
Negotiating Trade Agreements

The literature on international trade tends to focus on policy analysis: What should trade agreements cover? How do trade rules affect national economies? What policy changes should be pursued? However, the process by which trade policy is negotiated has received far less attention (one notable exception is Mayer 1998). This neglect is somewhat surprising, because international trade rules emerge from, are clarified by, and are implemented through processes of negotiation. Trade rules result from the actions of a host of interested parties—domestic, national, and supranational—competing and cooperating to shape agreements by using such tactics as forum shopping, coalition building, agenda setting, and grassroots organizing. And signing an agreement is by no means the end of the story—many details and ambiguities often remain to be negotiated and sometimes renegotiated during implementation. The processes by which agreements are enforced involve further strategic efforts to influence outcomes.

This is not to say that trade policy is captive to those who are best able to advance their partisan interests in negotiations. Macropolitical and macroeconomic forces play a major role in policymaking and in shaping how the trading system evolves. But within the boundaries established by these macro forces, substantial scope for process entrepreneurship remains. In all the case studies in this volume, the actions of individuals or small groups had significant impacts.

The ability to understand and undertake complex “negotiation games” is therefore essential for those who aspire to shape international trade policy. By viewing international trade through the conceptual lens of negotiation analysis, we pose questions different from, but complementary to, those illuminated by policy analysis: How do negotiation processes shape

trade rules? How are key decisions made, and who makes them? Which players are the most influential, and what strategies do they employ?

The cases in this volume therefore look beyond the changing substance of trade agreements, deeply exploring patterns of influence. They examine both the *what* of trade and the *who, how, and why* of decision making. By focusing attention on some of the most important recent trade negotiation processes, the reader can come to understand not just the larger issues surrounding trade but also how players seek to exert influence and how the system is evolving day to day.

Foundations of Negotiation Analysis

The point of departure for negotiation analysis is the treatment of negotiations as games, or sets of interactions among a group of parties who formulate and enact strategies to exert influence so that they may reach a favorable agreement on some cluster of issues.¹ Outcomes in negotiation are bounded but not determined by the structure of the game. In other words, there are no preset outcomes or equilibrium solutions;² rather, outcomes emerge from the choices made by the participating parties and from the evolving environment in which negotiations take place.

Games have structure—in classic game theory, a set of players, a range of potential outcomes and associated payoffs for the players, and rules governing the timing of moves. The structure of negotiating games likewise can be analyzed along four dimensions: issues, parties, levels, and linkages.³ The simplest negotiating games involve just two monolithic parties negotiating over a single issue. By definition, these negotiations occur at one level: because the parties are of one mind, internal negotiations within each side do not complicate the process. And because the two parties negotiate in a single episode or round, the precedents and relationships that shape negotiations that are linked in time are not important (though reputations may be).

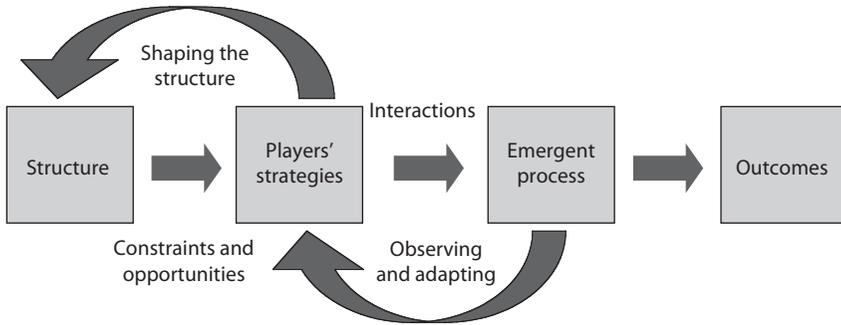
On the other end of the spectrum, the most complex negotiations involve multiple issues, many parties and levels of negotiating activity, and linked rounds of ongoing interactions. Even relatively straightforward bilateral trade negotiations are in fact quite complicated. Multilat-

1. This discussion draws on Howard Raiffa's seminal work on negotiation analysis; see Raiffa (1982).

2. *Equilibrium* in game theory means having one or a few undominated outcomes. Game theorists have devised several powerful notions of dominance—static or dynamic logics through which certain outcomes can be determined to be dominated by others. See Myerson (1997).

3. For an early effort to define the structure of negotiations, see Raiffa (1982, chapter 1). For developed frameworks, see Sebenius (1992).

Figure 2.1 The structure-strategy-process-outcomes model



eral rounds of trade negotiations under the auspices of the General Agreement on Tariffs and Trade (GATT) or the World Trade Organization (WTO) are arguably the most complex negotiations ever undertaken: they involve complicated agendas; perhaps hundreds of parties, each engaged in internal negotiations and decision-making processes; and years of linked interactions.

