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Moves Away from the Negotiating Table

Many of the most important tactical moves taken in a negotiation occur ‘away from the table’. Such moves are vital for setting up the most promising situation at the negotiating table. Indeed, if negotiators do not seek to influence the negotiating set-up, they are likely to be placed at an inherent disadvantage. In the words of two experts, ‘[N]o matter how many right moves you make at the table – however skilfully you read body language, build trust, frame arguments, make offers and counter offers – doing so at the wrong table can undercut your results’ (Lax and Sebenius 2004).

Key decisions about the set-up are taken before the parties sit down at the table. Through emails, telephone calls and informal one-on-one meetings, critical aspects of the negotiation are decided. These decisions include who will be at the negotiating table, where the negotiations will be held, the rules and decision-making procedures that will be followed, and the issues on the agenda and sequence in which they will be addressed.

Influencing these initial decisions can have an impact on the final outcome. In addition, initial interactions provide an excellent opportunity to learn as much as possible about the expectations and interests of negotiating partners (Bhuglah 2004).

Tactical moves away from the table are also useful once formal negotiations have started. This is particularly true for international trade negotiations which can last for many years. Moves include forming coalitions and alliances, shaping public opinion, and actively managing domestic politics.

Select the most favourable forum

The decision over the forum in which a negotiation takes place can strongly affect gains and losses, as it influences who will participate,
the rules of the game and how any resulting agreement will be enforced.

Industrialised countries actively use ‘forum-shifting’ to advance their negotiating objectives. A common strategy has been to switch between negotiations at the multilateral and bilateral level. In 2003, after the failure of the fifth WTO ministerial meeting in Cancun, for instance, the United States openly announced it would pursue its interests at the bilateral level, negotiating free trade agreements with ‘can-do’ countries, a move that would enable it to use asymmetrical bargaining power to greater effect. Similarly, the push to shift the negotiations on intellectual property from the United Nations to the WTO worked to the interests of industrialised countries as it provided a far stronger mechanism for enforcement (Devereaux et al. 2006b). More recently, as the negotiating strength of developing countries in the area of intellectual property has increased, industrialised countries are shifting decision-making to new fora where they can advance their interests more easily (Case Study 6).

Vigilance on the part of developing countries is crucial for defending against such ‘forum-shifting’ tactics. In particular, countries need to ensure there is excellent coordination and communication among those representing their country in different negotiations. A valuable lesson from Case Study 6 is that steps need to be taken to improve the political oversight of officials participating in negotiations in areas such as customs and standards setting, which have traditionally been seen as purely technical, and to ensure that these officials have greater awareness of the broader trade priorities and concerns of their government.

It is particularly difficult for small developing countries to react effectively to forum-shifting, as they are not always represented in all the relevant fora. Active networks among developing countries can be invaluable for mitigating this constraint. Barbados, for instance, works within an informal network of small country delegations in Geneva, including other Caribbean countries, Singapore and Mauritius, and they ‘watch each other’s back’. As one senior official explained, ‘They call us if we are not present in the room and they think our interests may be compromised’. This informal network functions across negotiating fora and extends into non-trade areas (Jones et al. 2010: 50).

Case Study 6: Forum-shifting undermines developing country opposition: the enforcement of intellectual property rights

Intellectual property has become one of the most hotly contested areas of international trade negotiations, with industrialised