Season 2- Episode 5

Donald Pearce: 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 Don Pearce and I'm a subject matter expert in strategic trade control policy, transnational criminal investigations, and national security issues with Torres Trade Advisory, an international trade national security advisory firm. Today we're joined by David Heasley, the Founder and Principal Solicitor of Heasley Lawyers, a firm based in Boronia, Australia, which is near Melbourne. Am I correct on that?

David Heasley: You are correct. Victoria, yes.

Donald Pearce: And specializing in defense contracts and contracting with state and local and federal government. David has 20 years of experience working for large corporate firms, both in defense and consulting industries, as well as experience working in private legal practice. His expertise in defense trade and export controls, intellectual property, tendering and procurement, dispute resolution and compliance. He is also a grant tender and contract specialist for the defense industry. Dave, thanks for joining us today.

David Heasley: My pleasure.

Donald Pearce: And, and I'm sure everyone's wondering why we are talking about the United States and Australia without the UK.

David Heasley: Good point, probably because the United States, Australia, export/import relationship is a heck of a lot more complicated than that with the UK. In that you've got a much more complex and involved in import export regime rules and regulations that the UK just doesn't have. Trying to get export controls in place with the U.S. for a project can take six to five months. Trying to get controls in place for a project with the UK takes filling in a bit of paper and sending it back to someone. It's that quick.

Donald Pearce: Well before we get into the meat and potatoes of AUKUS, perhaps tell us a little bit about your professional background and what brings you here.

David Heasley: I spent close to 20 years working for two or three of the largest defense corporations in Australian roles. My last role was with a large well, first, second tier multinational communications American company. And my

role in Australia was general commercial work in handling the Australian contracts with the Australian government and so forth. But I was also the authorized person in Australia. Authorized by head office in legal to talk import/export to do the controls paperwork, to assist with putting TAAs in place, variations to TAs, subcontractors, and so forth. So, I had a reasonable amount of autonomy to do it, I'm sure. But as you're aware, if it involved putting a new TA or a new license in place, I had to get back to the U.S. because they had to do the groundwork in the U.S. But I handled the Australian end of that. So as a result, I learned quite a bit about ITAR, EAR, export controls. I had a bit to do with the Australian export control system. We have our own defense export controls. But a large part of my work was making sure that the correct licenses were in place, TAs were in place, and that the Australian staff understood what we were signing up to. And the potential downfalls and pitfalls and potential penalties that can arise. If you, as I'm sure you're aware, there are some huge penalties for companies that could, that breach your export control legislation. Lately I've heard of one about $50 million, remember? And so, the idea was to keep the Australian side of the organization in out of trouble or keep the parent out of trouble as well, obviously.

So that's it in a nutshell. I've spent my life working around the defense industry, mainly. As you said, I've done a few years in private practice as well, just as a commercial IP lawyer. Which a lot of my clients, however, are the small to medium tier Australian defense suppliers. So, they want to get into the defense market, they want to go talk to somebody in the U.S., they want to import some kit or information, technical data, whatever. And so, I deal with setting them up, making sure they're not going to breach ITAR, helping with the contracts, using my defense background to do that sort of work. So that's it in a nutshell, I suppose.

Donald Pearce: So, how extensive is the ITAR part of what you're doing right now?

David Heasley: At the moment, I'm getting more and more inquiries about, we've heard of this beast called ITAR, what do we do? And some of them are at that level. We've heard of it, we know the full letters, but that's about the limit of our knowledge on the subject. And so, I'm doing a little bit of consultancy into some new clients on I call it ITAR one on one, where I go in and I talk to the commercial legal people about what they need to set up, how they need to set it up. Then quite often I get called in to do a couple of hours, depending on the guys on the floor. The guys who are going to be dealing with the data. The guys who are going to be dealing with the product, engineering staff, project

staff, project management staff type level. And this is how you work with it, and this is how you don't work with it, which is just as important.

Donald Pearce: Oh yeah.

David Heasley: You can't just go and give the plans for a battleship of your making to China, who's producing widgets. And if you think I'm joking, I've had that level of question almost, and it's, no, there is a process, and they have to be authorized and you don't just go giving the data out. And so, it's educating people on the pitfalls, at that level. Which as you've alluded to sometime in the next 12 months, two years, whatever, whenever it starts happening could be critically important to Australian industry in terms of the elephant in the room out of AUKUS.

