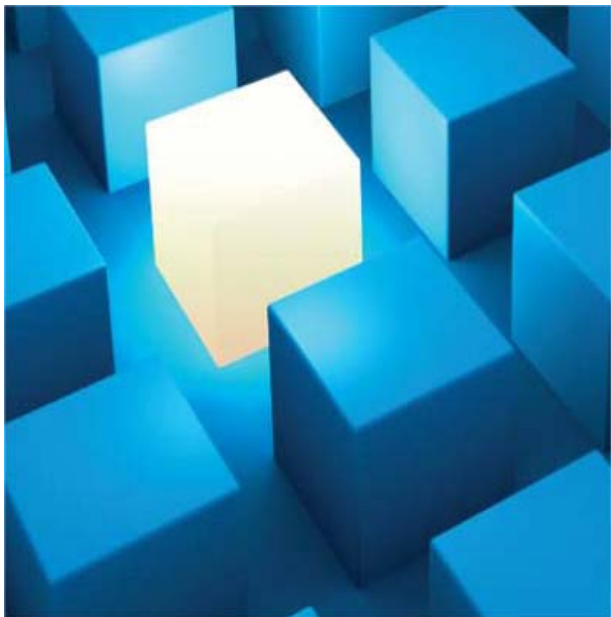


October 13, 2011

# Location Specific Advantages

**Nobuo Mori, Tokyo**  
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**SAT – OECD High Level Transfer Pricing Seminar**  
**Beijing, 13-14 October 2011**



2011年10月13日

## 区位优势

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中国国税总局 – **OECD** 高级转让定价研讨会  
北京, **2011年10月13日、14日**



## Objective

***Provide practical application of location specific advantages concept in various real-world situation and insight in quantification of LSAs and apportionment***



## 目标

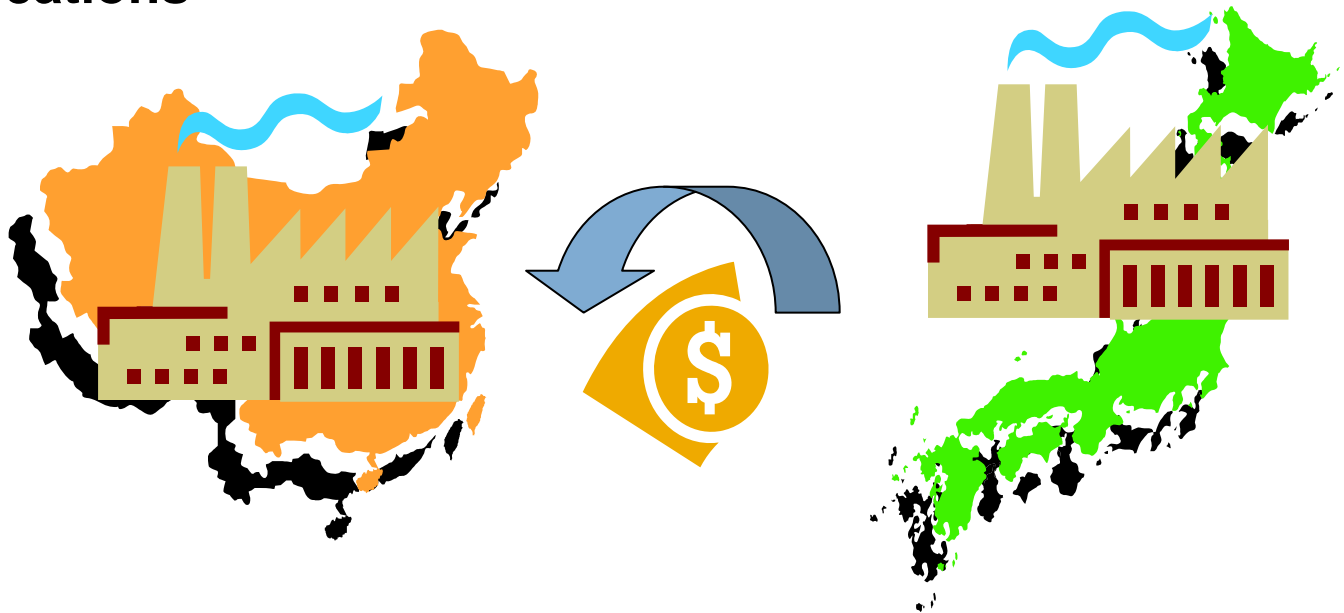
提供区位特定优势概念在各种现实情况下的  
实际应用以及对区位特定优势的量化和分摊的  
见解





## Location Savings Arise When “Relocating” Manufacturing Functions From High Cost To Low Cost Countries

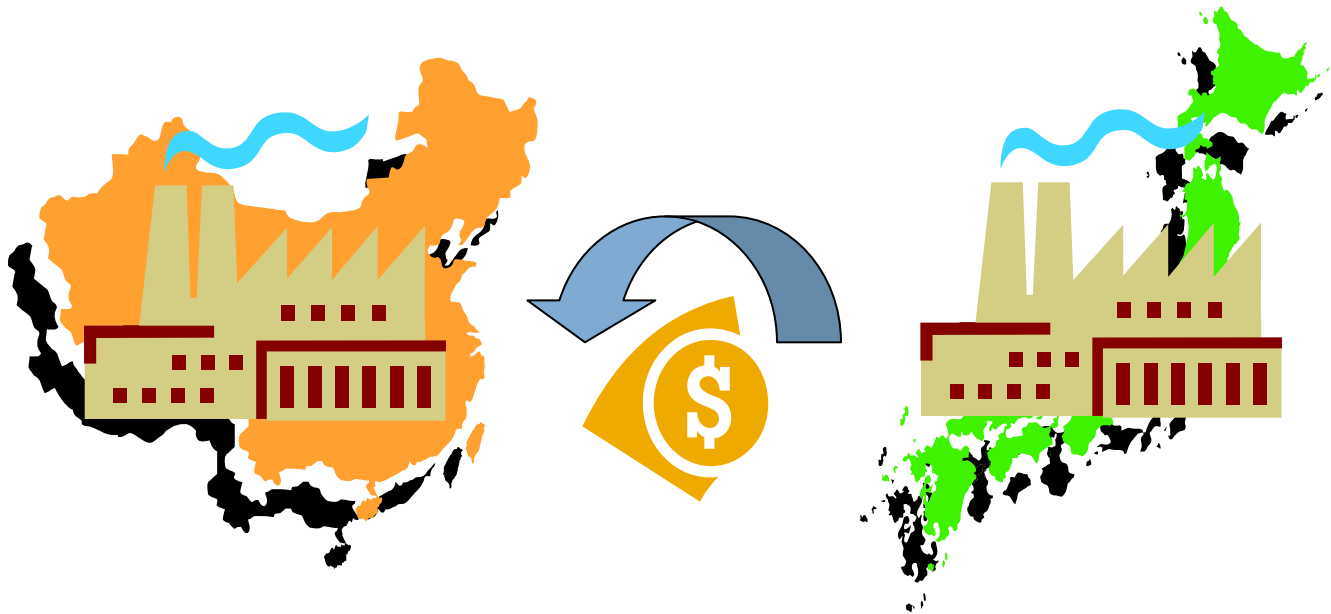
- Location savings emerge when companies transfer production or operation sites from a high cost environment to a low cost environment.
- Location savings = net savings from difference of total unit production cost due to difference in productivity-adjusted input cost (e.g. labor cost necessary for producing one unit) in a specific location, compared to an alternative location or locations





