

Insights Into Japanese Negotiations

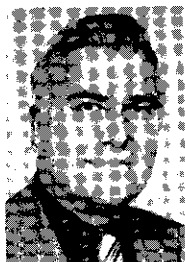
Be prepared, be observant, and importantly, be patient are general points in dealing with Japanese

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Technology transfer with Japan can be considered to be interesting, complex and, at times frustrating. So much past experience has been recorded that today there seems to be little room for variation. Since the end of the Pacific war, thousands of businessmen have visited Japan or lived in Japan and each has told his



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story as to the best way he feels the business of technology transfer should be conducted. Books, magazines and newspaper articles have been written containing additional advice to the point where each supposedly new tid-bit seems as bromidic as the classical symbols of Japan — the cherry blossoms, geisha and Mount Fuji. However, considering all the information that may be available on this subject, one area of interest merits repeated exploration — the close relationship between the mechanics of the transfer of technology and the cultural aspects of the transfer. Based on our experiences, we would like to share with you some interesting situations which will illustrate several important points for consideration when approaching the subject of the transfer of technology with Japan.

Consider the following scenario, an excerpt from a true story which happened in 1977. An American licensing executive visits Japan with one of his subordinates and, through the Far East representative of his corporation, is introduced to a leading Japanese manufacturer with a similar product line. The initial discussions go well and the Americans are interested in purchasing technology relating to a new product as well as technology relating to certain process improvements which would appear to enhance their competitive position in existing products. As a result of the discussions and an expression of genuine interest

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on the American side, the Japanese submit a detailed written proposal. The American executive responds with a counterproposal, coupled with the comment, "We are willing to sign an option agreement, subject of course to the negotiation of suitable terms and conditions." The Japanese side is delighted and, within a few days after receiving the letter, propose by telex that they visit the American company for further discussion. This proposal is accepted by telex and a five-member Japanese team is dispatched to visit the American company.

Sudden Chaos

The meeting opens with an apology from the American side saying that sample evaluation has not yet been completed and that there are still some serious internal matters that had to be clarified before entering into an agreement. Suddenly, the Japanese representatives are in a state of shock. The virtues of the project had been enthusiastically sold to top management and, as a result, two company directors had been sent as part of the negotiation team. The Americans are confused and embarrassed; the Japanese uneasy and fearful. What appeared to be a promising start to a mutually beneficial negotiation is suddenly plunged into chaos.

Where did things go wrong? Both companies have a sincere interest in concluding a mutually satisfactory business arrangement. Both companies are knowledgeable and sophisticated in international business. The American company has a high respect for the courtesy of the Japanese in their business dealings and felt that it would be discourteous (or at the least an indication of lack of interest) to refuse the ill-timed proposal of the visit.

The proper approach would have been to delay the meeting for the reason that sample evaluation had not been completed. Furthermore, a projected time schedule should have been proposed by the American company for completing the evaluation and a proposed date set for the meeting. In this way, the offer of a meeting by the Japanese company has not been refused, but merely delayed and for a justifiable reason.

One very important point is illustrated by this situation. Do not indicate you are willing to "sign an option agreement" (or make any other firm commitment) before you are really ready to proceed. It should only be indicated that an option agreement is possible, if further preliminary discussions are successful.

As is generally known, the application of negotiation techniques is situational and situations are best

recognized through repeated experience or through analysis of the experience of others. Therefore, we would like to share with you some additional situations, all of which are true and are taken from our files.

To focus attention on the theme of each of the following subject areas, we have entitled them with the key Japanese word describing the situation. From each situation, we will attempt to extract the key points which relate to the techniques of technology transfer.

NOREN (IMAGE AND GOODWILL)

Those of you who have visited Japan or even a Japanese restaurant in this country have undoubtedly seen a small three-section curtain, artfully decorated, hanging from the top of the doorway as you enter the restaurant. This curtain is called "noren" but, in the context of the following story, it is the image and goodwill of the Japanese company with which you are dealing.