Donald Pearce: Let's talk a little bit about AUKUS. For those of you who, haven't been following the happenings in the Indo-Pacific, AUKUS is a deal that originally, announced in September of 2021 that would bring Australia, U.S., and the UK together on multilateral projects. Probably the most significant of those being a nuclear submarine force. So, tell me, what do you think? If you were to look into your crystal ball, how long do you think it will take for the nuclear submarine part of this to become reality? And if not what do you think the biggest pitfall will be?

David Heasley: I think there's actually going to be three phases to the project, and this is based on talking to all the people in defense, defense industry, networking. I know a few people in various levels of department events and so forth. The way everybody seems to think it's going to go is that we are going to end up with some rotational subs U.S. owned in U.S. crude. As a stop gap for want to of a better term sitting off the coast. Just stop gap sometime in the next few years, whenever that might be, could be five, could be 10 years. We'll probably end up with a couple of, I believe it's U.S. Virginia class off the production line. Nobody's sure whether they're going to be new or secondhand. I don't think it really matters with the sub if it's been maintained. But we're going to end up with a couple of U.S. subs. The idea is they will backfill the next 10, 15, whatever it is, years until we build up the industry in Australia and train the people in Australia. Which is more important with nukes to do that level of maintenance, repair work, initial testing, whatever, to get the submarine business back somewhere in Australia. Now everybody keeps talking about South Australia because that's where the Collins Class subs were built, and I was actually involved in that project off and on. So, there's a good chance they'll get back to South Australia for at least some of the build. But we are talking about a 15, 20, 30-year project here. I don't think anybody knows what the

timeline is yet. What we do know is we don't have enough people on shore, either commercially or mechanically or engineering wise, qualified to do this project yet. And I think it's just starting to dawn on people, the enormity of what we've tried to bite off. And I just think, I'm not sure that even the politicians understand how big it is. I could be wrong. I hope I'm wrong.

Donald Pearce: What do you think the first step in preparing for this new AUKUS future should be?

David Heasley: It's already happened to a degree, is my understanding. We have sent staff on exchange to the U.S. crewmen and so forth who have been crewing a couple of your subs or assisting crew, your subs. So those guys have been beginning experience. We've sent some people to the U.S. from the technical side of our naval city, who are learning about the operations of subs and the nukes and how they work. So, we've already started the seed. I think this has been planned for a long time. And very cleverly planned, and we've just quietly been exchanging uniform personnel who've learned how to crew a sub, learned the differences in the new subs and getting to a point of competency where they'll be able to train the trainers. I think if everything I'm reading is correct, but yeah, who knows? We're reading something every two weeks.

Donald Pearce: We are dealing with governments here. So, understood that these timelines are an estimate at best.

David Heasley: Yes, yes.

Donald Pearce: Do you think that this will rejuvenate the ship building industry in South Australia?

David Heasley: I think it will provide a lot of jobs for a lot of people. At what level, I'm not sure. I'm not sure whether we'll be putting Ikea kits together. The plan as I see it from what we're hearing on the press, is that after the first couple of subs come into the stop gap subs, if you want to call them, we are then going to design a brand-new Australia, UK, U.S. hybrid, whatever you want to call it, sub. I have concerns about that plan. I think we'd be better off grabbing one of the current, either the UK subs or the U.S. subs and just building them onshore. Maybe Australianising them, yes, but building them onshore. But because I know with the Collins Project, it took 10 years-ish to shake out all the bugs in the new design. The first block were good, but they were not ready as such. The second block, they'd gotten rid of most of the bugs and by I think it was the third block, the last subs they were really good subs and they aren't really good subs, but it took eight years, 10 years to get rid of all the bugs. So, if we're going

to start a new design, I'm not sure that it's a bright idea, but hey, greater mines than me have obviously looked at this. So, I don't know the answer.

Donald Pearce: Do you think that this might just be an Australia pride issue where we want to design something new and, if so, do you think if they were to switch gears and go with say a Virginia class model, do you think that would be a non-starter?

