



DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-028]

Hydrofluorocarbon Blends from the People's Republic of China: Initiation of Circumvention Inquiries on the Antidumping Duty Order

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

SUMMARY: In response to a request from the American HFC Coalition (the petitioner), the U.S. Department of Commerce (Commerce) is initiating four country-wide circumvention inquiries to determine whether: (1) U.S. imports from the People's Republic of China (China) of R-410B, R-407G, and a custom blend, which are further processed in the United States, are circumventing the antidumping duty (AD) order on hydrofluorocarbon (HFC) blends from China; (2) U.S. imports from Malaysia of R-410A and R-407C, which are completed in Malaysia using Chinese components, are circumventing the AD order on HFC blends from China; (3) U.S. imports of R-410B from Turkey, which are completed in Turkey using Chinese components and further processed in the United States, are circumventing the AD order on HFC blends from China; and (4) U.S. imports of R-410A from Turkey, which are completed in Turkey using Chinese components, are circumventing the AD order on HFC blends from China.

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

FOR FURTHER INFORMATION CONTACT: Genevieve Coen or Melissa Porpotage, 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) 482-3251 or (202) 482-1413, respectively.

SUPPLEMENTARY INFORMATION:

[Background](#)

On May 15 and 16, 2023, pursuant to sections 781(a) and 781(b) of the Tariff Act of 1930, as amended, (the Act) and 19 CFR 351.226(c), the American HFC Coalition filed circumvention inquiry requests alleging that HFC blends from China, which are further processed in the United States, and HFC blends completed in Malaysia or Turkey from Chinese components are circumventing the order¹ and, accordingly, should be included within the scope of the *Order*.² On June 9, 2023, we extended the deadline to initiate these circumvention inquiries, in accordance with 19 CFR 351.226(d)(1).³ On June 9, 2023, Commerce issued supplemental questionnaires to the American HFC Coalition.⁴ On June 14, 2023, the American HFC Coalition responded to our supplemental questionnaires.⁵

Scope of the *Order*

The products subject to the *Order* are HFC blends. HFC blends covered by the scope are R-404A, a zeotropic mixture consisting of 52 percent 1,1,1-Trifluoroethane, 44 percent Pentafluoroethane, and 4 percent 1,1,1,2-Tetrafluoroethane; R-407A, a zeotropic mixture of 20 percent Difluoromethane, 40 percent Pentafluoroethane, and 40 percent 1,1,1,2-Tetrafluoroethane; R-407C, a zeotropic mixture of 23 percent Difluoromethane, 25 percent Pentafluoroethane, and 52 percent 1,1,1,2-Tetrafluoroethane; R-410A, a zeotropic mixture of 50 percent Difluoromethane and 50 percent Pentafluoroethane; and R-507A, an azeotropic mixture of 50 percent Pentafluoroethane and 50 percent 1,1,1-Trifluoroethane also known as R-507. The foregoing percentages are nominal percentages by weight. Actual percentages of single

¹ See *Hydrofluorocarbon Blends and Components Thereof from the People's Republic of China: Antidumping Duty Order*, 81 FR 55436 (August 19, 2016) (*Order*).

² See American HFC Coalition's Letters, "Request to Initiate Anti-Circumvention Inquiry with Respect to Imports of R410B, R-407G, and Certain 'Custom' HFC Blends from China," and "Request to Initiate Anti-Circumvention Inquiries with Respect to Imports of R-410A and R-407C Blended in Malaysia," dated May 15, 2023; and "Request to Initiate Anti-Circumvention Inquiries with Respect to Imports of R-410A and R-410B from Turkey Pursuant to Sections 781(a) and (b) of the Act," dated May 16, 2023 (collectively, Inquiry Requests).

³ See Memorandum, "Extension of Time to Determine Whether to Initiate Circumvention Inquiry," dated June 9, 2023.

⁴ See Commerce's Letters, "U.S. Custom Blends Circumvention Inquiry Request Supplemental Questionnaire," "Custom Blends from Malaysia Circumvention Inquiry Request Supplemental Questionnaire," and "Custom Blends from Turkey Circumvention Inquiry Request Supplemental Questionnaire," dated June 9, 2023.

⁵ See American HFC Coalition's Letters, "Response to Circumvention Supplemental Questionnaire – United States," "Response to Circumvention Supplemental Questionnaire – Malaysia," and "Response to Circumvention Supplemental Questionnaire – Turkey," dated June 14, 2023.

component refrigerants by weight may vary by plus or minus two percent points from the nominal percentage identified above.⁶

Any blend that includes an HFC component other than R-32, R-125, R-143a, or R-134a is excluded from the scope of the *Order*.

