

Podcast Episode 1- Russia

Olga Torres: Thank you for joining us for the Torres Talks Trade podcast, where we discuss timely topics in trade, national security, cybersecurity, and supply chain issues. My name is Olga Torres and I'm the founder and managing member of Torres Trade Law, an international trade and national security law firm. My guest today is Donald Pearce, a former special agent with the Office of Export Enforcement under the US Department of Commerce, who was also one of the last attachés in Moscow, Russia. Welcome Don.

Donald Pearce: Thank you for having me, Olga.

Olga Torres: So, today's a very special occasion for us. One, because it marks the very, very first podcast or our pilot podcast, and also because we're able to leverage our firm's internal resources and bring you Don, who also serves as our Senior Advisor for Global Risk Monitorship and Investigations.

Don lived in Russia for many years. He's actually married to a Russian, understands the Russian culture very well, and also knows the region very well. So, we thought you will be a great opener for our podcast, given the current Ukraine-Russia situation.

Donald Pearce: [In Russian] Bolshoye Spasibo (“Thank you very much.”)

Olga Torres: And I guess before we get started, it will be good to just get an idea of your background and how you ended up working for the US government and specifically why the Department of Commerce had boots on the ground. And if you can explain that to people that may not be as familiar with the program.

Donald Pearce: Oh, sure. So, I started with the government as a GS1 step one clerk in the Customs service at JFK airport. I was in a cadet program, and they had a stay in school program that put people to work part-time. So, that really started my journey in the federal government. One of those first assignments was I was the clerk for a unit called Operation Exodus, which was the Customs services outbound enforcement team that did dual-use and ITAR related inspections. So, I got hooked real early on export controls.

Later in my career, I became a Customs inspector and found myself as one of the plank holders on the newly formed outbound enforcement team at JFK

airport. Just before I got hired by commerce as a special agent that happened in 1997, I'm dating myself now. Hong Kong was still a British protectorate, and the regulations were still squarely aimed at an adversary that was going away.

So, I feel like my career in export controls, I spent 23 years with BIS, went from the Soviet-centric export controls of the late eighties and early nineties. And I was able to watch this process as we first made do with what we had and slowly but surely changed the regulations and eventually export control reform brought us into the 21st century with a much different set of regulations.

Today's export compliance professional, I think has a much easier time of applying than it was back in that weird time between the Cold War and the War on Terror.

Olga Torres: Yeah, that's really interesting. And I guess for those people that may not understand what export controls mean: basically, the US has restrictions on specific technologies that are called [export controls]. And I know you mentioned the ITAR; that's items that are defense, and under Commerce we have dual-use items. That's another term that Don was using and those are terms that could be commercial and military in nature. When he mentioned some of these acronyms, that's what it means. How long were you in Russia? And do you have any stories to share with us, something that you can tell us about your work in the region?

Donald Pearce: Oh, do I. So, I arrived in Moscow as the export control attaché, as they were known back then in 2004 and it was an interesting time to be in Moscow. Many of you may know about the “Roaring Nineties” where the changes that came after the fall of the Soviet Union led to a, let's just say rather gangster-like business environment for several years, but by 2004, things were starting to calm down. And it was interesting because it was also the rise of Vladimir Putin, who will feature in our story later as well. But at the time, though, there was a burgeoning middle class. There were more imports of goods into Russia with this attempt at trying to modernize. There were several places in Russia that were going to be the next Silicon Valley. There were a lot of tech imports, the Soviet, and then later Russian education systems produce excellent mathematics students.

Olga Torres: Yes.

