Suspension of Liquidation

In accordance with 19 U.S.C. 1673b, we are directing the Customs Service to continue to suspend liquidation of all entries of fresh cut roses from Ecuador, as defined in the ''Scope of Investigation'' section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or the posting of a bond on all entries equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds United States price as shown in the table below. The margins are as follows:

Manufacturer/Producer/Exporter	Margin (percent)
Arbusta-Agritab (and its related farms Agrisabe, Agritab, and Flaris)	5.38
Florin S.A. (and its related farms Cuentas En Participacion Florinsa-Ertego (Florinsa Cotopaxi) and Exflodec)	84.72
Guanguilqui Agro Industrial S.A. (and its related farm Indipasisa)	14.24
Inversiones Floricola S.A. (and its related farm Flores Mitad Del Mundo S.A.)	4.63
All Others	6.32

ITC Notification

In accordance 19 U.S.C. 1673d(d) we have notified the ITC of our determination.

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) in this investigation of their responsibility covering the return or destruction of proprietary information disclosed under APO in accordance with 19 C.F.R. 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant 19 U.S.C. 1673d(d) and 19 C.F.R. 353.20(b)(2).

Dated: January 26, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–2607 Filed 2–3–95; 8:45 am]

BILLING CODE 3510–DS–P

[C–791–001]

Ferrochrome From South Africa; Final Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of Countervailing Duty Administrative Review.

SUMMARY: On November 12, 1993, the Department of Commerce (the Department) published in the **Federal Register** its preliminary results of administrative review of the countervailing duty order on ferrochrome from South Africa for the period January 1, 1991, through December 31, 1991. We have now completed this review and determine the bounty or grant to be zero for Consolidated Metallurgical Industries, Ltd. (CMI), and 0.81 percent *ad valorem* for all other companies.

EFFECTIVE DATE: February 6, 1995.

FOR FURTHER INFORMATION CONTACT: Dana S. Mermelstein or Maria P. MacKay, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–0984/2786.

SUPPLEMENTARY INFORMATION:

Background

On November 12, 1993, the Department published in the **Federal Register** the preliminary results of its administrative review of the countervailing duty order on ferrochrome from South Africa (46 FR 21155, April 9, 1981). The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

We invited interested parties to comment on the preliminary results. On December 13, 1993, a joint case brief was submitted by Chromecorp Technology (Pty) Ltd., CMI, Ferralloys Limited, Middleburg Steel and Alloys (Pty) Ltd. (MS&A), and Samancor, the South African producers which exported ferrochrome to the United States during the review period (respondents). We returned respondents' brief because it contained untimely new factual information. *See* 19 CFR 355.31(a)(1)(ii). The Department has not considered the rejected new factual information for these final results of review. *See* 19 CFR 355.31(a)(3), 355.3(a). On December 21, 1993, respondents resubmitted a revised case brief. The comments addressed in this notice were presented in the resubmitted case brief.

At the request of respondents, the Department held a public hearing on December 28, 1993. On January 14 and January 16, 1994, respondents submitted two documents containing unsolicited written argument. The regulations (19 CFR 355.38) require written argument to be submitted in accordance with the deadlines and requirements for case briefs and rebuttal briefs. The two submissions in question were made after these deadlines. These submissions were returned to respondents in accordance with the regulations (19 CFR 355.38(a)). The Department has therefore not considered the arguments presented in these two submissions for purposes of reaching these final results of review.

The review covers the period January 1, 1991 through December 31, 1991. The review involves five companies and the following programs:

(1) Industrial Development Corporation Loans

(2) Export Incentive Program

(3) Regional Industrial Development Incentives

(4) Preferential Rail Rates

(5) Government Loan Guarantees

(6) Beneficiation Allowances—Electric Power Cost Aid Scheme

(7) General Export Incentive Scheme

After consideration of respondents' comments on the preliminary results of review, the Department has now recalculated the bounties or grants attributable to the Category D Scheme of the Export Incentive Program, and to the Industrial Development Corporation long-term loan program. The Department now determines the bounty or grant attributable to the Category D Scheme to be zero percent *ad valorem* for CMI, and 0.29 percent *ad valorem* for all other companies, and the bounty or grant attributable to the Industrial Development Corporation loan to be zero for CMI, and 0.05 percent *ad valorem* for all other companies. Accordingly, the Department determines the total bounty or grant from all programs under review to be zero for CMI, and 0.81 percent *ad valorem* for all other companies.

