

GLOBAL IFA TRAVELLING LECTURESHIP PROGRAMME 2024

INTERNATIONAL TAX DISPUTE RESOLUTION



International Fiscal Association



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**MONTREAL,
CANADA
5 MARCH,
TUESDAY**

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TOPIC: INTERNATIONAL TAX DISPUTE RESOLUTION



Montreal - 5 March 2024

Agenda

5 PM – 5.30 PM: Arrival attendees and coffee

A few words from the Branch Chair and Global IFA Representative

5.30 PM – 6.45 PM: Lecture, panel on Dispute Resolution, Q&A

6.45 – 8PM: Cocktail

TOPIC: INTERNATIONAL TAX DISPUTE RESOLUTION



Montreal - 5 March 2024

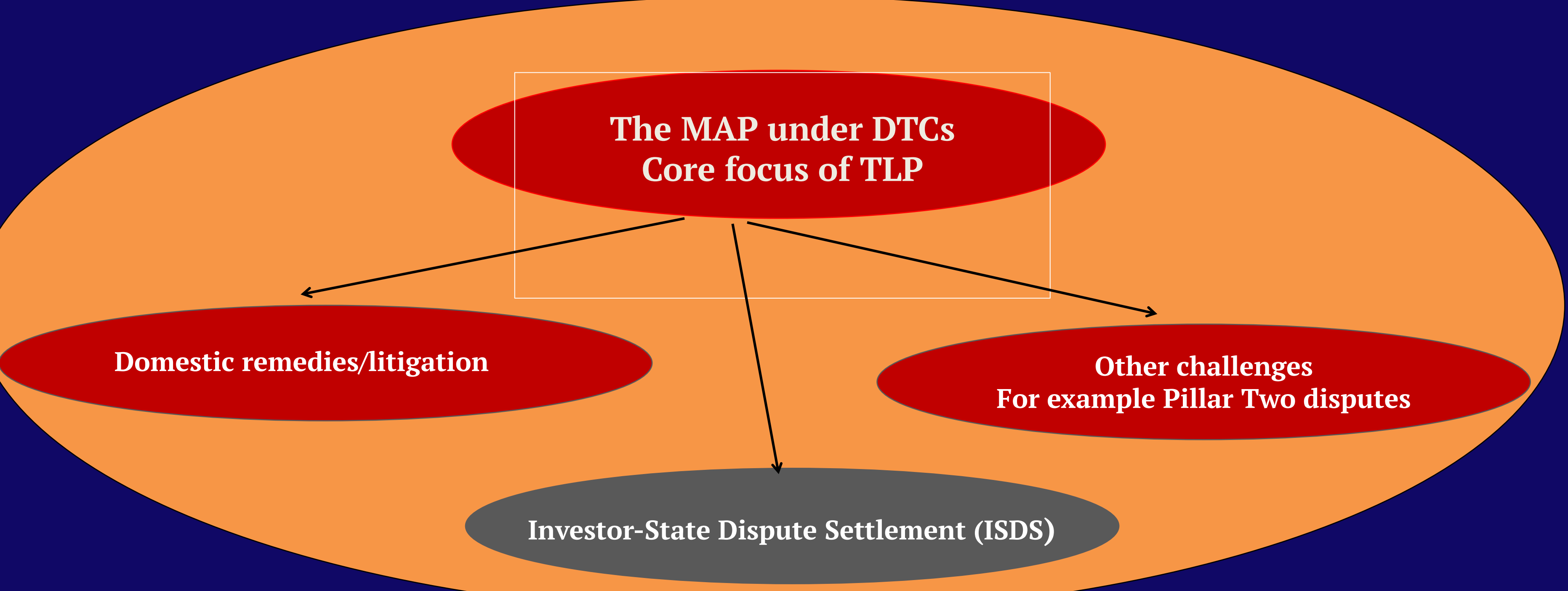
Global IFA's Travelling Lectures (TLP) on International Tax Dispute Resolution
Opening remarks on the scientific program
Prof. Robert Danon

Objectives of Global IFA's 2024 TLP

- Revisit the **current and future practical challenges posed by MAP as a state-to-state dispute settlement procedure inspired from diplomatic protection** (both at the level of access and operation of the MAP) and explore **broader ramifications** (for example penalties, criminal law ramifications, relation between TP and custom duties, etc.). Does it work? What can (should) be improved.
- **Building on regional experiences and strengthening ties with local IFA branches**
- **Input from all stakeholders** (CAs, OECD, business etc)
- Explore possible improvements to the **OECD Commentary on Art. 25** as well as **to minimum standards and best practices on BEPS Action 14**.
- Scientific agenda reflects the strong emphasis put by Global IFA **on International Tax Dispute Resolution from a holistic perspective**
- Main topic of Cape Town Congress ***“Practical approaches to International Tax Dispute Prevention and Resolution”*** is first important milestone



Global IFA's 2024 TLP in the global tax controversy context




Panel presentation

- Focus on transfer pricing and permanent establishments (Art. 5, 7 and 9 of the OECD MTC)

Lecturer: Caroline Silberztein (France)

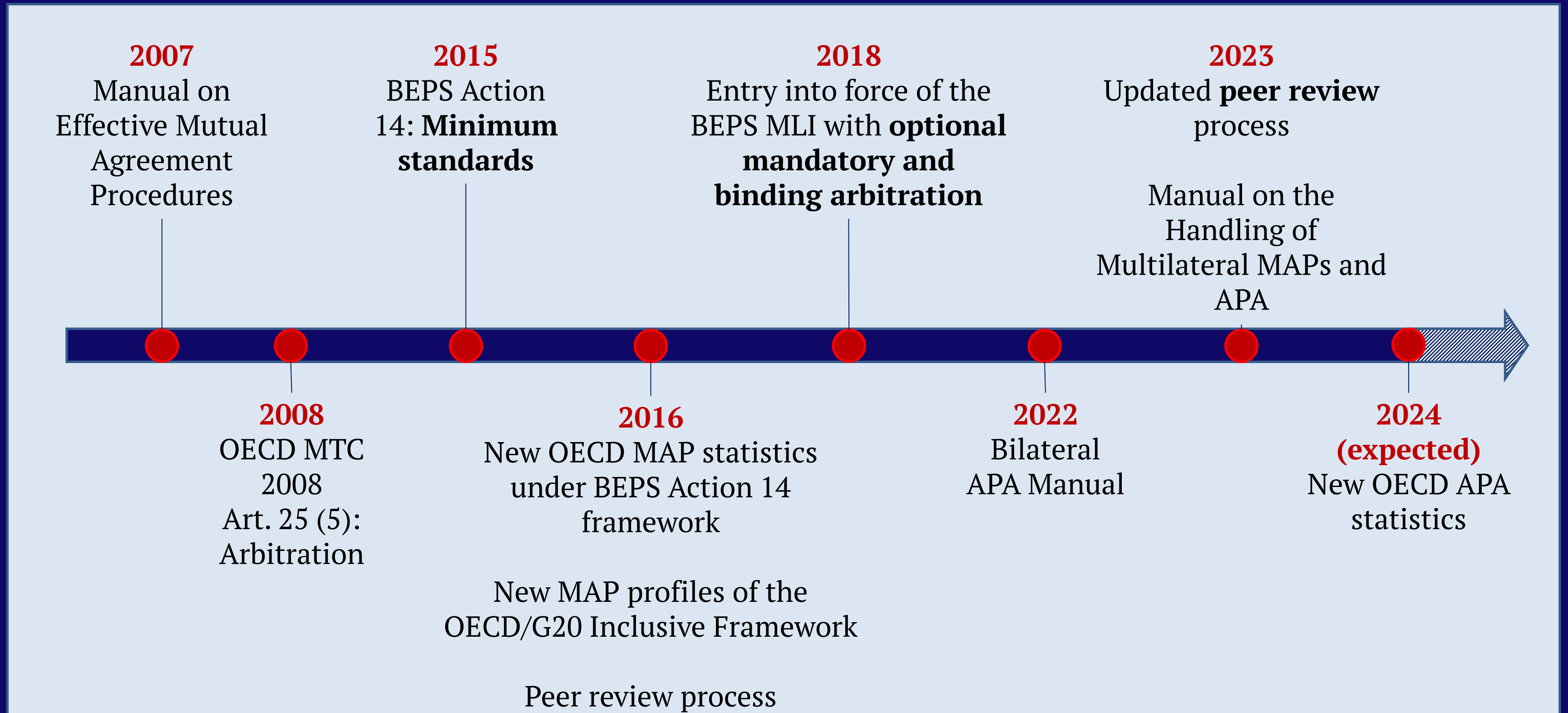
Panelists:

