



U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

October 11, 2022

VIA EMAIL

[Requesting Attorneys]

[Address Redacted]

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

Dear [Redacted]

This is in reference to your letter of August 25, 2022 (“the August 25 Letter”), in which you request an advisory opinion, pursuant to 28 C.F.R. § 5.2, with respect to the obligation of your client, [U.S. company], to register pursuant to the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.* (“FARA” or “the Act”). Specifically, your letter requests a determination whether [U.S. company] qualifies for an exemption from registration pursuant to § 613(d)(2), and your subsequent email message of August 31 (“the August 31 email message”) amends your request to inquire whether [U.S. company] qualifies for the exemption pursuant to Section 613(h). Based upon the representations in your letter, as well as the additional representations you provided at our request, we do not oppose your assertion that [U.S. company] is exempt from the obligation to register under FARA at this time pursuant to Section 613(h).

According to the August 25 Letter, [U.S. company] is a manufacturer and seller of various [Redacted] throughout the United States. In [Redacted] [U.S. company] was sold to [foreign corporation] that is publicly traded on [foreign countries] stock exchanges. Following the transaction, [U.S. company] is wholly owned by a [U.S. City] corporation called [U.S. holding company], which is itself wholly owned by [foreign corporation]. [U.S. company] now operates as a U.S. subsidiary of [foreign corporation], with the [foreign corporation] controlling all of [U.S. company]’s board seats and all of [U.S. holding company]’s board seats. [Foreign corporation] is itself approximately 40% owned by [parent foreign corporation], a multinational [redacted] company based in [foreign country]. [Parent foreign corporation] is a collective enterprise, and some officers and directors of both [foreign corporation] and [parent foreign corporation] are current or former members of the Government of [foreign country] and/or the [foreign political party]. You have represented that [foreign corporation] does not control, direct, or fund [U.S. company]’s operations and that operational control is left to the Company’s U.S. based leadership by design, although [foreign corporation]’s officers review and approve [U.S. company]’s annual budget and high-level operating plan, as well as provide high-level budget and revenue targets for [U.S. company]. For the purposes of this advisory opinion request, you have informed us that you assume, without conceding, that [foreign corporation] and [parent foreign corporation] would be treated as state-owned enterprises.

According to the August 25 letter, the services which are the subject of this request are conducted by [U.S. company]'s [Redacted], which operates independently from and without the oversight or direction of [foreign corporation] or any other non-U.S. person. You represent that such services have included and will continue to include typical government affairs activity related to [U.S. company]'s business in the United States including the following:

- Lobbying in support of the [Redacted] and related provisions designed to stimulate [Redacted] investment;
- Lobbying members of Congress for support in [Redacted] Court proceedings seeking to obtain [redacted];
- Lobbying members of Congress regarding excessive [redacted];
- Lobbying members of Congress for support in the Company's application to the United States [redacted] [Foreign country] that were used by [U.S. company] and other manufacturers in the United States;
- Lobbying Executive Branch officials with regard to, and otherwise participating in, regulatory rulemaking proceedings; and
- Lobbying in support of the [Redacted], which would require online marketplaces to exercise more due diligence of persons offering goods for sale online to reduce [Redacted].¹

You have asserted that all of the afore-mentioned activities further [U.S. company]'s bona fide commercial interests and, at most, only result in an indirect economic benefit for [foreign corporation] and its shareholders. You further asserted that these activities do not directly further the public or political interests of a foreign government or foreign political party. Finally, you note that [U.S. company] has registered for these activities under the Lobbying Disclosure Act of 1995, 2 U.S.C.A. § 1601 *et seq.*²

II. FARA Analysis

FARA's purpose is to inform the American public of the activities of agents working for 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 definition of "foreign principal" contained in FARA 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." 22 U.S.C. § 611(b)(3). A person representing a foreign principal is "an agent of a foreign principal" if he 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 "political activities" or

¹ In addition, the August 25 letter further discloses that [U.S. company] periodically publishes an Economic Impact Report, which illustrates its employment and economic impacts on the United States and the communities where [U.S. company] maintains operations, as well as participates in several trade associations made up of similar companies within [its industry], as well as other industries in which [U.S. company]'s products are relevant.

² [Redacted]

“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 (iv).

Based on the facts provided, [U.S. company] is acting as an agent of a foreign principal within the meaning of FARA and would be required to register absent an exemption. [Parent foreign corporation] is a “foreign principal” within the meaning of 22 U.S.C. § 611(b)(3). [U.S. company] is acting as an agent of [parent foreign corporation], a “foreign principal,” because it is acting under [parent foreign corporation] “direction or control” as a wholly owned U.S. subsidiary organization under [parent foreign corporation] as described above. *See* 22 U.S.C. § 611(c)(1). Further, [U.S. company] is engaging in political activities, as defined in FARA, within the United States on behalf of [parent foreign corporation] as well as representing [parent foreign corporation] before an agency or official of the United States Government. *See* 22 U.S.C. § 611(c)(1)(i) and (iv).

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. In your August 25 letter, you inquire whether [U.S. company]’s work on behalf of [parent foreign corporation] qualifies [U.S. company] for the exemption from registration set forth in 22 U.S.C. § 613(d)(2) in that [U.S. company] has engaged “only . . . in other activities not serving predominantly a foreign interest.” *See* 22 U.S.C. § 613(d)(2). In your August 31 email message, you further inquire whether these services qualify for the exemption set forth in 22 U.S.C. § 613(h) which exempts an agent serving a foreign person or foreign entity 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. § 1601 et seq.] for agents who properly register under the Lobbying Disclosure Act of 1995, 2 U.S.C. § 1601 (“LDA”). *See* 22 U.S.C. § 613(h). The burden of establishing an exemption “shall rest upon the person for whose benefit the exemption is claimed.” 28 C.F.R. § 5.300. 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.

Although [U.S. company] is the U.S. subsidiary of [parent foreign corporation], its parent company and a corporation “organized under the laws of a foreign country (as opposed to a government of a foreign country or a foreign political party), the activities of [U.S. company], as disclosed above, constitute lobbying for the commercial business interests of [U.S. company] in the United States. Thus, [U.S. company]’s proposed lobbying does not serve “predominantly a foreign interest.” *See* 22 U.S.C. § 613(d)(2). Further, as long as [U.S. company]’s lobbying activities are on behalf of an individual or corporation and not a foreign government or foreign political party, the activity would be covered by the LDA registration exemption to FARA. *Id.* At § 613(h). Accordingly, based on the information provided, we have determined [U.S. company] does not have a registration obligation under FARA.

Please note that this advisory opinion is based entirely upon the facts set out in your August 25 letter and August 31 email message. Our determination must be revisited in the event that any of the facts or circumstances described in these communications change. For example, should [U.S. company]’s activities change in a way such that a foreign government or foreign political

[Requesting attorneys] October 11, 2022

Page 4

party is a principal beneficiary of its lobbying efforts, [U.S. company] would have an obligation to register.

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

Sincerely,

/s/ Jennifer K. Gellie

Jennifer Kennedy Gellie
Chief
FARA Unit