A major Japanese company in the hospital-supply field has the largest market share in a certain health-care item which is sold to hospitals. The hospital-supply company enjoys a major portion of the sales of this item, because it also supplies to the hospitals the medical preparation to be used along with the item. The item itself is made by several manufacturers, three of which are major suppliers of the hospital-supply company. An American inventor invented, developed and patented a new part which could be used with the item and the invention was, within a short period of time, a commercial success in the United States. Because of a pre-existing obligation, the president of the hospital-supply company asked the president of one of his manufacturers to obtain, if possible, a license under the Japanese patent owned by the American inventor. The hospital-supply company agreed to place an order for items containing the new part in an amount equal to approximately 10% of the market share of the item and further agreed that, if initial market reaction was favorable, it would recommend an even wider use of the item containing the new part, because of the desirability of marketing the high quality product in the health-care field.

Inventor Waivers

The American inventor was eager to exploit his invention in the world market and had already started selling his part to a number of Japanese customers at the time that he received a request for a license from the Japanese manufacturer designated by the president of the hospital-supply company. The terms of the license were negotiated and a draft of the license was prepared. The draft was reviewed and changes were agreed upon. The Japanese manufacturer then proposed a final meeting at the inventor's laboratories to execute the license and to ask for advice on certain points that might help commercialization in Japan proceed smoothly.

By the time the Japanese manufacturer was ready to conclude its contract with the American inventor, at

least one and possibly two of the American's Japanese customers put in a bid for a license. At that point, the American inventor started to waiver. It is believed that he felt he did not negotiate the best financial arrangement for himself.

During the subsequent negotiation, the American inventor said that he was looking for an agreement which would be both more favorable to him in general matters and more favorable to the Japanese side than the agreed upon royalty rate (which was based on no guarantee of market share). What was essential, at this time, he said, was some kind of guarantee of market share, which constituted a major change in position. He asserted that he knew the Japanese market well and it had to be a much higher figure than that estimated by the Japanese side throughout the negotiations. In other words, he did not believe the market estimate presented by the Japanese manufacturer. On the other hand, he said that he was willing to grant a license at a much lower royalty rate but, in exchange for this, he needed his guarantee.

Over the course of three frustrating days, there were long discussions as to the potential profitability to the Japanese manufacturer seeking the license, the special relationship between the president of the hospital-supply company and the president of the Japanese manufacturer, the Japanese domestic marketing system with respect to the item on which the part was to be used, the names of all of the companies in the field and their respective market shares and ways in which a larger market share could be guaranteed. The inventor seemed to shift his position with each new bit of information and the Japanese manufacturer became confused and disappointed.

Finally, on the afternoon of the third day, the American said, "Even if I assume that all of your figures concerning the market are true, if I understand your production costs on this item, you can't possibly make a profit. What is your motive for asking for a license?" On hearing this (through an interpreter) the Japanese president, although visibly shaken, attempted to maintain his composure and he calmly said "noren desu" — the image of my company in this industry, which relates to basic human needs, is more important than profit. The American looked across the table uncomprehendingly and said, "If you have no profit motive and you are not the ultimate seller how can I be guaranteed of a larger market share?" at which point, the Japanese side still trying to maintain an outward calm uttered (but not for translation) "bujoku da" — it's an insult, contempt, an indignity, an affront.

Major Errors

Up to this point the American inventor had (1) gone back on his word as to the agreed upon royalty rate, (2) alleged as being untrue the Japanese manufacturer's estimate of the market in Japan, even though he was totally familiar with the market and (3) questioned the integrity of the manufacturer by implying that he would not enter this market based on his obligation to basic human needs as opposed to a sole profit motive. An important fact, which the American inventor did not check, is that the president of the Japanese

manufacturer, although operating out of a modern factory facility, was living with his family in a small apartment so that he could re-invest his own profits back into the company. Furthermore, the president was, in fact, very conscious as to his obligations to his customers to provide the best products he could make and wanted his company to have such an image. Once having attained that image, he believed that the goodwill of his company would naturally lead to its profitability.

The American inventor, not realizing that the negotiation was over, suggested that the Japanese president carry a letter directed to him from the American to the president of the hospital-supply company in which a request was made for suggestions as to how a larger market share could be guaranteed. To be polite, the Japanese side agreed to receive the letter and discuss the problem in Japan as requested.