- Jennifer Paul (Canada Revenue Agency)
- Sébastien Rheault (IFA Canada, Barsalou Lawson Rheault LLP)
- Josephine L. Scalia (TEI)



1. Making dispute resolution
mechanisms more effective
in the aftermath of OECD Action 14

OECD: Making dispute resolution mechanisms more effective



OECD Action 14: minimum standards (focus on a few)

1

Full implementation in good faith of MAPs and timely resolution, incl.:

- Provide MAP access in cases in which there is a disagreement between the taxpayer and the tax authorities making the adjustment as to whether the conditions for the application of a **treaty anti-abuse** provision have been met or as to whether the application of a **domestic law anti-abuse** provision is in conflict with the provisions of a treaty.
- Commit to a **timely resolution** of MAP cases (within an average 24 months).
- Having the compliance with the minimum standard **reviewed by their peers**.

2

Administrative processes, incl.:

- Allocating sufficient **resources** to MAP functions.
- Clarifying in their MAP guidance that **audit settlements do not preclude access to MAP**.
If countries have an administrative or statutory dispute settlement/resolution process independent from the audit and examination functions and that can only be accessed through a request by the taxpayer, countries **may limit access to the MAP with respect to the matters resolved through that process**.

3

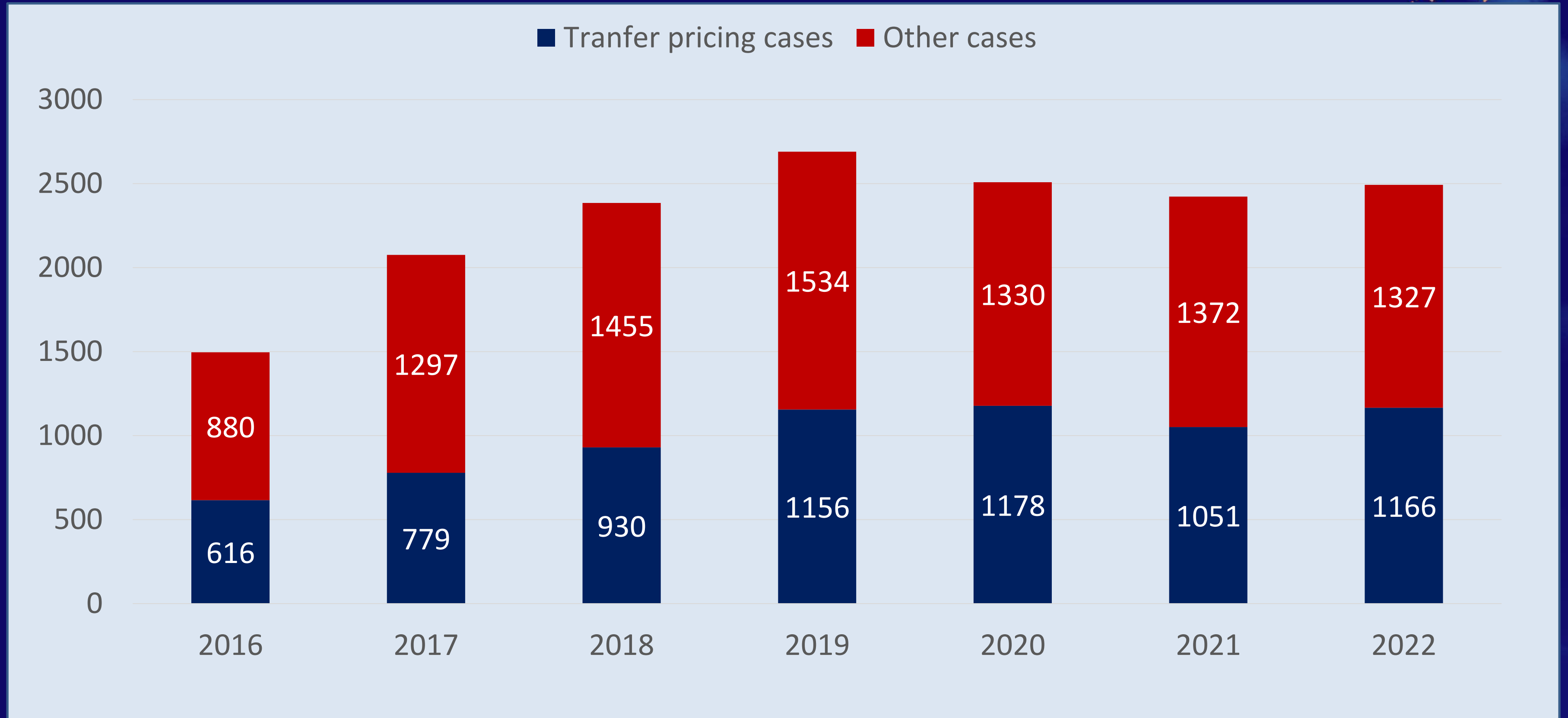
Taxpayers' access to MAP, incl.:

- Implementation of any agreement reached **notwithstanding any domestic time limits**.

