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CIRC - Indian Blends
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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 Scope Ruling and Anti-Circumvention Inquiry of the Antidumping Duty Order on Hydrofluorocarbon Blends from the People's Republic of China: Indian Blends

I. SUMMARY

In June 2017, Gujarat Fluorochemicals Ltd. (GFL) filed a scope ruling request¹ seeking that the Department of Commerce (Commerce) determine if R-410A, imported from India, that is manufactured and blended in India from Chinese and Indian origin components, is covered by the antidumping duty (AD) order on hydrofluorocarbon (HFC) blends from the People's Republic of China (China).² Based, in part, on a plain reading of the scope language itself, we preliminarily determine that the R-410A at issue is not within the scope of the *Order* within the meaning of 19 CFR 351.225(k).

Further, in response to a request from the American HFC Coalition (the petitioners), we initiated an anti-circumvention inquiry, pursuant to section 781(b) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.225(h),³ to determine whether HFC blends, containing HFC components from India and China, that are blended in India prior to importation into the United States, are subject to the *Order*. Based on the information submitted by interested parties and the analysis below, we recommend that, pursuant to section 781(b) of the Act, Commerce preliminarily find that imports of HFC blends R-404A, R-407A, R-407C, R-410A, and R-507A/R-507 produced in India using one or more HFC components of Chinese origin, that are blended in India prior to importation into the United States, are circumventing the *Order*.

¹ See GFL's Letter, "Hydrofluorocarbon Blends from the People's Republic of China: Request of Gujarat Fluorochemicals Ltd. for a Scope Ruling Confirming the Exclusion of Hydrofluorocarbon Blends Which Are Blended in India from the AD Order," dated June 12, 2017 (GFL Scope Ruling Request).

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

³ See *Hydrofluorocarbon Blends from the People's Republic of China: Initiation of Anti-Circumvention Inquiry of Antidumping Duty Order; Third-Country Blends Containing Chinese Components*, 84 FR 28269 (June 18, 2019) (*Notice of Initiation*).

II. BACKGROUND

Scope Inquiry and Circumvention Allegation

On June 12, 2017, GFL filed a scope ruling request asking Commerce to confirm that its blend of R-410A, containing a 50-50 blend of the Chinese manufactured HFC component, R-32, and the Indian-produced HFC component, R-125, blended in India, is excluded from the *Order*.⁴ On July 3, 2017, the petitioners filed a submission, in opposition to GFL's request, arguing that HFC blends, containing Chinese HFC components, are included in the scope of the *Order* regardless of whether the blending occurs in India.⁵ On October 13, 2017, Commerce initiated a formal scope inquiry.⁶

On August 6, 2018, the petitioners alleged that GFL was circumventing the *Order* by: (1) importing HFC component, R-32, from China into India; (2) performing a minor blending process in India with Indian-produced HFC component, R-125; and (3) exporting the HFC blend, R-410A, to the United States, as Indian origin.⁷ Therefore, the petitioners requested that Commerce conduct an anti-circumvention analysis of the scope ruling request filed by GFL, pursuant to section 781(b) of the Act, and 19 CFR 351.225(h) to determine whether GFL's exports of R-410A are circumventing the *Order*.⁸

On August 27, 2018, GFL filed a letter opposing the petitioners' request that Commerce apply section 781(b) of the Act to GFL's scope ruling request.⁹ In its submission, GFL argued, among other things, that its R-410A is already excluded from the *Order* because the International Trade Commission (ITC) reached a negative determination with respect to Chinese HFC components (*i.e.*, R-32).¹⁰

Initiation and Respondent Selection

On June 18, 2019, Commerce initiated this anti-circumvention inquiry with respect to certain HFC blends, containing HFC components from India and China, that are blended in India prior to importation into the United States.¹¹ On June 24, 2019, we requested comments from

⁴ See GFL Scope Ruling Request.

⁵ See Petitioners' Letter, "Hydrofluorocarbon Blends from the People's Republic of China: Opposition of the American HFC Coalition to the Request by Gujarat Fluorochemicals Ltd. for a Scope Ruling," dated July 3, 2017.

⁶ See Memorandum, "Hydrofluorocarbon Blends from the People's Republic of China: Initiation of Scope Inquiry on Gujarat Fluorochemicals Ltd.'s R-410A Blend," dated October 13, 2017.

⁷ See Petitioners' Letter, "Hydrofluorocarbon Blends from the People's Republic of China: Request to Apply Section 781(b) of the Act," dated August 6, 2018 (Initiation Request).

⁸ *Id.* at 4-5.

⁹ See GFL's Letter, "Hydrofluorocarbon Blends from the People's Republic of China: Objection to Application of Section 781 to GFL's Scope Ruling," dated August 27, 2018.

¹⁰ See *Hydrofluorocarbon Blends and Components from China, Inv. 731-TA-1279 (Final)*, USITC Pub. 4629, dated August 2016 (*Final ITC Determination*).

¹¹ See *Notice of Initiation*.

interested parties on respondent selection and the period of inquiry (POI).¹² In July 2019, we received comments on respondent selection and the POI from the petitioners and GFL.¹³

On October 25, 2019, we placed on the record U.S. Customs and Border Protection (CBP) data for U.S. imports from India under Harmonized Tariff Schedule of the United States (HTSUS) numbers 3824.78.0020 and 3824.78.0050, and solicited comments on these data.¹⁴ We issued quantity and value (Q&V) questionnaires to four companies on the same date.¹⁵ Three companies responded to the Q&V questionnaires and one company, Coolmate Refrigerant Pvt. Ltd. (Coolmate Refrigerant), did not respond to the Q&V questionnaire.¹⁶

Questionnaires and Responses

On December 26, 2019, we selected GFL and SRF Limited (SRF) as mandatory respondents in this inquiry.¹⁷ On December 27, 2019, we issued initial questionnaires to GFL and SRF.¹⁸ GFL and SRF responded to Commerce's initial questionnaire on January 31, 2020, and February 4, 2020, respectively.¹⁹

Surrogate Country and Surrogate Value Submissions

On December 27, 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 country, and surrogate values.²⁰ On January 9 and 13, 2020, the petitioners submitted initial and rebuttal comments on surrogate

¹² See Memorandum, "Antidumping Duty Order on Hydrofluorocarbon Blends from the People's Republic of China: Third-Country Blends Containing Chinese Components Anti-Circumvention Inquiry: Request for Comments on Period of Investigation and Respondent Selection," dated June 24, 2019.

¹³ See Petitioners' Letter, "Hydrofluorocarbon Blends from the People's Republic of China; Third-Country Blends Containing Chinese Components Anti-Circumvention Inquiry: Comments of the HFC Coalition on the Period of Investigation and Respondent Selection," dated July 5, 2019; and GFL's Letter, "Hydrofluorocarbon Blends from the People's Republic of China: Comments on Period of Investigation and Respondent Selection," dated July 5, 2019.

¹⁴ See Memorandum, "Anti-Circumvention Inquiry of the Antidumping Duty Order on Hydrofluorocarbon Blends from the People's Republic of China – Indian Blends: Release of U.S. Customs and Border Protection Data and Clarification of Quantity and Value Questionnaires," dated October 25, 2019.

¹⁵ *Id.*

¹⁶ See Memorandum, "Quantity and Value Delivery Confirmation in the Anti-Circumvention Inquiry of the Antidumping Duty Order on Hydrofluorocarbon Blends from the People's Republic of China: Indian Producers of Certain Hydrofluorocarbon Blends," dated December 23, 2019; see also Refex Industries Ltd.'s (Refex) Letter, "Anti-Circumvention Inquiry of the Antidumping Duty Order on Hydrofluorocarbon Blends from the People's Republic of China: Submission of Q&V Questionnaire Response for Indian Producers of Certain Hydrofluorocarbon Blends," dated December 4, 2019 (Refex December 4, 2019 Q&V Response).

