

Will the U.S. Bring Down the WTO?

By depriving the world's trade court of new judges, the Trump administration may succeed in paralyzing the institution

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For the quarter-century since the World Trade Organization began operating, Robert Lighthizer has been calling it “a threat to sovereignty” and a hotbed of “judicial activism,” hamstringing America’s efforts to counter its economic rivals, especially China.

Mr. Lighthizer, who is now President Trump’s U.S. trade representative, will soon be able to claim a victory in his long battle against the organization. The WTO was formed to resolve international trade disputes through multilateral rules and institutions, originally with strong support by both U.S. parties, though both have grown more critical. Mr. Lighthizer and others say it steps on national autonomy, has an anti-U.S. bias, and that many members—notably China—pay mere lip service while regularly breaking its rules.

Now, barring a last-minute reprieve, on Dec. 11 the WTO’s trade court in Geneva will no longer have enough judges to issue binding rulings—because of vacancies and the Trump administration’s two-year effort to **block new appointments**. That will effectively cripple the institution.

The WTO impasse hasn’t rattled markets the way that the U.S.-China trade war has, but its potential impact is broader, upending decades of U.S. trade policy. Messrs. Trump and Lighthizer prefer a more unilateral approach, with the WTO sidelined or defanged, in order to better leverage American economic might. To internationalists who built the old order,

“it’s tragic,” says Carla Hills, who helped to launch the WTO when she held Mr. Lighthizer’s position under President George H.W. Bush. “You’ll replace rule of law with rule of the jungle.”

Though the WTO won’t disband its court on Dec. 11 or stop making initial rulings, it will lack the judges needed to decide on new appeals: Three are required for such rulings, but only one will be left on the seven-member appeals panel. Countries that lose their cases can simply refer them to the inoperative panel and carry on their trade practices as before.

The European Union and other WTO supporters have been trying to develop other ways to arbitrate disputes, but no broad agreement with real legal force has emerged, and the U.S. could block such efforts by vetoing the use of WTO funds to support them. That puts the court in near-paralysis unless its supporters can [find a compromise](#) with Mr. Trump or his successor.

In some ways, the seeds of the current WTO crisis were planted at its formation. “The WTO was a utopian project,” says Edward Alden, a trade expert at the Council on Foreign Relations who, as a journalist, covered its founding. “If you look at history, utopian projects usually fail.”

On Jan. 1, 1995, the WTO replaced the General Agreement on Tariffs and Trade, or GATT, which had maintained global rules to govern trade since 1947. **The GATT lacked a mechanism for enforcing the rules, which were regularly ignored. The new trade court was designed as an independent judiciary whose authority would be accepted by sovereign nations all over the world. It has no precise parallel. Its establishment was “close to a miracle,”** said Peter Van den Bossche of Belgium, a longtime WTO judge, in a wistful speech earlier this year marking the end of his term and anticipating the demise of the court itself. “Those working in other fields of international law looked on with envy.”

The WTO began amid the heady idealism—some say naiveté—that marked the years after the Cold War, when the world seemed to be coalescing around U.S.-style capitalism and

democracy. American supporters saw the WTO as a way to codify and reinforce that trend, to the benefit of the U.S. But the new body covered over various political fissures: within the U.S., between the U.S. and Europe, and between developed and developing countries. The re-emergence of those foundational cracks explains the strains pulling the WTO apart today.

The domestic fight has buffeted American trade policy for generations. On one side are global businesses—Wall Street, Hollywood, Silicon Valley, Big Pharma—that benefit from opening markets abroad. On the other are domestically oriented industries threatened by foreign competition. Mr. Lighthizer, for years a lawyer for the steel industry, has been in the latter camp.

The WTO's American defenders say it has produced a big net gain for the country, regularly backing the efforts of U.S.-based multinationals to expand their global reach. But the U.S. has lost important cases as well. The Geneva court has frequently limited the U.S.'s ability to shield its domestic manufacturers, including steelmakers, from imports. Mr. Trump's 2016 election was, among other things, a revolt of the trade losers.

Those domestic tensions have been aggravated by friction between the U.S. and the EU. Washington and Brussels cooperated on the original WTO framework, but their views of it have since diverged. Europeans place more trust in international organizations and take a more expansive view of WTO legal authority. "We had this little window in the early 1990s when the two planets happened to align," says Stephen Vaughn, who worked until April as an aide to Mr. Lighthizer. "We've each moved our different ways."

American attempts to counter "dumping"—the practice of selling goods in the U.S. market below cost—have fueled the long-simmering dispute. The WTO has declared that U.S. methods defy the spirit of the rules, while Americans say that they don't violate the letter.

China and its rapid rise are also central to the current stalemate. Since Beijing joined in 2001, the trade court has struggled to apply its rules to the country's state-driven capitalism, even as China emerged as the world's largest exporter and became the WTO's most disruptive member—often accused of flouting the WTO while pursuing cases against other

members. The judges have not determined whether China is a “market economy,” which affects how aggressively countries can block Chinese goods.

The WTO has struggled in its mission to be more inclusive than GATT by developing a set of enforceable rules for all types of economies, including rising powers such as Brazil, India and South Africa. Since 1999, every effort to update the rules has failed. While trade has become “more and more sophisticated,” the rules have remained “static,” wrote Ujal Singh Bhatia of India, the chief judge whose term expires on Dec. 10, in a recent report. “It adds an extra hurdle when the Membership wants to fix current problems with old rules” and further inflames complaints about the court’s activism

In 2003, the George W. Bush administration signaled Washington’s pique with the WTO by nominating Mr. Lighthizer as one of two candidates to fill the designated American slot on the court. Geneva chose the other candidate. At the time, **a reporter asked** Mr. Lighthizer why he wanted to join the court he so regularly vilified. He said he saw two choices: “Do you criticize the system and hope to kill it, or...go to Geneva and apply a strict constructionist’s perspective?”

He is now forcing that same choice on the WTO itself: either create a new global consensus around his vision of a less powerful court, or watch the system fade away altogether.

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