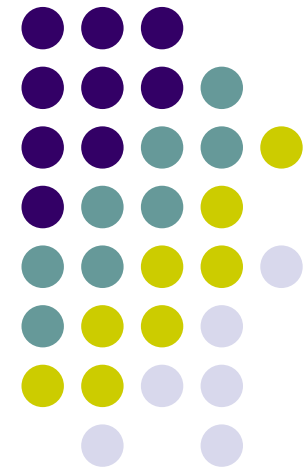


(tentative translation)

Economic Sanctions Framework

~comparison between US and Japan~

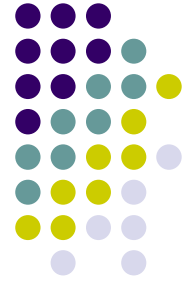
Hiroshi Ozaki, CAMS



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Economic Sanctions and AML Measures

~ comparison between US and Japan



1. Enhanced AML Measures as an effective means of economic sanction
2. Bans on Citizens / Products • Services / Money
 - 2-1 Japan
 - 2-2 US
3. History of AML Measures (Global, US, Japan)
4. Statistics in AML Measures
5. Organization — Addressing Economic Sanctions (US, Japan)
6. Enforcement Action :the US Approach (OFAC)
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8. International Framework for AML Compliance
 - FATF and its recommendation
9. FATF Mutual Evaluation
10. FATF Mutual Evaluation of Japan
11. US Measures :Legislative Approach (AML Compliance Framework)
12. US Measures :Customer Due Diligence (FATF Recommendation 5)
13. Targets of US OFAC Sanctions
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15. Increasing OFAC Penalties
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17. An Example of JFSA Administrative Actions / Citi Bank Case
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1. Enhanced AML Measures as an Effective Means of Economic Sanction



1. Economic Sanction within the UN regime

UNSC Resolution (based on UN Charter Art. 41)

⇒ Legislation by member states to impose sanction

UN Charter Article 41

“The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.”

2. Economic Sanctions outside UN the regime

US (1) Basically compliant with UN sanctions

(2) In Cooperation with allied countries

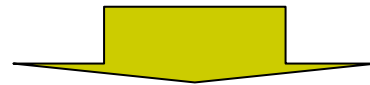
(3) Enforces economic sanctions based on multiple US laws (e.g. Cuba ·Sudan·Syria·Iran. etc)

Japan (1) Compliant with UN sanctions

(2) Enforces economic sanction based on Art 10 of Foreign Exchange and Foreign Trade Act (amended in Feb, 2004)

FEFTA Article 10

“The cabinet meeting may decide to take countermeasures when it is particularly necessary in order to maintain peace and security in Japan.”



- AML measures makes economic sanctions effective by blocking international settlement, payment etc.
- AML no longer targets merely traditional international crime such as narcotic traffickers and kingpins. It's a key state diplomatic strategy to “combat Terrorism.”
- US regulates dollar transaction wherever it takes place, which is a notable difference in effect, compared to Japanese approach.

2-1 Bans on Citizens / Products · Services / Money (Japan)



	Citizens	Products/Services	Money
Restriction on	<ul style="list-style-type: none"> • Embargo • Travel 	<ul style="list-style-type: none"> • Products/technology Transfer 	<ul style="list-style-type: none"> • Asset (Freeze) • Funds transfer • Capital transaction • Outgoing cash
Applicable Laws	<ul style="list-style-type: none"> • Immigration Control and Refugee Recognition Act • Act on Special Measures concerning Prohibition of Entry of specified Ships into Ports 	<ul style="list-style-type: none"> • Foreign exchange and foreign trade act 	<ul style="list-style-type: none"> • Foreign exchange and foreign trade act

AML related restrictions are applied to ensure effective economic sanction against North Korea

	Objective of Sanction	Examples
Economic Sanction enforced By Japan based on the Foreign Exchange and Foreign Trade Act	Counterparties of payments/transactions	<ul style="list-style-type: none"> • Persons related to Taliban, terrorists • Persons related to North Korea's missiles and weapons of mass-destruction development program • Persons related to Iran's nuclear program (10 items, 1,031 individuals/entities)
	Type of purpose of payments/transactions	<ul style="list-style-type: none"> • Trade restriction against North Korea • Activities on behalf of, to or for North Korea's nuclear program • Activities on behalf of, to or for Iran's nuclear program

2-2 Bans on Citizens / Products · Services / Money (US)



Characteristics of US sanctions - Comprehensive restrictions based on multiple economic sanctions legislations and Presidential Executive Order

Restriction on	Citizens · Embargo · Travel	Products/Services · Products/technology	Money · Asset (Freeze) · Funds transfer · Capital transaction · Outgoing cash
	Department of State designated Iran, Sudan, Syria, Cuba as State Sponsors of Terrorism		
Applicable Laws	Laws for Sanction		Designated counties
	Trading with the Enemy Act of 1917 (TWEA) Cuban Democracy Act Cuban Liberty and Democratic Solidarity Act Anti-terrorism and Effective Death Penalty Act International Security and Development Cooperation Act & Iranian Transaction Regulations International Emergency Economic Powers Act of 1977 (IEEPA) United Nations Participation Act Foreign Narcotics Kingpin Designation Act USA Patriot Act		Cuba Cuba Cuba Cuba, North Korea, Iran, Iraq, Syria, Sudan Iran Libya, Iraq, Iran, Serbia and Montenegro/Bosnia, Sudan, terrorists, narcotic drugs, Myanmar Iraq, Libya, Serbia and Montenegro/Bosnia

- AML related restrictions are applied as measure of economic sanctions against multiple State Sponsors of Terrorism
- Target states and details of sanction are defined in multiple laws
- Enforcement and change of sanctions is frequent by issuing or revising laws/rules and Presidential Executive Order.

