Prepared by OFW Law as a courtesy for members of AFOA, NIOP, and NOPA. For questions, please contact Denise Calle (dcalle@ofwlaw.com) or John Dillard (jdillard@ofwlaw.com)

Tariffs were a major topic during the 2024 election. We anticipate the incoming Trump Administration will quickly act to implement additional tariffs, which may affect transactions in the fats & oils industry. This is the first of a 3-part series of FAQ documents discussing the basics of tariffs. Part 2 will address how the President, agencies, and Congress can establish or revise tariffs. Part 3 will discuss basic strategies to mitigate tariff liability.

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U.S. Tariffs 101 for the Fats & Oils Industry

This document provides an overview of what tariffs are, how they are implemented, and how tariffs are handled under the various trade rules.[1]

What are tariffs?

Tariffs, also known as Customs duties, are a government-levied tax on imported goods.

How is the tariff rate determined?

All goods imported into the United States are subject to duty or duty-free entry in accordance with their classification under the Harmonized Tariff Schedule of the U.S. ("HTSUS") which carries a specified duty rate. The applicable duty varies based on the type of product, the country of origin, the value of the product, and other factors. Duties are most often applied at an *ad valorum* rate - a percentage of the value of the merchandise. However, other tariffs can be imposed on products in addition to the duty rate under the HTSUS.

What are trade remedies?

Trade remedies are an additional tariff that can be imposed on products in addition to the duty rate under the HTSUS. These are often product-specific and are intended to offset unfair trade practices, such as Section 301 tariffs levied on certain Chinese-origin goods.

What are retaliatory tariffs?

A retaliatory tariff is a tit-for-tat approach to trade disputes between countries, where a tax is imposed by a country on imported goods from another country in response to that country's imposition of a similar tax on its own exports. It is a way for a country to retaliate against another country's trade policies that it deems unfair or harmful to its own economy.

Who is responsible for paying tariffs?

The Importer of Record is responsible for paying duties to U.S. Customs and Border Protection ("CBP") at the time of entry. Liability for paying duties (including tariffs) to CBP is typically established when an entry for consumption or warehouse is filed with CBP. Failure to make a payment or provide legal justification for non-payment may result in suspension of immediate release privileges. *See* 19 CFR 142.26. If payment is not received by CBP on or before the late payment date appearing on the

[1] For more information about anticipated tariff actions under the new Trump Administration, *see* Memo - OFW Tariffs under a Second Trump Administration, Nov. 8 2024.pdf

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bill, interest charges will be assessed upon the delinquent principal amount of the bill. *See* 19 CFR 24.3a.

What is an Importer of Record?

"Importer of Record" (IOR) is defined as the owner or purchaser of the goods, or when designated by the owner, purchaser, or consignee, a licensed Customs broker. The person or company in whose name the entry is filed is the IOR.

What is the Importer of Record's responsibility?

The IOR is ultimately responsible for the correctness of the entry documentation presented to CBP and all applicable duties, taxes, and fees. An importer of record's failure to exercise reasonable care (e.g.,declaring an incorrect classification, incorrect value, or incorrect country of origin at entry) could delay the release of the products and, in some cases, could result in the imposition of penalties or, in certain instances, referral for criminal enforcement.

How does an Importer of Record pay CBP duties and taxes?

Importers can make payments by mail, credit, or debit card[2] on a transaction-per-transaction basis. CBP's Automated Commercial Environment (ACE) account holders can make periodic payments on an interest-free monthly basis.[3]

Who sets tariff rates under trade remedies?

Tariffs imposed under trade remedies are set by different federal agencies or departments depending on the regulatory authority being used to authorize the imposition of the tariffs. The US Trade Representative, the International Trade Commission, the Department of Commerce, and or the President may be involved in setting the tariff rate. *This will be addressed in more detail in Part 2*.

Who is responsible for paying tariffs under the various fats and oils trade rules?[4]

Under the various trade rules, the buyer is responsible for the payment of any tariffs or taxes imposed by governments. However, under some rules, the seller can bear responsibility for failure to properly label containers.

AFOA:

- **Vegetable Oils; Domestic and Import Contract – Rule 22 – Changes and Taxes**

Any taxes now or hereafter imposed by the United States Government or by any taxing body upon the manufacture, sale, transportation and/ or use of Imported and Domestic Vegetable Oils are for the account of Buyer.

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[2] Debit card users are required to have a Payer Unit Number.

[3] ACE account holders have the ability to pay for shipments entered or released during the previous calendar month by the 15th business day of the following month; CBP collects more than 68 percent of duties and fees on eligible entry summaries via periodic monthly statement, representing more than $1.6 billion dollars per month. Overall, there are more than 20,000 ACE Portal accounts.

[4] These excerpts include copyrighted material owned respectively by American Fats and Oils Association, Canadian Oilseed Processors Association, National Institute of Oilseed Products, National Oilseed Processors Association. These excerpts are printed with the express permission of these organizations.

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- **Vegetable Oils; Export Contract – Rule 47**

On C. & F. and C.I.F. contracts, the buyer shall receive the goods upon the arrival at destination and shall arrange and pay for all subsequent movement of the goods, including pumping out and steam charges, or otherwise take delivery of the goods from the vessel in accordance with Bill of Lading clauses and terms, and pay all costs of landing, including any duties, taxes and other expenses at named port of destination.

- **Animal and Poultry Proteins; Export Contract – Rule 13(D)(3)**

On C. &. F. and C.I.F. contracts, the buyer shall receive the goods upon arrival at destination and shall handle and pay for all subsequent movement of the goods, including taking delivery of the goods from the vessel in accordance with Bill of Lading clauses and terms, and pay all cost of landing, including any duties, taxes, and other expenses at named point of destination.

COPA: Canola Oil Rules – Rule 11, Sec. 2 – Taxes and Duties

Any taxes, duties or other government charges imposed by the Government of Canada or any other taxing body, foreign or domestic, upon the production, sale, shipment, delivery, import or export of Canola Oil, now or after the sales contract is negotiated, shall be for the account of the Buyer.

NIOP: Rule 7.8 - Tariff and Customs Classification (USA)

All sales are based upon United States tariff and customs classifications, excise and other United States Government tax in force at time of closing contract, and any change therein, or the imposition of duty or any other taxes of any kind whatsoever on goods previously free, or Government and/or State tax shall be for Buyer's account. Seller shall not be responsible for consequences arising from unforeseen administrative customs regulations.

The containers of goods shipped from foreign countries or territories or dependencies of the United States must bear, as prescribed by the U.S. Tariff Act, the name of the country of origin, such as: "Product of ___." Penalties exacted by the U.S. government for lack of such proper marking shall be at the expense of the Seller/Shipper.

NOPA:

- **Soybean Meal Rules – Rule 4 - TAXES**

Any taxes now or hereafter imposed by the U.S. Government or by any taxing body upon the manufacture, sale, transportation and/or use of soybean meal are for the account of Buyer.

- **Soybean Oil Rules – Rule 105, Section 5 - TAXES**

Any taxes now or hereafter imposed by the United States (U.S.) Government or by any taxing body upon the manufacture, sale, transportation, or use of soybean oil are for the account of Buyer.

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We trust this information is useful. If you have any questions, please do not hesitate to contact Denise Calle (dcalle@ofwlaw.com) or John Dillard (jdillard@ofwlaw.com).

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