



703 - Cross-Cultural Challenges in International Negotiations

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Faculty Biographies

Steven Kahaner

Steven M. Kahaner is the vice president and general counsel of Marste & Co., Inc. in New York. He provides general legal guidance and counsel to the company. His responsibilities include counseling on commercial transactions, employment and immigration matters, corporate policy and procedure, intellectual property, software licensing, and technology.

Prior to joining Marste, Mr. Kahaner practiced law at the New York offices of Sonnenschein, Nath & Rosenthal LLP and Chadbourne & Parke LLP, with a focus on international corporate and project finance.

Mr. Kahaner currently serves as the chair of the inter-American affairs committee of the New York City Bar, and is a member of the board of directors of the Association of Language Companies.

He received a B.A. with honors from Tufts University and a J.D. with honors from the George Washington University's National Law Center.

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Chief Legal Officer
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Henry Pitney

Henry C. Pitney serves as deputy general counsel for the Millennium Challenge Corporation (MCC). In this capacity, in close coordination with the general counsel, he oversees the office of the general counsel, including the attorneys, paralegals and assistants. He brings extensive experience in management and emerging markets finance to MCC, where his responsibilities include helping guide the department through all phases of negotiation, execution, and implementation of various transnational agreements.

Prior to joining the MCC, Mr. Pitney served as assistant general counsel to the Overseas Private Investment Corporation (OPIC). While at OPIC, he helped U.S. businesses invest overseas, and structured and negotiated transactions in emerging markets. He worked on international private equity, structured and project finance transactions, and political risk and insurance matters, including claims, and advised sponsors and financiers on managing risks associated with foreign direct investment.

Prior to joining OPIC, Mr. Pitney worked for the Asian Development Bank, in Manila, Philippines, where he was the Head of ADB's Private Sector Legal Group within the Office of the General Counsel. In that capacity, Mr. Pitney oversaw the delivery of legal services by lawyers working on non-sovereign operations in the infrastructure, private equity, political risk and partial credit risk areas.

Mr. Pitney received his B.A. from Middlebury College, and M.A. from the University of Michigan. He was awarded his J.D. from Columbia University Law School.

Tips for Doing Business and Negotiating in Spain

Outline

- I. Commercial Language
- II. Working Hours
- III. Holidays, Vacations and Punctuality
- IV. Dress
- V. Business Appointments
- VI. Meeting and Greeting
- VII. Conversation
- VIII. Business Structure and Hierarchy
- IX. Negotiating
- X. Local Counsel

Steven M. Kahaner

CROSS-CULTURAL NEGOTIATION CHECKLIST**A. NEGOTIATION STYLES AND CULTURES**

1. Understand negotiating “style” of country (non-confrontational (e.g. Japan); adversarial (you know who I mean, but not to upset anyone, I won’t mention countries); compromising (e.g. US).
2. Understand how decisions are made (individuals like CEO-President); committees/groups (Japan?).
3. Understand time constraints (allow adequate time for pre-meeting communication to define issues; identify parties and roles, and understand how much time you have for actual negotiations – be certain to factor in social time)
4. Watch body language – it may NOT be the same as in US.
5. Listen and learn the language of “yes”, “no” and “I heard, but am not agreeing to anything.”
6. Educate your “entire” negotiating team – there are few things more embarrassing than a CEO-CFO who has been too busy to be briefed and simply assumes things are done like they are in US) – example, CEO who announced openly he didn’t think someone on the other side understood what we were discussing because they couldn’t speak English, only to be answered in perfect English “I understand quite well”
7. As much as cultural stereotypes can help to prepare you for a negotiation, they can also be a major trap when you run into a “new entrepreneur” who does not fit the mold or has taken more time than you have to understand and adapt to the US style of negotiation.

8. Some no-fail suggestions:

- listen, listen and listen again even more carefully before speaking
- always be polite
- if in doubt, err on the side of being a little more formal (particularly in dress) than being too informal (example – some US executives still believe it is ok to fly in a jogging outfit – only to be met by a formal delegation upon arrival)
- show a sincere interest in learning about local culture, traditions, food, sports and history.

