



HARMONIZED SYSTEM
REVIEW SUB-COMMITTEE

-
24th Session
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NR0182E1
(+ Annexes I and II)
O. Eng.

Brussels, 23 July 2001.

STUDY OF POSSIBLE AMENDMENTS TO THE NOMENCLATURE
WITH REGARD TO THE CLASSIFICATION OF MULTIFUNCTIONAL DIGITAL COPIERS
(Item III.A.14 on Agenda)

Reference documents :

42.406 (RSC/18)	NC0090E2, Annex IJ/26 (HSC/23 – Report)
42.498 (RSC/18)	NC0160E2, Annex H/14 (HSC/24 – Report)
42.500, Annex B/19 (RSC/18 – Report)	NC0211E1 (HSC/25)
42.750, Annex E (HSC/22 – Report)	NC0243E1 (HSC/25)
NR0023E1 (RSC/19)	NC0250E2, Annex H/13 (HSC/25 – Report)
NR0037E1 (RSC/19)	NC0300E1 (HSC/26)
NR0045E2, Annex A/23 (RSC/19 – Report)	NC0335E1 (HSC/26)
NC0059E1 (HSC/23)	NC0430E2, Annex H/4 (HSC/27 – Report)

I. BACKGROUND

1. On 8 September 1998, the Secretariat received a Note from the Brazilian Administration proposing an amendment to heading 90.09 to specifically provide for multifunctional photo-copying apparatus in the Harmonized System (see Annex I to this document).
2. According to the Brazilian Administration, the machines were called multifunctional copiers and were photo-copying apparatus which could also be used as printers, fax machines and scanners. The Brazilian Administration proposed that separate subheadings be provided for these machines under heading 90.09. The proposal also suggested that separate subheadings be created for monochromatic and polychromatic types of these machines under heading 90.09.

File No. 2755

3. At the time, the Secretariat suggested that, given the different functions, it might be argued that, besides heading 90.09, the following headings also merited consideration : heading 84.71 or 84.72 (as printers, depending on whether or not the printers fulfilled the criteria of Note 5 (B) (b) and (B) (c) to Chapter 84); heading 84.71 (as scanners, provided the criteria of Note 5 (B) to Chapter 84 were satisfied); heading 85.17 (as fax machines, provided this function were the principal function). In conformity with Note 3 to Section XVI, 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 which performed the principal function. However, this Note was not applicable to apparatus of Chapter 90, therefore, it seemed to the Secretariat at the time that the legal basis for classification was not clear, unless it could be argued that the apparatus in question were excluded from Section XVI by virtue of Note 1 (m) to that Section.
4. In view of the foregoing, the Secretariat suggested that it might be appropriate to create a legal basis for the classification of composite instruments of Chapter 90, e.g., a new Note to Chapter 90 which would read "The provisions of Note 3 to Section XVI apply also to this Chapter." (cf. Note 3 to Chapter 90). Furthermore, the Secretariat suggested that, if the Sub-Committee found it desirable to group all multifunctional machines of the type under consideration in heading 90.09 as proposed by Brazil irrespective of their principal function, it would also be appropriate to create a Note in Chapter 90 to clarify their classification.

RSC/18

5. During the discussions at the Review Sub-Committee's 18th Session, Mr. Kusahara, then the Director of Tariff and Trade Affairs, expressed the following concerns regarding the Brazilian proposal : (i) whether the purpose could be achieved by merely inserting the term "a digital system in the text of heading 90.09", and (ii) if the apparatus incorporated an optical system, the reference to "digital system" could be removed and the proposed text could be further amended (e.g., by inserting "whether or not incorporating the function of a printer ..." after "optical system").
6. The Sub-Committee finally agreed to leave it for the HS Committee to settle the classification question and to continue studying the question of legal amendments at its next session. The Brazilian Administration was also requested to present trade statistics, as well as technical information on the mechanism of the apparatus (i.e., whether they contained an optical system).

HSC/22

7. At its 22nd Session, the HS Committee merely took note of the Review Sub-Committee's decision to continue studying the question of possible amendments to heading 90.09, to provide for multifunctional photocopying apparatus in the structured nomenclature of that heading. The Committee did not address the classification question.

