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International Trade and Finance: Key Policy Issues for the 113th Congress, Second Session

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Summary

The U.S. Constitution grants authority over the regulation of foreign commerce to Congress, which it exercises through oversight of trade policy, including the consideration of legislation to approve trade agreements and authorize trade programs. Policy issues cover such areas as: U.S. trade negotiations; tariff and nontariff barriers; worker dislocation from trade liberalization, trade remedy laws; import and export policies; international investment, economic sanctions; and trade policy functions of the federal government. Congress also has an important role in international finance. It has the authority over U.S. financial commitments to international financial institutions and oversight responsibilities for trade- and finance-related agencies of the U.S. Government.

The 112th Congress approved U.S. bilateral free trade agreements with Colombia, Panama, and South Korea, extended the Trade Adjustment Assistance (TAA) programs through December 31, 2013, and reauthorized the Generalized System of Preferences (GSP) through July 31, 2013. It also authorized permanent normal trade relations (PNTR) status for Russia and Moldova, reauthorized the U.S. Export-Import Bank, and approved full U.S. participation in general capital increases for the World Bank and four regional development banks. The 113th Congress may revisit these issues and address new ones. Among the more potentially prominent issues are:

1. Possible renewal of Trade Promotion Authority (TPA), allowing the President to enter into reciprocal trade agreements, and providing trade negotiating objectives and expedited legislative procedures to consider trade agreement implementing bills; and the possible related issue of TAA program reauthorization;
2. Negotiations for comprehensive reciprocal trade agreements with major trading partners, including the Trans-Pacific Partnership (TPP) with the United States 12 countries from the Western Hemisphere and Asia, and new negotiations with the European Union for the Transatlantic Trade and Investment Partnership (TTIP) Agreement;
3. U.S.-China trade relations including investment, intellectual property rights protection, currency reform, and market access liberalization;
4. International finance issues including implications of the ongoing Eurozone debt crisis for the U.S. economy, oversight of international financial institutions, and negotiations to conclude new bilateral investment treaties (BITs);
5. Oversight of the World Trade Organization (WTO) Doha Round negotiations, including the completed trade facilitation agreement, and of separate new trade negotiations (e.g. services) that some members of the WTO have undertaken;
6. Review of the President's export control reform initiative and possible renewal of the Export Control Act (EAA), and review of trade sanctions; and
7. Reauthorization of U.S. Customs and Border Protection (CBP) and expiring trade preference programs (e.g., the GSP and the Andean Trade Preference Act).

A list of CRS reports covering these issues is provided at the end of the report.

Contents

Policymaking in a Global Economy	1
The Role of Congress in International Trade and Finance.....	3
Policy Issues for Congress.....	4
Renewal of Trade Promotion Authority (TPA).....	5
Trade Agreements and Negotiations.....	5
Trans-Pacific Partnership (TPP) FTA.....	6
The WTO and WTO Doha Round.....	6
Proposed Transatlantic Trade and Investment Partnership (TTIP) Agreement	8
The Proposed Trade in International Services Agreement (TISA).....	8
China	9
Industrial Policies.....	10
Intellectual Property Rights (IPR) Protection	10
Currency Issues	11
Chinese Economic Reforms and Rebalancing	12
Challenges for Congress.....	13
U.S. Trade Promotion and Financing	13
Administration Initiatives.....	13
Reauthorization of Export-Import (Ex-Im) Bank and Overseas Private Investment Corporation (OPIC).....	14
Export Controls and Sanctions	15
The President’s Export Control Initiative.....	15
Economic Sanctions	16
Import Policies.....	16
Trade Remedies	17
Trade Preferences	17
AGOA and U.S.-Africa Trade Relations	18
U.S. Customs and Border Protection (CBP) Reauthorization.....	18
Miscellaneous Tariff Bill (MTB).....	19
Trade Adjustment Assistance	19
Intellectual Property Rights (IPR) in U.S. Trade Policy.....	20
IPR and U.S. Trade Negotiations	20
Section 337 Process and Online Copyright Infringement and Piracy	21
International Investment.....	21
Foreign Investment and National Security.....	21
U.S. International Investment Agreements.....	22
Promoting Investment in the United States.....	23
International Finance, Institutions, and Crises	23
International Monetary Fund.....	23
Multilateral Development Banks.....	24
G-20.....	24
Eurozone Sovereign Debt Crisis	25
Argentina Sovereign Debt Default and Related Economic Policies	26
Select CRS Products	26
Renewal of Trade Promotion Authority.....	26
Trade Agreements and Negotiations.....	27
China	27

U.S. Export and Investment Promotion.....	28
Export Controls and Sanctions	28
Import Policies.....	28
International Property Rights in U.S. Trade Policy	29
International Investment.....	29
International Finance, Institutions, and Crises	30

Contacts

Author Contact Information.....	30
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Policymaking in a Global Economy¹

The 113th Congress, in exercising both its legislative and oversight responsibilities, faces numerous international trade and finance policy issues. They are important to Congress because they can affect the health of the U.S. economy, the success of U.S. businesses and their workers, and the standard of living of Americans. A list of CRS reports covering in detail each of the issues addressed is provided at the end of the report.

International trade and finance issues are complex, and policy deliberation is often made more challenging by developments in the global economy. First, the world continues to recover unevenly from the 2008 global financial crisis, with many developed countries experiencing weak growth and the large emerging economies, such as China, India, and Brazil experiencing slower growth. The sovereign debt crisis in Europe and increased vulnerability of the Eurozone are among the most visible examples. Second, developing country influence and role in the global economy are growing, as witnessed by changing trade and investment patterns, as well as the ascendance of the Group of 20 (G-20) economies as a major forum for international economic cooperation. The rise of Brazil, India, and China, among other emerging economies, presents new challenges in U.S. trade policy and in developing global trade and finance agreements. Third, economic tensions emanating from large international imbalances have not eased.

The U.S. economy is recovering slowly from its worst recession in eight decades. Although the economy is experiencing productivity gains and moderate expansion in output, it nonetheless continues to struggle with declining, but still high unemployment and a large federal debt. These domestic imbalances are connected to international ones, including the large U.S. trade deficit, rising holdings of U.S. debt by foreign countries, and downward pressure on the dollar. The United States has long consumed more than it has produced, giving rise to the expanding trade deficit, which is financed by capital inflows. The counterpart is large saving balances, trade surpluses, and capital outflows in other countries, including China, Japan, and Germany.

The call for “global rebalancing” implies a reversal of these trends, which would require national and foreign responses. For the United States, this would involve increased saving (less spending) relative to investment that would produce a rise in net exports (reduction in trade deficit). Implicit in this mix, particularly given steady de-leveraging of U.S. firms and households since 2008, is a reduction of the fiscal deficit, the major source of U.S. dissaving since 2000. For trade surplus countries, it implies the opposite—an increase in domestic demand and decrease in saving relative to investment that would lead to a fall in net exports (reduction in trade surplus). Rebalancing also implies changes in relative exchange rates, including a likely depreciation of the dollar against major U.S. trade partner currencies, and appreciation of China’s currency.²

On the trade policy side, the 113th Congress during the second session will likely exercise its oversight responsibilities and possibly take up legislation that would lead to reauthorization of trade promotion authority. It may also take up implementing legislation for reciprocal trade agreements including the negotiations for the Trans-Pacific Partnership (TPP) agreement, with the European Union for the proposed Transatlantic Trade and Investment Partnership (TTIP)

¹ Written by (name redacted), Specialist in International Trade and Finance, 7-....

² The fundamentals are covered in Oliver Blanchard and Gian Maria Milesi-Ferretti, *Global Imbalances: In Midstream?*, International Monetary Fund, Staff Position Note 09/29, Washington, D.C., December, 22, 2009.

agreement, and the Trade in Services Agreement (TISA). Some of these agreements address new issues, such as cross-border data flows, state-owned enterprises, and international supply chains.

President Obama's National Export Initiative (NEI) continues to promote the goal of doubling U.S. exports in five years, which given that 95% of the world's population lives outside U.S. borders, some view as one solution to the challenge of generating faster economic and employment growth. In addition to supporting U.S. economic growth, the rationale for promoting exports is based on the view that foreign demand is needed to supplement an American consumer still dealing with a residual debt overhang and a federal government facing persistently large fiscal deficits. U.S. exports have recovered briskly since 2009. Meeting the goal of doubling exports, however, will be difficult because trade policy by itself is limited in its ability to affect the trade deficit and aggregate output, which will require vibrant global economic growth, a competitive dollar, and changes in domestic and foreign macroeconomic policies. In addition, after decades of increasing, global trade has slowed recently.

Foreign country policies, however, may not align easily with U.S. priorities. The European Union continues to wrestle with its own financial crisis and economic downturn, while Japan is mired in persistent slow growth, although Prime Minister Abe's government launched a program of immediate and long-term initiatives—dubbed “Abenomics”—designed to place Japan on a path to more sustainable economic growth. Rising economic powers, whose strong growth represents expanding markets for U.S. goods, may also be turning to less expansionist macroeconomic policies. Many countries, including many G-20 and emerging economies, have returned to industrial policies, backtracking on trade liberalization.³ So despite U.S. policies directed at opening markets, export promotion and encouraging macroeconomic changes abroad, U.S. economic recovery still depends on a balance of increased domestic investment and demand, which could worsen the trade deficit if increased saving is not also part of the mix.⁴

On the international finance side, policy-driven currency misalignments and the specter of “currency wars” point to the other side of the global imbalances problem. Some countries are discussing the need for more coordinated and equitable exchange rate policies, if not a broader rethinking of the international monetary system. Attention has also turned to the relevance of the International Monetary Fund (IMF) and other multilateral economic institutions in this process, such as the World Bank, including reevaluating their role, structure, and governance (i.e., increased role of emerging economies). A current concern is the potential threat of competitive devaluations, particularly from China, that could increase trade tensions, hinder the rebalancing of the global economy, and undermine international economic stability. China is not alone in this behavior, but receives the most attention because of its closed capital account and large holdings of U.S. Treasury securities.

