

A SHORT COURSE IN

INTERNATIONAL NEGOTIATING

国际商务简明教程系列

国际商务谈判

*Planning and Conducting
International Commercial
Negotiations*

THE SHORT COURSE IN INTERNATIONAL TRADE SERIES



JEFFREY EDMUND CURRY

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上海外语教育出版社

SHANGHAI FOREIGN LANGUAGE EDUCATION PRESS

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Jeffrey Edmund Curry, MBA, Ph.D.

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出版前言

当今世界经济全球一体化发展异常迅速。对许多国家而言,跨国商务在经济活动中的地位日益突出,了解国际市场并把握商机由此也显得极为迫切。

由上海外语教育出版社从美国世界贸易出版社引进出版的国际商务简明教程系列正合当前急需。本系列丛书的编写宗旨是:以全球性的眼光关注世界经贸活动,向全世界读者提供国际商务活动的理论、操作方法和案例。本丛书共有十三种,每种就一个主题进行深入浅出的讲解,介绍跨国商务的理论、实践与方法。丛书语言简明易懂,内容新颖实用,紧扣时代脉搏,并配有大量生动翔实的操作实例,能直接对实际商务操作起指导作用,是目前国内不可多得的原版商务教程。

《国际商务谈判》是本丛书中的一种,主要介绍国际商务谈判的内容与操作方法。书中对谈判首席代表的角色、谈判队伍、地点选择、日程安排、翻译工作、谈判风格、谈判策略、协议签订、成果汇报等主题分别进行了阐述,探讨深入而周全,使读者能充分把握住国际商务谈判的来龙去脉。书中还附有许多参考表格以及各国商业谈判人士风格的介绍,周全而实用。

本书详实介绍国际商务谈判的内容,可供参加国际商务谈判的各界人士阅读和参考。

A SHORT COURSE IN

International Negotiating

Planning and conducting international
commercial negotiations

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INTRODUCTION

THE GROWING DEMAND FOR GLOBAL SPECIALISTS

Many companies, large and small, have made the error of approaching foreign markets in much the same way that they would their domestic markets. The belief that what worked at home will work elsewhere usually stems from lack of experience rather than from arrogance. The most successful international companies and traders have come to rely on “global specialists” to handle their overseas operations. These specialists may be in-house personnel or, if it’s the company’s first overseas venture, the specialist might be brought in from the outside on a consultancy basis.

Expertise is demanded in international trade and investment for two powerful reasons:

1. Foreign markets are expensive to enter
2. Second chances are few and far between — some say nonexistent

Upper management must rely on these experts not only to plan the strategy for entering the target market but also to execute the tactics in the most efficient manner possible. The specialist, in turn, can be of greatest service by keeping management constantly informed of the opportunities and risks in the expanded marketplace. He (or she) should never make the mistake of letting the “final result” speak for his proficiency. Attaining that result can be a long, arduous affair, and management is unlikely to provide ongoing support to a venture that denies them timely information. The specialist will use his global acumen to inform and train management in the skills necessary to bring about long-term success. As the specialist moves on to the next project, other staff members must build on the foundation laid out in early negotiations.

The services these specialists provide have never been in greater demand. International trade is a huge contributor to the economy of nations. And it is by no means confined to the major economies. Foreign trade represents not only billions in realized profits but also millions of individual deals and contracts. Each deal or contract, in its turn, contains countless details. These details, which come to represent the difference between long-term profit and loss, weren’t arrived at casually. Each one was discussed and agreed upon in a conference room or office or during a telephone call or email exchange. Regardless of the medium, they were all negotiated.

WHY NEGOTIATE?