RSC/19

8. The Review Sub-Committee, at its 19th Session, continued its study of this issue on the basis of a new proposal presented by the Delegate of Brazil during the Session. This proposal eliminated the reference to "digital system" at the heading level in the original Brazilian proposal and therefore limited the proposal to four breakouts at sub-heading level. (See Annex II).

9. Given the time limit to take this question on board during the Second Review Cycle, the Sub-Committee agreed to place the new Brazilian proposal in square brackets and to submit it to the Harmonized System Committee for consideration and to leave, if necessary, the classification issue of the goods in question to the HSC. The Sub-Committee agreed with an EC proposal that it would be necessary to introduce a legal Note to Chapter 90 to enable these types of machines to be classified in that Chapter. The Sub-Committee also favoured the elimination of the distinction between monochromatic and polychromatic apparatus and consequently to group these machines in two subheadings instead of four.

HSC/23

10. At the 23rd Session of the Harmonized System Committee, several delegates supported the Brazilian proposal submitted in September 1998 to amend heading 90.09 to provide for multifunctional photocopying apparatus in the structured nomenclature of that heading. In this connection, the present and future importance of these apparatus in world trade was stressed. Delegates were told that the future amendment and the present classification of these goods were separate issues and, as a consequence, should not be linked. In addition, it was stated that such an amendment would eliminate the need for using various GIRs and legal notes, as the goods would be classified on the basis of GIR 1. Finally, the point was made that such a change did not change the scope of heading 90.09, as these goods were still photo-copying apparatus.
11. Several other delegates spoke out against the proposal. The Committee's attention was drawn to the fact that the Review Sub-Committee had not been able to undertake a discussion on the technical and classification issues. A full discussion with all the facts was needed. One delegate argued that many of these apparatus were merely printers with enhancements and should be classified in heading 84.71. He felt that it was premature to propose an amendment without first consulting the industry and doing a study of the different types of apparatus in question. Finally, with regard to the new Note to Chapter 90 proposed by the Brazilian Administration, there was some concern expressed by these delegates that there could be a transfer of goods from other Chapters to Chapter 90. By 9 votes to 7, the Committee decided not to amend the present (1996) Nomenclature.

HSC/24

12. At its 24th Session, the Harmonized System Committee finally began its examination of the classification of these multifunctional machines. Delegates had the opportunity to view a demonstration of a number of these machines in operation with the assistance of the International Chamber of Commerce.
13. The Director suggested that the Secretariat study the classification of multifunctional digital copiers on the basis of a number of machines that could be selected from those that had been demonstrated to delegates. Several delegates agreed that this would be an appropriate course of action. The Committee decided that the Secretariat in consultation with the industry and Contracting Parties would choose representative machines for study by the Committee. Technical information with regard to these machines would then be made available to administrations.

14. In response to the EC Delegate's comments concerning the possibility of also studying the amendment of the legal texts, the Chairman indicated that once these machines had been classified, the Committee could then look into the advisability of amending the legal texts.

HSC/25

15. At its 25th Session, the Committee undertook a preliminary discussion on the classification of these multifunctional machines on the basis of a new document (NC0211E1), which presented seven machines for the Committee's consideration. During the discussions, several delegates were in agreement that additional technical information specific to each product was needed. In addition, one delegate asked if it was known or could be determined whether the machines listed in paragraph 6 of Doc. NC0211E1 could work on their own, without being connected to an automatic data processing (ADP) machine. He felt it important to include in the study not only machines that could work on their own (standalone), even though they could be connected to an ADP machine but also multifunctional machines that could work only when connected to an ADP machine.
16. The Delegate of Brazil reiterated his contention that the machine presented by the Brazilian Administration by way of example, i.e., the Xerox Document Centre 230 DC, was classified in heading 90.09 by application of GIR 3 (b). Furthermore, he reminded the Committee that the machine in question contained a laser and a set of lenses which were used to create an image on the photoreceptor in order to produce a new image which would be revealed after being placed in contact with a chemical toner. In the view of the Delegate of Brazil, this was, in fact, an optical-electrostatic process of the type described in the Explanatory Notes to heading 90.09.
17. The Committee was informed that it was important to consider the classification of these machines in the context of the heading texts. For example, heading 90.09 covered photocopying devices incorporating an optical system. The scanning device incorporated in these systems, if imported separately, would be classified as an optical reader of heading 84.71. Consequently, in examining the classification of these machines, it was important to determine the scope of the phrase "incorporating an optical system" in order to determine whether these machines were, in fact, photocopying machines of heading 90.09.
18. It was finally agreed that the machines identified by the Secretariat in the working document were appropriate candidates for the study (subject to the inclusion of the Xerox Document Centre 230 DC) and that the Secretariat's next document would include all classification possibilities, including headings 84.71, 84.72, 85.17, 90.09 and printing machines.