U.S. international economic policy must also contend with “globalization,” or the increasing integration of markets and production, and supply chain networks brought about by advances in technology, communications, transportation, and lower barriers to trade. These transformative changes in the global economy have led to large decreases in transaction costs that have spurred tremendous growth in trade, particularly of intermediate goods, which now account for over 60%

³ Simon J. Evenett, ed., *Debacle: The 11th Global Trade Alert (GTA) Report on Protectionism*, Centre for Economic Policy Research, London, June 2012, p. 1-8.

⁴ On the tradeoffs and challenges of dealing with the trade deficit, see: CRS Report RL31032, *The U.S. Trade Deficit: Causes, Consequences, and Policy Options*, by (name redacted).

of the world's commercial exchange. It has also contributed to rising incomes. In the United States, jobs are supported by U.S. exports to foreign affiliates and U.S. production abroad, as well as foreign firms operating in the United States. These complex production networks further complicate the trade and employment policy debates, and raise other questions such as what constitutes an "American-made" product and how will innovation and production strategies continue to change the economic landscape.

At the same time, while global economic integration has increased trade and economic growth, it has also exposed U.S. firms and workers to greater competition from lower-cost and more efficient producers in certain sectors and increasingly, from state-owned-enterprises (SOEs). Globalization and the larger volume of imports of goods and services, therefore, may force some U.S. firms to make costly adjustments to remain competitive. In some cases this may take the form of worker dislocation and shifts to production abroad, and may raise concerns in Congress over distributional issues of global production and trade.

In sum, U.S. costs and benefits linked to an increasingly interconnected global economy may run in many directions. The discussion is no longer simply about free trade versus protectionism. The debate involves domestic and foreign macroeconomic policies, the participation of foreign states in markets, the competitiveness of U.S. firms and workers, implications of value-chain and cross-country production, and the financial stability of the international economy. For the United States, an overarching goal is to maintain its high standard of living by remaining innovative, productive, and internationally competitive, while safeguarding those stakeholders who otherwise may be left behind in a fast-changing global economy, suggesting a strong supporting role for complementary domestic policies. These changes have also raised new trade policy issues, some of which are being discussed in current U.S. free trade agreement negotiations.

Congress is in a unique position to address these issues, particularly given its constitutional mandate for legislating and overseeing international trade and financial policy. In addition to broader congressional oversight of the economic and political context of the current U.S. participation in the global economy, this report highlights major international trade and finance issues that the 113th Congress may address.

The Role of Congress in International Trade and Finance⁵

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

A major shift in U.S. trade policy occurred after Congress passed the highly protective "Smoot-Hawley" Tariff Act of 1930 (P.L. 71-361), which, by raising U.S. tariff rates to an all-time high

⁵ Written by (name redacted), x7-..., Specialist in International Trade and Finance.

level, led U.S. trading partners to respond in kind. In response, world trade declined rapidly, exacerbating the impact of the Great Depression. Since passage of this tariff act, Congress has delegated certain trade authority to the executive branch. First, Congress enacted the Reciprocal Trade Agreements Act (RTAA) of 1934 (P.L. 73-316), which authorized the President to enter into reciprocal agreements to reduce tariffs within congressionally preapproved levels, and to implement the new tariffs by proclamation without additional legislation. Congress has renewed this authority periodically. Second, Congress enacted the Trade Act of 1974 aimed at opening markets and establishing non-discriminatory international trade for nontariff barriers as well. Because changes in nontariff barriers in reciprocal bilateral, regional, and multilateral trade agreements usually involve amending U.S. law, the agreements require congressional approval and implementing legislation. Congress has renewed and amended the 1974 Act many times, which includes fast-track trade negotiating authority, now called trade promotion authority (TPA).

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

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

Policy Issues for Congress

During the first session of the 113th Congress, while overshadowed by other legislative priorities, including federal budget issues, trade and trade policy issues were the subject of active congressional interest, including through oversight committee hearings, if not direct legislative action. That may change during the second session as at least some of these issues may come to a head in the form of legislation or congressional consideration. They include: renewal of trade promotion authority (TPA); potential trade agreements including the Trans-Pacific Partnership (TPP), the Transatlantic Trade and Investment Partnership (TTIP), and the Trade in Services Agreement (TISA), and also expanded agreements in information technology products and trade facilitation under the WTO; U.S.-China trade relations; international finance issues; review of the U.S. export control regime; reauthorization of the Export-Import Bank; and reauthorization of U.S. Customs and Border Protection (CBP) and expiring trade preference programs.

Congress confronts these issues against the backdrop of a rapidly globalizing economy and the growing importance of emerging economic powers that have increased the role of global supply or value production chains, state-owned enterprises, and cross-border data flows, among other factors. These and other issues are discussed in more depth below.

Renewal of Trade Promotion Authority (TPA)⁶

In July 30, 2013, in a speech, President Obama requested that Congress reauthorize TPA. The 113th Congress may consider reauthorization during the second session. TPA allows implementing bills 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 adhering to congressionally-defined trade policy negotiating objectives, as well as congressional notification and consultation requirements before, during, and after the completion of the negotiation process. The primary purpose of TPA is to preserve the constitutional role of Congress with respect to consideration of implementing legislation for trade agreements that require changes in domestic law, while also bolstering the negotiating credibility of the executive branch by ensuring that the trade agreements will not be changed once concluded. Since first enacted in the Trade Act of 1974, TPA has been renewed multiple times, with the latest grant of authority expiring on July 1, 2007.

In light of TPA's special provisions governing trade agreement implementing bills, many consider its renewal as necessary to approve and implement new trade agreements. Others question whether TPA is necessary to pass trade implementing bills and note that it is not a prerequisite for initiating or concluding trade agreement negotiations. Some experts argue that TPA would have to be renewed if the United States is to be a credible negotiator in concluding proposed trade agreements such as the Trans-Pacific Partnership (TPP), the Transatlantic Trade and Investment Partnership (TTIP), a Trade in International Services Agreement (TISA), future WTO agreements, and other future trade agreements. It can also be argued that while the Obama Administration has been notifying and consulting Congress on these negotiations per previous TPA requirements, Congress has not formally expressed its views in the form of new or updated legislative negotiating objectives for trade agreements, which have been an important part of previous TPA/fast-track authorities. There are already bicameral efforts to renew TPA.

Trade Agreements and Negotiations

Historically, the United States has pursued trade agreements to reduce and eliminate barriers to trade and establish non-discriminatory rules and principles to govern trade. Among the trade issues for the 113th Congress are U.S. negotiations with the TPP countries—now 12 countries and possibly more—to create a comprehensive and high-standard regional FTA in the Asia-Pacific region. In addition, the United States has entered into negotiations with the European Union on the proposed TTIP free trade agreement. The United States is also engaged in the plurilateral TISA negotiations. Members may also examine the agreements reached during the December 2013 WTO Ministerial in Bali, Indonesia, including an agreement on trade facilitation.

⁶ Written by (name redacted), x7-...., Specialist in International Trade and Finance.

Trans-Pacific Partnership (TPP) FTA⁷

The TPP is an evolving regional FTA, which may become a vehicle to advance a wider Asia-Pacific free trade area, as well as a U.S. policy response to the rapidly increasing economic and strategic linkages among Asian-Pacific states. The TPP was originally a more limited FTA concluded in 2006 among Singapore, New Zealand, Chile, and Brunei. Subsequently, the United States, Australia, Peru, and Vietnam joined the negotiations in the fall of 2008 (during the Bush Administration). President Obama endorsed the negotiations in November 2009, and Malaysia joined as a full participant in October 2010. After intensive consultations with TPP participants, Canada, Mexico, and subsequently, Japan joined the negotiations in 2012 and 2013, respectively, greatly increasing the economic significance of the potential agreement.

The TPP is potentially an important trade agreement for the United States. In 2012, the TPP negotiating partners made up 37% of total U.S. goods and services trade. TPP negotiations aim to reduce and eliminate tariffs and non-tariff trade barriers to create a comprehensive and high standard FTA to which other nations can accede. Some of this trade liberalization has already occurred, however, as the United States has existing FTAs with six of the TPP partners (Australia, Canada, Chile, Mexico, Peru, and Singapore). The participants are also discussing new trade issues, such as supply chain management, state-owned enterprises (SOEs), regulatory coherence, new digital trade issues, and the participation of small and medium-sized enterprises to create what the Obama Administration refers to as a “21st century trade agreement.” Certain aspects of the negotiations have proven controversial. These include select market access issues, such as agriculture, textiles, and apparel, as well as the level of intellectual property protection, the enforcement of environmental and labor rights, the treatment of state-owned enterprises, and access to government procurement.

President Obama and other TPP leaders declared their intention to conclude the negotiations in 2013. Although the number of outstanding issues reportedly narrowed, TPP trade ministers did not reach a conclusion of the negotiations at their December 7-10, 2013 meeting and suggested that early 2014 may be a feasible timetable for concluding the agreement. Congress has a direct legislative interest in the progress of the negotiations. It must pass implementing legislation for the agreement to enter into force in U.S. law.