3. History of AML Measures (Global, US, Japan)

	Worldwide	U.S.A.	Japan
I	1988 December UN adopted a Convention against Illicit Traffic in Narcotic Drugs and Psychotropic substances to criminalize conducting money-laundering involving drug-related criminal proceeds		
	1989 July The G7/G8 at Arch Summit agreed on the establishment of FATF (Financial Action Task Force on Money Laundering)		
	1990 April FATF proposed "40 Recommendations" Customer Identification and reporting of suspicious transactions by financial institutions to financial regulatory authorities or financial intelligence unit (FIU).		June Memorandums relating to the obligation to Conduct Customer Identification were issued by the director general of Banking Bureau, the Ministry of Finance and others.
	1992		July The enforcement of the Act Concerning Special Provisions for the Narcotics and Psychotropics Control Act, etc. and Other Matters for the Prevention of Activities Encouraging Illicit Conducts and Other Activities Involving Controlled Substances through Interinstitutional Cooperation (Establishing Suspicious Transaction Reporting System)
	1996 June FATF amended "40 Recommendations" to expand the scope of predicate offences to felonious offences.		
	1998 May The G8 Summit at Birmingham agreed on the implementation of FIU.		
	2000		February The enforcement of Act on Punishment of Organized Crimes and Control of Crime Proceeds (To expand the scope of predicate offences to serious offences, Establishment of Japanese FIU)
9/11 2001			
II	2001 October FATF published " Special Recommendations on Terrorist Financing" to criminalize financing of terrorism, terrorist acts and terrorist organizations and require reporting suspicious transactions linked to terrorism	October The establishment of USA PATRIOT Act and the amendments of Bank Secrecy Act to require US financial sector to implement maintaining system and procedures for Bank Secrecy Act/Anti- Money Laundering. FinCEN was authorized to enforce Section 311-314, 319(b), 325-326, 351-352, 356, 359, 362 of the USA PATRIOT Act and Reporting suspicious Activities	
	2002		July The enforcement of International Convention for the Suppression of the Financing of Terrorism added to a crime of terrorist financing to the predicate crimes.
	2003 March UNSC adopted Resolution 1803 condemning Iran for Keeping its nuclear development program. June FATF published amended 40 Recommendations to apply to non-financial sectors (real estate agents, dealers in precious metals and dealers in precious stones) and independent legal professionals (lawyers and accountants)	April FRB amended Regulation H to require US banks to establish risk-based Bank Secrecy Act/Anti-Money Laundering program. FRB announced the proposal that amended Regulation K to require overseas banks to establish risk-based Bank Secrecy Act/Anti-Money Laundering program.	January The establishment of Act on Confirmation of Customers (etc.)' Identification by Financial Institution, etc and Preventions of Unauthorized Use of Deposit Account, etc. (legislating the duty of confirmation of customers identification by financial institutions)
	2004	March The Office of Terrorism and Financial Intelligence was established as an agency of the United States Department of the Treasury to include FinCEN.	December Headquarters for Promotion of Measures Against Transnational Organized Crime decided "Action Plan on preventing terrorism "
	2005	June FFIEG published comprehensive "Bank Secrecy Act/Anti-Money Laundering Examination Manual" to clarify inspection standards for Bank Secrecy Act/Anti-Money Laundering maintaining system September USA announced that it planned to designate Banco Delta Asia (BDA) as a money laundering concern, which precluded BDA's possibility of US dollar- denominated transactions.	November Headquarters for Promotion of Measures Against Transnational Organized Crime decided "Development of laws to enforce FATF 40 recommendations "
III	2006 October Basel Committee published "Core Principles for Effective Banking Supervision and Core Principles Methodology" to provide banks with ethical standards, including "know-your-customer" rules, with respect to Anti-Money Laundering and Counter-Terrorism Financing. October Condemning nuclear weapon test and test-firing missiles by Democratic People's Republic of Korea, UNSC adopted resolution 1718. December Resolution 1737 was adopted by the UNSC relating to Iran's nuclear program.	June Press releases on Department of Treasury's censoring SWIFT. September Toughened sanction measures to cut off Iran's Bank Saderat from the general license allowing for "U-turn" payments	October Decision on Japan's sanctions, including ban on importing from North Korea and suspension of North Korean ships from entering port November Ban on exporting luxury goods to North Korea, ban on exporting nuclear weapons for mass destruction to North Korea
	2007 March UNSC adopted resolution 1747 in relating to Iran's development of nuclear programme.	January Toughened sanction measures to cut off Iran's Bank Sepah from the general license allowing for "U-turn" payments March FRB amended Regulation K to require overseas banks to establish mandatory maintaining system and procedures for Bank Secrecy Act/Anti-Money Laundering BDA was designated as Anti-Money Laundering concern under Section 311, the USA PATRIOT Act May Publication of 2007 National Money Laundering Strategy October Toughened sanction measures to preclude Iran's Bank Mellat and Bank Mellat from the general license allowing for "U-turn" payments	March The establishment of Act on Prevention of Transfer of Criminal Proceeds April The enforcement of a part of Act on Prevention of Transfer of Criminal Proceeds: FLU transferring from Financial Service Agency to National Public Safety Commission, National Police Agency)
	2008 July Basel Committee published its preliminary views relating to "Due diligence and transparency regarding cover payment messages related to cross-border wire transfers"	November Any US dollar-denominated transaction involving Iran was entirely ceased by revoking an authorization to process "U-turn" transfers to or from Iran.	March The overall enforcement of the Act on Prevention of Transfer of Criminal Proceeds The enforcement of duty of confirmation of customers identification by non-financial sector

(Reference: The author prepared by quoting from JAFIC annual report, FinCEN's Web site and Web site of the U.S. Dep. Of Treasury)

4. Statistics in AML Measures

Suspicious Transaction Report

The number of SAR (received from financial institutions)

	2005	2006	Year to year	2007	Year to year	2008	Year to year
Japan	98,935	113,860	15%	158,041	39%	235,260	49%
US	910,923	1,078,894	18%	1,250,439	16%	1,290,590	3%
(ratio=US/Japan)	9.2	9.5		7.9		5.5	

