



HS REVIEW SUB-COMMITTEE
WORKING GROUP

-
1st Session
-

NR0334E1
(+ Annexes I to III)
O. Eng.

Brussels, 14 November 2002.

SECRETARIAT SYNTHESIS DOCUMENT RE PROPOSALS TO AMEND
THE INFORMATION TECHNOLOGY PROVISION OF THE HARMONIZED SYSTEM
(Item II.1 on Agenda)

Reference documents :

NR0115E1 (RSC/22)	NR0325E1 (RSC/26)
NR0133E2, Annex D/5 (RSC/22 – Report)	NR0326E1 (RSC/26)
NC0340E2, Annex E/1 (HSC/26 – Report)	NR0333B1 (RSC/26)
NR0188E1 (RSC/24)	NR0332E3, Annexes C/14 and F/9 (RSC/26 – Report)
NR0201E1 (RSC/24)	NR0332E3, Annexes C/15 and F/5 (RSC/26 – Report)
NR0205E2, Annex E (RSC/24 – Report)	NR0332E3, Annex C/16 (RSC/26 – Report)
NR0265E3, paragraphs 7 and 8, and Annex G (RSC/25 – Report)	NR0332E3, Annexes C/17 and F/10 (RSC/26 – Report)
NR0229E1 (RSC/25)	NR0332E3, Annexes C/18 and F/11 (RSC/26 – Report)
NR0285E1 (RSC/26)	NR0332E3, Annexes D/2 and F/15 (RSC/26 – Report)
NR0286E1 (RSC/26)	NR0332E3, Annex D/5 (RSC/26 – Report)
NR0287E1 (RSC/26)	NR0332E3, Annexes D/7 and F/20 (RSC/26 – Report)
NR0288E1 (RSC/26)	NR0332E3, Annexes D/8 and F/21 (RSC/26 – Report)
NR0289E1 (RSC/26)	NR0332B3, Annex F/4 (RSC/26 – Report)
NR0315E1 (RSC/26)	NR0332B3, Annex F/19 (RSC/26 – Report)
NR0319E1 (RSC/26)	NR0335E1 (RSC/WG/1)
NR0320E1 (RSC/26)	NR0336E1 (RSC/WG/1)
NR0323E1 (RSC/26)	NR0337E1 (RSC/WG/1)

I. BACKGROUND

1. At its 26th Session, the Harmonized System Committee unanimously decided to establish a Working Group with a view to updating and clarifying Note 5 to Chapter 84. This Working Group would report directly to the Review Sub-Committee (Doc. NC0340E2, Annex E/1, paragraph 21 – HSC/26 Report).
2. At its 24th Session (September 2001), the Review Sub-Committee informally discussed the possible amendment of Note 5 to Chapter 84 and associated headings. During the discussions the following issues were addressed (Doc. NR0205E2, Annex E – RSC/24 Report) :

File No. 2818

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

For reasons of economy, documents are printed in limited number. Delegates are kindly asked to bring their copies to meetings and not to request additional copies.

- (i) possible deletion of the references to analogue and hybrid apparatus;
- (ii) grouping together in a single Chapter "IT – related" commodities;
- (iii) the concept of being "freely programmable" and the user related requirements;
- (iv) possible substitution of the text "performing arithmetical computations" specified by the user "by a reference to binary operations in the last part of the Note 5 (A) (a) to Chapter 84;
- (v) possible deletion of the provisions for systems; and
- (vi) step by step approach (i.e., discussion on separate headings or group of headings, rather than a comprehensive proposal dealing with all issues at the same time).

3. In summing up the discussions, the Director invited administrations to come up with the first set of proposals.

4. At the Review Sub-Committee's 25th Session, the EC Delegate made a presentation and informed the Sub-Committee of the work carried out within the EC to modernise the HS Nomenclature, and more specifically Chapters 84, 85 and 90, as part of a study on products using information technology and on the revision of Note 5 to Chapter 84 (Doc. NR0265E3, paragraphs 7 and 8, and Annex G – RSC/25 Report).

5. To facilitate the discussions of the Working Group, the Secretariat has excerpted the following parts from the EC presentation in respect to the objectives and principles of the study :

"[**objectives**] the creation of a revised nomenclature :

- which has a logical structure;
- which consists of headings meeting the requirements of users of the HS Nomenclature respecting the need for a balance between simplicity and specificity;
- which will be applied in a uniform manner by contracting parties irrespective of economic or cultural diversities.

[. . .] we would suggest applying the following **principles** when dealing with products using information technology :

- the Nomenclature structure should – for the first 4 digits – be based on function;
- the Nomenclature structure should take into account degree of processing, value added and the degree of specificity;
- the descriptions in the Nomenclature should be clear and concise so that products to be covered by that nomenclature are identifiable or recognisable;
- whenever necessary, the Nomenclature should be supported by legal and Explanatory Notes with a view to ensure uniform classification of products;
- of course, one should not forget the principle that products are to be classified in their condition at the time of importation and that classification decisions must be based on objective and quantifiable data."

6. At its 26th Session (September 2002), the Review Sub-Committee held a preliminary discussion on the EC proposal reproduced in Doc. NR0323E1. The Delegate of Japan

informed the Sub-Committee that his administration would submit the proposals which had been presented at the beginning of that session as a non-paper (*Secretariat* : the formal proposals were received on 7 October and are set out in Doc. NR0335E1). The Director informed the Sub-Committee that the Secretariat was examining the possibility of having a meeting of the Working Group early 2003, the agenda for this Working Group comprising the EC proposal and all other proposals which were on the Sub-Committee's agenda and would touch the headings covered by the EC proposal. To that effect, the Secretariat would prepare a comprehensive document, setting up an outline for the discussions.

II. SECRETARIAT COMMENTS

Introduction and Annexes I to III to this document

7. To facilitate the discussions, the Secretariat would first like to clarify the scope of the various proposals as presented by the EC, Japan, the United States, the ICC and the Secretariat. A comparison between the various proposals, comments on the individual proposals, and the fundamental questions to be answered by the Working Group are subsequently explained.
8. The various proposals are reproduced in Annexes I to III to this document, i.e., Annex I contains the proposals for the Section and Chapter Notes, Annex II contains the proposals for the headings and Annex III contains the proposals for the structured nomenclature of the various headings. The working documents or HSC or RSC reports, as the case may be, are referred to either in the column concerned (for the EC and Japanese proposals) or preceding the proposals in the columns "US" (for the proposals presented by the United States) and "RSC/Other" (for the proposals presented by the ICC and the Secretariat). The column "RSC/Other" also includes the amendments vis-à-vis the Notes and headings under consideration, which have already been provisionally adopted by the HS Committee or provisionally approved by the RSC.
9. The Secretariat has prepared, to the extent possible, cross-references to the HS 2002 codes against each of the headings and subheadings proposed by the EC (right hand columns in Annexes II and III). With respect to the Japanese proposal, the Secretariat has merely reproduced the cross-references to the HS 2002 headings, as they were indicated in the original proposal in the Annex II to Doc. NR0335E1.

Scope of discussions

10. To avoid complicated (and, therefore, possibly delaying) discussions, the Secretariat suggests discussing the proposals for the four digit level (i.e., the headings) and their related Notes, first. Once the Working Group has agreed on the scope of the headings, proposals for subdivisions can be taken up for discussion. Any observations of the Secretariat in this document vis-à-vis proposed subheadings or related Subheading Notes are, therefore, included *pro memoria*.

Scope of the proposals

11. The proposals received so far range from creating a complete new sub-Chapter in Chapter 85 (EC proposal) to revising current headings and subheadings to accommodate new technologies and new products. However, the EC and Japan have both indicated that their proposals may need further refinement, since industry may provide further comments or may supplement the proposals, as required, as work progresses.

12. Having said this, the first question to be answered by the Working Group is whether or not a separate sub-Chapter should be created in Chapter 85 (or in Chapter 84) to accommodate information technology products and related commodities (as suggested by the EC). To facilitate discussions on this issue, the Secretariat has developed the following overview on the scope of the proposals.

European Community

13. The EC proposal is the most radical one, suggesting the creation of a separate sub-Chapter in Chapter 85, covering the entire content of HS 2002 headings 84.43, 84.69, 84.70, 84.71, 84.73, 85.17, 85.18, 85.19, 85.20, 85.21, 85.22, 85.23, 85.24, 85.25, 85.27, 85.28, 85.29, 85.32, 85.33, 85.34, 85.40, 85.41, 85.42, 85.44, 90.07 and 90.09 and the partial content of HS 2002 headings 84.72, 85.26, 85.31, 85.43, 85.48, 90.01, 90.06, 90.08 and 95.04. Proposals to delete or revise current Section or Chapter Notes or to introduce new ones, with a view to clarifying certain terms and expressions, complement the proposed new structure. It also provides detailed structures beyond the four digit level for the various new headings, as well as references to those Section and Chapter Notes and headings which should be deleted.
14. The EC also proposes to insert a reference to “accessories” in Note 2 to Section XVI, and suggests inserting this reference in all cases (in Chapters 84 and 85) where headings or subheadings refer to “parts”.
15. Finally, the EC proposes to enlarge the scope of Note 3 to Section XVI to provide for the classification of combinations of machines consisting of components of Sections XVI (Chapters 84 and 85), XVIII (Chapters 90 to 92) and XX (Chapters 94 to 96). It also suggests similarly amending Note 4 to Section XVI, governing the classification of functional units consisting of components of the Chapters mentioned, and Note 5 to Section XVI, clarifying that for the purpose of Notes 1 to 4 to Section XVI the term “machine” means any machine, plant, etc. cited in the headings of Sections XVI, XVIII and XX.

Japan

16. The proposal of Japan also contains a set of new headings, some of them further subdivided. Notes clarifying the scope of certain proposed terminology accompany the proposal. According to the information provided by the Japanese Administration (see Doc. NR0335E1, Annex IV), the new headings may affect the scope of HS 2002 headings 84.43, 84.70, 84.71, 84.73, 85.17, 85.18, 85.19, 85.20, 85.21, 85.22, 85.23, 85.24, 85.25, 85.26, 85.27, 85.28, 85.29, 85.30, 85.31, 85.34 and 85.40. A possible revision of HS 2002 headings 85.41 and 85.42 might be considered at a later stage. Japan has not indicated which of the HS 2002 headings (or parts thereof) are to be deleted if the proposal is adopted, and it may wish to clarify this point.
17. It is to be noted that Japan has not indicated whether the new headings should be grouped in a new sub-Chapter (of Chapter 84 or 85) or should be grouped in a separate Chapter (see in this connection the observations of the Secretariat in paragraphs 8 and 9 of Doc. NR0188E1). Since the Japanese proposal is related to the EC proposal, the Secretariat assumes that it should be considered in the same way as the EC proposal, i.e., headings 8A.AA to 8M.MM (which, if adopted, should be numbered according to the new structure) constitute a separate sub-Chapter within Chapter 85. The Japanese Delegate may wish to clarify this point.
18. The wording used in the various headings refers to converting certain phenomena into electrical signals or vice versa, or processing a signal, which gives the impression of an

abstract approach needing detailed Explanatory Notes. At the same time it might create potential classification problems with respect to combined apparatus. The Working Group is invited to consider the approach, as presented by **Japan**.

19. It is also to be noted that the **Japanese** proposal does not foresee the transfer (to the proposed new headings) of optical apparatus, such as copying machines, cameras and projectors, or optical fibres and bundles.

