TRAINING COURSE ON
THE PUBLIC HEALTH IMPLICATIONS OF
MULTILATERAL TRADE AGREEMENTS
WHO-UNIL

EFFECTIVELY MANAGING THE
NEGOTIATION PROCESS

Presented by Liz McClintock
CMG and CMPartners
14 June 2004
CMI® Conflict Management, Inc.
Experts in Negotiation and Process Advice
(1984)

Harvard Negotiation Project
(1978)

CONFLICT MANAGEMENT GROUP
The Roger Fisher House
(1984)

CMPartners
Negotiation and Conflict Management Advice
Move from single loop learning to double loop learning

Assumptions/Thinking

Actions

Results
Three Levels of Negotiation

1. How?  PROCESS
2. With whom?  RELATIONSHIP
3. About what?  SUBSTANCE
Negotiation: Criteria for Measuring Success

PREPARATION  CONDUCT  REVIEW
The agreement or result achieved:

1. Is better than our BATNA – our Best ALTERNATIVE To a Negotiated Agreement

2. Satisfies INTERESTS: $\text{INTEREST} \neq \text{POSITIONS}$
   - Ours, well
   - Theirs, at least acceptably
   - Others, at least tolerably

3. Leaves no joint gains on the table: is among the best of many OPTIONS

4. Is Legitimate – Parties view the outcome as fair and sensible as measured by objective CRITERIA

5. Contains COMMITMENTS that are well-planned, realistic, and operational

6. Is reached efficiently – there is effective COMMUNICATION

7. Helps to build a good working RELATIONSHIP among the parties
A Good Agreement is on the Pareto Frontier

Cannot be better for one party without being worse for another.
If “Yes”

- COMMITMENT

If “No”

- ALTERNATIVES

COMMUNICATION

RELATIONSHIP

INTERESTS

OPTIONS

CRITERIA
The 7 Elements as a Checklist for Preparation

Relationship

• What does the relationship map look like?

• What kind of relationship would we like to have with each of the parties?

• How can we improve these relationships without conceding on the substance?

Interests

• What are ours? What are theirs?

• Are there other parties’ interests to consider?

• Which interests are shared, which are just different, and which conflict?
Process

- Clarify and prioritize your own interests
- Create a map of the relevant players/actors
- Identify key interests of the different players/actors
- Identify and characterize the relationships between the players/actors
- Plan and implement a sequence of negotiations/meetings
Additional aspects to consider regarding the relationships:

- Between the two members of a delegation
  - Influence
- Between mandated/mandator
  - Deference
- Impact of the environment of each organization
  - Influence
**Personal interests - DMH:**
- Improve future job prospects
- Be seen as honoring mandate
- Balance mandate with information learned during negotiation process

**Organizational interests: DMH**
- Increase budget for MOH
- Develop more effective relationships with other players around the table to advance MOH interests
- Be seen as the experts on health issues
RELATIONSHIP MAP INTERNAL TO EACH PARTY

DMH

District physicians

Provincial Directors

Minister

“MINISTRY”
Personal interests - DMT:
- Improve future job prospects
- Be seen as honoring mandate

Organizational interests: DMT
- Continue to control trade agenda for Kelau Besani (limit input from other sectors)
- Expand country’s trade both in region and more broadly
- Assure that Kelau Besani’s voice in upcoming talks are enhanced by this process
RELATIONSHIP MAP INTERNAL TO EACH PARTY

DMT

Minister

Provincial Directors

District economists

“MINISTRY”
RELATIONSHIP MAP INTERNAL TO EACH PARTY

Organizational interests: NIC
- Ensure that industry's agenda is furthered with government officials
- Influence upcoming trade talks
- Create a more favorable environment for industry within Kelau Besani and within the region

Personal interests
- Enhance status with government officials
- Enhance position vis a vis other industries

"MANDATE"
**RELATIONSHIP MAP INTERNAL TO EACH PARTY**

**Personal interests**
- Enhance status with government officials
- Enhance position vis a vis other industries

**Organizational interests**
- Further the NGO agenda with government
- Attempt to influence industry and their policies with regards to health
- Generate more funding for local health related NGOs

[Diagram showing relationships between CHACO, NGO, and Local Org.]
**Relationship Mapping**

*Between the parties*
- Positive relationships between parties
  - Influence
- Negative relationship between parties
  - Antagonism

*Building coalitions*
- Identify positive relationships
  - Deference
  - Influence
- Identify negative relationships
  - Antagonism
- Use this information to build effective coalitions
Kelau Besani Trade Advisory Committee - Debrief

Relationship Mapping: Coalitions

– *Building coalitions*

– *Capitalizing on and maintaining coalitions*
RELATIONSHIP MAP BETWEEN THE PARTIES

Health Focus

DMH ↔ CHACO

DMT ↔ NIC

“Inside” Government

“Outside” Government

Trade Focus
<table>
<thead>
<tr>
<th>The 7 Elements as a Checklist for Preparation</th>
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<tbody>
<tr>
<td><strong>Options</strong></td>
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<tr>
<td>• What are some possible packages of options that might creatively satisfy our interests and meet the needs of our mandate?</td>
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<tr>
<td><strong>Criteria (legitimacy)</strong></td>
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<td>• What precedents exist that we can use to justify our package(s) of options? Is there a standard operating procedure? Law? Custom? Market Value?</td>
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<td>• What “ought” to govern an agreement?</td>
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<td>• How can we justify the outcome to our various constituents?</td>
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Communication

- What is our process strategy? How will we determine our agenda?

