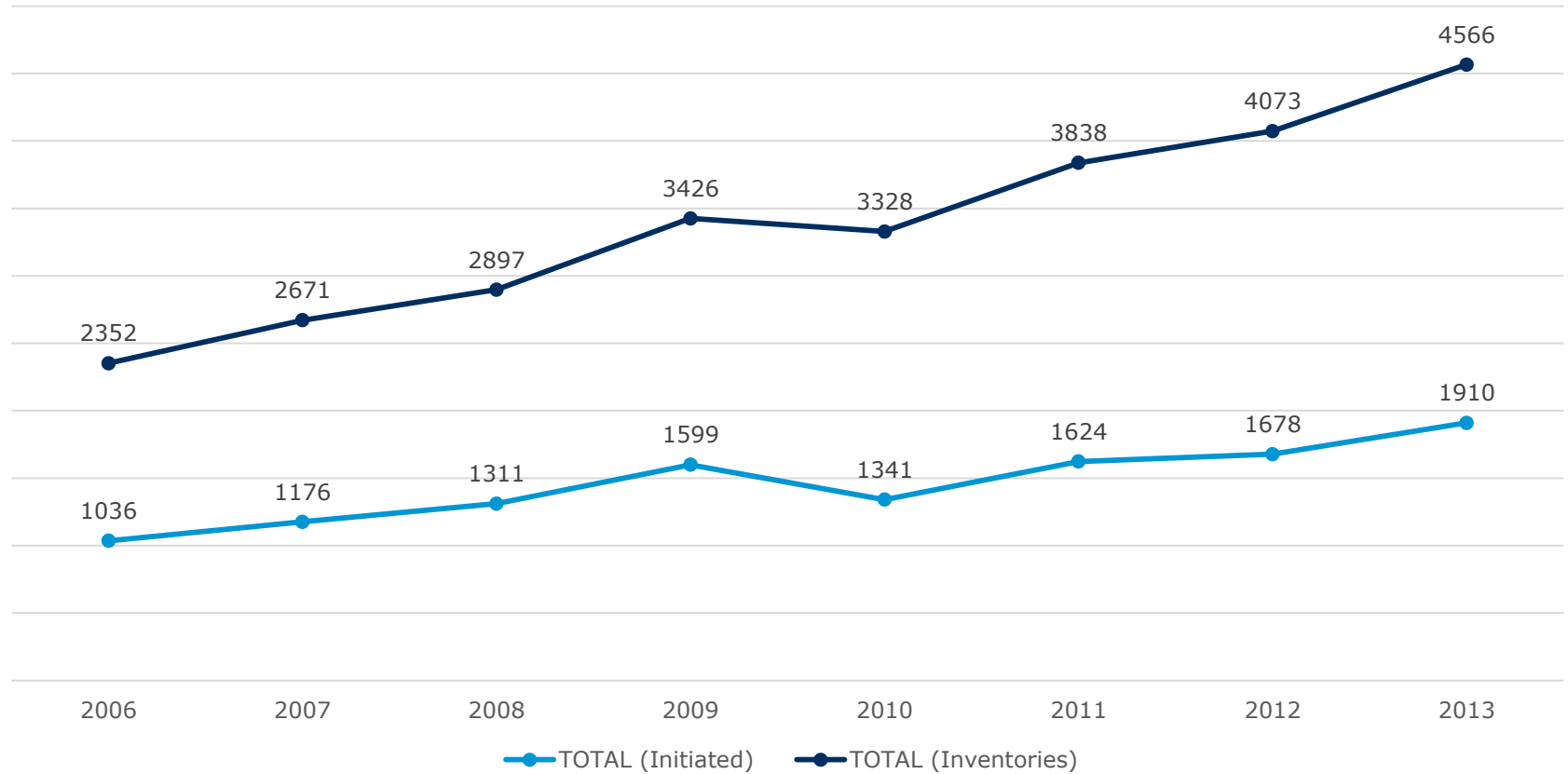


What do we know about cross-border disputes?

