



HARMONIZED SYSTEM
COMMITTEE

NC0741E1
(+ Annex)

-
32nd Session
-

O. Eng.

Brussels, 15 October 2003.

CLASSIFICATION OF THE "MEDIA COMPOSER 1000" (RESERVATION
BY THE US ADMINISTRATION

(Item VI.3 on Agenda)

Reference documents :

40.179 (HSC/17)	NC0151E1 (HSC/24)
40.260, Annex IJ/26 (HSC/17 – Report)	NC0160E2, Annex H/18 (HSC/24 – Report)
40.600, Annex IJ/4 (HSC/18 – Report)	NC0286E1 (HSC/26)
40.892 (HSC/19)	NC0340E2, Annex G/4 (HSC/26 – Report)
41.000, Annex A/VIII (HSC/19 – Report)	NC0385E1 (HSC/27)
41.100, Annex F/8 (HSC/19)	NC0430E2, Annex H/2 (HSC/27 – Report)
41.100, Annex K/16 (HSC/19)	NCO612E1 (HSC/30)
NC0071E1 (HSC/23)	NC0655E2, Annex G/2 (HSC/30 – Report)
NC0090E2, Annex IJ/36 (HSC/23 – Report)	NC0756E1 (HSC/32)

I. BACKGROUND

1. At its 30th Session in November 2002, the Harmonized System Committee re-examined the classification of the "Media Composer 1000", as a result of reservations submitted by the EC and the Czech Republic. When the issue was put to a vote, 28 delegates voted for classification in heading 85.43 (subheading 8543.89) and 19 delegates voted for heading 84.71. The decision to classify the "Media Composer 1000" in heading 85.43 was made by application of Note 4 to Section XVI and Note 5 (E) to Chapter 84. As a consequence of its decision, the Committee also decided to maintain Classification Opinion 8543.89/4. The Committee decided that a second Classification Opinion was not necessary. However, for the sake of clarity, the Committee noted that the classification decision taken at its 30th Session, was on a product whose sole material difference from the product which was the subject of Classification Opinion 8543.89/4 was the fact that the software was presented separately.

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2. By letter of 23 January 2003, the **United States** 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 101st and 102nd Sessions, referred the matter back to the Harmonized System Committee for re-examination at its 32nd Session.
3. On 22 September 2003, the Secretariat received the following Note from the **European Community** and the **Czech Republic**.

II. NOTE FROM THE EUROPEAN COMMUNITY AND THE CZECH REPUBLIC¹

"Subject : Classification of an apparatus called "**Media Composer 1000**"
Reservation by the **United States** (Art. 8.2 of the HS Convention)

Ref. Doc. NC0655E2, Annex G/2

SUMMARY OF THE ISSUE

4. Following the reservation presented by the **Czech Republic** and the **EC**, the HS Committee confirmed, at its 30th Session in November 2002, by 28 votes against 19, its prior classification established at the HS Committee's 18th Session of an apparatus called "**Media Composer**" in heading 8543.89 of the HS Nomenclature by application of Note 4 to Section XVI and Note 5 E) of Chapter 84.
5. Against this classification the **United States** presented a second request² to the Committee with a view to revise this decision. This second request is presented in the form of a "reservation" in the framework of Article 8.2 of the HS Convention.
6. The **EC** would point out that the Harmonised System Committee classified the "**Media Composer 1000**" system in subheading 8543.89 by 18 votes to 3, at its 18th Session in November 1996, on the basis of Doc. 40.179. Following this decision, the HS Committee unanimously adopted Classification Opinion No. 8543.89/4 for this system at its 19th Session in April 1997. No reservation has been submitted with regard to these decisions under Article 10 of the HS Convention and they are therefore considered to have been accepted by the Contracting Parties to the HS Convention on 1 February 1997 and 1 July 1997 respectively.
7. Consequently this decision still applies and Classification Opinion No. 8543.89/4 appears in the WCO Compendium of Classification Opinions and database.
8. At the time the Committee took the view that the "**Media Composer 1000**" system should be treated as a combination of machines designed for recording digital video images, creating video effects and editing and finalising video programmes for broadcasting which, quite clearly, were functions other than data processing. Consequently it ruled out heading 84.71 pursuant to Note 5 (E) to Chapter 84.

¹ The underlining is ours.

