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China and the WTO: Moving Toward Liberalization in China's Banking Sector

Wei J. Lee*

"WTO membership, for example, will require China to strengthen the rule of law and introduce certain civil reforms, such as the publication of rules."1

I. INTRODUCTION

China’s effort to become a member of the World Trade Organization (WTO) was a long and arduous journey.2 With successful negotiations concluding between China and member states, China’s accession was completed in early 2002.3 Although the WTO is comprised of many members, few can recall when a new member has caused such fanfare.4

In completing the bilateral and multilateral trade agreements necessary to gain membership, China has agreed to open its markets to foreign companies.5 The liberalization of China’s market equates to a

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* DePaul University College of Law, J.D., expected May 2003; University Illinois-Urbana/Champaign, B.A., 2000.
1. Press Release, President George W. Bush, President Welcomes China, Taiwan into the WTO (Nov. 11, 2001) (on file with the White House).
Boost in the worldwide economy. Additionally, the ease of restrictions on certain industries means foreign corporations will have greater access to China's one-billion-plus consumer market. By the same token, the immediate impact of liberalization will affect China greatly. Unemployment will rise as China forces State Owned Enterprises (SOEs) to become more efficient. Nonetheless, if China is able to successfully balance economic liberalization with social stabilization, it will transform itself into an essential trading partner. The exponential rise in China's Gross Domestic Product (GDP) over the past several years, coupled with a large consumer population base will make China an important market to penetrate.

This paper will address the impact of China's banking industry with its accession into the WTO. Part I will provide the necessary background to understand the current situation in China. Specifically, it will briefly outline WTO functions and regulations. Part II will provide an overview of China's current legal framework with regards to banking. Specifically the two banking laws - The Central Banking Law and The Commercial Banking Law- will be examined. Part III of this paper will discuss the ramifications of the banking laws on China's accession to the WTO. Part IV will list suggestions to improve China's current laws to better deal with its WTO accession. Part V will address the impact of China's accession on the United States, and provide suggestions for practitioners in China. The article concludes in Part VI that China's banking industry will face a dramatic change once it accedes to the WTO, but whether Chinese banks succeed in the new market paradigm will depend on the flexibility of the People's Bank of China (China's central bank).

6. Bruce Einhorn, Chester Dawson, Irene M. Kunii, Dexter Roberts, Alysha Webb & Pete Engardio, Asia's Future China, Bus. Wk., Oct. 29, 2001, at 50 (citing Deutsche Bank economist Jun Ma who predicts that China's accession into the WTO will raise world economic growth by a quarter percentage point within the next ten years).
8. See supra note 6, at 49 (arguing that China's urban unemployment rate will rise from around 8% to above 12% by 2002). See also Joseph Kahn, Officially, Jiang Is History; In News, He's Still on Top, N.Y. TIMES, Nov. 17, 2002, available at http://www.nytimes.com/2002/11/17/international/asia/17CHIN.html (citing the formal regime change in China's Communist Party, where Hu Jintao succeeded Jiang Zemin as President of China).
9. Id.
10. See supra note 6.
II. BACKGROUND

Traditionally, China's command economy has been closed to the outside world. One primary explanation for this practice was based in culture. In China, businesses and other dealings were conducted on an ad hoc basis. Specifically, unless the individual possesses some "quanxi" or "connections," she is unlikely to obtain her objectives. Consequently, foreign operators seeking to establish their business in China often failed due to their lack of "quanxi."

Nonetheless, as globalization began to take hold, states realized the advantages associated with bilateral and multilateral trading agreements. These trading pacts allow members to import goods at prices generally less than the price it costs them to produce. Conversely, the member can export goods to another country where demand is higher. The efficiency of these agreements is one main draw for states looking to enter into trade pacts. Undeniably, the WTO is one of the largest organizations that fosters and promotes trading among its members.

A. History of the WTO

The WTO came into being in 1995 after the Uruguay Round negotiations in which members decided to solidify their agreement, the General Agreement on Tariffs and Trade (GATT), into an international organization (WTO). The rules for joining the WTO were codified in the organization's "Agreement Establishing the WTO." The agreement was which was signed on April 15, 1995, provided that any state may accede to the WTO on terms negotiated between the collab-

11. See supra note 3.
12. "Quanxi" is a concept rooted in the Confucian tradition that has survived for a large part of the Chinese culture. While quanxi was imperative to have for any successful businessperson, its prevalence in Chinese culture has subsided since China's economy began to liberalize in the late-1970s. See Shin-yi Peng, The WTO Legalistic Approach and East Asia: From the Legal Culture Perspective, 1 ASIAN-PAC. L. & POL'Y J. 13, n.61 (2000); cf. Cindy Collins, Guests, Not Strangers... Refining the Inner "Ear" to Strengthen Global Client Ties, 18 NO. 20 OF COUNS. 14 (1999) (explaining that quanxi maintains its widespread use in China, especially with regards to the law and lawyers. However, as China's economy liberalizes, quanxi has to yield to official laws and regulations).
13. But see Collins, supra note 12 (explaining that quanxi has not been prevalent in China in recent times. Instead the rule of law has become the primary guide for economic transactions).
15. Id. (Although the WTO came into existence in 1995, its roots was established 50 years prior. Originally known as the General Agreement on Tariffs and Trade (GATT), GATT was established after World War II. Under GATT, member states held a series of trade negotiations dealing with various concerns. The negotiations ranged from anti-dumping to non-tariff measures. The latest round, known as the Uruguay Round, lead to the WTO's creation).
16. Id.
orating parties. Decisions on accession are determined by WTO's highest authority—the Ministerial Conference—and must be approved by a two-thirds majority of member states.\textsuperscript{17} Prior to approval by the mandatory majority, negotiations over the terms of accession must be finalized with member states.\textsuperscript{18} The negotiations occur on two fronts: the first involves consultations between the WTO and the interested party. The second front involves negotiations between the applicant and each major trading partner.\textsuperscript{19} Only after an applicant has passed through all the hurdles will it become a member of the WTO.\textsuperscript{20}

\textbf{B. Dispute Settlement Understanding (DSU)}

One interesting aspect of the WTO is the existence of the Dispute Settlement Understanding (DSU), a resolution body that settles disputes between member states.\textsuperscript{21} Indeed, the WTO utilizes its independent body, through the DSU to resolve member disputes.\textsuperscript{22} The DSU essentially "establishes . . . a legal system that functions very much like an international court. Moreover, it is a system that efficiently administers justice. Its combination of short deadlines, quasi-automatic procedures, and authority to issue binding decisions are qualities that are relatively unique among international forums for settling disputes."\textsuperscript{23}