Japan's Gross Domestic Product in 2008
US Gross Domestic Production in 2008

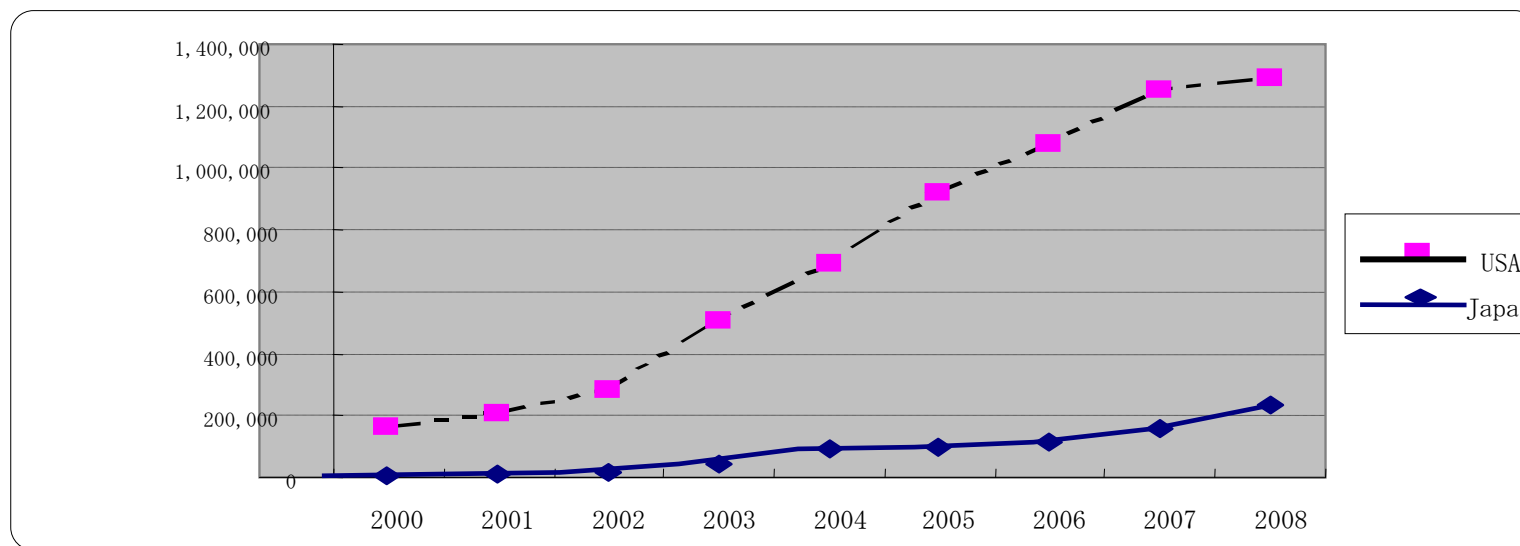
US\$4,923.76 Bil
US\$14,264.60 Bil

US GDP is 2.9 times that of Japan

Dollar-denominated transaction (IMF)

(in billion dollar)

(excerpt from : Annual Report of JAFIC in 2008, FinCEN website)



Official list of targets for Money-laundering restriction

List of frozen assets (MOFA List) about 1,300 printed list

List of Specially Designated Nationals (SDN List) about 4,200 printed list/ downloadable form

4. Statistics in AML Measures

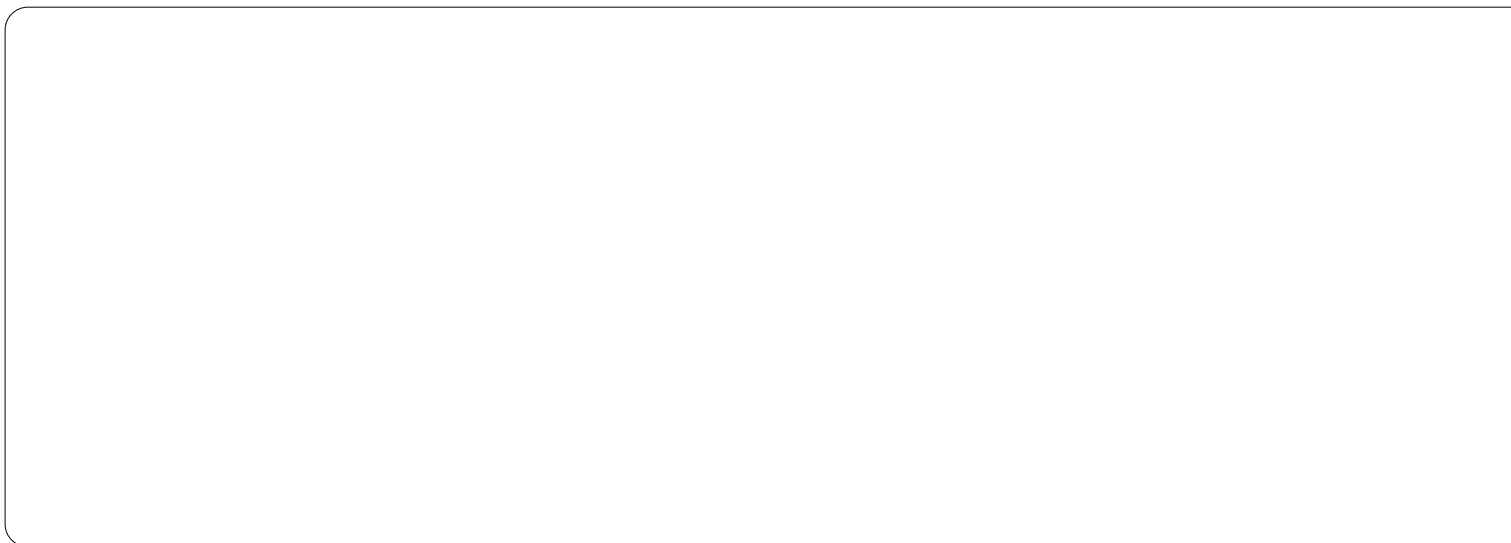
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 US Gross Domestic Production in 2008 US\$14,264.60 Bil **US GDP is 2.9 times that of Japan**

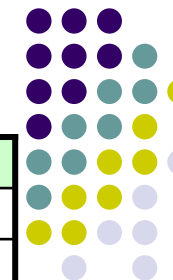
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 (excerpt from : Annual Report of JAFIC in 2008, FinCEN website)