¹⁷ See Memorandum, "Anti-Circumvention Inquiry of the Antidumping Duty Order on Hydrofluorocarbon Blends from the People's Republic of China: Indian Blends; Respondent Selection," dated December 26, 2019.

¹⁸ See Commerce's Letter, "Anti-Circumvention Inquiry of the Antidumping Duty Order on Hydrofluorocarbon Blends from the People's Republic of China – Indian Blends: Initial Questionnaire," dated December 27, 2019.

¹⁹ See GFL's January 31, 2020, initial questionnaire response; and SRF's February 4, 2020, initial questionnaire response.

²⁰ See Memorandum, "Antidumping Duty Order on Hydrofluorocarbon Blends from the People's Republic of China: Indian Blends Anti-Circumvention Inquiry," dated December 27, 2019.

country selection, respectively.²¹ On January 9, 2020, GFL submitted comments on surrogate country selection.²² On January 16, 2020, the petitioners and GFL submitted surrogate value comments.²³ On January 27, 2020, SRF submitted surrogate value rebuttal comments.²⁴

III. MERCHANDISE SUBJECT TO THE SCOPE AND ANTI-CIRCUMVENTION INQUIRY

The scope inquiry covers imports of R-410A, comprised of Chinese manufactured HFC components and Indian manufactured HFC components, blended in India to produce R-410A, prior to importation into the United States. The anti-circumvention inquiry covers HFC blends R-404A, R-407A, R-407C, R-410A, and R-507A/R-507 produced in India using one or more HFC components of Chinese origin.²⁵

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.²⁶

²¹ See Petitioners' Letter, "Hydrofluorocarbon Blends from the People's Republic of China: Initial Surrogate Country Selection Comments," dated January 9, 2020; and Petitioners' Letter, "Hydrofluorocarbon Blends from the People's Republic of China: Rebuttal Surrogate Country Comments," dated January 13, 2020.

²² See GFL's Letter, "Hydrofluorocarbon Blends from the People's Republic of China: Surrogate Country Comments," dated January 9, 2020.

²³ See Petitioners' Letter, "Hydrofluorocarbon Blends from the People's Republic of China: Surrogate Values Submission," dated January 16, 2020; and GFL's Letter, "Hydrofluorocarbon Blends from the People's Republic of China: Surrogate Value Comments," dated January 16, 2020.

²⁴ See SRF's Letter, "SRF's Surrogate Value Rebuttal Comments Antidumping Duty Order on Hydrofluorocarbon Blends from the People's Republic of China," dated January 27, 2020.

²⁵ Based upon questionnaire responses provided by the Indian producer/exporters in this inquiry, we have preliminarily determined to cover all of the HFC blends listed under the scope or the *Order*, as we stated we may cover in the *Notice of Initiation*, at 84 FR 28270.

²⁶ 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.

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 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.²⁷

V. STATUTORY AND REGULATORY FRAMEWORK FOR SCOPE INQUIRY

When a request for a scope ruling is filed, Commerce examines the scope language of the order at issue and the description of the product contained in the scope ruling request.²⁸ Pursuant to Commerce's regulations, Commerce may also examine other information, including the description of the merchandise contained in the petition, the records from the investigation, and prior scope determinations made for the same product.²⁹ If Commerce determines that these sources are sufficient to decide the matter, it will issue a scope ruling as to whether the merchandise is covered by an order.³⁰

Conversely, where the descriptions of the merchandise in the sources described in 19 CFR 351.225(k)(1) are not dispositive, Commerce will consider the five additional factors set forth at 19 CFR 351.225(k)(2). These factors are: (i) the physical characteristics of the merchandise; (ii) the expectations of the ultimate purchasers; (iii) the ultimate use of the product; (iv) the channels of trade in which the product is sold; and (v) the manner in which the product is advertised and displayed. The determination as to which analytical framework is most appropriate in any given scope proceeding is made on a case-by-case basis after consideration of all evidence before Commerce.

²⁷ See *Order*.

²⁸ See *Walgreen Co. v. United States*, 620 F.3d 1350, 1357 (Fed. Cir. 2010); see also 19 CFR 351.225(k).

²⁹ See 19 CFR 351.225(k)(1).

³⁰ See 19 CFR 351.225(d).

VI. INTERESTED PARTY SCOPE COMMENTS

GFL

GFL asserts that the starting point for deciding whether GFL's Indian origin R-410A falls within the scope of the *Order*, is the language of the *Order* itself. "If Commerce finds that the language of the scope is unambiguous with respect to the merchandise at issue, then it explains what it understands is the plain meaning of the scope and the inquiry ends there."³¹ In the instant case, GFL argues that the scope of the *Order* covers only Chinese HFC blends; it does not cover blends manufactured in third countries, nor does it cover HFC components from China. Therefore, GFL argues that an HFC blend manufactured in India of Indian and Chinese components is not covered by the scope of the *Order*.³²

GFL makes further arguments with regards to factors to be examined under 19 CFR 351.225(d) and 19 CFR 351.225(k)(1);³³ however, we have not addressed those arguments here because we have found GFL's R-410A to be outside the scope of the *Order* under the plain language of the scope and we therefore do not need to summarize or address the other arguments made by GFL.

Petitioners

The petitioners argue that the scope explicitly covers imports of R-410A, which is a blend of R-135 and R-32, in equal parts.³⁴ The petitioners further assert that the petition and underlying investigation unambiguously allow that third-country blends of Chinese-made components would be subject to the *Order*, even if only a single Chinese component is included in the blend.³⁵ Therefore, applying 19 CFR 351.225(k)(1), the petitioners argue that GFL's R-410A is covered by the *Order*.

The petitioners further posit, as an alternative, that under the "substantial transformation" test or the statutory factors identified in section 781(b) of the Act, imported R-410A should be covered by the *Order* because the imported R-410A is of the same class or kind as the merchandise covered by the scope of the *Order*; the R-32 used by GFL to blend the R-410A was completed in China; and blending itself is a simple operation.³⁶ As such, GFL's request amounts to an attempt to avoid antidumping duties by virtue of a minor blending process.³⁷ The petitioners further argue that there has been a spike in exports of HFCs from China to India since the imposition of the *Order*, and that Commerce should, under 781(b)(3) of the Act, take this change in the pattern

³¹ See GFL's November 2, 2017 Comments at 8 (citing *Bell Supply Co., LLC v. United States*, Court of International Trade (CIT), April 27, 2016).

³² *Id.* at 8.

³³ See Scope Ruling Request at 6-7; and GFL's November 2, 2017 Comments at 5-13.

³⁴ See Petitioners' November 13, 2017 Rebuttal Comments at 2.

³⁵ *Id.* at 2 and 5-11

³⁶ *Id.* at 2-3 and 11-21 (citing *Global Commodity Group LLC v. United States*, 709 F. 3d 1134 (Fed. Cir. 2013) (*Global Commodity Group*); and *Honey from the People's Republic of China: Affirmative Determination of Circumvention of the Antidumping Duty Order*, 77 FR 50464 (August 21, 2012) (*Honey from China*)).

