

**ANNOUNCEMENT AND REPORT  
CONCERNING  
ADVANCE PRICING AGREEMENTS**

March 31, 2016

This Announcement is issued pursuant to § 521(b) of Pub. L. 106-170, the Ticket to Work and Work Incentives Improvement Act of 1999, which requires the Secretary of the Treasury to report annually to the public concerning advance pricing agreements (APAs) and the Advance Pricing and Mutual Agreement Program (APMA Program), formerly known as the Advance Pricing Agreement Program (APA Program). The first report covered calendar years 1991 through 1999. Subsequent reports covered each calendar year 2000 through 2014 separately. This seventeenth report describes the experience, structure, and activities of the APMA Program during calendar year 2015. It does not provide guidance regarding the application of the arm's length standard.

Part I of this report includes information on the structure, composition, and operation of the APMA Program; Part II presents statistical data; and Part III includes general descriptions of various elements of the APAs executed in 2015, including types of transactions covered, transfer pricing methods used, and completion time.

Hareesh Dhawale  
Director, Advance Pricing and Mutual Agreement Program

## **Part I. The APMA Program – Structure, Composition, and Operation** **[PUB. L. 106-170 § 521(b)(2)(A)]**

In February of 2012, the former APA Program was moved from the Office of Chief Counsel to the Office of Transfer Pricing Operations within the Large Business and International Division of the IRS and combined with the United States Competent Authority staff responsible for transfer pricing cases, thereby forming the APMA Program.

After the formation of the APMA Program, the team that developed the IRS position in a bilateral or multilateral case and finalized the APA with the taxpayer also became responsible for discussing the case and obtaining an agreement with the treaty partner. This compression of functions into a single APA team has helped to eliminate inefficiencies and has decreased the amount of time it takes to reach resolution once a case is set for discussion with the treaty partner.

As of December 31, 2015, the APMA Program was comprised of 62 team leaders, 21 economists, and 10 senior managers organized into 10 groups (7 team leader groups and 3 economist groups). Each team leader group has responsibility for cases involving certain countries with one of the economist groups also taking responsibility of a country. Because of the large volume of cases with certain treaty partners, some countries are the responsibility of more than one group. The APMA Program's main office is located in Washington, DC, and it also has a significant presence in San Francisco and the Los Angeles area.

On August 31, 2015, new revenue procedures governing MAP and APA applications were published in 2015-35 I.R.B. 236 and 263, respectively. Revenue Procedure (Rev. Proc.) 2015-41 provides guidance and instructions on filing APA requests as well as guidance and information on the administration of APAs. Rev. Proc. 2015-41 updates and supersedes Rev. Proc. 2006-9, 2006-1 C.B. 278, as modified by Rev. Proc. 2008-31, 2008-1 C.B. 1133, which is also superseded. Rev. Proc. 2015-40 provides procedures and guidance on requesting assistance from the U.S. Competent Authority where the taxpayer believes that the actions of the United States or a treaty country result or will result in the taxpayer being subject to taxation not in accordance with the applicable U.S. tax treaty. Rev. Proc. 2015-40 updates and supersedes Rev. Proc. 2006-54, 2006-2 C.B. 1035. These revenue procedures reflect the changes in APMA's structure and were informed by the cumulative experience of more than 20 years of APA practice in the United States.

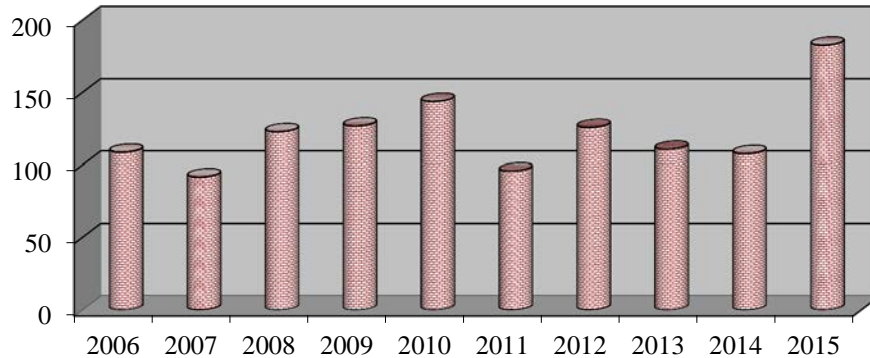
The model APA agreement, which was last significantly revised in 2009, is currently under review for future changes and appears in this report as Appendix 1. A list of primary APMA contacts is included as Appendix 2.

**Part II. APMA Program Statistical Data**  
**[Pub. L. 106-170 § 521(b)(2)(C)(i-viii)]**

**Table 1: APA Applications Filed**  
**§ 521(b)(2)(C)(i)**

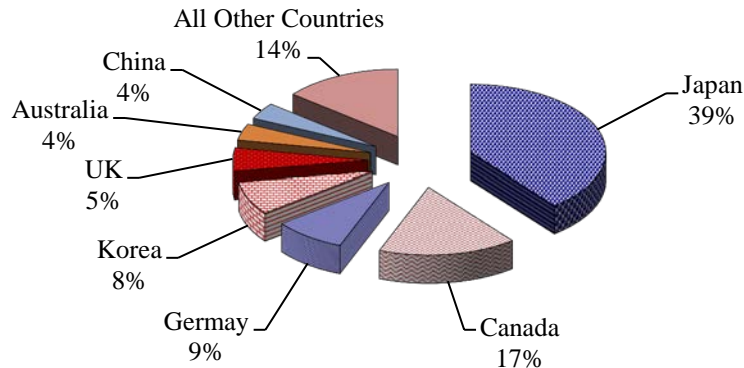
	<b>Unilateral</b>	<b>Bilateral</b>	<b>Multilateral</b>	<b>Total</b>
Filed 1991-1999 <sup>1</sup>				401
Filed 2000-2014	490	1067	6	1563
Filed in 2015	52	127	4	183
<b>Total Filed 1991-2015</b>				<b>2147</b>

**Applications Filed**  
**2006-2015**



The table above illustrates the number of applications filed per year; however, the table does not include situations in which the taxpayer has paid a user fee but has not yet submitted a substantially complete APA request. As of December 31, 2015, APMA had received 14 user fee filings in addition to the 183 complete APA applications.

**Bilateral APAs**  
**Filed by Country 2015**

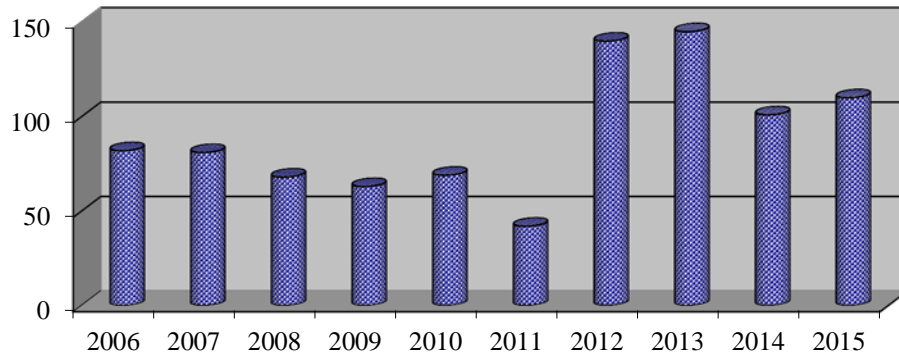


<sup>1</sup> The first APA Statutory Report, which compiled APA data from 1991-1999, did not report the cumulative number of applications for those years by submission type, so the cumulative totals cannot be reported in that manner.

