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Bargaining Power of Developing Countries in Trade Negotiations

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Abstract: The bargaining power of a country plays an influential and impactful role in trade negotiation. The final trade agreement is the result of the background negotiation among the contracting countries in a bilateral, regional or a multilateral arrangement. This paper has attempted to explore main strategies often exercised by the countries in trade negotiation and identifying factors that, in one way or the other, determine the bargaining power, particularly, of the developing countries. The data gathered from secondary sources are qualitatively analyzed. As strategies, the principle of reciprocity (negotiation based on a 'give and a take' policy) and prior preparation (conducting the negotiation process with full prior information, research finding and analysis), have been identified. Furthermore, the basic factors for building or relinquishing bargaining power particularly from the developing country's perspective have been discerned as market, commercial intelligence, capacity to control others and resource. As trade cooperation is becoming an unavoidable and inescapable phenomenon in the entire world, developing countries are advised to make themselves ready to play well the trade negotiation game by improving their bargaining power and by exploiting maximum possible out of that. There is no trade deal that is wholesale good or bad; it rather depends on how the country negotiates.

Keywords: Bargaining power; Trade negotiation; Developing countries.

Introduction

Trade cooperation and integration through various modalities is becoming the current trend. However, managing successfully this complex and rapidly evolving mass of economic arrangements, alongside the global political tension and dynamics, requires thorough attention and comprehensive technical skills. UNCTAD (n.d) states that “understanding the changes occurring globally, the impact of trade in national development interests and priorities and fostering consensus on addressing trade barriers and commitment to more open and fairer international trade.”

Trade negotiation is the process to set in advance rules that facilitate, guide and regulate trading among countries. In addition to the active participation of the negotiating countries, it invites direct or indirect involvement of the private sector and other interested groups. When countries come together for a certain trade deal, they stand for their own respective interests that most often contradict to each other. Trade negotiation is thus a very complex process which goes through a series of tradeoffs. Sometimes, the process takes decades together. The outcome of any trade negotiation depends on the relative strength of negotiating countries. Such strength of the countries is commonly referred to as bargaining power. Bargaining power of countries in trade negotiation can be interpreted and expressed in different ways.

The objective of this paper is to explore and discuss main issues involved in a trade negotiation particularly from the perspective of developing countries. This piece comprises five sections. The first section is introductory, followed by the section for the definition of bargaining power in trade negotiation. The third section highlights steps of how trade negotiation should be conducted. Having done these, the main determinants of trade negotiation have been discussed under the fourth with developing countries in focus.

Lastly, main points have been summarized as conclusion.

Understanding Bargaining Power in Trade Negotiations

The term ‘power’ has been understood in different ways with positive and negative undertones. The power of negotiating states in trade negotiation may be acquired from legitimate sources and applied in a fair manner. But the opposite is not also uncommon. Power is thus analyzed both theoretically based on the conception arguments’ reflect and its specific association and usage. Under this section, both views have been attempted.

Basing on the neorealist approaches and different alternatives, international relations between states take place within a constant state of anarchy (McGlinchey, Walters & Scheinpflug, 2017). Each state tends to protect its national security as well as securing its survival by means of military and economic capabilities within this anarchy. In so doing, states try to accumulate as many military and economic resources as much possible (Bailer, 2010). According to McGlinchey *et al.* (2017), this forms a basic ingredient of power in these relations as they dominate in relations between states. Henceforth, the basic emphasis of this theory is thus on the attributes of the actor (the state) itself. Approaches of structural realism validate this by relating it to a theory of balance of power whereas such balance may be attained by arms races and by factors of “economic capabilities” and “military strength” as well as alliances (ibid).

On the other hand, social constructivists emphasize the importance of the system in which the state interacts itself as a social process influences policy outcome. This process for example in the social environment generates identities; reputations; perceptions and ideas of the actors (Malik, 2013). Thus, international relations may not necessarily be influenced only by states’ material capabilities and structures

in which interactions take place. Ideas and the perceptions of the actors should not be ignored as they tend to play an important role. Henceforth, the ability to influence such ideas or creating and controlling such perceptions may form an ingredient of the power in international relations. How could such power be obtained and exercised? Ability to shape the opinions that other states have over these capabilities is crucial as well. According to Bailer (2010), controlling perceptions of the future capabilities of development are important in order to be in such a position. One way that developing countries may obtain such power would be to exercise practices that aim to create an image of them as important emerging markets (Drahoš, 2003). A good example of this may be drawn from the summits of the BRICs. When a developing country enters into negotiation with a developed country, it tends to face the challenge of unequal bargaining power (ibid). However, even in a multilateral trade agreement, bargaining power still functions to favour developed countries, and developing countries do not always gain powers from numbers (Page, 2002).

