



A-570-028

CIRC: HFC Components

Public Document

E&C/OII: BAL

April 3, 2020

MEMORANDUM TO: Christian Marsh
Deputy Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Preliminary Decision Memorandum for Anti-Circumvention
Inquiry of the Antidumping Duty Order on Hydrofluorocarbon
Blends from the People's Republic of China: HFC Components

I. SUMMARY

In response to a request from the American HFC Coalition (the petitioners), we initiated an anti-circumvention inquiry, pursuant to section 781(a) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.225(g),¹ to determine if imports of hydrofluorocarbon (HFC) components R-32 (difluoromethane), R-125 (pentafluoroethane), and R-143a (1,1,1-trifluoroethane), exported from the People's Republic of China (China), and further processed in the United States to create subject HFC blends, are circumventing the *Order* on HFC blends from China.² Based on the information submitted by interested parties and the analysis below, we recommend that, pursuant to section 781(a) of the Act, Commerce preliminarily find that imports of HFC components from China are circumventing the *Order*.

II. BACKGROUND

Circumvention Allegation

On April 4, 2019, the petitioners filed a request that, pursuant to section 781(a) of the Act and 19 CFR 351.225(g), Commerce initiate an anti-circumvention inquiry regarding imports of HFC components R-32, R-125, and R-143a from China, that are further processed into finished HFC blends in the United States, which the petitioners allege are circumventing the *Order*.³ On April

¹ See *Hydrofluorocarbon Blends from the People's Republic of China: Initiation of Anti-Circumvention Inquiry of Antidumping Duty Order; Components*, 84 FR 28273 (June 18, 2019) (*Initiation Notice*).

² See Petitioners' Letter, "Hydrofluorocarbon Blends from the People's Republic of China: Request to Initiate Anti-Circumvention Inquiry Pursuant to Section 781(a) of the Act," dated April 4, 2019 (*Allegation of Circumvention*); see also *Hydrofluorocarbon Blends from the People's Republic of China: Antidumping Duty Order*, 81 FR 55436 (August 19, 2016) (*the Order*).

³ See *Allegation of Circumvention*.



26, 2019, and May 14, 2019, National Refrigerants, Inc. (National), and Zhejiang Quzhou Lianzhou Refrigerants Co., Ltd. (Quzhou Lianzhou), respectively, filed objections to the petitioners' request for an anti-circumvention inquiry.⁴ On May 13, 2019, Commerce received rebuttal comments from the petitioners to National's objection to the application of section 781(a).⁵

Initiation and Respondent Selection

On June 18, 2019, Commerce initiated an anti-circumvention inquiry with respect to HFC components from China that are further processed into finished HFC blends in the United States.⁶ On June 24, 2019, we requested comments from interested parties on respondent selection and the period of inquiry (POI).⁷ In July 2019, we received comments on respondent selection and the POI from BMP USA Inc. (BMP USA) and iGas USA Inc. (iGas), Kivlan and Company, Inc. and FluoroFusion Speciality Chemicals Inc. (collectively, Kivlan), ICool International Commerce Limited (ICool), T.T. International Co., Ltd. (TTI), Hudson Technologies Company (Hudson), the petitioners, and National.⁸ ICool requested voluntary treatment as a mandatory respondent.⁹

On August 12, 2019, the petitioners filed supplemental comments describing further allegations of circumvention of the *Order*, and a request for an expedited preliminary determination.¹⁰ We

⁴ See National's Letter, "Hydrofluorocarbon Blends from the People's Republic of China: Objection to Petitioners' Request for a §781(a) Anti-Circumvention Inquiry and Request for Meeting," dated April 26, 2019 (National Anti-Circumvention Rebuttal Comments); see also Quzhou Lianzhou's Letter, "Zhejiang Quzhou Lianzhou Refrigerants Co., Ltd.'s Response to American HFC Coalition's Request for a §781(a) Anti-Circumvention Inquiry and Request for Meeting, Antidumping Duty Order on Hydrofluorocarbon Blends from the People's Republic of China," dated May 14, 2019 (Quzhou Lianzhou Anti-Circumvention Rebuttal Comments).

⁵ See Petitioners' Letter, "Hydrofluorocarbon Blends from the People's Republic of China; Request for Section 781(a) Investigation Regarding Certain Imported HFC Components: Response to National Refrigerants, Inc.," Dated May 13, 2019.

⁶ See *Initiation Notice*.

⁷ See Memorandum, "Antidumping Duty Order on Hydrofluorocarbon Blends from the People's Republic of China: HFC Components Anti-Circumvention Inquiry: Request for Comments on Period of Investigation and Respondent Selection," dated June 24, 2019.

⁸ See BMP USA's and iGas' Letter, "Hydrofluorocarbon Blends from the People's Republic of China: Comments on Period of Investigation and Respondent Selection," dated July 5, 2019; Kivlan's Letter, "Hydrofluorocarbon Blends from the People's Republic of China: Comments on Period of Investigation and Respondent Selection," dated July 5, 2019; ICool's Letter, "Hydrofluorocarbon Blends from China; A-570-028; Comments on Respondent Selection and Period of Investigation and Request for Voluntary Respondent Status," dated July 10, 2019 (ICool Respondent Selection Comments); TTI's Letter, "Antidumping Duty Order on Hydrofluorocarbon Blends from the People's Republic of China: HFC Components Anti-Circumvention Inquiry; Comments on Period of Investigation and Respondent Selection," dated July 10, 2019; Hudson's Letter, "Hydrofluorocarbon Blends from the People's Republic of China, Anti-Circumvention Inquiry – HFC Components (A-570-028): Hudson Technologies Company's Comments on Period of Investigation and Respondent Selection," dated July 10, 2019; Petitioners' Letter, "Hydrofluorocarbon Blends from the People's Republic of China; HFC Components Anti-Circumvention Inquiry: Comments on the Period of Investigation and Respondent Selection," dated July 10, 2019; and National's Letter, "Hydrofluorocarbon Blends from the People's Republic of China: Comments on Period of Investigation and Respondent Selection for HFC Components Anti-Circumvention Inquiry," dated July 10, 2019.

⁹ See ICool Respondent Selection Comments.

¹⁰ See Petitioners' Letter, "Hydrofluorocarbon Blends from the People's Republic of China: Supplemental Comments on Circumvention," dated August 12, 2019.

received comments opposing this request on August 19, 2019, from Quzhou Lianzhou,¹¹ and August 20, 2019, from BMP USA and iGas.¹²

On October 22, 2019, we placed on the record CBP data for U.S. imports under Harmonized Tariff Schedule of the United States (HTSUS) number 2903.39.2035 and solicited comments on these data.¹³ We issued quantity and value (Q&V) questionnaires to 41 companies on the same date.¹⁴ On October 29, 2019, we received comments on the CBP data from multiple interested parties.¹⁵

Commerce received Q&V responses from 44 companies. However, Commerce did not receive Q&V responses from Golden G Imports LLC and Taizhou Qingsong Refrigerant New Material Co., Ltd.¹⁶ Of the 44 responding companies, 18 stated that they neither exported nor imported HFC components.

Questionnaires and Responses

On December 18, 2020, we selected the Chinese producers and/or exporters, TTI, Zhejiang Quzhou Juxin Fluorine Chemical Co., Ltd. (Juxin), and Zhejiang Sanmei Chemical Ind. Co., Ltd. (Sanmei), and U.S. importers and blenders Arkema, BMP,¹⁷ and National as the mandatory respondents in this inquiry.¹⁸ On that same date we issued initial questionnaires to the mandatory

¹¹ See Quzhou Lianzhou's Letter, "Lianzhou's Response to American HFC Coalition's Supplemental Comments on Circumvention, Antidumping Duty Order on Hydrofluorocarbon Blends from the People's Republic of China," dated August 19, 2019.

