



HARMONIZED SYSTEM
COMMITTEE
-
30th Session
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NC0616E1

O. Eng.

Brussels, 17 October 2002.

DECISION THAT "PHOTOCOPYING" IS LIMITED TO THE PROJECTION OF AN IMAGE
ONTO A PHOTSENSITIVE SURFACE AND THAT PRESENT HEADING 90.09
DOES NOT COVER DIGITAL COPYING, AND THE DECISION TO AMEND
THE EXPLANATORY NOTES ACCORDINGLY
(RESERVATIONS BY THE EC AND THE BRAZILIAN ADMINISTRATION)

(Item VII.3 on Agenda)

Reference documents :

42.406 (RSC/18)	NC0250E2, Annex H/13 (HSC/25 – Report)
42.498 (RSC/18)	NC0300E1 (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)	NC0614E1 (HSC/30)
NC0160E2, Annex H/14 (HSC/24 – Report)	
NC0211E1 (HSC/25)	

I. BACKGROUND

1. At its 27th Session, the Committee examined the classification of various multifunctional digital copiers. Before it did so, the Committee, by a vote of 22 to 14, decided that "photocopying" was limited to the projection of an image onto a photosensitive surface and that, therefore, present heading 90.09 did not cover digital copying. The Committee then looked at the classification of each individual machine.
2. On 18 September 2002, the Secretariat received the following note from the **US** Administration on the classification of multifunctional digital copiers.

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**II. US NOTE ON THE CLASSIFICATION OF
MULTIFUNCTIONAL DIGITAL MACHINES**

3. “As you are well aware, our administration has lodged a request that the following decisions taken by the Harmonized System Committee at its 27th Session be referred to the Council :

Background

4. At its 27th Session (May 2001), the Harmonized System Committee decided that the term “photocopying” was limited to the projection of an image onto a photosensitive surface, and therefore the legal text of existing heading 90.09 does not cover digital copying. Accordingly, the Committee also decided to amend the Explanatory Note to heading 90.09 to reflect that decision.
5. At that same session, the Committee decided to classify the following multifunction digital machines as follows :

<u>Machine</u>	<u>HS subheading</u>
HP Mopier 320	8471.60
Xerox Document Centre 340 ST without fax function	8471.60
Xerox Document Centre 340 ST with fax function	8471.60
Brother MFC-8600	8517.21
Brother MFC-1970mc	8517.21

6. Subsequent to the 27th Session of the Committee, reservations were entered against each of the above-mentioned classification decisions and the decisions relating to the coverage of heading 90.09 and proposed amendments to the Explanatory Notes. Included among those Contracting Parties to the HS Convention who entered reservations with respect to this matter was the United States, which entered reservations against the decisions to classify the Brother MFC-8600 machine and Brother MFC-1970mc machine in heading 85.17. The US reservations are the subject of a separate document.
7. In addition to the above-mentioned five multifunction digital machines, the Committee will also examine the classification of the “Xerox Document Centre 230 DC” machine at its 30th Session.
8. For the reasons set forth below, the United States believes that the Committee’s decision that heading 90.09 does not cover digital copying was correct and should be affirmed. With the exception of the decisions on the Brother MFC-8600 and Brother MFC-1970mc machines, the United States also agrees with the previous decisions of the Committee to classify the multifunction machines in heading 84.71.

Scope of heading 90.09

9. As the Committee decided, the key consideration underlying the classification of the multifunction digital machines is the meaning of the term “photocopying” as used in the legal text of heading 90.09.

10. The initial question that must be addressed is whether or not these machines perform a function of a machine described in the legal text of heading 90.09. Of course, not every machine or device that produces a copy will be classified as a photocopier of heading 90.09. For example, an optical scanner and a printer, devices classifiable in heading 84.71, can be combined in order to operate together to produce a copy of what has been scanned.
11. The **US** Administration has examined the nature of the machines of heading 90.09 and has concluded that all photocopying apparatus of that heading operate by means of exposing a photosensitive material or surface with an image of the object to be copied.
12. The Explanatory Note to heading 90.09 is especially instructive as to the type of machine or apparatus that falls within the terms of that heading. In the first paragraph of item (A) (page 1784) of the Explanatory Note to that heading, it states very clearly that photocopying apparatus incorporating an optical system project an “optical image of an original document onto a light-sensitive surface.” The Explanatory Note to heading 90.09 also indicates that the other photocopying apparatus of that heading also operate by the projection of an image onto a photosensitive surface (i.e., by bringing the original into contact with the sensitive surface to be printed).
13. This leads one to the simple conclusion that the drafters of the Explanatory Notes and the Nomenclature intended the term “photocopying” to mean what was understood at the time those instruments were drafted and what is still applicable today : the term “photocopying,” as used in the legal text of heading 90.09, requires that an image be projected onto a photosensitive surface. This process does not occur with digital copying.

