A COMPARATIVE ANALYSIS OF THE CHINESE AND CZECH LEGAL SYSTEMS: WHICH SYSTEM IS MORE FAVORABLE TO AND PROVIDES MORE STABILITY FOR FOREIGN DIRECT INVESTMENT?

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I. Introduction

Foreign direct investment (“FDI”) has become a hot topic in board meetings all over the world as modern businesses are seizing new opportunities within the globalized economy. Profit making activities that were not possible with the technology of the past are now commonplace. The modern economy functions on a larger scale than ever before, and companies are beginning to realize that failing to partake in foreign direct investment could lead to their demise.1 From a purely profit making perspective, and disregarding the plethora of moral questions that arise in a foreign direct investment context, which this paper does not propose to address, foreign direct investment emerges as one way to weather the storm and succeed in the modern economy.2

In the past decade, foreign direct investment has been expanding rapidly, especially to China.3 However, China is unique, because unlike some countries that attract FDI, like the Czech Republic, China has not accepted the market economy in its entirety4, and the Chinese Communist Party is not willing to relinquish much of its control.5 The resistance to reform by the Chinese Communist Party maintains a culture of control that is not sustainable in the modern world and is on the brink of political instability.6 This increases the risk associated with investing in China.7 The Czech Republic, on the other hand, underwent rapid tran-

† J.D., Loyola University of Chicago School of Law, expected May 2012. I was inspired to write on this topic after studying abroad for a semester in both China and the Czech Republic.
2 Id. at 22.
4 Id. at 193. Many of China’s largest companies are still state owned enterprises, and although they now engage in the global corporate market, rather than state planned market activities, they do not operate completely on market economy principals because the Chinese state still maintains some amount of control.
5 See Michele A. Wong, China’s Direct Marketing Ban: A Case Study of China’s Response to Capital Based Social Networks, 11 Pac. Rim L. & Pol’y J. 257, 271 (2002) (the Chinese Communist Party’s response to increased social and economic freedom has been to tighten control).
6 Id. (relinquishment of some control is critical as China’s economy grows).
7 Id.
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sition to a market economy in the 1990’s. As a result, the Czech Republic does not face the political turmoil associated with resistance to form because the country has effectively worked out the transition kinks.

This paper examines the legal systems in place in China and the Czech Republic and analyzes the impact of both on foreign direct investment. Part II provides background information on the Chinese and Czech legal systems as well as each country’s transition to a market economy. Part III discusses the current investment vehicles that allow a foreign company to invest in either China or the Czech Republic. Part IV of this paper considers the advantages and disadvantages of each for FDI and Part V analyzes and proposes which country is a better option for foreign direct investment, considering both long-term and short-term investment horizons.

II. Background

A. The Chinese Legal System and Its Transition into a Market Economy

As the world’s largest developing economy, China has attracted foreign direct investment at an impressive rate. However, the legal system in China is unique, and is strikingly at odds with the legal systems of most, if not all, other market economies. This section considers the foundation of the Chinese legal system, and the transition into a socialist market economy.

1. Structure of the Chinese Legal System and Its Political Underpinnings

Although the structure of the Chinese legal system is important, the political system that underlies the structure is perhaps more critical to the analysis of this paper. To that effect, one cannot understand the Chinese legal system without first understanding the role of the Chinese Communist Party (“CCP”). The CCP fundamentally drives national policy, and is virtually indistinguishable from other official bodies of government. The CCP has long used the Chinese legal system as a vehicle by which to implement its own policy directives, rather than
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a forum for articulating the law or defining citizen’s rights. The fact that the CCP’s control is often inconspicuous creates ambiguity in the law-making process, whereby it may appear that the National People’s Congress is promulgating laws when in fact the CCP is covertly driving the law-making process. Moreover, membership in the CCP is often the most effective way for one to gain political power and a governmental position. This permeation of political control into the legislative process directly undermines any system of checks and balances and creates uncertainty for foreign investors who realize that the only factor that guarantees success in China is a good relationship with the CCP.

On its face, the People’s Republic of China (“PRC”) Constitution of 1982 creates seven organs of state government, as depicted by the following graph.

The National People’s Congress (“NPC”), and the NPC Standing Committee are at the pinnacle of state power, and comprise the legislative branch of the Chinese legal system, which is established by Article II of the PRC Constitution. The other five organs are subordinate to the NPC and its standing Committee, including: the President of the PRC, the State Council, the Central Military Commission, and the two judicial organs: the Supreme People’s Court and the Supreme People’s Procuratorate.

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15 Id. As an example, the direct marketing ban discussed in this article is a “short term regulation” promulgated by the State Council in response to the perceived risk associated with rapid market reform.

16 Id.; see also Chow, supra note 10, at 133 (stating the political system actually operates in reverse of appearances).

17 Chow, supra note 10, at 116 (the CCP places people throughout the government apparatus allowing the CCP to exercise control over the government).

18 Wong, supra note 5, at 265 (stating the ambiguity of the law-making process does not allow for adequate appraisal of costs and risks sometimes creating in “insurmountable barrier” to investing in China); see also Chow, supra note 10, at 131 (stating that “while the CPC has absolute authority in China, the Party is careful to give the appearance of operating within a legal framework and careful not to give the appearance . . . of acting above the law”).

19 See generally Chow, supra note 10, at 79-80 (discussing the background and structure of the Chinese government).

20 Wong, supra 5, at 262; see also Chow, supra note 10, at 87.
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and the Supreme People’s Procuratorate.21 The President’s position is largely ceremonial, and although the office appears graphically equally to the others, in reality, it is not.22 The state Council is the administrative and executive branch of government, the Central Military Commission controls the military, and the two judicial branches also fall under the authority of the NPC.23 While there are differences in the function of each of the above mentioned offices, China has no comparable separation of powers doctrine like the United States, and there are many areas of overlapping powers.24 For example, although the NPC and its Standing Committee have legislative powers, in reality the State Council and its ministries create most of the new legislation.25

The structure of the NPC includes the township, county, provincial, and national levels.26 The PRC Constitution establishes that the NPC as the “highest organ of state power.”27 However, the PRC Constitution is vague and ambiguous with respect to the delegation of legislative power and authority to promulgate laws.28 The positions are elected, however, the CPC puts forth the list of candidates, and about 85% of the seats are occupied by CPC members.29 The NPC meets annually and has broad powers that include amending the PRC Constitution, and appointing and removing top governmental officials including the President of the PRC and the heads of the State Council, and Supreme People’s court.30 The NPC additionally has the power to enact and amend basic laws, approve the state budget, and plan social and economic development.31 Considering the CCP occupies 85% of the NPC, the political stronghold on the effectuation of laws is readily apparent.

