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# International Trade and Finance: Overview and Issues for the 115th Congress


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December 21, 2016


**Congressional Research Service**
7-5700
www.crs.gov
R44717

# Summary

The U.S. Constitution grants authority to Congress to regulate commerce with foreign nations. Congress exercises this authority in numerous ways, including through oversight of trade policy and consideration of legislation to implement trade agreements and authorize trade programs. Policy issues cover areas such as U.S. trade negotiations; U.S. trade and economic relations with specific regions and countries; international institutions focused on trade; tariff and nontariff barriers; worker dislocation due to trade liberalization; enforcement of trade laws; import and export policies; international investment; economic sanctions; and other trade-related functions of the federal government. Congress also has authority over U.S. financial commitments to international financial institutions and oversight responsibilities for trade- and finance-related agencies of the U.S. government.

### Major Actions in the 114th Congress

The 114th Congress passed legislation that:

- renewed Trade Promotion Authority (TPA) through July 1, 2021 (subject to passage of an extension disapproval resolution in 2018), allowing implementing legislation for trade agreements to be considered under expedited legislative procedures, provided that certain statutory requirements are met;
- reauthorized Trade Adjustment Assistance (TAA), the Export-Import Bank (Ex-Im Bank), and several U.S. trade preference programs on a multi-year basis;
- reauthorized the U.S. Customs and Border Protection (CBP); and
- authorized U.S. participation in quota and governance reforms at the International Monetary Fund (IMF).

Additionally, Congress continued its oversight of the Administration's ongoing trade agreements and negotiations, and maintained economic sanctions against Iran, Cuba, Russia, and other countries, among other actions. Members also introduced a range of legislation on international trade and finance issues.

### Possible Issues in the 115th Congress

During the 2016 presidential election campaign, U.S. trade policy and trade agreements received significant attention, particularly regarding the impact of trade agreements on the U.S. economy and workers. Among the more potentially prominent international trade and finance issues the 115th Congress may consider are:

- the effects of trade on the U.S. economy, jobs, and manufacturing, as well as policies that support U.S. workers and industries adversely affected by trade agreements;
- the future of U.S. trade policy in Asia, given President-elect Donald Trump's November 2016 statement he intends to "issue our notification of intent to withdraw from the Trans-Pacific Partnership" (TPP);
- the status of negotiations for the proposed Transatlantic Trade and Investment Partnership (T-TIP) FTA with the European Union (EU);
- proposals to renegotiate or withdraw from existing FTAs, including the North American Free Trade Agreement (NAFTA), or launch new bilateral trade negotiations, such as with the United Kingdom;

- oversight of World Trade Organization (WTO) agreements and negotiations, including the completed Trade Facilitation Agreement (TFA) and expansion of the Information Technology Agreement (ITA), as well as potential agreements on environmental goods and trade in services;
- U.S.-China trade relations, including investment issues, intellectual property rights (IPR) protection, currency issues, and market access liberalization;
- responses to currency manipulation and the enforcement of U.S. trade laws;
- international finance and investment issues, including oversight of international financial institutions (IFIs), the creation of development and infrastructure banks by emerging economies, and U.S. negotiations on new bilateral investment treaties (BITs), notably with China and India; and
- oversight of international trade and finance policies to support development and/or foreign policy goals, including sanctions on Iran, Cuba, North Korea, Russia, and other countries.

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# Overview[1]

During its 114th session, Congress faced numerous international trade and finance policy issues. These issues included approval of legislation granting time-limited U.S. Trade Promotion Authority (TPA) to the President. TPA provides expedited congressional procedures for considering legislation to implement U.S. trade agreements that advance U.S. trade negotiating objectives and meet specific notification and consultative requirements. Congress also approved legislation to reauthorize the Export-Import Bank (Ex-Im Bank), the Trade Adjustment Assistance (TAA) program, U.S. trade preference programs for Africa and other developing countries, and the commercial operations of U.S. Customs and Border Protection (CBP), as well as legislation to enhance trade enforcement by Customs and approve governance reforms at the International Monetary Fund (IMF). Additionally, Congress continued oversight of ongoing U.S. trade agreements and negotiations, U.S. trading relationships with major economies, and U.S. economic sanctions against Iran, Cuba, North Korea, Russia, and other countries.

The future direction of U.S. trade policy and international economic issues are likely to remain active areas of interest in the 115th session of Congress. Notably, U.S. trade policy and trade agreements received significant attention during the 2016 presidential election campaign, particularly regarding the impact of trade agreements on the U.S. economy and workers and whether the United States should withdraw from, renegotiate, or move forward with past and recently-concluded trade agreements, such as the Trans-Pacific Partnership (TPP). Trade enforcement issues and the broader impact of trade on the U.S. economy have received growing attention. Other pertinent issues include the future direction of U.S.-China trade relations, ongoing trade negotiations at the World Trade Organization (WTO) and on services (taking place outside of the WTO), free trade agreement (FTA) negotiations between the United States and the European Union (EU), potential future U.S. FTAs, and other FTA discussions that do not include the United States.

International trade and finance issues are important to Congress because they can affect the overall health of the U.S. economy and specific sectors, the success of U.S. businesses and workers, and Americans' standard of living. They also have implications for U.S. geopolitical interests. Conversely, geopolitical tensions, risks, and opportunities can have major impacts on international trade and finance. These issues are complex and at times controversial, and developments in the global economy often make policy deliberation more challenging.

Congress is in a unique position to address these issues, particularly given its constitutional authority for legislating and overseeing international trade and financial policy. This report provides a brief overview of some of the trade and finance issues that may be of interest or continuing attention of the 115th Congress. A list of CRS products covering these issues and containing relevant citations is provided in the **Appendix**.

## The United States in the Global Economy

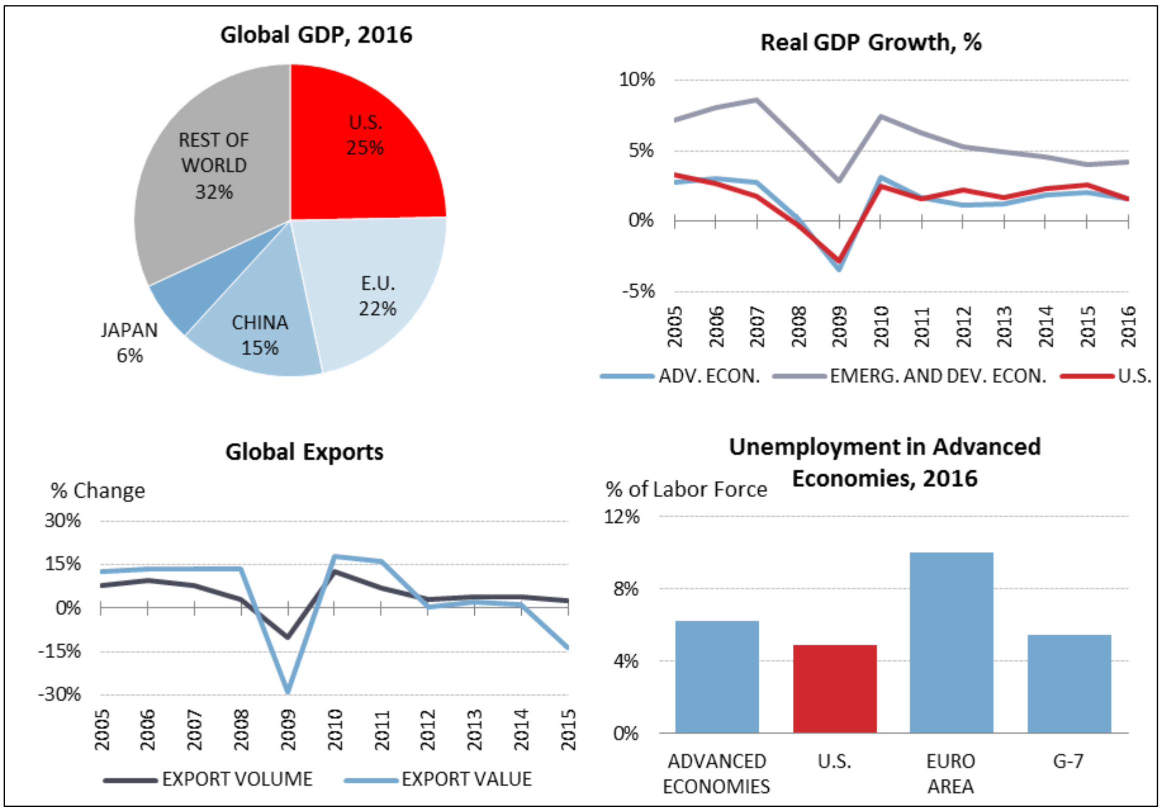
Since the end of World War II, the United States has served as the chief architect of an open and rules-based international economic order that has been characterized by trade expansion and growing economic integration. Some see this global economic order fragmenting and becoming less governable. The U.S. leadership role is being challenged by emerging economies and some

[1] Written by Mary A. Irace, Section Research Manager (x7-7769), James K. Jackson, Specialist in International Trade and Finance (x7-7751), and Ian Fergusson, Specialist in International Trade and Finance (x7-4997).

domestic groups that have grown skeptical of the benefits of U.S. participation in the global economy. For some, these changes to the international economic order may signal the end of America's dominance without a clear successor to lead the global economy.

The global economy is projected to continue to recover slowly in 2017 from the 2008-2009 financial crisis and economic recession, according to the Organization for Economic Cooperation and Development (OECD) and the International Monetary Fund (IMF). The IMF projects annual growth will rise to about 3.4% in 2017 from a projected growth rate of 3.1% in 2016.[2] The OECD growth forecast of 3.3% depends on the United States and other developed economies increasing government deficit spending to support infrastructure development, while avoiding restrictive trade measures.[3] The IMF also argues that emerging market and developing economies, in particular, could benefit from increased spending on infrastructure projects

**Figure 1. Global Economy: Snapshot**




**Source:** Created by CRS from International Monetary Fund, *World Economic Outlook*, April 2015 and October 2016.

Additional factors raise uncertainties about the strength and pace of the projected recovery in the rate of economic growth. One of the chief factors is the pace of economic recovery in the United States. The United States accounts for 24.5% of global gross domestic product (GDP) and 9.1% of global trade.[4] Saving and investment relative to GDP, which serve as the building blocks for

[2] International Monetary Fund, *World Economic Outlook*, October 2016.

[3] Organization for Economic Cooperation and Development, *OECD Economic Outlook*, November 2016.

[4] International Monetary Fund.

future growth, continue to lag behind pre-financial 2008 crisis levels in the advanced economies. Similarly, global trade continues to perform at lower levels and is significantly slower compared to historical levels (**Figure 1**). Lingering high rates of unemployment and non-performing loans are constraining economic growth in many Western European economies. Higher sustained rates of economic growth remain elusive in Japan, Canada, and parts of Europe, and especially in the United Kingdom where the implementation of Brexit (the vote in favor of exiting the European Union) has been suspended as the country grapples with a British court decision.

Emerging markets (EMs) as a group face growing vulnerabilities to their economies due to declining global trade, depreciating currencies, volatile equity markets, and, in certain areas, the lack of deeper economic reform. Growth rates have dropped sharply in several emerging markets, including Russia and Brazil. Additionally, China has faced a slowing economy as it attempts to navigate toward a more sustainable growth model that is more focused on boosting innovation and private consumption. This combination of events contributes to uncertainties that potentially impact global financial markets and raise concerns over the pace of business investment that could dampen prospects for longer-term gains in productivity and sustained higher rates of economic growth.

Stable or rising commodity prices (particularly oil) could ease some concerns in commodity-producing economies and stabilize national incomes. Volatile commodity prices have had spillover effects into major trading partners of EMs that depend on such exports. Shifts in international capital flows arising from changes in oil and commodity prices could add to uncertainties in global financial markets, raise risks for U.S. banks of non-performing loans made to the energy sector, and complicate the efforts of some major international banks to rebuild their capital bases. Droughts, civil wars, and domestic conflicts also add to global uncertainties and market volatility.

Over the long-term, developed and developing economies are struggling to find the right policy mix to address low growth, low inflation, and low levels of productivity growth, referred to as structural stagnation by some. Developed and developing economies are experiencing declining or flat birth rates, which portend a smaller work force in the future and lower potential rates of economic growth. Aging work forces, a demographic unfolding everywhere but in Africa, may also act to restrain economic growth. Under similar challenging conditions, nations have often turned to broad, multinational trade agreements to stimulate economic growth through improvements in productivity by removing market-distorting barriers.

Even with a tepid pace of economic recovery, the U.S. economy remains a relative bright spot in terms of the global economic outlook, which could help sustain its position as a main driver of global economic growth. Although the United States is still recovering from its worst recession in eight decades, overall conditions have improved with the unemployment rate below 5% in late 2016 from a high of 10% in 2009, and the IMF projects gross domestic product (GDP) growth will be 2.2% in 2017, up from 1.6% in 2016.[5] The stabilization in oil prices is affecting the U.S. economy. Relatively low energy prices are expected to raise consumers' real incomes, improve the competitive position of some industries, and stabilize employment and output in the energy sector. Despite improvements in the economy as a whole, average U.S. household incomes have not fully recovered from the 1999-2000 and 2008-2010 economic recessions. The U.S. economy, similar to other developed economies, has experienced widening disparity in incomes that is fueling domestically focused political movements and a backlash against globalization. While the

[5] International Monetary Fund, *World Economic Outlook*, October 2016.

incoming Trump administration is finalizing its policy priorities, it has announced its intention to focus on tax reform and infrastructure spending to restore economic growth.

The Euro and Japanese yen have experienced periods of volatility since the Brexit referendum vote during the summer of 2016. Some currencies remain at levels below the pre-Brexit level, including the Chinese renminbi, the Brazilian real, and the Russian ruble. In addition, the Mexican peso depreciated sharply in international foreign markets as the dollar strengthened in 2016. Volatile currency and equity markets combined with uncertainties over global growth prospects and rates of inflation that remain below the target levels of a number of central banks could further complicate the efforts of the U.S. Federal Reserve to take additional steps to raise U.S. interest rates to stabilize financial markets. In addition, other major economies in Europe and Japan may continue to pursue more expansionary monetary policies and certain EMs may continue to experience downward pressure on their currencies. Uncertainties in global financial markets could put additional upward pressure on the dollar as investors seek safe haven currencies and dollar-denominated investments. For some economies, volatile currencies and continued low commodity prices could add to sovereign debt issues, raising the prospect of sovereign defaults.

Since their peak in 2006, current account imbalances, as a share of world GDP, have fallen significantly, particularly the deficit in the United States and the surpluses in China and Japan. In the near term, concerns over a slowdown in global trade and the role the United States may play in supporting global growth as a major importer may overshadow potential concerns over global imbalances.

## Evolving Trade Patterns and Policy Implications

International trade and investment flows continue to evolve in significant ways, most notably through the growing integration of markets and production. The stages of transforming a good from its basic components into a final product for consumers now often occur in multiple countries. Advances in technology, communications, transportation, and lower barriers to trade have decreased transaction costs, making this global integration possible. According to the WTO, over the past 20 years, global trade in goods nearly quadrupled from $5 trillion in 1995 to $16 trillion in 2015. Trade in intermediate goods, which now account for over 60% of the world's commercial exchange, as well as digital trade, have seen particularly large growth. The ratio of global merchandise trade to global GDP fell sharply in 2009 following the 2008-2009 financial crisis, but rebounded quickly in 2010-2011.[6] In 2012-2014, merchandise trade to GDP declined gradually, before falling sharply in 2015, reflecting the drop in commodity prices.

Domestically, 11.7 million jobs are supported by U.S. exports, as reported by the Commerce Department.[7] Of the total amount of U.S. trade, intra-firm trade, including exports and imports sent to U.S. foreign affiliates and production abroad, as well as foreign firms operating in the United States accounted for 28% of U.S. exports and 34% of total U.S. imports.[8] These developments further complicate trade and employment policy debates, and raise other questions such as what constitutes an "American-made" product, who gains and who loses from trade, and how innovation and production strategies may continue to change the economic landscape.

[6] World Trade Organization, *World Trade Statistical Review 2016*.

[7] Chris Rasmussen, "Jobs Supported by Exports 2015: An Update," International Trade Administration, April 8, 2016.

[8] Bureau of Economic Analysis.

Other transformative changes in the global economy are the growing market size and role of China and other emerging markets, the growing role of state capitalism, and a more digitally-driven economy. These and other developments present significant opportunities and challenges for the United States as it seeks to achieve more open markets, transparent and rules-based trade, and financial and monetary stability in the global economy.

These developments have significant policy implications for the role and evolution of international trade and financial institutions and the U.S. role in these institutions. The inability of WTO members to conclude the 2001 Doha Round of multilateral trade negotiations, for example, presents an existential challenge to the institution's leadership for future broad-based trade liberalization. Partly in response, the United States has pursued "mega-regional" trade agreements like TPP and the U.S.-EU Transatlantic Trade and Investment Partnership (T-TIP) to break new ground in trade rules-setting and liberalization. Both agreements are, however, now on hold awaiting a new Administration and clarification of its positions on these and other components of U.S. trade policy. President-elect Trump has indicated he intends to withdraw from TPP and pursue more bilateral trade agreements.[9] The Group of 20 (G-20) process for furthering international economic cooperation among the world's 20 largest economies and newer institutions like the China-led Asian Infrastructure Investment Bank (AIIB) also raise questions about the leadership role of the United States in the global economy.

While global economic integration has increased trade and economic growth, it also has exposed U.S. firms and workers to greater competition from lower-cost and more efficient producers in certain sectors, and increasingly, from state-owned enterprises (SOEs) and other firms that receive government support and protection. Globalization and the larger volume of imports of goods and services, therefore, may force some U.S. firms to make costly adjustments to remain competitive. In some cases this may take the form of worker dislocation and shifts to production abroad, and may raise concerns in Congress over distributional issues of global production and trade, how to respond to unfair foreign trade practices, and the scope and effectiveness of U.S. worker training and trade adjustment assistance programs.

Volatility of the U.S. dollar relative to other major currencies has implications for U.S. and global trade. For the United States, an appreciating dollar may have slowed the rate of U.S. export growth and increased U.S. imports. The relationship between the exchange value of the dollar and trade performance, however, is complicated by a broad range of other factors that affects demand for U.S. exports and falling commodity prices that offset some of the impact of an appreciating currency. While potentially improving consumer welfare and lowering the costs of imports used as inputs in U.S. production, an appreciating currency also may result in increased competitive pressures on U.S. import sensitive industries and create greater trade tensions.

In sum, the costs and benefits of an increasingly interconnected global economy to the United States are multifaceted and often unclear. The trade policy debate extends beyond free trade versus protectionism, also to involve domestic and foreign macroeconomic policies, the participation of foreign states in markets, the competitiveness of U.S. firms and workers, the best approach to assist workers displaced by foreign competition, the implications of global value chains, and the financial stability of the international economy. For the United States, an overarching goal is to ensure a high standard of living for its people by remaining innovative, productive, and responsive to international competition and technological change. At the same time, the United States seeks to safeguard those stakeholders who otherwise may be left behind in

[9] Transition 2017, "A Message from President-Elect Donald Trump," November 21, 2016, https://www.youtube.com/watch?v=7xX_KaStFT8.

a fast-changing global economy or injured by noncompetitive and distortive trade practices, which may suggest a supporting role for complementary domestic policies.

## The Role of Congress in International Trade and Finance

The U.S. Constitution assigns express authority over foreign trade to Congress. Article I, Section 8, of the Constitution gives Congress the power to "regulate Commerce with foreign Nations" and to "lay and collect Taxes, Duties, Imposts, and Excises." For roughly the first 150 years of the United States, Congress exercised its power to regulate foreign trade by setting tariff rates on all imported products. Congressional trade debates in the 19th century often pitted Members from northern manufacturing regions, who benefitted from high tariffs, against those from largely southern raw material exporting regions, who gained from and advocated for low tariffs.

A major shift in U.S. trade policy occurred after Congress passed the highly protective "Smoot-Hawley" Tariff Act of 1930, which significantly raised U.S. tariff levels and led U.S. trading partners to respond in kind. As a result, world trade declined rapidly, exacerbating the impact of the Great Depression. Since the passage of the Tariff Act of 1930, Congress has delegated certain trade authority to the executive branch. First, Congress enacted the Reciprocal Trade Agreements Act of 1934, which authorized the President to enter into reciprocal agreements to reduce tariffs within congressionally pre-approved levels, and to implement the new tariffs by proclamation without additional legislation. Congress renewed this authority periodically until the 1960s. Second, Congress enacted the Trade Act of 1974, aimed at opening markets and establishing nondiscriminatory international trade norms for nontariff barriers as well. Because changes in nontariff barriers in reciprocal bilateral, regional, and multilateral trade agreements usually involve amending U.S. law, the agreements require congressional approval and implementing legislation. Congress has renewed and amended the 1974 Act five times, which includes granting "fast-track" trade negotiating authority. Since 2002, "fast track" has been known as trade promotion authority (TPA). Third, Congress has granted the President various authorities to address unfair trade practices and impose tariffs in certain circumstances for trade, national security and foreign policy purposes.

Congress also exercises trade policy authority through the enactment of laws authorizing trade programs and governing trade policy generally, as well as oversight of the implementation of trade policies, programs, and agreements. These include such areas as U.S. trade agreement negotiations, tariffs and nontariff barriers, trade remedy laws, import and export policies, economic sanctions, and the trade policy functions of the federal government.

Additionally, Congress has an important role in international investment and finance policy. It has authority over bilateral investment treaties (BITs) through Senate ratification, and the level of U.S. financial commitments to the multilateral development banks (MDBs), including the World Bank, and to the International Monetary Fund (IMF). It also authorizes the activities of such agencies as the Export-Import Bank (Ex-Im Bank) and the Overseas Private Investment Corporation (OPIC). Congress has oversight responsibilities over these institutions, as well as the Federal Reserve and the Department of the Treasury, whose activities affect international capital flows. Congress also closely monitors developments in international financial markets that could affect the U.S. economy.

# Policy Issues for Congress

## Trade Promotion Authority (TPA)[10]

Legislation to renew Trade Promotion Authority (TPA)—the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (P.L. 114-26)—was signed by President Obama on June 29, 2015, after months of debate and passage by both houses of Congress. TPA allows implementing bills for specific trade agreements to be considered under expedited legislative procedures—limited debate, no amendments, and an up or down vote—provided the President observes certain statutory obligations in negotiating trade agreements. These obligations include adhering to congressionally-defined U.S. trade policy negotiating objectives, as well as congressional notification and consultation requirements before, during, and after the completion of the negotiation process. The primary purpose of TPA is to preserve the constitutional role of Congress with respect to consideration of implementing legislation for trade agreements that require changes in domestic law, which includes tariffs, while also bolstering the negotiating credibility of the executive branch by ensuring that trade agreements will not be changed once concluded. Since the authority was first enacted in the Trade Act of 1974, Congress has renewed or amended TPA five times (1979, 1984, 1988, 2002, and 2015). The latest grant of authority expires on July 1, 2021, provided that the President requests its extension and neither chamber introduces and passes an extension disapproval resolution by July 1, 2018.

## The World Trade Organization (WTO)[11]

The WTO is an international organization that administers the trade rules and agreements negotiated by 164 participating members to eliminate barriers and create nondiscriminatory rules and principles to govern trade. It also serves as a forum for dispute settlement resolution and trade liberalization negotiations. The United States was a major force behind the establishment of the WTO on January 1, 1995, and the new rules and trade liberalization agreements that occurred as a result of the Uruguay Round of multilateral trade negotiations (1986-1994). The WTO succeeded the General Agreement on Tariffs and Trade (GATT), which was established in 1947.

