Republic of the Philippines
Department of Finance
Securities and Exchange Commission
SEC Building, EDSA, Greenhills, Mandaluyong City

OFFICE OF THE GENERAL COUNSEL

18 November 2014

SEC-OGC Opinion No. 14-34
Retail Trade Law; Republic Act No. 8762

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Sir:

This refers to your letter-request for confirmatory legal opinion duly received on July 4, 2014 that the sale of industrial cranes and/or water jet cutting tools in the Philippines of your client, Draper Power Cranes Co. does not constitute retail trade pursuant to the Retail Trade Liberalization Act of 2000 (Republic Act No. 8762).

You disclosed that that the cranes and water jet cutting tools sold by your client to construction firms, mining firms and other similar businesses to be used by them in their service business are producer goods rather than consumer goods.

Republic Act No. 8762 defines "retail trade" as *"any act, occupation or calling of habitually selling direct to the general public merchandise, commodities or goods for consumption."*[1] For a sale transaction to be considered as "retail", the following elements should concur: (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]

Pursuant thereto, Rule 1, Section 2(e) of the Implementing Rules and Regulations of Republic Act No. 8762,[3] reiterating Section 4(c) of Republic Act No. 1180 or the

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[1] Section 3 (1), Republic Act No. 8762.
[2] SEC Opinion dated January 15, 1996 addressed to Sycip Salazar Hernandez & Gatmaitan, citing *Marsman & Company, Inc. vs. First Coconut Central Company, Inc., infra.*
[3] *"Section 2. Sales Not Considered As Retail.* - The following sales are not considered as retail: xxx
"(c) Sales to industrial and commercial 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; xxx"

Retail Trade Nationalization Law as amended by Presidential Decree No. 714, considers sales to consumers who use the products bought by them to render service to the general public as non-retail sales.

As previously opined by the Commission, Republic Act No. 8762 covers only the sale of goods for consumption to the general public as end-user.[4] The term "retail" is associated with and limited to goods for personal, family, or household use, consumption and utilization.[5] The items sold must be "the final and end (uses) of a product which directly satisfy human wants and desires and are needed for home and daily life".[6] Moreover, the law covers only the sale of goods for consumption to the general public as end-user.[7]

Your reliance in the Decision of the Supreme Court in *Marsman & Company, Inc. vs. First Coconut Central Company, Inc.*,[8] which was cited by the Commission in SEC-OGC Opinion No. 13-07,[9] is well founded. As further expounded by the said opinion:

> "...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."
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> "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 auxillary 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'."[10]

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[4] SEC-OGC Opinion No. 14-08, May 19, 2014, addressed to Aranas Law Offices; SEC Opinion dated 23 June 2005 addressed to De Borja Medialdia Bello Guevarra & Gerodias.

[5] SEC-OGC Opinion No. 14-12, June 2, 2014, addressed to Reyes Esguerra Baluyut Benitez and Bongco Law Offices.

[6] SEC-OGC Opinion No. 06-32, August 2, 2006, addressed to Cayetano Sebastian Ata Dado and Cruz, citing Balrnaceda VS. Union Carbide Phils., Inc. G.R. No. L-30442, 30 September 1983.

[7] SEC-OGC Opinion No. 14-12, June 2, 2014, addressed to Reyes Esguerra Baluyut Benitez and Bongco Law Offices.

[8] G.R. No. L-3984l, June 20, 1988.

[9] 30 July 2013, addressed to Atty. Rosario S. Bernaldo.

[10] Ibid., citing SEC Opinion dated February 22, 2001, addressed to Atty. Remigio Noval and Atty. Ma. Georgina J. Soberano.

Thus, the sale of cranes and water jet cutting tools to firms engaged in construction, mining, and similar activities does not constitute retail trade, as the sale involves producer goods, not consumer goods, to be used for industry or business by industrial and commercial users, not the general public.

It shall be understood that the foregoing opinion is rendered based solely on the facts disclosed in the query and relevant solely to the particular issues raised therein and shall not be used in the nature of a standing rule binding upon the courts, or upon the Commission in other cases of similar or dissimilar circumstances.[11] If upon investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered null and void.

CAMILO S. CORREA
General Counsel

/vbsg

[11] SEC Memorandum Circular 2003-15 (No. 7).