



BEPS ACTION 14:  
MAKING DISPUTE RESOLUTION  
MECHANISMS MORE EFFECTIVE

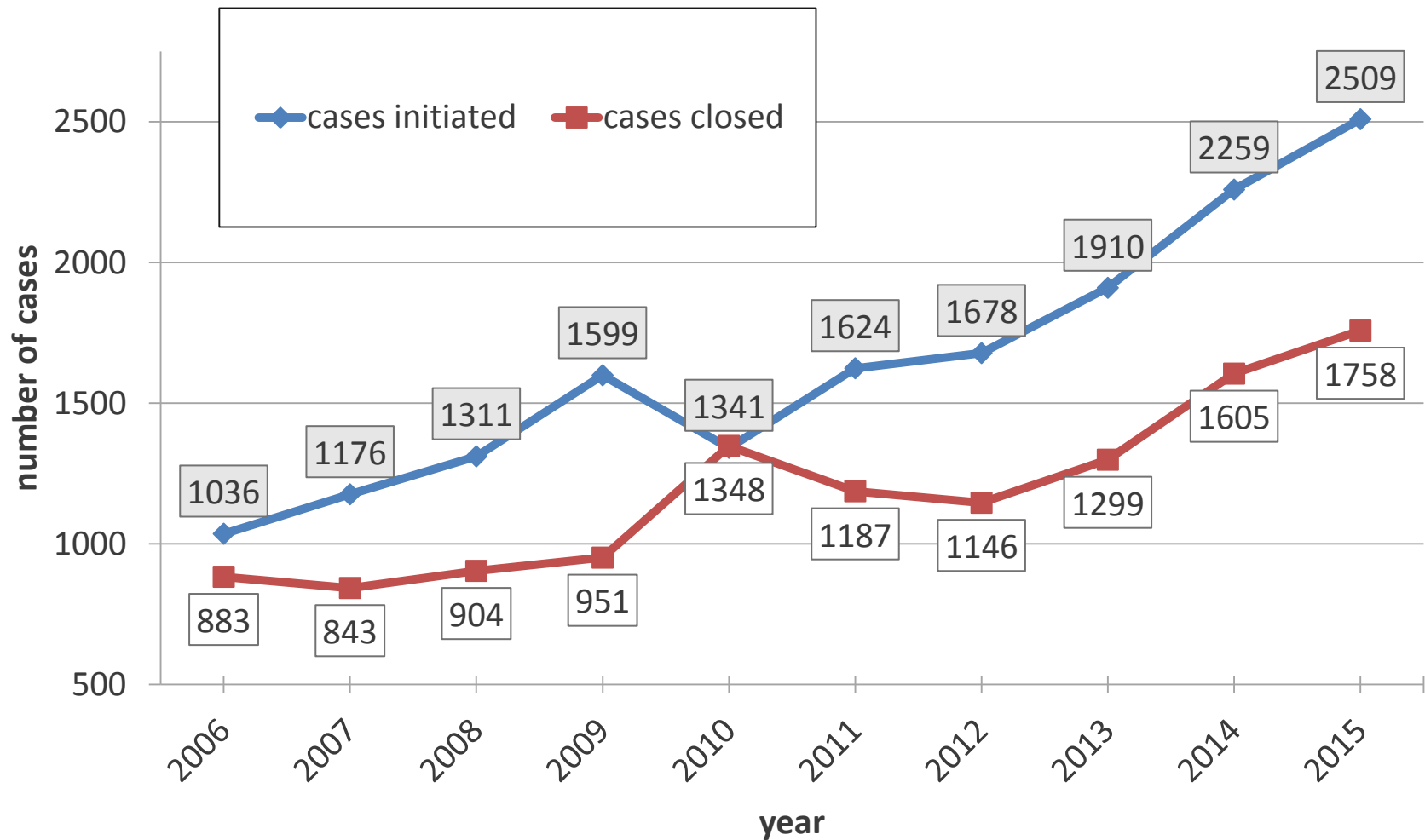
Sandra Knaepen, OECD

Athens, 8 May 2017



# Action 14 – Dispute resolution

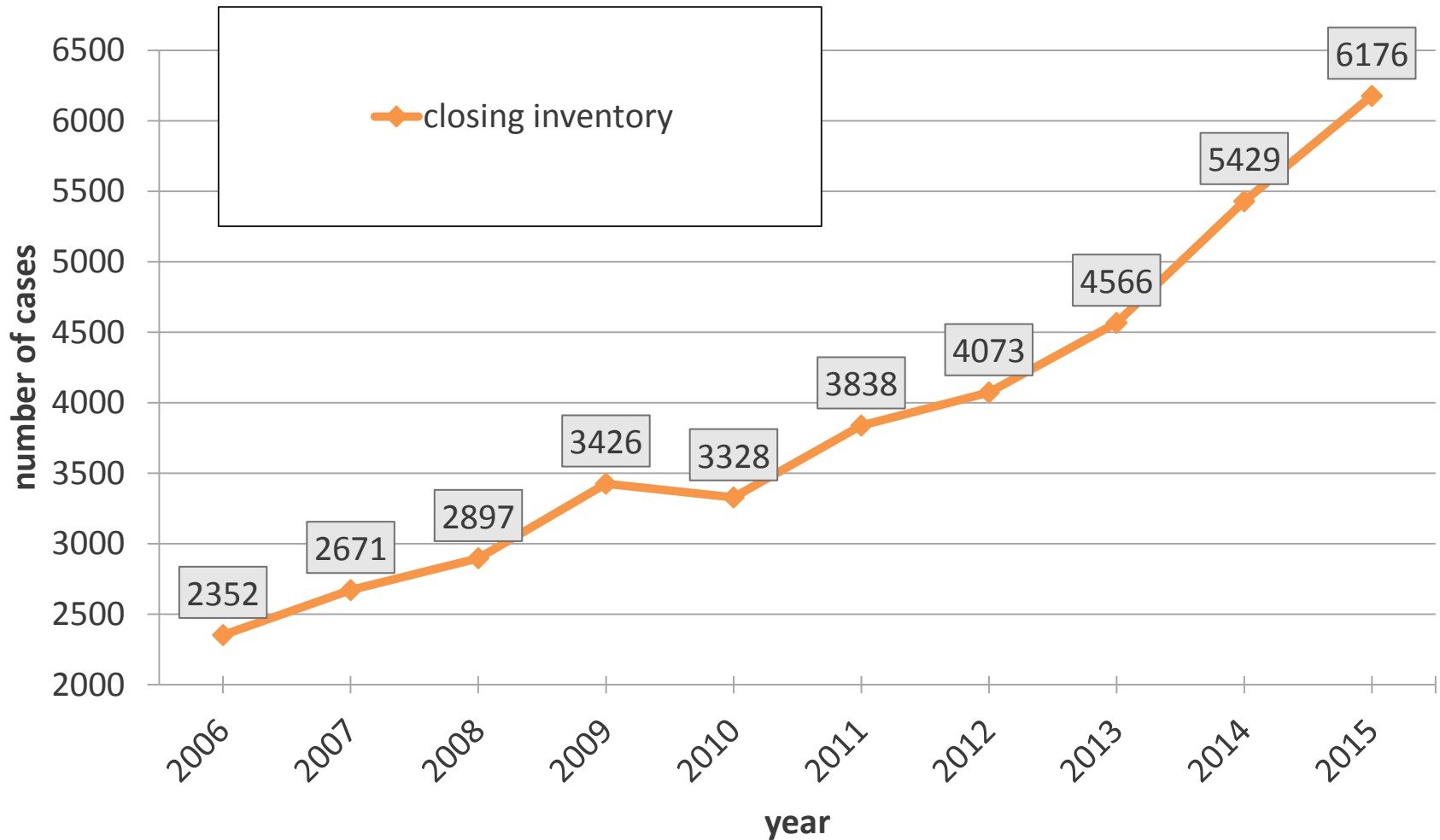
## MAP – Status quo





# Action 14 – Dispute resolution

MAP – Status quo





# Action 14 – Dispute resolution

## MAP – Status quo

**<50 MAP cases:**

**21 countries**

Argentina, Australia, Chile, Czech Republic, Estonia, Greece, Hungary, Iceland, Ireland, Israel, Latvia, Lithuania, Mexico, New Zealand, Poland, Portugal, Slovak Republic, Slovenia, South Africa, Turkey

**>500 MAP cases:**

**4 countries**

Belgium, France, Germany, U.S.

**53% of MAP inventory**

**5%**

**7%**

**35% of MAP inventory**

**50-99 MAP cases:**

**5 countries**

China, Finland, Japan, Norway, Spain

**100-500 MAP cases:**

**10 countries**

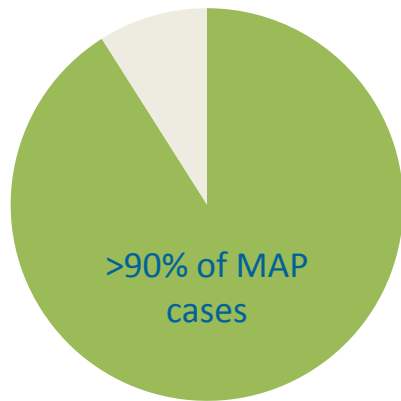
Austria, Canada, Denmark, Italy, Korea, Luxembourg, Netherlands, Sweden, Switzerland, U.K.



