



BILLING CODE: 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-028]

Hydrofluorocarbon Blends from the People's Republic of China: Preliminary Scope Ruling on Gujarat Fluorochemicals Ltd.'s R-410A Blend; Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order for Indian Blends Containing Chinese Components

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that certain hydrofluorocarbon (HFC) blends, containing HFC components from India and the People's Republic of China (China), that are blended in India prior to importation into the United States, are circumventing the antidumping duty (AD) order on HFC blends from China. As a result, imports of HFC blends, containing HFC components from India and China, that are blended in India prior to importation into the United States, will be subject to suspension of liquidation effective June 18, 2019. We invite interested parties to comment on this preliminary determination.

DATES: Applicable [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Jacob Garten or Benjamin Lubberda, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-3342 or (202) 482-2185, respectively.

SUPPLEMENTAL INFORMATION:

Background

On June 8, 2019, Commerce initiated an anti-circumvention inquiry to determine whether certain HFC blends, containing HFC components from India and China, that are blended in India prior to importation into the United States,¹ are circumventing the AD order on HFC blends from China.² Additionally, in the *Notice of Initiation*, we stated that, as part of this anti-circumvention inquiry, we would also address the scope inquiry filed by Gujarat Fluorochemicals Ltd. (GFL).³ As part of this preliminary determination, we also have made a preliminary scope finding. For a complete description of the events that followed the initiation of this inquiry, *see* the Preliminary Decision Memorandum.⁴

Scope of the Order

The products subject to the *Order* are HFC blends. HFC blends covered by the scope are R-404A, R-407A, R-407C, R-410A, and R-507A/R-507.⁵ HFC blends covered by the scope of the *Order* are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings 3824.78.0020 and 3824.78.0050. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive.

¹ *See Hydrofluorocarbon Blends from the People's Republic of China: Initiation of Anti-Circumvention Inquiry of Antidumping Duty Order; Third-Country Blends Containing Chinese Components*, 84 FR 28269 (June 18, 2019) (*Notice of Initiation*).

² *See Hydrofluorocarbon Blends from the People's Republic of China: Antidumping Duty Order*, 81 FR 55436 (August 19, 2016) (*Order*).

³ *See Notice of Initiation*, 84 FR at 28272.

⁴ *See* Memorandum, "Preliminary Decision Memorandum for Scope Ruling and Anti-Circumvention Inquiry of the Antidumping Duty Order on Hydrofluorocarbon Blends from the People's Republic of China: Indian Blends," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

⁵ For a complete description of the scope of the *Order*, *see* Preliminary Decision Memorandum.

Merchandise Subject to the Anti-Circumvention Inquiry

This anti-circumvention inquiry covers HFC blends R-404A, R-407A, R-407C, R-410A, and R-507A/R-507 produced in India using one or more HFC components of Chinese origin.⁶

Methodology

Commerce made this preliminary finding of circumvention in accordance with section 781(b) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.225(h). We relied on information placed on the record by the American HFC Coalition (the petitioners) and information placed on the record by GFL, Refex Industries Limited, and SRF Limited. Further, because Coolmate Refrigerant Pvt. Ltd. did not cooperate to the best of its ability in responding to Commerce's requests for information, we have based parts of our preliminary determination on the facts available, with adverse inferences, pursuant to sections 776(a) and (b) of the Act.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov>. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/>. The signed and electronic versions of the Preliminary Decision Memorandum are identical in content. A list of the topics discussed in the Preliminary Decision Memorandum is attached at Appendix I to this notice.

⁶ Based upon questionnaire responses provided by the Indian producer/exporters in this inquiry, we have preliminarily determined to cover all of the HFC blends listed under the scope of the *Order*, as we stated we may cover in the *Notice of Initiation*, 84 FR at 28270.

Preliminary Scope Ruling and Affirmative Preliminary Determination of Circumvention

As detailed in the Preliminary Decision Memorandum, we preliminarily determine, pursuant to 19 CFR 351.225(k), that because the scope only covers HFC blends manufactured in China, and HFC blends manufactured in third countries are not covered, that R-410A manufactured from Chinese and Indian HFC components is not covered by the plain language of the scope of the *Order* within the meaning of 19 CFR 351.225(k). Accordingly, because R-410A manufactured from Chinese and Indian HFC components is neither included in the *Order* nor specifically excluded from the *Order*, a circumvention analysis and determination is warranted for R-410A blends under 19 CFR 351.225(h).

