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Bilateral and Regional Trade Agreements: Issues for Congress

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Summary

Congress plays a prominent role in shaping, debating, and approving legislation to implement trade agreements, and over the past three decades, bilateral and regional trade agreements (RTAs, or free trade agreements (FTAs) in the U.S. context) have become a primary source of new international trade liberalization commitments. The United States has historically pursued FTAs to open markets for U.S. goods, services, and agriculture, and establish trade rules and disciplines to enhance overall domestic and global economic growth. They are actively debated and can be contentious due to concerns over the potential employment effects of greater import competition, among other reasons.

RTAs are reciprocal preferential arrangements among two or more parties. Their content has evolved significantly, partly as a result of change in the international economy where new trade barriers have been erected and/or where RTAs may provide a testing ground for new trade rules for potential future multilateral agreement. The United States historically has aimed for comprehensive coverage in eliminating barriers to trade and addressing all sectors in its FTAs. In addition to the reduction and elimination of tariffs and more traditional nontariff trade barriers, U.S. FTAs also cover services trade, enhance intellectual property rights (IPR), provide investment protections, and include enforceable labor and environmental commitments. Some countries pursue more limited agreements—only half of RTAs worldwide cover services and they rarely include labor and environmental provisions.

Congressional interest in U.S. and global RTAs stems from their potential economic and foreign policy implications, implementation issues, and Congress' role in establishing U.S. trade policy (Article I, Section 8 of the Constitution grants Congress authority to regulate foreign commerce). In its 2015 grant of Trade Promotion Authority (TPA), Congress set specific negotiating objectives for U.S. trade agreements that must be advanced in order for Congress to provide expedited consideration to the implementing legislation needed to bring new agreements into force. TPA is scheduled to be in effect through July 2021, unless Congress, before July 1, 2018, enacts an extension disapproval resolution regarding the Administration's recently submitted extension request.

Since 1990, the number of RTAs in force globally has grown six-fold from fewer than 50 to nearly 300. All 164 members of the World Trade Organization (WTO) are now party to at least one RTA; as of 2014 each member had on average 11 RTA partners. The United States began negotiating FTAs in the 1980s, and as of 2018, is party to 14 such agreements involving 20 trading partners. The multilateral trading system, meanwhile, has not produced a broad set of new trade liberalization agreements (excluding more limited scope agreements, such as the Trade Facilitation Agreement) since the Uruguay Round, which also established the WTO in 1995.

In the current environment of stalled multilateral negotiations, RTAs provide an alternative venue to pursue trade liberalization and establish new rules on emerging issues. RTAs are, however, inherently discriminatory given their limited membership (i.e., they provide preferential treatment to some countries and not others), leading to debate over their global economic effect and whether they serve to facilitate future multilateral agreements or lead to the creation of competing trade blocs. U.S. exporters benefit from the preferential aspects of FTAs when they gain better access to FTA partner markets than their foreign competitors, but may be similarly harmed when third parties negotiate agreements that do not include the United States.

To date there are no RTAs in force between the world's largest economies (China, Japan, European Union (EU), and the United States). This could change in the near future as these and other major U.S. trading partners are involved in several pending RTAs, including an ongoing

negotiation between 16 Asian nations that involves both China and Japan, and two recently concluded but not yet ratified and implemented RTAs: the EU-Japan agreement (one of twelve pending EU RTAs) and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).

In some ways, the United States has pulled back from its recent FTA policy. Under the Obama Administration, the United States pursued two major regional FTA negotiations, the Trans-Pacific Partnership (TPP) including Japan and 10 other Asia-Pacific nations, and the Transatlantic Trade and Investment Partnership (T-TIP) with the European Union. These FTAs would have nearly doubled the share of U.S. trade occurring with FTA partners. The Trump Administration, however, has criticized existing FTAs, withdrawn the United States from the concluded but not enacted TPP, placed the T-TIP negotiations on hold, and initiated renegotiation or modification of the largest U.S. FTAs with Canada, Mexico, and South Korea. The Administration has also stated its intent to negotiate future FTAs on a bilateral rather than multi-party basis.

As other countries move forward with new RTA negotiations that cover a significant share of world trade, a number of issues arise that may be of interest to Congress, including how these agreements will affect U.S. economic and strategic interests, their impact on U.S. leadership in trade liberalization efforts and establishing new trade rules, and the appropriate U.S. response.

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Introduction

Congress plays a central role in the negotiation, approval and implementation of U.S. trade agreements, reflecting its constitutional authority over foreign commerce.[1] Congress shapes the Administration's trade agreement negotiations through enacting statutory U.S. trade negotiating objectives, ongoing consultations and oversight, and ratification of concluded agreements through implementing legislation. It also oversees trade agreement implementation and the enforcement of commitments.[2] U.S. trade agreements can affect many facets of U.S. economic activity, including the cost and availability of goods and services in the United States, the competitiveness of U.S. firms both domestically and abroad, employment opportunities for U.S. workers, as well as broader U.S. strategic interests. The Trump Administration has altered U.S. trade agreement policy by withdrawing from the then-pending Trans-Pacific Partnership (TPP), starting renegotiations or modification of two existing free trade agreements (FTAs), and stating a preference for bilateral FTAs. It also has put forth a more skeptical approach toward multilateral trade agreements under the World Trade Organization (WTO), and has viewed bilateral trade imbalances as a measure of trade agreement success or failure. As Congress works with the Trump Administration in establishing and implementing U.S. trade policy, it may have interest in more closely examining the implications of the type and content of U.S. trade agreements and those pursued by major U.S. trading partners that exclude the United States.

Key questions to consider may include

- how other countries' trade agreements may affect U.S. economic and strategic interests and negotiating priorities;
- the influence of bilateral and regional agreements on broader international commercial norms and their impact on the multilateral trading system;
- the role of the United States in international trade agreement negotiations;
- whether the United States should pursue new trade agreement negotiations and if so how to prioritize potential partners; and
- the costs and benefits of bilateral versus multi-party or regional negotiating approaches.

To help inform this debate, this report analyzes bilateral and regional trade agreements, including a discussion of the relation between these types of agreements and broader multilateral negotiations. It also provides information on existing U.S. FTAs and their evolution over time. As other countries' trade agreement policies and negotiations may affect the costs and benefits of various U.S. approaches, it also looks at non-U.S. regional trade agreements (RTAs), and the specific RTA regimes of the top six U.S. trading partners: the European Union, China, Canada, Mexico, Japan, and South Korea.[3] The report concludes with a discussion of potential issues for Congress by addressing key policy questions.

[1] U.S. Const. art. I, §8, cl. 3.

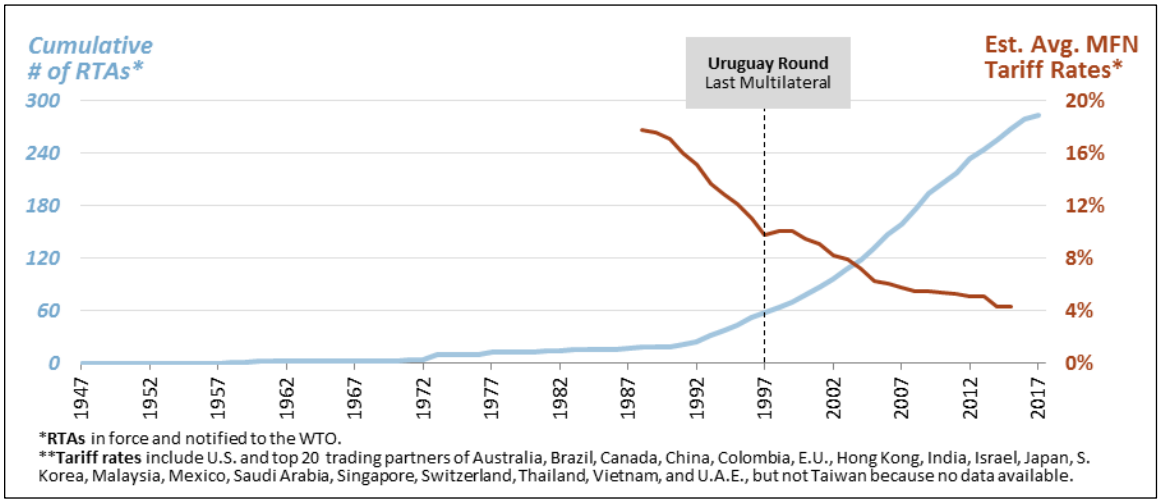
[2] For an overview on the roles of Congress and the Administration in trade agreement negotiations, see CRS In Focus IF10038, *Trade Promotion Authority (TPA)*, by Ian F. Fergusson.

[3] This report reserves the term FTA to refer to U.S. trade agreements, and uses RTA to discuss non-U.S. trade agreements. In a policy context the terms are often used interchangeably, but significant differences exist between some U.S. and non-U.S. trade agreements. For more discussion on terminology see "Types of Trade Agreements" text box below.

Overview

In the United States and internationally, trade agreements have changed considerably over the past 70 years, both in the types of agreements negotiated and their content. Those decades saw the creation, prevalence, and then relative stagnation of the multilateral trading system as the primary venue for the negotiated removal of barriers to international trade. Bilateral and now large regional (so-called mega-regional) trade liberalization agreements have become increasingly prominent, especially in the last two decades.[4] Meanwhile, tariff barriers have fallen considerably in the United States and globally as a result of multilateral, bilateral/regional, and unilateral liberalization (**Figure 1**). As tariffs have become less economically significant, trade agreements have increasingly expanded their content coverage, with more recent agreements including provisions on issues such as worker rights and environmental protections, investment commitments, and enhanced standards for intellectual property rights.

Figure 1. RTAs and Average Tariff Rates



Source: RTA data from the WTO. Tariff data from World Bank World Development Indicators.

Notes: Tariffs are simple average applied most-favored nation (MFN) (i.e., tariffs applied on imports from WTO members). Bound rates can be significantly higher than applied rates for some countries. Data are not available for all countries for all years. Missing data were imputed by taking the average of the closest observations.

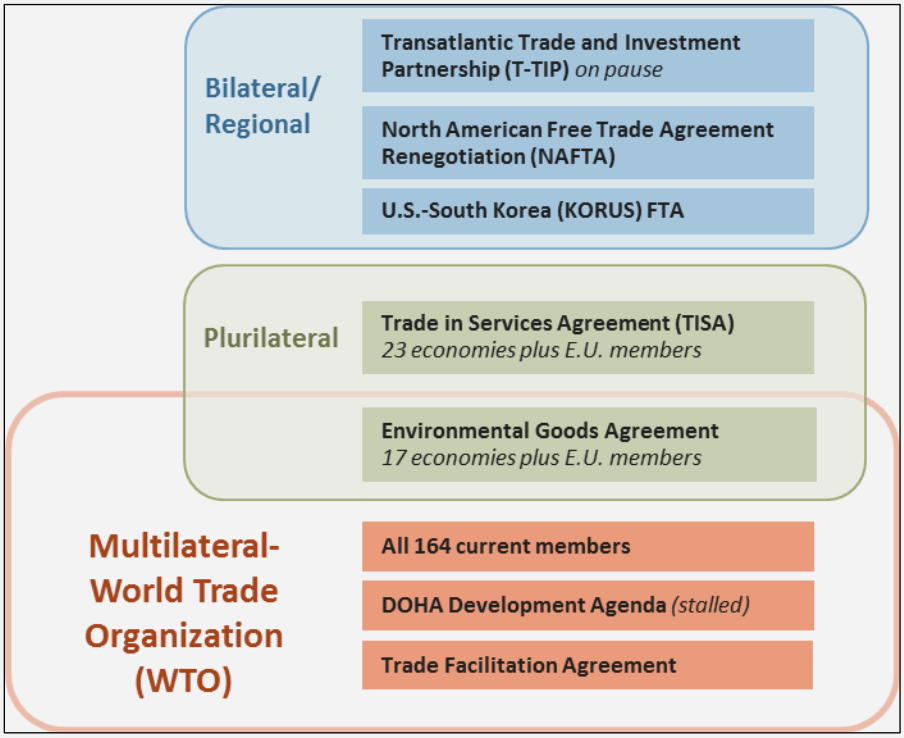
Against this backdrop of evolving and increasingly complex trade agreement negotiations and a growing number of RTAs worldwide, the Trump Administration has raised doubts about the economic benefits of recent U.S. FTAs and has taken steps to alter the current and future U.S. FTA landscape. This includes the U.S. withdrawal from the signed but not ratified 12-party Trans-Pacific Partnership (TPP), renegotiation of existing FTAs, including with a stated intent to place a major focus on trade imbalances, and a stated preference to negotiate future agreements bilaterally, rather than on a multi-party or regional basis. Congress will likely play a critical role in shaping future U.S. trade agreements since it must pass implementing legislation to bring FTAs into force. In order to receive expedited legislative consideration, such trade agreements must advance the U.S. trade negotiating objectives Congress established in its 2015 grant of Trade Promotion Authority (TPA), which is scheduled to remain in effect until July 1, 2021 unless

[4] This report uses regional trade agreement (RTA) to refer to agreements outside the multilateral system or World Trade Organization (WTO), including both bilateral and regional trade areas. Distinction will be made between bilateral and multi-party agreements where relevant.

Congress enacts, by July 1, 2018, an extension disapproval resolution regarding the Administration's recently submitted extension request.

Types of Trade Agreements

There are many different types of international trade agreements. It is useful to distinguish among three major categories for the discussion that follows. **Multilateral trade agreements** refer to the General Agreement on Tariffs and Trade (GATT), and the subsequent World Trade Organization (WTO) agreements to which164 countries are now party. These agreements generally establish the foundation of the international trading system. This report focuses specifically on a second category of agreement, **bilateral and regional trade agreements (RTAs)**, defined as reciprocal preferential arrangements outside the multilateral system and among two or more parties. This definition of RTAs encompasses both *preferential trade areas* in which two or more countries reduce or eliminate tariffs on trade among one another but maintain independent external tariff regimes, as well as *customs unions*, which go further and include the coordination of a common external tariff. In U.S. trade policy, RTAs are typically referred to as *free trade agreements (FTA),* and for clarity this report reserves the use of FTA strictly to discuss U.S. bilateral and regional agreements. In some cases, RTAs build upon existing multilateral commitments, for example by further reducing tariffs among the parties. They may establish new commitments not covered in the WTO, such as U.S. FTA provisions on investment protections and labor rights. **Plurilateral agreements**, typically refer to a third category of agreement that has elements of both RTAs and multilateral agreements. Like RTAs, only a subset of WTO members participate in plurilateral agreements, but participating members may extend the benefits negotiated in the agreement to all WTO members. For example, the 17 participants of the Environmental Goods Agreement negotiations have agreed that they will extend negotiated tariff reductions on environmental goods to all WTO members. The United States is currently involved in all three types of trade agreements as seen here.



Since the passage of the 1934 Reciprocal Trade Agreements Act, U.S. trade policy, and particularly trade agreement negotiations, have focused largely on reducing international barriers

to trade on a reciprocal basis.[5] In the immediate aftermath of World War II (WWII), policymakers in the United States and Europe, in particular, aimed to reverse past policies of the late 1920s and 1930s, when countries raised tariffs against one another, thereby exacerbating and prolonging the Great Depression and contributing to the economic and financial dislocation that many believe led to the outbreak of the war. These countries, motivated by a desire to prevent a future escalation in tariff barriers and to use trade liberalization to promote economic growth, peace and stability, created the General Agreement on Tariffs and Trade (GATT) in 1947, establishing the foundation of the modern multilateral trading system.[6]

In 1995, as part of the Uruguay Round negotiations, the GATT became part of the World Trade Organization (WTO), alongside major agreements covering services, intellectual property rights, agriculture and binding dispute settlement for the first time. Since the creation of the GATT, the United States, as the world's largest economy, has been a key driver of multilateral trade agreement negotiations, including in expanding the depth and scope of commitments. For many reasons, since the conclusion of the Uruguay Round, it has been increasingly difficult to conclude another major round of multilateral trade liberalization negotiations, such that since that time new trade rules have been established largely in RTAs.

In the 1980s, the United States began negotiating FTAs, the first of which entered into force with Israel in 1985. Bilateral negotiations on tariffs were part of U.S. trade policy long before the advent of the multilateral system, but U.S. FTAs are more extensive than earlier bilateral agreements, including the near complete elimination of tariffs among the parties, and a broad range of commitments beyond tariffs. While new provisions have been added over time, the general outlines of a U.S. FTA have remained largely consistent since the North American Free Trade Agreement (NAFTA) entered into force in 1994. Non-U.S. RTAs vary considerably in terms of the scope and depth of commitments. There is extensive debate over the effect of these agreements on trade negotiations at the broader multilateral level, with some evidence that they have both spurred and impeded multilateral efforts toward liberalization. The number of bilateral and regional agreements, including U.S. FTAs, has grown significantly in number since the conclusion of the Uruguay Round, the last major multilateral agreement, in 1994.

While the overarching goal of U.S. trade negotiations in the postwar period has focused on trade liberalization and its broad economic welfare gains, concerns over the effects of import competition on certain domestic U.S. industries and workers have always been present to varying degrees and have influenced policy decisions. In addition to transition periods for removing certain barriers in specific trade agreements, the United States and other countries have special safeguard mechanisms to address harmful import surges and enable adjustment to trade competition. Other trade policy tools are also in place to provide remedies from injury resulting from unfair trade practices such as dumping and subsidies.

In several instances, action on trade agreement implementation has been accompanied by new or enhanced trade adjustment programs to help workers and firms adversely affected by more open markets adjust to greater trade competition through training and income support. For example, the Trade Expansion Act of 1962, which authorized tariff reductions of up to 50%, also created the first iteration of the Trade Adjustment Assistance (TAA) program that provides compensation and

[5] In the context of recent trade agreements, reciprocal negotiations may involve concessions in different categories of interest. For example, significant tariff concessions may be offered by one party in exchange for stronger commitments on trade rules such as intellectual property.

[6] Richard Baldwin, "The World Trade Organization and the Future of Multilateralism," *Journal of Economic Perspectives*, vol. 30, no. 1 (Winter 2016), p. 97.

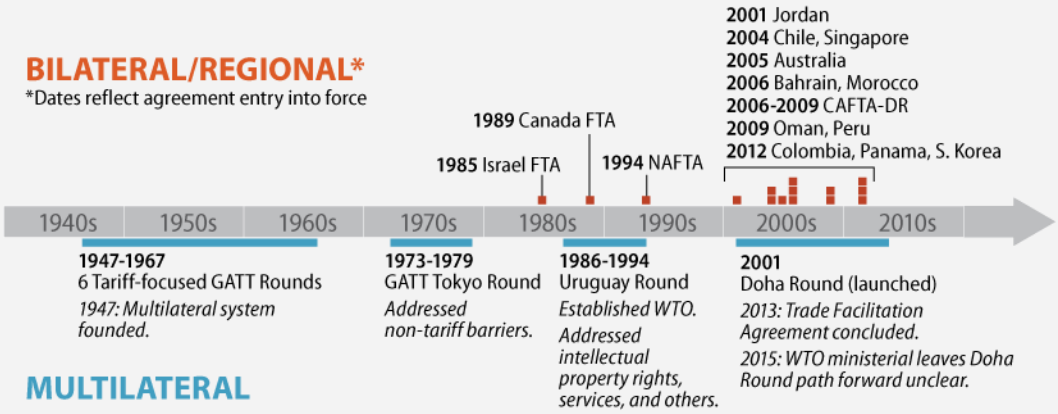
assistance to workers and firms negatively affected by trade.[7] The Trade Act of 1974, which authorized the Administration to negotiate reductions in both tariff and nontariff barriers and created the modern TPA, also expanded TAA and provided new authorities under Section 301 allowing the President to take action to address foreign trade barriers.[8]

The evolution of U.S. trade agreements has been informed by ongoing debate among some Members of Congress and affected stakeholders, whose varied interests include market access abroad, domestic import competition, and access to lower-cost and a greater variety of goods, services, and agriculture. The 115th Congress will likely continue to debate many aspects of U.S. trade agreement policy as it engages with the Trump Administration regarding possible modifications to existing U.S. FTAs, including NAFTA and the U.S.-South Korea (KORUS) FTA, and potential new trade negotiations.

[7] U.S. International Trade Commission, "U.S. Trade Policy since 1934," in *The Economic Effects of Significant U.S. Import Restraints*, publication 4094, August 2009, pp. 73-75.

[8] Ibid, p. 75.

Evolution of U.S. Trade Agreement Negotiations



(1947-1967)	• **Multilateral system (GATT) founded** and 5 subsequent tariff-focused negotiating rounds held.
(1973-1979)	• **GATT Tokyo Round** addressed nontariff barriers (NTBs) in multilateral setting but most nontariff agreements (antidumping, subsidies and countervailing duties, technical barriers to trade, and government procurement) are adopted by limited countries (plurilateral). Most, except government procurement, were eventually adopted multilaterally.
(1985-1994)	• **Uruguay Round** established current multilateral system (WTO). • **U.S. implemented first FTAs** (Israel, Canada, and NAFTA). • **Major expansion of U.S. international trade commitments** ensued at both multilateral and FTA level (tariffs, nontariff barriers, services, agriculture, intellectual property rights (IPR), and dispute settlement).
(2001-2012)	• **Doha Round** negotiations initiated and ongoing. • **U.S. implemented 12 FTAs** broadening geographic coverage (e.g., Asia, Latin America, and Middle East) and scope of commitments, which include deeper liberalization and "WTO plus" provisions on issues such as labor, environment, and IPR. U.S. joins regional TPP negotiations.
(2013-2016)	• **Doha Round stalemate** led to limited agreement on trade facilitation and shift in focus to sectoral plurilateral negotiations, including outside the WTO (Trade in Services Agreement). • **U.S. pursued mega-regional negotiations** (TPP-concluded, not ratified, T-TIP-launched), with emphasis on expanding commitments and addressing new issues such as digital trade and state-owned enterprises (SOEs).
(2017-)	• **Path forward** for multilateral Doha Round negotiation unclear. • **U.S. initiates review and revision of FTAs** (TPP withdrawal, T-TIP paused, NAFTA renegotiation, and KORUS modification talks), emphasizes new bilateral negotiations, continues to pursue commitments on new issues (e.g., digital and SOEs), and contemplates changes to existing rules (e.g., investment dispute-settlement and rules of origin).

Source: Information from USTR and WTO. Timeline graphic created by CRS.

Relationship to WTO

The relationship between regional trade agreements (RTAs) and the broader multilateral system (i.e., the WTO) is complex. While permitted by WTO rules, RTAs are technically a violation of a fundamental principle of the WTO, the most-favored nation (MFN) concept. MFN requires WTO adherents to treat all other members uniformly in their trade policies. RTAs, however, are explicitly discriminatory, committing participants to treat trade partners inside the agreement differently than those outside, except for certain provisions that may be applied on an MFN basis. The WTO agreements allow an exception for RTAs on the theory that such agreements, subject to certain rules, may further WTO goals of increasing trade and economic openness and could eventually facilitate a multilateral agreement. There is considerable debate, however, over how these agreements affect multilateral negotiations, with some historical examples suggesting they can both incentivize as well as impede multilateral action. In addition to affecting the pace of multilateral negotiations, RTAs may also influence their outcomes, including the type and level of commitments negotiated multilaterally. They may serve as incubators for new trade policies, or potentially create different standards that could complicate the international commercial environment. These concerns are particularly heightened today given the proliferation of RTAs and the rise of mega-regionals.

