CHAPTER
15

Power across Borders: International Business, Geopolitics and Development

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Introduction

When a firm negotiates across borders, the other side of the table is rarely just another firm. Behind every foreign customer, supplier or partner stand governments that tax, regulate, license, protect and sometimes expropriate. When the firm wants to build a factory, open a mine or buy a company abroad, the host government is itself a party to the negotiation, often the most powerful one. And governments in turn negotiate with each other over trade, investment and sanctions, shaping the rules within which firms bargain. International business negotiation is therefore negotiation in the presence of the state.

This chapter, the last of Part III, applies the book's analysis of power to this setting. It proceeds in four steps. Section 15.1 asks how firms bargain to enter a foreign market and what each side brings to the table. Section 15.2 explains why the bargain changes after an investment has been made, a phenomenon known as the obsolescing bargain, and how investors and host states try to manage it. Section 15.3 examines how trade agreements, sanctions, export controls and investment screening shift power between firms and states. Section 15.4 turns to negotiations for development: natural-resource contracts, public–private partnerships and the restructuring of sovereign debt.

The three pillars of the book take a distinctive form across borders. **Profit** is shared not only between firms but between firms and states, through taxes, royalties, local content and jobs. **Power** depends on the alternatives of each side, which change sharply once capital is sunk in a particular country. **Persuasion** must reach not only negotiators but citizens, courts and legislatures, whose support determines whether an agreement survives a change of government. The Deal File follows one of the most dramatic recent cases of these forces at work:

the Cobre Panamá copper mine, whose contract was struck down by Panama's Supreme Court in 2023 after weeks of mass protests, and whose future was being negotiated again in 2026.

DEAL FILE

Cobre Panamá

Cobre Panamá, in the province of Colón on Panama's Caribbean coast, is one of the largest open-pit copper mines opened anywhere in the world in recent decades. The concession was first approved in 1997 and granted to Inmet Mining, which First Quantum Minerals, a Canadian company, acquired in 2013. By the company's account, more than US$10 billion had been invested in Panama. In 2022 the mine produced a record 350,000 tonnes of copper and, according to its operator, contributed more than US$2.7 billion to Panama's gross domestic product (Minera Panamá, 2023).

The original legal basis of the concession was itself contested, and the government and First Quantum negotiated a new contract to replace it, following objectives on revenue, environmental protection and labour standards that the government set out in January 2022. The draft finalised in March 2023 guaranteed the state a minimum annual contribution of US$375 million, made up of corporate taxes, withholding taxes and a royalty of 12 to 16 per cent of profits, rising with the mine's operating margin (First Quantum Minerals, 2023). After approval by the National Assembly, the contract was signed into law by the President as Law 406 on 20 October 2023 (First Quantum Minerals, 2024).

The contract collapses. The approval of Law 406 triggered mass protests across Panama. Environmental groups, unions, teachers and students argued that the contract had been negotiated without transparency, gave a foreign company too much for too little and threatened forests and water supplies through the mine. Roads were blocked across the country, including the access roads to the mine and its port, and production was suspended. On 28 November 2023 the Supreme Court declared Law 406 unconstitutional, so that the contract ceased to exist, although the Court did not order the mine's closure. The National Assembly passed Law 407, which declared an indefinite moratorium on mining and barred new concessions or the renewal of existing ones, and in December 2023 the government placed the mine in a phase of preservation and safe management (First Quantum Minerals, 2024). Production of about 331,000 tonnes in 2023 fell to nothing in 2024 (Figure 15.1).

From arbitration to renegotiation. First Quantum began international arbitration proceedings against Panama, under the free trade agreement between Canada and Panama and before the International Chamber of Commerce (ICC), seeking compensation for the loss of the mine (First Quantum Minerals, 2024).

Table 15.1
Cobre Panamá at a glance

Parties	First Quantum Minerals and its Panamanian subsidiary, Minera Panamá; the government of Panama; the National Assembly and the Supreme Court; environmental groups, trade unions and protesters; local communities in Colón province; minority investors and lenders
At stake	One of the world's largest new copper mines, contributing more than US$2.7 billion to Panama's GDP in 2022; thousands of direct and indirect jobs; the state's share of the mine's revenue; environmental protection; international arbitration claims
Timeline	Concession approved in 1997; First Quantum acquires the project in 2013; commercial production from 2019; government objectives for new terms set in January 2022; draft contract finalised in March 2023; Law 406 approved on 20 October 2023; protests in October and November 2023; Supreme Court rules the contract unconstitutional on 28 November 2023; mine placed on preservation and safe management; one arbitration discontinued and another suspended in March 2025; processing of stockpiled ore in 2026; government commission recommends negotiations on 30 September 2026
Terms (2023 contract)	A minimum annual contribution of US$375 million from corporate taxes, withholding taxes and a profit-based royalty of 12 to 16 per cent