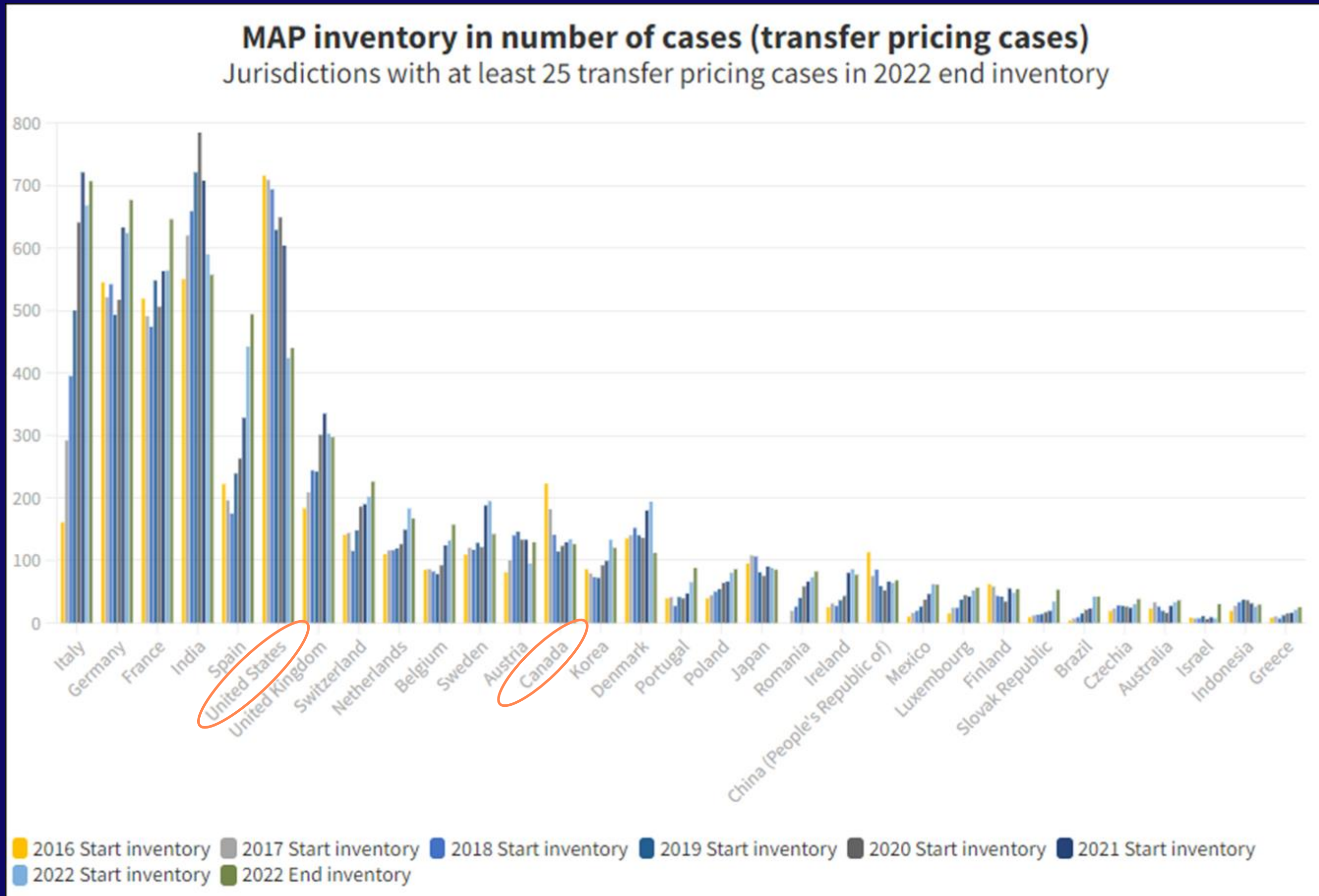
Optional mandatory and binding arbitration: implementation through MLI (Art. 18 to 26)



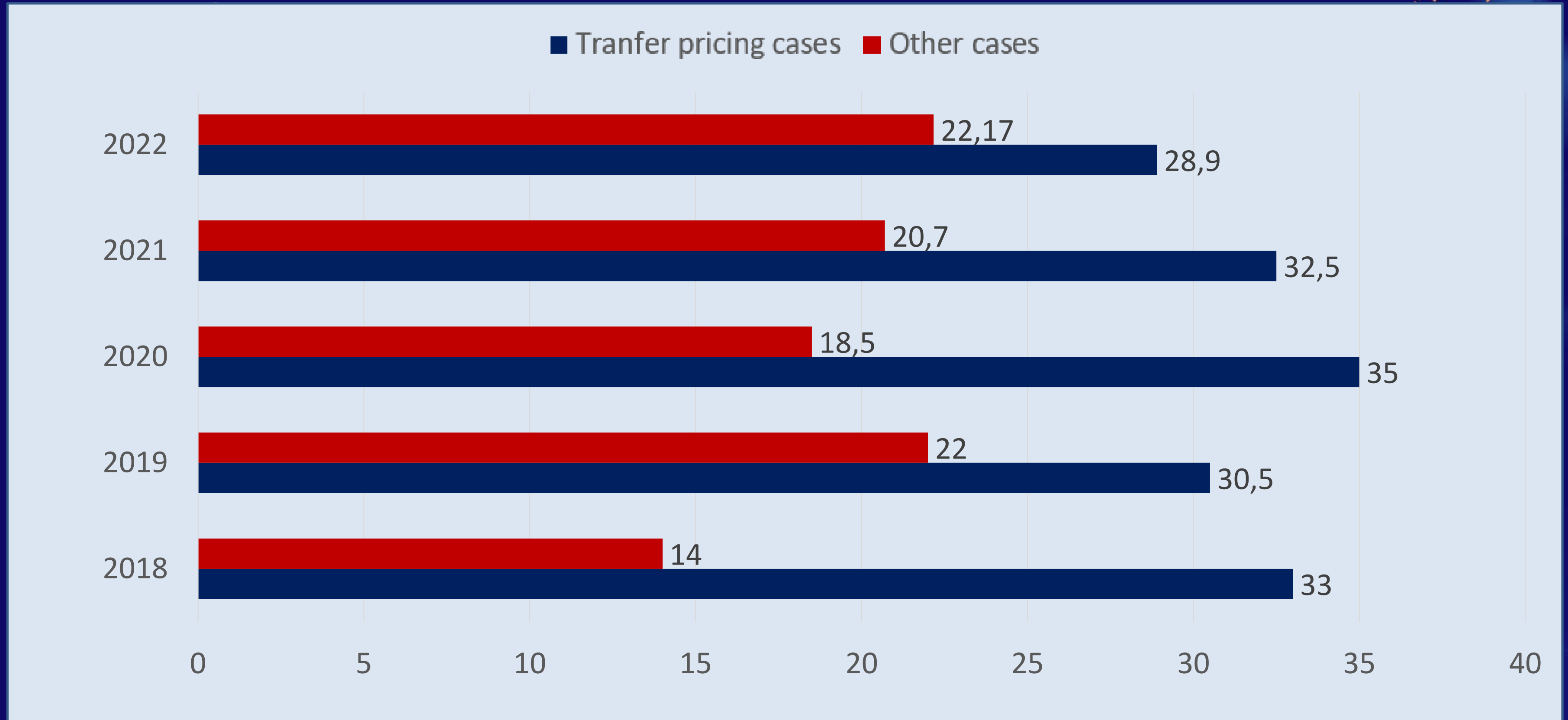
OECD Inclusive Framework MAP cases started