³⁷ *Id.* at 3.

of trade into consideration, because otherwise the *Order* will be severely undermined or nullified if Chinese components can be blended in third countries and thereby evade the *Order*.³⁸

The petitioners additionally argue that, if Commerce applies the 19 CFR 351.225(k)(2) factors, GFL's imports of R-410A should be included within the scope of the *Order*.³⁹

VII. PRELIMINARY SCOPE DETERMINATION

Commerce examined the language of the *Order* and the description of the product contained in this scope request. In accordance with 19 CFR 351.225(k)(1), we preliminarily determine that the scope language is dispositive as to whether the product at issue is subject merchandise. The scope of the *Order* covers HFC blends from China and provides that:

The products subject to this order are HFC blends. HFC blends covered by the scope are ... R-410A, a zeotropic mixture of 50 percent Difluoromethane and 50 percent Pentafluoroethane... 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.⁴⁰

GFL produces the HFC R-410A blend in India from self-produced Indian R-125 and Chinese R-32. The scope of the *Order* only covers R-410A from China; it does not cover Chinese components (*i.e.*, Chinese R-32) and it does not cover Indian HFC blends. Further, Commerce cannot rely upon the petition or the final determination with regards to components or third country blends, because the ITC did not find injury for components and therefore Commerce amended the language of the scope, at the time of issuance of the *Order*, to only cover HFC blends, upon which the ITC did find injury.⁴¹ Thus, because the R-410A HFC blend is produced in India, we do not find the blend to be covered by the scope of this order, which covers HFC blends from China.⁴²

While we agree with the petitioners that the scope does explicitly cover R-410A, we note that the scope covers R-410A which was produced in, and exported from China. In the instant case, the

³⁸ *Id.* at 21-22.

³⁹ *Id.* at 23-26.

⁴⁰ *See Order*, 81 FR at 55436.

⁴¹ *Id.*, 81 FR at 55437 (“on August 5, 2016, in accordance with section 735(d) of the Act, the ITC notified {Commerce} of its final determination in this investigation. In its determination, the ITC found two domestic like products: (1) HFC blends, and (2) HFC components. The ITC notified {Commerce} of: Its affirmative determination that an industry in the United States is materially injured within the meaning of section 735(b)(1)(A)(i) of the Act, by reason of the {less than fair value} imports of HFC blends from {China}; its negative determination that an industry in the United States is not materially injured or threatened with material injury by reason of imports of HFC components from {China}... Therefore, in accordance with section 735(c)(2) of the Act, we are issuing this antidumping duty order with respect to HFC blends as identified in the “Scope of the Order” section above.” (citations omitted)).

⁴² We further note that GFL's blend would be covered, in full, by an order, if there were one, on HFC blends from India. Because a product cannot be subject to more than one antidumping duty order, it would not be appropriate, in this case, for the antidumping duty order on HFC blends from China to cover HFC blends which are manufactured in India from mixed Indian and Chinese components.

R-410A exported by GFL was produced in and exported from India. Furthermore, this is not a case of the R-410A being assembled purely from Chinese components in India. Rather, the HFC blend is a mixture of Chinese and Indian components, and is blended and packaged in India. Because the scope does not cover Chinese components, without performing a circumvention analysis, there is no reason to assume that a Chinese component, shipped to India, and blended with an Indian component to make an HFC blend should be covered by the *Order*.

Further, we do not find the Court's determination in *Global Commodity Group* to be applicable here. In that case, the scope covered citric acid and Commerce found a blend of Chinese and other citric acid to be covered to the extent that the blend consisted of Chinese citric acid. In the instant case, the HFC blend was produced in India from non-subject Chinese R-32 and Indian R-125. Likewise, we do not find the facts in *Honey from China* to be applicable to the instant scope ruling. In *Honey from China*, Commerce found blended rice-syrup and honey to be later-developed merchandise, also subject to the order on honey from China; the scope inquiry in the instant case does not deal with later-developed merchandise.

Interested parties made numerous other arguments relying upon the ITC's final determination, the petition, and the factors under 19 CFR 351.225(k). However, we have not addressed those arguments because we find the language of the scope to be dispositive with respect to whether GFL's R-410A is within the scope and we, therefore, have relied solely upon the plain language of the scope in finding the R-410A produced by GFL, in India, to be outside the scope of the *Order*.

VIII. PERIOD OF ANTI-CIRCUMVENTION INQUIRY

For purposes of examining the patterns of trade for imports subject to this inquiry, we examined the time period from January 1, 2011 through June 30, 2019. For surrogate values (*i.e.*, for the Chinese export prices) we used the time period January 2018 through December 2018; and for U.S. sales values, we used the time period January 1, 2016 through June 30, 2019. For the purposes of examining Indian further manufacturing costs, we used the time period of January 1, 2018 through December 31, 2018 for SRF; and April 1, 2018 through March 31, 2019 for GFL.⁴³

IX. SURROGATE COUNTRY AND VALUATION METHODOLOGY FOR INPUTS FROM CHINA

In the last completed administrative review of the AD order on HFC blends from China, Commerce treated China as a non-market economy (NME) country.⁴⁴ In accordance with section 771(18)(C)(i) of the Act, a determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority.⁴⁵ No party has challenged the

⁴³ See GFL's Letter, "Hydrofluorocarbon Blends from the People's Republic of China: Request for Modification of Cost Reporting Period," dated January 7, 2020; and GFL's Letter, "Hydrofluorocarbon Blends from the People's Republic of China: Request for Modification of Cost Reporting Period," dated January 10, 2020.

⁴⁴ See, *e.g.*, *Hydrofluorocarbon Blends from the People's Republic of China: Final Results of the Antidumping Duty Administrative Review and Final Determination of No Shipments; 2017-2018*, 84 FR 56416 (October 22, 2019).

⁴⁵ See, *e.g.*, *Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Coated Free Sheet Paper from the People's Republic of China*, 72 FR 30758, 30760 (June 4, 2007), unchanged in

designation of China as an NME country in this anti-circumvention inquiry. Therefore, we continue to treat China as an NME country for purposes of the preliminary determination of this anti-circumvention inquiry.⁴⁶

When conducting proceedings involving imports from an NME country, section 773(c)(1) of the Act directs Commerce to base normal value, in most cases, on the NME producer's factors of production (FOPs) valued in a surrogate market economy (ME) country considered appropriate by Commerce.⁴⁷ In accordance with section 773(c)(4) of the Act, Commerce will value NME producers' FOPs using "to the extent possible, the prices or costs of the factors of production in one or more market-economy countries that are – (A) at a level of economic development comparable to that of the nonmarket economy country, and (B) significant producers of comparable merchandise."⁴⁸ In this anti-circumvention inquiry, GFL and SRF produced HFC blends using HFC components produced in China.

Because this anti-circumvention inquiry is for the AD order on HFC blends from China, our analysis of GFL's and SRF's HFC components that they purchased from China falls under the purview of Commerce's NME methodology.⁴⁹ As such, because key elements of Commerce's analysis under section 781(b)(1)(D) of the Act necessitates obtaining values for NME inputs, for the purchases of Chinese HFC components, we have determined to use surrogate values from an appropriate ME country, consistent with section 773(c)(1) of the Act and Commerce's past practice as guidance.⁵⁰

For the valuation of HFC components from China, we disclosed the list of potential surrogate countries and invited comments for the selection of the primary surrogate country and surrogate values.⁵¹ In response, the petitioners requested that we select Mexico as the primary surrogate

Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China, 72 FR 60632 (October 25, 2007).

⁴⁶ See *Antidumping Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less-Than-Fair Value and Postponement of Final Determination*, 82 FR 50858, 50861 (November 2, 2017), and accompanying Preliminary Decision Memorandum (PDM) at 7-8 (citing Memorandum, "China's Status as a Non-Market Economy," dated October 26, 2017), unchanged in *Certain Aluminum Foil from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 83 FR 9282 (March 5, 2018).

⁴⁷ See section 773(c)(1) of the Act.

⁴⁸ See section 773(c)(4) of the Act.

⁴⁹ See *Small Diameter Graphite Electrodes from the People's Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order and Extension of Final Determination*, 77 FR 33405, 33407 (June 6, 2012), unchanged in *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) (*SDGE Anti-Circumvention Final*), and accompanying Issues and Decision Memorandum (IDM) at Comment 2; *Certain Cold-Rolled Steel Flat Products from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty and Countervailing Duty Orders*, 83 FR 23891 (May 23, 2018) (*Cold-Rolled Steel*), and accompanying IDM at Comment 6.