WTO Rules on RTAs

The WTO Agreements provide three different exceptions for RTAs. Article XXIV of the GATT allows for both free trade areas and customs unions (free trade areas with a common external tariff).[9] Similar language in Article V of the General Agreement on Trade in Services (GATS) allows for economic integration agreements outside the WTO relating to services trade.[10] Recognizing that such agreements can lead to negative effects on other WTO members and the multilateral system as a whole, these provisions require that RTAs be notified to the other members, cover "substantially all trade," and do not effectively raise barriers on imports from third parties.[11] The WTO agreements also set out special provisions relating to developing countries. Paragraph 2(c) of the "enabling clause," which deals with special and differential treatment for developing countries,[12] allows RTAs among developing countries with the "mutual reduction or elimination of tariffs."[13] In addition, the RTA provisions in the GATS also clarify that services agreements that include a developing country can have greater flexibility regarding the extent of their sector coverage.

[9] WTO, "General Agreement on Tariffs and Trade (GATT)," available at https://www.wto.org/english/docs_e/legal_e/gatt47.

[10] WTO, "General Agreement on Trade in Services (GATS)," available at https://www.wto.org/english/docs_e/legal_e/26-gats_01_e.htm#articleV.

[11] An understanding on RTAs was incorporated in the WTO legal texts as part of the 1994 Uruguay Round agreements, emphasizing these additional criteria in light of RTAs increasing significance in the global trading system. WTO, "Understanding on the Interpretation of Article XXIV of the General Agreement on Tariffs and Trade 1994," available at https://www.wto.org/english/docs_e/legal_e/10-24_e.htm.

[12] The WTO does not have specific criteria for what constitutes a developing country. Countries are permitted to self-declare their developing country status. WTO, "Who are the developing countries in the WTO," available at https://www.wto.org/english/tratop_e/devel_e/d1who_e.htm.

[13] WTO, "Differential and More Favourable Treatment Reciprocity and Fuller Participation of Developing Countries," available at https://www.wto.org/english/docs_e/legal_e/enabling1979_e.htm.

There are questions over the degree to which RTAs adhere to these criteria, particularly regarding notification and coverage. Estimates suggest roughly 100 RTAs are in force but not notified to the WTO.[14] In addition, there is considerable variation in the scope and extent of liberalization in existing RTAs.

The WTO itself has had difficulty in assessing RTAs against these metrics. One issue is ambiguity in the requirements (e.g., how does one define "substantially all trade"?). Another challenge is the transparency and notification process. If WTO members are not made aware of ongoing trade agreement negotiations, or only after they are already in effect, it is difficult to weigh in on their design. The WTO Doha Round of multilateral negotiations, which began in 2001, potentially was to address some of these issues and revisit the WTO RTA review process. As those negotiations remain stalled, reviews currently take place under a provisional 2006 transparency initiative.[15] As part of that initiative, the WTO Secretariat makes a factual presentation on the contents of new agreements and their provisions after they have been notified.[16]

Individual WTO members have the option to use the institution's dispute settlement proceedings to address perceived violations of WTO rules on the requirements of RTAs.[17] While some members, including the United States,[18] have raised concerns that some RTAs do not adhere to WTO rules, including that they cover substantially all trade, such concerns have rarely been taken to a formal dispute settlement proceeding.[19] Some trade scholars argue that the rationale behind this lack of formal objection stems from the proliferation of RTAs among nearly all members, and hence a desire to keep one's own RTAs from excessive scrutiny.[20] Even among U.S. FTAs, which include near complete tariff elimination, there are some provisions that could violate WTO RTA rules. For example, the signed but not implemented TPP agreement included a 30-year tariff phase-out period for U.S. light truck tariffs. WTO rules technically require that the implementation of RTAs take no longer than 10 years except in exceptional circumstances.[21]

Debate over RTAs and Multilateral System

Since the modern multilateral trading system was first established in 1947, there has been ongoing debate over the effects of RTAs on the system and its members. This debate intensified as agreements proliferated, particularly after the United States began pursuing its own FTAs in

[14] Rohini Acharya, "Regional Trade Agreements: Recent Developments," in *Regional Trade Agreements and the Multilateral Trading System*, ed. Rohini Acharya (2016), p. 5.

[15] For more details on this process, see https://www.wto.org/english/tratop_e/region_e/trans_mecha_e.htm.

[16] These reports provide useful information on the contents of notified RTAs. They can be found via the "factual presentations" link at https://www.wto.org/english/tratop_e/region_e/region_e.htm.

[17] Bernard M. Hoekman and Michel M. Kostecki, "Preferential Trade Agreements," in *The Political Economy of the World Trading System*, 3rd ed. (2009), p. 490.

[18] Congress has stated its concerns regarding the coverage of RTAs in statute. For example, the Trade Preferences Extension Act of 2015, P.L. 114-27, directs the Administration that "if other countries seek to negotiate trade agreements that do not cover substantially all trade, continue to object in all appropriate forums."

[19] The issue of RTA compliance with GATT rules arose in three dispute-settlement panels before the WTO was established, but none of the three cases resulted in an adopted (i.e., binding) panel report. Since the creation of the WTO, at least two dispute-settlement cases have arisen due to adverse effects from the establishment of an RTA, and addressed the question of RTA compliance. For more information, see Petros C. Mavroidis, "If I Don't Do It, Somebody Else Will (or Won't)," *Journal of World Trade*, vol. 40, no. 1 (February 2006), pp. 205-207.

[20] Petros C. Mavroidis, "If I Don't Do It, Somebody Else Will (or Won't)," *Journal of World Trade*, vol. 40, no. 1 (February 2006), p. 212.

[21] The ten-year implementation rule is part of the 1994 "understanding" on RTAs, see footnote 11.

the 1980s. Some key aspects of this debate are the economic effects of RTAs on countries within and outside these agreements, the prospects for liberalization under either type of agreement, and how RTAs influence the multilateral system. In recent years, the rise of "mega-regional" RTA negotiations, such as the Regional Comprehensive Economic Partnership (RCEP) and TPP, or agreements involving multiple countries of considerable economic significance, has added another layer of complexity to this question. On one hand, as these agreements encompass a large number of trading partners they provide opportunities to consolidate existing agreements under one uniform framework; on the other hand, they could potentially cover such a significant share of world trade as to render questions over the WTO's primacy as the trade liberalization and rule-making forum for international commerce.[22]

Economic Effects

Multilateral and RTA trade liberalization can have different economic outcomes. Generally, the economic benefits of trade liberalization result from the removal of tariff and nontariff barriers (i.e., policies that distort underlying price signals in international commerce), which allows countries to specialize in the production of goods and services in which they have a relative comparative advantage. Economic theory posits that this shift in production should allocate resources most efficiently within and among countries, resulting in lower prices that benefit consumers, and therefore nondiscriminatory trade liberalization (i.e., multilateral tariff reductions) should generally lead to an unambiguous increase in global aggregate welfare.[23]

The economic effects of trade liberalization under RTAs are less clear, due to their discriminatory nature. Countries inside the agreement face one set of tariff and nontariff barriers, while those outside face another. Therefore the lowering of trade barriers among RTA partners, could lead both to *trade creation* whereby higher cost domestic production is replaced by imports from a lower cost RTA partner (an efficiency gain), as well as *trade diversion* whereby imports from a low-cost producer outside the agreement are replaced by imports from a higher cost producer inside the agreement (an efficiency loss).[24] This possibility for *trade diversion* is what distinguishes RTAs from multilateral agreements in economic analysis. These trade diversion effects can negatively affect economic welfare of countries both inside and outside the RTA. In practice, it is typically countries outside the RTA that are expected to face negative trade diversion effects. For example, economic modeling of the potential effects of TPP, estimated welfare gains for the 12 countries participating in the agreement, but slight losses for China, India, and Thailand due to trade diverting from these countries to TPP members.[25]

[22] World Economic Forum, *Mega-regional Trade Agreements*, July 2014, p. 8, http://www3.weforum.org/docs/GAC/2014/WEF_GAC_TradeFDI_MegaRegionalTradeAgreements_Report_2014.pdf.

[23] Under certain circumstances a positive tariff may be optimal when looking solely at the welfare of the domestic economy, but the relatively limited scenarios under which this might occur and the political difficulty of setting economically optimal tariffs generally leads most economists to support trade liberalization efforts. For a discussion of the economic merits of trade liberalization policies, see Chapters 8 and 9 of Paul R. Krugman and Maurice Obstfeld, *International Economics: Theory and Policy*, 6th ed. 2003.

[24] This question of trade creation versus trade diversion in RTAs was first explored in the 1950s by economist Jacob Viner and has remained relevant in the economic analysis of RTAs since. Jacob Viner, *The Customs Union Issue*, Carnegie Endowment for International Peace, 1950.

[25] Peter A. Petri and Michael G. Plummer, *The Economic Effects of the Trans-Pacific Partnership: New Estimates*, Peterson Institute for International Economics, WP 16-2, January 2016, p. 20, https://piie.com/system/files/documents/wp16-2_0.pdf.

Trade Diversion vs. Trade Creation

Consider a three-country world of apparel trade between Brazil, Vietnam, and the United States (see table below). Suppose production costs for t-shirts are $3 in Vietnam, $4 in Brazil, and $5 in the United States.

(A) If the United States imposes a 100% tariff on t-shirts, costs for U.S. retailers would initially be $6 on imports from Vietnam, $8 on imports from Brazil, or $5 for U.S.-made shirts. The United States would import no t-shirts.

(B) Now, suppose a multilateral agreement reduces U.S. tariffs on all partners by 50%. Costs for U.S. retailers are now $4.50 on t-shirts from Vietnam, $6 on t-shirts from Brazil, and $5 for U.S.-made shirts. After the tariff reduction, U.S. buyers would shift to imports from Vietnam. This agreement would be trade creating since the United States would now import t-shirts from a lower cost producer, resulting in a more efficient allocation of production.

(C) Now further suppose the United States and Brazil form an RTA that eliminates remaining tariffs, but only between each other. Costs for U.S. retailers would still be $4.50 for Vietnamese t-shirts and $5 for U.S. shirts, but now Brazilian shirts would cost only $4. This agreement would be trade diverting since the United States would now import t-shirts from Brazil, despite lower cost production in Vietnam, resulting in an overall global loss of economic efficiency relative to a scenario in which imports from all nations faced the same duty rate.

	Production Cost/Shirt	**(A)** U.S. price with 100% import tariff	**(B)** U.S. price after multilateral 50% tariff reduction	**(C)** U.S. price after bilateral tariff elimination with Brazil
U.S.	$5	**$5**	$5	$5
Brazil	$4	$8	$6	**$4**
Vietnam	**$3**	$6	**$4.50**	$4.50
Result of tariff regime		***No trade***	***Trade creation,*** *imports shift to low cost producer (Vietnam)*	***Trade diversion,*** *imports shift to higher cost producer (Brazil)*

Whether such RTAs are welfare enhancing then depends on the relative degree of trade diversion and creation resulting from an agreement. Empirical studies vary on their estimates of trade diversion and the significance of this problem, and such studies are inherently challenging exercises given the difficulty in parsing out the other factors simultaneously influencing trade flows.[26] Concerns over the trade diverting aspects of RTAs, however, may be waning, in large part because tariffs have fallen dramatically worldwide through a combination of multilateral, bilateral/regional, and unilateral actions. According to one international economist, "the specter that regional trading agreements would inefficiently divert trade never really appeared."[27] However, more recent research highlights that trade agreements may have a strong effect on trade flows even when applied tariffs are already low because they lower uncertainty over fluctuations in trade barriers, including by lowering bound tariff rates to applied levels.[28] Therefore, while most economists acknowledge the potential benefits of RTAs, many also urge continued

[26] For a review of the academic literature on empirical estimates of trade creation and diversion, see Caroline Freund and Emanuel Ornelas, "Regional Trade Agreements," *Annual Review of Economics*, vol. 2 (2010), pp. 143-144.

[27] Richard Baldwin, "The World Trade Organization and the Future of Multilateralism," *Journal of Economic Perspectives*, vol. 30, no. 1 (Winter 2016), p. 112.

[28] Bound tariffs refer to the maximum tariff allowed under an existing trade agreement, while applied tariffs refer to the tariff rate currently applied to imports. For the many countries that have unilaterally lowered their applied tariffs in recent decades (i.e., with no accompanying changes to their multilateral commitments), their applied tariff rates are below their bound rates and therefore could be raised without incurring any retaliatory action at the WTO.

evaluation regarding their effects on economic welfare,[29] and some remain very skeptical of their overall benefit.[30]

The trade creation and diversion debate has largely focused on tariff commitments. Nontariff commitments, however, are increasingly important components of RTAs, especially U.S. FTAs (see "Content of U.S. FTAs" for discussion of FTA commitments). Such commitments often involve domestic regulatory changes, and therefore may be less discriminatory against non-RTA parties than in the case of tariffs—in other words, non-RTA parties can also benefit from a country's lowering of nontariff barriers, often called "spillover" effects.[31] It is often difficult, if not impossible, to apply nontariff commitments on a country-by-country basis. Moreover, the WTO exemptions regarding RTAs do not apply to all commitments, such as the Agreement on Trade-Related Aspects of Intellectual Property (TRIPS). Therefore, IPR commitments in RTAs are not allowed to discriminate against other WTO members.[32]

Influence on the Multilateral System

Perhaps more consequential in today's trading environment than the debate over the issue of trade creation and trade diversion resulting from RTAs is the dynamic question of how RTAs influence the pace and scope of negotiations at the multilateral level.

Again, the evidence is inconclusive.[33] The two types of agreements have worked simultaneously, and at times RTAs may have spurred action at the multilateral level.[34] For example, some trade scholars argue that the formation and then expansion of the European Union led the United States and Japan to push for the Kennedy Round of multilateral trade negotiations in the 1960s in order to minimize export disadvantages in European markets as a result of the expanded customs union.[35] Similarly, NAFTA, which eliminated most tariff barriers between the United States, Canada, and Mexico and was passed by Congress in 1993, may have spurred action on the Uruguay Round agreements, which were signed the following year.[36] Some, however, question whether the more recent surge in the number of RTAs has removed incentives for members of the WTO to pursue multilateral negotiations, or has simply drawn needed energy and resources away from the multilateral process.[37] Economists have also found empirical evidence, specifically in

[29] Nuno Limao, "Preferential Trade Agreements," in *Handbook of Commercial Policy*, ed. Kyle Bagwell and Robert W. Staiger, vol. 1B (2016), p. 357.

[30] Jagdish Baghwati is a leading critic of RTAs, arguing "the proponents of PTAs [preferential trade agreements] are too complacent about the phenomenon of trade diversion." Jagdish Bhagwati, *Termites in the Trading System* (Oxford University Press, 2008), p. 52.

[31] For an analysis of the multilateralization of nontariff regional trade agreement commitments, see Richard Baldwin, Simon Evenett, and Patrick Low, "Beyond Tariffs: Multilateralizing Non-Tariff RTA Commitments," in *Multilateralizing Regionalism: Challenges for the Global Trading System*, ed. Richard Baldwin and Patrick Low (Cambridge University Press, 2009).

[32] Rohini Acharya, "Regional Trade Agreements: Recent Developments," in *Regional Trade Agreements and the Multilateral Trading System*, ed. Rohini Acharya (2016), p. 14.

[33] For a review of the academic literature on the effects of regional agreements on multilateralism, see Caroline Freund and Emanuel Ornelas, "Regional Trade Agreements," *Annual Review of Economics*, vol. 2 (2010), pp. 152-155.

[34] Richard Baldwin, "The World Trade Organization and the Future of Multilateralism," *Journal of Economic Perspectives*, vol. 30, no. 1 (Winter 2016), p. 100.

[35] Ibid, p. 102.

[36] Hoekman and Kostecki, op. cit., p. 499.

[37] Richard Baldwin, "The World Trade Organization and the Future of Multilateralism," *Journal of Economic Perspectives*, vol. 30, no. 1 (Winter 2016), p. 107.

the case of U.S. multilateral tariff offers, that existing RTAs lessen members' willingness to lower tariffs via multilateral negotiations.[38]

Yet, few experts argue that RTAs alone are the cause of the stagnation in successful multilateral negotiations since 1995. Some economists suggest the global trading system's difficulties are a result of its own success, as the major reduction of tariff and certain nontariff barriers over the past seven decades has hampered incentives for new agreements. Other possible explanations for the more challenging multilateral environment today include the greater number of participants, the growing role of developing countries in world trade and the fact that their priorities sometimes differ from those of developed countries, and the increasingly complex nature of nontariff issues and inherent challenges of measuring compliance.[39]

As new RTAs increasingly include commitments on various nontariff barriers and trade issues not currently addressed at the WTO, there are growing questions over how these new provisions may eventually affect multilateral rules. There are historical cases, such as NAFTA and its commitments on intellectual property rights (IPR) and dispute settlement for example, in which commitments similar to those found in RTAs quickly made their way into the multilateral system. There are also concerns, however, over the potential for a two-tiered system to emerge, one based on older multilateral rules, and another based on more modern commitments found in RTAs.[40] Another concern is how different RTAs may craft their rules, and to the extent they diverge whether this would create impediments for international commerce, or at least limit the benefits of liberalization.[41] On the other hand, some see RTAs as a trial space to explore different options for updating international trade rules, such as new commitments on digital trade.

In the view of two authoritative figures on international trade issues:

> Preferential trade agreements represent a challenge and an opportunity for the multilateral trading system. The opportunity is to use them as experimental laboratories for cooperation on issues that have not (yet) been addressed multilaterally, especially issues where the outcome is applied on a MFN basis. The challenge is to control the discrimination that is inherent in any PTA [preferential trade agreement].[42]

There may also be a first-mover advantage in establishing RTAs. Economic theorists have created models that show a domino effect of RTAs, whereby countries are induced to join based in part on the potential for lost competitiveness from staying outside the agreement (also referred to as competitive liberalization).[43] In practice, this may have been the motivation behind the expanding list of countries interested in the U.S.-led TPP negotiations during the Obama Administration. Japan, for example, announced its intent to participate in TPP shortly after the United States and South Korea implemented their bilateral FTA. Japan and South Korea compete in the U.S. market

[38] The study finds that U.S. multilateral tariff reductions in the Uruguay Round were lower on products traded intensively with existing preferential partners such as the NAFTA countries. Nuno Limao, "Preferential Trade Agreements as Stumbling Blocks for Multilateral Trade Liberalization: Evidence for the United States," *American Economic Review*, vol. 96, no. 3 (June 2006).

[39] For more information, see CRS In Focus IF10002, *The World Trade Organization*, by Ian F. Fergusson and Rachel F. Fefer.

[40] Richard Baldwin, "The World Trade Organization and the Future of Multilateralism," *Journal of Economic Perspectives*, vol. 30, no. 1 (Winter 2016), p. 112.

[41] Jagdish Bhagwati, *Termites in the Trading System: How the Preferential Agreements Undermine Free Trade* (Oxford University Press, 2008), p. 61.

[42] Hoekman and Kostecki, op. cit., p. 509.

[43] For a recent examination of this potential effect, see Richard Baldwin and Dany Jaimovich, "Are Free Trade Agreements Contagious?," *Journal of International Economics*, vol. 88, no. 1 (September 2012).

on a range of products, including motor vehicles, both countries' top export to the United States. China also expressed "interest" in the TPP to U.S. officials.

This dynamic could have significant implications in terms of establishing new trade rules, giving original members of trade pacts outsized influence, especially in the current landscape of mega-regional negotiations. Indeed, influencing global trading rules was a major stated goal of the Obama Administration in its pursuit of the TPP.[44] Concerns over competitiveness in export markets may also be important in providing political cover to economic reformers within countries debating participation in trade liberalizing agreements and facing opposition from domestic interests that expect increased import competition.

U.S. Free Trade Agreements (FTAs)[45]

The United States has been a major advocate of trade liberalization through multilateral agreements, but since the late 1980s has simultaneously pursued FTAs for numerous economic, political, and strategic reasons. Through both bilateral and multi-party negotiations the United States has negotiated, signed, and implemented 14 FTAs with 20 different countries.[46] Implementing legislation for the first U.S. FTA, the agreement with Israel, was signed in June 1985, while the most recent FTAs passed by Congress—agreements with Colombia, Panama, and South Korea—were signed into law in October 2011. During that time, U.S. FTAs have evolved with certain commitments clarified and expanded, new issues added, and some commitments dropped. These agreements have generally built upon one another, often seeking higher standards beyond WTO provisions, and have a number of common elements. This section provides a brief history of U.S. FTA negotiations and discussion of Trump Administration FTA policies to date, an examination of the typical components of U.S. FTAs, and analysis of trade trends under U.S. trade agreements.

Evolution of U.S. FTA Negotiations, Objectives, and Strategies

From the creation of the GATT in 1947 until the 1980s, U.S. efforts toward trade liberalization focused primarily on agreements in the multilateral setting, with the United States and other countries strongly eschewing discriminatory bilateral arrangements.[47] The U.S. focus on the multilateral system during this time in part reflected a reaction to the tit-for-tat trade discrimination that occurred in the 1930s and a desire to establish mechanisms to avoid such actions in the future. Judged by the metric of global tariff rates, the multilateral system was successful as successive rounds of multilateral negotiations achieved a significant reduction in average tariffs (above 30% reduction in weighted average in some rounds).[48] However, nontariff barriers became increasingly problematic both due to their growing relative significance as tariffs

[44] For more information, see CRS Report R44361, *The Trans-Pacific Partnership (TPP): Strategic Implications*, coordinated by Ben Dolven and Brock R. Williams.

[45] See Appendix A for a listing of CRS products on U.S. FTAs.

[46] The U.S. has technically negotiated, signed, and implemented 15 agreements, if one includes the U.S.-Canada FTA, which was later subsumed by the North American Free Trade Agreement (NAFTA).

[47] Arvind Panagariya, "The Regionalism Debate: An Overview," *World Economy*, June 1, 1999, p. 480.

[48] U.S. International Trade Commission, "U.S. Trade Policy since 1934," in *The Economic Effects of Significant U.S. Import Restraints*, publication 4094, August 2009, p. 69.

fell, and due to their increased use as an alternative mechanism to restrict imports in sensitive areas.[49]

Congress attempted to address this concern over the growth in nontariff barriers, as well as general concerns over less than reciprocal U.S. access to foreign markets, in the Trade Act of 1974 (P.L. 93-618). Some in Congress also raised concerns at that time over the discriminatory effects of preferential agreements, specifically the expansion of the European Community.[50] In response, Congress encouraged the executive branch to engage in new international negotiations covering a wider range of topics and approaches, including commitments on nontariff barriers. Specifically, Congress created a new negotiating authority for the executive branch, today known as Trade Promotion Authority (TPA), ensuring expedited legislative consideration for trade agreements and specifically mandating negotiation on nontariff issues (Section 102).[51] At the same time, Congress clarified that this authority applied not only to multilateral negotiations (the primary venue for engagement at the time), but also to bilateral agreements, and encouraged the Administration to undertake such a negotiation with Canada (Sections 105 & 612).

It would take roughly another decade before the first U.S. FTA negotiations began under the Reagan Administration. Since that time, every U.S. President has initiated or concluded at least one U.S. FTA. Presidents Clinton, George W. Bush, and Obama, each also worked with Congress to implement FTAs concluded by their immediate predecessor.

