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Remolding China's Iron Rice Bowl: An Opportunity for United States Agricultural Commodities Behind the Great Wall of China

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REMOLDING CHINA'S IRON RICE BOWL: AN OPPORTUNITY FOR UNITED STATES AGRICULTURAL COMMODITIES BEHIND THE GREAT WALL OF CHINA

JOEL B. BLANK*

INTRODUCTION	754
I. BACKGROUND	757
A. CHINA'S COMMODITY INSPECTION LAW PRIOR TO RECENT AMENDMENTS	760
B. CHINA'S WTO ACCESSION	762
1. <i>The U.S./China Bilateral Agreement</i>	764
2. <i>China's Multilateral Negotiations</i>	766
II. ANALYSIS	767
A. CHANGES TO CHINA'S COMMODITY INSPECTION LAW	767
B. IMPACT OF THE U.S./CHINA BILATERAL AGREEMENT	773
C. ECONOMIC IMPACT FOR U.S. COMMODITY EXPORTERS FROM THE BILATERAL AGREEMENT AND MULTILATERAL AGREEMENT	781
D. THE IMPACT OF THE COMMODITY LAW AMENDMENTS AND THE BILATERAL AGREEMENT UPON CHINA	784
III. RECOMMENDATIONS	789
A. CHINA SHOULD REFRAIN FROM IMPLEMENTING	

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ADDITIONAL SAFEGUARD MEASURES	789
B. REFORM INEFFICIENT STATE ENTERPRISES	792
C. CHINA MUST CONTINUE TO ADAPT TO ECONOMIC AND SOCIAL REFORMS	794
D. CHINA MUST TAKE TIME TO IMPLEMENT CHANGES	797
CONCLUSION	800

INTRODUCTION

On December 11, 2001, the World Trade Organization (“WTO”)¹ granted full member status to the People’s Republic of China (“China”).² This marked the culmination of over fifteen years of negotiations between China and the WTO.³ More importantly, this marked the moment when the WTO became a “world” trade organization in the real sense of the word.⁴ A “world” trade

1. Marrakesh Agreement Establishing the World Trade Organization, Legal Instruments - Results of the Uruguay Round vol. 1, 33 I.L.M. 1144 (1994) [hereinafter WTO].

2. See *Members and Observers* (listing the members of the WTO), at http://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm (last visited Nov. 19, 2002). The site divides WTO membership into member and observer status. *Id.* The site also lists the date of membership for full member countries. *Id.*; see also *Membership, Alliances and Bureaucracy* (describing that a country attains member status when it formally is formally into the WTO), at http://www.wto.org/english/thewto_e/whatis_e/tif_e/org3_e.htm#join (last visited Nov. 19, 2002). A country negotiating membership into the WTO remains an observer until it completes all negotiations and the WTO formally extends a membership invitation to the country. *Id.*

3. See Anyuan Yuan, *China's Entry into the WTO: Impact on China's Regulating Regime of Foreign Direct Investment*, 35 INT'L LAW. 195, 196 (2001) (explaining that China first notified the General Agreement on Tariffs and Trade (“GATT”) partners of its desire to re-enter the agreement in 1986). It was not until 1994 that China began its massive campaign to enter into GATT as a full member. *Id.*; see also discussion *infra* Part I (describing China’s accession process, including bilateral agreements between China and individual member countries, as well as China’s multilateral negotiations with the WTO leading to China’s protocol of accession). See generally General Agreement on Tariffs and Trade, Oct. 30, 1947, 61 Stat. A-11, 55 U.N.T.S. 194 [hereinafter GATT] (outlining the purpose of the national treatment pillar), available at http://www.wto.org/english/docs_e/legal_e/gatt47.pdf (last visited Nov. 19, 2002).

4. See David Blumental, “Reform” or “Opening”? *Reform of China's State-Owned Enterprises and WTO Accession—The Dilemma of Applying GATT to Marketizing Economies*, 16 UCLA PAC. BASIN L.J. 198, 204-05 (1998) (stating that a world trade organization without China is a contradiction in terms).

organization that excluded a country with one of the world's highest population concentrations and one of the largest domestic markets was a contradiction in terms.⁵ China's accession into the WTO opens the door to one of the largest markets in the world, a market of nearly 1.3 billion people.⁶

WTO members can look forward to greater access to China's markets through fewer trade barriers.⁷ Increased access to China's markets will take place through reduction of obvious barriers to trade, such as tariffs and quotas, as well as a reduction in less evident barriers, such as revising and publishing pertinent laws, enforcing intellectual property laws, changing inspection and licensing requirements for imports and exports, and promising uniform application of laws for domestic and foreign products.⁸ China's open domestic markets after WTO accession hold great opportunity for WTO members, including the United States.⁹

5. See Chengfei Ding, *The Protection For New Plant Varieties of American Businesses in China After China Enters the WTO*, 6 DRAKE J. AGRIC. L. 333, 335 (2001) (noting that the WTO cannot be considered as a global organization without China, a country with one-fifth of the world's population and the world's second largest population).

6. See *Encyclopedia: China* (stating numerous statistics on China, including an estimated population of 1,284,303,705), at <http://www.infoplease.com/ipa/A0107411.html> (last visited Nov. 19, 2002); see also Brent T. Yonehara, *Enter the Dragon: China's WTO Accession, Film Piracy and Prospects for Enforcement of Copyright Laws*, 12 DEPAUL-LCA J. ART & ENT. L. & POL'Y. 63, 63-64 (2002) (estimating China's population at nearly 1.3 billion).

7. See discussion *infra* Part I (detailing general WTO requirements and China's specific agreements).

8. See *China Passes Amendments to Import/Export Inspection Law*, ASIA PULSE, Apr. 29, 2002 (affirming China's initiative to uniformly apply China's commodity inspection law), available at 2002 WL 19015671 ; see also Yonehara, *supra* note 6, at 65 (explaining steps China took to improve intellectual property protections); Catherine R. Field, *Status of the Negotiations on China's Accession to the World Trade Organization*, 817 PLI/COMM. 7, 22-23 (2001) (noting China's recognition that numerous laws need revision and publication).

9. See Brad L. Bacon, *The People's Republic of China and the World Trade Organization: Anticipating a United States Congressional Dilemma*, 9 MINN. J. GLOBAL TRADE 369, 387-88 (2000) (discussing the benefits of China's accession). China's accession holds benefits for all WTO members by promoting fair trade and establishing a dispute resolution mechanism by which all member countries abide. *Id.* China's accession holds numerous specific benefits for the United States as

This comment discusses China's WTO accession, specifically focusing on the U.S./China bilateral negotiations relating to treatment of agricultural products. It also addresses the commitments China made to bring the country into compliance with WTO regulations relating to national treatment and discrimination against foreign products.¹⁰ This comment argues that the Chinese government must continue to make changes to bring China in line with WTO obligations, but it must do so in a manner that will avoid any detrimental impact on domestic companies and individuals.¹¹ Part I provides a brief synthesis of the old commodity inspection law.¹² Part I also gives a brief background on China's accession process, including the 1999 bilateral agreement with the United States.¹³ Then, Part I briefly discusses China's protocol of accession and China's promises with all WTO members.¹⁴

Part II examines the changes China has made since its acceptance into the WTO, including an in-depth analysis of China's commodity inspection law after WTO accession.¹⁵ Part II also examines the impact of the U.S./China bilateral agreement on agricultural commodities.¹⁶ This section will analyze what the changes in this

well. *Id.*; see also Raj Bhala, *Enter the Dragon: An Essay on China's WTO Accession Saga*, 15 AM. U. INT'L L. REV. 1469, 1511-19 (2000) (outlining the specific economic and political benefits received by the United States through bilateral negotiations with China).

10. See discussion *infra* Part I.B (discussing the long process of U.S./China negotiations that finally led to an agreement).

11. See discussion *infra* Part III.A-D (arguing that China must reform its domestic economy and social structure, carefully avoiding risks involved with reforms).

12. See discussion *infra* Part I.C (noting the major problems addressed in China's protocol of accession).

13. See discussion *infra* Part I.A-C (outlining the accession process, specifically focusing on China's numerous attempts to finish bilateral negotiations with the United States and multilateral negotiations with the WTO).

14. See discussion *infra* Part I.C (explaining the multilateral negotiations step of WTO accession and China's major problems identified within the protocol).

15. See discussion *infra* Part II.A (analyzing China's amended commodity inspection law).

16. See discussion *infra* Part II.B (discussing the commitments China made in the bilateral agreement, focusing specifically on promises relating to the agriculture industry).

law, as well as promises from the U.S./China bilateral agreement, mean to U.S. commodity exporters.¹⁷ Finally, this comment will recommend that China should adapt slowly to WTO requirements, but refrain from implementing additional safeguard measures while implementing those changes.¹⁸ While implementing reforms, China should focus on avoiding increasing unemployment, social unrest, and detrimental impact on domestic companies struggling to handle the increased competition.¹⁹

I. BACKGROUND

China's entry into the WTO means an overhaul of a large majority of China's legal, economic, and social systems.²⁰ China began this process in 2001 by discussing thirty new laws, passing sixteen of which help bring China into compliance with WTO membership.²¹ Although this was a step in the right direction, it was hardly adequate to address China's necessary legal changes.²² Not only must the

17. See discussion *infra* Part II.C (outlining the economic benefits U.S. commodity exporters will realize over the next few years).

18. See discussion *infra* Part III.A-D (recommending that China implement its obligations over time in order to slow the impact of increased levels of commodities).

19. See discussion *infra* Part III.A-D (arguing that China should focus on meeting WTO obligations, but not lose focus on protecting its domestic economy and society).

20. See *WTO Entry Calls for Reform*, CHINA DAILY, Jan. 12, 2001 (reporting that, although Chinese companies and enterprises see a great advantage to WTO membership, the government must face the difficult task of adapting to WTO rules that have economic and other impacts), available at http://search.chinadaily.com.cn/isearch/i_textinfo.exe?dbname=cndy_printedition&listid=16270&selectword-WTO%20TRADE%20LAW (last visited Nov. 19, 2002).

21. See Mark O'Neill, *Enforcement of Legislation Inadequate and Pace of Drafting Bills Too Slow, Says Congress Chief, Make Laws Stick, Says Li Peng*, S. CHINA MORNING POST, Mar. 10, 2002 (explaining that the work of China's legislature was inadequate, despite passing sixteen new laws intended to bring China into compliance with WTO rules), available at 2002 WL 15004787.

22. See *id.* (noting that China's progress did not meet its obligations due to inadequate research and discussion of the controversial issues); see also *China Amends Laws to Prepare for WTO Entry*, BBC MONITORING, Mar. 4, 2001 (stating that, after a preliminary review, China discovered more than 140 foreign trade

Chinese government focus on legal and economic change, but it must also deal with changing the cultural backbone of Chinese society.²³

Chinese culture is not founded upon the WTO's principle of a "rule of law,"²⁴ rather, it is founded upon a "rule by people" principle.²⁵ Confucian ideologies shaped Chinese culture, creating a society where the benefit of society rules over the benefit of the individual and the society disfavors the rule of law.²⁶ The Chinese favor the concept of *li*,²⁷ stability through interaction, over the penal concept of *fa*,²⁸ stability through punishment.

WTO membership also means a revision of China's current state-owned enterprise ("SOE") system, which will not only impact China's SOEs, but will also crack Chinese citizen's traditional "iron rice bowl" mentality.²⁹ China protects its SOEs through laws, such as

statutes that required amending, and over 570 other administrative regulations that the government must abolish), *available at* 2001 WL 15525564.

23. See Brett Williams, *The Influence and Lack of Influence of Principles in the Negotiation for China's Accession to the World Trade Organization*, 33 GEO. WASH. INT'L L. REV. 791, 792 (2001) (explaining that China, currently a rule by people system, will not change to a rule of law system overnight).

24. See Blumental, *supra* note 4, at 200 (reiterating that international law is more involved in matters that previously were left up to individual sovereign countries).

25. See Williams, *supra* note 23, at 792 (commenting that it is vain to believe that WTO membership will change China instantly from a rule by people to the rule of law society).

26. See Yonehara, *supra* note 6, at 74-75 (discussing the historical development of Chinese culture). Confucianism has developed over the course of thousands of years to shape Chinese culture into an unfavorable view of legalism. *Id.* at 75.

27. See *id.* (stating that the concept of *li* governs people's conduct and proper etiquette). Through following *li*, individuals contribute to a greater society of harmony through their interactions with friends and family. *Id.*

28. See Yonehara, *supra* note 6, at 75 (explaining that *fa* is the opposite of *li*). *Fa* is associated with legalism and the concept of punishment to maintain order. *Id.* The Chinese view this rule of law concept unfavorably. *Id.*

29. See Yuan, *supra* note 3, at 216 (arguing that China's reformation of inefficient SOEs is crucial to a successful WTO accession and that failure to do so properly could result in higher levels of unemployment); see also Asia Society: Glossary (defining the "iron rice bowl" as an expression that refers to China's traditional status of employment in which SOEs provided life tenure and comprehensive benefits to workers, regardless of their work performance), *available at* <http://www.asiasource.org/reference/display.cfm?wordid=1798> (last

the Corporate Law of 1993 (“Corporate Law”), which grant generous power to the directors and management of wholly owned SOEs.³⁰ Not only does China’s Corporate Law grant generous power to SOE management, it also provides numerous privileges to SOEs.³¹ China’s current bankruptcy law provides further protection for SOEs by preventing an SOE from filing for bankruptcy unless it receives permission from a government agency, which differs from the bankruptcy process for non-SOEs.³² The State-owned Industrial Enterprises Law of China (“SOE Law”) provides further governance for China’s SOEs by promoting a separation between the SOEs and the government.³³ However, this separation never became a legal reality.³⁴ The Chinese government also protects its SOEs by granting SOEs licenses and production quotas, monopolies, and unjustified

visited Oct. 30, 2002); Ching-Ching Ni, *China’s ‘Iron Rice Bowl’ Comes Up Empty*, L.A. TIMES, June 28, 2002 (reporting that the new competitive economy in China requires workers to adapt to a system where they are not guaranteed the establishment of a state-supported work environment), available at http://www.southerndigest.com/vnews/display.v/ART/2002/06/28/3d1b761def83a?in_archive=1 (last visited Mar. 3, 2003).

