FOREIGN ACCESS TO BANKING MARKETS IN CHINA AND TAIWAN

by

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Faculty of Law

We accept this thesis as conforming

to the required standards.

THE UNIVERSITY OF BRITISH COLUMBIA

September 1996

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Department of **LAW**

The University of British Columbia  
Vancouver, Canada

Date **October 10, 1996**
ABSTRACT

China and Taiwan today are both trying to become members of the World Trade Organization (WTO). Recently they have committed a lot of efforts in their banking law reforms and these recent reforms in both countries have provided more opportunities for foreign financial investors. With future WTO memberships, China and Taiwan will be bound by the upcoming General Agreement on Trade in Services (GATS) and consequently will increase their domestic banking services market to foreign banks. This thesis postulates that, while Taiwan and China have different attitudes toward their financial policy, both countries will continue to liberalize their financial markets in the context of the GATS. In time, with China’s future financial reform having relevant influence on its economy, its future impact will be an important consideration for Taiwan, who is also going through financial reform and trying to establish itself as the Asia Pacific Financial Operation Center in the region. This thesis focuses on the foreign access opportunities to the banking markets in China and Taiwan. Chapter One starts with a brief introduction, followed by Chapter Two, which begins with an overview of GATS as well as its Annexes, Decision and Understanding on Financial Services. Chapter Three examines the entry conditions and business activities of foreign banks in China, followed by the assessment on the impact of China’s accession to WTO. In comparison, Chapter Four further examines the entry conditions and business activities of foreign banks in Taiwan, followed by a description of Taiwan’s future legislative reforms geared toward WTO membership with intents to become the Asia Pacific Financial Operation Center of the future. Finally, Chapter Five marks the conclusion for this thesis.
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Finally, I would like to thank my parents, without their support this work would not have been possible.

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Vancouver

October 1996
Chapter 1 Introduction

After the second World War, although trade liberalization occurred within the framework of the General Agreement on Tariffs and Trade (GATT) has greatly reduced the tariff barriers in the international trade,\(^1\) there are still areas of high protectionism in agriculture, textile, banking and insurance. Even though it is widely accepted that the service industry has been the fastest growing sector in the global economy for more than a decade, yet its policies on international regulation of trade in services is far behind the field of trade in goods. It wasn't until the Uruguay Round, the eighth round of Multilateral Trade Negotiations (MTN) launched at Punta del Este in 1986, that the contracting parties of GATT began serious negotiations on trade in services.

The Uruguay Round has achieved a framework for liberalizing of trade through the General Agreement on Trade in Services (GATS). Important GAS rules include most-favored-nation (MFN) treatment, market access, national treatment, transparency of laws and regulations, recognition of operating licenses and professional qualifications as well as arrangement for dispute settlement. The financial services sector is one of the service sectors where important agreements were reached. The GATS contains two Annexes on Financial Services, an Understanding on Commitments in Financial Services and a Decision on Financial

\(^1\) GATT is both an international organization located in Geneva, Switzerland, and a multilateral treaty conferring rights and obligations on the more than 100 countries (known as “Contracting Parties”) which have chosen to join it. Countries that are part of GATT account for about 90 per cent of world merchandise trade (i.e., trade in “goods” as distinct from “services”). The tariff barriers were successfully dismantled and trade liberalization was pursued in eight successive rounds of multilateral negotiations under the auspices of GATT.
services. With GATS in place, liberalization of international banking is now on a more comprehensive footing.

More over, the Uruguay Round of Multilateral Trade negotiations is the first to substantially engage most of the Asia-Pacific Countries in the region. Today the world’s economic growth has shifted to the Asia-Pacific. It is generally believed that in the next century the center of economic development will lie in the Asia-Pacific region.\(^2\) With the emergence of new trading power in East Asia, one of the western countries’ central objectives in the Round was to ensure the future open market policies in the Asia-Pacific Countries. The Round was a success in increasing market access and lowering barriers maintained by countries such as Japan, Korea and members of the Association of Southeast Asian Nations (ASEAN). Progress has also been made to bring China and Taiwan into the GATT/WTO as well.

Fueled by high levels of foreign and domestic investment and strong growth in exports, China (the People’s Republic of China, ‘PRC’) is considered to be one of the fastest growing economic powers in the world.\(^3\) The average Gross National Product (GNP) growth

---

\(^2\) According to Wharton Econometric Forecasting Associates (WEFA), the economies of East Asian developing countries, which include the NIEs, ASEAN, and mainland China, grew on average 7.5 percent each year, the United States’ 1.5 percent, and the EU’s 1.2 percent. In 1993, developing Asia continued to outperform the industrial countries and registered a combined growth of 8.3 percent. Led by Japan, the NIEs have followed a fast growth track, an ASEAN also has begun its journey toward development and industrialization. China has now joined them as a third wave. Even Vietnam is sometimes mentioned as a new addition to the flying-geese pattern. See S. Chi, *East Asia Economic and Financial Out Look: Taiwan’s Economic Role in East Asia* (Washington, DC: The Center for Strategic and International Studies, 1995) at 6.

\(^3\) It is now the eleventh largest trading country in the world, with a total trade of US $235 billion in 1994. Its exports and imports were valued at US$ 120 billion and $115 billion respectively. By the end of 1994, savings by individuals in China has accumulated to RMB 2.15 trillion, growing at an average annual rate of 33.5 percent, from RMB 21 billion in 1978 when the economic reforms first started in China. With regard to foreign investment, China has also become an important player, by October 1994, foreign direct investment in China had accumulated to US $91.2 billion, representing an average annual growth rate of 40.7 percent over
rate in China was 9.0 percent for the 14-year period from 1979 to 1992. Per capita national income has also increased at an average of 5.5 percent annually during the same period. China's domestic savings rate consistently exceeds 30 percent of gross domestic product (see Table 1). There are plenty of opportunities for foreign financial institutions to finance or serve as financial advisers in China. China’s outstanding economic performance has attracted many of the world’s leading financial institutions, which has currently established more than 400 representative offices and branches in the country. As part of its goal to implement a “socialist market economy,” China has placed a high priority on reforming its financial sector. However, China’s unwillingness to grant broader market access and national treatment will be the greatest barrier for foreign financial institutions. Getting operation approval in China is not a straightforward task due to the lack of transparency of laws and regulations. The business scope of the foreign financial institutions is therefore very limited in China.

Taiwan (the Republic of China, ‘ROC’) has achieved one of the world’s highest rates of economic growth over the past four decades. Taiwan is an important capital exporter to
the world (see Table 2 and Table 3). Its global economic and financial stature will become increasingly important with its continuing high rates of economic growth. With the reversion of Hong Kong to China, Taiwan can become, with the appropriate regulatory policies, the key financial center to the emerging Chinese Economic Community. Until recently, Taiwan has tightened access to its financial markets. Financial regulation and government ownership have greatly influenced the development and competitive structure of its financial system. Foreign financial institutions encountered restricted access to Taiwan's financial markets, and upon entering these markets they have found fewer opportunities than their domestic counterparts.

Both China's and Taiwan's banking markets have been areas of protectionism since the end of World War II. Foreign banks enjoy limited market access and business power in both China and Taiwan. China and Taiwan have both participated in the Uruguay Round, neither as member of the GATT/WTO. Both have also applied to join and negotiate for their accession to membership of the GATT/WTO. China had initially hoped to become a founding member of the WTO by rejoining the GATT before January 1, 1995. Unfortunately, China was unsuccessful. Taiwan's goal is to enter WTO as soon as possible. But it is not an easy task due to the sensitive political situation involved, since China will not acknowledge the deposit in monetary institution amount to NT. $12,948.7 billion at the end of January 1996. See S. W.Y. Kuo, K. Yu, eds., Economic Development of ROC and the Pacific Rim in the 1990s and Beyond (Taiwan: World Scientific, 1994) at 1-3; Directorate-General of Budget, Accounting and Statistics, Executive Yuan, Taipei, Monthly Bulletin of Statistics of the Republic of China (September 1995) at 22; Economic Research Department, Central Bank of China, Taipei, Financial Statistics Monthly Taiwan District Republic of China (February 1996) at 8.

Due to geopolitical and historic reasons, regional cooperation in Asia so far has been achieved mainly by the initiative of the private sector. What current exists in Asia is a loosely defined Asia-pacific trading bloc resting on such bases as APEC and ASEAN. Whether the diverse economies within this region can further integrate into something like its European or North American counterparts remains to be seen. But the natural economic integration within this region among the Chinese culture-based economies (Taiwan, Hong Kong and China) irrespective of political and ideological boundaries were certain to continue.
international status of Taiwan. Should China and Taiwan become members of the World Trade Organization (WTO), they will be obligated to open up their banking services markets. In other words, they have to submit their schedules of commitments on financial services and comply with major principles of GATS, such as the MFN treatment, free market access, national treatment, and transparency of laws and regulations. In order to be the members of WTO, China and Taiwan have committed a lot of effort during the recent banking law reforms. However, there is still much to be done.

The topic of this thesis will discuss on the foreign access to banking markets in China and Taiwan. This thesis seeks to compare China’s and Taiwan’s current banking laws and regulations to the major trade principles of GATS. Because the analysis of this paper is based on the provisions and major principles of GATS, it is necessary to provide an overview of the GATS as well as the Annexes, Decision and Understanding on Financial Services. It is also

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8 In 1945, China’s nationalist Party, or Kuomingtang (KMT) government, using the name of the Republic of China (ROC), participated in the preparatory committee of the International Trade Organization which was held in London. In October 1947, as one of 23 original Contracting Parties to GATT. China signed the GATT Agreement and entered into tariff negotiations. China (Republic of China) became a Contracting Party by accepting the 'Protocol of Provisional Application of the GATT' on 21 May, 1948. In 1949, the People’s Republic of China (PRC) was founded by the Chinese Communist Party and the KMT government was defeated and fled to Taiwan Island. Chinese Communist Party now controlled all of Mainland China, and Taiwan authorities could not fulfill its obligations with GATT. At that time, almost all of the export products originating from Mainland China benefited from GATT tariff rates, while Taiwan’s exports were few. To avoid Communist China taking advantage of GATT membership, the Taiwan authorities notified the General-Secretary of the United Nations on 6 March, 1950, that China would withdraw from GATT. In March 1965, Taiwan’s application to be an observer was approved and Taiwan participated in GATT activities. In October 1971, the 26 Session of United nations restored all the rights to the PRC and to the representative of its Government, and reorganized the PRC as the only legitimate representative of China to the UN. GATT therefore canceled the observer status of Taiwan in 1971. Taiwan officially began an attempt to join GATT in 1987. Taiwan’s application to enter into GATT/WTO involved the following issues: (1) the political issue: choice of admission name; (2) the legal issue: choice of admission procedures; and (3) the economic issue: ticket of admission. However, complex political, legal and economic issues exist which must resolved before Taiwan can be accepted as a GATT Member. See Y. Feng, “Taiwan and GATT” (1990) 13:1 World Economy 129.
necessary to provide a comprehensive overview of China's and Taiwan's banking systems, their policy backgrounds, their legal frameworks and their past, recent and future financial reforms. This will be followed by the analysis of GATS principles on the current banking law of Taiwan and China.

The thesis is structured as follows: Chapter One will explain the purpose, motive, scope and method of this thesis. Chapter Two begins with an overview of the General Agreement on Trade in Services as well as the Annexes, Decision and Understanding on Financial Services. Chapter Three begins with a description of China's current banking system and its reforms, followed by an overview of the Central Bank Law, the Commercial Bank Law, and the Foreign Trade Law of China. This chapter devotes to examine the entrance conditions and the business activities for foreign banks in China, and concludes with an assessment on the impact of China's accession to World Trade Organization. Chapter Four will begin with a description of Taiwan's present banking system, followed by a description of Taiwan's legislative reforms for entering WTO, with the intention to enter the Asia Pacific Regional as the future Operation Center. Chapter Four will conclude with an assessment on the impact of Taiwan's accession to World Trade Organization. Chapter Five will mark the final conclusion for this thesis.
Table 1 Money Supply, Price Indices, GNP, and Bank Deposits

(All in billion yuan at current price except percentage)

<table>
<thead>
<tr>
<th>Year</th>
<th>M0</th>
<th>M1</th>
<th>M2</th>
<th>OPI(%)</th>
<th>MPI(%)</th>
<th>GNP</th>
<th>HBD</th>
</tr>
</thead>
<tbody>
<tr>
<td>1978</td>
<td>21.20</td>
<td>94.90</td>
<td>115.91</td>
<td>121.60</td>
<td>221.60</td>
<td>358.80</td>
<td>21.06</td>
</tr>
<tr>
<td>1979</td>
<td>26.77</td>
<td>117.70</td>
<td>145.81</td>
<td>124.00</td>
<td>211.60</td>
<td>399.80</td>
<td>28.10</td>
</tr>
<tr>
<td>1980</td>
<td>34.62</td>
<td>144.30</td>
<td>184.29</td>
<td>131.40</td>
<td>215.80</td>
<td>447.00</td>
<td>39.95</td>
</tr>
<tr>
<td>1987</td>
<td>39.63</td>
<td>171.10</td>
<td>223.45</td>
<td>134.60</td>
<td>228.30</td>
<td>477.30</td>
<td>52.37</td>
</tr>
<tr>
<td>1982</td>
<td>43.91</td>
<td>191.40</td>
<td>258.98</td>
<td>137.20</td>
<td>235.80</td>
<td>519.30</td>
<td>67.54</td>
</tr>
<tr>
<td>1983</td>
<td>52.98</td>
<td>218.30</td>
<td>307.50</td>
<td>139.30</td>
<td>245.70</td>
<td>580.90</td>
<td>89.25</td>
</tr>
<tr>
<td>1984</td>
<td>79.21</td>
<td>293.20</td>
<td>414.63</td>
<td>143.20</td>
<td>244.70</td>
<td>696.20</td>
<td>121.47</td>
</tr>
<tr>
<td>1985</td>
<td>98.78</td>
<td>326.20</td>
<td>488.43</td>
<td>155.80</td>
<td>286.80</td>
<td>855.80</td>
<td>162.26</td>
</tr>
<tr>
<td>1986</td>
<td>121.84</td>
<td>402.40</td>
<td>626.16</td>
<td>165.10</td>
<td>310.00</td>
<td>969.60</td>
<td>223.76</td>
</tr>
<tr>
<td>1987</td>
<td>145.45</td>
<td>459.10</td>
<td>766.45</td>
<td>177.20</td>
<td>360.50</td>
<td>1130.10</td>
<td>307.33</td>
</tr>
<tr>
<td>1988</td>
<td>213.40</td>
<td>548.70</td>
<td>928.89</td>
<td>210.00</td>
<td>469.70</td>
<td>1406.80</td>
<td>380.15</td>
</tr>
<tr>
<td>1989</td>
<td>234.40</td>
<td>577.30</td>
<td>1092.00</td>
<td>247.20</td>
<td>520.40</td>
<td>1599.30</td>
<td>514.69</td>
</tr>
<tr>
<td>1990</td>
<td>264.40</td>
<td>687.50</td>
<td>1390.90</td>
<td>252.40</td>
<td>490.70</td>
<td>1769.50</td>
<td>703.42</td>
</tr>
<tr>
<td>1991</td>
<td>317.80</td>
<td>844.60</td>
<td>1755.60</td>
<td>259.70</td>
<td>186.30</td>
<td>1985.50</td>
<td>911.03</td>
</tr>
<tr>
<td>1992</td>
<td>432.20</td>
<td>1131.70</td>
<td>2299.90</td>
<td>273.70</td>
<td>498.00</td>
<td>2393.80</td>
<td>1154.5</td>
</tr>
</tbody>
</table>


Note:
MO is defined as currency in circulation at the end of the year;
M1 is equal to MO plus demand deposits of firms, institutions;
M2 equals M1 plus and passbook saving and term deposits of households;
OPI = official general retail price index (1952=100);
MPI = free market price index of consumer goods (1952=100)
GNP = gross national product;
HBD = total households bank deposits
Table 2  Taiwan’s Outward Investment by Region, 1952-1993

(in thousands of US dollars)

<table>
<thead>
<tr>
<th>Year</th>
<th>Asia</th>
<th>Americas</th>
<th>Europe</th>
<th>Oceania</th>
<th>Africa</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1952-1979</td>
<td>43,057</td>
<td>13,576</td>
<td>142</td>
<td>2,074</td>
<td>441</td>
<td>59,590</td>
</tr>
<tr>
<td>1980</td>
<td>3,170</td>
<td>35,130</td>
<td>1,000</td>
<td>2,781</td>
<td>24</td>
<td>42,105</td>
</tr>
<tr>
<td>1981</td>
<td>6,738</td>
<td>1,795</td>
<td>2231</td>
<td>-</td>
<td>-</td>
<td>10,764</td>
</tr>
<tr>
<td>1982</td>
<td>9,132</td>
<td>2,500</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>11,632</td>
</tr>
<tr>
<td>1983</td>
<td>6,561</td>
<td>2,858</td>
<td>-</td>
<td>144</td>
<td>1,000</td>
<td>10,563</td>
</tr>
<tr>
<td>1984</td>
<td>6,551</td>
<td>32,178</td>
<td>-</td>
<td>134</td>
<td>400</td>
<td>39,263</td>
</tr>
<tr>
<td>1985</td>
<td>4,206</td>
<td>35,830</td>
<td>891</td>
<td>7</td>
<td>400</td>
<td>41,334</td>
</tr>
<tr>
<td>1986</td>
<td>8,412</td>
<td>46,738</td>
<td>194</td>
<td>717</td>
<td>850</td>
<td>56,911</td>
</tr>
<tr>
<td>1987</td>
<td>21,302</td>
<td>80,250</td>
<td>199</td>
<td>-</td>
<td>1,000</td>
<td>102,751</td>
</tr>
<tr>
<td>1988</td>
<td>69,299</td>
<td>130,335</td>
<td>12,005</td>
<td>6,134</td>
<td>963</td>
<td>218,736</td>
</tr>
<tr>
<td>1989</td>
<td>296,372</td>
<td>624,431</td>
<td>2333</td>
<td>-</td>
<td>7,850</td>
<td>930,986</td>
</tr>
<tr>
<td>1990</td>
<td>602,910</td>
<td>838,711</td>
<td>96,176</td>
<td>1,397</td>
<td>13,012</td>
<td>1,552,206</td>
</tr>
<tr>
<td>1991</td>
<td>929,819</td>
<td>658,959</td>
<td>60,289</td>
<td>2,441</td>
<td>4,523</td>
<td>1,656,030</td>
</tr>
<tr>
<td>1992</td>
<td>369,929</td>
<td>449,096</td>
<td>45,933</td>
<td>5,426</td>
<td>16,845</td>
<td>887,259</td>
</tr>
<tr>
<td>1993</td>
<td>663,514</td>
<td>739,610</td>
<td>255,913</td>
<td>983</td>
<td>415</td>
<td>1,660,435</td>
</tr>
</tbody>
</table>


Note: Figures exclude Taiwan’s investment in the mainland China.

Table 3  Taiwan’s Investment (contract basis) in Mainland China, 1959-1993

(in millions of US dollars and number of projects)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Dollars</td>
<td>-</td>
<td>100.0</td>
<td>420.0</td>
<td>517.0</td>
<td>984.0</td>
<td>1,392.3</td>
<td>5,547.9</td>
<td>9,965.0</td>
</tr>
<tr>
<td>Number of Project</td>
<td>-</td>
<td>80</td>
<td>355</td>
<td>547</td>
<td>1,117</td>
<td>1,735</td>
<td>6,430</td>
<td>10,948</td>
</tr>
</tbody>
</table>

Chapter 2 The General Agreement on Trade in Service and the Banking services sector

I. Liberalizing Trade in Banking Services

Before attempting to analyze the provisions of GATS, this section presents a brief representation of the international banking activities and major barriers encountered by the foreign bank affiliates. Note that financial services other than banking services are excluded from this analysis. Typical banking activities are listed as follow:


a) collection of domestic deposits and the making of loans in domestic currency to foreigners;
b) purchase or collection of deposits of foreign currency and the making of loans to domestic and foreign borrowers;
c) management of syndicated loans;
d) design of financial arrangements for international trade and other major projects;
e) foreign exchange transactions, international money transfers;
f) providing documentary letters of credit, standby letters of credit, multiple currency credit lines, bank acceptances, note issuance facilities;
g) trading in currency futures and options, financial futures and opinion, interest rates and asset swaps; writing interest rate caps;
h) underwriting and placement of bond issues, distribution of commercial paper, assisting cross-border mergers, acquisitions and sales, financial advisory and investment services.

As such, banking services can be defined as comprising the following activities: (1) deposit taking and lending, whether in domestic or foreign currency, to governments, corporations, private individuals, and others; (2) specialized forms of lending, including trade financing, loan syndication and participation; (3) trading and dealing in domestic and foreign currencies and (4) various advisory and brokerage services.  

What makes banking services international? There are three scenarios. In the first scenario, the service itself crosses the border. In the second scenario, the recipient goes abroad. In the third scenario, the service provider comes to the recipient (see Table 4).

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Regulation is pervasive in banking, and this in turn affects international trade in banking services. Depending on the manner in which services are traded, international trade in services can be discriminated by barriers to the service itself (i.e. cross-border supply), to the mobility of the service recipients (i.e. movement of consumer) and the service providers (i.e. commercial presence and presence of natural person).\(^\text{12}\)

In general, the third mode has received more attention in discussions of barriers in the trading of financial services.\(^\text{13}\) This mode of trade involves direct foreign investment in financial institutions located in the country of residency of the user for such particular service. Most commonly, this investment is in the form of locally owned subsidiaries or branches. The issue here is the treatment extended by the host country regulatory authorities to foreign banking affiliates. There are many ways that the host country can constrain the competitive opportunities of foreign banking affiliates.

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\(^{13}\) “Banking”, supra note 10 at 49.
A. Ownership of Foreign Banks

Attitude toward licensing foreign banks varies widely. Some countries totally exclude foreign financial institutions. Some countries permit representative offices, some countries permit branches and some countries permit subsidiaries. An important issue for licensing policy is whether or not to allow only foreign branches, subsidiaries, or both. A branch is a legal entity of its home country and is treated as an integral part of its parent bank. A subsidiary is a legal entity of the host country and is a separate corporation wholly or majority owned by its transnational bank parent. The difference matters because of regulatory treatment and, in particular, capitalization requirements.

Foreign ownership of banking institutions is frequently a politically sensitive topic in developing countries. This is especially so when the banking industry is seen as a policy control apparatus of the government, which can exert far greater control and moral suasion over national institutions (many ethical systems have an aversion to interest), and in some cases a fear of foreign banking affiliates is said to add to their unpopularity, regardless of nationality. The poor financial condition of many domestic financial institutions is also an invitation to protection by governments unprepared to face the fiscal cost of financial reform. Furthermore, in many developing countries, ‘the overwhelming presence of government’ is a common characteristic of their domestic banking systems. This implies that in many cases trade liberalization in banking services might amount to breaking a government monopoly.  

14 "Banking", supra note 10 at 52.
B. Restrictions on the Establishment of Foreign Banking Affiliates

Restrictions on the establishment of foreign banking affiliates take the form of discriminatory barriers to entry and discriminatory operation constraints. The following summary of barriers facing foreign banks are derived from P. Messerlin and K. Sauvant’s article, “Banking.” 15

1. Discriminatory Barriers to Entry

With rare exceptions, entry into domestic banking sectors has been difficult in most countries. In liberalized, market-based systems, entry restrictions typically specify minimum capital requirements, management integrity, and competence. In other systems, entry restrictions vary, ranging from absolute prohibition of any foreign presence to the limitations on capital participation in domestic institutions. This is the market access principle discussed in the Uruguay Round.

15 “Banking”, supra note 10 at 49-59.
2. Discriminatory Operational Constraints

Discriminatory operational constraints affect the operations of foreign banks once they are established in the host country’s markets. There are many ways in which operation constraints may affect the ability of foreign banking affiliates to compete with domestic banks. For instance, they may increase foreign bank’s cost of funds or their general operating costs in relation to those of domestic competitors, or they may constrain expansion of their operations within the country. Operational constraints can be further classified as intentional operational constraints, accidental operational constraints and preferential treatment measures. According to the US Treasure Department’s Report to Congress on Foreign Government Treatment of US Commercial Banking Organization, the discriminatory operation constraints can be grouped into the following three categories.
a) Intentional Operational Constraints

Intentional operational constraints are explicitly established to discriminate against foreign banking affiliates. They are frequently designed to limit foreign banks' operations to certain segments of the financial market while preserving other segments entirely for indigenous banks. This could occur through (see Table 5):

- Regulations related to private sources of funds
- Regulations that affect the number or location of foreign bank affiliates
- Regulations that affect foreign bank affiliates' access to central bank discount facilities
- Restrictions on the services that foreign bank affiliates can offer
- Restrictions related to loan and security portfolio
- Tax-related regulations
- Sundry operational constraints
## Table 5  Intentional Operational Constrains

<table>
<thead>
<tr>
<th>Constrains</th>
<th>Examples</th>
<th>Results</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Regulations related to private sources of funds</td>
<td>They restrict FBAs’ solicitation of some kinds of deposits - for example, retail deposits or deposits of specific business sectors - or limit borrowing from non-banks.</td>
<td>Deposits are one of a bank’s lowest-cost sources of funds, and to the extent that deposit-taking restrictions force foreign banks to use more expensive sources. The result is a significant competitive disadvantage for FBAs</td>
</tr>
<tr>
<td>2. Regulations that affect the number or location of FBAs</td>
<td>They limit the number or/and location of FBAs.</td>
<td>They limit the expansion of FBA’s branch networks; limit the sources that FBAs can tap for local deposits.</td>
</tr>
<tr>
<td>3. Regulations that affect FBA’s access to central bank discount facilities</td>
<td>They affect FBA’s access to central bank discount facilities and force FBAs generally to hold a larger proportion on their assets in lower-yield reserves.</td>
<td>They put FBAs at disadvantage in dealing with their liquidity need.</td>
</tr>
<tr>
<td>4. Restrictions on the services that FBAs can offer other than those related to deposit-taking and lending</td>
<td>They restrict the FBA’s business scope. Frequently seen examples of these restrictions have to do with security management and underwriting business, limits for guarantees, and the types of currencies that FBAs can deal in.</td>
<td>They make it difficult for FBAs to expand their market share because FBAs can not offer the full line of services permitted to domestic banks.</td>
</tr>
<tr>
<td>5. Restrictions related to the loan and security portfolio</td>
<td>They may limit the type of borrowers FBAs can service or may force FBAs to hold a larger proportion of their loan portfolio in low-yielding, longer-term loans than is required of domestic banks</td>
<td>The result is a significant competitive disadvantage for FBAs.</td>
</tr>
<tr>
<td>6. Tax-related regulations</td>
<td>Examples are a tax rate on foreign branch profits remitted to the parent bank that is large than the tax rate on dividends (the analogous payment for domestic banks), exemptions for domestic banks of withholding taxes on interest paid to nonresidents, and so on.</td>
<td>Tax-related regulations normally lead to higher costs of doing business.</td>
</tr>
<tr>
<td>7. Sundry operational constraints</td>
<td>Examples are ceilings on the annual repatriation or FBA’s profits, differential initial capital requirements, differential foreign currency reserve requirements, restrictions on the sources of funds for capital increases, restrictions on the ability to hold liens on real property, and regulations concerning the nationality of FBA executives.</td>
<td>The result is a significant competitive disadvantage for FBAs.</td>
</tr>
</tbody>
</table>

b) Accidental Operational Constraints

Accidental operational constraints are those regulations or national economic policy measures which, even though applied equally to foreign and domestic banks, have different and negative impacts on the ability of foreign banks to compete in the host country banking market because of the difference in the nature of their operations. This can occur through (see Table 6):

- Limits on the volume of assets, liabilities, or sizes of loans to individual borrowers
- Credit ceilings imposed for purposes of domestic monetary policy
- Other restrictions resulting from general economic and balance of payments policies
- Other accidental operational constraints result from measures completely divorced from the banking sector, such as requirements for alien work permits and residency requirements.

