

**REPORT ON THE FINAL DETERMINATION
ON THE APPLICATION OF THE PHILIPPINE MOSQUITO COIL
INDUSTRY FOR THE IMPOSITION OF DEFINITIVE
ANTI-DUMPING MEASURE AGAINST THE IMPORTATION
OF MOSQUITO COIL FROM INDONESIA
(AHN Subheading Nos. 3808.50.12 and 3808.91.20)
(Anti-Dumping Investigation No. 01-2010)**



(PUBLIC VERSION)

04 August 2010

1. INTRODUCTION

1.1 The Application for Anti-Dumping Measure

Green Coil Industries, Inc. (Green Coil), representing the Philippine mosquito coil industry, filed an application for anti-dumping measure against importation of mosquito coil from Indonesia. Green Coil alleged that mosquito coil is being imported from Indonesia at dumped price and that, as a result thereof, caused material injury to the domestic industry.

The Department of Trade and Industry (DTI) officially accepted the properly documented application on 08 July 2009. The DTI, in its Initiation Report dated 15 July 2009, found a *prima facie* case of dumping and, in view thereof, recommended the initiation of preliminary investigation. Notices of Initiation of the investigation were published in the *Manila Standard* and *Business Mirror* on 04 August 2009.

1.2 The Preliminary Determination

The Bureau of Import Services (BIS) of the DTI initiated the preliminary investigation on 15 July 2009 to determine the need to impose a provisional anti-dumping measure. The BIS issued its affirmative finding of dumping on the application against mosquito coil from Indonesia on 15 February 2010.

The DTI Secretary, following the BIS' positive preliminary determination, issued a Department Order (DO) for the imposition of provisional anti-dumping duty in the form of cash bond for a period of four (4) months from the effectivity of the Order ¹ on importation of mosquito coil from Indonesia, to wit:

Exporter	Weighted Average Dumping Margin (Amount of Bond) US\$/kg	% of Export Price
PT Johnson Home Hygiene Products (JHHP)	0.40	40
All Others Rate	0.40	40

On 19 March 2010, the DTI Secretary endorsed the case to the Tariff Commission (Commission) for formal investigation to determine the merit of the imposition of a definitive anti-dumping duty.

¹ The DTI Order shall take effect upon the issuance of the relevant Memorandum Order by the Bureau of Customs (BOC) or 15 days after the publication of this Order in two (2) newspaper of general circulation, whichever comes earlier. Said Order was published in the *Manila Standard* and *Business Mirror* on 22 March 2010. Customs Memorandum Order No 17-2010 issued by BOC is dated 26 April 2010.

2. THE FORMAL INVESTIGATION

Section 3 (h) of Republic Act (RA) No. 8752 (The Anti-Dumping Act of 1999) provides the legal basis for the Commission to conduct formal investigation. Under the law, the Commission has one hundred twenty (120) days from receipt of the records of the case to complete its investigation and submit a report of findings and recommendation to the DTI Secretary. The Commission commenced the formal investigation on 19 March 2010.

2.1 Scope of Investigation

The investigation covers all imports of mosquito coil from Indonesia during the period of investigation (POI), the importation or sale of which had caused or was likely to injure the Philippine mosquito coil industry.

2.2 Period of Investigation

The Commission considered the 12-month period from 01 January to 31 December 2008 as the POI for dumping determination.

With regard to the injury determination, the POI considered was 2006 to 2009.

2.3 The Commission's Approach to the Case

The Commission's investigation included the following courses of action:

2.3.1 Identification of Parties

The following companies were identified as parties to the case, namely:

Names of the Company	Addresses/Locations
A. Philippine Producers:	
1. Bendyson International Corporation	10 Premier St., Brgy. Gulod Novaliches, Quezon City
2. Benson Industries, Inc.	Hernan Cortes St., Banilad Mandaue City, Cebu
3. Green Coil Industries, Inc.	Tingub corner Pagsabungan Road Mandaue City, Cebu
4. Indocoil Philippines, Inc.	Bo. De Fuego, San Francisco General Trias, Cavite
5. Philippine Valiant Chemical	Peterbuilt Compound,

Products Company, Inc.	Veterans Village, Taguig City
B. Philippine Trader of Locally Produced Coil: 1. Global Winds Corporation	6371 Estrella St., Brgy. Guadalupe Viejo, Makati City
C. Philippine Importer: 1. SC Johnson and Son, Philippines, Inc. (SC Johnson Philippines)	2639 Zamora Street Pasay City
D. Indonesian Exporter: 1. JHHP	MidPlaza1, 16 th Floor Jl. Jend. Sudirman Kav. 10-11 Jakarta, Indonesia

2.3.2 Notification

Commencement of Formal Investigation and Preliminary Conference

Notice was published on 24 March 2010 in *The Manila Times* and the *Manila Standard Today* and posted at the Commission's website <http://www.tariffcommission.gov.ph> (Annex "A"). Individual notifications were sent to all identified interested parties.

Public Consultation

Notice was published on 15 May 2010 in *The Manila Times* and the *Manila Standard Today* and posted at the Commission's website <http://www.tariffcommission.gov.ph> (Annex "A-1"). Individual notifications were sent to all identified interested parties.

2.3.3 Conduct of Preliminary Conference

The preliminary conference was held on 29 March 2010 to apprise the parties on the nature and procedures of investigation, i.e., non-applicability of the technical rules of procedures under the Rules of Court; limitation of the number of witnesses; treatment of confidential information; schedule of activities and timeframe of the investigation; submission of parties' evidence and position papers and modes of services; and other related matters necessary for the speedy disposition of the case (e.g., explore the possibility of amicable settlement/price undertaking).

The parties in attendance were representatives from Green Coil, JHHP, SC Johnson Philippines and their respective counsels, Embassy of the Republic of Indonesia, DTI-BIS and media from Business World. (Annex "B").

On 30 March 2010, the Commission issued an Order (Annex "B-1") containing the agreements reached during the conference. All concerned parties were furnished a copy of said Order.

2.3.4 Conduct of On-Site Investigation

The main purpose of the on-site investigation is to verify information provided or to obtain further details vital in the investigation. Prior to the scheduled visit, companies were informed about the general nature of the information to be verified and of any further information which needs to be provided.

The Commission, following confirmation from companies of their agreements, conducted on-site investigations to the following companies:

Names of Company	Inclusive Dates
Green Coil, Cebu City, Philippines	13-15 April 2010
JHHP Head Office, Jakarta, Indonesia	19-20 April 2010
JHHP Coil Plant, Surabaya, Indonesia	21 April 2010
SC Johnson Philippines, Makati City, Philippines	29 April 2010

Other domestic producers were sent letter-request for ocular inspection but did not confirm acceptance. Indocoil Philippines informed the Commission that the company is not in operation since January 2007.