In Bailer (2010) statement, the term 'bargaining power' means "the ability of a person, group, or organization to exert influence over another party in a negotiation in order to achieve a deal which is favorable to themselves." In this sense, bargaining power refers to the relative capability of the parties to a negotiation that would culminate in a binding deal. In other ways, it is a measure of the capacity of one negotiating party to influence another. Parties with higher bargaining power are able to leverage their circumstances to strike more desirable deals with others. The term 'bargaining power' thus comes to the picture in any type of negotiation and between whatever entity of natural or of artificial in character.

Note that the parties in unilateral, bilateral, regional and multilateral negotiations are sovereign countries. For the purpose of this paper, 'bargaining power in trade negotiation'

does mean the capacity of one country to dominate the other due to its influence, power, size, or status, or through a combination of different persuasion tactics. In other words, trade negotiation is a bargaining game between countries with competing objectives and bargaining power is the strength of one negotiating country to influence another negotiating country to obtain an advantage out of the final agreement. However, if both the parties are on an equal footing in the negotiation, they will have equal bargaining power which is known as perfectly competitive (Lundgren, Bailer, Tallberg & Tarlea, 2017).

For negotiations to succeed, each one of the negotiating countries must give up something in exchange for reciprocal concessions of equal or more value from the other negotiating country. If countries on both the sides of the negotiation just focus on their own respective needs and interests irrespective of the needs and interests of countries on the other side of the negotiation, it is highly improbable to come to consensus though there are countries in the negotiation with huge bargaining power. However, the undeniable fact is that the more a country has a bargaining power, the more likely it can influence other negotiating countries for its own benefit, and the *vice versa*.

The factors that determine the level of countries' bargaining power in trade negotiations are different depending on the stage of the negotiation, the subject matter of the negotiation, the existing domestic affair of the negotiating country and the prevailing global economic and political landscape. A country which has a good bargaining power today may not have the same power tomorrow or a country with a significant bargaining power with respect to a certain good or service may have insignificant bargaining power in a trade negotiation for some other goods or services at the same time. Furthermore, bargaining power is measured on a comparative basis, i.e., by comparing the strength of one country with that of the other. Because of these, the existence

of high or low bargaining power is not per se visible during negotiation. It rather requires some comprehensive comparative investigation and analysis regarding potential of all the negotiating countries and the international environment.

Though there is no uniformity in the understanding of what a developing country is, and countries which are categorized under this title have some common features and defining characteristics. A developing country may be defined as a country with a low level of human development index (HDI), gross domestic product (GDP) and industrialization (Nordqvist, 2018). A developing country is less developed than a developed country. It is also known that the economy of developing countries is dominated by agriculture. The bureaucracy in particular and the governance system of developing countries, in general, are accused of rampant corruption, human rights abuse and absence of transparency. These common features put developing countries at (almost) similar position during trade negotiation, given the fact that the particular situation of these states makes a difference. Because of their contextual situation, the determinants of bargaining power from the side of developing countries are similar.

The Process of Trade Negotiation and the Making of Trade Agreements

Trade negotiation is a pathway to trade agreements where the parties on both sides of the agreement are bound by the terms and conditions thereof. The outcome of trade negotiation is a binding instrument called agreement, convention or treaty regarding that specific aspect of trade. By entering into an enforceable trade agreement, a country imposes on itself an obligation most probably with the expectation of some benefits from other contracting countries. Under Article 2(1) of the 1969 Vienna Convention on the Law of Treaties, a treaty is defined as “an international agreement concluded between States in written

form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.” It must be noted that the free consent of the contracting countries is always at the center of any agreement, including trade agreements. Regarding the making of a treaty, article 1(1) of the 1969 Convention reads:

“The consent of a State to be bound by a treaty is expressed by the signature of its representative when: (a) the treaty provides that signature shall have that effect; (b) it is otherwise established that the negotiating States were agreed that signature should have that effect; or (c) the intention of the State to give that effect to the signature appears from the full powers of its representative or was expressed during the negotiation.”

Treaties will acquire their binding status pursuant to the provisions of the agreement itself and in accordance with the domestic (constitutional) law of negotiating countries. A trade agreement is thus an international legal instrument born out of negotiation on a specific aspect, i.e., goods or services or the facilitating environment, between the countries that are parties to the agreement. In other words, it is the negotiation process that gives content and shapes terms and conditions of the agreement. In order to be the winner, or at least not to be a loser, in such a tough process of trade negotiations, countries across the world have developed many principles, strategies or approaches that are of significance to developing countries. Some of which are discussed hereunder in this section.