\begin{itemize}
  \item \textsuperscript{17} Id.
  \item \textsuperscript{18} See Ramona L. Taylor, \textit{Tearing Down the Great Wall: China's Road to WTO Accession}, 41 IDEA 151, 154 (2001) (outlining the procedure for states to become a member in the WTO. After a state has submitted a letter of interest and other required documents, it begins negotiations by bargaining either through the General Council's Working Party or through individual bilateral negotiations with WTO member states).
  \item \textsuperscript{19} See supra note 4.
  \item \textsuperscript{20} Generally, an entering member must be willing to liberalize its industries to provide a viable framework for international competition. Although the liberalization measures are wide-ranging, individual governments, via bi-lateral and multi-lateral negotiations, decide which industries will be opened to international competition. Once negotiations are concluded and liberalization has taken effect, trade between the contracting states could be made on a tariff-free basis. See generally WTO's Website, at http://www.wto.org (last visited Feb. 27, 2002).
  \item \textsuperscript{21} See Robert E. Hudec, \textit{The New WTO Dispute Settlement Procedure: An Overview of the First Three Years}, 8 MINN. J. GLOBAL TRADE 1 (1999) (showing statistics which suggest that the US and other European countries are using WTO's DSU more often then the dispute resolution mechanism under GATT. However, more developing countries are becoming defendants under the WTO regime, compared to the regime established under GATT).
  \item \textsuperscript{22} See Mark L. Movsesian, \textit{Sovereignty, Compliance, and the World Trade Organization: Lessons from the History of Supreme Court Review}, 20 MICH. J. INT'L L. 775 (1999) (providing the history of the dispute resolution procedure that emerged from GATT).
  \item \textsuperscript{23} Kim Van Der Borght, Book Review, 94 AM. J. INT'L L. 427 (2000) (reviewing \textsc{David Palmeter & Petros C. Marvroidis}, \textit{Dispute Settlement in the World Trade Organization} (1999)).
\end{itemize}
Essentially, the DSU has jurisdiction to hear appeals from all WTO dispute resolution panels and make legal rulings on all treaties supervised by the WTO. In a sense, the DSU functions like a constitutional court, elaborating and interpreting various provisions of WTO treaties. However, unlike other democratic systems that utilize a constitutional court, decisions from the DSU will unlikely become overridden.

C. The Hurdle Between the US and China

Until the United States Congress passed legislation granting Permanent Normal Trade Relations (PNTR) status to China, Congress annually reviewed whether China’s performance warranted the most favored nation status (MFN). In obtaining the coveted MFN status, China could export goods to the US at lower tariffs. Although both China and the US have discussed China’s accession into the WTO, the US insisted that China’s entry rely on “commercially meaningful terms.” In essence, China’s schedule toward liberalization must be definite and within a short period of time.

Currently, many American firms in China complain that they are not afforded the same opportunities as their Chinese counterparts. Specifically, they argue that China does not allow foreign firms to penetrate the Chinese market in order to protect their domestic industries. The service industry, including banking and insurance, faced even more barriers and obstacles than others—such as high technology and machinery—because China allowed only goods and services that were beneficial to China’s economic development. All other

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26. Id. (stating that a legislative override is unlikely because of the inherent nature of the WTO setup. Since the agreements are codified in treaty form, unless the treaty itself is changed, it is unlikely that DSU’s decisions will become disobeyed).
28. Id.
29. See supra note 4 (requiring China to significantly reduce trade and investment barriers within a short time frame).
30. Id.
31. Id. China was also protecting its own industries from foreign competition. Additionally, there are also cultural factors, such as the lack of “quanxi,” which hinders a foreign company from gaining access to the Chinese market.
32. Id.
services that directly competed with Chinese firms faced an "extensive array of trade barriers."\textsuperscript{33}

The latest agreements reached between China and the United States solves the closed market dilemma.\textsuperscript{34} In exchange for favorable tariffs on behalf of the United States, and other member countries, China will open its previously closed markets.\textsuperscript{35} The comprehensive bilateral agreement reached covers a broad range of goods and services.\textsuperscript{36} Nonetheless, in affording foreign firms "national treatment," the Chinese government must ensure equal treatment between foreign and domestic firms. Such policy must be especially ensured in areas where foreign services will directly compete with domestic services.

\textsuperscript{33} See supra note 4.
\textsuperscript{34} See supra note 21.
\textsuperscript{36} See Anyuan Yuan, \textit{China's Entry into the WTO: Impact on China's Regulating Regime of Foreign Direct Investment}, 35 Intl. L. 195, 197-98 (outlining the highlights of China's concessions with regards to foreign direct investments (FDI)):

1. \textit{Performance Requirement}
   China will immediately eliminate all the performance requirements for FDIs, including but not limited to, export performance requirements, local content requirements, and requirements of mandatory transfer of technology.

2. \textit{Foreign Trade Rights}
   After China's accession, restrictions on foreign trade rights and distribution services will be progressively phased out over three years.

3. \textit{Domestic Distribution and Related Services}
   China will liberalize wholesaling and related services within three years after accession. Restrictions on services auxiliary to distribution will also be phased out within four years.

4. \textit{Telecommunication}
   China will permit FDI in telecommunication services to own up to 49 percent after accession, and that percentage will increase to 50 percent after two years. Also, China will gradually phase out all geographic restrictions within six years.

5. \textit{Banking}
   China will allow 100 percent foreign ownership of banking entities starting five years after accession. Foreign banks will be allowed to conduct local currency business with Chinese enterprises starting two years after accession, with Chinese individuals starting five years after accession.

6. \textit{Insurance}
   China will allow foreign companies to own up to 50 percent in life insurance companies after accession, and branching or wholly foreign-owned subsidiaries for non-life insurance within two years. Further, China will expand the scope of business for foreign investors to include group, health, and pension. All geographic limitation will be eliminated within three years.

7. \textit{Securities}
   China will permit minority foreign-owned joint ventures to engage in fund management on the same terms as Chinese firms. In addition, 33 percent of foreign-owned ventures will be allowed to underwrite domestic equity and debt issues).
D. Implications of U.S.-China WTO Agreement

China's accession to the WTO carries several important ramifications for the U.S.-China economic relations. First, since China has been granted PNTR status, Congress could no longer vote annually on China's trade status, which could help bring greater stability and predictability to the trade relationship.\(^{37}\) Second, the United States and China will be able to use the WTO dispute resolution process to resolve trade disputes, rather than relying on unilateral threats of trade sanctions (prevalent especially over human rights issues).\(^{38}\) Third, subjecting China's trade regime to multilateral rules means that the United States would no longer have to unilaterally force China to open its markets; other WTO members would also have stakes in ensuring China's compliance.\(^{39}\) Finally, China's accession to the WTO would likely improve the business climate in China, leading to greater trade and investment opportunities for U.S. firms.\(^{40}\)

By the same token, many analysts express concerns about the Chinese government's willingness to fully implement WTO obligations once it obtains membership.\(^{41}\) Commentators note that corruption and local protectionism are rampant in China, and government bureaucrats that oversee various industries could prove difficult in the short term.\(^{42}\) Some analysts warn that these disruptions might erode the government's determination to fully implement their WTO commitments, especially if fears of social instability are realized.\(^{43}\)

III. China's Current Banking Laws

A. China's Banking Industry and the WTO: An Overview

Finalized negotiations between the WTO and China have paved the way for China's accession to the WTO.\(^{44}\) The negotiations yielded a

\(^{37}\) See supra note 4.

\(^{38}\) See supra note 24 (outlining the process in which member states are to resolve their disputes. The disputes are referred to a committee in which the disputes are resolved via internal mechanism rather then seeking a resolution outside of the organization).

\(^{39}\) Id.

\(^{40}\) See supra note 4.