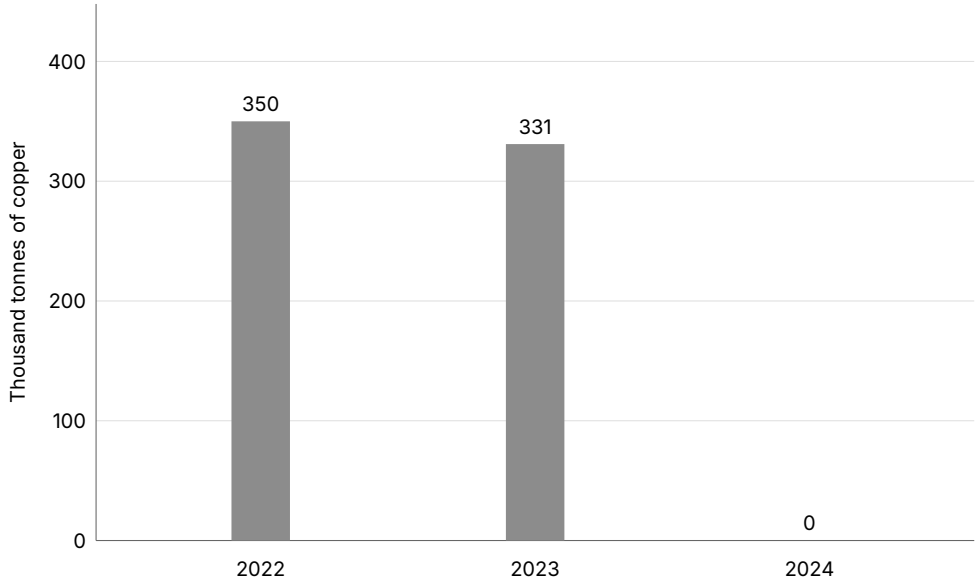
Note. Author, based on First Quantum Minerals (2023, 2024, 2025, 2026a, 2026b) and Minera Panamá (2023).

A new president, José Raúl Mulino, took office in July 2024. After talks with the government's legal counsel, First Quantum agreed on 31 March 2025 to discontinue its ICC arbitration and to suspend the one under the free trade agreement (First Quantum Minerals, 2025). Copper concentrate stored at the site was shipped abroad, and in 2026 the processing of stockpiled ore began, with the aim of producing 30,000 to 40,000 tonnes of copper in the year (First Quantum Minerals, 2026b).

On 30 September 2026 an interministerial commission delivered its final report to President Mulino, with 17 recommendations. It recommended opening formal negotiations with First Quantum on a new agreement under which the mine could be put back into operation to achieve an orderly closure, financed by the project itself at no cost to the state and with no possibility of extension, and it made the final termination of the pending arbitrations a mandatory condition of any agreement. The President said he would review the report with his cabinet and legal advisers before announcing a decision, and First Quantum said

Figure 15.1

Copper production at Cobre Panamá, 2022 to 2024 (thousand tonnes)



Note. Author, based on First Quantum Minerals (2024). Production stopped in November 2023. No copper was produced in 2024, when the mine was in a phase of preservation and safe management.

it would engage "constructively and in good faith" (First Quantum Minerals, 2026a, 2026b).

Questions to keep in mind. Why was a contract that had been negotiated and approved by the elected legislature overturned within weeks? Why did First Quantum's bargaining power change so much between 1997 and 2023? What alternatives did each side have after the mine closed? And what kind of agreement could survive the next change of government? The chapter answers these questions in turn.

15.1 How Do Firms Bargain to Enter a Foreign Market?

What Each Side Brings

A firm wanting to invest abroad and a government wanting to attract investment both expect to gain, but they must agree on how to share the gains. The economics of foreign direct investment explains what each side brings. Dunning's (1988) eclectic paradigm holds that firms invest abroad when they possess **ownership advantages** (technology, brands, management skills or access to capital lacking in local firms), when a particular country offers **location advantages** (resources, markets, low costs or favourable policies) and when the firm gains more by **internalising** its advantages, owning and controlling the foreign operation, than by licensing or exporting.

Each element is a source of bargaining power. A firm whose ownership advantages are rare, such as a unique technology or the capital and expertise to develop a large mine, can demand better terms than one whose capabilities are widely available. A country whose location advantages are rare, such as a large market or a rich ore body, can demand more from investors than one competing with many similar locations. The author's research on the determinants of foreign direct investment in India and Poland shows how market size, labour costs, infrastructure and policy shape the choices of investors, and therefore the bargaining position of each host country (Kumar, 2020). His earlier comparative analysis of investment in the two countries, and his work on new trends in foreign investment and the sustainable growth of emerging economies, trace how these determinants have changed as emerging economies have become more attractive and more selective hosts (Kumar, 2014, 2016). Table 15.2 summarises the sources of bargaining power on each side of these negotiations.

The Terms of Entry

The negotiation over entry typically covers taxes and royalties, ownership (whether a local partner or the state must hold a share), requirements for local content and employment, the transfer of technology, the repatriation of profits, environmental and social conditions, and the stability of the terms over time. Each of these issues can be traded against the others, and the integrative techniques of Chapter 8 apply. A host government valuing employment more than immediate revenue may accept lower taxes in exchange for a commitment to local hiring and training; an investor valuing the stability of its terms may accept a higher royalty in exchange for protection against future changes in law.

