



## U.S. Department of Justice

### National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

January 29, 2025

#### **Via E-mail**

[Attorney]  
[Law Firm]  
[Address]

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

Dear Mr. [Attorney]:

We write in response to your letter dated December 2, 2024 (the “Letter”),<sup>1</sup> as supplemented on December 30, 2024 (the “Supplement”),<sup>2</sup> requesting an advisory opinion under 28 C.F.R. § 5.2. You ask whether your client [U.S. Company] must register under the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. §§ 611-21 (“FARA” or “the Act”), in connection with certain activity it may undertake to promote the formation of joint ventures it is contemplating with [Foreign Company]. Based on the facts as described in your Letter and Supplement, and for the reasons discussed below, we do not oppose your assertion that the exemption from FARA registration for activity not serving predominantly a foreign interest applies.

#### **I. Background**

According to the Letter, [U.S. Company] is a multinational conglomerate corporation based in the United States.<sup>3</sup> [Foreign Company] is a publicly listed company formed under the laws of [Foreign Country] and based there.<sup>4</sup> “[Foreign Company] is not a [Foreign Country] state-owned enterprise or otherwise controlled by the [Foreign Country] government.”<sup>5</sup> Some [Foreign Country] state-owned enterprises that make investment decisions and exercise voting rights on their own, rather than under any direction or influence of the [Foreign Country] government, are shareholders in

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<sup>1</sup> Letter from [Attorney], [Law Firm], to the FARA Unit (Dec. 2, 2024).

<sup>2</sup> Letter from [Attorney], [Law Firm], to the FARA Unit (Dec. 30, 2024).

<sup>3</sup> Letter at 1.

<sup>4</sup> *Id.* at 2.

<sup>5</sup> *Id.* Though this fact was “[b]ased upon information and belief” of counsel, it is a material assumption of the advisory opinion. *Id.* The fact has been certified as correct, *id.* at 7, as required, 28 C.F.R. § 5.2(f).

[Foreign Company].<sup>6</sup> The top ten funds managed by such state-owned enterprises hold an aggregate shareholding interest of 5.71%.<sup>7</sup> Some [Foreign Country] state-owned securities firms also purchased [Foreign Company] shares on the open market. Collectively, such firms that are among [Foreign Company]'s top 200 shareholders own approximately a 0.34% interest in [Foreign Company] in the aggregate, and do not hold any special governance rights.<sup>8</sup> [U.S. Subsidiary] is a wholly owned subsidiary of [Foreign Company].<sup>9</sup>

Pursuant to a regulatory-undertakings letter agreement, [U.S. Company] and [Foreign Company] have “committed to using commercially reasonable efforts to enter into” two joint ventures.<sup>10</sup> Both joint ventures will use existing [Foreign Company]-licensed process technology to produce inputs for [power supply product] within the United States and exclusively limit their sale to North American manufacturers, “a majority of which are expected to be in the United States.”<sup>11</sup> The joint ventures are separated from [U.S. Company] infrastructure and personnel in some respects, including [U.S. Company] not making available any of its intellectual property related to the production of [Ingredient 1] and [Ingredient 2].<sup>12</sup>

One joint venture (“[Ingredient 1] JV”) will establish [a] U.S.-located manufacturer of [Ingredient 1].<sup>13</sup> [U.S. Company] is [a] producer in the United States of a key ingredient used in [Ingredient 1], and it will hold a 51% ownership interest and three of five board seats for the [Ingredient 1] JV, with [Foreign Company] holding the remaining interest and board positions.<sup>14</sup> The second joint venture (“[Ingredient 2] JV”) will produce [Ingredient 2] using [Ingredient 1], which are an essential input in that process.<sup>15</sup> There is currently “only limited U.S. manufacturing of [Ingredient 2].”<sup>16</sup> [Foreign Company] will hold a 51% ownership interest and three of five board seats in that joint venture, with [U.S. Company] holding the other interest and rights to the board.<sup>17</sup> The Committee on Foreign Investment in the United States approved the regulatory-undertakings letter

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<sup>6</sup> *Id.* at 2 n.2.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 2.

