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International Trade and Finance: Overview and Issues for the 116th Congress

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SUMMARY

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International Trade and Finance: Overview and Issues for the 116th Congress

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

Issues in the 116th Congress

To date, the 116th Congress has considered and passed legislation relating to a number of international trade and finance issues, in addition to conducting numerous hearings and other oversight of a wide variety of policy issues in this area. The House passed in December 2019, and the Senate passed in January 2020, the implementing legislation for the United States-Mexico Canada Trade Agreement (USMCA), a free trade agreement which would revise and modernize the North American Free Trade Agreement (NAFTA). The 116th Congress also reauthorized the Export-Import Bank, the U.S. export credit agency that helps finance U.S. exports, for a record seven years; funded the new U.S. Development Finance Corporation, which promotes private investment in developing countries, allowing the DFC to launch operations in January 2020; and approved U.S. participation in a capital increase at the World Bank. Congress also passed legislation to expand U.S. sanctions to advance a number of U.S. foreign policy objectives.

Broad policy debates during the 116th Congress have included the impact of trade and trade agreements on the U.S. economy and jobs; the causes and consequences of the U.S. trade deficit; the implications of technological developments for U.S. trade policy; and the intersection of economics and national security. Among many others, the potentially more prominent issues in this area that the 116th Congress may continue focus on during its second session include:

- the use and impact of unilateral tariffs imposed by the Trump Administration under various U.S. trade laws, as well as potential legislation that alters the authority granted by Congress to the President to do so;
- the expiration of trade promotion authority (TPA) in 2021 and the terms under which it might be renewed;
- U.S. engagement with the World Trade Organization (WTO) and its dispute settlement body, proposals for WTO reform, and the future direction of the multilateral trading system;
- the Administration's trade negotiations with the European Union, Japan, and the United Kingdom, as well as key provisions in trade agreements, including on intellectual property rights, labor, the environment, and dispute settlement;
- U.S.-China trade and economic relations and ongoing bilateral trade talks to address U.S. trade concerns, including with respect to investment, intellectual property rights protection, forced technology transfer, currency issues, and market access liberalization;
- the future of U.S.-Asia trade and economic relations, given President Trump's withdrawal of the United States from the proposed Trans-Pacific Partnership (TPP) and China's expanding Belt and

Road Initiative and trade agreements, such as the Regional Comprehensive Economic Partnership (RCEP);

- the Administration's use of quotas to achieve some of its trade objectives, and whether these actions represent a shift in U.S. policy towards "managed trade;" and
- major developments in the global economy and shifts in U.S. leadership of the global economy under the Trump Administration.

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Overview[1]

Members of Congress may address numerous ongoing and new policy issues in the second session of the 116th Congress. The changing dynamics and composition of international trade and finance can affect the overall health of the U.S. economy, the success of U.S. businesses and workers, and the U.S. standard of living. They also have implications for U.S. geopolitical interests. Conversely, geopolitical tensions, risks, and opportunities can have major impacts on international trade and finance. These issues are complex and at times controversial, and developments in the global economy often make policymaking more challenging. Congress is in a unique position to address these and other issues given its constitutional authority for legislating and overseeing international commerce.

A major focus of the 116th Congress during its first session was overseeing the Trump Administration's evolving trade policy. The Trump Administration's approach to international trade arguably represents a significant shift from the approaches of prior administrations, in that it questions the benefits of U.S. leadership in the rules-based global trading system and expresses concern over the effectiveness of this system. As such, the Administration's imposition of unilateral trade restrictions on various U.S. imports—particularly from China, efforts to ratify the U.S.-Mexico-Canada Agreement (USMCA), trade negotiations with China, Japan, and the European Union, and continued review of U.S. participation in the World Trade Organization (WTO) were among the most notable developments in U.S. trade policy over the past year. Other issues before Congress included overseeing the implementation of legislation to strengthen the process used to review the national security implications of foreign investment transactions in the United States, as well as to modernize U.S. development finance tools that help advance U.S. national economic interests and global influence. Continued focus on economic sanctions against Turkey, Russia, North Korea, Iran, Cuba, and other countries were also of interest to many in Congress.

The Trump Administration has displayed a more critical view than past administrations of U.S. trade agreements, made greater use of various U.S. trade laws with the potential to restrict U.S. imports, and focused on bilateral trade balances as a key metric of the health of U.S. trading relationships. As part of this shift in focus, the Administration has placed a greater emphasis on "fair" and "reciprocal" trade. China has also been a center of attention as the Administration seeks to address longstanding concerns over its policies on intellectual property (IP), forced technology transfer, and innovation. Citing these concerns and others, the President has unilaterally imposed trade restrictions on a number of U.S. imports under U.S. laws and authorities—most of which have been used infrequently since the establishment of the WTO in 1995. During the first session, many Members continued to weigh in on the President's trade actions. While some supported his use of unilateral trade measures, others raised concerns about potential negative economic implications of these actions for U.S. firms, farmers and workers, and the risks they may pose to the rules-based international trading system. Several Members introduced bills to amend some of the President's trade authorities—for example, to require congressional consultation or approval before imposing new trade barriers on imports for national security reasons.

The implications of changes in the U.S. trade policy landscape for the next year will depend on a number of factors, including the impact of the Administration's trade actions—particularly increased tariffs—on U.S. industries, firms, workers, and supply chains; the reaction of U.S. trading partners; and the extent to which future actions are in line with core U.S. commitments and obligations under the WTO and other trade agreements. The U.S.-China trade and economic

[1] Written by Andres B. Schwarzenberg, Analyst in International Trade and Finance.

relationship is complex and wide-ranging, and it may entail continued close examination by Congress. In addition to specific trade practices of concern, Congress may continue to scrutinize the economic and geopolitical implications of China's Belt and Road Initiative (BRI), which finances and develops infrastructure projects across a number of countries and regions. Congress may also examine the U.S.-China Phase One trade deal and next steps, and the ongoing economic implications of China's industrial policies in high technology sectors, which could potentially challenge U.S. firms and disrupt global markets.

How these issues play out, combined with the evolving global economic landscape, raise potentially significant legislative and policy questions for Congress. Members may consider (1) the implementation of the USMCA, once it is ratified by the government of Canada; (2) next steps in future U.S.-China trade talks and the next phase of the U.S.-Japan trade agreement negotiations; (3) measures to reassert its constitutional authority over tariffs and other trade restrictions or to narrow the scope of how the president can use delegated authorities to impose such restrictions; (4) the extent to which past U.S. FTAs should be modernized or revised and, if so, in what manner; (5) what priority should be given to negotiating new U.S. FTAs with the European Union, the United Kingdom, and other trading partners, as well as the scope of negotiations; and (6) the impact of FTAs excluding the United States on U.S. economic and broader interests, and the appropriate U.S. response to the proliferation of such agreements. Another major issue is the role of the United States in the multilateral, rules-based trading system underpinned by the WTO. Historically, U.S. leadership in the global trading system has enabled the United States to shape the international trade agenda in ways that both advance and defend U.S. interests. The growing debate over the role and future direction of the WTO may raise important issues for Congress, such as how current and future WTO agreements affect the U.S. economy, the value of U.S. membership and leadership in the WTO, and the need to update or adapt WTO rules to reflect 21st century realities. Such updates might address advances in technology, new forms of trade barriers, and market-distorting government policies.

This report provides a broad overview of select topics in international trade and finance. It is not an exhaustive look at all issues, nor is it a detailed examination of any one issue. Rather, it provides concise background information of certain prominent issues that have been the subject of recent discussion and debate, and that may come before the 116th Congress during its second session. It also include references to more in-depth CRS products on the issues.

The United States in the Global Economy[2]

In 2018, the global economy began to display signs of a synchronized slowdown, which some analysts contend continued into 2019.[3] The International Monetary Fund (IMF) estimates that real global gross domestic product (GDP) fell from 3.8% in 2017 to 3.6% in 2018—the most recent year for which annual data are available (**Figure 1**). As a group, advanced economies grew 2.3% (down from 2.5% in 2017),[4] while emerging market and developing economies grew 4.5% (down from 4.8% in 2017). The growth performance of major U.S. trading partners diverged widely in 2018, affecting both their bilateral trade and investment relations with the United States and their exchange rates against the U.S. dollar. The European Union (EU)'s real GDP growth rate fell

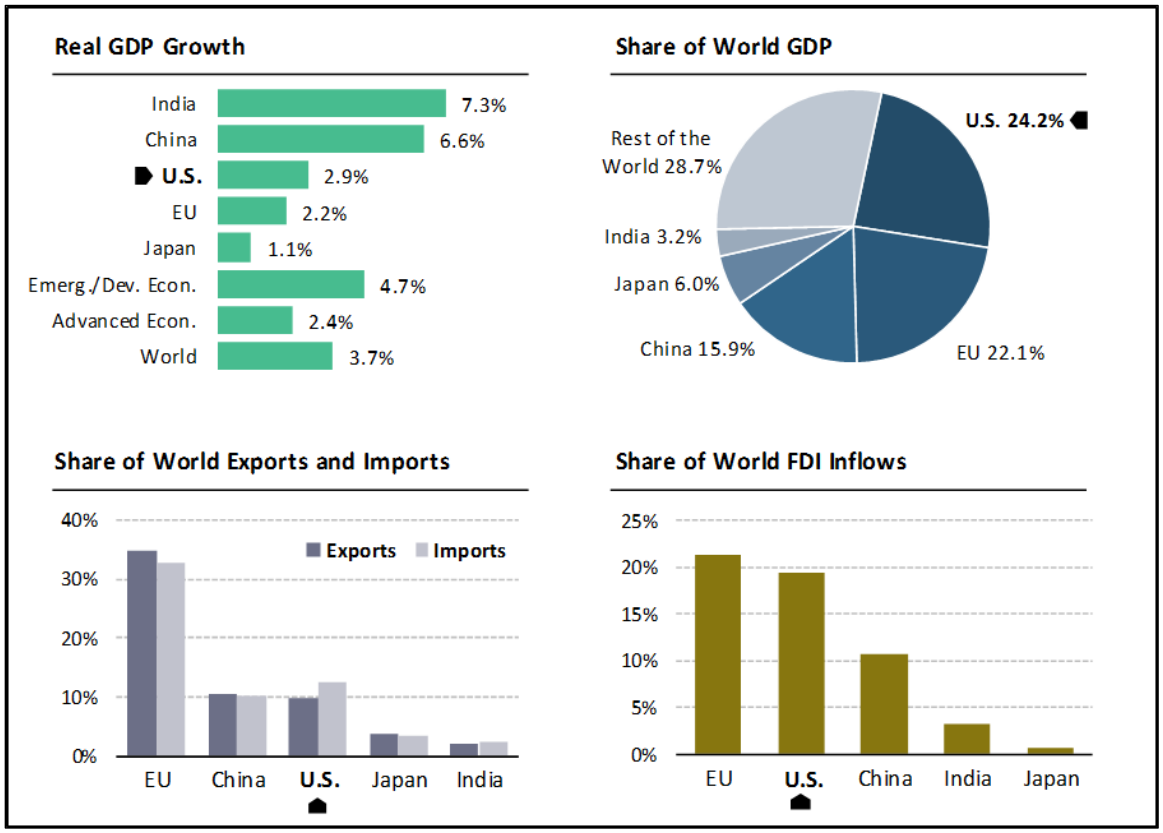
[2] Written by Andres B. Schwarzenberg, Analyst in International Trade and Finance.

[3] In its October 2019 *World Economic Outlook* report, the International Monetary Fund revised down global growth projections for 2019 and 2020. (The July 2019 report had already lowered growth forecasts for 2019 and 2020.)

[4] The main criteria used by the International Monetary Fund to classify the world into "advanced economies" and "emerging market and developing economies" are (1) per capita income, (2) export diversification, and (3) degree of integration into the global financial system.

from 2.5% in 2017 to 1.9% in 2018, while that of Canada dropped to 1.9% (from 3.0% in 2017). Other top U.S. trading partners, including China, Mexico, Japan, South Korea, India, and Taiwan experienced lower growth in 2018 than in 2017.

Figure 1. Snapshot of the World Economy in 2018



Source: Figure created by CRS with data from the International Monetary Fund, *World Economic Outlook Database*, October 2019; World Bank, *World Development Indicators*, 2019; United Nations Conference on Trade and Development, *UNCTADstat*, 2019.

Notes: 2018 is the most recent year for which yearly data are available. *Real GDP Growth*: percent change in gross domestic product (GDP) from preceding year; *Share of World GDP*: each country's GDP as a share of world GDP (in current U.S. dollars); *Share of World Exports and Imports*: each country's total exports (imports) of goods and services as a share of total world exports (imports) of goods and services; *Share of World FDI*: each country's inward (outward) foreign direct investment (FDI) flows as a share of world inward (outward) FDI flows.

The IMF forecasts weaker performance in the short-term for both advanced economies—1.7% for 2019—and emerging market and developing economies—3.9% in 2019.[5] This growth is

[5] The IMF's most recent forecast "highlights the large effects of trade tensions on global growth via worsening financial market sentiment as well as productivity. Potential triggers for risk-off episodes remain plentiful. These include further increases in trade tensions; protracted fiscal policy uncertainty and worsening debt dynamics in some high-debt countries; an intensification of stress in large emerging markets currently undergoing difficult macroeconomic adjustment processes; a no-deal Brexit; or a sharper-than-expected slowdown in China, which is dealing with multiple drags on growth from trade tensions and needed domestic regulatory strengthening. An abrupt risk-off episode could expose financial vulnerabilities accumulated during years of low interest rates and depress global growth as highly leveraged borrowers find it difficult to roll over debt and as capital flows retrench from emerging market and frontier economies." See International Monetary Fund, *World Economic Outlook: Global Manufacturing Downturn, Raising Trade Barriers*, October 2019.

projected to improve in the medium term, however, as output gaps close and advanced economies return to their potential output paths.[6] Beyond the short term, growth rates are expected to fall below pre-recession levels, as the aging populations and shrinking labor forces in advanced economies are expected to act as a drag on expansion. Overall fiscal policy is expected to remain expansionary in 2020. In addition, monetary policy may remain supportive in the Eurozone and Japan. In early 2019, the U.S. Federal Reserve reversed its policy of slight monetary tightening due to U.S. and global economic and financial market developments. More broadly, global financial conditions are expected to remain generally accommodative.

Emerging markets (EMs) as a group face growing vulnerabilities to their economies due to uncertainties about global trade, depreciating currencies and risks of capital flight, volatile equity markets, large debts denominated in foreign currencies, and, in certain areas, the lack of deeper economic reform. Increased uncertainty over political and policy direction could continue to constrain the rate of growth in Argentina, Brazil, Pakistan, Turkey, and South Africa. Additionally, China is expected to experience slower growth rates in the coming years, as the economy is affected by U.S.-China trade tensions and rebalances away from investment toward private consumption, and from industry to services. The rise in China's nonfinancial debt as a share of GDP is likely to contribute to this downward trend. In Venezuela, the economy has collapsed, with the inflation rate forecast by the IMF to reach 200,000% in 2019. In addition, low commodity prices, particularly oil, could increase concerns in commodity-producing economies—many of them EMs—and destabilize national incomes. These and other developments could add to uncertainties in global financial markets, raise risks for U.S. banks of nonperforming loans, complicate the efforts of some banks to rebuild their capital bases, and potentially dampen prospects for long-term gains in productivity and higher rates of economic growth.

The United States continues to experience strong economic fundamentals and remains a relatively bright spot within the global economy, which could help it sustain its position as one of the main drivers of global economic growth. With 4% of the world's population, it accounted for almost 24% of the world's output in nominal U.S. dollars, close to 10% of its exports (goods and services), and approximately 21% of its growth in 2018.[7] The U.S. economy grew faster in 2018 than in 2017: U.S. real GDP increased 2.9% in 2018, up from 1.6% in 2016 and 2.4% in 2017. The latest U.S. data show signs of continuing relative strong performance in 2019, with the IMF forecasting 2.4% growth and the U.S. Federal Reserve estimating growth between 2.1% and 2.4%.[8] (According to the most recent official estimate, in the third quarter of 2019, real U.S. GDP increased at an annual rate of 2.1%, up from 2.0% in the second quarter.[9]) Some forecasts indicate that U.S. growth could decelerate in the coming years, for reasons such as higher commodity prices, upward inflationary pressures, a return to monetary policy tightening by the U.S. Federal Reserve, trade policy uncertainties, and global risks.[10] Labor market data indicate that the United

[6] The output or GDP "gap is an economic measure of the difference between the actual output of an economy and its potential output. Potential output is the maximum amount of goods and services that an economy can turn out when it is most efficient—that is, at full capacity." See Sarwat Jahan and Ahmed Saber Mahmud, "What is the Output Gap," *Finance & Development*, Back to Basics, International Monetary Fund, September 2013.

[7] CRS calculation with data from the World Bank's World Development Indicators and the International Monetary Fund's World Economic Outlook Database.

[8] U.S. Federal Reserve, "Economic projections of Federal Reserve Board members and Federal Reserve Bank presidents under their individual assessments of projected appropriate monetary policy," September 18, 2019.

[9] The U.S. Department of Commerce's Bureau of Economic Analysis will release its "advanced estimate" for real U.S. GDP growth on January 30, 2020.

[10] See, among other studies, International Monetary Fund, *World Economic Outlook: Global Manufacturing Downturn,*

States might be at full employment, as the jobless rate reached 3.5% at the end of 2019 and is projected to remain below 4.0% in 2020. The relatively low price of oil (and fluctuations thereof) is affecting not only the global economy, but also the U.S. economy. While drops in energy prices may raise U.S. consumers' real incomes and improve the competitive position of some U.S. industries, these positive effects may be offset to some extent by a drop in employment and investment in the U.S. energy sector.

Amid potential downside risks in the global economy, the IMF and the WTO have downgraded their forecasts for trade growth in 2019 and 2020. Risks include continued trade tensions between major economies like the United States and China, and continued trade policy uncertainty.[11] Restrictive trade policy measures imposed by the United States and some of its major trading partners may continue to affect trade flows and prices in targeted sectors. Analysts claim that some recent policy announcements also have harmed business outlooks and investment plans, due to heightened concern over possible disruptions to supply chains and the risks of potential increases in the scope or intensity of trade restrictions.[12] The Organization for Economic Cooperation and Development (OECD) projects that a further rise in trade tensions may have additional adverse effects on global investment, economic growth, and job creation.[13]

In addition, in 2018, exchange rates experienced volatility, with a number of currencies depreciating against the U.S. dollar, including the Chinese renminbi, Argentine peso, and Brazilian real. Volatile currency and equity markets—combined with uncertainties over global trade and rates of inflation that remain below the target levels of a number of central banks—could further complicate efforts by the U.S. Federal Reserve to normalize monetary policy.[14] Other major economies, such as Eurozone and Japan, may continue to pursue unconventional monetary policies. Uncertainties in global financial markets could put additional upward pressure on the U.S. dollar, as investors may seek "safe haven" currencies and dollar-denominated investments. For some economies, volatile currencies and continued low commodity prices could add to debt issues, raising the prospect of defaults and potential economic crises.

The Role of Congress in International Trade and Finance[15]

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

Raising Trade Barriers, October 2019.

[11] World Trade Organization, "Trade Statistics and Outlook: WTO Lowers Trade Forecast as Tensions Unsettle Global Economy," Press Release, October 1, 2019; International Monetary Fund, *World Economic Outlook: Global Manufacturing Downturn, Raising Trade Barriers*, October 2019.

[12] See, for example, Organization for Economic Cooperation and Development, "OECD Sees Rising Trade Tensions and Policy Uncertainty Further Weakening Global Growth," September 19, 2019.

[13] Ibid.

[14] For an overview of the U.S. Federal Reserve's monetary policy normalization, see "What Does the Federal Reserve Mean When It Talks About the 'Normalization of Monetary Policy'?" in Frequently Asked Questions: Money, Interest Rates, and Monetary Policy, Board of Governors of the Federal Reserve System.

[15] Written by Ian F. Fergusson, Specialist in International Trade and Finance.

A major shift in U.S. trade policy occurred after Congress passed the highly protective "Smoot-Hawley" Tariff Act of 1930, which significantly raised U.S. tariff levels and led U.S. trading partners to respond in kind. As a result, world trade declined rapidly, exacerbating the impact of the Great Depression. Since the passage of the Tariff Act of 1930, Congress has delegated certain trade authority to the executive branch. First, Congress enacted the Reciprocal Trade Agreements Act of 1934, which authorized the President to enter into reciprocal agreements to reduce tariffs within congressionally pre-approved levels, and to implement the new tariffs by proclamation without additional legislation. Congress renewed this authority periodically until the 1960s. Subsequently, Congress enacted the Trade Act of 1974, aimed at opening markets and establishing nondiscriminatory international trade norms for nontariff barriers as well. Because changes in nontariff barriers in reciprocal bilateral, regional, and multilateral trade agreements may involve amending U.S. law, the agreements require congressional approval and implementing legislation. Congress has renewed or amended the 1974 Act five times. Since 2002, "fast track" has been known as trade promotion authority (TPA). In 2015, Congress authorized a new TPA through July 1, 2021 (see below).

Congress also exercises trade policy authority through the enactment of laws authorizing trade programs and measures to address unfair and other trade practices. Additionally, it conducts oversight of the implementation of trade policies, programs, and agreements. These include such areas as U.S. trade agreement negotiations, tariffs and nontariff barriers, trade remedy laws, import and export policies, economic sanctions, and the trade policy functions of the federal government.

Over the years, Congress has authorized a number of trade laws that delegate a range of authorities to the President to investigate and take actions on imported goods for national security purposes (Section 232, Trade Expansion Act of 1962), trade remedies to counter dumping and subsidy practices by other countries, unfair trade practices (Section 301, Trade Act of 1974), or safeguard measures (Section 201, Trade Act of 1974). The Trump Administration is using these provisions to impose steel and aluminum tariffs on major trading partners and for possible tariffs on vehicles and auto parts for national security purposes,[16] and on a range of Chinese products for what the Administration deems as unfair trading practices, including intellectual property theft and other practices. Some Members of Congress have opposed the use of these tariffs and in its second session, Congress may seek to revisit or curtail these statutes.

Additionally, Congress has an important role in international investment and finance policy. Under its treaty powers, the U.S. Senate considers bilateral investment treaties (BITs), and Congress sets the level of U.S. financial commitments to the multilateral development banks (MDBs), including the World Bank and the International Monetary Fund. It also funds the Office of the U.S. Trade Representative (USTR) and other trade agencies, and authorizes the activities of various agencies, such as the Export-Import Bank (Ex-Im Bank) and the newly operational U.S. International Development Finance Corporation (DFC), which is the successor to the Overseas Private Investment Corporation (OPIC). Congress also has oversight responsibilities over these institutions, as well as the Federal Reserve and the U.S. Department of the Treasury, whose activities can affect international capital flows and short-term movements in the international exchange value of the U.S. dollar. Congress also closely monitors developments in international financial markets that could affect the U.S. economy.

[16] A recent court decision has held that the authority for this particular investigation has lapsed. However, the President could initiate a new investigation.