Governments increasingly negotiate entry not only over economics but over security. When a foreign investor seeks to buy a company in a sensitive sector, approval may be conditional on commitments that go far beyond tax and employment. The acquisition of US Steel by Nippon Steel illustrates this. After President

Table 15.2

Sources of bargaining power in negotiations over foreign investment

Source of power	Investor	Host government
Alternatives	Other countries in which it could invest	Other investors who could undertake the project
Unique assets	Technology, brands, capital, management, access to export markets	Natural resources, market access, location, skilled labour
Control over approval	Can decline to invest	Grants licences, permits, tax treatment and land
Time	Can wait for better terms if the project is not urgent	Can wait if the resource will keep; may face pressure for jobs and revenue
Information	Knows the project's costs and expected profits	Knows the political and regulatory environment
Allies	Home government, lenders, other investors	Domestic constituencies, other governments, international institutions

Note. Author, based on Vernon (1971), Dunning (1988) and Ramamurti (2001).

Biden blocked the deal in January 2025 on grounds of national security (*Order Regarding the Proposed Acquisition of United States Steel Corporation by Nippon Steel Corporation*, 2025), a new review led to its approval in June 2025, subject to a national security agreement. Nippon Steel committed to make about US$11 billion of new investments in US Steel by 2028, to keep the company's name and its headquarters in Pittsburgh, and to ensure that a majority of its board and key executives were American citizens. The United States government received a "golden share", which allows it to appoint an independent director and whose consent is required for decisions such as changing the company's name or headquarters or moving production or jobs out of the United States (Nippon Steel Corporation & United States Steel Corporation, 2025). Entry was negotiated with the state as much as with the target's shareholders.

Triangular Diplomacy

Stopford and Strange (1991) described international business as a system of **triangular diplomacy**: firms negotiate with firms, governments with governments and, increasingly, firms with governments. Each set of negotiations affects the others. A government's trade agreement with another country changes the location advantages over which firms bargain; a firm's investment can become a subject of negotiation between governments; and governments compete for investment by offering incentives which firms play against each other. Chapter

13 showed how the EU–Mercosur agreement changed the terms on which European firms could enter South American markets. The Spirit AeroSystems case in Chapter 14 showed governments and regulators on two continents shaping a transaction between firms.

KEY MOVE

Before negotiating entry into a foreign market, map your alternatives and the host's: how many other locations could you choose, and how many other investors could the government choose? Negotiate the whole package, including stability, local content and security conditions, not only taxes.

15.2 Why Does the Bargain Change after Investment?

The Obsolescing Bargain

The single most important idea in negotiations between investors and host states is the **obsolescing bargain**, developed by Vernon (1971). Before an investment is made, the investor holds most of the power. The host country needs the investor's capital, technology and expertise, and the investor can take its money elsewhere. To attract the investment, the host offers generous terms. Once the investment is made, however, the balance shifts. The investor's capital is sunk in physical assets that cannot be moved. The host has learnt how the project works, its own officials and firms have gained skills, and the project's profitability, once uncertain, has become visible. The investor can no longer credibly threaten to walk away, and the host can demand a larger share of the profits. The bargain struck at the start becomes obsolete.

Figure 15.2 illustrates the shift.

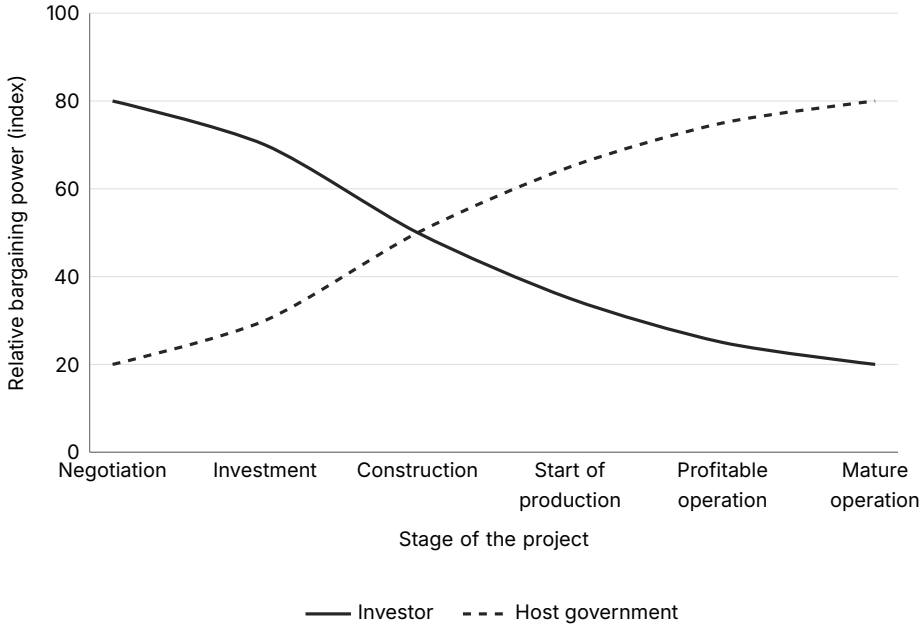
The logic is the same as that of the hold-up problem described in Chapter 2: a party making a specific investment, one worth much less outside the relationship, exposes itself to renegotiation by the other side. In a mine, the investment is about as specific as an investment can be. A copper deposit cannot be moved, and the plant built to exploit it has little value anywhere else.

