With the release of North Korean funds from the Banco Delta Asia (BDA) bank in Macau and North Korea’s invitation to IAEA inspectors, a major component of the BDA issue may have been resolved. However, since the transfer of assets took place in such an extraordinary and likely one-time-only fashion, the December 2005 Treasury Advisory warning US and other financial institutions to “guard against the abuse of their financial services by North Korea,” DPRK access to international financial institutions will likely remain a contentious issue in the weeks and months to come.

On September 15, 2005, after a long investigation into Macau’s financial system[^1], the U.S. Treasury Department designated Banco Delta Asia (BDA) a “financial institution of primary money laundering concern” and proposed rules to restrict U.S. financial transactions with the bank.[^2] In response to a run on the bank following the designation, the Macau monetary authority took over the bank, froze 52 North Korean-related accounts and began an extensive audit.

On December 13, 2005, the Treasury Department issued an advisory predicting that the DPRK might seek financial services elsewhere following the BDA designation. The advisory warned U.S. financial institutions to “guard against the abuse of their financial services by North Korea,” which might be seeking new accounts “for the purpose of conducting illicit activities.”

The advisory was also intended for an international audience; it states “We encourage financial institutions worldwide to take similar measures.” In addition, Stuart Levy, Under Secretary for Terrorism and Financial Intelligence in the U.S. Department of Treasury, made visits to several countries during which he emphasized U.S. concerns about North Korea’s financial dealings. By April 2006 at least two dozen financial institutions restricted or ended their financial dealings with North Korea.[^3] Australia, Vietnam, Mongolia, and China reportedly took similar measures.[^4] [^5]

The DPRK responded quite strongly to the BDA designation, suspending its participation in the Six Party Talks until these and other “sanctions” were lifted.[^6] The United States initially said that the BDA investigation is a matter of protecting its currency from counterfeiting and therefore asserted that it should be unconnected to negotiations on security matters.

However, the United States agreed to have discussions about BDA alongside rounds of Six Party Talks. Bilateral talks focused solely on or including discussion of BDA were held in March and December 2006 and in January, March and April 2007. Such talks are...
thought to have contributed to the DPRK’s willingness to sign the February 13 2007 Agreement, which outlines the first steps to implementing the September 19, 2005 Six Party Statement. Although not articulated in the agreement itself, BDA is understood to have been one of the “pending bilateral issues” to have been resolved between the U.S. and the DPRK within the first phase, or sixty-day period of the February 13 Agreement.

On March 14, 2007 the U.S. Department of Treasury announced that it had completed its investigation and issued a ruling barring BDA from "accessing the U.S. financial system, either directly or indirectly." In a press release U.S. Under Secretary for Terrorism and Financial Intelligence Stuart Levy said, "Abuses at the bank [BDA] included the facilitation of financial transactions related to illicit activities, including North Korea's trade in counterfeit U.S. currency, counterfeit cigarettes, and narcotics. In addition, several front companies may have laundered hundreds of millions of dollars in cash through the bank."

The rule ostensibly affects only transactions between BDA and US banks, so Macau authorities were technically free to unfreeze DPRK accounts with the end of the investigation. Assistant Secretary of State Chris Hill presented the issue as resolved, implying progress could now be made on other elements of the February 13 agreement.

Yet what the U.S. administration has described as “technical difficulties” immediately hindered the transfer of assets to the DPRK. One theme running through analysis of the issue is that a decision that might have been politically expedient (pledging a resolution of BDA in order to restart nuclear negotiations) ran into the reality of commercial practicalities and interests. One small example: some of the account-holders were reportedly dead.

Two of the affected banks fought back. In April 2007, BDA’s counsel submitted a petition calling the Treasury rule "arbitrary and capricious", and in May BDA’s holding company and Stanley Au, the principle owner, submitted a petition demanding withdrawal of the Treasury Department’s rule. Furthermore, the frozen assets included approximately $7 million associated with foreign account holders at Daedong Credit Bank (DCB). Colin McAskill (chairman of Koryo Asia, which is in the process of buying a share of DCB), initially insisted that the $7 million be transferred to a different bank in Macau before a final transfer to DCB and threatened a legal suit against Macau authorities if DCB-related funds were transferred to North Korea.

But the biggest obstacles seem to have stemmed from the Treasury rule itself. There appears to have been disagreement about whether or how funds would be released, even as to the basic decision of “how much?” According to early reports, the Department of Treasury initially recommended that only the $12 million deemed by the United States to be “legitimate” be released, despite State Department comments referring to the whole amount. An apparent compromise seemed to be signaled in the March 19 statement issued by Danny Glaser, Deputy Assistant Secretary of Treasury saying funds would be released now that North Korea had “pledged that these funds will be used solely for the
betterment of the North Korean people, including for humanitarian and educational purposes.”

Although the U.S.’s initial stance was that the DPRK could physically withdraw the funds at any time, according to most analysis North Korea insisted on a bank transfer as a means of challenging the treasury rule and re-entering the international financial system. However, fearful of Treasury regulatory action, no bank agreed to accept the funds directly from BDA. For example, in mid-May news sources reported that Wachovia Bank was considering transferring the funds, but eventually this possibility evaporated without comment from the relevant parties or the press.

Eventually, with assurances from the U.S. Department of Treasury that there would not be negative consequence, the funds were transferred to the Federal Reserve Bank of New York on June 14. The money was then transferred to the Russian central bank, which forwarded the funds to Russia’s Dalkombank, which in turn transferred the funds to North Korea’s Foreign Trade Bank on June 25.

The State Department has been criticized for succumbing to North Korean demands, especially by recently departed officials such as John Bolton and David Asher. But even advocates for sustained diplomacy with the DPRK have been critical of the inconsistency in law-enforcement demonstrated by the release of $13 million associated with North Korean “illicit activities,” dismissing as inconsequential the fact that Macau, not the United States, technically controls the funds. Critics have expressed concern that the administration reversed its initial position that the issue of protecting the U.S. financial system was unconnected to its objective of ending North Korea’s nuclear weapons program. The involvement of the Federal Reserve has ignited additional outrage: six Republican law-makers, headed by Rep. Ileana Ros-Lehtinen, have asked the U.S. Government Accountability Office to determine if U.S. money-laundering laws were violated in transferring the assets to the Federal Reserve.

On the other hand, news reports portrayed State Department officials as admirably persistent, and both the U.S. and North Korea showed rhetorical restraint during the weeks of searching for solution. While the funds were in transit, the DPRK extended an invitation to an IAEA team to visit their nuclear facilities. Hill made a surprise visit to Pyongyang as the funds were received, underscoring both the U.S. expectation that the shut down of North Korean nuclear facilities will take place in “weeks, not months” and Washington’s willingness to continue to expend political capital on moving negotiations forward.

However, since the transfer of assets took place in such an extraordinary and likely one-time-only fashion, the March 2007 Treasury ruling on BDA and the December 2005 Treasury Advisory are likely to remain contentious issues in the weeks and months to come.

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