The word negotiate derives from the Latin infinitive *negotari* meaning “to trade or do business.” This verb itself was derived from another, *negare*, meaning “to deny” and a noun, *otium*, meaning “leisure.” Thus, the ancient Roman businessperson would “deny leisure” until the deal had been settled. Negotiation is at the heart of every transaction and, for the most part, it comes down to the interaction between two sides with a common goal (profits) but divergent methods. These methods (the details of the contract) must be negotiated to the satisfaction of both parties. As we will see, it can be a very trying process that’s

rife with confrontation and concession. Whether it's trade or investment, one side will always arrive at the negotiation table in a position of greater power. That power (e.g., the potential for profit) may derive from the extent of the "demand" or from the ability to "supply." The purpose of negotiation is to *redistribute* that potential. There's no such thing as "take it or leave it" in international business. Everything is negotiable. It all depends on the expertise of the negotiators.

THE ZERO-SUM GAME

International business negotiations are the archetype of the zero-sum game. One side's gains are directly offset by the other side's losses. Your counterpart is attempting to achieve the maximum concessions while leaving you just enough to keep you interested in the deal. Some business gurus may attempt to interpret this as a win-win situation, but experienced global specialists are a hardened lot. Behind all of the smiles, handshakes, and banquets lurks the reality that both sides are trying to "best" each other. It's an accepted, if unspoken, fact.

In recognition of this zero-sum tendency, many of the so-called emerging markets actually legislate a maximum portion of the deal that the foreign partner will receive *prior* to the start of negotiations. Other economies simply give the local partner veto power on the project, even if they've only made a minimal investment in it. Still others dictate that local partners will always maintain a minimum 51 percent position in the venture, even if the foreign partner injects new capital. While these rules limit negotiations, they don't close them. Those experienced in international commerce see these as parameters within which they can negotiate a wide variety of concessions. As it turns out, many of these "legislated" contract terms are flexible in direct proportion to the scope of the project. It's important to realize that while the size of the playing field may vary from venture to venture, the overriding concept remains the same: Success isn't winning everything, it's winning enough.

Understanding the realities of the zero-sum game and the concept of "enough" will be discussed in detail in the later sections on strategy. Readers may use this book to assist in their own role of negotiator or as a means to select the proper personnel and strategies for international business. The basic format of this text will move through the who?, what?, where?, when? and how? of international negotiations. It's assumed that the reader already understands the importance of why? in today's marketplace.

Jeffrey Edmund Curry
San Francisco 1998

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The Role of the Chief Negotiator

SMALL STAGE, BIG PART

THOUGH LARGE TEAMS of global specialists may be assembled for some negotiations, the real interaction takes place between the two chief negotiators. This chapter will describe the role and characteristics of a chief negotiator and examine how that person's activities control the world of international business. Because in many cases the heads of companies must consider themselves for this role, a self-evaluation checklist is provided at the end of the chapter. This checklist is also useful for readers who may be considering careers as consultant negotiators.

Who Qualifies as a Negotiator?

Not everyone is cut out to be a negotiator, and the demands for international work are more stringent than for domestic work. Negotiators must possess a wide variety of technical, social, communication, and ethical skills. The job demands not only mental acuity but also a high degree of sympathy with the party on the other side of the negotiating table.

One of the mistakes many companies make is to assign a member of their upper management as a negotiator without actually considering his or her negotiating skills. In many cases, being the boss almost precludes someone from being a good negotiator. Such a person may be used to getting their way without question and unable to engage in the give and take that's at the heart of true negotiations. Unless their management style is strongly based in consensus, they'll be unwilling to allow for the needs of their counterparts.

The negotiator must always inhabit the middle ground. He (or she) must enter the negotiation process with the understanding that both teams must leave the table with a sense that they've received "enough." The negotiator's job is to maximize the long-term benefits of the venture while securing short-term needs.

The Chief Negotiator

The chief negotiator (CN) is responsible for unifying the strategy, tactics and overall style to be used by a particular company. He must exercise a high degree of self-control and keep the team on track under trying circumstances. Once the strategy and tactics have been determined, team discipline demands that all decisions regarding changes must have the CN as the focal point. While strategic consensus is important, delegation of responsibility is of little value. The stakes in international business are very high, and the CN must be willing to accept total responsibility for the outcome. This will be true even when subordinates have made key decisions.

