

Comment 24: Whether Commerce Should Adjust the Electricity Benchmark for VAT

Comment 25: Whether Electricity Constitutes General Infrastructure and Provides a Financial Contribution

Comment 26: Whether Commerce Should Rely on Xeneta Data for Freight Benchmark

Comment 27: Whether Commerce Should Find Non-Use of Steam Coal

## XI. Recommendation

### Appendix II

#### Scope of the Investigation

The merchandise covered by this investigation is aluminum foil having a thickness of 0.2 mm or less, in reels exceeding 25 pounds, regardless of width. Aluminum foil is made from an aluminum alloy that contains more than 92 percent aluminum. Aluminum foil may be made to ASTM specification ASTM B479, but can also be made to other specifications. Regardless of specification, however, all aluminum foil meeting the scope description is included in the scope, including aluminum foil to which lubricant has been applied to one or both sides of the foil.

Excluded from the scope of this investigation is aluminum foil that is backed with paper, paperboard, plastics, or similar backing materials on one side or both sides of the aluminum foil, as well as etched capacitor foil and aluminum foil that is cut to shape.

Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above. The products under investigation are currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7607.11.3000, 7607.11.6000, 7607.11.9030, 7607.11.9060, 7607.11.9090, and 7607.19.6000. Further, merchandise that falls within the scope of this proceeding may also be entered into the United States under HTSUS subheadings 7606.11.3060, 7606.11.6000, 7606.12.3045, 7606.12.3055, 7606.12.3090, 7606.12.6000, 7606.91.3090, 7606.91.6080, 7606.92.3090, and 7606.92.6080.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-028]

#### Hydrofluorocarbon Blends From the People's Republic of China: Notice of Covered Merchandise Referral

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

**SUMMARY:** Pursuant to the Enforce and Protect Act of 2015 (EAPA), the Department of Commerce (Commerce) received a covered merchandise referral from U.S. Customs and Border Protection (CBP) in connection with a CBP Enforce and Protect Act (EAPA) investigation concerning the antidumping duty (AD) order on hydrofluorocarbon (HFC) blends from the People's Republic of China (China). In accordance with EAPA, Commerce intends to determine whether the merchandise subject to the referral is covered by the scope of the order and promptly transmit its determination to CBP. Commerce is providing notice of the referral and inviting participation from interested parties.

**DATES:** Applicable March 5, 2018.

**FOR FURTHER INFORMATION CONTACT:** Manuel Rey at (202) 482-5518, AD/CVD Operations Office II, Enforcement & Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

#### SUPPLEMENTARY INFORMATION:

##### Background

On February 24, 2016, the Trade Facilitation and Trade Enforcement Act of 2015 was signed into law, which contains Title IV-Prevention of Evasion of Antidumping and Countervailing Duty Orders (short title "Enforce and Protect Act of 2015" or "EAPA") (Pub. L. 114-125, 130 Stat. 122, 155, Feb. 24, 2016). Effective August 22, 2016, section 421 of the EAPA added section 517 to the Tariff Act of 1930, as amended (the Act), which establishes a formal process for CBP to investigate allegations of the evasion of antidumping and countervailing duty (AD/CVD) orders. Section 517(b)(4)(A) of the Act provides a procedure whereby if, during the course of an EAPA investigation, CBP is unable to determine whether the merchandise at issue is covered merchandise within the meaning of section 517(a)(3) of the Act, it shall refer the matter to Commerce to make such a determination. Section 517(a)(3) of the Act defines covered merchandise as merchandise that is subject to an antidumping duty order issued under section 736 of the Act or a countervailing duty order issued under section 706 of the Act. Section 517(b)(4)(B) of the Act states that Commerce, after receiving a covered merchandise referral from CBP, shall determine whether the merchandise is covered merchandise and promptly transmit its determination to CBP. The Act does not establish a deadline within

which Commerce must issue its determination.

On December 4, 2017, Commerce received a covered merchandise referral from CBP regarding CBP EAPA Investigation No. 7212<sup>1</sup> which concerns the AD order on HFCs from China.<sup>2</sup> Specifically, based on an allegation by RMS of Georgia d/b/a Choice

Refrigerants, CBP has 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.

