

# TOPIC: INTERNATIONAL TAX DISPUTE RESOLUTION

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## Global IFA's Travelling Lectures (TLP) on International Tax Dispute Resolution Washington D.C. - 7 March 2024

### Agenda

5.00 PM – 5.30 PM: Arrival attendees and coffee

5.30 PM – 5.40 PM: A few words of Introduction

5.40 PM – 7.00 PM: Lecture, panel on Dispute Resolution, Q&A

7.00 – 8.00 PM: Cocktail

# GLOBAL IFA TRAVELLING LECTURESHIP PROGRAMME 2024

## INTERNATIONAL TAX DISPUTE RESOLUTION



International Fiscal Association



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# Opening remarks on the scientific program

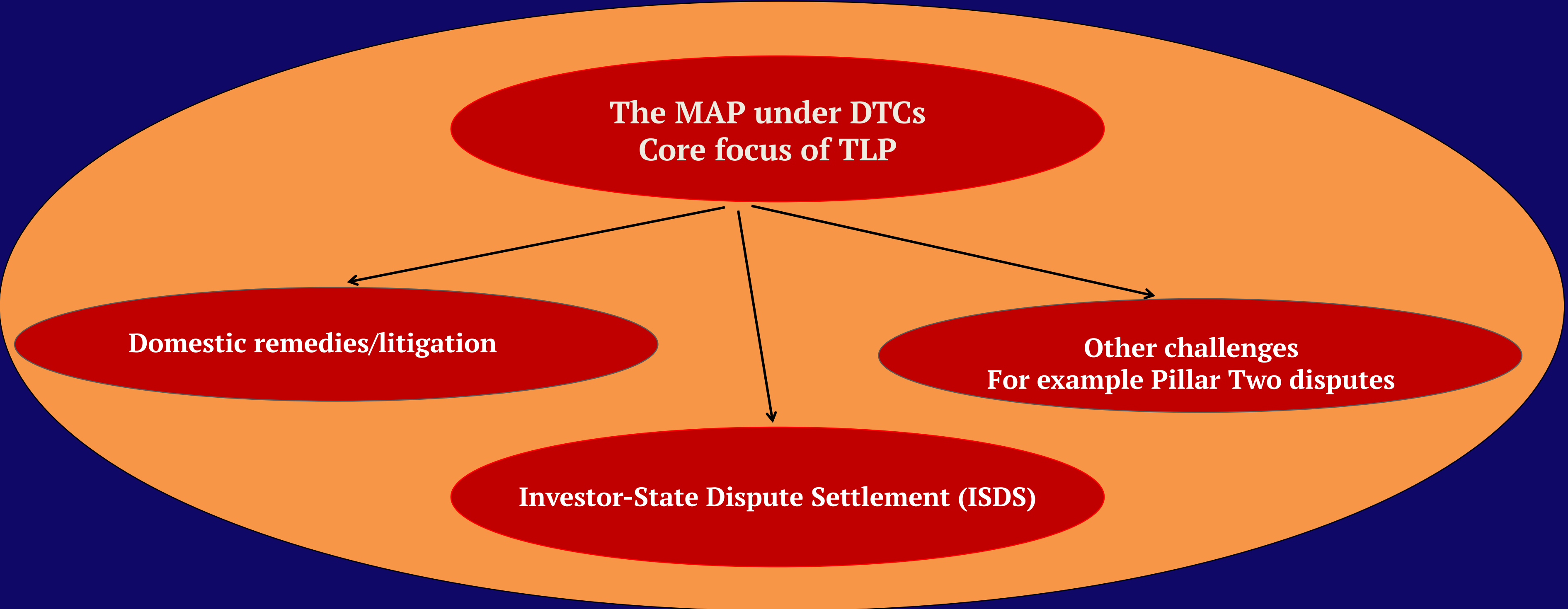
Prof. Robert Danon

# 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?
- 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 the Cape Town Congress ***“Practical approaches to International Tax Dispute Prevention and Resolution”*** is the first important milestone.