¹² See BMP USA's and iGas' Letter, "Hydrofluorocarbon Blends from the People's Republic of China (HFC Blends Order): Rebuttal Comments on Petitioner's Supplemental Comments on Circumvention," dated August 20, 2019.

¹³ See Memorandum, "Anti-Circumvention Inquiry of the Antidumping Duty Order on Hydrofluorocarbon Blends from the People's Republic of China – HFC Components: Release of U.S. Customs and Border Protection Data and Clarification of Quantity and Value Questionnaires," dated October 22, 2019 (CBP Data Memo).

¹⁴ *Id.* at Attachment II.

¹⁵ See Kivlan's Letter, "Hydrofluorocarbon Blends from the People's Republic of China: Comments on CBP Data," dated October 29, 2019; Sinochem Lantian Fluoro Material's Co., Ltd.'s, Sinochem Environmental Protection Chemicals (Taicang) Co., Ltd.'s and Sinochem Lantian Trading Co., Ltd.'s Letter, "Antidumping Duty Order on Hydrofluorocarbon Blends from the People's Republic of China: HFC Components Anti-Circumvention Inquiry; Comments on CBP Data and Request to Use Reported Quantity and Value Data for Respondent Selection," dated October 29, 2019; TTI's Letter, "Antidumping Duty Order on Hydrofluorocarbon Blends from the People's Republic of China: HFC Components Anti-Circumvention Inquiry; Comments on CBP Data and Request to Use Reported Quantity and Value Data for Respondent Selection," dated October 29, 2019; and Hudson's Letter, "Hydrofluorocarbon Blends from the People's Republic of China, Anti-Circumvention Inquiry – HFC Components (A-570-028): Hudson Technology Company's Comments on CBP Data," dated October 29, 2019.

¹⁶ See Memorandum, "Anti-Circumvention Inquiry of the Antidumping Duty Order on Hydrofluorocarbon Blends from the People's Republic of China – HFC components: Q&V Delivery Confirmation," dated December 13, 2019.

¹⁷ We selected both BMP USA and iGas as mandatory respondents in this inquiry. However, BMP USA and iGas report that BMP USA, iGas, BMP International Inc., Assured Comfort A/C Inc., LM Supply Inc., and Cool Master USA LLC share common ownership, and were involved in the importation, blending, and/or sale of HFC blends and components. Consequently, these entities have provided a single response. Therefore, for the purposes of this anti-circumvention inquiry, we are treating these companies as a single entity, hereinafter referred to as "BMP." See BMP's January 24, 2020, Initial Questionnaire Response (BMP January 24, 2020 IQR).

¹⁸ See Memorandum, "Anti-Circumvention Inquiry of the Antidumping Duty Order on Hydrofluorocarbon Blends from the People's Republic of China: Hydrofluorocarbon Components: Respondent Selection," dated December 18, 2020.

respondents.¹⁹ From January 15, 2020, to January 24, 2020, we received responses to the initial questionnaire from all of the mandatory respondents.²⁰

Surrogate Country and Surrogate Value Submissions

On December 18, 2019, Commerce placed on the record a list of countries that are at the same level of economic development as China, for use in this proceeding, and invited interested parties to submit comments on the list, selection of surrogate countries, and surrogate values.²¹ Between December 30, 2019, and February 7, 2020, interested parties submitted affirmative and rebuttal comments on surrogate country selection and surrogate values.²²

III. MERCHANDISE SUBJECT TO THE ANTI-CIRCUMVENTION INQUIRY

This anti-circumvention inquiry covers imports of the HFC components R-32, R-125, and R-143a from China that are further processed in the United States to create an HFC blend that would be subject to the *Order*.²³

IV. SCOPE OF THE ORDER:

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 component refrigerants by weight may vary by plus or minus two percent points from the nominal percentage identified above.²⁴

¹⁹ See, e.g., Commerce's Letter to Arkema, "Anti-Circumvention Inquiry of the Antidumping Duty Order on Hydrofluorocarbon (HFC) Blends from the People's Republic of China: HFC Components Initial Questionnaire," dated December 18, 2019.

²⁰ See Sanmei's January 15, 2020, Initial Questionnaire Response (Sanmei January 15, 2020 IQR); TTI's January 22, 2020, Initial Questionnaire Response (TTI January 22, 2020 IQR); BMP January 24, 2020 IQR; Arkema's January 24, 2020, Initial Questionnaire Response (Arkema January 24, 2020 IQR); National's January 24, 2020 Initial Questionnaire Response (National January 24, 2020 IQR); and Juxin's January 24, 2020, Initial Questionnaire Response (Juxin January 24, 2020 IQR).

²¹ See Commerce's Letter, "Antidumping Duty Order on Hydrofluorocarbon Blends from the People's Republic of China: HFC Components Anti-Circumvention Inquiry," dated December 18, 2019.

²² See, e.g., National's Letter, "Hydrofluorocarbon Blends from the People's Republic of China: Comments on Relevance of Identifying Countries Economically Comparable to China," dated December 30, 2019 (National's Surrogate Country Comments); see also, e.g., Petitioners' Letter, "Hydrofluorocarbon Blends from the People's Republic of China: Rebuttal Surrogate Values Submission," dated February 7, 2020.

²³ See *Initiation Notice*, 84 FR at 28274. R-32 is also known as difluoromethane; R-125 is also known as pentafluoroethane; and R-143a is also known as 1,1,1-trifluoroethane. The *Order* covers five HFC blends (*i.e.*, R-404A, R-407A, R-407C, R-410A, and R-507/R-507A). See *Order*.

²⁴ 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®

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 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.²⁵

V. PERIOD OF ANTI-CIRCUMVENTION INQUIRY

For purposes of examining the patterns of trade for imports of HFC components, we examined the time period from July 1, 2011 through June 30, 2019. For surrogate values (*i.e.*, for the Chinese export prices), U.S. cost of processing, and U.S. sales values, we used the calendar year 2018.

VI. SURROGATE COUNTRIES AND METHODOLOGY FOR VALUING INPUTS FROM CHINA

As explained *infra*, section 781(a)(1)(D) of the Act requires Commerce to determine whether the value of merchandise in the foreign country to which an order applies is a significant portion of the total value of the merchandise further processed and sold in the United States. This analysis requires an exercise that is similar to the determination of normal value in Commerce's typical antidumping (AD) methodology for price comparison purposes.

Multiple parties argue that the use of surrogate values for the valuation of the HFC components used in the production of HFC blends is inappropriate in this case.²⁶ Commerce disagrees with

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.

²⁵ See *Order*.

²⁶ See, e.g., National's Surrogate Country Comments; Juxin's Letter, "Juxin's Surrogate Country Comments: Hydrofluorocarbon Blends from the People's Republic of China, HFC Components Anti-Circumvention Inquiry," dated January 7, 2020; and BMP's Letter, "Hydrofluorocarbon Blends from the People's Republic of China:

these parties' claims that using surrogate values in the context of an anti-circumvention case is not permitted by the statute under section 781(a)(1)(D) of the Act.²⁷

Consistent with prior cases, we find that using surrogate values in this case is appropriate, because although actual prices paid for China-produced inputs are typically used in the cost buildup for market economy (ME) companies in ME proceedings, the instant inquiry is an anti-circumvention proceeding initiated under the HFCs *Order*, which is a non-market economy (NME) proceeding.²⁸ Commerce is attempting to determine whether Chinese-produced merchandise is being sold to the United States in circumvention of the HFCs *Order*, which requires an analysis of certain input costs. That analysis of the respondents' Chinese-origin input costs appropriately falls under the purview of Commerce's NME methodology, which by statute presumes that NME costs and prices are inherently unreliable.²⁹

Commerce is valuing the Chinese-origin HFC components using, to the extent possible, the prices or costs of factors of production in one or more ME countries that are at the same level of economic development comparable to the NME country and are significant producers of comparable merchandise, in accordance with section 773(c)(4) of the Act. Based on record evidence, Commerce is preliminarily selecting Mexico as the surrogate country for China because: (1) it is at a similar level of economic development pursuant to section 773(c)(4) of the Act; (2) it is a significant producer of comparable merchandise; (3) we have reliable data from Mexico.³⁰ Therefore, we calculated the value of the Chinese-origin HFC components R-32, R-125, and R-143a using a surrogate price from Mexico.³¹

Surrogate Country Comments," dated January 7, 2020.

