

No.: 08-03

Date: July 11, 2008

Foreign Corrupt Practices Act Review

Opinion Procedure Release

The Department has reviewed the FCPA Opinion Procedure Request, submitted on July 7, 2008 by TRACE International, Inc. ("TRACE"), a membership organization specializing in anti-bribery initiatives, including training, compliance benchmarking, and due diligence reviews of international commercial intermediaries. TRACE, a corporation organized under the laws of the District of Columbia, is a "domestic concern" within the meaning of the FCPA and therefore is eligible to submit an opinion procedure request.

TRACE proposes to pay certain expenses for approximately 20 journalists employed by media outlets based in the People's Republic of China ("PRC") to enable them to attend a press conference being held by TRACE in Shanghai. Most of the media outlets are wholly-owned by the PRC. Journalists based in Shanghai will receive a stipend intended to cover local transportation costs, one meal, and incidental expenses. Journalists traveling from outside Shanghai will receive a larger stipend in order to cover those same types of expenses, plus two additional meals. Journalists from outside Shanghai will also be reimbursed by TRACE, upon the submission of a receipt, for the cost of domestic, economy-class transportation and TRACE will provide one night's lodging at the hotel at which the press conference will be held, paid directly by TRACE to the hotel. According to TRACE, it is a common practice for foreign and domestic companies operating in the PRC to provide a stipend and travel expenses to journalists in connection with a press conference and such stipends are not conditioned on subsequent coverage of the press conference or the nature of the coverage.

The press conference has been scheduled to coincide with an international anti-corruption conference, which is taking place at the same Shanghai hotel as the press conference. At the press conference, TRACE intends to announce the results of BRIBELINE, an international webbased tool by which demands for bribes by government officials around the world can be anonymously reported to TRACE in order to assess and report on the demand side of bribery of government officials. TRACE states that through this press conference, it seeks to increase its membership, enhance its reputation, promote its initiatives, such as BRIBELINE itself, and promote commercial transparency worldwide. (Neither the opinion letter referred to herein nor this release is intended to constitute an endorsement by the Department of the press conference that is the subject of this request.) TRACE has asked for a determination of the Department's present intent to bring an enforcement action in connection with the described prospective conduct.

TRACE proposes to provide local and out-of town journalists the following benefits, subject to the specified limits and conditions:

#### Local Journalists

A cash stipend of RMB 200 (approximately \$28) for each journalist based in Shanghai. The stipend is intended to cover lunch, local transportation costs, and incidental expenses. The cash stipends will be handed openly to each journalist upon signing in for the press conference.

#### Out-of-town Journalists

A cash stipend of RMB 425 (approximately \$62) for each journalist based somewhere other than Shanghai. The stipend is intended to cover lunch, local transportation costs, incidental expenses, and two additional meals. The cash stipends will be handed openly to each journalist upon signing in for the press conference.

Reimbursement for economy-class inter-city domestic air, train, bus, and taxi travel upon submission of a receipt.

One night's lodging for out-of-town journalists will be provided at the hotel where the press conference is being held. The lodging costs, not to exceed \$229 per journalist, will be paid directly to the hotel by TRACE.

In proposing to provide the benefits described above, TRACE has represented, among other things, that:

Members of the state-owned PRC media are not typically reimbursed by their employers for work-related travel expenses or meals when covering an event such as the TRACE press conference.

TRACE will make the stipends and expense reimbursements equally available to all journalists who attend the press conference regardless of whether or not the journalists subsequently provide coverage of the press conference and regardless of the nature of such coverage.

The 200 RMB and 425 RMB stipends TRACE intends to pay to local and out-of-town journalists, respectively, are reasonable approximations of the costs likely to be incurred by such journalists in attending a press conference in Shanghai.

TRACE will send letters to the invited journalists' employers in advance of the press conference, advising that the stipend will be paid, its purpose, and TRACE's understanding that the payments are permitted under PRC laws and regulations. The letter will invite anyone with a different understanding of the applicable rules to so inform TRACE.

TRACE has no business pending with any PRC government agency.

TRACE has obtained written assurance from an established international law firm that TRACE's payment of the stipends is not contrary to PRC law.

TRACE will accurately record the payments in its own books and records.

Under the facts and circumstances, as represented by TRACE, the Department does not presently intend to take any enforcement action with respect to the planned provision of stipends and payment of transportation and lodging costs described in this request. Based on TRACE's representations, the stipend and expenses TRACE intends to pay on behalf of foreign officials fall within the FCPA's promotional expenses affirmative defense in that the expenses are reasonable under the circumstances and directly relate to "the promotion, demonstration, or explanation of [TRACE's] products or services." 15 U.S.C. § 78dd-2(c)(2)(A). In reaching this conclusion, however, the Department places no weight on the fact that it may be a common practice for companies in the PRC to provide such benefits to journalists attending a press conference.

The FCPA Opinion Letter referred to herein, and this release, have no binding application on any party which did not join in the request, and can be relied upon by TRACE only to the extent that the disclosure of facts and circumstances in its request is accurate and complete and continues to accurately and completely reflect such facts and circumstances.