Article 39 of the TRIPS Agreement. Protection was not applied to the information, which could be published or had been published, according to the Patent Law and the procedure described in this Law (application for invention, formula of the invention, its description).

603. [The representative of the Russian Federation confirmed that Russia would, in compliance with Article 39.3 of the TRIPS Agreement, ensure that the legislative provisions required the pharmaceutical registration authorities to provide a period of at least 6 years of protection against unfair commercial use starting from the date of receipt of the data. During this period no person other than the person who submitted such data could without the explicit consent of the person, who submitted the data, rely on such data in support of an application for product approval. During this period any subsequent applicant for marketing approval would not be granted a market authorization unless he submitted his own data. Furthermore, the Russian Federation would guarantee, during this period, the protection of such data against disclosure, except where necessary to protect the public, or unless steps were taken to ensure that the data are protected against unfair commercial use. The Working Party took note of these commitments.]

3. Enforcement

Criminal Measures

604. The representative of the Russian Federation stated the Criminal Code of 13 June 1996 included three articles specifically dealing with intellectual property: Article 146 (Copyright and Related Rights Violations); Article 147 (Patents Violations); and Article 180 (Trademark Violations).

605. Article 146 of the Criminal Code (as amended on 8 April 2003) reinforced criminal liability for illegal use of objects of copyright and related rights as well as for purchase, storage, transportation of counterfeited works of art or phonograms for the purpose of their sale in large quantities. This new legislation increased the penalty up to five years of imprisonment.

606. In accordance with Article 147, the illegal use of an invention, utility model and industrial design, or disclosure of the essence of an invention, utility model or industrial design, without the consent of its author or applicant before any official publication of information about them; illegal

acquisition of authorship; or compelling of co-authorship were punishable by fines of up to 300.000 Rubles (more than US\$ 10.000), or amounting to up to two years of wage, salary, or any other income of the convicted person, arrest for up to six month, or deprivation of liberty for up to five years, should these acts have inflicted serious damage to a person. In accordance with Article 180, the illegal use of a trademark or service mark, appellation of origin, or similar designations for homogeneous goods, as well as the illegal use of a special marking designating a trademark or an appellation of origin which had not been registered in the Russian Federation were punishable by fines of up to 300.000 Rubles or amounting to up to two years of wage, salary, or any other income of the convicted person, arrest for up to six months, or deprivation of liberty for up to five years, should these acts have taken place more than once or have inflicted serious damage to a person.

607. The representative of the Russian Federation stated that confiscation of illegal goods, materials and equipment used for their manufacturing was not directly stipulated under Articles 146, 147 and 180 of the Criminal Code. Decisions on confiscation and destruction of counterfeit products and equipment used in their production were taken within the framework of criminal prosecution as provided in Articles 81 and 82 of the Criminal Procedure Code. It was normal practice, however, to confiscate these goods and machinery as material evidence. Criminal procedure rules (Article 81 of the Criminal Procedure Code) were also applied with regard to destruction of confiscated “pirated” products. Under this Article, items which were used as “instruments of crime”, “preserved traces of crime”, or “which could serve a means for detecting a crime and establishing circumstances of a criminal case” were recognized as material evidence, filed to the criminal case, and could not be destroyed prior to the court decision. Pursuant to the Criminal Procedure Code, when passing sentence, a court must decide whether to order seizure or destruction of material evidence (including goods and machinery).

608. He added that since 1999 there had been a special department dealing with intellectual property crimes within the Main Economic Crime Division of the Ministry of Interior (and its regional departments).

Criminal Procedures

609. In accordance with the legislation in force intellectual property violations provided by Article 146, paragraph 1, and Article 147, paragraph 1, of the Criminal Code were subject to private complaint, and criminal procedure could not be initiated without a complaint by the right holder (Article 20 of the Criminal-Procedure Code). Other intellectual property criminal offences were cases of public accusation and did not need a complaint by the right holder (“ex-officio”). The time limits for investigation and final decision on cases provided for in paragraphs 1 and 2 of Article 180 of the

Criminal Code in accordance with the Criminal Procedure Code were initially 20 days and, for complex cases, 30 days from the date of institution of the criminal case. The time limits for investigation and final decision on cases provided for in Articles 146 and 147 of the Criminal Code in accordance with the Criminal Procedure Code were initially up to 2 months from the date of institution of the criminal case. This term could be prolonged to 12 months in complex cases. Official state examination might be done by the Centre for Expertise of the Ministry of Interior. At the request from an anti-trust or law enforcement body and on the basis of a relevant court order, Rospatent experts provided an opinion regarding a trademark, invention or another intellectual property issue. An investigator, prosecutor or court would then make a decision based on the results of the examination. The examination initiated by the law enforcement bodies was free of charge.

Border Measures

610. The representative of the Russian Federation stated that that Chapter 38 of the Customs Code on “Measures Taken by the Customs Authorities in Respect of Certain Goods” regulated protection of intellectual property rights by customs authorities in import-export transactions (border measures). Pursuant to the provisions of the new Code, customs authorities were vested with additional powers related to the protection of intellectual property rights, namely the authority to suspend the release of goods which contained intellectual property objects registered by the customs on the basis of right holders’ applications. A uniform procedure for ensuring protection of intellectual property rights by customs authorities, including the procedure for filing applications requesting measures to be taken to suspend release of goods, requirements in respect of the content of such application depending on the type of intellectual property, and rules for maintaining the customs register of intellectual property had been established by SCC Order No. 1199 of 27 October 2003 «On the Approval of Regulations on Intellectual Property Rights Protection by Customs Authorities».

611. The Code of Administrative Offences, in force since 1 July 2002, had introduced administrative liability for infringements of intellectual property rights (Article 7.12 “Infringements of Copyright and Related Rights, Inventive and Patent Rights” and Article 14.10 “Illegal Use of a Trademark”), inter alia, in performing import-export operations, and vested the customs authorities with the powers to exercise administrative prosecution where infringements were detected.

