

Negotiating in China:

Practical Approaches and Local Contexts

By Pitman B. Potter



Negotiating business agreements and partnerships is an art form unto itself, and nowhere is this more true than in China. CCBC members tell us that--while negotiating in China shares many similarities with talks elsewhere--negotiating in China has its unique aspects. To examine these, Business Forum asked UBC Asian research Chair Dr. Pitman Potter to offer insights gained from decades of experience in China.

Business negotiations in China are often quite similar to negotiations elsewhere. Issues of preparation, balance, and prudence apply to negotiations generally. Preparation includes completing due diligence on negotiating counterparts, design and planning for process and content of negotiations, and clarity in establishing end-goals and negotiable positions. Balance involves achieving an acceptable relationship between the goals of negotiators and counterparts. Prudence involves retaining sound business judgment and being aware of opportunity costs and alternatives. These general issues of negotiation apply to China as well, but the local context in China also raises particular challenges.

LOCAL CONTEXTS

Negotiating in China requires appreciation of local contexts—particularly the role of culture in business behaviour and organization. Understanding local culture in China requires appreciation of the importance of relational

networks. Culture (including language) offers the key to understanding local markets and market behaviour. Culture of business communities in China can generally be distinguished from the culture of individualism that often characterizes North American society. In China, relational networks are cultural vehicles for communication and risk management. Thus, businesses seeking partnerships or acquisition opportunities will tend to rely just as—or more—heavily on information obtained through relational networks than on the information presented in formal documentation such as profit and loss statements, annual reports, and the like.

Nonetheless, as elsewhere, culture in China is not uniform. There are distinct differences in social norms and behaviour based on social strata—elites/middle class; consumers/producers; government/society; family/nonfamily units, etc. As well cultural differences reflect regional differences—in China this is particularly the case between North and South China and even

between adjoining provinces. Occupational differences often lead to distinct perspectives and behaviours among different professionals e.g. accountants/lawyers; between bureaucrats and the subjects of their regulation; between intellectuals and society at large. As well, the centrality of family in China often means that values and loyalties within families transcend those driven by social, regional or occupational factors.

Attempts to understand local cultural values requires appreciation of how these are manifested—generally through expression and behaviour. Again, language is key. For example, the distinct use of the words “hetong” and “qiyue” to express the notion of contract also reflects value differences with regard to the community relationship expressed in contract or the formal legal documentary expression. Behaviour is naturally important, as indicated by varying responses to the etiquette of Chinese banquets, the selective use of informality, and body language. Certainly, culture



is not uniform, and the values and perspectives of an elite negotiator for a Chinese agency or company and those of the general society are often quite distinct. The theory of “Selective Adaptation” offers an approach to understanding the effect of cultural values on the implementation of international trade and business standards. Selective Adaptation cautions those involved in business and diplomatic discussions in China to appreciate that commitment to a legal text (contracts or treaties for example) may still involve culturally driven distinctions in interpretation and application. Appreciation of this approach and its implications for legal compliance and business behaviour are essential to preparing for negotiations in China.

PREPARATION

Preparation for negotiations in China includes conventional aspects of identifying goals (immediate, medium, and long-term); identifying goals and expectations of counterparts (requiring research and networking); and planning processes of “trade-offs,” “what-ifs,” and fall back positions etc. However China-specific preparation involves additional elements.

China-specific preparation involves first the completion of institutional and personal mapping of negotiating counterparts. This is

linked to identifying goals and expectations. For example, institutional mapping would reveal links between state-owned enterprises/central enterprises and relevant government departments, as well as determining relative bureaucratic authority by reference to staff allocations (*bianzhi*). Institutional mapping would also reveal the nature of provincial relationships locally and with the Centre. Rivalries among enterprises in particular sectors and among government departments (particularly those with overlapping jurisdiction) are essential to forecasting negotiating positions and behaviour. Institutional mapping also involves identifying the role of the Communist Party of China, including the role of the various “Leading Small Groups” and party members groups that often set policy and determine conduct of officials on particular issues.

Despite China’s accession to the WTO and the GATT, challenges continue around lack of transparency and obstacles to access to information. This means reliance on informal sources and completion of on-the-ground due diligence. Information obtained through English language media and internet sources should be compared with Chinese language sources. Informal sources (interviews, internet chat rooms, blogs, etc.) should be distinguished from formal reporting

(e.g. annual reports, P & L statements etc.). The “conventional wisdom” on particular business actors or opportunities should be treated with caution.

Preparation also involves identification of relational networks that may influence behaviour of counterparts. Recalling that networks are mechanisms for acquisition and management of information, it is useful to distinguish between formal institutions and personal and family networks. The latter are often more reliable and more comprehensive as a source of business and political information in China.

