ITI Promoting Innovation Worldwide

ITI Response to Initiation of Section 301 Investigation: Vietnam's Acts, Policies, and Practices Related to Currency Valuation

The Information Technology Industry Council (ITI) welcomes the opportunity to submit comments in response to the initiation of a Section 301 investigation into Vietnam's acts, policies, and practices related to currency valuation (USTR-2020-0037). ITI is a global trade association that represents over 70 of the world's leading information and communications technology (ICT) companies. ITI's membership comprises the leading global innovators from all corners of the technology sector, including hardware, software, digital services, semiconductors, network equipment, and platforms, as well as "technology-enabled" companies that rely on ICT to evolve their businesses. ITI engages policymakers around the world to promote innovation, security, and sustained economic opportunity.

Vietnam is of central importance to evolving global ICT supply chains in addition to being a significant market in and of itself. Vietnam's role as a growing hub for trusted supply chain partners can be attributed to structural factors, its approaches to trade and investment policy, and recent U.S. and Chinese trade policy actions that have accelerated the diversification of supply chains in the Asia Pacific region, particularly as companies have sought to move supply chains outside of China for reasons also including serious security and labor concerns. Vietnam is a key regional partner of the United States, and ITI supports bilateral engagement that recognizes that reality, including through efforts to increase regulatory compatibility and reduce barriers to trade.

With these points in mind, we would like to use our response to express significant reservations concerning the use of Section 301 in this bilateral and policy context. Rather than focusing on specific allegations of currency manipulation, we will address process, supply chain, and broader competitiveness and national security concerns that we feel weigh in favor of reliance on policy tools other than Section 301 to achieve USTR's stated objectives. If USTR nevertheless decides to continue with its Section 301 investigation, we strongly urge deliberate, thorough, and transparent consideration of these and other stakeholder concerns at each phase of the process.

Process Considerations

Policy Mechanisms for Addressing Alleged Currency Manipulation

The *Federal Register* notice announcing the present investigation asserts both that Vietnam's currency is undervalued on a real effective basis and that active interventions by the Vietnamese government have contributed to such undervaluation. These assertions reflect in part the conclusions of the U.S. Department of the Treasury's January 2020 *Macroeconomic and Foreign Exchange Policies of Major Trading Partners of the United States* Report to Congress (the Report). The Omnibus Trade and Competitiveness Act of 1988 (the 1988 Act) requires the Secretary of the Treasury (the Secretary) to provide such semiannual reports to Congress on international economic and exchange rate policy, and to consider specifically "whether countries manipulate the rate of exchange between their currency and the United States dollar for purposes of preventing effective balance of payments adjustment or gaining unfair competitive advantage in international trade." The

Trade Facilitation and Trade Enforcement Act of 2015 (the "2015 Act") also calls for the Secretary to monitor the macroeconomic and currency policies of major trading partners and conduct enhanced analysis of and engagement with those partners if they trigger certain objective criteria that provide insight into possibly unfair currency practices.

Notably, while the January 2020 Report does include Vietnam on its Monitoring List of major trading partners that merit close attention to their currency practices and macroeconomic policies, it finds that Vietnam meets only one of the three statutory criteria for enhanced analysis under the 2015 Act: a significant bilateral trade surplus with the United States. Given Treasury's assertion that Vietnam does not meet all relevant criteria under the 2015 Act to classify the country as a currency manipulator, it appears irregular that USTR would conduct a separate, independent investigation assessing whether the statutory thresholds established under Section 301 have been met. Were Treasury to formally deem Vietnam to be a currency manipulator on the basis of analysis undertaken under its statutory authority, the Secretary would then be obligated to enter into bilateral consultations with the Vietnamese government with a view to correcting the situation. Given the existence of such channels of engagement, and the apparent absence of evidence necessary to compel Treasury to engage in bilateral consultations under the 2015 Act, ITI has serious concerns that neither the investigative process laid out under Section 301 nor the potential application of remedies in the event of a positive determination represent appropriate policy responses to Vietnam's alleged currency manipulation.

We would also note that apart from Treasury's leading role in assessing the macroeconomic and foreign exchange practices of the United States' foreign trading partners, there exist trade policy tools other than those provided under Section 301 that are more tailored to addressing the specific impacts of alleged currency manipulation. Namely, a recently-finalized rule (19 CFR 351.528) provides the Department of Commerce with the authority to govern determinations of undervaluation and benefit when examining potential subsidies resulting from the exchange of undervalued currency. In other words, the Department of Commerce is able to consider currency undervaluation as a form of subsidy when determining countervailing duties. On October 28, 2020, the Department first exercised this authority in setting preliminary import duties on passenger car and light truck tires from Vietnam, attributing a portion of these duties to Vietnamese currency undervaluation. This too would appear to be a more direct and targeted mechanism than Section 301 for addressing negative trade impacts on U.S. firms as a result of alleged Vietnamese currency manipulation.

Ensuring a Measured, Transparent, and Deliberate Policy Response

Particularly given existing USG competencies for addressing potential currency manipulation, we urge USTR to be as transparent and deliberate as possible if it continues to proceed with the current investigation. As part of these efforts, we believe it would be appropriate to schedule a public hearing to ensure that the fullest range stakeholder input may be considered. Whether through the channels outlined above or in the event of a positive determination under Section 301, ITI strongly encourages bilateral engagement as the sole means of resolving any substantive concerns around Vietnam's macroeconomic and foreign exchange policies. In addition, should USTR make such a determination, we request that it adhere to recent practice in the publication of a detailed report outlining its findings and that it conduct another public stakeholder consultation and hearing prior to proceeding with any further policy response under Section 301.

While not expressed explicitly in the *Federal Register* notice, we are concerned that the investigation may be driven by concern about the growth of the United States' bilateral trade deficit with Vietnam.

