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U.S. Trade Policy Primer: Frequently Asked Questions

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SUMMARY

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U.S. Trade Policy Primer: Frequently Asked Questions

Congress plays a major role in U.S. trade policy through its legislative and oversight authority. Since the end of World War II, U.S. trade policy has focused on fostering an open, rules-based global trading system, liberalizing markets by reducing trade and investment barriers through negotiations and agreements, and enforcing trade commitments and related laws. International trade and investment issues can affect the overall health of the U.S. economy and specific sectors, the success of U.S. businesses, U.S. employment opportunities, and the overall standard of living of Americans. The benefits and costs of international trade and the future direction of trade policy are active areas of interest for many in Congress.

This report addresses frequently asked questions regarding U.S. trade policy and is intended to assist Members and staff who may be new to trade issues. The report provides context for basic trade concepts and data on key U.S. trade and investment trends. It also addresses how U.S. trade policy is formulated and describes the trade and investment policy tools used to advance U.S. objectives. The report is divided into five sections:

The Basics of Trade explains key economic concepts, including why countries trade, the benefits and costs of trade expansion, and the role of global value chains in international trade. The section also highlights common trade terms and principles.

U.S. Trade Trends provides broad data on key U.S. trade relationships, the U.S. trade deficit, and sector-specific issues related to manufacturing, agriculture, services, and digital trade.

Formulation of U.S. Trade Policy describes key objectives and functions of trade policy. The section outlines the roles of Congress, the executive branch, private stakeholders, and the judiciary in the formulation and implementation of U.S. trade policy.

U.S. Trade Policy Tools explains some of the key vehicles for advancing U.S. trade policy objectives, including trade negotiations and agreements, special trade programs, tariff policy and trade remedies, trade adjustment assistance, and export promotion programs and controls.

Link Between International Investment and Trade explains the motivations of foreign direct investment (FDI) and its relationship to trade. The section provides data on top sources of FDI in the United States as well as destinations of U.S. FDI abroad, and explains the role of investment agreements and the Committee on Foreign Investment in the United States (CFIUS).

This report is intended as an introduction to U.S. trade policy and does not provide in-depth coverage of all trade and investment issues. For more detail on U.S. trade policy issues, refer to the following CRS products.

CRS Report R46669, *International Trade and Finance: Overview and Key Issues for the 117th Congress*, by Andres B. Schwarzenberg and Christopher A. Casey

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

CRS Report R45243, *Trade Deficits and U.S. Trade Policy*, by James K. Jackson

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

CRS In Focus IF11016, *U.S. Trade Policy Functions: Who Does What?*, by Shayerah I. Akhtar

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The Basics of Trade

Economics of Trade

Why do countries trade?

Economics is largely the study of making the most efficient use of scarce resources. According to mainstream economic theory, trade occurs because it is mutually enriching and can leave both trade partners better off. Through trade, a country can enjoy a higher standard of living by producing those things it does efficiently and trading for things that it produces less efficiently, driven by comparative advantage (see below). This enables a country to produce more from its resources and enjoy a higher level of consumption than would be possible without trade.

A major benefit of trade is the ability to import goods and services and boost consumer welfare. The United States imports for several reasons: some goods cannot be produced domestically in sufficient quantities to satisfy demand or would be costly to produce relative to other economic activities; other products and services are imported because they can be produced less expensively or more efficiently by foreign firms. Because of global value chains, many U.S. imports contain U.S.-made components (e.g., semiconductors in a computer) or U.S.-grown raw materials (e.g., cotton used to make t-shirts). Through trade, consumers can access a greater variety of goods at lower cost. Trade improves consumer purchasing power, particularly for lower-income households that spend a greater share of income on imported goods like clothing.[1] These factors also help control the rate of inflation.

Through trade, producers can access lower-cost inputs used in production and exports, which can improve global competitiveness. Overseas markets for exports provide opportunities for domestic firms to exploit economies of scale—expanding production to reduce average costs and take advantage of increasing returns to scale. In the long term, trade leads to greater competition and can pressure firms to innovate and invest in research and development (R&D), supporting increased productivity and economic growth.

What is comparative advantage?

Economist David Ricardo developed the idea of comparative advantage in the early 19th century, and the theory's insights remain relevant to explaining how countries trade today.[2] Ricardo argued that specialization and trade are mutually beneficial even if a country is more efficient than its trading partners at producing all goods: a country has *absolute advantage* if it produces a given good at a lower cost than another country. But Ricardo argued that because resources, particularly labor, are (assumed to be) immobile between countries, a comparison of a good's absolute cost of production in each country is less relevant for determining whether specialization and trade should occur. Instead, what matters is the *opportunity cost*—how much output of good Y must be forgone to produce one more unit of good X. If the opportunity costs of producing the two goods differ in each country, then each has a *comparative advantage* in one of the goods. Ricardo predicted that a country can realize gains from trade by specializing in goods that it can

[1] For example, see Pablo D. Fajgelbaum and Amit K Khandelwal, *Measuring the Unequal Gains from Trade*, National Bureau of Economic Research, Working Paper 2033, July 2014; and Council of Economic Advisors, *The Economic Benefits of U.S. Trade*, May 2015.

[2] See Przemyslaw Kowalski, "Comparative Advantage and Trade Performance: Policy Implications," OECD Publishing, *OECD Trade Policy Papers*, no. 121, October 2011.

produce relatively well (and in which it has a comparative advantage) and then trading those for goods that it produces relatively less well (and in which it has a comparative disadvantage).

Subsequent economic theories have expanded on and qualified the theory of comparative advantage. Economists continue to examine to what extent comparative advantage explains the increasingly complex trade patterns in the 21st century with the rise of global value chains—where different stages of production of a single good take place in several countries—and with the rise of services and digital trade, and cross-border flows of data and technology.[3]

What determines comparative advantage and specialization in trade?

Differences in comparative advantage between countries may arise and evolve because of differences in the relative abundance of factors of production—so-called *factor endowments*—such as labor, physical capital (plants and equipment), human capital (skills and knowledge, including entrepreneurial talent), as well as technology. Economic theory predicts that a country will have comparative advantage in activities that make *intensive* use of the country's relatively abundant factors of production. For example, compared to other countries, the United States has relative abundance of high-skilled labor and relative scarcity of low-skilled labor. Thus, U.S. comparative advantage is expected in the production of goods that use high-skilled labor intensively, such as aircraft rather than apparel. In addition, differences in productive technology among countries can affect relative efficiency and may be a basis for comparative advantage. The information and communications technology (ICT) revolution and new platforms for digital trade have broken down some barriers to technology and knowledge-flows across countries.

Can governments shape or distort comparative advantage?

Governments can potentially influence comparative advantage through certain policies that either indirectly nurture comparative advantage (often by compensating for market failures, but not targeted at a specific industry or activity) or directly nurture advantages in particular industries (often called industrial policy). For example, indirect influence can include policies that aim to eliminate corruption, enforce property rights, liberalize trade and foreign investment barriers, build transport and communication infrastructure, and support mass education. More direct influence can include policies (such as subsidies or tariffs) that promote and protect certain industries considered to have significant strategic and economic potential but that require initial government support to help a country reach its economic targets.[4] There has been a broad debate on the impact and effectiveness of such targeted policies. While such intervention may benefit some groups in the economy, it potentially entails significant costs, including a misallocation of resources for the economy as a whole and, therefore, an overall loss in the standard of living. Some economists contend that protectionist policies that arise through direct policy interventions can potentially distort a country's trade and investment flows, reduce economic efficiency, or undermine the development of competitive industries that do not receive support.[5]

[3] For example, see Simon Evenett, ed., *Cloth for Wine? The Relevance of Ricardo's Comparative Advantage in the 21st Century*, Centre for Economic Policy Research, November 2017.

[4] This is based on the belief that only the government can marshal the large financial resources needed to promote development of targeted industries, and that once a certain level of development is obtained, the government's role in the economy can be reduced and the role of private markets will expand.

[5] For more on the debate, see Chapter 3 and Chapter 6 in OECD, *Globalisation, Comparative Advantage and the Changing Dynamics of Trade*, OECD Publishing, October 2011.

What is intra-industry trade?

A sizable portion of global trade occurs via countries exporting and importing goods within the same industry to each other—called intra-industry trade. This type of trade is particularly characteristic of the large flows of products between advanced economies, which have similar resource endowments and levels of development. These trade patterns suggest that there is another basis for trade, other than comparative advantage: the use of economies of scale or increasing returns to scale. Economies of scale exist when a production process is more efficient (i.e., has lower unit costs) the larger the scale at which it takes place. While the United States and Germany, for example, could be equally proficient at producing a wide array of goods such as autos and pharmaceuticals, neither has the productive capacity to produce the full range of goods optimally. Therefore, a pattern of specialization tends to occur with countries producing and trading some sub-set or "niche" of these goods.

Trade, Jobs, and Wages

What are the benefits and costs of trade expansion?

From a broad perspective of the U.S. economy as a whole, trade is one of a number of forces that drive changes in employment, wages, the distribution of income, and ultimately the standard of living.[6] There is a broad consensus that trade overall has a *net* positive effect on a country's economic well-being. Trade benefits can include the more efficient use of resources, greater competition, economies of scale, and consumption gains through lower prices and more choices for consumers.[7] Increases in trade can boost GDP because of the increased competition, efficiency gains, and consumer welfare increases. According to the World Bank, liberalizing trade and investment globally has reduced the number of people in extreme poverty by half over the past 25 years.[8] However, the benefits from trade are not necessarily distributed evenly within an economy. Trade can disrupt some sectors, and the costs, such as job losses and stagnant wages, may be concentrated in certain regions and import-sensitive industries. The economic impact of trade on jobs and wages is widely debated because there are numerous factors that impact jobs, including changes to technology.

While economic analyses indicate that economy-wide gains from trade generally exceed the costs, the difficult policy issue is how to reap these gains while dealing equitably with those hurt by the process. Economists argue that policies that facilitate the adjustment and compensate for the losses of those harmed by market forces, including trade, are economically less costly than protective policies that insulate workers and industries from trade and greater competition. In addition, from a political standpoint, experts also view adjustment assistance for those who are potentially displaced as an important factor for maintaining political support for free trade.

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[6] Most economists argue that technological change and other broad macroeconomic factors are generally considered to be more important drivers than trade. For more detail, see CRS Report R44546, *The Economic Effects of Trade: Overview and Policy Challenges*, by James K. Jackson.

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

[8] World Bank and World Trade Organization, *The Role of Trade in Ending Poverty*, June 2015, World Bank, *Global Economic Prospects 2008: Technology Diffusion in the Developing World*, 2008. Much of the poverty reduction occurred in China.

Policymakers continue to debate the effectiveness of existing policies that help communities affected by trade; in the United States, many experts conclude they have been inadequate.[9]

Does trade cause job loss in the United States?

Trade "creates" and "destroys" jobs in the economy—often called "job churn"—just as other market forces, such as technological change. Trade can have different effects on workers in different occupations, which some economists call "occupational exposure" to trade.[10] Such disruptions can also occur through *domestic* trade when firms relocate from one state to another for various economic reasons. As a result, trade liberalization can have a different effect not only between sectors of the economy, but also within the same industry.[11] Economy-wide, trade causes jobs to shift into industries in which a country has comparative advantage and away from industries with comparative disadvantage. In the process, the composition of employment may change, but there may not be a net loss of jobs.[12] Estimates suggest that job loss attributed to trade is a small share of jobs lost economy-wide each year—one study finds that between 2001 and 2016 more than 150,000 U.S. net jobs were lost annually due to expanded trade in manufactured goods, which accounted for 1% of workers laid off in a typical year.[13] While some jobs might be displaced, some workers are likely to be reemployed elsewhere.[14] On the other hand, some estimates find that the short-run costs to workers attempting to switch occupations or industries to obtain new jobs due to trade liberalization may be "substantial," including reduced wages.[15] Studies suggest that increased import competition from China in particular negatively affected U.S. local labor markets and manufacturing jobs.[16]

Most economists argue, however, that equating net imports—or importing more than exporting, known as a trade deficit—with a specific amount of unemployment in the economy is questionable given the underlying drivers of the trade deficit (see "What is the trade deficit?").[17] Historically, during periods of economic growth, U.S. global trade has also expanded. The U.S. trade deficit and unemployment rate have generally moved in tandem (see **Figure 1**)—GDP growth reduces the number of unemployed while increasing aggregate demand, including for

[9] For example, for more on the debate, see Edward Alden, *Failure to Adjust*: *How Americans Got Left Behind in the Global Economy* (Lanham, MD: Rowman & Littlefield, 2016), pp. 107-126.

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

[11] For example, an auto firm may announce the closing and relocation overseas of one plant making small cars, while stating the intent to expand other domestic plants that build bigger or more high-end vehicles.

[12] A study by the World Bank, WTO, ILO, and others surveyed the literature on trade and employment and found that, over the long run, higher levels of trade are associated with positive rates of economic growth and higher levels of employment. See Richard Newfarmer and Monika Sztajerowska, "Trade and Employment in a Fast-Changing World," in *Policy Priorities for International Trade and Jobs*, ed. Douglas Lippoldt, OECD Publishing, 2012.

[13] Gary Clyde Hufbauer and Zhiyao (Lucy) Lu, *The Payoff to America from Globalization: A Fresh Look With a Focus on Costs to Workers*, Peterson Institute for International Economics, May 2017.

[14] For example, the Bureau of Labor Statistics reported that from January 2015 through December 2017, 3.0 million workers were displaced from jobs they had held for at least three years, down slightly from 3.2 million workers for the prior survey covering 2013 to 2015. In January 2018, 66% of workers displaced from 2015-2017 were reemployed, which represented little change from the reemployment rate for January 2016. Among long-tenured workers who were displaced from full-time wage and salary jobs and then reemployed, 51% had earnings that were as much or greater than those of their lost job, similar to the prior survey. See *Displaced Workers Summary*, August 28 2018, https://www.bls.gov/news.release/disp.nr0.htm.

[15] Erhan Artuç and John McLaren, *Trade Policy and Wage Inequality: A Structural Analysis With Occupational and Sectoral Mobility*, The World Bank, Policy Research Working Paper, no. 6194, September 2012.

[16] See David H. Autor, David Dorn, and Gordon H. Hanson, "The China Syndrome: Local Labor Market Effects of Import Competition in the United States," *American Economic Review*, vol. 103, no. 6 (October 2013): 2121-2168.

[17] For more detail, see CRS In Focus IF10619, *The U.S. Trade Deficit: An Overview*, by James K. Jackson.

imports as well as attracting increased capital inflows, which often leads to an increased trade deficit.

Figure 1. U.S. Goods Trade Deficit and Unemployment Rate, 1992-2019

Sources: Bureau of Economic Analysis and Bureau of Labor Statistics.

Does trade reduce the wages of U.S. workers?

International trade can positively and negatively affect the wages of workers. Several studies have examined this relationship. There is no overall consensus on the impact of trade and trade agreements on wages of U.S. workers (which have been relatively stagnant for decades) and income inequality in the United States (which has also deepened).[18] Many studies have found that other factors, such as technological change, have had a significantly larger effect on relative wages.[19]

In economic theory, trade tends to increase the return to the abundant factors of production—capital and high-skilled workers in the United States—and to decrease the return to less-abundant factors—low-skilled labor in the United States. Therefore, other factors held constant, a large increase in imports, particularly from economies with vast supplies of low-skilled labor such as China, could negatively affect wages of low-skilled U.S. workers in import-sensitive industries (even though they too benefit from lower-priced imports from China). U.S. low-skilled workers have increasingly faced competition from lower-cost producers, largely in developing countries. The growth of global value chains has led some U.S. multinational corporations (MNCs) to shift low-value, labor-intensive production overseas. On the other hand, MNCs may keep or expand production in the United States or retain the high-end services aspects of their businesses; such jobs often require high levels of education and skills. In addition, U.S. workers in export-oriented

[18] For a survey of the literature, see Gary Clyde Hufbauer and Zhiyao (Lucy) Lu, "Has Global Trade Fueled US Wage Inequality? A Survey of Experts," August 30, 2017, Peterson Institute for International Economics, https://piie.com/blogs/trade-investment-policy-watch/has-global-trade-fueled-us-wage-inequality-survey-experts; Marc Bacchetta and Marion Jansen, ed., *Making Globalization Socially Sustainable*, WTO and ILO, 2011; and OECD, *Divided We Stand: Why Inequality Keeps Rising*, OECD Publishing, December 2011.

[19] For this reason, economists contend that domestic policies should seek to enhance U.S. education and skill levels to better enable the U.S. workforce to respond more effectively to the changing nature of the global economy, as well as new technological advancements—for example, robotics.

industries earn, on average, more than workers in nonexporting industries.[20] The U.S. International Trade Commission (ITC) estimated, on average, a 16% earnings premium in export-intensive manufacturing industries and 15.5% premium in services.[21]

Economic Globalization

What is economic globalization?

In general, economic globalization broadly refers to the increasing integration of national economies around the world, particularly through trade and financial flows.[22] Economic globalization involves trade in goods and services, capital flows and trade in assets (e.g., currency, stocks), the transfer of technology and ideas, and international flows of labor or migration.[23] There have been several periods of economic globalization; some experts also contend there have been periods of deglobalization—the slowdown or reverse of globalization.[24]

Scholars have dated the start of the most recent period of economic globalization to sometime in decades following World War II. From 1960 to 2019, global trade as a percentage of global GDP increased from 25% to 60%.[25] In the post-World War II period, global trade grew consistently faster than GDP (though this trend has not held in recent years). The stock of global foreign direct investment (FDI) grew from 6% of global GDP in 1980 to 42% in 2019.[26] The growing integration of the world economy has been facilitated by myriad technical advances in transport and communication, which have significantly reduced natural geographic barriers that separate economies. In addition, both domestic and multilateral policies have steadily lowered man-made barriers to international exchange since World War II (such as tariffs, quotas, subsidies, immigration regulations, and capital controls). While most economists argue that globalization has lifted living standards worldwide, an ongoing debate remains regarding the extent to which greater economic integration has been inclusive, benefited some groups more than others, and contributed to inequality within countries.[27]

What are global value chains and how do they relate to globalization?

Global value chains (GVCs) disaggregate production processes into discrete stages in various locations around the globe to achieve efficient production, allowing companies to organize different parts of their value chain strategically, such as locating in a target customer's home market or a competitor's base. Since the 1990s, powered by trade liberalization through free trade

[20] See Emilia Istrate, Jonathan Rothwell, and Bruce Katz, *Export Nation: How U.S. Metros Lead National Export Growth and Boost Competitiveness*, Brookings Institution, July 2010.

[21] David Riker, *Export-Intensive Industries Pay More on Average: An Update*, USITC, April 2015.

[22] IMF, "Globalization: A Brief Overview," May 2008, https://www.imf.org/external/np/exr/ib/2008/053008.htm.

[23] For an overview of key developments over periods of globalization, see Peterson Institute for International Economics, "What is Globalization? And How Has the Global Economy Shaped the United States?" https://piie.com/microsites/globalization/what-is-globalization.html.

[24] Kevin O'Rourke and Jeffrey G. Williamson, *Globalization and History: The Evolution of a Nineteenth Century Atlantic Economy* (Cambridge, MA: MIT Press, 1999); Harold James, *The End of Globalization: Lessons from the Great Depression* (Cambridge, MA: Harvard University Press, 2002); Harold James, "Deglobalization: The Rise of Disembedded Unilateralism," *Annual Review of Financial Economics* 10 (Nov. 2018).

[25] World Bank, World Development Indicators database, http://databank.worldbank.org.

[26] United Nations Conference on Trade and Development (UNCTAD) statistics, http://unctadstat.unctad.org.

[27] See Christine Lagarde, "Making Globalization Work for All," International Monetary Fund, Sylvia Ostry Lecture, September 2016, https://www.imf.org/en/News/Articles/2016/09/13/sp09132016-Making-Globalization-Work-for-All.

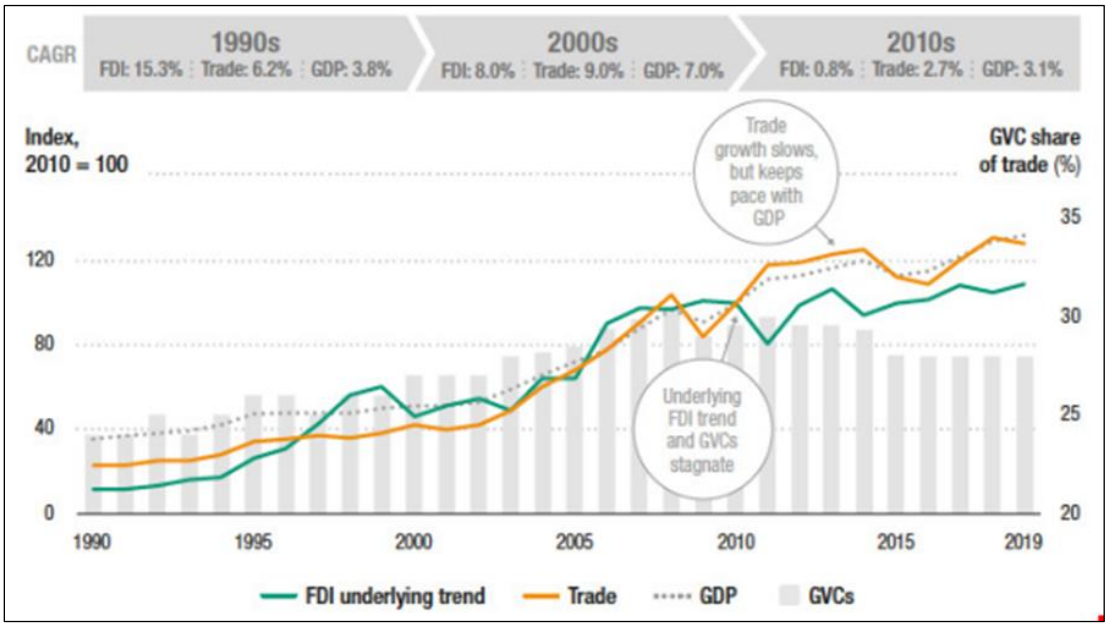
agreements (FTAs) and the creation of the World Trade Organization (WTO) and advances in services and technology, companies have increasingly structured international trade around global value chains. More than two-thirds of world trade occurs via GVCs each year, representing a shift in how trade and commerce are conducted as trade in intermediate goods and services exceeds that of commodities and finished goods. This shift makes it increasingly difficult to understand and interpret the implications of trade data trends for the U.S. economy as conventional trade data do not attribute any portion of the traded value of finished manufactured and agricultural products to intermediate goods or services.