David Heasley: The answer to your question is yes. I think there's a fair bit of pride in there, definitely. And I think we're at manifests. And I'm not sure whether you have familiar who you are with the Australian Defense Contracting setup. But about 2-3 years ago, there was a big push from the then Minister of Defense that we were going to concentrate onshore on a, what we call AIC or Australian industry content or capability users, used to be named content now capability. That we were going to build up onshore self-reliance and put AIC into every defense project as much as possible. How much of that was pork barreling? I don't know. I think it's a great idea if we can build the technical capability and the ability to do stuff on a shore up again and I've got no issue with that, if we can do it and I'm not sure whether we can do it. So I'm not sure how much of it says, you said appeasing the masses and how much of its actually smart. And I think, yes, there's definitely a lot of pride in there that we want this to be an Australian or partially Australian project building these subs. No doubt about it. It's the politicians talking to the masses because industry in Australia and a lot of parts of the world, our manufacturing base in Australia has gone from reasonably decent over the last few years to virtually non-existent. It really has. We don't build cars here anymore. We've got no major military projects. We've got a couple starting, but none on foot. We don't, we've stopped building the ships. We built the LHD, the landing helicopter decks here over a period, I think it was about eight years. But that project's done and dusted. The future frigates are coming up, yes, but they're partially, I believe British design. We are going to be building armed vehicles here very shortly, with a company called Rheinmetall, it's got their contract in Queensland to build quite a few armored vehicles. And there is a project on foot at the moment called land four hundred, where they're looking at building replacement for our the armored personnel carriers. And that's going to be a big project, but that hasn't been announced yet. That's still in down select, and that's a year or two away. So, I think we are maybe coming out of, we hope, what we call the Valley of Death, the manufacturing Valley of death. Maybe.

So yes, short answer is yes. I believe there's a lot of Australian pride involved in the project. I have concerns as to a lot of people where you throw three designs together because that's what you going to end up with. The U.S. is fine. The

U.S. can walk away and keep building Virginia class. They don't have to keep building this thing. The UK has their own, they can walk away and build their own. But we'll be stuck with rank and signs monster in the middle as the only design we have unless we go back to buy Virginia class or the astute class from the British.

Donald Pearce: Let's get into the to the geopolitical angles here. Well first actually I want to mention something that just read in the news, apparently, it isn't all moonlight and canoes in the Labor Party about AUKUS. Do you think there's any chance of there being a problem in the legislative side of this?

David Heasley: I'll start this by saying I am not a political expert. I'm just a layman but having read a lot, I believe that there's probably some disquiet going on in the background, and I believe that there'll be some very fast negotiating going on in the background because to put any legislation through the Labor Party will need the support of a couple of independents or the liberal party, the opposition. They can't do it on their own in one of their houses of parliament. They need the support. So, there will be some negotiations going on and that actually scares me a little bit more than anything else because when you start negotiating with other people who have different views, what are we going to end up with? What's going to come out the other end of the sausage factory

Donald Pearce: Speaking of Frankenstein's monster.

David Heasley: Yeah, a hundred percent. And what will also happen is, decisions that should be made on basis of reality, e.g., where to build the things, where to base the things, whatever. Could very well come down to a political discussion or a political compromise of, yeah, we'll let you build them in your home state. Great. The home state has absolutely no facilities. Nobody living there, nobody based there, which one state is not big enough. Would be a disaster. But yes, I think there's a lot more going on in the background. I think it's the old duck paradigm, which I'm sure you're familiar with. On the surface, it's all smooth, but underneath there's lofty. There's a lot of feet going, and I think it's that way at the moment, honestly. Yes. I think you're a hundred percent.

Donald Pearce: And let’s shift back to ITAR. recently, Former Secretary of the Navy, Richard Spencer was quoted as saying that ITAR is the biggest speed bump, and it has to be addressed to facilitate closer collaboration between the U.S. and its allies. If you could get your Christmas wish with regards to ITAR, what would be the situation you'd like to see?

David Heasley: Situation I'd like to see has already been worked on maybe, and they're talking about a tripartite treaty between the three countries. If they put the treaty in place a lot of the rules, regulations and pain in getting things like TAs through for projects. Because as you'd be aware, a TA that could be 20 on a project if it's all done under a treaty and it's preordained, so to speak, getting some of the ITAR regulations will disappear. Some of the process will disappear. And it will make life so much easier for everybody in the defense world dealing with the U.S. Everybody in Australia, in the defense world has been saying for years that we should be one of what do they call it, a Special Nation, I can't remember the term, but anyway, where there is a treaty in place where half the rules and regulations disappear and where you can freely trade and exchange information, obviously within the rules, that would be my Christmas present beyond all beliefs. And it would probably do me out of a heck of a lot of work. So maybe I don't want.

