

Podcast Episode 4

Olga Torres: Thank you for joining us. My name is Olga Torres and I'm the founder and managing member of Torres Trade Law, an international trade and national security law firm. Today we're discussing trade with Mexico, one of our top trading partners here in the United States. Specifically, we will look at USMCA, free trade agreements, and recent enforcement trends as well as politics having an impact on trade. We're happy to have Emilio Arteaga as our guest today. Emilio is a partner at a highly recognized Mexican trade law firm, Vazquez Tercero & Zepeda "VTZ." VTZ has offices in Mexico's top cities, including Mexico City, Guadalajara, and Monterrey. Their international trade practice is Chambers and Partners ranked, and they have received additional awards by Legal 500 and other prestigious attorney ranking organizations. We're also very proud to have a strategic alliance with VTZ through our trade advisory group to facilitate our clients' operations and trade needs in Mexico as well as the United States. Welcome, Emilio, thank you for being here.

Emilio Arteaga: Thank you, Olga. I'm honored to be here in your new podcast.

Olga Torres: We are very excited. We're finding it's a good way to bring people that may not necessarily think trade is the most exciting topic. We're bringing them on board and having them more engaged. So, we're excited. It's a pilot series of podcasts, but we're getting there.

So, really quickly, I'd like to start it by...just give us more information about your background, your work, and the type of work that you have been doing recently.

Emilio Arteaga: Well, Olga, well, as you said, we are a Mexican law firm, so I'm a lawyer. I also have, just for a quick academic background, a master's in international economic law. I studied in the Netherlands, in Maastricht, and ever since I graduated, I've been working in VTZ as a trade lawyer. So, my experience within the firm, which is perhaps already 10 years, or almost 10 years, has been focused on trade remedies.

Olga Torres: So, a lot of litigation, basically?

Emilio Arteaga: Well, it's sort of litigation before the Ministry of Economy, and I have also been involved in NAFTA panels or Chapter 19 NAFTA panels, regarding the trade remedies or anti-dumping duties on US product. And, of

course, I have been involved in domestic litigation of trade remedies as well in the Mexican courts as well as advising on tariff and non-tariff barriers in Mexico. Licenses to import. I have also been involved in litigation of trade measures, non-tariff trade measures. So, it's quite a broad scope, sometimes trade and of course, free trade agreement advisory like USMCA or NAFTA.

Olga Torres: Got it. Yeah. Very interesting. We hear a lot in the US, and I'm sure you're hearing the same talks in Mexico about the US, changing a little bit of geopolitics, deglobalization perhaps. We're decoupling from, for example, China, and we are dealing with the Russia-Ukraine situation or crisis. What are you hearing from Mexico, boots on the ground in Mexico in terms of where Mexico is heading? I know, I remember hearing, at a conference, I believe, Mexico having, at least it was one of the countries with the most free trade agreements. I wasn't sure if it was the one with the most, but you were pretty high up there. So where is Mexico nowadays in terms of trade?

Emilio Arteaga: So, I think if a country puts a free trade agreement on Mexico's desk, Mexico will sign. So, I think our reach is about 50 countries, of course, this is maybe explained in part by some mega deals such as with the European Union. Well, automatically you have access to the European Union, and CPTPP. So, of course those type of agreements help reach a lot of countries. Now, Mexico is open to free trade; there has not been any measures like those of the United States, like sort of trade remedies, which are these sections 301 or section 232. We don't have that type of instrument in Mexico. We could argue that maybe Mexico is a bit harsh on China with trade remedies of the traditional trade remedies, such as anti-dumping duties. And right now, I would say that Mexico is discussing, formally, negotiations with the UK as a result of Brexit, bilaterally and, multilaterally or regionally with CPTPP and with Korea, South Korea, as well. There has been talks, or they're going to start negotiations.

So, Mexico continues to be open. The question with China is going to be interesting in CPTPP because China has formally asked for accession. So, we still haven't heard news about what's going to happen in CPTPP. So, I think that's basically what's happening in Mexico and no sanctions against Russia and Belarus, no sanctions at all.

Olga Torres: Okay. And I have a lot of questions, so I'm writing them down so that I don't forget. With respect to China, you mentioned, I mentioned, in the US, we're decoupling from China, and I'm sure you're following, especially coming election time, I'm sure we're going to start hearing it again. Trade became a little bit of a polarizing situation where we started seeing some of

these populist trends and, in a way, I feel like Mexico may be more open to trade than even in the US, or at least domestic politics, anyway. Trade is not this word that can get parties too excited, either way.