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





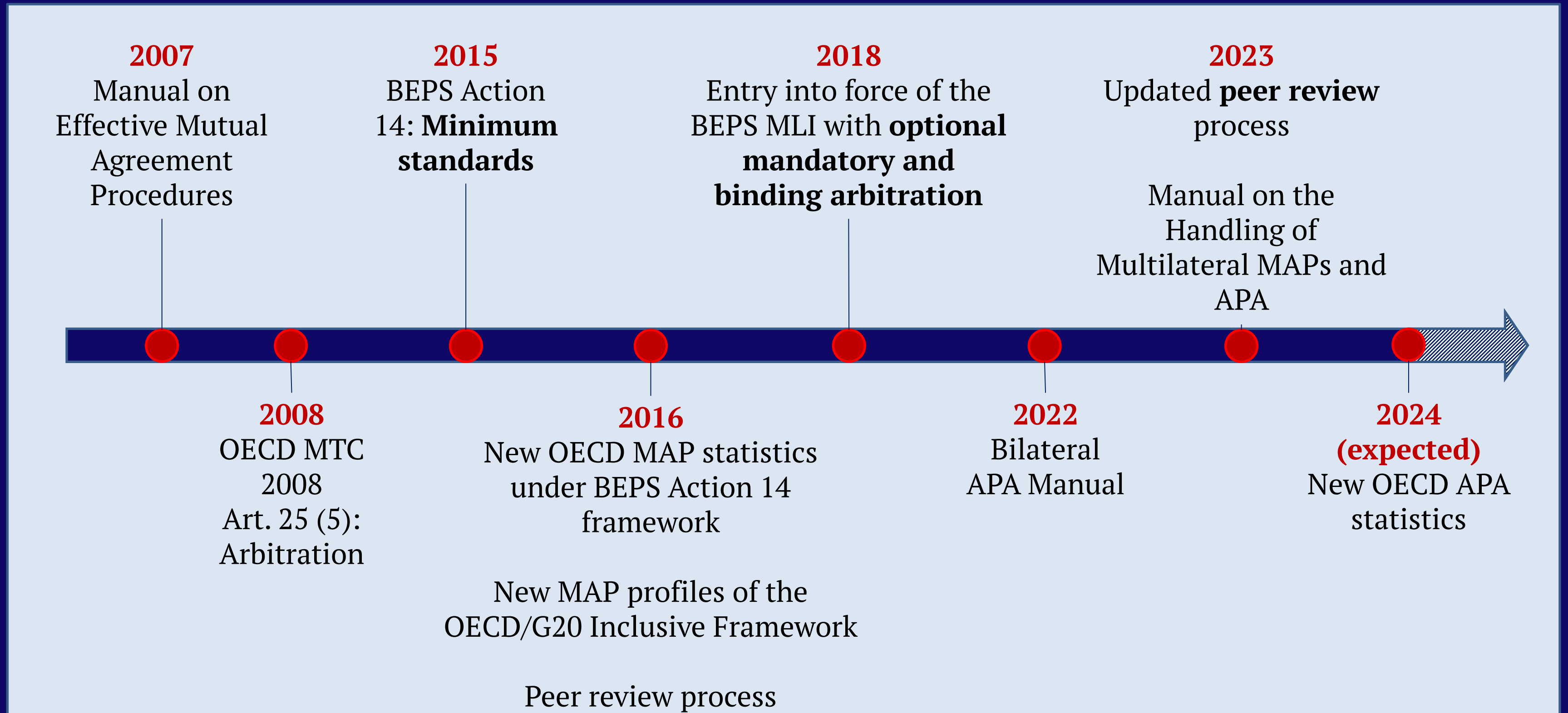
# Travelling Lecturer

## Angelo Nikolakakis



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.:

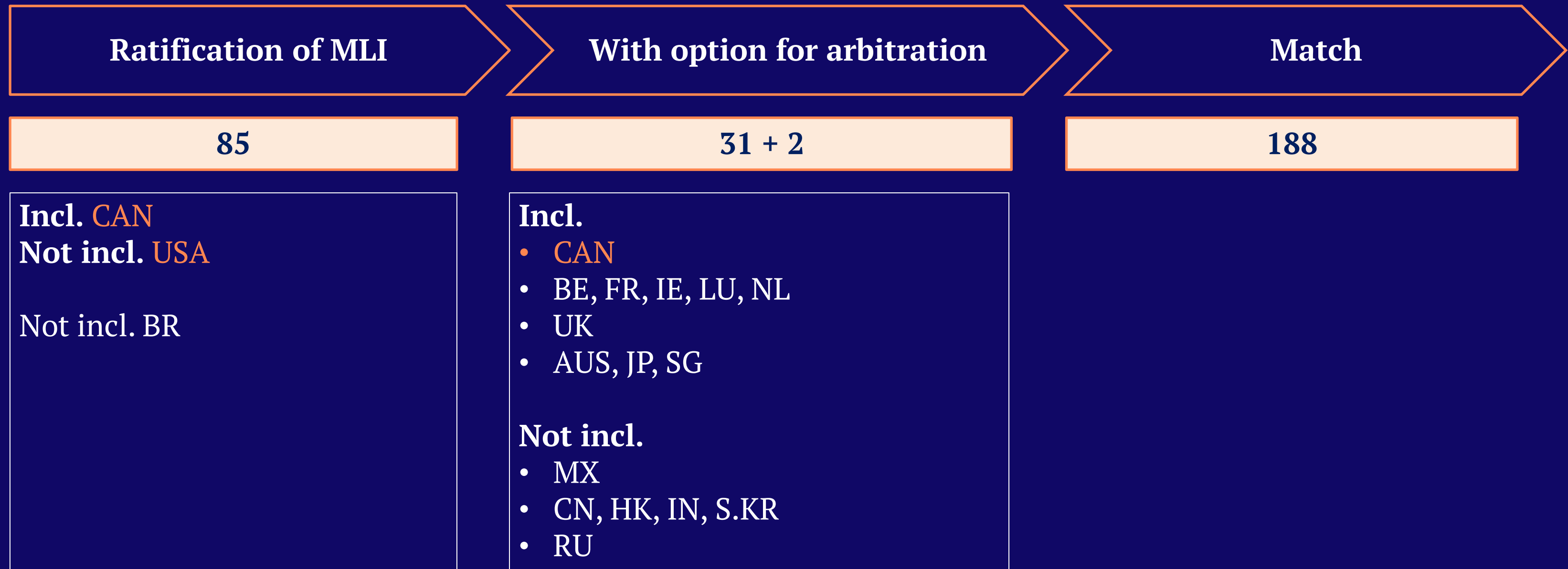
- Allocating sufficient **resources** to MAP functions.
- Clarifying in their MAP guidance that **audit settlements do not preclude access to MAP**.  
If countries have an administrative or statutory dispute settlement/resolution process independent from the audit and examination functions and that can 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