2.3.5 Issuance of Staff Report

Prior to the scheduled public consultation, the Commission issued on 17 May 2010 a Staff Report containing its findings on the determination of product comparability and price difference/dumping. All concerned parties were provided a copy of said report.

Parties were requested to submit to the Commission a list of issues they wanted to explore in the consultation other than the issues on product comparability and price difference. A party who did not submit a list of issues is deemed to have no controversial/contestable matter to raise and hence, was given less priority in the order of parties to ask clarificatory questions during the consultation.

2.3.6 Conduct of Public Consultations

During the preliminary conference, parties agreed to schedule the public consultations on 24 to 27 May and 01 June 2010 but the Commission conducted only two (2) hearings dates, i.e., 24 and 26 May 2010. Both parties were given equal opportunity to present evidence, elaborate on their submissions and respond to the presentations of the other parties.

The parties in attendance were representatives from the Green Coil, JHHP, SC Johnson Philippines and their respective counsels, Embassy of the Republic of Indonesia, DTI-BIS and media from Business World. (Annex "C").

2.3.7 Disclosure of Essential Facts

The Commission, in compliance with Section 15 of the IRR of RA 8752, informed the parties on 15, 16 and 19 July 2010 of the essential facts which form the basis of its final determination. Parties were given five (5) days from the date of receipt of the notice to submit their comments on the essential facts.

2.4 Limitation of the Investigation

For purposes of final determination, the Commission limited its investigation in accordance with the provisions of Section 11 (m) of the Implementing Rules and Regulations (IRR) of RA 8752 following Section 6.10 of the WTO Agreement on Anti-Dumping Practices (AD Agreement) which states:

“The authorities shall, as a rule, determine an individual margin of dumping for each known exporter or producer concerned of the product under investigation, In cases where the number of exporters, producers, importers or types of products involved is so large as to make such a determination impracticable, the authorities may limit their examination either to a reasonable number of interested parties or products by using samples which are statistically valid on the basis of information available to the authorities at the time of the selection, or to the largest percentage of the volume of the exports from the country in question which can reasonably be investigated.”

Further, parties who failed to submit answers to position papers or to questionnaire within the prescribed period were governed by the provisions of Section 10 (h) of the IRR of RA 8752 consistent with Section 6.8 of the AD Agreement which provides:

“In cases in which any interested party refuses access to, or otherwise does not provide, necessary information within a reasonable period or significantly impedes the investigation, preliminary or final determinations, affirmative or negative, may be made on the basis of the facts available.”

3. THE PARTICIPANTS' SUBMISSIONS

During the course of the investigation, the Commission received submissions, including position papers, comments and issues, from various parties. Non-confidential submissions were made available at the Commission's public file.

3.1 The Domestic Industry's Case

3.1.1 Green Coil

Company Profile

Green Coil is a 100% Filipino owned corporation registered with the Securities and Exchange Commission (SEC) since 21 February 1995. Its business and plant facilities are located at Pagsabungan, Mandaue City, Cebu, Philippines. The company has an authorized capital stock of 500,000 shares, of which 63,755 were issued at PhP100 par value.

The company manufactures and distributes mosquito coil under the brand names "Lion-Tiger", "Lion-Katol" and "Tiger-Katol". As of 31 December 2009, it has 130 personnel, 121 are directly involved in the production of mosquito coils.

Submissions

The company, through counsels, submitted the following:

- Manifestation received on 19 April 2010. It stated that the requirements per Commission Order dated 30 March 2010 have been complied with. The documentary evidences were already submitted being part of the protest and the same were verified by the Commission's staff. Other documents that the Commission may require will be presented in the scheduled public hearing
- Comments on the Commission's Staff Report received on 19 May 2010. The company requested the Commission to set aside the use of constructive prices in the determination of dumping margin and focus the investigation on the prices furnished by the Philippine Consulate in Indonesia
- List of issues to be explored during the public hearings received on 31 May 2010. Main issue is the basis of export price and normal value in the determination of dumping. Accordingly, prices provided by the Philippine Commercial *Attache* in Indonesia which was made an integral part of the DTI's preliminary determination report is the appropriate gauge in the determination of dumping margin

- Formal Offer of Exhibits received on 03 June 2010. Documentary evidences include:
 - (i) affidavit-testimony of Green Coil's Accounting Supervisor Ms. Myrna N. Tan;
 - (ii) DTI-BIS' Report on the Preliminary Determination dated 15 February 2010; and
 - (iii) all the supporting documents submitted to the DTI-BIS which formed part of the preliminary report
- Memorandum in Support of the Opposition to the Commission's Staff Report received on 03 June 2010. The company expressed its objection and opposition to the said report particularly on the basis and manner in arriving at the weighted average for both the export price and normal value in the determination of dumping margin. It requested the Commission to find and conclude the existence of dumping margin beyond the *de minimis* level either on the unscented variant or scented variant or both variants of the subject imported mosquito coils from Indonesia
- Memorandum in Support of the Anti-Dumping Petition/Application received on 16 June 2010.

3.2 The Opposing Party's Case

3.2.1 JHHP

Company Profile

JHHP is a limited liability company established in Indonesia as a subsidiary of SC Johnson and Son, Inc. (SC Johnson US), the international and privately (family) owned consumer goods company founded in 1886 with headquarter in Racine, Wisconsin, USA. As of 31 December 2008, SC Johnson US holds 24,873 shares representing 85% of the issued shares of the company. The company started commercial production in January 2003.

The company is engaged in the manufacture of household cleaning products and air freshener, and pest control products. It produces three types of mosquito coils under the brand name "Baygon", namely: Green (unscented), Lavender (scented) and Anti-Dengue. Its market share of coil in Indonesia accounted for 36% in 2008. Apart from the Philippines, JHHP also exports to thirteen (13) other SC Johnson companies around the world.

The company has a total of 1,762 regular employees and 600 temporary workers spread across its head office in Jakarta and three (3) factories in Pulogadong, Surabaya, and Medan, all in Indonesia. Its factories in Medan and Surabaya are dedicated entirely for mosquito coil production and employ 1,089 full-time plus 1,000 temporary employees during the so-called "insect season".

JHHP is the only recorded exporter of mosquito coil from Indonesia during the POI.

Submissions

The company, through counsel, submitted on 13 April 2010 its Initial Memorandum and Position Paper, asserting that:

- (i) imported mosquito coils are sold in the Philippines at a price greater than normal value and thus no dumping has occurred;
- (ii) petitioner's allegations of injury is without merit as there was no indication of material injury nor threat thereof to the Philippine mosquito coil industry;
- (iii) no causal link between dumping and injury; and
- (iv) DTI, despite the company's full participation in the proceeding and submission of all requested and relevant information, failed to make the fair comparison between the normal value and the export price in the determination of dumping margin.