30. See Cindy A. Schipani & Junhai Liu, *Corporate Governance in China: Then and Now*, 2002 COLUM. BUS. L. REV. 1, 17-18 (2002) (noting that the Corporate Law granted too much power to management, which led to irresponsible managerial behavior).

31. See *id.* at 24 (describing the privileges the Corporate Law grants to SOEs). The Chinese government waives incorporation requirements for SOEs. *Id.* The Corporate Law also allows any closely held corporation incorporated by two or more SOEs to issue corporate bonds, while other closely held corporations do not have that ability. *Id.*

32. See *Corporate/Debt Restructuring: Japan, the Hong Kong SAR & the People’s Republic of China a Roundtable Discussion*, 10 AM. BANKR. INST. L. REV. 1, 22 (2002) [hereinafter *Corporate/Debt Restructuring*] (reprinting remarks on China’s SOEs and bankruptcy by Mr. Charles Booth). Mr. Booth commented on China’s bankruptcy law, noting that SOEs are required to receive permission from a government agency prior to entering into bankruptcy. *Id.*

33. See Schipani & Liu, *supra* note 30, at 23 (noting that the intent of the SOE Law is to provide governmental separation from SOEs).

34. See *id.* at 23 (stating that the goal of separation between government and SOEs has been difficult to achieve).

non-economic policy loans as well as by guaranteeing government contracts.³⁵

A. CHINA'S COMMODITY INSPECTION LAW PRIOR TO RECENT AMENDMENTS

During the period of August 1, 1989, to the end of 2001, China's commodity inspection departments inspected nearly 32.4 million batches of commodities.³⁶ Of those commodities inspected, over 270,000 batches failed to meet certification standards.³⁷ When China first developed its commodity inspection law in 1989, the government focused on the needs of China at the time, the development of a socialist economy.³⁸ As China's current government shifted the focus of its commodity inspection law away from developing a socialist economy to focus on meeting WTO obligations of non-discrimination and equal treatment, the law became outdated.³⁹

Prior to passage of the recent amendments, Article 2 of the law established an Administration for Import and Export Commodity Inspection to oversee the inspection of imported and exported

35. See Yuan, *supra* note 3, at 216-17 (noting that China used economic and non-economic policy treatments to favor SOEs over non-SOE companies).

36. See Zhao Huanxin, *Move to Make Goods Agreeable*, CHINA DAILY, May 1, 2002 (stating that, during a twelve year time period under the old commodity inspection law, Chinese authorities inspected 32.4 million batches of goods valuing a total of roughly \$1.33 billion), available at <http://www1.chinadaily.com.cn/cndy/2002-05-01/68152.html> (last visited Nov. 19, 2002).

37. See *China: Official Outlines Changes to Import, Export Inspection Law*, BBC MONITORING, May 1, 2002 [hereinafter *Official Outlines Changes*] (explaining that the inspection standards, which disqualified over 270,000 batches of imported commodities, have enabled China to avoid losing \$26.88 billion and has effectively protected national and consumer interests), available at 2002 WL 19949336.

38. See *id.* (stating that when China developed the commodity inspection law, it focused on the economic needs of the socialist market).

39. See *id.* (noting that the "development and improvement of the socialist market economy," along with entry into the WTO and other commitments, outdated provisions of the commodity inspection law).

commodities throughout the country.⁴⁰ Article 2 further established that local inspection authorities must implement import and export commodity inspection at the local level.⁴¹ Article 5 required imported and exported products to pass the quality certification system, while domestic products needed only to comply with the compulsory certification system.⁴²

Additionally, the law required imported commodities to comply with the safety certification system applied to domestic Chinese products.⁴³ The dual certification requirement acted as a non-tariff barrier to trade⁴⁴ by discriminating against foreign products in the Chinese marketplace.⁴⁵ The law further applied different standards to

40. See Law of the People's Republic of China on Import and Export Commodity Inspection (1989) [hereinafter Law on Import and Export Inspection] (stating that the State Council shall establish the Administration for Import and Export Commodity Inspection to oversee the inspection process throughout all of China), at <http://www.ciq.gov.cn/doc/english/law1.htm> (last visited Nov. 19, 2002).

41. See *id.* (noting that, while the Administration had the power to oversee the entire commodity inspection process, local inspection authorities were responsible for inspecting commodities within their specific jurisdictions).

42. See *China to Revise Commodity Inspection Law*, PEOPLE'S DAILY, Feb. 28, 2002 (reporting that the current law requires use of the quality certification for import and export commodities but only requires the compulsory certification standard for products sold only in the domestic market), available at http://english.peopledaily.com.cn/200202/28/eng20020228_91118.shtml (last visited Nov. 19, 2002). The quality certification standard is a stricter standard than the compulsory certification standard. *Id.* See generally Law on Import and Export Inspection, *supra* note 40 (discussing the import and export commodity inspection process).

43. See *China to Revise Import-Export Rules*, CHINA DAILY, Feb. 28, 2002 (noting that China required imports into the country to comply with both the quality certification standard applicable only to imports and exports as well as the safety certification that domestic commodities must obtain), available at <http://www.china.org.cn/english/BAT/27742.htm> (last visited Nov. 20, 2002).

44. See Constance Z. Wagner, *The New WTO Agreement on Financial Services and Chapter 14 of NAFTA: Has Free Trade in Banking Finally Arrived?*, 5 NAFTA: L. & BUS. REV. AM. 5, 23 (1999) (stating that non-tariff barriers to trade are much less transparent than barriers caused by tariffs). Non-tariff barriers to trade can include import licensing procedures, customs valuation, government procurement, different standards, etc. *Id.*

45. See Report of the Working Party on the Accession of China (WT/MIN(01)/3), paras. 188-92, (Nov. 10, 2001) (describing WTO members' concern with the commodity inspection law and its function as a barrier to trade),

products from different countries, creating further discrimination.⁴⁶ In order to comply with WTO obligations, China amended its commodity inspection law on April 28, 2002, which is discussed further in Part II.⁴⁷

B. CHINA'S WTO ACCESSION

The WTO came into legal existence on January 1, 1995, following the Uruguay Round of GATT negotiations, but the idea of a unified trade organization dates back much further.⁴⁸ In 1982, China became

at <http://docsonline.wto.org> (last visited Nov. 21, 2002). In response to members' concerns, China confirmed that it would not impose requirements exclusively on imported products, but would eliminate any unnecessary barriers to trade. *Id.*; see also *China to Amend Import, Export Law to Comply With WTO Rules*, BBC MONITORING, Feb. 27, 2002 (explaining that China's old commodity inspection law was inconsistent with WTO regulations because of preferential treatment afforded to domestic products), available at 2002 WL 15123624.

46. See Bacon, *supra* note 9, at 397 (discussing China's procedure of using different standards contingent upon the national origin of the product); see also 1998 National Trade Estimate Report on Foreign Barriers, 49, Office of the United States Trade Representative (released Mar. 31, 1998) (reporting that China adopted a process of using different inspection standards on imports from different countries), at <http://www.ustr.gov/pdf/nte-1998.pdf> (last visited Nov. 20, 2002).

47. See *Assembly Chief Li Peng Speaks at End of Committee Session*, BBC MONITORING, Apr. 29, 2002 (stating that the Chinese Congress revised the commodity inspection law on April 28, 2002) available at 2002 WL 19948612.

48. See J. Steven Jarreau, *Interpreting the General Agreement on Trade in Services and the WTO Instruments Relevant to the International Trade of Financial Services: The Lawyer's Perspective*, 25 N.C. J. INT'L L. & COM. REG. 1, 3 (1999) (indicating that the WTO came into existence in 1995). The Uruguay Round negotiations lasted nearly eight years, concluding with the creation of the WTO. *Id.* at 20; see also Blumental, *supra* note 4, at 200 (remarking that the WTO is not merely a trade arm but that it "enjoys a stronger institutional identity, broader scope and more diverse functions than its predecessor" the GATT). See generally Kevin C. Kennedy, *The GATT-WTO System at Fifty*, 16 WIS. INT'L L.J. 421 (1998) (recounting the history of the GATT and the development of the WTO to better meet the purpose of the GATT system). The basic premise of the GATT-WTO system is to liberalize trade through four core legal principles or "pillars." *Id.* at 426. The four pillars are: 1) the unconditional most-favored-nation ("MFN") obligation; 2) tariff restrictions; 3) the national treatment obligation; and 4) the elimination of import quotas. *Id.* The MFN obligation requires countries to treat all "like products" from member countries equally. *Id.* at 428. The WTO system does not specifically ban tariffs, but instead seeks to reduce import tariff levels. *Id.* The national treatment obligation requires a country "to treat imports from other members no less favorably than domestic like products." *Id.* at 427. The final

interested in GATT involvement and became a GATT observer member.⁴⁹ China began its process of GATT accession in 1986.⁵⁰ In 1995, following the creation of the WTO, China began negotiations with a WTO Working Party for its accession.⁵¹ The first stage of China's WTO accession included bilateral negotiations with interested member countries.⁵² The second stage consisted of multilateral negotiations with the WTO as an entity.⁵³

pillar, elimination of import quotas, seeks to allow supply and demand to determine the price and quantity of goods sold. *Id.*

49. *See* Blumental, *supra* note 4, at 205 (reciting that China applied for readmission to GATT after it was granted observer status); *see also* Bhala, *supra* note 9, at 1477-79 (discussing China's acceptance as an observer member was not China's first interaction with GATT). The Republic of China, controlled by the Nationalist government headed by Chiang Kai-shek, was a founding member of GATT, but it withdrew from the agreement when the Communist government took control and the Nationalists fled to Taiwan. *Id.* at 1477. The Mainland Communist government sought to have the withdrawal revoked, arguing for application of the law of succession. *Id.* GATT members refused to grant the new government this right. *Id.* China's attempt to enter GATT fell apart and China did not reattempt to join GATT for many years. *Id.*

50. *See* Field, *supra* note 8, at 9 (stating that China submitted its request for GATT membership on July 10, 1986). On March 4, 1987, the GATT Council formally accepted China's request and established a Working Party to examine China's request. *Id.*

51. *See* Blumental, *supra* note 4, at 206 (describing China's first steps with the WTO, notably negotiating with a Working Party on a wide variety of issues including trade in services, intellectual property rights, and various other non-tariff barriers to trade); *see also* Bacon, *supra* note 9, at 377 (observing that once a country applies for WTO membership, the country must submit a memorandum describing its laws, policies, and regulations affecting international trade and investment).

52. *See* Field, *supra* note 8, at 12 (noting that any "participant in the Working Party can request formal bilateral market access negotiations"); *see also* Blumental, *supra* note 4, at 207 (illustrating that the bilateral agreements address the substantive issues between the applicant country and major WTO members).

53. *See* Timothy C. Brightbill et al., *International Trade*, 35 INT'L LAW. 407, 407-08 (2001) (stating that once interested WTO members conclude bilateral agreements with China, China must negotiate a multilateral "protocol of accession"); *see also* Bacon, *supra* note 9, at 377 (commenting that the multilateral negotiations cannot begin until all bilateral negotiations are concluded); Field, *supra* note 8, at 14 (explaining that the protocol of accession relates to the application of WTO rules and regulations and includes the commitments of the applicant country). Following the protocol of accession, an acceding country must either receive consensus from all members of the Working Party or receive an affirmative vote of two-thirds of all WTO members. Field, *supra* note 8, at 15.

1. The U.S./China Bilateral Agreement

On November 15, 1999, the United States and China concluded bilateral negotiations and reached an agreement that allowed China to move forward in its WTO accession process.⁵⁴ This historic agreement marked the end of roller coaster like negotiations between the two countries.⁵⁵ The U.S./China bilateral agreement not only increased market access to China in general, but it contained provisions that would benefit specific industries.⁵⁶ China committed to reduce agricultural tariffs, to implement a tariff-rate quota system⁵⁷ for import of bulk commodities, and to grant U.S. agricultural exporters increased trading rights.⁵⁸

China further agreed to reduce overall tariffs from an average of nearly twenty-five percent to just over seventeen percent.⁵⁹ China promised to eliminate all import quotas on industrial goods by 2005 and all quotas on U.S. priority products⁶⁰ upon WTO accession.⁶¹

54. See Bhala, *supra* note 9, at 1511 (stating that the United States and China signed a bilateral agreement that paved the way for China's accession to the WTO).

55. See *id.* (detailing the historical significance of the U.S./China bilateral trade agreement). The United States and China tried previously on numerous occasions to reach a final agreement on commitments for both sides, but always fell short of a final agreement. *Id.* at 1484-1511.

56. See *Summary of U.S.-China Bilateral WTO Agreement February 2, 2000* [hereinafter *U.S.-China Bilateral Agreement*] (recounting China's commitments to the United States given during the 1999 bilateral negotiations), at <http://www.uschina.org/public/wto/ustr/generalfacts.html> (last visited Nov. 21, 2002). China not only agreed to general provisions, such as reduction of tariffs and elimination of trade quotas, but also promised to open the markets of specific industries such as agriculture, telecommunications, insurance, banking, professional services, etc. *Id.*; see also Brightbill, *supra* note 53, at 408-09 (highlighting the major intention of the U.S./China bilateral agreement).

57. See Bhala, *supra* note 9, at 1512 (defining a tariff-rate quota system as a two-tiered system in which a lower tariff rate will apply to all imports of a product up to a predetermined threshold).

58. See discussion *infra* Part II.B (discussing the specific commitments China made to increase market access for U.S. agricultural products).

59. See Bhala, *supra* note 9, at 1512 (noting China's promise to reduce tariffs overall tariffs on U.S. priority products to an average of just over nine percent).

