



DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-028]

Antidumping Duty Order on Hydrofluorocarbon Blends from the People's Republic of China: Preliminary Affirmative Determination of Circumvention with Respect to R-410A and R-407C from Malaysia

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

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that imports of R-410A and R-407C, completed in Malaysia using the People's Republic of China (China)-origin components, and exported from Malaysia, as specified below, are circumventing the antidumping duty (AD) order on hydrofluorocarbon blends (HFC blends) from China.

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

FOR FURTHER INFORMATION CONTACT: Jerry Xiao, 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) 482-2273.

SUPPLEMENTARY INFORMATION:

Background

On August 19, 2016, Commerce published in the *Federal Register* the AD order on HFC blends from China.¹ On July 7, 2023, Commerce initiated a country-wide circumvention inquiry to determine whether imports of R-410A and R-407C, completed in Malaysia using HFC components, R-32 (difluoromethane), R-125 (pentafluoroethane), and R-134a (1,1,1,2

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

tetrafluoroethane) (collectively, China-origin components) manufactured in China, are circumventing the *Order* and, accordingly, should be covered by the scope of the *Order*.² The sole respondent in this circumvention inquiry is Juara Teguh Resources PLT (Juara)³ For a complete description of the events that followed the initiation of this circumvention inquiry, *see* the Preliminary Decision Memorandum.⁴

Scope of the *Order*

The merchandise covered by the *Order* is certain HFC blends. For a complete description of the scope of the *Order*, *see* the Preliminary Decision Memorandum.⁵

Merchandise Subject to the Circumvention Inquiries

This circumvention inquiry covers R-410A and R-407C, completed in Malaysia using China-origin HFC components and subsequently exported from Malaysia to the United States.

Methodology

Commerce is conducting this circumvention inquiry in accordance with section 781(b) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.226. For a complete description of the methodology underlying this circumvention inquiry, *see* the Preliminary Decision Memorandum. A list of topics discussed in the Preliminary Decision Memorandum is included in the appendix to this notice. 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 <https://access.trade.gov>. In addition, a complete version of the Preliminary Decision

² *See Hydrofluorocarbon Blends from the People's Republic of China: Initiation of Circumvention Inquiries on the Antidumping Duty Order*, 88 FR 43275 (July 7, 2023) (*Initiation Notice*).

³ *See* Memorandum, "Respondent Selection," dated August 14; *see also* Commerce's Letter, "Custom Blends from Malaysia Initial Questionnaire," dated August 23, 2023 (Initial Questionnaire).

⁴ *See* Memorandum, "Hydrofluorocarbon Blends from the People's Republic of China: Preliminary Decision Memorandum for the Circumvention Inquiry of the Antidumping Duty Order with Respect to Imports of R-410A and R-407C from Malaysia," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

⁵ *Id.* at 2-3.

Memorandum can be accessed directly at

<https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Preliminary Circumvention Determination

As detailed in the Preliminary Decision Memorandum, and based on the “Use of Adverse Facts Available (AFA)” section, Commerce preliminarily determines that R-410A and R-407C completed in Malaysia using HFC components from China, that are subsequently exported from Malaysia to the United States, are circumventing the *Order* on a country-wide basis. As a result, in accordance with section 781(b) of the Act, we preliminarily determine that the inquiry merchandise should be included within the scope of the *Order*. See the “Suspension of Liquidation and Cash Deposit Requirements” section below for details regarding suspension of liquidation and cash deposit requirements. See the “Certified Entries” section below for details regarding Commerce’s preliminary decision concerning certifications for inquiry merchandise exported from Malaysia.

Use of AFA

Pursuant to section 776(a) of the Act, if the necessary information is not available on the record, or an interested party withholds requested information, fails to provide requested information by the deadline or in the form and manner requested, or significantly impedes a proceeding, Commerce shall use the facts otherwise available in reaching the applicable determination. Moreover, pursuant to section 776(b) of the Act, Commerce may use inferences adverse to the interests of an interested party in selecting from among the facts otherwise available if the party fails to cooperate by not acting to the best of its ability to provide requested information.

We requested information from Juara. In the Initial Questionnaire, Commerce explained that, if the company to which Commerce issued the questionnaire fails to respond to the questionnaire, or fails to provide the requested information, Commerce may find that the company failed to cooperate by not acting to the best of its ability to comply with the request for

information, and may use an inference that is adverse to the company's interests in selecting from the facts otherwise available.⁶ Juara received, but failed to respond to, Commerce's questionnaire.⁷

Therefore, we preliminarily find that Juara failed to provide requested information by the deadline or in the form and manner requested, and significantly impeded this inquiry. Moreover, we find that Juara failed to cooperate to the best of its ability to provide the requested information because it did not provide a response to Commerce's initial questionnaire. Consequently, we used adverse inferences with respect to Juara in selecting from among the facts otherwise available on the record, pursuant to sections 776(a) and (b) of the Act. For details regarding the AFA used in this preliminary determination, *see* the Preliminary Decision Memorandum.

