



U.S. Department of Justice

National Security Division

Washington, DC 20530

September 10, 2013

[addressee deleted]

Re: Request for a Rule 2 Opinion [text deleted]

Dear [name deleted]:

This is in response to your letter of August 2, 2013, requesting a Rule 2 advisory opinion, pursuant to 28 C.F.R. § 5.2, of the possible obligation or exemption under the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.* (FARA or the Act) of your firm for its past, present, and future activities on behalf of [foreign corporation], a [foreign country] corporation. You ask us to agree that your firm's activities should be exempt from registration under FARA's commercial and legal exemptions, 22 U.S.C. § 613(d)(1) and §613(g), respectively.

You have advised that [foreign corporation] markets high-performance computer systems, software and services. Twenty-five percent of the company is owned by a [foreign country] bank controlled by the [foreign country] government. In [month deleted] of this year, [foreign corporation] was placed on the Entity List of the Department of Commerce's Bureau of Industry and Security (BIS). The Entity List, located in the Export Administration Regulations (EAR), prohibits listed foreign persons (the definition of person includes a foreign corporation) from receiving certain exports unless the exporter obtains a license. A license application is generally "subject to a policy of denial." When [foreign corporation] was added to the Entity List, the U.S. government claimed your client acted contrary to U.S. national security and/or U.S. foreign policy interests.

[Foreign corporation] hired your firm to remove it from the Entity List. Your letter details the procedures available for requesting removal from this list. These are limited to the civil administrative remedies found in EAR. You state your firm will not engage in any political activities as defined by FARA, and will not stray outside the established administrative procedures of EAR.

You conclude that your firm's work to remove [foreign corporation] from the Entity List will consist of private and nonpolitical activities in support of the bona fide trade or commerce of [foreign corporation]. You further conclude that your firm's work for your client will not involve efforts to influence any U.S. agency or official of the U.S. Government, with reference to formulating, adopting or changing the domestic or foreign policies of the United States or with reference to the political or public interests, policies or relations of a government of a foreign

country or a foreign political party. You argue your client's goal in seeking removal from the Entity List is not political, but private and commercial.

In addition, you claim the legal exemption under FARA also eliminates your firm's obligation to register. Your firm will be engaged in the legal representation of [foreign corporation] and attempt to remove it from the Entity List through a civil law enforcement proceeding. According to your letter, your firm disclosed its representation of [foreign corporation] to BIS in an informal meeting, and the administrative activities of your firm in this case will not involve political activities as defined in 22 U.S.C. § 611(o) nor will the activities involve attempts to influence federal officials outside of established agency proceedings.

There is insufficient information regarding the ownership and control of [foreign corporation] by the [foreign country] government and [foreign corporation]'s alleged export violations to provide a determination regarding the commercial exemption; however, based solely on the representations in your letter of August 2, 2013, we find that the activities of your firm on behalf of [foreign corporation] are covered by the legal exemption. Consequently, your firm has no present obligation to register under FARA.

Please note that the question of obligation or exemption must be revisited as the nature of the relationship changes from time to time. Because the question of obligation or exemption depends on your firm's relationship with any foreign principal, this opinion is limited to the facts as represented. If the facts concerning your relationship should change, you may wish to ask us to reexamine whether your firm has an obligation to register under the Act.

If I can be of further assistance, please call me at (202) 233-0777.

Sincerely,

Heather H. Hunt, Chief
Registration Unit
Counterespionage Section