Trade Promotion Authority (TPA)[17]

Trade Promotion Authority is a primary means by which Congress asserts its constitutional authority over trade policy, particularly U.S. trade agreements. TPA—the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (P.L. 114-26)—which was signed by President Obama on June 29, 2015, is in place until July 1, 2021. Any agreement entered in by that date, which includes the United States-Mexico-Canada Agreement, is eligible for consideration under TPA. TPA authorizes qualifying implementing legislation for trade agreements to be considered under expedited legislative procedures—limited debate, no amendments, and an up or down vote—provided the President observes certain statutory obligations in negotiating trade agreements. These obligations include achieving progress in meeting congressionally defined U.S. trade policy negotiating objectives, as well as congressional notification and consultation requirements before, during, and after the completion of the negotiation process.

TPA: Key Facts

- First enacted in 1974
- Renewed 4 times
- Used to consider 13 FTAs and two multilateral GATT/WTO rounds
- TPA 2015: In force until July 1, 2021

The primary purpose of TPA is to preserve the constitutional role of Congress with respect to the consideration of implementing legislation for trade agreements that require changes in domestic law. Another rationale for TPA has been to bolster the negotiating credibility of the executive branch by ensuring that trade agreements will not be changed once concluded. However, more recent FTAs, including the USMCA, have undergone additional negotiation after conclusion, perhaps eroding some of this rationale for TPA. Since the authority was first enacted in the Trade Act of 1974 (P.L. 93-618), Congress has renewed TPA four times (1979, 1988, 2002, and 2015) and amended it in 1984 to allow for the negotiation of bilateral agreements. In addition, TPA legislative procedures are considered rules of the House and Senate, and, as such, can be changed at any time. Precedent exists for implementing legislation to have its eligibility for expedited treatment under TPA removed by Congress. In 2020, Congress may use TPA to consider trade agreements negotiated by the Administration. It may also begin debate and examine future prospects for renewing and potentially revising the authority in light of its expiration in 2021.

Key International Economic and Trade Debates[18]

The United States has been a driving force in breaking down trade and investment barriers across the globe and constructing an open and rules-based global trading system through a wide range of international institutions and agreements. Since 1934, U.S. policymakers across political parties have recognized the importance of pursuing trade policies that promote more open, rules-based, and reciprocal international commerce, while being cognizant of potential costs to specific segments of the population, particularly through greater competition.[19] Although there is a general consensus that, in the aggregate, the overall economic benefits of reducing barriers to trade and

[17] Written by Ian F. Fergusson, Specialist in International Trade and Finance. See CRS Report R43491, *Trade Promotion Authority (TPA): Frequently Asked Questions*, by Ian F. Fergusson and Christopher M. Davis; and CRS In Focus IF10038, *Trade Promotion Authority (TPA)*, by Ian F. Fergusson.

[18] Written by Andres B. Schwarzenberg, Analyst in International Trade and Finance.

[19] The Reciprocal Tariff Act of 1934 marked a sharp departure from an era of protectionism in the United States and fundamentally changed the politics of U.S. trade policy by strengthening domestic political support for freer trade. (For more detail, see Douglas A. Irwin, *Free Trade Under Fire*, Princeton, NJ: Princeton University Press, 2002.)

investment outweigh the costs, the processes of trade and financial liberalization, and of globalization more broadly, have presented both opportunities and challenges for the United States. Many U.S. consumers, workers, farmers, firms, and industries have benefited from increased trade. On the consumption side, U.S. households have enjoyed lower product prices and a broader variety of goods and services—some of which the United States does not produce in large quantities. On the production side, stronger linkages to the global economy force U.S. industries and firms to focus on areas in which they have a comparative advantage, provide them with export and import opportunities, enable them to realize economies of scale, and encourage them to innovate.

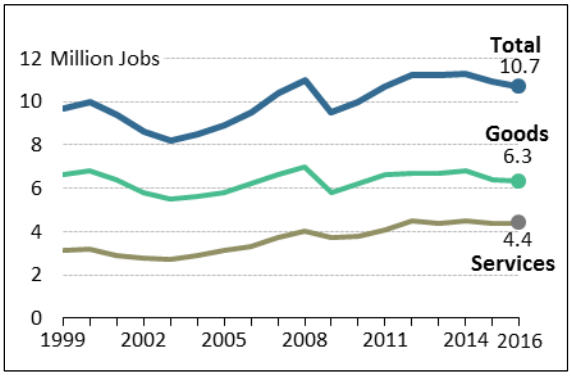
At the same time, some stakeholders argue that globalization is not inclusive, benefiting some more than others. They point to job losses, stagnant wages, and rising income inequality among some groups—as well as to environmental degradation—as indicators of the negative impact of globalization on the U.S. economy, although the causes of these trends are highly contested. Some policymakers also perceive growing bilateral U.S. trade deficits as evidence that U.S. trade with other nations is "uneven" or that foreign countries engage in "unfair" trade practices. Others view many of the existing global trade rules as outdated, since they do not reflect the realities of the 21st century—particularly when it comes to technological advances, new forms of trade (such as digital trade), and market-distorting government policies. Finally, some experts argue that the 2008-2009 financial crisis caused painful adjustment and costs for some segments of the population, which have exacerbated concerns related to U.S. trade policy and have led to increased domestic nationalism.

A longstanding objective of some Members of Congress and administrations has been to achieve a "level playing field" for U.S. industries, farmers and workers, and to preserve the United States' high standard of living—all while remaining innovative, productive, and internationally competitive, as well as safeguarding those stakeholders who otherwise may be left behind in a fast-changing global economy. Given Congress' constitutional authority over U.S. trade policy, Members are in a unique to position to influence, legislate, and oversee responses that support these goals and that reduce or soften the hardships and costs from international trade.

Trade and U.S. Employment[20]

A key question in policy debates over international trade is its impact on U.S. jobs. Trade is one among a number of forces that drive changes in employment, wages, the distribution of income, and ultimately the U.S. standard of living. Most economists argue that macroeconomic forces within an economy, including technological and demographic changes, are the dominant factors that shape trade and foreign investment relationships and complicate efforts to disentangle the distinct impact that trade has on the economy. In a dynamic economy like that of the United States, jobs are constantly being created and replaced as some economic activities expand, while others contract. Various measures are used to estimate the role and impact of trade in the economy and of trade on employment. One measure developed by the U.S. Department of Commerce concludes that, as of 2016 (the most recent year for which data is available), exports support, directly and indirectly, 10.7 million jobs in the U.S. economy: 6.3 million in the goods-producing sectors and 4.4 million in the services sector (**Figure 2**). According to these estimates, jobs associated with international trade, especially jobs in export-intensive manufacturing industries, earn 18% more on a weighted average basis than comparable jobs in other manufacturing industries.[21]

Figure 2. U.S. Employment Supported by Exports



Source: Figure created by CRS with data from the U.S. Department of Commerce's International Trade Administration.

Trade and trade liberalization can have a differential effect on workers and firms in the same industry. Some estimates indicate that the short-run costs to workers who attempt to switch occupations or switch industries in search of new employment opportunities may experience substantial effects. One study concluded that workers who switched jobs as a result of trade liberalization generally experienced a reduction in their wages, particularly in occupations where workers performed routine tasks.[22] These negative income effects were especially pronounced in occupations exposed to imports from low-income countries. In contrast, occupations associated with exports experienced a positive relationship between rising incomes and growth in export shares. As a result of the differing impact of trade liberalization on workers and firms, Congress created Trade Adjustment Assistance (TAA) programs to mitigate the potential adverse effects of trade liberalization on workers, firms, and farmers (see text box below).

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

[21] Chris Rasmussen, "Jobs Supported by Exports 2016: An Update," International Trade Administration, U.S. Department of Commerce, August 2, 2017.

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

Trade Adjustment Assistance[23]

Trade Adjustment Assistance (TAA) is a group of programs that provide federal assistance to parties that have been adversely affected by foreign trade. TAA programs are authorized by the Trade Act of 1974, as amended, and were last reauthorized by the Trade Adjustment Assistance Reauthorization Act of 2015 (TAARA; Title IV of P.L. 114-27).

The largest TAA program, TAA for Workers (TAAW), provides federal assistance to workers who have been separated from their jobs because of increases in directly competitive imports or because their jobs moved to a foreign country. The largest components of the TAAW program are (1) funding for career services and training to prepare workers for new occupations and (2) income support for workers who are enrolled in an eligible training program and have exhausted their unemployment compensation. In most cases, the benefits available to TAAW-eligible workers are more robust than those available to other unemployed workers. The TAAW program is administered at the federal level by the U.S. Department of Labor and the FY2020 appropriation was $680 million.

In addition to the workers program, TAA programs are also authorized for firms and farmers that have been adversely affected by international competition. TAA for Firms is administered by the U.S. Department of Commerce and the FY2020 appropriation was $13 million. The TAA for Farmers program was reauthorized by TAARA, but the program has not received an appropriation since FY2011.

TAA programs have historically been reauthorized in conjunction with other expansionary trade policies. For example, TAARA was enacted alongside renewal of the Trade Promotion Authority in 2015. Supporters of TAA view it as a means of offsetting some of the negative domestic effects of increased imports and increased offshoring that may result from expansionary trade policy. Some TAA supporters have proposed further expanding TAAW eligibility, such as including domestic workers who are adversely affected by reduced exports due to tariffs. Opponents of TAA typically view the program as duplicative, noting that trade-affected workers can be served by more general workforce programs that serve all unemployed workers.

U.S. Trade Deficit[24]

The overall U.S. trade deficit, or more broadly the current account balance, represents an accounting principle that expresses the difference between the country's exports and imports of goods and services. The United States has experienced annual current account deficits since the mid-1970s. Congressional interest in the trade deficit has been heightened by the Trump Administration's approach to international trade. The Administration has used the U.S. trade deficit as a barometer for evaluating the success or failure of the global trading system, U.S. trade policy, and U.S. trade agreements. It has characterized the trade deficit as a major factor in a number of perceived ills afflicting the U.S. economy—including the rate of unemployment in some sectors and slow gains in wages—and partially as the result of unfair trade practices by foreign competitors.

Many economists, however, argue that this characterization misrepresents the nature of the trade deficit and the role of trade in the U.S. economy.[25] In general, traditional economic theory holds

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

[24] Written by James K. Jackson, Specialist in International Trade and Finance, and Andres Schwarzenberg, Analyst in International Trade and Finance. See CRS In Focus IF10619, *The U.S. Trade Deficit: An Overview*, by James K. Jackson, and CRS Report R45243, *Trade Deficits and U.S. Trade Policy*, by James K. Jackson.

[25] Some observers also view conventional bilateral trade deficit data as misleading, given multinational firms' growing use of global supply chains. They note that products may be invented or developed in one country and manufactured or assembled elsewhere—using imported components from multiple foreign sources—and then exported. Conventional U.S. trade data may not fully reflect the value added in each country, and thus are often a relatively poor indicator of who benefits from global trade. For more detail, see James McBride and Andrew Chatzky, "The U.S. Trade Deficit: How Much Does It Matter?" Backgrounder, Council on Foreign Relations, March 8, 2019; Congressional Budget

that the overall size of the U.S. trade deficit stems largely from U.S. macroeconomic policies and an imbalance between saving and investment in the U.S. economy. Currently, the demand for capital in the U.S. economy outstrips the amount of gross savings supplied by households, firms, and the government (a savings-investment imbalance). Therefore, many observers argue that attempting to alter the trade deficit without addressing the underlying macroeconomic issues would be counterproductive and create distortions in the economy. A concern expressed by some analysts and policymakers is the debt accumulation associated with sustained trade deficits. They argue that the long-term impact on the U.S. economy of borrowing to finance imports depends on whether those funds are used for greater investments in productive capital with high returns that raise future standards of living, or whether they are used for current consumption. These concerns and the various policy approaches that have been used to alter the savings-investment imbalance in the economy are beyond the scope of this report.

Managed Trade[26]

During 2018 and 2019, the Trump Administration turned to quotas and quota-like arrangements to achieve some of its trade objectives. It negotiated potential quotas on autos through side letters to the proposed United States-Mexico-Canada Agreement[27], as well as quota arrangements that allowed certain U.S. trading partners to avoid U.S. tariff increases on steel and aluminum imports. In addition, in trade negotiations, the Administration has demanded that China increase its purchases of U.S. agricultural products by specific amounts. Some Members of Congress have questioned whether these actions represent an undesirable shift in U.S. trade policy—towards one that some analysts have labeled managed trade. Managed trade generally refers to government efforts to achieve measurable results by establishing—through quantitative restrictions on trade and other numerical targeted approaches—specific market shares or targets for certain products. These are met through mutual agreement or under threat of trade action (e.g., increased tariffs). During the second session, the 116th Congress may examine the extent to which the Administration is adopting such an approach, including its effectiveness and impact on U.S. and international trade.

Advocates of managed trade policies contend that, by negotiating results-oriented agreements and using the size of the U.S. economy as leverage, the United States can ensure that trade with certain trading partners is "fair," "balanced," and "reciprocal." In addition, they argue, it will force countries to change their distortive economic policies, decrease the size of the U.S. trade deficit and, by reducing U.S. imports, help strengthen certain U.S. industries and boost U.S. employment. Other policymakers view these measures as protectionist and harmful to the economy. Many economists question the efficacy of prodding U.S. trading partners into negotiating or accepting quotas or numerical targets, as well as the ability of the state, rather than market forces, to provide the most efficient allocation of scarce resources—even when attempting to respond to trade-distorting measures by trading partners. They also note that policies that

Office, "Causes and Consequences of the Trade Deficit: An Overview," CBO Memorandum, March 2000; and CRS Report R45243, *Trade Deficits and U.S. Trade Policy*, by James K. Jackson.

[26] Written by Andres B. Schwarzenberg, Analyst in International Trade and Finance. See CRS In Focus IF11035, *Managed Trade and Quantitative Restrictions: Issues for Congress*, by Wayne M. Morrison and Andres B. Schwarzenberg.

[27] The United States-Mexico-Canada Agreement (USMCA), a proposed trilateral free trade agreement, awaits ratification by the government of Canada. Mexico ratified the agreement on June 17, 2019, and the U.S. House of Representatives and U.S. Senate passed the USMCA implementing legislation on December 19, 2019, and January 16, 2020, respectively.

restrict U.S. imports and boost U.S. exports may not decrease the overall size of the U.S. trade deficit, as it is primarily the result of macroeconomic forces—namely the low level of U.S. savings relative to total investment. According to some observers, a move away from a market-driven, multilateral rules-based system to one driven by numerical outcomes and targets could lead to increasing trade restrictions, retaliation or replication by other countries, higher prices, lower global economic growth, and erosion of the international trading system.

Trade and Technology[28]

The rapid growth of digital technologies has created new opportunities for U.S. consumers and businesses but also new challenges in international trade. For example, consumers today access e-commerce, social media, telemedicine, and other offerings not available thirty years ago. Businesses use advanced technology to reach new markets, track global supply chains, analyze big data, and create new products and services. New technologies and the convergence between telecommunications, media and consumer electronics, and information technology facilitate economic activity but also create new trade policy questions and concerns.

No comprehensive agreement on digital trade exists in the WTO nor is there a single set of international rules or disciplines that govern key digital trade issues. The lack of multilateral rules governing the digital economy has led, on the one hand, to countries establishing diverging national policies that may create discriminatory and trade distorting barriers and, on the other hand, to efforts to establish common global rules through trade negotiations.

Recent international negotiations have sought to improve and remove barriers to market access for trade in digital goods and services and address other concerns, such as cybersecurity and privacy protection. Traditional trade barriers such as tariffs or export controls can hinder trade in information and communication technologies (ICT) products, whether physical goods (e.g., laptops) or emerging technologies, including algorithms and artificial intelligence. Nontariff barriers impede U.S. firms' market access by limiting what companies can offer or how they can operate in a foreign market, such as requiring local content or partners. Another often-cited digital trade barrier is data localization requirements or cross-border data flows restrictions that policymakers may enact to promote safety, security, privacy or favor domestic firms but that raise costs and risks for foreign firms.[29] Technology transfer requirements and cybersecurity issues include the infringement of intellectual property and theft of trade secrets, economic espionage, and may touch on national security concerns.

China, in particular, presents a number of significant opportunities and challenges for the United States in digital trade. The Chinese retail e-commerce is expected to grow 70% from 2018 to 2023, compared to 45% U.S. growth over the same time period, making it an attractive market for U.S. businesses (**Figure 3**).[30] However, China's trade and internet policies reflect state direction and industrial policy and discriminate against foreign companies. For example, under its concept of "internet sovereignty," China seeks to control what digital data is permitted within its borders

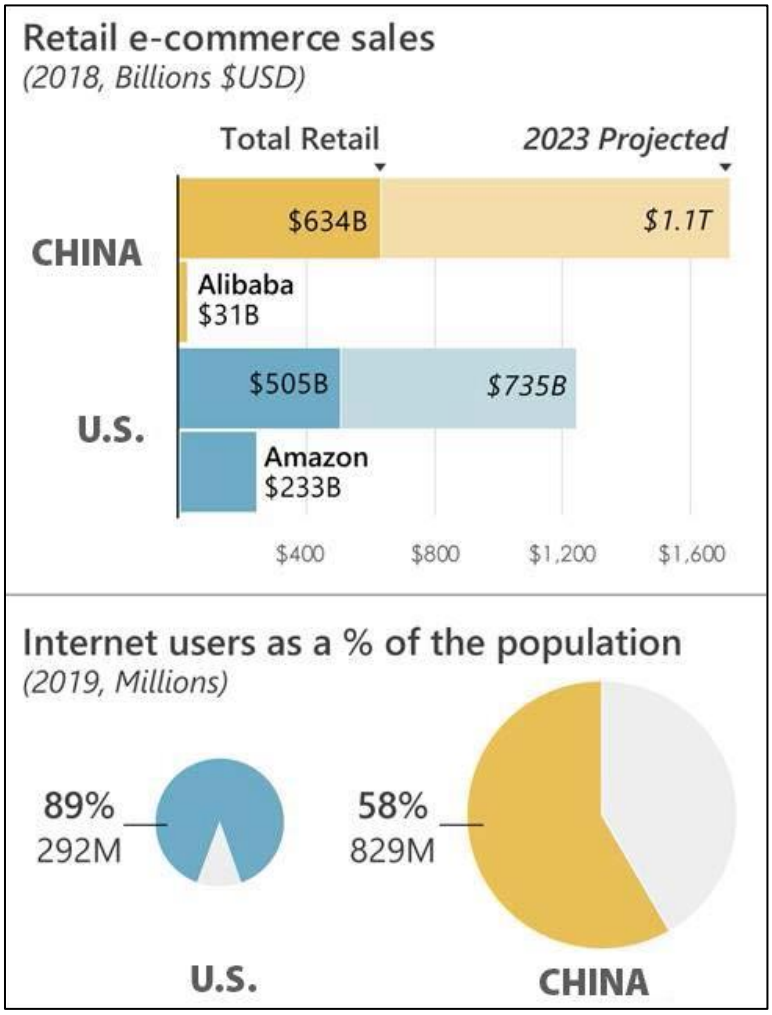
[28] Written by Rachel F. Fefer, Analyst in International Trade and Finance. See CRS In Focus IF10770, *Digital Trade*, by Rachel F. Fefer.

[29] Localization measures are defined as measures that compel companies to conduct certain digital-trade-related activities within a country's borders. Governments often use privacy or national security arguments as justifications for these measures. Though localization policies can be used to achieve legitimate public policy objectives, some are designed to protect, favor, or stimulate domestic industries, service providers, or intellectual property at the expense of foreign counterparts and, in doing so, function as nontariff barriers to market access. See CRS Report R44565, *Digital Trade and U.S. Trade Policy*, coordinated by Rachel F. Fefer.

[30] Statista.com.

and how it is used, limiting the free flow of information and individual privacy as well as market access by U.S. firms.

Figure 3. The U.S. and Chinese Digital Trade Markets



Source: U.N. population statistics, Statista.com, Internetworldstats.com.

During its second session, the 116th Congress may consider a variety of issues related to technology and trade. These include provisions in the United States-Mexico-Canada Agreement, U.S. participation in e-commerce negotiations at the World Trade Organization, evolving online privacy policies in the United States and other countries, such as the implementation of the European Union's privacy regulation and pending digital legislation. Additional issues involve technology trade issues with China, such as those outlined in the Trump Administration's investigation under Section 301 of the Trade Act of 1974 (see Tariff Actions by the Trump Administration).

Economics and National Security[31]

U.S. officials have long recognized that U.S. economic interests are vital to national security concerns and have considered the concepts of "geoeconomics"[32] and "economic statecraft" in relation to national security strategy.[33] Broadly speaking, these terms refer to the political consequences of economic decisions or the economic consequences of political trends and the dynamics of national power.

In recent years, a combination of domestic and international forces are challenging the U.S. leadership role in ways that are unprecedented in the post-World War II era. For some observers, these challenges are not just about economic growth and international economic engagement, but directly affect U.S. national security. In their view, China's growing economic competition for leading-edge technologies, in particular, challenges not only U.S. commercial interests, but potentially threatens U.S. national security interests.

According to some observers, since taking office, the Trump Administration has promoted a form of national security that mixes trade and economic relationships with national security, defense, and foreign policy objectives in ways that seem more confrontational than cooperative, more unilateral than multilateral, and more central to its overall agenda than in previous administrations. For example, the Trump Administration has used the U.S. trade deficit and import tariffs to support the defense industrial base by placing tariffs on the imports of strategic security partners as a form of national economic security. Despite existing National Security Strategy (NSS) reports and previous executive branch efforts, there is a view that the United States lacks a holistic, whole-of-government approach for thinking about economic challenges and opportunities in relation to U.S. national security.[34] In 2018, Congress adopted and President Trump signed the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA) to expand the scope of national reviews by the Committee on Foreign Investment in the United States (CFIUS) to determine if foreign investment transactions "threaten to impair the national security" of the United States. On January 13, 2020, the U.S. Treasury issued final regulations concerning implementation of various provisions of FIRRMA, which are to become effective on February 13, 2020. Also, on November 7, 2019, Senators Todd Young, Christopher Coons, Jeff Merkley, and Marco Rubio introduced S. 2826, the *Global Economic Security Strategy of 2019* to "ensure Federal policies, statutes, regulations, procedures, data gathering, and assessment practices are optimally designed and implemented to facilitate the competitiveness, prosperity, and security of the United States." This and similar legislation may be considered in the second session of the 116th Congress.

Policy Issues for Congress

Policy debates in the coming year may include the use and impact of unilateral tariffs imposed by the Trump Administration under various U.S. trade laws, as well as potential legislation that alters the authority granted by Congress to the President to do so; U.S.-China trade relations; implementation of the proposed United States-Mexico-Canada Trade Agreement, which awaits

[31] Written by James K. Jackson and Martin A. Weiss, Specialists in International Trade and Finance.

[32] Luttwak, Edward, "From Geopolitics to Geo-Economics: Logic of Conflict, Grammar of Commerce," *The National Interest*, Summer 1990, pp. 17-23.

[33] Baldwin, David, *Economic Statecraft* (Princeton, NJ: Princeton University Press, 1985).

[34] American Bar Association, *Economics and National Security: Six Questions for the Next Administration*, January 9, 2017, https://www.americanbar.org/content/dam/aba/administrative/law_national_security/Economics%20and%20National%20Security%20(final).authcheckdam.pdf.

ratification by the government of Canada; and the Administration's launch of bilateral trade negotiations with the European Union and the United Kingdom, among many others. The following section provides a broad overview of the potentially more prominent issues in international trade and finance that the 116th Congress may consider during its second session.

