

# Podcast Episode 13

**Olga Torres:** Today we're joined by Don Pearce and Jim Fuller, both of them, former OEE agents with the Office of Export Enforcement. Hello gentlemen, thank you for joining us.

**Don Pearce:** Thanks for having me back.

**Jim Fuller:** Hello Olga.

**Olga Torres:** Any like horror stories that you can share, like something like, do you ever have one of those where you called it, “drive-by’s” and just turned out into like, “Oh my God, we just uncovered something crazy?” Or not really.

**Don Pearce:** It wasn't so much a drive-by, but we did have one where we coordinated an outreach at the same time that an end-use check was being done. This was Jonathan Carson and I, and we show up at this company in New Jersey and literally sitting in the parking lot before going into the outreach. We called, Nasir Khan, who's now the Special Agent Charge in Washington, but at the time was our guy in Dubai, and he had just done an end use check that showed an unfavorable end use/end user, in that it got picked up by a couple of Iranian guys and put in the back of a the pickup truck. That's not where we thought this laser should be going. When we walked in to do the outreach, let's just say that flavor of that outreach changed significantly on our side. And the company was kind of going along with us until we finally asked them, well, “Hey, how did you get paid for this?” And when they presented the copy of the wire that said Tehrani Express, a bell went off and I swear.

**Olga Torres** Oh my God.

**Don Pearce:** The guy turned so ashen that I thought he was going to code right in front of me and we were going to have to do CPR. Luckily the color came back to his cheeks. And frankly, again, not the crime of the century, certainly not something that they could VSD their way out of since we already had opened an investigation, or in this case, I opened a lead on it.

**Olga Torres** So that reminded me of something, and I want to come back but I don't want to forget this. When you said, “Well, they cannot VSD either way out of

it.” I had an experience with OEE in a similar situation that we couldn't VSD their either way out of it. But I've always thought, that even if OEE is investigating, let's say a particular situation or shipment, we can always, as we're reviewing and assisting with the requests, that we can always have, if we do more expansive review of the whole universe, let's say. I mean, BIS in this particular incident was focused on a specific, shipment and a specific type of item. And when we come in and especially if we already are dealing with OEE and things seem a little bit, let's call them interesting. We try to expand it and we try to find out what what's going on. And could we have other issues outside of this particular instance or, sort of this family of products or region in the world, or maybe we're looking at hardware, maybe we'll expand it to, server and deemed exports and other areas where we could typically find issues and we can fix or identify gaps. I would think that in most cases, if OEE is asking about a particular situation, if we want to voluntarily disclose something else unrelated to that particular instance, that the agency would accept the VSD? Yes, no?

**Don Pearce:** Yeah. In fact, I have to laugh because one of the things Jim and I worked together on was the PPG investigation. You mentioned it earlier, which was the unauthorized shipment of specialty coatings, paint, to the Pakistan Atomic Energy Commission, PAEC, who are on the Entity List. And we were able to establish it was done with knowledge and that it was an egregious violation. And while we were doing that investigation, there were several PPG voluntary self-disclosures that came in as we were doing the proffering, the proffer sessions with PPG employees. At first, I kind of thought this was, are you kidding me?

**Olga Torres:** Yeah.

**Don Pearce:** But G. Michael Harvey explained this to me so succinctly. He said, “The fact that they're looking and finding stuff and then telling us is actually a good thing, because it's the mark of a company that wants to do the right thing.”

**Olga Torres:** And that's what I would've thought. From a government perspective, still dealing with, limited resources they're doing the work for you and you can always ask more questions as needed, but they're coming in, they're digging for more and they're bringing it to you. But in that particular instance, and I've never dealt with it before I suppose they told us that the VSD was rejected, but there was never anything in writing. Like we didn't receive anything in writing, and we didn't find out about it until we were under the impression that it was accepted. We only learned that it wasn't until after, the attaché in Germany met with this person. I

can't remember what country it was, but I think it was that. It was just a very interesting situation and it never happened before.

**Jim Fuller:** I don't understand what you mean by not accepted.

**Olga Torres:** Yeah, exactly.

**Jim Fuller:** Because OCC, I've never, ever really heard of them, not accepting a VSD. I've heard, them on occasion, not giving full credit.

