



BILLING CODE: 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[C-570-127]

Certain Non-Refillable Steel Cylinders from the People's Republic of China: Initiation of Countervailing Duty Investigation

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

DATES: Applicable April 16, 2020.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-3692.

SUPPLEMENTARY INFORMATION:

The Petition

On March 27, 2020, the U.S. Department of Commerce (Commerce) received a countervailing duty (CVD) petition concerning imports of certain non-refillable steel cylinders (non-refillable cylinders) from the People's Republic of China (China) filed in proper form on behalf of Worthington Industries (the petitioner).<sup>1</sup> The Petition was accompanied by an antidumping duty (AD) petition concerning imports of non-refillable cylinders from China.

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<sup>1</sup> See Petitioner's Letter, "Certain Non-Refillable Steel Cylinders from the People's Republic of China – Petition for the Imposition of Antidumping and Countervailing Duties," dated March 27, 2020 (the Petition).

On March 31, 2020, Commerce requested supplemental information pertaining to certain aspects of the Petition,<sup>2</sup> to which the petitioner filed responses on April 3, 2020.<sup>3</sup> On April 7, 2020, Commerce held a phone call with the petitioner concerning the scope of the investigations.<sup>4</sup>

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that the Government of China (GOC) is providing countervailable subsidies, within the meaning of sections 701 and 771(5) of the Act, to producers of non-refillable cylinders in China, and that such imports are materially injuring, or threatening material injury to, the domestic industry producing non-refillable cylinders in the United States. Consistent with section 702(b)(1) of the Act and 19 CFR 351.202(b), for those alleged programs on which we are initiating a CVD investigation, the Petition is accompanied by information reasonably available to the petitioner supporting its allegations.

Commerce finds that the petitioner filed the Petition on behalf of the domestic industry because the petitioner is an interested party as defined in section 771(9)(C) of the Act. Commerce also finds that the petitioner demonstrated sufficient industry support with respect to the initiation of the requested CVD investigation.<sup>5</sup>

### Period of Investigation

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<sup>2</sup> See Commerce's Letters, "Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Non-Refillable Steel Cylinders from the People's Republic of China: Supplemental Questions," and, "Petition for the Imposition of Countervailing Duties on Imports of Certain Non-Refillable Steel Cylinders from the People's Republic of China: Supplemental Questions Concerning Volume III," both dated March 31, 2020.

<sup>3</sup> See Petitioner's Letter, "Certain Non-Refillable Steel Cylinders from the People's Republic of China – Petitioner's Amendment to Volume I Relating to General and Injury Information," dated April 3, 2020 (General Issues Supplement); see also Petitioner's Letter, "Certain Non-Refillable Steel Cylinders from the People's Republic of China – Petitioner's Amendment to Volume III Relating to the People's Republic of China Countervailing Duties," dated April 3, 2020.

<sup>4</sup> See Memorandum, "Certain Non-Refillable Steel Cylinders from the People's Republic of China – Petitions for the Imposition of Antidumping and Countervailing Duties: Phone Call Regarding Scope of the Petitions," dated April 10, 2020 (Scope Phone Call Memo).

<sup>5</sup> See Countervailing Duty Investigation Initiation Checklist: Certain Non-Refillable Steel Cylinders (CVD Initiation Checklist), dated concurrently with this notice and on file electronically via ACCESS.

Because the Petition was filed on March 27, 2020, the period of investigation (POI) is January 1, 2019 through December 31, 2019.<sup>6</sup>

### Scope of the Investigation

The merchandise covered by this investigation is non-refillable cylinders from China. For a full description of the scope of this investigation, *see* the appendix to this notice.

### Comments on Scope of the Investigation

During our review of the Petition, Commerce issued questions to, and received responses from, the petitioner pertaining to the proposed scope to ensure that the scope language in the Petition would be an accurate reflection of the products for which the domestic industry is seeking relief.<sup>7</sup> Specifically, the petitioner's proposed scope included both unfilled/empty and filled cylinders. Filled cylinders are properly classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheading for the contents of the cylinder, not the HTSUS subheading for the cylinder itself. This could create challenges related to administrability because: (1) there are many substances these cylinders can contain; (2) the cylinders could be filled in a third country before being exported to the United States, thereby complicating the identification of the country of origin for these cylinders; and (3) it could be difficult, without time-consuming physical examination, to determine whether filled cylinders are subject to duties. In addition, there are legal issues surrounding the inclusion of imports of filled cylinders given that such cylinders are non-refillable. For these reasons, Commerce is removing the following substantive provisions which were in the scope the petitioner provided:

. . . may be filled or . . .