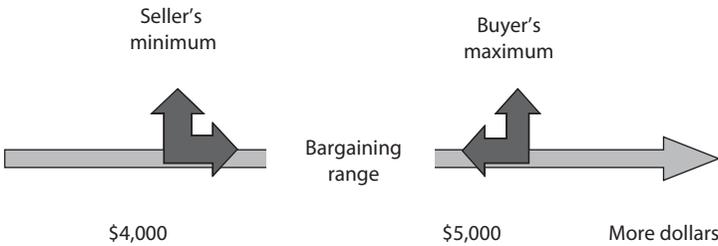
The structure of a negotiation strongly influences each party's constraints and opportunities. As the structure-strategy-process-outcomes model in figure 2.1 illustrates, structure shapes the strategies the players employ, the process that emerges from their interactions, and the eventual outcomes.⁴ At the same time, the players learn and adapt their strategies as the negotiations proceed. Also, as discussed later, they can take actions to alter the structure of the situation.

The Structure of Simple Negotiations

Consider a negotiation over a used car between a buyer and seller who are meeting for the first and only time. From a structural point of view, this is as simple as negotiations get. The interaction involves just two parties, both of whom are monolithic, negotiating over a single issue—the price of the car—in a single round. If the buyer and seller reach agreement, they exchange the car for some amount of money; if not, they walk away.

4. This model bridges the structure-process gap in the study of negotiation, accounting for both the impact of structure on process and the impact of process on structure. An earlier version of it is presented in Watkins (2000). Walton, Cutcher-Gershenfeld, and McKersie (1994) develop a related framework, analyzing negotiation in terms of forces shaping negotiators' choices and the interactions of strategies, processes, and structures. Sebenius (1996) analyzes negotiation in terms of structure, people, and context, as well as barriers and opportunities for creating and claiming value.

Figure 2.2 Bargaining range in a distributed negotiation



Here, the overriding goal of both sides is simply to *claim value*.⁵ The buyer and seller of the car have bottom lines, defined by what Roger Fisher and William Ury (1981) called BATNAs (best alternatives to a negotiated agreement); real-life negotiators would call them fallback options. For the seller of the used car, the best alternative may be a take-it-or-leave-it offer from another interested party; for the buyer, it may be purchasing another car. These BATNAs are translated into bottom-line prices for the two sides. If they overlap, there exists a *bargaining range* within which the parties negotiate; if not, then no agreement is possible.

Suppose that a buyer is willing to pay up to \$5,000 for the car and the seller will accept no less than \$4,000. The result, illustrated in figure 2.2, is a bargaining range of \$1,000. Given the size of the range, we would expect the parties to reach agreement somewhere within it.

This negotiation game does not have a predefined equilibrium outcome. Instead, each side seeks to claim the maximum amount of value. In this *distributive negotiation*, the negotiation process is purely competitive in nature. The outcome is determined by the strategies each side employs to shape the perceptions of the other. In particular, value is claimed through the dance of offers and concessions, threats and commitments as the parties progressively converge on an agreement or break off their talks (see Raiffa 1982, chapter 4).

The Structure of Complex Negotiations

If trade negotiations were as simple as bargaining for a used car, the world would be a much less interesting place. However, the negotiations that

5. Walton and McKersie (1965, chapters 2–5) make the important distinction between distributive and integrative bargaining. They also note that negotiations might involve a mix of distributive and integrative bargaining (in their terms, “mixed-motive”; see their chapter 5). Lax and Sebenius (1986) reconceptualize the distinction between distributive and integrative bargaining, viewing value claiming and value creating as processes that go on in parallel in most negotiations rather than as discrete types of bargaining.

result in trade agreements have structures that are far more complex in the four key dimensions mentioned earlier: issues, parties, levels, and linkages. Increasing the complexity of each dimension significantly changes the nature of the emergent process, creating strategic opportunities and vulnerabilities for the negotiators.

From Single-Issue to Multi-Issue Negotiations

The move from negotiating one issue to negotiating multiple issues changes the nature of the process dramatically, because it gives the parties opportunities to *create value* as well as *claim value*. As David Lax and Jim Sebenius (1986, 33) put it, “Value creating and value claiming are linked parts of negotiation. Both processes are present. No matter how much creative problem-solving enlarges the pie, it still must be divided; value that has been created must be claimed.”

The positions taken by parties in negotiations represent their efforts to advance underlying *interests*.⁶ To the extent that negotiators can identify complementary interests, they are able to make cross-issue trades and thereby enlarge the pie.⁷ In fact, the agendas of trade negotiations are explicitly constructed to open up possibilities for trades across issues—for example, tariff concessions in different sectors. Trade negotiators also create value through mechanisms such as side payments to compensate losers or phase-in provisions to permit time for adjustment.