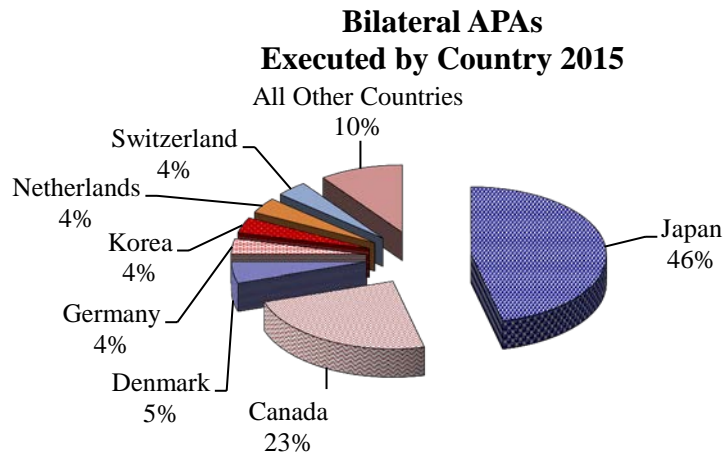
**Table 2: Executed and Pending APAs  
§ 521(b)(2)(C)(ii-vi)**

	Unilateral	Bilateral	Multilateral	Total
Total Executed 1991-2014	509	878	14	1401
Total Executed in 2015	30	80	0	110
<b>Total Executed 1991-2015</b>	<b>539</b>	<b>958</b>	<b>14</b>	<b>1511</b>
<b>Total Pending</b>	<b>85</b>	<b>316</b>	<b>9</b>	<b>410</b>
<i>Renewals Executed in 2015</i>	<i>18</i>	<i>48</i>	<i>0</i>	<i>66</i>
<i>Renewals Pending</i>	<i>40</i>	<i>146</i>	<i>2</i>	<i>188</i>

**APAs Executed  
2006-2015**



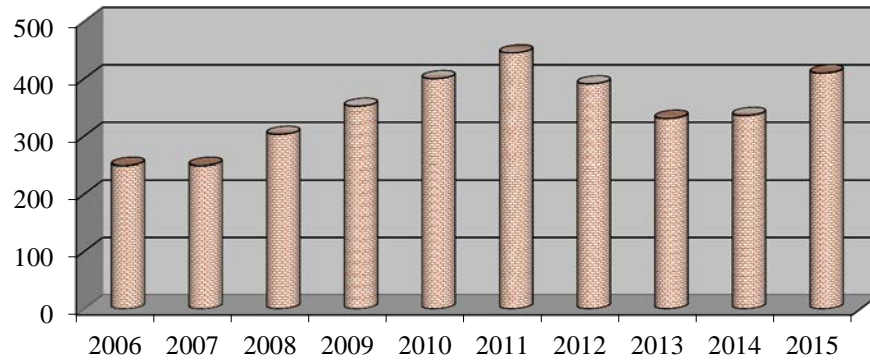
Of the 110 agreements executed in 2015, 44 of the agreements (40 percent) were new APAs (*i.e.*, not a renewal of a prior APA). This was a decrease from the 53 (52 percent) new APAs executed in 2014.



As the chart above illustrates, nearly three quarters of the total number of bilateral APAs executed in 2015 involved the United States entering into mutual agreements with Japan or

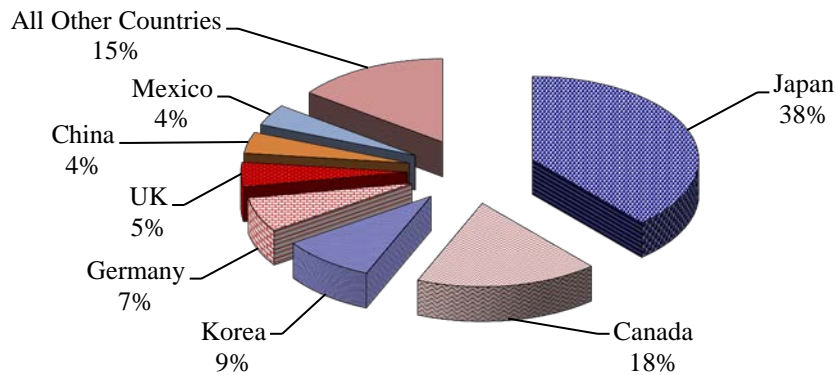
Canada. A notable milestone achieved by APMA in 2015 was the execution of the first bilateral APA between the United States and Italy.

**Pending APAs  
2006-2015**



The number of pending APAs rose in 2015 due largely to the record numbers of APA requests received during the fourth quarter. Japan and Canada continued to account for more than half of the pending bilateral APAs in 2015.

**Bilateral APAs  
Pending by Country 2015**

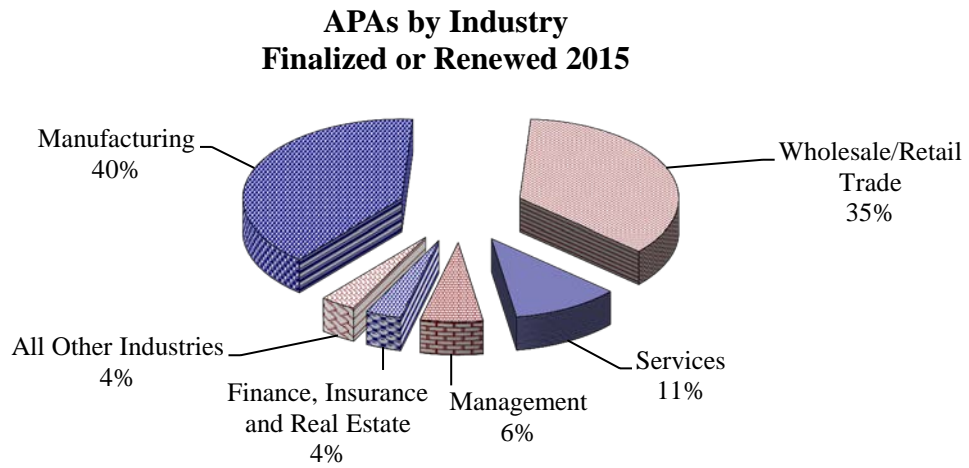


**Table 3: APAs Revoked or Cancelled and Applications Withdrawn  
§ 521(b)(2)(C)(vii)**

	Unilateral	Bilateral	Multilateral	Total
Revoked or Cancelled in 2015	0	0	0	0
<b>Total Revoked or Cancelled 1991-2015</b>				<b>11</b>
Applications Withdrawn in 2015	4	6	0	10
<b>Total Applications Withdrawn 1991-2015</b>				<b>200</b>

**Table 4: APAs Finalized or Renewed<sup>2</sup> by Industry  
§ 521(b)(2)(C)(viii)**

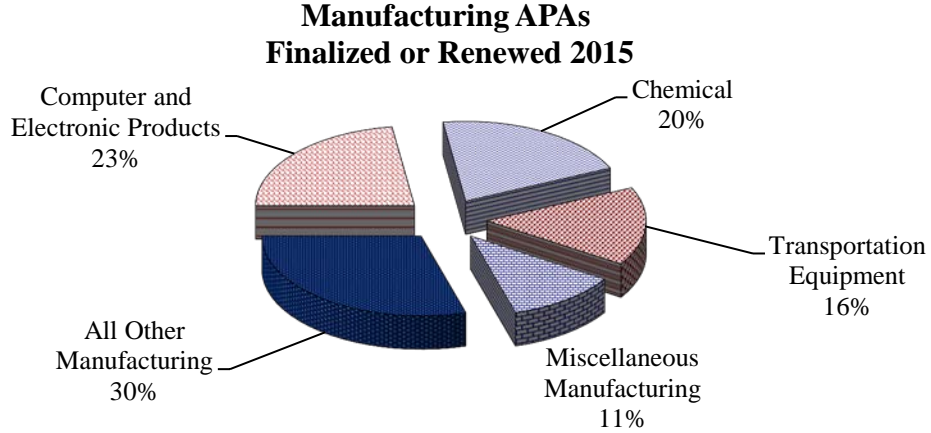
Industry	
Manufacturing	44
Wholesale/Retail Trade	39
Services	12
Management	7
Finance, Insurance and Real Estate	4
All Other Industries	4



<sup>2</sup> APAs finalized or renewed are the same as APAs executed.

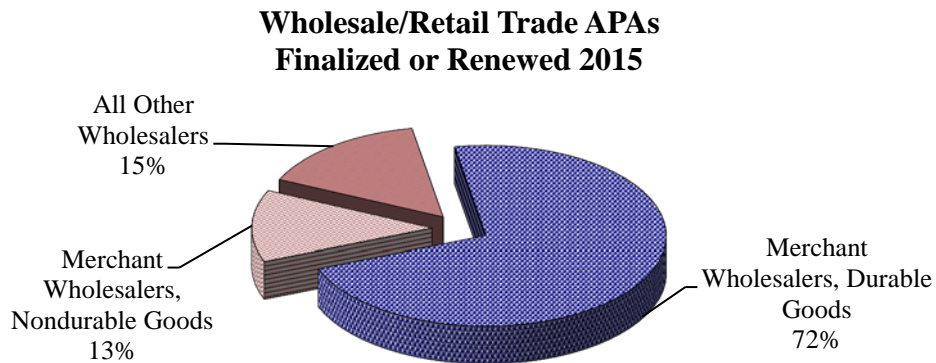
**Table 4a: Manufacturing APAs Finalized or Renewed**

<b>Manufacturing</b>	
Computer and Electronic Products	10
Chemical	9
Transportation Equipment	7
Miscellaneous Manufacturing <sup>3</sup>	5
All Other Types of Manufacturing	13