⁵⁰ See section 773(c)(1) of the Act; *SDGE Anti-Circumvention Final* IDM at Comment 2; and *Cold-Rolled Steel* IDM at Comment 6.

⁵¹ See Commerce's Letter to all interested parties dated December 27, 2019.

country⁵² and provided surrogate values for the valuation of Chinese HFC components.⁵³ GFL commented that Mexico, Malaysia, Turkey, and Russia all have a high export volume of components and could be viable alternatives as the primary surrogate country and provided surrogate values for all four countries.⁵⁴ SRF provided rebuttal comments to the effect that Mexico was not at a comparable level of economic development to India and was, thus, an inappropriate surrogate country.⁵⁵ GFL and SRF also argued that surrogate values should not be used in this proceeding.⁵⁶ The petitioners filed rebuttal comments in regard to surrogate country selection.⁵⁷ No other interested parties provided comments with regards to the selection of the primary surrogate country and the valuation of inputs.

Consistent with prior cases, we find that using surrogate values in this case is appropriate, because although actual prices paid for inputs produced in China are typically used in the cost buildup for ME companies in ME proceedings, the instant inquiry is an anti-circumvention proceeding initiated under the HFCs *Order*, which is an NME proceeding.⁵⁸ 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.⁵⁹

Commerce is valuing the Chinese-origin HFC components using, to the extent possible, the prices or costs of FOPs 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.⁶⁰ Therefore, we calculated the value of the Chinese-origin HFC components R-32, R-125, R-134a, and R-143a using a surrogate price from Mexico.⁶¹

⁵² See Petitioners' comments on surrogate country selection dated January 9, 2020.

⁵³ See Petitioners' surrogate value comments dated January 16, 2020.

⁵⁴ See GFL's comments on surrogate country selection dated January 9, 2020; and GFL's comments on surrogate value selection dated January 16, 2020.

⁵⁵ See SRF's rebuttal comments on surrogate values dated January 27, 2020.

⁵⁶ *Id.*; see also GFL's comments on surrogate country selection dated January 27, 2020.

⁵⁷ See Petitioners' rebuttal comments on surrogate country selection dated January 13, 2020.

⁵⁸ See, e.g., *SDGE Anti-Circumvention Final IDM* at Comment 2.

⁵⁹ *Id.*

⁶⁰ 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 PDM, 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.

⁶¹ We used the surrogate values provided by the petitioners for Mexico. See Petitioners' surrogate value comments dated January 16, 2020; see also GFL Preliminary Analysis Memorandum; and SRF Preliminary Analysis Memorandum for calculations.

X. STATUTORY AND REGULATORY FRAMEWORK FOR ANTI-CIRCUMVENTION INQUIRY

Section 781 of the Act addresses circumvention of AD and/or countervailing duty (CVD) orders.⁶² With respect to merchandise assembled or completed in a third country, section 781(b) of the Act provides that Commerce may find circumvention of an AD order when merchandise of the same class or kind subject to the order is assembled or completed in a foreign country other than the country to which the order applies. In conducting anti-circumvention inquiries under section 781(b) of the Act, Commerce, after taking into account any advice provided by the U.S. International Trade Commission (ITC) under section 781(e) of the Act, may include imported merchandise within the scope of an order at any time an order is in effect pursuant to the following criteria:⁶³

- (A) whether the merchandise imported into the United States is of the same class or kind of any merchandise that is subject to the order;
- (B) before importation into the United States, whether such imported merchandise is completed or assembled in another foreign country from merchandise which is subject to the order or produced in the foreign country that is subject to the order;
- (C) whether the process of assembly or completion in the foreign country referred to above is minor or insignificant;
- (D) whether the value of the merchandise produced in the foreign country to which the AD order applies is a significant portion of the total value of the merchandise exported to the United States, and
- (E) whether action is appropriate to prevent evasion of the order.

With respect to whether process of assembly or completion in the third country is minor or insignificant under section 781(b)(1)(C) of the Act, section 781(b)(2) of the Act directs Commerce to consider the following:⁶⁴

- (A) the level of investment in the foreign country;
- (B) the level of research and development in the foreign country;
- (C) the nature of the production process in the foreign country;
- (D) the extent of production facilities in the foreign country; and
- (E) whether the value of the processing performed in the foreign country represents a small proportion of the value of the merchandise imported into the United States.

In reaching this determination, Commerce “will not consider any single factor of section 781(b)(2) of the Act to be controlling.”⁶⁵ In other words, Commerce’s practice is to evaluate

⁶² Specifically, the legislative history to section 781(b) of the Act indicates that Congress intended Commerce to make determinations regarding circumvention on a case-by-case basis, in recognition that the facts of individual cases and the nature of specific industries are widely variable. *See* S. Rep. No. 103-412 (1994), at 81-82.

⁶³ *See* section 781(b)(1)(A)-(E) of the Act.

⁶⁴ *See* section 781(b)(2)(A)-(E) of the Act.

⁶⁵ *See* 19 CFR 351.225(h); Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316 (1994) (SAA) at 893; and *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27328 (May 19, 1997).

each of these five factors as they exist in the third country, depending on the totality of the circumstances of the particular anti-circumvention inquiry.⁶⁶

Finally, section 781(b)(3) of the Act further provides that, in determining whether to include merchandise assembled or completed in a foreign country within the scope of an AD order, Commerce shall consider the following additional factors:⁶⁷

- (A) the pattern of trade, including sourcing patterns;
- (B) whether the manufacturer or exporter of the merchandise described in accordance with section 781(b)(1)(B) of the Act is affiliated with the person who uses the merchandise described in accordance with section 781(b)(1)(B) to assemble or complete in the foreign country the merchandise that is subsequently imported into the United States; and
- (C) whether imports into the foreign country of the merchandise described in paragraph 781(b)(1)(B) have increased after the initiation of the investigation which resulted in the issuance of such order.

Commerce's practice for determining substantial transformation in country-of-origin determinations is distinct from Commerce's practice under section 781(b) of the Act in determining whether merchandise is being assembled or completed into a product in a third country and thereby avoiding the discipline of an AD and/or CVD order. Country-of-origin issues are not explicitly referenced in the anti-circumvention statute, or its implementing regulations. Nevertheless, as Commerce has stated in the past, country-of-origin determinations made by CBP pursuant to customs law, regulations, or practice may be different than what Commerce determines the country-of-origin to be for AD and/or CVD purposes. Moreover, we do not believe the past substantial transformation analyses replace the analyses required under section 781 of the Act. The purposes of the two analyses are different. Commerce typically uses the substantial transformation analysis to address a question distinct from that of an anti-circumvention inquiry, *i.e.*, to determine the country-of-origin of a product for AD and/or CVD purposes, rather than whether merchandise is being assembled or completed into a product in a third country and thereby avoiding the discipline of an order. Therefore, the language of section 781(b) of the Act does not preclude an analysis of whether the activity is minor or insignificant, even where Commerce has previously examined substantial transformation.⁶⁸

XI. USE OF FACTS AVAILABLE WITH AN ADVERSE INFERENCE

With respect to the non-responsive company (*i.e.*, Coolmate Refrigerant), Commerce finds it necessary to rely on facts available pursuant to section 776(a) of the Act because this company failed to provide necessary information upon which Commerce could rely and, thereby, withheld information requested by Commerce, failed to provide requested information within the

⁶⁶ See *Certain Tissue Paper Products from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 73 FR 57591, 57592 (October 3, 2008) (*Tissue Paper*); *Cold-Rolled Steel IDM* at "VI. Statutory Framework."

