Press Release 報道資料

For immediate release

ACCJ and the EBC Voice Concerns about Reports of Developing Keidanren Policy on Limiting Triangular Mergers

October 27, 2006 --- The American Chamber of Commerce in Japan (ACCJ) and the European Business Council (EBC) expressed concern today at recent reports by Reuters and the Yomiuri Newspaper that leaders of the Keidanren requested Diet members to create rules requiring foreign companies – even those already listed on major foreign exchanges – to list their shares on Japanese exchanges before being allowed to conclude triangular mergers with public Japanese companies.

"As strong supporters of Japan's economic growth and commitment to reaching greater levels of international competitiveness," ACCJ President Charles Lake said, "both the ACCJ and the EBC are surprised that a senior delegation from a leading business organization would reportedly take a stance that would largely hinder foreign direct investment (FDI) into Japan, potentially endangering Japan's growth trend and ultimately hurting its long-term global competitiveness."

The Government of Japan has set a target of doubling Japan's cumulative base of FDI by 2010. With FDI recognized globally as a key driver of economic growth and M&A transactions accounting for more than half of net increases to Japan's FDI base, leaders of both the ACCJ and the EBC are concerned that impractical restrictions on triangular mergers – a "friendly" type of transaction - would be inconsistent with the government's FDI goals.

"The Government of Japan's commitment to increasing inward FDI is a smart policy to ensure continuing growth by Japan's economy," said EBC Chairman Richard Collasse. "However, instituting rules requiring foreign companies already listed elsewhere to also list on Japanese exchanges to become eligible for triangular mergers with public firms is not the most practical means of meeting its goal of doubling Japan's FDI base. Frankly, it is hard to understand why the leadership of any business organization with Japan's best interests in mind would even suggest such a measure."

FDI and Triangular Mergers Fact Sheet

- In 2005, FDI flows into Japan slumped to their lowest point since 1996, declining 64% year-on-year from 2004. It appears almost certain that the Government of Japan's first five-year target to double the cumulative base of FDI in the period from 2001-2006 will not be reached.[1]

- At the end of 2005, Japan's cumulative base of FDI amounted to only 2.2% of GDP, as compared with 14.3% for China, 37.1% for the U.K., 13.0% for the U.S., 33.5% for the European Union, 21.4% for all developed economies, and 22.7% for the entire world.[2]

- A triangular merger is a "friendly" structure whereby a company (foreign or domestic) can issue its own shares as consideration in a merger with a Japanese company. Prior shareholders of the Japanese company will receive the newly issued shares in an effective "swap".

- Since only about 30 foreign companies are currently listed on Japanese stock exchanges, the result of such a proposal would be that initially only these 30 firms could realistically propose transactions to public Japanese companies. Because of obstacles to listing on Japanese exchanges that can make the process costly and time-consuming when compared to international standards, the number of foreign listings has been in decline since the 1990s.

- A triangular merger cannot be used for a hostile takeover because by law, Japanese boards must negotiate detailed terms and approve the transaction and the merger agreement before it goes to shareholders for their final approval.

- If Japanese boards want their shareholders to receive shares that are listed in Japan, this condition can be demanded in negotiations. If agreement on this condition is not reached, the boards can refuse the deal. Japanese boards cannot be forced to accept a transaction they do not agree with.

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[1] UNCTAD report: World Investment Report 2006, http://www.unctad.org/Templates/webflyer.asp?docid=7431&intItemID=2068&lang=1&mode=downloads

[2] Ibid

About the ACCJ
The mission of the American Chamber of Commerce in Japan (ACCJ) is to further the development of commerce between the United States of America and Japan, promote the interests of U.S. companies and members, and improve the international business environment in Japan. Established in 1948 by representatives of 40 American firms, the ACCJ has grown into one of the most influential business organizations in Japan, with close to 3,000 individual members representing more than forty countries and 1,400 companies.

About the EBC
The European Business Council (EBC) is the trade policy arm of the 17 European national chambers of commerce and business associations in Japan. Established in 1972, the EBC works to improve the trade and investment environment for European companies in Japan. The EBC currently represents around 3,000 local European companies and individuals who are members of their national chambers of commerce. More than 350 of these companies participate directly in the EBC's 29 sector-based committees.

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