\(^{41}\) See Taylor, supra note 18, at 157 (pointing out that the Chinese market is still masked in secretiveness, and although provincial leaders and business regulators have been educated on the implications of the WTO, their willingness to accommodate WTO regulations at the cost of unemployment from displaced state-owned enterprises remains uncertain).

\(^{42}\) See Yuan, supra note 36, at 217 (asserting that local protectionism in China is prevalent and notorious).

\(^{43}\) See supra note 4.

\(^{44}\) See supra note 2. Indeed, China successfully became a member of the WTO in 2002. See WTO Website, at http://www.wto.org (last visited Feb. 27, 2002).
timetable to integrate China into the global community. Generally, the agreements require China to open access to markets previously closed to foreign investors. Specifically, the banking sector is to become fully open within five years of accession. In the meantime, however, the liberalization of China’s banking sector will occur in three phases. First, upon accession, foreign financial institutions will be permitted to provide services in China without client restrictions for foreign currency businesses. Secondly, within two years of accession, foreign financial institutions will be permitted to provide local currency business services to Chinese enterprises. During the last phase, occurring within five years of accession, foreign financial institutions will be permitted to provide unrestricted financial services to all Chinese clients.

Currently, China’s banking reform has been moving at a slow pace. Although improvements have been made, Chinese banks will have a difficult time competing with foreign banks once liberalization fully takes affect. Aside from inefficiency, the government’s dominance over the Chinese banking system remains high. According to one commentator:

Chinese banks are operated more like an administrative agency than a commercial enterprise; banks operate in the red with significant government subsidies. Some 70% of Chinese bank loans go to the state sector, producing only 34% of total output. In the PRC there are low loan rejection rates and high bad loan rates, despite the requirement that commercial banks conduct a searching inquiry of the borrower’s purpose, collateral, and ability to repay.

Although such commentary suggests that China’s banking future remains bleak, it fails to factor China’s motivation for joining the WTO. Where China does have problems with its banking industry, it must correct those mistakes to be a viable competitor once the industry becomes open to foreign competition. Following the adage, “sink or

45. See WTO Website, at http://www.wto.org (last visited Feb. 27, 2002) (outlining the basic agreement that China must abide by).
46. Hong Kong Trade Development Council, Economic Forum on China’s Banking Industry (listing the schedule China must abide by with regards to the banking industry), available at http://www.tdctrade.com/econforum/sc/991203.htm (last visited Mar. 4, 2002) [Hereinafter Hong Kong Trade].
47. Id. See also Qian, infra note 63.
48. See Qian, infra note 63.
49. See Morrison, supra note 5.
50. Hong Kong Trade, supra note 46.
51. Id. (arguing “the inability of the banking system to allocate the country’s capital efficiently is arguably one of the most serious problems of the country’s economic infrastructure”).
swim” China must ensure that certain practices cease immediately to avoid sinking. Although China will have to address all of their issues in turn, the examination of China’s banking laws becomes a crucial starting point.

B. Current Legal Framework in China

The major problem China faces with its service sector is the lack of a legal framework. Under the WTO agreement, the WTO member must “administer published laws in an uniform, impartial and reasonable manner.” In China, the current legal system lacks the necessary transparency required by WTO rules. To a large extent, the implementation of laws and regulations relies on the discretion of bureaucrats. Compounding the problem, interpretations by judicial bodies of Chinese laws and regulations do not have legal precedent on later cases. Although Chinese laws are documented, they are sometimes opaque, and are often ambiguous. The ambiguity of Chinese laws are further complicated since provincial branches of the government may interpret laws differently than the Beijing administration.

The underlying issue facing China’s legal system involves the lack of uniformity. China does not have an official compilation of laws and regulations. Instead, periodical publications are sometimes compiled. Even so, China has taken steps toward streamlining laws to ensure accurate compliance. In anticipation of its accession into the global market place, China has taken steps to clarify its laws and regulations. Specifically, the banking sector has benefited from early reform. Although the reform began in the 1980s and stretched into the

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53. Specifically practices such as forcing banks to make loans to failing SOEs must be stopped.
54. See Yuan, supra note 36 (asserting that China’s laws are too transparent, and need to become more clear as China accedes to the WTO).
55. General Agreement on Tariffs and Trade 1947, art. XVII(1) [hereinafter GATT].
56. See Taylor, supra note 18 (in order to prevent discretion over WTO rules, the Chinese leadership brought provincial and business leaders to learn about the WTO). See also Yuan, supra note 36.
57. See Yuan, supra note 36.
59. See Yuan, supra note 36, at 217 (stating that China’s current legal system lacks transparency for several reasons. First, the laws are too generalized, and therefore leave a great deal of discretion to career bureaucrats. Second, China lacks the compilation of laws and regulations. Lastly, there are no official compilations for local rules and regulations).
1990s, only two substantive banking laws were passed. They are: the Central Banking Law and the Commercial Bank Law.

C. China's Current Banking Laws

China's attempt in conforming their banking industry to international standards is commendable. Indeed, it is one of the few sectors that have codified statutes into compilation form. Although the laws establish the necessary framework to commence banking practices, there are also some ambiguities inherent in the laws. In order to address those issues, the two substantive banking laws will first be outlined.

1. The Central Banking Law

The Central Banking Law established the People's Bank of China (PBOC) as China's central bank and promulgates certain responsibilities for the PBOC. The central bank is charged with three major responsibilities: “making and implementing national monetary policy, exercising supervision and administration over financial institutions, and maintaining the stability of the official currency—Renminbi yuan (RMB).” As the central bank, the PBOC was “established to formulate and implement the government’s monetary policies as well as

60. Although China's banking reform officially started in the late 1970s, both of the substantive banking laws came into existence only in the mid-1990s.
62. See Law of the People's Republic of China on the People's Bank of China (China) (establishing the PBOC as China's central bank. The law contains seven chapters and fifty-one articles outlining the responsibilities of the bank) [hereinafter Central Banking Law].
64. See Central Banking Law art. 4 (1995) (China). Specifically, the bank performs twelve main functions: 1) formulating and implementing monetary policies; 2) issuing Renminbi and managing the circulation of Renminbi; 3) examining the establishment of financial institutions and exercising regulation over them; 4) regulating financial markets; 5) issuing orders and rules and regulations concerning the regulation and operation of financial industry; 6) holding managing and operating state foreign exchange reserve and gold services; 7) operating state treasury; 8) safeguarding the normal operation of payment and clearing system; 9) responsible for financial statistics, investigation, analysis and forecasting; 10) engaging in financial operations; 11) engaging in international financial operations; and 12) handling other matters as entrusted by the State Council. See also People's Bank of China, at http://ce.cci.gov.cn/echn/a1/ca102pbc.htm (last visited Feb. 24, 2002) (People's Bank of China website, listing the main functions of the PBOC).
exercise supervision and administration of the financial industry under the leadership of the State Council.”

One important aspect of the PBOC is its relative autonomy. Although the PBOC must answer to the Standing Committee of the National People’s Congress, it is free from interference from other governmental authorities. The PBOC is charged to make lawful and independent implementation of monetary policy, fulfilling its responsibilities and business operations. As optimistic as initial reports suggest, PBOC’s autonomy carry an important caveat: the Standing Committee still oversees the PBOC. Since the Chinese government is based on a hierarchical system, it stands to reason that the Standing Committee could pressure the PBOC to implement regulations which it deems “necessary” at the cost of the PBOC’s autonomy. Whether the Standing Committee will exert such pressures will be evident in due time.

