U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section *Washington, DC 20530*

October 7, 2024

Via E-mail

[Requestor]

Re: Request for an Advisory Opinion Pursuant to 28 C.F.R. § 5.2

Dear [Professor 1]:

We write in response to your letter dated September 3, 2024, and received by this Unit on September 5, 2024 (the "Letter"),[1] requesting an advisory opinion, pursuant to 28 C.F.R. § 5.2(a), concerning whether you and [Professor 2] must register under the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.* ("FARA") for a research study you are engaged in under a contract with a U.S. non-governmental organization, [Non-Profit Organization]. Based on the representations in your Letter, and for the reasons discussed below, we have determined that you would not be obligated to register for the ongoing activities.

I. Background

According to the Letter, you and [Professor 2] (collectively "you") are U.S. professors of law at [U.S. Law School 1] and [U.S. Law School 2], respectively. [Non-Profit Organization] is a non-governmental organization organized under the laws of the United States with a principal place of business in [U.S. State].[2] [Non-Profit Organization] has offices throughout the United States and in [Redacted] locations around the world while working in [Redacted] countries.[3] [Foreign Subsidiary] ("[Foreign Subsidiary]") is a subsidiary of [Non-Profit Organization] but separately incorporated under [Foreign Country] law.[4] [Non-Profit Organization] and [Foreign Subsidiary]

[1] Letter from [Requestor] to the FARA Unit (Sept. 3, 2024).

[2] [Nonprofit Organization] Professional Services Agreements at 1.

[3] *[Article title]*, [NONPROFIT ORGANIZATION] (last visited Oct. 7, 2024), [website address].

[4] *[Article title]*, [Nonprofit Organization] (last visited Oct. 7, 2024), [website address] (noting that [Foreign Subsidiary] [is an independent, non-profit, tax-exempt legal entity established under [Foreign Country Law]); *[Foreign Subsidiary]*, [CORPORATE FILING PUBLISHER] (last visited Oct. 7, 2024) (summarizing [Foreign Subsidiary]'s corporate registration as a "subsidiary of foreign company") [website address].

sometimes "collaborate through knowledge exchange" while also maintaining "separate and independent activities" in [Foreign Country].[5]

In return for fees of $25,000 each, you have contracted with [Non-Profit Organization] to complete a report on possibilities for a carbon border adjustment mechanism ("CBAM") in [Foreign Country].[6] CBAMs impose fees similar to tariffs based on the cost of the carbon emitted by an imported product.[7] The contract calls for you to research and write a report regarding proposals for CBAMs from the European Union and the United States, particularly from [Foreign Country]'s perspective; [Foreign Country]'s options for responding to those proposals; considerations for [Foreign Country] if it implements its own CBAM; and legal review of a CBAM [Foreign Country] white paper developed by [Non-Profit Organization].[8] The report will contain recommendations that "could be made by [Non-Profit Organization] for adoption by [Foreign Country] policymakers in that country."[9]

The contracts provide that you are to "be entirely independent" in providing the research and report "at your own discretion and without the supervision or control of [Non-Profit Organization]."[10] The contracts further provide that "[Foreign Subsidiary] will provide support for understanding the relevant [Foreign Country] climate and trade policy perspectives" and that a person there "will be the [Non-Profit Organization] point of contact and will provide general guidance . . . for the work."[11] A staff person from [Foreign Subsidiary] in [City in Foreign Country] has, in fact, been the principal day-to-day contact for the contract while [Non-Profit Organization] staffers in other offices, including [City in Foreign Country] and [City in Foreign Country] , have also been extensively consulted.[12]

In the Letter, you ask whether the activities in which you are engaged require that you register under FARA.

II. FARA Analysis

FARA defines "foreign principal" to include the following:

> (1) a government of a foreign country and a foreign political party;

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[5] *[Article title]*, [Nonprofit Organization] (last visited Oct. 7, 2024), [website address].

[6] Letter at 1.

[7] *Id.*

[8] [Nonprofit Organization] Professional Services Agreements at 1.

[9] Letter at 2.

[10] [Nonprofit Organization] Professional Services Agreements at 2.

[11] *Id.* at 1.

[12] *Id.* at 2; Letter at 2.

> (2) a person outside of the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and
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> (3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country.[13]

Persons may be required to register under FARA if they have the requisite agency relationship with a foreign principal and engage in one of the enumerated activities requiring registration.[14]

As described in the Letter and the contracts, [Non-Profit Organization] is a domestic organization based in [U.S. State].[15] As such, it would not constitute a "foreign principal" under FARA.[16] Your execution of a contract to perform work for [Non-Profit Organization] therefore generally would not lead to an obligation to register.

Under the circumstances here, assistance with administration of a domestic contract by foreign staff does not compel the conclusion that your work has an additional principal. As you note, your contractual obligations run to [Non-Profit Organization], not its subsidiary in [Foreign Country].[17] Consistent with the hiring of academic professionals, the contract contemplates a high degree of autonomy for the work.[18] Under the contract, [Foreign Subsidiary] is merely to provide support about the local climate and general information, not broader direction and control of the work.[19] Moreover, you state that your consultations with [Non-Profit Organization] staff have not been limited to those with [Foreign Subsidiary] and have extended to multiple other offices.[20] [Non-Profit Organization] specifically notes on its website that it "may collaborate knowledge exchange" with [Foreign Subsidiary], although the two entities generally engage in separate

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[13] 22 U.S.C. § 611(b).

[14] 22 U.S.C. § 611(c)(1).

[15] Letter at 1; [Nonprofit Organization] Professional Services Agreements at 1.

[16] 22 U.S.C. § 611(b).

[17] Letter at 3.

[18] *See supra* note 11 and accompanying text; *cf.* 22 U.S.C. § 613(g) (exempting bona fide scholastic pursuits from FARA registration).

[19] *See supra* note 10 and accompanying text; 22 U.S.C. § 611(c)(1).

[20] *See supra* note 11 and accompanying text.

activities in the country.[21] Your contacts with [Foreign Subsidiary] appear to exemplify this arrangement. Interactions with a separately incorporated foreign subsidiary could suggest that an agent is acting on behalf of an additional principal in other contexts, but not in your particular situation. Accordingly, we do not contest your assertion that [Non-Profit Organization] is your exclusive principal and that there is no foreign principal connected to the work you describe.[22]

This advisory opinion is expressly limited to the facts, conditions, and conclusions stated herein, and the requirements of FARA and its regulations. If there are any changes in the facts and circumstances you related to us, you should contact us immediately.

We will treat your submission in accordance with 28 C.F.R. § 5.2(m). Please contact this office by e-mail to FARA.Public@usdoj.gov or by telephone at (202) 233-0776, if you have any questions.

Sincerely,

/s/ Evan N. Turgeon

Evan N. Turgeon
Chief, FARA Unit

[21] *[Article title]*, [Nonprofit Organization] (last visited Oct. 7, 2024), [website address].

[22] Because we are issuing our opinion based on the lack of a foreign principal, we need not make any other determinations such as whether the contracted work would fall into any of the categories of activities requiring registration set out in 22 U.S.C. § 611(c)(1) and whether the exemption at 22 U.S.C § 613(e) for scholastic pursuits is applicable.