

USTR Initiates Section 301 Investigations Into Vietnam's Currency and Timber Practices

10 / 09 / 20

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On October 8, 2020, the Office of the U.S. Trade Representative (USTR) issued notices launching two investigations with respect to Vietnam. USTR initiated investigations into the acts, policies and practices of Vietnam related to (1) the valuation of Vietnam's currency ([Currency Notice](#))¹ and (2) the import and use of timber that is illegally harvested or traded ([Timber Notice](#)).² USTR brought these investigations under the same statutory authority that led to the imposition of successive rounds of tariffs on China — Section 301 of the Trade Act of 1974 (Section 301). Companies that may be impacted by these investigations should evaluate whether and how to participate in the public comment process that is now underway.

Overview

According to the Currency Notice, the investigation targeting Vietnam's currency practices will focus on interventions by the State Bank of Vietnam (SBV) in exchange markets and other "related actions" that contribute to the undervaluation of Vietnam's currency, the dong. The Currency Notice cites evidence suggesting that the dong has been undervalued for the past three years and that in 2019 the SBV's interventions caused the average nominal bilateral exchange rate against the dollar to be undervalued by approximately 1,090 dong per dollar.

The investigation into Vietnam's timber practices targets Vietnam's sourcing of imported timber in support of its wood products industry. According to the Timber Notice, a significant portion of the timber imported into Vietnam is harvested in ways that violate the laws of the source countries. The Timber Notice points, in particular, to timber imported from Cambodia, much of which is harvested on protected lands such as wildlife sanctuaries or in violation of the terms of timber concessions issued by the Cambodian government. In addition, the Timber Notice indicates that Vietnam may not be enforcing its own laws, including laws that require wood processors to ensure the lawful origin of the timber they purchase. The notice flags a concern that Vietnam's timber practices may be inconsistent with the Convention on International Trade in Endangered Species of Wild Fauna and Flora.

Both investigations will focus on whether the acts, policies and practices at issue meet the standard required under Section 301 — *i.e.*, that they (1) are "unreasonable or discriminatory" and (2) "burden or restrict U.S. commerce." If USTR finds that both requirements are met, the U.S. president then has broad authority to take action to induce Vietnam to change its practices, including the imposition of tariffs and other restrictions on imports of goods or services.

The launch of these investigations reflects the Trump administration's renewed use of Section 301, a statute that languished in relative obscurity in the decades after the creation of the World Trade Organization. In 2017, [USTR initiated a Section 301 investigation](#) into the acts, policies and practices of China with respect to technology transfer, intellectual property and innovation, which resulted in the imposition of substantial tariffs on Chinese imports (and retaliation by China with respect to U.S. exports).³ Likewise, [USTR initiated a Section 301 investigation](#) into France's Digital Services Tax

¹ Office of the U.S. Trade Representative, Notice, "Initiation of Section 301 Investigation: Vietnam's Acts, Policies, and Practices Related to Currency Valuation," 85 Fed. Reg. 63637 (Oct. 8, 2020).

² Office of the U.S. Trade Representative, Notice, "Initiation of Section 301 Investigation: Vietnam's Acts, Policies, and Practices Related to the Import and Use of Illegal Timber," 85 Fed. Reg. 63639 (Oct. 8, 2020).

³ Office of the U.S. Trade Representative, Notice, "Initiation of Section 301 Investigation; Hearing; and Request for Public Comments: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation," 82 Fed. Reg. 40213 (Aug. 24, 2017).

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(DST) in July 2019⁴ and launched a further [Section 301 investigation](#) in June 2020 into DSTs adopted or under consideration by Austria, Brazil, the Czech Republic, the European Union, India, Indonesia, Italy, Spain, Turkey and the United Kingdom.⁵

US Government Efforts To Rein In Currency Manipulation

USTR's investigation into Vietnam's currency practices dovetails with a broader initiative by the U.S. government to crack down on currency manipulation by other countries. In February 2020, the U.S. Department of Commerce (Commerce) [amended its regulations](#) to provide for currency undervaluation to be treated as a countervailable subsidy.⁶ Under the amended regulations, Commerce may find that a foreign government's intervention to weaken its currency qualifies as a countervailable subsidy if it meets the traditional requirements — *i.e.*, the government or a public body provides a “financial contribution” that confers a “benefit,” and the subsidy is “specific” to an enterprise or industry, or a group of enterprises or industries. If Commerce finds in the affirmative, and if the U.S. International Trade Commission finds that the currency-related subsidy causes or threatens to cause material injury to a U.S. industry, this could lead to the imposition of additional duties, called countervailing duties (CVDs), on imports of products found to benefit from the subsidy.

