



BILLING CODE: 3510-DS-P

**DEPARTMENT OF COMMERCE**

**International Trade Administration**

**[A-570-028]**

**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**

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

**SUMMARY:** The Department of Commerce (Commerce) preliminarily 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. As a result, imports of blends of unpatented R-421A from China 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:** Andrew Medley or Manuel Rey, 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) 482-4987 or (202) 482-3342, respectively.

**SUPPLEMENTARY INFORMATION:**

## Background

On June 18, 2019, Commerce initiated an anti-circumvention inquiry to determine whether blends of unpatented R-421A from China, that are further processed into finished HFC blends in the United States,<sup>1</sup> are circumventing the *Order* on HFC blends from China.<sup>2</sup> Additionally, in our *Notice of Initiation*, we stated that, as part of this anti-circumvention inquiry,<sup>3</sup> we would also address both a covered merchandise referral from U.S. Customs and Border Protection (CBP),<sup>4</sup> and a scope inquiry filed by Choice Refrigerants under 19 CFR.225(c).<sup>5</sup> As part of this preliminary determination, we also have made a final scope finding. With respect to the covered merchandise referral, we will inform CBP of our findings at the conclusion of this anti-circumvention proceeding. For a complete description of the events that followed the initiation of this inquiry, *see* the Preliminary Decision Memorandum.<sup>6</sup>

## Scope of the Order

The products subject to this order are HFC blends. HFC blends covered by the scope are R-404A, R-407A, R-407C, R-410A, and R-507A.<sup>7</sup> HFC blends covered by the scope of the *Order* are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS)

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<sup>1</sup> *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*).

<sup>2</sup> *See Hydrofluorocarbon Blends from the People's Republic of China: Antidumping Duty Order*, 81 FR 55436 (October 16, 2017) (*Order*).

<sup>3</sup> *See Notice of Initiation*, 84 FR 28281, 28283-84.

<sup>4</sup> *See Hydrofluorocarbon Blends from the People's Republic of China: Notice of Covered Merchandise Referral*, 83 FR 9277 (March 5, 2018).

<sup>5</sup> *See* Choice Refrigerants' Letter, "Application for Scope Ruling on Exclusion of Patented HFC Blends from Antidumping Duty Order A-570-028: Hydrofluorocarbon Blends and Components Thereof from the People's Republic of China," dated November 30, 2017.

<sup>6</sup> *See* Memorandum, "Decision Memorandum for 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; Unpatented R-421A" dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

<sup>7</sup> For a complete description of the scope of the order, *see* Preliminary 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*.<sup>8</sup>

#### Methodology

Commerce made this preliminary finding of circumvention in accordance with section 781(a) of the Tariff Act of 1930, as amended (Act) and 19 CFR 351.225(g). We relied on information placed on the record by the American HFC Coalition (the petitioners) and information placed on the record by LM Supply Inc. and Cool Master USA, LLC, the importers of the merchandise in question, and their affiliated blenders, BMP USA Inc. (BMP USA) and IGas USA, Inc. Further, because certain interested parties did not cooperate to the best of their abilities 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

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<sup>8</sup> 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 Refrigerants.

Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov>, and to all parties in the Central Records Unit, room B8024 of the main Commerce building. 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 the Appendix to this notice.

#### Scope Ruling and Affirmative Preliminary Determination of Circumvention

As detailed in the Preliminary Decision Memorandum, we determine, 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).

As detailed in the Preliminary Decision Memorandum, we preliminarily determine, pursuant to section 781(a) of the Tariff Act, that imports of unpatented R-421A from China are circumventing the *Order*.

#### Suspension of Liquidation

In accordance with 19 CFR 351.225(l)(2), Commerce will instruct CBP to suspend liquidation of all unpatented R-421A (as defined in the Merchandise Subject to the Anti-Circumvention Inquiry section above) from China that are entered, or withdrawn from warehouse, for consumption on or after June 18, 2019, the date of initiation of this anti-

circumvention inquiry.<sup>9</sup> CBP shall require cash deposits in accordance with those rates prevailing at the time of entry, depending upon the exporter in question. At this time, we have not included a certification requirement; however, based upon comments from interested parties, we may add such a certification requirement for the final determination.

### Public Comment

Interested parties may submit case briefs to Commerce no later than 14 days after the date of publication of this notice.<sup>10</sup> Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the time limit for filing case briefs.<sup>11</sup> 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.<sup>12</sup> Case and rebuttal briefs should be filed electronically via ACCESS.<sup>13</sup>

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.<sup>14</sup> 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

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<sup>9</sup> See, e.g., *Anti-circumvention Inquiry of the Antidumping Duty Order on Certain Pasta from Italy: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order*, 63 FR 18364, 18366 (April 15, 1998), unchanged in *Anti-Circumvention Inquiry of the Antidumping Duty Order on Certain Pasta from Italy: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 63 FR 54672, 54675-6 (October 13, 1998).

<sup>10</sup> Commerce is exercising its discretion, under 19 CFR 351.309(c)(1)(ii), to alter the time limit for filing of case briefs.

<sup>11</sup> Commerce is exercising its discretion, under 19 CFR 351.309(d)(1), to alter the time limit for filing of rebuttal briefs.

<sup>12</sup> See 19 CFR 351.309(c)(2) and (d)(2).

<sup>13</sup> See 19 CFR 351.303.

<sup>14</sup> See 19 CFR 351.310(c).

be held at the U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230.<sup>15</sup>

#### Postponement of Final Determination

Section 781(f) of the Act provides that, to the maximum extent practicable, Commerce shall make its anti-circumvention 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 45 days, to May 28, 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.

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<sup>15</sup> *Id.*

Notification to Interested Parties

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

Dated: February 25, 2020.

**Christian Marsh,**

*Deputy Assistant Secretary*

*for Enforcement and Compliance.*

## Appendix

### List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
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- IV. Scope of the Order
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