Other proposals

20. The **United States** in its submissions, proposed to create a new heading 85.49 covering apparatus for transmission or reception of voice, data or images, while deleting HS 2002 heading 85.17 and rewording HS 2002 headings 85.25, 85.27 and 85.42. It also proposed redefining the scope of current heading 84.43 to provide for certain multifunction machines and facsimile machines. Technical rectifications to corresponding Section and Chapter Notes have also been proposed.
21. The **ICC** has presented revised texts of the proposed new Note 4 to Chapter 85 with a view to describing "flash electronic storage cards". This new Note was suggested by the Secretariat in the context of clarifying the classification of these cards in current headings 85.23 and 85.24, as the case may be.
22. The Secretariat has suggested amending heading 84.72 to cover copying apparatus, including combination machines (multifunction office machines), and facsimile machines and teleprinters. Corresponding amendments to legal Notes and to other headings were suggested to facilitate the classification of this apparatus in heading 84.72.
23. Finally, it should be noted that :
- The HS Committee provisionally adopted the deletion of the subheadings of current heading 84.69 (Doc. NC0430B2, Annexes F and P/6 - HSC/27 Report) and Note 6 to Chapter 85 (Doc. NC0510B2, Annexes E and L/5 - HSC/28 Report); and
 - The Review Sub-Committee provisionally approved editorial amendments with respect to the presentation of the paragraphs in certain Section, Chapter and Subheading Notes (Doc. NR0332B2, Annex F/19 – RSC/26 Report).

New sub-Chapter of Chapter 85

24. As indicated in paragraph 12 above, the first question to be addressed by the Working Group is whether or not a sub-Chapter in Chapter 85 should be created, as suggested by the **EC** (and apparently **Japan**).
25. The creation of a sub-Chapter would have the advantage that the headings covering information technology commodities and related products, will be grouped together, and dedicated Section or Chapter Notes could be drafted to provide the necessary information vis-à-vis the classification principles (definitions, descriptions, precedence over other headings or Chapters, etc.) for these headings, more easily.
26. If the idea to create a new sub-Chapter of Chapter 85 is accepted, the Secretariat would suggest that the first heading of that sub-Chapter should be numbered as heading 85.49, i.e., the next higher number following the current structure. The Secretariat sees no reason to skip one or more numbers, as suggested by the **EC**. Of course, the

subsequent headings and any references elsewhere to these headings should be renumbered accordingly.

27. If, on the other hand, the Working Group does not accept the idea of creating a separate sub-Chapter in Chapter 85 or elsewhere, due consideration should be given to the HS 2002 headings involved in the EC proposal, with a view to revising them to accommodate the classification of the commodities identified in the EC proposal.

Scope of the new sub-Chapter

28. The next issue to be addressed is the scope of the new sub-Chapter (if adopted). The EC has suggested transferring the content of certain headings of Chapters 84 and 85 (and consequently deleting the headings at issue – see also paragraph 13 above), and a number of particular commodities from Chapters 90 and 95, to this sub-Chapter. The transfer from Chapters 90 and 95 concern the following commodities :
- (i) Optical fibres, optical bundles and optical fibre cables not made up of individually sheathed fibres, from heading 90.01 to proposed heading 85.56;
 - (ii) Game players (data reproduction or processing machines) and their parts and accessories from heading 95.04 to proposed headings 85.71, 85.73 and 85.74, respectively;
 - (iii) Photographic and cinematographic cameras and projectors from heading 90.06 and 90.07 to proposed heading 85.62 or 85.68; and
 - (iv) Photocopying apparatus from heading 90.09 to proposed heading 85.65.
29. Japan has proposed the transfer of certain commodities from headings of Chapters 84 and 85 to the new headings (see paragraph 16 above). The Secretariat must admit, however, that the descriptions of the various headings proposed by Japan might not always be entirely clear. If the structure proposed by Japan is accepted by the Working Group, it might, therefore, be necessary to redraft the wording of some (or all) proposed headings.
30. If the idea of creating a new sub-Chapter is not adopted (see paragraphs 24 to 27 above), the Working Group may consider the transfer of the commodities mentioned in paragraph 28 (i) to (iv) above to the appropriate headings of Chapters 84 and 85. It may also consider the creation of a new heading 85.49, covering apparatus for the transmission of voice, data or images, other than transmission or reception apparatus of headings 85.25, 85.27 or 85.28, as suggested by the United States (Doc. NR0332E2, Annexes D/7 and F/20).
31. With respect to the transfers suggested by the EC, the Secretariat would like to provide the following information.
- Optical fibres, etc.
32. The classification of optical fibres, optical bundles and optical fibre cables in a single heading was the subject of discussions at the time of preparing the 1993 Council Recommendation with amendments to the Harmonized System, with a view to classifying them all in heading 90.01 (i.e., headings 85.44 and 90.01 were to be modified, subheading 8544.70 deleted and the relevant Section and Chapter Notes updated). This recommended reclassification was, however, objected to by one of the HS Contracting Parties and the relevant parts were, consequently, deleted from the set of amendments adopted.

Game players

33. The question whether or not to transfer certain commodities from heading 95.04 is closely related to the classification of game players in the current Nomenclature. Grouping them together with data reproduction or processing machines (either in a heading of the proposed Sub-Chapter or in a specific heading in Chapter 84 or 85) would have the advantage that discussions on the classification of such apparatus can be avoided in future.
34. The **EC** has proposed to insert a reference to the apparatus of heading 85.69 in Note 1 to Chapter 95, with a view to excluding it from that Chapter and directing classification to proposed heading 85.69. The Secretariat has some doubts whether the reference to this new heading would be accurate since this apparatus might be classifiable in some other headings, depending on the nature of the apparatus, and suggests, therefore (if the Working Group accepts the transfer of game players and their parts and accessories to Section XVI), rephrasing Note 1 (x) to Chapter 95 proposed by the **EC** accordingly. It also suggests inserting the rephrased text in current Note 1 (m) to Chapter 95, as follows :

CHAPTER 95.Note 1 (m).

Delete “or radio remote control apparatus (heading 85.26);” and substitute “, radio remote control apparatus (heading 85.26) or apparatus of sub-Chapter II of Chapter 85;”

35. If the Working Group does not accept the creation of a new sub-Chapter in Chapter 85, but does agree with the transfer of game players to Section XVI, the above-suggested text should be adapted accordingly.

Photographic and cinematographic cameras

36. The **Japanese** (heading 8G.GG) and **US** (heading 85.25) proposals do not foresee the transfer of photographic or cinematographic cameras to Section XVI.

Photocopying apparatus

37. The **United States** has proposed the transfer of certain copiers to HS 2002 heading 84.43, whereas the Secretariat suggested transferring all copying machines from heading 90.09 to HS 2002 heading 84.72. **Japan**, on the other hand, is apparently not in favour of the transfer of this apparatus from Chapter 90 to Section XVI.

Structure of the new sub-chapter

38. The **EC** has proposed a structure for the new sub-Chapter on the basis of the concept of degree of manufacture, i.e., providing for individual components first (proposed headings 85.51 to 85.58), followed by the apparatus (headings 85.60 to 85.73). In addition, special headings for parts and accessories have been suggested for these categories of goods (headings 85.59 and 85.74, respectively).
39. The Secretariat would like to draw the Working Group’s attention to three issues in this regard.
40. First, proposed heading 85.59 covers parts and accessories suitable for use solely or principally with the machines of proposed headings 85.51, 85.52, 85.53, 85.55 and 85.57.

The heading, therefore, does not cover parts and accessories of proposed headings 85.54 (printed circuits), 85.56 (insulated wire; optical fibres and cables) and 85.58 (display modules). Parts of the commodities of these headings should, therefore, be classified with the parent goods in the same (sub)heading, by virtue of Note 2 to Section XVI. The Secretariat leaves it to the Working Group to decide whether or not the parts should be classified in the same heading or in proposed heading 85.59, in which case the text of the latter should be adapted accordingly. If proposed heading 85.59 has the scope suggested by the EC, the Secretariat would suggest moving this heading before proposed heading 85.58 and to renumber them accordingly.

41. With respect to accessories, it should be noted that this term does not occur in the current version of Note 2 to Section XVI, or in the corresponding HS 2002 headings. If the Working Group decides to leave the parts in the same heading as the parent articles (i.e., not amending the scope of proposed heading 85.59), the question concerning the classification of accessories could be discussed within the framework of the proposed new wording of Note 2 to Section XVI (see paragraphs 50 to 54 below).
42. Second, proposed heading 85.74 refers to parts and accessories suitable for use solely or principally with the machines of headings 85.62 to 85.73, which means that parts and accessories of the commodities of proposed headings 85.60 and 85.61 will not be covered by proposed heading 85.74. Consequently, the parts of the commodities of proposed headings 85.60 and 85.61 will be classified with their parent articles in these headings, whereas the accessories will be classified elsewhere. In this connection, the Secretariat wonders how a distinction can be made between parts of “unrecorded media” (of proposed heading 85.60) and parts of “recorded media” (of proposed heading 85.61). It would, therefore, suggest rewording the text of proposed heading 85.74 with a view to covering all parts (and accessories) of the articles of proposed headings 85.60 to 85.73.
43. Third, the structure of the headings proposed by Japan does not make separate provisions for parts, either at the heading level or at the subheading level. Assuming that the proposed headings will remain within Section XVI, the parts of the articles of the proposed headings are to be classified with their parent articles in the same heading and subheading. This might create, in the Secretariat’s view, an identification problem, given the detailed structure of some of the proposed headings. The Secretariat would, therefore, suggest creating a separate heading for parts (with appropriate subheadings, if necessary), if the structure proposed by Japan were to be adopted. The question of how to deal with accessories is not addressed in this proposal.

Notes (Japanese proposal)

44. Before addressing the Section and Chapter Notes in the EC proposal, the Secretariat would like to comment on the proposal of the Japanese Administration.
45. The Japanese Administration has not indicated whether proposed Notes 1 to 8 (referred to as “[New 1]” to “[New 8]” in Annex I to this document) should be inserted at the Section or the Chapter level, although the Secretariat assumes that, while Notes 2 to 8 could be incorporated at the Chapter level, Note 1 could be introduced at the Section level (see also paragraphs 47 and 48 hereafter). The Japanese Administration is invited to clarify this point.
46. The Secretariat has adapted the wording of the various Notes to reflect current practice, as presented in Annex I to this document.

47. With respect to proposed Note 1, the Secretariat has noted that the wording is quite open and could cover, in principle, all machines and apparatus of Section XVI, if inserted at Section XVI level. That being the case, it wonders what the effect of this proposed Note would be, given the existence of (i) Note 3 to Section XVI (governing the classification of composite machines and other machines designed for the purpose of performing two or more complementary or alternative functions) and (ii) Notes 2 and 3 to Chapter 84 (which also give precedence to certain headings, which do not necessarily occur later in numerical order). The Japanese Administration may wish to clarify this issue.
48. Concerning the terminology used in the proposed notes, the Secretariat has some difficulties in understanding the meaning of some. The scope of, for example, the terms “writer” and “external programme” might need further explanation. The Japanese Administration is invited to clarify these points. Further observations vis-à-vis the terminology and scope of the headings can be found in the relevant paragraphs below.

Notes – Section XVI (EC proposal)

49. The EC proposal for a new sub-Chapter in Chapter 85, appears to be based on the presumption that classification in this sub-Chapter should be given precedence over a possible classification elsewhere, in particular over classification in Chapter 84, in the first sub-Chapter of Chapter 85 or in Chapter 90. The Japanese proposal (Note 1) is, apparently, based on the same idea. Therefore, if the Working Group accepts the idea that a machine or apparatus classifiable in one of the headings of new sub-Chapter II of Chapter 85 as suggested by the EC, or in one of the headings proposed by Japan, and at the same time in one of the headings of Chapters 84 or 90, or in sub-Chapter I of Chapter 85, should be classified in the new sub-Chapter, the Secretariat suggests introducing a Section Note to that effect. See also paragraph 34 above with respect to Chapter 95. The Working Group is invited to express its view on this issue.