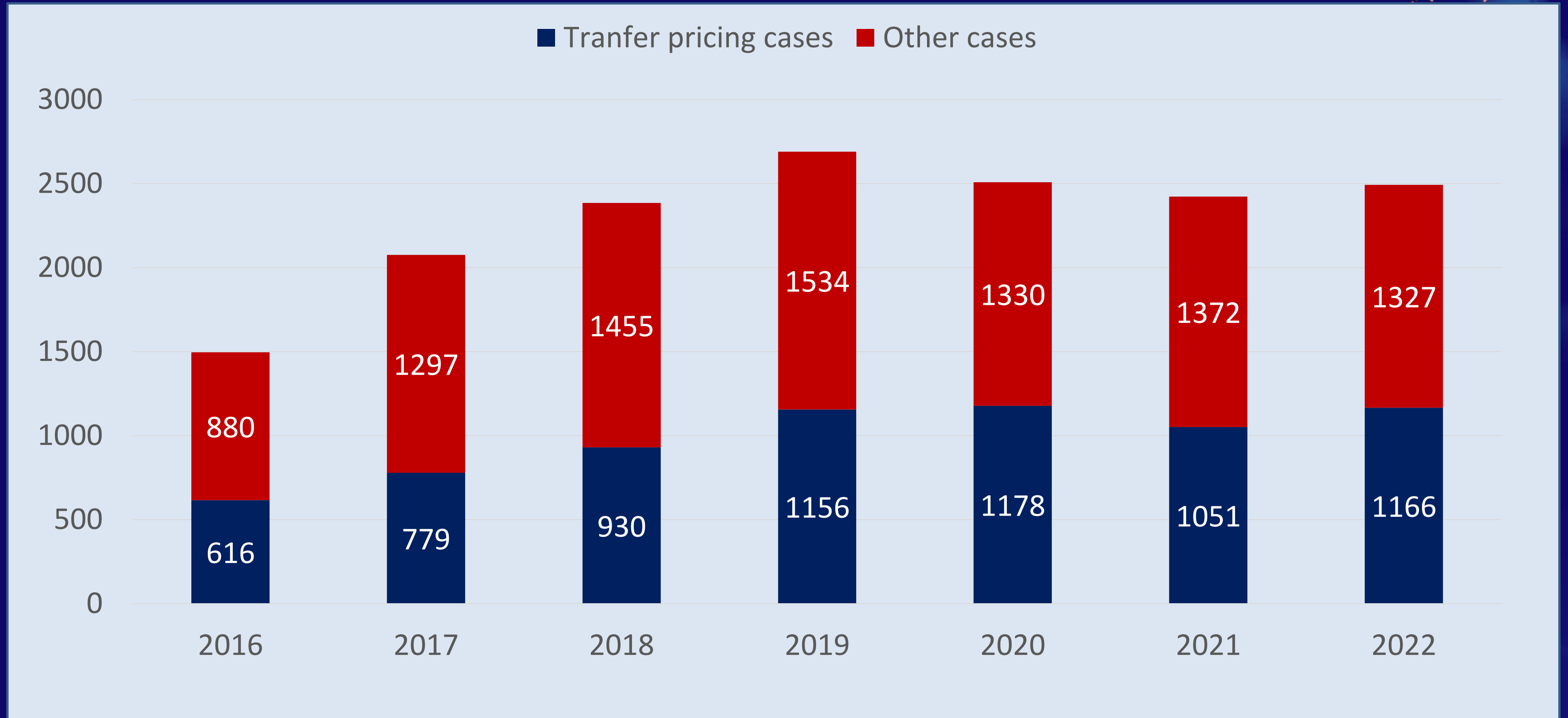
## Taxpayers' access to MAP, incl.:

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

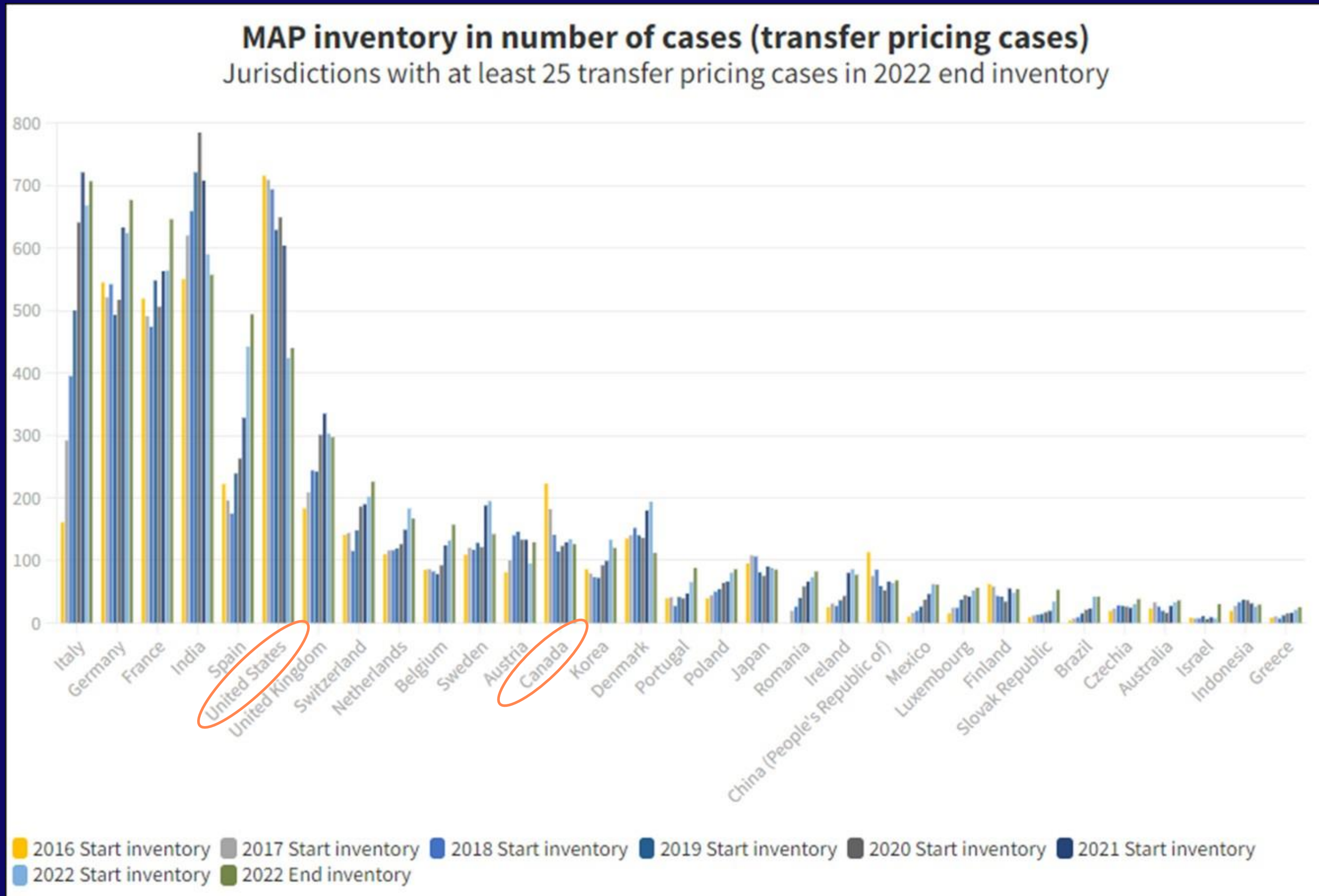
# Optional mandatory and binding arbitration: implementation through MLI (Art. 18 to 26)



