

November 12, 2020

Section 301 Investigations: Vietnam's Timber Trade and Currency Practices

On October 2, 2020, the U.S. Trade Representative (USTR) announced that it had initiated two separate investigations—pursuant to Section 301 of the Trade Act of 1974—with respect to Vietnam's trade with the United States. The USTR will review Vietnam's importation of timber that may have been illegally harvested or traded, used as inputs for its manufacturing of timber products, and subsequently exported to the United States. The agency will also review, in consultation with the Treasury Department, any practices that may have contributed to the alleged undervaluation of Vietnam's currency and thus may have impaired the competitiveness of U.S. products (by making them more expensive to foreign buyers). The USTR has requested consultations with the government of Vietnam and is seeking public comments on the investigations through November 12, 2020.

Overview of Section 301

Title III of the Trade Act of 1974 (Sections 301-310, codified at 19 U.S.C. §§2411-2420), titled "Relief from Unfair Trade Practices," is collectively referred to as "Section 301." It grants the USTR a range of responsibilities and authorities to impose trade sanctions on foreign countries that violate U.S. trade agreements or engage in acts that are "unjustifiable," "unreasonable," or "discriminatory" and burden U.S. commerce. Prior to 1995, the United States used Section 301 to unilaterally pressure other countries to eliminate trade barriers and open their markets to U.S. exports. The creation of an enforceable dispute settlement mechanism in the World Trade Organization (WTO), strongly supported by the United States at the time, significantly reduced the use of Section 301. While the United States retains the flexibility to seek recourse for foreign unfair trade practices in the WTO or under Section 301, a determination to bypass WTO dispute settlement and impose retaliatory measures (if any) in response to a Section 301 investigation may be challenged at the WTO. (For more detail, see CRS In Focus IF11346, *Section 301 of the Trade Act of 1974*.)

Since 2017, the USTR has launched Section 301 investigations against China, the European Union (EU), France, and a group of 10 trading partners. Two investigations have resulted in the USTR imposing tariffs to date: on U.S. imports from China and the EU. The U.S. action against the EU—unlike that against China—was based on a WTO dispute in which the USTR anticipated being allowed to retaliate.

Section 301 Investigations: Vietnam

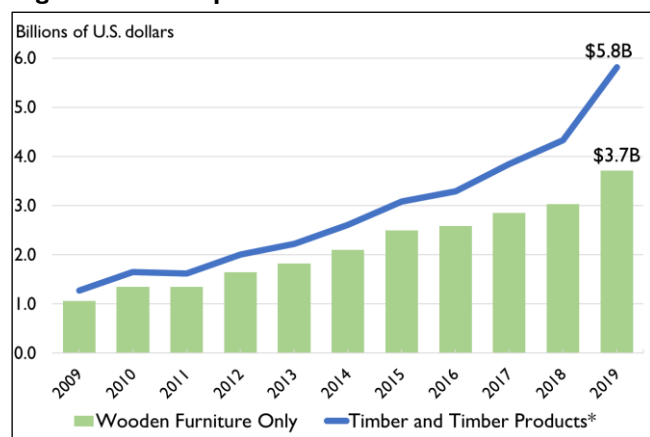
The Trump Administration and some Members of Congress have expressed concern over the rapidly growing U.S. merchandise trade deficit with Vietnam, which reached an all-time high of \$55.8 billion in 2019 (a 74% increase from 2016). They attributed this trend primarily to Vietnam's

trade practices and "unfair" export competitiveness, which they claim is afforded by purposeful currency undervaluation. Others contend that other factors have driven recent changes in the sourcing of U.S. imports. For example, some manufacturing companies have relocated production from other countries in Asia to Vietnam to take advantage of lower costs and to avoid Section 301 tariffs on U.S. imports from China.

Import and Use of Illegal Timber

During the past decade, Vietnam has become one of the world's largest exporting countries of timber and timber products, with exports valued at \$9.5 billion in 2019. As a processing hub, Vietnam heavily relies on imports of timber harvested in other countries, particularly for the manufacturing and export of high-end products, such as wooden furniture. According to the USTR, a significant portion of the timber inputs used in these products may have been illegally harvested or traded. The agency further asserts that some of that timber may be from species listed under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). As parties to the Convention, both the United States and Vietnam are bound by CITES provisions designed to curb illegal timber trade.

Figure 1. U.S. Imports from Vietnam



Source: CRS with data from USITC's DataWeb.

Notes: Not adjusted for inflation. *Calculations do not include wood pulp, paper and paperboard, and printed books and newspapers.

The United States is the top market for Vietnam's exports of timber and timber-based products (48% of its exports in 2019). In announcing the investigation, the USTR noted that "[u]sing illegal timber in wood products exported to the U.S. market harms the environment and is unfair to U.S. workers and businesses who follow the rules by using legally harvested timber." In 2019, Vietnam was the third largest supplier of U.S. timber and timber-based product imports, after Canada and China. U.S. imports from Vietnam of these products totaled \$5.8 billion—of which

\$3.7 billion accounted for wooden furniture (**Figure 1**). In nominal terms, this is up 34% from 2018, and it represents a 77% increase from 2016.

