

PRESENTED BY:

The 2015 OECD International Tax Conference

June 10-11, 2015
Four Seasons Hotel
Washington D.C.



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VIII. Dispute Resolution

The 2015 OECD International Tax Conference

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Panelists

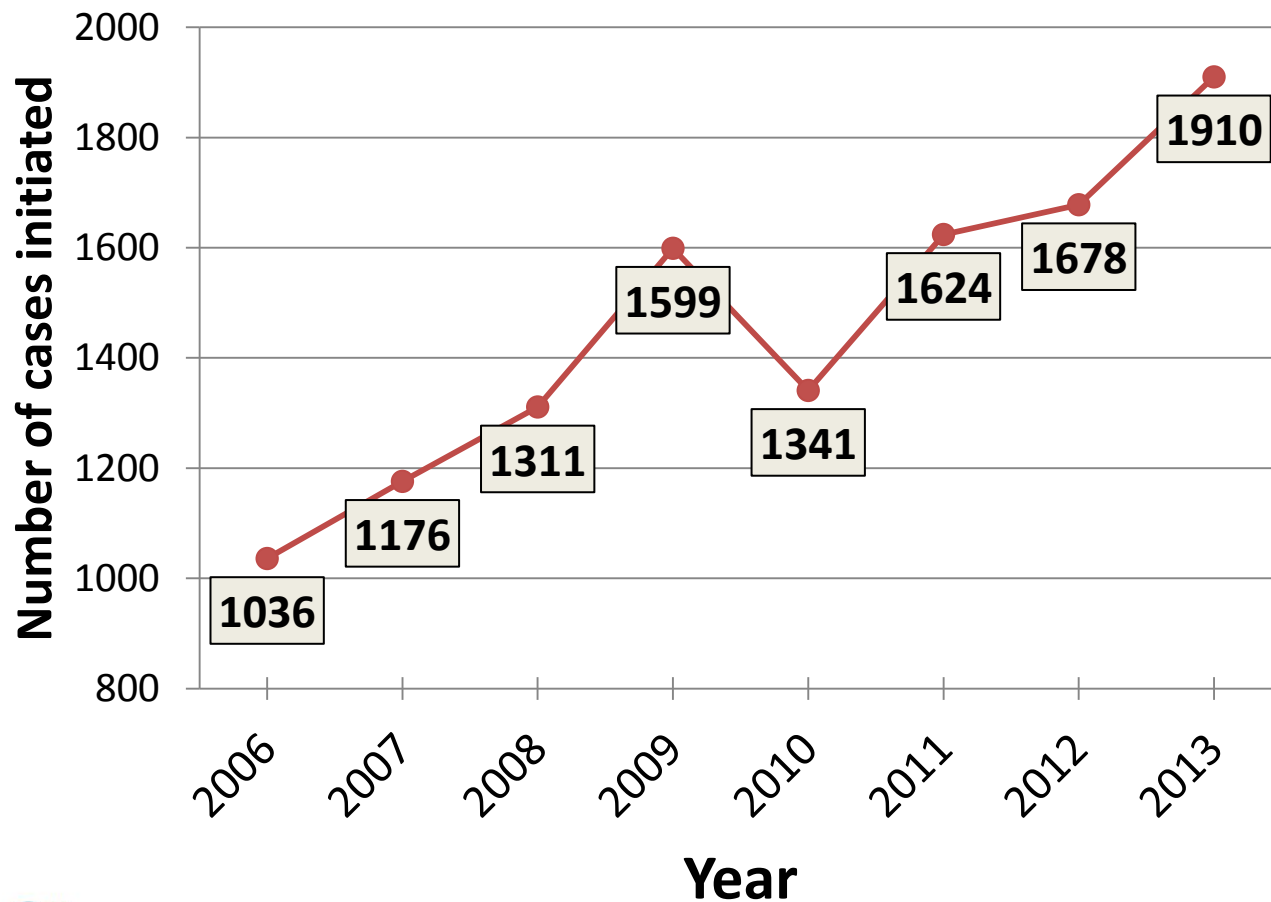
- **Grace Perez-Navarro**, Deputy Director, OECD Centre for Tax Policy & Administration
- **Doug O'Donnell**, LB&I Deputy Commissioner (International), IRS
- **Tim McDonald**, Vice President - Finance & Accounting, Global Taxes, Procter & Gamble
- **Carol Dunahoo**, Partner, Baker & McKenzie LLP

Action 14 of the BEPS Action Plan

“Develop solutions to address obstacles that prevent countries from [re]solving treaty-related disputes under MAP, including the absence of arbitration provisions in most treaties and the fact that access to MAP and arbitration may be denied in certain cases.”