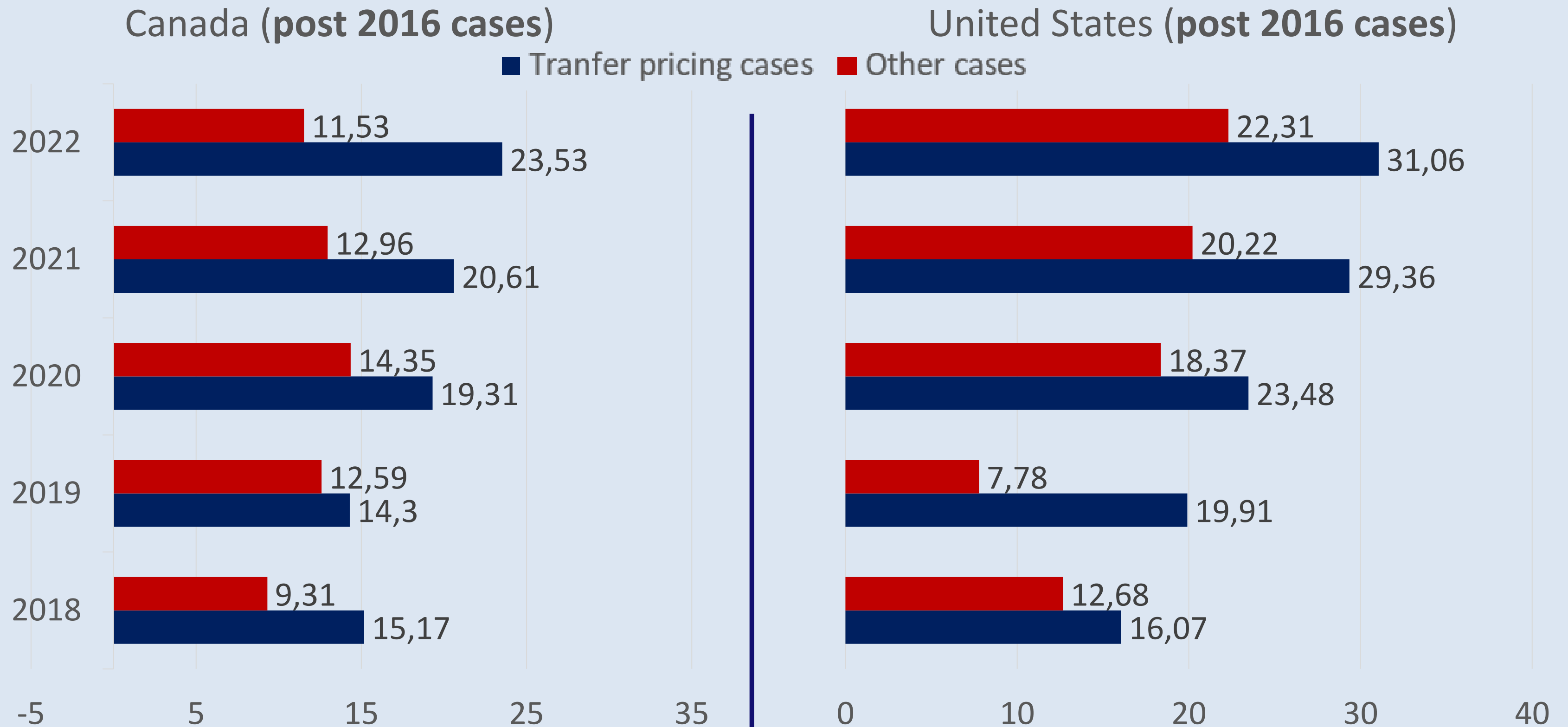
OECD MAP Cases by Jurisdiction



OECD Inclusive Framework: average time to close MAP

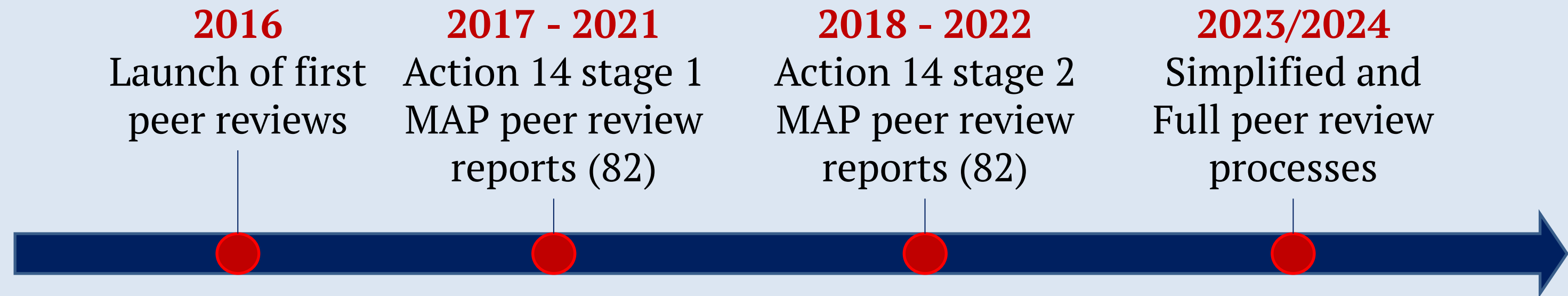


OECD Inclusive Framework: average time to close MAP



Source: OECD Mutual Agreement Procedure Statistics Canada and US, 2018, 2019, 2020, 2021, 2022

OECD Peer review process



Key takeaways from the Canada peer review?

2. Focus on Canada

Structure of the Competent Authority Services Division (CASD)