Donald Pearce: Which means great programmers and great coders. A lot in the software development world, going on over there at the time when I was there and probably up until just a couple of months ago. And the interesting thing

about doing end-use checks in Russia was if you went to a run of the mill company, the average Russian company, you were welcomed with open arms, they were more than happy to show you what they were doing. They were very interested in not just American technology, but in technologies that they could use to make their products better and sell them. And it was a very, I would say, pure version of capitalism going on at that worker level. My experiences with some of the, let's say, state-owned organizations or government organizations that would vary, sometimes I would have to sit through a 45-minute lesson on how the Gulf war had impacted America's reputation overseas and I had to sit there and nod, or I would walk in with very cold eyes looking at me, which would sometimes warm up if I mentioned that my grandfather was a coastguardsman during the Second World War and did convoy escort duty to which would always lead to the obvious [Lend-Lease Act](#). Convoys and the stories of those, which would warm the hearts and show a moment where America and the Soviet Union were at one against a common enemy. And that often warmed them up, which was nice.

Olga Torres: Yeah.

Donald Pearce: I, also, I'm a people person, I like people, I try not to judge where someone comes from or what their political beliefs are. I just want to, in this case, get my job done. But I also want to enjoy the moment as well. So, it was always fun to learn about the interesting things that the companies could share with me about the culture and it's a fascinating culture because. . .

Olga Torres: It sounds like back then, the US was allowed because, I remember even a few years back where we had to represent companies that had been listed in [Unverified List](#), for example, because at the time the Russian government was not cooperating on this end user requests. So, what happened then, that the Russian government decides, okay, let's kick these guys out?

Donald Pearce: Okay. Well, first of all, it happened after I left so it's not my fault, but seriously, I think what happened is, well, frankly, 2014's invasion of Crimea.

Olga Torres: Right, so that's the first round.

Donald Pearce: Yeah, which changed the dynamic significantly between the Bureau of Industry and Security in Russia. When I was over there, there were sanctions against certain organizations, some of them legacy Soviet institutes that after the fall, were still involved in unauthorized end uses or end users. Those folks remained on the [Entity List](#) or in some cases there were issues with

persons that were denied export privileges or had been connected with debarred organizations under the State Department or on there under other.

Olga Torres: More like entity specific?

Donald Pearce: Yeah, very end-use-/end-user-specific issues and in those cases, there may have been some political sensitivities, but at least everyone knew that if I was going to go back and ask about a particular company and that company was on the Entity List, there was a very small chance that I was going to get to actually talk to them.

So that's par for the course, what event ended up happening? I think was there was a decision made by the Russian government first to make it a state secret to share export related information with non-Russians, which basically made doing end use checks impossible.

Olga Torres: And it, was it that it was related to their own technologies or related to US origin products technologies?

Donald Pearce: That was related directly to US origin technologies coming into Russia. And what I found interesting about that is number one, it shut down the ability to do an end-use verification, because one of the things that obviously we want to do is we want to verify the paperwork. And one of the things I loved about doing end-use checks in Russia was paperwork was plentiful.

Olga Torres: Right.

Donald Pearce: You needed permits, you needed permission to do things. These permissions needed to have stamps in some cases and in many cases if you had it would have been a chore to actually authenticate all of it because there was a lot there. But to me more is better. I would rather see a company present to me every single piece of paper that they think is involved in a particular transaction than to leave the one out that I'm actually looking for.

Olga Torres: It sounds like they have really good records and trails that you can review

Donald Pearce: The companies that I rated as favorable, I'd say 99 times out of a hundred had excellent systems for managing this paperwork. If in some cases, these were manual systems where I'm sure there were people that were literally filing things, making sure they knew where they were filed, but in some cases,

people were embracing technology. And there were many cases where they asked me if it was okay if they just printed out everything for me. And I was always cool with that. I would imagine that nowadays they could have probably emailed it to me.

Olga Torres: Right, yeah.

Donald Pearce: Being there at that time where email was still kind of, I wouldn't say it was new. It had been around for a while, but it wasn't as heavily utilized as it is today and especially for attachments and things, because there were bandwidth limits.

Olga Torres: Yeah. So, it sounds like in general, in the olden days, when you were allowed to visit the companies that you visited, at least the ones that pass the test, they had a really good record, keeping the word open to show in the records, I suppose, and giving you the...

Donald Pearce: And they we're doing good due diligence on their end users. In many cases.

