



HARMONIZED SYSTEM
REVIEW SUB-COMMITTEE

-
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NR0234E1

O. Eng.

Brussels, 22 January 2002.

STUDY OF POSSIBLE AMENDMENTS TO THE NOMENCLATURE
WITH REGARD TO THE CLASSIFICATION OF MULTIFUNCTIONAL DIGITAL COPIERS

(Item III.A.11 on Agenda)

Reference documents :

42.406 (RSC/18)	NC0211E1 (HSC/25)
42.498 (RSC/18)	NC0243E1 (HSC/25)
42.500, Annex B/19 (RSC/18 – Report)	NC0250E2, Annex H/13 (HSC/25 – Report)
42.750, Annex E (HSC/22 – Report)	NC0300E1 (HSC/26)
NR0023E1 (RSC/19)	NC0335E1 (HSC/26)
NR0037E1 (RSC/19)	NC0430E2, Annex H/4 (HSC/27 - Report)
NR0045E2, Annex A/23 (RSC/19 – Report)	NR0182E1 (RSC/24)
NC0059E1 (HSC/23)	NR0205E2, Annex C/14 (RSC/24 – Report)
NC0090E2, Annex IJ/26 (HSC/23 – Report)	NR0221E1 (RSC/25)
NC0160E2, Annex H/14 (HSC/24 – Report)	

I. BACKGROUND

1. On 8 November 2001, the Secretariat received the following note from the **Brazilian** Administration proposing an amendment to the text of heading 90.09, as well as the Notes to Chapter 90, to provide for the classification of multifunctional digital copiers in heading 90.09 in 2007.

II. NOTE FROM THE BRAZILIAN ADMINISTRATION

2. “Brazil’s proposal consists of two parts : (1) amending Note 3 to Chapter 90 to specify that the provisions of Note 3 to Section XVI also apply to this Chapter; (2) stipulating that photocopying apparatus incorporating an optical system, connectable to an automatic data processing machine, can fall to be classified in heading 90.09.

Note : Shaded parts will be removed when documents are placed on the WCO documentation database available to the public.

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3. In this way, these multifunctional apparatus could be classified merely by application of GIR 1, while retaining the possibility of classifying each apparatus according to its principal function and specific characteristics, thus avoiding the transfer of products with different designs and properties to a single Harmonized System heading.
4. The following is the proposal from the Brazilian Administration :

ARTICLE 16 PROCEDURE

AMENDMENTS TO THE NOMENCLATURE

Chapter 90.

1. Note 3.

Delete and substitute :

“The provisions of Notes 3 and 4 to Section XVI apply also to this Chapter.”

2. Heading 90.09. Heading text.

Delete and substitute :

“Photocopying apparatus incorporating an optical system, whether or not connectable to an automatic data processing machine; photocopying apparatus of the contact type, thermo-copying apparatus.”

III. SECRETARIAT COMMENTS

5. During HSC/27, there were discussions as to whether digital copying was covered by the text of heading 90.09. In addition, there were discussions as to whether the multifunction digital copiers at issue incorporated an optical system. If the goal of the Brazilian proposal is to ensure for 2007 that the multifunctional digital copiers currently under consideration by the Harmonized System Committee are classified in heading 90.09, then the Secretariat believes that the following text would be a useful starting point.

Heading 90.09 – new text :

90.09 “Copying machines, including combined machines capable of performing copying, printing, scanning and facsimile functions, whether or not connectable to an automatic data processing machine.”

6. The Secretariat believes that, considering the discussions at HSC/27 on this issue, it would be appropriate to replace “photocopying apparatus incorporating an optical system” by “copying machines, including combined machines capable of performing copying, printing, scanning and facsimile functions, whether or not connectable to an automatic data processing machine”. This change would eliminate having to decide whether digital copying is a “photocopying process” covered by the text of heading 90.09. The same would apply to the issue of whether the conversion of information into a digital data stream is equivalent to an “optical system” covered by heading 90.09. Both of these processes would, in the

Secretariat's opinion, be covered in the proposed Secretariat amendment to the **Brazilian** proposal.

7. In addition, as mentioned in Doc. NR0221E1, the Secretariat understands from trade circles that by 2007, photocopying machines of the optical type, as mentioned in the text of heading 90.09, will no longer be manufactured.
8. Given these considerations, the Secretariat believes that it would then not be necessary to retain, in the heading text of the **Brazilian** proposal, the phrase "photocopying apparatus of the contact type, thermo-copying apparatus". As a result, the Secretariat has not included this phrase in its proposal. However, the Secretariat is of the view that its proposal is broad enough to cover such machines should they continue to be traded in 2007.
9. Regarding the **Brazilian** proposal to have Note 3 to Section XVI apply as well to Chapter 90, the Secretariat is of the view that only adding a reference to that Note to Chapter 90 will not solve the problem of applying that Note to multifunction machines potentially classifiable in Chapters 84, 85 and 90. Note 3 to Section XVI applies to Chapters 84 and 85 and is restrictive in that sense. By saying that the provisions of Note 3 also apply to Chapter 90, the Secretariat understands that to mean that the restrictive nature of the application of Note 3 to Section XVI also applies when applying this Note to Chapter 90. In other words, when applying the provisions of this Note to Chapter 90, it is applied only to composite machines consisting of two or more machines classifiable in Chapter 90 and not to machines classifiable in other Chapters, e.g., Chapter 84 or 85. What is necessary, in the Secretariat's opinion, is a modification of Note 3 to Section XVI to say that it applies to Chapters 84, 85 and 90. In this regard, the Secretariat suggests the following :

New Note 3 to Section XVI :

"Unless the context otherwise requires, composite machines consisting of two or more machines classifiable in Chapters 84, 85 or 90, fitted together to form a whole and other machines designed for the purpose of performing two or more complementary or alternative functions referred to in Chapters 84, 85 or 90 are to be classified as if consisting only of that component or as being that machine which performs the principal function."

10. The Secretariat would point out that Note 2 to Chapter 22 states that Note 2 also applies to Chapters 20 and 21. While the situation is not identical, as these Chapters are within the same Section, the concept of having a Note in one Chapter applicable to another Chapter has some relevance in regard to the Secretariat's proposal. However, the Secretariat leaves it to the Review Sub-Committee to decide whether it is appropriate to include a reference in a Section Note to a Chapter which is found in another Section.
11. In any case, the Secretariat believes that by 2007 the products of present heading 90.09 will largely be obsolete and would prefer to provide for multifunctional digital copiers in heading 84.72 in the future, as detailed in Doc. NR0221E1.

IV. CONCLUSION

12. The Sub-Committee is invited to take into consideration the comments of the **Brazilian** Administration and the Secretariat's comments in paragraphs 5 to 10 when considering this agenda item.