

**Before the  
Office of the United States Trade Representative**

*In the matters of:* Docket No. USTR-2020-0036 – Initiation of Section 301 Investigation: Vietnam’s Acts, Policies and Practices Related to the Import and Use of Illegal Timber; and

Docket No. USTR-2020-0037 -- Initiation of Section 301 Investigation: Vietnam’s Acts, Policies and Practices Related to Currency Valuation

Comments of USA Poultry & Egg Export Council

USA Poultry & Egg Export Council (“USAPEEC”) submits these comments in response to the requests for public comment issued by the Office of the United States Trade Representative (“USTR”) on October 8, 2020. <sup>1</sup> USAPEEC is a national trade association, headquartered in Stone Mountain, Georgia, that represents the interests of America’s poultry and egg export industry, perennially one of America’s most important and successful export sectors. USAPEEC has more than 200 member companies involved in export trade including chicken, turkey and egg producers; trading companies; freight forwarders; shipping companies; cold storage facilities; and port authorities. USAPEEC member companies represents more than 90 percent of all U.S. poultry and egg exports. Annually, the U.S. poultry industry exports more than 3.7 million metric tons valued at over \$4.6 billion to more than 100 countries, making poultry and eggs the most important U.S. agricultural export products.

USAPEEC has substantial concerns regarding the initiation of the Section 301 investigations in these particular cases. First, USTR should be aware of the already large, but still increasing, significance of the Vietnam market for U.S. poultry exports. Between 2010 and 2019, the Vietnam market for U.S. poultry increased by 73% from approximately 91,000 MT to more than 157,000 MT. In 2019, total sales to

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<sup>1</sup> 85 Fed. Reg. 63639 & 63637

Vietnam had reached more than \$140 million annually. For 2020, U.S. exports are on pace to maintain those same high levels despite the difficulties of trade during the worldwide pandemic. As of September 2020, export volume was already more than 132,000 MT at a value of more than \$114 million. As of this year, Vietnam has become the U.S. poultry export industry's 4<sup>th</sup> most important market in terms of volume sales, and its 5<sup>th</sup> most important market in terms of dollar value.

Firstly, USAPEEC would note that the alleged currency manipulation by Vietnam over the past three years has had no deleterious impact on U.S. exports of poultry. Despite the alleged undervaluation of the Vietnamese dong, which would presumably make that currency less valuable relative to the dollar, U.S. poultry sales have substantially increased over that three year period in both volume and dollar value.

Secondly, USAPEEC notes that these investigations are being initiated not on the basis that the rights of the United States are being denied under a trade agreement; or that Vietnam's is acting inconsistent with the provisions of, or denying the United States of any benefits under, an international accord such as a World Trade Organization agreement. Rather these investigations are proceeding under the more vague and more subjective standard of section 301(a)(1)(B)(ii) – *i.e.*, that Vietnam's actions are “unjustifiable and [burden or restrict] United States commerce.” Historically, Section 301 investigations have been initiated primarily in circumstances where foreign government actions are deemed to violate bilateral or multilateral trade agreements, and much less often in cases invoking the “unjustifiable” standard of section 301(a)(1)(B)(ii). This has been for very good reason.

Section 301 cases that have been brought in the past under sections 301(a)(1)(A) or 301(a)(1)(B)(i) are typically referred for dispute resolution under the provisions of an international or bilateral agreement, and the parties to that agreement have committed to abide by the decision reached in that dispute resolution process. Cases brought under these provisions effectively contain the dispute, in most instances, to the economic sector implicated. In other words, in

cases submitted for dispute resolution under treaty provision, other non-involved sectors are not dragged into the dispute unwillingly. Cases brought under the “unjustifiable” standard of section 301(a)(1)(B)(ii) by stark contrast involve a unilateral determination of unfairness by one party – in this case the United States – to which the other party has not consented. Where trade restrictions or additional tariffs are imposed unilaterally as a consequence of a 301(a)(1)(B)(ii) investigation or similar statute, it invites, and almost invariably results in trade retaliation, often imposed on U.S. sector that had not even been involved in the initial dispute. A trade partner, aggrieved by a unilateral determination that limits its exports to the United States, typically will single out a highly competitive U.S. export as its target for retaliation. In too many cases in the recent past, that has been the U.S. poultry sector.

