

Podcast Episode 8

Olga Torres: 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 have Steve Charnovitz a professor at the George Washington University School of Law and he's an expert on U.S. international trade law, foreign relations law, as well as the intersection of trade, labor, and the environment. He's also a member of both the Council and Foreign Relations and the American Law Institute. Welcome, Steve, we're delighted to have you with us today.

Steve Charnovitz: Thanks for inviting me to your podcast series and for your leadership in the U.S. trade law community.

Olga Torres: I'm going to be honest, this is one of my favorite topics that I've covered so far, and it's going to be on "What is a Worker-Centered Trade Policy?" And we're seeing this coming out of the Biden Administration. Specifically, we saw the term mentioned in their Trade Policy Agenda in 2022.

So, what is it? And what do we need to be seeing coming out from the administration? We're going to be dissecting it in terms of Steve's experience and some of his suggestions. But before we get started, I think it would be a great idea if you can tell our audience more about your background, your career, and how do you end up focusing on international trade, but specifically the intersection of international trade and labor.

Steve Charnovitz: Well, international trade has been a common thread throughout my whole career in Washington. In the first two decades, I served in the U.S. government at the U.S. Department of Labor first, and that's how I got involved in worker trade issues. And then as a Leadership Staffer in the U.S. House of Representatives and then as Policy Director for new U.S. Competitiveness Policy Council that made recommendations to the President and the Congress. And after that, I helped to start and direct a research project called the Global Environment and Trade Study, which was centered at Yale University. And this was with when the early years of the international debate on trade and the environment. And then after a stint in private trade practice I joined the law faculty of George Washington University, where I've been for the last 18 years. So, my interest on trade and labor originated at the Labor Department in the mid-seventies, shortly after the Trade Act of 1974 went into effect and I was a junior member of several task forces seeking to implement the new Trade Act provisions relating to labor.

Olga Torres: Very interesting. Do you think it's a good idea to have a worker-centered trade policy? And if so, what? Why?

Steve Charnovitz: Yes, there should certainly be more attention to workers, But, overall context is important. In my view achieving good trade policy for the United States or any country entails a balance of three interests: producers, consumers, and workers. All three of those interests are important. None of them is more virtuous than the other. And importantly, failing to achieve one doesn't mean the others will be better achieved. A poorly conceived trade policy can lead to bad outcomes for workers, producers, and consumers.

While I endorse what the Biden Administration has done or said it wants to do in terms of a worker-centered U.S. trade policy, that should not be used as an excuse for more U.S. protectionism. Rather, the United States should seek to be a much better leader in achieving a more secure, prosperous, and environmentally sound global public order in which international trade can play its key role in improving the welfare of all countries that participate in the international economy.

Olga Torres: And you mentioned specifically, and we'll go into more detail in some of those key elements that you briefly mentioned, but that is so important because, for our listeners that may not be as familiar, when we think of free trade, I think more so now than ever, free trade always has a negative connotation or oftentimes has a negative connotation to workers' rights. And, and so it's a really good initiative to start thinking about these issues and what can we do as free traders to make sure that we don't do that inadvertently or by failure to implement good policies that, not only improve our workers' rights here in the U.S., but also abroad. And we are seeing it, as a regulatory compliance law firm we're seeing a lot of improvements in certain areas. We're thinking just at the top of mind, USMCA Fast Response Mechanism. Forced labor, for example, it's a big concern right now for importers. We're seeing the U.S. and all the executive agencies that are in charge of regulating trade at the enforcement, at the border level, are really targeting enforcement and letting companies know we care about these issues and there will be consequences. But from a policy perspective, you mentioned key elements. Can you talk about the first element in terms of how does the U.S. improve or how does U.S. trade policy, how can they improve domestic employment opportunities? Again, with the background I just gave that we always think trade will just ship jobs away.

Steve Charnovitz: Well, I'm a proud free trader, I've always been that. I don't think it's at all inconsistent with the welfare of American workers. In fact, promoting free trade will be beneficial to American workers and refusing to

promote trade will undermine the position of American workers. But, a worker-centered trade policy, I think, has three elements to it, a good worker-centered trade policy. First, U.S. trade policy should be improving jobs for U.S. workers in the domestic economy. Second, we should be seeking to raise labor standards in America's trading partners. And we should do that for economic reasons and human rights reasons. And third, the processes of trade policy at both the United States level and the international level should provide more space for worker interest to participate. I'm all for all three of those things. In my view, a worker-centered trade policy means all three of those elements. And I think U.S. trade policy is attentive to all three elements. We do better than many other countries do. But there are important improvements that can and should be made in U.S. trade policy.