Evidence and Qualifications

The model fits the experience of natural-resource industries well. Waves of renegotiation and nationalisation of oil and mining concessions followed periods of high commodity prices in the 1970s and again in the 2000s, when governments in Latin America, Africa and Central Asia raised taxes and royalties, required larger state shares or took over projects outright. It fits manufacturing less well. Kobrin (1987) found that in manufacturing, where technology changes quickly

Figure 15.2

The obsolescing bargain: relative bargaining power of an investor and a host government over the life of a project (illustrative)



Note. Author's illustrative representation of the model of Vernon (1971). The values are indices, not measurements.

and the investor's continuing contribution matters, the bargain obsolesces more slowly or not at all: the host continues to need the investor's new technology, access to export markets and management. Ramamurti (2001) argued that the model also neglects the role of the investor's home government and of international institutions, which can protect investors through treaties and arbitration; the bargain should therefore be seen as a two-tier negotiation, between states as well as between the firm and its host.

The pace of obsolescence depends on several factors. Table 15.3 summarises them.

Managing the Obsolescing Bargain

Investors cannot prevent the bargain from shifting, but they can manage the shift. Five strategies are common.

The first is **legal protection**: stability clauses in contracts freezing the fiscal terms, and investment treaties allowing investors to bring claims against host

Table 15.3

Factors that speed or slow the obsolescing bargain

Factor	Speeds obsolescence	Slows obsolescence
Type of asset	Immobile, specific assets such as mines and pipelines	Mobile assets; activities that can be moved
Technology	Mature, widely available	Rapidly changing, controlled by the investor
Market access	Output sold on open world markets	Output depends on the investor's global network
Profitability	High and visible profits, rising prices	Modest or uncertain profits
Domestic politics	Nationalist sentiment, elections, protests	Broad domestic support, local partners who benefit
International protection	No treaty protection	Investment treaties, arbitration, home-government support

Note. Author, based on Vernon (1971), Kobrin (1987) and Ramamurti (2001).

states before international tribunals. Chapter 5 examined investor–state arbitration and its limits. Legal protection raises the cost to the host of changing the terms, but it does not remove the incentive to do so, and an award of compensation is not the same as a working project.

The second is **sharing the gains with the host as they grow**. Contracts with progressive royalties or taxes that rise with prices or profits give the host a larger share when the project does well, reducing the pressure to renegotiate.

The third is **building local support**: employing and training local people, buying from local suppliers, investing in community infrastructure and taking local partners. An investor whose project is widely seen to benefit the country is harder to attack.

The fourth is **retaining a continuing contribution** needed by the host, such as technology, access to markets or the expansion of the project, so the host continues to depend on the investor.

The fifth is **legitimacy of the original bargain**. A contract negotiated in secret, with terms which later appear one-sided, is vulnerable to the charge of never having been fair. A contract negotiated transparently, approved through processes the public trusts and seen to give the country a fair share, is more durable.

The Deal File illustrates every element of the model. First Quantum's investment of several billion dollars was sunk in a single location. The mine's profitability became visible as production reached record levels. The original concession, with terms set in 1997, came to be seen as too favourable to the investor, and the renegotiated contract, although it raised the state's share considerably, was approved quickly and with little public consultation. Protesters and the Court

rejected it not only because of its terms but because of the way it had been negotiated.

KEY MOVE

If you invest in immobile assets abroad, assume that the host will seek to renegotiate once the investment succeeds. Build in progressive sharing of gains, local support and a continuing contribution, and make sure the original bargain is seen to be fair and legitimate.

15.3 How Do Trade Agreements, Sanctions and Geopolitics Shift Power?

Trade Agreements and the Rules of the Game

Firms bargain within rules negotiated by governments. Trade agreements change the location advantages of countries by reducing tariffs and other barriers, and they change the legal protection available to investors through chapters on investment, services and intellectual property. A firm deciding where to invest, or negotiating with a supplier abroad, must consider not only current tariffs but the agreements which will change them. The EU–Mercosur agreement in Chapter 13 and the tariff escalation between the United States and China in Chapter 12 showed how quickly such rules can change.

Rules made by governments can also be the subject of disputes between them, in which firms' interests are at stake. The case of Indonesia's nickel illustrates how a government can use trade policy to shift bargaining power from foreign buyers to domestic industry, and how weakly the international rules constrain it when the institutions that enforce them do not function.

Sanctions, Export Controls and Weaponised Interdependence

Governments also shift bargaining power by restricting trade and investment for political reasons. Chapter 11 examined export controls on rare earths and semiconductors as instruments of leverage between the United States and China. Here the focus is on what such measures mean for firms negotiating across borders.