3.2.2 SC Johnson Philippines

Company Profile

SC Johnson Philippines was founded and registered with the SEC on 22 April 1957 as a fully owned subsidiary of SC Johnson US. The company is 82% owned by SC Johnson Europe BV but owned and controlled by its ultimate parent company, SC Johnson US, which exclusively licensed SC Johnson Philippines for Intellectual Property (IP) right to the Philippine market.

SC Johnson Philippines imported "Baygon" Anti-Dengue mosquito coils and "Baygon" scented mosquito coils from JHHP, its affiliated contract manufacturer based in Indonesia. It reaches out to consumers and customers *via* a combination of directly covered key accounts and a strong network of independent provincial and regional distributors.

Apart from its business operations, SC Johnson Philippines is engaged in the "Iwas" Dengue Campaign conducted in partnership with the Department of Health and local communities. To date, the company has provided education and spraying services to over 1,000,000 homes.

During the POI, SC Johnson Philippines was the only identified importer of mosquito coil from Indonesia. The company's registered office is located at 6371 Estrella Street, Barangay Guadalupe Viejo, Makati City.

Submissions

Through counsel, the company submitted the following:

- Initial Memorandum and Position Paper received by the Commission on 13 April 2010. The company asserted that:
 - (i) SC Johnson Philippines did not engage in dumping during the POI, the imported mosquito coils were sold at a higher price than that of the domestic industry;
 - (ii) petitioner suffered no injury from imports of Indonesian mosquito coils as it enjoyed a remarkable growth in profits and continues to be the market leader;
 - (iii) no causal link between dumping and injury; and
 - (iv) DTI, despite the company's full participation in the proceeding and submission of all requested and relevant information, failed to make the fair comparison between the normal value and the export price in the determination of dumping margin

- Judicial Affidavits of SC Johnson Philippines' General Manager Mr. Ramon P. Daez and Crowell & Moring's Counsel Mr. Daniel Cannistra received on 20 May 2010. Said affidavits were offered as direct testimony/ies in the public hearings

- Formal Offer of Documentary Evidence received on 04 June 2010 includes the following:
 - (i) judicial affidavits of Mr. Daez and Mr. Cannistra;
 - (ii) AC Nielsen Certification;
 - (iii) graphic illustration entitled "Historical Consumer Shelf Price Comparison AC Nielsen Data Baygon Coil Higher Priced vs. Lion Tiger";
 - (iv) table entitled "Actual Consumer Shelf Price Comparison Baygon Coil Higher Priced vs. Lion Tiger";
 - (v) tables collectively entitled "2008 Coil Trade Price Comparison Baygon Coils Higher Priced vs. Lion Tiger Before and After Lion Tiger Price Increase in April 2008";
 - (vi) table entitled "2008 Coil Trade Price Comparison Baygon Coils Higher Priced vs. Lion Tiger After Baygon Price Increase in 8 August 2008; and
 - (vii) Green Coil's comparative audited financial statements for the years ended 31 December 2006 to 2008

- Principal Memorandum *Ad Cautelam* received on 15 June 2010

- Comments/Objection to Green Coil's Formal Offer of Exhibits received on 15 June 2010

- Comments on Green Coil's Memorandum in Support of the Opposition of the Staff Report of the Commission received on 15 June 2010

- Comments on Green Coil's Memorandum in Support of the Anti-Dumping Application/Petition received on 23 June 2010.
- Comments on the Essential Facts received on 26 July 2010. The company requested the immediate termination of the investigation pursuant to Section 9 of the IRR of RA 8752.

3.3 Other Parties

3.3.1 Ministry of Trade of the Republic of Indonesia

- Letter received on 13 April 2010 requesting the Philippine Anti-Dumping Authority to address the issue on normal value and export price for purposes of fair comparison and terminate the investigation without the imposition of anti-dumping measure
- Letter dated 21 May 2010 requesting the termination of the investigation pursuant to Article 5.8 of the Anti-Dumping Agreement. No price suppression and depression, and no causal link between the injury of the domestic industry of the Philippines and the alleged dumped imports. Domestic industry during the POI has shown positive trends in the volume and value of domestic sales, sales revenue, gross profit, volume of production, capacity utilization and productivity.

3.3.2 Indocoil Philippines, Inc. (Indocoil)

- Letter dated 05 April 2010 informing the Commission that Indocoil is no longer involved in manufacturing and/or trading operations for mosquito coil from the time the company closed its factory and stopped operation on 01 January 2007. Indocoil denied information that they are importing mosquito coil from Indonesia.
- Letter dated 24 June 2010 confirming SC Johnson Philippines' statement that Indocoil was a toll manufacturer of "Baygon" brand mosquito coil from 2003 when Bayer Philippines sold the brand to SC Johnson Philippines until December 2006 when the latter decided to import mosquito coil from Indonesia in 2007. Indocoil closed its operation in January 2007.

3.3.3 Global Winds Corporation

- Email dated 07 May 2010 to clarify that the company is not a manufacturer but only a trader of mosquito coil produced by Philippine Valiant Chemical Products Company. The company took the position not to participate in the investigation.

3.4 Consideration of Information/Evidence Submitted

The Commission, in its appreciation of evidence submitted, exercised due diligence in the determination of the existence of dumping.

4. THE DOMESTIC INDUSTRY AND MARKET

4.1 The Domestic Industry

Section 2 (i) of the IRR of RA 8752 defines domestic industry as:

“Domestic producers as a whole of the like product or to those of such producers whose collective output of the product constitutes a major proportion of the total domestic production of that products, except that when producers are related to the importers or foreign exporters or are themselves importers of the allegedly dumped product, the term “domestic industry” may be interpreted as referring to the rest of the producers.”

Green Coil filed the instant application on behalf of the domestic industry. During the POI, Green Coil accounted for 85% and 87% of the total Philippine production of mosquito coil in 2007 and 2008, respectively.² As such, the company-applicant satisfied the requirement of domestic industry.