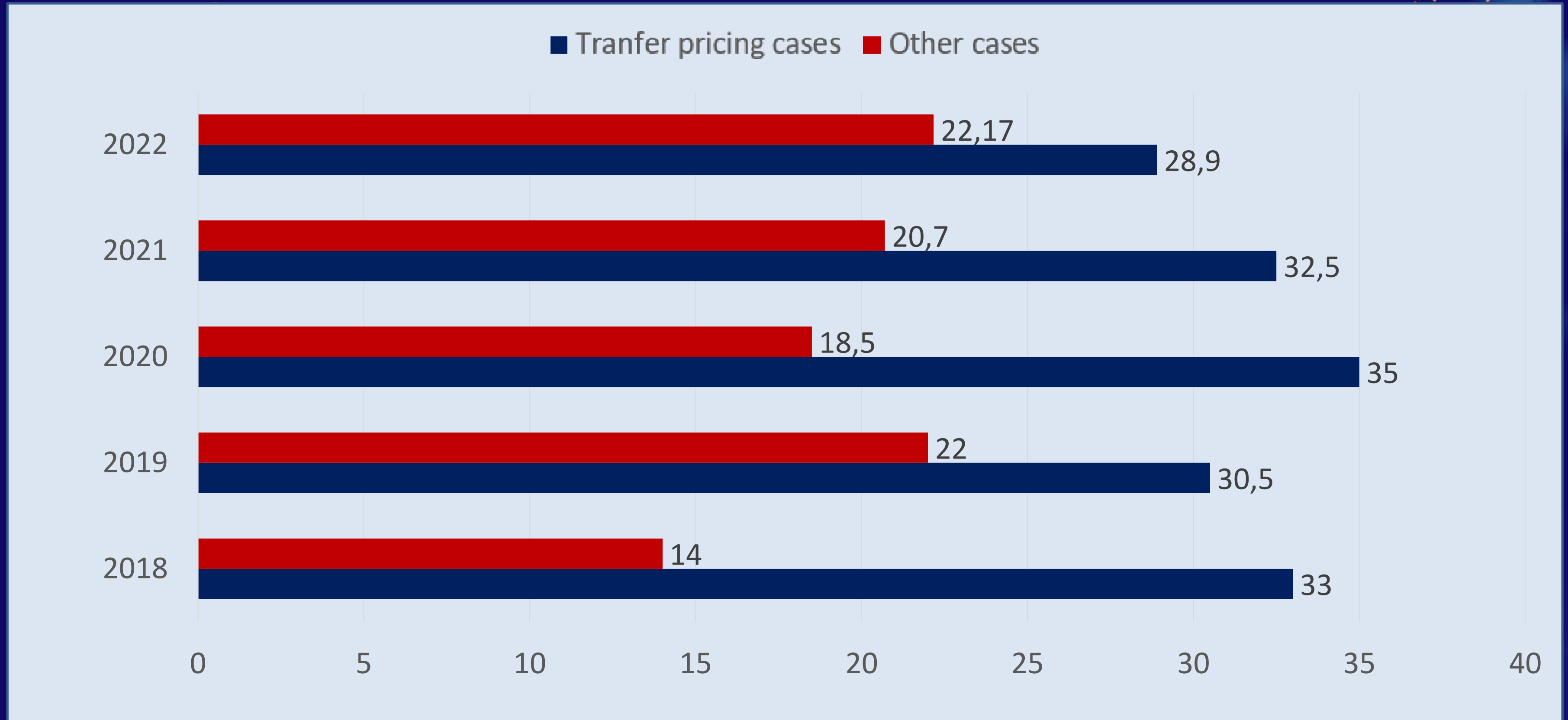
# OECD Inclusive Framework MAP cases started



