Kate Kalmykov (00:10):

Hi, everyone. And welcome to the Immigration Insights Podcast, presented to you by the Immigration Group at Greenberg Traurig. My name is Kate Kalmykov, and I am your host. And today, we are going to be speaking on an incredibly timely and interesting topic, which is tariffs. And we're lucky to have my partner in our New York office, Laura Rabinowitz, here, who specializes in this area. Laura, thank you so much for being here. Can you tell us a little bit about yourself and your incredibly busy practice?

Laura Rabinowitz (00:47):

Thank you, Kate. I'm happy to join you today. Yes, we've been a little bit busy, I will say. Our practice, we work with companies that are manufacturing globally and importing and exporting globally, with a particular focus on imports into the US. So unlike you who work with people, we work with goods. So it can be a raw material, a component, or a finished product.

Kate Kalmykov (01:18):

And of course, many of our immigration clients are trading in goods, and so this is an incredibly relevant topic to them. So the president took office in January and immediately started talking about tariffs and changing the tariff regime of the United States. It was a platform that the campaign ran on, and I think it was anticipated, but there's been a lot of information in the news, and I think a lot of people are confused by what's in effect now and what can we expect.

Laura Rabinowitz (01:52):

Sure. Confusion for sure. And I would say what the Trump Administration has done since they're in office starting in January of 25, really builds on what they did in their first administration. And what sometimes is forgotten, I would say the first Trump Administration focused on China. So sourcing strategies were anywhere but China, and the administration put tariffs on about two thirds of the products manufactured in China and imported into the US. Some come with an additional 25% duty and others with an additional 7.5% duty. And those tariffs are still in effect, because the Biden Administration kept them in effect 100%. And then we have the second Trump Administration where they've only built on that. So yes, they've, starting at the beginning of their second administration, went to other countries, went to all countries in the world. So it didn't matter where you manufactured or where you were sourcing your raw materials. All countries now have an additional tariff imposed on it.

Kate Kalmykov (03:02):

And I understand, and correct me, obviously, if I'm wrong, that the regime, the tariff regime differs country by country, and how does that work?

Laura Rabinowitz (03:13):

So the administration's plan has changed over time since they're in office. Liberation Day, as they called it, April 2nd, seems like a hundred years ago. What they're implementing now with a date, with a gold date of August 1st is country-specific tariffs for these additional tariffs. They were originally called reciprocal tariffs, but they really now are country-specific tariffs. And we're waiting for official announcement of the deals. What we do have a lot of are truth social posts, but as I always counsel companies that we work with, that's not an official document. We're waiting for a Federal Register notice to be followed by a notice from US Customs on how to import goods from a certain country.

Kate Kalmykov (04:06):

So how does this differ from what has traditionally been US trade policy, and how did we get here?

Laura Rabinowitz (04:14):

Very good question. We had, in this country, 40 years of globalization and free trade, and there was bipartisan support for free trade. And the United States is part of the World Trade Organization where all countries have tariffs, and the tariff rate is based on what is in fact the product. So every product imported into the US has a ten-digit code attached to it. The first six digits are global, and the last four digits are US specific. And that 10 digits has a tariff rate connected to it, a general rate of duty.

(04:57):

So if you're importing, for example, a silk product into the US, it may come in at a low rate of duty like 6%, but if you're importing a man-made fiber product, it could come in at 32% of duty. So it was the original general rates of duty are based on what domestic industry we have, and on that basis, the government set these rates. And they evolve over time, and they basically have been declining over time for most products.

(05:32):

So what's different about this administration now is it does matter where you manufacture. So when you're manufacturing that man-made fiber top, before 2025, it didn't matter for duty if it was in Vietnam or Bangladesh. It all came in at the same rate of duty. Now, it's going to matter. So these tariff rates are very important and are impacting sourcing decisions for companies.

Kate Kalmykov (06:01):

So how can importers protect themselves? What can they do in this situation?

Laura Rabinowitz (06:07):

Importers need increased visibility into their supply chains first and foremost. They need to know where all components are from, and they need to know how all components are being valued, and they need to protect themselves in terms of their production agreements. So wherever you are in the supply chain, if you're the US importer, if you're the foreign factory, you need to protect yourself and have your discussions memorialized in your production agreements. And those sections on tariffs, and who's responsible or who's figuring out those tariff rates and who's paying those tariffs, it all needs to be very clear. So it's really time to revisit those production agreements first.

