

A faint, teal-colored map of East Asia, including the Korean Peninsula, Japan, and the Philippines, serves as a background for the slide. The text is overlaid on this map.

Main topics

- I. General idea for critical assumption**
- II. Approaches for agreed BAPAs with TNMM hit by a black swan event**

A stylized teal map of East Asia, showing the Korean Peninsula, Japan, and the Philippines. The map is semi-transparent and serves as a background for the text.


I. General idea for critical assumption

A teal-colored map of the Pacific region, including North America, Central America, the Caribbean, South America, and the Pacific Islands, is overlaid on the left side of the slide. The text is positioned to the right of the map.

What are critical assumptions?

They are conditions to materially affect an agreed APA's existence (effectiveness).

They include facts to affect the methodology for an agreed APA.



The scope of conditions (controllable / uncontrollable)

- **Business operations
(functions ,risks and assets)**
- **Business structures**
- **Economic circumstances**

etc.

Facts, to affect the methodology for an agreed APA

- **No change in functions, risks, assets**
 - **No change in intangible ownership**
 - **No change in license agreement**
 - **No change in royalty percentages**
 - **No change in accounting consistency**
 - **No change in governments' regulations**
- etc.**



Facts, to affect the methodology for an agreed APA (cont.)

- **No catastrophic events exceeding normal business cycle**
- **No extreme economic downturns**
- **No black swan events affecting a routine profit etc.**



Effects of failure to meet a critical assumption

An agreed APA would be led into

- **ineffectiveness, and cancellation,**
- **renegotiation (back to the table).**

A teal-colored map of the United States is shown in the background, covering the left and top portions of the slide. The map is semi-transparent, allowing the text to be overlaid on it.

II. Approaches for agreed BAPAs with TNMM hit by a black swan event

Treatments for agreed BAPAs with TNMM hit by a black swan event

- [Treatment 1]

Rearrange the agreed BAPA

APA term (5 years)



- [Treatment 2]

Close the agreed BAPA, and renegotiate the new BAPA

Close for APA term (2 years)



Discussing methodology for 5 or more years



A faint, light blue map of Asia and Oceania is visible in the background of the slide. The map shows the outlines of the continents and major islands, including the Philippines, Indonesia, and parts of Australia and New Zealand.

Approaches for agreed BAPAs with TNMM hit by a black swan event

- i. An update on comparable data**
- ii. A set of new screening criteria for new comparable companies**
- iii. Longer term test / separate annual test**
- iv. Comparability adjustments**



i. An update on comparable data

- **Updating comparable data agreed in the established BAPA, to enhance the agreed past comparable companies to be in the comparable situation to the tested party**

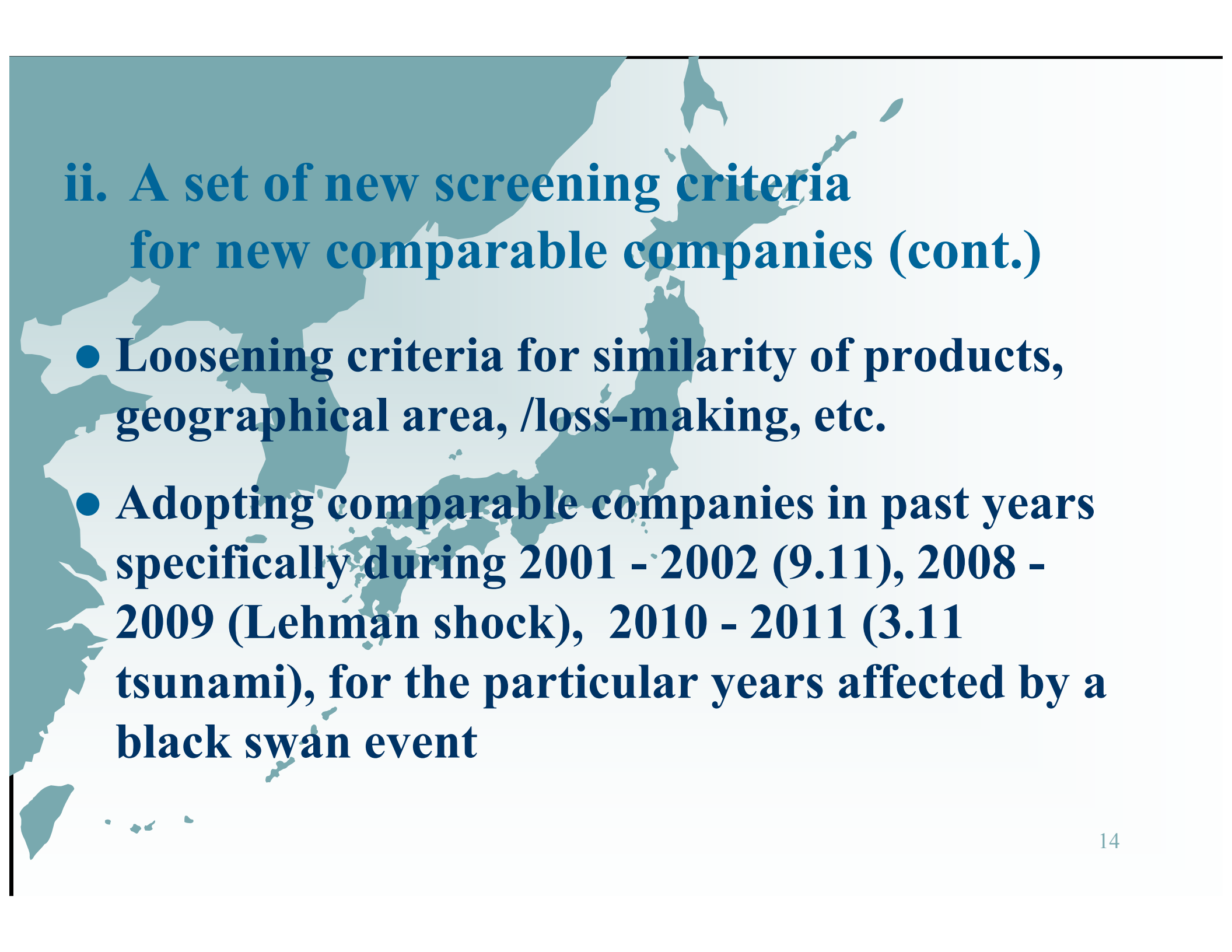
Concerns for an update on comparable data