Dick Mosher

ACC-ILAC Program Negotiation Scenario

Session No. 703 – Cross-Cultural Negotiations

A Mexican company (represented by Dick Mosher) and a Spanish company (represented by Steve Kahaner) company have an existing limited liability joint venture company (organized and headquartered in Spain) to manufacture and market GPS wireless location technology (hardware, software and systems) world-wide. The name of the company is Mordida Unlimited, S.A. The JV has filed patent applications for the core technology pending in Mexico, the EU and U.S. (not P.R.C.) They also have valuable trade secrets which are currently protected through the use of comprehensive written non-disclosure agreements with vendors, customers and employees.

The companies are interesting in exploring two important business opportunities with a company in the P.R.C. (represented by Henry Pitney). The first involves location of elementary school children in the P.R.C. through the use of identity tags and wireless location technology. This is a P.R.C. Central Government sponsored and financed project that will be awarded to the highest qualified bidder. The P.R.C. company would be the named bidder in association with

the Spanish and Mexican JV company. The successful bid will likely be in the Euro 50-75 million range.

The second opportunity is a private project with a major clothing manufacturer that wants to keep track of their parts and finished goods inventory. This project will likely be in the Euro 1 million range.

The parties have been communicating for 3 months via telephone and e-mail after being introduced by an independent business agent in Hong Kong (Ms. Pei Wei). This will be the party's first face-to-face meeting to discuss the details of their business relationship and the two projects. It is important for all parties to gain a good understanding of the business and start to establish trust and confidence in their personal relationships with each other because manufacturing, marketing and distribution will be in the PRC; technology and software will be developed in Spain and Mexico, and follow-up technical service and support will be provided by the Spanish and Mexican companies. The PRC company will be the

local contact with customers and may either manufacture or out-source manufacturing in the P.R.C., Vietnam, Philippines or Taiwan.

The substance of the business deal and the legal issues are not important for this mock negotiation. Please pay particular attention to the negotiating style of the parties, language, customs, gestures, the decision-making process, and the overall tenor of the discussions. After the mock negotiation, the parties will briefly discuss their performance and open the floor for comments and questions from the audience.

Dick, Steve and Henry

NEGOTIATIONS IN MEXICO

My observations are based on 30+ years experience working in Mexico (joint venture companies, maquiladoras, sales and liaison offices). Obviously, there are exceptions to every comment based upon a multitude of factors, including the age of the people, the industry, the city you are doing business in, and individual personalities and perceptions. I have tried not to include too many pure stereotypes, but it is frankly very difficult to provide guidance without some generalizations. Please accept my apologies if any offense is taken; certainly none was intended. In my opinion, our good and bad experiences are more likely based on people, instead of country and culture.

1. Generally speaking, Mexico's culture is much more conservative than the U.S.
2. Business people in Mexico, perhaps contrary to a stereotype, are often "cool", more tolerant and less explosive in response to matters unexpectedly going wrong than their American counterparts. This leads to a trait of generally avoiding conflict and direct conflict when possible. For example, rather than saying an outright and final "no", you may hear "we'll see" or "we will get back to you." It also means a businessperson in Mexico is likely to be very patient.
3. Another possible stereotype (perhaps from learning Spanish from our "friends", in bars or watching movies where stereotyping is at its worst?) is that swearing, sarcasm or abusive language is acceptable. Quite the contrary is true. I have found that negotiations and the Spanish language in general is very polite and quite formal. Frequent use of "gracias" (thank you), "por favor" (please) and "con su permiso" (with your permission) are good phrases to know and use. The same is true with the formality of greetings and good-byes – (buenas dias, buenas tardes and buenas noches).

4. Similarly modesty and humility is favored over bragging (hechando demasiada crema al taco – putting too much cream on the taco). If you show yourself to be inflexible or arrogant, you are likely in for unsuccessful negotiations!