Scope of Review

Imports covered by this review are shipments of ferrochrome, which is currently classifiable under item 7202.41.00, 7202.49.10 and 7202.49.50 of the *Harmonized Tariff Schedule* (HTS). The HTS item numbers are provided for convenience and Customs

purposes. The written description remains dispositive.

Calculation of Country-Wide Rate

We calculated the bounty or grant on a country-wide basis by first calculating the bounty or grant for each company subject to the administrative review. We then weight-averaged the bounty or grant received by each company using as the weight its share of total South African ferrochrome exports to the United States, including all companies, even those with *de minimis* or zero bounties or grants. We then summed the individual companies' weight-averaged bounties or grants to determine the bounty or grant from all programs benefitting ferrochrome exports to the United States. Since the country-wide rate calculated using this methodology was above *de minimis*, as defined by 19 CFR 355.7 (1994), we proceeded to the next step and examined the total bounty or grant calculated for each company to determine whether individual company rates differed significantly from the weighted-average country-wide rate, pursuant to 19 CFR 355.22(d)(3). One company, CMI, had a bounty or grant of zero during the review period, which is significantly different pursuant to 19 CFR 355.22(d)(3). This company is treated separately for assessment purposes. All other companies are assigned the country-wide rate.

Analysis of Comments

Comment 1: Respondents argue that the Department incorrectly calculated Category D benefits because it was demonstrated at verification that Category D benefits were tied to exports to countries other than the United States. Respondents argue that their Category D benefits were tied in one of the following three ways: (1) There were no exports to the United States of the subject merchandise during the tax year covered by the tax return filed during the review period; therefore, there could be no expenses (and no tax deduction) relating to marketing U.S. exports; (2) marketing expenses were segregated as they were incurred, and only expenses relating to non-U.S. exports were claimed as a tax deduction; or (3) expenses were apportioned on a pro-rata basis, therefore the tax deduction had been adjusted downward as a result of the removal of the portion of marketing expenses determined to relate to U.S. exports. Respondents argue that, in accordance with the proposed regulations, the Department cannot countervail benefits which do not relate to exports of the subject merchandise to the United States. *See, Notice of Proposed Rulemaking and Request for Public Comments* (54 FR 23366, 23384; May 31, 1989) (*Proposed Regulations*) at § 355.47(b).

Department's Position: We recognize that to the extent that respondents segregated their marketing expenses as they were incurred, and claimed the Category D deduction only on expenses related to non-U.S. exports, Category D benefits do not benefit exports of ferrochrome to the United States. Since we were able to verify that some companies did segregate their expenses in this manner, for certain expense items claimed, we did not include in our calculations benefits attributable to these expense items.

We do not agree, however, that solely because a company did not export to a specific market during a particular period, one can necessarily conclude that the company did not incur marketing expenses related to that market. In the instant case, however, the company in question demonstrated at verification that the expenses that it claimed under this program consisted only of commissions and warehousing expenses, which can be tied to sales to a particular export market. Therefore, we agree that, in this particular case, where the company did not export the subject merchandise to the United States during the tax year, it also did not incur or claim any marketing expenses with respect to the U.S. market for subject merchandise. As such, we conclude that Category D was not used by this company with respect to its U.S. exports of ferrochrome.

In the absence of a Government of South Africa mandate prohibiting Category D claims for marketing expenses tied to U.S. exports, the pro-rata apportionment of expenses which are not directly tied to specific export sales or markets is not an adequate substitute for the direct tying of the expenses to specific sales or markets for the purpose of the Department's analysis. Therefore, we do not recognize pro-rated expenses as being tied to particular markets, or markets other than the United States. We also note that some respondents did not pro-rate or otherwise adjust certain expenses, to exclude expenses directly incurred for the U.S. market, before claiming the expenses, in their entirety, as a tax deduction under Category D. Therefore, we have included all such expenses in our calculations.