60. See *id.* (listing beef, cheese, poultry, and wine as U.S. priority products); see also *The U.S.-China WTO Accession Deal: A Strong Deal in the Best Interests of U.S. Agriculture*, Feb. 9, 2000 [hereinafter *Best Interests of U.S. Agriculture*]

China further promised to grant all private firms full import and export trading rights without requiring the use of a Chinese middleman.⁶²

In exchange for China's commitments, the United States agreed to grant China normal trade relations on a permanent basis.⁶³ This changed China's trade status and no longer required the United States to review China's trade practices on a yearly basis.⁶⁴ This commitment was important to China because it required the United States to refrain from discriminating against Chinese goods, placing China on the same trading level as other WTO members.⁶⁵

(stating U.S. priority products are beef, poultry, pork, cheese, apples, oranges, cherries, grapes, wine, and almonds), at <http://www.fas.usda.gov/info/factsheets/China/deal.html>, (last visited Nov. 21, 2002).

61. See Bhala, *supra* note 9, at 1512 (providing an explanation of China's agreements to reduce all import quotas).

62. See *U.S.-China Bilateral Agreement*, *supra* note 56 (discussing that over the three years following the agreement, China will phase in trading rights for private companies); see also Bhala, *supra* note 9, at 1513 (relaying China's agreement to grant foreign firms full import and export rights).

63. See Brightbill et al., *supra* note 53, at 408-09 (reciting the agreement that the United States would grant China permanent normal trade relations in exchange for China's promise to enforce China's promises in the bilateral agreement); see also H.R. 4444, 106th Cong. (2000) (proposing Congress authorize the President to extend permanent normal trade relations to imports from China, provided that the President transmit a report to Congress certifying that the terms for China's accession to the WTO are at least equivalent to those agreed upon between the United States and China); People's Republic of China—Trade Relations, Pub. L. No. 106-286, 114 Stat. 180 (2000) (enacting House Resolution 4444 into law following bicameral and Presidential approval). The law grants permanent normal trade relations to Chinese products. *Id.*

64. See Brightbill et al., *supra* note 53, at 416 (describing the process of granting communist countries normal trade relations); see also Trade Act of 1974, 19 U.S.C. § 2437 (2002) (discussing the power of the President to extend nondiscriminatory treatment to countries not on normal trade relations status).

65. See Leo Wise, *Trading With China*, 38 HARV. J. ON LEGIS. 567, 567 (2001) (explaining that the law authorized the permanent extension of nondiscriminatory treatment of Chinese goods).

2. China's Multilateral Negotiations

The development of a protocol of accession was the second stage of China's WTO accession.⁶⁶ This protocol, unlike those of other countries, includes specific commitments made by the Chinese government.⁶⁷ Some of China's major problems addressed in the protocol include increasing the transparency of its laws, ensuring uniform application of its laws throughout the country, non-discrimination of foreign-funded enterprises and products, liberalizing the right to trade within the country, elimination of non-tariff trade barriers, and compliance with various WTO agreements.⁶⁸

66. See Bhala, *supra* note 9, at 1473 (reiterating that an acceding country must first complete bilateral negotiations in order to move to the second stage of the accession process). The protocol of accession is a negotiation with the WTO as an entity. *Id.* The protocol is essentially a contract between the acceding country and the joint members of the WTO. *Id.* at 1474. The protocol often incorporates specific bilateral agreements into a generalized multilateral agreement. *Id.* Finally, the protocol outlines the applicant country's current trade laws, noting any necessary changes in order to comply with WTO requirements and explaining a correction process the country must implement in order to comply with WTO regulations. *Id.*; see also Field, *supra* note 8, at 23 (discussing China's actions in cooperation with the information gathering process). In June of 2000, China submitted a list of laws and regulations in contradiction to WTO regulations. *Id.* China's list included thirty-eight laws that were revised in order to meet WTO requirements, thirty-six other laws that are scheduled for revision, and one hundred twenty "Department Ministry" rules that have been revised, abolished, or are scheduled for revision. *Id.*

67. See Field, *supra* note 8, at 14 (explaining that China's protocol includes specific commitments, not just references to other portions of the accession package). A typical protocol of accession is very brief, two or three pages, and only references commitments found in other schedules, working reports, and annexes. *Id.* China's protocol includes specific commitments because of the long history of China's accession process and the desire to avoid reopening old issues without need. *Id.*

68. See Yuan, *supra* note 3, at 217 (discussing China's lack of transparency relating to its trade laws). China's current legal system includes ambiguous and highly generalized laws and regulations. *Id.* To further complicate the problem, China does not have an official publication of its laws, rules, and regulations. *Id.*; see also Field, *supra* note 8, at 26 (noting that China has agreed to the creation of a system that ensures uniform application of WTO commitments). China promised to use the authority of the national government to ensure that sub-national and local governments remain in compliance with WTO standards. *Id.*; see also Bacon, *supra* note 9, at 396-97 (outlining China's discriminatory treatment of imported goods through inspection and certification standards). China required that all imported manufactured goods receive a quality license prior to importation. *Id.* at

On December 11, 2001, the WTO accepted China's protocol of accession and granted China full member status.⁶⁹ Following China's accession, the Chinese government has taken steps to uphold its commitments, including the recent amendments to its commodity inspection law.⁷⁰

II. ANALYSIS

A. CHANGES TO CHINA'S COMMODITY INSPECTION LAW

China's accession into the WTO presents a great challenge to the Chinese government; WTO membership means an almost complete overhaul of the Chinese economic and legal system.⁷¹ The National People's Congress ("NPC") produced one of China's first solid initiatives to live up to its WTO commitments by amending China's

397. China did not honor quality certifications of many other countries, making the certification process a non-tariff barrier to trade. *Id.* at 397-98. China also applied different inspection standards to domestic and imported commodities, requiring imports to pass standards deviating from international standards. *Id.* at 397. *See generally*, Protocol on the Accession of the People's Republic of China (providing descriptions of China's negotiated commitments upon accession), at http://www.wto.org/english/thewto_e/acc_e/completeacc_e.htm (last visited Nov. 21, 2002).

69. *See Members and Observers*, *supra* note 2 (listing China's official date of accession).

70. *See* Huanxin, *supra* note 36 (reporting China's revision of its import and export commodity inspection law in order to comply with WTO rules). The revision of the law was the first legal revision undertaken since China's acceptance to the WTO. *Id.*; *see also* Meng Yan, *Words Mean Action on Trade*, CHINA DAILY, May 2, 2002 (explaining further steps China has taken to comply with WTO rules and regulations), available at <http://www1.chinadaily.com.cn/cndy/2002-05-02/68216.html> (last visited Feb. 13, 2003). China is in the process of revising its rules on trademark law, copyright law, and drug administration law. *Id.* China has also established the Ministry of Foreign Trade and Economic Co-operation ("MOFTEC") that is responsible for increasing the transparency of the Chinese government. *Id.*

71. *See WTO Entry Calls for Reform*, *supra* note 20 (stating that China's government, upon WTO accession, has a difficult task of opening the economic system to free trade and economic globalization). The Chinese government needs to begin to focus on maintaining market order and creating a fair and open market. *Id.* The government must reduce its involvement in the economic affairs of domestic companies and allow for a free market economy in order to comply with WTO rules. *Id.*

Import and Export Commodity Inspection Law.⁷² By amending the commodity inspection law, China has eliminated one method of discriminatory treatment towards imported commodities.⁷³ Both the United States and China should realize economic benefits from the amendments to the inspection law, however China must be prepared to address accompanying social and economic changes.⁷⁴

One of China's changes to its commodity inspection law involved amending the purpose of the commodity inspection law.⁷⁵ This new purpose, "protecting people's health and security, protecting the environment, preventing illegal activities and safeguarding national security," replaces the out-dated purpose of inspecting "in the light of the needs in the development of foreign trade."⁷⁶ The revision brings the law into compliance with Article 2 of the WTO's Agreement on Technical Barriers to Trade ("Agreement on TBT").⁷⁷

72. See *China Passes Amendments to Import, Export Commodity Inspection Law*, PEOPLE'S DAILY, Apr. 30, 2002 (describing that China's top legislative body amended the law on inspection of import and export commodities), available at http://english.peopledaily.com.cn/200204/29/eng20020429_94916.shtml (last visited Nov. 21, 2002).

73. See *China to Revise Import-Export Rules*, *supra* note 43 (explaining how the amendments will eliminate discriminatory treatment of imports).

74. See discussion *infra* Parts II.C & D (explaining that the process of opening China's domestic markets will lead to economic benefits for both sides, but Chinese industries and citizens may have difficulty adapting to the changes at first).

75. See *China to Revise Commodity Inspection Law*, *supra* note 42 (stating that the Chinese government desired to update the purpose and scope of the commodity inspection law in order to comply with WTO requirements).

76. See *id.* (discussing the change in the official purpose of the commodity inspection law).

77. See *id.* (reporting that the amended purpose brings the law into compliance with the Agreement on Technical Barriers to Trade). The WTO Agreement on Technical Barriers to Trade desires to ensure that no member country uses technical regulations or standards to create an unnecessary obstacle to international trade. See Agreement on Technical Barriers to Trade, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, Results of the Uruguay Round of Multilateral Trade Negotiations [hereinafter Agreement on TBT] (discussing the WTO's commitment to reduce technical barriers to trade), available at http://www.wto.org/english/docs_e/legal_e/17-tbt.pdf (last visited Nov. 21, 2002).

Article 2 of the Agreement on TBT requires member countries to apply technical regulations to foreign and domestic products equally.⁷⁸ Article 2 further requires members to ensure that technical regulations do not cause unnecessary obstacles to international trade.⁷⁹ The change in the official purpose of the commodity inspection law brings the law into compliance with the Agreement on TBT by forcing China to ensure that the government will not use the law's purpose as a technical method of restricting international trade.⁸⁰

The amendments to China's commodity inspection law benefit foreign exporters because the amendments changed the official scope and purpose of the law to protecting the lives and health of humans and animals.⁸¹ Along with compliance with the Agreement on TBT, a change in the purpose of the law increases transparency of China's law by establishing a less ambiguous scope and purpose.⁸² By increasing the transparency of the law, U.S. exporters can better understand what standards they must meet in order to export into China.⁸³

78. See *id.* para. 2.1 (requiring member countries to afford foreign products "treatment no less favourable than that accorded to like products of national origin"). Member countries are further required to give consideration to technical regulations of other countries, even if those regulations differ from their own, provided that the other regulations satisfy the objectives of the country's own regulations. *Id.* para. 2.7.

79. See Agreement on TBT, *supra* note 77, at para. 2.2 (noting that member countries are required to ensure that technical regulations are not "prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade").

80. See *China to Revise Commodity Inspection Law*, *supra* note 42 (reporting that the change to the official purpose brings the law into conformity with the WTO's Agreement on TBT).

81. See *id.* (stating that the amended law was drafted with the purpose of protecting people's health and security, protecting the environment, preventing illegal activities, and safeguarding national security).

82. See Bacon, *supra* note 9, at 396 (maintaining that China's laws lack transparency because of a high level of ambiguity and generalization). Prior to the amendment, the purpose of China's commodity inspection law was replete with ambiguities. See *China to Revise Commodity Inspection Law*, *supra* note 42 (quoting the ambiguous purpose and scope of the old law).

83. See Yonehara, *supra* note 6, at 88 (noting that lack of transparency leads to a misinterpretation of China's laws); see also Teresa Schroeder, *Chinese*

The amendments also benefit U.S. exporters because the law creates one uniform national certification system for all import and export commodities.⁸⁴ Prior to the changes, a commodity from the United States sometimes received different treatment than a commodity from a country with lower standards.⁸⁵ This discriminatory treatment was unfair to countries like the United States because stricter domestic quality standards meant stricter international quality standards for exported products.⁸⁶ Applying different standards to commodities from different countries granted favor to nations with lower domestic quality certifications and punished those with stricter quality requirements.⁸⁷

With the establishment of a unified national policy, imports from the U.S. agricultural industry will receive the same treatment as imports from every other country.⁸⁸ If a product is on one of China's

Regulation of Traditional Chinese Medicine in the Modern World: Can the Chinese Effectively Profit From One of Their Most Valuable Cultural Resources?, 11 PAC. RIM L. & POL'Y J. 687, 712 (2002) (arguing that WTO members rely on transparency of other member countries' laws in order to determine trade expectations and effectiveness).

84. See *China to Revise Commodity Inspection Law*, *supra* note 42 (stating that the amendments stipulate a single uniform standard that will be used for all import and export commodities).

85. See Bacon, *supra* note 9, at 396-97 (explaining that the level of inspection of products varied depending on the country of origin). China's Import and Export Commodity Inspection Law dictated that China should use the standard of the country of origin in cases where China has not developed its own standard for that particular commodity. *Id.* at 397; see also Regulations for the Implementation of the Law of the People's Republic of China on Import and Export Commodity Inspection, art. 10 (detailing that China will use the standard of the origin country or relevant international standards, if China has not established its own standard), available at <http://www.chinae.com/resource/read.asp?id=10> (last visited June 21, 2002).

86. See Bacon, *supra* note 9, at 397 (noting that if China imports a commodity from a country with lower standards than the United States, the commodity will be inspected at that lower standard).

87. See *id.* (stating that China's former process of applying different inspection standards to products originating from different countries was at odds with the WTO's principle of granting all member countries equal treatment).

88. See *China to Revise Commodity Inspection Law*, *supra* note 42 (explaining that the amendments create a uniform national system that will apply to imports from all countries); see also Fu Jing, *Unified Certification System to Set the Standard*, CHINA DAILY, Apr. 10, 2002 (reporting that China's new unified certification system will use a single set of technical regulations and standards to

existing commodity lists, it will be subject to China's domestic quality standards; if the product is not one for which China has established a domestic standard, it will be subject to different, but standardized, international quality levels.⁸⁹ A unified certification system will help U.S. agricultural exporters realize economic gain because U.S. exports will be subject to the same inspection criteria as exports from other countries with lower domestic inspection standards.⁹⁰

Imported products will receive the same treatment as domestic products because domestic products and imported products need only comply with one unified certification management system.⁹¹ The new unified management system will use one "set of technical regulations, standards and conformity assessment procedures to inspect commodities."⁹² The Chinese government will establish the new certification standard in three to five years, and it will apply a new compulsory product certification standard in the interim.⁹³

ensure that all domestic and foreign commodities are inspected according to the same standards), *available at* 2002 WL 7168071.

