



## DEPARTMENT OF COMMERCE

### International Trade Administration

[C-570-138]

### Pentafluoroethane (R-125) from the People's Republic of China: Initiation of Countervailing Duty Investigation

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

**DATES:** Applicable February 1, 2021

**FOR FURTHER INFORMATION CONTACT:** Joshua Tucker or Peter Skarlatos, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-2044 or (202) 482-0324, respectively.

### SUPPLEMENTARY INFORMATION:

#### The Petition

On January 12, 2021, the U.S. Department of Commerce (Commerce) received a countervailing duty (CVD) petition concerning imports of pentafluoroethane (R-125) from the People's Republic of China (China) filed in proper form on behalf of Honewell International, Inc. (the petitioner).<sup>1</sup> The Petition was accompanied by an antidumping duty (AD) petition concerning imports of R-125 from China.

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<sup>1</sup> See Petitioner's Letter, "Petitions for the Imposition of Antidumping and Countervailing Duties: R-125 (Pentafluoroethane) from the People's Republic of China," dated January 12, 2021 (the Petition).

Between January 14 and 27, 2021, Commerce requested supplemental information pertaining to certain aspects of the Petition,<sup>2</sup> to which the petitioner filed responses between January 19 and 28, 2021.<sup>3</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 R-125 in China and that such imports are materially injuring, or threatening material injury to, the domestic industry producing R-125 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 supported by information reasonably available to the petitioner.

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>4</sup>

### Period of Investigation

Because the Petition was filed on January 12, 2021, the period of investigation is January 1, 2020, through December 31, 2020.<sup>5</sup>

### Scope of the Investigation

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<sup>2</sup> See Commerce's Letter, "Petition for the Imposition of Countervailing Duties on Imports of Pentafluoroethane (R-125) from the People's Republic of China: Supplemental Questions," dated January 14, 2021; see also Commerce's Letter, "Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Pentafluoroethane (R-125) from the People's Republic of China: Supplemental Questions," dated January 14, 2021 (General Issues Supplemental); Memorandum, "Phone Call with Counsel to the Petitioner," dated January 22, 2021 (Phone Call with Petitioner's Counsel); and Memorandum, "Phone Call with Counsel to the Petitioner," dated January 27, 2021 (Second Phone Call with Petitioner's Counsel).

<sup>3</sup> See Petitioner's Letter, "R-125 (Pentafluoroethane) from the People's Republic of China: Honeywell International Inc.'s CVD Supplemental Questionnaire Response," dated January 19, 2021; see also Petitioner's Letter, "R-125 (Pentafluoroethane) from the People's Republic of China: Honeywell International Inc.'s Supplemental Questionnaire Response," dated January 21, 2021 (Petitioner's First Supplemental Questionnaire Response); Petitioner's Letter, "R-125 (Pentafluoroethane) from the People's Republic of China: Honeywell International Inc.'s Second Supplemental Questionnaire Response," dated January 25, 2021; and Petitioner's Letter, "R-125 (Pentafluoroethane) from the People's Republic of China: Honeywell International Inc.'s Third Supplemental Questionnaire Response," dated January 28, 2021 (Petitioner's Third Supplemental Questionnaire Response).

<sup>4</sup> See "Determination of Industry Support for the Petition" section, *infra*.

<sup>5</sup> See 19 CFR 351.204(b)(2).

The merchandise covered by this investigation is R-125 from China. For a full description of the scope of this investigation, *see* the appendix to this notice.

#### Comments on Scope of the Investigation

On January 14, 22, and 27, 2021, Commerce requested further information from the petitioner regarding the proposed scope to ensure that the scope language in the Petition is an accurate reflection of the products for which the domestic industry is seeking relief.<sup>6</sup> On January 19 and 28, 2021, the petitioner revised the scope.<sup>7</sup> The description of the merchandise covered by this investigation, as described in the appendix to this notice, reflects these clarifications.

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>8</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>9</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 February 22, 2021, which is the next business day after 20 calendar days from the signature date of this notice.<sup>10</sup> Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on March 4, 2021, which is 10 calendar days from the initial comment deadline.

