

## Podcast Episode 6- Forced Labor

**Olga Torres:** Thank you for joining us today. My name is Olga Torres and I'm the Founder and Managing Member of Torres Trade Law, a national security and international trade law firm. Today we're joined by Ana Hinojosa and Kelli Thompson, two women who specialize in all things customs and global trade. Ana Hinojosa served in many leadership positions in Customs for over 30 years. Most recently, she was responsible for directing CBP's Trade Threat Assessment Units, Special Investigations, and Enforcement programs focused on detecting and disrupting illicit trade with a special emphasis on forced labor. She also served as an elected official at the World Customs Organization, where she led the Directorate responsible for assisting more than 183 members in implementing effective and efficient controls, ensuring fair and accurate revenue collection and protecting society by intercepting illicit and criminal activity. She's now the President at a ABH Global Trade Consulting. Kelli Thompson spent eight years with CBP as a Supervisory Import Specialist and is currently the CEO of Integrity International Trade Consulting, where she advises clients on imports, Customs regulations, including training, valuation, country of origin, trade compliance audits, to name a few. Welcome ladies. Thank you for being here. We're very excited to have you to discuss a very timely topic, the topic of forced labor and supply chains.

**Ana Hinojosa:** Thanks for inviting us, Olga.

**Kelli Thompson:** Thanks.

**Olga Torres:** Very nice. And we're very excited because this is a preview to a panel that three of us are going to be participating in. For those of you who may need more in the weeds type instruction on supply chain auditing and things like that, that's also something that we can provide information upon request, if you email us. Throughout the discussion, we'll be mentioning acronyms, maybe we're going to be mentioning laws. This is a podcast, we're not webinar-based, so what we do typically is we introduce some of these concepts. If we don't define them ourselves, if you're watching some of our videos, we will have resources, whether throughout the discussion or just at the end. So, just be patient, watch the videos as well, or just feel free to contact either one of us, and we can give you more information.

Just to provide context to people that may not be as familiar with forced labor and customs, in recent years, the U.S. government has taken numerous actions to target forced labor and human rights. We saw significant increase in activity

in 2020, early 2021 and this includes not just imports, but we're also seeing some developments on the export side, especially with respect to human rights, for example. We've seen differences in, or new implementation of, new regulations on the economic sanctions front. We're seeing civil monetary penalties and we're seeing certain regions around the world are obviously more the subject of these types of reviews by the government of the U.S. So companies should be very careful reviewing their supply chains, talking to management and obtaining the adequate resources that are needed to be able to tackle some of these issues.

Now, today, specifically, this is a very broad topic, we're going to be discussing forced labor in supply chains, and trade generally, but that's our main focus. Now in the U.S., we've had laws against forced labor since the Tariff Act of 1930, which was passed in 1930. But there was a loophole in the law and it basically, in a nutshell, if there was not enough product to meet U.S. consumers' demand, then you could import products that were produced with forced labor. That loophole was closed in 2015 with the passing of the Trade Facilitation and Trade Enforcement Act. So, we cannot do that anymore. And more recently, some of you may be hearing about the latest act, the Uyghur Forced Labor Prevention Act, which was implemented just last week, June 21<sup>st</sup>, very recently. And it's something that companies doing business in China and the Xinjiang Region should be obviously closely monitoring. But not only those companies doing business in that region, I think it's going to be interesting to see how the government is going to potentially expanded it to other regions.

And it is very important to pay attention because with this particular Act, the burden is on the importer to show that your products were not the product of forced labor. It's almost like you're guilty until you prove yourself innocent, which is not something that we are typically used to seeing. And so, the presumption is if you're importing products from that region, it is using forced labor and you have to meet a very high legal standard, clear and convincing evidence, to be able to show that your product is not subject to forced labor. So that's a little bit of the high-level background.

So for now, I would like to start with Ana and Kelli. If you can just give our audience an idea of your background? The work that you did throughout the years, you have very impressive backgrounds, and then we can start from there.