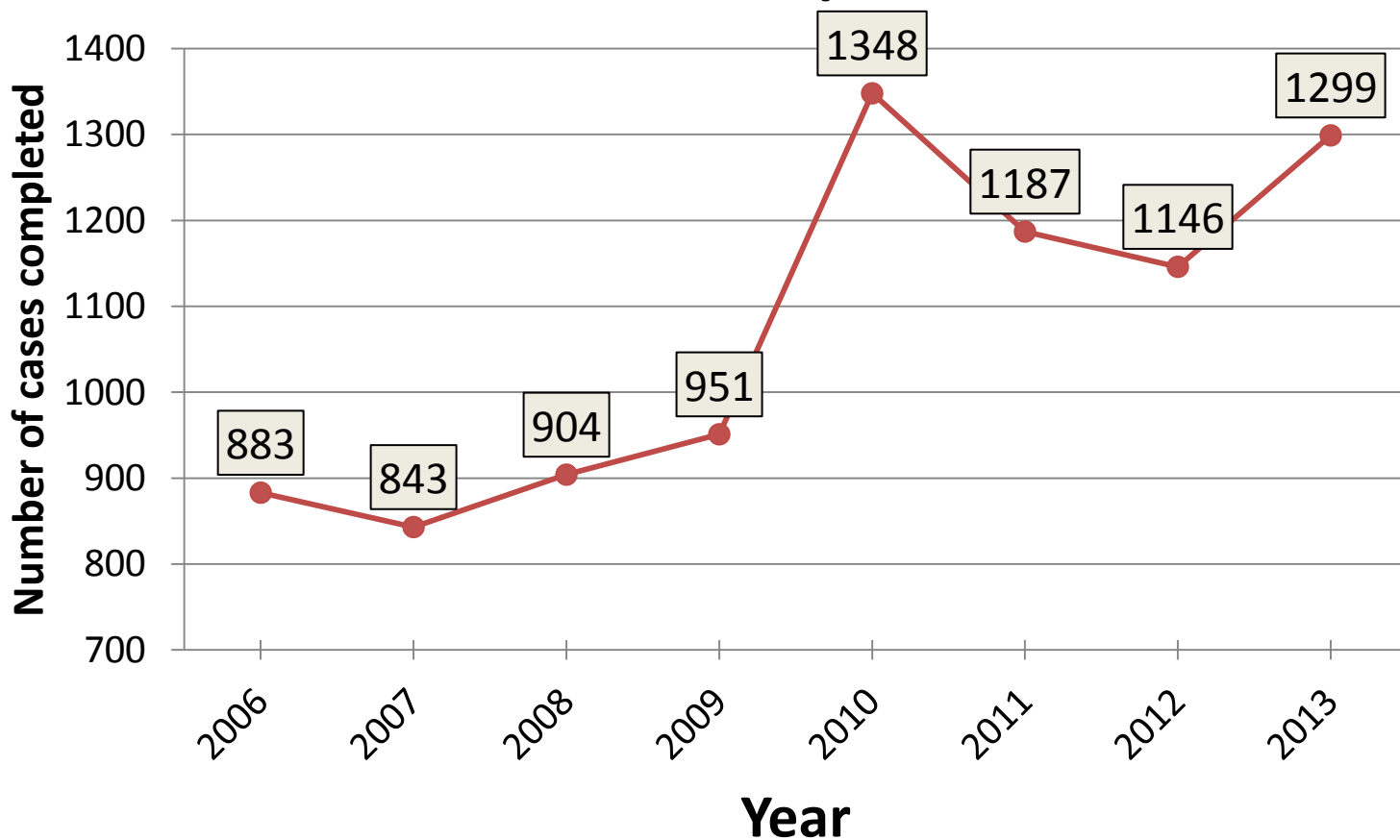
Number of MAP cases initiated has steadily increased since 2006