You asked about how, “what can U.S. trade policy do better to improve U.S. domestic employment opportunities?” Back in 1986, which is a long time ago, I wrote an article for the California Management Review at Berkeley titled “Worker Adjustment: the Missing Ingredient in Trade Policy.” And the theme of that article was that United States needed to do a much better job of helping U.S. workers who lose their employment as a result of import. And I wrote that article in 1986. I assumed that the missing ingredient in trade policy would be remedied and that the serious deficiency in U.S. trade and employment policy would be fixed. But frankly, over the next 36 years, despite the progressive intentions of the U.S. Congress, the U.S. government has never established worker adjustment and retraining programs that are sufficiently effective so as to remove the fear of labor unions, that imports can cause devastating permanent losses for factory workers. So, it's something that we've really never fixed. Still the missing ingredient in U.S. trade policy.

Olga Torres: And just to go into it in more detail, are we talking about, for example, retraining people that may have lost their jobs, retraining them in certain areas so that they can, “Okay, you lose your job manufacturing a widget, but now we're going to train you to be able to manufacture something else, perhaps more sophisticated in nature.” So, what we're talking about is we may not have been as successful doing those kinds of or affecting those kinds of efforts, right?

Steve Charnovitz: That's right, absolutely. The U.S. government has not been successful. You can go back 30-40 years and read newspaper articles that discover the fact that all these programs are carried out ineffectively by the U.S. government and we've just done a very poor job of them. Improving the federal programs for workers, companies, and communities are not really trade policy per se, but are matters of U.S. domestic and labor and business policy. And the

impetus and energy for reform has to come from the U.S. Department of Labor, the Department of Commerce, and other agencies that can help on that. Office of the U.S. Trade Representative, USTR, is not the primary agency of responsibility for worker adjustment.

Olga Torres: Right.

Steve Charnovitz: But there are lots of programmatic activities that USTR could and should be doing. I'll give you some examples. The 1974 Trade Act envisioned a role for USTR in chairing an Adjustment Assistance Coordinating Committee under section 281 of that law. The 1974 law sought to improve worker, firm, and community adjustment assistance, it was part of the approach of the 1974 Trade Act. USTR was supposed to be chairing a committee of coordination, they never did it. And so that is a role of USTR, to provide leadership and coordination and to make sure that the domestic responsible agencies are doing their job effectively. But USTR has been AWOL on that. As far as I can tell the Biden administration has not done anything in the Adjustment Assistance Coordinating Committee.

Second, while the United States needs better programs for worker adjustment, other countries do too in the multilateral trading system. It's not just a U.S. deficiency, many countries have this deficiency. And so, decades ago I recommended that the World Trade Organization, the WTO establish a committee on trade and employment to improve the mutuality of trade and employment policies. And just as we've seen over decades that the WTO benefits from its Committee on Trade and Environment, I think there'd be many potential benefits of a WTO committee on trade and employment. And I would urge USTR to pursue this idea in ongoing WTO reform efforts.

One other area I'll mention is that the 1988 Trade Act, directed the President to negotiate a provision in the General Agreement on Tariffs and Trade, the GATT, to permit countries to levy a very small uniform fee on imports that could be used to fund programs that directly assist adjustment import competition. So, it was a dedicated funding through a very small like 0.15% tariff. My view at the time when I worked on this provision in the 1988 Trade Act, was that this idea of a very small tax on trade could be justified and that U.S. trade negotiators that implemented it didn't make a serious effort to negotiate this pro-worker provision in the GATT. So, looking at this today, decades later, for the WTO, I think there's still merit in this self-funding approach. As I look at the WTO, I see that it permits all kinds of tariffs for protectionist purposes. And I'd be happy if all those tariffs were eliminated. But I can see a benefit to a very small non-protectionist tariff that would help the

trading system help the United States help other countries get the funding they need for worker adjustment so that workers would not...

Olga Torres: I know some people are skeptical of, if somebody has been working in the same manufacturing site, manufacturing the same type of item for 25 years, retraining may be very difficult. So, I'm thinking, even, for example, for subsidies, you lost your job and there's a potential monetary benefit that you get because you're not going to be able to be retrained, depending on your individual circumstances, your age, your level of education as well.