The WTO and WTO Doha Round⁸

The World Trade Organization (WTO) is an international organization that administers the trade rules and agreements negotiated by 160 participating parties—with Laos and Yemen becoming members in 2013—and serves as a forum for dispute settlement resolution and trade liberalization negotiations. The United States was a major force behind the establishment of the WTO on January 1, 1995, and the new rules and trade liberalization agreements that occurred as a result of the Uruguay Round of multilateral trade negotiations (1986-1994). The WTO succeeded the General Agreement on Tariffs and Trade (GATT), first established in 1947.

⁷ Written by (name redacted), Specialist in International Trade and Finance, x7-..... See, CRS Report R42694, *The Trans-Pacific Partnership (TPP) Negotiations and Issues for Congress*, coordinated by (name redacted), and CRS Report R42344, *Trans-Pacific Partnership (TPP) Countries: Comparative Trade and Economic Analysis*, by (name redacted).

⁸ Written by (name redacted), Specialist in International Trade and Finance, x7-..... See CRS Report RL32060, *World Trade Organization Negotiations: The Doha Development Agenda*, by (name redacted).

The WTO Doha Round of multilateral trade negotiations, begun in November 2001, has remained deadlocked for several years. However, WTO Members at 9th Ministerial Conference held in Bali, Indonesia on December 3-7, 2013, agreed to a package of trade facilitation, agriculture, and development measures. Though modest in scope, it represents the first successful conclusion of a negotiation in the WTO's nearly 20-year history. The accord has three components:

- **Trade facilitation.** Members agreed to a package that would impose binding disciplines on issues concerning the process of trade: freedom of transit, fees and formalities associated with the import and export of goods, and transparency and publication of goods. These provisions are designed to reduce transaction costs and to improve efficiencies, especially with regard to trade with and between developing countries. The accord places binding disciplines on developing countries to implement these reforms. While wealthy donor countries and international organizations have pledged funds to least-developed countries (LDCs) to implement these reforms, the agreement itself places no obligations on Member states to provide assistance.
- **Agriculture.** Members agreed to a compromise on so-called food security issues. This agreement would exempt food stockpiling programs, especially for developing countries, subject to certain transparency requirements, from dispute settlement until a permanent solution to the relationship between these programs and trade-distorting subsidy limitations in the WTO Agriculture Agreement is negotiated. Members also agreed to provisions concerning the administration of tariff-rate quotas (TRQ) and recommitted themselves to negotiate the parallel elimination of export subsidies.
- **Development Issues.** The Members agreed to a package of items to enhance trade with least-developed countries (LDCs). The agreement contained: a commitment to develop simplified preferential rules-of-origin for LDCs; a "services waiver" to grant LDCs greater access to the services markets of developed countries; a commitment to negotiate duty-free, quota-free access to LDCs; and a commitment to improve market access for cotton from LDCs.

The agreement also directed the WTO secretariat to develop a clearly defined work program to complete the Doha Round within the next 12 months. This task remains formidable. The negotiations have been characterized by persistent differences among the United States, the European Union, and advanced developing countries on major issues, such as agriculture, industrial tariffs and nontariff barriers, services, and trade remedies. While some have lauded the Bali accord as a vindication of the body's negotiating function, it remains to be seen whether this successful outcome has any lasting momentum to propel agreement on the wider Doha Round agenda.

In addition, work has started on expanding the reach of the current WTO agreements outside the scope of the Doha Round. A group now composed of 46 developed and advanced developing countries are negotiating the TISA (discussed below). The 42 Members of the plurilateral WTO Government Procurement Agreement (GPA) are awaiting the threshold of the ratification for a revised GPA to enter into force after concluding negotiations to expand its commitments in March 2012. Also, several countries, including China, are in negotiations to accede to the GPA. However, negotiations to expand the scope of the plurilateral Information Technology Agreement (ITA) recently reached an impasse in November 2013. This was a major objective of the United States.

Proposed Transatlantic Trade and Investment Partnership (TTIP) Agreement⁹

TTIP is a proposed comprehensive and high-standard FTA between the United States and European Union (EU), through which the two sides seek to enhance trade disciplines and market access by reducing and eliminating remaining transatlantic barriers to trade and investment. The Obama Administration notified Congress of its intent to negotiate TTIP on March 20, 2013, and formal negotiations commenced in July 2013. Core components of the negotiations include: reducing and eliminating tariffs; enhancing regulatory cooperation and compatibility; opening government procurement markets; and strengthening and developing new rules in areas such as intellectual property rights, investment, digital trade, trade facilitation, labor and the environment, localization barriers to trade, and state-owned enterprises (SOEs). Both the United States and EU aim to conclude the negotiations in two years, but certain issues, notably regulatory compatibility, have been contentious in previous transatlantic dialogues, and some question the likelihood of their early resolution.

TTIP is a potentially significant and strategic FTA for the United States. It involves the two largest advanced economies in the world—which, combined, represent 30% of global trade, nearly 20% of global direct investment, and almost half of global GDP. However, views on TTIP vary broadly among stakeholders. Supporters see an opportunity to boost transatlantic economic growth and jobs by addressing costly trade barriers; strengthen the U.S.-EU bilateral relationship; support broader and deeper trade liberalization; and address challenges associated with third countries. Opponents are concerned about adverse effects on import-sensitive sectors; the impact on U.S.-EU relations should negotiations stall; a focus on regional and bilateral FTAs detracting from multilateral trade liberalization; and potential infringement on U.S. and EU sovereignty, including the ability to regulate health, labor, and environmental interests.

Congress has a direct interest in the TTIP negotiations, since it establishes overall U.S. trade negotiating objectives and would consider legislation to implement a final TTIP agreement. Possible congressional consideration of renewal of Trade Promotion Authority (TPA) (see above), which expired in 2007, could affect TTIP. As part of its oversight role, Congress could examine the impact of greater transatlantic trade liberalization on the U.S. economy and particular sectors; the role of a potential TTIP in EU-U.S. relations; how TTIP would compare with other FTAs currently being negotiated, such as the Trans-Pacific Partnership (TPP) and Trade in Services Agreement (TISA); and whether TTIP should be broadened to include other countries.

The Proposed Trade in International Services Agreement (TISA)¹⁰

Services are a significant sector of the U.S. economy, accounting for almost 70% of U.S. gross domestic product (GDP) and for over 80% of U.S. civilian employment. They not only function as end-user products by themselves, but also act as the “lifeblood” of the rest of the economy with

⁹ Written by (name redacted), Specialist in International Trade and Finance x7-.... and (name redacted), Specialist in International Trade and Finance, x7-..... See CRS Report R43158, *Proposed Transatlantic Trade and Investment Partnership (TTIP): In Brief*, by (name redacted) and (name redacted), and CRS Report RL30608, *EU-U.S. Economic Ties: Framework, Scope, and Magnitude*, by (name redacted).

¹⁰ This section was written by (name redacted), Specialist in International Trade and Finance, 7-..... See CRS Report R43291, *U.S. Foreign Trade in Services: Trends and U.S. Policy Challenges*, by (name redacted).

transportation services ensuring the goods reach customers and financial services providing financing for the manufacture of goods. Services have been an important priority in U.S. foreign trade and trade policy and of global trade in general, although their intangibility, the requirement for direct buyer-provider contact, and other characteristics have limited the types and volume of services that can be traded. Advances in information technology and the related growth of transnational supply and production networks have reduced these barriers making an expanding range of services tradable across national borders.

Services present unique trade policy issues and challenges, such as how to construct trade rules that are applicable across a wide range of varied economic activities. The General Agreement on Trade in Services (GATS) under the WTO is the only multilateral set of rules on trade in services. Many policy experts, however, have argued that the GATS must be expanded if it is to govern services trade effectively, but this prospect is diminished given that GATS reform had been stuck in the floundering Doha Round of WTO negotiations.

In order to salvage a services agreement, a group of WTO members, led by the United States and Australia, launched informal discussions in early 2012 to explore negotiating a trade in international services agreement (TISA). On January 15, 2013, the Office of the United States Trade Representative (USTR) notified congressional leaders of the United States' intention to engage formally in negotiations to reach a plurilateral TISA, in conformity with the now-expired TPA congressional notification requirements. Among U.S. objectives would be to: 1) allow U.S. service providers to compete on the basis of quality and competence rather than nationality; 2) permit comprehensive coverage of all services, including services that have yet to be conceived; 3) seek to secure greater transparency and predictability from U.S. trading partners regarding regulatory policies that present barriers to trade in services and hinder U.S. exports; and, 4) address new issues arising from globalization and new mechanisms for conducting trade. Negotiations began on April 15, 2013, and include, besides the United States: Australia; Canada; Chile; Taiwan (Chinese Taipei); Colombia; Costa Rica; EU; Hong Kong; Iceland; Israel; Japan; South Korea; Liechtenstein; Mexico; New Zealand; Norway; Pakistan; Panama; Paraguay; Peru; Switzerland; and Turkey. China has expressed interest in joining.

Members of Congress have long had interest in trade agreements that could affect important sectors, such as services. In addition, Congress would have to approve a TISA for it to enter into force in the United States and, therefore, would likely want to play a role in shaping the content and outcome of a TISA.