Farrell and Newman (2019) argued that global economic networks, such as payment systems, supply chains and communications infrastructure, are concentrated in a small number of hubs, and states with jurisdiction over those hubs can use them to coerce others. They called this **weaponised interdependence**. States can exploit a hub in two ways: by gathering information from the flows that pass through it, and by cutting others off from it. The power of the United States over

DEAL SNAPSHOT

Indonesia's Ban on Nickel Ore Exports, 2020 to 2026

Indonesia has the world's largest reserves of nickel, a metal used in stainless steel and in batteries for electric vehicles. For years it exported unprocessed ore, mainly to China. From 1 January 2020 it banned the export of nickel ore, requiring that it be processed in Indonesia. The policy forced foreign firms wanting Indonesian nickel to invest in smelters and processing plants in the country, and Chinese companies built a large industry there. The European Union, whose stainless steel producers relied on imported ore, challenged the ban at the World Trade Organization. On 30 November 2022 a WTO panel found that the ban and the domestic processing requirement were inconsistent with Indonesia's obligations under the General Agreement on Tariffs and Trade and were not justified by any available exception. On 8 December 2022 Indonesia appealed to the WTO's Appellate Body, which has been unable to hear appeals since 2019 because the United States has blocked the appointment of its members. The appeal "into the void" meant that the ruling could not become final. The EU estimated the direct harm to its interests at about €350 million a year and in 2023 consulted on possible countermeasures under its own enforcement regulation (European Commission, 2023b). Meanwhile Indonesia's output of mined nickel tripled between 2020 and 2024, giving it about 62 per cent of world production (Figure 15.3). The case shows how a resource-rich state can use control of a scarce input to oblige foreign investors to locate processing in its territory, and how the weakness of multilateral enforcement shifts power to the party willing to defy a ruling.

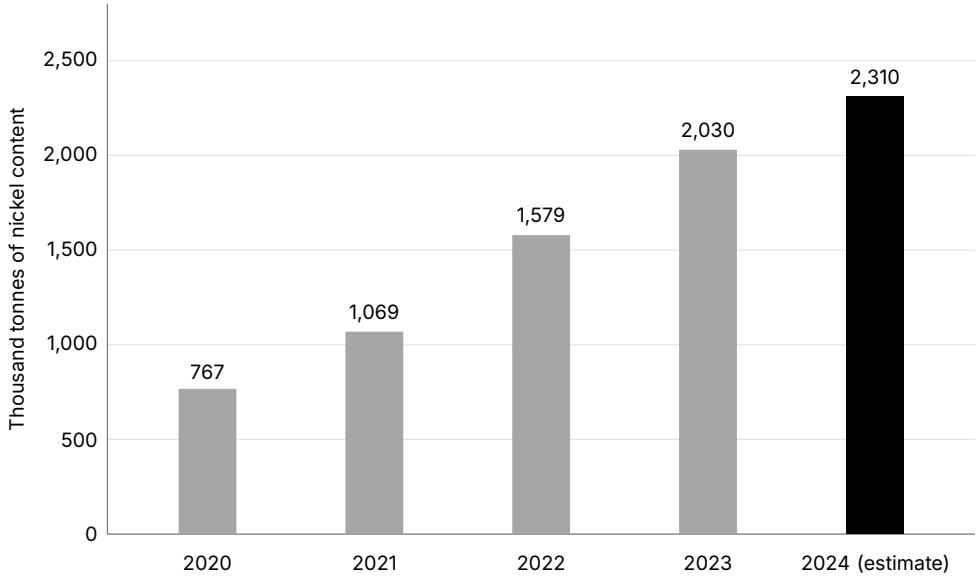
the international use of the dollar and of China over the processing of critical minerals are examples.

For firms, weaponised interdependence has three consequences for negotiation. First, the firm's alternatives depend on government decisions beyond its control: a supplier becoming subject to sanctions ceases to be an alternative overnight. Second, contracts must allocate the risk of such measures, through clauses on sanctions, force majeure and termination. Third, firms increasingly negotiate with governments for licences, exemptions and approvals, so that public authorities become parties to commercial negotiations.

Geoeconomic fragmentation also changes the bargaining position of middle powers. Countries such as India can gain leverage by balancing among competing blocs, but they also face the risk of being caught between them, a dilemma that the author has analysed in the context of India's role in BRICS (Kumar, 2026f). For Central European states, the war in Ukraine has reshaped economic and strategic calculations even in distant markets, as the author's analysis of Poland's economic relations with India and South Asia shows (Kumar, 2026d).

Figure 15.3

Indonesia's mine production of nickel, 2020 to 2024 (thousand tonnes of nickel content)



Note. Author, based on United States Geological Survey (2025), National Minerals Information Center country data for Indonesia. The 2024 figure is an estimate. Indonesia accounted for an estimated 62 per cent of world mine production in 2024.

Investment Screening

Governments have also increased their scrutiny of inward investment. The United States has long reviewed foreign acquisitions on grounds of national security through the Committee on Foreign Investment in the United States. The European Union adopted a framework for screening foreign direct investment, applicable since October 2020, under which member states share information on investments which may affect security or public order; many member states, including Poland, have national screening systems. As the Nippon Steel case showed, screening turns many cross-border acquisitions into negotiations with the state, in which approval is traded for commitments on governance, employment, investment and security. Table 15.4 summarises how such state measures shift bargaining power in cross-border business.

