Module 9

A Practical Guide to Negotiations

I - Introduction

In the spring of 1979 two American trade officials with responsibility for the US participation in the Tokyo Round of Multilateral Trade Negotiations under the aegis of the GATT were discussing a problem. The negotiations were heading into the final phase, and the United States had still not found a way of satisfying an important negotiating objective established by the US Congress in the legislation authorizing US participation in the negotiations. The legislation directed the President to negotiate a reduction in the barriers to trade in services, and American officials had pressed for action on this issue for several years without success. Since the two officials were on their way to a meeting of the Trade Committee of the Organization for Economic Cooperation and Development a forum for cooperation on trade matters by developed countries, they hit upon the idea of asking the Committee to agree to a study of trade in services. The OECD was not the GATT, and a study was not the same as reducing barriers, but it would be a step forward.

When they reached Paris, they first broached the issue with the Chairman of the Committee, who agreed to give them a chance to sell the idea to a core group of the Committee that was to meet at a private dinner that evening to discuss the agenda of the meeting. The dinner guests, and later the Committee as a whole had heard a great deal from the Americans about negotiating on trade in services and had universally agreed it was an outlandish idea. Nevertheless, they were all eager to conclude the negotiations, and a study seemed a cheap price to pay if it would take that issue off the table for the remainder of the negotiations. They therefore agreed in principle to the idea of a study, but deferred its content until after the negotiations were concluded.

When the American negotiators went home they sold it to the services industry as a great breakthrough, which it eventually turned out to be, though that did not become apparent until after a number of years of discussion and struggle over the issue. Members of the GATT reached agreement at Punta Del Este, Uruguay in 1986 to establish a Negotiating Committee on Trade in Services as part of the Uruguay Round of Multilateral Trade Negotiations, and reached agreement on the General Agreement on Trade in Services in 1994.¹

Agreement on the study did not magically convince other countries to do something they did not think made sense, but it provided a platform for an organized examination of the issue. Often that is all it takes in a negotiation. There are many issues that are not resolved simply because the people who would have to agree do not have the time to acquire all the information needed to make an informed decision. The other

¹ The author of this paper was the US delegate to the OECD Trade Committee at the time, and one of the two officials involved. He subsequently assumed responsibility for building global consensus on the initiation of negotiations on trade in services. His subsequent efforts in building global consensus on the launching of negotiations are covered in two case studies, Aronson [1990] and Drake & Nicolaidis [1992].
lesson of this story is that an idea raised at the right time may have a chance to be agreed, while at any other time it would have been rejected.

The OECD study initiated in 1980 ultimately demonstrated that information technology and globalization had changed the world, that in this new world trade in services had not only become a reality, but that it had also become crucial for productivity in manufacturing and for participation in the global economy. It also showed that trade in services faced barriers to trade just as trade in goods, that such barriers could be reduced through negotiations, and that their reduction would increase the productivity of the economy and create new opportunities for trade and growth.

Trade in services has become a key topic for trade negotiations, and will become even more important in the future. Globalization is knitting together the services component of national economies, and technological change is rapidly increasing the proportion of value added and employment that is generated through the services component of the economy.

This manual will examine the negotiating processes that have evolved for negotiating issues on trade in services, how negotiations should be organized and prepared, and good negotiating habits used by successful negotiators.
II. Where, Why, What and How Issues Are Negotiated

This first section of the manual will focus on where negotiations on trade in services take place, why governments negotiate in different venues and how the venues affect the outcome of negotiations, what is negotiated under the rubric of trade in services, how the negotiation on a particular issue moves from one venue to another, and how issues related to trade in services are negotiated.

a. Negotiating Venues – Where Negotiations on Trade in Services Take Place

The most visible, global negotiating forum for trade in services is the World Trade Organization (WTO). The General Agreement on Trade in Services (GATS) administered by the WTO provides both a global set of rules and a forum for the negotiation of national commitments. The negotiations in the GATS, however, are only the tip of the proverbial iceberg. Most negotiations over government measures that affect international trade and investment in services are under the surface of visibility. They take place through bilateral consultations and negotiations between the enterprises and governments most directly involved. Only systemic issues that cannot be resolved through bilateral consultations and negotiations are added to the agenda of global trade negotiations such as the current Doha Round of Multilateral Trade Negotiations in the WTO or regional/bilateral free trade negotiations such as the negotiations on the Free Trade Area of the Americas, the South Asian Free Trade Area Negotiations, or the bilateral free trade agreement between Korea and Chile.

Typically trade officials do not have direct policy responsibility for measures that affect international trade or investment in services. Trade officials therefore are usually cast in the role of intermediaries with the regulatory officials responsible for the formulation and administration of the regulations involved. This means that trade officials typically have to involve themselves in two sets of negotiations – internal and external negotiations. While the home government typically faces internal negotiations with the affected enterprises, the host government faces internal negotiations with regulatory officials in the home government.

The negotiation of issues affecting trade and investment in services is not the exclusive province of trade officials. National regulatory officials negotiate their own agreements with their counterparts, both bilaterally and multilaterally in specialized international organizations responsible for cooperation on regulatory issues in particular sectors such as the International telecommunications Union, which is responsible for the development of international technical regulations for telecommunications.

b. Negotiating Objectives – Why Governments Negotiate on Services in a Trade Context

International negotiation on services within a regulatory context has a long history. Its objective has been to establish a mutually compatible regulatory framework for the delivery of infrastructure services such as shipping, rail transport, air transport,
telecommunications and postal services between countries. The delivery of such services requires a mutually compatible regulatory framework because no one country can simply apply its own regulations to services that fall under the jurisdiction of at least two countries. Regulatory officials responsible for the regulation of specific sectors such as air transportation have therefore negotiated both bilateral and multilateral agreements designed to establish some common ground rules for the enterprises delivering international services in that sector. In air transportation that has included bilateral air transport agreements and a multilateral framework agreement, the Montreal Agreement.

As is to be expected, national regulatory officials negotiating with each other to develop international ground rules for the delivery of international infrastructure services are largely concerned how the agreement will allow them to discharge their regulatory responsibilities. Negotiations within a regulatory framework thus have a dynamic where each side in the negotiation is interested in giving up the least amount of regulatory sovereignty necessary to establish a basis for the provision of infrastructure services between the countries involved in the negotiations. Regulatory officials usually have neither the mandate nor the orientation to resolve issues on behalf of commercial interests.

The negotiation of policy measures on services within a trade context is a relatively recent development that arose in the first instance from a desire by enterprises engaged in international trade and investment in services to obtain support from officials within their home government for the elimination of barriers to trade and investment in services. This is a function trade officials have long provided for exporters of goods. In policy terms, a trade framework has made it possible to put an increased focus on the potential for stimulating economic growth through the expansion of international competition, specialization and innovation in services.

The problem solving type of negotiations that take place between enterprises engaged in foreign trade and investment with host government officials, or between home and host governments on a bilateral basis are usually the most efficient means of dealing with issues that can be resolved through the use of administrative discretion in the application of regulations, with the objective of facilitating trade and investment on a mutually advantageous basis. The resolution of issues that require changes in national regulations, or even constitutional changes, in most cases require a more formal international negotiation or dispute settlement process such as those provided by the GATS in the WTO or the various regional forums.

Ultimately no one venue provides the means for achieving all negotiating objectives. Negotiations on technical regulatory issues are best carried out directly between regulatory officials. Negotiations that require advocacy on behalf of a home country’s enterprise vis-à-vis foreign governments are best carried out by trade officials. Negotiations that are aimed at facilitating specific international transactions through adjustments in the administration of specific regulatory measures requirements are best pursued through bilateral consultations or negotiations, while issues that require changes in national legislation are best carried out through formal, multilateral negotiations within
a trade framework. Over time we have seen the emergence of a degree of specialization among negotiating venues, and we can expect further innovation on negotiating venues and methods in the future as negotiations in services seek to come to terms with increasingly complex regulatory issues that require the participation of a wide range of stakeholders.

c. Scope of Negotiations– What are the Barriers to Trade in Services?

Barriers to trade negotiations in services are generally embedded in domestic regulations. Since services are invisible, governments cannot directly control trade in services at the point they cross the border. Instead, they seek to control trade in services through the regulation of the consumption of services by domestic residents or the production of services by locally established foreign suppliers. In addition, governments can seek to regulate the entry of foreigners who have the intention of producing a service, the exit of nationals who have the intention of consuming services abroad, or international payments associated with trade in services.

The focus of trade negotiations in services is thus not on tariffs and quotas, as is the case for trade negotiations in goods, but on domestic regulations that limit the consumption or production of services produced abroad, the movement of services producers or consumers across the border, the ability of foreign service providers to establish themselves in the host country, or the ability of enterprises engaged in trade in services to transfer money internationally.

*d. The Negotiating Life Cycle of an Issue – How an Issue Evolves from Informal Consultations to Formal Global Negotiations

An enterprise that faces a particular regulatory barrier should ideally first seek to deal with the issue directly through consultations with the responsible officials in the host government. Such contacts will enable the enterprise managers and officials most directly involved in the issue to sort out how the existing regulations should apply to the specific facts in the case. It will also enable host country regulators to take into account any special factors that may need to be considered in the trade or investment proposal. In many cases the issue identified by an enterprise is created by a misunderstanding of the regulations by the exporter or investor, or a misunderstanding of the specific facts related to the proposed export or investment. In other cases, the regulator may be able to make adjustments in how the regulation is applied to unique circumstances, without sacrificing the regulatory objective.

A clear understanding of the regulatory issues will also better equip the prospective exporter or investor to communicate the nature of the issue clearly to the officials of the home government, if their intervention proves necessary. The willingness of an enterprise to expend the resources necessary to conduct such direct consultations is also usually a good test to the officials from whom they may seek help of how important the issue is to the enterprise. Small exporters, particularly small exporters in developing countries, may not have the resources to consult with the responsible officials in the
importing country on a face-to-face basis. They could accomplish the same thing by contacting the officials involved through the mail or the Internet, or by visiting the economic/commercial section of the nearest embassy or consulate of the host country.

The second step in the process, if direct consultations with the host government fail to resolve the issue, is to consult with the commercial/economic officers in the home country’s embassy in the host country. The embassy may well be able to shed additional light on the issue, or to intervene on behalf of the enterprise with host country officials. The embassy can also help alert officials with a potential stake in the issue in the home government to the issue through their regular reports to the home government. A wide range of officials in the home government eagerly read embassy reports on the problems faced by a country’s exporters and investors in other countries. While embassy reporting cannot be a substitute for direct consultations with trade officials in the home country, it will facilitate the exporter or investor’s task of briefing home government officials and of persuading to add the issue to their agenda.

At the third stage of the process the affected enterprise seeks to enlist officials in its home government in an advocacy effort. Trade and other officials at various levels of the hierarchy meet regularly with their counterparts in other countries to discuss issues of common concern and mutual trade and investment problems. In this third phase of the process an issue can move step by step to more senior levels, starting with the desk officers responsible for trade and investment issues with a particular country and ending (for the most important issues) with the ministers or even heads of government. At some point during this process the nature of the discussions on the issue may move from an informal consultation process between specific officials to a formal country-to-country negotiating process. Efforts to resolve issues during this phase of bilateral consultations and negotiations is motivated by an implicit reciprocity – you help me solve one of my problems and I help you solve one of your problems.

Aside from the mutual back scratching aspect of the bilateral consultation and negotiation process, the bilateral advocacy process enables officials from the two countries to weigh the trade effects of the measure, to explore the regulatory objectives served by the measure and the potential for achieving the same regulatory objective through alternative, less trade distorting measures. It also enables the two governments to test each other’s perceptions regarding the applicability of various provisions and national commitments in international trade and investment agreements, and the likelihood that one country or the other would lose a case submitted to dispute settlement. While even the best arguments put forward during such discussions may not be able to overcome strong political resistance, in a large number of cases these kinds of discussions do lead to mutually acceptable outcomes.

Problems that cannot be resolved through a mutual back scratching process are then often incorporated in broader, formal negotiations such as multilateral trade negotiating rounds in the WTO, or regional/bilateral free trade area negotiations. Such broader negotiating venues not only widens the potential for trade offs among issues of interest to host countries, but it also makes it possible to negotiate rules for repetitive
problems or to bring other countries into any effort to address the issue through a dispute settlement process.

An orderly sequential process for addressing specific trade issues, from direct contacts between the enterprises and the host government, to bilateral negotiations, and ultimately multilateral negotiations or dispute settlement provides for the most efficient means for addressing trade-negotiating issues. The sequential process serves as a filtering device. Issues that are less difficult and less important are dealt with at a junior level of the government, while more senior officials or political leaders address the more intractable issues that raise difficult political or legal problems. Naturally, only the most important issues, those that are of major commercial or policy significance make it to the higher levels of government.

One obvious point is worth making. Countries become engaged in negotiations on trade in services either because they would like to address a barrier to their exports of services in another country, or because another country seeks to engage the importing or host country in a negotiation over barriers to entry. As pointed out above, normally both countries engaged in a two-way trade relationship have trade or investment-policy related issues they would like to address with each other. Where that is not the case, and the issues being raised by the exporting country are not covered by commitments an importing country has made in a trade agreement, the importing country can simply refuse to negotiate. Current practice gives sovereign countries considerable leeway to agree or not to agree on a trade matter on which it has not made a commitment. It is equally true that some importing countries in this kind of a situation may have non-trade reasons to engage in negotiations on trade issues raised by another country.

e. How the WTO Structures Negotiations on Trade in Services

Negotiations on trade in services in the WTO focus on specific commitments by individual national governments and on rules that apply to all member countries. Countries negotiate specific national commitments bilaterally, with each country negotiating with every other member of the WTO. Since every country must extend the commitment made to any one country to all other countries that belong to the WTO, however, each country will seek to “sell” the same commitment to as many other member countries as possible. In contrast, countries negotiate rules multilaterally, i.e. collectively. The negotiating dynamics are quite different in the two cases. The bilateral negotiation of specific national commitments takes the form of a bilateral bargaining process based on requests and offers, while the negotiation of rules involves an effort to build consensus among member countries on broad principles. We will explore the practical implications of these differences below.

Domestic regulations can restrain foreign imports either by discriminating against foreign suppliers or by restricting both foreign and domestic suppliers more than is necessary to accomplish the desired domestic regulatory objective. Under the provisions of the GATS, trade negotiations on services in the WTO cover both types of regulatory restraints. Negotiations aimed at the elimination of discriminatory provisions are called
negotiations on national treatment, since national treatment requires the nondiscriminatory application of rules and regulations to both foreign and domestic suppliers. Negotiations aimed at the reduction or elimination of regulations that place quantitative constraints on both domestic and foreign producers on a nondiscriminatory basis are called market access negotiations.

The national schedules of commitments are organized by sector, and within each sector, by mode of supply. Commitments fall into three categories – Commitments on market access, commitments on national treatment and other commitments. Countries may also enter horizontal commitments on broad regulations that apply to all services. A schematic outline of a typical national schedule is found in the appendix to the exercise at the end of this manuscript.

The negotiation of rules under the GATS focuses on the elaboration of existing Articles of the GATS agreement, or potentially the addition of new articles. Some rules apply to all regulations that affect trade in services, regardless whether a country has made a specific commitment on that service. Other rules apply to all regulations that affect trade within sectors in which a country has made commitments. Still other rules apply only to regulations that affect trade in specific services covered by national commitments.

Sectoral negotiations constitute a third category of negotiations that encompass both the negotiation of rules and national commitments that apply to a particular sector. The General Agreement on Basic Telecommunications, for example, includes both a template for national commitments on the liberalization of particular segments of the public telecommunications market, and a Reference Paper that sets out guidelines for the regulation of competition in the provision of competitive telecommunication services.
We now turn to the preparation of negotiations. The face-to-face negotiations are the culmination of a long and extended process of preparation. While many may think that the outcome of negotiations depends largely on the negotiating skills of individual negotiators at the bargaining table, good research and analysis and skillful shaping is often just as important, if not more important. A good negotiating outcome requires extensive analysis of the:

- commercial issues at stake for all sides,
- economic impact on the respective countries,
- trade-related domestic policy issues,
- laws and international rules that apply, and
- views and political influence of the stakeholders

**a. Identifying and Consulting Stakeholders**

The first step in preparing for international negotiations is to identify the domestic stakeholders. Stakeholders are groups in society, both inside and outside the government, who will be affected by the negotiations and therefore have a stake in the negotiating outcome. A stakeholder will be impacted positively, negatively, or not at all, depending on how the issues discussed at the negotiating table relate to their interests.

By their very nature, international negotiations involve people who represent governments, businesses, NGOs, and other entities that have a stake or interest in the outcome of the negotiations. While the individual people involved in the negotiation process bring their own ambitions, and self-interests to the table, their mission is to serve as representatives of their organizations, bureaucracies, or enterprises to whom they are accountable.

Involving domestic stakeholders in the preparation of negotiation is consistent with principles of good governance, since those most directly affected by the negotiations will have the best information on how various negotiating outcomes will affect trade and the achievement of regulatory objectives. Involving stakeholders is also required for practical political considerations. Those most affected by a governmental action will have a strong motivation to use the political process to ensure that the country’s negotiating position reflects their interests.

Starting the preparation of negotiations with the identification and consultation of stakeholders also makes sense because stake holders are likely to be in a position to contribute, and in some cases help collect, basic information about the competitive strengths and weaknesses of national service industries, the problems exporters face in

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2 An in depth treatment of the analysis of trade issues in preparation for negotiations can be found in a series of instructional manuals developed by the International Commercial Diplomacy Project, and available on their website, www.commercialdipomacy.org. They include an a manual on the overall analytical framework , [Feketekuty, ] and individual manuals on economic and commercial analysis, political analysis, policy analysis, and legal analysis.
penetrating foreign markets, and the regulatory issues that are likely to arise in the course of the negotiations.

Asking domestic stakeholders to participate in the preparation of the negotiations also makes them feel as full participants in the process, making them loyal supporters of the negotiations as long as they can rationalize it as being consistent with their basic interests. At the very least, stakeholders included in the process will achieve a full understanding of the issues and the rationale for the negotiations, and they are likely to give the negotiators credit for including them in the process and for factoring their interests into the development of national positions, even if their interests are not fully satisfied. The final result is that they are much more likely to support the final agreement negotiated by the government if they are included, than if they are not consulted.

