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General Government Division

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April 2, 1993

The Honorable John Conyers
Chairman, Legislation and National
Security Subcommittee
Committee on Government Operations
House of Representatives

Dear Mr. Chairman:

This letter responds to your request that we assess the nature and extent of contacts between U.S. trade officials and former high-level federal officials working for foreign interests. In recent months there have been significant policy initiatives, within both Congress and the administration, to deal with foreign lobbying and federal official conflict-of-interest issues. As discussed with the Subcommittee, we believe those initiatives reduce the need for extensive additional work to identify the foreign representation activities of former U.S. trade negotiators. Accordingly, this letter concludes our work on this matter.

In order to determine the nature and extent of contacts, we reviewed the telephone logs and appointment calendars of four senior U.S. trade officials that the Subcommittee selected, and compared them with the names of former high-level officials listed in our 1986 and 1992 reports on foreign agent registration. We also identified the recorded contacts that 19 former federal officials, selected by the Subcommittee and registered under the Foreign Agents Registration Act of 1938 (FARA), as amended,¹ had with the Office of the U.S. Trade Representative (OUSTR). In addition, we identified instances in which the registrants testified before Congress as representatives of foreign interests. Former high-level officials were considered as

¹This act requires foreign agents to disclose to the Justice Department their connections with foreign governments, foreign political parties, and other foreign principals, as well as activities they perform on behalf of such principals in the United States.

GAO/GGD-93-32R Foreign Agent Contacts

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representing or consulting for foreign interests if they had registered with the Department of Justice under FARA or if they had registered as representing foreign clients under the Federal Regulation of Lobbying Act of 1946.²

A RANGE OF CONTACTS TOOK PLACE

A range of contacts (variable in number and purpose) was made between the former high-level officials listed in our 1986 and 1992 reports and the four senior officials of OUSTR and the Department of Commerce, according to our review of the records. Similarly, a range of contacts was made between the 19 selected FARA registrants and OUSTR officials at all levels. Further, three of these registrants testified before Congress. However, the subjects of their testimonies indicated that they testified based on their professional expertise, not in their role as representatives of foreign clients.

We believe that for the following reasons the number of officials we identified in our two past reports³ on foreign agent registration represents a lower-bound estimate of the extent to which former high-level officials are working for foreign clients:

- (1) Our database may not include former high-level officials whose work for a foreign interest falls under one of the exemptions from the registration requirement of FARA and, consequently, who do not register with the Department of Justice. We have no way of knowing how many individuals fall into this category. For this reason, we recommended in a

²This act requires any person or organization paid to influence legislation to register with the Secretary of the Senate and the Clerk of the House of Representatives. They are required to report who they are representing, their legislative interests, and the compensation they receive.

³Foreign Representation: Former High-Level Federal Officials Representing Foreign Interests (GAO/NSIAD-86-17BR, Jul. 11, 1986); and Foreign Agent Registration: Former Federal Officials Representing Foreign Interests Before the U.S. Government (GAO/NSIAD-92-113, Mar. 26, 1992).

previous report⁴ that all individuals claiming an exemption under FARA provide written identification to the Department of Justice as to what exemptions they are using before undertaking any such activities.

- (2) The enforcement of FARA remains a problem, as we reported in 1990 testimony before the Senate Committee on Commerce, Science, and Transportation.⁵ People have acted as foreign agents without registering, registered agents have not fully disclosed their activities, and required registrations have not been filed in a timely manner.

REVIEW OF APPOINTMENT CALENDARS AND TELEPHONE LOGS OF OFFICIALS

As one method of assessing contacts, we examined the personal telephone logs and appointment calendars from July 1, 1991 through August 5, 1992, of the U.S. Trade Representative (USTR) and a deputy assistant secretary for trade development at the Department of Commerce. In addition, we requested the telephone logs and appointment calendars for a former deputy USTR and a current deputy USTR for the Assistant USTR for North American Affairs. However, not all of the requested documents were available for our examination.⁶ According to an OUSTR assistant general counsel, the current Deputy USTR and the Assistant USTR for North American Affairs did not keep a record of their calls. Consequently, we could only review their appointment calendars. In addition, the Assistant General Counsel said the former Deputy USTR's telephone log and appointment calendar had been discarded before our request was received.

The logs and calendars included the following information: Five FARA registrants had contacts with the USTR with a

⁴Improvements Needed in the Administration of Foreign Agent Registration (GAO/ID-80-51, July 31, 1980).

⁵Foreign Agent Registration and Former High-Level Federal Officials Representing Foreign Interests (GAO/T-NSIAD-90-50, Sept. 27, 1990).

⁶These senior trade officials, except the one former official, held their positions during our review, which was conducted in September 1992.

frequency of one to eight contacts per registrant; one FARA registrant had one contact with the Deputy USTR; there were no listed contacts with the Assistant USTR for North American Affairs; and four FARA registrants had contacts with the Deputy Assistant Secretary of Commerce for Trade Development with a frequency of one to six contacts per registrant.