One of the most common constraints emerges from maximum permissible asset-capital ratios, and limits on the amount of loans to individual borrowers in relation to capital. Both of these constraints are imposed by most countries in order to ensure minimum levels of capitalization and portfolio diversification as well as enhance the safety of the institutions. Also many nations treat foreign banking affiliates in the host country as independent entities. This means that asset-capital ratios and lending limits are based exclusively on the foreign banking affiliate's capital, which is typically only a small fraction of the total capital of the
parent organization. As a result, the affiliates' volume of operations and individual loan sizes are seriously constrained. As in the cases of minimum capital-asset ratios and maximum lending limits discussed above, many constraints on banking operations are prudential, especially in the developing nations. Prudential regulations establish the outside limits and constraints placed on banks to ensure safety and soundness. The issue then is not the constraints themselves but equality of treatment between foreign and domestic banks. This is the national treatment principle and the prudential regulation discussed at the Uruguay Round.
Table 6  Accidental Operational Constraints

<table>
<thead>
<tr>
<th>Constraints</th>
<th>Examples</th>
<th>Results</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Limits on the volume of assets, liabilities, or sizes of loans to individual borrowers</td>
<td>The constraints emerge from maximum permissible asset-capital ratios and limits on the size of loans to individual borrowers.</td>
<td>They are imposed in most countries for prudential reasons, with the objective of ensuring minimum levels of capitalization and portfolio diversification and so enhancing the safety of depository institutions. Also for prudential reasons, many nations treat FBAs in the host country as independent entities. Consequently, asset-capital ratio and lending limits are based exclusively on the FBA’s capital, which is typically just a small fraction of the total capital of the parent organization. As a result, FBAs’ total volume of operations and individual loan sizes are seriously constrained. Competitive inequities are exacerbated if such measures are imposed simultaneously with the enforcement of limits on imports of capital.</td>
</tr>
<tr>
<td>2. Credit ceilings imposed for purposes of domestic monetary policy</td>
<td>Credit ceilings</td>
<td>They may apply to both foreign and domestic banks, but if foreign banks are relatively later entrants in the market, they have had less time to build up their domestic business and are consequently more constrained in expanding their portfolios. In some cases lending limits are based on domestic deposit liabilities. Where this type of constraint is enforced simultaneously with regulations affecting FBAs’ access to local deposits, the resulting competitive inequities are even more significant.</td>
</tr>
<tr>
<td>Other restrictions resulting from general economic and balance of payments policies</td>
<td>Such as limitations on foreign exchange transactions, the constraints on business with nonresidents, and capital control</td>
<td>Because of international orientation of FBA’s operations, limitations on foreign exchange transactions affect them more negatively than they do their domestic counterparts. In general, business with nonresidents represents a larger share of operations for FBAs than for local banks. So the constraints on business with nonresidents lead to competitive inequities for FBAs. Capital controls tend to be more restrictive on foreign banks that are funding their operations by borrowing form their parent institution.</td>
</tr>
<tr>
<td>4. Other accidental operational constraints result from measures completely divorced form the banking sector</td>
<td>Such as requirements for alien work permits and nationality requirements.</td>
<td>FBAs may be affected more severely than domestic banks because they may desire staff of their own nationality. The difficulties in obtaining work permits may limit their ability to develop their staff.</td>
</tr>
</tbody>
</table>

c) Preferential Treatment Measures

Some governments have deliberately reduced competitive inequities that affect foreign
bank affiliates by flexibly applying regulatory requirements or by granting the affiliates
privileges not extended to domestic banks. In some cases, measures that apply equally to
both groups of competitors can have a favorable impact on foreign banking affiliates
because of the nature of their operations. This can occur through (see Table 7):

- Regulations concerning reserve requirements on deposits or funding in the inter-bank
  market
- Preferential measures related to directed lending
- Sundry preferential measures
Table 7  Preferential Treatment Measures

<table>
<thead>
<tr>
<th>Constraints</th>
<th>Examples</th>
<th>Results</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Regulations concerning reserve requirement on deposits or funding in the interbank</td>
<td>Such as lower reserve requirements on foreign currency or non-resident deposits than domestic deposits. Another example is the waiver of reserve requirements on funds raised in the interbank market, which FBAs use more extensively than do domestic banks.</td>
<td>They decrease FBAs' cost of deposit funds, since they normally hold a greater proportion of foreign currency liabilities than do domestic banks.</td>
</tr>
<tr>
<td>2. Preferential measures related to directed lending</td>
<td>Flexibility in the application of credit controls, exemptions from the obligation to support government bond issue, to participate in rescue operations of failing firms, or to extend loans to priority sectors identified in government development plans.</td>
<td>They reduced competitive inequities that affect FBAs</td>
</tr>
<tr>
<td>3. Sundry preferential measures</td>
<td>Examples are access to special swap facilities not available to domestic banks (to compensate for the impact on foreign bank operations of the denial of access to the discount window, for example), flexibility in the application of foreign exchange controls, and the like. In some cases governments have offered inducements for the establishment of foreign banking affiliates in the form of special tax concessions or preferential tax treatment.</td>
<td>They reduced competitive inequities that affect FBAs</td>
</tr>
</tbody>
</table>


The full liberalization of banking services requires nondiscriminatory entry and operating conditions for foreign banking affiliates as compare with domestic banks. The liberalization links to the application of GATS concepts, such as Most Favored Nation treatment, market access, national treatment and transparency. This shall be discussed in the next section.
II. The General Agreement on Trade in Services

A. Uruguay Round and GATS

Until the early 1980s, trade in services was mostly ignored by policy makers and analysts. Driven by innovations in information technology, increasing specialization and product differentiation, and more comprehensive government policies in deregulation, privatization and liberalization of trade and investment regimes, trade in services grew faster than trade in merchandises throughout the last decade (see Table 8). International trade in services gained a prominent place on the agenda of the Uruguay Round, GATT’s eighth round of multilateral negotiations.

Table 8 Global Trade Flows, 1982 and 1992

(in US $ billion)

<table>
<thead>
<tr>
<th></th>
<th>1982</th>
<th>1992</th>
<th>Average annual change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total trade in services</td>
<td>405</td>
<td>1,000</td>
<td>9.5</td>
</tr>
<tr>
<td>Total trade in merchandises</td>
<td>1,882</td>
<td>3,731</td>
<td>7.1</td>
</tr>
<tr>
<td>Share of services in total</td>
<td>17.7</td>
<td>21.1</td>
<td>1.8</td>
</tr>
</tbody>
</table>

The Uruguay Round began in September, 1986, with a ministerial meeting at Punta del Este, Uruguay (hence 'Uruguay Round'). The Uruguay Round Declaration highlighted two areas for negotiation: (1) The functional role of the GATT in surveillance and monitoring the trade policies of Contracting Parties, and to improve its effectiveness as an institution. (2) Trade in services. The machinery put in place to manage the wide-ranging Uruguay Round negotiations consisted of: (1) A Trade Negotiations Committee (TNC) with a general oversight role; (2) A Group on Negotiations on Goods (GNG) to coordinate the various negotiations on topics related to trade in goods; (3) A Group on Negotiations on Services (GNS) to explore the prospect for new agreements in the service area. The negotiation was originally scheduled to conclude by the end of 1990. In fact, it stretched through 1993, with its Final Act formally signed by more than 100 countries in April 1994.

The Uruguay Round produced a far-reaching agreement and led to the establishment of new World Trade Organization (WTO) in 1995, which marks a turning point for the international trade system. The final Uruguay Round package consists of a large number of separate but related “agreements,” “understandings,” and “decision,” all linked to a new, comprehensive World Trade Organization set to come into existence on January 1, 1995. With the creation of the WTO, the scope of multilateral trade regulation will be considerably expanded beyond GATT’s traditional purview of trade in goods, to encompass areas such as trade in services, trade-related aspects of intellectual property rights (TRIPs), and trade-related investment measures (TRIMs). Further, with the creation of the WTO, an institutional system much different from that associated with GATT will emerge. First, unlike GATT, the WTO will have an unambiguous legal personality, and enjoy a status similar to that accorded
to the World Bank, the International Monetary Fund, or other specialized agencies of the United Nations. One manifestation of this change in legal status is that the GATT term "Contracting Party" will be replaced with that of "Member" once the WTO is established.

Second, apart a General Council to administer the WTO between bi-annual ministerial meetings, three new specialized Councils will also operate under the WTO: the Council for Trade in Services; the Council for Trade in Goods; and the Council for Trade-Related Aspects of Intellectual Property Rights. Third, the WTO General Council will serve as both the WTO's Dispute Settlement Body and as its Trade Policy Review Body. The latter body created by the agreement confirms and strengthens an earlier 1989 GATT decision to establish a GATT Trade Policy Review Mechanism to monitor and report on the trade and related economic policies of selected countries.¹⁶

The WTO agreement consists of three parts: (1) Final Act; (2) Agreement Establishing The World Trade Organization composed of the Agreement Establishing the WTO and four groups of Annexes (see Table 9); and (3) Ministerial Decisions and Declarations. The GATS is the Annex 1B of the Agreement Establishing the WTO. Any country accepting the WTO Agreement is also bound to accept the Multilateral Trade Agreement annexed to it, including the GATS. In other words, WTO Members must accept all of the agreements included in the final Uruguay Round package, and it is not possible for them to pick and choose among the agreements.¹⁷ GATS is the first legally enforceable, multilateral agreement covering trade and

¹⁷ To be a member of the WTO, a nation must agree to accept not only the Uruguay Round obligations of the General Agreement on Trade in Goods (essentially the outcome for trade previously covered by the GATT),
investment in service sectors. It provides a forum and a legal framework for future negotiations aimed at reducing barriers that discriminate against foreign service providers.

Table 9 Table of Contents of the World Trade Agreement

I. Final Act

II. Agreement Establishing The World Trade Organization
   Annex 1A: Agreement on Trade in Goods
   Annex 1B: General Agreement on Trade in Services and Annexes
   Annex 1C: Agreement on Trade-Related Aspects of Intellectual Property Rights, including Trade in Counterfeit Goods
   Annex 2: Understanding on Rules and Procedures Governing the Settlement of Disputes
   Annex 3: Trade Policy Review Mechanism
   Annex 4: Plurilateral Trade Agreement

III. Ministerial Decisions and Declarations


but also those of the GATS, TRIPs, TRIM, and the dispute settlement and trade policy review procedures of the WTO. Nations have the right to decide what they included in their schedules of commitments under the various sub-agreements; but if they choose to remain outside of GATS entirely (for example), they cannot join the WTO. See W. Cline, “Evaluating the Uruguay Round” (1995) 18:1 World Economy 1 at 10.
B. An Overview of the GATS

The GATS consists of four elements: (1) A set of general concepts, principles and rules that apply across the board to measures affecting trade in services; (2) Specific commitments on national treatment and market access that apply to those service sectors and sub-sectors in a Member's schedule, subject to sector-specific or cross-sector qualifications or conditions, if any; (3) An understanding that Members to the GATS shall undertake periodic negotiations with the goal of achieving a progressively higher level of liberalization; and (4) A set of attachments that include annexes that take into account specific sectors and ministerial decisions that relate to the implementation of the GATS.  

1. The Framework

The framework agreement consisting of twenty-nine articles, spread over six parts. The framework agreement is essentially a set of general concepts, principles, and rules that create obligations applying to all measures affecting trade in services (see Table 10).

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Part I SCOPE AND DEFINITION

It contains basic obligations and disciplines. The agreement extends in principle to all internationally traded services which it defines in terms of the four modes of supply.

Part II GENERAL OBLIGATIONS AND DISCIPLINES

It contains the application of general obligations and disciplines, such as MFN; transparency; provisions for increased participation of developing countries in the global trade in service; the administration of domestic regulations pertaining to services; obligations with respect to recognition requirements in the services area; the use of limited restrictions on international transfers and payments in the event of balance of payments difficulties; and the application of general and special exceptions.

Part III SPECIFIC COMMITMENTS

Part III of the GATS is the operative part containing provisions on market access and national treatment, which are not drafted as general obligations, but rather as specific commitments to be included in national schedules.
Part IV PROGRESSIVE LIBERALIZATION

This part of the GATS contains the details regarding the specific commitments. The schedules are part of GATS but the liberalization commitments inscribed in there represent only the first step. The liberalization and market opening process will continue through successive round of negotiations within 5 years from April 1995.

Part V INSTITUTIONAL PROVISIONS

This part covers institutional provisions, including the establishment of GATS Council with reference to dispute settlement procedures.

Part VI FINAL PROVISION

Part VI states the conditions under which benefits may be denied; and gives the definitions of terms used in the GATS.

2. Member Countries' Schedules

Under GATT procedures, Contracting Parties present a schedule of bound tariff concessions. The counterpart to this in the GATS is that schedules of market access concessions (commitments) pertain to four modes of supply, not just one. However, the structure is similar. This is not the case with national treatment which, unlike the GATT, is not a general obligation under the GATS. Consequently, in the GATS context the schedules of commitments of Members are much more important than is the case in the GATT in
determining the extent of the market access opportunities resulting from the Agreement. If most countries list most of their services sectors in their schedules, and do not impose restrictive conditions or limitations on alternative modes of supply, the effective market access opportunities resulting from the Agreement may prove to be substantial. Conversely, if many sectors are excluded (i.e. not listed in country schedules), or if many restrictions are imposed with respect to modes of supply and the application of national treatment and market access in scheduled sectors, the Agreement will have little immediate impact in terms of effective liberalization.\textsuperscript{19}

3. Annexes and Ministerial Decisions

The GATS contains a number of annexes which take specific sectors into account. They are as follows:

- Annex on Article II Exemptions
- Annex on Movement of Natural Persons Supplying Services under the Agreement
- Annex on Financial Services
- Second Annex on Financial Services
- Annex on Telecommunications
- Annex on Air Transport Services

\textsuperscript{19} Liberalizing Trade in Services, Supra note 18 at 33.
• Annex on Negotiations on Basic Telecommunications
• Annex on Negotiations on Maritime Transport Services

In addition, GATS contains eight institutional decisions and one understanding. They are considered as separate instruments. Members may choose whether to sign and to be bound by. They are as follows:

• Decision on Institutional Arrangements for the General Agreement on Trade in Services
• Decision on Certain Dispute Settlement Procedures for the General Agreement on Trade in Services
• Decision on Negotiations on Basic Telecommunications
• Understanding on Commitments in Financial Services
• Decision on Financial Services
• Decision on Professional Services
• Decision on Negotiations on Movement of Natural Persons
• Decision on Trade in Services and Environment
• Decision on Negotiations of Maritime Transport Services

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Table 10 The Structure of the General Agreement on Trade in Services

Framework

Preamble

Part I Scope and Definition

Article I Scope and Definition

Part II General Obligations and Disciplines

Article II Most-Favored-Nation Treatment
Article III Transparency
Article III bis Disclosure of Confidential Information
Article IV Economic Integrating
Article V Economic Integration
Article VI Domestic Regulation
Article VII Recognition
Article VIII Monopolies and Exclusive Service Suppliers
Article IX Business Practices
Article X Emergency Safeguard Measures
Article XI Payments and Transfers
Article XII Restrictions to Safeguard the Balance of Payments
Article XIV General Exceptions
Article XIV bis Security Exceptions
Article XV Subsidies

Part III Specific Commitments

Article XVI Market Access
Article XVII National Treatment
Article XVIII Additional Commitments

Part IV Progressive Liberalization

Article XIX Negotiation of Specific Commitments
Article XX Schedules of Specific Commitments
Article XXI Modification of Schedules
Part V  Institutional Provisions

Article XXII  Consultation
Article XXIII  Dispute Settlement and Enforcement
Article XXIV  Council for Trade in Service
Article XXV  Technical Cooperation
Article XXVI  Relationship with Other International Organizations

Part VI  Final Provisions

Article XXVII  Denial of Benefits
Article XXVIII  Definitions
Article XXIX  Annex

Annex

Annex on Article II Exemptions
Annex on Movement of Natural Persons Supplying Services under the Agreement
Annex on Financial Services
Second Annex on Financial Services
Annex on Telecommunications
Annex on Air Transport Services
Annex on Negotiations on Basic Telecommunications
Annex on Negotiations on Maritime Transport Services

Ministerial Decisions

Decision on Institutional Arrangements for the General Agreement on Trade in Services
Decision on Certain Dispute Settlement Procedures for the General Agreement on Trade in Services
Decision on Negotiations on Basic Telecommunications
Understanding on Commitments in Financial Services
Decision on Financial Services
Decision on Professional Services
Decision on Negotiations on Movement of Natural Persons
Decision on Trade in Services and Environment
Decision on Negotiations of Maritime Transport Services
C. Definition of Trade in Services

1. Defining International Trade in Services

What is service? Services are widely considered to be very different from goods. Contrary to goods, service output is mainly invisible or intangible. As a rule, direct physical contact and proximity between the producer and the consumer are seen as prerequisite for transactions in the service sector because they cannot be stored, which requires temporary movements of either factors of production or customers for delivery or absorption of the services. Transactions in this face-to-face services logically raise difficult questions concerning work-permit, immigration and direct investment policies. There are also “tangible services” which may be incorporated into goods and can internationally be traded as easily as goods, such as tapes, paper, floppy disks etc.\(^{21}\) What is international trade in services? What makes a service international? There are three scenarios. In the first scenario, the service itself crosses the border, such as a data bank retrieval. In the second scenario, the recipient goes abroad, for instance, to see a surgeon. In the third scenario, the service provider comes to the recipient, for example, such as a foreign consultant.\(^{22}\)

The GATS avoids any definition of services. Instead, Article 2.1 of GATS covers all trade in services which it defined in terms of the four modes of supply (see Table 11):

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\(^{21}\) C. Engel, Supra note 11 at 214.

1) Services which themselves cross frontiers "from the territory of one Member into the territory of any other Member"

2) Services which are made available "in the territory of one Member to the service consumer of any other Member"

3) Services supplied "by the service supplier of one Member, through commercial presence in the territory of any other Member"

4) Services supplied "by the service supplier of one Member, through presence of natural persons of a Member in the territory of any other Member"

<table>
<thead>
<tr>
<th></th>
<th>Service suppliers local</th>
<th>Service suppliers mobile</th>
</tr>
</thead>
<tbody>
<tr>
<td>Consumers local</td>
<td><strong>Mode 1 - Cross border supply</strong>&lt;br&gt;cross-border supply (e.g. a long-distance telephone call, international shipping)</td>
<td><strong>Mode 3 - Commercial presence</strong>&lt;br&gt;the provision of services through a established presence in a foreign territory (e.g. the Canadian subsidiary of a British Bank)</td>
</tr>
<tr>
<td>Consumers mobile</td>
<td><strong>Mode 2 - Movement of consumer</strong>&lt;br&gt;the provision of services involving the movement of consumers to the location of suppliers (e.g. a German tourist visit Great Wall of China)</td>
<td><strong>Mode 4 - Presence of natural person</strong>&lt;br&gt;the provision of services requiring the temporary cross-border movement of natural persons (e.g. a US consulting engineer operating in Taiwan).</td>
</tr>
</tbody>
</table>

Source: Complied by author.

It is important to note that the definition covering all modes of supply are defined in principle only; that is, the extent to which specific modes will be used by foreign service suppliers is determined wholly by a country's schedule of commitments. Besides, GATS does
not cover services normally provided by governments, such as health care, education or policing, except insofar these are "privatized", and thus open to competition in the domestic market. Moreover, services include different sectors such as insurance, banking, broadcasting, entertainment, advertising, education, tourism, all sorts of agency, management and consulting, architecture, construction, transport, communication, medical treatment, as well as small business like hairdressing or dry-cleaning. Every sector has its own unique character and existing sets of domestic regulatory and often international arrangements.

Indeed, sectoral issues are very much at the core of the Uruguay Round services trade negotiations. GATS pays careful attention to sector-specific considerations through the annexes, decisions and understandings.

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D. Key Aspects of the GATS

Four major GATT principles are embodied in the GATS agreement, i.e. most-favored-nation (MFN) treatment, transparency, market access and national treatment.²⁵

1. MFN/Non-Discrimination

Under the MFN rule, Members of the GATS are committed to treat services and service providers from one Member in the same way as services and service providers from any other Member. MFN treatment is the core general obligation of the GATS, applicable to all services. Article 2.1 states that:

"With respect to any measure covered by this Agreement, each member shall accord immediately and unconditionally to services and service suppliers of any other member treatment no less favorable than that is accords to like services and service suppliers of any other country."

²⁵ M. Footer, supra note 20 at 465-477.
Two exceptions are permitted to MFN obligation:

a) According to Article 2.2

"A member may maintain a measure inconsistent with Paragraph 1 provided that such a measure is listed in and meets the conditions of the Annex on Article II Exemptions."

Such exemptions must be filed prior to entry into force of the WTO Agreement. Any exemption filed after this date shall be dealt with under Paragraph 3 of Article 9 of the WTO Agreement, which requires a qualified majority of three-fourths of the members of the WTO.\textsuperscript{26} The exemptions are subject to review every five years.\textsuperscript{27} In principle, such exemptions shall not exceed ten years.\textsuperscript{28} The words 'in principle' would appear to allow for the possibility of extending exemptions beyond ten years, although the ease with which the Council for Trade in Services would allow this to happen remains to be seen. However, the inclusion of such MFN exemptions introduces the notion of differential treatment that appears to counter the underlying promise of nondiscrimination.

\textsuperscript{26} GATS, Annex on Article 2 Exemptions of the GATS, Paragraph 2.
\textsuperscript{27} GATS, Annex on Article 2 Exemptions of the GATS, Paragraph 3.
\textsuperscript{28} GATS, Annex on Article 2 Exemptions of the GATS, Paragraph 6.
b) According to Article 2.3

"The provisions of this Agreement shall not be so construed as to prevent any Member from conferring or according advantages to adjacent countries in order to facilitate exchanges limited to contiguous frontier zones of services that are both locally produced and consumed."

As general rule, a country may only obtain an exemption from the MFN clause in order to offer a level of commitments to its partners that is higher than the general level of commitments shown in that country's schedule. That is, a country may improve upon the terms of treatment, but may not invoke an exemption in order to grant treatment less favorable than the minimum standard of treatment specified in the schedule.

2. Transparency

The provisions of Article 3 of the GATS demand transparency in all service activities with exchange of information and publication of all relevant national 'measures' by ways of laws, regulations, and administrative guidelines.

'Each member shall publish promptly and, except in emergency situations, at the latest by the time of their entry into force, all relevant measures of general application which pertain to or affect the operation of this Agreement,
international agreements pertaining to or affecting trade in services to which a Member is a signatory shall be published.\textsuperscript{29}

Where publication as referred to in Paragraph 1 is not practicable, such information shall be made otherwise publicly available.\textsuperscript{30}

Each member shall promptly and at least annually inform the Council for Trade in Services of the introduction of any new, or any changes to existing laws, regulations or administrative guidelines which significantly affect trade in services covered by its specific commitments under this Agreement.\textsuperscript{31}

Requests by Members for specific information about publishable measures must be promptly answered. Inquiry points must be established by 1997 (within two years from the date of entry into force of the Agreement Establishing the WTO) to provide publishable and noticeable information to other Members.\textsuperscript{32} Member may notify to the Council for Trade in Services any measure, taken by any other member, which it considers affects the operation of this Agreement.\textsuperscript{33}

Nothing in the Agreement requires Members to provide confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public

\textsuperscript{29} GATS, Article 3.1.  
\textsuperscript{30} GATS, Article 3.2.  
\textsuperscript{31} GATS, Article 3.3.  
\textsuperscript{32} GATS, Article 3.4.  
\textsuperscript{33} GATS, Article 3.5.
interest, or which would prejudice legitimate commercial interest of particular enterprises, whether public or private.\textsuperscript{34}

3. Market Access and National Treatment

Part III of GATS provides for Members to undertake specific commitments, particular in regards to market access and national treatment. The application of National Treatment needs to be clearly distinguished from the application of Market Access. Market access is the policy instrument by which governments exercise their discretionary powers as to how foreign services, or service suppliers, shall be granted access to their domestic markets. The principle of national treatments comes into play once access is granted. It concerns the continuing treatments that suppliers of the services are expect to receive from the authorities of the importing country.

a) Market Access

All members have a Schedule of market-access commitments regarding the four modes of supply covered by Article 1 of GATS. The chosen method in Article 16 of the GATS is not to define market access as an obligation. As stated by the Paragraph 1 of Article 16:

\textsuperscript{34} GATS, Article 3 bis.
“each member shall accord services and service suppliers of any other member
treatment no less favorable than that provided for under the terms, limitations and
conditions agreed and specified in its Schedule”

When a commitment is given for a sector, GATS specifies six measures which are forbidden (both national and regional) unless otherwise specified in the Schedule. These are listed in Paragraph 2 of Article 16:

'(1) Limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic need test;
(2) Limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
(3) Limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;
(4) Limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test;
(5) Measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a services; and
(6) Limitations on the participation of foreign capital in terms of maximum percentage limit on foreign share holding or the total value of individual or aggregate foreign investment.”

b) National Treatment

Unlike the GATT, the national treatment obligation of GATS is not one of general application, but depends on the commitments inscribed in Members’ Schedules. As suggested by Paragraph 1 of Article 17:

"In the sectors inscribed in its schedule, and subject to any conditions and qualifications set out therein, each Member shall accord to services and service suppliers of any other Member, in respect of all measures affecting the supply of services, treatment no less favorable than that it accords to its own like services and service suppliers”

It is essentially designed to ensure that foreign services and service suppliers are not subject to discriminatory treatment under an importing country’s internal taxes, laws and regulations. As with market access, members may list any conditions and qualifications to the granting of national treatment in their schedules.
c) Additional Commitments

Article 18 of the GATS allows for commitments to be negotiated on measures that reach beyond the purview of the GATS regarding qualification, standards or licensing matters. Such commitments shall be inscribed in Member's Schedule.

d) Progressive Liberalization

Part IV of the GATS describes details which have to be shown in the schedules regarding the specific commitments. Each Member's Schedule states its specific commitments with respect to sectors where such commitments are undertaken (see Table 12). Each Schedule shall specify:

1) Terms, limitations and conditions on market access;
2) Conditions and qualifications on national treatment;
3) Undertakings relating to additional commitments;
4) Where appropriate the time-frame for implementation; and
5) The date of entry into force.
As illustrated in Table 12, signatories to the GATS must list each sector or sub-sector where a specific commitment will be granted, but may exclude individual modes of supply, or continue to apply certain conditions for a mode of supply.\(^{35}\)

### Table 12 Format for Country Schedules of Specific Commitments

<table>
<thead>
<tr>
<th>Sector or sub-sector</th>
<th>Mode of supply</th>
<th>Conditions and limitations on market access</th>
<th>Conditions and qualifications on national treatment</th>
<th>Additional commitments</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Cross-border</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Commercial presence</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Movement of consumer</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Movement of personnel</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>


Schedules of specific commitments shall be annexed to the Agreement and form an integral part.\(^{36}\) Besides, after a period of three years from the entry into force of a commitment, a member may modify or withdraw any commitment in its schedule. At least three months notice must be given of the proposed change and negotiations must be held if requested by affected trading partners in order to agree on any necessary compensatory adjustment. If agreement is not reached between the modifying Member and any affected Member before the end of the period provided for negotiation, such affected member may refer the matter to arbitration.\(^{37}\)

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\(^{35}\) *Liberalizing Trade in Services*, Supra note 18 at 34.