MAP cases initiated by year



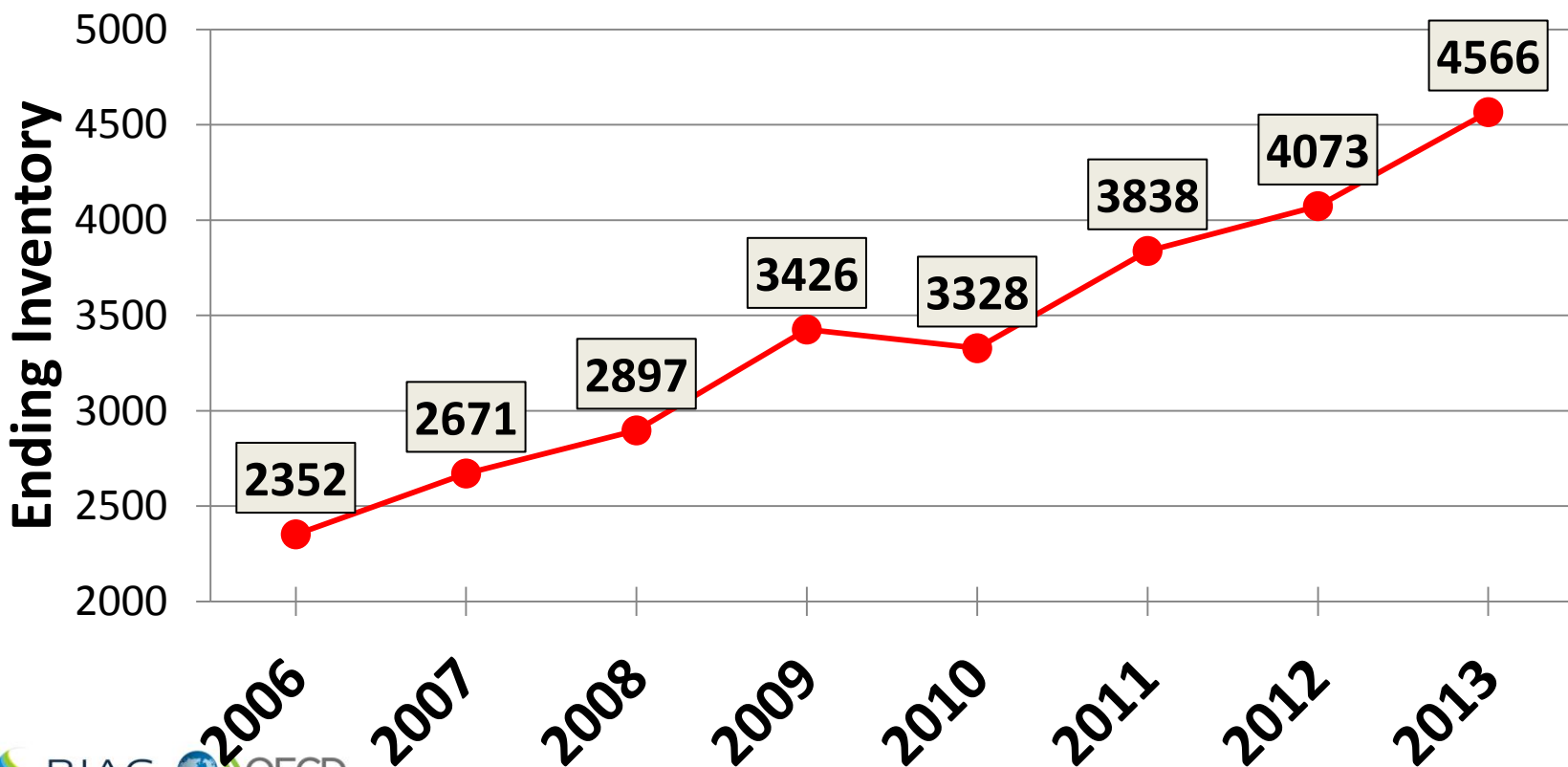
Competent authorities are working hard...