Olga Torres: That's actually my experience. And I mean, obviously we get only certain sets of people that we represent. But that has been my experience that when we represent Russian companies in the past, they have really good recordkeeping; also, they do great due diligence. I think they understand that any kind of diversion could subject them also to extraterritoriality from the US side. And now I've always been very impressed because we represent people all over the world and other countries don't have these kinds of systems in place. At least their ERP and their due diligence was very good in my opinion, as well.

Donald Pearce: And to give credit where credit's due, the Russian export control systems is pretty good. They're a [Wassenaar](#) member. I have to say my interactions with the local export control authorities were limited because, well, they also controlled communication security. So, it's sort of like if BIS sat in the national security agency. So, there was a certain level of employee that was no longer allowed to talk to somebody like me.

Olga Torres: Yeah,

Donald Pearce: But the interactions that I had with the Russian officials on export controls, I'd say almost uniformly, good. Like everyone was on the same sheet of music, everyone realized the importance of the mission and everyone was trying to keep things from slipping out and I couldn't have asked for more.

Olga Torres: So, what do you think? I mean, and we all hear a lot about, justly so, about the people in Ukraine and obviously less so about Russians. And what I hear anyway is the Russian media is controlled by the government. From your basic understanding of the culture and the country, do you think for the most part, the Russian people are still, do they still believe that the war is justified or they, what, what do you think is happening there?

Donald Pearce: My purely speculation here, based on the media that has been coming out of Russia, that you can find on social media, I'm not an expert on the current affairs networks of Russia. However, from what I've seen, I could imagine that the average Russian still thinks this is some type of special operations. If they are only consuming their news from the state-owned and even the independent, now kind of state-controlled media in Russia, there's very little of what we would consider to be accurate information making its way through. And when accurate information does make its way through, as I've seen in a couple of clips, it's often treated as misinformation by other members of the panel or host yeah, exactly fake news or, the same person will come on and kind of do a *mea culpa* the next day.

So, I really think that most Russians that aren't really either hip to the internet, or are really interested in what's going on, or maybe have some type of a reason to look such as many family connections. Might I have family on both sides of this conflict basically now because we have members of the family that are Ukrainian as well.

So, I think the more skin you have in that game, the more likely you are to seek alternatives news, and you might have a better idea of what's going on. However, I think back often to my reactions, to the Second Gulf War where I, full disclosure, I wasn't really a fan and I often felt like, maybe they're right. Maybe I am not very patriotic on this. Here's a guy who spent his entire adult life, serving his government, having a second thought about whether or not maybe he should jump on the bandwagon and call them freedom fries. Right? I understand how difficult it can be for someone to have to pop that perception bubble of "usually my country's on the right side of these things."

Olga Torres: Right.

Donald Pearce: And imagine the shock of finding out that not only are they not on the right side of this thing, but they haven't been on the right side of a lot of things for a long time.

Olga Torres: Yeah. That's what's so difficult cause if you're controlling the narrative, it's so powerful. People don't fully understand what's going on and then you can sway them either way for the US, for the West, we issued so much in terms of economic sanctions. And there's been a lot of discussion. "Well, they're not working." And, from my perspective, I think sanctions were not necessarily supposed to stop the war, but make it very difficult for the administration, I guess I wouldn't even call them administrative, but for the regime there to continue with the war. And I think, for the most part, it is working. It's been so multilateral so many countries have joined in terms of economic sanctions that it's really actually hurting them. In terms of not having a full embargo, because we don't have a full embargo. Unlike with other countries, where do we go from where we are now? As economic sanctions and export lawyers, we have to monitor; it's so fluid and every day there's something new. I think last week or the week before, it was on a Sunday where they shouldn't have a bunch of new FRs [Federal Registers]. But where do we go from where we are now? Are we ever in a position to do a full-on embargo? Yes. And if not, why? Why do you think that that would not be the case and more specifically for companies that are still doing business in the region? Is it a recommendation of, obviously continue with caution, double checking everything because things are so fluid or is it, what are you doing/get out kind of environment, in your opinion?