\(^{36}\) GATS, Article 20.

\(^{37}\) GATS, Article 21.
In order to achieve a higher level of liberalization through additional commitment, successive rounds of negotiations will be held, beginning by the year 2000 and periodically thereafter.\textsuperscript{38}

E. The Scope of the GATS

The structure of the GATS is quite complicated. Each Member's commitments and obligations will often not be easy to determine unambiguously. The decision to distinguish general from specific commitments; the choice that was made to schedule specific commitments - and exceptions to those commitments - by modes of supply; and the agreement to allow for MFN exemptions ensure that it is difficult to determine the scope of coverage of the GATS. Figure 1 illustrates the scope of GATS.\textsuperscript{39}

- The GATS will not apply to services that are supplied in the exercise of governmental authority.
- Different obligations apply to Members for their scheduled and non-scheduled services.
- Some sectors may be exempted from the MFN requirement.
- As to the sectors subject to specific commitments on market access and national treatment, governments may nonetheless treat foreign service suppliers inferior than

\textsuperscript{38} GATS, Article 19.
\textsuperscript{39} Liberalizing Trade in Services, supra note 18 at 40-43.
domestic providers for one or more modes of supply, if they choose to do so by including a reservation to that effect in their schedule.

Figure 1 The Scope of the GATS


Note:
(1) Excluded from GATS coverage.
(2) Subject to terms, limitations, conditions and qualifications as inscribed in Members' schedules.
III. Financial Service Sector

GATS contains two Annexes, one Decision and one Understanding in Financial Services sector. These texts on financial services provide the definition of financial services, the modification on some general rules of GATS and an alternative approach to specific commitments on Part III of GATS. On one hand, the rules in these two Annexes on Financial Services are consistent in most respects with the general obligations established in the GATS. On the other hand, the Understanding on Financial Services establishes a set of harmonized commitments for Members' schedules which goes well beyond GATS obligations. Members are free to choose and schedule specific commitments in the financial sector either in accordance with Part III of GATS or in accordance with the Understanding on Commitments in Financial Services. The approach adopted in the Understanding is explicitly intended not to conflict with GATS provisions and not to prejudice Members' rights to pursue the Part III approach if they so prefer. Consequently the provisions of the Understanding are additions to the ordinary GATS rules.  

A. Defining Trade in Financial Services

In the Article 5.1 of the Annex on Financial Services, the financial services sector is defined as follows.

"A financial service is any service of a financial nature offered by a financial service supplier of a Member. Financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance). Financial services include the following activities:

Insurance and insurance-related services

(a) Direct insurance (including co-insurance):
   (i) life
   (ii) non-life

(b) Reinsurance and retrocession;

(c) Insurance inter-mediation, such as brokerage and agency;

(d) Services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services.

Banking and other financial services (excluding insurance)

(e) Acceptance of deposits and other repayable funds from the public,
(f) Lending of all types, including consumer credit, mortgage, credit, factoring and financing of commercial transaction;

(g) Financial leasing;

(h) All payment and money transmission services, including credit, charge and debit
cards, travelers cheques and bankers drafts;

(i) Guarantees and commitments;

(j) Trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:
   (i) Money market instruments (including cheques, bills, certificates of deposits);
   (ii) Foreign exchange;
   (iii) Derivative products including, but not limited to, futures and options;
   (iv) Exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;
   (v) Transferable securities;
   (vi) Other negotiable instruments and financial assets, including bullion.

(k) Participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;

(l) Money broking;

(m) Asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;
(n) Settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;
(o) Provision and transfer of financial information, and financial data processing and related software by suppliers of other financial service;
(p) Advisory, inter-mediation and other auxiliary financial services on all the activities listed in sub-paragraphs (e) to (o), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy."

The general definition of financial services is broad. The list of activities that fall within the general definition is long. The clear intent of Article 5.1 is to include as many activities as possible. As such, all the banking activities discussed at the beginning of this chapter fall within financial services defined by Article 5.1. Thus, trade in banking services is subject to the provisions of GATS, Annex on Financial Services, Second Annex on Financial Services, Decision on Financial Services and Understanding on Commitments in Financial Services.
B. Modifications of GATS General Rules - Annex and Second Annex on Financial Services

First of all, exceptions for governmental activity are specified more precisely than GATS. Thus, a “financial services supplier” does not include a “public entity”, i.e.

1. a government, a central bank or a monetary authority, of a Member, or an entity owned or controlled by a Member, that is principally engaged in carrying out governmental functions or activities for governmental purposes, not including an entity principally engaged in supplying financial services on commercial terms; or

2. a private entity, performing functions normally performed by a central bank or monetary authority, when exercising those functions.\(^{41}\)

Furthermore, services supplied “in the exercise of governmental authority”, which are outside the scope of GATS, have a special meaning in this context. They comprise:

1. activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies;

\(^{41}\)GATS, Annex on Financial Services, Paragraph 5(c).
2. activities forming part of a statutory system of social security or public retirement plans; and

3. other activities conducted by a public entity for the account or with the guarantee or using the financial resources of the Government. ⁴²

Secondly, the Second Annex makes provision for an extension of the deadline on negotiations and commitments until the end of June 1995. Thus, the deadline for listing exceptions to the MFN obligation in GATS Article 2 is extended: Members may list them during a 60-day period beginning four months after the date of entry into force to the WTO Agreement. Furthermore, notwithstanding Article 21, within the same period a Member may improve, modify or withdraw all or part of the specific commitments on financial services inscribed in its schedule. These exceptions to GATS are confirmed by the Decision on Financial Services.

Thirdly, there is a special exception to GATS which permits Members to take measures for “prudential reasons”, including the protection of investors, depositors, policy holder or persons to whom a fiduciary duty is owed by a financial service supplier, or to ensure the integrity and stability of the financial system. According to Paragraph b of Article 2, such measures shall not be used as a means of avoiding Member’s commitments or obligations under GATS. ⁴³ Moreover, nothing in GATS may be construed to require a Member to disclose information relating to the affairs and accounts of individual customers, or

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⁴² GATS, Annex on Financial Services, Paragraphs 1(b) & 1(c).
⁴³ GATS, Annex on Financial Services, Paragraph 2(a).
confidential or proprietary information possessed by public entities. This is rather more precise guarantee of confidentiality than that provided by Paragraph c of Article 14 of GATS.

Finally, Paragraph 3 of the Annex on Financial Services has special rules on recognition which partly replace Article 7 of GATS. Paragraph 3 permits either unilateral or mutual recognition of the “prudent measures.” This limited exception to the MFN principle is subject to the requirement that, a Member must provide an opportunity for other Members to accede to the agreement, or to negotiate a comparable deal. If a Member is contemplating according recognition to prudential measures of any other country, Paragraph 4(b) of Article 7 shall not apply. Paragraph 4(b) of Article 7 of GATS requires each Member to promptly informs the Council for Trade in Services in advance as early as possible before the opening of negotiations on agreement or arrangement of the recognition.

C. Alternative Approach of Specific Commitments: The Understanding on Commitments in Financial Services

Like Part III of GATS, the Understanding on Commitments in Financial Services focuses on two areas: market access and national treatment. The Understanding forms an

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44 GATS, Annex on Financial Services, Paragraph 3(a).
45 GATS, Annex on Financial Services, Paragraph 3(b).
46 GATS, Annex on Financial Services, Paragraph 3(b).
47 Harmonization of the commitments inscribed in GATS Schedules arises partly in a spontaneous fashion from the negotiations, and partly from the obligations in Part III of GATS which are dependent on specific commitments being inscribed in Schedule. The latter process is taken considerably further in the case of financial services by the Understanding on Commitments in Financial Services which was incorporated in the Final Act of the Uruguay Round.
alternative basis for, or interpretation of, the specific commitments on market access and national treatment outlined in Part III of GATS. Members are free to choose to schedule-specific commitments in the financial sector, either in accordance with Part III or in accordance with the Understanding. The provisions of Understanding are additional to the ordinary GATS rules. This Understanding is directly dependent on the commitments given by Members, and by giving commitments on financial services Members are bound by themselves with these terms. Members can inscribe such commitments in their individual schedules, and which gain legal force not from their inclusion in the Understanding but from their presence in the schedules.

The Understanding contains four sections. Section A declares the approach and standstill of Understanding. Section B concentrates on market access. Section C concentrates on national treatment. Section D provides a series of definitions. The specific commitments contained in the Understanding, taken together, represent a very extensive degree of liberalization.

1. Section A: The Status and Standstill of the Understanding

The Understanding declares that Members can inscribe their specific commitments according to the approach described in the paragraphs of the Understanding. Conditions,

48 E. McGovern, International Trade Regulation (Exeter: Globefield Press, 1995) at 31.32.1- 31.32.8;
Trebilcock & Howse, supra note 40 at 241-243.
49 Trebilcock & Howse, supra note 40, at 241-243.
limitations and qualifications to these commitments are only permissible insofar as they apply to existing non-conforming measures which do not conform with these principles.\textsuperscript{50}

The Understanding provides Members an alternative approach to the Specific Commitments of Part III of the GATS. Paragraph A states that, 'Participants in the Uruguay Round have been enabled to take on specific commitments with respect to Financial Services under the General Agreement on Trade in Services on the basis of an alternative approach to that covered by the provisions of Part III of the Agreement.' The approach adopted in the Understanding is subject to the following understanding:

- it does not conflict with the provisions of the Agreement;
- it does not prejudice the right of any Member to schedule its specific commitments in accordance with the approach under Part III of the Agreement;
- resulting specific commitments shall apply on a most-favored-nation basis;
- no presumption has been created as to the degree of liberalization to which a Member is committing itself under the Agreement.

\textsuperscript{50} GATS, Understanding on Commitments in Financial Services, Section A.
2. Section B: Market Access

a) Monopoly Rights

In addition to Article 8 of GATS, the Understanding requires each Member to list the existing monopoly rights in its schedule and endeavor to eliminate them or reduce their scope.\(^{51}\)

b) Financial Services Purchased by Public Entities

Notwithstanding Article 8 of the GATS, each Member shall ensure that financial service suppliers of any other Member established in its territory are accorded most-favored-nation treatment and national treatment, in regards to the purchase or acquisition of financial services by public entities of the Member in its territory.\(^{52}\) That is, both National Treatment and MFN obligations are to apply to government procurement of financial services.

\(^{51}\) GATS, Understanding on Commitments in Financial Services, Section B Paragraph 1.
\(^{52}\) GATS, Understanding on Commitments in Financial Services, Section B Paragraph 2.
c) Cross-border Trade

Market access are given to non-resident suppliers on a National Treatment basis in the areas of financial data processing and transmission. Each Member shall permit its residents to purchase the banking and other financial services (excluding insurance services) in any other Members' territory.

d) Commercial Presence

A right to establishment is provided in paragraph 5 and paragraph 6 of Section B. In accordance with paragraph 5, each Member shall grant financial service suppliers of any other Member the right to establish or expand within its territory, including methods through the acquisition of existing enterprises, a commercial presence. "Commercial presence" means establishing an enterprise within a Member's territory for the supply of financial services, which includes wholly- or partly-owned subsidiaries, joint ventures, partnerships, sole proprietorships, franchising operations, branches, agencies, representative offices or other organizations. However, a Member may impose terms, conditions and procedures for authorization of the establishment and expansion of a commercial presence as long as the terms and conditions do not circumvent the Member's obligation under Paragraph 5 and in

53 GATS, Understanding on Commitments in Financial Services, Section B Paragraph 3.
54 GATS, Annex on Financial Services, Articles 3.1, 3.2, 3.3 and 5.1(e) to (p).
55 GATS, Understanding on Commitments in Financial Services, Section B Paragraph 4.
56 GATS, Understanding on Commitments in Financial Services, Section B Paragraph 5.
57 GATS, Understanding on Commitments in Financial Services, Section D Paragraph 2.
consistency with the other obligations of the Agreement.\(^{58}\)

e) New Financial Services

A Member shall permit financial service suppliers of any other Member established in its territory to offer any new financial service.\(^{59}\) A new financial service is a service of a financial nature, including services related to existing and new products or the manner in which a product is delivered, that is not supplied by any financial service supplier in the territory of a particular Member but which is supplied in the territory of another Member.\(^{60}\)

f) Transfers of Information and Processing of Information

No Member shall take measures that prevent transfers of information, processing of financial information or transfers of equipment, where such transfers of information, processing of financial information or transfers of equipment are necessary for the conduct of the ordinary business of a financial service supplier. However, this does not restrict the right of a Member to protect personal data, personal privacy and the confidentiality of individual records.\(^{61}\)

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\(^{58}\) GATS, Understanding on Commitments in Financial Services, Section B Paragraph 6.

\(^{59}\) GATS, Understanding on Commitments in Financial Services, Section B Paragraph 7.

\(^{60}\) GATS, Understanding on Commitments in Financial Services, Section D Paragraph 3.

\(^{61}\) GATS, Understanding on Commitments in Financial Services, Section B Paragraph 8.
g) Temporary Entry of Personnel

Each Member shall permit temporary entry into its territory by any personnel of a financial service supplier of any other Member that is establishing or has established a commercial presence in the territory of the Member: (i) senior managerial personnel possessing proprietary information essential to the establishment, control and operation of the services of the financial service supplier; and (ii) specialists in the operation of the financial service supplier. Besides, each Member shall permit, subject to the availability of qualified personnel in its territory, temporary entry into its territory of the following personnel associated with a commercial presence of a financial service supplier of any other Member: (i) specialists in computer services, telecommunication services and accountants of the financial service supplier; and (ii) actuarial and legal specialists.62

h) Non-discriminatory Measures

Paragraph 10 of Section B of Understanding entails a commitment for each Member ‘to endeavor to remove’ or to limit any significant adverse effects to a wide range of ‘non-discriminatory regulatory measures’.63 It is to be noted that the language ‘endeavor to remove’ stops short of formal legal commitment to actually eliminate the measures in question.

62 GATS, Understanding on Commitments in Financial Services, Section B Paragraph 9.
63 GATS, Understanding on Commitments in Financial Services, Section B Paragraph 10.
3. Section C: National Treatment

Under terms and conditions that accord national treatment, each Member shall grant to financial service suppliers of any other Member established in its territory access to payment and clearing systems operated by public entities, and to official funding and refinancing facilities available in the normal course of ordinary business (excluding the Member or last resort facilities).  

There are two circumstances where Members must ensure that such entities accord national treatment to financial service suppliers of any other Member resident in the territory of the Member:

- When membership or participation in, or access to, any self-regulatory body, securities or futures exchange or market, clearing agency, or any other organization or association, is required by a Member in order for financial service suppliers of any other Member to supply financial services on an equal basis with financial service suppliers of the Member.
- When the Member provides directly or indirectly such entities, privileges or advantages in supplying financial services.

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64 GATS, Understanding on Commitments in Financial Services, Section C Paragraph 1.
65 GATS, Understanding on Commitments in Financial Services, Section C Paragraph 2.
IV. Summary

Any country accepting the WTO Agreement is also bound to accept the Multilateral Trade Agreement annexed to it, including the GATS. GATS consists of several elements: (1) Framework Agreement, (2) Member Countries’ Schedules of specific commitments on national treatment and market access, (3) Annexes and Ministerial Decisions. However, the scope of the GATS is quite complicated. First, GATS avoids any definition of services. Instead, Article 2.1 of GATS covers all trade in services which is defined in terms of four modes of supply: (1) Cross border supply, (2) Movement of consumer, (3) Commercial Presence and (4) Presence of natural person. But, GATS will not apply to services that are supplied in the exercise of governmental authority. Second, different obligations apply to Members for their scheduled and non-scheduled services. Third, some sectors may be exempted from the MFN requirement. Forth, market access and national treatment are not automatically provided under GATS. They become binding commitments only in the services sectors that Members list in their schedules.

Besides, GATS pays careful attention to sector-specific considerations through the annexes, decisions and understandings. GATS contains two Annexes, one Decision and one Understanding in Financial Services sector. These texts on financial services provide the definition of financial services, the modification on some general rules of GATS and an alternative approach to specific commitments on Part III of GATS. First, the general definition of financial services under Article 5.1 of the Annex on Financial Services is very
broad. Second, the rules in these two Annexes on Financial Services are consistent in most respects with the general obligations established in the GATS. Third, the Understanding on Commitments in Financial Services establishes a set of harmonized commitments for Members' schedules which goes well beyond GATS obligations. Members are free to choose and schedule specific commitments in the financial sector either in accordance with Part III of GATS or in accordance with the Understanding on Commitments in Financial Services.

For some observers, the scope of GATS appears confusing. There are several reasons. First, its framework Agreement is weak and contains fewer obligations intended than its true nature. MFN treatment, market access and national treatment are not automatically provided under GATS. Rather, they become binding commitments only in the services sectors that Members list in their schedules. Second, many important decisions in key areas have not been reached. Article 19 of GATS states future basis for progressive liberalization through further trade negotiation rounds in the years 1995 to 2000. Thus, progressive liberalization of trade in services does not end with the conclusion of the Uruguay Round. The extent of liberalization depends upon Members' willingness and commitment to adopt a liberalized approach, especially developing countries who weren't willing to offer substantial commitments in their banking service sectors. Despite all the noted shortcomings, GATS may be a useful start. GATS provides a body of legally binding multilateral concepts, principles and rules to pursue further progressive liberalization in services sector.

66 See "Assessing the GATS", supra note 20 at 137.
Chapter 3 Banking Law Reform in China

China’s financial markets were closed to foreigners in the early 1950s, shortly after the communist revolution. After China announced the “open-door” policy and committed to transform itself from a “socialist” economy to a market economy, the reform of its financial system started hand in hand with its economic reform. In responds to the “open-door” policy, China permitted foreign financial institutions to establish their representative offices in China during the 1980s. Today, China’s huge financial market still attracts many world leading financial institutions. Most of these foreign financial institutions have established themselves in China since 1990. As of June 1994, some 250 foreign financial institutions from 34 countries have 438 representative offices and branches in China, and their representative offices and branches account for just over two-thirds of the foreign presence in China. Japanese financial institutions have the largest presence in China (about 20 per cent of the total market), followed by Hong Kong (about 15 per cent) and the United States (about 12 per cent). British and French financial institutions also have a significant presence in China. As of early 1995, Canadian financial institutions had 30 branches and 12 representative offices in China, with applications for another 3 representative offices waiting for approval. However, China’s unwillingness to grant broader market access and national treatment presents the greatest barrier for foreign financial institutions. Another serious challenge is the lack of transparency in laws, regulations, and administrative guidelines. Reliable information

67 Sutton, supra note 3 at 10.
is difficult to obtain. As a result, foreign banks’ share in the domestic banking market is negligible.

China has applied to rejoin the GATT and negotiate for accession to the membership of WTO. WTO membership will require China’s compliance to “establish a multilateral framework of principles and rules for trade in services with a view to the expansion of such trade under conditions of transparency and progressive liberalization.” While China’s domestic financial markets currently offer limited opportunities for foreign financial institutions, it is under considerable pressure to open its financial markets much further.

I. Historical Review

A. Banking System during 1949 to 1978

As Kuomingtang(KMT) retreated to Taiwan and the Chinese Communist Party (CCP) seized political power in China, financial institutions were either closed or restructured as socialist entities. The pre-1949 banking system was replaced with a new system based on

\[ \text{GATS, Preamble.} \]

\[ \text{(a) Four well-known KMT families had controlled more than seven of the largest Chinese financial institutions, and these were taken over. These institutions included four banks, two agencies, and one reserve bank: Central Bank of China, Bank of China, Transportation Bank, Farmer’s Bank of China, Central Trust the Post and Remittance Administration, Transportation Bank, and the Cooperative Reserve. Except for the Bank of China and the Transportation Bank, the operations of the others were merge with branches of the People’s Bank of China. The Bank of China and the Transportation Bank were restructured as Chinese banks.} \]

\[ \text{(b) In addition to the previously mentioned banking institutions, there were an estimated 3,500 banks in the provinces and municipalities which were either closed, merged with branches of the PBOC or turned into} \]
the former Soviet model. This banking system was characterized as an "all-inclusive mono-
bank system" and functioned as an integral part of the centrally planned economy.\textsuperscript{70} Under 
this system, the People's Bank of China (PBOC) served as both a central bank and a 
commercial bank which controlled about 93 per cent of the total financial assets of the 
country. The PBOC acted as the "center of cash, credit and settlement," from which currency 
and credit were issued, into which cash held by urban residents and credit held by state 
enterprises and institutions were deposited, and through which the payments within the state 
sector were cleared. Although there were specialized banks under PBOC, such as the 
Agricultural Bank (ABC), Bank of China (BOC), and People's Construction Bank of China 
(PCBC), they were not independent. The PBOC monopolized almost all banking activities. 
The specialized banks virtually served as departments of PBOC, or department of Ministry of 

\begin{itemize}
\item joint state-private banks. About 2400 of the banks had strong KMT connections, and their closure or takeover 
were almost immediate. Those banks that were owned by national bourgeoisie were given an opportunity to 
conform to socialist principles, and many of them became state-private banks. However, they did not last 
long: higher taxes and wage contracts force them to close or sell out to state and by 1955, they had ceased to 
exist. (c) An estimated 100 trust and insurance companies were taken over by the state and were closed or 
restructured as socialist entities. Most of these operations were in the larger cities of Shanghai, Beijing and 
Tianjin. (d) Mortgages were banned and mortgage companies were given until about 1955 to wind up 
operations. See C.R. Dipchand, Y. Zhang & M. Ma, \textit{The Chinese Financial System} (Westport, Connecticut, 
\end{itemize}

\textsuperscript{70} The People's Bank of China (PBOC) monopolized almost all banking activities. PBOC was formed in 
1948. PBOC expanded its organization rapidly and by 1952 all banks were effectively under the supervision 
of the PBOC. By 1957 it reportedly had 20,000 branches and sub-branches and controlled over 100,000 rural 
credit cooperatives. The PBOC has assumed the major banking role in post-1949 China, being responsible for 
the issue and control of currency, management of government accounts and the administration and supervision 
of short-term loans for working capital. All enterprises, government units and cooperatives had to keep their 
accounts with it and settle accounts between them through its agency, individuals also kept savings deposits 
there. As of the end of 1979, there were a total of over 15,000 different PBOC sub-units throughout the 
country including 29 provincial-level branch banks, one for each province, autonomous region, and centrally 
administered municipality, 148 municipal-level subbranches (in cities directly subordinate to the Provinces), 
220 central subbranches in prefectures, 2777 county-level subbranch banks, and 2883 office under the 
jurisdiction of county-level subbranches. Thus the PBOC survived as the financial skeleton of the socialist 
Finance (MOF). During the 30-year period from 1949 to 1978, the nature of the all-inclusive mono-bank system had never changed.\textsuperscript{71}

Table 13 The Specialized Banks during the Pre-Reform Period

<table>
<thead>
<tr>
<th>Specialized Banks</th>
<th>Pre-Reform Period</th>
<th>Past Reform Period</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agricultural Bank of China (ABC)</td>
<td>1. ABC was first established in March 1955 but was closed after 21 months and merged with the operation of the PBOC. 2. In November 1963, ABC was revived, caused to operate independently of PBOC for 22 months. 3. In 1964, ABC was merged with PBOC again.</td>
<td>In December 1978, ABC was reestablished</td>
</tr>
<tr>
<td>Bank of China (BOC)</td>
<td>4. BOC was first established in February 1912. 5. In May 1949, CCP took over the bank, confiscated its assets, and restructured the management team. 6. BOC is supervised by the PBOC and is responsible for foreign exchange transactions and overseas business. BOC played an important role during the 1950s but was of less importance during the 1960s and early 1970s, when foreign trade played a relatively minor role in the Chinese economy.</td>
<td>In 1979, State Council took the bank under its leadership and confirmed its role as a foreign trade bank.</td>
</tr>
<tr>
<td>3. People’s Construction Bank of China (PCBC)</td>
<td>7. On October 1, 1954, PCBC was officially established and formally supervised by the Ministry of Finance. PCBC has a head office in Beijing and also has a network of branches and subbranches throughout China. PCBC was a specialist bank concerned with investment. PCBC was responsible for administering fixed capital grants form the state budget in accordance with the plan and for settling business arising from funds allocated for fixed investment. 8. During the Great Leap, which started in 1958, almost all PCBC’s branches throughout the country are closed. 9. On 1972, PCBC was revived.</td>
<td>1. On August 1979, State Council took PCBC under its ownership. 2. On April 20, 1983, PCBC was approved by the State Council to carry out significant systematic reforms and assist in China’s economic development.</td>
</tr>
</tbody>
</table>


\textsuperscript{71} Yi, supra note 4 at 19.
B. Past Reform

As the planned economic system had dragged China into being one of the least-developed countries, in the late 1970s economic reforms became inevitable. In December 1978, China announced the “open-door” policy. The objective was to establish a socialist market-oriented economy based primarily on public ownership. Reform in the banking sector was necessary to achieve this goal. The new system was aimed at promoting the economic leverage function of the banking system, by giving more freedom of operation and profit motivations to specialized and commercial banks, making these banks independent economic entities while the central bank has totally controlled of the monetary policy. The banking reform policies are summarized as follows.

1. Establishment or Re-establishment of Banks

Many banks were established or reestablished during 1980s (see Table 14). There are four government owned specialized banks: (1) the Industrial and Commercial Bank of China (ICBC) for the urban areas, (2) the Agricultural Bank of China (ABC) for the rural areas, (3) the People’s Construction Bank of China (PCBC) for long-term investments on large scale projects, and (4) the Bank of China (BOC) for foreign exchange. There are also Rural Credit

73 Yi, supra note 4 at 27.
Cooperatives (RRCs) which are collectively owned rural financial institutions affiliated with the ABC. Other bank closely associated with the PCBC is the China Investment Bank (CIB). The main function of CIB is to channel loans from international sources (mainly from the World Bank). Besides these four specialized banks, there are several more comprehensive commercial banks. Among them, the Bank of Communications (BOCOM) and CITIC Industrial Bank (CITICIB) have national networks of branches. There are also other regional banks, such as Shenzhen Development Bank, Fujian Industrial Bank, Guangdong Development Bank, Shanghai Pudong Development Bank, etc.  