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,

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<sup>6</sup> *See* General Issues Supplemental at 3; *see also* Phone Call with Petitioner's Counsel at 1; and Second Phone Call with Petitioner's Counsel at 1.

<sup>7</sup> *See* Petitioner's First Supplemental Questionnaire Response at 1-2; *see also* Petitioner's Third Supplemental Questionnaire Response at 1-2.

<sup>8</sup> *See Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

<sup>9</sup> *See* 19 CFR 351.102(b)(21) (defining "factual information").

<sup>10</sup> *See* 19 CFR 351.303(b). Commerce's practice dictates that where a deadline falls on a weekend or Federal holiday, the appropriate deadline is the next business day (in this instance, February 22, 2021). *See Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005).

the party may contact Commerce and request permission to submit the additional information.

All scope 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 (E&C)'s Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS), unless an exception applies.<sup>11</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>12</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 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

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<sup>11</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>12</sup> See Commerce's Letter, "Pentafluoroethane (R-125) from the People's Republic of China: Invitation for Consultation to Discuss the Countervailing Duty Petition," dated January 14, 2021.

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>13</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>14</sup>

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>15</sup> Based on our analysis of the information submitted on the record, we have determined that R-125, as defined in the scope,

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<sup>13</sup> See section 771(10) of the Act.

<sup>14</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)).

<sup>15</sup> See Volume I of the Petition at 11-14 and Exhibit I-3.

constitutes a single domestic like product, and we have analyzed industry support in terms of that domestic like product.<sup>16</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 2020.<sup>17</sup> The petitioner states that there are no other known U.S. producers of R-125; therefore, the Petition is supported by 100 percent of the U.S. industry.<sup>18</sup> We relied on data provided by the petitioner for purposes of measuring industry support.<sup>19</sup>

Our review of the data provided in the Petition, the Petitioner’s First Supplemental Questionnaire Response, and other information readily available to Commerce indicates that the petitioner has established industry support for the Petition. 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>20</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>21</sup> Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of

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<sup>16</sup> For a discussion of the domestic like product analysis as applied to this case and information regarding industry support, *see* Countervailing Duty Investigation Initiation Checklist: Pentafluoroethane (R-125) from the People’s Republic of China (China CVD Initiation Checklist) at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Pentafluoroethane (R-125) from the People’s Republic of China (Attachment II). This checklist is dated concurrently with this notice and on file electronically via ACCESS.

<sup>17</sup> *See* Petitioner’s First Supplemental Questionnaire Response at 2-3 and Exhibit Supp-I-10b.

<sup>18</sup> *See* Volume I of the Petition at 2-4 and Exhibit I-1; *see also* Petitioner’s First Supplemental Questionnaire Response at Exhibit Supp-I-1.

<sup>19</sup> *See* Volume I of the Petition at 2-4 and Exhibit I-1; *see also* Petitioner’s First Supplemental Questionnaire Response at 2-3 and Exhibits Supp-I-1 and Supp-I-10b. For further discussion, *see* Attachment II of the China CVD Initiation Checklist.

<sup>20</sup> *See* Attachment II of the China CVD Initiation Checklist; *see also* section 702(c)(4)(D) of the Act.

<sup>21</sup> *See* Attachment II of the China CVD Initiation Checklist.

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>22</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>23</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

The petitioner alleges that imports of the subject merchandise are benefitting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the U.S. industry producing the domestic like product. In addition, the petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.<sup>24</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 and suppression; lost sales and revenues; decline in employment variables; declining profitability; and adverse impact on capital expenditures and capacity utilization.<sup>25</sup> We assessed the allegations and supporting evidence regarding material injury, threat of material injury,

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<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> See Volume I of the Petition at 14-15 and Exhibit I-8.

