



U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

October 18, 2017

[addressee deleted]

Re: [text deleted] Request for Advisory Opinion

Dear [name deleted]:

We write in response to your letter of August 9, 2017, in which you request an opinion pursuant to 28 C.F.R. § 5.2(a) with respect to the registration status of you and your company, [U.S. company], pursuant to the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.* ("FARA" or the "Act"). Based upon the representations made in your letter and the consulting agreement provided with the letter, we have determined that [U.S. company] is entitled to the exemption for private and nonpolitical activities set out in Section 613(d) of the Act, also known as the "commercial exemption," and thus, does not have an obligation to register under FARA.¹

According to your submission, [U.S. company] entered into a consulting agreement on August 1, 2017, with [foreign company], a company in [foreign country] that owns an air cargo facility connected with the [foreign city airport] in the [foreign country]. Under the terms of the consulting agreement, [U.S. company] will provide strategic advice and associated services to [foreign company] with the goal of obtaining U.S. Customs and Border Protection ("CBP") cargo pre-inspection at [foreign company]'s cargo facility in [foreign city]. In order to accomplish the goal, [U.S. company] will engage with officials from CBP, and officials from other United States government agencies to promote the project. Additionally, [foreign company], through its principals, [individual names], will provide background to [name of company] regarding CBP's pre-inspection program and engage in strategic messaging about the bilateral economic benefits of CBP's pre-inspection program with the goal of building support on both sides of the [two countries] border. Supporting materials would be shared with government agencies in the United States.

¹ Because your individual registration status and that of [name of principal individual of U.S. company] are tied to that of [U.S. company], we will speak only to the status of [name of company] in this letter.

Generally speaking, a party 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 one of the following activities:

- (i) engages within the United States in political activities for or in the interests of such foreign principal;
- (ii) acts within the United States as a public relations counsel, publicity agent, information-service employee or political consultant for or in the interests of such foreign principal;
- (iii) within the United States solicits, collects, disburses, or dispenses contributions, loans, money, or other things of value for or in the interest of such foreign principal; or
- (iv) within the United States represents the interests of such foreign principal before any agency or official of the Government of the United States[.]

22 U.S.C. § 611(c).

The Act contains a number of exemptions to the registration requirement, among them, the “commercial exemption” set out at Section 613(d) of the Act. Under that section, a party otherwise required to register, may be exempt from registration if the person is “engaging or agreeing to engage only (1) in private and nonpolitical activities in furtherance of the bona fide trade or commerce of such foreign principal.” That appears to be the case with respect to [U. S. Company].

The regulations promulgated by the Department of Justice to implement the exemptions contained in the Act place “[t]he burden of establishing the availability of an exemption from registration under the Act ... upon the person for whose benefit the exemption is claimed.” 28 C.F.R. § 5.300. The regulations further state that the “activities of an agent of a foreign principal ...in furtherance of the bona fide trade or commerce of such foreign principal, shall be considered ‘private,’ so long as the activities do not directly promote the public or political interests of [a] foreign government.” *Id.* § 5.304(b).

In your August 9, 2017 letter to this office, you note that [foreign company], a private company organized in [foreign country], is the foreign principal in this matter. You further note, that as part of your engagement with [foreign company], you might participate in communications or communicate on behalf of [foreign company], with CBP or other U.S. government agencies with an interest in pre-inspection at [foreign company]’s airport facility. These activities would normally be registerable under FARA, but for, as you note, the exemption for commercial activities set out in Section 613(d) of the Act.

In your August 9, 2017 letter, you characterize your proposed activities as “private” since they “do not directly promote the public or political interest of the foreign government,” noting the provision in the regulations. *Id.* You also note that your activities are “nonpolitical” in that they deal with existing CBP policy and administrative action with respect to approval of pre-inspection locations and that the contemplated activities are purely commercial in that they are only concerned with the bona fide commercial, industrial, or financial operations of [foreign

company], a foreign corporation. *Id.* § 5.304(c).

Accordingly, we have determined that [U.S. company] is exempt from registration under FARA pursuant to Section 613(d) of the Act. Our determination is limited to the particular facts you have represented in your August 9, 2017 letter and consulting agreement attached thereto. Therefore, if any of the facts with respect to activities undertaken by [U.S. company] depart in any way from those described in the August 9, 2017 letter and consulting agreement, please notify this office, as the registration status of [U.S. company] may change.

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

Sincerely,

Heather H. Hunt, Chief
Registration Unit