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0521679788 - Negotiating Trade: Developing Countries in the WTO and NAFTA

Edited by John S. Odell

Excerpt

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1 Introduction

John S. Odell

Negotiating international trade agreements has become a full-time job for developing countries. They negotiate often in pairs, in regional groups, and as members of the World Trade Organization (WTO), where they make up the majority of members. The WTO in particular is one of the premier sites where globalization will be either managed or mismanaged. Some official talks aim for deals that shape international rules and state policies. Other talks seek settlements for legal disputes arising in the shadow of those rules. Ultimately all this bargaining helps determine who receives the gains and bears the burdens of trade, with powerful consequences for local communities across the globe.

Less developed countries have become dramatically more active in trade negotiations in recent years, as their policies and societies have become more dependent on trade. Even the smallest traders are better organized and prepared than in the past. They were prominent players in WTO ministerial conferences in Seattle in 1999, Doha in 2001, and Cancún in 2003. The results – for the entire world – depend more than ever on how developing countries negotiate.

Yet social science still does not understand the process of trade negotiation – as distinct from the institutions, laws, and economics of the issues – well enough. In particular, negotiation process research has underrepresented the experience and needs of developing countries, where the large majority of the world's people live. Empirically grounded research on their negotiations is still in its infancy. What happens inside these frequent talks between delegations? What negotiation strategies have developing country delegations attempted and have they made any difference, considering the power disparities they face? How do they process information and influence their counterparts' beliefs during the talks? Why do some bargaining coalitions hold together while others fragment? Most centrally, what accounts for the varying outcomes we see? Is it possible to generalize about this complex process? Can one find any valuable lessons for practitioners who will face future negotiations?

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The theme of this book is that the content of developing countries' international trade agreements varies with the process of negotiation that produces them, and in turn that process depends partly on the institutions in which the process unfolds. The trade superpowers – especially the United States and the European Union – dominate this process, of course. For smaller and poorer players, achieving their objectives is a daunting challenge. But this book's main message is that even so, their decisions about how to negotiate make a material difference to the results, for them and for the world.

This chapter summarizes the innovative ways in which we develop this theme. By *the international negotiation process* we mean a sequence of actions in which two or more governments address demands and proposals to each other for the ostensible purpose of reaching an agreement and changing the behavior of at least one party.¹ The central elements are the actions of official negotiators, but this complex international process often involves others. Government officials also interact with constituents, international officials and non-state actors.

Our specific conclusions concentrate on three variable aspects of the negotiation process that are likely to affect the outcome: coalition design, strategies used by states and coalitions, and dynamic subjective interactions. We also flesh out the general idea that variable properties of the institutional setting of a trade negotiation will shape the process and in turn its outcome.

Things besides this process also matter, of course. Trade negotiators must take various conditions as given and are not able to exert much influence over them, except perhaps indirectly over the long term. Exogenous elements of the negotiator's context – such as the cultures of the countries participating, the interstate distribution of power, existing international institutions, existing domestic institutions, technological change, and other market trends – are conceptually “outside” the negotiation process and almost certainly have important effects on official negotiated outcomes too, at least indirectly. But our premise is that such conditions in the negotiators' environment do not predetermine any official outcome completely. We assume they leave significant space in which decisions by governments and delegations, including those from developing countries, tip their collective outcomes toward impasse or agreement and shape the distribution of costs and benefits. We attempt to offer something distinctive by exploring this space, rather than abstracting from negotiator

¹ The terms “negotiation” and “bargaining” are used interchangeably here, as in much of the literature. Some scholars draw a distinction between the two, but this practice can divide research in one tradition from related insights developed in the other. I believe integration is what this literature needs.

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decisions and behavior as much political economy research has done. Some might consider this behavior a rather special element in the grand sweep of history. But many governments repeatedly invest great effort and expense to conduct these negotiations, and companies, other non-governmental organizations, and the media spend yet more resources trying to monitor and influence them. We assume something significant is going on.