Jeffrey Owens (Director WU Global Tax Policy Center)

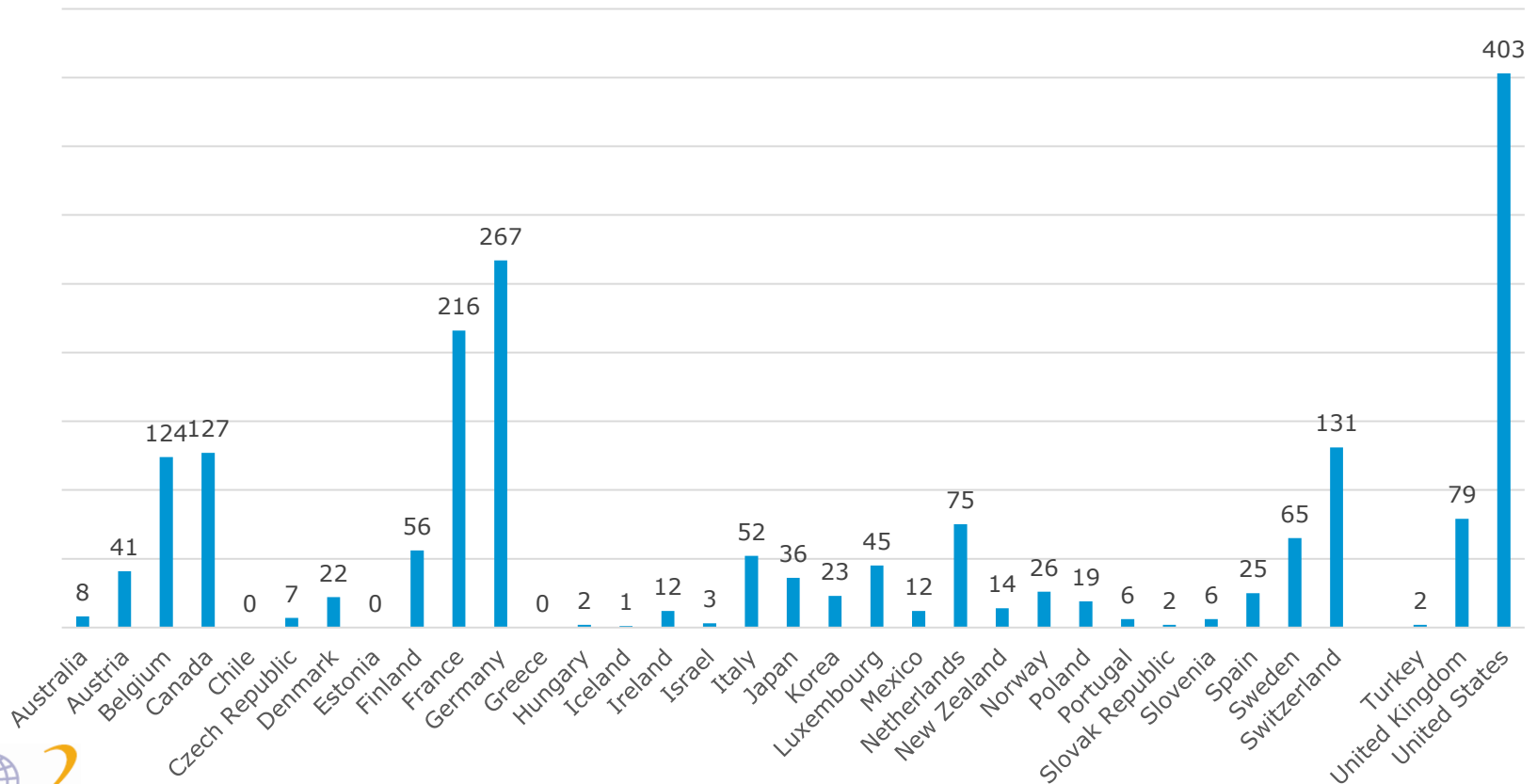
**Foundation For International Taxation
December 3-5, 2015
Mumbai**