Steve Charnovitz: Yeah. It's not just one size fits all. I mean, we need much better labor retraining policies, not just for imports, but for just technology generally.

Olga Torres Yeah.

Steve Charnovitz: The federal government can play a very important role in working with the states to much better equip workers to get retrained. Now you say, "Well, some workers might be too old or whatever, and they're un-retrainable," and that may be the case. And so there may be a role just for providing some income assistance adjustment to workers rather than seek to retrain them. But I think most workers would welcome the retraining. You can't look at worker retraining and labor policies in isolation because the question will always be, "What do you, what do you train them in? What are the jobs of the future?" Of course, we don't know what the jobs of the future are. But as we said in the U.S. Competitiveness Policy Council Report in the early nineties, and this was a presidential congressional advisory group that included labor union presidents, business leaders, and public members. We said that that better worker retraining has got to be part of broader policies to help create jobs and prepare workers for them, including critical technology, manufacturing, public infrastructure. We have to have in the United States, and we don't, focused policies to improve American competitive. And if we had that, then I think workers would not fear imports in the same way that they do. And we'd be able to engage in more trade liberalization and more integration with the rest of the world than we're currently doing right now.

Olga Torres: And in terms of integration with the rest of the world, I think for workers' rights here, we also need to boost and improve workers' rights everywhere else, right? How do we go about doing that? And I've seen some of that already starting at least again, I go back to USMCA with a Rapid Response Mechanism where we're trying to ensure that Mexico is ensuring they abide by

their own labor law standards within that country. What else do you think we can be doing there?

Steve Charnovitz: Well, as you said, your law firm is on kind of the cutting edge and you're helping companies take advantage of USMCA provisions. You're helping them with forced labor regulations that just got boosted for import bans related to forced labor. There are a lot of things going on in the labor space that are new, and that U.S. companies need help on. But when I think about raising labor standards in other countries, which I endorse, it's not just that we want to raise U.S. labor standards, I think the United States should be trying to boost labor standards around the world. But I point out, this has been a goal of U.S. foreign policy for over a century and higher labor standards will improve the economies of other countries. That's good for the United States because there can be greater mutual benefits from trade if other countries have strong economic growth. The international agency with legal jurisdiction to write and implement international labor standards is the International Labor Organization, ILO, now over a century old.

And unfortunately, in my view, the United States does not carry out effective participation in the ILO. The agency that should be doing this, the U.S. is not an effective player in. The most painful example of U.S. non-cooperation with the ILO is that the United States has never ratified the most important ILO convention, which is the San Francisco Convention, adopted in San Francisco, on Freedom of Association, number 87. President Truman sent this treaty to the Senate for ratification in 1949 and in the decades since 1949, the Senate Foreign Relations Committee has never even held a hearing toward a ratification of that core international convention.

Olga Torres: Why do you think that is?

Steve Charnovitz: I think presidents have not pushed it, have not prioritized it. The United States is very cautious, very shy when it comes to ratifying international treaties. I can name, if you'd like, 10 important international treaties that the United States has not ratified. We don't contribute to the world order because we're afraid to get treaty through the Senate. The Senate's a bit nonfunctional in that regard, it always has been. But if the United States wants to promote freedom of association around the world, then the United States should show the world that the United States takes basic human rights seriously, and ratify this convention. Now it's true that China has not ratified this convention either, but I don't think that's an excuse for the United States to ratify it simply because China hasn't done so. I think we should lead by ratifying this core labor rights convention.

Another issue that you alluded to is forced labor. And the United States talks the talk here, but it has not walked the walk by ratifying the ILO Convention on Forced Labor, number 29. Today, there are only two major economies that have failed to ratify the Forced Labor Convention, China and the United States. And now China has announced that it plans to ratify this convention. So I would like to...

Olga Torres: No pressure there for the U.S.

Steve Charnovitz: I'd like to see the United States step up and do that too. That's for me, if we're concerned about forced labor, let's ratify the key international treaty against forced labor and show the world that we take it seriously.

Olga Torres: And this is very interesting. I don't have international labor expertise, the way you do. But to me, it's mind blowing in a way, because a lot of what we are seeing lately in trade, specifically, more regulatory, right? Like I mentioned, imports, Customs and Border Protection enforcement, and even the export agencies, a lot of the policies that are coming out in terms of issuing licenses or not issuing licenses for certain sensitive exports of U.S. technologies to certain countries. We are hearing, human rights as a concern nowadays. To me, it's almost being affected at an executive agency level, on a trade, kind of commercial way. We're not going to trade with you, we're not going to buy your product, we're not going to let your product come into the country. But as I am learning, we're also not ratifying some of these international treaties, which is quite interesting.

