



HARMONIZED SYSTEM  
COMMITTEE  
-  
32<sup>nd</sup> Session  
-

NC0787E1  
(+Annex)  
  
O. Eng.

Brussels, 23 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)	NC0786E1 (HSC/32)

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 23 January 2003, the **Canadian** Administration requested the Secretary General of the WCO to submit this HS Committee decision directly back to the Harmonized System Committee for re-examination at its 31<sup>st</sup> Session in accordance with paragraph 2 (a)(ii) of Council Decision No. 298. 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**, **Japan** and **Mexico**.
8. Pursuant to Rule 20 of the HS Committee’s Rules of Procedure, on 17 September 2003, the Secretariat received the following Note from the **Canadian** 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 CANADIAN ADMINISTRATION

### “EXPLANATION OF THE CANADIAN ADMINISTRATION’S RESERVATION AGAINST THE DECISION OF THE 30<sup>TH</sup> SESSION OF THE HARMONIZED SYSTEM COMMITTEE THAT “PHOTOCOPYING” WAS NOT LIMITED TO THE PROJECTION OF AN IMAGE ONTO A PHOTSENSITIVE SURFACE AND THAT PRESENT HEADING 90.09 COVERS DIGITAL COPYING.

9. At its 27<sup>th</sup> Session, the Harmonized System Committee (HSC) decided, by a vote of 22 to 14, that “photocopying” was limited to the projection of an image onto a photosensitive surface and therefore, heading 90.09 did not cover digital copying. The **EC** and **Brazilian** Administrations entered reservations against that decision. These reservations were considered by the HSC at its 30<sup>th</sup> Session.
10. At the 30<sup>th</sup> Session of the HSC, the **EC** maintained that heading 90.09 specifically provided for copying apparatus and that there was no reason to exclude digital copying (NC0655E2, paragraph 7).
11. The **Brazilian** Administration pointed out that although the HSC had decided heading 90.09 did not include digital copying it had not decided which heading covered the digital copying function. They indicated they felt heading 90.09 or even heading 84.72 could cover the digital copying process. They emphasised that the digital copying process employed optical elements, that heading 90.09 and the related Explanatory Note (EN) described goods of the type in use when the ENs were drafted and that the heading neither specifically makes reference to nor specifically excludes digital copying.
12. The **US** Administration spoke in support of the decision at the 27<sup>th</sup> Session. They noted that the precise issue was the scope of the term “photocopying” in heading 90.09. They felt the digital copying process did not include projection of the image onto a photosensitive surface and that it did not meet the definition of photocopying found in the EN to heading 90.09, or other technical sources. Furthermore, they claimed that digital copiers are not commercially described as photocopiers.
13. The HSC, by a vote of 24 to 22, reversed its decision at the 27<sup>th</sup> Session, and determined that “photocopying” was not limited to the projection of an image onto a photosensitive surface and that heading 90.09 covers digital copying.
14. The **Canadian** Administration disagrees with that most recent decision of the HSC, for the following reasons :
15. Heading 90.09 provides for three types of goods :
  - “photocopying apparatus incorporating an optical system”
  - “photocopying apparatus of the contact type”, and
  - “thermo-copying apparatus”.
16. Parts (B) and (C) of the Explanatory Note to heading 90.09 explain that both contact-type photocopying and thermo-copying bring the original into contact with a sensitive surface. As that does not occur during the digital copying process those provisions do not apply.

17. The Explanatory Note to heading 90.09 Part (A) describes “photocopying apparatus incorporating an optical system”. There are significant differences between “photocopying” as described in Part (A) of the Explanatory Note to heading 90.09 and digital copying. The Annexes to this document provide a graphic representation of the two processes.
- I. In the photocopying process covered in heading 90.09, an optical system projects an optical analog image of an original document directly on a light-sensitive surface. The optical image is projected without being changed in any way.
  - II. In the digital copying process, the machine’s controller converts the optical image to digital data and then transmits the digital data so that the image is recreated on the photoreceptor. This process is not photocopying and is thus distinct from that performed by the apparatus of heading 90.09.
  - III. Photocopying apparatus requires one exposure of the optical image of the original document for one copy. No digital data is involved. On the other hand, regardless of the number of copies required, digital copying requires a single scanning of the image of the original document. In other words, prints of an original document are produced from the digital data stored electronically in the controller’s image data storage device by a single scanning of the optical image of the original document. This feature underlines another difference with the analog photocopying apparatus of heading 90.90.
  - IV. Due to the large volume of copies required in today’s workplace environment, the typical digital copying machine is designed as about 2.5 times more durable than photocopiers.
  - V. Digital copiers use software programs, and have the capability of communicating with, and sharing data with, other automatic data processing units. By contrast, the analog photocopiers of heading 90.09 are not software compatible, and cannot communicate or share data with other devices.
  - VI. The industry distinguishes between photocopying and digital copying. Digital copiers are marketed as separate products from photocopiers.
18. The distinction between digital copying and photocopying is very much like that between photographic cameras and digital cameras. The final products (pictures and copies) are very similar but the processes are different and are provided for in separate provisions in the Nomenclature.
19. The provision for photocopying apparatus in heading 90.09 does not include the digital copying and therefore **Canada** asks the HSC to confirm its decision at the 27<sup>th</sup> Session that photocopying is limited to the projection of an image onto a photosensitive surface.”

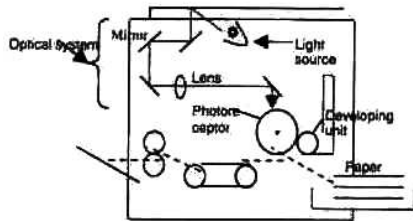
### III. CONCLUSION

20. The Committee is invited to take account of the note from the **Canadian** Administration and the attached Annex when it examines this agenda item.

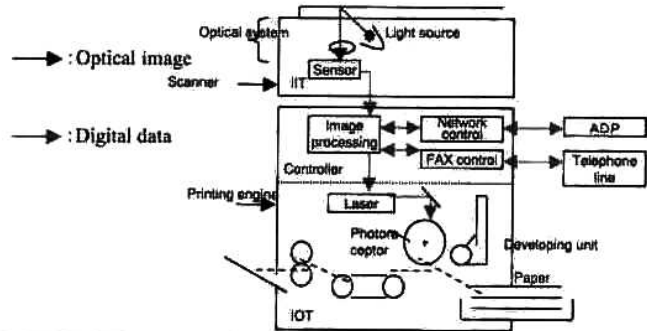
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Material 2: Graphic representation of analog copier and the DMF machine

**Light-Lens Copier**



**Digital Multifunction Machine**



<p>• Copier of Heading 9009 Incorporating Optical System</p>	<p>Digital Multifunction Machines(DMF Machines)</p>
<p>1.The printed material is scanned to create an optical image.</p>	<p>1. The printed material is scanned to create an optical image.</p>
<p>2.The image is <u>directly</u> projected on to the photoreceptor.</p>	<p>2.a)The DMF Machines' controller <u>converts</u> the optical image to <u>digital data</u>. b)The controller <u>transmits</u> the digital data to the printer engine to <u>recreate</u> the printed image on to the photoreceptor.</p>
<p>3. The image is developed on the photoreceptor and copied on the paper .</p>	<p>3. a) The DMF Machines are connected with ADP Machines. b) The DMF Machines are connected with Telephone Line.</p>
<p>3. The image is developed on the photoreceptor and copied on the paper .</p>	<p>4. The image is developed on the photoreceptor and copied on the paper .</p>