Accordingly, we have adjusted our preliminary calculations to include only those Category D benefits which arose from marketing expenses which were either pro-rated or not adjusted by the companies in making their Category D claims on the tax return filed during the review period. For further discussion of the Department's position on the tying of benefits, *see* Memorandum for the File, dated December 16, 1994; ''Tying of Benefits,'' which is on file in the Central Records Unit (Room B099 of the Main Commerce Building). We now determine the bounty or grant attributable to Category D to be zero percent *ad valorem* for CMI and 0.29 percent *ad valorem* for all other companies.

Comment 2: CMI argues that it could not have derived any benefit from the Category D program because it was in a tax loss position during the period of review (POR). Therefore, the company could not have experienced any cash-flow effect from the deduction of export marketing expenses claimed under Category D. CMI argues that the Department has previously held that a company in a tax loss position cannot benefit from an otherwise countervailable tax deduction. *See, Preliminary Negative Countervailing Duty Determinations; Certain Steel Products from South Africa* (58 FR 47865, September 13, 1993); *Final Negative Countervailing Duty Determinations; Certain Steel Products from South Africa* (58 FR 62100, November 24, 1993).

Department's Position: The Department's ''Proposed Regulations,'' at § 355.41(i)(1), state: ''[a] countervailable benefit exists to the extent the Secretary determines that the taxes paid by a firm are less than the taxes it otherwise would have paid * * *'' (54 FR 23336, 23382, May 31, 1989). Because CMI was in a tax loss position, no taxes were due during the POR. In addition, the magnitude of the tax loss alone shows that it was not created during the POR by the use of the Category D program. Therefore, we agree with respondent that CMI derived no benefit from the Category D tax deduction it took during the POR.

Comment 3: Two respondents, Samancor and Ferralloys, Ltd., argue that the Department erroneously countervailed benefits from Category A and B promissory notes issued prior to the review period which matured during the review period. Respondents claim that because these notes were discovered during the verification in discussions with government officials, and after verification at the companies' offices, the Department must request and consider information from the companies. Respondents claim that this information would reveal that one of these promissory notes does not exist and that the other two are not fully attributable to exports of subject merchandise to the United States.

Department's Position: Section 776 of the Act provides that if the Department ''is unable to verify the accuracy of the information submitted, it shall use the best information available (BIA) to it as the basis for its action.'' During verification, the Department verifiers learned of a government practice of paying benefits under Categories A and B of the General Export Incentive Scheme with promissory notes. The Department verified the promissory note practice both at the companies and the government. However, after completing verification at the companies' offices, the verifiers discovered at the government offices several promissory notes which had been issued to Samancor and Ferralloys in accordance with this practice as payment of benefits under Categories A and B of the General Export Incentive Scheme. Although the Department had previously found the Categories A and B programs countervailable (*see Ferrochrome from South Africa; Final Results of Countervailing Duty Administrative Review* (56 FR 33254; July 19, 1991)), these notes had been neither reported in the questionnaire responses nor presented at verification by the companies as Categories A and B benefits.

While the Department has determined that the omission from the questionnaire responses of information about the promissory note practice is not a sufficient basis to question the reliability of the entire response, with regard to benefits from the Categories A and B programs, the inconsistencies at verification between the information presented by the government and the information presented by the companies is a sufficient basis for Department to rely on BIA. Since the only information on the record regarding these promissory notes is the information collected at verification at the government, the Department decided to use it as BIA in the preliminary results, and has not changed that determination for these final results.