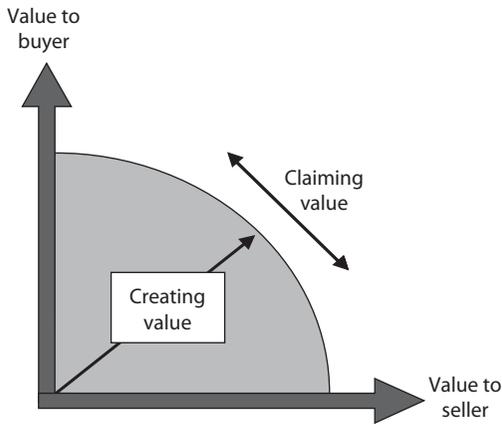
To explore how the move to multiple issues affects the players’ strategies and the resulting process, we might add an issue to the used car negotiation: now, the buyer and seller are bargaining over the timing of transfer of the car as well as over price. Suppose that the seller hopes to keep the car for 10 more days, in order to have time to buy another. And suppose that the prospective buyer has some flexibility, but really wants to acquire a car within 5 days—immediately, if possible. If the buyer is willing to pay more in return for getting the car earlier than the seller’s minimum price for giving it up, then they can make a mutually beneficial cross-issue trade of money for time.

The result is an *integrative negotiation* in which the parties seek simultaneously to create value and to claim value. The bargaining range in such a negotiation is not a line, as in the case of purely distributive negotiation (see figure 2.2), but a zone as shown in figure 2.3. Both sides may gain if they can identify and capitalize on the potential to make mutually ben-

6. Fisher and Ury (1981) make the crucial distinction between positions and interests. For a deeper treatment of approaches to evaluating trade-offs and making better decisions, see Hammond, Keeney, and Raiffa (1999).

7. For a detailed discussion of differences as a potential source of joint gains, see Sebenius (1984, chapter 5) and Lax and Sebenius (1986, chapter 5).

Figure 2.3 Bargaining range in an interactive negotiation



Note: "Value" means the total value to each of the parties of different (price, delivery time) combinations.

eficial trades (moving toward the frontier of feasible agreements). Of course, the value that is created has to be claimed or divided between the sides (moving along the frontier).

As in single-issue negotiations, parties engaged in multi-issue negotiations seek to influence each other's perceptions of their alternatives to a negotiated agreement. But they also seek to influence each other's perceptions of their interests and hence the possible trade-offs across issues. When they identify shared or complementary interests that are the basis for mutually beneficial trades, they create value and make possible greater joint gains. To create and claim more value, parties control what issues are up for negotiation by framing what is at stake, setting the agenda, and similar strategies.

The extent to which value can be created and claimed in trade negotiations is strongly influenced by how the *issue agenda* is constructed. If the agenda is too narrow, the parties may have difficulty creating enough value to make agreement possible. This was a key factor in the failed Organization for Economic Cooperation and Development (OECD) negotiations over a Multilateral Agreement on Investment (MAI). The talks focused so narrowly on investment issues between developed nations that they lacked the grist—the multiple issues across which trades could be made—for reaching an agreement. Conversely, if the agenda for a negotiation is very broad, the process may become unmanageable unless it is divided into smaller subnegotiations. For this reason, trade negotiations—and indeed all negotiations with broad agendas—usually get broken down

or “unbundled”⁸ into smaller clusters of issues. But the precise form of this breakdown is critical. Each cluster must contain a range of issues sufficiently broad to enable value to be created and claimed. At the same time, the results of the subnegotiations must ultimately be integrated; failure to reach agreement in one issue-cluster can poison the entire process.

Issues can be negotiated sequentially as well as in parallel subsets, making *issue sequencing* important. A common approach is first to negotiate a few easier issues, hoping to thereby build confidence and momentum. But overreliance on sequential negotiation eliminates cross-issue trades and thus the potential for value creation. The sequence in which issues are negotiated can also influence how coalitions form and eventually how gains and losses are distributed.⁹ Parties therefore often compete to shape not just the agenda’s contents but also the order in which those contents are addressed.

Finally, the need both to create and to claim value in multi-issue negotiations results in a fundamental tension. In order to create value, the parties have to share some information about their preferences. But information sharing leaves them vulnerable to being misled by the other side. The result is what Lax and Sebenius (1986) term “the negotiator’s dilemma”: negotiators must balance cooperative efforts to enlarge the pie and competitive efforts to get the biggest share.¹⁰ This tension often leads to defensive behavior (e.g., not sharing sufficient information about true preferences) that can end in missed opportunities for value creation. By failing to share sufficient information or by engaging in strategic behavior, the parties may leave value on the table.

From Two-Party to Multiparty Negotiations

As Howard Raiffa, one of the founders of the field of negotiation analysis, once noted, “significant conceptual complexities arise when even a single new party is added to two-party negotiations: coalitions . . . can now form”

8. This term is borrowed from Lax and Sebenius (1986, 94): “Where different interests are bundled into a negotiation, a good strategy can be to unbundle and seek creative ways to dovetail them.”

9. For a fascinating discussion of the relationship between issue sequencing and coalition formation, see Riker (1986).

10. Walton and McKersie (1965, 183) had earlier observed that tensions often arise when negotiators engage in mixed-motive negotiations: “At virtually every turn the negotiator finds himself in a dilemma: Should he conceal information in order to make his tactical commitment more credible, or should he reveal information in order to pursue integrative bargaining; should he bring militant constituents into the session to affirm feeling, or should he use small subcommittees in which new ideas can be quietly explored.” Lax and Sebenius (1986) place this strategic tension between value creating and value claiming at the heart of negotiation.

