Republic of the Philippines
Department of Finance
Securities and Exchange Commission

OFFICE OF THE GENERAL COUNSEL

14 October 2016

SEC-OGC Opinion No. 16-25
RE: Retail Trade

MEER, MEER & MEER ATTORNEYS-AT-LAW
19th Floor, L.V. Locsin Building
6752 Ayala Avenue cor. Makati Avenue
Makati City 1229, Philippines

Attention: Atty. Alfredo Pablo S. Malvar
Atty. Jose Luis Francisco P. Meer

Gentlemen:

This refers to your letter dated 12 August 2016 requesting for confirmation that ESCO Philippines Inc. (EPI) will not be engaged in "retail trade" under Republic Act No. 8762, otherwise known as the Retail Trade Liberalization Act of 2000 (RTLA) and its Implementing Rules and Regulations (IRR) in selling its products in the Philippines.

In your letter, you stated that EPI is a duly registered foreign-owned domestic corporation. EPI, based on its primary purpose, is engaged in "buying and selling at wholesale, exporting and importing, and providing services such as, but not limited to, installation, certification, and calibration of laboratory and cleanroom equipment." Its products generally involve three lines: laboratory, medical and healthcare equipment.

You also disclosed that currently, EPI engages distributors to facilitate the distribution of its products to users, which you identified to include hospitals, laboratories, schools and government entities such as South Bacolod General Hospital, Department of Health, Department of Agriculture, St. Luke's Medical Center, Alaska Milk Corporation and the University of the Philippines. However, you stated that apart from engaging distributors, EPI now plans to distribute and sell its products directly to these users.

Thus, you seek confirmation of your position that the sale by EPI of laboratory, medical and healthcare equipment directly to hospitals, laboratories, schools, commercial and industrial users, government entities and distributors in the Philippines will not constitute retail trade; thus, not covered by any limitation imposed in the RTLA.

To support your position, you posited the following arguments:

1. "The products of EPI, consisting of laboratory, medical and healthcare equipment are not considered 'consumer goods', but 'producer goods' and

2. EPI will not sell its products to the 'general public', but to hospitals, laboratories, schools, commercial and industrial users, government entities and distributors."

Under Section 3 of the RTLA, "retail trade" is defined as, "any act, occupation or calling of habitually selling direct to the general public merchandise, commodities or good for consumption".

For sales 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*;
3. The object of the *sale is limited to merchandise, commodities or goods for consumption.*[1]

One of the elements of a retail sale is that the products sold are consumer goods. Consumer goods, as defined by the Supreme Court, are "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.**"[2] (Emphasis and underscoring supplied).

Furthermore, Section 2 of the IRR enumerated certain sales transactions which are not considered as retail, to wit:

"Section 2. Sales not Considered as Retail – The following sales are not considered as retail:

---

[1] SEC Opinion No. 16-03 dated 15 February 2016 addressed to Platon Martinez Flores San Pedro & Leaño Law Offices.

[2] *Marsman & Company, Inc. vs First Coconut Central Company, Inc.*, G.R. No. L-39841, 20 June 1988.

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; or

f. Sales to the government and/or its agencies and government-owned and controlled corporation."

The Commission has previously opined that the sale of door control, automatic and revolving door, glass fittings and systems, room dividing systems and the like, to the real estate developer, which shall be used by the same in the construction of buildings and other infrastructure, is not considered as retail trade.[3]

In a more closely-related matter, the Commission also opined that the sale of chemical reagents equipment and instruments directly to hospitals and laboratories cannot be considered as retail trade because the buyers will use the products to render service to the general public.[4]

As presented in your letter, the products of EPI includes laboratory, medical and healthcare equipments used for storing, protecting, handling and analyzing substances, hazardous chemicals and other related materials. As presented, these products have specialized features and functions designed for hospital and laboratory use. Clearly, these products are not intended for personal, family and household purposes for they are mainly for the production of goods or rendering of other services by commercial or industrial establishments. Based on the foregoing, the products of EPI could not be classified as consumer good, thus this element of retail trade is not present.

Furthermore, it appears from the circumstances that the buyers (i.e. laboratories, hospitals, commercial enterprises, schools and government agencies) of EPI's products will use the equipment to render service or produce goods to the general public. In this regard, the sale activities of EPI fit well within the activities enumerated in the above-mentioned Section 2 of the IRR.

Thus, we confirm your position.

It shall be understood, however, that the foregoing opinion is rendered based solely on the facts and circumstances disclosed and relevant

---

[3] SEC Opinion No. 13-07 dated 30 July 2013 addressed to Atty. Rosario S. Bernaldo.
[4] SEC-OGC Opinion No. 14-12 dated 02 June 2014 addressed to Reyes Esguerra Baluyut Benitez & Bongco Law Offices c/o Mr. Paul J. Bongco.

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.[5] 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.

CAMILO S. CORREA
General Counsel

[5] SEC Memorandum Circular 2003-15, No.7