² The first request for a revision had been presented by the United States in March 1999

9. Classification under heading 85.21 was also ruled out since the appliance had several functions other than video recording or reproduction and the latter function did not appear to be the main one.
10. Since the creation of video effects, video editing, etc. are the principal function and are not specifically listed in Chapter 85, classification under heading 85.43 as a functional unit in application of Note 4 to Section XVI and Note 5 (E) to Chapter 84 was judged relevant by the HS Committee at the sessions mentioned above.
11. However, at the request of the **United States** two years later, the HS Committee re-examined the matter and decided at its 24th Session to reclassify the system under heading 84.71, to draft a new Classification Opinion in subheading 8471.49 and to delete Classification Opinion No. 8543.89/4. Following a reservation entered by the **EC**, the Committee confirmed this decision at its 27th Session by a narrow majority of 18 to 15.
12. This decision constitutes a radical change of position in relation to decisions taken by the Committee at its 18th and 19th Sessions.
13. By letter of 25 July 2001 the **EC** asked 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.
14. Pursuant to Article 20 of the HS Committee's rules of procedure, the **EC** is submitting the following note setting out the reasons for its request and proposals for resolving the issue.

DESCRIPTION

15. The **EC** considers that the Committee should give its views on (1) whether classification of the "**Media Composer 1000**" system as set out in Classification Opinion No. 8543.89/4 is justified and whether this classification should be confirmed or rejected; (2) the classification of the **Media Composer** system set out in Annex II to document NC0286E1; and (3) whether the way in which the system is presented to customs can affect its classification.
16. In the interests of clarity these descriptions are attached to this note.

FUNCTIONAL UNIT, DECISIONS TAKEN AT THE 18TH AND 19TH SESSIONS OF THE HS COMMITTEE, AT PRESENT IN FORCE. DESCRIPTION IN CLASSIFICATION OPINION No. 8543.89/4

17. The **EC** would point out that the Committee was asked to classify a complete system, which was presented to Customs as such and cleared by Customs as a functional unit. This is clear from the first part of the legal basis given in the Classification Opinion : Note 4 to Section XVI (functional unit).
18. Consequently, it is clear that the question put to the Committee has never been the separate classification of the different components in the light of their different functions.
19. At its 18th and 30th Sessions, the Committee considered that the system was a single functional unit. The **EC** would urgently ask delegations to examine this vital conclusion. This

can only be based on the EXACT DESCRIPTION OF CLASSIFICATION OPINION No. 8543.89/4 which was unanimously adopted at the Committee's 19th Session.

20. According to this description this is :

1. A system (not one single appliance or machine);
2. A system "consisting of a combination of machines";
3. A system designed to record digital video images (heading 85.21), create video effects, or edit and finalise video programmes (heading 85.43).

This wording "designed to" shows that the system has been deliberately created and the combination of machines chosen is that which bests achieves the desired function

4. Inside the system "video signals are converted into digital signals so that they can be processed by the central processing unit" (heading 84.71).

This conclusion clearly demonstrates that this function is an intermediate one which is designed to achieve the principal function for which the system was designed which is described under point 3

5. "The system is capable of sending and receiving video signals".

Again this is a function other than data processing

6. The key components which make up the system include in addition to "specialised boards", a colour display unit which is an interlaced scanner for video presentations (heading 85.28) and a second non-interlaced unit for displaying data (heading 84.71).

21. The Report on the 18th Session of the HS Committee contains the following statement regarding the different components making up the system :

The United States delegation "noted that the system incorporated certain additional hardware whose application was specifically for professional video and audio editing. This hardware included a video monitor, a video board solely for editing and specialised boards for video compression, video effects and audio mixing. As a whole, the principle function of the system was video editing and, therefore, under Legal Note 5 (E) to Chapter 84, classification would be directed to the specific function that is its principal function. In this case the function fell in heading 85.43 "(Doc. 40.600, Annex IJ/4 and 5).

22. Consequently it is the function carried out by the system which determines its classification and not the individual functions of the system's components but what is this principal function ?

23. The United States, the EC, the Secretariat³ and other delegates agreed in the Committee's report that:

³ At the time the Secretariat stated in Doc. 40.179, paragraph 7, that the system with these features was specially designed to process digital video images and could be excluded from heading 84.71 by application of Note 4 to Section XVI and Note 5 (E) to Chapter 84.

"Given that this was a digital data-processing system, designed to record digital video images, create video effects or edit and finalise video programmes for broadcasting, and that clearly these were functions other than information processing, classification in heading 84.71 ought to be ruled out by virtue of Note 5 (E) to Chapter 84. ... As the creation of video effects, etc., was not specifically mentioned in Chapter 85, the appliance was classifiable in heading 85.43 as a functional unit by application of Note 4 to Section XVI" (Doc. 40.600, Annex IJ/4 & 2).