612. In response to concerns of some Members, the representative of the Russian Federation stated that with regard to ex officio authority, the new Code of Administrative Offences provided administrative responsibility for imports of goods infringing IPRs in its Articles 14.10 and 7.12. In accordance with Chapter 28 (Articles 28.2 and 28.3) of this Code, customs authorities could, upon their own initiative if they had acquired prima facie evidence, initiate an administrative investigation

in this case. In the course of such investigation, customs authorities were authorized to suspend the release of suspected goods (to execute requisition or seizure) and seek from the right holder any information that may assist them in the investigation. All persons concerned had the right to familiarize themselves with the record of the case, as well as submit explanations and comments, which were attached to the record of the case. The suspension of the release of suspected goods normally lasted one month (a period prescribed for the administrative investigation) and could be extended for a further period, but not more than for six months. Final decisions on administrative offences were taken by court. Thus, the customs authorities were endowed with powers to fully exercise the function of protecting intellectual property rights in the course of export and import operations both on the basis of the right holder's application or without one, in accordance with the "ex officio" principle of Article 58 of the WTO Agreement on TRIPS.

Civil and Administrative Procedures and Remedies

613. The representative of the Russian Federation stated that remedies currently available under the Civil Code included confirmation of rights; prohibition of actions violating rights; imposing fines; compensation of damages caused to the right holder; statutory compensation and compensation of income received by the infringer. The latter measure was available only for copyrights. Regarding claims for damages and assessment of damages, civil law cases provided for the general principle of full recovery of damages. The amount of damage was calculated in accordance with the general norms of the Civil Code based on the prices of corresponding legitimate goods adjusted for actual damage and forgone profit of the right holder. As for the statutory compensation, it was initially defined by the plaintiff who had the burden to prove the fact of damage caused without calculating the amount. It was further assessed by the court based on the nature of infringement, income received by the infringer and other relevant facts. Civil legislation also provided possibility of confiscation and destruction of counterfeit products as well as confiscation of materials and equipment used for their production.

614. The Law «On Copyright and Related Rights» (as amended by Federal Law No. 72-FZ as of 20 July 2004) provided that counterfeit copies of works of art or phonograms, as well as materials and equipment used for reproducing counterfeit copies of works of art or phonograms, were subject to confiscation by judicial decision. Confiscated counterfeit copies of works of art or phonograms were subject to destruction (by decision of court), save for cases of their transfer to holders of copyright and similar rights at their request (by decision of court). According to the Superior Arbitration Court's practice, the Court would issue a decision on confiscation and destruction when the right holder had

not requested the goods to be transferred to him/her. Should the court not order confiscation of illegal goods in civil proceedings, the right holder could appeal.

615. The final decision on the amount of compensation rested with the court. Regarding provisional measures under Article 90 of the new Arbitration Procedure Code, the arbitration court could issue an order for preliminary injunction based on the plaintiff's petition. Such measures should be aimed at securing the claim. Provisional measures included: prohibition of infringing actions, arrest of property including back accounts, seizure of documents and other evidence. The judge handling the case should make a decision the next day after the petition was filed without the representatives of the parties. Provisions stipulating similar measures were also provided in Chapter 13 "Provisional Measures" of the new Civil Procedure Code No. 138-FZ of 14 November 2002. In his view, these provisions fully complied with the requirements of Article 50 of the TRIPS Agreement.

616. The representative of the Russian Federation stated that Articles 7.12, 7.28 and 14.10 of the new Code of Administrative Offences established administrative liability for violation of copyrights and related rights, rights regarding inventions and industrial designs, trademarks, service marks and appellation of origin. In addition to fines up to 40.000 Rubles (i.e. about US\$ 1.400), administrative sanctions included obligatory confiscation of counterfeit products, materials and equipment used in their production and other instruments used in committing the administrative offence. In accordance with Article 32.4 of the Code, confiscated products, materials, equipment and instruments were subject to destruction or, at the request of the right holder, transferred to him/her.

617. In addition, anti-monopoly legislation provided certain sanctions that were administered directly by the Federal Anti-Monopoly Service. Any commercial legal entity whose rights of intellectual property had been violated by another commercial legal entity could apply to the Service to start the proceedings against the offender. The Service could issue a decision imposing fines or demanding certain actions or prohibiting infringing actions. The procedure normally took between one and two months, and in complicated cases between three and six months.

618. In response to questions concerning appeals processes in intellectual property matters, he further noted that the Chamber on Patent Disputes of Rospatent heard disputes arising out of use of objects protected by the Russian laws regulating intellectual property issues (Articles 13, 19.2, 28, 29, 34, 42, 42.1 of Law of the Russian Federation of 23 September 1992, No. 3520-1 "On Trademarks, Service Marks and Appellations of Origin of Goods" (as amended by Federal Law No. 166-FZ of 11 December 2002), Articles 21, 29 of Patent Law of the Russian Federation No. 3517-1 of 23 September 1992).

619. He further noted that the Patent Dispute Chamber performed the following functions:

- Considered objections to refusals to issue patent for an invention, industrial design or certificate for utility model or to accept an application for trademark, service mark or appellation of origin based on the results of a formal examination.
- Considered objections to refusals to issue patent for an invention, industrial design or to register a trademark, service mark, appellation of origin and/or to grant the right to use an appellation of origin, based on an on the merits examination of applications and examination of the designations applied for.
- Considered objections from individuals and legal entities against issuance of patents for inventions, industrial designs and certificates for utility models in violation of existing Russian copyright certificates for inventions and certificates for industrial designs, and against registration of trademarks, service marks, appellations of origin, and issuance of certificate for the right to use appellations of origin.
- Based on the results of hearings of the above objections held in accordance with the Rules of Hearing Objections by the Patent Dispute Chamber, the Patent Dispute Chamber passes a decision.
- Provided confidentiality of hearings of any objections by the Patent Dispute Chamber.
- Prepared publication of its results in the official press organs of Rospatent.
- Performed registration of documents confirming payment of fees required by law for lodging an application with the Patent Dispute Chamber and for an act thereof by the Chamber.

620. He further noted that pursuant to Article 43.1 of the Law "On Trademarks, Services Marks and Appellations of Origin of Goods", and Article 21 of the Patent Law, the decisions of the Patent Dispute Chamber and the procedure for consideration of disputes were determined by the federal executive authority for intellectual property (Rospatent). The procedure for lodging objections and applications to the Patent Dispute Chamber and the procedure for their consideration were determined by Rospatent. Decisions of the Patent Dispute Chamber were subject to approval by the Chief Officer of Rospatent, took effect from the date of their approval and could be appealed in court in accordance with the legislation of the Russian Federation.

621. Noting all the above, Members of the Working Party sought a commitment that the Russian Federation would be in compliance with the WTO Agreement on TRIPS, including its enforcement provisions, as from the date of accession, without recourse to transitional arrangements.