Despite the growing presence of GVCs in the global economy, recent events have highlighted the potential risks and vulnerabilities of GVCs, particularly those concentrated in a particular region or reliant on a single supplier. Worldwide natural disasters, emergencies, and other policy-driven circumstances, such as the Coronavirus Disease 2019 (COVID-19) pandemic, have shown that GVC links integrate and create interdependence between economies, which can leave companies vulnerable to external shocks, including interruptions in other countries. At the same time, interdependence can create broader economic growth and strengthened relationships among nations.

Although using GVCs can offer significant benefits, doing so can create additional costs and raise risks. To mitigate risks and vulnerabilities, companies may (1) rethink their business models and seek to build in redundancies for resilience, (2) focus more on shorter local or regional value chains, and/or (3) utilize emerging technologies to lower and diversify risks and costs. These shifts will likely vary across industry sectors, depending in part on the location and availability of suppliers and customers, as well as U.S. and foreign trade and investment policies.[28]

Figure 2. GDP, Trade, FDI, and GVCs Trends: 1990-2019

GDP, trade, and FDI indexed, 2010 = 100; GVCs, percentage



Source: United Nations Conference on Trade and Development, *World Investment Report 2020: International Production Beyond the Pandemic*, June 2020.

[28] For more information, see CRS Report R46641, *Global Value Chains: Overview and Issues for Congress*, coordinated by Rachel F. Fefer.

Notes: Trade is global exports of goods and services. GVC share of trade is proxied by the share of foreign value added in exports, based on the UNCTAD-Eora GVC database. The underlying FDI trend is an UNCTAD indicator capturing the long-term dynamics of FDI by netting out fluctuations driven by one-off transactions and volatile financial flows.

What is the relationship between trade and foreign direct investment?

Trade and investment flows are complements, and foreign direct investment (FDI) is considered to be a major driver of trade.[29] FDI is a type of cross-border capital flow, which takes place when a resident of one country (including a company) obtains a lasting interest in—and a degree of influence over—the management of a business enterprise in another country.[30] FDI has supported the development of global value chains by multinational corporations (MNCs), which source production globally. As a result, the majority of trade takes place within MNCs that send components to and from locations at home and abroad to transform into final products.[31] FDI has thus supported the significant expansion of inter- and intra-firm trade, which represents trade between parent companies and their foreign affiliates, and trade between affiliates of foreign firms and the foreign parent company (see "Link Between International Investment and Trade").[32]

A predominant reason U.S. firms make investments abroad is to sell goods and services to foreign markets.[33] Many firms want to maintain operations close to their customers to gauge preferences and tastes that may differ from U.S. consumers (e.g., SUVs preferred in the United States versus small cars in Japan). According to the latest data on activities of U.S. multinationals, in 2018, 12% of the sales of U.S. foreign affiliates went to U.S. parent companies, while 58% of sales went to the local market of the host country and 30% went to other foreign countries (see **Figure 3**). However, some firms may also establish operations abroad to replace exports or production, or to gain access to raw materials or less expensive labor abroad. Foreign firms may invest in the United States to access the U.S. consumer market, high-skilled labor, and other resources.

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

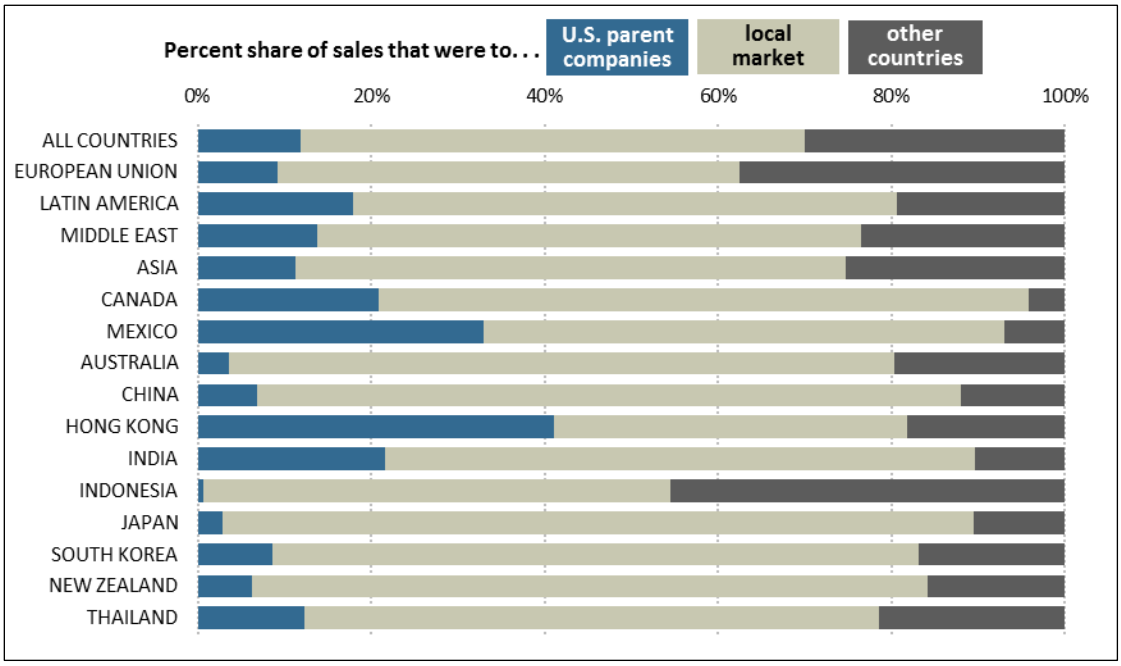
[30] The United States defines direct investment as the ownership of at least 10% of the voting securities of an incorporated business enterprise or the equivalent interest in an unincorporated business enterprise. 15 C.F.R. §806.15(a)(1).

[31] UNCTAD, *Global Value Chains and Development: Investment and Value Added Trade in the Global Economy*, 2013, https://unctad.org/en/pages/newsdetails.aspx?OriginalVersionID=411.

[32] For data on intrafirm trade, see CRS Report RS21857, *Foreign Direct Investment in the United States: An Economic Analysis*, by James K. Jackson.

[33] CRS Report RS21118, *U.S. Direct Investment Abroad: Trends and Current Issues*, by James K. Jackson.

Figure 3. Sales by Destination of Foreign Affiliates of U.S. Firms, 2018



Source: Bureau of Economic Analysis, "Worldwide Activities of U.S. Multinational Enterprises: Preliminary 2018 Statistics," August 2020.

Note: Includes goods and services.

How does globalization affect jobs?

Greater global integration through trade and investment flows, combined with specialization in certain stages of production, can disrupt markets. This disruption may create concerns about "offshoring" or "outsourcing," the shift of manufacturing and business functions to countries with lower labor costs. For example, some U.S. multinational corporations (MNCs) focus on high-end activities associated with innovating products in the United States, such as research and development (R&D), while outsourcing production of components and final product assembly to suppliers and locations abroad. Although most economists maintain that globalization and trade liberalization are unlikely to affect the overall U.S. employment rate,[34] greater volatility of U.S. worker incomes and employment in some sectors are possible effects. For example, the shifting of manufacturing assembly abroad may reduce the number of U.S. manufacturing jobs in some industries but boost the number of service-related jobs in others.

Another issue is the impact of globalization on wealth distribution; for example, through dampening wages for U.S. lower-skilled workers facing greater foreign competition compared to higher-skilled workers, or through higher returns to capital over labor.[35] In one study, the OECD

[34] International trade primarily affects the composition of jobs in the economy rather than the overall level of jobs. According to economic theory, a country could achieve full employment with zero trade or full employment if trade generated 100% of the country's economic growth—trade (i.e., net exports) is but one component of a country's aggregate demand. In theory, if an economy falls to less than full employment, the government can use fiscal and/or monetary policy to boost growth and employment.

[35] For an overview of the debate over trade, jobs, and income inequality, see CRS Report R44546, *The Economic Effects of Trade: Overview and Policy Challenges*, by James K. Jackson.

concluded that "in advanced economies, at least 10% of the decline of the labour share [in total national income] is accounted for by increasing globalisation—and in particular by the pressures from the delocalisation of some parts of the production chain as well as from import competition from firms producing in countries with low labour cost."[36] A range of studies suggests that within the United States, globalization has contributed marginally to rising U.S. wage inequality at a factor ranging from 10% to 20%.[37]

Key Trade Terms and Principles

What is most-favored-nation (MFN) treatment?

Most-favored-nation treatment (MFN) is the fundamental principle of nondiscrimination in the multilateral trading system.[38] MFN requires World Trade Organization (WTO) members to grant each other member country treatment at least as favorable as it grants to its most-favored trade partner—in other words, every member must treat all members equally. For example, if a country grants a trade benefit or concession to one country, such as lower tariffs, it would have to extend the same benefit to all other members. There are a number of permitted exceptions to MFN treatment, however. For example, countries can establish trade agreements with one another outside of the WTO, granting additional preferences to those in the agreement, provided certain conditions are met. In addition, more favorable treatment can be given to developing countries, often called "special and differential treatment."[39]

What is national treatment?

National treatment is another fundamental principle of nondiscrimination in the multilateral trading system. It obligates each trading partner not to discriminate between domestic and foreign products. In other words, once an imported product enters a country, it must be treated no less favorably than a "like" product produced domestically. The same concept is also applied to foreign and domestic services and intellectual property rights.

What is Permanent Normal Trade Relations (PNTR) status?

"Most-favored nation" (MFN) trade status, called permanent normal trade relations (PNTR) in U.S. law, denotes nondiscriminatory treatment of a trading partner. According to U.S. Customs and Border Protection, Cuba and North Korea do not have PNTR with the United States.[40] Other countries at times have received temporary or conditional NTR status before graduating to PNTR. In practice, imports from countries with NTR status face lower duty rates than imports from countries without that status. Title IV of the Trade Act of 1974 prohibits the President from granting PNTR status to any country not receiving such treatment at the time of the law's enactment in January 1975 (in effect, the majority of then-communist countries).[41] The so-called,

[36] OECD, *OECD Employment Outlook 2012*, 2012, p. 110.

[37] Peterson Institute for International Economics, "What is Globalization? And How Has the Global Economy Shaped the United States?" https://piie.com/microsites/globalization/what-is-globalization.html.

[38] See WTO, "Principles of the trading system," https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm.

[39] WTO, "Differential and more favourable treatment reciprocity and fuller participation of developing countries," https://www.wto.org/english/docs_e/legal_e/enabling1979_e.htm.

[40] U.S. Customs and Border Protection, "Countries ineligible for NTR / MFN duty rates," https://go.usa.gov/xQcjC.

[41] See CRS In Focus IF10294, *Kazakhstan and Tajikistan: WTO Accession and U.S. Trade Relations*, by Vivian C. Jones and Ian F. Fergusson.

Jackson-Vanik amendment further denies PNTR status for countries that deny citizens freedom of emigration (subject to presidential waiver). As a WTO member, the United States is required to extend MFN treatment "immediately and unconditionally" to all WTO members. Thus upon accession to the WTO for countries like China (joined in 2001), Vietnam (2007), and Russia (2012) for example, PNTR had to concurrently be established under U.S. law for the United States to receive the full benefits of their membership.

What is the Harmonized Tariff Schedule of the United States?

The Harmonized Tariff Schedule of the United States (USHTS) determines the tariffs (also known as duties) that are imposed on imported goods.[42] The HTS uses a structure of tariff classification, based on standard commodity codes and descriptions developed by the World Customs Organization (WCO), the so-called Harmonized System (HS). The HS groups 1,200 product headings into 96 chapters. Each heading is divided into product subheadings at the four-digit and six-digit levels, for a total of 5,000 separate groups of goods at the 6-digit level, with harmonized digit and category descriptions. In other words, the higher the digits the more detailed the product category. For example, the 2-digit chapter 08 stands for "edible fruits and nuts." Within that chapter, "citrus fruits" are identified by the 4-digit HS code 0805; and within that subheading, "oranges" are identified by 6-digit HS code 0805.10. HS codes are standard worldwide up to the 6-digit level. The USHTS further subdivides each product subheading into 8-digit and 10-digit tariff lines that are unique to the United States. The U.S. International Trade Commission (ITC) publishes the HTS and keeps it up to date.[43] U.S. Customs and Border Protection is responsible for interpreting and enforcing the tariff code.

What are rules of origin?

Rules of origin (ROO) determine the "nationality" of imported products.[44] ROO are important for several reasons, including determining admissibility of imports, assessing duty rates, and establishing eligibility for preferential trade programs and free trade agreements (FTAs). Determining a product's origin can be relatively straightforward if the product's raw materials and parts are manufactured and assembled in a single country. However, in today's global economy, determining origin can be complex because goods such as autos, computers, and clothing are assembled with parts sourced from many countries.

The United States negotiates different ROO within its FTAs to ensure that only eligible trading partners receive the agreement's tariff benefits. But some rules may also be crafted to limit the impact of liberalized trade on import-sensitive industries. For example, the "yarn-forward" rule requires that all yarn and fabric used in most apparel must come from FTA partners themselves, in addition to the assembly process. Some in Congress with retailers in their districts argue that the yarn-forward rule is relatively strict compared to the rules negotiated by other countries; others with textile interests maintain that the rule is crucial for the survival of the U.S. industry.

[42] For the latest version of the U.S. Harmonized Tariff Schedule, see https://hts.usitc.gov/current.

[43] Section 1205(a) of P.L. 100-418 directed the ITC to keep the USHTS under continuous review and periodically recommend nomenclature modifications to the President. These modifications generally reflect changes to the HS that are periodically recommended by the International Convention on the Harmonized Commodity Description and Coding System, of which the United States is a member; or reflect decisions made by the WCO's Harmonized System Committee on individual products. Changes in tariff levels generally occur as a result of trade negotiations.

[44] For more detail see CRS In Focus IF10754, *Rules of Origin*, by Vivian C. Jones and Liana Wong.

U.S. Trade Trends[45]

The Role of Trade in the U.S. and Global Economy[46]

How important is trade to the global economy?

Global trade is an important engine of the global economy—trade as a share of global GDP has risen from 25% in 1960 to about 60% in 2019.[47] Greater openness to trade and trade reforms worldwide have been linked to higher growth in productivity and real incomes, as well as reduced poverty worldwide.[48] For decades since World War II, annual real global trade growth outpaced GDP growth, growing on average 1.5 times faster (see **Figure 4**). This trend has not held in recent years as the global economy recovered from the financial crisis in 2008; merchandise trade volume fell by 0.12% in 2019, after having grown 2.89% in 2018. Weakened trade growth had been attributed to several factors, including weak import demand, exchange rate fluctuations, and falling commodity prices.[49] The slowdown in investment and China's rebalancing toward a consumption-driven economy were seen as major structural factors, while others considered growing trade protectionism to be an important factor.[50]

Trade growth rebounded in 2017—the strongest rate since 2011—and in 2018, driven mainly by cyclical factors, in particular increased investment and consumption expenditure.[51] With the improving global economic outlook, the IMF and the WTO had projected a rebound in trade growth for 2019 and 2020. Amid several downside risks, including rising trade tensions between major economies like the United States and China, heightened trade policy uncertainty, and the COVID-19 pandemic, the IMF and WTO now estimate the volume of global trade to have fallen by 9.2% in 2020 (and to grow by 7.2% in 2021).[52] Restrictive trade policy measures imposed by the United States and some of its major trading partners may be affecting trade flows and prices in targeted sectors. Analysts claim that some recent policies also have harmed businesses' outlooks and investment plans, due to heightened concern over possible disruptions to supply chains and the risks of potential increases in the scope or intensity of trade restrictions.[53]

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[45] Section prepared by Cathleen Cimino-Isaacs, Rachel Fefer, and Andres B. Schwarzenberg, Analysts in International Trade and Finance, and James K. Jackson, Specialist in International Trade and Finance.

[46] For more detail, see CRS Report R45420, *U.S. Trade Trends and Developments*, by Andres B. Schwarzenberg.

[47] World Bank, World Development Indicators database, http://databank.worldbank.org and WTO Data portal, http://data.wto.org/.

[48] IMF, World Bank, and WTO, *Making Trade an Engine of Growth for All: The Case for Trade and for Policies to Facilitate Adjustment*, April 2017.

[49] WTO, "Falling import demand, lower commodity prices push down trade growth prospects," September 20, 2015, https://www.wto.org/english/news_e/pres15_e/pr752_e.htm.

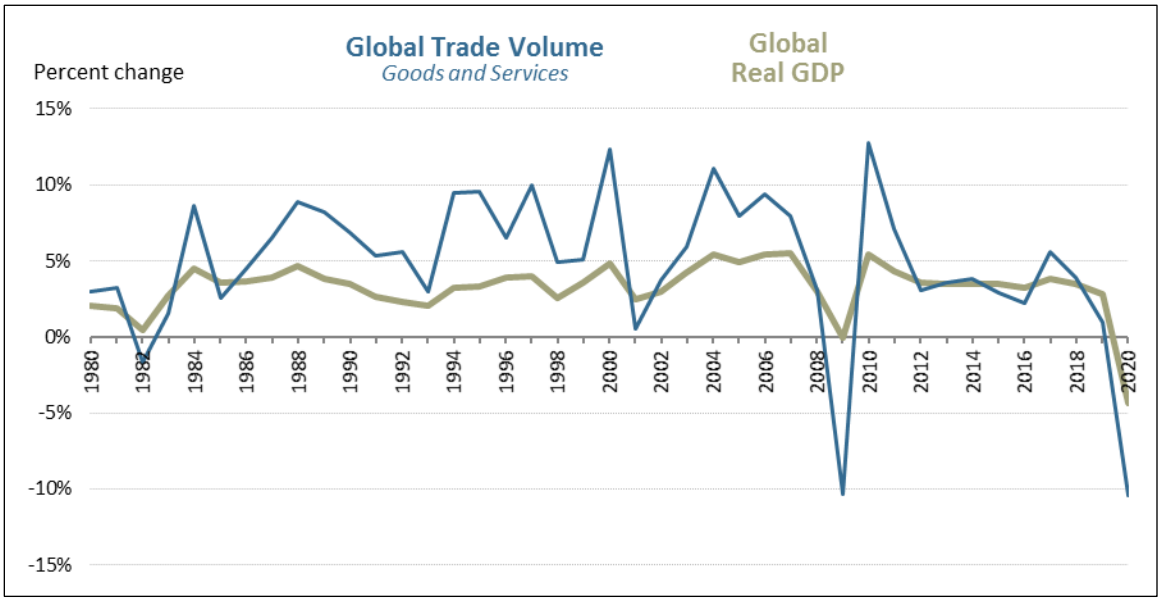
[50] For example, see Caroline Freund, "The Global Trade Slowdown and Secular Stagnation," Peterson Institute for International Economics, April 20, 2016, https://piie.com/blogs/trade-investment-policy-watch/global-trade-slowdown-and-secular-stagnation; and Simon J. Evenett and Johannes Fritz, *The Tide Turns? Trade, Protectionism and Slowing Global Growth*, Centre for Economic Policy Research, 2015.

[51] WTO, "Strong trade growth in 2018 rests on policy choices," Press Release, April 12, 2018, https://www.wto.org/english/news_e/pres18_e/pr820_e.htm.

[52] WTO, "Trade shows signs of rebound from COVID-19, recovery still uncertain," Press Release, October 6, 2020, https://www.wto.org/english/news_e/pres20_e/pr862_e.htm.

[53] OECD, "High Uncertainty Weighing on Global Growth," Interim Economic Outlook, September 20, 2018.

Figure 4. Global Trade Volume and Real GDP Growth, 1980-2020



Source: IMF, World Economic Outlook database, October 2020.

Notes: Global trade volume is the average of annual percent change of world exports and imports. Data for 2020 based on IMF projection.

What are the largest global trading economies?

In 2019, the top-five largest trading economies in terms of share of global trade were the European Union, the United States, China, Japan and the United Kingdom (UK) (**Figure 5**). Considering EU member states individually, China was the largest exporter, while the United States was the largest importer. In goods trade, the United States was the largest importer and second-largest exporter (behind China). In services trade, the United States was both the largest importer and exporter.

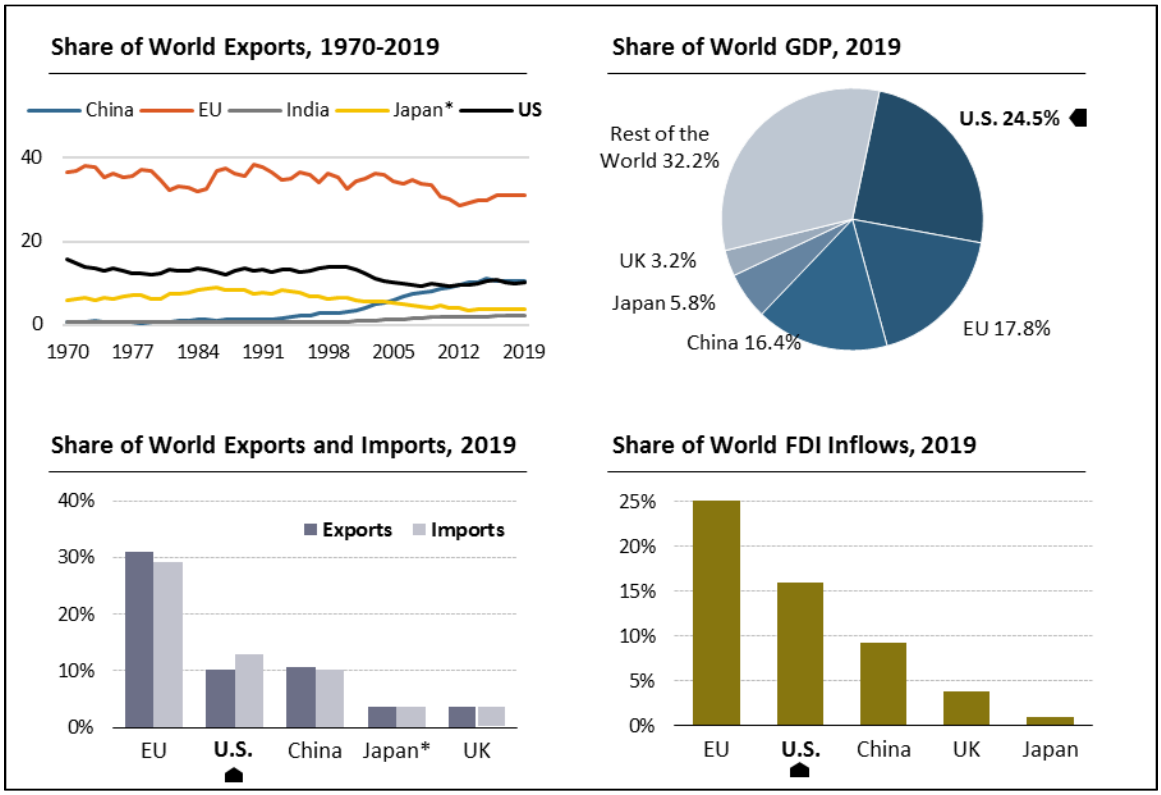
The U.S. share of global goods trade has fallen over the past several decades—from 15% in 1970 to 9% in 2019—largely due to the rapid increase of global trade, especially among developing countries and emerging markets.[54] Historical data on global trade in services is limited; in 2019, the U.S. export share of global services was 14%, and import share was 10%.