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<sup>6</sup> *See* 19 CFR 351.204(b)(2).

<sup>7</sup> *See* Supplemental General Issues Questionnaire and General Issues Supplement; *see also* Scope Phone Call Memo.

Also excluded from the scope of this investigation are non-refillable steel cylinders filled at the time of importation whose content is subject to another antidumping and/or countervailing duty order. At the time of filing this petition, there are existing antidumping duty orders on Hydrofluorocarbon Blends from the People's Republic of China and 1,1,1,2-Tetrafluoroethane (R-134A) from the People's Republic of China. *See Hydrofluorocarbon Blends from the People's Republic of China: Antidumping Duty Order*, 81 FR 55436 (August 19, 2016); *1,1,1,2 Tetrafluoroethane (R-134a) from the People's Republic of China: Antidumping Duty Order*, 82 FR 18422 (April 19, 2017). In the case of non-refillable steel cylinders entering the United States filled with merchandise covered by the scope of these investigations or future antidumping and/or countervailing duty orders covering the gas or material content of the non-refillable steel cylinders, such other orders control. In the case of non-refillable steel cylinders entering the United States filled with merchandise not covered by the scope of any other antidumping and/or countervailing duty order, the scope of this investigation controls.

Commerce has not adopted these provisions for purposes of initiation. We are interested, however, in further comment on this issue from parties to this proceeding.<sup>8</sup> Consequently, Commerce is initiating this investigation with respect to unfilled non-refillable cylinders only, subject to further clarification, as warranted.

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (*i.e.*, scope).<sup>9</sup> Commerce will consider all comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determination. If scope comments include factual information,<sup>10</sup> all such factual information should be limited to public information. To facilitate preparation of its questionnaires, Commerce requests that all interested parties submit scope comments by 5:00 p.m. Eastern Time (ET) on May 6, 2020, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include

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<sup>8</sup> Commerce is responsible for clarifying, where necessary, the scope of an order. *See Diversified Products Corp. v. United States*, 572 F. Supp. 883, 887 (CIT 1983).

<sup>9</sup> *See Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

<sup>10</sup> *See* 19 CFR 351.102(b)(21) (defining "factual information").

factual information, must be filed by 5:00 p.m. ET on May 18, 2020, which is 10 calendar days from the initial comment deadline.<sup>11</sup>

Commerce requests that any factual information the parties consider relevant to the scope of the investigation be submitted during this time period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigation may be relevant, the party may contact Commerce and request permission to submit the additional information. All such comments must also be filed on the record of the concurrent AD investigation.

### Filing Requirements

All submissions to Commerce must be filed electronically using Enforcement and Compliance's (E&C's) Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS), unless an exception applies.<sup>12</sup> An electronically filed document must be received successfully in its entirety by the time and date it is due.

### Consultations

Pursuant to sections 702(b)(4)(A)(i) and (ii) of the Act, Commerce notified the GOC of the receipt of the Petition and provided it the opportunity for consultations with respect to the CVD Petition.<sup>13</sup> The GOC did not request consultations.

### Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the

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<sup>11</sup> See 19 CFR 351.303(b).

<sup>12</sup> See *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011); see also *Enforcement and Compliance; Change of Electronic Filing System Name*, 79 FR 69046 (November 20, 2014), for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on 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\\_on\\_Electronic\\_Filing\\_Procedures.pdf](https://access.trade.gov/help/Handbook_on_Electronic_Filing_Procedures.pdf).

<sup>13</sup> See Commerce's Letter, "Certain Non-Refillable Steel Cylinders the People's Republic of China: Invitation for Consultation to Discuss the Countervailing Duty Petition," dated April 2, 2020.

domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the “industry.”

Section 771(4)(A) of the Act defines the “industry” as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether “the domestic industry” has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC must apply the same statutory definition regarding the domestic like product,<sup>14</sup> they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce’s determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.<sup>15</sup>

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<sup>14</sup> See section 771(10) of the Act.

<sup>15</sup> See *USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd. v. United States*, 688 F. Supp. 639, 644 (CIT 1988), *aff’d* 865 F. 2d 240 (Fed. Cir. 1989)).

