



U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

March 26, 2021

Via Email to [\[email\]](#)

[addressee]

Re: [U.S. firm] re [foreign corporation]
Request for Advisory Opinion Pursuant to 28 C.F.R. § 5.2

Dear [name]:

We write in response to your letter of March 3, 2021 (“March 3 Letter”), requesting an advisory opinion under 28 C.F.R. § 5.2, with respect to your obligation to register under the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.* (“FARA” or the “Act”), in connection with your activities on behalf of [U.S. subsidiary of foreign corporation]. Based upon the representations in your letter, we have concluded that [U.S. firm] is exempt from registration under Section 613(h) of the Act.

I. Background

According to the March 3 Letter, [U.S. subsidiary of foreign corporation], a [U.S. state] corporation, is a wholly owned subsidiary of [foreign corporation 2], which is a wholly owned subsidiary of [foreign corporation], a [foreign country] corporation (“[foreign corporation]”). March 3 Letter at 1. You further assert that “[foreign corporation] is privately owned and has no government ownership.” *Id.*

You describe that [U.S. firm]’s services for [U.S. subsidiary of foreign corporation] “will include government relations activity related to [U.S. subsidiary of foreign corporation]’s business in the United States,” and you anticipate such activity will be “related to seeking relief from national security tariffs against products from [foreign country].” *Id.*¹

You posit that these services qualify for the exemption set forth in 22 U.S.C. § 613(h) for agents who register under the Lobbying Disclosure Act of 1995, 2 U.S.C. § 1601 (“LDA”).

Based on your representations in the March 3 Letter, we agree that if you register for the described activity under LDA, you will be exempt from registration under FARA.

II. FARA Analysis

FARA’s purpose is to inform the American public of the activities of agents working for

¹ [U.S. firm] provided the FARA Unit with a copy of its February 26, 2021 engagement letter with [U.S. subsidiary of foreign corporation].

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foreign principals intended to influence U.S. Government officials and/or the American public with reference to the domestic or foreign policies of the United States or with reference to the political or public interests, policies, or relations of a foreign country or foreign political party. The term “foreign principal” is defined as including “a government of a foreign country and a foreign political party . . . and 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.” 22 U.S.C. § 611(b). A person representing a foreign principal is “an agent of a foreign principal” who must register under FARA if it acts “at the order, request, or under the direction or control of a foreign principal” and engages in certain specified activities within the United States. Among those activities requiring registration are engaging in “political activities” or “represent[ing] the interests of such foreign principal before any agency or official of the Government of the United States.” 22 U.S.C. § 611(c)(1)(i) and (iii).

Even if agency under FARA is established, a foreign agent may qualify for one of the exemptions set out in 22 U.S.C. § 613. The burden of establishing an exemption “shall rest upon the person for whose benefit the exemption is claimed.” 28 C.F.R. § 5.300.

Section 613(h) provides the “LDA exemption,” allowing an agent serving a foreign person or foreign entity exemption from registration if the agent “has engaged in lobbying activities and has registered under the Lobbying Disclosure Act of 1995 [2 U.S.C.A. s 1601 *et seq.*] in connection with the agent’s representation of such person or entity.” 22 U.S.C. § 613(h). FARA’s implementing regulations further clarify the scope of the exemption by stating: “In no case where a foreign government or foreign political party is the principal beneficiary will the exemption under 3(h) be recognized.” 28 C.F.R. § 5.307.

You assert that the LDA exemption applies because [U.S. subsidiary of foreign corporation] parent company, [foreign corporation], is a corporation “organized under the laws of a foreign country (as opposed to a government of a foreign country or a foreign political party), and [U.S. firm] anticipates that its activities for [U.S. subsidiary of foreign corporation] would constitute lobbying under the LDA.” March 3 Letter at 1. The March 3 Letter identifies tariff relief as the subject of said lobbying. *Id.* You contend that “[a]lthough the government of [foreign country] supports lifting national security tariffs against products imported from [foreign country], the principal beneficiary of this policy change would be private sector entities like [U.S. subsidiary of foreign corporation] and [foreign corporation].”² *Id.*; see 28 C.F.R. § 5.307.

Accordingly, you assert that the [foreign] government is not “*the*, or even *a*, principal beneficiary” of the tariff relief you are seeking on behalf of [U.S. subsidiary of foreign corporation], under 28 C.F.R. § 5.307. March 3 Letter at 1 (emphasis in original). Relying upon your description of [U.S. firm]’s lobbying for [U.S. subsidiary of foreign corporation], we do not contest your assertion that a foreign government or foreign political party is not the principal beneficiary of the described activities. While a foreign government may indirectly benefit from

² You submit that “[U.S. firm] would solely take direction from [U.S. subsidiary of foreign corporation] and [foreign corporation].” March 3 Letter at 1.

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the described activities, the activities clearly benefit [U.S. subsidiary of foreign corporation]'s commercial interests. Accordingly, we do not dispute your claim that the LDA exemption applies.

Please note that this advisory opinion is based entirely upon the facts set out in your March 3 Letter. Our determination must be revisited in the event that any of the facts or circumstances described in the March 3 Letter change. For example, should [U.S. firm]'s activities change in a way such that a foreign government or foreign political party is a principal beneficiary of its lobbying efforts, [U.S. firm] may have a possible obligation to register.

We will treat your submission in accordance with 28 C.F.R. § 5.2(m). Please contact [redacted] at (202) 233-0776, if you have any questions.

Sincerely,

/s/ Jennifer K. Gellie

Jennifer Kennedy Gellie
Chief, FARA Unit