622. [The representative of the Russian Federation confirmed that the Russian Federation would apply fully the provisions of the WTO Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS) from the date of accession to the WTO, including provisions for enforcement, without recourse to any transitional period. He confirmed that the Russian Federation would provide effective

protection against unfair commercial use of undisclosed test or other data submitted to authorities in the Russian Federation, in support of applications for marketing approval of pharmaceutical or of agricultural chemical products which utilized new chemical entities, for a period of at least six years from the date on which the Russian Federation granted marketing approval to the person submitting the data. He also confirmed that the Patent Law had been amended to better specify the legal framework for decision-making with respect to issuance of compulsory licenses (this amendment brought the Patent Law in conformity with the requirements Article 31 of the TRIPS Agreement); the Law on Trademarks brought the Russian legislation in this area in conformity with TRIPS requirements (including immediate publication after registration, additional protection for well-known trademarks against bad faith registration and use on dissimilar goods, and additional protection against trademarks registration containing geographical indications); the law on the introduction of amendments and addenda to Federal Law "On Legal Protection of Layout Designs of Integrated Circuits" implemented all the TRIPS requirements in this area and ensured the granting of protection against articles embodying an integrated circuit containing an unlawfully reproduced topography; the federal law on introduction of amendments and addenda to Federal Law "On Legal Protection of Computer Programmes and Databases" made clear its relationship, as 'lex specialis' to the Copyright Law and that the Russian Federation would implement all TRIPS obligations with respect to Computer Software and Databases; the Federal law on introduction of amendments to Federal Law "On copyright and related rights" introduced amendments that allowed the application "in toto" of the provisions of Article 18 of the Berne Convention to foreign works and phonograms, including the granting of retroactive protection to foreign works or phonograms; and that current revisions of the Criminal Code and the Criminal Procedure Code, the Civil Procedure Code and the Code of Arbitration Procedure and the Customs Code would allow for the correct implementation of Articles 41-61 of the WTO Agreement on TRIPS and the enforcement by the Russian Federation of intellectual property rights.]

623. [The representative of the Russian Federation confirmed that, from the date of accession, the Russian Federation would conform with the provisions of the TRIPS Agreement without having recourse to transitional period. The Working Party took note of that commitment.]

[to be completed]

POLICIES AFFECTING TRADE IN SERVICES

624. The representative of the Russian Federation noted that the Russian market for services began to develop only in the first part of the 1990s, following the domestic process of economic reforms, privatization and liberalization of the whole system of the Russian Federation's economy.

625. He further stated that the reform of the Russian economy during the last decade called into being new services sectors as well as contributed to the development of existing ones. At the same time, be they old or new, services providers in some sectors operated within insufficient regulatory and institutional framework and suffered from an unstable market structure. As "infant industries", those services sectors were liable to positive and negative economic and social variations that could have a serious impact on the economy as a whole.

626. He noted that economic developments in services were supported by the legislative process. Many laws and regulations were adopted to establish a legal framework for provision of services in general or in specific sectors. However, the dynamism of services markets was still not adequately reflected by the domestic regulatory system. As an example, the Russian banking crisis in August 1998 was particularly associated with inadequate approaches to, and lack of effective prudential arrangements in, the established banking activities following the extreme dependence of the domestic financial system from the situation in short-term foreign capital markets. For the purposes of creating a favourable economic and investment climate, including in the sphere of services, the Russian Federation had embarked on a series of measures to reduce restraints on the economy involving streamlining of the procedures of company registrations, downsizing the list of types of activities subject to licensing and a reduction of the frequency of inspections of enterprises. It could be expected that regulatory framework of the Russian Federation governing the services sector would, at the same time, be continuously subject to frequent adaptations and improvement in light of experience and of progress made in building national capacity to supply services on a competitive basis.

627. Answering to the questions of members on the system of licensing in the sphere of services the representative of the Russian Federation informed that the existing legal framework rendered some types of services subject to licensing. The fundamentals of the regulation of licensing in the area of services were laid in the Federal Law "On Licensing of specific types of activity" No. 128-FZ of 8 August 2001 and limited number of other Federal Laws, regulating individual services sectors. The Law "On Licensing of specific types of activity" had been adopted in the context of the governmental program of "debureaucratization" of the economy and established a unified and transparent licensing procedure aimed at removal of excessive administrative regulation and barriers for market access. Another Law, which had been passed in the context of this program, was the Federal Law No. 129 – FZ of 8 August 2001 "On State Registration Of Juridical Persons".

628. The representative of the Russian Federation clarified that according to the Civil Code of the Russian Federation a juridical person was an organization that had separate property under ownership,

economic management, or operative administration and that was liable for its obligations with that property and that might, in its own name, obtain and exercise property and non-property personal rights, bear duties, and be a plaintiff and defendant in court. Juridical persons must have an independent balance sheet or budget. Branches were not juridical persons but a separate subdivision of a juridical person located outside the place where the legal person was located and conducting all its functions or part of them. Representative offices were not juridical persons either.

629. In accordance with the Civil Code of the Russian Federation the juridical persons might be organized as commercial organizations, which saw making profits as the chief goal of their activity, and as non-commercial organizations, which did not see making profits as such a goal, and which did not distribute the derived profit among their participants. The juridical persons that were non-commercial organizations, might be set up in the form of state-corporations, non-commercial partnerships, institutions, autonomous non-commercial organizations, consumer cooperatives, public or religious organizations (associations), financed by the owner of the institutions, in the form of the charity and other funds, and associations combination of juridical persons (associations and unions).

630. He further noted that the Russian Federation exercised its sovereign rights over subsoil and mineral resources, underground resources within the territory of the Russian Federation, including subsoil domain and mineral resources contained therein, energy and other resources. Subsoil areas could not be subject to purchase, sale, gift, inheritance, deposit, pledge or any other form of alienation.

631. Regarding the energy sector, some members noted that the Russian Federation had so far made no commitments on mining, oil drilling and pipeline services. In this regard, these members requested details of the relationship, if any, between the lack of any commitments in these activities and the exercise of the Russian Federation's sovereign rights over its subsoil and mineral and energy resources. They further asked a clarification on the Russian Federation's intentions in respect of the development of a market environment in relation to the provision of mining, oil-drilling and pipeline services and whether these would be consistent with the role that the Russian Federation saw for the conclusion of production sharing agreements and concession arrangements.

