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O. Eng.

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CLASSIFICATION OF FLASH ELECTRONIC STORAGE CARDS

(Item VII.9 on Agenda)

Reference documents :

42.448 (HSC/22)
NC0160E2, Annex G/17 (HSC/24 – Report)
NC0225E1 (HSC/25)
NC0250E2, Annex IJ/14 (HSC/25 – Report)
NC0301E1 (HSC/26)
NC0340E2, Annex G/18 (HSC/26 – Report)
NC0388E1 (HSC/27)
NC0430E2, Annex H/5 (HSC/27 – Report)
NC0470E1 (HSC/28)

I. NOTE FROM THE US ADMINISTRATION

1. On 16 October 2001 the Secretariat received a note from the US Customs Administration, providing comments on the classification of flash electronic storage cards. The note reads as follows :

2. "The Committee has been considering the classification of flash electronic memory cards. At the 27th Session, the Committee considered headings 84.71, 85.23, 85.43 and 85.48, but decided to continue its review with respect to whether these cards have an individual function and, most importantly, whether these cards satisfy the description for a specific good in a heading.

3. Flash electronic memory cards are solid state data storage devices. They are capable of storing ADP data, video images, sound or other information. They are available in many different sizes which are determined, in part, by the machines with which they will be used and by the amount of storage capacity required or desired by users.

4. All flash electronic memory cards are comprised of the same basic components : a printed circuit board, one or more flash memory or E-prom chips, an integrated circuit or controller chip (in most cases), and a connector. The flash memory chips consist of literally millions of transistors that are arranged in series on the chip to form "cells." Flash technology, i.e., the use of an electrical charge applied to a transistor at the command of the host machine, is a stable, non-volatile storage technology that does not require a battery in order to retain data indefinitely.

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5. Flash memory may be in standardized format (e.g., ATA interface) or in proprietary format (e.g., linear or socket flash). The physical design of flash memory cards is determined by the device in which it will be used, but used with adapters, such as a PCMCIA adapter, allow for the interchangeable use of a flash memory card with multiple devices, such as digital cameras, ADP machines, MP3 players, etc.

Classification

6. As the Committee has recognized, the key question is whether the cards meet the terms of a specific heading in the Nomenclature. Only if such classification can be ruled out may classification in a residual heading, such as heading 85.43, be considered.

7. Flash memory is the latest form of storage medium. Flash memory cards performs the same functions as magnetic tapes, magnetic disks, CD-ROMs, DVD-ROMs or magnetic hard drives. Its solid state design allows it to be easily transportable and reliable.

Heading 85.23

8. Heading 85.23 provides for "prepared unrecorded media for sound recording, or similar recording of other phenomena." There is no limitation with regard to the manner in which the media of the heading function.

9. The feature or function common to all media, whether the media is a vinyl disc for a phonograph, a magnetic tape for an audio tape player, an optical disk for a CD-ROM data storage system, or a magnetic diskette for a floppy disk drive, is that they function as an instrument on which phenomena may be stored or retrieved upon demand from a host machine. Flash memory cards meet this description in every respect. Very simply, they are storage media. They are designed and used for recording phenomena, whether sound, video or data. The storage or retrieval is directed by commands sent from a host machine.

10. The term "media" (plural of "medium") is not defined in the HS. However, both the Oxford English Dictionary and Webster's New Third International Dictionary define the term "medium" as an intermediate means or instrument through which something is accomplished or conveyed. In the case of a magnetic disk, it is the presence of an oxide layer evenly spread over a plastic substrate that allows data, for example, to be magnetically encoded and recorded on a disk. In the case of a flash memory card, it is the array of transistors in a chip mounted on a PCB with connectors that allows data to be recorded electrically on the card.

11. Therefore, we conclude that unrecorded flash memory cards, which are, essentially, devices for recording and storing information in a digital format, satisfy the meaning of the term "unrecorded media" for purposes of headings 85.23.

12. A question has been raised as to whether the flash memory cards satisfy the term "prepared" as used in heading 85.23. The lexicographic meanings for "prepared" include "treated by a special process for some purpose" or "made ready or fit for something." We would not limit the term to mean "coating" of a surface. The term "prepared" applies to any product that is made ready or fit for recording phenomena.

13. In the case of a flash memory card, it is ready and fit for recording. Flash memory cards record phenomena in 1s and 0s by electrical flashes to turn on or off the transistors in the memory chip. In an optical disk, the 1s and 0s are recorded by burning pits into a disk. In a magnetic disk, the 1s and 0s would be stored by changing the polarity on the surface.

Conclusion

14. For the above reasons, we conclude that the flash memory cards are within the meaning of "unrecorded prepared media" for purposes of heading 85.23. Therefore, pursuant to GIR 1 and Note 6 to Chapter 85, the flash memory cards are classifiable in heading 85.23, and consideration of other headings is precluded."

II. SECRETARIAT COMMENTS

15. The Secretariat would refer simply to the comments reproduced in paragraph 14 of Doc. NC0470E1.

III. CONCLUSION

16. The Committee is invited to take into consideration the comments of the US Customs Administration, reproduced in paragraphs 2 to 14 above, when considering this agenda item.