The discussions in Japan were short and swift. Quickly, consideration was given to competitive parts, one of which was already commercially available in Japan. The American inventor's other two licensing prospects are suppliers to the Japanese hospital-supply company so that present chances for obtaining a major market share in Japan for this excellent invention are substantially nil.

The important points to be observed from this particular situation are:

1. Be fully acquainted with the Japanese company and, if possible, key individuals attending or associated with the negotiations, hopefully before the negotiations start but, at least, long before the final round of negotiations are to begin.

2. Understand the philosophical and factual considerations surrounding the Japanese domestic market (which usually substantially differs from that in our country) in that particular industry with which you are concerned.

3. If you ask your Japanese counterpart for data, don't question the integrity of his data in a manner such that it would be insulting. Approach this situation carefully and politely.

4. Do not get deeply involved with more than one Japanese potential licensee at the same time, unless it is clear to all parties your licensing program involves an industry-wide non-exclusive license. This is especially true where the industry is small and the activities of the competitors are well known to each other as in the present situation.

5. Remember that "noren" as well as profit may be the motive for the license. You may be representing a world-famous American company with an excellent international reputation and the mere association by way of a license agreement between your company and the Japanese licensor or licensee may, from a Japanese point of view, be the major consideration for justifying the consummation of a business relationship.

SMOKING OUT THE "TANUKI" (DETERMINING THE TRUE INTENTION)

The "tanuki" or badger is often a central figure in Japanese children's stories and folklore. The "tanuki" is small, pot-bellied, sly and mischievous. He is cunning and often irksome.

An American inventor and president of a small research corporation made a major breakthrough in a particular field of technology and successfully licensed his invention in the United States. As a result of an excellent patent program, he secured good protection in the major industrial countries, including Japan. A decision was made to license nonexclusively and, as a result of apparently adequately conducted negotiations, option contracts were sent (perhaps under delusions of excessive optimism) to potential licensees. One of the potential Japanese licensees seemed particularly enthusiastic at the time of the initial meetings and yet there followed a long period of silence.

A further meeting was finally arranged in which we, along with two Japanese businessmen, represented the American licensor in his absence. The discussions took place in Japanese and within 10 minutes, because of the criticism of the option contract, it was evident that no progress was being made or would be made if the discussions continued. The obvious question in our minds was "Why?" and because the licensor was not present, we were in a position to make a very attractive, carefully worded *hypothetical proposal*, pointing out, of course, that our new counteroffer had not been thoroughly discussed with the licensor and that, therefore, no binding commitment could be made. The representative of the Japanese negotiating team said that this matter should be discussed with his superior and he promptly excused himself and left the room. In spite of the fact that the counteroffer was somewhat complex, the representative returned within a surprisingly short period of time. Upon his return, he commented that, although the counteroffer was highly favorable, his superior said that it would be impossible to act upon it at this time (whereupon one of the Japanese members of our team whispered, "Saa-tanuki wo ibushidashita!" — we have smoked out the tanuki!). Based on the discussions that had been held, it seemed clear that there was not an actual interest in acquiring a license. In retrospect, there seemed to be only a great curiosity concerning the new invention and that the company that we thought to be a potential licensee had agreed to the series of meetings to see what they could learn.

As a technology transfer negotiating technique, the foregoing (a timely proposal of the *possibility* of a favorable counteroffer) if used judiciously, may eliminate the necessity of conducting a continuing series of nonproductive meetings. In any event, at some point in time, it is necessary to know exactly what your opponent's intentions are and whether he is really interested in acquiring a license. The above maneuver provides one way of accomplishing such a result.

FUMIE (DETERMINING THE LIMIT)

When there is a "tanuki" to be smoked out there is an implication that the other side has been somewhat less than serious in their attitude toward the negotiations. The extreme to which one side or the other can be pushed is often tested in other ways.

