

Legal aspects of localization. “Made in Russia“ and participation in government procurements

Evgeniya Sinanova

Legal Team Leader, SCHNEIDER GROUP

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Agenda

- “Carrot and Stick“: import substitution program and pharma 2020/2030
- Access restrictions for foreign products on public procurements
- Made in Russia – how?

Import substitution program

- Regulations on import substitution as of 31.03.2015
 - Automotive industry
 - Civil-aircraft production
 - Cable and electrical industry
 - Light industry
 - Forest industry
 - Machines for food
 - Oil and gas technology
 - Electronics industry
 - Agricultural mechanical engineering
 - Toolmaking industry
 - Road construction technology
 - Shipbuilding
 - Traffic engineering
 - Heavy engineering
 - Pharmaceutical industry
 - Medical industry
 - Chemical industry
 - Non-ferrous industry
 - Iron metallurgy
 - Defence industry

Import substitution program

– Examples:

Product/Technology	Import dependency in 2014 (%)	Import dependency in 2020 (%)
CNC lathes	90	60
Drilling machines	80	61
Grinding machines	97	85
Industrial robots and manipulators	95	69
Electric motors	100	86

Federal law 488-FZ “On industrial policy”

– Goal

- Promotion of local production, diversification of economy, distribution of tasks between federal and regional levels, creation of general frameworks for industry development programs

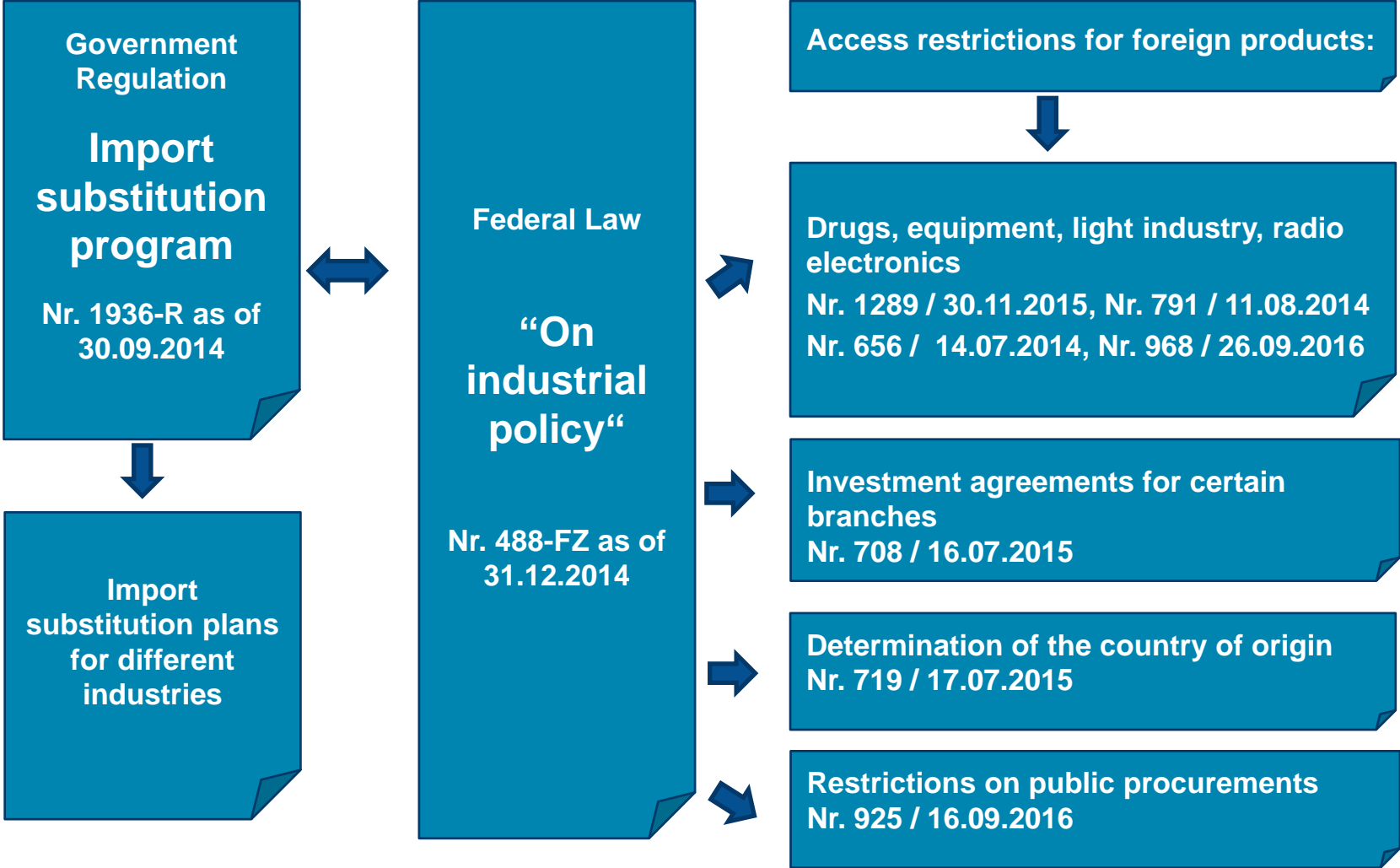
– “Carrot”