²⁷ *Id.*

²⁸ See, e.g., *Small Diameter Graphite Electrodes from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 77 FR 47596 (August 9, 2012), and accompanying Issues and Decision Memorandum (IDM) at Comment 2.

²⁹ *Id.*

³⁰ Further, we selected Mexico as the surrogate country in the underlying investigation. See *Hydrofluorocarbon Blends and Components Thereof from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances, in Part, and Postponement of Final Determination*, 81 FR 5098 (February 1, 2016) and accompanying Preliminary Decision Memorandum, unchanged in *Hydrofluorocarbon Blends and Components Thereof from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 81 FR 42314 (June 29, 2016) and accompanying IDM. We note that National placed information on the record alleging to show that Mexico did not import any HFC components from the United States under Mexican HS 2903.39.99 in calendar year 2018. See National's Letter, "Hydrofluorocarbon Blends from the People's Republic of China: Rebuttal to Petitioner's Comments on Selection of Surrogate Values," dated February 7, 2020 at 2 and Exhibit 1. The petitioners placed evidence on the record showing that Mexico did, in fact, import HFC components in 2018 from the United States under Mexican HS 2903.39.99. See Petitioners' Letter, "Hydrofluorocarbon Blends from the People's Republic of China: Rebuttal Surrogate Values Submission," dated February 7, 2020 at Exhibit 2. Thus, we preliminarily determine that the Mexican data is reliable.

³¹ See Memorandum, "Anti-Circumvention Inquiry of Antidumping Duty Order on Hydrofluorocarbon Blends from the People's Republic of China – HFC Components: Surrogate Value Data Memorandum for the Preliminary Determination," dated concurrently with this memorandum (Surrogate Value Data Memorandum), for calculations showing how the surrogate values for the Chinese-origin R-32, R-125, and R-143a were determined, as well as the underlying data from Global Trade Atlas.

VII. STATUTORY AND REGULATORY FRAMEWORK FOR ANTI-CIRCUMVENTION INQUIRY

A. The Act

Section 781(a) of the Act, dealing with merchandise completed or assembled in the United States, states:

- (1) In general. If
 - (A) merchandise sold in the United States is of the same class or kind as any other merchandise that is the subject of
 - (i) an antidumping duty order issued under section 736,
 - (ii) a finding issued under the Antidumping Act, 1921, or
 - (iii) a countervailing duty order issued under section 706 or section 303,
 - (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,

the administering authority, after taking into account any advice provided by the Commission under subsection (e), may include within the scope of such order or finding the imported parts or components referred to in subparagraph (B) that are used in the completion or assembly of the merchandise in the United States at any time such order or finding is in effect.

- (2) Determination of whether process is minor or insignificant. In determining whether the process of assembly or completion is minor or insignificant under paragraph (1)(C), the administering authority shall take into account
 - (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.
- (3) Factors to consider. In determining whether to include parts or components in a countervailing or antidumping duty order or finding under paragraph (1), the administering authority 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 or finding described in paragraph (1) applies, and

(C) whether imports into the United States of the parts or components produced in such foreign country have increased after the initiation of the investigation which resulted in the issuance of such order or finding.

B. Commerce's Regulations

19 CFR 351.225(a) states:

Issues may arise as to whether a particular product is included within the scope of an antidumping or countervailing duty order or a suspended investigation. Such issues can arise because the descriptions of subject merchandise contained in the Department's determinations must be written in general terms. At other times, a domestic interested party may allege that a change to an imported product or the place where the imported product is assembled constitutes circumvention under section 781 of the Act. When such issues arise, the Department conducts circumvention inquiries that clarify the scope of an order or suspended investigation with respect to particular products.

19 CFR 351.225(g) states:

Under section 781(a) of the Act, the Secretary may include within the scope of an antidumping or countervailing duty order imported parts or components referred to in section 781(a)(1)(B) of the Act that are used in the completion or assembly of the merchandise in the United States at any time such order is in effect. In making this determination, the Secretary will not consider any single factor of section 781(a)(2) of the Act to be controlling. In determining the value of parts or components purchased from an affiliated person under section 781(a)(1)(D) of the Act, or of processing performed by an affiliated person under section 781(a)(2)(E) of the Act, the Secretary may determine the value of the part or component on the basis of the cost of producing the part or component under section 773(f)(3) of the Act.

VIII. USE OF FACTS AVAILABLE WITH AN ADVERSE INFERENCE

With respect to the non-responsive companies, Commerce finds it necessary to rely on facts available pursuant to section 776(a) of the Act because these companies failed to provide necessary information upon which Commerce could rely and, thereby, withheld information requested by Commerce, failed to provide requested information within the established deadlines, and significantly impeded this anti-circumvention inquiry. Further, as discussed *infra*, we find it appropriate to apply facts available with an adverse inference (AFA), pursuant to section 776(b) of the Act, to non-responsive companies because these companies failed to cooperate by not acting to the best of their ability to comply with Commerce's requests for information in this anti-circumvention inquiry.

A. Legal Standard

Section 776(a)(1) and 776(a)(2) of the Act provide that Commerce shall, subject to section 782(d) of the Act, apply facts otherwise available in reaching the applicable determination if necessary information is not on the record, or if an interested party: (A) withholds information requested by Commerce; (B) fails to provide such information by the deadlines for submission of the information, or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides such information but the information cannot be verified as provided in section 782(i) of the Act.

Section 782(c)(1) of the Act states that Commerce shall consider the ability of an interested party to provide information upon a prompt notification by that party that it is unable to submit the information in the form and manner required, and that party also provides a full explanation for the difficulty and suggests an alternative form in which the party is able to provide the information. Section 782(e) of the Act states further that Commerce shall not decline to consider submitted information if all of the following requirements are met: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Section 776(b) of the Act provides that, if Commerce finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, Commerce may use an inference adverse to the interests of that party in selecting from among the facts otherwise available.³² In so doing, Commerce is not required to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.³³ In addition, the Statement of Administrative Action explains that Commerce may employ an adverse inference “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”³⁴ The Court of Appeals for the Federal Circuit, in *Nippon Steel*,³⁵ explained that the ordinary meaning of “best” means “one’s maximum effort,” and that the statutory mandate that a respondent act to the “best of its ability” requires the respondent to do the maximum it is able to do.³⁶ Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference.³⁷ It is Commerce’s practice to consider, in employing adverse inferences, the extent to which a party may benefit from its own lack of cooperation.³⁸

³² See 19 CFR 351.308(a).

³³ See section 776(b)(1)(B) of the Act.

³⁴ See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. 1 (1994) (SAA) at 870.

³⁵ See *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003) (*Nippon Steel*).

³⁶ See SAA at 870.

³⁷ See *Nippon Steel*, 337 F.3d at 1382-83; see also *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27340 (May 19, 1997).

