

the costs of non-compliance. Both the complainant and defendant seek to exploit this uncertainty concerning their own course of action to their own advantage, leveraging concessions or upholding the status quo, respectively. The complainant's (often low-probability) estimate that the defendant is going to concede in the event of an adverse ruling leads it to set a high bar for the kinds of early settlement offers that it will accept. At the same time, the defendant's desire to avoid normative condemnation, compounded by the desire to forestall potential retaliation, induces the defendant to meet the complainant's (high) demands and thus to offer more generous concessions up front than after a ruling. The increased value of concessions in early settlement is thus a product of the *anticipation* of both normative condemnation¹² and market punishment. The twist here is that the uncertainty about the defendant's preparedness to incur the costs of non-compliance ends once the ruling is issued and the defendant acts, or fails to act. Rulings thus eliminate the uncertainty that serves, *ex ante*, as the basis for the complainant's heightened resolve, and thus the defendant's richer early settlement offer. This *anticipation*, and not the *realization* of a ruling, is thus the system's most effective means of extracting market-liberalizing concessions.

Sometimes settlement talks fail, and the dispute goes to a ruling. This occurs when there is little *ex ante* expectation either that the defendant would prefer to avoid the appearance of overt non-compliance, or that the complainant would be willing to retaliate in any event. In such cases the window for settlement is too small, such that the parties escalate the dispute fully. A ruling against the defendant, then, is most likely when an adverse ruling is *least* likely to affect the defendant's behaviour.

Our perspective on the dynamics of GATT/WTO dispute settlement provides a wide range of testable insights. Most important in this regard, concessions are more likely in advance of a ruling. This is not to say that the direction of a ruling is in-

¹² As Hudec explained it, "the basic force of the procedure [comes] from the normative force of the decisions themselves and from community pressure to observe them." Hudec 1987, 214.