**Table 4b: Wholesale/Retail Trade APAs Finalized or Renewed**

<b>Wholesale/Retail Trade</b>	
Merchant Wholesalers, Durable Goods	28
Merchant Wholesalers, Nondurable Goods	5
All Other Types of Other Wholesale/Retail Trade	6

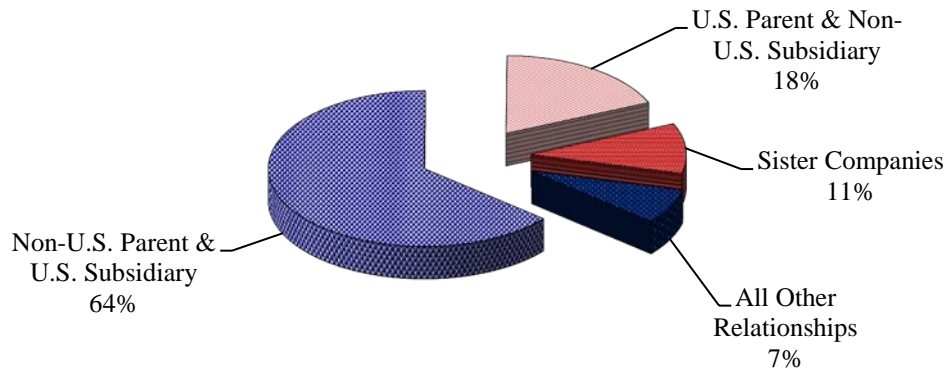


<sup>3</sup> Miscellaneous Manufacturing is NAICS code 339.

**Part III. General Descriptions of APAs Executed in 2015**  
**[Pub. L. 106-170 § 521(b)(2)(D) and (E)]**

**Nature of the Relationships**  
**§ 521(b)(2)(D)(i)**

**Relationships between Controlled Parties 2015**



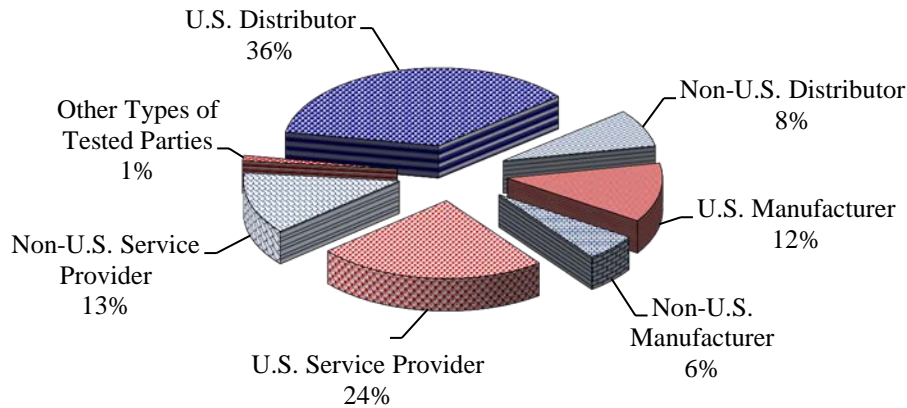
As in prior years, more than half of the APAs executed in 2015 involved transactions between non-U.S. parents and U.S. subsidiaries.

**Covered Transactions, Functions and Risks, and Tested Parties**  
**§ 521(b)(2)(D)(ii-iii)**

In the majority of APAs, the covered transactions involve numerous business functions and risks. For instance, with respect to functions, APAs involving manufactured products typically involve a controlled group that conducts research and development (R&D), engages in product design and engineering, manufactures the product, markets and distributes the product, and performs support functions such as legal, finance, and human resources services. Regarding risks, the controlled group may assume a variety of risks including market risks, R&D risks, financial risks, credit and collection risks, product liability risks, and general business risks. In the APA evaluation process a significant amount of time and effort is devoted to understanding how the functions and risks are allocated amongst the controlled group of companies that are party to the covered transactions. Generally, for methods requiring selection of a tested party, the tested party that is chosen will be the least complex of the controlled taxpayers that does not make nonroutine contributions.

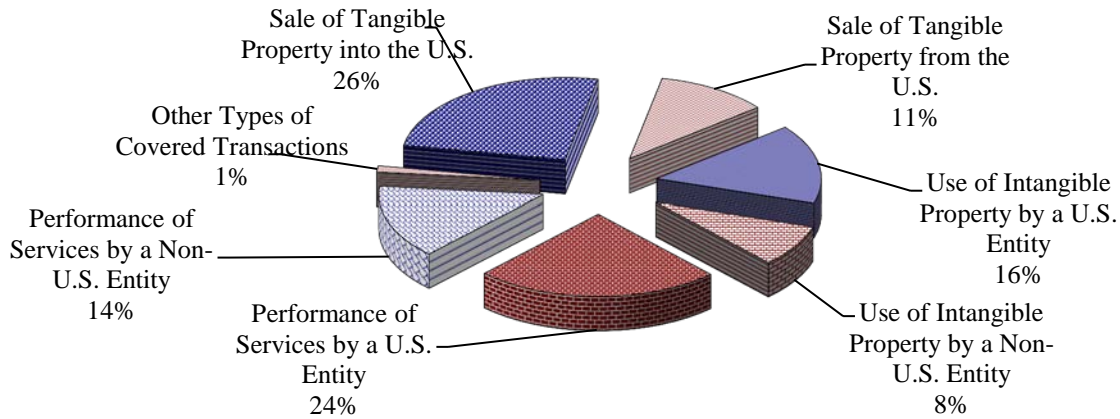


### Types of Tested Parties 2015



Consistent with prior years, more than half of the tested parties of the APAs executed in 2015<sup>4</sup> fell into one of two categories, *i.e.*, U.S. distributors and U.S. service providers. Combined, these two types of tested parties represent 60 percent of the total.

### Types of Covered Transactions 2015

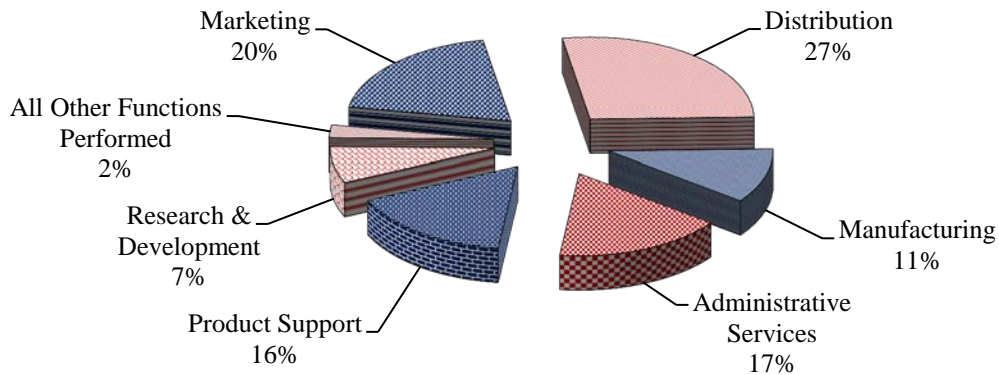


Although 75 percent of covered transactions<sup>5</sup> involve tangible goods and services transactions, the IRS also has successfully completed numerous APAs involving transfers of intangibles. While complex transactions involving intangibles may be more challenging and represent a smaller percentage of the covered transactions in 2015 (24 percent), the IRS continues to seek opportunities to work with taxpayers and treaty partners to provide prospective certainty for such transactions wherever appropriate.

<sup>4</sup> Not all APAs executed in 2015 involved a tested party.

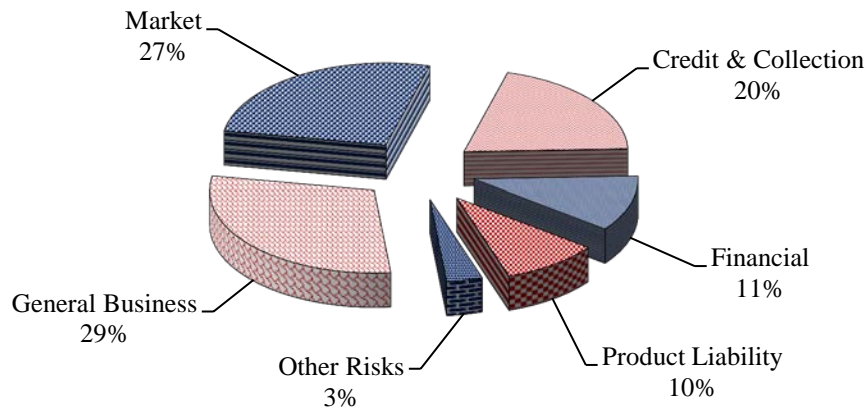
<sup>5</sup> APAs often cover more than one type of transaction.