MAP Cases General (OECD Countries)



MAP Cases Specific Countries (OECD)

Number of **New MAP Cases** Initiated in 2013 (OECD Countries)



Source: <http://www.oecd.org/ctp/dispute/map-statistics-2013.htm>

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- Americas

- **Argentina** had 3 MAP cases up to 2013
- **Brazil, Colombia, Peru, Uruguay, Venezuela** had no MAP cases up to 2013

- Asia

- **China** had between 10 and 20 per year
- **Taiwan** had 1 case in 2013
- **India, Indonesia, Malaysia, Philippines, Taiwan, Thailand, Vietnam** had no information

- EMEA

- **Egypt, Kazakhstan, Latvia** had no MAP cases up to 2013
- **Romania, Russia** had no information

MAP Cases TP Cases

		2013
Americas	Canada	98 ⁽¹⁾
	Mexico	4 ⁽²⁾
	United States	266
Asia	China	10-20 ⁽³⁾
	Japan	20-30 ⁽³⁾
	Singapore	3 ⁽³⁾
EMEA	Austria	50-70 ⁽³⁾
	Denmark	20 ⁽³⁾
	Finland	20-30 ⁽³⁾
	Germany	20 ⁽³⁾
	Lithuania	1
	Netherlands	50
	Norway	15-20 ⁽³⁾
	Sweden	20 ⁽³⁾
	Switzerland	13 ⁽³⁾