Michael Jennings
Director

Christopher Lukie
Senior Economic
Advisor

Mihailo Radoman
Senior Economic
Advisor

Patrick Massicotte
Senior Technical
Advisor

Jennifer Paul
MAP-APA Section 1
Transfer Pricing

Jaime Nemeth
MAP-APA Section 2
Transfer Pricing

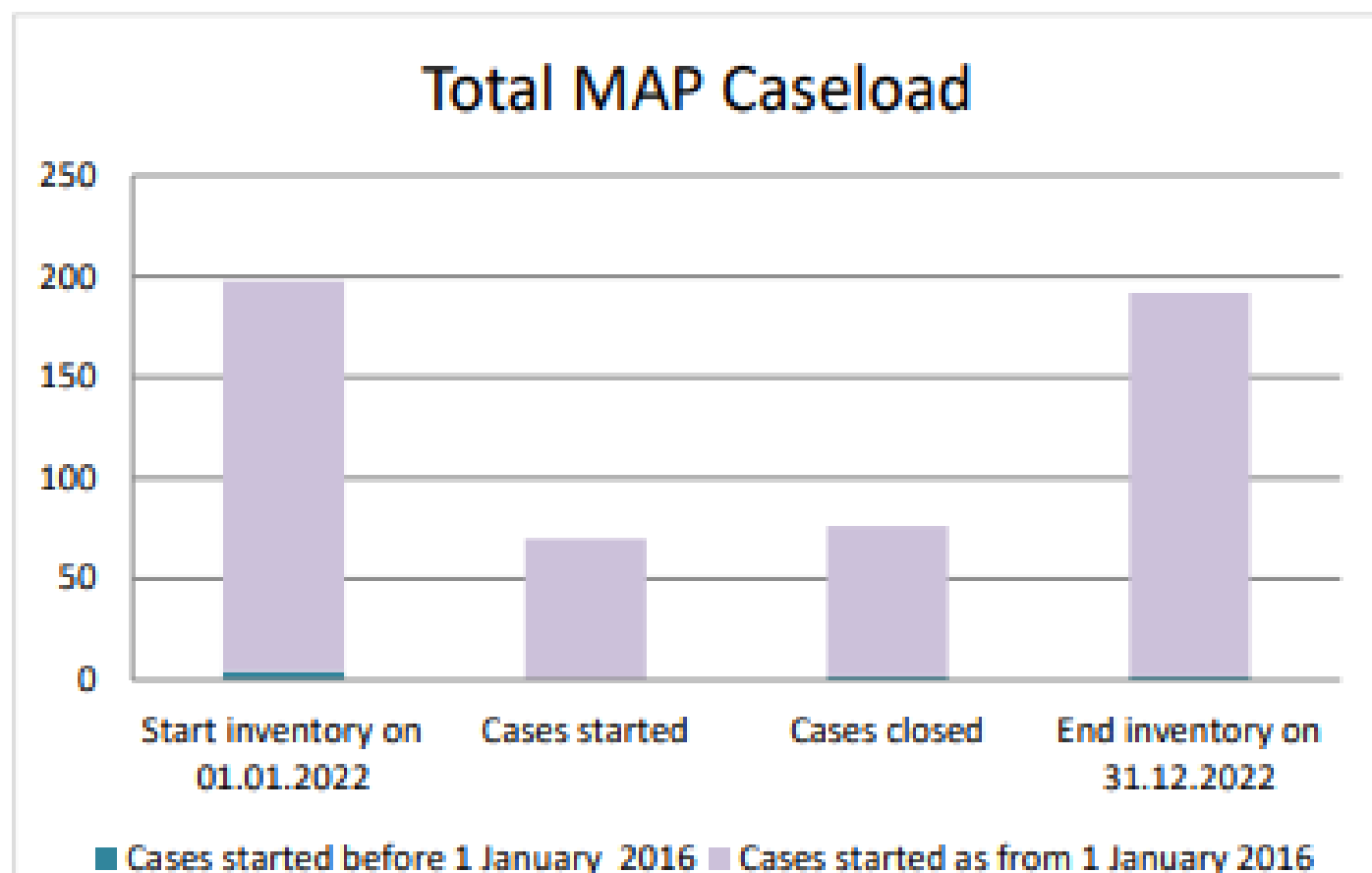
Pauline Motard
MAP Section
Technical Cases

Chuck McSpaden
MAP-APA Section 3
Transfer Pricing

Antonio Zappavigna
MAP-APA Section 4
Transfer Pricing

Joanne O'Neil
Program Support
Services

Canada - MAP Caseload



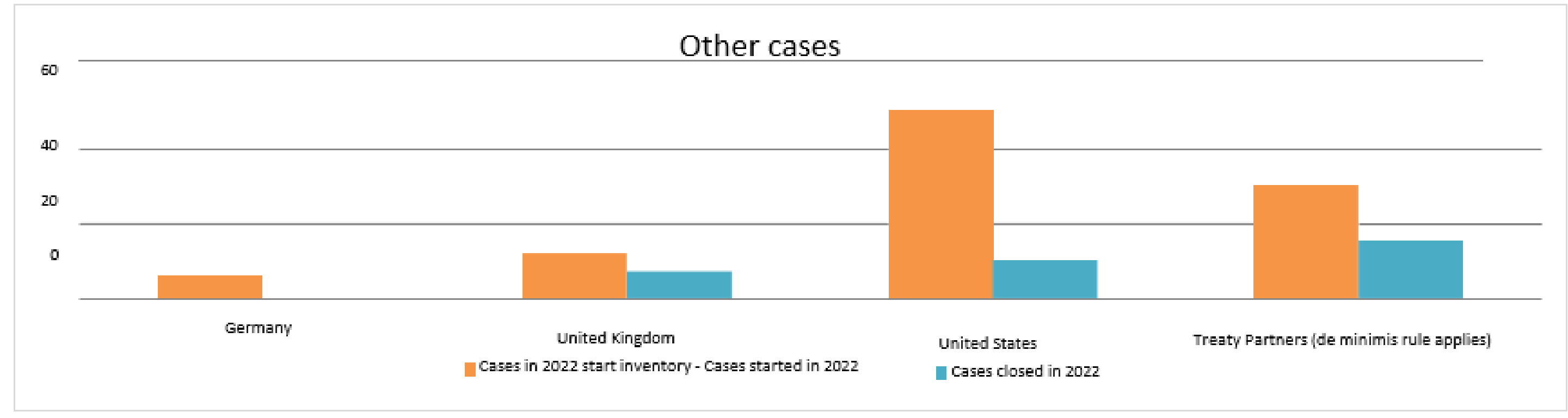
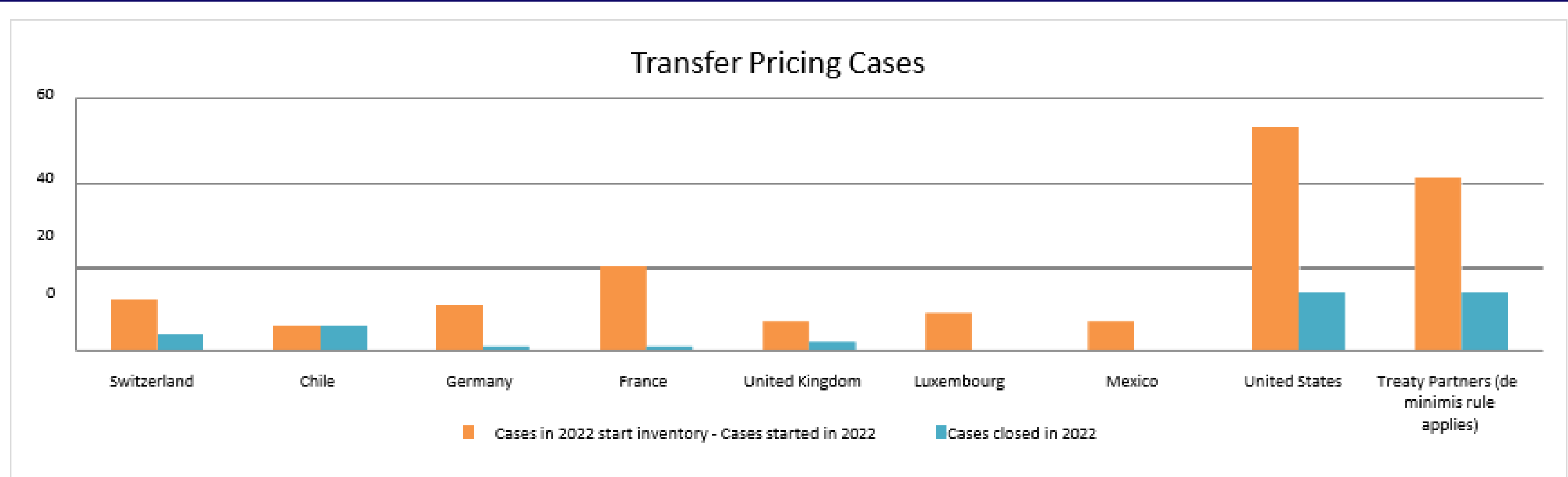
Cases started before 1 January 2016	2022 Start inventory	Cases started	Cases closed	2022 End inventory
Transfer pricing cases	2	0	0	2
Other cases	2	0	2	0

