

## **Korea-U.S. Cooperation against Bulk Cash Smuggling**

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December 7, 2010

Threats to American society are relentless and Americans' concerns about their security are endless. Despite the efforts of the U.S. and other governments to root them out, criminal elements remain in every dark niche of society and just fluctuate in accordance with the changes of social and economic environments surrounding them, posing various and evolving threats.

Criminal organizations are like cancer cells, which emerge by taking advantage of imbalances in our bodies, grow by absorbing nutrition and oxygen supplied through blood arteries, and encroach on the function of normal cells. Likewise, criminal organizations grow everywhere social control is weakened and criminogenic opportunities (those which can lead to criminal activity) are perceived to exist; many take advantage of legitimate functions and transactions. No matter how many criminals, from ringleaders to street thugs, are removed from society, as long as lucrative criminogenic opportunities exist, crimes keep occurring and gouging into the flesh of American society. In response to these chronic threats, like surgeons dealing with cancers, the U.S. government seeks not only to dismantle structures of criminal organizations by arresting criminals but also to cut financial arteries to prevent criminal organizations from being nourished and having motivation for engaging in crime in the future. Anti-money laundering (AML) policies are the main ways that governments seek to disrupt the flows of cash on which criminal organizations thrive.

### **Bulk cash smuggling**

First adopted in the 1970s, anti-money laundering policies have drawn global attention and have been widely enforced since the 9/11 terror attacks. These policies have paid attention not only to laundering of dirty money but also to the illicit movement of legitimate funds which can support criminal activities, including terrorism. However, criminal organizations have easily adapted their financing methods to steer clear of the AML policies focusing on the formal banking system; organizations have developed diverse alternative financing mechanisms ranging from the use of charities to informal banking systems to smuggling of bulk cash and commodities, such as precious stones and metals.

Among the alternative financing methods, bulk cash smuggling (the illicit movement of large amounts of money in cash form) is one of the most primitive but also most difficult to detect. Therefore, it receives the most attention from criminal organizations – as well as from law enforcement agencies. Bulk cash smuggling is effective because U.S. dollars are accepted everywhere, and cash transactions do not leave paper trails that can be traced easily by financial institutions and law enforcement authorities. Bulk cash smuggling also takes advantage of the relative openness of the U.S. system; indeed, the government does not require inbound or outbound travelers to declare cash they are carrying unless it is in excess of \$10,000. Although it is convenient, bulk cash smuggling also has some handicaps, such as the cost of couriers and the risk

of detection and/or theft during its movement. Nonetheless, in terms of liquidity and flexibility, bulk cash smuggling is preferred to other alternative financing methods.

This activity increases the likelihood that criminal proceeds will leave the U.S. without leaving any trace, to fund subsequent external threats or legitimately come back to the U.S. via foreign financial institutions in order to support criminal activities in the U.S. The United States Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP) have employed various methods such as inspection by x-rays and canines of incoming luggage and confiscation of unreported cash to tackle this money laundering method. However, given that the inspection rate on passengers' hand-carried baggage is low and that the confiscation power of the U.S. government is restricted by the U.S. Supreme Court's 1998 decision in *United States v. Bajakajian*, the U.S. government does not have effective tools to deter money laundering through bulk cash smuggling. Nonetheless, the CBP and ICE have strived to suppress bulk cash smuggling, especially following the 9/11 attacks. In response to the attacks, U.S. customs initiated an outbound-currency operation, Operation Oasis, and seized more than \$28 million in bulk cash from October 2001 to August 2003. ICE launched Operation Firewall to crack down on illicit exports of bulk cash and since 2005 has seized approximately \$278 million and arrested 550 criminals.

### **International cooperation against bulk cash smuggling**

Modern money laundering is an international phenomenon, and even relatively primitive bulk cash smugglers utilize the global financial system to serve their criminal purposes. Like financial traders, money launderers take advantage of globally connected financial networks and communication systems; skilled launderers can exploit differences in money laundering regulations among countries and find small niches. No matter how diligently the U.S. government and financial institutions in the U.S. work to prevent and control money laundering, lax regulations in some countries can function as conduits that guide illicit money even to financial institutions located in countries with rigorous AML practices. Thus, for effective control over bulk cash smuggling, international cooperation is crucial.

Based on the achievements of Operation Firewall, U.S. ICE launched the Hands Across the World (hereafter HAW) initiative in 2007 in order to fill the gap between cash export declarations in travelers' country of departure and cash import declarations in the country of arrival. For example, if a passenger leaving Mexico for the U.S. reports to Mexican customs that he or she is carrying monetary instruments of more than \$10,000, Mexican customs sends this data to U.S. ICE which can then monitor and arrest the passenger if he or she does not report the importation of more than \$10,000.

Table 1, below, compares possible outcomes of different combinations of required declarations for a passenger traveling from Mexico to the U.S. with monetary instruments in excess of \$10,000. More than ten countries now participate in this initiative, and ICE is increasing the number of partner customs authorities in order to expand the anti-bulk cash smuggling cooperation network. The Korea Customs Service (hereafter KCS, in which this author is an officer) is a candidate for participation in the program.

Table 1: Potential outcomes of travelers' cash declarations

Cash Declaration		Without HAW data exchange	With HAW data exchange
Export from Korea?	Import into the U.S.?		
Yes	Yes	Detection possible at point of entry	Detection likely at point of entry
Yes	No	Smuggling from Korea into the U.S. possible	Detection possible at point of entry
No	Yes	Smuggling out of Korea possible	Provision of evidence to investigate smuggling cash out of Korea possible
No	No	Smuggling from Korea into the U.S. possible	Smuggling from Korea into the U.S. possible

Table created by author.