As detailed in the Preliminary Decision Memorandum, based on AFA, we preliminarily determine that Juara exported inquiry merchandise and that U.S. entries of that merchandise are circumventing the *Order*.

Suspension of Liquidation and Cash Deposit Requirements

Based on the preliminary affirmative country-wide determination of circumvention for Malaysia in accordance with 19 CFR 351.226(1)(2), we will direct U.S. Customs and Border Protection (CBP) to suspend liquidation and require a cash deposit of estimated duties on unliquidated entries of R-410A and R0407C, completed in Malaysia using China-origin components, that were entered, or withdrawn from warehouse, for consumption on or after July 7, 2023, the date of publication of the initiation of this circumvention inquiry in the *Federal Register*.⁸ CBP shall require cash deposits in accordance with the rate established for the China-wide entity, *i.e.*, 216.37 percent,⁹ for entries of such merchandise produced in Malaysia.

⁶ *See* Initial Questionnaire at 3.

⁷ *See* Memorandum, "Delivery Confirmation," dated September 1, 2023.

⁸ *See* *Initiation Notice*, 88 FR at 43275.

⁹ *See* *Order*, 81 FR at 55438.

Commerce has established the following third-country case number for Malaysia in the Automated Commercial Environment (ACE) for such entries: A-557-300-000. For Juara, Commerce will direct CBP, for all entries of R-410A or R-407C from Malaysia produced or exported by Juara, to suspend liquidation and require a cash deposit at the rate established for the China-wide entity, *i.e.*, 216.37 percent, under this third country case number.

R-410A and R-407C produced in Malaysia that is not from China-origin HFC blends is not subject to this inquiry. Therefore, cash deposits are not required for such merchandise under the *Order*. These suspension of liquidation instructions will remain in effect until further notice.

Certified Entries

At this time, Commerce has not included a certification requirement. We invite interested parties to comment on this matter.

Public Comment

Interested parties may submit case briefs to Commerce no later than 14 days after the date of publication of this notice.¹⁰ Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the date for filing case briefs.¹¹ Interested parties who submit case briefs or rebuttal briefs in these proceedings must submit: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.¹²

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their brief that should be limited to five pages total, including footnotes. In these circumvention inquiries, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.¹³ Further, we request that interested parties limit

¹⁰ Commerce is exercising its discretion, under 19 CFR 351.309(C)(1)(ii), to alter the time limit for filing case briefs.

¹¹ See 19 CFR 351.309(d); *see also Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings*, 88 FR 67069, 67077 (September 29, 2023).

¹² See 19 CFR 351.309(c)(2)(d)(2).

¹³ We use the term “issue” here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

their executive summary of each issue to no more than 450 words, not including citations. We intend to use the executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final determination in this circumvention inquiry. We request that interested parties include footnotes for relevant citations in the executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).¹⁴

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice in the *Federal Register*. Requests should contain: (1) the requesting party's name, address, and telephone number; (2) the number of individuals from the requesting party that will attend the hearing and whether any of those individuals is a foreign national; and (3) a list of the issues that the party intends to discuss at the hearing. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date of the hearing.

U.S. International Trade Commission Notification

Consistent with section 781(e) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of this preliminary determination to include the merchandise subject to this circumvention inquiry within the *Order*. Pursuant to section 781(e) of the Act, the ITC may request consultations concerning Commerce's proposed inclusion of the inquiry merchandise. If, after consultations, the ITC believes that a significant injury issue is presented by the proposed inclusion, it will have 60 days from the date of notification by Commerce to provide written advice.

¹⁴ See *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings; Final Rule*, 88 FR 67069 (September 29, 2023).

Notification to Interested Parties

Commerce is issuing and publishing this determination in accordance with section 781(b) of the Act and 19 CFR 351.226(g)(1).

Dated: December 4, 2023.

Abdelali Elouaradia,

Deputy Assistant Secretary

for Enforcement and Compliance.

Appendix

Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the *Order*
- IV. Merchandise Subject to the Circumvention Inquiry
- V. Period of the Circumvention Inquiry
- VI. Application of Facts Available and Use of Adverse Inferences
- VII. Statutory and Regulatory Framework for the Circumvention Inquiry
- VIII. Analysis of Statutory Criteria for the Circumvention Inquiry
- IX. Summary of Statutory Analysis
- X. Country-Wide Affirmative Determination of Circumvention
- XI. Recommendation

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