### Tested Party Functions 2015



More than 60 percent of the tested parties in the APAs executed in 2015 involved distribution or related functions, *i.e.*, marketing and product support.

### Tested Party Risks 2015

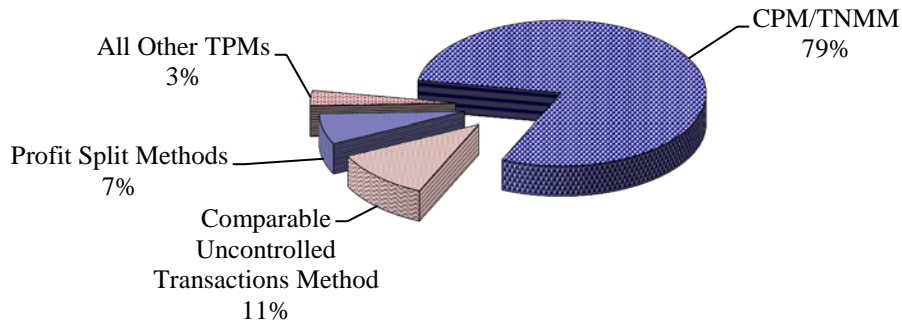


The majority of tested parties bear multiple risks. The chart above illustrates all of the risks borne by the tested parties for APAs executed in 2015.

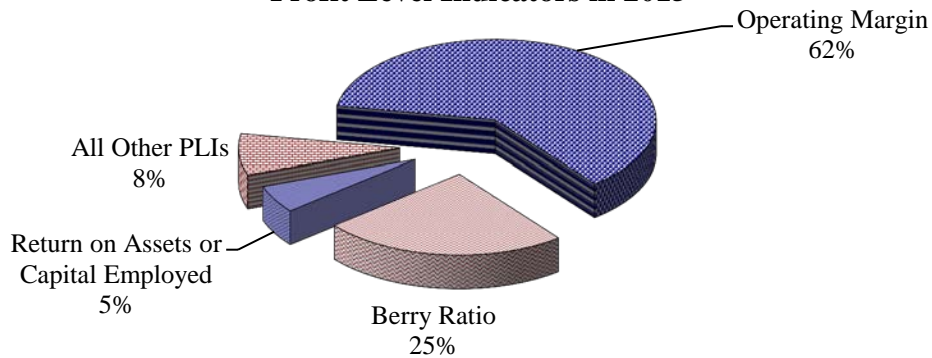
### Transfer Pricing Methods Used § 521(b)(2)(D)(iv)

As shown on the following graphs, and consistent with prior years, the primary transfer pricing method (TPM) used for transfers of both tangible and intangible property in APAs executed in 2015 was the comparable profits method/transactional net margin method (CPM/TNMM).

### Tangible and Intangible Property Transfer Pricing Methods 2015



### Tangible and Intangible Property CPM/TNMM Profit Level Indicators in 2015

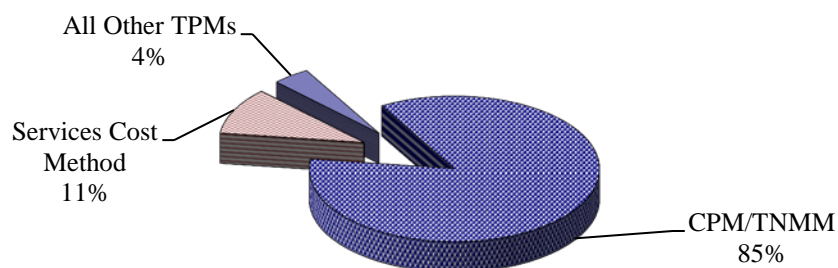


In controlled transactions using the CPM/TNMM, operating margin continues to be the most common profit level indicator (PLI) used to benchmark results for transfers of tangible and intangible property. As used here, “operating margin” means the ratio of operating profits to sales<sup>6</sup> and “Berry Ratio” means the ratio of gross profit to operating expenses.<sup>7</sup>

<sup>6</sup> See Treas. Reg. § 1.482-5(b)(4)(ii)(A).

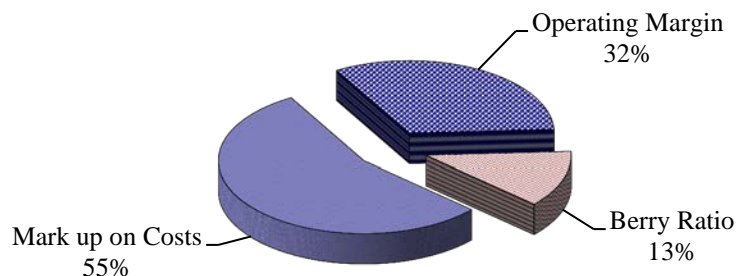
<sup>7</sup> See Treas. Reg. § 1.482-5(b)(4)(ii)(B).

### Services Transfer Pricing Methods in 2015



For services transactions, the majority of cases applied the CPM/TNMM or the services cost method. The services cost method evaluates the amount charged for certain services with reference to the total services costs.<sup>8</sup>

### Services CPM/TNMM Profit Level Indicators in 2015



When the CPM/TNMM is used to benchmark services transactions, mark up on costs is the most frequently used PLI.

### Sources of Comparables, Comparables Selection Criteria, and Nature of Adjustments to Comparables or Tested Party Data § 521(b)(2)(D)(v-vii)

For the APAs executed in 2015 that used external comparables data in the analysis, the most widely used data source for comparables was Standard and Poor's Compustat/Capital IQ database. Other sources were also used in appropriate cases (*e.g.*, where the tested party was not the U.S. entity or transaction-based methods were applied). Other commonly used sources include the databases listed in Table 5.

<sup>8</sup> See Treas. Reg. § 1.482-9(b).

**Table 5: Commonly Used Sources of Comparable Data**

Avention (formerly known as OneSource)	Mergent
Bloomberg	Orbis
Disclosure	Recap
Global Vantage	RoyaltySource
ktMINE	RoyaltyStat
LoanConnector	Worldscope

In making comparability adjustments, the standard balance sheet adjustments identified in Treas. Reg. § 1.482-1(d) and § 1.482-5(c), including adjustments for differing amounts of payables, receivables, and inventory, were made in the majority of cases. Where appropriate, adjustments for different accounting practices were made to convert from LIFO to FIFO inventory accounting, and a small number of cases also involved the accounting reclassification of expenses, *e.g.*, from COGS to operating expenses.

### **Ranges, Targets, and Adjustment Mechanisms** **§ 521(b)(2)(D)(viii-ix)**

The majority of transactions covered in APAs target an interquartile range as described in Treas. Reg. § 1.482-1(e)(2)(iii)(C). Where the transaction involves a royalty payment for the use of intangible property, both specific royalty rates and ranges have been used. In some cases where the covered transaction is the payment of a royalty based solely on external royalty agreements, a secondary method, *e.g.*, a test of the post-royalty operating margin, has also been used. The testing periods of the APAs executed in 2015 were either: (1) a single year, (2) the term of the APA only, or (3) the term of the APA plus rollback years.

APAs executed in 2015 include a number of mechanisms for making adjustments to tested party results when the results fall outside the range or do not match the point required by the APA. The following are examples of the mechanisms used: an adjustment bringing the tested party's results to the closer edge of the range applied to the results of a single year; an adjustment to the closer edge of the range applied to the results over the APA term; an adjustment to the specified point or royalty rate; or an adjustment to the median of the range for a single year.

### **Critical Assumptions** **§ 521(b)(2)(D)(v)**

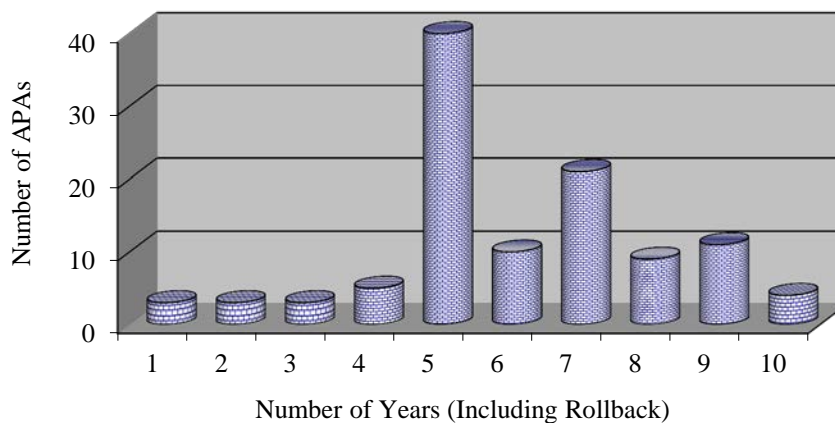
The model APA used by the IRS (included as Appendix 1 of this report) includes a standard critical assumption that there will be no material changes to the taxpayer's business or to its tax or financial accounting practices during the APA term. Each of the APAs executed in 2015 included this standard critical assumption. A few bilateral cases have included critical assumptions tied to either the taxpayer's profitability in a certain year or over the term of the APA, or to the amount of non-covered transactions as a percentage of the taxpayer's revenue. Pursuant to § 7.06(3) of Rev. Proc. 2015-41, 2015 I.R.B. 263, APMA will cancel an APA in the event of a failure of a critical assumption unless the parties agree to revise the APA.