The WTO Doha Round of multilateral trade negotiations, begun in November 2001, has remained deadlocked for several years. At the WTO's 9th Ministerial Conference, held in Bali, Indonesia, in 2013, WTO members agreed to a package of trade facilitation, agriculture, and development measures. Though considered modest in scope, the Trade Facilitation Agreement (TFA) represented the first successful conclusion of a negotiation in the WTO's nearly 20-year history. The Bali agreements also directed the WTO Secretariat to develop a clearly defined work program to complete the Doha Round. However, the10th Ministerial Conference, held in Nairobi, Kenya in December 2015, concluded with no clear path forward for the WTO Doha Round. Trade ministers and their senior representatives in Nairobi did reach consensus on a limited set of deliverables related to the agriculture priorities of least developed countries. While the Nairobi

[10] Written by Ian F. Fergusson, Specialist in International Trade and Finance (x7-4997). See CRS Report RL33743, *Trade Promotion Authority (TPA) and the Role of Congress in Trade Policy*, by Ian F. Fergusson; CRS Report R43491, *Trade Promotion Authority (TPA): Frequently Asked Questions*, by Ian F. Fergusson and Richard S. Beth; and CRS In Focus IF10297, *TPP-Trade Promotion Authority (TPA) Timeline*, by Ian F. Fergusson.

[11] Written by Ian F. Fergusson, Specialist in International Trade and Finance (x7-4997), and Rachel Fefer, Analyst in International Trade and Finance (x7-1804). See CRS In Focus IF10002, *The World Trade Organization*, by Ian F. Fergusson and Rachel F. Fefer; and CRS Report R43592, *Agriculture in the WTO Bali Ministerial Agreement*, by Randy Schnepf.

Ministerial Declaration affirmed the WTO as an important consensus-driven multilateral institution, it did not clearly endorse the continuation of the Doha Round and reflects the continued wide division among WTO members.

The WTO's future as an effective multilateral trade negotiating organization for broad based multilateral trade liberalization remains in question. The deadlock in negotiations is largely due to differences between developing and advanced countries. Most developing countries want to continue to link the broad spectrum of agricultural and non-agricultural issues under the Doha Round and have been reluctant to lower their tariffs on industrial goods. They maintain that unless all issues are addressed in a single package, issues important to developing countries will be ignored. Conversely, the developed economies have pushed for change in the negotiating dynamics, arguing that the WTO needs to address new issues, such as digital trade and investment, especially given the growth of major emerging markets, such as China and India. WTO members plan to hold several "mini-ministerial summits" leading up to the 11th ministerial conference in Buenos Aires, Argentina, to discuss potential deliverables for the December 2017 meeting.

The WTO appears to moving in a direction of negotiating sectoral and often issue-focused agreements on a more plurilateral basis (subsets of WTO members rather than among all WTO members). The Nairobi Declaration underscored the importance of a multilateral rules-based trading system with regional and plurilateral agreements as a complement to, not a substitute for, the multilateral forum. Work to build on the current WTO agreements outside the scope of the Doha Round continues, including through sectoral or plurilateral agreements that involve only a subset of WTO members, for example, on services (see **text box**).

### Sectoral and Plurilateral Agreements and Negotiations

- **WTO Trade Facilitation Agreement (TFA).** The TFA, which aims to streamline the flow of goods across borders, was finalized in Bali in 2013 and was the first formal new multilateral agreement reached under the WTO. Originally part of the Doha Round, the agreement contains provisions to expedite and achieve greater transparency in the movement, release, and clearance of goods, including goods in transit. The TFA will be implemented after two-thirds (110) of WTO's currently 164 members have ratified the deal; as of December 7, 2016, 102 members, including the United States and several least developed countries, have ratified it.
- **WTO Information Technology Agreement (ITA).** The ITA, originally concluded in 1996 by a subset of WTO members, provides tariff-free treatment for covered IT products. While a plurilateral agreement, it is applied on a most-favored-nation (MFN) basis so that all WTO members benefit from the tariff cuts. The United States and other parties finalized an updated version of the ITA in December 2015, further cutting tariffs on IT products over a seven-year period on 201 additional goods over the 1996 original ITA. In June 2016, President Obama issued a proclamation to implement the ITA tariff cuts. China began its cuts in mid-September 2016 and said it will reduce its tariffs over five to seven years, while six members, including the European Union, have not yet submitted their modified tariff schedules as of November 1, 2016.
- **WTO Government Procurement Agreement (GPA).** The GPA is a plurilateral agreement that provides market access for various non-defense government projects to its signatories. Each member submits lists of government entities and goods and services (with thresholds and limitations) that are open to bidding by firms of the other GPA members. Non-GPA signatories do not enjoy any rights under the GPA. Negotiations to expand the GPA were concluded in March 2012, and a revised GPA entered into force on April 6, 2014. The United States is among the 45 WTO members (including 28 EU member countries) that are part of the GPA. Several countries, including China, are in negotiations to accede to the GPA. Armenia, Montenegro, and New Zealand joined the GPA in 2015.
- **WTO Environmental Goods Agreement (EGA).** In July 2014, the United States and 13 other countries launched plurilateral negotiations within the WTO to liberalize trade in environmental goods and services, which are viewed as promoting sustainable development—through tariff elimination. While only 17 members (including the EU, which represents 28 member countries) are negotiating, it would be an open plurilateral agreement like the ITA, so that all benefits achieved through negotiation would be extended on a MFN basis to all members of the WTO. Thus, achieving a "critical mass" of participation by the producers of such goods—suggested to be

90%—is considered necessary to avoid the problem of free-riders. However, after 18 rounds of negotiations, the agreement was not concluded at the December 2016 General Council meeting and its future remains uncertain. Most parties blamed China for the failure as it rejected the list of products to be included and requested several lengthy tariff phase-out periods, which other countries refused to accept.

- **WTO Fisheries Subsidy Agreement.** Members continue to negotiate an agreement to eliminate fisheries subsidies in support of the United Nations' Sustainable Development Goals (SDGs). Current proposals focus on subsidies in respect of illegal, unreported and unregulated fishing (IUU) and overfished stocks that contribute to overcapacity, as well as various approaches to special and differential treatment for developing and least developed countries.
- **Trade in Services Agreement (TiSA).** TiSA is a potential agreement outside of the WTO structure but building on WTO agreements. The group is composed of 23 developed and advanced developing members, including the United States and the EU (more below).

## U.S. Bilateral and Regional Trade Agreements

In addition to the WTO, the United States has worked to reduce and eliminate barriers to trade and create nondiscriminatory rules and principles to govern trade through plurilateral and bilateral agreements. It has concluded 14 free trade agreements (FTAs) with 20 countries since 1985, when the first U.S. bilateral FTA was concluded with Israel.

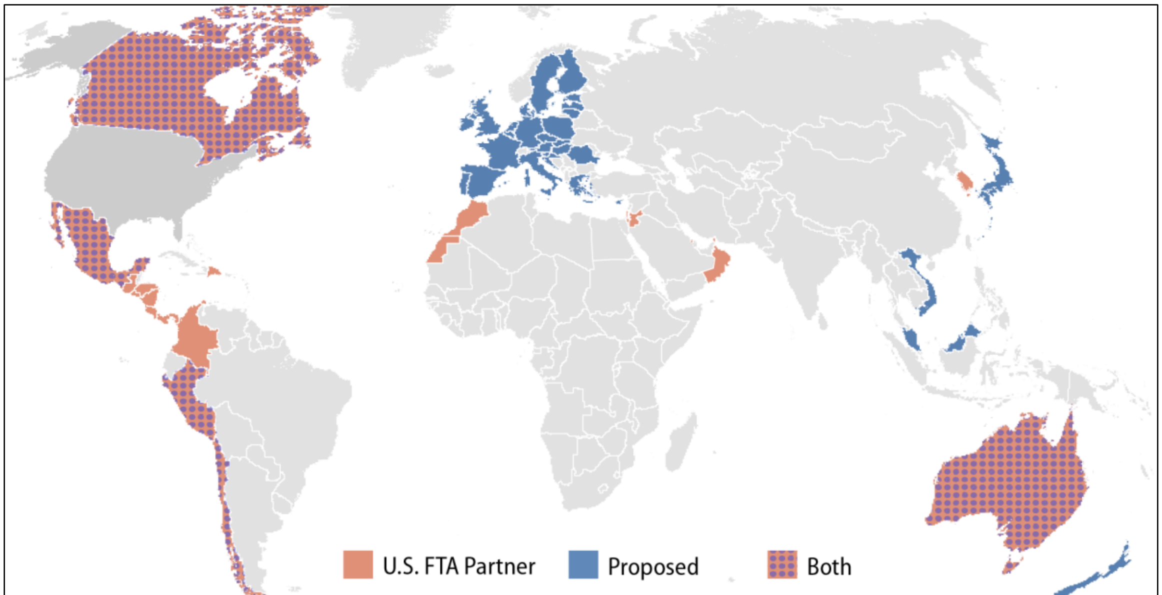
Several trade negotiations were recently concluded or are underway with important regions. Among these are negotiations on the Trans-Pacific Partnership (TPP), which the United States and 11 other countries in the Asia-Pacific region concluded in October 2015. Negotiations also are underway between the United States and the European Union (EU) on a potential Transatlantic Trade and Investment Partnership (T-TIP), and among 23 WTO members on a potential Trade in Services Agreement (TiSA).

### U.S. Trade Agreement Basics

U.S. trade agreements generally are negotiated:

- on the basis of ***U.S. trade negotiating objectives*** established by Congress;
- by the ***U.S. Trade Representative (USTR)***, who is the lead U.S. trade negotiator and responsible for developing and coordinating U.S. trade policy;
- with ***interagency processes*** and ***advisory systems*** to provide support and take into account ***stakeholder input***;
- to seek ***market access*** in goods, services, and agriculture by reducing and eliminating ***tariff and non-tariff barriers*** and to establish ***trade-related rules and disciplines***;
- on a ***reciprocal basis***, with the United States granting concessions in exchange for concessions from trading partner(s);
- with the goal of concluding agreements that are ***"comprehensive and high standard,"*** covering substantially all trade and setting high standard rules for trade that generally exceed current WTO levels of commitment; and
- in one of four forms: ***multilateral*** (with all WTO members), ***plurilateral*** (with a subset of WTO members), ***regional*** (such as NAFTA and TPP), or ***bilateral*** (with one country, such as KORUS).

**Figure 2. Existing and Proposed U.S. Free Trade Agreements**




| FTA PARTNER | YEAR ENTERED INTO FORCE | GOODS (2015) U.S. EXPORTS | GOODS (2015) U.S. IMPORTS | SERVICES (2015) U.S. EXPORTS | SERVICES (2015) U.S. IMPORTS |
|---|---|---|---|---|---|
| Bahrain | 2006 | $1.3 | $0.9 | $0.3 | $1.1 |
| Morocco | 2006 | $1.6 | $1.0 | $0.7 | $0.6 |
| Oman | 2009 | $2.4 | $0.9 | $0.4 | $0.3 |
| Jordan | 2001 | $1.4 | $1.5 | $0.7 | $0.6 |
| Panama | 2012 | $7.7 | $0.4 | $1.6 | $1.3 |
| Peru | 2009 | $8.7 | $5.1 | $3.9 | $2.9 |
| Chile | 2004 | $15.4 | $8.8 | $4.0 | $1.6 |
| Colombia | 2012 | $16.3 | $14.1 | $6.5 | $3.2 |
| Israel | 1985 | $13.5 | $24.5 | $4.8 | $6.1 |
| Australia | 2005 | $25.0 | $10.9 | $22.3 | $7.0 |
| Singapore | 2004 | $28.5 | $18.3 | $14.4 | $6.8 |
| CAFTA-DR | 2006-'09 | $28.7 | $23.8 | $7.2 | $10.0 |
| S. Korea | 2012 | $43.4 | $71.8 | $20.5 | $11.1 |
| NAFTA | 1994 | $516.4 | $592.6 | $87.9 | $50.9 |
| T-TIP | NA | $272.0 | $427.6 | $226.8 | $172.8 |
| TPP | NA | $679.6 | $843.2 | $184.1 | $103.4 |

$BILLIONS

**Source:** Created by CRS using U.S. International Trade Commission and the Bureau of Economic Analysis data.

## Trans-Pacific Partnership (TPP)[12]

**TPP Fast Facts**

- ***Negotiations concluded:*** 10/5/2015.
- ***Agreement text released:*** 11/5/2015.
- ***Date signed:*** 2/4/2016.
- ***Status:*** Future uncertain. President-Elect Trump has pledged withdrawal.
- ***12 countries participating:*** Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States, Vietnam.
- ***Value of total 2015 U.S. goods and services trade with TPP countries:*** $1.8 trillion.

The Trans-Pacific Partnership (TPP) is a proposed free trade agreement (FTA) among 12 countries in the Asia-Pacific region (see **text box**). The Obama Administration casts TPP as a comprehensive and high standard agreement with economic and strategic significance for the United States. However, President-elect Donald Trump has indicated he plans to notify his intent to withdraw from the TPP, leaving its future consideration in doubt.[13] If ratified, it would be the largest U.S. FTA by trade flows to date, as it includes three of the five largest U.S. trade partners—Canada, Mexico, and Japan. The 12 TPP countries (including the United States) announced the conclusion of the TPP negotiations on October 5, 2015, after nearly 7 years of talks, and the 12 TPP ministers officially signed the agreement on February 4, 2016. If implementing legislation is introduced in Congress in the future, it would be eligible to receive expedited consideration under TPA (P.L. 114-26) after the Obama Administration complied with various notification and consultation requirements and if Congress determines that the proposed TPP advances U.S. trade negotiating objectives.

With the proposed TPP, the participating countries have sought to liberalize trade and investment and establish new rules and disciplines beyond those that already exist in World Trade Organization (WTO) agreements. It has also been envisioned as a "living agreement" open to future members and new issues. Throughout the negotiations, certain issues proved controversial. These included select market access issues (such as on dairy and other agricultural products, autos, and textiles and apparel), as well as the inclusion of provisions on currency valuation and exchange rates, among other issues. Following the conclusion of TPP, some Members of Congress have criticized what they consider as inadequate patent protection for biologic drugs, the exclusion of tobacco products from investor-state dispute settlement (ISDS) arbitration, and the exemption of the financial services industry from data localization prohibitions. Other Members have criticized the TPP's rules of origin for vehicles, the inclusion of ISDS, and the perceived lack of enforcement of labor and environmental provisions in previous FTAs.

The Obama Administration promoted TPP as a U.S. policy response to the rapidly increasing economic and strategic linkages among Asian Pacific nations. It portrayed the TPP as the means by which the United States and other TPP partners would write the rules and norms for trade in the 21st century, and TPP became the economic centerpiece of the "rebalance" towards Asia. If the TPP does not proceed, the Regional Comprehensive Economic Partnership (RCEP), a China and Association of South-East Asian Nations (ASEAN)-led negotiation, may take on increased significance. The RCEP encompasses ASEAN members (Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam) as well as China, Japan, South Korea, Australia, India, and New Zealand. These negotiations do not include the United

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[12] Written by Ian F. Fergusson, Specialist in International Trade and Finance (x7-4997), and Brock R. Williams, Analyst in International Trade and Finance (x7-1157). See CRS Insight IN10443, *CRS Products on the Trans-Pacific Partnership (TPP)*, by Ian F. Fergusson and Brock R. Williams.

[13] Transition 2017, "A Message from President-Elect Donald Trump," November 21, 2016, https://www.youtube.com/watch?v=7xX_KaStFT8.

States. TPP countries may seek to solidify their trading relationship with China, whether within RCEP or bilaterally, as China is already the largest trading partner for most TPP countries.

Alternatively, TPP countries could continue without the United States. The Japanese Diet approved the TPP in late 2016. While Vietnam reportedly shelved consideration of TPP this year, Australia and New Zealand are currently deliberating the TPP in their respective Parliaments. While the agreement as currently written cannot come into force without the United States, the other countries may find value in continuing the agreement among themselves in a revised form, perhaps without the provisions included due to U.S. pressure.

The United States has existing FTAs with six of the countries participating in the TPP (Australia, Canada, Chile, Mexico, Peru, and Singapore). NAFTA partners Canada and Mexico have agreed, in principle, to discuss modernizing or amending NAFTA, a campaign stance supported by both parties, although some of the potential issues for renegotiation are addressed in the TPP. The largest foregone economic benefit of the TPP for the United States may be the FTA with Japan, the world's third largest economy with significant market access barriers significantly lowered by the TPP. Some observers have speculated about a U.S.-Japan bilateral FTA, instead of TPP. Japan has existing bilaterals with several countries in the region, including Australia, and exports to Japan from these countries currently enjoy a price advantage in the Japanese market relative to U.S. exports.

## Transatlantic Trade and Investment Partnership (T-TIP)[14]

The Transatlantic Trade and Investment Partnership (T-TIP) is a potential "comprehensive and high-standard" free trade agreement (FTA) under negotiation since 2013 between the United States and European Union (EU), each other's largest overall trade and investment partner. T-TIP aims to liberalize U.S.-EU trade and investment and address tariff and nontariff barriers on goods, services, and agriculture. It also aims to set globally relevant rules and disciplines to support economic growth and multilateral trade liberalization through the World Trade Organization (WTO). The 15th negotiating round, the last round under the Obama Administration, was in October 2016.

**T-TIP Basics**

- ***U.S.-EU High-Level Working Group report:*** Called for United States and EU to negotiate FTA, 2/11/13.
- ***Date negotiations started:*** 7/8/2013.
- ***Number of negotiating rounds:*** 15 rounds through October 2016.
- ***Status:*** Future uncertain as new administration takes office.
- ***U.S.-EU goods and services trade in 2015:*** $1.1 trillion (22% of U.S. global trade).
- ***U.S.-EU investment in 2015:*** $4.5 trillion (56% of U.S. world investment stock).

Despite strong overall U.S. and EU commitment to T-TIP to date, the outlook is uncertain. Negotiations are on pause until the next Administration is in place and decides how it wants to proceed. It may be several months before President-elect Trump sets priorities for U.S.-EU trade relations and fills key trade positions in the Administration. Other variables include the 2017 national elections in France and Germany, where public opposition to T-TIP runs high due to concerns over treatment of genetically modified organisms (GMOs), investor-state dispute settlement (ISDS), and data privacy, as well as the possible United Kingdom exit from the EU

[14] Written by Shayerah Ilias Akhtar (x7-9253) and Vivian C. Jones (x7-7823), Specialists in International Trade and Finance. See CRS Report R43387, *Transatlantic Trade and Investment Partnership (T-TIP) Negotiations*, by Shayerah Ilias Akhtar, Vivian C. Jones, and Renée Johnson; and CRS In Focus IF10120, *Transatlantic Trade and Investment Partnership (T-TIP)*, by Shayerah Ilias Akhtar and Vivian C. Jones.

("Brexit", see next section). More broadly, trade is a controversial issue on both sides of the Atlantic, fueling debate over its impact on the U.S. economy and workers, among other issues.

In the negotiations, the two sides have consolidated texts in a number of areas, but unresolved complex and sensitive issues raise questions about whether political momentum exists to overcome differences. Some do not expect T-TIP's most sensitive issues to be resolved until a potential "end-game" stage of negotiations. Others, including some in the EU, have called for talks to end due to ongoing differences. Some stakeholders hope that T-TIP progress to date is not lost in the transition to the new Administration.

### Brexit and Potential U.S.-UK Free Trade Agreement (FTA)[15]

On June 23, 2016, the United Kingdom (UK) voted in favor of exiting the EU ("Brexit"), presenting oversight and legislative issues regarding transatlantic trade relations. Trade is equivalent to about 60% of the UK economy, in large part due to reduced trade barriers through the EU's Single Market. At $2.8 trillion, the UK is the EU's second largest economy behind Germany and accounts for about 18% of EU GDP. Recent British court decisions have placed new roadblocks on the ability of the UK to initiate Brexit activities and raised additional uncertainties about its potential economic and financial impact.

**U.S.-UK Trade Relations: Fast Answers**

***What are current terms of trade?*** Presently, U.S.-UK terms of trade are based on U.S. and EU World Trade Organization (WTO) most-favored-nation (MFN) commitments.

***What are ongoing trade negotiations?*** The United States and the UK, as a member of the EU, have been engaged in various negotiations, including on a potential U.S.-EU Transatlantic Trade and Investment Partnership (T-TIP) free trade agreement (FTA).

***What could Brexit change?*** Much uncertainty exists, but Brexit presumably would return to the UK competence over its trade policy. Brexit could affect the UK's status with respect to any future trade negotiations, such as T-TIP. It also could lead to possible U.S.-UK bilateral FTA negotiations.

***What happens in the meantime?*** The UK remains an EU member, and the EU retains exclusive competence over UK trade policy, as it does for all other EU other members. Thus, the UK remains a part of any ongoing EU trade negotiations.

Brexit's impact on U.S.-EU and U.S.-UK trade relations depends on a number of variables, including the UK's negotiated terms of withdrawal from the EU and its future trade relationship with the EU. Observers have put forward a number of possible scenarios for the post-Brexit UK-EU trade relationship, ranging from terms based on World Trade Organization (WTO)-only parameters to a comprehensive bilateral free trade agreement, potentially modeled after the proposed EU-Canada FTA, to a specialized arrangement with more limited access to the Single Market (potentially modeled after EU arrangements with countries such as Norway and Switzerland). Another variable is any redefinition of UK and EU terms of trade in the WTO, issues unprecedented for the WTO. The UK is a member of the WTO both on an individual basis and as a part of the EU. However, the UK's commitments to other WTO members are through the EU's schedule of commitments in the WTO. Thus, the UK may have to negotiate with other WTO members its own WTO schedule of commitments, including most-favored-nation (MFN) tariff levels, agricultural tariff-rate-quotas and subsidy limits, and services commitments and exceptions. In the absence of a preferential trade agreement between the United States and UK, trade between the two presumably would be on a WTO MFN basis.

[15] Written by Shayerah Ilias Akhtar, Specialist in International Trade and Finance (x7-9253), and James K. Jackson, Specialist in International Trade and Finance (x7-7751). See CRS Report R44559, *Economic Implications of a United Kingdom Exit from the European Union*, by James K. Jackson, Shayerah Ilias Akhtar, and Derek E. Mix.

The UK is a key U.S. trade and investment partner, but an EU without the UK nevertheless would remain the United States' single largest trade and investment partner. However, regarding specific U.S. trade negotiations, Brexit could have significant implications. After the UK referendum, U.S. and EU leaders affirmed their commitment to the Transatlantic Trade and Investment Partnership (T-TIP). Brexit could enhance T-TIP's role in potentially reaffirming EU unity and U.S.-EU ties, but also amplifies questions about T-TIP's outlook. Some argue that the UK's possible absence could complicate any future T-TIP negotiations, given the UK's traditionally liberalizing role in the EU. Others say that a potential future U.S.-UK bilateral FTA, advocated by some Members of Congress, is a likelier prospect in the near-term, and could even add pressure to advance any further T-TIP negotiations. Given strong U.S.-UK ties, some observers expect that a U.S.-UK FTA would be easier to negotiate than other U.S. FTAs and is more likely to secure congressional approval—albeit against a backdrop of expected active debate over U.S. trade policy in the 115th Congress. The UK's future status also could affect other U.S. trade policy interests, such as the plurilateral Trade in Services Agreement (TiSA) negotiations (see below).