But in terms of Australia dealing with the U.S., that would be the ideal situation. And there is talk that's going to happen. And I note that at the meeting of the committee, I've forgotten the committee, and it's one of the committees that your Department of State put in place where industry reps and so forth talk about ITAR and talk about revisions and all the rest of it. At the minute meeting minutes I saw of that committee, before our Christmas, they were talking about this very subject, they were talking about the simplification of the controlled list. They were talking about simplification of the regulations. So, it's been talked about at your state department type and above levels. And it seems, if I read the tea leaves correctly, the work is going on in the background to facilitate some of this now and to get things in place. So, if that happens, I would honestly call it a paradigm shift. I probably spent 50% of my life working in house, putting TAs in place and explaining them to subcontractors and making sure they follow the rules. If that overhead went, it would massively change, I believe the picture. That's just my reading of the tea leaves.

Donald Pearce: And I have to admit with export controls, having a moment, it's great to be able to hear kind of from the Australian perspective, what effectively would be a minor change in U.S. export control regulations could have a major impact.

David Heasley: It would be huge. The problem with your ITAR regulations, is apart from the fact, and this has been accepted and has been worked on by the ITAR committees, as I said, some of the references, for instance in the legislation are circular. You read one or we call a section, you call it regulation. You read one and it loops you back to another lookup list and you read that lookup list and then it takes you back to where you were. Now they're getting

rid of a lot of that stuff. They're getting rid of a lot of the definitions of equipment that just no longer exists, or definitions that just die because there's nothing at the other end. They're getting rid of a lot of that stuff, which would make it easy to read and to work with, especially for non-U.S. staff. And I believe they're changing the control list, the controls to making it much simpler. Because at the moment there's, was it 28-29 categories and thousands of line entries. And if you read something it's duplications of others. What has made ITAR bearable in the last few years is EAR. It's helped immensely, where you're talking dual use. Fantastic, simpler, easier, quicker, easier to deal with.

Donald Pearce: Well, as a former commerce guy myself, I have to say what is your favorite export control and why is it the export administration regulations?

David Heasley: It would be the export administration regulations because they're quicker, easier, because they were drafted from scratch recently. The legislation's much better. The lists are much better. They're not the legacy that's been bolted on 200 times, as you know, when you start amending legislation, it goes from one folio go to, I don't know, pick a figure.

If I can use an Australian example there when I was at university, which was a long time ago, I remember our tax lecturer saying that our new tax system legislation when it came out in Australia about 30 years ago, was one folio. That same legislation today is 40 folios.

Donald Pearce Wow.

David Heasley: And that's part of the problem with the ITAR legislation. You could spend a day looking for a definition of a piece of equipment and whether it was ITAR or not. I was advising a client yesterday, day before on AI, they deal with AI type products. AI is not called out anywhere in ITAR and it's not called out in EAR. Software is, computer equipment is, computer equipment that could be used for guidance purposes and whatever is, but AI has not been considered under EAR or ITAR yet. Which is a bit of a problem, and I assume someone's working on it right now. I would hope someone's working on it right now. But this particular company are looking at exporting an Australian software package to the U.S. to be used in a military application. Well, as soon as that happens, it opens up a world of hurt for everybody.

Donald Pearce: Well, let's hope we're seeing the foundational and emerging technologies take a front seat again now that we've got that whole semiconductor thing under control.

David Heasley: Yeah. No, I followed that too. Oh my God. That was a whole mess.

Donald Pearce: So, let's talk a little bit about global politics for a moment. And obviously China's not too pleased with the with the AUKUS deal. How do you think this is going to affect the routine trade between Australia and China?

David Heasley: If everybody uses their brains, keeps their calm and treats it pragmatically, it shouldn't. Unfortunately, China has already shown the world that it's quite happy to dump tariffs or trade restrictions on goods imports at two minutes notice. As soon as you know, they think they're offended. And they did it to Australia a couple of years ago where they basically stopped the import of what wines and other luxury goods and so forth into China. It just became impossible. You could not get goods into China full stop. And from talking to import export attorneys and people, I know they were saying the import/export facilitation people would phone up their contact in China. We'll get back to you we're not sure of the answer. A week, nothing, two weeks, nothing. They'd phone them up again. Oh yeah, we are waiting on an answer. Two weeks, nothing. And that's what they did. They were under orders just to block it, block it, block it, block it, not answer anything, just block it at the Chinese end. And as a result, our wine industry, for instance, suffered huge impost because I can't remember the percentage 60-70, whatever it was, percentage of certain of our luxury wines were sold into the Asian market. It was a huge impost, and you had ships full of wine and chips full of beef and whatever sitting offshore off your ports in China for three, six months. Well, that's only wine, pardon the fact it's costing you a fortune for the charges. But a ton of beef sitting in a freezer offshore for six months. Well, you know, you can't really sell that anymore.

