ACC DOCKET
INFORMED. INDISPENSABLE. IN-HOUSE.

# Navigating International Negotiations with a Global Mindset

**Commercial and Contracts**

## CHEAT SHEET

- ***Build trust***. The most successful negotiations occur when business partners like each other—so try to develop empathy and aim to understand the motivations of your partners.
- ***Develop a brand***. The in-house counsel leads negotiations and sets the tone, which is a valuable opportunity to set the appropriate expectations.
- ***Navigate personal and cultural differences***. Consider how time zones, local customs, traditions, and culture can affect communications.
- ***Maintain formal and informal relationships***. Monitor and follow up on promises made and

maintain trust in the relationship.

We've all been there. The excitement starts with an idea that quickly bubbles into a strategy and suddenly, there is a deal primed for negotiation on our plate with an ever-helpful timeline of ASAP. The strategic objectives are good, but has our team of business developers, engineers, operations specialists, HR professionals, lawyers, and other stakeholders really prepared for the hurdles that await any company seeking to expand its footprint outside of currently-known geographic territories? Many pitfalls await that can jeopardize the success of even the best business alignments. In this article, we will share a business case, key potential pitfalls, and a means to navigate your way to success by leveraging a global mindset at all phases of your next multinational contract negotiation.

USCO, a leading US technology company headquartered in Mountain View, California, wanted to create a competitive advantage in its supply chain by partnering with a Chinese firm in Shanghai called GrowthMindset Technologies, Ltd. (GMT). USCO executives were all very business savvy individuals with extensive experience in Europe, but little experience in multinational transactions and in living and working outside of the United States. They were confident in their strategy and keen to start negotiating right away with GMT to verify if collaboration was possible, or, if not, to then quickly move on to other strategic partnerships to enhance their business in the region. USCO's business had grown significantly internationally in recent years, and a partnership with GMT would enhance USCO's global competitive advantage. The Chinese firm did not have experience in USCO's industry, but excelled in a key strategic technology, making the firm a desirable partner. Also, USCO's Chinese subsidiary had played a role in connecting this firm with USCO. Therefore, many USCO executives felt that they could trust the Chinese firm's performance. Yet there were also internal discussions about whether this important business activity should be entrusted to a third-party supplier, especially one without industry experience.

GMT was also somewhat skeptical about working with USCO because USCO's business had not been a strategic growth area for them. The firm's leaders were intrigued by USCO's interest, saw potential for business growth, and were therefore happy to evaluate USCO's offer. The firm had participated in global dealings in the past but had preserved the values of its founder, whose photo, quotes on his personal management philosophies, and guiding proverbs could be seen in every GMT office. One quote read: "One cannot manage too many affairs: Like pumpkins in the water, one pops up while you try to hold down the other."

USCO approached negotiations with lots of energy and a sense of urgency due to their desire to pursue a new strategic focus. They provided a contract from their template portfolio that covered in great detail the requirements of the project, as well as all legal, operational, and compliance expectations. USCO's initial reaction was one of disappointment as they did not perceive the same level of enthusiasm coming from the GMT representatives, and this quickly led to some USCO executives concluding that GMT did not place as high a value on the project as USCO did. The lack of enthusiasm and a sense of urgency became very frustrating to USCO executives, who also felt that no personal connection had been made with GMT project delegates. Could something be done to increase the priority of the project, or was the slow rate of response by GMT because the process for collaboration was not clear? USCO executives decided to email more frequently with project updates and Gant charts. An ultimatum with clear deadlines for milestones was suggested as one strategy to drive results. Discussions about other strategic alternatives intensified in order to avoid putting all eggs in one basket. Finally, the project lead, Bob Doitfaster, decided to invite the GMT executives to a conference call to discuss USCO's concerns and any concerns GMT may potentially have. Doitfaster was hoping that he could schedule this call before the next strategic review meeting to be able to give an update to the leadership team in the following week and proposed a call on a Friday, at 9:30 am PCT.

The GMT executives could not quite make sense of his email. There were once again lots of attachments to the email and the proposed call time was at almost midnight their time. They had been having difficulties catching up with the emails from USCO because it was hard for them to review all information and discuss internally before they could form a response. They found the contract terms difficult to navigate, one-sided, and with long run-on sentences that were nearly impossible to translate. There was no consensus among GMT executives about the strategic value of the deal as they thought this was still being explored. They were offended that nobody from USCO had made an effort to travel to their offices, or to otherwise create an opportunity to meet in person. How could they trust a key business partner whom they had never met? Are they really thinking on behalf of GMT's interests as well as their own? Do they even understand the value of GMT's business and its history? Also, are USCO executives good to work with? What are they like as people? How long have they worked for USCO? The pressure to move quickly was too strong and their trust in USCO as a potential business partner was diminishing just as fast.