## Trade in International Services Agreement (TiSA)[16]

TiSA is a potential agreement that would liberalize trade in services among its signatories. The term "services" refers to an expanding range of economic activities, such as construction, retail and wholesale sales, e-commerce, financial services, professional services (such as accounting and legal services), logistics, transportation, tourism, and telecommunications. The impetus for TiSA comes from the lack of progress in the World Trade Organization (WTO) Doha Round on services trade liberalization. Given the impasse in the WTO, a subset of WTO members, led by the United States and Australia, launched informal discussions in early 2012 to explore negotiating a separate agreement focused on trade in services. On January 15, 2013, the Office of the United States Trade Representative (USTR) notified Congress of the United States' intention to engage formally in negotiations to reach a plurilateral TiSA. Negotiations began in April 2013, and 21 rounds of negotiations and intercessional meetings took place through November 2016. The United States and the 22 other TiSA participants account for more than 70% of global trade in services.

### TiSA Facts

- ***Negotiations launched:*** April 2013.
- ***Number of negotiating rounds:*** 21 rounds through November 2016.
- ***Type of agreement:*** Plurilateral agreement currently outside WTO.
- ***Number of parties:*** 23 (Australia, Canada, Chile, Taiwan [Chinese Taipei], Colombia, Costa Rica, the EU [28 members], Hong Kong, Iceland, Israel, Japan, South Korea, Liechtenstein, Mauritius, Mexico, New Zealand, Norway, Pakistan, Panama, Peru, Switzerland, Turkey, and the United States).
- ***Potential scope:*** Market access, rules and disciplines, and specific service sectors; final scope and structure still under negotiation.
- ***Status:*** Future uncertain as new administration takes office.

Negotiations on services present unique trade policy issues, such as how to construct trade rules that are applicable across a wide range of varied economic activities. The General Agreement on Trade in Services (GATS) under the WTO is the only multilateral set of rules on trade in services. GATS came into effect in 1995, and many policy experts have argued that the GATS must be

[16] Written by Rachel Fefer, Analyst in International Trade and Finance (x7-1804). See CRS Report R44354, *Trade in Services Agreement (TiSA) Negotiations: Overview and Issues for Congress*, by Rachel F. Fefer; CRS In Focus IF10311, *Trade in Services Agreement (TiSA) Negotiations*, by Rachel F. Fefer; and CRS Report R43291, *U.S. Trade in Services: Trends and Policy Issues*, by Rachel F. Fefer.

updated and expanded if it is to govern services trade effectively. This prospect is diminished given that GATS reform is part of the stalled Doha Round of WTO negotiations.

The TiSA negotiations are of congressional interest given the significance of the services sector in the U.S. economy and TiSA's potential impact on domestic services industries seeking to expand internationally. Services account for almost 78% of U.S. gross domestic product (GDP) and for over 82% of U.S. private sector employment.[17] They not only function as end-user products by themselves, but they also act as the "lifeblood" of the rest of the economy. For example, transportation services ensure that goods reach customers and financial services provide financing for the manufacture of goods, while e-commerce and cross-border data flows allow customers to download products and companies to manage global supply chains. Services have been an important priority in U.S. trade policy and of global trade in general. TiSA parties aimed to conclude negotiations in 2016, but it is unlikely due to large differences in areas such as the access to maritime service markets, data flows, and localization requirements.

Congress may continue oversight of the TiSA negotiations. Opening services markets globally has been a long-standing U.S. trade negotiating objective. In the 2015 Trade Promotion Authority (TPA) legislation, Congress included specific provisions establishing U.S. trade negotiating objectives on services trade to expand competitive market opportunities and obtain fairer and more open conditions of trade.

## North American Free Trade Agreement (NAFTA)[18]

NAFTA, a comprehensive FTA among the United States, Canada, and Mexico, entered into force on January 1, 1994. It continues to be of interest to Congress because of the role it played in the 2016 presidential elections, the strong U.S. trade and investment ties with Canada and Mexico, NAFTA's significance for U.S. trade policy, and how it might be affected by the proposed Trans-Pacific Partnership Agreement (TPP). Another issue of interest to Congress is the possibility of withdrawal from or a renegotiation of NAFTA, and the related implications, which President-elect Trump signaled might occur.[19] NAFTA initiated a new generation of trade agreements influencing negotiations in areas such as market access, rules of origin, intellectual property rights (IPR), foreign investment, dispute resolution, worker rights, and environmental protection. If NAFTA is changed or the TPP enters into force, the rules that have governed North American trade since 1994 would change. If such changes included stronger and more enforceable labor and environmental provisions, for example, some aspects of the U.S. trade relationship with both Mexico and Canada could be altered.

[17] U.S. International Trade Commission, *Recent Trends in U.S. Services Trade: 2016 Annual Report*, 2016, p. 23, https://www.usitc.gov/publications/332/pub4643_0.pdf.

[18] Written by M. Angeles Villarreal, Specialist in International Trade and Finance (x7-0321). See CRS Report R42965, *The North American Free Trade Agreement (NAFTA),* by M. Angeles Villarreal and Ian F. Fergusson; and CRS In Focus IF10047, *North American Free Trade Agreement (NAFTA),* by M. Angeles Villarreal.

[19] Trump-Pence Campaign, "Donald J. Trump Delivers Groundbreaking Contract for the American Voter in Gettysburg," October 22, 2016, https://www.donaldjtrump.com/press-releases/donald-j.-trump-delivers-groundbreaking-contract-for-the-american-vote1.

The rising number of bilateral and regional trade agreements globally and the growing presence of China in Latin America could have implications for U.S. trade policy with its NAFTA partners. Proponents of a stronger North American trade relationship contend that forming deeper trade and investment ties would have positive implications for economic growth, corporate governance, worker rights, environmental protection, and democratic governance. However, some policymakers, labor groups and some consumer advocacy groups argue that NAFTA has had a negative effect on the U.S. economy and strongly discourage further trade liberalization. They maintain that trade agreements result in outsourcing, lower wages, and job dislocation.

Both proponents and critics of NAFTA agree that the three countries could consider the strengths and shortcomings of the agreement as they look to the future of North American trade and economic relations. Policy issues could include: strengthening or revisiting NAFTA provisions in areas such as worker rights, the environment, intellectual property rights, and services trade; considering the ramifications if the United States does not approve TPP and NAFTA partners ratify the agreement with other TPP partners; evaluating the possibility of trade retaliation by Canada or Mexico if the United States considers changing or withdrawing from NAFTA; considering the establishment of a border infrastructure plan, including more investment in infrastructure to make border crossings more efficient; promoting research and development to enhance the global competitiveness of North American industries; enhancing understanding of regional supply chain networks; and/or creating more efforts to lessen income differentials within the region.

**NAFTA Facts**

- ***Milestones.*** Negotiations began in February 1991. The agreement was signed by President George H. W. Bush on December 17, 1992. NAFTA side agreements were signed in August 1993. The NAFTA Implementation Act was approved by Congress on November 20, 1993, and signed into law by President William J. Clinton on December 8, 1993.
- ***Prior Liberalization.*** NAFTA enhanced prior liberalization efforts. The U.S.-Canada FTA had been in effect since 1989, and Mexico was in the process of substantive unilateral trade and investment liberalization measures.
- ***NAFTA Text.*** NAFTA contains provisions on tariff and non-tariff barrier elimination, customs procedures, energy, agriculture, technical barriers to trade, government procurement, foreign investments, services trade, temporary entry for business persons, intellectual property rights protection, and dispute resolution procedures.
- ***Labor and Environmental Side Agreements.*** NAFTA parties approved additional binding side agreements on labor and the environment, including the establishment of the North American Development Bank.

## U.S.-China Commercial Relations[20]

Since China embarked upon economic and trade liberalization in 1979, U.S.-Chinese economic ties have grown extensively and total bilateral trade rose from about $2 billion in 1979 to $599 billion in 2015. China was the United States' second-largest trading partner, largest source of imports ($483 billion), and third largest merchandise export market ($116 billion).[21] The U.S. merchandise trade deficit with China was $367 billion, by far the largest U.S. bilateral trade imbalance.

China has been one of the fastest growing markets for U.S. exports. From 2006 to 2015, U.S. merchandise exports to China doubled. The U.S.-China Business Council estimates that China is a $400 billion market for U.S. firms when U.S. exports of goods and services to China plus sales by U.S-invested firms in China are counted.[22] China's large population, vast infrastructure needs, and rising middle class could make it an even more significant market for U.S. businesses, provided that new economic reforms are implemented. Chinese foreign direct investment (FDI) in the United States has increased sharply in recent years, estimated by the Rhodium Group at $15.3 billion in 2015 and $18 billion during the first half of 2016.[23] China is important to the global supply chain for many U.S. companies, some of which use China as a final point of assembly for their products. Low-cost imports from China help keep U.S. inflation low.

### Significance of China's Economic Rise

Listed below are illustrations of China's growing global economic reach.

***Economy***. China's gross domestic product (GDP) on a purchasing power parity (PPP) basis overtook the U.S. economy in 2014. China's PPP GDP in 2015 was $19.8 trillion (10% higher than the U.S. level).

***Trade***. China surpassed the United States as the world's largest trading economy (exports plus imports) in 2012. China's total trade in 2015 was $3.9 trillion.

***FDI.*** In 2015, China was third largest destination, and third largest source, of global FDT flows.

***Manufacturer***. China overtook the United States in 2010 as the world's largest manufacturer on a gross value added basis, and in 2014, China's level (at $2.9 trillion) was 40% higher than the U.S. level.

***Foreign exchange reserves***. Despite declining by $871 billion from July 2014, to October 2016, China's reserves are the world's largest at $3.12 trillion.

***Foreign holder of U.S. Treasury securities***. At $1.16 trillion (as of September 2016), China is the largest foreign holder of U.S. Treasury debt. These large-scale holdings help the U.S. government finance its budget deficits, helping to keep U.S. real interest rates low.

***A huge market.*** General Motors sold more vehicles in China (3.6 million) than any other country (including the United States) each year from 2010-2015. Boeing Corporation predicts that over the next 20 years, China will need 6,020 new airplanes valued at $870 billion.

China has emerged as the world's largest economy and trading country. Its economic conditions and policies have a major impact on the U.S. and global economy (see **text box**), and thus are of interest to Congress.

Despite growing U.S.-Chinese commercial ties, the bilateral relationship is complex and at times contentious. From the U.S. perspective, many trade tensions stem from China's incomplete transition to an open-market economy. While China has significantly liberalized its economic and trade regimes over the past three decades—especially since joining the World Trade Organization

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[20] Written by Wayne M. Morrison, Specialist in Asian Trade and Finance (x7-7767). See CRS Report RL33536, *China-U.S. Trade Issues*, by Wayne M. Morrison; CRS Report RL33534, *China's Economic Rise: History, Trends, Challenges, and Implications for the United States*, by Wayne M. Morrison; and CRS In Focus IF10030, *U.S.-China Trade Issues*, by Wayne M. Morrison.

[21] U.S. International Trade Commission.

[22] U.S.-China Business Council 2016 China Business Environment Member Survey, https://www.uschina.org/reports/uscbc-2016-member-company-survey.

[23] The Rhodium Group, *China Investment Monitor*, available at http://rhg.com/interactive/china-investment-monitor.

(WTO) in 2001—it continues to maintain (or has recently imposed) a number of policies that appear to distort trade and FDI flows, which, some Members argue, often undermine U.S. economic interests and cause U.S. job losses in some sectors. The USTR summed up the major challenge to U.S.-China trade relations in its 2015 Report to Congress on China's WTO Compliance as follows: "Many of the problems that arise in the U.S.-China trade and investment relationship can be traced to the Chinese government's interventionist policies and practices and the large role of state-owned enterprises and other national champions in China's economy, which continue to generate significant trade distortions that inevitably give rise to trade frictions."[24] Major economic and trade areas of congressional concern are described below.

A 2016 American Chamber in China business climate survey of its member companies found that while a majority of respondents felt optimistic about their investments in China, 77% said that foreign businesses in China were "less welcomed" in China than before, compared to 44% who felt that way in 2014.[25] The United States has sought to engage China on a number of trade disputes through a number of forums, such as the U.S.-China Strategic and Economic Dialogue (S&ED), an annually-held high-level government forum that was established in 2006 to discuss long-term global and bilateral economic issues. Additionally, the United States has initiated more WTO dispute settlement cases (19 cases) against China than any other WTO member. Recently-brought cases involve Chinese agricultural subsides, export restrictions on certain raw materials, and preferential tax policies for locally-produced aircraft. China has brought 10 WTO cases against the United States, the most recent of which was filed on December 12, 2016, and involves U.S. treatment of China as a non-market economy (NME) for the purposes of applying anti-dumping measures. China contends that the WTO agreement on its accession to the WTO in 2001 contained a provision mandating that all WTO members give it market economy status by December 11, 2016. The United States and other WTO members argue that the provision of China's WTO accession agreement cited by Chinese officials is vague at best and that China has failed to demonstrate that it is in fact a market economy.

## Industrial Policies and State Capitalism

Although a significant share of China's economy is thought to be driven by market forces, the Chinese government continues to play a major role in economic decision-making. For example, at the macroeconomic level, the Chinese government maintains policies that induce households to save a high level of their income, much of which is deposited in state-controlled Chinese banks. This enables the government to provide low-cost financing to Chinese firms, especially SOEs which dominate several economic sectors in China. Fortune's 2015 Global 500 list of the world's largest companies included 103 Chinese firms, 75 of which were classified as being 50% or more owned by the Chinese government. At the microeconomic level, the Chinese government (at the central and local government level) seeks to promote the development of industries deemed critical to the country's future economic development by using various means, such as subsidies, preferential loans, tax exemptions, and access to low-cost land and energy. Many analysts contend that such distortionary policies have contributed to overcapacity in several Chinese industrial sectors, such as steel and aluminum. Additionally, the Chinese government imposes numerous restrictions on foreign firms seeking to do business in China, such as discriminatory regulations and standards, uneven enforcement of commercial laws (such as its anti-monopoly laws), FDI barriers and mandates, export restrictions on raw materials, technology transfer

[24] https://ustr.gov/sites/default/files/2015-Report-to-Congress-China-WTO-Compliance.pdf.

[25] Laurie Burkitt, "American Companies Say Doing Business in China is Getting Tougher," *Wall Street Journal*, January 19, 2016.

requirements imposed on foreign firms, and public procurement rules that give preferences to domestic Chinese firms.

The Chinese government has outlined a number of policies to promote China's transition from a manufacturing center to a major global source of innovation and reducing the country's dependence on foreign technology by promoting "indigenous innovation." In recent years, the Chinese government has enacted new laws on national security, cybersecurity, and counter-terrorism, and has proposed new regulations for banking and insurance, which, under the pretext of protecting national security, appear to impose new restrictions against foreign providers of information and communications products (ICT) and services. For example, some of the provisions describe the need for China to obtain ICT that is "secure and controllable," describe the need for the government to promote indigenous sources of technology, imposes data localization requirements, and contain broad and vague language on an approval process for ICT goods and services.

## Intellectual Property Rights (IPR) Protection and Cyber-Theft

American firms cite the lack of effective and consistent protection and enforcement in China of U.S. IPR as one of the largest challenges they face in doing business in China. Although China has significantly improved its IPR protection regime over the past few years, many U.S. industry officials view piracy rates in China as unacceptably high. A 2015 survey by the American Chamber in China found that 78% of respondents felt that China's IPR enforcement regime was ineffective, up from 59% in its 2012 survey. A May 2013 study by the Commission on the Theft of American Intellectual Property, a commission co-chaired by Dennis C. Blair, former U.S. Director of National Intelligence, and former U.S. Ambassador to China, Jon Huntsman, estimated that China accounted for up to 80% ($240 billion) of the annual cost to the U.S. economy of global IPR theft ($300 billion).[26] The USTR's 2016 report on foreign trade barriers stated that over the past decade, China's Internet restrictions have "posed a significant burden to foreign suppliers," and that eight out of the top 25 most globally visited sites (such as Yahoo, Facebook, YouTube, eBay, Twitter and Amazon) are blocked in China.[27] Cyberattacks by Chinese entities against U.S. firms have raised concerns over the potential theft of U.S. IPR, especially trade secrets. A February 2013 report by Mandiant, a U.S. information security company, documented extensive economic cyber espionage by a Chinese unit (designated as "APT1") with alleged links to the Chinese People's Liberation Army (PLA) against 141 firms, covering 20 industries, since 2006.[28] On May 19, 2014, the U.S. Department of Justice issued a 31-count indictment against five members of the Chinese People's Liberation Army (PLA) for cyber espionage and other offenses that allegedly targeted five U.S. firms and a labor union for commercial advantage, the first time the federal government initiated such action against state actors.

On April 1, 2015, President Obama issued Executive Order 13964, authorizing certain sanctions against "persons engaging in significant malicious cyber-enabled activates." Shortly before Chinese President Xi's state visit to the United States in September 2015, some press reports indicated that the Obama Administration was considering imposing sanctions against Chinese

[26] The Report of the Commission on the Theft of American Intellectual Property, 2013, http://www.ipcommission.org/report/IP_Commission_Report_052213.pdf.

[27] U.S. Trade Representative, 2016 National Trade Estimate Report on Foreign Trade Barriers, https://ustr.gov/sites/default/files/2016-NTE-Report-FINAL.pdf

[28] Mandiant, *APT1: Exposing One of China's Cyber, Espionage Units*, February 19, 2013, p. 2.

entities over cyber-theft. After high-level talks between Chinese and U.S. officials on cybersecurity, President Obama and President Xi announced on September 25, 2016 that they reached an agreement. The agreement stated that neither country's government will conduct or knowingly support cyber-enabled theft of intellectual property, including trade secrets or other confidential business information, with the intent of providing competitive advantages to companies or commercial sectors. They also agreed to set up a high-level dialogue mechanism to address cybercrime and to improvImpact of U.S. Sanctions on Russia's Economy two-way communication when cyber-related concerns arise. The U.S.-China High-Level Joint Dialogue on Cybercrime and Related Issues met in December 2015 and June 2016. It is not clear to what extend the new dialogue has impacted the level of Chinese cyber-hacking of U.S. firms. U.S. firms have also expressed concerns over the effects of Internet restrictions in China.

## Chinese Economic Reforms and Rebalancing

China's economic growth rates have slowed in recent years, caused in part by the global economic slowdown as well as Chinese structural economic challenges (such as overdependence on fixed investment and exporting for much of its economic growth). China's real GDP grew in 2010 was 10.6% but has slowed over each of the past five years and was 6.9% in 2015.[29] The IMF projects China's real GDP growth will slow to 6.6% in 2016 and 5.8% in 2021. Chinese officials describe the current state of the Chinese economy as the "new normal," a term used to describe China's efforts to move toward a more sustainable economic growth model that seeks to obtain more balanced economic growth, including greater reliance on private consumption, innovation, and services to drive future growth. Many economists contend that such reforms are necessary in order for China to avoid a sharp slowing of the economy in the future or even stagnation, but question whether China's stated goals can be achieved without a greater role of the private sector in the economy, a more effective IPR protection regime, and an economy that is more open to foreign investment and competition.

## Going Forward

Different views exist on how the United States could better address commercial disputes with China. Some contend that the United States should take a more aggressive stance against China's trade policies, such as by increasing the number of U.S. WTO dispute settlement cases brought against China, expanding the use of U.S. trade remedy laws (such as anti-dumping and countervailing measures) on certain imports from China, and/or threatening to impose sanctions against China unless it addresses various policies, such as cyber-theft of U.S. business trade secrets, that hurt U.S. economic interests. Others contend that U.S. trade policy towards China should focus on intensifying and broadening ongoing bilateral dialogues, such as the S&ED. Others contend that the main focus of U.S. trade policy towards China should be to pursue and complete market opening agreements. For example, since 2008, the United States has been negotiating with China to reach a bilateral investment treaty (BIT), and in 2013 China agreed to negotiate a high standard BIT that included a commitment to open new sectors to foreign investment. To many, the conclusion of a high standard BIT would be a "game changer" for U.S. firms doing business in China and would signal to the world that China was serious about liberalizing its economy. The United States has also participated in plurilateral negotiations to obtain China's accession to the WTO's Government Procurement Agreement (GPA), which

[29] International Monetary Fund, *World Economic Outlook*, October 2016.

would open up some of China's $280 billion annual public procurement market to bidding by U.S. firms.

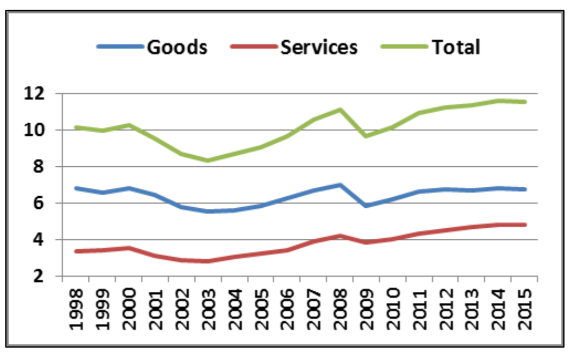
## Economic Effects of Trade

Trade and trade agreements have wide-ranging effects on the economy, including on economic growth, the distribution of income, and employment gains or losses. For most economists, liberalized trade results in both economic costs and benefits, but they argue the long-run net effect on the economy as a whole is positive. It is argued that the economy as a whole operates more efficiently and grows most rapidly as a result of competition through international trade, and consumers benefit by having available a wider variety of goods and services at varying levels of quality and price than would be possible in an economy closed to international trade. Trade also can have long-term positive dynamic effects on an economy and enhances production and employment. However, the costs and benefits associated with expanding trade and trade agreements do not accrue to the economy at the same speed; costs to the economy in the form of job losses are felt in the initial stages of the agreement, while benefits to the economy accrue over time. According to the World Bank, liberalizing trade and foreign investment have reduced the number of people in the world living in extreme poverty (under $1 per day) by half, or 600 million, over the past 25 years, transforming the global economy.[30]

### Trade and U.S. Jobs[31]

Trade is one among a number of forces that drive changes in employment, wages, the distribution of income, and ultimately the standard of living in the U.S. economy. Most economists argue that macroeconomic forces within an economy, including technological and demographic changes, are the dominant factors that shape trade and foreign investment relationships and complicate efforts to disentangle the distinct impact that trade has on the economy. Various measures are used to estimate the role and impact of trade in the economy and of trade on employment. One measure developed by the Department of Commerce concludes that exports support, directly and indirectly, 11.7 million jobs in the U.S. economy. According to these estimates, jobs associated with international trade, especially jobs in export-intensive manufacturing industries, earn 18% more on a weighted average basis than comparable jobs in other manufacturing industries.

**Figure 3. Jobs Supported by Exports in the Goods and Services Sectors of the U.S. Economy (Millions)**




**Source:** International Trade Administration.

[30] *Global Economic Prospects*, The World Bank, 2008, p. 46.

[31] Written by James K. Jackson, Specialist in International Trade and Finance (x7-7751). See CRS Report R44546, *The Economic Effects of Trade: Overview and Policy Challenges*, by James K. Jackson; and CRS In Focus IF10161, *International Trade Agreements and Job Estimates*, by James K. Jackson.

