



HARMONIZED SYSTEM  
COMMITTEE

NC0759E1

-  
32<sup>nd</sup> Session

O. Eng.

Brussels, 17 October 2003.

## STUDY OF THE APPLICATION OF GIR 3 (b) TO MULTIFUNCTION MACHINES

(Item VI.6 on Agenda)

### Reference documents :

42.406 (RSC/18)	NC0300E1 (HSC/26)
42.498 (RSC/18)	NC0335E1 (HSC/26)
42.500, Annex B/19 (RSC/18 – Report)	NC0335E1 (HSC/26)
42.750, Annex E (HSC/22 – Report)	NC0398E1 (HSC/26)
NR0023E1 (RSC/19)	NC0430E2, Annex H/4 (HSC/27 – Report)
NR0037E1 (RSC/19)	NC0613E1 (HSC/30)
NC0090E2, Annex IJ/26 (HSC/23 – Report)	NC0655E2, Annex G/4 (HSC/30 – Report)
NC0160E2, Annex H/14 (HSC/24 – Report)	NC0699E1 (HSC/31)
NC0211E1 (HSC/25)	NC0730E2, Annex H/13 (HSC/31 – Report)
NC0250E2, Annex H/13 (HSC/25 – Report)	

### I. BACKGROUND

1. At its 30<sup>th</sup> Session, the Committee discussed the classification of a number of multifunction machines. The Delegate of **Brazil** indicated that the fundamental question of whether or not General Interpretative Rule (GIR) 3 (b) was applicable to the classification of multifunction machines was extremely important in resolving the classification of the multifunction machines at issue.
2. The Committee agreed, therefore, to instruct the Secretariat to undertake a study, for examination by the Committee at its next session, (i) to determine whether GIR 3 (b) can be applied to multifunction machines which perform functions covered by headings in Chapters 84, 85 and 90 and (ii) to determine the consequences of the Committee's previous decision (that heading 90.09 covered digital copying) on the application of GIRs 3 (b) and 3 (c) for the classification of the multifunction machines at issue. The machines which were the subject of agenda items VII.4 to VII.9 would all be included in this study.
3. Subsequent to the 30<sup>th</sup> Session and within the time period for entering reservations, the **United States**, **Canada**, **Japan** and **Mexico** all requested that the decision that "photocopying" is not limited to the projection of an image onto a photosensitive surface and

Note : Shaded parts will be removed when documents are placed on the WCO documentation database available to the public.

File No. 2755

present heading 90.09 covers digital copying" (Doc. NC0655E2, Annex G/3) be referred to the Council under the reservation procedure. Since the study of the question of whether GIR 3 (b) could be applied to multifunction machines, is closely linked to the decision on the scope of the term "photocopying" in the Harmonized System and, consequently, to the reservation entered with regard to that decision, the Secretariat considered that it would not be appropriate to start the study on the application of GIR 3 (b) to multifunction machines and its consequences at this time. It suggested discussing this issue once the Committee has taken a final decision on the scope of heading 90.09.

4. Meanwhile, the Secretariat requested interested parties to provide specific examples (other than those which are the subject of the reservations) of combinations of machines of Chapters 84 (or 85) and 90 (or any other Chapter outside Section XVI), which could contribute to the preparation of the study.
5. At its 31<sup>st</sup> Session, the **EC** Delegate regretted that the Secretariat had not started the study on the application of GIR 3 (b) to multifunction machines, as requested by the Committee at its 30<sup>th</sup> Session, in particular because the Committee would be asked, at its next session, to clarify the classification of certain multifunction machines. He reiterated that the question at issue, i.e., whether or not General Interpretative Rule 3 (b) could be applied when a machine performed functions covered by different Sections of the Nomenclature, should first be addressed, to allow the Committee to take a decision on the classification of the machines involved. Moreover, since the study concerned the interpretation of the legal text, there was no need to base it on actual products. In this context, he reminded delegates that the study was not part of the reservations entered.
6. The Director explained that the Secretariat had refrained from preparing the study, given the fact that the decision of the Committee (HSC/30) that the term "photocopying" in Chapter 90 was not limited to the projection of an image onto a photosensitive surface and that present heading 90.09 covered digital copying, had been referred to the Council under the reservation procedure. He further clarified that the Secretariat was hesitant to carry out the study in the abstract. Nonetheless, if the Secretariat received new instructions from the Committee to conduct the study at issue, the Secretariat was prepared to do so, preferably on the basis of one or more concrete products.
7. The **US** Delegate stated that it would be difficult to conduct the study at issue without actual product descriptions and, therefore, supported the Secretariat.
8. After further discussion, the Committee decided, by 25 votes to 10, to instruct the Secretariat to conduct a study to determine whether GIR 3 (b) can be applied to multifunction machines which perform functions covered by different Sections of the Nomenclature. The results of this study should be presented to the Committee at its next session (November 2003).

