



HQ H347879

September 12, 2025

OT:RR:CTF:VS H347879 EE

CATEGORY: Valuation

Ryan D'Elia
The Delco Group, Ltd.
3500 Sunrise Highway, Building 200
Suite 2104A
Great River, New York 11739

RE: Toys; Transaction Value; First Sale

Dear Mr. D'Elia:

This is in response to your request, dated March 14, 2025, filed on behalf of your client, Brooklyn Lollipops Import Corp. ("Brooklyn Lollipops"), requesting a prospective ruling on the use of "first sale" valuation of certain importations of toys into the United States. Your request, submitted as an electronic ruling request, was forwarded to this office from the National Commodity Specialist Division for response. You provided supplemental information on May 13, July 11, July 28, August 7, August 8, and August 22, 2025.

FACTS:

You state that Brooklyn Lollipops imports goods from China through a middleman, Hipro Trade Limited ("Hipro") in Hong Kong. The factories quote and sell to Hipro in renminbi ("RMB")¹, and Hipro subsequently invoices the importer in U.S. dollars. You state that the middleman is responsible for handling quality control and ensuring that the importer's specific requirements are met before shipment. You believe that the "first sale" price - the price between the factories and the middleman - should be the basis for transaction value for customs purposes.

We reviewed the following documents from a representative transaction:

¹ You state that Hipro's employee Lidong Mei in China settles factory invoices and works on a flat 7%-15% commission from factory pricing. However, you claim that this is not a commission or compensation from the importer. Rather, it is the pricing differential between the price paid by the importer to Hipro for the goods and the amount paid by Hipro to the factories. It is a known profit margin the importer knows Hipro makes on the transactions.

- An email order from the importer to Hipro, dated December 22, 2024, for a list of toys including 300 cartons of toy robots.
- A purchase order from Hipro to the factory, Shantou Dade Toys Co., LTD (“Shantou”), for 300 cartons of toy robots, dated January 10, 2025. The translation from Chinese to English provided by the importer indicates that 70 cartons are already imported and the remaining 230 cartons are pending.
- A proforma invoice from Shantou to Hipro, dated January 21, 2025, for 70 cartons of toy robots for a total amount of \$1142.80. The proforma invoice indicates FOB Shenzhen term of sale.
- A proforma invoice for a total amount of \$14,219.71 and corresponding packing list from Hipro to the importer for 705 cartons of toys including 70 cartons of toy robots, dated January 21, 2025. The proforma invoice indicates FOB Shenzhen term of sale.
- A debit note from Hipro to “Li Guangze”, who the importer states is an employee of the factory, dated March 7, 2025, for a total amount of 14,400 RMB which includes \$1142 for 70 cartons of toy robots.
- Payment record from the Agricultural Bank of China for payment from “Li Dongmei”, who the importer states is an employee of Hipro, to “Li Guangze” for 14,400RMB, dated March 7, 2025.
- Email from the importer which includes confirmation of IDB Bank wire transfer receipt to Hipro, dated February 28, 2025, for a total amount of \$88,287.79. The importer lists separate amounts for each invoice including payment of \$14,219.71.
- Bill of lading for consolidated shipments from Hipro to the importer, dated February 10, 2025, indicating place of receipt Yantian, China and place of delivery New York, NY.
- Commercial invoices and packing lists for the goods in the consolidated shipment.

ISSUE:

Whether the sales between the middleman and the factories are sales for exportation to the United States upon which the goods may be appraised at entry.

LAW AND ANALYSIS:

Merchandise imported into the United States is appraised in accordance with Section 402 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (TAA; 19 U.S.C. § 1401a). The preferred method of appraisement is transaction value, which is defined as the “price actually paid or payable for the merchandise when sold for exportation to the United States” plus certain statutory additions. 19 U.S.C. § 1401a(b)(1).