Section 771(10) of the Act defines the domestic like product as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.” Thus, the reference point from which the domestic like product analysis begins is “the article subject to an investigation” (*i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioner does not offer a definition of the domestic like product distinct from the scope of the investigation.<sup>16</sup> Based on our analysis of the information submitted on the record, we have determined that non-refillable cylinders, as defined in the scope, constitute a single domestic like product, and we have analyzed industry support in terms of that domestic like product.<sup>17</sup>

In determining whether the petitioner has standing under section 702(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the “Scope of the Investigation,” in the appendix to this notice. To establish industry support, the petitioner provided its own production of the domestic like product in 2019.<sup>18</sup> The petitioner states that there are no other known producers of non-refillable cylinders in the United States; therefore, the Petition is supported by 100 percent of the U.S. industry.<sup>19</sup> We relied on data provided by the petitioner for purposes of measuring industry support.<sup>20</sup>

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<sup>16</sup> See Volume I of the Petition at 12-15; *see also* General Issues Supplement at 8.

<sup>17</sup> For a discussion of the domestic like product analysis as applied to this case and information regarding industry support, *see* CVD Initiation Checklist at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Certain Non-Refillable Steel Cylinders from the People’s Republic of China (Attachment II).

<sup>18</sup> See Volume I of the Petition at 2-3 and Exhibit GEN-2.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

Our review of the data provided in the Petition, the General Issues Supplement, and other information readily available to Commerce indicates that the petitioner has established industry support for the Petition.<sup>21</sup> First, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, Commerce is not required to take further action in order to evaluate industry support (*e.g.*, polling).<sup>22</sup> Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product.<sup>23</sup> Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition.<sup>24</sup> Accordingly, Commerce determines that the Petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act.<sup>25</sup>

### Injury Test

Because China is a “Subsidies Agreement Country” within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from China materially injure, or threaten material injury to, a U.S. industry.

### Allegations and Evidence of Material Injury and Causation

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<sup>21</sup> See CVD Initiation Checklist at Attachment II.

<sup>22</sup> See section 702(c)(4)(D) of the Act; *see also* CVD Initiation Checklist at Attachment II.

<sup>23</sup> See CVD Initiation Checklist at Attachment II.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

The petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise that are benefitting from countervailable subsidies. In addition, the petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.<sup>26</sup>

The petitioner contends that the industry's injured condition is illustrated by a significant and increasing volume of subject imports; reduced market share; underselling and price depression or suppression; lost sales and revenues; decreased U.S. production and capacity utilization rates; and a decline in the domestic industry's financial performance and profitability.<sup>27</sup> We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, as well as cumulation, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.<sup>28</sup>

#### Initiation of CVD Investigation

Based upon our examination of the Petition on non-refillable cylinders from China and supplemental responses, we find that the Petition meets the requirements of section 702 of the Act. Therefore, we are initiating a CVD investigation to determine whether imports of non-refillable cylinders from China benefit from countervailable subsidies conferred by the GOC. Based on our review of the Petition, we find that there is sufficient information to initiate a CVD investigation on all the alleged programs. For a full discussion of the basis for our decision to initiate on each program, *see* CVD Initiation Checklist. A public version of the initiation

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<sup>26</sup> *See* Volume I of the Petition at 16-17.

<sup>27</sup> *See* Volume I of the Petition at 17-26 and Exhibits GEN-8, and GEN-10 through GEN-13; *see also* General Issues Supplement at Exhibits GEN-SUPP-3 and GEN-SUPP-5.

<sup>28</sup> *See* CVD Initiation Checklist at Attachment III.

checklist for this investigation is available on ACCESS. In accordance with section 703(b)(1) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 65 days after the date of this initiation.

### Respondent Selection

The petitioner named 15 companies in China as producers/exporters of non-refillable cylinders.<sup>29</sup> Commerce intends to follow its standard practice in CVD investigations and calculate company-specific subsidy rates in this investigation. In the event Commerce determines that the number of companies is large and it cannot individually examine each company based upon Commerce's resources, where appropriate, Commerce intends to select mandatory respondents based on quantity and value (Q&V) questionnaires issued to the potential respondents. Commerce normally selects mandatory respondents in CVD investigations using U.S. Customs and Border Protection (CBP) entry data for U.S. imports under the appropriate Harmonized Tariff Schedule of the United States (HTSUS) numbers listed in the scope of the investigation. However, for this investigation, the HTSUS numbers under which the subject merchandise would enter (*i.e.*, 7311.00.0060 and 7311.00.0090, 7310.29.0025 and 7310.29.0050) are basket categories under which non-subject merchandise may enter. Therefore, we cannot rely on CBP entry data in selecting respondents. We intend instead to issue Q&V questionnaires to each potential respondent for which the petitioner has provided a complete address.