**Don Pearce:** Yeah.

**Jim Fuller:** For a VSD.

**Olga Torres:** And that's what we knew that we may not get full credit. But here it was not accepted and then we didn't get anything in writing. Then we find out later and we have discussions and then we ended up having at that point, for unrelated reasons to any of these, we ended up having to withdraw from the case. So, I don't know really what happened, but yeah, we were told on the phone it wasn't accepted.

**Don Pearce:** So, I could speculate.

**Jim Fuller:** By who though?

**Don Pearce:** I could speculate that the that not accepted is, if I'd have to go and look at the regs, but I don't think there's something where it says that we accept or reject anything.

**Olga Torres:** We couldn't find anything.

**Don Pearce:** Yeah. In this case, it could just be semantic in that, if there was already an investigation, a case or a lead opened on that allegation, your voluntary self-disclosure is not a voluntary self-disclosure. It's just a confession, which is kind of like, if I remember right in PPG, about 10 minutes after you delivered the subpoena. A lawyer from PPG called up and said, we'd like to do a voluntary self-disclosure, which actually again is not a voluntary self-disclosure.

**Olga Torres:** No, no but remember it's very limited investigation, so we're submitting an initial for something, in case we find other things completely unrelated to this other matter.

**Don Pearce:** Sure. And in those, and in those cases, as I came to learn on the PPG case, that's fine. That's great. In fact, Jim correct me if I'm wrong, but I think the only heroes in PPG in that story, were really the compliance folks, because they were trying to prevent this specific transaction. They kind of had their own little, like, "be on the lookout" poster. Trying to stop this thing from happening and it happened anyway. So, I always say that compliance team probably saved PPG a couple of million dollars.

**Olga Torres:** Yeah.

**Jim Fuller:** Yeah, you're right. You're right.

**Olga Torres:** And in my experience, I would say 99% of the companies that we deal with, everybody wants to do the right thing. I mean, most of it is administrative or people just don't understand the jurisdiction, or relying on somebody's classification, lack of resources. I've always said, I am very amazed by people sometimes. We've had cases where, they don't even understand fully the lists and the differences in the lists and certain people, like, Unverified Lists, you technically can send things and people just like, "No, we're not going to send anything." Being conservative, which is the right thing. So, I think for the most part, everybody tries to do the right thing. And then when they do have violations, there's always the option of the voluntary self-disclosure. Yeah. Any war stories, Jim, about any of this?

**Jim Fuller:** Well, see, it was a little different. Because, especially with my career, right out of the gate I started with PPG and that was an intensive investigation at a time when everything had changed. The fine amounts had just changed and really the priority was on enforcement. And I got a lot of great mentoring from G Michael Harvey and from John Carson and from Don Pearce, but there was always, these cases, I was very blessed. These cases were given to me. And I worked them, but they were large. So, the smaller cases that I did, I knew exactly what was going on. If I came to your door, I already knew. And that was because of really, of circumstance within the field offices I worked and my caseload, because I had these big cases.

But if we showed up, if an OEE agent shows up at your door and you are doing something wrong and you're nervous, just assume that they already know. They just came there to let you lie to them. That was always... Yes, we had to do educational outreach and Don and I love to do this. We would pick the most interesting industries to penetrate, to learn something about because we, that's the one great thing about being an OEE agent. You get to pick and choose. There's a tremendous amount of autonomy because the enforcement circle is so large and there's so few of us. It's the best. And we have so much autonomy. They really do trust us to do what we need to do. But they also require us to go visit. So, you could, if you're into chemicals, if you're into biological stuff, if you're into lasers, if you're into nuclear, whatever it is that you want to learn about whatever industry you want to touch, you just touch that. But we all do research before we ever leave the office, right?

**Olga Torres:** Right.

**Jim Fuller:** You do have to touch industries. That was the drive-by's that Don was talking about. Where we can see, the chances of a violation, the industry has to be touched. It has to be educated. But the threshold is much lower than some of the other industries that are critical for the infrastructure and for national security issues. So, especially in Don's later years, when he was working in DC, he had a much clearer focus of what that entailed. Whereas a lot of the field offices, you kind of stay narrow, within the things you're comfortable with, but he had a much larger picture.