In 2019, U.S. exports and imports of goods and services combined were equivalent to 26% of GDP. Although the United States is a major global trader, the size of trade relative to the size of the U.S. economy is smaller compared to other major trading economies. Various organizations have developed indexes to assess the "openness" or "competitiveness" of the U.S. economy relative to other economies. The United States ranked second (behind Singapore) out of 140 economies in the World Economic Forum's (WEF) latest "Global Competitiveness Index."[55]

[54] The decline in the U.S. share of global goods exports may also reflect the growing relative importance of U.S. services exports. For example in 1980, services accounted for 18% of U.S. global exports of goods and services, nearly doubling its share to 35% in 2019, according to the Bureau of Economic Analysis.

[55] The WEF defines national competitiveness as "the set of institutions, policies and factors that determine the level of productivity of a country." Index scores are calculated by analyzing country-level data covering 12 categories, including institutions, infrastructure, macroeconomic environment, education, goods market efficiency, labor market efficiency, technological readiness, business sophistication and innovation. See World Economic Forum, *Global Competitiveness Report 2019*, at https://www.weforum.org/reports/how-to-end-a-decade-of-lost-productivity-growth.

Figure 5. Snapshot of the Top Global Trading Economies in 2019



Sources: CRS, with data from the International Monetary Fund, *World Economic Outlook Database*, October 2020; World Bank, *World Development Indicators*, 2020; United Nations Conference on Trade and Development, *UNCTADstat*, 2020.

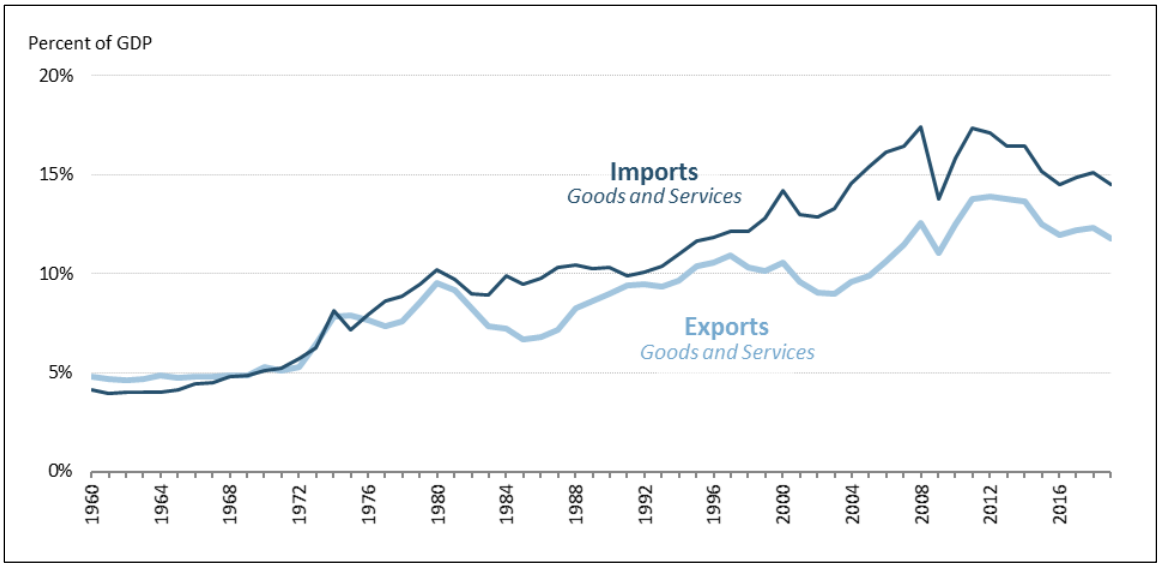
Notes: 2019 is the most recent year for which annual data are available; * Japan trade share latest data 2018. *Share of World GDP*: each country's GDP as a share of world GDP (in current U.S. dollars); *Share of World Exports and Imports*: each country's total exports (imports) of goods and services as a share of total world exports (imports); *Share of World FDI*: each country's inward foreign direct investment (FDI) flows as a share of world inward FDI flows.

How important is trade to the U.S. economy?

In 2019, the United States exported $2.5 trillion in goods and services and imported $3.1 trillion.[56] Over the past decade since 2009 and the financial crisis, U.S. exports have grown more than 60% in nominal terms, while U.S. imports have grown more than 55%. Since 1960, trade relative to GDP has risen markedly (see **Figure 6**). U.S. exports as a percent of GDP expanded from 5% in 1960 to 12% of GDP in 2019, while U.S. imports expanded from 4% to 15% of GDP.

[56] For data, see U.S. Census Bureau, FT900, https://go.usa.gov/xnexE.

Figure 6. U.S. Trade as a Share of GDP, 1960-2019



Source: CRS, based on Bureau of Economic Analysis.

What countries are the top U.S. trade partners?

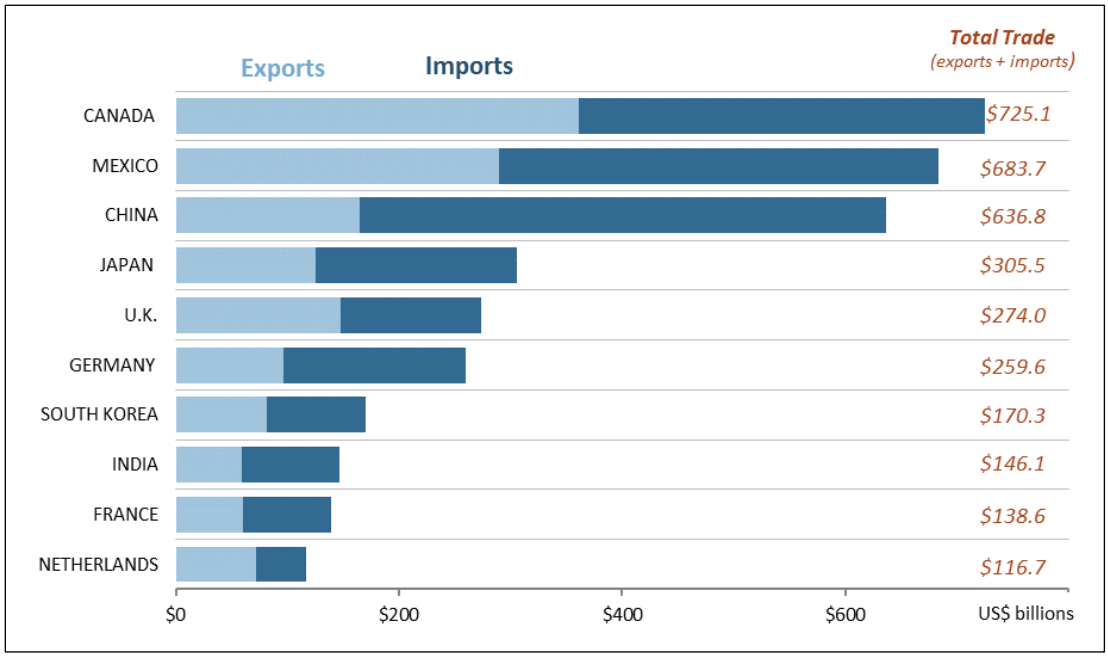
In 2019, Canada was the top U.S. trading partner, with $725 billion in total goods and services trade, followed by Mexico, China, Japan, the UK and Germany (see **Figure 7**).[57] China was the largest source of U.S. imports, while Canada was the largest destination for U.S. exports. However, considering the 28 EU member states as a single trading partner, the EU was both the largest export destination and source of imports for the United States.[58] The majority of U.S. global trade, about 65%, is with countries with which the United States does not have a free trade agreement.[59] (See "How many free trade agreements (FTAs) does the United States have?")

[57] For more detail and analysis, see CRS Report R45434, *U.S. Trade with Major Trading Partners*, by Andres B. Schwarzenberg.

[58] The United Kingdom is included as part of the EU in BEA data through the end of 2019.

[59] CRS calculation based on data from the Commerce Department and Bureau of Economic Analysis.

Figure 7. Top U.S. Trading Partners, Ranked by Total Trade in Goods and Services, 2019



Source: Bureau of Economic Analysis.

Note: Data on a balance of payments basis.

How do global value chains complicate interpretation of U.S. trade data?

The growth of GVCs, intra-firm trade, and trade in intermediate goods means that traditional accounting methods may not fully reflect the source of inputs used in producing goods and services, a limitation that may ultimately distort trade data tallied using such methods.[60] As more products are effectively made globally, concepts such as country of origin and bilateral trade imbalances may take on different meaning.[61] This shift makes it increasingly difficult to understand and interpret the implications of trade data trends for the U.S. economy. In addition, conventional data that often drive policy discussions may underestimate trade in services, because the data do not attribute any portion of the traded value of manufactured and agricultural products to services inputs. As mentioned above, intermediate services such as transportation and distribution, R&D, and design and engineering are embedded within a value chain as inputs and thus are often not visible in the data. Moreover, these data are not disaggregated enough to identify trends in GVCs or their impact on the U.S. economy.

To illustrate, when the United States imports such products as iPhones and iPads, it attributes the full value of those imports as occurring in China, even though the value added there is quite small (**Figure 8**). Apple Inc., the U.S. firm that developed these products, is the largest beneficiary in terms of the profits generated by the sale of its products, and most of its product design, software development, product management, marketing, and other high-wage functions and employment occur in the United States. Some partners have a larger value-added role in the Apple GVC than others; for example, Taiwan-based Foxconn handles the sourcing, manufacturing, and logistics. In other words, U.S. trade data may show from where products are being imported, but they often do

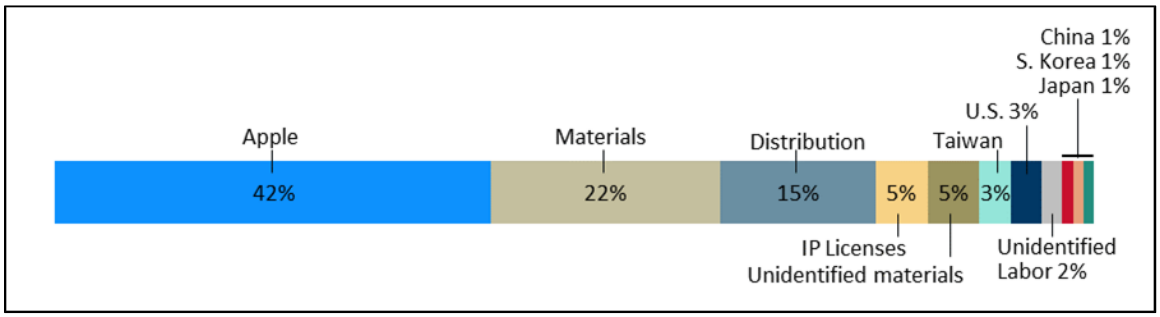
[60] OECD, *Trade in Value-Added: Concepts, Methodologies, and Challenges* (Joint OECD-WTO Note), 2010.

[61] WTO, *Trade Patterns and Global Value Chains in East Asia: From Trade in Goods to Trade in Tasks*, 2011.

not reflect the country or countries that ultimately benefit from that trade. In many instances, U.S. imports from China are really imports from many countries. Yet, the full value of the final imported product is attributed to China, which results in what some might consider to be an inflated trade deficit figure.

Figure 8. Value Capture for iPhone 7

Chinese firms contribute 1% of the finished product's value, while Apple captures 42%



Source: CRS, with data from Jason Dedrick and Kenneth L. Kraemer, "Intangible Assets and Value Capture in Global Value Chains: The Smartphone Industry," WIPO Economic Research Working Paper No. 41 (2017).

Note: Excludes Apple's contribution.

Measuring trade in value-added (TiVA) terms can mitigate these problems by enabling domestic content embedded in exports to be assigned to each country that participated in the production of the final good. In contrast to traditional trade statistics, measuring trade this way can provide a more detailed picture of the location where value is added during the various stages of production.[62] The OECD and WTO developed a TiVA database, considered to be the most comprehensive and widely used trade database that provides insight into domestic and foreign value-added content of gross exports by exporting industries.[63] Despite a significant time lag, such statistics provide a detailed picture of inter-industry relationships in the supply and uses of goods and services between sectors of the economy. In other words, TiVA data provide a better indication not only of the production and movement of goods and services, but also of where they are being consumed.

The U.S. Trade Deficit

What is the trade deficit?

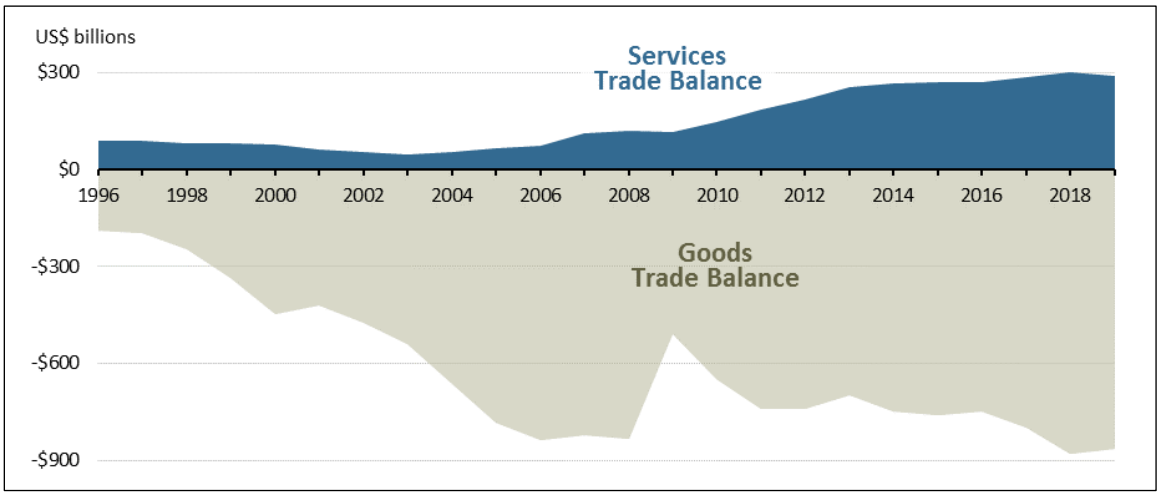
The "trade deficit" generally is used to refer to three things: the balance of trade in goods, balance of trade in goods and services, and broadly as the balance on the current account. The trade balance is the difference between a country's exports and imports of goods, services, and some income flows; this applies to each bilateral trading relationship, as well as to the aggregate across

[62] A joint study by the OECD and the WTO estimated that the U.S. trade deficit with China in 2009 would have been reduced by 25% if bilateral trade flows were measured according to the value-added that occurred in each country before it was exported (OECD and WTO, "Trade in Value-Added [TiVA] Database: China," January 16, 2013). In addition, another study estimated that 25% of U.S. imports from Canada and 40% of U.S. final merchandise imports from Mexico consisted of value added from the United States (Robert Koopman, William Powers, Zhi Wang, and Shang-Jin Wei, *Give Credit Where Credit Is Due: Tracing Value Added in Global Production Chains*, National Bureau of Economic Research Working Papers 16426, October 2011).

[63] Given the level of aggregation among the TiVA input-output tables, much of the extensive inter-industry trade that occurs among the United States and its trading partners, especially in complex sectors such as motor vehicles or semiconductors, may not be fully captured.

all trading partners. A deficit occurs when a country imports more than it exports. Broadly, a trade deficit is an indicator that a nation consumes more than it produces and does not save enough domestically to fund its investment needs (see below). The United States has run trade deficits annually for most of the post-WWII period. In 2019, the United States had a global trade deficit in goods and services of $576.9 billion. The deficit is driven by goods trade—the U.S. trade deficit in goods was $864.3 billion (down from a peak of $837.3 billion in 2006) (see **Figure 9**). A large and growing level of U.S. trade is in services, where the United States runs annual surpluses, exporting more than it imports. In 2019, the services trade surplus was $287.5 billion.

Figure 9. U.S. Global Trade Deficit, 1996-2019

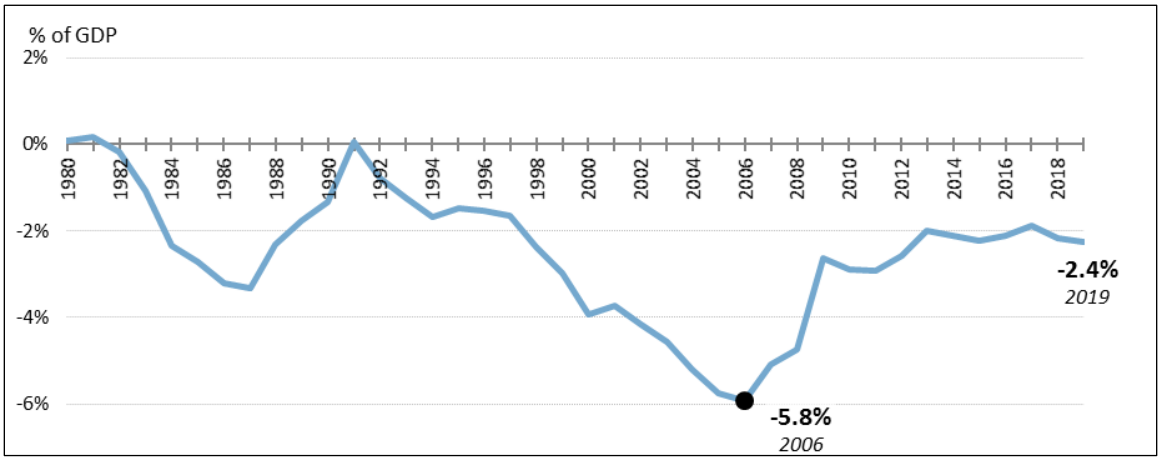


Source: Bureau of Economic Analysis.

The broadest measure of a country's trade balance is the current account, which includes trade in goods, services, net income (payments and receipts on foreign investments), and some official, or government, flows. The United States has experienced an annual current account deficit since the mid-1970s. In 2019, the United States had a $480.2 billion current account deficit, down from its historic peak of $816.6 billion in 2006. The shrinking deficit was largely due to the economic slowdown following the global financial crisis in 2008, which significantly reduced U.S. (and global) demand for imports, and the decline of commodity prices and U.S. oil imports in the wake of the shale oil and gas boom. The U.S. trade deficit relative to the size of the economy provides a metric to examine trends over time and compare with other countries. The U.S. current account deficit relative to GDP reached a historic high of 5.8% of GDP in 2006, but it has declined since to 2.4% of GDP as of 2019 (see **Figure 10**).[64]

[64] Among major advanced economies, the United Kingdom, Canada, and United States have typically run large current account deficits as a percent of GDP in recent years, suggesting savings are not enough to meet investment needs—such countries are net borrowers and typically run current account deficits. Countries with large current account surpluses, such as the Netherlands, Germany, and South Korea, save more than they need for domestic investment, which makes them net global lenders.

Figure 10. U.S. Current Account Balance, 1980-2019



Source: IMF, World Economic Outlook database, October 2020.

Why does the United States run a trade deficit?

Put simply, the U.S. global trade deficit reflects that the United States consumes more than it produces and imports more than it exports. Most economists argue that the trade deficit stems largely from U.S. macroeconomic policies, primarily an imbalance between domestic savings and total investment in the economy. The most significant cause of the trade deficit is the low rate of U.S. domestic savings by households, firms, and the government relative to its investment needs.[65] To make up for that shortfall, Americans must borrow from countries abroad (such as China) with excess savings.[66] Such borrowing enables Americans to enjoy a higher rate of economic growth than would be obtained if the United States had to rely solely on domestic savings.[67] This boosts U.S. consumption and demand for imports, producing a trade deficit. A number of other factors can affect the size of the U.S. trade deficit in the short run, such as differences in economic growth between countries.[68] The role of the dollar is also an important factor in sustaining the U.S. trade deficit. As a de facto global reserve currency, the U.S. dollar facilitates the trade deficit by broadening the availability of dollars and dollar-denominated assets. Foreign investors seek dollar-denominated assets as safe-haven assets, especially during times of economic stress. As long as foreigners (both governments and private entities) are willing to loan the United States the funds to finance the lack of savings in the U.S. economy, such as through buying U.S. Treasury securities, the trade deficit can continue.

What role do foreign trade barriers play in causing trade deficits?

Some policymakers view the size of U.S. bilateral trade deficits with certain countries—such as China, the largest single source of the U.S. overall trade deficit—as an indicator that the trade

[65] For more detail and analysis, see CRS Report R45243, *Trade Deficits and U.S. Trade Policy*, by James K. Jackson.

[66] This occurs, for example, when households buy on credit, businesses invest with borrowed funds, and the federal government runs budget deficits.

[67] U.S. gross national savings as a percentage of GDP has been among the lowest of major global economies. If the United States could draw only from domestic savings to fund investment demand, real interest rates (and the costs of borrowing) would likely increase significantly, which could negatively affect U.S. economic growth in the short run.

[68] For example, more rapid U.S. economic growth relative to its major trading partners could cause U.S. imports to rise faster than exports, thus increasing the trade deficit. In addition, falling oil prices can reduce the cost of oil imports.

relationship is "unfair" and the result of market-distorting trade policies, such as trade barriers, subsidies, and discriminatory regulations. Such policies may potentially affect the volume of bilateral trade in specific products and with particular countries, but they have less effect on the size of the global U.S. trade deficit, which is largely a reflection of the low level of U.S. savings. The evidence suggests that high tariffs and trade barriers are not correlated with smaller overall trade deficits.[69] If protectionist trade measures were reduced in certain countries, U.S. exporters might sell more products. However, if U.S. overall consumption and savings behavior did not change, increased demand for imports would leave the overall U.S. trade deficit relatively unchanged, all things held equal. Similarly, the reduction or imposition of protectionist trade measures in one country might simply result in trade diversion, the shifting of trade from one country to another, and do little to change the overall trade deficit.

Bilateral trade balances provide a useful snapshot of the U.S. trade relationship with a particular country, but they are influenced by various factors beyond trade barriers including the overall level of economic development and relative rates of economic growth, abundance of raw materials, and rates of technological change.[70] Moreover, bilateral trade deficits with certain trading partners often marks complex supply chain relationships, where one country (such as China) is the final point of assembly for products (such as iPhones) or a supplier of inputs and components, where the added value that occurred in one country is relatively small compared to the value that occurred in other parts of the supply chain.[71]

How does the trade deficit affect the exchange value of the dollar?