Tariff Actions by the Trump Administration[35]

The Trump Administration has focused on concerns over trading partner trade practices, the U.S. trade deficit, and potential negative effects of U.S. imports. Citing these concerns and others, the President has unilaterally imposed increased tariffs under three U.S. laws:

- (1) Section 201[36] of the Trade Act of 1974 on U.S. imports of washing machines and solar products due to concerns over their effects on U.S. domestic industry;
- (2) Section 232[37] of the Trade Expansion Act of 1962 on U.S. imports of steel and aluminum, and potentially motor vehicles/parts and titanium sponge due to concerns over their effects on U.S. national security;[38] and
- (3) Section 301[39] of the Trade Act of 1974 on U.S. imports from China due to concerns over its intellectual property rights practices, on U.S. imports from the EU due to the EU's WTO-inconsistent subsidies on the manufacture of large civil aircraft (and the EU's failure to implement WTO Dispute Settlement Body recommendations), and potentially on U.S. imports from France due to concerns over its digital services tax (DST).[40]

The President also proposed increasing tariffs on imports from Mexico, due to concerns over Mexico's immigration policies, using authorities delegated by Congress under the International Emergency Economic Powers Act (IEEPA),[41] but subsequently suspended the proposed tariffs citing an agreement reached with Mexico.[42]

Congress delegated aspects of its constitutional authority to regulate foreign commerce to the President through these trade laws. They allow presidential action, based on agency investigations and other criteria, to impose import restrictions to address specific concerns (**Table 1**). They have been used infrequently in the past two decades, in part due to the 1995 creation of the World Trade Organization and its dispute settlement system. The Administration argues the unilateral tariffs are a necessary U.S. response to challenges in the global trading system, which the WTO

[35] Written by Brock R. Williams, Specialist in International Trade and Finance and Rachel F. Fefer, Analyst in International Trade and Finance. See CRS Insight IN10943, *Escalating U.S. Tariffs: Timeline*, coordinated by Brock R. Williams, and CRS Insight IN10971, *Escalating U.S. Tariffs: Affected Trade*, coordinated by Brock R. Williams.

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

[37] See CRS In Focus IF10667, *Section 232 of the Trade Expansion Act of 1962*, by Rachel F. Fefer and Vivian C. Jones.

[38] The President decided not to impose Section 232 tariffs on uranium imports, after an investigation.

[39] See CRS In Focus IF11346, *Section 301 of the Trade Act of 1974*, by Andres B. Schwarzenberg. The U.S. Section 301 tariffs on U.S. imports from the EU were not unilaterally imposed as they were sanctioned by a WTO dispute settlement panel; they are not included in the aggregate tariff figures cited throughout this section.

[40] The United States has also imposed Section 301 tariffs on imports from the EU, but these tariffs were not unilaterally imposed as they were sanctioned by a WTO dispute panel. See CRS In Focus IF11364, *Boeing-Airbus Subsidy Dispute: Recent Developments*, by Andres B. Schwarzenberg.

[41] See CRS Report R45618, *The International Emergency Economic Powers Act: Origins, Evolution, and Use*, coordinated by Christopher A. Casey.

[42] U.S. Department of State, "U.S.-Mexico Joint Declaration," media note, June 7, 2019, https://www.state.gov/u-s-mexico-joint-declaration/.

has been unable to address effectively, and that they provide the United States with leverage for broader trade negotiations with affected trading partners, such as China, Japan, and the EU. While the tariffs benefit some import-competing U.S. firms, they also increase costs for downstream users of imported products and consumers and may have broader negative effects on the U.S. economy, as well as several policy implications.

Table 1. U.S. Laws Related to Proposed and Implemented Unilateral Tariff Actions

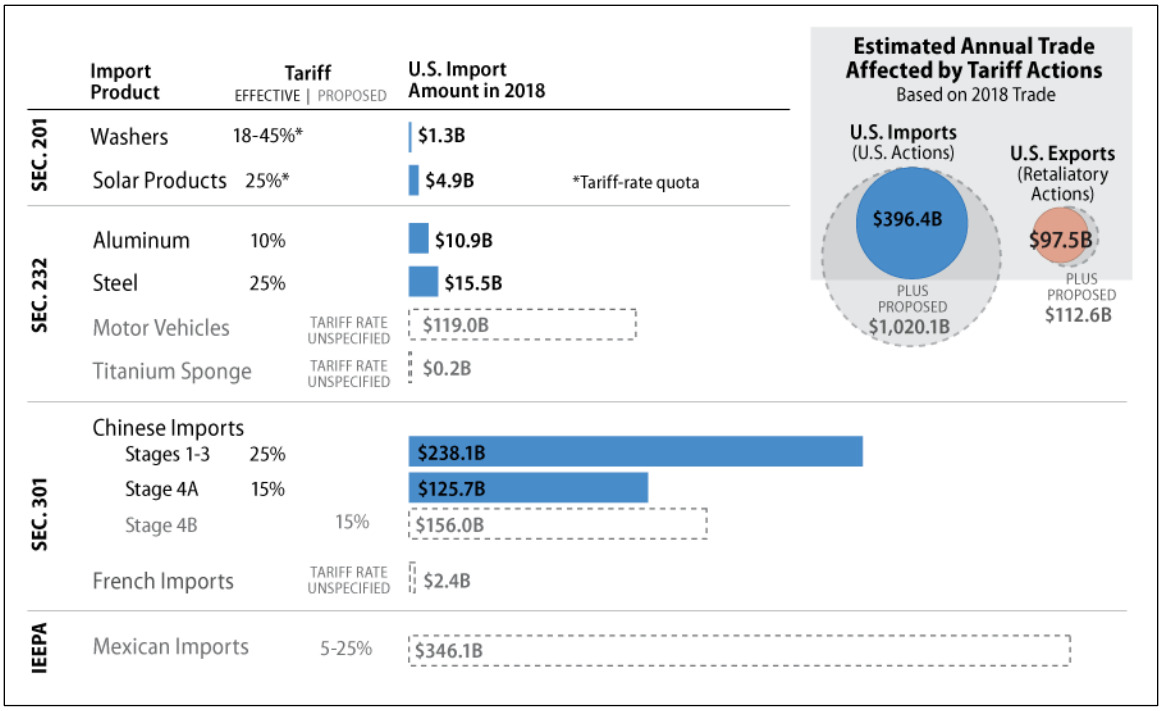
Section 201 Trade Act of 1974	Allows the President to impose temporary duties and other trade measures if the U.S. International Trade Commission (ITC) determines a surge in imports is a ***substantial cause or threat of serious injury*** to a U.S. industry.
Section 232 Trade Expansion Act of 1962	Allows the President to take action to adjust imports of products the U.S. Department of Commerce finds to be imported into the United States in such quantities or under such circumstances as to ***threaten to impair U.S. national security***.
Section 301 Trade Act of 1974	Allows the U.S. Trade Representative (USTR) to suspend trade agreement concessions or impose import restrictions if it determines a U.S. trading partner is ***violating trade agreement commitments or engaging in discriminatory or unreasonable practices that burden or restrict U.S. commerce.***
International Emergency Economic Powers Act (IEEPA) of 1977	Allows the President to regulate the importation of any property in which any foreign country or a national thereof has any interest ***if the President declares a national emergency to deal with an unusual and extraordinary threat***, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States.

Source: Trade Act of 1974 (P.L. 93-618, as amended), Trade Expansion Act of 1962 (P.L. 87-794, as amended), and International Emergency Economic Powers Act (P.L. 95-223, as amended).

The multiple tariff increases applied to date, ranging from 10% to 45%, affect approximately 16% of U.S. annual imports. This amounts to $396.4 billion of imports using 2018 annual data (**Figure 4**). Section 301 tariffs on U.S. imports from China, which have been imposed in four successive stages to date, account for more than 90% of trade affected by the Administration's tariff actions. While the Administration has taken some steps to reduce the scale of imports affected by the tariffs since they were initially imposed in 2018 (e.g., by exempting Canada and Mexico from the steel and aluminum duties and creating processes by which certain products may be excluded), the general trend has been an escalation of tariff actions. Since May 2019, the Administration has increased existing tariffs on Chinese imports and broadened the scope of products covered; declared motor vehicle imports, particularly from Japan and the EU, a national security threat, granting the President authority to impose tariff increases on such imports; and proposed an additional 5%-25% on all imports from Mexico and tariffs on $2.4 billion of imports from France. In total, the existing and proposed actions would potentially affect over $1 trillion of U.S. imports, or 40% of the annual total. However, some de-escalation of tariff activity looks likely in the near term: the Administration indefinitely suspended its proposed stage 4B tariffs on Chinese imports, and announced a partial reduction in existing stage 4A tariffs as part of the Phase One Trade Deal with China, which the Administration signed on January 15.[43]

[43] USTR, "United States and China Reach Phase One Trade Agreement," press release, December 12, 2019, https://ustr.gov/about-us/policy-offices/press-office/press-releases/2019/december/united-states-and-china-reach, and "Economic and Trade Agreement Between the Government of the United States and the Government of the People's Republic of China," January 15, 2020, https://ustr.gov/about-us/policy-offices/press-office/press-releases/2020/january/economic-and-trade-agreement-between-government-united-states-and-government-peoples-republic-china.

Figure 4. Annual U.S. Trade Affected by Recent Tariff Actions



Source: CRS calculations based on U.S. import data from the U.S. Department of Commerce's Census Bureau and partner country import data from Global Trade Atlas (U.S. exports).

Notes: Reflects tariff actions effective as of January 15, 2020 with dotted lines highlighting proposed tariff actions. Based on annual 2018 import values. Excludes exempted countries. Motor vehicle and parts import figure includes only U.S. imports from the European Union and Japan, which were the focus of the President's proclamation declaring motor vehicle imports a national security threat. Tariff-rate quotas (TRQs) are a form of import restriction in which one tariff applies up to a specific quantity or value of imports and a higher tariff applies above that threshold.

As tariffs act as a tax on foreign-produced goods, they distort price signals, potentially leading to less efficient consumption and production patterns, which may ultimately reduce U.S. and global economic growth rates. As of November 6, 2019, the United States collected $45.5 billion from the additional taxes paid by U.S. importers, according to U.S. Customs and Border Protection (CBP).[44] Increasing tariffs also creates a general environment of economic uncertainty, potentially dampening business investment and creating a further drag on growth. Estimates of the tariffs' overall economic effects vary, depending on modeling assumptions and the specific set of tariffs considered. Most studies, however, predict declines in GDP growth: the Congressional Budget Office (CBO) estimated that the tariffs in effect as of July 25, 2019, would lower U.S. GDP by roughly 0.3% by 2020 below a baseline without the tariffs;[45] considering also more recent actions, the IMF estimated that the tariffs would reduce global GDP in 2020 by 0.8%.[46] Preliminary analysis from researchers at the U.S. Federal Reserve Board finds that the tariffs have

[44] Information provided to CRS by CBP officials.

[45] CBO, "The Effects of Tariffs and Trade Barriers in CBO's Projections," August 22, 2019, https://www.cbo.gov/publication/55576.

[46] IMF, *World Economic Outlook*, October 2019, p. 32, https://www.imf.org/~/media/Files/Publications/WEO/2019/October/English/text.ashx?la=en.

had a negative aggregate effect on the manufacturing sector with increased input costs more than offsetting gains to the sector resulting from increased protection from foreign competition.[47]

Many Members of Congress, U.S. businesses, farmers, interest groups, and trading partners, including major allies, have weighed in on the President's actions. While some U.S. stakeholders support the President's use of unilateral tariffs to the extent they result in a more level playing field for U.S. firms, many have raised concerns over their potential negative economic implications and impact on U.S. allies, the process for seeking exclusions to the tariffs, and the potential implications for the global trading system. Some Members of Congress also question whether the President's actions adhere to the intent of the trade laws used. Several Members have introduced legislation in the 116th Congress that would alter the President's current authorities, particularly Section 232, and Senator Charles E. Grassley, chair of the Senate Finance Committee, has expressed interest in considering such legislation in committee.[48] The issue may be the subject of further debate and possible legislative activity in the second session of the 116th Congress.

Trading Partner Retaliation and Countermeasures

Increasing U.S. tariffs or imposing other import restrictions potentially opens the United States to complaints that it is violating its World Trade Organization and free trade agreement (FTA) commitments. In response to the U.S. unilateral tariff actions, several U.S. trading partners, including China and the European Union, have initiated dispute settlement proceedings, which are now at various stages in the WTO dispute settlement process.[49] Multiple countries have also imposed retaliatory tariffs, most in the range of 5%-25%, and the United States has similarly responded by initiating additional dispute settlement measures at the WTO, arguing that the retaliatory measures do not adhere to WTO commitments. Some analysts argue that this escalating series of unilateral tariff actions, retaliations, and resulting WTO disputes may threaten the stability of the multilateral trading system, given the political sensitivity of a potential WTO panel ruling on issues related to national security (Section 232) and the possibility of countries potentially disregarding WTO rulings not in their favor.[50]

[47] Aaron Flaaen and Justin Pierce, *Disentangling the Effects of the 2018-2019 Tariffs on a Globally Connected U.S. Manufacturing Sector*, Board of Governors of the Federal Reserve System, Finance and Economics Discussion Series 2019-086, December 23, 2019.

[48] Senator Grassley, "Grassley on 232 Tariff Reform," November 5, 2019, https://www.grassley.senate.gov/news/news-releases/grassley-232-tariff-reform. The two most frequently cited legislative reform proposals are those sponsored by Senator Toomey (S. 287), and Senator Portman (S. 365).

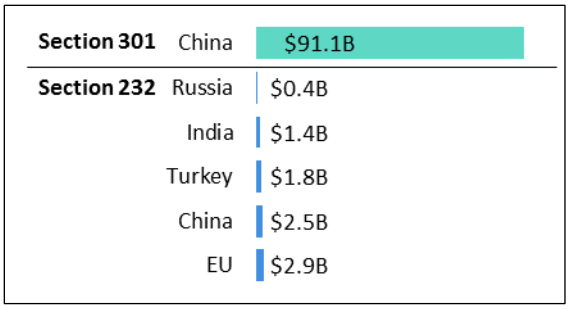
[49] For a listing of ongoing disputes, see Table 3 in CRS Report R45417, *World Trade Organization: Overview and Future Direction*, coordinated by Cathleen D. Cimino-Isaacs.

[50] Adam Behsudi, "Trump Threatens to Blow Up Global Trading Order with Tariffs," *Politico*, March 9, 2018.

Economically, retaliation amplifies the potential negative effects of the U.S. tariff measures. It broadens the scope of U.S. industries potentially harmed by making targeted U.S. exports less competitive in foreign markets. U.S. exports of targeted industries have declined, with U.S. agricultural exports subject to retaliation down 27% in 2018 compared to 2017.[51] Five U.S. trading partners currently impose retaliatory tariffs affecting approximately $9 billion of U.S. annual exports in response to Section 232 actions, while China has imposed retaliatory tariffs in response to Section 301 actions affecting more than $91 billion of U.S. annual exports (**Figure 5**). As part of the U.S.-China Phase One trade deal, China suspended planned increases in its retaliatory tariffs and committed to increase purchases of various U.S. exports, including agricultural products. The products affected by retaliation to date cover a range of U.S. industries, but the largest export categories include soybeans, pork, whiskies, wood products, steel, and aluminum. Lost market access resulting from the retaliatory tariffs may compound concerns that U.S. exporters increasingly face higher tariffs than some competitors in foreign markets, as other countries proceed with trade liberalization agreements, such as the EU-Japan FTA, which do not include the United States.

Figure 5. U.S. Exports Facing Retaliation

(2018 exports, billion U.S. $s)



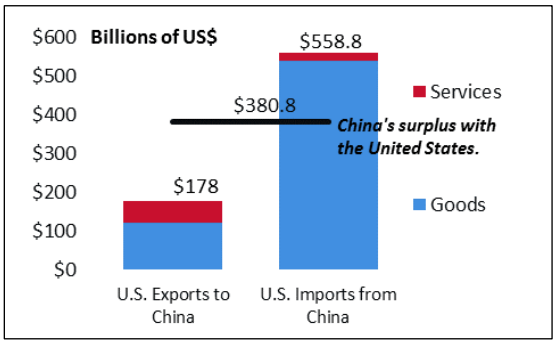
Source: Created by CRS. Data from Global Trade Atlas.

Notes: U.S. exports approximated by using 2018 trading partner import data and reflect tariffs in effect as of January 15, 2020. Mexico and Canada withdrew their retaliation after the Trump Administration exempted both countries from the Section 232 steel and aluminum duties.

U.S.-China Economic Issues[52]

The U.S.-China economic relationship has expanded significantly over the past three decades. In 2018, China was, in terms of goods, the largest U.S. trading partner (with total trade more than $730 billion), the third-largest U.S. export market (at $120 billion), and the largest source of U.S. imports (at $540 billion) (**Figure 6**).[53] China is the second-largest foreign holder of U.S. Treasury securities, at $1.11 trillion as of June 2019.[54]

Figure 6. U.S.-China Trade in 2018



Source: Figure created by CRS with data from U.S. Bureau of Economic Analysis (BEA).

Against the backdrop of growing commercial ties, U.S. concerns about China's trade and investment policies, business practices, and

[51] CRS Report R45903, *Retaliatory Tariffs and U.S. Agriculture*, by Anita Regmi.

[52] Written by Karen M. Sutter, Specialist in Asian Trade and Finance, and Michael D. Sutherland, Analyst in International Trade and Finance. For more detail, see CRS In Focus IF11284, *U.S.-China Trade and Economic Relations: Overview*, by Karen M. Sutter.

[53] Bureau of Economic Analysis.

[54] U.S. Department of the Treasury.

asymmetries in the bilateral commercial relationship have been building over the past decade. The Chinese government's unwillingness to acknowledge and address priority U.S. concerns, while Chinese firms expand their activities in the United States and globally, has highlighted uneven levels of market openness, divergent approaches to global rules, and significant differences in the operating conditions and tenets of the U.S. and Chinese economic systems. These differences relate to foundational elements of the U.S. market-based system that are lacking in China, including a clear separation of government and business roles, freedom of information and expression, protections of privacy and intellectual property rights (IPR), and the rule of law that is created to protect individual rights, not the interests and power of the ruling party or government. Problems that individual companies have faced in China for some time are now coalescing and intensifying—particularly with the emergence of new technologies such as 5G and artificial intelligence—in ways that are raising U.S. government concerns about the broader effects of Chinese commercial behavior on U.S. economic competitiveness and national security.

China's Trade Practices

U.S. concerns relate primarily to the Chinese state's increasingly direct and powerful role in the economy through a web of reinforcing industrial policies, government funding, and the influence of the Chinese government and Chinese Communist Party (CCP) in corporate decision-making. Of particular concern are China's industrial policies requiring U.S. firms to disclose and transfer proprietary operational and technical information and intellectual property, often in areas where U.S. firms are global leaders, as a precondition to operate in China. Other developments feeding U.S. concerns include:

- An uptick in reports of Chinese corporate espionage;
- China's use of access to U.S. universities to conduct political operations and participate in American research and development in emerging technologies;
- China's tightening of information controls (and pressure on U.S. firms to abide by these controls);
- China's use of tit-for-tat retaliation and economic coercion against U.S. businesses, and;
- New Chinese policies incentivizing the transfer of advanced civilian technical capabilities to the military (including capabilities obtained from U.S. firms).

China's Global Expansion

China's rapid commercial expansion offshore is raising concerns among many observers about unfair business practices, such as government subsidies and lack of reciprocal market access, global overcapacity,[55] and China's potential to challenge U.S. global economic leadership. Some in Congress are concerned that China's use of concessional lending is advancing Chinese state firms at the expense of private enterprise and potentially economically weakening host

[55] China is a top global steel and aluminum producer. In 2009, it issued 13 industry support plans allowing its firms to expand steel and aluminum capacity while much of the world dialed back. Assessing persistent global overcapacity, the United States in March 2018 announced tariffs on all aluminum (10%) and steel (25%) imports citing national security concerns (Section 232, Trade Expansion Act of 1962, PL 87-794). China responded by raising tariffs by 15% to 25% on $3 billion of U.S. exports and filing a World Trade Organization case.

governments while promoting authoritarian trends overseas.[56] China's One Belt One Road (OBOR) program aims to promote economic integration for China around the world through new infrastructure—including energy, financial, ICT, and transportation—that is invested, controlled and increasingly vertically integrated into Chinese supply chains.[57] The effort leans heavily on standards interoperability to connect Chinese projects across regions and globally. While China has released little official information on overseas lending and investment, a review of available information shows that almost all of China's overseas lending and investment activities are undertaken by the Chinese government, state-owned companies or state banks. There appears to be a split among experts who seek to improve the terms and quality of China's investment as the main concern and those who seek to restrict cooperation because of the strategic implications of connectivity and interoperability across the energy, ICT, and transportation projects that China is building around the world.

As Chinese companies expand into global markets, Beijing is looking to dilute or change global rules that challenge its state-led economic model and advance new rules, principles, and standards that could legitimize and protect China's model from challenge and, particularly in the area of technical standards, pave the way for new business opportunities from Chinese firms who benefit from the ability to build and operate against indigenous standards introduced on the bilateral, multilateral or global level. China has adopted a technical approach in assuming leadership of key multilateral functional organizations and introducing policies and standards in these obscure but influential bodies, including the International Standards Organization (ISO) and the International Telecommunication Union (ITU). If Chinese standards proliferate across global markets—particularly Chinese standards in 5G and other technologies—the competitive advantage of many U.S. exporters could erode.[58]

U.S. Policy Response

The Trump Administration has undertaken a number of policy actions to begin to address these issues. In March 2018, the U.S. Trade Representative (USTR) concluded under Section 301 of the Trade Act of 1974 (19 U.S.C. §2411) that four Chinese trade practices justified U.S. action: forced technology transfer requirements, cyber-enabled theft of U.S. IPR and trade secrets, discriminatory and nonmarket licensing practices, and state-funded strategic acquisition of U.S. companies.[59] In response to these findings, the Trump Administration, over the course of four rounds, increased import tariffs on about $360 billion of Chinese imports. China, in response, raised tariffs on more than $90 billion worth of U.S. products. As the United States and China have increased tariffs since 2018, bilateral trade flows decreased in the first three quarters of 2019 (**Figure 7**).[60]

[56] China's export of its model through training and the provision of surveillance and ICT systems could promote authoritarian regimes and build Chinese relationships that undermine U.S. interests. See Elizabeth Economy, "Beijing is Seeking to Export the Chinese Development Model," public remarks at CSIS, December 4, 2019.

[57] "Full text of President Xi's speech at opening of Belt and Road Forum," *Xinhua*, May 14, 2017.

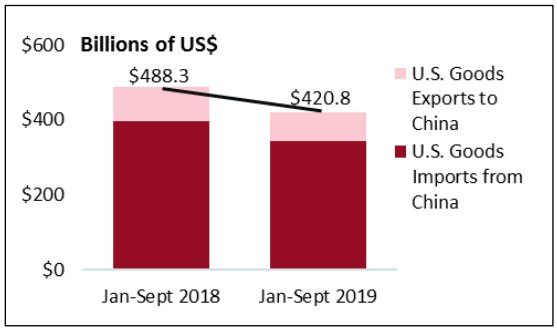
[58] Hilary McGeachy, "US-China Technology Competition: Impacting a Rules-Based Order," *United States Studies Centre*, May 2, 2019, https://www.ussc.edu.au/analysis/us-china-technology-competition-impacting-a-rules-based-order.