(Raiffa 1982, 257). In negotiations involving more than two parties, when none is able to unilaterally impose (or veto) the outcome, coalitions can profoundly alter parties' perceptions of their bargaining power. A group of parties that succeeds in building a *winning coalition* can improve their desired outcomes; but a *blocking coalition* may be able to frustrate the plans of even the most powerful individual player (see Lax and Sebenius 1991).

But building coalitions is one thing—sustaining them is quite another. Coalitions founded on strongly aligned interests and long-term relationships are inherently stable. However, alliances that are short-term and more opportunistic are often vulnerable. The breakup of a coalition can be triggered by changes in external conditions or by the active efforts of other parties, bargaining with or punishing members of an opposing coalition in order to induce them to defect.¹¹

Like multiple issues, the sheer number of the parties in trade negotiations can powerfully complicate the process. By definition, multilateral trade negotiations involve many parties. National governments and, in the case of the European Union, a negotiation unit representing many national governments, sit at the table. But numerous other parties, including nongovernmental organizations (NGOs) and lobbying groups, exert influence on the process.

As the number of parties to a negotiation rises, so too does the challenge of reaching a mutually acceptable agreement—especially when consensus is required for a decision, making it possible for a single determined spoiler to halt the process. For example, India nearly blocked the launch of the Doha Round of trade talks over concerns about negotiations on foreign investment and other issues.

As noted above, dividing a negotiation into subnegotiations over subsets of issues can be helpful in reaching agreement. Often, the key to simplifying the process is reducing the number of parties participating in the core negotiation to a manageable level. Such a reduction occurs voluntarily when *patterns of deference* emerge over the course of a negotiation: some parties agree to subordinate themselves (i.e., be represented by others) in the process (Myerson 1997, chapters 8, 9). Such patterns of deference often arise; but as the case of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) will show, they come into play most strongly at the time of key deadlines or “action-forcing events” (Watkins 1998).

From Unitary to Multilevel Negotiations

In the used car negotiation, the two parties are individuals and hence assumed to be monolithic or of one mind. But negotiations that take place

11. Much of the discussion of negotiation in this section is implicitly framed in terms of non-cooperative game theory, but the issue of coalition stability is also a central concern in the literature on cooperative game theory. See Myerson (1997, chapters 8, 9).

among groups, organizations, or nations simultaneously occur *within* the parties. Even if trade negotiations are bilateral, such as those in 1999 between China and the United States over market access, negotiations within the parties interact strongly with negotiations between the parties, resulting in what Robert Putnam termed “the two level game” (Putnam 1988; see also Lax and Sebenius 1986, chapter 17).

Along this dimension, too, the move from simplicity to complexity profoundly alters the character of the game and hence of effective strategies of influence. Any bargain between two sides really involves three separate agreements: one across the table and one within each side.¹² More precisely, reaching agreement between the parties requires that a critical mass of support—in other words, a sufficiently powerful coalition—be built within each side.

Negotiators must therefore synchronize talks held at the various internal and external tables so that the agreement is accepted at all of them. Each negotiator must both vigorously seek to advance the interests of his or her side and at the same time sell the agreement to internal decision makers. One tool for gaining internal approval is ambiguous language, which can enable the parties to sell differing interpretations to their respective constituencies. Of course, such reliance on ambiguity can create major problems when the resulting agreements are implemented and disputes must subsequently be resolved.

Synchronizing internal and external negotiations involves a delicate balancing act, because their interactions may restrict tactical flexibility. For example, exhibiting unyielding behavior in the external talks may make a leader appear to be a tough negotiator and thereby bolster internal political support; but it may also lock him or her into untenable positions with outside counterparts. Later retreat from these positions may prove impossible because the resulting internal loss of face would be unacceptable. Likewise, negotiators must pay close attention to how positions taken at the table will influence internal negotiation processes. A leader’s willingness to make concessions in external negotiations can easily become grist for internal political struggles, as we will see clearly in the cases of the negotiation for permanent normal trade relations (PNTR) with China and the battle for fast track.

Finally, success in managing multilevel negotiation rests, in part, on the negotiator’s ability to understand how the other side or sides make decisions. Negotiators must ask key questions, such as, Who has authority to negotiate and to ratify trade agreements? How will decisions be made within governments? Who influences these decisions? For example, the decision-making process in the United States contains multiple levels of

12. For an extensive discussion of bureaucratic politics and its impact on decision making, see Allison (1971); see also Iklé (1964).

authority—the administration can negotiate trade agreements, but Congress must ratify any associated changes in domestic law.

International trade negotiations are not just two-level games; they are multilevel or *network games*. In multilateral negotiations, each participating nation must both negotiate at the table and engage in some form of domestic decision-making process away from the table. Additional levels of negotiating may occur within or among the supranational agencies concerned about trade issues. The resulting need to synchronize these linked negotiations is perhaps the most difficult challenge confronting the facilitators of trade talks and is a principal reason why major rounds of multilateral trade negotiations tend to be so time-consuming.