HSC/26

19. At the request of the Delegate of Brazil, the discussion of multifunctional machines during the Committee's 26th Session was postponed to its 27th Session.

HSC/27

20. At its 27th Session, the Delegate of Brazil drew the Committee's attention to paragraph 9 of Doc. NC0211E1, wherein the common features of all multifunctional digital machines were described, and page 1592 of the Explanatory Notes. He pointed out that the

descriptions in both were similar. Each description referred to an optical system which projected the optical image of an original document onto a light-sensitive surface, and components for the developing and printing of the image. In his administration's view, the marking of paper by a laser was, in fact, an operation carried out by an optical system. This view was supported by dictionary definitions of the term. As a consequence, in his administration's view, heading 90.09 provided for these multifunctional digital copiers. He felt that the Secretariat and certain Contracting Parties, in ruling out this conclusion, were invoking an interpretation of the Explanatory Note to heading 90.09 that was too restrictive.

21. The Delegate of Brazil also cited the first sentence of Part B of the Explanatory Note to heading 90.09 which gave an indication of the difference between photocopiers incorporating an optical system and contact type photocopiers, noting that the latter had no optical system and only made copies of the actual size of the documents to be reproduced. In his opinion, this Note indicated that, in general, any machine incorporating an optical system that enabled it to produce copies of variable dimensions to suit the needs of the users could, in principle, fall in heading 90.09.
22. The EC Delegate supported the possibility of classifying these multifunctional digital copiers in heading 90.09. In his view, an analysis of the text to that heading supplied the appropriate legal basis for that position. He noted that the Secretariat had used the fact that the Explanatory Notes did not mention digital types of photocopiers to exclude classification in heading 90.09. When those Notes were drafted, these types of apparatus did not exist, but it went without saying that the Explanatory Notes could not expand or restrict the legal scope of a heading. There was no legal basis for excluding the digital photocopying function from heading 90.09. This view appeared to be confirmed by decisions of the European Court of Justice which had found that the present heading 90.09 included, in addition to optical and direct-reproduction photocopiers, those that used an intermediate for indirect reproduction. The indirect reproduction process could take the form of the conversion of images into digital data.
23. Furthermore, the machines at issue were composite machines. Consequently, it was necessary to determine their principal function. These machines could scan, copy, fax and print. They could be used in conjunction with an automatic data processing (ADP) machine but also in a stand-alone mode. It would be difficult to determine the main function at time of importation. One should not confuse the main function with principal use. The use was determined in accordance with the needs of the user and these were not known at the time of clearance. In addition, at time of importation, they were not presented with an ADP machine. Given these facts, he wondered how the machines in question could satisfy the terms of Note 5 (B) to Chapter 84, as being of a kind solely or principally used in an ADP system, as their principal use could only be determined after importation. If it was not possible to determine the principal function, then classification according to Note 3 to Section XVI was ruled out and one must turn to GIRs 3 (b) or 3 (c). In addition, the possible application of Note 5 (E) to Chapter 84 should also be considered.
24. The EC Delegate saw a general trend in the Committee to classify any product connectable to an ADP machine in heading 84.71, as an output unit of an ADP machine. However, he questioned this practice. All products which could fulfil the conditions of Note 5 (B) to Chapter 84 did not necessarily have to be classified in heading 84.71. Just because a machine was connectable to an ADP machine did not automatically mean that it was an output unit of an ADP machine. In this regard, he referred to the recent classification of an ink-jet printing machine in heading 84.43, even though it was connectable to an ADP

machine and could only function when connected to an ADP machine (see Classification Opinion 8443.51/1).