Donald Pearce: So, I'll answer the second part first and say, as a former criminal investigator, I'm always of the opinion that if you're in doubt, you should probably not do it.

Olga Torres: Right.

Donald Pearce: But there are many things that a company can do to alleviate that doubt. Good end-use/end-user reviews are key understanding and knowing your customer. I mean, it goes beyond just our normal advice. In this case, you have to basically take one step further and try and find if there is a threat that the goods or technology you're sharing could end up helping the war effort because then, even if it is legitimate and can go with or without a license, even if the transaction can legally proceed, do you really want to do that? So, the questions that I'm getting. . .

Olga Torres: And getting paid, getting paid is so difficult.

Donald Pearce: Getting paid is an important part that's now a lot trickier than it was a couple of months ago. And it's an important piece of the calculation for a company. I'm also conflicted on this because for example, the family that we

have that are still in the country, they're still going to need cardiac medicine, they're still going to need medical devices, like blood pressure cuffs.

Olga Torres: Right.

Donald Pearce: There are going to be simple things that if you were to draw the aperture out and say, oh well, you could take that blood pressure monitoring device that's intended for grandma and give it to a medic and now it's helping the war effort. Alright, yeah sure you've got me, but I think we do have to think about these things.

Olga Torres: We do have, I know with OFAC and even with Commerce, we have so many General Licenses under OFAC for humanitarian purposes, medical, same with Commerce. You may still perhaps require licensing and double-checking it is not going to the wrong hands and things like that. But hopefully we have, but I think in practice, what we're seeing also, and that is concerning, there is just so much noise, right? And people are getting scared. I've had situations where we have forwarders and the transaction is completely legal, there's no license, products are EAR99, for example. And then people just don't want to go there, they don't want to move it; they didn't want to transport it. I mean, companies are leaving the region. So, it is interesting, and I agree with you. I mean, certain things we, for humanitarian concerns alone, we would hope that we continue the trade or at least sending those kinds of items, which is usually what we do in any region. Even for the embargo regions, we have exceptions for that in my last question. Cause we were running out of time.

So, a lot of attention, obviously, Russia-Ukraine region, and at the same time, we're seeing some parallel writing regarding China and Taiwan invasion and, what are they going to do when, if they do invade, what will the US and the west do, which I presume it will be similar treatment? Full economic sanctions, export controls. The biggest difference will be China is such a big part of our trade, right? Our second largest trading partner and like Russia where we don't have as much. So, I think that in my speculation, I wonder how far we would go in such a situation, but then I'm also seeing that apparently the Chinese government is requesting people to decouple from the US economy, divest assets and things like that, which is almost like are they getting ready to do something like that? What is your opinion there and what, what do you think the US response should be in terms of like our world export and economic sanctions?

Donald Pearce: Well, thanks for the easy question. So, if I, as I gaze into my crystal ball, I think two of the things that I find interesting is, firstly yes, it does

appear that the Chinese government is attempting to insulate its membership, from potential foreign sanctions activity. But that might not just be because they're thinking of going into Taiwan. That could be because they're afraid of secondary sanctions related to Russia. And honestly, they don't have to be as worried about that as I think they could have been because there is evidence that Chinese companies are starting to stop shipping to Russia, specifically in the tech sector.

Olga Torres: I read that, and I was actually quite surprised about that. But it makes total sense though, if you think about it, if I'm a Chinese company and I'm selling, 70% to US companies and 10% to Russia, I don't know there, but I'm assuming we are one of their largest trading partners. And we are, I'm not assuming, we are, so it will make sense that they will not try to get in trouble with US authorities, I would think. Right?

Donald Pearce: And I think there's also a lot of math going on in the heads of Chinese officials regarding whether or not this is the right time for Taiwan based on the reaction of the Ukrainian army and the Ukrainian defense forces, the civilian defense forces, everyone expected that this was going to take a month tops.

Olga Torres: Right.

Donald Pearce: And one of the, I think, Ukraine secret weapons here that have allowed it to withstand these, these onslaughts, is once the problems in the Donbas became militarized, the folks who were subject to national service and conscripted would end up spending some time on the lines, some longer than others, but everyone got a little taste of it.