So, in terms of China and, and some of the most recent posture by the US, and you mentioned section 301, do you think Mexico can seize an opportunity if the US is sort of turning away from China in a way, right? I mean, China is still our largest trading partner. Mexico is right after, and I think it depends also on what figures imports versus exports, but they're both pretty high up. Does that present an opportunity for Mexico, and what do you think Mexico is or should be doing to seize that opportunity?

Emilio Arteaga: I think it definitely is an opportunity for Mexico to attract more business with China. For instance, what you say, China's the US's major trading partner, and I think China is a major trading partner with every country in the world, including Mexico.

Olga Torres: That's fair.

Emilio Arteaga: Yeah. So, China is also one of Mexico's major trading partners right now. I believe the US is Mexico's top trading partner due to exports and imports, but we have a huge deficit with China and another import.

Olga Torres: Like everybody else, yes.

Emilio Arteaga: Yeah, probably. And another point to consider here is that, unlike the relationship with the United States, where there is a lot of foreign investment from the United States, we have very little foreign investment from China. So this situation has been discussed as an opportunity to have more investment, more manufacturing plants coming from China to Mexico and...

Olga Torres: Okay. Your answer is actually really interesting to me because where I was going with my question, that this is actually quite interesting. My question was asking, how does Mexico position itself so that if we are decoupling from China, Mexico is in a way doing more business with the US? But your answer, and correct me if I'm wrong, your answer is we are seeing that as an opportunity to potentially do more business with China or potentially receive more foreign investment from China rather than per se the US, right?

Emilio Arteaga: Yes. I think that's the answer and it has to do with the regionalization or the nearshoring of business. Now, not all business in China is Chinese. There is foreign investment in China. So maybe European firms,

Japanese firms, Koreans that are in China, see this issue of this trade war, this conflict between the US as an opportunity to change where they have their manufacturing plants or their supply chain. And this is one of the things that has been discussed in international forums about nearshoring, the value chains, or the regionalization of the value chains, which is something that President Biden wants to do as well in certain strategic supply chains. And this is an opportunity, but the question here, Olga, is Mexico taking advantage of this opportunity? It's hard to say right now and because COVID came in during the trade war and it's difficult to say if there has been a substantial amount of investment of China, I don't think Mexico with the foreign investment statistics has been receiving investment or a substantial amount of investment from China.

But I have seen in media about new projects entailing China, or Chinese investment. There has been sometimes some interest of Chinese firms of establishing in Mexico. And this has to do, of course, with the trade measures adopted by the US.

Olga Torres: Yeah, and that is interesting that you say that here in the US, for example, investment from China is highly regulated. Meaning any kind of any foreign investment, any investors of Chinese nationality even if they're in a different country, those are more scrutinized by the US government, to the extent that we've heard officially, for example, where other countries where Chinese investment is very high, let's say Canada, in a way we also review those very carefully because we understand that there could be Chinese money coming in through those routes.

So that would be interesting if Mexico, because I did notice, over the years when we're following this, Chinese investment in Latin America has been very high. I mean, I'm thinking Brazil and Argentina and some of the South American countries. And I wonder why, actually. I wonder why there has been more Chinese investment in that region versus, for example, Mexico. Any ideas there?

Emilio Arteaga: Yes, I think, in great deal, for instance, Brazil is part of BRICS or this group of countries, so that may help politically. But I think Chinese investment has to do in these countries with natural resources...

Olga Torres: Resources.

Emilio Arteaga: We are talking about minerals. We are talking about perhaps, some forestry products. We're talking about maybe even agricultural supplies. Because Brazil supplies some agricultural products to China, so, and

infrastructure, maybe energy. So, these are the reasons why. These are the main sectors that China, I believe, has targeted Latin American countries. Now, Mexico has not been quite friendly with Chinese investment.

Olga Torres: That's what I remembered in the past.

Emilio Arteaga: Yes.

Olga Torres: Just trade with China, generally, it was not trade-friendly.

Emilio Arteaga: Trade but non-investment there was, and Chinese investors are quite careful about the politics and there was a decision in the last administration that canceled immediately a train project without a lot of notice, and there were Chinese investments. And there was another Chinese project that was also canceled, through the Ministry of Environment. So that has also created a wrong, or better said, a perception that Mexico's hostile against Chinese investment. But now the discourse of the government is how open, having investment from Asia. So that has, I think, the rhetoric, the discussion is opening Mexico to China and to Asia and Asian economies.