89. *See China Passes Amendments to Import, Export Commodity Inspection Law, supra* note 72 (stating that "all import and export commodities listed in the index shall be examined in accordance with the compulsory national standards, and those not listed shall be examined according to foreign standards designated by the national administration for import and export commodities inspection").

90. *See China to Revise Commodity Inspection Law, supra* note 42 (stating that the amendments specify a uniform system for all imports and exports); *see also* Bacon, *supra* note 9, at 397 (explaining that the old inspection law applied different inspection standards to products that originated in different countries).

91. *See Official Outlines Changes, supra* note 37 (noting that China shall establish and apply a unified management system to both import and export commodities and domestic products); *see also* Yan, *supra* note 70 (explaining that the new unified system will inspect and quarantine domestic and foreign commodities at the same level).

92. *China to Revise Import-Export Rules, supra* note 43 (reporting that China's new management system will establish a single catalogue of products that are subject to the compulsory certification standard and that all domestic and imported products are subject to one obligatory standard certification mark).

93. *See* Jing, *supra* note 88 (explaining that the new unified system will take time to fully implement, but that the Chinese government unveiled a new certification in February 2002 that required domestic and imported quantities to meet the same standard).

Enforcing different inspection standards for imported and domestic products violates Article 2 of the WTO's Agreement on TBT. Article 2 requires member countries to treat foreign and domestic products equally by applying the same technical regulations to both sets of products.⁹⁴ In addition, different inspection standards violate one of the WTO's four "pillars," the national treatment obligation, by according less favorable treatment to foreign products.⁹⁵ By applying different inspection standards to imports, China created a non-tariff barrier to trade through technical regulations.⁹⁶ The amended law no longer imposes different inspection standards to imported and domestic products, eliminating the technical barrier to trade.⁹⁷ Furthermore, by no longer granting domestic commodities preferential treatment, the law puts China into compliance with the national treatment obligation.⁹⁸

Finally, the amendments establish a stricter confidentiality obligation for commodity inspection personnel.⁹⁹ Historically, China

94. See Agreement on TBT, *supra* note 77, art. 2, para. 1 (reiterating that products imported from any member country should receive the same treatment as domestic products).

95. See GATT, *supra* note 3, art. III, 1 (outlining the purpose of the national treatment pillar). GATT Art. III requires that products from any member country be "accorded treatment no less favorable than that accorded to like products of national origin." *Id.* art. III, 4.

96. See Agreement on TBT, *supra* note 77, paras. 2.1, 2.2 (describing that a barrier to trade can include technical regulations that have the effect of creating unnecessary obstacles to international trade). A technical regulation cannot be more restrictive than necessary to fulfill a legitimate governmental objective. *Id.*

97. See Jing, *supra* note 88 (stating that China will institute a new management system with a single set of criteria and standards that will apply equally to imported and domestic commodities).

98. See *Official Outlines Changes*, *supra* note 37 (noting that the unified management system solves the problem of non-compliance with the national treatment obligation).

99. See *id.* (explaining that China added a provision to the inspection law that requires inspection personnel to increase secrecy); see also *Amendment of the Law on Inspections for Imports and Exports*, CHINA LEGAL CHANGE (May 6, 2002) (outlining the changes made to the law, including a provision on confidentiality duties of commodity inspection personnel), available at <http://www.chinalegalchange.com/Archiv02/C0207003.html> (last visited Nov. 20, 2002); *China to Revise Import-Export Rules*, *supra* note 43 (explaining that inspection staff will be obligated to protect any commercial secrets that may be discovered during the inspection process).

has failed to provide adequate protection of intellectual property rights and trade secrets.¹⁰⁰ China amended the commodity inspection law in order to prevent inspection personnel from disclosing any confidential information they gained through inspecting imported commodities.¹⁰¹ Over the last few years, China began to implement measures to protect intellectual property rights and trade secrets.¹⁰² This amendment will encourage U.S. exporters to expand exportation of commodities by ensuring inspection personnel will protect any intellectual property rights or trade secrets discovered during the inspection process.¹⁰³

B. IMPACT OF THE U.S./CHINA BILATERAL AGREEMENT

The U.S.-China bilateral agreement not only paved the way for China's acceptance into the WTO, but it also served the more important purpose of opening China's markets to U.S. exports.¹⁰⁴ The

100. See Ding, *supra* note 5, at 338 (noting that the protection of intellectual property rights is a concern for the United States). However, the Chinese culture is hostile toward protecting intellectual property rights and trade secrets. *Id.* This cultural belief dates back to Confucian teachings that writing should be for moral teaching, not economic gain. *Id.* The Chinese often have followed this old Confucian ideology, and the United States often has accused China of failing to apply intellectual property protection laws. *Id.* at 339; see also Yonehara, *supra* note 6, at 65 (stating that Chinese intellectual property law did not exist until recently).

101. See *Official Outlines Changes*, *supra* note 37 (explaining one aspect of the amended law requires inspectors to keep secrets they gain during an inspection of foreign commodities confidential).

102. See Naigen Zhang, *Intellectual Property Law Enforcement in China: Trade Issues, Policies and Practices*, 8 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 63, 63-64 (1997) (enumerating changes China made to enforce intellectual property rights). China's changes included the creation of numerous regulations and laws intended to provide protection for intellectual property rights as well as enrollment in nearly all of the important international treaties for protection of intellectual property rights. *Id.* at 64.

103. See *Official Outlines Changes*, *supra* note 37 (noting that China amended the commodity inspection law to require a higher confidentiality requirement for commodity inspection personnel); see also Zhang, *supra* note 102, at 75-76 (explaining that China's efforts to increase protection of intellectual property rights led to an increase of imports from the United States).

104. See Brightbill, *supra* note 53, at 408 (describing the scope of the U.S.-China bilateral agreement). The agreement sought to reduce trade barriers into China, eliminate restrictions on imports, and strengthen fair trade practices. *Id.*; see

agreement benefits U.S. exporters through reduction of tariffs, a decrease and eventual elimination of quotas, and a decrease of restrictions on import rights.¹⁰⁵ In exchange for these commitments, China received permanent normal trade relations status (“PNTR”) with the United States.¹⁰⁶ Normal trade relations¹⁰⁷ place China on the same trading level as other WTO members.¹⁰⁸

The U.S.-China bilateral agreement contained provisions to benefit U.S. agricultural commodity exporters in particular.¹⁰⁹ Prior to the bilateral agreement, China’s average tariff for U.S. commodities was thirty-one and one half percent.¹¹⁰ China promised to reduce its import tariffs on U.S. commodities to seventeen and one half percent.¹¹¹ The reduction of tariffs also included a commitment to reduce tariffs on U.S. priority products to an average of fourteen percent.¹¹² Tariff reductions mean that U.S. exporters have greater

also Greg Mastel, *China and the World Trade Organization: Moving Forward Without Sliding Backward*, 31 LAW & POL’Y INT’L BUS. 981, 983 (2000) (asserting that the bilateral agreement between the United States and China was the “definitive breakthrough” in China’s WTO accession).

105. See *U.S.-China Bilateral Agreement*, *supra* note 56 (summarizing the commitments China made to the United States, which included reduction of general and specific tariff rates, elimination of trade quotas, and granting U.S. companies the right to trade and distribute within China).

106. See Brightbill et al., *supra* note 53, at 408-09 (detailing the U.S.’s decision to grant normal trade relations status to China).

107. See Sean P. Feeney, *The Dispute Settlement Understanding of the WTO Agreement: An Inadequate Mechanism for the Resolution of International Trade Disputes*, 2 PEPP. DISP. RESOL. L.J. 99, 100 n.12 (2002) (noting that normal trade relations commitments grant equal treatment to products from all member countries). Equal treatment consists of non-discriminatory treatment of products and equal tariff rates. *Id.*

108. See Wise, *supra* note 65, at 567 (explaining that the United States granted permanent extension of nondiscriminatory treatment of Chinese goods).

109. See *U.S.-China Bilateral Agreement*, *supra* note 56 (listing the steps China would implement in order to allow greater market access for U.S. commodities).

110. See Bhala, *supra* note 9, at 1512 (noting that China’s tariffs on agricultural products ranged from twenty percent to fifty percent, averaging thirty-one and one half percent).

111. See *U.S.-China Bilateral Agreement*, *supra* note 56 (indicating China’s agreement to reduce tariffs on U.S. agricultural commodities by 2004).

112. See *Best Interests of U.S. Agriculture*, *supra* note 60 (commenting on the lower tariff rate for U.S. priority products).

access to Chinese markets.¹¹³ U.S. agricultural exporters will have an opportunity to realize greater economic gain by selling more commodities at lower costs or by selling the same amount of products at current prices and realizing greater profit margins.¹¹⁴

China further agreed to implement a tariff-rate quota system for imports of bulk commodities.¹¹⁵ Under the tariff-rate quota system, a portion of the quota for each commodity is reserved for private traders.¹¹⁶ The tariff rate quota system will have relatively high thresholds, allowing U.S. exporters to import more commodities into China under the lower tariff rate to increase economic gain.¹¹⁷ The

113. See Andrea Kupfer Schneider, *Getting Along: The Evolution of Dispute Resolution Regimes in International Trade Organizations*, 20 MICH. J. INT'L L. 697, 738-39 (1999) (explaining that the purpose of international trade organizations is to help countries realize economic benefits through overall tariff reductions).

114. See Bacon, *supra* note 9, at 387-88 (arguing that increased market access through lower tariffs, among other concessions, will provide an opportunity to increase exports to China); see also *Information on the Globalization Debate* (commenting on the benefits realized from international trade, including benefits from gaining increased access to foreign markets), available at <http://www.ustr.gov/new/legaldoc1.PDF> (last visited Nov. 20, 2002).

115. See Bhala, *supra* note 9, at 1512 (discussing China's commitment to establish tariff-rate quotas for bulk commodities such as barley, corn, cotton, rice, and wheat). A tariff-rate quota is a two-tiered system in which a low tariff will be charged against all imports of a product up to a predetermined quantity. See generally David W. Skully, *Economics on Tariff Rate Quota Administration* (discussing that once the amount of imports reaches the predetermined quantity, the country can impose a higher tariff upon all subsequent imports of that product), available at <http://www.ers.usda.gov/publications/tb1893/tb1893b.pdf> (last visited Nov. 20, 2002).

116. See Bryan Lohmar et al., *WTO Accession Will Increase China's Agricultural Imports*, Apr. 2002 (stating that a portion of the quota for every commodity is set aside for private and other non-state trading firms in order to loosen the control of China's state trading enterprises), available at <http://www.ers.usda.gov/publications/AgOutlook/April2002/AO290f.pdf> (last visited Nov. 20, 2002); see also Bhala, *supra* note 9, at 1512 (explaining that a share of the tariff-rate quotas are reserved for private traders).

117. See *id.* (maintaining that the quota threshold for U.S. commodities will be high); see also Lohmar et al., *supra* note 116 (listing the tariff-rate quota levels for nine major commodities). But see Kenneth Hood, *Letter to USTR Zoellick on Implementation of the TRQ Agreement by the People's Republic of China* (May 3, 2002) (explaining that China's tariff-rate quota system for cotton is not high for private cotton mills), available at <http://www.cotton.org/gov/China-TRQ.cfm> (last visited Nov. 20, 2002). The cotton tariff-rate quota system allocated a quota of

tariff rate for imports under the threshold range from one to twenty percent, while the tariff rates for commodity imports above the threshold are as high as seventy-one percent.¹¹⁸ The increase in the threshold levels allows U.S. exporters to export more commodities to China under the lower tariff rates, helping them to realize greater profits.¹¹⁹

China also granted U.S. agricultural exporters the right to import commodities into China “without going through a state-trading enterprise or middleman.”¹²⁰ Prior to the U.S-China bilateral agreement, only a limited number of companies had the rights necessary to import and export commodities.¹²¹ The Chinese government reserved import and export rights for SOEs, making it difficult for U.S. exporters to freely export their commodities into China.¹²²

China’s governance of SOEs, through the Corporate Law and SOEs Law, not only has given SOEs advantages through increased import and export rights, but it also has given SOEs advantages through tax refunds, debt write-offs, and exclusive access to technology and raw materials.¹²³ The numerous powers granted to

820,000 metric tons of cotton a year. *Id.* Of this amount only 50,000 metric tons is allocated to private cotton mills. *Id.*

118. See Lohmar et al., *supra* note 116 (cataloging the various tariff rates for nine major imported commodities).

119. See Bhala, *supra* note 9, at 1512 (stating that China agreed to implement a tariff-rate quota system with a high threshold for the first tier of tariff rates). This allows the United States to export more commodities subject to the lower, first tier, tariff rates. *Id.*

120. *U.S.-China Bilateral Agreement*, *supra* note 56; see also Bhala, *supra* note 9, at 1512 (describing that China, for the first time, agreed to allow trade in agricultural products between private parties).

121. See *Agriculture—General* (Feb. 9, 2000) (showing the state of affairs before the agreement was signed and specifically that China restricted trading rights by granting import and export rights only to companies with specific authorization), at <http://www.fas.usda.gov/info/factsheets/China/ag-gen.html> (last modified Aug. 2, 2001) (last visited Nov. 20, 2002).

122. See Bacon, *supra* note 9, at 424 (stating that SOEs have advantages over U.S. companies because they “have free and direct access to China’s domestic market”).