China¹¹

Since China embarked upon a policy of economic and trade liberalization in 1979, U.S.-Chinese economic ties have grown extensively. Total U.S.-China trade rose from \$2 billion in 1979 to \$536 billion in 2012, and is projected to increase to \$555 billion in 2013. China is currently the United States' second-largest trading partner, its largest source of imports, and its third largest export market. China's large population and rapidly growing economy make it a potentially huge market for U.S. exports, and lower-cost imports from China benefit U.S. consumers. China is also an important part of the global supply chain for many U.S. companies, many of which use China

¹¹ Written by (name redacted), Specialist in Asian Trade and Finance, x7-..... See CRS Report RL33536, *China-U.S. Trade Issues*, by (name redacted), and CRS Report RL33534, *China's Economic Rise: History, Trends, Challenges, and Implications for the United States*, by (name redacted).

as a final point of assembly for their products. In addition, China's large-scale holdings of U.S. Treasury securities (\$1.3 trillion as of September 2013) have helped the federal government finance its budget deficits, thereby helping to keep U.S. real interest rates relatively low.

Despite growing commercial ties, the bilateral economic relationship has become increasingly complex and often fraught with tension. From the U.S. perspective, many trade tensions stem from China's incomplete transition to an open-market economy. While China has significantly liberalized its economic and trade regimes over the past three decades, it continues to maintain, (or has imposed) a number of state-directed policies that appear to distort trade and investment flows, which many argue, undermine U.S. economic interests. As a result, U.S.-China commercial relations will likely continue to be a major focus for Congress. Important areas of congressional concern are discussed below.

Industrial Policies

Numerous policies have been implemented by China to promote the development of domestic industries deemed critical to its future economic growth. China's primary goals include transitioning from a manufacturing center to a major global source of innovation, and reducing the country's dependence on foreign technology by promoting "indigenous innovation." The latter policy can amount to discrimination against foreign firms and has become a major source of trade tension with the United States. The Chinese government has responded that they have not and will not discriminate against foreign firms or violate global trade rules, but many U.S. business leaders remain skeptical even as they have acknowledged China's pledge to delink indigenous innovation from government procurement.

Many U.S. firms have also complained about Chinese pressure to establish production facilities in China, share proprietary technology with Chinese partners, or set up R&D centers as a condition for gaining market access. A 2013 survey by the American Chamber of Commerce in China (Am Cham China) of U.S. firms reported that 35% of its respondents stated their belief that technology transfer was a requirement for market access in China and 37% stating that such requirements were increasing.¹² The Obama Administration has initiated WTO dispute settlement cases against a number of Chinese industrial policies, including China's export subsidies to auto and auto parts (September 2012), export restrictions on rare earth elements (March 2012), and preferential subsidies given to Chinese wind power equipment manufacturers (December 2010).

Intellectual Property Rights (IPR) Protection

Lack of effective and consistent protection and enforcement in China of U.S. intellectual property rights (IPR) have been cited by U.S. firms as one of the most significant problems they face in doing business in China. Although China has significantly improved its IPR protection regime over the past few years, U.S. industry officials complain that piracy rates in China remain unacceptably high. The 2013 Am Cham China survey found that 72% of respondents felt that China's IPR enforcement regime was ineffective, up from 59% in its 2012 survey. A May 2013 study by the Commission on the Theft of American Intellectual Property estimated the annual

¹² AmCham China, *2013 China Business Climate Survey Report*, March 2013.

cost to the U.S. economy of global IPR theft at \$300 billion, of which, China accounted for 50% (\$150 billion) to 80% (\$240 billion) of those losses.¹³

Cyber-attacks by Chinese entities against U.S. firms have raised concerns over the potential large-scale theft of U.S. IPR, especially trade secrets, and its implications for the U.S. economy. A 2011 report by the U.S. Office of the Director of National Intelligence (DNI) stated that: “Chinese actors are the world’s most active and persistent perpetrators of economic espionage. U.S. private sector firms and cyber security specialists have reported an onslaught of computer network intrusions that have originated in China, but the IC (Intelligence Community) cannot confirm who was responsible.”¹⁴ A February 2013 report by Mandiant, a U.S. information security company, documented extensive economic cyber espionage by a Chinese unit (designated as “APT1”) with alleged links to the Chinese People’s Liberation Army (PLA) against 141 firms, covering 20 industries, since 2006. The report stated: “Our analysis has led us to conclude that APT1 is likely government-sponsored and one of the most persistent of China’s cyber threat actors. We believe that APT1 is able to wage such a long-running and extensive cyber espionage campaign in large part because it receives direct government support.”¹⁵ Following a meeting with Chinese President Xi Jinping in June 2013, President Obama warned that if cyber security issues are not addressed and if there continues to be direct theft of U.S. property, then “this was going to be a very difficult problem in the economic relationship and was going to be an inhibitor to the relationship really reaching its full potential.”¹⁶

Currency Issues

Unlike most major economies, China does not have a floating currency. Instead, the government pegs its currency (the renminbi—RMB) largely to the U.S. dollar, and intervenes in currency markets to limit its appreciation. Critics charge that China manipulates its currency in order to give its exporters an unfair competitive advantage by making Chinese exports to the United States relatively less expensive and U.S. exports to China relatively more expensive than would occur under free market conditions. They argue that if China’s currency is undervalued, it acts as a subsidy conveyed to Chinese exporters while constituting an additional trade barrier to U.S. exports to China. Some U.S. policymakers contend that China’s currency policy has been a major contributor to large annual U.S. bilateral trade deficits with China (\$315 billion in 2012) and the extensive loss of U.S. manufacturing jobs. In addition, some economists claim that China’s currency policy induces other countries to intervene similarly in currency markets.

Beginning in 2005, China began to liberalize its currency policy, due in part to international pressure, and allowed the RMB to appreciate gradually.¹⁷ From July 2005 to July 2009, the RMB was allowed to appreciate by 21%. However, once the effects of the global financial crisis became apparent, the Chinese government halted its appreciation of the RMB and kept it

¹³ The Commission on the Theft of American Intellectual Property, *The Report of the Commission on the Theft of Intellectual Property*, May 2013.

¹⁴ DNI, Office of the National Counterintelligence Executive, *Foreign Spies Stealing U.S. Economic Secrets in Cyberspace, Report to Congress on Foreign Economic Collection and Industrial Espionage: 2009-2011*, October 2011.

¹⁵ Mandiant, *APT1: Exposing one of China’s Cyber, Espionage Units*, February 19, 2013, p. 2.

¹⁶ The White House, *Press Briefing by National Security Advisor Tom Donilon*, June 8, 2013.

¹⁷ Prior to 2005, China had pegged the RMB solely to the dollar at a constant exchange rate of about 8.28 per dollar. Thereafter, China pegged the RMB to a basket of major currencies (including the dollar and allowed it to appreciate gradually).

relatively constant through June 2010, when it was allowed to appreciate again. From June 2010 through the end of November 2013, the RMB has appreciated 12.2% against the dollar. (However, the RMB appreciated very little in 2012 and during the first 11 months of 2013.) In an October 2013 report, the Department of the Treasury stated that the RMB remained significantly undervalued.

Several bills have been introduced over the past few years to address China's currency policy, some of which would have increased U.S. tariffs on Chinese products or sought to apply U.S. trade remedy measures against countries (such as China) deemed to have a currency that was fundamentally misaligned. Supporters contend that the RMB remains significantly undervalued against the dollar and that pressure needs to be applied to China to induce it to adopt a more market-based currency regime. Opponents argue that such legislation, if enacted, would likely have little impact on the U.S. economy, would worsen trade relations with China, and could later be found to be inconsistent with U.S. WTO commitments. Other Members contend that, while China's undervalued currency remains an area of concern, it has been superseded by other more significant challenges to U.S. economic interests, discussed above.

Chinese Economic Reforms and Rebalancing

A major focus of U.S. economic policy towards China has been to persuade it to rebalance its economy by reducing the country's policy preference for exporting and investing, and increase an emphasis on consumer demand. This goal could be achieved with a number of policies to boost household incomes (e.g., developing a social safety net and reducing the need to maintain high rates of savings) and implementing reforms to reduce distortive government policies (e.g., maintaining an undervalued currency and using the government-controlled banking system to subsidize state-owned enterprises). Many economists argue that boosting Chinese domestic consumption and eliminating distortive economic policies would greatly increase China's demand for imports, promote greater competition in China, improve Chinese living standards, and help reduce trade tensions with the United States.

From November 9-12, 2013, the Communist Party of China held the 3rd Plenum of its 18th Party Congress, a meeting that many analysts anticipated would result in the initiation of extensive new economic reforms under China's new leadership. Following the meeting, the Communist Party issued a communique with a number of broad policy statements. One highlighted by the Chinese media was that the market would now play a "decisive" role in allocating resources in the economy. This was in contrast to previous statements that the market was a "basic" means of allocating economic resources. Some analysts have raised concerns over the communique's statement that China "must unwaveringly consolidate and develop the publicly owned economy, persist in the dominant role of the public ownership system, give rein to the leading role of the State-owned economy, and incessantly strengthen the vitality, control strength and influence of the State-owned economy."¹⁸ Some observers contend that this indicates that China will not implement reforms that reduce the role of the government in promoting and supporting state-owned enterprises (SOEs), a goal of U.S. economic officials. Others argue that the Plenum's signals indicate that SOEs will be subject to greater market forces.

