



BILLING CODE: 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-028]

Hydrofluorocarbon Blends from the People's Republic of China: Final Scope Ruling on Unpatented R-421A; Affirmative Final Determination of Circumvention of the Antidumping Duty Order for Unpatented R-421A

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

SUMMARY: The Department of Commerce (Commerce) determines that imports of unpatented R-421A from the People's Republic of China (China) are circumventing the antidumping duty (AD) order on HFC blends from China.

DATES: Applicable [insert date of publication in the *Federal Register*].

FOR FURTHER INFORMATION CONTACT: Manuel Rey or Benjamin Luberdá, 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) 482-5518 or (202) 482-2185, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 2020, Commerce published the *Preliminary Determination*¹ of circumvention of the AD order on HFC blends from China with respect to unpatented R-421A

¹ See *Hydrofluorocarbon Blends from the People's Republic of China: Scope Ruling on Unpatented R-421A; Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order for Unpatented R-421A; and Extension of Time Limit for Final Determination*, 85 FR 12511 (March 3, 2020) (*Preliminary Determination*).

which is imported from China and further processed into HFC blends subject to the *Order*.² We invited parties to comment on the *Preliminary Determination*, and received case and rebuttal briefs from the HFC Coalition (the petitioners), BMP,³ and Choice Refrigerants (Choice).

A summary of the events that occurred since Commerce published the *Preliminary Determination*, as well as a full discussion of the issues raised by the parties for this final determination are discussed in the Issues and Decision Memorandum.⁴ The Issues and 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 Issues and Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/>. The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Commerce conducted this anti-circumvention inquiry in accordance with section 781(a) of the Tariff Act of 1930, as amended (the Act).

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.⁵ HFC blends covered by the scope of the *Order* are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS)

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

³ LM Supply Inc., Cool Master USA, LLC, and their affiliated blenders, BMP USA Inc. and IGas Inc. (collectively, BMP).

⁴ See Memorandum, "Final Decision Memorandum for Scope Ruling and Anti-Circumvention Inquiry of the Antidumping Duty Order on Hydrofluorocarbon Blends from the People's Republic of China; Unpatented R-421A," dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

⁵ For a complete description of the scope of the order, see Issues and Decision Memorandum.

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.

Merchandise Subject to the Anti-Circumvention Inquiry

This anti-circumvention inquiry covers imports of unpatented R-421A, a blend of HFC components R-125 (also known as Pentafluoroethane) and R-134a (also known as 1,1,1,2-Tetrafluoroethane), from China that are further processed in the United States to create an HFC blend that would be subject to the *Order*.⁶

Final Scope Ruling and Final Determination

In the *Preliminary Determination* we determined, pursuant to 19 CFR 351.225(k), that because the scope only covers five HFC blends, and unpatented R-421A is not one of the five blends, that consequently, unpatented R-421A is not covered by the scope of the *Order* within the meaning of 19 CFR 351.225(k). Accordingly, because unpatented R-421A is not specifically excluded from the *Order*, a circumvention analysis and determination is warranted for the unpatented R-421A blends, under 19 CFR 351.225(g). Our final determination remains unchanged from the *Preliminary Determination*.

In the *Preliminary Determination*, we determined that imports of unpatented R-421A from China are circumventing the *Order*. Specifically, we determined that imports of unpatented R-421A from China are being finished and sold in the United States pursuant to the statutory and regulatory criteria laid out in section 781(a) of the Act and 19 CFR 351.225(g). We based our *Preliminary Determination* upon record evidence submitted by the petitioners, BMP and Choice.

⁶ The scope of the order explicitly excludes Choice® R-421A (also referred to as “patented R-421A”). The scope also only covers five HFC blends; R-421A is not one of the covered blends. Patented R-421A is a blend of 58 percent R-125, and 42 percent R-134a, with a lubricant added to it. The patent holder for R-421A is Choice.

For a complete discussion of the evidence which led to our preliminary determination, *see* the *Preliminary Determination* and accompanying Preliminary Decision Memorandum.

All issues raised in the case and rebuttal briefs by parties to this inquiry are addressed in the Issues and Decision Memorandum. A list of the issues raised is attached to this notice as Appendix I. Our final determination remains unchanged from the *Preliminary Determination*. Accordingly, we determine, pursuant to section 781(a) of the Act and 19 CFR 351.225(g), that imports of unpatented R-421A from China are circumventing the *Order*.