**Don Pearce:** Let's just say I had to convince agents to go do outreaches by saying things like, "Listen just please for me, just go out and talk to these people, trust me."

**Olga Torres:** Yeah. It's interesting when you said, it was so powerful when you said, "I'm just there for them to lie to me, I'm just giving them the opportunity to lie to me." Yeah, that's interesting. In terms of average visits, since we're on that topic, I've always recommended, we've had situations where clients, there's always, almost like opposites. Like we've had clients that just like, "Oh, it's just an average visit they come all the time, and I'm like, "Okay, like, do you ever think of telling us?" We like to have a streamlined process, not just because we want to know why OEE shows up or any of the other agencies. Just so that we know what's given, what's discussed and we've even written about it. Cause there's not a ton of guidance on how to deal with this. We have the clients that are like, "Oh, not a big

deal, we blah, we just gave this and blah, blah, blah,” and they don't keep records. We don't even know who met with them, especially if they're not maintaining records, and we just found out after the fact, like two years later. So, we always recommend maintaining records of who shows up. What were the questions asked? I mean, we understand that they get the basics and the EAR links and all of that. We have seen BIS use OEE outreach visits in charging letters – was it in a charging letter? I'm sure – to establish knowledge when they met with the company several times and the company continued with violations and they said, “Well, you should have known because we've been meeting with you over a period of years.”

So they are things that need to be taken seriously, not only for them, but also for you so that you can understand more, speaking about we need to learn about certain industries and things like that. It also makes it faster and more efficient for you if they give you the right context. We've had situations where it takes OEE a while to be directed to the right point of contact, for example. There's just general confusion. Like there's somebody from the federal government, we don't understand what's going on. What I'm hearing is obviously most of these are benign visits, but they should be taken seriously. And that's really good because we've had the other situations where clients just, we have to have lawyers present, and we need notice in advance and that kind of thing.

So, will you ever recommend companies to say, especially with unannounced, “We are unavailable, but we can meet with you tomorrow or the next day, or we don't have the right point of contact for you.” Have you ever seen that and what would be your reaction to that? I mean, because it wouldn't necessarily be that they're trying to hide anything, but it's more about we're not ready to meet. We don't know what's going on and we just want some time.

**Don Pearce:** I think the answer to that question may be the experience level of the agent involved. Where the rookie agent and myself included back in the dinosaur days when we used to ride up on the stagecoach and do the outreaches, might think that, ah, I got it, I got 'em. Yeah, they're bringing a lawyer in, there's got to be something wrong here.

**Olga Torres:** But there are policies, right? That they say, agencies show up, we need lawyers involved.

**Don Pearce:** It's like any other regulatory visit. If someone from OSHA showed up, you'd probably bring your inside counsel that has something to do with

occupational safety and health to sit in and above all, I think the most important thing that any company should do is just be honest. If you're afraid to be honest, get some advice before being honest, but do not lie.

**Olga Torres:** Yes.

**Don Pearce:** And don't intentionally withhold information, telling a half truth is still a lie. And that's where you start getting in trouble. Do you agree, Jim?

**Jim Fuller:** Oh, absolutely. But I'm sure you could agree with me too, Don. Especially when you've been around the block. I mean, we never and in the outreaches that we did, together, we didn't bother talking, finding anybody. We only give them three choices. We're going to talk to the CEO, the general counsel or the CFO. And if they're not there, then I'm going to give you a subpoena and you're going to come to me. And that was the way we played it.

**Olga Torres:** And these are like, these are the scary OEE visits, right? We've had several where I almost feel like the client distrusts us after the fact because we we're recommending, well, just let us be there to, to help you out and just, lawyers, just being very careful, very conservative and clients are just like, "You just want some billable time for yourself." And we've had several where we really are like, okay, "Well, this was just a breeze." I mean, the client is looking at you, like, "You totally didn't have to be here." But it sort of, and we also have the educational outreach by the Office of, what's the education. It's a different.