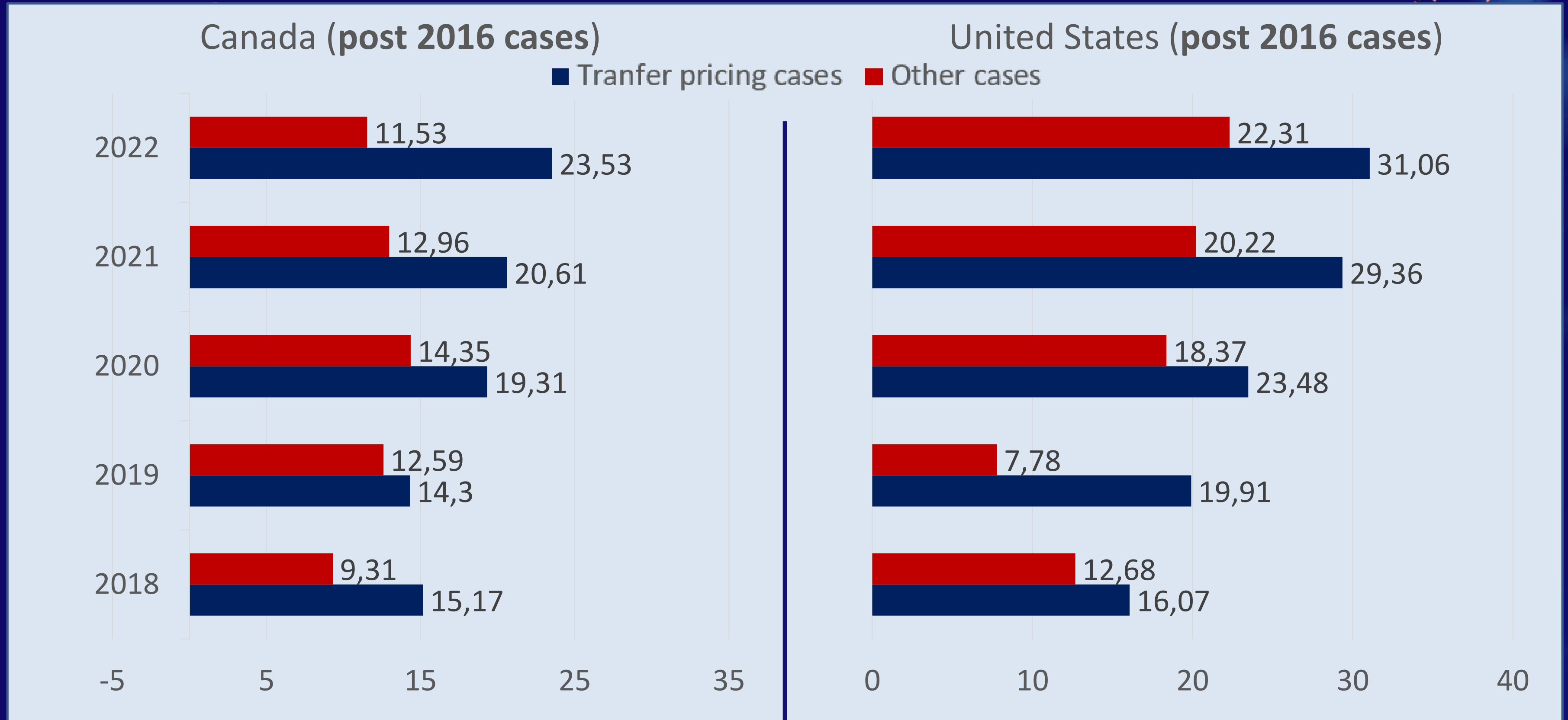
# OECD MAP Cases by Jurisdiction



# OECD Inclusive Framework: average time to close MAP

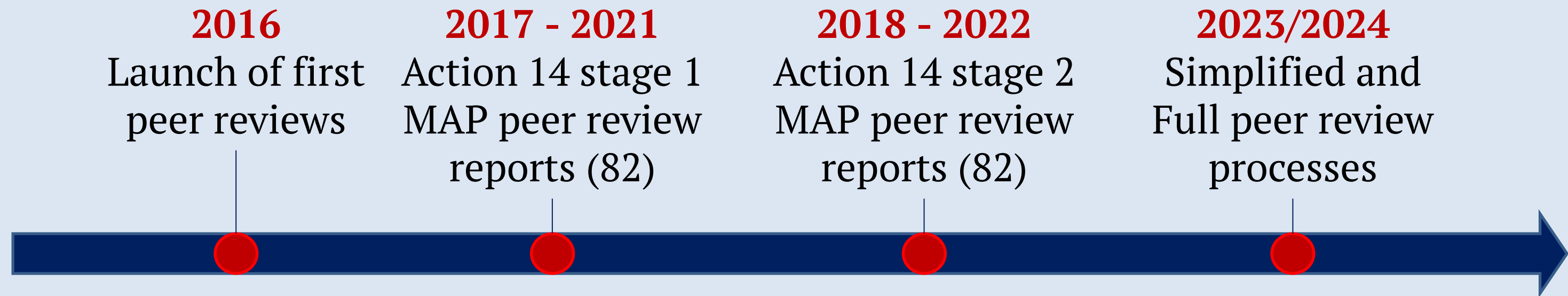


# OECD Inclusive Framework: average time to close MAP



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