⁶⁷ See section 781(b)(3)(A)-(C) of the Act.

⁶⁸ See *Certain Cold-Rolled Steel Flat Products from the People's Republic of China: Affirmative Preliminary Determination of Anti-Circumvention Inquiries on the Antidumping Duty and Countervailing Duty Orders*, 82 FR 58178 (December 11, 2017), and accompanying PDM at 15, unchanged in *Cold-Rolled Steel IDM* at Comment 1.

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 the non-responsive company because this company failed to cooperate by not acting to the best of its ability to comply with Commerce's requests for information in this anti-circumvention inquiry.

A. Legal Standard

Sections 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.⁶⁹ 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.⁷⁰ 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."⁷¹ The Court of Appeals for the Federal Circuit, in *Nippon Steel*,⁷² 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.⁷³ Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an

⁶⁹ See 19 CFR 351.308(a).

⁷⁰ See section 776(b)(1)(B) of the Act.

⁷¹ See SAA at 870.

⁷² See *Nippon Steel Corp. v. United States*, 337 F. 3d 1373, 1382-83 (Fed. Cir. 2003) (*Nippon Steel*).

⁷³ See SAA at 870.

adverse inference.⁷⁴ 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.⁷⁵

B. Use of Facts Available with an Adverse Inference

Commerce preliminarily finds that the non-responsive company 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 this non-responsive company, pursuant to sections 776(a)(1) and (a)(2)(A)-(C) of the Act. Further, Commerce finds that this non-responsive company did not cooperate to the best of its 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 this non-responsive company in accordance with section 776(b) of the Act and 19 CFR 351.308(a).

Thus, consistent with our analysis below, relying on our application of AFA for the non-responsive company, we preliminarily find that HFC blends R-404A, R-407A, R-407C, R-410A, and R-507A/R-507 produced in India using one or more HFC components of Chinese origin, are circumventing the *Order*.

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

As stated above, the petitioners filed a request for a circumvention determination, in which petitioners point to proprietary data to claim that R-410A blended in India, containing R-32 manufactured in China that is completed or assembled by GFL in India into HFC blends, are covered by the scope of the *Order*.⁷⁶ The petitioners allege that R-410A imported into the United States is completed or assembled from merchandise produced in the foreign country to which the *Order* applies (*i.e.*, China).⁷⁷ According to the petitioners, the process of blending HFC components into HFC blends is "minor and insignificant" within the meaning of section 781(b)(2) of the Act, and that the resulting products are within the scope of the *Order*.⁷⁸

Citing information provided by interested parties in the proceedings following the scope ruling request by GFL and the original investigation, proprietary data, and the ITC's final determination, the petitioners explain that: (1) the blending process does not require major investment, complex equipment or research and development (R&D); (2) the production

⁷⁴ See *Nippon Steel*, 337 F. 3d at 1382-83; see also *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27340 (May 19, 1997).

⁷⁵ 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 PDM at 4, unchanged in *Steel Threaded Rod from Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances*, 79 FR 14476 (March 14, 2014).

⁷⁶ See Initiation Request at 5-6.

⁷⁷ *Id.* at 6-7.

⁷⁸ *Id.* at 7-9.

facilities for blending consist only of a few employees, valves, and tanks; (3) the value of processing components into blends performed in India is a small proportion of the value of the HFC blends.⁷⁹ Further, the petitioners contend that average export volumes of HFC components from China to India have increased, while U.S. imports of HFC blends from India have increased from zero kilogram (kg) in 2016 to over one million kg in the first five months of 2018, and that the only reason for the change in patterns of trade is to evade application of AD duties upon importation to the United States of Chinese blends.⁸⁰

XIII. ANTI-CIRCUMVENTION ANALYSIS

Section 781(b) of the Act directs Commerce to consider the criteria described above to determine whether merchandise completed or assembled in a third country is circumventing an order. As explained and referenced below, information available to Commerce indicates that the factors, as set forth by section 781(b), are satisfied. Thus, based on our analysis of these criteria, we preliminarily determine that imports of HFC blends R-404A, R-407A, R-407C, R-410A, and R-507A/R-507 from India, which are assembled, in whole or in part, from HFC components R-32, R-125, R-134a, and R-143a from China, are circumventing the *Order*.

A. The Merchandise Exported to the United States from India Is of the Same Class or Kind as Merchandise Subject to the Order

The petitioners state that the R-410A blended in India and sold in the United States is of the same class or kind as the subject merchandise.⁸¹ GFL and SRF stated that they exported HFC blends R-407A, R-407C, and R-410A produced in India using one or more HFC components of Chinese origin to the United States.⁸² In its Q&V response, Refex indicated that it also exported R-404A and R-407C to the United States and that it imported Chinese components.⁸³

Thus, record evidence indicates that after blending in India, the HFC blends would be subject to the *Order* if they were imported from China, because such HFC blends meet the physical characteristics outlined in the scope of the *Order*. For these reasons, we preliminarily determine that the merchandise produced from the Chinese 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, Before Importation into the United States

According to the petitioners, the HFC blends produced by GFL are completed or assembled from HFC components produced in China.⁸⁴ GFL and SRF state that, for certain of the HFC blends

⁷⁹ *Id.* at 9-14.

⁸⁰ *Id.* at 12-13 and Exhibits 2 and 3.

⁸¹ See Initiation Request at 5-6.

⁸² See GFL January 31, 2020, IQR at Exhibit 5; and SRF February 4, 2020, IQR at Exhibit 7.

⁸³ See Refex December 4, 2019 Q&V Response. Refex also claims to have only imported Chinese components for sale within India.

⁸⁴ See Initiation Request at 6-7.

that are completed or assembled in India, they sourced HFC components from China.⁸⁵ The Chinese HFC components were used to create HFC blends. GFL and SRF then sold the HFC blends to customers in the United States.⁸⁶ Therefore, we preliminarily find that HFC blends, exported from India, and sold in the United States, are assembled or completed with HFC components produced in the foreign country to which such order or finding applies (*i.e.*, China) under section 781(b)(1)(B)(ii) of the Act.

Furthermore, GFL also stated that it imported HFC blends (*i.e.*, R-410A) from China and sold it to unaffiliated customers in India and to other countries;⁸⁷ and SRF also stated that it purchased HFC blends from China, but denies that it sold any of these purchased blends in the United States.⁸⁸ Due to the fungible nature of these products, it is not possible to trace the ultimate destination of the blends once they are released from the large transport tanks and stored on-site at GFL's and SRF's facilities.

C. The Process of Assembly or Completion in India is Minor or Insignificant

The petitioners state that the R-32 and/or R-125 exported from China should be included in the *Order* because they are a significant portion of the finished HFC blends produced and the blending process is “minor or insignificant.”⁸⁹ The petitioners assert that the blending operation is a simple process that does not require major investment, complex equipment, or R&D.⁹⁰ Blending HFC components only requires a holding tank for the finished HFC blend, some pipes, and valves.⁹¹ According to the petitioners, given that GFL manufactures R-22 and polytetrafluoroethylene, it has the vessels needed to store, transfer, and blend HFC components and, thus, likely required no additional investment.⁹²

GFL argues that the petitioners are unlawfully attempting to expand the scope of the *Order* and that the *Order* does not include HFC components.⁹³ GFL states that language in the scope that covered HFC components was removed due to the ITC's final negative injury determination as to HFC components.⁹⁴ GFL further contends that because HFC components are not-subject inputs, the blending of HFC components in a third country cannot be within the scope of the *Order*.⁹⁵ GFL also argues that when Commerce included Chinese HFC components in the scope of the *Order*, prior to the ITC's final negative injury determination as to HFC components, that

⁸⁵ See GFL's January 31, 2020, IQR at 3 and Exhibits 5 and 7; and SRF's February 4, 2020, IQR at 33 and Exhibits 9(a) and 32(d).