Without sufficient inflows of capital, a trade deficit causes other parts of the economy to adjust, in particular a country's exchange rate (e.g., the value of the dollar relative to the yen or euro). Net imports cause a surplus of U.S. dollars to flow abroad. If converted to other national currencies, the dollar's excess supply tends to lower its value relative to other currencies. In practice, this should make imports more expensive for Americans and exports cheaper for foreign buyers, gradually leading to a smaller trade deficit. However, the dollar holds a special status in global financial markets; countries use the dollar both as a medium of exchange and reserve currency. The U.S. economy is a safe haven for storing wealth and an attractive destination for investments, especially for countries with high savings rates, like China. When foreigners exchange their currency for U.S. dollars to buy U.S. Treasury securities, for example, the dollar appreciates, which makes U.S. exports more expensive. In addition, foreign governments (with large domestic savings) have intervened to keep the value of their currency from appreciating relative to the dollar by buying dollars and investing them back in the United States. Some analysts contend that past intervention in currency markets by China and other countries seeking to hold down the value of their currencies in order to boost exports has hampered the realignment of global trade balances.[72]

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[69] See Joseph Gagnon, "We Know What Causes Trade Deficits," Peterson Institute for International Economics, April 7, 2017, https://piie.com/blogs/trade-investment-policy-watch/we-know-what-causes-trade-deficits.

[70] CRS In Focus IF10619, *The U.S. Trade Deficit: An Overview*, by James K. Jackson.

[71] See Mary Amiti, Caroline Freund, and Tyler Bodine-Smith, "Why Renegotiating NAFTA Could Disrupt Supply Chains," Federal Reserve Bank of New York *Liberty Street Economics* (blog), April 18, 2017, http://libertystreeteconomics.newyorkfed.org/2017/04/why-renegotiating-nafta-could-disrupt-supply-chains.html.

[72] See C. Fred Bergsten and Joseph E. Gagnon, *Currency Manipulation, the US Economy, and the Global Economic Order*, Peterson Institute for International Economics, Policy Brief 12-25, December 2012.

Is the trade deficit a problem for the U.S. economy?

As discussed, trade deficits reflect the savings/investment shortfall, which means the United States is borrowing from abroad. One major concern is the debt accumulation from sustained trade deficits. Ultimately, whether borrowing to finance imports is worthwhile depends on whether those funds are used for greater investments in productive capital with high returns that raise future standards of living, or whether they are used for current consumption.[73] If U.S. consumers, business, and the government are borrowing to finance new technology, equipment, or other productivity-enhancing products, borrowing results in a deficit and can be paid off because such investments are expected to result in a higher long-run economic growth. However, borrowing to finance consumer purchases (e.g., clothes, household electronics) pushes repayment to future generations, without investments to raise the ability to finance those repayments. Some economists also warn that under certain circumstances, a rising U.S. trade deficit could spark a large and sudden fall in the value of the dollar, risking financial turmoil in the United States and abroad.[74] For example, foreigners could lose faith in U.S. ability to honor its debt or no longer see the United States as an optimal place to invest in.[75]

Many economists argue that attempting to reduce the U.S. trade deficit without addressing the underlying macroeconomic imbalances could negatively affect the economy, including reducing economic growth, and do little to affect the trade balance in the long run.[76] The current account deficit could be reduced by boosting domestic savings (i.e., reducing domestic consumption and government budget deficits) or reducing foreign investment (i.e., reducing borrowing from abroad). Realigning exchange rates through the depreciation of the dollar, or ensuring other countries are not intervening in the market to artificially devalue their currencies, is another means. Trade policies are generally not viewed as the most effective policy tools for affecting the overall trade balance.[77]

Sector-Specific Issues in U.S. Trade

How important are manufactured goods in U.S. trade?

In 2019, the United States exported $1.4 trillion in manufactured goods and imported $2.2 trillion, creating a merchandise trade deficit of $793 billion (see **Figure 11**). U.S. manufactures exports accounted for 54% of total U.S. exports of goods and services and 70% of total U.S. imports of goods and services.[78] Manufactures share of U.S. *exports* fell 4 percentage points over the past decade, as the services export share expanded; manufactures share of U.S. *imports*

[73] See *The Annual Report of the Council of Economic Advisers*, February 2018, pp. 226-227.

[74] See for example, C. Fred Bergsten, "The Dollar and the Deficits: How Washington Can Prevent the Next Crisis," *Foreign Affairs*, vol. 88, no. 6, November/December 2009.

[75] According to CBO projections, federal debt held by the public is projected to rise from 81% of GDP in 2020 to 98% in 2030 (its highest percentage since 1946). See *The Budget and Economic Outlook: 2020 to 2030*, January 2020, https://www.cbo.gov/publication/56073.

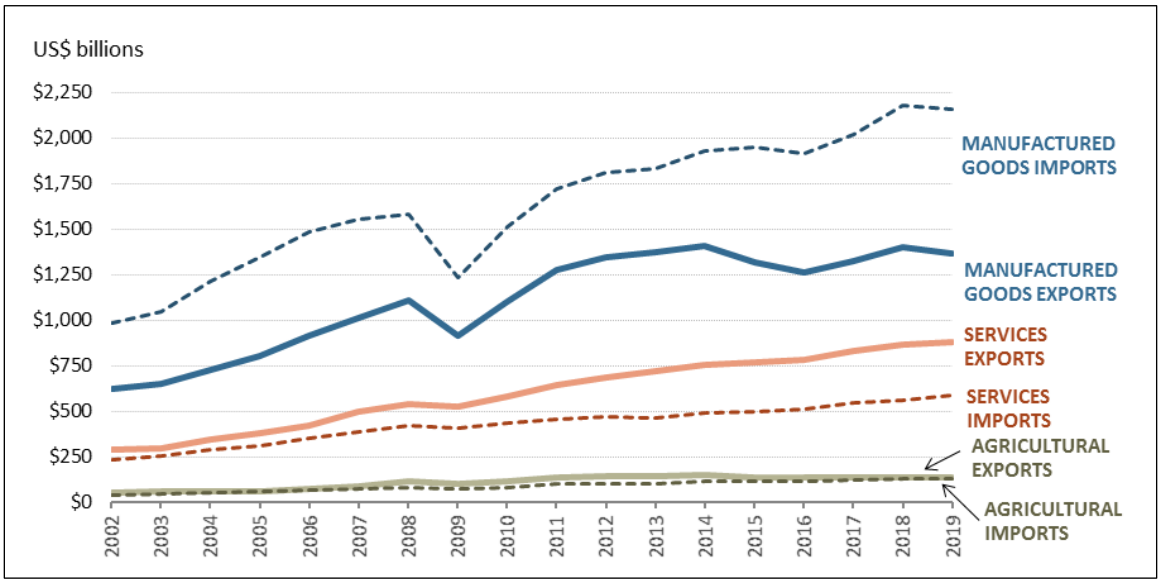
[76] CRS In Focus IF10619, *The U.S. Trade Deficit: An Overview*, by James K. Jackson.

[77] As the Council of Economic Advisers stated, "Fiscal and monetary policies may be more important than trade policies in determining the magnitude of trade balances.... Policies that try to affect the trade balance without considering the broad current account balance, or vice versa, will be hard-pressed to succeed in the long run." See *The Annual Report of the Council of Economic Advisers*, February 2018, pp. 227-228.

[78] In 2019, U.S. total exports and imports were $2.5 trillion and $3.1 trillion, respectively. Considering only U.S. goods trade, manufactures exports and imports accounted for more than 80% share. For data, see https://go.usa.gov/xnexE.

expanded by 7 percentage points. Top U.S. exports and imports by subsector included transportation equipment, computer and electronic products, chemicals, and machinery.

Figure 11. U.S. Trade, by Sector



Sources: U.S. Census Bureau and Bureau of Economic Analysis.

Note: Manufactured goods based on North American Industry Classification System (NAICS) commodity codes (31-33); agricultural goods based on Harmonized System codes specified by the U.S. Department of Agriculture.

Is the U.S. manufacturing sector shrinking due to increased trade?

The growth of global value chains has transformed U.S. manufacturing in certain industries, with the expansion of production that requires advanced technology but relatively less labor. As a result, for many products, labor-intensive activities like assembly have moved abroad, while activities such as design, product development, and distribution increasingly drive the U.S. manufacturing process. Reports of factory closings and layoffs, such as at the Carrier plant in Indiana[79] and GM factories in the Midwest,[80] and labels indicating merchandise made in China, Mexico, or other countries, have reinforced the perception that the U.S. manufacturing sector is shrinking. Many experts consider relative changes in output and employment, among other metrics, to examine the health of the sector (see **Figure 12**). Such data paint a mixed picture. The United States has seen a long-term decline in employment in manufacturing.[81] At the same time, manufacturing output has increased, reflecting increased productivity, with fewer workers needed for a given level of production. While the sector's importance relative to the economy and relative to services in terms of value-added as a share of GDP has declined, manufacturing remains a significant component of the U.S. economy.[82]

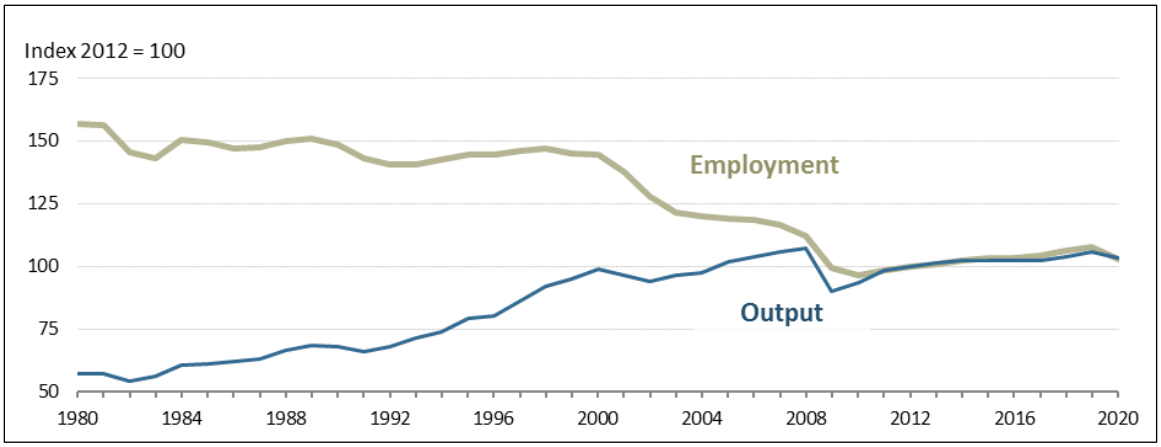
[79] Amanda Becker, "More layoffs at Indiana factory Trump made deal to keep open," Reuters, January 11, 2018.

[80] David Welch, "GM Plans More Than 14,000 Job Cuts, Seven Factory Closings, *Bloomberg*, November 26, 2018.

[81] According to BLS data, in 2019, employment in manufacturing accounted for 8.5% of total nonfarm employment, compared to 20.7% in 1980; the services share expanded by about 20 percentage points over the same time period.

[82] For more information see CRS Report R44546, *The Economic Effects of Trade: Overview and Policy Challenges*, by James K. Jackson.

Figure 12. Real Output and Employment in the U.S. Manufacturing Sector



Sources: Bureau of Labor Statistics and Bureau of Economic Analysis.

Note: Annual values are averages of monthly data.

Falling employment and the declining importance of physical production in the manufacturing process are not unique to the United States and have occurred in most advanced economies. Although some changes in the sector may be a result of factors specific to the United States, others may be due to changes related to technology, consumer preferences, or broader macroeconomic factors.[83] The role of trade has been widely debated. Some estimate that increased imports from China contributed to the steep decline in U.S. manufacturing employment in the 2000s;[84] others estimate that job loss in manufacturing was substantially offset by job gains in services, due to the expansion of U.S. exports globally.[85] Others contend that trade has played a less dominant role compared to automation and other factors.[86] Taking a broader view, a fundamental restructuring of the U.S. manufacturing sector was underway for more than two decades prior to China joining the World Trade Organization (WTO).[87]

Measuring manufacturing activity can be challenging, and existing data may not fully capture how manufacturing has changed, the sources of employment, and how value is created (see above).[88] Manufacturing remains a significant component of the U.S. economy by several measures, for example, U.S. manufacturers account for more than 60% of all private-sector research and development (R&D), and more than half of U.S. exports.[89] While the U.S. share of

[83] CRS Report R42135, *U.S. Manufacturing in International Perspective*, by Marc Levinson.

[84] See Daron Acemoglu, David Autor, David Dorn, Gordon H. Hanson, and Brendan Price, "Import Competition and the Great US Employment Sag of the 2000s," *Journal of Labor Economics*, vol. 34, no. S1 (January 2016): S141-S198.

[85] Robert Feenstra, Hong Ma, Akira Sasahara, and Yuan Xu, "Reconsidering the 'China shock' in trade,"*VoxEu*, January 18, 2018, https://voxeu.org/article/reconsidering-china-shock-trade.

[86] For example see Robert Z. Lawrence, *Recent U.S. Manufacturing Employment: The Exception that Proves the Rule*, Peterson Institute for International Economics, Working Paper 17-12, November 2017.

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

[88] For example, some of the "decline" in manufacturing may have resulted from reclassification of jobs in the data, from manufacturing to services.

[89] National Association of Manufacturers, "Facts about Manufacturing," https://www.nam.org/facts-about-manufacturing/.

global manufacturing value-added has declined, the United States remains a top global manufacturer.[90]

How important are agricultural goods in U.S. trade?

In 2019, the United States exported $136 billion in agricultural goods and imported $131 billion, creating a trade surplus of $5 billion—a surplus that has narrowed in recent years (see **Figure 11**).[91] U.S. agricultural exports accounted for 8% of total U.S. goods exports and 5% of total U.S. goods imports. Agriculture's share of total U.S. exports has fallen slightly over the past decade,[92] while the import share remains on trend. Although small relative to trade in manufactured goods, trade remains a significant component of the U.S. agricultural sector, with exports accounting for about 20% of total farm production by value.[93] Foreign markets are a major outlet for many agricultural goods; for example, cotton and soybeans rely on other countries for absorbing over three-fourths and half of U.S. output, respectively. According to the U.S. Department of Agriculture, imports of certain products, such as coffee, cocoa and spices, fish, and juices, accounted for a large share of U.S. food consumption in recent years.[94]

What is trade in services, and how is it different from goods trade?

"Services" refers to an expanding range of economic activities, such as audiovisual, construction, computer and related services, energy, express delivery, e-commerce, financial, professional, retail and wholesaling, transportation, tourism, and telecommunications.[95] Services not only function as end-use products, but they also facilitate the rest of the economy. For example, transportation services move intermediate products along global value chains and final products to consumers; telecommunications services open e-commerce channels; and financial services provide credits for the manufacture of goods. Intermediate services embedded within a supply chain can include R&D, design and engineering, and business services.

As with trade in goods, foreign barriers may prevent U.S. trade in services from expanding to its full potential, but services barriers are often different from those faced by goods suppliers. Many barriers to goods trade—tariffs and quotas, for example—are at the border. By contrast, restrictions on services trade occur largely within the importing country as "behind the border" barriers. Some restrictions are in the form of discriminatory regulations that may favor domestic service providers over foreign service providers. Because services transactions more often require direct contact between the consumer and provider, many of the trade barriers faced by companies

[90] In 2019, the United States ranked second behind China, with $2.3 trillion in gross value-added in manufacturing compared to $4.0 trillion in China. This is the actual value of manufacturing, excluding inputs and raw materials, based on data from the U.N. National Accounts Main Aggregates Database, https://unstats.un.org.

[91] U.S. Census Bureau Trade Data, accessed via U.S. Department of Agriculture (USDA), Foreign Agricultural Service (FAS), December 2020, https://www.fas.usda.gov/databases/global-agricultural-trade-system-gats. For more analysis on agricultural trade issues, see CRS Report R46653, *Major Agricultural Trade Issues in the 117th Congress*, coordinated by Anita Regmi.

[92] The decline in value of exports in recent years mainly reflected lower market prices for bulk commodities.

[93] USDA, Economic Research Service (ERS), "Agricultural Trade: Exports Expand the Market for U.S. Agricultural Products," https://www.ers.usda.gov/data-products/ag-and-food-statistics-charting-theessentials/agricultural-trade/.

[94] U.S. Department of Agriculture, "Agricultural Trade," https://go.usa.gov/xnex9. USDA has not updated this data since 2015.

[95] For more detail see CRS Report R43291, *U.S. Trade in Services: Trends and Policy Issues*, by Rachel F. Fefer, and CRS In Focus IF11706, *International Trade in Services*, by Rachel F. Fefer.

relate to the ability to establish a commercial presence in the consumers' country in the form of direct investment or to the temporary movement of providers and consumers across borders.

How important are services in U.S. trade?

In 2019, the United States exported $876 billion in services and imported $588 billion, creating a trade surplus of $287 billion (see **Figure 11**). U.S. services exports accounted for 35% of total U.S. exports of goods and services, while services imports accounted for 19% of total U.S. imports.[96] As services account for over 80% of U.S. employment and 79% of U.S. GDP, trade in services, both as exports and as inputs to other exported products, can have a broad impact across the U.S. economy. Unlike trade in goods, each year the United States exports more services than it imports, thus surpluses in services trade have partially offset U.S. trade deficits in goods trade.

Conventional trade data may underestimate trade in services because the data are not measured on a value-added basis and do not attribute any portion of the traded value of manufactured and agricultural products to services inputs. Intermediate services embedded within a value chain as inputs include not only transportation and distribution to help move goods along, but also R&D, design and engineering, and business services. The independent value of these services (as opposed to the value of the final product) can be captured in trade in value-added statistics.[97] As manufacturing and agriculture grow more complex and technologically advanced, their consumption of value-added services also grows.

How is digital trade different from other trade in goods and services?

Digital trade includes not only end-products such as movies, software, or video games; it also serves as a means to facilitate economic activity, potentially enhancing productivity and competitiveness.[98] Examples of digital trade include online shopping; transmission of information to manage business operations; online health or educational services; communication channels, such as email; and financial services used in e-commerce or electronic trading. Information and communication technologies (ICT) services are outpacing the growth of trade in ICT goods.

As with traditional trade barriers, digital trade constraints can be classified as tariff or nontariff barriers. Nontariff barriers establish restrictions that may affect what a firm offers in a market or how it operates. Because digital trade is intangible and does not require direct interaction between individuals, trade barriers are often in the form of localization requirements that restrict the flow of commercial data. Digitally delivered exports and services in particular rely on cross-border data flows. But trade in manufactured goods and agricultural products also increasingly depends on data flows. For example, farmers may use real-time satellite data to optimize the productivity of crops and soil. Data transfer regulations that restrict cross-border data flows or require use of locally based servers or infrastructure, so-called data localization barriers, may limit the type of services that a firm can sell or how it can communicate and share data with subsidiaries or headquarters abroad. Such restrictions may also prevent the ability of providers that offer or rely on cloud-computing from entering a market.

The COVID-19 pandemic, with social distancing enforcement, lockdowns, and other measures, demonstrated the increasing importance of digital trade, and led to spikes in both business-to-

[96] In 2019, U.S. total exports and imports were $2.5 trillion and $3.1 trillion, respectively. For data, see https://go.usa.gov/xneax.

[97] "Trade in value-added" estimates the sources of value (by country and industry) that are added in producing goods and services for export and import. See OECD, http://www.oecd.org/sti/ind/whatistradeinvalueadded.htm.

[98] For more information, see CRS In Focus IF10770, *Digital Trade*, by Rachel F. Fefer.

consumers and business-to-business digital trade. The growth reflected a surge in online shopping, social media use, internet telephony, teleconferencing and teleservices (such as education and medicine), and streaming of videos and films. Analysts expect that many of the digital habits and practices that consumers and workers developed during the pandemic will continue and accelerate technology adoption, further spurring digital trade.

Formulation of U.S. Trade Policy

Trade Policy Objectives and Functions

What have been the overall objectives of U.S. trade policy?

The United States was a key architect of the global economic order that evolved after World War II, which established multilateral institutions to advance a rules-based, open trading system. Historically, U.S. trade policy has focused on supporting economic growth and jobs through trade, liberalizing markets by reducing trade and investment barriers through trade agreements and negotiations, enforcing trade commitments and related laws, and providing time-limited relief to companies and workers facing unfair or injurious import competition. Another key objective of U.S. trade policy has been to advance U.S. strategic goals by supporting economic development and integration of developing countries including through unilateral preferential tariff programs, strengthening regional alliances, and extending U.S. influence abroad. U.S. administrations outline key trade policy objectives in an annual trade policy agenda established by the U.S. Trade Representative (USTR). Over the past four years, the Trump Administration emphasized trade policies that support U.S. national security and preserve national sovereignty; negotiating "new and better trade deals"; strictly enforcing U.S. trade laws and protecting U.S. rights under trade agreements; and reforming the multilateral trading system.[99] The Biden Administration has pledged to focus on enforcement of U.S. trade agreement commitments, particularly labor and environmental protections, pairing trade policy with domestic policy tools to spur greater production in the United States, and working with allies to confront global trade challenges.[100]

What are the key functions of U.S. trade policy?

Key trade functions of the U.S. government include formulating and coordinating trade policy; negotiating trade and investment agreements; enforcing U.S. trade laws and U.S. rights under trade agreements; and administering trade and investment programs, such as export financing, import inspection and safety, and trade adjustment assistance. Congress plays a major role in U.S. trade policy through its legislative and oversight authority, working together with the executive branch to negotiate and implement trade agreements.

The USTR and multiple other U.S. agencies are generally involved in implementing trade policy, making interagency coordination an important part of the process.[101] By statute, the USTR is the President's principal advisor on trade policy, chief U.S. trade negotiator, and head of the interagency trade policy coordinating process. Certain other agencies have primary roles in specific regards, such as the Commerce Department, which holds operational responsibility over key trade programs, and the Department of Agriculture, which aims to promote and regulate U.S.

[99] Office of the U.S. Trade Representative, *2019 Trade Policy Agenda and 2018 Annual Report*, February 2018.

[100] Biden-Harris Transition, "Keynote Remarks as Prepared for Delivery by USTR-designate Katherine Tai," January 12, 2021, at https://go.usa.gov/xAy5A.

[101] See CRS In Focus IF11016, *U.S. Trade Policy Functions: Who Does What?*, by Shayerah Ilias Akhtar.

agricultural trade. Agency roles have evolved over time, both through legislative and administrative actions.

Role of Congress

What is the role of Congress in making trade policy?

The U.S. Constitution designates Congress as the primary authority over trade policy. Article 1, Section 8, of the U.S. Constitution expressly grants Congress the power "To lay and collect Taxes, Duties, Imposts and Excises" and "To regulate Commerce with foreign Nations, and among the several States," as well as the general provision "To make all Laws which shall be necessary and proper" to carry out these specific authorities. Congress exercises this power in many ways, such as through the enactment and oversight of tariff schedules and trade remedy laws, and the approval and implementation of reciprocal trade agreements.

How does Congress make trade policy?