#### Notification to Interested Parties

Commerce is hereby notifying interested parties that it has received the covered merchandise referral referenced above, will begin a new segment of the proceeding, and intends to issue a determination regarding whether the merchandise subject to the referral is covered merchandise within the meaning of section 517(a)(3) of the Act. Additionally, Commerce intends to provide interested parties with the opportunity to participate in this segment of the proceeding, including through the submission of comments, and, if appropriate, new factual information and verification. Specifically, Commerce will notify parties on the segment-specific service list for this segment of the proceeding of a schedule for comments. In addition, Commerce may request factual information from any person to assist in making its determination and may verify submissions of factual information, if Commerce determines that such verification is appropriate. Commerce intends to issue a final determination within 120 days of the publication of this notice (this deadline

<sup>1</sup> See Letter from CBP, "EAPA Case Number: 7212; Scope Referral Request for merchandise under EAPA Investigation 7212, imported by LM Supply, Inc. and concerning the investigation of evasion of the antidumping duty order on hydrofluorocarbon blends from the People's Republic of China (A-570-028)," dated December 4, 2017. This document and any supporting documents will be available electronically on Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS) within five days of publication of this notice.

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

may be extended if it is not practicable to complete the final determination within 120 days), and will promptly transmit its final determination to CBP in accordance with section 517(b)(4)(B) of the Act.

Parties are also hereby notified that this is the only notice that Commerce intends to publish in the **Federal Register** concerning this covered merchandise referral. Therefore, interested parties that wish to participate in this segment of the proceeding, and receive notice of the final determination, must submit their letters of appearance, as discussed below. Further, any party desiring access to business proprietary information in this segment of the proceeding must file an application for access to business proprietary information under administrative protective order (APO), as discussed below.

Finally, we note that covered merchandise referrals constitute a new type of segment of a proceeding at Commerce and, therefore, Commerce will continue to develop its practice and procedures in this area. Additionally, we note that Commerce has received a scope ruling request concerning merchandise which may be similar to the merchandise at issue in the covered merchandise referral referenced above.<sup>3</sup> Thus, Commerce may consider any potential overlapping issues in these separate segments of the proceeding.

#### Scope of the AD Order Hydrofluorocarbon Blends From People's Republic of China

The merchandise covered by this order is 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, a zeotropic mixture of 50 percent Pentafluoroethane and 50 percent 1,1,1-

<sup>3</sup> See Letter on behalf of Kenneth Ponder and Choice Refrigerants "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.

Trifluoroethane also known as R-507. The foregoing percentages are nominal percentages by weight. Actual percentages of single component refrigerants by weight may vary by plus or minus two percent points from the nominal percentage identified above.<sup>4</sup>

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

Excluded from this 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 this 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 this 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.

#### Filing Requirements

All submissions to Commerce must be filed electronically using ACCESS.<sup>5</sup> An electronically filed document must be received successfully in its entirety by

<sup>4</sup> 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.

<sup>5</sup> See *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011), as amended in *Enforcement and Compliance; Change of Electronic Filing System Name*, 79 FR 69046 (November 20, 2014) for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on help using ACCESS can be found at <https://access.trade.gov/help.aspx> and a handbook can be found at <https://access.trade.gov/help/Handbook%20on%20Electronic%20Filing%20Procedures.pdf>.

the time and date it is due. Documents exempted from the electronic submission requirements must be filed manually (*i.e.*, in paper form) with Enforcement and Compliance's APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, and stamped with the date of receipt by the applicable deadlines.

#### Letters of Appearance and Administrative Protective Order

Interested parties that wish to participate in this segment of the proceeding and be added to the public service list for this segment of the proceeding must file a letter of appearance in accordance with 19 CFR 351.103(d)(1), with one exception: The parties publicly identified by CBP in the covered merchandise referral (referenced above) are not required to submit a letter of appearance, and will be added to the public service list for this segment of the proceeding by Commerce.

Commerce placed an APO on the record on December 22, 2017,<sup>6</sup> (amended on January 16, 2018),<sup>7</sup> and established the APO service list for use in this segment. Commerce intends to place the business proprietary versions of the documents contained in the covered merchandise referral on the record of this proceeding in ACCESS within five days of publication of this notice.

Interested parties must submit applications for disclosure under the APO in accordance with the procedures outlined in Commerce's regulations at 19 CFR 351.305. Those procedures apply to this segment of the proceeding, with one exception: APO applicants representing the parties that have been identified by CBP as an importer in the covered merchandise referral (referenced above) are exempt from the additional filing requirements for importers pursuant to 19 CFR 351.305(d).

Dated: February 22, 2018.

**Christian Marsh,**

*Deputy Assistant Secretary for Enforcement and Compliance.*

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<sup>6</sup> See the Administrative Protective Order "In the Matter of the Scope Inquiry of the Antidumping Duty Order on Hydrofluorocarbon Blends (A-570-028) (CBP EAPA Inv. No. 7212)," dated December 22, 2017.

<sup>7</sup> See Amendment of the Administrative Protective Order "In the Matter of the Scope Inquiry of the Antidumping Duty Order on Hydrofluorocarbon Blends (A-570-028) (CBP EAPA Inv. No. 7212)," dated January 16, 2018.