<sup>10</sup> Supplement; Letter Agreement Regarding Regulatory Undertakings Agreement, § [Section] [Date].

<sup>11</sup> Letter at 2.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*; Supplement.

<sup>14</sup> Letter at 2; Supplement.

<sup>15</sup> Letter at 2; Supplement.

<sup>16</sup> Letter at 2.

<sup>17</sup> *Id.*; Supplement.

agreement and proposed equity purchase and limited liability company agreement for each respective joint venture on [Date].<sup>18</sup> Similar to the regulatory-undertakings letter agreement, the respective equity purchase agreements impose obligations on [U.S. Company] to undertake reasonable best efforts to consummate the transactions, including obtaining the necessary governmental approvals.<sup>19</sup>

[U.S. Company] is contemplating lobbying, communications, and public relations activities to promote the formation of the joint ventures.<sup>20</sup> [U.S. Company] proposes to lobby federal, state, and local officials and to contend that the transactions would benefit the United States and the [powered product] market, that guardrails have been implemented in the transactions to protect U.S. and [U.S. Company] interests, and provide other information.<sup>21</sup> In its lobbying engagements, [U.S. Company] would provide facts that would disclose [Foreign Company] as its joint venture partner and make clear that [Foreign Company] is a [Foreign Country] entity.<sup>22</sup> [U.S. Company] plans to amend its Lobbying Disclosure Act (“LDA”)<sup>23</sup> filing prior to engaging in federal lobbying to include reference to activities [related to the promotion of [Ingredient 1], [Ingredient 2] for [end product], including potential joint ventures to promote domestic production].<sup>24</sup> Once the transaction becomes public, [U.S. Company] plans to engage with the press and prepare holding disclosures and responses to common questions about the joint ventures.<sup>25</sup> “[T]he strategy and direction of these activities would be driven exclusively by [U.S. Company] to advance [U.S. Company]’s interests, and interactions with [Foreign Company] would be through counsel for fact-checking purposes only.”<sup>26</sup> The contemplated activities would cease when and if the joint ventures are formed.<sup>27</sup>

You request an advisory opinion as to whether [U.S. Company]’s proposed activities meet the requirements for registration under FARA and whether [U.S. Company] is entitled to exemptions

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<sup>18</sup> *Id.*

<sup>19</sup> Equity Purchase Agreement By and Among [U.S. Company] and [U.S. Subsidiary], § [Section]; Equity Purchase Agreement By and Among [U.S. Company], [U.S. Subsidiary] and [Foreign Company], § [Section].

<sup>20</sup> Letter at 3.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> 2 U.S.C. §§ 1601-14.

<sup>24</sup> *Id.* at 4.

<sup>25</sup> *Id.* at 3. The transaction became public on [Date]. *See* [citation to weblog].

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

under the Act pursuant to § 613(h) for LDA filers or pursuant to § 613(d)(2) for activities not serving predominantly a foreign interest.<sup>28</sup>

## II. FARA Analysis

Whether a person is required to register under FARA involves four determinations: (1) the existence of a foreign principal; (2) the nature of the relationship between the person and the foreign principal; (3) whether the person is engaging in specified activities within the United States for or in the interests of such foreign principal; and (4) whether an exemption applies. An obligation to register under FARA will arise when the first three parts of the inquiry are established, and no exemption applies in the fourth part.

FARA's definition of a "foreign principal" includes 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."<sup>29</sup> As a company organized under the laws of [Foreign Country], with its principal place of business there, [Foreign Company] qualifies as a foreign principal under FARA.<sup>30</sup> [U.S. Subsidiary] and the two joint ventures are also accordingly foreign principals because their activities are "directly or indirectly supervised, controlled, financed, or subsidized in whole or in major part by a foreign principal," [Foreign Company].<sup>31</sup>