## 将制造功能从低成本地区“转移”至低成本地区时会产生选址节约

- 公司将生产或运营地点从低成本环境转移至低成本环境时会出现选址节约
- 选址节约 = 在某一特定地点，与其它可替代地点相比较，由于生产效率-调整后的投入成本（如：为生产一单元产品所需劳动力成本）差异所产生的净节约





# Court Cases

Cases	Fiscal Years	Background	Outcome
<b>Eli Lilly &amp; Co v US</b>	1971-1972	US parent purchased pharmaceuticals from Puerto Rican subsidiary and resold them in the US. Combined profits split as follows: returns to routine functions (production -100% to Puerto Rico- and selling-100% to US), Location Savings (100% to Puerto Rico) and return on intangibles (55% Puerto Rico for IP-45% US for marketing intangibles).	Location savings: 100% to low cost manufacturer
<b>Sundstrand Corp. &amp; Subs v Comm.</b>	1977-1978	Location Savings estimated with the costs of setting up/operating new hypothetical US factory. Manufacturing licence agreement gave to Singapore Sub. a “monopolistic position”: a third party would have kept all Loc. Sav. (after appropriate royalty for the technology license).	Location savings: 100% to low cost manufacturer
<b>National Semiconductor Corp.v Comm</b>	1976-1981	Mutually dependent business relationship: NSC US needed the labour cost savings provided by NSC Asia to remain competitive and NSC Asia needed a high and steady volume of orders to justify heavy investments in equipment, etc. At arm's length, NSC Asia could not afford to risk losing NSC US's business by allowing NSC to suffer heavy losses.	Mutually dependent business relationship implies that location savings should be shared b/w Parent and Sub.



## 法庭判例

案例	财政年度	背景	结果
<b>Eli Lilly &amp; Co v US</b>	1971-1972	美国母公司从波多黎各子公司购买药品，在美国进行再销售。合并利润分割如下：常规功能回报（生产 – 100% 归于波多黎各；销售 – 100% 归于美国），选址节约（100% 归于波多黎各），无形资产回报（55% 归于波多黎各的无形资产 – 45% 归于美国的营销性无形资产）	选址节约：100%归于低成本制造商
<b>Sundstrand Corp. &amp; Subs v Comm.</b>	1977-1978	根据假设新设立 / 运营美国工厂所需成本对选址节约进行估算。制造许可协议使新加坡子公司获得了“垄断地位”：某第三方本应该获得所有选址节约（为技术许可支付合适的使用费后）。	选址节约：100%归于低成本制造商
<b>National Semiconductor Corp.v Comm</b>	1976-1981	相互依赖的业务关系：NSC美国需要NSC亚洲所提供的劳动力成本节约以保持其竞争力，NSC亚洲需要稳定的大量订单以有正当理由对设备进行高额投资。根据公平交易原则，NSC亚洲无法承受任由NSC遭受巨额损失而失去与NSC美国之间的业务的风险。	相互依赖的业务关系说明选址节约应当由母公司和子公司共同享有。





# Court Cases

Cases	Fiscal Years	Background	Outcome
<b>Bausch &amp; Lomb v Comm</b>	1980	Implicitly allocated Loc. Sav. to Sub. by rejecting its characterisation as a mere subcontractor given that neither volumes nor prices were guaranteed.	Location savings: 100% to low cost manufacturer
<b>Compaq Computer Corp &amp; Subs v Comm.</b>	1986-1992	Electronic circuits market is global and a world price should have been produced by competition within the market; moreover Compaq Asia had market power resulting from its ability to meet the product quality and flexibility requirements of its customer. Thus relevant market was the US and Court accepted CUPs paid by Compaq to unrelated subcontractors (mostly located in the US).	Location savings: 100% to low cost manufacturer
<b>Lower Tax Court of Münster, 16 March 2006, IStR 2006, at 794</b>		50% of the location savings were kept with the contract manufacturer. However, tax authorities currently considering the release of administrative principles which would emphasize that a major part of the location savings shall be attributable to the principal	50% of the location savings kept by the contract manufacturer.



# 法庭判例

案例	财政年度	北京	结果
<b>Bausch &amp; Lomb v Comm</b>	1980	考虑到数量和价格都无法保证，通过否定子公司仅仅作为分包商的特性，暗示将选址节约分配给子公司。	选址节约： 100% 归于低成本制造商
<b>Compaq Computer Corp &amp; Subs v Comm.</b>	1986-1992	电子电路市场具有全球化，市场内的竞争应该产生了某一世界价格。并且，Compaq亚洲由于其能够满足客户对产品质量和适应性的需求，拥有市场力量。因此美国是相关市场，法庭接受了Compaq支付给非关联分包商（大部分位于美国）的可比非受控价格。	选址节约： 100% 归于低成本制造商
<b>Lower Tax Court of Münster, 16 March 2006, IStR 2006, at 794</b>		50% 的选址节约由合约制造商保留。然而税务机关目前考虑颁发行政原则，这将强调选址节约的大部分都将归委托方所有。	50% 的选址节约由合约制造商保留



# The OECD Perspective

## Example

## Argument

## Outcome

- | Example   | Argument   | Outcome  |
|---|--|--|
| 1. Branded clothes manufacturer in a high cost Country owning all IP (brand, designs, etc.) decides to relocate basic contract manufacturing operations to a low cost Country [9.150-9.151]   | Relocated activity is highly competitive, does not employ valuable intangibles, nor implies assumption of significant risks: the parent has the option realistically available to use either the affiliate or a third party. | All or most of the location savings would be attributed to the Parent. |
| 2. Provider of highly specialised engineering services in high cost Country A opens a subsidiary in low cost Country B; The clients of the parent in Country A ignore sub-contracting and are charged country A hourly rates until competition forces parent to pass some of the savings to clients [9.152-9.153] | If the Subsidiary in Country B is the only one capable to provide the required quality standards (or has some locally developed intangibles) then a split of the profits is likely.  | Profit Split method to determine split of Location savings             |

