

## Season 2- Episode 4

**Camille Edwards:** My name is Camille Edwards and I'm an Associate at Torres Trade Law, a national security and international trade law firm. This podcast will be focused on current developments in the enforcement of trade controls against Russia, including a DOJ task force dedicated to enforcing these trade controls and its involvement in two recent cases of enforcement. Joining me today is Donald Pearce, a Senior Trade Advisor at Torres Trade Advisory, and Former Special Agent with the Office of Export Enforcement under the U.S. Department of Commerce. In our very first podcast episode, Don talked with us about his time working in Russia as an export control attaché. So today we thought it fitting, considering his unique insights, to have him back on to discuss Russia related updates. Welcome, Don. Thanks for being here.

**Donald Pearce:** Thanks so much for having me and we should note that I'm dialing in live and direct from Singapore, where I'll be instructing in the Export Compliance Training Institute's classes out here.

**Camille Edwards:** Awesome. All right, so jumping right in, can you tell us a little bit about this DOJ task force? What does it do? What is its purpose? Just give us some background.

**Donald Pearce:** Sure. Task Force KleptoCapture, which I have to say is probably the most innovative name in federal task forces in years, is dedicated to, just as it sounds, the capture of goods, technology, money, anything going to the kleptocracy that is currently running the Russian Federation. This is an interesting task force because normally the task forces come out of the law enforcement agencies. Everyone's familiar with the FBI's world-famous Joint Terrorism Task Force (JTTF). As a former JTTF guy myself, I can say it was probably one of the best inter-agency organizations I've had the pleasure of working with. The interesting thing about this is it is not out of the FBI. This is out of main Justice. So, it is run by the Justice Department, which means that there probably isn't the single agency focus that the FBI normally gives to their task forces, where it's "You're aboard and you're with us." In this case, it's more like "We're all here and working for them." So, I think it'll be an interesting. I would love to be able to sit down with some of the agents on the task force and see how it's actually working out, but frankly, they're too busy to have those kinds of discussions as we'll find out as we go through today.

**Camille Edwards:** Right. Exactly, they have been busy. Task Force KleptoCapture was first launched in March of 2022. Was there any significance to the timing of its launch at that time? Were we seeing a rise in sanctions

evasion or export control violations? Do you know, can you kind of give us some insight on why it was launched just last year?

**Donald Pearce:** Sure. And I think this may have been more about the politics of putting together an interagency task force in how long it took for them to actually get to this point. I think this was something that was probably mulled over as soon as the Russians rolled into Ukraine. The Russian sanctions are not new in and of themselves. Many of them go back to 2014 to the initial seizure of Crimea. So, the Justice Department especially has been focused on the enforcement of those sanctions and export controls. It's interesting that it actually took that long, I think, to finally put something together as formal as this. A little inside baseball here: oftentimes agencies will get together and do something in joint investigations that's much less structured and they don't even get names. They may get an operation name or something if somebody's paying attention. But most of the time it's just a joint case between, say, the Bureau of Industry and Security's Office of Export Enforcement and the FBI. Then your next level would be a strike force, which requires fewer people to sign off on it. It's something that can be done at the local field office level between Special Agents-in-Charge. When you get to a task force like this, you're probably getting buy-in from senior leadership and management. There's probably a formal MOU. I'm not sure because I've been out for too long. I wasn't involved in putting this together. But, by nature, task forces are usually set up with a reporting chain and structure within. So, it does take a little while. And plus getting all of those leaders to sign off can sometimes be the most challenging thing, to find someone willing to put the pen to paper.

**Camille Edwards:** Gotcha. Do you think that this task force indicates any broader policy adjustments from the U.S., like stricter enforcement of trade laws when it comes to Russia or hardening the U.S. stance against Russia?

**Donald Pearce:** I think it absolutely says that the United States government, in a whole-of-government fashion, is going to do as much as possible to enforce these sanctions and export controls. The agencies are already doing that by themselves, or at least that's their mandate, that's their mission. But by putting something together formally like this, it's to show that this is a team effort and it's to show that this is not just another export control exercise. This is something that is going to be taken seriously and is going to be given priority.

**Camille Edwards:** It sounds like this is a very robust task force. It's a very effective tool in enforcement. I was wondering what your thoughts are on its effectiveness over this past year because we are right at that one-year mark

since it's been in place. What can you tell us about what they've done, what they've accomplished?

**Donald Pearce:** The rule of thumb, as BIS agents often say, is that these cases take years to develop. So, the fact that you've got 30 to 35 significant enforcement actions and cases spun up within about a year, it's pretty good. That's pretty fast. That tells me that people are taking this seriously. This isn't something where they took the “alright, we'll put an agent over there part-time and we'll see what we can get out of it.” This looks like to me to be a full-on commitment by the law enforcement agencies to work together on this, in lock-step, and do what it is that the Department of Justice, U.S. Attorney's Offices, and the main Justice National Security Division feel are the priority cases and the best targets.