24. The HS Committee accepted the position taken by the **United States**, the **EC**, the Secretariat and many other delegations by deciding, by 18 votes to 3, that the **Media Composer 1000** should come under heading 8543.89, noting in its Classification Opinion that this was by application of Note 4 to Section XVI and Note 5 (E) to Chapter 84.
25. What, therefore, are the reasons for such a radical change of position by the Committee which has now ruled that the **Media Composer 1000** system is a simple information processing machine covered by heading 84.71 ?
26. The **EC** continues to believe, for the reasons set out above, that this Classification Opinion complies fully with the HS Convention and should not be deleted. Furthermore, deletion is not justified because the legal texts of the Convention relating to this decision have not changed and they are still, in 2002, identical to those in 1996 and 1999. In other words, at its 18th Session the Committee was aware of the function of the software which was already incorporated in the system and was specially designed with the various components required to achieve the essential function (Doc. 40.179, paragraph 5).

DECISIONS TAKEN AT THE 24TH AND 27TH SESSIONS OF THE HS COMMITTEE AGAINST WHICH A RESERVATION WAS ENTERED. DESCRIPTION IN ANNEX II TO DOC. NC0286E1

27. This new description differs in certain respects from the current description in Classification Opinion No. 8543.89/4 :
- in the introductory paragraph the first sentence has been amended to read : "System consisting of a combination of machines, and software which enables it ..." (unchanged);
 - a new subparagraph has been added to the components making up the system reading : "**Media Composer**" software on CD-ROM,..."
28. The **EC** believe that the only difference between the two systems classified by the Committee is that in the "**Media Composer**" classified in Classification Opinion No. 8543.89/4 the software is incorporated in the system whereas in the new description the software is on CD-ROM.
29. This new discussion within the Committee has focused on the fact that the **Media Composer 1000** is simply a software. However, there is no way of getting round the fact that the situation has not changed, the same description and the explanations given during the demonstration at WCO headquarters still apply; the **Media Composer** system consists of a combination of machines and software which is also called **Media Composer** which cannot be installed or operate separately in any type of system or computer.

30. Clearly all the components referred to are required to enable the system to achieve its principal function which is to record video images, create video effects, and edit and finalise video programmes for broadcasting.
31. Furthermore the Committee and Customs must classify this system in its entirety as it is presented for clearance, i.e., with the software. Consequently, the theoretical question as to how to classify this product without the software is redundant as the system is made up of a deliberate combination of machines which are intended to achieve its specific function.
32. The Committee must therefore classify "the system" in its entirety (with all its components including the software), i.e., consisting of a combination of machines, designed for various functions, in particular the recording of digital video images, creation of video effects or editing and finalising of video programmes for broadcasting. In the course of the discussions within the Committee the fact that these principal functions are clearly functions other than information processing has never been contested. Heading 84.71 has to be excluded pursuant to Note 5 (E) of Chapter 84 and, given that this function is not listed under a specific heading of Chapter 85, it should be classified under heading 85.43.
33. The EC believe that the "Media Composer 1000" system with software on CD-ROM has to be classified under heading 85.43 for these reasons and under the same legal basis (Note 4 to Section XVI and Note 5 (E) of Chapter 84) under which the "Media Composer 1000" system presented without the CD-ROM was classified in accordance with Classification Opinion No. 8543.89/4.

CAN THE WAY IN WHICH THE SYSTEM IS PRESENTED TO CUSTOMS INFLUENCE ITS CLASSIFICATION ?

34. In principle, and as a general rule, the way in which an article is presented to Customs may have an influence on its classification. Any article presented separately is classified under the heading in which it is actually listed and the same article presented as part of a system (Note 4 to Section XVI) or a set (GIR 3) may also be classified under another heading.
35. The EC agreed that the Media Composer 1000 system classified by the Committee at its 18th and 27th Sessions is essentially the same. No new technical information has been provided and no change has been made to the legal text justifying a change of classification.
36. The only difference between the two systems classified by the Committee lies in the fact that the software in the Media Composer classified in Classification Opinion No. 8543.89/4 is incorporated in the system whereas in the new description the software is on CD-ROM.
37. Consequently, the Committee should examine whether the way in which this system is presented to Customs influences its classification. There is one overriding factor: the CD-ROM must be classified separately under heading 85.24 by application of Note 6 to Chapter 85. The Committee must also consider and decide whether this means that Note 4 to Section XVI does not apply.
38. The fact that the software is on CD-ROM has led some delegations to make a distinction between the system and the software. According to these delegations, the creation of video effects and the editing and finalising of video programmes for broadcasting

is carried out solely by the software (principal function other than information processing⁴), whereas the other functions are simply information processing. We have already shown (and we believe that this is largely accepted) that this is an entire system which has been deliberately created to achieve a specific and essential function. Consequently all these components are required to achieve this end.

PRECEDENTS

39. This is not the first time the Committee has discussed the classification of this type of apparatus and the present Compendium of Classification Opinions contains recent rulings by the HS Committee.