So yes, the Chinese will do it, but the thing I find to be a problem with the Chinese is their hypocrisy. They're talking about Australia's ramping up nukes and doing this and doing that. Well, no, we're not. And secondly, China has been building nuclear submarines for the last 30 years that skirt the regulations and skirt the International Atomic Energy regulations, and now they're winging us doing it. It's all show, it's all phase. So that's beyond my pay grade. I hope we can deal with it. I hope the Chinese don't get to upset.

I think the China problem with the Chinese is, and this is just personal opinion, they like being the big boy in the room and as soon as someone else starts getting a bit of power, they don't like it very much. And I think that's the situation. They don't like the fact that the U.S. is supporting us, Britain's supporting us, we are supporting ourselves and we are never going to be a regional power. Anybody who thinks we're going to be a regional power is a

politician because we are never going to be big enough. We're never going to have a big enough navy. I mean, we are going to have, if we keep the colons class boats, we've got six of those, I think we're talking about eight new ones, at the most we're going to have 10 to 14 subs in the water tops. China's got, I think it was 80 at last count, I think, and I can't remember how many the U.S. have, but it's 60 or 80 or whatever it is. We are just a minnow in that pond.

Donald Pearce: How do you think it'll fare for regional alliances, say with perhaps Japan?

David Heasley: I think Japan will be very careful, or Japan is already aligned to a degree with the U.S. and Southeast Asian countries. I think they'll be very careful because nobody wants to upset the Chinese. I know for a fact, for instance, that we have a neighbor country called Indonesia, which is a couple thousand kilometers now about 1500 miles long off our coast. So they're within spitting distance of Australia, and they have been making noises about, oh, we don't like this, it's going to cause problems between our countries. But if you dig deeper, Indonesia has a lot of Chinese infrastructure, investment banking, so they're just making the right noises to keep the communist party happy. So, I think there'll be some regional disquiet, lots of noises made. I'm hoping, and I don't know this, I'm not a politician. I'm hoping it doesn't interfere too much with the regional situation. I think Australia's between a rock and a hard place. And the truth, I think we do need some self-protection. I have no issue with that. But the rock is, are we going to interfere with local relationships? Probably, yes, but who knows? That's only my personal opinion.

Donald Pearce: Well, we like personal opinions here as well. Especially learned ones. Do you think this maybe changes China's math on a repatriation of Taiwan?

David Heasley: That's actually a multi-layered question. The reason I say that is strategically, I believe so. Because if you've got a couple of U.S. new submarines floating around Australia and if you've got a few Australian nuke submarines, in the event that China tried to start an invasion, which I'm still not sure whether they'd ever do, but anyway, you have regional assets within a day's steaming or whatever, much closer than the U.S. Obviously, we should take a couple of days to get here. Much closer than Britain, which would take a couple of days to get here. You have nukes in the water within so many hours of men. If our Navy's aren't already watching that area, I'd be stunned, but so you will have boats sitting in the water very close.

Would they be a deterrent to the Chinese perhaps because if the Chinese got into a shooting war or a torpedo war with the American Navy, that'd be an order of magnitude above getting into it with the Australian Navy. In terms of the output, in terms of the end result. It probably would not end well for the Chinese. And I'm not sure they're that stupid to start what potentially could be World War III. I mean, I'm just not sure. I think with the presence in the water, it might be enough of a deterrent to keep them saber rattling without pulling the saber out of the sheath. I think, and I'm assuming that's strategic think that's going on. But I mean, I'm no strategist and that that's for the military minds to come up with.

Donald Pearce: Well, thank you so much, David, for joining us and talking about this, and let's do this again soon.

David Heasley: Happy to happy to.

Donald Pearce: And thank you for listening. This has been Torres Talks Trade talking AUKUS, thank you very much.

David Heasley: Thank you.