Reagan Administration. The first U.S. FTA negotiations, under the Reagan Administration, took place under two subsequent grants of TPA in the Trade Agreements Act of 1979 (P.L. 96-39) and Trade and Tariff Act of 1984 (P.L. 98-573) (**Figure 2**).[52] Scholars assert that the rationale for the U.S.-Israel FTA, concluded and passed by Congress in 1985 (P.L. 99-47), was largely based on foreign policy dynamics.[53] Meanwhile, the second agreement, with Canada, at the time the largest U.S. trading partner, was primarily done for commercial reasons. Some argue the United States may have also sought the agreement with Canada to generate interest in a new multilateral round of negotiations.[54] The U.S.-Canada FTA negotiations began in May 1986 and the multilateral Uruguay Round negotiations got underway the following September. The U.S.-Canada FTA was concluded and implementing legislation was passed by Congress in 1988 (P.L. 100-449).

George H.W. Bush Administration. The next significant step in U.S. FTA negotiations occurred simultaneously with the ongoing multilateral Uruguay Round negotiations under a TPA grant in the Omnibus Trade and Competitiveness Act of 1988 (P.L. 100-418). In 1991, three years after the U.S.-Canada FTA was concluded, the United States began trilateral negotiations with Canada and Mexico on the North American Free Trade Agreement (NAFTA). NAFTA was signed in 1992 in the last days of the George H.W. Bush Administration, but not considered by Congress at the time due to concerns in part over a lack of labor and environmental provisions.

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[49] Ibid, p. 70.

[50] U.S. Congress, Senate Committee on Finance, *Trade Reform Act of 1974*, 93rd Cong., November 26, 1974, 93-1298 (Washington: GPO, 1974), p. 5.

[51] For more information on Trade Promotion Authority, see CRS Report RL33743, *Trade Promotion Authority (TPA) and the Role of Congress in Trade Policy*, by Ian F. Fergusson.

[52] The Trade Agreements Act of 1979 extended the TPA negotiating authority relating to nontariff measures through 1988, while the Trade and Tariff Act of 1984 modified the TPA authority to include both nontariff and tariff measures, and included specific provisions relating to the notification requirements for the U.S.-Israel FTA.

[53] Howard Rosen, "Free Trade Agreements as Foreign Policy Tools: The U.S.-Israel and U.S.-Jordan FTAs," in *Free Trade Agreements*, ed. Jeffrey J. Schott (Institute for International Economics, 2004), p. 51.

[54] Raymond Vernon, Debora L. Spar, and Glenn Tobin, *Iron Triangles and Revolving Doors* (Praeger, 1991), p. 26.

Clinton Administration. The Clinton Administration began its FTA efforts negotiating additional labor and environmental side agreements to NAFTA to address congressional concerns. Congress passed NAFTA at the end of 1993 (P.L. 103-182).[55] The Uruguay Round negotiations, ongoing since 1986, were concluded and signed shortly after NAFTA under a special extension of the 1988 TPA grant, which had by then expired, and were subsequently passed by Congress in 1994 (P.L. 103-465). At the end of his Administration, President Clinton also negotiated and signed an FTA with Jordan. The agreement is the only U.S. FTA not signed or implemented by Congress under TPA procedures, as Congress did not pass new TPA legislation during the Clinton presidency. Before leaving office, President Clinton also initiated FTA negotiations with Chile and Singapore.

George W. Bush Administration. President George W. Bush greatly expanded the number and regional coverage of U.S. FTA negotiations. In addition to finalizing and implementing the three agreements begun at the end of the Clinton Administration, President Bush initiated and concluded negotiations on nine additional FTAs. The Bush Administration pursued these agreements simultaneously with and viewed them as complementary to the multilateral Doha Development Agenda, which was launched in 2001. After passing implementing legislation for the Jordan FTA (P.L. 107-43), Congress established a new set of trade negotiating objectives and provided the Bush Administration with a new grant of TPA in the Trade Act of 2002 (P.L. 107-210). The eight agreements passed by Congress during the Bush Administration under the 2002 TPA include

- Three agreements with relatively small U.S. trading partners in the Middle East and North Africa (MENA) region, which were motivated by strong foreign policy objectives: Morocco (P.L. 108-302), Bahrain (P.L. 109-169), and Oman (P.L. 109-283);
- The first two U.S. FTAs with trading partners in Asia, including Singapore (P.L. 108-78) and Australia (P.L. 108-286); and
- Three agreements with Latin American trading partners, including a bilateral agreement with Chile (P.L. 108-77), the U.S.-Dominican Republic-Central America FTA (CAFTA-DR, P.L. 109-53), which is a multi-party agreement with Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and the Dominican Republic, and a bilateral agreement with Peru (P.L. 110-138).

President Bush also concluded and signed three trade agreements—with Colombia, Panama, and South Korea—which were not considered by Congress during his Administration. He formally entered the United States into the Trans-Pacific Partnership (TPP) negotiations, though no negotiating rounds were held during his presidency.

Obama Administration. The Obama Administration addressed congressional concerns regarding the three pending George W. Bush Administration FTAs including on auto[56] and labor[57] issues,

[55] When NAFTA went into effect in 1994 it subsumed the prior U.S.-Canada FTA.

[56] Commitments on autos were of concern in the KORUS FTA. In response, the Obama Administration negotiated side letters with South Korea that effectively modified the auto tariff reductions and safeguard provisions among other commitments in the agreement. The text of the side letters can be found on the USTR website at: https://ustr.gov/trade-agreements/free-trade-agreements/korus-fta/legal-texts-reflecting-december-3-2010-agreement.

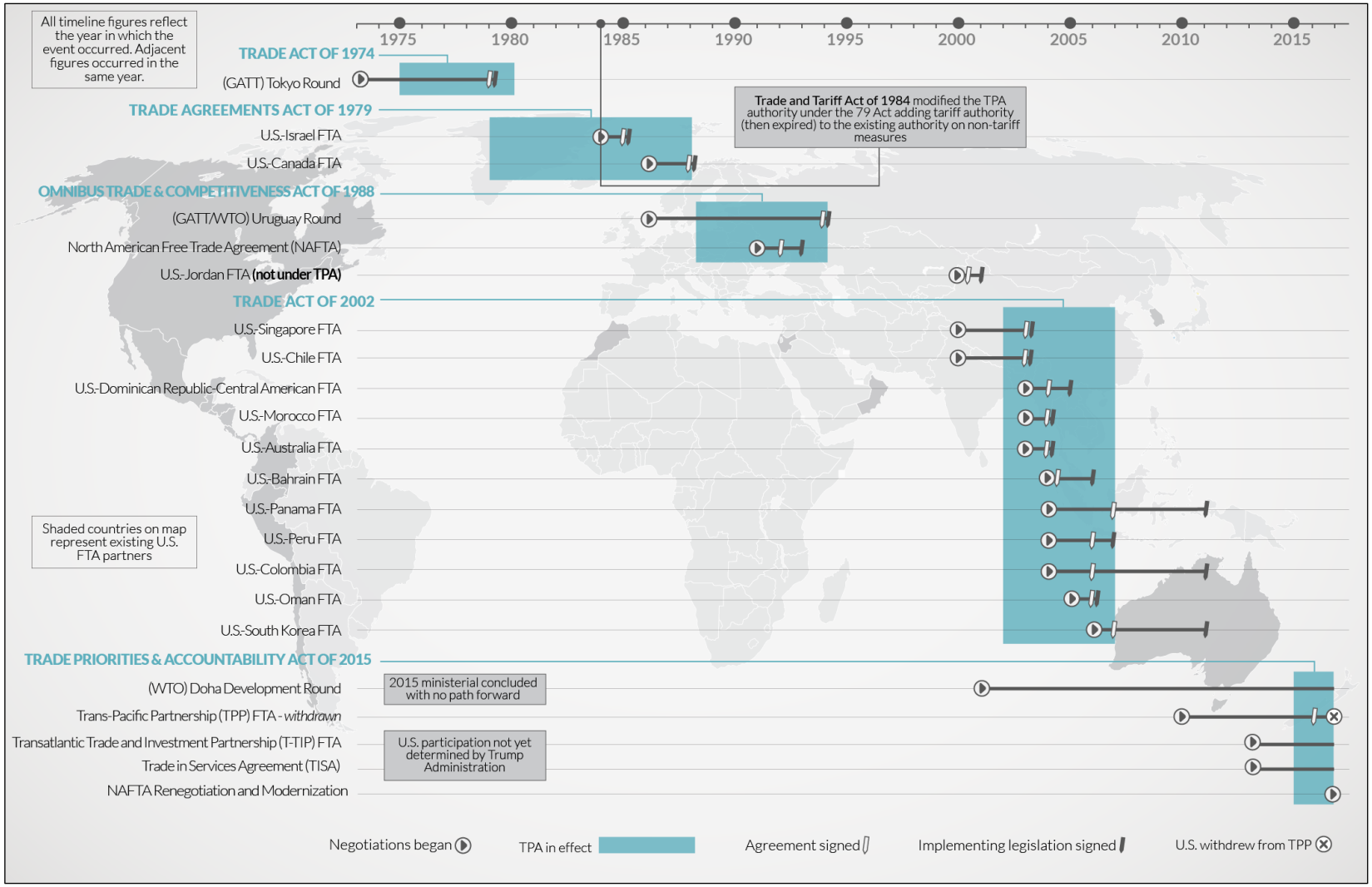
[57] Labor issues were of particular concern in the U.S.-Colombia FTA. To resolve the issue, the two countries agreed to a labor action plan requiring various reforms, prior to the agreement's entry into force, in Colombia to improve worker rights including establishing a new Labor Ministry and reforming the criminal code. The text of the Labor Action Plan can be found on the USTR website at: https://ustr.gov/sites/default/files/uploads/agreements/morocco/pdfs/Colombian%20Action%20Plan%20Related%20to%20Labor%20Rights.pdf.

paving the way for their entry into force. Congress ultimately passed the agreements with Colombia (P.L. 112-42), Panama (P.L. 112-43), and South Korea (P.L. 112-41) under expedited legislative procedures in October 2011. Although the 2002 TPA grant had expired in 2007, the three agreements had been signed and notified to Congress while TPA was in effect and therefore were still eligible for consideration under the TPA procedures. The Obama Administration also pursued two major multi-party FTA negotiations, which, if implemented, would have nearly doubled the share of U.S. trade occurring with FTA partners.

The TPP negotiations included three of the four largest U.S. trading partners (Canada, Japan, and Mexico) and eight other countries in the Asia-Pacific region. In order to provide for potential expedited legislative consideration of TPP and to set updated trade negotiating objectives, Congress passed a new grant of TPA in 2015 (P.L. 114-26) as the TPP talks were nearing conclusion. The 12 TPP participants signed an agreement in February 2016, but President Obama never submitted implementing legislation to Congress due to ongoing consultations with Congress on key provisions and uncertain congressional support.

The Obama Administration also initiated negotiations with the European Union (EU), collectively the largest U.S. trade and investment partner, on a potential Transatlantic Trade and Investment Partnership (T-TIP). The T-TIP negotiations remained ongoing at the end of the Obama presidency. With the multilateral Doha Round negotiations still stalled, the Obama Administration viewed both TPP and T-TIP as an opportunity to establish new regional trading rules with economically significant trading partners on emerging issues like state-owned enterprises and digital trade.

Figure 2. Trade Promotion Authority (TPA) and U.S. Trade Agreements



Source: CRS with data from U.S. trade promotion authority and trade agreement legislation.

Trump Administration FTA Policy and Recent Developments

President Trump took office after running a campaign that was highly critical of U.S. trade agreements, arguing that they negatively affected U.S. workers and industries. During his tenure in office, the President has continued to express dissatisfaction with U.S. trade agreements, referring to the KORUS FTA, for example, as "a disaster for the United States."[58] Much of the President's concern with U.S. FTAs relates to the U.S. trade deficit, which he asserts stems from bad trade deals and "unfair trading practices" of U.S. FTA partners. In order to investigate this relationship, the Administration undertook examinations of U.S. bilateral trade deficits and the outcomes of existing U.S. FTAs focused on potential violations of commitments or negative effects. To date those studies have not been made public, but may inform U.S. negotiations moving forward.[59]

The President has also taken issue with U.S. participation in multi-party FTA negotiations, arguing that bilateral negotiations create more leverage for the United States, given the much greater size of the U.S. economy relative to most potential FTA partners. Many trade policy experts have argued conversely, noting particular benefits from a multi-party approach. They suggest that, especially in the context of TPP, the multiparty approach made concessions by other countries more politically feasible, in part, by lessening the appearance of submitting solely to U.S. interests, and have highlighted the benefit of such an approach in establishing more uniform regional trade rules and disciplines.[60]

To date, the President has taken a number of steps to alter U.S. FTA policy. The first, in January 2017, was the withdrawal of the United States as a signatory to the TPP.[61] After withdrawing from TPP, the Trump Administration set out to revisit commitments in existing U.S. FTAs. This has included initiating a renegotiation of NAFTA and bilateral talks toward modifications to the KORUS FTA. Despite questioning the value of the TPA process, the President has followed TPA procedures with regard to the NAFTA renegotiation.[62] Therefore, changes to NAFTA requiring congressional action could receive expedited legislative consideration if the agreement is signed while TPA is in effect. The President has not followed TPA procedures, however, with respect to the KORUS FTA talks. In March 2018, the Administration announced an agreement in principle on modifications to KORUS.[63] The limited commitments, including tariff schedule modifications

[58] White House, "Remarks by President Trump on His Trip to Asia," November 15, 2017, press release, available at https://www.whitehouse.gov/briefings-statements/remarks-president-trump-trip-asia/.

[59] Stakeholder comments collected as part of these studies are available. For comments regarding the report on trade agreement violations, see https://www.regulations.gov/docket?D=USTR-2017-0010. For comments regarding the report on trade deficits, see https://www.regulations.gov/docket?D=ITA-2017-0003.

[60] For example, see Wendy Cutler, "TPP, Multi-Party Deals, Best Match for Complex Global Economy," *The Hill*, January 6, 2017.

[61] White House, "Presidential Memorandum Regarding Withdrawal of the United States from the Trans-Pacific Partnership Negotiations and Agreement," January 23, 2017, available at https://www.whitehouse.gov/presidential-actions/presidential-memorandum-regarding-withdrawal-united-states-trans-pacific-partnership-negotiations-agreement/.

[62] "Like we want to start to negotiate with Mexico immediately...you have to notify Congress, and after you notify Congress, you have to get certified, and then you can't speak to them for 100 days. The whole thing is ridiculous." White House, "Remarks by President Trump on Buy American, Hire American Executive Order," April 18, 2017, available at https://www.whitehouse.gov/briefings-statements/remarks-president-trump-buy-american-hire-american-executive-order/.

[63] USTR, "New U.S. Trade Policy and National Security Outcomes with the Republic of Korea," fact sheet, available at https://ustr.gov/about-us/policy-offices/press-office/fact-sheets/2018/march/new-us-trade-policy-and-national.

and South Korean regulatory changes will likely not require implementing legislation in order to become effective, since the legislation implementing the original KORUS agreement gives the Administration authority to make tariff modifications on U.S. imports from South Korea.

In many areas, including digital trade and state-owned enterprises, the Trump Administration's negotiating objectives for the NAFTA modernization talks are similar to U.S. positions in the TPP negotiations under President Obama, which included NAFTA partners Canada and Mexico.[64] In other areas, such as proposed modifications to rules of origin, investor-state dispute settlement, government procurement, and a "sunset provision" that would reportedly require a renewal of the agreement every five years, the Trump Administration's proposals differ considerably from prior U.S. policy.[65]

Despite a critical view of existing agreements, the Trump Administration has also expressed interest in negotiating new bilateral FTAs, including with the United Kingdom and TPP countries like Japan. To date no TPP country has formally endorsed a new FTA negotiation with the United States, which may, in part, reflect wariness toward the contentious nature of the ongoing NAFTA talks. The President has repeatedly stated his willingness to unilaterally withdrawal the United States from NAFTA should current talks not reach a satisfactory conclusion.

Content of U.S. FTAs[66]

U.S. FTAs have evolved in the scope and depth of their commitments since the 1980s. Despite the variation in each U.S. FTA, there has been a general trend toward more comprehensive and enforceable commitments. The first bilateral U.S. FTA, with Israel, is only 14 pages in length and focused primarily on the elimination of tariffs. Other provisions, such as services and intellectual property rights, are included in the text but with few explicit commitments.[67] Since that time, U.S. FTAs have expanded to include enforceable and extensive provisions on a range of trade-related issues. Key observations regarding the content of existing U.S. FTAs include

- NAFTA represented a major step in establishing the current nature of U.S. FTAs and even multilateral commitments, serving in many ways, as a template for future agreements;
- A limited number of provisions included in NAFTA and early FTAs have been restricted or eliminated in later U.S. FTAs. These include NAFTA's Chapter 19 commitments, which allow for review of trade remedy cases, a provision not incorporated in any other U.S. FTA. Commitments affecting visa issuance for

[64] USTR, *Summary of Objectives for the NAFTA Renegotiation*, July 17, 2017, available at https://ustr.gov/sites/default/files/files/Press/Releases/NAFTAObjectives.pdf.

[65] "In His Own Words: Lighthizer Lets Loose on Business, Hill Opposition to ISDS, Sunset Clause," World Trade Online, October 19, 2017.

[66] The information in this section is drawn from the texts of U.S. FTAs available on the USTR website at https://ustr.gov/trade-agreements/free-trade-agreements, as well as USITC report 4614, *Economic Impact of Trade Agreements Implemented under Trade Authorities Procedures, 2016 Report.*

[67] The agreement does include commitments to go beyond multilateral government procurement agreements by lowering the threshold of covered procurement. Neither the WTO nor the current Government Procurement Agreement (GPA) existed in 1985 when the U.S.-Israel FTA was negotiated. At the time, multilateral government procurement commitments were based on the Tokyo Round Code on Government Procurement, which entered into force in 1981. Like the modern GPA, the agreement was plurilateral so not all GATT (now WTO) members participated. The United States and Israel, both members of the GPA, agreed in their FTA to lower the threshold for commitments from 150,000 SDR (approximately $154,000 in 1985) to $50,000.

temporary entry of business persons, are only included in NAFTA and bilateral FTAs with Chile and Singapore;[68]

- Significant changes in U.S. FTA provisions since NAFTA, particularly the agreements with Colombia, Peru, and South Korea, include modifications to commitments on labor and environment, e-commerce, services, and intellectual property rights. These stem in part from updated negotiating objectives in the 2002 grant of TPA as well as the 2007 agreement between the George W. Bush Administration and congressional leadership known as the "May 10th Agreement," which further clarified U.S. trade negotiating objectives;[69]
- The Jordan FTA was negotiated and ratified without TPA procedures in effect in 2001, and generally has less extensive commitments than NAFTA (e.g., the FTA contains no commitments on investment); and
- The multilateral Uruguay Round Agreements entered into force in 1995, one year after NAFTA became effective, and included commitments on issues also included in NAFTA, such as services trade, intellectual property rights protections, agriculture and dispute settlement. U.S. FTAs after 1995 reinforce and build upon these multilateral commitments.

In terms of the specific commitments included in existing U.S. FTAs, there is variation among the 14 agreements, particularly in the precise language included in the texts. However, NAFTA and later FTAs have certain common elements, including core rules such as nondiscriminatory and national treatment among the parties (i.e., treating the goods, services, and investment of another party the same as domestic sources), and transparency in the regulatory process. Major elements (beginning with tariffs and then in alphabetical order) in U.S. FTAs include

- **Tariffs and Market Access.** U.S. FTAs generally eliminate most tariffs on manufactured goods and most tariffs and quotas on agriculture products among the parties immediately. Tariffs and quotas on more import sensitive items are usually phased out over time, generally within a few years, but ranging up to 20 years.[70] Some tariffs or quotas remain in place indefinitely on the most import sensitive agricultural products.[71] U.S. FTAs also include nontariff market access provisions covering issues such as import and export restrictions, import licensing, and export taxes. U.S. FTAs implemented after the Jordan FTA also ban import duties on remanufactured goods traded between the parties.[72]

[68] NAFTA and its U.S. implementing legislation (P.L. 103-182) created a special category (TN) of professional worker visa which now has no annual limit (amending an earlier program under the U.S.-Canada FTA). The U.S.-Chile and U.S. Singapore FTAs and their U.S. implementing legislation (P.L. 108-77 and P.L. 108-78) secured a portion of the 65,000 annual U.S. H1-B1 visas available to temporary business workers—1,400 and 5,400 are allotted to temporary entrants from Chile and Singapore, respectively.

[69] USTR, "Bipartisan Trade Deal," May 2007, available at https://ustr.gov/sites/default/files/uploads/factsheets/2007/asset_upload_file127_11319.pdf.

[70] The CAFTA-DR included a 20-year phase-out of U.S. import tariffs on certain dairy products. The agreement in principle on modifications to the 2012 KORUS FTA, announced in March 2018, is to include an extension of the phase-out of the U.S. light truck tariff to 2041. Once implemented this extended phase-out would become the longest in any existing U.S. FTA.

[71] For a listing of tariff-rate quotas in U.S. FTAs, see USITC report 4614, *Economic Impact of Trade Agreements Implemented under Trade Authorities Procedures, 2016 Report*, pp. 293-294.

[72] This commitment essentially requires trade partners to treat remanufactured goods, which are refurbished to a like-new condition, distinctly from used goods. The United States exported nearly $12 billion of remanufactured goods in 2011 according to the U.S. International Trade Commission. USITC, *Remanufactured Goods*, Investigation No. 332-525, October 2012, https://www.usitc.gov/publications/332/pub4356.pdf.

- **Competition Policy, Monopolies, and State Enterprises.** First established in NAFTA and included in U.S. FTAs with Australia, Chile, Colombia, Peru, Singapore, and South Korea, these provisions commit the parties to maintain or establish laws that prohibit anticompetitive business behavior, though certain aspects are often not subject to dispute settlement procedures. The later agreements expanded the commitments to require nondiscriminatory treatment in the application of anti-competition laws with respect to entities of the other party and to specify transparency and administrative requirements.

  These chapters also address concerns over competition with monopolies requiring that they act in accordance with commercial considerations and in a nondiscriminatory manner in *purchase and sale* decisions. They also prohibit monopolies from engaging in anticompetitive behavior including through cross-subsidization. More limited commitments on the activities of state-owned enterprises (SOEs) are also included, requiring nondiscriminatory treatment in the *sale* of goods and services. The U.S. Singapore FTA includes the most extensive language on SOEs, requiring, for example, nondiscriminatory treatment in the *purchase and sale* of goods and services.
- **Customs and Trade Facilitation.** NAFTA established rules on customs procedures and administration, including what may be required of an importer to claim preferential treatment and prove origin under the agreement as well as what is expected of customs agencies in responding to requests for advance rulings on potential imports. Later U.S. FTAs expanded those commitments to include broader trade facilitation provisions related to: the release of goods, in some cases with target maximum timeframes; automation, including electronic systems; expedited customs procedures for express delivery shipments; and publication of customs laws, regulations, and procedures. U.S. FTAs with Colombia, Oman, Panama, Peru, and South Korea also establish a minimum de minimis threshold (generally $200) on the value of imports, below which expedited customs procedures apply and taxes and duties are generally not applicable. The de minimis threshold in the United States is currently $800.[73] All 14 U.S. FTAs were implemented prior to the 2013 conclusion of the multilateral WTO Trade Facilitation Agreement (TFA), which entered into force in February 2017 and includes related provisions.[74]
- **Cross-Border and Financial Services.[75]** NAFTA includes the three core services commitments of national treatment, most-favored nation treatment, and prohibition of local presence requirements to access markets. It applies these commitments to all services on a *negative list* basis, excluding only those services explicitly exempted in the schedules of nonconforming measures. The negative list feature has become a hallmark objective of U.S. services negotiations, and is included in all subsequent U.S. FTAs, except the U.S.-Jordan FTA. The NAFTA financial services chapter also establishes transparency

[73] CBP, "DeMinimis Value Increases to $800," press release, March 11, 2016, available at https://www.cbp.gov/newsroom/national-media-release/de-minimis-value-increases-800.

