

A YEAR INTO PRESIDENT DONALD TRUMP’S term, many observers are concluding that the administration’s “bite” against the multilateral, rules-based trading system will not be as bad as its “bark.” As evidence, they note that it is not withdrawing from the North Atlantic Free Trade Agreement (NAFTA), but pursuing a renegotiation of it and the Korea-US bilateral free trade agreement (KORUS). Only very recently have a few import restrictions on solar panels or washing machines been announced. But it would be a mistake to think that US foreign trade policy does not pose substantial risks to supply chains.

The administration has repeatedly claimed that the World Trade Organization, established in 1994 to negotiate trading rules and resolve trade disputes and now including 164 countries, is a “disaster.” As evidence of persistent discrimination against the US, the President claims that it loses all its cases at the WTO and has fewer judges than other countries.

The facts tell a different story. The US has been a complainant at the WTO more often than any other country and has prevailed in 91 percent of those adjudicated cases. During President Barack Obama’s Administration, the US was largely undefeated, including in 16 cases against China. The US also has more cases brought against it than any other member and loses most (89 percent) of those that end in adjudication. That is roughly in line with the win-lose rates of other countries.

It is also untrue that the rules for appointing panels of judges discriminate against the US. A large number of disputes are settled before litigation. Unresolved disputes are handled by a three-person panel drawn from a WTO-approved list of qualified individuals. None can be from a country involved in the dispute. Decisions may be appealed to a panel of three members chosen on a rotating basis from seven standing full-time members of the appellate body who serve four-year terms. So far, the US has had one member on that appellate body. True, the US doesn’t have majorities on the dispute settlement panels, but neither does any other country.

Over the past months, the Trump administration has been blocking the appointment of appellate body members. There should be seven members, but there were only four as of January. Three more terms expire by the end of 2019. Three members are needed to rule on any individual case. Meanwhile, cases in the backlog are building up and taking longer to resolve. The system is close to collapse; EU Trade Commissioner Cecilia Malmström has stated that the US risks “killing the WTO from the inside.”

Although the US is effectively holding the WTO hostage to its demands for reform, it has not articulated what those demands are. US Trade Representative Robert Lighthizer has in the past recommended that US judges should be able to review any findings against the US. More recently, he has praised the system that preceded the WTO, under which members could block panel rulings. By eroding impartiality of the system and inviting other countries to do the same, these fixes would undermine a system that has averted trade wars for more than two decades.

In its National Trade Foreign Policy Agenda released in March, the administration announced that it does not consider WTO rulings binding and would feel free to ignore adverse rulings. It also said it would seek to deal with trade disputes outside the WTO system. Although the US already has some of the world’s more far-reaching forms of “trade defense,” the administration signaled it would consider imposing restrictions unilaterally by using statutes rarely used in the past.

One of these would enable the President to limit imports of specific items because of national security considerations. Originally conceived to apply during a time of war, this administration is prepared to define “national security” far more broadly.