Next, the State Council, though technically subordinate to the NPC, promulgates the administrative rulings relating to FDI.32 For example, the State Council oversees the National Development and Reform Committee (“NDRC”), and the Ministry of Commerce, which is responsible for maintaining foreign investment guidelines.33 These agencies created categories of foreign direct investment to determine if the investment is encouraged, restricted, permitted or prohibited.34

21 Chow, supra note 10, at 80.
22 Id.
23 Id.
24 Id.
25 Id.
26 Id. at 88.
27 Id. (citing Article 57 of the Chinese Constitution).
28 Wong, supra note 5, at 262.
29 Chow, supra note 10, at 90.
30 Id.
31 Id. at 88.
32 Liu, supra note 3, at 194.
33 Id.
34 Id. The rules requiring entry approvals section of this article outlines the agencies and processes for investment approval.
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These agencies also oversee the tedious approval process discussed in the discussion section of this paper.35

2. Transition into a Market Economy

Transition in China took place gradually.36 Transition began shortly after the death of Mao Zedong and the end of the Cultural Revolution, and continues to the present.37 Early reforms sought to establish some free markets while maintaining the overall framework of socialism by creating a mixed economic system in which the private sector was viewed as a complement to the state sector.38 Under the socialist market system, the state maintained all ownership of property and continued to largely control the economy.39 The first reforms in 1978 targeted the agricultural sector.40 These reforms shifted responsibility for production from the commune to individual families, and saw immediate success.41 However, state sector reforms, on the other hand, were largely unsuccessful and continue to pose great challenges in modern China.42 In large part, these challenges stem from resistance to change, especially since the population is accustomed to inefficient working conditions and state provided social services, including cost free housing.43

Since the 1978 reforms, China’s economy grew at an unprecedented pace, in no small part due to large quantities of foreign direct investment.44 Although some of the money has remained in China, and has increased domestic purchasing power, much of it has returned abroad.45 However, the increased purchasing power and economic freedom lead to a gradual breakdown of social control.46 The state has simply not been able to accept this breakdown, and has attempted to regain control by, for example “reforms” such as, banning social networks.47 Currently, the Chinese legal system is at a crossroads – trying to maintain control while seizing the wealth that foreign investment brings.

35 Id.
36 Id.
37 CHOW, supra note 10, at 26, 33. With Mao’s death ending the Cultural Revolution in 1976, the CPC then shifted focus on China’s neglected economy. Many were shocked and embarrassed about China’s “backwardness and poverty” in comparison to its Asian neighbors like Japan and Hong Kong. Chapter One in this book provides a thorough and complete discussion of China’s political and economic history leading up to the reforms of 1978 and beyond.
38 Id. at 27.
39 Id.
40 Id.
41 Id.
42 Id. at 28-29.
43 Id. at 20.
44 Id. at 32.
45 Liu, supra note 3, at 202-03.
46 Wong, supra note 5, at 271.
47 Id.
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B. The Czech Legal System and Its Transition to a Market Economy

The Czech Republic offers a road less traveled for foreign direct investment. Certainly, the Czech Republic has seen less FDI than China, which is at least in part — likely due to its much smaller size, but the Czech Republic — it has a longer standing market economy, membership in the European Union, and a less ambiguous legal system to offer foreign investors.48

1. Structure of the Czech Legal System and the Political Foundation

The Czech Republic has a continental legal system, which traces back to its German roots.49 The continental legal system has the following characteristics: only written law is recognized as a source of law, the main areas of the law are codified, and the structure of legal sources is hierarchical.50 The Czech Republic adopted its modern Constitution in December of 1992, which proclaims that the Czech Republic is a democratic state founded on respect for the rights and freedoms of its citizens.51 The Czech Republic has been a member of the European Union since 2004.52

The political system is a parliamentary democracy with the head of state being the President, who is elected by both chambers of the Parliament.53 Similar to China, the role of the president is largely symbolic, but, in the Czech Republic, the prime minister has genuine and unencumbered power.54 The structure of the state power is divided into three branches: the legislature, which consists of both chambers of Parliament (the Chamber of Deputies and the Senate); the executive, which consists of the President and the Government (consisting of the Prime Minister, deputy Prime Minister, and other Ministers); and the judiciary, which consists of the courts of general jurisdiction, administrative courts, and the Constitutional Court.55 The three branches have separate and distinct functions and operate under a functional system of checks and balances.56

The main codified areas of Czech law are the criminal code, the civil code, and the commercial code.57 The criminal code defines the criminal offenses and proscribes punishment, while the civil code provides a basic foundation for both the private law and the general legal system.58 The commercial code, which is

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49 Id.
50 Id.
51 Id. (citing Article 1 of the Constitution of the Czech Republic).
52 Id.
53 Id.
54 Id.
55 Id.
56 Id.
57 Id.
58 Id.
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most relevant for FDI, regulates the relationships between commercial activity and transactions.59

2. Transition to a Market Economy

The Czech Republic, unlike China, chose to undergo rapid transition.60 Although not without incident, the rapid privatization route chosen in the Czech Republic – namely the voucher system of privatization – was successful.61 Voucher system privatization is characterized by states selling coupon books to citizens with vouchers, which can be used to purchase shares in public companies.62 The Czech Republic also effectuated privatization by selling directly to foreign investors.63 As a result, approximately 2,100 enterprises with an aggregate value upwards of U.S. $17 billion became privatized at a very rapid rate.64 Most significantly, this created private ownership in property, which in turn created incentives to use the property efficiently.65 In the Czech Republic, transition was rapid, and the state now exercises relatively little control over enterprises within its borders.66 In contrast to China, the Czech Republic was controlled externally by the Soviet Union, and once it severed external ties, it did not have to fight internally with a political party that refuses to relinquish control.67

III. Discussion

A. Current Vehicles For and Legal Rules Affecting Foreign Direct Investment

When considering whether to invest in any foreign country, a logical starting point is the entities available for business investment and the ease of investing. The entities available for investment are similar between the Czech Republic and China, though some entities may be preferable to others from the standpoint of the foreign investor who likely wants to maintain control over the business.68

59 Id.
60 Balfour & Crise, supra note 8, at 86.
61 Id.
62 Id.
63 Id. at 96.
64 Id.
65 Id. at 87.
66 For example, in contrast to China, there are no restrictions on the amount of FDI allowed in the Czech Republic, not on the business entity forms which are permissible in the Czech Republic. Regulatory approvals are also straightforward and transparent relative to China, as the Czech Republic uses investment incentives to attract FDI to the country. See Walton, supra note 9, ¶ 10.
67 See KAREL DYBA, THE CZECH REPUBLIC: 1990 TO 1995, 21 (Schuster Foundation Press 1996) (the Czech people were eager to own business privately and understood that ownership required strong, interested and effective owners).
68 See discussion infra Part III.A (discussing the relative forms for FDI and those which offer more control to foreign owners).
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Institutional culture and ease of the approval process is also a consideration, and here, the two countries differ.69