**Kelli Thompson:** Go ahead, Ana, you go first.

**Ana Hinojosa:** Thanks, Kelli. Well, I think like you mentioned that I spent over 30 years with the U.S. government. I worked the vast majority of my career. I'm

a native of South Texas and so most of my career I've worked along the U.S.-Mexico border, but I have had the opportunity as I progressed through the ranks in what was first U.S Customs and now Customs and Border Protection, moved to other areas, I've lived in Texas, California. I've lived in Washington, DC area. And, and then as an elected official, I lived in Brussels, Belgium for four years, which was an incredible opportunity to work with a lot of countries. A lot of my work, half of my career, I've spent a little over 34 years with the government, half of my career was in the Senior Executive Service, which means that I was in a leadership position. And so, 26 of those years were in a very operational role. So really looking at how the Customs operations work in the field, like where the goods and people are coming in. And the other part of my work was really working in policy and international affairs. I served as the Deputy Assistant Commissioner for International Affairs. And then in this role, my last role, which was as the Executive Director for Trade Remedy Law Enforcement, where I was responsible for all of the things that you mentioned. Obviously, the most prominent in the news these days is the work with regards to forced labor. So, I'm really excited to be on this podcast with you.

It's the beginning of what I know will be a number of podcasts and I'm excited to be reaching your audience.

**Olga Torres:** Ana, we're very excited to have you. And I really like that you have the experience, not only now that you're doing more of the private industry consulting, but that you have the background with the government, but also helping other governments. That's some of the work that you did at the WCO, where you're actually helping not just our government, but governments around the world to deal with some of these pressing issues. So, Kelli, you're next.

**Kelli Thompson:** Thank you all once again for having me. This is definitely a pleasure working with you two and I'm super excited about not just this platform, but all the others that are going to come about. So, like you said early on that I am Kelli Thompson and I used to work with CBP for about eight years and I was a Supervisory Import Specialist. My area of expertise is textiles and apparel. I'm all about the apparel. I started off in Jersey and then we went to Miami and then from Miami, I ended up becoming the Supervisory Course Development Instructor at the Federal Law Enforcement Training Center. What was so interesting and fun about that is that I was the instructor for all the newly hired Import Specialists, all of the appraisers and classifiers of merchandise that enters into the U.S. And so during this. . .

**Olga Torres:** You got in the weeds of classification.

**Kelli Thompson:** Oh, I'm full, I am the weed person. I am all in the weeds, I'm technical. I like to get into looking at the documentation, looking at the meticulous details, doing the supply chain tracing, looking at value and see if there's assists, and see if there's any royalty. So yes, I'm very much into the technical component of trade that I love so much. However, I do also do a lot of training. We did, specifically, a lot of training in rules of origin, components, component parts. What does that even look like? Once I finished, I loved my career with CBP, loved it, but I wanted to see what private industry was like. So I resigned and I started Integrity International Trade Consulting and I got my Customs Brokers License. And from there it's just been amazing. It's just been an amazing ride working with small startup companies to Fortune 500 companies. It's just been really good. I'm excited.

**Olga Torres:** That's great. I like that I have both perspectives: in the weeds and also higher policy level executive position. What are you hearing in terms of the concerns that industry may have with a lot of the new changes, especially with forced labor? We mentioned the Uyghur Act becoming effective last week. What are the challenges that you think industry is going to have to face and how do they overcome those challenges? And just generally, it doesn't have to be just the Act. As I mentioned before, we had previous laws that prohibited import of products into the U.S., the product of forced labor. So just generally, what are the challenges that you're seeing for industry?

**Ana Hinojosa:** Should I jump in? Are you okay with me jumping in?

**Olga Torres:** Yeah, go ahead.

**Ana Hinojosa:** Okay. So, I mean, I've been hearing from a number of private-sector representatives that to some extent, "Oh my God, this is such a huge burden, we're not ready." And it's true. A lot of people in the private sector are not ready, even though this is not a surprise. As you mentioned, Olga, the Trade Facilitation and Trade Enforcement Act, which amended the initial forced labor provision under Section 307 of the Tariff Act of 1930, that was passed in February of 2016, as part of TFTEA of 2015.