We analyze two types of trade negotiation. In complex episodes like the Uruguay Round and the Doha Round, dozens of governments seek to reach multilateral agreements to regulate access to markets and write rules for the world trading system. Chapters 2 through 5 investigate WTO deal-making and chapter 6 investigates a regional deal. In the second type represented by chapters 7 and 8, two or a few more governments attempt to negotiate settlements to disputes taking place in the shadow of these rules. When WTO members file legal complaints attempting to achieve fuller compliance, they often engage simultaneously in settlement bargaining with the defending states. In fact most disputes brought to the General Agreement on Tariffs and Trade (GATT) and WTO have been settled by negotiation or dropped before the adjudication process has run its course.²

A broader aim of this book is to flesh out an under-exploited overlap of two lively multi-disciplinary bodies of scholarship: international political economy and negotiation analysis. Scholars working in each of these communities are accomplishing a great deal but are not always able to keep up with advances in the other, and we see opportunities for deepening knowledge over the long term by exploring their possible intersection. We draw on and combine elements from both.

This is also scholarship designed to be relevant. The main questions about which we seek to generalize spotlight possible courses of action and factors that will determine the results. A central goal is to add to the body of empirically grounded scholarship on the economic negotiation process that is available to support participants in these negotiations and their constituents.

Section 1 of this chapter sets the scene by highlighting major changes in the participation of developing countries in trade negotiations in recent years and by situating our contributions in published literatures. The following section introduces key assumptions and analytical terms that will appear in other chapters without further definition. A third section summarizes our specific contributions, and a fourth points toward implications for future research and future negotiations.

² Busch and Reinhardt 2003; Davey 2005.

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After 1990 developing country participation in dispute settlement talks increased, and their participation in multilateral trade negotiations exploded. During and after the GATT's Uruguay Round (1986–1994) more developing countries shifted their policies toward reliance on international markets for development. After creation of the WTO in 1995, more countries reinforced or established their missions in Geneva. Most notably, in 1999 during preparations for the WTO's ministerial conference in Seattle, developing countries voiced concerns and injected dozens of formal proposals into the negotiation process. This participation explosion drew in many smaller trading countries that had been passive or not signatories at all prior to 1994. Many states increased their investment in training their officials for international commercial negotiations, with the help of UNCTAD, the WTO, and regional organizations. Many delegations formed or joined bargaining coalitions to defend common negotiating positions through direct coordination. Almost every member state sent its minister to Seattle and again to Doha in 2001 and Cancún in 2003. These events and developing countries' role in them became front-page news worldwide.

Newer organizations are now part of the negotiator's context as well. The South Centre and the Agency for International Trade Information and Cooperation are intergovernmental organizations created to support developing countries in trade negotiations and headquartered in Geneva. Non-governmental organizations have become quite active not only in public protests but also behind the scenes in some cases, supplying applied analysis and proposals to developing country delegations. Chapter 3 in this book documents such a case.

Meanwhile, developing countries have been targeted as defendants in far more legal disputes under the WTO than under the GATT. From 1995 through 2000, they were defendants in 81 cases – amounting to 37 percent of all disputes – which was dramatically higher than the 8 percent of disputes that had targeted developing countries during the GATT period. This is partly because there are far more developing country members, they have far more legal obligations under the new treaty, and their trade has expanded. Each of these cases, along with 64 others during 1995–2000 in which a developing country initiated a complaint,³ created an occasion for a possible settlement negotiation. From 2000 through mid-2004, developing countries, especially some in Latin

³ Busch and Reinhardt 2002.

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America, sharply increased their use of the system as complainants, filing against other developing countries as well as developed countries. Some complaints, such as those by Brazil and India against certain US and EC policies, seemed aimed in part at influencing the Doha multilateral negotiations.⁴

Simultaneously many developing country governments were also busy negotiating over trade inside their regions. The Caribbean Community and Common Market (CARICOM) has existed since 1973. The Association of Southeast Asian States (ASEAN) and the South American countries of the Mercado Común del Sur (MERCOSUR) launched free trade areas in the early 1990s. The Andean Pact and the Central American Common Market were reactivated during that time. Western hemisphere states began to negotiate a Free Trade Area of the Americas in 1994. In 1997 the South Asian Association for Regional Cooperation agreed to make itself into a free trade area. The African, Caribbean, and Pacific Countries engaged in continuing talks with the European Union. African states have negotiated a variety of sub-regional and region-wide trade and monetary pacts since the 1960s. They launched the African Economic Community in 1991 and the African Union in 2002.⁵