Note 2

50. The EC has suggested inserting a reference to “accessories” in Note 2 to Section XVI, resulting in the classification of such commodities with the parent articles. This would align the wording of this Note with that of the corresponding Note in Chapter 90. It should be noted that some of the current headings of Chapters 84 and 85 already refer to “accessories”, in combination with “parts” (i.e., headings 84.48, 84.66, 84.73 and 85.22).
51. Having said this, the Secretariat has some doubts about the effects of the introduction of this reference, since its scope is not necessarily clear in all cases. It might, therefore, be necessary to introduce a description of what is meant by “accessories” in the context of Section XVI. This description could be based on those already available in the HS 2002 Explanatory Notes to certain headings.
52. Second, the insertion of a reference to “accessories” might create unforeseen effects that goods will be transferred from the “material” Chapters to Chapters 84 and 85. The Secretariat considers that, if the term “accessories” is introduced in Note 2 to Section XVI, there will be no transfer within the Section, given the proposed wording of Note 2 (a), which directs the classification of these articles to the appropriate heading.
53. In this context, the Secretariat would like to draw the Working Group’s attention to the fact that the EC proposal might create a problem vis-à-vis the classification of electrical parts which are suitable for use with several machines of Chapters 84 or 85. First, because the amended wording of HS 2002 heading 85.48 restricts the scope of this heading to those parts not specified or included in sub-Chapter I of Chapter 85, and second because the

wording of proposed heading 85.74 refers to those parts (and accessories) which are suitable for use solely with the machines of headings 85.62 to 85.73. To solve this potential problem and to avoid a possible conflict with the wording of Note 2 (c) to Section XVI (which refers such parts (and accessories) to heading 85.48), the Secretariat suggests not amending the wording of HS 2002 heading 85.48.

54. In addition, it appears that the classification of parts and accessories of HS 2002 subheading 8473.50, which covers parts and accessories equally suitable for use with machines of two or more of the (HS 2002) headings 84.69 to 84.72, would no longer be obvious in the **EC** proposal. Noting that HS 2002 heading 84.72 will remain in Chapter 84, whereas the other headings will have been transferred to sub-Chapter II of Chapter 85, parts (and accessories) not suitable for use solely or principally with a particular machine are to be classified in heading 84.85 or 85.48 (see, however, paragraph 53 above), by virtue of Note 2 (c) to Section XVI. The Working Group may wish to reflect on this point.

Notes 3, 4 and 5

55. The **EC** has proposed to widen the scope of current Notes 3 and 4 to Section XVI and to adapt current Note 5 to Section XVI on the proposed scope of these Notes. Whereas the Notes concerned are currently restricted to the machines of Section XVI, the new texts would provide for the classification of composite machines, machines fitted together, and “functional units” consisting of components that are classifiable as such in one of the Sections XVI (Chapters 84 and 85), XVIII (Chapters 90, 91 and 92) and Section XX (Chapters 94, 95 and 96). The purpose of this proposal is not quite clear to the Secretariat and the **EC** may wish to provide a further explanation.

56. The Secretariat also has some reservations about the possible consequences, taking into account the fact that the proposed new wording of Notes 3 and 4 to Section XVI continue to refer to (i) classification according to the principal function of the component and (ii) classification according to a clearly defined function covered by one of the headings of these Sections, respectively. The current provisions consider measuring or checking instruments, automatic regulators, and similar appliances, as accessory apparatus. This concept is explained in the current General Explanatory Note to Section XVI, part (III) – Accessory apparatus, first sentence, on page 1386, which states :

“Accessory instruments and apparatus (e.g., manometers, thermometers, level gauges or other measuring or checking instruments, output counters, clockwork switches, control panels, automatic regulators) presented with the machine or apparatus with which they normally belong are classified with that machine or apparatus, if they are designed to measure, check, control or regulate one specific machine or apparatus (which may be a combination of machines (see Part VI below) or a functional unit (see Part VII below)).”

57. If the **EC** proposals for Notes 3 and 4 to Section XVI are accepted, the above-mentioned accessory apparatus would no longer be “accessory” but would be considered as one of the components which has to be taken into account when classifying combination machines or functional units. In addition, whereas the concept of “function” is apparent in the headings of Chapters 84 and 85, and to a certain degree in Chapter 90, it might be less obvious in Chapters 91 and 92, and 94 to 96. Classification in these Chapters is, in the view of the Secretariat, based on the character or nature of the commodities, rather than their function.

58. Furthermore, the proposed provisions might conflict with some of the legal provisions in Chapters 91 and 92, and 94 to 96. For example, Note 1 (b) to Chapter 92 excludes

amplifiers and loudspeakers being presented with but not incorporated in an instrument of that Chapter. Under the proposed wording of Note 4 to Section XVI, such components presented together with an electronic organ, could be classified as a functional unit. If the main function is performed by the musical instrument (assuming that it is possible to describe the expression “musical instrument” as a function), the whole should be classified in Chapter 92. If this is the idea of the **EC**, the Secretariat suggests adapting the proposed wording of Notes 3 and 4 to Section XVI, with a view to avoiding such legal conflicts. Nonetheless, the Secretariat leaves it to the Working Group to decide whether or not the **EC** suggestion should be adapted in this respect.

59. Finally, if the idea to insert a reference to Section XVIII (or to Chapter 90) in Note 3 or 4 to Section XVI is accepted, the Secretariat suggests deleting current Note 3 to Chapter 90. It would also suggest replacing the expression “Sections XVI, XVIII and XX” (French : “Sections XVI, XVIII et XX”) by “Sections XVI, XVIII or XX” (French : “Sections XVI, XVIII ou XX”) in Note 4 and 5, and replacing the expression “(excluding parts and accessories)” (French : “à l’exception des parties et accessoires”) by “(other than parts and accessories)” (French : “autres que les parties et les accessoires”) in Note 5 to Section XVI, to align these parts on current terminology.

Chapter 84 - Notes

60. The **EC** has proposed to delete current Notes 5 (defining for the purposes of heading 84.71 the expression “automatic data processing machines”) and 8 (defining the term “pocket-size” for the purposes of heading 84.70), and Subheading Note 1 to Chapter 84 (which defined the term “systems” in the context of subheading 8471.49). These Notes have been deleted due to the deletion (and transfer) of the corresponding headings to Chapter 85, in the **EC** proposal. Proposed Note 14 to Chapter 85 in the **EC** proposal corresponds to current Note 5 to Chapter 84 (see below). Of course, if the **EC** proposal is accepted, the remaining Notes and Subheading Note to Chapter 84 should be renumbered according to the new situation.

Chapter 84 - Headings

Transfers

61. If the Working Group adopts the **EC** proposal concerning the new scope of Chapter 85, and in particular that of a new sub-Chapter (see paragraph 28 above), the following headings of Chapter 84 will be affected :
- Heading 84.43 : transfer to heading 84.79 (i.e., machines for uses ancillary to printing (HS 2002 : 8443.60) and their parts (HS 2002 : ex 8443.90) (HS 2002 : 8479.89 and 8479.90, respectively)) and Chapter 85;
 - Headings 84.69, 84.70, 84.71 (transfer to Chapter 85);
 - Heading 84.72 (partial transfer to Chapter 85); and
 - Heading 84.73 (transfer to Chapter 85 and to heading 84.72).
62. If the **EC** proposal to transfer all or part of the above-mentioned headings to Chapter 85 is not supported, the Working Group has to consider the possible regrouping of (certain) copying apparatus, multifunction apparatus, facsimile apparatus and teleprinters in either heading 84.43 (as suggested by the **US**) or in heading 84.72 (as suggested by the Secretariat). It should be noted that the **EC** proposals provide for a single heading (85.65) to

group “Machines for the reproduction of data by means of printing machinery and printers (including plotters); printers combined with an optical reader or a transmission device”. This description, apparently, includes multifunction machines. The **Japanese** proposal provides for “Apparatus for converting electric signals to fix optical image by means of printers” in proposed heading 8M.MM. For the **EC** and **Japanese** proposals, see also proposed heading 85.65 below.

US proposal

63. The **United States** has proposed to widen the scope of heading 84.43 to provide for (i) multifunction machines which perform two or more of the following functions : printing, copying, facsimile transmission, and (ii) other printers, copiers (other than those of heading 90.09) and facsimile machines. The proposal also includes amendments to HS 2002 Note 5 to Chapter 84 and HS 2002 headings 84.72 and 85.17 with respect to printing machines. The proposal is, however, silent regarding the possible classification of those machines being connectable to automatic data processing machines. Finally, the **United States** has also proposed a reference to facsimile machines in (the structured nomenclature of) proposed heading 85.49. The **United States** may wish to clarify these points.
64. The scope of the proposed reference to “copiers (other than those of heading 90.09)” (penultimate part of the proposed text) is not entirely clear to the Secretariat, given the fact that multifunction machines having a copying function are already mentioned in another part of the proposed text and that the copying apparatus of heading 90.09 are excluded. Furthermore, it is the understanding of the Secretariat that facsimile apparatus have, by definition, a printer function. The **United States** may wish to clarify its proposal for heading 84.43 in this regard.
65. The **US** proposal has the advantage of covering high volume printing apparatus using digital data from outside, but being operated independently from an automatic data processing machine, and using a laser or similar printing technique. This type of printing machine is currently not classifiable in heading 84.43. The **EC** and **Japanese** proposals for heading 85.65 or 8M.MM, respectively, may also include this type of printer in the proposed headings at issue.

Secretariat proposal

66. The Secretariat has also suggested grouping the multifunction machines and the facsimile machines in a single heading (i.e., HS 2002 heading 84.72), accompanied by appropriate amendments to Note 5 (D) to Chapter 84, Note 1 (c) to Chapter 85 and Note 1 (g) to Chapter 90. Unlike the **US** proposal, the Secretariat suggests including the copying apparatus of HS 2002 heading 90.09 in this heading. The proposal also refers to the function of “scanning” in the context of the multifunction machines, and to teleprinters, which are not included in the **US** proposal. The Secretariat’s proposal would not, however, solve the problem that high volume printers referred to in paragraph 65 above, might be classifiable in the basket heading 84.79, rather than with printing apparatus in heading 84.43 or with office equipment of heading 84.72. An amendment which would provide for the classification, together with other printing equipment, of apparatus using this new technology would be preferable.
67. In this context, the Secretariat has also suggested creating separate subheadings for the parts and accessories of facsimile machines and teleprinters, and of copying machines, in HS 2002 heading 84.73 (see Annex III to this document).

EC proposal

68. The EC has proposed to delete subheading 8472.10 and to insert a reference to “other machines” and “parts and accessories” (the latter due to the proposed deletion of heading 84.73), in new subheadings 8472.40 and 8472.80, respectively. The Secretariat suggests renumbering the proposed subheadings as 8472.80 and 8472.90, respectively, if the EC suggestion is accepted.

Chapter 85General

69. The Secretariat suggests considering the proposed or amended Notes together with their related proposed heading(s). The numbering of the Notes will be updated, once they have been accepted by the Working Group. The Secretariat has prepared its observations vis-à-vis the proposals for Chapter 85 in the numerical order of the headings concerned or, failing that, in the numerical order of the Notes to that Chapter.