74 For more details see Yi, supra note 4 at 27-32; Wang & Foo, supra note 72 at 14; Dipchand, Zhang & Ma, supra note 69 at 47-94.
<table>
<thead>
<tr>
<th>Bank Name</th>
<th>Established on</th>
<th>Function</th>
</tr>
</thead>
<tbody>
<tr>
<td>State Administration of Foreign Exchange Control (SAEC)</td>
<td>March, 1979</td>
<td>According to the Provisional Regulations of Foreign Exchange Control (December 18, 1980), SAEC in charge of the Administration of Foreign Exchange</td>
</tr>
<tr>
<td>Industrial and Commercial Bank of China (ICBC)</td>
<td>January 1, 1984</td>
<td>(Specialized Bank) It take on the commercial banking function of the PBC in urban area.</td>
</tr>
<tr>
<td>Agricultural Bank of China (ABC)</td>
<td>Reestablished on February 1979</td>
<td>(Specialized Bank) It take on the commercial banking function of the PBC in rural area.</td>
</tr>
<tr>
<td>Bank of China (BOC)</td>
<td>Reestablished on March 1979</td>
<td>(Specialized Bank) According to the Articles of Association of the Bank of China (September 12, 1980), it is in charge of foreign exchange and foreign trade transaction for China.</td>
</tr>
<tr>
<td>People’s Construction Bank of China (PCBC)</td>
<td>April 1983</td>
<td>(Specialized Bank) It is in charge of the administration of the funds allocated for the capital of construction, renovation expansion of enterprises.</td>
</tr>
<tr>
<td>Bank of Communications (BOCOM)</td>
<td>Reestablished on July 1986</td>
<td>(Commercial Bank) It establishes branches in major cities in accordance with its business need. It may conduct business in any sector of the economy without restriction. Its business scope included foreign currency and RMB business.</td>
</tr>
<tr>
<td>CITIC Industrial Bank (CITICB)</td>
<td>April 1987</td>
<td>For the purpose of attracting foreign investment in interdicting an element of competition to the domestic economy, the China International Trust and Investment Corporation (CITIC) was established in 1979. Its functions include issuing bonds, borrowing and carrying out other forms of raising funds in the international financial market, as well as making investment in cooperation with domestic and foreign enterprises, both within or outside of China. With such functions, CITIC established a financial department which was, in effect, a commercial bank. The CITIC financial department expended into a bank in 1987.</td>
</tr>
<tr>
<td>Shenzhen Development Bank (SDB)</td>
<td>December 1987</td>
<td>(Commercial Bank) SDB handles deposits and loans for collectives and industrial or commercial enterprises or units, as well as saving deposits of residents. SDB is authorized to conduct business in foreign currencies.</td>
</tr>
<tr>
<td>Guangdong Development Bank</td>
<td>July 1988</td>
<td>(Commercial Bank) Its business activities includes: foreign exchange deposit and loan, RMB deposit and Loan, note discount, etc.</td>
</tr>
</tbody>
</table>

2. Reform of Central Bank

In 1978, People's Bank of China (PBOC) was formally separated from the Ministry of Finance and was granted a ministerial rank. On September 17, 1983, the "Decision Requiring PBOC to Perform the Functions of the Central Bank" was promulgated by the State Council. In January 1984, PBOC became the central bank, and its commercial banking business was taken over by the newly established specialized banks. As the central bank of China, PBOC is a government administrative organization directly led by the State Council. It has powers and functions to:

1) Research and formulate national guidelines and policies for financial activities, and supervise the progress of their implementation after approval;
2) Study and draft financial legislation;
3) Formulate the basic financial regulation;
4) Control the issuance of currency, regulate currency circulation and maintain its stability;

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75 PBOC was formed in 1948 and was regarded as a separate agency from the Ministry of Finance. In the period up to the Great Leap Forward in 1958, the PBOC and the MOF were formally separated. During the Great Leap Forward and the Culture Revolution, PBOC was subordinated to the MOF. During the 1960s and much of the 1970s, the MOF controlled the banking apparatus. PBOC did not regain its former status until 1976. See P. Bowles & G. White, supra note 70, at 55-58.

76 Yi, supra note 4 at 27.

5) Determine interest rates on deposits and loans and the exchange rate between RMB and foreign currencies.

6) Devise the State Credit Plan, exercise its centralized control over credit funds and gives uniform control over the working capital on State enterprises.

7) Control foreign exchange in currency, gold and silver, as well as gold reserves in the State foreign-exchange.

8) Examine and approve the establishment, abolition and merger of specialized banks and other financial institutions.

9) Lead, control, coordinate, supervise and inspect the operations of specialized banks and other financial institutions.

10) Manage the State treasury, and issue government securities on its behalf.

11) Control the shares, bonds, money market and other securities in the enterprises; and

12) Participate in international financial activities on behalf of the government.

3. Characteristics of Banking System

Under the central bank, the banking system consists of specialized banks and commercial banks. Their characteristics were: 78

78 Wang & Foo, Supra note 72, at 15.
• The People's Bank of China was the central bank in charge of overall operation of the system;
• The specialized banks played a major role in the system; and
• The credit unions, other banks and financial institutions with foreign interest played a supplementary role.

This system was somewhat formalized with the adoption of the "Provisional Regulations of the State Council on the Administration of Banks" (1986 Banks Regulations) announced on January 7, 1986. 1986 Banking Regulations are organized into ten chapters. The aim of 1986 Banks Regulations is to unify the administration of China's bank system. The contents of 1986 Banks Regulations are linked to the structure and business scope of all banks. The 1986 Banks Regulations provides a framework of China's domestic bank system for late 80s (see Figure 2). Note that it only applies to the domestic banks. 79

79 1986 Banks Regulations, Article 60.
Figure 2  China’s Banking System Before Recent Reform

C. Recent Reform (since 1993)

The establishment of a market economy in China requires the introduction of competition in every sector. Compared with agricultural and industrial reforms, reforms in the financial sector have been slow. The faster the reforms are in other sectors of the economy, the more urgent it is to reform the banking system. Despite earlier reform, China’s financial sector continued to be plagued by several difficulties and problems: 80

- A monetary policy that relied heavily on administrative controls;
- The administrative interference, the lack of commercial considerations in the granting of credit, and bad debts; 81
- An inadequate legal framework;
- Too little competition among financial institutions;
- Difficulties resulting from the transformation of a planned economy to a market economy.

80 See Wang & Foo, supra note 72 at 21-25.
81 In practice banks did not exercise efficiency-oriented. Loans were basically guaranteed to state enterprises. Accounting methods remained rudimentary. Until the 1988, although some banks had difficulties in securing loan repayments form enterprises, the general level of ‘bad debts’ was low. On 1988-1989, the double-digit inflation, the budget deficit and retrenchment forced banks to increase lending. The pressure on banks to increase lending came form central government, local governments and enterprises. As a result, the unpaid loans rised rapidly. For details of “the inflationary pressures which culminated in the inflation of 1988 and 1989” and “the relationship between banks and enterprises” see Bowles & White, supra note 70 at 98-120.
To address these problems, in 1993 the State Council adopted the “Decision on the Financial Structure Reforms” (1993 Financial Reforms Decision), a more extensive guideline in financial reform policies. The overall objectives of the Decision were: \(^{82}\)

- To establish a macro-control system by the central bank under the leadership of the State Council, for the purpose of independently implementing monetary policies;
- To establish the policy banks. To achieve the separation of policy finance and commercial finance;
- To commercialize the specialized banks. To establish a financial system with State-owned commercial banks as its main body, allowing the coexistence of multifold financial entities.
- To establish a financial system with an unified open market, orderly competition and close supervision.

1. Establishing Three Policy Banks and Commercializing Four Specialized Banks

China’s domestic banking market is dominated by four specialized banks: PCBC, ABC, ICBC, and BOC. At the end of 1993, the domestic assets of Chinese financial institutions was about RMB 7,900 billion. These four specialized banks hold about three-quarters of total assets and employed about two-thirds of the people working in the financial

service industry. These four specialized banks are plagued by huge bad debts. The official bad debt is about 10 percent of its total loan amount, but believed to be two or three times higher than the figure.

In accordance with the dictum of 1993 Financial Reforms Decision, three policy banks were established: China Agricultural Development Bank (CADB), Import and Export Credit Bank (IECB), and State Development Bank (SDB). The purpose of these three policy banks is to liberalize the other four specialized banks from their administrative duties in respect to the allocation of funds on behalf of the State, so that the specialized banks can function as commercial banks. Policy loans which are state grants and concessionaire loans, previously issued by the specialized banks, are now issued by newly established policy banks. As a result, the total loans outstanding has declined from 83 per cent in 1990 to 74.6 in 1994 (see Table 15).

Table 15 The Occupation of National Commercial Banks in the Market

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Asset</td>
<td>84%</td>
<td>83.5%</td>
<td>81.3%</td>
<td>80.4%</td>
<td>74.6%</td>
</tr>
<tr>
<td>Loan</td>
<td>83%</td>
<td>82%</td>
<td>80%</td>
<td>78%</td>
<td>74.2%</td>
</tr>
</tbody>
</table>


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83 Sutton, supra note 3 at 4.
84 Sutton, supra note 3 at 5.
2. The Enactment of Laws and Regulations

Due to the lack of a comprehensive law in commercial banking, previous operation and supervision of banks was subject only to some general principles. This situation greatly affected the operation and supervision of the banks. Banks often granted loans without feasibility reports and securities, which was beyond the normal practice of the market economies. Lack of comprehensive laws in commercial banking also had an adverse effect on the rights and obligations of the banks. For instance, the relationship between a banker and a customer was neither clear nor definitive. In practice, banks and financial institutions often breached their duties of secrecy and care. Because of vague policies, courts and arbitrate tribunals always found it difficult to rule cases involving banks. With regard to the supervision of banks and financial institutions, however, there was clearly a lack of detailed rules in China. For example, the capital adequacy, liquidity and lending ceiling of banks were not stipulated in any laws or regulations.\(^{85}\) To solve these problems, China enacted several laws, regulations, and guidelines during 1994 to 1995 (see Table 16, Table 17).

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\(^{85}\) Such rules, "Guidelines of the PBOC on the administration of Assets and Liabilities Ratio of the Commercial Banks", were first promulgated by the PBC on February 15, 1994, in Wang & Foo, supra note 72 at 44-47.
### Table 16  The Problems and the Reforms

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>A monetary policy that relied heavily on administrative controls;</td>
<td>To establish a macro-control system by the central bank, under the leadership of the State Council, for the purpose of independently implementing monetary policies;</td>
<td>1. The reform of foreign exchange system</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2. The enactment of the Central Bank Law</td>
</tr>
<tr>
<td>The administrative interference and bad debts</td>
<td>To establish a financial entity system with State-owned commercial banks as the main body, allowing the coexistence of multifold financial entities and achieving the separation of &quot;policy&quot; finance and commercial finance; and</td>
<td>1. The establishment of three policy bank and the commercialization of the specialized banks</td>
</tr>
<tr>
<td>An inadequate legal frame work. As a result:</td>
<td>To establish a financial market system with an unified open market, orderly competition an close supervision.</td>
<td>The enactment of 1. Law of People's Bank of China</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2. Commercial Bank Law</td>
</tr>
<tr>
<td></td>
<td></td>
<td>3. Law of Secured Interests (dan bao fa)</td>
</tr>
<tr>
<td>The difficulties resulting from the transformation from a planned economy to a market economy in China.</td>
<td></td>
<td>4. FFIs Regulation</td>
</tr>
<tr>
<td></td>
<td></td>
<td>5. Decision about the Punishment of Financial Crimes</td>
</tr>
</tbody>
</table>

Source: Compiled by author.

### Table 17  The New Laws and Regulations (During 94 - 95)

<table>
<thead>
<tr>
<th>Date of effect</th>
<th>Laws and Regulations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Feb. 15, 94</td>
<td>Guidelines of the PBOC on the Administration of Assets and Liabilities Ratio of the Commercial Banks</td>
</tr>
<tr>
<td>Feb. 25, 94</td>
<td>Administration of Foreign Investment Financial Institutions Regulations</td>
</tr>
<tr>
<td>Aug. 9, 94</td>
<td>Administrative Regulations Governing Financial Institutions</td>
</tr>
<tr>
<td>March 18, 95</td>
<td>Law of People’s Bank of China (the Central Bank Law)</td>
</tr>
<tr>
<td>July 1, 1995</td>
<td>Commercial Bank Law of the People’s Republic of China</td>
</tr>
<tr>
<td>Oct. 1, 1995</td>
<td>Secured Interests Law of the People’s Republic of China</td>
</tr>
</tbody>
</table>

Source: Compiled by author.
a) Law of Peoples Bank of China - Central Bank Law

After ten years of drafting, the "Law of People's Bank of China" (PBOC Law) went into effect on March 22, 1995. This Law stipulates that PBOC will be the central bank of China. According to Article 1, the PBC Law is designed to (1) define the status and functions of the People's Bank of China; (2) to ensure the correct formulation and implementation of the state monetary policy; to (3) establish and perfect macro control under a central bank, and to (4) strengthen the supervision and control of the financial system.

1) Defining the Status and Functions of PBOC

On one hand, the PBOC is a ministry subject to the control of State Council. On the other hand, it has considerable autonomy in its own operation. The president of PBOC is responsible for the entire operation of the Bank. With vice-presidents serve as assistants, he or she has the ultimate authority within the enterprise. In regard to the appointment of the president and vice-presidents, the State Council can effectively influence PBOC. Besides, according to the Article 11, PBOC shall establish a monetary policy committee.

87 PBOC Law, Article 7.
88 PBOC Law, Article 9, 10.
Compared with its functions stipulated previously in the 1986 Banks Regulations, PBOC shall supervise the financial institutions and financial sector, stressing the importance of economic measures rather than administrative ones in maintaining the order of the financial market.\(^8^9\)

2) Implementing of the State Monetary Policy

Establishing and Perfecting Macro Control under Central Bank

According to Article 3 of the PBOC Law, the aim of monetary policy is to maintain the value of currency and thereby promotes economic growth.\(^9^0\) That is, the Law requires the PBOC to make price stability, rather than economic growth. The PBOC Law promotes the development and use of indirect controls, rather than direct controls, in the conduct of monetary policy. The PBOC Law also enhances PBOC’s regulatory responsibilities and supervisory capabilities over financial institutions.\(^9^1\)

However, the power of PBOC to maintain the stability of the financial system is likely to be affected by the administration’s desire for economic growth. First, according to Article 11, PBOC shall establish a monetary policy committee. The committee’s function, organization, and working procedure shall be prescribed by State Council and reported to Standing Committee of the National People’s Congress for the record. However, questions

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\(^8^9\) See Wang & Foo, supra note 72 at 40.
\(^9^0\) It was argued that the Central Bank Law did not reflect the needs of a market economy. See Wang & Foo, supra note 72 at 38.
\(^9^1\) PBOC Law, Article 22.
arise with such organization. Should the Committee be controlled under State Council, National People’s Congress or People’s Bank of China? Is it a policy-making body or an advisory body? The mission of the committee is still not clear. However, the current Article 11 leaves its nature to be decided by State Council. Second, under Article 8, Article 37 and Article 38, the entire paid-up capital of PBOC is allocated by the State and the budget of PBOC is controlled by State Council. Thus, even though Article 7 prohibits government departments at various levels from interfering the operation of PBOC, it fails to prohibit any interference by the central government. Third, under the current administrative structure, PBOC is under the dual supervision of both State Council and National People’s Congress.92 The current provisions reflect State Council’s reluctance to let go of the control in the decision-making process on financial matters. The position of the central bank is a natural result of the power structure in China. Until National People’s Congress becomes a genuine decision-making body of the highest authority, it does not have the ability to supervise the operation of central bank. Taking into consideration the traditional relationship between the central bank and the State Council, it is possible that State Council may lead to direct or indirect interference with PBOC. Under the current system, PBOC must report its work to the Standing Committee of the National People’s Congress since National People’s Congress channels information from the administration to the legislature. This of course, does not mean that legislature may not ask questions upon receiving such reports. But the administration can always ignore the legislature should it desires.93

92PBOC Law, Articles 2 & 6.
93 See Wang & Foo, Supra note 72, at 34-36.
3) Strengthening the Supervision and Control of the Financial Industry

Chapter 5, Supervision over Financial Institutions, empowers PBOC to supervise and control the financial institutions.\textsuperscript{94} PBOC is in charge of the establishment, changes, termination and the operation business scope of a financial institution.\textsuperscript{95} PBOC has the power to audit, check and supervise the deposits, credits, settlements, bad loans and other business affairs of any financial institutions at any time.\textsuperscript{96} PBOC also has the power to check and supervise the rate of interest rates on deposits or loans by financial institutions in violation of regulations.\textsuperscript{97} PBOC can request the financial institutions to submit financial and accounting reports and materials any time.\textsuperscript{98} Besides, PBOC is responsible for compiling comprehensive statistics and accounting statements for the national financial system, and publishing them in accordance with relevant provisions of the State.\textsuperscript{99}

\textsuperscript{94} PBOC Law, Articles 30 & 36.
\textsuperscript{95} PBOC Law, Article 31.
\textsuperscript{96} PBOC Law, Article 32, Paragraph 1.
\textsuperscript{97} PBOC Law, Article 32, Paragraph 2.
\textsuperscript{98} PBOC Law, Article 33.
\textsuperscript{99} PBOC Law, Article 34.
b) Commercial Bank Law and Relevant Regulations

The Commercial Banking Law (CBL) went into effect on July 1995. The Commercial Bank Law is formulated to protect the legal rights and interests of commercial banks, depositors and other clients, to standardize the activities of commercial banks, to improve the quality of credit assets, to strengthen supervision and administration, to ensure the commercial banks operate securely, to maintain the financial order and to promote the development of the socialist market economy. The enactment of the Commercial Bank Law strengthens the regulatory framework of banking system. The CBL contains nine chapters:

Chapter 1 - General Principles;
Chapter 2 - Establishment and Organizational Structure of Commercial Banks;
Chapter 3 - Protection for Depositors;
Chapter 4 - Fundamental Rules for Loans and Other Business;
Chapter 5 - Finance and Accounting;
Chapter 6 - Supervision and Administration;
Chapter 7 - Takeovers and Administration;
Chapter 8 - Legal Liability;
Chapter 9 - Supplementary Principles.

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1) Clarifying the Legal Statue, Structure and Function of the Commercial Bank

Article two of CBL states that, "the term commercial banks refer to the corporate entities which are established to accept public deposits, grant loans, handle settlements and other business in accordance with the Commercial Bank Law and Company Law of PRC". In other words, the provisions of the Company Law are applicable to commercial banks. As such, the establishment, organization structure, takeover and termination of commercial banks shall refer to the Company Law. Indeed, the provisions of Chapter Two (Establishment and Organizational Structure of Commercial Bank) and Chapter Seven (Takeover and Termination) of Commercial Bank Law are coordinated with the provisions of the Company Law. However, if the provisions of Commercial Bank Law are different form those of the Company Law, the Commercial Bank Law provisions shall govern.

In order to establish a bank, applicant must meet the conditions set forth in Chapter Two of CBL. Chapter Two specifies the establishment conditions and application procedures. As to the establishment conditions, Articles 12 and 13 specify the minimum capital requirement and management integrity (see Table 18 and 19).

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101 CBL, Articles 2 & 17.
Table 18  Conditions for Establishing Domestic Commercial Banks

<table>
<thead>
<tr>
<th>Establishment Conditions</th>
<th>CBL and FIs Regulations</th>
<th>Content</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minimum capital requirement</td>
<td>CBL - Art. 12 (2)</td>
<td>have the minimum amount or registered capital as stipulate by Art. 13</td>
</tr>
<tr>
<td></td>
<td>CBL - Arts. 12 (2) &amp; 13 FIs Regulations - Art. 8 (1)</td>
<td>see Table 19.</td>
</tr>
<tr>
<td>Management integrity</td>
<td>CBL - Art. 12 (3) FIs Regulations - Art 8 (2)</td>
<td>have a qualified chairman (governor), general manager and other senior management personnel with professional knowledge and specialized work experience.</td>
</tr>
<tr>
<td></td>
<td>CBL Art. 12(4)</td>
<td>have a sound organizational structure and management system</td>
</tr>
<tr>
<td>Other conditions</td>
<td>CBL Art. 12 (1) FIs Regulations - Art 8 (3)</td>
<td>have articles of association in conformity with the stipulations of the Commercial Bank Law and the Company Law</td>
</tr>
<tr>
<td></td>
<td>CBL Art. 2 (5)</td>
<td>have operational premises, security facilities and other facilities relevant to operation in accordance with the requirement.</td>
</tr>
</tbody>
</table>

Source: Compiled by author.

Table 19  Capital Requirement & Competence for Establishing Domestic Commercial Banks (Article 13 of Commercial Bank Law)

<table>
<thead>
<tr>
<th>The requirements of the establishment of the domestic commercial banks</th>
<th>The minimum amount of the registered capital</th>
<th>The paid-up capital</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commercial Bank</td>
<td>RMB 1 billion</td>
<td>equal to the registered capital</td>
</tr>
<tr>
<td>Urban cooperative commercial bank</td>
<td>RMB 100 million</td>
<td>equal to the registered capital</td>
</tr>
<tr>
<td>Rural cooperative commercial bank</td>
<td>RMB 50 million</td>
<td>equal to the registered capital</td>
</tr>
</tbody>
</table>

Source: Compiled by author.
2) Protecting the Legal Rights and Interests of Commercial Banks, Depositors and Other Clients

Commercial Bank Law clarifies the rights and obligations between the banks and the customers. As we have discussed earlier, the lack of a comprehensive law on commercial banks had an adverse effect on their basic rights and obligations. Chapter Three clarifies the rights and obligations between the banks and the customers. Under the current provision, commercial banks are prohibited from engaging in any activities contrary to the interests of the State and society. They should operate legally, fairly and honestly (fair competition). CBL has also borrowed some banking law principles from Western jurisdictions. For example, customers shall have complete freedom to withdraw their money from their banks at any time within office hours, while banks maintains full confidentiality.
3) Standardizing the Activities of Commercial Banks

According to Article Three, commercial banks have following business powers:

- Accept public deposits;
- Grant short-term, medium-term and long-term loans;
- Conduct domestic and overseas settlements;
- Handle discounts on negotiable instruments;
- Issue financial bonds;
- Act as an agent to issue, honor and underwrite government bonds;
- Buy and sale government bonds,
- Engage in interbank loans;
- Buy and sell foreign exchange on its own behalf or as an agent
- Provide letter of credit services and guarantees;
- Act as an agent for receipts and payments and in issuance business operations;
- Provide a safety deposit box service;
- Other business operations approved by the People’s Bank of China.

The scope of business operations shall be set forth in articles associated with commercial bank and shall be submitted to the People’s Bank of China for approval.
According to Article 43, commercial banks are not allowed to involve in high-risk activities such as trust investment and stock operation.

4) Improving the Quality of Credit Assets

As discussed earlier, banks and financial institutions often made loans without feasible reports and securities, which was beyond the normal practice of the market economies. To resolve this problem, Chapter Three provides policies in regards granting commercial credit. Furthermore, in order to ensure the satisfaction of creditors’ claim, the Secured Interest Law was adopted on June 30, 1995 and went into effect on October 1, 1995. The Secured Interest Law provides detailed rules in guarantee, mortgage and pledge. This Law will help banks to avoid bad debts in the future.

5) Strengthening Supervision and Administration

CBL strengthens the supervision and administration of the commercial banks. In conformity with PBOC Law, Article 10 empowers the PBOC to supervise commercial banks. Commercial banks shall submit financial reports to PBOC at regular intervals. Pursuant to provisions of Chapter Three, Four and Five of CBL, PBOC has the power to conduct examination and supervision of the state of affairs regarding deposits, loans, settlement of

\[105\] CBL, Article 61.
accounts, bad debts and other aspects of commercial banking. In return, Commercial banks shall formulate their own business principles and establish their own business administration, cash administration, security, and safeguard systems in accordance with the regulations of the PBOC. They shall establish their own examination process and conduct verification frequently.

On February 15, 1994, the central bank issued ‘Guidelines of the PBOC on the Administration of Assets and Liabilities Ratio of the Commercial Banks.’ This Guidelines apparently aim at advancing China’s financial system whereby the supervision requirements of commercial banks will be similar to those under the Basle Accord. Under the Guideline, capital adequacy of commercial banks, including the specialized banks, should be maintained at 8 percent.

6) Securing the Operation of Commercial Banks

CBL also tries to prevent the administrative interference. Commercial banks enjoy an autonomy in their business operations, free from interference by any entity or individuals. They shall be fully responsible for their own profits and losses, and bear any civil liabilities under their entire corporate assets.

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106 CBL, Article 62.  
107 CBL, Article 59.  
108 CBL, Article 60.  
109 Guidelines of the PBOC on the Administration of Assets and Liabilities Ratio of the Commercial Banks, supra note 85.  
110 CBL, Article 4.
D. Foreign Banking Activities

1. Overview

There were a total of 72 foreign banks in China in June 1949 and all had been established prior to 1949. But soon after the establishment of PRC, most of these foreign banks were driven out of China. In 1978, only 4 foreign banks were permitted to operate under a limited scope. They were: Hong Kong Shanghai Bank Corp. Ltd. (UK), Standard Chartered Bank PLC (UK), Bank of East Asia (Hong Kong), and Overseas-Chinese Banking Corporation (Singapore). In 1984, People's Bank of China permitted these four banks in Shanghai to expand their business to a certain degree.111

On April 2, 1985, the 'Regulation of the People's Republic of China for the Administration of Foreign Bank and Chinese-Foreign Joint-Venture Banks in the Special Economic Zones" (SEZ Regulations) was promulgated.112 Foreign banks were permitted to operate in special economic zones established in 1980. The first four economic zones were Shenzhen, Zhuhai, Shantou and Xiamen. Hainan Island was added later. Initially, foreign banks were permitted to open branches in these five Special Economic Zones, but they were

111 Supra note 4 at 33.
limited to deal only with foreign-funded companies and joint ventures. In 1990, the "Measures for Administration of Foreign-Capital Financial Institutions & Chinese-Foreign Equity Joint Financial Institutions in Shanghai Municipality" (Shanghai Measures) went into effect and Shanghai has became as one of the economic zones. Moreover, another seven cities, including Guangzhou, became economic zones in 1992.

However, foreign banks' market share is still bounded by entry constraints and discriminatory operation limits in China's economic zones. After difficult entries to the banking market, foreign banks will likely encounter more operational constraints. The following summary of difficulties facing foreign banks was derived from information of Dipchand, Zhang, and Ma (1994).

a) Initially, the confinement to Beijing inflicted a high cost on the representative offices, as commercial and residential spaces were limited and costly and were confined to designated hotels. The problem of office space eased somewhat in mid-1985 with the opening of the CITIC office/apartment building and Noble Tower. Later, in 1991, there was option to locate in the open cities where space costs are lower. In addition, costly expatriates had to be brought in to handle routine administrative duties, as qualified locals were hard to find.