Source: *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations*, paragraphs 9.150-9.153, pages 285-286



# OECD的观点

## 例子

## 论据

## 结果

- |   |  |                            |
|---|--|----------------------------|
| <p>1. 一品牌服饰制造商，在高成本地区拥有所有的无形资产（品牌、设计等），决定将其基本的合约制造经营活动转移至一低成本地区【9.150-9.151】</p>  | <p>转移的活动高度竞争，不拥有任何有价值的无形资产，也不承担重大风险：母公司实际可以选择使用子公司或者使用某一第三方。</p> | <p>所有或者大部分选址节约都归于母公司</p>   |
| <p>2. 一高成本地区A的高度专业化工程服务供应商，在低成本地区B开设了子公司。地区A的母公司的客户，在竞争强度迫使母公司将这一节约传递到客户（部分）之前，并不会意识到这一分包过程被收取的是地区A的小时费率【9.152-9.153】</p> | <p>如果在地区B的子公司是唯一可提供所需要的质量标准（或是具备一些本地化开发的无形资产），那么可能需要对利润进行分割。</p> | <p>采用利润分割法以确定选址节约之间的分配</p> |

来源: OECD 跨国公司及税务机构转让定价指南, Para. 9.150 – 9.153, P285 – 286



## The US Perspective

“If an uncontrolled taxpayer operates in a different geographic market than the controlled taxpayer, adjustments may be necessary to account for significant differences in costs attributable to the geographic markets. These adjustments must be based on the effect such differences would have on the consideration charged or paid in the controlled transaction **given the relative competitive positions of buyers and sellers in each market**. Thus, for example, the fact that the total costs of operating in a controlled manufacturer's geographic market are less than the total costs of operating in other markets ordinarily justifies higher profits to the manufacturer only if the cost differences would increase the profits of comparable uncontrolled manufacturers operating at arm's length, **given the competitive positions of buyers and sellers in that market**”.

U.S. Section 482 regulations 1.482-1(d)(4)(ii)(C).



## 美国的观点

“如果非受控纳税人与受控纳税人在不同的地理市场经营，考虑到由于地理市场不同而产生的重大成本差异，需要做调整。考虑到在每一个市场中购买方和销售方的相对竞争地位，这些调整必须建立在这样的差异可能对受控交易中对支付或收取的费用的考虑所产生的影响之上。因此，例如，考虑到在每一个市场中购买方和销售方的相对竞争地位，在某一受控制造商的地理市场经营所需的总成本比在其他市场要少，这一事实通常仅在成本差异会增加按照公平交易原则运营的可比非受控制造商的利润的情况下，证明制造商应该获得更高利润。”

美国482条款规定 1.482-1(d)(4)(ii)(C)



## The Japanese Perspective

Japanese guideline take a strict view on location savings indicating that in principle such saving is likely to be reflected in benchmark Profit Level Indicators in a specific location.



## 日本的观点

日本准则对于选址节约的看法很严谨，表明原则上来说，在某一特定的区位，这样的节约可能反映在基准利润水平指标上。



# Location Specific Advantages : The Need For A Clear Definition

- **Location specific advantages (LSAs)**
  - “Location specific advantageous access to factors of production and distribution that can be exploited to produce a particular product or service cheaper, better or with less risk, or to increase the ability of a company to sell more product or achieve a larger market share”
  - Both supply and demand sides
  - **Broader than location *savings***
  - ***Net* location specific advantages and location rents**
- **Location rents**
  - Location rents exist if the following two conditions apply:
    - There is a quantifiable net location specific advantage
    - Certain market characteristics prevent the advantages / savings from being passed on to ultimate customers or unrelated suppliers



## 区位特定优势：清晰定义的必要性

### ■ 区位特定优势 (LSAs)

- “区位特定的获取某些生产和销售要素的优势，可以被开发用于更廉价、更好地及/或以更小的风险生产某个特定的产品或服务，或者增加公司在更高的价格下销售更多产品及/或达到更大市场份额的能力”
- 供给和需求方面
- 比选址 *节约*定义要更广泛
- *净*区位特定优势和区位租值

### ■ 区位租值

- 区位租值在以下两个条件满足的情况下存在：
  - 存在可量化的净区位特定优势
  - 某些市场特点避免了这些优势/节约被传递到最终消费者或者无关的供应商



# Location Specific Advantages : The Need For A Systematic Review Process

**Economic analysis is necessary to assess:**

- 1. Whether or not an MNE benefits from LSAs in certain locations**
- 2. In cases where LSAs are identified, whether they convert into location rents (super-profits)**
- 3. Which entity (parent / principal / local subsidiary) is entitled to location rents (super-profits)**