Continuation of Suspension of Liquidation

As a result of this determination, and consistent with 19 CFR 351.225(l)(3), we intend to direct CBP to continue to suspend liquidation and to require a cash deposit of estimated antidumping duties at the applicable rate on unliquidated entries of merchandise subject to this inquiry 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

Patented Choice® R-421A produced in China is not subject to this inquiry. Therefore, cash deposits are not required for such merchandise. However, as a result of this anti-circumvention proceeding, unpatented R-421A produced in China is subject to the AD order on HFC blends from China. Accordingly, in order to prevent evasion, if an importer imports patented Choice® R-421A from China, 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. Exporters of patented Choice® R-421A produced in China must prepare and maintain an Exporter Certification and documentation supporting the Exporter Certification (*see* Appendix IV). In addition, importers of such patented Choice® R-421A must

⁷ *See Hydrofluorocarbon Blends from the People's Republic of China: Initiation of Anti-Circumvention Inquiry of Antidumping Duty Order; Unpatented R-421A*, 84 FR 28281 (June 18, 2019) (*Notice of Initiation*).

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 patented Choice® R-421A.

Notification to CBP of Covered Merchandise Referral

In our *Notice of Initiation*, we stated that, as part of this anti-circumvention inquiry, we would also address a covered merchandise referral from U.S. Customs and Border Protection (CBP).⁸ In the *Covered Merchandise Referral*, we stated that, based upon allegations by Choice, CBP requested that Commerce issue a determination as to whether certain merchandise imported by LM Supply, Inc. (LM Supply) is subject to the AD order on HFCs from China. Specifically, CBP asked Commerce to clarify: (1) If the scope exclusion for Choice® R-421A is limited to only merchandise that is licensed by the rights holder or does it apply to any HFC blends that satisfy the terms of the patents, and (2) if the scope exclusion is limited to only that merchandise that also carries the trademarks indicated in the scope exclusion.

Therefore, we intend to inform CBP of our findings in this inquiry: (1) that the scope only covers five HFCs blends (*i.e.*, R-404A, R-407A, R-407C, R-410A, and R-507A) and that unpatented R-421A is not one of those five blends; (2) based upon Commerce's anti-circumvention proceeding, unpatented R-421A, is circumventing the order on HFC blends from China, retroactive to June 18, 2019; and (3) that the exclusion for patented Choice® R-421A (applicable on or after June 18, 2019) is limited to only that merchandise which carries the trademarks indicated in the scope exclusion, and which is licensed by the rights holder, and for

⁸ *See Hydrofluorocarbon Blends from the People's Republic of China: Notice of Covered Merchandise Referral*, 83 FR 9277 (March 5, 2018) (*Covered Merchandise Referral*).

which the exporter and importer have prepared certifications, as explained in Appendix II of this notice.

Notification Regarding Administrative Protective Order

This notice also serves as a reminder to parties subject to the administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 781(a) of the Act, and 19 CFR 351.225(g).

Dated: May 28, 2020.

Joseph Laroski,
Deputy Assistant Secretary
for Policy and Negotiations.

APPENDIX I

List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Merchandise Subject to the Scope and Anti-Circumvention Inquiry
- IV. Scope of the Order
- V. Discussion of the Issues
 - Comment 1: Preliminary Scope Ruling
 - Comment 2: Whether the Process of Assembly or Completion of R-421A into HFC Blends in the United States is Minor and Insignificant
 - Comment 3: Value Analysis
 - Comment 4: Use of Surrogate Values to Value Material Inputs
 - Comment 5: Certification Requirements
- VI. Recommendation

APPENDIX II

Certification Requirements

In order to import R-421A from China and declare it as patented and eligible for the exclusion specified in the scope for Choice® R-421A, and hence free of AD duties, the importer and the exporter must complete and maintain certifications, along with proof that the goods are properly patented, and identifying the license agreement authorizing the production of the goods being entered. 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 summary 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.

For shipments and/or entries on or after June 18, 2019 through June 26, 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 Summary,” could be edited as follows: “The imports referenced herein entered before June 27, 2020. This certification was completed on mm/dd/yyyy, within 30 days of the *Federal Register* notice publication of the final 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 June 27, 2020. This certification was completed on mm/dd/yyyy, within 30 days of the *Federal Register* notice publication of the final 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 June 27, 2020, for which certifications are required, importers should complete the required certification at, or prior to, the date of entry summary and exporters should complete the required certification and provide it to the importer at, or prior to, the date of shipment.

