

The Pike Law Firm, P.C.  
Customs and International Trade



## VIEW FROM THE PIKE



### U.S. Customs Issues First “APA Ruling” Since 2003



The ongoing global debate over the use of income tax transfer pricing rules/methodologies to support declared customs values of merchandise when imported from related suppliers recently received a welcome “update” from U.S. Customs and Border Protection (CBP). In a ruling issued in December of 2009, CBP approved the use of “transaction value” for an importer of automotive vehicles and parts when the customs values were based on prices set pursuant to a bilateral APA. In [HQ H029658](#), CBP ruled that, in addition to the APA itself, the importer had provided fairly objective evidence concerning the “normal pricing practices” of the automotive industry which demonstrated that the inter-company prices were arm’s length. In addition, CBP departed from its traditional reliance on examining the seller’s profit, and found that – consistent with the income tax methodology used in the APA – the buyer/importer had earned the requisite profit upon re-sale of its vehicles and parts to unrelated dealers to comport with CBP’s regulations. A more in-depth discussion of this ruling can be found [here](#). This new ruling may signal more willingness on the part of CBP to work with importers in “bridging the gap” between the transfer pricing and customs valuation rules for tangible goods when sold between related parties.

### Georgetown Law Center’s “International Trade Update” Highlights Developments In 2009



For many years, I have been honored to serve on the Advisory Board of the Georgetown Law Center’s annual “International Trade Update” program, which takes place every winter in Washington, D.C. This year’s conference highlighted many important issues facing global traders, including climate change, the environment, China, and trade policy in Congress.

I was pleased to moderate “The Year in Review In Customs Law” panel, which included a senior representative of CBP and distinguished private sector customs

attorneys. The panel focused on the ruling discussed above, a [new case](#) involving intellectual property enforcement by CBP, the increase in "Focused Assessment" and other customs audits, and significant decisions by the US Court of International Trade in 2009. As for trade policy, key staffers from Capitol Hill as well as the Deputy U.S. Trade Representative offered their insights into progress on various initiatives during the coming year. The resulting consensus found a common priority at both ends of Pennsylvania Avenue: getting Congress to pass the three existing free trade agreements with Korea, Colombia, and Panama which remain stalled. Little chance was given to any other trade priorities (such as re-launching the "Doha Round" of the World Trade Organization) gaining traction this year, thanks to the current health care legislation initiative and the general inertia which envelops Capitol Hill in an election year.

## IRS And Global Transfer Pricing Audits On The Uptick



The Internal Revenue Service and other tax authorities are significantly boosting their transfer pricing resources, with 1,500 proposed new hires at the IRS alone. In addition, certain tax authorities among the developed nations (including the U.S., Canada, U.K. and others) have begun sharing data on transfer pricing audits. Finally, Customs authorities are aligning with tax authorities to identify potential issues with customs valuation and transfer pricing. To prepare for these eventual tax and customs audits, our firm has a well-established informal network of transfer pricing professionals in every major trading jurisdiction. Although the circumstances of each

taxpayer/importer are different, the primary intercompany transactions targeted by the authorities involve the cross-border sale of tangible products and contract manufacturing – which directly impact the declared customs values of imported merchandise. Our firm's approach has always been to work with a company's transfer pricing advisors in developing "contemporaneous documentation" which satisfies *both* the tax and customs rules. Contact us today for more information about how our proven "dual approach" can help your company!

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Please don't hesitate to [contact me](#) if you need further information about the topics above, or on any other customs and trade-related matter. Until the next newsletter, may your businesses continue to thrive!

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