



HARMONIZED SYSTEM  
COMMITTEE

NC0757E1

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32<sup>nd</sup> Session

O. Eng.

Brussels, 20 October 2003.

DECISION THAT "PHOTOCOPYING" IS NOT LIMITED TO THE PROJECTION OF AN  
IMAGE ONTO A PHOTSENSITIVE SURFACE AND PRESENT HEADING 90.09 COVERS  
DIGITAL COPYING (RESERVATIONS BY THE CANADIAN, JAPANESE, MEXICAN AND  
US ADMINISTRATIONS) AND CLASSIFICATION OF THE RELEVANT MACHINES  
(RESERVATIONS BY THE BRAZILIAN AND US ADMINISTRATIONS (HSC/27)  
AND THE EC (HSC/27))  
(Item VI.4 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)	NC0398E1 (HSC/26)
42.750, Annex E (HSC/22 – Report)	NC0430E2, Annex H/4 (HSC/27 – Report)
NR0023E1 (RSC/19)	NC0613E1 (HSC/30)
NR0037E1 (RSC/19)	NC0614E1 (HSC/30)
NC0090E2, Annex IJ/26 (HSC/23 – Report)	NC0616E1 (HSC/30)
NC0160E2, Annex H/14 (HSC/24 – Report)	NC0655E2, Annexes G/3 and G/4 (HSC/30 – Report)
NC0211E1 (HSC/25)	NC0757E1 (HSC/32)
NC0250E2, Annex H/13 (HSC/25 – Report)	

I. BACKGROUND

1. At its 30<sup>th</sup> Session, the Committee examined the issues of whether "photocopying" was limited to the projection of an image onto a photosensitive surface and whether present heading 90.09 covered digital copying. When the matter was put to a vote, 22 delegates voted to reaffirm the Committee's previous decision that "photocopying" was limited to the projection of an image onto a photosensitive surface and that present heading 90.09 did not cover digital copying, while 24 delegates voted to reverse these decisions. On the basis of

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this vote, the Committee decided that “photocopying” was not limited to the projection of an image onto a photosensitive surface and that present heading 90.09 did cover digital copying.

2. At its 30<sup>th</sup> Session, the Committee instructed the Secretariat to undertake a study, for examination by the Committee at its next session, (i) to determine whether GIR (b) can be applied to multifunction machines which perform functions covered by headings in Chapter 84, 85 or 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 before it. The machines which were the subject of agenda items VII.4 to VII.9 would all be included in this study (see Annex V to Doc. NC0786E1 for this Report).
3. At the Committee’s 31<sup>st</sup> Session, 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.
4. The **US** Delegate stated that it would be difficult to conduct the study at issue without actual product descriptions and, therefore, supported the Secretariat.
5. 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 multi-function 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).
6. The results of the Secretariat’s study are presented in Doc. NC0759E1 under Agenda Item VI.6.
7. By letter of 31 January 2003, the **Japanese** Administration requested the Secretary General of the WCO to submit this HS Committee decision to the Council in accordance with Article 8.2 of the HS Convention for referral back to the Harmonized System Committee for re-examination. The Council, at its 101<sup>st</sup> and 102<sup>nd</sup> Sessions, referred the matter back to the Harmonized System Committee for re-examination at its 32<sup>nd</sup> Session. Reservations were also submitted on the same issues by the **United States**, **Canada** and **Mexico**.
8. On 1 September 2003, the Secretariat received the following note from the **Japanese** Administration on the issues of whether “photocopying” was limited to the projection of an image onto a photosensitive surface and whether present heading 90.09 covered digital copying.