632. In response, the representative of the Russian Federation explained that the current legislation of the Russian Federation did not guarantee full market access of foreign services suppliers with respect to energy related services in GATS terms, and there were no plans to amend this legislation. He further explained that Production sharing agreements were concluded in accordance with the Federal Law No. 225-FZ of December 30, 1995 "On production sharing agreements". This law applied to all Agreements concluded after its entry into force. Agreements concluded prior to the

entry into force of the Law should be implemented in accordance with their terms and conditions. At that the provisions of the Law would be applicable to the above-mentioned Agreements to the extent its application did not contradict the terms and conditions of such Agreements.

633. In accordance with Article 7 of this Federal Law, the production sharing agreement may establish certain obligations for Investors, who were defined as those persons who contributed their own, borrowed or attracted funds, either in the form of property or property rights, to exploration, development and production of mineral raw materials and were the users of subsoil areas covered by the production sharing agreement. Thus, Investors are obliged to employ citizens of the Russian Federation, their proportion being no less than 80 per cent of all employed personnel.

634. The representative of the Russian Federation also noted that the Russian authorities were aware of ongoing negotiations within the WTO with a view to developing the necessary multilateral disciplines to avoid trade distortive effects of subsidies and addressing the appropriateness of countervailing procedures. Taking into account the fact that the Russian Federation did not take part in the negotiations as a fully-fledged participant and thus was not able to adequately secure its particular interests in this respect, the Russian Federation had to reserve the right to maintain subsidy measures according to national legislation and practices.

635. For instance, under Russian legislation, state support for juridical persons could be subject to criteria or conditions such as inter alia, employment or provision of services to persons suffering from unfavorable social and economic position or being entities of social importance or as small business enterprises. Mentioned criteria were applied on non-discriminatory basis independently of foreign participation in juridical person.

Under current legislation:

- persons suffering from unfavorable social and economic position included persons of limited abilities due to illness or age, jobless persons, orphans, persons suffering from low income, natural and other disasters, war or social conflict and other circumstances which deny common conduct of life and could not be solved by these persons themselves;
- entities of social importance included entities providing services of mutual social use and/or services consumption of which could be of a principle importance to any of juridical persons and/or individuals and/or entities being of key importance as a source of job within a respective region or economy in general and entities providing services which are closely connected to the production of services mentioned above for example as a part of technological process of such production or as a condition of production.
- small business enterprises were those commercial organizations in which the average number of workers does not exceed in the reporting period the following maximum levels: 100 in industry and construction, 80 in agriculture, 60 in the scientific and cultural sphere, 30 in

retail trade and domestic services and 50 in wholesale trade and in other activities or branches of activity as well as participation in capital of juridical persons not being small business enterprises less than 25%.

636. Several members of the Working Party stressed the need for more information on the Russian Federation's progress towards establishing the required inquiry point and other transparency and procedural requirements for complying with the GATS. These members requested confirmation that, in services sectors requiring licensing, foreign natural and juridical persons needing activity licenses could obtain them on the same terms as Russian natural and juridical persons. Some members noted that the Russian Federation had used the "infant industry" argument to justify a certain level of protection to its services sector and asked how the Russian Federation would implement measures in this regard, considering that the GATS did not contemplate any safeguards mechanism.

637. Regarding the banking sector, some members expressed concern that the two largest commercial banks in the Russian Federation (Sberbank and Vneshtorgbank) were currently owned by the CBR. Taken together these two banks held a dominant position on the Russian market and their ownership by the CBR created a clear potential conflict of interest with the CBR's prudential and other tasks. While welcoming the information on plans to divest the CBR holdings in commercial banks, these members invited the Russian Federation to indicate a firm date by when the ownership of these banks and their commercial activities would be legally and in practice separated from the CBR. In addition, these members expressed further concern about the distortions of competition created by the unlimited (i.e. 100 per cent) state guarantee given to deposits in accounts held with Sberbank. No state guarantee at all existed for deposits held in accounts with other banks, whether Russian or foreign. As this would foster equal conditions of competition in the Russian banking sector and would help improve the solidity and functioning of the financial sector more generally, these members expected that the Russian Federation would commit by an agreed timeframe to divest or bring under the responsibility of another branch of government the commercial activities of the CBR and to ensure that there was no discrimination between established banks as regards the guarantee of deposits. One member of the Working Party expressed concern over the current regulations of the CBR regarding qualification of certain countries as off-shore zones and other discriminatory measures in the banking sector and requested the Russian Federation to bring these regulations in conformity with internationally recognized practices.

638. Responding to the concerns expressed by some members with respect to potential conflict of interest with the Bank of Russia as a supervisory body and the stakeholder in some of commercial banks as well as possible distortions of competition created by the unlimited state guarantee given to

deposits in accounts held with Sberbank, the representative of the Russian Federation noted the following:

- The Bank of Russia held a 63% stake in Sberbank. The remaining shares were owned by non-governmental investors, including foreign investors, which ensured well-thought-out decision making and contributed to a high level of transparency of the bank's policy for minority shareholders and the general public.
- In the Bank of Russia the functions with respect to control over Sberbank were strictly divided. Management of Sberbank as an object of ownership was performed by those divisions of the Bank of Russia that did not exercise banking supervision. At the same time, banking supervision divisions applied to Sberbank the same supervision rules and norms as those applied to any other bank.
- The Bank of Russia had transferred to the representatives of the Government of the Russian Federation part of its seats on Sberbank's Board of Directors, which promoted implementation of government policy with respect to Sberbank's activities.
- Sberbank maintained a historically leading role in the personal deposits' market (at present, about 68%), although its share of individual deposits had been gradually decreasing (in early 2002, for example, it constituted almost 75%). Sberbank remained a socially significant bank, since the majority of its depositors were individuals with low-income, primarily pensioners (retired people). It was impossible to indicate a firm date by when the Bank of Russia would withdraw from Sberbank's capital.

639. He further noted that the issue of Sberbank's participation in the system of guaranteeing deposits had already been resolved in the Federal Law of 23 December 2003 No. 177-FZ "On Insurance of Deposits of Physical Persons in Banks of the Russian Federation".

640. One member of the Working Party expressed deep concern over the Russian Federation's maintenance of a discriminatory regime with regard to the supply of services on the Russian Federation's services' market by his country's nationals residing in different regions of his country, under the mode of supply – "commercial presence" and "movement of natural persons". A member requested the Russian Federation to make the necessary adjustments in order to avoid discriminatory treatment and to allow all his nationals to provide services on the Russian market on an equal footing.