Cases started as from 1 January 2016	2022 Start inventory	Cases started	Cases closed	2022 End inventory
Transfer pricing cases	132	34	42	124
Other cases	62	36	32	66

Average time needed to close MAP cases

Cases started as from 1 January 2016	Start to End	Receipt to Start	Start to Milestone 1	Milestone 1 to End
Transfer pricing cases	23.53	2.80	9.42	20.50
Other cases	11.53	1.71	7.38	6.41

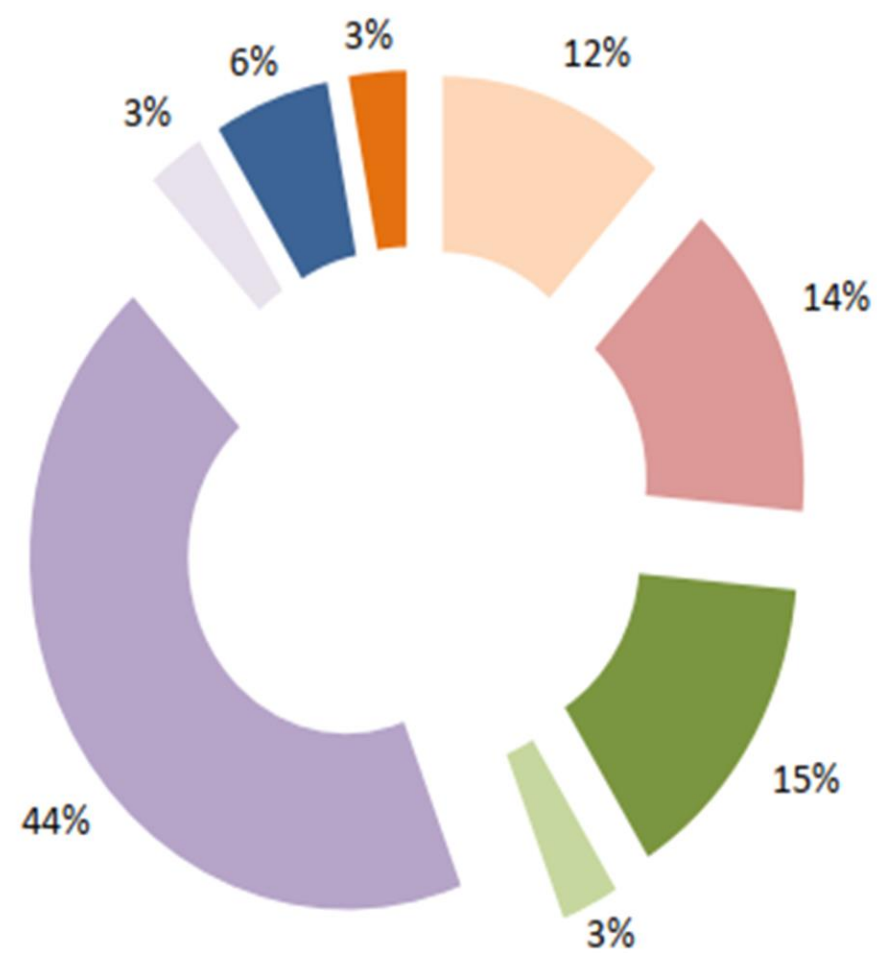
Canada Post-2016 MAP Cases by Country 2022



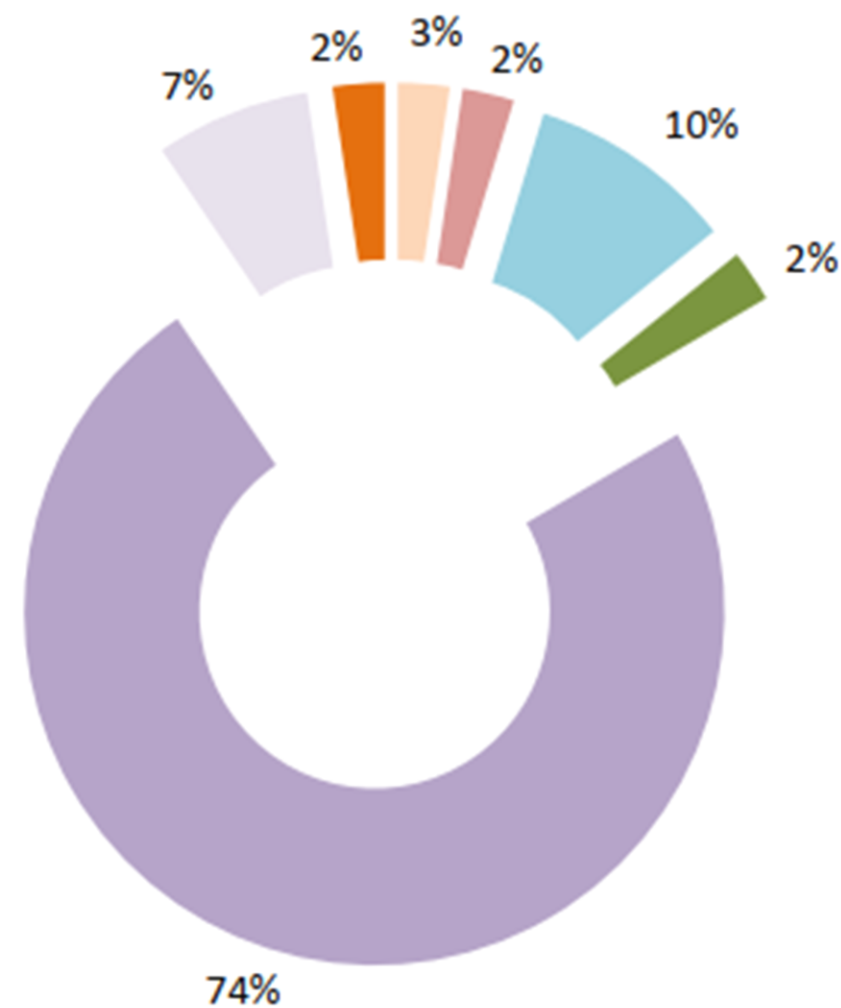
Canada MAP Cases by Outcome – 2022



MAP Outcomes - other cases



MAP Outcomes - TP cases



- denied MAP access
- objection is not justified
- withdrawn by taxpayer
- unilateral relief granted
- resolved via domestic remedy
- agreement fully eliminating double taxation eliminated / fully resolving taxation not in accordance with tax treaty
- agreement partially eliminating double taxation / partially resolving taxation not in accordance with tax treaty
- agreement that there is no taxation not in accordance with tax treaty
- no agreement including agreement to disagree
- any other outcome