KCS and the Korean government would reap several benefits from participation in the HAW initiative. First, the exchange of cash declaration data between Korea and the U.S. can improve the Korean government's ability to monitor inflow and outflow of foreign exchange, allowing the Korean government to trace criminals who deliberately declare bankruptcy and siphon off their assets to the U.S. in the form of cash. Second, participation in this initiative can provide the Korean government with opportunities to improve its capacity for investigation of criminal proceeds. In fact, money laundering investigations by Korean law enforcement authorities have tended to concentrate on detecting simple violations of foreign exchange regulations, such as informal transfers of funds to other countries and late retrievability of export returns, rather than scrutinizing transfers of illegal funds into or out of Korea. KCS leadership recently has devoted more financial investigation resources to discovering dirty money, such as secret funds that corporations may conceal in their overseas branches; this effort can be boosted through cooperation with U.S. ICE.

However, KCS faces some legal obstacles to cooperating with U.S. ICE via the HAW initiative. That is because the cash declaration data that the HAW initiative targets contain private information and the HAW involves the possibility of infringement on the privacy of cash exportation/importation declarers. That is, cash declaration data includes not only foreign exchange transaction information such as the amount of cash and the purpose of cash-carrying, but also personal information such as an individual's name, national registration number (the Korea equivalent of a social security number), and passport number. These two kinds of information are regulated separately by two distinct laws in Korea: the Foreign Exchange Transaction Act and the Private Information Protection Act. In order to secure private information, the two laws prohibit, respectively, any Korean government body from collecting foreign exchange information and personal identifying information for other than pre-specified purposes, such as audits on financial institutions, court orders, investigation of tax fraud, or congressional examinations. To overcome this obstacle, working-level officers of KCS and ICE developed the idea that the "Agreement on Mutual Customs Service Assistance between the Government of the Republic of Korea and the United States of America" can be used as a legal basis for exchanging cash declaration data. However, the Agreement excludes exchange control laws in its mutual assistance areas. That is because when the Agreement was concluded in 1986, Korea's foreign exchange market was so immature and fragile

that Korean financial officials were concerned that investigations by the U.S. government on foreign exchange transactions of Koreans could upset the stability of Korea's foreign exchange market, even though the investigations were supposed to be limited to customs matters. Although the current foreign exchange market of Korea is as strong and stabilized as that of developed countries, Korea's foreign exchange authorities remain reluctant to agree to requests by KCS to revise the agreement.

There are two general means of obtaining private information: by laws and by concessions of the data owners. Given the legal and administrative incompatibilities noted above, KCS recently recognized that the best way, in the short term, to help combat bulk cash smuggling and support the HAW initiative is to take advantage of voluntary concessions of the data owners. Rather than expend resources in a long and uncertain battle to revise the Foreign Exchange Transaction Act and the Agreement between the U.S. and Korea, KCS considers that it can send voluntary cash declaration data to customs authorities in the U.S., thus avoiding restrictions of the Foreign Exchange Transaction Act and the Private Information Protection Act.

For instance, when passengers leaving Korea declare cash exportation to KCS, they will be encouraged simultaneously to declare their cash importation to the U.S. on the U.S. government's "Report of International Transport of Currency or Monetary Instruments" (FinCEN Form 105), which will be provided to travelers by KCS officers. Information on the forms will be gathered by KCS officers on behalf of U.S. ICE, and will be sent to U.S. ICE. Then, U.S. ICE officers will have the information needed to catch possible smugglers, and travelers who declared cash importation for the U.S. government in Korea do not have to declare cash importation when they arrive in the U.S. In this way, KCS and U.S. ICE can enhance their cooperation and avoid the restrictions of the two Korean laws by the concession of data owners. The use of an official United States form to collect this information means that the U.S. government will be the legal collector of the data, rather than the Korean government.

This type of bilateral cooperation can provide a significant boost to cooperation between the two countries. In general, bilateral cooperation can be conducted in several ways, including sharing information, providing assistance for a partner country, or working separately but in a coordinated manner in pursuit of a common goal. It can even expand to the level of working on behalf of the partner country. For example, in this case, cash export declarations taken by KCS can also serve as cash import declarations on behalf of the U.S. ICE, and vice versa. This idea originates from the "single window" concept that is often used in customs areas. Under this system, export declarations in an exporting country are directly adopted as import declarations in the importing country and declarations to an agency are shared with other agencies without additional declarations. The "single window" idea was introduced to increase efficiency and facilitate trade, and it can also be an effective tool in combating bulk cash smuggling.

KCS is expected to participate in the HAW initiative through this new mechanism very soon. The idea to exchange volunteered information is expected not only to provide KCS with a solution to the legal restrictions on exchanging cash declaration data, but also to help KCS and U.S. ICE avoid criticism that the HAW initiative is not chasing professional money launderers but is merely snagging casual travelers who are ignorant of the regulations on declaring cash at the border. Even though KCS and U.S. ICE face some unresolved problems, such as detecting the flows of illegal money that do not leave any trace and revising the Agreement between customs authorities of the two countries, cooperation based on the HAW initiative, and in accordance with the current legal realities in Korea, will become a cornerstone to defeat bulk cash smuggling. It will also be an important pillar as Korea builds its status as a major and responsible actor on the world stage.