As to the nature of the relationship, agency can arise under FARA when a person acts "at the order, request, or under the direction or control, of a foreign principal" in covered activities.<sup>32</sup> "[C]ontrol" includes "the possession or the exercise of the power, directly or indirectly, to determine the policies or the activities of a person, whether through the ownership of voting rights, by contract, or otherwise." 28 C.F.R. § 5.100(b). Here, [U.S. Company] is obligated pursuant to its contracts with [Foreign Company] and [U.S. Subsidiary] to use commercially reasonable efforts to enter into the two joint ventures and complete the purchase agreements, including through pursuit of approval by the necessary governmental authorities.<sup>33</sup> Though [Foreign Company] may not have

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<sup>28</sup> "Any present or prospective agent of a foreign principal . . . may request . . . a statement of the present enforcement intentions of the Department of Justice under the Act with respect to any presently contemplated activity . . . ." 28 C.F.R. § 5.2.

<sup>29</sup> 22 U.S.C. § 611(b)(3).

<sup>30</sup> Letter at 2, 4.

<sup>31</sup> 22 U.S.C. § 611(c)(1); *see also* 28 C.F.R. § 5.100(a)(8) ("The term *foreign principal* includes a person any of whose activities are directed or indirectly supervised, directed, controlled, financed, or subsidized in whole or in major part by a foreign principal as that term is defined in" 22 U.S.C. § 611(b).).

<sup>32</sup> 22 U.S.C. § 611(c)(1).

<sup>33</sup> *See supra* notes 10, 19 and accompanying text.

“direction or control over the strategy and execution of the proposed activities,”<sup>34</sup> [U.S. Company]’s planned lobbying and public relations work are part and parcel of its efforts to enter into the joint ventures pursuant to those contractual obligations. Moreover, the activities will benefit [Foreign Company] given its interest in the transactions.<sup>35</sup> The requisite relationship accordingly does exist between [U.S. Company] and both [Foreign Company] and [U.S. Subsidiary].

Turning to which activities require registration, those include when a person:

(i) engages within the United States in political activities for or in the interests of [their] foreign principal;

(ii) acts within the United States as a public relations counsel [or] publicity agent . . . for or in the interests of [their] foreign principal; [or]

. . .

(iv) within the United States represents the interests of [their] foreign principal before any agency or official of the Government of the United States.<sup>36</sup>

Here, you are proposing to engage in at least two of these categories of FARA-covered activities for the reasons that follow.

First, under § 611(c)(1)(ii), there are two potential types of roles at issue here.<sup>37</sup> “[P]ublic relations counsel” under FARA includes “any person who engages directly or indirectly in informing, advising, or in any way representing a principal in any public relations matter pertaining to political or public interests, policies, or relations of such principal.”<sup>38</sup> By engaging in public relations work as part of the company’s efforts to carry out its obligations under the contract with [Foreign Company], [U.S. Company] personnel would be serving as public-relations counsel under the statute.<sup>39</sup> “[P]ublicity agent” is defined to include “any person who engages directly or indirectly in the publication or dissemination of oral, visual, graphic, written, or pictorial information or matter of any kind, including publication by means of advertising, books, periodicals, newspapers,

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<sup>34</sup> Letter at 4.

<sup>35</sup> *Id.*

<sup>36</sup> 22 U.S.C. § 611(c)(1)(ii), (iv).

<sup>37</sup> 22 U.S.C. § 611(c)(1)(ii).

<sup>38</sup> 22 U.S.C. § 611(g).

<sup>39</sup> Letter at 3.

lectures, broadcasts, motion pictures, or otherwise.”<sup>40</sup> Disseminating holding statements and any other similar materials in press interactions constitutes publicity-agent work under FARA.<sup>41</sup> [U.S. Company] accordingly is playing or planning to play multiple roles under the § 611(c)(1)(ii) category of registrable activities.

Second, [U.S. Company] personnel will be lobbying federal officials to promote the joint ventures.<sup>42</sup> In so doing, they would be representing [Foreign Company]’s interests, among others’, before officials of the U.S. government. That constitutes registrable activity under 22 U.S.C. § 611(c)(1)(iv).