Olga Torres: Do you think that it could change based on political parties? When does Mexico have elections next? I know here, between parties, we go one way, then we go to the other, opposites. Do you think that would change with a new president for example, or is it not as subject or as, subject to change with different administrations?

Emilio Arteaga: Well, it's a great question. It's a great question, Olga. I really don't...

Olga Torres: And it's okay if you don't know. We can...

Emilio Arteaga: I mean, the government party is a left-wing government. So sometimes there could be a common ground with China because they're socialist or socially minded. But I do think that, in the end, that what may cause issue or conflict is the industrial companies or the companies within the industrial sector. Those are who may trigger whether Chinese investment or may create this conflict with Chinese investment up to this date. There has not been any major criticism against Chinese investment because we barely have Chinese investment.

Olga Torres: Right.

Emilio Arteaga: What will happen in the future? Well, I think first we have to know if we're going to have Chinese investment or not to know if there's going to be any sort of reaction. So, I think that's...

Olga Torres: But it does have an impact. I mean, if the government is actively hurting, going after the investors, right? I mean, versus we're not too interested.

Emilio Arteaga: Well, this is a major issue in our point of view because Mexico has decoupled one of the foreign investment and trade promotion agency that no longer exists. So...

Olga Torres: I heard that, yes, from Mexico.

Emilio Arteaga: So Pro Mexico was this agency that made this, and it no longer exists, and it's the embassies now in charge of the promotion. So, these sorts of actions may have created hurdles for foreign companies, not only in China, in all the world to seek counsel of how the first steps to getting into Mexico and this might have had an effect in the foreign investment policy attraction.

Olga Torres: Interesting. Okay. So, Mexico, what I'm hearing, is wide open for foreign investment, free trade. You mentioned over 50 countries. We look at all the foreign trade agreements that Mexico has. Not as politically polarizing to say we're going to do another free trade agreement as much as it is here, anyway. And when I asked the question, are you seeking investment or how are you positioning the country to lure more Americans? The answer I got was, basically, we're interested in Chinese investment. In a nutshell, that's kind of what I heard, which is really interesting. So where do we go?

USMCA was implemented two years ago, and we have seen in NAFTA 2.0, there were various changes, some of them very technical. A lot of what we have been seeing lately, or the questions that we're getting, or some of the concerns that we're getting, are related to (and this is just in general in the US), USMCA has strong labor provisions. They have the rapid response mechanism. And we will have in our screen, we have the USMCA coordination center. So, you can go visit for very detailed information on USMCA, what changed, and guidance that was issued by the US government. But just higher level, what are the concerns that you're seeing in Mexico, at least from Mexico companies or companies in Mexico that are owned by US companies or Canadian companies, regarding USMCA rapid response mechanism?

Emilio Arteaga: Well, I think, first of all, the issue of the rapid response mechanism has to do with the compliance of the new labor system that was implemented as a result of USMCA. We are seeing now, four rapid response requests of the USA, as of today.

Olga Torres: And two years, right? So, it's not a very high number. I mean, we start seeing some trends in terms of, okay, that they are coming in, but it's not a very high number. I mean, obviously, COVID must have had an impact. But anyway, I interrupted, continue.

Emilio Arteaga: It makes sense, and the rapid response mechanism, we have to remember, Olga, that only applies to certain industries. So, we are talking, I think, we are talking about six or eight, something like that. And we...

Olga Torres: But they were not exclusive. I think they said that these are just examples, and we can include more as needed, right? I mean, but that's what I remember.

Emilio Arteaga: I think it was like that but the point here, in the end, is that it's the manufacturing industry that was greatly pulled into this pool of facilities that could be subject to the rapid response mechanism. All companies have to comply with the labor chapter, but we are talking about exclusively the rapid response mechanism and what we are seeing right now, is that the USTR or the international labor commission that was created of USMCA is, they're focusing or they're receiving complaints of automotive facilities. I think all of the four companies are automotive or part of the supply chain. I believe three are in the north and one is in the Bajío, which is like in the center of the country. But what catches my attention is that they're automotive industry, and we could say that there's been four requests, but really there has been three in which Mexico has agreed to be subject or to review because one of them dealt with matters before USMCA entered into force. So, Mexico did not agree to review because they said, well, this is before.

Olga Torres: That was more like technical.

Emilio Arteaga: Very technical and the company did the...