Sub-Chapters

70. The EC has proposed to subdivide Chapter 85 into two sub-Chapters. The titles of the two sub-Chapters and the numbering of the headings in proposed sub-Chapter II will be addressed, once the Working Group has agreed to the new structure (see also paragraphs 24 to 27 above).
71. If the EC proposal is adopted, a number of headings of Chapter 85 will be deleted. The Secretariat suggests, for reasons of transparency and avoiding confusion, indicating them by a reference in square brackets, similarly to what was done in Chapter 41. Details concerning the proposed headings to be deleted, can be taken from Annex II to this document.

New Note 4 and headings 85.23 and 85.24

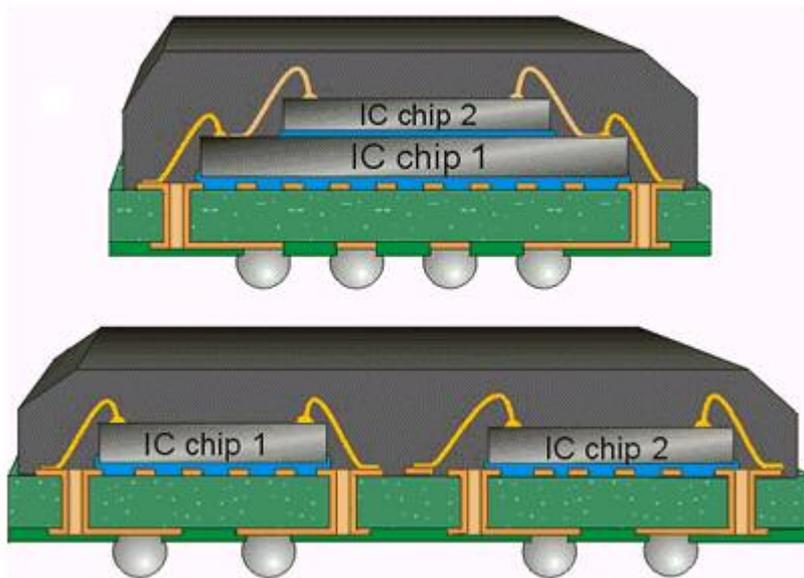
72. The ICC and the Secretariat have proposed amendments to the texts of headings 85.23 and 85.24 with a view to clarifying the classification of “flash electronic storage cards”. These proposals were accompanied by a new Note 4 to Chapter 85, which defines the scope of this expression as follows :

Secretariat	ICC
For the purposes of headings 85.23 and 85.24, “solid-state, non-volatile data storage devices (“flash electronic storage cards”)” are devices with a connecting socket, comprising in the same housing one or more flash memories (for example, “FLASH E ² PROM”) in the form of integrated circuits mounted on a printed circuit board, whether or not comprising a programmed microcontroller in the form of an integrated circuit, and discrete passive components, such as capacitors and resistors.	For the purposes of headings 85.23 and 85.24, “solid-state, non-volatile data storage devices (“flash memory cards” or “flash electronic storage cards”)” are devices comprised of, in the same housing, one or more non-volatile semiconductor memories (for example, “FLASH E ² PROM”) in the form of integrated circuits mounted on a printed circuit board (“PCB”) or in a multi-chip integrated circuit (“IC”) package; whether or not including a microcontroller in the form of an integrated circuit; including discrete, passive components; and with a connective capability to a host appliance.

73. The **ICC** proposal for this new Note (which refers to “flash electronic storage cards” and “flash memory cards”) appears to cover new developments with regard to these cards, in particular with respect to multichip integrated circuit (“IC”) package technology or MCP. The following description and pictures of MCPs are reproduced from the Annex to Doc. NC0419E1 (HSC/27) (information received from the **ICC**) :

“(MultiChip Package) A chip package that contains two or more chips. It is essentially a multichip module (MCM) that uses a laminated, printed-circuit-board-like substrate (MCM-L) rather than ceramic (MCM-C). MCPs are also tested after packaging, whereas the bare die of ceramic-based MCMs were tested before packaging so as not to waste the more costly ceramic substrate if the chips were no good.

From Computer Desktop Encyclopedia
Reproduced with permission.
© 1999 Joseph Fjelstad



Multichip Packages

These are examples of multichip packages with stacked chips (top) and side-by-side chips (bottom). The chips are wire bonded to the resin-based substrate which is attached to the printed circuit board using a ball grid array (BGA). *(Illustration courtesy of Joseph Fjelstad.)*”

74. With respect to the wording proposed by the Secretariat for headings 85.23 and 85.24, it should be noted that the expression “flash memory cards” is not used in its proposal. If the Working Group can agree with the **ICC**'s suggestion to include this expression, the Secretariat suggests amending the draft texts of headings 85.23 and 85.24 accordingly with a view to including this expression.
75. Finally, the **Swiss** Administration has suggested inserting a reference to “integrated circuit modules (memories) for digital data storage” at the end of heading 85.24 (Doc. NR0285E1 – RSC/26), if the Sub-Committee decides to incorporate a subheading for these apparatus in that heading. It should be noted that the **Swiss** proposal includes such modules, whether or not recorded.
76. However, if the Working Group agrees with the **EC** proposal to transfer the content of these two headings to the new sub-Chapter II (proposed headings 85.60 and 85.61) or agrees with the **Japanese** proposal for a new heading 8A.AA, HS 2002 headings 85.23 and 85.24 will be deleted and the above-proposed Note would no longer be necessary.

Note 6

77. The Harmonized System Committee provisionally approved the deletion of Note 6 to Chapter 85 and the renumbering of current Note 7 as Note 6 (HSC/28 – Doc. NC0510B2/L/5).

Note 7

78. The reference to heading 85.48 needs to be updated if the **US** proposal on heading 85.43 is accepted (see below).

New Note 16

79. The **EC** has proposed to insert a new Note 16, defining the term “data” for the purposes of the Nomenclature. If this Note is accepted, the Secretariat suggests placing it before the first Note to Chapter 85 referring to a specific heading or group of headings.
80. Having said this, the Secretariat has some misgivings about the possible repercussions elsewhere in the Nomenclature. For example, Note 2 to Chapter 49, which defines the term “printed” for the purposes of that Chapter, includes a reference to “automatic data processing machines”. If the term “data” were to be substituted by the term “sound”, then “printed” in Chapter 49 would be widened to cover also sound reproduction. The Secretariat, therefore, suggests restricting the scope of the Note to Section XVI.

Heading 85.17

81. The Secretariat has suggested excluding facsimile machines and teleprinters from this heading and transferring them to HS 2002 heading 84.72 (see paragraph 66 above); the other apparatus remaining in heading 85.17.
82. If, on the other hand, the Working Group adopts the **US** proposal to transfer the content of heading 85.17 to heading 84.43 (see paragraphs 63 to 65 above) and to new heading 85.49, or adopts the structure proposed by the **EC** (headings 85.65, 85.72 and 85.74) or **Japan** (headings 8M.MM and 8K.KK), heading 85.17 will be deleted.

Headings 85.19 and 85.20

83. The Review Sub-Committee has adopted revised texts for headings 85.19 and 85.20, in the context of updating terminology and deleting obsolete items (Doc. NR0265E3, Annexes C/9 and F/5, and C/6 and F/6, respectively – RSC/25 Report). That being the case, the square brackets around the heading texts could be deleted, if the Working Group does not support the transfer of this apparatus to new sub-Chapter II (headings 85.64 and 85.66, as suggested by the **EC**) or to new headings 8F.FF and 8K.KK (as suggested by **Japan**).

Heading 85.25

84. The **United States** has proposed to delete the reference to apparatus for radio-telephony and radio-telegraphy from heading 85.25 and to transfer them to new heading 85.49.
85. The **EC** has proposed to delete this heading and to transfer its content to headings 85.62 (cameras) and 85.72 (data transmission or reception machines), whereas

Japan has suggested transferring the content of this heading to headings 8G.GG, 8J.JJ, 8K.KK and 8L.LL.

86. It appears that the three proponents referred to above, agree that telephone apparatus, whether of the line or the radio type, should be classified in the same heading, although **Japan** is making a distinction between apparatus having no image processing capability (proposed heading 8K.KK) and apparatus which has an image processing capability (proposed heading 8L.LL).

Heading 85.26

87. The **EC** proposes to delete the reference to “radio navigational aid apparatus” from heading 85.26 and to transfer that type of apparatus to proposed heading 85.72 (data transmission or reception machines). The provision in Note 2 (b) to Section XVI concerning the classification of parts which are equally suitable for use principally with the goods of headings 85.17 and 85.25 to 85.28, has been deleted in the **EC** proposals; which is correct for HS 2002 headings 85.17, 85.25, 85.27 and 85.28 (which are to be deleted in the **EC** proposals). HS 2002 heading 85.26 will, however, not be deleted in the **EC** proposal (radar apparatus and radio remote control apparatus will remain in that heading). Since the classification of parts which are equally suitable for use principally with the goods of headings 85.26 and of proposed headings 85.62 to 85.73 might become questionable, the Secretariat suggests maintaining a provision similar to the current one in Note 2 (b) to Section XVI, but giving priority to the classification of the parts concerned in proposed heading 85.74.

Heading 85.27

88. The **United States** has proposed to delete the reference to reception apparatus for radio-telephony and radio-telegraphy from heading 85.27 and to transfer that kind of apparatus to new heading 85.49.
89. The **EC** has proposed to delete this heading and to transfer its content to heading 85.67 (radio reception machines), whereas **Japan** has suggested transferring the content of heading 85.27 to headings 8F.FF and 8K.KK.

Heading 85.31

90. The **EC** has proposed to exclude from this heading the display modules of proposed heading 85.58.
91. In the **Japanese** proposal, a transfer is suggested of apparatus for converting electric signals into data (coded data output apparatus) from this heading to proposed heading 8D.DD.

Heading 85.37

92. The **United States** has proposed to replace “heading 85.17” by “heading 85.49”, to reflect its proposal to transfer the content of HS 2002 heading 85.17 to new heading 85.49.
93. This heading is not affected by the **EC** and **Japanese** proposals.

Heading 85.42

94. The **United States** suggests deleting the reference to “microassemblies” from this heading and from the corresponding part of Note 5 to Chapter 85, thus leaving HS 2002 heading 85.42 to refer to “electronic integrated circuits” only. It also suggests rephrasing Note 5 (B) (a) to Chapter 85, describing the term “monolithic integrated circuits”.
95. The **EC** has proposed deleting this heading and transferring electronic integrated circuits to proposed heading 85.53. It has also proposed to redraft the corresponding Note 5 (B) to Chapter 85 accordingly, and to renumber it (new Note 10 to Chapter 85).
96. Both proponents apparently agree to restrict the scope of current heading 85.42 and proposed heading 85.53 to electronic integrated circuits only, thus excluding “microassemblies” from either of these headings. The Secretariat understands that such assemblies will be classifiable in HS 2002 heading 85.43 or in another heading in Chapter 85 (for example, heading 85.55, as proposed by the **EC**), depending on the function of the commodity, if either of the proposals is accepted.
97. To facilitate discussions, the Secretariat has reproduced below the integral text of the Note describing “electronic integrated circuits”, as suggested by the **EC** (new Note 10 to Chapter 85) and by the **US** (current Note 5 (B) to Chapter 85).