2. The Commercial Banking Law

One of China’s most comprehensive banking legislations, the Commercial Banking Law contains nine chapters and covers ninety-one articles. The Commercial Banking Law’s primary intent was to establish a standardized system for banks in China to operate. Such standardization provides banks with the necessary framework to operate autonomously. By shifting fiscal responsibility to the banks, the Commercial Banking Law acts as an impetus for bank liberalization. Specifically, banks now must create innovative products and programs.


68. Commercial Banking Law (1995) (China) (covering a vast array of banking services that protect “the legitimate rights and interests of commercial banks, depositors and other clients, standardize the behavior of commercial banks, improve the quality of funds, strengthen supervision and administration, ensure security and soundness in commercial banking, maintain normal financial order and promote the development of the socialist market economy”). Id. art. 1.

69. Id. art. 1.

70. Qian, supra note 63, at 488 (describing that commercial banks should now rely on self-operation, self-risk management, self-responsibility for profits or losses, and self restraint). See also Commercial Banking Law art. 4 (stating: “a commercial bank operates independently, assumes responsibility for all risks it may encounter and for the profits and losses belonging thereto it may bear on its own, and exercises self-regulating mechanisms on the management principles of economic efficiency, safety and liquidity . . . ) (emphasis added).

71. Wang Sheng Ming & Feng Wang, P.R.C Gets Its First Commercial Bank Law, 17 NO. 10 E. Asian Executive Rep. 9 (1995) (stating that in the past, commercial banks' autonomy were
to compete for customers. Also, corporate governance will be crucial as customers will be attracted to banks, which not only offer great products and services, but also provide a safe haven for their savings.

Recognizing the liberalization effect of the Commercial Banking Law, the drafters wanted to ensure transparency in its provisions. Indeed, the Commercial Banking Law is divided into Chapters that deal with specific issues. While the law provides a general understanding of requisite documentation and fiscal implementation obligations, there are also provisions which seem to dilute the straightforwardness of the law's provisions. For example Article 8 of the Commercial Banking Law states: "A commercial bank shall abide by the relevant provisions of the law and administrative decrees and regulations in its business activities and shall not infringe upon the interests of the State or the public." Since the state determines its own interests, the provision allows the government sweeping authority to categorize anything to be "against the state's interest." Article 8, potentially, provides the ammunition necessary to subjectively punish a commercial bank for its failure to obey any governmental agency. Such power remains too broad and could succumb to abuse by unscrupulous government officials.

D. Effects of the Two Banking Laws on China's Banking Industry

In the long run, the two banking laws will undoubtedly have a positive effect on China's banking industry. Establishing the PBOC as an independent central bank with the powers to regulate the banking sector will be extremely beneficial to China. What complicates the issue is the timeframe imposed on this sector with its accession to the WTO. For all intent and purposes, the timeframe in which Chinese banks needs to completely adapt to the laws' liberalization policies will be within the next five years. Once foreign competition has full access disregarded by local government agencies. These agencies would order banks to issue loans to companies that were in bad financial shape).

72. COMMERCIAL BANKING LAW (1995) (China) (The Chapters deal with a vast array of issues, from the protection of depositors (Chapter III), to Basic Principles for Loans and Other Businesses (Chapter IV) and Legal Liabilities (Chapter VIII)).

73. Id. art. 13 (requiring a minimum registered capital for the establishment of a commercial bank to be one billion Yuan. An urban cooperative commercial bank needs to register a minimum of 100 million Yuan of capital. A rural cooperative commercial bank needs a minimum registered capital of 50 million Yuan to become an established bank).

74. See id. art. 8.

75. Id.

76. See supra note 36 (outlining the timetable in which China will allow foreign banks to compete in China. Specifically, all restrictions on foreign banks will be phased out after 5 years).
to the Chinese market, they could potentially erase half of China's banking share.\footnote{77}{See Banks Dancing to WTO Tune, CHINA DAILY, Feb. 12, 2002 (quoting Frank Kolhatkar of the accounting firm Deloitte & Touche: "Chinese banks will face fierce competition from foreign counterparts and qualified employees"), available at www.china.org.cn/english/26850.htm (last visited Feb. 24, 2002). See also Smith, supra note 3 (quoting China's prime minister, Zhu Rongji at a gathering of private businessmen in Nanjing, "Friends, you clap, but even I don't yet know how big the competition is that we'll face after we enter the WTO . . . My heart isn't yet very settled." The article also estimates that China's banks could lose as much as half of the market to foreign competition), available at http://www.nytimes.com/2001/10/18/business/worldbusiness/18YUAN.html (last visited Feb. 24, 2002).}

In order to prevent a large migration to foreign banks of its corporate and individual customers, China will need to address several problems:

1. State Dominance in Banks

Currently the banking industry is dominated by four state-owned commercial banks.\footnote{78}{See Qian, supra note 63, at 482-84 (distinguishing the four "specialized banks" in China. When the PBOC was established as a central bank, its lending practices were separated into four different banks. Although the four banks were technically autonomous, they were still under government control and carried out special responsibility in its own field. The banks were described as: "a socialist multi-level financial system with Chinese characteristics . . . with the central bank as its core and specialized state banks as its main body, and with co-existing diversified forms of financial organization.") (quoting the Chinese Academy of Social Sciences, Information China 633 (1988)).} These banks are: Industrial and Commercial Bank of China, the Agricultural Bank of China, the Bank of China, and the People's Construction Bank of China.\footnote{79}{Id.} Together the four banks account for 70% of banking sector's deposits and loans.\footnote{80}{See Qian, supra note 63 (stating that about 70% of the banking sector's deposits could be accounted by the four state-owned banks).} Although these banks have a large percentage of China's banking businesses, commentators have argued that they need to be more selective in their lending practices, and to improve their efficiency.\footnote{81}{Id. See also supra note 71 (commenting that Chinese banks are run more like governmental administrative agencies instead of private business enterprises). Additionally, the issue of bad loans remains a major concern for the PBOC. One PBOC governor estimated that the problem loans stand at twenty percent of the major commercial banks total revenue. Peter Montagnon, Bad Loans at Chinese Banks Total 20%, FIN. TIMES, Oct. 30, 1999, at 7.} Additionally, the banks infrastructure will have to be upgraded as the banks compete with foreign firms whom possess the latest technology.

2. PBOC Autonomy

Although the PBOC retains its autonomy as the central bank of China, it is still affected by the political tentacles of the Standing Com-
mittee. Because the Standing Committee appoints the governor of the PBOC, there is a danger that the appointment will be based on political connections rather than experience.82 One major concern is that career politicians rather than qualified economists, will make complicated monetary decisions.83 Such a scenario would prove detrimental to China's credibility in the WTO.

Additionally, the Chinese government's influence over the PBOC remains unclear.84 Although the PBOC is "autonomous," the separation between the central bank and the government could be extended.