Often networks focus on obligations rather than rights, and can be invaluable in understanding the goals and strategies of business and government negotiators. For example, interpretation of agreements -- contracts, treaties etc.-- involves differing interpretations on their significance. Whereas negotiators in the North American tradition often consider a formal agreement to be the conclusion of negotiations, in China the formal agreement is often the beginning of a relationship which involves ongoing adjustments. Agreements are also interpreted differently as regards their emphasis on rights versus obligations—the close interplay between contract provisions on rights and those on obligations (despite use



of formal severability clauses) is key to understanding goals and strategies of counterparts. These perspectives all have implications for negotiations and should be included in general preparatory efforts.

As well, once negotiating sessions have begun it is essential to identify and understand who is participating and who not, where is the power and authority behind the negotiating team. Key participants in a business relationship often do not participate in the negotiations. Often the power to decide outcomes of negotiations rests with individuals or groups whose existence is often undisclosed and who often do not participate in the negotiations. It is not uncommon for negotiators in business and diplomatic relations to have existing relationships and commitments to third parties that are either not disclosed or are otherwise veiled from the negotiating process. These are but a few examples of the items that must be included in preparation for negotiations.

PRUDENCE

Business and diplomatic negotiators often find the mystique and distinctive environment of China to be highly conducive to reaching agreeing on terms and conditions that would be unacceptable in other contexts. One of the first rules of prudence is do not sacrifice business and diplomatic judgment in negotiations. Banquet diplomacy is a key element of negotiations and is designed to build relationships among the parties. As such it is an invaluable part of the negotiation process. Foreign businesses operating in China often are presented with opportunities that require significant market entry costs, identification of loss-leader products etc. in order to gain access to the market. Depending on the business strategy involved this may be acceptable but should be considered carefully. However negotiators should not sacrifice their business judgment despite the multiple friendly inducements to do so.

Another aspect of prudence is to assume foreign negotiators are being observed at all times. Negotiator behaviour is noted carefully at the negotiating table and elsewhere—especially in the context of “informal” events. Prudence requires negotiators to plan activities, demeanour, and behaviour well in advance. Prudence also requires bringing staff translators and assistants rather than relying on those provided helpfully by counterparts in China.

As well, negotiators are advised to be disciplined. The spoken word—whether table talk, negotiating demeanour, or banquet discussion—carries significant meaning for negotiating counterparts and should be managed carefully. Behaviour inside and outside the negotiating room must be managed with great care—and particular attention paid to “informal” events. While a distinction should be made between social and business relationships and activities, negotiators should bear in mind that Chinese counterparts are looking at the whole person, the whole organization with whom they are negotiating and so the distinctions between social and business behaviour often fade.

BALANCE

Balance involves a variety of cautionary perspectives to avoid jumping to conclusions and accepting negotiating conditions based on inadequate information. It is essential to be aware of the complexity within Chinese culture. As discussed above, social, occupational, regional and family differences have a significant role in values and behaviour. Assumptions about the uniformity of China and the behaviour of Chinese businesses and organizations should be discarded. Differences within a large city such as Shanghai, let alone regional differences between Shanghai and Beijing or between the coastal and interior areas of China are significant, and foreign negotiators should be cautious not to assume that perspectives and values expressed in one area apply universally.

As well, attitudes and behaviours in China are changing in response to a variety of local and global pressures. The increased availability of international entertainment and information through the internet has contributed to changing attitudes about individualistic and collectivist approaches to social and economic activity. The role of formal documentation is increasing, even as relational networks remain strong. Technical and professional knowledge among Chinese negotiators has increased at a staggering rate and is often closely comparable to that of North American counterparts. Assumptions about attitudes and abilities should be avoided.

Nonetheless, successful negotiations require anticipation of cultural perspective of negotiating counterparts (with regard to issues of net-

working, community values, obligations etc.). Whether in business or diplomatic negotiation, culture will play a role. However, negotiators must be ready for contradictions and uncertainties. Changing cultural perspectives have effects on market behaviour whether in individual or community context. Cultural perspectives on informal networking and formal documentation have a significant impact on management of information and risk management. For example, the issue of information disclosure for the purposes of securities transaction often involves a combination of formal and informal processes. Certainly globalization and marketization are bringing change to Chinese cultural perspectives. However this does not mean that China’s changing cultural system will come to mirror European / North American market culture. Cultural differences do affect contract practices—especially the question of whether a contract is the final expression or the beginning of a relationship. Appreciation of culture should complement but not displace attention to business goals and self interests. Understanding of cultural perspectives helps us to understand how “interests” are perceived and pursued in a course of business and diplomatic negotiations.

SUMMARY

In sum, negotiations in China require an appreciation of local context—particularly the role of changing cultural perspectives on negotiations and behaviour. Negotiators are advised to be prepared (through due diligence and institutional mapping); be prudent (through retaining firm grasp of goals and objectives); and be balanced (retain a nuanced perspective on issues such as cultural perspectives and “conventional wisdom”). Attention to these factors will not guarantee negotiating success, but it will certainly help. 🇨🇳

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