

*CISC cannot offer legal advice to its members, and we encourage our members to consult their legal counsel to understand how tariffs may impact specific businesses and practices. Based on requests from our members, below is sample contract language developed by our legal team at ArentFox Schiff for information only. Seek independent legal counsel in drafting contracts.*

### **Tariff [Mitigation] Responsibility**

In the event that the United States government imposes additional taxes, duties, fees, or similar charges (“Tariffs”) that lead to an increase in costs associated with the U.S. entry of goods under this Agreement, the parties (**buyer and seller**) agree **[that the party responsible for the tariffs will be [insert responsible party]]/[to share the additional Tariffs in accordance with the terms outlined below]**.

**Notification.** The **seller** shall promptly notify the **buyer** in writing if the United States government imposes Tariffs on products after the effective date of this Agreement or quote.

### **Cost Sharing Formula.**

- a. Where Tariffs are imposed on goods from Country, the **[insert party]** will share the lesser of [X] percent of the difference of the Tariffs.

**Payment of Tariffs**<sup>1</sup>. As the importer of record, **[insert responsible party – the buyer or the seller]** will pay Tariffs on products imported into the United States to U.S. Customs and Border Protection or any future U.S. government agency responsible for collecting such Tariffs (collectively, “CBP”). **[insert responsible party]** will maintain all records related to payment of Tariffs on products, including Automated Clearinghouse (“ACH”) records, Customs broker bills, and any bills from CBP (collectively, “Payment Records”). **[insert responsible party]** will provide **[insert other party]** with Payment Records upon request from **[insert other party]** within (XX)<sup>2</sup> business days.

**Calculation.** **[the seller]** will calculate the Tariffs each party will pay for products in accordance with the cost sharing formula in Section [ ]. A copy of such calculation will be provided to **[the buyer]** within thirty (30) business days of **[the buyer’s]** payment. If **[buyer]** does not notify **[the seller]** that it objects to this calculation within [ ] days of it being furnished, the calculation will be deemed accepted.

**Liquidation**<sup>3</sup>. **[Importer of record]** shall maintain a list of shipments where Tariffs were paid to CBP on products imported into the United States and review the shipment list every six (6) months to ensure

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<sup>1</sup> If there is a cost sharing agreement, another point to consider is that if exclusions or exemptions from additional duties are announced, one of the parties could potentially request refunds where additional duties were paid and subject to this cost sharing provision. Additional provisions could be added to reflect this issue depending on the interests in the transaction.

<sup>2</sup> For consideration, the timing of the payment of the tariffs should provide opportunity to review and correct an entry should such a correction be necessary. In many cases, importers can correct entries within 300 days of the entry date, but this can vary and the amount of time should be tailored to the goals of the contract and resources for reviewing/correction such errors.

<sup>3</sup> For consideration. It is important for companies in these agreements to preserve their rights to potential profit sharing scenarios or refunds that may have been processed by CBP in error. This type of preservation relates to the

Tariffs are accurately paid on products prior to the date of final ascertainment of Tariffs (“Liquidation”) by CBP.

**Prior Agreements.**

The agreement on the party responsible for the tariffs replaces any prior verbal agreements between the parties concerning the party responsible for paying the tariffs.

Or if there is a cost sharing agreement then use the following text.

This cost sharing formula replaces any prior verbal agreements between the parties concerning [buyer’s/seller’s] offer to share the cost of Tariffs on products.

**Tariff Mitigation Scenarios and calculations examples:** *Optionally can include a table illustrating the party responsible for the different U.S. additional tariffs and tariff amounts and/or who is responsible for the tariffs for specific incoterms.*

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customs concept of “liquidation”, where one of the companies, typically the importer of record, should be responsible for tracking liquidation on relevant imports. However, this is very fact specific to the interests of the transaction and type of profit sharing or potential refunds involved.