

# Making Deals in Strange Places

**How to Prepare for and Cope With the Unique Challenges of International Business Negotiations**

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**by Douglas Cohen**

*Douglas Cohen, Esq., has over 15 years of first-hand international business and legal experience working in Europe, Asia, and Latin America. He is a partner in Worldwide Trade Consultants, in Scottsdale Arizona, where he provides strategic and legal advice to companies entering or expanding foreign markets. He is also an adjunct professor in international business and law at several universities. He can be reached at (480) 614-0511.*

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I still remember my first business trip to Japan. The numbing 14-hour flight. The exotic sights and smells of Tokyo, the foreign language, the strange customs. When I asked questions, people reacted in ways I couldn't quite understand. I felt utterly lost.

In an instant, I knew what it meant to suffer from "culture shock." Doing business in a foreign country poses many unique challenges. If your company is involved in, for example, an import/export sale, a license agreement, establishing a foreign office or a joint venture, you will face special obstacles not present in domestic transactions.

Not knowing how to deal with these challenges causes many U.S. companies to avoid overseas markets. Companies that fail to prepare for these constraints lose valuable opportunities to their competitors. In today's economy, all business is global, all customers are local, and competition comes from everywhere. If we do not learn how to face our competitors head on in foreign markets, we will be facing them in our own markets. As a result, businesses must reach the entire world for customers and suppliers, for partners and labor, for know-how, and finance.

Therefore, whether you are from Scottsdale, Arizona or Shanghai, China, managers have to master what is quickly becoming a basic element of modern business life – the global deal. What are the most critical challenges international dealmakers face? My experience as an international business lawyer and consultant in Europe, Asia,

and Latin America would suggest the following:

- An unfamiliar environment;
- Unusual negotiation/communication styles;
- The possibility of sudden and significant change;
- and
- Foreign laws and governments.

These constraints greatly increase your risk of failure. However, these warnings should not cause you to fear international negotiations. You can handle these potential pitfalls. As you read on, I will also share with you how to deal with one of the most common “dirty tricks” played on unsuspecting international negotiators. If you correctly prepare for these challenges, and hire qualified experts, you can greatly increase your odds of success.

### **The Strange Environment**

Negotiating in foreign territory presents many disadvantages. In addition to being costly, the environment is unfamiliar and uncontrollable. You have to deal with jet lag, unfamiliar foods, strange customs, and foreign language. Your progress will slow drastically. Your physical and emotional stamina will be tested. I have seen many an experienced U.S. executive lose all common sense while overseas.

Further, overseas lines of communication to the home office are long, uncertain, and insecure. Will the hotel fax machine operator sell copies of your messages

to the other side? Will the local government bug your hotel room or meeting place? This may sound far-fetched but it has happened to me in China. If not dealt with effectively, these pressures may prevent a good agreement, or cause your negotiating team to pack its bags and go home without a deal.

In addition, the other side has the advantage of controlling the environment, including the selection and arrangement of the negotiating room. For example, during a negotiation in Korea, our hosts choose to hold negotiations in a tiny, dank, windowless room. As is the norm in Asia, the Koreans chained smoked cigarettes until the room was a charred haze. The longer we spent in this uncomfortable environment, the stronger we felt the emotional drive to conclude the negotiations and return home. Needless to say, we probably left Korea with less than we should have.

Unfortunately, it is not always possible to avoid these strange surroundings. If your company is in the position of the seller, it is typically only by going to the buyer's country that you can bring your product or service to the buyer's attention. In addition, by traveling to the other side's territory, you demonstrate your seriousness of intent and strong desire to make a deal.

However, do not be naïve. When traveling abroad, your foreign hosts have "home field" advantage. There are a few ways to reduce this advantage. First, obtain advice from international negotiation experts who have worked extensively in the customer's country. Seek information from the US embassy, US Department of Commerce, and Chamber of Commerce's. If you have business contacts in the for-

foreign market, ask them for guidance on how to prepare for doing business in their country. These local experts can alert you to problems, keep the negotiation moving, and act as a cultural bridge or representative.