123. See Schipani & Liu, *supra* note 30, at 23 (explaining that the Corporate Law and the SOEs Law govern Chinese SOEs and that these laws have conferred

Chinese SOEs by the Corporate Law, the SOEs Law, the bankruptcy laws, and other domestic favoring laws, although not explicitly limiting foreign firms' ability to import and export, restricted foreign firms' import and export capabilities by granting unfair protection to China's SOEs.¹²⁴

China committed to implementing a three-year plan to allow private U.S. companies to import most agricultural products.¹²⁵ Chinese officials refused to grant full trading rights for all commodities; instead, they generated a select list of products that are partially exempt from this commitment.¹²⁶ Without competing against or using government supported SOEs, U.S. exporters will have greater access to the Chinese market.¹²⁷

The Chinese government further committed to grant foreign firms distribution rights within the country.¹²⁸ Under the U.S./China bilateral agreement, China agreed to progressively phase in the right to distribution services over the three years following the

numerous advantages only to SOEs); *see also* Bacon, *supra* note 9, at 424 (describing some of the advantages SOEs have received).

124. *See* Yuan, *supra* note 3, at 216-17 (stating that China favored SOEs by providing economic and non-economic policy advantages).

125. *See Best Interests of U.S. Agriculture, supra* note 60 (noting that China committed to phase in unrestricted import trading rights on most commodities over the next three years); *see also* Bhala, *supra* note 9, at 1513 (discussing China's commitment to grant foreign firms full import and export rights over the next three years).

126. *See Agriculture — General, supra* note 121 (stating China's refusal to grant full trading rights on certain commodities, but its desire to continue trading through its SOEs). Commodities on the list include corn, wheat, rice, and cotton. *Id.*

127. *See* Bacon, *supra* note 9, at 422-24 (explaining that China's SOEs receive many benefits from the Chinese government, including tax advantages, access to technology and money, and access to domestic markets); *see also* Bhala, *supra* note 9, at 1513 (stating that China granted U.S. firms the right to import and export to and from its domestic market).

128. *See* Bhala, *supra* note 9, at 1513 (noting that China granted distribution rights for both agricultural and industrial products). Now foreign companies will be able to conduct their own distribution networks without the help of a Chinese firm known as a middleman. *Id.* These distribution rights will be phased in over a three to four-year period. *Id.* China maintained some reservations on distribution rights, such as a restriction on the number of gasoline service stations operated by foreign oil companies, for the first three years after China's WTO accession. *Id.*

agreement.¹²⁹ U.S. firms will be able to trade freely throughout China without the use of a Chinese company serving as a “middleman.”¹³⁰ The right to own and operate distribution services also includes the right to operate in sectors related to distribution services, such as “repair and maintenance, warehousing, trucking, and air couriers.”¹³¹

China also agreed to eliminate sanitary and phytosanitary standards (“SPS”) that are not based on scientific evidence.¹³² The WTO’s Agreement on SPS obligates WTO members to use scientific evidence, to apply measures at an even level, to recognize the equivalency of foreign SPS measures, and to ensure transparency of SPS measures; however, the agreement does not require all countries to adopt the same standards.¹³³ Article 2 of the Agreement on SPS

129. See *U.S.-China Bilateral Agreement*, *supra* note 56 (stating that the bilateral agreement not only granted U.S. firms the right to import into the country but that it also granted U.S. firms the right to own and operate distribution networks within the country as well).

130. See Bhala, *supra* note 9, at 1513 (explaining that China granted foreign firms the right to conduct their own “distribution networks, again without Chinese middlemen”).

131. See *U.S.-China Bilateral Agreement*, *supra* note 56 (discussing China’s commitment to open up sectors related to distribution services); see also Bhala, *supra* note 9, at 1513 (explaining that foreign firms will have the right to maintain wholesale or retail operations as well as to operate after-sales services and other distribution related services).

132. See *U.S.-China Bilateral Agreement*, *supra* note 56 (stating that China agreed to the elimination of non-scientifically based SPS barriers); see also David S. Johanson & William L. Bryant, *Eliminating Phytosanitary Trade Barriers: The Effect of the Uruguay Round Agreements on California Agricultural Exports*, 6 SAN JOAQUIN AGRIC. L. REV. 1, 2-3 (1996) (describing how SPS standards are measures designed to protect human, plant, and animal health in the area of food safety); Agreement on the Application of Sanitary and Phytosanitary Measures, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, Results of the Uruguay Round of Multilateral Trade Negotiations, art. 2 [hereinafter Agreement on SPS] (discussing the provisions, rights, and responsibilities of WTO members pertaining to Sanitary and Phytosanitary measures), available at http://www.wto.org/english/docs_e/legal_e/15-sps.pdf (last visited Feb. 13, 2003).

133. See Johanson & Bryant, *supra* note 132, at 4 (stating that the SPS agreement now obligates WTO members to base standards on sound science, to apply an even level of acceptable risk, to recognize the equivalency of different procedures, and to maintain transparent and available regulations); see also Terence P. Stewart & David S. Johanson, *The SPS Agreement of the World Trade Organization and the International Trade of Dairy Products*, 54 FOOD & DRUG L.

grants member countries the right to adopt SPS measures necessary to protect the health of humans, plants, and animals as long as those measures do not restrict trade and have a scientific justification.¹³⁴ SPS measures often restrict trade when those measures are not based on scientific evidence.¹³⁵

Article 4 of the Agreement on SPS forces China to accept the SPS measures of other member countries as the equivalent of domestic standards provided that the standards from the exporting member country provide equivalent protection.¹³⁶ China may adopt standards that are stricter than the suggested international standards if it can scientifically justify such measures.¹³⁷ China has used unscientific SPS measures to block agricultural imports from foreign countries, including the United States.¹³⁸ China's commitment to apply only scientifically founded SPS measures will increase the access to

J. 55, 55 (1999) (explaining that Article 3 of the Agreement on SPS measures encourages, but does not require, a system of uniform regulations).

134. See Agreement on SPS, *supra* note 132, art. 2 (requiring member countries to apply SPS measures "only to the extent necessary to protect human, plant, or animal life or health" and that such measures are not maintained without scientific justification).

135. See Stewart & Johanson, *supra* note 133, at 58 (explaining that the SPS Agreement of the WTO addresses the problem of countries using questionable safety standards as barriers to trade); see also Johanson & Bryant, *supra* note 132, at 4 (noting that SPS measures can be barriers to trade when based on scientifically questionable standards).

136. See Agreement on SPS, *supra* note 132, art. 4 (requiring member countries to accept the SPS measures of other members if the exporting member can objectively demonstrate that its standards meet an appropriate level); see also Stewart & Johanson, *supra* note 133, at 59 (outlining Article 4 of the Agreement on SPS, which requires a country to adopt the measures of other member countries even if the measures are different, if the measures are objectively shown to provide similar protection).

137. See Johanson & Bryant, *supra* note 132, at 5 (describing that Article 3 of the Agreement on SPS allows for higher standards if the country can produce a scientific justification for diverging from the international standard); see also Agreement on SPS, *supra* note 132, art. 3 (maintaining that, provided a scientific justification, a member country may apply stricter standards).

138. See Johanson & Bryant, *supra* note 132, at 3 (stating that China used scientifically questionable SPS measures to block imports from California due to a fungus that does not exist in the state).

China's market, as China cannot ban U.S. commodities for arbitrary reasons.¹³⁹

While lower tariffs, elimination of tariffs, and reduced domestic subsidies will increase access to China's domestic markets, scientifically questionable sanitary measures would contradict these measures and keep China's markets closed to foreign trade.¹⁴⁰ The Agreement on SPS also provides WTO member countries with a vehicle to challenge, and possibly remove, China's protectionist measures that are scientifically unfounded.¹⁴¹ China's commitment to apply SPS measures that are based on scientific evidence will eliminate one more method of restricting the importation of foreign commodities.¹⁴²

China's WTO membership and the U.S./China bilateral agreement could cause China's markets to become dependent on foreign economies, leading to a different domestic political, social, and economic environment.¹⁴³ As a result of recent reforms and influence from foreign markets, China's social system has experienced both

139. See Stewart & Johanson, *supra* note 135, at 60 (discussing one purpose of the SPS Agreement). WTO members cannot enact arbitrary and unjustified measures that discriminate against foreign commodities and restrict access to domestic markets. *Id.*

140. See Johanson & Bryant, *supra* note 132, at 2 (noting that while elimination or reduction of other trade barriers has opened some foreign markets to U.S. exports, other markets have remained closed due to scientifically questionable sanitary and phytosanitary measures).

141. See Stewart & Johanson, *supra* note 133, at 56 (explaining that the Agreement on SPS provides a means to challenge the sanitary and phytosanitary measures for dairy products if those measures are not based on scientific evidence).

142. See *U.S.-China Bilateral Agreement*, *supra* note 56 (noting that China agreed to eliminate non-scientifically based SPS barriers); see also Stewart & Johanson, *supra* note 133, at 56 (reiterating that SPS measures based on scientifically unfounded evidence tend to reduce trade). The Agreement on SPS should eliminate questionable sanitary barriers to international trade. *Id.* at 71.

143. See Bacon, *supra* note 9, at 387 (stating that China's accession will cause China's economy to become more interdependent with other economies); see also Blumental, *supra* note 4, at 212-16 (describing the impact of WTO accession on the economy, political realm, and society). WTO membership affects the employment levels, leading to social unrest and political problems. *Id.* at 212.

beneficial and detrimental changes.¹⁴⁴ China's Confucian culture, lack of a "rule of law" system, and changes to social welfare have led to a history of broken trade agreements and a long list of questions about China's ability to operate under the WTO's "rule of law" system.¹⁴⁵ As social welfare changes, China's government must focus on maintaining social stability and upholding its political leadership.¹⁴⁶

C. ECONOMIC IMPACT FOR U.S. COMMODITY EXPORTERS FROM THE BILATERAL AGREEMENT AND MULTILATERAL AGREEMENT

China's implementation of WTO required changes opens the door to China for U.S. products.¹⁴⁷ Over the past twenty years, the total exports from the United States into China have grown to nearly \$14 billion a year.¹⁴⁸ In 2000, the United States exported nearly \$1.7 billion worth of agricultural products to China alone.¹⁴⁹ The

144. See Stanley Lubman, *Bird in a Cage: Chinese Law Reform After Twenty Years*, 20 NW. J. INT'L L. & BUS. 383, 402-03 (2000) (explaining the social implications of China's reforms over the last twenty years). Reforms have led to increased personal freedom for Chinese citizens because of the relaxation of state control over their lives. *Id.* at 402; see also Blumental, *supra* note 4, at 212 (noting that recent reforms have led to increased unemployment, creating urban unrest, and increased crime).

145. See Mastel, *supra* note 104, at 988-91 (describing China's history of failing to enforce previous trade agreements). China's lack of a "rule of law" is a major reason for the failure to enforce prior agreements and commitments. *Id.* at 991. China previously agreed to increase transparency of its laws, but has been very slow in releasing rules and regulations. *Id.* at 990. China also previously agreed to refrain from applying unscientific provisions to restrict importation of agricultural products, but has failed to comply with its repeated promises. *Id.*

146. See Blumental, *supra* note 4, at 215-16 (remarking that Chinese government officials recognize the importance of maintaining public stability). China must focus on upholding the leadership of the government and protecting society from jeopardy. *Id.*

147. See *Best Interests of U.S. Agriculture*, *supra* note 60 (discussing the advantages to U.S. agricultural products gained by China's accession to the WTO).

148. See *id.* (stating that, over the past twenty years, the amount of U.S. exports to China has increased dramatically from nearly zero to almost \$14 billion per year).

149. See *China's Entry to the WTO will Slash Barriers to the Sale of American Agricultural Products in the World's Most Populous Country* (listing the volume of U.S. agricultural exports to China for the 2000 fiscal year), at <http://www.fas.usda.gov/itp/china/accession.html> (last modified Dec. 18, 2002).

U.S./China bilateral agreement, along with the amendments to the commodity inspection law, should dramatically increase the volume of U.S. agricultural exports to China.¹⁵⁰ Increased access to China's domestic markets not only offers U.S. agricultural producers an opportunity to export to one of the fastest growing markets but also an opportunity to reduce the trade deficit between the United States and China.¹⁵¹

Agricultural trade has become one of the critical elements of international trade, accounting for roughly \$450 billion per year or twelve percent of all international trade.¹⁵² International trade of agricultural commodities has become very important for the United States in particular.¹⁵³ In 2000, the United States exported nearly \$54 billion worth of agricultural products; this is just over twelve percent

150. See *Best Interests of U.S. Agriculture*, *supra* note 60 (noting that the U.S./China bilateral agreement will raise the amount of agricultural commodities the U.S. exports to China).

151. See Bacon, *supra* note 9, at 387 (describing the impact U.S. exporters will realize as a result of China's open domestic market). In 2000, the U.S. trade deficit with China reached nearly \$84 billion. See *CRS Issue Brief for Congress*, Apr. 13, 2001 (summarizing the U.S./China commercial ties, including the trade deficit), available at <http://cnie.org/NLE/CRSreports/Economics/econ-35.cfm> (last visited Feb. 13, 2003). Over the past twenty-one years, China's real gross domestic product ("GDP") has grown by an average of nine and one half percent, making it one of the fastest growing economies in the world. *Id.*

152. See George E.C. York, *Global Foods, Local Tastes and Biotechnology: The New Legal Architecture of International Agricultural Trade*, 7 COLUM. J. EUR. L. 423, 423 (2001) (introducing the overall significance of agricultural products in the international market); see also Johanson & Bryant, *supra* note 132, at 1-2 (stating that recent trade liberalization has opened new markets for agricultural trade, specifically for California's high value agricultural products).