3. Role of State Owned Enterprises (SOE)

As China liberalizes, it must shed inefficient and unprofitable state owned enterprises (SOEs).85 One problem associated with such action stems from the large number of workers employed by the SOEs.86 A recurring pressure placed on the central government in Beijing is to keep SOE employees working to assure social stability.87 In order to ensure that SOEs are able to stay financially afloat, the Chinese government has, in the past, pressured banks to make unwise loans to failing SOEs.88

As liberalization takes hold, the government could pressure state owned commercial banks to lend money to the ailing industries. Such a scenario could jeopardize many sectors in China's economy. It would be best to allow those ailing industry to succumb to market pressures and either merge or declare bankruptcy. Of course, one important factor to keep in mind involves the displaced Chinese work-

82. To China's credit, it has selected qualified individuals to head the PBOC. The current governor, Dai Xianglong, has extensive experience in the banking industry, and was trained as an accountant. Nonetheless, the possibility of politics clouding the judgment of the Standing Committee remains a threat. See generally CENTRAL BANKING LAW art. 9 (1995) (China) (outlining the election process for PBOC's governor. The governor is nominated by the Premier of the State Council and approved by the National People's Congress. However, if the Congress is not in session, the governor will be decided by the Standing Committee and appointed or removed by the President of the People's Republic of China. Additionally, the premier of the State Council appoints the deputy governors).

83. Qian, supra note 63 (stating that although the Central Banking Law, which established the PBOC, forbids government authorities at any level to interfere with PBOC's implementation of monetary policies, there is a danger of provincial interference. Specifically, since the PBOC is administered through its headquarters in Beijing and local provincial or municipal government, interference could exist).

84. See id.
85. China has already attempted to close down inefficient and unprofitable SOEs.
86. See Michael E. Burke, IV, China's Stock Markets and the World Trade Organization, 30 LAW & POL'Y INT'L BUS. 321 (1999) (suggesting that the failure of SEO reforms could expose roughly seventy million Chinese SOE employees to unemployment).
87. Id.
88. See Bacon, supra note 2, at 430.
ers.\textsuperscript{89} Such a predicament places a heavy burden on the government.\textsuperscript{90} China's liberalization progress must be balanced with wise financial decisions and the resulting potential social unrest from unemployment pressures. Such delicate balance will take much effort and planning.

IV. Analysis - Suggestions to Improve China's Banking Sector

Becoming a member of the WTO, China's actions will have international ramifications. Therefore, the international community will carefully scrutinize China's actions. After all, member states of the WTO are involved in the organization for mutual benefit.\textsuperscript{91} Should their expectations fail to materialize due to inadequate market conditions, members will apply diplomatic pressure to ensure that liberalization takes full effect. Additionally international members are able to utilize the dispute resolution mechanism, through the WTO body, to ensure compliance.\textsuperscript{92}

A. Problems Revisited

1. State Dominance in Banks

Currently, four state-owned banks dominate the Chinese commercial-bank sector.\textsuperscript{93} After five years of WTO membership, China will open its banking market without restrictions.\textsuperscript{94} Given China's large corporate and consumer base, there will undoubtedly be a large influx

\textsuperscript{89} See Burke, supra note 86.

\textsuperscript{90} Id.

\textsuperscript{91} Indeed, each member state independently negotiates with the acceding member on tariffs and obligations. Thus, the "agreement" reached are really independent agreements bilaterally negotiated between states. See generally WTO Accessions: The Mandate, at http://www.wto.org/english/tratop_e/acc_e/acc7_3_e.htm (last visited Oct. 20, 2001) (citing the Marrakesh agreement establishing the WTO. The provisions are as follows:

1. Any State or separate customs territory possessing full autonomy in the conduct of its external commercial relations and of the other matters provided for in this Agreement and the Multilateral Trade Agreements may accede to this Agreement, on terms to be agreed between it and the WTO. Such accession shall apply to this Agreement and the Multilateral Trade Agreements annexed thereto.

2. The Ministerial Conference shall take decisions on accession. The Ministerial Conference shall approve the agreement on the terms of accession by a two-thirds majority of the Members of the WTO).

\textsuperscript{92} Dispute Resolution Mechanism is an option to be utilized by WTO members to settle disputes among its members. See generally Movsesian infra note 126.

\textsuperscript{93} See Qian, supra note 63 (stating that foreign competition could erode China's market share by 50%).

\textsuperscript{94} See Yuan, supra note 36.
of foreign banks. Basic economic theory of competition dictate that
the opening of the banking sector will erode the market share of Chi-
inese banks.

With liberalization, both foreign and new domestic banks will have
to first comply with the Commercial Banking Law, as well as China's
Company Law. These laws will have to be carefully studied prior to
entry. Additionally, the dominant Chinese banks will have to reor-
ganize its internal structure to ensure compliance with the Commer-
cial Banking Law. Specifically, the Chinese banks will have to refer
to the PBOC for clear guidance on monetary and economic
regulations.

At this liberalization juncture, domestic Chinese commercial banks
should take advantage of the Commercial Banking Law. Although
four banks dominate the banking sector, these banks have not com-
plied with the Commercial Banking Law. Indeed, the Law contains
exemptions for large state banks from compliance for a certain period
of time. Chinese banks, possessing a large capital reserve and in-
corporated under the Commercial Banking Law, could reap the most
benefit. These banks have a jump on foreign banks since they at least

chinadaily.com.cn/star/history/00-02-29/ (last visited Mar. 2, 2002) (citing Ma Jia'nan, deputy di-
rector of the Economic Adjustment Division under the Pudong Comprehensive Planning Com-
mission, who expects an influx of foreign banks as China enters the WTO).


97. The Commercial Banking Law does cite the Company Law. Both laws, in particular, gov-
ern banks. See CHINA'S COMPANY LAW (1994) (China).

98. See Qian, supra note 63, at 492 (stating that banking institutions and also credit unions are
not up to the standards established in the Commercial Banking Law).

99. See COMMERCIAL BANKING LAW arts. 10-12 (1995) (China) (the law provides the follow-
ing provisions:

Article 10: A commercial bank shall be subject to supervision and administration by the
People's Bank of China pursuant to the law.

Article 11: The establishment of a commercial bank shall require the examination and
approval of the People's Bank of China. No organization or individual shall receive
deposits of money form the public, engage in any other activities of a commercial bank,
or use the title of "bank" without the approval of the People's Bank of China.

Article 12: The establishment of a commercial bank shall satisfy the following
requirements:

(1) Its statute shall be pursuant to this law and the Company Law of the People's
Republic of China.

(2) It shall possess the minimum registered capital defined by this law;

(3) Chair of the Board of Directors (president), general manager and other senior
managerial personnel with expertise and professional experience required by their
positions shall be appointed.

(4) Organization and management shall be complete;

(5) Business site, safety measures and other facilities relevant with the business thereof
shall all be up to standard).

100. See Qian, supra note 63.
have some experience with the law, and contain a certain level of customer base.

As China's accession agreements begin to materialize, these Chinese banks need to take a more aggressive approach. Aside from aforementioned customer service and infrastructure improvements, these banks must also begin to establish name recognition. Advertising will play a key role as banks differentiate themselves before the arrival of foreign firms. Initially, Chinese commercial banks must expand its customer base. Corporate and individual consumers must be made aware of the innovative services offered by the bank.