From Single-Round to Multiround Negotiations

The final dimension of structural complexity concerns linkages in time among sets of negotiations. In our used car example, the parties met, negotiated, reached agreement, and parted company for good. But trade policy is shaped through multiple rounds of negotiations involving the same parties, a change that alters the character of the negotiating process in several important ways.

First and most obviously, prior relationships—good and bad—strongly shape outcomes. Sometimes, prior relationships lead to a more challenging negotiation. The perception among developing countries that they were stiffed in the Uruguay Round powerfully influenced how they approached the negotiations to start a new round of multilateral trade talks at Doha. Such rules of thumb adopted by real-life negotiators as “build the relationship” and “safeguard your reputation” make a great deal of sense in this context. The ongoing relationships created by linkages in time can also project into the future. For example, concessions may be made in one round of negotiations with the expectation that future rounds will bring reciprocal concessions.

Another complication in multiround processes is that agreements are not *self-enforcing*. In the used car negotiation, the parties traded the car for some cash; the exchange immediately followed the agreement, and neither side could renege. But trade negotiations are rarely so happily foolproof. In fact, the agreements reached in trade negotiations may be quite insecure, in that powerful parties can and do abrogate provisions and insist on highly questionable interpretations of terms. Weaker parties therefore face a dual challenge: they must both advance their interests in the rule-making negotiations and also increase the security of agreements. The latter requires that they strengthen the mechanisms and institutions for resolving collective disputes and negotiate regimes to monitor and verify agreements.

A related change is that complex trade agreements are implemented, in part, through later clarifying rounds. In other words, the gains made in the main negotiation can easily be lost (and losses made up) in the subse-

quent negotiations concerning implementation. Disputes over implementation themselves may well be addressed in part through further negotiations. Therefore, in a fundamental sense, the game of negotiating trade rules never really ends.

The negotiations that shape international trade rules are clearly among the most complex possible. This complexity is both good news and bad news. Because the negotiations involve multiple issues, they offer opportunities to create and claim value through cross-issue trades. But to realize those potential gains and avoid confusion or deadlock, negotiators must carefully craft the agenda and parse it into promising subnegotiations. Because trade negotiations frequently involve many parties, the less powerful parties can increase their bargaining power by forming coalitions. But to avoid lowest-common-denominator agreements and neutralize potential spoilers, negotiators must cooperate. Because trade negotiations take place on multiple levels, they provide opportunities to build coalitions within the sides. But agreements must often be crafted to allow political leaders to save face. Because trade policy is made in negotiations that are linked in time, trades (or attempts to right perceived wrongs) can be made across multiple rounds. But the agreements that are made may ultimately prove to be insecure, either because they are abrogated outright or because their gains are whittled away during the incremental process of negotiating their implementation.

Analyzing Process Dynamics

As the structure-strategy-process-outcomes model illustrates, each negotiation's structure strongly influences the strategies of the participating parties, and hence the emergent process. While multi-issue negotiations tend to stimulate cross-issue trading, giving rise to the negotiator's dilemma, single-issue negotiations obviously do not. Multiparty negotiations tend to promote coalition-building behavior, which has no place in two-party negotiations. Those engaged in multilevel negotiations tend to keep an eye on how their actions will be perceived on all levels of the game, while two-party negotiations require only that each negotiator send clear messages to the other. The parties in multiround negotiations, for good or ill, usually pay more attention to relationships and precedents than those in one-round interactions.

Though structure shapes strategy, individual players retain considerable scope to influence the process. In a negotiation, like a good soccer match, the overarching structure constrains and focuses the competition among players, who are themselves responsible for crafting and executing good plays.

Of course, the games of negotiation and soccer differ in fundamental ways. Not only is it possible for more than one side in a negotiation to

Figure 2.4 Strategies in complex negotiations

	<p>Accepting the structure: Working with existing parties, agendas, and linkages</p>	<p>Shaping the structure: Seeking to alter who participates and what the issues are</p>
<p>At the table: Advancing interests through agreement with other players</p>	<p>Learning and bargaining</p>	<p>Negotiating the game</p>
<p>Away from the table: Advancing interests through unilateral actions</p>	<p>Analysis and preparation</p>	<p>Unilateral game-changing moves</p>

win, but the boundaries of a negotiation are in several respects more fluid. In soccer, all play takes place on a field of specified size. In negotiation, strategic moves are not limited to the field—that is, established negotiating forums. On the field, parties seek to create and claim value by identifying complementary interests, proposing mutually beneficial trades, offering persuasive arguments, and committing themselves to favorable positions. Away from the field, they work, often in secret, to build coalitions, make side deals, and influence public opinion.