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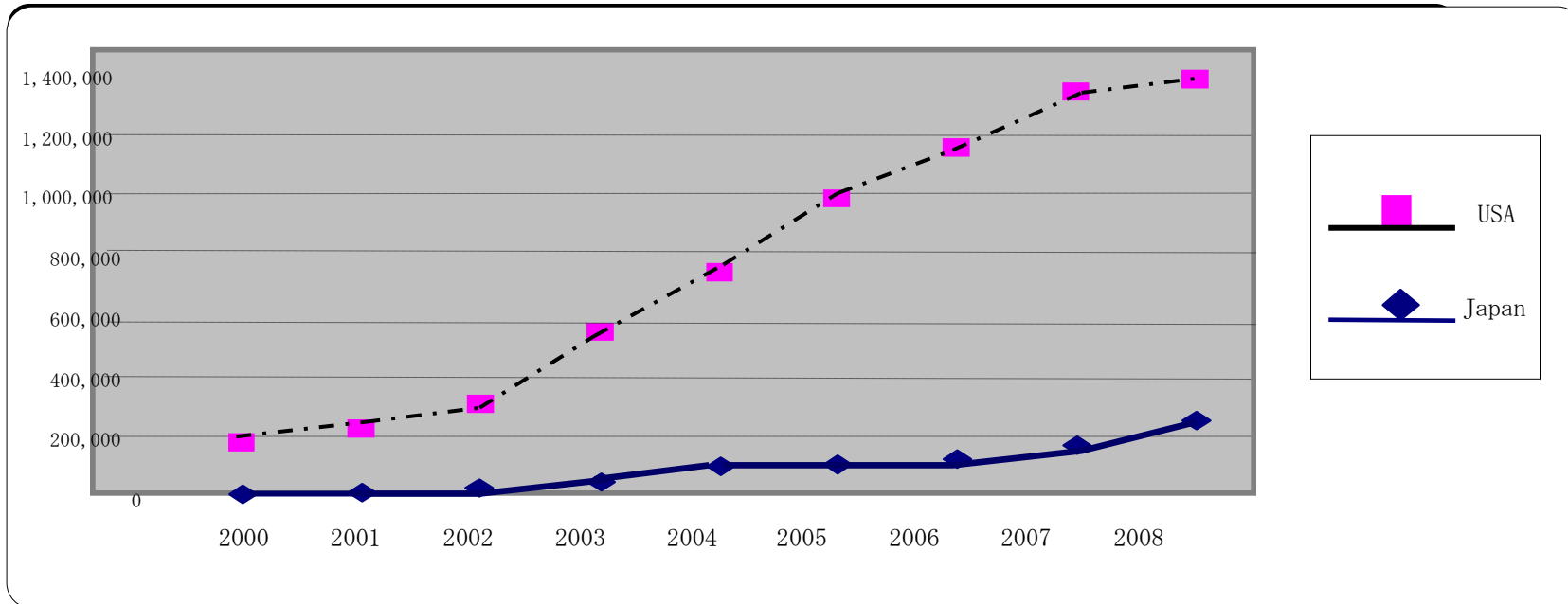
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5. Organization– Addressing Economic Sanctions (US, Japan)



Responsible for Counting Money Laundering FIU (Financial Intelligence Unit)

- A central, national agency responsible for receiving (and, as permitted, requesting), analyzing and disseminating to the competent authorities, disclosures of financial information concerning suspected proceeds of crime, or required by national legislation or regulation, in order to counter money laundering.
- G8 at Birmingham Summit agreed on its establishment in 1988.

- Responsible for administering and enforcing economic sanctions and payment restrictions

- Licensing is required for transaction with designated

Japan

- JAFIC (Japan Financial Intelligence Center)
- Established in April, 1st, 2007

- **Legal Office, International Bureau, (Ministry of Finance)**
- **Trade Control Department, Trade and Economic Cooperation Bureau, (The Ministry of Economy, Trade and Industry)**
- **Relevant regional bureaus, (Ministry of Foreign Affairs)**
Foreign Exchange and Foreign Trade Act is drastically amended to abolish of Authorized Foreign Exchange Bank System and all the restrictions on financial dealings with foreign countries except economic sanctions, economic emergency legislation, foreign direct investment.

US

FinCEN (Financial Crimes Enforcement Network)

- 1994 Established
- 1994 Operation broadened to administer Bank Secrecy Act
- 2001 Reorganized as a bureau of Treasury Dept. to administer **USA Patriot Act section 300**.
The officials will number in 300.
 - 100 supervisors
 - 100 financial transaction analysts
 - 100 specialists (Compliance, IT, Regulatory Enforcement/Outreach)