[74] For more information, see CRS Report R44777, *WTO Trade Facilitation Agreement*, by Rachel F. Fefer and Vivian C. Jones.

[75] For more information, see CRS Report R43291, *U.S. Trade in Services: Trends and Policy Issues*, by Rachel F. Fefer.

commitments in the regulatory process, including time limits for responses to administrative requests. It also requires that opportunities to supply newly approved financial services in any party's market are accessible to the firms of all parties, and includes a requirement that companies be able to transfer "information in electronic form" in and out of each party's territory (Article 1407).[76]

In addition to the three core commitments listed above, U.S. FTAs subsequent to NAFTA also include market access provisions in both cross-border and financial services chapters, which prohibit restrictions on the number of service providers, value of service transactions, and types of legal entities allowed to supply services. They also set out additional transparency and regulatory requirements.

- **Dispute Settlement.**[77] U.S. FTAs include provisions for a dispute settlement mechanism, which may be used to resolve disputes regarding each party's adherence to agreement obligations. These enforcement commitments require the parties to attempt to resolve disputes through consultation before pursuing the formal dispute settlement process. If resolution of the dispute cannot be achieved through consultation, a panel, typically consisting of three arbiters, may be convened to adjudicate. U.S. FTA dispute settlement cases, excluding disputes under NAFTA's Chapter 19 provisions, are rare, as most issues are resolved through consultation, or adjudicated at the WTO if multilateral obligations are also relevant to the dispute. To date only four cases have been resolved through a U.S. FTA dispute settlement panel, three under NAFTA and one under CAFTA-DR (Guatemala).
- **E-commerce.**[78] U.S. FTA commitments in e-commerce chapters have expanded considerably in their scope and enforceability since they were first included in the U.S.-Jordan FTA (NAFTA does not contain an e-commerce chapter). The main provisions include language to: (1) prohibit customs duties on electronically transmitted products, (2) disallow discriminatory treatment of digital products on the basis of their origin; and (3) subject digitally delivered services to the relevant provisions of the investment, cross-border services, and financial services chapters. The KORUS FTA represents the most expansive e-commerce chapter, including provisions on electronic authentication and electronic signatures and committing the parties to *endeavor* to limit barriers to data flows across borders. A strengthened version of the latter provision was a key component of the TPP's digital trade provisions.
- **Government Procurement.** U.S. FTAs include commitments to provide certain levels of access to and nondiscriminatory and national treatment in the pursuit of FTA parties' government procurement markets. The extent of new access granted by the FTA depends on whether or not the U.S. FTA partner is already a member of the plurilateral WTO Government Procurement Agreement (GPA). For U.S. FTA partners that are GPA members, FTA commitments may expand on GPA commitments by, for example, setting a lower monetary threshold for covered

[76] A similar provision is included in the KORUS FTA, see KORUS Annex 13-B, Section B.

[77] For more information, see CRS In Focus IF10645, *Dispute Settlement in U.S. Trade Agreements*, by Ian F. Fergusson.

[78] For more information, see CRS Report R44565, *Digital Trade and U.S. Trade Policy*, coordinated by Rachel F. Fefer.

procurement. U.S. states may include their procurement in U.S. FTA commitments, but the number of states choosing to do so has fallen considerably over time, from 37 state participants in the U.S.-Chile FTA to 10 in the KORUS FTA. Among the 20 U.S. FTA partner countries, Canada, Israel, Singapore, and South Korea are currently members of the GPA.

- **Intellectual Property Rights (IPR).**[79] NAFTA's commitments on intellectual property rights represented a major step in the evolution of international trade agreements. Negotiated at the same time as the Uruguay Round agreements, they share much in common with the multilateral Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). NAFTA includes protections for copyrights (life of the author plus 50 years), patents (20 years) including exclusivity periods for test data (5 years for pharmaceuticals), trade secrets, trademarks, and geographical indications, as well as specific requirements on the enforcement of these provisions.

  The negotiating objectives in the 2002 TPA established a new iteration of U.S. FTA commitments on IPR, specifically calling for provisions that "reflect a standard of protection similar to that found in United States law."[80] Thus the FTAs negotiated under that grant of TPA include strengthened provisions such as longer copyright protection (life of the author plus 70 years), mandate patent term extensions for unreasonable delays in the approval process, and include patent linkage provisions, which seek to ensure that marketing approvals for generic versions of patented products fully respect existing patent protections. These later agreements also include new provisions related to IPR in the digital environment such as internet service provider liability and safe harbor provisions. They also specify domain name dispute resolution commitments.

  Due to concerns over the appropriate balance between strong IPR commitments and providing adequate access to medicines in developing countries, the "May 10th Agreement" included certain modifications to U.S. FTA IPR commitments related to patents for pharmaceutical products. As a result, the U.S. FTAs with Colombia, Panama, and Peru make optional the patent term extension and patent linkage provisions and put limitations on the five-year data exclusivity period for pharmaceutical patents.
- **Investment.**[81] Excluding agreements with Bahrain, Israel, and Jordan, U.S. FTAs include a chapter with commitments to reduce restrictions on investment and ensure investor protections, a key area in which U.S. FTAs extend beyond multilateral commitments, which consist only of limited provisions in the Agreement on Trade-Related Investment Measures (TRIMs). Core commitments beginning with NAFTA include: (1) nondiscriminatory treatment relative to both domestic and other foreign parties; (2) minimum standard of treatment (MST), including "fair and equitable treatment and full protection and security"; (3)

[79] For more information, see CRS Report RL34292, *Intellectual Property Rights and International Trade*, by Shayerah Ilias Akhtar and Ian F. Fergusson, and CRS In Focus IF10033, *Intellectual Property Rights (IPR) and International Trade*, by Shayerah Ilias Akhtar and Ian F. Fergusson.

[80] P.L. 107-210, Section 2102(b)(4).

[81] For more information, see CRS Report R43052, *U.S. International Investment Agreements: Issues for Congress*, by Shayerah Ilias Akhtar and Martin A. Weiss, and CRS In Focus IF10052, *U.S. International Investment Agreements (IIAs)*, by Martin A. Weiss and Shayerah Ilias Akhtar.

requirements for compensation in the case of direct or indirect expropriation; (4) restrictions on performance requirements that would condition investment access; (5) provisions for expeditious transfer of funds; (6) denial of benefits to investors with limited commercial activity in the FTA region; and (7) an investor-state dispute settlement (ISDS) mechanism that allows private investors to take host governments to binding arbitration regarding potential violations of the FTA investment provisions.[82] Among the 11 U.S. FTAs with investment chapters, only the U.S.-Australia agreement does not include an ISDS mechanism.

- **Labor and Environment.[83]** NAFTA also represented a major step forward in U.S. FTA provisions on labor and environmental protections. Although the original text of the agreement did not include labor and environment commitments, the United States, Canada and Mexico later negotiated legally binding side agreements on labor and the environment that were included in NAFTA implementing legislation. These agreements require the parties to *effectively enforce* their labor and environmental laws, and ensure these laws provide for "high labor standards" and "high levels of environmental protection." The agreements include separate enforcement mechanisms with limited monetary penalties applicable to select provisions.

  Beginning with the Jordan FTA, U.S. FTAs have included specific labor and environmental commitments in the main FTA text. The strength of these commitments has evolved from those first contained in the NAFTA side agreements. The "May 10th Agreement" in particular represented a significant progression in U.S. FTA labor and environmental commitments. U.S. FTAs have advanced to not only require that parties enforce their own labor and environmental laws, but also that parties *shall* adopt and maintain laws guaranteeing specific internationally recognized worker rights[84] and fulfilling obligations under certain multilateral environmental agreements.[85] U.S. labor and environmental chapters in the most recent FTAs are also enforceable under the regular FTA dispute settlement procedures, and therefore subject to the same

[82] Due to concerns raised over whether ISDS procedures provide foreign investors greater rights in the United States than domestic investors and in accordance with the "May 10th Agreement," preamble language is included in each of the four FTAs implemented after May 2007 (Peru, Colombia, Panama, South Korea) that clarifies "foreign investors are not hereby accorded greater substantive rights with respect to investment protections than domestic investors under domestic law where, as in the United States, protections of investor rights under domestic law equal or exceed those set forth in this Agreement."

[83] For more information, see CRS In Focus IF10166, *Environmental Provisions in Free Trade Agreements (FTAs)*, by Richard K. Lattanzio and Ian F. Fergusson, and CRS In Focus IF10046, *Worker Rights Provisions in Free Trade Agreements (FTAs)*, by Cathleen D. Cimino-Isaacs and M. Angeles Villarreal.

[84] The specific worker rights are those included in the International Labor Organization (ILO) Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998): freedom of association, effective recognition of the right to collective bargaining, elimination of all forms of compulsory or force labor, effective abolition of child labor and prohibition of worst forms of child labor, and elimination of discrimination in respect of employment and occupation.

[85] The seven multilateral environmental agreements include: the Convention on International Trade in Endangered Species of Wild Fauna and Flora, the Montreal Protocol on Substances that Deplete the Ozone Layer, the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, the Convention on Wetlands of International Importance Especially as Waterfowl Habitat, the Convention on the Conservation of Antarctic Marine Living Resources, the International Convention for the Regulation of Whaling, and the Convention for the Establishment of an Inter-American Tropical Tuna Commission.

potential penalties.[86] In practice, there have been few disputes under U.S. FTAs in these areas; the United States has brought one labor case to dispute settlement involving Guatemala under CAFTA-DR.

- **Rules of Origin.**[87] These provisions set criteria to determine if a product is considered to have originated within a party or trading bloc of the FTA and therefore if it is eligible for preferential duty treatment under the agreement. U.S. FTAs vary in their origin requirements in a number of ways including the specific content requirements by product, as well as in the methodologies used to determine origin. For example, under NAFTA 62.5% of an automobile's value must originate within the NAFTA region to qualify for NAFTA benefits. By contrast in the KORUS FTA, the regional value content requirement for autos is 35%.
- **Safeguards.**[88] Beginning with the U.S.-Israel FTA, U.S. FTAs have included provisions allowing for temporary reinstatement of tariffs to protect against serious injury to domestic industries from specific imports. These commitments generally also reaffirm rights and obligations under the multilateral Safeguards Agreement, and discuss the ability to exclude FTA partners from global safeguard cases. The strongest language on this provision is included in NAFTA, which requires that parties *shall* exclude imports from other FTA parties in any global safeguard case unless they account for a substantial share of imports or are causing particular harm. Most U.S. FTAs also include commitments reaffirming each party's rights and obligations under the multilateral antidumping and countervailing duty agreements.
- **Sanitary and Phytosanitary Standards (SPS).**[89] SPS commitments in U.S. FTAs address trade-related measures countries take to protect the health and safety of human, plant, and animal life, which can have a major impact on agricultural trade. NAFTA and the multilateral SPS agreement were negotiated simultaneously and contain similar enforceable provisions designed to ensure SPS measures are transparent, nondiscriminatory, not intended as a disguised restriction on trade, applied to the extent necessary to achieve the appropriate level of protection, adapted to varying regional conditions, and based on scientific analysis and risk assessments. After the SPS agreement entered into force in 1995, subsequent U.S. FTA commitments on SPS issues largely reinforce the multilateral SPS agreement and are not themselves subject to FTA dispute-settlement mechanisms. U.S. FTAs also generally establish a committee tasked with consultation and cooperation on SPS issues. Certain agriculture industries report that these committees have been instrumental in removing SPS barriers to U.S. exports.[90]

[86] See for example, Chapters 19 and 20 of the KORUS FTA, available at https://ustr.gov/trade-agreements/free-trade-agreements/korus-fta/final-text.

[87] For more information, see CRS Report RL34524, *International Trade: Rules of Origin*, by Vivian C. Jones.

[88] For more information, see CRS Report RL32371, *Trade Remedies: A Primer*, by Vivian C. Jones, and CRS In Focus IF10786, *Trade Remedies: Section 201 of the Trade Act of 1974*, by Vivian C. Jones.

[89] For more information, see CRS Report R43450, *Sanitary and Phytosanitary (SPS) and Related Non-Tariff Barriers to Agricultural Trade*, by Renée Johnson.

[90] USITC report 4614, *Economic Impact of Trade Agreements Implemented under Trade Authorities Procedures, 2016 Report*, p. 158.

- **Technical Barriers to Trade (TBT).** TBT, like SPS issues, relate to regulations or standards set by governments to protect various domestic interests from harm. They were first covered in NAFTA, followed by multilateral commitments in the Uruguay Round Agreements. These commitments seek to ensure TBT measures are transparent, nondiscriminatory, based on science and risk assessments, distort trade as little as possible, and require the use of international standards as the basis of domestic standards where they exist. Later U.S. FTAs build on and affirm rights and obligations under the TBT Agreement and are generally enforceable under dispute-settlement procedures. Some U.S. FTAs also establish industry-specific TBT commitments. For example, the KORUS FTA includes a section specifically on motor vehicle standards and technical regulations (Article 9.7).[91]
- **Telecommunications.** NAFTA and subsequent U.S. FTAs (except the U.S.-Jordan FTA) include commitments related to access, transparency, and competition in the telecommunications sector. Specifically, these commitments require that all parties have access to any public telecommunications network on reasonable and nondiscriminatory terms. U.S. FTAs starting with Chile and Singapore also require number portability, independent regulatory bodies, and timely, transparent, and nondiscriminatory allocation of scarce resources like frequencies, among other provisions. These U.S. FTA commitments build on multilateral commitments including a telecommunications annex to the GATS and a 1996 telecommunications reference paper which some governments have made part of their GATS commitments.[92]
- **Transparency and Good Governance.** Transparency commitments are included in many NAFTA chapters, but the U.S. FTAs with Chile and Singapore were the first to include stand-alone transparency chapters, which became the norm for subsequent U.S. FTAs. These commitments require parties to publish any relevant laws, regulations, procedures, or administrative rulings in advance and allow stakeholders an opportunity to comment. They also include notification, and review and appeal provisions for administrative actions. Later U.S. FTAs also include provisions related to anti-corruption, including a requirement to establish laws that make corruption affecting international trade and investment a criminal offense.

Trade Trends under U.S. FTAs[93]

This section provides an overview of U.S. trade patterns under U.S. FTAs. Specifically, it examines the share of U.S. trade covered by FTAs, bilateral trade balances, top products traded with each U.S. FTA partner, and the utilization rates of U.S. FTAs. Services trade data are not yet available for 2017, so most of the discussion focuses on 2016 trade flows. Sections that only cover goods trade use data from 2017.

[91] KORUS text is available at https://ustr.gov/sites/default/files/uploads/agreements/fta/korus/asset_upload_file604_12708.pdf.

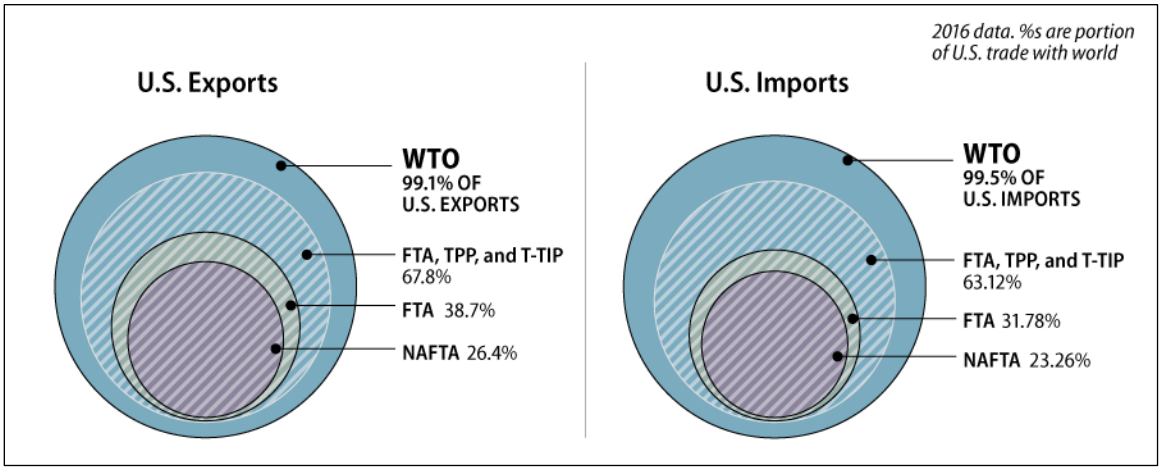
[92] For more information, see https://www.wto.org/english/tratop_e/serv_e/telecom_e/telecom_e.htm.

[93] U.S. trade statistics sourced from the U.S. Census Bureau (goods), the U.S. Bureau of Economic Analysis (goods and services), and the U.S. International Trade Commission (U.S. preferential imports). Unless otherwise noted analysis is from CRS based on U.S. trade data.

U.S. Trade Shares with FTA Partners

U.S. FTAs have been a significant component of U.S. trade policy, have been influential in establishing new rules for the global trading system, and are a major focus of the current U.S. trade debate. Less than half of U.S. trade, however, takes place with FTA partners while virtually all trade takes place with members of the multilateral trading system. In 2016, 99% of all U.S. trade took place with WTO members (**Figure 3**), while 39% of U.S. exports and 32% of imports were with U.S. FTA partners (all U.S. FTA partners are also WTO members). NAFTA alone accounts for the majority of U.S. trade with FTA partners (68% of FTA exports and 73% of FTA imports) so the remaining 13 U.S. FTAs comprise a relatively small share of U.S. trade. This number, of course, could grow depending on future U.S. FTA negotiations. For example, the mega-regional agreements pursued by the Obama Administration, including TPP and T-TIP, would have expanded the share of U.S. trade covered by FTAs to roughly 65%. In examining these trade flows it is important to note that not all trade with FTA partners makes use of the FTA benefits (see "Utilization Rates of U.S. FTAs"), and that FTA benefits are only one of several factors that affect trade flows.

Figure 3. Shares of U.S. Total Trade with WTO and FTA Partners



Source: Trade data from U.S. Census Bureau and U.S. Bureau of Economic Analysis. Figure created by CRS.
Notes: Includes goods and services trade. Services trade data not available for non-WTO members.

Bilateral Trade Balances with FTA Partners

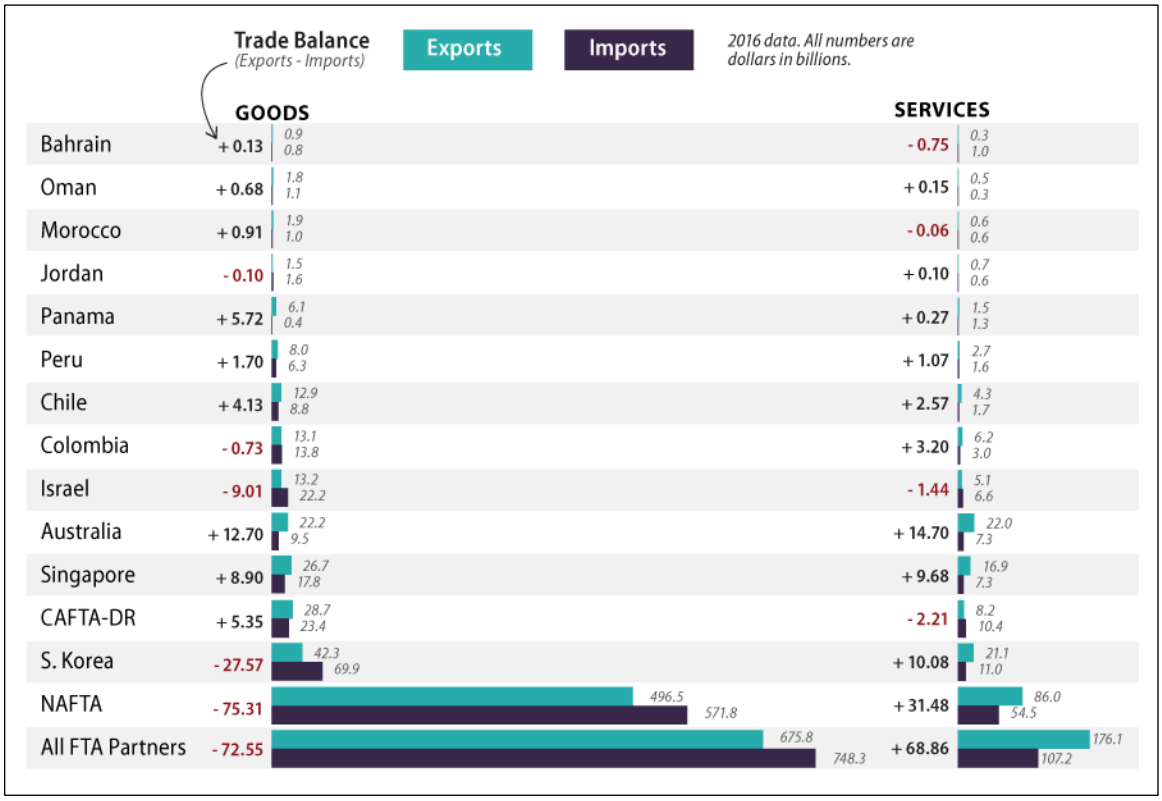
A focus of the Trump Administration and some Members of Congress has been on bilateral trade balances (the difference between exports and imports) with U.S. trading partners in general, and specifically U.S. FTA partners.[94] They argue that a bilateral trade deficit is an indicator of unfairness in a trade relationship, and therefore see an increasing trade deficit after an FTA goes into effect as a negative outcome. Most economists assert that trade balances are driven largely by macroeconomic factors, including exchange rates and aggregate savings and investment patterns.[95] In 2016, taking each agreement separately, the United States ran a surplus in goods trade with nine of its 14 FTAs. However, the United States had an overall goods trade deficit of

[94] For more information on U.S. trade with FTA partners, see CRS Report R44044, *U.S. Trade with Free Trade Agreement (FTA) Partners*, by James K. Jackson.

[95] For more information on trade deficits, see CRS In Focus IF10619, *The U.S. Trade Deficit: An Overview*, by James K. Jackson.

$72.6 billion with all FTA countries combined due to deficits with the largest FTA partners (**Figure 4**). In services trade, the United States ran a surplus with 10 of its 14 FTAs, including the largest FTA partners, resulting in an overall bilateral services trade surplus with FTA partners of $68.9 billion. Combining goods and services trade, overall U.S. trade with FTA partners was relatively balanced in 2016: the total U.S. trade deficit with FTA partners was $15.8 billion in 2016 (**Figure 5**) out of more than $1.7 trillion in total trade with FTA partners.[96] In 2016, total U.S. goods and services trade with FTA partners accounted for nearly 35% of U.S. trade with the world, but less than 3% of the overall $504.8 billion U.S. trade deficit.