**Don Pearce:** Exporter Services, yeah. It's out of the Export Administration.

**Olga Torres:** Yes, and then we have your type of outreach.

**Don Pearce:** So, keep in mind that BIS special agents will often use an educational outreach to get out and learn about an industry or to meet a contact or at least get the business card into somebody's cubicle that if something does look weird, they know who to call. The vast majority of outreaches are those.

**Olga Torres:** Right.

**Don Pearce:** The targeted outreach. You'll know when they're really interested in you or in a particular transaction. As much as agents think that they can be coy and

play it off, if they ask you about something that you had a second thought about, you probably should have gone with your gut.

**Olga Torres:** Yeah. Everything I'm hearing is what we always recommend clients. I mean, do not lie ever, do not lie if you don't remember transactions, it's okay to say that you need to review documentation, or that you need to review reports or whatever you need to, but do not lie. Ask for more time, especially if the visit is unannounced, ask for more time. I think it's a fair question to say, "Well, we need time to find out who the right point of contact is and to be able to gather the information that you're requesting."

Very interesting. Okay. So, let's go back to, with the new policy where we're going to have VSDs that are the let's call them the easy breezy VSDs, the administrative ones, and the ones that are going to be assigned OEE and attorneys. What are the recommendations or things to avoid in VSDs that you will give companies, from an OEE perspective, when you're reviewing a VSD. What are the things that you're like, oh, this is interesting. Or what tips for the VSD process for companies? Jim, you can go.

**Jim Fuller:** Okay, so, one of the things, is everybody's human. So, you have different people have different writing styles and people have different ways that they argue their points. As an investigator, unless I see an egregious, willful decision to violate the law, and I'm investigating the company. If you are looking at mistakes, I don't need 101 excuses. Just tell me what happened and then tell me the remedial actions that the company took. There were many companies that I had a good working relationship, which really surprised them. They said, "I can't believe that you would allow this." I said, "Look, I'll even go as far as letting you write the narrative, you give it to me, I'm going to tweak it and write it my way. But that'll be the charging letter if they issue the charging letter. Because they were completely forthcoming and they took the right remedial actions. We don't need excuses. We don't need, "I was having a bad day, my cat died and so I just authorized the transaction to North Korea." I don't want to hear that. So, you just say, "Look, this is how it occurred. This is what we've done to correct it." It keeps it nice and professional, nice and simple, straightforward. It's going, and I wanted to say this before, it's going to OCC, your correspondence going to go to OCC.

**Olga Torres:** Yeah, we, that's a good, it's actually kind of funny because we oftentimes submit the VSDs and it's not until a few months later that we get OEE,

“Hey, can you email me the VSD?” I'm like, “Okay, we can do that.” I'm like. I guess they're not getting it internally somehow.

**Jim Fuller:** Well, no, what happens is, there are lots of questions that need to be answered. And again, it's the time that the attorneys have. So, we get the VSD and we fill in the backstory, we ask for additional information or we see that all the bases have been covered. Then we submit our report to OCC and say, “Yes, this is it's a full disclosure. Here's the documentation from our systems. It matches what they've given us.” Because the documentation looks different in government system than what the company provides.

**Olga Torres:** Yeah. And sorry to interrupt, when you say that, that's also very important. We always, and we just had a call on this yesterday, Don, where I emphasized, we need the ACE data because I want to know, if the government runs a report on your data, what can they see? So, that's always something that we start with when we're doing VSDs because we want to see what happened and compare that to their internal data. And it sounds like that's something that, do you ever run ACE reports when you're reviewing these VSD? I'm assuming you do.

**Don Pearce:** The interface is the same data, but the interface that we use is specific to regulatory and law enforcement. But yeah, the ACE, is the Automated Customs Environment, which is, kind of the way that the freight forwarders and or organizations, exporters and importers, file their electronic declarations with Customs. It's interesting because Customs runs the mainframe, but the data for exports actually belongs to the Commerce Department, but the Commerce Department has to go to the Department of Homeland Security to get permission, to look at its own data.