- **The updated data cannot be obtained soon. Accordingly, the CA negotiation has been suspended until collecting them.**
- **Some potential comparable companies would suffer a bankruptcy and stop their business, removed from the database. Some would be survived even in a black swan event. Consequently, the range would be led to be downward, or upward ironically.**



**ii. A set of new screening criteria
for new comparable companies**

- **Similar sales' decline trend to previous year**
- **Similar capacity utilization's decline trend to previous year**
- **Similar fixed costs' ratio increasing trend to previous year**
- **Similar level of fixed assets to total assets
etc.**



**ii. A set of new screening criteria
for new comparable companies (cont.)**

- **Loosening criteria for similarity of products, geographical area, /loss-making, etc.**
- **Adopting comparable companies in past years specifically during 2001 - 2002 (9.11), 2008 - 2009 (Lehman shock), 2010 - 2011 (3.11 tsunami), for the particular years affected by a black swan event**

iii. Longer term test / separate annual test

- Making an entire APA term test for 5 years or more, to reduce the impact of a black swan event, using data for both comparable companies suffered by a black swan event and not suffered by a black swan event**
- Alternatively, suffered year(s) is(are) tested to the range formed by suffered comparables data, and separately non-suffered year(s) is (are) tested to the range constructed by non-suffered comparables data.**

iii. Longer term test / separate annual test (cont.)

- Adopting specific one-year (or more) comparable data suffered from a black swan event to test the suffered year(s) of the tested party, while comparables' multiple-year average data are generally used to test the year(s) in the normal business condition.

[Comparables]	:	[The tested party]
One-year (or more) data	:	The black swan-suffered year(s)
Multiple-year average data	:	The black swan-suffered year(s)

iv. Comparability adjustments

- **Adjustments for difference between the tested party and comparable companies, depending on the facts and circumstances**
 - **Declined sales vs. flat sales**
 - **Declined capacity utilization vs. flat capacity utilization**
- etc.**

iv. Comparability adjustments (cont.)

- **What type of adjustments and how can be made?**
 - **It depends on data availability for the tested party and comparable companies, on a case by case basis.**
 - **Quantifying effects on declines of sales, capacity utilization, etc., and adjusting them to the profit**

Concerns for comparability adjustments

- **The difference for cost structure (variable costs' ratio / fixed costs' ratio)**
 - **The sales' decline has a more significant impact on the profit for a company with higher fixed costs ratio than lower fixed costs ratio.**
- **How can we access to the detailed information for comparable companies (a limitation of data availability)?**



A raised issue for a black swan event

- **Does the related subsidiary with a minimum risk enjoy a certain level of profit at any time, even under an unpredictable black swan event?**

OECDTPG for the raised issue

[OECDTPG A.7.3 Para. 3.63 - 3.66 (Extreme result: comparability considerations)]

[Para. 3.64]

Simple or low risk functions in particular are not expected to generate losses for a long period of time.

Para. 3.64 may imply that simple or low risk functions in particular are expected to generate losses for a short period of time.

OECDTPG for the raised issue (cont.)

[OECDTPG Para. 3.72]

The question arises whether and if so how to take account in the transfer pricing analysis of future events that were unpredictable at the time of the testing of a controlled transaction, in particular where valuation at that time was highly uncertain. The question should be resolved, both by taxpayers and tax administrations, by reference to what independent enterprises would have done in comparable circumstances to take account of the valuation uncertainty in the pricing of the transaction.

The resolution is in the comparability analysis.

Summary

- **Critical assumptions are prepared in APAs, given that they are agreed based on a certain condition for business operation, business structures, economic circumstances, etc. Unpredictable events would happen in the future.**
- **A black swan event is one of unpredicted events to affect the agreed APAs, causing a tested party into a extreme loss situation.**



Summary (cont.)

- **Four approaches are introduced for a black swan event.**
- **OECDTPG prepares the solution in the comparability analysis for a black swan event.**

Conclusion for my entire presentation

- **Increasing cross-border trade**
- **Risks for state: losing tax revenue**
- **Risks for taxpayers: double taxation**
- **Leaving the double taxation leads us into difficulties in the long run (losing tax revenue)**
- **Balance between theoretical solution and pragmatic solution with flexibility and good judgment**
- **Solution through MAP / APA process on a case by case basis**



Thank you