Empirical negotiation process research has not kept up with this participation explosion, however. We do have voluminous literatures from economics and law on the effects of past agreements, problems, proposals for future agreements, and developing country stakes in these deals.⁶ But scholarship concentrating on what developing country delegations and others do during negotiations and why is only beginning to accumulate. Histories and memoirs of GATT rounds sometimes touch in passing on roles played by developing countries.⁷ A few studies describe and analyze particular negotiations from earlier years – for example when newly independent African states first bargained with the European Community,⁸ textile exporters faced demands for restrictions in the 1960s and 1970s,⁹ Latin American governments and South Korea faced the United States during that period,¹⁰ and a bloc of developing countries campaigned in the United Nations for a new international economic order.¹¹

⁴ Davey 2005; Petersmann 2005. ⁵ World Bank 2001.

⁶ A sampling of recent works could begin with a special issue of *The World Economy* 2000, UNCTAD 2000, and articles and books by the prolific World Bank trade research group, such as Michalopoulos 2001, Panagariya 2002, Hoekman, Mattoo, and English 2002, later working papers at www.worldbank.org/research/trade, and their references. This would only scratch the surface.

⁷ Preeg 1970; Evans 1971; Winham 1986; Oxley 1990; Hampson and Hart 1994; Paemen and Bensch 1995; Croome 1999.

⁸ Zartman 1971. ⁹ Destler, Fukui, and Sato 1979; Aggarwal 1985.

¹⁰ Odell 1980, Yoffie 1983, Odell 1985, Bayard and Elliott 1994.

¹¹ Rothstein 1979; Zartman 1987. Also see Hoda 1987.

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During the Uruguay round as some poorer countries developed further and their governments became more active in Geneva, several more publications discussed their bargaining options and experience.¹² After 1999 the increasing contention in trade negotiations, as developing country governments and non-governmental organizations became much more active in and around the WTO, attracted the attention of a few more authors.¹³ A handful of statistical studies has traced effects of political institutions on regional trade agreements without observing the negotiation processes involved in reaching those agreements.¹⁴

Excellent statistical studies of GATT and WTO dispute settlement have illuminated which countries have filed the most complaints, which have gained the greatest policy change at which stages of the proceedings, and reasons for the observed differences.¹⁵ Yet these studies are by nature limited to information that is publicly available for hundreds of cases and to what can be measured. The method is not able to analyze much of what happens inside any settlement negotiation. Few empirical studies describe how dispute negotiators behave in these talks and ask how their process might affect the outcome.

Reasons for the relative shortage of empirically grounded analyses of the process itself – even studies of richer countries' experience – are not difficult to find. Insiders seldom have the inclination, liberty, and time to publish what they have learned about negotiation strategy and tactics, especially not in societies where such talents are extremely scarce and absorbed for other purposes. Outsiders find it virtually impossible to observe intergovernmental negotiations directly, and alternative methods must be devised. The best methods for indirectly discovering what occurs – reading archives and interviewing participants scattered over several continents – involve costs high enough to deter many scholars. Others shy away from empirical study of this process because they prefer to limit themselves to claims that can be supported with quantitative data, and no such data exist on negotiating strategies and other key process elements.

Two established multi-disciplinary bodies of literature are, however, very much part of our conceptual context. The literature of international

¹² E.g., Hamilton and Whalley 1989; Nau 1989; Whalley 1989; Winham 1989; Tussie and Glover 1993; Arriola 1994; Shukla 1994; Stephenson 1994; Sell 1995; Raffaelli and Jenkins 1996; Winham 1998; Watal 2001; Steinberg 2002. Higgott and Cooper 1990 first described and analyzed the Cairns group. Additional studies are cited in later chapters.

¹³ Singh 2000; Duran 2001; Ramamurti 2001; Das 2002; Crystal 2003; Drahos 2003; Ives 2003; Jawara and Kwa 2003; Narlikar 2003; Page 2003; Sally 2003; Narlikar and Tussie 2004; Bernal et al. 2004.

¹⁴ Mansfield, Milner, and Rosendorff 2002; Mansfield and Reinhardt 2003.

