

## US initiates Section 301 investigation into Vietnam currency policy; files WTO appeal on Canada lumber finding

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### Executive summary

On 2 October 2020, the United States Trade Representative (USTR) announced the initiation of two investigations under Section 301 of the *Trade Act of 1974* (Section 301) regarding Vietnam. The first investigation pertains to Vietnam's acts, policies, and practices related to the import and use of timber that is illegally harvested or traded; the second investigation is related to Vietnam's acts, policies, and practices that may contribute to the undervaluation of its currency and any subsequent harm caused to United States (US) commerce.<sup>1</sup>

In addition, the US notified the World Trade Organization (WTO) of its intention to challenge an August 2020 decision by the Dispute Settlement Body involving the US imposition of countervailing duties on softwood lumber imports from Canada.<sup>2</sup>

### Detailed discussion

#### Section 301 Investigations of Vietnam

On 2 October 2020, the USTR initiated two investigations into Vietnam pursuant to Section 302(b)(1)(A) of the Trade Act of 1974 that authorizes the USTR to initiate an investigation to determine whether an act, policy, or practice of a foreign country is actionable under Section 301 of the *Trade Act*.<sup>3</sup>

The first investigation pertains to the usage of illegally-sourced timber. The USTR advised that Vietnam exported over US\$3.7 billion of wooden furniture to the US in 2019. Available evidence suggests a significant portion of the timber imported into Vietnam and used in the production of the subsequent furniture exported from Vietnam was illegally harvested or traded. The investigation will focus on reports that Vietnam may be importing timber from protected lands in Cambodia or in violation of the Convention on International Trade in Endangered Species of Wild Flora (CITES).

The second investigation is around whether currency practices of Vietnam are unreasonable or discriminatory and burden or restrict US commerce.<sup>4</sup> In the announcement, the USTR notes Vietnam's currency (the Dong) was undervalued on a real effective basis by approximately 7% in 2017 and by approximately 8.4% in 2018. Further, available evidence also indicates that the Government of Vietnam actively intervened in the exchange market, which contributed to the Dong's undervaluation in 2019.

With regard to the timber investigation, the USTR is seeking public comment on:

- ▶ The extent to which illegal timber is imported into Vietnam.
- ▶ The extent to which Vietnamese producers, including producers of wooden furniture, use illegal timber.
- ▶ The extent to which products of Vietnam made from illegal timber, including wooden furniture, are imported into the United States.

With regard to the currency investigation, the USTR is seeking public comment on:

- ▶ Whether Vietnam's currency is undervalued, and the level of the undervaluation.
- ▶ The extent to which Vietnam's acts, policies, or practices contribute to the undervaluation.
- ▶ The nature and level of burden or restriction on US commerce caused by the undervaluation of Vietnam's currency.

Comments for both investigations should be submitted by 12 November 2020.

## Appeal of WTO Ruling over Canadian Softwood Lumber

On 29 September 2020, the US notified the WTO of its decision to appeal the Dispute Settlement Body's (DSB) decision on Countervailing Measure on Softwood Lumber from Canada.<sup>5</sup> The US has expressed concerns about

unfairly dumped and subsidized imports of softwood lumber products from Canada for nearly 40 years. In 2017, the US Department of Commerce and the US International Trade Commission (USITC) found that the Canadian softwood lumber producers were causing material injury to US softwood lumber producers and subsequently imposed countervailing duties on these Canadian producers.<sup>6</sup> The Canadian Government challenged these duties in the WTO DSB under the Subsidies and Countervailing Measures agreement and, on 24 August 2020, the WTO ruled that the US could not support the subsidy calculations used to determine such duties.<sup>7</sup> In response, the US announced that it would appeal the ruling. However, because the US has blocked the election of new members to the Appellate Body, the Appellate Body currently lacks the required quorum and will be unable to hear the case.<sup>8</sup>

## Actions for businesses

Any company involved in the importation of goods from Vietnam is encouraged to identify the potential impact of additional duties and explore mitigation strategies. Close monitoring of the negotiations and any political developments is warranted, as companies will want to assess any liability under a changing tariff regime.

