

June 30, 2009

Representative Gene Green
Representative Phil Hare
Representative Marcy Kaptur
Representative Dennis Kucinich

Representative Mike Michaud
Representative Tim Ryan
Representative Louise Slaughter
Representative Betty Sutton

Dear Representatives:

I am writing on behalf of the American Bar Association, which represents over 400,000 members across the nation, regarding your letter to the Government Accountability Office requesting a report on former government officials who advise foreign interests. We have concerns about this initiative that we want to communicate directly to you.

The ABA has long supported imposing the highest level of ethical standards on both current and former government officials. Federal laws as well as local bar rules prohibit conflicts of interest, and there are already a number of laws on the books addressing the so-called revolving door issue. Moreover, lawyers are subject to codes of professional conduct that prevent use of confidential information obtained during prior government service or prior private sector legal representations.

As we understand, you are not alleging violation of any of these laws or standards, but suggest nonetheless that it may be inappropriate, or even unethical, for former trade officials to represent foreign interests, or even domestic interests involved in import trade or the distribution of imported products. We disagree and are concerned that your inquiry suggests a goal of imposing additional post-employment limitations on former trade officials and that limitations on representation of clients by former government officials should be tied to the particular clients they represent.

The ABA has studied these issues in the past and recommended that Congress not impose on trade officials post-employment proscriptions that are more severe than those imposed on other government officials. One cannot readily distinguish former trade officials from other government officials or the instances of representation you have focused on from other cases involving the use, on behalf of private clients, of skills developed during government service. Further, we would certainly not equate representing foreign clients, and domestic clients involved in the acquisition and distribution of foreign-origin products, to advancing interests that are inevitably inimical to those of American taxpayers and citizens. Were this otherwise, the many former members of Congress who represent such foreign and domestic clients might be clouded with comparable public opprobrium – a result that is clearly unwarranted.

Any action that appears to stigmatize lawful advocacy is a matter of great concern to the organized bar – a concern that crosses all lines of party identification and substantive opinions on trade policy.

We would be pleased to discuss the ABA’s position on these issues with you at your convenience and to share with you the thinking that went into our consideration of the issues. We also would be happy to discuss ways that you might reframe the inquiry you have requested to address the concerns we have.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas M. Susman", with a long horizontal flourish extending to the right.

Thomas M. Susman