CHINA'S ONE-WAY STREET ON FOREIGN DIRECT INVESTMENT AND MARKET ACCESS

China's Government Imposes High Hurdles to Foreign Investment
and Business in China, Particularly In America's Most Advanced Industries

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August 18, 2005

EXECUTIVE SUMMARY

Introduction

As Chinese-government-controlled CNOOC attempted to buy UNOCAL, China continues to restrict U.S. companies from owning Chinese companies. China forces U.S. firms into a minority stakeholder in joint ventures with Chinese firms. Often, as a condition for investment, China demands valuable technology and intellectual property from U.S. firms. China especially targets industries in which the United States leads the world. Typically they are industries that require sophisticated know-how and intellectual property, rather than cheap labor alone.

Schumer's report – the first attempt at quantifying this problem- details some of the ways that U.S. industries are affected by China's unwillingness to play fair.

It must also be noted that an accurate picture of which investments, mergers, and joint ventures are rejected by the Chinese government is almost impossible to compile, because companies and investors don't want to admit publicly that China said "no." Trade associations have told us that many companies don't want to go on the record because they fear retaliation if they complain to the United States Trade Representative or pursue a case with the World Trade Organization.

I. Handcuffing American Investment: Limited Partnerships and Joint Ventures

The Chinese government does not permit foreign companies to own majority stakes in almost any domestic Chinese enterprise. Foreign companies interested in investing in China are required to go in 'joint ventures' with Chinese companies. The Chinese component always must own at least 50.1%. Foreign investment is further limited by investment minimums in certain key industries like energy or automobiles. For instance, in automobile production, China limits joint ventures. In the energy sectors, foreign companies are specifically consigned to minority stakes, which would have prohibited a take over of CNOOC by UNOCAL, for instance. In aviation technology, China essentially requires backdoor intellectual property theft with "technology transfer requirements."

No American company would be able to take over a Chinese competitor in the way that CNOOC attempted to take over UNOCAL. The rules simply don't allow it.

Chinese Legal Restrictions and Prohibitions:

The Chinese government goes beyond setting broad restrictions on ownership. They categorize investment into four categories, by law: 1) encouraged, (2) permitted, (3) restricted, or (4) prohibited. Even in non-prohibited categories, all foreign investment must be approved by the Ministry of Foreign Trade and Economic Cooperation (MOFTEC). Prohibited categories of investment include firearms, aspects of media production, and aspects of biotech.

Why do the Chinese categorize investment this way? The Chinese very tightly and self-consciously manage who invests in what industry, how much they invest, and what the price to enter the domestic market is. Chinese government tightly manages all investment in ways that is most beneficial to China and the long term growth of Chinese firms. Fairness or adherence to the normal rules of the free market is not the top priority of the Chinese government.

II. Holding American Technology Hostage: Technology Transfers

In many industries the Chinese government makes a brazen deal with U.S. firms: you can taste our vast domestic market at a price – give us the technology that makes U.S. industry the envy of the world. In industries from aviation to steel China demands that U.S. firms give up their technology and know how to the joint venture as a condition of entering into the market place. The effect of this is essentially to give up the only competitive advantage that American firms have.

Chinese Double Standards Are Even Written Into Their Law

The Chinese double standard is even written into the Guidance Catalog of Industry with Foreign Investment that governs foreign investment in China.

Incredibly, while China blatantly extorts patented technology from American companies in exchange for market access, China PROHIBITS foreign investment in projects that use "the particular techniques or technologies of China to produce products."

According to the Guidance Catalog, three types of "encouraged" foreign investment cover projects that bring in new technology to China are "2) being of high and new technologies or advanced application technologies that can improve the product performance and increase the technology economic efficiency of the enterprises or those that can produce the new equipments and new materials which the domestic production capacity fails to produce; 4) being of new technologies and new equipments that can save energy and raw material, comprehensively utilize resources and regenerate resources, and prevent environment pollutions"

However, according to the Guidance Catalog of Industry with Foreign Investment issued by the Chinese Government CHINA EXPRESSLY PROHIBITS foreign investment in projects that use "the particular techniques or technologies of China to produce products."