Steve Charnovitz: Yeah. I mean, the United States ought to be a leader on these issues, particularly forced labor. And the first step in doing so is ratifying the key international convention. It's shameful that we haven't done it. Now, as you know, with USMCA, it's been since the year 2000 that U.S. free trade agreements have included provisions on worker rights. USMCA is the most developed I think U.S. free trade agreement in that space. And while the labor language in the USMCA has flaws on the whole, I think those labor provisions in the USMCA are a very positive development. But what's been missing under the Biden administration is that the U.S. lost confidence to negotiate new free trade agreements. Instead, the new U.S. model is for TAs, just trade agreements rather than free trade agreements. And without congressional authorization, we don't have a fast-track presidential negotiating authority approved by the Congress. Without congressional authorization, the ensuing trade agreements that the U.S. is going to achieve are going to be very shallow agreements, without entailing any U.S. reform and with only very limited substantive

harmonization between the United States and other countries. I think as a matter of U.S. democratic governance, trade policy should be shaped in the Congress. That's where we should lay out, Congress should lay out objectives for these trade agreements and an approval process.

And we shouldn't rely on what the Biden administration is doing, which is to try to achieve some results with flimsy sole presidential executive agreements.

Olga Torres: And that could potentially also be related to the politics we live in today, where nothing really gets passed, right. I mean, I would think that's also why certain Presidents go to executive orders more so than Congress. How do we get workers more involved in trade? Just it could also be coming from them more of them, trying to tell the administration and not just administration, but Congress, "Pay attention to these treaties." And how do we get them involved?

Steve Charnovitz: Well, United States has long been an international leader in institutionalizing attention to workers in U.S. negotiating and administrative processes. This is something the United States has done really well. But the problem I think today is that worker interests are conceived too narrowly as being synonymous with the views of large U.S. labor unions. Even though less than 11% of the U.S. labor force is unionized. If you look at the Labor Advisory Committee for USTR you can see an imbalance and a very narrow range of membership on that committee.

Today, unfortunately, the leading U.S. labor unions are very different than the AFL-CIO of 1962, when President Kennedy advocated what became the Trade Expansion Act and the U.S. labor community supported trade expansion. But today, the U.S. labor unions don't advocate U.S. trade expansion. And I think that's a mistake and it's not in the worker interest. So, yes, I think workers should play a role, but we can't just rely upon the labor unions that are pretty much anti-trade or anti-trade liberalization, these days.

Now, if you look at the World Trade Organization, I was very happy to see the WTO Ministerial Conference reached some limited outcomes at MC 12 in Geneva a couple of weeks ago. But I think there is a potential role for workers, businesses and civil society to help shape the WTO debate that we're not using now.

And so, yes the WTO didn't fail in Geneva, it succeeded. And that was a great thing for the WTO because failure would've been terrible. But, 20 years ago we viewed the trading system, the WTO, as among the most effective of the international regimes. There was WTO envy in a lot of other international

regimes because of the WTO dispute system and lots of features of the WTO that were exceptional.

But today, the WTO has fallen down to resemble all the other ineffective multilateral regimes, such as the climate regime, the UN Security Council, the World Health Organization, as we saw during the pandemic. And so, if you say, can earthlings be proud of our global governance today? And I'd say the answer is no. Global governance is a mess, and we've got to improve that if we're going to deal with the most serious problems facing the world economy and the global environment.

Olga Torres: And that brings me to my next question, which you may have, maybe that was the answer. You have been involved in trade and labor issues for almost half a century. What are the key lessons that you have learned? I mean, you've been through different administrations, the U.S. economy up the U.S. economy down, what are some of the key lessons? And especially right now, we're seeing this new geopolitics playing out after the invasion of Ukraine and decoupling from China. What are the key lessons that you think we should be mindful of?

