
USTR Completes Section 301 Investigation of Vietnam's Currency Practices

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On July 23, the Office of the U.S. Trade Representative (“USTR”) [announced](#) the conclusion of its investigation under Section 301 of the Trade Act of 1974 (“the Trade Act”) into Vietnam’s practices related to currency valuation. Citing an agreement reached between the U.S. Department of the Treasury (“Treasury”) and the State Bank of Vietnam (“SBV”), USTR determined that no action is warranted under Section 301 at this time, because the agreement provides a satisfactory resolution of the matter subject to investigation. USTR also announced that it will monitor Vietnam’s implementation of its commitments under the agreement, and associated measures, in coordination with Treasury.

As WilmerHale [previously](#) reported, USTR initiated the investigation on October 2, 2020. USTR’s [initiation](#) notice asserted that Vietnam’s currency (the dong) had been undervalued over the previous three years, and that the SBV had contributed to the undervaluation by actively intervening in the exchange market. After holding a virtual hearing and collecting public comments, USTR [determined](#) on January 15, 2021 that Vietnam’s practices were actionable under Section 301 of the Trade Act. However, USTR did not take any specific actions in response at that time or in the ensuing seven months.

USTR’s use of Section 301 to address currency undervaluation was unusual, as Treasury has historically acted as the lead agency within the U.S. Government on foreign currency practices, even when trade and currency intersect. For example, Treasury led the negotiation of a chapter on macroeconomic policies and exchange rate matters in the United States-Mexico-Canada Agreement (“USMCA”). This was likely a result of capacity – USTR does not have an office with career staff specializing in currency issues – as well as traditional interagency divisions of responsibility.

Treasury and the SBV issued a [joint statement](#) announcing their agreement on July 19, 2021. The joint statement includes an acknowledgement by Vietnam “that it is bound under the Articles of Agreement of the IMF to avoid manipulating its exchange rate in order to prevent effective balance of payments adjustment or to gain an unfair competitive advantage” and that it “will refrain from any competitive devaluation of the Vietnamese dong.” The statement also notes that the SBV is working

to modernize and increase the transparency of its monetary policy and exchange rate framework, and that it will “continue to improve exchange rate flexibility over time, allowing the Vietnamese dong to move in line with the stage of development of the financial and foreign exchange markets and with economic fundamentals, while maintaining macroeconomic and financial market stability.”

The Treasury-SBV joint statement is the culmination of Treasury’s “enhanced engagement” with the SBV, which began following Treasury’s conclusion in December 2020 that Vietnam was manipulating its currency. Treasury [reported](#) this conclusion in its semiannual *Report on Macroeconomic and Foreign Exchange Policies of Major Trading Partners of the United States*, just over two months after USTR initiated the Section 301 investigation.

In announcing the agreement with the SBV, Treasury Secretary Yellen “welcome[d] the constructive dialogue between the Department of the Treasury and the [SBV] on currency policy, and the mutual understanding we have reached.” She also expressed her belief that the SBV’s attention to these issues “not only will address Treasury’s concerns, but also will support the further development of Vietnam’s financial markets and enhance its macroeconomic and financial resilience.”

Similarly, in announcing the conclusion of the Section 301 investigation, the U.S. Trade Representative, Ambassador Katherine Tai, commended Vietnam for its “commitment to addressing U.S. concerns with its currency practices and setting an important example for the Indo-Pacific region.” Ambassador Tai also stated that “American workers and businesses are stronger when our partners value their currency fairly and compete on a level playing field. Going forward, in coordination with Treasury, we will work together with Vietnam to ensure implementation, and we will continue to examine the currency practices of other major trading partners.”

The Federal Register [notice](#) setting out USTR’s determination cites sections 301(b) and 304(a)(1) (B) of the Trade Act as the legal authority for USTR’s determination to take no action against Vietnam. Those sections comprise the “discretionary” prong of Section 301, because they give USTR the authority and discretion to determine whether an act, policy or practice of a foreign country is unreasonable or discriminatory and burdens or restricts United States commerce, and what action, if any, to take in response. In this case, USTR determined that no action was appropriate, in light of the agreement referenced above.

USTR would have less flexibility under the statute to decline to act, however, if it later determines that Vietnam has failed to live up to its commitments. The Federal Register notice indicates that USTR will monitor Vietnam’s implementation of its commitments, in coordination with Treasury, pursuant to Section 306(a) of the Trade Act. The notice adds that, pursuant to Section 306(b), if USTR determines (in consultation with Treasury) that Vietnam is not satisfactorily implementing its commitments, “then the U.S. Trade Representative will consider further action under Section 301.” Section 306(b) calls on USTR to determine what further action to take under Section 301(a) – the mandatory prong of the statute. USTR would maintain flexibility to determine what action to take, but it could only decline to act altogether under the circumstances set out in Section 301(a)(2)(B).

As WilmerHale has [previously](#) reported, USTR is also pursuing a Section 301 investigation into Vietnam’s practices related to the alleged importation and use of illegal timber. That investigation

remains ongoing.

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