³⁸ See, e.g., *Steel Threaded Rod from Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances*, 78 FR 79670 (December 31, 2013), and accompanying Preliminary Decision Memorandum (PDM) at 4, unchanged in *Steel Threaded Rod from Thailand*:

B. Use of Facts Available with an Adverse Inference

Commerce preliminarily finds that the non-responsive companies failed to provide necessary information, withheld information requested by Commerce, failed to provide information in a timely manner, and significantly impeded this proceeding by not submitting the requested information. Accordingly, Commerce preliminarily determines that use of facts available is warranted in making a determination with respect to these non-responsive companies, pursuant to sections 776(a)(1) and (a)(2)(A)-(C) of the Act. Further, Commerce finds that these non-responsive companies did not cooperate to the best of their ability by failing to provide the requested information. Therefore, we preliminarily find that an adverse inference is warranted in selecting from the facts otherwise available with respect to these non-responsive companies in accordance with section 776(b) of the Act and 19 CFR 351.308(a).

Thus, relying on our application of AFA for the non-responsive companies, and consistent with our analysis of the statutory circumvention factors below, we preliminarily find that HFC components exported from China by the non-responsive companies are circumventing the HFCs *Order*.

IX. ALLEGATIONS OF CIRCUMVENTION AS IDENTIFIED IN THE INITIATION OF INQUIRY

As stated above, the petitioners filed a request for a circumvention determination, in which the petitioners point to proprietary information to claim that imported HFC components R-32, R-125, and R-143a, produced in China and further processed in the United States into finished HFC blends are covered by the scope of the *Order*.³⁹ The petitioners allege that the imported HFC components are not sold in the United States, but, rather, are consumed by BMP to make in-scope blends, which are resold in the United States.⁴⁰ According to the petitioners, the process of blending the HFC components into finished blends is “minor and insignificant” within the meaning of 781(a)(2) of the Act, and the resulting finished product is squarely within the scope of the antidumping duty order.⁴¹

Citing the International Trade Commission (ITC)’s hearing transcript, the petitioners explain that: (1) the blending process does not require major investment, complex equipment or research and development (R&D); (2) the production facilities for blending consist of only a handful of employees and some ISO tanks; and (3) the value of processing components into blends performed in the United States is a small proportion of the value of the finished HFC blend.⁴²

Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances, 79 FR 14476 (March 14, 2014).

³⁹ See Allegation of Circumvention at 9-12.

⁴⁰ *Id.* at 12.

⁴¹ *Id.* at 9 and 12-13.

⁴² *Id.* at 13-18 and Exhibits 10-16 (citing ITC Conference Transcript in the Matter of: Hydrofluorocarbon Blends and Components from China, Investigation No. 731-TA-1279 (Preliminary), dated July 16, 2015 ITC (ITC Preliminary Transcript) at 147-151; and Hearing Transcript in the Matter of: Hydrofluorocarbon Blends and Components from China, Investigation No. 731-TA-1279 (Final), dated June 21, 2016 (ITC Final Transcript) at 26-

Additionally, the petitioners argue that the value of the Chinese HFC components is a “significant” portion of the total value of the merchandise.⁴³ Finally, the petitioners insist that the *Order* will be invalidated if HFC components can be blended into subject merchandise in the United States in order to escape the HFC blends *Order*.⁴⁴

National and Quzhou Lianzhou contend that a finding that HFC components are circumventing the *Order* would directly contradict the ITC’s negative injury determination in the investigation with respect to HFC components, which has been affirmed by the Court of International Trade (CIT), and would be contrary to law and precedent.⁴⁵ National asserts that HFC components are not covered by the scope, based on the ITC’s negative determination which specifically excludes HFC components and points out that Commerce recognized this determination when it deleted language from Commerce’s final *Order* that pertained to HFC components.⁴⁶ Thus, a finding that imports of HFC components are circumventing the *Order* would improperly expand the *Order*’s scope to include, and impose antidumping duties on, products where no material injury was found.⁴⁷ National and Quzhou Lianzhou argue that Commerce should not permit an anti-circumvention proceeding to avoid or disregard a negative ITC determination.⁴⁸

Moreover, National argues that the petitioners’ claims that imports of HFC components are circumventing merchandise within the meaning of section 781(a) of the Act are inconsistent with the ITC’s determination. Citing to the ITC Final Report, National claims that the process to transform HFC components into HFC blends is significant.⁴⁹ Specifically, National and Quzhou Lianzhou assert that the ITC found that blending HFC components requires a significant level of investment in sophisticated processes, technical expertise, and equipment, and that the process involved with blending HFC components is a significant portion of the value of the finished merchandise.⁵⁰ Thus, due to the ITC’s decision and the CIT’s affirmation, Quzhou Lianzhou claims that post-importation blending of HFC components cannot, “as a matter of law,” circumvent the *Order*.⁵¹

X. ANTI-CIRCUMVENTION ANALYSIS

Section 781(a) of the Act directs Commerce to consider the criteria described above to determine whether merchandise completed or assembled in the United States is circumventing an order. As

27, 34-36, 45-46, and 19-121, TTI’s October 19, 2015, Section D Questionnaire Response from the original investigation (TTI Original Section D Response) at 7).

⁴³ *Id.* at 15-16.

⁴⁴ *Id.* at 16-19.

⁴⁵ See National Anti-Circumvention Rebuttal Comments at 8-12; and Quzhou Lianzhou Anti-Circumvention Rebuttal Comments at 7-14.

⁴⁶ See National Anti-Circumvention Rebuttal Comments at 5.

⁴⁷ *Id.* at 8.

⁴⁸ *Id.* at 12; and Quzhou Lianzhou Anti-Circumvention Rebuttal Comments at 7.

⁴⁹ See National Anti-Circumvention Rebuttal Comments at 10 (citing USITC Final Report, “Hydrofluorocarbon Blends and Components from China,” Publication 4629, Investigation No. 731-TA-1279 (Final) (August 2016) (ITC Final Report) at 12-13)

⁵⁰ *Id.* at 10-11 (citing ITC’s Remand Determination filed May 2, 2018, concerning *Arkema Inc. v. United States*, Court No. 16-00179, Slip Op. 18-12 (CIT 2018) (ITC Remand Determination) at 18); and Quzhou Lianzhou Anti-Circumvention Rebuttal Comments at 5-6 (citing ITC Remand Determination at 17-18).

⁵¹ See Quzhou Lianzhou Anti-Circumvention Rebuttal Comments at 8-9.

explained and referenced below, information available to Commerce indicates that all factors, as set forth by section 781(a) are satisfied. Thus, based on our analysis of these criteria, we preliminarily determine that imports of HFC components R-32, R-125, and R-143a from China are circumventing the *Order*.

A. The Merchandise Sold in the United States Is of the Same Class or Kind As Merchandise Subject to the *Order*

The petitioners state that the HFC blends sold in the United States from imported Chinese components R-32, R-125, and R143a, that are blended after importation, are of the same class or kind as the subject merchandise.⁵² All of the U.S. mandatory respondents (*i.e.*, BMP, National, and Arkema) reported importing one or more of the Chinese-origin HFC components that are subject to this inquiry, which were then used to create HFC blends subject to the *Order* (*i.e.*, 404A, R-407A, R-407C, R-410A, and R-507/R-507A).⁵³ These blends were then sold to customers in the United States.⁵⁴

Thus, record evidence indicates that after conversion, the HFC blends that the mandatory respondents finish in the United States would be subject to the antidumping duty order if they were imported in this finished condition, because such HFC blends meet the physical characteristics outlined in the scope of the *Order*.⁵⁵ Thus, we preliminarily determine that the merchandise produced from the imported, Chinese-origin HFC components and sold in the United States, are HFC blends of the same class or kind as the subject merchandise.