**Term Lengths of APAs Executed in 2015**  
**§ 521(b)(2)(D)(x)**

**Table 6: Term Lengths (Including Rollback Years)**

<b>Term Length (years)</b>	<b>Number of APAs</b>
1	≤3
2	≤3
3	≤3
4	5
5	40
6	10
7	21
8	9
9	11
10	4
>10	7
<b>Average</b>	<b>7 years</b>

**Term Length of APAs in 2015**

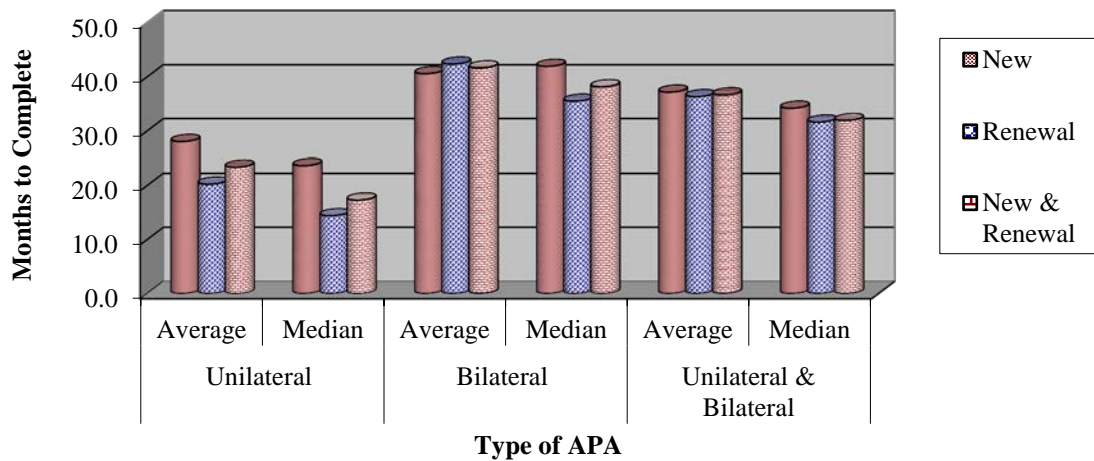


As described in § 3.03(1) of Rev. Proc. 2015-41, taxpayers should request an APA term that would cover at least 5 prospective years, although the appropriate APA term is decided on a case-by-case basis. Taxpayers may also request that the APA be “rolled back” to cover one or more earlier taxable years. Of the APAs executed in 2015, only 24 (22 percent) included rollback years. For those APAs with terms of greater than 5 years, a substantial number of those were submitted as a request for a 5-year term, and the additional years were agreed to between the taxpayer and the IRS (or, in the case of a bilateral APA, between the IRS and the foreign government upon the taxpayer’s request) to ensure a reasonable amount of prospectivity in the APA term.

**Amount of Time Taken to Complete New and Renewal APAs**  
**§ 521(b)(2)(E)**

**Table 7: Months to Complete New and Renewal APAs Executed in 2015**  
**§ 521(b)(2)(E)**

	Unilateral		Bilateral		Unilateral & Bilateral	
	Average	Median	Average	Median	Average	Median
New	28.0	23.7	40.6	41.9	<b>37.2</b>	<b>34.2</b>
Renewal	20.2	14.4	42.4	35.5	<b>36.3</b>	<b>31.6</b>
<b>New &amp; Renewal</b>	<b>23.4</b>	<b>17.3</b>	<b>41.7</b>	<b>38.2</b>	<b>36.7</b>	<b>31.9</b>



The median time required to complete APAs executed in 2015 decreased from 2014 (31.9 months in 2015 compared to 35.3 in 2014).

**Efforts to Ensure Compliance with APAs**  
**§ 521(b)(2)(F)**

As described in § 7.02 (1) of Rev. Proc. 2015-41, APA taxpayers are required to file annual reports to demonstrate compliance with the terms and conditions of the APA. The filing and review of annual reports is a critical part of the APA process. Through annual report review, the APMA Program monitors taxpayer compliance with APAs on a contemporaneous basis. Annual report review also provides current information on the success or problems associated with the various TPMs adopted in the APA process.

Each report received by the APMA Program is assigned to a designated APMA team leader. Whenever possible, annual report reviews are assigned to the team leader who worked the case, or another staff member who is already familiar with the relevant facts and terms of the APA. Other team leaders and economists may assist the assigned staff member as well. The annual report is also sent to the field personnel with exam jurisdiction over the taxpayer. The field

personnel conduct a compliance review and coordinate with APMA personnel to resolve any questions or problems that might arise.

**Nature of Documentation Required in Annual Report**  
**§ 521(b)(2)(D)(xi)**

APAs executed in 2015 required taxpayers to provide various documents with their annual reports, depending on the specific facts of the case. While not every annual report will include each of the documents listed below the documents listed below are required where the facts demonstrate a need for such documentation.

1.	Statement identifying all material differences between Taxpayer's business operations during APA year and description of Taxpayer's business operations contained in Taxpayer's request for APA. If there have been no such material differences, a statement to that effect.
2.	Statement of all material changes in the Taxpayer's accounting methods and classifications, and methods of estimation, from those described or used in Taxpayer's request for the APA. If there has been no material change in accounting methods and classifications or methods of estimation, a statement to that effect.
3.	Description of any failure to meet critical assumptions. If there has been none, a statement to that effect.
4.	Copy of the APA.
5.	Financial analysis demonstrating Taxpayer's compliance with TPM.
6.	Organizational chart.
7.	Any change to the taxpayer notice information in section 14 of the APA.
8.	The amount, reason for, and financial analysis of any compensating adjustment, for the APA year, including but not limited to: the amounts paid or received by each affected entity; the character (such as capital or ordinary expense) and country source of the funds transferred, and the specific line item(s) of any affected U.S. tax return; and any change to any entity classification for federal income tax purposes of any member of Taxpayer's group that is relevant to the APA.
9.	The amounts, description, reason for, and financial analysis of any book-tax difference relevant to the TPM for the APA year, as reflected on Schedule M-1 or Schedule M-3 of the U.S. return for the APA year.
10.	Financial statements and any necessary account detail to show compliance with the TPM, with a copy of the opinion from an independent certified public accountant or other documentation required by paragraph 5(f) of the APA.
11.	Where required by paragraph 5(f) of the APA, certified public accountant's opinion that financial statements present fairly the financial position of Taxpayer and the results of its operations, in accordance with a foreign GAAP.
12.	Where applicable, financial statements as prepared in accordance with a foreign GAAP.
13.	Various work papers.
14.	Where applicable, a review of the financial statements by a certified public accountant.



**Approaches for Sharing of Currency or Other Risks**  
**§ 521(b)(2)(D)(xii)**

In appropriate cases, APAs may provide specific approaches for dealing with currency risk, such as adjustment mechanisms and/or critical assumptions.

**APPENDIX 1– Model APA (based on Rev. Proc. 2006-9)**  
**[§ 521(b)(2)(B)]**

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**ADVANCE PRICING AGREEMENT**  
**between**  
**[Insert Taxpayer’s Name]**  
**and**  
**THE INTERNAL REVENUE SERVICE**

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**PARTIES**

The Parties to this Advance Pricing Agreement (APA) are the Internal Revenue Service (IRS) and [Insert Taxpayer’s Name], EIN \_\_\_\_\_.

**RECITALS**

[Insert Taxpayer Name] is the common parent of an affiliated group filing consolidated U.S. tax returns (collectively referred to as “Taxpayer”), and is entering into this APA on behalf of itself and other members of its consolidated group.

Taxpayer’s principal place of business is [City, State]. [Insert general description of taxpayer and other relevant parties].