During the Tokyo Round of Multilateral Trade Negotiations, the U.S. Trade Representative developed an elaborate system of private sector advisory committees that were consulted before, during and at the end of the negotiations. There were 45 committees, with a total membership of 600 private sector representatives. In addition to the formal consultations with these committees, Ambassador Robert Strauss consulted extensively with top business executives, labor leaders, Members of Congress and politicians. As result of these efforts he was able to obtain overwhelming approval of the Tokyo Round Agreements in the Congress. The Senate approved the Agreement by a vote of 96 to 3, and the house approved it with an equivalent majority. What was equally interesting is that the vast majority of Advisors, including representatives of industries facing increased competition from imports as a result of the agreements, fervently spoke in favor of the Agreement at industry gatherings and public meetings.

Not every country has the resources to establish the same kind of elaborate system as the United States, but then most smaller and less resource rich countries do not have as many key stakeholder groups who are likely to have a substantive interest in negotiations. Every government has the ability to develop a consultative process appropriate to its economic and institutional circumstances.

We identified two categories of domestic stakeholders in the previous section – the various government ministries and departments responsible for administering the regulations likely to be covered by the negotiations, and the enterprises producing the services likely to be covered by the prospective negotiations. The stakeholders in the government can include not only officials in the central government, but also officials at a sub-central level, e.g. states, provinces, etc., where responsibility for the regulation of services is exercised at a sub central level. Stakeholders from the services industries include both the various industry associations in services and the major enterprises producing services. Other stakeholders can include labor unions representing services workers, non-governmental organizations with a focus on services, and consumer groups.

Having identified the major stakeholder groups, the negotiator has to decide who should be consulted either individually or as a group, who should be invited to participate in meetings organized to discuss the negotiations, and who should be invited to join
various consultative bodies established to support the negotiations. The consultation process should be built around three concentric circles. The innermost circle should consist of the stakeholders within the central government, i.e., the key ministries and departments responsible for regulations covered by the negotiations. Each such ministry, department or agency should be asked to designate an individual who will participate in an inter-ministerial or inter-agency group responsible for the negotiations. In many countries such a group is given decision-making power. In other countries the group can give formal advice to the trade negotiator, but does not have the power to make decisions.

Where sub-central governments have a key role in regulating services, the trade negotiators may also have to establish a separate forum for consulting officials from sub-central governments, though such consultations will inevitably occur on a less frequent basis, since the representatives involved may have to travel some distance to participate in meetings.

The second concentric circle is made up of representatives of key private stakeholder groups who are invited to participate in various advisory bodies. These advisory bodies can give negotiators direct feedback on proposed negotiating positions and serve as a vehicle for building consensus with the most influential private stakeholders. Such advisory bodies can also serve as sources of information on trade opportunities and problems, industry practices, and the most vexing barriers to an expansion of trade.

It is neither practical nor necessary to include representatives of every enterprise, industry association, union, non-governmental organization or sub-central government in the consultation process. Optimally, negotiators should involve the most influential and interested individuals from these groups, who will be respected by their peers by virtue of their reputation, who can influence the domestic political debate by virtue of their political clout, and who will spend the time to become informed by virtue of their interest in the negotiating outcome. Such individuals will often be found in the largest enterprises or most widely representative organizations, but not always. Since the objective of the negotiations is to expand trade, special care should be taken to include representatives of the most competitive industries who have a keen interest in expanding their exports. Ultimately, negotiators will have to count on their vocal support in building domestic political support in favor of the negotiations. It is also wise to include some vocal opponents to take some of the edge off their opposition.

The identification of the most relevant domestic stakeholder groups and of the most influential individuals in such groups is best accomplished by talking to academic and industry experts in the field and to journalists who cover services industries. By getting in touch with recommended individuals, trade officials can get a fair idea of the organization’s potential interest, and the contribution individuals at various levels in the organization could make to a consultative process. Ideally, an organization included in the consultative process would have interested individuals at both the top and middle levels of the organization, and staff experts who can brief them and support their effective participation in meetings.
Consultations with key private sector stakeholders can take place either through private consultations with representatives of general business organizations such as chambers of commerce, key industry associations such as the Banker’s Association, key companies, labor unions and interested non-governmental organizations companies. Most countries conduct such consultations to a lesser or greater extent. In addition to consultations with individual stakeholders, the government may choose to establish an advisory body or committee to provide organized advice to the government officials negotiating international trade agreements in services. Private advisory groups should be large enough to include representatives of the most important nongovernmental stakeholder groups. Such formal or informal advisory bodies can serve as a useful forum for building national consensus on the country’s approach to the negotiations, for exchanging information on the progress of the negotiations, and for validating political support for any bargains struck during the negotiations. Such formal advisory groups have proven to be useful and practical in both very large developed countries and small developing countries such Sri Lanka, Kenya, and the islands in the Caribbean.

The third concentric tier is made up of all interested stakeholders, who may be invited to participate in briefings or conferences covering the negotiations. Individuals participating in such briefings and conferences will have an opportunity to become educated on the issues covered by the negotiations, but will have only limited opportunity to provide direct in-depth feedback on negotiating positions. Public briefings by government negotiators can be held in hotels, chambers of commerce, or research institutes. The resource requirement for conducting such briefings is modest, particularly when the briefings are held in facilities that can be provided by a stakeholder.

Beyond these three concentric circles, negotiators will have to devise the means for informing the public at large on the evolution of negotiations. Since the press and the media have the widest reach, a core element of such a communication strategy is to brief the press on a regular basis through press releases, interviews and press briefings. Negotiators can also publish reports or white papers on negotiating issues, and establish a website with up to date information on the progress of the negotiations.

In practice, negotiators ideally would follow the following sequence of steps in identifying and organizing stakeholders:

- Draft a letter from the Trade Minister or other senior trade official to other government departments, ministries or agencies responsible for regulations that will be covered by the negotiations, asking them to appoint a senior official to an interagency committee that will review negotiating proposals. Organize an introductory meeting, in which members of the Committee are brought up to date on the schedule for the negotiations and the state of preparations for the negotiations.
- Identify appropriate sub-central officials and invite them to join an advisory committee of sub-central officials who will advise trade negotiators on regulatory issues within their jurisdiction. Invite them to an initial briefing on the negotiations.
• Identify private sector stakeholders, contact them through a phone call or personal visit, explain to them the nature of the upcoming negotiations and invite their participation in a briefing session or conference on the negotiations, and at that meeting invite their inputs into the negotiating process.

• Issue a press release on the briefing session or conference, and ask the press to publicize the conference, indicating that any interested organizations are invited to send a representative.

• Based on initial contacts and consultations with relevant experts, identify prospective members of a private sector advisory body, and end them invitations to become a member of the advisory body.

b. Assembling Information on National Interests and Issues

The next task of the services negotiators is to assemble and compile background information on the country’s exports and imports of services, competitive strengths and weaknesses of domestic services industries, foreign regulatory barriers that inhibit national exports of services to other markets, and regulatory issues that might arise in the context of negotiations. Crucial help in the collection of such information can come from the country’s export industries, particularly the most successful exporting enterprises. Such companies are found even in the smallest developing countries.

Help in assembling this information can also come from a number of international institutions such as the International Trade Center in Geneva and the multilateral development banks, and from bilateral economic development assistance agencies such as the U.S. Agency for International Development and the Canadian Economic Development Agency.

Collecting detailed official statistics on trade in services is a challenge in every country, because unlike data on industrial trade, data on trade in services usually lacks sufficient detail to provide information on trade in specific services, much less a consistent time series. Available data are likely to be aggregated on a sectoral level, e.g. fee-based banking services, professional services, maritime transport services, etc. The problem is, of course, even more difficult in small developing countries that lack the means for the organized collection of statistics on services.

To supplement the official statistics, negotiators should ask major exporters and industry associations in he individual services sectors to provide additional data that can provide insights at a product level. Asking stakeholders to supplement official data is particularly important for the newer information-based services and various professional services, services that are often too new or too dispersed to be included in official statistics. This is particularly important because in most countries, both developed and developing, these services are often the ones that have the greatest potential for export growth if the right policies are pursued. In fact, the export potential in these services often hinges on domestic regulatory reforms in areas such as telecommunications, air transportation, and financial services that might be included in a country’s offer. Consulting businesses in these sectors is a challenge in some countries such as South
Africa and India, where these industries are located in cities at a distance from the capital, but it is important that the effort be made.

Initial information on the country’s competitive strengths and weaknesses is provided by the trade data. Sectors that export are likely to be relatively competitive, while sectors with large imports are likely to be competitively weak. Trade data, however, do not tell the full story. A sector in which a country has a potential competitive strength may not show many exports because foreign trade barriers or domestic regulatory constraints inhibit such trade, or simply because the industry has not explored export opportunities. Additional insights into competitive strengths can come from economic studies carried out by academic experts, assessments provided by industry experts, and a review of the export performance of other countries at a similar stage of economic development and similar economic circumstances. Such studies are often available from academic sources and from intergovernmental organizations such as the World Bank and the International Trade Center.

Trade negotiators are unlikely to find the same kind of detailed quantitative data on trade, production and prices of services that are available for goods. You cannot see a service crossing the border. Governments are therefore not able to measure the flow of services across the border in the same way that they can measure the flow of individual goods across the border. Instead, governments have to compile data on trade in services by periodically asking exporters and importers of services to fill out questionnaires. Since filling out the forms is relatively costly for market participants, only a limited number of exporters and importers are surveyed, and the published data are based on projections based on these sample surveys. Data on trade in services consequently lack the kind of accuracy and detail available for trade in goods. Data is generally available only for broad industry categories and for relatively long time intervals. The shortcomings of the trade data is compounded by the difficulty of making a quantitative assessment of the degree of protection provided by regulatory measures. Negotiators in services thus lack the kind of detailed data that would enable them to estimate the impact of negotiated reductions in particular barriers on exports and imports of specific services. In order to make up for the lack of detailed official data, trade negotiators in services have to rely more heavily on information that can be provided by enterprises. Extensive consultations with industry are therefore particularly important in preparing of negotiations on trade in services.

In assessing the country’s competitive strengths and weaknesses, a country must openly confront any competitive weaknesses that result from the country’s own regulations. Onerous regulatory requirements may prevent the country’s enterprises in a particular sector from increasing the economic efficiency of its operations or from introducing new and more competitive services and marketing techniques. In fact, most countries involved in negotiations in services have found that domestic regulatory reforms were a prerequisite for the country’s effective participation in the negotiations. In most cases that entails removing outdated regulations that made sense in the past in the context of different technologies and market structures but have now outlived their usefulness. In many cases that also entails the introduction of new regulations appropriate
to a more market-oriented regulatory regime. In fact, as we have seen, many countries that liberalized capital controls and international financial transactions went through a subsequent financial crisis because they did not accompany liberalization with adequate fiduciary controls on financial transactions.

Information about foreign trade barriers is best provided by industry. The necessary canvassing of the industry can be done either by the trade negotiators themselves, by consultant hired for the task, or by a general industry association. Insights into trade barriers can also be found in the surveys done by third countries, particularly third countries with large staffs. Fortunately, the results of many of these surveys and inventories of trade barriers in the principal countries are now often available through the Internet.

The greatest difficulty any country will face in collecting information about foreign barriers is to collect information about industries in which the country has no exports but potentially could export if foreign barriers are removed. How can we know whether the country’s inability to export is due to foreign regulatory barriers or a lack of competitiveness of the country’s enterprises in this sector? In such industries, private stakeholders are unlikely to be very reliable sources of information. What a small developing country in such a situation should do is to look for other developing countries at the same or slightly more advanced stage of economic development that might have developed successful exports in this sector. Officials and business managers in such countries may well be willing to share their information and insights, and to serve as allies in the negotiating process.

The best sources of information about regulatory issues are the regulatory officials in the home government, research institutes that specialize in regulatory issues, international professional bodies in areas such as architecture and accounting, international organizations such as the ITU that responsible for the development of technical regulations at a global level for individual industries, and international organizations with a wide economic mandate that regularly carry out regulatory studies for their members, including the WTO, UNCTAD, the World Bank, the OAS and the OECD.

c. Assembling Information on Foreign Interests and Issues

Once we understand our own country’s competitive strengths and weaknesses in services, our domestic stakeholders and their interests, and the foreign trade barriers that hamper our exports, we have to collect information about the countries with whom we will be negotiating. We need to understand the strengths and weaknesses of their services industries, their stakeholders and their interests, what difficulties the foreign government is likely to face in meeting our requests, and what they are likely to ask us to do. Information about what they may ask us to do in turn will enable us to identify the domestic regulatory issues we may have to face.
Understanding the foreign stakeholders and their interests is important because it will tell us something about the likely foreign reaction to our requests and the requests they are likely to make of us, even if we can gain no direct information on the thinking and evolving position of the foreign government. While it may not be possible to know precisely how the stakeholder interests will be reflected in the country’s final negotiating position, it can give us some general ideas. Moreover, down the road, understanding the interests of the stakeholders who stand behind the government’s position will enable us to enlist the support of the stakeholders with similar or converging interests, give us an idea where the other government can be pushed, and ultimately provide insights into possible win-win solutions to the negotiations.

In order to negotiate successfully, we also have to understand the interests and problems of those we are negotiating with almost as well as we do our own interests and problems. The reason for this is simply that a successful conclusion of a negotiation requires the consent of at least two parties, and that means that both sides to an agreement have to be satisfied that it meets their economic interests. Becoming familiar with the interests of our negotiating partners allows us to argue more effectively why our proposals will satisfy their economic interests. In many cases a government that has not taken the time to do a comprehensive analysis of its interests may not be even aware how particular proposals could advance their interests. Ultimately, understanding the interests of our negotiating partners will help us to shape proposals that will meet their interests while also satisfying our own interest.

Collecting information about foreign stakeholders around the world sounds like a resource intensive exercise that only large, rich countries could undertake, and it is certainly true that such countries can mobilize more resources to collect such information. However, most countries have commercial officers posted in embassies around the world who could collect this kind of information. The most successful exporting companies in the home country are another good source for this kind of information. Even most small developing countries have companies that have been successful in building markets overseas, and these companies are generally very knowledgeable about the views and interests of their counterparts abroad.

Another key source of information accessible to anyone, even in developing countries, is the Internet. Most large countries, particularly democratic countries, have established a considerable degree of transparency with respect to the views and interests of their key stakeholder. They do this because it is an important tool for influencing the internal domestic debate on the issues. The United States, in particular, has a great deal of transparency as a result of its culture, legal environment, and a vigorous press. Most key industry associations, large corporations, unions and NGO’s in the United States maintain websites with information about the organization’s activities and position on negotiating issues. Both companies and industry associations frequently prepare white papers to set out their views. The same is increasingly the case for principal stakeholder groups in other developed countries and the more advanced developing countries.
d. Analyzing the Data

In order to be useful, the information that is collected has to be organized in a coherent manner and analyzed. Collecting all the information needed to understand an issue can be time-consuming, but it is relatively easy compared to analyzing the data. New trade analysts often think that they have completed the work when they have compiled voluminous information. Developing an in-depth understanding of the relevance of the information for the issue at stake is far more challenging. Analysis consists of developing an understanding of how the information relates to the particulars of the issue at hand, how the information can be used to define the issue to maximize the chances for a successful negotiation, and ultimately how the information can be used to develop possible negotiating outcomes.

The following describes how information collected to prepare for negotiations on trade in services in the WTO can be used to prepare negotiating requests and offers.

- Information drawn from the export data, economic studies, industry surveys and studies of other economies should lead to analytical conclusions regarding the services in which the country already has or could easily develop competitive exports.
- Information about foreign regulatory barriers and industry assessments of their relative importance, when combined with the analytical conclusions regarding potential export industries, can lead to conclusions regarding the foreign regulatory barriers that should be targeted in the requests submitted to other countries in the first stage of the negotiations.
- Import data, economic studies, industry surveys, studies of other economies and inputs provided by domestic ministries or departments can lead to analytical conclusions regarding the services in which the country has weaknesses, and in which liberalization commitments should only be made on the basis of long phase-in periods, or precluded altogether.
- Information on regulatory issues can lead to analytical conclusions on how requests and offers in particular sectors or with respect to particular horizontal measures should be framed.
- Information on the positions and interests of both domestic and foreign stakeholders are crucial for the development of negotiating positions, the development of requests and offers, and the development of negotiating strategies and tactics.

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3 We will explore the implication of the differences between positions and interests later. Interests are the commercial interests, policy objectives, bureaucratic imperatives, or legal requirements that a negotiator must satisfy in a negotiation in order to obtain the approval of the home constituencies. Interests need to be distinguished from the negotiating position, which is what a negotiator is instructed to ask for at any particular phase of the negotiation. The negotiating position is dictated not only by the organization’s interests, but also by the negotiating strategies and tactics of the parties.
IV - Preparing the Negotiations – Developing Domestic Consensus on Negotiating Objectives, Negotiating Strategy and Negotiating Proposals

Analysis of the issues and of the stakeholders in a negotiation builds the foundation for the formulation of negotiating objectives, the development of a negotiating strategy and the drafting of negotiating proposals. Negotiating objectives provide a sense of direction for the negotiations. A negotiating strategy provides a road map for getting to the desired negotiating goal. A negotiating proposal is designed as the first step in engaging others involved in the negotiation in a dialogue and for conveying one possible way of satisfying the negotiating objectives. The documents that set out a country’s negotiating objectives, negotiating strategy and negotiating proposals provide a common frame of reference for the country’s negotiating team and their stakeholders.

This section will examine in greater detail the purpose and content of documents that set out a country’s negotiating objectives, negotiating strategy and negotiating proposals.

a. Establishing Negotiating Objectives

Once we have collected and analyzed the information described above, we are ready to develop a set of negotiating objectives. It is important to set out a clear set of negotiating objectives in order to provide a clear focus for both the preparatory work leading to a negotiation and to the management of the negotiation itself. The development of negotiating objectives is also the ideal way of building support by domestic stakeholders, particularly stakeholders who will have a crucial influence on the acceptance or rejection of the negotiating outcome by domestic decision makers and by officials who will have to implement the results. At the same time, the initial negotiating objectives may need to be adjusted or fine-tuned during the course of the negotiations as negotiators and their stakeholders learn more about the issues being negotiated and the constraints and interests of their negotiating partners.

In order to develop our negotiating objectives we have to compile and analyze the information we have collected as discussed above. But we must also consult with our stakeholders. We have to go out and actively build consensus among the key domestic stakeholders who can influence a political decision on the issues covered by the negotiations. In effect, the negotiators have to build a coalition of domestic stakeholders who will support a political decision in support of a negotiating position. Coalition partners at home can include key officials from other government departments or agencies, key executives from corporations or trade associations, experts from academia or think tanks, and key legislators and their staffs.

The country’s negotiating objectives should be set out in a statement that is approved by the political leadership. Who has to approve such a statement of negotiating objectives in the country varies according to the importance of the issues and the political structure of the country. Comprehensive multilateral negotiations in the WTO that may have far-reaching consequences for the country may require not only the approval of the
country’s trade minister, but also by the country’s other top economic leadership and the head of government.