Essentially, China nakedly encourages projects that will bring American know how and technology into their dominion, take U.S. capital, without giving any long term market access up in return.

III. Taking Aim at America's Most Advanced Industries

China's restrictions, hurdles, and double standards are not aimed randomly. They are aimed at the industries and sectors that America leads the world. For instance, in hi-tech, China encourages the use of Microsoft competitors and looks the other way at intellectual property theft. In China's massive but inefficient steel sector, technology transfers are now a condition for entry. In the high tech world of aviation equipment, China demands technology transfers. In media production, China demands co-production of films, and strongly censors content. China recently announced that it would freeze approvals for satellite broadcasters.

The reasons behind this are obvious. China hopes to extract and steal America's best industrial technology, then shepherd its own domestic industries into a position where they will one day be able to take market share using America's own technology.

Because the Chinese market is so large and the potential for short term profits so great, American companies go along with these highly irregular restrictions and rules, even if the effect will be to grow Chinese competition in the global market place over the long term.

An Overview: Industry By Industry Restrictions

> In key sectors like energy, foreign firms must form a joint venture for the Chinese firm, and they can only take a minority position. They also have to give up certain technologies the Chinese demand as access and entry into their market. Neither the U.S. government, nor a private U.S. firm would be permitted to buy Sinopec or CNOOC. We can't go in -- no firm, much less the U.S. government, would not be permitted to buy a Chinese firm.
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> -Richard D'Amato. Chairman U.S China Economic and Security Review Commission.

Industry	Chinese Restriction on Foreign Ownership or Anti-Competitive Rule
Securities (i.e. J.P. Morgan)	Securities: ownership limited to 33%. For asset management services, the maximum increased from 33 to 49% last year.
Aviation (i.e. General Electric, Boeing)	China demands "technology transfers" as a condition of investment.
Broadcasting (i.e. Viacom, Time-Warner)	Froze approvals for foreign satellite broadcasters.
Print and Film Media (i.e. Disney, Time Warner)	Censorship of books, films, and newspapers and banned prime time foreign cartoons. Froze joint productions of television shows.
Banking and Insurance (i.e. Bank of America, Cigna)	Foreign banks limited to 20% stake; Insurance companies limited to 50%.
Automobiles (i.e. General Motors)	Limited to less than 50% in joint venture.
Telecom (i.e. ATT)	Foreign ownership cannot exceed 25%, rising to 49% by the end of 2007. Mobile capped at 49%.
Energy (i.e. Exxon-Mobil)	Three state owned Chinese companies dominate the energy sector. China just agreed to open up 10% of crude imports to the private sector.
Steel	Ownership limited to less than 50% and "technology transfer" required for investment.
High Tech (i.e. Microsoft)	Limited to less than 50%. Intellectual Property violations are notoriously rampant.
Intellectual Property Violations	Rampant in Hi Tech, Pharmaceuticals, Aviation technology, auto parts, and food. China has not signed two important treaties in IP theft.
Technology Transfers (i.e. GE, Boeing)	Required "technology transfer"
Biotech Seed Production	PROHIBITED
Firearms	PROHIBITED

HOW CHINESE RESTRICTIONS AFFECT SPECIFIC U.S. INDUSTRIES

China focuses its efforts to set up roadblocks on many industries in which the United States has clear advantages over China, in terms of know-how and experience. The following details how the restrictions are hurting American companies.