**Olga Torres:** Well, it's government efficiency. That's what I call.

**Don Pearce:** Yes. And I wanted to say this earlier and it's could kind of could fall into this type of a situation where it's maybe unclear at first, but if you're going to do a VSD and you're going to tell the government that you're going to fix something. Make sure you fix it because that's something that agents might take as the charge of contempt of cop. You told me you were going to do something and then you didn't do it, and then you ended up violating again, and now you're going to write the same VSD with the same block cut and paste from the other one. That's not going to fly.

**Olga Torres:** For a while we started seeing DDTC paying a lot of attention to old VSDs, and they would even come back and ask questions, two years after the fact. We had a couple cases where they came back and asked about the corrective actions. Is that something OEE is doing? Does OEE ever audit the VSDs?

**Don Pearce:** So, DDTC has the luxury of being purely regulatory and not having the full investigative function. I think what you're seeing here is, there isn't somebody who's been told they have to do this. There are probably people who do it because it, frankly to me, seems like it would be an easy, it'd be an easy mark.

**Olga Torres:** Right.

**Don Pearce:** Especially if you start, hearing whispers about a particular company that you did a VSD on. And in our system, when you do a VSD or you do an enforcement action on a company, and you have your name attached to that company, generally, any leads or any tips that come in will come to you as the case agent. I know I would go back and look and see if I had done anything with this company before. And I think if I had gotten one where I had done a VSD in the last two or three years, I certainly would look to see if they said that they were going to do some remedial action and make sure that that remedial action was taped.

**Olga Torres:** It's complete. Mm-hmm yeah, that gets completed.

**Don Pearce:** Yeah. Jim, did I, did you ever have one like that?

**Olga Torres:** I think I interrupted Jim at some point. You were talking about the data.

**Jim Fuller:** No, I have no idea. I'm trying to track with you guys. So, you're asking me, the squirrel had passed that mile mark for a while back. But the one thing that I would say, and I know Don, I don't want to shut you down Don, but I know he is not going to say anything. He's just going to nod knowingly. You never know who you're sitting across from. I've sat across from informants. It's like a, I call it the Keyser Soze moment. You're sitting across from an informant and you realize that this is actually the guy that you're looking for. He's just feeding you a very well put together pile of crap, on another guy or another entity. So, you stay away from him. And, I've seen that, I've seen that with corporations, they provide information. In the corporate world, your competitors are like ex-wives. They have it out for you. They're going to get you one way or another. And so, you get a lot of

competitors that say, “Hey, you need to look at these people.” And, if you're smart, or you've been around long enough, you start doing your homework on your own informants. You have to. But, sometimes it takes a couple years. You'll get calls, you'll put people into the system, whatever system, whether you're dealing with intelligence or you're dealing with the in-house systems in Commerce. And you'll get a ping 2, 3, 4 years later, “Hey, you put this in about this guy, do you know about this guy? And then that's when people start talking, putting the puzzle pieces together and then you just look at each other and go Wow. You encountered this guy and something else. Everybody's got their own script to run, you're doing a case. It takes you where it's going to take you. And then three years later, comes the phone call or the email saying, you need to look at this and the guy you thought was okay, isn't okay.

**Olga Torres:** Yeah.

**Jim Fuller:** So, you never know. Look, when you see an agent dealing with the public. I tried to understand, I had a really, I had a really bad boss. I worked for Immigration my first 10 years.

**Don Pearce:** Yeah, not in Commerce.

**Jim Fuller:** No, not in Commerce, actually. No, but with Immigration, but as much of a jerk as he was, he taught me a valuable lesson. He said, “Treat everybody like you treat your mother. And that way you'll never get, no one will ever have a harsh word against you.”

**Olga Torres:** Unless you're my one-year-old in which case? I don't know.

**Jim Fuller:** They're starting younger and younger. But he was right. So, I always tried to treat companies the right way, but to be honest with you, I never believed anybody because, as an agent you're always being lied to. So, you just smile and nod.

**Olga Torres:** But you also deal in criminal cases mainly, right? So, you're also in like your own little bubble, because like, I do think most people try to do the right thing.

