Comment 24: Whether Commerce Should Adjust the Electricity Benchmark for VAT
Comment 25: Whether Electricity Constitutes General Infrastructure and Provides a Financial Contribution
Comment 26: Whether Commerce Should Rely on Xeneta Data for Freight Benchmark
Comment 27: Whether Commerce Should Find Non-Use of Steam Coal

XI. Recommendation

Appendix II
Scope of the Investigation

The merchandise covered by this investigation is aluminum foil having a thickness of 0.2 mm or less, in reels exceeding 25 pounds, regardless of width. Aluminum foil is made from an aluminum alloy that contains more than 92 percent aluminum. Aluminum foil may be made to ASTM specification ASTM B479, but can also be made to other specifications.

Regardless of specification, however, all aluminum foil meeting the scope description is included in the scope, including aluminum foil to which lubricant has been applied to one or both sides of the foil.

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

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

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

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

DATES: Applicable March 5, 2018.


SUPPLEMENTARY INFORMATION:

Background

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

On December 4, 2017, Commerce received a covered merchandise referral from CBP regarding CBP EAPA Investigation No. 7212 which concerns the AD order on HFCs from China. Specifically, based on an allegation by RMS of Georgia d/b/a Choice Refrigerants, CBP has requested that Commerce issue a determination as to whether certain merchandise imported by LM Supply, Inc. (LM Supply) is subject to the AD order on HFCs from China. Specifically, CBP asked Commerce to clarify: (1) If the scope exclusion for Choice® R–421A is limited to only merchandise that is licensed by the rights holder or does it apply to any HFC blends that satisfy the terms of the patents, and (2) if the scope exclusion is limited to only that merchandise that also carries the trademarks indicated in the scope exclusion.

Notification to Interested Parties

Commerce is hereby notifying interested parties that it has received the covered merchandise referral referenced above, will begin a new segment of the proceeding, and intends to issue a determination regarding whether the merchandise subject to the referral is covered merchandise within the meaning of section 517(a)(3) of the Act. Additionally, Commerce intends to provide interested parties with the opportunity to participate in this segment of the proceeding, including through the submission of comments, and, if appropriate, new factual information and verification.

Specifically, Commerce will notify parties on the segment-specific service list for this segment of the proceeding of a schedule for comments. In addition, Commerce may request factual information from any person to assist in making its determination and may verify submissions of factual information. If Commerce determines that such verification is appropriate, Commerce intends to issue a final determination within 120 days of the publication of this notice (this deadline

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

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

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

Finally, we note that covered
merchandise referrals constitute a new
type of segment of a proceeding at
Commerce and, therefore, Commerce
will continue to develop its practice
and procedures in this area. Additionally,
we note that Commerce has received a
scope ruling request concerning
merchandise which may be similar to
the merchandise at issue in the covered
merchandise referral referenced above.3

Thus, Commerce may consider any
potential overlapping issues in these
separate segments of the proceeding.

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

The merchandise covered by this
order is HFC blends. HFC blends
covered by the scope are R–404A, a
zeotropic mixture consisting of 52
percent 1,1,1-Trifluoroethane, 44
percent Pentafluoroethane, and 4
percent 1,1,1,2-Tetrafluoroethane; R–407A, a zeotropic mixture of 20 percent
Diffuoromethane, 40 percent
Pentafluoroethane, and 40 percent
1,1,1,2-Tetrafluoroethane; R–407C, a
zeotropic mixture of 23 percent
Diffuoromethane, 25 percent
Pentafluoroethane, and 52 percent
1,1,1,2-Tetrafluoroethane; R–410A, a
zeotropic mixture of 50 percent
Diffuoromethane and 50 percent
Pentafluoroethane; and R–507A, a
zeotropic 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.4

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

Excluded from this order are blends
of refrigerant chemicals that include
products other than HFCs, such as
blends including chlorofluorocarbons
(CFCs), hydrochlorofluorocarbons
(HFCs), hydrocarbons (HCs), or
hydrofluoroolefins (HFOs).

Also excluded from this order are
patented HFC blends, including, but not
limited to, ISCEON® blends, including
MO99TM (R–438A), MO79 (R–422A),
MO59 (R–417A), MO49PlusTM (R–437A)
and MO29TM (R–4–22D), Genetron®
Performax™ LT (R–407F), Choice® R–
421A, and Choice® R–421B.

HFC blends covered by the scope
of this order are currently classified in the
Harmonized Tariff Schedule of the
United States (HTSUS) at subheadings
3824.78.0020 and 3824.78.0050.

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

Filing Requirements

All submissions to Commerce must be
filed electronically using ACCESS.5 An
electronically filed document must be
received successfully in its entirety by
the time and date it is due. Documents
exempted from the electronic
submission requirements must be filed
manually (i.e., in paper form) with
Enforcement and Compliance’s APO/
Dockets Unit, Room 18022, U.S.
Department of Commerce, 1401
Constitution Avenue NW, Washington,
DC 20230, and stamped with the date of
receipt by the applicable deadlines.

Letters of Appearance and
Administrative Protective Order

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

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

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


Christian Marsh,
Deputy Assistant Secretary for
Enforcement and Compliance

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3 See Letter on behalf of Kenneth Ponder and
Choice Refrigerants “Application for Scope Ruling on
Exclusion of Patented HFC Blends from
Antidumping Duty Order A–570–028:
Hydrofluorocarbon Blends and Components
Thereof from the People’s Republic of China,”
dated November 30, 3017.

4 R–404A is sold under various trade names,
including Forane® 404A, Genetron® 404A,
Solkane® 404A, Krea® 404A, and Suva®404A. R–
407A is sold under various trade names, including
Forane® 407A, Solkane® 407A, Krea® 407A, and
Suva®407A. R–407C is sold under various trade
names, including Forane® 407C, Genetron® 407C,
Solkane® 407C, Krea® 407C and Suva® 407C.
R–
410A is sold under various trade names, including
EcoFluor R410, Forane® R410A, Genetron® R410A
and AZ–20, Solkane® 410A, Krea® 410A, Suva®
410A and Puron®, R–507A is sold under various
trade names, including Forane® 507, Solkane® 507,
Krea®507, Genetron®AZ–50, and Suva®507. R–32
is sold under various trade names, including
Solkane®32, Forane®32 and Krea®32. R–125 is sold
under various trade names, including Solkane®125,
Krea®125, and Forane®125. R–134a is sold under
various trade names, including Solkane®134a,
Genetron®134a, and Forane®134a.

5 See Antidumping and Countervailing Duty
Proceedings: Electronic Filing Procedures;
Administrative Protective Order Procedures, 76 FR
39263 (July 6, 2011), as amended in Enforcement
and Compliance: Change of Electronic Filing
Service Name, 79 FR 60946 (November 20, 2014) for
details of Commerce’s electronic filing
requirements, effective August 5, 2011. Information
on help using ACCESS can be found at
https://access.trade.gov/help.aspx and a handbook can
be found at https://access.trade.gov/help/
Handbook%20on%20Electronic%20Filing%20
Procedures.pdf.

6 See the Administrative Protective Order “In
the Matter of the Scope Inquiry of the Antidumping
Duty Order on Hydrofluorocarbon Blends (A–570–
028) (CBP EAPA Inv. No. 7212),” dated December
22, 2017.

7 See Amendment of the Administrative
Protective Order “In the Matter of the Scope Inquiry
of the Antidumping Duty Order on
Hydrofluorocarbon Blends (A–570–028) (CBP EAPA