A foreign company (not American) was

renegotiating a contract with its Japanese partner because of changed commercial circumstances. Renegotiation was obviously desirable from the point of view of both sides and a considerable amount of give and take was required in order to adjust to the new circumstances in an equitable manner. The foreign company was insistent on certain concessions to the point that their insistence became wearisome. Finally, changes in the agreement (such as cancellation of minimum royalties) were offered by the foreign company in exchange for the requested concessions.

The Japanese side had become frustrated by the repeated demands and they were not certain that the proposed compensatory changes in the agreement offered an equitable balance. We were assisting in the negotiations and had persuaded the parties to occupy separate rooms as the discussions became more heated. Finally, the leader of the Japanese negotiating team said to us, "Tell them that we demand this (enumerating the condition) as an absolute condition for making the concessions." The new demand from the Japanese side was outlandish and we tried for at least half an hour to persuade them that it would scare their guests out of their wits. The answer to that comment was, "aitsu notame ni fumie da" — It's a "fumie" for those guys!! The speaker was fluent in English but he was speaking (emotionally) in Japanese to make his point. Whereupon we asked, "What is a 'fumie'?" Answer: 340 years ago in Tokugawa times, the government considered that Christianity was an alien influence and an obstacle to government efforts to unify Japan. Accordingly, it was proclaimed that the Christian religion should be abolished, although all of the converts should be given an opportunity to reconvert to the old religions. Failure to convert carried with it an extreme penalty — crucifixion. The verb "fumu" in Japanese means "to tread on." "E" is represented by the Chinese-Japanese character meaning "picture." In order to test the sincerity of the people who were reconverting, the government forced them to step on a picture of Christ. Those who refused to step on Christ were obviously not sincere in their pledge to reconvert.

After hearing the explanation, the "fumie" proposal was transmitted (without explaining "fumie") to the other side who promptly asked, "When is the next flight leaving Tokyo?" After calming them down, their reaction was transmitted to the Japanese, who relaxed with enlightened smiles. After the crisis, the opposing negotiating teams were reunited and a fair and mutually satisfactory compromise was swiftly arranged.

The "fumie" is illustrative of one of the techniques that may be used on you and if you can detect it as such, remain calm, smile and relax and the negotiations will soon revert to a natural equilibrium. The point to remember is that many of the Japanese thinking patterns were evolved in Tokugawa times (or earlier) and Japan, in spite of its rise to the Number Two economic position in the Free World, is only a little over 100 years removed from feudalism. Western business philosophy is still to the Japanese an alien culture, not withstanding their *intense study of it* and their considerable success at *applying their version of it*.

NEMA WASHI (DIGGING AROUND THE ROOTS)

A mutually satisfactory agreement was rapidly concluded between members of the negotiating team of a foreign company and a Japanese company. The negotiating team of the foreign company was in a position to sign a binding agreement and, because of other business commitments, they had scheduled themselves to depart from Tokyo on an early afternoon flight on the day that the negotiation was concluded. A written agreement was hastily prepared, checked and double-checked and the signature of a director of the Japanese company was obtained. If the story had ended at this point, the ending would seem to be a happy one.

Members of the Japanese negotiating team were somewhat disappointed that they did not have a chance to celebrate in Japanese style with the members of the opposing team. This disappointment was minor when it was soon discovered that the director responsible for the project, who could not be consulted because he was out of town, was furious because the agreement, although apparently *very favorable* to the Japanese side, had been executed without his prior approval. Much-cherished harmony soon gave way to strident discord and the Japanese negotiating team was thrown into dejection and confusion.

Decide on Plan

After a long series of weekend meetings, the proper plan for "nemawashi" — digging around the roots or persuasion of those of higher authority by indirect methods — was decided upon. Early Monday morning a delegation was sent to the "Semmu" or Senior Executive Director who out-ranked the "Jomu" or Executive Director who had complained about the precipitous action. A long, detailed explanation was needed to establish the reasons why the matter had to be settled without everyone's approval in the traditional manner, which would have involved the circulation of a "ringisho" — a memorandum explaining the action to be taken — with each concerned individual applying his "hanko" or seal to the memorandum, thereby giving approval (or disapproval) as the case may be. Fortunately, the signer of the agreement from the Japanese side was also of the "Jomu" class and of equal rank to the complaining Executive Director.

