



HARMONIZED SYSTEM  
REVIEW SUB-COMMITTEE

NR0033E1

-  
19th Session

O. Fr.

H2-1

Brussels, 4 March 1999.

DRAFT AMENDMENTS TO THE NOMENCLATURE TO CLARIFY

THE CLASSIFICATION OF RECORDED MEDIA

(Item II.A.6 on Agenda)

Reference documents :

40.264 (HSC/17)	41.600, Annex D, paragraph 73 (HSC/20 – Report)
40.260, Annex IJ/28 (HSC/17- Report)	41.794 (RSC/17)
40.600, Annex IJ/7 (HSC/18 - Report)	41.920, Annex A/14 (RSC/17 – Report)
40.785 (RSC/15)	42.019, paragraphs 36 to 38 (HSC/21)
40.920, Annex B/10 (RSC/15 – Report)	42.100, Annex F/1, paragraph 42 (HSC/21 – Report)
	42.225 (RSC/18)
40.881, paragraphs 60 and 61 (HSC/19)	42.246 (RSC/18)
41.100, Annex E/1 paragraphs 52 and 53, and Annex H/2 (HSC/19 – Report)	
41.165 (RSC/16)	42.500, Annex A/8 (RSC/18 – Report)
41.472 (RSC/16)	42.406, paragraph 15 (HSC/22)
41.582 (RSC/16)	42.750, Annex E, paragraph 16 (HSC/22 – Report)
41.580, Annex B/12 (RSC/16 – Report)	NR0007 (RSC/19)
41.341, paragraph 57 (HSC/20)	NR0034 (RSC/19)

I. BACKGROUND

1. The Secretariat received the following Note from the Korean Administration, on 19 January 1999.

File No. 2679

II. NOTE FROM KOREA

**"Korean Administration's view on the definition of "software"  
and the classification of discs for laser reading systems**

2. Korea raised the question about the classification of discs for laser reading systems at the 19th Session of the HS Committee. There was general agreement among Members at the meeting on the need to modify the Nomenclature, and the proposal is now under review by the Review Sub-Committee.
3. Though it is a little late, I am glad to have the opportunity to submit our view on the definition of software and the classification of some discs and other recorded media to help settle the issue.
4. According to the relevant domestic law, the Software Development Promotion Act, software is defined as "a program and specifications, descriptions and other related data used for programming". The Act defines a program as "that which is expressed as a series of connected instructions and commands used directly or indirectly within a computer or apparatus with information-processing capability for the purpose of obtaining specific results".
5. Specific results means having objectives, such as computation of figures and printing of letters, which are set in advance in order to obtain the expected outcomes, displayed through information processing.
6. Apparatus with information-processing capability means apparatus designed to receive, transmit and search information including data input machines and various kinds of multimedia apparatuses such as computers.
7. A series of instructions and commands means such instructions and orders expressed in letters, figures and signs maintaining constant relations with one another to be processed in information processing apparatuses.
8. In order to clarify the range of software, the Korean Administration thinks a provisory clause should be added to the definition stating that software does not include simple recording of sounds or images. This provisory clause excludes simple audio discs and video discs from software discs.
9. As a result, Korea maintains the definition of software as "a program which is expressed as a series of connected instructions and commands used directly or indirectly within a computer or apparatus with information processing capability for the purpose of obtaining specific results and specifications, descriptions and other related data used for programming, excluding simple recording of sounds or/and images".
10. According to this definition, the scope of software is narrower than proposed by Canada because simple data recorded on discs, etc. (e.g. an electronic book saved on a CD) will be excluded.
11. Korea is of the opinion that the scope of software should not be overly widened. With this definition, discs for game machines can be classified as discs bearing software, but

simple audio discs and video discs will not be classified as such, but in subheading 8524.39. In addition, for consistency of classification the Korean Administration suggests that audio discs containing images should be classified in subheading 8524.39. Korea thinks that discs containing music and images do not necessarily have to be classified in subheading 8524.39 along with video discs.

12. There may be some overlapping and thus it is hard to draw a line between software discs and audio/video discs combined with some additional programs. These products should be classified according to their main characteristics, by application of GIR 2.
13. In conclusion, Korea's proposal for the classification of discs for laser reading systems and other media is as follows :

8524.3	Discs for laser reading systems
8524.31	Bearing software and data other than sound or image
8524.32	For reproducing sound only
8524.39	Other
8524.40	Magnetic tapes bearing software and data other than sound or image
8524.5	Other magnetic tapes
8524.9	Other
8524.91	Bearing software and data other than sound or image
8524.99	Other
8524.9	Other

Heading Note : “Software” is a program which is expressed as a series of connected instructions and commands used directly or indirectly within a computer or apparatus with information-processing capability for the purpose of obtaining specific results and specifications, descriptions and other related data used for programming, excluding simple recording of sounds or/and images.

14. One of the issues to which Korea suggests the Committee pays more attention is the term “other recorded media” in heading 85.24. Since there is no provision that specifies the contents of other recorded media in heading 85.24, confusion may arise as to how to classify software included in new types of media such as ICs. Korea suggests that other recorded media be clearly specified in the HS Explanatory Notes in order to avoid confusion that is likely to arise as imports of software in various kinds of hardware increase.”

### III. SECRETARIAT COMMENTS

15. The Secretariat would begin by recalling that following its last session in September 1998, the Sub-Committee instructed the Secretariat to draft a document containing a draft subheading legal Note to define the term "software" taking account of the proposals and comments in the Report on that meeting (see Annex A/8 to Doc. 42.500/RSC/18 – Report).
16. However, the above proposal is an alternative to the one previously prepared by the Secretariat according to the above instructions in Doc. NR0007 (RSC/19).

17. As the Secretariat understands it, the Korean proposal is aimed at limiting the scope of "software" by distinguishing between discs bearing software and audio/video discs combined with additional programs.
18. However, the Korean Administration realizes that it is difficult to distinguish between the two categories of product, and proposes classification by application of GIR 2 (see paragraph 12 above).
19. Given that this proposal is likely to raise many classification questions, the Secretariat feels that it would be more appropriate to clearly define the term "software" by placing it in the context of heading 85.24, which generally includes recorded media.
20. Thus, the Secretariat could propose that media containing recorded programs designed
21. to be processed by an automatic data processing machine could be designated as media "bearing software" without mentioning the term "other than sound or image".
22. The Korean Administration also proposes defining the scope of the expression "other recorded media" in the text of heading 85.24 by mentioning new types of media which could contain software, such as integrated circuits.
23. In this respect, the Secretariat points out that it does not have sufficient information to give a reasoned opinion on these new products.
24. The Secretariat also feels useful to recall that during previous discussions, one delegate felt that it was no longer appropriate to seek to distinguish software usable solely by automatic data processing machines when virtually identical software was used on different platforms, for example, games used on personal computers and for games machines (see Annex A/14 to Doc. 41.920, paragraph 4, third sentence – RSC/17 – Report).
25. Finally, the Secretariat notes that the Korean Administration's proposal to separate audio discs comprising images, for example, from discs for reproducing sound is not consonant with the conclusions of the Report on RSC/18, contained in Doc. NR0007 (RSC/19), that all digital audio discs should be grouped together in a single subheading. The Secretariat therefore leaves it to the Sub-Committee to decide whether or not the classification issue of "enhanced compact discs" should be submitted to the Harmonized System Committee for examination.

#### IV. CONCLUSION

26. The Sub-Committee is invited to take note of the Korean Administration's comments and the Secretariat's comments above when examining this Agenda item.
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