EC	US
<p>10. - For the purposes of heading 85.53, “electronic integrated circuits” are :</p> <p>(a) Monolithic integrated circuits in which the circuit elements (diodes, transistors, resistors, capacitors, etc.) are created in the mass (essentially) and on the surface of a semiconductor or compound semiconductor material (doped silicon, gallium arsenide, silicon-germanium, for example) and are inseparably associated;</p> <p>(b) Hybrid integrated circuits in which passive elements (resistors, capacitors, inductances, etc.), obtained by thin- or thick-film technology, and active elements (diodes, transistors, monolithic integrated circuits, etc.), obtained by semiconductor technology, are combined to all intents and purposes indivisibly, by interconnections or interconnecting cables, on a single insulating substrate (glass, ceramic, etc.). These circuits may also include discrete components.</p> <p>For the classification of the goods defined in this Note, heading 85.53 shall take precedence over any other heading in the Nomenclature, except in the case of headings 85.60 and 85.61, which might cover them by reference to, in particular, their function.</p>	<p>5. - For the purposes of headings 85.41 and 85.42 :</p> <p>(A) [. . .];</p> <p>(B) “Electronic integrated circuits” are :</p> <p>(a) Monolithic integrated circuits in which the circuit elements (diodes, transistors, resistors, capacitors, interconnections, etc.) are created in the mass (essentially) and on the surface of a semiconductor or compound semiconductor material (for example, doped silicon, gallium arsenide, silicon germanium, indium phosphide) and are inseparably associated;</p> <p>(b) Hybrid integrated circuits in which passive elements (resistors, capacitors, interconnections, etc.), obtained by thin- or thick-film technology, and active elements (diodes, transistors, monolithic integrated circuits, etc.), obtained by semiconductor technology, are combined to all intents and purposes indivisibly, on a single insulating substrate (glass, ceramic, etc.). These circuits may also include discrete components.</p> <p>For the classification of the articles defined in this Note, headings 85.41 and 85.42 shall take precedence over any other heading in the Nomenclature which might cover them by reference to, in particular, their function.</p>

98. The description in proposed Note 10 (a) to Chapter 85 concerning “monolithic integrated circuits” (EC proposal), differs in the following way from the description in current Note 5 (B) (a) :
- (i) The reference to “interconnections” in the context of circuit elements has been deleted;
 - (ii) A reference to “compound semiconductor material” has been inserted in the context of the surface material; and
 - (iii) References to “gallium arsenide” and “silicon-germanium” have been inserted as further examples of the surface material.
99. The US proposal for current Note 5 (B) (a) to Chapter 85 contains the same amendments as those listed in paragraph 98 (ii) and (iii) above. In addition, a reference to “indium phosphide” has been included as a further example of the surface material.
100. With respect to the description of “hybrid integrated circuits” (current Note 5 (B) (b) to Chapter 85), the Delegate of Japan, at the 26th Session of the Review Sub-Committee, proposed that the words “obtained by thin- or thick-film technology” be removed, since they referred to obsolete manufacturing technologies. The Secretariat feels that, if this expression would be deleted, the scope of the Note would be widened to include not only those passive elements obtained by modern technology, but also those produced in the traditional way, for example, capacitors using insulating material. The Japanese Administration may wish to clarify this point. The Note 10 (b) proposed by the EC shows the following differences vis-à-vis the current Note 5 (B) (b) :
- (i) Deletion of the reference to “interconnections” as an example of passive elements, and replacement by a reference to “inductances”; and
 - (ii) Insertion of a reference to “interconnections or interconnecting cables”, as the means of connection for the various elements.
101. The Secretariat understands the expression “interconnecting cables”, as suggested by the EC, as referring to cables which may be used to connect any of the elements onto the substrate. The EC may, however, wish to clarify this expression.
102. The Secretariat has noted that both proponents agree that classification in the heading covering “electronic integrated circuits” should take precedence over any other heading which might cover the commodities by reference to their function. However, the EC has excluded the commodities of proposed headings 85.60 (“unrecorded carrier media for the storage of data”) and 85.61 (“recorded carrier media for the storage of data”) from this provision, apparently to provide for the classification of flash electronic storage cards in heading 85.60 or 85.61, as the case may be. If the Working Group does not accept the transfer of electronic integrated circuits to proposed heading 85.53 (EC proposal), the Secretariat suggests inserting a similar exclusion in current Note 5 to Chapter 85 for HS 2002 headings 85.23 and 85.24.
103. Having said this, it should be noted that the Secretariat had suggested editorial amendments to Note 5 to Chapter 85, which were adopted by the Review Sub-Committee. If the Working Group accepts the US proposal (i.e., amending HS 2002 heading 85.42 and Note 5 to Chapter 85), the text of Note 5 should be duly amended to reflect these editorial amendments.

Heading 85.43

104. In the EC proposal, this heading will become the residual heading of sub-Chapter I. The Secretariat wonders whether it is necessary to refer to “not specified or included

elsewhere in this sub-Chapter” rather than “not specified or included elsewhere in this Chapter”, as it is at the moment. As suggested in paragraph 49 above, a Note giving precedence to classification in sub-Chapter II of Chapter 85 could be inserted, thus automatically restricting the scope of heading 85.43 to apparatus not specified or included in sub-Chapter I of Chapter 85. But even without such a Note, the Secretariat believes that the scope would be the same. The “basket” heading of sub-Chapter II for apparatus, in the **EC** proposal (i.e., heading 85.73) refers to “Automatic data-processing machines and other data processing machines, not elsewhere specified or included”, which would be more specific than the wording of heading 85.43.

105. If the Working Group accepts the **EC** proposal, the Secretariat suggest replacing the term “sub-chapter” by “sub-Chapter”, to be in line with text elsewhere in the Nomenclature.
106. If the structured nomenclature proposed by the **EC** is accepted, the Secretariat suggests replacing the text of subheading 8543.80 by “Other machines and apparatus”. This code number was in use until 1-1-1996.
107. The **United States**, on the other hand, has proposed to renumber this heading as heading 85.50, given the insertion of new heading 85.49.

Heading 85.44

108. The **United States** has proposed to combine HS 2002 subheadings 8544.4 and 8544.5, thus no longer making a distinction between those electrical conductors for a voltage not exceeding 80 V on the one hand and those electrical conductors for a voltage exceeding 80 V but not exceeding 1,000 V, on the other hand (see proposed heading 85.56 below).

Heading 85.48

109. The **United States** has proposed to renumber this heading as 85.51, due to the insertion of a new heading 85.49.
110. In the **EC** proposal, the number remains the same. However, it is proposed to redraft the last part of the heading to read “electrical parts of machinery or apparatus, not specified or included elsewhere in this sub-chapter” (emphasis added). The Secretariat, while having expressed its concern about a possible problem vis-à-vis the classification of electrical parts which are suitable for use with several machines of Chapters 84 and 85, with this proposed wording, has suggested not to amend the wording of this heading (see paragraph 53 above). If, however, the Working Group accepts the **EC** proposal, the Secretariat suggests replacing the expression “sub-chapter” by “sub-Chapter” (see also paragraph 105 above).

Heading 85.49

111. The **US** has proposed a new heading 85.49, covering apparatus for the transmission or reception of voice, data or images. This heading would cover, broadly speaking the apparatus of HS 2002 headings 85.17, 85.25 and 85.27, including facsimile machines, which are also mentioned in the **US** proposal for HS 2002 heading 84.43 (see paragraph 63 above). The proposed heading also covers the parts of the apparatus.
112. The content of this proposed heading would be distributed over new headings 85.65 (facsimile machines and teleprinters), 85.67 (radio-telephony and radio-telegraphy reception apparatus) and 85.72 (data transmission or reception apparatus), as proposed by the **EC**, and over new headings 8M.MM, 8K.KK and 8J.JJ in the **Japanese** proposal.

Headings 85.51 to 85.74

113. Headings 85.51 to 85.74 constitute the new sub-Chapter II to Chapter 85, as proposed by the EC. Proposed headings 85.58 to 85.73 would, in the view of the Secretariat, also cover the content of the headings 8A.AA to 8M.MM as proposed by Japan. The Secretariat has suggested starting the numbering of the headings with the next number available, i.e., with heading 85.49 and to renumber the other headings accordingly (see paragraph 26 above).
114. With respect to the terminology used in the proposed headings 85.62 to 85.73, the Secretariat has some doubts concerning the appropriateness of the word “machine” (French : “machines”) in these headings. The EC is using this word as the generic term to describe the various commodities in these headings, whereas the terms used in the corresponding headings of Chapters 84 and 85 currently refer to “machinery” (French : “machines et appareils”) (heading 84.43), “machines” (French : “machines”) (headings 84.69, 84.70 and 84.71), “machines” (French : “machines et appareils”) (heading 84.72), “apparatus” (French : “appareils”) (headings 85.17, 85.19, 85.20, 85.21, 85.25, 85.26, 85.27 and 85.28) and “machines and apparatus” (French : “machines et appareils”) (heading 85.43), respectively. From this overview, it appears that the term “machine” (French : “machine”) is used as the generic term mainly in Chapter 84, whereas the term “apparatus” (French : “appareils”) is used in the headings of Chapter 85.
115. The term “machine” is described in Note 5 to Section XVI as meaning any machine, machinery, plant, equipment, apparatus or appliance cited in the headings of Chapters 84 or 85 (in the EC proposal : any machine, machinery, plant, equipment, apparatus, instrument, appliance, article or component cited in the headings of Sections XVI, XVIII and XX). Since the wording of Note 5 to Section XVI restricts the extension of the word “machine” to the application of Notes 1 to 4 to that Section, the Secretariat believes that the word “machine(s)” in the proposed headings 85.62 to 85.73 is not entirely appropriate when used as the generic term to identify the commodities falling within the individual headings. It suggests, therefore, replacing it by the term “apparatus” (French : “appareils”), or, alternatively “machines and apparatus” (French : “machines et appareils”).
116. A new Note 13 to Chapter 85 has been suggested by the EC with a view to laying down the classification principles for the purposes of proposed headings 85.62 to 85.73, i.e., classification of the commodity should proceed on the basis of its function. The Secretariat would like to offer the following comments.
117. First, the proposed Note includes the expression “hardware present in the machine” in the English version, whereas the French version refers to “une machine est capable d’effectuer au regard de ses caractéristiques techniques”, which could be translated as “a machine being capable of performing, taking into account its technical characteristics” (emphasis added). Where the word “hardware” refers to the physical components of a machine (*Concise Oxford Dictionary, Tenth edition completely revised*, page 649), the Secretariat feels that the technical characteristics of a machine may also be determined by non-physical elements. Consequently, the French version may have a wider scope than the English one. The EC may wish to clarify this point.
118. Second, the third sub-paragraph describes the term “data processing”. In this context it should be noted that the EC has also proposed Notes defining the expressions “automatic data processing machines” (proposed Note 14) and “automatic data processing” (proposed Note 15). The Secretariat wonders whether it is necessary to have three Notes dealing more or less with the same issue. See also paragraphs 200 to 202 below.

119. Third, in the last sub-paragraph of this Note reference is made to “software”. The Secretariat wonders whether this sub-paragraph is appropriate within the context of the Note, since neither the other paragraphs of the Note, nor the texts of the headings concerned refer to software. Since the function of the machine or apparatus is related to the hardware (see the second sub-paragraph of the proposed Note), the presence or absence of software would, in the view of the Secretariat, not exert any influence on that function. Furthermore, the Secretariat is not certain what is meant by the word “embedded” in this context (“intégrante” in the French version, which could be translated into English as “integrated”). It appears to have the purpose of excluding from this provision, software which could, for example, be deleted from the machine or apparatus. The **EC** is invited to clarify these points.

120. Finally, if the Working Group accepts proposed Note 13 (in whole or in part), the Secretariat suggests replacing “data-processing” by “data processing” (English version only).

Heading 85.51 and Note 8 to Chapter 85

121. This heading, the scope of which is defined in proposed Note 8 to Chapter 85, covers mainly the devices currently classified in headings 85.32 and 85.33.

122. Proposed Note 8 describes the expression “passive circuit elements” (French version : “éléments de circuit passifs”) as “individual, discrete components” (French version : “des composants discrets indissociables”) (emphasis added). That being the case, the Secretariat feels that the reference to “discrete” (French version : “discret”) in the heading text is redundant and should, therefore, be deleted.