5. Do not be confused by the names of your associates – given the popularity of certain names, it is customary to use a mother's maiden name after a given name or a middle name (such as Jose Manuel or Maria Elena as if it were a single first name).

6. There are many acceptable topics of general conversation, such as sports (soccer or “futbol”), culture and history, food and the local scenery and surroundings. It is usual not a good idea to discuss weather, traffic or pollution (as it may be a source of embarrassment), religion, Mexican politics, and, of course, controversial subjects like illegal aliens.

7. Try to find a friendly or sympathetic person on the other side of the negotiating table. If there are any misunderstandings (particular language) it always helps to be able to talk to someone during a break to find out the possible source of a deadlock or problem.

8. Never underestimate the importance of family and inheritance. I have been involved in several negotiations where the most important consideration for the Mexican business person was the legacy, real estate or inheritance that he was going to pass on to his son. We incorrectly assumed that the pure business economics of the deal were of primary importance, but the role of his sons in operating the JV turned out to be much more important.

9. Despite the tendency for patience (or perhaps because of it), chaos is an important factor in doing business in Mexico. As in some other countries, lack of long term planning and organization is quite common and things have a tendency to get done at the last minute (however, they often do get done). This also means that your counterpart may have an advantage

in adaptation and being able to take advantage of opportunities and change with little advance notice.

10. Social relationships with partners and between businesses and individuals in Mexico are extremely important to the success of any business relationship. Cultivate these relationships whenever you can if you desire a long term business in Mexico.

11. Mexico has made recent many reforms to make it easier to do business in their country. According to the World Bank, they ranked 3rd (after Georgia and Romania) in making reforms to starting a business, protecting investors and taxation. There are many business opportunities that should stand or fall on their merits, but unfortunately are derailed due to a failure to understand Mexican cultures and tradition during the investigation and negotiation stages of deal-making. Consider looking at some of these additional sources before you repeat the mistakes of others (and do an Internet search for additional articles) :

Kiss, Bow or Shake Hands

<http://www.doingbusiness.org/mexico>

http://www.solutionsabroad.com/d_doingbusinesswithmexico.asp

<http://www.mexicomatters.net/businessmexico/index.php>

<http://www.fita.org/countries/mexico>

Lex Mundi country guide for Mexico

Dick Mosher

Cross-Cultural Challenges in International Negotiations

Negotiating in China

Getting Started

Be respectful of the host's business card, title, and efforts to show kindness to you as the visitor. Present your business card with both hands, and if possible receive those offered in the same way. Study cards of lead negotiators or officials, and place them carefully on the table in front of you or in another location of respect, such as a card holder. (No back pockets.) If you can have your cards made in your language and in Chinese, so much the better.

A handshake, a smile, and a slight bow make for a good greeting. You will be profusely welcomed, and you should express your happiness to be in China and to meet your hosts.

Gifts

Modest gifts are common, lavish gifts are frowned upon. Something from your company is often ideal. Other gifts might include something from your place of origin that is unique or interesting. A bottle of liquor not normally found in China might also fit the bill.

More preliminaries

Your host will want to discuss your trip, and may frequently inquire after your comfort, and whether you would like to rest, and so forth. While it may seem excessive to you, it is merely the custom to treat you as a guest. You will likely get frequent expressions of concern over your health, your interest in sightseeing and anything that might not agree with you.

Giving face

Simply put, it is very important to cause no embarrassment to your host, and to express gratitude for gestures of kindness shown to you, organization or preparedness on the part of the Chinese side. These expressions might come in business meetings, at meals in the form of a toast, or in other face to face meetings where it might seem appropriate.

Food and drink

The larger your transaction, the more likely it is that you will be treated to elaborate banquets (and you should reciprocate). This is both part of giving you face, and also a celebration of the remarkable diversity of Chinese food. The more food you can try, the better, and let them know what you like (omitting anything that you do not). Chinese want you to like their food, but generally are quite relaxed if you do not want to try things, if you decline politely or silently. Often things will be placed on your plate by a server, but if you do not finish them, they will also be removed.

