

sized, developing-country in eliciting compliance from a defendant that is found in violation of its WTO obligations.

Hence the picture that emerges is that poor complainants tend to have less well-prepared cases up front, losing out on the opportunity to use the "shadow of the law" effectively against defendants. With their larger share of weakly-briefed cases selected out, poor complainants fare no worse in those cases that end with further litigation. This problem has become particularly acute under the WTO, which has put a greater premium on legal argumentation in the early life of disputes.

### *The transatlantic relationship*

The importance of early settlement is no less evident in US-EC disputes. If Washington and Brussels fail to resolve their trade tensions prior to a panel ruling, the likelihood of concessions drops precipitously.<sup>39</sup> Indeed, concessions offered in the transatlantic relationship are typically had in advance of a ruling, or not at all. Most compelling in this regard is that, no matter how the panel rules, a verdict *reduces* the prospects for concessions, even under the WTO. In other words, the data suggest that the prospect of resolving a dispute falls when these two countries do not settle early. This supports the thrust of former WTO Director-General Renato Ruggiero's observation that, while "[t]he WTO dispute settlement system is in some ways the first international economic court ... it is still preferable for the Member countries involved to discuss their problems and try to resolve them ... before actually resorting to a panel."<sup>40</sup>

A quick tabulation of US-EC concessions under the GATT and WTO reveals greater concessions under the latter institution. Part of the challenge in making this assessment is that the WTO has extended its reach into intellectual property (IP) and traded services through the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) and the General

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<sup>39</sup> Busch and Reinhardt 2003a.

<sup>40</sup> Director General Ruggiero's 1998 speech at the University of Trieste  
[http://www.wto.org/english/news\\_e/spr\\_e/triest\\_e.htm](http://www.wto.org/english/news_e/spr_e/triest_e.htm)