- Government incentives, i.a. Special investment contracts
- Guarantee for stability: immunity for investors from later legislation changes

– “Stick”

- Preferences for local products (EEU)
- Restriction or exclusion of foreign goods in procurements or tenders of state agencies and state-owned enterprises (>50%)

Russian industrial policy



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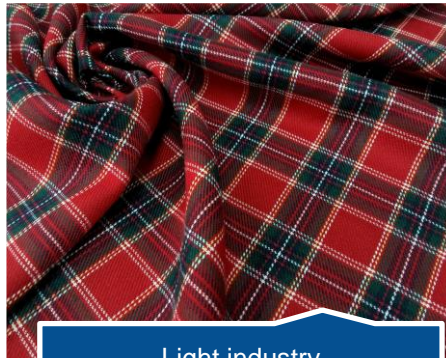
Access restrictions for foreign goods on public procurements

Type of goods	Type of restriction
Regulation No. 656: Cars, other vehicles (including street cleaning vehicles), heavy equipment	Exclusion of foreign products from procurements
Regulation No. 1289: Strategically important and essential medicines	Foreign applications are excluded from participation if min. 2 local applications are submitted; 15% penalty rule
Regulation No. 791: Foreign light industry (textiles)	Exclusion of foreign products from procurements
Regulation No. 1236: Foreign software	Generally only Russian or EEU software can be procured
Regulation No. 968: IT hardware and electronics (e.g. keyboards, printers, cash points, payment terminals, video cameras, dictation devices, LED light bulbs)	Foreign applications are excluded from participation if min. 2 local applications are submitted
Regulation No. 925: Priority of Russian products and services (effective from 1.1.2017)	15% penalty for foreign goods and services

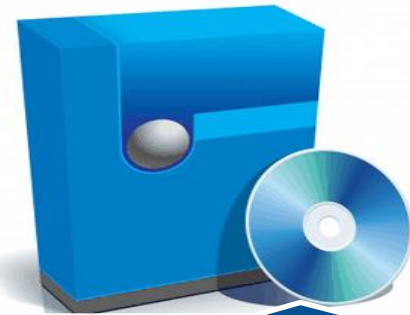
Prohibition of admission on public procurements (44-FZ)



Machinery construction
(Government Regulation
No. 656 as of 14.07.2014)



Light industry
(Government Regulation
No. 791 as of 11.08.2014)



Software (Government
Regulation No. 1236 as of
16.11.2015)



Goods, works and services for
für state defence and security
(Government Regulation No. 9
as of 14.01.2017)



Furniture and woodworking
industry
(Government Regulation
No. 1072 as of 05.09.2017)

Restrictions and conditions for participation in public procurements (44-FZ)



Wide range of goods
(Regulation No. 155 of the Ministry for Economic Development as of 25.03.2014)



Medical products
(Government Regulation No 102 as of 05.02.2015)



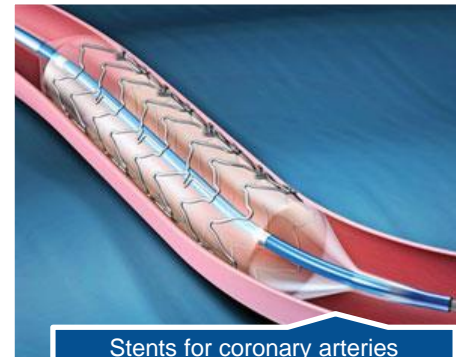
Vital and Essential Drugs
(Government Regulation No. 1289 as of 30.11.2015)