More open markets globally and other changes have subjected a larger portion of the domestic workforce to international competition. According to the International Monetary Fund (IMF), the effective global labor market quadrupled over the past two decades through the opening of China, India, and the former East European bloc countries.[32] In particular, the entry of China into the global economy is an unprecedented development given the size of the Chinese economy and the speed with which it became a major participant in the global economy. Standard economic theory recognizes that some workers and producers in the economy may experience a disproportionate share of the short-term adjustment costs as a result of such economic transformations. Although the attendant adjustment costs for firms and workers are difficult to measure, some estimates suggest they may be significant over the short-run and can entail dislocations for some segments of the labor force, some companies, and some communities. Closed plants can result in depressed commercial and residential property values and lost tax revenues, with effects on local schools, local public infrastructure, and local community viability.[33]

In a dynamic economy like that of the United States, jobs are constantly being created and replaced as some economic activities expand, while others contract. As part of this process, various industries and sectors evolve at different speeds, reflecting differences in technological advancement, productivity, and efficiency. Those sectors that are the most successful in developing or incorporating new technological advancements usually generate greater economic rewards and are capable of attracting larger amounts of capital and labor. In contrast, those sectors or individual firms that lag behind generally attract less capital and labor and confront ever-increasing competitive challenges. In addition, advances in communications, transportation, and technology have facilitated a global transformation of economic production into sophisticated supply chains that span national borders, defy traditional concepts of trade, and effectively increase the number of firms and workers participating in the global economy. The growth of the digital economy, or the digitization of information, also has enhanced the knowledge economy and information-based trade.

Trade and trade liberalization can have a differential effect on workers and firms in the same industry. Some estimates indicate that the short-run costs to workers who attempt to switch occupations or switch industries in search of new employment opportunities may experience substantial effects. One study concluded that workers who switched jobs as a result of trade liberalization generally experienced a reduction in their wages, particularly in occupations where workers performed routine tasks.[34] These negative income effects were especially pronounced in occupations exposed to imports from low-income countries. In contrast, occupations associated with exports experienced a positive relationship between rising incomes and growth in export shares. As a result of the differing impact of trade liberalization on workers and firms, some governments have adopted special safeguards and worker retraining and other social safety net policies to mitigate the potential adverse effects of trade liberalization or address certain trade practices that may cause or threaten to cause injury.

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[32] The Globalization of Labor, *World Economic Outlook,* International Monetary Fund, April 2007, p. 161.

[33] Schneider, Howard, "When a Factory Leaves Town: In the Shadow of Silicon Valley, A City Reels From Job Losses," *The Washington Post,* August 22, 2014.

[34] Artuc, Erhan, and John McLaren, *Trade Policy and Wage Inequality: A Structural Analysis With Occupational and Sectoral Mobility*, Policy Research Working Paper, The World Bank, September, 2012, p. 35.

## Trade Adjustment Assistance (TAA)[35]

Trade Adjustment Assistance (TAA) is a group of programs that provide federal assistance to parties that have been adversely affected by foreign trade. Reduced barriers to trade can offer domestic benefits in increased consumer choice and new export markets but trade can also have negative effects among domestic industries that face increased competition. TAA aims to mitigate some of these negative domestic effects. TAA programs are authorized by the Trade Act of 1974, as amended, and were last reauthorized by the Trade Adjustment Assistance Reauthorization Act of 2015 (TAARA; Title IV of P.L. 114-27; see **text box**).

**Trade Adjustment Assistance Reauthorization Act of 2015**

TAARA was enacted as Title IV of P.L. 114-27. The reauthorization and extension of TAA was aligned with the renewal of Trade Promotion Authority.

Under TAARA, the TAA for Workers program is scheduled to operate under the provisions enacted by TAARA through June 30, 2021. Funding for the TAA for workers program is mandatory. TAARA also authorized appropriations for the Firms and Farmers programs through FY2021. Funding for the TAA programs for firms and farmers are discretionary and subject to annual appropriations.

The largest TAA program, TAA for Workers (TAAW), provides federal assistance to workers who have been separated from their jobs because of increases in directly competitive imports or because their jobs moved to a foreign country. The largest components of the TAAW program are (1) funding for career services and training to prepare workers for new occupations and (2) income support for workers who are enrolled in an eligible training program and have exhausted their unemployment compensation. The TAAW program is administered at the federal level by the Department of Labor and FY2016 appropriations were $861 million.

TAA programs are also authorized for firms and farmers that have been adversely affected by international competition. TAA for Firms supports trade-impacted businesses by providing technical assistance in developing business recovery plans and by providing matching funds to implement those plans. TAA for Firms is administered by the Department of Commerce and FY2016 appropriations were $13 million. The TAA for Farmers program was reauthorized by TAARA, but the program has not received an appropriation since FY2011.

[35] Written by Benjamin Collins, Analyst in Labor Policy (x7-7382). See CRS Report R44153, *Trade Adjustment Assistance for Workers and the TAA Reauthorization Act of 2015*, by Benjamin Collins, CRS Report RS20210, *Trade Adjustment Assistance for Firms*, by Rachel F. Fefer, and CRS Report R40206, *Trade Adjustment Assistance for Farmers*, by Mark A. McMinimy.

## Intellectual Property Rights (IPR)[36]

Intellectual property (IP) is a creation of the mind embodied in physical and digital objects. IPR are legal, private, enforceable rights that governments grant to inventors and artists that generally provide time-limited monopolies to right holders to use, commercialize, and market their creations and prevent others from doing the same without their permission (see **text box**).

> **Examples of IPR**
>
> ***Patents*** protect new innovations and inventions, such as pharmaceutical products, chemical processes, new business technologies, and computer software.
>
> ***Copyrights*** protect artistic and literary works, such as books, music, and movies.
>
> ***Trademarks*** protect distinctive commercial names, marks, and symbols.
>
> ***Trade secrets*** protect confidential business information that is commercially valuable because it is secret, including formulas, manufacturing techniques, and customer lists.
>
> ***Geographical indications (GIs)*** protect distinctive products from a certain region, applying primarily to agricultural products.

IP is a source of comparative advantage of the United States, and IPR infringement has adverse consequences for U.S. commercial, health, safety, and security interests. Protection and enforcement of IPR in the digital environment is of increasing concern, including cybertheft. At the same time, lawful limitations to IPR, such as exceptions in copyright law for media, research, and teaching (known as "fair use"), also may have benefits.

### IPR in Trade Agreements & Negotiations

IPR protection and enforcement have been a long-standing key objective in U.S. trade agreement negotiations. Currently, the United States generally seeks IP commitments that exceed the minimum standards of the World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), known as "TRIPS-plus." The 2015 Trade Promotion Authority (TPA) incorporated past trade negotiating objectives to ensure that U.S. free trade agreements (FTAs) "reflect a standard of protection similar to that found in U.S. law" ("TRIPS-plus") and to apply existing IPR protection to digital media through adhering to the World Intellectual Property Organization (WIPO) "Internet Treaties." The TPA also contained new objectives on addressing cybertheft and protecting trade secrets and proprietary information.

Treatment of IPR was a key issue in the Trans-Pacific Partnership (TPP) negotiations, and the results reflected compromise among the parties. The proposed TPP included IPR provisions (with transitional periods for developing countries to implement obligations) such as:

- pharmaceutical patent protections, with measures to protect public health consistent with TRIPS;
- data exclusivity periods for biologics—either eight years or, alternatively, at least five years with additional periods to achieve a "comparable market outcome;"
- copyright protections, penalties for circumventing technological protection measures, safe harbor measures for Internet Service Providers (ISPs), and goals to achieve an appropriate balance between the interests of copyright holders and users (known as "fair use" in the U.S. context);

[36] Written by Shayerah Ilias Akhtar, Specialist in International Trade and Finance (x7-9253), and Ian F. Fergusson, Specialist in International Trade and Finance (x7-4997). See CRS Report RL34292, *Intellectual Property Rights and International Trade*, by Shayerah Ilias Akhtar and Ian F. Fergusson; CRS In Focus IF10033, *Intellectual Property Rights (IPR) and International Trade*, by Shayerah Ilias Akhtar and Ian F. Fergusson; and CRS In Focus IF10442, *TPP: Intellectual Property Rights (IPR)*, by Shayerah Ilias Akhtar and Ian F. Fergusson.

- enhanced trademark protection and disciplines for geographic indicators (GIs), with measures to ensure that widely used geographic terms are available for generic use; and
- enhanced enforcement measures, including new criminal penalties for trade secret theft, clarification that criminal penalties apply to infringement in the digital environment, and *ex officio* authority for customs agents to seize counterfeit and pirated goods.

Although the outlook for congressional consideration of TPP is unclear, the negotiated outcomes on IPR in the agreement may be subject to debate and may be pursued in future U.S. trade agreements. Congress could consider whether TPP addressed U.S. trade negotiating objectives on IPR, and whether to revisit specific provisions in the TPP, such as on biologics IPR issues in other U.S. trade agreements and negotiations. T-TIP also presents possible areas of congressional oversight, particularly on treatment of GIs, IPR protection and enforcement in the digital environment, and cooperation to address trade secret theft. Additionally, U.S. government actions to enforce foreign trading partners' IPR obligations within the WTO and under existing U.S. FTAs could intensify. During the presidential campaign, Trump has called for stronger trade enforcement.[37] Possible oversight issues for Congress include approaches to, as well as prioritization of, potential future U.S. trade enforcement actions in the IPR context.

## Other IPR Trade Policy Tools

The United States maintains other trade policy tools to advance IPR goals. These tools may be particularly relevant in addressing U.S. issues with respect to emerging economies, such as China, India, and Brazil, which are not a part of existing U.S. trade agreements or negotiations and present significant IPR challenges.

- **Special 301.** The United States Trade Representative (USTR) publishes annually a "Special 301" report, pursuant to the Trade Act of 1974, as amended. This report identifies countries that do not offer "adequate and effective" IPR protection, for example for patents and copyrights, and designates them on various "watch lists." The Trade Facilitation and Trade Enforcement Act of 2015 (P.L. 114-125) required USTR to identify issues in countries' protection of trade secrets in the "Special 301" report.
- **Section 337.** The U.S. International Trade Commission (ITC), pursuant to the Tariff Act of 1930, as amended, conducts "Section 337" investigations into allegations that U.S. imports infringe U.S. IP. Based on the investigations, ITC can issue, among other things, orders prohibiting counterfeit and pirated products from entering the United States.

The 115th Congress could examine the effectiveness of Special 301 and Section 337. Given President-elect Trump's expressed intent to focus on trade enforcement, such tools may take on greater prominence.

[37] Trump-Pence Campaign, "Donald J. Trump Delivers Groundbreaking Contract for the American Voter in Gettysburg," October 22, 2016, https://www.donaldjtrump.com/press-releases/donald-j.-trump-delivers-groundbreaking-contract-for-the-american-vote1.

## International Investment

The United States is both a major source and recipient of foreign direct investment (FDI). In 2015, the total stock of global FDI was $25.0 trillion, with the United States continuing to have the world's largest cumulative share of FDI on a country basis ($5.6 trillion).[38] Global foreign direct investment (FDI) flows jumped 38% to $1.76 trillion, their highest level since the global economic and financial crisis of 2008–2009. Following several years of decline, FDI flows to developed countries increased by 84% in 2015 to $962 billion, reversing a five-year trend during which developing and transition economies were the majority recipients of global FDI.

FDI growth in the United States was particularly strong over the past year. In 2015, the United States was the largest recipient of inward FDI ($380 billion), followed by Hong Kong, China ($175 billion), Mainland China ($136 billion), and Ireland ($101 billion). FDI in the United States was 250% higher than in 2014 ($107 billion), and the highest level since 2000.

The U.S. dual position as a leading source and destination for FDI argues that globalization, the spread of economic activity by firms across national borders, which has become a prominent feature of the U.S. economy. This means that the United States has important economic, political, and social interests at stake in the development of international policies regarding direct investment. U.S. investment policy has become a focal point of U.S. trade policy debate, intersecting with questions of economic impact, trade restrictions, national security, and regulatory sovereignty. Congress influences all aspects of these international issues.

### Foreign Investment and National Security[39]

The United States has established domestic policies that treat foreign investors no less favorably than U.S. firms, with some exceptions for national security. Under current U.S. law, the President exercises broad discretionary authority over developing and implementing U.S. direct investment policy, including the authority to suspend or block investments that "threaten to impair the national security." At the same time, Congress also is directly involved in formulating the scope and direction of U.S. foreign investment policy. For instance, following the terrorist attacks on the United States on September 11, 2001, some Members questioned the traditional U.S. open door policy for foreign investment and argued for greater consideration of the long-term impact of foreign direct investment on the structure and industrial capacity of the economy, and on the ability of the economy to meet the needs of U.S. defense and security interests.

In July 2007, Congress asserted its own role in making and conducting foreign investment policy when it adopted and the President signed the Foreign Investment and National Security Act of 2007 (P.L. 110-49) that formally established the Committee on Foreign Investment in the United States (CFIUS). This law broadens Congress's oversight role, and explicitly includes homeland security and critical infrastructure as separately identifiable components of national security that the President must consider when evaluating the national security implications of foreign investment transactions. The law also grants the President the authority to suspend or block foreign investments that are judged to threaten U.S. national security, although the law does not define what constitutes national security relative to a foreign investment. It also requires review

[38] United Nations Conference on Trade and Development, *World Investment Report 2016*, Geneva, 2016.

[39] Written by James K. Jackson, Specialist in International Trade and Finance (x7-7751). See CRS Report RL34561, *Foreign Investment and National Security: Economic Considerations*, by James K. Jackson; CRS Report RS22863, *Foreign Investment, CFIUS, and Homeland Security: An Overview*, by James K. Jackson; and CRS In Focus IF10177, *The Committee on Foreign Investment in the United States*, by James K. Jackson.

of investments by foreign investors owned or controlled by foreign governments. Through the fall of 2016, the law has been used twice to block a foreign acquisition of a U.S. firm.[40] At times, the law has drawn Congress into a greater dialogue over the role of foreign investment in the economy and the relationship between foreign investment and the general concept of national economic security.

Internationally, over the past decade national security-related concerns have become more prominent in the investment policies of numerous countries.[41] As a result, countries have adopted new measures to restrict foreign investment or have amended existing laws concerning investment-related national security reviews. International organizations have long recognized the legitimate concerns of nations in restricting foreign investment in certain sectors of their economies, but the recent increase in such restrictions has raised a number of policy issues. Countries have different approaches for reviewing and restricting foreign investment on national security-related grounds. These range from formal investment restrictions to complex review mechanisms with broad definitions and broad scope of application to provide host country authorities with wide discretion in the review process. As a result of these differences, foreign investors can face different entry conditions in different countries in similar economic activities.[42]

## U.S. International Investment Agreements (IIAs)[43]

The United States negotiates international investment agreements (IIAs), based on a "model" Bilateral Investment Treaty (BIT), to reduce restrictions on foreign investment, ensure nondiscriminatory treatment of investors and investment, and advance other U.S. interests. U.S. IIAs typically take two forms: (1) BITs, which require a two-thirds vote of approval in the Senate; or (2) BIT-like chapters in free trade agreements (FTAs), which require simple majority approval of implementing legislation by both houses of Congress (**Figure 4**). While U.S. IIAs are a small fraction of the more than 3,300 IIA agreements worldwide, they are often viewed as more comprehensive and of a higher standard than those of other countries. U.S. trade negotiating objectives, renewed in 2015 through Trade Promotion Authority (TPA), retained a principal negotiating objective to reduce or eliminate barriers to foreign investment while ensuring that foreign investors in the United States are not accorded "greater substantive rights" for investment protections than domestic investors.

[40] In 1990, President Bush, using the authority granted under the Exon-Florio provision, directed the China National Aero-Technology Import and Export Corporation (CATIC) to divest its acquisition of MAMCO Manufacturing, a Seattle-based firm producing metal parts and assemblies for aircraft, because of concerns that CATIC might gain access to technology through MAMCO that it would otherwise have to obtain under an export license. In the second case, an investment by the American firm Ralls Corp., owned by Chinese nationals who also owned Sany Electric Company, a Chinese electric company, in a wind farm project in Oregon, known as the Butter Creek Projects. In March 2012, Ralls acquired wind farm assets from Terna Energy SA, an Athens, Greece-based company, without reporting the transaction to CFIUS. Upon the recommendation of CFIUS, President Obama issued an executive order on September 28, 2012, that argued that there was credible evidence that the Ralls acquisition threatened to impair U.S. national security and ordered Ralls to divest itself of the Oregon wind farm project.

[41] *World Investment Report 2016*, United Nations Conference on Trade and Development, 2016, p. 95.

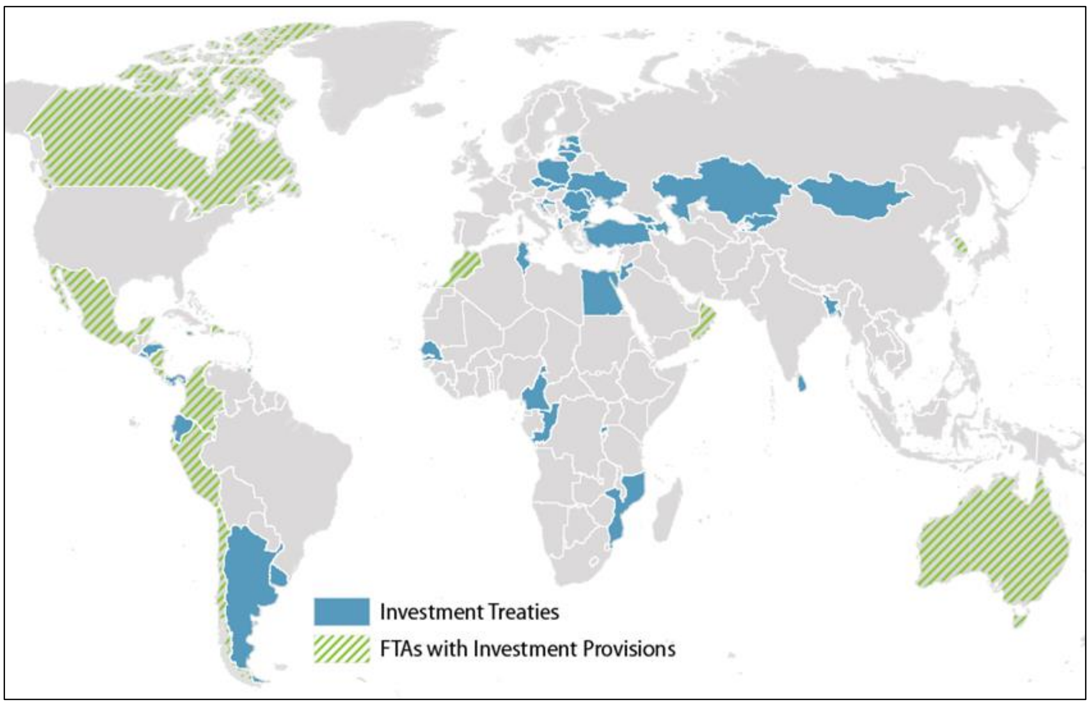
[42] Ibid., p. 94.

[43] Written by Shayerah Ilias Akhtar (x7-9253), and Martin A. Weiss (x7-5407), Specialists in International Trade and Finance. See CRS Report R43052, *U.S. International Investment Agreements: Issues for Congress*, by Shayerah Ilias Akhtar and Martin A. Weiss; and CRS Report R44015, *International Investment Agreements (IIAs): Frequently Asked Questions*, coordinated by Martin A. Weiss; CRS In Focus IF10052, *U.S. International Investment Agreements (IIAs)*, by Martin A. Weiss and Shayerah Ilias Akhtar; and CRS In Focus IF10476, *TPP: Investment Provisions*, by Shayerah Ilias Akhtar and Ian F. Fergusson.

### Substantive Protections Common to U.S. Investment Agreements

- ***Market access*** for investments.
- ***Non-discriminatory treatment*** of foreign investors and investments compared to domestic investors (national treatment) and to those of another country (most-favored-nation treatment).
- ***Minimum standard of treatment*** in accordance with customary international law, including fair and equitable treatment and full protection and security.
- Prompt, adequate, and effective ***compensation for expropriation***, both direct and indirect, recognizing that, except in rare circumstances, non-discriminatory regulation is not an indirect expropriation.
- Timely ***transfer of funds*** into and out of the host country without delay using a market rate of exchange.
- Limits on ***performance requirements*** that, for example, condition approval of an investment on using local content.
- ***Investor-State Dispute Settlement (ISDS)*** for binding international arbitration of private investors' claims against host country governments for violation of investment obligations, along with requirements for transparency of ISDS proceedings.
- ***Exceptions*** for national security and prudential interests, among others.

**Figure 4. U.S. International Investment Agreements**




**Source:** CRS, based on information from USTR and the Department of State.

The proposed Trans-Pacific Partnership (TPP) represented the most recent set of investment rules negotiated by the United States. It carried over core investor protections (see **text box**), as well as added new provisions, including clarification of the minimum standard of treatment for investors; an exception allowing governments to decline to accept ISDS challenges against tobacco control measures; clarification that countries have a right to regulate in the public interest (building on language in prior U.S. IIAs recognizing, for example, that only in rare circumstances is non-discriminatory regulatory action indirect expropriation); and enhanced investor-state dispute settlement (ISDS) procedures for transparency, public participation, and dismissal of frivolous claims. The negotiated outcomes on investment in TPP have been controversial. Congress could revisit specific provisions in TPP, examining how its investor protections balance against other interests (such as protecting governments' regulatory ability).

Investment issues in other U.S. trade negotiations, such as the Transatlantic Trade and Investment Partnership (T-TIP), also could present possible areas of congressional oversight. If continued, T-TIP negotiations could raise issues about the traditional U.S. approach of including ISDS in IIAs to enforce host governments' obligations to protect investors. In lieu of ISDS, the EU has proposed a new Investment Court System. The U.S. government and U.S. industry have favored ISDS to protect investors, while some civil society groups assert that the EU proposal fails to resolve their concerns about transparency, fairness, and other issues surrounding ISDS. Additionally, the United States has engaged in BIT discussions with emerging and developing economies that are not a part of current U.S. FTA negotiations, notably China and India. While such potential BITs present opportunities for enhanced commercial relations, debate exists over whether they can achieve high standard investment commitments.

### Promoting Investment in the United States[44]

U.S. investment policy includes a focus on attracting investment to the United States. The Department of Commerce's SelectUSA program, established in 2011 by Executive Order 13577, aims to coordinate federal efforts to attract and retain business investment in the United States, complementing states' investment promotion activities. SelectUSA serves as an information resource on investment, helps resolve investment issues involving federal programs and activities, and advocates at a national level to attract inward investment. It has operated with a budget of up to $10 million in recent years. In March 2015, the Administration announced efforts to enhance the program, including through establishing a federal advisory committee to solicit input on retaining FDI.

**Selected Bills in the 114th Congress**

- S. 3097, which was reported favorably out of committee with an amendment, would have codified the SelectUSA program.
- H.R. 1007 would have authorized appropriations for SelectUSA at $20 million annually over the period FY2016-FY2020.

Legislative and oversight issues in the 115th Congress could include SelectUSA's authorization status, funding levels, and effectiveness in supporting U.S. investment goals (see **text box**). Supporters of SelectUSA may argue that the program is effective, and that a permanent authorization would ensure its stability and send a message internationally of U.S. interest in competing for investment. Opponents of SelectUSA may argue that the program is unnecessary, based on opposition to U.S. government involvement in supporting private sector activity or in light of state- and local-level investment attraction initiatives.

## Digital Trade[45]

As digital trade flows make up an important and growing segment of the economy, addressing digital trade barriers has emerged as a key negotiating objective in U.S. trade agreements. The United States generally seeks to preserve a free and open Internet. Congressional issues include possible oversight of ongoing implementation of the EU-U.S. Privacy Shield, and treatment of

[44] Ibid.