- How will we design our communication strategy?
  - What information do we want to listen for?
  - How can we show them they have been heard?

Commitments

- What is our mandate? Theirs?

- What kind of commitment do we want at this stage of the process? Set of recommendations? A framework for agreement? Tentative? Final?
The 7 Elements as a Checklist for Preparation

Alternatives

• What’s our BATNA? Do the others have a BATNA? What is it?

• Can we improve ours? Weaken theirs?

• If we have no real alternative, what is the impact on our negotiation strategy?
Assumptions in Negotiation

The size of the pie is fixed

My goal is to gain as large a piece of the pie as possible

I am in competition with my adversary

I must choose between the substance of the negotiation and the relationship; to succeed in one means a failure in the other

vs.

The negotiators can create or destroy value at the table

My goal is to create as much value as possible and then determine how to share it with the others

I will better succeed if we collaborate in creating the most value possible

Creating value in the negotiation process improves both the relationship and the substance; a good relationship will create value for both parties
Guidelines for Negotiation

Clarify *INTERESTS* Not Positions

- Ask why?, why not?
- Capitalize on joint interests, reconcile differing interests
- Look to *CRITERIA* and creative *OPTIONS* to deal with conflicting interests

Invent *OPTIONS* for Mutual Gain

- Separate inventing from deciding
- Generate options through “brainstorming” — no evaluation, no commitment, no attributions
Guidelines for Negotiation (cont.)

Use **CRITERIA** to Help Evaluate Options

- Ask “Why is that fair?”
- Look to fair procedures
- Use the test of reciprocity

Make **COMMITMENTS** At the End of the Process

- Talk first, decide later
  - No commitments until interests and options are fully explored
- Think of *how*, as well as what
- Give them a stake in the outcome by including them in the process
Guidelines for Negotiation (cont.)

Know your *Best Alternative To a Negotiated Agreement (BATNA)*

- Evaluate their BATNA
- Reality-Test both BATNAs

Facilitate Good Two-Way *COMMUNICATION*

- Listen actively and inquire
- Balance advocacy with inquiry
- Explain our reasoning, inquire into theirs
- Frame what we say in light of what they will hear
Separate the People from the Problem

- Deal with the *RELATIONSHIP* and the substance each on its own merits
- Attack the problem, not the people
- Use people techniques to deal with people problems
## PREPARATION TOOL

<table>
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<tr>
<th>INTERESTS</th>
<th>OPTIONS</th>
<th>ALTERNATIVES</th>
<th>COMMUNICATION</th>
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<tbody>
<tr>
<td>MINE</td>
<td>THEIRS</td>
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<tr>
<td>CRITERIA</td>
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BUILDING COALITIONS

• Within organizations or governments:
  – Build them early
  – Be aware of and manage potentially antagonistic relationships

• With other organizations and institutions
  – Alliances can be found in many places – the importance of understanding interests AND the priority of interests at play
CAPITALIZING ON AND MAINTAINING COALITIONS

– **Strong**: sign that it is built on priority interests for all members of coalition
  - Sustainable over time
  - Resistant to outside pressure

– **Weak**: sign that it is a secondary interest to at least some of the members
  - Diminish over time however
  - Provides opportunities for trade-offs
I. Expansion of GATS – Cross border supply of services
II. Rules of Investment

![Bar chart with categories II.A. and II.B. and color-coded bars for NIC, MOH, CHACO, and MOT]
III. International Trade Agreements and Social Policy

![Chart showing data for III.A. and III.B. categories with different colored bars for NIC, MOH, CHACO, and MOT.](chart.png)
Kelau Besani Trade Advisory Committee - Debrief

Reflections on Process

➢ **Process Design**
  - Impact of preparation process? Comfort with your mandate?
  - How did you structure the negotiations?
  - What was your agenda? How did you determine that agenda?
  - Choice of a chairperson? Other roles in the group?

➢ **Development of a package of recommendations**
  - Exploration of interests?
  - Process used to get options on the table?
  - How did you manage trade-offs?
  - Challenges, dangers of different process choices?
Kelau Besani Trade Advisory Committee - Debrief

Applying these lessons to our organizations

- What general advice do you have for managing future multilateral negotiations?
  - In terms of preparation
  - In terms of process

- What can be done at a country level to raise the profile of health and to integrate health concerns into the negotiating agendas of others?
Some important recurrent issues

- Health policy makers need to be aware of how WTO agreements interface with national laws, particularly with regards to developing remedies to address policy issues (i.e. access to medicines) and for influencing future negotiation processes.

- “As WHO gets into the business of developing conventions and other health rules the issue will arise of which conventions/instruments should take precedence” – this is particularly important for health policy makers when determining criteria for evaluating policy impacts.

- On-going negotiations for further liberalization within GATS. How to influence this process? What role should health policy makers play? How can they get their agenda on the table?
Debrief - Advice

**Preparation**
- Understand the interests of the other parties
- Review domestic legislation in advance of negotiations

**Process**
- Structure process so that you discuss interests first and then move to discussion of options
- Choice of chairperson/facilitator important to success of discussions

**During Negotiations**
- Have an open discussion – emphasize transparency
- Share interests
- Build relationship amongst parties – break down walls
- Demonstrate understanding of others’ interests
- Use criteria to justify options – to others at the table; to those who mandated you
- Periodically recap discussions to demonstrate where discussions are at/what has been agreed to and to demonstrate progress
- Set out common principles at beginning of negotiation as frame for discussion i.e.:
  - Slow liberalization process
  - Focus on the needs/interests of the population
  - National sovereignty