1. Investing in China

In China, FDI has brought with it much wealth and prosperity playing a critical role in China’s development.70 However, the legal culture and regulatory process requires patience and persistence.71

Beginning in 1978 with Deng Xiaoping as the new head of the Chinese state, China implemented an open door policy to attract investment.72 The first trial of the policy was the creation of special economic zones (“SEZs”) as “windows” for foreign investment and international trade.73 The establishment of the SEZs was met with great success, as both foreign trade and foreign investment have increased dramatically.74 The success lasted until 1989 when the Tiananmen Square incident scared away many investors.75 However, the investor retreat did not last, as FDI increased tremendously from 1997 to 2000, and has continued to increase to the present.76 In 1989, FDI in China was U.S. $3.4 billion; “from 1997 to 2000, China’s FDI stabilized between U.S. $40 billion and U.S. $50 billion.”77 In 2009, U.S. $2.9 billion found its way into China in the form of 1,772 FDI projects.78 China has become a hot spot for foreign investors.79 The Open Door Policy utilized in modern China under Deng Xiaoping was an important impetus for China’s economic development.80

There are four primary ways to invest in China: establishment of a representative office (licensing only), a branch office, the equity joint venture, the contractual (or cooperative) joint venture, and the wholly foreign owned enterprise (“WFOE”).81 Both forms of joint ventures as well as the WFOE are collectively referred to as foreign investment enterprises (“FIE”), all of which can usually be

69 Walton, supra note 9, ¶¶ 9-11; see also Liu, supra note 3, at 194.
70 See LIANG, supra note 11, at 122; see also CHOW supra note 10, at 33.
71 See, e.g., Liu, supra note 3, at 194 (explaining the lengthy process of entry approvals).
72 LIANG, supra note 11, at 121.
73 Id.
74 Id.
75 Id. at 123. On June 4, 1989, the Community Party ordered units of the People’s Liberation Army to kill thousands of mostly unarmed civilians in Tiananmen Square in response to pro-democracy demonstration. Two days later, the CPC launched a nationwide search for hidden enemies, arrested over 20,000 people, and executed dozens during the remainder of June 1989. See generally CHOW, supra note 13, at 20.
76 LIANG, supra note 11, at 125.
77 Id.
79 LIANG, supra note 11, at 121-23.
80 Id.
81 VAI IO LO AND XIAOWEN TIAN, LAW FOR FOREIGN BUSINESS AND INVESTMENT IN CHINA 73 (Routledge 2009); see also CHOW supra note 10, at 368. See generally MARK SCHAUB, FOREIGN INVESTMENT IN CHINA 15-93 (CCH 2009).
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established as a Chinese legal person.\textsuperscript{82} The importance of establishing an entity that is a Chinese legal person cannot be understated because it is the only way to gain limited liability protection.\textsuperscript{83} The FIEs are the most popular, and are thus the focus of this paper. The Ministry of Foreign Trade and Economic Co-operation (“MOFTEC”) is charged with approving applications for establishment of all FIEs.\textsuperscript{84}

The EJV Law governs Chinese Foreign Equity Joint Venture business entity (“EJV’’).\textsuperscript{85} The law provides detailed rules for establishing EJVs in China, including “contribution of capital, the requirement of technology transfer, and the functions of the board of directors.”\textsuperscript{86} To establish an EJV, the foreign party must contribute at least twenty-five percent of the registered capital, which may not be reduced during the EJV’s tenure in China.\textsuperscript{87} The EJV is a relatively inflexible form of FDI that is governed extensively by the EJV law; for example, the duration of an EJV is generally limited to thirty years.\textsuperscript{88} However, many foreign investors choose to utilize a Chinese Foreign Contractual Joint Venture (“CJV”) because it is more flexible.\textsuperscript{89}

A Chinese Foreign Contractual Joint Venture (“CJV”) is the chosen entity for many foreign investors due to its more flexible form.\textsuperscript{90} The CJV law was implemented in 1988 to govern this business entity.\textsuperscript{91} A CJV is more flexible because it can be a “separate and distinct legal entity or it can be a loosely-linked contractual arrangement between foreign and Chinese parties for cooperation in a business.”\textsuperscript{92} Moreover, a minimum capital contribution is not required for formation of a CJV, and a CJV is not required to establish a board of directors and may choose to utilize a less formal “combined management body.”\textsuperscript{93} As such, this entity form is particularly popular with investors who want to do business in China only in the short-term or on a trial basis.\textsuperscript{94}

\textsuperscript{82} See Lo & Tian, supra note 81, at 73; see also Chow, supra note 10, at 368-69.


\textsuperscript{84} Id. at 334-35. The State Council promulgated rules pertaining to the EJV, which requires technology transfer and contribution of substantial capital by the foreign party. The regulatory approval process for the EJV is loosely outlined in the EJV Law, which does not provide any regulation on the appeal procedure if an application is denied.

\textsuperscript{85} Id. at 334.

\textsuperscript{86} Id.

\textsuperscript{87} Id.

\textsuperscript{88} Id. at 336-37. Although the EJV law was amended in 1986 to allow the period of an EJV to be extended for more than 50 years, it is discretionary depending on several factors including: the amount on investment, the profit rate, and the level of advanced technology provided by a foreign investor.

\textsuperscript{89} Id. at 337-38.

\textsuperscript{90} Id.

\textsuperscript{91} Id. at 337.

\textsuperscript{92} Id. Thus, investors with short term investment horizons, or those who want to do business on a trial basis will likely prefer the CJV format over the EJV format.

\textsuperscript{93} Id.