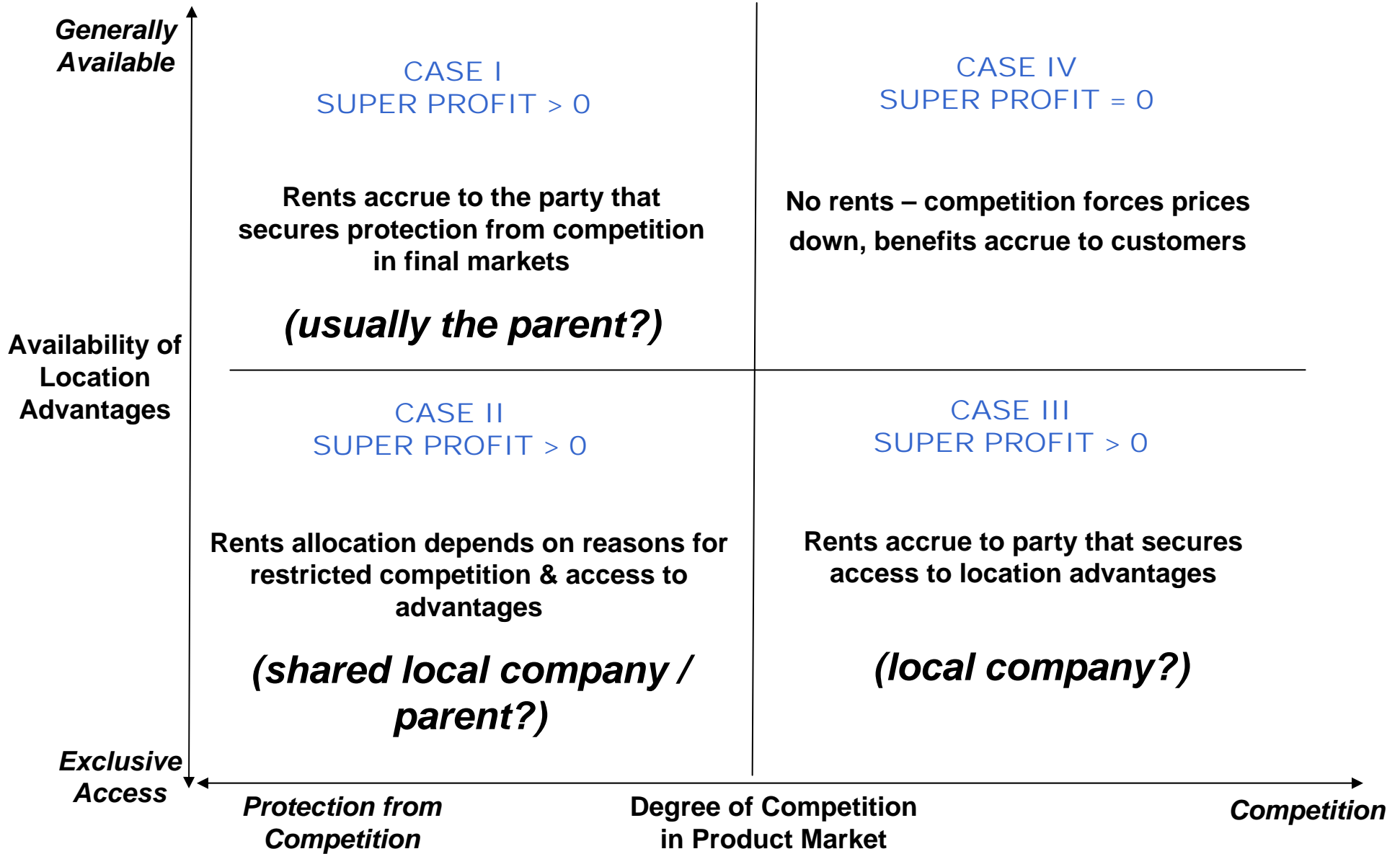
## 区位特定优势：系统化的观察过程的必要性

需要进行经济分析来评估：

1. 某一跨国公司在特定的区位是否受益于区位特定优势
2. 在确定存在区位特定优势的情况下，它们是否会转化为区位租值（超额利润）
3. 哪一实体（母公司/委托人/本地子公司）可以获得这些区位租值（超额利润）



# The LSA Matrix



Note: this matrix is a revised version of a model introduced by Frisch in 1993 reflecting the conclusions from the US location savings case law



# 区位特定优势矩阵



注释：该矩阵是Frisch1993年所提出的一种模型的修改版，反映了美国选址节约案例法的结论。



## Step 3 – Which Entity Is Entitled To Location Rents?

- In most cases, reliable CUPs / CUTs do not exist
- Other methods should therefore be envisaged
  - Allocation of location rents between parent (intellectual property owner) and local affiliate should be analyzed using their relative **bargaining power**

Local affiliate is powerful if:	IP Owner is powerful if:
It does not depend heavily on the IP owner for revenue	The IP is exclusive and cannot easily be replaced
There are high switching costs in changing local affiliate	There are high switching costs for local affiliate to use IP from another source
The local affiliate can easily have access to similar IP	It relies on costly and specialized assets that cannot easily be used with other IP
There are strong incumbency advantages	The IP is valuable and yields super-profits in the long run
Restrictive local government policy distort competition	Investments in developing the IP are constantly renewed and controlled

"IP" in this case embodies everything that 1. allows access and 2. safeguards competitive strength



## 步骤3 – 哪一实体可获得区位租值？

- 在大部分情况下，可靠的可比非受控价格 / 可比非受控交易不存在
- 因此需要应用其他方法
  - 区位租值在母公司（无形资产所有者）及本地子公司间的分配应该使用其相对议价能力进行分析

本地子公司议价能力强，如果：	无形资产所有者议价能力强，如果：
子公司没有非常地依赖无形资产所有者以获得收入	无形资产是排他性的，且不易被替代
更换本地子公司会产生高转换成本	本地子公司更换使用其他来源的无形资产会产生高转换成本
本地子公司容易获取相似的无形资产	依赖于不易与其他无形资产共同使用的昂贵和专业的资产
存在很强的在职优势	无形资产很宝贵，并且长期来看可产生超额利润
限制性的本地政府政策扭曲了竞争	持续性地更新和控制发展无形资产的投资

“无形资产”在这种情况下包括一切具备以下条件的事物：1、允许准入及 2、保护竞争性优势。



## Case Studies

- Case 1:
  - Relocation of manufacturing plant from Japan to Indonesia
  
- Case 2:
  - License Manufacturer in China
  
- Case 3:
  - R&D center in India



## 案例研究

- 案例1:
  - 将制造工厂从日本转移至印度尼西亚
- 案例2:
  - 在中国的许可制造商
- 案例3:
  - 在印度的研发中心



# Case Study 1 : Relocation Of Manufacturing Sites

## Background:

BAGAIR is one of leading multinational auto parts manufacturers mainly producing airbags and seatbelts. Aiming to be more cost-competitive, BAGAIR has moved its manufacturing sites in Japan to neighboring countries, including Indonesia where they produce “bag” for airbags and “webbing” for seatbelts.

Soon after the start of operation, an affiliated company in Indonesia (Indonesian Sub) recorded profit significantly higher than that for similar plants in Japan. The TRTB audited the firm and indicated 10 billion yen profit adjustment using the comparable profit method.

## Issue at stake:

To which extent can so-called “location savings” explain the high profits of Indonesian Sub?



## 案例研究1：转移制造地点

### 背景：

**BAGAIR**是一家领先的跨国汽车配件制造商，主要生产安全气囊和安全带。为了在成本上更加具备竞争力，**BAGAIR**将其在日本的制造地点转移至了邻近的地区，包括印度尼西亚，他们在印度尼西亚为安全气囊生产“气囊”，为安全带生产“织带”。

开始运营不久，在印度尼西亚的一家子公司（印尼子公司）获得了比日本相似的工厂高很多的利润。东京地方税务局（**TRTB**）对这家子公司进行了审计，并表示使用可比利润方法应对其进行**100亿日元**的利润调整。

### 关键的问题：

所谓“选址节约”可以在何种程度上解释印尼子公司所获得的高利润？





## Case Study 1 : Relocation Of Manufacturing Sites

In this case, in computing the location savings, we have compared the Indonesian site with the Japanese prior transfer site: both difference in volumes produced and productivity were accounted for in the location savings calculation.

