

new possibility—indeed, the *inevitability*²⁹—of successive rounds of litigation in the same dispute, culminating in up to a 15-month grace period for implementation,³⁰ the possibility of an Article 21.5 “compliance” panel review (and possibly appeal thereof), and additional litigation under an Article 22.6 panel tasked with arbitrating the amount and form of retaliation. Put simply, a determined defendant can wring three years of delays from the system before facing definitive legal condemnation, more than enough time for “temporary” measures—like the 2002 US steel safeguards—to impair competition without possibility for *retroactive* compensation.³¹ Further, the added stages of litigation, tight enforcement of terms of reference, the legal disincentives for disclosure, and the rules on standing, all put the onus on disputants and third parties to legally mobilize as soon as possible in order to avoid losses on technicalities (i.e., having the panel or AB deem a certain argument outside its terms of reference) later on.

At the outset of a dispute, the concern for post-ruling delays, in particular, has the effect of undermining early settlement.³² This is especially true if the rush to litigation draws in third parties or additional disputants, whose involvement has been shown to reduce the prospects for concessions by a defendant.³³ In the wake of a ruling, the DSU’s superiority in eliciting compliance is also vastly overstated in relation to the GATT; the hurdle, in this regard, has never been obtaining legal authorization *per se*,³⁴ but mustering the political will—and having the

²⁹ Of the eleven initial panel reports in the dataset of completed US-EC WTO cases below, only *Section 301* and *US Copyright Act* were not appealed. And in the latter case, no fewer than three separate arbitrations were invoked, under Articles 23.1(c), 25, and 22.6, governing the “reasonable period of time” for implementation, the level of nullification or impairment, and the level of retaliation.

³⁰ The grace period in *Australia—Salmon* was eight months, but generally it has been much longer.

³¹ Mavroidis 2000; Pauwelyn 2000.

³² Stewart and Burr 1998, 514.

³³ Busch 2000.

³⁴ Hudec 1999, 9-10; Mavroidis 2000; Valles and McGivern 2000; Reinhardt 2001.