\textsuperscript{94} Id. at 337-38.
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Finally, the Wholly Foreign Owned Enterprise permits foreign investors to hold a 100% ownership in the private entity.95 The WFOE Law was enacted in 1986, and although it allows for 100% foreign ownership it requires technology transfer and export production.96 Although there is no requirement for minimum capital contribution, the WFOE law requires the registered capital to be sufficient in light of the size of the operation of the business, something the MOFTEC considers in the approval process; and like the EJV, the registered capital cannot be reduced during the WFOE’s tenure.97 Additionally, the WFOE is required to export the majority of its product and may only sell in domestic markets according to the sale proportion permitted by the Chinese government.98 Moreover, any product sold in China is subject to governmental price controls.99 The increased purchasing power in domestic markets has increased foreign investor interest in selling goods and services domestically.100

A final and novel vehicle for FDI is a merger or acquisition of a domestic company.101 In a merger situation, foreign investors seek to acquire existing Chinese companies in their field that have already established manufacturing facilities and employ a local workforce.102 This type of FDI is largely a response to the increasingly open domestic markets and seeks to take advantage of increased purchasing power and demand for products within China.103 Moreover, this form of FDI was not possible until the existence of private companies in China with which foreign companies could engage in a merger or acquisition transaction; as such, it is a relatively novel form of FDI.104

In all of the above-mentioned FDI vehicles, one critical factor is common among foreign investment in any country, but with China in particular: the need for local counsel or a local partner with connections to the CCP.105 Although the obvious drawback to a local partner is that the foreign investor will have to share

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95 Id. at 338.
96 Id. at 338. This provides a more flexible approach to minimum capital contribution as compared to the EJV law, which requires a minimum of 25% of capital contribution to emanate from the foreign investor.
97 Id. at 339. Moreover, there is no mandatory limitation on the period of operation of a WFOE.
98 Id.
99 Id.
100 Id. at 340; see also Liu, supra note 3, at 202.
102 Liu, supra note 3, at 202. Additionally, foreign companies are now seeking to take advantage of already existing infrastructure as well as an established presence in the domestic markets in order to decrease start-up costs.
103 Id.
104 Id.
profits and relinquish some control, a foreign partner can provide access to additional financing, overcome language barriers, and facilitate the regulatory process.106 In China, local connections and CCP relationships are critical to both the approval of an FIE as well as its success in the Chinese market.107

2. Investing in the Czech Republic

The Czech Republic offers many opportunities for foreign direct investment, which largely consists of WFOEs, Joint Ventures, and Branch Offices.108 The Czech Republic recognizes all kinds of business associations including limited liability companies, general partnerships, and limited partnerships and places no restriction on the amount of FDI in the country.109 All investors must submit applications through the Investment Promotion Agency.110 In addition, the Investment and Business Development Agency, established by the Ministry of Industry and Trade offers free services to investors, including information assistances, handling of investment incentives, location of Czech suppliers, business property identification, infrastructure development, and access to structural funds.111

The Czech Republic provides incentives for investment in the manufacturing and services industries.112 These incentives are laid out in the Act on Investment Incentives of 2007.113 Manufacturing sector incentives are available provided the foreign investor meets the minimum required investment threshold of approximately US $11.5 million. The act provides income tax relief for ten years – full corporate income tax relief for five years, and five additional years of partial income tax relief provided the company is expanding.114 Job creation grants are also offered in the amount of 50,000CZK (Czech Koruna) for each employee in regions worst affected by unemployment as well as training and re-training

106 Id.
107 Guanxi (personal relationships) is a powerful component of the Chinese culture and can play an influential role in business relationships. Failure to take local context into account can cause resentment and erode support for the company. Influential networks arise in China from a strong cultural tendency to rely on personal relationships characterized by exchanges of favors. They can provide security in a sometimes hostile and highly politicized environment. See, e.g., Guanming Fang, U.S./China Differences and Their Impacts on Business Behaviors, 6 GOOD BUS. (2008) http://robinson.gsu.edu/ethics_pub/2008/behaviors.html (last visited April 20, 2011).
108 Walton, supra note 9, ¶ 9.
109 Id. ¶ 10.
110 Id; see also CZECH INVESTMENT AND BUSINESS DEVELOPMENT AGENCY, http://www.czechinvest.org/en (last visited November 22, 2010).
111 CZECH INVESTMENT AND BUSINESS DEVELOPMENT AGENCY, supra note 110 (from the home page click on “Why Invest in the Czech Republic”).
112 See Walton, supra note 9, ¶¶ 12-13; see also CZECH INVESTMENT AND BUSINESS DEVELOPMENT AGENCY, supra note 110.
113 Walton, supra note 9, ¶ 12.
114 See CZECH INVESTMENT AND BUSINESS DEVELOPMENT AGENCY, supra note 110 (from the home page click on “Why Invest in the Czech Republic,” then “Investment Incentives”); see also Walton, supra note 9, ¶ 12.
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grants. Finally, foreign investors may solicit transfers of technically equipped properties for privileged prices.

The Czech Republic has also created incentives available to the services sector that are designed to attract services that add significant value to the Czech economy, create new job opportunities, and enable utilization of information technologies. Provided that a foreign investor meets the minimum investment requirement of U.S. $1.7 million, the following incentives are offered: access to customer contact centers, access to software development centers, access to expert solution centers and high tech repair centers. Both the relatively straightforward approval process and the availability of investment incentives make the Czech Republic an investor friendly country.

IV. Analysis

A. Foreign Direct Investment in China

Foreign Direct Investment in China is booming, and the fact that FDI in China is a road well-traveled is one of its strengths. China, however, is not without some serious institutional weaknesses that should be thoroughly considered before investing in China.

1. Advantage’s for Foreign Direct Investment

China’s main advantages for FDI include: its enormous population of inexpensive laborers, expansive domestic markets, cultural characteristics and desire for material wealth in the younger generations, and, perhaps most importantly, the amount of foreign investment that has already taken place in China. Although utilizing the expansive work force at extremely low wages raises many human rights issues, from a purely profit maximizing perspective, it is one of China’s greatest advantages for attracting FDI. Especially since Chinese laborers are both relatively inexpensive and skilled in relation to many of their Asian counterparts. In addition, both domestic and foreign companies in China are increas-

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115 See Walton, supra note 9, ¶ 12; see also Czech Investment and Business Development Agency, supra note 110 (from the home page click on “Why Invest in the Czech Republic, then Investment Incentives”).

116 Walton, supra note 9, ¶ 12.

117 Id.

118 Id.


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...ingly taking advantage of the domestic markets in China as the culture of consumerism catches on, especially in the younger generations.\textsuperscript{122} The younger Chinese generations have the requisite greed and hunger for materialism for capitalism to be successful in China, however, the government is resistant to any loss of social and economic control.\textsuperscript{123}

Since the Open Door Policy of 1978, FDI has played an integral role in the rapid economic development of China.\textsuperscript{124} The Chinese government has undertaken many policy initiatives to attract FDI and bring economic development to China, but on its own terms.\textsuperscript{125} The government is not willing to relinquish total control, but has loosened its ironclad grip.\textsuperscript{126} Nonetheless, the Chinese government has encouraged foreign investors to choose China, and investment in China has proved fruitful for many countries.\textsuperscript{127} For future investors, the fact that many other companies have already invested in China, and that the system has been tested and has been very successful decreases the risk of investing in China relative to countries where FDI is less common.\textsuperscript{128} Overall, China is the paradigm of successful FDI; although not without downside, China has generated tremendous wealth via foreign direct investment.\textsuperscript{129}

2. Disadvantages for Foreign Direct Investment

China has several serious disadvantages for foreign direct investment, mainly, the lack of substantial intellectual property protections, lack of enforcement of preexisting laws, and ambiguity in the lawmaking process. First, China has poor intellectual property protections, hence the booming counterfeit market.\textsuperscript{130} The lack of intellectual property protections is in large part traceable to traditional

\textsuperscript{122} See Wong, supra note 5, at 275 (increasing economic and social independence but the government has responded by clamping down on independent thought. As China continues to liberalize its economic system, society and politics must evolve to meet new demands); see also Daniel Gross, Shanghai Surprise, supra note 119.