**In many cases, the labor cost in developed countries is higher but the labor force is more trained and equipped.**

The following steps are suggested in this specific case:

1. Japan prior transfer manufacturing site has been selected as a comparable;
2. Calculate the labor cost per unit time for both Indonesian plant (post-transfer plant) and Japan plant;
3. Calculate the time needed for a worker to produce one unit of product in Indonesia and Japan;
4. Calculate the labor cost to produce one unit of product (=product of labor cost per unit time and labor hours) in Japan and Indonesia; and
5. Calculate the labor cost difference by multiplying the result of item 4 with the production volume of Indonesian sub.



## 案例研究1：转移制造地点

在该案例中，计算选址节约时，我们比较了印尼制造地点和转移前的日本制造地点：在计算选址节约时同时考虑了产量和生产效率的差异。

在许多情况下，发达地区的劳动力成本更高，但是劳动力受到了更多的培训和装备。

在这一特定的案例中，建议采用以下步骤：

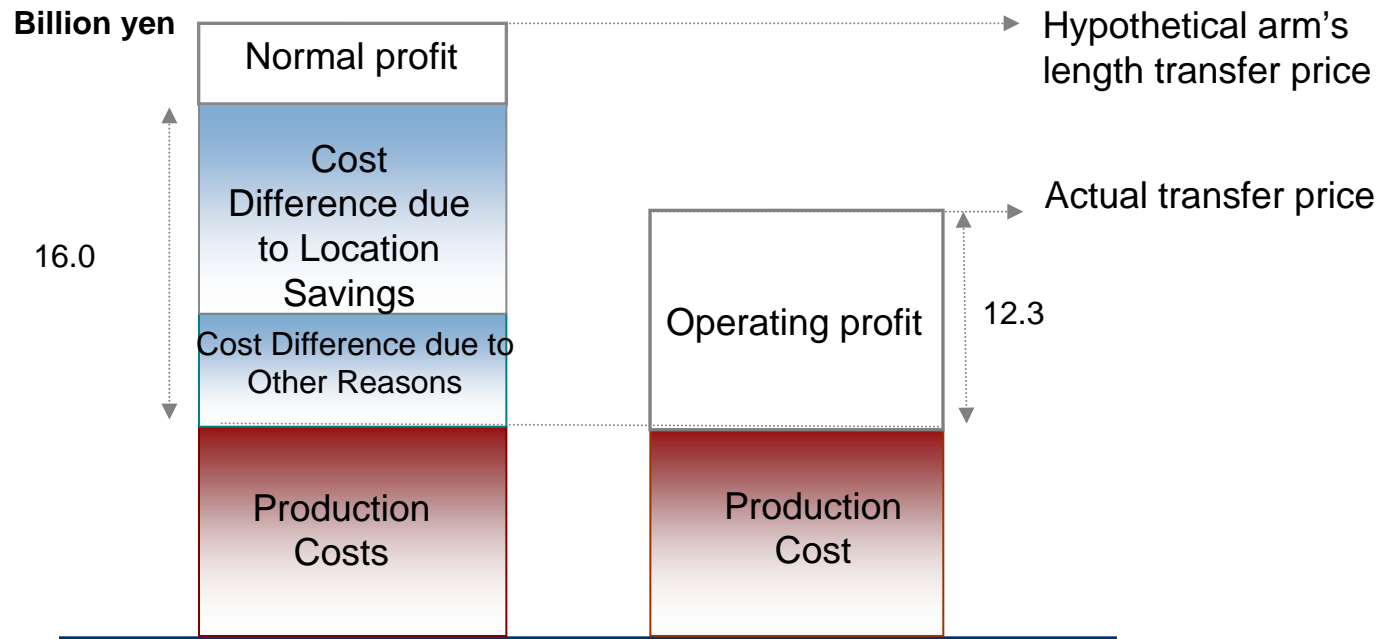
1. 选择转移前在日本的制造点作为一个可比方；
2. 计算印尼工厂（转移后的工厂）和日本工厂的每单位时间的劳动力成本；
3. 计算在印尼和日本一个工人生产一单位产品所需的时间；
4. 计算在印尼和日本生产一单位产品的劳动力成本（即每单位时间劳动力成本和劳动时间的乘积），以及
5. 计算劳动力成本差异，将步骤4的结果乘以印尼子公司的产量。



# Case Study 1 : Relocation Of Manufacturing Sites

Should all location savings be retained by Indonesian Sub, transfer prices to Japan would be higher than actual prices charged as illustrated below

Limited CUP insight due to small amounts supplied by Indonesian sub to third-parties