# The new approach to dispute resolution

## 20 countries

Australia, Austria, Belgium, Canada, France, Germany, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Poland, Slovenia, Spain, Sweden, Switzerland, the United Kingdom and the United States.





# Action 14 – Dispute resolution

## The agreed minimum standard

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### **Peer Review**

- ✓ conducted by the FTA MAP Forum
- ✓ compliance with implementation of Action 14 Minimum Standard reviewed
- ✓ peer review to begin in 2016; first set of reports published in 2017
- ✓ peer review to be conducted based on Terms of Reference and Assessment Methodology

### **MAP Statistics Reporting**

- ✓ reporting of MAP statistics in accordance with MAP statistics reporting framework

### **MAP Profile**

- ✓ publication of MAP profile in accordance with MAP Profile Template



# Terms of Reference

## Minimum Standard in Action 14 Report

Elements 1.1 – 1.7

Jurisdictions should ensure that treaty obligations related to the MAP are fully implemented in good faith and that MAP cases are resolved in a timely manner

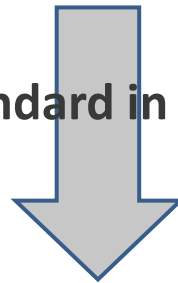
Elements 2.1 – 2.7

Jurisdictions should ensure that administrative processes promote the prevention and timely resolution of treaty-related disputes

Elements 3.1 – 3.3

Jurisdictions should ensure that taxpayers that meet the requirements of paragraph 1 of Article 25 can access the MAP

**Translating minimum standard in Action 14 Report into TOR**





# Terms of Reference

## (A) Preventing Dispute

- Inclusion of 1<sup>st</sup> sentence of Art 25(3) in tax treaties
- Allow roll-back of BAPAs

## (B) Availability and Access to MAP

- Ensuring awareness of MAP requests by both CAs
- Inclusion of 2<sup>nd</sup> sentence of Art 25(3) in tax treaties
- Ensuring access to MAP
- Publication of clear rules, guidelines and procedures

**TOR: Key features of an efficient & effective MAP process**

## (D) Implementation of MAP Agreements

- Ensuring timely implementation
- Ensuring implementation of all MAP agreements

## (C) Resolution of MAP cases

- Inclusion of 1<sup>st</sup> sentence of Article 25(2) in tax treaties
- Ensuring timely and principled resolution
- Transparency on arbitration position