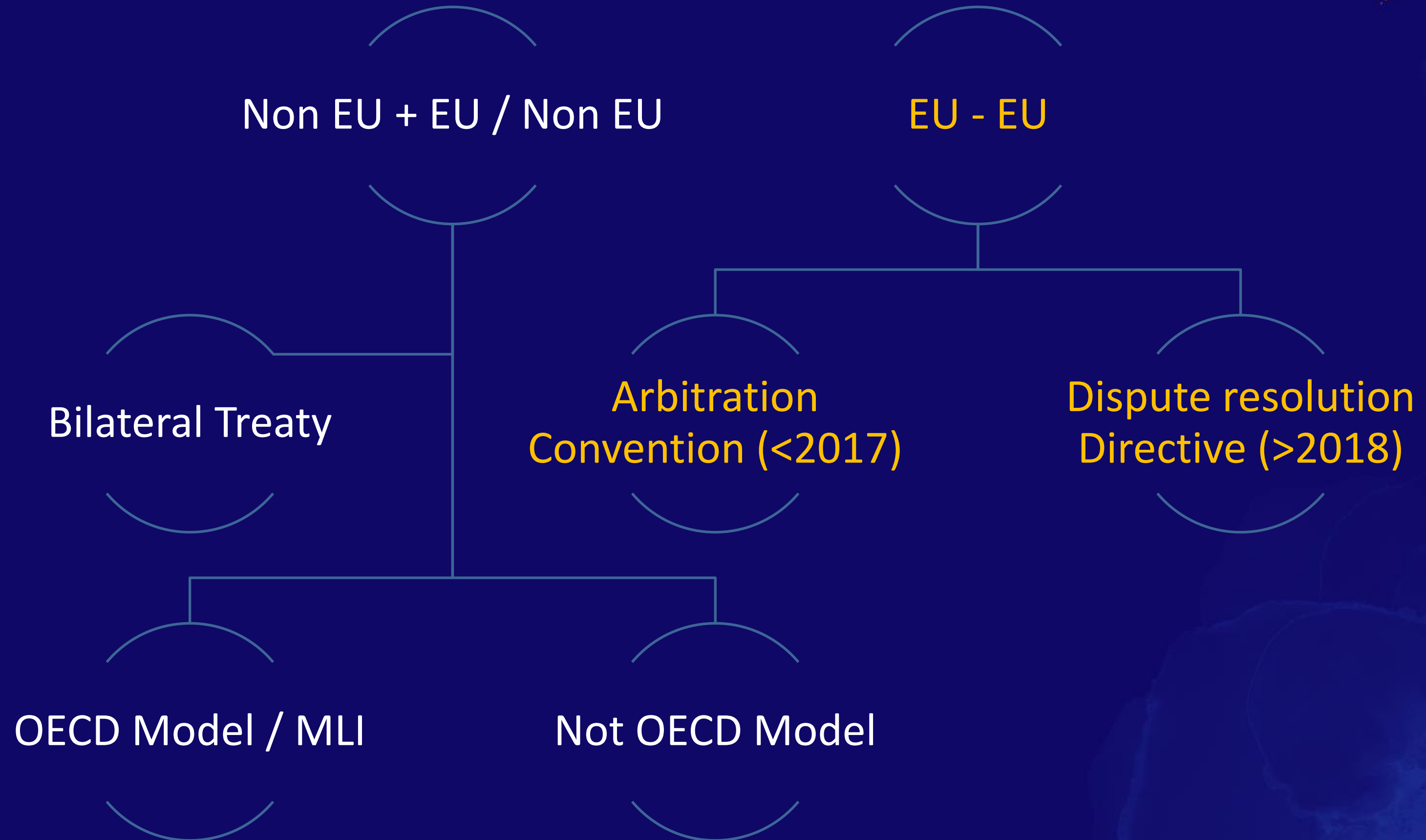
MAP Process in Canada

- Circular on Competent Authority Assistance: IC71-17R6 (June 2021)
- Best practices and barriers to MAPs
- Downward adjustments (para. 247(10) *ITA*, TPM-03R)
- ACAP (IC71-17R6; TPM-12 (revision forthcoming))
- APAs and roll-back (IC94-4R2 February 21, 2024)



3. Looking forward: global view

MAP and Arbitration: different instruments, differing rules



Access to MAP / arbitration (CAN, OECD, EU)

- Restrictions in case of “serious penalties”?
 - Criminalization of transfer pricing in several jurisdictions
- For recharacterization cases?
- TP adjustments based on other domestic law provisions, e.g.:
 - documentation of management fees ?
 - limitation in deductible royalties ?
 - interest limitation ?
 - capital losses ?



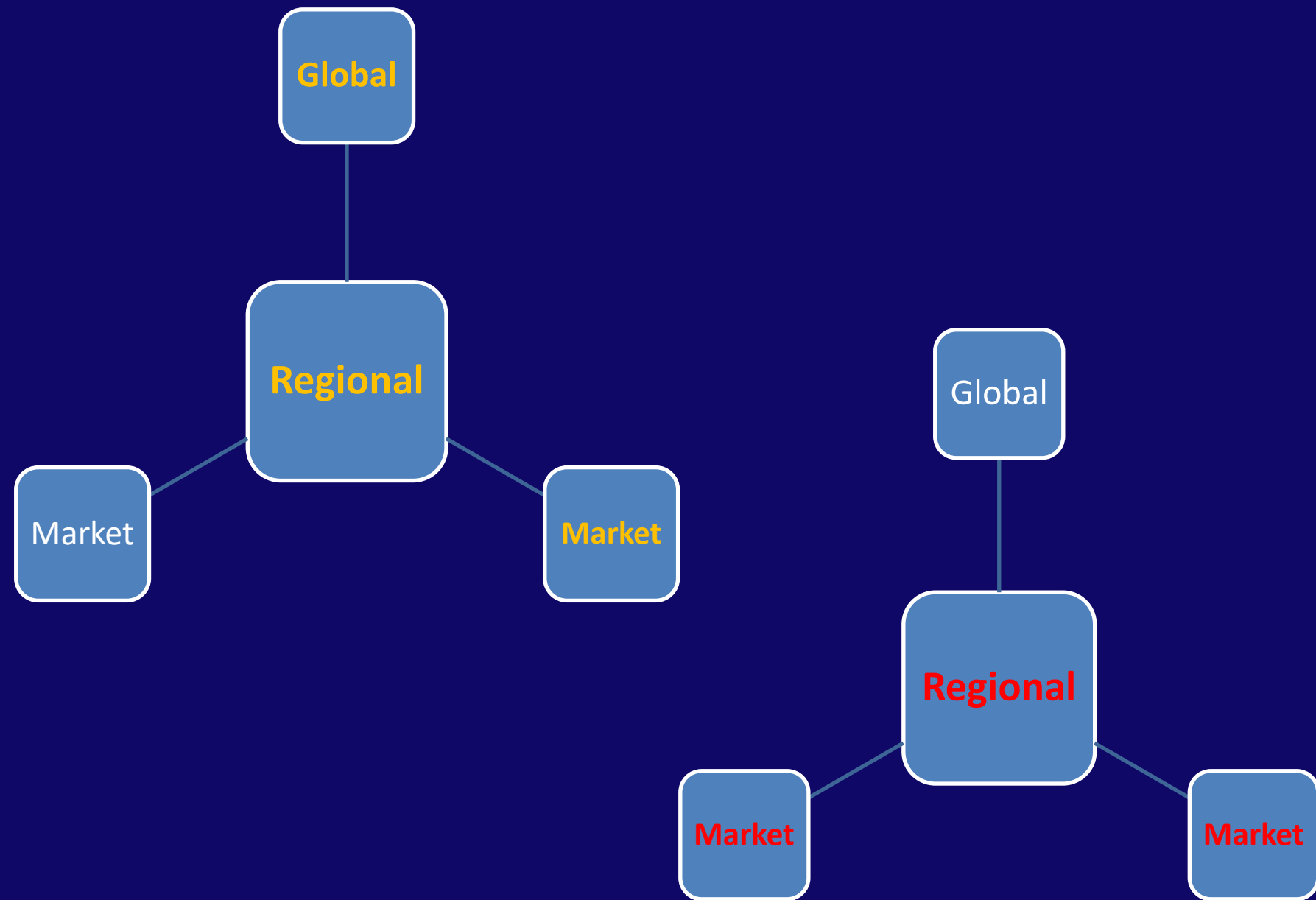
Interaction between MAP and other recourses (CAN, OECD, EU)



- MAPs and appeals settlements (pros and cons) ?
- MAPs / arbitration and domestic remedies / litigation ?
- Alignment of transfer pricing / customs valuation ?
- MAPs, transfer pricing disputes and Pillar 2 ?