Despite these monumental challenges, counsels from both sides were able to come to an agreement after several more weeks of negotiating the contract. There was only a minor design issue to take care of and USCO decided to hire a well-known Israeli R&D and design firm to take care of it. This appeared to be the only way to make up for the time that was lost during internal discussions and negotiations. USCO, GMT, and the Israeli design firm worked together to finally get USCO's product to commercialization. USCO then started executing a global launch plan, and negotiating contracts with distributors in Latin America and Asia to make the product accessible to customers.

USCO's aspirations and challenges have become very common in our globalized world. The process of achieving results when working with individuals and organizations from other cultures entails many more unknown variables than working in our home countries and markets. The saying "perception is reality" needs to be interpreted and applied with a global mindset when we try to work with other cultures as any business skill from communication, relationship building, and managing to selling and negotiation is likely to be performed differently in different cultures. Members of different societies can hold different values, and hence, they may behave in different ways, or enact the same values in different ways. One common example is the use of the word "yes" in American and Asian cultures: While a "yes" signals approval to most Americans, who typically appreciate directness as a sign of truthfulness, a person from an Asian culture may say "yes" to acknowledge the perspective being proposed (as in "I hear what you have said") and to avoid direct disagreement which may be perceived as being disrespectful and may hurt relationships. Honesty may be best demonstrated by a direct communication style in the United States and through an act of sincerity — such as appropriate gift giving — in a different country. Cultural differences pose significant challenges in international business dealings, and executives who work across cultures — both internal and external to their companies — will benefit from investing in their cultural knowledge in order to be able to navigate strong, long-term relationships across borders.

Related to the challenges due to cultural differences, but carrying a weight of its own is the local mindset vs. the global mindset in international business. The local mindset may be blind to cultural differences in international dealings, and may also not be aware of differences in market drivers, customer buying behavior, competitors, or transactional details. Failure to invest in creative solutions to understand, connect, and bridge differences can be fatal to a negotiation or the longevity of a relationship. During international negotiations, this ignorance may result in false assumptions such as:

1. The desired business outcome (the understanding of opportunity and risk) has been defined sufficiently and is clear to all stakeholders.
2. A written contract is absolutely critical to desired business outcome and is the embodiment of the formal agreement between both parties.
3. The form, length, and governing language of the contract is mutually acceptable.
4. Winning in the negotiation means getting more than the other party. The win/win situation is clear to all parties and there is sufficient trust to believe in win/win.
5. The local party will manage all in-country regulatory compliance.
6. Negotiations should happen quickly so all parties can move forward with the actual business.
7. The business leader should be the leader of the negotiation process; the in-house counsel needs to be in a support role.
8. The messages to be given before, during, and after the negotiations are clear.
9. Once the agreement is signed, both parties will cooperate to ensure the operational details run smoothly.
10. In the event of any disagreement, the parties will be able to work things out without the need for litigation.

False assumptions may result in the following problems:

1. Significant delays in negotiation, causing unexpected costs, and deterioration of trust.
2. Insurmountable hurdles in negotiation, causing parties to walk away from the deal.
3. Internal disagreements and a potential hit to morale or loss of talent.
4. Loss of intellectual property if adequate controls and expectations are not set.
5. Misunderstanding of the agreement due to failures to adequately communicate/gain requisite approvals or misalignment on what constitutes the agreement (paper vs. handshakes).
6. Loss of business due to delays or to competitors.
7. Issues of non-compliance with local regulation (may result in fines, blocks to doing business, product seizures, damage to reputation/brand, etc.)
8. Product and service quality deterioration.
9. Lower than anticipated return on investment.
10. Termination of contract — loss of time, money, good will, brand value.

An example of what kinds of tools may be leveraged to help global leaders better influence individuals, groups, organizations, and systems unlike their own can be found in the results of a study completed by the Thunderbird School of Global Mindset. The extensive research in this study resulted in the concept of the Global Mindset®. The attributes of this concept can be taught in organizations through assessment, training and coaching, and comprises three key areas: (1) the intellectual capital, (2) psychological capital, and (3) social capital.

