



Workshop on Facilitating the Launch of the Arab Customs Union

Cairo, Egypt, 2-3 July 2017

Presentation outline

Part I - Trade Negotiation skills: basics & tools:

- Introduction
- The theoretical background
- Basic principles of a complex negotiation
- Steps of the negotiation

Part II - Elements of Modalities for ACU negotiations

- Rational
- Key considerations & Challenges
- Guiding negotiating principles & modalities
- Tariff Liberalization Modalities: Options



Part I

Trade Negotiation skills: basics & tools



Introduction

- **Wide range of books on negotiation but very little on complex negotiation & even less on complexity in international trade negotiations**
- **International trade negotiations among the most complex negotiations ever**
- **Presentation to provide advice, examine potential stages of a successful negotiation, with concrete examples**

A large, stylized world map in shades of orange and yellow, serving as the background for the slide. The map is composed of horizontal lines and is centered in the upper half of the page.

BASIC FACTS REGARDING A NEGOTIATION

The United Nations logo, featuring a world map surrounded by olive branches, is positioned in the bottom left corner of the slide.

03/07/2017

Why negotiating?

- Negotiation is a need and a major tool for conflict resolution in an increasingly complex world;
- Negotiation is a skill acquired through practice & by learning techniques:
 - *"you don't get what you deserve, you get what you negotiate"* ;
- Negotiation is crucial in multilateral trade;
- Has great impact on wealth of the country and its population;

Its importance is not questionable, but can a pattern be established for a good negotiation, with tips and ideal sequencing?



The theoretical background



The BATNA (Best Alternative to a Negotiated Agreement):

In negotiation theory, the best alternative to a negotiated agreement or BATNA is the **most advantageous** alternative course of action a negotiator can take if negotiations fail & an agreement cannot be reached !

The BATNA Cont'd

Was developed by negotiation researchers **Roger Fisher & William Ury** of the Harvard Program on Negotiation: (Best-selling book: *Getting to YES: Negotiating Agreement Without Giving In*).T

The authors gave 3 suggestions of how to accomplish this:

- 1- **Inventing** a list of actions one might take if no agreement is reached;
- 2- **Converting** some of the more promising ideas and transforming them into tangible and partial alternatives;
- 3- **Selecting** the alternative that sounds best.

The BATNA Cont'd

- Make a decision when you know what alternatives are;
- should not accept a worse resolution than its BATNA;
- BATNA is often seen by negotiators not as a safety net, but rather as a point of **leverage** in negotiations: « **The ability to walk away from a deal is the ultimate source of bargaining power** » !
- Options need to be real and actionable to be of value;

The BATNA

- ▶ Perception by others of your **outside options** can be shaped (regional/bilateral rather than multilateral)



The BATNA Cont'd..

But


BATNA **is not** the so called **bottom line** that negotiators perceive as the means to guard themselves against reaching agreements where they give **too** much or receive too little.

The BATNA Cont'd..

- A bottom line or **walk away** signifies the **worst** possible outcome that a negotiator might accept;
- It is a means to **defend** oneself against the pressure & temptation that is often exerted on a negotiator to **conclude** an agreement that is **self defeating**;
- A BATNA is not interested in the objectives of a negotiation, **but to determine** the course of action if an agreement is **not reached** within a certain **time frame**;
- It prohibits a negotiator from accepting **an unfavourable** agreement or one that is not in their **best interests** because it provides a better option **outside** the negotiation.

The BATNA Cont'd..

- ***"Don't put all your eggs in one basket." !***
- To a negotiator, this wise old proverb illustrates that if you bring only **a single proposal** to the table, you may likely end up with a **BAD** deal, or no deal at all !
- You need to have **an alternative plan** waiting in the wings!!



Integrative and distributive negotiations

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Integrative strategy:

- Collaborative mode adapted to **long-run negotiations with several rounds**;
- Seeking to « create value »;
- Main **criteria** is having several issues negotiated that allow for **trade-offs + creativity**

Distributive strategy:

- Each negotiator battles for « **biggest slice of the pie** »
- Main objective is to estimate **the minimum** the other party is willing to accept and get as close as possible to it.