In soccer, moreover, the rules of the game are predetermined, and referees have the authority to enforce them. But in negotiation, the participants can influence the rules, changing the game even as they play it. Thus, while the structure of negotiation shapes strategy, strategy can also affect structure. The outcomes of trade negotiations are often strongly influenced, for example, by the moves preceding their formal start that set the agenda, determine the forum in which negotiations will take place, or establish procedural ground rules and substantive understandings. As the TRIPS negotiations will illustrate, early game-changing moves can be determinative.

The two-by-two matrix shown in figure 2.4 characterizes strategies in complex negotiations. One dimension distinguishes between moves to play the game—that is, to work within the established structure—and to change the game (for example, by shaping the agenda or influencing who participates). The other distinguishes between moves made at and away from the negotiating table. In superior negotiation strategies, players integrate a mixture drawn from all four cells of the matrix.

Many people associate *negotiating* with the at-the-table bargaining process in the upper left cell of the matrix. Perhaps the biggest revelation of this discussion is that such negotiation is only a small part of the process—possibly the least important. In fact, what happens at the table is largely predetermined by the efforts made by the parties, both at and away from the table, to prepare for the negotiations and to shape the game.

Designing Negotiation Strategies

In order to achieve a favorable agreement, players craft negotiation strategies to shape how the other side or sides perceive their interests and alternatives. Sophisticated players of trade negotiation games draw from an established repertoire of seven tactical elements, all of which (in various combinations) are displayed in the cases explored in this volume.

1. ***Organizing to influence:*** creating, staffing, funding, and directing institutions in ways that influence the trade negotiation process.
2. ***Selecting the forum:*** identifying the most promising forum in which to pursue one's objectives and then ensuring that negotiations take place there.
3. ***Shaping the agenda:*** adding or removing issues from the agenda, dividing the larger agenda into modules for parallel negotiations, and establishing some high-level principles to govern the process.
4. ***Building coalitions:*** identifying potential winning and blocking coalitions and then devising plans for building supportive coalitions and breaking or forestalling opposing ones.
5. ***Leveraging linkages:*** linking and de-linking issues or sets of negotiations in order to create and claim value.
6. ***Playing the frame game:*** crafting and promulgating a favorable framing of "the problem" and "the options."
7. ***Creating momentum:*** channeling the flow of the negotiation process in promising directions by establishing appropriate stages to demarcate the process, as well as by instigating or taking advantage of action-forcing events.

Element #1: Organizing to Influence

Lobbyists organize to influence and negotiate with their own government. Industry groups in one country may also organize to influence their counterparts in another country. Government negotiators themselves have to figure out how to organize their team, secure their mandate, and get instructions from their principals.

Sometimes entirely new organizations are created to help build coalitions, monitor the negotiation process, and develop strategy. Parties also seek to gain analyses and expertise by co-opting the resources of existing institutions, such as trade associations. Such organizations, if appropriately staffed, funded, and directed, can provide support that is essential to influencing the course of trade negotiations.

In the cases that follow, we will see that effective organizing to influence is key in shaping the outcome of trade talks. In the TRIPS negotiation, for example, a group of CEOs of US pharmaceutical, software, and entertainment companies created the Intellectual Property Committee (IPC) and staffed this new organization with people skilled both in working out policy positions and in playing the trade negotiation game. As a result, the IPC played a central role in developing the framework for the TRIPS agreement.

Element #2: Selecting the Forum

Often, *where* a negotiation takes place strongly affects gains and losses. For this reason, vigorous jousting can occur as the forum for a particular set of trade talks is selected. That choice influences who will participate in the negotiation, the rules of the game, and how any resulting agreement will be enforced.

For example, supporters of strong intellectual property (IP) protection worked hard to include IP in the Uruguay Round of trade talks. The issue of international IP protection had been housed at the United Nations, whose lack of enforcement had frustrated many industry representatives; the WTO, they believed, would offer more recourse against a nation that failed to honor intellectual property rights. The failed negotiations for a Multilateral Agreement on Investment also underscore the significance of forum selection, for the decision to negotiate at the OECD, as opposed to the WTO or another institution, significantly shaped the direction of the talks and the challenges that ultimately led to their demise.

Element #3: Shaping the Agenda

In tandem with selecting the forum, negotiators must establish the agenda for the talks. What issues will be negotiated and which will be set aside? Will the agreement be comprehensive and multisector, or will it focus on a specific issue (such as investment) or a single sector (such as steel)? Will parties have the ability to selectively embrace any provisions they choose (such as codes of conduct), or will they have to negotiate in order to opt out of or delay acceding to provisions they don't like? Will the implementation of an agreement be on the same schedule for all parties, or will it be staged over time (as, for example, in the Uruguay Round agreement)? Will parties make different levels of commitments, depend-

ing on such variables as their stage of development, or will all signatories make the same commitments?

In complex trade negotiations, those who control the agenda for the talks and the sequencing of issues strongly affect outcomes. Effective agenda setting involves defining the issues that will be covered in a negotiation and influencing the order in which they will be dealt with.¹³ Negotiators typically undertake a “prenegotiation negotiation” over the agenda, attempting to define certain issues as “nonnegotiable” and to set preconditions.