⁸⁶ See GFL January 31, 2020, IQR at Exhibit; and SRF February 4, 2020, IQR at Exhibit .

⁸⁷ See GFL January 31, 2020, IQR at 29.

⁸⁸ See SRF February 4, 2020, IQR at 36.

⁸⁹ See Initiation Request at 7-9.

⁹⁰ *Id.* at 8.

⁹¹ *Id.*

⁹² *Id.*

⁹³ See GFL's Letter, “Hydrofluorocarbon Blends from the People's Republic of China: Objection to Initiation of Anti-Circumvention Inquiry,” dated July 8, 2019, at 4.

⁹⁴ *Id.* at 10-13.

⁹⁵ *Id.* at 15.

Commerce did not cover blends and only covered components in third-country blends to the extent the components were of Chinese origin.⁹⁶

GFL argues that GFL's production of R-125 and the blending process require: (1) a high level of investment; (2) a high level of R&D; (3) a highly skilled workforce; and (4) a significant proportion of production in India.⁹⁷

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

- (A) the level of investment in the foreign country;
- (B) the level of research and development in the foreign country;
- (C) the nature of the production process in the foreign country;
- (D) the extent of production facilities in the foreign country; and
- (E) whether the value of the processing performed in the foreign country represents a small proportion of the value of the merchandise imported into the United States.

With regard to parts (A) through (E) under section 781(b)(2), because we have no information from the Chinese producers of HFC components, we rely on the information placed on the record by the participating parties. Thus, our analysis is based on information provided by the petitioners, GFL, and SRF.

As explained above, the SAA explains that no single factor listed in section 781(b)(2) of the Act will be controlling.⁹⁸ Accordingly, it is Commerce's practice to evaluate each of the factors as they exist in the third country depending on the particular circumvention scenario.⁹⁹ Therefore, the importance of any one of the factors listed under section 781(b)(2) of the Act can vary from case to case depending on the particular circumstances unique to each anti-circumvention inquiry.

In this inquiry, Commerce based its analysis on both qualitative and quantitative factors in determining whether the process of assembly or completion in India is minor or insignificant, in accordance with the criteria of section 781(b)(2) of the Act. This approach is consistent with our analysis in prior anti-circumvention inquiries.¹⁰⁰ We preliminarily determine that the blending process is the appropriate focus of our inquiry, because each HFC component requires a separate, dedicated production line.

⁹⁶ *Id.* at 16-18.

⁹⁷ *Id.* at 22.

⁹⁸ See SAA at 893; accord 19 CFR 351.225(h) ("...the Secretary will not consider any single factor of section 781(b)(2) of the Act to be controlling.").

⁹⁹ See *Tissue Paper*, 73 FR at 57592; *Cold-Rolled Steel IDM* at "VI. Statutory Framework."

¹⁰⁰ See, e.g., *Anticircumvention Inquiry of the Antidumping and Countervailing Duty Orders on Certain Pasta from Italy: Affirmative Preliminary Determinations of Circumvention of Antidumping and Countervailing Duty Orders*, 68 FR 46571, 46574 (August 6, 2003), unchanged in *Anticircumvention Inquiry of the Antidumping and Countervailing Duty Orders on Certain Pasta from Italy: Affirmative Final Determinations of Circumvention of Antidumping and Countervailing Duty Orders*, 68 FR 54888 (September 19, 2003).

Certain of the detailed analysis used to determine whether the process of assembly or completion is minor or insignificant is business proprietary and is addressed in the GFL and SRF Preliminary Analysis Memoranda.

(A) The Level of Investment in the Foreign Country

We analyzed information that GFL and SRF provided regarding their investment in India.¹⁰¹ Information on the record shows that GFL's and SRF's investment in the production equipment was comparable to the investment in the production equipment in China by HFC component producers in China.¹⁰² Based on this information, we preliminarily find that the level of investment in the production facilities in India is comparable to the level of investment of Chinese HFC component producers.

(B) The Level of Research and Development in the Foreign Country

GFL and SRF do not claim to have conducted any R&D related to the production of HFC blends.¹⁰³

(C) The Nature of the Production Process in the Foreign Country

GFL and SRF provided information regarding their process for blending HFC components to produce HFC blends.¹⁰⁴ GFL and SRF also provided information regarding the steps to produce HFC components that were used in the production of HFC blends. The steps taken in the production of HFC blends are: (1) the production or purchase of HFC components; (2) blending of components in specific ratios to produce HFC blends; and (3) filling containers with HFC blends for shipment.¹⁰⁵

Based on this information, we find that GFL's and SRF's production process in India for HFC blends made with Chinese HFC components is less extensive than the full production process which includes the production of all HFC components as well as the blending processes.¹⁰⁶ When one or more HFC components are sourced from China, the process of assembly or completion in India consists of only the blending in specific ratios noted above. Although blending is a necessary step in the production of HFC blends, it is just one of the multiple steps in the production process of HFC blends, and the least labor and capital intensive.¹⁰⁷ We find that the blending and subsequent filling production steps are a minor part of the production process for HFC blends.

¹⁰¹ See GFL's January 31, 2020, IQR; and SRF's February 4, 2020, IQR.

¹⁰² See Petitioners' Letter, "Hydrofluorocarbon Blends from the People's Republic of China: Response to GFL's Initial Scope Comments," dated November 13, 2017 (Petitioners' Scope Comments), at Exhibits 2 and 5, p. 30; see also GFL's January 31, 2020, IQR at Exhibits 4, 13, and 14; and SRF's February 4, 2020, IQR at Exhibits 6, 13(a), and 13(b).

¹⁰³ See GFL's January 31, 2020, IQR at 19; and SRF's February 4, 2020, IQR at Exhibit 26 (fails to show any connection to the production of HFC blends).

¹⁰⁴ See GFL January 31, 2020, IQR at 6-8 and Exhibit 14; and SRF's February 4, 2020, IQR at Exhibit 27.

¹⁰⁵ *Id.*

¹⁰⁶ See Initiation Request at 8; see also Petitioners' Scope Comments at Exhibits 2 and 5.

¹⁰⁷ See Petitioners' Scope Comments at Exhibits 2 and 5.

We acknowledge that the production of HFC components involves greater complexity than the production of HFC blends, as well as specialized inputs and production equipment. However, when those processes are separated, *i.e.*, when GFL or SRF sources one or more HFC components from China for use in the assembly or completion of HFC blends in India, we find that this results in a process that more closely resembles assembly of components than the full production of an HFC blend from non-Chinese origin components.

Therefore, for HFC blends assembled or completed in India using HFC components sourced from China, the nature of the production process in India is far less extensive than it would be to produce HFC blends without Chinese components.

(D) The Extent of Production Facilities in the Foreign Country

We analyzed information GFL and SRF provided regarding the extent of production facilities in India; both GFL and SRF have component production facilities, in addition to blending operations.¹⁰⁸ GFL and SRF have HFC component production operations comparable to the facilities for HFC component production in China. Therefore, we preliminarily find the extent of production facilities of GFL and SRF in India are comparable to that of HFC component producers in China.¹⁰⁹

(E) Whether the Value of the Processing Performed in the Foreign Country Represents a Small Proportion of the Value of the Merchandise Imported into the United States

In prior anti-circumvention inquiries, Commerce has explained that Congress has directed Commerce to “focus more on the nature of the production process and less on the difference between the value of the subject merchandise and the value of the parts and components imported into the processing country.”¹¹⁰ Additionally, Commerce has explained that, following the Uruguay Round Agreements Act, Congress redirected Commerce’s focus away from a rigid numerical calculation of value-added toward a more qualitative focus on the nature of the production process.¹¹¹ For the assembly or completion of HFC blends with Chinese HFC components, for the processing performed with HFC component R-32 or R-125, but not both, from China, in each scenario a substantial portion of the production of HFC blends has taken place in China.