153. See *US Foreign Trade Highlights* (listing U.S. export statistics for 1967 to 2001), at <http://www.ita.doc.gov/td/industry/otea/usfth/aggregate/H01T03.html>, (last visited July 12, 2002). In 2001, the United States exported agricultural commodities totaling \$55.2 billion, while importing only \$39.5 billion. *Id.* While this amount equated only to 7.6 percent of all exports, it was the only major good that the United States exported more than it imported. *Id.* In 2001, agricultural products accounted for almost one and one half percent of the U.S. GDP. See *Gross Product By Industry*, (giving GDP data and percentages by industry), at <http://www.bea.doc.gov/bea/dn2/gposhr.htm> (last visited July 12, 2002). However, the percentage of agricultural products to goods is higher as this statistic includes both services and goods, where services account for the majority of the GDP. *Id.*

of the total agricultural trade for the world.¹⁵⁴ However, less than three percent of those U.S. exports made their way into China.¹⁵⁵

The emphasis the United States places on exporting agricultural products, coupled with the increased market access into China, should lead to enormous opportunities for U.S. commodities.¹⁵⁶ China's commitments to reduce tariffs, reduce tariff-rate quotas, eliminate arbitrary SPS measures, create a unified inspection standard, and grant U.S. exporters importation and distribution rights remove the major barriers relating to agricultural trade.¹⁵⁷ China's commitments grant U.S. businesses an opportunity to export to one of the "world's most promising markets."¹⁵⁸ This is, in part, because China contains one-fifth of the world's population.¹⁵⁹ Additionally,

154. See *International Trade Statistics, 2001*, at 105 (listing agricultural import and export leaders), available at http://www.wto.org/english/res_e/statis_e/its2001_e/stats2001_e.pdf (last visited July 12, 2002).

155. See *U.S. Agricultural Trade Briefing Room: U.S. Agricultural Trade* (illustrating that mainland China imported only 1.4 percent of U.S. commodities traded internationally, while Hong Kong, a special administrative region of China, imported an additional 1.4 percent of U.S. internationally traded commodities during the period of 1997-2000), at <http://www.ers.usda.gov/briefing/agtrade/usagriculturaltrade.htm> (last visited Aug. 3, 2002).

156. See Ding, *supra* note 5, at 333-34 (stating that the U.S. agricultural sector has much to gain from increased access to China's markets).

157. See *supra* notes 36-89 and accompanying text (discussing the amendments to China's commodity inspection law and the U.S./China bilateral agreement); see also Ding, *supra* note 5, at 336 (describing what China's commitments really mean to U.S. agricultural exporters). The terms China negotiated during its WTO accession will open its domestic markets to foreign goods, especially U.S. agricultural products. *Id.*

158. *TIA's Letters to Congress Concerning Permanent Normal Trade Relations (PNTR) to China*, at http://www.tiaonline.org/media/press_releases/2000/pntr_1.cfm (Jan. 25, 2000); see also *Wine Institute Supports Permanent Normal Trade Relations With China* (stating that the bilateral agreement holds great opportunity for U.S. agricultural products, specifically for the wine industry), at <http://www.wineinstitute.org/communications/statistics/chinatrade.htm> (Mar. 27, 2000).

159. See *Why PNTR (permanent normal trade relations) with China matters for America*, WASH. TIMES – HONG KONG, Apr. 6, 2000 (noting that the bilateral agreement cuts tariffs on agricultural products by two-thirds, allowing those products access to one of the world's largest markets), available at

China's demand for agricultural products will continue to grow along with its economy, further paving the way for U.S. agricultural exports.¹⁶⁰

D. THE IMPACT OF THE COMMODITY LAW AMENDMENTS AND THE BILATERAL AGREEMENT UPON CHINA

Contrary to the U.S. trend, international trade of agricultural commodities has remained relatively low for China.¹⁶¹ Historically, China has protected its agricultural industry and focused on developing agriculture in order to realize agricultural self-sufficiency and provide a secure and steady work environment for its citizens.¹⁶² China's membership in the WTO will decrease its self-sufficiency by causing its markets to become more entwined with and dependent on other economies.¹⁶³ Entwined markets have two major effects on the domestic market. Increased imports lead to numerous domestic economic benefits, but they also can negatively impact the livelihood of domestic industries.¹⁶⁴

<http://www.internationalreports.com/asiapacific/00/hongkong/6.html> (last visited Feb. 13, 2003).

160. See Ding, *supra* note 5, at 336 (remarking that China's economic growth has a direct relationship with demand for agricultural products). As the Chinese people's income increases, their demand for agricultural products will also increase, creating more opportunity for U.S. commodities. *Id.*

161. See *International Trade Statistics*, *supra* note 154, at 105 (explaining that China only exported a total of \$13.56 billion worth of agricultural products in 2000). This amount accounted for just over three percent of the international trade in agricultural products. *Id.* China imported a total of \$9.04 billion worth of agricultural products, while Hong Kong imported an additional \$9.14 billion worth of agricultural commodities. *Id.*

162. See Ding, *supra* note 5, at 335 (noting that China has protected its agricultural system in order to achieve a self-sufficient food system and not to refrain from relying on imports); see also Asia Society: Glossary, *supra* note 29 (defining the "iron rice bowl" as a Chinese expression that guarantees Chinese workers job security, regardless of performance); Ching-Ching, *supra* note 29 (noting that the "Communist rule [in China] fostered a widespread culture of dependency").

163. See Bacon, *supra* note 9, at 387 (listing the effects of China's WTO accession). By increasing access to a member country's market, the WTO agreements create markets that are dependent upon one another. *Id.*

164. See *id.* (discussing the impact of WTO accession). WTO membership promotes economic benefits, such as stimulating economic growth, increasing

The Chinese government saw WTO membership as a rational way to benefit China's domestic economy.¹⁶⁵ First, WTO membership means Chinese goods have greater access to foreign markets.¹⁶⁶ Under the U.S./China bilateral agreement, the United States granted China PNTR status, putting Chinese products on the same level as imported products from other foreign countries.¹⁶⁷ This commitment gives Chinese products greater access to U.S. markets.¹⁶⁸ China also will realize economic benefit from the increased quantities of foreign goods imported into its domestic market.¹⁶⁹

personal income levels, and decreasing the cost of living. *Id.*; see also Yuan, *supra* note 3, at 196 (explaining that China's sheltered industries, including farming, are ill-prepared for the global competition that accompanies WTO membership); Bhala, *supra* note 9, at 1523-24 (noting that China's agricultural produce prices were thirty percent above the world price due to government protection); Blumental, *supra* note 4, at 238 (stating that the basic premise of the GATT system is to increase wealth, helping people live better).

165. See Bhala, *supra* note 9, at 1479 (describing that China's desire to join the WTO generated from its economic self-interest); see also Blumental, *supra* note 4, at 216 (quoting Zhu Rongji as noting that China cannot achieve economic growth as an isolated country).

166. See Williams, *supra* note 23, at 808 (noting that China stands to gain from the elimination of discriminatory treatment towards its exports); see also Bhala, *supra* note 9, at 1479-80 (stating the ways in which China would benefit from WTO accession). WTO membership not only means lower tariffs on major exports, but also reduction of other non-tariff barriers. *Id.* Chinese products entering the United States are no longer subject to quotas, allowing Chinese companies to export more products into the United States. *Id.*

167. See Gregory C. Ott, *China's Accession into the WTO: The Practice of International Bribery and the Issues it Presents for American Counsel Whose Clients are Doing Business Within the Confines of the Great Wall*, 15 TEMP. INT'L & COMP. L.J. 147, 149 (2001) (explaining that, because of the U.S./China bilateral agreement and granting PNTR to China, Chinese products receive the same tariff rates as products from other WTO members); see also CRS Report: 1B93107 – *Normal-Trade-Relations (Most Favored Nation) Policy of the U.S.* [hereinafter CRS Report: 1B93107] (describing normal trade relations), available at http://cnie.org/NLE/CRSreports/Economics/econ-49.cfm#_1_4 (June 7, 2000). Normal trade relations, previously Most Favored Nation, status simply promises to grant all countries equal trade concession, privileges, or immunities. *Id.*

168. See Ott, *supra* note 167, at 149 (noting that PNTR status allows Chinese products greater access to the U.S. domestic market).

169. See Ding, *supra* note 5, at 336 (explaining that both the United States and China will benefit from less restricted trading). Under a comparative advantage theory, both countries benefit because each country has different strengths. *Id.*; see

Unlike China's labor-intensive industry, the U.S. agricultural industry is land and capital intensive, allowing U.S. producers to farm more land per capita.¹⁷⁰ The difference in modernization grants the United States a comparative advantage in the production of agricultural products that leads to lower prices.¹⁷¹ With open markets, the United States can produce and export its commodities at a price below Chinese domestic prices, providing less expensive products for Chinese citizens.¹⁷² China's domestic prices will decrease not only because U.S. companies are more efficient, but because such efficiency also helps influence Chinese prices from local producers through increased competition.¹⁷³ However, increased competition

also Bacon, *supra* note 9, at 387 (stating that freer trade helps to raise income levels and provide a broader choice of goods for individuals).

170. See Ding, *supra* note 5, at 336 (discussing the difference in the modernization levels of agricultural production in the United States and China); see also Bhala, *supra* note 9, at 1523-24 (noting that the average U.S. farmer worked 1.4 hectares of land, while the average Chinese farmer worked only .1 hectares).

171. See Bhala, *supra* note 9, at 1524 (explaining that the prices of agricultural products in China are nearly thirty percent higher than the world prices); see also Steven Suranovic, *The Theory of Comparative Advantage – Overview*, INTERNATIONAL TRADE THEORY AND POLICY LECTURE NOTES (1997) (describing the theory of comparative advantage), available at <http://internationalecon.com/v1.0/ch40/40c000.html> (last visited Nov. 20, 2002). Under the theory of comparative advantage, a country that is more efficient at producing one good should produce and export that good, leading to the most efficient overall production. *Id.*

172. See Daniil E. Fedorchuk, *Acceding to the WTO: Advantages for Foreign Investors in the Ukrainian Market*, 15 N.Y. INT'L L. REV. 1, 13 (2002) (noting that the GATT and WTO systems are based upon the theory of comparative advantage). An efficient country can import at lower prices when markets are more open to foreign products. *Id.*; see also Cheryl W. Gray & William W. Jarosz, *Law and the Regulation of Foreign Direct Investment: The Experience From Central and Eastern Europe*, 33 COLUM. J. TRANSNAT'L L. 1, 8-9 (1995) (stating that, if states are free to trade, the markets of those states will adjust to allow the state with greater efficiency in production of a particular good to produce and trade that good).

173. See Alex Y. Seita, *Globalization and the Convergence of Values*, 30 CORNELL INT'L L.J. 429, 446 (1997) (explaining that elimination of tools of protectionism (tariffs, quotas, domestic subsidies, etc.) allows foreign products increased access to the domestic market, leading to the development of more efficient local firms).

for local producers is not always beneficial; it can be detrimental if the domestic firms are not ready to compete with the foreign firms.¹⁷⁴

China's state protected companies are going to have difficulty adjusting to the global competition accompanying WTO membership.¹⁷⁵ Chinese officials predict that WTO required reforms will lead to the dismissal of ten million domestic employees over the next few years.¹⁷⁶ As unemployment rises, social unrest and crime also may rise.¹⁷⁷ China's agricultural industry has received government protection, through SOEs and government subsidies, for many years.¹⁷⁸ China used high tariffs, quotas, and inspection regulations to ensure its domestic agricultural industry would remain protected from foreign competition.¹⁷⁹ With increased access into China's market, foreign commodities will increase, making it difficult for inefficient domestic producers to compete.¹⁸⁰ The Chinese firms' inability to compete will lead to a loss of employment

174. See Yuan, *supra* note 3, at 196 (arguing that China's businesses and industries may be ill-prepared for the global competition that accompanies WTO membership). The state-owned enterprises in farming, telecommunications, and banking, which have grown accustomed to governmental shelter, will have an especially difficult time dealing with the competition. *Id.*

175. See *id.* (stating that Chinese businesses and industries, particularly the SOEs, are "ill-prepared" for increased global competition).

176. See Blumental, *supra* note 4, at 212 (discussing the impact from recent reforms on SOEs). China's unemployment rate has been rapidly increasing as a result of required SOE reforms. *Id.*

177. See *id.* (noting that, as Chinese unemployment rates increased, the urban unrest and crime have become a major problem for the Chinese government); see also Lubman, *supra* note 144, at 403 (explaining that crime in China has increased since the beginning of economic reform, provoking concern about social order).

178. See Yuan, *supra* note 3, at 196 (noting that the farming industry has received governmental protection); see also Ding, *supra* note 5, at 335 (stating that China's agricultural products market is highly protected, so that China can attain food self-sufficiency).

179. See *supra* notes 71-142 and accompanying text (discussing the old commodity inspection law, the changes brought about by the amendments, and the U.S./China bilateral agreement).

180. See Mastel, *supra* note 104, at 985-86 (explaining that the agricultural industry has historically been one of the most protected industries in China). "Chinese agriculture is likely to have difficulty matching the global competition." *Id.*

for a substantial number of Chinese citizens.¹⁸¹ As more imports enter China's market, the Chinese government and its citizens must find ways to adapt without recreating barriers to trade.¹⁸²

Economic reforms also have led to an increase in the income disparity and further development of economic classes for Chinese citizens.¹⁸³ The disparity between rural and urban areas continues to draw more Chinese to the cities in search of higher incomes.¹⁸⁴ In February 2000, the scare of increasing income disparity and the closure of inefficient SOEs led to a riot at the Yangjiazhangzi Mine.¹⁸⁵ The government called in the People's Liberation Army ("PLA") to restore order at the mine.¹⁸⁶ Thus, the Chinese government must be prepared for more such incidents as it closes down additional inefficient SOEs and its economy feels the impact of foreign competition.¹⁸⁷

181. *See id.* at 986 (noting that the increased competition from global producers could displace a large number of Chinese working in the agricultural sector).

182. *See* discussion *infra* Part III.A (discussing how China should adapt to the increased competition from foreign exporters).