# OECD Peer review process

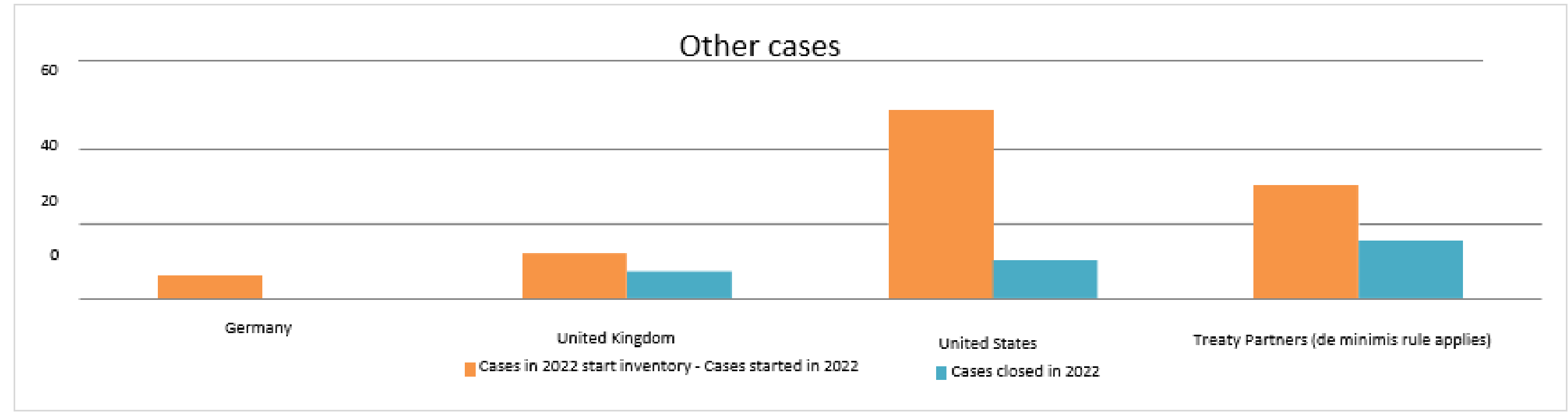
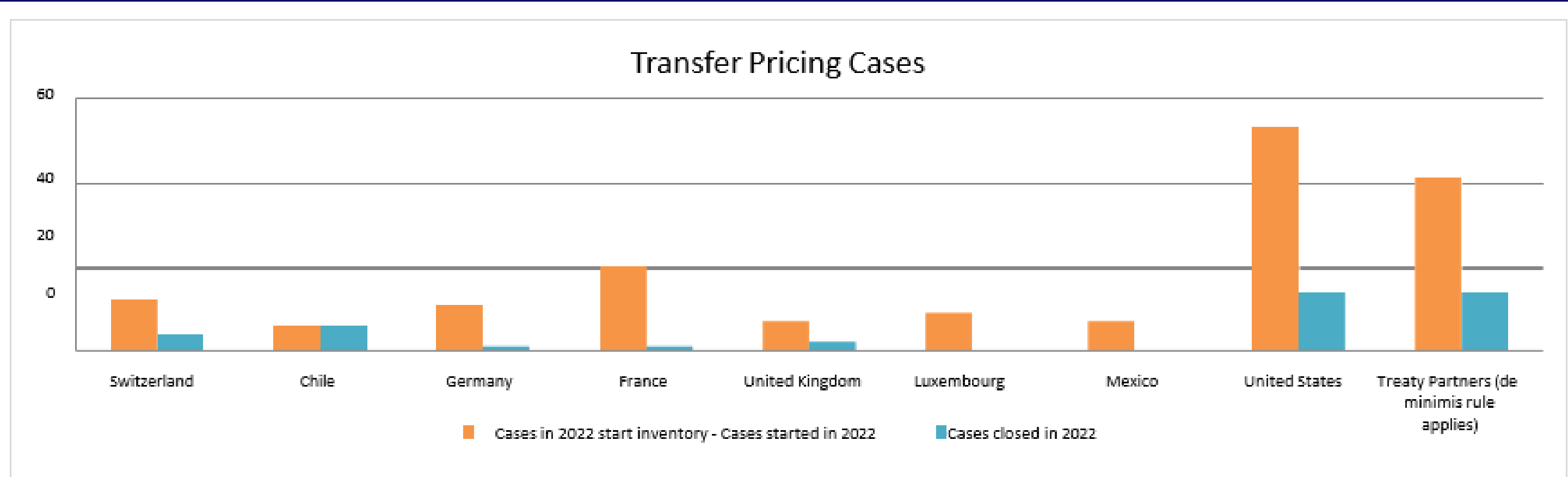


Key takeaways from the US peer review?

## 2. Focus on Canada/US



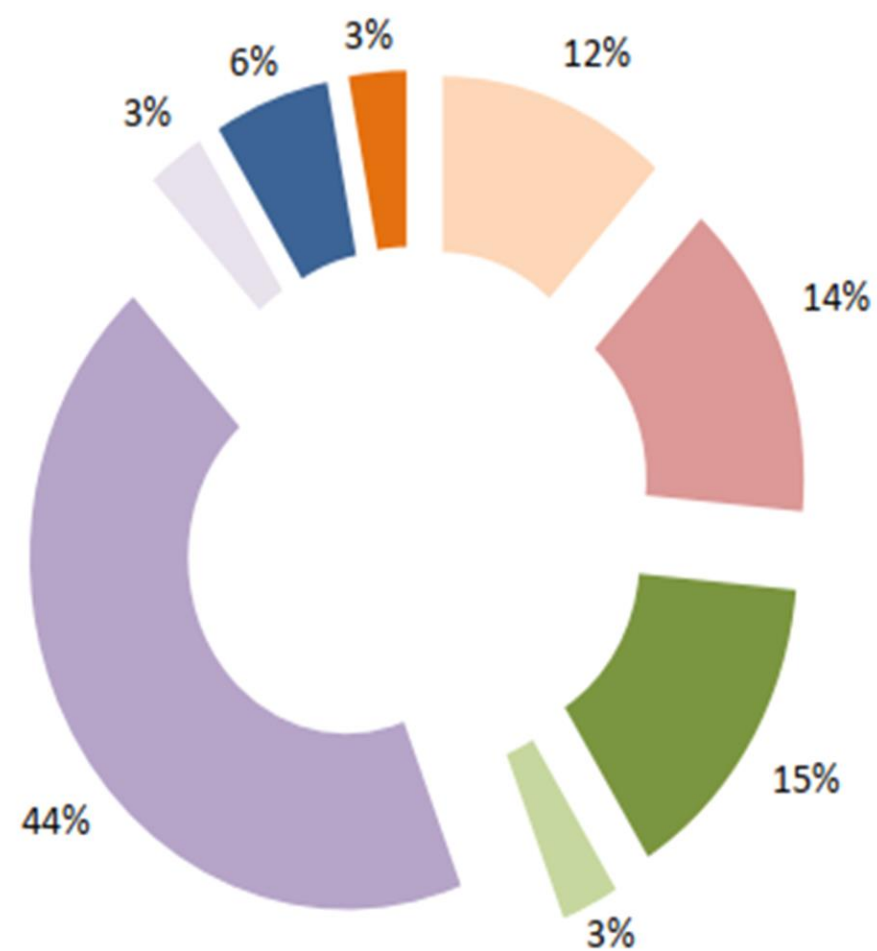
# Canada Post-2016 MAP Cases by Country 2022