ENERGY AND NATURAL RESOURCES: MINORITY PARTNERSHIPS AND BACK DOOR INTELLECTUAL PROPERTY THEFT

Roadblocks: As in many other industries, China only permits foreign energy firms to form a joint venture with Chinese firms and then only permits the foreign firm to maintain a minority stake in the venture. This limits energy companies from entering the Chinese market precisely in the way that CNOC attempted to buy UNOCAL. Moreover, CNOC, CNPC, and Sinopec are Chinese government controlled monopolies. To buy a controlling stake in these companies would be to buy a controlling stake in the Chinese government itself, which the Chinese would never permit. For example, between 2000 and 2002, the three largest Chinese oil and gas firms – Sinopec, CNPC, and CNOOC have all carried out initial public offerings (IPOs) of stocks, which have helped bring foreign dollars into the Chinese market. However, there were limits placed on stakes foreign companies could hold, for example PetroChina only allowed a minority stake of 15%. To date, the Chinese government holds majority stakes in *all three* firms, and to boot, the foreign investors have not received seats on their board of directors. As part of China's WTO accession commitments, it has agreed to gradually open the crude and refined oil sectors to private traders and to cut its state monopoly on oil trading by giving up 4 million tons of oil products and 10 % of crude imports to the private sector.

> *Snapshot: Foreign companies are only marginally involved in the production of energy in China, especially in regards to the onshore oil sector. China's undeveloped resources are located in areas difficult to access and the resources are hard to find, develop, extract and especially hard to utilize, requiring advanced technology and large capital investments. Yet China has made it extremely hard for competitive internationally-renown countries to penetrate the domestic oil market by establishing strict environmental standards, customs regulations, labor laws and tax laws.*
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> Steel: In July of 2005, China revised its rules governing foreign investment in the steel industry. Under the new rules, China will forbid foreign steel producers from taking controlling stakes in domestic steel companies. Foreign steel producers, if they want to invest in China's steel sector, must "have independent intellectual property in steel-making technologies and have an annual output of 10 million tons," according to Qi Xiangdong, deputy secretary general of China Iron and Steel Association. These anti-competitive and unfair rules amount to state sponsored bribery and will have the effect of forcing foreign

manufacturers to hand over valuable intellectual property to China, already the world's largest producer and consumer of steel.

BANKING AND INSURANCE: Ownership Limitations

Roadblocks: A single foreign bank can only own 20 % of a Chinese bank, with total ownership by all foreign investors not to exceed 25 %. The limitation for life insurance companies is 50 %. According to the United States Trade Representative (USTR), "through an opaque regulatory process, overly burdensome licensing and operating requirements, and other means, Chinese regulatory authorities continue to frustrate efforts of U.S. providers of insurance, express delivery, telecommunications and other services to achieve their full market potential in China."

In addition, according to the U.S.-China Business Council, several Chinese banking officials have hinted that they are looking for ways to slow the entry of foreign banks to the sector without violating China's WTO commitments, under which China must allow foreign banks to offer services to Chinese citizens by December 2006. Specifically, the mainland press has reported that China was considering restricting foreign banks to the less-prosperous central and western regions, and capping at two the number of Chinese banks in which foreign banks could take a stake (related to the ownership issues above).

> *Example—Bank of America, CIGNA: Examples of how foreign investments face these artificial limitations include Bank of America's joint venture with China Construction Bank (9 %, limited to a 19.9 % maximum stake) and CIGNA's venture with China Merchants Holdings Group (the 50 % stake is the maximum allowed).*

RETAILING SERVICES: Market Access and Joint Venture Restrictions

Roadblocks: Although China has broadened the scope for foreign investment in the retail sector, China is slow to implement true liberalization in the wholesale area as foreign enterprises continue to face a variety of restrictions. It wasn't until halfway through 2004 that China even began to take steps to liberalize the restrictions, when the Chinese Ministry of Commerce (MOFCOM) issued regulations eliminating market access restrictions on joint ventures providing retailing services. Though MOFCOM introduced more progressive regulations, they have failed to clarify the procedures for securing the necessary approval certificates, which has in turn delayed foreign enterprises' provision of these services.

LEGAL SERVICES: Numerous Continuing Restrictions

Roadblocks: China was supposed to relax many restrictions within one year of joining the WTO, but in reality, there are still a number of artificial barriers in this area. Foreign law firms looking to expand into China have to jump through a number of hoops that do not appear to be in line with the WTO commitments. For example, a foreign firm may not open an additional office until its most recently established office has been open for three consecutive years. In addition, according to the regulations, foreign lawyers are not permitted to provide their clients with "opinions or comments as counsel on the application of Chinese law and facts involved in Chinese law in arbitration activities." China also continues to unreasonably limit the freedom of Chinese nationals to be employed by foreign firms. And the regulations require foreign law firms that establish offices in multiple cities to assign a different partner to head each office, which creates a barrier to trade in providing legal services.

