

The Eagle

Congress can stop Trump from ditching WTO, analysts say

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Congress has largely been a bystander as the Trump administration's trade actions have unleashed trade disputes with friend and foe, but lawmakers may have a chance to weigh in with the president's latest trade threat — withdrawing from the World Trade Organization.

“We're not planning anything now, but if they don't treat us properly we will be doing something,” President Donald Trump said July 2. “They have been treating us very badly for many, many years and that's why we were at a big disadvantage with the WTO.”

Trump issued the WTO threat while lawmakers were on recess. They return next week.

Trump has long disparaged the international body of 164 nations, which the United States co-founded to serve as a trade negotiator and trade referee for member nations. His threat comes after he pulled the United States out of the Trans-Pacific Partnership and complicated already difficult negotiations with Mexico and Canada on updating the North American Free Trade Agreement by imposing global steel and aluminum tariffs. He is also threatening to slap tariffs on car imports.

The Republican-led Congress has been hesitant to intervene, but analysts say that leaving the WTO has far greater consequences, which could prompt congressional action.

“Steel is about \$20 billion, autos about \$200 billion, WTO everything,” said economist Gary Clyde Hufbauer, a senior fellow at the Peterson Institute for International Economics. He predicted that the ramifications of a WTO withdrawal would affect a broad swath of U.S. industries.

Hufbauer acknowledged GOP lawmakers' reluctance to rebuff Trump on trade, but said the president would raise the financial stakes so high with a WTO withdrawal that Congress would be hard-pressed not to act.

“There are legitimate criticisms” on how WTO decisions are reached, Hufbauer said, but change has been stymied by a broadly held view by member states “that every country has to agree to change the rules.”

Countries generally settle their disputes with one another during a voluntary mediation period. Thornier disputes proceed to a three-person panel that does not include anyone from a country involved in the dispute. If there is an appeal of the decision at that level, it goes to a seven-member permanent appellate panel. Three members of that body then hear the case and issue a decision. The process, the United States has argued, leaves it at the mercy of other countries.

The Obama administration tried to pressure the WTO to consider changes by blocking the reappointment of a South Korean jurist member to the organization's seven-seat, full-time appellate body because it disagreed with his rulings in cases involving American interests. The U.S. has one seat on the panel.

The Trump administration has taken a harder line, blocking all appointments to the appellate panel. By fall, the appellate panel could stop functioning if the number of members falls below three, Hufbauer said.

If the Trump administration gives the required six-month notice for leaving the WTO, Hufbauer said he would expect a major legal fight.

"I think that would certainly produce litigation, probably starting in the federal circuit (court) of appeals in Washington, to say that he is exceeding his power," Hufbauer said. "It would be such a big thing I suppose it would get on a rocket docket to the Supreme Court."

"I think it would cause an uproar in Congress because even the Democrats who don't like NAFTA and who didn't like TPP, most of them seem pretty comfortable with the WTO," he added. "You're not going to tap into any latent anti-WTO sentiment of any significance."

Rufus Yerxa, president of the National Foreign Trade Council, a business group, raises similar concerns about the effects of a WTO withdrawal, predicting it "would be highly damaging to the U.S. economy."

Yerxa, a former WTO deputy director general, believes Congress would have to approve a withdrawal, since lawmakers approved the United States' entry into the organization.

Under the implementing legislation Congress approved in 1994, lawmakers can decide every five years whether the United States should continue its WTO membership. In 2000 and 2005, Congress reviewed and voted on resolutions of withdrawal filed by lawmakers. The resolution in 2000 was rejected on a 56-363 vote in the House, and the 2005 resolution fell on an 86-338 vote. No votes occurred in 2010 and 2015.

The next opportunity for a congressional review is in 2020.

But those votes occurred before Trump won the White House with support from the manufacturing states of Michigan and Wisconsin, in part with promises to fix a trade system he said was tilted against U.S. interests. Trump made a campaign promise to reform or to leave the WTO.

No longer bound by WTO rules, the United States could significantly raise tariffs on a broad range of goods. Yerxa said the downside for the United States is that WTO member nations would be free to increase tariffs on goods from the United States.

"It would isolate the U.S. from the global trading system," Yerxa added.

The president's ire against WTO appears tied to rulings on trade cases involving the United States.

Trump's criticism is at odds with findings by pro-trade research organizations such as the Cato Institute. A 2017 report by the institute found that the United States prevailed 91 percent of the time in 114 adjudicated cases it brought against other countries.

But the United States has lost 89 percent of the 129 adjudicated cases filed against it by other countries challenging Commerce Department and International Trade Commission decisions to impose penalties on foreign companies. The agencies argued that foreign companies had received government subsidies or aid that allowed them to sell products at artificially low prices.