A statement of negotiating objectives need not cover technical details, but rather should set out some broad strategic objectives, and a set of negotiating priorities. It may also set out an accompanying domestic policy agenda. As we noted earlier, the ability of a country’s enterprises to take advantage of the liberalization of trade barriers by other countries may well hinge on domestic regulatory reforms designed to remove unnecessary regulatory burdens, while assuring that regulations are in place to protect important social objectives such as the protection of consumers, the stability of the financial system, regulatory transparency, and so on. Moreover, the government may well find it desirable to ease the economic adjustment of import sensitive sectors and firms to increased competition from foreign firms. Such assistance could take the form of adjustment assistance programs designed to assist domestic firms in adopting more competitive technologies or business practices, or to assist workers in these industries to develop the skills needed in the export-oriented industries that are expected to benefit from trade liberalization.

Ideally, a country’s negotiating objectives are formulated as part of a broader domestic economic development strategy. While most countries sooner or later need to face up to the connection between the domestic policy agenda and international trade negotiations, institutional issues often make it difficult to synchronize the domestic and trade policy making processes in a seamless way. Linking negotiating objectives to broader domestic economic growth strategies is generally beyond the scope of responsibilities of trade officials, and therefore requires leadership by the country’s top political leaders.

b. Developing a Negotiating Strategy

In negotiations, like in war, good strategy is a critical factor in success, as has been demonstrated by numerous examples where the less powerful beat the more powerful through good strategy. Good strategy can also help the powerful to obtain their objectives without much conflict. The best generals are those who win a war with a minimum of bloodshed, or even without fighting a battle at all.

Negotiations are a process rather than a discrete event that begins and ends with a formal negotiating session. The more successful a negotiator is in building support outside the negotiating room for the preferred negotiating outcome and in developing a broad international consensus on the basic legitimacy and fairness of the proposed outcome, the easier it will be for the negotiator to achieve the desired results at the negotiating table.

A negotiator’s bargaining strength inside the negotiating room is determined as much by the number of stakeholders at home and abroad who support the negotiator’s preferred negotiating outcome, and by the degree to which the wider stakeholder community considers the proposals to be legitimate and fair, as it is by the economic
power of the country he or she represents in international negotiations, or by the power of the organization he or she represents in negotiations at home. Support is built through the formation of coalitions of stakeholders dedicated to the achievement of particular negotiating outcomes. Legitimacy and fairness is built through wider public dialogue with policy experts, the press and the public at large, provided of course that the proposal is not arbitrary and can be defended on the basis of widely held principles of what is fair and legitimate.

A negotiating strategy is a plan for building support for a desired negotiating outcome. It needs to identify the means for obtaining the support of potential allies and for minimizing and overcoming the opposition of potential opponents. Building support is a process of aligning interests, aligning negotiating proposals and arguments, and aligning supportive actions. A good strategy spells out in fairly specific terms how the desired negotiating outcome has to be adjusted to meet the interests of the targeted coalition of supporters. It needs to describe the arguments that should be made to potential supporters to win their support, and the arguments that should be made to opponents to minimize their opposition or to win them over. It should lay out a menu of written and oral communications such as white papers, advocacy letters, testimony, press releases, speeches, conferences, and other communication tools that will be used to reach the targeted stakeholder communities. It should include steps that can be taken to establish and communicate the legitimacy and fairness of the proposed outcome. Finally, a strategy should set out the basis for a successful negotiating outcome by describing the possible elements of an outcome that could satisfy the interests of the parties to the negotiations.

A good strategy builds on the information that has been collected about the issues and the stakeholders in phase one of the preparations, and the analysis of that information in phase of the preparations. The better our information, and the higher the quality of our analysis, the better we can make the negotiating strategy.

The development of a strategy for coalition building and legitimizing negotiating objectives is particularly important for smaller countries participating in international negotiations, and to smaller companies or industries seeking to influence governments at home or abroad on negotiating issues. Large and powerful countries can more easily afford to pay less attention to alliances and to considerations of legitimacy, but as history has shown even powerful countries or organizations are unlikely to remain successful if they do not seek the support of allies and fail to establish the legitimacy of their desired negotiating outcomes. Building consensus is a labor-intensive effort, but once it is built and the negotiated outcome is firmly rooted as the new paradigm, it is difficult to change. This is particularly true for negotiations on rules or negotiations that will create a new paradigm.

A good negotiating strategy that maps out the formation of coalitions and the establishment of the legitimacy of desired negotiating outcomes is also important for the negotiation of rules. After all, ultimately every country that will be bound by the rule will have to agree to it. This can only be achieved through a good strategy. Issue and country
specific negotiations provide fewer opportunities for coalition building and issues of legitimacy and fairness are often difficult to judge in such negotiations. However, the problems inherent in communicating the relevance of a complicated technical issue, or worse, a whole catalog of technical issues, can be overcome through the skillful packaging of the issues and the results. If the relevance of the issues involved and of possible negotiating outcomes is successfully communicated in ways that can be understood by the broader stakeholder communities it is possible to bring to bear the benefits of good strategy, including the benefits of alliances and appeals to legitimacy, to even the most technical and detailed negotiations.

Building global consensus in support of the negotiation of an agreement on trade in services, for example, was a multidimensional effort that required building support by a large number of stakeholder groups throughout the world, and establishing the legitimacy of its objective, which is to reduce barriers and expand trade in services. While the United States led the early effort, changes in political leadership at the top resulted in a sharp decline of US leadership during some years. During those periods, the momentum generated by the international consensus that had been built during the earlier years carried the effort forward on its own momentum, and overrode new US positions that might have reversed aspects of the consensus that had been built. International negotiations can be best visualized as an aircraft carrier – it takes a considerable amount of energy to get it moving, but once it is moving in a particular direction, it is difficult to change its course. Other examples of negotiating strategies can be found in the Bibliography and the section on Additional resources at the end of this document.

Case Illustrating Use of Strategy in Negotiations

A use of strategy in negotiations is provided by the strategy adopted by the US negotiating team to use the OECD Study on services discussed in the introduction as a stepping stone towards global consensus on the launching of negotiations on trade in services. By the time the US began to seriously address the issue of the study, the importance of launching negotiations on services had risen very considerably in US priorities because a high exchange rate for the dollar had put the whole manufacturing sector in the United States on the defensive and the United States needed to use the services industries, counting for over 60% of the economy, to build political support for the launching of a new round of multilateral trade negotiations in the GATT. trade agreements. Some elements of the strategy concerned the orientation and management of the study, other elements concerned parallel actions outside the OECD. While the US focused during the initial phase of the study on developed counties, it subsequently extended its efforts to developing countries.

Specifically, the strategy consisted of

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4 The US negotiating effort was led by the author. For detailed accounts of the implementation of the strategy see Aronson, Drake and Nicolaidis, and Feketekuty, op cit.
1. Using the study to identify real trade problems in services and to show that these trade problems were similar in kind to many barriers to trade in goods that had been successfully addressed in trade negotiations.

2. Working with the private sector in the United States to identify services industries in key countries that had real interests in expanding trade opportunities abroad, and who could be persuaded to communicate those interests to their respective governments.

3. Demonstrating the practicality of using traditional trade rules to address trade problems in services by (a) raising a number of regulatory barriers in bilateral trade consultations with individual countries and tying the resolution of these problems to other bilateral negotiations on traditional trade issues in goods, and (b) adding services to the agenda of bilateral free trade area negotiations with Canada and Israel.

4. Establishing the legitimacy of negotiations on trade in services by (a) working with economists from a representative group of countries on the applicability to traditional trade theories to trade in services and the economic benefits that could be derived, and (b) organizing weekend conferences of key opinion leaders from key countries to discuss the role of services in light of globalization and the new information technologies.

Building a global consensus on the launching of negotiation on trade in services was something beyond the normal challenge faced by trade negotiators and it called for an extra level of effort, but at the same time the number of people directly involved and the resources that were used were quite modest. While this does not mean that any country could have accomplished the same thing, the techniques involved are generally applicable and can usefully applied by any country, no matter how small.

Can any country develop the means for implementing a good strategy? Can a country with limited means mobilize enough resources to develop wide support outside the negotiating room for its desired negotiating outcome? Resources obviously do make a difference and a small country would have found it more difficult mobilizing global consensus in support of a global undertaking, but not impossible. There are many examples where even one individual was able to move the world – examples such as Florence Nightingale and the formation of the Red Cross and Adam Powell and the Scouting Movement come to mind. A few talented individuals can devise and implement successful strategies if they have the requisite knowledge and skills. One can identify charismatic, knowledgeable and energetic individuals in most countries, particularly in small countries since individuals in small countries learn from an early how to overcome the lack of power through the energetic application of knowledge and skill. Development of the right alliances can empower any country, as was demonstrated by the Cairns Group of both small and large countries that banded together during the Uruguay Round negotiations to achieve a break through on agriculture.
Developing Negotiating Proposals

The next step in the preparation of negotiations is the development of negotiating proposals. A negotiating proposal represents the opening position in a negotiation, and should be designed to evoke responses from negotiating partners that will help frame the negotiations. In framing a negotiating proposal, a country (or stakeholder) needs to consider not only its negotiating objective, but also the views and interests of its negotiating partners. Like a game of chess, a negotiation is an interactive process of moves and countermoves, and the wise negotiator will think ahead to map out how the sequence of moves will eventually lead to the desired negotiating outcome. This is, of course, the essence of negotiating strategy.

How a proposal is structured depends on the nature of the negotiations. A negotiating proposal in a bilateral negotiation can take the form of a paper that describes desired changes in the regulation at issue. In the request/offer process that is used in the GATS to frame the negotiation of national commitments, the negotiating proposal takes the form of requests for liberalizing actions by trading partners and offers of liberalizing actions by one’s own government. In the negotiation of GATS rules, the negotiating proposal takes the form of a paper outlining a proposed rule and the rationale for such a rule. The process for initiating negotiations in the WTO under these procedures is described below.

i. Developing Requests under the Request/Offer Procedure in the WTO

Under the procedures currently in effect for the services negotiations under the Doha Round of Multilateral Trade Negotiations in the WTO, the negotiation of specific national commitments will proceed on the basis of a request/offer procedure. Under this procedure, the negotiations are initiated through the submission of requests by each WTO member to all trading partners it considers important with respect to actual or potential services exports. Once the initial set of requests are made, the negotiating committee will schedule an opportunity for bilateral consultations, during which the countries that have received requests are given the opportunity to ask clarifying questions. Subsequently, all countries that have received requests are expected to make offers to each country that submitted a request. The initial exchange of requests and offers is followed by subsequent rounds of requests and offers, and ultimately bilateral negotiations.

Requests can take the form of a request for national treatment and the elimination of all market access barriers in particular services or sectors, by mode of supply, or they can target specific regulatory provisions considered particularly restrictive by the country’s exporters. For example, a country could ask for national treatment in banking services under mode 3, which covers establishment. This means that any of their banks would be treated in the same way as domestic banks under domestic laws and regulations. Alternatively, the request could focus on the removal of an onerous regulation, such as the requirement that foreign banks must make a large deposit at the Central Bank before they can establish themselves.
By keeping its initial request general, the requesting country might obtain more information about what the responding country considers a reasonable request. Based on the feedback provided by the importing country through its bilateral consultations on the requests and the subsequent offer, the requesting country can more precisely target the requested regulatory changes in the second or subsequent exchanges of requests and offers. Ideally requests should follow the format followed by the national schedules. Figure 1 provides a schematic outline of a national schedule.

An interesting tactical question is whether the requests submitted to other countries should cover all sectors, modes of supply and horizontal measures in which they have an interest. Negotiators may wish to leave some areas of interest out of their request if they are confident that other countries with more leverage will be pressing the country involved to liberalize that particular service, mode of supply or horizontal measure. Under the Most Favored Nation provision of the GATS, WTO members have to treat all other members alike. By focusing its request on services, modes of supply or horizontal measures that are unlikely to be covered by other countries with negotiating clout, smaller or less developed countries may be able to focus their limited negotiating leverage more effectively.

Of course, there is a risk in leaving out areas of high priority for the country submitting the request, because the other countries that include the desired measures in their own requests may end up assigning a low priority to that area in the course of the negotiations. It is therefore best to include services, modes of supply, and horizontal measures in which the country has a high interest in its requests, even if it knows other countries will be making similar requests.

A favored defensive tactic employed by countries that are reluctant to undertake major regulatory reforms in the course of the negotiations is to request regulatory changes that its trading partners will find difficult to meet, even if the requesting country does not have a real interest in the requested change. They believe this will enable them to deflect requests with the argument that their requests are not being met either. It is best to focus requests on areas of real interest. If a service of real export interest to a developing country such as construction causes political difficulty to a developed country, it is quite reasonable and practical to include it in the request list. Even if the importing country is not in a position politically to make a full offer, it may be willing to make a partial offer that may well be of concrete commercial interest to the country making the request.

A developing country with a limited ability to liberalize its services industry may be reluctant to make too many requests of its own, for fear that it will come under excessive pressure to liberalize in areas where that will be difficult or impossible. More often than not countries are overly concerned about the potential negotiating pressure generated by an extensive request list. By not listing requests that reflect true interests a country forgoes the possibility of offers that might advance its commercial interests. If the price the other country asks for making an offer is too high, the country making the
request can always pull back on its requests in subsequent rounds. Moreover, the process of submitting requests in areas of real interest to its exporting industries may generate enthusiastic political support from its exporting industries, thus expanding the limits of what may be politically feasible in liberalizing domestic measures. If, as is likely, other countries press for the liberalization of these same measures, the lack of negotiating leverage will not be the real issue anyway. It is best, therefore, for countries to construct a request list that reflects their true export interests. It best serves to signal the country’s economic interests to the other negotiators, thus maximizing the possibility of an optimal negotiating outcome.

As mentioned previously, a country needs to consider the adverse impact of its own regulations on the competitiveness of its enterprises when formulating its requests and offers in international negotiations. Ideally, the formulation of requests is accompanied by the development of a broader strategy for strengthening the competitiveness of the country’s services industries.

ii. Formulating Negotiating Proposals on Rules in the GATS Negotiations.

In addition to the negotiation of specific national commitments, the negotiations on trade in services in the Doha Round of Multilateral Trade Negotiations in the WTO will focus on the development of additional rules that might be added to the GATS Agreement and possible sectoral agreements. The negotiation of rules and sectoral agreements are generally preceded by a review of the issues by participating countries, and decisions on analytical studies the Secretariat may be asked to undertake. Upon completion of the analytical phase of the Negotiating Committee’s work, member countries are likely to be asked to submit negotiating proposals, which are then reviewed in subsequent meetings of the Committee. At some point the Secretariat may be asked to compile all negotiating proposals that were submitted into an integrated analytical paper that describes and compares all the proposals on the basis of a common analytical framework.

Any country can submit a negotiating proposal at any time during the negotiating process. The timing of negotiating proposals needs to be based on various tactical considerations. The optimal time to submit a proposal will depend on what a country hopes to accomplish with its proposal. For example, a country may choose to submit a proposal early during the negotiating process, even before countries are ready to consider proposals, in order to make a point concerning the feasibility of developing a rule that meets certain requirements under discussion. Such a proposal may help to derail skeptics who are trying to block the negotiations from developing in a certain direction. In tabling such a proposal, however, a country would need to consider that too much detail might scare off countries that have not yet reached a point where they are willing to contemplate certain types of rules or sectoral agreements. At a later stage in the process, when member countries have been invited to submit proposals, a country may choose to make a proposal that narrowly focuses on one aspect of the rule that best captures its particular interest or regulatory perspective, or the country may choose to submit a proposal that reflects a broad group interest, including its own. At a later stage in the
negotiations, a country may choose to submit a proposal that bridges earlier proposals made by different countries, in the expectation that the proposal could serve as a viable compromise solution.

Negotiating proposals can be submitted by individual countries, or by a coalition of countries acting together. If the coalition is wide enough and representative of a cross-section of countries, it can have considerable influence on the negotiating process. On the other hand, strategically crafted proposals by individual countries could turn out to be just as influential. Countries that are proactive in submitting negotiating proposals and in crafting group proposals can achieve considerable influence in the negotiating process, even if they are relatively small countries. The key to exercising influence is to master the technical details of the issue, to develop an in depth understanding of the needs and views of member countries, and to surface proposals that can serve as the basis for consensus.

A negotiating proposal should contain not only proposed language, but also the rationale underlying the proposal. The proposal should start out by placing the proposal in the context of the negotiations. This should be followed by an analytical section that lays out the issues that need to be addressed, by a description of the proposed text, and a final section laying out the rationale and why the proposal is the right solution for the problems posed.

**Defensive Strategies**

In the last section we looked at outward looking negotiations aimed at solving a problem faced by exporters. In this section we will examine possible responses by an importing country to foreign requests for a change in its regulations. Our response to the foreign request will be influenced by the legitimacy of the request, the relative political and legal difficulty in responding to the request, and our relative bargaining power. The role of a negotiating strategy in this situation is to develop the means for increasing our relative bargaining power and the legitimacy of our position. In the final analysis, however, we need to consider that both sides have options, and we therefore have to consider the consequences of saying no. An important concept in evaluating such requests is the concept of BATNA, the Best Alternative to an Agreement.

**i. The Power to Say No**

Current ideas of national sovereignty give a country the right to say no to foreign requests, even where the foreign request is a request to honor commitments under trade rules. Saying no may have consequences, but as long as the country is prepared to live with those consequences it has the right to say no. There may be a number of reasons why we may want to say no. The request may involve an action that is inconsistent with our economic philosophy. Changing the targeted regulation may not be in our economic interest or it may be too difficult to change the regulation for political, legal or even constitutional reasons. We may simply consider the request as not a legitimate request.
The power to say no is even stronger in multilateral trade negotiations in the World Trade Negotiations than in bilateral negotiations. Decisions in the WTO are made on the basis of consensus. In principle, consensus means that all countries that are members of the WTO have to agree. In practice, it is probably means that the vast majority of countries and all important countries have to agree. This right to say no gives individual countries considerable leverage in multilateral negotiations carried out under the WTO umbrella. The same is true, of course, under regional and bilateral free trade agreements.

The question we want to address here is how we can minimize the consequences of saying no. The consequences of saying no will depend on the importance of the issue to the other country, the relative merits of their request and our decision to say no, and the relative bargaining power of the two sides, i.e. the relative strengths of the options available to the two sides involved in the negotiation. Just saying no is most likely to be a successful strategy when the issues is not particularly important to the other side, when we don’t have important export interests in the other country, when the request of the other side is not backed by international trade rules or is not seen as legitimate by the world trading community.