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114 Sutton, supra note 3 at 12.
115 Dipchand, Zhang, and Ma, supra note 69 at 178-187.
b) The Chinese have a knack for administratively redefining (or even canceling) regulations. Under the SEZ Regulations, foreign banks could deal in foreign exchange and renminbi (RMB) in the SEZs, but only with nonlocal enterprises and individuals. Initially, the SEZ Regulations provided for foreign banks to take deposits and make loans in RMB, but the privilege was withdrawn to protect domestic banks from competition.

c) Foreign banks had few opportunities to "carve out" niches in the investment program in the Chinese economy. China is a large country, and the idea of economic restructuring conjures up visions of massive projects requiring large sums of money. While this may be true in China, investment was controlled according to a unified plan. Whatever financing foreign banks had to offer, this had to fit within that unified plan and it normally required close contacts with the Chinese fraternity. Very few foreign banks had such contacts. Besides, foreign banks had to compete with the Bank of China which had ample foreign exchange to finance projects within the unified plan. Moreover, the Chinese economy was easy to overheat. When it happened, the state had very little remorse in applying measures to reduce the investment and even cancel the projects.
2. Recent Reforms

On April 1, 1994, the “Administration of Foreign Investment Financial Institutions Regulations” (FFIs Regulations)\footnote{“Administration of Foreign Investment Financial Institutions Regulations” (FFIs Regulations) in CCH Australia Ltd., China Laws for Foreign Business (looseleaf), para 8-692.} went into effect. With the Central Banking Law, Commercial Banking Law, and FFIs Regulations in place, the foreign banks enjoy wider business opportunity and power.

According to Article 88 of CBL, provisions of CBL shall be applicable to foreign-funded commercial banks, Sino-foreign joint equity commercial banks and other branches of foreign commercial banks. However, if additional law and administrative legislation stipulate otherwise, such law and administrative legislation shall be applicable. FFIs Regulation went into effect on April 1, 1994. At the same time, SEZ Regulations and Shanghai Measures were replaced. Foreign banks’ representative offices remain subject to the ‘Procedures of the People’s Bank of China for the Establishment of Representative Offices in China by Overseas Chinese and Foreign Financial Institutions Tentative Regulations.’\footnote{Procedures of the People’s Bank of China for the Establishment of Representative Offices in China by Overseas Chinese and Foreign Financial Institutions Tentative Regulations (February 1, 1983) in CCH Australia Ltd., China Laws for Foreign Business (looseleaf), para 7-540.}

The establishment of foreign bank branches, subsidiaries and joint ventures is governed by Chapter 2 of the FFIs Regulations. First, in order to establish a branch of foreign bank in China, FFIs must have a representative office in China for two years. Foreign banks must have total asset of US $20 billion subject to sound supervision system in their home country
in the year before requesting establishment in China.\textsuperscript{118} Regulations to establish a foreign bank subsidiary or joint venture are similar. A foreign bank subsidiary or joint venture must have assets of US $10 million in the year before requesting establishments (see Table 20).\textsuperscript{119}

Secondly, the minimum registered capital requirements for FFIs are now stated in RMB. The minimum amount of working capital for the head office of a foreign bank branch is the equivalent of RMB$ 100 million in freely convertible currencies. The minimum registered capital for a foreign bank subsidiary and joint venture is the equivalent of RMB$ 300 million in freely convertible currencies (See Table 20).\textsuperscript{120}

Thirdly, the ratio of paid-up to capital is required to be no less than 50\% of their registered capital (see Table 20).\textsuperscript{121}

Finally, foreign banks must apply to the PBOC to establish a presence in China. A foreign bank must first submit a letter to the PBOC stating its intention to apply for a license, along with prescribed documentation on the company, which includes a feasibility study.\textsuperscript{122} After the preliminary examination, PBOC has 90 days to decide whether to provide or deny the foreign bank to a formal application.\textsuperscript{123} If the foreign bank is invited to submit a formal application, it must provides additional information on company’s profile within 60 days. This includes a letter of guarantee signed by foreign bank’s head office stating any tax and debt obligation incurred by its operating entity in China.\textsuperscript{124} Within 30 Days of receiving approval,
the foreign bank must transfer the required paid-up capital or working capital to China, register with a local office of the Administration of Industry and Commerce and local office of the Taxation Bureau, and finally apply for a foreign exchange business license from the SAEC.\textsuperscript{125}

Article 17 of the FFIs Regulation outlines the permissible business powers for foreign banks. These include: (1) foreign exchange deposits; (2) foreign exchange lending; (3) foreign exchange note discount; (4) approved foreign exchange investment; (5) foreign exchange remittances; (6) foreign exchange guarantee; (7) import and export clearing; (8) trading in foreign exchange for its own account and for clients; (9) acting as an agent for the exchange of foreign currencies and foreign exchange notes; (10) acting as an agent for foreign currency credit card payments; (11) custody and safe deposit box services; (12) credit investigation and advice; and (13) approved domestic and foreign currency business.

\textsuperscript{125} FFIs Regulations, Articles 15 & 16.
<table>
<thead>
<tr>
<th>Requirements of establishment of foreign financial institutions</th>
<th>Minimum amount of the registered capital</th>
<th>Paid-up capital</th>
<th>Assets at the end of the prior to the year of submitting the application</th>
</tr>
</thead>
<tbody>
<tr>
<td>Foreign investment bank</td>
<td>RMB 300 million (FFIs Regulations art. 5)</td>
<td>not less than 50 per cent of the registered capital (FFIs Regulations art. 5)</td>
<td>US$ 10 billion (FFIs Regulations art. 5)</td>
</tr>
<tr>
<td>Joint venture bank</td>
<td>RMB 300 million (FFIs Regulations art. 5)</td>
<td>not less than 50 per cent of the registered capital (FFIs Regulations art. 5)</td>
<td>US$ 10 billion (foreign party) (FFIs Regulations art. 6)</td>
</tr>
<tr>
<td>Branch of foreign bank</td>
<td>Shall be allocated without consideration by its head office RMB 100 million as its working capital (FFIs Regulations art. 5)</td>
<td></td>
<td>US$ 20 billion (FFIs Regulations art. 7)</td>
</tr>
<tr>
<td>Foreign investment company</td>
<td>RMB 200 million (FFIs Regulations art. 5)</td>
<td>not less than 50 per cent of the registered capital (FFIs Regulations art. 5)</td>
<td>US$ 10 billion (FFIs Regulations art. 6)</td>
</tr>
<tr>
<td>Joint venture investment company</td>
<td>RMB 200 million (FFIs Regulations art. 5)</td>
<td>not less than 50 per cent of the registered capital (FFIs Regulations art. 5)</td>
<td>US$ 10 billion (FFIs Regulations art. 8)</td>
</tr>
</tbody>
</table>

Source: Compiled by the author
E. Evaluation of the Recent Reform

These reforms are designed to bring China's financial system more in line with those found in developed countries. In fact, 1994 and 1995 were remarkable years for the banking industry. The Law of People's Bank of China, Commercial Bank Law, and Secured Interests Law went into effect within these two years. Many measures were designed to solve existing problems and improve banking system (see Table 16, Table 17). With these laws and regulations in place, a relatively workable, much improved, more effective and better operating banking system is in place (see Figure 3). Taking into consideration the experience and lessons learned in the past, and assistance to be expected from organizations such as the International Monetary Fund, the World Bank and other international institutions, one is optimistic to expect a more effective and better operated banking system to be established in China.
Figure 3  China’s Banking System after Recent Reform

II. Trade in Banking Services - Current Provisions and GATS Principles

A. The Foreign Trade Law of PRC

After twelve years of deliberation and drafting, the "Foreign Trade Law" (FTL) became effective on July 1, 1994.\textsuperscript{126} FTL is written in eight sections on: General Provisions, Foreign Trade Operators, Import and Export of Goods and Technology, International Service Trade, Regulation of Foreign Trade, Promotion of Foreign Trade, Legal Liability and Supplementary Provisions. China's urge to become a member of the World Trade Organization provides impetus to liberalize service sectors. The contents of FTL are linked to the political context of recent international events relating to foreign trade.

1. Definition of Foreign Trade

First, the term "foreign trade" includes "Goods and Technology (Chapter 3)" and "International Service Trade(Chapter 4)". "International Service Trade" was not included in FTL until 1992. It needs to be understood in reference to China's accession to GATT/WTO. The contents of Chapter 4 are especially relevant to GATS.

\textsuperscript{126} China Economic News (May 23, 1994) at 8; China Economic News (May 30, 1994) at 7.
2. Recognition to Desired Freedom in Trade

Article 4 of FTL stipulates that: "The State shall implement a unified system for foreign trade and maintain fair and free operations in foregoing trade in accordance with the law." It recognizes the increasing desire in the freedom of trade. Article 22 states that the State shall promote the "gradual" development of trade in international services. Note that, with respect to trade in goods and technology, FTL use different language. In accordance with the Article 15, State shall permits "the free import and export" of goods and technology.

3. Major Principles of FTL

The contents of FTL are linked to the major principles of GATT 1994 and GATS. According to Article 6 and Article 23:

a) China will grant MFN treatment:
   i) in according with international treaties or agreements
   ii) on the basis of the principles of mutual benefit and reciprocity

b) China will grant national treatment
   i) in according with international treaties or agreements
   ii) on the basis of the principles of mutual benefit and reciprocity
   iii) with respect to trade in services, in according with its commitments made under international treaties or agreements
c) China will grant market access

with respect to trade in services, in accordance with its commitments made under international treaties or agreements

Responding to the "transparency" principle, in accordance to Article 18, State Council shall formulate, revise and promulgate lists of the goods and technologies restricted or prohibited for import or export in accordance with Articles 16 and 17 of FTL. But FTL did not mention the transparency principle in the field of trade in services.

4. Chapter 4 - Trade in Services

Chapter 4 contains five chapters concerning international trade in services. Article 23 refers to PRC granting the right in "market access and national treatment...in accordance with its commitments made under international treaties of agreement concluded or acceded to." There is no special provision of Most Favored Nation treatment in Chapter 4. Therefore, the right of "MFN" should refer to Article 6 under Chapter 1 General Provision. However, FTL permits several exceptions. They include:

- Article 24: the State of PRC may restrict international services trade operation for the following reasons: (1) in order to maintain national security or public interest; (2) in order to protect the natural environment; (3) in order to establish
or accelerate the establishment of specific domestic service industries; (4) in order to ensure balancing foreign exchange revenue and expenditure of the state; or (5) in the case of other restrictions provided for in laws or administrative regulations.

- **Article 25**: The State shall prohibit international service trade activities under any of the following circumstances: (1) where national security or public interest are jeopardized; (2) where international obligations assumed by the PRC are contravened; or (3) where prohibition is provided for in laws or administrative regulations.

- **Article 7**: If any country or region takes sanctions, restrictions or other similar measures of a discriminatory nature against the PRC with respect to foreign trade, PRC may take corresponding measures against such country or region in line with actual circumstances.

- **Article 42**: The State shall adopt flexible measures by offering preferential treatment and otherwise facilitating trade between border cities and towns of China and those of neighboring countries, as well as to the cross-border market trading between residents of border areas. Specific measures shall be determined by the State Council.

MFN treatment, market access, and national treatment are not automatically provided under GATS. They will become binding commitments after China lists in its schedule. Furthermore, these concepts apply only to those services listed in the schedule. In addition,
there are several exceptions to the general obligations of GATS. GATS Article 7 creates a balance-of-payments exception. In the event of "serious balance-of-payments and external financial difficulties or that thereof," restrictions may be imposed on trade in services. Such restrictions must not exceed those necessary to deal with difficult. Such restrictions must be temporary and must be phased out as the situation improves. GATS Article 14 establishes general exceptions. GATS Article 14 bis provides security exceptions. Finally, the extent of China's open financial market policy depends upon its commitment to adopt a liberalized approach in service trade.

The Chinese government's approach to law is both fundamentally instrumental and formal. As a result, law has been used primarily not only to achieve social controls, but also to pursue further economic goals. Moreover, many laws and regulations governing China's foreign economic relations are replete with vague passages that do not lend predictability or transparency to the regulatory process. For example, in accordance with Article 24.3, State may restrict international services trade operation "in order to establish or accelerate the establishment of specific domestic service industries." The language of above said article is vague. This phrase is entirely upon central or local governments' interpretation and implementation of its laws and regulations to satisfies its own policy goals.

Another challenge is the inconsistency between the central and local laws and regulations. Under this circumstance, the implementation of Article 24.5 and Article 25.3 will be problematic. Under Article 24.5, State may restrict international service trade

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operation in the case of other restrictions provided for in laws or administrative regulations. Under Article 25.3, State shall prohibit international service trade activities where prohibition is provided for in laws or administrative regulations.

B. Trade in Banking Services

China is not a member of GATT/WTO. China does not extend any of the standard liberal trading principles to activities of foreign financial institutions in China. Therefore, foreign financial institutions can not enjoy the right of establishment and national treatment. Moreover, China does not apply MFN status in its bilateral arrangements, it does not adhere to the principle of transparency nor any trade disputes referred to independent dispute panels. As a result, foreign financial institutions are restricted from commercial freedoms in China, access is largely at governments’ discretion, and appeal mechanisms for unfavorable decisions does not exist.

China has applied to rejoin the GATT/WTO. To deal with the enormity of bringing China into the international trading regime, a separate Working Group on China has been established to negotiate terms and conditions under which China will be admitted to the organization. Parallel bilateral negotiations are dealt in market access and national treatment
under specific sectors, including financial services. With the Uruguay Round convention, China has submitted its schedule and commitment to open its banking industry.\textsuperscript{128}

FTL does not provide a definition of financial services. There are no detail rules of granting the MFN treatment, market access, and favorable national treatment. In accordance with Article 26 of FTL, "relevant departments of the State Council shall regulate international service trade in accordance to FTL and other laws or administrative regulations." Therefore, entry conditions of foreign bank and its business scope shall refer to the relevant laws and administrative regulations.

After China’s recent financial service policy reform, there are several relevant laws and regulations in place: the Company Law, the Law of People’s Bank of China (PBOC Law), the Commercial Bank Law (CBL), the Foreign Investment Financial Institutions Regulations (FFIs Regulations) and the Regulations Governing the Administration of Financial Institutions (FIs Regulations). As discussed earlier, the Commercial Bank Law prevails over the Company Law. In other word, the provisions of Company Law shall be applicable to commercial banks; but if the Commercial Bank Law stipulate otherwise, Commercial Bank Law shall be applicable. According to Article 88 of CBL, "the provision of this Law shall be applicable to foreign-funded commercial banks, Sino-foreign joint equity commercial banks and branches of foreign commercial banks. However, if the law and administrative legislation stipulate otherwise, such law and administrative legislation shall be applicable." According to the Article 63 of the FIs Regulations, the FIs Regulations only governs domestic financial

\textsuperscript{128} Z.D. Chen, "the Open and Legislature of the Services industries in China (Uo Kuo Fu U Ie Duei Uai Ki Fang Han Li Fa) " (1995) 3 Politic Science and Law (Zheng Zh U Fa Lu) 12.
institutions, and the regulations governing the administration of foreign-funded financial institution shall be formulated separately. As a result, the administration of foreign banks shall refer to the FFIs Regulations. In the event of any conflict between CBL and FFIs Regulations, the FFIs Regulation shall prevail.

C. Current Provisions and GATS Principles

1. Entry Constraints and Market Access

The restricted market access of foreign financial institutions in China is bounded by geographic limits and establishment requirements.

a) Geographical Restriction

China's approach to economic reform was to first allow previously unauthorized activities to take place on an experimental basis in designated regions or cities and then extend their geographic boundaries if it proves successful. In the financial service sector, China continues to restrict the activities of foreign financial institutions to specific geographical regions. Foreign banks were limited to 13 cities: Shanghai, Shenzhen, Zhuhai,
Shantou, Hainan, Xiamen, Dalian, Ningpo, Guangzhou, Fuzhou, Tianjin, Nanjing, Qingdao.\textsuperscript{129} State Council, recently decided to open ten more cities to foreign financial institutions. They are Beijing, Shenyang, Shijiazhuang, Xian, Hefei, Hangzhou, Suzhou, Wuhan, Chengdu, and Chongqing. Foreign banks can now formally enter China's hinterland to compete with Chinese banks on an even footing. To date, only cities in the coastal regions in east China have been opened to overseas financial institutions.\textsuperscript{130} As of June 1994, there were 211 foreign bank branches in China compare to thousands of branches of domestic banks. Foreign banks are clearly at a disadvantage (see Table 21).

<table>
<thead>
<tr>
<th>Country</th>
<th>Bank Institutions</th>
<th>Bank representative offices</th>
<th>Bank branches</th>
<th>Insurance representative offices*</th>
<th>Security representative office</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>Japan</td>
<td>49</td>
<td>57</td>
<td>19</td>
<td>24</td>
<td>14</td>
<td>4</td>
</tr>
<tr>
<td>United States</td>
<td>36</td>
<td>21</td>
<td>6</td>
<td>13</td>
<td>10</td>
<td>3</td>
</tr>
<tr>
<td>Hong Kong**</td>
<td>35</td>
<td>21</td>
<td>24</td>
<td>4</td>
<td>8</td>
<td>7</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>17</td>
<td>15</td>
<td>12</td>
<td>9</td>
<td>6</td>
<td>1</td>
</tr>
<tr>
<td>France</td>
<td>11</td>
<td>15</td>
<td>11</td>
<td>1</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Italy</td>
<td>8</td>
<td>9</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Canada</td>
<td>7</td>
<td>6</td>
<td>3</td>
<td>6</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Singapore</td>
<td>7</td>
<td>6</td>
<td>6</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Australia</td>
<td>6</td>
<td>5</td>
<td>1</td>
<td>2</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Germany</td>
<td>6</td>
<td>8</td>
<td>2</td>
<td>2</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Netherlands</td>
<td>5</td>
<td>3</td>
<td>2</td>
<td>5</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Switzerland</td>
<td>5</td>
<td>5</td>
<td>1</td>
<td>2</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Others (22)</td>
<td>44</td>
<td>40</td>
<td>6</td>
<td>1</td>
<td>0</td>
<td>5</td>
</tr>
<tr>
<td>Total</td>
<td>236</td>
<td>211</td>
<td>93</td>
<td>69</td>
<td>39</td>
<td>24</td>
</tr>
</tbody>
</table>


Note: * Includes two branches.

** Includes Hong Kong subsidiaries of companies headquarters elsewhere.

\textsuperscript{129} Sutton, supra note 3 at 10.

\textsuperscript{130} China Daily Report (21 September 1995) at 42.
b) Establishment Requirement

The establishments of foreign bank branches, subsidiaries and joint ventures is governed by CBL and FFIs Regulations. Unless FFIs Regulations stipulates otherwise, CBL shall be applicable. As a result, applicants must meet the conditions laid down in Chapter Two of the FFIs Regulations which specify the minimum registered capital requirement, the paid-up capital requirement and management integrity (see Table 22). With regard to the establishment of domestic banks, CBL and FIs Regulations shall be applicable. Chapter Two of CBL and Chapter Two of FIs Regulations also specify the capital requirement and management integrity as the establishment conditions (see Table 22 and Table 23).

Under the current provisions, minimum amount of the registered capital for domestic commercial banks is RMB 1 billion, more than what is needed for establishing a foreign bank (300 million). The paid-up capital for establishing a domestic bank “shall be equal to the registered capital”, compare to the establishment of a foreign bank, “not less than 50 percent of the registered capital” is enough. The capital requirements for establishing domestic banks are stricter than setting up the foreign banks.
Table 22  The Conditions for Establishing Domestic and Foreign Banks

<table>
<thead>
<tr>
<th>Conditions</th>
<th>Domestic Banks</th>
<th>Foreign Banks</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minimum capital requirement</td>
<td>CBL Arts. 12.2 &amp; 13.</td>
<td>FFIs Regulations Art. 5</td>
</tr>
<tr>
<td>Competence</td>
<td></td>
<td>FFIs Regulations Arts. 5, 6(3), 7(2) &amp; 8(3).</td>
</tr>
<tr>
<td>Management Integrity</td>
<td>CBL Art. 12.3</td>
<td>FFIs Regulations Arts. 2, 6, 7 &amp; 8</td>
</tr>
<tr>
<td>Geography Limitation</td>
<td>No limits</td>
<td>Limited to the following cities:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Shanghai, Shenzhen, Zhuhai, Hairan,</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Xiamen, Dalian, Ningpo, Guangzhou,</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Fuzhou, Tianjin, Nanjing, Qingdao</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Hefei, Hangzhou, Suzhou, Wuhan,</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Chongqing, Chengdu, Beijing,</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Shenyang, Shijiazhuang, Xian, Hefei,</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Hangzhou.</td>
</tr>
<tr>
<td>Others</td>
<td>CBL Art. 12.1</td>
<td>CBL Art. 12.1</td>
</tr>
<tr>
<td></td>
<td>CBL Art. 12.5</td>
<td>CBL Art. 12.5</td>
</tr>
<tr>
<td></td>
<td>FFs Regulations Art. 8.2</td>
<td></td>
</tr>
</tbody>
</table>

Source: Compiled by author.

Table 23  The Minimum Capital Requirements for Domestic and Foreign Banks (in RMB)

<table>
<thead>
<tr>
<th>Domestic Banks</th>
<th>Minimum Registered capital</th>
<th>Paid-Up Capital</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Commercial Banks</td>
<td>1,000,000,000</td>
<td>Equal to the registered capital</td>
</tr>
<tr>
<td>2. Urban Cooperative Commercial Banks</td>
<td>100,000,000</td>
<td>Equal to the registered capital</td>
</tr>
<tr>
<td>3. Rural Cooperative Commercial Banks</td>
<td>50,000,000</td>
<td>Equal to the registered capital</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Foreign Banks</th>
<th>Minimum Registered capital</th>
<th>Paid-Up Capital</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Foreign Investment Banks</td>
<td>300,000,000</td>
<td>Not less than 50% of the registered capital</td>
</tr>
<tr>
<td>2. Joint Venture Banks</td>
<td>300,000,000</td>
<td>Not less than 50% of the registered capital</td>
</tr>
<tr>
<td>3. Branch of Foreign Banks</td>
<td>Shall be allocated without consideration by its head office RMB $100,000,000 as its working capital</td>
<td>Not less than 50% of the registered capital</td>
</tr>
</tbody>
</table>

Source: Compiled by author.
However, gaining approval to operate in China is not a straightforward task for foreign banks because China does not adhere to the principle of transparency in the field of trade in services. In addition to the requirements under the Chapter 2 of the FFIs Regulations, there are other "unofficial" considerations that play equal roles. Chinese officials look favorably upon foreign financial institutions that.

- are well-known and enjoy outstanding international reputations;
- have demonstrated a commitment to China and are seeking to establish long-term business relationships rather than securing short-term profits;
- have made a positive contribution to China's economic development by providing foreign currency loans and other forms of investment capital;
- have contributed to China's financial sector by supporting and/or offering training programs for Chinese regulatory officials and financial executives;
- have established positive relationships with Chinese financial institutions through their commercial dealings; and form countries where Chinese financial institutions would like to develop a commercial presence; and
- continued to deal with China following the Tianamen Square incident.

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131 Sutton, supra note 3 at 8.
In fact, many laws and regulations governing China’s foreign economic relations are still replete with vague and ambiguous passage that do not lend predictable or transparent regulatory process. Reliable information is still difficult to obtain.

2. Operational Constraints

a) Limited Business Power

China is placing strict limits on the types of business activities that foreign financial banks can conduct within China. FFIs Regulations offer limited business powers to foreign financial institutions. Foreign Banks are largely restricted by trade finance and foreign currency loans. RMB business in China is still out of the reach of foreign banks. Under national treatment principle, article 17 of GATS, foreign banks shall be treated the same way as domestic banks are treated. Thus the inability of FFIs’ engaging in RMB business is inconsistent with the national treatment principle.

China’s latest offer to the WTO working group did not expand this power, although China has indicated that a small number of foreign banks may be permitted to engage in RMB-denominated business on an experimental basis. Such a move would be accommodated by Item 13, Article 17 of FFIs Regulations. Currently, only in special circumstances, can the banks with foreign interests be allowed to conduct RMB transactions. For instance, in 1992,
Chinese government permitted, for the first time, a joint-venture bank, the Xiamen International Bank, to conduct RMB transactions on a trial basis.\textsuperscript{132}

Table 24 The Business Scopes of the Commercial Banks

<table>
<thead>
<tr>
<th>Domestic Commercial Banks</th>
<th>Foreign Banks</th>
</tr>
</thead>
<tbody>
<tr>
<td>Art. 3 of CBL</td>
<td>Art. 17 of FFls Regulations</td>
</tr>
<tr>
<td>(1) accept public deposits;</td>
<td>(1) foreign exchange deposits;</td>
</tr>
<tr>
<td>(2) grant short-term, medium-term and long-term loans;</td>
<td>(2) foreign exchange lending;</td>
</tr>
<tr>
<td>(3) conduct domestic and overseas settlements;</td>
<td>(3) foreign exchange note discount;</td>
</tr>
<tr>
<td>(4) handle discounts on negotiable instruments;</td>
<td>(4) approved foreign exchange investment;</td>
</tr>
<tr>
<td>(5) issue financial bonds;</td>
<td>(5) foreign exchange remittances;</td>
</tr>
<tr>
<td>(6) act as an agent to issue, honor and underwrite government bonds;</td>
<td>(6) foreign exchange guarantee;</td>
</tr>
<tr>
<td>(7) buy and sell government bonds,</td>
<td>(7) import and export clearing;</td>
</tr>
<tr>
<td>(8) engage in interbank loans;</td>
<td>(8) trading in foreign exchange for its own account and for clients;</td>
</tr>
<tr>
<td>(9) buy and sell foreign exchange on its own behalf or as an agent</td>
<td>(9) acting as an agent for the exchange of foreign currencies and foreign exchange notes;</td>
</tr>
<tr>
<td>(10) provide letter of credit services and guarantees;</td>
<td>(10) acting as an agent for foreign currency credit card payments;</td>
</tr>
<tr>
<td>(11) act as an agent for receipts and payments and in issuance business operations;</td>
<td>(11) custody and safe deposit box services;</td>
</tr>
<tr>
<td>(12) provide a safety deposit box service;</td>
<td>(12) credit investigation and advice; and</td>
</tr>
<tr>
<td>(13) other business operations approved by the People’s Bank of China</td>
<td>(13) approved domestic currency business and other, foreign currency business;</td>
</tr>
</tbody>
</table>

Source: Compiled by author.