641. In response, the representative of the Russian Federation stated that the nature and origin of this situation was due to complicated historical factors. The Russian Federation felt that the settlement to those problems which were outside the WTO, could be achieved through bilateral negotiations and was prepared to take all reasonable steps in this regard.

642. Another member requested confirmation regarding the Russian Federation's intention to introduce international accounting standards (IAS) adopted by the International Accounting Standards Board (IASB) for banks by 1 January 2004 and for all listed companies by 1 January 2005. That

member asked the Russian Federation to confirm this information and indicate the steps by which it intended to achieve this objective. He also requested the Russian Federation to provide information on the actual application of IAS by Russian companies. Another member asked whether the financial measures described by the Russian Federation in relation to currency regulations and controls were not already covered by Article XII of the GATS and paragraph 2 of the Annex on Financial Services.

643. The representative of the Russian Federation replied that it was the plan of the Government to introduce international accounting standards in due time. He also stated that in the services sectors inscribed in the Russian Federation's Schedule of Specific Commitments, WTO Members' nationals who were services suppliers should be accorded treatment no less favorable than that provided for under the terms, limitations and conditions and subject to qualifications specified in its Schedule as it was provided by GATS. He noted that the requirement for establishing a GATS enquiry point was being addressed. He further noted that the Russian Federation had a limited number of bilateral agreements related to debt settlements and technical assistance measures resulting from agreements on legal assistance which contained some preferential provisions, and agreements on conditions of activity on the territory of Russia of Severniy Investitsionniy Bank (North Investment Bank) and Tchernomorskiy Bank Torgovliy i Rasvitiya (Tchernomorskiy Bank of Trade and Development). The Russian Federation understood that WTO provisions should not be construed as preventing the Russian Federation implementing these bilateral agreements for the period of their validity. For the purpose of the protection of interests of investors, depositors and policy-holders, the protection of national currency of the Russian Federation and also for the purpose of ensuring the stability and integrity of the financial system, the Russian Federation did not exclude the possibility of applying measures affecting currency regulation and currency control and any transaction involving instruments of the internal debt of the Russian Federation and raising credits or loans at international financial markets by issuance and placement of bonds and other issue-grade securities outside the territory of the Russian Federation.

644. Concerning horizontal measures of regulation, the representative of the Russian Federation explained that services considered as public utilities and referred to in the Horizontal part of the Schedule of specific commitments of the Russian Federation in services, could be subject to public monopolies or exclusive rights granted to private operators. Exclusive rights on such services could be granted to private operators, for instance operators with concessions from bodies of state power and local self-governmental bodies, subject to specific services obligations. The foreign services suppliers can apply for these exclusive rights on equal terms with national services suppliers. Services considered as public utilities were supplied on the basis of public contract.

645. He stated that the policy of the Russian Federation in preserving, developing, and disseminating culture, required an authorization with respect to the acquisition of control over a juridical person of the Russian Federation related to the cultural heritage of Russian Federation and/or being a cultural property of the peoples of the Russian Federation. Also the number of services suppliers and scope of their operation could be limited on non-discriminatory basis on the specially protected territories.

646. He noted that for the purpose of the protection and preservation of indigenous persons and exiguous ethnic communities, measures directed at the protection and preservation of the territories of the traditional habitation of these group could be applied, and preferences to these group could be granted with respect to their traditional economic activity on the territory of their traditional habitation. For the purpose of the protection and preservation of indigenous persons and exiguous ethnic communities, a special regime of the use of land of their traditional residence and economic activity had been established. According to that regime they have, inter alia, a priority right to the use of the wild life or natural resources in that land and they have to give their conformity for any use of natural resources in that land.

647. For the purpose of national security reasons, the Russian Federation could use measures to regulate economic and entrepreneur activities with respect to trade in services, including possession, use and disposal of land, natural resources and immovable property, entry and/or permanent stay of physical persons could be limited or prohibited within the border zones and closed administrative areas.

648. Answering to the concerns of some Members, the representative of the Russian Federation confirmed that commitments on "tour operator and tour agency services CPC 7471" include, services rendered for passenger travel by tour agencies, tour operators, and similar services; travel information, advice and planning services; services related to arrangement of tours, accommodation, passenger and baggage transportation; ticket issuance services.

649. Members of the Working Party stated that they expected the Russian Federation to make a commitment to guarantee transparency of licensing requirements and procedures, qualification requirements and procedures as well as of other authorisation requirements, in particular with respect to obtaining, extending, renewing, denying and terminating licences and other approvals required to provide services in the Russian Federation's market and appeals of such actions. The Russian Federation's licensing procedures and conditions should not in themselves act as a barrier to market access and should not be more trade restrictive than necessary. The Russian Federation should publish a list of authorities responsible for authorising, approving or regulating those service sectors

in which the Russian Federation makes specific commitments and the Russian Federation's licensing procedures and conditions. Members also expected the Russian Federation to make a commitment to guarantee that for those services that would be included in the Russian Federation's Schedule of Specific Commitments, relevant regulatory authorities would be separated from, and not accountable to, any service suppliers they regulate. Members further expected the Russian Federation to make a commitment to guarantee that foreign service suppliers remain free to choose their partners.

650. [In response, the representative of the Russian Federation noted that with respect to transparency of licensing requirements and procedures, qualification requirements and procedures as well as other authorization requirements, the Russian Federation would make commitments in accordance with GATS and as provided for under the terms, limitations and conditions and subject to qualifications specified in its Schedule.]

651. The Russian Federation undertook market access negotiations in services with members of the Working Party. The Russian Federation's commitments in services are contained in the Schedule of Specific Commitments, reproduced in Annex ... to the Draft Protocol.

652. [Commitment language in this section will be considered by the Russian Federation at a later stage.]

[to be completed]

TRANSPARENCY

Publication of Information on Trade

653. Members of the Working Party requested a description of the legal authorization to implement Article X of the GATT 1994 and the other transparency provisions required under WTO Agreements together with a confirmation that these provisions would be applied upon accession. A clarification was particularly sought on where the Russian Federation's laws, decrees, resolutions, orders, letters, etc. were published to fulfill the requirements of Article X of the GATT 1994 and the transparency provisions in other WTO Agreements, including GATS and TRIPS.

654. Some members of the Working Party stated that access to customs regulations and decrees was vital for traders attempting to import and export. In this regard, those members noted that there were currently over 4,500 customs regulations and "instructions". Access to the published versions of those provisions was very difficult, notwithstanding that they were considered to be regulatory and normative acts, legally binding and of general application, and the State Customs Committee did not

provide them to importers (or Embassies) upon request. Those members requested that the Russian Federation elaborate how it was approaching this issue, e.g., the need to facilitate access to customs regulations and other subsidiary legislation.