Table 15.4

How state measures shift bargaining power in cross-border business

Measure	How it works	Effect on bargaining
Trade agreement	Reduces tariffs and barriers; protects investment	Expands alternatives; strengthens investors' legal position
Export ban or restriction	Prohibits or limits exports of a good	Forces foreign buyers to invest locally or find other sources
Sanctions	Prohibit dealings with designated parties	Removes alternatives; raises compliance costs; may end contracts
Export controls	Require licences for sensitive goods or technology	Gives the state a veto over sales; firms must negotiate licences
Investment screening	Reviews foreign acquisitions for security risks	Turns approval into a negotiation over commitments
Investment treaty	Gives investors access to international arbitration	Raises the cost to host states of changing terms

Note. Author, based on Farrell and Newman (2019) and the cases in this book.

KEY MOVE

Treat government action as part of your alternatives. Ask which of your suppliers, customers or partners could be removed by sanctions, export controls or screening, allocate those risks in your contracts and, where the state must approve, prepare to negotiate with it as a party.

15.4 Negotiating for Development: Resources, Partnerships and Debt

Natural-Resource Contracts

Negotiations over natural resources are among the highest-stakes negotiations that developing countries undertake. A single mining or oil contract can determine a large share of a country's public revenue for decades. Yet the parties are often unequal. International mining and oil companies have specialist negotiators, lawyers and geologists, and detailed knowledge of the project's economics; host governments, particularly in smaller and poorer countries, may lack all of these. The asymmetry of information described in Chapter 2 is acute.

Several developments have tried to reduce this imbalance. Model contracts and fiscal regimes published by international organisations give governments benchmarks. Transparency initiatives require the publication of contracts and payments, so that citizens can judge whether a deal is fair. Independent advisers, sometimes funded by development agencies, help governments to negotiate.

And fiscal terms have increasingly been designed to respond to changing conditions. Table 15.5 compares common instruments.

Table 15.5

Instruments for sharing resource revenues between investors and states

Instrument	How it works	Advantages for the state	Risks
Royalty on revenue	A percentage of the value of output	Simple; paid from the start of production	Does not rise with profits; can deter investment in marginal projects
Profit tax	Tax on the investor's profits	Rises with profitability	Depends on the investor's accounts; transfer pricing
Resource rent tax	Additional tax once returns exceed a threshold	Captures windfall gains	Complex to administer
State equity	The state holds shares in the project	Share in profits and information	Requires capital; conflicts of interest
Minimum payment	A guaranteed annual amount	Predictable revenue	May be too low in good years
Production sharing	The state receives a share of output	Common in oil; shares upside	Requires monitoring of production and costs

A contract combining a royalty, which guarantees revenue from the start, with a profit-related element, which gives the state a larger share in good years, can reduce the pressure for renegotiation driving the obsolescing bargain. The 2023 Cobre Panamá contract contained both a minimum payment and a profit-based royalty, yet still failed. The lesson is that fiscal design alone does not guarantee durability; the process by which the agreement is reached, and its legitimacy among citizens, matter as much.

Public–Private Partnerships

In a **public–private partnership** (PPP), a private firm finances, builds and often operates infrastructure such as a road, a hospital or a power plant, in return for payments from the state or from users over a long period. Engel et al. (2014) showed that the economics of PPPs is dominated by renegotiation. Because contracts last for decades and cannot anticipate every contingency, they are frequently renegotiated, and the renegotiations often favour the private partner, who may have bid low to win the contract in the expectation of recovering its costs later. The negotiations over a PPP therefore require attention to the same issues as resource contracts: the allocation of risks, mechanisms for adjustment and the transparency of the process.

DEAL SNAPSHOT

Zambia's Debt Restructuring, 2020 to 2024

Zambia, Africa's second-largest copper producer, defaulted on its foreign debt in late 2020, becoming the first African country to default during the pandemic. It applied for treatment under the G20's Common Framework, which brought together its official creditors, including China, its largest bilateral lender, and members of the Paris Club, in a single committee co-chaired by France and China. In October 2023, almost three years after the default, Zambia signed a memorandum of understanding with this committee on the treatment of about US$6 billion of debt, and the first bilateral agreement implementing it, with France, was signed only in December 2024 (Direction générale du Trésor, 2024). Agreement with private creditors took longer still. In February 2024 the official creditors confirmed their requirements for **comparability of treatment**, the principle under which each class of creditors must offer relief comparable to the others, and in March 2024 Zambia reached an agreement in principle with the steering committee of its Eurobond holders. The official creditors confirmed that the agreement met this test, and the exchange of the bonds was settled on 11 June 2024 (International Monetary Fund, 2024). The talks were also slowed by disputes over whether multilateral development banks and Chinese lenders should accept losses. The restructuring illustrates how a negotiation among many creditors, each with a veto over its own claims, can make agreement slow even when all agree that relief is necessary. Table 15.6 sets out the main components of the restructuring.