**Jim Fuller:** That's true. And this, I wanted to say this earlier, this is one of the unintended kind of insurance policies that Commerce has when you have OCC,

and you have that, it's kind of an impartial level of review. So, the agent can be dealing with a company that's maybe adverse or disrespectful and there's not a great working relationship. But OCC has none of that emotional involvement. They're cold and detached. And they're like, "Look, this is, this is where it falls in the scheme of things. It's not the case of the century, no matter how poorly they treated you or the field office. Or yes, they're bad guys. Yes, they lie. But we can only do so much. It's always a good checks and balances, so you'll get a fair deal. That's what I always liked. Commerce is staffed with amazing, amazing people. And I thought to speak to some of your viewership. If you guys are familiar with Matt Borman.

Matt Borman is one of the most intelligent people in Washington. And he is so approachable. He answers his phone, and he answers his email. People complain to him. He writes the regulations and people complain to him and he listens, he will actually discuss. He's such a, just a gentleman, that, even people who don't like the regulations walk away going, "Okay, I get it."

**Olga Torres:** Yeah. I mean, I think it's always good to come back to the purpose of all of these. Ultimately the purpose is to protect national security, to advance foreign policy interests of the U.S. And I think, especially I'm sitting in Texas right now. I mean, there's always this fear of the federal government, the bureaucrats, and the government. But, like you say, there's a system, it's a fair system. People can reach out to the government; they can do the right thing. They can invest. I think priority-wise, I always talk to companies about, invest upfront, be proactive. Don't tell me, "We've always been doing it this way, nothing happens. We're not going to be investing in something that we don't think we need." But it's very important for people to keep in mind, investing not only gets you, hopefully you don't get in trouble to begin with, but also the all of the agencies, even, economic sanctions agencies, they all take it as a mitigating factor. If you do have violations, then they'll take that into account. "They had a great compliance program. It was a one off, or it was related to an employee that did such and such, not the company policy at large." Don, were you going to say something? I thought you were going to say something.

**Don Pearce:** Just that, as much as OCC, functions as the legal conduit from BIS to a company in a VSD case, that's why it's important to have legal counsel, either inside counsel or specialty counsel involved in that process. Because lawyers like talking to lawyers, and whereas an agent who feels like he or she may have been

lied to might have a bit of an emotional reaction. I mean not Jim and I. We're just cold as ice.

**Jim Fuller:** Yeah, I was as Mr. Spock, man.

**Don Pearce:** But you may see that on the company side as well. Compliance teams that feel like they're doing the right thing and feel like they're doing everything right, and then stumble across something where there was a problem. They don't want to think about it as their error. And it's again, it's a part of being human, it's, it's a part of a system that relies on human beings.

**Olga Torres:** There's some fear too, they're in trouble.

**Don Pearce:** Yeah. And the problem is a lot of times they think they're in more trouble than they actually are.

**Olga Torres:** Yes, that's exactly right. We've had investigations where we are doing interviews and the employee's perfectly fine. But you still have to read the Upjohn. People just think that we're... It's always interesting because it's never going that route. It's people thinking that they're in trouble when they're not. It's quite interesting to see.

To close it out because we're above time. Enforcement priorities: what would be your advice to a company that is either in the United States or exporting or re-export in U.S. product, because even if you're a foreign company with no U.S. presence, if you purchase U.S. products that are controlled under the U.S., regulations the EAR, the Export Administration Regulations, then you would have to be dealing with the Bureau of Industry and Security and all the various regulations and otherwise be potentially liable. What is your advice in terms of enforcement priorities? If I'm an executive and I think I haven't looked at this area in a while, or I don't have an understanding of my company operations in terms of enforcement priorities. What will your advice be, focus on the following two or three items at your company? Who takes it?

**Don Pearce:** I'll start well I'll or no, go ahead. Go ahead, Jim.

**Jim Fuller:** Yeah, the one thing that I would say is the cost of doing business. One thing about the June 30th Enforcement Memo. He was pretty open that enforcement is a priority and they were going to increase the monetary penalties.

And the successful enforcement actions against ZTE and the rehabilitation of that company. As well as the enforcement actions against Huawei and SMIC.