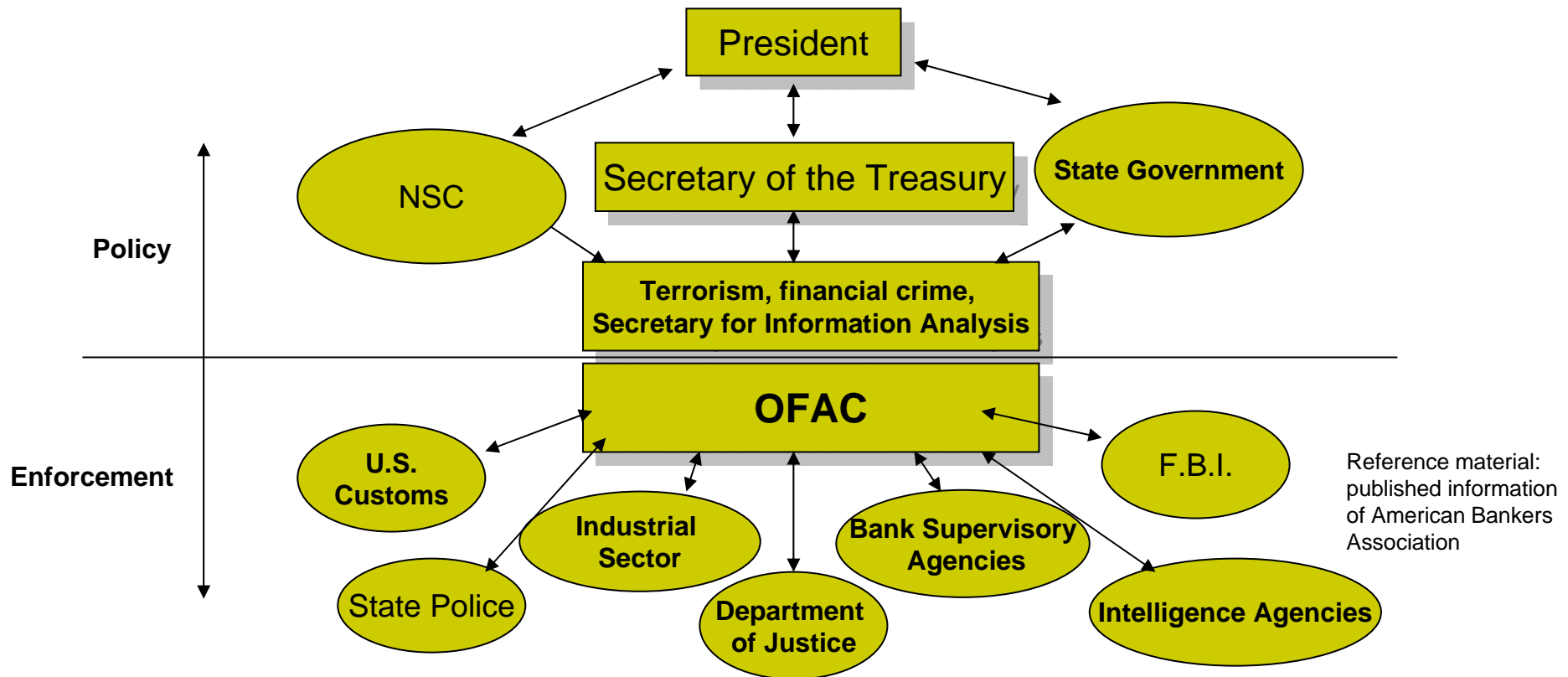
Office of Foreign Asset Control or OFAC About 150 people, including 30 members in the Licensing division.

- History of sanction imposed by US Treasury Dept. dates back to 1812 against UK. Throughout Civil War, World War I, World War II, US administered sanctions by blocking enemy assets and prohibiting foreign trade and financial transactions.
- Current OFAC was formally established in 1950, following entry of China into Korean War.

6. Enforcement Action : US Approach (OFAC)



- Outline of sanction determined mainly by National Security Council or NSC and Department of State
- Issue Presidential Executive Order
- Issue OFAC Regulations



7. Economics Sanction as State Strategy



Japan

Strategy : Dual Approach consisting of AML and CTF

AML
(Anti-Money
Laundering)

- Act on Prevention of Transfer of Criminal Proceeds
- established in March 2007
- to protect citizen's safe and peaceful life from anti-social forces and bank transfer scams
- to establish safe and sound development of economy

CTF
(Counter Terrorism
Financing)

- FIU was transferred from FSA to NPA as JAFIC
- Guidelines for Handling of Anti-Social Forces (July/2001)
- Amendment of Foreign Exchange and Foreign Trade Act (February/2004)
- **“Maintenance of peace and security in Japan and international community”**
(Article 1)

USA

Strategy : Comprehensive Approach for national security “Money Laundering Strategy (*)”

AML/CTF

- After 9/11, 2001, combating terrorism is added to the target of AML.
- “Special Recommendations” (originally 8, currently 9) by FATF
- A measure against “proliferation of weapons of mass destruction”
- AML Compliance is required by law as obligation of financial institutions.
- US standard requires even foreign financial institutions to meet AML Compliance requirements.

(*) The U.S. Departments of Treasury, Justice, and Homeland Security annually issue the National Money Laundering Strategy - a report detailing continued efforts to combat money laundering and terrorist financing networks. http://www.fincen.gov/news_room/rp/nmls.html

8. International Framework for AML Compliance – FATF and its recommendation



FATF (Financial Action Task Force on Money Laundering), The Financial Action Task Force (FATF) is an inter-governmental body whose purpose is the development and promotion of policies, both at national and international levels, to combat money laundering and terrorist financing. Since the attacks of 9/11, 2001, it has played a role to promote international cooperation and measures to combat terrorist financing.

FATF member states, regions and international organizations

The following 32 states and regions, and 2 organizations joined FATF.

Argentina, Australia, Austria, Belgium, Brazil, Canada, China, Denmark, Finland, France, Germany, Greece, Hong Kong (China), Iceland, Ireland, Italy, Japan, Kingdom of the Netherlands, Luxembourg, Mexico, New Zealand, Norway, Portugal, Russian Federation, Singapore, South Africa, Spain, Sweden, Switzerland, Turkey, United Kingdom, United States, European Commission, Gulf Cooperation Council (GCC)

Main role of FATF

- ① Setting standards for national anti-money laundering and counter terrorist financing programs (FATF Recommendation)
- ② Evaluating the degree to which countries have implemented measures that meet those standards (Mutual Evaluation)
- ③ Recommending non member states to implement measures that meet FATF standards
- ④ Identifying and studying money laundering and terrorist financing methods and trends

40 Recommendations

In 1990, FATF issued a report containing a set of Recommendations which provide a comprehensive plan of action needed to fight money laundering. In 1996, FATF revised the standards to require reporting suspicious transactions. In 2001, the continuous evolution of money laundering techniques led the FATF to revise standards comprehensively in June 2003.

The main points of the second revision of 40 Recommendations include;

- Expansion and clarification of the scope stipulated as criminal offence to be punished
- Enhancement and development of customer due diligence measures (Identifying the customer)
- Refusing to enter into or continue a correspondent banking relationship with shell banks.
- Applying FATF Recommendations to non-financial sectors (real estate agents, dealers in precious metals and dealers in precious stones) and independent legal professionals (lawyers and accountants)
- National and international cooperation with FIU, regulatory authorities, law enforcement authorities, and other government agencies involving money-laundering

(FATF Special Recommendations on Terrorist Financing)

FATF convened special meeting in response to the statement by G7 finance ministers held in October 2001 after the attacks of September 11, 2001. In this meeting, FATF issued “8 Special Recommendations” related to terrorist financing. In 2004, “Cash couriers”, the ninth special recommendation was added, and “8 Special Recommendations” was expanded to “9 Special Recommendations”.

