



press release

For immediate release

ACCJ Releases Its Sixth Specific FDI Policy Recommendation Urging the Use of Tax Deferred Stock Swaps to Spur Cross-Border M&A

April 6, 2004 (Tokyo)—Following the October 2003 release of the Fukao Report (Foreign Direct Investment and the Japanese Economy) and the policy piece “From Goals to Reality: FDI Policy in Japan,” the American Chamber of Commerce in Japan (ACCJ) has released a specific policy recommendation paper on tax-deferred share exchanges using foreign company shares (to view the full text, please see <http://www.accj.or.jp/content/advocacy/FDI/SPP>). This is the sixth in a series of policy recommendations on foreign direct investment (FDI) the ACCJ will be offering over the next few months.

In order to increase foreign direct investment into Japan, the ACCJ recommends that the government of Japan amend the Japanese tax law to allow a foreign parent company to engage in simple share exchanges in which the foreign parent company acquires all or substantially all of the shares of a Japanese target company in exchange for the foreign parent company’s shares, while granting the target company’s shareholders deferral of recognition of gains so as to delay their tax liability until they dispose of the shares of the foreign parent company. This amendment would allow foreign companies to receive the same treatment for cross-border share exchange transactions as domestic companies do in domestic share exchange transactions.

In 2001, cross-border M&A, at approximately \$771 billion, accounted for roughly 45 percent of total worldwide M&A deal value. Since 1995, there have been 1,404 major M&A deals between the United States and Europe, each valued at more than \$100 million. The total aggregate value of the deals is \$1,359 billion. By contrast, in the period 1995-2001, M&A flows between Japan and the U.S. totaled \$61 billion for 83 deals, and M&A flows between Japan and Europe totaled \$51 billion for 55 deals, for a total aggregate value of only \$116 billion—less than 10 percent of the total number and value of M&A transactions between the United States and Europe.

Cash M&A deals still do occur in international markets globally, but large-scale M&A deals are more commonly done through stock-for-stock or hybrid structures. Increases in inbound M&A flows—including transactions by means of stock-for-stock or hybrid structures—are essential to further expansion of Japan’s cumulative stock of FDI.

However, cross-border M&A deals between Japan and the rest of the world remain limited due to the lack of flexible alternatives that can be used by foreign companies to structure transactions. Japan needs to adopt proactive policies to facilitate cross-border M&A, just as was noted prominently as a key recommendation of the Japan Investment Council (JIC) dated March 27, 2003.

The government of Japan has committed to promote investment and jobs by doubling FDI during the five-year period from 2003 through 2008. But at present Japanese cross-

border deals are not able to utilize tax-deferred treatment for stock exchange transactions. The ACCJ believes that adoption of this tax deferral treatment represents a critical policy step to achieving the government's stated goal to double FDI by 2008.

ACCJ President Debbie Howard stated, "This single change alone can stimulate a significant increase in FDI flows, and will address the present inequality of treatment between domestic acquirers and foreign investors. What's more, it can be implemented in the near term, and can have major impact soon."

To date the ACCJ has released specific FDI policy recommendations on "Corporate Governance and Transparency" (Feb. 16, 2004), "Cash Mergers" (Feb. 20, 2004), "Pharmaceuticals" (Feb. 25, 2004), "Education" (March 17, 2004) and "Medical Devices" (March 25, 2004). "Tax-Deferred Share Exchanges Using Foreign Company Shares" marks the ACCJ's sixth specific FDI policy recommendation.

ACCJ FDI Task Force

In 2003 the ACCJ focused on foreign direct investment into Japan in response to Prime Minister Koizumi's January speech to the Diet, in which he announced the government's goal of doubling FDI in five years. A task force engaged the services of Japan's most authoritative experts on FDI, Professor Kyoji Fukao of Hitotsubashi University and Tomofumi Amano of Toyo University, to conduct objective analysis and write a report illuminating the facts concerning FDI in Japan, including the kinds of benefits that it brings and suggesting policy implications. This report was issued in Japanese on October 29, 2003, under the title "Foreign Direct Investment and the Japanese Economy." In addition, the task force prepared a companion policy document, "From Goals to Reality: FDI Policy in Japan." This report builds on the facts and empirical analysis presented by Professors Fukao and Amano to dispel a number of myths and fears about FDI in Japan and offers a number of ACCJ policy recommendations for achieving the government's goal of doubling FDI into Japan by 2008. To learn more about the ACCJ FDI Task Force, please visit <http://www.accj.or.jp/content/advocacy/FDI>

About ACCJ

Established in 1948, the American Chamber of Commerce in Japan (ACCJ) has grown into Japan's most influential organization representing the interests of international businesses in Japan, with close to 3,200 individual members representing more than 40 countries and 1,400 companies. The ACCJ promotes commerce between the United States and Japan, supports measures to benefit and protect the interests of U.S. companies, and presents a variety of programs that keep Chamber members abreast of current business practices and trends. For more information, visit: <http://www.accj.or.jp>

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