AUTOMOBILES: Joint Venture Restrictions

The United States produces 11.4 million automobiles a year, more cars than any other nation. Japan is a close second with 9.8 million a year. China currently only produces 2.4 million a year and is desperate to catch up. In order to spur development China limits foreign investment, market expansion, and looks the other way as Chinese companies make copy cat versions of American cars. With 1 billion potential Chinese consumers, the Chinese are strategically nursing their domestic industries at the expense of free trade.

Roadblocks: According to the American Chamber of Commerce in China (AmCham-China), China has sought to circumvent a commitment on the establishment of new joint ventures. The new Chinese Auto Policy stipulates a minimum investment amount of RMB2 billion ($244 million) required for the establishment of new vehicle manufacturing joint ventures, substantially higher than what was promised, which essentially means that the State Council will need to approve all such projects.

AmCham-China writes, "This requirement for central government approval may result in significant delays in the approval and establishment processes....The Auto Policy also imposes an important restriction that is not imposed on joint ventures in other industries...if a joint venture lists on the stock market, a single Chinese company must hold more shares than are held by all the foreign shareholders combined." These are important roadblocks to significant U.S. automobile investment in China. In addition, we have learned that China is objecting to Ford's effort to expand a plant, thereby limiting total U.S. automobile investment in China in another way.

> *Example –To see how these requirements are affecting a specific U.S. company, one need look no further than **General Motors**. In some respects, GM has been one of the most successful American enterprises in China. In 2004 alone, it was involved in the manufacture and sale of almost 500,000 vehicles on the Chinese mainland. But even so, GM faces major restrictions: It is not allowed full control of its Chinese enterprises, as it is only permitted to own a 50 % stake in its major ventures. Thus, GM's opportunity for expansion in China is strictly limited.*

To make matters worse, while GM has been denied full ownership of its own companies in China, a Chinese auto manufacturer (Chery) gained access to a GM model and has since been accused of counterfeiting a Chevrolet Spark design, building and selling it in China.

MEDIA: Frozen Licenses, Content Restrictions, and Ownership Limitations

Roadblock: Satellite Broadcasting: In August of 2005, China just froze ALL approvals for foreign satellite broadcasters entering its market. Three foreign broadcasters own rights in China, and other broadcasters like CNN and the BBC can broadcast into hotels used by foreigners or have joint-venture arrangements with Chinese companies.

Roadblock: Film Imports and Production: In addition, China currently imposes film import quotas, capping the number of foreign revenue-sharing films allowed for exhibition each year at a maximum of 20. China also places an exhibition quota of two Chinese films for each foreign film. Some foreign investment is now allowed in television and film production, but the Chinese side must still retain a controlling share. (While the U.S. also has rules on foreign telecom investment, we do not have similar quantitative restrictions.) Since China's entertainment market is starved for content, the artificial limit simply drives consumers to the black market to satisfy their desire to see the latest films, thereby worsening intellectual property violations.

Roadblock: Books, TV, and Newspaper Content. In August of 2005, the Chinese Ministry of Propaganda, Ministry of Culture of other agencies announced new rules that tightened restrictions for foreign television programs, books, newspapers and performances. Chinese regulators said that, "Import of cultural products contrary to regulations will be punished according to the circumstances, and in serious cases the import license will be revoked," the rules, which were issued on Tuesday, stated. "In the near future, there will be no more approvals for setting up cultural import agencies."

Example: TV cartoons: China recently announced that they were not going to allow foreign cartoons to be aired on television during prime time, which adversely affects U.S. companies like Viacom, Time-Warner, and Disney.

Example: Viacom: the U.S. television and entertainment conglomerate that owns MTV China, is one of three foreign broadcasters that have secured rights to broadcast to selected Chinese audiences. The other two are Star TV, owned by News Corp., and Phoenix Satellite Television, based in Hong Kong.