Figure 4. U.S. Trade Balances with FTA Partners

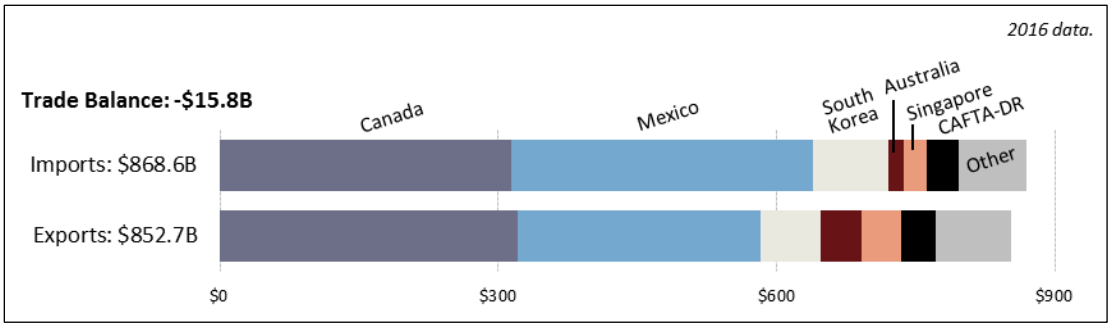


Source: Data from U.S. Census Bureau and U.S. Bureau of Economic Analysis. Figure created by CRS.

Notes: CAFTA-DR includes Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and the Dominican Republic. Goods data reported on a Census basis.

[96] Total U.S. trade figures (combined goods and services) are based on balance of payments basis data where available. See note to **Figure 5**.

Figure 5. U.S. Total Goods and Services Trade Balance with FTA Partners



Source: Data from U.S. Census Bureau and U.S. Bureau of Economic Analysis (BEA). Figure created by CRS.

Notes: Figure includes data on goods and services trade. BEA reports overall U.S. trade balance figures using goods trade data on a balance of payments (BOP) basis to align with concepts in the broader national accounts, but BOP basis data are not available for smaller U.S. FTA partners. Due to this lack of data availability, goods data in the figure above are on a Census basis for the smallest FTA partners including the 6 members of CAFTA-DR, Bahrain, Jordan, Morocco, Oman, Panama, and Peru.

Top Goods and Services Trade with FTA Partners

As highlighted above, U.S. trade with FTA partners is heavily concentrated among the largest FTAs. In 2016, U.S. trade with Canada, Mexico, South Korea, the CAFTA-DR countries, Singapore, and Australia accounted for more than 90% of U.S. trade with FTA partners. **Table 1** and **Table 2** show the types of goods (2017 data) and services (2016 data, latest available) traded with these largest FTA partners. A few observations stand out. Supply chain linkages and U.S. specialization in different stages of the production process are evident by top U.S. exports and imports in similar product categories with the same countries. Three examples include: (1) U.S. motor vehicle and parts trade with Canada and Mexico; (2) U.S. computer equipment trade with Mexico; and (3) U.S. exports of fibers, yarns, and threads to CAFTA-DR countries and imports of finished apparel products. In addition, several countries show a comparative advantage in certain industries. For example, U.S. aircraft and parts are among the top U.S. exports to South Korea, Singapore, and Australia, highlighting U.S. specialization in high-tech products. Meanwhile, more than 20% of U.S. goods imports from Australia and South Korea are in meat products and motor vehicles, respectively.

U.S. services trade with top FTA partners is concentrated in a few key categories (partly reflecting more aggregated services classifications), and these top categories are consistent across U.S. FTA partners. Travel is by far the top U.S. services import and export, accounting for more than one-third of U.S. services trade with FTA partners. This category includes all types of travel, including tourism and travel for business and educational purposes. The costs incurred by a South Korean student studying at a U.S. university, for example, are considered a U.S. travel service export. The other major U.S. export categories are business services and charges for the use of intellectual property. Nearly 80% of U.S. imports from CAFTA-DR countries and more than 65% of U.S. imports from Mexico are in travel services, highlighting these countries appeal as a U.S. tourist destination. More than half of all U.S. services imports from South Korea, meanwhile, are of transport services, reflecting South Korea's specialization in the shipping industry.

Table 1. U.S. Goods Trade with Top FTA Partners

(2017, millions of U.S. dollars, sorted by export value)

FTA Partner	Export Product	Export Value	Share	Import Product	Import Value	Share
All FTA Partners	**Total**	**720,450**		**Total**	**797,036**	
	Petroleum & Coal Products	51,617	7%	Motor Vehicles	117,938	15%
	Motor Vehicle Parts	44,050	6%	Oil & Gas	75,850	10%
	Motor Vehicles	37,020	5%	Motor Vehicle Parts	66,147	8%
Canada	**Total**	**282,472**		**Total**	**299,975**	
	Motor Vehicles	27,878	10%	Oil & Gas	59,173	20%
	Motor Vehicle Parts	21,603	8%	Motor Vehicles	44,634	15%
	Petroleum & Coal Products	9,515	3%	Motor Vehicle Parts	13,223	4%
Mexico	**Total**	**242,989**		**Total**	**314,045**	
	Petroleum & Coal Products	21,348	9%	Motor Vehicles	57,440	18%
	Motor Vehicle Parts	19,809	8%	Motor Vehicle Parts	45,542	15%
	Computer Equipment	15,731	6%	Computer Equipment	20,216	6%
South Korea	**Total**	**48,277**		**Total**	**71,164**	
	Industrial Machinery	6,036	13%	Motor Vehicles	15,732	22%
	Aerospace & Parts	3,634	8%	Communications Equipment	6,363	9%
	Semiconductors, Electronic Components	3,589	7%	Semiconductors, Electronic Components	6,302	9%
CAFTA-DR	**Total**	**30,719**		**Total**	**23,641**	
	Petroleum /Coal Products	6,788	22%	Apparel	7,478	32%
	Fibers, Yarns, & Threads	1,450	5%	Fruits & Tree Nuts	3,381	14%
	Oilseeds & Grains	1,241	4%	Medical Equipment & Supplies	2,375	10%
Singapore	**Total**	**29,753**		**Total**	**19,397**	
	Aerospace & Parts	4,770	16%	Pharmaceuticals and Medicine	4,061	21%
	Petroleum & Coal Products	2,341	8%	Aerospace and Parts	1,981	10%
	Semiconductors, Electronic Components	2,076	7%	Basic Chemicals	1,397	7%
Australia	**Total**	**24,601**		**Total**	**10,051**	

FTA Partner	Export Product	Export Value	Share	Import Product	Import Value	Share
	Aerospace & Parts	2,566	10%	Meat Products	2,178	22%
	Motor Vehicles	1,878	8%	Pharmaceuticals & Medicine	706	7%
	Ag & Construction Machinery	1,657	7%	Nonferrous (excl. Aluminum) & Processing	592	6%

Source: Data from U.S. Census Bureau.

Notes: Categories are 4-digit North American Industrial Classification System (NAICS) commodities. Excludes NAICS 9200/9300 (used merchandise), 9800 (exports returned), and 9900 (other special classification).

Table 2. U.S. Services Trade with Top FTA Partners

(2016, millions of U.S. dollars, sorted by export value)

FTA Partner	Export Product	Export Value	Share	Import Product	Import Value	Share
All FTA Partners	**Total**	**176,073**		**Total**	**107,215**	
	Travel	62,362	35%	Travel	41,108	38%
	Other Business	28,382	16%	Transport	21,299	20%
	IPR Charges	25,565	15%	Other Business	20,751	19%
Canada	**Total**	**53,957**		**Total**	**29,950**	
	Travel	15,936	30%	Travel	7,856	26%
	Other Business	9,789	18%	Other Business	7,398	25%
	IPR Charges	7,977	15%	Transport	5,356	18%
Mexico	**Total**	**32,045**		**Total**	**24,569**	
	Travel	17,459	54%	Travel	16,152	66%
	Transport	3,886	12%	Transport	3,077	13%
	IPR Charges	3,748	12%	Other Business	2,848	12%
South Korea	**Total**	**21,055**		**Total**	**10,974**	
	Travel	8,492	40%	Transport	5,704	52%
	IPR Charges	5,848	28%	Travel	1,230	11%
	Transport	2,348	11%	Other Business	1,106	10%
Australia	**Total**	**21,977**		**Total**	**7,274**	
	Travel	7,937	36%	Other Business	1,867	26%
	Financial	3,448	16%	Travel	1,831	25%
	Other Business	2,657	12%	Transport	1,032	14%
Singapore	**Total**	**16,940**		**Total**	**7,258**	
	Other Business	8,621	51%	Other Business	3,109	43%
	IPR Charges	2,844	17%	Transport	1,213	17%
	Maintenance and Repair	1,203	7%	Financial	900	12%

FTA Partner	Export Product	Export Value	Share	Import Product	Import Value	Share
CAFTA-DR	**Total**	**8,213**		**Total**	**10,422**	
	Travel	4,045	49%	Travel	8,109	78%
	Transport	2,303	28%	Other Business	744	7%
	Other Business	426	5%	Telecommunications, computer, and information services	741	7%

Source: Data from U.S. Bureau of Economic Analysis.

Notes: Other business category includes professional services such as accounting, consulting, and architecture.

Utilization Rates of U.S. FTAs (U.S. Imports)

While the numbers above show the total value of U.S. trade with FTA partners, not all trade with FTA partners makes use of the preferential FTA tariff treatment. Combined, roughly half of U.S. goods imports by value from FTA partners entered the United States under preferential FTA duty rates in 2017 (**Table 3**). This may be caused by a number of factors including challenges in meeting the requirements of the agreement, such as rules of origin, or a lack of knowledge of the FTA benefits. It may also merely reflect the fact that existing applied U.S. MFN tariffs are zero or low enough that compliance with the FTA is more costly than the resulting tariff benefit. For example, more than one-third of all U.S. tariff lines have a zero import tariff or no associated duty. Therefore, entering these products under the FTA would have no specific benefit to an importer. These FTA usage rates highlight the importance of evaluating how specific FTA provisions, such as rules of origin, impact the cost-effectiveness of utilizing the agreement. The usage rates also signify the value of nontariff provisions, for example, rules on customs activities, intellectual property rights, and labor and environmental protections, given that these commitments have the potential to impact trading relationships regardless of the relevant tariffs.

Preferential tariff treatment under U.S. FTAs is relatively more important to some U.S. FTA partners than others and is concentrated in certain product groups. For example, less than 10% of U.S. imports from Singapore make use of the preferential tariff rates under the FTA while 88% of U.S imports from Jordan receive preferential tariff treatment. For seven U.S. FTA partners, apparel, a product with relatively high average MFN tariffs, is the top U.S. import receiving preferential treatment, including for five of the six members of CAFTA-DR. In terms of value, however, motor vehicles is the largest U.S. import receiving preferential treatment under an FTA, accounting for 30% of all such U.S. imports. It is the top import receiving preferential treatment from the three largest U.S. FTA partners: Canada, Mexico, and South Korea.

Table 3. U.S. Imports from FTA Partners Receiving Preferential Tariff Treatment

(2017, millions of U.S. dollars, sorted by FTA partner)

U.S. FTA Partner	*Share of U.S. imports entering under the FTA*	*Total value of U.S. imports entering under the FTA*	*Top import product entering under the FTA*	*Value of top import product entering under the FTA*
Australia	38%	$3,914	Meat Products	$1,894
Bahrain	58%	$581	Aluminum & Processing	$360
Canada	43%	$129,875	Motor Vehicles	$43,607
Chile	56%	$5,940	Nonferrous & Processing	$2,977

U.S. FTA Partner	Share of U.S. imports entering under the FTA	Total value of U.S. imports entering under the FTA	Top import product entering under the FTA	Value of top import product entering under the FTA
Colombia	37%	$5,010	Oil and Gas	$2,862
Costa Rica	33%	$1,493	Fruits & Tree Nuts	$536
Dominican Republic	60%	$2,810	Apparel	$697
El Salvador	84%	$2,074	Apparel	$1,571
Guatemala	49%	$1,956	Apparel	$1,055
Honduras	72%	$3,311	Apparel	$2,156
Israel	12%	$2,693	Plastics	$538
Jordan	88%	$1,485	Apparel	$1,345
Mexico	58%	$182,763	Motor Vehicles	$57,541
Morocco	16%	$201	Fruits and Tree Nuts	$72
Nicaragua	63%	$2,053	Apparel	$988
Oman	68%	$708	Plastics	$235
Panama	13%	$56	Sugar/Confectionary	$24
Peru	46%	$3,310	Apparel	$585
Singapore	9%	$1,806	Petroleum & Coal Products	$655
South Korea	47%	$33,015	Motor Vehicles	$15,581

Source: Analysis by CRS. Trade and tariff preference data from the USITC trade dataweb.

Notes: Import values based on U.S. imports for consumption.

Global RTAs

During the past two decades regional trade agreements (RTAs) have become, arguably, the dominant force in international trade negotiations, increasing in number and expanding in scope. Since 1990, the number of RTAs in force and notified to the WTO has increased seven-fold, while metrics on the average depth of provisions (i.e., the number of legally enforceable commitments) have doubled over the same period.[97] All of the United States' major trading partners participate in multiple RTAs. As of May 2018, there were 287 such agreements in force and notified to the WTO of which the United States is party to 14 (involving 20 countries).

Agreements that do not involve the United States have the potential to affect U.S. stakeholders and broader U.S. trade policy goals through a number of channels. For example, lower tariffs among RTA partners can place U.S. exporters at a competitive disadvantage in accessing foreign markets relative to members of the RTA. Other countries' participation in RTAs could also enhance their ability to attract investment relative to the United States, as potential investors benefit from both the preferential access to foreign markets, as well as the ability to potentially source imports at lower cost from other RTA partners. In addition to these direct economic effects, RTAs not involving the United States, may affect U.S. leadership and influence in setting

[97] Claudia Hofman, Alberto Osnago, and Michele Ruta, *Horizontal Depth, A New Database on the Content of Preferential Trade Agreements*, World Bank Group, Policy Research Working Paper 7981, February 2017.

global trading rules, depending on the degree to which such agreements differ from U.S. FTAs and the extent to which they establish precedents for future trade agreements.

Data Sources on Regional Trade Agreements

There are a number of sources available for more information and research on global RTAs. The WTO, given its requirement that members make notification of new agreements, houses the most authoritative and comprehensive database. WTO publications provide further analysis of these agreements and their provisions, including factual reports compiled by the WTO Committee on Regional Trade Agreements, which is responsible for examining RTAs against WTO requirements. In addition, the 2016 WTO book, "Regional Trade Agreements and the Multilateral Trading System," provides one of the most in-depth studies of agreements notified to the WTO, comparing agreements across a range of provisions.

Research departments at several multilateral development banks have also created databases on RTAs and their provisions. The World Bank has created a database of RTAs, including those not notified to the WTO. World Bank researchers have also created a dataset mapping out the provisions and legal enforceability of notified RTAs as of 2015. The Asian Development Bank's (ADB) Asia Regional Integration Center includes a database of RTAs that involve at least one ADB member, with links to the texts of the agreements and related news and research. Finally, the Inter-American Development Bank (IDB) together with the International Center for Trade and Sustainable Development (ICTSD) has launched a similar database covering RTAs around the world, also with links to additional related resources and research.

WTO Database: http://rtais.wto.org/UI/PublicMaintainRTAHome.aspx

World Bank Database: https://wits.worldbank.org/gptad/trade_database.html

World Bank Dataset on Horizontal Depth: https://data.worldbank.org/data-catalog/deep-trade-agreements

ADB Database: https://aric.adb.org/fta

IDB/ICTSD Database, RTA Exchange: https://rtaexchange.org

Global Growth in RTAs[98]

RTAs long predate the formation of the multilateral trading system in 1947, and before that time they were the primary mechanism for pursuing tariff liberalization. However, as part of the major restructuring of international economic policy that took place after World War II, the locus of trade negotiations shifted to the multilateral forum under the GATT for the next several decades. In the early postwar years, RTAs continued to be negotiated and co-existed with the multilateral system, but most of these agreements were among European countries and associated with the region's ongoing drive toward economic integration.[99] Beginning in the 1980's, and some argue as a result of challenges in addressing trade issues at the multilateral level, RTA negotiations started to become an increasing focus of trade policy beyond Europe, including, most significantly, in the United States.[100]

The conclusion of the 1994 Uruguay Round negotiations highlighted forward momentum of both RTAs and the multilateral trading system. The Uruguay Round, which established the WTO and introduced multilateral commitments on a range of issues including IPR, trade in services, and agriculture, came into effect amidst the continued proliferation of RTAs. The agreements of the Uruguay Round incorporated a number of provisions first established in RTAs, such as NAFTA,

[98] Unless otherwise noted, the global set of regional trade agreements considered are those that have been notified to the WTO.

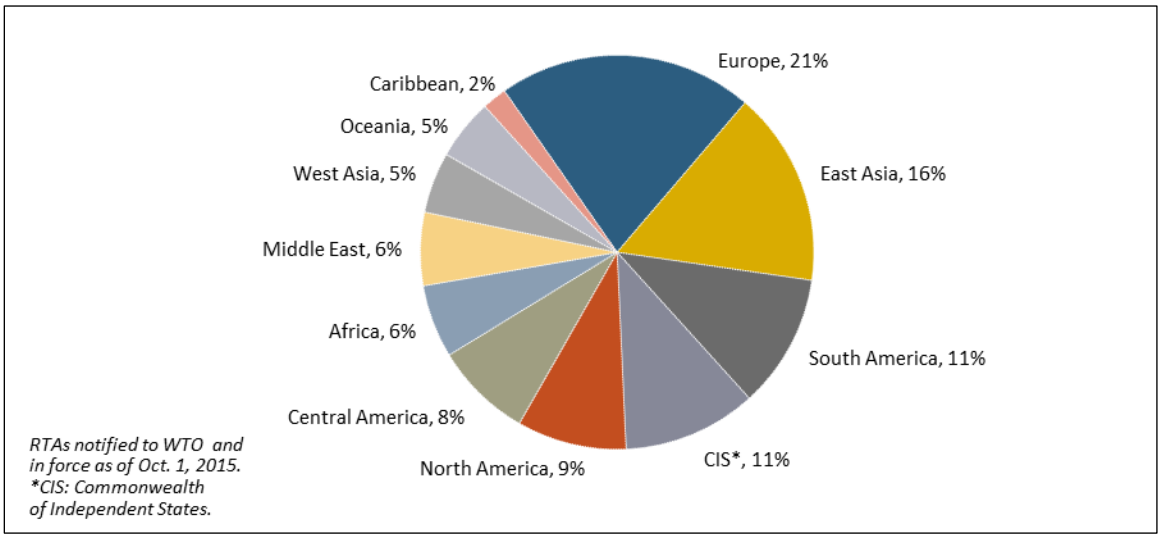
[99] WTO, World Trade Report 2011: The WTO and Preferential Trade Agreements, 2011, p. 52.

[100] At the time the United States was having difficulty convincing the other members of the GATT, particularly the European Community, to pursue a new multilateral agreement. Arvind Panagariya, "The Regionalism Debate: An Overview," *World Economy*, June 1, 1999, p. 481.

and may have been motivated in part to lessen the potential discriminatory effects of RTAs. During the 1990s RTAs spread further throughout the globe with the emergence of several significant regional agreements including in North America (NAFTA), South America (Mercosur), Asia (ASEAN FTA), and Africa (COMESA).[101]

In the last two decades, RTAs have become the main tool for reform for most of the participants in the global trading system.[102] While the WTO Doha Round of negotiations has continued for 16 years, the United States and the European Union have negotiated bilateral and regional agreements around the globe. During the same time, major Latin American economies, such as Mexico and Chile, and East Asian economies including China, Japan, and South Korea began pursuing RTAs, including such agreements as a major component of their domestic economic strategies to enhance growth and attract investment. Today East Asia is home to the second largest concentration of RTAs behind Europe (**Figure 6**).

Figure 6. RTAs by Region



Source: Data from Acharya 2016, p. 7. Figure created by CRS.

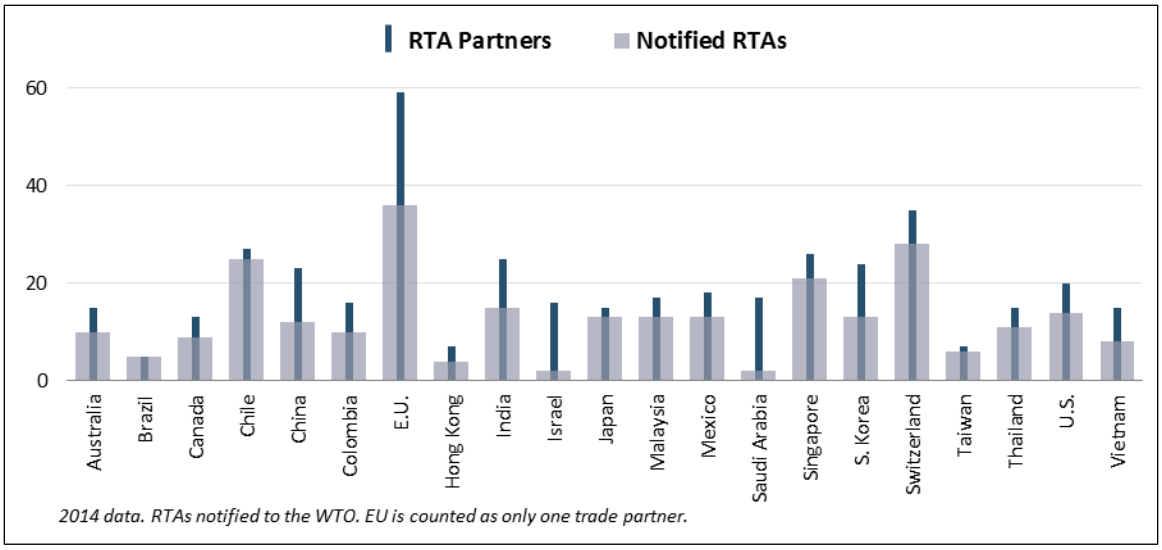
With the implementation of the Mongolia-Japan RTA in June 2016, every WTO member is now a participant in at least one RTA. As of December 2014, the average number of RTA partners per WTO member was 11.[103] The European Union continues to lead in the pursuit and formation of RTAs with a total of 59 partners (**Figure 7**). All of the top 20 U.S. trading partners, however, have been active participants in RTAs. As of 2014, members of this group had on average 20 RTA partners, with leading members, in addition to the EU, including Switzerland (35 RTA partners), Chile (27), China (23), and Singapore (26). The United States has its own FTAs with 8 of these top trade partners.

[101] See **Appendix B** for RTA country groupings.

[102] Nuno Limao, "Preferential Trade Agreements," in *Handbook of Commercial Policy*, ed. Kyle Bagwell and Robert W. Staiger, vol. 1B (2016), p. 289.

[103] Jo-Ann Crawford, "Market Access Provisions on Trade in Goods in Regional Trade Agreements," in *Regional Trade Agreements and the Multilateral System*, ed. Rohini Acharya (2016), p. 25.

Figure 7. RTAs of United States and Top 20 U.S. Trade Partners



Source: Data from Regional Trade Agreements and the Multilateral System, 2016. Figure created by CRS.

Trade agreements have proliferated among and between both developed and developing countries. According to a 2011 study, which included roughly 100 RTAs not notified to the WTO, in the late 1970's, 60% of all RTAs were between developed and developing countries, with only 20% among developing countries only.[104] Since that time, however, agreements among developing countries have increased markedly, with these agreements now accounting for more than two-thirds of global RTAs. Trade agreements between developed and developing countries have shrunk to roughly one-quarter of global RTAs, but have still grown at a quicker rate than trade agreements among only developed countries, which now account for less than 10% of global RTAs. This trend in RTA negotiations reemphasizes the growing significance of developing countries in international economic activity and policymaking over the past two decades.