25. Several other delegations expressed their support for the conclusions reached by the EC Delegate. Comments were expressed that it would be difficult to classify these machines as output units of ADP machines when they could operate autonomously and were not presented with an ADP machine. Furthermore, the Explanatory Note to heading 90.09 referred only to the technology available at the time of its drafting. Technology evolved and, in the view of certain delegates, the copying of a document by whatever means was still a process covered by the scope of heading 90.09.
26. The US Delegate stated that for purposes of classification in heading 90.09, the phrase "digital photocopiers" was a contradiction in terms. In his view, "photocopying" was limited to the projection of an optical image directly onto a photosensitive surface. He expressed support for the Secretariat's position in Doc. NC0300E1 that "photocopying" did not include the conversion of an image into digital data by a scanner and the printing of that data by the printer as was done by the machines under consideration. There was substantial support from other delegates for this point of view.
27. At the conclusion of its general discussion, 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. The Chairman drew the Committee's attention to the fact that the "HP Mopier 320" was a composite machine (as were all the machines under consideration) encompassing a printer and scanner. As a result of the Committee's decision, classification in heading 90.09 was ruled out and, as a consequence, Note 3 to Section XVI could apply. He pointed out that if it was not possible to determine the principal function, then GIR 3 (c) would come into play.
28. Based on the aforementioned, the Committee voted in favour of the view that the conditions of Note 5 (B) to Chapter 84 were fulfilled and, as a consequence, classified the "HP Mopier 320" and the "Xerox Document Centre 340" in subheading 8471.60 as a printer, by application of GIR 1 (Note 3 to Section XVI and Note 5 (B) to Chapter 84). The Committee classified the "Brother MFC-8600" and the "Brother 1970mc" in heading 85.17 (subheading 8517.21), as fax machines rather than print devices of heading 84.71, by application of Note 3 to Section XVI. The Committee postponed classification of the "Océ 3133" and the "Xerox Document Centre 230 DC" to its next session, on the basis of a new document to be presented by the Secretariat, that would provide additional information on the nature of the machines. Finally, based on the Committee's previous decision not to classify a machine that was no longer being manufactured, the Committee agreed that the classification of the "HP OfficeJet Pro 1175C" be dropped from the Agenda.
29. The US Delegate requested that the Committee look at amending the Explanatory Note to heading 90.09 to reflect the Committee's decision that heading 90.09 did not cover "digital copying". As there were differing viewpoints within the Committee, the Chairman put the matter to a vote. By a vote of 15 to 7, the Committee decided to amend the Explanatory Notes to reflect its decision that heading 90.09 did not cover "digital copying". The question was to be submitted to the Committee for consideration at its next session.

30. Following this, a discussion ensued as to whether the Nomenclature should be amended for the year 2007, with regard to the classification of multifunction digital copiers. A proposal was made that the Secretariat undertake a study with a view to amending the legal text. The Director indicated his willingness to look into the matter.
31. The Committee concluded the discussion by instructing the Secretariat to undertake a study with a view to determining whether an amendment could be made to the legal text and administrations were invited to send in submissions.

II. SECRETARIAT COMMENTS

32. At the time of the preparation of this document, the time limit for reservations on decisions taken during the Committee's 27th Session has not expired. As a result, the Secretariat feels that it would be precipitous to draft a proposal to amend the Nomenclature without some direction from the Sub-Committee. In this connection, the Secretariat would have no difficulty in drafting a proposal to group all such machines in one heading (84.71, 85.17 or 90.09, for example) provided the Sub-Committee expressed a preference for one of them. As mentioned in paragraph 4, if such a possibility were envisaged for heading 90.09, then certain legal amendments would have to be made.
33. The Secretariat would also draw the Sub-Committee's attention to the fact that, as yet, there have been no indications by Contracting Parties to revive the Brazilian proposal to amend the structured nomenclature to heading 90.09 to encompass multifunctional machines.

III. CONCLUSION

34. The Secretariat has provided this historical background on the issue of the classification of multifunctional machines in order to assist the Review Sub-Committee in its future deliberations. In this connection, the Secretariat would request the Sub-Committee provide guidance on the following :
- (i) Is the Sub-Committee in agreement with the proposal to group all multifunctional machines of the type examined by the Committee in one heading ?
 - (ii) If the Sub-Committee agrees with the aforementioned proposal, then which heading (i.e., 84.71, 85.17 or 90.09) would be the Sub-Committee's preference ?
 - (iii) If the Sub-Committee prefers heading 90.09, then does it wish to use the revised Brazilian proposal as the starting point for its deliberations ?