Sovereign Debt Restructuring

When a country cannot pay its debts, it must negotiate with its creditors, and these negotiations have become more complex as the creditors have become more diverse. In the past, most lending to poor countries came from Western governments, organised in the Paris Club, and from multilateral institutions such as the World Bank and the International Monetary Fund. Today China is the largest bilateral lender to many developing countries, and private bondholders hold a large share of their debt. Each group of creditors wants the others to bear their fair share of the losses, and each fears that relief it grants will be used to pay others. Bulow and Rogoff (1989) showed that sovereign debt is sustained by the threat of sanctions and exclusion from markets rather than by legal enforcement, so the terms of any restructuring are themselves the outcome of bargaining.

To coordinate these creditors, the G20 created the **Common Framework** in 2020. Its first full test was Zambia.

Table 15.6

The main components of Zambia's debt restructuring

Creditor group	Debt covered	Form of agreement
Official bilateral creditors (Official Creditor Committee, co-chaired by France and China)	About US$6 billion	Memorandum of understanding of October 2023, implemented through bilateral agreements from December 2024
Eurobond holders	Zambia's outstanding Eurobonds	Agreement in principle with the bondholders' steering committee in March 2024; exchange of the bonds settled in June 2024

Note. Author, based on Direction générale du Trésor (2024) and International Monetary Fund (2024).

Negotiating Capacity and Development

Across resources, PPPs and debt, a common theme is the capacity of developing countries to negotiate. A government lacking information, expertise and alternatives will agree terms it later regrets, setting the scene for the conflict and renegotiation predicted by the obsolescing bargain. The author's work on trade cooperation between India and Europe and on business approaches to economic development argues that negotiating capacity, including the ability of governments and firms to understand partners and their institutions, is itself a factor in development (Kumar, 2026b, 2026c). Building this capacity, through training, transparency and access to independent advice, can produce agreements both more favourable to host countries and more durable for investors.

KEY MOVE

In negotiations with developing-country governments, aim for agreements which will still look fair in ten years. Combine guaranteed and profit-related payments, publish the terms, support the other side's capacity to evaluate them and build mechanisms for adjustment rather than leaving change to crisis.

BACK TO THE DEAL FILE

Reading the Cobre Panamá Negotiations

The concepts of this chapter explain the rise, fall and possible return of the Cobre Panamá agreement.

The bargain obsolesced as the model predicts. First Quantum's capital was sunk in an immobile asset. As the mine reached record production, its profitability became visible, and the terms set in 1997 came to look inadequate. Panama sought, and obtained, much better terms.

Better terms were not enough. The 2023 contract raised the state's share considerably, but it was negotiated with little public involvement and approved quickly. Citizens, unions and environmental groups, who were not at the table, rejected it, and the Supreme Court gave legal force to their objections. The failure was one of legitimacy, not only of economics.

Both sides' alternatives deteriorated. After the closure, Panama lost revenue, jobs and part of its GDP, and faced international arbitration claims. First Quantum lost its largest source of revenue and faced years of uncertain litigation. Each side's alternative to a negotiated agreement became worse, creating the conditions for talks.

The new negotiation is shaped by the old one. The commission's conditions (an operation tied to an orderly closure, no extension, no cost to the state and the end of arbitration) respond directly to the reasons why the 2023 contract failed. Any new agreement must persuade not only First Quantum and the government but the citizens who brought down the last one.

International rules mattered but did not decide. Treaty-based arbitration gave First Quantum leverage, which it partly gave up to open the way for talks. The case shows that legal protection can bring a host back to the table, but it cannot impose a durable agreement on an unwilling society.

MA EXTENSION

Hold-Up, Sunk Investment and Self-Enforcing Contracts

Suppose an investor must sink an investment $I = 6$ (in billions of dollars) to develop a mine yielding a surplus of $R = 2$ a year for many years, with a discount rate of $r = 10$ per cent; the present value of the surplus is then $R/r = 20$. Before the investment, the investor and the host agree that the host will receive a share s of the annual surplus. After the investment, the host can renegotiate by threatening to expropriate, at a cost to itself (in lost reputation, future investment and arbitration risk) of C per year. (a) What is the largest share the host could demand after investment without making expropriation attractive? (b) What is the lowest share the investor would accept before investing? (c) Show that if C is small, no agreement may be self-enforcing, and the investment will not be made. (d) Discuss how investment treaties, progressive fiscal terms and local support change C and the range of self-enforcing agreements, and relate your answer to Cobre Panamá.

ETHICS CHECK

The 2023 Cobre Panamá contract was approved by an elected legislature, but it was rejected by large parts of the population and struck down by the Supreme Court. First Quantum had invested billions of dollars on the basis of a concession granted by the state. Did Panama act fairly towards an investor that had relied on its promises? Did the investor act responsibly in seeking a contract that many citizens regarded as illegitimate? What obligations does a foreign investor have to ensure that the agreements it negotiates with governments are reached transparently and are accepted by the people they affect?

Pillar Scorecard

Table 15.7

Pillar Scorecard: Cobre Panamá, 2022 to 2026

Pillar	Importance in this case	Evidence
Profit	Very high	A mine contributing more than US$2.7 billion a year to GDP, a minimum payment of US$375 million a year and international arbitration claims were at stake
Power	Very high	The obsolescing bargain, the Supreme Court's ruling and the arbitration claims shifted power repeatedly between the investor and the state
Persuasion	High	Public protests overturned the 2023 contract; any new agreement must persuade citizens as well as negotiators

Your Move

This is a constructed teaching case.