This APA contains the Parties’ agreement on the best method for determining arm’s-length prices of the Covered Transactions under I.R.C. section 482, the Treasury Regulations thereunder, and any applicable tax treaties.

{If renewal, add} [Taxpayer and IRS previously entered into an APA covering taxable years ending \_\_\_\_ to \_\_\_\_\_, executed on \_\_\_\_\_.]

**AGREEMENT**

The Parties agree as follows:

1. *Covered Transactions.* This APA applies to the Covered Transactions, as defined in Appendix A.
2. *Transfer Pricing Method.* Appendix A sets forth the Transfer Pricing Method (TPM) for the Covered Transactions.

3. *Term.* This APA applies to the APA Term, as defined in Appendix A.

4. *Operation.*

a. Revenue Procedure 2006-9 governs the interpretation, legal effect, and administration of this APA.

b. Nonfactual oral and written representations, within the meaning of sections 10.04 and 10.05 of Revenue Procedure 2006-9 (including any proposals to use particular TPMs), made in conjunction with the APA Request constitute statements made in compromise negotiations within the meaning of Rule 408 of the Federal Rules of Evidence.

5. *Compliance.*

a. Taxpayer must report its taxable income in an amount that is consistent with Appendix A and all other requirements of this APA on its timely filed U.S. Return. However, if Taxpayer's timely filed U.S. Return for any taxable year covered by this APA (APA Year) is filed prior to, or no later than 60 days after, the effective date of this APA, then Taxpayer must report its taxable income for that APA Year in an amount that is consistent with Appendix A and all other requirements of this APA either on the original U.S. Return or on an amended U.S. Return filed no later than 120 days after the effective date of this APA, or through such other means as may be specified herein.

b. *{ Use or edit the following when U.S. Group or Foreign Group contains more than one member. }* [This APA addresses the arm's-length nature of prices charged or received in the aggregate between Taxpayer and Foreign Participants with respect to the Covered Transactions. Except as explicitly provided, this APA does not address and does not bind the IRS with respect to prices charged or received, or the relative amounts of income or loss realized, by particular legal entities that are members of U.S. Group or that are members of Foreign Group.]

c. For each APA Year, if Taxpayer complies with the terms and conditions of this APA, then the IRS will not make or propose any allocation or adjustment under I.R.C. section 482 to the amounts charged in the aggregate between Taxpayer and Foreign Participant[s] with respect to the Covered Transactions.

d. If Taxpayer does not comply with the terms and conditions of this APA, then the IRS may:

i. enforce the terms and conditions of this APA and make or propose allocations or adjustments under I.R.C. section 482 consistent with this APA;

ii. cancel or revoke this APA under section 11.06 of Revenue Procedure 2006-9; or

iii. revise this APA, if the Parties agree.

e. Taxpayer must timely file an Annual Report (an original and four copies) for each APA Year in accordance with Appendix C and section 11.01 of Revenue Procedure 2006-9. Taxpayer must file the Annual Report for all APA Years through the APA Year ending [insert year] by [insert date]. Taxpayer must file the Annual Report for each subsequent APA Year by [insert month and day] immediately following the close of that APA Year. (If any date falls on a weekend or holiday, the Annual Report shall be due on the next date that is not a weekend or holiday.) The IRS may request additional information reasonably necessary to clarify or complete the Annual Report. Taxpayer will provide such requested information within 30 days. Additional time may be allowed for good cause.

f. The IRS will determine whether Taxpayer has complied with this APA based on Taxpayer's U.S. Returns, the Financial Statements, and other APA Records, for the APA Term and any other year necessary to verify compliance. For Taxpayer to comply with this APA, *{use the following or an alternative}* an independent certified public accountant must render an opinion that Taxpayer's Financial Statements present fairly, in all material respects, Taxpayer's financial position under U.S. GAAP.

g. In accordance with section 11.04 of Revenue Procedure 2006-9, Taxpayer will (1) maintain the APA Records, and (2) make them available to the IRS in connection with an examination under section 11.03. Compliance with this subparagraph constitutes compliance with the record-maintenance provisions of I.R.C. sections 6038A and 6038C for the Covered Transactions for any taxable year during the APA Term.

h. The True Taxable Income within the meaning of Treasury Regulations sections 1.482-1(a)(1) and (i)(9) of a member of an affiliated group filing a U.S. consolidated return will be determined under the I.R.C. section 1502 Treasury Regulations.

i. *{Optional for US Parent Signatories}* To the extent that Taxpayer's compliance with this APA depends on certain acts of Foreign Group members, Taxpayer will ensure that each Foreign Group member will perform such acts.

6. *Critical Assumptions.* This APA's critical assumptions, within the meaning of Revenue Procedure 2006-9, section 4.05, appear in Appendix B. If any critical assumption has not been met, then Revenue Procedure 2006-9, section 11.06, governs.

7. *Disclosure.* This APA, and any background information related to this APA or the APA Request, are: (1) considered "return information" under I.R.C. section 6103(b)(2)(C); and (2) not subject to public inspection as a "written determination" under I.R.C. section 6110(b)(1). Section 521(b) of Pub. L. 106-170 provides that the Secretary of the Treasury must prepare a report for public disclosure that includes certain specifically designated information concerning all APAs, including this APA, in a form that does not reveal taxpayers' identities, trade secrets, and proprietary or confidential business or financial information.

8. *Disputes.* If a dispute arises concerning the interpretation of this APA, the Parties will seek a resolution by the Director of the Advance Pricing and Mutual Agreement Program, to the extent reasonably practicable, before seeking alternative remedies.

9. *Materiality.* In this APA the terms “material” and “materially” will be interpreted consistently with the definition of “material facts” in Revenue Procedure 2006-9, section 11.06(4).

10. *Section Captions.* This APA’s section captions, which appear in *italics*, are for convenience and reference only. The captions do not affect in any way the interpretation or application of this APA.

11. *Terms and Definitions.* Unless otherwise specified, terms in the plural include the singular and vice versa. Appendix D contains definitions for capitalized terms not elsewhere defined in this APA.

12. *Entire Agreement and Severability.* This APA is the complete statement of the Parties’ agreement. The Parties will sever, delete, or reform any invalid or unenforceable provision in this APA to approximate the Parties’ intent as nearly as possible.

13. *Successor in Interest.* This APA binds, and inures to the benefit of, any successor in interest to Taxpayer.

14. *Notice.* Any notices required by this APA or Revenue Procedure 2006-9 must be in writing. Taxpayer will send notices to the IRS at the address and in the manner set forth in Revenue Procedure 2006-9, section 4.11. The IRS will send notices to:

Taxpayer Corporation Attn: Jane Doe, Sr. Vice President (Taxes) 1000 Any Road Any City, USA 10000 (phone: _____)
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15. *Effective Date and Counterparts.* This APA is effective starting on the date, or later date of the dates, upon which all Parties execute this APA. The Parties may execute this APA in counterparts, with each counterpart constituting an original.

**WITNESS,**

The Parties have executed this APA on the dates below.

**[Taxpayer Name in all caps]**

By: \_\_\_\_\_ Date: \_\_\_\_\_, 201\_\_\_\_  
Jane Doe  
Sr. Vice President (Taxes)

**IRS**

By: \_\_\_\_\_ Date: \_\_\_\_\_, 201\_\_\_\_  
Hareesh Dhawale  
Director, Advance Pricing and Mutual Agreement Program

## APPENDIX A

### COVERED TRANSACTIONS AND TRANSFER PRICING METHOD (TPM)

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#### 1. Covered Transactions.

[Define the Covered Transactions.]

#### 2. APA Term.

This APA applies to Taxpayer's taxable years ending \_\_\_\_\_ through \_\_\_\_\_ (APA Term).

#### 3. TPM.

{Note: If appropriate, adapt language from the following examples.}

[The Tested Party is \_\_\_\_\_.]

- **CUP Method**

The TPM is the comparable uncontrolled price (CUP) method. The Arm's Length Range of the price charged for \_\_\_\_\_ is between \_\_\_\_\_ and \_\_\_\_\_ per unit.

- **CUT Method**

The TPM is the CUT Method. The Arm's Length Range of the royalty charged for the license of \_\_\_\_\_ is between \_\_\_\_% and \_\_\_\_% of [Taxpayer's, Foreign Participants', or other specified party's] Net Sales Revenue. [Insert definition of net sales revenue or other royalty base.]

- **Resale Price Method (RPM)**

The TPM is the resale price method (RPM). The Tested Party's Gross Margin for any APA Year is defined as follows: the Tested Party's gross profit divided by its sales revenue (as those terms are defined in Treasury Regulations sections 1.482-5(d)(1) and (2)) for that APA Year. The Arm's Length Range is between \_\_\_\_% and \_\_\_\_%, and the Median of the Arm's Length Range is \_\_\_\_%.