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ORIGINAL BRAZILIAN PROPOSAL

CURRENT		PROPOSED	
HS HEADING/ SUBHEADING	PRODUCT	HS HEADING/ SUBHEADING	PRODUCT
90.09	PHOTOCOPYING APPARATUS INCORPORATING AN OPTICAL SYSTEM OR OF THE CONTACT TYPE AND THERMO-COPYING APPARATUS; PARTS AND ACCESSORIES THEREOF	90.09	PHOTOCOPYING APPARATUS INCORPORATING A <i>DIGITAL SYSTEM</i> , OPTICAL SYSTEM OR OF THE CONTACT TYPE AND THERMOCOPYING APPARATUS; PARTS AND ACCESSORIES THEREOF
90.09	ELECTROSTATIC PHOTOCOPYING APPARATUS	90.09	ELECTROSTATIC PHOTOCOPYING APPARATUS
9009.11	OPERATING BY REPRODUCING THE ORIGINAL IMAGE DIRECTLY ONTO THE COPY (DIRECT PROCESS)	9009.11	OPERATING BY REPRODUCING THE ORIGINAL IMAGE DIRECTLY ONTO THE COPY (DIRECT PROCESS)
9009.12	OPERATING BY REPRODUCING THE ORIGINAL IMAGE VIA AN INTERMEDIATE ONTO THE COPY (INDIRECT PROCESS)	9009.12	<i>MONOCHROMATIC</i> , OPERATING BY REPRODUCING THE ORIGINAL IMAGE VIA AN INTERMEDIATE ONTO THE COPY (INDIRECT PROCESS), <i>PRESENTING THE COPIER FUNCTION ONLY</i>
		<i>9009.13</i>	<i>POLYCHROMATIC</i> , OPERATING BY REPRODUCING THE ORIGINAL IMAGE VIA AN INTERMEDIATE ONTO THE COPY (INDIRECT PROCESS), <i>PRESENTING THE COPIER FUNCTION ONLY</i>
		<i>9009.14</i>	<i>MONOCHROMATIC</i> , OPERATING BY REPRODUCING THE ORIGINAL IMAGE VIA AN INTERMEDIATE ONTO THE COPY (INDIRECT PROCESS), <i>PRESENTING THE COPIER FUNCTION COMBINED WITH ONE OR MORE THAN ONE OF THE FOLLOWING FUNCTIONS: PRINTER, FAX, SCANNER</i>

		9009.15	<i>POLYCHROMATIC, OPERATING BY REPRODUCING THE ORIGINAL IMAGE VIA AN INTERMEDIATE ONTO THE COPY (INDIRECT PROCESS), PRESENTING THE COPIER FUNCTION COMBINED WITH ONE OR MORE THAN ONE OF THE FOLLOWING FUNCTIONS: PRINTER, FAX, SCANNER</i>
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NOTE: TEXTS IN ITALICS INDICATE CHANGES

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PROCEDURE DE L'ARTICLE 16

AMENDEMENTS DE LA NOMENCLATURE

[CHAPITRE 90.

N° 9009.12.

Nouvelle rédaction :

- "9009.13 -- Fonctionnant par reproduction de l'image de l'original, sur la copie au moyen d'un support intermédiaire (procédé indirect), ne pouvant assurer que la fonction d'appareil de photocopie
- 9009.14 -- Fonctionnant par reproduction de l'image de l'original, sur la copie au moyen d'un support intermédiaire (procédé indirect), combinant les fonctions d'un appareil de photocopie en même temps que celles des appareils ci-après : imprimante, télécopieur, scanner"].

ARTICLE 16 PROCEDURE

AMENDMENTS TO THE NOMENCLATURE

[CHAPTER 90.

Subheading 9009.12.

Delete and substitute :

- "9009.13 -- Operating by reproducing the original image via an intermediate onto the copy (indirect process), presenting the copier function only
- 9009.14 -- Operating by reproducing the original image via an intermediate onto the copy (indirect process), presenting the copier function combined with one or more than one of the following functions : printer, fax, scanner"].