The CN's greatest skill is the ability to deal with pressure from a variety of directions. Headquarters, clients, team members, family, negotiating counterparts, and government officials will all demand attention. The CN must be a decision maker who can keep everyone satisfied without being distracted from the pre-established priorities. Handling these responsibilities within a foreign environment, and possibly in a foreign language, isn't a job for the faint of heart.

Special problems often arise between a CN who has been brought in on a consultancy basis and personnel who've been made members of the negotiating team primarily for their technical skills. These conflicts must be worked out far in advance of negotiations. This will be discussed in more detail later but the reader is cautioned at this stage that one of the CN's duties is to present a unified and coherent negotiating agenda at all times.

How Much Technical Knowledge is Required?

Government regulations and corporate specifications make technical requirements a key part of negotiations. Besides the actual specifications of the product at hand, the logistical movement of the product across national borders may, in and of itself, require great technical insight. This is often the case in high-tech and telecommunication projects. While it's certainly necessary for CNs to be thoroughly briefed on the technical aspects of the negotiation, it's by no means a requirement that they be experts. Should the subject of the negotiations be highly technical in nature, team members will supply the proper technical backup when required. The CN must devote his attention to the larger picture.

Candidates for CN should be technically astute with regard to both the company's products and modern day information technology. Most international businesspeople now travel with laptop computers (notebook, sub-notebook or palm-top) in order to compactly carry along the vast amount of data necessary for quick decision making. These "electronic team members" can greatly reduce the number of personnel required to make presentations and/or assist in technical decisions. These machines also bring the added ability to make the CN, or team, more productive during travel or downtime. The CN must not be a casual or neophyte user of this technology as his competence may be judged at meetings by his ability to handle the newest hardware and software. In some ways, the laptop has become as useful, and potentially embarrassing (when they don't work), as the slide projector of yore. Laptops can also become a security risk.

Character Traits

SHREWDNESS

The CN, whether staff or consultant, carries the entire responsibility and trust of the company when acting on its behalf. The successful CN must be capable of allowing the other side to see only what serves the strategy best, and this requires an ethical mixture of honesty and cunning. Forthrightness is a trait to avoid when selecting a CN. People who "wear their hearts on their sleeves" or insist on

transparency in all dealings will make sorry negotiators in the global marketplace. While there's no room for duplicity, the CN must know which cards to lay on the table and when. For this reason, shrewdness heads the list for desirable characteristics.

PATIENCE

Patience is an indispensable attribute. Negotiations can be quite taxing—each offer brings a counteroffer and every maneuver a countermovement, while delays eat up time and energy. Corrupt officials, petty management, and incompetent staff members all must be handled with care. As will be seen in the sections on bias, some countries make patience a *cultural requirement* for working in their economic sector. Regardless of the locale, a CN who “flies off of the handle” will be of little use in international negotiations.

ADAPTABILITY

Because negotiations are concerned with each side getting the other to change positions, the CN must be highly adaptable. Having an inflexible strategy and limited tactics will almost instantly bring negotiations to an unproductive close. Beyond the preplanned contingencies, the CN must be able to respond quickly and decisively to unforeseen developments. Negotiations seldom go completely according to plan, nor will they always change in preconceived patterns. Being able to “think on your feet” will go a long way toward success at the conference table.

ENDURANCE

While negotiating is primarily a mental activity, it can be physically demanding. The CN must be available for all sessions and eight-hour days will be rare. Add in travel fatigue, climatic changes, jet lag, foreign food, late-night socializing, and work stress and you have the makings of burnout. Many cultures use the tactic of physically and mentally wearing down their counterparts in order to achieve concessions. The CN (and the entire team) must be on guard against fatigue, and there is no better place to start than during the selection process. Physical fitness, endurance, and a reasonably abstemious nature are highly desirable, and bankable, attributes in a CN.