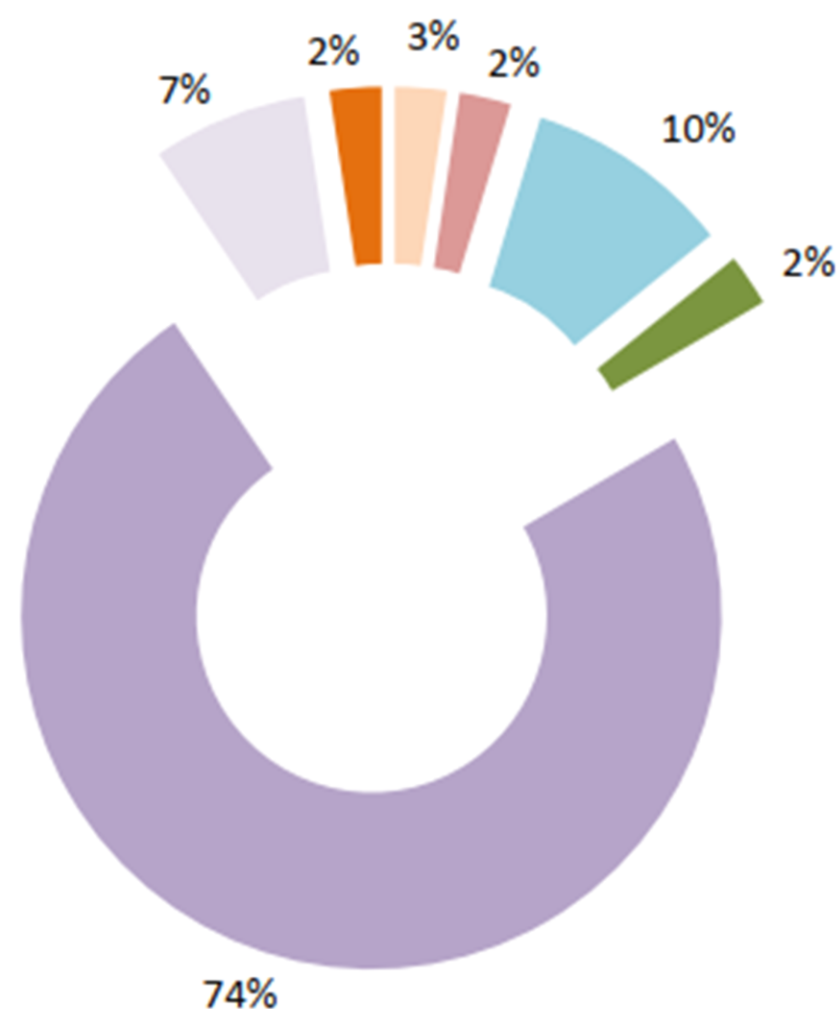
# Canada MAP Cases by Outcome – 2022



## MAP Outcomes - other cases



## MAP Outcomes - TP cases

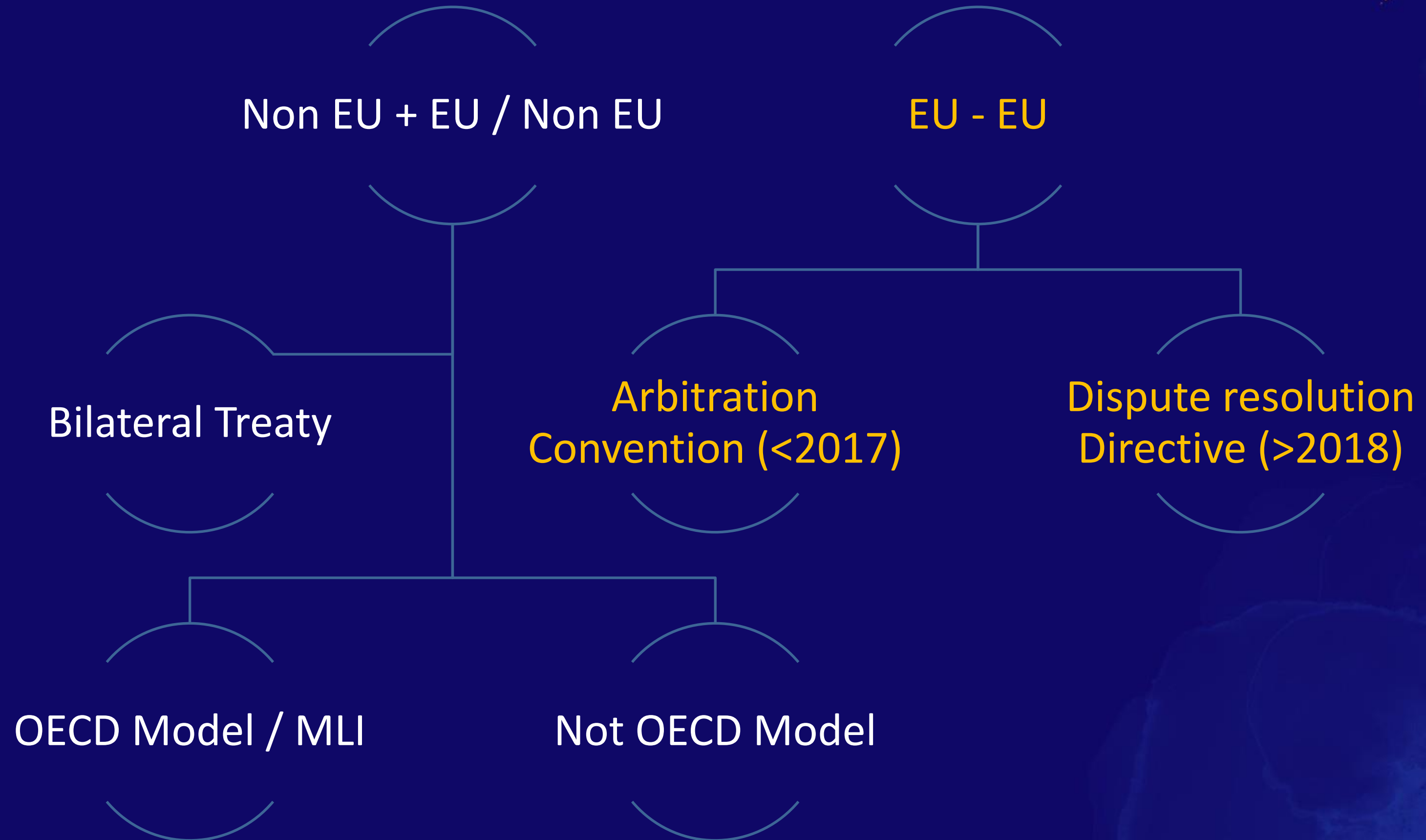


- denied MAP access
- objection is not justified
- withdrawn by taxpayer
- unilateral relief granted
- resolved via domestic remedy
- agreement fully eliminating double taxation eliminated / fully resolving taxation not in accordance with tax treaty
- agreement partially eliminating double taxation / 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