The Senior Executive Director ultimately assumed the responsibility for restoring harmony. However, there was a lingering bad taste concerning the project as a whole in spite of the fact that the Japanese had been "forced" (in the sense of being made to proceed too quickly) into an agreement favorable to them.

This story contains a number of vital insights:

- (1) Remember that there is less concern for time in the Orient than in our western culture.
- (2) If at all possible, allow enough time for the smooth conclusion of the negotiation after which you will have the opportunity to join your Japanese hosts in a celebration. The mood of the celebration will be completely relaxed, providing an opportunity to break

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Policies Affect Technology Transfer

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- Technology by U.S. Firms and their Implications for the U.S. Economy"; A report prepared for the Office of Foreign Economic Research, U.S. Department of Labor, Washington, D.C., 1976.
14. Ireson, Grant, "Some Problems of Technical Assistance to LDC Universities", *TECHNOS*, January/March, p. 13, 1975.
15. "The Mochudi Toolbar", Published by the Agricultural Information Service, Ministry of Agriculture, Private Bag 003, Bagorone, Republic of Botswana. Distributed by The Mochudi Farmers Brigade, Box 208, Mochudi, Republic of Botswana.
16. "Appropriate Technology in World Bank Projects", A Draft Report from The World Bank, 1976.

Commonality With Third World

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does not relate directly to the "regulation" of technology transfer, I will merely summarize some of the main features of our proposals. They call on developed countries, directly or through international organizations, to undertake measures to facilitate LDC access to technological information; facilitate access to government-owned technology; assist in the development of indigenous technology; encourage the training of personnel from LDCs; provide for exchange programs on industrial and scientific research; provide for cooperation between science and technology institutions on common R&D projects; and other similar programs.

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CONCLUSION

I have commented on the U.S. position with regard to some of the principal issues in the code of conduct. Others, which I will not attempt to elaborate on here, include definitions, national regulation, responsibilities of source and recipient enterprises, and applicable law and settlement of disputes. The general approach of the U.S. on these points has been touched on, and the positions of the respective groups are reflected in the draft proposals which have been tabled in the UNCTAD.

Earlier on, I observed that the U.S. and developing country positions on the regulation of technology transfer appear to be highly divergent. Certainly we cannot overlook the differences. However, it is my view that a U.S. position which favors a generally liberal investment policy may not be entirely incompatible with the developing country position on technology transfer. The mutual education process has demonstrated that most countries are motivated by a

desire to formulate an agreement which facilitates the most effective means for the delivery of the factors of technology transfer, i.e., capital, know-how and trained personnel. We are in agreement with regard to some of the basic principles; we recognize that the special needs of developing countries are a prime consideration; we respect the rights of states to regulate in this field; we agree that suppliers have certain responsibilities, including avoidance of restrictive business practices; and we know that conditions in host countries must be favorable if the transfer of appropriate technology is to be stimulated. If we can achieve common positions around these and other key points, I think we can be more sanguine about the apparent divergency of positions.

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down the "enryo" or restraint between the new license partners. Those of you who have extensive experience in Japan realize the fact that warm human relationships have greater value than the words of the license agreement.

(3) It is important to know as early as possible in the negotiations the rank of the members of the negotiation team and who within the company has responsibility for the project under consideration. The Japanese are highly status conscious and above all they will do everything to follow protocol in a harmonious manner.

(4) Disruption of harmony means disruption of the project and the results will be unfavorable to your side.

(5) Enthusiasm for your project was probably developed at the upper middle-management level and an enthusiastic presentation was undoubtedly made to select members of top management.

(6) Top management, being only partially informed, may have some preconceived ideas as to the final result of the negotiations and it will probably be feeling rather than strict logic which changes their view with respect to the outcome. This requires time — which you should be prepared to spend on projects of any magnitude.

The specific techniques that we have discussed can be summarized generally to say that, when negotiating with the Japanese, one should be thoroughly prepared, should be observant, and, above all, should be patient. As a final note of interest, it should always be kept in mind that the nodding of the head by Japanese people usually means "I hear you." In most cases, it is not intended to mean "I understand."