4.2 The Philippine Market

Table 1. The Philippine Mosquito Coil Market (In kg): 2006-2009

Particulars	POI			
	2006	2007	2008	2009
Domestic Sales ^{1/}	1,211,837	966,927	1,253,479	1,130,611
Total Imports ^{2/}	786,612	2,700,880	5,311,998	4,683,640
Imports from Indonesia	626,221	2,681,690	5,272,305	4,593,867
Imports from Other Sources	160,391	19,190	39,693	89,773
Total Philippine Market	1,998,449	3,667,807	6,565,477	5,814,251
% Share in the Philippine Market:				
Domestic Sales	60.64	26.36	19.09	19.45
Imports from Indonesia	31.33	73.11	80.30	79.01
Imports from Other Sources	8.03	0.53	0.61	1.54

Sources: ^{1/} Green Coil

^{2/} NSO, Foreign Trade Statistics

Table 1 gives the breakdown of the Philippine market for mosquito coil with Green Coil as the main supplier in 2006. Domestic sales in 2006 totaled 1,211,837 kg or 61% of the total Philippine market. Green Coil’s market share dwindled starting 2007 even as the domestic requirements for mosquito coil increased due to the prevalence of “dengue”.³ Imports particularly from Indonesia surged and dominated the market at 73% in 2007 and 80% in 2008 and 2009. In contrast, the share of the domestic industry dropped from a high

² DTI-BIS Report on the Preliminary Determination on the Anti-Dumping Investigation Against Mosquito Coils from Indonesia, 15 February 2010

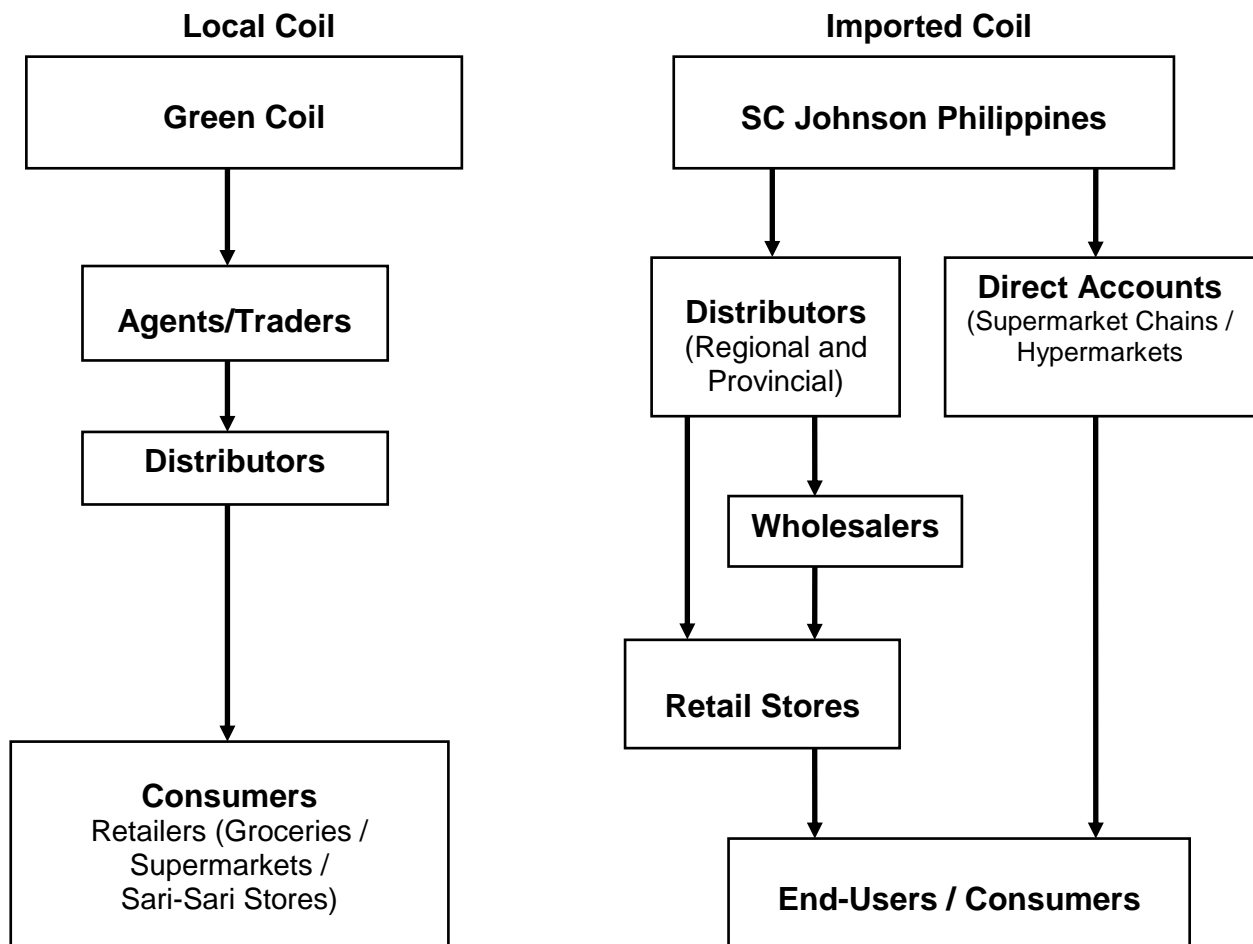
³ Dengue is endemic to the Philippines in 2006. http://en.wikipedia.org/wiki/list_of_epidemics.

of 61% in 2006 to 26% in 2007 and further to 19% in 2008 and 2009. The balance of the market is augmented by imports from other countries such as Malaysia and China.

Mosquito coils are offered and sold to the customers through agents and distributors, which in turn sell the product to the end-user customers. Green Coil markets its product to Luzon (50%), Mindanao (30%) and Visayas (20%). Similarly, importer SC Johnson Philippines reaches its customers via a combination of directly covered key accounts and a strong network of independent provincial and regional distributors, with coverage outlets employing people (including sales people, van sales, promotional persons, merchandisers, etc.). Sale of imported Baygon coil to distributors accounted for 70% of sales and the rest are for supermarkets and hyper markets. SC Johnson Philippines started importing mosquito coil from its affiliated manufacturer JHHP based in Indonesia in 2007.

Figure 1 shows the similarities in the distribution and sale of both local and imported coils.

Figure 1
Distribution Channel



5. LIKE PRODUCT

Section 2 (n) of the IRR of RA 8752 defines like product as:

“A product which is identical or alike in all respects to the allegedly dumped product, or, in the absence of the former, another product which, although not alike in all respects, has characteristics closely resembling those of the allegedly dumped product.”

5.1 Product Under Consideration

Mosquito coil is mosquito-repelling incense, usually shaped into a spiral, and typically made from a dried paste of pyrethrum powder. The coil is usually held at the center of the spiral, suspending it in the air, or wedged by two pieces of fireproof nettings to allow continuous smoldering. Burning usually begins at the outer end of the spiral and progresses slowly toward the centre of the spiral, producing a mosquito-repellent smoke. A typical mosquito coil can measure around 15 cm in diameter and lasts up to eight (8) hours.

5.2 Factors Considered in Determining Like Product

5.2.1 Chemical and Physical Composition

Domestic Product



Locally produced mosquito coil, branded as “Lion-Tiger”, is an insecticidal preparation made up of locally sourced natural combustible materials such as coconut shells, coffee pulps, corn cobs, ipil ipil and cassava starch, blended with chemicals such as joss powder, dye stuff, metofluthrin (0.005%) or esbiothrin (0.1%) and sodium benzoate as active ingredients. It is green colored, joss scented and packed in small boxes containing five (5) double coils with a metal holder. The active ingredient is emitted by heat from the slow burning of the coil, thus mixing with air to repel or kill mosquitoes. Local raw materials averaged 26% of the total cost of raw materials used in the production of mosquito coils. The rest are imported chemical ingredients mostly from Indonesia and Thailand.