[45] Written by Rachel Fefer, Analyst in International Trade and Finance (x7-1804). See CRS Report R44565, *Digital Trade and U.S. Trade Policy*, coordinated by Rachel F. Fefer, CRS Report R44257, *U.S.-EU Data Privacy: From Safe Harbor to Privacy Shield*, by Martin A. Weiss and Kristin Archick.

digital trade issues in the proposed Trans-Pacific Partnership (TPP), a potential Transatlantic Trade and Investment Partnership (T-TIP), and a potential plurilateral Trade in Services Agreement (TiSA).

**What is Digital Trade?**

The U.S. International Trade Commission (ITC) broadly defines digital trade as "U.S. domestic commerce and international trade in which the Internet and Internet-based technologies play a particularly significant role in ordering, producing, or delivering products and services."[46] Thus, digital trade includes end-products like movies and video games, as well as the means to enhance the productivity and overall competitiveness of an economy. The Internet has become a facilitator of existing international trade in goods and services, as well as a platform itself for new digitally-originated services.

## New Barriers

The increase in digital trade raises new policy challenges, including how best to address new and emerging digital trade issues, including:

- Restrictions on cross-border data flows and localization barriers;
- Intellectual Property Rights (IPR) infringement in the online environment;
- Forced source-code disclosure;
- Online filtering, blocking, and neutrality policies;
- Local standards and burdensome testing, certification requirements;
- Cybersecurity and government-to-government cooperation; and
- Consumer protection and data privacy.

The United States is beginning to address these and other barriers to digital trade through existing and proposed trade agreements as well as in other international settings. Digital trade norms are being discussed in forums such as the WTO, Group of 20 (G-20), the Organization for Economic Cooperation and Development (OECD), and the Asia-Pacific Economic Cooperation (APEC), providing the United States with multiple opportunities to engage in and shape global developments.

## EU-U.S. Privacy Shield

Cross-border data flows between the United States and Europe are the highest in the world. On October 6, 2015, the Court of Justice of the European Union (CJEU) invalidated the Safe Harbor Agreement between the United States and the 28-member European Union (EU), under which personal data could legally be transferred between EU member countries and the United States. The decision was driven by European concerns that the U.S. approach to data privacy did not guarantee a sufficient level of protection for European citizens' personal data. Approximately 4,500 U.S. companies (including U.S. subsidiaries of European firms) participated in the Safe Harbor Agreement.

In early 2016, U.S. and EU officials announced an agreement on a replacement to Safe Harbor: the EU-U.S. Privacy Shield, which was approved by the European Commission (the EU's

[46] U.S. International Trade Commission, *Digital Trade in the U.S. and Global Economies, Part 2*, Publication No: 4485, Investigation No: 332-540, p.29, August 2014, https://www.usitc.gov/publications/332/pub4485.pdf.

executive) and entered into force July 12, 2016.[47] The final agreement included additional obligations on the U.S. government, including a new ombudsman in the U.S. State Department and supplementary safeguards and limitations on surveillance. It also included additional obligations for U.S. companies, such as robust data processing. The Privacy Shield also involves proactive monitoring and enforcement by U.S. agencies, and is subject to an annual joint review by the United States and the EU.

While companies will be able rely on the Privacy Shield to ensure their digital data flows are allowed, many experts expect that privacy advocates will challenge the Privacy Shield in court as well. The European Parliament reached political agreement in late 2015 on a new General Data Protection Regulation (GDPR) that will be directly applicable in all EU member states, thus establishing a single set of rules for data protection throughout the EU.[48] EU member states have until May 25, 2018, to fully implement the GDPR provisions.[49] The potential impact of the GDPR on the EU-U.S. Privacy Shield is unclear.

## Exchange Rates[50]

The impact of other countries' exchange rate policies on the United States is a long-standing source of congressional interest and concern. An exchange rate is the price of a country's currency relative to other currencies, or the rate at which one currency can be converted into another currency. Exchange rates are among the most important prices in the global economy. They affect the price of every country's imports and exports, as well as the value of every overseas investment. Changes in exchange rates can have dramatic impacts on trade and investment flows between countries.

Governments take different approaches to the value of their currencies. Some countries and entities, including the United States, Japan, and the Eurozone, let the market determine the value of their currency ("floating" currencies). Others may use various policy measures to target the value of their currency to a specific value ("hard peg") or a range of values ("soft peg"). The optimal policy for any given country will depend on its characteristics, including its size and interconnectedness to the global economy.

### Debates over Currency Manipulation

Over the past decade, some Members of Congress and policy experts have been concerned that foreign countries are using exchange rate policies to gain an unfair trade advantage against the United States, or "manipulating" their currencies. Specifically, the concern is that other countries are purposefully undervaluing their currencies to boost exports, making it harder for other countries to compete in global markets. They argue that U.S. companies and jobs have been adversely affected by the exchange rate policies adopted by China, Japan, and a number of other countries "manipulating" their currencies.

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[47] European Commission Press Release, "European Commission launches EU-U.S. Privacy Shield: stronger protection for transatlantic data flows," July 12, 2016, http://europa.eu/rapid/press-release_IP-16-2461_en.htm.

[48] European Commission, "Agreement on Commission's EU data protection reform will boost Digital Single Market," Press Release, December 15, 2015.

[49] Stephen Gardner, "Effective Date Set for EU General Data Protection Rule," Bloomberg BNA, May 4, 2016.

[50] Written by Rebecca Nelson, Specialist in International Trade and Finance (x7-6819). See CRS In Focus IF10049, *Debates over "Currency Manipulation"*, by Rebecca M. Nelson, and CRS Report R43242, *Current Debates over Exchange Rates: Overview and Issues for Congress*, by Rebecca M. Nelson.

Some economists are skeptical about currency manipulation and whether it is a significant problem. They raise questions about whether government policies have long-term effects on exchange rates, whether it is possible to differentiate between "manipulation" and legitimate central bank activities, and the net effect of alleged currency manipulation on the U.S. economy.

**Exchange Rate Policies: China and Japan**

***China*:** Over the past decade, some Members have alleged that China uses policies to keep the value of its currency artificially low, making it harder for U.S. goods to compete in global markets. More recently, however, slowing growth in China has put downward pressure on its currency. Since mid-2015, its central bank has intervened in foreign exchange markets in the opposite direction (to prevent further depreciation of its currency). The IMF estimates that the value of China's currency is currently in line with economic fundamentals.

***Japan*:** Some Members have also voiced concerns about Japan's policies. Japan's currency, the yen, depreciated against the U.S. dollar by about 50% between mid-2012 and end-2015, following a new set of expansionary monetary policies, similar to the Federal Reserve's quantitative easing programs. Over the course of 2016, however, then yen has strengthened against the dollar.

### Key Provisions on Currency

Provisions in multilateral agreements and U.S. law aim to combat currency manipulation. Multilaterally, members of the International Monetary Fund (IMF) have committed to refraining from manipulating their exchange rates to gain an unfair trade advantage, although the IMF has never publicly labeled a country as a currency manipulator. There is debate over whether commitments made in the context of the World Trade Organization are also relevant to disagreements over exchange rates. With respect to U.S. law, the 1988 Trade Act (P.L. 110-418) requires the Department of the Treasury to initiate negotiations with countries found to be manipulating their currencies. The Treasury has not found currency manipulation under the terms of the Act in more than two decades.

The 114th Congress addressed concerns about currency manipulation through Trade Promotion Authority (TPA) and customs legislation. TPA legislation signed into law in June 2015 (P.L. 114-26) includes, for the first time, principal negotiating objectives addressing currency manipulation. Largely in response to the TPA legislation, monetary authorities from the 12 TPP countries negotiated a joint declaration to addresses unfair currency practices, which would take effect should TPP enter into force. The Trade Facilitation and Trade Enforcement Act of 2015 (P.L. 114-125) includes provisions to enhance Treasury reporting and engagement on exchange rate issues.

Currency manipulation remained a salient issue in the 2016 presidential election. During the campaign, President-elect Donald Trump indicated he would direct the Treasury Secretary to label China a currency manipulator.[51] Some argue that more assertive action on China currency could bolster U.S. competitiveness, while others caution that it does not reflect current Chinese economic policies and risks triggering a trade war with China.

## Labor and Environment

Some Members of Congress and others have sought to improve labor and environmental conditions in other countries through the inclusion of provisions addressing those issues in U.S.

[51] Trump-Pence Campaign, "Donald J. Trump Delivers Groundbreaking Contract for the American Voter in Gettysburg," October 22, 2016, https://www.donaldjtrump.com/press-releases/donald-j.-trump-delivers-groundbreaking-contract-for-the-american-vote1.

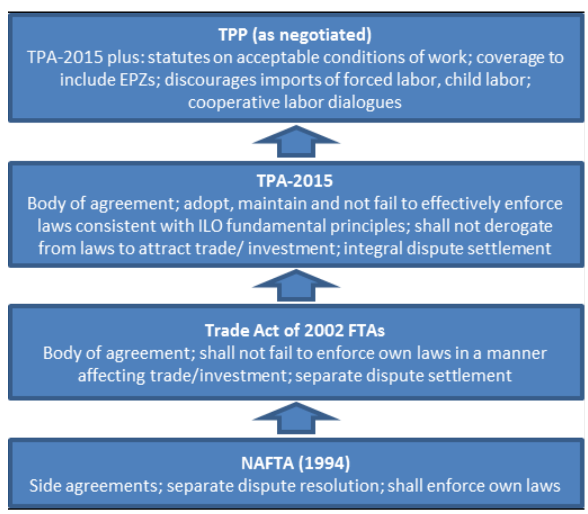
FTAs. They have been concerned that lax or lower standards in other countries may make U.S. products uncompetitive, losing jobs and production to overseas, or, alternatively, lowering wages and standards in the United States, contributing to a perceived "race to the bottom." Others have tried to limit the scope and enforceability of such provisions, or believe that the competence to address these issues lies elsewhere, such as with international organizations.

## Labor Provisions in FTAs[52]

The issue of worker rights has become prominent in the negotiation of U.S. FTAs. Some stakeholders believe that worker rights provisions are necessary to protect U.S. labor from perceived unfair competition and to raise standards in other countries. Others believe that worker rights are more appropriately addressed at the International Labor Organization (ILO) or through cooperative efforts and capacity building on worker rights and economic growth. Since 1988, Congress has included worker rights as a principal negotiating objective in Trade Promotion Authority (TPA) legislation. The United States has been in the forefront of using trade agreements to promote core internationally recognized worker rights consistent with the ILO *Declaration on Fundamental Principles and Rights at Work (1998)*. These include freedom of association and the effective recognition of the right to collective bargaining, elimination of all forms of compulsory or forced labor, effective abolition of child labor, and elimination of discrimination in respect of employment and occupation. The ILO is the primary multilateral organization responsible for promoting labor standards through international conventions and principles. A specialized agency of the United Nations, it has a tripartite structure composed of representatives from government, business and labor organizations. The ILO promotes labor rights through assessment of country standards and technical assistance, but it has no real enforcement authority. The World Trade Organization does not address worker rights.

Labor provisions in U.S. FTAs have evolved since the North American Free Trade Agreement (NAFTA), which was the first U.S. FTA that addressed worker rights in a side agreement committing the parties to enforce their own labor laws and to resolve disputes (**Figure 5**). The most recent U.S. FTAs (with Peru, Colombia, Panama, and South Korea) incorporate stronger language by which parties must adopt, maintain, and enforce ILO core labor principles. The proposed TPP includes similar provisions, in addition to three labor consistency plans with specific labor commitments in regard to worker rights for Brunei, Malaysia, and Vietnam. Proponents of including labor provisions in FTAs contend that they help poorer countries build their capacity to support labor protections, improve international labor standards, and enhance

**Figure 5. Evolution of Labor Commitments**




**Source:** Congressional Research Service.

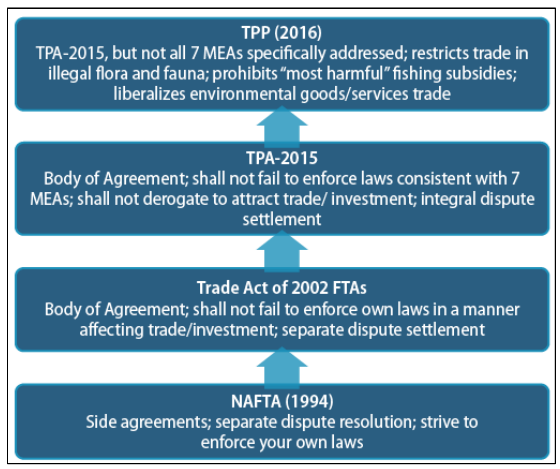
[52] Written by M. Angeles Villarreal, Specialist in International Trade and Finance (x7-0321). See CRS In Focus IF10046, *Worker Rights Provisions in Free Trade Agreements (FTAs)*, by Ian F. Fergusson and M. Angeles Villarreal; and CRS In Focus IF10452, *TPP: Labor Provisions*, by M. Angeles Villarreal and Ian F. Fergusson.

economic growth. Labor groups are concerned that labor provisions in FTAs are generally weak and that trade agreements encourage businesses to move U.S. jobs to other countries. Some Members of Congress are particularly concerned about whether lesser developed countries have the ability to meet FTA labor obligations or make significant reforms to their labor laws and practices.

## Environment Provisions in FTAs[53]

The United States has negotiated environmental provisions in its FTAs, which have evolved over time. The nexus between trade and environmental protection are a concern to U.S. policymakers and stakeholders. Some observers argue that economic expansion brought on both by trade liberalization adversely impacts the environment, and that some countries may adopt less stringent environmental policies to attract trade and investment. Other policymakers and stakeholders believe that trade liberalization and environmental protection are mutually supportive. They argue that while economic growth may adversely impact the environment during the initial stages of industrialization, it can also provide resources to mitigate such effects as countries develop. They also argue that trade liberalization can support U.S. environmental goals through the elimination of tariffs on environmental goods, and the reduction of trade-distorting subsidies

**Figure 6. Evolution of Environment Commitments**




**Source:** Congressional Research Service.

As with labor provisions, environment chapters in U.S. FTAs have evolved over time. They first appeared as a side agreement to NAFTA, committing the parties to enforce their own laws and cooperatively resolve disputes in a special venue. The Trade Act of 2002 was the first grant of trade promotion authority (TPA) containing environmental negotiating objectives, calling for countries not to fail to enforce their own environmental laws in a manner affecting trade between the United States and the partner country. Environmental obligations were expanded for U.S. FTAs with Colombia, Panama, Peru, and South Korea and were largely reflected in the 2015 grant of TPA. Under those FTAs and the 2015 TPA legislation, parties are obligated to enforce their own laws, but those laws must be consistent with 7 multilateral environmental agreements (MEAs) to which each was a party. Parties also were obligated not to derogate from their laws in order to attract trade and investment. In addition, these provisions were subject to the same dispute settlement provisions as other parts of the agreement with the withdrawal of trade concessions as the ultimate penalty for non-compliance. The WTO does not have provisions related to environmental protection.

One controversy surrounding the TPP is the extent to which its environmental provisions were consistent with TPA. Critics argue that TPP lacked incorporation of all the MEAs listed in TPA,

[53] Written by Ian Fergusson, Specialist in International Trade and Finance (x7-4997). See CRS In Focus IF10166, *Environmental Provisions in Free Trade Agreements (FTAs)*, by Richard K. Lattanzio and Ian F. Fergusson.

and noted the hortatory nature of many of the chapter's commitments. USTR and other supporters of the agreement claimed that some provisions addressed issues related to certain MEAs even if not specifically listed and that it contained disciplines on new issues, never before addressed in an FTA, for example, fishing subsidies. In addition, measures were included to provide technical assistance to countries in carrying out their obligations and for the parties to engage in cooperative activities to promote environmental conservation.

## Trade Enforcement[54]

Trade enforcement represents a broad range of functions. These include ensuring commitments under U.S., WTO, and other trade agreements are upheld, including through dispute settlement, detecting and preventing fraud at the broader, ensuring product safety and regulatory compliance, and ensuring trade laws are upheld.

The USTR is the lead agency in enforcing U.S. rights under the WTO and trade agreements. The front-line trade enforcement agency at the border is U.S. Customs and Border Protection (CBP) of the Department of Homeland Security. In collaboration with its sister agency, U.S. Immigration and Customs Enforcement (ICE), CBP works to detect high-risk activity, deter non-compliance, and disrupt fraudulent trade behavior.[55]

CBP is also responsible for clearing imports at U.S. ports of entry (POEs), but in order to complete this task it must coordinate with 47 partner government agencies (PGAs) that have licensing and regulatory authority over various kinds of imported merchandise including food, firearms, and pharmaceuticals. If a shipment is suspect, officers from participating agencies other than CBP may open and physically inspect containers for goods.[56]

U.S. trade laws include trade remedies used by the United States and other countries to mitigate the adverse impact of various trade practices on domestic industries and workers, such as antidumping (AD) laws and countervailing duty (CVD) laws. Trade remedy laws and actions are often controversial because many trade experts view them as protectionist. Others assert that they are an essential means of mitigating the adverse impact of unfair trade on domestic companies, workers, and the communities in which they are located. Federal agencies involved trade remedy adjudication and enforcement include the U.S. International Trade Commission (ITC), the International Trade Administration (ITA) of the Department of Commerce, and the Interagency Trade Enforcement Center (ITEC). Other U.S. trade laws that the USTR and other agencies implement and enforce include "Special 301" and Section 337, which address IPR unfair trade practices (see IPR section). In addition, Congress has granted the President various authorities to address unfair trade practices and impose tariffs in certain circumstances for trade, national security and foreign policy purposes.

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[54] Written by Vivian C. Jones, Specialist in International Trade and Finance (x7-7823).

[55] U.S. Customs and Border Protection, "CBP Trade Enforcement—Operational Approach," https://www.cbp.gov/document/fact-sheets/cbp-trade-enforcement-operational-approach.

[56] U.S. Customs and Border Protection, "International Trade Data System (ITDS) Capabilities."

## Dispute Settlement[57]

The United States has several means of enforcing trade agreements through the dispute settlement process of the WTO and various U.S. FTAs. Dispute settlement is a well-used feature of the WTO agreements with over 500 cases filed since 1995. U.S. FTAs also have dispute settlement mechanisms, but they are used less often. The U.S. Trade Representative is authorized to launch cases on behalf of the United States, after input from other Departments and stakeholders in the private sector or non-governmental organizations (NGOs).

Usually, countries first seek to settle their differences through consultation, without resorting to formal dispute settlement, and both the WTO and U.S. FTAs provide mechanisms to do so. Once a dispute is launched in the WTO, however, the Dispute Settlement Understanding (DSU) provides procedures and timetables to keep the handling of the dispute on track. The timetable to conclude a case before a dispute settlement panel is launched is six months, with an additional two months for the decision to be adopted by the Dispute Settlement Body. A dispute settlement tribunal consists of 3-5 panelists agreed upon by the countries in dispute, or by the Director-General of the WTO. Cases can be appealed to the Appellate Body, which can affirm or overturn all or part of the panel decision. If a party is found to violate the agreement, it has time to bring its law into conformity with the decision, which is subject to consideration by a compliance panel. In total, a WTO decision can take two to three years to implement. If the party refuses to bring itself into compliance, or if the compliance panel deems the steps taken to be insufficient, the aggrieved party can retaliate by withdrawing trade concessions (i.e., reimposing tariffs) to a level equivalent to the economic damage of the infringing measure.

U.S. regional and bilateral FTAs contain dispute settlement chapter resembling those of the WTO DSU. However, they generally have not been used to settle disputes. Under U.S. FTAs, countries can choose the venue for the dispute, provided that the two agreements have common provisions. Some choose the WTO system because it has an appeals procedure, while U.S. FTAs do not. In addition, many trade disputes concern unfair trade practices such as dumping and subsidies, and U.S. FTAs have not altered WTO obligations in these subjects. Thus, FTA dispute settlement may be utilized for subjects not addressed in the WTO agreements. For example, one U.S. FTA dispute settlement case currently being considered is against Guatemala over alleged violations of labor chapter obligations of Dominican Republic-Central American Free Trade Agreement (DR-CAFTA). In addition, some provisions of U.S. FTAs are explicitly excluded from dispute settlement.

Some Members of Congress have identified some perceived shortcomings of dispute settlement in trade agreements to which the United States is a party. These include:

- **Quantity of cases:** Some Members of Congress have questioned whether the USTR could bring more cases for violations of the WTO agreements. Some NGOs have complained about the paucity of labor and environmental proceedings brought against U.S. FTA partners.
- **Interpretation of agreements:** Some Members of Congress have accused WTO panelists of interpreting WTO agreements in an expansive manner, and not

[57] Written by Ian F. Fergusson, Specialist in International Trade and Finance (x7-4997). See CRS Report RS20088, *Dispute Settlement in the World Trade Organization (WTO): An Overview*, by Daniel T. Shedd, Brandon J. Murrill, and Jane M. Smith; and CRS In Focus IF10436, *Dispute Settlement in the World Trade Organization: Key Legal Concepts*, by Brandon J. Murrill.

giving deference to the practices of member states in areas not specifically prohibited by the agreements.

- **Length of proceedings:** While procedures and timelines are set in the agreement, extensions are frequently granted, especially in complex cases. Appellate cases are also frequently pursued, even when findings are unlikely to change.

## Trade Remedies[58]

The United States and its trading partners use laws known as trade remedies to mitigate the injury (or threat thereof) of various trade practices to domestic industries and workers. The three most frequently applied U.S. trade remedies are:

- **antidumping (AD)**, which provides relief from injurious imports sold at less than fair market value;
- **countervailing duty (CVD)**, which provides relief from injurious imports subsidized by a foreign government or public entity; and
- **safeguard (Section 201)**, which provides temporary relief from import surges of fairly traded goods.

These laws are administered primarily through the International Trade Administration of the Department of Commerce (ITA, addresses the existence and amount of dumping or subsidies) and the United States International Trade Commission (ITC, determines injury to the domestic industries petitioning for redress). In AD and CVD cases, the remedy is an AD or CVD "order" that places an additional duty assessed to offset the calculated amount of dumping or subsidy. In safeguard cases that are determined by the President, a temporary import quota or a tariff may be assessed. In addition, the World Trade Organization (WTO) agreements contain specific obligations on these measures to which its member countries, including the United States, adhere.

Congress has enacted and amended U.S. trade remedy laws over time. For example, the 114th Congress, in P.L. 114-27 (Title V, known as the "American Trade Enforcement Effectiveness Act,"), enacted several amendments to AD and CVD laws that clarified and expanded certain methods that the ITC uses to investigate the injury to U.S. petitioning industries. Specific individual AD and CVD cases require no direct congressional action. Nonetheless, they are often the subject of congressional interest, especially if constituents are involved as domestic manufacturers or as importers of merchandise subject to trade remedy investigations.

Some U.S. producers of products covered by AD/CVD orders allege that U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE), the sister agencies that enforce these orders, have not adequately investigated allegations of AD/CVD duty evasion. These issues have been the subject of several congressional hearings. Section 421 of the Trade Facilitation and Trade Act of 2015 (P.L. 114-125), required CBP to investigate AD/CVD evasion allegations using a specific process and within certain deadlines. Among other provisions, the legislation required negotiations with other countries' customs authorities on preventing AD/CVD duty evasion, and established obtaining a commitment for cooperation on evasion as a U.S. trade negotiating objective. On August 22, 2016, CBP implemented interim regulations for investigating claims of evasion of antidumping and countervailing duties.