Further, as detailed in the Preliminary Decision Memorandum, we have examined HFC blends R-404A, R-407A, R-407C, R-410A, and R-507A/R-507 produced and/or exported from India which consist of Chinese and non-Chinese HFC components and we preliminarily determine, pursuant to section 781(b) of the Act, that imports of such HFC blends, composed of Chinese HFC components and non-Chinese HFC components, blended in India prior to importation into the United States, are circumventing the *Order*.

Suspension of Liquidation

In accordance with section 19 CFR 351.225(l)(2), Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of HFC blends R-404A, R-407A, R-407C, R-410A, and R-507A/R-507 produced (*i.e.*, assembled or completed) using one or more Chinese-origin HFC components in India (as defined in the Merchandise Subject to the Anti-Circumvention Inquiry section above) that are entered, or withdrawn from warehouse, for consumption on or after June 18, 2019, the date of initiation of this anti-circumvention inquiry.⁷

⁷ See *Notice of Initiation*.

CBP shall require cash deposits in accordance with the rate established for the China-wide entity, *i.e.*, 216.37 percent,⁸ for entries of such merchandise produced in India. The suspension of liquidation instructions will remain in effect until further notice.

HFC blends produced in India entirely from HFC components that are not of Chinese origin are not subject to this inquiry. Therefore, cash deposits are not required for such merchandise. However, HFC blends R-404A, R-407A, R-407C, R-410A, and R-507A/R-507 produced in India, in whole or in part, from R-32, R-125, R-134a, and/or R-143a from China are subject to the AD order on HFC blends from China. If an importer imports HFC blends R-404A, R-407A, R-407C, R-410A, or R-507A/R-507 from India and claims that the HFC blend was produced from non-Chinese HFC components, in order not to be subject to cash deposit requirements, the importer and exporter are required to meet the certification and documentation requirements described in Appendix II. As explained in Appendix II, entries of shipments made within one year after the exporter and/or producer (as relevant) purchases Chinese blends or components are not eligible for the certification process. Exporters of HFC blends produced in India from non-Chinese-origin HFC components must prepare and maintain an Exporter Certification and documentation supporting the Exporter Certification (*see* Appendix IV). In addition, importers of such HFC components must prepare and maintain an Importer Certification (*see* Appendix III) as well as documentation supporting the Importer Certification. In addition to the Importer Certification, the importer must also maintain a copy of the Exporter Certification (*see* Appendix IV) and relevant supporting documentation from its exporter of HFC blends produced from non-Chinese-origin HFC components.

⁸ *See Order* at 81 FR 55438.

Public Comment

Interested parties may submit case briefs to Commerce no later than 14 days after the date of publication of this notice.⁹ Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than seven days after the time limit for filing case briefs.¹⁰ Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.¹¹ Case and rebuttal briefs should be filed electronically via ACCESS.¹² Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until May 19, 2020, unless extended.¹³

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically and received successfully in its entirety via ACCESS by 5:00 p.m. Eastern Time within 14 days after the date of publication of this notice.¹⁴ Hearing requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the date and time for the hearing to be held at the U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230.¹⁵

⁹ Commerce is exercising its discretion, under 19 CFR 351.309(c)(1)(ii), to alter the time limit for filing of case briefs.

¹⁰ Commerce is exercising its discretion, under 19 CFR 351.309(d)(1), to alter the time limit for filing of rebuttal briefs.

¹¹ See 19 CFR 351.309(c)(2) and (d)(2).

¹² See 19 CFR 351.303.

¹³ See *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19*, 85 FR 17006 (March 26, 2020).

¹⁴ See 19 CFR 351.310(c).

¹⁵ *Id.*

Postponement of Final Determination

Section 781(f) of the Act provides that, to the maximum extent practicable, Commerce shall make its anticircumvention determinations within 300 days from the date of initiation of the inquiry. We determine that it is not practicable to make a final determination in this anti-circumvention inquiry by the current deadline of April 13, 2020, because Commerce will require additional time to notify the U.S. International Trade Commission (ITC), and to review and analyze case and rebuttal briefs. Therefore, we are extending the time period for issuing the final determination in this inquiry by 100 days, to July 22, 2020.

Notification to the ITC

Consistent with section 781(e) of the Act, Commerce is notifying the ITC of this affirmative preliminary determination to include the merchandise subject to this inquiry within the AD order on HFC blends from China. Pursuant to section 781(e) of the Act, the ITC may request consultations concerning Commerce's proposed inclusion of the subject merchandise. These consultations must be concluded within 15 days after the date of the request. If, after consultations, the ITC believes that a significant injury issue is presented by the proposed inclusion, it will have 60 days to provide written advice to Commerce.