123. With respect to the proposed terminology, the Secretariat would suggest replacing the term “elements” (French version “éléments”) by “components” (French version : “composants”) in the wording of proposed heading 85.51, and the corresponding part of proposed Note 8. The term “components” is currently used in the same context (see for example part (II) of the “Explanatory Note to heading 85.42, on page 1700), and also in proposed Note 12 (b) to Chapter 85.

124. With respect to the French wording of proposed Note 8, the Secretariat has noted that that version does not include the equivalent of the English term “individual” in describing the components. The Secretariat suggests inserting the term in French or deleting it from the English version, if this Note is accepted.

125. The Secretariat also suggests replacing the word “passif” by “passifs” in the French version of heading 85.51, if accepted.

126. Having said this, the Secretariat has some doubts whether mounted piezo-electric crystals (which are referred to in proposed subheading 8551.40) would fall within the description given in the proposed Note 8. These devices are described in the current Explanatory Note (part (D), first paragraph, on page 1698) to heading 85.41 as “mounted and generally in the form of plates, bars, discs, rings, etc., and must, at least, be equipped with electrodes or electric connections. They may be coated with graphite, varnish, etc., or arranged on supports and they are often inside an envelope (e.g., metal box, glass bulb).”. If the Working Group agrees to include these devices in proposed heading 85.51, the Secretariat would suggest adding a reference to “mounted piezo-electric crystals” in the heading text.

Heading 85.52 and Note 9 to Chapter 85

127. This heading, the scope of which is defined in proposed Note 9 to Chapter 85, covers mainly the devices currently classified in heading 85.41. The description given in Note 9 is similar to the one given in current Note 5 (A) to Chapter 85. However, unlike the provisions of current Note 5 (A), the phrase “the operation of which depends on variation in resistivity on the application of an electric field” in the proposed Note seems to be part of the example given, and not necessarily the sole characteristic of the devices.
128. Proposed Note 9 describes the expression “active circuit elements” (French version : “éléments de circuit actifs”) as “individual, discrete components” (French version : “des composants discrets indissociables”) (emphasis added). That being the case, the Secretariat feels that the reference to “discrete” (French version : “discret”) in the heading text is redundant and should, therefore, be deleted.
129. With respect to the proposed terminology, the Secretariat would suggest replacing the term “elements” (French version “éléments”) by “components” (French version : “composants”) in the wording of proposed heading 85.52, and in the corresponding part of proposed Note 9. The term “components” is currently used in the same context (see for example part (II) of the “Explanatory Note to heading 85.42, on page 1700), and also in proposed Note 12 (b) to Chapter 85.
130. With respect to the French wording of proposed Note 9, the Secretariat has noted that that version does not include the equivalent of the English term “individual” in describing the components. The Secretariat suggests inserting the term in French or deleting it from the English version, if this Note is accepted.
131. The Secretariat also suggests replacing the word “actif” by “actifs” in the French version of heading 85.52, if accepted.
132. Due to the proposed wording of Note 9 to Chapter 85, it appears that photovoltaic cells assembled in modules or made up into panels (HS 2002 : ex 8541.40) do not fall within the description of active circuit elements, and should, therefore, be classified in heading 85.43 (subheading 8543.89).

Heading 85.53 and Note 10 to Chapter 85

133. This heading, the scope of which is defined in proposed Note 10 to Chapter 85, covers mainly the devices currently classified in heading 85.42. The description given in Note 10 is similar to the one given in current Note 5 (B) to Chapter 85. See paragraphs 94 to 103 above for analysis and comparison with the **US** proposal.
134. In this context, the Secretariat wonders whether proposed heading 85.53 should also cover multichip modules (multichip packages), which contain two or more chips (see also paragraph 73 above in this respect).

Heading 85.54 and Note 11 to Chapter 85

135. This heading covers the content of HS 2002 heading 85.34. Proposed Note 11 to Chapter 85, which is basically HS 2002 Note 4 to Chapter 85, defines the expression used in that heading. In addition to the renumbering of the references to headings, the **EC** has proposed to replace the expression “semiconductor elements” (French : “éléments à semi-conducteur”) by “active circuit elements” (French : “éléments du circuit actifs”), in the first sub-paragraph. If the Working Group accepts the Secretariat’s suggestion for the wording of

proposed heading 85.52 (see paragraph 129 above), the Secretariat suggests (i) replacing the word “elements” (French : “éléments”) by the word “component” (French “composants”) in this heading and in Note 11 as well, and (ii) replacing the expression “du circuit actifs” in the French version by “de circuit actifs”, with a view to aligning this text on that of proposed heading 85.52.

136. Due to the wording of proposed heading 85.59, parts of “printed circuits” will also be classified in proposed heading 85.54. The Working Group is asked to reflect on this issue (see paragraphs 40 and 41 above).

Heading 85.55 and Note 12 to Chapter 85

137. The scope of proposed heading 85.55 is described in Note 12 to Chapter 85. With respect to that Note (and, consequently, that of the proposed heading), the Secretariat would like to offer the following comments, if the Working Group accepts the proposed heading and Note.
138. First, the Working Group has to decide whether “arrays” should be formed by mounting one or two circuit elements (sub-paragraph (a) of proposed Note 12) (with respect to the term “elements”, see paragraph 129 above).
139. Second, the expression “circuit elements” (or “circuit components”, as suggested by the Secretariat) (French version : “éléments du circuit” and “composants de circuit”, respectively) used in sub-paragraph (a), is described in Notes 8 and 9, but only for the purposes of headings 85.51 and 85.52, not for the purposes of heading 85.55 or of Note 12.
140. Third, neither the type of circuit element (or component – see above) (i.e., either passive or active, or both) nor the function of the component(s) are specified in sub-paragraph (a). The **EC** may wish to clarify this point.
141. Fourth, the English version of sub-paragraphs (a) and (b) uses the expression “printed-circuit board/printed-wiring board”, whereas the French version refers to “une carte de circuit imprimé”. The expression “printed-wiring board” may need further clarification from the **EC** and, if maintained, the “/” should be replaced by the conjunction “or”. The French equivalent should be inserted as well.
142. Fifth, subparagraph (b) uses the expression “discrete components or integrated circuits” (French : “composants ou circuits intégrés [discrets]”). The Secretariat has some doubts about the exact scope of the expression “discrete integrated circuits”, given the fact that the word “discrete” is used in the context of having a single active or passive electrical function, and that integrated circuits usually have several. The **EC** is invited to clarify.
143. Sixth, the intention of the last sub-paragraph of proposed Note 12 is not entirely clear to the Secretariat. For example, proposed heading 85.74 refers to parts suitable for use solely or principally with the machines of headings 85.62 to 85.73. If such a part consisted of several discrete components mounted on a printed circuit board, they would, in the view of the Secretariat, fall within the description of the last sub-paragraph and, consequently, be excluded from proposed heading 85.55. The **EC** may wish to clarify this point.
144. Finally, the last sub-paragraph of proposed Note 12 refers to “goods” in the English, whereas the term “articles” is used in the French version. The Secretariat suggests aligning both versions by using the term “articles” in English as well.

145. With respect to proposed heading 85.55, the EC may also wish to clarify what kind of commodities would fall within the term “other circuits”.
146. If the Working Group accepts the proposed heading 85.55 with its proposed structure, the Secretariat suggests renumbering subheading 8555.21 and 8555.29 as 8555.91 and 8555.99, respectively.

Heading 85.56

147. This proposed heading would cover the content of HS 2002 heading 85.44 and the commodities transferred from HS 2002 heading 90.01, if the Working Group accepts this transfer (see paragraph 28 above). It should be noted that the heading will also covers parts (and accessories, if the EC proposal for Note 2 to Section XVI in this respect is accepted). They would be classified in the same subheading as the parent article, which might pose identification problems. The Secretariat, therefore, suggests creating a separate subheading for parts (and accessories), or, alternatively, amending proposed heading 85.59 (see also paragraph 40 above).
148. With respect to the proposed structure, the Secretariat has noted that HS 2002 subheading 8544.30 has been deleted, and that there are no subheadings proposed to separate certain cables fitted with connectors and those not fitted with connectors. The Secretariat also wonders whether the descriptions “optical fibres” (proposed subheading 8556.20) on the one hand and “optical fibre cables” (proposed subheadings 8556.31 to 8556.39) on the other hand, are clear enough to make the distinction between the two, and wonders what will be left for proposed subheading 8556.39. The EC may wish to clarify this point.
149. The US has proposed to combine HS 2002 subheadings 8544.4 and 8544.5, thus no longer making a distinction between those electrical conductors for a voltage not exceeding 80 V on the one hand and those electrical conductors for a voltage exceeding 80 V but not exceeding 1,000 V, on the other.

Heading 85.57

150. This heading apparently has the same scope as HS 2002 heading 85.40. The Secretariat is, however, not convinced that the proposed wording is unambiguous. To avoid any misunderstanding with respect to the scope of the proposed heading, the Secretariat suggests replacing the heading text with that of HS 2002 heading 85.40, without the examples, i.e., “thermionic, cold cathode or photo-cathode valves and tubes” (French : “lampes, tubes et valves électroniques à cathode chaude, à cathode froide ou à photocathode”).

Heading 85.58

151. The French wording of this heading refers to “écrans plats” (in English : “flat screens”), whereas the English version refers to “display modules”. The Secretariat is not sure whether these two terms have the same scope : a display module is not necessarily flat and a screen is not necessarily a module, the latter term being described as “each of a set of standardised parts or independent units that can be used to construct a more complex structure” (*Concise Oxford Dictionary, Tenth edition completely revised*, page 916). The EC may wish to clarify the intended scope of this heading.
152. It should be noted that the parts (and accessories – see paragraphs 50 to 52) of the articles of proposed heading 85.58 will be classified in the same heading and subheading as

the parent articles, unless the Working Group decides to amend the scope of proposed heading 85.59 (see paragraph 40 above).

Heading 85.59

153. If accepted, this proposed heading will cover parts and accessories of commodities of a number of headings. It would also include parts of parts and parts of accessories.
154. With respect to the question what the scope of this heading should be and where to place it, see paragraph 40 above.

Headings 85.60 and 85.61

155. The headings proposed by the EC cover the articles of HS 2002 headings 85.23 and 85.24, respectively. The Japanese Administration has, however, suggested grouping these two kind of commodities together in a single heading (proposed heading 8A.AA), although both proponents suggest further subdividing according to the nature of the carrier : magnetic, optical, semi-conductor. The Japanese proposal also provides for a Note (“New 2”) describing the expression “media for the storage of electrical signals”.
156. The wording of the Note proposed by Japan is ambiguous. First, when taken literally, only recorded media would be covered, since the definition given refers to “apparatus on which data has been stored” (emphasis added), which excludes those media which do not contain recorded data. A heading covering such unrecorded media has not been proposed by Japan. Second, it appears also to exclude flash memory cards and similar cards, since they do not use a “writer” or “reader”. Third, gramophone records would be excluded as well, since the data they contain has not been “written”, but pressed into the carrier. Fourth, the terms “writer” and “reader” are not entirely clear. The Japanese Administration may wish to clarify these points.
157. Given the wording of heading 85.74, as proposed by the EC, parts (and accessories, whatever they may be) of the articles of proposed headings 85.60 and 85.61 are to be classified with their parent articles in the same heading and subheading. This might create a problem at the four digit level, since the parts (and accessories) themselves will not be recorded. Moreover, application of the provisions of Note 2 to Section XVI would result in a classification of the parts in heading 84.85 or 85.48 if electrical, and of the accessories elsewhere in the Nomenclature. However, as indicated in paragraph 53 above, the scope of the latter heading would not be applicable within the context of the EC proposal. The Secretariat suggests, therefore, widening the scope of proposed heading 85.74, with a view to including the parts (and accessories) of the articles of proposed headings 85.60 and 85.61.
158. If the proposal to create headings 85.60 and 85.61 and their structured nomenclatures is accepted, the Secretariat suggests replacing the expression “data-storage” in subheading 8560.31 by “data storage” (English version only). It questions, however, how to distinguish between the proposed subheadings 8560.31 (“Solid-state, non-volatile data-storage devices”) and 8560.32 (“Cards with one or more integrated circuits”). In this context, the Secretariat wishes to draw the Working Group’s attention on the proposals from the ICC and the Secretariat with respect to HS 2002 headings 85.23 and 85.24, with a view to clarifying the classification of “flash electronic storage cards”, and from Switzerland with respect to HS 2002 heading 85.24 (see paragraphs 72 to 76 above).
159. The Secretariat also proposes to replace the expressions “sound, and image recorded” and “data-processing machine” by “sound and image, recorded” and “data

processing machine”, respectively, if subheadings 8561.21 and 8561.31 are accepted (English version only).

