RETAIL INDUSTRY LEADERS ASSOCIATION

99 M Street, SE
Suite 700
Washington, DC 20003

www.rila.org

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The Honorable Robert Lighthizer
United States Trade Representative
Office of the United States Trade Representative
600 17th Street Northwest
Washington, DC 20508

Re: Post-Hearing Rebuttal Comments – Section 301 Investigation of Vietnam's Acts, Policies, and Practices Related to Currency Valuation (Docket No. USTR-2020-0037)

Dear Ambassador Lighthizer,

The Retail Industry Leaders Association (RILA) appreciates the opportunity to comment on the hearing held on December 29, 2020 concerning the Section 301 Investigation of Vietnam's Acts, Policies, and Practices Related to Currency Valuation (Docket No. USTR-2020-0037) [hereinafter referred to as the "Investigation"].

RILA is the trade association of the world's largest, most innovative, and recognizable retail companies and brands. We convene decision-makers, advocate for the industry, and promote operational excellence and innovation. Our aim is to elevate a dynamic industry by transforming the environment in which retailers operate. RILA members include more than 200 retailers, product manufacturers, and service suppliers, which together account for more than $1.5 trillion in annual sales, millions of American jobs, and more than 100,000 stores, manufacturing facilities, and distribution centers domestically and abroad. RILA's membership includes some of the largest importers in the United States.

RILA agrees that U.S. trading partners should abide by U.S. and global trade rules. We support using targeted trade tools to remedy unfair or discriminatory practices that create an unlevel playing field for American businesses and workers. We want to partner with the Administration to hold U.S. trading partners accountable; however, we cannot support non-targeted actions that unfairly tax American businesses and families and have no relationship to the problem of currency valuation. Adding financial strain during an ongoing pandemic and economic recession will slow our recovery. Instead, we urge the Administration to engage in bilateral negotiations with Vietnam to address any concerning currency practices.

I. The Department of Treasury has more specific authority to analyze and address currency undervaluation.

Through the *Omnibus Trade and Competitiveness Act of 1988* ("the Act") (Pub. L. 100-418), Congress specifically tasked the Secretary of the Treasury with investigating and making determinations with respect to currency undervaluation. Section 3004 of the Act states that the Treasury Secretary, in conducting its analysis, shall "consider whether countries manipulate the rate of exchange between their currency and the United States dollar for purposes of preventing effective balance of payments adjustments or gaining unfair competitive advantage in international trade." Further, Congress contemplated the remedy where the Treasury Secretary finds that currency manipulation "is occurring with respect to countries that (1) have material global current account surpluses; and (2) have significant bilateral trade surpluses with the United States." In such instances, Congress directed the Treasury Secretary "to initiate negotiations with such foreign countries on an expedited basis . . . for the purpose of ensuring that such countries regularly and promptly adjust the rate of exchange between their currencies and the United States dollar to permit effective balance of payments adjustments and to eliminate the unfair advantage." Congress even provided a recourse where "negotiations would have a serious detrimental impact on vital national economic and security interests" – to notify the appropriate congressional committees.

Through the *Trade Facilitation and Trade Enforcement Act of 2015* (Pub. L. 114-125) ("TFTEA"), Congress again codified its expectation that the Treasury Department lead any Executive Branch investigation into currency undervaluation by U.S. trading partners. Specifically, section 701 of TFTEA requires the Treasury Secretary to submit a biannual report to Congress "on the macroeconomic and currency exchange rate policies of each country that is a major trading partner of the United States." It further directs the Treasury Secretary to "commence enhanced bilateral engagement with each country for which an enhanced analysis of macroeconomic and currency exchange rate policies is included in the report" to urge implementation of policies that address the currency undervaluation. If those negotiations are not successful, Congress outlined several remedial actions that the Treasury must take to address the issue. This includes instructing USTR "to take into account, in consultation with the Secretary, in assessing whether to enter into a bilateral or regional trade agreement with that country or to initiate or participate in negotiations with respect to a bilateral or regional trade agreement with that country, the extent to which that country has failed to adopt appropriate policies to correct the undervaluation and surpluses described in subsection (b)(1)(A)."

Congress has indicated clear intent that the United States address currency undervaluation practices by U.S. trading partners, particularly where they are harmful to the U.S. economy or create an unlevel playing field for American businesses. In doing so, Congress gave explicit authority to the Treasury Secretary to address these issues and identified bilateral negotiations as the appropriate recourse in such instances.