Rise of Mega-Regional Negotiations

In recent years, another shift has occurred in which many of the largest trading nations in the world have embarked on mega-regional negotiations (RTAs with broad and economically significant membership). Despite the proliferation of RTAs in recent decades, as recently as 2008, less than half of world trade took place between RTA partners, because many of the world's largest economies and trade partners (e.g., United States, European Union, China, and Japan) do not have agreements in effect with one another.[105] If implemented, new mega-regional agreements currently being pursued between these countries would greatly expand the share of world trade covered by RTAs. On one hand, the economic significance of these agreements may cause renewed concerns over their potential discriminatory effects and their impact on the development and coordination of global trading rules. On the other hand, they may provide an opportunity to

[104] WTO, *World Trade Report 2011: The WTO and Preferential Trade Agreements*, 2011, pp. 55-56.

[105] In 2008 the share of trade between RTA partners was 35%, excluding intra-EU trade, or 51% including intra-EU trade. Ibid, p. 64.

consolidate multiple existing bilateral RTAs into a smaller number of agreements, simplifying the global commercial environment.[106]

Under the Trump Administration, the United States has eschewed these large negotiations in favor of bilateral agreements. However, other countries continue to pursue mega-regional pacts such as the recently concluded but not yet ratified and implemented Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) agreement without the United States, making it likely that mega-regional agreements will remain a significant component of the global trading system for the foreseeable future. The U.S. position on these negotiations could also change, particularly if U.S. stakeholders incur significant negative economic effects as a result of not participating.

Economically significant trade agreements currently under negotiation or awaiting implementation include (see "Major U.S. Trade Partners' RTAs" for more)

- EU-Japan RTA, which includes two of the five largest U.S. trading partners;
- CPTPP, which includes all TPP countries except the United States;
- Expansion of the Pacific Alliance (current members Chile, Colombia, Mexico, and Peru are negotiating with Australia, Canada, New Zealand, and Singapore);
- Regional Comprehensive Economic Partnership (RCEP), which includes several of the world's largest economies, such as China, Japan, India, and South Korea; and
- Tripartite Agreement and Continental Free Trade Area, 27- and 55-member RTA negotiations, respectively, encompassing all major African economies.

Comparison of Provisions

Trade agreements have grown not only in number over the past decades, but also in the depth and scope of their commitments. At the same time, considerable differences exist between and among agreements from the extent of their tariff coverage to the scope and enforceability of the nontariff commitments. For example, while every U.S. FTA (except the first with Israel) includes enforceable commitments on services trade, only roughly half of all RTAs notified to the WTO cover services. While RTAs may deepen existing multilateral commitments by further reducing tariffs or providing additional access to services markets, they may also go beyond WTO rules and establish new provisions. With the long delay in achieving new multilateral commitments, these RTAs have become the incubators for new rules in the global trading system.

From the U.S. perspective, this heterogeneity in RTAs raises at least two questions: (1) are these agreements adhering to the WTO criteria on RTAs and creating an environment conducive to future multilateral negotiations, and (2) are these agreements creating new rules that differ in type from U.S. RTAs and how could those new rules affect U.S. interests?

[106] Rohini Acharya, "Regional Trade Agreements: Recent Developments," in *Regional Trade Agreements and the Multilateral Trading System*, ed. Rohini Acharya (2016), p. 9.

Extent of Tariff Liberalization[107]

Tariffs, the most traditional aspect of trade agreements, remain at the core of RTA negotiations and can be a contentious issue.[108] RTAs notified to the WTO under Article XXIV of the GATT are required to cover substantially all trade, and tariff concessions are to be implemented within ten years.[109] According to the sample in the 2016 WTO study, most RTAs cover at least 80% of tariff lines (on average 90.6%) and liberalize more than 80% of trade.[110] However, a number of agreements fall below the 80% tariff line threshold, and more commonly, include heavily traded products among the protected tariff lines, therefore liberalizing significantly less than 80% of trade. Agricultural products are by far the most likely products to be excluded from RTAs. In the sample, on average, 93.4% of tariffs are eliminated on nonagricultural products, while only 72.1% of agricultural tariff lines are completely liberalized. Textile and apparel products were the other categories most likely to be excluded. Regarding the length of implementation, 40% of the RTAs studied required the completion of tariff phase-outs within 5 years, 63% within 10 years, and over 90% within 20 years.

U.S. FTAs have among the highest overall rates of tariff liberalization. The study included eight U.S. FTAs with eight partners, providing a sample covering more than half of all U.S. FTAs. On average across the agreements, the United States eliminated nearly all tariffs, removing industrial goods tariffs entirely by the end of the implementation period with only a small number of tariffs remaining on the most sensitive agricultural products (0.3% of total tariff lines, or 1.8% of total agricultural tariff lines).

An examination of the RTAs of the top 20 U.S. trading partners, again using data on RTAs from 2007-2014, reveals considerable heterogeneity (**Figure 8**). Australia, Hong Kong, and Singapore each completely liberalized their tariffs in the agreements included in the sample—the only countries with higher liberalization rates than the United States among top U.S. trade partners.[111] Meanwhile India is an obvious outlier for its very low overall rates of liberalization, eliminating duties on less than 50% of tariff lines. Vietnam, Malaysia, and Thailand stand out among developing countries for their relatively extensive elimination of tariffs, particularly in agricultural products, with less than 10% of agriculture tariff lines remaining protected in their RTAs included in the sample. Several U.S. FTA partners among this group retain tariff barriers on a significant share of tariff lines in their RTAs, on average, despite the fact that their FTAs with the United States eliminate nearly all tariffs, even in agricultural products. For example, among the RTAs in this study, South Korea on average retained tariffs on 6.5% of tariff lines, while in its

[107] This section based on the market access chapter in Acharya 2016. Jo-Ann Crawford, "Market Access Provisions on Trade in Goods in Regional Trade Agreements," in *Regional Trade Agreements and the Multilateral System*, ed. Rohini Acharya (2016), pp. 21-57.

[108] Tariff schedules are classified by Harmonized Schedule (HS) codes in which additional digits allow for more precise commodity classifications and therefore fewer digits signify a greater degree of aggregation among products. Tariff schedules are consistent across countries up to the six-digit level HS code, which includes about 5,000 commodities. Many countries, including the United States, assess tariffs at the eight-, ten-, or even twelve-digit level, leading to inconsistencies at the tariff-line level between countries. For this reason, Acharya 2016, and most international tariff analysis, aggregates tariff schedules to the uniform six-digit level for comparisons.

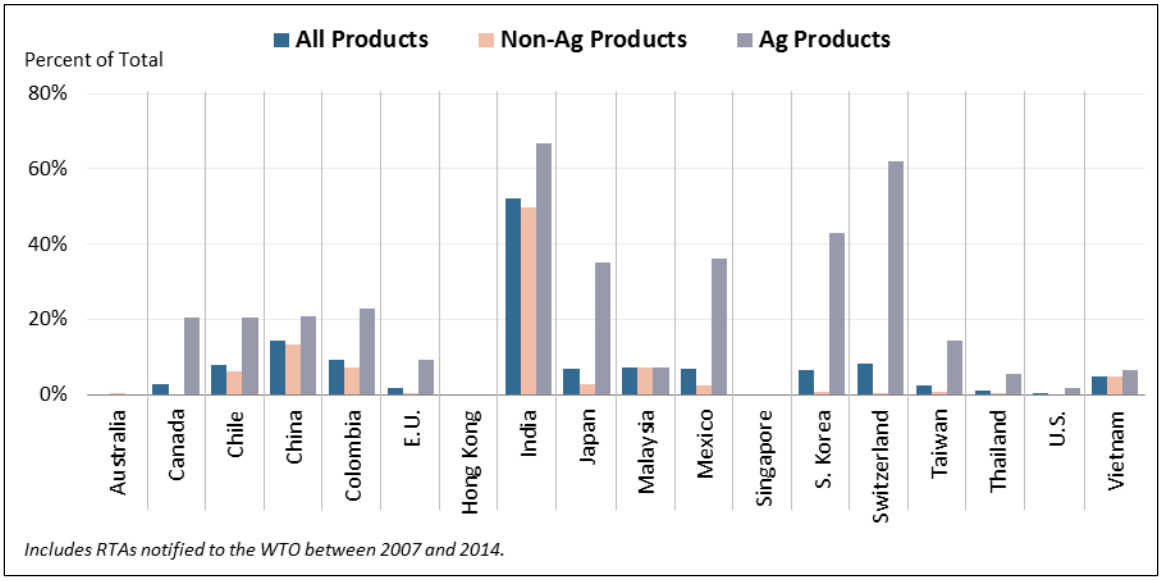
[109] See section "WTO Rules on RTAs" for more discussion of this issue. Agreements among developing countries may also notify under the enabling clause, which maintains less stringent criteria, but the majority of FTAs in the study are notified under Article XXIV, with only 5 of the 61 RTAs among developing countries notifying under the enabling clause. The 10-year time frame may be exceeded in exceptional circumstances.

[110] RTAs included in the tariff analysis are those notified to the WTO between 2007 and 2014, and subject to the WTO's RTA transparency mechanism.

[111] Singapore and Hong Kong have virtually eliminated tariffs on an MFN basis, so their high RTA liberalization rates are less noteworthy.

FTA with the United States it retained tariffs on less than 1% of tariff lines. Similarly, Mexico retained tariffs on more than 30% of its agricultural tariff lines on average across its RTAs, but eliminated such tariffs entirely in NAFTA. Although the sample size is limited, it may be indicative of U.S. ability to extract concessions and set the general parameters for its FTA negotiations, given that comprehensive tariff coverage has been a long-standing priority of U.S. negotiators.

Figure 8. Tariff Lines Not Eliminated in RTAs for Top 20 U.S. Trade Partners



Source: Jo-Ann Crawford, "Market Access Provisions on Trade in Goods in Regional Trade Agreements," in Regional Trade Agreements and the Multilateral System, ed. Rohini Acharya (2016), Tables 1.2, 1.3, and 1.4.

Notes: RTAs included in the tariff analysis are those notified to the WTO between 2007 and 2014, and subject to the WTO's RTA transparency mechanism. Brazil, Israel, Saudi Arabia, and the United Arab Emirates are also among the top 20 U.S. trade partners, but no RTA data for these countries was included in the sample.

Strength and Scope of Commitments

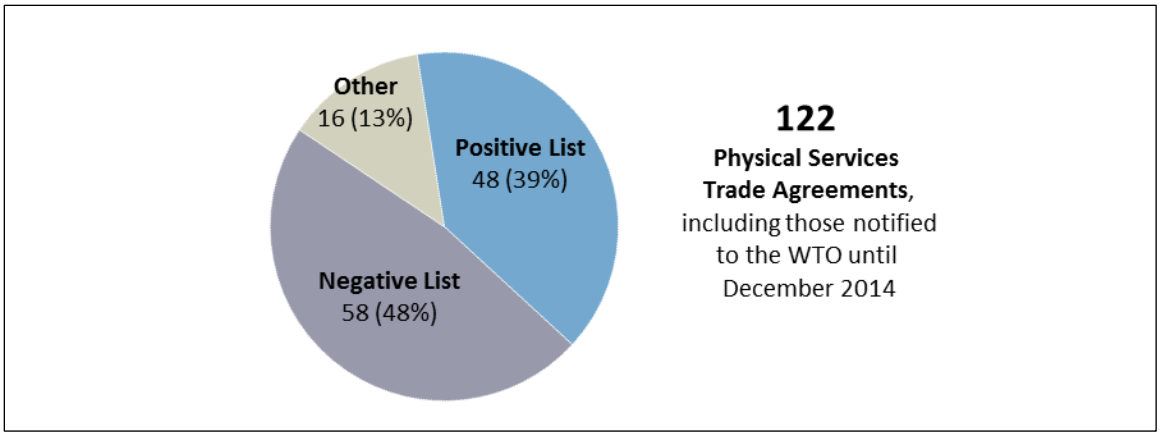
Similar to the variation in the extent of tariff coverage, the growth in the number of global RTAs has also been accompanied by diversity in the depth and scope of various nontariff provisions. Agreements may make certain commitments unenforceable (i.e., not subject to a dispute-settlement mechanism), they may include less extensive commitments on particular issues, or they may exclude issues entirely. In general, U.S. FTAs cover a broader range of issues than most global RTAs. For example, roughly one-half of RTAs notified to the WTO between 2000 and 2014 include core U.S. FTA commitments such as services (55%), investment (54%), IPR commitments beyond TRIPS (46%), and government procurement (46%), while less than one-third include provisions on the environment (31%), e-commerce (22%), or labor (22%).[112] Below, two specific areas are examined in more detail, commitments on services and intellectual property rights, with a comparison of U.S. and global RTA commitments.

[112] Rohini Acharya, "Regional Trade Agreements: Recent Developments," in *Regional Trade Agreements and the Multilateral Trading System*, ed. Rohini Acharya (2016), p. 11.

Services.[113] Considering agreements notified to the WTO through December 2014, roughly half of the agreements contain provisions on trade in services (122 of 258). In terms of the structure of the commitments, the negative versus positive list approach is one of the key characteristics differentiating services agreements. A negative list covers all sectors except those *explicitly excluded*, and is generally considered more liberalizing than a positive list, which covers only those sectors *explicitly included*. NAFTA was the first U.S. FTA to include extensive commitments on services trade. NAFTA's negative list approach, which the United States continues to champion in bilateral, regional, and multilateral negotiating fora has become the model for a family of global RTAs. While the negative/positive list approach provides some indication of an agreement's coverage, the exclusions and specific commitments determine the level of liberalization achieved. For example, two-thirds of the EU agreements included in the study exclude audio-visual services, an area of comparative advantage and major services export interest of the United States.

Of the 122 services agreements analyzed by the WTO study, 54 followed a NAFTA-style negative list approach (**Figure 9**). The positive list approach of the GATS, meanwhile, is used in 48 RTAs, primarily those among developing countries or between developed and developing countries. Regional differences are apparent as well with countries in the Americas favoring the NAFTA approach while those in Asia make greater use of the GATS positive list approach. Overall, while the structure of RTA services commitments vary, the authors of the WTO study assert that the agreements do not differ to an extent that would hinder future multilateralization. The largest concern the authors raise is that such agreements will likely continue to exclude least-developed countries that lack the institutional capacity to engage in such negotiations.

Figure 9. Breakdown of Global Services RTAs by Type



Source: Information from Pierre Latrille, "Services Rules in Regional Trade Agreements: How Diverse or Creative are they Compared to the Multilateral Rules?," in *Regional Trade Agreements and the Multilateral Trading System*, ed. Rohini Acharya (2016), p. 430. Figure created by CRS.

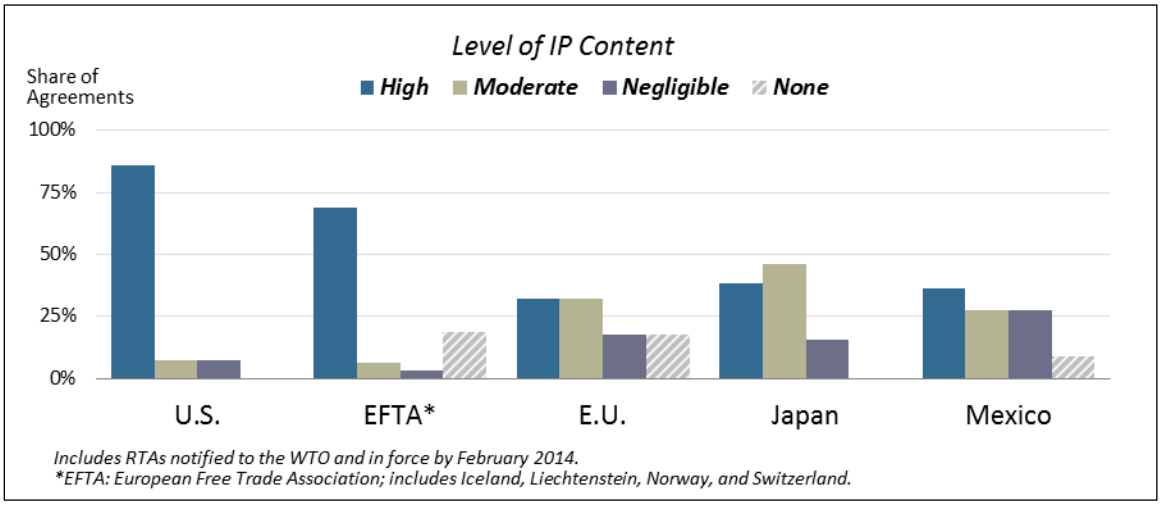
Intellectual Property Rights (IPR).[114] In a 2016 WTO study examining the 245 RTAs notified to the WTO and in force between 1995 and December 2014, the authors determined that 174 have

[113] This section is based on the services chapter in Acharya 2016. Pierre Latrille, "Services Rules in Regional Trade Agreements: How Diverse or Creative are they Compared to the Multilateral Rules?," in *Regional Trade Agreements and the Multilateral Trading System*, ed. Rohini Acharya (2016), pp. 421-493.

[114] This section is based on the intellectual property rights chapter in Acharya 2016. Raymundo Valdès and Maegan McCann, "Intellectual Property Provisions in Regional Trade Agreements: Revision and Update," in *Regional Trade Agreements and the Multilateral Trading System*, ed. Rohini Acharya (2016), pp. 497-607.

some type of IP provisions, 116 referenced specific types of IPR, and 94 included pharmaceutical provisions. The United States stands out in the extent and consistency of its IPR coverage in FTAs (**Figure 10**). Other countries with a comparative advantage in IP-intensive products, such as Japan and the EU, have negotiated RTAs with strong and extensive coverage of IPR issues, but they differ considerably in the consistency of their approach. Essentially all U.S. FTAs include high levels of IP protections, while more than 50% of the EU and Japanese agreements contained moderate, negligible, or no IP content.[115] The European Free Trade Association (EFTA) countries (Iceland, Liechtenstein, Norway, and Switzerland) have the largest share of RTAs with high levels of IPR commitments after the United States. Developing countries have also been active participants in RTAs with IPR commitments; all but five of the 174 RTA agreements with IPR commitments include at least one developing country. Mexico, for example, has nearly the same share of RTAs with high and moderate IP content as the EU and Japan.

Figure 10. Shares of Trade Agreements by Level of IP Content, Select Trade Partners



Source: Information from Raymundo Valdès and Maegan McCann, "Intellectual Property Provisions in Regional Trade Agreements: Revision and Update," in *Regional Trade Agreements and the Multilateral Trading System*, ed. Rohini Acharya (2016), pp. 497-607. Figure created by CRS.

Differing Approaches

Commitments in RTAs also vary in the approach they take to addressing specific issues. Four different areas in which U.S. and EU approaches to RTA commitments have differed are discussed below. The United States and EU are both leaders in global trade negotiations in part due to the economic significance of the trading relationships encompassed by their agreements. The EU already has the world's largest RTA network, and has 12 pending or ongoing RTA negotiations, including with major U.S. trading partners like Japan. One implication is that a growing and significant share of world trade could be subject to EU RTA rules (**Table 5**). These negotiations also have the potential to set precedents for future agreements. In sum, differing approaches between the United States and the European Union may be consequential for U.S.

[115] The classification methodology for the level of IP content was unique to this specific study. The authors identify 32 different potential IP provisions within three categories (general, specific, and pharmaceutical) and then assign a score to each RTA depending on how many of the 32 potential provisions it contains. In creating the score, the authors used asymmetric weights placing greater emphasis on general and specific provisions than those related to pharmaceuticals: 60% for general, 30% for specific, and 10% for pharmaceutical.

stakeholders and future trade negotiating objectives in trade agreements. Better coordination in regulatory approaches to minimize impediments to trade was a primary goal of the now stalled T-TIP negotiations.[116]

Digital Trade/Data Privacy.[117] Rules on digital trade have been a priority area in recent RTA agreements, given the significant increase in internet-based commercial activity that began in the1990s and the absence of multilateral trade rules on this issue.[118] At the same time, growing concerns over data privacy and national security have led to increased public debate on digital trade issues, including the regulation of data storage and transfer, and emphasized the need for digital trade commitments that balance goals of facilitating commercial activity with legitimate public policy concerns. The United States and the EU have generally addressed digital trade differently in their trade agreements. The EU views privacy as a fundamental right and not a subject of trade agreements. Regardless of their location, U.S. firms that handle personal data of EU citizens will be subject to the EU General Data Protection Regulation (GDPR), effective May 25, 2018. Given the EU position, it has focused on regulatory dialogue in its RTAs while U.S. FTAs, particularly the negotiated but not implemented TPP,[119] have included explicit enforceable language ensuring companies' ability to transfer data across borders, and prohibiting data localization requirements (e.g., requiring servers to be located in-country). TPP also called for participants to have online consumer protection and anti-spam laws in place and a legal framework on privacy.[120] The EU's recently concluded but not yet implemented FTA with Japan, a country that has taken a similar approach to the United States on digital trade issues, omitted an explicit commitment on data flows, and instead included a provision to re-evaluate the issue within three years.[121] Press reports suggest that the EU may be moving toward more explicit language on data flows and localization requirements in its future RTAs.[122]

Geographical Indications (GIs). GIs denote distinct products based on their production origin, typically food and beverage products (e.g., Idaho potatoes), and are a form of intellectual property protected by both the United States and the EU, domestically and in their trade agreements.[123] The United States and the EU, however, have different legal regimes for the protection of GIs (the United States generally protects GIs through its trademark registration system, while the EU uses

[116] For more information, see CRS In Focus IF10120, *Transatlantic Trade and Investment Partnership (T-TIP)*, by Shayerah Ilias Akhtar and Vivian C. Jones.

[117] For more information, see CRS Report R44565, *Digital Trade and U.S. Trade Policy*, coordinated by Rachel F. Fefer, CRS In Focus IF10770, *Digital Trade*, by Rachel F. Fefer, and CRS In Focus IF10748, *European Union Digital Single Market*, by Rachel F. Fefer and Shayerah Ilias Akhtar.

[118] At the WTO's latest ministerial in December 2017, a group of over 70 members, including the United States, announced a plurilateral effort, agreeing to "initiate exploratory work on negotiations on electronic commerce issues in the WTO." "Joint Statement on Electronic Commerce," December 13, 2017, https://ustr.gov/sites/default/files/files/Press/Releases/Joint%20Statement%20on%20Electronic%20Commerce.pdf.

[119] See for example, Articles 14.11 and 14.13 of TPP Chapter 14. https://ustr.gov/sites/default/files/TPP-Final-Text-Electronic-Commerce.pdf.

[120] Mark Wu, *Digital Trade-Related Provisions in Regional Trade Agreements: Existing Models and Lessons for the Multilateral System*, RTA Exchange, November 2017, p. 28, http://rtaexchange.org/pdf/Digital%20Trade%20Related%20Provisions%20in%20RTA_%20WU.pdf.

[121] See Article 12, Japan-EU EPA/FTA, http://trade.ec.europa.eu/doclib/docs/2017/december/tradoc_156436.F%20EU_JPN_FTA_Electronic_Commerce_4_171205_Limited.pdf.

[122] "EU Moves to Remove Barriers to Data Flows in Trade Deals," *Reuters*, February 9, 2018.