\textsuperscript{123} See id. (the Chinese government does not want to loosen its control over the Chinese people).

\textsuperscript{124} Liang, supra note 11, at 121.

\textsuperscript{125} Id.; see also Schaub, supra note 81, at 6-10 (saying the Chinese government still maintains control over licensing, scope of business, and the tenuous approval process by categorizing FDI into encouraged, restricted, and prohibitive categories).

\textsuperscript{126} See Wong, supra note 5, at 273-74 (the CCP has loosened its control economically more than it has socially).

\textsuperscript{127} See Lee & Armstrong, supra note 101 (china attracted $105.7 billion in FDI in 2010); see also Liang, supra note 11 at 122 (graph shows China has generated an immense amount of FDI and has consistently increased its market share).

\textsuperscript{128} See Crothers, supra note 105, at 288 (asserting that it is critical to have foreign counsel that knows the ropes, but the fact that so many companies have engaged in FDI with China means that there a people with professional reputations who can help navigate the immense bureaucracy, and also stating that less developed markets with less foreign investment are perceived by foreign investors as more stable).

\textsuperscript{129} Liang, supra note 11, at 122.

\textsuperscript{130} Chow, supra note 10, at 410. See generally Bryan Bachner, Intellectual Property Rights and China: The Modernization of Traditional Knowledge 85-142 (Boom Eleven International 2009) (although patent law exists in China, enforcement is highly problematic).
Chinese culture where copying is not scorned but rather viewed as a method of showing deference to the past.\textsuperscript{131} Moreover, intellectual property rights that reward ingenuity, creativity, and individuality are fundamentally inconsistent with a society that stresses “collective endeavor and common ownership.”\textsuperscript{132} The Chinese government has been faced with the conundrum of guaranteeing superficial intellectual property rights to foreign investors who demand protection before bringing revenue into China while maintaining a culture of collective endeavor and ownership.\textsuperscript{133}

In 1979, the United States insisted in the 1979 Trade Agreement, which was part of establishing diplomatic relations between China and the United States, that China agree to provide protection for trademarks, copyrights, and patents to American companies.\textsuperscript{134} However, by 1989, both the United States government and American companies had found the Chinese intellectual property guarantees to be inadequate.\textsuperscript{135} Since then, China has enacted several major, but largely ineffective, intellectual property laws.\textsuperscript{136} Between 1982 and 1991, China enacted three major intellectual property laws: the Trademark Law of 1982, the Patent Law of 1984, and the Copyright Law of 1991.\textsuperscript{137} China has also acceded to become a signatory member of a number of significant international intellectual property treaties.\textsuperscript{138}

Although it appears that China has caught up to speed with intellectual property legislation, the laws are largely ineffective due to widespread lack of enforcement.\textsuperscript{139} In fact, the lack of adequate enforcement has led to serious commercial piracy problems, which many investors say is one of their most serious business problems in China today.\textsuperscript{140}

Second, local protectionism is one of the most formidable barriers to enforcement of intellectual property laws.\textsuperscript{141} Although the central government may understand the importance of intellectual property protection, enforcement is the

\textsuperscript{131} See id. (Chinese culture emphasized respecting heritage and ancestry).

\textsuperscript{132} Chow, supra note 10, at 411.

\textsuperscript{133} See Wong, supra note 5, at 282 (the Chinese government has found itself in a predicament between wanting more investment but resisting social and economic freedom of its population, and the CCP cannot maintain absolute control any longer if the Chinese economy is to develop further).

\textsuperscript{134} Chow, supra note 10, at 413.

\textsuperscript{135} Id. In order to avoid sanction by the U.S., China agreed to a “Memorandum of Understanding” that set out a series of steps China would follow to improve its intellectual property protections.

\textsuperscript{136} Id. at 416.

\textsuperscript{137} Id.

\textsuperscript{138} Id. China has acceded to several international treaties including the World Intellectual Property Organization Convention, the Paris Convention for the Protection of Industrial Property, the Berne Convention for the Protection of Literary and Artistic Works, and the Geneva Phonogram Convention.

\textsuperscript{139} Id. at 433. Although laws that meet international standard are enacted in China, adequate enforcement remains a serious problem. For example, one software industry group estimated that 94% of all software used in China at the end of 2000 was pirated.

\textsuperscript{140} Id. at 433-35. According to industry groups, losses from commercial piracy reached a peak of $2.8 billion in 1997 (considering figures from 2003). Annual losses suffered by U.S. publishers from piracy of academic journals are estimated to be $100 million.

\textsuperscript{141} Id. at 439.
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responsibility of the local level of government, and at the local level, economic protectionism prevails. \(^{142}\) Economic protectionism prevails on the local level because of mismatched incentives. Local level leaders are evaluated based on the economic performance of the local political unit, and since counterfeiting is a massive contributor to the local economy, there is a clear incentive not to enforce intellectual property laws. \(^{143}\) Upon entering China, it takes very little time for a visitor to find one of the many counterfeiting markets and understand why enforcement is lacking.

Moreover, even where the laws are enforced, the sanctions are inadequate. \(^{144}\) Where fines are imposed, the fines are extremely small relative to the profit potential, thus providing no incentive for a vendor to discontinue their commercial piracy practices. \(^{145}\) In 2000, the average fine for engaging in commercial piracy was under $800, and of that amount, the average amount used to compensate owners of the copyrights, trademarks, or patents was merely $19. \(^{146}\) There are no mandatory guidelines for imposing fines, and therefore the fines are often extremely low and have no effect on reducing the profitability of engaging in counterfeiting business. \(^{147}\) Even where businesses are shut down, vendors relocate to another market, and are back in business within a few weeks. \(^{148}\) So long as commercial piracy is profitable, vendors will pay the minute fines and continue business. \(^{149}\)

Finally, ambiguity in the Chinese lawmaking process is a disadvantage for FDI. \(^{150}\) The ambiguity in the lawmaking process and general lack of enforcement complicates risk analysis because potential investors are unable to accurately estimate costs and risks. \(^{151}\) In short, China is a risky choice for investment precisely because of the permeation of communist politics into the lawmaking process. \(^{152}\) Therefore, the CPC can enact a law to appease foreign investors and foreign governments, but can also control enforcement of the law, thus creating the risk that laws exist but are not enforced entirely for political reasons (as

\(^{142}\) Id. As an example, a well-known commercial piracy center in the Zhenjiang Province attracts at least 200,000 customers every day to the 33,000 stores where industry experts estimate 90% are counterfeit or infringing goods.

