

In the News: North Korea and *Banco Delta Asia*

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 system¹, 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."⁷

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.⁸

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.⁹ 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 DCB¹⁰ and threatened a legal suit against Macau authorities if DCB-related funds were transferred to North Korea.¹¹

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,¹² 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.”¹³

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.¹⁴ 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,¹⁵ 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 25.¹⁶

The State Department has been criticized for succumbing to North Korean demands, especially by recently departed officials such as John Bolton¹⁷ 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,”¹⁸ 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.¹⁹

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”²⁰ 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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¹ The investigation took a year and a half, and was prompted in part by general U.S. concerns about banking practices in Macau, China, which came under greater scrutiny as U.S. casinos began to do business in Macau. North Korean related accounts were a component of the investigation of BDA.

² The designation took place pursuant to Section 311 of the U.S. Patriot Act, added to Section 5318 of the Bank Secrecy Act, which authorizes the Secretary of the Treasury to find foreign institutions of “primary money laundering concern” and to protect the U.S. financial system by issuing rulings requiring U.S. financial institutions to take special protective measures.

³ Testimony of Stuart Levey, Under Secretary Terrorism and Financial Intelligence U.S. Department of the Treasury. Senate Appropriations Subcommittee, April 6, 2006. <http://www.treasury.gov/press/releases/js4163.htm>.

⁴ “North Korea’s Nuclear Test: The Fallout,” November 13, 2006 International Crisis Group, Available on their home page, <http://www.crisisgroup.org/home/index.cfm?id=4502&l=1>

⁵ UN Resolution 1718, adopted October 14, 2006, mandates further scrutiny of DPRK financial transactions. The resolution states that all Member States shall freeze assets designated by the Sanctions Committee to be owned by people or entities engaged in the DPRK’s WMD and ballistic missile programs.

⁶ The U.S. maintains that the BDA designation is not a sanction; the DPRK continues to call it a sanction. Some critics have argued that the designation was timed to derail the [September 19, 2005 Six Party Statement](#). The designation was made on September 15, and printed in the Federal Register on September 20. Whether the timing could have or should have been altered is a question for history, but the designation took place before September 19.

⁷ “Treasury Finalizes Rule Against Banco Delta Asia: BDA Cut Off From U.S. Financial System”, March 14, Department of Treasury HP-315

⁸ See for example, “[End of Bank Probe to Smooth North Korea Progress: US](#)” *The New York Times*, March 15, 2007.

⁹ McGlynn, John, “[Banco Delta Asia, North Korea’s Frozen Funds and US Undermining of the Six Party Talks: Obstacles to a Solution, Japan Focus](#)”, June 9, 2007. Lee Jeong Hon, “[Analysis: N. Korea’s Macao funds](#),” United Press International, April 24, 2007, and Lague, David, Macao “[Bank Challenges as Politically Based](#),” the New York Times, April 17, 2007. [1](#)

¹⁰ Anna Fifield, [U.S. officials meet North Koreans over Funds](#), March 26, link no longer active

¹¹ “North Korea Update,” by Scott Rembrandt, in Korea Insight Volume 9 No. 4, The Korea Economic Institute, April 2007, <http://www.keia.org/2-Publications/2-1-Insight/Insight-April07.pdf>. Colin McCaskill reportedly also said that DCB will not accept a cash deposit of the funds—see Koo, Heejin and Martin, Bradley K, “North Korea Deadlock to Be Resolved Soon, Chun Says,” Bloomberg.com, April 26, 2007, <http://www.bloomberg.com/apps/news?pid=20601080&sid=aC43sFljzu20&refer=asia>

¹² See Demetri Sevastopulo and Andrew Yeh “[Rice helped unfreeze N Korean funds](#),” The Financial Times, Published: March 21 2007 22:13 | Last updated: March 22 2007 and Steven R. Weisman “[How U.S. Turned North Korean Funds into a Bargaining Chip](#),” April 12, 2007.

¹³ Statement by DAS Glaser on the Disposition of DPRK-Related Funds Frozen at Banco Delta Asia, Treasury Department Press Release HP-322, March 19, 2007.

¹⁴ See, for example, Anna Fifield, “North Korea may get back cash—at a price,” Financial Times, May 16, 2007, <http://www.ft.com/cms/s/1cd01926-03cf-11dc-a931-000b5df10621.html> and Greg Torode, “Pyongyang gets its cash, raising hopes of talks Funds transferred from Banco Delta to Russian Bank Account,” South China Morning Post, June 15, 2007, <http://www.scmp.com/portal/site/SCMP/menuitem.2c913216495213d5df646910cba0a0a0/?vgnnextoid=228928e540b23110VgnVCM100000360a0a0aRCD&vgnnextfmt=teaser&ss=Asia&s=News>

¹⁵ Glenn Kessler, “Transfer of N. Korea Money Sought” May 17, 2007 (accessed at,

<http://www.washingtonpost.com/wp-dyn/content/article/2007/05/16/AR2007051602487.html>)

¹⁶ “[North Korea Confirms Fund Dispute Resolved](#),” The Financial Times, June 25, 2007

¹⁷ See, for example, Edward Luce, “Gang of Three Help Keep Administration on Course” (accessed at <http://search.ft.com/ftArticle?queryText=%22gang+of+three%22&y=0&aje=true&x=0&id=070403011654>), *The Financial Times*, April 3, 2007 and Lee Dong Min, “Former Amb. Bolton insists U.S. policy on N.K. should be Regime Collapse,” Yonhap News, June 20, 2007, (accessed at: <http://english.yonhapnews.co.kr/national/2007/06/20/26/0301000000AEN20070620000200315F.HTML>)

¹⁸ Steven R. Weisman, op-cited.

¹⁹ Kessler, Glenn, North Korea Gets \$25 Million Frozen by U.S. Probe, *The Washington Post*, June 15, 2007, Section A, Page 17.

²⁰ Remarks to the Media on Six-Party Talks by Christopher R. Hill, Assistant Secretary for East Asian and Pacific Affairs, June 18, 2007, <http://www.state.gov/p/eap/rls/rm/2007/86600.htm>