- **Cost Plus Method**

The TPM is the cost plus method. The Tested Party's Cost Plus Markup is defined as follows for any APA Year: the Tested Party's ratio of gross profit to production

costs (as those terms are defined in Treasury Regulations sections 1.482-3(d)(1) and (2)) for that APA Year. The Arm's Length Range is between \_\_\_% and \_\_\_%, and the Median of the Arm's Length Range is \_\_\_%.

- **CPM with Berry Ratio PLI**

The TPM is the comparable profits method (CPM). The profit level indicator is a Berry Ratio. The Tested Party's Berry Ratio is defined as follows for any APA Year: the Tested Party's gross profit divided by its operating expenses (as those terms are defined in Treasury Regulations sections 1.482-5(d)(2) and (3)) for that APA Year. The Arm's Length Range is between \_\_\_ and \_\_\_, and the Median of the Arm's Length Range is \_\_\_.

- **CPM using an Operating Margin PLI**

The TPM is the comparable profits method (CPM). The profit level indicator is an operating margin. The Tested Party's Operating Margin is defined as follows for any APA Year: the Tested Party's operating profit divided by its sales revenue (as those terms are defined in Treasury Regulations section 1.482-5(d)(1) and (4)) for that APA Year. The Arm's Length Range is between \_\_\_% and \_\_\_%, and the Median of the Arm's Length Range is \_\_\_%.

- **CPM using a Three-year Rolling Average Operating Margin PLI**

The TPM is the comparable profits method (CPM). The profit level indicator is an operating margin. The Tested Party's Three-Year Rolling Average operating margin is defined as follows for any APA Year: the sum of the Tested Party's operating profit (within the meaning of Treasury Regulation section 1.482-5(d)(4)) for that APA Year and the two preceding years, divided by the sum of its sales revenue (within the meaning of Treasury Regulation section 1.482-5(d)(1)) for that APA Year and the two preceding years. The Arm's Length Range is between \_\_\_% and \_\_\_%, and the Median of the Arm's Length Range is \_\_\_%.

- **Residual Profit Split Method**

The TPM is the residual profit split method. [*Insert description of routine profit level determinations and residual profit-split mechanism*].

[*Insert additional provisions as needed.*]

#### **4. Application of TPM.**

For any APA Year, if the results of Taxpayer's actual transactions produce a [price per unit, royalty rate for the Covered Transactions] [or] [Gross Margin, Cost Plus Markup, Berry Ratio, Operating Margin, Three-Year Rolling Average Operating Margin for the Tested Party] within



the Arm's Length Range, then the amounts reported on Taxpayer's U.S. Return must clearly reflect such results.

For any APA year, if the results of Taxpayer's actual transactions produce a [price per unit, royalty rate] [or] [Gross Margin, Cost Plus Markup, Berry Ratio, Operating Margin, Three-Year Rolling Average Operating Margin for the Tested Party] outside the Arm's Length Range, then amounts reported on Taxpayer's U.S. Return must clearly reflect an adjustment that brings the [price per unit, royalty rate] [or] [Tested Party's Gross Margin, Cost Plus Markup, Berry Ratio, Operating Margin, Three-Year Rolling Average Operating Margin] to the Median.

For purposes of this Appendix A, the "results of Taxpayer's actual transactions" means the results reflected in Taxpayer's and Tested Party's books and records as computed under U.S. GAAP [*insert another relevant accounting standard if applicable*], with the following adjustments:

- (a) [The fair value of stock-based compensation as disclosed in the Tested Party's audited financial statements shall be treated as an operating expense]; and
- (b) To the extent that the results in any prior APA Year are relevant (for example, to compute a multi-year average), such results shall be adjusted to reflect the amount of any adjustment made for that prior APA Year under this Appendix A.

## **5. APA Revenue Procedure Treatment**

If Taxpayer makes an adjustment under paragraph 4 of this Appendix A (a "primary adjustment"), Taxpayer and its related foreign entity may elect APA Revenue Procedure Treatment in accordance with section 11.02(3) of Revenue Procedure 2006-9 and avoid the possible adverse tax consequences of a secondary adjustment that would otherwise follow the primary adjustment.

*[Insert additional provisions as needed.]*

## APPENDIX B

### CRITICAL ASSUMPTIONS

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This APA's critical assumptions are:

1. The business activities, functions performed, risks assumed, assets employed, and financial and tax accounting methods and classifications [and methods of estimation] of Taxpayer in relation to the Covered Transactions will remain materially the same as described or used in Taxpayer's APA Request. A mere change in business results will not be a material change.

*[Insert additional provisions as needed.]*

## APPENDIX C

### APA RECORDS AND ANNUAL REPORT

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#### APA RECORDS

The APA Records will consist of all documents listed below for inclusion in the Annual Report, as well as all documents, notes, work papers, records, or other writings that support the information provided in such documents.

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#### ANNUAL REPORT

The Annual Report (and each of the four copies required by paragraph 5(e) of this APA) will include:

1. Two copies of a properly completed APA Annual Report Summary in the form of Appendix E to this APA, one copy of the form bound with, and one copy provided separately from, the rest of the Annual Report.
2. A table of contents, organized as follows:
3. Statements that fully identify, describe, analyze, and explain:
  - a. All material differences between the U.S. Group's business operations (including functions, risks assumed, markets, contractual terms, economic conditions, property, services, and assets employed) during the APA Year from the business operations described in the APA Request. If there have been no material differences, the Annual Report will include a statement to that effect.
  - b. All material differences between the U.S. Group's accounting methods and classifications, and methods of estimation used during the APA Year, from those described or used in the APA Request. If any change was made to conform to changes in U.S. GAAP (or other relevant accounting standards) Taxpayer will specifically identify the change. If there has been no material change in accounting methods and classifications or methods of estimation, the Annual Report will include a statement to that effect.
  - c. Any change to the Taxpayer notice information in paragraph 14 of this APA.
  - d. Any failure to meet any critical assumption. If there has been no failure, the Annual Report will include a statement to that effect.

e. Whether or not material information submitted while the APA Request was pending is discovered to be false, incorrect, or incomplete.

f. Any change to any entity classification for federal income tax purposes (including any change that causes an entity to be disregarded for federal income tax purposes) of any Worldwide Group member that is a party to the Covered Transactions or is otherwise relevant to the TPM.

g. The amount, reason for, and financial analysis of (1) any primary adjustments made under Appendix A for the APA Year; and (2) any (a) secondary adjustments that follow such primary adjustments or (b) accounts receivable that Taxpayer establishes, in lieu of secondary adjustments, by electing APA Revenue Procedure Treatment pursuant to paragraph 5 of Appendix A and Revenue Procedure 2006-9, section 11.02(3), for the APA Year, including but not limited to:

- i. the amounts due or owed, and paid or received by each affected entity;
- ii. the character (such as capital, ordinary, income, expense) and country source of the funds transferred, and the specific affected line item(s) of any affected U.S. Return;
- iii. the date(s) and means by which the payments are or will be made; and
- iv. whether or not APA Revenue Procedure was elected pursuant to paragraph 5 of Appendix A and Revenue Procedure 2006-9, section 11.02(3).

h. The amounts, description, reason for, and financial analysis of any book-tax difference relevant to the TPM for the APA Year, as reflected on Schedule M-1 or Schedule M-3 of the U.S. Return for the APA Year.

i. Whether Taxpayer contemplates requesting, or has requested, to renew, modify, or cancel the APA.

4. The Financial Statements, and any necessary account detail to show compliance with the TPM, including consolidating financial statements, segmented financial data, records from the general ledger, or similar information if the assets, liabilities, income, or expenses relevant to showing compliance with the TPM are a subset of the assets, liabilities, income, or expenses presented in the Financial Statements.

5. *{Use the following or the alternative prescribed by paragraph 5(f) of this APA:}* A copy of the independent certified public accountant's opinion required by paragraph 5(f) of this APA.

6. A financial analysis that reflects Taxpayer's TPM calculations for the APA Year. The calculations must reconcile with and reference the information required under item 4 above in sufficient account detail to allow the IRS to determine whether Taxpayer has complied with the TPM.

7. An organizational chart for the Worldwide Group, revised annually to reflect all ownership or structural changes of entities that are parties to the Covered Transactions or are otherwise relevant to the TPM.
8. A copy of the APA and any amendment.
9. A penalty of perjury statement, executed in accordance with Revenue Procedure 2006-9, section 11.01(6) and (7).

