

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.