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COMMITTEE

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(+ Annex)
O. Eng.

Brussels, 15 April 2002.

CLASSIFICATION OF FLASH ELECTRONIC STORAGE CARDS

(Item VIII.13 on Agenda)

Reference documents :

42.448 (HSC/22)	NC0388E1 (HSC/27)
NC0160E2, Annex G/17 (HSC/24 – Report)	NC0430E2, Annex H/5 (HSC/27 – Report)
NC0225E1 (HSC/25)	NC0470E1 (HSC/28)
NC0250E2, Annex IJ/14 (HSC/25 – Report)	NC0502E1 (HSC/28)
NC0301E1 (HSC/26)	NC0510E2, Annex G/8 (HSC/28 – Report)
NC0340E2, Annex G/18 (HSC/26 – Report)	NC0549E1 (HSC/29)

I. BACKGROUND

1. On 1 March 2002, the Secretariat received the following comments from the Japanese Customs Administration (the paragraphs have been re-numbered to facilitate the reading of this document, compared to the original submission).

II. NOTE FROM JAPAN

2. “Flash electronic storage cards (“the cards”) (see Annex to this document) are “solid-state non-volatile data storage devices”, consisting of printed circuit boards onto which are mounted one or more flash memories (and as for certain types, microcontrollers) in the form of integrated circuits, and passive elements, such as capacitors and resistors, with a connecting sockets. As the eighth paragraph of Doc. NC0470E1 states, “the function of the cards is to store data in electronic format, which is received from an external source to which the card can be connected”, the cards have the following two functions,
 - (i) to record data of external sources such as navigation and global positioning systems, data collection terminals, portable scanners, medical monitoring appliances, audio recording apparatus, personal communicators (“pagers”), mobile phones and digital cameras,

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File No. 2804

- (ii) to store the recorded data

Possible headings for the cards

- 3. Possible headings for the cards are : heading 84.71, heading 85.43, heading 85.48, and heading 85.23 (and for recorded media, heading 85.24).

Heading 84.71

- 4. The cards are used with various appliances and not solely or principally with an ADP system. Furthermore, the cards do not meet the condition of Note 5 (B) (a) to Chapter 84. Therefore, we believe the cards cannot be classified under heading 84.71.

Headings 85.43 or 85.48

- 5. We believe the cards should not be classified under heading 85.43 or 85.48 because headings 85.43 and 85.48 cover electrical apparatus “not specified or included elsewhere in this Chapter”. This must mean that these headings are applied when there is no appropriate heading in Chapter 85. If there is any appropriate heading in Chapter 85 under which the cards are classifiable, neither heading 85.43 nor 85.48 should be applied to them.

Heading 85.23

- 6. Heading 85.23 is the heading for “prepared unrecorded media for sound recording or similar recording of other phenomena”. The cards have two functions, that is, to record data of external sources and to store the recorded data. These two functions are the very functions of recording media classified under heading 85.23, and therefore, the cards meet the provision of heading 85.23 (and for recorded media, heading 85.24). Floppy disks and magnetic tapes are classified under heading 85.23 on the ground that they have functions as recording media, that is, recording and storing data. Therefore, the cards should be classified under heading 85.23 for the same exact reason.
- 7. Except for the goods described in the exclusion note of the Explanatory Note to heading 85.23, i.e., articles intended for use as media for recording sound or other phenomena but not yet prepared as such and sensitised film for photoelectric recording, heading 85.23 does not exclude any goods by its materials, structure, method of manufacture, nor contents. This heading provides only examples. There is no indication of a condition to limit the scope of the recording media classified under this heading, either from the wording of the provision itself, nor from the Note. Therefore, such a condition for heading 85.23 which requires to have undergone a “physical treatment” has no ground in the HS provision.
- 8. Incidentally, we believe the word “prepared” indicates “treated by a special process for giving an essential character as media” because heading 85.23 states “articles not yet prepared as media ... are classified in their respective headings”. For instance, floppy disks are treated by the process of coating with magnetic powder. Therefore, all goods treated by a special process for recording and storing can be regarded as “prepared” media. Even if the conditions stated in the WCO paper are applied to the cards, they can meet the conditions because of the above reason.
- 9. Furthermore, the cards should be classified under heading 85.23 (and for recorded media, heading 85.24) for the following reason.

- (i) Regarding the “physical treatment” condition, floppy disks or magnetic tapes seem to meet this condition by regarding the process of coating with magnetic powder as a “physical treatment”. The cards are manufactured by mounting memory elements, i.e., flash memories (FLASH EEPROM) onto their printed circuit boards, and such process for manufacturing flash memories or mounting them onto printed circuit boards are no different from the processes for manufacturing floppy disks or magnetic tapes from the point of “physical treatment”. Therefore, the cards can be regarded as “prepared” recorded media which underwent a “physical treatment”.
- (ii) Regarding the “physical means” condition, floppy disks or magnetic tapes seem to meet this condition by regarding the way of their recording. That is, recording by the electronic action resulting to change physical states, e.g., magnetization, as “physical means”. The cards record data through an electronic action resulting to change the physical status in the memory elements consisting of transistor, and there is no difference between the way of recording of the cards and that of floppy disks or magnetic tapes from the point of “physical means”. Therefore, the data on the cards can be regarded as being recorded by “physical means”.
10. “Smart cards” are classified under heading 85.42 (having an electronic integrated circuit) or heading 85.43 (having two or more electronic integrated circuits) under the existing HS provisions. Although the cards and the “smart cards” are similar where both are in the form of cards having embedded in them one or more integrated circuits in form of chips, the cards completely differ from the “smart cards” in their structure and functions. The “smart cards” are capable of rewriting recorded data by a CPU or other similar chips embedded in them. These chips can manage the function as CPU and give the “smart cards” a processing function. That is, the “smart cards” are to be considered as having more functions than the function of recording media classified under heading 85.23. Therefore, the “smart card” cannot be considered as mere recording media. On the other hand, the cards cannot rewrite recorded data by itself. Though, in addition to flash memories, they have a control unit for allocation of recorded data, the function of the controller is a mere supplement to the function of recording and storing. In this point, the cards are considered as recording media themselves, while the “smart cards” are not.

Conclusion

11. The cards should be classified under heading 85.23 (and for recorded media, heading 85.24) under the existing HS provisions.”

III. SECRETARIAT COMMENTS

12. The Secretariat would like to clarify that the function of the cards was described in paragraph 8 of Doc. NC0470E1 as “storing of data”, and not as “recording and storing of data” (emphasis added), as suggested in the Japanese Note (see paragraph 2 above). Having said this, the Secretariat would simply like to refer to its comments in paragraphs 7 to 13 of Doc. NC0549E1.

IV. CONCLUSION

13. The Committee is invited to take into account the comments of Japan, set out in paragraphs 2 to 10 above, when examining the classification of articles known as “flash electronic storage cards”.

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