\(^{143}\) Id. Since local government entities are measured based on economic performance of their constituent, they often have a direct financial interest in the illegal trade itself.

\(^{144}\) Id. at 442-43. In 1999, only 1 in 806 cases resulted in any form of criminal prosecution, a level far too low to act as a deterrent.

\(^{145}\) Id. at 443. Brand owners who have successfully urged enforcement in some cases complain that the vendors are back in business with a matter of weeks.

\(^{146}\) Id.

\(^{147}\) Id. at 442. One reason Chinese officials may be hesitant to widely enforce counterfeiting laws is the local turmoil that would like result as many utilize counterfeit operations as their source of employment.

\(^{148}\) Id. at 443.

\(^{149}\) Id.

\(^{150}\) Wong, supra note 5, at 265.

\(^{151}\) Id. The lack of any transparent or established protocol for the transformation of CCP policy into legislation results in a system that is unclear even to those working within it.

\(^{152}\) Id.
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appears to have happened in the intellectual property arena). In China, the lack of “consistency, predictability, and transparency” in the lawmakers and regulatory process creates confusion for investors who are unable to adequately evaluate the risks and costs of doing business in China.

There is, of course, always a risk factor inherent in FDI, especially when the target company is an emerging market, however, in China, the undue interference by the CCP in the lawful generation of revenue magnifies the already inherent risk. In sum, although China is probably the most successful example of risky foreign direct investment paying large returns, the political system in China creates several disadvantages for investment and should be thoroughly considered by prospective investors.

B. Foreign Direct Investment in the Czech Republic

Although the Czech Republic is the road less traveled in terms of foreign direct investment, it has many advantages to offer for the prospective investors without the severe risks associated with investing in China.

1. Advantages for Foreign Direct Investment

The Czech Republic has been a member of the European Union since 2004, and with EU membership comes a tremendous amount of stability. The stability certainly extends in the monetary sense (as we have seen this past year with Greece, and, more currently, Ireland), but also in the political sense. In order to be eligible for European Union membership, the country must fulfill the democratic, political, and economic criteria; therefore, European Union membership decreases the risk of investing in any EU member country. In effect, EU membership is a voucher by many powerful and economically stable countries (many of whom are long-term allies of the United States) that the member country is a safe investment decision.

153 Id.
154 Id. In some cases, this has created an “insurmountable barrier” to doing business in China.
155 See Crothers, supra note 105, at 288.
156 Walton, supra note 9, ¶ 9.
157 Id.; see also Lefteris Papadmias & Jan Strupczewski, EU and IMF agree $147M Bailout for Greece, REUTERS (May 2, 2010), http://www.reuters.com/article/idUSTRE6400PJ20100502 (the EU will go to great lengths to ensure political and monetary stability because instability in one country has the potential to affect instability in all the others).
158 By the time a country joins the EU, it must have: (1) stable institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities; (2) a functioning market economy and the capacity to cope with competitive pressure and market forces within the Union; and (3) the ability to take on the obligations of membership, including support for the aims of the Union. They must have a public administration capable of applying and managing EU laws in practice. EUROPEAN COMMISSION, ENLARGEMENT AND NEIGHBOURHOOD POLICY, http://europa.eu/abc/12lessons/lesson_3/index_en.htm (last visited Nov. 22, 2010).
159 See Papadmias & Strupczewski, supra note 157 (The EU money markets rely on the monetary stability of the EU as a whole as well as the individual countries).
In addition to its membership in the EU, the Czech Republic also has a central European location, stable political and economic environment, extensive infrastructure, and relatively low cost of labor to offer prospective investors. The Czech Republic’s central location is the best of both worlds, because it allows easy access to the still developing and potential news markets of the Eastern European countries like Hungary, Slovakia, and Croatia as well as the Baltic countries. These countries are likely to be the target of further expansion in foreign investment, but the Czech Republic also offers close proximity to the developed Western European countries and exposure to a booming export market. Moreover, rapid privatization in the Czech Republic forced (and did not, like China, postpone) political turmoil. This turmoil has long passed, and the Czech Republic now has nearly two decades of economic stability under its belt. With the success of voucher privatization, foreign investors can attempt and sometimes successfully buy companies from individual shareholders and avoid the costly process of creating a new entity.

The Czech Republic also has extensive infrastructure covering the country and connecting it to neighboring countries. Many large foreign companies have taken advantage of the existing infrastructure system and invested in the Czech Republic. Another advantage of the Czech Republic is its relatively inexpensive, but also relatively skilled labor force. Although more expensive than the Chinese labor force, the labor force is inexpensive relative to many other EU members, and is also relatively educated and skilled. Finally, the Czech government has sought to attract foreign investment by creating the numerous and significant tax incentives described in the previous section of this paper.

2. Disadvantages for Foreign Direct Investment

The chief disadvantage of the Czech Republic for purposes of FDI is that there is less risk, which generally follows less returns. Relative to China and other Asian markets, the size of the potential labor force is only a fraction, and the cost of labor is higher. Although human rights issues are greatly decreased by

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160 Walton, supra note 9, ¶ 9.
161 Id.
162 See background supra Part II.B.2.
163 Id.
164 CZECH INVESTMENT AND BUSINESS DEVELOPMENT AGENCY, supra note 110 (from the home page click on “Why Invest in the Czech Republic” and then click on “Educated Workforce”).
165 Walton, supra note 9, ¶ 9.
166 Id. ¶ 3.
167 Balfour and Crise, supra note 8, at 106.
168 Id.
170 Walton, supra note 9, ¶ 9; see also background supra Part II.A.1 (because China’s population is larger, China necessarily has a larger potential labor force; additionally, China is a target for FDI precisely because of the low costs of labor and production, as previously discussed).
investing in the Czech Republic, costs of production are greater, especially in light of the consistent policy of the Chinese government to devalue the Chinese Yuan relative to the dollar and the Euro to bolster exports. In terms of profit making incentives, a skilled labor force is not necessarily an advantage because it generally translates to increased cost of production. Moreover, the domestic market in the Czech Republic is miniscule relative to Asian markets, and large, profit seeking companies can tap into Western European markets by exporting products made inexpensively in the Asian markets.