Although an aggressive approach should prove beneficial, one factor to keep in mind deals with China's size and people. Due to the vast differences that undoubtedly occur with any large populations, it would be advisable for Chinese commercial banks to regionalize their operations. Instead of offering a vast array of services over all of China, banks—both domestic and foreign—should concentrate on one region. Banks must tailor their products and services to the needs of the designated region. Smaller commercial banks could even consider specializing within the needs of one particular city.

2. PBOC Autonomy

Success of China's entry into a liberalized banking sector will heavily depend on the PBOC's ability to promulgate decisive laws and regulations. However, China will have to ensure that PBOC retains its autonomy from the Standing Council of the Chinese government. One of the most worrisome aspects of the PBOC revolves around their authority to promulgate rules.

In order for China to strive toward liberalization, the PBOC must be able to maintain its autonomy. For example, the governors of the central bank must be qualified economists familiar with policy initiatives employed under various market conditions. Cash flow, interest rates, inflation and other monetary policies are some of the problems the PBOC will encounter. The interest rate, specifically, should be further liberalized to conform to market conditions. The staff, too, must be qualified to analyze the market conditions to provide an accu-

101. Some foreign firms have already established joint venture, and other partnerships with Chinese banks prior to the WTO agreement.
102. See Burke, supra note 52, at 60 (stating that "jurisdictional lines between financial authorities are unclear, especially regarding potential conflicts between the PB[O]C and the State Council Securities Commission over securities regulation").
103. Id.
104. Dai Xianglong, Governor of the People's Bank of China, China's Financial Industry at the Threshold of the 21st Century, Address at Stanford University (Oct. 17, 2000), in PBOC's
rate and immediate feedback to their superiors. One solution is for the PBOC to establish different branches to perform specific functions. Although the proceeding suggestions seem basic, one must remember that the PBOC continues to be heavily influenced by the government’s Standing Committee. The Standing Committee could appoint career politicians, rather than qualified individuals to posts within the PBOC. In order for the PBOC to be independent from the government, and especially the Standing Committee, it must avoid its inclination to appoint an unqualified politician.

Appointments to the PBOC will be only the first step toward banking liberalization. The next step will be for the Standing Committee to further distance itself from the PBOC. One solution is to make the central bank’s operations more transparent, and provide more of a detailed guidance for the PBOC. The PBOC must possess the ability to unilaterally form committees in dealing with various market factors. Such measure should ensure the banks autonomy from undue influence from the Standing Committee.

3. Role of SOE

One potential problem with China’s liberalization process is the role of China’s SOE. China will undoubtedly try to protect their SOE

website, available at http://www.pbc.gov.cn/english/speeches/ (last visited Feb. 28, 2002) (governor Xianglong addressed the liberalization of the PBOC and its interest rate policy:

The interest rates of deposits and loans are, however, still decided by the central bank, which does not seem appropriate. In the coming years, therefore, China will enhance its reform efforts of interest rate liberalization. The steps of the reform are as follows: (i) Beginning September 2000, China has decontrolled the interest rates of deposits and loans in foreign currencies. (ii) The interest rates of deposits and loans of rural financial institutions are expected to approach those for private borrowing and lending. (iii) The band of lending rate for urban financial institutions is expected to enlarge and flexible management will be imposed on the interest rate of deposits. Finally, the central bank should be able to rely on the open market operations to adjust the level of interest rates. Third, China will implement a comprehensive reform of its wholly state-owned commercial banks according to the principles of modern banking).

105. See CENTRAL BANKING LAW art. 12 (1995) (China) (allowing the PBOC to establish branches as representative organs. These organs can be responsible for supervision and the handling of other businesses under the auspices of the PBOC).

106. See Burke, supra note 52, at 57 (arguing that political influence in banking operations of Chinese banks prevent the PBOC from promulgating rules objectively).

107. See Burke, supra note 52, at 59 (stating that the 1993 reforms of the PBOC made operations more confusing since there was no clear guidance to pursue the new rules. Also, there was weak regulatory oversight on commercial banks, which could make a system-wide failure of the Chinese banking-sector possible).

108. Factors such as inflation, interest rates, and other monetary policies should be compartmentalized within the PBOC.
interests.\textsuperscript{109} In the short term, it is likely that unemployment will rise in China as foreign competition enters China.\textsuperscript{110} Additionally, established Chinese firms could continue to purchase their inventory from other Chinese firms with whom they have quanxi.\textsuperscript{111} The culmination of these factors could force the Chinese government to provide unadvisable loans to inefficient companies.\textsuperscript{112}

Although such bleak scenario seems unlikely, there are internal procedures China must take to avoid this type of catastrophe. With the SOEs, China should err on the side of liberalization. Although unemployment will rise in the short term, if the markets become liberalized as planned, foreign competition will offset any domestic failure. Unemployment will eventually subside as foreign firms begin to hire more domestic workers.\textsuperscript{113}

C. Recommendations

The forgoing discussion involved the internal dynamics surrounding the Chinese banking industry. This section will focus on specific recommendations for China to adopt. Aside from PBOC autonomy, China will have to revise or clarify certain provisions listed in the Chinese Banking Law. Lastly, there are measures, via the Dispute

\begin{enumerate}
\item[109.] See Craig S. Smith, \textit{Chinese See Pain as Well as Profit in New Trade Era}, \textsc{N.Y. Times}, Sept. 21, 2000, at A1 (asserting that SOEs in China are not yet ready for foreign competition).
\item[110.] \textit{Id.}
\item[111.] See Peng, \textit{supra} note 12 (explaining that quanxi, or connections, were prevalent in Chinese business dealings).
\item[112.] See The White House Office of Public Liaison, \textit{Briefing on the Clinton Administration Agenda for the World Trade Organization Material, Summary of U.S.-China Bilateral WTO Agreement} (Nov. 17, 1999), at http://www.uschina.org/public/991115a.html (last visited Feb. 27, 2002) (stating that \textquotedblleft China has agreed that it will ensure that state-owned and state-invested enterprises will make purchases and sales based solely on commercial considerations, such as price, quality, availability and marketability, provide U.S. firms with the opportunity to compete for sales and purchases on non-discriminatory terms and conditions"). \textit{See also} Bacon, \textit{supra} note 2, at 430 (discussing the Chinese government's influence in extending loans to failing SOEs. Bacon suggests that such assistance amounts to a form of indirect subsidy).
\item[113.] \textit{Who Won in the WTO Deal: Membership Will Help Change China's Society – and the WTO Itself}, \textit{Asia Wk.}, Dec. 3, 1999, available at http://www.asiaweek.com/asiaweek/magazine/99/1203/ed.wto.winner.html (last visited Mar. 2, 2002) (stating: The increased competition Chinese industries will feel from the influx of more foreign imports and deeper foreign investment will become the acid test for coddled industries. Those that can meet the challenge will ultimately survive and prosper. Many others will fail to navigate in the new climate. The expected business expansion as investors build up competing ventures should in time help create new jobs to absorb displaced workers, including many in the farming sector, as well as providing new opportunities for the countless younger workers who will be coming of age).
Settlement Understanding (DSU) of the WTO, to pursue by foreign
governments to ensure WTO compliance.\textsuperscript{114}

1. The Commercial Banking Law

China's Banking Law provides a provision that lists the minimum
registered capital required for establishing a commercial bank.\textsuperscript{115} The
requirements list a specific amount of capital needed for commercial
banks, urban cooperative commercial banks, and rural cooperative
commercial banks.\textsuperscript{116} Although the Commercial Banking Law lists
the required paid-up capital, it does not mention the minimum oper-
tional capital needed for a commercial bank to continue operation.\textsuperscript{117}
In order to ensure proper corporate governance, the Commercial
Banking Law should be amended to include a provision which states
the minimum amount of capital needed to maintain a banking license.
Such amendment would force individual commercial banks to comply
with lending provisions listed in the Commercial Banking Law.\textsuperscript{118} In
particular, banks will have the added incentive to provide proper cor-
porate governance and ensure that all corporate businesses are prop-
erly documented. Additionally, banks must invent innovative
products and provide excellent customer service to make sure that
their operational capital will not dip below the minimum threshold.