Before exploring strategies we can adopt to strengthen our ability to say no while minimizing the consequences, it is useful to consider the issue of bargaining power. We are programmed to thinking that bargaining power is a function of the size of the country, but that is not necessarily true in he case of trade. What matters in trade negotiations is not the relative size of the countries but the relative size of their actual and potential trade. A large country may have little bargaining power if its imports are relatively small, while a small country may have a large amount of bargaining power if its imports are relatively large. Thus India for a long time had limited bargaining power for many years, while smaller countries like the Netherlands, Chile, Switzerland or Hong Kong had much more bargaining power than would have been suggested by their size. At the same time a small country that has professionally ell trained negotiators who are successful in building the legitimacy of their case may have more bargaining power than a large country that lacks negotiators with those skills.

This brings us to strategy. How can we bolster our decision to say no? One obvious answer is to find allies – in the other country, in third countries, among opinion makers. Finding allies in a bilateral dispute is clearly more of a challenge than in multilateral negotiations, but it can be done. For example, if he other country feels it has a case under trade rules and initiates a dispute settlement proceeding we can get other countries to submit a brief in support of our case. Other countries can also help strengthen the legitimacy of our case by speaking out in our behalf. In multilateral negotiations, building coalitions is the essence of the negotiating process, just as it is in national legislatures. How do representatives from small and poor districts get a hearing in national legislatures?
Formula Commitments in Services: The Financial Services Understanding

The following case illustrates the ability of some countries to say no, while working out an accommodation that met some key requirements of another group of countries.

Borrowing from the growing practice in the GATT for reducing tariffs, the services negotiators grappled with how “formula” obligations, which would entail the same level of obligations to market access and national treatment, might be achieved in the Uruguay Round. This posed an enormous challenge, since no numerical equivalent of protection could possibly be arrived at in the context of services. In general, attaining a level of market access and national treatment that represented across-the-board liberalization was a very difficult proposition, as many countries viewed the Uruguay Round as merely the initial stage of putting together a framework of rules and disciplines, followed by subsequent rounds of negotiations that would address market access and national treatment obligations in a more serious way.

Financial services negotiators from OECD countries had a different view. They were determined to develop a formula of market access obligations that would become part of the GATS itself, in the form of an annex. To a certain extent, the bond amongst this group of negotiators was a bureaucratic one, in that it represented the particular agenda of Finance ministries who viewed trade agreements that covered financial services with skepticism. As the framework of the GATS slowly evolved, the Finance representatives inventoried those elements that represented digressions from the objective of liberal trade, from the flexibilities in the GATS for developing countries, the prudential exception available to finance regulators, and the asymmetries created by the MFN rule that would place more burdensome obligations on more liberal regimes compared to those that largely excluded foreign competition. This skepticism was shared largely by interested financial services companies in these countries, in particular the United States, who saw the MFN obligation as nothing more than a “free ride” for countries with protected markets which could exploit the more open markets through this rule.

In response to these concerns, the OECD financial services negotiators proposed an annex to the GATS that would obligate each WTO member to assume a threshold of liberalization in financial services. For instance, every country would assume the obligation to the cross-border provision of reinsurance, something that most regulators permitted at the time. Other obligations included the freedom to provide financial information and to assure national treatment in the placement of government agency deposits in banking institutions. There is some question whether the proponents of the financial services formula saw any chance of its adoption under the rule of consensus that prevails at the WTO. However, its rejection could have set the stage for an end to their participation in the Uruguay Round.

5 The following case was submitted by Richard Self, who served as the US negotiator of the GATS Agreement.
Indeed, the formula met predictable opposition from developing country members, who opposed such provisions as a digression from the structure established for making commitments for all services, which were to be undertaken on a request and offer basis, taking into account the particularities of the regulatory system of each country. Ambassador David Hawes of Australia, who at the time presided over the services negotiations, faced a dilemma. It was clear that there was no consensus for the financial services formula proposed by most of the OECD countries. At the same time, the complete rejection of this proposal, which had generated considerable support in the powerful world of finance ministries and their constituents, threatened to end the involvement of a group of very important players in the world of trade. Hawes came up with a solution that preserved the annex of commitments through an “Understanding”, which took the form of an optional approach for scheduling commitments by WTO members who chose to do so. Thus, the elements of the proposal were retained as an attachment to the GATS, but they did not constitute obligations. Rather, they were subject to negotiations among WTO members. Flexibility was allowed for the assumption of some parts of the Understanding, allowing for the exclusion of others. The Financial Services Understanding became part of the “Draft Final Act” of 1991, which constituted a proposal by the Director General of the GATT to its members for their consideration as the Uruguay Round legal text. With only a few exceptions, The Draft Final Act, with its Financial Services Understanding, became the GATS as it is known today.

The Understanding is the basis on which all OECD countries inscribed commitments in financial services. No developing country chose to make commitments under this provision, despite laborious efforts by OECD financial services negotiators to persuade them to do so. In the final analysis, the greatest significance of the Understanding is that it kept Finance Ministries of industrialized countries engaged in the Uruguay Round, albeit with different levels of enthusiasm. While it can never be established with certainty that the out-right rejection of the “formula” liberalization proposal would have brought a large-scale desertion from the process by some of the critical players, Hawes’ ability to preserve its elements in some form helped neutralize their position, by giving their proposal a measure of credence in the GATS.

ii. The consequences of Saying No – Moves and Countermoves

To better understand the consequences of saying no, we need to examine the options available to a country whose request we have refused. As we discussed in the first section, the essence of trade negotiations is the exchange of commitments that involve the mutual liberalization of barriers to trade. When we say no to a request from another country to help solve a problem faced by their exporters, they will be less inclined to help us solve a problem faced by our exporters. Two countries that trade actively with each other undoubtedly have a large number of mutual problems to address, and a country’s willingness to help its trading partners is unlikely to depend on the resolution of a single issue. The net impact of saying no on any one issue therefore will depend on the relative
importance of the issue and our response on all the other issues on the negotiating table. One way of minimizing the consequences of saying no on one issue is to be more helpful in solving another issue.

Another potential response of the country we have refused is to initiate dispute settlement proceedings if they believe that the measure at stake involves a violation of a commitment we have made in a trade agreement or a trade rule. We therefore need to consider the relative strength of our and their legal position, and the consequences of losing the case. If we are confident that we can win the case, winning the case would bolster the legitimacy of our position and make it much more difficult for the other country to press their case or to take any action against us for refusing to address the issue. On the other hand, if we are likely to lose the case, are the problems associated with resolving the problem greater than the problems we may face if the other country is given the right to retaliate against us? Are we in a better position to address the issue domestically after we have lost the case than we are now? On the other hand,

The other country may decide not to wait for a dispute settlement ruling and take some form of retaliatory measure. There are a number of ways it may be able to do so legally under the trade rules by initiating an action sanctioned by the trade rules. For example, they could initiate a safeguard action on one of our export products that have been creating difficulty for their industry, or they may decide to initiate a stricter enforcement of a sanitary measure on one of our exported agricultural products. Beyond such actions within the rules, they could decide to take an illegal retaliatory measure that would put pressure on us while we initiate a dispute settlement proceeding against them.

We also need to consider responses by a country that is frustrated by our ability to block consensus in the WTO on adding a particular issue to the negotiating agenda or in concluding an agreement that has been under negotiation. One of those responses is to pursue the issues involved in other international negotiating venues in which we are excluded. While we may be able to avoid being bound by any such agreement we may also lose our ability to influence the development of international norms on that issue.

iii. Cooperative Defensive Strategies

The foreign request for a change in our regulations that affect their exports may well have economic merit, even from the point of view of the regulation of domestic enterprises. There may be a number of reasons why our country’s regulatory agencies may have failed to reform regulations that may be outdated as a result of changes in technology, market structure or system of governance. The reason may have been regulatory inertia, or political difficulties associated in overcoming the vested interests created under the existing regulatory structure. In such cases, the question we can ask is how we can use the external impetus to pursue regulatory reforms that are in our economic interest but difficult to implement. Many countries have developed the fine art of blaming foreigners for reforms that are desirable but politically difficult. It can be useful tactic, but it is also a double-edged sword because ultimately the legitimacy of the reform depends on public
belief that it is in the country’s interest. China’s use of the negotiations with WTO members on its readmission to the WTO, for example, is a classic case of a country making the most of negotiations with foreigners to advance a domestic regulatory and economic reform agenda.

In responding to a foreign request for a regulatory change, we should ideally first ask ourselves whether changes in the targeted regulations would ultimately be in our economic interest. Maybe the specific changes suggested by the other government would not be in our best economic interest, but an alternative set of changes that would address some of their concerns could be turned into a desirable reform. If the trade negotiators on the other side are doing their job well, they will present all the arguments why the desired change would not only remove a barrier to their exports but would also improve the performance of our economy or increase the competitiveness of our own industry. This could result from both
V - Preparing the Negotiations –Building Support

The negotiating process begins with the first exploratory discussions of the issues with stakeholders at home and abroad. While these preliminary discussions are not what we normally consider as a negotiation, for all practical purposes they are a part and parcel of the negotiating process.

This section will examine the process for building supportive coalitions and for selling negotiating proposals to negotiating partners.

a. Building Supportive Coalitions

Trade negotiations are a process of progressively building consensus among an increasing number of stakeholder groups with diverse interests. Building coalitions among like-minded groups at home in support of particular negotiating proposals and agreements is a critical aspect of that process.

The negotiation of the services agreement in the WTO, for example, was advanced by a number of crosscutting international coalitions of stakeholders that supported the negotiation of a services agreement under the aegis of the global multilateral trading system. Business leaders, academics, and government officials from both developed and developing countries that favored an agreement met periodically to brainstorm the issues, to coordinate lobbying efforts, and to map out negotiating proposals and initiatives. It included stakeholders from such diverse countries as the United States, the European Community, UK, France, Sweden, Japan, Australia, New Zealand, Hong Kong, Singapore, Colombia and Chile. Similarly, the working level negotiators from many of these countries constituted an informal group called the friends of services, who regularly coordinated their interventions in the meetings of the negotiating group on services.

Once potential coalition partners have been identified, then it is important to reach out to them to discuss the pending negotiations, and where possible to coordinate positions or even to draft joint negotiating proposals. A coalition partner may support efforts to prepare negotiations in some or all of the following ways:

• Help brainstorm possible solutions (options) to present in the negotiations
• Reach out to their constituents (members) to involve them in collateral legislative, lobbying, media, or other supportive activities
• Help to raise resources including funds to advance various aspects of a concerted campaign which will support the negotiators
• Provide market, scientific, research, and other data in support of the negotiating objectives.

One of the most important skills a negotiator can have is the ability to build coalitions and alliances with other parties that have similar, or at least, compatible interests. This is particularly important for small developing countries with a limited amount of imports. In trade negotiations, the volume of current and potential imports
gives a country negotiating power. In trade negotiations, buying power equates to negotiating power. Even large countries may have only limited amount of negotiating power if the value of their imports is relatively small. On the other hand, even a small country can exert considerable negotiating power if it is a significant importing country. What a country cannot achieve on its own through a large volume of trade, however, it may be able to achieve as part of a coalition of countries that together can exert considerable negotiating clout.

Some countries limit their coalition building efforts to regional neighbors. This can sometimes be a mistake because neighboring countries may not have the same economic interests on a particular issue, and the negotiation of a common position may therefore unnecessarily dilute the effectiveness of common negotiating proposals in advancing the country’s economic interest. It may also be a mistake in spending too many resources in building coalitions with neighboring countries that lack much negotiating power. It would be much better in such situations to seek out influential countries in other parts of the world that have similar interests on a particular issue.

Coalition partners in broad stakeholder coalitions can include key officials from government departments or agencies, key executives from corporations or trade associations, experts from academia or think tanks, and key legislators and their staffs. International coalition partners can include officials from other governments, executives from foreign corporations and trade associations, and foreign academic experts. The negotiation of the General Agreement for Trade in Services was supported by a loose international coalition of officials, businessmen and academic experts who met periodically to map a joint strategy for advancing the negotiations, and who organized conferences and other events around the world to expand the consensus. This coalition was crucial in building up negotiating momentum and sustaining the negotiating process once the negotiations developed their own momentum. Negotiators should also identify members of the press who develop an interest in the negotiations and become educated on the issues, and can be counted on to write informative, in-depth articles on the rationale for the negotiations.

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Negotiators should ideally establish different coalitions for different purposes. Thus a coalition within the government at home may be a critical to the development of an interagency consensus, while a coalition of like-minded countries in the WTO may be equally critical to building support among WTO negotiators. International coalition
building is particularly critical to smaller countries, which can gain influence only through coalitions that include powerful countries. During the Uruguay Round, many smaller developing economies were able to exert considerable influence on the course of the agriculture negotiations through the Cairns group of countries, named after the Australian city where they first met. The negotiation of the GATS during the Uruguay Round was significantly enhanced through the coordinated efforts of a group of small and big countries called the friends of services.

Equally important is contacting stakeholders with conflicting interests. Can they be approached and “neutralized”? E.g., Can you offer information, trade-offs, or other assurances that will minimize or eliminate their adverse influence on the negotiation process?

Negotiations need to be viewed as an interlocking chain of events that start with the formation of coalitions to explore negotiating ideas. The formation of supportive coalitions and the development of negotiating proposals should be treated as an interactive process. In order to succeed, a negotiating proposal has to receive the support of a coalition of stakeholders at home and a coalition of countries internationally that together is influential enough to prevail. Building a coalition and negotiating a common position among the members of the coalition is thus a steppingstone towards the negotiation of a successful outcome. Negotiating supportive coalitions at home is a key stepping stone to the development of the country’s initial negotiating position. Negotiating supportive coalitions abroad is a key stepping stone towards the negotiation of an international agreement.

Formally, the development of a negotiating position in the home country and the negotiation of an international agreement are two separate and sequential phases of the negotiation process. In reality, a successful outcome to negotiations is enhanced through international coalition building, while a national position is still being developed. Such an overlapping process allows negotiators to factor the interests of likely international coalition partners into the development of the country’s initial negotiating position.

b. Selling the Negotiating Proposals

Once negotiators have developed a negotiating proposal, they must persuade stakeholders at home and abroad on the merits of the proposal. In part this is done through meetings with stakeholders and conferences. In part this is accomplished in writing through the preparation of white papers, published statements, press releases and websites. Such documents can be targeted at either at the general public media or specialized publications serving particular services industries. Negotiators might also make public speeches to stakeholder groups, testify at legislative hearings and post the white paper and other materials on the organization’s web site.

Internationally, bilateral consultations with foreign negotiators are the most common method of broadening support among negotiators. Negotiators also have the
option of distributing the written text of oral interventions made at meetings of the negotiating group.

Each of the various types of written and oral methods of communication have their own requirements that determine structure and format. A white paper, for example, should have a brief summary which briefly covers the what, where, when and why; a background section which outlines the issues that give rise to the proposal; a full description of the proposal; and a section that describes what will be gained as a result of the proposal. This paper can serve as a handout at meetings with stakeholders and at conferences.

Building public support for proposals contained in requests and offers under the request/offer procedure is a major challenge since the requests and offers contain long lists of proposed changes in a broad and diverse range of regulatory measures. Nevertheless it is important to find a way to characterize the nature of the requests and offers in order to build support among stakeholders. Negotiators may wish to summarize the industries targeted through the requests and offers, and what domestic and foreign exporters will be able to do once the regulatory changes are implemented. Negotiators may also wish to describe what is not contained in the requests and offers to reassure stakeholders in import-sensitive sectors.

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6 For an extended description of the most effective structure and content of these various written documents and oral presentations, visit the website of the Institute for Trade and Commercial Diplomacy, www.commercialdiplomacy.org, and look for the instructional modules on written and oral communications.
VI – How Negotiations on Trade in Services in the WTO are Organized

We discussed in Section I how the negotiations on trade in services in the WTO are structured. In this section we will examine how the negotiations unfold, beginning with the initial exchanges of information between the negotiating parties and proceeding in stages to the framing of the issues and the bargaining process.

a. Pursuing Negotiations through the Request/Offer Process

As indicated previously, the negotiation of specific national commitments is initiated through the tabling of requests, and subsequent bilateral consultations with the countries that have received the requests. These bilateral consultations offer the country making the requests an opportunity to explain the rationale for the requests, and they offer the country receiving the requests an opportunity to ask follow-up questions that will help clarify the nature of the request, and help fill in missing details.

The exchange of requests is followed at a subsequent stage by an exchange of offers. The initial offers should signal to negotiating partners the services and the modes of supply where the importing country believes that it may be able to liberalize restrictive provisions, and the services and modes of supply where the importing country will have great difficulty in meeting the requests, either because the domestic industry is not ready for international competition or because domestic policy reasons will make it difficult to change the targeted regulations. Similarly, the importing country may want to signal which horizontal regulations it may be willing to reform, and which are likely to be very difficult to change. A willingness to negotiate can be signaled by including some kind of offer with respect to the service and mode of supply, and the horizontal measure. Difficulty in meeting a request can be signaled by excluding the service, mode of supply or horizontal measure from the offer. Offers can include proposed commitments not included in the request if there is a reason to believe that the requesting country may benefit from the offer. They may have deliberately left the commitment out of the request in the belief that other countries with more leverage will be making a request in that area.

The exchange of offers is followed by another round of bilateral consultations, during which negotiators seek to clarify the nature of the various offers and the reason why the offer did not address other liberalization measures included in the first round of requests. These consultations provide the basis for the preparation of a second round of requests, which should provide the negotiators an opportunity to become more precise in their requests, and to abandon requests that are considered a low priority, or requests that are clearly not achievable. In turn, the second round of offers should provide an opportunity for the other side to respond to the updated requests.

The second round of requests and offers may be followed by further exchanges of requests, and each round of requests and offers is followed by further bilateral consolidations. At some point in this process, the members of the negotiating committee will ask the Secretariat to compile a consolidated list of offers, which then becomes the basis for the final round or rounds of negotiations.
b. The Negotiations on Rules

Multilateral negotiations of rules usually go through several phases. In the first phase, the issue identification stage, one country typically identifies an issue or problem, which it believes needs to be addressed through the formulation of a rule, or some other form of common action. In order to persuade other governments to embark on an analysis of the issue that could lead to the negotiation of a rule, proponents have to demonstrate that the identified problem or issue is more than a one time or rare event, that it potentially a problem for every (or most) countries, that it is a serious than a trivial problem for member countries, that the nature of the problem and the potential remedy is fairly consistent over time and across countries, and that the problem can be solved through a negotiated rule or agreement. If the problem is rare, member countries will be reluctant to spend the time to analyze and negotiate the issue and to restrict their future freedom of action. If it is only a problem for one or some countries, but not for a majority of countries, it will be difficult to get an agreement to study the issue, much less to negotiate binding commitments. If the nature of the problem and the appropriate remedy changes from event to event, opponents will argue that while there may be a problem, rule making is not the answer.