Excluded from the *Order* are blends of refrigerant chemicals that include products other than HFCs, such as blends including chlorofluorocarbons (CFCs), hydrochlorofluorocarbons (HCFCs), hydrocarbons (HCs), or hydrofluoroolefins (HFOs).

Also excluded from the *Order* are patented HFC blends, including, but not limited to, ISCEON® blends, including MO99™ (R-438A), MO79 (R-422A), MO59 (R-417A), MO49Plus™ (R-437A) and MO29™ (R-4 22D), Genetron® Performax™ LT (R-407F), Choice® R-421A, and Choice® R-421B.

HFC blends covered by the scope of the *Order* are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings 3827.61.0000, 3827.63.0000, 3827.64.0000, 3827.65.0000, 3827.68.0000, 3827.69.0000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive.⁷

Merchandise Subject to the Circumvention Inquiries

(1) One circumvention inquiry covers R-410B, R-407G, and a custom blend of 50 percent R-125 and 50 percent R-134a exported from China that are further processed in the United States into in-scope blends.

⁶ R-404A is sold under various trade names, including Forane® 404A, Genetron® 404A, Solkane® 404A, Klea® 404A, and Suva®404A. R-407A is sold under various trade names, including Forane® 407A, Solkane® 407A, Klea®407A, and Suva®407A. R-407C is sold under various trade names, including Forane® 407C, Genetron® 407C, Solkane® 407C, Klea® 407C and Suva® 407C. R-410A is sold under various trade names, including EcoFluor R410, Forane® 410A, Genetron® R410A and AZ-20, Solkane® 410A, Klea® 410A, Suva® 410A, and Puron®. R-507A is sold under various trade names, including Forane® 507, Solkane® 507, Klea®507, Genetron®AZ-50, and Suva®507. R-32 is sold under various trade names, including Solkane®32, Forane®32, and Klea®32. R-125 is sold under various trade names, including Solkane®125, Klea®125, Genetron®125, and Forane®125. R-143a is sold under various trade names, including Solkane®143a, Genetron®143a, and Forane®125.

⁷ See *Order*.

(2) The second circumvention inquiry covers R-410A and R-407C from Malaysia that are completed in Malaysia using Chinese R-32 and R-125 (for R-410A), and R-32, R-125, and R-134a (for R-407C), and subsequently exported from Malaysia to the United States.

(3) The third circumvention inquiry covers R-410B from Turkey that is completed in Turkey using Chinese R-32 and R-125 and subsequently exported to and further processed in the United States into an in-scope blend.

(4) The fourth circumvention inquiry covers R-410A from Turkey that is completed in Turkey using Chinese R-32 and R-125 and subsequently exported from Turkey to the United States.

Initiation of Circumvention Inquiries

Section 351.226(d) of Commerce's regulations states that if Commerce determines that a request for a circumvention inquiry satisfies the requirements of 19 CFR 351.226(c), then Commerce "will accept the request and initiate a circumvention inquiry." Section 351.226(c)(1) of Commerce's regulations, in turn, requires that each circumvention inquiry request allege "that the elements necessary for a circumvention determination under section 781 of the Act exist" and be "accompanied by information reasonably available to the interested party supporting these allegations." The American HFC Coalition alleged circumvention pursuant to sections 781(a) and 781(b) of the Act (merchandise completed or assembled in the United States and merchandise completed or assembled in other foreign countries, respectively).

Section 781(a)(1) of the Act provides that Commerce may find circumvention of an order when merchandise of the same class or kind subject to the order is completed or assembled in the United States. In conducting a circumvention inquiry, under section 781(a)(1) of the Act, Commerce relies on the following criteria: (A) merchandise sold in the United States is of the same class or kind as any merchandise that is the subject of an AD or countervailing duty (CVD) order; (B) such merchandise sold in the United States is completed or assembled in the United States from parts or components produced in the foreign country with respect to which such

order or finding applies; (C) the process of assembly or completion in the United States is minor or insignificant; and (D) the value of the parts or components referred to in subparagraph (B) is a significant portion of the total value of the merchandise.