Aside from amending Article 13 to require minimum operational
capital, the PBOC also must clarify the second half of the article. The
second paragraph of Article 13 states that the PBOC "may readjust
the floor amount of the registered capital necessary for the establish-
ment of a commercial bank in consideration of economic develop-
ment."

\textsuperscript{114} See Hudec, supra note 21 (showing statistics which suggest that US and other European
countries are using WTO's DSU more often then the dispute resolution mechanism under
GATT. However, more developing countries are becoming defendants under the WTO regime,
compared to the regime established under GATT).

\textsuperscript{115} See COMMERCIAL BANKING LAW art. 13 (1995) (China).

\textsuperscript{116} See id.

Article 13: The minimum registered capital for the establishment of a commercial bank
shall be one billion yuan (RMB 1,000,000,000). An urban cooperative commercial
bank shall need a minimum registered capital of 100 million yuan (RMB 100,000,000)
and a rural cooperative commercial bank shall need a minimum registered capital of 50
million yuan (RMB 50,000,000). The registered capital referred to herein should be
paid-up capital.

The People's Bank of China may readjust the floor amount of the registered capital
necessary for the establishment of a commercial bank in consideration of economic
development, but the amount shall not be lower than those specified in the previous
paragraph.

\textsuperscript{117} See id. arts. 20-23 (listing the license approval process and the time-frame in which the
bank license must be used before expiration).

\textsuperscript{118} See id. art. 4.
ment, but the amount shall not be lower than those specified in the previous paragraph.”

The provision seems ambiguous and confusing. Indeed, several questions need to be addressed by the PBOC to clarify the ambiguity and confusion. First, the ambiguity occurs with PBOC’s ability to readjust the minimum amount necessary to maintain bank operations. What type of discretion will the PBOC have with regards to this issue? Secondly, the confusion occurs with the statement that the “amount shall not be lower than those specified in the previous paragraph.” How can the PBOC readjust the floor requirements when the amount cannot be lower than the previous paragraph? The PBOC must clarify this contradiction.

However, in order to maintain equality between all commercial banks, the PBOC should not make exceptions, and lower the floor for the paid-up capital.

2. The PBOC

Ensuring compliance will require the PBOC to develop a task force. Documentation will become key, as PBOC staff reviews individual bank’s capital statements. These reviews should occur regularly. Aside from motivating banks to develop products, continued PBOC review would reassure corporate and individual consumers that banks in China are a safe haven for their investments.

Additionally, the central government must promulgate certain enforcement mechanisms for the PBOC. Under the Central Banking Law, the PBOC’s mandate ambiguously states: “exercise supervision and control over banking institutions and their business operations to maintain the legitimate, stable and sound operation of the banking industry.” Although the Central Banking Law does list activities punishable by fines or jail time, the list only pertains to criminal activities involving the RMB. Instead, the PBOC need to possess an enforcement mechanism involving commercial banks failure to obey PBOC regulations. Similar to the criminal list established, the Central Banking Law should include provisions listing fines applicable to vari-

120. Id.
121. See supra note 116 (listing the entire provision of Article 13).
122. See CENTRAL BANKING LAW art. 33 (1995) (China) (providing that the PBOC “shall have the power to demand banking institutions to submit according to regulations balance sheets of their assets, statements of profit and loss and other financial and accounting reports and data”).
123. Id. art. 30.
124. Id. arts. 41-50 (the articles list the crimes punishable by fines and jail time. Specifically, articles 41-46 pertain to the activity of counterfeit, while articles 47-50 involve the crime of embezzlement and bribes).
ous infractions. For example, the PBOC might consider the consequences of a commercial bank's failure to provide requested documents in time. Under such scenario, the PBOC would benefit from the authority to impose a fine for each day the documents are not delivered. Ultimately, if a commercial bank repeatedly fails to comply with PBOC regulations, the PBOC should have the ability to revoke their banking license.

The enforcement mechanisms will have a two-fold purpose. First, it will provide the PBOC with the needed mechanism to enforce rules and regulations. Secondly, banks will have an added incentive to comply with PBOC regulations. The culmination of the two purposes will not only legitimize the PBOC as an independent body, entrusted with enforcement of its own policies, but also increase the confidence of banking consumers. Specifically, consumers can trust their commercial banks to have complied with stringent PBOC standards.

Following the increased confidence, consumers in China will be more willing to try other banking products. Of course, the preceding analysis presupposes the autonomy of the PBOC. The importance of PBOC's autonomy cannot be overly stressed. For commercial banks to obtain consumer confidence, the PBOC must first be entrusted by the public as an entity that is independent from government influence. Providing the PBOC with enforcement mechanisms and freedom from career politicians will assist the central bank in achieving that public trust.

3. Regulation and Compliance within the framework of the WTO

Clearly, China's internal banking laws must first be liberalized in order for foreign commercial banks to fairly compete with Chinese commercial banks. One major concern of critics opposed to China's accession to the WTO involves China's willingness to follow international agreements. Why if China chooses not to liberalize its banking sector within the timeframe agreed to between the United States and China? What courses of action will the United States, and other member states, have in dealing with China? The next part of the paper will discuss the course of action available through the WTO.

One interesting aspect of the WTO is the existence of the Dispute Settlement Understanding (DSU), a resolution body that settles disputes between member states. Indeed, the WTO utilizes its inde-

125. See Hudec, supra note 21 (showing statistics which suggest that US and other European countries are using WTO's DSU more often then the dispute resolution mechanism under GATT. However, more developing countries are becoming defendants under the WTO regime, compared to the regime established under GATT).
pendent body, through the DSU to resolve member disputes. The DSU essentially "establishes...a legal system that functions very much like an international court. Moreover, it is a system that efficiently administers justice. Its combination of short deadlines, quasi-automatic procedures, and authority to issue binding decisions are qualities that are relatively unique among international forums for settling disputes."127

Although international banks will not have the standing to lodge a compliant against China, it can pressure its own governments to complain on their behalf.128 Such methods will essentially bypass the standing requirement established by the WTO.129 Nonetheless, pressure from individual commercial banks-and bank groups-will be necessary. Specifically if China’s banking liberalization does not conform to their bilateral agreements then foreign banks, doing business in China, must inform their governments of the situation. Essentially, this places banks in the role of regulators of China’s commitment in liberalizing their banking industry.