A box of “Lion-Tiger” mosquito coils comes in two sizes: regular and junior. The coil is highly resistant to breakage because it utilizes high quality binding materials and is packed in a sturdy box.

Imported Product

There are two (2) types of mosquito coils produced by JHHP and sold in the Philippine market: “Baygon Anti-Dengue Mosquito Coil”, which is green, spiral mosquito coil featuring a mild fragrance and containing 0.20% d-allethrin as active ingredient; and “Baygon Scented Mosquito Coil”, the product is a violet, spiral mosquito coil featuring a floral fragrance and containing 0.20% d-allethrin as its active ingredient. Raw materials such as coconut, wood, glue and starch powders, dyestuffs, preservatives and fragrances are 100% sourced locally.



Both types are used to kill and repel mosquitoes and the active ingredient is emitted to the air by the heat generated by the slow burning of the coil. Each consumer box contains five (5) double coils and each coil lasts eight (8) hours.

5.2.2 Manufacturing Process

Local and imported mosquito coils undergo the same process, which comprise the following steps:

- ① The combustible inputs are transformed into powder form, while starch is cooked to form a paste with sodium benzoate as preservative, and the active ingredient is dissolved in water at the desired concentration.
- ② The three mixtures are mixed and passed to the kneading machine for uniform distribution.
- ③ The complete preparation is extruded into sheets and stamped to form the coils.
- ④ The coils undergo drying in the oven and cooled before packing in plastic bags, small boxes and carton boxes.

5.2.3 Uses

The domestic product and the imported mosquito coils, whether scented or unscented, are both intended for the same purpose, i.e., to repel and kill mosquitoes.

5.2.4 Tariff Classification

The protested imported and domestically-produced mosquito coils, both fall under AHTN subheading Nos. 3808.50.12 and 3808.91.20 of the ASEAN Harmonized Tariff Nomenclature (AHTN) Tariff and Customs Code, as described below:

Hdg. No.	2007 AHTN Code	Description	MFN Rate of Duty (%) (2008-2010)
38.08		Insecticides, rodenticides, fungicides, herbicides, anti-sprouting products and plant-growth regulators, disinfectants and similar products, put up in forms or packings for retail sale or as preparations or articles (for example, sulphur-treated bands, wicks and candles, and fly-papers).	
	3808.50	- Goods specified in Subheading Note 1 to this Chapter:	
		- - Insecticides:	
	3808.50.11	- - - x x x	
	3808.50.12	- - - In the form of mosquito coils or mosquito coil powder	10
	3808.50.13	- - - x x x	
	To		
	3808.50.99	- - - x x x	
		- Other:	
	3808.91	- - Insecticides:	
	3808.91.10	- - - x x x	
	3808.91.20	- - - In the form of mosquito coils or mosquito coil powder	10
	3808.91.30	- - - x x x	
	To		
	3808.99.90	- - - x x x	

Source: AHTN Tariff and Customs Code of the Philippines (Volume 1), January 2009

Table 2 shows the historical development of the tariff rates for subject article:

Table 2. Historical Development of the Tariff Rates for Mosquito Coil: 2004-2010

Year	MFN	CEPT	ACFTA	AKFTA	JPEPA ^{a/}	AANZFTA ^{b/}
2010	10	0	0	3	7	5
2009	10	0	5 ^{f/}	3 ^{g/}	8	7
2008	10	0 ^{c/}	8 ^{d/}	5 ^{e/}	9	-
2007	10	5	-	-	-	-
2006	10	5	-	-	-	-
2005	10	5	-	-	-	-
2004	10	5	-	-	-	-

^{a/} Executive Order (EO) 767 dated 7 November 2008

^{b/} EO 851 dated 23 December 2009

^{c/} EO 703 dated 22 January 2008

^{d/} EO 613 dated 17 April 2007

^{e/} EO 639 dated 21 July 2007

^{f/} EO 814 dated 30 June 2009

^{g/} EO 812 dated 15 June 2009

5.3 Conclusion

Imported and locally-produced mosquito coils are both made of natural combustible materials as carrier of the active mosquito repellent. Regardless of the variant, both are activated by burning and used for the same purpose, i.e., to repel and kill mosquitoes. Both are classified under subheading 3808.50.12/3808.91.20 of the AHTN Tariff and Customs of the Philippines.

The Commission thus determined that the domestically produced mosquito coils constitute a like product to the imported product under consideration.

6. DUMPING

Dumping occurs when any specific kind or class of foreign article is imported or brought into the Philippines at a price i.e., export price, less than its normal value.

Section 11 (a) of the IRR of RA 8752 provides:

“The Secretary and the Commission shall determine the existence of dumping by making a fair comparison between the export price and the normal value of the allegedly dumped product, covering all transactions for the allegedly dumped product during the POI.”

6.1 Export Price

Section 2 (l) of the IRR of RA 8752 defines export price as:

“(1) the ex-factory price at the point of sale for export; or (2) the FOB price at the point of shipment. In cases where (1) or (2) cannot be used, then the export price may be constructed based on such reasonable basis as the Secretary or the Commission may determine.”

The DTI, in the initiation stage and in the preliminary determination, used as basis in the computation of export price the FOB export prices reflected in the electronic Import Entry Declarations (IED) obtained from the Bureau of Customs. Export prices ranged from US\$0.86/kg to US\$1.15/kg or a weighted average of US\$1.01/kg.

Respondents JHHP and SC Johnson Philippines, in their initial memorandum and position paper submitted to the Commission, disagreed with the DTI using JHHP’s invoice price to SC Johnson Philippines as basis of export price. JHHP and SC Johnson Philippines are affiliates and thus actual transaction price between them could not be used as basis for export price.

Section 11 (k) of the IRR of RA 8752, in conformity with Article 2.3 of the AD Agreement, states:

“In cases where there is no export price or where it appears that the export price is unreliable because of a relationship or a compensatory arrangement between the foreign exporter and the importer or a third party, the export price may be constructed on the basis of the price at which the allegedly dumped product is first resold to an independent buyer, or if such product is not resold to an independent buyer, or not resold in the condition as imported, on such reasonable basis as the Secretary or Commission may determine.”

Based on the verified documentary evidences submitted by the respondents, it is evident that JHHP and SC Johnson Philippines are affiliates. Both companies are owned and controlled by its parent company, SC Johnson US, and they are exclusively (sole) licensed for each of their respective country markets, meaning JHHP cannot directly sell into the Philippine market. JHHP is an affiliated contract manufacturer for SC Johnson Philippines, which in turn sells coils to end-use customers in the Philippines. JHHP charges SC Johnson Philippines an affiliated price equivalent to the contract manufacturing price inclusive of a reasonable profit margin and passes on to SC Johnson Philippines the transportation and related costs for shipping goods. Said affiliated price is strictly governed by its parent company SC Johnson US' global policies to ensure full compliance with corporate accounting rules as well as local government regulations.