[59] Office of the United States Trade Representative, *Findings of the Investigation Into China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation Under Section 301 of the Trade Act of 1974* (March 2018), https://ustr.gov/sites/default/files/Section%20301%20FINAL.PDF

[60] Based on preliminary data from the U.S. Bureau of Economic Analysis.

The Trump Administration announced in December 2019 a draft Phase One trade deal with the Chinese government on a subset of U.S. concerns, including some aspects of IPR, technology transfer, agriculture, financial services, exchange rates, and dispute resolution. As part of this agreement, which was signed on January 15, 2020, the Administration has indefinitely suspended its proposed stage 4B tariffs on U.S. imports from China and announced a partial reduction in existing stage 4A tariffs in return for China committing to purchase an additional $200 billion of U.S. agriculture, energy, and manufacturing goods over the next two years. The deal is a first step that appears to leave tough systemic issues on IP, technology transfer, and state subsidies to phase two talks. U.S. firms facing tariffs that remain in place are concerned about the effects on their businesses.[61] Meanwhile, Beijing appears to have preserved space to implement industrial policies in strategic sectors of concern to the United States and may delay phase two talks to gain time to implement new government programs to support sectors such as advanced manufacturing.

Figure 7. U.S.-China Trade in 2018 and 2019



Source: Figure created by CRS with data from U.S. Bureau of Economic Analysis (BEA).

The Administration, in response to legislation, strengthened U.S. investment review and export control authorities, stepped up efforts to stem Chinese economic espionage, and sanctioned specific Chinese firms for violations of U.S. sanctions and the theft of U.S. IPR. The Administration placed additional restrictions on U.S. technology that may have the potential for "dual use" in China's civilian and military sectors, as well as surveillance technology used by Chinese authorities in the western Chinese region of Xinjiang.The Administration has also taken steps to confront China globally. Administration officials have tried to reform China's behavior and role in international organizations, including China's status as a developing country in the World Bank, the WTO, and the International Postal Union (IPU), which affords China certain preferential terms. The Administration has worked diplomatically to discourage countries from signing below par infrastructure agreements with China and to emphasize the security risks of including Chinese suppliers in their domestic 5G information communications technology (ICT) systems. To provide project finance alternatives to China, the Administration, in collaboration with Congress, created the U.S. International Development Finance Corporation and a Blue Dot infrastructure network to promote collaborative project finance among Australia, Japan, and the United States.[62]

[61] Reuters, "Cost to U.S. consumers, businesses of Trump's China tariffs surged in June – trade group," August 7, 2019, https://www.reuters.com/article/us-usa-trade-china-tariffs/cost-to-u-s-consumers-businesses-of-trumps-china-tariffs-surged-in-june-trade-group-idUSKCN1UX2H7

[62] Spearheaded the U.S. Overseas Private Investment Corporation (OPIC), Australia's Department of Foreign Affairs and Trade (DFAT), and Japan Bank for International Cooperation (JBIC), the Blue Dot Network is "a multi-stakeholder initiative that brings together governments, the private sector, and civil society to promote high-quality, trusted standards for global infrastructure development in an open and inclusive framework. Blue Dot Network will evaluate and certify nominated infrastructure projects based upon adherence to commonly accepted principles and standards to promote market-driven, transparent, and financially sustainable infrastructure development in the Indo-Pacific region and around the world." For more detail, see "The Launch of Multi-Stakeholder Blue Dot Network," U.S. International Development Finance Corporation, November 4, 2019.

In its second session, the 116th Congress continues to face these China-related concerns on a range of fronts and is positioned to provide oversight of the Administration's implementation of new policies, respond to potential gaps and counter effects of current policies, and call for a comprehensive look at the broader policy challenges with China to identify what new authorities and approaches may be needed. There appears to be bipartisan consensus about the imperative of sustained policy attention to address China-related concerns. In addition to monitoring the status of bilateral trade talks, Congress may consider the following issues:

- Search for new policy options to address China's continued use of industrial policies and subsidies;
- Examine how best to address a perceived lack of transparency, accountability, and legal recourse involving Chinese firms listed on stock exchanges in the United States;
- Exercise oversight to assess the effectiveness of new U.S. investment security review and export control authorities and address potential gaps;
- Examine U.S. 5G infrastructure exposure to Chinese firms other than Huawei and emerging technology sectors beyond telecommunications (e.g., messaging apps, fintech);
- Explore opening U.S. FTA talks with Taiwan and assess Taiwan's central role in both U.S. and China's microelectronics supply chains; and
- Exercise oversight authorities to monitor and sanction China's activities of concern in multilateral development banks and international financial institutions.

U.S. Trade Agreements and Negotiations[63]

In addition to multilateral efforts through the World Trade Organization, the United States has worked to reduce and eliminate barriers to trade and create nondiscriminatory rules and principles to govern trade through bilateral and regional trade agreements.[64] Over the past two decades, these agreements, generally referred to as free trade agreements (FTAs) in the U.S. context, have proliferated globally in part due to difficulty in reaching consensus on new agreements at the WTO. In total, the United States has implemented 14 comprehensive FTAs with 20 countries since 1985, when the first bilateral FTA was concluded with Israel (**Figure 8**).

Trade agreements have been a top priority of the Trump Administration and the issue is likely to be a continued focus during the second session of the 116th Congress. After withdrawing the United States from the 12-member Trans-Pacific Partnership (TPP) in 2017, which had been signed but not ratified during the Obama Administration, President Trump initiated new negotiations with the three largest economies and biggest U.S. trade partners among the TPP members—Canada, Mexico, and Japan. The new United States-Mexico-Canada Agreement, if ratified by the government of Canada, would replace the North American Free Trade Agreement (NAFTA), the largest existing U.S. FTA. Legislation to implement and bring into force USMCA, signed in 2018, passed the House of Representatives in December 2019 and the Senate in January 2020. The Administration has taken a staged approach to negotiations with Japan, signing two

[63] Written by Brock R. Williams, Specialist in International Trade and Finance.

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

initial agreements on limited tariff reductions and digital trade in 2019, with more extensive negotiations to follow. Due to their limited scope, the Administration enacted the initial agreements with Japan, as well as minor revisions to the U.S.-South Korea (KORUS) FTA,[65] using delegated tariff authorities, without formal approval or action by Congress. These actions have elicited debate among Members over the appropriate congressional role in the negotiation and implementation of partial scope free trade agreements, which is likely to continue in the second session.

Looking forward, several new trade agreement negotiations may begin during the second session of the 116th Congress. The Administration expects to start talks toward a more comprehensive second stage agreement with Japan in early 2020, and notified Congress under Trade Promotion Authority of its intent to negotiate trade agreements with the European Union and the United Kingdom (UK). Such efforts, however, have been complicated by the ongoing Brexit negotiations and differing U.S. and EU views on their appropriate scope.[66] The Administration has also informally expressed interest in new trade negotiations with a number of countries, including Brazil.[67] Congress is expected to weigh in on the scope and objectives for any new agreements throughout the negotiating process, especially through the TPA negotiating objective and requirements for the Executive Branch to conduct ongoing consultations before, during, and after the completion of the negotiations. Congress may also advise the Administration on congressional priorities for potential trade agreement partners.[68]

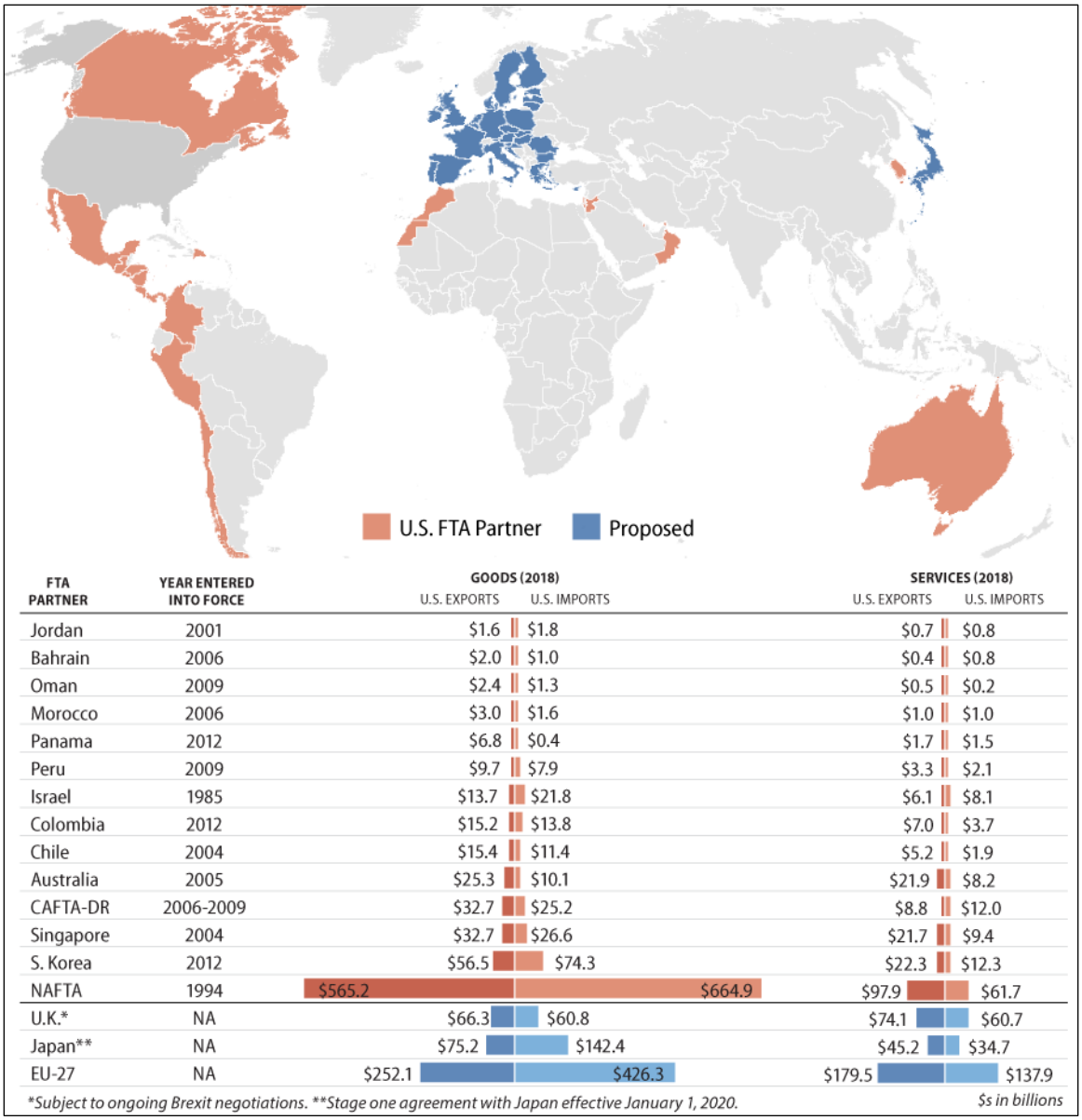
[65] For more information, see CRS In Focus IF10733, *U.S.-South Korea (KORUS) FTA*, coordinated by Brock R. Williams.

[66] The United States and the UK will not be able to start formal trade negotiations until the UK leaves the EU.

[67] "Trump Says He Will Seek U.S. Trade Accord with Brazil," *Reuters*, July 30, 2019.

[68] For example, in December 2019 more than 150 Representatives sent a letter to Ambassador Lighthizer urging the Administration to initiate bilateral trade negotiations with Taiwan.

Figure 8. U.S. Trade with Current and Proposed FTA Partners



Source: Figure created by CRS with data from the U.S. Department of Commerce's Census Bureau and Bureau of Economic Analysis.

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

Core Provisions in U.S. Trade Agreements[69]

U.S. free trade agreements (FTAs) generally are negotiated on the basis of U.S. trade negotiating objectives established by Congress under Trade Promotion Authority.[70] Since the 1980s, U.S.

[69] Written by M. Angeles Villarreal, Specialist in International Trade and Finance. See CRS Report R45198, *U.S. and Global Trade Agreements: Issues for Congress*, by Brock R. Williams.

[70] For more information on Trade Promotion Authority and negotiating objectives, see CRS Report R43491, *Trade*

FTAs have evolved in the scope and depth of their commitments.[71] The first U.S. bilateral FTA was with Israel. It was14 pages in length and focused primarily on the elimination of tariffs. In subsequent agreements, the United States pursued increasingly comprehensive and high-standard, enforceable commitments. NAFTA, which entered into force in 1994, was the first FTA that incorporated groundbreaking rules included in subsequent U.S. FTAs. It initiated a new generation of U.S. trade agreements in the Western Hemisphere and other parts of the world, influencing negotiations in areas such as market access, rules of origin, intellectual property rights (IPR), foreign investment, and dispute resolution. NAFTA was the first trade agreement to include provisions on IPR protection, labor, and the environment. Although not all FTAs are identical, core provisions incorporated into most U.S. FTAs include the following:

- **Tariffs and Market Access.** Gradual elimination of most tariffs and nontariff barriers on goods, services, and agriculture, and specific rules of origin requirements.
- **Services.** Commitments on national treatment, most-favored nation (MFN) treatment, and prohibition of local presence requirements.
- **IPR Protection.** Minimum standards of protection and enforcement for patents, copyrights, trademarks, and other forms of IPR. FTAs after NAFTA have new commitments, reflecting standard protection similar to that found in U.S. law.
- **Foreign Investment.** Removal of investment barriers, basic protections for investors, with exceptions, and mechanisms for dispute settlement.
- **Labor and Environmental Provisions.** NAFTA's commitments for each party to enforce their own laws evolved in later FTAs to commitments to adopt, maintain, and not derogate from laws incorporating specific standards, among other provisions.
- **Government Procurement.** Commitments to provide certain levels of access to and nondiscriminatory treatment in parties' government procurement markets.
- **Dispute Settlement.** Provisions for dispute settlement mechanism to resolve disputes regarding each party's adherence to agreement obligations.
- **Other Provisions.** Other core provisions have included those related to competition policy, monopolies, and state enterprises, sanitary and phytosanitary standards, safeguards, technical barriers to trade, transparency, and good governance.

The governments of all parties generally must ratify an FTA before it can enter into force. In the United States, Congress must pass legislation to implement any part of an FTA that requires a change in U.S. law. Before voting on an agreement, Congress may review whether progress was made in achieving the negotiating objectives it established in TPA legislation. Congress may also evaluate the overall economic effect on the U.S. economy, including through a mandated report by the U.S. International Trade Commission (ITC), determine whether the agreement would promote U.S. standards such as IPR, labor, and the environment in other countries, or consider the level of commitments and enforceability of the agreement and its rules.

Promotion Authority (TPA): Frequently Asked Questions, by Ian F. Fergusson and Christopher M. Davis.

[71] See CRS Report R45198, *U.S. and Global Trade Agreements: Issues for Congress*, by Brock R. Williams, CRS Report R44981, *NAFTA Renegotiation and the Proposed United States-Mexico-Canada Agreement (USMCA)*, by M. Angeles Villarreal and Ian F. Fergusson, and CRS Report R44044, *U.S. Trade with Free Trade Agreement (FTA) Partners*, by James K. Jackson.

U.S.-Mexico-Canada Agreement (USMCA)[72]

On November 30, 2018, President Trump and the leaders of Canada and Mexico signed the United States-Mexico-Canada Agreement, a proposed trilateral free trade agreement that, if ratified by all governments, would revise and modernize the North American Free Trade Agreement. Pursuant to Trade Promotion Authority, the Administration notified Congress on August 31, 2018 of its intention to sign the agreement, in part to allow for the signing of the agreement prior to Mexico's president-elect Andres Manuel Lopez Obrador taking office on December 1. Mexico became the first party to ratify the agreement on June 17, 2019. On December 13, the Trump Administration submitted to Congress the proposed USMCA implementing legislation, which reflects recent amendments negotiated by some Members of Congress and the USTR. On the same day, the United States-Mexico-Canada Implementation Act (H.R. 5430) was introduced in the House of Representatives. On December 16, the companion bill was introduced in the Senate (S. 3052). H.R. 5430 was passed by the House on December 19, 2019, and by the Senate on January 16, 2020.

NAFTA and USMCA Fast Facts

Significant Dates

- Dec. 1992: NAFTA signed by Pres. George H. W. Bush and leaders of Canada and Mexico
- Aug. 1993: NAFTA side agreements signed
- Nov. 1993: NAFTA Implementation Act approved by Congress
- Dec. 1993: Signed into law by Pres. Clinton
- Jan. 1994: NAFTA entered into force
- May 2017**:** Pres. Trump sends 90-day notification to Congress of intent to renegotiate NAFTA
- Aug. 2018: Pres. Trump notifies Congress of intent to sign agreement
- Nov. 2018: USMCA signed by Pres. Trump and leaders of Canada and Mexico
- May 2019: Draft Statement of Administrative Action (SAA) and text of the agreement submitted to Congress
- Dec. 2019: Implementing legislation introduced in House (H.R. 5430) and Senate (S. 3052)
- Dec. 17, 2019. House approved H.R. 5430 by a vote of 385-41
- Jan. 16, 2020. Senate approved H.R. 5430 by a vote of 89-10

Proposed USMCA: Retains most of NAFTA's chapters with new, updated or revised provisions on rules of origin for motor vehicle and agricultural products, IPR protection, digital trade, investment, dispute settlement, services, labor and the environment, state-owned enterprises, currency misalignment, and periodic review of the agreement.

The 116th Congress debate on USMCA centered on whether USMCA advanced TPA negotiating objectives, the enforceability of labor and environmental provisions, the extent to which Mexico implements its labor reform commitments under USMCA, and the affordability of biologics under the proposed intellectual property rights (IPR) provision.[73] Other congressional concerns included the economic effects of the agreement, the implications for U.S. trade policy in areas in which USMCA scales back NAFTA commitments, such as motor vehicle rules of origin (ROO) and investor state dispute settlement provisions, and political implications if the agreement was not approved by Congress or if President Trump moved forward on his threat to withdraw from NAFTA.

Many trade policy experts and economists give credit to FTAs such as NAFTA for expanding trade and economic linkages among countries, creating more efficient production processes,

[72] Written by M. Angeles Villarreal, Specialist in International Trade and Finance. See CRS In Focus IF10997, *Proposed U.S.-Mexico-Canada (USMCA) Trade Agreement*, by Ian F. Fergusson and M. Angeles Villarreal; CRS Report R44981, *NAFTA Renegotiation and the Proposed United States-Mexico-Canada Agreement (USMCA)*, by M. Angeles Villarreal and Ian F. Fergusson; and CRS In Focus IF10047, *North American Free Trade Agreement (NAFTA)*, by M. Angeles Villarreal.

[73] For more information, see CRS In Focus IF11308, *USMCA: Labor Provisions*, by M. Angeles Villarreal, Cathleen D. Cimino-Isaacs, and Katarina De la Rosa, and CRS In Focus IF11314, *USMCA: Intellectual Property Rights (IPR)*, by Shayerah Ilias Akhtar and Ian F. Fergusson.

increasing the availability of lower-priced consumer goods, and improving living standards and working conditions. Other proponents contend that NAFTA has political dimensions that create positive ties within North America and improve democratic governance. At the same time, some policymakers, labor groups, and consumer advocacy groups argue that NAFTA has had a negative effect on U.S. jobs and wages. They often refer to labor provisions as being weak and maintained that the proposed USMCA should have stronger, more enforceable labor provisions to address issues such as outsourcing, lower wages, and job dislocation.

The USMCA, comprised of 34 chapters and 12 side letters, retains most of NAFTA's chapters, including the elimination of tariff and nontariff trade barriers, while making notable changes to ROO for motor vehicle and agriculture products and modernizing provisions on IPR, digital trade, and services trade. The agreement also allows some greater access to the Canadian dairy market to U.S. dairy producers and adds new obligations on currency misalignment, a new chapter on state-owned enterprises, and a new chapter on anti-corruption. Other USMCA provisions that are new to U.S. FTAs include: a sunset clause provision, which requires a joint review and agreement on renewal issues after six years, revised provisions on government procurement and investment, and a provision that allows a party to withdraw from the agreement if another party enters into an FTA with a country it deems to be a nonmarket economy (e.g., China).

During the negotiations, the Trump Administration's proposals on ROO in motor vehicle products were among the more contentious issues. Under NAFTA, the ROO requirement for autos, light trucks, engines, and transmissions is 62.5%; for all other vehicles and parts, it is 60%. USMCA raises these requirements to 75% of a motor vehicle's content and to 70% of its steel and aluminum content. It requires that 70% of a motor vehicle's steel and aluminum must originate (melted and poured) in North America by years seven (for aluminum) and ten (for steel) of its entry into force. It also adds a wage requirement, for the first time in any FTA, stating that 40%-45% of auto content must be made by workers earning at least $16 per hour.

Supporters of the proposed USMCA contend that the agreement modernizes NAFTA by including updated provisions in areas such as digital trade and financial services. Some analysts believe that the updated auto ROO requirements contained in the USMCA could raise compliance and production costs and lead to higher prices, which could possibly negatively affect U.S. vehicle sales. Overall, the full economic effects of the proposed USMCA likely would not be significant because nearly all U.S. trade with Canada and Mexico is now conducted duty and barrier free.[74] Many economists and other observers believe that it is not expected to have a measurable effect on United States-Mexico trade and investment, jobs, wages, or overall economic growth, and that it would probably not have a measurable effect on the U.S. trade deficit with Mexico.[75]

Core issues at the center of the USMCA congressional debate were some policymakers' concerns over effective dispute settlement provisions, enforcement of labor and environmental provisions, the enforceability of Mexico's labor reforms, and IPR protections for biologic drugs, which are large-molecule drugs developed from living organisms. The USTR and some Members of Congress negotiated proposed changes to the USMCA to address congressional concerns. USTR then negotiated the amendments with USMCA parties. On December 10, 2019, the United States,

[74] For more information, see United States International Trade Commission, *U.S.-Mexico-Canada Trade Agreement: Likely Impact on the U.S. Economy and on Specific Industry Sectors*, Publication Number 4889, April 2019; William Alan Reinsch, Jack Caporal, and Jonathan Robison, et al., *The Road to Ratification: The U.S. ITC's Economic Analysis of the USMCA*, Center for Strategic and International Studies, April 19, 2019; and Sabrina Rodriguez, "A Look at ITC's Underwhelming Report on USMCA," *Politico Morning Trade*, April 19, 2019.

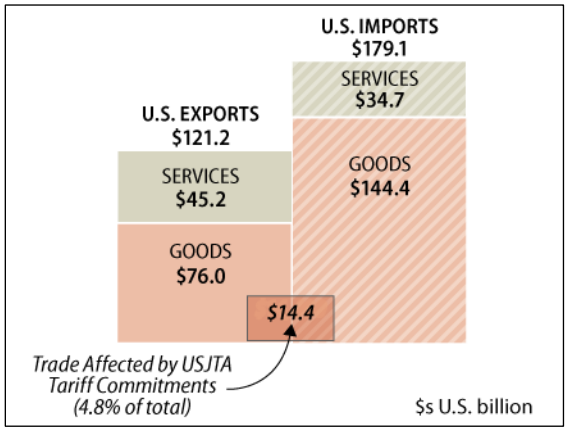
[75] C. Fred Bergsten, *Trade Balances and the NAFTA Renegotiation*, Peterson Institute for International Economics, Policy Brief, June 2017.