Informed Decision Making: there is a common maxim – ‘information is power.’ Yes, information is power. When a country negotiates and entered into a certain trade agreement, it makes a decision. To exploit the maximum possible advantage from the existing condition, the negotiating state shall be well aware of that. The outcome of any bargaining game depends on wherefrom negotiations start. Trade agreements are no exception. The policies

that each country will adopt if no agreement is reached provide a reference point - or a 'threat point' - for the negotiations (Sampson, 2016). Countries will make concessions starting from this reference point. In such a manner, the final outcome depends on the initial point, i.e., the existing condition. For most trade negotiations, the reference point is the status quo. The reference point for negotiations determines what countries bargain over and, consequently, the outcome of negotiations.

The Principle of Reciprocity: the main purpose of trade agreements is to make all the contracting countries better off by preventing governments from adopting policies, such as import tariffs or foreign investment subsidies, which benefit their own economy only because they hurt other countries (ibid). Sampson (2016) argued that "the potential gains from trade agreements are larger when countries are willing to make bigger concessions and give up more policy control". The more a country makes itself ready to give, the more it will be positioned to take from others. Trade negotiation should therefore follow a give-and-take approach or a win-win approach.

In the current interdependent world, no single country is fully self-sufficient to whatever degree it advances economically, politically and technologically. It should not be forgotten that the effects of the trade policy of a country are not limited to its national borders. Sampson (2016) further stated "in the language of economics, trade policy generates international 'externalities;' and frequently these externalities lead to 'beggar-my-neighbor' effects, which make other countries worse off."

Trade policy externalities operate through three main channels. First, there are terms of trade effects. Each country can use trade policy to improve its terms of trade by raising the price of its exports relative to its imports. For example, OPEC countries improve their terms of trade by restricting the supply of oil to drive up its price. But one country's exports

are another country's imports. Consequently, a country can only improve its terms of trade by making imports relatively more expensive for the rest of the world. A high oil price benefits oil exporters, but hurts oil importers.

Second, there are production location effects. Countries compete to attract investment from internationally mobile firms. Policies designed to attract foreign investment include reducing tariffs on intermediate inputs and providing production subsidies through tax breaks or loan guarantees. Ireland has been very successful in using investment incentives to attract multinational firms. But while Ireland benefits from increased investment and employment and from obtaining access to new technologies, other countries lose out. Location decisions are a 'zero-sum game'.

Third, even when firms are immobile, trade policy can be used to raise profits of domestic firms at the expense of their foreign competitors. This profit-shifting effect lies at the heart of the decade's long battle between the United States and the EU to capture a greater share of aircraft industry profits by subsidizing Boeing and Airbus, respectively (Sampson, 2016).

Taking into consideration of these externalities, when a country sets its trade policy unilaterally, it must assure the policy would not affect other trading partners. This behavior of controlling externalities would entitle the country with a privilege to claim more concessions. Put another way, unilateral trade policy is beneficial only if the other countries do not respond by changing their policies. In trade wars, everyone loses. This is why trade agreements are needed. By negotiating trade agreements, countries can internalize externalities resulting from international interdependencies, avoid damaging trade wars and in a way make all countries better off (ibid). That is the foundation for sustainable trade deal which in turn maximizes benefits for both the parties.

The Main Determinants of Bargaining Power in Trade Negotiation: Developing Countries in Focus

The issue of bargaining power arose most often in negotiations between developed and developing countries. Drahos (2003) illustrates that “it is even presumed that, when a developing country negotiates with a large developed country it generally faces the problem of unequal bargaining power.” Trade negotiation is very sensitive and highly influenced by the bargaining strength of the negotiating countries. The Trade Negotiations Committee (TNC), an organ mandated for assisting developing countries in trade negotiation, was set up by the Doha Declaration, which in turn assigned it to create subsidiary negotiating bodies to handle individual negotiating subjects. In particular, the mandate of the TNC is indicated as quoted from WTO (2001):

“The overall conduct of the negotiations shall be supervised by a Trade Negotiations Committee under the authority of the General Council. The Trade Negotiations Committee shall hold its first meeting not later than 31 January 2002. It shall establish appropriate negotiating mechanisms as required and supervise the progress of the negotiations.”

United Nations Conference on Trade and Development (UNCTAD) has also an initiative to improve bargaining power of developing countries in trade negotiation. UNCTAD’s endeavors focus on trade negotiations and commercial diplomacy to enhance policy, productive, institutional, regulatory and human capacities in developing countries and enable them to trade and participate beneficially in the international trading system. To achieve this, it offers analysis, builds capacity and promotes consensus and partnerships on various sectors, including trade negotiation. The simple implication of all these is how trade negotiation is a serious issue where developing countries are mostly prone to be jeopardized.