In conclusion, the Czech Republic is a favorable location for FDI because of its European Union Membership, central European location, and political and economic stability. Although clearly a less risky alternative for FDI than China, the Czech Republic would likely be more costly and have lower, albeit more stable, returns.

V. Proposal

This section analyzes the facts discussed in the previous sections and proposes which country is a better target for Foreign Direct Investment.

A. Which country is more favorable to Foreign Direct Investment?

Here, the legal and the business worlds are at odds. From a legal perspective, the Czech Republic is a better target for foreign direct investment because the integrity of the legislative process is not in question. A functioning system of checks and balances in the Czech Republic ensures that no one person or group has undue influence over the legislative process. In such a system, laws are passed and enforced by separate entities, and the general population has respect for the rule of law. Because the Czech legal system is more transparent, prospective investors are able to calculate the risks and costs; investors know what they need to do in order to gain approval and the process by which approval


172 Walton, *supra* note 9, ¶ 9 (although the Czech Republic has a skilled labor force, this often leads to higher labor costs). See background *supra* Part II for a detailed discussion of each country, and its strengths and weaknesses for FDI.

173 Walton, *supra* note 9, ¶ 9

174 *See* background *supra* Part II.A.1 (Because the integrity of the legislative process in China is questionable, foreign investors can not adequately assess the risks and costs of investing in the China, therefore, because the Czech Republic does not face these issues, investors can better assess the risks).

175 *See* background *supra* Part II.B.1 (Czech political parties have much less influence than the CPC on the law-making process).

176 *See* background part II.B.1 for a detailed discussion of the Czech legal system including the separation of powers. Unlike China, Czech citizens do not question the integrity of the laws nor are they faced with inconsistent enforcement of the laws, therefore, the rule of law is more respected.
occurs is not unduly influenced by politics.\textsuperscript{177} Moreover, investor’s intellectual property would be protected on a much more sophisticated level in the Czech Republic.\textsuperscript{178} Overall, the Czech Republic is more favorable to foreign direct investment from a risk adverse perspective.\textsuperscript{179} However, general economic theory provides that where there is less risk, there are also generally lower returns, which is why the legal and business viewpoints are at odds in regard to this issue.

From a purely profit maximizing perspective, China is almost certainly a more favorable target for FDI.\textsuperscript{180} The cost of production is incredibly low in China, and returns to FDI have historically been substantial.\textsuperscript{181} At least currently, the Chinese government has decided that it wants to entice foreign investors to China, but the future is uncertain as the communist party could change its position at any time.\textsuperscript{182} Because the communist party permeates virtually every facet of life in China, a change in stance would be devastating to foreign investors. Additionally, the legislative and regulatory processes are far from transparent, and there is little that foreign investors could do in the event of institutional roadblocks other than pull out of China.\textsuperscript{183} For now, China appears to be interested in continuing to bring wealth and prosperity to China, and as long as that is the case, China is a better target for FDI from a purely profit maximizing vantage point. China is a place where enormous profits can be made, but also where enormous losses could be suffered in the event that the government changes its mind about foreign investment, or if the county becomes politically unstable.

In addition, there are vast untapped domestic Asian markets, and the younger generations in China are fascinated by materialism.\textsuperscript{184} The Chinese people, especially the younger generation that has grown up with some disposable income, are hungry for more. The potential for consumerism to take off in China is immense. However, consumerism cannot take off without a relinquishment of con-

\begin{itemize}
\item \textsuperscript{177} See analysis \textit{supra} Part IV.B.1 (there is less risk in the Czech Republic that an FDI proposal will be rejected for political reasons); \textit{see also background supra} Part II.B.1.
\item \textsuperscript{178} See analysis \textit{supra} Part IV.A.2 (because China has poor intellectual property protections, the Czech Republic does not have a large hurdle to overcome to be better in that arena); \textit{see also Czech Republic, Intellectual Property Protections, The European Commission}, \url{http://ec.europa.eu/youreurope/business/competing-through-innovation/protecting-intellectual-property/czech-republic/index_en.htm} (last visited April 20, 2011).
\item \textsuperscript{179} See analysis \textit{supra} Part IV.B.1 (because the political uncertainty is much less in the Czech Republic, foreign investors are able to better predict the future of their enterprises).
\item \textsuperscript{180} See analysis \textit{supra} Part IV.A (as is demonstrated by the fact that, currently, China is a significantly more popular destination for FDI).
\item \textsuperscript{181} See discussion \textit{supra} Part III.A.1 (the history of high profit margins, due in large part to the much lower costs of production, in Chinese markets has attracted consistently expanding FDI markets).
\item \textsuperscript{182} See analysis \textit{supra} Part IV.A.2 (in China, there is very little transparency in the regulatory and law-making processes, which makes it very difficult for foreign investors to predict how regulators and law makers will proceed with respect to authorizing further FDI or extending existing FDI).
\item \textsuperscript{183} See discussion \textit{supra} Part III.A.1 (if the CPC decides FDI is no longer desirable for China, foreign investors will face significant barriers to future or further foreign investment).
\item \textsuperscript{184} See analysis \textit{supra} Part IV.A.1 (this injects hope into the foreign investor because, until recently, many FDI enterprises have sought Asian markets for the low cost of production and high profit margins, not the vast domestic markets. Those markets could lead to even greater profit potential for foreign investors).
\end{itemize}
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trol by the central government. As such, China is at a crossroads, which is why FDI in China with a long-term view should be approached with caution.

B. Which country is more stable for Foreign Direct Investment?

The Czech Republic is more stable than China, and is definitively a less risky investment.\(^{185}\) The risk of investing in the Czech Republic is much lower than in China because it is politically and economically stable, is a member of the European Union, and has a functioning system of checks and balances.\(^{186}\) The Czech Republic now has a fully functioning market economy that operates on similar social and economic driving forces to the United States’ economy.\(^{187}\) The stability and familiarity with the economic forces driving the Czech economy make it both a more stable and therefore, a less risky location for FDI.\(^{188}\) However, the profit potential of foreign investment for short-term investors in the Czech Republic is less than in China, due largely to the higher cost of labor and smaller population.\(^{189}\) Nonetheless, a long-term investment in a stable country like the Czech Republic could likewise generate high returns if a foreign investor capitalized on the European domestic markets as well as possibly utilizing the lower cost of labor in the Eastern European countries.\(^{190}\)

C. Which country is better overall for Foreign Direct Investment?

1. Short-term Investment Horizon

For purely profit-seeking investors who are willing to face risk of political instability, and who are looking for a short-term investment, China is the better option.\(^{191}\) During the current economic challenges, successful FDI in the Asian markets has aided companies in surviving the recession.\(^{192}\) At least until the political turmoil that ultimately accompanies economic freedom occurs, China will likely continue to offer low cost of production and expansive export markets

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185 See analysis supra Part IV.A.1 (political stability is the primary area in which the Czech Republic is more favorable than China for FDI).