In determining whether the process of assembly or completion in the United States is minor or insignificant under section 781(a)(1)(C) of the Act, section 781(a)(2) of the Act directs Commerce to consider: (A) the level of investment in the United States; (B) the level of research and development in the United States; (C) the nature of the production process in the United States; (D) the extent of production facilities in the United States; and (E) whether the value of the processing performed in the United States represents a small proportion of the value of the merchandise sold in the United States. However, no single factor, by itself, controls Commerce's determination of whether the process of assembly or completion in the United States is minor or insignificant.⁸ Accordingly, it is Commerce's practice to evaluate each of these five factors as they exist in the United States, and to reach an affirmative or negative circumvention determination based on the totality of the circumstances of the particular circumvention inquiry.⁹

In addition, section 781(a)(3) of the Act sets forth additional factors to consider in determining whether to include merchandise assembled or completed in the United States within the scope of an AD or CVD order. Specifically, Commerce shall take into account such factors as: (A) the pattern of trade, including sourcing patterns; (B) whether the manufacturer or exporter of the parts or components is affiliated with the person who assembles or completes the merchandise sold in the United States from the parts or components produced in the foreign country with respect to which the order applies; and (C) whether imports into the United States

⁸ See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, Vol. 1 (1994) (SAA), at 893.

⁹ See *Hydrofluorocarbon Blends from the People's Republic of China: Final Negative Scope Ruling on Gujarat Fluorochemicals Ltd.'s R-410A Blend; Affirmative Final Determination of Circumvention of the Antidumping Duty Order by Indian Blends Containing CCC Components*, 85 FR 61930 (October 1, 2020), and accompanying Issues and Decision Memorandum (IDM), at 20 (specifying same in the context of a section 781(b) inquiry).

of the parts or components products in such foreign country have increased after the initiation of the investigation which resulted in the issuance of such order.

Section 781(b)(1) of the Act provides that Commerce may find circumvention of an order when merchandise of the same class or kind subject to the order is completed or assembled in a foreign country other than the country to which the order applies. In conducting a circumvention inquiry, under section 781(b)(1) of the Act, Commerce relies on the following criteria: (A) merchandise imported into the United States is of the same class or kind as any merchandise produced in a foreign country that is the subject of an AD or CVD order; (B) before importation into the United States, such imported merchandise is completed or assembled in another foreign country from merchandise which is subject to the order or is produced in the foreign country that is subject to the order; (C) the process of assembly or completion in the foreign country referred to in section (B) is minor or insignificant; (D) the value of the merchandise produced in the foreign country to which the AD or CVD order applies is a significant portion of the total value of the merchandise exported to the United States; and (E) the administering authority determines that action is appropriate to prevent evasion of such order.

In determining whether the process of assembly or completion in a foreign country is minor or insignificant under section 781(b)(1)(C) of the Act, section 781(b)(2) of the Act directs Commerce to consider: (A) the level of investment in the foreign country; (B) the level of research and development in the foreign country; (C) the nature of the production process in the foreign country; (D) the extent of production facilities in the foreign country; and (E) whether or not the value of processing performed in the foreign country represents a small proportion of the value of the merchandise imported into the United States. However, no single factor, by itself, controls Commerce's determination of whether the process of assembly or completion in a foreign country is minor or insignificant.¹⁰ Accordingly, it is Commerce's practice to evaluate

¹⁰ See SAA at 893.

each of these five factors as they exist in the foreign country, depending on the totality of the circumstances of the particular circumvention inquiry.¹¹

In addition, section 781(b)(3) of the Act sets forth additional factors to consider in determining whether to include merchandise assembled or completed in a foreign country within the scope of an AD or CVD order. Specifically, Commerce shall take into account such factors as: (A) the pattern of trade, including sourcing patterns; (B) whether the manufacturer or exporter of the merchandise that was shipped to the foreign country is affiliated with the person who, in the foreign country, uses the merchandise to complete or assemble the merchandise which is subsequently imported into the United States; and (C) whether imports of the merchandise into the foreign country have increased after the initiation of the investigation that resulted in the issuance of such order.

Analysis

Based on our analysis of American HFC Coalition's circumvention requests, Commerce determines that American HFC Coalition has satisfied the criteria under 19 CFR 351.226(c) to warrant the initiation of circumvention inquiries of the *Order*. For a full discussion of the basis for our decision to initiate these circumvention inquiries, *see* the Initiation Checklists.¹² As explained in the Initiation Checklists, the information provided by domestic interested parties warrants initiating these circumvention inquiries on a country-wide basis. Commerce has taken this approach in prior circumvention inquiries, where the facts warranted initiation on a country-wide basis.¹³

¹¹ *See Uncovered Innerspring Units from the People's Republic of China: Final Affirmative Determination of Circumvention of the Antidumping Duty Order*, 83 FR 65626 (December 21, 2018), and accompanying IDM at 4.