Basic principles of a complex negotiation



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Strategy follows the structure

- **Structure shapes way in which negotiations are going to be conducted**
 - ▶ **Careful analysis is needed on:**
 - **Number of issues**
 - **Number of rounds**
 - **How are the rules established?**
 - **Pre-existing attitudes**
 - **Assessment of partners' respective power**
 - **Link of multilateral negotiations with other forum.**

Good strategies shape the structure:

« you can shape the game as well as play it »

- ▶ Rules are influenced by actions of the participants on:
 - Setting the agenda
 - Managing conflict (i.e. introduction of mediator)
 - Staging the process
 - Creating coalitions
 - Leveraging linkages (linking or de-linking issues to create momentum)
- ▶ Sequence of moves « at the table » & « away from the table »

Simple & complex negotiation

- ▶ From one issue to many
- ▶ From one round of negotiations to many
- ▶ From fixed rules to negotiable ones
- ▶ Pre-existing attitudes
- ▶ From one party to many parties
- ▶ From one level to many interacting levels of negotiation
- ▶ From a self-contained negotiation to a densely linked web involving different but overlapping set of parties.

Doha round is a best example of complex negotiations !

The rules of the game

- What are the rules of the game & how can you shape them?
- Important to negotiate the initial rules of the game: **process & rules** always receive **less attention**
- Winner of negotiation is the one who can best shape negotiations: **common mistake** is to take the structure of negotiation as a given

"it is not the rules but the players who matter "

- ▶ *"Think strategically but act opportunistically"* : expect to be surprised and to have to modify your initial approach !



STEPS OF A NEGOTIATION

1. Organise to influence

Moves “out of the table” (preparation phase) as important as moves “at the table”

Preparation needs Commitment, Organization, Resources and Coherence (CORC)

- ▶ **Commitment:** identify qualified people and train them
- ▶ **Organization:** close attention to institutional framework
- ▶ **Resources:** allocation of enough public funds
- ▶ **Coherence:** strategy fits in broader development vision & needs internal support (**consultative process: involvement of all relevant stakeholders**)

2. Choosing the appropriate forum

Which forum is the most appropriate to bring forward interests and objectives?

- Multilateral (WTO), regional or bilateral forum: the choice also depends on the size and importance of your country
- Which forum gives us the biggest relative weight?
- Certain issues are brought forward in a forum rather than another, depending on the subject
- Certain processes are selected because they are binding (*Eg. In 2002 Brazil vs USA in cotton subsidies case before WTO DSB. Brazil won the case*)

3. Setting the agenda

Allocation of time between subjects and format of negotiation

- ▶ Influence what issues are up for negotiation by adding or removing some of them, and avoid **02 risks**:
 1. **agenda too narrow**: difficult to create enough value
 2. **agenda too large**: dividing and breaking down the larger agenda into parallel negotiations & sub-groups
- ▶ Choosing the format:
 - “**Single undertaking**” or negotiating issue by issue

4. Building coalition

1. Secure a support as wide as possible;
 2. Acquire expertise through knowledge-sharing;
 3. Division of labour;
 4. Increase cost of reprisals from others
- ▶ 1st step is **identification of influential** parties (opinion leaders), their interests & sources of power, analysis of existing coalitions (possible allies and potential blockers)
 - ▶ Design your coalition to be **resistant** to pressure:
 - 1) Not **too many** issues, interests or parties
 - 2) Avoid **narrow coalition** to avoid broad and vague goals
 - 3) Moving & **flexible coalition** to avoid polarization

4. Building coalition *cont'd*

- ▶ **Coalition-building:** looking inside the other party

Eg. Paris Climate change Agreement: Some US states announced to implement this agreement despite the decision to withdraw by Pdt Trump at the federal level

- ▶ Coalitions can also be defensive not to be cut off the deal (agriculture negotiations)
- ▶ **Importance of coalition sustainability: time has to be devoted for that.**