Congress exercises trade policy authority through the enactment of laws authorizing trade programs and measures to address unfair and other trade practices. Additionally, it conducts oversight of the implementation of trade policies, programs, and agreements in areas such as tariffs, nontariff barriers, trade remedies, import and export policies, and economic sanctions, as well as trade policy functions of the federal government. Congress also sets trade negotiating objectives in law, through trade promotion authority (TPA, see "What is Trade Promotion Authority (TPA)?"); requires formal notification and consultation from the executive branch and opportunity to provide advice on trade negotiations; and conducts oversight hearings on trade programs and agreements to assess their conformity to U.S. law and congressional intent. Congress has delegated certain powers to the President to negotiate reciprocal trade agreements and take certain executive action regarding trade policy. In 1934, Congress enacted the Reciprocal Trade Agreements Act, which authorized the President to enter into reciprocal agreements to reduce tariffs within congressionally preapproved levels, and to implement the new tariffs by proclamation without additional legislation. Congress renewed this authority periodically until the 1960s. Subsequently, Congress enacted the Trade Act of 1974, combining tariff proclamation authority with a broader mandate for the executive branch to open markets and to negotiate nondiscriminatory international trade norms for nontariff barriers as well.

Over the years, Congress has authorized a number of trade laws that delegate a range of authorities to the President to investigate and take actions on imported goods for national security purposes (Section 232, Trade Expansion Act of 1962); trade remedies to counter dumping and subsidy practices by other countries; unfair trade practices (Section 301, Trade Act of 1974); or safeguard measures (Section 201, Trade Act of 1974). The Trump Administration used these provisions to impose steel and aluminum tariffs on major trading partners and on a range of Chinese products for what the Administration deems as unfair trading practices, including intellectual property theft and other activities (see "Tariffs and Trade Remedies").

Additionally, Congress has an important role in international investment and finance policy. Under its treaty powers, the U.S. Senate considers bilateral investment treaties (BITs), and Congress sets the level of U.S. financial commitments to the multilateral development banks (MDBs), including the World Bank and the International Monetary Fund. It also funds the Office of the U.S. Trade Representative (USTR) and other trade agencies, and authorizes the activities of various agencies, such as the Export-Import Bank (Ex-Im Bank) and the newly operational U.S. International Development Finance Corporation (DFC). Congress also has oversight

responsibilities over these institutions, as well as the Federal Reserve and the U.S. Department of the Treasury, whose activities can affect international capital flows and short-term movements in the international exchange value of the U.S. dollar. Congress also closely monitors developments in international financial markets that could affect the U.S. economy.

What committees lead in exercising congressional authority over trade?

Because of the revenue implications inherent in most trade agreements and trade policy changes, the House Ways and Means Committee and Senate Finance Committee have primary responsibility for trade matters. Each committee has a subcommittee dedicated exclusively to trade issues. Other committees may also have a role should trade agreements, policies, and other trade issues include matters under their jurisdiction. For example, the House Foreign Affairs and Senate Banking Committees have jurisdiction over export controls. The foreign affairs committees in both chambers also examine trade relationships as part of their broader oversight of foreign relations.

TPA established Congressional Advisory Groups on Negotiations (CAGs) to consult and provide advice to USTR before and during trade agreement negotiations. Separate CAGs are established for both houses: a House Advisory Group on Negotiations (HAG), chaired by the chair of the Ways and Means Committee, and a Senate Advisory Group on Negotiations (SAG), chaired by the chair of the Finance Committee. CAGs can receive briefings and can access trade negotiating documents.

How can individual Members of Congress affect trade policy decisions?

Individual Members affect trade policy first as voting representatives who collectively determine the statutes governing trade matters. They may also exercise influence as sitting members on relevant committees, in testimony before committees whether or not they are members, in written letters to USTR weighing in on trade policy decisions, and in exercising informal influence over other Members through the exercise of the political authority and power invested in them by the electorate.

What is Trade Promotion Authority (TPA)?

In 2021, President Biden may seek and Congress may debate whether to grant Trade Promotion Authority (TPA) to his Administration. TPA is a primary means by which Congress asserts its constitutional authority over trade policy, particularly U.S. trade agreements. TPA—the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (P.L. 114-26)—which was signed by President Obama on June 29, 2015, is in place until July 1, 2021.

TPA: Key Facts

- First enacted in 1974
- Renewed 4 times
- Was used to consider 15 FTAs and two multilateral GATT/WTO rounds
- TPA 2015 expires on July 1, 2021

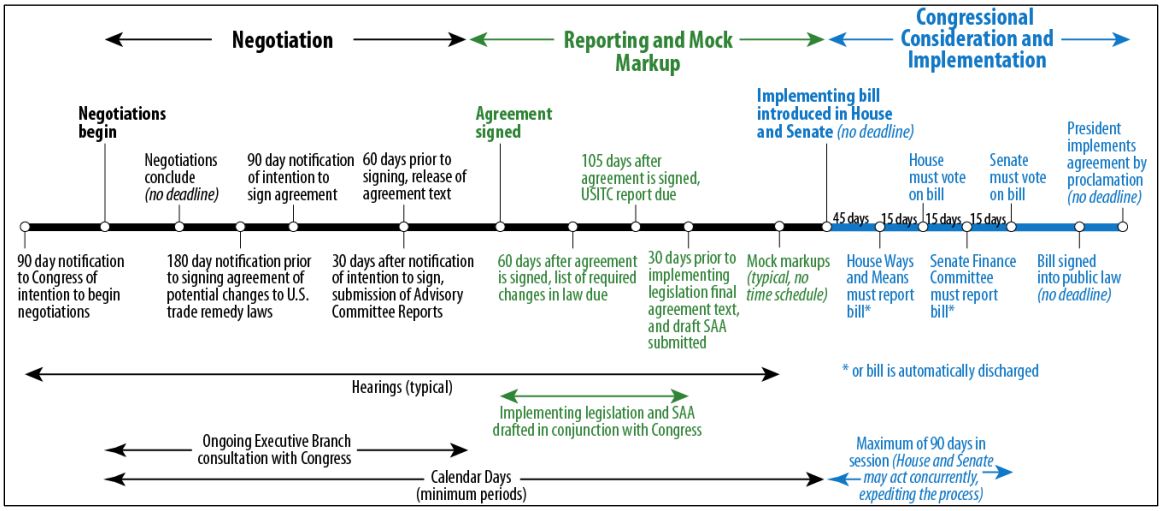
Under TPA, an agreement the President concludes (signs) by that date is eligible for consideration under TPA. TPA authorizes qualifying implementing legislation for trade agreements to be considered under expedited legislative procedures—limited debate, no amendments, and an up or down vote—provided the President observes certain statutory obligations in negotiating trade agreements. These obligations include achieving progress in meeting 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 the consideration of implementing legislation for trade agreements that require changes in domestic law. Another rationale for TPA has been to bolster the negotiating credibility of the executive branch by ensuring that trade agreements will not be changed once concluded. However, more recent FTAs, including the USMCA, have undergone additional negotiation after conclusion, perhaps eroding some of this rationale for TPA. In addition, the Trump Administration concluded agreements with Japan and Brazil, negotiating outcomes on nontariff barriers not requiring changes to U.S. law or a reduction of tariffs through proclamation authority that bypassed congressional consideration.

Since the authority was first enacted in the Trade Act of 1974 (P.L. 93-618), Congress has renewed TPA four times (1979, 1988, 2002, and 2015) and amended it in 1984 to allow for the negotiation of bilateral agreements. In addition, TPA legislative procedures are considered rules of the House and Senate, and, as such, can be changed at any time. Precedent exists for implementing legislation to have its eligibility for expedited treatment under TPA removed by Congress. The 117th Congress may debate granting TPA to the Biden Administration.

Figure 13. TPA Procedures Timeline

TPA-2015 (P.L. 114-26)



Source: CRS.

Role of the Executive Branch

What are the functions of the executive branch in U.S. trade policy?

While the Constitution designates Congress as the primary authority over trade policy, the executive branch executes trade policy in various ways, through delegated authorities (see "Role of Congress" above). Under the Constitution, the President has the responsibility for conducting the nation's foreign relations and negotiating treaties with other nations. The executive branch negotiates, implements, and monitors U.S. trade agreements. The executive branch is also responsible for customs enforcement and collection of duties; implementation of trade remedy and other trade laws, through which Congress has delegated to the executive branch certain tariff authorities; budget proposals for trade programs and agencies; and administering export and

import policies, among other functions. In addition, the President sets the overall domestic and foreign policy frameworks that inform trade policy.

Who is in charge of U.S. trade policy?

The President directs overall trade policy in the executive branch and performs specific trade functions granted by statute, such as adjusting tariff rates through delegated authority. The chief adviser on trade policy to the President is the USTR, a Cabinet-level appointment. The USTR has primary responsibility for developing, coordinating, and implementing trade policy, as well as negotiating multilateral, regional, and bilateral trade agreements and enforcing U.S. trade laws. The USTR reports annually on the President's trade policy agenda—due to Congress by March 1st each year—and on foreign trade barriers.[102] Congress created the USTR in 1962 (originally the Office of the Special Representative for Trade Negotiations, STR) to heighten the profile of trade and provide better balance between competing domestic and international interests in the formulation and implementation of U.S. trade policy and negotiations, previously managed by the State Department. Congress expanded its role in the 1970s and 1980s, as part of the Executive Office of the President and cabinet level.[103]

Many trade functions have been delegated by Congress and the President to various departments and agencies within the executive branch. These agencies administer the government's trade functions, coordinating U.S. positions through an interagency process and with input from public and private sector advisory groups. Other key agencies with trade policymaking and enforcement responsibilities include the Departments of Commerce, Agriculture, State and the Treasury. The Departments of Homeland Security and Labor are also involved in trade enforcement.

What is the interagency process?

The USTR has primary responsibility for trade negotiations and trade policy decisions across the U.S. government or among government agencies or within the executive branch. However, such trade responsibilities and decisions often involve issues that overlap or fall within the jurisdiction of other Cabinet-level departments, requiring a multidepartment interagency process. To implement this process, Congress initially established the Trade Policy Committee, chaired by USTR and consisting of the Secretaries of the Treasury, Commerce, State, Agriculture, Labor, and other department heads as USTR deems appropriate. Two sub-Cabinet groups were subsequently established—the Trade Policy Review Group (TPRG, sub-Cabinet or deputies level) and the Trade Policy Staff Committee (TPSC, staff level), composed of some 20 agencies. The executive branch also solicits advice from a three-tier trade advisory committee system mandated by Congress that consists of private sector and nonfederal government representatives (see "Role of the Private Sector and Other Stakeholders").

When does the President get involved in trade decisions?

The President is responsible for influencing the direction of trade policy and legislation, signing trade legislation into law, and making other specific decisions on U.S. trade policies and programs when the President deems that the national interest or the political environment requires

[102] For the latest reports for 2020, see https://go.usa.gov/xAy5J and https://go.usa.gov/xAy5S

[103] For example, "Section 141 of the Trade Act of 1974 provided a legislative charter for STR as part of the Executive Office of the President, making it responsible for the trade agreements programs under the Tariff Act of 1930, the Trade Expansion Act of 1962, and the 1974 act. The act also made STR directly accountable to both the President and the Congress for these and other trade responsibilities and elevated the Special Trade Representative to cabinet level." See "History of the United States Trade Representative," https://ustr.gov/about-us/history.

direct participation. This can take place in many areas of trade policy, such as requesting TPA, initiating critical trade remedy cases and/or deciding whether to impose recommended import restrictions in certain investigations. In addition, the President can influence trade relations through meetings or communications with foreign heads of state, and regarding other trade policy areas subject to or requiring high political visibility.

Role of the Private Sector and Other Stakeholders

What is the formal role of the private sector and other stakeholders in the formulation of U.S. trade policy?

The role of the private sector and other stakeholders in the formulation of U.S. trade policy is embodied in a three-tiered committee system that Congress established in Section 135 of the Trade Act of 1974, as amended. The advisory system consists of 28 committees (with about 700 citizen advisors), which is administered by USTR's Office of Intergovernmental Affairs & Public Engagement (IAPE) in cooperation with other agencies.[104] The three-tier system consists of (1) the President's Advisory Committee for Trade Policy and Negotiations (ACTPN); (2) five general policy advisory committees dealing with environment, labor, agriculture, Africa, and intergovernmental issues; and (3) 20 technical advisory committees in the areas of industry and agriculture.[105] Committees were set up to ensure that U.S. public and private sector views are considered in trade policies and programs. The advisory system provides information and advice on negotiating objectives and bargaining positions for trade agreements, among other issues.[106]

What is the informal role of the private sector and other stakeholders?

The private sector, nongovernment organizations (NGOs), labor groups, and other stakeholders shape U.S. trade policy in a number of other ways. For example, representatives from industry and NGOs may be invited to testify before congressional committees. Private sector representatives are also invited or requested to testify before the U.S. International Trade Commission, USTR, the Department of Commerce, or other government bodies to provide assessments of the potential impact of pending trade negotiations on their industries and sectors. In addition, the executive branch regularly seeks comments from interested stakeholders through *Federal Register* notices regarding a variety of trade initiatives, including new trade negotiations, eligibility for preferential trading programs, and trade investigations, including potential use of presidential tariff authorities.[107] Private sector, NGOs and labor groups also lobby Congress and the executive branch to promote their interests in U.S. trade policies and trade agreements.

Why do groups attempt to lobby on trade decisions?

Trade is an integral part of the U.S. economy. Virtually all kinds of agricultural and manufactured goods are tradeable—they can be exported and imported. In addition, a growing number of

[104] See *Statement of Lisa Garcia, Assistant U.S. Trade Representative for Intergovernmental Affairs & Public Engagement, Before the House Ways and Means Committee*, Hearing on Trade Advisory Committee System, July 21, 2009.

[105] For a list of the main advisory committees, see https://ustr.gov/about-us/advisory-committees.

[106] For an example of trade advisory committee reports evaluating the USMCA, see https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/advisory-committee.

[107] For example, see USTR, "Notice of Public Hearing in Section 301 Investigation of Vietnam's Acts, Policies, and Practices Related to the Import and Use of Illegal Timber," 85 *Federal Register* 75398, November 25, 2020, at https://go.usa.gov/xAyNZ.

services—once considered nontradeable because of their intangibility—can be bought and sold across borders because of technological advancements. As a result, implementing trade policy can affect a broad spectrum of interests in the United States. For some industries, firms, and workers, congressional decisions to support a particular trade agreement or rulings on antidumping and other cases could affect both employment and economic growth; those decisions also influence product choices and prices facing U.S. consumers. Such groups are also concerned with obtaining greater market access in various countries. In addition, the increasing focus of trade agreements on nontariff issues, such as digital trade, intellectual property rights and labor and environmental protections, has broadened the scope of stakeholder interest. Consequently, groups representing businesses, farmers, workers, consumers, and various public interest groups strive to ensure that their views on trade policy decisions are represented.

Role of the Judiciary

How do federal courts get involved in trade?

Legal challenges may be brought in federal court by importers, exporters, domestic manufacturers, and other injured parties to appeal governmental actions and decisions concerning trade. Cases may involve, for example, customs classification decisions, agency determinations in antidumping (AD) and countervailing duty (CVD) proceedings, Section 201 safeguards, Section 232 national security investigations (see "Tariffs and Trade Remedies"), or the constitutionality of state economic sanctions. The federal government may also initiate legal proceedings against individuals and firms to enforce customs laws or statutory restrictions on particular imports and exports. Some trade statutes may preclude judicial review. For example, most *preliminary* determinations in AD and CVD proceedings and governmental actions involving the implementation of World Trade Organization (WTO) and free trade agreements may not be challenged in federal court. While most federal cases involving trade laws are heard in the U.S. Court of International Trade (see below), cases may also be filed in other federal courts depending on the nature of the cause of action or proceeding involved. Court decisions may significantly affect U.S. trade policy when they (1) examine whether an agency has properly interpreted its statutory mandate or has acted outside the scope of its statutory authority, (2) decide how much deference courts should accord actions of the executive branch undertaken pursuant to statutory grants of authority, or (3) rule on whether a trade statute violates the U.S. Constitution.

What is the U.S. Court of International Trade?

The U.S. Court of International Trade (USCIT) is an Article III federal court located in New York City with exclusive jurisdiction over a number of trade-related matters, including customs decisions, trade remedy determinations, import embargoes imposed for reasons other than health and safety, and the recovery of customs duties and penalties. Formerly known as the Customs Court, the USCIT was renamed in the Customs Court Act of 1980, which also significantly enlarged its jurisdiction. The court consists of nine judges, no more than five of whom may be from the same political party. Judges are appointed by the President with the advice and consent of the Senate. USCIT decisions may be appealed by right to the U.S. Court of Appeals for the Federal Circuit and possibly to the U.S. Supreme Court.[108]

[108] P.L. 96-417 (October 10, 1980), 94 Stat. 1727. Codified statutory provisions related to the USCIT can be found at 28 U.S.C. §§251-258 (establishment), 28 U.S.C. §§1581-1585 (jurisdiction), and 28 U.S.C. §§2631-2647 (procedure).

U.S. Trade Policy Tools[109]

Trade Negotiations and Agreements

Why does the United States negotiate trade liberalizing agreements?

The United States negotiates trade liberalizing agreements for economic and commercial reasons, as well as foreign policy and national security reasons.[110] Objectives include

- encourage trade partners to reduce or eliminate tariffs and nontariff barriers and increase market access for U.S. exporters;
- gain competitive advantages for U.S. firms over foreign competitors in third country markets;
- increase access to lower-cost imports that offer domestic and industrial consumers a wider choice of products;
- encourage trading partners, especially developing countries, to liberalize their trade and investment regimes, and thereby improve the efficiency of their economies and their integration with the global economy;
- influence other countries in establishing standards that align with U.S. practices (e.g., intellectual property, labor and environment); and
- strengthen alliances, forge new strategic relationships, and deepen U.S. presence and influence in a geographic region.

What are the types of trade agreements?

The United States participates in three major categories of trade agreements:

- **Multilateral agreements** are negotiated in the World Trade Organization (WTO), and include all 164 WTO members.
- **Free trade agreements** (FTAs) are negotiated outside the WTO and can be divided by the number of participants. **Bilateral FTAs** involve two countries, while **regional FTAs**, such as the U.S.-Mexico-Canada Agreement (USMCA) and Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP or TPP-11) involve three or more, typically in a geographic region.
- **Plurilateral agreements** involve more than two countries but not all WTO members and typically focus on a specific sector, such as the Information Technology Agreement (ITA) or Government Procurement Agreement (GPA).

How many free trade agreements (FTAs) does the United States have?

The United States currently has 14 comprehensive FTAs in force, covering 20 countries (see **Figure 14**), and a partial-scope agreement with Japan covering limited tariffs and digital trade.

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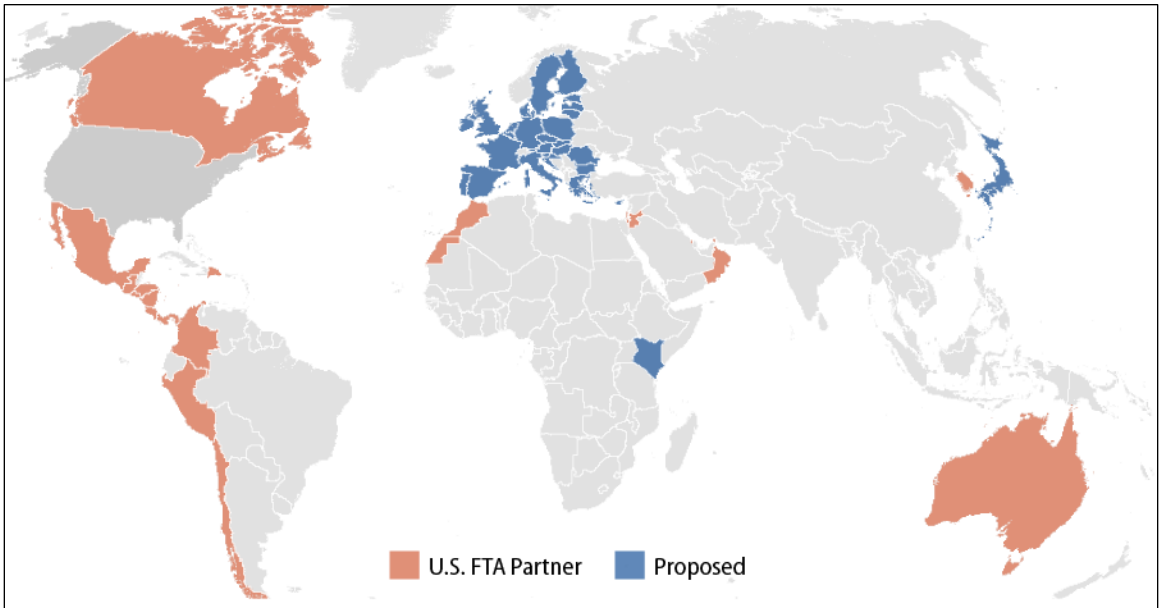
[109] Section prepared by Shayerah Ilias Akhtar, Brock R. Williams, Ian F. Fergusson, Vivian C. Jones, Karen Sutter, and M. Angeles Villarreal, Specialists in International Trade and Finance, and Cathleen Cimino-Isaacs and Liana Wong, Analyst in International Trade and Finance.

[110] See CRS Report R45198, *U.S. and Global Trade Agreements: Issues for Congress*, by Brock R. Williams.

Globally, more than 300 trade agreements have been notified to the WTO and are in force as of late 2020.[111] The majority of U.S. FTA partners are small, developing countries. While comprehensive U.S. FTAs cover some major U.S. trading partners, like Canada and Mexico, only about one-third of total U.S. trade is with FTA partners. More than 99% of U.S. trade is with WTO member countries and thus subject to WTO commitments and provisions—two-thirds of U.S. trade is with WTO members with which the United States does not have an FTA.[112]

Figure 14. Existing and Proposed U.S. Free Trade Agreements



FTA PARTNER	YEAR ENTERED INTO FORCE	GOODS (2019, $bn) U.S. EXPORTS	GOODS (2019, $bn) U.S. IMPORTS	SERVICES (2019, $bn) U.S. EXPORTS	SERVICES (2019, $bn) U.S. IMPORTS
Oman	2009	$1.9	$1.2	$0.6	$0.2
Bahrain	2006	$1.4	$1.0	$0.7	$0.8
Jordan	2001	$1.5	$2.2	$0.8	$0.7
Morocco	2006	$3.5	$1.6	$0.8	$0.8
Panama	2012	$7.5	$0.5	$2.4	$2.7
Peru	2009	$9.7	$6.1	$4.0	$1.4
Chile	2004	$15.7	$10.4	$5.6	$2.6
Colombia	2012	$14.7	$14.2	$7.2	$4.5
Israel	1985	$14.4	$19.5	$5.8	$7.4
Australia	2005	$26.0	$10.8	$22.0	$8.6
CAFTA-DR	2006-2009	$32.7	$25.9	$9.5	$11.8
Singapore	2004	$31.2	$26.4	$23.7	$10.2
S. Korea	2012	$56.5	$77.5	$24.0	$10.6
USMCA (replaced NAFTA)	2020 (1994)	$549.2	$677.4	$100.7	$68.4
Kenya	NA	$0.4	$0.7	Services trade data not available.	
U.K.	NA	$69.1	$63.2	$78.3	$62.3
Japan	Stage one agreement effective January 1, 2020.	$74.4	$143.6	$50.1	$35.8
EU-27	NA	$267.6	$452.0	$200.7	$146.0

Sources: CRS, with data from the U.S. Census Bureau and Bureau of Economic Analysis.