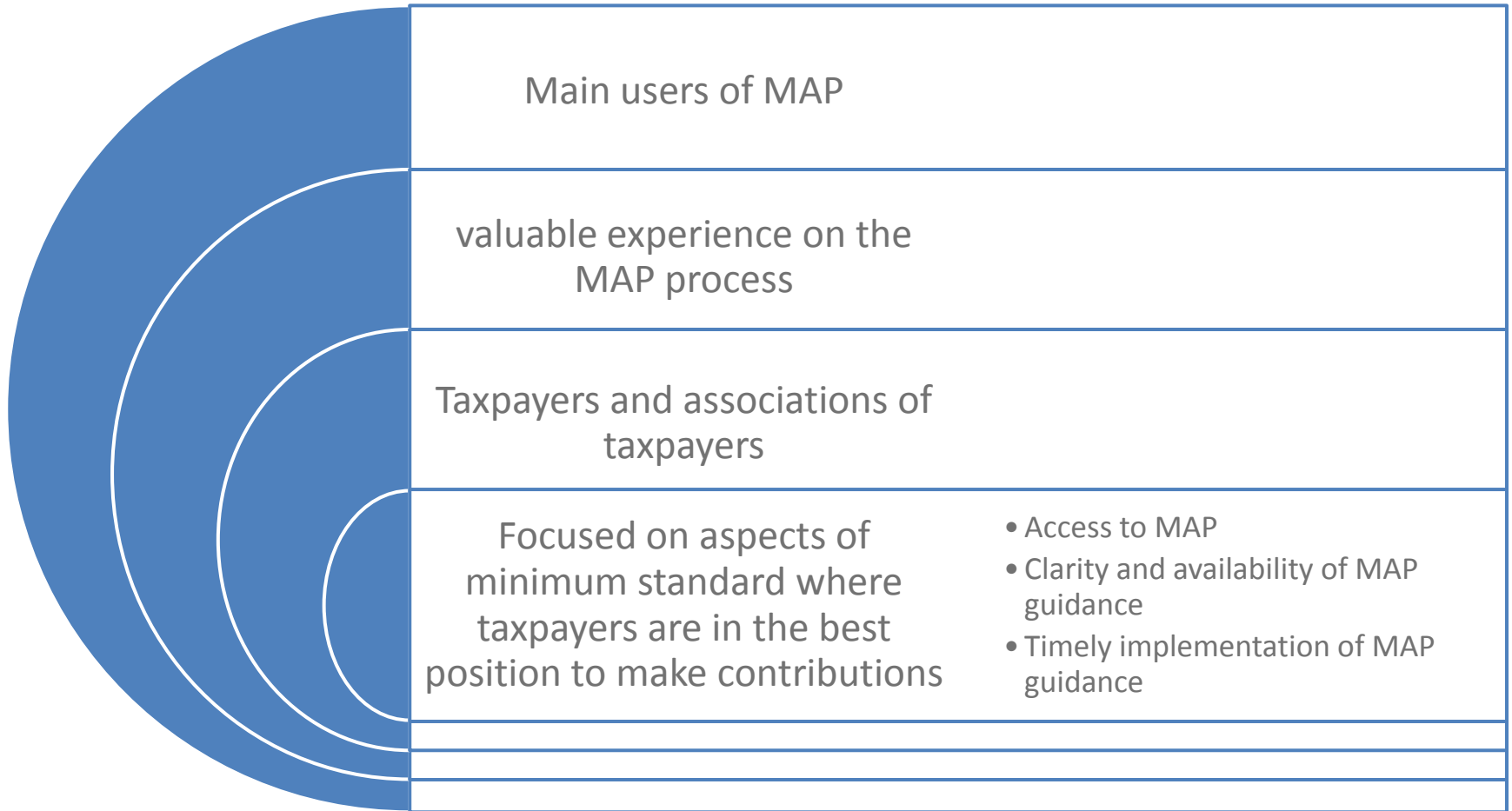
# Assessment Methodology

## 2-Stage approach

- Stage 1: Peer Review Process
  - Identifying strengths and areas for improvement
  - To begin in 2016 and all 44 OECD/G20 countries' review be launched by 2018
  - Information collected through questionnaires to assessed jurisdiction, peers and taxpayers  
(<http://www.oecd.org/tax/planned-stakeholder-input-in-oecd-tax-matters.htm>)
- Stage 2: Peer Monitoring Process
  - Acknowledge measures taken to improve on MAP process



# Importance of taxpayer input





# MAP Statistics Reporting Framework

OECD countries and partner economies already reporting MAP statistics



All members of the inclusive framework to submit yearly MAP statistics based on new reporting framework → improved to reflect:

- a collaborative approach between competent authorities to resolving MAP cases on a timely basis
- agreed definitions of reported items to ensure consistency and comparability
- a balanced approach taking into account the perspective of competent authorities and taxpayers



# MAP Statistics Reporting Framework

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MAP statistics reporting templates:

- separate reporting of new and old cases
- take into account administrative burden of tracking and reporting MAP statistics
- provide transparency on the MAP inventory and MAP outcomes

All jurisdictions that are members of the inclusive framework to report MAP statistics under this framework with effect from reporting year 2016 (i.e. 1 Jan – 31 Dec 2016) by 31 May 2017 for publication



# Inventory and outcome

**Table 1: Attribution / Allocation MAP Cases**

	Treaty Partner	no. of post-2015 cases in MAP inventory on 1 January [YEAR]	no. of post-2015 cases started during the reporting period	number of post-2015 cases closed during the reporting period by outcome:									no. of post-2015 cases remaining in MAP inventory on 31 December [YEAR]	
				denied MAP access	objection is not justified	withdrawn by taxpayer	unilateral relief granted	resolved via domestic remedy	agreement fully eliminating double taxation / 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
	Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
Row 1	Treaty Partner 1													
	Treaty Partner 2													
	...													
Row 2	Treaty Partners ( <i>de minimis</i> rule applies)													
Row 3	Treaty Partners (Others)													
	<b>Total</b>													

Notes

A reporting jurisdiction can include in this notes section any information which in its view would be useful in providing clarification or understanding on any of the statistics reported above.



# MAP Profile Template

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OECD countries and partner economies already publishing MAP profile.

New template created following the 4 key features of the ToR

All jurisdictions that are members of the inclusive framework to submit MAP profile for publication

Published MAP profile:

- a platform for jurisdictions to provide taxpayers with relevant information on dispute resolution mechanisms
- improved to provide greater transparency on the MAP regime of a jurisdiction.



# Guidance on how a taxpayer can make a request for MAP assistance

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- A toolkit for jurisdictions to develop / fine-tune their guidance
- Facilitate taxpayer's preparation and submission of a complete MAP request; thus facilitating faster resolution of MAP cases

Purpose

- contact information of the competent authority or the office in charge of MAP cases
- The manner and form in which the taxpayer should submit its MAP request

Guidance should include



# BEPS Action 14

## Impact for taxpayers

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