1. The intellectual capital is our capacity to understand how our business might work on a global level. The key attributes related to this area are “global business savvy” which is about our understanding of our customers, competitors, and risk at the international/regional/global level, “cognitive complexity” which is our ability to analyze and problem-solve, and “cosmopolitan outlook” which is our knowledge of different cultures, history, geography, and political and economic systems around the world.
2. The psychological capital relates to our receptiveness to new ideas and experiences. The key attributes are “passion for diversity” which is about intense curiosity about other parts of the world, experiencing different cultures, and trying new ways of doing things, “thirst for

adventure” which is about an appreciation for and an ability to thrive in unpredictable, complex environments, and “self-assurance” which is self-confidence, a sense of humor, and a willingness to take risks in new contexts requiring high levels of energy.

3. The social capital relates to our ability to build trusting relationships with people who are different from us. The key attributes are “empathy” which is our ability to emotionally connect with people from other parts of the world, “interpersonal impact” which is about being able to bring diverse perspectives together, maintain credibility, and develop networks in unique ways, and “diplomacy” which is about our ability to listen to what is said and not said in conversations, our ability to start conversations with strangers, and an inclination to ask rather than answer questions.

In any organization, you can leverage various internal and external tools to create awareness and leverage the strength of market knowledge and international cultural diversity. The Global Mindset® levels can be assessed with the Global Mindset Inventory® (GMI), an online survey tool. Professionals can identify their strengths, capitalize on these, and then help others develop themselves in these areas. They then can focus on their development areas as well and come up with strategies to improve these. There are many other tools available to assist in international negotiations, whether in paper form or online learning tools (i.e., such as GlobeSmart®, an online cultural intelligence platform that can be used by individuals and within corporations).

In this article, we propose a three-step approach for leading your business through international negotiations toward a better business outcome with a global mindset. You will see from the suggestions below that preparation is key to what follows:

# I. Preparing for negotiations

## A. Building trust.

The responsibility to establish and sustain a constructive working relationship with negotiating parties lies with the highest stakeholder (party making the offer and wanting to make the deal happen most).

**1. Intercultural empathy**

(emotional connection triggers behavioral change). Empathy allows us to put ourselves in someone else’s shoes. This ability to consider the perspective from the other side of the negotiating table not only enables a strategic vision toward success, but also can create a lasting understanding of the personal and professional values that sustain a successful business relationship. Learning about the history of the local business partner and their local circumstances will further your understanding. It is also critical to start cross-cultural journeys with a self-awareness exercise. What do I want to do, how and why do I want to do this, and in what way? Then, let your assumptions guide your questions for your local business partner. Global Mindset and cultural awareness training will have the highest return of investment when conducted prior to beginning the relationships for negotiations. As soon as the vision and strategic focus is set, it’s time to invest in the human capital that will lead and drive the negotiations.

**2. Interpersonal impact.**

Let’s face it, we are all willing to take a larger leap of faith, to try harder, and consistently aim for success when we work with people we like. Research shows — and human nature would corroborate — that people prefer to work with other people who have a good reputation. Development of leaders often includes identifying what you want your “brand” to be and taking constructive steps towards building that brand. It’s also important to strive to understand the networks and type of relationships people build and use in other countries. Joining and participating in these networks will greatly enhance work productivity.

**3. Diplomacy skills.**

When everything is going well, it is easy to maintain relationships. But what to do when a disagreement arises? Some see disagreement as an opportunity to learn — this is the power of diversity driving innovation. Others see it as a threat. You can rely that there will be disagreement and misunderstanding in most relationships, and particularly in cross-cultural relationships. Leveraging both empathy and the ability to integrate diverse perspectives will help when diplomacy is required to find a solution. Keep in mind that success in diplomacy is not playing to the lowest common denominator in order to find consensus. Rather, skilled diplomats listen and learn in order to make an educated decision on what the shared vision outcome should be.

## B. Strategic thinking/Developing a brand for negotiations.

Strategic thinking and engagement will help increase effectiveness, develop efficiencies, ensure lasting results, and is a key responsibility of the highest stakeholder. The highest stakeholder can — and possibly should — then delegate certain responsibilities to those with key roles and the greatest subject matter knowledge in those roles. The in-house counsel, leading any negotiation, plays a critical role here — however, as with all multicultural areas, be aware that the empowerment of an in-house counsel to make decisions and enable strategy may not be the same in all companies and in all countries.