## II. NOTE FROM THE JAPANESE ADMINISTRATION

9. “As to the definition of heading 90.09, we wish to clarify our position as to why we presented a reservation to the WCO against the decision at the 30<sup>th</sup> HS Committee, where the 27<sup>th</sup> HSC decision was reversed by a vote of 24 to 22, so that heading 90.09 included digital copying.
10. The vote at the 30<sup>th</sup> Committee resulted from reservations submitted by the EC and Brazil. The EC Delegate reiterated the Community’s reasons for its reservation against the decision at the 27<sup>th</sup> HSC that heading 90.09 did not include digital copying, as follows :
- “The EC cannot find a legal basis in the 27<sup>th</sup>HS Committee’s decision that would permit a restrictive interpretation of the legal description of heading 90.09 so as to exclude digital technology from the scope of this heading. The fact that the (non-binding) Explanatory Notes do not refer to this technology does not mean that it is excluded, but merely that they were drafted at a time when it did not exist.”
11. The followings are the reasons why Japan lodged a reservation against the decision at the 30<sup>th</sup> HSC. Firstly, if you precisely interpret the legal text of heading 90.09, you must surely reach the conclusion that the decision of the 30<sup>th</sup> HSC, which is along the lines of the EC’s assertion that the interpretation of the text of heading 90.09 includes digital copying, is too broad, and our assertion that heading 90.09 does not include digital copying is never “restricted” but rather with fidelity.
12. Secondly, we believe that the EC’s reasoning about the historic background on the Explanatory Notes of heading 90.09 is not logical, by which the EC is contending that digital technology did not exist when the Explanatory Notes were drafted and thus digital technology should be included now. We would like to point out the logical contradiction of the EC’s contention.
13. The Explanatory Note to heading 90.09 reads :
- “...[an] apparatus incorporate[s] an optical system (comprising mainly a light source, a condenser, lenses, mirrors, prisms or an array of optical fibres) which projects the optical image of an original document on to a light-sensitive surface, and components for the developing and printing of the image.”
14. We interpret the description as “an optical system which projects the original optical image intact on to an light-sensitive intermediate such as the surface of the drum, belt or some other media, and components....”. In other words, what is projected should be an intact optical image of the original document, not the composite of dots created from processed data.
15. Our interpretation takes no account of the presence or absence of digital technology, or whether the Explanatory Notes were written before the beginning of digital age or not. Rather, we simply think that an apparatus incorporating an optical system in which an original optical image is projected intact should be classified in heading 90.09, and that in which an original image is converted or processed before being projected should be classified in a heading other than heading 90.09.

16. When an intact image is projected on to a light-sensitive substance, the original image can be enlarged or reduced in copying according to the distance between the original document and the lenses. We understand that these functions of analog copiers are within the scope of heading 90.09. However, we do not agree that an apparatus that easily enables the same features by digital technologies should also be classified in heading 90.09.
17. **Japan** would like to clarify our position with respect to digital data processing and the interpretation of heading 90.09. In order to do so, it is necessary for us to examine the Explanatory Note to heading 90.09 since the legal text of the heading is written very concisely. The Explanatory Note to heading 90.09 describes in detail the “direct process” by which an original document is projected on to the coated paper or the like in order to directly reproduce copies, and the “indirect process” by which an original document is projected on to some intermediate to make a latent image. The Explanatory Note describes the indirect process to be as follows :
- “The optical image is projected onto a drum (or plate) coated with selenium or other semiconducting substance charged with static electricity. After the latent image has been developed by means of a powdered dye, it is transferred onto ordinary paper by applying an electrostatic field and fixed to the paper by heat treatment.”
18. Here, as written in the Explanatory Note to heading 90.09, we must precisely understand the terms “direct process” and “indirect process” as defined and used in the Electro-photographic Society <sup>1</sup> because we consider that these Explanatory Notes were written by an expert with sufficient technical background. Both the words “direct” and “indirect” processes exist to distinguish the method of image developing and printing, but both are within the field of the so called “marking” technology.
19. Both copiers and printers inevitably use marking technology, and both possibly have direct and indirect processes respectively. However, the “indirect process” is described in the Explanatory Note to heading 90.09 in order not to express the marking technology of printers but, rather, ensure that it is the marking process of copiers that is reflected. The difference between copiers and printers is whether or not there is a “projecting” function of the original optical image before the marking function.
20. The Explanatory Note to heading 90.09 defines, though it is very concise, that the heading covers apparatus which incorporates units projecting an optical image of the original document at the previous stage of marking. Heading 90.09 does not make any reference to the original image being digitised, stored, edited and processed before marking. It only states that the original optical image be projected intact for marking as a prerequisite, and thus heading 90.09 defines the real meaning of “copiers”. Once the original optical image is projected intact, the apparatus has to be classified as in heading 90.09 as a copier, regardless of the marking technologies, be they indirect or direct.
21. When we consider digital technology, is an optical image of an original document really projected on to a sheet of paper, or on to an intermediate? In order to digitise the data, we “read” the original document by a scanner or by a Charged Coupled Device (CCD) of a

