

May 30, 2016 2:09 pm

US accused of undermining WTO

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Roberto Azevêdo, WTO director-general, admitted the reappointment of panellists was a sensitive issue and raised the possibility of changing the way judges are selected

The US has been accused of being a bully and undermining the World Trade Organisation's dispute system after vetoing the reappointment of a South Korean judge. The EU and legal scholars have warned that the veto threatens the impartiality of the global trade court.

US opposition comes at a time when many believe Washington has been losing faith in the WTO and is preparing for a big fight with China over how and when economies can deploy anti-dumping defences against cheap imports.

The US told fellow WTO members last week that it could not support the reappointment of Seung Wha Chang, a respected South Korean expert in international trade law

whose four-year term on the seven-member resident appellate body ends on Tuesday.

Washington cited the body's decisions in three cases involving the US and one other as examples of what it said was a pattern of WTO panels overreaching and issuing "abstract" decisions.

"The appellate body is not an academic body that may pursue issues simply because they are of interest to them or may be to certain members in the abstract," the US told WTO members. "It is not the role of the appellate body to engage in abstract discussions."

But other WTO members, including Brazil, Japan and the EU, say the US objection to Mr Chang serving a second four-year term, as is customary, risks undermining the appellate body and its independence and therefore the entire dispute system.

That is of particular concern because the WTO's role in resolving trade disputes is widely seen as a great strength of the intergovernmental organisation, which was created in 1995 as a successor to the post-second world war General Agreement on Tariffs and Trade.

"This is unprecedented and poses a very serious threat to the independence and impartiality of current and future appellate body members," the EU told a meeting of the governing body for the WTO's dispute settlement system last week.

In an interview, Roberto Azevêdo, the WTO's director-general, declined to comment on the US objection to Mr Chang's reappointment. "They have their concerns, which they made very explicitly," he said.

But he admitted the reappointment of panellists was a sensitive issue and raised the possibility of members changing the way judges are selected and their term limits. Some at the WTO have proposed that members of the appellate body serve a single seven-year term.

The US intervention comes ahead of what is likely to be an important period for the appellate body. Among the issues it is expected to decide are whether China is entitled to "market economy" status within the WTO, an important designation that would help Beijing fight back against anti-dumping cases, such as those being mounted against Chinese steel imports on both sides of the Atlantic.

Beijing claims it should be awarded the status automatically in December, the 15th anniversary of the country joining the WTO. The US and some opponents in Europe insist that the text of China's accession agreement is more ambiguous and that eventually the issue will have to be decided by the appellate body.

Such a dispute would be among the most consequential the WTO has confronted since China joined the WTO in 2001. It might also be one of its most political.

Because of a collapse in steel prices blamed on Chinese overcapacity and the shuttering of competing mills around the world, the issue of China's market economy status has become

politically sensitive around the world, particularly in Europe.

Greg Shaffer, an expert in WTO law at the University of California Irvine, said the US's opposition to the reappointment of Mr Chang risked injecting politics into what ought to be a purely legal process.

It also, he said, was “making the US look like a bully, and not an upholder of rule of law principles”.

“The US response and example will have ripple effects around the world,” Prof Shaffer said.

“Undermining the independence of the WTO appellate body will affect the entire rules-based system to resolve trade disputes.”

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