183. *See* Lubman, *supra* note 144, at 403 (stating that income disparity among Chinese citizens is growing). The disparity between individuals is not only increasing between rural and urban areas, but is a general phenomenon as well. *Id.*

184. *See id.* (noting that the difference in earnings continues to draw more peasants from the countryside to the cities). This has created a "floating population" of nearly one hundred million Chinese in search of work. *Id.*

185. *See* Bhala, *supra* note 9, at 1482-83 (describing the reaction of mine workers when the government closed the state-owned mine). Over 20,000 workers and families burned cars, barricaded streets, smashed windows, set fires, and fought with the People's Armed Police in retaliation to the news. *Id.*

186. *See id.* (explaining that the PLA restored order only after firing warning shots above the crowd).

187. *See id.* at 1483 (stating that the riot at the Yangjiazhanzi mine was a "frightening symbol of what was to come").

III. RECOMMENDATIONS

A. CHINA SHOULD REFRAIN FROM IMPLEMENTING ADDITIONAL SAFEGUARD MEASURES

The WTO's Agreement on Safeguards allows countries to implement temporary safeguard measures¹⁸⁸ in order to protect a domestic product or industry if that product or industry is under extreme foreign competition.¹⁸⁹ Article 2 of the WTO's Agreement on Safeguards requires the member country to meet three conditions prior to the implementation of any additional safeguard measures: 1) there must be an absolute or relative increase in the quantity of imports; 2) the increase of imports must cause, or threaten to cause, serious injury to a domestic industry producing a similar product; and 3) there must be a causal link between the increased imports and the injury or threat of injury.¹⁹⁰ Furthermore, under Article 2, China cannot discriminate when implementing safeguard measures or purposefully target imports from one country; rather, China must target all imports of certain products.¹⁹¹ Additionally, the goal of any safeguard is to promote the healthy development of trade by

188. See Wise, *supra* note 65, at 571 (noting that the term "safeguard" refers to certain "retaliatory measures, such as tariffs and quotas, that countries impose in reaction to increased import competition in a particular category of goods").

189. See Agreement on Safeguards, Apr. 15, 1994, Final Text of the GATT Uruguay Round Agreements Including the Agreement Establishing the World Trade Organization, Annex 1A, art. 2 [hereinafter Agreement on Safeguards], (stating that a member of the WTO may enact safeguard measures to protect domestic industries from like or directly competitive foreign products), available at http://www.wto.org/english/docs_e/legal_e/25-safeg.pdf (last visited Nov. 20, 2002).

190. See Lihu Chen & Yun Gu, *China's Safeguard Measures Under the New WTO Framework*, 25 *FORDHAM INT'L L.J.* 1169, 1178 (2002) (describing the requirements that must be met in order for China to implement safeguard measures against imported commodities); see also Agreement on Safeguards, *supra* note 189, art. 2 (stating that a member may apply safeguard measures only if that member has determined "that such product is being imported into its territory in such increased quantities, absolute or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products").

191. See Agreement on Safeguards, *supra* note 189, art. 2 (explaining that safeguard measures shall be applied to all imports, regardless of their source).

providing an environment for strengthening the competitiveness of domestic producers.¹⁹²

China may implement safeguard measures only to the extent necessary to prevent or remedy serious injury and allow the country to adjust to the increased level of imports.¹⁹³ Thus, safeguard measures serve the dual roles of providing a “safety release valve” when the pressure from international competition becomes too great and facilitating the competitive capability of domestic producers.¹⁹⁴ Currently, China has a few measures in place to provide the protection necessary to relieve the pressures of international competition.¹⁹⁵

Under the U.S./China bilateral agreement, China will be able to keep certain safeguard measures in place for a few more years, giving the domestic agricultural industry time to adjust to increased competition.¹⁹⁶ Furthermore, China did not officially implement the amended commodity inspection law until October 1, 2002, again granting the domestic agricultural industry additional time to

192. See Chen & Gu, *supra* note 190, at 1178, 1186 (noting that the goal of safeguard measures is to promote healthy trade and increase the competitiveness of domestic industry).

193. See Agreement on Safeguards, *supra* note 189, art. 5 (stating that a member country shall only apply safeguard measures “to the extent necessary to prevent or remedy serious injury and to facilitate adjustment”).

194. See Terence P. Stewart, et al., *Opportunities in the WTO for Increased Liberalization of Goods: Making Sure the Rules Work for All and That Special Needs are Addressed*, 24 *FORDHAM INT'L L.J.* 652, 65 (2000) (discussing that the purpose of safeguard measures is to provide a release from the tension brought about from high levels of global competition); see also Chen & Gu, *supra* note 190, at 1186 (reiterating that the second purpose of safeguard measures is to increase the competitiveness of domestic industry).

195. See *supra* notes 65-89 and accompanying text (discussing the U.S./China bilateral agreement, which will continue to be slowly implemented until 2005); see also Bhala, *supra* note 9, at 1512-18 (outlining current safeguard measures that China is gradually reducing or eliminating). China is in the process of reducing tariffs in general and specific tariff rates for U.S. priority products. *Id.* at 1512. China further agreed to eliminate import quotas by 2005. *Id.*

196. See Bhala, *supra* note 9, at 1511-19 (listing the various commitments China made in the bilateral agreement). China promised to reduce tariffs by 2005, with the majority of the reductions in place by 2003. *Id.* at 1512. The tariffs for agricultural commodities will be reduced by seventeen percent by 2004. *Id.* China further agreed to eliminate import quotas on industrial goods by 2005. *Id.*

improve itself.¹⁹⁷ In order to keep the faith of international exporters, China must find other methods to increase its economic efficiency.¹⁹⁸

To increase the efficiency of its domestic agricultural industry without implementing additional safeguard measures, China should focus on eliminating obsolete agricultural farming related laws and increasing domestic use of agricultural technology.¹⁹⁹ If China implements additional safeguard measures, there are two likely results. First, foreign exporters may lose faith in China's dedication to the WTO system and, under Article 14 of the Agreement on Safeguards, use the WTO's dispute settlement mechanism.²⁰⁰ Second, the United States or any other WTO member country could retaliate by implementing safeguard measures specifically against Chinese products.²⁰¹ This would be detrimental to Chinese exporters and further harm Chinese producers by restricting access to foreign markets for their products.²⁰²

197. See Huanxin, *supra* note 36 (reporting that the amended law would take effect on October 1, 2002).

198. See Mastel, *supra* note 104, at 988-89 (noting that China has repeatedly failed to live up to international agreements and treaties, creating much concern over its WTO membership).

199. See discussion *infra* Part III.D (stating ways China could improve its agriculture industry); see also Chen & Gu, *supra* note 190, at 1176-77 (discussing problems with China's domestic agriculture industry). China could change its current system of granting administrative agencies control over agriculture production and distribution. *Id.* The Chinese government can also increase agricultural efficiency by increasing the level of agricultural technology used by Chinese farmers. *Id.* at 1176.

200. See Agreement on Safeguards, *supra* note 189, art. 14 (stating that the Dispute Settlement Understanding of Articles XXII and XXIII of GATT 1994 apply to the settlement of disputes arising under the Agreement on Safeguards).

201. See Wise, *supra* note 65, at 574-75 (reviewing sections of the PNTR law that deal with safeguards against Chinese products). Unlike the Agreement on Safeguards, which forbids any WTO member from imposing safeguards against products from a particular country, the PNTR law specifically allows the United States to implement safeguard measures against Chinese products. *Id.* at 574. The PNTR law further allows the United States to implement safeguard measures for twelve years following China's accession to the WTO, where the Agreement on Safeguards only grants an eight-year grace period. *Id.* at 574-75.

202. See Stewart et al., *supra* note 194, at 655 (explaining that countries use safeguard measures as retaliatory measures in order to decrease particular imports that damage domestic industry); see also Wise, *supra* note 65, at 574-75 (noting that the U.S. PNTR Law specifically allows the United States, or other WTO

B. REFORM INEFFICIENT STATE ENTERPRISES

In order to improve its agricultural industry, China should reform its inefficient SOEs instead of providing additional protection for them.²⁰³ The Chinese government has protected its domestic SOEs for so long that they have lost the ability to manage themselves and to compete efficiently.²⁰⁴ In order for China to improve the efficiency of its domestic companies, the government should focus on revising the laws surrounding its SOEs.²⁰⁵ The first step the Chinese government should take is to repeal the SOE Law and consolidate SOE governance under the Corporate Law.²⁰⁶ This will simplify corporate governance and help establish corporate autonomy for all companies, including SOEs.²⁰⁷ The government should also create new bankruptcy laws that apply equally to SOEs and non-SOEs.²⁰⁸

In order to compete effectively with foreign companies, China's SOEs must shed their governmental protection and improve their

member countries, to implement product specific safeguard measures against Chinese products).

203. See Bhala, *supra* note 9, at 1482 (noting U.S. concerns that government agencies and SOEs control nearly seventy-five percent of the Chinese economy); see also Yuan, *supra* note 3, at 196 (explaining that many SOEs in farming are ill-prepared for increased global competition). China must continue to reform its SOEs in order to create more efficient enterprises capable of global competition. *Id.* at 216.

204. See Thomas Li-Ping Tang & Fuyu Tang, *The Changes of the State-Owned Enterprises in China*, 10 INT'L HUM. RESOURCES J. 6, 3 (2001) (stating that a major problem with the SOEs is the long history of poor management). The Chinese government has not been concerned with the productivity or efficiency of SOEs, but instead has focused on product quantity and value. *Id.* at 4.

205. See Yuan, *supra* note 3, at 216 (explaining that China must successfully revise its SOE system in order to comply with WTO obligations).

206. See Schipani & Liu, *supra* note 30, at 28 (arguing that China should repeal the SOE Law in order to allow the Corporate Law to govern all SOEs and other companies).

207. See *id.*, at 28-29 (explaining that application of Corporate Law will not only simplify corporate governance but may also help SOEs establish their own legal independence).

208. See *Corporate/Debt Restructuring*, *supra* note 32, at 22 (stating that a drafting committee in the NPC is working on drafting a new bankruptcy law). This law will have a broader scope than the current bankruptcy law that applied only to SOEs. *Id.*

management skills and overall efficiency.²⁰⁹ Historic management practices have revolved around the practice of bribery; China must change this to implement a “rule of law” system.²¹⁰

Joint venture companies will provide one of the most effective methods for Chinese firms to learn to compete with foreign firms.²¹¹ Within the last twenty years, the number of joint ventures operating within China has increased substantially, helping Chinese industries break away from state aid and increase their competitive capability.²¹² U.S. companies and exporters will also benefit from joint venture companies by having and exploiting a direct connection to China and one-fifth of the world's population.²¹³ China must also seize this opportunity to improve the efficiency of its farmers by upgrading the level of technology used by Chinese farmers.²¹⁴ For example, SOEs must work with the government to gain access to better information technology that will help agricultural SOEs increase efficiency and understand changing markets.²¹⁵

209. See Li-Pang Tang & Tang, *supra* note 204, at 7 (discussing the challenges facing Chinese SOEs). Management must focus on providing leadership to the company through developing business and management skills. *Id.*

210. See Ott, *supra* note 167, at 151 (explaining that China's shun of a “rule of law” system combined with inefficient SOEs has led to a system revolving around bribery).

211. See Li-Ping Tang & Tang, *supra* note 204, at 8 (listing the numerous advantages SOEs can realize from forming joint ventures with foreign firms, including absorption of foreign technologies and management practices).

212. See *id.* at 8 (contending that joint ventures will help Chinese companies develop on their own because the Chinese government does not want to interfere with foreign companies' interests).

213. See *id.* at 8-9 (arguing that SOE joint ventures are attractive to foreign companies because of the potential to gain direct access to one of the world's largest markets).

214. See Chen & Gu, *supra* note 190, at 1176 (mentioning that Chinese agricultural technology is below the level of foreign farmers, resulting in higher costs and lower competitiveness); see also Ding, *supra* note 5, at 336 (noting that China's agricultural industry uses very limited technology and that it is very labor-intensive); Bhala, *supra* note 9, at 1523-24 (suggesting that government protection of SOEs led to Chinese farmers working far less land on average compared to U.S. farmers).

215. See Li-Pang Tang & Tang, *supra* note 204, at 8 (arguing that Chinese SOE managers must utilize information technology to increase their access to market and company information).

C. CHINA MUST CONTINUE TO ADAPT TO ECONOMIC AND SOCIAL REFORMS

To date, Chinese officials have launched numerous legal, political, and social campaigns to combat social unrest and crime; they must continue to do so because the amendments to the commodity inspection law and specific commitments from the U.S./China bilateral agreement will saturate China's market with foreign goods and force its corporations to battle increased foreign competition.²¹⁶ As China implements its WTO commitments and withdraws its protection of domestic industry, Chinese citizens and industries may feel threatened and react negatively; this could lead to more incidents similar to the Yangjiazhangzi mine riot.²¹⁷ The Chinese government must combat social and economic unrest by focusing on legal reforms such as the revision of laws that provide protection to SOEs, employment programs to encourage workers to support themselves, and political campaigns to explain to its population the benefits to be realized from WTO membership.²¹⁸ Chinese officials should focus on informing their citizens that increased access to foreign markets through non-discriminatory treatment and reduction or elimination of tariff and non-tariff barriers will benefit China's domestic economy.²¹⁹

216. See Lubman, *supra* note 144, at 403 (describing China's reaction to the increased level of crime and social unrest). Some campaigns are designed to increase the public's belief in government officials and the creation of a "spiritual civilization." *Id.* at 404; see also Blumental, *supra* note 4, at 216 (discussing the Chinese government's position of guarding against domestic hostile forces in order to maintain social stability).

217. See *supra* notes 175-187 and accompanying text (discussing the detrimental side effects China's citizens and industries will realize due to foreign competition).

218. See Blumental, *supra* note 4, at 216 (quoting Chinese officials explaining that China cannot achieve economic growth without WTO membership); see also Bacon, *supra* note 9, at 387 (listing economic and social benefits China will realize from opening its domestic markets to international trade).

219. See Williams, *supra* note 23, at 808 (noting that Chinese exporters will benefit from nondiscriminatory treatment of its exported goods); see also Bhala, *supra* note 9, at 1479-80 (stating that Chinese goods will gain from lower tariffs and reduction or elimination of other non-tariff barriers, mainly from the elimination of quotas).