Nevertheless, if possible, the best option is to hold significant negotiations at your location. If this is not possible, the parties should meet at a neutral site. Hawaii is a lovely location for meeting your Asian partners. Alternatively, you could schedule several “rounds” of meetings in both sides’ countries. In this manner, neither party has the “home field” advantage.

### **Different Culture and Communication Styles**

Culture is an important factor shaping how people think, communicate, and behave. It’s people who make or break business, not necessarily the product or the price. The cultural differences between a Hungarian plant manager in Budapest and an American division head from Los Angeles can create a negotiating barrier that may block any deal. International business deals fail not so much because of external factors - economics, technology, and politics - but because of a lack of understanding between the two sides about cultural differences.

For example, one American cultural trait is our value of time management. In the U.S., “time equals money”. However, most non-US managers do not work under the same time pressures that we do. Therefore, they have the power of time on their side and can make Americans feel pressured to make compromises. Many

U.S. firms simply do not have the required patience or do not make the time commitment necessary to reach a satisfactory international deal. Non U.S. companies are particularly clever at using this cultural distinction to their advantage.

For example, most Americans are uncomfortable with long periods of silence. Once while negotiating in Japan, the Japanese side remained silent for nearly twenty minutes before responding to one of our offers. Japanese and Chinese negotiators have admitted to me that they can make Americans agree to concessions simply because they can “outwait” the impatient Americans.

Further, in most business cultures, the establishment of a relationship with your potential business partner is very important. In the U.S., we often approach a new customer or partner as simply another transaction. However, most non-U.S. executives wish to get to know you on a personal level first, to determine the possibility of a long-term relationship. Therefore, you will be invited to attend several social gatherings or meals before you “get down to business”. Many American managers are unaccustomed to this process or feel it is an uneconomical use of time.

Another potential pitfall to international negotiations is different communication styles. For example, in America, we like direct “yes” or “no” answers. In many countries, if you ask a negotiator for a direct “yes” or “no” answer, they will often say “yes”, simply because saying “no” in their culture is impolite. In addition, in many cultures, “yes” does not really mean “yes”. Often a “yes” response means only that “I understand”, or that “I have heard you”. It is the *manner* in which the “yes” is stated

that *implies* whether the answer is actually “yes” or “no”. In other words, you have to read between the lines in order to *interpret* what has been said. The closest a Japanese negotiator will come to a “no”, is when he uses the word “difficult”. “Difficult” does not mean what it means in the U.S. “Difficult” in Japan means that what you ask is not possible.

In addition, understanding cultural differences is more than the typical laundry list of “do’s and don’ts” concerning cultural taboos. Knowing how to drink your tea in Taiwan or cross your legs in Saudi Arabia is just the tip of the iceberg. In addition, there is not one “Asian” or “European” style of communication. Negotiators from a particular culture are not cut from a uniform mold and do not represent a single stereotype.

Therefore, when you travel into another culture, do not look for answers. Look for understanding. Break through your American cultural biases and assumptions. Your foreign customers will likely find your American approach to business strange as well. If the two of you can appreciate the differences, then you can find common ground, compromise, and close the deal.

One critical step to reaching common ground is to throw away your American assumptions. What do I mean by assumptions? A good example is the assumption a former client made about hospitality. While in Asia, my client felt pressured by the tight schedules arranged by their hosts. My American client resented all of the sightseeing and banquets as a waste of time. However, the Asians saw these activities as opportunities to get to know each other before committing to a business relationship.

Unfortunately, given *his distaste* for planned events, my US client *assumed* that when visiting the US, their Asian customers would like “free time” to shop and explore on their own. Instead, the Asians felt abandoned and insulted by the lack of “friendship” showed to them.

### **Foreign Laws and Governments**

By engaging in international business, your company enters into a world of different laws and political systems. When you do business in a foreign territory, your business is subject to foreign law, jurisdiction, and government regulation.