The logs and calendars contained only limited information concerning the topics of the contacts. The information indicated that some contacts were work related and others were social or personal. Work-related contacts included such issues as trade with Korea and the loss of a sale by a U.S. auto parts manufacturer to a Japanese competitor. Social and personal matters included, for example, one appointment for an official to attend a dinner party in honor of a FARA registrant's husband who was sworn in as a university president. On another occasion, a FARA registrant called an official with information about the death of a mutual friend.

Because our purpose was primarily to determine the incidence of contacts, we did not verify with the participants the nature of each contact recorded in the logs.

REVIEW OF FARA FILINGS

We also reviewed the Department of Justice's supplemental registration forms for foreign agents. FARA registrants are to report on this form the contacts they make on behalf of their foreign clients. We reviewed forms from January 1, 1990, through August 31, 1992, to determine the nature and frequency of contacts made between the 19 selected FARA registrants and all OUSTR officials.

We determined that 12 of the 19 selected FARA registrants reported contacts with OUSTR officials. The FARA filings identified a range of contacts concerning trade-related matters such as the voluntary restraint agreements for machine tools, U.S.-South Korea trade, U.S.-Argentina trade relations, and trade legislation.

Since the supplemental form is an official document filed by the registrant, we did not verify the specifics concerning the record of contacts with the FARA registrants.

FOREIGN AGENT TESTIMONY

For the 19 selected former officials registered under FARA, we searched three congressional databases for testimony from January 1, 1990, through August 31, 1992: Scorpio, the Congressional Information Service, and the Congressional Record Index. Our search indicated that 3 of the 19 former officials had testified before Congress during this period. We determined that the testimony each presented was based on his professional expertise. It did not appear that the issues directly related to his foreign clients' concerns. These issues included the testimony on July 25, 1991, by a former Secretary of Labor who was later the Chairman of the Secretary of Labor's Commission on Achieving Necessary Skills. He testified on higher education before the House Committee on Foreign Affairs. On May 13, 1992, a former national security adviser testified on U.S. post-Cold War foreign policy before the House Committee on Foreign Affairs. On June 13, 1992, a former deputy USTR who had played a major role in negotiations on intellectual property rights while at OUSTR testified on his views regarding copyright issues concerning the Digital Audio Tape (DAT) Recorder Act of 1990. In his testimony, the former OUSTR official pointed out that he was one of the first executive branch officials involved in the DAT debate. He presented an argument against the passage of the proposed legislation based on his experiences as a deputy USTR.

RECENT LEGISLATION AND FOREIGN LOBBYING DEVELOPMENTS

On October 6, 1992, Congress passed the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1993. Section 609 of the act amends the Ethics Reform Act of 1989 and includes a special rule for the USTR. The law specifically applies the restrictions on postemployment lobbying activities to the USTR and prohibits that person from engaging in lobbying for foreign interests for 3 years after the USTR's term of service ends.

As you are aware, the presidential transition team is subject to lobbying restrictions for 6 months after inauguration day. In addition, on January 20, 1993, President Clinton signed Executive Order No. 12834 instituting ethics reforms that strengthen postemployment lobbying restrictions. The executive order places 5-year restrictions on postemployment lobbying activities by certain administration officials at their former agencies.

This order also imposes a lifetime ban on certain senior-level Clinton Administration officials' lobbying for foreign interests.

Moreover, on February 4, 1993, Senator Carl Levin introduced the Lobbying Disclosure Act to the 103rd Congress. The bill is designed to close the loopholes in lobbying disclosure laws, cover lobbying of the executive branch, and create a reasonable enforcement program for addressing disclosure violations. This legislation combines and updates the Federal Regulation of Lobbying Act of 1946 and some aspects of FARA. Currently FARA includes exemptions to the registration requirement, such as those for diplomatic, commercial, academic, or legal activities. Individuals who use these exemptions are not required to notify the Department of Justice that they are exercising an exemption from the registration requirement. The Levin bill has three essential purposes: It would broaden the coverage of existing disclosure statutes to ensure that all professional lobbyists are registered; streamline disclosure requirements to make sure that only meaningful information is disclosed and needless burdens are avoided; and create a new, more effective and equitable system for administering and enforcing these requirements.

We believe that these initiatives may adequately address some of the current deficiencies in the laws identified in our 1990 report.⁷

After assessing your request that we look into the question of former trade negotiators who registered as foreign agents, we determined that because we would use the same primary databases (FARA, Office of Personnel Management files, and the Federal Regulation of Lobbying Act files) we would not be able to add to our current understanding of the issue and related problems as previously described. In particular, the provisions of FARA that provide major exemptions from the registration requirement create a situation in which no additional meaningful information is likely to be available. Therefore, as agreed with your office, this letter completes our work on your request.

⁷Foreign Agent Registration: Justice Needs to Improve Program Administration (GAO/NSIAD-90-250, July 30, 1990).

B-252652

Please contact me on (202) 512-4812 if you or your staff have any questions concerning this letter. The information in this letter was developed by Curtis Turnbow, Assistant Director, and Kevin Malone, Evaluator.

Sincerely yours,

Allan I. Mendelowitz

**Allan I. Mendelowitz, Director
Financial Institutions and
International Trade**

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7

GAO/GGD-93-32R Foreign Agent Contacts