Olga Torres: And that company was like *sigh*

Emilio Arteaga: The company did engage with the USTR and did, kind of, this is a state-to-state mechanism. It kind of shifted because of this technical issue between the company and the US government and Mexico was not involved.

So, the court was not directly involved. I do think that the automotive industry has to be very careful or those that are in the supply chain of automotive.

Olga Torres: Automotive suppliers.

Emilio Arteaga: Have to be very careful.

Olga Torres: This is very interesting because again, we're trade lawyers and I remember we actually did a lot of webinars back in the day, right before implementation. And a lot of them were focused on this very same mechanism because it was so unique and novel. At the end of the day, we're not labor lawyers, right? And definitely not labor lawyers in Mexico. So, what are some of the high-level recommendations that you are giving companies in terms of looking at their labor laws from a Mexico point of view?

Emilio Arteaga: Be in touch with a labor lawyer for the compliance of the new reality of the collective bargain agreements and unions not interfering in the life of the unions. And then, we have to be very careful, companies have to be very careful of not intervening but also taking maybe measures to safeguard these rights because, for instance, the case of General Motors in Silao. The case arises because the elections, of the, I believe, maybe of the union or of the collective bargaining agreement, were interrupted. There was a conflict between the workers and the union. So, the vote had to be suspended. So technically speaking, it appears that the company did nothing directly, but could the company have done more? Could the company have put security in place to avoid any possible violence that could arise? I think that, because the rapid response mechanism does not entail necessarily the responsibility or direct actions of the company, it could be the government as well.

But if the company does not take into place actions that could safeguard the rights of the workers, if there is a panel within the rapid response mechanism, maybe the panel would say, "Well, the company could have done more." And I think that could be important of not only trying to meet the minimum standard but also taking additional steps. And I think this is something where labor lawyers and maybe trade lawyers could shoot out ideas because we have to think that this is not only labor, but it's labor and trade.

Olga Torres: Yeah, agreed. And in terms of just general enforcement by the Mexican authorities, are you seeing more? I'm thinking verification of origin type cases.

Emilio Arteaga: That's a great question. It is difficult to say today because I have, by the way, Olga, I have requested an information access request to keep me updated about how many origin verifications have been launched by the customs authorities.

Olga Torres: Very interesting.

Emilio Arteaga: I have done that in the past and it's not a huge number, the origin verifications, but what I would like to highlight here is that companies that do not have good lawyers so to speak, or do not comply with the verification, it's very difficult to reverse the decision.

Olga Torres: Right.

Emilio Arteaga: If you do not have a successful origin verification, challenging this is a very complicated and lengthy tasks because now the courts are asking, for instance, if you have to go to court, you have to present an official translation of all your documents that you have supporting, as evidence. So, right. It's a lot of money because maybe you're even presenting accounting records, invoices, which shouldn't be translated.

Olga Torres: The whole trial. So, I remember in the past when we were doing some, I want to say it was NAFTA verifications, and I remember Mexican customs had, at that time they were sending, basically the letters and they would send them in Spanish.

I don't remember seeing a translation and they would send them sometimes to American companies and sometimes they would get lost. It would go to the wrong department; these are really large companies and they had really strict deadlines. I want to say 30 days to respond, and people are receiving this document in Spanish and they're like, "Ah, I don't know what this is," right? And eventually somebody would see it and translate it and they would have two days to reply to Mexican customs. Are you seeing some of that? I know that you said, based on the response that you got, there's not a ton of enforcement. I also want to say same here and I think part of it is also probably COVID. But are you seeing some of those cases where Mexican customs is contacting the US companies directly in the US?

Emilio Arteaga: Yes, we are. Well, this thing of the courts, that's because we have been involved in several. One that we have just filed, like a constitutional remedy, but right now at least they send the translation. So, there is, how would you say, a courtesy translation for the company.

Olga Torres: That's very good.

Emilio Arteaga: COVID for instance, in a CPTPP verification did create some problems because the company did not have personnel

Olga Torres: Like receiving mail.

Emilio Arteaga: And there's short deadlines, as well, so that was a problem.

Olga Torres: Actually, let me ask you. This was Mexican customs working from home? Because here in the US, so many government agencies, and even today, I think slowly but surely they're going back, but there were so many different types of submissions that we would send in and for a while we wondered, "Did they get it?"

Emilio Arteaga: Well, there was a decree in Mexico regarding this COVID. And tax matters were considered as a national security or an essential activity. I don't think that customs officials were working at home. Maybe some of them did that; there were shifts, so to speak, but officially, legally, customs was an essential activity and maybe they couldn't go to their homes.