5. Play with the linkages

“Single undertaking” rule produces complex web of linkages: finding balance is tricky but vital

- Densely linked web of negotiations : risk of "toxic issue": one issue **poisoning** the rest
*i.e. US intransigence on **cotton**; EU attempts on **Singapore issues** in Cancun*
- ▶ Will the creation of **reciprocal linkages** give you access to important resources and/or improve my **bargaining** position?
- ▶ **Sequencing** of moves among the various negotiations is important

6. Play the frame game

Conflicts come often from substantive disagreements but sometimes also from misunderstandings on language

- Reframing to define the problematic issue, present it with a different angle, facilitating the « creation of value » and consensus-building (**integrative strategy**)

Reframing to claim value and win the battle of the public opinion

eg. Brazil and NGOs in the cotton case

Health debate on TRIPS !

7. Sequencing to create momentum

What is sequencing? It is the order to approach the several stages of a negotiation

Staging the process:

- 1) diagnostic phase (exploring relative merits of negotiation and alternative courses of action, gather information)**
- 2) formula phase (parties seek the basic formula for agreement: it is the core set of principles that will serve as an overarching framework for agreement)**
- 3) detailed bargaining phase (attention shifts to bargaining over specific terms).**

7. Sequencing to create momentum (2)

► Factors influencing the sequencing:

- **Action-forcing events** (Schelling theory: tying one's own hands)- Thomas C. Schelling, an economist and Nobel Prize laureate: Major work: *The Strategy of Conflict* (Book 1960)
- *eg. the fast Track procedure in the US obliging to settle FTAs and Doha Round negotiation before the end of the mandate*
- **First-mover advantage** when you propose a framework of organization of a coalition
- Securing agreement through "**incrementalism**": series of small & mutually verifiable steps, **future** gains contingent on meeting current obligations, & **embedding** current negotiations in a larger context...
- **Re-legitimization of mandate** (*eg. EU in any negotiation*)

T.Schelling: The Strategy of Conflict (1960)

- ▶ one side in a negotiation can **strengthen its position** by **narrowing its options**, using as an example: a driver **in chicken game** who rips the steering wheel from the steering column & brandishes it so his opponent can see that he no longer controls the car. He also argued that **uncertain retaliation** is more **credible** and more **efficient** than **certain retaliation**.
- “The Strategy of Conflict” introduced the concept of **the focal point**, often called the **Schelling point**, to describe a solution that people reach without benefit of communicating, relying instead on **“each person’s expectation of what the other expects him to expect to be expected to do.”**

T.Schelling: The game theory

Chicken "game" is a game in which two drivers drive toward each other on a collision course, with each seeking to induce the other to swerve.



8. Multi-channel influence

➤ **Direct** influence method such as negotiation and **litigation** : parallel processes

➤ **Public relations:**

eg. Brazil in cotton case, TRIPS (South Africa against pharmaceutical companies)

■ **Challenge: avoiding ending up with channel conflict**

9. Multi-level negotiations

- **The "two level game": within and between the parties**
 - **Need to coordinate both levels**
 - **Ambiguity in drafting agreement**
 - **Understand how decision-making works within the other sides, as well as in their own side.**
 - **Importance of sequencing: first securing an internal mandate, then engaging in early external discussions, then returning for internal consultations etc.**
 - **Risk: your external positions or actions cause problems within your coalition and vice-versa**

Value claiming

- ▶ **Anchoring:** initial positions tend to strongly **influence** perceptions of the zone of possible agreement
- ▶ **Patterns of concessions:** make substantial concessions early on and following up with progressively **smaller** ones
- ▶ **Threats and warnings:** used to shape other's perceptions of the consequences of **no-agreement**
- ▶ **Commitments:** self-imposed, constraints used to convince counterparts that one's hands are tied

Value claiming *cont'd*

- ▶ **Action-forcing events**: negotiators set deadlines and use meetings and other key events in order to move process forward
- ▶ **Never share your walk-away position**
- ▶ **Never specify your trade-offs** among issues
- ▶ **Be sure that information-sharing** is reciprocal, rather than a one-way process

Value creation

Claiming trap: getting big slice of a small pie or reasonable slice of a much larger pie?

