



U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

October 2, 2019

Via Email and USPS

[addressee deleted]

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

Dear [name deleted]:

We write in response to your letter of August 19, 2019 (“August 19 Letter”), in which you request an advisory opinion, pursuant to 28 C.F.R. § 5.2, regarding the registration status of your client, [US subsidiary of foreign corp (US sub)], under the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.* (“FARA” or the “Act”). Based upon the representations in your letter, we have concluded that [US sub] is exempt from registration under the Act and may terminate its current registration.

According to your August 19 Letter, [US sub] is the North American sales and marketing arm for [foreign corp]. [US sub] is a wholly-owned subsidiary of [foreign subsidiary of foreign corp (foreign sub)], a company organized under the laws of [foreign country] that provides [text deleted]. [Foreign sub], in turn, is a wholly-owned subsidiary of [foreign corp]. [Foreign corp]’s shares are equally distributed among three entities: [foreign government], [foreign government], and privately-owned [foreign entities].

[US sub] is currently registered under FARA as an agent of [foreign corp]. In its most recent Supplemental Statement, [US sub] has described its activities on behalf of [foreign corp] as including the study of [text deleted] market in the United States. Your August 19 Letter and [US sub]’s Supplemental Statement also disclose meetings attended by [US sub] with U.S. Government officials. You have described these meetings as being “for informational and bona fide commercial purposes only.”¹

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 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

¹ August 16 Letter, at 2.

[addressee deleted]

October 2, 2019

Page 2

activities”² 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).

[US sub]’s registration documents identify [foreign corp] as its foreign principal and state that it is engaged in political activities. Your August 19 Letter affirms these representations and informs that [US sub] has appeared on behalf of its foreign principal before officials of multiple U.S. Government agencies. Based on these activities, [US sub] has an obligation to register under FARA, unless it qualifies for one or more of the exemptions set forth at Section 613.

Your August 19 Letter requests that we consider [US sub] exempt from FARA’s registration requirements pursuant to the “commercial exemption” for engaging in “activities not serving predominantly a foreign interest.” 22 U.S.C. § 613(d)(2). The scope of the exemption is further delineated by FARA’s implementing regulations, which provide:

A person engaged in political activities on behalf of a foreign corporation, even if owned in whole or in part by a foreign government, 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 do not directly promote the public or political interests of a foreign government or foreign political party.

28 C.F.R. § 5.304(c).

In all instances, the burden of establishing an exemption “shall rest upon the person for whose benefit the exemption is claimed.” 28 C.F.R. § 5.300. Your August 19 Letter asserts that [US sub]’s meetings with U.S. Government officials were in furtherance of protecting the financial interests and operations of [US sub] in the United States. You further maintain that [US sub]’s “political activities” are not being directed by a foreign government or directly promote the public and political interests of a foreign country, in this case, the interests of the [foreign governments], each of which own a portion of [US sub]. We conclude that the described activities would not “directly promote” the public interests of a foreign government. While foreign governments may indirectly benefit from the described activities, the activities appear to advance commercial interests. Accordingly, we do not contest your claim that the exemption applies.³

You may, therefore, terminate [US sub]’s registration with the filing of its next Supplemental Statement for the period ending [date deleted].

² Under FARA, “[t]he term ‘political activities’ means 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 or with reference to the political or public interests, policies or relations of a government of a foreign country or foreign political party.” 22 U.S.C. § 611(o).

³ Because we are affirming the applicability of the commercial exemption, we issue no opinion on the applicability of the exemption set out at 22 U.S.C. § 613(h) (“the LDA exemption”).

[addressee deleted]

October 2, 2019

Page 3

Please note that this advisory opinion is based entirely upon the facts set out in your August 19 Letter and [US sub]'s public FARA filings. Our determination must be revisited in the event that any of the facts or circumstances described in the August 19 Letter change. For example, should [US sub]'s activities change in a way that directly promotes the public or political interests of a foreign government or foreign political party, [US sub] may be required to again register.

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

Sincerely,

Brandon L. Van Grack
Chief, FARA Unit