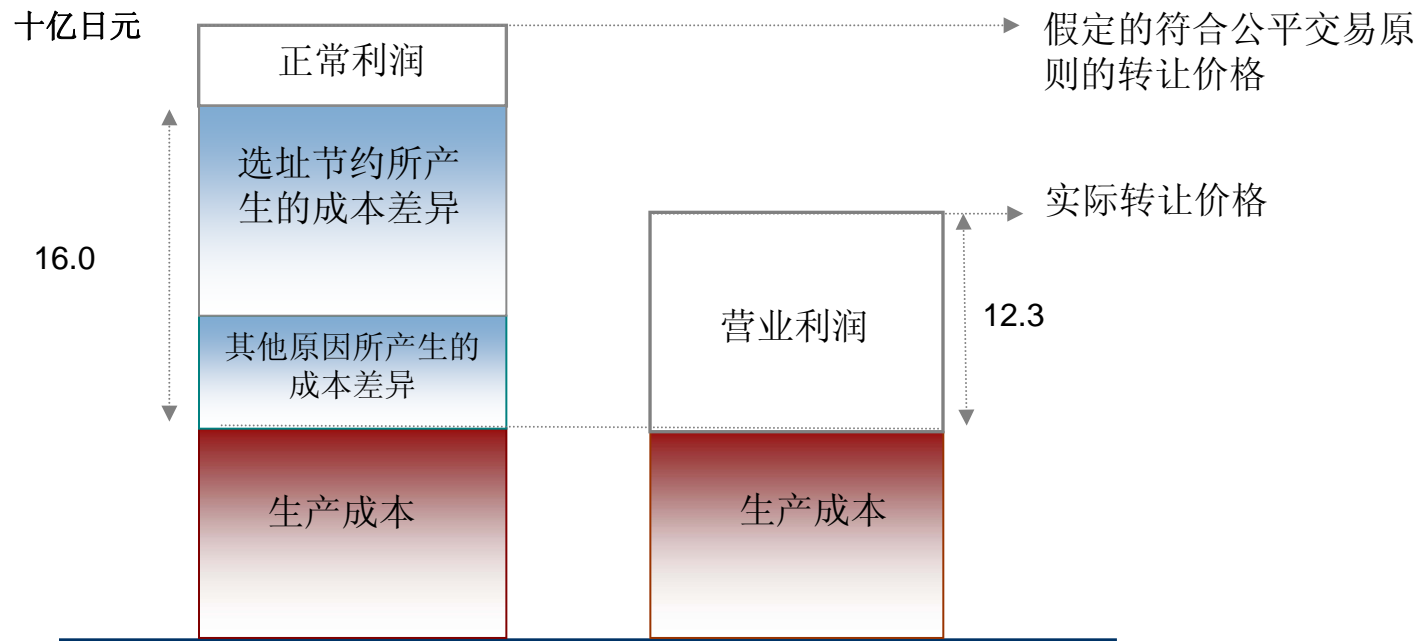




## 案例研究1：转移制造地点

如果所有选址节约都应由印尼子公司保留，向日本的转让价格将比收取的实际价格更高，阐释如下：

由于印尼子公司向第三方提供的产品非常少，因此观察到的可比非受控价格有限。





# Case Study 1 : Relocation Of Manufacturing Sites

## Conclusion:

- Indonesian Sub's cumulative operating profit of 12.3 billion yen is smaller than the total of above savings of 16.0 billion yen. This suggests that Indonesian Sub has made profit smaller than what Indonesian Sub is entitled to, provided Indonesian Sub is entitled to all location savings.
- The location savings analysis was supplemented by the CUP analysis (despite small quantities).
- The TRTB withdrew its original proposition and the case ended with the adjustment of 700 million yen.



## 案例研究1：转移制造地点

### 结论：

- 印尼子公司累积营业利润为**123**亿日元，比以上的总节约金额**160**亿日元要小。这表明，如果所有选址节约都归于印尼子公司，其所获得的利润比它应获得的利润要小。
- 采用了可比非受控交易分析来作为选址节约分析的补充（尽管数量很少）。
- **TRTB**撤回了其最初的提议，最后此案例以进行**7,000**万日元的调整结束。



## Case Study 2 : A License Manufacturer in China

### Background:

- ABC operates with license manufacturers in various jurisdictions that are granted by ABC US Headquarters the rights to manufacture and distribute the products
- In China, ABC has set up a license manufacturer 15 years ago; ABC China produces and sells inside China mostly
- After some challenging start-up years, ABC China now makes comfortable margins (above 30% of sales)
- The Group tax director wonders whether the levels of profits left in China are arm's length, given the cost advantage that ABC China benefits from and the market in which the company operates
- Ultimately the Group tax director would like to assess the various transfer pricing options available