655. The representative of the Russian Federation replied that in accordance with Article 5.3 of the Constitution, laws and other regulatory acts relating to human rights, freedom and duties were subject to official publication. This provision was developed in Federal Law No. 5-FZ of 14 July 1994 "On the Procedures for Publishing and Entering into Force of Federal Constitutional Laws, Federal Laws, and Acts passed by the Chambers of the Federal Assembly"; and Presidential Decree No. 763 of 23 May 1996 "On the Procedures for Publication and Entering into Force of the Acts of the President of the Russian Federation, the Government of the Russian Federation and the Normative Legal Acts of the Federal Executive Bodies". According to Article 4 of Federal Law No. 5-FZ, the date of publication of a federal constitutional law, federal law or act passed by the Chambers of the Federal Assembly should be the date of the first publication of their full text in the "Parlamentskaya Gazeta", "Rossiyskaya Gazeta" or in the digest "Sobraniye Zakonodatelstva Rossijskoj Federatsii". Federal constitutional laws, federal laws and acts of the Chambers could also be published in other press sources and brought to general knowledge through media, distributed to state authorities, officials, enterprises, establishments and organizations, transmitted via communication channels or distributed in machine-readable formats. He also noted that a great deal of draft legislation was made available on various governmental and parliamentary, (e.g. the State Duma) websites from the time it was formally proposed to the State Duma. The Government intended to continue and expand this practice.

656. He added that in accordance with paragraph 2 of Presidential Decree No. 763, acts of the President of the Russian Federation and of the Government were subject to official publication in the "Rossiyskaya Gazeta" and in the digest "Sobraniye Zakonodatelstva Rossijskoj Federatsii" within ten days after their signing. Distribution of the acts of the President and the Government in a machine-readable form by the scientific and technical centre of legal information "Systema" was also deemed to constitute an official publication. Moreover, in accordance with paragraph 8 of Presidential Decree No. 763, regulatory legal acts of federal executive bodies related to human rights, freedom and duties or establishing the legal status of organizations or acts of inter-departmental nature were subject to official publication in the "Rossiyskaya Gazeta" within three days of their registration, and in the "Bulletin of Normative Acts of the Federal Bodies of Executive Power" published by the publishing house "Yuridicheskaya Literature" of the Administration of the President. This Bulletin was distributed in a machine-readable form by "Systema".

657. He noted that in accordance with Federal Law No. 164 of 8 December 2003 "On Fundamentals of State Regulation of Foreign Trade Activity" (Article 16), new Customs Code No. 61-FZ of 28 May 2003 (Article 24) and Government Resolution No. 98 of 12 February 2003 "On Access to Information on Activities of the Government of the Russian Federation and Federal Executive Bodies", all federal executive bodies were required to ensure public access to information with regard to laws, Presidential decrees, government resolutions, as well as their own regulations, orders, rules, instructions, recommendations, letters, telegrams, teletype messages, etc., having an impact on trade, including by placing this information on the Internet. He also confirmed that his Government had set up an operational enquiry point in conformity with the requirements of the WTO Agreements on TBT and SPS and was establishing operational enquiry points in conformity with the requirements of Article III of the General Agreement on Trade in Services.

658. Members requested further information on any legal requirements in the Russian Federation that judicial decisions pertaining to the issues covered by the GATT 1994, the GATS and other WTO Agreements also be published "in such a manner as to enable governments and traders to become acquainted with them" prior to their entry into force. In particular, they asked for information on where information on laws and regulations affecting the GATS and Intellectual Property Protection might be published. They also suggested that the Russian Federation consider posting the contents of "Rossiyskaya Gazeta, "Sobraniye Zakonodatelstva Rossijskoj Federatsii," and "Parlamentskaya Gazeta" on the Internet to improve access by the general public. While many legal provisions existed that laws, regulations, decrees, instructions, etc. be published and be available approximately at the time of implementation, some important rulings, particularly in the area of customs activities, were not easily accessible, and there were few facilities to acquaint traders and the general population with these provisions prior to their enactment or to provide an opportunity for comment. Members also expressed concerns about the lack of opportunity to provide comments and views on laws, regulations and other measures prior to their implementation.

659. Members noted that in the areas of licensing of services, it was often difficult to identify the responsible authorities. Moreover the operation of Russian agencies responsible for authorizing, approving or regulating services activities, whether through grant of license or other approval, lacked transparency and procedures were often unpredictable.

660. In response, the representative of the Russian Federation noted that Federal Law No. 128-FZ of 8 August 2001 "On Licensing of Specific Types of Activity" (as amended on 23 December 2003) imposed specific procedural requirements, including criteria and time limits for decisions on licensing and licensing authorities, and requirements for written notification of decisions. Under Federal Law

No. 128-FZ licensing procedures and authorised bodies were established by Government Resolutions (according to Article 5 of that Federal Law). All acts of the Government of the Russian Federation were subject to official publication before they came into effect.

661. Members welcomed this information, but noted that the Law did not cover important sectors, such as activities in the field of communications, production and sale of ethyl alcohol and alcohol products, and market activity.

662. In response, the representative of the Russian Federation noted that though Federal Law No. 128-FZ did not cover a certain range of activities, including communications, production and sale of alcohol, etc., specific requirements on transparency, including criteria and time limits for decisions on licensing and licensing authorities, and requirements for written notification of decisions, were stipulated in the special Federal Laws regulating those types of activity.