- ▶ **Identification** of complementary interests: able to make cross-issue trade & so, "enlarge the pie".
- ▶ **Value creation** by identifying shared or complementary interests that are the basis for mutually beneficial trades. **Framing & agenda setting** can be used to achieve this objective
- ▶ Need to both **create and claim value** in multi-issue negotiations.

Conclusion

- ▶ **Knowledge** of principles cannot **guarantee** successful outcome of negotiation: many variables beyond the reach of any negotiator;
- ▶ **Integrative strategy** seems more relevant for **DCs** who don't have capacity to hold distributive strategy and exert pressure;
- ▶ **Coalition-building**: major tool for DCs
- ▶ **Preparatory work** even more crucial for DCs
- ▶ **Negotiating strategy** should always be part of **broader development strategy !**

As a good negotiator

"You have to have the ability to look at the **big picture** and set **concrete** goals. Then from those goals devise not only the strategy, but also **the tactics** for achieving the goals. It's the rare ability **to combine** the big things with the small, to see the forest and the trees"

Avi Gil, Oslo Process negotiator



Part II

Elements of Modalities for an Arab Customs Union (ACU) negotiations

Customs Union (CU) Definition & Objective

- **No customs are levied on goods travelling *within* the CU (single Customs territory) ;**
- **unlike a FTA, members of CU impose a *common external tariff* (CET) on all goods entering the union;**
- **One of the consequences of CU is to *negotiate* as a *single entity* (in international trade deals such as WTO instead of individual member states negotiating for themselves.**

Common external tariff (CET)

- The **CET** is a mild form of economic union but may lead to further types of economic integration;
- In addition to having the same customs duties, CU Members may have other **common trade policies**:
 - **same quotas,**
 - **preferences or other NTBs**

Rational

- The ACU project started from the observed low level of intra-Arab trade, which is estimated around **12 %** of total Arab merchandise trade !



Rational.. Cont'd

- **One of the critical issues in the ACU negotiations is to ascertain the adequate level of ambition;**
- **This should be informed by possible economic gains & losses expected from the ACU;**

Rational.. Cont'd

- **The assumption of the negotiations is to aim at a highest level of ambition to narrow tariffs structure and level for a large share of products**

Key considerations/ Challenges

The ACU negotiations is faced by a number of challenges. These include:

- **Heterogeneity of countries involved;**
- **Several sub-regional and inter-sub-regional integration processes (AA, Agadir, UMA, GCC, CFTA, COMESA..);**
- **Asymmetric level of integration achieved in different Regional entities;**
- **overlapping membership of several RTAs.**

Key considerations/ Challenges.. Cont'd

- large disparity in trade flows among different existing regional integration entities;
- Underlying economic constraints characterizing several LAS Members, including low income level and poverty (LDCs countries);
- Undiversified economies (dominance of Oil industry/export);
- High reliance on tariffs for fiscal revenue for many economies.

Key considerations/ Challenges.. Cont'd..

- **The higher the level of ambition, the larger the trade and income gains;**
- **However, larger gains would also imply larger adjustment costs domestically;**
- **This is why the level of ambition is critical as a matter of policy in any trade negotiations.**

Key considerations/ Challenges.. Cont'd..

- **Trade liberalization could have adverse implications for:**
 - local industries;**
 - food security;**
 - government revenue;**
 - possible welfare losses arising from trade diversion,**

Key considerations/ Challenges.. Cont'd..

- Need for balancing act to address **adjustment** challenges particularly for **weaker** & smaller members within the region;
- **Flexibilities** need to be carefully weighed against the expected gains from **ambitious** outcome;
- **Tariff revenues** are particularly important for countries that are less capable of introducing fiscal reforms (e.g., introduction of VAT) and remain dependent on **import taxes**.

Key considerations/ Challenges.. Cont'd..