GREGARIOUSNESS

Negotiating is by nature a social process. Many countries have little in the way of commercial contract law, and the success of the deal in such circumstances is based on trust and friendship. Even when the deal is bound by contract, the “relationship” will play a huge role in finalizing it. A competent CN is gregarious by disposition and excels in social settings. Just as many deals are made across the dinner table as are made across the conference table. The ability to hold a good, off-business-topic conversation with a counterpart, even in translation, will only advance the CN's position. Remember, concessions must be *extracted* from adversaries but they're *given* by friends.

CONCENTRATION

International business can make substantial demands on its practitioners. Time zone changes, language problems, and legal wranglings can all be major

distractions from the goals set forth in the strategy. The potential for “losing track” is enormous. Many an executive has returned from an overseas negotiating trip with either a diminished sense of accomplishment or a firm belief that *nothing* went according to plan. For this reason, the ability to concentrate on those issues at the heart of the negotiation is an asset the CN cannot afford to be without. Counterparts will often attempt to put as many points as possible “on the table” in an effort to cloud the main issue. The CN must be able to maintain the team’s (and his own) focus at all times.

THE ABILITY TO ARTICULATE

People who can’t communicate their ideas or understand those put forth by counterparts are of little use around the negotiating table. Good CNs must be practiced listeners as well as articulate speakers. Everything about them—from their demeanor, to their clothes, to their body language, to how they handle subordinates—will be scrutinized. A CN must also have a keen sense of what is motivating his counterparts in order to communicate the proper image. Make no mistake, the negotiating arena is a stage, albeit small, and CNs play the largest roles.

SENSE OF HUMOR

Negotiating can be a very stressful affair, and there will be moments when it hardly seems worth the effort. A CN must be equipped with a highly developed sense of humor in order to weather persistent storms. Some of the negotiating delays, logistical problems, and social settings may seem like exercises in absurdity, and many of the discomforts of travel can be downright demeaning. Viewing such problems with a humorous eye and avoiding the syndrome of taking yourself too seriously can make all the difference in keeping negotiations on track.

Organizational Qualities

When working overseas, the CN embodies the company in image and practice. Consequently, the CN must be highly organized in order to effectively handle the vast number of problems that will inevitably arise. The CN must be able to select, motivate, and control a team operating under high-stress conditions. He also must be able to arrange and rearrange schedules, as well as oversee staff in difficult circumstances. Every and any logistical detail can make the difference between success and failure.

Because administrative support teams will be unavailable to all but the largest corporations, the negotiating team (or perhaps the CN alone) will be left to its own resources. Problems must be foreseen far in advance, and team members assigned to each task. There’s little room for error. Every negotiating session should be preceded by a strategy session and followed by a recap. The professional CN leaves no detail unexamined.

The Importance of Team Solidarity

Whenever possible, the CN should have full control over the selection of negotiating team members. This is key, because the team must think as a unit at all times and have total respect for, confidence in, and loyalty to the CN. There can be no “turf wars” or disputes over the CN’s authority or assignments. This may seem extreme to believers in less hierarchical management structures. However, high stakes, stresses, and the adversarial nature of international negotiations can’t tolerate anything less than a unified effort if success is to be attained.

CAUTION Dissent within a team will be exploited by counterparts to the fullest extent.

While team members will have varying levels of authority and responsibility, all direction must come from the CN. Any actions that depart from the preordained strategic, tactical, or contingency plans must be discussed with and condoned by the CN. As we will see later, Divide and Conquer is a very common negotiating technique, and the only defense against it is seamless unity. Lastly, because of the need for centralized decision making, it’s wise to appoint a second in command (in case illness or calamity should befall the CN).