## 案例研究2：在中国的某一许可制造商

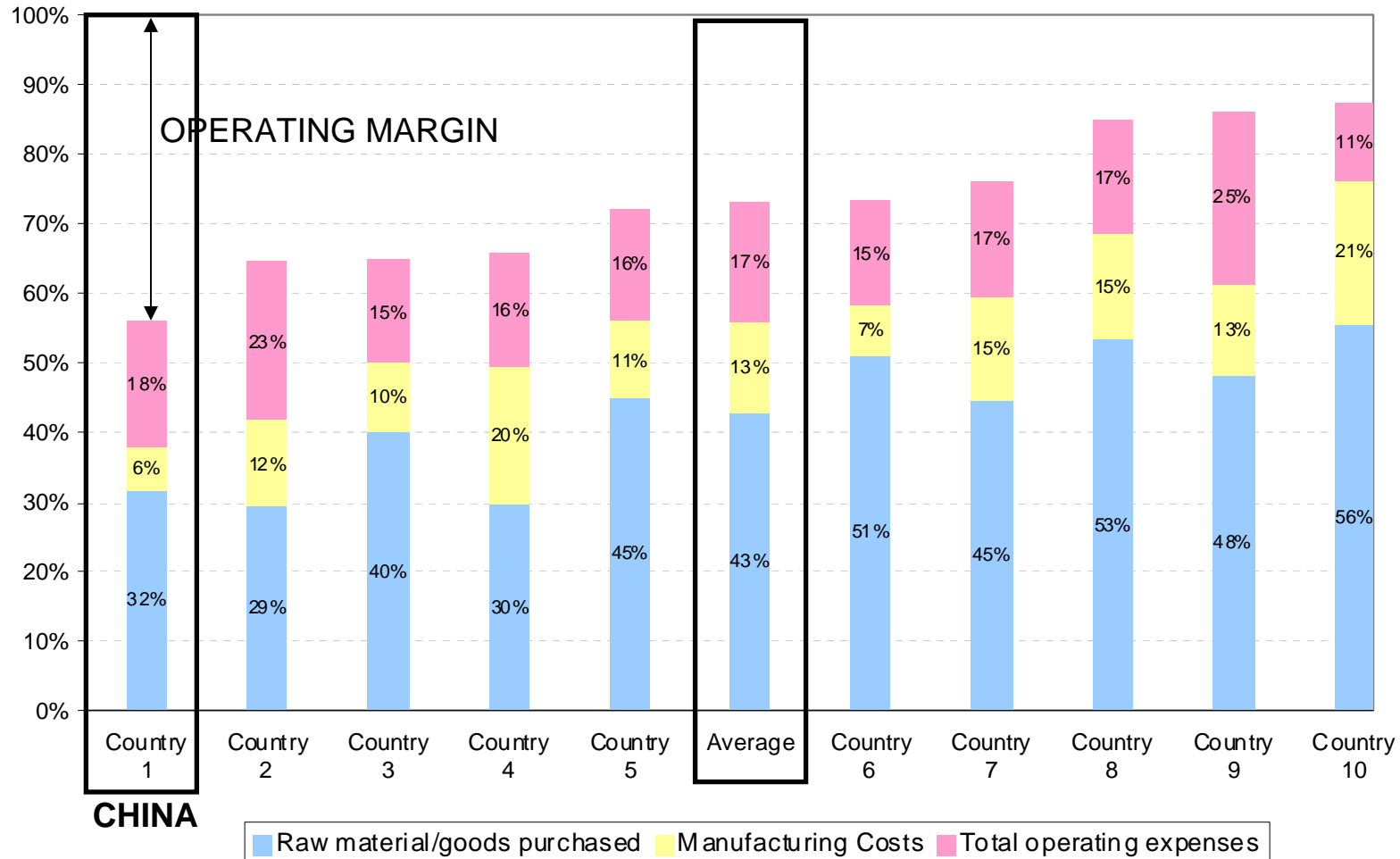
### 背景：

- **ABC**在许多地区通过许可制造商运营，这些许可制造商由**ABC**美国总部授权，制造和分销产品。
- 在中国，**ABC**在15年前就设立了一家许可制造商。**ABC**中国主要在中国境内生产和销售。
- 在最初设立时富有挑战性的几年后，**ABC**中国现在获得了充裕的利润率（占销售额的30%以上）。
- 集团税务负责人想知道，给定**ABC**中国所受益的成本优势以及公司运营所在的市场，在中国所保留的利润水平是否符合公平交易原则。
- 最终，集团税务负责人希望评估各种可用的转让定价选择方案。