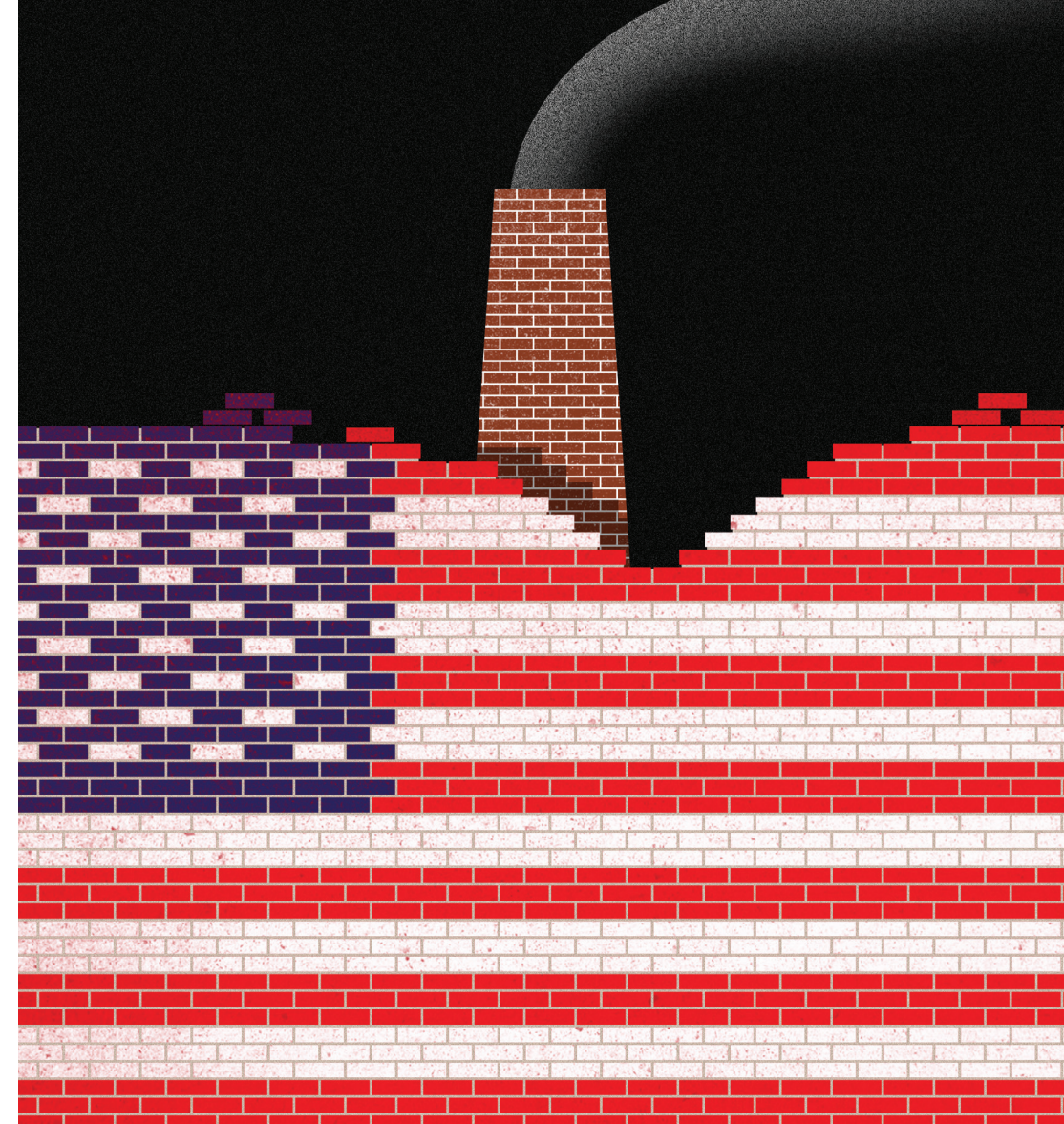
Among such unilateral actions currently on hold are tariffs on aluminum and steel. On the sidelines of the December WTO meeting in Buenos Aires,

The US is disrupting the World Trade Organization’s global system that has prevented trade wars for two decades, say Brunswick’s **ANTHONY GARDNER** and **PASCAL LAMY**. And it could get worse

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the EU, Japan and the US announced an alliance to tackle “severe excess capacity” in steel and the role (specifically in China) of illegal subsidies, state financing and state-owned enterprises. The EU and Japan are hoping that the US can be induced to cooperate, rather than act unilaterally, to fix abuses in the world trading system.

But it would be unwise to assume that the US won’t take unilateral action to protect its steel, aluminum or other sectors it may consider strategic. Even though such measures could trigger retaliatory gestures by foreign countries, and erode the competitiveness of the US by increasing input costs and consumer prices, the President may consider them worth implementing as an appeal to his electoral base.



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According to press reports, he repeatedly rejected Chinese proposals to cut steel overcapacity, despite a positive recommendation from several top advisers.

Unilateral measures to withdraw from plurilateral pacts have already proven counterproductive. The US decision to withdraw from the Trans-Pacific Partnership prompted the remaining 11 members to proceed with a slightly revised agreement covering nearly 500 million people and 13 percent of global economic output. The move also accelerated the finalization of the EU-Japan free trade agreement. It is spurring EU negotiations with Australia and New Zealand, and it has revived the prospect for a deal with the Mercosur trading bloc in Latin America.

As a result, US exporters will be comparatively disadvantaged when they sell into these markets; the EU and others will export their own industrial and regulatory standards, including in key areas such as the digital economy, and the US will have forfeited the opportunity to write or at least co-write the rules of global trade. A withdrawal from NAFTA or KORUS, while more disruptive from a systemic point of view, would have similar effect.

The rules-based international trade system has proved its worth for decades. But it is fragile and there can be no guarantee that it can withstand sustained assault. If the US moves ahead with its plans to work against or outside the WTO, we would move into a new era of economic disorder worldwide. Unless other WTO members can find a way to work together without the US, protectionism would come back, with a risk of every country taking the law into its own hands. The result would be global trade frictions, potentially even a trade war, that would disrupt international business and growth. Multinational businesses need to plan for that eventuality.

The US was essentially undefeated during President Barack Obama’s term in cases it litigated at the WTO; these included

16 CASES against China

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