It's very confusing the way the title of the Act is versus when it passed. But when that was struck, obviously a lot of people had been used to, even though there was a forced labor provision, that the government wasn't doing a lot of enforcement. But with the elimination of the loophole of the consumptive demand, the government had to, was obligated to, start taking enforcement action. And that building process was a little slow those first few years after that clause was eliminated. The government was just building the resources

necessary, building the infrastructure to start taking on an enforcement that it hadn't done in many years because of that clause. Moving forward, the government started taking action by issuing Withhold Release Orders ["WROs"] and a few Findings. And so, the private sector was just starting to get its head around the impact of detentions, with regards to Withhold Release Orders and potentially Findings. And then this, this Uyghur Forced Labor Prevention Act came around, which is a totally different situation. The rebuttable presumption clause or the rebuttable presumption concept that is incorporated into the Uyghur Forced Labor Prevention Act is very similar to the what enforcement actions the U.S. government takes with regards to goods produced by North Koreans. So that was kind of the experience.

There was a rebuttable presumption that if goods were produced by North Koreans, they were necessarily coerced because North Koreans were not free to choose what they could work on and what they could do. And so there was that experience of enforcement. Congress opted to take that level of scrutiny to goods out of the Xinjiang Region because of what's happening in China in that region because of the coercive nature of the government structure in that particular region of China, and the level of government surveillance and all of the evidence that was coming out of the Region. There was a determination that if it was connected to the Xinjiang Region, then it had to be presumed to be produced with forced labor or through coercion. And so, it would be up to the Importer of Record to then provide that clear and convincing evidence that it was not. And I'll throw in one more last thing and then I'll hand it over because I don't want to hog the conversation. It's important to note that these are new laws and new nuances, but the regulatory infrastructure has been in place for a long time for how Customs can enforce the release of goods coming into the U.S. And a very important kind of milestone was 1993 when, along with NAFTA, Congress passed the Customs Modernization Act ["Mod Act"]. And so, with the passage of the Customs Modernization Act, there was a shifting of the responsibility to the Importer of Record. And so the Mod Act required importers now to exercise reasonable care, to ensure that any foreign goods that they brought to the United States were in compliance with all laws, rules, and regulations. One of those laws, rules, and regulations is the Uyghur Forced Labor Prevention Act, as well as Section 307 of the Tariff Act, which covers regular forced labor enforcement.

**Olga Torres:** And that was very helpful. You mentioned a lot of concepts and, depending on our audience, and sometimes we have exporters more so than importers and sometimes just higher executive level. You mentioned WROs; you mentioned Findings. If you're not familiar with these concepts, typically, what we're going to do is, if you're watching our video, we are going to have definitions spelled out for you, so don't despair. And we also have, throughout

the presentation, like I mentioned, or the discussion, you can go to our websites where we have more resources. Because we realize we have limited time, but also, in our area, our discussion is very technical. So sometimes it's kind of difficult to stay away from the WRO.

Kelli, so, with that background, how do companies go about doing an audit, for example? Are you currently assisting companies with those kinds of issues? What are your recommendations, your best practices, if you will? If it's a, let's say, a startup company, maybe a new importer versus a larger company. Do you have different suggestions? Just generally speaking.

**Kelli Thompson:** When it comes to new importers, it's good because it's proactive versus reactive.

**Olga Torres:** Right.

**Kelli Thompson:** They have the opportunity to actually do some sourcing. They are able to vet out their suppliers, their manufacturer. And identify, to ensure early on, before the contract is even signed, that there's no forced labor. So they do their due diligence ahead of time before actually developing relationships and contracts and getting products actually produced. That's the good part about the beginning of a startup company, because they can be very proactive early on and ensure that there's no forced labor. In that particular supplier, or if they have a buying commission or a selling commission, there's a selling agent that's involved. Who are they working with? So, they're able to look at their supply chain early on, prior to contracting.

**Olga Torres:** That's really interesting. I wonder if there's going to be any kind of, we're the largest economy, I suspect we won't, but I want to ask the question anyway. I wonder in certain countries, especially for reviewing the whole supply chain, whether we could face barriers from our own suppliers? Not necessarily having the resources or understanding why all of a sudden we're asking all these questions.

**Kelli Thompson:** Yeah and it matters just like when we talk about, for example, even U.S. companies, they may not be actual importers, but they may be producers of a particular item, but they have a supplier that imports. And that's an input into their particular product that they're making. And again, that also is involved with forced labor. So therefore, that supplier can still affect a company that's here in the U.S. because they may not be importing themselves, but....