1. In-house counsel can assume the leadership role in pulling together the task force that will negotiate on behalf of the company, and developing clarity as to how this task force envisions to define and leverage opportunities as well as to define and mitigate risk.
2. In-house counsel should also engage in appropriate communications — potentially following an interview protocol developed by research experts — with the other negotiating party prior to negotiations to identify customers, critical decision makers and stakeholders, and also understand key beliefs and underlying rationale for a desired business outcome from their perspective. Understanding of the local market, legal system, and culture — as well as global interdependencies — is critical to asking the right questions and making the right observations. This knowledge creates an inquisitive mind.
3. By comparing internal and external perspectives (as well as feelings) the in-house counsel can help develop a clear negotiation strategy including key selling points, and non-negotiable and negotiable terms. Some critical questions that can be addressed are:
    1. What are the key motivators and the decision making rationale for the other party? What are the critical factors driving the deal? What are strengths and weaknesses, and what risks are presented on both sides?
    2. What is your positioning and how do opportunities and your strengths support this positioning?
    3. What protocol must be followed and how should that be navigated within the requirements for timing and execution of the deal?
    4. How will negotiations take place? In person, by phone?
    5. Who will attend negotiations and at which junctures?
    6. What communication strategy will work best?
        1. Which language(s) will be the language in negotiations?

2. Who speaks?
3. Who controls the documents/edits?
4. How will you know when an agreement has been reached and further discussion on an issue can be closed?
4. The in-house counsel can then develop a road map and resources for the negotiations
    1. What are the key milestones?
    2. What kind of resources are needed? (e.g., travel, video conferencing, translations, time)
    3. What are feedback and conflict resolution mechanisms?

# II. Performing the negotiations

## A. Connecting multilateral good faith for results

As it is not easy to spare time and resources for global mindset workshops for the "highest stakeholder" party, it may not be something of consideration at all for the other party. However, we know how a lack of global mindset on either side can fail and slow down negotiations significantly. Therefore, it is going to be helpful to start performing negotiations with a global team building activity that helps discuss and explain cultural differences and business view. The result of this activity will be critical to integrating diverse perspectives in mutually beneficial ways.

## B. Execution of the negotiation

Leveraging the strategy set forth above, negotiators can benefit from treating a negotiation like a project plan including:

1. Know who's who.
    1. Who is leading the negotiation? Who needs to be present?
    2. How are the key issues going to be discussed and key messages delivered?
    3. Authority — who needs to approve?
2. Form and format.
    1. Is a written contract acceptable and is this the single source of truth?
    2. Is there a governing language? Dual language?
    3. Will there be in-person or virtual negotiation?
3. Tracking road map, using feedback mechanisms and resources.

## C. Navigating personal and cultural difference in communications, integrating different perspectives, and listening

1. **Again, know who's who, who speaks first, and who approves.**
    1. Your way is not the only way. Your diplomacy skills are going to be invaluable.
    2. Consider the possible impact of gender, ethnicity, custom, and style.
    3. Culture is communication and communication is culture. Understand how culture is affecting communications and clarify whenever necessary.
    4. Be sensitive to nonverbal communication. (e.g., eye contact, seating arrangements due to seniority, or other reasons).
    5. When in doubt, ask. Use common techniques like following up a statement with a clarifying question — "So that I am sure to understand, did we just agree that 1+1=2?"
    6. Make sure to listen to deeper culture. Why is the other party communicating and

acting in a certain way? The underlying rationale will give you clues to what is of essence to the other side.

2. **Understand and respect the pace.**
    1. Consider time zones and impact to work/personal time.
    2. Monitor the progress towards key milestones and ask for clarification or suggestions if you foresee hurdles to meeting those milestones.
    3. Understand what time the other side is willing to put in or expects you to put in.
        1. Will this be negotiated over days, weeks, months?
        2. If you are meeting in person, will you work through meals or are breaks and social interaction outside of the office part of the cultural norm?

### D. Navigating personal and cultural difference in closing the negotiations and gaining commitment

1. **Prioritization of issues and leverage.**
    1. Have you covered the most important issues first, or are these the last items to cover?
    2. Can time — delay or expediency — be used to move leverage?
    3. What are the process and protocol for closing? Is a final approval still needed? Who signs first and how will you acknowledge the closing?
2. **What continuity planning is expected?**
    1. Will key personnel need to be hired or a team assembled?
    2. What touch points and with what frequency?
    3. Who will stay abreast of commercial or regulatory changes that may impact the performance or even the terms?
3. **Overcoming hurdles in negotiation.**
    1. If you haven’t planned for disagreement, then you haven’t planned. Are you relying on protocol, relationships, or both to manage through a disagreement?
    2. Stick to the plan – is the desired business outcome still clear and where does this hurdle lie in connection with that outcome?
    3. Analysis of the situation from a commercial, cultural, and legal perspective. It is not unusual for these three areas to be in harmony within one culture, and clash with another.
    4. Advocacy and urgency –Who needs to be involved in the decision making and when does the decision need to be made? Is the matter something to be managed over time or is it urgent? Who is the customer and how will the customer best be served?