¹⁸ For an unofficial English translation of the full text of the Communique, see <http://chinacopyrightandmedia.wordpress.com/2013/11/12/communique-of-the-3rd-plenum-of-the-18th-party-congress/>.

The extent of China's economic reforms resulting from the meeting will not be fully understood until more information is made available by the Chinese government. Treasury Secretary Lew, on his visit to Beijing immediately following the 3rd Plenum, was quoted as saying that China had announced "an ambitious agenda." He added, "The direction is significant, but the character and the pace of change matters."¹⁹

Challenges for Congress

China's continued economic rise and U.S.-China trade relations will likely be closely monitored by Congress. Opinions differ, however, as to the most effective way of dealing with China on numerous issues. Some support a policy of engagement using various cabinet-level forums, such as the U.S.-China Strategic and Economic Dialogue (S&ED) and the U.S.-China Joint Commission on Commerce and Trade (JCCT). Others support a somewhat mixed policy of using engagement when possible, coupled with a more aggressive use of WTO dispute settlement procedures to address China's unfair trade policies. Still others, who see China as a growing threat to the U.S. economy and the global trading system, advocate a policy of trying to contain China's economic power and resorting to punitive measures when needed. Some Members may press the Administration to boost efforts to induce China to abide more fully by its WTO commitments, including bringing more trade dispute settlement cases in the WTO. They may also introduce new bills that seek to address China's currency, industrial, and IRP protection policies.

U.S. Trade Promotion and Financing²⁰

The federal government promotes U.S. exports and investments through providing finance and insurance programs that are administered by the U.S. Export-Import Bank (Ex-Im Bank); the Department of Agriculture; and the Overseas Private Investment Corporation (OPIC), among other agencies. In addition, the Department of Commerce supports U.S. exports and inward investment into the United States through trade missions, advocacy, market research, and other activities, often with an emphasis on U.S. small businesses.

Administration Initiatives

A current broad-based framework for U.S. trade promotion and financing is the National Export Initiative (NEI), the Obama Administration's plan to double U.S. exports worldwide in five years (2009-2014). With the NEI nearing an end, some question whether its goal of doubling U.S. exports can be achieved, or whether the NEI should be extended or re-focused. Others contend that, regardless of the outcome, the NEI has elevated federal export promotion as a U.S. policy priority. More targeted Administration initiatives also are underway, centered, for example, on supporting trade and investment with specific regions (e.g., sub-Saharan Africa, Asia-Pacific) and in specific economic sectors (e.g., renewable energy). The 113th Congress could conduct oversight of and legislate on a number of issues related to federal trade promotion, including: the effectiveness of the NEI and other Administration initiatives to boost U.S. exports and

¹⁹ Ian Talley, "Lew Seeks Details on China's Agenda," *The Wall Street Journal*, November 15, 2013.

²⁰ Written by (name redacted), Specialist in International Trade and Finance, x7-..... See CRS Report R41495, *U.S. Government Agencies Involved in Export Promotion: Overview and Issues for Congress*, coordinated by (name redacted); and CRS Report R42555, *Trade Reorganization: Overview and Issues for Congress*, by (name redacted)

investment; the extent to which these initiatives are aligned or serve as competing U.S. policy goals; the adequacy of federal funding of such efforts; proposals to reorganize, or enhance coordination of federal trade promotion and finance functions; and whether alternative policy options may be more effective.

Reauthorization of Export-Import (Ex-Im) Bank and Overseas Private Investment Corporation (OPIC)²¹

Ex-Im Bank and OPIC are two trade finance agencies whose authorities will expire in September 2014 unless renewed by Congress. Ex-Im Bank provides direct loans, guarantees, and insurance to help finance U.S. exports, in support of U.S. employment. OPIC provides political risk insurance and finance to facilitate U.S. private investment in developing countries, in support of U.S. foreign policy objectives. The financial activities of Ex-Im Bank and OPIC are backed by the full faith and credit of the U.S. government. Both agencies seek to fill gaps in private sector finance, and to help level the playing field for U.S. businesses competing against foreign companies that receive government-supported financing. As demand-driven agencies, their actual levels of financial support depend on commercial interests. Both agencies are self-sustaining; they use offsetting collections, generated from fees charged for their services and other sources, to fund their activities. Congress approves an annual appropriation setting an upper limit on each of the agencies' administrative and program expenses.

Congress has responsibility for reauthorizing Ex-Im Bank and OPIC. In May 2012, the 112th Congress passed legislation to extend Ex-Im Bank's authority to September 30, 2014 (P.L. 112-122). Among other provisions, the legislation allowed for incremental increases in Ex-Im Bank's lending authority from the previous \$100 billion limit to \$140 billion in FY2014 (contingent on certain requirements) and mandated increased Ex-Im Bank reviews of its lending operations. The 113th Congress could continue oversight of Ex-Im Bank's implementation of reauthorization requirements. In addition, as Ex-Im Bank's new expiration date nears, Congress will likely debate renewal of its authority. In contrast, Congress last reauthorized OPIC in 2003, extending its authority through FY2007 (P.L. 108-158). Since then, Congress has extended OPIC's authority to conduct its programs through the annual appropriations process. Although Congress has made some adjustments to OPIC's activities through appropriations, some argue that the 113th Congress should consider OPIC reauthorization, which could afford Members greater opportunity to weigh in on broader OPIC policy issues, such as the agency's role in U.S. foreign policy.

The 113th Congress could consider a range of issues related to Ex-Im Bank and OPIC reauthorization. Most fundamentally, Congress must decide whether to reauthorize them. In doing so, Congress could examine these agencies' economic and competitive rationales, their implications for the size and scope of the U.S. government, and whether other organizational structures are more suited to U.S. trade finance functions. Should Congress decide to renew their authorities, the length of reauthorization may be debated. On one hand, a multi-year or permanent authorization could enhance these agencies' long-term planning capacity and ability to assure businesses of the stability of their programs. On the other hand, shorter-term renewals could permit enhanced congressional oversight. Congress also may consider broader issues. For instance, in terms of the international context, Congress could examine U.S. economic

²¹ Written by (name redacted), Specialist in International Trade and Finance, x7-..... See CRS Report R42472, *Export-Import Bank: Background and Legislative Issues*, by (name redacted); and CRS Report 98-567, *The Overseas Private Investment Corporation: Background and Legislative Issues*, by (name redacted).

competitiveness vis-à-vis the officially-backed export and investment financing provided by other countries, as well as the adequacy of current international disciplines for trade finance to which large emerging economies such as China, Brazil, and India, do not adhere. Other issues could include examination of the role of these agencies in supporting specific U.S. policy goals. For example, legislative proposals in the 113th Congress have called for increased Ex-Im Bank and OPIC support for U.S. trade and investment with Africa. In examining the potential for these agencies' greater involvement, Congress may consider how other stakeholder interests and policy goals should be balanced.

Export Controls and Sanctions

Congress has authorized the President to control the export of various items for national security, foreign policy, and economic reasons. Separate programs and statutes for controlling different types of exports exist for nuclear materials and technology, defense articles and services, and dual-use goods and technology. Under each program, licenses of various types are required before an export can be undertaken. The Departments of Commerce, State, and Defense administer these programs. At the same time, Congress also legislates country-specific sanctions that restrict aid, trade, and other transactions to address U.S. policy concerns about proliferation, regional stability, and human rights. In the 113th Congress, these controls and sanctions may raise difficult issues over how to balance U.S. foreign policy and national security objectives against U.S. commercial and economic interests.

The President's Export Control Initiative²²

In 2009, the Obama Administration launched a comprehensive review of the U.S. export control system. In the current system, responsibility for controlling 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, with enforcement shared among these agencies, as well as the Departments of Justice and Homeland Security. Key elements of the Administration's reform agenda include a four-pronged approach that would create a single export control licensing agency for both dual-use and munitions exports; adopt a unified control list; create a single integrated information technology system, which would include a single database of sanctioned and denied parties; and establish a single enforcement coordination agency.

The Administration's blueprint envisions that these changes would be implemented in three phases with the final tier requiring legislative action. To date, efforts have been undertaken to harmonize the Commerce Control List (CCL), which focuses on dual-use items, with the U.S. Munitions List (USML). This has been done through an ongoing category-by-category review of USML items and a migration of what the Administration deems as less sensitive items to the CCL. Congressional notification is required if items are moved from the munitions list to the dual-use list; the first of these notifications occurred in March 2013. Rulemakings to transfer several categories of USML items were issued and changes to four categories of the USML taking effect in 2013. The President also made the determination required by the NDAA 2013 that the transition of certain satellites and related items from the USML to the CCL was in the national interest. An Export Enforcement Coordination Center, which was created by executive order on

²² Written by (name redacted), Specialist in International Trade and Finance, x7-..... See CRS Report R41916, *The U.S. Export Control System and the President's Reform Initiative*, by (name redacted) and (name redacted).

November 9, 2010, has been set up within the Department of Homeland Security to synchronize enforcement efforts. An integrated information technology system based on the Defense Department's USXports platform is being adopted by the Departments of State and Commerce.

The 113th Congress may scrutinize this effort through oversight and may be asked to approve certain changes proposed by the Administration, including the creation and placement of the proposed licensing agency. Congress may also attempt to reauthorize or rewrite the currently expired Export Administration Act, the statutory basis of dual-use export controls.