Notification to Interested Parties

This notice is published in accordance with section 781(b) of the Act and 19 CFR 351.225(h).

Dated: April 3, 2020.

Christian Marsh,
Deputy Assistant Secretary
for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Merchandise Subject to the Scope and Anti-Circumvention Inquiry
- IV. Scope of the Order
- V. Statutory and Regulatory Framework for Scope Inquiry
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- VII. Preliminary Scope Determination
- VIII. Period of Anti-Circumvention Inquiry
- IX. Surrogate Country and Valuation Methodology for Inputs from China
- X. Statutory and Regulatory Framework for Anti-Circumvention Inquiry
- XI. Use of Facts Available with an Adverse Inference
- XII. Allegations of Circumvention as Identified in the Initiation of the Inquiry
- XIII. Anti-Circumvention Analysis
- XIV. Summary of Statutory Analysis
- XV. Country-Wide Determination
- XVI. Certification for Not Using Chinese-Origin HFC Components or Chinese-Origin HFC Blends
- XVII. Recommendation

Appendix II

Certification Requirements

If an importer imports HFC blends (*i.e.*, R-404A, R-407A, R-407C, R-410A, and R-507A/R-507) from India and claims that the HFC blends were not produced from Chinese components (*i.e.*, Chinese origin R-32, R-125, R-134a, and/or R-143a), the importer is required to complete and maintain the importer certification attached hereto as Appendix III and all supporting documentation. Where the importer uses a broker to facilitate the entry process, it should obtain the entry number from the broker. Agents of the importer, such as brokers, however, are not permitted to make this certification on behalf of the importer.

The exporter is required to complete and maintain the exporter certification, attached as Appendix IV, and is further required to provide the importer a copy of that certification and all supporting documentation. As explained below, shipments made within one year of purchase of Chinese blends or components are not eligible for the certification process.

For shipments and/or entries on or after June 18, 2019, through April 30, 2020, for which certifications are required, importers and exporters should complete the required certification, as soon as practicable but not later than 30 days after the publication of this notice in the *Federal Register*. Accordingly, where appropriate, the relevant bullet in the certification should be edited to reflect that the certification was completed within the time frame specified above. For example, the bullet in the importer certification that reads: “This certification was completed at or prior to the time of Entry,” could be edited as follows: “The imports referenced herein entered before May 1, 2020. This certification was completed on mm/dd/yyyy, within 30 days of the *Federal Register* notice publication of the preliminary determination of circumvention.” Similarly, the bullet in the exporter certification that reads, “This certification was completed at

or prior to the time of shipment,” could be edited as follows: “The shipments/products referenced herein shipped before May 1, 2020. This certification was completed on mm/dd/yyyy, within 30 days of the *Federal Register* notice publication of the preliminary determination of circumvention.” For such entries/shipments, importers and exporters each have the option to complete a blanket certification covering multiple entries/shipments, individual certifications for each entry/shipment, or a combination thereof.

For shipments and/or entries on or after May 1, 2020, for which certifications are required, importers should complete the required certification at or prior to the date of entry and exporters should complete the required certification and provide it to the importer at or prior to the date of shipment.

The importer and Indian exporter are also required to maintain sufficient documentation supporting their certifications. The importer will not be required to submit the certifications or supporting documentation to U.S. Customs and Border Protection (CBP) as part of the entry process at this time. However, the importer and the exporter will be required to present the certifications and supporting documentation, to Commerce and/or CBP, as applicable, upon request by the respective agency. Additionally, the claims made in the certifications and any supporting documentation are subject to verification by Commerce and/or CBP. The importer and exporter are required to maintain the certifications (the importer must retain both certifications) and supporting documentation for the later of (1) a period of five years from the date of entry or (2) a period of three years after the conclusion of any litigation in United States courts regarding such entries.

In the situation where no certification is provided for an entry, and the AD China HFC blends order potentially applies to that entry, Commerce intends to instruct CBP to suspend the

entry and collect cash deposits at the AD rate established for the China-wide entity (216.37 percent). Further, due to the fungible nature of HFC components and HFC blends, their relatively long shelf-lives, and the manner in which HFC components and blends are handled and mixed, the U.S. importer and the Indian exporter must both certify that the Indian producer/exporter has not purchased Chinese-origin HFC components or Chinese-origin HFC blends during the 12 months prior to shipment in order to be eligible for entry of Indian-origin HFC blends (*i.e.*, R-404A, R-407A, R-407C, R-410A, and R-507A/R-507) without regard to dumping duties. Any purchases of Chinese-origin HFC components (*i.e.*, Chinese origin R-32, R-125, R-134a, and/or R-143a) or Chinese-origin HFC blends (*i.e.*, R-404A, R-407A, R-407C, R-410A, and/or R-507A/R-507), by the Indian exporter and/or producer (as relevant) during the 12 months prior to shipment will render the U.S. imports of the Indian blend subject to the Chinese order on HFC blends due to the possibility that the Indian blend may consist, in whole or in part, of Chinese-origin HFC components and/or Chinese HFC blends.