Self-Evaluation

In smaller companies, it’s often the case that a member of upper management is called upon to act as the CN. This can be for overseas negotiations or in the domestic market should a foreign company come calling. Although it may be necessary for top management to sign-off on the contract or attend meetings for appearances sake, it’s by no means necessary that they actually negotiate the deal. In some cases, it may be contrary to the company’s best interest to have upper management involved, at least until the details have been finalized. The following checklist can be used by managers, owners, or anyone else wishing to consider a career in international negotiations.

| SELF-SELECTION QUESTIONNAIRE | YES | NO |
|---|--------------------------|--------------------------|
| 1. Do I have the necessary time and attention to devote to these crucial negotiations? | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Am I the most experienced member of the organization in terms of international business? | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. Do I understand the culture and commercial nuances of my counterparts? | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. Are my language skills suitable for the negotiation? | <input type="checkbox"/> | <input type="checkbox"/> |
| 5. Have I ever worked with a translator before? | <input type="checkbox"/> | <input type="checkbox"/> |
| 6. Have I negotiated major contracts before? | <input type="checkbox"/> | <input type="checkbox"/> |

- | | | |
|---|--------------------------|--------------------------|
| 7. Am I physically well enough to engage in extended and stressful negotiations? | <input type="checkbox"/> | <input type="checkbox"/> |
| 8. Do I have the organizational skills to lead a team that's not entirely of my own choosing? | <input type="checkbox"/> | <input type="checkbox"/> |
| 9. Do I have the technical expertise to run the negotiation? | <input type="checkbox"/> | <input type="checkbox"/> |
| 10. Am I capable of working sixteen hours a day? | <input type="checkbox"/> | <input type="checkbox"/> |
| 11. Am I at ease in unusual social situations? | <input type="checkbox"/> | <input type="checkbox"/> |
| 12. Am I capable of living in physically demanding circumstances? | <input type="checkbox"/> | <input type="checkbox"/> |
| 13. Do I find other cultures easy to accept? | <input type="checkbox"/> | <input type="checkbox"/> |
| 14. Am I considered a patient person by my peers and subordinates? | <input type="checkbox"/> | <input type="checkbox"/> |
| 15. Am I considered an extrovert? | <input type="checkbox"/> | <input type="checkbox"/> |
| 16. Am I capable of accepting full responsibility for the outcome of these negotiations? | <input type="checkbox"/> | <input type="checkbox"/> |
| 17. Are my organizational skills optimal for leading the negotiation team? | <input type="checkbox"/> | <input type="checkbox"/> |
| 18. Have I traveled overseas for extended periods on business before? | <input type="checkbox"/> | <input type="checkbox"/> |
| 19. Will my absence from home cause me only slight emotional distress? | <input type="checkbox"/> | <input type="checkbox"/> |
| 20. Will my absence from home cause my family only slight emotional distress? | <input type="checkbox"/> | <input type="checkbox"/> |

If you found yourself answering "no" to any of these twenty questions, you may wish to re-evaluate your potential role as chief negotiator.

What to Look For in a Potential CN Consultant

Sometimes the right person to fill the role of CN will not be found within your company, or it could be that the best person for the job can't be spared from their domestic duties. In both instances, an outside company or consultant must be found. Keep in mind that, in some cases, the CN is the only representative of your company at the negotiations, while at other times, the CN's role is to advise your team on strategy and tactics. Either way, making a correct choice and a "good fit" will ultimately determine the success of your strategy. Here are some major points to consider.

- **MATCH ETHICS** Make it clear to candidates that you want the negotiations conducted in a specific manner. Check references thoroughly on this point. It's even advisable to resort to role-playing in order to assess the consultant's ability to act in accordance with your company's ethical standards.
- **MATCH CULTURES** Negotiating in Japan is not like negotiating in Brazil. Make sure that the consultant has relatable experience in the target market. Language skills

are helpful but not absolutely necessary. If the consultant claims fluency in specific languages, put these to the test prior to making the decision to hire. The same goes for dialects. Remember, Cantonese is of limited use in Beijing.