Under this section, the common indicators or factors on the basis of which the level of bargaining power of the developing countries would be weighed and analyzed are presented hereunder.

According to Grossman (2012), bargaining power in the context of trade negotiation has three basic sources. Firstly is the market power a country has at its command, secondly is the state’s ‘commercial intelligence networks’, and thirdly is the capacity of a country to control others, both state and non-state, in a coalition.

Market Power of a Country

Control over a large domestic market tends to give countries a powerful tool in trade negotiations (Draho, 2003; Braunstein and Epstein, 2002; Karayanidi, 2011). Apparently, a country with a relatively large domestic market is in a better position, can make credible threats and/or promises to countries which want access or already depending on that specific market. The capacity to make such threats is viewed as among the critical determinants of a trade negotiation (Draho, 2003). For example, during the Uruguay Round, developing countries had enjoyed the benefit of duty-free trading privileges in the US under the Generalized System of Preferences (GSP). After the US amended its Trade Act of 1974 by linking the grant to the provision and enforcement of adequate intellectual property standards, a number of developing countries were threatened with the suspension of GSP privileges for failing to enact adequate standards of intellectual property protection (Drahos, 2003; UNCTAD, 2010)

Commercial Intelligence Networks

According to Draho (2003), these are networks that gather, distribute and analyze information relating to a country’s trade, economic and business performance as well as those of other countries. The more integrated the network is the more effective it is likely to be in trade negotiations. Developed countries have over

time developed sophisticated networks to attain such powers (Draho, 2003; Karayanidi, 2011).

Capacity to Control Others

A third source of bargaining power may be the capacity of a country to control other countries, both state and non-state, in a coalition (Braithwaite & Drahos 2000). Non-state actors in the shape of business actors have often been crucial in the international trade negotiations. The declaration on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and Public in Doha was the product of an alliance between developing states and influential NGO actors, like the Oxfam and Consumer Project on Technology, Médecins Sans Frontières (Draho, 2003; Drahos & Mayne 2002).

Bargaining power, therefore, may be analyzed in two facets. Firstly, the structural power of a country, which may be determined by the capacity of a country as well as her strength in negotiations. In the second facet, the procedural power, which is based on bargaining skills, resources and tactics as well as the ideational power that depends on ideas and norms (Elsig, 2006). The sources of bargaining power can be found on these different levels, and the discussion of which falls hereunder.

For the purpose of identifying specific indicators of bargaining power in trade negotiations, establishing taxonomy of facets of power in the multilateral trade regime is of primary concern. In the same vein, Elsig (2006) proposed taxonomy based on structural, procedural, ideational as well as institutional power as key facets of bargaining power in a trade negotiation.

Structural power

Malik (2013) divided structural power into two major elements. The capacities of the negotiating party are on the one hand. These refer to the neo-realist concept of power; indicating that power depends on attributes of the country itself, such as economic and

military capabilities, its population and size. Henceforth, the analysis of bargaining power in trade negotiations offered in this paper lays a focus on the part of economic resources and capabilities. It is apparently clear that in a negotiation, bargaining power depends on what an actor actually has to offer. As multilateral trade negotiations are about economic concessions, the market size and other economic capabilities of each actor are important (Elsig, 2006). Considering the principle of reciprocity in trade negotiations, larger relative market size increases leverage. In order to determine economic capabilities, it is imperative to establish country's economic profile (Elsig, 2006; Malik, 2013). For a case in point, market size merely translates into structural power in tariff negotiations if the referred market is protected by tariff barriers, which can then be used as bargaining chips. Accordingly, the prevailing barriers to market access which may be used as concessions in the negotiations have to be included as well (Bailer, 2010; Elsig, 2006). Such an economic analysis may relatively be sufficient to identify what an actor has to offer economically. The positional strength is, on the other hand, the second element. This is determined by relative losses that negotiating countries would have to suffer by not concluding the deal (Elsig, 2006). As a result, the famous concept of Best Alternative to a Negotiated Agreement (BATNA) arises. BATNA is often mentioned as among the fundamental elements of bargaining theory (Elsig, 2006; Spangler, 2012). The actor in the negotiation with the less profitable BATNA is more inclined to offer larger concessions to conclude the deal. According to Spangler (2012), the majority of the developing countries have relatively weak BATNA.