**APPENDIX D**  
**DEFINITIONS**

The following definitions control for all purposes of this APA. The definitions appear alphabetically below:

<b>Term</b>	<b>Definition</b>
Annual Report	A report within the meaning of Revenue Procedure 2006-9, section 11.01.
APA	This Advance Pricing Agreement, which is an “advance pricing agreement” within the meaning of Revenue Procedure 2006-9, section 2.04.
APA Records	The records specified in Appendix C.
APA Request	Taxpayer’s request for this APA dated _____, including any amendments or supplemental or additional information thereto.
APA Year	This term is defined in paragraph 5(a) of this APA.
Covered Transaction(s)	This term is defined in Appendix A.
Financial Statements	Financial statements prepared in accordance with U.S. GAAP and stated in U.S. dollars.
Foreign Group	Worldwide Group members that are not U.S. persons.
Foreign Participants	[name the foreign entities involved in Covered Transactions].
I.R.C.	The Internal Revenue Code of 1986, 26 U.S.C., as amended.
Pub. L. 106-170	The Ticket to Work and Work Incentives Improvement Act of 1999.
Revenue Procedure 2006-9	Rev. Proc. 2006-9, 2006-1 C.B. 278.
Transfer Pricing Method (TPM)	A transfer pricing method within the meaning of Treasury Regulation section 1.482-1(b) and Revenue Procedure 2006-9, section 2.04.
U.S. GAAP	U.S. generally-accepted accounting principles.
U.S. Group	Worldwide Group members that are U.S. persons.

<b>Term</b>	<b>Definition</b>
U.S. Return	For each taxable year, the “returns with respect to income taxes under subtitle A” that Taxpayer must “make” in accordance with I.R.C. section 6012. { <i>Or substitute for partnership:</i> For each taxable year, the “return” that Taxpayer must “make” in accordance with I.R.C. section 6031.}
Worldwide Group	Taxpayer and all organizations, trades, businesses, entities, or branches (whether or not incorporated, organized in the United States, or affiliated) owned or controlled directly or indirectly by the same interests.

## **APPENDIX E**

### **APA ANNUAL REPORT SUMMARY FORM**

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The APA Annual Report Summary on the next page is a required APA Record. The APA Team Leader supplies some of the information requested on the form. Taxpayer is to supply the remaining information requested by the form and submit the form as part of its Annual Report.



<b>APA Annual Report SUMMARY</b>	<b>Department of the Treasury--Internal Revenue Service Large Business and International Division Transfer Pricing Operations Advance Pricing and Mutual Agreement Program</b>		APA No. _____ Team Leader _____ Economist _____ Intl Examiner _____						
<b>APA Information</b>	Taxpayer Name: _____ Taxpayer EIN: _____ NAICS: _____ APA Term: Taxable years ending _____ to _____ Original APA <input type="checkbox"/> Renewal APA <input type="checkbox"/> Annual Report due dates: _____, 201__ for all APA Years through APA Year ending in 200__; for each APA Year thereafter, on _____ [month and day] immediately following the close of the APA Year Principal foreign country(ies) involved in covered transaction(s): _____ Type of APA: <input type="checkbox"/> unilateral <input type="checkbox"/> bilateral with _____ Tested party is <input type="checkbox"/> US <input type="checkbox"/> foreign <input type="checkbox"/> both Approximate dollar volume of covered transactions (on an annual basis) involving tangible goods and services: <input type="checkbox"/> N/A <input type="checkbox"/> <\$50 million <input type="checkbox"/> \$50-100 million <input type="checkbox"/> \$100-250 million <input type="checkbox"/> \$250-500 million <input type="checkbox"/> >\$500 million APA tests on (check all that apply): <input type="checkbox"/> annual basis <input type="checkbox"/> multi-year basis <input type="checkbox"/> term basis APA provides (check all that apply) a: <input type="checkbox"/> range <input type="checkbox"/> point <input type="checkbox"/> floor only <input type="checkbox"/> ceiling only <input type="checkbox"/> other _____ APA provides for adjustment (check all that apply) to: <input type="checkbox"/> nearest edge <input type="checkbox"/> median <input type="checkbox"/> other point								
<b>APA Annual Report Information</b> (to be completed by the Taxpayer)	APA date executed: _____, 201__ This APA Annual Report Summary is for APA Year(s) ending in 200__ and was filed on _____, 201__ Check here <input type="checkbox"/> if Annual Report was filed after original due date but in accordance with extension. Has this APA been amended or changed? <input type="checkbox"/> yes <input type="checkbox"/> no      Effective Date: _____ Has Taxpayer complied with all APA terms and conditions? <input type="checkbox"/> yes <input type="checkbox"/> no Were all the critical assumptions met? <input type="checkbox"/> yes <input type="checkbox"/> no Has a Primary Compensating Adjustment been made in any APA Year covered by this Annual Report? <input type="checkbox"/> yes <input type="checkbox"/> no      If yes, which year(s): 200__ Have any necessary Secondary Compensating Adjustments been made? <input type="checkbox"/> yes <input type="checkbox"/> no Did Taxpayer elect APA Revenue Procedure treatment? <input type="checkbox"/> yes <input type="checkbox"/> no Any change to the entity classification of a party to the APA? <input type="checkbox"/> yes <input type="checkbox"/> no Taxpayer notice information contained in the APA remains unchanged? <input type="checkbox"/> yes <input type="checkbox"/> no Taxpayer's current US principal place of business: (City, State) _____								
<b>APA Annual Report Checklist of Key Contents</b> (to be completed by the Taxpayer)	Financial analysis reflecting TPM calculations <input type="checkbox"/> yes <input type="checkbox"/> no Financial statements showing compliance with TPM(s) <input type="checkbox"/> yes <input type="checkbox"/> no Schedule M-1 or M-3 book-tax differences <input type="checkbox"/> yes <input type="checkbox"/> no Current organizational chart of relevant portion of world-wide group <input type="checkbox"/> yes <input type="checkbox"/> no Attach copy of APA <input type="checkbox"/> yes <input type="checkbox"/> no Other APA records and documents included:								
<b>Contact Information</b>	<table border="1"> <thead> <tr> <th data-bbox="428 1787 688 1829">Authorized Representative</th> <th data-bbox="693 1787 889 1829">Phone Number</th> <th data-bbox="894 1787 1414 1829">Affiliation and Address</th> </tr> </thead> <tbody> <tr> <td colspan="3" data-bbox="428 1835 1414 1896" style="height: 30px;"></td> </tr> </tbody> </table>			Authorized Representative	Phone Number	Affiliation and Address			
Authorized Representative	Phone Number	Affiliation and Address							

## APPENDIX 2 – APMA Contacts

<b>APMA LEADERSHIP</b>		
Director	Dhawale, Hareesh	202-515-4306
Assistant Director	McComber, Donna	202-515-4341
Assistant Director	Rock, Peter	415-547-3776
Assistant Director	Wiltshire, Nancy	202-515-4729

<b>ECONOMISTS</b>		
Senior Manager	Kwiat, Russell	202-515-4309
Senior Manager	Larson, Charles	312-292-3663
Senior Manager	Lee, Ho Jin	213-833-1166

<b>AUSTRALIA, AUSTRIA, CANADA, KAZAKHSTAN, NETHERLANDS, NEW ZEALAND</b>		
Senior Manager	Cohen, Judith	202-515-4312

<b>INDONESIA, JAPAN, SOUTH AFRICA &amp; THAILAND</b>		
Senior Manager (Acting)	Rock, Peter	415-547-3776

<b>CANADA, INDIA, ITALY &amp; LUXEMBOURG</b>		
Senior Manager	Mader, Burton	202-515-4319

<b>DENMARK, INDIA, IRELAND, NORWAY, SWEDEN, SWITZERLAND &amp; UK</b>		
Senior Manager (Acting)	McComber, Donna	202-515-4341

<b>ARGENTINA, CARIBBEAN, CHINA, GERMANY, MEXICO, PORTUGAL, PUERTO RICO, SPAIN, VENEZUELA, &amp; EASTERN EUROPE</b>		
Senior Manager	Spring, Gregory	202-515-4340

<b>BELGIUM, CANADA, FRANCE, GREECE, HUNGARY &amp; INDIA</b>		
Senior Manager	Fouts, Patricia	202-515-4740

<b>GUAM, JAPAN, KOREA, MOROCCO &amp; PHILIPPINES</b>		
Senior Manager	Bracken, Dennis	310-414-3617

<b>ISRAEL</b>		
Senior Manager	Kwiat, Russell	202-515-4309

As of 2/7/2016