\textsuperscript{132} Wong & Foo, supra note 72 at 21.
b) Discriminatory Operation Restriction

Other requirements facing foreign banks and branches are under the FFIs Regulations Chapter 4, Supervision and Administration. They include:

- Article 22: Deposit and lending rates and service fees must be determined in accordance with PBOC rules.
- Article 23: Deposit reserves (of between 3 and 5 per cent) must be kept with the PBOC.
- Article 24: Thirty per cent of the working capital must be interest-bearing investments designated by the PBOC.
- Article 30: Deposits taken within China cannot exceed 40 per cent of the branch’s assets.
- Article 32: Liquid assets must equal at least 25 per cent of deposits.
- Article 33: Foreign banks are required to employ at least one Chinese national as a senior executive.
- Article 36: Foreign banks must report and submit financial statements and relevant information to the PBOC and its relevant branches.
- Article 37: The PBOC and its relevant branches shall have the right to examine or check the operation, management and financial situation of foreign investment financial institutions.
GATS does not prohibit national governments from employing supervisory practices designed to protect depositors and the confidence of monetary system.\footnote{GATS, Annex on Financial Services of GATS, Article 2.} In practice, prudent regulation by one government may be interpreted (or misinterpreted) as a form of restrictive action.\footnote{C. W. Hultman, “International Banking, Competitive Advantage and Global Marketing Strategy” (June 1995) 18:4 World Competition 148.} On one hand, requirements under Chapter 4, Supervision and Administration, could be interpreted as prudent measures which protect customers and ensure the integrity and stability of China's financial system. On the other hand, in the eye of foreign banks, these requirements could be burdensome actions. Furthermore, China does not adhere to national treatment in the supervision and administration of financial institutions. The supervision and administration of foreign banks refers to CBL and FFIs Regulations, while the supervision and administration of domestic banks shall refer to CBL and Chapter Nine of FIs Regulations. Under the current provisions of Chapter Nine of FIs Regulations, PBOC shall inspect the daily operation of a financial institution and shall implement a system of annual review.\footnote{Administrative Regulations Governing Financial Institutions, Article 47. Administrative Regulations Governing Financial Institutions (August 9, 1994) (hereinafter “FIs Regulations”), in CCH Australia Ltd., China Laws for Foreign Business (looseleaf), para 8-400.} The content of an annual review or routine inspection is as follows:\footnote{FIs Regulations, Article 47.}

1) Whether or not the procedures for the examination and approval of establishment or amendments have been completely carried out;

2) Whether or not the details of application materials are in compliance with the actual situation;

\footnote{GATS, Annex on Financial Services of GATS, Article 2.} \footnote{C. W. Hultman, “International Banking, Competitive Advantage and Global Marketing Strategy” (June 1995) 18:4 World Competition 148.} \footnote{Administrative Regulations Governing Financial Institutions, Article 47. Administrative Regulations Governing Financial Institutions (August 9, 1994) (hereinafter “FIs Regulations”), in CCH Australia Ltd., China Laws for Foreign Business (looseleaf), para 8-400.} \footnote{FIs Regulations, Article 47.}
3) Whether or not the capital funds or working funds are true and adequate;

4) Whether or not the conduct of business operations exceeds the business scope;

5) Whether or not the procedures for change of legal representative or principal personnel are completely carried out;

6) Whether or not business operations are in violation of rules and laws;

7) Whether or not business operations are in good order;

8) Whether or not business premises and safety facilities conform to requirement;

9) Other matters which require inspection as deemed by the People’s Bank of China.

Compared with the provisions of FFIs Regulations, foreign banks face a stricter standard required by PBOC. For instance, with regard to the capital funds, PBOC requires the working capital of a domestic bank be “true and adequate.”\(^{137}\) But PBOC requires foreign banks to meet the following additional requirements:

1) A foreign investment financial institution engaging in deposit business must place a deposit reserve with a branch of the PBOC at place where it is located. The ratio of such deposit reserve shall be determined and adjusted according to the needs by the PBOC. Such reserve shall not carry interest.\(^ {138}\)

\(^{137}\) FFIs Regulations, Article 47, Paragraph 1 (3).

\(^{138}\) FFIs Regulations, Article 23.
2) The total assets of a foreign investment, joint venture bank shall not exceed 20 times the sum of its paid-up capital.  

3) Loans to an enterprise and its affiliates by a foreign investment bank, joint venture bank shall not exceed 30% of the sum of its paid-up capital and reserves, except for loans specially approved by the PBOC.

4) The total amount of investment of a foreign investment bank/joint venture bank shall not exceed thirty per cent of the sum of its paid-up capital and reserves, except for investment in financial institutions made with the approval by the PBOC.

5) The fixed assets of a foreign investment bank/joint venture bank shall not exceed forty percent of the sum of its paid-up capital.

6) The total amount of deposits taken up in the PRC by a foreign investment financial institution shall not exceed 40% of its total assets.

7) A foreign investment bank/joint venture bank whose paid-up capital is less than its registered capital must each year withdraw 25% of its after-tax profits to make up the deficiency until the sum of its paid-up and reserves equals its registered capital.

Above provisions indicate the limitation of maximum permissible asset-capital ratios. This kind of constraints are imposed in most countries for prudential reasons, since by
ensuring minimum levels of capitalization and portfolio diversification, China can ensure the safety of its depository institutions. China does not intend to adhere the national treatment principle and these constraints are only imposed on foreign banks. As a result, foreign banks' total volume of operations are seriously constrained in China.

III. Policy Issues for the Future

The reform policies in China since 1978 have created a foundation for change. China has deliberately enacted new laws and reformed legal institutions to transform its economy from command to market. From 1979 to the early 1990s, China has moved a monobanking system to a financial system that is typical of that in an industrialized country. During the past five years, hundreds of laws were enacted. Although much of the work to develop these laws is on track, there are still many obstacles on the way to attaining reform. The first difficulty is the tension between China's old and new economic structures which is produced by the shift from a planned economy to a market economy. This tension has manifested itself in four notable ways: (1) legal reform of enterprises in China, (2) treatment of property rights, (3) reform of the law of contracts and (4) reform of China's banking system. The second difficulty is the contradiction between China's legal and political structures. This tension is in three areas: (1) the freedom of speech and freedom of the press, (2) the role of the judiciary system in China; and (3) the role of the CCP within the context of China's reform. The third difficulty is the existing contradiction between the promulgation and the enforcement of
Finally, it is important to note that policy swings have impeded stability and prediction in Chinese foreign system. Considerable political uncertainty exists with respect to the policy directions China may adopt following the death of Deng Xiaoping. China has shown a remarkable ability in the past to implement substantial policy changes on short notice in response to faction shifts. This experience suggests that China’s current approach to economic liberalization could be slowed or even reversed with the emergence of new leaders.

With regard to financial reforms, it still encountered some old problems as well as some new ones. In particular, the relationship between banks and enterprises, especially in the state sector, continued to be problematic, with the banks still acting ineffectively as monitors of enterprise efficiency. In addition, a new problem facing the reformers is how to avoid the inflation. As to the foreign access to the domestic market, on the one hand, there is a strong economic and academic opinion that the ‘playing field should be level.’ The proponents of this viewpoint argue that foreign banks should not be restricted in business activities in China and this should surely speed up the efficiency of the domestic banks. Under this policy, foreign banks would compete with domestic banks for both foreign currency and renminbi business. The foreign banks support this approach which would allow them access to domestic savings. On the other hand, the industry opinion is quite the opposite and includes the following suggestions: (1) Restrict the entry of foreign banks both in scale and in speed. (2) Restrict international settlements and other selected activities of foreign banks. (3)

146 Potter, supra note 127 at 15-18.
147 Bowles & White, supra note 70 at 160.
Strengthen the auditing management of foreign banks to ensure high quality in capital adequacy ratios, assets, liquidity, profitability, and so forth. (4) Only joint venture banks should be allowed entry as this approach would give China some control over future development in the banking industry. (5) Restrict the further entry of foreign banks in the special economic zones because banking industry in the special economic zones may be saturated.\textsuperscript{148}

However, with the enactment of the Law of People's Bank of China, Commercial Bank Law, Administrative Regulations Governing the Financial Institutions, Administration of Foreign Investment Financial Institutions Regulations and Secured Interest Law, a relatively workable banking system is in place. In addition, China is making a strong bid to enter into the World Trade Organization. China's application to resume membership in the GATT/WTO encourages China to liberalize its banking sectors. One can hope that a more open financial market and a better banking system will be established in the near future.

\textsuperscript{148} Dipchand, Zhang & Ma, supra note 69 at 188.
Chapter 4 The Banking Law Reform in Taiwan

Taiwan has emerged as one of the world’s leading industrialized countries benefited from its tremendous economic success. The size of its domestic financial market is very significant, and it has attracted many world’s leading financial institutions. Foreign banks have established their presence in Taiwan as early as 1959, and the first bank that entered Taiwan’s market was Dai-Ichi Kangyo Bank of Japan. Six years later, Citibank N.A., Bank of America, and Bangkok Bank have also established their branches, followed by American Express Bank Ltd. in 1967, and seven banks in the 1970s. As of December 1995, there are now 38 foreign banks with over 58 branches in Taiwan, with the majority established since 1990. Of all the institutions established in Taiwan, United States financial institutions have the largest presence (about 29 per cent of the total), followed by France (about 13 per cent) and British financial institutions. As of December 1995, Canadian financial institutions had four institutions with six branches in Taiwan. However, prior to 1989, liberalization process on foreign financial institutions’ entrance to Taiwan financial market was slow. It was not until the recent amendments of the Banking Law and relevant regulations did Taiwanese Government granted broader market access and favorable national treatment to the foreign financial institutions. Taiwan has participated in the Uruguay Round as an observer and its anticipation to join and negotiations for the accession to the WTO is high. Ultimately, with

membership to WTO Taiwan will be obliged to open its domestic financial market. While foreign banks today still have not been able to enjoy the full MFN treatment, market access, and national treatment, Taiwan is currently under tremendous pressure to open up its current financial markets much further.

I. Historical Review

Before we compare the regulatory constraints for foreign banks in Taiwan and the provisions of GATS in banking sectors, it will be helpful to briefly discuss the Banking Law, the financial system and financial institutions of Taiwan.

A. Banking Law and Past Reforms

1. Past Reforms

The Banking Law of Republic of China was promulgated on March 28, 1931 in China and it had been amended 12 times since 1931. The original Banking Law contained 51 articles and it lasted for 16 years. On 1947, this Banking Law was replaced by a newer version which contained 119 articles. On 1949, as Kuomingtang Government moved to

Taiwan,\textsuperscript{151} the Banking Law policy and reform were also implemented in Taiwan. During 1947 to 1975, the Banking Law was amended twice yet the whole system and the main content remained the same. The most notable substantive amendments were made on July 1975. In 1975, of the 119 articles in the old Banking Law, 31 articles were deleted, 2 articles retained, and 86 articles amended. After this amendment, the entire 140 articles were organized into 9 chapters.

Chapter One  the General Provision;
Chapter Two  the Establishment of the Bank;
Chapter Three  the Commercial Bank;
Chapter Four  the Saving Bank;
Chapter Five  the Specialized Bank;
Chapter Six  the Trust and Investment Company;
Chapter Seven  the Foreign Bank;
Chapter Eight  the Punishment;
Chapter Nine  the Annexes.

\textsuperscript{151} For most of modern history, Taiwan was known in the West as Formosa, a name meaning "beautiful island" that was given to it by Portuguese sailors. After being ruled by mainland China dynasties for more than 400 years, Taiwan was invaded alternately by Dutch and Spaniards during the 17th century. By the end of the century, however, it was reverted to Chinese rule. In 1895, after China lost the Sino-Japanese war, Taiwan was ceded to Japan. The Japanese ruled the island for 50 years - until the end of World War II. Following the Communist takeover the mainland in 1949, the leader of the Chinese Nationalist Party (known as the Kuomingtang), Chiang Kai-shek transplanted his government to Taiwan's capital, Taipei, Taiwan.
A “bank” is broadly defined under the Banking Law to be a legal person engaged in the banking business and organized and registered under Banking Law. The specific banking powers of a particular banking institution will depend upon the type of such institution, and will have to be set forth in its banking license. The foreign exchange business is prohibited unless the approval of the Central Bank of China (CBC) is obtained to act as appointed banks. According to Article 20 of the 1975 Banking Law, banks are classified into four groups: the Commercial Bank, the Saving Bank, the Specialized Bank, and the Trust and Investment Company. The major functions of the domestic commercial banks are the processing of short-term loans and checking deposits. Commercial banks are subject to certain operating restrictions such as reserve ratio on medium-term credit facilities, and investment in real property disposal of collateral. Taiwan has no savings banks as separate financial institutions, despite the fact that the Banking Law determines the conditions for their creation and the scope of their business activities. Commercial banks, however, do have savings departments that de jure engage in savings bank business activities, since these are permitted under the Banking Law for commercial, specialized, and foreign commercial banks. Moreover, the postal savings system functions as a de facto savings bank. Specialized banks provide medium- and long-term industrial, agricultural, trade, real-estate, and medium and small business credit. Investment and trust companies (ITCs) in Taiwan are hybrid financial institutions. While they have became de facto commercial banks, given permissive

153 Banking Law, Article 4.
154 Banking Law, Article 4.
155 Banking Law, Articles 70 and 71.
156 Banking Law, Articles 72-76.
123
regulatory discretion exercised by the Ministry of Finance (MOF), the ITCs are organized under the Banking Law as financial institutions that act as trustees to receive, manage and operate trust funds and property, and that act as investment intermediaries to engage in specific investments related to the capital market. As a result, while the ITCs are not true depository institutions, the trust funds received by these companies possess certain characteristics of deposits.

During the past twenty years, there were eight amendments with no fundamental changes in the basic structure and principles of the 1975 Banking Law. The only substantial amendment in the past twenty years was the amendment of 1989, which we will discuss in the following paragraph.

2. 1989 Banking Law Amendment

On July 19, 1989, substantive amendments were made to the Banking Law (hereinafter 1989 Banking Law), affecting more than one-quarter of the provisions of its predecessor. The 1989 Banking Law reflected a number of major thrusts in regulating the banking industry in Taiwan in order to make it more competitive and secure. Moreover, it reflected Taiwan’s needs to modernize its financial system in order to meet the needs of its growing economy. There was a legal, above-the-ground banking industry dominated by the

157 Banking Law, Articles 87-90.
158 Banking Law, Article 100.
159 Semkow, supra note 149 at 32-40.
government-owned enterprises. There was also an illegal, underground banking industry that supplied funds to less creditworthy enterprises. During the period of 1964 to 1986, 63.38% of capital supply came from formal financial institutions and 36.62% came from illegal underground financial industry. \(^{160}\) Several reasons underlying the existence of such a large illegal underground financial industry. The first one was the opportunity of earning high profits, since (1) The interest rate was restricted, (2) The domestic banks are primarily owned by the central, provincial and municipal government of Taiwan, and they were run more like bureaucracies than competitive financial institutions. (3) The establishment of new financial institutions or branches were restricted. (4) The financial powers of the banks were restricted. Under insufficient competition, the financial institutions' functions and transactions between the users and suppliers of capital could not be fully performed, hence the services provided by the financial institutions do not meet the demand of the society. \(^{161}\)

On one hand, banks always supplied funds to the clients with as much land and fixed assets to pledge as security. The less creditworthy capital users must rely on high interest illegal underground banking industry in order to get the capital resources they need. On the other hand, some capital suppliers prefer to grant credit through underground financial industry to earn interests, which were much higher than formal financial industry could provide. \(^{162}\) In fact, the "underground investment companies" could present the next financial

\(^{160}\) See Shou Hsyin Liu, "The Development and Discussion of Taiwan’s Financial Institutions (Ti Wan Chyin Jweng Chi Kou T Fa Chan U Chyan Tao)" in Y.S Lee ed., The Development of Taiwan’s Service Industry (Ti Wan Fw W Yeh Fa Chan Lwen Wen Chi) (Taiwan: Lyanching 1994) 253-273, at 264.


\(^{162}\) Semkow, supra note 149 at 100-102.
crisis. Underground investment companies have been using pyramid schemes to attract idle funds, taking advantage of the excess liquidity in the domestic financial system and the conservatism and backwardness of government-controlled banks. The fact that such underground investment companies have successfully perpetrated their existence should be given legal recognition. Therefore, an important policy of the 1989 amendment was to eliminate or deter underground investment companies taking public's fund under a pyramid scheme at usurious interest or pay-back rate. Moreover, another important issue of the 1989 amendment was to open up the banking sector. The market opening measure should encourage investors to shy away form such illegal schemes gradually. Accordingly, the excess funds could be channeled into regular banking institutions.\(^{163}\) As such, the 1989 amendment focused on the competitive deregulation and prudential regulation.

Under competitive deregulation, the 1989 Banking Law had enhanced competition and growth in the financial banking industry, with areas in.\(^{164}\)

1) Interest Rate Deregulation - The 1989 Banking Law's predecessor allowed the Central Bank of China in Taiwan (CBCT) to determine the maximum rates for various types of deposits, and in conjunction with the Bankers Association, setting the limits for different

\(^{163}\) Lawrence S. Liu, "Brave New World of Financial Reform in Taiwan, The Republic of China - Three Waves of Internationalization and Liberalization and Beyond", Chinese Yearbook of International Law and Affairs 134 at 205.

\(^{164}\) Semkow, supra note 149 at 89.
type of loans.\textsuperscript{165} With the 1989 Banking Law, the reference to the CBCT was deleted, eliminating the CBCT's otherwise latent authority in this area.

2) Banking Entry Deregulation - The most important reform of the 1989 amendment is to permit privately owned commercial banks to be set up. During the past 40 years, Taiwan's banking industry was an industry dominated by publicly owned and controlled banks. In order to make the financial market more competitive, many new privately owned banks were created and some of the large, government majority-controlled commercial banks were privatized.

3) Operational Deregulation and Financial Products Deregulation - The business powers of various banks under the 1989 Banking Law were expanded.

4) Internationalization of the Domestic Banking Industry - Foreign banks had been provided with greater entry and scope of business powers, though not as much as competitive element as the national treatment might otherwise entail.

Under prudential regulation, the 1989 Banking Law enhanced the safety and stability of the banking industry on Taiwan with a number of measures. First, it regulated the underground financial industry, which had otherwise escaped the legislative purview of its

\textsuperscript{165} Banking Law, Article 41, as amended.
Second, the Law sought to eliminate the narrow ownership of the new banks in order to prevent conflicts of interest and abusive self-dealing that might be occasioned for its own improper financial gain. Third, to insure sound financial practice, the Law requires the ratio of each bank’s capital to its risk assets to be not less than eight percent, unless approved by the MOF. Fourth, the Law provided a number of miscellaneous provisions, by which to regulate and improve different aspects of the banking industry, ranging from corporate governance improvement through the qualifications of bank executives and reorganizing the winding-down failing banks.

3. 1992 Banking Law Amendment

On October 30, 1992, the Banking Law was amended and promulgated again. However, regarding the entry and business opportunity of foreign banks, no substantial changes was made.

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166 Banking Law, Articles 29, 29-1 & 125, as amended. The 1989 amendment attempts to provide for clearer definitions of deposit taking activities to deal with illegal underground financial industry. Article 29-1 was added to define deposit taking activities such as receiving or soliciting funds form a group of persons or general public under such pretexts as loans or investments - or from shareholders in exchange for payments or promises to pay bonuses, interest, dividends, or other remunerations whose amount is disproportionate to the principal amount. Article 29 was also amended to provide for the investigatory powers of the MOF, the MOEA and the district prosecutors. It also provides for the organizers' joint and several civil liability to the investors. See Lawrence S. Liu, supra note 163 at 205-206.

167 Banking Law, Articles 44 and 19, as amended.

168 Semkow, supra note 149 at 103.
B. The Financial Institutions of Taiwan

The development of Taiwan's financial institutions during 1945 till 1988 can be categorized into three stages. The first stage was from the end of 1945 to the end of 1949. During this stage, KMT government allowed Taiwan District to establish its own local currency system and reorganized its old Japanese financial institutions. There was still no close link to the financial institutions of China. The second stage of financial development in Taiwan was from the beginning of 1950 to the end of 1959. During this stage, several financial institutions which were established in China were moved to Taiwan. They were not in operation except the Central Trust of China. Compare to the first stage, there is no fundamental change to its financial system. The third stage started from 1959. In order to promote the economic reforms, several financial institutions were established or reestablished. However, with the establishment of these financial institutions, numbers of the branches and their business scope are restricted. During this stage, Taiwan's domestic financial institutions were primarily owned by the government (see Table 25 & 26), and they were run more like bureaucracies than competitive financial institutions. Furthermore, the development was very slow (see Table 27).\(^{169}\) After the 1989 Banking Law deregulation, only seventeen new domestic banks were established and a few government-owned banks were privatized.

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\(^{169}\) See Shou Hsyin Liu, supra note 160 at 253-274.
Table 25 The Numbers of Private-owned Banks and State-owned Banks, December 1986

<table>
<thead>
<tr>
<th>Numbers</th>
<th>Private owned banks</th>
<th>State-owned banks</th>
<th>Private owned / State owned</th>
</tr>
</thead>
<tbody>
<tr>
<td>Domestic banks (excluding Medium Business Banks)</td>
<td>4 (48)</td>
<td>12 (585)</td>
<td>4/12 (48/585)</td>
</tr>
<tr>
<td>Medium business banks</td>
<td>7 (141)</td>
<td>1 (89)</td>
<td>7/1 (141/89)</td>
</tr>
<tr>
<td>Trust &amp; investment co.</td>
<td>6 (32)</td>
<td>2 (5)</td>
<td>6/2 (32/5)</td>
</tr>
<tr>
<td>Total</td>
<td>17 (221)</td>
<td>15 (679)</td>
<td>17/15 (221/679)</td>
</tr>
</tbody>
</table>

Source: Shou Hsyin Liu, "The Development and Discussion of Taiwan's Financial Institutions (Ti Wan Chyin Jweng Chi Kou T Fa Chan U Chyan Tao)" in Y.S Lee ed., The Development of Taiwan's Service Industry (Ti Wan Fw W Yeh Fa Chan Lwen Wen Chi) (Taiwan: LyanChying 1994) at 259.
Note: Figures in parentheses represent the numbers of domestic offices.

Table 26 The Assets of Private-owned Banks and Private-owned Banks, December 1986
(In NT Million Dollars)

<table>
<thead>
<tr>
<th>Asset</th>
<th>Private owned banks</th>
<th>Government owned banks</th>
<th>Private owned / State owned</th>
</tr>
</thead>
<tbody>
<tr>
<td>Domestic banks (excluding Medium Business Banks)</td>
<td>198,303</td>
<td>2,793,797</td>
<td>7.10%</td>
</tr>
<tr>
<td>Medium business banks</td>
<td>116,607</td>
<td>176,966</td>
<td>56.89%</td>
</tr>
<tr>
<td>Trust &amp; investment co.</td>
<td>151,385</td>
<td>23,619</td>
<td>640.95%</td>
</tr>
<tr>
<td>Total</td>
<td>446295</td>
<td>2,994,382</td>
<td>15.57%</td>
</tr>
</tbody>
</table>

Source: Shou Hsyin Liu, "The Development and Discussion of Taiwan's Financial Institutions (Ti Wan Chyin Jweng Chi Kou T Fa Chan U Chyan Tao)" in Y.S Lee ed., The Development of Taiwan's Service Industry (Ti Wan Fw W Yeh Fa Chan Lwen Wen Chi) (Taiwan: LyanChying 1994) at 259.
Table 27 The Number of Financial Institutions

<table>
<thead>
<tr>
<th>year</th>
<th>1961</th>
<th>1971</th>
<th>1981</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Number of financial institutions</strong></td>
<td>Institutions</td>
<td>Branches</td>
<td>Institutions</td>
</tr>
<tr>
<td>Total *</td>
<td>400</td>
<td>1,359 (100%)</td>
<td>427</td>
</tr>
<tr>
<td>Deposit Money Bank</td>
<td>390</td>
<td>883 (64.97%)</td>
<td>399</td>
</tr>
<tr>
<td>Domestic Bank</td>
<td>10</td>
<td>260 (19.13%)</td>
<td>13</td>
</tr>
<tr>
<td>The Local Branches of Foreign Banks</td>
<td>1</td>
<td>1 (0.74%)</td>
<td>7</td>
</tr>
<tr>
<td>Medium Business Banks</td>
<td>8</td>
<td>84 (6.18%)</td>
<td>8</td>
</tr>
<tr>
<td>Credit Cooperative Associations</td>
<td>81</td>
<td>153 (11.26%)</td>
<td>75</td>
</tr>
<tr>
<td>Credit Departments of Farmers’ &amp; Fishermen’s Associations</td>
<td>290</td>
<td>385 (28.33%)</td>
<td>296</td>
</tr>
<tr>
<td>Other Financial Institutions</td>
<td>10</td>
<td>476 (35.03%)</td>
<td>28</td>
</tr>
<tr>
<td>Investment and Trust Companies</td>
<td>1</td>
<td>1 (0.74%)</td>
<td>6</td>
</tr>
<tr>
<td>The Directorate General of Postal Remittances and Savings Banks</td>
<td>1</td>
<td>451 (33.19%)</td>
<td>1</td>
</tr>
<tr>
<td>Life Insurance Companies</td>
<td>1</td>
<td>6 (0.44%)</td>
<td>8</td>
</tr>
<tr>
<td>Property and Casualty Insurance Companies</td>
<td>7</td>
<td>18 (1.32%)</td>
<td>13</td>
</tr>
</tbody>
</table>


Note: * The Central Bank and the Central Reinsurance Company were not included.
The Financial Statistics Monthly at present classifies the financial institutions as either monetary institutions or other financial institutions according to whether or not they are able to create money, as shown on figure 4.¹⁷⁰

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If we refer to the Yearly Report of the Business of Financial Institutions, the financial institutions can be classified into four groups: (1) Banks, (2) Cooperative Associations, (3) Insurance Companies, (4) Bills Finance Companies and Securities Finance Companies, as shown on figure 5.  

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Figure 5  Taiwan's Financial Institutions


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171 Y. Lin, “The Unfair Competition of Taiwan’s Financial Institutions (Ti Wan Ti Chyu Chyin Jweng Chi Kou T Pw Pying Teng Chying Cheng)” in Y.S. Lee ed., The Development of Taiwan’s Service Industry (Ti Wan Fw W Yeh Fa Chan Lwen Wen Chi) (Taiwan: LyanChying 1994) at 212.
C. Domestic Banks

Prior to the bank entry deregulation by 1989 Banking Law and relevant regulations, there were only twenty-four domestic banks and medium business banks in the market. Five of the twenty-four banks were established in Mainland China prior to 1950, and fourteen banks were established in Taiwan under Japanese occupation as Japanese banks. The banks that were established in the wake of these repatriations and reorganizations of Mainland China banks and Japanese banks, are the China Export & Import Bank established on 11 January 1979, the City Bank of Taipei established on 21 April 1969, the City Bank of Kaohsiung established on 30 January 1982, the United World Chinese Commercial Bank established on 20 May 1975, and finally the Shanghai Commercial & Saving Bank Corporation established on 30 June 1975.\(^{172}\)

On 26 June 1991, the MOF approved fifteen applications for new domestic banks. In addition, the MOF conducted a second and third round of applications during 1991 to 1992. Within those two years 17 new banks were established. The presence of these new banks had lead to considerable competition in the market(see table 28). The privatization of the state owned banks had also increased the competitiveness of the banking industry.