40. By way of example a few cases are given below :

8517.30/1

This Classification Opinion refers to an appliance, a voice processor, made up of :

- a data-processing unit comprising a hard disk,
- a diskette reader,
- a keyboard,
- a monitor,
- one or more call detection boards,
- a modem,
- software (classified separately under heading 85.24).

41. This Opinion states that "No modem is used in this process. The call detection boards are used to recognise the analogue signal and convert it to digital format. The modem is used only for remote dial-in for the purpose of diagnostics. Where applicable, the software is classified separately in heading 85.24".

Classification Opinion No. 9017.10/1

42. "System" to control marking-out instruments for industrial design. The software is not presented to Customs. It is incorporated on the hard disk of the computer.

Classification Opinion No. 9027.30/1

Atomic absorption spectrometer

43. The Classification Opinion states that "this device is presented together with an automatic data processing machine and a CD-ROM (special software) which are used for controlling the analysis device and processing the data obtained from the analysis.

44. The analysis device must be connected to the automatic data processing machine, since all its operations are performed in conformity with the instructions given by the automatic data processing machine, e.g., measurement mode, sampling mode, etc. The results from the analysis are communicated to the automatic data processing machine, which converts them into a spectrograph and intelligible data for further use (e.g., for quantitative analysis). The CD-ROM is classified separately in heading 85.24."

⁴ Another function, recording of digital video images, comes under heading 85.21.

45. Legal basis : application of Note 4 to Section XVI, Note 3 to Chapter 90 (functional unit) and Note 6 to Chapter 85.

CASE LAW

46. Classification Opinion 8543.89/4 was consolidated by judgement No. 3 K 5461/98 of 8th October 2001 by the **Finance Court Munich** where it is mentioned in the justification. This judgement declares that classification in heading 84.71 depends on whether the function of the apparatus, which is part of a complete system, is limited to data processing or whether the apparatus also has another main function in which the data processing constitutes only an intermediary function. If the data processing function exclusively serves a special purpose and if the hardware is specifically geared towards that purpose, the principal function of the machine determines the nature of the apparatus. For this reason text processing being the function of an office machine belongs to heading 84.72, a flight simulator is classified under heading 88.05 (ground flying trainer) and a computer for video games comes under heading 95.04.
47. The data processing is not in the foreground; its main function is to simulate situations by working through and representing programs which were calculated and produced in automatic data processing machines with a view to generating images. The programmes are pre-installed on the machine and used by the central unit. The hardware is of great value which surpasses the normal equipment of a data processing machine and is exclusively designed for the generation and precise representation of images; with regard to the high value of the machine and the absence of other specifically adapted hard- and software an application different to that of processing digital video images is not intended and would not be justified from an economic point of view.

CONCLUSIONS

48. If the "**Media Composer 1000's**" function is confined to the software on CD-ROM, as has been stated, the Committee could simply classify that software solely under heading 85.24. If, however, the Committee is being asked to classify the entire system with all the components referred to in Classification Opinion No. 8543.89/4 or in Annex II to document NC0286E1, account will have to be taken of Note 4 to Section XVI (functional unit).⁵ This would mean that it would have to be classified under heading 85.43, as the Committee already decided at its 18th and 19th Sessions, if the Committee maintains that the function of recording digital video images, creating video effects or editing and finalising video programmes for broadcasting is the principal function of the system which has been deliberately created with all its components to achieve this objective."

⁵ as well as Note 5(E) to Chapter 84 and, where appropriate, Note 6 to Chapter 85.

III. CONCLUSION

49. The Committee is invited to rule on the classification of the "Media Composer 1000" taking into account the Note from the European Community and the Czech Republic.

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Excerpt from Doc. NR0286E1
(HSC/26/Nov. 2000)

ANNEX 2

Description of the "Media Composer 1000"

System, consisting of a combination of machines, and software which enables it to record digital video images, create video effects, or edit and finalize video programmes for broadcasting. The system is capable of sending and receiving video signals. Inside the system, video signals are converted into digital signals so that they can be processed by the central processing unit. The system consists of the following components:

- (i) one central processing unit;
 - (ii) two colour display units (monitors) (with a non-interlaced scanner for displaying data, and an interlaced scanner for video presentations); one of these units shows digital operations conducted by the central unit and the other shows the final result;
 - (iii) input unit in the form of a keyboard;
 - (iv) 4 and 9 Gb (gigabyte) magnetic hard disk storage;
 - (v) AVID logging software;
 - (vi) video coprocessor board;
 - (vii) JANUS compression board;
 - (viii) DVE real-time board;
 - (ix) audiomedia II sound board
 - (x) SCSI-II accelerator board;
 - (xi) two amplified speakers.
 - (xii) "Media Composer" software on CD-ROM, which enables the "Media Composer 1000" system to record digital video images, create video effects, or edit and finalize video programmes for broadcasting.
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