¹⁵ Hudec 1993; Busch and Reinhardt 2002; Busch and Reinhardt 2003.

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political economy is a mix of economics and political science and has devoted extensive attention to trade policies, especially in the United States and to a lesser extent in other industrial countries.¹⁶ The second literature of negotiation analysis has been fed by streams from business, law, political science, psychology, and sociology, and not so much by economic theory since early game theory.¹⁷ Negotiation analysts have suggested concepts for understanding the negotiation process at many levels, from the local community to world politics, though again without great attention to developing countries in trade negotiations. In the former genre, game theoretical methods are prominent and the latter is mostly not mathematical. Several recent review articles discuss the seminal works, accumulating findings, and remaining challenges of each tradition. This is not the place for additional comprehensive reviews.

For now, suffice it to say that the two traditions have tended to specialize in somewhat different ways and have not fully developed the potential bridges between them. To simplify greatly, political economy research on trade policies has often abstracted from the behavior of international negotiators, concentrating more on the sectoral market conditions, exchange rates, institutions, and politics surrounding them to explain trade policies. Few political economists have conducted empirical research designed to generalize about the negotiating behavior of developing countries and their partners. Skeptics sometimes complain that the assumptions on which political economy models depend are too strong to provide accurate explanations. Meanwhile, it is fair to say that many international negotiation studies have not yet exploited insights from economics or political-economic institutionalism very fully. Skeptics here sometimes complain that they cannot find many clear causal hypotheses in negotiation studies. Nor have negotiation analysts often applied their process ideas in the empirical domain of developing countries' trade negotiations. There are exceptions in both cases and some are mentioned here. Our purpose is not to disparage either tradition; it will be apparent that we incorporate elements of each. The point is that we see our work as an attempt at cross-fertilization that will contribute to each. The third section will be more specific. One study also suggests a different possible bridge to constructivism, which is not a substantive

¹⁶ For reviews see Nelson 1988, Marks and McArthur 1990, Odell 1990, Milner 1999, Hoekman and Kostecki 2001, and Frieden and Martin 2003. These reviews show that most political economy research concerning trade policies has concentrated on aspects other than negotiator decisions and behavior, and that developing country negotiations have been especially neglected. Rodrik 1995 emphasizes other gaps.

¹⁷ For reviews see Jönsson 2002 and Sebenius 1991. The sub-school represented by Sebenius, following Raiffa 1982, begins the work of bridge-building that we continue.

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theory but a set of basic premises under which to investigate inter-subjective phenomena in world and domestic politics.¹⁸

2 Main question and assumptions

We concentrate in this book on one main analytical question or dependent variable: what determines the outcome of a trade negotiation involving developing countries? Any negotiation outcome has two dimensions – whether the process ends in impasse or agreement,¹⁹ and which parties receive which gains and losses. The value of an outcome to a government varies by degrees rather than simply between success and failure. Gains and losses are almost impossible to measure precisely, however, even on economic issues. Some trade negotiations end with agreement on an agenda for another negotiation, so that the ultimate value of a gain in agenda formation – keeping an item out or getting one in – depends on later events. Some outcomes take the form of changes in international rules, and efforts to forecast rules' effects face great inherent uncertainty. Some final gains and losses are intangible. Here we attempt to classify and compare outcomes qualitatively.

Any notion of gain or loss implies some reference point. In this book the primary reference point is the status quo before negotiations. Was the country or coalition better off or worse off than before, and how much so? In several chapters, two outcomes will be compared with one another. What counts as a gain for a country will be defined in light of the objectives of the country's government rather than the authors' personal values. The negotiation outcome for present purposes also refers to the terms of official agreements themselves and not the behavior of markets later. Exports expand and diminish for reasons other than negotiated government agreements; the analysis of trade itself is also a substantial enterprise, and many others supply it.

Our primary method is the single case study or the focused comparison of two or three cases of negotiation. Most authors choose these established methods because one primary research goal is to add accurate observations and descriptions of the negotiation process to the literature. Without careful case studies it is difficult for an outsider even to know what happens in confidential government negotiations, and accurate description is a prerequisite for valid explanations and generalizations about the process. Through process tracing, these studies provide more

¹⁸ Finnemore and Sikkink 2001.

