



RETAIL INDUSTRY LEADERS ASSOCIATION

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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 the Import and Use of Illegal Timber (Docket No. USTR-2020-0036)

Dear Ambassador Lighthizer,

The Retail Industry Leaders Association (RILA) appreciates the opportunity to comment on the hearing held on December 28, 2020 concerning the Section 301 Investigation of Vietnam's Acts, Policies, and Practices Related to the Import and Use of Illegal Timber (Docket No. USTR-2020-0036) [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 illegal logging. Adding financial strain during an ongoing pandemic and economic recession will slow our recovery.

As USTR considers what, if any, action should be taken in this investigation, we urge it to leverage the Lacey Act to address concerns with Vietnam's timber practices, including those set forth in the Federal Register notice that launched this investigation. In addition, we urge USTR to engage in bilateral negotiations with Vietnam to address practices, if they exist, that cannot be appropriately remedied through Lacey.

I. USTR should use targeted tools – not tariffs – to address concerns with Vietnam's timber practices.

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. In determining how best to remedy any potential unfair trading practice by Vietnam with respect to timber, we urge USTR to avoid imposing tariffs which place additional economic burdens on American businesses, consumers, and workers.

a. Tariffs Harm American Businesses and Families

American businesses and families have been assessed more than \$72 billion¹ in additional tariffs on products since the China 301 tariffs were put into place. These tariffs have resulted in less money in the pockets of American families², a slowdown in U.S. manufacturing³, 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

¹ CBP Trade Statistics, available at <https://www.cbp.gov/newsroom/stats/trade> (last visited 12/19/2020).

² 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.").

³ 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).

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.⁴ Further, according to the U.S. 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 nine months of 2020. This is up 17.7% from the same time period last year.⁵

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

⁴ U.S. General Imports from Vietnam, available at <https://otexa.trade.gov/msrcty/v5520.htm>

⁵ USITC's Trade Data Web, available at <https://dataweb.usitc.gov/>

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.⁶ 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.

b. Tariffs Undercut U.S. Competitiveness

The country most likely to benefit from tariffs against Vietnam is China, as companies may elect 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 additional 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 USITC, U.S. textile

⁶ 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).

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.⁷ These American exports, along with key U.S. agricultural exports, will surely be subject to retaliatory tariffs if the Administration imposes tariffs on goods from Vietnam.

Simply put, tariffs are not the answer. Tariffs will not resolve concerns with Vietnam's timber 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 tariffs."⁸ 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 currency investigation, it also suggests that concerns with Vietnam's timber 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."⁹ The report also recommends that the

⁷ USITC's Vietnam Trade Shifts Index, *available at*

https://www.usitc.gov/research_and_analysis/trade_shifts_2019/vietnam.htm

⁸ Jacobs, Jennifer, "Trump Aide Tells Vietnam to Curb China Shipments to Avoid Duties," Bloomberg News (Nov. 22, 2020).

⁹ "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

U.S. continues "using statutory trade tools to strengthen economic and geostrategic ties with developing countries in Africa, Asia, and Latin America."¹⁰

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 engage in an open dialogue with Vietnam to develop and promote mutually agreeable solutions that will benefit, not harm, American businesses, consumers, and workers.

II. The Lacey Act, coupled with bilateral negotiations if needed, is the more appropriate remedy.

Rather than impose tariffs, we urge USTR to leverage the Lacey Act to address any actionable conduct related to Vietnam's timber practices. More specifically, we urge USTR to work with the U.S. Department of Agriculture to consider a long-term action plan to enforce the Lacey Act for violative products from Vietnam – including by building on actions by Vietnamese Customs to deter the transshipments of Chinese goods subject to the existing Section 301 tariffs.¹¹

The Lacey Act requires detailed information from importers regarding the genus and species of plants, as well as their origin, used in imported products. Our members make Lacey Act declarations routinely on imports, and it is a proven tool to ensure products made with illegally harvested or traded plant species do not enter the United States. To make such declarations, our members have established extensive due diligence programs to ensure their products do not contain illegally harvested timber.

For example, many retailers require suppliers to fill out a detailed questionnaire regarding whether the product contains any plant or wood material. If it does, one member reported that its suppliers must then submit Lacey information on any component piece containing the wood or plant material, as well as a Supplier Certification of Lacey Act Compliance at the time of production or annual testing. For high-risk products, that same member requires suppliers to provide a Government Certificate of Authority, a Forest Management Unit Certificate or a similar document that indicates the supplier's government approved of the harvest.

visited Jan. 4, 2021). See *also* China Task Force Report, U.S. House of Representatives, 116th Congress, p. 69 (Sept. 2020)

¹⁰ *Id.* See *also* China Task Force Report, U.S. House of Representatives, 116th Congress, p. 69-70 (Sept. 2020)

¹¹ Yap, Chuin-Wei, "American Tariffs on China Are Being Blunted By Trade Cheats," *The Wall Street Journal* (June 26, 2019) (noting "Vietnam's customs agency said this month that it instructed its provincial and municipal branches to step up inspection and verification of certificates of origin, a document that accompanies all international shipments . . .").