The main points of 9 Special Recommendations include;

- Criminalizing the financing of terrorism and associated money laundering (Special Recommendations II)
- Reporting suspicious transactions related to terrorism (Special Recommendations IV)
- Requiring financial institutions to include accurate and meaningful originator information on funds transfers (Special Recommendations VII) (*)

(*) Interpretative Note to Special Recommendation VII requires to include accurate and meaningful originator information on \$/€ 1,000 or more funds transfer.

(Reference: Website of Japan Financial Intelligence Center (JAFIC))

9.FATF Mutual Evaluation



Mutual Evaluation sets out levels of compliance of member states with FATF 40+9 Recommendations related to money-laundering and terrorist financing. The rating of compliance vis-à-vis the FATF Recommendations is made according to the five categories of compliance (a. Compliant b. Largely Compliant c. Partially Compliant, d. Non-Compliant e. Not Applicable). FATF conducted Mutual Evaluation for Japan in October 2008. The number of execution rate $((a+b)/(49-e))$ remain 48 percent. The result of Evaluation for US showed 88 percent in June 2006.

		UK Jun-07	USA Jun-06	CHINA Jun-07	IRE Feb-06	AUS Oct-05	THILAND Jul-07	ROC Jul-07	CANADA Feb-08	SNG Feb-08	MAL Jul-07	HK Jul-08	RUS Jun-08	INA Jul-08	MYAN MAR Jul-08	UAE Jun-08	QATAR Apr-08	JAPAN Oct-08	KOREA Jul-09
C	Compliant	24	15	8	16	12	2	7	7	11	9	9	10	4	2	5	2	4	5
LC	Largely Compliant	12	28	16	12	14	4	18	23	32	24	21	13	7	2	15	10	19	14
C+LC		36	43	24	28	26	6	25	30	43	33	30	23	11	4	20	12	23	19
%		73%	88%	49%	57%	53%	13%	51%	61%	88%	67%	61%	49%	23%	9%	41%	24%	48%	39%
PC	Partially Compliant	10	2	16	16	13	29	13	8	4	15	14	21	22	28	18	22	15	19
NC	Non compliant	3	4	9	5	10	13	11	11	2	1	5	3	15	15	11	15	10	11
PC+NC		13	6	25	21	23	42	24	19	6	16	19	24	37	43	29	37	25	30
%		27%	12%	51%	43%	47%	88%	49%	39%	12%	33%	39%	51%	77%	91%	59%	76%	52%	61%
Total		49	49	49	49	49	48	49	49	49	49	49	47	48	47	49	49	48	49

10. FATF Mutual Evaluation of Japan



- Low execution rate means that Japan has left many duties to be legislated unaddressed.
- FATF analyzed that Japan has not addressed the following recommendations including; “Recommendation 5 (Important)” Customer due diligence in financial institutions, “Recommendation 6” Transactions with foreign politically exposed persons, “Recommendation 7” Correspondent banking business, “Recommendation 12” Development of internal policies, procedures and controls, “Recommendation 21” Special attention for higher risk countries, “Recommendation 22” Applying FATF Recommendations to foreign branches and subsidiaries. The items assigned PC or NC are required to improve to report the improvement status biennially according to FATF procedure. If the rating of important Recommendations (Recommendation 1, 5, 10, 13, Special Recommendation II, IV) include one PC or NC, the improvement status of all items assigned PC and NC should be reported at Annual Meeting within 2 years.
- Japan is the subject of the follow-up states due to the rating (NC for Recommendation 5, PC for Special Recommendation II, which requires to report at Annual Meeting in 2010.

○ Recommendation 5 Due diligence in financial institutions NC

There is no obligation in law or regulation for financial institutions to conduct ongoing due diligence on the business relationship.

Requirements in law and regulation should obligate financial institutions to verify the identity of the beneficial owner, obtain information on the purpose of transaction, take measures on ongoing customer due diligence

In situations when photographic identification is not required, additional secondary measures should be considered

○ Special Recommendation II Criminalize terrorist financing PC

Japanese law/regulation failures to criminalize funds collection for terrorists by non-terrorists,

It is unclear that funds collection to terrorist organizations for any other purposes than committing a terrorist act is criminalized in the law.

【Others】

- Tax-evasion is not included in predicate offenses to be regulated as money-laundering
- As to the freezing of terrorist assets, Japan has established a mechanism based on a licensing system prior to carrying out certain transactions. This process does not cover (i) the potential for domestic funds being available, unless attempted transactions in foreign currency, with a non-resident in Japan, or overseas transactions are undertaken or (ii) other support by residents for listed terrorist entities and individuals; and does not allow Japan to freeze terrorist funds without delay. In addition, there is no express obligation for financial institutions to screen their customers' databases, permitting the verification of the nature of assets already located in Japan at the time of designation of new terrorists, whether they will be individual or legal person. Japanese officials however told the team, which is not satisfied with this explanation, that financial institutions have to screen their customers' databases to properly implement the licensing obligation. The duration of seizure orders issued to freeze terrorist assets without delay. Finally, the absence of a broad definition of the word “funds” limits the assets that can be frozen by the Japanese authorities.

http://www.mof.go.jp/jouhou/kokkin/fatf_201030.htm

11. US Measures :Legislative Approach (AML Compliance Framework)



- Mandatory AML Compliance Framework (required by BSA and USA Patriot Act (2001))
- Wide Scope for Regulation (financial institutions in general)
- FRB
 - i) requires US branches of foreign banks to develop as robust AML Compliance framework as US Banks
 - ii) warns US branches of foreign banks that failure to do so may result in enforcement action

Section 352 of the USA Patriot Act (AML Program):

Financial institutions are required to establish an AML Program, which, at a minimum, must include:

- (1) development of internal policies, procedures, and controls;
- (2) designation of a compliance officer;
- (3) an ongoing employee training program; and
- (4) an independent audit function to test programs.

The official title of the USA PATRIOT Act is "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001."

12. US Measures : Customer Due Diligence (FATF Recommendation 5)



- The CIP required by USA Patriot Act (2001)
- Wide Scope of regulation (financial institutions in general)
- FRB requires US branches of foreign banks to establish similar customer identification procedure.
- Risk-based methodology needs additional confirmation such as CDD, EDD if necessary.