The U.S./China bilateral agreement put China on PNTR status with the United States, which grants Chinese goods equal access to the U.S. market.²²⁰ PNTR status benefits China's domestic economy by providing greater access to the U.S. market, allowing Chinese companies to export more products to the United States.²²¹ The Chinese government must inform the public that increased competition does in fact benefit the domestic economy through lower product prices and eventual increased efficiency of domestic industry.²²² China must inform its citizens of the benefits of WTO membership, but also take its time in implementing its WTO commitments in order to maintain stability, combat social unrest, and decrease unemployment.²²³ China's economy will take time to adjust to foreign competition, and adopting new laws, or revising old laws too quickly could lead to more domestic struggling and social unrest.²²⁴

The Chinese government should implement legal, economic, and social reforms to combat an increase in the unemployment levels.²²⁵ China should focus on both strengthening its domestic agriculture industry as well as developing other non-agricultural industries to

220. See Ott, *supra* note 167, at 149 (explaining that PNTR status allows China to export products to the United States and receive the same tariff rates as other U.S. trading partners); see also *CRS Report: IB93107 supra* note 167 (describing that normal trade relations require the United States to extend the same trading rights to all trading partners).

221. See Ott, *supra* note 167, at 149 (noting that PNTR status commitments require the United States to apply the same low tariff rates to Chinese products that it grants to all WTO members).

222. See Seita, *supra* note 173, at 446 (explaining that increased competition from foreign firms leads to increased efficiency of domestic firms).

223. See Blumental, *supra* note 4, at 216 (noting that China's main focus should be toward maintaining social stability and preventing social and political unrest).

224. See Lubman, *supra* note 144, at 403 (maintaining that recent reforms have had detrimental effects on China's social fabric).

225. See Blumental, *supra* note 4, at 212 (stating that the Chinese unemployment rate has recently increased as a result of distressed SOEs); see also Ching-Ching, *supra* note **Error! Bookmark not defined.** (discussing Project 4050, a program started by Shanghai's city government to provide employment opportunities and incentives for the "least marketable members of China's old command economy").

stabilize the overall economy.²²⁶ China can do this by eliminating obsolete laws that grant too much production and distribution power to administrative agencies.²²⁷ China should also focus on increasing the level of technology used by its farmers and agriculture producers in order to increase competitiveness and efficiency.²²⁸

As China's agricultural industry struggles with increased competition and unemployment, the Chinese government should focus legal reforms on developing other industries to accommodate unemployed workers.²²⁹ The Chinese government should shift the focus of its agricultural industry away from being labor-intensive by using the opportunities presented by WTO membership to create new, non-agricultural, jobs for its population.²³⁰ China should develop other industries by offering educational and training programs in sectors other than the agricultural industry to increase

226. See Chen & Gu, *supra* note 190, at 1175-76 (explaining that China's domestic agricultural industry has been at the "heart of China's domestic economy;" however, the government must change the current system in order to ensure its efficient survival).

227. See *id.* at 1177 (stating that China's WTO accession forces China to eliminate obsolete laws). Agricultural commodity prices are distorted and market adjustment mechanisms do not operate properly because administrative agencies exercise too much control over agricultural commodities. *Id.* at 1176-77.

228. See *id.* at 1176 (explaining that China's agricultural technology is below the level of foreign competitors, which leads to high costs and low international competitiveness).

229. See Bhala, *supra* note 9, at 1523-24 (explaining that Chinese farmers are less efficient than U.S. farmers and will have trouble dealing with the competition); see also Suranovic, *supra* note 171 (describing how the comparative advantage theory encourages a country to focus on its most efficient industry or production method); Ching-Ching, *supra* note 29 (explaining Shanghai's initiative to encourage the least marketable citizens to become their own supporters). Project 4050 encourages women over forty and men over fifty to start their own businesses and hire other 4050 workers. *Id.* The city government will then provide them with tax breaks and management guidance. *Id.*

230. See Gao Shangquan, *Speeding up the Reform and Liberalization Processes to Meet the New Challenges for China's Post-WTO Accession*, 34 INT'L LAW. 355, 356 (2000) (discussing the opportunity presented by China's WTO accession to allow China to focus on increasing the exports of labor-intensive products to "alleviate the employment pressure and stimulate economic growth"); see also Chen & Gu, *supra* note 190, at 1176 (noting that, since eighty percent of China's population works in the agricultural industry, there is an overabundance of laborers in this industry).

the employability of unemployed Chinese workers.²³¹ Chinese government officials could further support development in new industries by encouraging joint ventures in those areas.²³²

D. CHINA MUST TAKE TIME TO IMPLEMENT CHANGES

Implementation of WTO requirements, such as the Agreement on TBT and the Agreement on SPS, and economic reform could lead to increased social unrest, unemployment, and instability if the government handles the requirements improperly.²³³ Immediately upon accession, China assumed all WTO regime obligations including the national treatment obligation, the non-discrimination agreement, and the reduction of tariffs.²³⁴ However, the U.S./China bilateral agreement does not require China to implement all of its commitments immediately; under the agreement, many of the specific commitments call for a reduction or elimination over a period of five to six years.²³⁵

China's agricultural industry historically has received a high amount of governmental protection.²³⁶ As China continues implementing its bilateral agreement commitments, its domestic

231. See Shangquan, *supra* note 230, at 362 (noting that the Chinese government will provide training to help increase the re-employment of affected citizens).

232. See *supra* notes 211-215 and accompanying text (arguing that joint ventures provide an excellent opportunity for Chinese firms to enter new areas of business or become more competitive in existing areas).

233. See *supra* notes 122-134 and accompanying text (discussing the impact of economic reforms and the need for the Chinese government to take appropriate measures to ensure stability).

234. See Bhala, *supra* note 9, at 1519 (reiterating that upon accession, China would implement all WTO obligations); see also Kennedy, *supra* note 48, at 425 (listing the four GATT & WTO "pillars": the MFN obligation, the national treatment obligation, reduction of tariffs, and the elimination of quotas).

235. See Bhala, *supra* note 9, at 1511-19 (outlining China's commitments made to the United States in the bilateral agreement of 1999). China has until 2005 to finish the reduction of tariffs. *Id.* at 1512. Similarly, China does not have to eliminate import quotas on industrial goods until 2005. *Id.* China's commitment to reduce import tariffs on agricultural products must be completed by January 2004, but not sooner. *Id.*

236. See Ding, *supra* note 5, at 335 (stating that China has protected its agricultural industry in order to attain agricultural self-sufficiency).

agricultural industry will struggle as inefficient Chinese farmers fight to compete with more efficient U.S. farmers exporting to China.²³⁷ China must continue with the trend of slowly implementing its commitments, while eliminating inefficient SOEs in the agricultural sector.²³⁸ If China fails to reform its domestic agriculture industry slowly, agricultural companies and individual farmers will remain uncompetitive, and China's protection of agricultural SOEs may lead to forced elimination of those agricultural companies because of their violation of WTO principles.²³⁹

U.S. exporters must recognize that China cannot amend all of its laws and remove government protections overnight, and it must allow China time to level the playing field.²⁴⁰ U.S. exporters must realize that it is not only China's economic sector that must change, but China's cultural structure as well.²⁴¹ By allowing China time for the domestic economy and society to react to an influx of foreign commodities and competition, U.S. firms will realize greater economic gain.²⁴² If China's economy does not have time to adjust, there will be little domestic competition for foreign commodities

237. See Bhala, *supra* note 9, at 1523-24 (explaining that Chinese farmers are less efficient than U.S. farmers, as the Chinese farm far less land per farmer); see also Suranovic, *supra* note 171 (describing the comparative advantage theory). Under the comparative advantage theory, the country that is more efficient at producing a product will produce that product and export it to the less efficient country. *Id.*

238. See Bhala, *supra* note 9, at 1483 (noting that SOEs in other sectors will experience similar situations as the SOE at the Yangjiazhanzi mine).

239. See Blumental, *supra* note 4, at 202 (maintaining that the conditions of WTO membership will have the short term affect of forcing many SOEs into insolvency, increasing the unemployment levels).

240. See Williams, *supra* note 23, at 792 (explaining that it will take time for the Chinese government to enact reform and make necessary changes).

241. See Yuan, *supra* note 3, at 196 (stating that China's state-protected industries are "ill-prepared" for the global competition that will ensue); see also Ott, *supra* note 167, at 150-51 (explaining that Chinese society and culture is very different than U.S. culture). Chinese culture has an anti-law tradition with inconsistent rules. *Id.*

242. See Blumental, *supra* note 4, at 212 (noting that unemployment has increased as China has reformed its domestic economy and industries); see also Lubman, *supra* note 144, at 403 (explaining that reforms have led to income disparity and social unrest).

because unemployment will be high, and Chinese citizens will not have the ability to purchase U.S. commodities.²⁴³

China must learn to follow through with its trade commitments and move towards a "rule of law" principle.²⁴⁴ U.S. exporters, however, must understand that China cannot transform immediately into a "rule of law" society.²⁴⁵ Despite the fact that this transformation will not be instantaneous, U.S. exporters must have faith that China will be able to fulfill its international obligations and open itself to foreign commodities.²⁴⁶ Moreover, U.S. exporters should grant China the time to adjust and temporarily refrain from bringing WTO dispute resolution actions against China.²⁴⁷

Notwithstanding China's history with trade agreements, U.S. exporters must put their faith in China's ability to fulfill its commitments, as the Chinese government recognizes how important WTO membership is to its economic survival and success.²⁴⁸ Chinese officials realize China cannot grow economically independent of the WTO and must have the opportunity to fulfill China's

243. See Blumental, *supra* note 4, at 212 (stating that China's unemployment rate has increased due to recent domestic economic reform); see also Lubman, *supra* note 144, at 403 (noting that recent reforms have had detrimental impacts, including increasing the income disparity between the rich and the poor).

244. See Blumental, *supra* note 4, at 208 (explaining that, in 1997, China followed through on many of its bilateral commitments but that it still had many issues to resolve).

245. See Williams, *supra* note 23, at 792 (stating that it is unreasonable to believe that WTO membership will instantly change China from a "rule by people" to the "rule of law").

246. See Blumental, *supra* note 4, at 208 (noting that China has begun following through on its international obligations). *But see* Lubman, *supra* note 144, at 420 (arguing that the ineffectiveness of Chinese legal institutions will impair China's ability to follow through on its international obligations and commitments).

247. See Yonehara, *supra* note 6, at 101-02 (contending that a course of action consisting of a WTO dispute resolution case would not be the best method to compel China to live up to WTO obligations and implement the "rule of law").

248. See Blumental, *supra* note 4, at 216 (explaining that Chinese officials recognize the importance of WTO membership). The government realizes that the Chinese economy cannot achieve economic growth in isolation from the rest of the world. *Id.* Government officials are committed to opening China to the rest of the world in order to ensure the success of China's economic reforms. *Id.*

commitments.²⁴⁹ Failure to transform from a “rule by people” system into a “rule of law” society will not only cause foreign exporters to lose faith in China’s commitment to the WTO regime, but it will also violate the WTO’s “rule of law” requirement, leading to use of the WTO judicial system as the means to force China to comply with the WTO’s system.²⁵⁰

CONCLUSION

China’s accession to the WTO and the necessary revision of its domestic laws will continue to open the access to China’s domestic agricultural market for foreign producers.²⁵¹ The amended commodity inspection law eliminated dual certification of imported commodities, created a unified system that applies to all imports as well as domestic products, and established stricter confidentiality guidelines for inspection personnel.²⁵² The U.S./China bilateral agreement increased market access by lowering overall tariffs, eliminating import quotas, granting more freedom concerning trading and distribution rights, and eliminating non-scientific SPS measures.²⁵³ Therefore, China’s accession to the WTO will continue to have both positive and negative effects on China as well as the United States.²⁵⁴

249. See Bhala, *supra* note 9, at 1479 (describing that Chinese officials realize the importance of involvement in the international arena in order to ensure domestic economic growth).

250. See Charles E. Roh, Jr. et al., *Future Challenges: The Proposed Accession of China, Russia, and Others*, 32 INT’L LAW. 883, 894 (1998) (stating that China’s lack of a “rule of law” system has led to bribery, lack of contractual commitment, and regulation mystery). China’s lack of the “rule of law” system and constant lack of legal enforcement could prove to become a serious burden on the WTO’s dispute resolution system. *Id.*

251. See *supra* notes 71-142 and accompanying text (describing the impact of the amended commodity inspection law and the U.S./China bilateral agreement).

252. See *supra* notes 71-103 and accompanying text (discussing the many effects of the amendments to the commodity inspection law required in order to bring the law into compliance with WTO obligations and agreements).

253. See *supra* notes 104-146 and accompanying text (explaining China’s commitments made in the U.S./China bilateral agreement).

254. See *supra* notes 147-187 and accompanying text (highlighting the economic impact on both the United States and China from increased market access for U.S. commodities into China).

In order for the United States and China to realize the greatest benefit from China's commitments, China must find ways to handle the pressures of increased foreign competition.²⁵⁵ U.S. exporters must realize that China's economy will not change overnight; rather, it will require time to mature into a fair and cooperative market.²⁵⁶ Complying with WTO rules and obligations requires restructuring of China's economic system and, in many ways, restructuring of China's social system.²⁵⁷

255. See *supra* notes 143-187, 203-214 and accompanying text (commenting on the economic, political, and social effects of increased competition for the agricultural industry and measures China has in place to reduce the detrimental effects).

256. See *supra* notes 248-249 and accompanying text (stating that U.S. agricultural exporters must have faith that China will follow through on its commitments and patience while China lessens the harsh impact from international competition).

257. See Yonehara, *supra* note 6, at 75 (explaining that Chinese culture is based on Confucian teaching and the ideology of harmony through interaction, not harmony through formal legalism); Ching-Ching, *supra* note 29 (reporting that China's recent reforms erase China's "iron rice bowl" and require its citizens to "stoop so low-fending for themselves in a competitive market economy").