\(^{172}\) Semkow, supra note 149 at 96.
### Table 28  Branch Numbers of Domestic Banks

<table>
<thead>
<tr>
<th>Domestic Bank</th>
<th>Branch No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bank of Taiwan</td>
<td>93</td>
</tr>
<tr>
<td>Taipei Bank</td>
<td>58</td>
</tr>
<tr>
<td>ChiaoTung Bank</td>
<td>31</td>
</tr>
<tr>
<td>The Farmers Bank of China</td>
<td>64</td>
</tr>
<tr>
<td>Central Trust of China *</td>
<td>17</td>
</tr>
<tr>
<td>Land Bank of Taiwan</td>
<td>83</td>
</tr>
<tr>
<td>Taiwan Cooperative Bank</td>
<td>121</td>
</tr>
<tr>
<td>First Commercial Bank</td>
<td>134</td>
</tr>
<tr>
<td>Hua-Nan Commercial Bank</td>
<td>120</td>
</tr>
<tr>
<td>Chang Hwa Bank</td>
<td>133</td>
</tr>
<tr>
<td>The International Commercial Bank of China</td>
<td>51</td>
</tr>
<tr>
<td>Overseas Chinese Bank</td>
<td>42</td>
</tr>
<tr>
<td>The Shanghai Commercial &amp; Saving Bank</td>
<td>34</td>
</tr>
<tr>
<td>United World Chinese Commercial Bank</td>
<td>48</td>
</tr>
<tr>
<td>The Export-Import Bank of the ROC</td>
<td>2</td>
</tr>
<tr>
<td>Bank of Kaohsiung</td>
<td>29</td>
</tr>
<tr>
<td>Grand Commercial Bank **</td>
<td>19</td>
</tr>
<tr>
<td>Dah An Commercial Bank **</td>
<td>16</td>
</tr>
<tr>
<td>Union Bank of Taiwan **</td>
<td>18</td>
</tr>
<tr>
<td>Chinese Bank **</td>
<td>16</td>
</tr>
<tr>
<td>Bank SinoPac **</td>
<td>17</td>
</tr>
<tr>
<td>Asia Pacific Bank **</td>
<td>20</td>
</tr>
<tr>
<td>E. Sun Commercial Bank **</td>
<td>19</td>
</tr>
<tr>
<td>Cosmos Bank **</td>
<td>18</td>
</tr>
<tr>
<td>Pan Asia Bank **</td>
<td>16</td>
</tr>
<tr>
<td>Chung Shing Bank **</td>
<td>16</td>
</tr>
<tr>
<td>Taishin International Bank **</td>
<td>16</td>
</tr>
<tr>
<td>Far Eastern International Bank **</td>
<td>16</td>
</tr>
<tr>
<td>Fubon Commercial Bank **</td>
<td>18</td>
</tr>
<tr>
<td>Our Commercial Banking Corporation **</td>
<td>20</td>
</tr>
<tr>
<td>Baodao Commercial Bank **</td>
<td>13</td>
</tr>
<tr>
<td>Chinaturst Commercial Bank **</td>
<td>29</td>
</tr>
<tr>
<td>Entie Commercial Bank **</td>
<td>13</td>
</tr>
<tr>
<td>Chinon Commercial Bank **</td>
<td>18</td>
</tr>
<tr>
<td>** Sub Total</td>
<td>1378</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Medium Business Banks</th>
<th>Branch No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Taiwan Business Bank</td>
<td>112</td>
</tr>
<tr>
<td>Taipei Business Bank</td>
<td>67</td>
</tr>
<tr>
<td>Hsinchu Bank</td>
<td>58</td>
</tr>
<tr>
<td>Taichung Business Bank</td>
<td>24</td>
</tr>
<tr>
<td>Tainan Business Bank</td>
<td>51</td>
</tr>
<tr>
<td>Kaohsiung Business Bank</td>
<td>52</td>
</tr>
<tr>
<td>Hualien Business Bank</td>
<td>24</td>
</tr>
<tr>
<td>Taitung Business Bank</td>
<td>21</td>
</tr>
<tr>
<td>** Sub Total</td>
<td>448</td>
</tr>
<tr>
<td>** Total</td>
<td>1826</td>
</tr>
</tbody>
</table>


Note:  
* Central Trust of China was classified as the Domestic banks in the Financial Statistic Monthly.  
II. Foreign Banks - Current Provisions and GATS Principles

A. Trade in Services and Trade in Banking Services

As discussed early, according to GATS, trade in services included 4 different modes: movement of consumer, movement of supplier, cross-border supply, and commercial presence. Note that the movement of consumer, movement of supplier and cross-border supply are excluded from this analysis. This section seeks to analysis the market access and business scope that foreign banks can enjoy in Taiwan.

On February 5, 1994, “the Republic of China, Trade Law” (Trade Law) was promulgated. Trade Law contains five chapters: General Provisions, Export and Import, Promotion of Trade, Punishment and Supplementary Provisions. Trade Law recognizes the desirability of trade liberalization. However, unlike the Foreign Trade Law of China, “Trade in Services” was not included in Trade Law. According to Article 2, the “trade” means the import and export of goods and intellectual properties. Therefore, the trade in banking services shall refer to relevant laws, regulations and administrative guidelines on banking services sector directly. As such, the entry conditions and business activities of foreign banks shall refer to the Company Law, Banking Law, Guidelines for Screening and Approval of Establishment of Branches and Representative Offices.
B. Foreign Banks

Two main regulations, the ‘Banking Law’ and the ‘Guidelines for Screening and Approval of Establishment of Branches and Representative Offices of Foreign Banks’, screen the establishment of foreign banks and define their business scope. The Banking Law and Guidelines contains several restrictions on the establishment and business scope of foreign banks which take the form of discriminatory barriers to entry and discriminatory operation constraints.

1. Entry Requirement

Foreign financial institutions’ entry to Taiwan’s domestic banking market has been historically under strict control. First, in Taiwan, the corporate statue of foreign bank is limited. Their corporate statue is ‘branch’, not ‘subsidiary’. According to Article 116 of Banking Law, foreign bank is defined as “a bank organized and registered under the Laws of a foreign country whose branch is registered pursuant to this Law (Banking Law) and Company Law to operate within the territory of Republic of China (Taiwan).” A branch is a legal entity of the home country and is treated as an integral part of the parent bank. A subsidiary is a legal entity of the host country and is a separate corporation wholly or majority owned by the transnational bank parents. The difference matters because of regulatory treatment will be different. Without a separate corporate existence, a foreign bank in Taiwan is still subject to
the domestic laws of its home country. Other than 'branches,” Taiwanese government permits ‘representative offices.” The representative office is defined as the office established in Taiwan by a foreign bank pursuant to Article 386 of Company Law. The representative office shall only engage in collection of commercial information and business communication. The representative office can not engage in the business only open to branches.¹⁷³

Secondly, the entry restrictions typically specify minimum capital requirements, management integrity, and competence. Under current provisions, any foreign bank which meets the following conditions may apply for the establishment of a branch.¹⁷⁴

1) Not committing major violation of relevant laws and regulations or having bad records in the last five years;

2) Having been ranked among the top 500 banks of the whole world in terms of capital or assets in the year prior to application, or having transacted with the banks and major enterprises of Taiwan (ROC) in an aggregate amount of not less than US$ 1 billion in the three calendar years prior to application, among which US$ 180,000,000 shall have been granted as medium or long term credits.

3) Having engaged in international banking business, with excellent credit and sound financial status, the ratio of self-owned capital and assets with risky nature meeting the MOF

¹⁷⁴ 1994 Guidelines, Article 2.
criteria, and having been approved by the financial authorities of the home country to set up a branch in the ROC and cooperate with the ROC by sharing the obligation of combined banking supervision and management;

4) The managerial personnel to be appointed having professional financial expertise and experience in operating international banking business operation;

5) The financial authorities of the home country and applicant's head office being capable of overall supervision and management of its overseas branch;

6) No other facts showing that sound operation of the business may be adversely affected.

The foreign bank which has been approved to establish a branch shall allocate a minimum working capital in the amount of NT$ 150,000,000. For each approved additional branch, the foreign bank shall allocate additional working capital in the amount of NT$ 120,000,000. The said capital shall be entered into the account of the branch established at the time of recognition of the branch designed by the MOF. ¹⁷⁵

2. Operational Constraints

Once foreign banks start to operate in Taiwan, they will face discriminatory operation constrains which occur through: (1) regulations that limit foreign banks' business scope and (2) regulations that affect the number or location of foreign banks.

¹⁷⁵ 1994 Guidelines, Article 9.
a) Business Scope

Prior to 1989 Banking Law, foreign banks only had the authority to provide consumer loans with the power to double the maximum credit line up to NT$ 300 billion. Later the credit lines was raised again to NT$ 500 billion in September 1988. Foreign banks could attract more New-Taiwan-Dollar-dominated deposits to a maximum of 12.5 times the paid-in capital (less retained earnings).

Business scope of foreign banks was expanded considerably under the amendment of Banking Law in July 1989 (hereinafter 1989 Banking Law) and the promulgation of Guidelines for Screening and Approval of Establishment of Branches and Representative Offices of Foreign Banks in April 1990 (hereinafter 1990 Guidelines). Not only could the foreign banks engage in commercial banking, it also had additional powers to act as savings banks and trust and investment companies. Under Article 121 of the 1989 Banking Law, the Ministry of Finance (MOF), upon consultation with the Central Bank of China in Taiwan (CBC), can determine the scope of business powers in which foreign banks can operate within the scope of commercial banks, savings banks, and trust and investment companies. Article

176 Semkow, supra note 149 at 97.
177 See Guidelines for Screening and Approval of Establishment of Branches and Representative Offices of Foreign Banks (Wai Kuo Ying Hang She Li Fen Hang Chi Tai Piao Jen Pan Kung Shih Ch' u shen He Chun Tse) (1985) (ROC Ministry of Finance, Tai Tsai Jung no. 14291); Guidelines for Screening and Approval of Establishment of Branches and Representative Offices of Foreign Banks (Wai Kuo Ying Hang She Li Fen Hang Chi Tai Piao Jen Pan Kung Shih Ch' u shen He Chun Tse) (1986) (ROC Ministry of Finance, Tai Tsai Jung no. 7504401).
178 Guidelines for Screening and Approval of Establishment of Branches and Representative Offices of Foreign Banks (Wai Kuo Ying Hang She Li Fen Hang Chi Tai Piao Jen Pan Kung Shih Ch' u shen He Chun Tse) (1990) (ROC Ministry of Finance, Tai Tsai Jung no. 791256755).
12 of the 1990 Guidelines provided a list of business activities in which foreign banks can engage subject to the approval of the relevant regulators.  

1) Receive checking deposits, demand deposits, time deposits and savings deposits;
2) Discount negotiable instruments and extend loans;
3) Engage in the acceptance of commercial bills;
4) Engage in guarantee services;
5) Issue letters of Credit;
6) Engage in remittances and exchange of foreign currencies;
7) Act as collecting and paying agent;
8) Invest in government bonds, short-term bills, corporate bonds and financial bonds;
9) Undertake underwriting and trading of securities on behalf of its customers;
10) Receive, manage and employ various kinds of trust funds the principal or interest of which is not guaranteed;
11) Act as custodian of securities investment trust funds as entrusted;
12) Act as witness to issuance of bonds and securities;
13) Act as agent for the issuance, registration and transfer of stocks, and for distribution and payment of dividends and Exchange Law.
14) Provide consultation services for stock issuance and subscription;

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179 The regulators are Ministry of Finance of the central government and Department of Finance of a provincial or municipal government. Banking Law, Article 19.
15) Engage in warehousing, custodial and agency services related to any business described above; and

16) Engage in other related business approved by the Ministry of Finance.

Above list provided by Article 12 of 1990 Guidelines expanded the business power of foreign banks on the surface. Actually, the list limited banks' operation power, i.e. foreign banks could not engage in business other than those on the list.

MOF amended the Guidelines for Screening and Approval of Establishment of Branches and Representative Offices again in October 1994. The 1994 Guidelines provided a wider business scope for foreign banks. First, under Article 14 of the 1990 Guidelines, each foreign branch could only attract domestic deposits at a multiple of 15 times their paid-in capital. This restriction limited foreign banks' depository base for the purpose of making loans. Since it did not imposed on domestic banks, Article 14 of 1990 Guidelines was inconsistent with the national treatment principle. In the new 1994 Guideline, above restriction was removed. Second, in the 1994 Guidelines, all the previous restrictions on foreign banks' business activities were removed. Under the Banking Law and the 1994 Guidelines, business scope permitted to be applied by foreign banks for its operation shall be determined by MOF, pursuant to Article 4, Article 117, and Article 121 of the Banking Law.180 Thus, after the application for recognition and registration have been approved and the business license has been obtained, a foreign bank may commence operations within the

180 1994 Guidelines, Article 10.
scope of the Banking Law, in accordance with the category to which it belongs.\textsuperscript{181} Article 121 states that, "the scope of business of a foreign bank shall be prescribed by order of the central competent authority after consultation with the Central Bank of China in accordance with provision of Article 71, Article 78 and the first paragraph of Article 101 herein. Where the scope covers foreign exchanges business, approval shall be sought from the Central Bank of China." As a result, foreign banks can now enjoy the same business power as those of the domestic banks (see Table 29).

\textsuperscript{181} Banking Law, Articles. 4 & 7.
### Table 29  Business Scope of Domestic and Foreign Banks

<table>
<thead>
<tr>
<th>Commercial banks - Art. 71</th>
<th>Saving banks - Art. 78</th>
<th>Trust Investment Co. - Art. 101</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. Receive demand deposits;</td>
<td>2. Receive time deposits;</td>
<td>2. Invest in government bonds, short-term bills, corporate bonds, financial bonds and listed stocks;</td>
</tr>
<tr>
<td>5. Discount negotiable instruments;</td>
<td>5. Extend medium-term loans, long-term loans as well as medium- and long-term loans repayable by installment to enterprises for the purpose of financing construction of commercial and residential buildings;</td>
<td>5. Undertake underwriting and trading of securities on its own behalf or for the account of its customers;</td>
</tr>
<tr>
<td>8. Engage in acceptance of commercial drafts;</td>
<td>8. Discount negotiable instruments;</td>
<td>8. Manage various kinds of properties as entrusted;</td>
</tr>
<tr>
<td>11. Act as a collecting and paying agent;</td>
<td>11. Guarantee issue of corporate bonds;</td>
<td>11. Act as agent for issuance, registration, transfer of securities, and for distribution and payment of dividends and bonuses;</td>
</tr>
<tr>
<td>13. Engage in warehousing, custodial, and agency services related to any business described above; and</td>
<td>13. Underwrite government bonds, treasury bills, corporate bonds, and company stocks;</td>
<td>13. Act as company reorganization supervisor;</td>
</tr>
<tr>
<td>14. Engage in other related business as may be approved by the central competent authority.</td>
<td>14. Engage in domestic and foreign guaranty business approved by the central competent authority;</td>
<td>14. Provide consultation services for security issue and subscription and provide agency services related to any business described above; and,</td>
</tr>
<tr>
<td>15. Engage in warehousing, custodial, and agency services related to any business described above; and</td>
<td>15. Engage in other related business as may be approved by the central competent authority;</td>
<td>15. Engage in other related business as may be approved by the central competent authority.</td>
</tr>
</tbody>
</table>

Source: Compiled by author.
However, foreign banks’ corporate status limits their powers. As we have discussed earlier, a foreign bank’s corporate status is “branch”, not “subsidiary”. A branch is a legal entity of its home country and is treated as an integral part of the parent bank. As a result, foreign banks from “nonuniversal banking regulatory regimes” are at a disadvantage. The reason is that they cannot establish themselves as subsidiaries in Taiwan. Without a separate corporate existence as a “subsidiary” incorporated under the laws of Taiwan, a “branch” in Taiwan is still subject to the domestic laws of its parent bank. For instance, US banks cannot engage in underwriting and dealing of corporate securities in Taiwan because they cannot underwrite and deal corporate securities in the US. In addition, Canadian banks cannot engage in trust banking in Taiwan since they cannot engage in trust banking in Canada. However, Canadian banks can underwrite and deal corporate securities in Taiwan because they are permitted to do so at home. Similar to Canada, US banks can engage in trust banking in Taiwan because they have been permitted to do so in the United States. The only foreign bank that can enjoy national treatment under the newly expanded business powers of banks in Taiwan are those which came from universal banking jurisdictions, such as Germany, England, Netherlands, and Switzerland, where banks are permitted to provide all financial services.

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182 Banking Law, Articles. 116 & 117.
183 See Semkow, supra note 149 at 96-100.
b) Location and Number of Foreign Banks

Prior to 1986, foreign banks could only establish one single branch office in Taipei. With the promulgation of 1986 Guidelines, foreign banks could open a second branch office in Kaohsiung City. The 1990 Guidelines represented an improvement. Under the 1990 Guidelines, a foreign bank that complied with normal entry requirements could establish three branches per year,\textsuperscript{184} included locations other than Taipei and Kaohsiung city, where MOF, by reasons "due to the needs of market conditions", may permit foreign banks to locate elsewhere.\textsuperscript{185} Pursuant to this liberalization, Citibank opened a branch office in December 1990 in Taichung city, augmenting its presence in cities other than Taipei and Kaohsiung.\textsuperscript{186} A step further, with the promulgation of 1994 Guidelines, this limitation was removed. However, the central competent authority can "designate" the locations for foreign banks to meet the needs of international trade and industrial development.\textsuperscript{187} Moreover, in accordance with the Article 124 of Banking Law, where a foreign bank acquires real estate necessary for its business operations, Article 376 of the Company Law shall govern. Thus, a duly-recognized foreign bank may acquire real estate that is required for its business operation. The foreign bank must also obtain the approval of the acquisition from the central competent authority through local competent authority, and this base on the condition that the laws of its

\textsuperscript{184} 1990 Guidelines, Articles 3 & 7.
\textsuperscript{185} 1990 Guidelines Article 8.
\textsuperscript{186} Semkow, supra note 149 at 97.
\textsuperscript{187} Banking Law, Article 118.
home country permit a Taiwan company to have the same right. These regulations have made it more difficult for foreign banks to obtain land for their branches.

As to the establishment of additional branches, there is no restrictions on the number of branch that a foreign can establish. Under current provision, a foreign bank which has established and operated in Taiwan for two years may apply to establish an additional branch. MOF shall screen and examine the application based on its stability of business operation, law-abidance, long-term market strategy, and business plan.\textsuperscript{188} However, MOF may favorably consider the application for the establishment of a branch or additional branches by foreign banks who have concrete contribution or plan for the development of Taiwan regional financial center.\textsuperscript{189}

\begin{flushleft}
\begin{footnotesize}
\textsuperscript{188} 1994 Guidelines 1994, Article 6.
\end{footnotesize}
\end{flushleft}
<table>
<thead>
<tr>
<th>Location</th>
<th>Foreign banks</th>
<th>GATS Principle</th>
</tr>
</thead>
<tbody>
<tr>
<td>Location</td>
<td>Banking Law: Art. 118&lt;br&gt;&quot;To meet the needs of international trade and industrial development, the central competent authority may designate the locations in which foreign banks may be established.&quot;</td>
<td>This provision is not applicable to domestic banks. Since it does not imposed on domestic banks, Article 118 is inconsistent with the national treatment principle</td>
</tr>
<tr>
<td>Land Use</td>
<td>Banking Law: 124&lt;br&gt;Where a foreign bank acquires real estate necessary for its business operations, Article 376 of the Company Law shall govern.&lt;br&gt;Company Law: 376&lt;br&gt;&quot;A duly-recognized foreign company may acquire such real estates may be required for its business operations, provided, however, that prior approval of the acquisition has been obtained from the central competent authority through the local competent authority, and on the condition that the laws of its home country permit a Republic of China (Taiwan) company to have the same right.&quot;</td>
<td>This provision is inconsistent with the MFN treatment.</td>
</tr>
</tbody>
</table>
C. Current Provisions and GATS Principles

1. Foreign Banks in Taiwan

After the liberalization of the 1994 Guideline, foreign banks’ business increased rapidly at the 1994. Compare to 1993, in 1994 the deposit business of foreign bank increased NT$ 39,028 million (30.1%); amount of business loan increased NT$ 17,074 million (6.2%); the security and investment increased NT$ 10,168 million (63.7%); the guarantee loan increased NT$ 2,825 million (2.3%). However, foreign banks market share was still low. At the end of 1994, foreign banks’ market share of deposit business was 1.3%; their market share of loan business was 2.7%; their market share of security and investment business was 1.4%; their market share of guarantee business was 15.1% (see Table 31, 32, 33, and 34).

There are 36 foreign banks with 47 branches by the end of 1991. In 1995 the number of foreign banks had increased to 38 with 58 branches. Of the 58 branches, 41 branches are at Taipei city (see Table 35 and 36). To date, there are 42 domestic national banks (including the medium business banks) with 1,826 branches. Foreign banks do not have extensive branch network and they are at a considerable competitive disadvantage comparing to domestic banks (see Table 37).
### Table 31 Deposit Business of Financial Institutions

(in NT million Dollars)

<table>
<thead>
<tr>
<th></th>
<th>the end of 1994</th>
<th>the end of 1993</th>
<th>compare 94 to 93</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>amount</td>
<td>%</td>
<td>amount</td>
</tr>
<tr>
<td>Foreign Bank</td>
<td>168,780</td>
<td>1.3</td>
<td>129,752</td>
</tr>
<tr>
<td>Domestic bank</td>
<td>10,072,884</td>
<td>75.1</td>
<td>8,874,517</td>
</tr>
<tr>
<td>Trust &amp; Investment Company</td>
<td>301,367</td>
<td>2.2</td>
<td>383,326</td>
</tr>
<tr>
<td>Credit Cooperate</td>
<td>1,650,909</td>
<td>12.3</td>
<td>1,492,846</td>
</tr>
<tr>
<td>Credit Departments of Farmer’s Associations</td>
<td>1,200,178</td>
<td>8.9</td>
<td>1,040,418</td>
</tr>
<tr>
<td>Credit Departments of Fishermen’s Association</td>
<td>21,558</td>
<td>0.2</td>
<td>18,347</td>
</tr>
<tr>
<td>Total</td>
<td>13,415,676</td>
<td>100</td>
<td>11,939,206</td>
</tr>
</tbody>
</table>


### Table 32 Loans Business of Financial Institutions

(in NT million Dollars)

<table>
<thead>
<tr>
<th></th>
<th>The end of 1994</th>
<th>The end of 1993</th>
<th>Compare 94 to 93</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Amount</td>
<td>%</td>
<td>Amount</td>
</tr>
<tr>
<td>Foreign Bank</td>
<td>293,003</td>
<td>2.7</td>
<td>275,929</td>
</tr>
<tr>
<td>Domestic Bank</td>
<td>8,052,734</td>
<td>74.0</td>
<td>6,776,924</td>
</tr>
<tr>
<td>Trust &amp; Investment Company</td>
<td>219,946</td>
<td>2.0</td>
<td>286,256</td>
</tr>
<tr>
<td>Credit Cooperate</td>
<td>1,034,553</td>
<td>9.5</td>
<td>929,793</td>
</tr>
<tr>
<td>Credit Department of Farmer’s Association</td>
<td>802,015</td>
<td>7.4</td>
<td>688,483</td>
</tr>
<tr>
<td>Credit Department of Fishermen’s Association</td>
<td>15,338</td>
<td>0.1</td>
<td>12,999</td>
</tr>
<tr>
<td>Insurance Companies</td>
<td>346,827</td>
<td>3.2</td>
<td>279,204</td>
</tr>
<tr>
<td>Security Finance Company</td>
<td>114,746</td>
<td>1.1</td>
<td>81,185</td>
</tr>
<tr>
<td>Total</td>
<td>10,879,142</td>
<td>100.0</td>
<td>9,330,773</td>
</tr>
</tbody>
</table>

### Table 33: Security and Investment Business of the Financial Institutions

(in NT million Dollars)

<table>
<thead>
<tr>
<th></th>
<th>The end of 1994</th>
<th>The end of 1993</th>
<th>Compare 94 to 93</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Amount</td>
<td>%</td>
<td>Amount</td>
</tr>
<tr>
<td>Foreign Bank</td>
<td>26,127</td>
<td>1.4</td>
<td>15,959</td>
</tr>
<tr>
<td>Domestic Bank</td>
<td>1,321,226</td>
<td>69.6</td>
<td>1,314,916</td>
</tr>
<tr>
<td>Trust &amp; Investment Co.</td>
<td>111,824</td>
<td>5.9</td>
<td>126,487</td>
</tr>
<tr>
<td>Credit Cooperate</td>
<td>19,652</td>
<td>1.0</td>
<td>6,726</td>
</tr>
<tr>
<td>Credit Departments of</td>
<td>2,990</td>
<td>0.2</td>
<td>3,011</td>
</tr>
<tr>
<td>Farmer’s Ass.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Credit departments of</td>
<td>8</td>
<td>-</td>
<td>4</td>
</tr>
<tr>
<td>Fishermen’s Ass.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bill finance Co.</td>
<td>24,093</td>
<td>1.3</td>
<td>11,860</td>
</tr>
<tr>
<td>Insurance Co.</td>
<td>392,256</td>
<td>20.6</td>
<td>340,522</td>
</tr>
<tr>
<td>Securities Finance Co.</td>
<td>691</td>
<td>-</td>
<td>2,135</td>
</tr>
<tr>
<td>Total</td>
<td>1,898,867</td>
<td>100.0</td>
<td>1,821,620</td>
</tr>
</tbody>
</table>


### Table 34: Guarantee Business of the Financial Institutions

(in NT million Dollars)

<table>
<thead>
<tr>
<th></th>
<th>the end of 1994</th>
<th>the end of 1993</th>
<th>Compare 94 to 93</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>amount</td>
<td>%</td>
<td>amount</td>
</tr>
<tr>
<td>Foreign Bank</td>
<td>124,655</td>
<td>15.1</td>
<td>121,830</td>
</tr>
<tr>
<td>Domestic Bank</td>
<td>349,206</td>
<td>42.2</td>
<td>335,072</td>
</tr>
<tr>
<td>Trust &amp; Investment Co.</td>
<td>51,617</td>
<td>6.3</td>
<td>58,838</td>
</tr>
<tr>
<td>Bills Finance Co.</td>
<td>298,540</td>
<td>36.2</td>
<td>265,933</td>
</tr>
<tr>
<td>Total</td>
<td>824,018</td>
<td>100.0</td>
<td>781,673</td>
</tr>
</tbody>
</table>

Table 35 Number of Foreign Bank, December 1991

<table>
<thead>
<tr>
<th>Country</th>
<th>Number of Banks</th>
<th>Total Branches</th>
<th>Taipei Branches</th>
<th>Kaohsung Branches</th>
<th>Else-where</th>
</tr>
</thead>
<tbody>
<tr>
<td>United States</td>
<td>12</td>
<td>15</td>
<td>12</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>France</td>
<td>5</td>
<td>7</td>
<td>5</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>3</td>
<td>4</td>
<td>3</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Canada</td>
<td>3</td>
<td>5</td>
<td>3</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>Netherlands</td>
<td>2</td>
<td>3</td>
<td>2</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Australia</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Singapore</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Hong Kong</td>
<td>1</td>
<td>2</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Thailand</td>
<td>1</td>
<td>2</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Japan</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>The Philippines</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>South Africa</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Germany</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Switzerland</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Total</td>
<td>36</td>
<td>47</td>
<td>36</td>
<td>10</td>
<td>1</td>
</tr>
</tbody>
</table>