(06:51):

Second, companies should be trying to reduce their duty exposure. That's the conversation I basically have about a thousand times a day is, "How can we pay less duty?" If you're manufacturing in a certain country, companies are certainly considering diversifying sourcing strategies, but it's very product specific and you have to look at labor and quality and all that. But what you can change is the value of the goods declared to customs. So how do we chip away at the declared value? And it certainly is a time where US importers are renegotiating pricing with their foreign vendors, and there are other legal deductions that can be taken from the value of the goods.

(07:39):

For example, foreign inland freight and foreign port charges. The importer might be paying those charges to the foreign vendor, but they don't have to pay duty on them to US customs. So those are line item deductions that can be taken. If there were any royalty payments, royalty payments structured in a certain way are not added to the dutiable value of the goods coming in. And there are other legal deductions that can be taken.

(08:09):

And then there are also ways to structure the agreement to reduce the value, particularly if it's a multi-tier transaction. There's a US importer, a middleman vendor, and a foreign factory. If the middleman and the foreign factor are either related parties or unrelated parties, certain costing can be moved to basically shave off any middleman profit. So the importer would still pay the middleman the full amount, but they would only pay duty on a lower factory amount.

Kate Kalmykov (08:43):

So is that what you're doing? You're helping to negotiate those contracts and rework them?

Laura Rabinowitz (08:48):

Correct. Correct.

Kate Kalmykov (08:51):

Now, for immigration purposes, I travel a lot in Asia, and I think I've seen a trend just over the past 10 years that a lot of manufacturers are moving away from mainland China and is going to Malaysia, to Vietnam, to Cambodia. Is that something that you think is a trend that will continue because of this reason? And how do you think the administration's tariff strategy is going to impact global sort of manufacture and production?

Laura Rabinowitz (09:20):

Since the first Trump Administration imposed tariffs on products, products of China, companies all try to get out of China to whatever extent they can. And it really is product specific how successful those companies were. But I would say very few companies I work with are exclusively in China at this point. So they definitely diversified into other countries in Asia, and that will continue without question.

Kate Kalmykov (09:49):

It's very interesting. It's interesting from an immigration point of view, right? Because now, we see country conditions change as a result, a lot of increase in wealth, a lot of opportunity now for migration and things that we didn't see before. So it's interesting how our practices intersect, even if unintentionally.

Laura Rabinowitz (10:08):

That's right. Not just foreign employees coming to work for US retailers, yeah, no, that's absolutely true. And something that we're monitoring in terms of diversification of sourcing strategies and going to other Asian countries, we're going to see where this administration comes out on the rules of origin.

(10:30):

In the administration's note about Vietnam, for example, there was a reference to trans-shipment, and that's a term of art related to mis-declaration of country of origin at import into the US. But potentially, this administration will be changing the rules of origin. So what we today may consider country of origin, Malaysia or Vietnam, under the new rules of origin, if there are still Chinese inputs into a product that is actually manufactured in Vietnam, they could change those rules of origin, and that would be another game changer for this administration.

Kate Kalmykov (11:13):

That would also be interesting in terms of enforcement. And what have we seen to date with an increase in enforcement by customs?

Laura Rabinowitz (11:22):

Yeah. US Customs has been very clear that they're increasing their enforcement, and we've seen it on the ground. US Customs did not lose any of its workforce, so they have lots of employees. And typically, US customs would send an importer, if they had a question about a specific entry, they would issue a request for information. And then the importer had an opportunity to respond.

(11:53):

For example, I recently had an issue with marking. All foreign products coming into the US have to be marked with the country of origin, and Customs had a question about the marking of the product. The product was marked correctly, but Customs, they can ask questions. But in this case, they decided to forgo that first step and just to issue the second step, which is a notice of action saying, "We disagree with how the marking was done at importation, and the importer now has to pay a penalty." And when I asked the import specialist about it, I said, "Why didn't you issue a request for information?" She said, "We don't have to do that."

(12:36):

And that's technically correct. It was always a courtesy, but it was always done. Now, they're forgoing that. And this is something that we're seeing at the port, while the goods are still at the port, they're issuing these. So the import specialist said to me, "Well, the importer can follow a protest," which is an administrative procedure that importers have the ability to do to prove that it was done correctly. But the importer now has to spend resources, time and energy, money. It could have been taken care of very quickly at entry, but they're very much in enforcement mode and very aware that the agency is now a revenue generating agency. That was never their focus. They always collected duties, but they never really saw themselves as a revenue generator. And now, it's a fairly large percentage of what the federal government collects.