Economic Sanctions²³

Economic sanctions may be defined as coercive economic measures taken against a target to bring about a change in policies. They typically include measures such as trade embargoes; restrictions on particular exports or imports; denial of foreign assistance, loans, and investments; or control of foreign assets and economic transactions that involve U.S. citizens or businesses. The decision to apply trade and aid sanctions is based, to some extent, on a country's record with respect to human rights, international terrorism, religious freedom, proliferation of weapons of mass destruction, international narcotics trafficking, trafficking in persons, interference with democratic processes, corruption, and money laundering. The United States currently maintains robust sanctions regimes against foreign governments it has identified as supporters of acts of international terrorism (Cuba, Iran, Sudan, and Syria), nuclear arms proliferators (Iran, North Korea, Syria), and egregious violators of international human rights standards (Syria, Burma, Cuba, Iran, North Korea).

Members introduced a number of bills in the 1st session that, if enacted, could change United States' bilateral relationships with Cuba, Brazil, Sudan, Vietnam, Zimbabwe, and Pakistan. Congress remains engaged in the debate regarding weapons proliferation programs in Iran, North Korea, and Syria, rule of law matters in Russia, incremental movement toward normalizing trade relations with Burma, and supporting stability and development in the contentious Sudan-South Sudan border region.

Nothing looms larger, however, than democracy in Egypt and nuclear proliferation by Iran—two critical matters about which Congress could adopt legislation. In both matters, a bipartisan group of legislators could prevail to affect U.S. foreign policy and national security interests in ways that are discordant with the President's negotiations.

Import Policies

U.S. policies affecting imports are shaped by a mixture of economic objectives, foreign policy interests, and political considerations. The case for supporting freer trade and more open markets rests on the view that they yield substantial economic benefits for all participating countries. However, since the gains from trade may be disproportionately allocated within domestic economies, some industries and workers may be adversely affected by import competition. Thus, international trade rules also allow governments to provide means (called "trade remedies") by which certain groups may petition for temporary protection from import surges of "fairly" traded imports, or for redress in certain cases of "unfair" imports. Additionally, efforts to forge closer

²³ Written by (name redacted), Specialist in Foreign Policy Legislation, x7-.....

economic and political ties with developing countries may also lead to more open policies through the extension of non-reciprocal preferential access to the U.S. market. Import policy issues in which Congress has a direct interest include five broad policy areas: (1) trade remedies; (2) trade preferences; (3) border security and trade facilitation; (4) tariffs; and, (5) trade adjustment assistance.

Trade Remedies²⁴

The United States and its trading partners use laws known as trade remedies to mitigate the injury (or threat thereof) of various trade practices to domestic industries and workers. The three most frequently applied U.S. trade remedies are: (1) antidumping (AD), which provides relief from injurious imports sold at less than fair market value; (2) countervailing duty (CVD), which provides relief from injurious imports subsidized by a foreign government or public entity; and (3) safeguards, which provide temporary relief from import surges of fairly-traded goods. These laws are enforced primarily through the administrative procedures of two U.S. government agencies, the Department of Commerce and the United States International Trade Commission. In AD and CVD cases, the remedy is an additional duty assessed to offset the calculated amount of dumping or subsidy. In safeguard cases that are determined by the President, an import quota or a tariff may be assessed. In addition, the WTO agreements contain specific obligations on these measures to which its member countries, including the United States, adhere.

One issue that may emerge in the second session of the 113th Congress relates to the alleged under-collection of AD and CVD duties. U.S. Customs and Border Protection (CBP) has responsibility for collecting duties, including proposals that would require CBP and its sister agency U.S. Immigration and Customs Enforcement (ICE) to investigate allegations of AD/CVD duty circumvention under specific deadlines. A second concern involves China's currency intervention policy (see above) and whether China's alleged limiting of the appreciation of its currency should be treated as a subsidy in CVD investigations.

Trade Preferences²⁵

Since 1974, Congress has created six trade preference programs designed to assist "lesser developed" countries: 1) the Generalized System of Preferences (GSP—expired July 31, 2013)), which applies to all eligible developing countries; 2) the Andean Trade Preference Act (ATPA—expired July 31, 2013); 3) the Caribbean Basin Economic Recovery Act (CBERA—permanent); 4) the Caribbean Basin Trade Partnership Act (CBTPA—expires September 30, 2020); 5) the African Growth and Opportunity Act (AGOA—expires September 30, 2015); and 6) the Haitian Opportunity through Partnership Encouragement (HOPE—expires September 30, 2020) Act. Except for CBERA, which is permanent, these programs give temporary, non-reciprocal, duty-free access to the U.S. market for a select group of exports from eligible countries.

Congress authorizes, revises, and conducts regular oversight of these programs. Since the GSP and ATPA programs expired in 2013, legislation extending and/or revising these preference

²⁴ Written by (name redacted), Specialist in International Trade and Finance, x7-..... See CRS Report RL32371, *Trade Remedies: A Primer*, by (name redacted).

²⁵ Written by (name redacted), Specialist in International Trade and Finance, x7-..... See CRS Report R41429, *Trade Preferences: Economic Issues and Policy Options*, coordinated by (name redacted).

programs could be considered in the second session of the 113th Congress. Colombia's status as a beneficiary country under ATPA expired upon entry into force of the U.S.-Colombia FTA and Bolivia has been dropped from the program. Because Ecuador is the only remaining designated beneficiary country, there is some question as to whether the 113th Congress will extend ATPA or allow it to expire. Congress could also examine the participation of the more advanced developing countries in these programs.

AGOA and U.S.-Africa Trade Relations²⁶

With its current expiration set for 2015, AGOA has received increased Congressional interest in the 113th Congress. Both the Administration and relevant congressional committees have requested agency evaluations of the preference program in preparation for the renewal debate. As a cornerstone of U.S.-Africa trade policy, the potential reauthorization and reform of AGOA may also build upon recent legislative proposals to increase U.S.-Africa trade and investment. Given the significant improvement in the economies of several African countries during AGOA's lifespan, these legislative proposals and the AGOA renewal debate may have a greater focus on two-way U.S.-Africa trade. As a non-reciprocal preference program, AGOA currently focuses on African exports destined for the United State

U.S. Customs and Border Protection (CBP) Reauthorization²⁷

U.S. Customs and Border Protection (CBP), within the Department of Homeland Security (DHS), is the primary agency charged with ensuring the smooth flow of trade through U.S. ports of entry (POEs). CBP's policies with regard to U.S. imports are designed to: (1) facilitate the smooth flow of imported cargo through U.S. ports of entry; (2) enforce trade and customs laws designed to protect U.S. consumers and business and to collect customs revenue; and (3) enforce import security laws designed to prevent weapons of mass destruction, illegal drugs, and other contraband from entering the United States—a complex and difficult mission. Congress has a direct role in organizing, authorizing, and defining CBP's international trade functions, as well as appropriating funding for and conducting oversight of its programs.

The second session of the 113th Congress may consider legislation to reauthorize CBP's trade functions in the above areas, and to provide additional funding for CBP's modernization efforts, such as the continuing development of the Automated Commercial Environment (ACE), an online platform designed to facilitate the import process, and the International Trade Data System (ITDS), a U.S. Treasury Department-led effort to develop an online "single window" for all U.S. agencies involved in import processing to clear goods for entry into the U.S. market.

Trade facilitation aims to improve the efficiency of international trade by harmonizing and streamlining customs procedures, such as duplicative documentation requirements, customs processing delays, and non-transparent or unequally enforced importation rules and requirements. Multilateral efforts to streamline trade facilitation procedures were addressed as part of a "Bali Package" of "deliverables" at the 9th WTO Ministerial Conference in December 2013 (see above). The final text contains several provisions sought by U.S. negotiators, including

²⁶ Written by Brock Williams, Analyst in International; Trade and Finance, x7-.....

²⁷ Written by (name redacted), Specialist in International Trade and Finance, x7-..... See CRS Report R43014, *U.S. Customs and Border Protection: Trade Facilitation, Enforcement, and Security*, by (name redacted).

multilateral rules for timely, binding advance customs rulings; and procedures that would allow expedited release for goods entered through air cargo facilities.

Oversight into CBP efforts to enhance cargo security may also receive congressional attention as part of, or separate from, consideration of a possible CBP reauthorization bill. For example, the SAFE Port Act (P.L. 109-347), as amended, included a statutory mandate to scan all U.S. maritime cargo with non-intrusive inspection equipment at overseas ports of loading by July 2012. On May 2, 2012, Homeland Security Secretary Napolitano notified Congress that she would exercise her authority to extend the 100% scanning deadline. Thus, cargo screening could become the focus of additional legislation in the 113th Congress, among other issues.

Miscellaneous Tariff Bill (MTB)²⁸

Many Members of Congress introduce bills that 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 they help domestic producers of manufactured goods reduce costs, making their products more competitive. Due to the large number of bills typically introduced, they are often packaged together in a broader miscellaneous tariff bill. The United States Manufacturing Enhancement Act of 2010 (P.L. 111-227) enacted on August 11, 2010, is the most recent MTB. It expired on December 31, 2012.

Legislation could emerge in the second session of the 113th Congress proposing to retroactively renew these duty suspensions, enact new ones, or make procedural changes to the MTB process. It is also possible that consideration of an MTB bill could be controversial because of past congressional moratoriums on “earmarks,” which in the past have included measures to provide “limited tariff benefits,” including duty suspensions.