Immediate actions for such companies to consider include:

- ▶ Reviewing contracts with suppliers and with customers to understand who has liability for increased duties and if there are opportunities for negotiation.
- ▶ Mapping their complete, end-to-end supply chain to fully understand the extent of products impacted, potential costs, alternative sourcing options, and to assess any opportunities to mitigate impact such as tariff engineering to address potential 301 or countervailing duties.
- ▶ Identifying strategies to defer, eliminate, or recover the excess duties paid under Section 301 or countervailing duty orders such as bonded warehouses, Free Trade Zones, substitution drawback, Chapter 98, and equivalent programs under Vietnam customs regulations.
- ▶ Exploring strategies to minimize the customs value of imported products subject to the additional duties under either 301 tariffs and countervailing duties, re-evaluating current transfer pricing approaches, and for US imports, considering US customs strategies, such as First Sale for Export.

## Endnotes

1. <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2020/october/ustr-initiates-vietnam-section-301-investigation>.
2. <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/DS/533-5.pdf&Open=True>.
3. [https://ustr.gov/sites/default/files/enforcement/301Investigations/Vietnam\\_Timber\\_Initiation\\_Notice\\_October\\_2020.pdf](https://ustr.gov/sites/default/files/enforcement/301Investigations/Vietnam_Timber_Initiation_Notice_October_2020.pdf).
4. [https://ustr.gov/sites/default/files/enforcement/301Investigations/Vietnam\\_Currency\\_Initiation\\_Notice\\_October\\_2020.pdf](https://ustr.gov/sites/default/files/enforcement/301Investigations/Vietnam_Currency_Initiation_Notice_October_2020.pdf).
5. <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/DS/533-5.pdf&Open=True>.
6. 82 FR 61587.
7. [https://www.wto.org/english/tratop\\_e/dispu\\_e/533r\\_conc\\_e.pdf](https://www.wto.org/english/tratop_e/dispu_e/533r_conc_e.pdf).
8. <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/DS/533-5.pdf&Open=True>.

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For additional information with respect to this Alert, please contact the following:

### Ernst & Young LLP (United States), Global Trade

- |  |                             |
|--|-----------------------------|
| ▶ Robert Smith, <i>Irvine</i>            | robert.smith5@ey.com        |
| ▶ Michael Leightman, <i>Houston</i>      | michael.leightman@ey.com    |
| ▶ Lynlee Brown, <i>San Diego</i>         | lynlee.brown@ey.com         |
| ▶ Michael Heldebrand, <i>San Jose</i>    | michael.heldebrand@ey.com   |
| ▶ Nathan Gollaher, <i>Chicago</i>        | nathan.gollaher@ey.com      |
| ▶ Todd Smith, <i>Irvine</i>              | todd.r.smith@ey.com         |
| ▶ Bill Methenitis, <i>Dallas</i>         | william.methenitis@ey.com   |
| ▶ Armando Beteta, <i>Dallas</i>          | armando.beteta@ey.com       |
| ▶ Bryan Schillinger, <i>Houston</i>      | bryan.schillinger@ey.com    |
| ▶ Michelle F. Forte, <i>New York</i>     | michelle.forte@ey.com       |
| ▶ Dennis Forhart, <i>Seattle</i>         | dennis.forhart@ey.com       |
| ▶ Douglas M. Bell, <i>Washington, DC</i> | douglas.m.bell@ey.com       |
| ▶ Nesia Warner, <i>Austin</i>            | nesia.warner@ey.com         |
| ▶ Jay Bezek, <i>Charlotte</i>            | jay.bezek@ey.com            |
| ▶ Helen Xiao, <i>Chicago</i>             | helen.xiao@ey.com           |
| ▶ Sharon Martin, <i>Chicago</i>          | sharon.martin1@ey.com       |
| ▶ Scott Fife, <i>Chicago</i>             | scott.fife@ey.com           |
| ▶ James Grogan, <i>Houston</i>           | james.grogan@ey.com         |
| ▶ Nicholas Baker, <i>Houston</i>         | nicholas.baker@ey.com       |
| ▶ Oleksii Manuilov, <i>New York</i>      | oleksii.manuilov@ey.com     |
| ▶ Parag Agarwal, <i>New York</i>         | parag.agarwal@ey.com        |
| ▶ James Lessard-Templin, <i>Portland</i> | james.lessardtemplin@ey.com |
| ▶ Amy Papendorf, <i>San Francisco</i>    | amy.papendorf@ey.com        |
| ▶ Robert Schadt, <i>Washington, DC</i>   | robert.schadt@ey.com        |
| ▶ Alexa Reed, <i>Detroit</i>             | alexa.reed@ey.com           |
| ▶ Jeremie Klein, <i>New York</i>         | jeremie.klein@ey.com        |
| ▶ Justin Shields, <i>San Diego</i>       | justin.shields@ey.com       |

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