[111] WTO, "Regional Trade Agreements: Facts and Figures," https://www.wto.org/english/tratop_e/region_e/regfac_e.htm.

[112] CRS analysis according to data from the Department of Commerce and Bureau of Economic Analysis.

Notes: EU-27 excludes trade with the United Kingdom.

What trade agreements have been recently negotiated?

The Trump Administration made U.S. trade agreements a focus of its trade policy. After withdrawing from the proposed Trans-Pacific Partnership in 2017—a regional FTA negotiated during the Obama Administration with 11 other countries in the Asia-Pacific[113]—the Trump Administration made minor modifications to the existing U.S.-South Korea (KORUS) FTA,[114] enacted a new limited deal with Japan covering about 5% of bilateral trade, and concluded other so-called mini-deals with Brazil and Ecuador that were limited in scope but intended to enhance trade relations in the region.[115] These actions, undertaken without legislative approval, have led to debate within Congress over the future scope of U.S. trade agreements and presidential trade agreement authorities.

The Trump Administration also negotiated the U.S.-Mexico-Canada Agreement (USMCA), which entered into force on July 1, 2020, replacing the North American Free Trade Agreement (NAFTA).[116] USMCA addresses new issues, such as digital trade and state-owned enterprises, increases North American content requirements for vehicles, expands market access in agriculture, and reduces U.S. obligations in certain areas, such as investment and government procurement. The Trump Administration also initiated but did not conclude FTA talks with the EU, the United Kingdom,[117] and Kenya.[118]

The Biden Administration has stated its intent to focus on enforcement of existing U.S. trade agreements and domestic economic policy issues before seeking new trade negotiations.[119]

How do U.S. FTAs differ from FTAs negotiated among other countries?

Historically, FTAs negotiated by the United States have been more comprehensive—both in terms of tariff coverage and the overall scope of enforceable commitments—than those negotiated among other countries.[120] However, the Trump Administration shifted this policy somewhat through its use of partial-scope agreements, particularly in the case of the "Stage One" U.S.-Japan agreement, which covered only 5% of bilateral trade. In general, U.S. FTA rules and obligations also go beyond those established in the WTO. Nearly all U.S. FTAs include not only the elimination of the majority of tariffs on trade in goods, but also reduction of barriers to services

[113] In March 2018, the 11 remaining signatories signed the new Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), which suspends a limited number of TPP provisions. Following ratification by six CPTPP members, the agreement entered into force in December 2018. See CRS Insight IN10822, *TPP Countries Sign New CPTPP Agreement without U.S. Participation*, by Ian F. Fergusson and Brock R. Williams.

[114] CRS In Focus IF10733, *U.S.-South Korea (KORUS) FTA*, coordinated by Brock R. Williams.

[115] CRS In Focus IF11120, *U.S.-Japan Trade Agreement Negotiations*, by Cathleen D. Cimino-Isaacs and Brock R. Williams, and CRS In Focus IF10447, *U.S.-Brazil Trade Relations*, by M. Angeles Villarreal and Andres B. Schwarzenberg.

[116] CRS In Focus IF10997, *U.S.-Mexico-Canada (USMCA) Trade Agreement*, by M. Angeles Villarreal and Ian F. Fergusson.

[117] CRS In Focus IF11123, *Brexit and Outlook for a U.S.-UK Free Trade Agreement*, coordinated by Shayerah I. Akhtar.

[118] CRS In Focus IF11526, *U.S.-Kenya FTA Negotiations*, by Brock R. Williams and Lauren Ploch Blanchard.

[119] Thomas L. Friedman, "Biden Made Sure 'Trump is Not Going to Be President for Four More Years'," *New York Times*, December 2, 2020.

[120] For more analysis, see CRS Report R45198, *U.S. and Global Trade Agreements: Issues for Congress*, by Brock R. Williams.

trade, rules on foreign investment, intellectual property rights protection, commitments on opening government procurement markets, and enforceable provisions on labor standards and the environment. The United States has sought to establish new trading rules within recent trade negotiations and agreements on emerging issues like digital trade and state-owned enterprises.

What are Trade and Investment Framework Agreements (TIFAs)?

A Trade and Investment Framework Agreement (TIFA) is an agreement between the United States and another country or group of countries to consult on issues of mutual economic interest in order to promote trade and investment. The USTR is the U.S. lead representative in TIFA talks. The United States has more than 50 TIFAs, most of which are with developing countries.[121] The United States and its TIFA partners can agree to establish a joint ministerial-level council as the overall mechanism for consultations, as well as issue-oriented working groups. A TIFA is a nonbinding agreement and does not involve changes in U.S. law; therefore, TIFAs do not require congressional approval. In some cases however, TIFAs have led to FTA or bilateral investment treaty (BIT) negotiations.

What is the General Agreement on Tariffs and Trade (GATT)?

The General Agreement on Tariffs and Trade (GATT) was created in 1947 as a part of the post-WWII effort to build a stable, open international economic framework. The GATT was not a formal international organization, but it became the principal set of rules governing international trade for 47 years, until the creation of the World Trade Organization (WTO) in 1995. With some slight modifications, the GATT continues to be applied today. The core principles and articles of the GATT committed the original 23 signatories, including the United States, to lower tariffs on a range of goods and to apply tariffs in a nondiscriminatory manner—the so-called most-favored nation, or MFN principle. Although the GATT mechanism for the enforcement of these rules or principles was viewed as largely ineffective (and led to strengthened dispute settlement under the WTO, see below), the agreement nonetheless brought about a substantial reduction of tariffs and other trade barriers.

What is the World Trade Organization (WTO)?

The WTO is a 164-member international organization that administers the trade rules and agreements negotiated by its members, including the United States, to eliminate barriers and create nondiscriminatory rules to govern trade.[122] It also serves as a forum for trade liberalization negotiations and dispute settlement resolution. The United States was a major force behind the WTO's establishment in 1995, as well as the new rules and trade agreements that resulted from multilateral trade negotiations (Uruguay Round, 1986-1994). The WTO succeeded and encompassed the 1947 General Agreement on Tariffs and Trade (GATT). The WTO administers a number of agreements and separate commitments under the GATT, the General Agreement on Trade in Services (GATS), the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), and others. It also oversees plurilateral agreements and negotiations among subsets of WTO members, such as the Information Technology Agreement (ITA).

The Doha Development Agenda, the latest "round" of multilateral trade negotiations, was launched in 2001, but ended in stalemate amid significant differences among members, with no

[121] For a list of TIFAs, see http://www.ustr.gov/trade-agreements/trade-investment-framework-agreements.

[122] CRS Report R45417, *World Trade Organization: Overview and Future Direction*, coordinated by Cathleen D. Cimino-Isaacs.

clear path forward. At the most recent Ministerial Conference in 2017, WTO members did not announce major deliverables, leaving the stakes high for the next meeting. In 2020, members were forced to postpone the 12th Ministerial to 2021 due to the COVID-19 pandemic. Members have committed to complete or make significant progress on ongoing talks, including on fisheries subsidies, and advancing e-commerce and other areas.

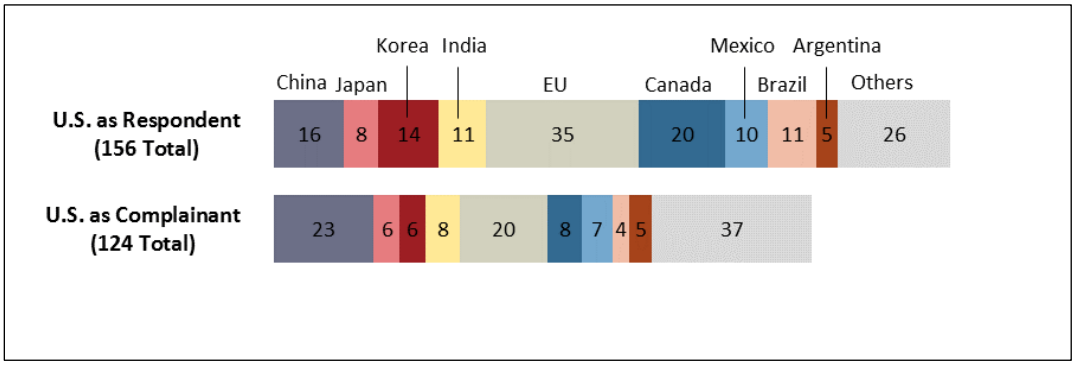
The WTO's effectiveness as a negotiating body for broad-based trade liberalization has come under scrutiny since the collapse of the Doha Round. Several members believe the WTO needs to adopt reforms to continue its role as the foundation of the global trading system, and are exploring aspects of reform and new negotiations. Reforms also aim to improve the working of the WTO's dispute settlement system, in large part driven by U.S. actions. Under the Trump Administration, the USTR withheld approval for appointments to the Appellate Body (AB)—the seven-member body that reviews appeals of dispute panel findings—amid concerns over "judicial overreach" and certain procedures and practices. As a result, the AB ceased to function in December 2019, raising questions about the effective enforcement of WTO rules moving forward.

How are disputes resolved at the WTO?

A WTO member may initiate dispute settlement (DS) proceedings under the WTO to challenge another member's trade practices that allegedly violate a WTO agreement. The DS process begins with consultations between the two parties. If the consultations fail to resolve the dispute, the member may request a panel adjudicate the dispute. A panel decision may be appealed to the Appellate Body (AB), although decisions appealed since December 2019 remain in limbo as there are no AB members to adjudicate them. If the defending member is found to have violated a WTO obligation, the member will be expected to remove the challenged measure within a reasonable period; otherwise, the prevailing member may request authorization from the WTO to take temporary retaliatory action, such as increased tariffs, or seek compensation.

Since 1995, nearly 600 dispute settlement complaints have been filed in the WTO. The United States has been an active user of the WTO dispute settlement system and, among WTO members, has been the complainant or respondent in the most WTO cases (see **Figure 15**). Several pending WTO disputes are of significance to the United States, including challenges by a number of countries to recent tariff measures imposed by the Trump Administration.[123]

Figure 15. WTO Disputes Involving the United States



Source: WTO, https://www.wto.org/english/tratop_e/dispu_e/find_dispu_cases_e.htm.

[123] For more information and analysis on tariff actions and disputes, see CRS Report R45529, *Trump Administration Tariff Actions: Frequently Asked Questions*, coordinated by Brock R. Williams.

Notes: Does not include cases with U.S. participation as a third party. Dispute count as of January 2021.

WTO decisions do not have direct effect in U.S. law.[124] Thus, if a panel finds a U.S. statute, policy or practice to be inconsistent with U.S. WTO obligations, the findings may not be implemented except through U.S. legislative action. Where an administrative action is successfully challenged, USTR decides what, if any, compliance action will be taken. If there is sufficient statutory authority to amend or modify a regulation or practice or to issue a new determination in a challenged administrative proceeding, USTR may direct the agency involved to make the change (provided certain statutory procedures for such actions are followed).[125] In some cases, the United States may pay compensation to the complainant country instead of changing U.S. rules or regulations. Traditionally, the United States generally sought to comply with WTO decisions against it, partly to ensure reciprocal compliance from other countries in dispute ruling favorable to the United States. However, the United States has appealed adverse panel rulings to the AB decided in 2020, which currently is not functioning, which some perceive as a way to potentially avoid compliance.[126]

How are disputes resolved under U.S. FTAs?

U.S. FTAs establish procedures to resolve disputes in both state-to-state (STS) and investor-state (ISDS) fora.[127] Similar to WTO dispute settlement, U.S. FTAs aim first to resolve disputes through consultations; otherwise, a panel can be requested to adjudicate the dispute. Once a decision is issued by the panel, the offending party is expected to come into compliance or can face possible suspension of trade benefits or other remedies. If a dispute is common to both FTA and WTO rules, a country may choose the forum in which to bring the dispute. STS dispute settlement has not been frequently used under U.S. FTAs—three cases have been decided under NAFTA and one under CAFTA-DR—and disputes are usually resolved via consultations. Most other U.S. disputes with FTA partners have been adjudicated under WTO rules, if applicable. However, USMCA dispute settlement contains changes in part to prevent panel blocking, thus assuring cases are heard. United States is already using STS in a dairy dispute with Canada. USMCA also contains a novel "rapid response" enforcement mechanism for labor disputes. Most U.S. FTAs also contain a separate dispute system for investment-related provisions, called investor-state dispute settlement. (See "What is investor-state dispute settlement (ISDS)?"). The USMCA also continues a binational panel system to review an administrative agency application of a country's trade remedy laws hitherto unique to NAFTA.

Trade and Development

What are trade preferences programs?

Trade preference programs provide temporary, nonreciprocal, duty-free access to the U.S. market for selected exports from eligible developing countries. Since 1974, Congress has created several programs: Generalized System of Preferences (GSP); Andean Trade Preference Act (APTA; expired July 2013); Caribbean Basin Economic Recovery Act (CBERA; permanent); United

[124] For more detail, see CRS In Focus IF10436, *Dispute Settlement in the World Trade Organization: Key Legal Concepts*, by Brandon J. Murrill.

[125] Uruguay Round Agreements Act, P.L. 103-465, §§123(g), 129, 19 U.S.C. §§3535(g), 3538.

[126] See WTO, "Appellate Body: Current Notified Appeals," https://www.wto.org/english/tratop_e/dispu_e/appellate_body_e.htm.

[127] See CRS In Focus IF10645, *Dispute Settlement in the WTO and U.S. Trade Agreements*, by Ian F. Fergusson.

States-Caribbean Basin Trade Partnership Act (CBTPA); African Growth and Opportunity Act (AGOA); Haitian Hemispheric Opportunity Through Partnership Encouragement Act (HOPE); and the Nepal Trade Preferences Act.[128]

GSP, which expired on December 31, 2020, is the largest U.S. trade preference program, covering 120 countries and territories.[129] It provides duty-free treatment to about 3,500 products imported from designated beneficiary developing countries and 1,500 additional products from least-developed countries. In 2019, $21.0 billion (imports for consumption) entered the United States duty-free under the program, out of $235.1 billion worth of total imports from GSP-eligible countries. Countries must meet such criteria specified by Congress to be eligible, including protections for intellectual property rights and worker rights. Congress may consider renewal of GSP.

What is trade capacity building?

Trade capacity building (TCB) involves U.S. assistance, such as funding, training, and technical expertise, to support developing countries' integration and participation in international trade. According to the U.S. Agency for International Development (USAID), in FY2018 (latest data), the United States invested about $890 million in 715 TCB activities across 130 countries, regions or trade groups.[130] The U.S. government has viewed TCB as an important way to help developing countries "negotiate and implement market opening and reform-oriented trade agreements and improve their capacity to benefit from increased trade."[131] Examples include U.S. assistance to implement customs reforms required by the WTO Trade Facilitation Agreement, improve labor and environment protections, and meet export standards and phyto-sanitary rules. Currently no single agency is responsible for coordinating U.S. government TCB. USAID typically receives the most funding to implement TCB activities; the Millennium Challenge Corporation (MCC) also comprises a large share of funds related to infrastructure. Other agencies have TCB responsibilities, including the Departments of Agriculture, Labor, and State, and the Trade and Development Agency.

Tariffs and Trade Remedies

What is U.S. tariff policy?

The Constitution empowers Congress to set tariffs—a customs duty levied on imports and exports; this power has been partially delegated to the President.[132] While historically tariffs were used as a primary means of collecting government revenue, today developed countries like the United States rely on other means for generating revenue. U.S. Customs and Border Protection

[128] GSP expired on December 31, 2020; the CBTPA expires on September 30, 2030; AGOA expires September 30, 2025; the Nepal program expires on December 31, 2025. The programs for Haiti, including HOPE, the Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2008 (HOPE II), and the Haiti Economic Lift Program of 2010 (HELP), expire on September 30, 2025.

[129] CRS Report RL33663, *Generalized System of Preferences (GSP): Overview and Issues for Congress*, by Vivian C. Jones and Liana Wong.

[130] USAID, https://tcb.usaid.gov/.

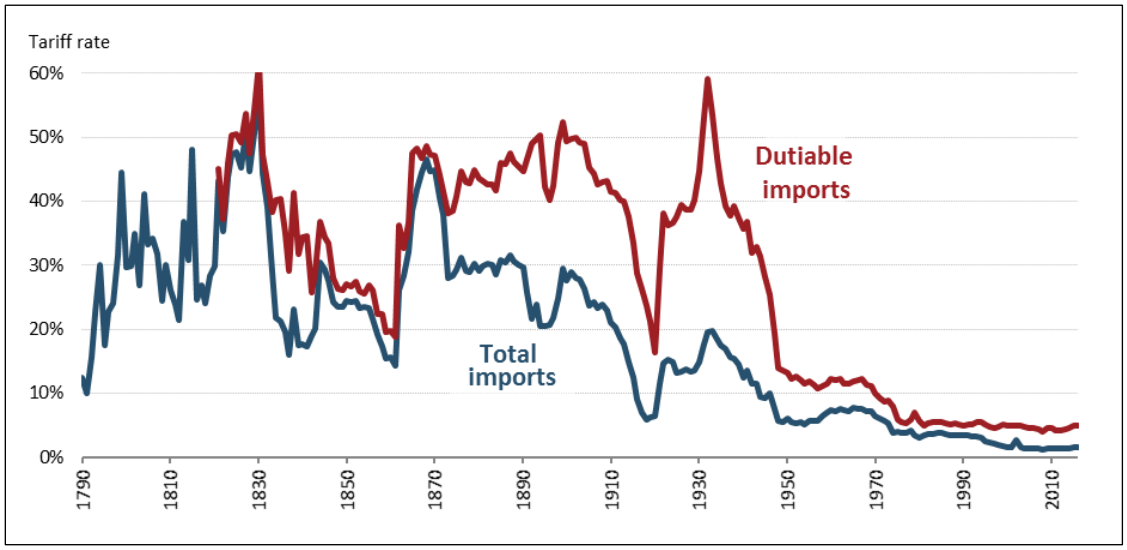
[131] U.S. Trade Representative, "Trade Capacity Building," https://go.usa.gov/xneCb.

[132] For more detail, see CRS In Focus IF11030, *U.S. Tariff Policy: Overview*, by Christopher A. Casey.

(CBP) administers the collection of tariffs at U.S. ports of entry—in FY2020, CBP collected $74 billion in tariffs (just 2% of total federal revenue), up from $35 billion in FY2017.[133]

Over the past 80 years, the United States used its tariff policy to encourage global trade liberalization toward various ends, such as increasing global trade, supporting global peace and economic prosperity, and opening markets for U.S. exports. Toward these ends, the United States has reduced or eliminated many of its tariffs through bilateral and multilateral trade negotiations and agreements (see "Trade Negotiations and Agreements"). Beginning in 1934, Congress began periodically authorizing the President to negotiate reciprocal reductions in tariffs bilaterally. Following World War II, the United States encouraged tariff reduction globally by supporting a rules-based trading system under the GATT and the WTO. By 2012, global tariffs had fallen to less than 7% on average. As of 2019, the simple mean of U.S. tariffs applied across all products was 3.3% (see **Figure 16**), the lowest among the top five global economies by GDP. Roughly 70% of all products enter the United States duty free. The Trump Administration was critical of low-tariff policies and made greater use of its discretionary authority to increase tariffs on certain goods imported from key U.S. trading partners.

Figure 16. U.S. Tariff Rates, 1790-2019



Source: CRS, based on Historical Statistics of the United States, U.S. Census Bureau.

What are the main U.S. trade remedy laws?

U.S. trade laws include trade remedies used by the United States to mitigate the adverse impact of various foreign trade practices on domestic industries and workers. The two most frequently used trade remedies aimed at unfair trade practices are antidumping (AD) and countervailing duty (CVD) laws.[134] These laws are administered primarily through the Department of Commerce's International Trade Administration (ITA), which determines the existence and amount of dumping or subsidies, and the U.S. International Trade Commission (ITC), which determines the injury or threat thereof to U.S. industries. Other trade remedy laws include Section 201 of the Trade Act of

[133] U.S. CBP, "Trade Statistics," https://www.cbp.gov/newsroom/stats/trade. Also see "U.S. collected nearly 73% more duties in fiscal 2019 as trade wars raged," Reuters, January 30, 2020.

[134] CRS In Focus IF10018, *Trade Remedies: Antidumping and Countervailing Duties*, by Vivian C. Jones and Christopher A. Casey.

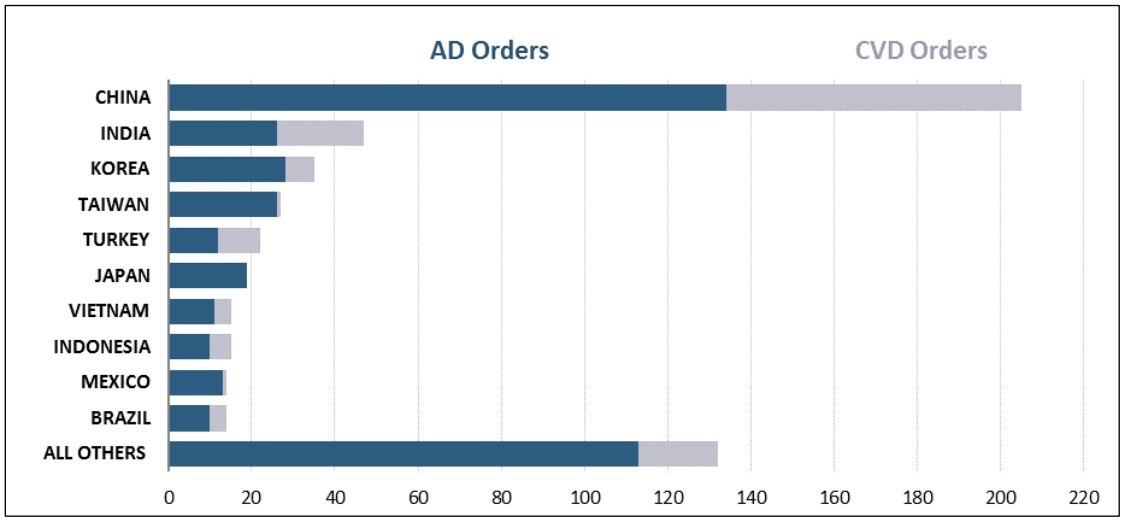
1974, which focuses on import surges of fairly traded goods; Section 301 of the Trade Act of 1974, which focuses on violations of trade agreements or other foreign practices found to be unjustifiable and restrict U.S. commerce; and Section 337 of the Tariff Act of 1930, which focuses on patent and copyright infringements, and counterfeit goods. All laws must comply with U.S. WTO obligations, including articles under the GATT, known as the Antidumping Agreement, Agreement on Subsidies and Countervailing Measures, and the Agreement on Safeguards.

