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Latest USTR Action Casts Doubt on Expanding Vietnam Supply Chains

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Last Friday, the Office of the U.S. Trade Representative (USTR) [announced](#) the initiation of investigations into Vietnam's import practices and use of illegal timber and undervaluation of its currency under Section 301 of the Trade Act of 1974, the same statute that the USTR used to impose tariffs on Chinese products.

USTR then issued [two separate initiation notices](#) with more details. Interested parties have until **November 12, 2020** to submit written comments. This is the [sixth Section 301 proceeding](#) conducted under the Trump Administration,¹ and it occurs while more than 3,400 lawsuits challenging the China Section 301 tariffs are pending at the Court of International Trade.

The announcement of the investigations has raised immediate concerns across the business community over the possibility of sweeping tariff actions on imports from Vietnam just as many businesses have completed a shift of their supply chains away from China to Vietnam.

Vietnam Section 301 Investigation: Illegally Harvested and Traded Timber

USTR's initiation notice states that "much of the timber imported by Vietnam was harvested against the laws of the source country." For instance, timber exported from Cambodia to Vietnam was reportedly harvested on protected lands. USTR further notes that Vietnamese timber imports may be traded illegally. USTR invites comments on: (1) the extent to which illegal timber is imported into Vietnam; (2) the extent to which Vietnamese producers use illegal timber; (3) the extent to which products of Vietnam made from illegal timber, including wooden furniture, are imported into the United States; (4) Vietnam's acts, policies, or practices relating to the import and use of illegal timber; (5) the nature and level of the burden or restriction on U.S. commerce caused by Vietnam's import and use of illegal timber; and (6) the determinations required under Section 304 of the Trade Act, including what action, if any, should be taken.

Import restrictions that may result from the investigation could affect downstream wood products, such as wooden furniture, which the initiation notice specifically mentions.

¹ The other five investigations: (1) China; (2) Large Civil Aircraft; (3) France's Digital Services Tax; (4) Digital Services Taxes adopted by Austria, Brazil, the Czech Republic, the European Union, India, Indonesia, Italy, Spain, Turkey, and the United Kingdom (initiated in June 2020; ongoing); and (5) EU Beef (concluded without tariff actions). The Administration has imposed import tariffs as a result of the investigations into China, Large Civil Aircraft, and France's Digital Services Tax (tariffs suspended at this time).

Vietnam Section 301 Investigation: Currency Valuation

USTR is also investigating whether the government of Vietnam, through the State Bank of Vietnam, has actively intervened in the exchange market, which contributed to the undervaluation of its currency, the dong. USTR invites comments on Vietnam's currency practices, including the nature and level of burden or restriction on U.S. commerce caused by the undervaluation of Vietnam's currency, as well as the determinations required under Section 304 of the Trade Act, including what action, if any, should be taken.

What to Expect

If USTR determines that Vietnam's timber or currency practices are unreasonable or discriminatory and burden or restrict U.S. commerce, the Trade Act authorizes USTR (subject to the President's direction) to impose additional tariffs or other import restrictions. USTR has 12 months from the date of initiation to determine whether unfair practices exist and, if that determination is affirmative, what action, if any, to take under the Trade Act. USTR followed this timeline to impose the initial round of tariffs on Chinese products, and in the Section 301 investigation of France's digital services tax. Under this timeline, USTR will issue its findings and take actions by October 2021, if not earlier.

This investigation, initiated one month before the presidential election, will likely continue into the next presidential term. Regardless of the election outcome, there is some bipartisan consensus on enforcement actions to curtail illegal timber trafficking. For instance, the Obama Administration created the Task Force on Wildlife Trafficking to combat wildlife trafficking, including illegal logging and associated trade. However, there are various means at the disposal of an Administration to seek to enforce such conservation measures.

Potentially impacted businesses may want to consider commenting before November 12. Just as importantly, however, they should plan now for possible cost increases, enhanced compliance burdens, or supply chain disruptions. Recent experience suggests USTR may act quickly and that increased tariffs or other punitive measures could be significant.

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