Trade Adjustment Assistance²⁹

Congress created Trade Adjustment Assistance (TAA) in the Trade Expansion Act of 1962 to help workers and firms adjust to dislocation that may be caused by increased trade liberalization. It is justified now, as it was then, on grounds that the government has an obligation to help those hurt by policy-driven trade opening. TAA is also presented as an alternative to policies that would restrict imports, and so provides assistance while bolstering freer trade and diminishing prospects for potentially costly tension (retaliation) among trade partners. As in the past, critics debate the merits of TAA on equity, efficiency, and budgetary grounds. Democratic leaders and the Obama Administration, however, considered TAA renewal essential for passage of three implementing bills for free trade agreements (FTAs) with Colombia, Panama, and South Korea. With this understanding, Congress reauthorized TAA with bipartisan support (P.L. 112-40).

The TAA statute reauthorized the workers, firms, and farmers programs through December 31, 2013, but included provisions that allow TAA programs to continue assisting clients who were certified before December 31, 2013. The TAA programs can continue to operate with FY13

²⁸ Written by (name redacted), Specialist in International Trade and Finance, x7-.... See CRS Report RL33867, *Miscellaneous Tariff Bills: Overview and Issues for Congress*, by (name redacted).

²⁹ Written by Glennon Harrison, Specialist in International Trade and Finance, x7-....

appropriations if funds are available. Since Congress did not reauthorize the TAA program before January 1, 2014, the TAA program reverted from the expanded program made effective by the TAAEA to the more limited program that was in effect on February 13, 2011, before the TAAEA amendments. The 2011 reauthorization also discontinued TAA for communities because it was considered duplicative of other federal programs. Many, but not all, of the enhanced programs passed in an earlier (2009) reauthorization were continued, retaining eligibility for services workers and firms, increasing income support for workers undergoing job training, raising the Health Coverage Tax Credit, expanding funding for training benefits, and reinstating more detailed program evaluation and reporting requirements. Funding was reduced for job search, relocation assistance, and wage insurance for older workers, and eligibility for public sector workers was discontinued.

Senator Baucus introduced the Trade Adjustment Assistance Extension Act of 2013 (S. 1357) on July 24, 2013. The bill would extend and reauthorize TAA for workers, firms, and farmers at current funding levels through 2020. On July 30, 2013, President Obama announced support for reauthorization of the TAA and linked it to passage of Trade Promotion Authority (TPA). TAA renewal continues to spur heated debate in Congress, but TAA reauthorizations that have been tied to the granting of trade negotiating authority have generally received strong support.

Intellectual Property Rights (IPR) in U.S. Trade Policy³⁰

The international protection and enforcement of IPR—such as patents, copyrights, trademarks, and trade secrets—is a major component of U.S. trade policy, due to the significant role of IPR in the U.S. economy and the potentially negative commercial, health, safety, and security consequences of counterfeiting and piracy. The United States pursues intellectual property objectives using a range of trade policy mechanisms, including multilaterally through the WTO, which administers the Agreement on Trade-Related Aspects of Intellectual Property Rights (“TRIPS Agreement”); regionally and bilaterally through the negotiation of FTAs; and domestically through U.S. trade laws, such as “Section 337” and “Special 301.”

IPR and U.S. Trade Negotiations

IPR protection and enforcement have been a key negotiating objective in TPA and in U.S. trade agreement negotiations. The 113th Congress could conduct oversight of implementation of IPR commitments in the U.S. FTAs with Colombia, South Korea, and Panama, which entered into force in 2012. Congress also could conduct oversight of the treatment of IPR issues in current U.S. trade negotiations. IPR issues feature prominently in the TPP negotiations, in which the United States seeks intellectual property commitments that exceed the minimum standards of the TRIPS Agreement, “TRIPS-plus.” Key issues in TPP include pharmaceutical patents and implications for access to medicines, and copyright enforcement and implications for digital data flows and privacy. Possible issues in the TTIP negotiations, which are in early stages, include the treatment of pharmaceuticals; the protection of geographical indications; and new concerns in the

³⁰ Written by (name redacted), Specialist in International Trade and Finance, x7-..... See, CRS Report RL34292, *Intellectual Property Rights and International Trade*, by (name redacted) and (name redacted), and CRS Report R41107, *The Proposed Anti-Counterfeiting Trade Agreement: Background and Key Issues*, by (name redacted).

digital realm, such as forced localization barriers to trade. Both negotiations include a focus on commitments to enhance protections for trade secrets.

Additionally, the 113th Congress could continue to monitor the resolution of the Anti-Counterfeiting Trade Agreement (ACTA), which was negotiated outside of the WTO by the United States and nearly 40 other primarily developed countries. The ACTA is intended to build on the TRIPS Agreement, such as by addressing new IPR issues in the digital environment. Concluded in 2010, the ACTA has not entered into force. The United States continues efforts to bring the ACTA into force.

Section 337 Process and Online Copyright Infringement and Piracy

Among the U.S. domestic tools to pursue IPR-related trade policy is Section 337 of the Tariff Act of 1930 (19 U.S.C. §1337), as amended, which authorizes the U.S. International Trade Commission (ITC) to prohibit imports of products into the United States that infringe on U.S. intellectual property. In the 112th Congress, legislative efforts related to Section 337 focused on addressing jurisdictional problems associated with holding foreign websites accountable for piracy and counterfeiting. Multiple bills were introduced, renewing congressional and public debate about the balance between protecting U.S. intellectual property and promoting innovation. The 113th Congress could take these issues up again, as well as other issues, including CBP's enforcement of Section 337 exclusion orders. Concerns have been raised by some Members, as well as other stakeholders, about the effectiveness, efficiency, and transparency of the Section 337 enforcement process.

International Investment

The United States is the largest source and recipient of foreign direct investment (FDI) in the world. This dual position points to one aspect of globalization, the spread of economic activity by firms across national borders, which has become a prominent feature of the U.S. economy. Globalization also means the United States has important economic, political, and social interests at stake in the development of international policies regarding direct investment. Congress weighs in on all aspects of these international investment issues.

Foreign Investment and National Security³¹

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

³¹ Written by (name redacted), Specialist in International Trade and Finance, x7-..... See CRS Report RL34561, *Foreign Investment and National Security: Economic Considerations*, by (name redacted), and CRS Report RS22863, *Foreign Investment, CFIUS, and Homeland Security: An Overview*, by (name redacted).

foreign direct investment on the structure and industrial capacity of the economy, and on the ability of the economy to meet the needs of U.S. defense and security interests.

In July 2007, Congress asserted its own role in making and conducting foreign investment policy when it adopted and the President signed the Foreign Investment and National Security Act of 2007 (P.L. 110-49). This law broadens Congress's oversight role, and explicitly includes the areas of homeland security and critical infrastructure as separately identifiable components of national security that the President must consider when evaluating the national security implications of foreign investment transactions. At times, the act has drawn Congress into a greater dialogue over the role of foreign investment in the economy.

U.S. International Investment Agreements³²

The United States promotes international investment agreements to reduce restrictions on foreign investment, ensure non-discriminatory treatment of foreign investment, protect investor rights, provide investor-state arbitration, and balance other U.S. policy interests. International investment agreements typically take two forms: bilateral investment treaties (BITs) and BIT-like chapters in free trade agreements. In April 2012, the Obama Administration announced the conclusion of its review of the U.S. Model BIT, the template which the United States uses to negotiate with foreign countries on BITs and investment chapters in FTAs.

The 2012 Model BIT maintains the “core” or substantive investor protections affirmed in the 2004 Model BIT review. In addition, it clarifies that BIT obligations apply to state-owned enterprises (SOEs); includes language further limiting performance requirements; clarifies labor and environmental provisions; clarifies which financial services provisions may fall under a prudential exception (such as to address balance of payments problems); and expands transparency obligations, among other provisions. The conclusion of the Model BIT review may generate momentum to conclude previously-launched negotiations with countries such as China and India, or to launch investment negotiations with other U.S. trading partners. For example, President Obama announced in July 2013 efforts to explore an investment treaty with the East African Community (EAC), building upon the U.S.-EAC Trade and Investment Partnership announced in June 2012. Investment policy issues also feature prominently in U.S. trade negotiations, including the current proposed TPP, where investor-state dispute settlement issues have been particularly controversial. They may be addressed in the TTIP negotiations as well, given the high level of transatlantic investment and U.S. and EU interest in using TTIP to signal the importance of investment protections to third countries.

BITs are submitted to Congress as treaties, which require a two-third's vote of approval for ratification. BIT-like chapters in FTAs, by contrast, require simple majority approval of the trade agreement implementing legislation by both Houses of Congress. The 113th Congress may be asked to consider new BITs, as well as the possible TPP and TTIP that may include investment chapters.

³² Written by (name redacted), x7-.... and (name redacted), x7-....., Specialists in International Trade and Finance.

Promoting Investment in the United States³³

U.S. investment policy includes a focus on attracting investment to the United States. SelectUSA is a program established by Executive Order 13577 in June 2011 to coordinate federal efforts to attract and retain investment, both foreign and domestic, in the United States. Housed in the Department of Commerce, SelectUSA provides information to potential investors about doing business in the United States; serves as an “ombudsman” for investors to help resolve issues involving federal investment-related programs and activities; and advocates for U.S. cities, states, and regions competing for global investment. In October 2013, President Obama announced a broad-based plan to enhance SelectUSA, including by making investment promotion a formal part of the portfolio of U.S. ambassadors and their embassy staff. The 113th Congress could consider funding levels for Select USA, as well as conduct oversight of the effectiveness of SelectUSA in supporting U.S. investment policy.

