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REPORT (2013) OF THE COMMITTEE ON RULES OF ORIGIN TO THE COUNCIL FOR TRADE IN GOODS

1. This report is being submitted to the Council for Trade in Goods (CTG) in accordance with Article 6.1 of the Agreement on Rules of Origin (the Agreement), which provides as follows:

"The Committee shall review annually the implementation and operation of Parts II and III of this Agreement having regard to its objectives. The Committee shall annually inform the Council for Trade in Goods of developments during the period covered by such reviews."

2. The Committee on Rules of Origin (CRO) held two clusters of informal and formal meetings in 2013: on 16 to 18 April and on 13 and 26 September. In addition, the Chairman of the Committee, Mr. Marhijn VISSER (The Netherlands) held a series of bilateral meetings with some delegations in order to discuss the future organisation of the Committee's work.

3. The main area of work in the CRO relates to negotiations for harmonized non-preferential rules of origin (Harmonization Work Programme, HWP). These negotiations, mandated under Part IV of the Agreement, were initiated in 1995 and conducted in collaboration with the Technical Committee on Rules of Origin at the World Customs Organization. Despite substantive progress in elaborating specific rules of origin for thousands of tariff lines, the negotiations came to a virtual halt in 2007 due to divergences on a number of "core policy issues", including:

- i. "Implications": What became known as the "implications issue" refers to divergences regarding the scope of application of the newly harmonized rules of origin. In fact, several trade instruments require the determination of origin, as is recalled in article 1 of the Agreement on Rules of Origin, including: most-favoured nation treatment in the determination of import duties; safeguard measures; anti-dumping measures; countervailing duties; origin marking and labelling; discriminatory quantitative restrictions or tariff quotas, government procurement; and trade statistics. Members have polarized views regarding whether the harmonized rules should also apply to such other instruments or not. As a compromise, the Chairperson of the Committee had proposed in 2006 that each Member would choose the instruments to which it would apply the harmonized rules and notify the Secretariat. Nevertheless, a partial or selective application of the rules could not be accepted by all WTO Members.
- ii. "Dual rule for machinery": Members also held divergent views on the identification of rules for the machinery sector (about 600 tariff lines in HS Chapters 84-90), largely because of uncertainties regarding the utilization of harmonized rules of origin for trade policy measures. Some Members had argued that value-added rules should be used for this sector while other Members argued the opposite. The Chairperson of the Committee had proposed, in 2006, that both tariff-shift rules and value added rules be used depending on Members' preferences ("double approach" or "dual rule"), but this pragmatic solution could not be accepted by all WTO Members.

4. Recognizing Members' divergences on these two issues, the General Council, on 27 July 2007, recommended that work on these issues be suspended until such guidance from the General Council would be forthcoming. Since then, work in the Committee has focused on marginal technical aspects of the HWP. In 2010, a communication from the delegations of China, India and Pakistan (WT/GC/W/622 and WT/CG/W/622/Add.1) reminded the General Council that a decision on the core policy issues was still pending, but no specific guidance was forwarded to the CRO. Since then, the only recent significant work concerned the completion of the transposition of

the draft harmonized rules of origin into newer versions of the Harmonized System by the Secretariat (HS2002, 2007 and 2012, documents JOB/RO/2/Rev.1, JOB/RO/3/Rev.1 and JOB/RO/4 respectively).

5. As a result of negotiating deadlocks and of the absence of political guidance from the General Council, work in the CRO lost momentum. In his bilateral consultations with Members in July and during the informal meeting in September 2013, the Chairman sought to take stock of Members' interests and positions. He asked Members if the harmonization of non-preferential rules of origin continued to be an important trade policy objective 18 years after the launch of these negotiations and whether Members were ready to intensify work, including on some of the core policy issues. Two views emerged clearly from these consultations:

- i. Some Members believed that fully harmonized, non-preferential rules of origin remains an important objective to facilitate world trade. These Members would support an intensification of the Committee's work to conclude the negotiations. These Members argued that non-preferential rules of origin might have lost importance for tariff treatment, but that their relevance has only increased in the context of trade remedies, government procurement, and labelling, etc. These Members thought, however, that full negotiations could only resume if there was a clear political commitment to conclude the HWP.
- ii. Other Members mentioned that concluding the negotiations is no longer a political priority. According to them, world trade had changed dramatically since the late 1990s, when the Work Programme had initiated. The WTO now covered virtually all major trading nations, so distinguishing preferential, MFN and non-MFN origin did not make sense any longer. National customs administrations now needed to focus on preferential origin only. They also argued that products were now "made in the world", so the concept of national origin had lost its importance. For these Members, the Committee should reduce the frequency of its meetings and focus on additional areas, for instance: certification and verification of origin, trade in value chains and global production networks, transparency regarding non-preferential and preferential rules of origin and notifications.
- iii. Some Members, from both previous groups, also mentioned that they were ready to explore the possibility of concluding the HWP for a voluntary adoption by Members as "guidelines".

6. As it is, the implementation and operation of the Agreement is not satisfactory as the adoption of harmonized non-preferential rules of origin constitutes its central objective. During the informal meeting of September, several Members submitted room documents or made presentations describing their current non-preferential rules of origin. The Secretariat delivered presentations on the Agreement, a summary of the notifications available, and the history of the HWP negotiations. To this date, 41 Members have notified to the Secretariat that they apply some type of non-preferential rules of origin, 44 Members have notified that they do not apply non-preferential rules and 46 Members have not submitted a notification yet.

7. Given this difference in Members' views, it is difficult for the Chairman to draw a future roadmap. In the absence of any guidance from the General Council, it would be difficult for the Chairman of the CRO to put forward any concrete agenda of work on the HWP other than the transposition exercise for the Committee's forthcoming meeting in April 2014.
