



For immediate release

Misinformation on FDI Impedes Sound Decision-Making

March 4, 2005 - A spate of incorrect and misleading reports and commentary is presenting a false picture to the Japanese people about foreign investors in Japan. The American Chamber of Commerce in Japan (ACCJ) would like to correct these inaccuracies by presenting the facts with respect to three of the most egregious misconceptions. We call upon the media and commentators to ensure a positive and unemotional atmosphere with respect to the formation of Japanese policy on foreign direct investment (FDI) and mergers and acquisitions (M&A).

Misconception#1: Upcoming changes to the Commercial Code will make it much easier for foreign companies to propose "hostile" stock swaps by using triangular mergers.

Facts: For many years, both foreign and domestic companies have been able to propose exchanges of stock to shareholders as an M&A method, either under Japan's Securities Exchange Law as a takeover bid for "hostile" transactions or under the Commercial Code between Japanese domestic companies for friendly transactions. Nothing in the planned 2005 amendments to the Commercial Code will make it easier to propose or execute exchange transactions of a "hostile" nature, and no one is proposing that. The proposed triangular merger rules address only "friendly" transactions.¹ Moreover, only operating companies that can issue new stock are able to engage in stock-exchange transactions. These strategic investors are precisely the kinds of long-term investors that bring new business models, products and technology to benefit Japan. Investment "funds" and other financial investors cannot and do not propose such stock-exchange transactions.

Misconception#2: Many foreign firms are eager to engage in "hostile" takeovers of Japanese corporations.

Facts: "Hostile" takeovers are rare, even in the United States. Recent figures for 2004 show that of over 23,000 M&A transactions completed globally, less than 100

¹ Many inaccurate reports over the past year suggest the opposite interpretation. However the Director of METI's Industrial Organization Division (Economic and Industrial Policy Bureau) publicly confirmed to an ACCJ audience on February 28, 2005 that the new Commercial Code amendments will only facilitate "friendly" transactions. METI has also confirmed that its Corporate Value Study Group, which is now considering fair and reasonable guidelines for takeover defenses and other related matters, was not formed in reaction to the triangular merger provisions in the upcoming Commercial Code amendments (which will not facilitate "hostile" "swap" transactions). Rather, METI's Corporate Value Study Group was formed with cash takeover bids in mind. This fact appears to be widely misunderstood.

were "hostile" - and not a single one of these was in Japan. "Friendly" transactions, as opposed to "hostile" ones, are the first choice of acquirers for a variety of reasons: access to due diligence, cooperation of management, and the preservation of the goodwill of the employee and customer base. "Hostile" takeovers may risk damage to reputation, brand and management processes of the acquiring company. These universal business concerns are greater in the case of Japan, where there still have been almost no successful takeovers that were truly "hostile". A "hostile" takeover complicates the difficulty of running a company after the acquisition. Most foreign investors would not even consider trying to manage a company in Japan without the cooperation of its Japanese management.

Misconception#3: Stringent new laws—so-called "take-over defenses" -- are needed to prevent foreign companies from engaging in "hostile" takeovers via stock swaps or triangular mergers.

Facts: Mechanisms to promote balanced decision-making for the objective determination of the best interests of stockholders and all other stakeholders of any company, for which any acquisition offer has been made -- whether "friendly" or "hostile" -- are essential to any well-regulated M&A system. While no specific modifications to the Commercial Code have yet been proposed, good policy decisions will be hampered by an atmosphere of misinformation, hysteria, and doom-saying. Instead, careful consideration in light of expert opinion, quality information and ample public comment is the proper path.

The ACCJ calls on all participants in the policy discussions concerning M&A and FDI to act in a responsible and constructive manner. More than 80% of M&A in Japan has been carried out among Japanese firms for several years, and has become an accepted and useful business strategy in Japanese domestic business as in all other developed countries. Similarly, direct investment by foreign firms into Japan already has clearly demonstrated its value by reinvigorating individual firms and contributing to overall employment and economic growth. Now is the time to move forward to increase Japan's share of global FDI, not to generate groundless fears.

About the 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 1,300 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 further information, visit the ACCJ public website, <http://www.accj.or.jp>.

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