Section 326 of the USA PATRIOT Act

mandated the promulgation of regulations establishing minimum standards for financial institutions regarding the identification of customers opening new accounts at financial institutions. The implementing regulations require those financial institutions for which account relationships actually exist to implement reasonable CIP procedures for:

- (1) verifying the identity of any person seeking to open an account, to the extent reasonable and practicable;
- (2) maintaining records of the information used to verify the person's identity, including name, address, and other identifying information; and
- (3) determining whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency.

13. Targets of US OFAC sanctions



- Objective

Designated states, government, public entities

Person/entity in the designated states

Designated nationals (including outside the states)

Specially Designated Nationals (SDNs)

Specially Designated Terrorists (SDTs) or

Specially Designated Global Terrorist (SDGTs)

Narcotic Traffickers

Specially Designated dealers of weapons of mass –
destruction

Problematic entities/person in terms of nuclear non-
proliferation measures

【States that are prohibited any transaction】

Cuba

Sudan

Iran

U-Turn(*) transaction, a type of funds transfer involving Iran, was authorized until November 9, 2007. This authorization, however did not cover Bank Saderat (after September 8, 2006), Bank Sepah (after January 9, 2007), Bank Melli·Bank Bellat (after October 25)

(*)U-Turn transaction is where U.S. dollar transactions involving Iran are cleared through a U.S. bank. There must be a third-country bank on both sides of a transaction to avoid the funds staying in U.S.

On November 10,2008, OFAC imposed blanket ban on all U-Turn Transaction. As a result, the exemption itself was eliminated

【States that are prohibited designated transactions and transactions with designated person/entity】

Previous Yugoslavia (Serbia and Montenegro),
Macedonia, Balkan States

Cote d'voire

Iraqi

Liberia

Zimbabwe

Syria

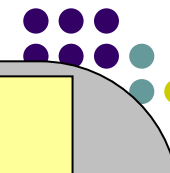
Belarus

Congo

North Korea (Democratic People's Republic of
Korea)

Myanmar (US calls it Burma even after transition
to military regime in 1989)

14. Penalties



Japan

○ Penalties stipulated in the Foreign Exchange and Foreign Trade Act

Penalties pertaining to violation of restriction on payments/transactions

In case any person makes a restricted payment or conducts restricted capital transaction, without permission

【penalty】 Imprisonment with work for not more than three years or a fine of not more than one million yen (a fine may be increased to not more than three times the price)

【Restrictions on Payment, etc.】

When a person is found to possibly make a restricted payment or conduct restricted capital transaction, the person may be imposed prohibition of making payment (excluding payment conducted by banks) and conducting capital transaction, and obligation to obtain permission for such payment

Penalties pertaining to violation of confirmation obligation

【Administrative penalty】

Penalties pertaining to violation of confirmation obligation (including the case the person likely commits the violations) ... Rectification measures order, restriction or suspension of content of the business pertaining to foreign exchange transaction

In case banks violates the order of the suspension or restriction

【penalty】 Imprisonment with work for not more than three years or a fine of not more than one million yen (a fine may be increased to not more than three times the price)

USA

○ OFAC's penalties

【 penalty】 Basic penalties are;

- civil Up to the greater of \$250,000 and twice the 'amount of the transaction that is the basis of the violation'.
- criminal Up to the greater of \$1m and twice the "pecuniary gain or loss", and up to 20 years in prison for convicted

Applicable laws and sanction requirements prescribe guidelines of penalty for each violations.

(*)In May 2006, the law increased penalties from \$11,000 to \$50,000. Additionally, in October 2007, it increased from \$50,000 to an amount of the greater of \$250,000 or the amount that is not more than twice the amount of the transaction (However, the Department of Treasury of U.S. permits reduction to recommend self-disclosure. →Case of National Bank of Australia in September 2007)

15. Increasing OFAC Penalties



	The number of violations	Fine (US dollar)		Example of violations
		amount	average	
2003	226	3,463,001	15,323	–
2004	203	2,728,631	13,442	–
2005	92	1,417,231	15,405	–
2006	33	40,735,273	1,234,402	ABN AMRO Bank:40.0mil
2007	56	4,344,686	77,584	Cavron Corportion:2.0mil
2008	99	3,504,533	35,399	Minxia Non-Ferrous Metal:1.2mil
~ 2009/8/24	22	16,394,248	745,193	ANZ Bank:5.75mil DHL:9.44mil

(note) Fines directly imposed by OFAC is indicated. US\$ 3.5 million fine imposed by Department of Justice on Lloyds Bank in January is not included.

16. An Example of US Enforcement Action /

Lloyds Bank Case



In January 2009, Lloyds TSB Group has agreed to forfeit \$350 million to U.S. authorities (\$175 million dollars to the US Department of Justice and 175 million to the New York County District Attorney's Office.) due to the violation of U.S. economic sanction against Iran and Sudan.

Violation (Repairing and Stripping)

- From June 1995 to January 2007, Lloyds falsified outgoing U.S. wire transfers that involved countries or persons on U.S. sanctions lists by itself. Then it formed process to deal with those countries or persons respectively by setting them apart from usual procedure.
 - In addition, Lloyds deliberately removed such information as customer and bank name from SWIFT messages so that the wire transfers would pass through filters at branches in the U.S. financial institutions..
- ⇒ Such conduct allegedly allowed \$350 million in transactions to be processed that might have otherwise been blocked and frozen due to sanctions regulations.