In its December 2020 report to Congress entitled "Macroeconomic and Foreign Exchange Policies of Major Trading Partners of the United States," the Department of Treasury concluded that Vietnam met the criteria of the 1988 and 2015 Acts and is a currency manipulator. The Treasury Department also indicated that it would "commence enhanced bilateral engagement with Vietnam" which "will include urging the development of a plan with specific policy actions to address the underlying causes of Vietnam's undervaluation of its currency."[1] While our members have not relayed concerns with Vietnam's currency practices or indicated that Vietnam's currency practices inhibit U.S. competitiveness in any way, we agree that bilateral engagement with Vietnam is both legally appropriate and the most effective means to address any such concerns. We urge USTR to work with the Treasury Department through this channel to address any concerns with Vietnam's currency practices.

II. USTR should not impose tariffs to address concerns with Vietnam's currency.

Section 301 provides USTR with several options to remedy a foreign trade practice: (1) withdraw or suspend trade agreement concessions; (2) impose duties or other import restrictions; or (3) enter into a binding agreement with the foreign government to either eliminate the practice in question (or the burden to U.S. commerce) or compensate the United States with satisfactory trade benefits. If USTR continues with its own investigation into Vietnam's currency practices, we urge it not to impose tariffs – which will place additional economic burdens on American businesses and families. Instead, we urge USTR to support Treasury's bilateral engagement to remedy any concerns. This will minimize uncertainty and ensure the Administration speaks with one voice. This will also ensure USTR does not take any action that will undermine Treasury's negotiations with Vietnam.

a. Tariffs Harm American Businesses and Families

American businesses and families have been assessed more than $72 billion[2] in additional tariffs on products since the China 301 tariffs were put into place. These tariffs

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[1] U.S. Department of the Treasury, Office of International Affairs, "Report to Congress: Macroeconomic and Foreign Exchange Policies of Major Trading Partners of the United States," p.3 (December 2020).
[2] CBP Trade Statistics, *available at* https://www.cbp.gov/newsroom/stats/trade (last visited 12/19/2020).

have resulted in less money in the pockets of American families[3], a slowdown in U.S. manufacturing[4], and decreased competitiveness for American businesses vis-à-vis their European and Asian counterparts. The evidence is clear – tariffs on imports have failed to increase domestic sourcing.

The global economy faces enormous uncertainty right now. According to the OECD, experience shows that companies can best weather this uncertainty by investing in longer-term relationships. U.S. retailers have built many such relationships out of China where possible, including in Vietnam. Our members leveraged existing relationships in Vietnam built on the country's intrinsic strengths.

Vietnam is unique. It has the production capacity, a stable, abundant, and skilled labor force, logistics capabilities, and the strong infrastructure needed to meet the high standards of our members. Unlike China, Vietnam is not an economic competitor of the United States. In fact, Vietnam has demonstrated progress in improving standards across many disciplines – including trade facilitation, labor, and the environment – as it worked with USTR during negotiations on the Trans-Pacific Partnership Agreement. And in fact, U.S. retailers are committed to seeing continued improvement in Vietnam's standards – participating in programs on worker well-being, sustainability, capacity building, and worker safety. Our members are invested in the long-term partnerships they have created.

Our members source a variety of goods – including apparel, footwear, electronics, home goods, furniture, power tools, decorative and seasonal goods, luggage, and toys – from trusted partners in Vietnam who meet our members' rigorous quality and safety standards. In a recent survey of our membership, 94% of respondents reported sourcing from Vietnam in the past four quarters and 62% of those respondents imported apparel products from Vietnam in the past four quarters.

According to the Department of Commerce's Office of Textiles and Apparel, Vietnam is the second largest supplier of apparel, footwear, and travel goods to the U.S. market, and has experienced dramatic growth since 2016. U.S. imports of apparel from Vietnam represent 19.3% of total U.S. apparel imported from October 2019 through October 2020. Additionally, during that same time period, imports of cotton apparel from Vietnam represent 17% of total U.S. cotton apparel imports, which is more than what the U.S. imported from China during the same time period.[5] Further, according to the U.S.