Supporters of trade remedies say that they are necessary to shield U.S. industries and workers from unfair competition. Others, including some importers and downstream industries, are concerned that AD/CVD actions can serve as disguised protectionism and create inefficiencies in the global trading system by raising prices on imported goods.

What is the purpose of the antidumping law?

Antidumping (AD) is the most frequently used U.S. trade remedy law. Dumping generally refers to an unfair trade practice in which an exporter sells goods in one export market at lower prices than comparable goods sold in the home market or in other export markets. Companies sometimes dump products to gain market share, deter competition, or get rid of industrial overcapacity. U.S. law provides for the assessment and collection of AD duties when an administrative determination is made by the ITA that foreign goods are being sold at "less than fair value" in the United States, and if the ITC determines that such imports cause material injury to a U.S. industry or the threat thereof. AD orders are not permanent and are subject to annual review if requested by an interested party, and a sunset review every five years. As of November 2020, the United States had more than 400 AD orders in place; about one-third were against China (see **Figure 17**).

Figure 17. U.S. AD and CVD Orders in Place, by Country



Source: U.S. International Trade Commission, as of November 2020.

What is the purpose of the countervailing duty law?

After AD, countervailing duties (CVD) are the most frequently used U.S. trade remedies. The purpose of CVDs are to offset injurious competitive advantage that foreign manufacturers or exporters might enjoy over U.S. producers as a result of receiving a subsidy from the government or another public entity. Countervailing duties are designed to offset the net amount of the foreign

subsidy and are levied upon imports of the subsidized goods into the United States. Although AD and CVDs are intended to remedy fundamentally different kinds of unfair trade, the procedures for both investigations are similar. As of November 2020, the United States had 143 CVD orders in place, half of which were against China (see **Figure 17**).

What is the Section 201 safeguards law?

Section 201 of the Trade Act of 1974 (19 U.S.C. §2251, as amended) authorizes the President to restrict temporarily imports that are found to cause or threaten serious injury to domestic industry.[135] So-called "safeguard" actions are designed to provide *temporary* relief—for example, through additional tariffs or quotas—to facilitate "positive adjustment" of a domestic industry to import competition.[136] Unlike AD and CVD cases, no allegation of "unfair" trade practices is required to trigger a safeguard investigation. The ITC conducts an investigation, generally initiated by petition filed by a trade association, company, or union representing a U.S. industry. If the ITC finds imports are a substantial cause of serious injury, it makes recommendations on temporary relief to the President, who takes the final action on whether or not to implement the recommendations.

In 2017, two safeguard investigations were initiated under the Trump Administration. In January 2018, President Trump imposed a four-year safeguard measure on imports of solar cells and a three-year safeguard on large residential washing machines.[137] Prior to these safeguard actions, the last safeguard investigation was in 2001 over steel products. From 1975 to 2001, the ITC conducted 73 investigations; the ITC determined in the negative in 32 cases and in the affirmative in 34 cases (6 cases ended in ties).[138] The President imposed some type of safeguard measure in 19 cases during this time.

What is Section 232 of the Trade Expansion Act of 1962?

Section 232 of the Trade Expansion Act of 1962 (19 U.S.C. §1862, as amended) is often called the "national security clause," because it provides the President with the ability to impose restrictions on imports that the Secretary of Commerce determines are being imported in "such quantities or under such circumstances as to threaten to impair the national security."[139] If requested or upon self-initiation, the Commerce Department's Bureau of Industry and Security (BIS) consults with the Secretary of Defense and other agencies, and conducts the investigation. Section 232 specifies the factors that Commerce must consider regarding the impact of the U.S.

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[135] Drawn from CRS In Focus IF10786, *Safeguards: Section 201 of the Trade Act of 1974*, by Vivian C. Jones.

[136] "Positive adjustment" in the law means the ability of the industry to compete successfully with imports after termination of the safeguard measure, or the industry's orderly transfer of resources to other productive pursuits, as well as the ability of dislocated workers to transition.

[137] See "Proclamation 9693 of January 23, 2018," 83 *Federal Register* 3541, "Proclamation 9694 of January 23, 2018," 83 *Federal Register* 3553, and subsequent proclamations.

[138] One case was terminated. See USITC, *Import Injury Investigations Case Statistics (FY1980-2008)*, February 2010, https://www.usitc.gov/trade_remedy/documents/historical_case_stats.pdf.

[139] For more detail, see CRS Report R45249, *Section 232 Investigations: Overview and Issues for Congress*, coordinated by Rachel F. Fefer and Vivian C. Jones, and CRS In Focus IF10667, *Section 232 of the Trade Expansion Act of 1962*, by Rachel F. Fefer and Vivian C. Jones.

imports on national security. Depending on the findings, the President has the discretion to impose tariffs, quotas, or other measures to offset the adverse effect, subject to few limits.

Prior to the Trump Administration, Commerce initiated 26 Section 232 investigations, beginning in 1963. The Trump Administration opened eight investigations. In March 2018, President Trump imposed a 25% tariff on *steel* imports and a 10% tariff on *aluminum* imports from most countries,[140] and took nontrade measures to address threats posed by imports of *uranium*, *titanium sponge*, and *grain-oriented electrical steel* imports. The Administration did not act on an investigation into *autos and auto parts*,[141] terminated an investigation into *mobile cranes*, and an investigation of *vanadium* was ongoing.

What is Section 301 of the Trade Act of 1974?

Section 301 of the Trade Act of 1974 (19 U.S.C. §2411) grants the Office of the United States Trade Representative (USTR) a range of responsibilities and authorities to investigate and take action to enforce U.S. rights under trade agreements and respond to certain foreign trade practices.[142] Specifically, Section 301 provides a statutory means by which the United States imposes penalties or trade restrictions (trade sanctions) on foreign countries that violate U.S. trade agreements or engage in acts that are "unjustifiable" or "unreasonable" and burden U.S. commerce.

Prior to 1995, the United States used Section 301 extensively to pressure other countries to eliminate trade barriers and open their markets to U.S. exports. The creation of an enforceable dispute settlement mechanism in the WTO, strongly advocated by the United States, significantly reduced U.S. use of Section 301. While the United States retains the flexibility to determine whether to seek recourse for foreign unfair trade practices in the WTO and/or act unilaterally, the USTR's decision to bypass WTO dispute settlement and impose retaliatory measures (if any), may be challenged at the WTO.

There have been 130 cases under Section 301 since the law's enactment in 1974, of which 35 have been initiated since the WTO's establishment in 1995. Historically, Section 301 cases have targeted primarily the European Union (EU), which accounts for about 30% of all cases—concerning mostly agricultural trade. Prior to 2017, that is, the start of the Trump Administration, the last Section 301 investigation took place in 2013 and involved Ukraine's practices regarding intellectual property rights. The last case that resulted in retaliation (e.g., the imposition of tariffs) took place in 2009 and involved Canada's compliance with the 2006 U.S.-Canada Softwood Lumber Agreement. During the Trump Administration, the USTR initiated six new investigations against China, the EU, France, a group of 10 trading partners, and two against Vietnam.

What is the Section 301 Investigation involving China and the U.S.-China Phase One Trade Deal?

The Trump Administration undertook a series of policy actions that included invoking Section 301 of the Trade Act of 1974 to address growing concerns about China's trade and investment

[140] CRS Insight IN10872, *The President Acts to Impose Tariffs on Steel and Aluminum Imports*, by Rachel F. Fefer and Vivian C. Jones.

[141] See CRS In Focus IF10971, *Section 232 Auto Investigation*, coordinated by Rachel F. Fefer.

[142] Title III of the Trade Act of 1974 (Sections 301 through 310, P.L. 93-618; codified as amended at 19 U.S.C. §§2411-2420), titled "Relief from Unfair Trade Practices," is often collectively referred to as "Section 301." For more detail, see CRS Report R46604, *Section 301 of the Trade Act of 1974: Origin, Evolution, and Use*, by Andres B. Schwarzenberg.

practices tied to its industrial policies, including evidence of policies and practices that included the forced or required foreign technology transfer and growing instances of the theft of U.S. intellectual property (IP) and trade secrets.

In March 2018, the USTR issued its investigation findings of Chinese policies related to technology transfer, IP, and innovation under Section 301. USTR concluded that four practices justified U.S. action: forced technology transfer requirements, cyber-enabled theft of U.S. IP and trade secrets, discriminatory and nonmarket licensing practices, and state-funded strategic acquisition of U.S. assets. In response to these findings, between 2018 and 2020, the U.S. government imposed increased 25% tariffs on three tranches of imports from China worth approximately $250 billion. The Chinese government retaliated in response to each U.S. tariff round and, in turn, raised tariffs (at rates ranging from 5% to 25%) on $110 billion worth of U.S. products.

Section 301 includes language that requires USTR to seek a negotiated settlement if possible. The United States and China entered into negotiations and signed a phase one trade agreement on January 15, 2020, to resolve some of the U.S. government's concerns. China committed to strengthen IP enforcement and improve market access in agriculture and financial services—sectors important to the U.S. economy, but outside the Section 301 investigation's scope—leaving most U.S. concerns on IP, technology transfer, industrial policies, and state subsidies unresolved.

The agreement included a commitment for China to buy $468 billion over two years of U.S. agriculture, energy, goods, and services. China's purchases in the first year (2020) fell below its commitments and in many sectors were well below 2017 trade levels. Both sides delayed proposed tariffs that were to be implemented in December 2019. For U.S. tariffs enacted on September 1, 2019, the United States cut the rate from 15% to 7.5%. China reduced the retaliatory tariffs it was to issue at the same time to 2.5% from 5%. Other U.S. and Chinese tariffs enacted since March 2018 remain in effect.

Most Members of Congress saw the phase one deal to be only a first step and pause in bilateral tensions. Some observers warn that China's President Xi Jinping appears to be expanding the role of the state in China's economy and doubling down on industrial policies.

What is Section 337 of the Tariff Act of 1930?

Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. §1337), prohibits unfair acts or unfair methods of competition in importing goods or selling imports in the United States.[143] In recent decades, the statute has become increasingly used for IPR enforcement. Section 337 prohibits imports that infringe U.S. patents (including patented processes), copyrights, trademarks, mask work rights in semiconductor products (such as integrated circuit designs), or protected vessel hull design rights. The import or sale of an infringing product is illegal only if U.S. industry is producing an article covered by the relevant IPR or in the process of establishing such production. The transmission of digital data across borders is not considered an "article"

[143] For more detail see CRS Report RL34292, *Intellectual Property Rights and International Trade*, by Shayerah I. Akhtar, Ian F. Fergusson, and Liana Wong. Also, see USITC, "Understanding Investigations of Intellectual Property Infringement and Unfair Practices in Import Trade (Section 337)," https://www.usitc.gov/press_room/us337.htm.

and, therefore, not covered under Section 337.[144] Unlike other trade remedies, no proof of injury due to the import is required for cases related to IPR infringement.[145]

The U.S. International Trade Commission (ITC) is responsible for Section 337 investigations, which are mostly based on complaints filed by private parties. If a violation is found, the ITC may issue an exclusion order (enforced by the U.S. Customs and Border Protection) and/or cease-and-desist order (enforced by ITC), subject to presidential disapproval. In FY2020, 24 exclusion orders (up from 15 in FY2019) and 45 cease and desist orders (up from 16 in FY2019) were issued.[146] The number of active Section 337 investigations conducted by the ITC has trended upward over the past decade. In FY2020, there were 120 active investigations, compared to 70 in FY2006.[147]

What is Section 307 of the Tariff Act of 1930?

Section 307 of the Tariff Act of 1930, as amended (19 U.S.C. §1307) prohibits U.S. imports of any product that was mined, produced, or manufactured wholly or in part by forced labor, including forced or indentured child labor.[148] U.S. Customs and Border Protection (CBP) enforces the prohibition. Any individual who has reason to believe that any good that is being, or is likely to be, imported is produced by forced labor may communicate that belief to CBP. Following an investigation, if the Commissioner of CBP finds the information "reasonably but not conclusively indicates" that imports may be the product of forced labor, then she or he is to issue an order to withhold release of such goods (WRO), which bar entry into the United States.

Amid concerns in recent decades over the statute's lack of use, Congress amended Section 307 in 2015 to make it easier to block the entry of products of forced labor by removing the so-called, "consumptive demand" exception. This exception had permitted imports of goods that were not domestically produced in such quantities as to meet U.S. consumption needs. Between 2000 and 2015, CBP had issued zero WROs. Since 2016, CBP has increased the use of Section 307, issuing nearly 30 WROs, with 16 against products from China. In the past, WROs were typically limited to specific manufacturers and producers. Recently, however, CBP has also issued broader industry, regional, and countrywide orders. Some stakeholders and Members of Congress advocate for greater use of broader enforcement actions.

[144] ClearCorrect Operating v. Int'l Trade Comm'n, 810 F.3d 1283, 1286-87 (2015) (holding that ITC lacked Section 337 jurisdiction over transmission of digital data into the U.S. because "articles" referred to "material things"). The ITC investigation number is 337-TA-833 and can be found at https://pubapps2.usitc.gov/337external/.

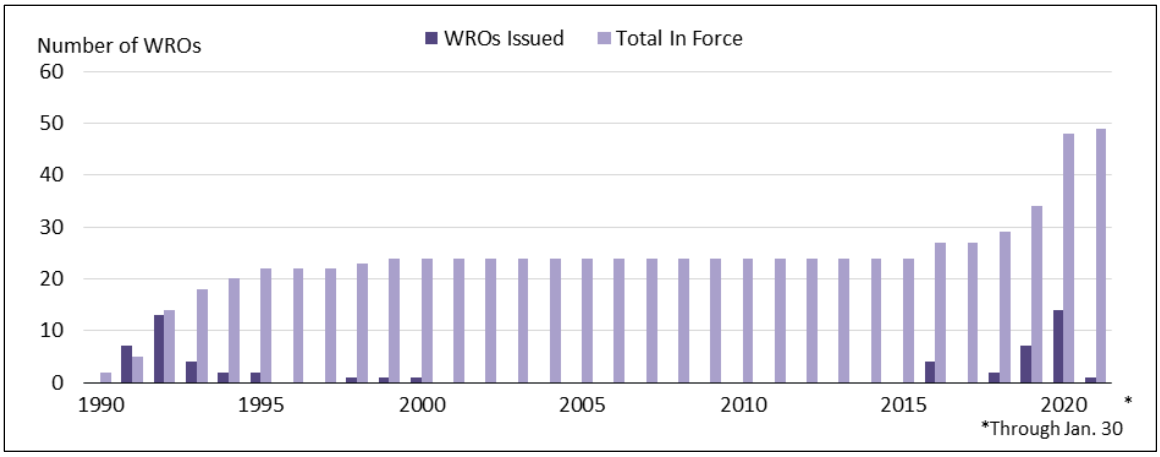
[145] U.S International Trade Commission, *Section 337: Answers to Frequently Asked Questions*, Publication No. 4105, March 20009.

[146] U.S. International Trade Commission, "Remedial Orders Issued (GEOs, LEOs, and CDOs) by Fiscal Year," accessed January 8, 2021, at https://www.usitc.gov/intellectual_property/337_statistics_remedial_orders_issued_leo_v_geo.htm.

[147] U.S. International Trade Commission, "Section 337 Statistics," accessed January 8, 2021, at https://www.usitc.gov/intellectual_property/337_statistics_number_new_completed_and_active.htm.

[148] For more detail and analysis, see CRS Report R46631, *Section 307 and U.S. Imports of Products of Forced Labor: Overview and Issues for Congress*, coordinated by Cathleen D. Cimino-Isaacs.

Figure 18. Withhold Release Orders (WROs): Issued and In Force, 1990-2021



Source: CBP, as of January 2021.

Trade Adjustment

What is the Trade Adjustment Assistance (TAA) Program?

Trade Adjustment Assistance (TAA) programs provide federal assistance to workers and firms that have been adversely affected by trade. 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 (Title IV of P.L. 114-27). TAA for Workers (TAAW) is the largest program, with appropriations of $790 million in FY2019. TAAW provides assistance to trade-affected workers who have been separated from their jobs due to foreign competition, either through increased imports or because their jobs were relocated abroad. The program is administered at the federal level by the Department of Labor and supports various benefits and services, including funding for career services and training, and income support for workers, formally known as Trade Readjustment Allowance. Actual benefits are provided to individual workers through state workforce systems and state unemployment insurance systems. Smaller TAA programs are also authorized for firms and farmers affected by foreign competition.[149]

What is the rationale for TAA?

While trade liberalization may increase the overall economic welfare of the affected trade partners, it can cause adjustment problems for firms and workers facing import competition. Trade Adjustment Assistance (TAA) has long been justified on the grounds that it is among the least disruptive options for offsetting policy-driven trade liberalization. Justification for TAA rests on arguments for (1) economic efficiency, by facilitating the adjustment process and returning workers to work more quickly; (2) equity, by compensating those who lose out due to liberalized trade and spreading the costs to society as a whole; and (3) generating support for international trade, by defusing domestic opposition to trade agreements and other trade policy measures. TAA skeptics argue that assistance is costly and economically inefficient, reduces worker and firm incentives to relocate and adjust to increased competition, and may not be equitable given that

[149] A TAA program for farmers is also authorized in statue but was last funded in FY2011. For more information on TAA, see CRS In Focus IF10570, *Trade Adjustment Assistance for Workers (TAA)*, by Benjamin Collins, Trade Adjustment Assistance for Workers (TAA), by Benjamin Collins.

many groups hurt by changing economic circumstances caused by factors other than trade policies are not afforded special economic assistance. Others argue that TAA programs are not extensive enough to be effective. Despite widespread disagreement, Congress has consistently reached compromise to maintain the program in some form over the past five decades.

Export Promotion and Export Controls

How does the U.S. government promote exports?

Several federal agencies promote U.S. exports and support U.S. investment. The Export-Import Bank (Ex-Im Bank), the Department of Agriculture, and the U.S. International Development Finance Corporation (DFC) administer various finance programs aimed at helping U.S. firms export and invest in certain developing countries, including through fee-based services. The Better Utilization of Investments Leading to Development Act of 2018 (BUILD Act), enacted in October 2018, established the DFC as a new successor agency to the former Overseas Private Investment Corporation (OPIC), as part of the U.S. response to China's Belt and Road Initiative (BRI).[150] Agency mandates vary in their emphasis on U.S. commercial interests and foreign policy objectives, but their activities can have implications in both areas. In some cases, U.S. trade financing intends to help U.S. firms obtain a "level playing field" against foreign firms that may be receiving subsidized financing from their governments. In addition, the Department of Commerce's International Trade Administration (ITA) promotes U.S. exports, particularly by small and medium-sized companies (SMEs), through various support services, such as through market research and business connections.

The Ex-Im Bank, the official U.S. export credit agency, provides direct loans, loan guarantees, and export credit insurance, backed by the U.S. government, to help finance U.S. exports to developing economies, in part to counter similar activities by foreign governments.[151] It operates under a renewable general statutory charter (Export-Import Bank Act of 1945, as amended); the Further Consolidated Appropriations Act, 2020 (P.L. 116-94) extended Ex-Im Bank's general statutory authority for a record seven years, through December 31, 2026. Presidential appointments to the board require Senate approval, and have been part of the broader debate over Ex-Im Bank and the role of government in financing exports.

What is the purpose of export controls?

Congress has authorized the President to control the export of various items for national security, foreign policy, and economic reasons.[152] Export controls have been a controversial policy issue due to the difficulty striking a balance between national security goals and maintaining export competitiveness. Through the Arms Export Control Act (AECA), the Export Control Reform Act of 2018 (ECRA), the International Emergency Economic Powers Act (IEEPA), and other authorities, the United States restricts exports of defense items or munitions; dual-use goods and technology; certain nuclear materials and technology; and items that would assist in the proliferation of nuclear, chemical, and biological weapons or related missile technology. U.S. export controls are also used to restrict trade with certain countries on which the United States

[150] See CRS In Focus IF11436, *U.S. International Development Finance Corporation (DFC)*, by Shayerah I. Akhtar and Nick M. Brown; and CRS In Focus IF11735, *China's "One Belt, One Road" Initiative: Economic Issues*, by Karen M. Sutter, Andres B. Schwarzenberg, and Michael D. Sutherland.

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

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

imposes economic sanctions. The Departments of Commerce, State, Energy, and the Treasury administer export control programs and various types of licenses required before certain exports can be undertaken.

ECRA (P.L. 115-232, Subtitle B, Part I), which became law on August 13, 2018, provides broad legislative authority for the President to implement dual-use export controls. The law repealed the Export Administration Act of 1979, which had been the underlying statutory authority for such controls until it expired in 2001. The Trump Administration sought to expand the application of export controls over emerging, surveillance, repression, and other advanced technologies, especially towards China, and exports to Hong Kong.

What are "dual-use" goods and technology?

Dual-used goods are commodities, software, or technologies that have both civilian and military applications.[153] Examples include product categories like nuclear materials, microorganisms, electronics and computers, and lasers and sensors. Exports of dual-use goods and technologies are licensed by the Commerce Department's Bureau of Industry and Security (BIS). Licenses are issued depending on an item's technical characteristics, destination and end use, and other activities of the end user.

Link Between International Investment and Trade[154]

What are the main kinds of capital flows?

Generally, the two main kinds of capital flows are foreign direct investment (FDI) and foreign portfolio investment (FPI). FDI involves the acquisition of real assets such as real estate, a manufacturing plant, or controlling interest in an ongoing enterprise by a person or entity from another country.[155] Foreign portfolio investment involves the purchase of foreign equities or bonds, loans to foreign residents, or the opening of foreign bank accounts. FDI often involves a long-term commitment and can have the advantage of stimulating direct employment for the host country. By contrast, portfolio investments are extremely liquid and can be withdrawn often at the click of a computer mouse. In addition, official capital flows are generated by governments for various purposes, such as humanitarian assistance and other foreign aid.

Which is larger—trade or capital flows?