- **MATCH TECHNICAL PROWESS** Most consultants specialize in specific industries or services. While some will insist that they can negotiate “anything, anywhere, anytime,” you’ll be best served by someone who has some expertise in your product or service. This is especially true in high-tech, telecom, and financial services.
- **MATCH COMMITMENT** Because of the intensity of international negotiations, you can’t afford to have a detached, dispassionate CN—consultant or not. The successful candidate must perform as if their own company’s future is at stake. If the candidate gives you the impression that this is just another overseas assignment, end the interview. He or she must be deeply and noticeably committed to your success. The counterparts across the table should not be able to detect that your consultant CN is anything other than an employee of your company. In many cases, consultants are given company logo business cards with a staff title, such as “Vice President of Overseas Planning,” in order to blur the consultant/employee distinction.

NOTE: It’s advisable to check your home country’s laws on independent contractors prior to issuing the cards or titles.

- **MATCH LOYALTY** Many consultants complain of being given the responsibility for making the negotiations work and then having their authority undermined at every turn. Conversely, headquarters management often complains of consultants who are determined to follow their own agendas. Neither case is acceptable. Consultant CNs are paid to define strategy and execute prearranged tactics. They must be given 100 percent control of the negotiations and of any staff who may accompany them. In return, the consultant CN must tow the company line to whatever degree management stipulates. All of this must be made clear *contractually* far in advance of the negotiations. If the company can’t find a consultant CN they can fully trust, it’s best to forgo the hire. If the company recognizes other useful qualities in the candidate, it may wish to use him or her as an assistant to a staff CN.
- **MATCH MOTIVATIONS** The majority of consultants will charge for both expenses and fees. Expenses should allow the CN to project an image that befits the company. (Don’t underestimate the value of appearances.) Fees should be commensurate with the prospective CN’s experience and the size of the project. Fees should also include payments for attaining specific portions of the strategy. Financial motivation feeds commitment. Consultants who will not agree to performance-based pay are best avoided.



Choosing Your Team

BIG GUNS, LITTLE GUNS

How Big Should the Team Be?

There are several reasons to keep your negotiation team (NT) as small as possible. The first few deal with the expense and difficulties that arise when your NT must operate overseas. Flights, ground transport, meals, hotels, communication, conference centers, taxes, and cargo can make a trip for even a small team extremely expensive. Arranging for passports, visas, inoculations, and potential medical care for a large group can easily become unmanageable. Problems and additional expenses may also arise when attempting to deal with various family and business schedules. Finally, for NTs operating overseas, keeping track of large groups in a foreign country is nightmarish at best—ask any tour guide.

The rest of the reasons for keeping the NT compact apply to both domestic and overseas assignments. Primarily, communication is a source of strength within any organization and never more so than within the NT. Premeetings, recaps and midmeeting breaks demand that communication be both precise and concise, as major decisions are made in a matter of seconds. The CN must be able to seek the input of the team quickly, and large groups are cumbersome.

Secondly, as mentioned earlier, presenting a unified front is key. The CN must be able to redirect tactics as counterparts bring new issues to the table. Agreement on tactics becomes more difficult in direct proportion to group size, even when there's agreement on strategy. Keeping the NT small enables the CN to make timely adjustments to the negotiating plan and to disseminate that information quickly. Additionally, small teams are more easily able to withstand the “wedges” that counterparts may attempt to drive between members of large teams.

Thirdly, the members of the NT have other job duties unrelated to the negotiations. The fewer you pull away from their regular assignments the better. There's no sense disrupting the company's core business. As exciting as the international arena is, keep in mind that someone must oversee the old business while others look for new opportunities.

Don't Use the Assignment as a Reward

A very common mistake that executives or CNs make is assigning membership to the NT as a reward for other successes unrelated to the task at hand. This is especially true when the team is headed for exotic locales. Many employees see the trip as a minivacation and a way for them to broaden their personal horizons. Even when the NT will be receiving foreign counterparts at the company offices,