Optical Readers of heading 84.71

14. Optical readers or scanners of heading 84.71 operate by a process that is very different from the process used by photocopying apparatus. They use electrical receptors on a CCD or CMOS chip that electronically record individual points of light reflected from the image as it is scanned. Optical readers are specifically named in the legal text of heading 84.71.
15. An optical reader consists of a light source, mirror, lens and an electronic photoreceptor that converts points of light into electrical signals. It functions to reproduce images of objects by converting individual points of light, reflected from the object, into electrical signals (digital data). This data may either be stored in that form or converted into a printed image and then deleted. Usually, an optical reader is used with an ADP system in order to print the scanned file or “copy” it onto paper.
16. Due to the nature of digital technology, optical readers can also be coupled directly with output devices to print onto paper that which has been scanned or recorded. A document produced by this process would not be a “photocopy” as that term is used to describe a document produced by the photocopying apparatus of heading 90.09.
17. These multifunction digital machines incorporate an optical reader. It is the function of the optical reader that enables a multifunction digital machine to record images or to copy images. The process used by an optical reader is fundamentally different from that of a photocopier. Specifically, there is no projection of an optical image. Instead, with optical readers, individual points of light, reflected from an object, are converted into electrical signals that are stored in the form of a digital file.

18. For this reason, the **United States** concludes that the multifunction digital machines under consideration do not have, nor can they perform, the function of a photocopying apparatus because they do not incorporate a machine that meets the terms of heading 90.09. They cannot produce a photocopy (1) by projecting an optical image onto a photosensitive surface or (2) by bringing the original into contact with the sensitive surface to be printed.
19. In light of the above, it is clear that the ability of these multifunction machines to produce an original document is attributable to the optical reader found in the machine working in conjunction with the printer. This is not a function of a machine of heading 90.09.

Classification of Multifunction Digital Machines

20. Having concluded that these multifunction digital machines do not perform the function of a photocopying apparatus of heading 90.09 and, therefore, that heading 90.09 is not relevant to the classification of these machines, it is now necessary to determine those functions performed by these machines that are relevant.
21. Each of the multifunction digital machines is a composite machine that consists of several machines that have individual functions. The individual functions are as follows :
- (1) printing from a digital file received from an ADP machine or the optical reader (printer unit of ADP machine of heading 84.71);
 - (2) scanning images of an object (optical reader of heading 84.71); and
 - (3) in some of the machines, the function of sending or receiving facsimile transmissions (electrical apparatus for line telephony of heading 85.17).
22. Relevant to the classification of these machines and the functions they perform is Note 3 to Section XVI, which states as follows :
- Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines adapted for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function.
23. Each of the composite machines under consideration is connectable to an ADP machine or system and functions as a printer. The printer component is also necessary for the print output of a facsimile machine and an optical reader. The capacity to be connectable as an output unit for an ADP machine or an ADP system represents the most important application of these machines. For this reason, classification of these multifunction digital machines, by application of Note 3 to Section XVI, will be based on the printer component as the component that performs the principal function of the composite machines.

Conclusion

24. The multifunction digital machines are composite machines that perform the functions of two or more machines for the purpose of performing complementary or alternative functions.

25. These composite machines consist of a printer and an optical reader, and some also consist of a facsimile machine. The functions of these individual machines are formed together, as a whole, to provide complementary or alternative functions.
26. These composite digital machines do not incorporate a photocopying machine, nor are they capable of functioning as a photocopying machine because they are unable to produce photocopies of an image on a photosensitive material.
27. Classification in the Nomenclature is based on the terms of the headings, and as these machines do not incorporate a photocopying machine or perform the function of a machine of heading 90.09, consideration of the classification of the machines in that heading is not relevant. Therefore, heading 90.09 does not merit consideration in the classification of these multifunction digital machines.
28. These multifunction digital machines perform the function of printers and optical readers, and some also perform the function of facsimile machines. As composite machines, whose components are classifiable in Section XVI, classification must be based on Note 3 to Section XVI.
29. The printer function constitutes the principal function of these composite machines. Not only does the printer component perform the function of an output unit for an ADP machine (i.e., printer), it is also the component that serves as the output for the optical reader and facsimile (in those machines consisting of a facsimile machine). Accordingly, the **United States** believes that the machines are classified in heading 84.71 as units of automatic data processing machines by application of Note 3 to Section XVI and Note 5 (B) to Chapter 84.”

III. CONCLUSION

30. The Committee is invited to take account of the Note from the **US** Administration when it examines this agenda item.
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