In the second phase, the analysis phase, the negotiators analyze the nature of the problem and the potential remedies. This phase of the negotiation is designed to create a clear understanding of the problem and how it may be addressed. In the WTO an issue at this stage of the process will be entrusted to a study group. Members will study historical occurrences of the problem, identify patterns, examine analogies to similar problems that have been addressed through negotiated agreements, and evaluate principles that could serve as the basis for rule making. If member countries are persuaded by this work that the problem is serious, that it is consistent over time, that it is widespread among member countries, that it can be remedied through some form of agreement, then discussions will move toward the search for a negotiating framework to address the issue.

In the third phase, the pre-negotiation phase, member countries hammer out the terms and mandate for the negotiations. In the WTO the issue at this stage is often entrusted to a working group or a committee that has a formal standing within the organization. The work of the group is to define the problem to be addressed, to identify the nature of the solution to be pursued through negotiations, the specific elements of the issue to be addressed, the components of a negotiated solution, and a timetable and venue for the negotiations.

In the fourth phase, the negotiating phase, member countries negotiate the actual provisions that will be added to the trade agreement. Such negotiations usually start with a consideration of negotiating proposals tabled by member countries. Where there are many such proposals, the Secretariat may be asked to compile the proposals into an integrated document, and to provide members with an analysis of the various proposals. A discussion of these proposals can lead to a second tier of proposals, which incorporate
comments made by members during the review of the initial proposals, or which seek to bridge the gap between competing proposals.

c. Negotiation of Sectoral Agreements

Sectoral agreements such as the GATS Agreement on Basic Telecommunications contain rules, the establishment of a framework for the negotiation of national commitments, and a set of national commitments that are incorporated in the country’s schedule of commitments. The negotiations therefore contain features discussed above under both the section on the negotiation of rules and the section on negotiations on a request and offer basis.

Sectoral agreements provide a comprehensive and coherent approach to the liberalization and reform of regulations in a particular sector. Instead of approaching the negotiations on an issue by issue and a country by country basis, a sectoral negotiation make it possible to discuss the basic objectives of regulation in the sector, and where countries can reach consensus on regulatory objectives, to set out a set of best practices for attaining those objectives and a model schedule of commitments that can serve as a template for the negotiation of individual national commitments. Negotiations along these lines therefore begin with a discussion of regulatory objectives, the impact of technological changes and market structures on the achievement of these objectives, the barriers to trade created by existing regulatory provisions and how the reform and liberalization of restrictive regulatory measures can be structured to accommodate the needs of member countries at various stages of development and at various stages of implementing reform. Agreement on a model set of rules and a model schedule of commitments then provides the basis for the negotiation of an initial set of national commitments with respect to both the rules and the reform/liberalization of regulatory barriers to trade and competition.
This section will explore the organization and choreography of opening, managing and concluding a negotiation. A well-run negotiation follows a number of well-established steps for choreographing the negotiating process. Some of the steps are designed to assure that the negotiating team is solidly grounded in terms of its relationship with the home constituencies. Other steps are designed to achieve an efficient organization of the negotiations and to create a positive feedback mechanism that will facilitate progress in the negotiations. Some of the steps in a well-choreographed negotiation can help minimize irritants that could distract and derail the negotiations, and create a sequence of events that will allow negotiators to make progress on an incremental basis. The ultimate value of a well-choreographed negotiation is to create positive psychological and physical feedback mechanisms that will encourage participants in the negotiations to expand their horizons and to address the issues under discussion with a great deal of creativity.

a. Organizing the Negotiating Team

A governmental delegation will most often consist of a “head of delegation” who serves as the lead negotiator, experts on various issues, and representatives of various departments and ministries. The head of delegation should organize the team well ahead of the start of negotiations, giving each team member a clear set of responsibilities. This will not only assure that every team member feels like a full participant who will take responsibility for the outcome, but it will also lighten the load on the lead negotiator and assure better preparation of the negotiating issues.

It is of critical importance in negotiations for a team to reflect a unified position at all times. Nothing will undermine a negotiating team’s credibility more than an aura of disunity, disagreement, or other forms of dissension. If disunity or disagreement is observed a counterpart negotiator, that negotiator will move to exploit those differences or will simply be confused by the team’s inability to present a unified and coherent proposal or response.

b. Drafting the Negotiating Instructions

In pursuing these discussions with domestic and foreign stakeholders, negotiators are usually acting under general guidance they have received from their superiors on the negotiating issues. Since no formal commitments are being made on behalf of the government involved during these discussions, they usually take place without formal Agreeing Without Giving In. by Roger Fisher and William Ury. Penguin Books, 1991.

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\(^7\) Much of the material in this and the next section is taken from a manual published by the International Commercial Diplomacy Project, Inc. on its website www.commercialdiplomacy.org. The manual jointly coauthored by Bill Monning and Geza Feketekuty, is entitled. The manual built on ideas developed by Roger Fischer of the Harvard Negotiating Project, and disseminated through various books, including Getting to Yes: Negotiating Agreement Without Giving In.
negotiating instructions. Once the negotiations move from informal discussions to formal negotiations, however, negotiators become bound by negotiating instructions that receive all the necessary approvals from their home government. Most governments have a legally established procedure for approving such instructions that normally require not only the approval of superiors within the Trade Ministry (or Foreign Ministry), but also by other key departments and ministries within the government.

Negotiating instructions constitute both a delegation of authority by the political authorities of a government to its negotiators, giving them the authority to speak on behalf of the government, and a script for the negotiations, that sets out the country’s positions on the issues, the arguments negotiators should put forward in support of those positions, the information they should seek to obtain from negotiating partners, and what they may agree to during the negotiating sessions covered by the instructions.

The negotiating instructions should set out the country’s opening position for the negotiations, and spell out the flexibility that can be exercised by the negotiators. As a general rule, negotiators should be given some degree of flexibility in exploring possible negotiating outcomes, but only limited degree of flexibility to agree on an outcome that substantially differs from the negotiating position outlined in the instructions. After all, the instructions, and the negotiating proposals on which they are based, reflect carefully crafted compromises among stakeholder at home inside and outside of the government, and these stakeholders should be given an opportunity to participate in the evolution of the country’s negotiating position. Besides, it is normally advantageous to allow some time for reflection on new negotiating outcomes, because it is usually difficult, if not impossible, to think through all the ramifications and implications of new compromise proposals. Of course, as the negotiations move to a final conclusion, the negotiators have to be given a well-defined range of outcomes that they are authorized to accept. Even then, it is common for negotiators to seek and obtain final instructions from their superiors before finally concluding an agreement.

c. Pre-negotiating the Negotiations

Every negotiation actually begins before the negotiators sit down at the negotiating table. Through phone calls, email messages and other communications the negotiating parties need to discuss and decide on the following:

- Meeting logistics (when and where, who participates)
- Exchange of background information that can be reviewed before the negotiation session.
- The Agenda – a list of the topics to be covered in the negotiations, and sequence of topics and the amount of time that should be scheduled for each topic. A scheduling of different topics may allow the two parties to decide who should sit in during which portion of the negotiations.
- Rules of the negotiation
- Confidentiality
- Media contacts
- Use of interpreters
Negotiators can also use the pre-negotiation period to learn as much as possible about the expectations of their counterparts. By exchanging information about expectations, the participants can avoid being caught by surprise when the formal sessions are convened.

d. The Preliminary Steps of the Dance.

Before launching into the negotiation proper—the substantive issues that have brought the parties to the table—the negotiators will want to go through a basic check list to insure a productive negotiating session.

1. Introduction of team members. It is useful to build an early rapport with the negotiators on the other side even though there may be serious and contentious issues that divide the parties.
2. Review of logistical arrangements, agreements on confidentiality/media issues, and the agenda.
3. Review of mutual expectations regarding the objectives or desired results of the negotiating session— to exchange information, exploration of issues, identification of possible solutions, concluding a final agreement.

e. Opening Statements

An opening statement is an important “first intervention” in a formal negotiation, working group, or conference setting. The opening statement provides parties with an opportunity to identify key issues and interests as well as to articulate parameters for potential agreements. This is not a process where a party “reveals a bottom line”, but rather an opportunity to stress the importance of the outcome to the interests of the party and to establish early in the proceeding exactly what the party making the opening statement has been directed to pursue by his/her nation or other organizational hierarchy.

After a few negotiating sessions, participants can grow weary of the repetitive enumeration of each side’s views and positions on the issue. Nevertheless, a country’s position, no matter how often it is repeated, remains one of the anchor points in a negotiation and it is important to be clear about the starting point for each negotiating session. Repetition of the country’s position also provides an opportunity to ask whether any aspect of the position has changed since the last session. Miscommunication and false assumptions can easily set a negotiation back, so it is important always to be very clear about the two positions that frame the negotiation. Patience is a key characteristic of a good negotiator, and a certain amount of repetition is the price you pay for being a negotiator.

f. Exploring the Positions and Interests of the Parties.

The opening statements provide a platform for a subsequent exchange of clarifying questions on the respective positions and the underlying interests of the parties.
A good way to start the process is for the head of each delegation to summarize the position of the other side and to seek confirmation that they understood the position of the other side correctly. This provides each side the opportunity to clarify and elaborate on their initial statement of the position, and to ask clarifying questions of the other side.

As discussed earlier, negotiating positions need to be distinguished from interests. The negotiating position, which is what a negotiator is instructed to ask for at any particular phase of the negotiation, is dictated not only by the organization’s interests, but by the negotiating strategies and tactics of the parties. Interests underlie positions. Interests are the commercial interests, policy objectives, bureaucratic imperatives, or legal requirements that a negotiator must satisfy in a negotiation in order to obtain the approval of the home constituencies. Interests are at the very core of what drives parties in a negotiation.

In trade negotiations, it can be safely assumed that all parties at the table seek to advance their economic interests. But there may be a multitude of other important interests that compel the parties to take the positions they do. The ranking and prioritization of interests will differ between parties. It is in the recognition of these different priorities in the interest that the skilled negotiator can offer creative options (solutions) that maximize prospects for a negotiated agreement.

The interests of stakeholders is determined by the impact of the targeted policy measure on the commercial interests of competing enterprises and workers, the policy objectives served by the targeted policy measure, the broader economic impact of the measure, and institutional and bureaucratic interests. It is also shaped by the domestic and international legal provisions that apply to the measure. A stake holder’s perceived interests may or may not coincide with that stakeholder’s real interests, depending on the availability and accuracy of their information. A successful commercial diplomat therefore analyzes the issues not only to better understand the issues at stake, but also potentially to educate other stakeholders on their real interests, where that reinforces the analyst’s own objectives.

g. Framing the Issues

A complete understanding of the issues, and of the perceived and real interests of stakeholders forms an essential basis for framing the issue for negotiation. In the course of preparing for negotiations, a commercial diplomat may find it necessary or desirable to redefine the negotiating issue periodically as more information sheds new light on the issue. For example, as negotiators learns more about the policy issue underlying a targeted measure, they may find that their understanding of the problem was faulty and that the more accurate information calls for a different approach to the problem. Alternatively, the negotiator may conclude the issue needs to be redefined to reach out to better address the needs of new potential allies or to provide a closer legal fit.
h. Creating Multiple Solutions to Satisfy Interests

One of the key elements to effective negotiations is the development of multiple options or solutions to satisfy party interests. The best negotiators distinguish themselves by their ability to create and generate multiple options in both the planning stage and at the negotiating table. This is the area of interest-based negotiation where a negotiator’s creativity and capacity to think beyond a single solution is paramount. The shortcoming of many positional negotiators is that they become fixated on single solutions or positions that blind them to other possibilities. Such singular thinking can lead to stalemate and impasse in the negotiation process.

Negotiating the North-South Deal in the GATS Negotiations

In the early stages of the Uruguay Round, there was a fundamental difference of opinion between developed and developing countries over the inclusion of investment as part any services framework that would emerge. Developing countries, led largely by India, were concerned about the inclusion of services in the GATT because of this issue alone, fearing it would be a precursor of a larger agreement on investment in the GATT. At this pre-Internet stage of the negotiations, the ability to provide services in other countries rested largely on the ability to invest—what was later to be called a “commercial presence”—in the host country. There were both competitive and regulatory reasons for this. To give one obvious example, most financial services from abroad were (and are) prohibited unless they were provided through a branch or a subsidiary of the foreign services supplier. Clearly, any agreement that did not include investment was going to have no value at all, and yet there was considerable opposition by developing countries to the inclusion of investment as a matter of general principle.

The issue came to a head at the mid-term Ministerial in Montreal in December 1988. The parameters of this gathering did not necessarily call for agreement to legal texts, but it did put pressure on the GATT system to make meaningful progress on key issues. Prior to the Montreal meeting, services negotiators attempted to forge a common text that would reflect a consensus of views among the participants. This proved difficult, especially in light of the differences over the matter of investment in services. Indeed, despite considerable efforts leading up to the Montreal meeting, negotiators had a text that contained over 100 brackets.

Negotiators managed to bridge their differences and reach an agreed text through intensive negotiations at Montreal by addressing specific issues of interest to developing countries, again with India completely in the lead, while incorporating the investment principle. The first was to acknowledge that the temporary entry of natural persons—what was to become the fourth mode of supply—had equal footing with that of commercial presence. While the four modes of supplying services under GATS were established subsequent to the Montreal meeting, the conceptual basis for giving

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8 This case example was provided by Richard Self, who served as the US Negotiator of the GATS Agreement.
temporary entry and establishment equal footing in a negotiating context was agreed at Montreal.

In addition, developing countries wanted numerous provisions in the services agreement to reflect the special needs of developing countries. As their leader, Ambassador Shurang Shukla of India put it, development should “permeate” the framework. Indeed, many of the bracketed provisions in the draft text contained various references to developing countries. The United States, in particular, found these references too numerous to be acceptable. The final text that emerged from Montreal certainly contained its share of development-related provisions, which survived in GATS Articles IV and XIX. Nonetheless, the developing countries accepted a reduction in the amount of provisions relating to development concerns at the Montreal gathering. In a showdown at the level of Ministers, the Indians abandoned a provision that would have duplicated the GATT’s Enabling Clause for services, and this proved to be the final breakthrough that established consensus at Montreal.

Of course, the drafting of the GATS itself was still in its infancy, but the Montreal meeting was an important turning point in resolving fundamental issues of interest to both developed and developing countries. To a large extent, it represented the abandonment of services as strictly a North/South issue, as it had been for the first two years of the Uruguay Round. Thereafter, the negotiating process was less factionalized, and there was little debate over the inclusion of investment and the temporary entry of natural persons in the final agreement.

1. Introducing a Written or Single Text Document

The “dance” of negotiation can involve protracted dialogue and discussion that may seem unproductive as parties restate positions and appear to offer nothing to advance the process. In most productive negotiation sessions, the parties will eventually reduce areas of agreement or consensus to writing. Once parties begin working on text there is often a qualitative change in the course of the negotiations. Parties begin working together to craft appropriate and acceptable text. To be effective, a written or single text proposal need not be long or address a long list of issues. It is useful to use text that has been agreed to as building blocks.

A negotiator can actually expedite this productive stage of negotiations by introducing a written or single text document. By offering text that describes a prior agreement or suggests a potential resolution, the parties will begin discussing terms in response to a written text. When a draft proposal or agreement is presented to counterparts, it should be with the intent of inviting their feedback. There may be proposed changes that are minor and which make the document read better. These are obviously welcome changes and give your counterparts a hand in the crafting of the document. They see their words in the document and are more likely to support and sign an agreement that has their input and “fingerprint”. Some proposed changes might be
fundamental and go to the very substance of the negotiations. Even if the proposed change is unacceptable, it can be used as a platform for exploring other variants and options that may satisfy all parties.

It is useful to obtain signatures or initials of the parties on individual text documents and proposals that are agreed to indicate support. This can be done with the assurance that no final agreement will be signed if not acceptable to the party, but the act of signing or initialing the interim agreements or building blocks is to establish a “culture of agreement” and signing documents together.

2. Drafting Durable Agreements

The following outline provides the key elements that should be contained in an enforceable agreement.

1. Title – include suggestion of achievement in title (e.g., “Trade Agreement Between Chile and Brazil”; “Agreement on Reconciliation of Multilateral Environmental Agreements (MEAs) and Trade Agreements Between the United States and the European Union.”)
2. Preamble- One or several paragraphs “media statement” – describes the achievement in layman’s terms-designed to make it easy for media and public to understand significance and key elements of agreement.
3. Identification of parties.
5. Implementation provisions.
6. Penalty provisions
   a. Conflict resolution provisions
7. Signatures of the principal negotiators, date and location.
   Translator’s declaration if a certified professional translator translated the document.
This section addresses good negotiating habits that help to facilitate good communications among the negotiators, create a positive atmosphere conducive to progress in the negotiations and facilitate the identification of win/win solutions to the negotiations.

a. **Active Listening**

Active listening is one of the most important skills to be developed as a negotiator. It sounds like common sense, but many negotiators do not make good listeners. Negotiators often become so convinced of the wisdom of their own arguments, and become so intent on convincing others of their particular point of view that they naturally tend to interpret what they hear through the prism of their own view of the issue, and to think others agree with them, when in reality they don’t. A healthy degree of skepticism is therefore a healthy trait in a negotiator. When in doubt, ask to confirm what you thought you heard.

Another aspect of listening is to place information provided by other negotiators into the proper context. Is it information about the official position of the organization the negotiator represents? Or, is it information about the underlying interests of the organization? Is it an argument why you or others should support the position the other negotiator is advocating? Is it a statement about the underlying beliefs of the organization your negotiating partner represents? Or perhaps is it information about the personal views of the negotiator? It obviously makes a huge difference whether a statement provides information about the organization’s position, belief, or interest, and whether it is an official view or a personal view.

A few years ago the American representative to the Development Committee of UNCTAD made the statement that the United States did not believe in special and differential treatment as the right approach to economic development. Some delegates interpreted that statement as an indication that the United States would oppose S&D in the Doha Round, which was not what was said. The Ambassador did not say that it was the position of the United States to oppose the extension of S&D. A belief says something about a country’s philosophical predisposition, but not what it intends to do on an issue.