58 Written by Vivian C. Jones, Specialist in International Trade and Finance (x7-7823). See CRS Report RL32371, *Trade Remedies: A Primer*, by Vivian C. Jones; and CRS In Focus IF10018, *Trade Remedies: Antidumping and Countervailing Duties*, by Vivian C. Jones.

### U.S. Customs and Border Protection (CBP) Reauthorization[59]

U.S. Customs and Border Protection (CBP), a bureau within the Department of Homeland Security (DHS), is the primary agency charged with ensuring the smooth flow of imports through U.S. ports of entry (POEs). In 2015, more than $2 trillion in goods were imported into the United States. In addition to facilitating the smooth flow of imported cargo through U.S. ports of entry, CBP's policies with regard to U.S. imports are designed to enforce trade and customs laws designed to protect U.S. consumers and business and to collect customs revenue and enforce import security laws designed to prevent weapons of mass destruction, illegal drugs, and other contraband from entering the United States. Congress has a direct role in organizing, authorizing, and defining CBP's international trade functions, as well as appropriating funding for and conducting oversight of its programs.

The Trade Facilitation and Trade Enforcement Act of 2015 (P.L. 114-125) reauthorized CBP's trade functions in the above areas (see **text box**). It also provided additional funding for CBP's modernization efforts, such as the continuing development of the Automated Commercial Environment (ACE), an online platform designed to facilitate the import process, and the International Trade Data System (ITDS), a U.S. Department of the Treasury-led effort to develop an online "single window" for all U.S. agencies involved in import processing to clear goods for entry into the U.S. market, among other provisions. CBP has reported that they are working to complete and deploy core trade processing capabilities in ACE by early 2017.[60]

**Trade Facilitation and Trade Enforcement Act of 2015 (P.L. 114-125)**

- Introduced as H.R. 664 in House on February 2, 2015.
- Conference report released and passed in House on December 9, 2015; passed in Senate on February 11, 2016,
- Signed by the President on February 24, 2016 (P.L. 114-125).
- Reauthorizes CBP's trade functions, provides additional funding for CBP's modernization efforts.
- Includes other measures, for example, focused on U.S. trade negotiating objectives related to trade remedies and "currency manipulation," as well as measures on intellectual property rights (IPR) (see relevant sections in this report).

## Export Controls and Sanctions

Congress has authorized the President to control the export of various items for national security, foreign policy, and economic reasons. Separate programs and statutes for controlling different types of exports exist for nuclear materials and technology, defense articles and services, and dual-use goods and technology. Under each program, licenses of various types are required before export. The Departments of Commerce, State, Energy, and Defense administer these programs. At the same time, Congress also legislates country-specific sanctions that restrict aid, trade, and other transactions to address U.S. policy concerns about proliferation of weapons, regional stability, and human rights. In the 115th Congress, these controls and sanctions may raise difficult issues over how to balance U.S. foreign policy and national security objectives against U.S. commercial and economic interests.

[59] Written by Vivian C. Jones, Specialist in International Trade and Finance (x7-7823). See CRS Report R43014, *U.S. Customs and Border Protection: Trade Facilitation, Enforcement, and Security*, by Vivian C. Jones and Lisa N. Sacco.

[60] CBP website, https://www.cbp.gov/trade/automated.

## Export Controls[61]

In 2009, the Obama Administration launched a comprehensive review of the U.S. export control system. In the current system, responsibility for licensing exports is divided among the Departments of Commerce, State, and the Treasury, based on the nature of the product (munitions or dual-use goods) and basis for control. The Department of Defense has an important advisory role in examining license applications. Enforcement is shared among these agencies, as well as the Departments of Justice and Homeland Security. Key elements of the Administration's reform agenda included a four-pronged approach that would: (1) create a single export control licensing agency for both dual-use and munitions exports; (2) adopt a unified control list; (3) create a single integrated information technology system (which would include a single database of sanctioned and denied parties); and (4) establish a single enforcement coordination agency.

The Obama Administration's blueprint envisioned that these changes would be implemented in three phases with the final tier requiring legislative action. Under this initiative, the Administration undertook efforts to harmonize the Commerce Control List (CCL), which focuses on dual-use items (i.e., both commercial and defense uses), with the U.S. Munitions List (USML). This has been done through an ongoing category-by-category review of USML items and a migration of what the Administration deems as less sensitive items to the CCL. Congressional notification is required if items are moved from the munitions list to the dual-use list; the first of these notifications occurred in March 2013. Since the first rulemakings were announced in November 2013, rules to transfer certain items in 18 of 21 USML categories have been issued and taken effect. The President also made the determination required by the National Defense Authorization Act (NDAA) of 2013 (P.L. 112-239) that the transition of certain satellites and related items from the USML to the CCL was in the national interest. An Export Enforcement Coordination Center (E2C2), which was created by executive order on November 9, 2010, has been set up within the Department of Homeland Security to synchronize enforcement efforts with the E2C2 headquarters opening in March 2012. The integrated information technology system based on the Defense Department's USXports platform became fully operational among the Departments of Commerce, Defense, Energy, and State on October 5, 2015. The Obama Administration did not pursue the idea of a single licensing agency to administer export control licensing, which would have required legislation.

The 115th Congress may take stock of the work done by the Obama Administration through oversight, including the viability and placement of any proposed licensing agency. Congress also may attempt to reauthorize or rewrite the now-expired Export Administration Act (EAA), the statutory basis of dual-use export controls.

[61] Written by Ian F. Fergusson, Specialist in International Trade and Finance (x7-4997). See CRS Report R41916, *The U.S. Export Control System and the President's Reform Initiative*, by Ian F. Fergusson and Paul K. Kerr.

## Economic Sanctions[62]

Economic sanctions may be defined as coercive economic measures taken against a target to bring about a change in policies. They can include such measures as: trade embargoes; restrictions on particular exports or imports; denial of foreign assistance, loans, and investments; control of foreign assets under U.S. jurisdiction; and prohibition of economic transactions that involve U.S. citizens or businesses. Secondary sanctions, in addition, impede trade, transactions, and access to U.S.-located assets of foreign persons and entities that engage with a primary target. The United States maintains an array of economic sanctions against foreign governments. Specifically, the United States:

- maintains robust sanctions regimes against foreign governments it has identified as supporters of acts of international terrorism (Iran, Sudan, Syria), nuclear arms proliferators (Iran, North Korea, Syria), egregious violators of international human rights standards (Belarus, Burundi, Iran, North Korea, Russia, Syria, Venezuela), and those threatening regional stability (Iran, North Korea, Russia, South Sudan, Sudan, Syria);
- imposes economic restrictions on individuals and entities found to be active in international terrorism, narcotics trafficking, weapons proliferation, illicit cyber activities, conflict diamond trade, and transnational crime; and
- targets individuals and entities with economic and diplomatic restrictions to meet the requirements of the United Nations Security Council (Central African Republic, Democratic Republic of Congo, Eritrea, Guinea-Bissau, Iran, Iraq, Lebanon, Libya, North Korea, Somalia, South Sudan, Sudan, Yemen, and individuals affiliated with the Islamic State (Da'esh), al-Qaida, or the Taliban).

The 115th Congress is likely to seek to have a significant role in several foreign policy decisions facing the 45th President—whether to abrogate U.S. agreement to the multilateral Iran nuclear deal, further normalize bilateral relations with Cuba, engage with Russia to resolve the crisis in Syria, restore the Crimea region to Ukraine, and bring North Korea back to multi-party denuclearization negotiations. Several of these states are implicated, as well, in recent cyberattacks on the United States. Sanctions as a foreign policy tool figure heavily in each of these challenges. Legislative proposals left uncompleted in 114th Congress reflect some of these areas of interest (see **text box**).

### Sanctions Legislation in the Waning Days of the 114th Congress

***Enacted into Law***

- Iran Sanctions Extension Act (H.R. 6297, adopted in the House November 15, 2016, by a vote of 419-1; adopted in the Senate, December 1, 2016, by a vote of 99-1; enacted as P.L. 114-277 on December 15, 2016, without President's signature).
- Frank R. Wolf International Religious Freedom Act (H.R. 1150, adopted in the House May 16, 2016, by Voice

[62] Written by Dianne E. Rennack, Specialist in Foreign Policy Legislation (x7-7608). See CRS Report R43835, *State Sponsors of Acts of International Terrorism—Legislative Parameters: In Brief*, by Dianne E. Rennack; CRS Report RS20871, *Iran Sanctions*, by Kenneth Katzman; CRS Report RL33948, *State and Local Economic Sanctions: Constitutional Issues*, by Michael John Garcia and Todd Garvey; CRS Report R43311, *Iran: U.S. Economic Sanctions and the Authority to Lift Restrictions*, by Dianne E. Rennack; CRS Report R41438, *North Korea: Legislative Basis for U.S. Economic Sanctions*, by Dianne E. Rennack; CRS Report RL30613, *North Korea: Back on the Terrorism List?*, by Mark E. Manyin; CRS In Focus IF10552, *U.S. Sanctions on Russia Related to the Ukraine Conflict*, coordinated by Cory Welt; and CRS Report R43895, *U.S. Sanctions on Russia: Economic Implications*, by Rebecca M. Nelson.

Vote; signed into law as P.L. 114-281 on December 16, 2016).

***Pending Enactment into Law***

- Global Magnitsky Human Rights Accountability Act (title XII, subtitle F, National Defense Authorization Act for Fiscal Year 2017; S. 2943 S. 2943; sent to the White House December 14, 2016).

***Adopted in the House:***

- Stability and Democracy for Ukraine Act (H.R. 5094, adopted in the House September 21, 2016, by Voice Vote; Senate introduced similar language (S. 3543), on December 9, 2016).
- Iranian Leadership Asset Transparency Act (H.R. 5461, adopted in the House September 21, 2016, by a vote of 282-143).
- Iran Accountability Act of 2016 (H.R. 5631, adopted in the House July 14, 2016, by a vote of 246-179).
- No U.S. Financing for Iran Act (H.R. 5711, adopted in the House November 17, 2016, by a vote of 243-174).
- Caesar Syria Civilian Protection Act of 2016 (H.R. 5732, adopted in the House November 15, 2016, by Voice Vote).
- Prohibiting Future Ransom Payments to Iran Act (H.R. 5931, adopted in the House September 22, 2016, by a vote of 254-163).

### Iran

The United States and other world powers reached agreement with the government of Iran that opened Iran for inspection by the International Atomic Energy Agency (IAEA) and committed the Iranian government to foregoing any near-term pursuit of nuclear weapons development or acquisition. In return, the United States, the European Union (EU), and the United Nations provided sanctions relief and eventually removed multilateral nuclear-related restrictions on trade and finance. Interest persists in some congressional quarters, however, to slow the implementation of the agreement and to strengthen sanctions targeting missile proliferators, human rights violators, international terrorism, and Iran's access to the U.S. financial system.

### Cuba

The United States and the government of Cuba, over the past two years, have largely normalized bilateral relations. Some economic sanctions remain, however, and would require either that the President certify that Cuba has held free and fair democratic elections, or Congress to repeal several provisions in permanent law, to complete the normalization process.

### North Korea

North Korea conducted its fifth nuclear detonation test and more than two dozen missile tests in 2016. Presently, the United States prohibits most trade with North Korea because of its nuclear weapons pursuits, its aggression toward Japan and South Korea, and its extra-legal activities in money laundering, counterfeiting of goods and currency, bulk cash smuggling, and narcotics trafficking.

### Russia

The United States, the EU, and other nations blocked assets and travel of designated Russian leaders in an effort to reverse Russia's annexation of Ukraine's Crimean region and military incursions that began in early 2014. President Obama issued a series of executive orders over 2014 to isolate Russian President Putin, and to prohibit investment and trade with some entities in Russia's financial services, energy, metals and mining, engineering, and defense sectors. The President also prohibited any U.S. person from participating in new investment in Crimea, imports from and exports to the Crimea region, and any financing, facilitation, or guarantee of any related transaction by a U.S. person. Russia retaliated by banning imports of certain agricultural products from selected countries imposing sanctions. There has been little change in the stalemate over the past year. Russia, however, holds a critical seat in the U.N. Security Council, is increasingly involved in conditions in Syria, and holds an important position in negotiating with the North Korean government.

## Miscellaneous Tariff Bills (MTBs)[63]

Many Members of Congress introduce bills to support importer requests for the temporary suspension of tariffs on chemicals, raw materials, or other non-domestically made components generally used as inputs in the manufacturing process. A rationale for these requests is that they help domestic producers of manufactured goods reduce costs, making their products more competitive. Due to the large number of bills typically introduced, they are often packaged together in a broader miscellaneous tariff bill (MTB). The most recent MTB, P.L. 111-227, was enacted on August 11, 2010 and expired on December 31, 2012. MTB consideration has been controversial in previous Congresses due to congressional moratoriums on "earmarks," which have included measures to provide "limited tariff benefits," defined in House and Senate rules as tariff reductions benefiting 10 or fewer entities.

On May 20, 2016, President Obama signed P.L. 114-159, the American Manufacturing Competitiveness Act of 2016, which reformed the process for considering MTBs. The legislation passed in the House by a wide margin (415-2) and in the Senate by unanimous consent. The law provided a new process for initiating two MTBs, one in 2016 and one in 2019. In the procedure outlined in the law, the International Trade Commission (ITC), rather than Congress, is responsible for receiving petitions for reduced or suspended duties (duty suspensions), collecting public feedback, gathering input from related Federal agencies, and reporting findings directly to the House Ways and Means and Senate Finance Committees.

The 2016 MTB process began on October 15, 2016 with a *Federal Register* notice from the ITC asking for members of the public to submit petitions within a 60-day period (closed mid-December 2016). The ITC will then publish all of the petitions, along with all disclosure forms, and issue a notice requesting public comments within 45 days. The ITC will also gather information from other agencies, and provide preliminary and final reports to the relevant congressional committees. The final ITC report is expected by mid-August 2017.

Congress must act on the MTB in order for it to be enacted. Although the law contains a sense of Congress that an MTB be considered no later than 90 days after the final ITC report, there is no requirement in the law for a MTB to receive floor action. If an MTB is to be considered, the committees must publish a list of all "limited tariff benefits" (i.e., provisions modifying the HTS in a way that benefits 10 or fewer entities), under a process specified in the legislation. In addition, although the ITC receives, analyzes, and reports to Congress on all MTB petitions, neither the ITC nor any other agency is permitted to exclude any duty suspension from potential consideration by Congress, or to add a duty suspension not submitted through the MTB petition process. Any acceptance or exclusion of MTB petitions reported by the ITC, along with subsequent MTB drafting, remains the prerogative of the House Ways and Means and Senate Finance Committees.

[63] Written by Vivian C. Jones, Specialist in International Trade and Finance (x7-7823). See CRS In Focus IF10478, *Miscellaneous Tariff Bills,* by Vivian C. Jones.

## Trade and Development

The United States also uses trade as a tool to spur economic growth in developing countries. The two main components of this policy are trade preference programs and funding for trade capacity building. Trade preference programs grant limited duty-free access to the U.S. market to eligible developing countries, providing a market-oriented incentive to invest in productive capacity and access international markets. Trade capacity building involves U.S. assistance (funding, training, or otherwise) to facilitate developing countries' engagement in international trade, and encompasses activities ranging from support of efficient customs systems to implementation of trade agreements.

### Trade Preferences[64]

Since 1974, Congress has created six trade preference programs designed to assist developing countries:

- Generalized System of Preferences (GSP—expires December 31, 2017), which applies to all eligible developing countries;
- Andean Trade Preference Act (APTA—expired July 31, 2013);
- Caribbean Basin Economic Recovery Act (CBERA—permanent);
- Caribbean Basin Trade Partnership Act (CBTPA—expires September 30, 2020);
- African Growth and Opportunity Act (AGOA—expires September 30, 2025);
- Haitian Opportunity through Partnership Encouragement Act (HOPE—expires September 30, 2025); and
- trade preferences for Nepal (expires on December 31, 2025).

Except for CBERA, which is permanent, these programs give temporary, non-reciprocal, duty-free access to the U.S. market for a select group of exports from eligible countries. In its first session, the 114th Congress passed the Trade Preferences Extension Act of 2015 (P.L. 114-27) with broad bipartisan support, to reauthorize and make certain revisions to AGOA, GSP, and HOPE (see **text box**). In its second session, the 114th Congress passed customs legislation (H.R. 644, signed by the President on February 24, 2016), including new duty-free treatment on select U.S. imports from Nepal. The 115th Congress will continue its oversight of these programs, and may consider, among other issues, reauthorization of GSP, which expires at the end of 2017. As the 115th Congress debates other potential trade agreements it may also evaluate those agreement's potential impact on preference program beneficiaries.

[64] Written by Vivian C. Jones, Specialist in International Trade and Finance (x7-7823). See CRS Report R41429, *Trade Preferences: Economic Issues and Policy Options*, coordinated by Vivian C. Jones, and CRS Report RL33663, *Generalized System of Preferences: Overview and Issues for Congress*, by Vivian C. Jones.

**Trade Preferences Extension Act of 2015 (P.L. 114-27)**

Signed June 29, 2015, this law extends and modifies key trade preference programs. Outcomes include:

**Generalized System of Preferences (GSP)**

- Retroactively reauthorized program through December 31, 2017 (previously lapsed since August 2013).
- Expanded potential benefits to certain cotton articles and travel goods.

**African Growth and Opportunity Act (AGOA)**

- Extended program authorization through September 30, 2025.
- Extended textile/apparel provisions (e.g., 3rd country fabric).
- Modified rules of origin requirements.
- Increased flexibility in disciplining eligibility infractions.
- Mandated certain procedures and period for eligibility reviews.
- Reinstated lapsed reporting requirement.
- Encouraged creation of AGOA strategies by beneficiaries.

**Haitian Opportunity through Partnership Encouragement Act (HOPE)**

- Extended program authorization through September 30, 2025.

### *Generalized System of Preferences (GSP)*

The GSP program provides non-reciprocal, duty-free tariff treatment to approximately 3,500 products imported from designated beneficiary developing countries (BDCs) and about 1,500 additional products from eligible least-developed beneficiary developing countries. Country and product eligibility are based on criteria specified by Congress. In order to remain eligible for GSP, countries must meet certain criteria established by Congress, including taking steps to protect intellectual property rights (IPR) and internationally recognized worker rights. The GSP program also includes certain limits on product eligibility intended to shield U.S. manufacturers and workers from potential adverse impact due to the duty-free treatment. These include specific exclusion of certain "import sensitive" products (e.g., textiles and apparel), and limits on the quantity or value of any one product imported from any one country under the program (least-developed countries excepted). The U.S. program was first authorized in Title V of the Trade Act of 1974, and is subject to periodic renewal by Congress. The GSP program was most recently extended until December 31, 2017, in Title II of P.L. 114-27. P.L. 114-27 also designated new product categories as eligible for GSP status, including some cotton products (for least-developed beneficiaries only) and certain luggage and travel goods.

On September 14, 2016, the President ended the suspension of Burma as a beneficiary developing country, and once again designated Burma as least-developed beneficiary country for purposes of the GSP program.[65]

### *African Growth and Opportunity Act (AGOA)*[66]

AGOA is a non-reciprocal U.S. trade preference program that provides duty-free treatment to qualifying imports from eligible sub-Saharan African (SSA) countries. AGOA benefits build on

[65] 81 *Federal Register* 63671, September 14, 2016. Burma's GSP designation became effective on November 13, 2016, or 60 days after publication of Presidential Proclamation 9492, authorizing Burma's GSP status.

[66] Written by Brock Williams, Analyst in International Trade and Finance (x7-1157). See CRS Report R43173, *African Growth and Opportunity Act (AGOA): Background and Reauthorization*, by Brock R. Williams; and CRS In Focus IF10149, *African Growth and Opportunity Act (AGOA)*, by Brock R. Williams.

and are more extensive than those provided through GSP. In particular, AGOA includes duty-free treatment for certain textile and apparel products, and allows eligible least-developed AGOA countries to export apparel products to the United States duty-free regardless of the origin of the fabrics used in their production ("third-country fabric provision"). Congress first authorized AGOA in 2000 (P.L. 106-200) to encourage export-led growth and economic development in SSA and improve U.S. economic relations with the region.

The 114th Congress extended AGOA's authorization, including the program's textile and apparel provisions, as well as the third-country fabric provision, for ten years to September 30, 2025. Congress included a number of reforms in the reauthorization. The renewal legislation also required a review of South Africa's eligibility for the program due to ongoing concerns with restrictions placed on U.S. exports, particularly poultry. South Africa ultimately retained its AGOA eligibility following its implementation of an agreement, which among other things exempted a certain quantity of U.S. poultry exports from existing anti-dumping duties.

The length of the ten-year reauthorization of AGOA, together with the apparel program and the third-country fabric provision, are unprecedented in the preference program's 16-year history. This longer-term reauthorization may help address concerns over investor uncertainty about the program and give AGOA beneficiaries a competitive advantage in producing exports for the U.S. market. However, the utilization of AGOA preferences remains concentrated in few countries and few product categories, and a number of domestic constraints may continue to hinder AGOA countries' export capabilities. Congress could seek to address these challenges in future legislation, such as the AGOA Enhancement Act of 2015 (H.R. 2845), which passed the House, but was not considered by the Senate in the 114th Congress.

The new Administration and the 115th Congress may also consider whether and how to advance U.S. trade and investment relations with the region beyond unilateral preferences. AGOA's extension directed the Administration to seek partners in the region for potential future FTAs, and both Kenya and Mauritius have expressed limited interest in pursuing such agreements. AGOA countries' capacity to negotiate and undertake U.S. FTA commitments remains an ongoing concern, as highlighted in the Obama Administration's 2016 "Beyond AGOA" report. In late 2016 Congress passed legislation requiring relevant U.S. agencies, including USTR and the U.S. Agency for International Development (USAID), to coordinate efforts toward negotiating reciprocal agreements with interested parties in the region and authorized use of funds to that end.

### *Trade Preferences for Nepal*

A new preference program for Nepal was enacted in Section 915 of the Trade Facilitation and Trade Act of 2015 (P.L. 114-125). The program authorized duty-free access of certain textile, apparel, and travel products imported directly from Nepal provided that the President determines that Nepal meets certain eligibility requirements similar to those in the African Growth and Opportunity Act (AGOA) and Generalized System of Preferences (GSP) programs. The International Trade Commission must also determine that products imported by the United States are not import sensitive. Nepal would be subject to the same rules of origin, mandatory graduation, and other requirements as in the AGOA and GSP programs. The President would also be required to establish a Nepal-specific trade facilitation and capacity building program. The program is set to expire on December 31, 2025. As of this writing, the preference program has not yet been implemented.[67]

[67] The legislation provided that the President could declare Nepal as a beneficiary developing country for purposes of the new preference program after consultations with the ITC and USTR. On March 28th, 2016, the USTR requested (continued...)

## Trade Capacity Building

Trade capacity building (TCB) refers to a wide range of activities that support a country's ability to engage in international trade. These efforts may include various forms of assistance targeting, among other issues: negotiation and implementation of bilateral and multilateral trade agreements; customs procedures and processes; legal and regulatory structures for trade-related issues such as intellectual property rights (IPR); labor and environmental protections; technical assistance to help countries meet export standards and phyto-sanitary rules and improve their commercial environments; and development assistance for infrastructure projects that support trade, such as ports. The United States uses TCB activities as a trade policy tool to encourage market-based economic development in developing countries and increase U.S. opportunities for trade and investment abroad. The United States also uses TCB to complement and enhance other trade policies such as preference programs and trade agreements.