MAP cases completed

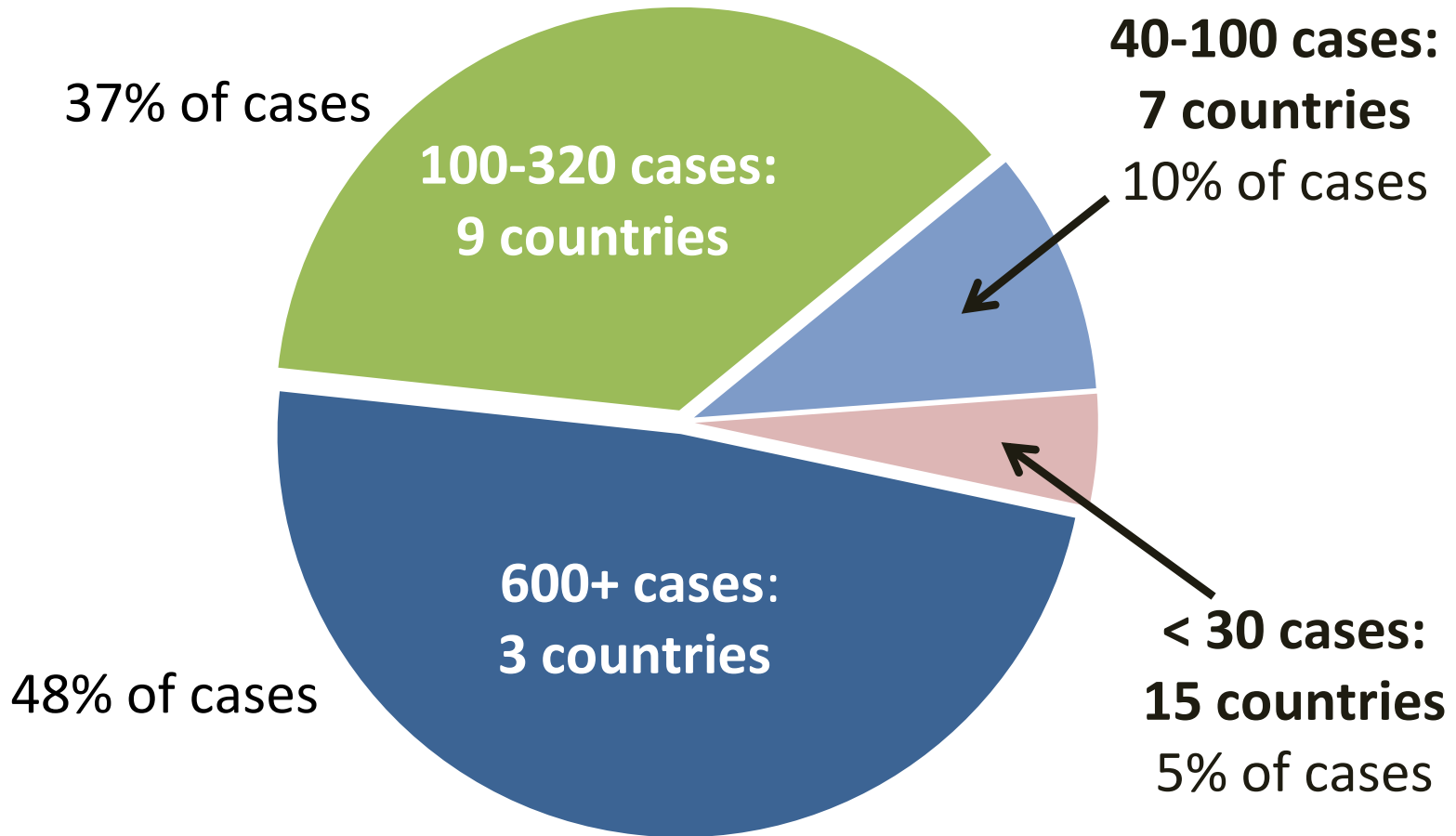


But OECD country MAP case inventories have significantly increased since 2006

End of Year MAP Case Inventories by Year



Number of MAP cases by country

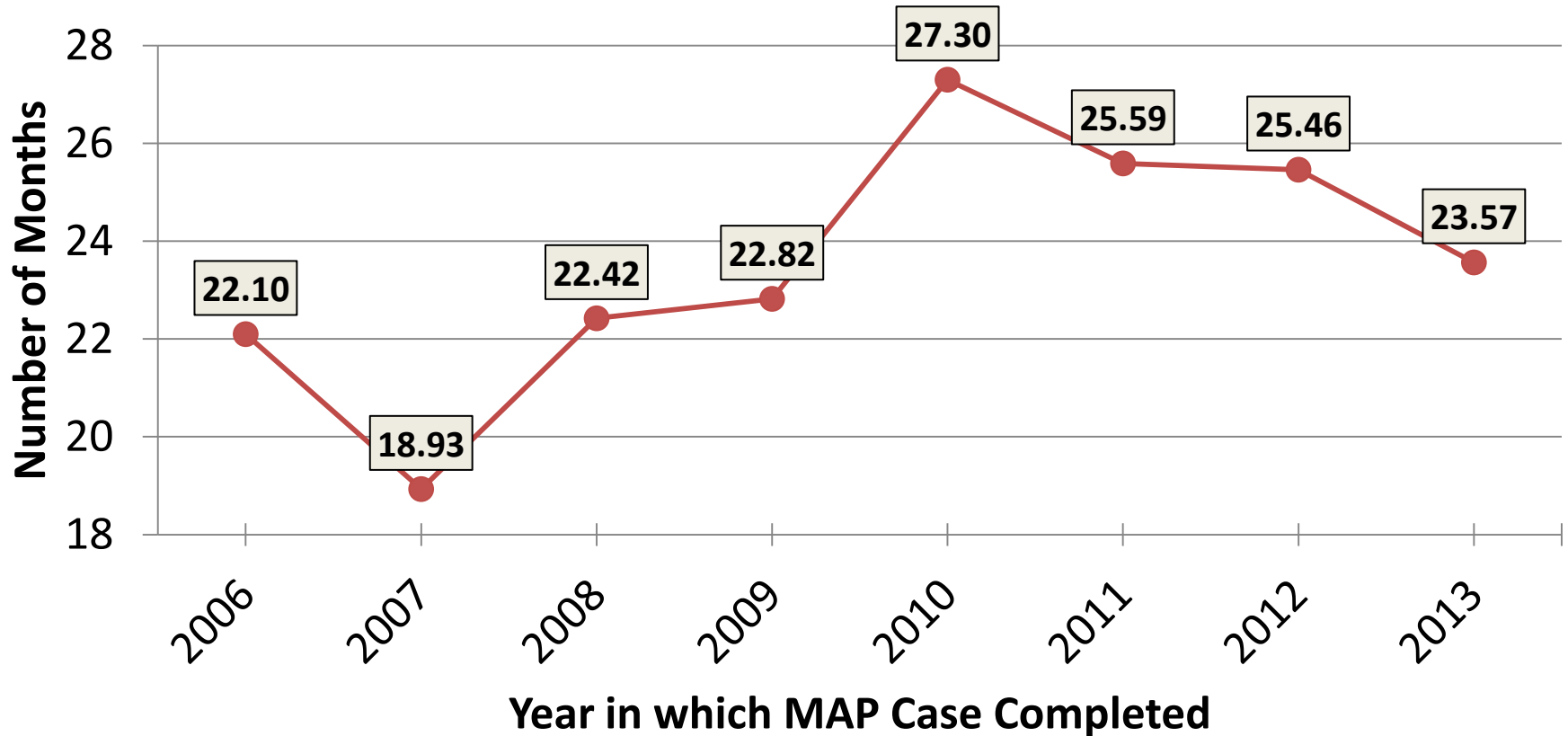


12 countries = 85% of MAP cases

More than 600 cases	3 countries (48% of cases)	France, Germany, U.S.
100-320 cases	9 countries (37% of cases)	Austria, Belgium, Canada, Finland, Italy, Netherlands, Sweden, Switzerland, U.K.
40-100 cases	7 countries (10% of cases)	Denmark, Japan, Korea, Luxembourg, Norway, Poland, Spain
Less than 30 cases	15 countries (5% of cases)	Australia, Chile, Czech Rep., Estonia, Greece, Hungary, Iceland, Ireland, Israel, Mexico, New Zealand, Portugal, Slovak Rep., Slovenia, Turkey

How long to complete a MAP case?