Heading 85.62

160. The EC has proposed a separate heading covering all cameras, currently classified in headings 84.71, 85.25, 90.06 and 90.07. Japan, however, suggests grouping together the cameras which convert the image into an electrical signal (proposed heading 8G.GG), thus leaving photographic cameras and cinematographic cameras in Chapter 90. The Working Group has to decide on the scope of the proposed heading, if the principle of a separate heading for cameras is accepted (see also paragraphs 28 to 37 above).
161. In order to clarify the classification of cameras incorporating sound recording or reproducing apparatus, the Secretariat suggests inserting a reference to such apparatus, as follows “whether or not incorporating sound recording or reproducing apparatus” (French version : “même incorporant un appareil d’enregistrement ou de reproduction du son”), if either of the proposals is accepted.
162. If the Working Group accepts the EC proposal, the Secretariat suggests replacing the expression “image-capture” by “image capture” (English version only).

Headings 85.63 and 85.64

163. The EC has proposed a separate heading for “data capturing apparatus”, whereas Japan has suggested a heading for “apparatus for converting coded data to electrical signals” (proposed heading 8C.CC) and one for “apparatus for converting sound into electrical signals” (proposed heading 8E.EE), which are in the Secretariat’s view comparable to proposed heading 85.63.
164. The Secretariat has some doubts whether the terms “capture” and “recording” (proposed heading 85.64) can be used separately and independently in all cases. To avoid possible identification problems in this respect, the Secretariat suggests merging proposed headings 85.63 and 85.64, without further subdivisions. If the Working Group accepts this suggestion, the proposed heading could read “Data capture or recording apparatus, not incorporating data reproducing apparatus, other than those of heading 85.62” (French version : “Appareils pour la capture ou pour l’enregistrement de données, n’incorporant pas un appareil de reproduction des données, autres que ceux du n° 85.62”). If the Working Group accepts the EC proposal to create separate headings, the Secretariat suggests replacing the expression “data-capture” by “data capture” in proposed heading 85.63 (English version only).
165. If the Working Group opts for the Japanese proposal (proposed headings 8C.CC and 8E.EE), the Secretariat would also suggest merging the two headings concerned, given the restricted number of commodities covered (see Annex II to Doc. NR0335E1). The pertinent part of the proposed headings 8C.CC and 8E.EE could then read as follows : “Apparatus for converting coded data or sound into electrical signals” (French : “{. . .}”¹⁾). In this context, it should be noted that Japan has proposed a Note (“New 4”), describing the term “input”, which is also used in the texts of proposed headings 8C.CC and 8E.EE. The Secretariat, however, has some doubts as to whether the description given in the Note is sufficiently clear.

¹⁾ { . . . } = French text to be inserted.

166. The term “coded data” is described in a Note (“New 8”), although this description is restricted to proposed headings 8J.JJ and 8L.LL. The Secretariat assumes that this part of the proposed Note should read “For the purposes of headings 8C.CC and 8D.DD”. The **Japanese** Administration is invited to clarify the above points.

Heading 85.65

167. Heading 85.65, as proposed by the **EC**, would, in the view of the Secretariat, comprise machines and apparatus of HS 2002 headings 84.43 (printing machinery), 84.71 (printers connectable to ADP machines), 85.17 (printers combined with facsimile function), 90.09 (printers combined with an optical reader), and possibly 90.17 (plotters). It appears that this proposed heading corresponds partially to the one proposed by **Japan** (proposed heading 8M.MM). Concerning the scope of the proposed headings, and similar proposals presented by the **United States** for HS 2002 heading 84.43 and by the Secretariat for HS 2002 headings 84.72, the Working Group is invited to refer to paragraphs 63 to 67 above.
168. If the Working Group accepts the idea to classify plotters in proposed heading 85.65 or elsewhere in Section XVI, the Secretariat suggests inserting an exclusion to that effect in Note 1 (h) to Chapter 90.
169. It should be noted that the heading proposed by **Japan** refers only to such apparatus which convert electrical signals into a fixed image. This description might include large printing machinery, which receives the data to be printed in electronic format. It would not include such printing machinery using other techniques. The Secretariat would not be in favour of having printing machinery in two different headings, i.e., 84.43 and proposed 8M.MM. The **Japanese** Administration may wish to clarify this issue.
170. Having said this, the Secretariat considers that the expression “by mechanical means” used in proposed subheadings 8556.11 and 8556.21 might need further clarification from the **EC**, if the proposed heading and subheadings are accepted.

Heading 85.66

171. Heading 85.66 as proposed by the **EC**, corresponds to heading 8F.FF and 8K.KK (partly) proposed by **Japan**. It should be noted that, unlike HS 2002 heading 85.19, the proposed heading(s) would cover the reproducing apparatus, whether or not incorporating a sound recording device. It should also be noted that proposed heading 8K.KK apparently includes certain radio receivers/transmitters, which are covered by heading 85.72 in the **EC** proposals.
172. If the Working Group accepts the **EC** proposal, the Secretariat suggests replacing the text of the heading by : “Sound reproducing apparatus, whether or not incorporating sound recording apparatus” (French version : “Appareils de reproduction du son, même incorporant des dispositifs d’enregistrement du son”).
173. With respect to the structured nomenclature proposed by the **EC**, the Secretariat would like to point out that there might be a potential conflict between two or more of the subheadings, given the fact that some of the apparatus on the market may have dual functions, e.g., reproducing sound from an audio CD (referred to in proposed subheading 8566.91) and from MP3 format (referred to in proposed subheading 8566.93). The Working Group may wish to address this issue when considering the proposed subheadings.

174. With respect to the **Japanese** proposal for heading 8K.KK, see paragraph 180 below.

Heading 85.67

175. It is apparently the intention of the **EC** to cover in this heading the apparatus of HS 2002 heading 85.27 (other than radio-telephony and radio-telegraphy – see proposed heading 85.72) and radio navigational aid reception apparatus of HS 2002 heading 85.26. It corresponds (partly) to heading 8K.KK proposed by **Japan**.
176. The **United States** has proposed to separate the radio-telephony and radio-telegraphy reception apparatus from the other radio reception apparatus (see paragraph 84 above).
177. If the Working Group accepts the **EC** proposal (and its scope – see above), the Secretariat suggests aligning the text on that of current heading 85.27, as follows :
“Reception apparatus for radio navigational aid or radio-broadcasting, whether or not incorporating sound recording or sound reproducing apparatus or a clock” (French version : “Appareils récepteurs pour la radionavigation ou la radiodiffusion, même incorporant des dispositifs d’enregistrement ou de reproduction du son ou d’un appareil d’horlogerie”). If it is the intention to classify radio navigational aid apparatus somewhere else, e.g., in proposed heading 85.72, the Secretariat suggests deleting the corresponding part from the alternative proposal.
178. The **EC** has proposed a Subheading Note for the purposes of subheading 8567.11 (Subheading Note 1).
179. If the Working Group adopts the structured nomenclature proposed by the **EC**, the Secretariat suggests replacing the expressions “sound-recording” and “sound-reproduction” by “sound recording” and “sound reproducing”, respectively (English version only). The Secretariat also suggests replacing the part “Combined with” (French : “Combiné avec”) in proposed subheadings 8567.12 and 8567.92 by “Other, combined with” (French : “Autres, combiné avec”).
180. With respect to the structured nomenclature of heading 8K.KK proposed by **Japan**, the Secretariat has some doubts on the scope of the various descriptions, i.e., input or output functions, and reading or writing functions. These terms “input” and “output” are described in proposed Note “New 4”. It appears that the latter terms are similar to the terms “recording” and “reproducing” used in the current version and in the **EC** proposal. If that is the case, the Secretariat suggests using the latter terms. However, the **Japanese** Administration may wish to clarify this issue. The term “telecommunication” used in the **Japanese** proposal is described in proposed New Note 7.

Heading 85.68

181. This heading proposed by the **EC**, would cover monitors and projectors (image reproduction apparatus). The **Japanese** Administration has proposed a heading (8H.HH) having a similar scope. It should be noted that both proposed headings do not include television reception apparatus (headings 85.69 and 85.70 in the **EC** proposals, and heading 8L.LL in the **Japanese** proposals). It should also be noted that the heading proposed by the **EC** would include image projectors (e.g., slide projectors) and cinematographic projectors, currently classified in Chapter 90. As indicated in paragraph 19 above, **Japan** has not proposed such transfers.

182. The Secretariat feels that the expression “image reproduction machines”, as proposed by the EC, is ambiguous, since it might create a potential overlap with proposed heading 85.65 in the case of, for example, copying machines, and with proposed headings 85.69 and 85.70. The Secretariat would, therefore, suggest rephrasing the text of this proposed heading to read as follows : “monitors and projectors, for the reproduction of images” (French version : “moniteurs et projecteurs, pour la reproduction d’images”), if the Working Group accepts the EC proposal. In any case, the Secretariat would prefer not to use the punctuation mark “/” in texts, since it might be considered as referring to a combination of the apparatus mentioned, rather than being an enumeration of commodities.
183. Concerning the proposed structured nomenclature, the EC has proposed subdivision according to the actual type of monitor or projector, whereas Japan suggests referring to the type of technique used to reproduce the image. In this context, the Secretariat wonders what will be left in proposed subheading 8HHH.90 in the Japanese proposal. In addition, the wording proposed for subheading 8HHH.10 is not entirely clear, since it appears to restrict the scope of this subheading to that apparatus which is capable of processing television (or video) signals only. If so, it might be necessary to provide a clear dividing line between the two categories. The Secretariat also wonders whether there might be a potential overlap between proposed subheadings 8HHH.10 and 8HHH.20, since the expression “flat panel” is not defined and might include apparatus incorporating a flat cathode ray tube. Finally, the wording proposed for these subheadings may set aside the application of General Interpretative Rule 2 (a), in those cases where a monitor or projector is presented without the cathode ray tube, or where a monitor or projector is presented in the non-assembled state. The Japanese Administration may wish to clarify these points.
184. With respect to the subdivisions proposed by the EC, the Secretariat wonders whether the reference to “component” in proposed subheading 8568.11 is appropriate. A similar term does not appear in the French version. The EC may wish to clarify this point.