## II. SECRETARIAT COMMENTS

9. The Secretariat would like to point out first that it has not received examples of composite goods which could contribute to the study. Consequently, the following analysis of the possible application of General Interpretative Rule (GIR) 3 (b) vis-à-vis multi-function machines which perform functions covered by different Sections of the Nomenclature, is based on a theoretical study.

10. GIR 3 (b) reads in pertinent part as follows (irrelevant parts have been omitted to facilitate the reading) :
- “When [. . .] for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows :
- (a) [. . .]
- (b) [. . .] composite goods [. . .] made up of different components, [. . .] shall be classified as if they consisted of the [. . .] component which gives them their essential character, insofar as this criterion is applicable.”
11. This Rule can only take effect provided the terms of headings or Section or Chapter Notes do not otherwise require (see item (II) of the Explanatory Note to GIR 3 (b), on page 3).
12. The factor which determines the essential character will vary between different kinds of goods, for example the nature of the component, its bulk, quantity, weight or value (see item (VIII) of the Explanatory Note to GIR 3 (b), on page 4).
13. The parameters referred to above which can be used to determine the essential character of a composite good, are listed by way of example (emphasis added). The Rule itself does not contain a specific reference to the nature of the expression “essential character”. This implies that other parameters cannot be excluded and may be applicable, including the “function” of the individual components which make up the composite good.
14. In this context, the Secretariat would like to draw the Committee’s attention to part (III) of the General Explanatory Note to Section XVI (on page 1386), which stipulates that certain instruments and apparatus of Chapter 90 are classified with the machine or apparatus of Section XVI, if they are designed to measure, check, control or regulate one specific machine or apparatus. From the wording of this Explanatory Note and its title (which refers to, among others, GIR 3 (b)) one can conclude the following :
- (i) When the machines or apparatus of Section XVI are fitted with instruments of Chapter 90, the machines or apparatus of Section XVI on the one hand and the instruments of Chapter 90 on the other, are each considered to be “components” of a composite good; and
- (ii) The essential character of such composite goods is determined by the (function of the) machine of Section XVI.
15. In other words, the provisions of Rule 3 (b) have been applied, using the “function” of the various components as the decisive factor for classification purposes.
16. Furthermore, Note 3 to Section XVI, which governs the classification of multi-function machines within that Section, could be considered as a codification of GIR 3 (b) in which the function determines the classification. The General Explanatory Note to Section XVI (item (VI), on page 1387) states that, where it is not possible to determine the principal function (as required by Note 3), and where, as provided in the same Note, the context does not otherwise require, it is necessary to apply GIR 3 (c).

17. From the foregoing, the Secretariat concludes that the function of a component of a composite good can be the decisive factor to give the whole its essential character. This would apply throughout the Nomenclature.
18. Having said this, the Secretariat would like to emphasise that Section or Chapter Notes may block the application of GIR 3 (b), in particular when goods classifiable in a particular Section or Chapter are excluded by a Note from another Chapter or Section. For example, toys of heading 95.04 may contain (among other things) components of Section XVI. GIR 3 (b) cannot be applied, since Note 1 (p) to Section XVI applies, which Note excludes from that Section, goods of Chapter 95. In other words, Section or Chapter Notes and GIR 3 (b) are mutually exclusive.
19. Finally, if the Committee agrees, the Secretariat could draft an amendment to the Explanatory Note to GIR 3 (b) with a view to including a reference to “function” as one of the possible parameters when considering the essential character of composite goods.

### III. CONCLUSION

20. The Committee is invited to examine the application of GIR 3 (b) to multi-function machines, taking into account the comments of the Secretariat in paragraphs 9 to 19 above, and to indicate what further steps should be taken in this regard.

---