With regard to the respondents' request that the Department solicit additional information about the promissory notes, the appropriate time for submission of information on benefits received was in the questionnaire responses, or prior to the deadline for the timely submission of factual information (the earlier of 180 days from initiation of the administrative review or issuance of the preliminary results of review)(see 19 CFR 355.31(a)(1)(ii)). In this instance, that information could have been presented even at verification, when the Department accepted newly- presented information about the promissory note practice and the benefits conferred by these promissory notes in particular. The purpose of verification is to determine that submitted information has been completely and accurately reported. Further explanation of these notes after verification would involve consideration by the Department of information that the Department did not have the opportunity to verify.

Comment 4: Samancor argues that the Department should not treat the Industrial Development Corporation (IDC) loan that Middleburg Steel and Alloys (MS&A) received as a long-term loan, but as a short-term loan of nine months' duration because Barlow Rand, Ltd., the parent company of MS&A, sold the ferrochrome operation to Samancor during the review period, but retained the loan obligation. Samancor further argues that in the calculation of benefits from the fixed-rate portion of the loan, the Department should have used as its benchmark the 3-year Eskom rate, rather than the Company Loan Securities rate. Respondent argues that if the appropriate benchmark and short-term loan methodology are used, no countervailable benefit results from the fixed-rate portion of the loan. Respondent argues further that, if the Department persists in using the long-term loan methodology and the company loan securities rate as the benchmark, the Department must correct significant errors made in the calculations.

Department's Position: The IDC loan in question is a long-term loan because, when issued, the loan had a term of 7 years. The type of bounty or grant did not change as a result of events affecting the company's corporate structure. As a result of the sale of MS&A during the POR, and the retention of this loan liability by MS&A's parent after the sale, MS&A was only responsible for making interest and principal payments on the loan for 9 months during the review period; however, this does not change the terms of the loan, from a long-term loan to a short-term loan. Therefore, we apply the long-term loan methodology (as outlined in the Proposed Regulations (54 FR 23366, 23384)) to measure the benefit to MS&A for those nine months.

In the absence of contemporaneous commercial borrowing by the company, and consistent with the *Proposed Regulations* (§ 355.44(b)(4)(iv), 54 FR at 23380), the Department used as the benchmark the Company Loan Securities rate, a national average long-term rate as reported in the Quarterly Bulletin of the South African Reserve Bank. With regard to the use of the 3-year Eskom rate as a benchmark, the Department did not adopt it for two reasons. First, this rate is only a 3-year rate, and the loan's term is 7 years. Second, this rate does not represent the cost of commercial borrowing in South Africa, but the rate at which the government-owned power company raises capital by issuing 3-year bonds. Therefore, it is an inappropriate benchmark for purposes of this analysis.

We have, however, corrected the calculations for the errors noted by respondents. As a result, we determine the bounty or grant attributable to the IDC loan program to be zero for CMI and 0.09 percent *ad valorem* for all other companies.

In our preliminary results, we found that the corporate restructuring resulted in the loan no longer being subject to review and stated we would not include in our calculation of the rate of cash deposit of estimated countervailing the bounty or grant conferred by this loan. However, in these final results, we have determined that neither the corporate restructuring, nor the subsequent repayment of the loan during the period of review, meet the requirements for a program-wide change as articulated in § 355.50 of the Department's *Proposed Regulations*. The *Proposed Regulations* define a program-wide change as ''(1) [n]ot limited to an individual firm or firms; and (2) [e]ffectuated by an official act such as the enactment of a statute, regulation, or decree, or contained in the schedule of an existing statute, regulation, or decree''(54 FR at 23385). Because the Department has no verified information indicating that the Industrial Development Corporation loan program has been terminated, there is no reason to remove this amount from the cash deposit rate. Accordingly, no adjustment has been made to the cash deposit rate for this program in these final results. However, since we verified that Categories A and B have been terminated, and there are no residual benefits, we are adjusting the cash deposit rate to reflect this program-wide change.

Final Results of Review

As a result of our review, we determine the total bounty or grant to be zero for CMI, and 0.81 percent *ad valorem* for all other companies for the period January 1, 1991 through December 31, 1991. The bounty or grant attributable to each program is as follows:

Program	Ad valorem rate
Category D	0.29
Category A & B (Promissory Notes)	0.44
Regional Incentives:	
Labor Program	0.01
Interest Program	0.01
Housing Program	0.01
DC Loan Program	0.05
Total	0.81

Therefore, the Department will instruct the Customs Service to assess countervailing duties of zero for shipments from CMI, and 0.81 percent *ad valorem* on all other shipments from South Africa of the subject merchandise exported on or after January 1, 1991 and on or before December 31, 1991.