¹² *See* Checklist, "Enforcement and Compliance, Office of AD/CVD Operations, U.S. Custom Blends Circumvention Initiation Checklist," dated June 29, 2023; *see also* Checklist, "Enforcement and Compliance, Office of AD/CVD Operations, Custom Blends from Malaysia Circumvention Initiation Checklist," dated June 29, 2023; Checklist, "Enforcement and Compliance, Office of AD/CVD Operations, R410A from Turkey Circumvention Initiation Checklist," dated June 29, 2023; and Checklist, "Enforcement and Compliance, Office of AD/CVD Operations, R10B from Turkey Circumvention Initiation Checklist," dated June 29, 2023 (Collectively, Initiation Checklists).

¹³ *See, e.g., Certain Corrosion-Resistant Steel Products from the Republic of Korea and Taiwan: Initiation of Anti-Circumvention Inquiries on the Antidumping Duty and Countervailing Duty Orders*, 83 FR 37785 (August 2, 2018); *Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China: Initiation of Anti-Circumvention*

Consistent with the approach in the prior circumvention inquiries that were initiated on a country-wide basis, Commerce intends to issue four questionnaires (one for China, one for Malaysia, and two for Turkey) to solicit information from producers and exporters in China, Malaysia, and Turkey, respectively, concerning their shipments to the United States and the origin of any imported HFC blends being further processed into HFC blends subject to the *Order*.

Respondent Selection

Commerce intends to base respondent selection on U.S. Customs and Border and Protection (CBP) data. Commerce intends to place CBP data on each record within five days of the publication of the initiation notice. Comments regarding the CBP data and respondent selection should be submitted within seven days after placement of the CBP data on the record of the relevant inquiry.

Commerce intends to establish a schedule for questionnaire responses after respondent selection. A company's failure to completely respond to Commerce's requests for information may result in the application of partial or total facts available, pursuant to section 776(a) of the Act, which may include adverse inferences, pursuant to section 776(b) of the Act.

Suspension of Liquidation

Pursuant to 19 CFR 351.226(l)(1), Commerce will notify CBP of the initiation of these circumvention inquiries and direct CBP to continue the suspension of liquidation of entries of products subject to the circumvention inquiries that were already subject to the suspension of liquidation under the *Order* and to apply the cash deposit rate that would be applicable if the products were determined to be covered by the scope of the *Order*. Should Commerce issue preliminary or final circumvention determinations, Commerce will follow the suspension of liquidation rules under 19 CFR 351.226(l)(2)-(4).

Inquiry on the Antidumping Duty Order, 82 FR 40556, 40560 (August 25, 2017) (stating at initiation that Commerce would evaluate the extent to which a country-wide finding applicable to all exports might be warranted); and *Certain Corrosion-Resistant Steel Products from the People's Republic of China: Initiation of Anti-Circumvention Inquiries on the Antidumping Duty and Countervailing Duty Orders*, 81 FR 79454, 79458 (November 14, 2016) (stating at initiation that Commerce would evaluate the extent to which a country-wide finding applicable to all exports might be warranted).

Notification to Interested Parties

In accordance with 19 CFR 351.226(d) and sections 781(a) and (b) of the Act, Commerce determines that the American HFC Coalition's requests for these circumvention inquiries satisfies the requirements of 19 CFR 351.226(c). Accordingly, Commerce is notifying all interested parties of the initiation of these four circumvention inquiries to determine whether: (1) U.S. imports from China of R-410B, R-407G, and a custom blend that are further processed in the United States, are circumventing the *Order*; (2) U.S. imports from Malaysia of R-410A and R-407C that are completed in Malaysia using Chinese components are circumventing the *Order*; (3) U.S. imports of R-410B from Turkey that are completed in Turkey using Chinese components and further processed in the United States into in-scope blends are circumventing the *Order*; and (4) U.S. imports from Turkey of R-410A that are completed in Turkey using Chinese components are circumventing the *Order*. In addition, we included a description of the products that are the subject of these inquiries and an explanation of the reasons for Commerce's decision to initiate these inquiries as provided above and in the accompanying Initiation Checklists. In accordance with 19 CFR 351.226(e)(1), Commerce intends to issue its preliminary determination no later than 150 days from the date of publication of the notice of initiation of these circumvention inquiries in the *Federal Register*.

This notice is published in accordance with sections 781(a) and (b) of the Act and 19 CFR 351.226(d)(1)(ii).

Dated: June 29, 2023.

Lisa W. Wang,
Assistant Secretary

for Enforcement and Compliance.

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