**Olga Torres:** They are bringing it in...

**Kelli Thompson:** And so, those are things that we need to look at as well.

**Olga Torres:** And it kind of mixes also with the reputational damage.

**Kelli Thompson:** Absolutely.

**Olga Torres:** Because sure, you may not be directly importing, but ultimately if it is your name selling the product, distributing the product, somehow being involved in, part of the chain, but not directly importing the product and it's going to be so important because no one wants to say "we were involved in forced labor."

**Kelli Thompson:** Yeah, no one wants to say that.

**Olga Torres:** Especially now with ESG.

**Kelli Thompson:** Exactly, no one wants to know that an input was made with child labor for my product. That's traumatizing. So that's why it's so important for us to have this conversation.

**Ana Hinojosa:** I was just recently at a conference, and one of the interesting things that came up is over the years, many large companies have looked to shield themselves from any customs penalties. So, what they've done is they've bought their products landed in the U.S., so that somebody else takes on the liability of complying with the laws, rules, and regulations. Well, now these large companies are finding themselves at a bit of a disadvantage in being able to trace their supply chain because they're not the Importer of Record. And so they're not having to go to the Importer of Record who's saying, "Why am I going to have to tell you where I'm sourcing my things, my raw materials from, or my products from?" But the reality is that large client for that importer is very important for that supplier. And not having the information to be able to clear the goods if they get detained will actually substantially impact their further manufacturing in the United States. So, imagine that you're a car manufacturer and where you're buying certain parts are at risk of being detained because they come out of China or they may have some inputs from Xinjiang. Your assembly plant is on hold because this product isn't coming in and you don't have enough information to be able to clear those goods coming across.

**Kelli Thompson:** And that's going to be another target market. That's going to be another, outside of just importers, there's going to be those companies that

are going to need some assistance and need some help to identify: doing some mapping, doing some supply chain tracing, and then even assisting the importers as well as those companies with how do we find clear and convincing evidence.

**Olga Torres:** Right.

**Kelli Thompson:** Okay, so you've identified that you possibly may need to make an exception. You need to be able to ask, "Okay, I think that we're good." But you have all these listings of documents that are saying, "Hey, these are what's clear and convincing," but it's just a story.

**Olga Torres:** That reminds me. I think at some point somebody had mentioned for example, in certain regions (and I don't want to label countries), but it may be more difficult to get auditors in certain regions of the world. Or the auditors may not get the information they need to be receiving from those companies and factories. So it's also going to be interesting to see when you have auditors on the ground and how do they ensure themselves that they're receiving the correct information that is not false or misleading in any way? So that's really interesting as well.

**Kelli Thompson:** And even having the access. One of the things, when I was with Customs and Border Protection, we had the Textile Verification Teams and some of the same details that they have in the Strategy that speaks of an audit, a credible audit, what that looked like, coming unannounced. Being able to tour the factory freely, speak to different individual workers, go to the cafeteria and sit down and talk with them. We did this during our verifications and so it's going to be interesting to see if any auditors going to have that ability to go into that region.

**Olga Torres:** I know what.

**Kelli Thompson:** Yeah, that's, that's just really hard to see.

**Ana Hinojosa:** Right now, it's not possible. And the other thing is as you probably are aware, China has passed a foreign sanctions law, which means that any companies in China are subject to potential penalties, or some sort of sanctions in China for helping, providing evidence that would then bring about foreign sanctions. And so, it's really hard for companies who even if they have all of the information, it's very hard for them to provide it without risking being sanctioned by the Chinese government. It really is important that when normal business documents are being collected, they should be collected as early in the

process as possible. So that it's not reactive, as Kelli was talking about, a reactive, "Okay, now I have a shipment detained. Now I need it fast." That's going to bring about some further hurdles for companies to be able to actually get the documents that they need to be able to support whether the goods are produced with forced labor or not.

**Kelli Thompson:** And one of the things. . .China, they've always been a country where, when we would look at some of the different documents and verifications, like for example, for transshipment. It was more so for free trade agreement compliance. They would basically send it to Guatemala, and then after that, change the sewing, the label, and then import it into the U.S. as from Guatemala. So they can get it in under the DR CAFTA, even though the product very much was from China.