186 See analysis supra Part IV.B.1 (European Union membership is somewhat of a guarantee that the Czech Republic will remain politically stable and that other countries rely on its stability and vitality).

187 See background supra Part II.B.1 (market forces have taken off in the Czech Republic, which now has thriving financial and consumer markets).

188 See analysis supra Part IV.B.1 (economically, the Czech Republic is more similar to Western economies like the United States, thus making it more predictable).

189 See analysis supra Part IV.A.1; see also analysis supra Part IV.B.2 (one downside to the more developed Central European economies from a profit maximizing perspective is the higher standard of living and higher costs of production).

190 See analysis supra Part IV.A (in the long term, stability from an established market economy and democratic political system, relatively educated labor force, and favorable Central European location could make the Czech Republic a better long term location for FDI).

191 See analysis supra Part IV.A.1 (an investor who is willing to take on the risk of political turmoil may be more likely to invest in China and seek to access the vast Asian markets).

192 ALFARO & CHEN, supra note 1, at 8 (asserting that FDI plays a critical and complex role in surviving the current global financial crisis).
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to entice profit-seeking investors.\(^{193}\) Moreover, as long as the government continues to want to attract FDI into China, they will act to make investment profitable.\(^{194}\)

However, if a foreign investor did not require low cost laborers for profit and instead needed skilled laborers, the Czech Republic could pose a better option for short-term investment.\(^{195}\) This is especially true if an investor bought shares from individuals and took over an already existing company and therefore had lower startup costs.\(^{196}\) If a foreign investor were looking to capitalize on domestic markets, or the European market, then the Czech Republic would be a wiser choice for investment since the Chinese government still largely controls the Chinese domestic markets.

2. *Long-term Investment Horizon*

China is at a crossroads, and as such, long-term investment in China cannot be predicted with any certainty.\(^{197}\) With increasing social and economic independence comes knowledge that the government does not want the Chinese population to have, and the tension between social and economic independence and communist party control is palpable in China.\(^{198}\) Foreign investors know the potential in China is greater than has been tapped, and the Chinese people have tasted small amounts of freedom and will someday demand more. Foreign investors will probably try to pressure the Chinese government to relinquish control and allow them to exploit the vast and largely untapped domestic markets. However, the CCP probably will not give up control easily.\(^{199}\) In fact, it is likely that the CCP will try to clamp down harder and ultimately either China will end up in revolt and political instability or foreign investors will gradually move to other

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\(^{193}\) See analysis *supra* Part IV.A.1 (China will, at some point in the future, face a decision between loosening the reins on freedoms associated with more knowledge and wealth, or it will stagnate as an FDI destination. Certainly, any political revolution would likely scare investors out of China, as happened after the Tiananmen Square incident).

\(^{194}\) See analysis *supra* Part IV.A.1 (the key for foreign investors is to ensure that the CPC continues to want to attract FDI into China. As soon as the CPC changes its mind, investors will likely face insurmountable barriers to entry due to the lack of transparency).

\(^{195}\) See analysis *supra* Part IV.B (although the Chinese labor force is catching up, higher education is still limited to only the brightest students, while the Czech labor force offers both political stability and a skilled labor force).

\(^{196}\) See discussion *supra* Part III.B (since the Czech Republic chose to undergo rapid transition, there are no longer any SOEs, and thus there is opportunity for a foreign investor to purchase an already existing company through a public or private market).

\(^{197}\) See analysis *supra* Part IV.A.2 (China will ultimately have to choose between FDI and its associated freedoms or shut out many foreign investors and retain tight control over the population).

\(^{198}\) See, e.g., CNN Wire Staff, *China Sentences Woman to Labor Camp for Twitter Post*, CNN (Nov. 18, 2010), http://articles.cnn.com/2010-11-18/world/china.tweet.punishment_1_labor-camp-twitter-japanese-products?_s=PM:WORLD.

\(^{199}\) See background *supra* Part II.A.1 (with incidents like the censorship of Wikipedia and Facebook as well as the direct marketing ban discussed in Wong, *supra* note 5, the CCP has demonstrated that it will not let go of control quickly, quietly, or easily).
locations where the economic opportunities are not stagnant. There appear to be two options for China. It cannot stay as it is now, where the government has its cake and eats it too—foreign investors are pouring into China, while the CCP has somehow managed to retain control over the general population. The CCP will either relinquish control and FDI in China will propel to levels never before imagined as the vast domestic markets are opened, or China will stagnate or fall backwards as the CCP tries to regain total control, in which case, either political revolt will occur or investors will relocate.

Therefore, the Czech Republic is a much safer long-term investment. Although it may not generate the same level of short-term profits, it will also not likely suffer huge losses, and may balance out over the long-term. Of course, the Czech Republic is just one of many other options for FDI.

VI. Conclusion

In conclusion, both China and the Czech Republic are viable targets for FDI. Although both countries have advantages and disadvantages for FDI, the Czech Republic is, without a doubt, the more stable political, economic, and legal system, and therefore investment in the Czech Republic is less risky. As such, a long-term investor with his or her sights set beyond the current global economic crisis should seriously consider investing in the Czech Republic.

China, however, is a hot bed for FDI and has enormous potential to generate tremendous profits, especially if the domestic markets are opened up without interference from the government. The younger generations in China have been exposed to consumerism and have tasted a small amount of social and economic freedom. If the domestic markets in China were unencumbered by the government, the profit potential is massive, but if China continues to regulate internal markets and export much of what is produced in the country, investors may ultimately relocate.

However, the main issue with China is not that the status quo will remain, because foreign investors are making a lot of money on the status quo by taking advantage of cheap labor and exporting products, but the fact that the status quo is not sustainable in a world where with global scale productions comes social and economic freedom. The real issue is the tension that now exists between the government wanting to maintain control and the people trending towards consumerism. The Chinese government will not tolerate the social and political knowledge that comes with international consumerism, and it is likely that the government will attempt to contain it, stagnating investment returns and potentially inciting revolt. Therefore, long-term investment in China should be ap-

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200 See analysis supra Part IV.A.2 (this is especially true if there are other Asian markets that do not face the tight control of the CPC, which would provide relatively easy opportunities for foreign investors to relocate in Asia).

201 See Wong, supra note 5, at 265-66.

202 See analysis supra Part IV.B.1 (If China ultimately faces some form of political or social instability, investors would likely suffer great losses, thus, the Czech Republic would provide a more stable long term investment).
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proached with extreme caution, as some form of political instability is likely to be in China’s future. Until that time, however, China is a favorable target of foreign direct investment.