How can we tell what the negotiator meant? We have to listen for the introductory comment. Does the negotiator say it is my country’s “position” or does the negotiator say it my country’s “belief”? Does the negotiator say that the country’s objective is to expand opportunities for a particular group or avoid injury to another group, which are statements about “interests”. In private conversations the negotiator may be even more direct in describing the interests they are seeking to satisfy. Does the negotiator say that others should agree with a particular proposition “because” it would accomplish a variety of wonderful objectives? The word “because” is a tip-off that what follows is a recitation of
reasons why other parties should agree to the proposition being advocated. Those reasons
don’t say anything about the country’s own objectives or practices.

The most confident negotiators use the art of active listening to enhance their
understanding of their counterparts’ interests. Active listening is more than just listening.
Active listening includes the act of communicating to counterparts that you have heard
what they said. By communicating understanding the negotiator is not accepting or
acquiescing to the counterparts’ proposal. By actively restating what the speaker has said,
you communicate that you have indeed heard what was said.

b. Asking Questions – Information is Power

Combined with the skill of active listening is the skill of asking. This may sound like
a basic tenet of negotiations at any level, but many inexperienced negotiators use every
opportunity to advance their proposals, their options, and their ultimatums at the table.
By failing to use the negotiation setting as an opportunity to learn, a negotiator will
remain uneducated about counterpart interests.

Asking for information or clarification conveys interest and a willingness to understand
the other party’s interests.

1. Questions can draw information from counterparts---Information that has not been
offered or volunteered by a counterpart in an opening or affirmative statement may be
shared or revealed in response to a question.
2. Questions and responses will contribute to building the information base for the
negotiations. The broader and more complete the base of information, the better
equipped a negotiator will be to fashion proposals, options, and solutions that can
result in a successful outcome.
3. Examples of intentional ‘leading questions”’. Leading questions are those designed
to get your counterpart talking/sharing information:

a. “How did you arrive at that position?”
b. “What is your proposal based upon? If we understand the basis of the proposal
we will be better equipped to share it with our superiors, home office, etc.”
c. “What information did you rely upon to reach that conclusion? Would you share
a copy with us?”
d. “Please explain further…”
e. The use of the single word ‘Why” can be a trigger to uncover underlying party
interests…

Patience in the negotiating process can give a negotiator the upper hand in terms of
command of information, finding out what is really important to counterparts, and
determining areas where trade-offs or compromise might be appropriate.
c. Use of Silence

One of the more powerful skills to be employed in the negotiation process is the tactical and timely use of silence. In many cultures, protracted silence creates a socially uncomfortable atmosphere. People will offer words and verbiage to fill the silence. Counterparts may offer further information, concessions, or compromises simply to fill the vacuum.

d. Taking Breaks from the Negotiating Table – “Going to the Balcony”

Getting away from the table can be one of the most important and underutilized tools to increase negotiating power. Negotiators, even when representing large organizations, often make commitments or concessions without having fully discussed them with teammates or superiors. “Going to the balcony” is a terminology intended to mean the physical act of leaving the negotiating area by going out on the balcony, or going to a balcony where one might still observe the proceedings but from a more distant perspective. Taking a break allows parties to achieve a number of important negotiating objectives, including:

a. To review an oral or written proposal…. “You have put a lot of time into developing this proposal, let us take a few minutes to review it…” Or, depending on the weight and volume of what has been introduced by a counterpart, a negotiator may need a week or a month recess for economists, scientists, or other experts to review the proposal and the underlying data upon which it has been based.

b. To develop or formulate a response. Thinking “on your feet” or in the heat of the moment may lead to unwise decisions and incomplete formulation of a counterproposal or response. Taking a break and leaving the room may allow a negotiator to work on the formulation of a response or counter-proposal that protects and advances the party’s interests.

c. To regain your composure. If a negotiator feels that the negotiation is moving too quickly or simply doesn’t feel right about the pace of the negotiations, a break can be useful to evaluate what has transpired. A break can facilitate negotiations by allowing a counterpart to hear from teammates.

e. Organizing Brainstorming Sessions

An organized brainstorming session can serve a number of functions. First, it gets team members comfortable working with each other and empowers all team members to be contributors to the process.

In working with teammates or counterparts, there are some useful techniques that can be employed to elicit reactions, ideas, and counter-proposals. An error commonly made is for parties to advance a proposal as an ultimatum or as a non-negotiable, singular solution. By inviting a teammate or counterpart to evaluate a proposed option, the negotiator gives the counterpart the power of choice. They have the power to accept or reject the proposal. When a negotiating partner summarily rejects a proposal, ask them to
offer a counterproposal, to offer a modification of the proposed option that would make it acceptable.

By employing this tactic, a negotiator can engage team members or counterparts constructively in the formulation of options for consideration, comment, and acceptance or refinement. A useful technique for eliciting a team mate or counterparts input is to ask, “What if we did x, or what if we agreed to do y?” By posing the option in the form of a question, the counterpart’s opinion is sought and their counter-proposal or modification may lead to a viable option or proposal. Often, a minor modification that preserves the essence of your proposed option may work to gain the acceptance of a counterpart.

f. Use of Objective Criteria

Objective criteria represent a set of independent or external standards that are introduced to support the legitimacy or fairness of a party’s proposed option or solution. Objective criteria can be viewed as factual information drawn from any number of sources. The introduction of objective criteria at the negotiating table is a form of submitting evidence in support of an argument or proposal. The goal is to persuade the other parties that a proposal is reasonable and consistent with findings of independent, neutral experts.

Objective criteria can also be understood as the introduction of fair standards. By relying on a non-party to the negotiations who in the normal course of business produces scientific or market studies, the parties can agree on the standards or norms that will serve as guideposts in the negotiation process.

A party may be skeptical that a certain proposal is fair. Objective outside criteria in support of a proposal it will convey legitimacy that counterparts can use to persuade their constituencies or superiors.

Some examples of sources for objective criteria include:

- Market values
- Prevailing wage rates
- Industry standards and practices
- Expert studies
- Academic research and reports
- Rules and regulations
- Precedent decisions (decisions made by legal or authoritative bodies or similar types of issues or cases.

g. Practicing Role Reversal

Role reversal can be an invaluable tool in achieving a better understanding of the negotiations. Practice Role reversal. Have members of your own team play the role of counterparts. Insist that they assume the role by speaking in the first person. Ask them
directly what are their concerns, goals & objectives, interests…. What would work for them and why?

**h. Listening to and Recording all Proposed Options**

In both brainstorming sessions with teammates and with counterparts, it is important to record all proposed options. The use of charts or posted paper is an effective means as it will preserve the proposal for ongoing review and comment and create a record of the session.

Without agreeing or acquiescing to a proposed option that has been generated by a teammate or counterpart, you can gain valuable information and expose potential weaknesses by asking the contributor, “How did you arrive at that solution or proposal? What is it based upon? Is there a factual, scientific, or other objective basis for your proposed option?”

If the presenter can offer further evidence or criteria in support of their proposal (or if you can in response to a similar question) the information shared may be useful in winning support from constituents or superiors who may be skeptical. The further information or lack thereof can fortify or reduce the value of a proposed option.

**i. Cross-cultural Dynamics, Gender, and Language**

International negotiations necessarily involve cross-cultural interactions that may affect the flow of a negotiation and the understanding of various parties to process, proposals, and agreements.

In the field of international trade law and practice, a diplomatic culture has developed which has served to minimize some of the barriers that cross-cultural dynamics may pose in business or other non-governmental negotiations. Diplomatic culture can be described as the universal culture of professional diplomats who often speak in a common language (English, French, Spanish) even if that language is not the diplomat’s native language. Diplomats often maintain common habits associated with international diplomacy including western dress, common educational backgrounds, and familiarity with procedures and protocols associated with international law or rule-making.

But, even those who present themselves as part of this diplomatic culture may maintain strong cultural identification and habits with their native culture. Culture is manifest in many ways including orientation to time, decision-making process, formality of negotiation process, formality of decisions (oral agreement vs. written contract.), importance of age, language, preferences and attitudes toward food, music, sports, body language, etc. Combined with cross-cultural issues that may affect the negotiation process is the difference in the role of men and women in various cultures. Gender dynamics may be of little importance or of profound significance depending upon the culture.
Language and the choice of language used in international negotiations is also an important variant in the potential success or failure of a negotiation process. Today, the diplomatic culture increasingly relies on English as the common language for intergovernmental negotiations. This may, of course, vary if all participants are South European, Latin American or from a Francophone country or the former Soviet Union. The important lesson to be learned with respect to language as a variant in international negotiations is that people possess varying degrees of fluency. If a person is not negotiating in their native language, the potential for misunderstanding increases.

Negotiators often are confused or misunderstand the intent of a counterpart negotiator even when negotiating in a shared common language. When negotiating with a party or parties who do not share a common language, the potential for misunderstanding increases. Even with skilled, professional interpreters, a literally accurate interpretation may not convey the intent or nuance of the speaker.

How can a negotiator be sure that his/her words are being understood as they are intended? Speaking slowly, rephrasing what the counterpart negotiator has said in the negotiator’s own words, reviewing written text, and use of interpreters (oral) and translators (written) represent non-exclusive options to minimize error or misunderstanding.

j. Dealing With Dirty Tricks and Ultimatums

Most serious negotiators bring a level of sophistication and professionalism to the negotiating table, but there are always circumstances where a desperate or aggressive negotiator will employ dirty tricks, ultimatums, or intimidation.

The key to dealing with unprincipled negotiators is to recognize and identify the tactics being used. By being mindful of the types of tactics that are sometimes used, you can evaluate the impact that such tactics are having on the negotiation process and utilize one of the following techniques:

1. Identify and focus on the tactic. Explain to the counterpart that you do not appreciate intimidation, abusive language, or ultimatums. You can also convey that you remain fully prepared to continue in a good faith negotiation but will not accept conduct that is disrespectful or designed to intimidate. In many instances, identification of the perceived tactic will result in a denial by the counterpart, but often you will realize a change in behavior as well. By clearly articulating what you perceive to be unacceptable behavior changes the atmosphere of the negotiation and registers that you will not succumb to such tactics.

2. Utilize counter-tactics to counteract the behavior. In the face of an ultimatum (a “take-it-or-leave-it” offer), you can request a break to review the offer. Return to the table to draw the party back into the negotiation by asking them how they arrived at
that final offer. Use questions to draw the counterpart back into the game of a give and take negotiation.

3. Make contact with the counterpart’s superior. In the most egregious case of disrespectful, demeaning, or insulting attacks by a counterpart, indicate that you will not participate in a negotiation where such behavior is manifest. A party can refuse to continue in a negotiation where such tactics are employed and contact the offending official’s superiors to request that the offending personality be replaced at the negotiating table before you will continue in the process.

4. Demand respect for your team. By treating counterparts with a modicum of respect you can appropriately demand that respect be reciprocated.

Often, the tactics described above reflect the conduct of a highly emotional, defensive, and inexperienced negotiator. While such tactics may have worked in some instances, you need to make it clear that such conduct is unacceptable in the present negotiation.

k. Building a Reputation

At the end of the day, a negotiator will be evaluated as fair or untrustworthy. If you gain a reputation as being unfair or unprincipled, this reputation will follow you and will be difficult to overcome. There is a difference between appearing tough but principled, and being unscrupulous and unprincipled. You build your reputation as a negotiator in large measure by your ability to follow-through and implement commitments made during negotiations.

As discussed earlier, building rapport and a good working relationship with counterparts will generate long-term benefit. Remember, that you are dealing with people who have their own professional aspirations, honor, and pride. Often, the key ingredient in building a strong working relationship is to build a friendship away from the negotiating table. Sharing meals, gifts, and providing hospitality to negotiating partners who have journeyed to your city will translate into more productive work at the negotiating table. Your ability to reach out to the people at the table, regardless of the severity of conflict between principals, demonstrates a maturity and confidence that will win respect and help the parties to navigate the difficult terrain of the negotiation.

l. Creating a Win-Win Mentality

Bilateral negotiations aimed at the mutual reduction of trade barriers take place in an overall win-win framework, but they inevitably involve gains for some domestic stakeholders such as exporters or domestic consumers of imported products, and losses for other stakeholders such as domestic producers of competitive products in each country. Negotiators on both sides are expected to maximize the gains and to minimize the losses for their side. While economists would argue that both sides gain, whatever the impact on winners and losers in each country, the political economic reality is that losers
are often in a position to block outcomes that do not take into account their interests. While winners can always trump losers where the potential gains a large enough, it is useful in a democratic society to persuade losers that the outcome is just. This usually means accommodating them in some way, while persuading them that a successful negotiating outcome is in the interests of the country as a whole. A good negotiator is able to gain their support through a combination of offers and threats – an offer to make less of a cut in the trade barrier than might be possible if they acquiesce and a threat to ignore their interests if they chose to oppose the agreement actively.

Negotiations over the mutual reduction of trade barriers thus always involve hard bargaining, both at home and internationally. In light of the stakes for winners and losers, they inevitable take on a zero-sum mentality. Negotiators in such situation must always remind themselves that the desired outcome is a win-win solution for the country as a whole, consistent with an acceptable distribution of gains and losses among stakeholders. The challenge of the negotiator is to achieve such an outcome for both sides, since both sides have to be satisfied with the outcome. The role of the negotiator is to let the other side know what is required to achieve a successful outcome, both in terms of the expected gains for exporters and what would constitute unacceptable losses for import competing industries. Equipped with information about each side’s needs, the two negotiators then have the task of identifying an outcome that will maximize the potential increase in trade, while meeting the domestic political requirements of each side.

The most important requirements for a successful outcome in such negotiations are a detailed analysis of the interests of stakeholders in both countries, and comprehensive consultations with affected stakeholders on desired and achievable results. Good information about stakeholder interests in the other country will strengthen a negotiators hand in negotiations with counterparts, and provide the raw material for developing win-win solutions. Consultations with stakeholders will earn the negotiator the support of stakeholders when the negotiated agreement is tested politically at home.
IX – Conclusion

Success in negotiations, whether on services or any other issue, depends not only on innate bargaining skills and on the power of the countries involved, but also on a detailed and comprehensive analysis of the issues, persuasive oral and written communication skills, and the ability to build alliances. These are skills that can be learned and mastered by any competent professional in the field, and when even a relatively small country has provided the necessary training for its trade negotiators, they are able to have considerable influence on any negotiating outcome.

Successful negotiations follow certain guidelines that create an atmosphere of trust conducive to a search for win-win solutions and an orderly sequence for addressing the full range of outstanding issues in a negotiation. When these guidelines are followed by the participants in a negotiation, they create a positive feedback loop that adds a dynamic momentum to the negotiating process.

The challenges involved in services negotiations are great, because barriers to trade in services are enmeshed in domestic regulations. In services an orderly process for sorting out the issues is therefore especially important, because such negotiations inevitably touch on issues considered the sovereign prerogative of any national government to protect its consumers and the smooth functioning of its domestic economy.

Notwithstanding the challenges, negotiations on services have become extremely important for economic growth because the efficiency of all economic activity and the competitiveness of a country’s manufacturing sector in the globalized, information-technology based economy of today depends on the efficiency of a country’s services sector.
Further Readings


Monning, William and Feketekuty, Geza. *International Trade Negotiations: A Training Manual*, draft manuscript available through the Internet at www.commercialdiplomacy.org/Instructional Modules


Summary Points

1 Trade in services has become a key topic for trade negotiations, and will become even more important in the future. Globalization is knitting together the services component of national economies, and technological change is rapidly increasing the proportion of value added and employment that is generated through the services component of the economy.

2 Typically trade officials do not have direct policy responsibility for measures that affect international trade or investment in services. Trade officials therefore are usually cast in the role of intermediaries with the regulatory officials responsible for the formulation and administration of the regulations involved. This means that trade officials typically have to involve themselves in two sets of negotiations – internal and external negotiations. While the home government typically faces internal negotiations with the affected enterprises, the host government faces internal negotiations with regulatory officials in the home government.

3 Negotiations on technical regulatory issues are best carried out directly between regulatory officials. Negotiations that require advocacy on behalf of a home country’s enterprise vis-à-vis foreign governments are best carried out by trade officials. Negotiations that are aimed at facilitating specific international transactions through adjustments in the administration of specific regulatory measures requirements are best pursued through bilateral consultations or negotiations, while issues that require changes in national legislation are best carried out through formal, multilateral negotiations within a trade framework.

4 Negotiations between countries on a particular issue normally follow an orderly sequential process, starting with direct contacts between affected enterprises and the host government, followed by bilateral negotiations, and ultimately multilateral negotiations or dispute settlement. Such a process provides for the most efficient means for addressing trade-negotiating issues. The sequential process serves as a filtering device. Issues that are less difficult and less important are dealt with at a junior level of the government, while more senior officials or political leaders address the more intractable issues that raise difficult political or legal problems.

5 Negotiations on trade in services in the WTO focus on specific commitments by individual national governments and on rules that apply to all member countries. Countries negotiate specific national commitments bilaterally, with each country negotiating with every other member of the WTO. However, every country must extend the commitment made to any one country to all other countries that belong to the WTO.

6 A good negotiating outcome requires extensive analysis of (a) the commercial issues at stake for all sides, (b) the economic impact on the respective countries, (c) the trade-related domestic policy issues, (d) the domestic laws and regulations
and the international trade rules that apply to the case, and (e) the key
stakeholders, their views on the issues and their political influence. Stakeholders
are groups in society, both inside and outside the government, who will be
affected by the negotiations and therefore have a stake in the negotiating outcome.

7 Process in trade negotiations is as important as substance. For example,
involvement in the preparation of negotiations is as important to stakeholders as
the achievement of favorable negotiating outcomes. Stakeholders included in the
process not only gain a better understanding of the issues from a national
perspective, but also develop an appreciation of the willingness of negotiators to
listen to their views and to consider their interests in the negotiations, even if at
the end of the day their interests are not fully satisfied.

8 In assessing the country’s competitive strengths and weaknesses, a country must
openly confront any competitive weaknesses that result from the country’s own
regulations. Onerous regulatory requirements may prevent the country’s
enterprises in a particular sector from increasing the economic efficiency of its
operations or from introducing new and more competitive services and marketing
techniques.

9 In order to negotiate successfully, it is as important to understand the interests and
problems of negotiating partners as the home country’s interests and problems. A
successful negotiation requires that both sides to an agreement have to be satisfied
that it meets their economic interests. Becoming familiar with the interests of
negotiating partners allows negotiators to address the needs and problems of
negotiating partners. Both in their arguments and in the development of proposals.

10 A statement of negotiating objectives can provide a sense of direction for the
negotiations. A negotiating strategy provides a road map for getting to the desired
negotiating goal. A negotiating proposal is designed as the first step in engaging
others involved in the negotiation in a dialogue. All three documents also provide
a common frame of reference for the country’s negotiating team and their
stakeholders, facilitating dialogue and collaboration.