**Olga Torres:** I've been hearing a lot about, potentially, and this has happened in the past, but more so now than ever, Mexico, for example, getting product from China, tweaking it a little bit and then. . .

**Kelli Thompson:** Yeah, and so that's why it's important that people understand the rules of origin. You need to understand, was there substantial change? So not just knowing where did all the inputs come from? Where was it? Did it go through a tariff shift? So all of trade comes together. If you have any type of cotton input or if you have a little slight tomato paste, you need to understand all of those different components because, you may have some paprika, and not realizing that paprika has tomato contents in it. So there's really a lot of education, there's a really lot of supply chain tracing and mapping.

**Olga Torres:** And that is going to be, and it always is, very difficult. Especially for, like we mentioned, high profile companies that are not necessarily importers. They've had contracts trying to avoid being importers because they don't want that liability. And now they have to deal with, well, there's still reputational damage. Maybe I don't get my product on time and whether companies are going to have the leverage, some of them will, but some of them won't, to have the leverage to say, "We have a contract for the next five years, are you going to let me audit your supply chain? You're telling me that your product is not subject to forced labor, but I want to audit. I want the right to review your findings, if you do internal audits," things like that. So, that's going to be interesting as we're kind of engaging in more enforcement and just to kind of monitor that.

So we talked about reputational damage. I mentioned really quickly ESG. We are hearing a lot of the buzz term ESG. And then typically when I read about it

and when we work on it, obviously we have the trade component and that's kind of what we're focusing on. But everything I read in major newspapers and just the media in general, they never really quite focus on ESG as trade, as forced labor. I see less of that. We're obviously trying to change that and educating and training. Do you have anything to comment on ESG and forced labor and just what you think people should be doing there? If you're a director at a public company and you're hearing about ESG, should you be asking also about forced labor, for example?

**Ana Hinojosa:** Well, absolutely. I mean, I think one of the things that I have found, in my short tenure in doing consulting work is that in some cases the large companies have separate departments, that some departments are working on what their definition of ESG is, and then another department is working on compliance. So they're working on, "How do you comply with the government?" But they don't necessarily speak to each other. One of them is looking at how we're going to improve lowering our carbon emissions, how we're recycling, how we're built, planting more trees, maybe more philanthropic donations, building schools, et cetera, cleaning water. But human rights and forced labor very much falls within the environmental, social, governance programs. And so, I've seen a number of suppliers who have forced labor clauses, in their contracts. But it's written in such small little print in the back of a purchase order and then it never comes up. Like it's only printed in the back. How many of you, of us read those?

**Olga Torres:** That's true.

**Ana Hinojosa:** That's super tiny print on every terms of agreement you've signed because you just want to move forward. That doesn't really hold a lot of water when you're going to move forward to try to justify your efforts towards due diligence and your efforts towards exercising reasonable care. It's not good enough for you to have a binder full of policies that say how you're preventing forced labor from going into your supply chain. You have to do more than that.

**Kelli Thompson:** Yes.

**Ana Hinojosa:** You have to monitor whether or not there's compliance with those standards and policies that you put in place, both from your own employees, as well as from your suppliers. And so it needs to be a much deeper investment into making sure that there isn't forced labor in your supply chain.

**Kelli Thompson:** Yeah. I, think that this Act is a game changer for trade. It's going to be, just as much as the world changed with COVID, I think that the Act

is going to change the way the trade moves in terms of the Sourcing Departments, talking to the Customs Department, the C-Suites actually are involved now with what's happening. Because there's been a long time, there are many large companies and high-level companies that I've done audits with where the C-suiters had no idea of Customs at all. And the effect of what Customs can do to the business until, it's reactive. They get a notice and now, all of a sudden, you've got 25-30 shipments that are on the way, but it can't enter. So now...