Steve Charnovitz: Well, I can think of a couple on worker and labor policies in particular. First U.S. leadership, or lack thereof, continues to be very important to achieve win-win outcomes for the global economy. United States just plays a central role in global governance. When the United States is absent, then global governance is not going to be nearly as successful as it could be with the United States present. If the United States is outwardly looking and progressive, then it can help lead other countries to improve economic growth and environmental protection. But when the United States gets more isolationist and unilateral, as happened a bit under the Trump administration, then the potential gains from international cooperation are severely truncated. And we saw failures in the WTO, but also failures in other areas of international policy, so that's one lesson. The U.S. role matters. United States is still the most important single economy and therefore needs to step up and be a leader in making improvement.

The second lesson that I learned was that when I served as U.S. Trade Negotiator in 1983 for the Caribbean Basin Initiative, which was the first U.S. trade preference program that had a labor condition, I learned that by offering greater market access to other countries, United States could gain reforms on labor, even though a country might be seriously deficient on labor policies, including non-democratic countries, such as Haiti in 1983 in the Duvalier years where I negotiated with the Haitian government to commit to some labor

reforms. If the United States offers greater trade access, it can negotiate with other countries to make improvements. But I think the reverse isn't true. If all we're doing is threatening to diminish access to U.S. markets, then that isn't going to work symmetrically to get countries to raise their labor standards. I think countries are going to push back on that. The lesson I learned is use the prospect of greater trade access to help other countries move up on labor standards. But the stick is not going to work as well as the carrot.

Olga Torres: Very interesting. And I'm moving to my last question. It's a little bit of a charged question and it refers to the concept of, and you talked about the us being unilateral and our role, whether we're going to be global leaders of the world. But we are hearing a lot about this new term “friend-shoring.” And for people that may not have heard of the term, in a nutshell, basically the idea that we are going to be trading more with countries that have our same types of values for human rights and trade and democracy, things like that. We're going to play the clip for our listeners coming from the U.S. Treasury Secretary [clip plays]. What do you think of that term?

Steve Charnovitz: Well, as an international lawyer, I'm sure that the United States should honor its legal commitments in international trade law. And one of those core commitments is the “most favored nation” principle that generally prohibits the United States or any WTO member from discriminating between different countries based on who a sitting administration happens to think is a good friend or a foe. The whole idea of basing our trade policy on degree of friendship with another country, I think is wrong, legally.

I'm familiar with the statement that you referred to of Treasury Secretary Yellen who suggested that our current concepts of multilateralism are not modern enough. I think that's wrong. I think multilateralism and non-discrimination is the best way to work with the other countries on the planet to try to move in a cohesive, positive, constructive direction.

And I can't think of anything more antediluvian that the U.S. should glorify state led non-market norms in seeking to rewrite the contours of a global economy by saying that we're going to privilege certain friends and mistreat countries that we don't think are friends. I think that's just not the right way to go on basic trade commitments

Now, we've learned something in recent years, which is that COVID-19 showed us, U.S. inflation now shows us, and the Russian war shows us, that there's a lot of market and government failures out there and vulnerability.

Olga Torres: Supply chain disruptions being one, right?

Steve Charnovitz: These vulnerabilities were not apparent five years ago to everyone. Certainly, they weren't as fully apparent to me as they became during COVID and the Russian war. So yeah, we've got a problem and we need to be thinking about supply chains. But as an academic, although maybe I'm sometimes personally guilty of it, I don't think policy makers should rely on empty slogans like "friend-shoring," as a yard stick for determining economic and industrial policies to meet current realities. You know, we've got to develop policies that are sensitive to particular sectors. For example, on steel, I think it was wrong for the trade administration to use tariffs to support an uncompetitive U.S. steel industry. Multiple sources of steel in many other countries make the United States more secure not less secure. I think for solar panels, the same story is true. But there's no reason why U.S. policies should say that we favor domestic content on solar panels. Instead, the lower we can get the cost of solar panels, whether made in China or whatever country, the lower the global cost of seller panels is the more they'll be adopted by U.S. consumers and developing countries for clean energy. And that's the bottom line, that's what we need: more solar panels used. The idea that, that we should, we should isolate or not buy solar panels from China because they're not our friend. I think it's just wrongheaded well with solar,

Olga Torres: Well with solar panels it's interesting because I think a lot of it comes from the Xinjiang Uygur region which is currently under U.S. law presumed to be the direct result of forced labor. It's going to be interesting to see how the administration treats that for the very same reasons that you're mentioning, that we do need those products. Very interesting. I really appreciate your time and sharing all this information with us and to our listeners. Please stay tuned for our next podcast. Thank you very much, everybody, for joining today.

Steve Charnovitz: Okay, thank you very much.

Olga Torres: Thank you.