Radio electronics
(Government Regulation No. 968 as of 29.06.2016)



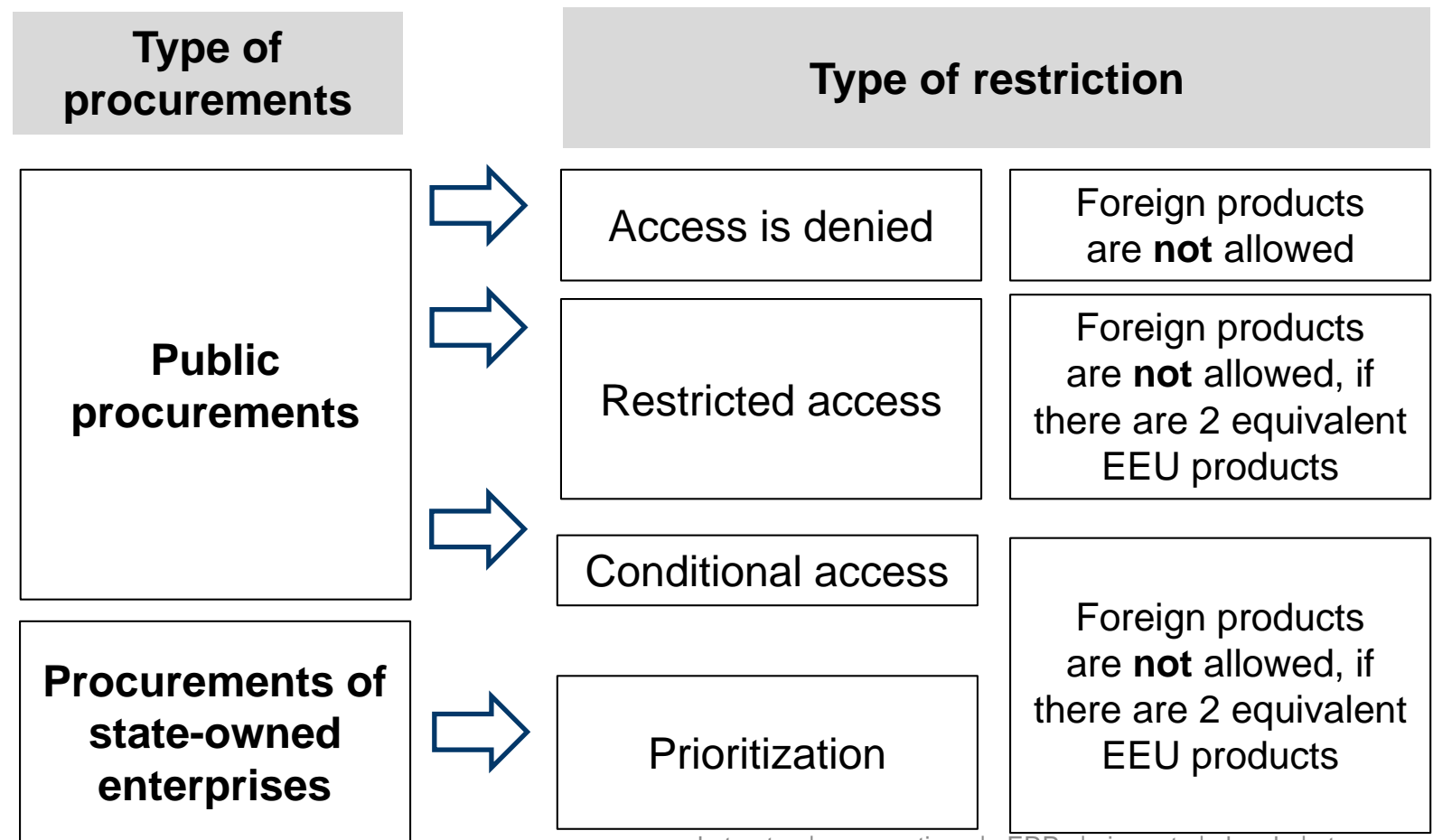
Food
(Government Regulation No. 832 as of 22.08.2016)



Stents for coronary arteries
(Government Regulation No. 1469 as of 04.12.2017)
Applies for 2 years as of 14.12.2017