# Case Study 2 : A License Manufacturer in China

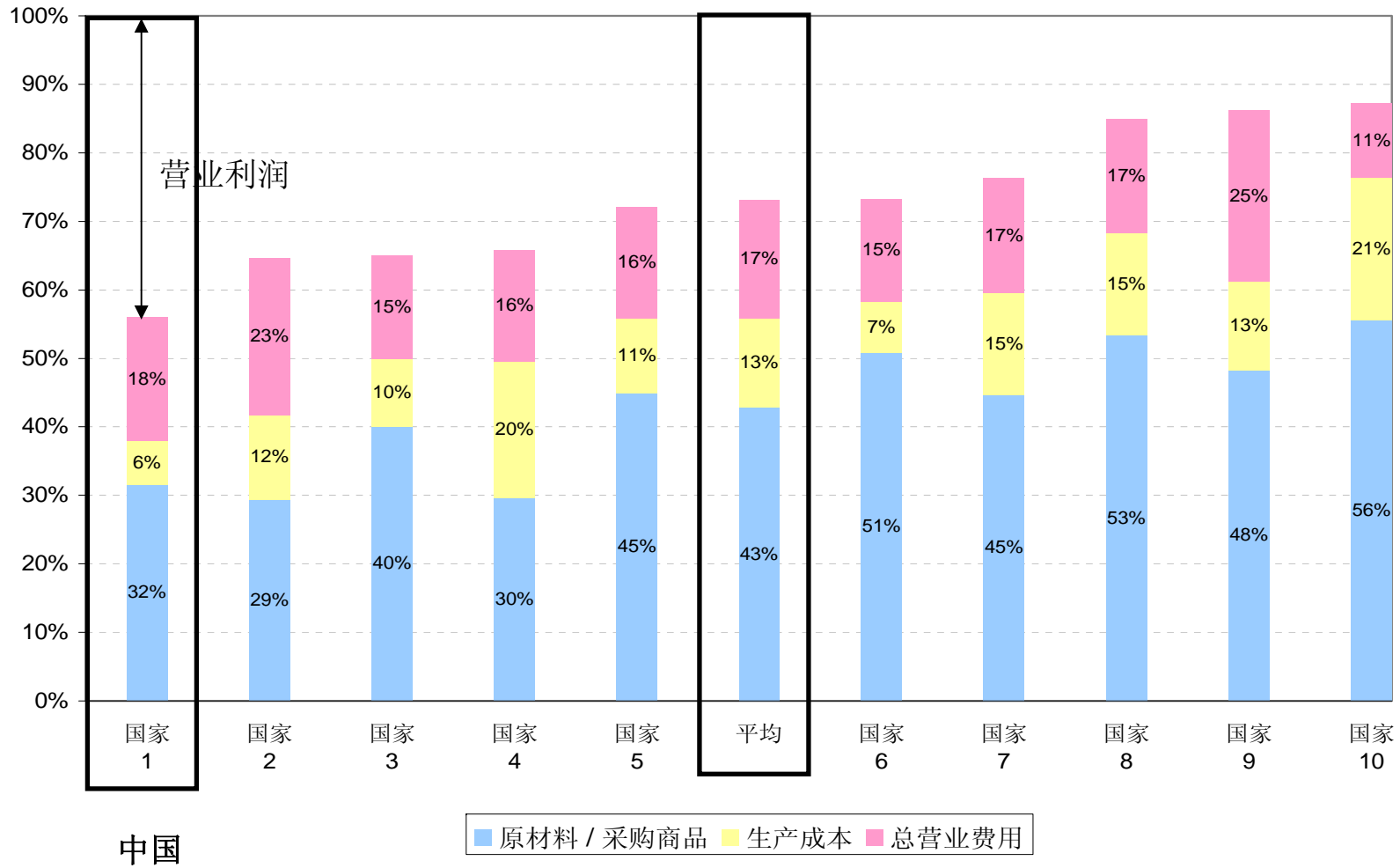
## Sales





## 案例研究2：在中国的某一许可制造商

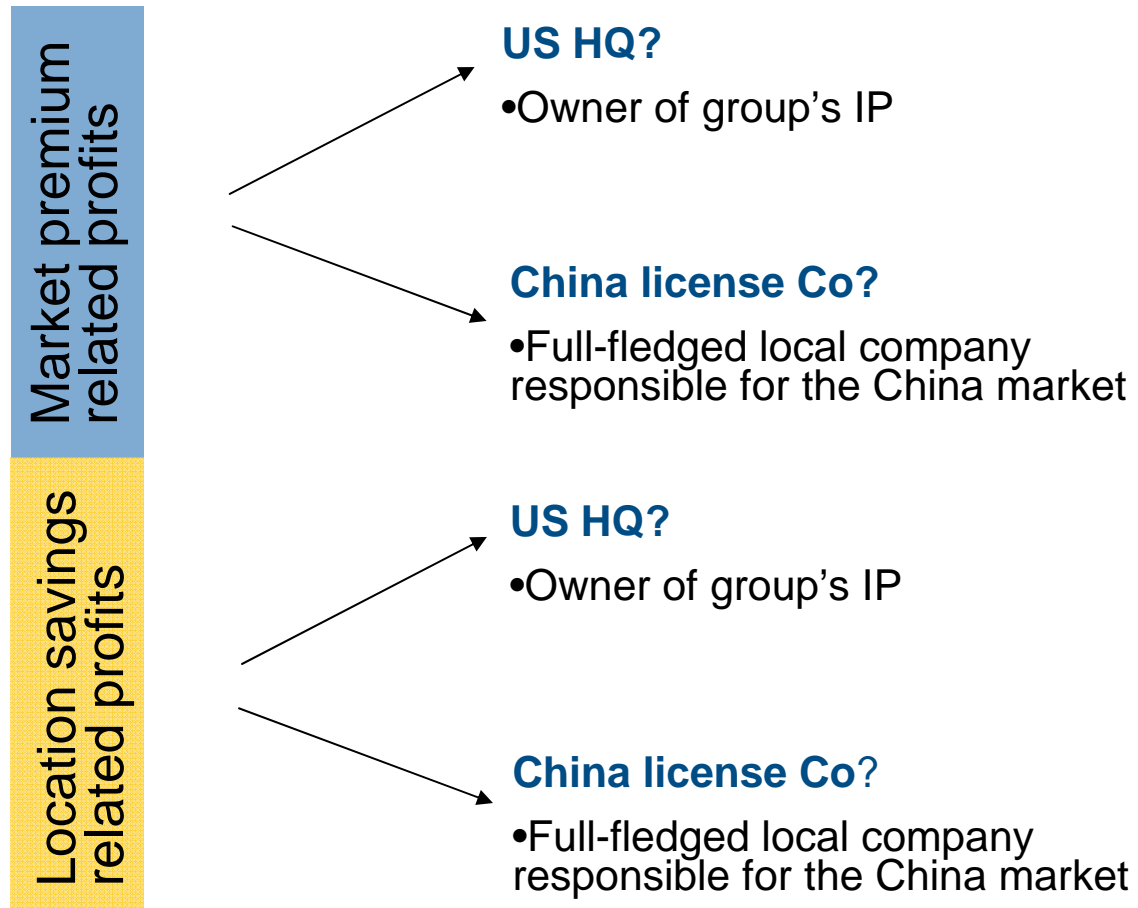
销售额





## Case Study 2 : A License Manufacturer in China

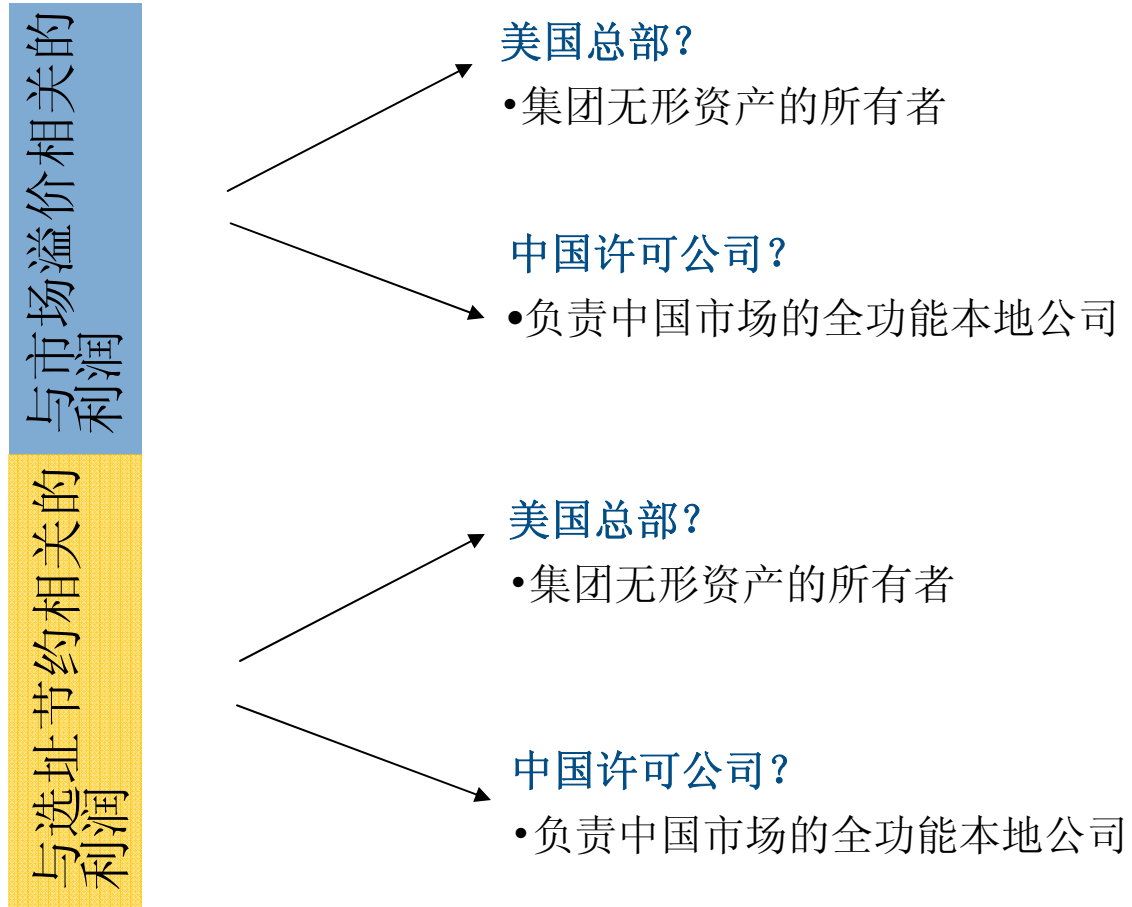
China license manufacturer extra-profitability (compared to average)





## 案例研究2：在中国的某一许可制造商

中国许可制造商的超额盈利（与平均水平相比）





## Case Study 3: An R&D Center in India

- **A technology driven company**
  - Global R&D centralized in Canada with legal and economic (financing) ownership of IP (patents, etc.)
  - IP centers in Germany, France, the US and India
  - Gradual shift of R&D people and responsibilities to India
  - Assuming R&D engineers and technicians in India cost 50% of the average cost of R&D staff in the other countries, what is the arm's length price for R&D services rendered by India to the group?



## 案例分析3：在印度的某一研发中心

### ■ 某一技术驱动型公司

- 全球研发集中在加拿大，从法律角度和经济（财务）角度都拥有知识产权（专利等）的所有权。
- 知识产权中心在德国、法国、美国以及印度
- 逐渐将研发人员及责任转移至印度
- 假设研发工程师和技术员在印度的成本为其他地区研发人员平均成本的50%，印度向集团提供的研发服务的符合公平交易原则的价格是多少？



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