It depends. From 1990 to 2019, global trade in goods and services, as measured by exports, grew more than five times, from about $4 trillion a year to $25 trillion.[156] From 1990 to 2017, gross capital flows, as measured in the balance of payments accounts (direct, portfolio, and other official investments), expanded from around $1 trillion a year to about $4 trillion—but with a precrisis peak of more than $12 trillion in 2007, which showed significant growth since the

[153] See Bureau of Industry and Security (BIS), "Dual Use Export Licenses," https://go.usa.gov/xQYsF.

[154] Section prepared by James K. Jackson and Shayerah Ilias Akhtar, Specialists in International Trade and Finance, Cathleen Cimino-Isaacs and Christopher Casey, Analysts in International Trade and Finance.

[155] According to the U.S. BEA, direct investment implies that a person in one country has a lasting interest in, and a degree of influence over, the management of, a business enterprise in another country. As such, it defines FDI as ownership or control of 10% or more of an enterprise's voting securities, or the equivalent, is considered evidence of such a lasting interest or degree of influence over management.

[156] World Bank, World Development Indicators database, http://databank.worldbank.org.

1990s.[157] During this period, there was also an explosion in growth in other types of capital flows, known as foreign exchange and over-the-counter derivatives markets. These markets facilitate trade in foreign exchange and other types of assets. While the capital flows associated with these markets do not directly relate to transactions in the balance of payments, they do affect the international exchange value of the dollar, which in turn affects prices of goods and services and the cost of securities. The latest survey of the world's leading central banks indicated that the total daily trading of foreign currencies was $6.6 trillion in the second quarter of 2019.[158]

Why do companies invest abroad?

Broadly, firms invest abroad to increase their profits. However, a range of factors can influence a firm's decision to invest. Multinational corporations (MNCs) generally invest abroad because they possess some special process or product knowledge or special managerial abilities, which give them an advantage over foreign firms. Major determinants of FDI include the presence of competitive advantages, resources such as low-cost labor in a host country, and greater commercial benefits through an intra-firm relationship as opposed to an arm's-length relationship between the investor and host country. MNCs are motivated by more than a single factor and likely invest abroad not only to gain access to low-cost resources, but to improve efficiency or market share. FDI has supported the development of global value chains by multinational corporations (MNCs), which source production globally. In addition, many firms find it advantageous to operate close to their customers in foreign countries, where tastes and preferences may differ from the home market.[159] Foreign markets also enable MNCs to access various resources, such as a well-educated work force, which might contribute to a firm's R&D activities. Last, some FDI transactions involve mergers and acquisitions, which can help make a firm become more globally competitive.

What countries are the largest source of and destinations for global foreign direct investment (FDI)?

According to the United Nations Conference on Trade and Development (UNCTAD), in 2019 the total stock of global outward FDI was $36 trillion.[160] In 2019, the United States was the largest source of FDI worldwide, followed by the Netherlands, China, the UK, Japan and Hong Kong, all with individual outward investment positions about one-third or less than that of the United States. The United States was also the largest recipient of FDI, followed by the UK, Hong Kong, China, the Netherlands and Singapore. By region, developing Asia accounted for the largest share of global FDI inflows in 2019 (33%), followed by Europe (31%), North America (19.3%), Latin America and the Caribbean (11%), and Africa (3%).

[157] Susan Lund et al., *The New Dynamics of Financial Globalization,* August 2017, https://www.mckinsey.com/industries/financial-services/our-insights/the-new-dynamics-of-financial-globalization.

[158] Bank for International Settlements, *Triennial Central Bank Survey: Global foreign exchange market turnover in April 2019,* September 16, 2019.

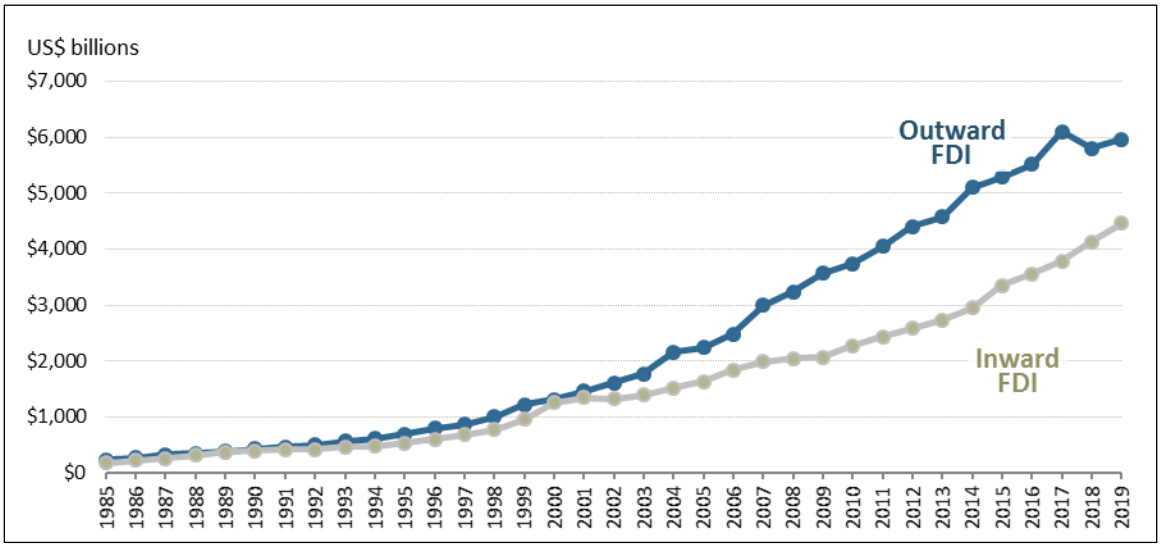
[159] For example, the latest data on the activities of U.S. multinationals show that the majority of sales of foreign affiliates of U.S. firms went to the local market of the FDI host country or other foreign countries. Bureau of Economic Analysis, "Activities of U.S. Multinational Enterprises, 2018," August 21, 2020.

[160] UNCTAD, http://unctadstat.unctad.org/EN/.

What are the levels of U.S. outward and inward FDI?

FDI to and from the United States has increased rapidly over the past few decades, and the United States has been the largest source and recipient of global FDI. From 1985 to 2019, the stock of U.S. FDI abroad rose from $238 billion to approximately $6.0 trillion, while the stock of FDI in the United States increased from $184 billion to $4.5 trillion (see **Figure 19**). The largest destinations for cumulative (or the stock of) U.S. FDI outflows through 2019 included the Netherlands, the UK, Luxembourg, Canada, Ireland, Singapore, Australia, Germany, and Japan. The largest sources of cumulative FDI inflows are similarly, Japan, the UK, Canada, the Netherlands, Germany, Switzerland, Luxembourg, France and Ireland. Transatlantic ties drive investment flows, with about 60% of U.S. direct investment abroad in Europe and 64% of FDI in the United States from Europe.[161] By sector, U.S. outward direct investment is primarily concentrated in high-technology, finance, and services. The largest share of U.S. inward FDI is in the manufacturing sector, primarily chemicals and transport industries.

Figure 19. U.S. Outward and Inward FDI Stock, 1985-2019



Source: Bureau of Economic Analysis.

Note: Data on a historical-cost basis.

What are the benefits of FDI?

Generally, economists argue for unimpeded international flows of capital, such as FDI, because such flows complement domestic economic activity and positively affect both the domestic (home) and foreign (host) economies.[162] For the home country, direct investment benefits the firms that invest abroad because they are better able to exploit their competitive advantages and acquire additional skills and other advantages in foreign markets. Direct investment is also associated with a strengthened competitive position, a higher level of skills of the employees, and higher incomes of firms that invest abroad. Host countries benefit from inward FDI because the investment adds permanently to the capital stock and often to the skill set of the economy. Direct

[161] For more on the transatlantic relationship, see CRS In Focus IF10930, *U.S.-EU Trade and Investment Ties: Magnitude and Scope*, by Shayerah I. Akhtar.

[162] See CRS Report RS21857, *Foreign Direct Investment in the United States: An Economic Analysis*, by James K. Jackson; CRS Report RS21118, *U.S. Direct Investment Abroad: Trends and Current Issues*, by James K. Jackson.

investment also brings technological advances, since firms that invest abroad generally possess advanced technology and production processes, boosts capital formation, and contributes to a more competitive business environment and productivity growth. More broadly, FDI contributes to global trade and economic integration, since most firms investing abroad are established MNCs that operate within global value chains.

Both inward and outward FDI play a role in U.S. trade, jobs, and production.[163] In 2018, the majority-owned affiliates of foreign firms in the United States employed 7.8 million workers, exported $395.3 billion in goods, and imported $750.6 billion in goods.[164] Foreign firm affiliates contributed $1.1 trillion value-added to U.S. GDP, with larger annual growth in value-added on average compared to other private U.S. firms.

Are there costs associated with FDI?

Some stakeholders raise concerns that U.S. firms invest abroad to send manufacturing and jobs overseas, and that U.S. FDI in operations and production facilities abroad supplants U.S. production and exports, thereby reducing employment and wages in the United States.[165] There have been examples of U.S. firms closing a domestic plant and opening another plant abroad, but no official sources track such activities in aggregate. As a result, most data on the activity of U.S. firms shifting plants or jobs abroad remain anecdotal. More broadly, most U.S. outward FDI is concentrated in high-income developed countries, where markets and consumer tastes are broadly similar to those in the United States, and most of this production is consumed abroad.

Most economists argue there is no conclusive evidence that U.S. direct investment abroad leads to fewer jobs or lower incomes overall for Americans.[166] Instead, they generally argue that the loss of U.S. manufacturing jobs in recent decades reflects a broad restructuring of the sector, responding primarily to improvements in productivity and other domestic economic forces. That said, jobs in particular companies and sectors can be adversely affected when a company makes decisions to produce similar products abroad.

What are international investment agreements (IIAs)?

International investment agreements (IIAs) establish binding rules on investment protections.[167] While multilateral agreements of the World Trade Organization (WTO) address some investment issues to a limited extent, there are no comprehensive multilateral rules on investment. IIAs have thus become the primary vehicle for promoting investment rules—there are over 2,600 IIAs in force globally.[168] The United States negotiates IIAs based on a "model" Bilateral Investment Treaty (BIT), to reduce restrictions on foreign investment, ensure nondiscriminatory treatment of

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[163] For example, see Theodore H. Moran and Lindsay Oldenski, *Japanese Investment in the United States: Superior Performance, Increasing Integration*, Peterson Institute for International Economics, Policy Brief 15-3, February 2015.

[164] Bureau of Economic Analysis, *Activities of U.S. Affiliates of Foreign Multinational Enterprises, 2018*, November 13, 2020, https://www.bea.gov/news/2020/activities-us-affiliates-foreign-multinational-enterprises-2018.

[165] CRS In Focus IF10636, *Foreign Direct Investment: Overview and Issues*, by James K. Jackson and Shayerah Ilias Akhtar.

[166] CRS Report RS21118, *U.S. Direct Investment Abroad: Trends and Current Issues*, by James K. Jackson.

[167] See CRS Report R44015, *International Investment Agreements (IIAs): Frequently Asked Questions*, coordinated by Martin A. Weiss; and CRS In Focus IF10052, *U.S. International Investment Agreements (IIAs)*, by Martin A. Weiss and Shayerah Ilias Akhtar.

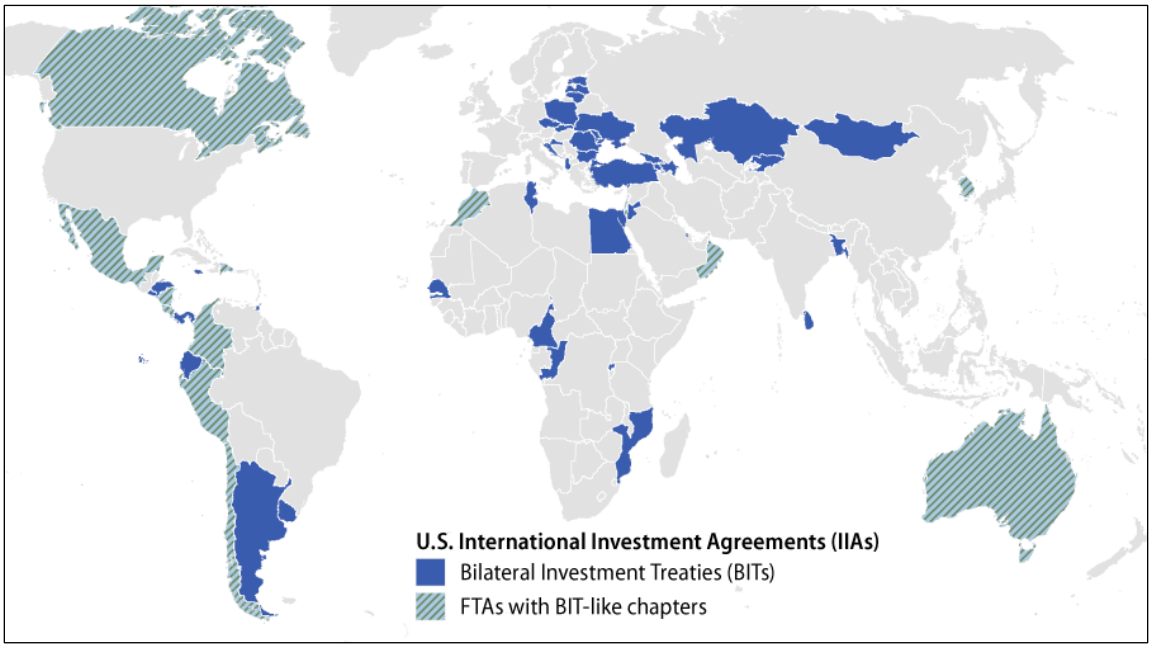
[168] According to UNCTAD, https://investmentpolicy.unctad.org/international-investment-agreements, accessed January 14, 2021.

investors and investment, and advance other U.S. interests. The agreements also generally include provisions to safeguard a government's right to regulate in the public interest and provide for national security and prudential exceptions. U.S. IIAs typically take two forms: (1) BITs, which require a two-thirds vote of approval in the Senate; or (2) investment chapters in free trade agreements, which require simple majority approval of implementing legislation by both houses of Congress. The USTR and State Department negotiate U.S. IIAs. While U.S. IIAs are a small fraction of IIA agreements worldwide, they are often viewed as more comprehensive and of a higher standard than those of other countries.

How many IIAs does the United States have?

The United States has bilateral investment treaties (BITs) in force with 40 countries, most of which are with developing countries (see **Figure 20**).[169] The latest BIT ratified by the U.S. Senate, with Rwanda, entered into force in 2012. The United States had been pursuing BIT negotiations with China and India, but both talks have stalled for several years. The United States also has 14 FTAs in force covering 20 countries, most of which include chapters on investment. The U.S.-Mexico-Canada Agreement (USMCA) represents the United States' most recent set of investment commitments in a U.S. trade agreement.

Figure 20. U.S. International Investment Agreements (IIAs)



Sources: CRS, based on information from USTR and the State Department.

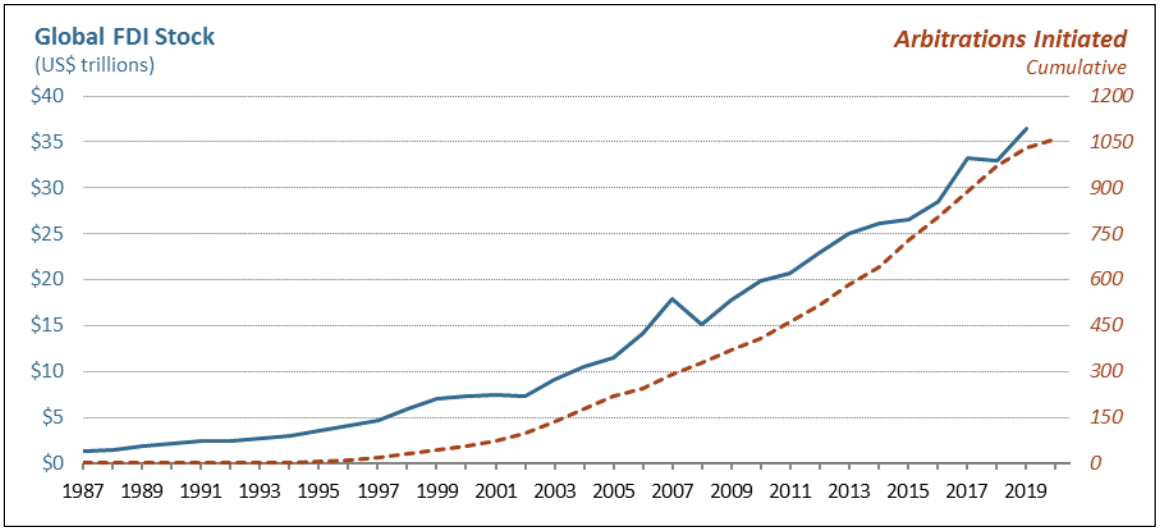
What is investor-state dispute settlement (ISDS)?

Investor-state dispute settlement (ISDS) enables private investors to bring claims against host country governments for alleged violations of investment agreements before an international arbitration panel. ISDS provisions are intended to establish a binding and impartial procedure for settling disputes, with proceedings conducted under the auspices of the World Bank-affiliated International Centre for Settlement for Investment Disputes (ICSID) or comparable rules. While a

[169] U.S. Department of State, "United States Bilateral Investment Treaties," https://go.usa.gov/xneqx.

successful claim by an investor can result in monetary penalties, a country cannot be compelled to change its laws over a decision. Globally, the number of ISDS cases has expanded significantly with the significant growth of global FDI in recent decades (see **Figure 21**). U.S. investors account for nearly one-fifth of investment claims worldwide.[170] Although there have been 17 cases brought by foreign investors against the United States as of 2020, the U.S. government has yet to lose a case.[171]

Figure 21. Global FDI and ISDS Cases



Source: U.N. Conference on Trade and Development, Investment Policy Hub and UNCTADstat database.

Notes: Cases as of July 31, 2020. FDI data for 2020 not yet available.

ISDS provisions are included in the majority of U.S. BITs and FTAs. Nearly all ISDS cases brought against the United States were under the 1994 North American Free Trade Agreement (NAFTA).[172] The use of ISDS, however, has become a subject of debate within recent U.S. trade negotiations. At the center of the debate is ensuring robust investor protections, while protecting the government's right to regulate in the public interest.[173] The Trump Administration departed from past practice with major changes to ISDS under the NAFTA renegotiation. The U.S.-Mexico-Canada Agreement (USMCA), which entered into force in July 2020, eliminates ISDS between the United States and Canada and places specific limits with respect to Mexico in sectors in which U.S. companies are heavily invested, such as the energy sector.[174] ISDS was also a major point of contention in previous negotiations for the Transatlantic Trade and Investment

[170] Specifically, 190 of some 1,061 publicly-known cases filed under ICSID and non-ICSID arbitration rules, as of July 2020; see http://investmentpolicyhub.unctad.org/.

[171] According to UNCTAD, the United States has prevailed in 10 cases, while 4 other cases have been settled and 3 discontinued. See https://investmentpolicy.unctad.org/investment-dispute-settlement/country/223/united-states-of-america/investor.

[172] CRS In Focus IF10645, *Dispute Settlement in the WTO and U.S. Trade Agreements*, by Ian F. Fergusson.

[173] For more detail on the debate, see CRS In Focus IF10052, *U.S. International Investment Agreements (IIAs)*, by Martin A. Weiss and Shayerah Ilias Akhtar.

[174] For Mexico, ISDS can be invoked regarding government contracts in the oil, natural gas, power generation, infrastructure, and telecommunications sectors, while disputes related to other sectors would require both countries to first exhaust national remedies. See CRS In Focus IF11167, *USMCA: Investment Provisions*, by Christopher A. Casey and M. Angeles Villarreal.

Partnership (T-TIP) during the Obama Administration, and would likely be an issue in future talks. The EU has been pushing to include an investment court system in place of ISDS in its recent trade agreements and negotiations.

What is the Committee on Foreign Investment in the United States (CFIUS)?

Foreign investment, particularly by firms that are owned or controlled by a foreign government, can raise concerns about national security. CFIUS is an interagency committee that assists the President in overseeing the implications of foreign investment transactions for U.S. national security interests.[175] The committee is composed of nine Cabinet members, two ex officio members, and other members as appointed. CFIUS was originally established by an executive order in 1975 with broad responsibilities and few powers. The authority to review foreign investments, known as the Exon-Florio provision, was formally established in 1988 with the passage of P.L. 100-418. In 2007, the Foreign Investment and National Security Act (P.L. 110-49) established CFIUS in statute and expanded the committee's role in reviewing FDI transactions that could affect "homeland security" and "critical industries." The Secretary of the Treasury serves as chairman of CFIUS, and a designated lead agency conducts a "risk-based analysis" of the national security threat posed by mergers, acquisitions, or takeovers that result in control of a U.S. firm by a foreign investor. The President has the authority to block proposed or pending transactions. To date, the law has been used six times to block a foreign acquisition of a U.S. firm, although a number of investments have been withdrawn before reviews were completed.

The Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA, P.L. 115-232, Title XVII), signed into law in August 2018, amended the CFIUS review process and expanded the scope of transactions subject to review, to include certain noncontrolling investments in U.S. businesses involved in critical technology, critical infrastructure, or sensitive data and certain real estate transactions.[176]

How does the U.S. government promote investment?

The United States promotes both inward and outward FDI.[177] The U.S. International Development Finance Corporation (DFC) provides political risk insurance, financing, direct equity investments, and technical assistance to help facilitate U.S. private investments abroad in developing countries.[178] The Better Utilization of Investments Leading to Development Act of 2018 (BUILD Act), enacted on October 5, 2018 (P.L. 115-254, Division F) established the DFC as a new, consolidated agency that assumed the development finance functions of the Overseas Private Investment Corporation (OPIC, now terminated) and the USAID Development Credit Authority (DCA); the BUILD Act also expanded the DFC's authorities and capacity, compared to OPIC.

SelectUSA, a Department of Commerce program established in 2011 via executive order, coordinates federal efforts to attract FDI in the United States.[179] Primary functions of SelectUSA

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

[176] For more information see CRS In Focus IF10952, *CFIUS Reform Under FIRRMA*, by James K. Jackson and Cathleen D. Cimino-Isaacs; and CRS In Focus IF11334, *CFIUS: New Foreign Investment Review Regulations*, by Cathleen D. Cimino-Isaacs and James K. Jackson.

[177] See CRS In Focus IF10636, *Foreign Direct Investment: Overview and Issues*, by James K. Jackson and Shayerah Ilias Akhtar.

[178] See CRS In Focus IF11436, *U.S. International Development Finance Corporation (DFC)*, by Shayerah I. Akhtar and Nick M. Brown.

[179] CRS In Focus IF10674, *SelectUSA Program: U.S. Inbound Investment Promotion*, by Shayerah I. Akhtar.

include providing information and data on investments to businesses and economic development organizations (EDOs), helping to resolve issues involving federal programs, and advocating at the national level for making investments in the United States over a foreign location.

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