B. The Merchandise Sold in the United States Is Completed from Parts or Components Produced in China, the Foreign Country

The petitioners point to import statistics to support their claim that imports of HFC components are completed in the United States from parts and components produced in China.⁵⁶ Specifically, the petitioners explain that, since 2016, imports into the United States from China of subject HFC blends have rapidly fallen, but imports of HFC components have substantially increased. Performing the final blending operations in the United States turns the product into subject HFC blends.⁵⁷

As explained above, all of the U.S. mandatory respondents reported importing one or more of the Chinese-origin HFC components that are subject to this inquiry, which were then used to create

⁵² See Allegation of Circumvention at 7-9. We note that certain blends covered by the *Order* require an additional component, R-134a (1,1,1,2-tetrafluoroethane), which is not subject to this anti-circumvention inquiry as it is already covered by another antidumping duty order. See *1,1,1,2 Tetrafluoroethane (R-134a) from the People's Republic of China: Antidumping Duty Order*, 82 FR 18422 (April 19, 2017).

⁵³ See, *e.g.*, BMP January 24, 2020 IQR at 3; National January 24, 2020 IQR at 33; and Arkema January 24, 2020 IQR at 33.

⁵⁴ See, *e.g.*, BMP January 24, 2020 IQR at Exhibit 9 Question 16; National January 24, 2020 IQR at Exhibit 8; and Arkema January 24, 2020 IQR at Exhibit Q16.

⁵⁵ See the "Scope of the Order" section of this memorandum, above.

⁵⁶ See Allegation of Circumvention at 9-11 and Exhibit 8.

⁵⁷ *Id* at 12.

HFC blends subject to the *Order*.⁵⁸ Thus, we preliminarily determine that the subject HFC blends are completed and sold in the United States from parts or components produced in the foreign country with respect to which such order or finding applies (*i.e.*, China).

C. The Process of Assembly or Completion in the United States is Minor or Insignificant

According to the petitioners, the process of converting HFC components into finished HFC blends is minor or insignificant.⁵⁹ Specifically, the petitioners assert that a blending operation is a simple process that does not require major investment, complex equipment, or research and development.⁶⁰ Blending HFC components “only requires a holding tank for the finished HFC blend, some pipes, and valves.”⁶¹ Quoting TTI, from the original investigation, the petitioners claim, “{t}he blending process simply combines the single components together according to the blending recipe and then {the blend is} packed in various containers.”⁶²

Multiple parties claim that, based upon the ITC’s prior determinations, their post-importation blending of HFC components is neither minor nor insignificant; thus, the anti-circumvention inquiry must be dismissed for failure to meet the requirements of section 781(a)(2) of the Act, or, alternatively, Commerce must reach a negative circumvention finding.⁶³ Specifically, National states that the ITC, in its determination, found that the post-importation blending process transforming HFC components into HFC blends was significant and that blending required significant investment, a high level of R&D, a highly skilled workforce, and a significant proportion of production in the United States.⁶⁴

Section 781(a)(2) of the Act instructs us to consider the following when determining whether the process of assembly or completion is minor or insignificant under section 781(a)(1)(c):

- (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.

⁵⁸ *See, e.g.*, BMP January 24, 2020 IQR at 3; National January 24, 2020 IQR at 33; and Arkema January 24, 2020 IQR at 33. We note that Arkema, in addition to purchasing HFC components from China, also produces certain HFC components in the United States, which are then processed to produce HFC blends. *See* Arkema January 24, 2020 IQR at 33-34.

⁵⁹ *See* Allegation of Circumvention at 12-13.

⁶⁰ *Id.* at 13-15.

⁶¹ *Id.* at 14.

⁶² *Id.* (citing TTI Original Section D Response at 7).

⁶³ *See, e.g.*, National’s Letter, “Hydrofluorocarbon Blends from the People’s Republic of China: Comments in Advance of Preliminary Determination,” dated March 10, 2020 (National Pre-Preliminary Comments) at 10-11; and Juxin’s Letter, “Juxin’s Rebuttal Comments to the American HFC Coalition’s Pre-Preliminary Comments, Antidumping Duty Order on Hydrofluorocarbon Blends from the People’s Republic of China,” dated March 5, 2020 at 7-8.

⁶⁴ *See* National Pre-Preliminary Comments at 10 (citing ITC Final Report at 12-13).

With regard to parts (A) through (E) under section 781(a)(2) of the Act, we have limited information from the foreign producers and/or exporters, and we are reliant on the information placed on the record by the U.S. respondents and the petitioners. Thus, for those sections with limited information on the record from the foreign producers/exporters, our analysis is based on information provided by both the petitioners and the U.S. importers/blenders.

With respect to part (A) under section 781(a)(2) of the Act, record evidence demonstrates that blending HFC components requires significantly less investment than the production of the components. The petitioners placed evidence on the record that blending can require less than one million dollars of investment, while a production facility to manufacture HFC components requires an investment of hundreds of millions of dollars in equipment needed to handle high-hazard reaction and purification processes.⁶⁵ The low level of required investment in the United States for production of blends is corroborated by the U.S. respondents' responses. In their respective January 24, 2020 submissions, BMP, National, and Arkema provided tables that outline their level of investment expenditures in the United States in relation to blending.⁶⁶ In this same table, Arkema also provided its level of investment in component manufacturing,⁶⁷ which we note is several orders of magnitude larger than the respondents' investments in blending. Based upon the respondents' levels of investment, when compared to the investment required to build and maintain a components factory, we preliminarily find that the level of investment to blend HFCs in the United States is minimal.⁶⁸

With regard to part (B) under section 781(a)(2) of the Act, the petitioners further argue that R&D expenditures required to perform the blending operations are minimal.⁶⁹ The petitioners illustrate that it is the HFC component production process that is the focus of R&D activities in the HFCs industry, pointing to evidence submitted by Arkema that shows R&D expenditures significantly larger than those associated with the respondents' blending operations.⁷⁰ The U.S. respondents' questionnaire responses confirm that R&D expenses associated with blending are non-existent to negligible, especially when compared with R&D investments required by the production of HFC components.⁷¹ Thus, with respect to section 781(a)(2)(B) of the Act, we preliminarily find that the level of R&D spending on blending in the United States is limited.

⁶⁵ See Allegation of Circumvention at 13 (citing ITC Final Transcript at 26-27, and 119-20).

⁶⁶ See BMP January 24, 2020 IQR at Exhibit 18; National January 24, 2020 IQR at Exhibit 16; and Arkema January 24, 2020 IQR at Exhibit 18.c.

⁶⁷ See Arkema January 24, 2020 IQR at Exhibit 18.c.

⁶⁸ See Memoranda, "Anti-Circumvention Inquiry of the Antidumping Duty Order on Hydrofluorocarbon Blends from the People's Republic of China – HFC Components: Business Proprietary Memorandum for BMP;" "Anti-Circumvention Inquiry of the Antidumping Duty Order on Hydrofluorocarbon Blends from the People's Republic of China – HFC Components: Business Proprietary Memorandum for National Refrigerants, Inc.;" and "Anti-Circumvention Inquiry of the Antidumping Duty Order on Hydrofluorocarbon Blends from the People's Republic of China – HFC Components: Business Proprietary Memorandum for Arkema Inc.," dated concurrently with this memorandum (collectively, BPI Analysis Memoranda) for the figures underlying Commerce's conclusion.

⁶⁹ See Petitioners' Letter, "Hydrofluorocarbon Blends from the People's Republic of China: Pre-Preliminary Determination Comments," dated February 25, 2020 (Petitioner Pre-Preliminary Comments) at 11.

⁷⁰ *Id.* (citing Arkema January 24, 2020 IQR at 33).

⁷¹ See BMP's January 24, 2020 IQR at 25 and Exhibit 20; National January 24, 2020 IQR at 34-35 and Exhibit 21; and Arkema January 24, 2020 IQR at 32-33; see also the BPI Analysis Memoranda for the figures underlying the Commerce's conclusion.