In light of these concerns, the USTR aims to address several issues in its investigation, including:

- Is Vietnam importing illegal timber and are these imports inconsistent with its domestic laws (e.g., concerning the import, processing, and re-export of timber), the laws of exporting countries, or international agreements and commitments? The agency will examine whether timber imported by Vietnam has been harvested against the laws of source countries, particularly those of Cambodia, and traded illegally—for example, in violation of log export bans, CITES, or U.S. wildlife trade laws and regulations.
- Do Vietnamese officials improperly record the origin of timber crossing the Cambodia-Vietnam border, facilitate illegal timber imports, or allow the importation of CITES-listed species based on invalid permits? The USTR alleges that timber processors in Vietnam may be failing to ensure the lawful origins of the timber they use and that Vietnamese authorities may not be enforcing import or re-export permit or certification requirements.
- To what extent are products made in Vietnam from illegal timber, including furniture, imported into the United States? The agency will seek to determine if Vietnam's practices burden or restrict U.S. commerce, and what actions the United States should take to address them.

Currency Valuation

The USTR also opened a separate Section 301 investigation into Vietnam's currency practices. Vietnam's central bank—the State Bank of Vietnam (SBV)—manages the value of the Vietnamese currency, the dong. Buying and selling currencies (“interventions”) in foreign exchange markets can help central banks legitimately stabilize the value of their currencies. However, persistent, one-sided interventions create concerns that a central bank may be manipulating the value of its currency to gain an unfair trade advantage. In 2019, Vietnam had net purchases of foreign exchange totaling \$22 billion, and a large current account surplus of 5% of gross domestic product (GDP), indicators that some economists say indicate one-sided currency manipulation. However, economists and policymakers disagree about what policies constitute unfair currency practices, how to measure them, and the net trade effects of undervalued currencies.

The USTR currency investigation will focus on (1) whether SBV's interventions in exchange markets contribute to the undervaluation of the dong; (2) the specific practices that may contribute to such an undervaluation; (3) the nature and level of burden or restriction on U.S. commerce caused by it; and (4) the actions that the United States should take to address Vietnam's currency practices.

The Treasury Department first formally raised concerns about Vietnam's currency practices in May 2019, when it included Vietnam in its monitoring list of economies whose currency practices merit close attention. The Treasury Department again listed Vietnam in January 2020. In June 2020, the Commerce Department opened an investigation in response to a petition filed by United Steelworkers alleging

that the systematic undervaluation of the Vietnamese dong effectively subsidizes Vietnam's exports of passenger vehicles and light truck tires. The investigation utilizes a recent rule issued by the Commerce Department that allows it to treat currency undervaluation as a type of subsidy when determining countervailing duties (duties on imports that benefit from unfair government subsidies).

As part of Commerce's investigation, the Treasury Department reportedly estimated that the dong was undervalued by about 4.7% in 2019. The International Monetary Fund (IMF) estimated that Vietnam's currency was undervalued by 8.4% in 2019. Other studies, however, maintain that Vietnam's dong is overvalued in terms of real effective exchange rate (REER). In November 2020, Commerce announced the imposition of preliminary duties on car and truck tires from Vietnam, citing currency undervaluation among other reasons.

At an October 26, 2020 meeting with the Chief Executive Officer of the U.S. International Development Finance Corporation, Vietnam's Prime Minister Nguyen Xuan Phuc downplayed U.S. allegations of currency manipulation, asking that President Trump come to “a more objective assessment of the reality in Vietnam.”

The Trump Administration in general has taken an assertive approach to exchange rate issues, but the invocation of Section 301 to address Vietnam's currency practices—which could potentially impact a much larger swath of imports from Vietnam than Commerce's investigation—is controversial. It is not clear that Section 301 was designed to address currency issues. The Administration is also not utilizing congressionally-created processes for addressing alleged currency manipulation as specified in the Omnibus Trade and Competitiveness Act of 1988 (P.L. 100-418) and the Trade Facilitation and Trade Enforcement Act of 2015 (P.L. 114-125). The unilateral approach also eschews multilateral approaches (namely the IMF) and may strain otherwise good ties with Vietnam.

Outlook

Section 301 investigations generally take months to complete, as the USTR reviews public comments, holds consultations with the foreign government, and reports findings and recommendations. The determination on whether to take action in these cases will likely occur during the 117th Congress. Should the USTR determine that Vietnam's practices under investigation are unreasonable or discriminatory, actually burden or restrict U.S. commerce, and are therefore actionable under Section 301, the agency could seek to negotiate and enter into a binding agreement with Vietnam. Such an agreement could require Vietnam to address or eliminate the practices or policies under investigation or provide compensation to the United States. Absent mutual resolution, a likely scenario is the imposition of additional tariffs on U.S. imports from Vietnam. However, if the United States were to impose trade restrictions, Vietnam could pursue WTO dispute settlement or retaliate by targeting U.S. exports.

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