[123] For more information on geographical indications, see CRS In Focus IF10188, *Geographical Indications (GIs) in U.S. Agricultural Trade*, by Renée Johnson and CRS Report R44556, *Geographical Indications (GIs) in U.S. Food and Agricultural Trade*, by Renée Johnson.

a system of quality schemes to protect GIs) and differing views on the appropriate scope of GI protection and what qualifies a particular name as a GI.[124] U.S. industry is divided over the issue. Certain groups, particularly dairy producers, argue that EU GI protections extend to what are essentially common or generic food names (e.g., feta cheese), restricting the ability of U.S. exporters to sell products under those names and thereby conferring an advantage to EU producers.[125] Other U.S. producers, including some in the U.S. wine industry and members of the American Origin Products Association, are currently seeking a more extensive system of GI protections in the United States akin to the EU approach.[126] Through its trade agreements the EU has secured restrictions on the marketing of registered GIs with major U.S. trade partners including Canada and South Korea. The recently concluded EU-Japan agreement also includes the protection of more than 200 GIs, and the EU is currently negotiating with Mexico regarding an update to their existing RTA, including expanded GI coverage.[127] The USTR has noted concerns with the EU's approach to GIs in its annual report on international trade barriers.[128]

Investment Dispute Settlement. In its most recent trade agreements with Canada and Vietnam, the EU has adopted a new investment court model for the adjudication of investment disputes, and is advocating for a new multilateral system based on its model.[129] This system differs from the traditional investor-state dispute settlement (ISDS) mechanism included in existing U.S. FTAs, U.S bilateral investment treaties, and older EU trade and investment agreements; both systems, however, allow private investors to directly bring claims against host governments for alleged violations of investment commitments.[130] The EU's investment court system seeks to address some perceived shortcomings of ISDS, particularly its ad hoc nature and lack of an appeals process, by establishing a permanent and appellate tribunal with appointed judges.[131] Although ISDS remains the subject of intense public debate in the United States, some in the U.S. business community strongly argue for its inclusion in U.S. FTAs, favoring the ISDS approach over the new EU system, arguing that the investment court proposal essentially weakens investor protections relative to traditional ISDS.[132] The U.S. government position on ISDS may be evolving under the Trump Administration. USTR Ambassador Lighthizer raised concerns over

[124] Information on U.S. protection of GIs is available at https://www.uspto.gov/sites/default/files/web/offices/dcom/olia/globalip/pdf/gi_system.pdf.

[125] Letter from American Farm Bureau Federation et al. to President Trump, October 3, 2017, http://www.nmpf.org/files/files/Letter%20to%20President%20Trump%20on%20GIs_FINAL.pdf.

[126] For more information on GIs and the wine industry, see CRS Report R43658, *The U.S. Wine Industry and Selected Trade Issues with the European Union*, by Renée Johnson. For more on the American Origin Products Association, see http://www.aop-us.org/aopa-policy-agenda.html.

[127] European Commission, "EU-Japan EPA—The Agreement in Principle," July 6, 2017, http://trade.ec.europa.eu/doclib/docs/2017/july/tradoc_155693.doc.pdf.

[128] USTR, *2017 National Trade Estimate Report on Foreign Trade Barriers*, March 2017, p. 163.

[129] European Commission, "A Multilateral Investment Court," September 2017, http://trade.ec.europa.eu/doclib/docs/2017/september/tradoc_156042.pdf.

[130] ISDS is included in all U.S. FTAs with investment provisions except the agreement with Australia. For more on ISDS, see CRS In Focus IF10052, *U.S. International Investment Agreements (IIAs)*, by Martin A. Weiss and Shayerah Ilias Akhtar.

[131] European Commission, "CETA: Eu and Canada Agree on New Approach on Investment in Trade Agreement," press release, February 26, 2016, http://europa.eu/rapid/press-release_IP-16-399_en.htm.

[132] AmCham EU, *AmCham EU Response to EU Proposal for Investment Protection and Court System for T-TIP*, February 26, 2016, http://www.amchameu.eu/system/files/position_papers/amcham_eu_response_to_eu_proposal_for_investment_protection_and_court_system_for_ttip_-_26.02.2016.pdf.

ISDS and potential infringement on U.S. sovereignty in his nomination hearing,[133] and the United States, under Ambassador Lighthizer's direction, has proposed significant changes to the NAFTA ISDS system as part of the ongoing NAFTA renegotiation.[134]

Standards and Nontariff Barriers. Differences in approach to standards between the United States and the European Union can affect U.S. exports to the EU as well as third country markets. Both the United States and the EU have included commitments on recognition of standards in their trade agreements, such as in chapters on technical barriers to trade (TBT), with other countries. On one hand, these commitments may improve the transparency of the standards-setting process or encourage mutual recognition of standards based on outcomes, to the benefit of both EU and U.S. exporters. However, they may also encourage third country markets to adopt EU or U.S. standards, effectively favoring EU or U.S. producers, respectively. For example, the agreement between South Korea and the EU (KOREU) includes language on motor vehicle safety standards that encourages South Korea to use United Nations Economic Commission for Europe (UNECE) regulations as its benchmark when developing new standards.[135] Those standards, used throughout Europe, differ from U.S. safety regulations.[136] If South Korean standards were aligned with EU standards, U.S. automakers would have to revise their vehicles to meet them, a costly undertaking that could lead to fewer U.S. exports. U.S. motor vehicle industry representatives have argued that the EU's push to get other countries to adopt EU standards is a major challenge for the industry, and they are advocating that Mexico and Canada agree in current NAFTA negotiations to adopt U.S. vehicle safety standards.[137]

The EU and the United States also have different approaches to certain agriculture and food safety standards, including sanitary and phytosanitary (SPS) commitments.[138] The U.S.-EU High Level Working Group on Jobs and Growth produced a report to inform the T-TIP negotiations calling for SPS (and TBT) commitments that build on the disciplines already established in the WTO, as a number of U.S.-EU trade-disputes over SPS issues remain unresolved.[139] These include issues such as the EU's reluctance to adopt certain biotechnology as well as its restrictions on various meat processing techniques. These differences may in part stem from the EU's use of a precautionary principle to guide its regulatory process, which some argue is a generally more risk-averse approach than the "risk-based" assessments favored by the United States.[140]

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[133] U.S. Congress, Senate Committee on Finance, *Robert Lighthizer Nomination Hearing*, 115th Cong., 1st sess., March 14, 2017.

[134] "In His Own Words: Lighthizer Lets Loose on Business, Hill Opposition to ISDS, Sunset Clause," *World Trade Online*, October 19, 2017.

[135] See Annex 2-C of the KOREU agreement text.

[136] For more information, see CRS Report R43399, *U.S. and EU Motor Vehicle Standards: Issues for Transatlantic Trade Negotiations*, by Bill Canis and Richard K. Lattanzio.

[137] "Automakers Look to Leverage NAFTA Rewrite in Standards Battle with EU," *Inside U.S. Trade*, May 26, 2017.

[138] For more information, see CRS Report R43450, *Sanitary and Phytosanitary (SPS) and Related Non-Tariff Barriers to Agricultural Trade*, by Renée Johnson.

[139] The High Level Working Group report is available at http://trade.ec.europa.eu/doclib/docs/2013/february/tradoc_150519.pdf.

[140] For information on the precautionary principle in relation to EU trade agreements, see European Commission, "An Introduction to the EU-Japan Economic Partnership: Precautionary Principle," July 2017, http://trade.ec.europa.eu/doclib/docs/2017/july/tradoc_155718.pdf.

Potential for Discriminatory Treatment Affecting U.S. Trade

A major concern for many U.S. policymakers and stakeholders relating to the proliferation of global RTAs is how agreements not involving the United States may affect U.S. commercial interests. In particular, U.S. industries that rely heavily on exports and typically face relatively higher tariffs in foreign markets, such as agriculture, have expressed concern that a price disadvantage due to discriminatory preferential tariff treatment will reduce sales relative to foreign competitors. U.S. industries that rely on imported components may also face disadvantages with foreign competitors that face lower tariffs on similar imported components. The magnitude of these disadvantages depends on several factors: the specific products at issue; the existing tariff rates and degree of tariff elimination in the new RTAs; and the size of the economies participating and their existing trade relations with the United States. Overall average MFN tariff rates have fallen significantly worldwide in the past several decades limiting the potential for discrimination through preferential RTAs. However, tariff peaks remain in certain industries, such as agriculture, textiles and apparel, and in some countries, motor vehicles, and average tariffs are relatively higher in some countries, especially developing countries.

Table 4 below provides examples of U.S. exports to major foreign markets that do not have an existing FTA with the United States but are in the process of negotiating or implementing a trade agreement with other major U.S. trade partners. In particular, it looks at the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP, a revised TPP without the United States), and the European Union's agreements with Japan and Vietnam. The examples were chosen based on the size of the existing tariff, export potential from the United States, and potential for competition from another member of the RTA. For example, U.S. motor vehicle exports to the European Union totaled more than $10 billion in 2017 while facing up to a 10% tariff. In 2017, Japan exported $11.4 billion in motor vehicles to the EU, and if the EU-Japan FTA enters into force, Japanese motor vehicle exports would face no tariff by year seven. Similarly, U.S. cosmetic and perfume exports to Vietnam totaled $46 million in 2017, facing tariffs up to 25%. In 2017, the European Union exported $115 million of such goods to Vietnam, and if the EU's RTA with Vietnam becomes effective, EU exports of these products would face no tariffs within eight years.

Table 4. Selected Comparative Data on U.S. Exports to Major Trade Partners with RTAs that exclude the United States

Pending RTA	*U.S. Trade Partner*	*U.S. Export Product*	*U.S. Export Value (2017, million $s)*	*MFN Import Tariff*	*Year Tariff Eliminated in RTA*
CPTPP	**Japan**	Beef (HS 0201 & 0202)	$1,528.9	38.5%	To 9% by Year 16
		Frozen Potatoes (HS 200410)	$286.9	Up to 13.6%	Year 6
		Walnuts (HS 080232)	$131.3	10%	Year 1
	Malaysia	Table and Kitchen Glassware (HS 701349)	$24.1	30%	Year 6
		Self-adhesive Tape/Sheets (HS 391910)	$22.9	Up to 20%	Year 1
		Fresh Grapes (HS 080610)	$18.9	5%	Year 1

Pending RTA	U.S. Trade Partner	U.S. Export Product	U.S. Export Value (2017, million $s)	MFN Import Tariff	Year Tariff Eliminated in RTA
	Vietnam	Soybean Flour/Meal (HS 120810)	$72.0	8%	Year 3
		Chicken Cuts (HS 020714)	$71.5	20%	Year 11
		Motor Vehicles (HS 8703)	$63.2	Up to 70%	Year 13
EU-Japan RTA	**E.U.**	Motor Vehicles (HS 8703)	$10,026.0	10%	Year 8
		Tractors (HS 8701)	$673.6	Up to 16%	Year 13
		Ball Bearings (HS 8482)	$392.0	Up to 8%	Year 8
	Japan	Pork (HS 0203)	$1,535.0	4.3%AV + 482 yen/kg specific duty	AV eliminated and specific duty reduced to 50 yen/kg over 10 years
		Wine (HS 2204)	$95.2	15%	Year 1
		Footwear (HS 64)	$49.9	Up to 30%	Up to Year 16
EU-Vietnam RTA	**E.U.**	Apparel (HS 62)	$316.5	Up to 12%	Year 8
		Footwear (HS 64)	$104.3	Up to 17%	Year 8
		Misc. Fruits (HS 081190)	$30.9	Up 20.8%	Year 1
	Vietnam	Motor Vehicles (HS 8703)	$63.2	Up to 70%	Year 11
		Cosmetics and Perfumes (HS 33)	$46.4	Up to 25%	Year 8
		Internal Combustion Engines (HS 8408)	$12.3	Up to 25%	Year 11

Source: Trade data from Global Trade Atlas. Tariff data from trade agreement texts.

Notes: Year 1 refers to entry into force of the agreement.

Major U.S. Trade Partners' RTAs

This section provides analysis of U.S. FTAs compared with the trade agreements of the top six U.S. trading partners: the European Union, China, Canada, Mexico, Japan, and South Korea. **Tables 5-11** list each trading partner's RTAs in force and notified to the WTO, under negotiation or awaiting implementation, as well as existing agreements being renegotiated for potential changes. The subsequent figures show three key characteristics of each trading partner's RTAs: (1) the number of RTAs that include enforceable commitments (i.e., specific commitments subject to a dispute-settlement mechanism) across nine categories (selected because of their prioritization in U.S. FTAs); (2) the share of goods trade that occurs with RTA partners; and (3) the share of tariff lines excluded from total liberalization for selected agreements. Agreement texts and

information on agreements under negotiation come from the WTO RTA database and individual country's trade ministry websites. The analysis of enforceable commitments draws from the Hofmann, Osnago, and Ruta database, updated and with minor modifications to include the most recent agreements.[141] Tariff analysis is based on Chapter 1 of Acharya 2016.

Key observations of U.S. FTAs and top U.S. trade partners RTAs include

- **The EU has significantly more RTAs in place than the United States. Other top U.S. trading partners have a similar number of agreements as the United States, but they typically encompass more countries.** Canada, Mexico, and South Korea, each have an RTA with the 28-member EU. China and Japan have RTAs with ASEAN and its 10 members. The only multi-party U.S. FTAs are NAFTA (3 total parties) and CAFTA-DR (7 total parties).
- **All six top U.S. trade partners have several new RTAs under negotiation or awaiting implementation.** For example, the EU has twelve RTAs under negotiation or awaiting implementation. The United States is currently engaged in a renegotiation of NAFTA and KORUS, with the only new negotiation, T-TIP, on hold pending action by the Trump Administration.
- **U.S. goods trade with FTA partners as a share of total trade (39% of total U.S. trade) is similar to that of China (33%), the EU (32%), and Japan (22%).** The United States, China, Japan, and the EU, the world's four largest economies and all major trading partners, do not yet have trade agreements in force with one another. However, China and Japan are currently in RTA negotiations as part of RCEP, and the EU and Japan recently concluded but have not yet implemented a new RTA.
- **Canada, Mexico, and South Korea already have trade agreements in force with most of their largest trading partners.** These countries' goods trade with RTA partners is a high share of their overall trade: Canada (81%), Mexico (79%), and South Korea (68%).
- **The United States is the only country among this group to consistently include enforceable labor and environmental provisions in its RTAs.** On average across the six trading partners, less than 10% of their RTAs include such provisions. None of China's RTAs include enforceable labor or environmental commitments.
- **Based on the sample covered, U.S. FTAs have the most comprehensive tariff coverage among the group with less than 1% of tariff lines subject to duties following complete FTA implementation.**[142] China's RTAs represent the least liberalized among the sample with an average of 15% of tariff lines still subject to duties, and is the only country among the group with a large share of nonagricultural products excluded from tariff coverage. Strictly in terms of agricultural coverage, the United States is again the most comprehensive with less than 2% of tariff lines subject to duty after all tariff commitments have been

[141] Claudia Hofmann, Alberto Osnago, and Michele Ruta, *Horizontal Depth: A New Database on the Content of Preferential Trade Agreements*, World Bank Group, Policy Research Working Paper 7981, February 2017, http://documents.worldbank.org/curated/en/700771487791538589/pdf/WPS7981.pdf. This database includes analysis of RTAs notified to the WTO as of 2015. Subsequent agreements were analyzed by the author.

[142] The tariff analysis is based on only a select number of RTAs and therefore cannot be interpreted as representative of a country's overall RTA regime.

phased in. Excluded agricultural tariff lines for the top U.S. trading partners range from 9% (European Union) to 43% (South Korea).

- **All six top U.S. trading partners' RTAs cover both goods and agriculture tariffs.**[143] More than half of each trading partners RTAs (on average) also include enforceable commitments on customs (93%), services (76%), IPR (71%), investment (67%), and procurement (53%). Analyzing the precise nature of these commitments is beyond the scope of this paper, but such provisions are not excluded outright from the majority of these trading partners' RTAs. However, as discussed in the section above on the "Strength and Scope of Commitments," significant differences may exist between the level of commitments in various RTAs, and U.S. FTAs typically have among the most extensive provisions.

Sources and Notes for RTA Characteristics in Tables 5-11

Source: Trade data is from the IMF's Direction of Trade Statistics. Enforceable commitments data based on World Bank working paper (Hofmann et al. 2017, see footnote 141). Data on share of unliberalized tariff lines is from WTO RTA study (Crawford 2016, see footnote 107).

Notes: Enforceable commitments are those with precise and binding language subject to a dispute settlement mechanism. Goods trade data are from 2016. Unliberalized tariff lines are those with a duty remaining after RTA has been fully implemented. RTAs included in the tariff analysis are those notified to the WTO between 2007 and 2014, and subject to the WTO's RTA transparency mechanism.

[143] Some countries also have additional partial scope agreements not listed and not notified to the WTO that may exclude various sectors.

European Union

Table 5. European Union RTAs

RTA STATUS

In Force (39)

- EU-Albania
- EU-Algeria
- EU-Andorra
- EU-Bosnia Herzegovina
- EU-Cameroon
- EU-Canada
- EU-CARIFORUM
- EU-Central America
- EU-Chile
- EU-Colombia, Ecuador, and Peru
- EU-Cote d'Ivoire
- EU-Eastern and Southern Africa Interim RTA
- EU-Egypt
- EU-Faroe Islands
- EU-Fiji and Papua New Guinea
- EU-Georgia
- EU-Ghana
- EU-Iceland
- EU-Israel
- EU-Jordan
- EU-Lebanon
- EU-Macedonia
- EU-Mexico
- EU-Moldova
- EU-Montenegro
- EU-Morocco
- EU-Norway
- EU-Palestinian Authority
- European Economic Area
- EU-San Marino
- EU-Serbia
- EU-South Africa
- EU-South African Development Community
- EU-South Korea
- EU-Switzerland, Liechtenstein
- EU-Syria
- EU-Tunisia
- EU-Turkey
- EU-Ukraine

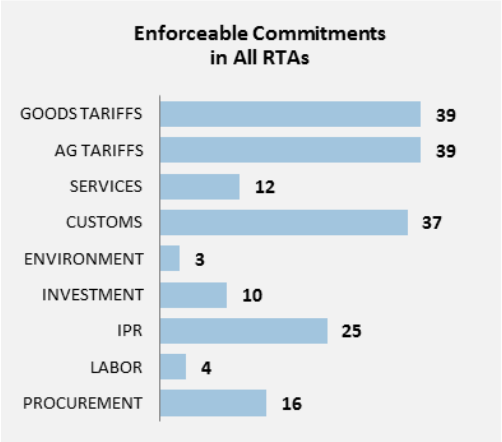
Under Negotiation or Awaiting Implementation (12)

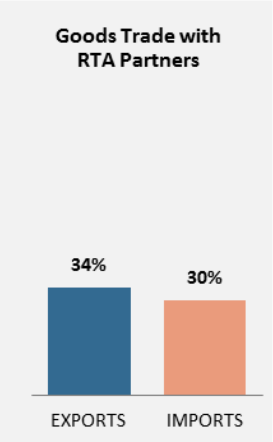
- EU-East African Community
- EU-India
- EU-Indonesia
- EU-Japan
- EU-Malaysia
- EU-Mercosur
- EU-Myanmar
- EU-Philippines
- EU-Singapore
- EU-Thailand
- EU-Vietnam
- T-TIP

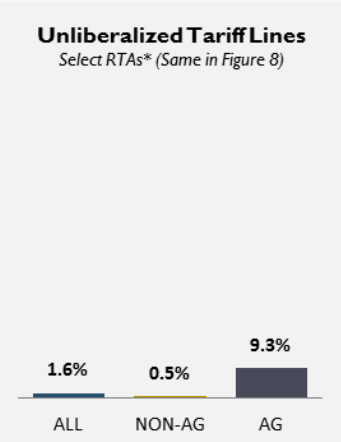
Update to Existing RTA in Progress (4)

- EU-Chile
- EU-Mexico
- EU-Morocco
- EU-Tunisia

RTA CHARACTERISTICS







Source: WTO RTA database and EU's "Negotiation's and Agreements" website, http://ec.europa.eu/trade/policy/countries-and-regions/negotiations-and-agreements/#_in-place.

Note: Does not include the agreements creating or expanding the EU. Goods trade data exclude intra-EU trade. RTA tariff analysis covers 11 RTAs, involving 12 partners (those notified to the WTO between 2007 and 2014, and subject to the WTO's RTA transparency mechanism). For full source and notes see p. 48.

China

Table 6. China's RTAs

RTA STATUS

In Force (14)

- China-ASEAN
- China-Australia
- China-Chile
- China-Costa Rica
- China-Georgia
- China-Hong Kong
- China-Iceland
- China-Macao
- China-New Zealand
- China-Pakistan
- China-Peru
- China-Singapore
- China-South Korea
- China-Switzerland

Under Negotiation or Awaiting Implementation (10)

- China-Georgia
- China-Gulf Cooperation Council
- China-Israel
- China-Japan-South Korea (CJK)
- China-Maldives
- China-Mauritius
- China-Moldova
- China-Norway
- China-Sri Lanka
- RCEP

Update to Existing RTA in Progress (4)

- China-ASEAN
- China-New Zealand
- China-Pakistan
- China-Singapore

RTA CHARACTERISTICS

Source: WTO RTA database and China's "FTA Network" website, http://fta.mofcom.gov.cn/english/fta_qianshu.shtml.

Note: RTA tariff analysis covers seven RTAs involving seven partners (those notified to the WTO between 2007 and 2014, and subject to the WTO's RTA transparency mechanism). For full source and notes see p. 48.

Canada

Table 7. Canada's RTAs

RTA STATUS

In Force (13)

- Canada-Chile
- Canada-Colombia
- Canada-Costa Rica
- Canada-EFTA
- Canada-EU
- Canada-Honduras
- Canada-Israel
- Canada-Jordan
- Canada-Panama
- Canada-Peru
- Canada-South Korea
- Canada-Ukraine
- NAFTA

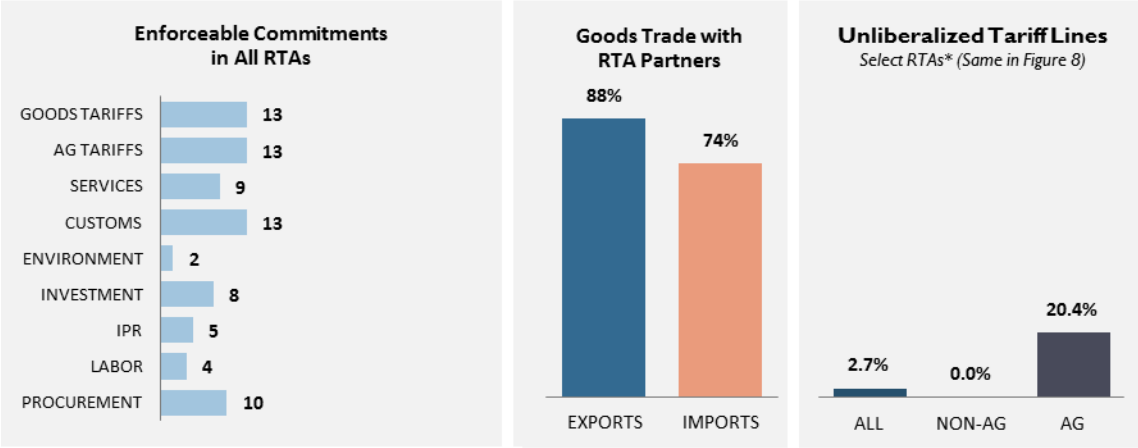
Under Negotiation or Awaiting Implementation (9)

- Canada-CARICOM
- Canada-Dominican Republic
- Canada-El Salvador, Guatemala, and Nicaragua
- Canada-India
- Canada-Japan
- Canada-Morocco
- Canada-Singapore
- CPTPP
- TPP

Update to Existing RTA in Progress (1)

- NAFTA

RTA CHARACTERISTICS



Source: WTO RTA database and Canada's "Trade Agreements" website, https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/index.aspx?lang=eng.