Canada, and Mexico agreed to a protocol of amendment to the proposed USMCA, which includes modifications to key elements of the original text in regard to dispute settlement, labor and environmental provisions, IPR, and steel and aluminum requirements in the motor vehicle ROO. Mexico was the first country to approve the amendments by a 107-1 vote in the Mexican Senate on December 12. The agreement awaits ratification by the government of Canada.

U.S.-Japan Trade Negotiations[76]

On October 7, 2019, after six months of formal negotiations, the United States and Japan signed two trade agreements covering market access for industrial and agricultural goods and rules on digital trade.[77] The market access agreement would reduce or eliminate tariffs on approximately $14.4 billion or 5% of bilateral trade ($7.2 billion each of U.S. imports and exports) (**Figure 9**). USTR has referred to the digital trade commitments as "most comprehensive and high-standard trade agreement" negotiated.[78] These agreements constitute what the Trump and Abe Administrations envision as the "first stage" of a broader trade negotiation, and the two sides intend to continue talks on a more comprehensive deal in coming months.[79] In a departure from past U.S. FTA practice, Congress did not have a formal role in approving the agreements as the Trump Administration used delegated tariff proclamation authorities under TPA to enact the tariff changes and no other changes to U.S. laws were required. The digital trade commitments, which did not require changes to U.S. law, are in the form of an Executive Agreement. Japan's Diet, however, needed to ratify the pact, and did so on December 5, 2019, paving the way for the agreements to enter into force on January 1, 2020.

Figure 9. U.S.-Japan Bilateral Trade
(2018)



Source: Figure created by CRS with data from the Bureau of Economic Analysis, USTR, USJTA Tariff Schedules.

A major motivation for the Trump Administration to pursue these initial agreements was Japan's recent conclusion of other FTAs with major trading partners. In particular, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP or TPP-11) and the Japan-EU FTA had weakened the competitive position of U.S. exporters. The U.S.-Japan deal will put most U.S. agriculture exporters on par with Japan's other trading partners in terms of tariffs, but the agreement excludes most other goods from the tariff commitments and does not cover market access for services,

[76] Written by Cathleen Cimino-Isaacs, Analyst in International Trade and Finance and Brock Williams, Specialist in International Trade and Finance. See CRS In Focus IF11120, *U.S.-Japan Trade Agreement Negotiations*, by Cathleen D. Cimino-Isaacs and Brock R. Williams.

[77] USTR, "U.S.-Japan Trade Agreement Text," https://ustr.gov/countries-regions/japan-korea-apec/japan/us-japan-trade-agreement-negotiations; USTR, "U.S.-Japan Digital Trade Agreement Text," https://ustr.gov/countries-regions/japan-korea-apec/japan/us-japan-trade-agreement-negotiations/us-japan-digital-trade-agreement-text.

[78] USTR, "FACTSHEET on U.S.-Japan Digital Trade Agreement," October 2019, https://ustr.gov/about-us/policy-offices/press-office/fact-sheets/2019/october/fact-sheet-us-japan-digital-trade-agreement.

[79] White House, "Joint Statement of the United States and Japan," September 25, 2019.

rules beyond digital trade, or nontariff barriers. Notably, the agreement does not cover trade in autos, an industry accounting for one-third of U.S. imports from Japan. Japan's decision to participate in bilateral talks came after President Trump threatened to impose additional auto tariffs on Japan, based on national security concerns.

The initial U.S.-Japan agreements raise a number of potential issues for Congress. In general, the agreements have been well received by some Members of Congress and U.S. stakeholders for the expected benefits to U.S. agriculture and crossborder digital trade. At the same time, many observers contend the deal should not be a substitute for a comprehensive free trade agreement and view second stage talks as critical for U.S. interests. While USTR included a broad range of issues in its original negotiating objectives, what is to be covered in future talks remains unclear.[80] Some Members and other stakeholders have raised questions over whether the staged approach to the talks is in the United States' best interest, how the commitments compare with the TPP, and whether the agreements, as limited in scope, adhere to U.S. obligations under the World Trade Organization. The Administration's decision to implement the agreements without the approval of Congress has also prompted debate among Members over the appropriate congressional role and whether congressional consultations have been adequate. In its second session, the 116th Congress may address congressional priorities for the second stage of negotiations with Japan through the consultation process outlined in TPA.

U.S.-European Union Trade Negotiations[81]

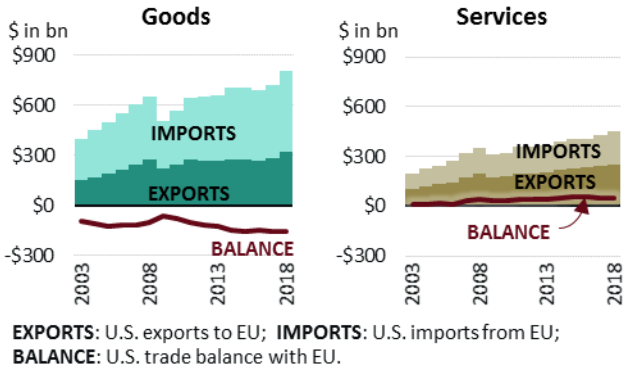
On October 16, 2018, the Trump Administration notified Congress, under Trade Promotion Authority, of its intent to enter trade agreement negotiations with the European Union, which is the United States' largest overall trade and investment partner (**Figure 10**). The TPA notification followed the July 2018 Joint Statement (agreed between President Trump and then-European Commission President Jean-Claude Juncker) that aimed to de-escalate trade tensions, including over tariff measures (see "Tariff Actions by the Trump Administration").[82] The negotiations appear to be at an impasse due to lack of U.S.-EU consensus on their scope. While U.S. negotiating objectives include agriculture, the EU mandate to negotiate on tariffs excludes the sector. In addition, U.S. negotiating objectives exclude discussion of auto tariffs. Some analysts say that the planned exclusion of autos from the negotiations preserves U.S. negotiating leverage, in light of the potential Section 232 auto tariffs. U.S.-EU differences also remain in such areas as government procurement, regulatory cooperation, cross-border data flows, and geographical indications. President Trump has threatened the EU repeatedly with tariffs, including over its exclusion of agriculture. The EU asserts that it will stop negotiating if it is subject to new Section 232 tariffs or any trade restrictions under Section 301. Meanwhile, U.S.-EU sector-specific regulatory cooperation is ongoing, such as on pharmaceuticals. In addition, in August 2019, the two sides concluded a new deal on greater market access for U.S. beef exports to the EU.

[80] USTR, "United States-Japan Trade Agreement (USJTA) Negotiations: Summary of Specific Negotiating Objectives," December 2018, https://ustr.gov/sites/default/files/2018.12.21_Summary_of_U.S.-Japan_Negotiating_Objectives.pdf.

[81] Written by Shayerah Ilias Akhtar. See CRS In Focus IF10930, *U.S.-EU Trade and Investment Ties: Magnitude and Scope*, by Shayerah Ilias Akhtar; CRS In Focus IF10931, *U.S.-EU Trade and Economic Issues*, by Shayerah Ilias Akhtar; CRS In Focus IF11209, *Proposed U.S.-EU Trade Agreement Negotiations*, by Shayerah Ilias Akhtar, Andres B. Schwarzenberg, and Renée Johnson; and CRS Report R45745, *Transatlantic Relations: U.S. Interests and Key Issues*, coordinated by Kristin Archick.

[82] White House, "President Donald J. Trump Launches a New Reciprocal Trade Relationship with the European Union," fact sheet, July 27, 2018.

Figure 10. U.S.-EU Trade



Source: Figure created by CRS with data from the U.S. Department of Commerce's Bureau of Economic Analysis.

Note: U.S.-EU trade levels would change significantly following the UK's pending exit from the EU. In 2018, the UK accounted for: 20.8% (or $66.7 billion) of U.S. goods exports to the EU ($320.2 billion); 12.5% (or $61.4 billion) of U.S. goods imports from the EU ($489.8 billion); 29.2% (or $74.1 billion) of U.S. services exports to the EU ($253.6 billion); and 30.6% (or $60.7 billion) of U.S. services imports from the EU ($198.6 billion).

The U.S.-EU negotiating approach remains unclear; the two sides could approach the negotiations as a comprehensive "single undertaking," or seek a more limited or staged approach to prioritizing certain issues or sectors. Another uncertainty is whether any changes or continuity in the new European Commission leadership's approach to EU trade policy towards the United States may provide a path forward for the negotiations. "Brexit," although it remains pending, also could affect the U.S.-EU trade negotiations. On one hand, the UK's expected withdrawal from the EU would remove a traditionally leading voice on trade liberalization from the EU, potentially making it more difficult for the United States and EU to reach consensus on certain differences in the negotiations. On the other hand, potential U.S.-UK trade negotiations could apply competitive pressure on U.S.-EU trade negotiations, but such negotiations hinge on whether the UK regains an independent national trade policy post-Brexit.[83]

Whether a U.S.-EU trade agreement, if concluded, would meet congressional expectations or TPA negotiating objectives and other requirements is unclear. Congress has a direct interest in monitoring and shaping trade discussions on these issues. Implementing legislation for any final U.S.-EU trade agreement would be subject to congressional consideration. As negotiations proceed, Congress may debate and hold hearings on such issues as the potential impact of greater transatlantic trade liberalization on the U.S. economy and particular sectors, and the extent to which any U.S.-EU commitments could help develop globally relevant rules on trade.

U.S.-United Kingdom Trade Negotiations[84]

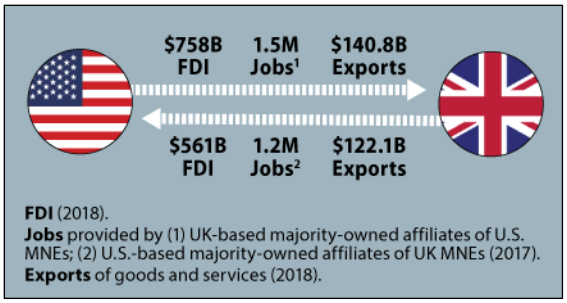
In light of "Brexit"—the expected withdrawal of the United Kingdom from the European Union—some Members of Congress and the Trump Administration support launching U.S.-UK trade agreement negotiations. The UK is a major U.S. trade and economic partner, and foreign

[83] CRS Report R45944, *Brexit: Status and Outlook*, coordinated by Derek E. Mix; and CRS Report R44817, *U.S.-UK Free Trade Agreement: Prospects and Issues for Congress*, by Shayerah Ilias Akhtar.

[84] Written by Shayerah Ilias Akhtar, Specialist in International Trade and Finance. See CRS Report R44817, *U.S.-UK Free Trade Agreement: Prospects and Issues for Congress*, by Shayerah Ilias Akhtar; and CRS Report RL33105, *The United Kingdom: Background, Brexit, and Relations with the United States*, by Derek E. Mix.

direct investment (FDI) and affiliate activity are key aspects of bilateral ties (**Figure 11**). In January 2017, President Trump and then-Prime Minister Theresa May discussed how the two sides could "lay the groundwork" for a future U.S.-UK trade agreement.[85] A bilateral working group subsequently has met regularly to explore ways to strengthen trade and investment ties, including through a potential future trade agreement.[86] On October 16, 2018, the Administration formally notified Congress, under Trade Promotion Authority, of its intent to enter into negotiations on a trade agreement with the UK to address tariff and non-tariff barriers to trade for goods, services, agriculture, investment, and government procurement, as well as trade-related rules.[87] In its second session, the 116th Congress may hold ongoing consultations with the Trump Administration over the scope of the negotiations, and may engage in oversight as the negotiations progress.

Figure 11. U.S.-UK Trade and Direct Investment (Stock)



Source: Figure created by CRS with data from U.S. Department of Commerce's Bureau of Economic Analysis.

The prospects of a free trade agreement depend on the terms of the UK's withdrawal from the EU and the future UK-EU trade relationship, including whether the UK will have an independent trade policy. The most recent Brexit extension negotiated by UK Prime Minister Boris Johnson lasts until January 31, 2020. A transition period would go through the end of 2020, during which time the UK may be able to negotiate, but not enter into, trade agreements with non-EU countries. Outside the EU customs union, the UK would regain an independent national trade policy—a major selling point for many Brexit supporters who advocate negotiating new bilateral trade deals around the world, including with the United States. The UK likely would seek to negotiate a FTA with the EU. A Brexit in which the UK remains a member of the EU single market or customs union, by contrast, would provide more barrier-free access to the EU, but would severely constrain the UK's ability to conduct an independent trade policy.

Some analysts question the sequencing of UK-EU and U.S.-UK trade agreement negotiations, arguing that the United States would find it difficult to negotiate meaningfully with the UK without knowing the shape of a post-Brexit UK-EU trade and economic relationship. Others assert that parallel negotiations are feasible as the contours of the UK-EU relationship become clearer. Some observers believe that U.S.-UK trade negotiations may progress rapidly, given the U.S.-UK "special relationship" and historical similarities in trade liberalization approaches. Others express doubts about the likelihood of a "quick win" in concluding negotiations. Many U.S. and UK businesses and other groups see a trade agreement as opportunity to enhance market access and align UK regulations more closely with those of the United States than the EU regulatory framework. Other stakeholders, particularly in UK civil society, fear that U.S.

[85] The White House, "President Trump and Prime Minister May's Opening Remarks," press release, January 27, 2017.

[86] USTR, "Fifth Meeting of the U.S.-UK Trade and Investment Working Group," press release, November 9, 2018.

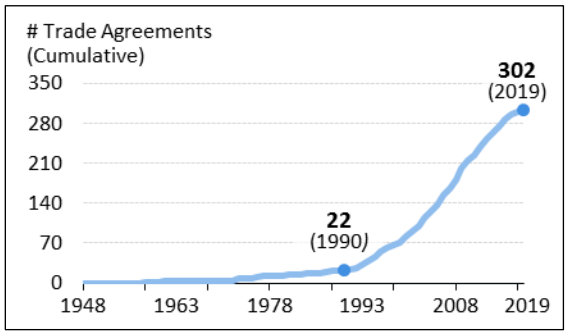
[87] The United States and the UK will not be able to start formal trade negotiations until the UK leaves the EU.

demands for greater access to the UK market could affect UK food safety regulations and pharmaceutical drug pricing. Key negotiating issues also could include financial services, investment, and e-commerce, which are prominent in U.S.-UK trade.

Proliferation of Non-U.S. Trade Agreements[88]

Since 1990, the number of free trade and regional agreements in force globally has grown from 22 to more than 300 (**Figure 12**). All 164 members of the World Trade Organization are now party to at least one free trade agreement and, as of 2014, each member had on average 11 FTA partners.[89] With 14 U.S. FTAs in effect, the vast majority of these agreements do not involve the United States. 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. The proliferation of FTAs, particularly in the absence of a major new multilateral agreement, presents certain challenges for the United States. These agreements are inherently discriminatory given their limited membership (i.e., they provide preferential treatment to some countries and not others). 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 involve the United States.

Figure 12. Trade Agreements Worldwide



Source: Figure created by CRS with data from the WTO Regional Trade Agreement Database.

Note: Includes active agreements notified to the WTO.

During the second session of the 116th Congress, this issue may grow more prominent as agreements among a number of the United States' top trading partners recently entered or may soon enter into force, potentially affecting U.S. trade flows. Major recent agreements include the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP or TPP-11), involving among others Canada, Mexico, Japan, and Vietnam, which took effect at the end of 2018, and the EU-Japan FTA which took effect in early 2019. U.S. auto exports to the EU ($9.9 billion in 2018), for example, will increasingly face a tariff disadvantage relative to Japanese auto exports as the EU-Japan FTA will eventually eliminate the EU's 10% auto tariff.[90] Meanwhile, China and 14 other Asian countries announced their intent to sign the Regional Comprehensive and Economic Partnership (RCEP) agreement in 2020, which if concluded, would encompass nearly 30% of the global population and goods trade.[91] As other countries move forward with new

[88] Written by Brock Williams, Specialist in International Trade and Finance. CRS Report R45198, *U.S. and Global Trade Agreements: Issues for Congress*, by Brock R. Williams.

[89] Jo-Ann Crawford, "Market Access Provisions on Trade in Goods in Regional Trade Agreements," in *Regional Trade Agreements and the Multilateral Trading System*, ed. Rohini Acharya (2016), p. 9.

[90] Auto exports based on Harmonized Schedule (HS) category 8703, sourced from U.S. Census Bureau.

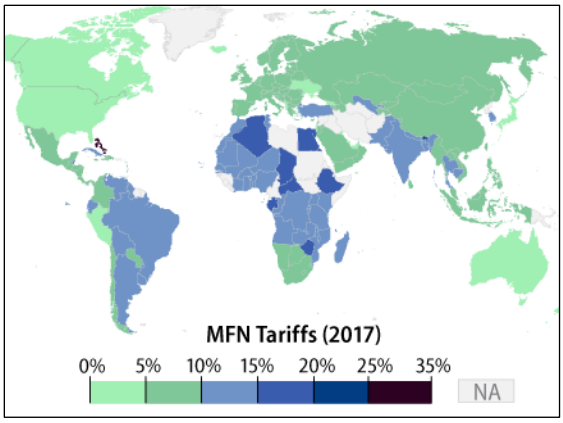
[91] RCEP negotiations originally included 16 countries, but India announced its withdrawal from negotiations in November 2019. For more information, see CRS Insight IN11200, *The Regional Comprehensive Economic Partnership: Status and Recent Developments*, by Cathleen D. Cimino-Isaacs and Michael D. Sutherland.

FTA 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.

The World Trade Organization (WTO)[92]

The 164-member World Trade Organization, established in 1995, oversees and administers global trade rules and negotiations, and resolves trade disputes. The WTO succeeded the 1947 General Agreement on Tariffs and Trade (GATT), which was established to advance a more open, rules-based trading system and to further economic stability, growth, and prosperity. The United States was a key architect of the GATT/WTO and the agreements resulting from multilateral trade negotiations. Successive rounds of trade liberalization, culminating in the Uruguay Round (1986-1994), supported the significant expansion of trade through reductions in trade barriers and the establishment of rules and principles, such as nondiscrimination and transparency. Since the establishment of the WTO, members have lowered their average most-favored nation (MFN) applied tariff on a unilateral basis from 25% in 1994 to less than 10% today (**Figure 13**).[93] The WTO's dispute settlement system has processed more than 500 disputes, with the aim of enforcing its rules, managing trade tensions, and ensuring a stable system.

Figure 13. Average Applied Most-Favored Nation (MFN) Tariffs



Source: Figure created by CRS with data from the WTO.

While the WTO is recognized as the foundation of the global trading system, including by Congress,[94] it faces growing challenges. Many observers believe it must adopt reforms to remain a relevant and effective institution, both in terms of its negotiating and dispute settlement functions. Several WTO members, including the United States, European Union, and Canada have issued various proposals to reform or modernize the WTO. Compared to past administrations, the Trump Administration has taken a more skeptical stance toward the WTO and the value of multilateral trade deals. A major question facing WTO members is the

[92] Written by Cathleen Cimino-Isaacs and Rachel Fefer, Analysts in International Trade and Finance, and Ian F. Fergusson, Specialist in International Trade and Finance. For more background and analysis see CRS Report R45417, *World Trade Organization: Overview and Future Direction*, coordinated by Cathleen D. Cimino-Isaacs.

[93] Caroline Freund, "The United States Wins from Trade Agreements," Trade & Investment Policy Watch, December 18, 2017, https://piie.com/blogs/trade-investment-policy-watch/united-states-wins-trade-agreements.

[94] As per Section 102(b)(13) of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (Title I, P.L. 114-26), which reauthorized trade promotion authority (TPA).

implications of the WTO's Appellate Body (AB), which reviews appeals of dispute cases, ceasing to function in December 2019, due to the U.S. blocking of AB jurists appointments (see below). As debates over the future of the WTO intensify, a number of issues arise that may be of interest to the 116th Congress, include how current and future WTO agreements affect the U.S. economy, the outcomes of ongoing reform efforts, and the value of U.S. membership and leadership in the WTO.

Multilateral and Plurilateral Negotiations[95]

While the landscape of global trade and investment has changed dramatically since the WTO's founding, WTO rules have not been modernized or expanded since 1995, with some exceptions. The most recent round of multilateral negotiations, the Doha Round, began in 2001, but stalled in 2015 with no clear path forward. The deadlock in negotiations is largely due to entrenched differences in priorities among leading emerging market economies, developing countries, and advanced economies, as well as rigidities in the multilateral negotiating process.

The most recent 11th WTO Ministerial Conference in 2017 did not result in major breakthroughs. Work to build on current WTO agreements continues, including through plurilateral negotiations among subsets of countries. WTO members committed to achieve a multilateral deal on fisheries subsidies by the next ministerial in 2020; the United States has supported these efforts. In other areas, such as agriculture, talks remain largely stalled. Separate groups of members are engaged in new plurilateral talks on e-commerce (which launched in March 2019 among the United States, EU, China and 73 other countries) and other areas. Some WTO members, including the United States, point to plurilateral or sectoral settings as the way forward for the institution.[96] More recently, the United States, European Union, Canada, China, and other countries have also put forward various WTO reform proposals, which in part aim to reinvigorate the WTO's negotiating function. Given ongoing concerns about the stalemate in WTO negotiations and the relevance of the institution, the stakes are high for WTO members to announce concrete outcomes when the next biennial Ministerial Conference convenes in June 2020. The Ministerial could provide added impetus for resolving differences and assessing progress in ongoing negotiations that have intensified, such as on fisheries subsidies, and new plurilateral efforts, as well as other reform efforts related to the institution and dispute settlement procedures. These and other issues may be of ongoing interest to Congress.

Dispute Settlement[97]

Another major area of ongoing reform efforts, involves the WTO dispute settlement system, often called the "crown jewel" of the organization by its adherents because it provides a means to enforce commitments and resolve disputes peacefully without recourse to unilateral action. Under its procedures, countries first seek to settle their differences through consultation. If consultations prove unsuccessful, a dispute can be launched. The dispute is presented before a dispute settlement panel, and a decision is adopted by the Dispute Settlement Body that includes all WTO members. Cases can be appealed to the Appellate Body (AB). If a party is found to violate an agreement, it has time to bring its law into conformity with the decision. If the party refuses to

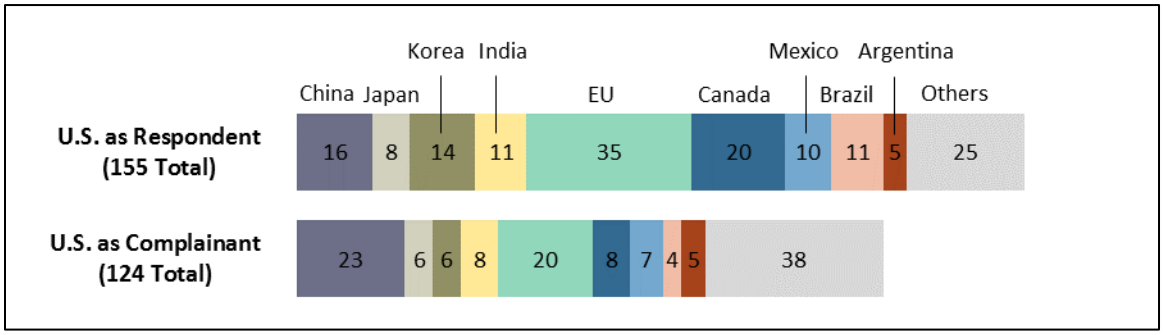
[95] Written by Cathleen Cimino-Isaacs and Rachel Fefer, Analysts in International Trade and Finance, and Ian F. Fergusson, Specialist in International Trade and Finance.