¹⁰⁸ See GFL’s January 31, 2020, IQR at 24; and SRF’s February 4, 2020, IQR at 29-30.

¹⁰⁹ See GFL Preliminary Analysis Memorandum; and SRF Preliminary Analysis Memorandum.

¹¹⁰ See, e.g., *Steel Wire Garment Hangers from the People’s Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping Order and Extension of Final Determination*, 76 FR 27007, 27011-13 (May 10, 2011), unchanged in *Steel Wire Garment Hangers from the People’s Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 76 FR 66895 (October 28, 2011); see also SAA at 893 (1994).

¹¹¹ *Id.*

Furthermore, GFL and SRF submitted cost of production information for their HFC blends manufactured in India,¹¹² and the value of HFC blends sold to the United States.¹¹³ To determine the value of processing in India for HFC blends produced in India with HFC components from China and exported to the United States, we first calculated the cost of production in India by adding the cost of: (1) labor; (2) factory overhead; (3) selling, general, and administrative expenses; and (4) net interest expenses.¹¹⁴ We divided the per-kg sum of the aforementioned costs by the per-kg value of U.S. sales to determine the value of processing performed in India for each HFC blend produced by the respondents and sold in the United States.¹¹⁵ Based on our calculations, we preliminarily find that the value of the processing performed in India as a proportion of the value of the merchandise imported into the United States is small for HFC blends manufactured in India with one or more HFC components from China.¹¹⁶

Overall Analysis of Section 781(b)(1)(C) of the Act

Of the five statutory criteria, three indicate that the assembly or completion of HFC blends, in India, from a mixture of Chinese-origin and non-Chinese origin HFC components, is minor or insignificant, and these three statutory criteria cover production activities and production-related activities, whereas the other two statutory criteria cover investments and installations for production activities, not the production activities themselves. In the circumstances of this case, the existence of investments and production facilities, alone, does not indicate that the process of assembly or completion of the products in the third country is significant. These two criteria need to be analyzed in conjunction with the other three statutory criteria, which cover production activities and production-related activities, to ascertain whether the invested production facilities have, in fact, been used in the production activities and production-related activities and, if so, whether the activities are significant or not. Our analysis of the statutory criteria under section 781(b)(1)(C) of the Act indicates that the process of assembly or completion (*i.e.*, primarily the act of blending components) in India is overall minor or insignificant.

(D) Whether the Value of the Merchandise Produced in China Is a Significant Portion of the Total Value of the Merchandise Exported to the United States

Under section 781(b)(1)(D) of the Act, Commerce must consider whether the value of the merchandise produced in the foreign country to which the AD order applies is a significant portion of the total value of the merchandise exported to the United States for Commerce to find circumvention. As discussed in the “Surrogate Country and Valuation Methodology for Inputs from China” section above, because China is an NME country, Commerce determines that it is appropriate to value the Chinese-origin inputs for producing HFC blends using surrogate value data, *i.e.*, Mexico import data from Global Trade Atlas (GTA).¹¹⁷ For HFC blends blended and finished in India using Chinese HFC components, we calculated the value of the Chinese

¹¹² See GFL’s January 31, 2020, IQR at Appendix VII; and SRF’s February 4, 2020, IQR at Appendix VII.

¹¹³ See GFL’s January 31, 2020, IQR at Exhibit 5; and SRF’s February 4, 2020, IQR at Exhibit 7.

¹¹⁴ See GFL Preliminary Analysis Memorandum; and SRF Preliminary Analysis Memorandum.

¹¹⁵ See GFL Preliminary Analysis Memorandum; and SRF Preliminary Analysis Memorandum.

¹¹⁶ For the percentages and additional analysis of the respondents’ business proprietary information, see GFL Preliminary Analysis Memorandum and SRF Preliminary Analysis Memorandum.

¹¹⁷ See GFL Preliminary Analysis Memorandum; and SRF Preliminary Analysis Memorandum.

components, as a percentage of U.S. value by multiplying the quantity of Chinese-components in a given blend for each respondent by the surrogate value for the HFC component. Then, this number was divided by the per-kg U.S. value of the HFC blend.¹¹⁸ Based on this calculation, we preliminarily find the value of the HFC components produced in China to be a significant portion of the value of the merchandise exported to the United States.¹¹⁹

(E) Whether Action is Appropriate to Prevent Evasion of the Order

Under section 781(b)(1)(E) of the Act, Commerce shall also consider whether action is appropriate to prevent evasion of the order and, if such action is appropriate, Commerce may include such imported merchandise within the scope of the order. Based upon our analysis of the factors under sections 781(b)(1)(A)-(D), (b)(2), and (b)(3) of the Act, we determine that action is appropriate, under section 781(b)(1)(E) to prevent evasion of the *Order*.

Additional Factors to Consider under section 781(b)(3) of the Act

Section 781(b)(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. Pattern of Trade, Including Sourcing Patterns

Under section 781(b)(3)(A) of the Act, Commerce shall take into account the pattern of trade, including sourcing patterns. The petitioners argue that consideration of changes in patterns of trade supports an affirmative finding of circumvention.¹²⁰ According to the petitioners, after the initiation of the investigation, Indian exports of HFC blends to the United States increased from zero kg in 2016 to 578,560 kg in 2017, and to 1.1 million kg in the first five months of 2018.¹²¹ The petitioners assert that this increase in exports from India to the United States represents a change in the patterns of trade, under section 781(b) of the Act.¹²²

We initiated the less-than-fair-value investigation of this proceeding on July 22, 2015.¹²³ The data for HFC blends exported to the United States provided by GFL and SRF indicate that GFL and SRF did not export HFC blends to the United States prior to the *Order*.¹²⁴ Further, GFL and SRF sold HFC blends to customers in the United States using HFC components from China after we initiated the less-than-fair-value investigation and the *Order* was in place.¹²⁵ Therefore, in light of record evidence, we preliminarily determine that the data provided on the record are

¹¹⁸ For a detailed discussion of business proprietary information provided by the respondents, see GFL Preliminary Analysis Memorandum; and SRF Preliminary Analysis Memorandum; see also Petitioner's Surrogate Value Comments, for the surrogate value for HFC components.

¹¹⁹ See GFL Preliminary Analysis Memorandum; and SRF Preliminary Analysis Memorandum.

¹²⁰ See Initiation Request at 14.

¹²¹ *Id.* at .

¹²² *Id.* at .

¹²³ See *Hydrofluorocarbon Blends and Components Thereof from the People's Republic of China: Initiation of Less-Than-Fair-Value Investigation*, 80 FR 43387, 43388 (July 22, 2015) (*Initiation of Investigation*).

¹²⁴ See GFL's January 31, 2020, IQR at Exhibit 5; and SRF's February 4, 2020, IQR at Exhibit 7.

¹²⁵ See the BPI Analysis Memorandum.

conclusive, and that exports of Indian HFC blends, containing Chinese HFC components, to the United States represents a change in the patterns of trade. Consequently, our preliminary finding with regard to this factor supports our preliminary affirmative determination that Indian HFC blends, containing Chinese HFC components, are circumventing the *Order*.

ii. Affiliation

Under section 781(b)(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 third country from the parts or components produced in the foreign country when making a decision in a circumvention inquiry. There is no evidence on the record to show any affiliation between Chinese producers or exporters of HFC components and the Indian producers/exporters of HFC blends. Consequently, this factor does not support a finding of circumvention.

iii. Subsequent Import Volume

Under section 781(b)(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 2015,¹²⁶ and published the *Order* in August 2016. GFL and SRF provided statistics of their imports of both HFC components from China and exports of finished HFC blends to the United States for the period January 1, 2016 to June 31, 2019.¹²⁷ According to GFL and SRF, from 2016 to 2019, (*i.e.*, after the *Order*) imports of Chinese HFC components, and exports of HFC blends to the United States, both increased significantly.¹²⁸ Thus, this factor supports an affirmative finding of circumvention.