The importer and 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 of R-421A, 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 for the exporter, or if none exists, at the rate for the China-wide entity (216.37 percent).

APPENDIX III

Importer Certification

I hereby certify that:

A) My name is {IMPORTING COMPANY OFFICIAL'S NAME} and I am an official of {NAME OF IMPORTING COMPANY}, located at {ADDRESS of IMPORTING COMPANY};

B) I have direct personal knowledge of the facts regarding the importation into the Customs territory of the United States of the hydrofluorocarbon (HFC) blend Choice® R-421A produced in China that entered under the entry summary 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.

C) The HFC blend Choice® R-421A covered by this certification was 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:

D) The HFC blend Choice® R-421A covered by this certification was imported by {NAME OF IMPORTING COMPANY} on behalf of {NAME OF U.S. CUSTOMER}, located at {ADDRESS OF U.S. CUSTOMER}.

E) The HFC blend Choice® R-421A covered by this certification was shipped to {NAME OF PARTY TO WHOM MERCHANDISE WAS FIRST SHIPPED IN THE UNITED STATES}, located at {ADDRESS OF SHIPMENT}.

F) 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).

G) The HFC blend Choice® R-421A covered by this certification was 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}.

H) This certification applies to the following entries:

{Repeat this block as many times as necessary}

Producer:

Entry Summary #:

Entry Summary Line Item #:

Invoice #:

Invoice Line Item #:

I) 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, license agreements, *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;

J) I understand that {NAME OF IMPORTING COMPANY} is required to, upon request, provide proof that the imported goods are properly patented, and identify the license agreement authorizing the production of the goods being entered;

K) 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);

L) 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.

M) 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;

N) I understand that the claims made herein, and the substantiating documentation, are subject to verification by CBP and/or Commerce;

O) 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:

- i) Suspension of liquidation of all unliquidated entries (and entries for which liquidation has not become final) for which these requirements were not met;
- ii) The requirement that the importer post applicable AD cash deposits equal to the rates as determined by Commerce; and
- iii) the revocation of {NAME OF IMPORTING COMPANY}'s privilege to certify future imports of HFC blend R-421A are patented Choice® R-421A.

P) I understand that agents of the importer, such as brokers, are not permitted to make this certification;

Q) This certification was completed at or prior to the time of Entry Summary; and

R) 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 material false statements to the U.S. government.

Signature

NAME OF COMPANY OFFICIAL

TITLE

DATE

APPENDIX IV

Exporter Certification

I hereby certify that:

A) My name is {COMPANY OFFICIAL'S NAME} and I am an official of {NAME OF EXPORTING COMPANY}, located at {ADDRESS OF EXPORTING COMPANY};

B) I am a producer of HFC blend Choice® R-421A and am under a license agreement with RMS of Georgia, LLC to produce Choice® R-421A.

C) I have direct personal knowledge of the facts regarding the production and exportation of the hydrofluorocarbon (HFC) blend Choice® R-421A 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.

D) 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}.

E) This certification applies to the following sales:

{Repeat this block as many times as necessary}

Producer

Invoice No.

Invoice Line Item No.

F) The HFC blend Choice® R-421A covered by this certification was sold to {NAME OF U.S. CUSTOMER}, located at {ADDRESS OF U.S. CUSTOMER}.

G) The HFC blend Choice® R-421A covered by this certification was shipped to {NAME OF PARTY TO WHOM MERCHANDISE WAS SHIPPED}, located at {ADDRESS OF SHIPMENT}.

H) 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, license agreement, 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) I understand that {NAME OF EXPORTING COMPANY} must provide this Exporter Certification to the U.S. importer by the time of shipment;

J) 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);

K) I understand that the claims made herein, and the substantiating documentation are subject to verification by CBP and/or Commerce;

L) 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:

- i) Suspension of all unliquidated entries (and entries for which liquidation has not become final) for which these requirements were not met;
- ii) The requirement that the importer post applicable AD cash deposits equal to the rates as determined by Commerce; and
- iii) the revocation of {NAME OF EXPORTING COMPANY}'s privilege to certify future shipments of HFC blend R-421A are patented Choice® R-421A;

M) This certification was completed at or prior to the time of shipment; and

N) 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 material false statements to the U.S. government.

Signature

NAME OF COMPANY OFFICIAL

TITLE

DATE

[FR Doc. 2020-12004 Filed: 6/3/2020 8:45 am; Publication Date: 6/4/2020]