Currently no single agency is responsible for coordinating U.S. government TCB. USAID typically receives the most funding to implement such activities given its foreign assistance objectives, but infrastructure-related funding through the Millennium Challenge Corporation (MCC) also comprises a large share of TCB funds. A number of other U.S. government agencies also have responsibilities and funding for TCB, including the Departments of Agriculture, Commerce, Labor, State, the Treasury, and the Interior, and the Trade and Development Agency. This, in part, reflects the capabilities and focus of the agencies involved. USTR has no funding obligated for TCB projects, but is responsible for developing and coordinating U.S. international trade and investment policies and plays a lead role in the interagency system by, for instance, chairing the Trade Policy Staff Committee and leading U.S. trade negotiations. Other agencies, such as Customs and Border Protection (CBP) and the Patent and Trademark Office, often provide technical expertise to support USAID efforts.

Coordination of TCB activities among U.S. government agencies has been an ongoing concern for Congress, particularly given the diversity of goals that TCB may simultaneously address. Some analysts have encouraged reforms to enhance the effectiveness and efficiency of U.S. efforts, including creation of a formal interagency process for TCB.[68] In the 114th Congress, legislation was introduced that would address some of these ongoing concerns, and formalize the coordination of U.S. TCB efforts (S. 2201). The 115th Congress may continue its oversight of TCB activities and consider TCB priorities as they relate to potential U.S. trade agreements, and the U.S. interagency coordination process.

(...continued)

public comments for a review of Nepal's country eligibility (81 *Federal Register* 17235). On April 21, 2016, the ITC instituted an investigation on whether certain textile and apparel products are import-sensitive for the purposes of the Act. In October 2016, the ITC released its report, *Nepal: Advice Concerning Whether Certain Textile and Apparel Articles are Import Sensitive,* Investigation No. 332-558. The President has not implemented the program as of this writing.

[68] For example, see Scott Miller and Daniel F. Runde, *Opportunities in Strengthening Trade Assistance: A Report of the CSIS Congressional Task Force on Trade Capacity Building*, CSIS, February 2015.

## U.S. Trade Finance and Promotion Agencies[69]

The federal government seeks to expand U.S. exports and investment to support U.S. jobs and economic growth through providing finance and insurance programs, as well as other forms of assistance for U.S. businesses (see **text box**). Many of these activities are demand-driven, meaning that the actual level of support depends on alignment with U.S. commercial interests. Some services, such as financing and insurance, are on a fee-basis. Such activities may support Administration initiatives and programs on trade, as well as U.S. foreign policy goals. These activities present a number of issues for Congress, such as their economic justifications, use of federal resources, and intersection with U.S. policy goals and priorities. They also raise questions about the effectiveness and efficiency of the U.S. government's trade organizational structure.

**Selected Trade Agencies**

**Office of the U.S. Trade Representative (USTR):** Located in the Executive Office of the President, leads the development and coordination of U.S. trade and investment policy, serves as the President's chief negotiator for international trade agreements, resolves trade disputes, conducts U.S. affairs related to the World Trade Organization (WTO), and manages the U.S. interagency trade advisory committee system.

**Department of Agriculture:** Conducts international agricultural trade promotion and financing.

**Department of Commerce:** Supports U.S. exports and inward investment through trade missions, advocacy, market research, and other activities.

**Export-Import Bank (Ex-Im Bank):** Provides direct loans, guarantees, and insurance to help finance U.S. exports, in support of U.S. employment.

**Overseas Private Investment Corporation (OPIC):** Provides political risk insurance and finance to facilitate U.S. private investment in developing countries, in support of U.S. foreign policy objectives.

**Small Business Administration (SBA):** Administers several programs to support small businesses, including export financing and promotion services.

**Trade and Development Agency (TDA):** Funds pre-export activities (e.g., feasibility studies, reverse trade missions) to support U.S. commercial and overseas development interests.

### Export-Import Bank of the United States (Ex-Im Bank)

Ex-Im Bank, the official U.S. export credit agency (ECA), provides direct loans, loan guarantees, and export credit insurance, backed by the full faith and credit of the U.S. government, to help finance U.S. exports of goods and services in order to contribute to U.S. employment. On a demand-driven basis, it aims to provide such support when alternative financing is not available or to counter government-backed export credit financing extended by other countries. It charges interest, premiums, and other fees for its services, which it uses to fund its activities. At the same time, Congress approves an annual appropriation setting an upper limit on Ex-Im Bank's operating expenses, among other things. Ex-Im Bank operates under a renewable general statutory charter (Export-Import Bank Act of 1945, as amended), extended through the end of FY2019 (P.L. 114-94, enacted in December 2015). Debate over Ex-Im Bank has intensified in recent years. Supporters contend that Ex-Im Bank supports U.S. exports and jobs, contributes

[69] Written by Shayerah Ilias Akhtar, Specialist in International Trade and Finance (x7-9253). See CRS Report R43671, *Export-Import Bank: Frequently Asked Questions*, coordinated by Shayerah Ilias Akhtar; CRS In Focus IF10017, *Export-Import Bank of the United States (Ex-Im Bank)*, by Shayerah Ilias Akhtar; CRS CRS Report 98-567, *The Overseas Private Investment Corporation: Background and Legislative Issues*, by Shayerah Ilias Akhtar; CRS Report R43970, *Commerce, Justice, Science, and Related Agencies Appropriations (CJS): Trade-Related Agencies*, by M. Angeles Villarreal; and CRS Report R42555, *Trade Reorganization: Overview and Issues for Congress*, by Shayerah Ilias Akhtar.

financially to the U.S. Treasury, and manages its risks. Critics argue that Ex-Im Bank crowds out private sector activity, picks winners and losers, acts as "corporate welfare," and poses a risk to taxpayers.

Despite its reauthorization, Ex-Im Bank is operating on a limited basis. An absence of quorum of its Board of Directors generally constrains it from approving medium- and long-term export financing above $10 million. The President of the United States appoints Board members with the advice and consent of the Senate. The Senate has not acted upon pending nominations to the Board. Provisions in the House and Senate State-Foreign Operations FY2017 appropriations would have eased the quorum requirement, but were not a part of the FY2017 continuing resolutions ultimately enacted. Potential future nominations to the Board would be subject to Senate approval. Other aspects of Ex-Im Bank also present issues for Congress. In the 114th Congress, for example, debate occurred over the possible use of Ex-Im Bank financing to support potential U.S. commercial aircraft sales to Iran, in light of the 2015 multilateral Iran nuclear agreement.

The international context for ECA activity also continues to present issues for Congress. Ex-Im Bank abides by Organization for Economic Cooperation and Development (OECD) guidelines for ECA activity (e.g., minimum interest rates, maximum repayment terms). Foreign ECAs, of both OECD and non-OECD members, increasingly are providing financing that is outside the scope of the OECD Arrangement, posing competitiveness issues for Ex-Im Bank. ECA financing by China, a non-OECD member, is of particular concern. Possible issues for Congress include the effectiveness of current international ECA rules and the status of negotiations within and outside the OECD to enhance existing ECA rules or develop new arrangements.

## Overseas Private Investment Corporation (OPIC)

OPIC is the official U.S. development finance institution (DFI). Operating under the Foreign Assistance Act of 1961 (FAA), as amended (22 U.S.C. §2191 *et seq*.), it seeks to promote economic growth in developing economies by providing political risk insurance, project and investment funds financing, and other services to U.S. firms investing in those countries. Its programs are intended to mitigate political risks—such as currency inconvertibility, expropriation, and political violence—for U.S. firms making qualified investments overseas. OPIC's activities are backed by the full faith and credit of the U.S. government. It is demand-driven, seeks to manage its risks, and maintains reserves against potential losses. OPIC charges fees for its services, which it uses to funds it activities, and is subject to the annual appropriations process.

**Selected Developments in 114th Congress**

Several bills entitled the "Electrify Africa Act of 2015" were introduced in the 114th Congress. The bills aimed to increase U.S. government support, including through OPIC, to assist sub-Saharan African countries in expanding electricity access to support economic growth and other goals. Two bills, H.R. 2847 and S. 1933 would have extended OPIC's authority through FY2018. In contrast, S. 2152 did not include any extension of OPIC's authority; this bill became law in February 2016 (P.L. 114-121).

Congress last reauthorized OPIC on a multi-year basis in 2003, extending its authority through FY2007 (P.L. 108-158). Since then, OPIC generally has continued operating based on extensions of its authority in appropriations law, which OPIC has characterized as authorization "waivers." Most recently, the FY2017 continuing resolution (P.L. 114-254) extended OPIC's authority through April 28, 2017. Consideration of OPIC's reauthorization could afford Members an opportunity to consider OPIC reforms, such as the alignment of OPIC's activities and policies with U.S. foreign policy objectives and OPIC's management of project risks.

Other issues of possible interest to Congress include the transformative changes in the international development finance landscape, such as the growing role of emerging markets and new multilateral institutions being established.

## International Trade Administration (ITA) of U.S. Department of Commerce

Part of the Department of Commerce, the International Trade Administration (ITA) is charged with "creat[ing] prosperity by strengthening the international competitiveness of U.S industry, promoting trade and investment, and ensuring fair trade and compliance with trade laws and agreements."[70] ITA's current organizational structure reflects a consolidation that ITA underwent in October 2013 to better organize its operations functionally. The Global Markets unit of ITA provides export assistance to U.S. companies seeking foreign business opportunities, including export counseling, market research, business matching services, and advocacy, as well as support for U.S. investment attraction through the SelectUSA program (see "International Investment" section). The Global Markets unit houses ITA's network of trade promotion and policy professionals (formerly and still commonly known as the U.S. and Foreign Commercial Service) in over 70 countries and over 100 U.S. locations to promote U.S. exports, support U.S. commercial interests overseas, and attract investment to the United States. Possible issues that ITA presents for Congress include the alignment of ITA's organizational structure with its mission and operations, the appropriate level of funding for ITA, and its role in U.S. export promotion efforts.

## U.S. Trade and Development Agency (TDA)

The U.S. Trade and Development Agency (TDA), an independent agency, operates under a dual mission of advancing economic development and U.S. commercial interests in developing and middle-income countries. TDA seeks to link U.S. businesses to export opportunities overseas, including through infrastructure development, that lead to economic growth in developing and middle-income countries by funding a range of pre-export activities. It is governed by the Foreign Assistance Act of 1961 (FAA), as amended (22 U.S.C. §2421).

## Trade Reorganization

A number of U.S. government agencies are involved in trade-related activities, including the Department of Commerce, Export-Import Bank (Ex-Im Bank), Overseas Private Investment Corporation (OPIC), Small Business Administration (SBA), Trade and Development Agency (TDA), and Office of the United States Trade Representative (USTR). The organizational structure of U.S. government trade agencies is of long-standing policy interest. Some policymakers have proposed consolidating trade-related functions to eliminate duplication of federal trade functions, provide a more streamlined rationale for U.S. export promotion, and reduce costs of U.S. trade policy programs. Reorganization skeptics contend that such proposals could result in the creation of a large, costly federal bureaucracy and undermine the effectiveness of key agencies, such as the USTR. They also assert that the diffusion of trade functions across federal agencies helps to advance various aspects of U.S. trade policy, such as supporting exports by small- and medium-sized businesses. Some observers suggest that the solution is not one of consolidation, but rather, better coordination across agencies, while others argue that existing coordinating bodies, such as the Trade Promotion Coordinating Committee, are insufficient.

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[70] ITA website, http://www.trade.gov/about.asp.

During the presidential campaign, President-elect Trump proposed to consolidate trade-related agencies and departments into one office called the "American Desk" under the Department of Commerce.[71] In the 115th Congress, Members would play a significant role in any potential trade reorganization debate through their legislative and oversight functions. The general contours of the Trump proposal appear to be reminiscent of President Obama's 2012 call to seek authority to reorganize and consolidate, into one department, the trade-related functions of six federal agencies. President Obama reiterated his request in subsequent budget requests, including the FY2017 budget request. The proposal, nevertheless, did not gain much traction in Congress, largely due to concerns about its implications for USTR and its U.S. trade negotiation and enforcement functions.

## International Financial Institutions (IFIs) and Markets

Since World War II, governments have created and used formal international institutions and more informal forums to discuss and coordinate economic policies. As economic integration has increased over the past 30 years, international economic policy coordination has become even more active and significant. Governments use a mix of formal international institutions and international economic forums to coordinate economic policies. Formal institutions, such as the International Monetary Fund (IMF), the World Bank, and the regional development banks (MDBs), among others, are typically formed by an official international agreement and have a permanent office with staff performing ongoing tasks. Governments have also relied on more informal forums for economic discussions, such as the G-7 and the G-20, that do not have formal rules or a permanent staff.

Congress exercises oversight of U.S. participation in international economic forums and the international financial institutions. Congress authorizes and appropriates U.S. contributions to these institutions. Congress may also want to exercise oversight of U.S. policy towards new institutions led by emerging markets of which the United States is not a member, including the Asia Infrastructure Investment Bank (AIIB), and how the international financial architecture has evolved since the global financial crisis.

More broadly, given long-standing economic and foreign policy interests in a stable, thriving global economy, the 115th Congress is likely to continue monitoring major economic developments overseas and their potential impact on U.S. economic and foreign policy interests. One such issue may be the evolving economic conditions in the Eurozone, which spiraled into crisis following the global financial crisis of 2008-2009. Although economic conditions have stabilized, fundamental challenges remain.

### International Economic Cooperation (G-7 and G-20)[72]

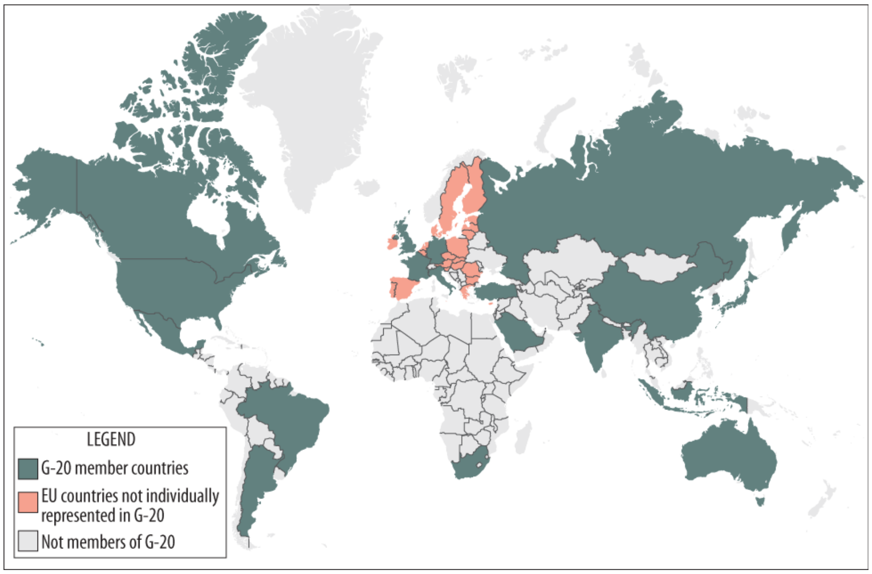
Prior to the global financial crisis of 2008-2009, international economic discussions at the top leadership level took place among a small group of developed industrialized economies. The Group of 8 (G-8) includes Canada, France, Germany, Italy, Japan, Russia, the United Kingdom, and the United States. In response to the global financial crisis, leaders decided that a broader

[71] Trump-Pence Campaign, "In Ohio Trump Announces American Desk to Protect Economic Interests of America's Workers on Trade," press release, October 20, 2016, https://www.donaldjtrump.com/press-releases/donald-j.-trump-proposes-american-desk-protect-economic-and-national-intere.

[72] Written by Rebecca M. Nelson, Specialist in International Trade and Finance (x7-6819). See CRS Report R40977, *The G-20 and International Economic Cooperation: Background and Implications for Congress*, by Rebecca M. Nelson.

group of developed and emerging-market economies, the Group of 20 (G-20), would become the premier forum for international economic cooperation and coordination. The G-20 includes the G-8 countries plus Argentina, Australia, Brazil, China, India, Indonesia, Mexico, Saudi Arabia, South Africa, South Korea, Turkey, and the EU (**Figure 7**). G-20 countries account for about 85% of global economic output, 75% of world exports, and two-thirds of the world's population.[73]

**Figure 7. G-20 Members**




**Source:** Created by CRS.

The leaders of the G-20 countries hold annual summits, as well as more frequent gatherings of finance ministers, central bankers, and other officials. Leaders and officials of the smaller group of developed countries also continue to meet. Since 2014, however, they have convened as the G-7, excluding Russia following its annexation of the Crimean region of Ukraine.

The G-20 and G-7 have rotating presidencies, which shape the forum's agenda for the year. Germany holds the G-20 presidency in 2017, and is setting priorities on trade and investment; energy, climate, and resource efficiency; financing growth and infrastructure; digitalization; employment and education; responsible business conduct and anti-corruption; and small and medium enterprises. As chair of the G-7, Italy has indicated it will prioritize migration and Africa, in the G-7's ongoing discussions of a host of economic and foreign policy issues.

Some analysts argue that while the G-7 and the G-20 are instrumental in responding to financial crises, their effectiveness diminishes as the urgency of crises wane and their portfolio of issues expand. Others argue that they are critical forums and useful steering committees in the global economy, even if agreement on policies is not always reached. Congress exercises oversight over the Administration's participation in the G-7 and G-20, including the policy commitments that the Administration is making and the policies it is encouraging other countries to pursue. Additionally, legislative action may be required to implement commitments made by the Administration in the G-7 and G-20 process.

[73] World Bank, *World Development Indicators*.

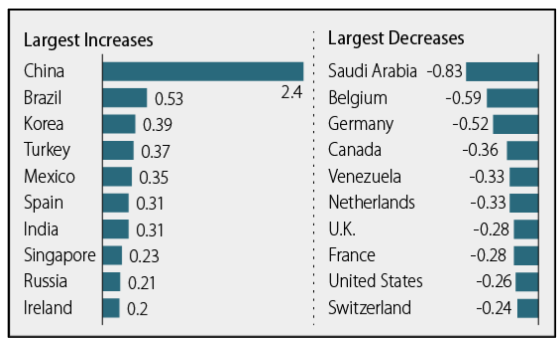
## International Monetary Fund (IMF)[74]

The International Monetary Fund (IMF) is an international organization focused on promoting international macroeconomic stability. Created in 1945, it has grown in membership over the past six decades to 188 countries. Although the IMF's functions have changed as the global economy has evolved, today it is focused on surveillance, lending, and technical assistance. Through surveillance, the IMF monitors economic and financial policies of its members, highlights possible risks to domestic and external stability, and advises on needed policy adjustments. The IMF also extends loans to countries experiencing balance-of-payments crises (meaning that they have or may have trouble paying for imports or making debt payments). These loans require governments to implement policy reforms before funds can be disbursed ("conditionality"). Finally, the IMF provides technical assistance and training to strengthen countries' capacity to design and implement effective policies. Recent congressional attention has centered on the use of IMF resources since the 2008 global economic crisis, proposed IMF governance changes, and the IMF's role in the Eurozone debt crisis.

In December 2010, the Board of Governors of the IMF agreed to a set of institutional reforms that would increase the institution's core source of funding and expand the representation of major emerging markets, such as Brazil, China, India, and Mexico (**Figure 8**). The FY2016 Consolidated Appropriations Act (P.L. 114-47) authorized U.S. participation in the IMF reform package, which became effective in early 2016. The United States retains veto power over major IMF policy decisions and keeps a representative on the IMF Executive Board. The reform did not increase net U.S. financial commitments, and effectively transferred about $60 million in U.S. financial contributions at the IMF from a supplemental fund (the New Arrangements to Borrow) to the IMF's core resources (IMF quota).

**Figure 8. Changes in IMF Quotas**

(percentage points)




**Source:** Created by CRS from IMF.

Members may be interested in following the implementation of several policies and reporting requirements included in the authorizing language. For example, provisions were included relating to the budgetary treatment of U.S. participation in the IMF, exceptional access programs (large-scale lending programs), and reporting on a variety of issues relating to IMF policies and U.S. participation at the IMF. The authorizing legislation also sunsets the remaining U.S. contributions to the New Arrangements to Borrow, about $40 billion, in December 2022. This would be a reduction of nearly 25% of total U.S. contributions to the IMF and the first time in the IMF's 70-year history that the United States has reduced its financial commitment to the institution.

[74] Written by Martin A. Weiss, Specialist in International Trade and Finance (x7-5407). See CRS Report R42019, *International Monetary Fund: Background and Issues for Congress*, by Martin A. Weiss; CRS Report R42844, *IMF Reforms: Issues for Congress*, by Rebecca M. Nelson and Martin A. Weiss; and CRS In Focus IF10134, *IMF Quota and Governance Reforms*, by Martin A. Weiss and Rebecca M. Nelson.

## Multilateral Development Banks (MDBs)[75]

The MDBs are international institutions that provide financing funded from private capital markets to developing countries in order to promote economic and social development. The United States is a member, and major donor, to five major multilateral development banks (MDBs): the World Bank, the African Development Bank, the Asian Development Bank, the European Bank for Reconstruction and Development, and the Inter-American Development Bank. These institutions were established after World War II to provide financing for economic development at a time when private sector financing, especially for war-torn, post-conflict, or developing countries, was not available. While the MDBs have thrived and grown over the past decades, the international economy has changed dramatically. Many developing and low-income countries are able to borrow on the international capital markets to finance their development projects. At the same time, developing countries are creating their own MDBs (see next section).

Many policymakers view U.S. participation in MDB capital increases as important, since the United States is the largest shareholder among the MDBs, and U.S. funding commitments also maintain U.S. veto power where relevant. The Department of the Treasury recently stressed that U.S. participation in the MDBs fosters U.S. national security by supporting MDB engagement with fragile and conflict-affected states, while addressing the root causes of economic instability. It also promotes U.S. economic growth through exports by helping the MDBs cultivate emerging markets. The MDBs have also responded to recent global crises such as the refugee crisis in the Middle East and North Africa, while also addressing key global priorities, such as energy security, environmental sustainability and resilience, and food security.

The Obama Administration's broad MDB reform objectives were to improve transparency, accountability, and governance; better align management performance and incentives with improved development outcomes; and more clearly delineate the division of labor between the World Bank and the regional development banks. Looking forward, several priorities have been identified that Congress may consider during the 115th Congress. These include options for making more efficient use of MDB resources, reforming MDB governance structures to increase the representation of developing countries, and examining how core MDBs engage with new institutions (see below).

## The Asian Infrastructure Investment Bank (AIIB)[76]

On October 24, 2014, China and 20 other countries signed an agreement to establish a new development bank, the Asian Infrastructure Investment Bank (AIIB). Formally established in late 2015, the AIIB has 57 founding members, including four G-7 economies (France, Germany, Italy and the United Kingdom, see **Figure 9**). The United States is not a member of the AIIB.