663. [The representative of the Russian Federation confirmed that from the date of accession all laws, regulations, decrees, decisions, judicial decisions and administrative rulings of general application related to trade would be published promptly in a manner that fulfills WTO requirements, including Article X of the GATT 1994. He also confirmed that the Russian Federation would observe the transparency requirements of the GATS, particularly Article III, and Article 63 of the TRIPS Agreement from the date of accession. As such, no law or regulation related to international trade would become effective prior to such publication in one or more official publication specifically identified for this purpose from the date of accession. His Government would review and, as necessary, amend current legislation to ensure that such measures would be implemented. He further confirmed that his Government had decided to expand the transparency provided with regard to legislation and measures having similar effect in the areas of trade and investment. In this regard, the Russian Federation would, from the date of accession, establish or designate a single official journal or website, published or updated on a regular basis and readily available to WTO members, individuals and enterprises, dedicated to the publication of all regulations, decisions, orders, administrative rulings of general application, and other normative measures pertaining to or affecting trade in goods, services, and TRIPS prior to enactment. The government would provide a reasonable period, i.e., no less than 30 days, for comment to the appropriate authorities before such measures would enter into force, except for those regulations and other measures involving national emergency or security, or for which the publication would impede law enforcement. The publication of such regulations and other measures would include the names of the authorities (including contact points) responsible for authorizing, approving or regulating services activities, whether through grant of license or other approval, including those organizations which had been delegated authority from

federal authorities. Procedures and conditions for obtaining such licenses or approval would also be published. Published information would also include the effective date of these measures and list the products and services affected by the particular measure, identified by appropriate tariff line and classification. The Government would take into account any comments received during the period for commenting, and if so requested, would reply as promptly as possible. He added that the Russian Federation intended to post the contents of current and past editions of "Rossiyskaya Gazeta," "Sobraniye Zakonodatelstva Rossijskoj Federatsii," and "Parlamentskaya Gazeta" on this website as well, and keep them current. The Working Party took note of these commitments.]

664. [The representative of the Russian Federation confirmed that, from the date of accession, the Russian Federation would conform with the provisions of Article X of the GATT 1994, Article III of the GATS. The Working Party took note of these commitments.]

Notifications

665. Members of the Working Party noted that all members of the WTO were obliged to provide notifications to the various subsidiary bodies of the WTO, pursuant to the covered Agreements. Members of the Working Party requested a specific commitment that the Russian Federation would provide, as from the date of accession, initial notifications for all WTO Agreements, and that regulations subsequently enacted by the Russian Federation which would give effect to the laws enacted to implement any of the WTO Agreements would also conform to the requirements of that Agreement.

666. [The representative of the Russian Federation confirmed that upon accession, the Russian Federation would submit all initial notifications required by any Agreement constituting part of the WTO Agreement. Any regulations subsequently enacted by the Russian Federation which gave effect to the laws enacted to implement any Agreement constituting part of the WTO Agreement would also conform to the requirements of that Agreement.]

667. [The representative of the Russian Federation confirmed that after accession the Russian Federation would submit notifications in conformity with WTO rules and procedures. The Working Party took note of this commitment.]

FREE TRADE AND CUSTOMS UNION AGREEMENTS

668. Members of the Working Party noted that the Russian Federation participated in a number of preferential trade agreements, and that it was customary to provide a detailed description of the scope, nature, and status of such agreements. This was required to ensure that the value of MFN

commitments negotiated in the schedules would be known to all parties. These agreements currently included: bilateral free trade agreements with CIS Member States and a bilateral free trade agreement (signed on 18 August 2000) with the Federal Republic of Yugoslavia (now Serbia and Montenegro); the "Agreement on the Creation of Free Trade Area" between CIS countries of 15 April 1994; the 'Agreement on Customs Union and Common Economic Area' of 26 February 1999 and subsequent 'Agreement on the Establishment of the Eurasian Economic Community' with the Republics of Belarus, Kazakhstan, Tajikistan and the Kyrgyz Republic of 10 October 2000; the 'Agreement on the Creation of a Unified State' with the Republic of Belarus of 8 December 1999; and the 'Agreement on the Establishment of a Common Economic Area' with Ukraine, the Republics of Belarus and Kazakhstan of 19 September 2003.

669. The representative of the Russian Federation noted that, at present, trade and economic relations between the Russian Federation and the other CIS countries (the Republics of Azerbaijan, Armenia, Belarus, Georgia, Moldova, Kazakhstan, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan and the Kyrgyz Republic) were determined by a number of multilateral and bilateral agreements. These Agreements had established a regime of free trade in goods among the Parties that covered a substantial part of trade in goods between them. In accordance with the agreements on free trade with CIS countries and the Republic of Serbia and Montenegro, the importation of nearly all goods (including agricultural products) originating from these countries into the customs territory of the Russian Federation was not subject to customs duties. The Russian Federation believed that an obvious advantage of WTO membership for CIS Member States would be implementation of the WTO requirement to bring the legislation of its members into compliance with its norms and rules. As a result, trade among CIS countries was likely to become more efficient. When expanding and implementing trade and economic agreements with CIS countries, including the Eurasian Economic Community, at both multilateral and bilateral levels, the Russian Federation currently took due account of existing or future obligations of these countries as current or potential WTO members. He also noted that Georgia, Moldova, the Kyrgyz Republic and Armenia, which were parties to a number of these preferential agreements with the Russian Federation, had joined the WTO between 1998 and 2003. He recalled that those respective agreements had also been discussed in the respective accession Working parties of these countries.

670. He noted that the preferential trade agreements concluded by the Russian Federation had effectively led to the elimination of customs duties and other restrictive regulations of commerce in respect of substantially all trade between the Russian Federation and the parties to these agreements. Trade preferences were granted to goods originating in respective territories of parties to preferential agreements on the basis of a certificate of origin as per the rules of origin included in the agreements.

671. On 15 April 1994, CIS Member States had signed a multilateral "Agreement on Establishing a Free Trade Area". This agreement provided for the gradual elimination of customs duties, taxes and charges and other limitations and obstructions to free movement of goods. The Agreement had been further modified by the "Protocol on Amending the Agreement on Establishing a Free Trade Area" signed by CIS Member States on 2 April 1999. The Protocol established that the free trade area was to be implemented via existing or future bilateral agreements and protocols on exemptions. Preferences were granted on the basis of a certificate of origin, provided that the goods met the required rules of origin and the exporter was a resident of the exporting country. He added that the Russian Federation had not yet ratified the multilateral Agreement and the Protocol.

672. The "Agreement between the Government of the Russian Federation and the Government of the Federal Republic Yugoslavia on Free Trade" had been concluded on 28 August 2000. It had not been ratified by the Russian Federation and was being applied provisionally in the interim. Article 1 of this Agreement stipulated that the Parties would liberalize trade in accordance with the provisions of the Agreement and WTO rules in order to create a free trade regime. The Agreement provided for the duty free movement of goods between the Parties covering substantially all trade.