[96] The Trump Administration has not specified its position on plurilaterals pursued under the Obama Administration, such as on services and environmental goods, however.

[97] Written by Cathleen Cimino-Isaacs and Rachel Fefer, Analysts in International Trade and Finance, and Ian F. Fergusson, Specialist in International Trade and Finance.

bring itself into compliance, or if the compliance panel deems the steps taken to be insufficient, the aggrieved party can retaliate by withdrawing trade concessions (i.e., reimposing tariffs) to a level equivalent to the economic damage of the infringing measure. The United States is an active user of the dispute settlement system. Among WTO members, the United States has been a complainant in the most dispute cases since the system was established in 1995, initiating 124 disputes (**Figure 14**). The two largest targets of U.S. complaints are China and the EU, which, combined, account for more than one-third of cases.

Figure 14. WTO Disputes Involving the United States



Source: Figure created by CRS with data from the WTO.

Notes: Does not include cases with U.S. participation as a third party. Dispute count as of December 1, 2019.

Some stakeholders, including the Trump Administration and some Members of Congress, hold a more skeptical view of the WTO's dispute settlement system and have focused on reforming it. The Administration has withheld the appointment of AB panelists, imperiling the ability of the AB to hear cases past December 10, 2019, due to a lack of quorum. USTR Robert Lighthizer has called for systemic changes in the body, but, thus far, the United States has not made specific proposals. U.S. concerns are known to include whether AB panelists have interpreted agreements too expansively and opine on issues not central to the case at hand, whether proceedings are completed in a timely manner, and whether AB jurists should be able to finish cases after their terms have expired. The EU and others have proposed reforms to address U.S. concerns on a number of issues, but these were rejected by the United States. The U.S. Ambassador to the WTO claims that the proposals "instead appear to endorse changing the rules to accommodate and authorize the very approaches that have given rise to Members' concerns."[98]

Challenges and Future Direction[99]

The United States has historically served as a leader in the WTO, and many U.S. firms rely on WTO rules to open markets, eliminate discriminatory treatment, and defend and advance U.S. economic interests. As WTO members did not conclude the Doha Round, new questions have emerged about the WTO's future direction. Many observers are concerned that recent U.S. tariff actions and counterretaliation by other countries, as well as escalating trade disputes are further straining the system. Arguably, the WTO system is only as strong as the members' commitment to abide by its rules, and if those rules are not respected by one or more members, for example, through unilateral trade restrictions that may violate key WTO commitments, the edifice of the system could be weakened. Another key question is whether the WTO is equipped to handle

[98] Deputy USTR Dennis Shea, quoted in "Appellate Body reform proposals fail to address U.S. concerns," *Inside U.S. Trade*, December 14, 2018.

[99] Written by Cathleen Cimino-Isaacs and Rachel Fefer, Analysts in International Trade and Finance, and Ian F. Fergusson, Specialist in International Trade and Finance.

effectively the challenges of emerging markets like China that many experts view as not full-fledged market economies.

The USTR has indicated interest in WTO institutional reform in several major areas: (1) addressing the "unanticipated challenges of non-market economies"; (2) ensuring respect in dispute settlement rulings for members' "sovereign policy choices"; (3) compelling members to adhere to WTO notification obligations, such as for subsidies; and (4) reassessing the treatment of "developing country status" that grants some members additional flexibilities.[100] While some U.S. frustrations with the WTO are not new and are shared by other trading partners, the Administration's overall approach has spurred new questions regarding future U.S. leadership in the WTO and U.S. objectives for reforming the system.

Many observers concur that the WTO needs to adopt reforms to reassert its role as the foundation of the global trading system. In addition to ongoing WTO efforts to negotiate new trade liberalization and rules in areas like fisheries or e-commerce and digital trade, negotiations in other areas such as services, competition with state-owned enterprises, and other issues could help increase the relevance of the WTO as a negotiating body. To this end, the United States, EU and Japan have proposed new rules on subsidies and other issues raised by non-market economies, like China, where the state plays a major role in international trade. Partly in response to perceived protectionist actions by the Trump Administration, other countries have begun to assert themselves as leaders and advocates for the global trading system. Led by the EU and Canada, some WTO members are exploring other aspects of institutional reform that could promote the effectiveness of the WTO. The upcoming WTO Ministerial Conference in June 2020 presents the United States and WTO members with an opportunity to address pressing concerns over reform efforts, ongoing and new negotiations, and the future of the trading system more broadly. In the second session of the 116th Congress, Members may consider whether new U.S. negotiating objectives or oversight hearings are needed to address prospects for WTO reforms and rulemaking, as well as possible participation in future delegations to the WTO to assess reform prospects.

Intellectual Property Rights[101]

Intellectual property is a creation of the mind that may be embodied in physical and nonphysical (including digital) objects. Intellectual property rights (IPR) are legal, private, enforceable rights that governments grant to inventors and artists that generally provide time-limited monopolies to right holders to use, commercialize, and market their creations and prevent others from doing the same without their permission. Types of IPR include patents, copyrights, trademarks, trade secrets, and geographical indicators.

The intersection of IPR and international trade raises policy issues regarding the role of intellectual property in the U.S. economy as a source of innovation and comparative advantage; the impact of IPR infringement on U.S. commercial, health, safety, and security interests; and the balance between protecting IPR to stimulate innovation and advancing other public policy goals, such as promoting access to medicines and ensuring the free flow of information. As the global economy changes, protection and enforcement of IPR in the digital environment, including

[100] USTR, *2019 Trade Policy Agenda and 2018 Annual Report*, March 2019.

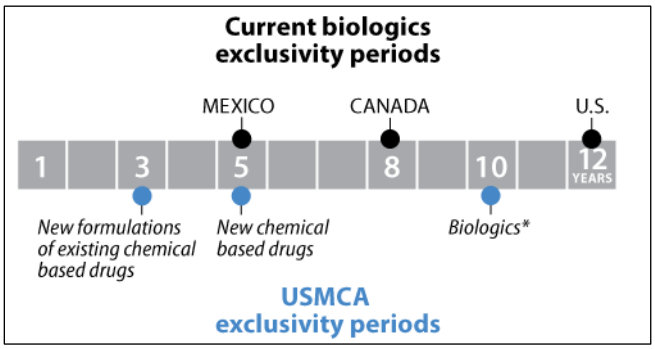
[101] Written by Shayerah Ilias Akhtar and Ian F. Fergusson, Specialists in International Trade and Finance. See CRS Report RL34292, *Intellectual Property Rights and International Trade*, by Shayerah Ilias Akhtar and Ian F. Fergusson; CRS In Focus IF10033, *Intellectual Property Rights (IPR) and International Trade*, by Shayerah Ilias Akhtar and Ian F. Fergusson; and CRS In Focus IF11314, *USMCA: Intellectual Property Rights (IPR)*, by Shayerah Ilias Akhtar and Ian F. Fergusson.

combating cyber-theft of trade secrets, is of increasing concern. At the same time, lawful limitations to IPR, such as exceptions in copyright law for media, research, and teaching (known as "fair use"), also may have benefits.

Since 1988, Congress has included IPR as a principal U.S. trade negotiating objective in Trade Promotion Authority. In the TPA passed in 2015, Congress directs the Executive Branch to seek IP commitments that exceed the minimum standards of the World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), and to reflect a standard of protection similar to that found in United States law.[102] The United States also has other trade policy tools at its disposal under U.S. law to advance IPR goals. The "Special 301" provision of the Trade Act of 1974 allows the U.S. Trade Representative (USTR) to identify and report different levels of U.S. concern about foreign countries' IPR practices and policies. The U.S. International Trade Commission (ITC) conducts investigations into allegations that U.S. imports infringe U.S. intellectual property under the "Section 337" provision of the Tariff Act of 1930, as amended. Section 337 investigations, depending on their outcome, can lead to orders prohibiting counterfeit and pirated goods from entering U.S. borders.

The IPR provisions of the proposed United States-Mexico-Canada Trade Agreement have been the subject of scrutiny by Congress. While USMCA retains the core protections and specific enforcement requirements of the North American Free Trade Agreement, it also includes updated and new provisions, notably: an extension of copyright terms to 70 years; prohibitions on circumvention of technological protection measures; criminal and civil penalties for trade secret theft, including by state-owned enterprises and cyber-theft; and copyright safe-harbor provisions for Internet Service Provider (ISP) liability. USMCA's treatment of biologic drugs, drugs made from living organisms rather than chemical formulas, has been controversial. The USMCA originally contained a 10-year regulatory exclusivity requirement for biologics in USMCA. Some Members argued that the USMCA would restrict the ability of Congress to lower that period in future policy discussions. Other Members held that exclusivity periods are critical for innovation and development of biologics. However, the revised agreement dropped this requirement. (See **Figure 15** on the current exclusivity periods.) Additional issues include concerns over the implementation of IPR obligations by USMCA parties and USMCA's potential precedent to enhance multilateral standards.

Figure 15. Regulatory Exclusivity in USMCA Countries



Source: Figure created by CRS.

Notes: *The biologics provision as contained in the USMCA, as originally negotiated, but it was dropped in the revised agreement.

[102] Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (P.L. 114-26), June 29, 2015.

In addition, Congress may continue to monitor closely negotiations with China to address the IPR issues raised by the Trump Administration's Section 301 investigation (see sections on "Tariff Actions by the Trump Administration" and "U.S.-China Economic Issues"). These include forced technology transfer from U.S. companies, cyber-intrusion and cyber-theft of U.S. trade secrets, discriminatory licensing restrictions on U.S. firms, and efforts to acquire sensitive U.S. technology.

Labor and Environment[103]

Some Members of Congress and other stakeholders have sought to improve labor and environmental conditions in other countries through the inclusion of more enforceable provisions in U.S. free trade agreements, most recently in the proposed U.S.-Mexico-Canada Agreement, which awaits ratification by the government of Canada. They have primarily been concerned that lax or lower standards in other countries may make U.S. products less competitive (potentially resulting in lost jobs and production to overseas firms), or cause damage to the environment as trade and investment expand. Others support limiting the scope and enforceability of such provisions, or believe that the competence to address these issues lies elsewhere, such as the International Labor Organization (ILO). They also view FTAs as helping to support greater economic growth in developing countries that can provide more resources for strengthening labor and environmental standards. Notably, these issues are not covered in current multilateral trade rules under the World Trade Organization.

Since 1988, Congress has included the protection of worker rights as a principal negotiating objective in Trade Promotion Authority legislation, and the United States has been in the forefront of promoting core internationally recognized worker rights in its FTAs. The treatment of labor issues was one of the major policy issues of interest for some Members of Congress as they considered the USMCA.[104] Some viewed more enforceable labor provisions as a key factor when debating whether to approve the implementing legislation. USMCA would revise and strengthen the labor provisions of the North American Free Trade Agreement to reflect the commitments of more recent U.S. FTAs. Among these core commitments are requiring that parties not only enforce their own laws, but also adopt, maintain, and not derogate from laws that reflect core worker rights and principles of the ILO.[105] The agreement also builds on past U.S. FTAs with several new provisions, and includes commitments specific to Mexico to implement certain labor reforms. Additional changes agreed to by some Members and the Administration and USMCA parties, subsequent to the signing of the agreement, aimed to address congressional concerns related to labor enforcement, among other issues. For example, the burden of proof regarding alleged violations of labor obligations has been reversed, with a failure to comply presumed to be "in a manner affecting trade or investment," unless a party demonstrates otherwise. In addition, negotiated changes include a new "rapid-response" mechanism that provides for an independent panel investigation of suspected denial of certain rights to workers at "covered facilities." A new interagency committee and reporting requirements to Congress on Mexico's implementation of

[103] Written by Cathleen Cimino-Isaacs, Analyst in International Trade and Finance, and Ian F. Fergusson and M. Angeles Villarreal, Specialists in International Trade and Finance. See CRS In Focus IF10046, *Worker Rights Provisions in Free Trade Agreements (FTAs)*, by Cathleen D. Cimino-Isaacs and M. Angeles Villarreal; CRS In Focus IF10972, *Labor Enforcement Issues in U.S. FTAs*, by Cathleen D. Cimino-Isaacs; and See CRS In Focus IF10166, *Environmental Provisions in Free Trade Agreements (FTAs)*, by Richard K. Lattanzio and Ian F. Fergusson.

[104] For more detail, see CRS In Focus IF11308, *USMCA: Labor Provisions*, by M. Angeles Villarreal and Cathleen D. Cimino-Isaacs.

[105] These include: freedom of association and effective recognition of the right to collective bargaining, elimination of compulsory or forced labor, effective abolition of child labor, and elimination of discrimination in respect of employment and occupation.

reforms also aim to enhance monitoring. Congress may examine the consistency of USMCA labor provisions with TPA, to what extent the enhanced agreement ensures more effective implementation of the labor chapter, and whether it serves as a template for future U.S. FTAs.

The United States has negotiated environmental provisions in FTAs, which, like the labor chapter, have evolved over time. NAFTA was the first agreement to include environmental provisions, committing the parties to enforce their own laws and cooperatively resolve disputes in a special venue, among other goals. The Trade Act of 2002 was the first grant of TPA containing environmental negotiating objectives, calling for countries not to fail to enforce their own environmental laws in a manner affecting trade and investment. Environmental obligations were expanded in later U.S. FTAs and were largely reflected in the 2015 grant of TPA, which obligated parties to adopt and maintain laws consistent with multilateral environmental agreements (MEAs) to which they are a party. Parties also were obligated not to derogate from their laws in order to attract trade and investment. These provisions were subject to the same dispute settlement provisions as other parts of the agreement, meaning that the withdrawal of trade concessions could be the ultimate penalty for noncompliance. With the changes agreed to by the Congress and the Administration, USMCA's environment chapter largely reflects the 2015 TPA, but establishes a rebuttable presumption that environmental violations affect trade and investment, similar to the labor chapter. It also makes commitments on fishing subsidies, and more aspirational goals on marine litter, trade and biodiversity, air quality, transition to a low emission economy, and invasive species among others. The negotiated changes include the creation of an interagency task force to monitor implementation of environmental commitments, as well as authorization for additional funding for anti-pollution projects on the U.S.-Mexican border and a new authorization for the North American Development Bank. However, it does not contain any language on climate change.

Select U.S. Import Policies[106]

The United States often uses its import policy to accomplish broader foreign and domestic policy goals. For example, to foster economic growth in less-developed countries, the United States provides such countries with preferential access to the U.S. market. In addition, to address unfair trade practices and provide relief to "materially injured" domestic producers and workers, the United States makes use of a suite of trade remedies. To provide a competitive edge to U.S. business by temporarily suspending or reducing tariffs on imports used by domestic manufacturers to make downstream goods, the Congress passes miscellaneous tariff bills. As the current Administration's actions shift the trade landscape, Congress may conduct oversight of these policies and their implementation.

Trade Preferences[107]

Since 1974, Congress has created six trade preference programs to assist developing countries. The following trade preference programs are still in effect:

[106] Written by Vivian C. Jones and Brock Williams, Specialists in International Trade and Finance, and Christopher A. Casey, Analyst in International Trade and Finance. See CRS In Focus IF11030, *U.S. Tariff Policy: Overview*, by Christopher A. Casey.

[107] Written by Vivian C. Jones and Brock Williams, Specialists in International Trade and Finance. See CRS Report RL33663, *Generalized System of Preferences (GSP): Overview and Issues for Congress*, by Vivian C. Jones; CRS Report R41429, *Trade Preferences: Economic Issues and Policy Options*, coordinated by Vivian C. Jones; and CRS In Focus IF10149, *African Growth and Opportunity Act (AGOA)*, by Brock R. Williams.

- **Generalized System of Preferences** (GSP—expires December 31, 2020), which applies to all designated developing countries;
- **Caribbean Basin Economic Recovery Act** (CBERA—permanent), which includes under its umbrella, the Haitian Hemispheric Opportunity through Partnership Encouragement Acts (HOPE I and II—expires September 30, 2025) and the Haitian Economic Lift Program (HELP—expires September 30, 2025);
- **Caribbean Basin Trade Partnership Act** (CBTPA—expires September 30, 2020);
- **African Growth and Opportunity Act** (AGOA—expires September 30, 2025); and
- **Nepal Preference Program** (expires December 31, 2025).

These programs give preferential, temporary, nonreciprocal, duty-free access to the U.S. market for select products from developing countries designated by the Administration. The aim of the policy is to encourage eligible countries to develop viable domestic industries. The 115th Congress extended GSP, one of the largest and oldest of the preferential trade programs. However, since the CBTPA and GSP expire in September and December of 2020, respectively, the 116th Congress could consider further extending these programs. With regard to the GSP, the Administration launched a new "proactive" process for evaluating beneficiary countries' compliance with GSP eligibility criteria in late 2017 and has continued this process in its annual GSP reviews. In May 2019, the Administration terminated GSP eligibility for Turkey and India, two of the top five beneficiaries under the program, and announced reviews of eligibility for a number of countries in 2020, including two other major beneficiaries: South Africa and Thailand. Congress may seek to consult with the Administration to ensure adherence to congressional objectives in consideration of eligibility criteria or examine possible reforms to the programs.

In line with its increased focus on reciprocity in U.S. trade relations, the Trump Administration has also expressed increased interest in potentially negotiating reciprocal trade agreements with current preference program beneficiaries. U.S. Trade Representative Robert Lighthizer, for example, emphasized the possibility of new reciprocal free trade agreement negotiations with African countries in his remarks at the annual United States-Sub-Saharan Africa Trade and Economic Cooperation Forum ("AGOA Forum") in 2018.[108] Congress has directed the Administration to seek such agreements in the past. The 116th Congress may consider influencing the scope and prioritization of any new negotiations through consultations with the Administration, and Congress would ultimately face passage of implementing legislation to bring new FTAs into force.

Trade Remedies[109]

Trade remedies are quasi-judicial administrative actions taken to mitigate injury (or the threat thereof) to domestic industries and workers caused by certain trade practices. Antidumping (AD) and countervailing duty (CVD) remedies provide relief from injurious imports that either are sold at less than fair value or subsidized by a foreign government. Safeguard (Section 201) actions provide temporary relief from import surges of fairly traded goods. AD/CVD laws are administered primarily through the U.S. Department of Commerce's International Trade

[108] USTR, "Statement of USTR at the Opening Plenary of the 2018 AGOA Forum," July 7, 2018, available at https://ustr.gov/about-us/policy-offices/press-office/press-releases/2018/july/statement-ustr-robert-lighthizer-0.

[109] See CRS Report RL32371, *Trade Remedies: A Primer*, by Vivian C. Jones and CRS In Focus IF10018, *Trade Remedies: Antidumping and Countervailing Duties*, by Vivian C. Jones.

Administration (ITA), which addresses the existence and amount of dumping or subsidies, and the U.S. International Trade Commission (ITC), which determines injury to the U.S. industries petitioning for redress. In AD and CVD cases, the remedy is an AD or CVD "order" that places an additional duty assessed to offset the calculated amount of dumping or subsidy. World Trade Organization rules permit the use of all three of these remedies. Recently, the Trump Administration decided to self-initiate anti-dumping investigations, which had not occurred since 1985.

Since a series of legislative changes expanded access to AD/CVD remedies in the 1970s, they have increased in use. As of September 23, 2019, there are 507 AD/CVD orders affecting imports from 51 countries.[110] The majority of these orders (52.4%) apply to iron and steel imports.[111] Critics of AD/CVD remedies argue that they are protectionist, opaque, overused by certain industries, based on poor economics, and give too much discretion to the ITA.[112] Advocates argue that AD/CVD remedies are based on sound economics, provide a safety valve necessary for the continuation of trade liberalization, and ensure a fairer trading system.[113] As part of its oversight function, Congress might consider how the current Administration's priorities might affect the U.S. trade remedy regime, including, as noted above, self-initiation of investigations as opposed to industry-led petitions. Additionally, while the quasi-judicial nature of AD/CVD investigations may indicate that Congress intended AD/CVD actions to be conducted apart from political influence, the involvement of constituents can lead to Members being asked to write letters or testify at hearings on either side of a trade remedy action to support a constituent's cause.

Miscellaneous Tariff Bills (MTBs)[114]

Many Members of Congress introduce bills to support importer requests for the temporary suspension of tariffs on chemicals, raw materials, or other non-domestically made components used as inputs in the manufacturing process. A rationale for these requests is that such tariff suspensions help domestic producers of manufactured goods reduce costs, making their products more competitive. Due to the large number of bills typically introduced, they are often packaged together in a broader miscellaneous tariff bill (MTB). The American Manufacturing Competitiveness Act of 2016 (P.L. 114-159) revised the process by directing the U.S. International Trade Commission (ITC) to receive importer petitions for reduced or suspended duties and report its findings directly to the U.S. House of Representatives Committee on Ways and Means and the U.S. Senate Committee on Finance. P.L. 114-159 allowed for two MTB cycles–one in 2016 and one in 2019. Using the new procedure, Congress passed P.L. 115-239, the Miscellaneous Tariff Bill Act of 2018. The ITC initiated the second cycle on October 11, 2019. The second session of the 116th Congress may consider a new MTB in mid-2020. Congress could also considering amending the law to provide further MTB authority.

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[110] U.S. International Trade Commission, DataWeb.

[111] Ibid.

[112] See J. Michael Finger, ed., *Antidumping: How It Works and Who Gets Hurt*, (Ann Arbor: University of Michigan Press, 1993); Paul R. Krugman and Maurice Obstfeld, *International Economics: Theory and Policy* 7th ed. (Boston: Addison-Wesley, 2006), pp. 131-136; Timothy Meyer, "Free Trade, Fair Trade, and Selective Enforcement," *Columbia Law Review* vol. 118, no. 2 (March 2018), pp 562-563.

[113] See Greg Mastel, *Antidumping Laws and the U.S. Economy* (London: M.E. Sharpe, 1998); Statement by U.S. Ambassador Michael Punke at the Negotiating Group on Rules in Geneva, Switzerland, July 13, 2010, USTR Press Release, available at https://ustr.gov/about-us/policy-offices/press-office/press-releases/2010/july/statement-us-ambassador-michael-punke-negotiating-gro.

[114] See CRS In Focus IF10478, *Miscellaneous Tariff Bills (MTBs)*, by Vivian C. Jones.

International Investment[115]

In 2018, the United States remained the world's largest recipient of foreign direct investment (FDI) ($252 billion). However, the United States lost its position in 2018 as the world's largest source of FDI; it experienced negative FDI outflows (-$64 billion) due to the large-scale repatriations of funds by U.S. multinational enterprises.[116] The United States' historical dual position as a leading source and destination for FDI means that the United States has important economic, political, and domestic interests at stake in the development of international policies regarding direct investment. Investment is a major driver of trade, and U.S. investment policy is a critical part of the U.S. trade policy debate—intersecting with questions about economic impact, trade restrictions, national security, and regulatory sovereignty.