TELECOMMUNICATIONS, HI-TECH, AND SOFTWARE: Ownership Limitations

Roadblocks: Telecom: For value-added services, including internet and paging, foreign investment in a Chinese firm cannot exceed 50 %; and for mobile voice and data services, foreign ownership cannot exceed 49 %. For domestic and international telecom services, foreign ownership cannot exceed 25 %, rising to 49 % by the end of 2007. In technology, the Chinese government actively encourages use of domestic Linux based operating systems. Additionally, China has never enforced patent protection as

Example: AT&T. AT&T has entered into a number of joint ventures in China with China Netcom and China Telecom, both under the joint venture laws described above. AT&T also limited investment in the Chinese fixed line telecom market, citing the high threshold for investment.

Example: Microsoft: On the software front, Microsoft faces a number of barriers in China. The Chinese government has actively discouraged its agencies and provinces from purchasing Windows software, instead opting for Linux-based operating systems marketed by local Chinese corporations. Furthermore, the Chinese have taken few steps to combat piracy: 90 % of Windows users in China own illegal, pirated copies of the software.

SECURITIES AND ASSET MANAGEMENT: Foreign Ownership Explicitly Limited

Roadblock: Foreign securities institutions can establish joint ventures in China, but foreign ownership cannot exceed 33 %. For asset management services, the maximum level of foreign ownership increased from 33 to 49 % at the end of last year.

Impact Snapshot J.P. Morgan Fleming: The quantitative restrictions mean that no Wall Street investment firm could do in China what CNOOC wants to do with UNOCAL. For example, JP Morgan Fleming's joint venture with Shanghai International Trust and Investment Corporation (SITICO) was limited to the 33 % maximum.

CONSTRUCTION, ENGINEERING, AND DESIGN: Personnel & Capital Requirements

Roadblocks: China imposes discriminatory practices in the fields of construction work, engineering, and design by requiring the majority of the work to be done by Chinese firms, though many foreign entities seek the technology, innovation, and project management expertise provided by foreign-based design and construction firms.

Current regulations do not allow foreign entities to select the firms that they want for a particular project. According to the U.S. China Business Council, although wholly foreign-owned enterprises will soon be allowed to engage in construction and engineering consulting services in China, strict qualifications on personnel and local operational experience are likely to continue to pose a market-entry barrier to foreign engineering and construction firms.

China also imposes large capital requirements on construction contracts, thereby forcing foreign firms to either bypass large projects or to place additional capital in China (e.g., $1 billion for a $5 billion project). The Chinese also impose personnel restrictions by requiring that large numbers of foreign staff reside in China for at least three to six months, thereby restricting how foreign construction and engineering firms allocate their personnel among several global clients.

China also limits international experience by requiring that new foreign-invested construction enterprises possess a minimum amount of China-based project experience. Foreign engineers must obtain Chinese certification even if they have obtained similar qualifications elsewhere, This is clearly an unfair burden placed upon international construction and engineering firms that have acquired years of international-based work experience. Lastly, China forces foreign firms to partner with Chinese design firms and insists that the Chinese design partner be included in the contract with the client.

> *Impact Snapshot:* *All of these rules pose a market-entry barrier to foreign firms because even enterprises with successful operational experience overseas will have to set up in China as though they were new to the field.*

AGRICULTURE AND FOOD IMPORTS: Imposing Arbitrary Standards on Imports

Roadblock: China has implemented a number of new protectionist sanitary measures and technical barriers to defend its domestic agricultural and food industries from imports. These measures run counter to China's WTO commitments. China frequently imposes unscientific measures, delays, or commercially discriminatory or uneconomic requirements that inhibit free trade, such as imposing a "zero tolerance" standard for certain pathogens in imported uncooked meat and poultry, which in practice only apply to imports. Agricultural trade with China remains among the least transparent and predictable of the world's major markets.