Public procurement market

– Two types of procurements in Russia

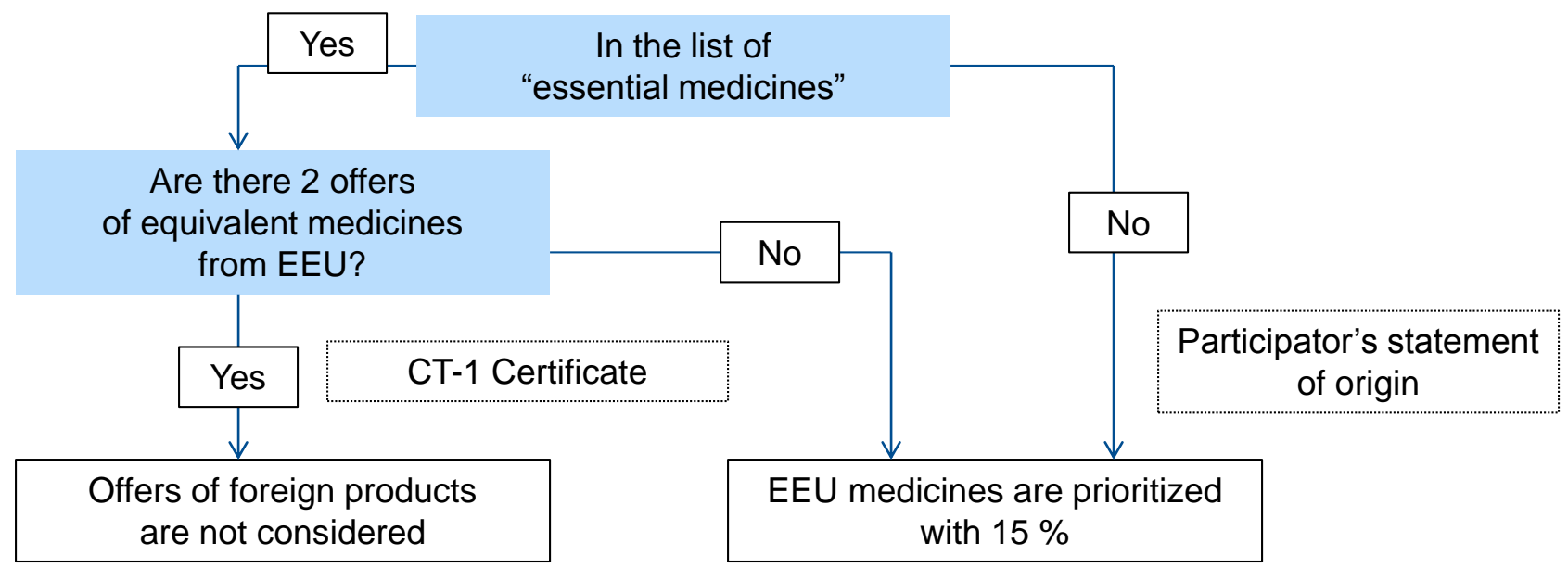


Participation in procurements of state-owned enterprises

- Russian/EEU products have priority in procurements of state-owned enterprises
- Two types of prioritization:
 - Competition: local product is estimated with a 15% deduction from actual price
 - Auction: agreement with a foreign provider is concluded with a deduction of 15% from the original price
- According to the GATT, such prioritization shall only be applied in certain fields

Participation in procurements

– Restrictions on the pharmaceutical market



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“Made in Russia”



- Special investment agreement: contractually agreed criteria

- Regulation No. 719 as of 17.07.2015: criteria for products from the following branches:
 - Photonics and lighting industry
 - Heavy equipment industry
 - (from 2017) Pharmaceutical industry
 - Electrical engineering and power industry
 - Toolmaking industry
 - Automotive industry
 - Special machines industry etc.

