

**BEFORE THE WORLD TRADE ORGANIZATION**

***EUROPEAN COMMUNITIES AND ITS MEMBER STATES –  
TARIFF TREATMENT OF CERTAIN INFORMATION  
TECHNOLOGY PRODUCTS***

**(WT/DS375, WT/DS376, WT/DS377)**

**JAPAN'S ANSWERS TO THE EUROPEAN COMMUNITIES'  
QUESTIONS TO THE COMPLAINANTS**

**3 JUNE 2009**

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**Question 1****To all the Complainants**

*Under which subheading of the 1996 version of the Harmonized System ("HS96") did your customs authorities classify imports of the following products prior to the conclusion of the ITA:*

1. With regard to the following products, Japan does not have any classification evidence such as classification regulations and advanced rulings that were issued during the period, because any such machines concerned in this dispute have been duty free since before the conclusion of ITA, so that no classification issues came up to the customs authorities of Japan. Therefore, we try to answer your questions in the light of the objective characteristics of the devices at issue.

**a) single-function digital copiers with an electrostatic print engine;**

→ Subheading 8472.90

**b) single-function digital copiers with an ink jet print engine**

Note that we have not found any examples of this type of machine existing in the market during the period.

→ Subheading 8472.90

**c) MFMs connectable to an ADP machine, which can both print and copy using an electrostatic print engine;**

→ Subheading 8471.60

**d) MFMs connectable to an ADP machine, which can both print and copy using an ink-jet print engine;**

→ Subheading 8471.60

**e) MFMs not connectable to an ADP machine, which can both fax and copy using an electrostatic engine;**

→ Subheading 8517.21

**f) MFMs not connectable to an ADP machine, which can both fax and copy using an ink jet print engine?**

→ Subheading 8517.21

*Please describe any changes in your classification practice of each of the above products between the conclusion of the ITA and the introduction of the 2007 version of the Harmonized System.*

2. There were no changes.

*Please provide relevant supporting evidence (e.g. classification regulations and rulings, explanatory notes, BTIs, etc) for all your replies.*

3. As discussed above, there is no evidence.

## Question 2

### To all the Complainants

*a) Is it your position that any MFM that is not connectable to an ADP machine and which can both copy and fax is to be classified always under HS96 subheading 8517 21, irrespective of the relative importance of the faxing function and the copying function?*

4. Yes, it is our position that any MFM that is not connectable to an ADP machine and which can both copy and fax is always to be classified under HS96 subheading 8517 21. It should be noted that the question here is a matter of tariff concession, not classification. The ordinary meaning of the terms can alone resolve this dispute. The interpretative materials from the Harmonized System confirm this interpretation.

5. These MFMs should always be subject to tariff concessions under subheading 8517 21 and not subheading 9009 12 by interpreting the ordinary meaning of the terms “facsimile machines” and “photocopying” read in context. Digital copying could NOT be covered by heading 90.09 “photocopying apparatus,” and the language of subheading 9009 12 is clear that it covers a specific type of analogue and optical technology, but cannot cover the digital copying machines that have no relationship to that technology. Thus, the ordinary meaning of the terms clearly indicates that these MFMs falls in the scope of tariff concessions under subheading 8517 21.

6. Our position is confirmed by the analysis that the principal function of these MFMs is objectively characterized as faxing, not copying. These MFMs consist of two main features, a

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scanner module and a printer module. The MFM, in order to function as a “facsimile machine,” uses both modules (i.e. the scanner module as a transmitter and the printing module as a receiver) and telephony connectivity. Digital copying, as indicated by its commercial description as “scan to print technology,” is just a combination of a part of scanning for faxing function and a part of printing for faxing function but does not use the telephony connectivity of such MFM. Therefore, for these MFMs, digital copying function is always secondary to faxing function.

*b) If not, under which other HS96 subheadings should such products be classified? Where exactly do you draw the boundaries between the different HS96 subheadings concerned? What is the basis in the HS96 for drawing such boundaries?*

7. Not applicable.

**To the United States**

**c) If your reply to letter a) is affirmative, how do you reconcile that position with the headquarter rulings HQ 963680, HQ 965478, HQ 965527, HQ 965636, HQ 965679, HQ 965680, HQ 965681, HQ 965682, HQ 965697 (Exhibit EC -69), in all of which the US Customs authorities determined that a non ADP connectable MFMs with a digital copying and a faxing function had to be classified under HS96 8472 90 pursuant to Note 3 to Section XVI of the HS because, on the basis of an examination of the machine at issue, the copying function was found to be more "important" than the faxing function?**

8. Not applicable to Japan.

**Question 3**

**To all the Complainants**

*Are video monitors and televisions within the scope of the EC's tariff concessions taken pursuant to ITA irrespective of the technology used? If so, where precisely?*

9. The EC Schedule specifies 14% as the tariff concessions on subheadings 8528.21 and 8528.22 for “video monitors” and on subheadings 8528.12 and 8528.13 for “Reception apparatus for television” as televisions.

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10. Japan believes that flat panel display devices capable of receiving signals from and operating with a computer (or any other ITA product) are covered by Attachment B as the flat panel display devices “for” the ITA products, even if they are classified under subheadings 8528.21 and 8528.22 for “video monitors” or 8528.12 and 8528.13 for “Reception apparatus for television”. Flat panel display devices are covered by Attachment A as an output unit of an ADP machine provided that they are solely or principally used in an ADP system. Flat panel display devices should not be excluded from duty free treatment simply because they are also capable of accepting a signal from sources other than a computer such as a video.

#### Question 4

##### To all the Complainants

*In its oral statement (paragraph 9), the US states that “ ‘set top boxes with a communication function’ was a concession that the EC itself drafted and formally added to its Schedule in 2000.”<sup>1</sup> Could the United States please explain:*

- a) what legal value and effect, if any, had this “formal addition” on the scope of the EC concession with respect to the products at issue?*
- b) whether, in its view, the EC was obliged to make this “formal addition” to its Schedule under the ITA rules?*
- c) whether this “formal addition” had any effect on the extent of the scope of the EC concession made with respect to “set top boxes which have a communication function”.*

*While this question is based on the US oral statement, given that the complainants mutually supported each others' statements the EC would like to address this question to the other complainants as well.*

11. Since this question is directed to the United States, we defer to the U.S. answer to this question.

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<sup>1</sup> Italics omitted.