Note: RTA tariff analysis covers five RTAs involving seven partners (those notified to the WTO between 2007 and 2014, and subject to the WTO's RTA transparency mechanism). For full source and notes see p. 48.

Mexico

Table 8. Mexico's RTAs

RTA STATUS

In Force (12)

- Mexico-Central America
- Mexico-Chile
- Mexico-Colombia
- Mexico-EFTA
- Mexico-EU
- Mexico-Israel
- Mexico-Japan
- Mexico-Panama
- Mexico-Peru
- Mexico-Uruguay
- NAFTA
- Pacific Alliance

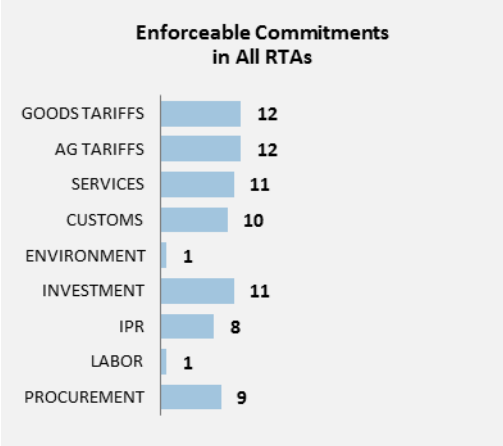
Under Negotiation or Awaiting Implementation (7)

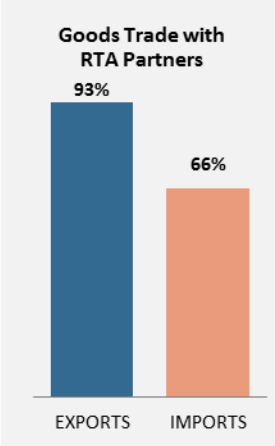
- CPTPP
- Mexico-South Korea
- Mexico-Turkey
- Pacific Alliance-Australia
- Pacific Alliance-New Zealand
- Pacific Alliance-Singapore
- TPP

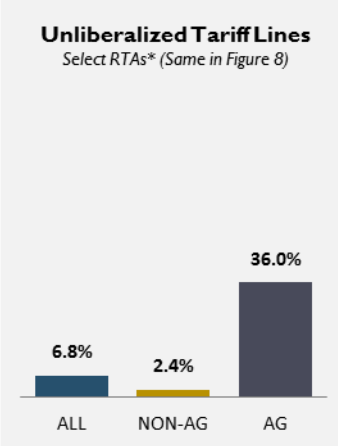
Update to Existing RTA in Progress (2)

- Mexico-EU
- NAFTA

RTA CHARACTERISTICS







Source: WTO RTA database and Mexico's "Treaties and Agreements" website, http://www.economia.gob.mx/files/gobmx/mapa_tratadosacuerdosMexico.jpg.

Note: RTA tariff analysis covers four RTAs involving four partners (those notified to the WTO between 2007 and 2014, and subject to the WTO's RTA transparency mechanism). For full source and notes see p. 48.

Japan

Table 9. Japan's RTAs

RTA STATUS

In Force (15)

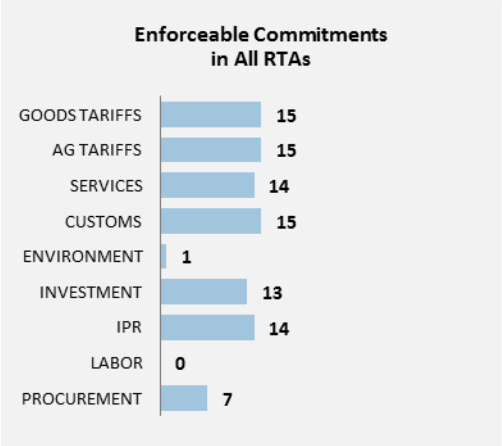
- Japan-ASEAN
- Japan-Australia
- Japan-Brunei
- Japan-Chile
- Japan-India
- Japan-Indonesia
- Japan-Malaysia
- Japan-Mexico
- Japan-Mongolia
- Japan-Peru
- Japan-Philippines
- Japan-Singapore
- Japan-Switzerland
- Japan-Thailand
- Japan-Vietnam

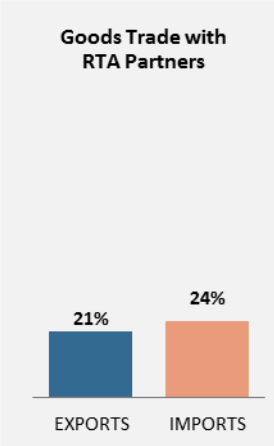
Under Negotiation or Awaiting Implementation (7)

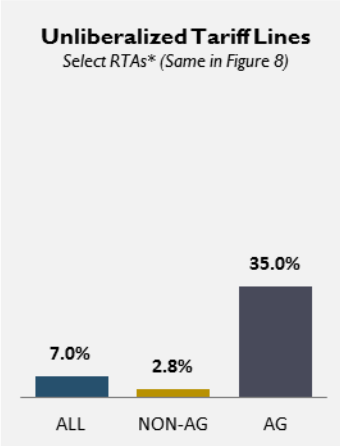
- CPTPP
- Japan-Colombia
- Japan-China-South Korea (CJK)
- Japan-EU
- Japan-Turkey
- RCEP
- TPP

Update to Existing RTA in Progress (0)

RTA CHARACTERISTICS







Source: WTO RTA database and Japan's "Free Trade Agreement and Economic Partnership Agreement" website, http://www.mofa.go.jp/policy/economy/fta/index.html.

Note: RTA tariff analysis covers 11 RTAs involving 12 partners (those notified to the WTO between 2007 and 2014, and subject to the WTO's RTA transparency mechanism). For full source and notes see p. 48.

South Korea

Table 10. South Korea's RTAs

RTA STATUS

In Force (15)

- South Korea-ASEAN
- South Korea-Australia
- South Korea-Canada
- South Korea-Chile
- South Korea-China
- South Korea-Colombia
- South Korea-EFTA
- South Korea-EU
- South Korea-India
- South Korea-New Zealand
- South Korea-Peru
- South Korea-Singapore
- South Korea-Turkey
- South Korea-U.S. (KORUS)
- South Korea-Vietnam

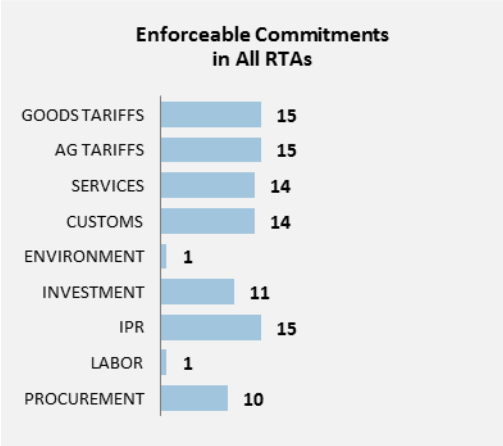
Under Negotiation or Awaiting Implementation (8)

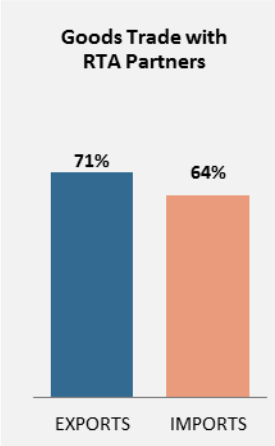
- South Korea-China-Japan (CJK)
- South Korea-Costa Rica
- South Korea-El Salvador
- South Korea-Honduras
- South Korea-Mexico
- South Korea-Nicaragua
- South Korea-Panama
- RCEP

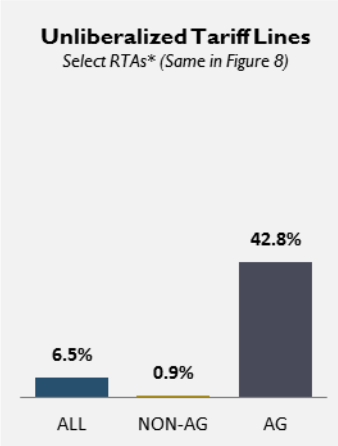
Update to Existing RTA in Progress (1)

- South Korea-U.S. (KORUS)

RTA CHARACTERISTICS







Source: WTO RTA database and South Korea's "Korea's FTA Network" website, http://english.motie.go.kr/en/if/ftanetwork/ftanetwork.jsp.

Note: RTA tariff analysis covers seven RTAs involving nine partners (those notified to the WTO between 2007 and 2014, and subject to the WTO's RTA transparency mechanism). For full source and notes see p. 48.

United States

Table 11. U.S. FTAs

FTA STATUS

In Force (14)

- NAFTA
- CAFTA-DR
- U.S.-Australia
- U.S.-Bahrain
- U.S.-Chile
- U.S.-Colombia
- U.S.-Israel
- U.S.-Jordan
- U.S.-Morocco
- U.S.-Oman
- U.S.-Panama
- U.S.-Peru
- U.S.-Singapore
- U.S.-South Korea (KORUS)

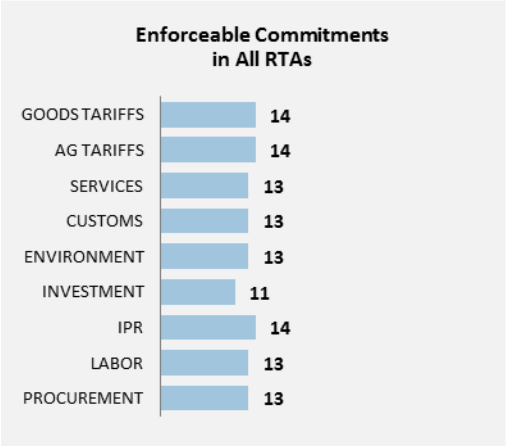
Under Negotiation or Awaiting Implementation (2)

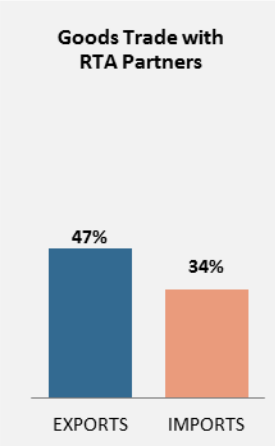
- T-TIP
- TPP (withdrew)

Update to Existing RTA in Progress (2)

- NAFTA
- U.S.-South Korea (KORUS)

FTA CHARACTERISTICS





Source: WTO RTA database and USTR's "Free Trade Agreements" website, https://ustr.gov/trade-agreements/free-trade-agreements.

Note: RTA tariff analysis covers eight FTAs involving eight partners (those notified to the WTO between 2007 and 2014, and subject to the WTO's RTA transparency mechanism). For full source and notes see p. 48.

Issues for Congress

Both domestically and internationally, shifts are underway in trade agreement policies that Congress may consider whether to address. In the United States, the Trump Administration has withdrawn from the proposed TPP and initiated a renegotiation of the two largest existing U.S. FTAs, NAFTA and KORUS. Globally, major U.S. trade partners, including China, Japan, and the EU are pushing forward with regional trade agreements that do not include the United States. As Congress works with the Trump Administration to guide future U.S. trade and trade agreement policy, it may wish to consider, among other issues, the following:

Structure of U.S. FTA Negotiations. Through legislation, Congress has implemented 14 U.S. FTAs with 20 different countries (15 including the U.S.-Canada FTA currently subsumed by NAFTA). Twelve of these agreements are bilateral and two (NAFTA and CAFTA-DR) are multi-party agreements. In its 2015 grant of TPA, Congress also supported the continued U.S. participation in the 12-party TPP negotiations and the T-TIP negotiations with the 28-member European Union. Since taking office, the Trump Administration has declared its intent to focus on bilateral negotiations for future FTAs, through which it argues the United States can take full advantage of its economic heft to secure the most advantageous terms. Some trade policy experts argue, conversely, that multi-party agreements may better serve U.S. interests given a broader range of potential trade-offs among the parties, the possibility of harmonizing rules across multiple existing FTAs under one larger framework, and potential legislative efficiencies in considering one single implementing bill for multiple trade agreement partners.

Potential questions for Congress include

- What evidence is there that bilateral FTA negotiations result in better outcomes for the United States?
- Should multi-party negotiations, like the TPP, remain part of the U.S. FTA negotiating toolkit?

Content of U.S. FTA Negotiations. Under the direction of Congress, including through new grants of TPA, U.S. trade agreements have evolved in their scope and enforceability since the first FTA with Israel was passed by Congress in 1985. Certain elements, such as comprehensive tariff coverage, and inclusion of commitments on services trade, intellectual property rights, and labor and environmental protections are present in all but one or two existing U.S. FTAs. The Trump Administration has argued repeatedly that many existing U.S. FTAs are "bad deals" in need of changes. In its renegotiation of NAFTA, many Trump Administration proposals closely align with previous U.S. FTA negotiating positions, while others, such as a potential sunset provision that would require the NAFTA parties to reauthorize the pact at set intervals, represent a significant departure from previous U.S. FTA policy.

Potential questions for Congress include

- Do principal U.S. trade negotiating objectives on the content of prospective U.S. FTAs as passed by Congress in the 2015 TPA law still reflect the best interests of the United States, or do they require changes?
- Do the Trump Administration's objectives for the NAFTA renegotiation align with congressional FTA negotiating objectives, as outlined in the 2015 TPA law?

U.S. FTA Negotiating Procedures. Congress and the executive branch have complementary roles in negotiating and implementing U.S. FTAs given separate but related constitutional authorities over foreign commerce and international negotiations. To facilitate this collaboration, Congress periodically grants the President trade promotion authority, affording implementing

legislation for trade agreements expedited consideration so long as the executive branch adheres to certain requirements. The Trump Administration so far has adhered to TPA notification requirements with respect to the NAFTA renegotiations, but not with respect to the KORUS modification talks. According to the Administration, the negotiated changes to KORUS will be limited primarily to tariff modifications and South Korean regulatory changes and therefore will not require implementing legislation by Congress. During the renegotiation process, the President has stated a willingness to withdraw from both agreements.

Potential questions for Congress include

- Aside from changes to U.S. law, what modifications to U.S. FTAs require formal congressional consent?
- Is additional clarity regarding the congressional role in FTA modifications, amendments, or withdrawal needed in future U.S. FTAs or FTA implementing legislation?

U.S. Leadership in Establishing International Trade Rules. The United States has been instrumental in the creation of the current international trading system, establishing new global trade rules through negotiations at the multilateral level and in its pioneering bilateral and regional FTAs. The commitments in NAFTA, for example, influenced later multilateral provisions and an entire generation of third country RTAs. In more recent negotiations, such as the TPP, the United States led in the creation of commitments on state-owned enterprises and digital trade, which have yet to be addressed comprehensively in the global trading system. Through its unique leadership position, the United States has also had the ability to shape global trade norms in ways that align with broader U.S. interests, such as the promotion of economic competition and the protection of labor and environmental standards. As other countries, particularly economically significant powers such as the EU, China, and Japan, move forward with new agreements that do not involve the United States, some trade policy experts worry that the United States may be losing an opportunity to shape future trade rules and influence other countries in adopting standards in areas such as IPR and labor.

Potential questions for Congress include

- In what ways has the United States benefitted from its global leadership in establishing the institutions and commitments that comprise the current international trading system?
- Do other countries' ongoing trade negotiations threaten U.S. trade rules-setting leadership? If so, what are the long-term implications? In what ways might commitments in those agreements impact U.S. stakeholders?

RTAs and the Multilateral Trading System. The proliferation of global RTAs in the past several decades has fundamentally altered the nature of the global trading system. On one hand these new agreements have afforded the United States and other countries an opportunity to move forward with new trade negotiations in the face of stalled multilateral action, reducing trade barriers among major world trading partners and establishing commitments on new nontariff issues where multilateral negotiations lag behind the current commercial environment. On the other hand, the limited membership of RTAs makes them inherently discriminatory toward those not party to the agreements, which in many cases includes the United States. Although they technically violate the WTO's most-favored nation (MFN) principle, the WTO allows exceptions for RTAs, so long as they meet certain criteria, such as covering substantially all trade. RTAs, however, are seldom challenged against these criteria despite considerable variation in their structure and content.

Potential questions for Congress include

- Are existing criteria on the types of RTAs allowed under WTO rules sufficient and are they adequately enforced? In what ways could existing rules and the WTO monitoring system be improved?
- Given more than 20 years since the successful conclusion of a major multilateral negotiation is the multilateral system adequately structured to address the most pressing issues in international trade? If not, how much of a priority should the United States give to revitalizing multilateral frameworks?

Effects of Global RTAs on U.S. Economy and Stakeholders. Trade agreements that do not involve the United States can make U.S. exports more costly in foreign markets relative to exports from countries that are party to the agreements and not subject to tariffs. They may also make U.S. producers reliant on imported components less competitive than foreign producers that face lower tariff barriers on their imports. Certain U.S. industries, including agriculture, export a high share of their production and/or face relatively high tariffs in foreign markets, making them particularly sensitive to tariff changes. These industries have raised concerns over the potential disadvantage in foreign markets due to other countries RTA negotiations. RTAs among top U.S. export partners, with which the United States does not currently have FTAs, have the potential for the most significant negative consequences. Given the size of the trading relationship and existing tariff levels, the EU-Japan FTA, for example, could have a significant effect on U.S. auto and agriculture producers, since it is to eventually eliminate a 10% EU auto tariff on imports from Japan and remove or lower relatively high Japanese agriculture tariffs on imports from the EU. Likewise, the recently concluded CPTPP agreement would eliminate most tariffs among the 11 parties and likely lead to diminished U.S. exports to Japan and other growing Asian economies. Resumed U.S. engagement in the T-TIP negotiations and U.S. pursuit of FTAs, bilaterally or collectively, with the CPTPP countries could eliminate the potential for discrimination against U.S. exports to these markets.

Potential questions for Congress include

- What industries are most likely to be negatively affected by the implementation of new RTAs among top U.S. trade partners?
- What is the best U.S. response to these potential negative consequences (e.g., pursuit of multilateral, bilateral, or regional FTA negotiations)?

Prioritization of Future FTA Negotiating Partners. The Trump Administration has stated an interest in negotiating new U.S. FTAs on a bilateral basis, and has mentioned TPP partner countries, such as Japan, as well as the United Kingdom, as potential partners. To date no TPP countries have formally announced interest in negotiating with the United States bilaterally.[144] Some question whether this lack of interest in new trade negotiations stems from the contentious nature of the current U.S. talks with the NAFTA parties and other recent trade actions. Congress has periodically encouraged the executive branch to negotiate or explore the possibility of an FTA with specific trade partners. For example, the first iteration of Trade Promotion Authority in the 1970s encouraged an FTA negotiation with Canada.

Potential questions for Congress include

[144] The United Kingdom has signaled interest but is unable to pursue new trade negotiations until its Brexit terms are finalized and it formally exits the EU. A U.S.-UK Trade and Investment Working Group convened in July 2017 to explore a possible post-Brexit FTA.

- How should the United States prioritize potential FTA partners (e.g., likelihood of successful conclusion, economic benefit, or geostrategic significance)?
- Are the Trump Administration's America First agenda and repeated statements of a willingness to withdraw from NAFTA and KORUS affecting potential future U.S. trade negotiations with other countries?

U.S. FTAs and the Trade Deficit. The United States in recent years has run significant bilateral merchandise trade deficits with FTA partner countries, including Mexico and South Korea. The Trump Administration views these deficits as indications that the FTAs are flawed and need change. Most economists, however, argue that while FTAs impact bilateral trade flows, other macroeconomic factors such as aggregate savings and investment patterns, fluctuations in exchange rates, and shifts in economic growth rates are the major drivers of changing trade patterns.

Potential questions for Congress include

- Do U.S. FTAs materially affect bilateral trade balances? Is it realistic to expect modifications to an FTA to significantly alter trade balances without addressing larger macroeconomic factors that also affect trade patterns?
- What are the risks of using the trade balance as the key metric in evaluating bilateral trade relations and U.S. FTAs?

Appendix A. CRS Materials on Existing and Proposed U.S. FTAs

In Focus Products

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

CRS In Focus IF10682, *NAFTA Renegotiation: Issues for U.S. Agriculture*, by Renée Johnson.

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

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

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

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

Reports - NAFTA Renegotiation and Modernization

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

CRS Report R44981, *NAFTA Renegotiation and Modernization*, by M. Angeles Villarreal and Ian F. Fergusson.

CRS Report R44907, *NAFTA and Motor Vehicle Trade*, by Bill Canis, M. Angeles Villarreal, and Vivian C. Jones.

CRS Report R45018, *Potential Effects of a U.S. NAFTA Withdrawal: Agricultural Markets*, by Renée Johnson.

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

Reports - Other FTAs

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

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

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

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

CRS Report R44817, *U.S.-UK Free Trade Agreement: Prospects and Issues for Congress*, by Shayerah Ilias Akhtar.

Appendix B. RTA Country Groupings

ASEAN (Association of Southeast Asian Nations) includes: Brunei, Burma, Cambodia, Laos, Indonesia, Malaysia, Philippines, Singapore, Thailand, and Vietnam.

CARICOM (Caribbean Community) includes: Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, and Trinidad and Tobago.

CARIFORUM (Caribbean Forum) RTA includes: Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, Saint Lucia, Saint Vincent and the Grenadines, Saint Kitts and Nevis, Surinam, Trinidad and Tobago, and the Dominican Republic.

COMESA (Common Market for Eastern and Southern Africa) includes: Burundi, the Comoros, the Democratic Republic of Congo, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Sudan, Seychelles, Swaziland, Uganda, Zambia, and Zimbabwe.

CPTPP (Comprehensive and Progressive Agreement for Trans-Pacific Partnership) includes: Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam. Also referred to as TPP-11.

EFTA (European Free Trade Association) includes: Iceland, Liechtenstein, Norway, and Switzerland.

European Economic Area includes: the EU, Iceland, Lichtenstein, and Norway.

EU (European Union) includes: Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom.

EU-Central America RTA includes: Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama.

EU-East African Community RTA includes: Burundi, Kenya, Rwanda, Tanzania, and Uganda.

EU-Eastern and Southern Africa Interim RTA includes: Madagascar, Mauritius, Seychelles, and Zambia.

EU-South African Development Community RTA includes: Botswana, Lesotho, Mozambique, Namibia, South Africa, and Swaziland.

Gulf Cooperation Council includes: Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates.

Mercosur includes: Argentina, Brazil, Paraguay, Uruguay, and Venezuela. Venezuela's membership, however, has been suspended since 2016.

Mexico-Central America RTA includes: Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua.

NAFTA (North American Free Trade Agreement) includes: Canada, Mexico, and the United States.

Pacific Alliance includes: Chile, Colombia, Mexico, and Peru.

RCEP (Regional Comprehensive Economic Partnership) includes: Australia, Brunei, Burma, Cambodia, China, Laos, India, Indonesia, Japan, Malaysia, New Zealand, Philippines, Singapore, South Korea, Thailand, and Vietnam.

TPP (Trans-Pacific Partnership) includes: Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam. *The United States was a signatory to the TPP but withdrew in January 2017.*

T-TIP (Transatlantic Trade and Investment Partnership) includes: the EU and the United States. *T-TIP negotiations are currently on hold pending further action by the Trump Administration.*

U.S.-CAFTA-DR (U.S.-Central America-Dominican Republic) FTA includes: Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and the Dominican Republic.

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