With regard to part (C) under section 781(a)(2) of the Act, the petitioners argue that the nature of U.S. production processing is extremely minor in scope and elementary in technique, particularly relative to the production process to manufacture HFC components.⁷² The respondents' responses confirm that the blending process is straightforward.⁷³ There are no chemical reactions or temperature changes involved in blending HFCs.⁷⁴ After the blend is tested, it is extracted from the mixing tank and packaged into smaller cylinders for resale.⁷⁵ Finally, BMP, National, and Arkema's responses demonstrate that their production process only requires a small number of employees to handle the blending operations.⁷⁶ Based on information provided by Arkema, which also manufactures certain HFC components, the blending and packaging processes require significantly less processing than the production of the underlying components that the respondents import from China to assemble into HFC blends in the United States.⁷⁷ Arkema's response demonstrates that the production process for the HFC components involves multiple complex steps and chemical reactions not found within the blending process, including: liquid phase reactions, gas phase reactions, distillation, absorption, scrubbing, drying, and compression.⁷⁸ Further, the petitioners placed information on the record showing that the component manufacturing process requires complex equipment suitable to "handle these high-hazard reaction and purification processes."⁷⁹ Thus, with respect to section 781(a)(2)(C) of the Act, we preliminarily find that the nature of the production process in the United States is not significant with respect to blending HFC components into subject HFC blends.

With regard to section 781(a)(2)(D) of the Act, the petitioners argue that the necessary production facilities in the United States are minor because blending HFC components only "requires a holding tank for the finished HFC blend, some pipes, and valves."⁸⁰ With respect to the extent of the production facilities in the United States, the respondents' questionnaire responses indicate that they are minimal, consisting of holding tanks, pumps, and piping.⁸¹ Much more space is dedicated to packaging, storage, or other processes not related specifically to blending HFC components.⁸² Therefore, with respect to section 781(a)(2)(D) of the Act, we preliminarily find that the extent of the production facilities in the United States for blending HFC components into finished HFC blends is not significant.⁸³

⁷² See Petitioner Pre-Preliminary Comments at 11-14.

⁷³ See BMP's January 24, 2020 IQR at 25-26 and Exhibit 21; National January 24, 2020 IQR at Exhibits 22-23; and Arkema January 24, 2020 IQR at 35, 37, and Exhibit Q36-A; *see also* the BPI Analysis Memoranda for the figures underlying the Commerce's conclusion.

⁷⁴ See Petitioner Pre-Prelim Comments at 12; and Allegation of Circumvention at 14.

⁷⁵ See Arkema January 24, 2020 IQE at 35.

⁷⁶ See BMP's January 24, 2020 IQR at 26-27; National January 24, 2020 IQR at Exhibit 23; and Arkema January 24, 2020 IQR at Exhibit Q36-B; *see also* BPI Analysis Memorandum for the specific steps underlying, and number of employees used in, the production process of the respondents.

⁷⁷ See Arkema January 24, 2020 IQR at 34-35.

⁷⁸ *Id.* at 31 and 34-35.

⁷⁹ See Allegation of Circumvention at 13 (citing ITC Final Transcript at 119-20).

⁸⁰ *Id.* at 14.

⁸¹ See BMP's January 24, 2020 IQR at Exhibit 18; National January 24, 2020 IQR at Exhibit 18; and Arkema January 24, 2020 IQR at Exhibit Q32-C.

⁸² See, e.g., Allegation of Circumvention at Exhibit 13, for a public exhibit showing BMP's production facility. Specifically, the picture shows ISO tanks being stored in a parking lot.

⁸³ See the BPI Analysis Memoranda for further details underlying Commerce's conclusion.

With regard to section 781(a)(2)(E) of the Act, the petitioners contend that the value of the processing performed in the United States represents a negligible proportion of the value of the merchandise sold in the United States.⁸⁴ The petitioners provided an analysis and supporting evidence showing that the blending in the United States amounts to an insignificant percentage of the value of the U.S. price of the HFC blends.⁸⁵ With regard to this criterion, we preliminarily determine that the appropriate method for valuing the processing performed in the United States is by comparing the respondents' blending costs related directly to processing the HFC components into finished blends (*i.e.*, direct labor, factory overhead, selling, general, and administrative expenses, and net interest expenses) with the average sales prices of the finished HFC blends in the United States over the same time period (*i.e.*, calendar year 2018).⁸⁶ As discussed in our BPI Analysis Memoranda, our comparison of BMP, National, and Arkema's total processing costs indicates that 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.⁸⁷ Specifically, we found that the weighted-average cost of processing the HFC components into finished HFC blends (both individually, and as a whole) only accounted for the following percentages:⁸⁸

- R-404A: 13.21%
- R-407A: 13.05%
- R-407C: 12.14%
- R-410A: 15.69%
- R-507/R-507A: 11.28%
- Weighted-Average Total: 14.68%

Thus, with respect section 781(a)(2)(E) of the Act, we preliminarily determine that 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.

D. The Value of the Parts or Components Produced in the Foreign Country Is a Significant Portion of the Total Value of the Merchandise

Based on our analysis of the figures placed on the record by participating parties,⁸⁹ we preliminarily find that the value of the parts or components produced in the foreign country is a significant portion of the total value of the merchandise in question.⁹⁰ Specifically, we found that, using the surrogate values contained in the Surrogate Value Data Memorandum, the

⁸⁴ See Petitioner Pre-Preliminary Comments at 15.

⁸⁵ *Id.*

⁸⁶ See BMP's January 24, 2020 IQR at Exhibit 23; National January 24, 2020 IQR at Exhibit 25; and Arkema January 24, 2020 IQR at Exhibits Q4 & 46.b and Q41.

⁸⁷ See the BPI Analysis Memoranda for the calculations underlying Commerce's conclusion.

⁸⁸ See Memorandum, "Anti-Circumvention Inquiry of Antidumping Duty Order on Hydrofluorocarbon Blends from the People's Republic of China – HFC Components: BPI Data Analysis Memorandum for the Preliminary Determination," dated concurrently with this memorandum (Preliminary BPI Data Analysis Memorandum) at Attachment I.

⁸⁹ See BMP's January 24, 2020 IQR at Exhibits 4 and 23; National January 24, 2020 IQR at Exhibits 4 and 24-25; and Arkema January 24, 2020 IQR at Exhibits Q4 & 46.b and Q39 & 40.

⁹⁰ See the BPI Analysis Memoranda for the calculations underlying Commerce's conclusion.

weighted-average value of the parts or components produced in the foreign country (*i.e.*, the HFC components) accounted for the following percentages of the value of the finished HFC blends (both individually, and in total):⁹¹

- R-404A: 97.54%
- R-407A: 77.69%
- R-407C: 58.17%
- R-410A: 121.68%
- R-507/R-507A: 107.51%
- Weighted-Average Total: 108.95%

Thus, with respect to section 781(a)(1)(D) of the Act, we preliminarily find that the value of the parts or components produced in the foreign country is a significant portion of the total value of the merchandise in question.⁹²

E. Additional Factors to Consider

Section 781(a)(3) of the Act identifies additional factors that Commerce shall consider in determining whether to include parts or components in an antidumping duty order as part of a circumvention inquiry.

i. Patterns of Trade, Including Sourcing Patterns

Under section 781(a)(3)(A) of the Act, Commerce shall take into account whether there has been a change in the pattern of trade when making its determinations with respect to circumvention. Record evidence demonstrates that there is a stark change in the pattern of trade since the *Order* was placed on HFC Blends, as demonstrated by the Q&V responses from the Chinese producers/exporters.⁹³ From July 2011, through August 2016 (*i.e.*, when the *Order* took effect), the average monthly exports of HFC components from China to the United States were 529,556 kilograms (Kg). From September 2016, through June 2019, monthly average exports of HFC components from China to the United States surged to 2,707,659 Kg; an increase of 411.31 percent.⁹⁴ Likewise, over the same time periods, the monthly average import quantity of HFC components from China into the U.S. increased from 599,875 Kg per month to 2,247,874 Kg per month; a 274.72 percent increase.⁹⁵

Likewise, imports of HFC blends have decreased dramatically since the imposition of the *Order*. ITC Dataweb data show that, in 2016, a total of 9,874.6 metric tons (MT) of HFC blends classified under HTSUS 3824.78.0020 were imported from China.⁹⁶ In 2018, that number dropped to 2,117.7 MT; a 78.55 percent decrease. Therefore, in light of significant record

⁹¹ See Preliminary BPI Data Analysis Memorandum at Attachment II.