XIV. SUMMARY OF STATUTORY ANALYSIS

As discussed above, to make an affirmative determination of circumvention, all the criteria under section 781(b)(1) of the Act must be satisfied, taking into account the criteria listed in section 781(b)(2) of the Act. In addition, section 781(b)(3) of the Act instructs Commerce to consider, in determining whether to include merchandise assembled or completed in a foreign country within the scope of an order, factors such as the pattern of trade, affiliation, and whether imports into the foreign country of the merchandise described in section 781(b)(1)(B) of the Act have increased after the initiation of the investigation.

Pursuant to section 781(b)(1)(A) and (B) of the Act, we preliminarily find that the merchandise assembled or completed in India and imported into the United States is within the same class or kind that is subject to the AD order on HFC blends from China, and is completed or assembled

¹²⁶ See *Initiation of Investigation*.

¹²⁷ See BMP's January 17, 2020 QR at Exhibit 6; see also BMP USA's November 21, 2019 Q&V response; LM Supply's November 21, 2019 Q&V response; and Cool Master's November 21, 2019 Q&V response.

¹²⁸ See BMP's January 17, 2020 QR at Exhibit 6; see also BPI Analysis Memorandum.

in India from merchandise which is produced in the foreign country with respect to which the AD order on HFC blends from China applies.

Pursuant to section 781(b)(1)(C) of the Act, Commerce preliminarily finds that the process of assembly of Chinese HFC components into HFC blends produced in India is minor or insignificant.

In accordance with section 781(b)(1)(D) of the Act, Commerce preliminarily finds that, for HFC blends assembled or completed in India with HFC components produced in China, the values of the HFC components produced in China are a significant portion of the total value of the merchandise exported from India to the United States.

Pursuant to section 781(b)(3) of the Act, Commerce preliminarily finds that Indian blenders increased both sourcing HFC components from Chinese producers, and exports of HFC blends to the United States, after the publication of the *Order* in 2016. We find that the Indian blenders' increased sourcing of Chinese HFC components from Chinese producers and exports of HFC blends to the United States provide evidence which supports a finding of circumvention.

Considering the above, the factors under section 781(b)(1)-(3) of the Act support a determination that exports of HFC blends R-404A, R-407A, R-407C, R-410A, and R-507A/R-507 produced in India using one or more HFC components of Chinese origin circumvent the AD order on HFC blends from China. Finally, upon taking into consideration section 781(b)(3) of the Act, our analysis of the pattern of trade, including sourcing of HFC components from China, the existence of Chinese producers as suppliers of HFC components from China, and our preliminary affirmative finding of an increase in imports of HFC components from China to India after the publication of the *Order* in 2016, we preliminarily determine that action is appropriate to prevent evasion of the *Order* pursuant to section 781(b)(1)(E) of the Act. We preliminarily find that, without action to prevent evasion of the *Order*, circumvention activities we preliminarily find to exist under sections 781(b)(1)(A)-(D) and 781(b)(3) of the Act, will continue. Consequently, our statutory analysis leads us to preliminarily find that, in accordance with sections 781(b)(1)-(3) of the Act, there is circumvention of the *Order* as a result of Chinese HFC components being assembled or completed into finished HFC blends in India. Therefore, Commerce preliminarily finds HFC blends R-404A, R-407A, R-407C, R-410A, and R-507A/R-507 produced in India using one or more HFC component of Chinese origin are included within the scope of the AD order on HFC blends from China.

XV. COUNTRY-WIDE DETERMINATION

As noted above, Commerce has identified the universe of Indian producers and exporters using CBP entry data for U.S. imports of HFC blends and Q&V questionnaires.¹²⁹ We gathered information from the largest Indian producers and exporters, which account for the largest volume of HFC blends exported from India 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 Indian respondents reported using HFC components originating in China in their production of finished HFC blends exported to the United States subject to the *Order*, and

¹²⁹ See CBP Data Memo.

provided full questionnaire responses substantiating this fact. Further, one Indian exporter from the CBP data did not respond to our Q&V questionnaire. Given that GFL and SRF account for the largest volume of HFC blends exported from India to the United States, we find that the two respondents' production processes are representative of other exporters from India to the United States. In addition, we rely on the application of AFA to the non-responsive Indian exporter. Therefore, we are applying this affirmative preliminary finding to all shipments of HFC blends from India, containing Chinese-origin HFC components, on or after June 18, 2019, the date of initiation of this anti-circumvention inquiry, in accordance with section 781(b) of the Act and 19 CFR 351.225(h).

XVI. CERTIFICATION FOR NOT USING CHINESE-ORIGIN HFC COMPONENTS OR CHINESE-ORIGIN HFC BLENDS

To administer its affirmative finding, Commerce is requiring that entries of HFC blends R-404A, R-407A, R-407C, R-410A, and R-507A/R-507 from India that are made from non-Chinese origin components be certified as such. Accordingly, importers and exporters of such merchandise will be required to certify and maintain their certifications and supporting documentation to provide to CBP and/or Commerce upon request. The importer and exporter certifications, respectively, are provided at Appendices III and IV of the accompanying *Federal Register* notice. Properly certified entries are not subject to antidumping duties under the HFC blends from China *Order*. Exemption from antidumping duties under the HFCs from China *Order* is permitted only if the certification and documentation requirements specified in the *Federal Register* notice are met.

In the situation where no certification is provided for an entry, Commerce intends to instruct CBP to suspend the entry and collect cash deposits at the rate established for the China-wide entity, *i.e.*, 216.37 percent.¹³⁰

Further, due to the fungible nature of HFC components and HFC blends, their relatively long shelf-lives, and the manner in which HFC components and blends are handled and mixed,¹³¹ the U.S. importer and the Indian exporter must both certify that the Indian producer/exporter has not purchased Chinese-origin HFC components or Chinese-origin HFC blends during the 12 months prior to shipment in order to be eligible for entry of Indian-origin HFC blends (*i.e.*, R-404A, R-407A, R-407C, R-410A, and R-507A/R-507) without regard to antidumping duties. Any purchases of Chinese-origin HFC components (*i.e.*, Chinese origin R-32, R-125, R-134a, and/or R-143a) or Chinese-origin HFC blends (*i.e.*, R-404A, R-407A, R-407C, R-410A, and/or R-507A/R-507), by the Indian exporter and/or producer (as relevant) during the 12 months prior to shipment will render the U.S. imports of the Indian blend subject to the Chinese order on HFC blends due to the possibility that the Indian blend may consist, in whole or in part, of Chinese-origin HFC components and/or Chinese HFC blends.

¹³⁰ See *Order*, 81 FR at 55438.

¹³¹ See GFL January 31, 2020, IQR at 6-8 and Exhibit 14.

XVII. RECOMMENDATION

For the reasons discussed above, and in accordance with 19 CFR 351.225(d) and (k)(1), we recommend finding that R-410A from India is not within the plain scope language of the *Order* because the *Order* covers HFC blends from China. However, U.S. imports of HFC blends from India consist of components imported from China, which are further blended in India into subject HFC blends, prior to being exported to the United States. Therefore, we recommend that, pursuant to section 781(b) of the Act and 19 CFR 351.225(h), Commerce issue a preliminary affirmative circumvention determination that imports of HFC blends R-404A, R-407A, R-407C, R-410A, and R-507A/R-507 produced in India using one or more HFC component of Chinese origin, are circumventing the *Order*.

Agree

Disagree

4/3/2020

X 

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