11 A negotiator’s bargaining strength inside the negotiating room is determined as
much by the number of stakeholders at home and abroad who support the
negotiator’s preferred negotiating outcome, and by the degree to which the wider
stakeholder community considers the proposals to be legitimate and fair, as it is
by economic power. Support is built through the formation of coalitions and
legitimacy is built through public dialogue with policy experts, the press and the
public at large.

12 A few talented individuals can devise and implement successful strategies if they
have the requisite knowledge and skills. Most countries have charismatic,
knowledgeable and energetic individuals who can be successful in influencing
others and in building coalitions.
13 A negotiating proposal represents the opening position in a negotiation. It should be designed to evoke responses from negotiating partners and thus to frame the negotiations.

14 In trade negotiations, buying power equates to negotiating power. Even large countries may have only limited amount of negotiating power if the value of their imports is relatively small. On the other hand, even a small country can exert considerable negotiating power if it is a significant importing country. What a country cannot achieve on its own through a large volume of trade, however, it may be able to achieve as part of a coalition of countries that together can exert considerable negotiating clout.

15 Negotiating instructions should set out the country’s opening position for the negotiations, and spell out the flexibility that can be exercised by the negotiators. As a general rule, negotiators should be given some degree of flexibility in exploring possible negotiating outcomes, but only limited degree of flexibility to agree on an outcome that substantially differs from the negotiating position outlined in the instructions.

16 An opening statement is an important “first intervention” in a formal negotiation, working group, or conference setting. The opening statement provides parties with an opportunity to identify key issues and interests as well as to articulate parameters for potential agreements. The opening statement also provides a platform for a subsequent exchange of clarifying questions on the respective positions and the underlying interests of the parties.

17 One of the key elements to effective negotiations is the development of multiple options or solutions to satisfy party interests. The best negotiators distinguish themselves by their ability to create and generate multiple options in both the planning stage and at the negotiating table. This is the area of interest-based negotiation where a negotiator’s creativity and capacity to think beyond a single solution is paramount.

18 The most confident negotiators use the art of active listening to enhance their understanding of what others are saying in the negotiations. Active listening includes the act of communicating to counterparts that you have heard what they said. By communicating understanding the negotiator is not accepting or acquiescing to the counterparts’ proposal, but communicating that he or she has heard what was said. Combined with the skill of active listening is the skill of asking questions. Asking for information or clarification conveys interest and a willingness to understand the other party’s interests.
Questions for Discussion

1. What are the various venues in which issues related to trade in services are negotiated?

2. How are negotiations on trade in services in the WTO organized?

3. What is the ideal sequence of events in addressing an individual services trade issue with another country?

4. What kind of information should a negotiator assemble before sitting down at the negotiating table?

5. Why is information and analysis so crucial to a negotiation?

6. Why is commercial analysis crucial for the preparation of negotiations on services trade issues?

7. Why is policy analysis crucial for the preparation of negotiations on services trade issues?

8. Why is legal analysis crucial for the preparation of negotiations on services trade issues?

9. Why is political analysis crucial for the preparation of negotiations on services trade issues?

10. What information resources required for effective participation in negotiations is generally available to anyone, including resource poor countries?

11. Who are the stakeholders in a negotiation and why is their involvement in the negotiating process so crucial?

12. Why are extensive consultations with stakeholders at home crucial to a successful outcome to a negotiation?

13. Why is it useful to know as much about the interests of foreign stakeholders as of the interests of domestic stakeholders?

14. What is the difference between the interests and the positions of a negotiating partner and why is that difference so crucial?

15. What is the difference between positions and statements of beliefs by negotiating partners and why is that difference important?
16. What is the role of statement on negotiating objectives and what should be the content of such a statement? How detailed should it be?

17. What is the role of good negotiating strategy? What are the components of a good negotiating strategy?

18. What is the role of a negotiating proposal?

19. What are some good habits for success in negotiations?

20. How should a negotiation be structured to facilitate progress in the negotiation?

21. How can a small, less powerful country prevail in a negotiation?
Negotiating Resources for Countries

The following are some of the resources available to countries that wish to strengthen the negotiating skills of their trade officials, or that seek assistance on some of the negotiating issues they are seeking to address in the WTO services negotiations or other negotiating forums.

World Bank

The objectives of the World Bank Institute’s program of assistance in trade are to assist member countries in (i) the development of sound national trade policy; (ii) their capacity to participate effectively in the WTO; and (iii) their understanding of the benefits and costs of increased openness. The Institute is targeting three audiences: researchers and trainers, policy advisors and negotiators; and civil society and the private sector.

To respond to the widely felt need for more research on trade in services—especially on issues of interest to developing countries—the World Bank has launched a work program on trade in services. The program aims to generate and draw together data and research, with the objective of improving services trade policy formulation and facilitating the services negotiations at the WTO. This program is supported in part by the United Kingdom Department of International Development, and will supplement the sector-specific work that is already taking place in the World Bank on telecommunications, finance, transport and other services sectors.

One of the central components of the program is the creation of a database on measures affecting trade in services. Other components include policy research projects, which are expected to result in a series of conceptual and empirical papers. The database and the papers will be disseminated through this website, seminars, workshops, and conferences in 2000-2002.

http://www.ibrd.org

WTO

The WTO offers a number of training courses for government officials and a number of on-line courses for the general public. The following courses are offered:

- **Regular three-month Trade Policy Courses** conducted in English, French and Spanish. These courses are open to government officials from developing countries, least-developed countries, customs territories and economies in transition who are members or observers of the WTO or are in the process of applying for membership.
• **Three-week Introduction to the WTO for LDCs** conducted in English and French. These courses are open only to government officials from least-developed countries.

• **Two-week Specialized Courses.** The topics of these courses vary: trade negotiation skills training, regionalism, agriculture etc. Participation also varies according to the topics or type of training. Invitations are sent to targeted groups of officials.

• **One-week Dispute Settlement Courses** conducted in English, French and Spanish. These courses are open to developing countries, least-developed countries, customs territories and economies in transition which are members or observers of the WTO and also developed countries.

• **One-day Introduction Courses to the WTO** conducted in English with interpretation into French and Spanish. These courses are intended for delegates newly arrived in Geneva, non-governmental organizations, as well as staff members working in the WTO Secretariat or the other Geneva-based International Organizations.

• **New! WTO eTraining** provides on-line training courses using distance learning technologies and allowing interaction between the participant and WTO tutors. The opening course “WTO Multilateral Trade System and its Basic Principles” will be conducted in English. It will also be available in French and Spanish. This course is only open to officials designated by developing countries, least-developed countries, customs territories and economies in transition which are members or observers of the WTO.

The WTO also provides technical assistance, which is designed to assist developing and least-developed countries and low-income countries in transition to adjust to WTO rules and disciplines, implement obligations and exercise the rights of membership, including drawing on the benefits of an open, rules-based multilateral trading system.

[http://www.wto.org](http://www.wto.org)

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**Doha Development Agenda Trade Capacity Building Database (TCBDB).**

The TCBDB has been established by the WTO jointly with the OECD to provide information on trade-related technical assistance and capacity building projects. It covers national as well as regional projects. It is an on-going activity and the Second Joint WTO/OECD Report on Trade-Related Technical Assistance and Capacity Building was circulated in July 2003. At present, the period of coverage is 2001, 2002 and partial 2003. Data is reported from bilateral donors and multilateral/regional Agencies.
A search of the database can be performed either by trade category or beneficiary country or donor country or agency. The statistical analysis option allows quantitative analysis of trade capacity building data by these categories. The TCBDB can be accessed through either the World Bank or OECD websites.

http://www.wto.org or http://www.oecd.org

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UNCTAD

UNCTAD has long experience in providing advice and training to build up the capacity of countries in international trade negotiations so as to enable them to better integrate in the international trading system. Support is also provided for regional trade and regional integration arrangements. It has provided assistance to developing countries in practically all GATT trade rounds, and in subsequent negotiations within WTO.

In the area of services, UNCTAD provides support to developing countries and countries with economies in transition to develop national policy-making capacity for the service sector, and to support regional integration in trade in services. UNCTAD also provides support to multilateral negotiations on trade in services, identifies trade interests in specific service sector through national sectoral studies on services and advises on reform of domestic services and opening of markets within the new multilateral trading system for services.

The Commercial Diplomacy Programme encompasses:

- **Training** for trade negotiators of developing countries and economies in transition, particularly in WTO on-going negotiations, from the development perspective;
- **Capacity-building** for research and training institutions so as to enhance their own capabilities in studying and addressing issues in the field of international trade from a development perspective;

Training and capacity-building events take place at the national, sub-regional and regional level in developing countries, as well as in Geneva, using a tailor-made approach based on recipient countries' needs. Other aspects of support to developing countries in the field of international trade include:

- **Technical advice** concerning WTO accession and multilateral trade negotiations, as well as assistance to developing countries in their own economic co-operation and integration efforts and assessments concerning the impact of Uruguay Round negotiations;
- **Dissemination of trade data** through the Trade Analysis and Information System (TRAiNS) on CD-ROM. TRAiNS contains what probably is the most comprehensive data available on tariff schedules, para-tariff measures, and non-
tariff measures worldwide. It also contains detailed import statistics by origin. The software, which integrates a simulation module (SMART), has been upgraded in 2002, in cooperation with the World Bank;

http://www.unctad.org

Institute for Trade and Commercial Diplomacy

The Institute for Trade & Commercial Diplomacy (ITCD) develops and publishes instructional material in Commercial Diplomacy – These include information about curricula and courses, instructional modules, case studies, simulations, operational documents reflecting best professional practice, and a guide to resources available elsewhere. ITCD also works with other organizations involved in the development of training materials or in the establishment of new training programs in Commercial Diplomacy. Most of the material developed by ITCD is published on its web site and is publicly available free of charge, provided its source is acknowledged and it is not used commercially. ITCD retains copyright to this material, and is happy to license it for commercial use for a fee. The various program elements and their rationale are described below.

1. Comprehensive Model Commercial Diplomacy Curriculum, including Course Outlines

ITCD publishes information describing the content, rationale, and teaching philosophy underlying a comprehensive professional training program in Commercial Diplomacy. Over time currently available materials will be expanded, upgraded and updated by adding new courses, by customizing the basic curriculum for different training needs, and by improving the quality of the model.

ITCD’s goal is to provide a model for universities, professional training institutes, corporations and government ministries that would like to establish training programs in Commercial Diplomacy, thereby facilitating and lowering the cost of establishing such new programs. ITCD also hopes to provide a focus for pooling the cumulative professional experience and insights that can be obtained from existing programs in the field.

2. Instructional Modules for Courses in Commercial Diplomacy

ITCD develops instructional modules, each of which will eventually include slide presentations, talking points, teaching notes, other supporting materials, and a study guide. As additional funding becomes available, these modules will be augmented with new technologies such as interactive Internet modules, CD-ROMs, and video presentations. Ultimately, ITCD expects to develop textbooks on how to manage trade negotiations and make trade policy.
ITCD’s goal is to assist institutions interested in developing training programs in Commercial Diplomacy, and to upgrade available teaching materials in Commercial Diplomacy to a level of quality comparable to those available in business management and public administration programs. ITCD also hopes to contribute to the professionalization and broader public recognition of this new area of academic training.

3. Case Studies of Past Decisions in Commercial Diplomacy

ITCD develops and publishes case studies of past decisions in Commercial Diplomacy. To date, very few trade case studies exist at all, and even fewer are written from the point of view of someone responsible for managing the trade policy making and negotiating process. Case studies in Commercial Diplomacy are built around historically important or particularly interesting trade problems and demonstrate how they were addressed through advocacy programs, legislation, negotiations or dispute settlement. Case studies developed by ITCD will cover a wide range of issues, countries, industries, types of negotiations, method of dispute settlement and approaches to public advocacy.

The case study approach, like that used in Harvard’s Executive Training programs, is effective in teaching the operational aspects of Commercial Diplomacy. They provide insights into the political and economic strategies that were employed by industry advocates, politicians and government officials. Furthermore, they give both students and professionals a way to learn from past successes and mistakes. Case studies afford the critical opportunity to ask of past trade negotiations what went well, what didn't, and what could be improved? Such an analysis is rarely, if ever, conducted. Distribution of these studies to current practitioners in the business community and the government will enable them to reflect on past negotiation successes and failures and improve their performance in future trade negotiations.

4. Simulations

Simulations of negotiations and dispute settlements are a core part of a hands-on-approach to professional training in Commercial Diplomacy. They provide a nuts-and-bolts perspective that is an excellent way to train trade professionals. Simulations teach students how to integrate material from different knowledge areas such as business, economics, politics, law, culture, public policy and science; how to simplify and focus complex issues to the priority issues; and how to make decisions in the face of imperfect information and the time pressures typical in the real world. Simulations teach not only the art of negotiation, dispute settlement and public advocacy, but also how to use research to pull together information relevant to these processes. By choosing a current conflict, students have access to a rich base of contacts, the Internet and other research sources, and can thus see how research can be used to influence the direction or outcome of negotiations.
5. Inventory of Operational Documents in Commercial Diplomacy, Reflecting Best Professional Practice

ITCD collects sample operational documents such as public policy statements, strategy papers, briefing memoranda, press releases, cables, public testimony, and speeches that reflect best professional practice in the field. Over time, the inventory will be expanded to include documents representative of a wide range of countries and cultures, and cover the full range of issues addressed by commercial diplomats.

The preparation of operational documents is an essential part of professional training in Commercial Diplomacy. It requires students to integrate what they know and their analysis of an issue within the operational context of the documents that are the essential tools of Commercial Diplomacy. Operational documents developed by experienced professionals are an essential teaching tool. It gives students an idea of what such a document looks like, what it contains, and what makes it effective. Students also learn how different countries and cultures handle similar tasks.

6. Guide to Information Resources in the Area of Commercial Diplomacy Available Electronically on the Internet and in Hard Copy

ITCD collects and published information about training and information resources in the area of Commercial Diplomacy available from the Internet and other public sources.

Teaching students where relevant research materials can be obtained is an important part of a training program in the field. Commercial Diplomacy requires practitioners to assemble information and analytical material on a wide range of subjects, frequently on short notice, and the information published on this web site can serve as a starting point for student research efforts. The guide also provides information about training materials in the field that are available from other sources, thus giving instructors a wider choice of materials.

http://www.commercialdiplomacy.org

Advisory Centre on WTO Law

The Advisory Centre on WTO Law is a public international organisation independent of the WTO that was established in 2001 to provide legal advice on WTO law, support in WTO dispute settlement proceedings and training in WTO law to developing countries and customs territories, countries with economies in transition and least developed countries.

The ACWL conducts three types of training programmes- a regular course on WTO law and procedures, the hosting of an annual lecture on dispute settlement issues and occasional seminars.
Each year, the Centre offers a six-month course on WTO dispute settlement procedures and jurisprudence to government officials from developing countries or customs territories, economies in transition and the least developed countries. The course take place at the premises of the Centre on Thursdays from 1 to 3 p.m. from October to March of the following year. A light lunch is provided for the participants. In April 2003, the Centre completed its first course on WTO dispute settlement procedures. The course was well attended. 20 officials were awarded the Centre's "Certificate of Training".

In October 2003, the Centre launched its second training programme with a course on the basic principles of WTO law through a detailed review of the most important rulings of WTO panels and the Appellate Body. This course is regularly attended by about 30 officials.

http://www.acwl.ch/e/index_e.aspx

AITIC

What is AITIC?

AITIC is an independent organisation, based in Geneva, whose goal is to help less-advantaged countries (LACs) to benefit from the globalisation process in general and the multilateral trading system in particular by assisting them in taking a more active part in the work of the World Trade Organization (WTO) and other trade-related organisations in Geneva, as well as the negotiations under the auspices of the former.

For whom is AITIC intended?

For the delegates in Geneva of the less-advantaged countries. The LACs are those countries which have not had a traditionally active participation in the multilateral trading system. These countries face structural and institutional constraints as regards international trade. The LACs include the 49 least-developed countries (LDCs), as defined by the United Nations, several low- and middle-income developing countries, and several economies in transition. Most of these countries have small missions and not enough human resources to be able to closely monitor the work of the trade-related organisations in Geneva. Consequently, their participation and voice in these organisations has been weak.

Who needs AITIC?

Delegates in Geneva (or neighbouring capitals) who need personalised assistance on trade-related issues; who seek specific information on subjects of interest to them; or who would like to discuss their trade interests, concerns and needs with like-minded partners
in an informal way. Through personalised services, AITIC can enable diplomats to become familiar with relevant trade issues.

Who's behind AITIC?

This agency was set up by the Federal Office of External Economic Affairs (OFAEE), transformed today into the State Secretariat for Economic Affairs of the Swiss Federal Administration. At present it is financed exclusively by the Swiss government. Other governments and aid agencies, interested in exploring original and effective ways of promoting the participation of the less-advantaged countries in the international trading system, and forestalling their growing marginalisation, are prospective associates.

Why AITIC?

Although there are other larger, well-established trade-related organisations seeking to promote the integration of developing countries in the international trading system, AITIC has established a niche in catering for the delegates present in Geneva and neighbouring capitals. These delegates, who are at the forefront of the international trade battlefield, need prompt and efficient responses to their individual needs. This kind of assistance, however, is difficult to obtain from large organisations, with well-established long-term programmes. As a small, flexible, non-bureaucratic agency, AITIC reaches the parts that other trade-related organisations cannot reach.

What are the services offered by AITIC?

The agency offers Briefing Notes on trade-related subjects on which delegates need concise and up-to-date information (e.g. ministerial meetings, electronic commerce, rules of origin, textiles, customs valuation, etc.). It organises workshops and training seminars on issues which are of prime interest to delegates and on which forthcoming negotiations are to take place. AITIC has already organised (sometimes with the collaboration and support from other institutions) several seminars on subjects of interest to the LACs and from their perspective, such as agriculture, textiles, electronic commerce, or the WTO's dispute settlement mechanism. In addition, AITIC holds regular informal meetings more targeted to participants with particular interests, e.g. the economies in transition on the eve of the Third Ministerial Conference in Seattle, or the difficulties faced by the least-developed countries in their process of accession to the WTO. Specifically, what is the kind of personalised assistance AITIC can provide?

- A delegation in Geneva only has one trade specialist who has a heavy schedule of meetings throughout the different organisations. AITIC helps him or her to identify priorities.
- In a similar situation, AITIC draws up an analysis on a given topic that the country in question has not followed in the past.
- AITIC responds to individual requests from countries not having representation in Geneva, enabling them to enter into contact with appropriate officials in relevant
organisations, or the already existing technical assistance available to them from other organisations.