You lead the international expansion of a Polish manufacturer of railway components based in Katowice. The firm plans to build its first factory outside Europe, in India, to supply the country's expanding railway network. Two Indian states are competing for the investment. One offers a lower price for land and a ten-year tax holiday but requires that 40 per cent of components be sourced locally within three years; the other offers faster approvals and a site close to a port but fewer financial incentives. Indian Railways, a state-owned enterprise, will be your main customer. The author's comparative research on foreign direct investment in India and Poland may help you to assess the location factors (Kumar, 2020).

1. Using Table 15.2, assess the bargaining power of your firm and of each state government.

2. How would you play the two states against each other without damaging your relationship with the one you eventually choose?
3. Your investment will be sunk in an immobile factory. Which of the strategies for managing the obsolescing bargain would you use, and how would you build them into the agreement?
4. What risks arising from trade agreements, sanctions or changes in Indian policy should your contracts address?
5. How would you ensure that the agreement is seen as fair by local communities and the state legislature?

Conclusion

Negotiations across borders take place in the presence of the state. Firms seeking to enter foreign markets bargain with host governments, using their ownership advantages against the host's location advantages, and the terms of entry increasingly include commitments on security as well as on taxes and jobs. Once an investment is sunk, the bargain obsolesces: power shifts from the investor to the host, which may seek to renegotiate. Investors can manage this shift through legal protection, progressive sharing of gains, local support, a continuing contribution and, above all, the legitimacy of the original bargain. Governments also shift power through trade agreements, export bans, sanctions, export controls and investment screening, which change the alternatives available to firms. In negotiations for development, over resource contracts, public–private partnerships and sovereign debt, unequal capacity and many parties make agreement difficult and fragile. The Cobre Panamá case shows these forces at work: a contract giving the state much better terms collapsed for lack of public legitimacy, and the negotiation which followed had to address not only profit and power but persuasion. That is the subject of Part IV, which turns to communication, culture and ethics.

Exercises

A. Objective Questions

1. According to Dunning's eclectic paradigm, firms invest abroad when they have:
   a) only location advantages
   b) ownership, location and internalisation advantages
   c) a home government that subsidises them
   d) lower costs than local firms

2. The obsolescing bargain refers to:
   a) the shift in bargaining power from the investor to the host once the investment is sunk
   b) the decline in the value of a contract because of inflation
   c) the end of a contract on its expiry date
   d) the replacement of old technology

3. Kobrin (1987) found that the obsolescing bargain applies less strongly in:
   a) mining
   b) oil
   c) pipelines
   d) manufacturing with rapidly changing technology

4. On 28 November 2023 Panama's Supreme Court:
   a) approved the Cobre Panamá contract
   b) ordered First Quantum to pay compensation
   c) declared Law 406 unconstitutional
   d) referred the contract to arbitration

5. A WTO appeal "into the void" means:
   a) an appeal to a non-functioning Appellate Body, which prevents the panel report from becoming final
   b) an appeal that is withdrawn
   c) an appeal to the International Court of Justice
   d) an appeal that is decided in favour of the appellant

6. Weaponised interdependence, according to Farrell and Newman (2019), refers to:
   a) military alliances between trading partners
   b) tariffs on weapons
   c) the use by states of control over hubs in global networks to coerce others
   d) the dependence of firms on their suppliers

7. Under the principle of comparability of treatment in sovereign debt restructuring:
   a) all creditors receive the same interest rate
   b) each class of creditors must offer relief comparable to the others
   c) official creditors are always repaid first
   d) private creditors are excluded

8. In Table 15.5, the instrument that captures windfall gains once returns exceed a threshold is:
   a) a royalty on revenue
   b) state equity
   c) a minimum payment
   d) a resource rent tax

B. Short-Answer Questions

1. Using Table 15.2, explain the sources of bargaining power of a foreign investor and of a host government.
2. Explain the obsolescing bargain and illustrate it with Figure 15.2 and the Cobre Panamá case.
3. Describe three strategies an investor can use to manage the obsolescing bargain.
4. How did Indonesia's ban on nickel ore exports shift bargaining power, and why could the WTO ruling not be enforced?
5. Explain how investment screening turns acquisitions into negotiations with the state, using the case of Nippon Steel and US Steel.
6. Compare a royalty, a profit tax and a resource rent tax as ways of sharing resource revenues.
7. Why did Zambia's debt restructuring take more than three years?

C. Long-Answer Questions

1. Analyse the Cobre Panamá negotiations from 1997 to 2026 using the model of the obsolescing bargain. Why did a contract that improved the state's terms fail, and what would a durable agreement require?
2. "Legal protection cannot substitute for legitimacy." Discuss with reference to investment treaties, investor–state arbitration and the cases in this chapter.
3. How have sanctions, export controls and investment screening changed the negotiations of multinational firms? Use examples from this chapter and from Chapters 11 and 12.
4. Evaluate the G20 Common Framework as a forum for multi-party negotiation, using the case of Zambia and the concepts of Chapter 14.

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