Since the amended regulations went into effect in April 2020, Commerce has initiated two investigations based on petitions filed by U.S. companies seeking CVD relief on the basis of a foreign government's alleged efforts to undervalue its currency. The [first investigation](#), which was initiated in June 2020, involves allegations that Vietnamese tire exports have been unfairly subsidized due to Vietnam's efforts to undervalue its currency.⁷ Similarly, in July 2020, [Commerce initiated an investigation](#) to determine whether twist ties from China have received unfair subsidies.⁸ One of the subsidy programs under investigation is China's alleged undervaluation of its currency.

⁴ Office of the U.S. Trade Representative, Notice, “Initiation of a Section 301 Investigation of France's Digital Services Tax,” 84 Fed. Reg. 34042 (July 16, 2019).

⁵ Office of the U.S. Trade Representative, Notice, “Initiation of Section 301 Investigations of Digital Services Taxes,” 85 Fed. Reg. 34709 (June 5, 2020).

⁶ U.S. Department of Commerce, “Modification of Regulations Regarding Benefit and Specificity in Countervailing Duty Proceedings,” 85 Fed. Reg. 6031 (Feb. 4, 2020).

⁷ U.S. Department of Commerce, “Passenger Vehicle and Light Truck Tires From the Socialist Republic of Vietnam: Initiation of Countervailing Duty Investigation,” 85 Fed. Reg. 38850 (June 29, 2020).

⁸ U.S. Department of Commerce, “Twist Ties From the People's Republic of China: Initiation of Countervailing Duty Investigation,” 85 Fed. Reg. 45188 (July 27, 2020).

Furthermore, the United States has included currency disciplines in its most recent trade agreements. The [United States-Mexico-Canada Agreement](#)⁹ and the [Phase One Agreement](#) between the United States and China¹⁰ both contain chapters that impose disciplines on exchange rate practices. These are the first trade agreements to contain enforceable currency commitments, and they reflect the U.S. government's focus on reining in what it sees as unfair currency practices.

Next Steps in the Vietnam Investigations

USTR has invited public comment in connection with the Section 301 investigations into Vietnam's currency and timber practices. With respect to the currency investigation, USTR has asked for public comment on a range of topics, including whether Vietnam's currency is undervalued (and if so, by how much) due to government action and the appropriate responsive action, if any, that should be taken. Likewise, in the timber investigation, USTR seeks public input on: (1) the extent to which illegal timber is imported into Vietnam; (2) how the Vietnamese government is contributing to the problem of illegal timber imports; (3) the extent to which producers of wooden furniture make use of such timber and export their products to the United States; (4) the nature and level of the burden on U.S. commerce that result from such imports; and (5) the appropriate responsive action, if any.

Critically, any written comments must be submitted in both investigations by November 12, 2020. USTR has not yet scheduled a hearing for these investigations due to the uncertainties caused by COVID-19 or indicated whether it will do so in the future. Companies whose interests may be affected by these investigations should consult with trade counsel to assess whether and how to participate.

At this stage, it is unclear how the investigations will affect U.S. trade with Vietnam. According to data from Commerce, U.S. imports from Vietnam have grown significantly in recent years as more manufacturers have looked to move out of China. However, as the level of imports has continued to rise, so, too, has the trade imbalance between the United States and Vietnam. If USTR ultimately determines that tariffs are an appropriate responsive action in these cases, that determination could significantly impact the price and competitiveness of Vietnamese imports in the United States.

⁹ Agreement Between the United States of America, the United Mexican States and Canada, Chapter 33.

¹⁰ Economic and Trade Agreement Between the Government of the United States of America and the Government of the People's Republic of China, Chapter 5.