Third, [U.S. Company] may also be “engaging within the United States in political activities for or in the interests of [their] foreign principal.” 22 U.S.C. § 611(c)(1)(i). “[P]olitical activities” is defined in relevant part under FARA to mean “any activity that the person engaging in believes will, or that the person intends to, in any way influence any agency or official of the Government of the United States or any section of the public within the United States with reference to formulating, adopting, or changing the domestic or foreign policies of the United States.” 22 U.S.C. § 611(o). “[F]ormulating, adopting, or changing” is defined not to include “seeking administrative action in a matter where such policy is not in question.” 28 C.F.R. § 5.100(e). Your descriptions of the proposed activities refer to the transactions providing benefits to the United States’s production capacity and [end product] market, but it is unclear whether the proposed activities would involve advocacy for federal policy changes. Letter at 2-3. In any event, given the findings above that the proposed activities do implicate other categories within 22 U.S.C. § 611(c)(1), we need not determine whether they additionally constitute “political activities.”

Because [U.S. Company] proposes to engage in multiple categories of registrable activities pursuant to the letter agreement obligating [U.S. Company] to pursue the joint ventures, and because the activities are in part in the interest of [Foreign Company], the three elements of an agency requirement are present. [U.S. Company] therefore qualifies as an “agent of a foreign principal”<sup>43</sup> in connection with its proposed activity promoting the joint ventures and must register under FARA unless an exemption applies.<sup>44</sup> “The burden of establishing the availability of an exemption under the Act shall rest upon the person whose benefit the exemption is claimed.”<sup>45</sup>

Section 613(d)(2) of FARA exempts from registration “[a]ny person engaging or agreeing to

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<sup>40</sup> 22 U.S.C. § 611(h).

<sup>41</sup> Letter at 2.

<sup>42</sup> See *supra* notes 21-22 and accompanying text. To the extent that [U.S. Company] responds to any Congressional investigations regarding the joint ventures through outside counsel, you state that the company will do so within the scope of the attorney-representation exemption under 22 U.S.C. 613(g). Letter at 3 n.3. You do not request an advisory opinion for that potential activity.

<sup>43</sup> 22 U.S.C. § 611(c).

<sup>44</sup> 22 U.S.C. § 613.

<sup>45</sup> 28 C.F.R. § 5.300.

engage only . . . in other activities not serving predominantly a foreign interest.”<sup>46</sup> The applicable implementing regulation further specifies that “a person engaged in political activities on behalf of a foreign corporation . . . will not be serving predominantly a foreign interest where the political activities are directly in furtherance of the bona fide commercial, industrial, or financial operations of the foreign corporation, so long as the political activities are not directed by a foreign government . . . and the political activities do not directly promote the public or political interests of a foreign government.”<sup>47</sup>

Here, the two proposed joint ventures would collectively serve [U.S. Company] and [Foreign Company] about equally, with each having a slight advantage in ownership interest in one joint venture.<sup>48</sup> Moreover, the joint ventures involve the establishment of manufacturing facilities in the United States.<sup>49</sup> The proposed activities will directly further [Foreign Company]’s commercial interests, are not directed by a foreign government, and do not directly promote the public or political interests of a foreign government or political party.<sup>50</sup> [U.S. Company]’s planned conduct would thus not “predominantly” serve a foreign interest.<sup>51</sup> Accordingly, we do not contest your assertion that the exemption at § 613(d)(2) applies to [U.S. Company]’s proposed activities.<sup>52</sup>

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 as confidential in accordance with 28 C.F.R. § 5.2(m). Please contact this office by e-mail to [FARA.Public@usdoj.gov](mailto: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

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<sup>46</sup> 22 U.S.C. § 613(d)(2).

<sup>47</sup> 28 C.F.R. § 5.304(c).

<sup>48</sup> See *supra* notes 13-17 and accompanying text.

<sup>49</sup> See *supra* note 11 and accompanying text.

<sup>50</sup> See 28 C.F.R. § 5.304(c); *supra* notes 49-88 and accompanying text.

<sup>51</sup> 22 U.S.C. § 613(d)(2).

<sup>52</sup> Because we find that the exemption at 22 U.S.C. § 613(d)(2) is applicable, we need not address your alternative contention that the exemption pursuant to § 613(h) for filers under the LDA is applicable to [U.S. Company]’s contemplated federal lobbying activities.