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<sup>1</sup> Electro-photographic Society is the society (the name is changed to “the Image Society” and its theme covers the subject of “image” at large) is aiming at the development of the electronic photograph technology, currently used for a copying machine and a digital multifunction machine, a printer, etc, through the research and investigation of learning and technology. The technical term on an electronic photograph is supervised at this society.

scanner to make electrical signals, so-called digital data, and store the data in memory. In most cases the digital data is compressed in order to save memory, and always gets processed through a parity check, noise filtering and various other procedures. Consequently, what is “projected” on to the paper or on to the intermediate to the paper in digital copying is never the original intact optical image.

22. Therefore, even if we call it a digital “copier”, the concept is no longer a copier defined in heading 90.09, because the “original” optical data does not exist in reality when the “copied” paper is printed out. We conclude that digital copying should never be included in heading 90.09 because that heading requires the existence of an original optical image. The above is **the first reason** (paragraph 11) we believe that the decision taken by of the 30<sup>th</sup> HSC should be reserved.
23. Providing that heading 90.09 would include, in addition to photocopiers incorporating an optical system and of the direct reproduction type, those that incorporate an intermediate for reproduction by the indirect process, and that digital data collected by scanning an original document, or those processed, converted or stored in the memory could be considered as “the intermediate”, it might be justified in saying that digital technology should be included in heading 90.09.
24. However, if the above reasoning would be correct, it has to be admitted at the same time that the process by which digitised data of the original document is printed directly on to coated paper, which is normally called “direct process” of marking technology, is in fact the “indirect process” based on the above supposition since the process uses digital data as an intermediate. This is a clear contradiction to the definition of direct and indirect process at the Electro-photographic Society and also the meaning at Explanatory Note to heading 90.09. The reason why this contradiction occurs is that digital data handling was considered as a kind of intermediate of the indirect process that must have meant marking technology. Therefore it becomes clear that this definition of the intermediate is too broad. The contradiction is also proof that our interpretation with respect to the scope of heading 90.09 excluding digital technology is not restrictive.
25. As mentioned above, we must not make light of **C.F. Carlson**'s invention of electro-photography or the indirect process.<sup>2</sup> This process existed at the time when the Explanatory Note to heading 90.09 was written and still is the most current marking technology available. The process is widely used in analog copiers, digital copiers, laser beam printers, laser facsimiles, and digital multifunction office machines. The process, a kind of marking technology and conversion of the image into digital data, a kind of data-input and handling technology, should not be discussed on the same stage under heading 90.09, otherwise we will fall into a theoretical contradiction. This is **the second reason** (paragraph 11) we believe that the decision taken by the 30<sup>th</sup> HSC has to be reviewed again.

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<sup>2</sup> **C.F. Carlson** is the person who invents the principle of the indirect electrostatic photocopying system currently used for the present copying machine and the digital multifunction machine. **Carlson** who was in the patent division of a certain company those days in 1930 considered whether the copy work (a photograph was taken those days) required for patent applications would be done much easier and faster, and finally invented the electronic photograph method, i.e., transferring the image on paper through taking the electrostatic image pattern of what should be copied by optical exposure, and adhering powder to it

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26. In the digital “copying” process, no matter how identical any functions, by analog copiers and by DMF machines, may look externally, the internal process is really different and that is the key to distinguishing their classification.
27. As described above, we support the decision taken by the 27<sup>th</sup> HS Committee that “photocopying” is limited to the projection of an image onto a photosensitive surface intact, and the present heading 90.09 does not cover digital copying. We also would like to see concrete progress at the next HSC for the classification of each benchmarked model.”
28. For the convenience of the delegates, the Secretariat has reproduced the previous Committee Reports on this issue, which can be found in Annexes I to VI to Doc. NC0786E1.

### III. CONCLUSION

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