The cost of doing business illegally, or the cost of making a mistake, is much greater than the cost of doing business with the appropriate professionals that come alongside, that you should have, if you want to have and grow an international footprint. So, getting third party – this isn't an infomercial for you, Olga – getting a third party who knows what they're doing, who knows the lay of the land, it's just an investment because it's the Office of Export Enforcement. We're here, our purpose, is built in the title. It's enforcement. And enforcement can be very costly. Just ask ZTE, just ask Huawei, just ask PPG. Ask any entity in the outreach booklet, “Don't let this happen to you.” If they could go back at a critical juncture and not do what they did for their balance sheet, they will tell you it's not worth it. So, the regulations, the Denied Parties lists and the Unverified List and all these different tools and subsequently all the bad guys who want a piece of the profit.

I mean, dealing with the Iranians is a 40% markup. So, the middlemen know that. I'm sure I'm not quite sure about where the Russians are in this equation, but anytime that you have sanctioned parties, it gets more expensive to acquire U.S. goods and that's what they want.

If you're honestly trying to do business on the international stage, you need somebody, you need guidance nowadays. It's just, if you're sick, you go to a doctor. If you want to save money and go to the internet, you're going to, you're going to have problems. It's just the way it is. So do-it-yourself is risky when enforcement is the word of the day. And yeah, the monetary penalties are breathtaking.

**Olga Torres:** And just reputation alone, I think sometimes.

**Jim Fuller:** Yeah. Right. You can't. That's an awesome point. Once your reputation is tarnished, it has to be rehabilitated. Trust is gone. I mean, when we put ZTE on the Entity List, so many of their clients bailed, they said, hands off, they lost \$600 million in the span of 30 days.

**Olga Torres:** Yeah, I can see that

**Don Pearce:** There was a company called WuXi Biologics that, due to a, let's say a disagreement between the U.S. government and the Chinese government about

COVID-19 regulations. An end use check couldn't be done there. So, BIS placed them on the Unverified List, which is the Commerce Department equivalent of a parking ticket. And the way you get on the list is you don't let the export control officer in to do the end use check. And the way you get off the list is you let 'em in to do the end use check. And in between, if you want to do business with this company, you have to get a note from them saying that they're going to let somebody in for an end use check in the future on this stuff. And oh, you can't use a license exception. You got to come in for a license. Which you're probably going to get, because it doesn't change the licensing, rate, protocol, policy at all. Yeah. It's going to be whatever the usual route for that license is going to take, this one's going to take the same one. So, 45 days later, boom, you're ready to go. WuXi Biologics, they wouldn't have been able to use a license exception, everything they did needed a license anyway.

And sending that note no problem. But the look of being on a list dropped their share value by 25% and that's tough. The moral to the story here is always let them do the end use check, but also if you possibly can.

**Olga Torres:** But with certain governments it's very difficult.

**Don Pearce:** Exactly. And, and in certain times, in certain places and in certain situations, yes, you may be a victim of this, but it's rare. But that idea of reputational risk I think is probably more important than the risk of, especially in voluntary self-disclosure cases where you found it first, the likelihood is you're going to get a sternly worded warning letter telling you never to do it again. And there'll be this press release that nobody reads. If you go through the BIS press room and count up all the press releases, and then try to correspond that with actual stories in the paper or, criminal investigations versus administrative, the vast majority of what's getting put out there is, simply "We made a mistake and we came forward and we're good to go now." I think that's, if I can close on a happy note, I think most compliance organizations have the knowledge of their industry and of their people and of their procedures. That if they do find a mistake that voluntary self-disclosure is going to be a snoozer to the agent, because it's going to have the entire problem laid out and the entire solution.

**Olga Torres:** Yep.

**Don Pearce:** But you can't do that without good help.

**Olga Torres:** Thank you so much. both of you. I think this is a very interesting, topic that I feel like we didn't even get to cover more than 30%. I think enforcement is such a hot topic and also just a top priority for all the agencies. Thank you very much for being here and thanks to our listeners for tuning in. We'll bring you more of the Torres Talks Trade podcast very soon. Thank you.

**Jim Fuller:** Thank you.

**Don Pearce:** Thanks.