So, in addition to your standing army, you had, I believe, the estimate was somewhere in the neighborhood of 400,000 people that had gone through the system since 2014 and had some sort of combat experience or at least training in the, in the combat environment. So that's a great reserve and I think that was underestimated.

You can look at Taiwan's national service very similarly. Although they have not had to actually engage, there is a notion of national service duty that you don't see in some other countries that have conscription forces. In fact, Russia being one of them.

Olga Torres: I also wonder whether. . .I don't think Putin is a young guy, right? He's what, 70-something?

Donald Pearce: Gosh, again, that's an easy question.

Olga Torres: We need to find out but he's pretty high up. There's a little bit of disconnect in his world and the younger generations. Right? Because we are all about this movements and just society and social media and sharing information. Like I remember. . .

Donald Pearce: I'm going to stop you there because I don't think that's because he's old. I think that's because he's insulated.

Olga Torres: Yeah, that too.

Donald Pearce: Because he has surrounded himself with a trusted, a small, trusted circle and that trusted circle is so afraid of him that they will not tell him the truth. So regardless of, he may be many things, but I don't think he's stupid. And I think what has happened is he has, as a colleague of mine, used to say, "don't believe your own press releases." Not only does he believe in his own press releases, he's writing them himself.

Olga Torres: Right.

Donald Pearce: And as long as he is in charge, I don't think you're going, I don't think he is going to know the truth. And even if someone were brave enough to tell him he wouldn't believe him.

Olga Torres: Yeah. Well, I just remember, talking to my nanny and my au pair, they're much younger, very young, and they're like, who takes countries like that anymore? It sounds like from the, something you were reading the history books, not something you do now in 2022. People did TikTok videos instead.

Donald Pearce: I had this conversation in 2014 with a good friend of mine who, I'm going to say, had a, let's say, a different opinion of Vladimir Putin and the Russian Federation than I did. And his opinion was that this would have been normal in any time in this century. And I said, I added, well, hold up. I said, "when was the last time that something like this happened?" And you had to go back into, the post-World War II scenarios where you had either the Stalinist ambitions or you had, you could even go back, you could say that Korea is an excellent example of this, where you have army versus army. Vietnam, slightly different, but still, we're not talking about something that happens in the information age anymore. And I always thought we had that peace dividend of this interconnected world and globalist tendencies for trade,

that was supposed to make everything more peaceful and more stable. And then the bottom dropped out on globalism.

Olga Torres: Right.

Donald Pearce: The supply chain issues that we have make it look like a bad idea all of a sudden. The nationalism in certain countries, ours included probably tainting that globalist view even further. And no one was prepared for this. The only folks who I can't say I saw this coming. I had it as a 50/50 coin flip as to whether or not Vladimir Putin would pull the trigger. But I changed that to 60/40 the week before, because it just looked like there was no other reason for them to be doing what they were doing. And I feel like it was that moment that I mourned the death of globalization because I don't think we'll ever go back to that. I think what we're going to see your export controls related. We're going to move from multilateral regimes to plurilateral agreements. We're not going to have the NOM and we'll, COCOM come back for, I'm dating myself now. COCOM was the coordinating committee basically of Western nations, trying to decide what export controls to put on, to keep stuff from going to Eastern Europe and the Soviet Union. And are we going to see something like that again? Where suddenly we go from this broader non-proliferation, counter terrorism, setting of, we just want to make sure that the nukes and the missiles and the military weapons that could be used by Al-Qaeda don't get into the wrong hands. Right?

Back to the state-specific export controls that we saw under the days of the Soviet Union. And if this thing protracts, which all evidence says, the Russians are not going to pull out of Ukraine anytime soon. We may be faced with going back to the future.

Olga Torres: Yeah, well, very interesting. Thank you so much, Don, for joining us today and our listeners for tuning in. We'll bring you more of the Torres Talks Trade very soon. Thank you.

Donald Pearce: Thank you so much.