<sup>25</sup> See Volume I of the Petition at 9-10, 14-26 and Exhibits I-2 and I-7 through I-10.

causation, as well as negligibility, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.<sup>26</sup>

#### Initiation of CVD Investigation

Based upon our examination of the Petition 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 R-125 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 five alleged programs. For a full discussion of the basis for our decision to initiate on each program, *see* China CVD Initiation Checklist. The initiation 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 11 companies in China as producers/exporters of R-125.<sup>27</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 number under which the subject merchandise would enter (*i.e.*,

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<sup>26</sup> *See* China CVD Initiation Checklist at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Pentafluoroethane (R-125) from the People's Republic of China (Attachment III).

<sup>27</sup> *See* Volume I of the Petition at Exhibit I-11.

2903.39.2035) is a basket category 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 R-125 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 <https://enforcement.trade.gov/questionnaires/questionnaires-ad.html>. Responses to the Q&V questionnaire must be submitted by the relevant Chinese producers/exporters no later than 5:00 p.m. ET on February 16, 2021. 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 R-125 from China are materially injuring, or threatening material injury to, a U.S. industry.<sup>28</sup> A negative ITC

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<sup>28</sup> See section 703(a)(1) of the Act.

determination will result in the investigation being terminated.<sup>29</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) publicly available information to value factors under 19 CFR 351.408(c) or to 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). Section 351.301(b) of Commerce's regulations requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted<sup>30</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>31</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. Interested parties should 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>32</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

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<sup>29</sup> *Id.*

<sup>30</sup> *See* 19 CFR 351.301(b).

<sup>31</sup> *See* 19 CFR 351.301(b)(2).

<sup>32</sup> *See* 19 CFR 351.302.

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, stand-alone submission; under limited circumstances we will grant untimely-filed requests for the extension of time limits. Parties should review Commerce's regulations concerning the extension of time limits prior to submitting extension requests or factual information in this investigation.<sup>33</sup>

#### Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.<sup>34</sup> Parties must use the certification formats provided in 19 CFR 351.303(g).<sup>35</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 in accordance with 19 CFR 351.305. Parties wishing to participate in this investigation should ensure that they meet the requirements of document submission procedures (*e.g.*, the filing of letters of appearance as discussed at 19 CFR 351.103(d)).<sup>36</sup> Note that Commerce has

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<sup>33</sup> See 19 CFR 351; see also *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>.

<sup>34</sup> See section 782(b) of the Act.

<sup>35</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).

<sup>36</sup> See *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures*, 73 FR 3634 (January 22, 2008).

temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.<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: February 1, 2021.

**Christian Marsh,**

*Acting 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; Extension of Effective Period*, 85 FR 41363 (July 10, 2020).

## Appendix

### Scope of the Investigation

The merchandise covered by this investigation is pentafluoroethane (R-125), or its chemical equivalent, regardless of form, type or purity level. R-125 has the Chemical Abstracts Service (CAS) registry number of 354-33-6 and the chemical formula C<sub>2</sub>HF<sub>5</sub>. R-125 is also referred to as Pentafluoroethane, Genetron HFC 125, Khladon 125, Suva 125, Freon 125, and Fc-125. Subject merchandise includes R-125, whether or not incorporated into a blend. When R-125 is blended with other products, only the R-125 component of the mixture is covered by the scope of this investigation. Subject merchandise also includes R-125 and unpurified R-125 that is processed in a third country or otherwise outside the customs territory of the United States, including, but not limited to, purifying, blending, or any other processing that would not otherwise remove the merchandise from the scope of this investigation if performed in the country of manufacture of the in-scope R-125. The scope also includes R-125 that is commingled with R-125 from sources not subject to this investigation. Only the subject component of such commingled products is covered by the scope of this investigation.

Excluded from the current scope is merchandise covered by the scope of the antidumping order on *Hydrofluorocarbon Blends 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) (the *Blends Order*).

R-125 is classified under Harmonized Tariff Schedule of the United States (HTSUS) subheading 2903.39.2035. Merchandise subject to the scope may also be entered under HTSUS subheadings 2903.39.2045 and 3824.78.0020. The HTSUS subheadings and CAS registry number are provided for convenience and customs purposes. The written description of the scope of the investigation is dispositive.

[FR Doc. 2021-02530 Filed: 2/5/2021 8:45 am; Publication Date: 2/8/2021]