Americans are often unprepared for the extensive influence exerted by foreign governments on business activities. Many governments, particularly in Latin America, Asia, and Africa, own a majority stake in their leading corporations. These governments may strictly regulate foreign trade and investment. For example, your company may be required to partner with a local foreign company or the government as a condition to doing business.

Your lack of understanding of a different legal system is a definite disadvantage. Your lack of knowledge of foreign law could result in project income being taxed by two or more governments. Your contract may be governed by two or more legal systems, and a dispute between the parties may be decided by two or more courts – in two or more different ways — in a language you do not understand.

Protecting your business against these dangers requires special measures, including the following legal provisions:

- The use of international commercial arbitration in a neutral third country instead of litigation in either party's court's.
- A specific choice of the governing law, jurisdiction, and language, of the arbitration.

Dealing with these and other legal issues will require you to retain an experienced "international lawyer." This is a lawyer qualified to practice law in at least one national legal system and has substantial experience negotiating and drafting international agreements. International lawyers typically speak at least two languages, understand foreign legal and business cultures, and have important personal contacts with foreign governments. If your company needs local counsel in a foreign country, international lawyers can locate one for you. Given the hassle and money they can save you, working with a qualified international lawyer is well worth the expense.

How do you find qualified international lawyers? First, do not rely on legal directories such as Martindale-Hubbell. Listings in Martindale-Hubbell are self-identified, meaning anyone can refer to themselves as "international lawyers". Further, the fact that an U.S. firm has overseas offices does not make them competent in international law. Instead, get several referrals from your U.S. lawyer, banks, accounting firms, and chambers of

commerce. Meet with selected attorneys to determine their level of experience, negotiations background, regions and industries of expertise, and languages spoken.

### **Instability and Sudden Change**

Many US firms are unprepared for the speed and magnitude of change in foreign markets. The type and magnitude of change in the international arena is far greater than in the US domestic setting. The fall of the Berlin Wall and the Soviet Union, the escalation of violence in the Middle East, the Asian currency crisis, and political shake ups in Latin America are just a few examples of events that had serious consequences for international business. Even a change in leadership in the foreign country may kill a deal. For example, one of my clients spent eight taxing months negotiating with a Latin American gas company before a new political party took over and prohibited the negotiated deal.

To cope with these risks, there is no substitute for market research and risk analysis. Develop a thorough knowledge of the country and region concerned including the political, economic, and social forces at work. For large investments, I recommend that you consider purchasing foreign investment or political risk insurance. In addition, have your international lawyer include a *force majeure* clause in every contract that allows cancellation of the contract upon specified events such as a coup d'etat, a change in government policy, weather disruptions, financial crisis, labor strife, or war.

## **Negotiation Tactics**

Finally, no discussion of international negotiations would be complete without a warning about one of the most common, and clever, negotiation tactics.

Imagine this scenario:

You are a manager at a growing hi-tech company based in Scottsdale, Arizona. You've been working day and night to conclude a valuable contract with a new Japanese client, Nihonsan. Your company asks you to fly to Tokyo on Monday to finalize the deal and return to the office the following Monday. After the numbing 14-hour flight to Tokyo, you are met at Narita airport by the friendly people at Nihonsan. While driving you to your hotel, your hosts invite you to be their guest at several Japanese cultural sites, while cordially inquiring about the length of your stay. In your jet-lagged state, you smile and respond that you will be leaving on Friday.

You have just cost your company several thousands of dollars.

**How did that happen?** By revealing your itinerary (i.e. that you are leaving on Friday), you have handed Nihonsan valuable information, which they can use against you. Specifically, if Nihonsan knows that you plan to depart Tokyo on Friday, they can stall negotiations until that time. When Friday arrives, you will be virtually begging for a deal, or at least willing to accept much less. This happened to me during one of my first visits to Singapore. My foreign guests did not begin serious negotiations until I was on my way to the airport for my return flight.

### **How do you deal with this negotiation tactic?**

First, leave yourself sufficient time to conclude your contract. An international transaction will probably take twice the time of a comparable domestic one.

How should you respond to your host's questions about your length of stay? Smile and tell them it is a pleasure to be their guests in their lovely country.



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