Multilateral MAP

- For what kind of cases (“star” v. “cascade” organizations)?



- Practical experience, feasibility and timelines
- Key takeaways from the 2023 OECD Manual on the handling of Multilateral MAPs and APAs



Practical experience: TEI survey

Q1: The OECD sets a 2-year target to resolve a mutual agreement procedure (“MAP”). With regards to these timelines, have you had a positive experience?

How do you think the efficiency of the MAP program could be further improved?

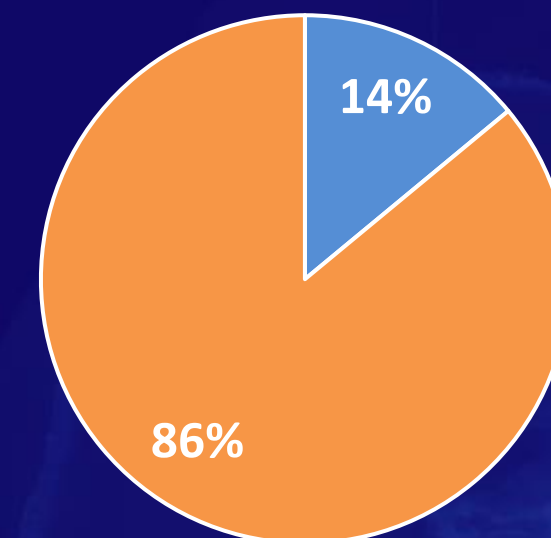
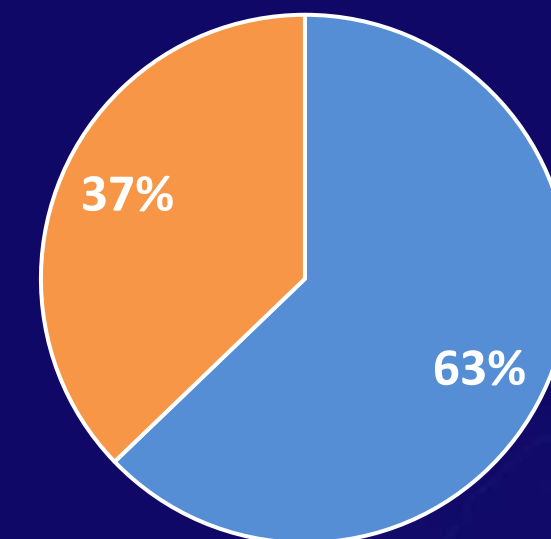
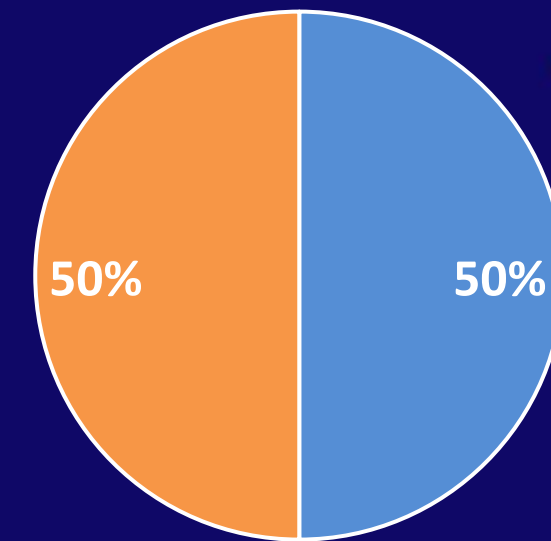
Q2: Do you expect that the implementation of mandatory arbitration across more jurisdictions will make taxpayers more open to request a MAP for transfer pricing disputes?

If yes, why?

Q3: Have you been denied access to MAP due to having reached an audit settlement or appeals settlement?

If yes, please explain.

■ Yes ■ No
As of March 4, 2024



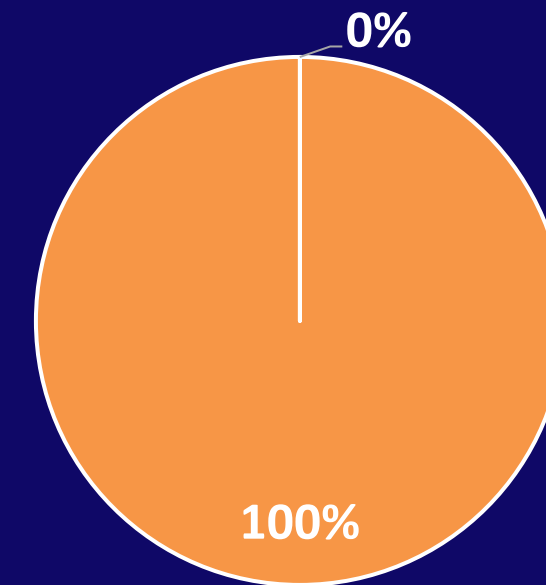
Practical experience: TEI survey

■ Yes ■ No

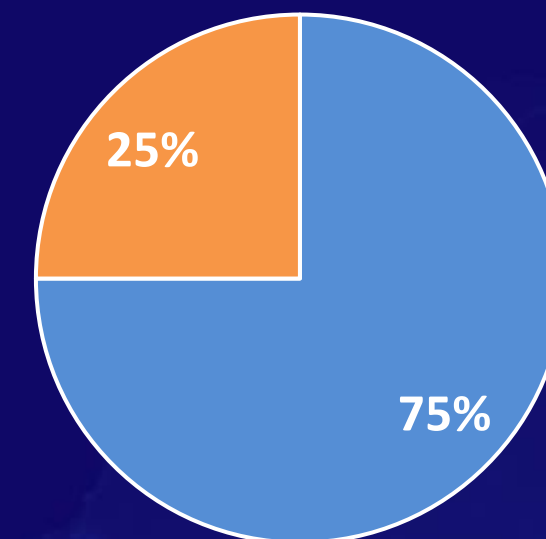
As of March 4, 2024

Q4: Have you been denied access to MAP for any other reasons, including due to Canada's position involving the application of an anti-avoidance provision (or recharacterization under section 247)?

If yes, please explain.



Q5: Would you have interest in requesting multilateral MAP?



Conclusion

What works ?

What does not work ?

What can be improved ?

Q&A