Two recent examples make this point. Over the past decade, both the prior and the current Administrations have unilaterally raised tariffs on goods exported to the United States from China or Mexico. In 2009, under the prior Administration, the U.S. imposed additional tariffs on Chinese tires as the result of a Section 421 “safeguard” action. In retaliation, China subsequently announced it was imposing antidumping duties on U.S. poultry. There is no question that the imposition of antidumping duties was in direct retaliation for the U.S. increases in tariffs on Chinese goods; Chinese officials have told us so in the clearest terms.

Similarly, when the current Administration imposed increased duties on some Mexican goods, the Mexican poultry industry immediately petitioned its government to lift its longstanding stay and to begin again to impose antidumping duties on U.S. poultry. We would note that it was the U.S. industry – and not the U.S. government – that had achieved that stay both through its legal efforts in the antidumping proceedings in Mexico, as well as through its efforts to achieve a cooperative relationship with the Mexican poultry import and production industries. Fortunately, the efforts of our industry and our colleagues in Mexico – and not, frankly, the efforts of the U.S. government – have thus far prevented the imposition of those duties.

U.S. poultry is one of the America's most globally competitive sectors, and perhaps the most competitive of all U.S. agricultural products. But it is also the most vulnerable because it has become apparent to our trading partners that if they wish to retaliate against U.S. unilateral actions, they can do so by imposing antidumping duties on competitive U.S. goods, including poultry. Typically, these cases are economically and legally unsound, but our government has not challenge them. It is no secret internationally that the United States, over the past several decades and through multiple Administrations, has had a long-standing – and in our view, misguided -- policy that it will not challenge the antidumping determinations made by other countries. This policy seems to be animated by the belief that not doing so somehow protects the U.S. ability to impose antidumping duties to protect its economically vulnerable sectors. Over time this has resulted in a policy that is clearly at odds with the basic economics of competitive markets, and with U.S. trading interests. It has resulted in the U.S. favoring protection of less-competitive industries over advocacy for its more competitive sectors.

The current investigations, it seems to us, are premised on very unusual legal grounds. The timber investigation, for example, seems to be based on the theory that “Vietnam is not enforcing its own laws concerning the import and processing of timber.” The initiation of this case suggests that USTR considers itself in the position to be able to make legal judgments regarding Vietnamese law and its enforcement. Certainly, the United States would never accept, in the context of a trade dispute, another country's judgment regarding the meaning, and the lack of enforcement, of our laws. It seems odd that USTR would initiate these investigations and establish the precedent. Moreover, the theory that it is “unfair” for Vietnam not to enforce its own law suggests that if Vietnam had no laws regarding the importation and processing of foreign timber, there would be no basis for the investigation.

Similarly unusual is the rather vague accusation that Vietnam “tacitly may support” the import and use of illegal lumber. Once again, the term “illegal” lumber in this instance appears to refer to possible violation of Vietnamese law. And the

violations alleged seem to be an alleged failure to issue permits that imports are consistent with certain international environmental treaties – in this case, CITES. The current Administration has repeatedly indicated its lack of confidence in international environmental accords and has been unwilling to apply them in a number of cases, but is now choosing to cite lack of adherence to such agreements as a basis of “unfairness” under Section 301? This seems a dubious basis for initiating a section 310 action.

If there is evidence that the wood products being exported to the United States are being made from wood imported from Cambodia, the question is whether there has been substantial transformation that would qualify the goods as products of Vietnam. Or, if the question is Vietnam’s adherence to CITES, that question would be better raised in bilateral discussions between the countries or in the context of CITES. However, it seems to us that the unilateral determinations that the U.S. government seeks to make in this case stretch the already loose standards of section 301(a)(1)(B)(ii) beyond useful boundaries, and to the point where retaliation would seem inevitable.

In conclusion, the U.S. poultry industry has worked long and hard to develop an important and valuable export market in Vietnam, and it has become one of the most important destinations in the world for our product. In our view, the current 301 investigation is structured in a way that will invite trade retaliation on U.S. exports, and U.S. poultry will be a likely candidate for that retaliation. The U.S. government must understand the amount of time and effort our industry puts into developing markets for U.S. poultry and contributing to the balance of trade. It must also understand the frustration that our industry experiences when, as an innocent bystander, it suddenly becomes the victim of unilateral determinations and retaliation.

We respectfully request that the Office of the Trade Representative terminate this investigation and use other legal or diplomatic means to deal with the issue presented by the timber industry.