## III. The after party — Maintaining the formal and informal relationships after the negotiations

### A. Written or verbal agreements

1. Once the agreement is signed, where does it live?
2. Are there milestones that need to be tracked closely or will standard operating procedure be sufficient?
3. Are both parties aware of how the contract/agreement can be amended? (i.e. for US publicly traded companies, any commitments made outside of a written agreement may be considered to be an illegal side letter).

### B. Compliance

1. Determine if any reporting for audit or compliance purposes is needed, who will manage the reporting, how it will be received, and if any verification of compliance is needed.
2. If an area of non-compliance is discovered, determine the impact and the road to a cure as you would with overcoming the hurdles in the suggestions above.
3. If the area of non-compliance includes a potential legal barrier to doing business, or a financial or other impact from a regulating agency, ensure that key contacts (i.e., outside counsel, government affairs staff, and executives with a need to know) are engaged and a remediation plan agreed.

### C. Maintaining the relationship

This critical element cannot be over-emphasized. Too often, parties rely on a commonly desired business outcome and are surprised when business dealings fail due to a poorly maintained relationship.

1. Are your priorities consistent? As with any relationship, priorities change and you may need to adjust your business — and even your contract — to adjust to these changing needs.
2. Trust. If either party fails to meet expectations in Sections A or B above, trust may deteriorate. By missing deadlines, failing to meet compliance requirements, failing to show empathy, or lacking a diplomatic solution when facing hurdles, trust — the foundation of any relationship — may be lost.
3. Healthy Competition. We all want to be successful and your relationship with one company may in fact be competitive with either your — or their — relationship with another party. Changing market dynamics or incentives outside of your control may change the balance of power and impact the balance of your relationship.

   Keep in mind that success in diplomacy is not playing to the lowest common denominator in order to find consensus. Rather, skilled diplomats listen and learn in order to make an educated decision on what the shared vision outcome should be.

## Conclusion

Forging successful international business relationships can be richly rewarding, both professionally and personally. However, with such great opportunity comes risk. Careful planning, execution, and maintenance can help to ensure that your strategy is sound, the companies with whom you do business are aligned, and that all interested parties are prepared to deliver on agreed obligations. The business case that we have shared is no doubt familiar in one way or another, and any alternation to countries and governing laws can change each scenario dramatically. By enriching your knowledge of cultural and legal influences, in house counsel will be better prepared for potential pitfalls and will have the tools necessary to navigate successfully through new scenarios by leveraging a global mindset from the moment a deal is proposed, through the planning and execution phases, and following on through the life of the relationship.

## Further Reading

Dr. Karen S. Walch, a professor at Thunderbird School of Global Management, discovered through in-depth research in 2010 that the twenty-first-century focus on global interdependency and justice has created entirely new rules for negotiations today. She found that there are still some instances where the ruthless and selfish negotiation tactics of previous centuries may apply, namely where power is centralized, and relationships may not matter. Generally however, Dr. Walch found that the majority of negotiations today require understanding of the social context and collaboration with others in order to produce sustainable, prosperous, and satisfying agreements. This is because many of the current social, political, and economic problems in negotiations are the result of complex social connections, not simple win-lose power plays. Global Mindset, the Handbook for Successful Global Leaders, 2013.

Sirin Koprucu is a certified Global Mindset facilitator and uses the concept in her work as a need arises. Neither Sirin Koprucu nor Carolyn Herzog are compensated for promoting this concept.

GlobeSmart®, an online cultural intelligence resource, provides ready access to detailed information on how to conduct business effectively with people from around the world.

Carolyn Herzog

Executive Vice President, General Counsel, Company Secretary, and Chief Compliance Officer

Arm Ltd.

At Arm Ltd., a leading semiconductor IP company, Carolyn is responsible for all legal, regulatory, and public affairs worldwide matters for the company and provides strategic counsel to the CEO, board, and leadership team on a wide range of corporate, commercial, and regulatory issues. Prior to Arm, she was the VP, CCO, and deputy GC at Symantec Corporation. She was previously Head of Legal for EMEA, based in London, UK. She joined Symantec from AXENT Technologies, where she was GC. Carolyn is a director for ACC and has previously served as a board member for ACC Europe, an Advisory Board member to IPWatch Systems Corporation, and as a board member for the National Cyber Security Alliance.

?irin Köprücü

Global Leadership Trainer and Market Entry Consultant

?irin Köprücü is a global leadership trainer and market entry consultant helping internationally growing organizations develop in an effective, efficient, and lasting way. She is a certified Global Mindset facilitator with Thunderbird School of Global Management and her company Strategic-Straits, Inc. has served clients from a wide range of sectors including associations and more. She currently resides with her family in Washington, DC.