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[3] *See* The Budget and Economic Outlook: 2020 to 2030, Congressional Budget Office, p. 33 ("As a result, tariffs are also projected to reduce average real household income by $1,277 (in 2019 dollars) in 2020.").

[4] *See* Flaaen, Aaron, and Justin Pierce, "Disentangling the Effects of the 2018-2019 Tariffs on a Globally Connected U.S. Manufacturing Sector," Federal Reserve Board (Dec. 23, 2019).

[5] U.S. General Imports from Vietnam, *available at* https://otexa.trade.gov/msrcty/v5520.htm

International Trade Commission (USITC), 24.7% of all U.S. footwear imports came from Vietnam between January 2020 and September 2020. As for travel goods, U.S. imports from Vietnam represent 19% of total U.S. travel goods imported for the first 9 months of 2020. This is up 17.7% from the same time period last year.[6]

Placing a tax on goods from Vietnam now would create tremendous uncertainty for U.S. retailers and unfairly punish them for moving away from China. It would also leave limited options for sourcing and create new challenges during a global recession.

The COVID-19 pandemic and ensuing recession makes it extremely challenging for companies to identify new source countries, which includes several steps such as: identifying producers that meet our members' quality, safety, and capacity requirements; vetting new producers for compliance with other U.S. laws, including the forced labor statute; constructing new facilities; purchasing machinery; and training a new workforce. In addition, even if companies have an appropriate length of time to identify new sourcing options once the pandemic has abated, there are limited options for sourcing in the volume needed from countries other than China and Vietnam. And what limited capacity exists in other countries will be quickly filled by companies across industry sectors looking to avoid the tariffs.

In addition to retailers, the purchasing power of American families has been diminished by the current recession. The financial suffering is most severe for lower income families who were already struggling to afford basic necessities.[7] If tariffs are imposed on imports from Vietnam, this will ultimately result in a tax on consumers. Consumer products imported from Vietnam include not only daily staples such as apparel and furniture, but also critical medical goods such as Personal Protective Equipment (PPE) that are essential for America's fight against COVID-19.

Higher costs on consumer goods may result in a decrease in sales for retailers. The retail industry operates on razor thin margins, and a decrease in sales for retailers may result in store closures and job losses across the country. For example, a 25 percent tariff on apparel products could result in apparel consumer demand decreasing by 5 to 8 percent. As a result of that decreased demand, the apparel industry could lose up to 1 million jobs.

The data is clear: tariffs on products from Vietnam will cost American jobs and harm American families and businesses.

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[6] USITC's Trade Data Web, *available at* https://dataweb.usitc.gov/

[7] Parker, Kim, Rachel Minkin, and Jesse Bennett, "Economic Fallout from COVID-19 Continues to Hit Lower-Income Americans the Hardest," Pew Research Center (Sept. 24, 2020).

b. Tariffs Undercut U.S. Competitiveness

The country most likely to benefit from tariffs against Vietnam is China, as companies will be forced to return their sourcing to China to meet the volume and pricing demands of U.S. consumers. Many members have taken their cue from the Administration's strong actions against China and worked to diversify their supply chains by moving their sourcing to other countries in Southeast Asia.

Imposing tariffs on goods from Vietnam will harm the ability of U.S. retailers to compete globally. While the U.S. is considering new tariffs on Vietnam, other competitor countries such as the European Union (EU) and Canada have lowered their tariffs and trade barriers with Vietnam through free trade agreements and trade preference programs.

In addition, placing tariffs on Vietnamese products could harm American exports. Vietnam is a major export market for U.S. textile, chemical, hardwood, and agricultural products. Additionally, imports of raw materials from Vietnam are critical inputs used by U.S. manufacturers of finished goods. According to the U.S. International Trade Commission, U.S. textile and apparel exports to Vietnam increased by $97 million from 2015 to 2019. And during that same time period, U.S. footwear exports to Vietnam increased by $170 million.[8] These American exports, along with key U.S. agricultural exports, will surely be subject to retaliatory tariffs if the Administration imposes tariffs on Vietnamese products.

Simply put, tariffs are not the answer. Tariffs will not resolve concerns with Vietnam's currency practices. In fact, it would do greater harm to U.S. economic interests and cause serious disruptions to the American economy.

c. Vietnam is a Crucial U.S. Ally and Trading Partner

Vietnam is not only a strong trading partner for the U.S., but it is also a crucial ally in a critical region for supply chains and national security interests. Our members have been encouraged by the Administration's strengthening of the diplomatic alliance with Vietnam over the past four years. We have also been reassured by Vietnam's willingness to embrace diplomatic relations with the U.S. based on shared national security concerns and its eagerness to create a mutually beneficial trade environment between our nations.