(1): resolved

(2): in 2012

(3): yearly

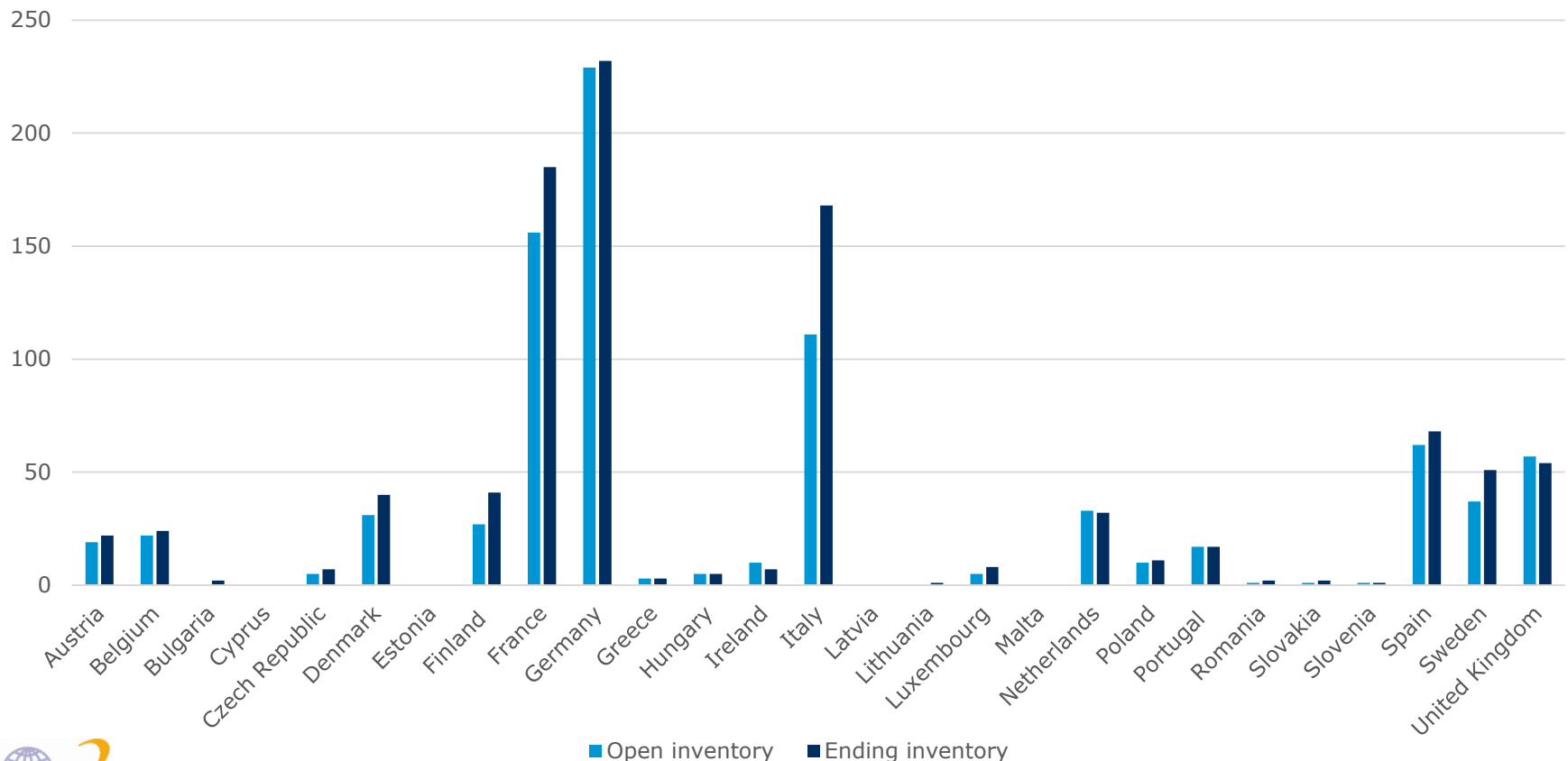


Source: EY 2014 global transfer pricing tax authority survey

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MAP Cases TP Cases (EU Convention)