That deficit has grown in part due to structural factors that have pushed up the United States' overall trade deficit, especially over the course of the pandemic. We continue to feel strongly that U.S. bilateral trade deficits should not be viewed as a primary metric in determining the effectiveness of the United States' trade policy approaches. This view is further reinforced by evidence that the United States' existing bilateral goods deficit with Vietnam has also grown in part as firms undertake efforts to diversify and increase resilience in their supply chains at a time when governments are imposing significant trade restrictions for both strategic and public health reasons. The use of a trade policy action to tackle an alleged issue of monetary policy for which multiple clearly defined channels already exist risks both disrupting ongoing efforts to strengthen the security and resilience of supply chains that are crucial to U.S. competitiveness in the global ICT sector and sending inconsistent messages with regard to the United States' broader strategic objectives in the Asia Pacific.

Promoting Resilient Supply Chains, U.S. Competitiveness, and National Security

Supply chain diversification is a necessary element of strengthening U.S. firms' – including leading technology firms' – global competitiveness. Should it continue with its investigation, we strongly encourage USTR to consider Vietnam's role as an increasingly important partner in trusted supply chains and ensuring the ability of U.S. firms to remain competitive in the Asia Pacific region and globally. Vietnam's presence in supply chains serves as an important complement to manufacturing in other regions, including Asia and the United States. We therefore also urge thorough consideration of the far-reaching consequences the potential application of market access restrictions on Vietnamese exports would have on global value chains and the bilateral economic relationship that supports the evolution of these trusted value chains.

The January 2020 Treasury report notes that there has been a particular rise this year in certain imported goods from Vietnam, which tracks with the fall in imports of similar goods from China. This reflects the ongoing diversification of supply chains, as well as increasing production in existing factories in both lower value- added products (apparel, shoes, and bags) and higher valued-added electronics and electrical equipment.[1] Beyond the push created by recent structural and policy shifts, including the impact of the COVID-19 pandemic and the U.S. decision to apply tariffs to many products imported from China, Vietnam's increasing role in global value chains can be attributed in part to its own reduced tariff and investment barriers, including as a result of regional and preferential trade agreements to which Vietnam is a party.

The Impact of Supply Chain Disruptions on U.S. Competitiveness

The notion that product component supply lines can be shifted and re-shifted overnight ignores the complexity, interconnectedness, and significant investment required to operate ICT supply chains. It also ignores the fact that U.S. companies carefully calibrate their supply chains in order to maximize time-to-market and account for other considerations that enable them to remain globally competitive. Companies often spend months and even years negotiating contracts with suppliers, analyzing their components, ensuring the components meet rigorous quality controls, and then deciding how to assemble and test products in the most secure and efficient way, customized for specific regions of the world. Terminating a relationship with a supplier and establishing a contract with another of equal quality (assuming one exists) typically results in significant lost time and added costs associated with shifting capital equipment, and workers. In these situations, market share could be lost and never regained. Moreover, the disruption of supply lines for intermediate components

[1] https://home.treasury.gov/policy-issues/international/macroeconomic-and-foreign-exchange-policies-of-major-trading-partners-of-the-united-states

could in turn decrease U.S. exports of finished products if companies opt to respond to the disruption by shifting final products to a foreign country for final assembly and export, thereby impacting employment of U.S. workers.

All of these challenges have an impact on the competitiveness of U.S. firms. Lost opportunities can impact a firm for years depending on the product design cycle. For instance, aerospace components often have up to 30-year lifecycles, meaning if a company loses a bid at the beginning of the design cycle they are effectively locked out of competition until the next design cycle can begin. We strongly encourage USTR to keep these global competitiveness considerations in mind as the current investigation progresses, including as a means of ensuring alignment with broader strategic objectives.

Preserving and Strengthening Strategic Partnerships

The United States benefits from deepening commercial, diplomatic, and security relationships with Vietnam and other key partners in the Asia Pacific region, particularly those that can serve as trusted supply chain partners. Despite the expense and logistical challenges associated with supply chain restructure, a 2020 study by UBS found that 76% of surveyed U.S. firms with manufacturing in China had or were considering moving some production, with one third planning to move in the near future.[2] At a time when policymakers, companies, and non-government stakeholders have coalesced around the need for secure and resilient supply chains, Vietnam is strongly positioned to play a leading role in that evolving ecosystem given its strong capabilities in technology manufacturing. Furthermore, where U.S. firms are already seeking to diversify their operations outside of China, the USG should take particular care to ensure that measures that may influence these business investment decisions are undertaken in a coordinated, strategic manner that takes into account the impact of such policies on the ability of U.S. technology firms to compete globally.

Conclusion

ITI understands that USTR has initiated this investigation to determine whether there exist Vietnamese acts, policies, or practices related to the valuation of its currency that may burden or restrict U.S. commerce. We believe there are other existing policy mechanisms that are better suited to addressing the substantive concerns identified in the *Federal Register* notice. In addition to process concerns, it is our view that the potential use of trade remedies under Section 301, including tariffs, in this context would fail to account for the realities of the global marketplace, detract from the realization of broader U.S. strategic objectives in the region, and exacerbate unpredictability in a supply chain environment already contending with the challenges of the pandemic and in which companies are recalibrating and diversifying supply chains in the region.

We thank USTR for its consideration of these comments and look forward to continuing to work with U.S. policymakers should this investigation continue.

---

[2] Tapin, Nathaniel (2020), "Is Decoupling from China Worth $1 Trillion?" *Wall Street Journal*, https://www.wsj.com/articles/is-decoupling-from-china-worth-1-trillion-11601555406?st=f8meevna43bkqc4&reflink=article_email_share