So, that's one aspect. I have not yet been involved in an origin verification under USMCA, but maybe there's not a ton of origin verification. And I'm convinced that customs knows where to ask. They have intelligence, so they know where sometimes companies may not meet because of the supplies in the region or because sometimes there's industries that go with customs agents and say, "This is happening." We don't think it could be possible. And this is why it's very selective because it's complex and customs, Mexican customs, is very intrusive.

Olga Torres: Yeah. I think all of the authorities in every country, I would think, are very intrusive. One time I heard and, correct me if I'm wrong, at some point I heard that Mexico had the largest audit team in terms of FTA verifications in the world. Have you ever heard that?

Emilio Arteaga: I'm not aware; I was not aware about that.

Olga Torres: I think it was by headcount. I don't remember where I got that information from, but that stuck with me for years. So, I wanted to verify with you...

Emilio Arteaga: There has been, by the way, recent change in customs in Mexico. So now we have a new customs agency and it's called the "National

Agency,” Customs Agency of Mexico (in case you were doubting what “national” means).

Olga Torres: In case you were wondering what country, that's...

Emilio Arteaga: So now we have another customs authority who is in charge of the customs stations and overseeing customs compliance and some other custom decisions, perhaps tariff classification and something like that. And we still have the tax authority, which is the famous SAT or “sat” and SAT has this department of audit, which is the audit of international trade. And it's AGACE, that's the small name or the acronym of this authority. This authority still exists in Mexico. I don't know, maybe we are no longer the biggest audit team because Mexico has adopted some austerity measures, whatever that means, and this could have an impact on the personnel of the authorities. And there have been changes in salaries because of the new government. So, this could have had an impact on the number of personnel.

Olga Torres: Mm, interesting. And I got our flag of “You have five minutes.” Really quickly, I just to close it out in terms of conducting business in Mexico. I know you mentioned right now, Mexico has a government that is more leaning towards the left.

Emilio Arteaga: In theory.

Olga Torres: Yes, for people that are not following Mexican politics very closely, when is the next election cycle? And I know you're not, I mean, we understand that you're a trade lawyer, but do you have any idea who's running and where things could go and whether that would have an impact on trade and specifically the relationship that Mexico has with the US? And I mentioned very specifically, and I don't want to get too political, but I did notice last week, AMLO (Andrés Manuel López Obrador), the Mexican president, did decline the invitation to participate in the Summit of the Americas and that made some noise. And what that means and where could Mexico go after a new election because the next election is what, two years from now?

Emilio Arteaga: Yes, it would be in June 2024. So, who are the dolphins, as we would say in Mexico? It's really right now too early to tell, but there are several individuals from the party that's in power, of AMLO. We have the foreign affair minister, we have the governor of Mexico City and other people, but I think those two are the strongest, perhaps. And from the other side, from the other political parties, it's difficult to tell who it could be.

Olga Torres: Yeah, it's too early. If you ask me here, I have no clue what's going to happen in two years.

Emilio Arteaga: There were some state elections in six states and four were won by the party Morena of AMLO, and the other two were retained by these political forces that joined forces.

So it really seems that this Morena left wing party, in theory left because they adopt any type of policies, may win again the election

Olga Torres: Really?

Emilio Arteaga: But maybe this is too early to tell, maybe, the economic...

Olga Torres: And we're disclaiming, we're just trade lawyers, but we're trying to make, what are people saying and hearing, and how can that impact trade.

Emilio Arteaga: And I don't think it would be wise for Mexico, economically, to have a hostile approach on trade against any country and especially with the US. As I said, US is Mexico's major trading partner right now. And Mexico has the US as top FDI foreign indirect investment inflow, so it would be shooting ourselves in our own foot if we want to have some conflict with the US. But we are having some conflicts, Olga. So, for instance, I mentioned that Mexico is open to foreign investment but perhaps not on energy. These sorts of matters can bring a wave of consequences against the Mexican and the US policy, and we are seeing it. Not only in the regional context because this is the Summit of the Americas, but we are going to maybe see it in the near future in a bilateral context because this energy issue is a serious issue taken by the USTR.

Olga Torres: Right. Mm-hmm and we're following it as well. And that may be a good podcast, actually, if we want to get into details.

Well, thank you so much Emilio for joining today. Thank you to our listeners for tuning in. We'll bring you more of Torres Talks Trade in the next episode. Thank you.