<http://manhattanda.org/whatsnew/press/2009-01-09.shtml>

90 year-old Manhattan District Attorney, Robert Morgenthau, investigated the Lloyds TSB case. (He is the son of Morgenthau, the **Treasury Secretary during World War II** .) He also investigated BCCI case (1991). He announced his retirement, and his last day will be the end of this year. According to Mr. Morgenthau, he was following up a prosecution of Lloyds TSB and continuing investigation into nine European banks, planning to have a case against another mainstream bank. He also said that he was looking in to Venezuelan banks in relating to Venezuelan narcotics money that could be being used to finance Hamas and Hizbollah militants, and to buy equipment for Iran. (Reference : an article of FT published 2009/9/9)

<http://www.ft.com/cms/s/0/4848e022-9cd1-11de-ab58-00144feabdc0.html>

17. An Example of JFSA Administrative Actions / Citi Bank Case



The reason for administrative penalty on June 26, 2009 addressed :

1. Problems with Compliance System
 - (1) Inadequate system for accurate execution of the obligation to make notification of suspicious transactions including money laundering
 - (2) Violation of a business improvement order pursuant to Article 26(1) of the Banking Act
2. Problems with governance and internal control systems
3. Internal audit

<http://www.fsa.go.jp/news/20/ginkou/20090626-3.html>

Observation: It might be...

- **Inadequate maintenance of database for money-laundering (including anti-social forces)**
- **Audit failure to detect non-compliance**
- **Management Responsibility**

- Background problem
1. No official documents/reference are published for establishing data base
⇒ bank's discretion
 2. AML compliance framework is NOT required by law, but based on guidelines by JFSA etc.
 3. Japanese cultural background where financial institutions cannot easily gain general understanding and cooperation as to AML issues
 4. Insufficient legal ground for closing account or cancellation of transaction

【Correction measures by Citi Bank】

In order to enhance and develop the system that ensures Citi Bank to properly file Suspicious Transaction Reports, it will ;

- **formalize PPM for AML**
- **conduct screening through anti-social forces database**
- **improve maintaining system including automated screening**

New department is established to address monitoring/closing of the existing account of designated “anti-social forces”.

http://www.citibank.co.jp/ja/customernotices/customernoticesindex/customernoticepages/cust_073109_01.html

18. Discussion

How effective is an economic sanction?



- Cuba Sanction : Is it really working ?
- Libya Sanction : A Successful Result ; Qadhafi's concession
- North Korean Sanction:
 - Banco Delta Asia as primary money-laundering concern
 - Does it bring North Korea back to the table of six-party talks ?
 - What else can we expect ?
 - Well, no loopholes ?
- Iranian Sanction
 - Successful ban on dollar transaction
 - What is next?

19. Libya Sanction



- January 1986 US tightened its economic sanctions against Libya
- December 1988 Lockerbie Bombing
(Pan Am flight 103 was destroyed by bombing)
- March 1992 UNSC adopted resolution 748 to impose sanctions on Libya.
- November 1992 UNSC adopted resolution 883 to enhance sanctions on Libya.
- April 1999 UNSC suspended sanction on Libya in response to the cooperation of Libyan Government to turn over two suspects for trial.
- September 2003 UNSC lifted sanctions imposed on Libya
- December 2003 Libya announced its decision to dismantle weapons of mass destruction program, and to accept inspection of nuclear facilities.
- January 2004 Libya ratified CTBT and entered into CWC
- October 2004 US lifted economic sanction on Libya June 2006
- June 2006 US removed Libya from designation list of state sponsor of terrorism.
- August 2006 Libya signed IAEA Additional Protocol
- August 2009 Al-Megrahi, a convicted bomber in 1988 Lockerbie bombing, was released in Scotland on compassionate grounds on the basis that he had terminal cancer.

20. Banco Delta Asia Case



1. Measure of sanction

- 2005.9.15** • Finding of Banco Delta Asia as a financial institution of
“**primary money laundering concern**”, based on Act 311,
USA Patriot Act.
• Imposition of Special Measure

2007.3.14 Final Rule : Special Measures include

(Effective at present)

- (1) Prohibition on direct use of correspondent accounts. A covered financial institution shall terminate any correspondent account that is established, maintained, administered, or managed in the United States for, or on behalf of, Banco Delta Asia.
- (2) Due diligence of correspondent accounts to prohibit indirect use.

2. Disposition of frozen assets

The US and the North Korean Government reached to agree the Disposition of frozen assets on March 19, 2007

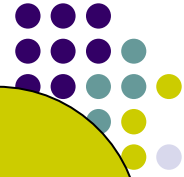
Statement by Daniel Glaser, the Treasury Department’s Deputy Assistant Secretary in Beijing, China.

“The United States and North Korean Governments have reached an understanding on the disposition of DPRK-related funds Frozen at Banco Delta Asia. The DPRK has proposed the transfer of the roughly \$25 million frozen in Banco Delta Asia into an account held by North Korea’s Foreign Trade Bank at the Bank of China in Beijing. North Korea has pledged, within the framework of the Six-Party Talks, that these funds will be used solely for the betterment of the North Korean people, including for humanitarian and educational purposes. The disposition of the frozen assets has always been and remains a decision by the Macanese authorities to be taken in accordance with Macanese law. North Korea will need to work out the legal and technical intricacies of the arrangement with the Macanese. The Treasury has communicated to both the Macanese and Chinese Governments. Separately, the final rule against Banco Delta Asia, issued by the Treasury Department under Section 311 of the US PARTIOT Act, remains in place.

<http://www.treas.gov/press/releases/hp322.htm>

FRB is interpreted as being excluded from the definition of “covered financial institution” in Act 311 of USA Patriot Act.

21.Discussion



AML Regulation Going Forward

US

- Iran sanction. Possibility to be tightened ?
- New standard for SWIFT messages
 - Introduction of MT202 COV (After November 22, 2009)
 - Who cares about SWIFT ?
 - International ACH (After September 18, 2009)

JAPAN

- Japan as Money Laundering Haven ?
- How is the progress of implementing FATF recommendations ?
- Lower political priority in Japan ?
- National code-number identification system required ?

(cf) “ 2nd National Forum on OFAC Enforcement and Compliance” on April 21-22, 2009

— Comments from Adam Szubin, Director of OFAC —

- ① “Knowing or intentional violations are taken very seriously. They are viewed as **an attack on central U.S. Foreign Policy Goals.**”
- ② OFAC is a **Strict Liability Regime**. If a transaction that is not supposed to go through, goes through for what ever reason, it is a **violation**.
- ③ Voluntary Self Disclosures are an investment in Compliance “credit” and “good will” with OFAC.
- ④ (The financial institutions) can lawfully provide guidance on what cannot be done; however it is illegal providing guidance on how otherwise prohibited acts could be conducted.