Office of Government Ethics
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Letter to a Designated Agency Ethics Official dated May 5, 1989

This is in response to your letter of December 8, 1988, requesting assistance in applying 18 U.S.C. § 207(a) to proposed representational activity by a former [agency] employee. [The former employee] was an economist in the [agency] advising United States negotiators in talks with representatives of [several foreign countries]. Those negotiations concerned [a GATT agreement] which could result in modifications to that Agreement. The specific issue under negotiation then and continuing now is reduction of government subsidies to the industry, particularly [one member of that industry.] [The former employee] now represents [an industry association] and proposes to serve as an industry advisor to the United States team which is negotiating this issue.

At the outset, it should be noted that regulations implementing 18 U.S.C. § 207 assign agencies the primary responsibility of providing advice to former employees regarding post-employment restrictions. See 5 C.F.R. §§ 737.1(c)(8) and 737.5(e). The Office of Government Ethics may assist agency ethics officials in situations involving unresolved or complex issues. However, [the former employee] and his employer should be made aware that this Office does not serve in an appellate capacity, absent unique issues. We do not view the facts of this case as presenting such issues. Nonetheless, the following general assistance is offered.

Your office previously advised [the former employee] that his proposed activities would violate 18 U.S.C. § 207, by your letter of September 20, 1988. His current employer's counsel then sought reconsideration by means of two letters to you, which provided additional facts and raised new issues. The detailed legal analysis which your office has provided to us as a proposed response is consistent with the regulations and our previous advisory opinions interpreting 18 U.S.C. § 207.

Specifically, this Office concurs in your opinions that, under the facts presented, these [specific] negotiations constitute a particular matter involving specific parties within the meaning

of 18 U.S.C. § 207; that [the former employee] participated personally and substantially in the matter while a Government employee by advising United States negotiators; that treaty negotiations by executive branch employees are not exempt from section 207 coverage simply because of their legislative characteristics; that the existence of shared objectives of the United States and [the former employee's] current employer does not preclude section 207 coverage, since what the statute proscribes is acting on behalf of someone other than the United States; and that [the former employee's] current employer, in whose behalf he would act, need not be one of the parties involved in the particular matter for a section 207 violation to occur.

We also agree that [these] negotiations and a resultant treaty can constitute the same particular matter, as you have indicated, which could perpetuate the section 207 bar even after negotiations are completed. However, not all matters arising under such a treaty would necessarily meet the tests for "same particular matter," as discussed at 5 C.F.R. § 737.5(c)(4). Any representational activity by [the former employee] after negotiations are completed and a treaty is in effect may merit re-examination to determine whether the facts and issues are substantially related to the particular matter in which he participated while a Government employee. Subject to that caveat, it is this Office's opinion that your proposed advice to [the former employee] is correct.

Sincerely,

Frank Q. Nebeker
Director