⁹² *Id.*

⁹³ See, generally, the Q&V responses from interested parties filed between October 31, 2019, and November 18, 2019.

⁹⁴ See Exhibit 1; see also Preliminary BPI Data Analysis Memorandum at Attachment III-A.

⁹⁵ See Exhibit 2; see also Preliminary BPI Data Analysis Memorandum at Attachment III-B.

⁹⁶ See Petitioner Pre-Preliminary Comments at Exhibit 1.

evidence, we preliminarily determine that the data provided on the record are clear, and that the massive decrease in imports of HFC blends into the United States, and corresponding massive increase of imports of HFC components into the United States, represent changes in the patterns of trade.⁹⁷ Consequently, our preliminary finding with regard to this factor supports our preliminary affirmative determination that HFC components from China are circumventing the *Order*.

ii. Affiliation

Under section 781(a)(3)(B) of the Act, Commerce shall take into account whether the producer or exporter of the parts or components is affiliated with the person who assembles or completes the HFC blends in the United States from the parts or components produced in the foreign country when making a decision in a circumvention inquiry. Although we note that not every importer and blender of HFC components is affiliated with Chinese producers or exporters (*e.g.*, National), record evidence shows that multiple entities in the United States, including certain respondents and companies responding to the Q&V questionnaire,⁹⁸ that import HFC components from China to further process into finished HFC blends in the United States are affiliated with the producers and exporters of the HFC components in China.⁹⁹ Consequently, this factor supports a finding of circumvention.

iii. Subsequent Import Volume

Under section 781(a)(3)(C) of the Act, another factor Commerce should consider is whether imports into the United States of the parts or components produced in the foreign country increased after the initiation of the investigation, which resulted in the issuance of the *Order*, when making a decision in a circumvention case.

We initiated the less-than-fair-value investigation in July 2015,¹⁰⁰ and published the *Order* in August 2016. Since the initiation of the investigation, imports of HFC components increased dramatically. The Q&V responses we received from U.S. importers of Chinese HFC components show that from July 2011, through June 2015 (*i.e.*, the month before the initiation of the investigation), these companies imported a total of 29,767.7 MT of HFC components from China. From August 2015 (*i.e.*, the month after the initiation of the investigation) to July 2019, these same importers/blenders accounted for 83,852.3 MT of imports of HFC components from China; a 181.69 percent increase over the same length of time (*i.e.*, 48 months).¹⁰¹ Thus, imports of HFC components increased after the initiation of the investigation and, as demonstrated in the “Patterns of Trade, Including Sourcing Patterns” section, even more significantly after the

⁹⁷ For analysis of this factor with respect to BMP, National, and Arkema, *see* the BPI Analysis Memoranda.

⁹⁸ For example, ICOOL USA Incorporated (*i.e.*, a U.S. importer and blender of Chinese HFC components) is affiliated with Ninhua Group Co., Ltd., ICOOL International Commerce Limited, and ICOOL International (HongKong) Limited (collectively, the Ninhua Group) all of which are exporters of Chinese-origin HFC components. *See* the Ninhua Group’s Letter, “Hydrofluorocarbon Blends from China; A-570-028; (HFC Components) Questionnaire Response,” dated November 12, 2019 at 6-8.

⁹⁹ *See* the BPI Analysis Memoranda for further details underlying Commerce’s conclusion.

¹⁰⁰ *See Hydrofluorocarbon Blends and Components Thereof from the People’s Republic of China: Initiation of Less-Than-Fair-Value Investigation*, 80 FR 43387 (July 22, 2015).

¹⁰¹ *See* Exhibit 2; *see also* Preliminary BPI Data Analysis Memorandum at Attachment III-B.

publication of the order. Thus, in whole, this factor supports an affirmative finding of circumvention.¹⁰²

XI. INTENT TO CONSIDER CERTIFICATION REQUIREMENT

In light of Commerce's preliminary finding of circumvention, Commerce intends to consider whether to require importers of HFC components who claim their merchandise is not used to create HFC blends subject to the *Order* to maintain certification to that effect. Commerce invites comments on this issue.

XII. COUNTRY-WIDE DETERMINATION

As noted above, Commerce has identified the universe of producers, exporters, importers, and blenders of HFC components R-32, R-125, and R-143a using CBP entry data for U.S. imports of HFC components, and Q&V questionnaires.¹⁰³ We gathered information from the largest producers and exporters, and the largest importers of HFC components from China, which account for the largest volume of HFC components exported from China and consumed in the United States, to extrapolate the best overall picture of the significance of further manufacturing on a country-wide basis. As noted above, the U.S. respondents reported using HFC components originating in China in their production of finished HFC blends in the United States subject to the *Order*, and provided full questionnaire responses substantiating this fact. Further, Juxin, Sanmei, and TTI are the largest Chinese exporters of HFC components to the United States, and BMP, National, and Arkema are the largest U.S. importers of Chinese-origin HFC components.¹⁰⁴ Given that Juxin, Sanmei, and TTI account for the largest volume of HFC components exported from China to the United States, and BMP, National, and Arkema account for the largest volume of imports, we find that the six respondents' production processes are representative of other exporters from China and importers in the United States. Therefore, we are applying this affirmative preliminary finding to all shipments of HFC components R-32, R-125, and R-143a from China, on or after June 18, 2019, the date of initiation of this anti-circumvention inquiry, in accordance with section 781(a) of the Act and 19 CFR 351.225(g).

XIII. RECOMMENDATION

Because imports of HFC components R-32, R-125, and R-143a, exported from China, are further processed by BMP, National, and Arkema into subject HFC blends in the United States, and, given the above analysis of the criteria set forth by the Act with respect to circumvention, we recommend that, pursuant to section 781(a) of the Act and 19 CFR 351.225(g), Commerce issue a preliminary affirmative circumvention determination that imports of HFC components R-32

¹⁰² For analysis of this factor with respect to BMP, National, and Arkema, *see* the BPI Analysis Memoranda.

¹⁰³ *See* CBP Data Memo.

¹⁰⁴ *See* Memorandum, "Anti-Circumvention Inquiry of the Antidumping Duty Order on Hydrofluorocarbon Blends from the People's Republic China: Hydrofluorocarbon Components: Respondent Selection," dated December 18, 2019 at 6.

(difluoromethane), R-125 (pentafluoroethane), and R-143a (1,1,1-trifluoroethane) from China are circumventing the *Order*.