**Olga Torres:** And it's forced labor will be an enforcement priority. We know that.

**Kelli Thompson:** Absolutely.

**Ana Hinojosa:** Yeah. Also, you look at requirements, the, that the Securities and Exchange Commission puts in place with regards to forced labor. I think that publicly traded companies definitely need to step up their game with regards to really doing more proactive due diligence in policing their supply chains. But even companies that are not publicly listed but are reliant on investors for doing business. Many investment companies want to do risk management with regards to forced labor on the industries and on the companies that they're looking to invest money in. I can tell you that I've had a number of conversations with potential investors who want to know, what's the risk in the industry? What are the chances that these goods are going to be detained? What are the chances that there will be enforcement in these particular areas? And I mean, it's not just something that importers need to be concerned with.

**Olga Torres:** That's so right. It goes back to ESG and beyond investors. Really also we're in the era of social media and we have very active consumers as well.

**Ana Hinojosa:** Right.

**Olga Torres:** So I can definitely see consumers taking a strong position. If all of a sudden, your tennis shoes come from forced labor environment.

**Kelli Thompson:** It's interesting. I have a several friends that own beauty salons and of course we know that...

**Olga Torres:** That's very useful!

**Kelli Thompson:** Yes, it's very useful. We know, extensions are big. So, there's a lot of human hair that's coming in. There's a lot of hair factories that're on the list and that people are not realizing that this involves so many different commodities that we need to pay attention to. And even if it's even for personal shipments, this is not just commercial shipments? We're not just looking at big businesses, but if you go and buy something online and it possibly can be in that area. Guess what? If there's forced labor, then guess what, detention still can happen, even if it's a personal shipment. So, it's not just for big business. We need to make sure that even these little, small companies or people that are selling on these little, small online platforms that they understand that this affects you, too.

**Olga Torres:** Right. Now pitfalls to avoid. If you are a C-level executive, I would think don't wait too long. Don't be reactive, but what do we add to that?

**Ana Hinojosa:** Well, I definitely think that having your compliance team and your ESG team, if they are working together, great. Having a very high-level presentation on what your risk and exposure is on your supply chain. Because it could be even, "How well did we look at potential transshipments?" I've seen where a lot of chemicals and a lot of precursor type materials that go into the pharmaceutical industry are at risk. And the pharmaceutical industry says "We're not manufacturing anything in Xinjiang, so we're not at risk." There's a lot of products that have either been transshipped through another country or you're getting some products that were processed in Xinjiang, are now somewhere in mainland China. And when they come into the manufacturing process may appear to be from a different area. But the connections to Xinjiang are definitely there, and that could be a big risk for companies.

**Olga Torres:** Yeah, sounds to me like reviewing country of origin and your supply chain, but also determining within the supply chain whether the products that I'm buying are from the country I think they're from.

**Kelli Thompson:** Right. And then look at the subsidiaries, you have to look at the subsidiaries. Looking at the business relationships; there may be sister companies that may actually be sending, it may come from this area, but they're all of a sudden shipping this, which is why it's important to look at the inputs and the outputs of what's happening. Does the factory even have the capacity to make what they're making? Right? How are they getting all this additional cotton or whatever it may be. So, you also have to look at the business relationships of these different companies, and that can also show that there might just be some transferring of product.

**Olga Torres:** And just going back again. I know we mentioned this but looking at the countries. I know the U.S. . .and we have a podcast coming up on this, and some of these concepts may be controversial or not. . . But from a policy standpoint, we look to be moving towards free trade, more towards trading with our friends and with countries that we perceive as having similar values as ours. So, if you are trading in certain countries or buying your product from certain countries, some countries will merit more attention than others. So that's also something important to keep in mind.

**Ana Hinojosa:** Yeah, there's a lot of information out there. I mean, there's a lot of information that's published by the State Department, by the Department of Labor, where they clearly outline where the risks for forced labor are around the world. And so, a little bit of effort goes a long way.

**Olga Torres:** Yeah. We will have those materials throughout our podcast; we'll send them to CBP's recently issued guidance. Our own law firm has published several articles on it, just digesting some of these things. We'll make sure that, if you're not watching the videos, feel free to email us and we can send you some of these links, but if you are watching us, you'll see those coming up on your screen. Along with your companies as well, your websites; I'm sure you have good resources as well.

Well, thank you so much, ladies. This was very informative and thank you so much for participating today. Thanks to our listeners for tuning in to discuss trade topics and just improving supply chains and due diligence overall.

**Ana Hinojosa:** Thank you.

**Kelli Thompson:** Thank you.