Traditionally, the United States has supported a rules-based open and liberalized investment environment, including by negotiating rules, disciplines, and market access commitments in trade agreements and administering investment promotion programs, while also reviewing certain proposed inbound foreign investment transactions for U.S. national security implications. The U.S. investment policy landscape may be evolving in the wake of the Trump Administration's approach to investment issues in the proposed United States-Mexico-Canada Agreement and approaches taking in ongoing trade agreement negotiations with other trading partners, as well as legislation passed in the 115th Congress to update and expand the scope of the Committee on Foreign Investment in the United States (CFIUS).

Committee on Foreign Investment in the United States (CFIUS)[117]

Competition over technological leadership and changing dynamics in the global economy with the rise of emerging economies, such as China and state-led firms, has led to renewed debates in Congress over the impact of foreign investment on U.S. economic and national security interests. In general, U.S. policies treat foreign investors no less favorably than U.S. firms, with some exceptions for national security. In 2007, Congress asserted its role in formulating the scope and direction of U.S. foreign investment policy when the *Foreign Investment and National Security Act of 2007* (P.L. 110-49) was enacted, formally establishing the Committee on Foreign Investment in the United States, which serves the President in overseeing the national security implications of foreign direct investment. This law broadened Congress's oversight role, and explicitly includes homeland security and critical infrastructure as issues that the President must consider when evaluating the national security implications. The law also grants the President the authority to suspend or block foreign investments that are judged to "threaten to impair" U.S. national security and requires review of investments by foreign investors owned or controlled by foreign governments. The law has been used five times to block a foreign acquisition of a U.S. firm, although a number of investments have been withdrawn before reviews were completed.

In 2017, growing concerns over the impact of Chinese investment in U.S. high-technology firms resulted in bipartisan legislation to "strengthen and modernize" CFIUS. On August 13, 2018, President Trump signed into law the *Foreign Investment Risk Review Modernization Act (FIRRMA) of 2018* (Title XVII, P.L. 115-232), which amends the current process for CFIUS to

[115] Written by Shayerah Ilias Akhtar and James Jackson, Specialists in International Trade and Finance.

[116] Comparative data from the United Nations Conference on Trade and Development (UNCTAD).

[117] Written by James K. Jackson, Specialist in International Trade and Finance and Cathleen Cimino-Isaacs, Analyst in International Trade and Finance. See CRS In Focus IF10177, *The Committee on Foreign Investment in the United States*, by James K. Jackson and CRS In Focus IF10952, *CFIUS Reform: Foreign Investment National Security Reviews*, by James K. Jackson and Cathleen D. Cimino-Isaacs.

review the effect of investment transactions on U.S. national security.[118] The legislation represents the most comprehensive reform of the CFIUS review process since it was created, and notably expands the scope of transactions that fall under CFIUS' jurisdiction. Some experts have suggested that the broad changes under FIRRMA could potentially lead CFIUS to take a more assertive role that emphasizes both U.S. economic and national security interests, particularly relative to the development of emerging or leading-edge technology. In addition, while specific countries are not singled out in the legislation, FIRRMA allows CFIUS to potentially discriminate among foreign investors by country of origin during the review of certain investment transactions.

On September 17, 2019, the U.S. Department of the Treasury proposed regulations to implement key parts of FIRRMA, which are to be finalized by February 2020. Treasury also launched a pilot program in October 2018 related to transactions involving critical technology. The proposed regulations expand and clarify new authority for CFIUS to review certain real estate and other *noncontrolling* foreign investments limited to U.S. businesses involved in critical technology, critical infrastructure, or sensitive personal data.[119] One major aim of the proposed regulations is to "provide clarity to the business and investment communities with respect to the types of U.S. businesses that are covered under FIRRMA's other investment authority."[120] The regulations would limit the application of the expanded review process to certain categories of foreign persons, introducing new terms such as "excepted investor" and "excepted foreign state" for noncontrolling transactions.

The debate over FIRRMA and its forthcoming implementation raises a number of questions for the 116th Congress. These include the potential impact on U.S businesses that rely on foreign investment; the extent to which the amended review process will be successful in protecting U.S. national security interests; and whether it balances the objectives of maintaining the traditionally open U.S. investment climate, while preserving the competitiveness of U.S. firms.

International Investment Agreements (IIAs)[121]

The United States negotiates international investment agreements (IIAs), based on a "model" Bilateral Investment Treaty (BIT), to reduce restrictions on foreign investment, ensure nondiscriminatory treatment of investors and investment, and advance other U.S. interests. U.S. IIAs typically take two forms: (1) BITs, which require a two-thirds vote of approval in the Senate; or (2) BIT-like chapters in free trade agreements, which require simple majority approval of implementing legislation by both houses of Congress. While U.S. IIAs are a small fraction of the more than 3,000 IIA agreements worldwide,[122] they are often viewed as more comprehensive and of a higher standard than those of other countries (**Figure 16**).

[118] CRS In Focus IF10952, *CFIUS Reform: Foreign Investment National Security Reviews*, by James K. Jackson and Cathleen D. Cimino-Isaacs.

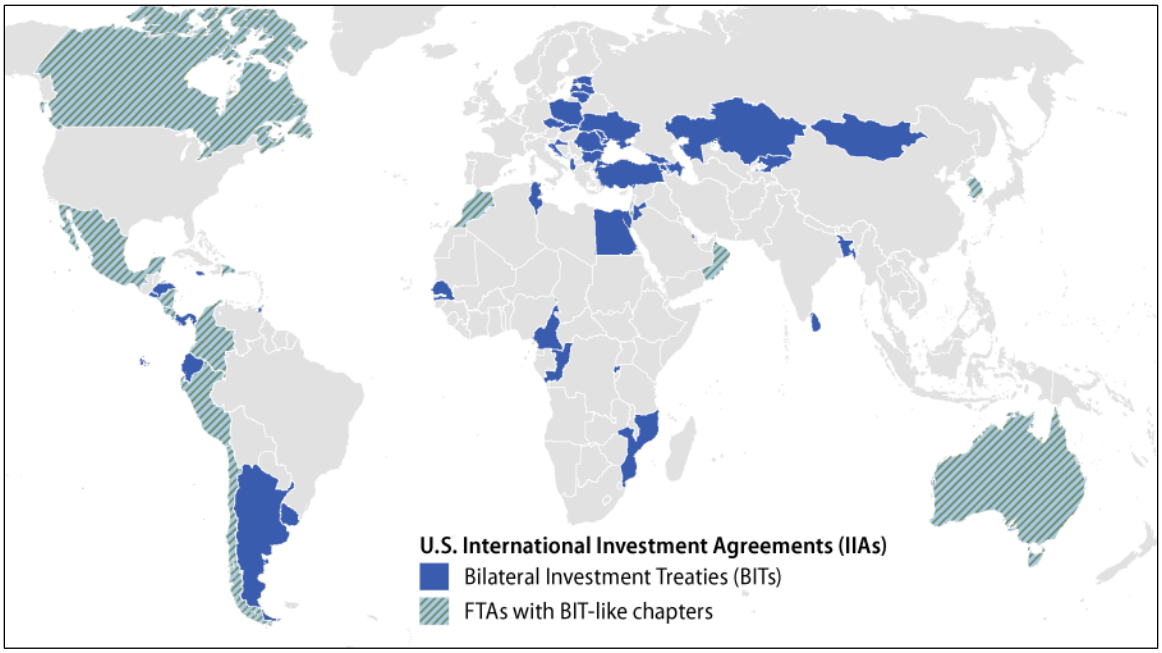
[119] For more detail, see CRS In Focus IF11334, *CFIUS: New Foreign Investment Review Regulations*, by Cathleen D. Cimino-Isaacs and James K. Jackson.

[120] Department of the Treasury, "Provisions Pertaining to Certain Investments in the United States by Foreign Persons," 84 *Federal Register* 50175, September 24, 2019.

[121] Written by Shayerah Ilias Akhtar, Specialist in International Trade and Finance and Christopher Casey, Analyst in International Trade and Finance. See CRS Report R43052, *U.S. International Investment Agreements: Issues for Congress*, by Shayerah Ilias Akhtar and Martin A. Weiss; CRS Report R44015, *International Investment Agreements (IIAs): Frequently Asked Questions*, coordinated by Martin A. Weiss; and CRS In Focus IF10052, *U.S. International Investment Agreements (IIAs)*, by Martin A. Weiss and Shayerah Ilias Akhtar.

[122] CRS calculation based on data from United Nations Conference on Trade and Development (UNCTAD), International Investment Agreements Navigator database.

Figure 16. U.S. International Investment Agreements



Source: Figure created by CRS based on information from the Office of the U.S. Trade Representative and the U.S. Department of State.

A current focal point for Congress on investment issues may be the implementation of the proposed United States-Mexico-Canada Agreement, which awaits ratification by the government of Canada. The investment provisions in USMCA differ significantly from those under the North American Free Trade Agreement and previous FTAs and BITs entered into by the United States. Differences relate to investor-state dispute settlement (ISDS), the binding arbitration of private claims against host-country governments for violation of investment obligations under IIAs (e.g., obligations to provide nondiscriminatory treatment and a minimum standard of treatment to foreign investors). A longstanding cornerstone of U.S. trade agreements, ISDS has been favored widely in the U.S. business community as an important reciprocal form of protection for foreign investment that is modeled on U.S. law. At the same time, it is contested by some civil society groups based on concerns over its scope and fairness, among other issues. While ISDS is in the current NAFTA, the proposed USMCA would eliminate ISDS with respect to Canada and place specific limits with respect to Mexico. ISDS is available under the proposed USMCA for alleged violations by Mexico of national treatment, most-favored nation treatment, or direct expropriation. However, the proposed USMCA would limit other claims against Mexico, such as those of indirect expropriation, government contracts involving the oil, power generation, telecommunications, transportation, and infrastructure sectors. Claimants would also be required to first exhaust local remedies. Treatment of ISDS and other provisions common to IIAs could be a focus of proposed U.S. trade agreement negotiations with Japan, the European Union, and the United Kingdom, especially considering the EU's push to include an Investment Court System in place of ISDS in its recent trade agreements and negotiations with other countries

U.S. Trade Finance and Promotion Agencies[123]

The federal government seeks to expand U.S. exports and investment through finance and insurance programs and other forms of assistance for U.S. businesses in order to support U.S. jobs and economic growth. Trade finance and promotion activities also may support U.S. foreign policy goals. Many of these activities are driven by demand from U.S. commercial interests and are fee-based (e.g., charges of interest, premiums, and other fees for financing services).

A number of U.S. government agencies have distinct roles in carrying out these functions. Two agencies that may be focal points for legislative activity and oversight in the 116th Congress are the Export-Import Bank (Ex-Im Bank) and U.S. International Development Finance Corporation (DFC), discussed below. Collectively, trade promotion agencies raise issues for Congress in terms of their economic justifications, use of federal resources, and intersection with U.S. policy goals and priorities. They also raise questions about the federal trade organizational structure.

Export-Import Bank of the United States (Ex-Im Bank)[124]

Ex-Im Bank, the official U.S. export credit agency (ECA), provides direct loans, loan guarantees, and export credit insurance to help finance U.S. exports of goods and services and to support U.S. employment. Ex-Im Bank operates under a renewable general statutory charter, extended for a record seven years through December 31, 2026 by the Further Consolidated Appropriations Act, 2020 (P.L. 116-94).[125] This extension of authority provides brings new stability to an agency that has faced active policy debate and constraints on its operating authority in recent years. Proponents of Ex-Im Bank contend that it supports U.S. exports and jobs, contributes financially to the U.S. Treasury, and manages its risks. Critics argue that Ex-Im Bank crowds out private sector activity, provides "corporate welfare," and poses a risk to taxpayers. Despite vocal opposition by some Members, support for Ex-Im Bank overall is largely bipartisan in Congress. Nevertheless, policy disagreements on specific terms and conditions of Ex-Im Bank's reauthorization made prospects for a long-term extension unclear for a time. Ultimately, bipartisan compromise was reached on certain structural and programmatic changes to Ex-Im Bank, as part of the renewal of its general statutory authority.[126]

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[123] Written by Shayerah Ilias Akhtar, Specialist in International Trade and Finance. See CRS In Focus IF11016, *U.S. Trade Policy Functions: Who Does What?*, by Shayerah Ilias Akhtar; CRS Report R45335, *Trade-Related Agencies: FY2019 Appropriations, Commerce, Justice, Science, and Related Agencies (CJS)*, by Keigh E. Hammond and M. Angeles Villarreal; CRS Report R43581, *Export-Import Bank: Overview and Reauthorization Issues*, by Shayerah Ilias Akhtar; CRS In Focus IF10017, *Export-Import Bank of the United States (Ex-Im Bank)*, by Shayerah Ilias Akhtar;CRS Report R45461, *BUILD Act: Frequently Asked Questions About the New U.S. International Development Finance Corporation*, by Shayerah Ilias Akhtar and Marian L. Lawson; CRS Report 98-567, *The Overseas Private Investment Corporation: Background and Legislative Issues*, by Shayerah Ilias Akhtar; CRS In Focus IF10659, *Overseas Private Investment Corporation (OPIC)*, by Shayerah Ilias Akhtar; CRS In Focus IF10673, *U.S. Trade and Development Agency (TDA)*, by Shayerah Ilias Akhtar; CRS In Focus IF10674, *SelectUSA Program: U.S. Inbound Investment Promotion*, by Shayerah Ilias Akhtar; and CRS Report R42555, *Trade Reorganization: Overview and Issues for Congress*, by Shayerah Ilias Akhtar.

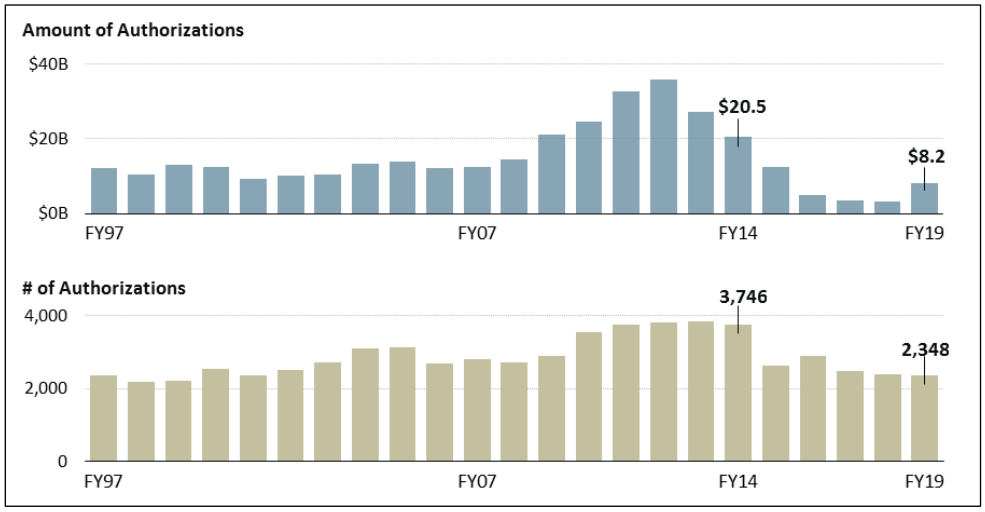
[124] Written by Shayerah Ilias Akhtar, Specialist in International Trade and Finance. See CRS Report R43581, *Export-Import Bank: Overview and Reauthorization Issues*, by Shayerah Ilias Akhtar and CRS In Focus IF10017, *Export-Import Bank of the United States (Ex-Im Bank)*, by Shayerah Ilias Akhtar.

[125] In the absence of a renewal of its general statutory authority, Ex-Im Bank is not able to approve new transactions, but it is able to continue to manage its existing obligations, and to perform certain other functions "for purposes of an orderly liquidation." 12 U.S.C. §635f.

[126] On November 15, 2019, the House, in a 235-184, largely partisan vote, approved H.R. 4863, which would have reauthorized the Bank for ten years and made other changes to it. The bill's prospects in the Senate were doubtful and

The extension of authority includes the establishment of alternative procedures for U.S. government officials to fill vacancies in Ex-Im Bank's five-member Board of Directors temporarily in the event of a lapse of a quorum (at least three members). This modification follows the prior inability of the agency to operate at full financing capacity in the absence of a quorum. For nearly four years, starting on July 20, 2015, until Senate confirmations of nominations to the Board on May 8, 2019, Ex-Im Bank's board lacked a quorum, as terms expired and no nominees were confirmed. Among other things, Ex-Im Bank, as a result, was not able to approve transactions above a certain threshold (then $10 million, now $25 million after action taken by the restored Board). Ex-Im Bank's authorization amounts declined during this time, while the number of deals authorized stayed relatively more stable as the Bank's focus on small business exporters increased (**Figure 17**). The Senate has not yet acted on presidential nominations submitted for two other Board positions.

Figure 17. Ex-Im Bank Authorizations of Finance and Insurance Transactions



Source: Figure created by CRS with data from the Export-Import Bank of the United States.

The extension of authority also includes other changes to Ex-Im Bank's programs and operations—reflecting other areas of active debate. For instance, a major focal point in the recent reauthorization debate was efforts by some Members to limit Ex-Im Bank's support for exports to China, particularly Chinese state-owned enterprises, based on competitiveness and other concerns. Other Members raised concerns that such limits could constrain Ex-Im Bank's support for exports in a major commercial market. Under the new extension, Ex-Im Bank must establish a new program to counter export subsidies by China or other designated countries for exports in specified high-technology sectors. Ex-Im Bank also is subject to new China-related reporting requirement. In addition, the extension includes anti-fraud requirements, as well as more emphasis related to supporting small business exports and renewable energy exports. The 116th Congress is to conduct oversight of Ex-Im Bank's implementation of the reauthorization requirements in the FY2020 appropriations law.

Looking forward, Congress also may consider the effectiveness of current international ECA rules and ongoing international negotiations to enhance existing ECA rules or develop new arrangements, as well as other opportunities to address concerns about "unfair" competition from

the Administration also opposed the bill. Key ongoing issues ahead of the vote included Ex-Im Bank's support for exports to China and the agency's environmental and energy policies. The reauthorization enacted as part of the FY2020 appropriations law retains certain aspects and modifies other aspects of the House-passed H.R. 4863.

foreign ECAs. Ex-Im Bank abides by the Organization for Economic Cooperation and Development (OECD) Arrangement on Officially Supported Export Credits (the Arrangement)—guidelines for ECA activity that were first developed in the 1970s and are intended to foster a level playing field for competition among exporters. The salience of the current rules regime and ongoing negotiations are of increasing U.S. concern as foreign ECAs, of both OECD and non-OECD members, are providing financing outside of the scope of the Arrangement. ECA financing by China, a non-OECD member, is of particular concern.

U.S. International Development Finance Corporation (DFC)[127]

The DFC—authorized by the Better Utilization of Investments Leading to Development Act of 2018 (BUILD Act, P.L. 115-254) and enacted on October 5, 2018—represents a major overhaul of U.S. support for private sector investment in lower-income countries. The BUILD Act is part of the U.S. policy response to China's growing economic influence in developing countries, and it aims to provide, as an alternative to China's state-directed investment financing model, a model that is market-driven and emphasizes transparency, environmental and social safeguards, and debt sustainability of host countries.

New DFC vs. OPIC

While the DFC carries over OPIC's authorities and many of its policy requirements, some key distinctions include that the new DFC statutorily has:

- **more "tools"** (e.g., authority to take minority equity positions in investments, provide technical assistance, and conduct feasibility studies, in addition to OPIC tools of providing investment financing and political risk insurance);
- **more capacity** ($60 billion exposure cap vs. OPIC's $29 billion cap);
- **a longer authorization** (seven years vs. OPIC's year-to-year authorization); and
- **more specific oversight** (e.g., its own Inspector General (IG) vs. OPIC, which is under the USAID IG).

The DFC is charged with promoting private investment in developing countries in support of both U.S. global development goals and U.S. economic interests. The DFC consolidates and expands many of the U.S. government's existing development finance functions (see **text box**). As the successor to the Overseas Private Investment Corporation (OPIC), the DFC assumes all of OPIC's functions, as well as the development credit authority (DCA) function of the U.S. Agency for International Development (USAID). On January 2, 2020, the DFC announced that it had launched operations. The DFC's launch, previously expected by October 1, 2019, was delayed due to lack of funding—an issue resolved with the enactment of the Further Consolidated Appropriations Act, 2020 (P.L. 116-94).

The 116th Congress has responsibility for oversight of the new DFC and its fulfillment of the requirements in the BUILD Act. Congress may examine whether the DFC's current statutory framework and provision of resources allow the DFC to balance both its mandates to support U.S. businesses in competing for overseas investment opportunities and to support development, as well as whether they enable the DFC to respond effectively to strategic concerns, especially vis-à-vis China. Congress also may consider whether to press the Administration to pursue international rules on development finance comparable to export credit financing. More broadly, the DFC's

[127] Written by Shayerah Ilias Akhtar, Specialist in International Trade and Finance. See CRS Report R45461, *BUILD Act: Frequently Asked Questions About the New U.S. International Development Finance Corporation*, by Shayerah Ilias Akhtar and Marian L. Lawson; CRS Report 98-567, *The Overseas Private Investment Corporation: Background and Legislative Issues*, by Shayerah Ilias Akhtar; and CRS In Focus IF10659, *Overseas Private Investment Corporation (OPIC)*, by Shayerah Ilias Akhtar.

establishment also could renew policy debate over the benefits and costs of U.S. government activity to support private investment.

Export Controls and Sanctions[128]

National security considerations shape U.S. trade and investment policies. In addition to the national security implications of foreign investment discussed above in the context of the Committee on Foreign Investment in the United States, key programs include controls on exports for foreign policy and other objectives and the use of economic sanctions to achieve specific foreign policy goals. The 116th Congress may continue to consider the relationship between U.S. foreign policy and national security objectives and U.S. commercial and economic interests.

Dual-Use Products and Export Controls[129]

Congress has authorized the President to control the export of various items for national security, foreign policy, and economic reasons. Separate programs and statutes for controlling different types of exports exist for nuclear materials and technology, defense articles and services, and dual-use goods and technology. Under each program, licenses of various types are required before export. The U.S. Departments of Commerce, State, Energy, and Defense administer these programs.

In 2018, in conjunction with reform of the Committee on Foreign Investment in the United States, Congress passed the Export Control Reform Act (ECRA) (Subtitle B, P.L. 115-232), which authorized the dual-use export control system administered by the Department of Commerce and largely codifies current practices. The Obama Administration undertook a comprehensive reform of the U.S. export control system, which adopted a unified control list, created a single integrated information technology system, and established a single enforcement coordination agency. Responsibility for licensing exports is divided among the Departments of Commerce, State, and the Treasury, based on the nature of the product (munitions or dual-use goods) and basis for control. The Department of Defense has an important advisory role in examining license applications. Enforcement is shared among these agencies, as well as the U.S. Departments of Justice and Homeland Security.