**Camille Edwards:** Can you tell us what these priority cases are? I think was it the Deputy Attorney General that said something to the effect that the task force was targeting cases or entities that are helping the “Russian War machine.” What do these kind of priority targets look like? Are they Americans? Are they Russian oligarchs? What does that look like?

**Donald Pearce:** They are all of the above and everyone in between. They are the supply chains that are bringing U.S. and Western goods and technologies into Russia for the specific purposes of military end-use. They are the funding sources that are keeping the factories limping along within Russia to produce the munitions materiel and equipment needed for them to continue to persecute the war. There are probably a number of U.S. companies – I know there's been at least one that's been publicly named – that should probably be looking over their shoulders right now. In addition, all of those middleman companies that spring up in places where the trade is continuing between Russia and the third country. For instance, in Turkey, there are probably some companies that are continuing to do business with Russia. Much of it could be legitimate but could be easily used as a transshipment point or a diversion point for U.S. goods or technology. And in that case, they're probably going to have to start looking over their shoulders too.

**Camille Edwards:** Interesting. Moving now to the recent cases that we've seen the task force involved in. On March 2<sup>nd</sup>, the DOJ issued a press release regarding two U.S. citizens arrested for illegally exporting technology to Russia. Can you kind of give us the circumstances of this case and how the task force was involved in this investigation?

**Donald Pearce:** Sure. KanRus was a company working out of Kansas that had a U.S. citizen and a naturalized U.S. citizen who was formally a Russian national, who were involved in the aviation business. So, whenever you get on a plane, think about this: that plane doesn't have the pilot's cell phone suction cupped to the window to do its navigation. It has an integrated inertial navigation system that's within the avionics, the electronics that basically run the aircraft. In the fly-by-wire aircraft, the more recent top-of-the-line commercial aircraft, these systems are fully integrated. That means that, to get the plane in the air, all of the systems have to work. Many of the airframes that are being used currently in the Russian Federation are U.S. or European origin but have a significant amount of U.S. goods inside, built right in. In many cases in these avionic components. What KanRus did was they repaired those, they did overhauls, they freshened up the electronics for companies. And apparently, in at least one circumstance, when the items came into the United States, they had little stickers that said they were property of the FSB, the Federal Security Service of the Russian Federation, which is the Russian equivalent of the FBI and the CIA if they had been merged together at some point. And of course, they came out of the world-famous KGB. So, the response, which I think is precious, from the overseas client who gets an email from the folks at KanRus saying there's an FSB sticker on there. He says, "Oh, I could see that might be problematic. Perhaps you can peel it off and then repair it and then put it back on?" So, yeah, this is one of those cases where you just kind of look at the evidence and you go, "Yeah, this has jury appeal."

In addition, and this is one of my favorite, most overlooked export control related regulations, is in these circumstances, what these guys often did was they undervalued the items that they were shipping in order to avoid the \$2,500 value requirement for filing Electronic Export Information (EEI), or what we used to call Shipper's Export Declarations (SED). So, again, email can be your best friend as an investigator because when you find an email from the company saying, "Hey, can you make the value below 2,500? It saves me on paperwork," it goes to motive.

**Camille Edwards:** Right. This case kind of involves some humorous, pretty obvious facts, but I was wondering if you had any insight on what were the major red flags. How did this task force flag these exports? How did they know to start their investigation? What were the first red flags that they would've seen? Was it done through an end-use check or something like that?

**Donald Pearce:** It could have been done through an end-use check. When I served over there, I did do aviation-related end-use verifications for goods and technology that were exported to the Russian Federation. It could have come

from a domestic outreach. An agent might have gone out to talk to them and maybe just got a funny feeling and came back and talked to the Special Agent-in-Charge and said there's just something wrong here. They just don't seem to want to open up the way a normal company does when a BIS agent comes knocking. It could have been a data review. Perhaps the numbers of shipments to Russia can be tallied. Perhaps they had items which they didn't undervalue, and they did properly declare, and they made regular shipments. So, you'd have a pattern of life that you could see in electronic export information. And then, all of a sudden, those numbers stop, but almost the equivalent amount of stuff goes somewhere else. Perhaps Finland, perhaps Turkey, perhaps somewhere else, Dubai? And it just looks like all the same stuff, but it's now going somewhere else. These are the key indicators that an agent might be looking for to find a target like this.

**Camille Edwards:** For our listeners who might have customers that are exporting their goods out of the U.S., are these red flags relevant to them to keep in mind as well?

**Donald Pearce:** Oh, absolutely. Especially that one. If you have a client that has done a significant amount of business in Russia and there is not a significant drop off in their orders, it's probably still going to Russia. It's just not going there directly anymore. Due diligence is definitely in order here and it's something that can be fairly easily done just by looking at the types of orders and the types of end-uses and end-users. Aviation especially is a great subject for this because all of those items have to have what is essentially a passport for their date of last inspection, their date of initial introduction into the aircraft, what aircraft frames they've been on, what tail numbers those had. It's like following the history of the device on this paperwork that has to accompany it to make it airworthy. In other words, to make it legal to use in commercial aviation. So, if you have components that you know have been in the past supporting Russian airframes, that all of a sudden are going to airframes that either aren't filled in or don't have the appropriate numbers, say the tail number is for a different type of aircraft, that's a red flag. That's something you should start asking questions about.