Kate Kalmykov (13:35):

It's interesting you say that because in immigration, again, we have the enforcement agency, but the benefits, USCIS was always the benefits organization, and it's also becoming very enforcement minded. So that's a trend, I think, against across government agencies.

Laura Rabinowitz (13:51):

Certainly in actuaries.

Kate Kalmykov (13:52):

You mentioned penalties. What kind of penalties can we expect to see in these kinds of cases?

Laura Rabinowitz (13:59):

Sure. So this is statutory. Not everyone realizes that Customs' penalties are quite onerous. If Customs determines that an importer has been negligent, the penalties can be two times the owing duty. So if there's an enforcement action, an importer might have to pay back owing duty, and Customs' look back period is five years. And then for negligence, there could be a penalty on top of that at two times the owing duty. For gross negligence, up to four times the owing duty. And then for fraud, up to the value of the goods. And interestingly, the statute that this administration is using to roll out these universal tariffs, on the country specific tariffs, IEEPA, the International Economic Emergency Powers Act, the statute of limitations in that act is 10 years. So again, that's another game changer. For all other Customs issues, that statute of limitations is only five years. Now, it's 10 years under the statute.

Kate Kalmykov (15:03):

What does your crystal ball tell you? Where are we going from here? What can we expect? What can importers expect? And what does it mean for the country and the economy?

Laura Rabinowitz (15:14):

Well, I think pricing is going to go up certainly on consumer products. Certain things, whether we end up moving more production into the US, pricing is going to go up. And the situation is going to be very fluid for the next three and a half years. This is a tool that this administration likes to use, and the administration has made it clear that we may have our deadline of August 1st, but trade deals will continue to be negotiated, potentially after August 1st.

(15:49):

And I think it's just going to be... They're going to have the ability to snap back tariffs. They may make a deal at 20%, and then something could happen and they could increase it to 25. And then they make a deal, and they could decrease it. So I think it's going to be kind of yo yo and country specific and also sector specific. The administration is increasingly focusing on certain sectors, and we're waiting for some of that. Some of that they've already rolled out, and we're waiting for other sectors to be rolled out, such as pharmaceuticals, timber, lumber, semiconductors, autos, beer cans.

Kate Kalmykov (16:33):

And I guess the question there is how likely is it that we can bring back production to the United States? And that's very sector specific, obviously.

Laura Rabinowitz (16:45):

Very sector specific. Yeah.

Kate Kalmykov (16:48):

And that's something, of course, that the immigration laws don't really address either, because we don't have specific visas for these types of industries that you just mentioned. So they may not even qualify for a work visa. So then you have to look in the US for that specialty in our labor pool, which may or may not exist.

Laura Rabinowitz (17:08):

Right now, the government wants to roll out 200% additional tariffs on imported pharmaceuticals. That's unsustainable. And they're giving a rollout period of the 18 months. The intention with those 18 months is to bring pharmaceutical production back to the United States. Because at 200%, it's unacceptable. So that's what their intention is with that.

Kate Kalmykov (17:34):

Yeah.

Laura Rabinowitz (17:35):

And I think they're focused on certain industries.

Kate Kalmykov (17:40):

A lot of very important information, and I think one that has a lot of impact just on the population, not even just on importers, but as you said, if pharmaceutical prices go up 200%, that has an impact on all of us. So very important to monitor and to keep track of everything.

(17:59):

So Laura, do you want to leave us with any closing thoughts on the tariff regime and what we're likely to see and what we can do, what importers can do? And what about consumers?

Laura Rabinowitz (18:13):

I have more advice for businesses than I do have for consumers. I think for consumers, if you shop at certain low end retailers, I think prices are going to go up, and I think luxury is going to go up. I think all products that are imported are going to go up. So there's really not much that consumers can do.

(18:37):

In terms of businesses, I think businesses have to continue to protect themselves, be very thoughtful about their sourcing strategies, try to mitigate duties wherever possible. There are legal ways to reduce the value that's declared to Customs. Companies should be, I think, at this time, aggressive but compliant. Push the envelope where they can, but make sure they have a diligence file memorializing any sourcing decision, any production agreement, any decision that reduces the value, to show that they have not been negligent. But it's very, very stressful for companies.

Kate Kalmykov (19:20):

Thank you. And I'm glad that we have you as a resource for clients and that certainly they can reach out for guidance in helping to negotiate these agreements, as you said, and to assist with compliance.

Laura Rabinowitz (19:33):

It was great chatting with you, Kate.

Kate Kalmykov (19:35):

You too. Thank you so much for joining us today.