In numerous instances, China has failed to notify the WTO of numerous food safety measures, resulting in rules that were adopted without the consent of other WTO members. In some cases, the regulations were overly burdensome, appeared to lack a scientific foundation, or raised significant national treatment concerns.

> *Impact Snapshot: U.S. Soybeans, Fruit, and Other Products: While the United States forced China to improve compliance with WTO obligations through bilateral negotiations, U.S. soybeans, biotechnologically related products, fruit and other products fell subject to un-notified entry and inspection and labeling requirements.*
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> *In terms of fruits and vegetables, China has placed bans on U.S. imports, ranging from citrus imports from Florida, cherries originating in California, and it has routinely blocked wheat exports from the Pacific Northwest. China has imposed a maximum residue level (MRL) for selenium (a mineral associated with wheat) that is below the international standard and imposed a MRL for*

vomitoxin in wheat in the absence of any international standard. The latter restriction threatens all U.S. wheat exports to China.

Impact Snapshot: U.S. Beef: In December 2003, China imposed bans on U.S. bovine products in response to the detection of bovine spongiform encephalopathy (BSE) in a cow imported into the United States from Canada. According to USTR, China's ban included not only beef, but low-risk bovine products such as bovine embryos (used for beef-genetics and artificial insemination which remains a large industry in China), protein-free tallow, and non-ruminant origin feeds and fats which pose no risk of BSE and should not be banned under existing international standards.

Although China announced lifting the ban in late 2004, there were conditions placed on lifting the ban were so restrictive that the U.S. and Chinese were unable to find common-ground. By the end of 2004, trade in low-risk bovine products had not yet resumed. The U.S. meat industry is also burdened in terms of Chinese labeling regulations (issued late in 2002) which require several measures that go beyond those of any other country.

INTELLECTUAL PROPERTY: Stealing Patents and Extracting Technology from High-Value-Added U.S. Industries

Roadblocks: China is legendary for intellectual property (IP) violations. This is not a specific industry, but it touches on so many industries that are vital to the U.S. economy – industries in which we clearly have a competitive advantage – that it must be included.

Since acceding to the WTO, China has increasingly resorted to policies that limit market access for non-Chinese-origin IP goods, and they also try to extract technology and intellectual property from foreign rights-holders on a regular basis. According to AmCham-China, the objective of these policies seems to be to support the development of Chinese industries that are higher up the economic "value chain" than the industries that make up China's current labor-intensive base, or simply to protect less-competitive domestic industries.

In 2004, IPR infringement in China continued to affect products, brands, and technologies from a wide range of industries including films, music, publishing, software, pharmaceuticals, chemicals, information technology, textile fabrics and floor coverings, consumer goods, electrical equipment, automotive parts, and industrial products, among others. According to the 2005 Report on Foreign Trade put out by USTR, inadequate enforcement has resulted in infringement levels in China that have remained at 90 % or above in 2004 for virtually every form of intellectual property, while U.S. estimated losses due to the piracy of copyrighted materials alone range between $2.5 billion and $3.8 billion annually.

The enforcement system of IP violations proves to be the largest problem, as the fines remain very low and there are not sufficient measures in place to clarify the conditions for imposing penalties.

Often, when the Chinese authorities decide on fines, the amounts are artificially low because they are based upon the undervalued price charged for the counterfeit or pirated goods rather than the value of the original product. To compound the lack of adequate fines, the cases are rarely forwarded to the Ministry of Public Security for criminal investigation.

Impact Snapshot: Pfizer. The drug maker applied for a patent in 1994, after a seven year battle China finally granted them a patent to produce Viagra in 2001. Three years later, after twelve Chinese pharmaceutical makers filed a complaint, China retroactively revoked Pfizer's patent. The Chinese government claimed that Pfizer failed to provide adequate documentation of the "technological uses" of the drug. Though the patent was revoked, a mere six months after Viagra was introduced to the Chinese market it was found that approximately 90 % of Viagra pills sold in Shanghai were fake. This year in March, Pfizer's lawyers filed an appeal in Chinese court, asking for a reversal of the government's decision. The appeal is still pending.