# 3. Looking forward: global view

# MAP and Arbitration: different instruments, differing rules



# Access to MAP / arbitration (CAN, US, 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 ?

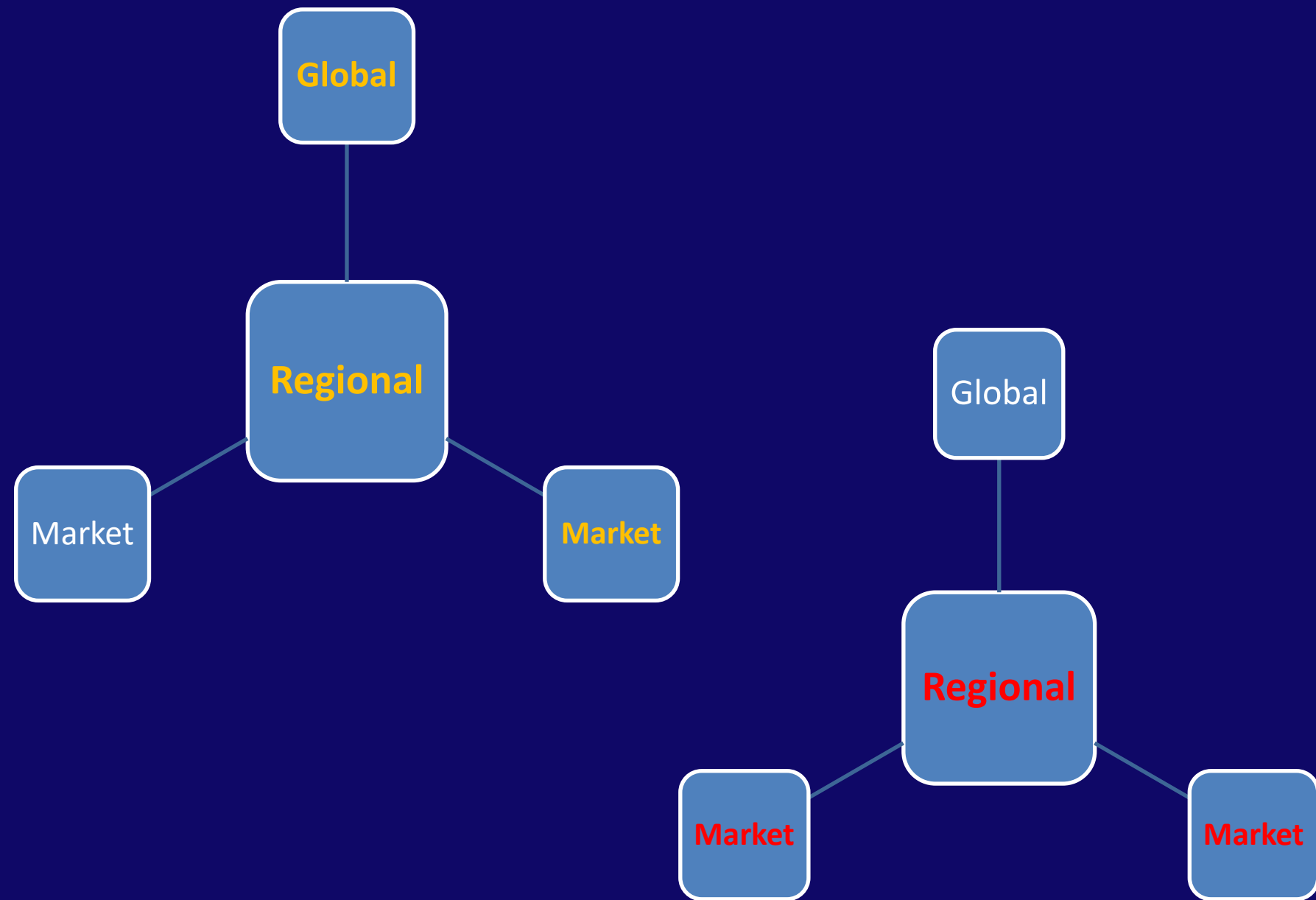
# Interaction between MAP and other recourses (CAN, US, OECD, EU)



- 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



# Conclusion

What works ?

What does not work ?

What can be improved ?

# Q&A