During his recent visit to Vietnam, U.S. National Security Advisor Robert O'Brien "told Vietnamese leaders they must curb illegal re-routing of Chinese exports and purchase more US goods such as liquefied natural gas and military equipment to avoid American

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[8] USITC's Vietnam Trade Shifts Index, *available at* https://www.usitc.gov/research_and_analysis/trade_shifts_2019/vietnam.htm

tariffs."[9] While this suggests the Administration has already decided that it will impose tariffs as a remedy in this investigation as well as USTR's companion illegal timber investigation, it also suggests that concerns with Vietnam's currency practices can be addressed through diplomatic channels rather than punitive measures such as the imposition of tariffs.

This past year marked the 25th anniversary of the normalization of diplomatic ties between the U.S. and Vietnam, a testament to the powerful and symbiotic relationship between the two nations that should be bolstered, not jeopardized.

Further, the recent report by the Congressional U.S.-China Working Group recommends negotiating trade agreements to "counter China's influence by strengthening economic and geostrategic ties, establishing ambitious rules and standards based on U.S. law, and creating export opportunities for U.S. producers." [10] The report also recommends that the U.S. continues "using statutory trade tools to strengthen economic and geostrategic ties with developing countries in Africa, Asia, and Latin America." [11]

We share the Administration and Congress' goals to strengthen ties with Vietnam and set ambitious trade rules that benefit both our countries. Given the Administration's diplomatic gains made with Vietnam, we urge USTR to support Treasury's bilateral engagement with Vietnam to develop and promote mutually agreeable solutions that will benefit, not harm, American businesses, consumers, and workers.

III. USTR should make every effort to conduct a fair, thorough, and transparent investigation.

Leading retailers appreciate USTR's decision to hold a hearing in this investigation, as well as the opportunity to participate and provide post-hearing comments. These are important steps to ensure a fair, thorough, and transparent process. As this investigation moves forward, we urge USTR to carefully consider the novel issue before it and all potential implications of any actions taken – including the collateral damage to U.S. retailers and American families if tariffs are imposed. This process must not be rushed –

[9] Jacobs, Jennifer, "Trump Aide Tells Vietnam to Curb China Shipments to Avoid Duties," Bloomberg News (Nov. 22, 2020).

[10] "China Task Force Recommendations in Ways & Means Committee Jurisdiction" (Sept. 30, 2020), *available at* https://republicans-waysandmeansforms.house.gov/uploadedfiles/ways_means_ctf_recommendations.pdf (last visited Jan. 4, 2021). *See also* China Task Force Report, U.S. House of Representatives, 116th Congress, p. 69 (Sept. 2020)

[11] *Id. See also* China Task Force Report, U.S. House of Representatives, 116th Congress, p. 69-70 (Sept. 2020)

to do so risks the credibility of the investigation and its findings and more broadly USTR's Section 301 authority.

Further, if the Administration moves to impose tariffs on Vietnam because of this investigation, we urge USTR to provide a public comment period and a hearing on any proposed tariff list before it takes effect. We further urge USTR to provide no less than 30 days between the date of any proposed tariff action and the date of implementation. These steps will improve transparency and help prevent unintended consequences on U.S. families, businesses, and our overall economy.

IV. **Conclusion**

In conclusion, we urge the Administration to engage in bilateral negotiations with Vietnam to address any concerning currency practices, and USTR should support the Treasury Department in this endeavor. We further urge USTR to carefully consider the negative impact of imposing tariffs against an important American trading partner and ally in a crucial region for U.S. supply chains and national security interests. Additionally, given the ongoing pandemic and ailing economy, we ask USTR to weigh the potential loss of American jobs and decreased affordability of everyday products that would result if tariffs are implemented on imports from Vietnam. Finally, we urge USTR to ensure a fair, thorough, and transparent process that carefully considers this novel issue and implications of any potential actions.

Thank you for the opportunity to provide insight on behalf of our membership.

Sincerely,

Blake Harden

Blake Harden
Vice President, International Trade
Retail Industry Leaders Association