Export controls lie between the nexus of trade and security. Congress is increasingly concerned with illicit attempts to obtain U.S. technology by foreign powers (particularly China), in both the dual-use and high technology spheres (such as artificial intelligence, robotics, etc.). In addition to enhanced investment scrutiny through CFIUS, the new export control act provides for the creation of an interagency process to identify foundational and emerging technologies, assess their national security implications, and recommend levels of control. In November 2018, the Department of Commerce began a regulatory proceeding to identify emerging, yet uncontrolled, technologies critical to U.S. national security. Congress may be interested in the implementation of this ongoing process and its role in maintaining U.S. superiority in critical technologies. Congress may also consider the economic and strategic implications of placing the Chinese telecommunications firms Huawei and ZTE, and potentially other Chinese firms, on the "entity list" maintained by Commerce, which requires exporters to obtain a license for the sale of items to these companies.

[128] Written by Ian F. Fergusson, Specialist in International Trade and Finance.

[129] Written by Ian F. Fergusson, Specialist in International Trade and Finance. See CRS Report R41916, *The U.S. Export Control System and the Export Control Reform Initiative*, by Ian F. Fergusson and Paul K. Kerr.

Economic Sanctions[130]

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

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

The 116th Congress, in its first session, vigorously promoted sanctions in furtherance of foreign policy or national security objectives. Members introduced more than 200 bills and joint resolutions that, if enacted, would require the President to take steps to restrict economic engagement or travel. Targeted behavior ranges from government response to protests in Hong Kong to election interference, corruption, currency insecurity, hostage taking, human rights abuses, illicit trade in goods, terrorism, and transnational crime. Pending legislation seeks to address environmental crime in Brazil; human rights conditions in Burma, Brunei, China, Libya, Saudi Arabia, Syria, Vietnam, Yemen, and the Russian-occupied areas of Georgia and Ukraine; democracy and rule of law in Cambodia, Hong Kong, Iraq, Venezuela, and the Northern Triangle region of Central America (Guatemala, El Salvador, and Honduras); and normalization of relations with Cuba and Cyprus. Members also have comprehensive sanctions proposals to

[130] Written by Dianne E. Rennack, Specialist in Foreign Policy Legislation. See CRS Report R43835, *State Sponsors of Acts of International Terrorism—Legislative Parameters: In Brief*, by Dianne E. Rennack; CRS Report R45415, *U.S. Sanctions on Russia*, coordinated by Cory Welt; CRS In Focus IF11138, *Nord Stream 2: A Fait Accompli?*, by Paul Belkin et al.; CRS Report RS20871, *Iran Sanctions*, by Kenneth Katzman; CRS Report R43311, *Iran: U.S. Economic Sanctions and the Authority to Lift Restrictions*, by Dianne E. Rennack; CRS Report R41438, *North Korea: Legislative Basis for U.S. Economic Sanctions*, by Dianne E. Rennack; CRS In Focus IF10715, *Venezuela: Overview of U.S. Sanctions*, by Clare Ribando Seelke; CRS Report R43888, *Cuba Sanctions: Legislative Restrictions Limiting the Normalization of Relations*, by Dianne E. Rennack and Mark P. Sullivan; and CRS In Focus IF10576, *The Global Magnitsky Human Rights Accountability Act*, by Dianne E. Rennack.

consider to shape U.S. policy towards Iran, North Korea, and Russia. Late-breaking events in Turkey, Syria, and Hong Kong brought about several sanctions-based bills, as well.

Meanwhile, the Executive Branch was equally engaged in 2019. The Department of the Treasury's Office of Foreign Assets Control, for example, which maintains 32 sanctions programs, nearly all under national emergency authorities, updated the programs relating to Belarus, Cuba, Iran, North Korea, Russia and Ukraine, Venezuela, Syria, and Turkey in the last quarter of 2019 alone. The U.S. Departments of Commerce and State were particularly attentive to implementing export policy modernization required by the Export Control Reform Act of 2018 (P.L. 115-232, Title XVII, Subtitle B). Sanctions are central to the debates throughout the Federal government over how to deter Iran's missile proliferation activities, normalize relations with North Korea while ensuring an end to its nuclear and missile programs and egregious human rights record, convince Russia to leave Ukraine, or end the conflict in Syria.

At the close of 2019, Congress enacted, and the President signed into law, several bills that could substantially expand the use of economic sanctions in foreign policy and the bureaucratic structure assigned to oversee such authorities, including:

- National Defense Authorization Act for Fiscal Year 2020 (P.L. 116-92, December 20, 2019), which expands the use of sanctions on North Korea (Title LXXI); establishes a new sanctions regime to deter foreign traffickers of illicit opioids (Title LXXII); creates new sanctions authorities to address the forced displacement of civilian populations in Syria (Title LXXIV); and requires the imposition of sanctions on any entity providing pipe-laying services or technology to Russia's energy export pipelines, in particular the Nord Stream 2 or TurkStream projects that, if completed, would provide Russian natural gas to Europe (Title LXXV).
- Hong Kong Human Rights and Democracy Act of 2019 (P.L. 116-76, November 27, 2019) to require the President to identify any foreign person responsible for "extrajudicial rendition, arbitrary detention, or torture of any person in Hong Kong" and designate any such person for sanctions that would restrict access to U.S.-based assets and travel to the United States.
- Championing American Business Through Diplomacy Act of 2019 (Title VII, P.L. 116-94, December 20, 2019), in which a position of Assistant Secretary of State for Economic and Business Matters is established in the State Department Basic Authorities Act of 1956 (22 U.S.C. 2651a et seq.), in part to oversee State's role in the interagency process of administering economic sanctions.
- Venezuela Emergency Relief, Democracy Assistance, and Development (VERDAD) Act of 2019 (Division J, Title I, P.L. 116-94, December 20, 2019) that covers a range of requirements relating to Venezuela, including visa restrictions, sanctions policy coordination with allies, and prohibitions on the sale of defense articles, defense services, other goods controlled by export regulations.

International Financial Institutions (IFIs) and Markets[131]

Since World War II, governments have created and used informal forums, as well as more formal international organizations, to discuss and coordinate economic policies. More informal forums include the Group of 7 (G-7) and the Group of 20 (G-20), and more formal international

[131] Written by Rebecca M. Nelson, Specialist in International Trade and Finance.

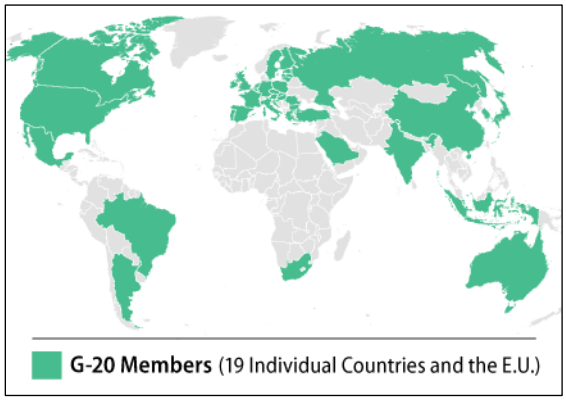
organizations include the International Monetary Fund, the Organization for Economic Co-operation and Development (OECD), the World Bank, and the World Trade Organization, among others. The United States has traditionally been a leader in these bodies, but the U.S. role is changing under President Trump. Congress plays a key role in shaping U.S. policy at international organizations and forums, including through authorizations and appropriations of U.S. funding, hearings, legislation that directs the Administration's policy and votes at the institutions, and Senate confirmation of high-level political appointees.

More broadly, given longstanding economic and foreign policy interests in a stable, thriving global economy, the 116th Congress may continue monitoring major economic developments overseas and their potential impact on U.S. economic and foreign policy interests. Key issues include how other countries' exchange rate policies are impacting the U.S. economy, the role of the U.S. dollar in the global economy, trade developments, and ongoing and potential economic crises, particularly in indebted emerging markets and developing countries.

International Economic Cooperation (G-7 and G-20)[132]

Between the 1970s and the 2000s, international economic discussions at the top leadership level took place among a small group of developed industrialized economies: the Group of 7 (G-7). The G-7 includes Canada, France, Germany, Italy, Japan, the United Kingdom, and the United States. In response to the global financial crisis, leaders decided that a broader group of developed and emerging-market economies, the Group of 20 (G-20), would become the premier forum for international economic cooperation and coordination (**Figure 18**). The G-20 includes the G-7 members, as well as Argentina, Australia, Brazil, China, India, Indonesia, Mexico, Russia, Saudi Arabia, South Africa, South Korea, Turkey, and the European Union. Although the G-20 is considered the "premier" forum, the G-7 continues to meet in parallel. G-7 and G-20 leader meetings ("summits") are held annually; meetings among lower and senior level officials occur throughout the year.

Figure 18. G-20 Members



Source: Figure created by CRS.

Traditionally, the United States has played a strong leadership role at the G-7 and the G-20. For example, the United States was the leader in convening the G-20 to respond to the global financial crisis of 2008-2009. Under President Trump, however, the U.S. role in these forums has been shifting. The summits have become more contentious, with the United States increasingly isolated on key issues, particularly trade and climate change. France and Japan hosted the G-7 and G-20 summits in 2019, respectively. In 2020, the United States will chair the G-7, with the summit to be held June 10-12 at Camp David. Saudi Arabia is to chair the G-20 in 2020 and host the summit on November 21-22 in Riyadh. Some analysts concerned about Saudi Arabia's human rights practices have called for a relocation or boycott of the summit, although such proposals have not gained much traction to date. U.S. participation in the G-7 and the G-20 is primarily

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

driven by the Administration, and Congress can exercise oversight of U.S. policy at these international forums through hearings and reporting requirements. Additionally, legislative action may be required to implement some commitments made by the Administration in the G-7 and G-20 process.

International Monetary Fund (IMF)[133]

The International Monetary Fund is an international organization focused on promoting international macroeconomic stability. Created in 1945, it has grown in membership over the past six decades to 189 countries. Although the IMF's functions have changed as the global economy has evolved, today it is focused on surveillance of member states and the global economy, lending to member states facing economic crises, and technical assistance to strengthen members' capacity to design and implement effective policies.

The FY2016 Consolidated Appropriations Act (P.L. 114-47) authorized U.S. participation in an IMF reform package, which doubled the size of IMF core resources ("quota") and gave emerging-markets a stronger voice in the governance of the institution. The legislation also sunsets U.S. contributions to a supplemental fund at the IMF, the New Arrangements to Borrow (NAB), in 2022, the first time the United States reduced its financial commitment to the institution since it was created.

IMF members are evaluating IMF rules on providing large loans, which were used controversially during the 2010-2012 Eurozone debt crisis. IMF members are also considering whether and how to increase the IMF's resources, which as noted above, will expire in the coming years. The Trump Administration is opposed to increasing IMF quotas, and due to this resistance, IMF members decided in October 2019 forgo a planned capital increase and agreed to revisit its review of IMF quotas by 2023 at the latest.

Multilateral Development Banks (MDBs)[134]

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

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[133] Written by Martin A. Weiss, Specialist in International Trade and Finance. See CRS Report R42019, *The International Monetary Fund*, by Martin A. Weiss and CRS In Focus IF10676, *The International Monetary Fund*, by Martin A. Weiss.

[134] Written by Martin A. Weiss, Specialist in International Trade and Finance. See CRS In Focus IF11361, *The World Bank*, by Rebecca M. Nelson and Jennifer M. Roscoe; CRS Report R41170, *Multilateral Development Banks: Overview and Issues for Congress*, by Rebecca M. Nelson; CRS Report RS20792, *Multilateral Development Banks: U.S. Contributions FY2000-FY2019*, by Rebecca M. Nelson; and CRS Report R41537, *Multilateral Development Banks: How the United States Makes and Implements Policy*, by Rebecca M. Nelson and Martin A. Weiss.

Congress authorizes and appropriates U.S. funding for the five major MDBs, which may shift under the Trump Administration. The Trump Administration has laid out a comprehensive reform agenda for the MDBs that includes, but is not limited to, creating lending limits to promote more robust financial discipline at the MDBs and graduate borrowers, especially China, and shift lending from higher income developing countries to lower income countries. The Administration is also seeking to better coordinate country programs and best practices across.[135] Meanwhile, in 2018, the United States and other World Bank members agreed to a $60.1 billion capital increase for the World Bank's main lending facility, the International Bank for Reconstruction and Development (IBRD), which would raise the IBRD's capital from $268.9 billion to $329 billion.[136] World Bank members also endorsed a $5.5 billion capital increase for the International Finance Corporation (IFC), the World Bank's private-sector lending arm, which would more than triple the IFC's capital base from $2.57 billion to $8.2 billion. In the FY 2020 appropriations act (P.L. 116-94), Congress authorized $1.42 billion in callable capital and appropriated $206.5 million toward the first of six installments of paid-in capital. Congress also appropriated $1.1 billion for IDA as the third and last payment of the 18th IDA replenishment. Congress did not authorize any capital increase for the IFC. In November 2019, Representative Anthony Gonzalez introduced H.R. 5051, *the Accountability for World Bank Loans to China Act* that, if passed, would seek to end World Bank lending to China.

The Asian Infrastructure Investment Bank (AIIB)[137]

On October 24, 2014, China and 20 other countries signed an agreement to establish a new development bank, the Asian Infrastructure Investment Bank (AIIB). Formally established in late 2015, the AIIB has 75 members, including four G-7 economies (France, Germany, Italy and the United Kingdom), and 25 prospective members. As its name suggests, the new entity is expected to focus on financing infrastructure projects throughout Asia. As of December 2019, the AIIB has approved 54 projects worth $10.8 billion.[138] The United States is not a member of the AIIB.

Some observers are concerned that these new development banks may duplicate existing multilateral and regional institutions, and might provide financing with minimal, if any, policy conditionality and without adhering to established environmental and social safeguards, which many developing countries believe are burdensome. By contrast, the United States and other major donors consider policy conditionality, safeguards, and other governance best practices, including measures such as rules on procurement, as being central to the effectiveness of development assistance, and have used their leadership in the MDBs to advance these priorities. While the United States is not a member of the AIIB, and thus will not be authorizing and appropriating financial contributions, Congress has several avenues to shape U.S. policy toward the institution. These include oversight of the AIIB's operations and shaping the evolving relationship between the AIIB and the MDBs in which the United States is a member.

Exchange Rates and Currency Manipulation[139]

Exchange rates, the price of currencies relative to each other, are among the most important prices in the global economy. They affect the price of every country's imports and exports, as well as the value of every overseas investment. Some U.S. policymakers have expressed concerns that other

[135] Under Secretary of the Treasury David Malpass, *Prepared Testimony for House Financial Services Committee Hearing*, December 12, 2018.

[136] CRS In Focus IF10895, *2018 World Bank Capital Increase Proposal*, by Martin A. Weiss.

[137] Written by Martin A. Weiss, Specialist in International Trade and Finance. See CRS Report R44754, *Asian Infrastructure Investment Bank (AIIB)*, by Martin A. Weiss.

[138] AIIB homepage, https://www.aiib.org/en/index.html.

[139] Written by Rebecca Nelson, Specialist in International Trade and Finance. See CRS In Focus IF10049, *Debates over Currency Manipulation*, by Rebecca M. Nelson and CRS Report R43242, *Debates over Exchange Rates: Overview and Issues for Congress*, by Rebecca M. Nelson.

governments purposefully undervalue their currency to gain an unfair advantage for their exports, or "manipulate" their currencies, hurting U.S. companies and jobs. Countries have committed to refraining from currency manipulation through the International Monetary Fund, the G-7, and the G-20. Under U.S. law, the U.S. Department of the Treasury is tasked with reporting on and responding to currency manipulation. For many years, some Members of Congress have called for more assertive action to combat currency manipulation. Combatting currency manipulation has been a key policy issue for the Trump Administration.

The Trump Administration negotiated enforceable provisions to combat currency manipulation among the signatories in the proposed United States-Mexico-Canada Agreement. The USMCA is the first trade agreement that would include such provisions. In August 2019, the Department of the Treasury labeled China as a currency manipulator, the first time it had labeled a country as a currency manipulator in 25 years. The designation was controversial, because, even though the designation followed a depreciation of the Chinese currency relative to the dollar (**Figure 19**), most economists believe that China's policy actions at the time of the designation did not meet traditional definitions of currency manipulation. The Trump Administration formally removed China's designation in January 2020 as part of the broader trade negotiations between the two countries.

Figure 19. Chinese Yuan per U.S. Dollar

Source: Figure created by CRS with data from the IMF.

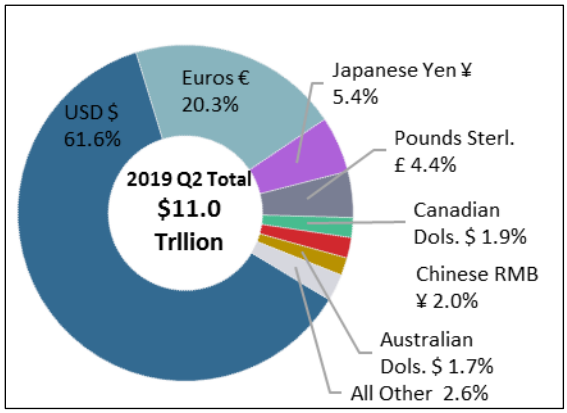
Notes: An increase (decrease) represents a depreciation (appreciation) of the yuan relative to the U.S. dollar.

In December 2019, President Trump criticized Brazil and Argentina for "presiding" over a massive devaluation of their currencies, and announced that as a result, the U.S. government would convert their steel and aluminum quotas into tariffs. This policy action was also controversial. Most economists do not believe that the Brazilian and Argentinean governments have been purposefully driving down the value of their currencies. Additionally, the steel and aluminum tariffs were intended to address national security concerns, rather than currency disputes.

Role of the U.S. Dollar[140]

For at least 70 years, the U.S. dollar has been the world's dominant currency. Central banks around the world hold a large portion of their reserves in U.S. dollars (**Figure 20**), and private companies use U.S. dollars for international transactions. Dollars make up nearly two-thirds of central bank reserves, countries' dollar imports are on average worth five times what they buy from the United States, and more than half of all global cross-border debt is denominated in U.S. dollars.[141] There are considerable benefits to having a reserve currency, including lower borrowing costs for the U.S. government. This cost advantage occurs because there is generally a willingness of foreign central banks to pay a liquidity premium to hold dollar assets.

Figure 20. Central Bank Reserves



Source: Data for countries identifying the currencies held in reserve (allocated reserves). Figure created by CRS with data from the IMF.

Questions have been raised about whether the U.S. dollar could lose its status as a reserve currency. Some countries are pursuing or considering policies that challenge the dollar's role. For example, countries are increasingly exploring the use of non-dollar denominated contracts, non-dollar central bank swap lines, and alternative payment systems that are not centered on the dollar, particularly in response to U.S. sanctions. Broader concerns about the direction of U.S. economic policy, including rising national debt, as well as the predictability of U.S. policies, including trade conflicts with other countries, are also driving debates about the dollar's supremacy. However, most economists agree that in the short run there are no good alternatives.[142] The Eurozone is still recovering from its crisis, and China does not have a stable banking system or open capital account. However, the 116th Congress may consider the benefits it derives from dollar as a reserve currency and the long-term impact of various economic policies, such as fiscal policies and financial sanctions, on the role of the dollar in the global economy.

Ongoing and Potential Economic Crises[143]

Analysts are growing increasingly concerned about debt sustainability in many emerging markets and developing countries. Many emerging markets experienced an influx of capital following the global financial crisis of 2008-2009, as investors sought more profitable investment opportunities than in advanced economies, where interest rates were at historical lows. The influx of capital into emerging markets may have created investment bubbles, which could be vulnerable to changes in the availability or cost of financing, for example if the U.S. Federal Reserve raises

[140] Written by Rebecca Nelson, Specialist in International Trade and Finance.

[141] "America Must Use Sanctions Cautiously," *Economist*, May 17, 2018.

[142] For example, see Megan Greene, "The Dollar Can Defend Its Global Reserve Role against EU and China," *Financial Times*, November 7, 2018.

[143] Written by Rebecca Nelson, Specialist in International Trade and Finance. See CRS In Focus IF10991, *Argentina's Economic Crisis*, by Rebecca M. Nelson; CRS In Focus IF10957, *Turkey's Currency Crisis*, by Rebecca M. Nelson; and CRS In Focus IF11000, *Pakistan's Economic Crisis*, by K. Alan Kronstadt and Martin A. Weiss.

interest rates. These dynamics started playing out in Argentina and Turkey in 2018, and there are concerns that other emerging markets similarly reliant on external financing may face similar pressures. Additionally, China has increasingly financed projects in developing countries, some of which, such as Pakistan, are starting to experience or exacerbating existing fiscal problems. Some analysts are concerned about whether such countries will be able to meet their financial obligations to China, and the implications if they are unable to do so.

In its second session, the 116th Congress may continue to monitor economic conditions in emerging markets and developing countries in terms of U.S. interests and implications for the role of the IMF. In terms of U.S. economic interests, U.S. economic exposure through trade, investment, and financial channels to emerging markets that faced the most significant pressures in 2018—Argentina and Turkey—is relatively limited. A broader crisis across emerging and developing markets could have more significant economic ramifications. Economic crises in emerging and developing countries could also have implications for U.S. foreign policy interests, depending on the specific countries in question. In terms of the IMF, Congress may monitor the IMF's role in responding to crises. With the United States as the IMF's largest shareholder, Congress may monitor in particular the size of and reforms attached to any IMF programs and the adequacy of IMF resources. Congress may also focus on the role of Chinese financing in countries approaching the IMF for assistance, including transparency on the size and terms of Chinese financing and burden sharing by China in any financial assistance package.

Looking Forward

Members of Congress exert significant influence over U.S. economic and trade policy and its implementation through their legislative, appropriations, and oversight roles. Given current debates, fundamental questions about the future direction of trade and international economic issues may continue to be key areas of interest in the second session of the 116th Congress. In engaging on these issues, Congress may

- evaluate the impact of Section 301, 232, and 201 tariffs on U.S. workers and firms, and consider legislation that alters the authority granted by Congress to the President to impose unilateral tariffs;
- conduct oversight of trade negotiations with the EU, Japan, and UK, as well as implementation of the USMCA;
- debate and conduct oversight of the Trump Administration's policies at the WTO, including reform efforts;
- conduct oversight and take possible legislative action concerning a range of other trade issues, including U.S. trade relations with China and other major economies, as well as U.S. export and import policies and programs;
- examine implementation of the recent reauthorization of the U.S. Export-Import Bank and Development Finance Corporation operations;
- evaluate the implementation of major legislation passed during the 115th Congress, including CFIUS and export control reforms;
- examine U.S. leadership in discussions over international economic policy coordination at the G-7 and the G-20, as well as the use of sanctions to advance U.S. foreign policy goals;
- consider U.S. priorities at the international financial institutions (IFIs); and

- monitor major developments in financial markets, including the impact of other countries' exchange rate policies on the U.S. economy, high levels of debt in emerging markets, and the role of the U.S. dollar.

U.S. trade and economic policy affects the interest of all Members of Congress and their constituents. Congressional actions on these issues can impact the health of the U.S. economy, the success of U.S. businesses and their workers, the standard of living of Americans, and U.S. geopolitical interests. Some of these issues may be highly contested, as Members of Congress and affected stakeholders have differing views on the benefits, costs, and role of U.S. trade policy. The dynamic nature of the global economy—including the increasingly interconnected nature of the global market, the growing influence of emerging markets, and the growing role of digital trade, among other factors—as well as the Trump Administration's reassessment of U.S. policies provide the backdrop for potentially robust and complex debate in the 116th Congress over a range of trade and finance issues.

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