- A group of countries sharing a common trade concern want an informal forum to


The Research and Information System for the Non-Aligned and Other Developing Countries (RIS)

The Research and Information System for the Non-Aligned and Other Developing Countries (RIS) is an autonomous research institution under the Ministry of External Affairs, Government of India. Established in 1984, RIS is India’s contribution to the fulfilment of the long-felt need of the developing world for creating a ‘Think Tank’ on global issues in the field of international economic relations and development cooperation. RIS has also been envisioned as a forum for fostering effective intellectual dialogue among developing countries.

RIS is also mandated to function as an advisory body to the Government of India on matters pertaining to multilateral economic and social issues, including regional and sub-regional cooperation arrangements, as may be referred to it from time to time. RIS functions in close association with various governmental bodies, research institutions, academicians, policy-makers, business and industry circles in India and abroad. RIS has conducted policy research and other activities in collaboration with other agencies, including United Nations-Economic and Social Commission for Asia and Pacific (UN-ESCAP), United Nations Conference on Trade and Development (UNCTAD), United Nations University (UNU), Group of 77, Non-Aligned Movement, SAARC Secretariat, Asian Development Bank (ADB), The World Bank, and the South Centre.

The work of RIS covers research studies, policy advice and consultations provided to policy makers in national and international organizations, conferences and seminars organized to foster analytical debates, capacity building through training of policy makers, nurturing effective networking and conducting collaborative research studies with various national policy think tanks and international organizations, and a publication programme designed to disseminate its work among the policy makers and foster debate.

[http://www.ris.org.in/index.html](http://www.ris.org.in/index.html)
Exercises

The following exercises are designed to give students an opportunity to apply the negotiating skills covered in this module, and the knowledge of substantive issues covered in earlier modules. There are three simulations, as follows:

Simulation #1 involves a negotiation of a free trade agreement between two fictitious countries. The two countries have resolved all but two issues, and now must resolve the last two issues. The simulation consists of a common fact sheet, and confidential negotiating instructions for the two parties, which are available only through the teaching notes available for instructors. This simulation should take no more than 1 hour.

Simulation #2, involves a request/offer negotiation among four fictitious countries under the umbrella of the GATS. It assumes knowledge of the basic rules of the GATS and the structure of national schedules. The simulation consists of a description and the national GATS schedule of each of the four countries, and a confidential set of negotiating instructions to each of the four countries, which are available only through the teaching notes. It should be possible to complete this simulation in 1 to 2 hours, depending on the familiarity students have with the subject matter and the amount of time that is allotted to the bargaining process among the participants. However, it would also be possible to extend the simulation to 1 to 2 days.

Simulation #3 also involves a request/offer negotiation among the same four fictitious countries as in simulation #2. Simulation #3 add a new twist by introducing private and other public stakeholders, and instead of being given their negotiating instructions, students have to work out their negotiating instructions in consultation with their respective stakeholders before they can sit down and negotiate with the other countries.

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9 Other useful exercises are found on the website of the International Commercial Diplomacy Project, Inc., www.commercialdiplomacy.org, including a simulation of a request/offer negotiation among four hypothetical countries at different stages of economic development.
**Exercise #1 – Simulation of Negotiations Between Two Countries**

This simulation involves negotiations between two hypothetical countries, Novartis and Sunderland, which have been negotiating a free trade agreement. They have resolved all the issues in the services chapter except two issues that are described in the section on *Common Facts* below. The instructor organizing the simulation will give participants simulating the role of negotiators for each of the two countries confidential instructions at the start of the exercise.

**Common Facts**

Novartis and Sunderland have been negotiating a free trade agreement, and they have resolved most of the issues. Novartis is a large developed economy, and Sunderland is an advanced developing economy about one tenth the size of Novartis.

There is an extensive economic relationship between the two countries, as a result of a large immigrant population from Sunderland in Novartis, extensive investments by Novartis companies in Sunderland. Sunderland is also an important tourist destination for Novartis citizens, who are a major source of income in Sunderland. Both Novartis and Sunderland have been plagued by unemployment problems, which has created some sensitivities. Despite the unemployment problem, however, Novartis continues to have a shortage of workers in some industries such as the hospitality and food processing industries. A large number of students from Sunderland study at universities in Novartis, and often stay an additional period of time under professional training visas.

There are two major sticking points, which have to be resolved in order to conclude the agreement. The President of Sunderland is scheduled to visit Novartis in two weeks, and the two Presidents would very much like to sign the agreement. Very considerable political pressure has been put on the two negotiating teams to come up with an agreement.

One of the two issues that remains unresolved is the desire of Novartis to gain access for its banks, which are highly competitive, and are at the technological frontier in the application of information technology, including the use of ATM machines. Support by the banking industry is essential for legislative approval of the agreement, since the banking industry is quite powerful politically. Sunderland has indicated that the liberalization of banking services is nonnegotiable. The banks in Sunderland are concerned about going out of business if they had to compete with the Novartis banks. Moreover, the Finance Ministry and the Central Bank are concerned that they would not have the same degree of effective control over capital outflows if foreign banks were allowed to establish themselves.

The other major issue that remains unresolved is the request by Sunderland for an increased number of business visas. Sunderland has a large number of extremely well trained university graduates who have not been able to find jobs, and work in other
countries by these professionals has not only proven to be an important source of income, but also an important means for keeping social discontent by this articulate element of the population at a tolerable level. The limitations Novartis has placed on the number of business visas granted each year has cut off many of these opportunities, and Sunderland is concerned about the possible disruption of social stability. The number of visas has been limited under pressure from the Novartis legislature and the country’s unions, for whom this is a fundamental issue. All out opposition from these groups could sink the agreement.
Simulation #2 – Request/Offer Negotiations Among Four Countries

This simulation involves request/offer negotiations among four hypothetical countries under a GATS framework. The four countries are Northland, Southwestland, Southland and Eastland. They are structured to incorporate features of a developed country, an advanced developing economy, a developing economy and a transition economy. It is assumed that consultations with private stakeholders and discussions inside the government have led to the development of a set of request lists, which the instructor will hand out to each of the negotiating teams at the beginning of the exercise.

The simulation will begin with an exchange of requests among the negotiating teams representing each of the four countries. Each team then needs to develop an offer list for each of the other three country teams. Since GATS rules apply, however, any commitment negotiated with any one of the other three countries has to be extended to the other two at the end of the negotiating process.

In developing the offer to the three other countries, each country negotiating team should be guided by the country write-up and the existing national schedule for its own country, all of which are found in the appendix to Simulation #3. The offers should be framed in terms of possible entries into the country’s national schedule, by sector, by mode of supply and by type of commitment (market access, national treatment, or other).

Each country will deploy three negotiating teams. In total, therefore, this simulation will require nine separate negotiations. This simulation will take at least an hour and a half, and within that time frame the instructor will not be able to allow much time for coordination among the three country teams during the course of the negotiation. If more time is available, the instructor should call for periodic breaks in the negotiations to allow for consultation and coordination among the three negotiating teams that represent each country, since at the end of the process all offers have to be consolidated into a single national schedule.
Simulation #3 – Request/Offer Negotiations Among Four Countries, After Consultations With Private and Public Stakeholders in the Home Country

This simulation involves request/offer negotiations among the same four hypothetical countries as in Simulation #2. Simulation #3 differs from Simulation #2 in as much as the negotiators have to develop the request lists that will start off the negotiations on the basis of consultations with a number of private stakeholders and public stakeholders from other government ministries. The list of stakeholders for each country is attached below. The instructor will give each of the stakeholders, including the representatives of the Trade Ministry who will lead the negotiations, individual confidential instructions.

In the first phase of the simulation, all the stakeholders from each country will discuss the development of the requests that will be submitted to each of the other three countries. After the exchange of requests, the all the stakeholders from each country will get together again to submit a set of offers.

When negotiations begin, the country team members representing the government will split up to negotiate with their counterparts from the other countries. In the meantime, the private stakeholders will talk to their counterparts from the other countries to collect information and to test out possible negotiating outcomes.

The instructor will call for periodic breaks in the negotiations to allow country team members to share information about the course of the negotiations with their private stakeholders, and to obtain their consent for a substantial changes in the negotiating outcome from what was contemplated in the initial requests and offers. The breaks will enable the three negotiating teams that represent each country to consult and coordinate with each other, since at the end of the process all offers have to be consolidated into a single national schedule.

As in the case of Simulation #2, GATS rules apply, and any commitment negotiated with any one of the other three countries has to be extended to the other two at the end of the negotiating process. The offers should be framed in terms of possible entries into the country’s national schedule, by sector, by mode of supply and by type of commitment (market access, national treatment, or other).

This simulation will take at least a full day in order to get the full value of the experience, though it could also be structured to take a longer period of time, allowing team members to delve more deeply into the substantive issues that need to be addressed in the negotiations.
Part I – Stakeholders Participating in the Negotiations From Each Country

South Land – Developing Country

Government Ministries

Trade Ministry
Telecom Ministry
Finance Ministry

Private Stakeholders and Publicly Owned Enterprises

Information and Professional Services companies
Public Telecom Monopoly
Local Financial Services Industry
Union Federation

Southwest Land – Advanced Developing Country

Government Stakeholders

Trade Ministry
Finance Ministry
Ministry of Commerce, Tourism and Transportation

Private Stakeholders and Publicly Owned Enterprises

Services Industry Federation
Public Service Union
Telecom Company

North Land – Developed Economy

Government Stakeholders

Trade Ministry
Ministry of Commerce
Labor Ministry

Private Stakeholders

Services Industry Association
Shipping Industry
Union Federation
National Association of Universities
Eastland – Transition Economy

Government Stakeholders

Ministry of Trade and Economy
Finance Ministry
Labor Ministry

Private Stakeholders and Publicly Owned Enterprises

Telecommunications Company
Professional Services Industry Association
Financial Services Industry Association
SOUTHLAND

Population: 90 million

Gross Domestic Product (GDP): N$32 billion

GDP per Head in 2001: N$355

GDP per Head in 2001 in purchasing power parity: 6 (Northland = 100)

Summary:

Southland is a low-income developing country, with a bureaucratic culture and a highly interventionist regulatory regime in services. All foreign investments have to be approved by the Finance Ministry and the Ministry responsible for the particular sector, e.g., the Telecommunication Ministry for telecommunication services. Few licenses are granted. Southland has an excellent university system with more graduates than can find jobs in their chosen area of specialization.

Over the past few years Southland has sought to pursue extensive reforms in an effort to reverse previous inward-looking policies. Existing regulatory provisions significantly restrict the managerial flexibility of domestic enterprises in all the traditional services sectors in pursuing efficiency enhancing measures or to pursue innovative products. Despite reforms of the system, heavy government intervention in all services sectors is still significant. The current government supports the continuation of economic reforms, however there is some evidence of growing political pressure against the continuation of the reform process, as previously protected industries producing for the domestic market have faced more competition.

Services play increasingly important role but Southland remains a net importer of international services. The best-developed sectors are construction and maritime transport. Telecommunications and insurance services are closed to foreign competition. Foreign banks are allowed to operate in Southland on a limited basis in providing international banking services. Companies with foreign equity participation cannot participate in public construction projects. Basic telecommunication services are supplied by a state monopoly that has had only limited success in meeting the growing demand for telecommunication services, since it continues to use obsolete technology and has not been able to expand its network or to improve the quality of its services fast enough. The market for value-added telecom services is closed. Southland has a lot to offer as an attractive tourist destination but it lacks basic infrastructure - many unsafe roads and low-standards hotel facilities - to attract tourists from abroad.

Southland carefully screens foreign investment and an authorization from the Minister of Foreign Trade is required for every foreign investment. Foreign owned companies cannot
employ more than 100 employees, employ insurance agents, or supervise public construction jobs. FDI is subject to a minimum capital requirement of US$100,000 in joint ventures, and US$400,000 for enterprises wholly owned by foreigners. Southland has strict visa requirements and only top executives of the foreign companies can obtain an automatic 3-months renewable visa. All other foreigners, including professionals, have to apply for a special visa permit issued by the Ministry of Foreign Affairs through a lengthy and unpredictable application process.
SOUTHWESTLAND

Population: 45 million

Gross Domestic Product (GDP): N$234 billion

GDP Per Head in 2001: N$5200

GDP per Head in 2001 in purchasing power parity: 52 (Northland = 100)

Summary:

Southwestland is a medium-income developing country. Southwestland is committed to the role of private enterprise as a key element in economic growth, and it seeks an international environment where trade and investment will flourish. However, the government has also played a strong and pro-active role in developing and industrializing the economy, and in promoting policy goals of poverty alleviation, social restructuring and a more equitable distribution of income. Exports and foreign direct investment play an important role in the economy.

Southwestland has relied heavily on inward investment and export promotion to achieve high levels of economic growth. Liberalization in services has been mixed. While there has been some opening to foreign competition in value-added and mobile telecommunication services, banking, insurance, construction and tourism industries, basic telecommunication, energy, health, education and transportation services are still largely closed to foreign competition. Due to its favorable geographical location, however, Southwestland aims at becoming a main provider of ground transportation in the region, and it has a highly competitive shipping industry.

Southwestland has licensed a number of foreign banks to provide banking services through joint ventures, in which they can own up to 49% of the equity. Local banks have become increasingly competitive internationally. The government has initiated new legislation to further liberalize banking services, but it has not been passed by the legislature. Under the new legislation any foreign bank would be allowed to participate in locally incorporated joint venture banks, provided they met fiduciary standards. However, banks with more than 20% foreign equity would have to maintain much higher minimum capital levels.

Foreign insurance companies currently are allowed to participate in joint ventures in which they can own up to 10% of the equity. The government is required to take 30% of the equity of such companies, while the rest is available to Southwestland citizens. The National Insurance Commission must approve all premium increases; though it currently only intervenes in setting motor vehicle insurance premiums.
State-owned enterprises continue to play an important role in transportation, energy and basic telecommunication services. Aside from their own operations, some of these enterprises provide financing not just to each other, but also to private companies. For example, SUMARONAS, the highly profitable state-owned automobile and transportation company has purchased stakes in financial institutions and various hotel chains.

The Government's recently proposed a plan that envisages a further gradual opening of investment in the services sector. Overall, foreign services companies are confined to joint ventures, in which the combined foreign ownership cannot exceed 49%. Insofar as barriers to commercial presence restrict competition in the provision of services, they tend to impair efficiency in the sector, so that the prices paid for these services, both by businesses and households, are higher than would be the case in a more competitive market. The resulting higher costs of doing business could hamper the competitiveness of all firms in Southwestland that require essential services (such as energy, finance, telecommunications, and transportation) as inputs in their production and delivery of goods and services.

Southwestland is a popular tourism destination, though it has a shortage of first class hotels. Telecom rates charged by the government owned company are 40% above comparable rates in the United States for local calls and 80% for international calls. Southwestland has a good educational system, but insufficient capacity at university level. Emerging information technology companies are growing fast, and Southwestland is a popular, low budget location for the production of TV films and commercials. Partial regulatory reforms have simplified regulation of services, but regulation remains more cumbersome than in many other countries. Public service union concerned about privatization of education and other social services.
**NORTHLAND**

**Population:** 180 million

**Gross Domestic Product (GDP):** $3,820 billion

**GDP Per Head in 2001:** $21,200

**GDP per Head in 2001 in purchasing power parity: 100**  
(Northland = 100)

**Summary:**

Northland is a high-income developed country, with world competitive financial services, telecom, and professional services industries. It has an excellent private university system and private hospitals. Its trade and investment regime is amongst the world's most open and transparent, with extensive foreign investments in both manufacturing and services. Nevertheless, there are persistent barriers in many areas, and reducing such remaining barriers would further increase the efficiency of its economy, and benefit domestic consumers and taxpayers. It would also lessen distortions in global markets, frictions with trading partners and strengthen the multilateral trading system. The basic objective of Northland’s trade policy regime is to pursue multilateral and bilateral initiatives to liberalize trade. Services are by far the largest contributor to output in the Northland economy. Northland is committed to continue removing restrictions to competition and trade in the services sector.

The pace of liberalization differs significantly among sectors, however. Restrictions remain in areas such as financial services, distribution, transportation, and construction. In financial services, steps have been taken to improve foreign access but still certain domestic ownership requirements are maintained. Other serious restrictions are maintained in maritime transport, where competition policy concerns led the competition authority to question existing barriers to foreign participation. Maritime transport continues to rank among the most protected sectors of the Northland economy. The Northland maritime transport market is generally closed to foreign competition and international cargoes carried by Northland-flag vessels benefit from substantial government assistance. The current government supports cabotage laws that reserve domestic routes to Northland operators.

Northland is characterized by a very sophisticated and well-developed regulatory, administrative, and legislative framework that often serves as a model for other countries around the world. Northland has very restrictive laws when it comes to employment of foreign workers. Under the current economic conditions, especially given the high unemployment rate, it will be very difficult to liberalize these laws.
EASTLAND

Population: 12 million

Gross Domestic Product (GDP): N$17 billion

GDP Per Head in 2001: N$1416

GDP per Head in 2001 in purchasing power parity: 24  (Northland = 100)

Summary:

Eastland is a transition economy that is pursuing market-oriented reforms. The vast majority of State owned commercial assets and enterprises have been privatized and the privatization program is to be completed by the end of 2005. Import/export restrictions have been eliminated for almost all items. However, government subsidies in all areas of the economy have not been eliminated yet. The foreign investment environment is only partially open.

Services Sectors and the Economy:

The economy is primarily agricultural. Agricultural production represents 45 per cent of gross domestic product (GDP) and employs over 50 per cent of the population. Heavy accounts for 25 per cent, light industry for 5 per cent and food processing another 5 per cent of GDP. Respectively.

The services sector plays a relatively small role in the economy because of the legacy of the planned economy, but Eastland wants to develop a wide range of services sectors and the relevant regulatory and administrative framework. Overall, Eastland needs substantial inflows of FDI.

The telecommunication sector is particularly underdeveloped due to the state-monopoly that still prevails. The telecommunication sector is currently closed to foreign competition. However, the sector is in such a bad state that only a limited number of citizens in the urban areas have access to a telephone line and even if they do, the obsolete infrastructure causes many technical problems that prevent effective communication. Due to the serious budgetary problems, it is becoming clear that the government cannot afford to modernize this sector.

The services sector as a whole has a very low level of productivity. Employment in the services sector has been rising, however, because many workers who left the agricultural sector and could not find jobs in manufacturing, have obtained jobs in a variety of unskilled services jobs. Eastland also has many highly educated university graduates, many of whom have not been able to find jobs in their fields. On the positive side, Eastland has benefited from a growing tourism industry.