Agree

Disagree

4/3/2020

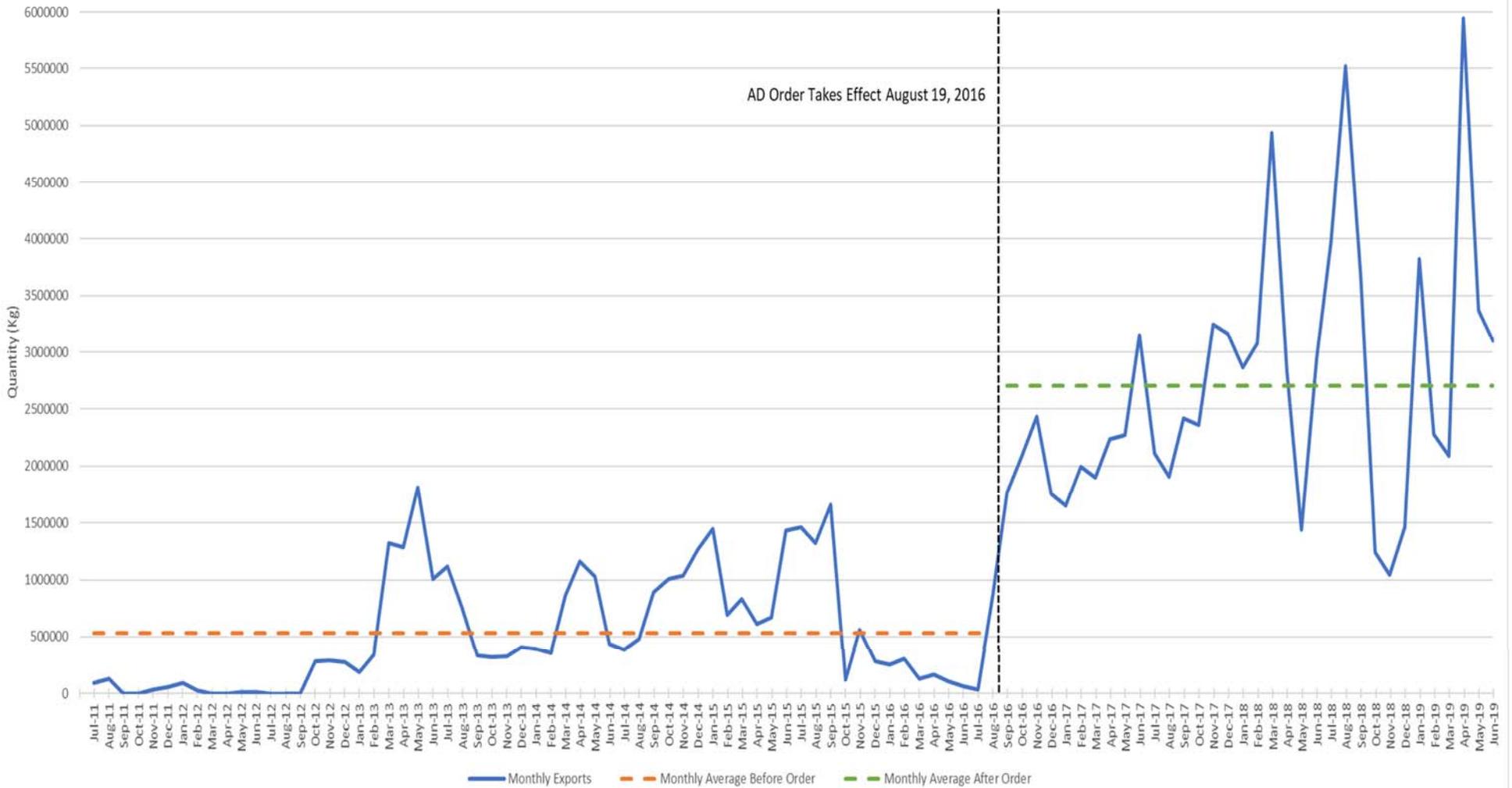
X



Signed by: CHRISTIAN MARSH
Christian Marsh
Deputy Assistant Secretary
for Enforcement and Compliance

EXHIBIT 1

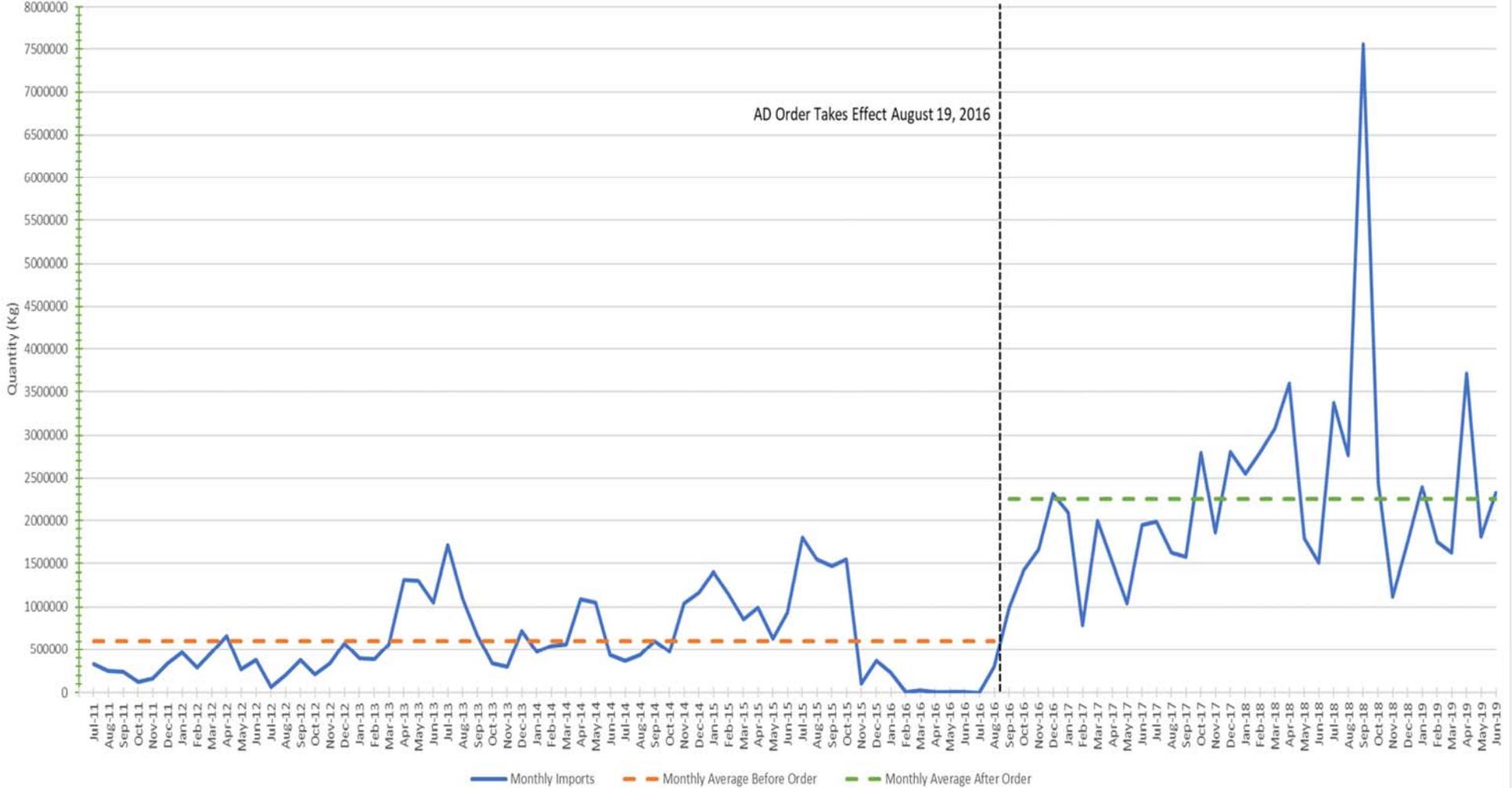
Monthly Exports from China to the United States of HFC Components R-32, R-125, and R-143a under HTSUS 2903.39.2035



* See Preliminary BPI Data Analysis Memorandum at Attachment III-A.

EXHIBIT 2

Monthly Imports from China to the United States of HFC Components R-32, R-125, and R-143a under HTSUS
2903.39.2035



* See Preliminary BPI Data Analysis Memorandum at Attachment III-B