Appendix III

Importer Certification

I hereby certify that:

- My name is {IMPORTING COMPANY OFFICIAL’S NAME} and I am an official of {NAME OF IMPORTING COMPANY}, located at {ADDRESS of IMPORTING COMPANY};
- I have direct personal knowledge of the facts regarding the importation into the Customs territory of the United States of the hydrofluorocarbon (HFC) blends (*i.e.*, R-404A, R-407A, R-407C, R-410A, and/or R-507A/R-507) produced in India that entered under the entry number(s) identified below, and which are covered by this certification. “Direct personal knowledge” refers to facts the certifying party is expected to have in its own records. For example, the importer should have direct personal knowledge of the importation of the product (*e.g.*, the name of the exporter) in its records.
- The HFC blends covered by this certification were exported by {NAME OF EXPORTING COMPANY}, located at {ADDRESS OF EXPORTING COMPANY}.
If the importer is acting on behalf of the first U.S. customer, complete this paragraph:
- The HFC blends covered by this certification were imported by {NAME OF IMPORTING COMPANY} on behalf of {NAME OF U.S. CUSTOMER}, located at {ADDRESS OF U.S. CUSTOMER}.
- The HFC blends covered by this certification were shipped to {NAME OF PARTY TO WHOM MERCHANDISE WAS FIRST SHIPPED IN THE UNITED STATES}, located at {ADDRESS OF SHIPMENT}.
- I have personal knowledge of the facts regarding the production of the imported products covered by this certification. “Personal knowledge” includes facts obtained from another party, (*e.g.*, correspondence received by the importer (or exporter) from the producer regarding the source of the inputs used to produce the imported products);
- The HFC blends covered by this certification were produced by {NAME OF PRODUCING COMPANY}, located at {ADDRESS OF PRODUCING COMPANY}; *for each additional company, repeat:* {NAME OF PRODUCING COMPANY}, located at {ADDRESS OF PRODUCING COMPANY}.
- The HFC blends covered by this certification do not contain HFC components (*i.e.*, R-32, R-125, R-134a, and/or R-143a) produced in the People’s Republic of China (China);
- The Indian exporter (and producer, if two different companies) have not purchased Chinese HFC blends (*i.e.*, R-404A, R-407A, R-407C, R-410A, and/or R-507A/R-507) or Chinese HFC components (*i.e.*, R-32, R-125, R-134a, and/or R-143a) during the 12 months prior to shipment of the aforementioned HFC blend(s) to the United States;
- This certification applies to the following entries:

Producer	Entry Summary No.	Entry Summary Line Item No.	Invoice No.	Invoice Line Item No.

- I understand that {NAME OF IMPORTING COMPANY} is required to maintain a copy of this certification and sufficient documentation supporting this certification (*i.e.*, documents

maintained in the normal course of business, or documents obtained by the certifying party, for example, product data sheets, chemical testing specifications, productions records, invoices, *etc.etc.*) for the later of (1) a period of five years from the date of entry or (2) a period of three years after the conclusion of any litigation in the United States courts regarding such entries;

- I understand that {NAME OF IMPORTING COMPANY} is required to provide this certification and supporting records, upon request, to U.S. Customs and Border Protection (CBP) and/or the Department of Commerce (Commerce);
- I understand that {NAME OF IMPORTING COMPANY} is required to maintain a copy of the exporter's certification (attesting to the production and/or export of the imported merchandise identified above), and any supporting records provided by the exporter to the importer, for the later of (1) a period of five years from the date of entry or (2) a period of three years after the conclusion of any litigation in United States courts regarding such entries;
- I understand that {NAME OF IMPORTING COMPANY} is required to maintain, and upon request, provide a copy of the exporter's certification and any supporting records provided by the exporter to the importer, to CBP and/or Commerce;
- I understand that the claims made herein, and the substantiating documentation, are subject to verification by CBP and/or Commerce;
- I understand that failure to maintain the required certifications, and/or failure to substantiate the claims made herein, and/or failure to allow CBP and/or Commerce to verify the claims made herein, may result in a *de facto* determination that all entries to which this certification applies are within the scope of the antidumping duty (AD) order on HFC blends from China. I understand that such a finding will result in:
 - Suspension of liquidation of all unliquidated entries (and entries for which liquidation has not become final) for which these requirements were not met;
 - The requirement that the importer post applicable AD cash deposits equal to the rates as determined by Commerce; and
 - The revocation of {NAME OF IMPORTING COMPANY}'s privilege to certify future imports of HFC blends from India as not manufactured using HFC blends and/or components from China.
- I understand that agents of the importer, such as brokers, are not permitted to make this certification;
- This certification was completed at or prior to the time of Entry; and
- I am aware that U.S. law (including, but not limited to, 18 U.S.C. §1001) imposes criminal sanctions on individuals who knowingly and willfully make materially false statements to the U.S. government.