Number of MAP Cases under the **EU Arbitration Convention** in 2013

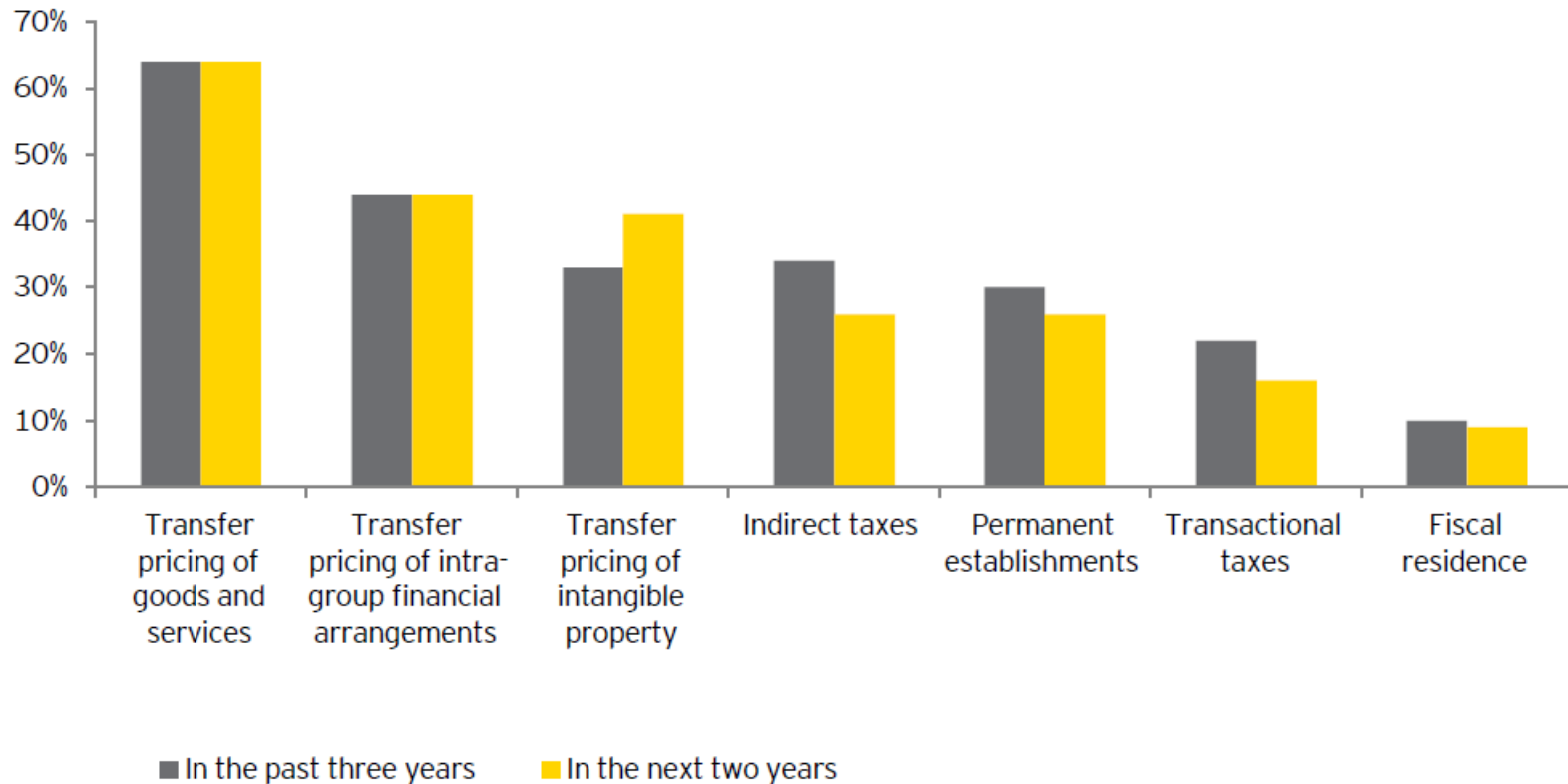


Topics Generating Controversies (Case Law)

	Argentina	Australia	Belgium	Canada	Czech Republic	Finland	France	Germany	India	Indonesia	Italy	Malaysia	Netherlands	Portugal	Russia	Spain	Sweden	United Kingdom	United States	Uruguay	Zimbabwe	TOTAL
Related party	7	1	1	1	1		2	4	115	1	3	1	3	8	1	5		4	16			174
ALP	1			5		1	2	1	12		1		2		2	1	2	1	6		1	38
Methodology	5	2	2	3					183				2						2	1		200
Comparability	6								238													244

Topics Generating Controversies (Before BEPS)

Most important areas of **transfer pricing controversy**



Topics Generating Controversies (After BEPS)

- Allocation of risk and re-characterization of the transactions
- Intangibles (and development CCAs)
- Services (and services CCAs)
- Financial transactions
- Business restructurings
- Attribution of profits to permanent establishments
- Documentation requirements
- Methodologies

Room for Improvement

- Improvements deriving from BEPS Action 14
 - Minimum standard
 - Good faith
 - Timely resolution
 - Access for all taxpayers
 - Periodic review (based, e.g., on statistics)
 - Engage into fora (e.g. Forum on Tax Administration MAP Forum)
 - Timely and complete reporting of the results
 - Peer reviews
 - Transparency on positions on arbitration
 - Publication of clear rules, guidelines and procedures on MAPs (incl. identification information and documentation to be provided)
 - Publication country profiles on shared public platforms
 - Authority of staff in charge of MAP process
 - Adequate resources dedicated
 - Assurance that settlements between tax authorities/taxpayers do not preclude access to MAP

Room for Improvement

- Improvements deriving from BEPS Action 14
 - Best practices
 - Include para. 2 in art. 9
 - Publication agreements reached
 - Development “global awareness”
 - Bilateral APA programmes
 - Implementation appropriate procedures
 - Suspension of collection procedures while MAP pending
 - Facilitate recourse to MAP
 - Explain relationship MAP vs. domestic remedies
 - Facilitate consultation on bona fide taxpayer-initiated foreign adjustments
 - Guidance on interest and penalties
 - Guidance on multilateral MAPs and APAs

Room for Improvement

- Further improvements
 - Adequate training competent authorities (understanding, e.g., facts and circumstances, FAR analysis, global value chain, economic analysis)
 - Mandatory nature MAPs
 - Better use of technology