Number of Months to Complete a MAP Case



Summary of OECD MAP Statistics (2006-2013)

- 84% increase in number of cases initiated per year
- 47% increase in cases completed per year
- 94% increase in MAP case inventories
- 23.57 month average cycle time (2013)

**Even without BEPS Project, an
urgent need to improve dispute
resolution**

Action 14: Step-change in the resolution of treaty-related disputes

Discussion Draft on Action 14 calls for:

- 1) **Political commitment** to effectively eliminate taxation not in accordance with the Convention
- 2) **Minimum standard** (specific measures to remove obstacles to an effective and efficient MAP)
- 3) **Monitoring mechanism** to ensure proper implementation of the minimum standard

Action 14 minimum standard

Ensuring that:

1. Treaty obligations related to MAP are fully implemented in good faith
2. Administrative processes promote the prevention and resolution of treaty-related disputes
3. Taxpayers can access MAP when eligible
4. Cases are resolved once they are in MAP

Critical Role of Forum on Tax Administration

- FTA brings together commissioners of 46 countries
- Competent Authority function generally in tax administrations
- Tax administrations can play key role in preventing disputes before they start
- FTA has made it a priority to improve dispute resolution and MAP

FTA MAP Forum and Strategic Plan for MAP Improvement

Areas of strategic focus:

- Obtaining, retaining and training necessary staffing levels
- Empowering competent authorities to achieve their mandate to avoid double taxation without competing considerations including revenue maximization
- Enhancing relationships among competent authorities based on mutual trust to ensure appropriate sharing of information and negotiations
- Process improvements
 - Efficiency
 - Case elevation
 - Taxpayer/advisor involvement
 - Early involvement to avoid need for MAP
 - Development of standards for resolving certain issues

FTA MAP Forum and Strategic Plan for MAP Improvement

Areas of Strategic Focus (cont)

- Relationship with audit functions
 - Positions taken in audit must be in line with treaties
 - Remove practical and legal impediments to MAP access
 - Increase awareness that audit adjustments can create double taxation and the resulting competent authority processes
- FTA MAP Forum accepts responsibility and accountability for this strategic plan

FTA Global Awareness Training Module

Purpose:

- Ensure examination functions around the world:
 - are fully informed on global tax environmental factors, and
 - the dynamics arising as proposed adjustments raising double tax move into mutual agreement processes for resolution

Content:

- Raise awareness that international adjustments usually pose a threat of double taxation of the profits in question
- Principles for evaluating when adjustments are appropriate, when double tax will likely result, and when another country is appropriately put in the position of relieving such double taxation, and
- Highlight areas in which difficult negotiations frequently arise

FTA: Next Steps

- June 2015 Meeting
- Establish Basic Terms of Reference (e.g., Start and End Dates and Common Concepts of MAP stages)
- Develop Milestones of Process (e.g., Stages)
- Develop Expected Timeframes for Stages (minimum standards)
- Develop a Questionnaire for reporting
- Coordinate with WP1 – Action Item 14 to develop a monitoring mechanism

Mandatory binding MAP arbitration

- No consensus among the 44 countries on moving to mandatory binding MAP arbitration
- BUT, relevant group of countries interested in introducing MAP arbitration through BEPS process
- Action 14 outputs expected to include optional commitment to MAP arbitration
 - Limited scope?
 - Multilateral instrument (Action 15)?

Business Goals

- Key business goals:
 - Predictability of tax treatment
 - Relief from double taxation
 - Non-discriminatory taxation
- To facilitate cross-border trade and investment, need assurance in advance that disputes will be resolved effectively in all cases

Business Concerns / Solutions

- Key business concerns:
 - Limits on access to competent authority consideration in some jurisdictions
 - Lack of due process in some jurisdictions
 - Political or revenue-driven positions
- Solutions:
 - Mandatory binding arbitration - not voluntary
 - Properly designed MAP peer review
 - Application of trade and investment agreements

Action 14: Next Steps

- Committee on Fiscal Affairs meeting in May 2015
- Working Party 1 meeting in June 2015
- Deadline for completion: **September 2015**
- Post-BEPS: set up monitoring (terms of reference, etc)