Procedural Power

Procedural power depends on skills as well as resources of negotiators (Elsig, 2006). This power can be used to offset irregularities in structural power and can therefore relatively affect the bargaining power of an actor. In

technical negotiations, countries with highly qualified and experienced negotiators on the issues are more likely to be influential. This is particularly true for highly technical rules-based topics such as anti-dumping negotiations (ibid). As Odell (2000) points out, the use of different tactics may affect the outcome of negotiations. A factor that determines bargaining power would therefore be the use of the relevant tactics in a certain situation in negotiations. The effect of a domestic ratification constraint on the bargaining power of an actor largely depends on tactics within the negotiations. A hard bargaining strategy can be justified by a weak autonomy of the negotiator or a large ratification constraint (Karayanidi, 2011). For example, different aspects of developing country's foreign and trade policy can be interwoven in different fora to maximize bargaining power within them.

Ideational Power

Ideational power is a result of influences of ideas and normative power in multilateral trade relations (Orbie & Khorana, 2015). In particular terms, literature suggests that these ideas, values and norms are important in negotiations and multilateral institutions (Elsig, 2006; Finnemore and Sikkink, 1998; Karayanidi, 2011; Page, 2002). Three types of norms can be distinguished in this course as suggested by Finnemore and Sikkink (1998). Firstly, general norms, for example in the case of the European Union, include support for democracy, the rule of law, human rights and good governance. Secondly, framework norms which determine the underlying approach to market regulation. Thirdly, specific norms which are specific regulatory provisions defined by a country's laws. Henceforth, by leading the process of implementation of norms, a country can exert power through its own interpretations of these norms. This can therefore serve as an example and thus influence behaviour of other actors (Woolcock, 2012). Individual countries can also cooperate with civil society actors, such as NGOs, to increase their ideational power

(Malik, 2013). Henceforth, ideational power can also be used as a tool to determine policy problems or solutions in the negotiations. This is particularly relevant during the earlier stages of multilateral trade negotiations such as the agenda-setting phase (Tussie and Sagui, 2011).

From this analysis of bargaining power, it is apparently clear why the developed countries tend to have relatively strong bargaining power and developing countries comparatively weak bargaining power; true even in a multilateral forum like the WTO. This brief review of the state of bargaining power implies that much remains to be done. Researches so far have taken place in the realm of voting power indices, which according to Elsig (2006) have failed to account for many facets of negotiations. Studies that incorporate additional bargaining power resources are limited to certain periods and measurement challenges.

Furthermore, the bargaining power of particularly developing countries is affected by the availability of alternatives in the sense of availability of options to choose trading partners or the fact that the negotiating country is not in an urgent need of the deal. Secondly, the creditworthiness of the country – that is the past history of the negotiating country in the performance of its international obligations and commitments – is also an asset to attract the confidence of other contracting parties. Whether there are concessions or gaps in the existing legal framework to developing countries is another factor that contributes for expanding or lowering down bargaining power of the developing countries in trade negotiation. Fourthly, the expertise of negotiators representing developing countries, such as their skill to analyze and differentiate the pros and cons of the deal based on preliminary survey, to exploit concessions and legal gaps, to understand and to be understood, and other skills of negotiation play significant role to rate the bargaining power of the developing countries in trade negotiation.

Lastly, the obvious factor that determines such bargaining power of countries is its comparative advantage which can be interpreted in terms of resource availability – including land and human resource, the environment for smooth trading – such as legal & policy frameworks, the bureaucracy and infrastructure, and market access.

Conclusion

No country can exclude itself from trade cooperation and integration through the instrumentality of trade negotiations that most often result in binding agreements and non-binding memorandum of understandings (MOU). However, developed and developing countries have not been able to play on an equal degree in the process of coming together and negotiations. The imbalance of bargaining power in trade negotiation between developed and developing countries causes tilted and unfair trade relation among them. Although the factors that negatively affect the bargaining power of developing countries in trade negotiation generally depend on their relative economic strength, political condition, infrastructure and resource of the negotiating country; some of the factors have been discussed in this paper on the basis of the common feature and characteristics of the developing countries. Pragmatically, the principles of informed decision making and reciprocity are recognized as the best trade negotiation strategies that the developing countries should be accustomed to. There is no concession without a reciprocal tradeoff. Parallel to addressing the factors that determine their bargaining power (in trade negotiation), adoption of these strategies is advisable for developing countries to improve their position, influencing capacity and realize a win-win outcome. As entering into a binding trade agreement brings about cross-generational consequences, it should be conducted thoughtfully and cautiously. Moreover, improving the bargaining power of developing countries would be an endless

project so as to equitably utilize world's resources.

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