Impact Snapshot: Hi-Tech and Internet: Copyright infringement on the Internet has also become a growing problem. China has yet to accede to the two most important treaties pertaining to Internet protections set forth by the World Intellectual Property Organization (WIPO): the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. China boasts the second largest number of Internet users in the world and rapid growth in broadband penetration in China has begun to affect foreign markets.

*Impact Snapshot: Other Counterfeiting: Counterfeiting is rampant throughout nearly all of China's markets. Food counterfeiters have targeted such products as **Coca-Cola, Haagen-Dazs, Starbucks** and **Budweiser**. **Ford Motor Company** has lost nearly $2 billion per year in counterfeiting of auto parts. In 2004, Ford raided a Chinese factory making brake pads and uncovered seven thousand sets of counterfeit pads. In more egregious examples, counterfeiters set up a fake prison in the Sichuan Province to manufacture forty types of phony brand-name cigarettes which included ingredients such as plastic and sand.*

AVIATION AND TECHNOLOGY TRANSFER REQUIREMENTS: Backdoor IP Theft

In addition to these industry-specific limitations, one of the most pervasive problems that still exists is the issue of "conditional" approvals based on "technology transfer" – which is a nice way of saying, **"We will approve the deal if we can also steal your idea."**

This has been particularly prevalent in the high tech manufacturing aviation sector.
Currently the U.S. is the worlds' biggest producer of aerospace products, followed by the EU. Despite the overall $160 billion trade deficit with China, the U.S. runs approximately a $2 billion surplus with China in aviation equipment. In order to combat the U.S. of the U.S. advantage in that industry, China aggressively demands "technology transfers," the equivalent of backdoor intellectual property theft, in aviation deals, one assumes in the hopes of shepherding the domestic industry into a position to challenge the U.S. industry.

Roadblock: According to the USTR's annual report on China's WTO compliance, **the Chinese government still "encourages" such technology transfers in order to approve FDI deals.** The 2004 report says that "U.S. companies are concerned that this 'encouragement' will in practice amount to a 'requirement' in many cases, particularly in light of the high degree of discretion provided to Chinese government officials when reviewing investment applications."

So the Chinese may be following the letter of the WTO agreement, but not the spirit of the agreement, by throwing up these artificial roadblocks. To cite just one example: The Chinese government has said that in all automobile-related joint ventures, all intellectual property brought to the deal by one of the companies will be owned equally by all of the companies after the deal.

Finally, U.S. companies argue that some Chinese government officials still consider factors such as export performance and local content when deciding whether to approve an investment, or to recommend approval of a loan from a Chinese policy bank. The success of an investment project often depends on these loans, so it's another way of throwing up roadblocks to FDI.

> *Impact Snapshot General Electric: Such a situation occurred with **General Electric**, a huge employer in New York and a big supplier of aircraft engines. They wanted to sell their engines in China. The Chinese said that they would allow access to the Chinese market – as long as GE turned over the technology within 10 years, so China could make the engines themselves – in effect killing U.S. jobs. GE wanted access to their market, so they agreed to the deal. Similar deals happen all the time.*
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> *Impact Snapshot: Aviation: Companies such as **Boeing** and **Airbus** have tried to enter into China's aviation market, but have been forced to make significant concessions to do so. A 1999 report issued by the Bureau of Industry and Security arm of the U.S. Department of Commerce observed that "despite the obviously enormous opportunities present in China's aviation sector…U.S. aerospace companies, represented primarily by Boeing, appear to be willing to make significant concessions to Chinese state planners in co-production agreements in return for increased market access." The report continues, "[U.S. aerospace companies] have already agreed to onerous conditions in order to win access to the market in China by acceding to co-production deals and technology transfers."*
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> *As a result of concessions made to China, such as forced technology transfer, China can now proclaim itself as a major center for aircraft parts and whole planes, and it hopes to manufacture its first major aircraft by 2018. Though China's accession to the WTO prohibits forced technology transfers, it is unlikely to hinder aerospace firms who have already engaged in intense battles to gain entry in China's market.*

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