Both RA 8752 and the AD Agreement clearly provide that in case where it appears to the investigating authorities that the export price is unreliable because of association or a compensatory arrangement exists between the exporter and the importer, the export price may be constructed on the basis of the price at which the imported products are first resold to an independent buyer. The AD Agreement does not provide any guidance on the term "compensatory arrangement" nor does it contain specific requirement or particular methodology to be followed to determine the reliability of related-party export price.

Export prices from transactions involving related parties are not automatically viewed as unreliable. Rather than to assume its unreliability, it is the practice of some WTO Members to test the reliability of export price in related-party transactions. The reliability of related-party export prices is tested by comparing such prices to export prices to independent or unrelated parties. If the difference between the average price of related parties and the average price to independent parties is significant, then the related-party export prices could be considered not at arm's length and unreliable for purposes of calculating the export price.⁴ Since JHHP and SC Johnson Philippines were the only identified exporter and importer, respectively, of coils from Indonesia during the POI, the reliability test was not undertaken. Thus, in the absence of such comparison and in view of the affiliation between JHHP and SC Johnson Philippines, the Commission viewed the related-party export price between JHHP and SC Johnson Philippines as unreliable and therefore cannot be used as basis of export price.

The Commission, for purposes of the final determination, constructed the export price using SC Johnson Philippines' resale price to its first independent/unaffiliated customer in the Philippines subject to price adjustments pursuant to Section 11 (k) of the IRR of RA 8752 that states:

"In this case, allowances for costs, including duties and taxes incurred between importation and resale, and for profits, should also be made.

⁴ WTO Handbook on Anti-Dumping Investigation, Judith Czako, Johann Human and Jorge Miranda Cambridge University Press, 2003

If in these cases, price comparability has been affected, the normal value shall be established at a level of trade equivalent to the level of trade of the constructed export price taking into consideration due allowances with affect price comparability.”

SC Johnson Philippines provided the Commission with its selling price on transactions made to unaffiliated/independent customers. Resale prices for both unscented (Green Standard) and scented (Lavender Standard) coil during the POI ranged from PhP654 to PhP678/case. During the on-site investigation, the company stated that the price of scented coil being leveled to unscented is purely a marketing strategy to offer consumers the benefit of an easy choice.

To calculate the constructed export price, price adjustments such as discounts (i.e., supply chain discounts, price/quantity discounts for returns and remnant and cash discounts), movement expenses (i.e., sales freight and other distribution expenses from Indonesia to the Philippines and onto the unaffiliated customers) and selling expenses (i.e., advertising, promotions, and external marketing services) as well as general and administrative expenses, duties incurred between importation and resale, and profits accrued in the distribution of product were deducted from SC Johnson Philippines’ sale price to convert the latter to an ex-works price in Indonesia.

The calculated weighted average export price of mosquito coil (scented and unscented) in 2008 was US\$8.18/case. Table 3 shows the calculated constructed export price used by the Commission for its final determination. The detailed computation is contained in Annex “D”.

Table 3. Constructed Export Price: January to December 2008

POI (Jan – Dec. 2008)	Qty (Cases)	Unadjusted Resale Price to Unrelated Purchaser (PHP/case)	Net Constructed Export Price (PHP/case)	Net Constructed Export Price (US\$/case)
Baygon Mosquito Coil (Scented and Unscented) 10s x 60				
January	50,073	654	332	8.12
February	45,852	654	332	8.17
March	44,084	654	332	8.06
April	33,617	654	332	7.95
May	54,246	654	332	7.75
June	44,465	654	332	7.51
July	68,941	654	378	8.41
August	63,787	654	378	8.43
September	63,813	678	393	8.42
October	52,190	678	393	8.19
November	54,494	679	414	8.41
December	26,690	677	413	8.58
Weighted Average Export Price = US\$ 8.18/case				

Source: SC Johnson Philippines

6.2 Normal Value

Section 2 (s) of the IRR of RA 8752 provides that:

“Normal value refers to a comparable price at the date of sale of the like product, commodity or article in the ordinary course of trade when destined for consumption in the country of export.”

During the initiation stage, the DTI used as basis for normal value the information on domestic wholesale selling prices for mosquito coils in Indonesia provided by the Philippine Commercial *Attache* in Indonesia. Normal value averaged US\$1.48/kg.

In its preliminary determination, the DTI adopted JHHP’s domestic wholesale selling prices in Indonesian market but did not use the adjustments claimed by JHHP in the calculation of the normal value. Calculated normal value averaged US\$1.41/kg.

The respondents, in its initial memorandum and position paper to the Commission, commented that although DTI used the Indonesian market sales prices as basis for normal value, it failed to make the required price adjustments in its calculation of normal value. The respondents claimed that the home market prices in Indonesia are not comparable with their export price to the Philippines for reason that they are related parties. Thus, adjustments have to be made following the provision under Section 11 (b) of the IRR of RA 8752.

The Commission, in its final determination, has set the whole year of 2008 (January to December) as POI for dumping determination. JHHP submitted information regarding its home market sales of mosquito coils in Indonesia during the POI. Invoices covering the sales transactions were verified and validated during the Commission’s on-site investigation. The Commission determined that JHHP’s sales volume in the Indonesian market is 325% of its export sales to the Philippines, more than the required 5% sufficiency threshold, and were all made in the ordinary course of trade, i.e., at prices above cost.

The requirements prescribed under Section 2 (s) of RA 8752 having been satisfied, the Commission decided to adopt as basis for normal value the domestic selling price submitted by JHHP and verified by the Commission.