4. China’s Willingness to Comply with International Norms: Case Study

The concept of liberalization in China’s banking sector seems abstract at first glance. Indeed, whether the Chinese leadership will actually enforce its banking laws and abide by its WTO commitments remains unclear. Initial analysis, however, suggests that the Chinese government is fully committed to liberalizing its industries.130 Indeed, Chinese leadership must embrace other nation-states to ensure foreign investment, and secure the success of its WTO membership.131 Domestically, China must take steps to guarantee an open environment for business transactions. Of course, corruption must be addressed by the banking sector.

126. Movsesian, supra note 22 (providing the history of the dispute resolution procedure that emerged from GATT). See also Peng supra note 12, at *4 (explaining the procedure of the dispute resolution procedure within the context of Chinese culture).
127. Van Der Borght, supra note 23 (reviewing DAVID PALMETER & PETROS C. MARVROIDIS, DISPUTE SETTLEMENT IN THE WORLD TRADE ORGANIZATION (1999)).
129. Id.
130. See Paul Mooney, Beijing’s Latest Look, NEWSWEEK, Feb. 18, 2002, at 44 (stating that China will continue to make good impressions to obtain benefits from its WTO acceptance).
131. Id.
Recently, the banking industry faced a scandal involving one of the four largest Chinese commercial banks. The Bank of China, the country’s second-largest bank, and Wang Xuebing (head of the bank), were implicated in a lending scheme in which Wang loaned $23 million to his wife. Under the Commercial Banking Law, Mr. Wang’s loans, which became defaulted and contained insufficient collateral, amounted to an illegal transaction under Chinese law. Fearing a more widespread epidemic, the PBOC censured all of the Big Four banks and punished 686 members for various infractions.

Although such measures seem severe, corruption in the state-owned banks is by no means isolated. Indeed, in another recent example, several high-ranking bank managers stole $480 million dollars from a Bank of China branch. Interestingly, corruption the Commercial Banking Law addresses corruption. Anticipating the temptations inherently involved in the banking sector, Article 27 prohibits certain individuals from holding “high managerial positions.”

Although safeguards in place failed to prevent corruption in certain instances it shows the PBOC, along with the Chinese leadership’s, willingness to pursue high-level corruptors. Thus, the existence of corruption becomes a secondary issue. International members, especially


133. See COMMERCIAL BANKING LAW art. 40 (1995) (China) (stating that “a commercial bank shall not extend unsecured loans to individuals connected to the bank; and shall not provide such individuals with secured loans with conditions more favorable than those offered to a borrower of a similar loan with no such connections.” The provision defines “related persons” as “members of the Board of Directors . . . managerial personnel and staff . . . and the close relatives thereof . . . ”)(emphasis added).

134. See Clifford et al., supra note 132.

135. Id. (The accused bank managers were believed to have stole the money from a Guangdong branch between 1992 and 2001. According to various sources, three of the managers involved have escaped to Canada).

136. See COMMERCIAL BANKING LAW art. 27 (1995) (China).

137. Id. Article 27 states:

Individuals who have been in one of the following circumstances shall not hold high managerial positions in a commercial bank.

1. sentenced to imprisonment or deprived of political rights on account of graft, bribery, illegal possession of property, embezzlement of public property or disruption of social economic order;

2. served as a director on a Board of Directors, or as the director or manager, of a company which went bankrupt because of mismanagement, and having been personally responsible for the bankruptcy;

3. acted as the legal representative of a company whose business license had been revoked on account of violation of the law and having been personally responsible therefore;

4. failed to repay a fairly large debt which had become due).
members of the WTO, should breathe a sigh of relief. This case not only suggests China's ability to combat corruption, but also of its acceptance of international rules.

5. Quanxi in China

One variable, which could influence China's liberalization strategy, involves its cultural inclination to employ quanxi in business dealings.\(^\text{138}\) Whereas the PBOC is willing to pursue corruption cases, their willingness to end cultural norms seems uncertain. Such hesitation stems from the fine line drawn between a favor and an illegal act. For example, whereas making an unjustified loan to a spouse would be illegal, speeding up the loan process for a qualified friend would be legitimate.

Small favors are conducted everyday, and cross all borders. However, in China, the use of quanxi could hinder its aspiration for speedy banking liberalization. While quanxi could be employed to assist some banks, it could also be utilized to hinder other banks. For example, instead of fully opening the banking sector to all qualified commercial banks, the PBOC could speed up banking licenses to those banks whom have quanxi with the PBOC staff. It is equally probable that the PBOC could unduly delay issuing a banking license to a commercial bank that will directly compete with an existing commercial bank.

To avoid such blatant favoritism, the PBOC will have to treat each applicant objectively. Here, the Standing Committee must maintain its role as an enforcer. It must make sure that PBOC's actions are justified and fair, and any discrepancies are clearly and immediately explained. Additionally, clear guidelines must be promulgated by the Standing Committee. The guidelines should establish PBOC's role in various central bank transactions. Most importantly, all decisions must remain transparent to the international community.

V. IMPACT FOR FUTURE US-CHINA RELATIONS

China's accession to the WTO will have important implications for the United States and China's relations.\(^\text{139}\) Commentators argue that the United States will loose an important bargaining chip since it can no longer review the PNTR of China. These critics argue that the US

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138. See Peng, supra note 12.
should continue to "police" China using the PNTR as incentive for compliance. During President Clinton's term, he decided to stop using the PNTR as the pretext of addressing the issue of human rights. Instead, PNTR became granted solely on the basis of economic benefits and factors. This approach ultimately led to the successful negotiation between the US and China regarding its accession to the WTO.

One major concern for critics opposed to China's accession to the WTO was the lack of control the United States would have over China. Specifically, the United States will lose its bargaining chip over economic issues in China. These fears are unfounded. Instead, the United States could ensure China's compliance with economic standards and liberalization policies agreed by the parties. The United States will ultimately utilize the DSU to monitor and regulate China's liberalization progress. Indeed, the DSU should prove to be a better mechanism than the PNTR. Aside from international legitimacy, the US will also obtain international support should China fail to liberalize according to its WTO commitments.

One important question remains, what role will legal practitioners have in post-WTO China? Legal experts must become familiar with the relevant banking laws promulgated by the PBOC. These experts must inform and pressure the PBOC to clarify ambiguous rules and regulations. Obtaining legal knowledge is only the first step in becoming a practitioner in China. A legal expert must also indoctrinate herself with cultural nuances that exist in China. Additionally, the tradition of quanxi must be recognized by any successful practitioner. Foreign practitioners in China cannot isolate themselves from domestic practitioners and agencies. Instead, relationships must be forged and various practices disseminated.

VI. Conclusion

Ultimately the liberalization and internationalization of China's banking sector will prove to be beneficial for all. China, for its part, will have the necessary catalyst, its entry into the WTO, to make sure that their banks are efficient and able to compete with foreign banks. In return, billions of Chinese citizens will have access to competitive and innovative banking products. By the same token, foreign firms

140. See Sarah H. Cleveland, Normal Internalization and U.S. Economic Sanctions, 26 Yale J. Int'l L. 1, 44 (providing the background to China and United States' history involving the most favored nation status and its role in human rights).

141. With China's accession to the WTO, the legal environment will also begin to open up to foreign practitioners.
will finally be able to penetrate the Chinese market and access its huge consumer base. In the end, China’s WTO membership should prove to be a win-win situation.