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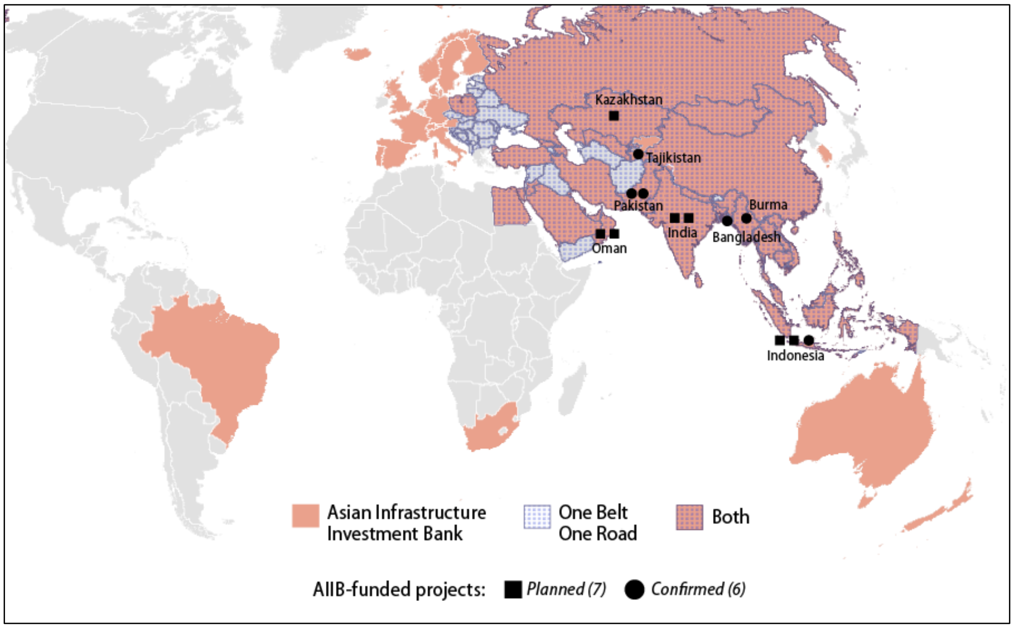
[75] Written by Martin A. Weiss, Specialist in International Trade and Finance (x7-5407). See CRS Report R41170, *Multilateral Development Banks: Overview and Issues for Congress*, by Rebecca M. Nelson; and CRS Report R41537, *Multilateral Development Banks: How the United States Makes and Implements Policy*, by Rebecca M. Nelson and Martin A. Weiss.

[76] Written by Martin A. Weiss, Specialist in International Trade and Finance (x7-5407). See CRS In Focus IF10154, *Asian Infrastructure Investment Bank*, by Martin A. Weiss; and CRS In Focus IF10273, *China's "One Belt, One Road"*, by Susan V. Lawrence and Gabriel M. Nelson.

**Figure 9. One Belt, One Road and AIIB Countries and Projects**




**Source:** AIIB, CRS.

As its name suggests, the new entity is expected to focus on financing infrastructure projects throughout Asia. China sees the AIIB and other financing mechanisms, including a $40 billion Silk Road Fund, the $100 billion New Development Bank (formerly known as the BRICS Development Bank), and the Shanghai Cooperation Organization Development Bank, as a means to finance what it calls a "Silk Road Economic Belt" and a "21st Century Maritime Silk Road." The "Silk Road Economic Belt" would be a network of highways, railways and other critical infrastructure linking China to Central and South Asia, the Middle East and Europe. The Silk Road Maritime Route entails building or expanding ports throughout Asia, the Middle East, Africa and Europe. To date, the AIIB has approved six projects worth $830 million, five which are being co-financed with established MDBs. AIIB officials are targeting $4 billion to $5 billion in yearly lending.[77]

The AIIB announcement followed closely an agreement in July 2014 on a separate development institution, the New Development Bank (NDB), by the leaders of the BRICS countries (Brazil, Russia, India, China, and South Africa). Some observers are concerned that these new development banks may duplicate existing multilateral and regional institutions, and might provide financing with minimal, if any, policy conditionality and without adhering to established environmental and social safeguards, which many developing countries believe are too burdensome. By contrast, the United States and other major donors consider policy conditionality, safeguards, and other governance best practices, including measures such as rules on procurement, as being central to the effectiveness of development assistance, and have used their leadership in the MDBs to advance these priorities.

While the United States has not opposed the creation of the AIIB and the BRICS Bank, U.S. officials reportedly initially pressured other governments not to join. U.S. Administration officials recognized the need to support infrastructure investment globally, but expressed concerns about

[77] "China's AIIB: A Surprisingly Normal Bank," *Economist Intelligence Unit,* October 28, 2016.

whether AIIB will incorporate the high standards of the World Bank and regional development banks particularly with respect to governance, and environmental and social safeguards. A broader concern has been the emergence of Chinese-led regional economic institutions in which the United States has little influence and which offer alternatives to U.S.-led economic efforts in the region.

### Eurozone Crisis[78]

The economic crisis that started in Greece in 2009 and spread to other Eurozone countries has been a source of concern for some Members of Congress. The United States and Europe have the world's largest bilateral economic relationship and a robust European economy is important to U.S. interests. Although the crisis has stabilized in many Eurozone countries and the threat of contagion from the crisis has diminished, several challenges remain. Greece's economy has been devastated: the economy has contracted by 25%; unemployment has increased to 25%; and government debt is over 175% of GDP.[79] Greece is on its third financial assistance package, and struggling with debt sustainability, jumpstarting economic growth, structural reforms, and responding to an influx of refugees.

More broadly, trade imbalances within the Eurozone persist, some Eurozone banks continue to grapple with non-performing loans from the crisis, and growth for the Eurozone as a whole, forecast at 1.5%, is sluggish. The crisis also exposed problems with the institutional architecture of the Eurozone, whose member states share a common currency and monetary policy but retain national control over fiscal and banking policies, that have not been fully addressed.

# Looking Forward

Members of Congress exert significant influence over the course of U.S. trade policy and its implementation through their legislative, appropriations, and oversight roles. Given that U.S. trade was a central debate in the 2016 presidential election campaign, fundamental questions about the future direction of trade and international economic issues are likely to be active areas of interest for the 115th Congress. In engaging on these issues, Congress may:

- debate proposals to renegotiate or withdraw from trade agreements, including the North American Free Trade Agreement (NAFTA);
- consider new bilateral trade agreements in Asia, if proposed by President-Elect Donald Trump in place of the proposed Trans-Pacific Partnership (TPP);
- conduct oversight of ongoing U.S. trade negotiations, including on a potential Transatlantic Trade and Investment Partnership (T-TIP) with the European Union (EU), a potential international plurilateral Trade in Services Agreement (TiSA), and World Trade Organization (WTO) negotiations;
- conduct oversight and take possible legislative action concerning a range of other trade issues, including U.S. trade relations with China and other major economies as well as U.S. export and import policies and programs; and

[78] Written by Rebecca M. Nelson, Specialist in International Trade and Finance (x7-6819). See CRS Report R44155, *The Greek Debt Crisis: Overview and Implications for the United States*, coordinated by Rebecca M. Nelson.

[79] International Monetary Fund, *World Economic Outlook*, October 2016.

- monitor developments in capital flows and global debt levels, the international financial institutions and U.S. funding levels, and other countries' exchange rate policies, among other international finance issues.

U.S. trade and economic policy affects the interest of all Members of Congress and their constituents. Congressional actions on these issues can impact the health of the U.S. economy, the success of U.S. businesses and their workers, the standard of living of Americans, and U.S. geopolitical interests. Some of these issues may be highly contested, as Members of Congress and affected stakeholders have differing views on the benefits, costs, and role of U.S. trade policy. The dynamic nature of the global economy—including the increasingly interconnected nature of the global market, the growing influence of emerging markets, and the growing role of digital trade, among other factors—provide the backdrop for a robust and complex debate in the 115th Congress over a range of trade and finance issues.

# Appendix. Select CRS Products

Select CRS products follow on key trade and finance issues for the 115th Congress that are discussed in this report. The products take the form of reports or In Focus products, which are two-page executive briefs.

## Trade Background

### *In Focus*

CRS In Focus IF10156, *U.S. Trade Policy: Background and Current Issues*, by Shayerah Ilias Akhtar, Ian F. Fergusson, and Brock R. Williams.

### *Reports*

CRS Report RL33944, *U.S. Trade Concepts, Performance, and Policy: Frequently Asked Questions*, by Wayne M. Morrison et al.

## Trade Promotion Authority

### *In Focus*

CRS In Focus IF10038, *Trade Promotion Authority (TPA)*, by Ian F. Fergusson.

CRS In Focus IF10297, *TPP-Trade Promotion Authority (TPA) Timeline*, by Ian F. Fergusson.

### *Reports*

CRS Report RL33743, *Trade Promotion Authority (TPA) and the Role of Congress in Trade Policy*, by Ian F. Fergusson.

CRS Report R43491, *Trade Promotion Authority (TPA): Frequently Asked Questions*, by Ian F. Fergusson and Richard S. Beth.

CRS Report 97-896, *Why Certain Trade Agreements Are Approved as Congressional-Executive Agreements Rather Than Treaties*, by Jane M. Smith, Daniel T. Shedd, and Brandon J. Murrill.

## World Trade Organization

### *In Focus*

CRS In Focus IF10002, *The World Trade Organization*, by Ian F. Fergusson and Rachel F. Fefer.

### *Reports*

CRS Report R43592, *Agriculture in the WTO Bali Ministerial Agreement*, by Randy Schnepf.

## U.S. Bilateral and Regional Trade Agreements

### *In Focus*

CRS In Focus IF10000, *TPP: An Overview*, by Brock R. Williams and Ian F. Fergusson.

CRS In Focus IF10326, *TPP: Selected Commodity Impacts for U.S. Agriculture*, by Mark A. McMinimy.

CRS In Focus IF10120, *Transatlantic Trade and Investment Partnership (T-TIP)*, by Shayerah Ilias Akhtar and Vivian C. Jones.

CRS In Focus IF10311, *Trade in Services Agreement (TiSA) Negotiations*, by Rachel F. Fefer.

CRS In Focus IF10047, *North American Free Trade Agreement (NAFTA)*, by M. Angeles Villarreal.

CRS In Focus IF10394, *Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR)*, by M. Angeles Villarreal.

### *Reports*

CRS Report R44278, *The Trans-Pacific Partnership (TPP): In Brief*, by Ian F. Fergusson, Mark A. McMinimy, and Brock R. Williams.

CRS Report R44489, *The Trans-Pacific Partnership (TPP): Key Provisions and Issues for Congress*, coordinated by Ian F. Fergusson and Brock R. Williams.

CRS Report R44361, *The Trans-Pacific Partnership (TPP): Strategic Implications*, coordinated by Ben Dolven and Brock R. Williams.

CRS Report R44337, *TPP: American Agriculture and the Trans-Pacific Partnership (TPP) Agreement*, by Mark A. McMinimy.

CRS Report R42344, *Trans-Pacific Partnership (TPP) Countries: Comparative Trade and Economic Analysis*, by Brock R. Williams.

CRS Report R43387, *Transatlantic Trade and Investment Partnership (T-TIP) Negotiations*, by Shayerah Ilias Akhtar, Vivian C. Jones, and Renée Johnson.

CRS Report R44559, *Economic Implications of a United Kingdom Exit from the European Union*, by James K. Jackson, Shayerah Ilias Akhtar, and Derek E. Mix.

CRS Report R44354, *Trade in Services Agreement (TiSA) Negotiations: Overview and Issues for Congress*, by Rachel F. Fefer.

CRS Report R43291, *U.S. Trade in Services: Trends and Policy Issues*, by Rachel F. Fefer.

CRS Report R42965, *The North American Free Trade Agreement (NAFTA)*, by M. Angeles Villarreal and Ian F. Fergusson.

CRS Report RL34330, *The U.S.-South Korea Free Trade Agreement (KORUS FTA): Provisions and Implementation*, coordinated by Brock R. Williams.

CRS Report RL34470, *The U.S.-Colombia Free Trade Agreement: Background and Issues*, by M. Angeles Villarreal.

CRS Report R44044, *U.S. Trade with Free Trade Agreement (FTA) Partners*, by James K. Jackson.

CRS Report R44630, *U.S. Withdrawal from Free Trade Agreements: Frequently Asked Legal Questions*, by Brandon J. Murrill.

## U.S.-China Economic Relations

### In Focus

CRS In Focus IF10030, *U.S.-China Trade Issues*, by Wayne M. Morrison.

CRS In Focus IF10385, *China's Status as a Nonmarket Economy (NME)*, by Wayne M. Morrison.

CRS In Focus IF10139, *China's Currency Policy*, by Wayne M. Morrison.

CRS In Focus IF10313, *Is the Chinese "Economic Miracle" Over?*, by Wayne M. Morrison.

CRS In Focus IF10110, *China as the World's "Largest Economy"*, by Wayne M. Morrison.

CRS In Focus IF10273, *China's "One Belt, One Road"*, by Susan V. Lawrence and Gabriel M. Nelson.

CRS In Focus IF10307, *A U.S.-China Bilateral Investment Treaty (BIT): Issues and Implications*, by Wayne M. Morrison.

CRS In Focus IF10257, *The U.S.-China Strategic and Economic Dialogue (S&ED): Economic Outcomes and Issues*, by Wayne M. Morrison.

### Reports

CRS Report RL33536, *China-U.S. Trade Issues*, by Wayne M. Morrison.

CRS Report RL33534, *China's Economic Rise: History, Trends, Challenges, and Implications for the United States*, by Wayne M. Morrison.

CRS Report RS21625, *China's Currency Policy: An Analysis of the Economic Issues*, by Wayne M. Morrison and Marc Labonte.

CRS Report RL34314, *China's Holdings of U.S. Securities: Implications for the U.S. Economy*, by Wayne M. Morrison and Marc Labonte.

CRS Report R41748, *China and the United States—A Comparison of Green Energy Programs and Policies*, by Richard J. Campbell.

## Economic Effects of Trade

### In Focus

CRS In Focus IF10161, *International Trade Agreements and Job Estimates*, by James K. Jackson.

CRS In Focus IF10431, *TPP: Estimates of Economic Effects*, by James K. Jackson.

### Reports

CRS Report R44551, *The Trans-Pacific Partnership (TPP): Analysis of Economic Studies*, by James K. Jackson.

CRS Report R44546, *The Economic Effects of Trade: Overview and Policy Challenges*, by James K. Jackson.

CRS Report R44153, *Trade Adjustment Assistance for Workers and the TAA Reauthorization Act of 2015*, by Benjamin Collins.

CRS Report RS20210, *Trade Adjustment Assistance for Firms*, by Rachel F. Fefer.

CRS Report R40206, *Trade Adjustment Assistance for Farmers*, by Mark A. McMinimy.

## Intellectual Property Rights

### *In Focus*

CRS In Focus IF10033, *Intellectual Property Rights (IPR) and International Trade*, by Shayerah Ilias Akhtar and Ian F. Fergusson.

CRS In Focus IF10442, *TPP: Intellectual Property Rights (IPR)*, by Shayerah Ilias Akhtar and Ian F. Fergusson.

### *Reports*

CRS Report RL34292, *Intellectual Property Rights and International Trade*, by Shayerah Ilias Akhtar and Ian F. Fergusson.

CRS Report RS22880, *Intellectual Property Rights Protection and Enforcement: Section 337 of the Tariff Act of 1930*, by Shayerah Ilias Akhtar.

## International Investment

### *In Focus*

CRS In Focus IF10177, *The Committee on Foreign Investment in the United States*, by James K. Jackson.

CRS In Focus IF10052, *U.S. International Investment Agreements (IIAs)*, by Martin A. Weiss and Shayerah Ilias Akhtar.

CRS In Focus IF10476, *TPP: Investment Provisions*, by Shayerah Ilias Akhtar and Ian F. Fergusson.

CRS In Focus IF10112, *Introduction to Financial Services: The International Foreign Exchange Market*, by James K. Jackson.

### *Reports*

CRS Report R43052, *U.S. International Investment Agreements: Issues for Congress*, by Shayerah Ilias Akhtar and Martin A. Weiss.

CRS Report R44015, *International Investment Agreements (IIAs): Frequently Asked Questions*, coordinated by Martin A. Weiss.

CRS Report R43988, *Issues in International Trade: A Legal Overview of Investor-State Dispute Settlement*, by Brandon J. Murrill and Daniel T. Shedd.

CRS Report RL32462, *Foreign Investment in U.S. Securities*, by James K. Jackson.

CRS Report RL33388, *The Committee on Foreign Investment in the United States (CFIUS)*, by James K. Jackson.

CRS Report RL32461, *Outsourcing and Insourcing Jobs in the U.S. Economy: Evidence Based on Foreign Investment Data*, by James K. Jackson.

## Digital Trade

### In Focus

CRS In Focus IF10390, *TPP: Digital Trade Provisions*, by Rachel F. Fefer.

### Reports

CRS Report R44565, *Digital Trade and U.S. Trade Policy*, coordinated by Rachel F. Fefer.

## Exchange Rates

### In Focus

CRS In Focus IF10049, *Debates over "Currency Manipulation"*, by Rebecca M. Nelson.

CRS In Focus IF10112, *Introduction to Financial Services: The International Foreign Exchange Market*, by James K. Jackson.

CRS In Focus IF10406, *Currency Exchange Rate Policies and the World Trade Organization Subsidies Agreement*, by Brandon J. Murrill.

CRS In Focus IF10139, *China's Currency Policy*, by Wayne M. Morrison.

### Reports

CRS Report R43242, *Current Debates over Exchange Rates: Overview and Issues for Congress*, by Rebecca M. Nelson.

CRS Report RL32165, *China's Currency: Economic Issues and Options for U.S. Trade Policy*, by Wayne M. Morrison and Marc Labonte.

## Labor and Environment

### In Focus

CRS In Focus IF10046, *Worker Rights Provisions in Free Trade Agreements (FTAs)*, by Ian F. Fergusson and M. Angeles Villarreal.

CRS In Focus IF10452, *TPP: Labor Provisions*, by M. Angeles Villarreal and Ian F. Fergusson.

CRS In Focus IF10166, *Environmental Provisions in Free Trade Agreements (FTAs)*, by Richard K. Lattanzio and Ian F. Fergusson.

## Trade Enforcement

### In Focus

CRS In Focus IF10436, *Dispute Settlement in the World Trade Organization: Key Legal Concepts*, by Brandon J. Murrill.

CRS In Focus IF10018, *Trade Remedies: Antidumping and Countervailing Duties*, by Vivian C. Jones.

### Reports

CRS Report RS20088, *Dispute Settlement in the World Trade Organization (WTO): An Overview*, by Daniel T. Shedd, Brandon J. Murrill, and Jane M. Smith.

See CRS Report RL32371, *Trade Remedies: A Primer*, by Vivian C. Jones.

CRS Report R43014, *U.S. Customs and Border Protection: Trade Facilitation, Enforcement, and Security*, by Vivian C. Jones and Lisa N. Sacco.

CRS Report RL34524, *International Trade: Rules of Origin*, by Vivian C. Jones.

## Export Controls and Sanctions

### In Focus

CRS In Focus IF10045, *Cuba: President Obama's New Policy Approach*, by Mark P. Sullivan.

### Reports

See CRS Report R41916, *The U.S. Export Control System and the President's Reform Initiative*, by Ian F. Fergusson and Paul K. Kerr.

CRS Report R43835, *State Sponsors of Acts of International Terrorism—Legislative Parameters: In Brief*, by Dianne E. Rennack.

CRS Report RS20871, *Iran Sanctions*, by Kenneth Katzman.

CRS Report R43311, *Iran: U.S. Economic Sanctions and the Authority to Lift Restrictions*, by Dianne E. Rennack.

CRS Report RL33948, *State and Local Economic Sanctions: Constitutional Issues*, by Michael John Garcia and Todd Garvey.

CRS Report R41438, *North Korea: Legislative Basis for U.S. Economic Sanctions*, by Dianne E. Rennack.

CRS Report RL30613, *North Korea: Back on the Terrorism List?*, by Mark E. Manyin.

CRS Report R43895, *U.S. Sanctions on Russia: Economic Implications*, by Rebecca M. Nelson.

CRS Report R43888, *Cuba Sanctions: Legislative Restrictions Limiting the Normalization of Relations*, by Dianne E. Rennack and Mark P. Sullivan.

## Miscellaneous Tariff Bills (MTBs)

### In Focus

CRS In Focus IF10478, *Miscellaneous Tariff Bills*, by Vivian C. Jones.

### Reports

CRS Report RL33867, *Miscellaneous Tariff Bills: Overview and Issues for Congress*, by Vivian C. Jones.

## Trade and Development

### In Focus

CRS In Focus IF10149, *African Growth and Opportunity Act (AGOA)*, by Brock R. Williams.

### Report

CRS Report R41429, *Trade Preferences: Economic Issues and Policy Options*, coordinated by Vivian C. Jones.

CRS Report RL33663, *Generalized System of Preferences: Overview and Issues for Congress*, by Vivian C. Jones.

CRS Report RS22541, *Generalized System of Preferences: Agricultural Imports*, by Renée Johnson.

CRS Report R43173, *African Growth and Opportunity Act (AGOA): Background and Reauthorization*, by Brock R. Williams.

## U.S. Trade Finance and Promotion Agencies

### In Focus

CRS In Focus IF10017, *Export-Import Bank of the United States (Ex-Im Bank)*, by Shayerah Ilias Akhtar.

CRS In Focus IF10457, *Export-Import Bank (Ex-Im Bank) and the Federal Budget*, by Grant A. Driessen.

### Reports

CRS Report R43581, *Export-Import Bank: Overview and Reauthorization Issues*, by Shayerah Ilias Akhtar.

CRS Report R43671, *Export-Import Bank: Frequently Asked Questions*, coordinated by Shayerah Ilias Akhtar.

CRS Report 98-567, *The Overseas Private Investment Corporation: Background and Legislative Issues*, by Shayerah Ilias Akhtar.

CRS Report R43970, *Commerce, Justice, Science, and Related Agencies Appropriations (CJS): Trade-Related Agencies*, by M. Angeles Villarreal.

## International Financial Institutions (IFIs) and Markets

### *In Focus*

CRS In Focus IF10134, *IMF Quota and Governance Reforms*, by Martin A. Weiss and Rebecca M. Nelson.

CRS In Focus IF10327, *The IMF's Special Drawing Right and China's Renminbi*, by Martin A. Weiss.

CRS In Focus IF10134, *IMF Quota and Governance Reforms*, by Martin A. Weiss and Rebecca M. Nelson.

CRS In Focus IF10480, *The North American Development Bank*, by Rebecca M. Nelson and Martin A. Weiss.

CRS In Focus IF10154, *Asian Infrastructure Investment Bank*, by Martin A. Weiss.

CRS In Focus IF10112, *Introduction to Financial Services: The International Foreign Exchange Market*, by James K. Jackson.

CRS In Focus IF10129, *Introduction to Financial Services: International Supervision*, by Martin A. Weiss.

### *Reports*

CRS Report R40977, *The G-20 and International Economic Cooperation: Background and Implications for Congress*, by Rebecca M. Nelson.

CRS Report R42019, *International Monetary Fund: Background and Issues for Congress*, by Martin A. Weiss.

CRS Report R42844, *IMF Reforms: Issues for Congress*, by Rebecca M. Nelson and Martin A. Weiss.

CRS Report R41170, *Multilateral Development Banks: Overview and Issues for Congress*, by Rebecca M. Nelson.

CRS Report RS20792, *Multilateral Development Banks: U.S. Contributions FY2000-FY2015*, by Rebecca M. Nelson.

CRS Report R42377, *The Eurozone Crisis: Overview and Issues for Congress*, coordinated by Rebecca M. Nelson.

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## Acknowledgments

Previous versions of this report were coordinated by Shayerah Akhtar, Specialist in International Trade and Finance, and Brock Williams, Analyst in International Trade and Finance, as well as Jeff Hornbeck and William Cooper, former CRS Specialists in International Trade and Finance.