

BOTH A MORAL VIRTUE AND A LEGAL DUTY: REVISITING THE DUTY OF COLLABORATION RULE IN WTO DISPUTE SETTLEMENT SYSTEM

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ABSTRACT

This paper explores the duty of collaboration rule under WTO dispute settlement system. While the Appellate Body in Canada-Aircraft dispute has developed this rule, several potential issues still have not been perfectly addressed. This paper, after observing the WTO jurisprudence, discusses the nature, legal basis, conditions, and legal effects of this very rule. While categorizing this duty as parties' procedural good faith obligations, this paper further addresses how to establish the conditions to trigger this duty – including whether the evidence being requested shall be in the sole possession of the party being requested, whether the claimant shall produce prima facie evidence before this duty is triggered, and whether some legitimate concerns such as confidentiality may exempt the party from this duty – and whether the panel is justified to draw adverse inference from the failure of the party to comply with this duty. With a comprehensive analysis on this duty of collaboration rule, it is anticipated that not only the “collaboration”, but also the “duty”, may be more substantiated and rooted in WTO dispute settlement proceedings.

KEYWORDS: *duty of collaboration, duty of cooperation, burden of proof, adverse inference, WTO, dispute settlement, objective assessment, good faith,*

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prima facie, confidentiality