WTO Compatibility:

- WTO rules, RTAs/ CU required to be compatible with GATT Article XXIV, which calls for "**substantially all the trade**" coverage;
- 'substantially all the trade' coverage is generally understood to mean tariff liberalization of **90%** of products and/or imports over **10 years**, although there is **no consensus** on the thresholds
- **Enabling Clause** designed specifically for **DCs** RTAs with less stringent rules;

Key considerations/ Challenges.. Cont'd

- ❑ These issues would require policy attention in determining possible approaches to ACU market access negotiations on trade in goods in respect of **Common External Tariff (CET)**;
- ❑to be effectively factored in the **conduct & structure** of ACU negotiations.

Key considerations/ Challenges.. Cont'd

- In considering the draft modalities, LAS Member States may take into account:
 - (i) the current status of liberalization in the existing regional entities;
 - (ii) commitments that some Member States have made to third parties under RTAs & BTAs (EU, US);
 - (iii) issues of WTO compatibility.

Key considerations.. Cont'd

- ❑ Special attention should be paid to **funding** the **negotiating process & ACU**
- ❑ Consideration to establish an **“Integration Fund”** devoted to financing ACU;
- ❑ The fund could be lodged with the LAS;
- ❑ Financing sources could be Internal sources (statutory contributions from LAS Members & alternative sources of financing through fund raising directed to regional institutions IsDB Group & other bilateral donors

Challenges.. Cont'd

The major constraints that can **hinder** or slow the **ACU** negotiations:

- **lack of effective coordination;**
- **lack of compatibility between national policies &**
- **regional approaches;**
- **overlapping memberships of countries to several RTAs**

Guiding negotiating principles & Operational modalities

- ❖ **The negotiations shall be LAS Member driven with support of the LAS Secretariat and relevant structures;**
- ❖ **Sub-regional arrangements to be considered as building blocks for the ACU (Agadir, GCC, UMA);**
- ❖ **Preservation of Acquis;**
- ❖ **Variable geometry (Pace and level of development);**
- ❖ **Flexibility and Special and Differential Treatment (LDCs);**
- ❖ **Transparency and disclosure of information;**
- ❖ **Substantial liberalization (level of the ambition);**

Guiding negotiating principles Cont'd..

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- **Decisions shall be taken by consensus;**
- **Adoption of Best Practices**

Tariff Liberalization Modalities: Options

- **The Linear Approach;**
- **The Special Product Categorization;**
- **The progressive tariff liberalization;**
- **Two-phased Linear Cuts Process.**

Tariff Liberalization Modalities.. Cont'd

- **Several different categories of treatment are conceivable for different products:**
- **(i) Complete exclusion (i.e., no liberalization);**
- **(ii) Subject to tariff reduction only & not elimination (with or without transition period);**
- **(iii) Subject to longer transition period;**
- **(iv) Subject to shorter transition period;**
- **(v) Immediate elimination (i.e., zero tariffs at the entry into force).**

Tariff Liberalization Modalities.. Cont'd

- **Categories (i) and (ii) refer to the so-called "sensitive products" which are basically excluded from the liberalization,**
- **(iii)-(v) are those subject to liberalization.**



Tariff Liberalization Modalities.. Cont'd

- Accordingly, **02 stages** of negotiations can be distinguished:
- **1st stage:** would be to determine the overall level of ambition or exclusion (how many products and how much trade should be assigned to (i) and (ii) (e.g. 10 % of tariff lines & import value which would mean liberalization coverage of 90 %).

Tariff Liberalization Modalities.. Cont'd

- **2nd stage: to determine different tariff phase-in arrangements ("staging");**
- **and assign different tariff elimination approaches to different products on a **line-by-line basis**;**
- **At this stage, a **template** of tariff elimination schedules, or "modalities", would be useful & be focused on the negotiation in the **2nd stage**.**

Tariff Liberalization Modalities.. Cont'd

- **Three criteria for selecting "sensitive products "are usually used:**
 - 1. minimization of possible import surge;**
 - 2. continued protection of highly protected products;**
 - 3. minimization of possible tariff revenue losses.**



Thank you for your attention!