Table 36 Number of Foreign Banks, December 1995

<table>
<thead>
<tr>
<th>Country</th>
<th>Number of Banks</th>
<th>Total Branches</th>
<th>Taipei Branches</th>
<th>Kaohsung Branches</th>
<th>Else-where</th>
</tr>
</thead>
<tbody>
<tr>
<td>United States</td>
<td>11</td>
<td>19</td>
<td>14</td>
<td>1</td>
<td>4</td>
</tr>
<tr>
<td>France</td>
<td>5</td>
<td>8</td>
<td>5</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>1</td>
<td>2</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Canada</td>
<td>4</td>
<td>6</td>
<td>4</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>Netherlands</td>
<td>2</td>
<td>3</td>
<td>2</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Australia</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Singapore</td>
<td>3</td>
<td>3</td>
<td>3</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Hong Kong</td>
<td>1</td>
<td>3</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Thailand</td>
<td>1</td>
<td>2</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Japan</td>
<td>3</td>
<td>4</td>
<td>3</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>The Philippines</td>
<td>1</td>
<td>2</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>South Africa</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Germany</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Switzerland</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Belgium</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Total</td>
<td>38</td>
<td>58</td>
<td>41</td>
<td>11</td>
<td>6</td>
</tr>
</tbody>
</table>

Table 37 Branch Number of Financial Institutions in Taiwan (End of January 1996)

<table>
<thead>
<tr>
<th>Financial Institutions</th>
<th>Numbers of institutions</th>
<th>Number of branches</th>
</tr>
</thead>
<tbody>
<tr>
<td>Foreign Banks (branches)</td>
<td>38</td>
<td>58</td>
</tr>
<tr>
<td>Domestic Banks (excluding Medium Business Banks)</td>
<td>34</td>
<td>1361</td>
</tr>
<tr>
<td>Medium Business Banks</td>
<td>8</td>
<td>446</td>
</tr>
<tr>
<td>Credit Co.</td>
<td>73</td>
<td>556</td>
</tr>
<tr>
<td>Credit Department of Farmers' Association</td>
<td>285</td>
<td>886</td>
</tr>
<tr>
<td>Credit Department of Fishermen's Association</td>
<td>27</td>
<td>44</td>
</tr>
<tr>
<td>Investment and Trust Co.</td>
<td>5</td>
<td>49</td>
</tr>
<tr>
<td>The Directorate General of Postal Remittances and Savings Banks</td>
<td>1269 *</td>
<td>246 **</td>
</tr>
<tr>
<td>Life Insurance Companies</td>
<td>29</td>
<td>76</td>
</tr>
</tbody>
</table>


Note: * Figures represent the number of Postal Offices
       ** Figures represent the number of Postal Agencies

2. Current Constrains and Principles of GATS

Prior to 1989, foreign financial institutions' entry to Taiwan's domestic banking market was under strict control. Once they started to operate in Taiwan, they faced several operation constraints. The 1989 Banking Law and the accompanying 1990 Guidelines had improved entry opportunity and business powers of foreign banks in Taiwan. Under 1990 Guidelines, foreign banks still faced several discriminatory operational constraints on their locations, numbers, and business scope. These provisions were inconsistent with the national treatment principle. In the new 1994 Guidelines, those restriction were removed (see Table 38).
Table 38  Operation Constraints in 1990 Guidelines and the Improvement offered by the 1994 Guidelines

<table>
<thead>
<tr>
<th>1990 Guideline</th>
<th>Types of barriers</th>
<th>Violations to the GATS principles</th>
<th>Improvement offered by the 1994 Guideline</th>
</tr>
</thead>
<tbody>
<tr>
<td>Art. 6</td>
<td>Reciprocity</td>
<td>The Most Favored Nation treatment principle discussed in Article 2 of GATS.</td>
<td>According to the Art. 5 of 1994 Guideline, the basis of reciprocity for granting branch or representative status has been widened.</td>
</tr>
<tr>
<td>Art. 7</td>
<td>Intentional Operation Constrains</td>
<td>The national treatment principle discussed in Article 17 of GATS</td>
<td>This restriction has been removed.</td>
</tr>
<tr>
<td>Art. 8</td>
<td>Intentional Operation Constrains</td>
<td>The national treatment principle discussed in Article 17 of GATS</td>
<td>This restriction has been removed.</td>
</tr>
<tr>
<td>Art. 9 Par. 2</td>
<td>Intentional Operation Constrains</td>
<td>The national treatment principle discussed in Article 17 of GATS</td>
<td>This restriction has been removed.</td>
</tr>
<tr>
<td>Art 14</td>
<td>Intentional Operation Constrains</td>
<td>the national treatment principle discussed in Article 17 of GATS</td>
<td>This restriction has been removed.</td>
</tr>
</tbody>
</table>

Source: Composed by the author.
With regard to the business scope, foreign banks are treated the same way as domestic banks are treated. Both foreign and domestic banks can engage in the same business activities. They are subject to same asset-capital ratio and loan limit. Moreover, the supervision of foreign and domestic banks refers to the Chapter 1 of Banking Law (see Table 39). Taiwan government adheres national treatment in the supervision of financial institutions.

With the establishment of 17 new domestic banks, the planned privatization of state-owned commercial banks, the greater entry and presence of foreign banks and the expansion of the business powers of both domestic and foreign banks, the landscape of Taiwan’s financial market was changed. Taiwan has achieved much through its recent and ongoing liberalization, deregulation, and internationalization of its financial markets and institutions, but much more remains to be done. For instance, while foreign banks have enjoyed new entry opportunities and expanded powers after recent reforms, they have not received full most favored nation treatment, market access and national treatment (see Table 40). There is much to be done in upgrading Taiwan’s financial system to make Taiwan a more competitive nation in the global international service trade.
Table 39: Current Provisions of Establishment Requirement, Operational Constraints,
Prudential Regulations for Domestic and Foreign Banks

<table>
<thead>
<tr>
<th>Establishment Requirement</th>
<th>Domestic Banks</th>
<th>Foreign Banks</th>
</tr>
</thead>
<tbody>
<tr>
<td>Banking Law - Chapter 2</td>
<td>1994 Guidelines</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Operational Constraints</th>
<th>Domestic Banks</th>
<th>Foreign Banks</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business activities</td>
<td>Banking Law - Arts. 71, 78 &amp; 101</td>
<td>Banking Law - Arts. 121, 71, 78 &amp; 101</td>
</tr>
<tr>
<td>Asset capital ratio</td>
<td>Banking Law Arts. 42, 43 &amp; 44</td>
<td>Banking Law Arts. 42, 43 &amp; 44</td>
</tr>
<tr>
<td>Loan Limit</td>
<td>Banking Law - Arts. 72 &amp; 82</td>
<td>Banking Law - Arts. 72 &amp; 82</td>
</tr>
<tr>
<td>Requirement for establishing additional branches</td>
<td>Banking Law - Arts. 26 &amp; 57</td>
<td>Banking Law - Arts. 26 &amp; 57</td>
</tr>
<tr>
<td></td>
<td>1994 Guidelines - Art. 9</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Prudential Regulations</th>
<th>Domestic Banks</th>
<th>Foreign Banks</th>
</tr>
</thead>
<tbody>
<tr>
<td>Supervision</td>
<td>Banking Law - Art. 45</td>
<td>Banking Law - Art. 45</td>
</tr>
</tbody>
</table>

Source: Compiled by author.

Table 40: Current Banking Law and 1994 Guidelines and their Violations of the GATS Principles

<table>
<thead>
<tr>
<th>1994 Guideline &amp; Banking Law</th>
<th>Content &amp; the type of barriers</th>
<th>Violations to the GATS principles</th>
</tr>
</thead>
<tbody>
<tr>
<td>Article 5 of 1994 Guideline</td>
<td>(The basis of reciprocity for granting branch or representative status) If the financial authority of a foreign country, under special consideration, permits the Taiwan Banks to establish branches or representative offices in that country based on its agreement with the MOF, the MOF may screen/examine on lenient basis.</td>
<td>The Most Favored Nation treatment principle discussed in Article 2 of GATS.</td>
</tr>
<tr>
<td>Article 124 of Banking Law &amp; Article 376 of the Company Law</td>
<td>(The basis of reciprocity for foreign bank to acquires real estate necessary for its business operations)</td>
<td>The Most Favored Nation treatment principle discussed in Article 2 of GATS.</td>
</tr>
<tr>
<td>Articles 116 &amp; 117 of the Banking Law</td>
<td>(The regulation that limit the ownership of foreign banks) Foreign Bank can only entry into Taiwan as a branch. The corporate status of foreign banks is cannot establish themselves as subsidiaries in Taiwan. As a result, a branch in Taiwan is still subject to the domestic laws of its parent. Thus, the restriction limits the business power of a foreign bank from nonuniversal banking system regimes area.</td>
<td>The Most Favored Nation treatment principle discussed in Article 2 of GATS.</td>
</tr>
<tr>
<td>Article 118 of the Banking Law</td>
<td>(Regulations that affect the locations of foreign banks) Art. 118, “To meet the needs of international trade and industrial development, the central competent authority may designate the locations in which the foreign banks may be established.”</td>
<td>The market access principle discussed in Article 16 of GATS. The national treatment principle discussed in Article 17 of GATS</td>
</tr>
</tbody>
</table>

Source: Compiled by author.
III. Policy Issues for the Future

A. Taiwan’s Reform for its Accession to GATT/WTO and the Establishment of Asia Pacific Regional Operation Center

With a view to promote Taiwan’s accession to the GATT/WTO, it is necessary for legislation to amend the current banking laws in Taiwan in order to expedite and fulfill its future obligation under GATT/WTO. Moreover, with rising costs in labor and production, Taiwan has lost its competitive advantages to other developing nations in Asia and South America and it must find another solution in today’s increasingly competitive global economy. Taiwan will need to extend its marketing niche ever further in today’s competitive world market. In tandem with its accession efforts, Taiwan is taking the necessary steps to transform itself into an Asia-Pacific Regional Operation Center (APROC).\(^{190}\)

With the above goals in mind, the Executive Yuan of the ROC Council for Economic Planning and Development (CEPD), the Ministry of Economic Affairs (MOEA) and the Ministry of Justice (MOJ) had proposed a package of legislative reforms, and it was passed by Executive Yuan on January 5, 1995.\(^{191}\) Under this reform policy, new laws were promulgated and existing laws were amended. The reform policies are summarized as follows:

\(^{190}\)Taiwan, CEPD, The Plan of developing Taiwan into the Asia Pacific Regional Operation Center (Fa Chan Taiwan Cheng Uci Ya Ti Ying Yun Chyung Hsyin Chi Hua) (January 1, 1995) (Executive Meeting Ref. 2414, January 1995) (hereinafter “APROC Plan”).

\(^{191}\)Ibid.
1. The First Priority Legislative Reform

CEPD believes that Taiwan must enter GATT/WTO so it can enjoy the protection of the international economic and trade associations treaties like other countries. This will help Taiwan securing its future economic and trade interest in the long run. In consideration of Taiwan's GATT/WTO entry schedule, the following new laws and amendments, among others, were proposed:

- Amendment to the Statute For Investment by Foreign Nationals
- Amendment to the Statute For Investment By Overseas Chinese
- Amendment to the Organization Law of Ministry of Economic Affairs
- Amendment to the Employment Service Law
- Abolishment of the Statute for Technical Cooperation
• Enactment of the Business Secrecy Law
• Enactment of Integrated Circuit Layout-Design Protection Law
• Amendment to the Copyright Law

In addition, CEPD and MOEA also proposed to enact or amend certain laws, such as the Integrated Circuit Layout Design Protection Law, Business Secrecy Law and Copyright Law within the first priority legislative reform, not only because of their important implications in Taiwan's accession to GATT/WTO but also because of the political pressure from the US Trade Representative (USTR) to apply Special 301 trade sanctions against Taiwan if those laws are not passed. 192

With respect to the operation centers under the initial stage of the Reform, CEPD proposed new laws and amendments to its current laws toward the founding of operations centers, with projects such as the financial center, telecommunications center and media center.

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192 It is the unilateral application of US trade laws. The principle status - Section 301 of the Trade Act of 1974 (as amended) - authorizes the US Trade Representative (USTR) following an investigation to take 'all appropriate and feasible action' (including retaliation) against foreign government practices found to violate US rights under a trade agreement or any practice which is 'unjustifiable, unreasonable, or discriminatory and burdens or restricts United States commerce'. Super 301, reinstated by President Clinton in March 1994 for two years, requires the USTR to identify 'priority' foreign trade practices for Section 301 investigation. In general, trade retaliation may target any goods or sectors, whether or not they are the subject of the investigation. The customary retaliation provided for under Section 301-type laws is a 100 per cent tariff.
2. The Second Priority Legislative Reform

As for the second priority legislative reform, CEPD proposed to promulgate the following laws and amendments (among others) to increase the free flow of capital and information:

- The Foreign Exchange Regulation Law is to be amended to relax the restrictions on inward and outward remittance of foreign exchanges. After the deregulation of foreign exchange control, monitoring and reporting systems will be established. Further, Central Bank of China in Taiwan will be authorized to employ special measures to handle emergency financial and economic situations.
- The Code of Criminal Law is to be amended. New clauses are added to cope with increasing crimes in the technology and computer fields.
- The Code of Civil Procedures is to be amended so that new technology can be used to protect and collect evidence.
- The Documentation Law is to be enacted.
- The Computer Personal Data Protection Law is to be enacted. This follows the international trend towards protecting privacy of personal information.

In addition, like the first priority legislative reform the CEPD proposed to establish the following operations centers: manufacturing center, shipping transportation center and air transportation center. To facilitate the establishment of these operation centers, CEPD has
proposed to amend the Shipping Business Law, the Commercial Harbor law, the Ships Law
and the Civil Air Transportation Law.

B. The Financial Center

I. The Development Model - Complete Opening the Offshore Financial Markets and
Gradually Opening the Domestic Financial Markets

Although Taiwan has strong manufacturing and export industries with a larger
domestic market larger than Hong Kong and Singapore, it is still by nature a relatively small
but open ended market. Taiwan’s trade in goods and trade in services account for 89% of its
GDP. Thus, any large business activities and transactions that involve the exchange rate of
NT dollars in the international monetary market will have a significant impact on Taiwan
economy. Since a large part of Taiwan’s economic growth dependents on its foreign trade, a
negative account situation could act as a severe drag on a rapid expansion of money and
credit, which in turn could lead to inflation. Such inflows will threaten the stability of
Taiwan’ financial markets and its economy as a whole. Therefore, Taiwanese Government
should adopt a different pace of liberalization for on-shore activities as opposed to the pace
adopted for off-shore activities. The short-term objective in the financial center development
plan thus seeks to separate offshore markets from domestic ones, under the principle of
“Completely opening the offshore financial markets and gradually opening the domestic financial markets”.

This, however, does not mean that Taiwan government will focus solely on the development of offshore financial markets. As a matter of fact, the Ministry of Finance and the Central Bank of China have both committed themselves to step up efforts to develop the offshore foreign market, and to (1) increase the international competitiveness of its domestic financial institutions; as well as (2) develop domestic financial markets which includes the foreign exchange, money market, capital market, insurance and future markets; and to (3) gradually liberalize short-term capital movements. 193

2. The Legislative Reform for the establishment of the Financial Center

To establish Taiwan as the regional financial center, CEPD proposed to internationalize hardware, software as well as function of its financial center. It will first improve the general terms for establishing the financial center. Second, develop foreign banking market. Third, provide greater entry for new financial service market. Forth, develop its gold market. Fifth, develop its insurance market. And finally, develop its capital market. In regard to the improvement of the general terms for the development of the financial center, CEPD planed to:

a) Increase the flow of capital

- Foreign Exchange Regulation Law is to be amended to relax the restrictions on inward and outward remittance of foreign exchange. Furthermore, monitoring and reporting systems are to be established after the deregulation of foreign exchange control, and CBCT in Taiwan will be empowered to employ special measures to handle emergency financial and economic situations.

- The deregulation of the restriction on the inward and outward remittance for the foreign enterprises and persons.

- Deregulation of restrictions on the inward and outward remittance for the domestic enterprises and persons.

b) Provide foreign financial banks greater entry and better business opportunities

- Deregulation of restriction on the establishment requirements. Amend the Article 2, Article 9 of the Guidelines for Screening & Approval of Establishment of Branches and Representative Offices of Foreign Banks.

- Deregulation of restriction on the business scope of foreign banks.

- Deregulation of restriction on the location of foreign banks.

c) Amend the relevant Tax Law to comply with the international tax practices.

d) Deregulate restriction on the business power of foreign financial companies.

e) Accelerate the privatization of the government-owned banks.

- Set a time table.

- Enact “The Administration Regulation of the State-Owned Financial Institutions”.
• Encourage the domestic banks to establish the branch abroad.

• Adjust the business scope of different types of banks in the Banking Law. Amend the Banking Law.

f) Deregulation of restriction on the financial transaction between Taiwan and China.

g) Additional training in financial experts.

h) Improvement financial hardware and software technologies.

C. Conclusion

Taiwan is expecting to enter into World Trade Organization. Once Taiwan becomes a WTO Member, it will be bound by General Agreement on Trade in Services. The structure of GATS is quite complicated. First, there are several exceptions to general obligations. MFN treatment is not automatically provided by GATS because some sectors may be exempted from the MFN requirement. In addition, GATS Article 7 creates a balance-of-payments exception. Article 14 provides security exceptions. Second, the specific commitments, market access and national treatment, are not automatically provided under GATS. These concepts will become binding commitments after Taiwan lists them in its schedule. As a result, the extent to which Taiwan’s banking market become open depends upon Taiwan’s commitments.

Taiwan’s economic policy has been moving toward liberalization and internationalization. Calls for creating an international financial center in Taiwan have been
heard since liberalization began. Recently, Taiwan’s Central Bank of China announced ambitious plans to make Taiwan a regional funding center by introducing new financial products, improving the market structure and system, and amending certain business laws. As we have discussed earlier, foreign banks have not received full most favored nation treatment, market access and national treatment (see Table 41). There is much to be done in upgrading its financial system to make Taiwan a more competitive nation in the global international service trade. The APROC reform package provides an improvement. Under the First Priority Legislative Reform, CEPD proposed amend Company Law, Employment Service Law, and Guidelines for Screening & Approval of Establishment of Branches and Representative Offices of Foreign Banks.

1. Company Law

Under the draft amendment, the prevailing reciprocity requirements in connection with the business operation and branch establishment in Taiwan by foreign companies will be abolished based upon the non-discrimination requirement in the General Agreement on Trade in Services.
Table 41  Current Reciprocity Requirements and Improvement offered by the Amendment of Company Law

<table>
<thead>
<tr>
<th>1994 Guideline &amp; Banking Law</th>
<th>Content &amp; the type of barriers</th>
<th>Violations to the GATS principles</th>
<th>Improvement provided by the draft amendment of Company Law</th>
</tr>
</thead>
<tbody>
<tr>
<td>Art. 5 of 1994 Guideline</td>
<td>The basis of reciprocity for granting branches or representative offices status.</td>
<td>Most Favored Nation treatment principle discussed in Article 2 of GATS.</td>
<td>The Prevailing reciprocity requirements in connection with the branch establishment in Taiwan by foreign companies would be abolished.</td>
</tr>
<tr>
<td>Art. 124 of Banking Law &amp; Article 376 of Company Law</td>
<td>The basis of reciprocity for foreign bank to acquire real estate necessary for its business operations.</td>
<td>Most Favored Nation treatment principle discussed in Article 2 of GATS.</td>
<td>The Prevailing reciprocity requirements in connection with the branch establishment in Taiwan by foreign companies would be abolished.</td>
</tr>
</tbody>
</table>

Source: Compiled by author.

2. Employment Service Law

The requirements for alien work permits are additional accidental operational constraints from measures completely irrelevant to the banking sector. Since foreign banks may desire staffs of their own nationality, difficulties in obtaining working permits may limit their ability to train or acquire employees and thus increase their operational costs. As such, this is the market access principles discussed in GATS. The Paragraph 9 under Section B of "Understanding of Commitments in Financial Services" requires each Member to permit personnel of a financial service supplier of any other Member to temporary entry into its territory. 194

194 GATS, Understanding of Commitments in Financial Services, Section B, Paragraph 9. These personnel includes: (1) senior managerial personnel possessing proprietary information essential to the establishment, control and operation of the services of the financial service supplier; and (2) specialists in the operation of the financial service supplier. Besides, subject to the availability of qualified personnel in its territory, each
In Taiwan, the granting of alien working permit is pursuant to Chapter Five of the Employment Service Law. Article 49 of Employment Service Law specifies the maximum length of legal residence in Taiwan for foreign employees. The personnel of a financial service supplier described in Paragraph 9 under Section B of the Understanding fall within the Subparagraphs 1, 2 and 9 of Paragraph 1 under Article 43 of the Employment Service Law. Pursuant to Article 49, they may stay in Taiwan up to two years and may apply for an one year extension.

One of the most important measures to establish Taiwan as the APROC is to grant foreign professionals, managers, and employees easier access to its job market. The amendment to the Employment Service Law is proposed in APROC's First Priority Legislative Reform. The draft amendment proposed to extend the length of stay for those employed under Subparagraphs 1 to 6 and Subparagraph 9 of Paragraph 1, Article 43 for up to three years of legal residency with an one-year extension for each renewal. As a result, the length of legal residency in Taiwan for foreign personnel of any financial service supplier described in Paragraph B.9 is proposed to be extended under the draft amendment of Employment Service Law.

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Member shall permit (1) specialists in computer services, telecommunication services and accounts of the financial service supplier; and (2) actuarial and legal specialists accounts of the financial service supplier to temporary entry into its territory

195 Employment Service Law (Chyu Yeh Fw W Fa) (1992), Article 43, Paragraph 1, Subparagraphs 1, 2, & 9. Those who are employed to work as professionals or in the technical field, as a supervisor in a government approved enterprise invested by overseas Chinese or foreign nationals and jobs with specific nature of which there is a scarce supply of domestic talents.

196 Employment Service Law, Articles 43 & 49.

197 APROC Plan.

With a view to promote Taiwan's accession to the WTO, CEPD proposed to amend Article 2, Article 9 of "Guidelines for Screening & Approval of Establishment of Branches and Representative Offices by Foreign Banks." Moreover, the APROC plans provide foreign banks better business opportunities by the deregulation of restriction on the business scope and location of foreign banks.

Taiwan's economic policy has been moving toward liberalization and internationalization. The recent Banking Law deregulation and the "Plan of Developing Taiwan into the Asia Pacific Regional Operation Center" give evidence of the liberalization policy. Liberalization will continue to create an opener market for foreign banks.
Chapter 5  Conclusion

Similarities and differences exist between China and Taiwan in regards to their banking regulation systems and foreign banking accessibility. One can even trace China’s emulation to Taiwan. Prior to recent liberalization, most domestic banks in Taiwan are states-owned. Foreign banks could only engage in foreign currency business, and their locations are limited to Taipei city. Similar to Taiwan, the overwhelming presence of government is the characteristic of China’s financial institutions. Foreign banks in China can not engage in RMB business. In addition, their locations are limited to Special Economic Zones. China and Taiwan’s approach to law are both fundamentally instrumental and formal. Their financial policies were used primarily not only to achieve social controls, but also to pursue further economic goals. Many financial policies, laws and regulations are replete with vague passage that do not lend predictability or transparency to its regulatory process.

China and Taiwan both has different attitudes toward their financial policy making. China is confirming its commitment to the market economy. China’s recent financial reform tries to establish a workable financial system with an unified open market and orderly competition under close supervision, while Taiwan is trying to establish itself as the Asia-Pacific Region Financial Operation Center. Taiwan’s financial policy is geared toward the process of market liberalization and globalization. Its approach of financial reform is to “Complete opening the offshore banking and gradual opening the domestic banking.” In

198 Potter, supra note 127.
addition, Taiwan needs to be very cautious about its monetary policy reforms, it is a small nation that leaves no room for errors in its regulatory system. On the other hand, China can experiment its financial policies at selected regions such as special economic zones without jeopardizing its entire financial market. Thus, two economies adopted different attitudes toward market liberalization programs.

For some observers, the scope of GATS appears confusing. There are several reasons. First, its framework Agreement is weak and contains fewer obligations intended than its true nature. MFN treatment, market access and national treatment are not automatically provided under GATS. Rather, they become binding commitments only in the services sectors that Members list in their schedules. Second, many important decisions in key areas have not been reached. Article 19 of GATS provides a basis for progressive liberalization through further trade negotiation rounds in the years 1995 to 2000. Thus, progressive liberalization of trade in services does not end with the conclusion of the Uruguay Round. The extent of liberalization depends upon Members’ willingness and commitment to adopt a liberalized approach, especially developing countries who weren’t willing to offer substantial commitments in their banking service sectors. Despite all the noted shortcomings, GATS may be a useful start. GATS provides a body of legally binding multilateral concepts, principles and rules to pursue further progressive liberalization in services sector.

Both Taiwan and China are actively seeking membership into WTO. They are now act as observers of the world trade body and have entered into the final stages of trade negotiations with their contracting members. In the near future, both Taiwan and China will become WTO Members under its full obligation. They will be bounded by the General
Agreement on Trade in Services and consequently open their domestic banking services markets to foreign banks. Thus, GATS provides the impetus for both China and Taiwan to liberalize their domestic banking markets.

Consider China’s outstanding economic performance in the past, there is no doubt that its economy will perform well in the up coming years. Through its reform process, China has learned a lot about the operation of banking in its less developed regions. China’s recent efforts to enter the GATT/WTO will encourage the liberalize of its financial sector. It is expected that China will further develop its financial sector, strengthen its central bank, prevent excessive money supply and accelerate the commercialization of the state thru specialized banks, and finally further develop its capital markets.\(^{199}\) It is not over-optimistic to expect a more open financial market and a better banking system will be established in the near future.

The goals of Taiwan is to become a member of GATT/WTO and establish itself as an Asia-Pacific Regional Operation Center. Taiwan’s legislative reform to meet the obligations of the General Agreement on Trade in Services is a useful start. First, Taiwan can become a better place for international financial business by implementing GATS’ obligation and open up its market. Second, international competition may raise the economic efficiency of Taiwan’s service industries. Third, GATS will provide the body for legally binding multilateral concepts, principles and rules. Specific commitments undertaken by GATS Members will increase Taiwan’s opportunities in imports and exports services providing

\(^{199}\) China Daily Reports (3 October 1995) at 31.
Taiwan the access privilege in other Members’ market. Taiwan is well situated geographically to coordinate trade among China, Southeast Asia, Japan, and North America. Further, many Taiwan industries and companies recently have been investing heavily in China and many Southeast Asia regions. This will ensure Taiwan’s regional role in the emerging Asia-Pacific Ring. In deed, closer financial integration of China, Taiwan and Hong Kong is rapidly emerging. China will become a vital part of Taiwan’s economy if its political and economic reforms continue. Until China and Taiwan’s economic relation dominates their cross-strait ties, can the global benefits of Taiwan’s regional operation center be fully realized.
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