For parties that seek an agreement, efforts at controlling the agenda focus on identifying bundles of issues that seem able to support value-creating trades. These parties also attempt to exclude or defer potentially toxic issues—those that could prevent agreement altogether. For deal spoilers, the goal is to undermine or delay decision making by turning the negotiation into a win-lose proposition. To that end, they may introduce or maintain toxic issues on the agenda. For example, in the negotiations to renew fast track, the question of whether labor and environmental issues belonged on the agenda of trade negotiations was a major potential stumbling block. In fact, the debates over fast track in the US Congress can be thought of as prenegotiations over the agenda for trade talks.

Element #4: Building Coalitions

In negotiations involving more than two parties, in which none can unilaterally impose (or veto) the outcome, success in building coalitions can profoundly alter BATNAs. Building a winning coalition enables a negotiator to achieve the desired outcome; but if a blocking coalition forms, those plans may be frustrated.

Coalition building involves identifying groups with complementary goals, building alliances among them, and focusing their collective resources to shape a particular negotiation process. In essence, effective coalition building identifies and exploits alignments of interests.

Sometimes long-standing allies cooperate on a broad range of issues. One such industry coalition is USA Engage. Consisting of more than 600 corporations and associations—including Caterpillar, Boeing, Dow Chemical, General Motors, IBM, Motorola, USX, the US Chamber of Commerce, the American Petroleum Institute, the Business Roundtable, and the Environmental Export Council—it was created to promote international economic involvement by US business and discourage the imposition of unilateral trade sanctions by the US government for political purposes.

But coalitions need not be founded on shared goals and long-standing relationships; they may be short-term pragmatic alliances, based on mutually beneficial trades of support or of resources.

13. For a classic treatment of agenda setting in government, see Kingdon (1995).

Negotiators build coalitions by making sequences of moves that create momentum. By approaching the right people in the right sequence, they are able to reduce resistance. In part, such sequencing relies on patterns of deference, as mentioned above (see Lax and Sebenius 1991). Decision makers often defer to others whose opinions on a given set of issues they respect. For an effective sequencing strategy, it is therefore essential that negotiators analyze influence networks in complex negotiations and understand who defers to whom on crucial issues (see Krackhardt and Hanson 1993; on the psychology of interpersonal persuasion, see also Cialdini 1993, chapter 6).

Questions of sustainability also loom large in coalition building. Simply eliciting support is never enough, because allies can vanish in the night. Negotiators must also devote energy to buttressing the commitment of their supporters, as well as to expanding their own persuasive reach. In the words of Owen Harries (1984): “Preaching to the converted, far from being a superfluous activity, is vital. Preachers do it every Sunday. The strengthening of the commitment, intellectual performance, and morale of those already on your side is an essential task, both in order to bind them more securely to the cause and to make them more effective exponents of it.”

Element #5: Leveraging Linkages

Negotiators seek to advance their interests by linking or delinking potentially separate sets of negotiations. Standalone negotiations are rare. Typically, negotiators’ perceptions of their alternatives are strongly influenced by linkages to other negotiations—past, present, and future—that can create barriers or open up opportunities (ideas developed in Watkins and Pasow 1996). Negotiations can be linked in a number of common ways:

- ***Synergistic linkages*** combine sets of issues that could be negotiated separately in ways that enhance opportunities to create value.
- ***Antagonistic linkages*** poison the potential for agreement. Some toxic issues not only are impossible to settle but seriously complicate the settlement of other issues.
- ***Sequential linkages*** arise when past negotiations or the prospect of future negotiations affect current ones.
- ***Competitive linkages*** occur when only one negotiation can reach fruition as one party negotiates with two or more others.
- ***Reciprocal linkages*** occur when all negotiations must reach fruition for an overall deal to occur as one party negotiates with two or more others. In ***conditional agreements***, each requires that agreement be reached in the others.

Linkages are a familiar feature of trade negotiations. Threats of sanctions in bilateral disputes, for example, can shape parties' perceptions of their interests and alternatives in multilateral processes and vice versa. Thus the United States used the club of potential section 301 actions to make a multilateral TRIPS agreement appear more attractive to developing countries. Bilateral or regional negotiations also can create useful precedents for subsequent multilateral processes. The TRIPS agreement was strongly shaped by an earlier bilateral agreement on intellectual property rights negotiated between the United States and South Korea. In another kind of linkage, US advocates of greater protection of human rights in China gained leverage by linking the issue to annual renewal of China's most favored nation (MFN) status.

Skilled negotiators also create and claim value by linking and de-linking issues within a particular negotiation. For example, although many developing countries were not enthusiastic about including intellectual property in the Uruguay Round, they were persuaded to include TRIPS in exchange for a phaseout of the Multi-Fiber Arrangement, which limited their opportunities for exporting textiles. A linkage can also be used to claim value; for example, a key issue can be held hostage until the other side shows willingness to make a concession. Negotiators therefore seek to identify synergistic linkages that combine issues in order to create value. At the same time, they work to neutralize antagonistic linkages; to the extent that toxic issues can be eliminated or deferred, agreement becomes easier to reach.