Your client seeks to utilize the transaction value based on the sale between the factories in China and the middleman in the multi-tiered transaction described above. In *Nissho Iwai American Corp. v. United States*, 982 F. 2d 505 (Fed. Cir. 1992), the court reviewed the standard for determining transaction value in a multi-tiered transaction. The court case involved a foreign manufacturer, a middleman, and a U.S. purchaser. The court held that the price paid by the middleman to the foreign manufacturer was the proper basis for transaction value. The court stated that in order for the foreign

manufacturer's price to be a valid transaction value, the transaction between the foreign manufacturer and the middleman needed to be a sale negotiated at "arm's length" that was free from any non-market influences, and involved goods clearly destined for exportation to the United States.

In accordance with the *Nissho Iwai* decision and our own precedent, we presume that transaction value is based on the price paid by the importer. An importer may request appraisement based on the price paid by the middleman to the foreign manufacturer in situations where the middleman is not the importer. It is the importer's responsibility to show that the "first sale" price is acceptable under the standard set forth in *Nissho Iwai*. The U.S. importer must present sufficient evidence that the alleged sale was a *bona fide* "arm's length sale" and that it was "a sale for export to the United States" within the meaning of 19 U.S.C. § 1401a.

In Treasury Decision ("T.D.") 96-87, dated January 2, 1997, the Customs Service (now CBP) advised that the importer must describe in detail the roles of the parties involved and must supply relevant documentation addressing each transaction that was involved in the exportation of the merchandise to the United States (e.g., the alleged sale between the importer and middleman, and the alleged sale between the middleman and the manufacturer). Relevant documents include, but are not limited to purchase orders, invoices, proof of payments, contracts, and any additional documents (i.e. correspondence) that establish how the parties deal with one another. CBP is looking for "a complete paper trail of the imported merchandise showing the structure of the entire transaction." If unable to do so, the sale between the middleman and the manufacturer cannot form the basis of transaction value.

You state that the parties are unrelated. As the parties are unrelated, the sale between them is presumed to be at arm's length. You indicate that the importer does not have master agreements/contracts for their imports. You provided a proforma invoice from the factory to the middleman and from the middleman to the importer which specifies FOB Shenzhen term of sale. Based on these documents, risk of loss transfers from the factory to the middleman and from the middleman to the importer at the port of export, i.e., there is a flash transfer of the risk of loss. Based on the assumption that title transfers at the same time as risk of loss, these documents indicate a "flash title" transfer. While CBP recognizes that *bona fide* sales may occur in instances of "flash title," such transactions generally are viewed with greater scrutiny so as to determine whether the middleman truly is an independent buyer/seller of goods or is actually acting as an agent on the part of one of the other parties. See Headquarters Ruling Letter ("HQ") H097616, dated November 21, 2011; see also HQ W563605, dated November 19, 2009.

In the instant case, we do not find a *bona fide* sale between the parties. Delivery terms listed on the commercial invoices without more, such as agreements/contracts between the parties, is not sufficient evidence to demonstrate that the middleman held title to the goods or bore the risk of loss. Accordingly, since the sale between the factory and the middleman is not a *bona fide* sale, the transaction value for the

transactions at issue is the amount paid by the importer for the merchandise. We also note that the flow of the ordering process is flawed as the purchase orders from the factory to the middleman and the middleman to the importer indicate a different quantity of merchandise than the quantity that is ultimately imported.

HOLDING:

Based on the information submitted, the appraisement of the imported merchandise should be based on the price paid by the importer.

Please note that 19 C.F.R. § 177.9(b)(1) provides that “[e]ach ruling letter is issued on the assumption that all of the information furnished in connection with the ruling request and incorporated in the ruling letter, either directly, by reference, or by implication, is accurate and complete in every material respect. The application of a ruling letter by a CBP field office to the transaction to which it is purported to relate is subject to the verification of the facts incorporated in the ruling letter, a comparison of the transaction described therein to the actual transaction, and the satisfaction of any conditions on which the ruling was based.”

A copy of this ruling letter should be attached to the entry documents at the time this merchandise is entered. If the documents have been filed without a copy, this ruling should be brought to the attention of the CBP officer handling the transaction.

Sincerely,

Monika R. Brenner, Chief
Valuation & Special Programs Branch