The culture question.

In many respects, China has been rebelling against its own culture for at least a century. Chinese have worked to cast off of the old order since late in the 19th century, continuing through the last dynasty in 1911, and the corrupt Nationalist regime in 1949. Traditional values came under tremendous strain alongside the political upheaval. The Great Proletarian Cultural Revolution (1966-1976) was in part aimed at destroying "old culture" (including Confucianism) because it was seen as holding China back. But the Chinese have an extremely old and proud culture, and yet realize that modernization is needed, along with better, stronger institutions. So, many traditions such as respect for age, remain strong, but are no longer the only considerations. Your hosts will accord you some slack because you are a foreigner, particularly in major cities. However, try to behave in accordance with traditional practices, rather than have to be forgiven for a major gaffe.

Big to small.

The Chinese prefer to present and to understand the larger concepts first, and many practices and habits can be better understood in this light. For example, they won't want to discuss details about customs duties on imported goods or equipment until they are convinced something needs to be imported. Even dates are large to small, e.g., 2007-10-28 (not October 28, 2007).

Doing Business

Be punctual to meetings and social events. Being late is a sign of bad upbringing. Chinese will criticize each other and foreigners who are late. Do not cancel an appointment, particularly at the last minute. Rescheduling a meeting is acceptable usually, provided there is a good reason and those meeting you have not been greatly put out.

Bring an interpreter to important meetings. Your host may have one, but the quality of interpreters can vary greatly. A good interpreter can clear up many mysteries for you. If you are speaking through an interpreter, pause frequently to allow time for translation. Even the best interpreters make mistakes, and their mistakes increase under pressure.

The senior member of the team usually conducts the negotiations, and speaks for it at formal occasions. The subordinates typically do not intervene, unless called upon to do so.

The Chinese you will meet often manifest a "can do" attitude. This is a highly desirous trait. But just as you would anywhere, make sure the positive attitude is backed up by genuine ability, as opposed to eagerness, say, to get rich quick. Your hosts will certainly measure you the same way.

Many visitors come expecting to close a deal on their first trip. This is often not possible, and PRC negotiators will sometimes seek to exploit pre-announced departure deadlines to

their benefit. The Chinese are careful, and generally will not be rushed into things. Be patient and prepared for delays beyond what you would expect at home.

On occasion, if you have been discussing business practices that you see as incompatible with your business model, you may be lectured that China has 5,000 years of history. This probably means you have pressed something farther than your host would like, or that some show of resistance is needed for some reason. Your interpreter may be able to pinpoint what if anything has gone wrong. Be very patient if you get this lecture, and try to soothe the speaker as best you can.

The Chinese often prepare meticulously for negotiations. Sometimes visitors are poorly prepared by comparison, but this varies widely. Some investors seem to assume that because they are bringing investment, the Chinese side must be unsophisticated. This often turns out poorly for the investor.

Closing the deal in many cultures means that negotiations are complete, and risks have been allocated in a way that is substantially final. However, the Chinese often do not view a contract as immutable and often will have no compunction not to renegotiate terms that prove to be too onerous.

For companies possessing high or proprietary technology, you may be asked to turn over all rights or grant unrestricted licenses to the host company or a venture partner. You may be asked to contribute the technology in a manner far beyond what your company will be comfortable with. Plan to be asked to do this, and to explain whether this is acceptable. In some cases, this sort of issue causes foreign investors to establish wholly foreign owned enterprises.

Suggestions on further reading follow.

www.kissboworshakehands.com

<http://www.doingbusiness.org/ExploreEconomies/?economyid=42>

<http://www.communicaid.com/chinese-business-culture.asp>

<http://www.calumcoburn.co.uk/qa/negotiation-china.html>

<http://www.worldbiz.com/index.php/cPath/40?osCsid=7e399a7d210307cdae6823af3fccd>

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All the Tea in China: How to Buy, Sell, and Make Money on the Mainland, Jeremy Haft (2007).