Element #6: Playing the Frame Game

Public opinion shapes the positions of political leaders in trade negotiations. The parties to a negotiation will therefore often engage in a competition to frame the terms of the public debate. They do so by using arguments, analogies, and metaphors to define both the problem to be solved and the set of potential solutions in ways that favor their point of view.

Framing tactics work for two reasons: assessments of interests often crystallize only when people are confronted with the need to make choices or form opinions, and the "mental models" people use to make sense of a given situation depend on how that situation is presented (Johnson-Laird 1983). Mental models are conceptual frameworks; the products of formative experiences, professional training, and cultural heritage, they embody guiding assumptions and values, beliefs about cause and effect, and expectations of others' behavior (Goffman 1974). These frameworks are the crucial link between an individual's observations of external realities and conclusions about the nature of a problem. Moreover, they provide rules of thumb and scripts that guide actions (see Valley and Keros 2000).

Therefore, the art of framing is to define the problem and the options in ways that tap into particular preconceived beliefs and attitudes, elevating

the importance of some and suppressing others. Effective framing has been called “a burning glass which collects and focuses the diffuse warmth of popular emotions, concentrating them on a specific issue” (Mitchell 1970, 111). Among the public, it promotes “right thinking”—that is, “right” in the eyes of those doing the framing—and discredits or provides counterarguments to possible “wrong thinking.”

When two contending sides vie to sway public support, the contest is often primarily a language game. Each opponent tries to link its objective to the target audience’s values and established beliefs about how the world works. In the TRIPS case, for example, the supporters of strengthening international protection of intellectual property rights succeeded in painting the developing countries as engaging in “intellectual piracy.” Later, however, developing countries and NGOs applied the same term—*piracy*—to efforts by multinational companies to patent indigenous knowledge from developing countries. Likewise, in the MAI talks, opponents of the negotiations managed to frame the issue as an effort by large corporations to secretly take over the world, while proponents were unable to offer a compelling riposte.

Element #7: Creating Momentum

Negotiations rarely proceed smoothly from start to conclusion. Instead, they ebb and flow; periods of deadlock or inaction are punctuated by bursts of progress until agreement is reached or a final breakdown occurs. Skilled negotiators recognize these patterns and work to build momentum in favorable directions, taking such actions as proposing a new formula for agreement or suggesting a face-saving compromise that breaks a logjam.

Skilled players often fashion *multistage processes* explicitly designed to build momentum in the desired direction. Initial agreements on basic principles shape preliminary negotiations over the basic framework of trades the parties will make. This framework, in turn, influences the course of the hard bargaining over details. By fashioning early successes, sophisticated negotiators create options for themselves and limit the choices of others.

Action-forcing events can also spur negotiations forward. They can be variously categorized: *internally imposed* (arising from the actions of the negotiators themselves) or *externally imposed* (arising from outside circumstances); *unilateral* (e.g., a threat tied to a deadline) or *consensual* (e.g., a mutual commitment to a deadline, perhaps as a spur to their internal decision making); and *macrolevel* (e.g., deadlines) or *microlevel* (e.g., meetings). All are break points at which negotiators must make a move to avoid incurring substantial and irreversible costs. For example, organizations’ annual planning and decision-making cycles can force or delay negotiations. In international negotiations, key political events such as elec-

tions serve to drive or restrain action. Action-forcing events are important tools that impel counterparts (and even colleagues on the same side) to realize that hard choices are necessary.

Consider, for example, an action-forcing event in the Uruguay Round negotiations. Though the parties would have preferred to avoid confronting some issues, the impending expiration of US fast-track authority made the status quo untenable. Effective negotiators set up and use deadlines in order to create and claim value, on occasion even intentionally engineering impasses to increase the pressure on others to make concessions. To be sure, the use of action-forcing events sometimes backfires. In the case of PNTR for China, for example, the visit of Premier Zhu Rongji to the United States was intended to force the two sides to work out their remaining disagreements. But the gaps proved too broad to bridge; rather than gaining momentum toward agreement, the negotiations became deadlocked and descended into mutual recriminations.

Guiding Questions

The cases that follow provide a rich base of data for exploring negotiation strategies. The following questions will be helpful in analyzing them:

- **Organization:** Who was better organized to influence the process, and why?
- **Forums:** What forum was selected for the negotiations? How did the forum influence the outcome?
- **Agenda:** Which parties exerted influence on the agenda, and how did they do it? How was the basic structure of the negotiation established, and who influenced the process?
- **Coalitions:** What coalitions were built (and broken), and which parties were most effective at coalition building?
- **Linkages:** How did the negotiations get linked to other negotiations, and which parties were most effective at using linkage to create and claim value?
- **Framing:** To what extent did public opinion influence outcomes, and which parties were most effective at playing the frame game?
- **Momentum:** Who was most skilled at channeling the flow of the negotiation process and in using action-forcing events to move it forward?