- Other products: Criteria according to CIS agreement as of November 20, 2009

Requirements for products “Made in Russia”

- Criteria according to Regulation No. 719
 - Criteria are product-specific
 - Maximum rate (%) of foreign raw materials and components of the cost of manufacturing final product
 - Implementation of certain production processes in Russia
 - Right of the producer for design and technical documentation of the product
 - Service centre in one of the member states of the EEU

Requirements for products “Made in Russia”

– Criteria in Regulation No. 719



- Example: Vehicles

- Localization criterion – Implementation of certain production processes in Russia, e.g.:
 - Motor fitting, front and rear suspension, exhaust system, steering gear, electronic devices, interior and exterior parts
 - Welding
 - Car body painting and fitting
 - Final check of finished vehicles
- Number of necessary production processes increases from year to year (2015: 7; 2016: 9; from 2017: min. 11 production steps localized in Russia necessary)

Requirements for products

“Made in Russia”

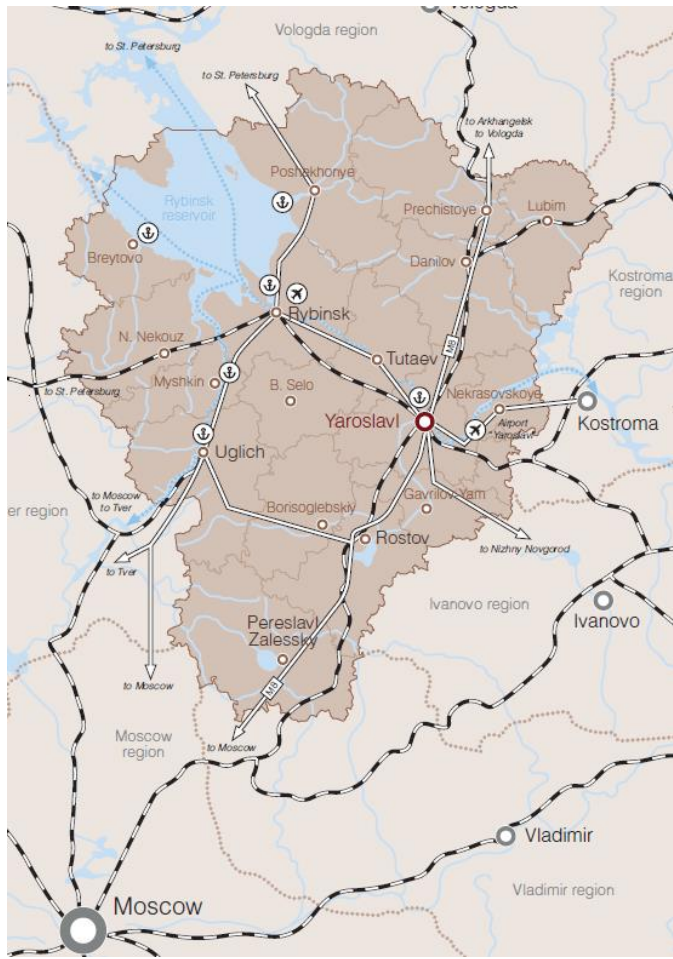
- Criteria (according to CIS agreement) are product-specific:
 - Change of customs tariff number within the first 4 positions
 - Certain technical requirements for production processes
 - Requirements for imported components / materials (only certain imported materials are permitted)
 - Ad valorem rule (maximum value of imported raw materials in final product)

Requirements for products

“Made in Russia”

- Criteria according to CIS agreement (examples)
 - HS group 87 – vehicle parts:
 - Ad valorem share should be not less 50%
 - Customs tariff number 851650000 – microwave ovens:
 - Necessary production processes:
 - Production of housings and electric components
 - Fitting and installation
 - Regulation and control of parameters / options

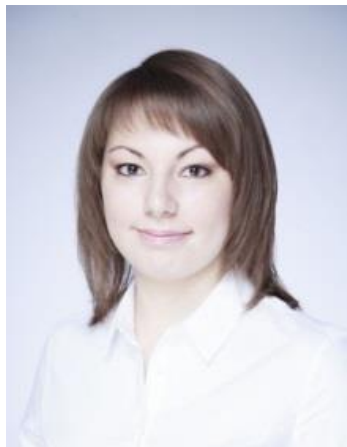
Localization in pharmaceuticals: example of Yaroslavl Oblast



- Greenfield / Brownfield industrial parks
- Regional programs of public health development
- Research
- Staff

Localization – What else to consider?

- What shall be localized?
 - CIS customs tariff numbers
 - “OKPD 2” codes
- How does localization take place?
- CMO: Choice of partner?
- Specific investment agreement?
- Regional investment agreement?
- Site selection
- Company foundation & financial structure
- Property: Due Diligence, property purchase
- Construction contract: procurements, negotiation, construction phase
- Production facilities: classification decision, import, fitting



Evgeniya Sinanova

Legal Team Leader

SinanovaEV@schneider-group.com

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