Heading 85.69

185. The EC has proposed a separate heading for television reception apparatus and image reproduction apparatus, without a display. The heading would, in the view of the Secretariat, include video cassette recording and reproducing apparatus, DVD apparatus and satellite television reception apparatus. Similar apparatus incorporating a display would be classified under proposed heading 85.70. Japan has proposed a single heading for both types of apparatus (heading 8L.LL).
186. The Secretariat has some doubt whether the text proposed by the EC (i.e., “without visual display”) would result in the effect intended, since many if not most of the apparatus potentially classifiable in this heading, comprise a display showing the actual state or function of the apparatus, the recording time left, the channel chosen, etc. On the other hand, it might cover such television sets without the cathode ray tube (being the screen or display) incorporated, thus setting aside the application of General Interpretative Rule 2 (a) in respect of incomplete or non-assembled commodities, or even copying apparatus. The EC may wish to clarify these points.
187. In view of the above observations, the Secretariat suggests rephrasing the wording of the heading as follows, taking into account the RSC/26 proposal for HS 2002 subheading 8528.11 (see Annex III to this document) : “television reception apparatus and video reproducing apparatus, not incorporating and not designed to incorporate a video display or screen, whether or not incorporating a video tuner, sound recording or reproducing apparatus or image recording apparatus” (French version : “appareils pour la réception de télévision et appareils de reproduction vidéophoniques, non incorporant ni conçus pour

incorporer un dispositif d'affichage vidéo ou écran, même incorporant un récepteur de signaux vidéophoniques, un appareil d'enregistrement ou de reproduction du son ou un appareil d'enregistrement des images”), if the Working group accepts the **EC** suggestion.

188. If the Working Group adopts the structured nomenclature proposed by the **EC**, the Secretariat suggests replacing the expressions “sound-recording” and “sound-reproduction” by “sound recording” and “sound reproducing”, respectively (English version only). The Secretariat also suggests replacing the expression “Combined with” (French : “Combiné avec”) in proposed subheading 8569.12 by “Other, combined with” (French : “Autres, combiné avec”).
189. Concerning the text proposed by **Japan**, the Secretariat has some doubts vis-à-vis the intended scope. According to the information provided by **Japan**, this heading should cover cellular phones also having a camera function, which might also be covered by proposed headings 8E.EE (“converting sound to electric signals”), 8F.FF (“converting electric signals to sound”), 8G.GG (“converting image to electric signals”), 8H.HH (“converting electric signals to image”) or 8K.KK (“sound signal processing”). The **Japanese** Administration may wish to clarify this issue.
190. Nevertheless, the Working Group is invited to address the issue where to classify cellular phones with a built-in video camera and display, be it in the **Japanese** proposal or the **EC** one.

Heading 85.70

191. The Secretariat feels that the text proposed by the **EC** (“television reception or image reproduction machines”) is ambiguous, since it might also cover apparatus which is intended to be classified in proposed heading 85.69. If the Working Group accepts the idea of having a separate heading for the apparatus as suggested by the **EC**, the Secretariat suggests rephrasing the text as follows : “video reproduction apparatus and reception apparatus for television, whether or not incorporating a video tuner, sound recording or reproducing apparatus or image recording apparatus, other than those of headings 85.68 and 85.69” (French version : “appareils pour la réception de télévision et appareils de reproduction vidéophoniques, même incorporant un récepteur de signaux vidéophoniques, un appareil d'enregistrement ou de reproduction du son ou un appareil d'enregistrement des images, autres que ceux des n°s 85.68 ou 85.69”).
192. The Secretariat wonders, however, why a distinction should be made between the apparatus of proposed heading 85.69 and that of proposed heading 85.70. In the view of the Secretariat, both headings could be merged and further subdivisions could be created for the various apparatus, if necessary. It should be noted that **Japan** has proposed a single heading as well, though apparently with a wider scope. The Working Group is invited to consider this issue.
193. If the Working Group accepts the **EC** proposal for the structured nomenclature, the Secretariat suggests replacing the word “Color” by “Colour” in proposed subheading 8570.10 (English version only).

Heading 85.71

194. Heading 85.71 would cover data (other than sound or image) reproduction apparatus, not specified in earlier headings. The Secretariat is, however, not sure about the exact meaning of the expression “data reproduction”. From the structured nomenclature, which refers, *inter alia*, to “read-only drives” and “other drives”, it appears that a combination

of data reading and (presumably) data writing apparatus (e.g., CD-R or CD-RW apparatus) would also be classified here. Data writing apparatus should apparently be considered to be “data recording apparatus” of proposed heading 85.64. Nonetheless, the EC may wish to clarify the scope of the proposed heading.

195. If the Working Group accepts the EC proposal, the Secretariat suggests replacing the expression “data-reproduction” by “data reproduction” (English version only).
196. Japan, on the other hand, has proposed a heading for reading or writing electric signals (proposed heading 8B.BB). The proposed wording is, again, ambiguous, since apparatus which reads data from, e.g., a CD-ROM or from a DVD, is not reading electrical signals but digital data, which is subsequently converted into electrical signals. The Japanese Administration may wish to clarify this point.

Heading 85.72

197. This heading would cover apparatus, which transmits or receives data by line, by radio signal, by infrared signal, etc., other than that of proposed headings 85.67 to 85.71. As indicated in paragraphs 175 to 177 above, it would also cover radio-telephony and radio-telegraphy apparatus, and presumably, radio navigational aid apparatus, as well as apparatus used in communication networks, such as LAN and WAN.
198. This proposed heading appears to correspond, to a certain extent, to heading 8J.JJ proposed by Japan. However, the description given is not sufficiently clear to allow the Secretariat to give its comments on the scope of the proposed heading. The Japanese Administration may wish to clarify its proposal.
199. If the Working Group accepts the EC proposal, the Secretariat suggests replacing the expression “data-transmission or -reception” by “data transmission or reception” (English version only).

Heading 85.73

200. This heading is proposed to cover “automatic data processing machines and other data processing apparatus, not elsewhere specified or included”. The expression “automatic data processing machines” is defined in proposed Note 14 to Chapter 85, which is similar to current Note 5 (A) (a) to Chapter 84. Proposed Note 15 to Chapter 85 defines the scope of the expression “automatic data processing” for the purposes of proposed heading 85.73.
201. If the Working Group accepts the heading and the related Notes proposed by the EC, the Secretariat would suggest merging the two Notes, with proposed Note 15 becoming the new last two paragraphs of the merged Note. Apart from that, the Secretariat suggests widening the scope of the proposed Note 15, by saying “For the purposes of [this] Note [14] and of heading 85.73, [rest unchanged]” (French version : “Au sens de [la] [cette] Note [14] et du n° 85.73, [inchangé]”). It also suggests replacing the expression “data-processing” by “data processing” in the proposed Note(s) and in the heading and subheading texts (English version only).
202. Having said this and noting that proposed Note 15 would be applicable for the purposes of heading 85.73, the Secretariat has noted that the French version of this Note refers to “traitement automatisé de l’information”, which expression does not appear in the heading at issue. In addition, the Secretariat has some difficulty in understanding the meaning of the adjective “semantic” in the context of this Note. If this term refers to “coded

data”, the Secretariat suggests using the latter language. The EC may wish to clarify these points.

203. Japan also proposes a heading for “data processing machines” (proposed heading 8I.II), this expression being defined in proposed Note “New 5”. The definition in this Note, while also referring to the hardware which should be present, is less detailed than the one proposed by the EC.
204. With respect to the structured nomenclature proposed by the EC, the Secretariat would like to offer the following comments.
205. First, the expression “automatic data processing machines”, when used at subheading level, may need further clarification with respect to “units”. The proposed Notes are silent in terms of machines presented in the form of units, but by application of Note 4 to Section XVI, machines consisting of individual components intended to contribute together to a clearly defined function covered by one of the headings of Chapters 84 and 85, are to be classified as a single machine in the appropriate heading. In other words, when these components together perform the function “automatic data processing”, they are classifiable in proposed heading 85.73. This provision also applies at subheading level, by virtue of General Interpretative Rule 6. The individual units, when presented separately, might be classifiable in one of the other proposed headings, depending on their function, or in heading 85.73 as “other data processing machines”, failing the application of a more specific heading.
206. Subheading 8573.11 refers to “central processing units” within the one dash subheading “automatic data processing machines” (the latter expression being defined in proposed Note 14 to Chapter 85). The question at issue is, whether a “central processing unit”, when presented separately, can be regarded as an automatic data processing machine or as one of the units of such a machine. Units of automatic data processing machines are, in the view of the Secretariat, not covered by the expression “automatic data processing machines”, and, consequently, not covered by the terms of the first one dash subheading. They may, however, fall within the expression “other data processing machines” (see paragraph 205 above). The EC and the Working Group may wish to address this issue, as appropriate.
207. If the Working Group accepts proposed subheading 8573.11, the Secretariat suggests replacing the expression “capture or reproduction machines” by “data capture or reproduction apparatus”, to align this part of the text on the French version. In this context, it should be noted that the expression “data capture machines” includes machines of proposed headings 85.62 and 85.63, and that the expression “data reproduction machines” includes machines of proposed headings 85.65 to 85.71.
208. Second, if the Working Group accepts the proposed structured nomenclature, the Secretariat suggests (i) amending the second one dash subheading (8573.2) to read “Other” (French version : “Autres”), and (ii) re-coding the proposed two dash subheadings as 8573.91 to 8573.99, respectively.
209. Third, the Secretariat is not entirely sure whether the references in proposed subheadings 8573.21 (amplifiers) and 8573.22 (control panels) are appropriate, given the fact that the expression “data processing”, as used in the heading and one-dash subheading texts, is described in proposed Note 13 as referring to “capture, recording, storage, reproduction, transmission or reception of data”. In this context, it should also be noted that data transmission or reception apparatus is classified in proposed subheading 85.72. The EC may wish to clarify this issue.

210. Finally, the EC has proposed a Subheading Note 3, to describe the expression “personal digital assistant”, used in proposed subheading 8573.24. If this proposed Subheading Note is accepted by the Working Group, the Secretariat suggests replacing the word “term” by “expression” and the expression “data-processing” by “data processing”, respectively (English version only).

Heading 85.74

211. Proposed heading 85.74 covers the parts and accessories suitable for use solely or principally with the apparatus of headings 85.62 to 85.73. It should be noted that the heading also covers parts of parts and parts of accessories.
212. The Secretariat would suggest the widening of the scope of the proposed heading, if accepted, to also cover the parts (and accessories) of the articles of headings 85.60 and 85.61 (see paragraph 157 above).
213. The EC proposal does not provide for subheadings. If the heading is accepted, the Working Group may wish to insert a structured nomenclature, taking into consideration the Secretariat’s proposal for HS 2002 heading 84.73 (subheading 8473.40).

III. CONCLUSIONS

214. The Working Group is invited to examine the proposals to revise certain headings of Chapters 84, 85, 90 and 95, as proposed by the EC, Japan, the US, the ICC and the Secretariat and reproduced in the Annexes to this document.
215. To that end, the Working Group is invited to address the following issues, in particular :
- (i) Should a new sub-Chapter be created in Chapter 85 or elsewhere, covering apparatus using information technology and related apparatus (paragraphs 11 to 27);
 - (ii) If so, what should be the scope and the structure of this new sub-Chapter (paragraphs 28 to 43, and the paragraphs concerning the individual headings with their relevant Notes or Subheading Notes);
 - (iii) If not :
 - (a) Should the scope of Chapter 84 or 85 be expanded to cover certain commodities currently classified in Chapters 90 and 95 (see paragraph 28);
 - (b) Should “multifunction machines” be grouped together and if so, where (see paragraphs 63 to 67);
 - (c) Should the definitions of automatic data processing machines and of certain electronic components be rewritten (see the paragraphs of the (proposed) headings concerned); and
 - (d) Which HS 2002 headings would need to be updated with a view to reflecting modern technology and specifying new commodities.

* * *