Signature

NAME OF COMPANY OFFICIAL

TITLE

DATE

Appendix IV

Exporter Certification

I hereby certify that:

- My name is {COMPANY OFFICIAL'S NAME} and I am an official of {NAME OF EXPORTING COMPANY}, located at {ADDRESS OF EXPORTING COMPANY};
- I have direct personal knowledge of the facts regarding the production and exportation of the hydrofluorocarbon (HFC) blends (*i.e.*, R-404A, R-407A, R-407C, R-410A, and/or R-507A/R-507) identified below. "Direct personal knowledge" refers to facts the certifying party is expected to have in its own books and records. For example, an exporter should have direct personal knowledge of the producer's identity and location.
- The HFC blends, and the individual components thereof, covered this certification were produced by {NAME OF PRODUCING COMPANY}, located at {ADDRESS OF PRODUCING COMPANY}; *for each additional company, repeat:* {NAME OF PRODUCING COMPANY}, located at {ADDRESS OF PRODUCING COMPANY}.
- The HFC blends produced in India do not contain HFC components (*i.e.*, R-32, R-125, R-134a, and/or R-143a) produced in the People's Republic of China (China);
- The Indian exporter (and producer, if two different companies) have not purchased Chinese HFC blends (*i.e.*, R-404A, R-407A, R-407C, R-410A, and/or R-507A/R-507) or Chinese HFC components (*i.e.*, R-32, R-125, R-134a, and/or R-143a) during the 12 months prior to shipment of the aforementioned HFC blend(s) to the United States;
- This certification applies to the following sales:

Producer	Invoice No.	Invoice Line Item No.

- The HFC blends covered by this certification were sold to {NAME OF U.S. CUSTOMER}, located at {ADDRESS OF U.S. CUSTOMER}.
- The HFC blends covered by this certification were shipped to {NAME OF PARTY TO WHOM MERCHANDISE WAS SHIPPED}, located at {ADDRESS OF SHIPMENT}.
- I understand that {NAME OF EXPORTING COMPANY} is required to maintain a copy of this certification and sufficient documentation supporting this certification (*i.e.*, documents maintained in the normal course of business, or documents obtained by the certifying party, for example, product data sheets, chemical testing specifications, productions records, invoices, *etc.*) for the later of (1) a period of five years from the date of entry or (2) a period of three years after the conclusion of any litigation in the United States courts regarding such entries;
- I understand that {NAME OF EXPORTING COMPANY} must provide this Exporter Certification to the U.S. importer by the time of shipment;
- I understand that {NAME OF EXPORTING COMPANY} is required to provide a copy of this certification and supporting records, upon request, to U.S. Customs and Border Protection (CBP) and/or the Department of Commerce (Commerce);
- I understand that the claims made herein, and the substantiating documentation are subject to verification by CBP and/or Commerce;

- I understand that failure to maintain the required certifications, and/or failure to substantiate the claims made herein, and/or failure to allow CBP and/or Commerce to verify the claims made herein, may result in a *de facto* determination that all sales to which this certification applies are within the scope of the antidumping duty (AD) order on HFC blends from China. I understand that such finding will result in:
 - Suspension of all unliquidated entries (and entries for which liquidation has not become final) for which these requirements were not met;
 - The requirement that the importer post applicable AD cash deposits equal to the rates as determined by Commerce; and
 - The revocation of {NAME OF EXPORTING COMPANY}'s privilege to certify future exports of HFC blends from India as not manufactured using HFC blends and/or components from China.
- This certification was completed at or prior to the time of shipment; and
- I am aware that U.S. law (including, but not limited to, 18 U.S.C. §1001) imposes criminal sanctions on individuals who knowingly and willfully make materially false statements to the U.S. government.

Signature

NAME OF COMPANY OFFICIAL

TITLE

DATE

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