International Finance, Institutions, and Crises

The International Financial Institutions (IFIs) include the International Monetary Fund (IMF), whose main task is ensuring international monetary and financial stability, and several multilateral development banks (MDBs), including the World Bank and four regional development banks—the African Development Bank, the Asian Development Bank, the European Bank for Reconstruction and Development, and the Inter-American Development Bank. The United States is a member and major contributor to all these institutions.

The IFIs and the Group of Twenty (G-20) major economies were at the forefront of the global response to the financial crisis in 2008, dramatically increasing their lending to help developing countries absorb the impact of reduced economic growth and its effects on trade and financial flows. To cover increased lending, the IMF and the MDBs sought new donor resources. At several G-20 summits, world leaders committed to ensure sufficient resources for the IFIs to support their macroeconomic stability and development mandates. Many of these efforts, which were directed at stabilizing the world economy in the midst of the 2008-2009 global economic crisis, are now focused on resolving the Eurozone sovereign debt crisis to ensure that it does not undermine the stability and growth of the world economy.

International Monetary Fund³⁴

Recent congressional attention has centered on the how IMF resources have been used since the 2008 global economic crisis, on proposed IMF governance changes, and on the IMF’s role in the Eurozone debt crisis. Three Eurozone countries—Ireland, Greece, and Portugal—are currently receiving IMF-budget support and Congress will likely continue to conduct oversight of events in Europe.

³³ Written by (name redacted), x7-.... and (name redacted) x7-...., Specialists in International Trade and Finance.

³⁴ Written by (name redacted), Specialist in International Trade and Finance, x7-.... See CRS Report R42019, *International Monetary Fund: Background and Issues for Congress*, by (name redacted), CRS Report R42844, *IMF Reforms: Issues for Congress*, by (name redacted) and (name redacted), and CRS Report RL33626, *International Monetary Fund: Reforming Country Representation*, by (name redacted).

In December 2010, the Board of Governors of the IMF agreed to a wide-ranging set of institutional reforms. If enacted, they would increase the institution's core source of funding and expand the representation of major emerging market countries, such as Brazil, India, China, and Mexico. In order for key elements of the reform package to take effect, IMF rules dictate that the reforms must be approved by three-fifths of IMF members (113) representing 85% of the total voting power. Under this formula, approval by the United States is essential because it controls 16.75% of the voting power. Under U.S. law, congressional authorization is required for the United States to consent to change the U.S. quota in the IMF, which determines the U.S. share of total voting power. Furthermore, depending on the budgetary treatment of any newly-authorized U.S. contributions to the IMF, appropriations may be required.

To date, a majority of IMF member countries have approved these reforms, but the United States has not. U.S. inaction reportedly created tensions at the IMF-World Bank Annual Meetings in October 2012 and October 2013, with some IMF members frustrated because the United States was instrumental in initially advancing some of the reforms.

Multilateral Development Banks³⁵

Many policymakers view U.S. participation in MDB capital increases as important because the United States is the largest shareholder in the MDBs, a position which also defines its power to veto, which it can exercise under certain circumstances. The Obama Administration has strongly supported capital increases at the MDBs, but cautioned that the increases must be tied to policy reforms to: improve transparency, accountability, and governance; better align management performance and incentives with improved development outcomes; and delineate more clearly the division of labor between the World Bank and the regional development banks. Congress may evaluate the effectiveness of and possibly consider future appropriations for MDBs.

G-20³⁶

The Group of 20, or G-20, is the premier forum for international economic cooperation and coordination, and includes 20 major advanced and emerging-market economies that, together, account for two-thirds of the world's population and 90% of world GDP. Members of the G-20 include Argentina, Australia, Brazil, Canada, China, France, Germany, India, Indonesia, Italy, Japan, Mexico, Russia, Saudi Arabia, South Africa, South Korea, Turkey, United Kingdom, and the United States, as well as the European Union (EU). The leaders of the G-20 countries hold annual "summits," as well as more frequent gatherings of finance ministers, central bankers, and other officials. Discussions and agreements primarily focus on international economic and financial issues, although related topics, such as development, food security, and the environment, may also be featured.

The G-20 has a rotating presidency, which was held by Russia in 2013. Russia hosted the 2013 G-20 summit in St. Petersburg on September 5-6. The official G-20 statement released at the end of

³⁵ Written by (name redacted), Specialist in International Trade and Finance, x7-..... See CRS Report R41170, *Multilateral Development Banks: Overview and Issues for Congress*, by (name redacted), and CRS Report R41537, *Multilateral Development Banks: How the United States Makes and Implements Policy*, by (name redacted) and (name redacted).

³⁶ Written by (name redacted), Analyst in International Trade and Finance, x7-..... See CRS Report R40977, *The G-20 and International Economic Cooperation: Background and Implications for Congress*, by (name redacted).

the summit focused on a wide range of economic issues, including trade, investment, jobs, financial regulation, and corruption. However, foreign policy issues, most notably the situation in Syria, were reported to have dominated the informal discussions. Some analysts are now calling for a more formal foreign policy track in the G-20, similar to the set-up of the G-7/G-8 (Canada, France, Germany, Italy, Japan, the UK, and the United States, plus Russia). Other analysts argue that formally broadening the G-20 agenda to foreign policy issues would distract the discussion from important economic issues, such as U.S. Federal Reserve potentially “tapering” its quantitative easing program, the slowdown of growth in emerging economies, and progress on financial regulatory reforms.

The 113th Congress may want to exercise oversight over the Administration's participation in the G-20 process, including the policy commitments that the Administration is making in the context of the G-20 and the policies it is encouraging other G-20 countries to pursue. Australia formally assumed the G-20 presidency on December 1, 2013, and is expected to host the next G-20 summit in Brisbane on November 15-16, 2014.

Eurozone Sovereign Debt Crisis³⁷

Beginning in late 2009, the Eurozone has faced an economic crisis that has posed serious threats to economic stability in Europe and the broader international economy. The concerns of investors and policymakers have focused on high, and potentially unsustainable, levels of public and private debt in some Eurozone countries, particularly Greece, Ireland, Italy, Portugal, Spain, and Cyprus. Concerns about debt levels have been compounded by weaknesses in the Eurozone banking system, slow or negative growth, high unemployment, and persistent trade imbalances within the Eurozone. The financial crisis also became a political crisis, provoking large scale protests and directly or indirectly leading to the fall of several governments in Europe.

European leaders and institutions have pursued a number of policies to stem contagion of the crisis. The European Central Bank took unprecedented steps to increase liquidity in the Eurozone banking system, Eurozone governments and the IMF provided financial assistance packages to countries in crisis, and governments implemented several rounds of austerity programs, among other measures. The intense market pressure facing Eurozone countries abated through most of 2013, and economic conditions in some crisis countries, particularly Ireland, have improved. Some analysts are speculating that the crisis is over, but others disagree. They argue that serious, long-term economic challenges remain, particularly related to growth and unemployment. They also caution that debt levels in some Eurozone countries remain too high.

The United States and Europe have the largest bilateral economic relationship in the world, and many Members of Congress have expressed concern about the impacts of the Eurozone crisis on the U.S. economy. The crisis could continue to affect the U.S. economy through a number of channels. For example, slow or negative growth in the Eurozone could depress demand for U.S. exports. Some Members have also expressed concerns about the role of the IMF in the crisis. The IMF is providing loans to Greece, Ireland, Portugal, and Cyprus, in conjunction with financing from European sources. Some Members have questioned whether the IMF's role in the Eurozone has been appropriate and constructive. Others argue that the IMF's role in the Eurozone has been consistent with its mandate of promoting stability in the international economy.

³⁷ Written by (name redacted), Analyst in International Trade and Finance, x7-..... See CRS Report R42377, *The Eurozone Crisis: Overview and Issues for Congress*, coordinated by (name redacted).

Argentina Sovereign Debt Default and Related Economic Policies³⁸

In December 2001, Argentina suffered a severe financial crisis, leading to the largest default on sovereign debt in history. After unsuccessful attempts to find a mutually acceptable solution to restructuring the debt, Argentina abandoned the negotiation process and made two bond exchange offers in 2005 and 2010 that were accepted by 92% of private creditors. This outcome left debt held by hedge funds and members of the Paris Club of countries, including the United States, in default. The offers flaunted normal restructuring procedures, and, as a result, Argentina faces prolonged litigation by holdout creditors that have resulted in judgments and attachment orders. In addition, Argentina has adopted policies that have caused increased tension with foreign states and companies. These include failure to pay judgments against Argentina in the World Bank's International Centre for Settlement of Investment Disputes (ICSID), nationalization of a largely Spanish-owned oil company, increasingly protectionist trade measures, capital and exchange rate controls, import taxes, and failure to submit to an IMF Article IV economic review required of all Fund members.

Some U.S. policymakers remain frustrated at Argentina's reluctance to settle with U.S. stakeholders and alter other policies. The United States has taken a number of financial actions against Argentina, including suspension of GSP benefits, voting against loans to Argentina in the World Bank and Inter-American Development Bank, and denying bilateral aid. Previous congresses have introduced resolutions calling for Argentina's membership in the G-20 to be conditioned on adherence to international norms of economic behavior and various versions of the Judgment Evading Foreign States Accountability Act, which would have attempted to pressure Argentina in a number of ways. Despite congressional support for U.S. interests in this matter, there is disagreement as to whether this legislation is the best way to proceed given questions over committee jurisdiction and action pending before federal courts.

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³⁸ Written by Martin Weiss, Specialist in International Trade and Finance, x7-.....

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