Additionally, some members require suppliers to provide documents that show the full chain of ownership – from when the wood was harvested to the time of purchase by the supplier. One member requires this information to be updated for any changes in sourcing or any changes in the materials which could affect the genus, species, or component amount in the products.

Our members also go through detailed steps to ensure no material used in their products are endangered and prohibited from importation into the United States. For example, one member company reported that it verifies genus and species and utilizes the [USDA National Plant Germplasm genus/species website](#). That member asks vendors whether the product contains any material subject to CITES. Another member company conducts a search for all products containing plant or wood materials against the Natural Resources Conservation Service's *Federal Noxious Weed List* and its *Threatened, Endangered, and Rare Species List* and the International Union for Conservation of Nature's *Red List*. If the product is on any of these lists, the member informs its buyer that the product is endangered and not allowed to be imported.

Our members also conduct regular audits of their suppliers, and suppliers located in high-risk geographic areas are audited more frequently.

In addition to ensuring compliance with the Lacey Act, our members are global leaders in sustainable business practices. Many U.S. retailers have developed their own sustainable forestry goals, often setting out long-term, multi-year objectives and have partnered with outside organizations committed to responsible sourcing of forest products to achieve their high-reaching sustainability goals. Our members recognize the value of certifications such as the Forest Stewardship Council (FSC), the Sustainable Forestry Initiative (SFI), and the Programme for the Endorsement of Forest Certification (PEFC). One member noted that it relies on the use of the FSC certification scheme within its supply chains to achieve broader policy commitment. That same member works with suppliers to achieve full visibility to their supply chain of custody and increase the penetration of FSC certified products available in its stores and online.

In addition to establishing strong due diligence standards, our members report that long-term supplier relationships help ensure compliance with Lacey Act requirements. This is especially important when it comes to maintaining the extensive documentation needed for the chain of custody tracing from harvest to importation. Our members note that many countries do not have the same record keeping requirements as the United States and requiring suppliers to acquire and maintain this additional paperwork for an extended period of time in support of U.S. entries is an increased administrative burden. Establishing longer supplier relationships incentivizes suppliers to maintain the appropriate documentation and provide it to retailers on a regular basis. These long-term



relationships help minimize risk and ensure compliance with U.S. laws, including the Lacey Act. Imposing tariffs would jeopardize these long-term relationships and increase risk if retailers are forced to establish relationships with new, untested suppliers.

For all of these reasons, we urge USTR to leverage the Lacey Act to address concerns with violative products from Vietnam. In addition, we urge USTR to engage in bilateral negotiations with Vietnam to address practices, if they exist, that cannot be appropriately remedied through enforcement of the Lacey Act. Such negotiations could lead to the establishment of a protocol to update the 2007 Trade and Investment Framework Agreement (TIFA) between the United States and Vietnam. The protocol could establish a basis for regular ongoing dialogue with Vietnam to promote sustainable forestry and legal timber trade, combat illegal logging, and provide for enhanced customs enforcement cooperation. The U.S. has pursued similar models with other trading partners, such as through the Memorandum of Understanding on Combatting Illegal Logging and Associated Trade with China, and more recently the Protocol to update the 2011 Agreement on Trade and Economic Cooperation (ATEC) with Brazil – which includes notable commitments to cooperate electronic phytosanitary certificate and e-CITES processes and certificate exchanges.

We believe this approach could create meaningful results. Vietnam has already demonstrated a willingness to tackle unfair timber practices to enhance its bilateral trading relationships. For example, Vietnam recently issued a Decree implementing its Vietnam Timber Legality Assurance System regulations for importing and exporting timber following a risk-based approach. The Decree implements Vietnam's commitments under its Voluntary Partnership Agreement on Forest law enforcement, Governance and Trade (VPA-FLEGT) with the EU. The Administration should work closely with Vietnam to ensure the Decree and VNTLAS system are implemented quickly and effectively. In addition, the Administration should establish a protocol to the 2007 TIFA that strengthens Vietnam's forestry governance, rather than resort to tariffs. Such an agreement could serve as a U.S. counterpart to the VPA as well as a foundation for broader bilateral commitments between the U.S. and Vietnam over time.

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 –

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 leverage the Lacey Act, coupled with bilateral negotiations as appropriate, to address concerns with Vietnam's timber practices stemming from this investigation. 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
Vice President, International Trade
Retail Industry Leaders Association

