Republic of the Philippines
Department of Finance
SECURITIES AND EXCHANGE COMMISSION
SEC Building, EDSA, Greenhills
Mandaluyong City Metro Manila
Philippines

02 August 2006

SEC-OGC Opinion No. 06-32
Re: Sales to industrial or commercial users or consumers not considered "retail trade"

CAYETANO SEBASTIAN ATA DADO & CRUZ
12th Floor, NDC Building
116 Tordesillas Street
Salcedo Village, Makati City

Attention : Atty. Alfred S. Jacinto

Gentlemen:

This refers to your letter dated 15 June 2006 seeking confirmation from the Commission of your opinion that the activities of Network Box Philippines, Inc. ("NBPI," for brevity) do not fall under the classification of "retail trade" as defined under R.A. No. 8762, also known as the Retail Trade Liberalization Act of 2000 and its Implementing Rules and Regulations ("IRR").

Section 3 of R.A. No. 8762, also known as the "Retail Trade Liberalization Act of 2000," defines the term "retail trade" as follows:

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"Section 3.

(1) 'Retail trade' shall mean any act, occupation or calling of habitually selling direct to the general public merchandise, commodities or goods of consumption xxx"[1]

The following sales, however, are not considered within the purview of retail trade:

"(a) Sales by a manufacturer, processor, laborer, or worker, to the general public the products manufactured, processed or produced by him if his capital does not exceed One Hundred Thousand Pesos (P100,000.00)"[2]

xxx xxx xxx

"(e) 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;"[3]

The retail trade law 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] This is supported by doctrines laid down by the Supreme Court. Jurisprudence instructs us that goods for consumption mentioned in Republic Act No. 1180[6] should be construed to refer to the final and end (uses) of a product which directly satisfy human wants and desires and are needed for home and daily life.[7] In one case, the Supreme Court affirmed the ruling that the sales of a rubber company's products to the following customers are not considered retail trade:

"(a) The Government of the Republic of the Philippines and all its instrumentalities and/or agencies, who use the Rubber Products to render essential services to the country and to the general public.

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[1]Section 3 (1), R.A. No. 8762 and Section 1 (q), IRR.
[2]Section 3(1) (a), R.A. No. 8762.
[3]Section 2(e), IRR.
[4]SEC Opinion dated 23 June 2005 addressed to De Borja Medialdia Bello Guevarra & Gerodias.
[5]Balmaceda vs. Union Carbide Phils., Inc. G.R. No. L-30442, 30 September 1983.
[6]Section 4 of R.A. No. 1180, as amended, defines retail trade as the: "occupation or calling of habitually selling direct to the general public merchandise, commodities or goods for consumption." The same definition was adopted in R.A. No. 8762.
[7]See Note 6.

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(b) Public utilities, such as bus fleets, taxi fleets, jeepney fleets, freight lines, etc., and power and communications companies, who use Rubber Products to render essential services to third parties and the general public for compensation.
(c) Agricultural enterprises, proprietary planters, agricultural processing plants, and agricultural cooperatives, who use the Rubber Products to perform essential services to third parties and to the general public for valuable consideration and profit.
(d) Logging, mining, and other entities and persons engaged in the exploitation of natural resources.
(e) Automotive assembly plants, who buy the Rubber Products in bulk for use in the assembly of automotive equipment, and who resell the same to third parties and to the general public without alteration or change at a profit as the assembled automotive equipment and vehicles are sold.
(f) Industrial and Commercial enterprises, engaged in manufacturing and sales of prime and essential commodities to third parties and the general public for a profit, who buy the Rubber Products for use in their manufacturing and sales operations."[8]

However, sales to the employees and officers of the company are classified as retail trade.[9]

In the case at hand, NBPI represents that it will enter into Distributorship Agreements and wholesale marketing agreements with independent corporations, partnerships and other business entities which will engage in the sales and marketing of NBPI's products to corporate and business end-users. NBPI intends to market principally its "Network Box" to industrial and commercial users to provide computer network security for the said business firms and not for personal, family or household use, consumption and utilization. Based on the foregoing, it is the opinion of this Office that the proposed activities of NBPI are not embraced in the category of retail sale.

It must be understood, however, that the above opinion is based solely on the facts disclosed in your letter and relevant solely to the particular issues raised therein and shall not be used in the nature of a standing rule binding upon the Commission.

VERNETTE G. UMALI-PACO
General Counsel

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[8] Goodyear Tire & Rubber Co., vs. Reyes, Sr., et al. G.R. No. L-30063, 02 July 1983, 208 Phil 249.
[9] *Ibid.*

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