

## USTR releases findings of Section 301 investigation on DST regimes of Austria, Spain and the UK, and 301 findings on Vietnam's currency valuation practices

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### Executive summary

On 14 January 2021, the United States (US) Trade Representative (USTR) released the findings in its Section 301 of the *Trade Act of 1974* (Section 301) investigations of Digital Services Tax (DST) regimes of Austria, Spain and the United Kingdom (UK). The USTR concluded that each of the DST regimes discriminates against US companies, is inconsistent with prevailing principles of international taxation and burdens or restricts US commerce.<sup>1</sup> In alignment with its 6 January 2021 report with respect to the DST regimes of India, Italy and Turkey, the USTR has similarly announced that no specific actions against Austria, Spain or the UK would be taken at this time. The USTR expects to announce the progress and/or completion of DST investigations into Brazil, the Czech Republic, the European Union (EU) and Indonesia in the near future.

On 15 January 2021, the USTR announced the findings in the Section 301 investigation of Vietnam's acts, policies, and practices related to currency valuation including excessive foreign exchange market interventions and other related actions. The investigation determined that Vietnam's acts, policies and practices are unreasonable and burden or restrict US commerce. Similar to the DST report, the USTR is not taking specific actions at this time.

## Detailed discussion

### Additional USTR findings on Austria, Spain, and the UK DST regimes

In June 2020, the USTR initiated multiple Section 301 investigations into Austria, Brazil, the Czech Republic, the EU,<sup>2</sup> Indonesia, Spain and the UK relating to the adoption or contemplated adoption of a DST.<sup>3,4</sup>

On 6 January 2021, the USTR announced its findings in the investigations of the DST regimes of India, Italy and Turkey. The USTR determined that in each instance, the DST adopted was discriminatory to US companies, inconsistent with prevailing principals of international taxation, and burdens or restricts US commerce, but declined to take any specific actions in connection with those findings. See EY Global Tax Alert, [USTR announces findings in Section 301 investigations on DSTs adopted by India, Italy, Turkey, suspends punitive tariff actions on French origin goods](#), dated 13 January 2021 for further information.

The following week, on 14 January 2021, the USTR released the findings of the investigation into the DST regimes of Austria, Spain and the UK. As in the aforementioned investigations into the DST regimes of India, Italy and Turkey, the USTR concluded that the DSTs adopted were discriminatory to US companies, inconsistent with prevailing principals of international taxation, and burden or restrict US commerce. The USTR again announced that there is no intention to take action at this time, but they are reviewing all available options.

Although not currently in effect, the DSTs under consideration by Brazil, the Czech Republic, the EU and Indonesia are under Section 301 investigation as well. The USTR has indicated the intent to announce a status update for these jurisdictions shortly.

### Findings in Section 301 investigation of Vietnam's acts, policies, and practices related to currency valuation

In October 2020, the USTR announced that it was initiating two separate Section 301 investigations into Vietnam; the first related to the country's policies that may contribute to the undervaluation of its currency (the dong) and the second pertaining to the importation and use of illegally harvested

timber.<sup>5</sup> See EY Global Tax Alert, [US initiates Section 301 investigation into Vietnam currency policy; files WTO appeal on Canada lumber finding](#), dated 8 October 2020 for further information.

The first investigation focused on Vietnam's actions to manage the value of its currency. The USTR stated that the currency, which is managed through the State Bank of Vietnam, has been closely tied to the US dollar and available analysis indicates that Vietnam's currency was undervalued over the past three years.<sup>6</sup>

In the investigation into the import and use of illegal timber, the USTR alleged that Vietnam relied on imports of timber harvested in other countries and that evidence suggests that a significant portion of imported timber was illegally harvested or illegally traded.<sup>7</sup>

On 15 January 2021, the USTR released the results of the Section 301 investigation into Vietnam's currency practices. In conjunction with the Department of the Treasury as to matters of currency valuation and Vietnam's exchange rate policy, the USTR determined that Vietnam's acts, policies, and practices including excessive foreign exchange market interventions and other related actions, taken in their totality, are unreasonable and burden or restrict US commerce.

In a move parallel to recent decisions by USTR, the agency is not taking any specific actions in connection with Vietnam's currency practice findings at this time but is continuing to evaluate all available options.

On 28 December 2020, the USTR held a public virtual hearing for the Section 301 investigation concerning Vietnam's importation and use of illegally harvested or traded timber. The USTR has yet to release the findings.

## Actions for Businesses

In addition to monitoring the release of findings from the timber investigation, US companies that import goods from any of the aforementioned jurisdictions subject to Section 301 investigations should closely monitor any changes to the USTR's decision against taking actions following the DST and currency investigations, particularly as the Biden Administration assumed office days after the findings were released. US Companies should also monitor new USTR policy and proceedings as the administration begins its 100-day agenda and Katherine Tai is confirmed as US Trade Representative.

Section 301 allows for the imposition of tariffs, among other trade remedies. USTR actions during the previous administration included targeting specific categories of goods in certain industry subsectors. Consequently, as the investigations conclude and the Biden Administration

assumes office, companies should be sure to fully understand the extent of products, particularly, the Harmonized Tariff Schedule of the US (HTSUS) classifications and country of origin for trade flows between the impacted jurisdictions and the US.

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## Endnotes

1. See USTR press release "[USTR Releases Findings and Updates in DST Investigations.](#)"
2. EU member countries are Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden.
3. 85 FR 34709.
4. Investigations under Section 301 are directed by the President to the USTR to remedy violations of bilateral or multilateral trade agreements, or unreasonable, unjustifiable, or discriminatory foreign government practices that burden or restrict US commerce. Section 301 also includes a general authorization that permits USTR to take any actions that are within the President's power with respect to trade in goods or services, or with respect to any other area of pertinent relations with the foreign country.
5. See USTR press release "[USTR Initiates Vietnam Section 301 Investigation.](#)"
6. 85 FR 63637.
7. 85 FR 63639.

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