Producers/exporters of non-refillable cylinders from China that do not receive Q&V questionnaires by mail may still submit a response to the Q&V questionnaire and can obtain the Q&V questionnaire from E&C's website at <http://trade.gov/enforcement/news.asp>. Responses to

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<sup>29</sup> See Volume I of the Petition at Exhibit GEN-7.

the Q&V questionnaire must be submitted by the relevant Chinese producers/exporters no later than 5:00 p.m. ET on May 4, 2020. All Q&V responses must be filed electronically via ACCESS. An electronically filed document must be received successfully, in its entirety, by ACCESS no later than 5:00 p.m. ET on the deadline noted above. Commerce intends to finalize its decisions regarding respondent selection within 20 days of publication of this notice.

#### Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A) of the Act and 19 CFR 351.202(f), a copy of the public version of the Petition has been provided to the GOC via ACCESS.

Furthermore, to the extent practicable, Commerce will attempt to provide a copy of the public version of the Petition to each exporter named in the Petition, as provided under 19 CFR 351.203(c)(2).

#### ITC Notification

Commerce will notify the ITC of its initiation, as required by section 702(d) of the Act.

#### Preliminary Determination by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petition was filed, whether there is a reasonable indication that imports of non-refillable cylinders from China are materially injuring, or threatening material injury to, a U.S. industry.<sup>30</sup> A negative ITC determination will result in the investigation being terminated.<sup>31</sup> Otherwise, this investigation will proceed according to statutory and regulatory time limits.

#### Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) information to

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<sup>30</sup> See section 703(a)(1) of the Act.

<sup>31</sup> *Id.*

measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). Any party, when submitting factual information, must specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted<sup>32</sup> and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.<sup>33</sup> Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Please review the regulations prior to submitting factual information in this investigation.

#### Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by Commerce. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301.<sup>34</sup> For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, Commerce may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, Commerce will inform parties in a letter or memorandum of the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, standalone

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<sup>32</sup> See 19 CFR 351.301(b).

<sup>33</sup> See 19 CFR 351.301(b)(2).

<sup>34</sup> See 19 CFR 351.302.

submission; under limited circumstances Commerce will grant untimely filed requests for the extension of time limits. Parties should review *Extension of Time Limits; Final Rule*, 78 FR 57790 (September 20, 2013), available at <http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm>, prior to submitting extension requests or factual information in this investigation.

#### Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.<sup>35</sup> Parties must use the certification formats provided in 19 CFR 351.303(g).<sup>36</sup> Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

#### Notification to Interested Parties

Interested parties must submit applications for disclosure under administrative protective order (APO) in accordance with 19 CFR 351.305. Instructions for filing such applications may be found on E&C's website at <http://enforcement.trade.gov/apo>.

On January 22, 2008, Commerce published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures*, 73 FR 3634 (January 22, 2008). Parties wishing to participate in this investigation should ensure that they meet the requirements of these procedures (e.g., the filing of letters of appearance as discussed at 19 CFR 351.103(d)). Note that Commerce has temporarily modified certain of its requirements for

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<sup>35</sup> See section 782(b) of the Act.

<sup>36</sup> See *Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings*, 78 FR 42678 (July 17, 2013) (*Final Rule*); see also frequently asked questions regarding the *Final Rule*, available at [http://enforcement.trade.gov/tlei/notices/factual\\_info\\_final\\_rule\\_FAQ\\_07172013.pdf](http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf).

serving documents containing business proprietary information, until May 19, 2020, unless extended.<sup>37</sup>

This notice is issued and published pursuant to sections 702 and 777(i) of the Act, and 19 CFR 351.203(c).

Dated: April 16, 2020.

Jeffrey I. Kessler,  
Assistant Secretary  
for Enforcement and Compliance.

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<sup>37</sup> See *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19*, 85 FR 17006 (March 26, 2020).

## **Appendix**

### **Scope of the Investigation**

The merchandise covered by this investigation is certain seamed (welded or brazed), non-refillable steel cylinders meeting the requirements of, or produced to meet the requirements of, U.S. Department of Transportation (USDOT) Specification 39, TransportCanada Specification 39M, or United Nations pressure receptacle standard ISO 11118 and otherwise meeting the description provided below (non-refillable steel cylinders). The subject non-refillable steel cylinders are portable and range from 300-cubic inch (4.9 liter) water capacity to 1,526-cubic inch (25 liter) water capacity. Subject non-refillable steel cylinders may be imported with or without a valve and/or pressure release device and unfilled at the time of importation.

Specifically excluded are seamless non-refillable steel cylinders.

The merchandise subject to this investigation is properly classified under statistical reporting numbers 7311.00.0060 and 7311.00.0090 of the Harmonized Tariff Schedule of the United States (HTSUS). The merchandise may also enter under HTSUS statistical reporting numbers 7310.29.0025 and 7310.29.0050. Although the HTSUS statistical reporting numbers are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

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