**Camille Edwards:** Okay. In breaking news, because this just happened on March 8th, we have another instance, where the DOJ announced that it had obtained a warrant for a seizure of an airplane owned by a Russian oil company. Don, can you give us the details on that case and tell us about this most recent enforcement by the task force?

**Donald Pearce:** Sure. Rosneft is an oil company in Russia. The company and its principals are sanctioned individuals, and they had this really nice Boeing aircraft. The upside to them buying American, of course, other than promoting Boeing and American jobs, is that aircraft remains subject to the U.S. Export Administration Regulations (EAR). So, by using the aircraft, by repairing the aircraft, by fueling the aircraft, anyone involved in that chain could open themselves up to sanctions because once you have violated the Export Administration Regulations and, in this case, the violation would be using the aircraft after the sanctions were put in place, restricting the use of the these to the Russian Federation, without a license. And that's the thing, Rosneft could theoretically come in and ask for a license. Would they have gotten it? Probably not because there's a presumption of denial. But, by not doing that, they put themselves in the trick bag.

**Camille Edwards:** Gotcha. In this press release, it was noted that the BIS Office of Export Enforcement worked closely with KleptoCapture in this investigation. I know we touched on this earlier in our discussion about the agencies collaborating with this task force. Can you provide any details on what that collaboration looks like?

**Donald Pearce:** Absolutely. The quote that's in there is from Special Agent-in-Charge Jonathan Carson in the New York Field Office (BIS), who was my field partner for years, and I have to admit reading that press release made me want to be back in the field again. In his quotation, you'll note that this is not something that is unusual. This is BIS Office of Export Enforcement doing what it does every day and doing it, in this case, against a very particular target. So, the number of agents involved in the task force, I'm not sure, but obviously there's at least one, if not more. And what often happens in these cases is an agent perhaps not aligned with the task force will find something, will start running a lead, will catch something from a voluntary self-disclosure or from intel that might end up dragging that case into the task force. It's kind of interesting because now you're talking about a joint investigation between the task force and BIS, which is kind of hard to wrap your head around until you do it a couple of times. But, at the end of the day, what we're looking at is a full court press by agencies of the U.S. government, not just BIS, but the FBI, Homeland Security, Customs and Border Protection. Everyone with a dog in the fight is bringing their dogs and all of them are ready to hunt.

**Camille Edwards:** So, is your advice to companies that are exporting right now just to be hyper-diligent with their compliance, because it seems like there's going to be heightened enforcement? We're already seeing that, right?

**Donald Pearce:** Yes, and we're seeing heightened enforcement across the board. It's not just Russia, it's also China. Several significant cases have come across for the Chinese industry and we have seen a significant increase in the number of entities on the Entity List. And we have seen significant interest in voluntary self-disclosures. Back when I was an agent, a voluntary self-disclosure very rarely was looked at as anything other than getting the sternly worded warning letter. That is changing and I think you're going to see more cases where companies come forward in good faith but still end up having to pay a fine or still end up perhaps even finding individuals or, heaven forbid, the corporation facing criminal charges. Now why would that happen? Well, these are significant cases. These are things that perhaps show a significant risk to the national security or foreign policy objectives of the United States. It's not going to be because someone forgot to file an SED, or someone did two or three shipments undervalued in order to not file those SEDs. This is going to be criminal conspiracies to violate the Export Administration Regulations, and in the case of Task Force KleptoCapture, to help the Russian military or Russian intelligence services. That's where there's going to be significant problems.

What companies should be doing right now to protect themselves from having to file said VSDs is to make sure you're filing your Shipper's Export Declarations, your Electronic Export Information, correctly and accurately. And if you're asked to do something other than that, you should be calling an agent at a local field office. In addition, you should know your customer. Knowing your customer is great advice during normal times, if for no other reason than to be able to make sure that you're fulfilling their needs as well as possible and selling them as much as you can, right? But that information is also very helpful in situations like these because if you start to see an interesting change, perhaps a commodity that was rarely ordered suddenly gets ordered a lot more, and it's something that you used to sell a lot to Russia. It's a red flag. You should be asking questions. And you're going to be making business decisions, but you'll make much better business decisions if you ask questions and then check the answers. Trust but verify.

**Camille Edwards:** That's great advice, Don. Thank you for providing these updates. Very interesting updates and I'm sure we'll see more from this task force, more announcements, more enforcement. So, we'll be looking for that coming up. But, thank you for being here today, Don, and thank you everybody for joining us on this podcast episode.

**Donald Pearce:** Thanks for having me. See you soon.