Securities and Exchange Commission
PHILIPPINES

OFFICE OF THE GENERAL COUNSEL

SEC OGC Opinion No. 23-02
Re: Retail Trade; Sale to Industrial and Commercial Users

21 February 2023

AGUSTIN CHIONG AGUSTIN LAW OFFICES
Suite 317, Third Floor, Calvo Building
No. 266 Escolta Street, Binondo
Manila, Philippines
acalaw@globelines.com.ph

Attention: Atty. Ira Carlota Chiong Agustin

Dear Atty. Agustin,

This refers to your letter sent through electronic mail on 26 January 2022 requesting for opinion on whether the business activity of your client, Siri Tulin Philippines, Inc., ("Siri Tulin"), is considered as retail under Republic Act (RA) No. 8762 or the "Retail Trade Liberalization Act of 2000" (hereinafter referred to as "RTLA").

As background, you mentioned that Siri Tulin is a duly organized and existing corporation with principal office address at Cabatian, Buhangin, Davao City. Its secondary purpose states:

> "To be an importer/**wholesaler** *[sic]* of agricultural inputs, sprayers, and other supplies and implements; agro-industrial equipment and machinery importation and installation."

You stated that Siri Tulin sells agricultural sprayers, agro-industrial equipment and machinery to corporate plantation growers and industrial farms of banana, pineapple, and other fruits in Davao and neighboring provinces. The corporate plantation growers and industrial farms use the equipment and machinery sold by Siri Tulin in their business operations to produce fruits and vegetables that they either sell to corporate clients or use in the manufacturing of its other products such as processed fruits or vegetables.

Relative to the foregoing, you seek confirmation of your position that the above-cited business activities of Siri Tulin fall outside the coverage of the RTLA.

Section 3 of the RTLA, as amended[1], defines "retail trade" as any act, occupation or calling of habitually selling direct to the general public merchandise, commodities or goods for consumption. Thus, for transactions to be considered as retail trade, the following must be present: ***1) The seller should be habitually engaged in selling; 2) The sale must be direct to the general public; and 3) The object of the sale is limited to merchandise, commodities, or goods for consumption.***[2]

As previously opined by the Commission, the RTLA covers only the sale of goods for consumption to the general public as end-user. The term "retail" is associated with and limited to goods for personal, family, or household use, consumption and utilization. The items sold must be "the final and end (uses) of

---

[1] On 21 January 2022, RA No. 11595, otherwise known as "An Act Amending RA No. 8762 or the RTLA", took effect.
[2] SEC-OGC Opinion No. 19-61, *addressed to Kymco Philippines, Inc.*, 5 December 2019.

a product which directly satisfy human wants and desires and are needed for home and daily life". Moreover, the law covers only the sale of goods for consumption to the general public as end-user.[3]

Under Rule IV, Section 1(e) of the Implementing Rules and Regulations (IRR)[4] of the RTLA, "*sales to industrial users or consumers who use the products bought by them to render service to the general public and/or produce or manufacture of goods which are in turn sold by them*" are not considered as retail.

In *Marsman & Company, Inc. vs. First Coconut Central Company, Inc.*[5], the Supreme Court explained:

> ". . . The last element refers to the subject of the retailer's activities or what he is selling, *i.e.*, consumption goods or consumer goods. **Consumer goods may be defined as "goods" which are used or bought for use primarily for personal, family or household purposes. Such goods are not intended for resale or further use in the production of other products. In other words, consumer goods are goods which by their very nature are ready for consumption.**"
>
> "**Producer goods have been defined as "goods (as tools and raw material) that are factors in the production of other goods** and that satisfy wants only indirectly-called also auxiliary goods, instrumental goods, intermediate goods." **They are by their very nature not sold to the public for consumption. As such, the sale of producer goods used for industry or business is classified as a wholesale transaction**. Wholesaling has been defined as "selling to retailers or jobbers rather than to consumers or a sale in large quantity to one who intends to resell." **Hence, tools and equipment which will be used for 'business purposes', not for personal, family or household purposes, are considered as 'producer goods', not as 'consumer goods'.**"[6]

The equipment and machinery sold by Siri Tulin are to be used by industrial and commercial users, *and not by the general public,* and hence, are producer goods. The above-described sale of agricultural sprayers, agro-industrial equipment and machinery by Siri Tulin to corporate plantation growers and industrial farms are considered as sale of *producer goods* or tools that are *factors in the production of other goods.*

Thus, applying the foregoing discussion, we confirm your position.

It shall be understood that the foregoing opinion is rendered solely on the basis of the facts, circumstances and documents disclosed/submitted and relevant solely to the particular issue raised therein. It shall not be used in the nature of a standing rule binding upon the Commission in other cases or upon the courts whether of similar or dissimilar circumstances.[7] If, upon further inquiry or investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered void.

Please be guided accordingly.

Very truly yours,

Romuald C. Padilla
General Counsel

14/F The SEC Headquarters, 7907 Makati Avenue
Salcedo Village, Bel-air, Makati City
(+63 2) 8818 8260 / (+63 2) 8818 5348
www.sec.gov.ph | ogc_picc@sec.gov.ph

[3] SEC-OGC Opinion No. 14-34 *addressed to See and Herrera Law Firm*, 18 November 2014.
[4] IRR of the RTLA, as amended by RA No. 11595, 9 March 2022
[5] G.R. No. L-39841, 20 June 1988.
[6] *Supra*, no. 3.
[7] Section 7, SEC Memorandum Circular No. 15-03, 16 December 2003.