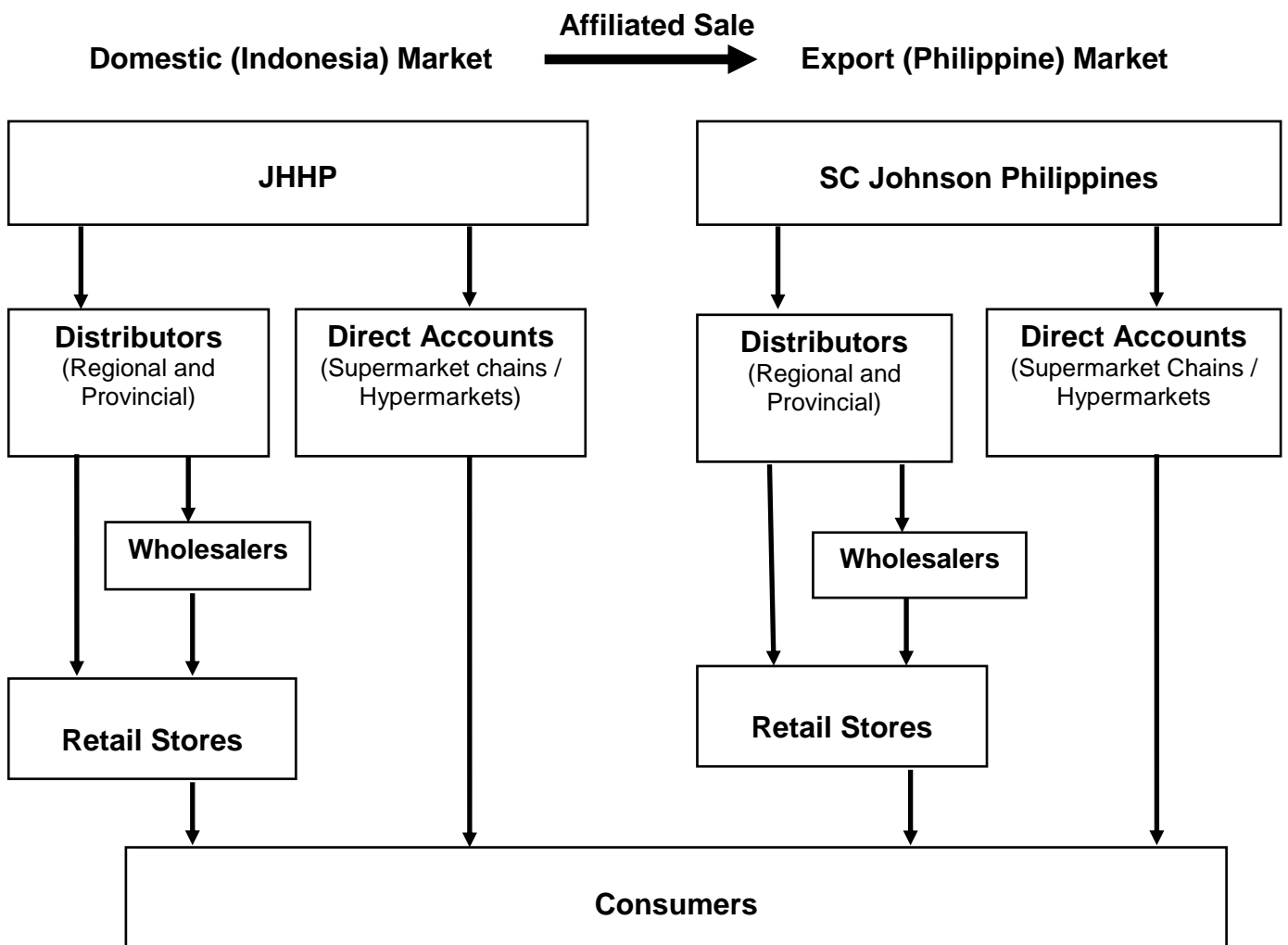
On the issue of adjustments, the Commission is guided by the provision of Section 11 (b) that states:

“The comparison shall be made at the same level of trade, normally at ex-factory level, and in respect of sales made at the same time or as near as possible to the date of exportation. Due allowance shall be made in each case for differences which affect price comparability including differences in conditions and terms of sale, taxation, levels of

trade, quantities, physical characteristics and any other differences which are also demonstrated to affect price comparability.”

Figure 2 below shows the product distribution and sales in the Indonesian and Philippine markets. In both markets, JHHP (exporter in Indonesia) and SC Johnson Philippines (importer in the Philippines) sell to unaffiliated distributors and direct accounts. Sales by SC Johnson Philippines to its unaffiliated customers are at a level of trade comparable to JHHP sales to its unaffiliated Indonesian customers. Thus, for purposes of fair comparison, the Commission concluded that the appropriate comparison is between JHHP’s selling price to its distributors in Indonesia and SC Johnson Philippines’ selling prices to distributors in the Philippines.

**Figure 2
Distribution Flowchart**



JHHP submitted information on its home market sales to its distributors in Indonesia during the POI. Domestic wholesale selling prices ranged from IDR95,504 to IDR110,280/case for unscented (Green Standard) and IDR106,432 to IDR127,260/case for scented (Lavender Standard). To make it comparable with the export price, adjustments such as discounts, moving expenses, selling expenses and the difference in the physical characteristics⁵ of the product sold locally and exported to the Philippines were deducted from the gross domestic selling prices.

Adjusted to ex-factory level, the calculated weighted average normal value of mosquito coil (scented and unscented) in 2008 was US\$8.23/case. Table 4 shows the normal value used by the Commission for its final determination. The detailed computation is contained in Annex "E".

Table 4. Adjusted Normal Value: January to December 2008

POI (Jan. – Dec. 2008)	Qty (Cases)	Gross Price (IDR/case)	Net Price (IDR/case)	Net Price (US\$/case)
Baygon Mosquito Coils - Unscented (Green Standard EF 0.2) 60 x 5DC				
January	225,963	95,504	75,802	8.05
February	167,349	98,281	78,024	8.49
March	158,359	98,400	78,119	8.55
April	111,430	98,400	78,119	8.49
May	131,633	98,400	78,119	8.42
June	199,760	98,400	78,119	8.39
July	162,837	98,400	73,009	7.97
August	202,122	98,400	73,009	7.94
September	171,301	98,604	73,172	7.81
October	90,824	110,149	82,408	8.36
November	120,257	110,280	82,513	7.09
December	160,382	110,280	82,513	7.22
Baygon Mosquito Coils - Scented (Lavender Standard) 60 x 5DC				
January	33,863	106,432	86,980	9.23
February	26,453	109,670	89,667	9.75
March	17,530	109,800	89,775	9.82
April	8,883	109,800	89,775	9.75
May	21,530	109,800	89,775	9.67
June	35,216	109,800	89,775	9.64
July	17,926	117,167	86,548	9.44
August	30,116	121,200	89,895	9.77
September	27,365	121,234	89,923	9.60
October	9,979	127,260	94,925	9.63
November	9,036	127,260	94,925	8.16
December	14,593	127,260	94,925	8.30
Weighted Average Normal Value = US\$ 8.23/case				

Source: JHHP

⁵ JHHP uses different active ingredient in the production of mosquito coils sold in Indonesia and exported to the Philippines. The active ingredient used for coils sold in the Indonesian market is transfluthrin while d-allethrin is used for those sold in the Philippines.

Green Coil, in its memorandum to the Commission commenting on the Commission's Staff Report dated 17 May 2010, disagreed with the Commission's decision to use the verified JHHP's domestic selling price as basis for normal value and insisted on the use of information on domestic selling price in Indonesia provided by the Philippine Commercial *Attache*.