Further, as a result of removing from the countervailing duty rate the bounty or grant conferred by the Category A and B programs, we determine the cash deposit rate of estimated countervailing duties to be 0.37 percent *ad valorem*. This rate is *de minimis* as defined by 19 CFR 355.50. Therefore, as provided for by section 751(a)(1) of the Act, the Department will instruct the Customs Service to collect cash deposits of estimated countervailing duties of zero for all shipments of the subject merchandise from South Africa entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1) and 19 CFR 355.22).

Dated: January 31, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–2854 Filed 2–3–95; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

[I.D. 011195A]

Marine Mammals; Small Takes of Marine Mammals Incidental to Specified Activities

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of issuance of an incidental harassment authorization.

SUMMARY: In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that an Incidental Harassment Authorization to take small numbers of harbor seals by harassment incidental to the nonexplosive demolition of the Still Harbor Dock Facility on McNeil Island in southern Puget Sound has been issued to the Washington State Department of Corrections (WDOC).

EFFECTIVE DATE: This authorization is effective from 0001 hours January 20, 1995 until 2400 hours January 19, 1996.

ADDRESSES: The application and authorization are available for review in the following offices: Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 and the Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115.

FOR FURTHER INFORMATION CONTACT: Kenneth Hollingshead, Marine Mammal Division, Office of Protected Resources at 301–713–2055, or Brent Norberg, Northwest Regional Office at 206–526–6733.

SUPPLEMENTARY INFORMATION: Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq*.) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s); will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses; and the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth.

On April 30, 1994, the President signed Public Law 103–238, the Marine Mammal Protection Act Amendments of 1994. One part of this law added a new subsection 101(a)(5)(D) to the MMPA to establish an expedited process by which citizens of the United States can receive an authorization, without regulations, to incidentally take small numbers of marine mammals by harassment. New subsection 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

On August 18, 1994, the WDOC applied for an authorization under section 101(a)(5)(D) of the MMPA, for the take of a small number of harbor seals by harassment incidental to the demolition of the existing dock facility and the driving of approximately 152 concrete, plastic, and steel piles (90 concrete, 40 plastic, and 22 steel) of the Still Harbor Dock Facility on McNeil Island in southern Puget Sound, WA. Notice of receipt of the application and the proposed authorization was published on November 8, 1994 (59 FR 55639) and a 30-day public comment period was provided on the application and proposed authorization. In addition, an Environmental Assessment (EA) was prepared for this action by NMFS and made available at that time. During the comment period, one comment was received. The Marine Mammal Commission recommended that the proposed small take exemption not be issued until the uncertainties and details of the monitoring program have been worked out and NMFS is able to reasonably conclude that the (monitoring) program is appropriate to detect any possible harmful effects on the local harbor seal population. In part as a result of this comment, a condition of the Incidental Harassment Authorization is for WDOC to notify both NMFS and the Washington Department of Fish and Wildlife (WDFW) at least 48 hours prior to commencement of work in order to allow observations of harbor seals prior to work beginning. To ensure that observations take place during demolition work, if NMFS and/or WDFW biologists are not available during demolition, the WDOC is required to contract for behavioral observations to be made during any work on the McNeil Island Dock. The Commission also questioned the scheduling of the proposed activities and noted that while documentation states that ''[t]he dock removal and construction schedules were developed to avoid reproductively sensitive life history periods of several species of wildlife, including harbor seals'' the documents did not indicate what other wildlife species were considered or discussed. As a result, the Commission was concerned that they were not able to determine whether the proposed authorization would meet the requirements of section 101(a)(5)(D)(ii) of the MMPA. As explained to the Commission, these other species were not discussed in the EA because they were discussed in the Environmental