673. The representative of the Russian Federation added that the "Agreement on the Customs Union and Common Economic Area" had been signed on 26 February 1999 with the Republics of Belarus, Kazakhstan, and Tajikistan and the Kyrgyz Republic. The Agreement foresaw the gradual creation of a free-trade area and a customs union, and covered trade in goods and services and the movement of capital. In particular, the Agreement set the objective of the elimination of all customs tariffs and other restrictions related to trade in goods between the Parties except those allowed under the WTO agreement. With reference to trade in services, the Parties would aim at providing national treatment with respect to access to services markets, including the gradual elimination of existing restrictions on juridical and natural persons. In order to formally establish the common economic area and customs union, the "Agreement on the Establishment of the Eurasian Economic Community" (EAEC) had been signed on 10 October 2000 and had entered into force on 30 May 2001. He added that the aims of these agreements had not been reached yet. The Heads of Governments of the EAEC had adopted a "List of Activities on Creating the Eurasian Economic Community for the years 2003-2006." These Activities included the implementation of previously adopted decisions and concluded international treaties as well as the preparation of new documents. In all, 57 additional agreements had been concluded under the auspices of the Customs Union and the EAEC, 48 of which were in force. These Agreements aimed at fostering economic cooperation between entities of countries-members; unification of foreign trade, customs policies and trade remedies; cooperation between the

financial and banking systems; cooperation in social and humanitarian areas; and cooperation in the field of legal regulation.

674. In order to continue developing the integration process between the Russian Federation and the Republic of Belarus, the 'Agreement on the Creation of a Unified State' and the associated 'Program of Actions of the Russian Federation and the Republic of Belarus on the Realization of Provisions of the Agreement on the Creation of a Unified State' had been concluded on 8 December 1999. The Agreement had been ratified by the Russian Federation on 2 January 2000. The purpose of this Agreement was, inter alia, the establishment of a common economic area and the setting of a legal basis for a common market providing for free trade in goods and services, and free movement of capital and labor within the territory of the Parties, including equal conditions and guarantees for business, as well as implementation of a common external trade and custom tariff policy.

675. On 19 September 2003, the Presidents of the Russian Federation, Ukraine and the Republics of Belarus and Kazakhstan signed an 'Agreement on the Establishment of a Common Economic Area'. Parties to the Agreement intended to promote mutual trade and investment on the basis of fundamental principles and norms of international law, including WTO rules, and also to increase the competitiveness of their economies via, inter alia, the creation of a free-trade area and possibly of a customs union. No specific agreements aimed at realization of this Common Economic Area had been concluded so far. According to the Agreement, the Common Economic Area would be created by stages, taking into account the possibility of different implementation rates and levels of integration. Transition from one stage to another could be achieved by those Members who had performed all the measures envisaged in the previous stage. Each Member would determine independently which integration measures it would adopt and the rate and degree of such integration.

676. Members of the Working Party required further clarification on how the Russian Federation intended to ensure compliance between its process of accession to the WTO and its commitments undertaken in the framework of the Customs Union, notably with respect to the establishment of a common external tariff considering that a Customs Union country was already a Member of the WTO. Some Members sought a more detailed explanation of the reasons why MFN exemptions would be needed in the Russian Federation's GATS Schedule if, as the Russian Federation had claimed, the customs union arrangements would be in conformity with Article V of the GATS. Another Member inquired whether the Russian Federation would confirm that preferential access to exports of other CIS countries to the Russian market was limited to exporters resident in the exporting countries as, if this was the case, this provision would be inconsistent with WTO obligations.

Members also requested further information about the Russia-EU Partnership and Co-operation Agreement (PCA).

677. In response, the representative of the Russian Federation stated that nothing in its agreements on the creation of customs unions limited its ability to accede to the WTO in accordance with its rules and to implement WTO commitments upon accession. The Russian Federation had submitted new proposals on the MFN exemptions list of its services offer, which took account of the concerns of WTO Members. The purpose of that list was to ensure the possibility of implementation of preferential agreements covering some specific services sectors or specific issues. The residency requirement for free trade between CIS countries was necessary for the effective implementation of those preferential agreements, to avoid false declarations of origin and combat money laundering, and did not have practical effects for trade. As far as the PCA was concerned, it had been ratified by the Russian Federation on 25 November 1996, and was one of more than 100 non-preferential trade agreements the Russian Federation had concluded with its trading partners. The PCA set out both the general principles and detailed provisions that governed relationships between the EU and the Russian Federation in the field of trade in goods and services and related issues. The main objectives of the PCA were: to provide an appropriate framework for political dialogue; to promote trade and investment and harmonious economic relations; to strengthen political and economic freedoms; to provide a basis for economic, social, financial and cultural cooperation and to provide an appropriate framework for the further integration between the Russian Federation and a wider area of cooperation in Europe. The PCA had created different institutions to attain the objectives of the agreement: the Cooperation Council, the Cooperation Committee and the Parliamentary Cooperation Committee. As far as trade in goods was concerned, the PCA foresaw MFN treatment for goods and provided for the application of certain GATT principles. It further promoted legislative harmonization. In the area of investment, it contained provisions that aimed at improving the environment for the establishment and operation of companies of both sides. The PCA also addressed the issues of current payments and movement of capital, competition and intellectual property.

678. Members of the Working Party sought a commitment that the Russian Federation would observe Article XXIV of the GATT 1994 and Article V of the GATS in its participation in trade agreements, and would ensure that the provisions of these WTO Agreements for notification, consultation and other requirements concerning free trade areas and customs unions were met upon accession, and that any subsequent legislation or regulations enacted or altered under these agreements would remain consistent with the provision of the WTO. More specifically, the Russian Federation should notify its Free Trade Areas, Customs Unions and Economic Union Agreements for review by the Committee on Regional Trade Agreements (CRTA) upon accession.

679. [The Representative of the Russian Federation confirmed that his Government would observe the provisions of the WTO including Article XXIV of the GATT 1994 and Article V of the GATS in its participation in trade agreements, and would ensure that the provisions of these WTO Agreements for notification, consultation and other requirements concerning free trade areas and customs unions of which the Russian Federation was a member were met from the date of accession. He confirmed that the Russian Federation would, upon accession, submit notifications and copies of its Free Trade Area and Custom Union Agreements to the Committee on Regional Trade Agreements (CRTA). He further confirmed that any legislation or regulations required to be altered under its Trade Agreements would remain consistent with the provision of the WTO and would, in any case, be notified to the CRTA during its examination of the same.]

680. [The representative of the Russian Federation stated that the Russian Federation would observe the provisions of Article XXIV of the GATT 1994 and Article V of the GATS in its future preferential trade agreements. The Working Party took note of this commitment.]

CONCLUSIONS

[to be completed]