Under Section 11 (c) of the IRR of RA 8752, use of alternative normal value is allowed only if the default rule, i.e., normal value based on the home market prices of the subject product in the country of export cannot be determined. The IRR further enumerated the conditions where alternative normal value can be used (e.g., when the sales in the domestic market for the exporting country are made below the cost of production, when the sales volume in the domestic market is less than 5% of the investigated imports, or when the exporter fails to cooperate, impede an investigation or make incomplete or incorrect submissions). None of these exceptions apply in the instant case.

Consistent with the provisions of the applicable law, the Commission stood by its decision that home market sales submitted by JHHP and verified by the Commission must be the basis of normal value.

Moreover, the adoption and use as exhibit by Green Coil of the DTI's Report on Preliminary Determination is tantamount to its agreement on the information and methodology used therein. The DTI, short of data verification, likewise used JHHP's selling prices as basis of normal value for its preliminary determination.

6.3 Margin of Dumping

Section 11 (l) of the IRR of RA 8752, consistent with Article 2.4.2 of the AD Agreement, states that:

"In accordance with the provisions governing fair comparison, the existence of a dumping margin during the period of investigation shall be established by the comparison of:

- 1. a weighted average normal value with a weighted average of all comparable export transactions; or*
- 2. corresponding normal value and individual export prices on a transaction by transaction basis; or*
- 3. the weighted average normal value with the individual export transactions, in cases, where the pattern of export prices differs significantly among different purchasers, regions or time periods and such differences as explained in writing cannot be taken into account appropriately by using methods 1 and 2."*

Section 11 (m) of the IRR of RA 8752 further states that:

“If possible, an individual margin of dumping shall be determined for each known exporter or producer of the article under investigation. In cases where the number of exporters, producers, importers or types of product involved is so large as to make such determination impracticable, the Secretary and the Commission may limit their examination either to a reasonable number of interested parties or products by using samples which are statistically valid on the basis of information available to them at the time of the selection, or to the largest percentage of volume of exports from the country in question which can reasonably be investigated.”

Using method 1 of the aforementioned provision, the Commission calculated the margin of dumping by comparing the weighted average normal value with the weighted average constructed export price of all mosquito coils, scented and unscented combined, exported by JHHP from Indonesia to its affiliate-importer SC Johnson Philippines in 2008.

The estimated dumping margin was recomputed using the amended weighted average normal value which includes sales transactions in July, August and September 2008 not priced below cost.

The dumping margin computed for JHHP, the only identified exporter of mosquito coils from Indonesia during the POI, is shown in Table 5.

Table 5. Calculation of Dumping Margin

Identified Exporter	Weighted Ave. Normal Value (US\$/case)	Weighted Ave. Export Price (US\$/case)	Dumping Margin	
			Absolute Terms (US\$/case)	Percentage Terms of Export Price (%)
(a)	(b)	(c)	(d) = (b) - (c)	(e) = (d) / (c)
JHHP	8.23	8.18	0.05	0.61

The calculated dumping margin is US\$ 0.05/case or 0.61% of export price, which is below the *de minimis* threshold of less than 2% of export price.

Green Coil, in its memorandum to the Commission, opposed the Commission’s computation for a weighted average export price and normal value by adding up together the value for both unscented and scented. The company requested that a weighted average for both the export price and the normal value be computed individually and separately per variant because: (i) there is a significant marked difference between the two (2) variants not only in terms of its color and smell but more so in terms of its prices; and (ii) the two (2) variants may fall under the same tariff heading but significantly differ in many material aspects. The company cited the case of clear float glass from Indonesia, wherein the commodity belongs to one and the same tariff heading but differ significantly in terms of sizes, thickness and width.

Initially, the AD Agreement does not express any preference for the use of one method over the other. Thus, it is left to the investigating authorities to decide which methodology to adopt depending on the data set used in the determination of normal value and export price. The AD Agreement, however, restricts the use of method 3 to very specific circumstances. In particular, investigating authorities have to find a pattern of export prices which differ significantly among different purchasers, regions or time periods and provide an explanation as to why such differences cannot be taken into account appropriately by either using method 1 or 2.

The DTI, in its preliminary determination, actually used method 3 when it compared JHHP's weighted average domestic selling prices of scented and unscented mosquito coil with the individual export price transactions obtained from BOC-IEDs. Yet, it did not segregate nor compute individual dumping margin for scented and unscented mosquito coils. Dumping margin calculated applies to both scented and unscented mosquito coil. The adoption and use as exhibit by Green Coil of the DTI's Report on Preliminary Determination is tantamount to its agreement on the methodology used therein.

The Commission, in its final determination, used different data set of export price, i.e., constructed export price based on the pricing information submitted by SC Johnson Philippines wherein selling prices of scented and unscented mosquito coil do not vary among purchasers, region or time periods. As such, use of method 3 is inappropriate.

Finally, the attempt by Green Coil to use as case precedent the anti-dumping investigation on float glass from Indonesia is misplaced. The Commission used the segregated computation of the different sizes of float glass products because of the use factor, meaning the different sizes of float glass are meant to be used for different purposes, whereas, mosquito coils are used primarily as mosquito repellent, be it scented or unscented. The Commission used method 3 in this case as it compared the computed normal value with the individual export price transactions obtained from BOC-IEDs.

The Commission is consistent with its computation of dumping margin, i.e., weighted average normal value versus the weighted average constructed export prices of scented and unscented mosquito coils. For purpose of final determination, use of method 1 is appropriate in the instant case.

6.4 De Minimis Margin of Dumping

Section 9 (a) of the IRR of RA 8752 states that:

“The Secretary or the Commission, as the case may be, shall motu proprio terminate the investigation at any stage of the proceedings if the provisionally estimated margin of dumping is less than two per cent (2%) of the export price x x x”, as defined in existing international trade agreements of which the Republic of the Philippines is a party.

The calculated dumping margin is below the *de minimis* threshold of less than 2% of export price.

7. FINAL DETERMINATION

The margin of dumping being *de minimis* at 0.61% of export price, the petition for anti-dumping measure against the importation of mosquito coil from Indonesia is hereby dismissed.

Section 16 (e) of the IRR of RA 8752 provides:

“In case of a negative finding by the Commission, the Secretary shall issue, through the Secretary of Finance, after the lapse of the period for the petitioner to appeal to the Court of Tax Appeals, an Order for the Commissioner of Customs to immediately release the cash bond to the importer. All the parties concerned shall also be duly notified of the dismissal of the case.”

Let copy of the decision be furnished to the protestant, the protestee, the Embassy of Indonesia and all other interested parties.

Let copy of the dispositive portion of the decision be published immediately in two (2) newspapers of general circulation.

SO ORDERED.

30 July 2010

EDGARDO B. ABON
Chairman

EDGARDO R. MARALIT
Acting Commissioner

MARILOU P. MENDOZA
Acting Commissioner