¹⁹ A third possible category is a signed agreement that fails of ratification, like the 1948 charter for the International Trade Organization. This book does not explore any such cases.

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accurate and meaningful description of those cases than would be possible by measuring only a few variables in each case along with many other cases in a statistical study. But we seek more than descriptions of a few episodes. We use them inductively to generate some modest middle-range hypotheses that may prove promising for investigation and use in other cases. In some cases we apply a published hypothesis to interpret a new case. Note that we do not claim to test any hypothesis here or to reject alternative approaches in general. Our goals are different. We do claim that ignoring the negotiation process would miss key reasons for the outcomes we study. But these cases have not been selected randomly and larger numbers of cases selected neutrally would be needed for true tests. Developing data quantitatively measuring negotiation strategies or other elements of this process in actual international negotiations would be a large-scale undertaking, and case studies should be valuable prerequisites for efforts to create valid measures and models.²⁰ We do speculate about the likely limits of each hypothesis. Chapter 5, rather than using a case study of actual negotiations, experiments with the innovative technique of observing how developing country delegates behave in WTO training simulations, and does generate some data from this setting.

Two premises

To frame answers to the main question, we begin with two assumptions. First, the actors in trade negotiations make decisions using bounded rationality. The assumptions of classic unbounded rationality have proven highly fruitful and surely will continue to be so. Much other social science research, including the negotiation analysis tradition, has shown that a different set of assumptions has also been highly fruitful, and the premise of this project is that it will continue to be so. Here agents are rational in the sense that they aim to achieve objectives as effectively as they are able, but their rationality is bounded in two senses, in keeping with Simon's definition.²¹ Agents lack not only complete information but also the ability to perform the computations needed to optimize. (Much political economy work has recognized certain limits on information while continuing to assume that players optimize.) Negotiators lack full information, for instance, about other countries' reservation values, true priorities across issues, and domestic politics. The others have well-known incentives to

²⁰ In 2002 *International Negotiation* published a special issue (volume 7, number 1) exploring the difficulties and possible remedies.

²¹ Simon 1997, 291, emphasized both these dimensions. Much evidence for their relevance has accumulated in economics and political science as well as psychology. See Conlisk 1996 and Odell 2002 for comprehensive reviews.

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misrepresent some information. Before the beginning of a multilateral trade negotiation, delegates cannot know exactly which issues will be on the agenda and exactly how they will be defined. These features will be determined by negotiation.

Thus in practice a boundedly rational player cannot deduce a single optimal strategy simply and directly from material interests. Even if she could specify every possible course of action available to her country, she is unable to forecast exactly what would happen with each alternative. The outcome in multilateral talks will depend on how parties B and C respond to each alternative, not to mention how markets would respond. How B responds often depends on how C responds. How government C responds will in turn depend on how its citizens value the alternative outcomes. Constituents and bureaucracies often disagree on such matters, and so how C responds will also depend partly on domestic politics inside C's country.

To take another example, identifying a government's reservation value empirically is also too complex and uncertain an operation to permit exact computation. The parties' reservation values – the worst deals they would prefer to accept – collectively determine whether they have a positive zone of agreement or contract zone. Given that negotiator B can be expected to misrepresent her own state's bottom line, identifying the true value would require putting some exact value on the best course of action party B could take if this negotiation ended in deadlock. Choosing one outside alternative as best (abbreviated as the *batna* – best alternative to negotiated agreement) implies knowing what other governments and markets would do in each scenario. If the outside alternative is a conflict, how likely is it and what would be the costs and any benefits? Judging which deal is the minimum also implies estimating which deals could be sold in B's domestic politics. That will depend on how many political resources its leaders spend to secure ratification, which will depend in turn on the other demands upon those resources at the time. The number of combinations to evaluate escalates quickly beyond the computation capacity of even the most developed government. One veteran GATT and WTO negotiator declares flatly: "Most delegations don't know their own bottom lines,"²² not to mention those of other states.

In this world, the only way to make timely decisions is to use mental short cuts – to consider only a few alternative strategies, overlook many complexities, and make rough subjective judgments about risks, others' resistance points, and odds of success. Since such judgments and strategy choices are unavoidably subjective, they are open to biases, framing

²² Interview, Florence, Italy, July 3, 2004.